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El Salvador Considers Changes to Hyper-Strict Abortion Policy

by Benjamin Witte-Lebhar

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El Salvador's total ban on abortion, long a source of concern for local and international rights groups, is now a subject of serious debate in the legislature, raising hopes among the policy's many opponents that change may finally be in the air.

The debate centers around a government-backed bill, submitted last October, that proposes scaling back the blanket ban to allow exceptions in cases of rape or incest, or for so-called "therapeutic" abortions, when a fetus is considered nonviable or the pregnancy poses a serious risk to the mother's health.

The legislation was introduced by the then-president of the Asamblea Legislativa (Legislative Assembly, AL), Lorena Peña of the governing Frente Farabundo Martí para la Liberación Nacional (Farabundo Martí National Liberation Front, FMLN), which promises full support should the measure go to a full vote in the unicameral legislature. Peña, now the vice-president of the AL, is the FMLN's highest-ranking deputy.

El Salvador is one of just a handful of countries to prohibit abortion outright, even in cases where terminating a pregnancy could save the mother's life. The no-exceptions policy dates back to the late 1990s, when it was pushed through by conservative lawmakers from Alianza Republicana Nacionalista (Nationalist Republican Alliance, ARENA), the governing party at the time. Other countries on the list are Chile, Nicaragua, Honduras, Haiti, Suriname, Andorra, and Malta. In Chile, legislation to loosen the abortion ban is making its way through Congress (NotiSur, Jan. 9, 2015, and April 8, 2016).

For now, the FMLN bill is still under committee review, where it is being held up by strong opposition from the hard-right ARENA, now the country's leading opposition group. Even if the measure does go to vote in the full AL, there's no guarantee it will be approved. Passage will require a simple majority (43 votes), something neither the FMLN nor ARENA have right now.

The left-leaning FMLN controls the presidency—under Salvador Sánchez Cerén, a former guerrilla commander elected in 2014—but has just 31 of the legislature's 84 seats. ARENA has 35. The AL's remaining seats are divided between the center-right Gran Alianza por la Unidad Nacional (Grand Alliance for National Unity, GANA), which has 11; the conservative Partido de Concertación Nacional (National Coalition Party, PCN), with six; and the centrist Partido Demócrata Cristiano (Christian Democratic Party, PDC), which has just one deputy.

'A qualitative shift'

Still, critics of the all-out ban say they have reason to feel cautiously optimistic, especially after a public hearing that the Comisión de Legislación y Puntos Constitucionales—the congressional committee currently examining the FMLN bill—held in late February. A host of experts and

organization representatives spoke during the hearing, mostly in favor of abortion reform, observers reported.

“This is a historic moment. There’s been a qualitative shift. It’s not just women’s groups speaking out. Abortion has become a priority topic for diverse groups. It smells and feels like change,” Sara García, a campaigner with the Agrupación Ciudadana por la Despenalización del Aborto Terapéutico Ético y Eugénico, a Salvadoran civil society group pushing for decriminalization of abortion in certain circumstances, told the British newspaper *The Guardian* in late March.

Outside rights groups such as Amnesty International (AI) are also paying close attention to developments in El Salvador and seizing the moment to step up their attacks on what they see as a gross violation of women’s rights. In a May 8 press release, AI said that El Salvador has a “critical opportunity” right now to amend the situation. “The total ban on abortion is, quite simply, a form of torture that puts the lives of millions of women and girls at risk every day,” said Erika Guevara Rosas, the organization’s Americas director.

The UN Committee on the Elimination of Discrimination Against Women (CEDAW) made similar arguments earlier this year, calling on the Salvadoran legislature to expedite the FMLN-backed bill and in the meantime, “introduce a moratorium on the enforcement of the current law.” As the group pointed out in a March 3 report, numerous women have been prosecuted, held in long periods of pre-trial detention, and incarcerated in El Salvador, even in cases where their pregnancies ended due to miscarriage.

A 40-year sentence

El Salvador’s insistence on enforcing the total abortion ban sets it apart even from countries with similar laws in place. Article 133 of the country’s criminal code establishes that people can be sentenced to between two and eight years in jail for abortion-related offences. And indeed, many women have been prosecuted along those lines after being reported to police, often by doctors in public hospitals.

