El Salvador Pardons Woman Sentenced To 30 Years For Abortion-Related Offense

Benjamin Witte-Lebhar
El Salvador Pardons Woman Sentenced To 30 Years For Abortion-Related Offense

by Benjamin Witte-Lebhar
Category/Department: El Salvador
Published: 2015-02-19

Rights groups are hoping the recent pardon of a woman who was convicted of murder after losing her child to birth complications will mark a turning point in El Salvador's hyperstrict stance on abortion, which is outlawed even in rape cases or when a pregnancy puts the mother's life at risk.

The country’s abortion law is among the harshest in the world, not only because it precludes any and all exceptions—an approach El Salvador shares with Nicaragua, Honduras, Chile, and a handful of other nations (NotiCen, Feb. 25, 2010, and NotiSur, Jan. 9, 2015)—but also because of how aggressively the rules are enforced. Since the total ban went into effect in the late 1990s, Salvadoran courts have convicted dozens of women, ordering them in some cases to serve decades-long prison sentences.

One of those women is Guadalupe Vásquez, a live-in housekeeper who was arrested and jailed in 2007 after delivering what she says was a stillborn baby. The then 18-year-old gave birth to the baby alone, in the room she occupied in the home of her employer. The family she worked for later took Vásquez to a hospital, where she was treated for heavy bleeding. Doctors contacted the police, who detained the patient on the suspicion that she had intentionally aborted the child. Prosecutors originally charged Vásquez with abortion, punishable by up to eight years of incarceration, but decided later to prosecute her for murder. The defendant was convicted in 2008 and sentenced to 30 years in prison.

Seven years later, on Jan. 21, the unicameral Asamblea Legislativa (AL) took the unusual step of pardoning Vásquez. Lawmakers voted 43 to 23 to approve the exceptional measure and thus comply with a recommendation by the Corte Suprema de Justicia (CSJ), which had reviewed the case at the behest of the civil-society organization Agrupación Ciudadana por la Despenalización del Aborto Terapéutico Ético y Eugenésico. After studying the matter, the CSJ decided there was enough "reasonable doubt" to exonerate Vásquez. It described her 30-year sentence, furthermore, as "disproportionate, severe, and unjust."

"Las 17"

The unprecedented pardon drew widespread applause from rights groups and international organizations, including the UN, which has complained for years about El Salvador’s blanket abortion ban and the harsh punishments it sometimes entails. The Office of the UN High Commissioner for Human Rights (OHCHR) in Geneva, Switzerland, said it was "encouraged" by the AL decision and hopes "that other imprisoned women in El Salvador who received similar convictions will be freed and that efforts will be made to reform the legal framework on sexual and reproduction rights in line with recommendations of numerous human rights bodies."

Amnesty International (AI) welcomed the news as well. AI’s America’s director Erika Guevara-Rosas called it "a triumph of justice and a result of the tireless work by local human rights activists." She went on to say that Vásquez’s ordeal was a "terrible injustice" and that the decision to pardon...
her "must mark a turning point for El Salvador’s retrograde laws, which punish women and girls when having medical complications during their pregnancies."

The pardon was particularly satisfying for members of the Agrupación Ciudadana por la Despenalización del Aborto Terapéutico Ético y Eugenésico, the group that petitioned the CSJ to review the Vásquez case. "This is a recognition by two branches of power, the CSJ and the Asamblea Legislative, that these types of injustices occur and that it’s necessary for the state to acknowledge and rectify its mistakes," said Agrupación Ciudadana activist Morena Herrera, an outspoken feminist and former guerilla fighter.

Vásquez’s case was one of 17 that the group submitted to the high court last April. All involve women sentenced to long prison terms (12 to 40 years) after suffering miscarriages, stillbirths, or pregnancy complications. A lawyer for the Agrupación Ciudadana, Denis Muñoz, told the Reuters news agency that he took up the cases because they involve scant evidence and flawed trials. "There was never any proof that these women intentionally harmed or killed their unborn or newborn babies," he said.

The Agrupación Ciudadana also notes that "las 17," as the women are collectively known, are all poor, a factor that made them particularly vulnerable to these kinds of legal injustices. Wealthier women, the group points out, have better access to health care, are less likely to be suspected of wrongdoing, and, even if they are reported to police, are in a better position to defend themselves in the courts. "This is a problem of social class and exclusion," Herrera told the Spanish daily El País last year. "Poor women are the ones who bear the biggest burden, suffer the worst consequences for their lives and their families."

**Backing the ban**

The Agrupación Ciudadana and other rights groups hope Vásquez’s exoneration will pave the way for more pardons and perhaps even convince authorities to revisit the abortion ban. That could prove easier said that done. The CSJ has already decided not to recommend pardons in six of the 17 cases it agreed to review, meaning that the AL, even if it does hold more clemency votes, will at best exonerate only some of the women.

The high court also made it clear in 2013—when it rejected a government-backed request that doctors be allowed to terminate the nonviable pregnancy of an ill woman named Beatriz—that it’s in no rush to take on the abortion ban itself. The CSJ declined the request even though doctors thought that Beatriz (not her real name), a then 22-year-old with lupus, a debilitating autoimmune disease that had caused serious damage to her kidneys, might not survive her pregnancy. Hospital staff had also diagnosed the fetus as anencephalic, meaning it was missing part of its skull and brain and would surely die either before or shortly after delivery (NotiCen, May 30, 2013).

In rejecting the petition, the CSJ argued that "the rights of the mother cannot take precedence over those of the unborn child or vice versa." Several weeks later, once the pregnancy was far enough advanced that the abortion law no longer applied, Beatriz underwent a premature C-section. That baby, as predicted, did not survive.

Catholic Church leaders stand by the total ban, as do the hard-right Alianza Republicana Nacionalista (ARENA), El Salvador’s leading opposition group, and pro-life groups such as the Fundación Sí a la Vida. ARENA lawmakers for the most part also voted against pardoning
Guadalupe Vásquez. "These creatures, the newborns and those who haven’t been born yet, need someone who defends them," said ARENA Deputy Ernesto Angulo.

Some members of the governing Frente Farabundo Martí para la Liberación Nacional (FMLN), in contrast, have begun to join civil-society groups in openly questioning the country’s no-exemptions abortion policy. Two years ago, then public health minister María Isabel Rodríguez actively advocated for Beatriz’s right to a potentially life-saving abortion. The president of the AL, Deputy Sigrido Reyes (FMLN), has spoken out on the abortion issue as well. "There is a lot of concern all around the world that in El Salvador many women are imprisoned after unjust trials that could even be described as rigged," he told the daily La Página last September.

Rights groups would like to see the left-wing FMLN—which came to power in 2009 and was re-elected last year by the narrowest of margins (NotiCen, March 20, 2014)—push the issue even harder in the future. "The FMLN still fears the right a lot. We hope it loses that fear," Agrupación Ciudadana member Alejandra Burgos told the online magazine Pikara last month. "The [abortion] issue is very politicized. Everyone’s afraid to lose votes."

-- End --