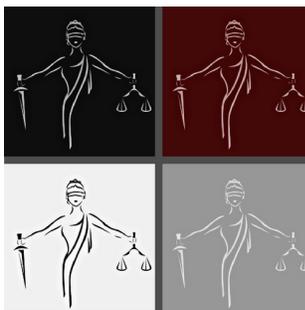
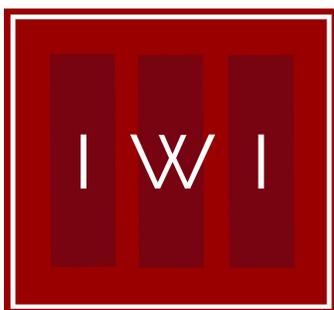




¡Mi Cuerpo, Mis Derechos!
**A Closer Look at El Salvador's Discriminatory Laws:
Women's Sexual and Reproductive Rights**

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Abstract

The following analysis will seek to highlight the ongoing issues that hinder Salvadoran women's opportunities to obtain sexual and reproductive rights, services and resources in El Salvador. It will emphasise the legal gaps that neglect women's rights to choose or access particular services, with special attention to abortion, birth control and family planning methods. Through developed legislation, updated penal code and with respect to international obligations, El Salvador has the potential to fulfil its duties to protect its women's sexual and reproductive rights through appropriate change.

Introduction

“¡Mi Cuerpo, Mis Derechos!” These are some of the chants and strategic words of protest that women in El Salvador are demanding in retaliation to the criminalisation of abortion nationwide. Translating to, “my body, my rights,” El Salvador maintains some of the world’s most restrictive legislation regarding abortion, playing into a so-called, ‘Blanket Abortion Ban’. In the years leading up to the country’s civil war, controlled abortions were once legal with medical authorisation, and were legal in cases of mothers’ endangerment caused by the pregnancy, congenital disorders present in the fetus, or when the pregnancy itself was the result of incest or rape. Salvadoran penal code was later changed in the mid-1980s during the civil war with the support of Archbishop Fernando Saenz LaCalle, who instigated the movement of *Yes to Vida* (‘yes to life’), a pro-life movement focused on ensuring the public maintained a religiously-motivated idea that human life begins at conception. When the penal code eventually shifted due to religious influence, to enforce the criminalisation of abortion in all forms, it also included the criminalisation of women having miscarriages on the grounds that miscarriages were the result of negligent pregnancies. Political talks surrounding the new reforms regarding abortion began in 1992 amidst the peace agreements to end the war. Legislation was later enacted and enforced in April 1998, completely outlawing any practices of abortion, miscarriages and stillborn births.

To this day, however, the national public health services are severely underfunded, resulting in only 51 percent of the population seeking medical assistance at any given time. Of that percentage seeking medical care, a large majority of them spend less than US\$30 on personal healthcare per year.¹ Therefore, most women who are victims of rape, incest and sexual violence and become pregnant cannot typically afford contraceptives for either preventative measures or for prenatal treatments or abortion-related services.

¹ World Health Organisation, Annex 11 El Salvador (2010)
<http://www.who.int/workforcealliance/knowledge/resources/MLHWCcountryCaseStudies_annex11_ElSalvador.pdf> accessed 05 April 2018

In relation to regional statistics, El Salvador has some of the highest rates of teenage pregnancy in Latin America due to the restrictiveness of Salvadoran abortion laws.

The World Health Organization (WHO) reported in 2011, that nearly 11 percent of Salvadoran women seeking a secretive or illegal abortion resulted in death.² This number compares to the roughly ten percent of women regionally who died as a result of unsafe abortions.³ Women are forced to utilize dangerous methods to induce abortions including consuming rat poison and inserting mechanical tools (i.e. pliers or screwdrivers) into the cervix. Most women who unwillingly become pregnant are typically under the age of 22 and the majority of women undergoing an unsafe abortion are under the age of 18.⁴ Only one women's refuge center remains in the whole country, and it is only able to accommodate 35 women and children, creating a greater obstacle for women to seek resources to accommodate their pregnancies.⁵

In Context

El Salvador is member to a number of international agreements; both binding and non-binding that outline the rights related to sexual and reproductive healthcare that persons are entitled to. These documents include the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC) and the International Planned Parenthood Federation (IPPF) Charter on Sexual and Reproductive Rights. These treaties each

² Amnesty International, *Twelve Facts About the Abortion Ban in El Salvador* September (2014) <<https://www.amnesty.org/en/latest/news/2014/09/twelve-facts-about-abortion-ban-el-salvador>> accessed 05 April 2018

³ Guttmacher Institute, *Abortion in Latin America and the Caribbean, Incidence and Trends* (2016) <<https://www.guttmacher.org/>> accessed 05 April 2018

