El Salvador has one of the world’s most restrictive abortion laws. The current abortion law, passed in 1998, bans abortion in all circumstances, even when the pregnancy poses a risk to a woman’s life or in cases of rape. Additionally, in January of 1999, Article 1 of the Constitution was amended to recognize the right to life from the moment of conception, further criminalizing abortion by providing the legal basis for the state to prosecute abortion related crimes as homicide.

El Salvador’s abortion ban violates women’s human rights. In February 2011, the United Nations Special Rapporteur on Violence against Women emphasized that the country’s absolute ban on abortion puts women and adolescent girls at risk, because many of them may resort to illegal and clandestine abortions. Between 2000 and 2011, 129 Salvadoran women were prosecuted for crimes related to abortion, and myriad others were accused of having an abortion. Today, there are 17 women in prison serving sentences for homicide, after having been accused of procuring an abortion. In almost half of these cases, the crime was first identified as abortion related, but later changed to homicide. This has serious repercussions for women, as a homicide charge may carry a prison sentence of up to 50 years.

El Salvador’s abortion ban discriminates against women. Of the complaints made against the 129 women, 57.36% were made by health professionals treating them for miscarriages and obstetric emergencies. Health professionals believe that they are legally obligated to report their patients to the police in order to avoid criminal persecution. This deters women from seeking critical health care, risking their lives, while turning doctors into a mechanism of the criminal justice system. It also constitutes a violation of doctor-patient confidentiality, and contravenes both medical ethics and the principle of beneficence. The Salvadoran state’s criminalization of abortion places the life and health of all women at risk, restricting access to essential health services, which in addition to widespread fear of arrest can lead to death. Also, it is based on gender stereotypes that assign traditional roles to women and violates women’s right to be free from gender bias and discrimination.

Manuela’s story

Manuela was a 33-year-old Salvadoran mother of two who was accused of having an abortion by the medical professionals treating her for severe complications she suffered while giving birth. Manuela lacked the financial resources to hire a private attorney and only met her public defenders on the day of her hearing. She was charged with murder and sentenced to 30 years in prison. After being convicted, Manuela could not appeal the ruling due to her inadequate legal representation and a lack of remedies. While in prison, Manuela was diagnosed with advanced Hodgkin’s lymphoma. She died in prison less than a year after her miscarriage. Manuela is representative of the Salvadoran woman who is most likely to be a victim of the total criminalization of abortion: she lived in a rural area, had received no formal education, and was unable to access adequate healthcare and legal representation. Manuela’s case was filed by the Center for Reproductive Rights and the Agrupación Ciudadana before the Inter-American Commission on Human Rights in 2012.
Socioeconomic context of El Salvador’s abortion ban

The women most affected by El Salvador’s total criminalization of abortion are young women of low socioeconomic status.10

• In El Salvador, 41% of the nationwide households are impoverished, with the percentage rising to 50% in rural areas.11 Of those impoverished households in rural areas, 18% live in extreme poverty and 32% in relative poverty.12

• Illiteracy on a national scale stands at nearly 13%; 8% of women and 4.8% of men are illiterate.13 In rural areas the illiteracy rate is 21%, of those, 12% are women.14

• The statistics on maternal health in El Salvador, especially in rural areas, are alarming. In 2008, there were approximately 110 maternal deaths per 100,000 live births15, as compared to the regional average of 66 maternal deaths per 100,000 live births.16 Of these deaths, 11% were adolescent girls between the ages of 15 and 19.17

• According to the data from the 2007 population and housing census, 48,000 adolescents, between the ages of 12 and 19, had already had at least one child.18

Like Manuela (see box), the women most likely to be prosecuted for abortion-related crimes are those who are most vulnerable: poor women who live in rural areas and lack access to quality medical services and education.19

El Salvador’s abortion ban and sexual violence

Even in cases of rape, women in El Salvador do not have access to a safe and legal abortion and will be persecuted if they terminate a pregnancy.20 This is particularly devastating given the high rates of sexual violence in the country.

• Evidence indicates that girls and adolescents are the principal victims of sexual violence. In 2010, of the 2,079 sex crimes reported nationally, 67% were committed against girls and adolescents under the age of 17.21

• Of the approximately 1,300 criminal complaints of sexual violence in 2007, only 47 resulted in convictions.22

• Sexual violence may result in unwanted pregnancy, a particularly devastating consequence given that 50% of victims of sexual violence are under the age of 17.23

The total criminalization of abortion violates women’s rights, puts their health and life at risk, and disproportionately affects young women of a low socioeconomic status. El Salvador needs to meet its obligations under human rights standards in order to protect the health and life of women. Respect for Salvadoran women’s human rights and dignity requires immediate action.

Photo caption: Women in overcrowded conditions at El Salvador’s Ilopango prison, where Manuela died.

Endnotes


2 Rashida Manjoo – Addendum - Follow-up mission to El Salvador, para. 166. (2014).


6 CRR, MARGINALIZED, PERSECUTED, AND IMPRISONED, supra note 1, at 38, citing research conducted by Agrupación Ciudadana por la Despenalización del Aborto Terapéutico between 2011 and 2012.

7 id. at 38, citing research conducted by Agrupación Ciudadana por la Despenalización del Aborto Terapéutico between 2011 and 2012.

8 Agrupación Ciudadana por la Despenalización del Aborto, Las 17: No dejemos que sus vidas se marchiten (2014).

9 For more information please visit http://agrupacionciudadana.org/.

10 Rashida Manjoo, Addendum - Follow-up mission to El Salvador, supra note 4, para. 64.


12 id. at 21-22.

13 id. at 4.

14 id.


19 CRR, MARGINALIZED, PERSECUTED, AND IMPRISONED, supra note 1, at 49, citing research conducted by Agrupación Ciudadana por la Despenalización del Aborto Terapéutico between 2011 and 2012.

20 id. at 25.


23 CRR, MARGINALIZED, PERSECUTED, AND IMPRISONED, supra note 1, at 49, citing research conducted by Agrupación Ciudadana por la Despenalización del Aborto Terapéutico between 2011 and 2012.

Textbox

1 The Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Étnico y Eugénico (Citizen’s Association for the Decriminalization of Therapeutic, Ethnic, and Eugenic Abortion) is a multidisciplinary organization formed by men and women in El Salvador in 2009. For more information, visit http://agrupacionciudadana.org/.

2 CRR, supra note 6, at 49.