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Passions Flare Regarding El Salvador’s No-Exceptions Abortion Policy

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The plight of a pregnant Salvadoran woman known only as "Beatriz" has drawn outrage from abroad and rekindled a raging debate at home regarding El Salvador’s zero-tolerance approach to abortion.

Beatriz (not her real name), who is now more than five months pregnant, suffers from lupus, a debilitating autoimmune disease that has already caused serious damage to her kidneys. The fetus she is carrying is also unwell: it has been diagnosed as anencephalic, meaning it is missing part of its skull and brain and will almost surely die either before or shortly after delivery.

Concerned that Beatriz, 22, may not survive her pregnancy, doctors at San Salvador’s Hospital Nacional de Maternidad have been hoping for months to perform what they believe could be a life-saving abortion. So far, however, they have held off—out of fear that they, and Beatriz, could end up in jail for violating El Salvador’s total ban on abortions. Under Salvadoran law, abortion is a punishable criminal offence, even in cases where the pregnancy was caused by rape or incest or is understood as putting the mother’s life at risk.

Beatriz and her doctors are hoping authorities will make an exception in this one case. If there was ever cause for bending the rules, they argue, this is it—not only because an abortion could save the mother’s life but also because the fetus is expected to die regardless. "I think [abortion] is bad," Beatriz, who has one child already, told the online news site El Faro during a brief April phone interview. "If [the fetus] was coming along well, I wouldn’t risk its life…. But this child. They say he’s growing without a brain. That he won’t live. So I say the best thing is that they take him out."

Numerous rights groups, both in El Salvador and abroad, are backing Beatriz’s abortion request, which doctors at the Hospital Nacional de Maternidad officially submitted in March—more than 10 weeks ago. Amnesty International (AI) and Human Rights Watch (HRW) have both lobbied on the young woman’s behalf, as has the Washington, DC-based Inter-American Commission on Human Rights (IACHR), a judicial branch of the Organization of American States (OAS).

The vast majority of countries—even those that prohibit abortions in general—allow "therapeutic" abortions (performed to protect the life of the mother) or in the case of severe fetal malformations, AI and other rights groups point out. El Salvador allowed such exceptions until 1998, when legislation spearheaded by the far-right Alianza Republicana Nacionalista (ARENA) led to changes in the country’s penal code.

"We thought, with a case this clear and urgent, surely the courts would respond quickly to save this young woman’s life. Yet weeks later, the judges have also failed to treat this case with the urgency it merits," Esther Major, a Central America researcher with AI, wrote in a recent essay. "Their delays are unconscionable, as is their failure to issue a ruling that would respect Beatriz’s most basic human rights."
"Cruel in the extreme"

El Salvador’s Public Health Minister María Isabel Rodríguez has also come out in favor of granting Beatriz special permission to undergo an abortion. In April, Rodríguez helped bring the matter before El Salvador’s Corte Suprema de Justicia (CSJ), which agreed to consider the matter but has been slow to reach a verdict. On May 16, one day after hearing testimony from Beatriz, the court announced it would take an additional 15 days to weigh its options.

The delay prompted a fierce response from AI, which accused the CSJ of "toying" with Beatriz’s life. "Yesterday, judges with the power to immediately save the life of a young mother who desperately wants to live chose not to do so," said Ester Major. "We are outraged at their abdication of their role to protect and defend Beatriz’s life and health. There is no justice in this delay and definitely no humanity. To give themselves up to three weeks to decide on whether Beatriz lives or dies, or is potentially left with severe health problems, is cruel in the extreme."

The CSJ faces mounting pressure from the other side of the abortion debate as well. Conservative leaders, including San Salvador Mayor and ARENA presidential candidate Norman Quijano, stand firmly behind the country’s no-exceptions abortion policy. "We have to respect the life of this being and let this young mother give birth," Quijano told reporters in late April.

Catholic Church leaders and members of Fundación Sí a La Vida, an influential pro-life lobby group, have been even more forthright in their opposition to Beatriz’s abortion request. Sí a La Vida head Regina de Cardenal claims doctors are exaggerating Beatriz’s medical condition. San Salvador Archbishop José Luis Escobar has made similar statements, downplaying Beatriz’s illness and denouncing rights groups for using this "emblematic case" to push their pro-abortion "agenda."

"Sure, [Beatriz] has health problems, but she’s not in grave danger of death. Since we need to consider both lives, we need to ask, whose life is in greater danger. We think that the fetus is in greater danger," he argued during an April 21 church service. "I think future generations, more advanced than us, will have difficulty understanding that past generations killed their children; it’s terrible, inhuman, against nature, and against all principles."

"Straight from the hospital to jail"

Rights groups reject the notion that they are "exploiting" Beatriz's case. It is no secret, however, that they would eventually like to see El Salvador’s abortion laws loosened in general, not just in this one instance. AI has been campaigning against the no-exceptions policy for years, as have local groups such as the Colectiva de Mujeres por el Desarrollo Social (CMDS), which view the all-out ban as a violation of women’s basic human rights.

The law, especially in the way it is enforced, is also discriminatory—by mostly targeting women from low-income backgrounds, according to the CMDS, which works closely with women who have been charged and/or convicted of abortion-related offenses. The majority of the women who have run afoul of El Salvador’s strict anti-abortion statute "are in a situation of poverty," CMDS spokesperson Morena Herrera, a former guerrilla fighter, explained in a 2010 interview with Spain’s La Vanguardia. "If they have a complication with their pregnancy, they can’t [afford] to go to a private hospital. In the private clinics, the number of which has tripled in the past decade, professional confidentiality is respected. People aren’t reported [to the authorities]." In a number of public facilities, however, "women have gone straight from the hospital to jail," Herrera said.

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A lengthy article published in 2011 by El Faro detailed two such cases, both involving women who lost their babies late during their pregnancies. One woman, Cristina Quintanilla, was 18 when, seven months into her pregnancy, she suffered a miscarriage in the bathroom of her family home. Just hours later, while recovering in a nearby hospital, Quintanilla was placed under arrest.

Prosecutors first charged her with involuntary manslaughter. The young woman was acquitted in an initial hearing. Prosecutors appealed and forced another trial—this time for first-degree murder. When the trial began, according to the article, entitled "Madres en el país de la inquisición" (Mothers in the Land of Inquisition), Quintanilla’s state-appointed attorney could not even remember her client’s name. The court found Quintanilla guilty, sentencing her to 30 years in prison. Thanks to the intervention of another attorney, the sentence was eventually commuted. Quintanilla was freed in 2009, after spending four years in the Cárcel de Mujeres in Llopongo.

The other woman profiled in the El Faro article, María Edís Hernández, was not so lucky. Though she had not yet been diagnosed, Hernández was suffering from Hodgkin’s lymphoma when, in 2009, she lost her baby in circumstances not dissimilar to what Quintanilla endured. She, too, was eventually convicted and issued a 30-year jail sentences. In 2010, just a year into her sentence, Hernández died.

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