⁴ *ibid*

⁵ *ibid*

include elements of the right to life, right to privacy, right to protections and assistance to the family, including special measures for protection and assistance for mothers and children, along with women's rights to their bodies during pregnancy and their sexual health. Despite reports and pleas from the United Nations and human rights groups for the country to reassess its laws regarding abortion, El Salvador continues to penalise women that fall victim within the discriminatory margins of the country's legislation.⁶

More recently, the country's abortion laws started to gain notoriety with the imprisonment of *Las 17* ('The 17'). They were the 17 women sentenced under the country's punitive laws for miscarrying during their pregnancies, which is also viewed by the State as negligence and were thus tried under charges of aggravated homicide. The United Nations Human Rights Committee has stated that it "[condemns] the harsh and strict laws that El Salvador has implemented and for wrongful imprisonment of the 17 women."⁷

With the help of international human rights defenders and consistent recommendations from working groups of international bodies, approximately nine women of Las 17 have since been released from prison after serving a partial period of their lengthened sentences, as a result of the ongoing activism.⁸

⁶ United Nations, Office of the High Commissioner of Human Rights, *Country Profile: El Salvador, El Salvador and UN Treaty Bodies* (nd)

<<http://www.ohchr.org/EN/Countries/LACRegion/Pages/SVIndex.aspx>> accessed 07 April 2018

⁷ United Nations Human Rights Committee 99th Session, *International Covenant on Civil and Political Rights, Report on Violations of Women's Human Rights Due to the Complete Criminalization of Abortion: Periodic Report of El Salvador* October (2010)

<http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SLV/INT_CCPR_NGO_SLV_100_10027_E.pdf> accessed 07 April 2018

⁸ *Center for Reproductive Rights El Salvador: Free the Women Behind Bars for Pregnancy Complications* (Updated February 2018) <<https://www.reproductiverights.org/justice-in-el-salvador>> accessed 05 April 2018

Legal Backing

In the *Libro Segundo, Capitulo II* or *Second Book of the Penal Code*, Chapter II titled, “De Los Delitos Relativos a la Vida Del Ser Humano en Formacion” translates to the “Crimes Relevant to the Formation of Human Life” and presents the updated framework for which El Salvador’s constrictive laws are established and upheld.⁹ The following articles in El Salvador’s present day penal code are laws and standards used in court trials to hold women accountable for violations. While the articles draw conclusions to the consequences of breaking the laws, they do not provide a perspective on how women are legally protected under these laws for the betterment of their sexual health or the health of their pregnancy. The language used in the context of the articles is also important as it poses a suggestive tone of Salvadoran women’s intentions for handling their pregnancies and their relationship with the State:

Aborto Consentido Y Propio or “Consensual Abortion”

Art. 133: “Whoever provokes an abortion with the consent of the woman or if the woman herself provokes their own abortion, or consents to the practice itself, shall be punished with imprisonment from two to eight year.”¹⁰

Aborto Agravado or “Aggravated Abortion”

Art. 135: “If the abortion is committed by a doctor, pharmacist, or persons who practices medical activities of the aforementioned professions, when dedicated to this practice, shall be punished with imprisonment from six to twelve years. The penalty of disqualification for the exercise of the profession or activity for the same period shall also be imposed.”¹¹

⁹ *Codigo Penal*, El Salvador (1998) <www.oas.org> accessed 05 April 2018

¹⁰ *ibid*

¹¹ *ibid*

Induccion O Ayuda Al Aborto or “Induction or Assistance of Abortion”

Art. 136: “A woman who induces or provides economic or other means for an abortion that is performed shall be punished with imprisonment from two to five years. If the person who helps or induces abortion is the provoker, the penalty shall be increased by one third of the maximum penalty prescribed in the preceding paragraph.”¹²

Aborto Culposo or “Self-Inflicted Abortion”

Art. 137: “Whoever culpably provokes an abortion shall be punished with imprisonment from six months to two years. If the pregnant woman herself inflicts the abortions and fails, the attempt will not be punishable.”¹³

Language and Punishment

As previously mentioned, the specific language used throughout El Salvador’s penal code articles, beginning with the Spanish word, *provocar* is used and means ‘provoke’, insinuating that the women who seek abortions are doing so with premeditated intentions and are choosing to act on ‘wrongdoings’. However, this closed approach also fails to take into account the exterior factors that led up to the pregnancy and ultimately puts a woman at a disadvantage and one that is based on gender. Such discriminations also put women who may face trial for such crimes, at an inherit disadvantage before a formal and fair trial. Another important phrase is, the use of the word *dedicaron* (‘dedicated’) when referring to medical professionals who could be potential ‘accomplices’ in the practice of abortion. This word implies that medical professionals are dedicated to breaking the law, rather than providing adequate health services. Furthermore, the penal code fails to further describe how a pregnant woman is protected under the law if there are complications or how a ‘perpetrator’ of rape or sexual assault will be punished, if their actions result in a woman’s pregnancy.