But in a number of high-profile cases, women have been given even longer sentences—as much as 40 years—after prosecutors chose to tack on homicide charges. One of those women is Guadalupe Vásquez, who was arrested in 2007 and later sentenced to 30 years after losing her child to birth complications ([NotiCen, Feb. 19, 2015](#)). Vásquez was just 18 at the time and working as a live-in housekeeper. She gave birth to her stillborn 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 doctors reported her to police on suspicion that she had intentionally aborted the child.

Vásquez is one of 17 women—“Las 17,” as they came to be known—who were the focus of a justice campaign that the Agrupación Ciudadana and other civil society organizations launched in 2014. As part of their efforts, the advocates petitioned El Salvador’s top court, the Corte Suprema de Justicia (CSJ), to review the cases. Several months later, the CSJ determined there was enough “reasonable doubt” to exonerate Vásquez, and in January 2015, the AL took the unusual step of pardoning her.

Another Salvadoran woman, Sonia Tábor, was pardoned earlier this year. Like Vásquez, the young woman had been charged with aggravated murder and sentenced to 30 years in prison after losing her child due to an obstetrics emergency. Tábor was 20 when, in 2005, she went into premature labor—alone and in a coffee plantation. She spent seven years behind bars before her conviction

was reviewed and overturned in 2012. Still, Tábora's legal nightmares continued for another two years pending a second review, which could have sent her back to jail.

A third woman, María Teresa Rivera, was released last year after serving nearly five years of a 40-year sentence for the "murder" of her baby, who died in childbirth. Afterward, prosecutors appealed the decision, raising the possibility that the now 34-year-old woman could be sent back to jail. Rivera decided at that point to apply for political asylum in Sweden, and last month, Swedish authorities granted her request. She is believed to be the first person ever given political asylum for abortion-related persecution.

'Yes to Life'

For critics of the hyper-strict abortion policy, the Swedish asylum decision is further evidence that the harrowing ordeals experienced by Vásquez, Tábora, and Rivera—not to mention the many Salvadoran women who were prosecuted under similar circumstances but remain behind bars—represent a systematic problem, one that cannot be resolved by case-by-case legal reviews or pardons. Women, they say, need to be spared that kind of criminal persecution from the outset, and the only way to do that is to change the law.

"The current legal framework forces women and girls to resort to unsafe abortions to save their lives, and creates an atmosphere of suspicion around women who miscarry or experience other obstetric emergencies," AI argued in its recent press release. "As a result, women who experience complications during pregnancy have been prosecuted and convicted on charges of 'induced abortion,' with sentences of up to 40 years in prison."

The "Las 17" cases are particularly egregious examples of how El Salvador's all-out abortion ban and willingness to enforce it violate basic human rights. But there are less-talked-about repercussions of the policy that should also be taken into account, AI and other rights groups argue. The ban unfairly forces doctors and other medical professionals to play the role of law enforcement officers, they say. It puts women's lives at risk by forcing them to continue with pregnancies that may kill them, or by discouraging them from seeking medical attention in cases of miscarriage ([NotiCen, May 30, 2013](#)). And it punishes girls and women psychologically, critics argue, by forcing them to bear children conceived through rape.

Standing in the way of reform are influential sectors in the Catholic Church; well-funded anti-abortion lobby groups like the *Sí a la Vida* (Yes to Life) foundation, headed by Julia Regina de Cardenal, the wife of one of El Salvador's richest entrepreneurs; and conservative lawmakers like Ricardo Velásquez Parker of ARENA, who introduced his own bill last year demanding stiffer penalties for abortions. Velásquez Parker wants all abortion cases to be treated as aggravated murder.

"I'm deeply troubled by cases of girls who have been raped and impregnated. It's awful," the deputy told CNN en Español earlier this year. "But that doesn't mean that I'm going to agree with re-victimizing the victim by making her suffer through the process of an abortion. That, furthermore, makes her responsible—consciously or unconsciously—for a second victim, her [unborn] child."

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