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Women

# The unspeakable cruelty of El Salvador's abortion laws

- IV Online magazine - 2018 - IV520 - May 2018 -

Publication date: Saturday 12 May 2018

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### **Around the world today we are seeing two opposite tendencies in abortion law reform.**

In the Americas, the governments of Bolivia, Chile and Mexico City recently lifted total bans on abortion. Other jurisdictions such as Ohio, several states in Mexico and Poland have passed or attempted tighter restrictions.

Even Doug Ford, the leader of Ontario's Progressive Conservative party, has voiced openness to making abortion more difficult to access. [1]

In El Salvador, the clock is ticking towards a May 1, 2018, deadline for reform that would decriminalize abortion in two situations: [2] When the life of the pregnant woman is in danger and when an underage girl (but not an adult woman) becomes pregnant through rape. [3]

The attention of the world's media was recently drawn to this country's extreme abortion regime by the commutations of the 30-year prison sentences of two Salvadoran women. [4] Their crime was to have had a miscarriage. Both innocent women had served over a decade of their sentences.

To understand what is at stake, we need to look at what makes El Salvador probably the worst country on earth to have an unwanted or life-threatening pregnancy, or a complicated miscarriage, especially if you are poor.

I am a sociologist who has researched health-care policy in El Salvador, including the expansion of health-care services to the poor by the left-of-centre Farabundo Martí- National Liberation Front (FMLN) government. [5]

As an admirer of this government's goals and achievements in health care, I am struck by a contradiction: It has made genuine efforts to reduce maternal mortality but during most of its nine years in office, it has failed to challenge a law that may actually increase it.

The problem is not just the abortion ban itself, which El Salvador shares in common with five other Latin American and Caribbean nations. [6]

What has made El Salvador unique on the international stage is the fanatical over-application of the law by police, prosecutors and judges. And the complicity of many doctors fearful of standing on the wrong side of the law.

## **An extreme law zealously over-applied**

Abortion was made illegal in El Salvador in all circumstances in 1997.

This was reinforced two years later by a Constitutional amendment declaring that life begins at conception.

Among the small number of countries that maintain a complete ban, only in El Salvador has law enforcement led to women being sent to prison for 30 to 40 years. To date more than 150 women and girls have been prosecuted. [7]

More than 28 women are currently serving out cruelly long sentences.

The country's penal code mandates a 12-year sentence for women convicted of having an abortion. But if a miscarried or stillborn fetus is deemed viable by the courts, women are prosecuted for aggravated homicide. [8]

In one case, a 40-year prison term was handed to a woman who miscarried at 18 weeks. [9]

Many women jailed for miscarriages did not even know they were pregnant. [10]

Women have been criminalized for obstetric emergencies because judges accept contradictory or non-existent evidence that they intended to either end the pregnancy or kill an early-term fetus. [11]

It is precisely the flimsiness of these cases that has enabled sentences to eventually be overturned through strenuous efforts of organizations like the Citizens' Coalition for the Decriminalization of Abortion. [12]

## Harms to health

In addition to this clear violation of women's civil rights, the extremist application of the law imposes harms to health and life.

For example, Salvadoran doctors have refused to intervene medically when a pregnancy endangers a woman's life, as in the case of ectopic pregnancy. This is when a fertilized egg becomes lodged in the fallopian tube, leading to rupture and lethal internal bleeding if untreated. In such cases doctors have stood by until the tube ruptures. [13]

There are particular harms for very young girls and teens. Girls as young as nine years old have been denied therapeutic abortion. [14]

For these children, the trauma of sexual violence is compounded by the physical risks that childbirth poses to an immature body and the terror of going through with a dangerous pregnancy.

Three out of every eight maternal deaths in El Salvador are pregnant teens who take their own lives. [15]

It is also known that 13 per cent of maternal deaths in less developed countries are caused by unsafe abortions, which in turn become more frequent when abortion is illegal or unavailable.