¹² *Codigo Penal*, El Salvador (1998) <www.oas.org> accessed 05 April 2018

¹³ *ibid*

Legislation decrees miscarriages to carry up to a 50-year sentence, the equivalent of the charge of aggravated homicide. Miscarriage of twins can double the sentence and increase further on the number of terminated fetuses. Abortions carry up to eight years as stated previously, and providers who assist in the process face up to 12 years, along with removal of their medical license. Healthcare providers have less incentive to help pregnant women for fear they will be viewed as an accomplice to a criminalized activity such as a stillborn birth.¹⁴

Looking Forward

El Salvador has been consistently encouraged domestically and by the international community to loosen its laws and implement reform. Yet, “countless women in El Salvador are ostracised and persecuted because of the country’s unjust abortion ban—whether they’ve sought to end their pregnancy or simply suffered a miscarriage, every single Salvadoran woman wrongfully imprisoned under the cruel law deserves justice.”¹⁵

El Salvador is obligated to protect its women appropriately and implement legislation that promotes women’s human rights. However, in order to begin the process of reforming their healthcare system to implement respective measures that would ensure the non-discriminatory wellbeing of all Salvadoran women, the government must first understand its role as a State party to a number of international human rights documents, treaties and conventions, of which they are members. El Salvador must respect women’s rights through the following aspects outlined in human rights documents such as the Universal Declaration of Human Rights (1948); International Covenant on Economic Social and Cultural Rights (1976); and the Convention on Elimination of All Forms of Discrimination (1981):

¹⁴ Amnesty International, *Lottery Approach to Health Care for Women in Latin American is Putting Thousands of Lives at Risk* (2016)

<<https://www.amnesty.org/en/latest/news/2016/03/americas-lottery-approach-to-health-care-for-women-putting-thousands-of-lives-at-risk/>> accessed 05April 2018

¹⁵ *ibid*

- *Obligation to respect* can be achieved through decriminalisation of abortions, HIV non-disclosures and privacy, and offering options for family planning.
- *Obligation to protect* can be achieved through sexual education, prenatal resources, contraceptives, Sexually transmitted diseases and infections, , this also includes protection of sexual and reproductive health for middle-aged women, between 40 and 60 years old (mammograms, breast cancer screenings).
- *Obligation to fulfil* can be completed by legislative, administrative, budgetary, judicial and promotional measures. El Salvador must guarantee physical and mental healthcare for survivors of sexual/domestic violence in all situations, including access to post-exposure prevention, emergency contraception and safe abortion services.¹⁶

Along with these necessities, El Salvador must also take steps towards updating its legal reforms that negatively affect women through amendments. “The amendment to [reform] the penal code, presented by Salvadoran politician Lorena Peña, is a critical step in the right direction,” says the International Campaign for Women’s Right to Safe Abortions, as it would change legislation to allow for women who are pregnant as a result of rape, incest, or sexual violence to terminate an unwanted pregnancy.¹⁷ This is important because it pressures the government to take more active measures to address the needs of women suffering at the hands of outdated, religiously-influenced laws.¹⁸

Concluding observations presented by CEDAW’s Committee in response to El Salvador’s combined eighth and ninth periodic report further emphasises that imprisonment and unfair trial of women on the basis of abortions and miscarriages

¹⁶ The Committee on Economic, Social, and Cultural Rights, *General Comment No. 14* 11 August 2000

¹⁷ International Campaign for Women’s Right to Safe Abortion, *El Salvador: The Debate on Abortion Law is Officially Open* (2017)

<<http://www.safeabortionwomensright.org/el-salvador-the-debate-on-abortion-law-reform-is-officially-open/>> accessed 05 April 2018

¹⁸ *ibid*

continues to violate women's rights as a whole. CEDAW firmly recommends that El Salvador release the women being held on such charges and reform current and future legislation to prevent other women from becoming victim to legalized gender bias.¹⁹

Fair trials without discrimination and ensuring appeals are possible are also needed, especially for those currently imprisoned. There is a need for language change when describing or addressing the events and persons involved directly or indirectly with abortion. By changing the language in which the topic is discussed could also potentially change the social outlook of the practice as well. This means updating the word usage in the penal code and ensuring the materials and resources are also updated and respectfully available le sounding in indigenous languages as well.²⁰

Since the prosecution of Las 17, lobbying groups have acted on their behalf to submit appeals and promote justice for the women. Only with the advocacy of these women's injustices, can the international community support local advocacy groups such as the Federación de Asociaciones Independientes O Sindicatos de El Salvador (FEASIES)²¹ effectively pressure El Salvador to make pivotal shifts in its legislation, for the betterment of Salvadoran women's sexual and reproductive rights.

¹⁹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of El Salvador/CEDAW/C/SLV/CO/8-9* 3 March 2017 <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSLV%2fCO%2f8-9&Lang=en> accessed 05.04.2018

²⁰ BBC, *Abortion Laws may be Relaxed for Rape Victims in El Salvador* (2016) <<http://www.bbc.com/news/world-latin-america-37629236>> accessed 05 April 2018

²¹ The Federation of Independent Associations and Unions of El Salvador



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