Hundreds of clandestine abortions certainly continue to occur each year in El Salvador despite the ban. Health Ministry officials themselves acknowledge that the law and its application undermine their efforts to reduce the maternal mortality rate. [16]

## Government-employed doctors and poor women

What makes this situation all the more poignant is that it only affects the poor and poorly educated.

These women and girls can't afford care in private hospitals and clinics where doctors maintain patient confidentiality. Nor can they afford good legal counsel.

Hand in hand with this class bias is most prosecutions of women for suspected abortion originate from doctors in state-funded, public hospitals. [17] Since the public system doesn't charge for services, it is the only option for low-income Salvadorans.

It is also where there are more early-career doctors who don't want to jeopardize their futures; these doctors fear that not reporting could be seen as assisting in an abortion, which for health professionals carries a penalty of six to 12 years. [18]

## Prospects for change

Taken together, the deprivations of liberty and the physical and psychological suffering that have resulted from El Salvador's abortion regime have been labelled torture by Amnesty International. [19]

The outcome of the abortion struggle in the political arena is highly uncertain.

On the one hand, almost 60 per cent of Salvadorans now favour loosening the law when a woman's life is in danger, and fully 79 per cent when the fetus is not medically viable. [20]

As well, a tentative coalition emerged among legislators in late 2017 in favour of a bill by a maverick Nationalist Republican Alliance (ARENA) party member proposing abortion be allowed in very limited circumstances. [21]

On the other hand, most of these lawmakers will be replaced on May 1, 2018 and ARENA overall remains staunchly opposed to any liberalization of the law. The party will have a large plurality of seats in the Legislative Assembly, dwarfing all the others.

ARENA, moreover, has used abortion to villainize the FMLN, which has responded at times by sacrificing women's interests for success at the polls. [22]

But whatever legislators decide in the coming days, a broad social movement for fundamental justice on this issue has created momentum for change that will not likely subside. [23]

PS:

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[1] National Post March 6 2018 <http://nationalpost.com/pmnn/news-pm...>

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[2] The Guardian April 3 <https://www.theguardian.com/global-...>

[3] Since this article was first published, the opportunity for decriminalization has been lost <http://www.catholicsforchoice.org/a...>

[4] The Guardian March 13 <https://www.theguardian.com/global-...>

[5] <https://www.nursesworkincentralamerica.com/>

[6] The Conversation October 11 2017 <https://theconversation.com/in-lati...>

[7] Foreignpolicy.com Jan 3 2017 <http://foreignpolicy.com/2017/01/03...>

[8] Ny Times Feb 15 2018 <https://www.nytimes.com/2018/02/15/...>

[9] Latimes July 30 2017 <http://www.latimes.com/opinion/op-e...>

[10] Amnesty USA <https://www.amnestyusa.org/reports/...>

[11] Ibid

[12] <https://agrupacionciudadana.org/>

[13] Amnesty usa <https://www.amnestyusa.org/reports/...>

[14] Ibid

[15] Guernicamag Jan 11 2018 <https://www.guernicamag.com/consequ...>

[16] Amnesty USA <https://www.amnestyusa.org/wp-conte...>

[17] The Nation Dec 14 2016 <https://www.thenation.com/article/w...>

[18] Guernica Jan 11 2018 <https://www.guernicamag.com/consequ...>

[19] Amnesty USA

[20] <http://fespap.org.sv/se-dan-a-conocer-los-resultados-de-encuesta-sobre-interrupcion-del-aborto/>

[21] [https://elfaro.net/es/201708/el\\_salvador/20764/Alianza-entre-diputados-de-derecha-y-el-FMLN-apunta-hacia-la-despenalizaci%C3%B3n-del-aborto.htm](https://elfaro.net/es/201708/el_salvador/20764/Alianza-entre-diputados-de-derecha-y-el-FMLN-apunta-hacia-la-despenalizaci%C3%B3n-del-aborto.htm)

[22] La Times July 30 2017 <http://www.latimes.com/opinion/op-e...> and <https://scholar.harvard.edu/viterna...>

[23] The Nation Dec 14 2016 <https://www.thenation.com/article/w...>