

4-19-2018

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Recommended Citation

Witte-Lebhar, Benjamin. "Last-Minute Pleas for Abortion Reform in El Salvador." (2018). <https://digitalrepository.unm.edu/noticen/10511>

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Last-Minute Pleas for Abortion Reform in El Salvador

by Benjamin Witte-Lebhar

Category/Department: El Salvador

Published: 2018-04-19

If there was ever a time for El Salvador to scale back its two-decade-old blanket ban on abortion, it is now—before lawmakers chosen in the midterm elections in March take their seats in the unicameral legislative assembly, the Asamblea Legislativa (AL).

That was the message former AL president Lorena Peña—the highest-ranking deputy with the governing Frente Farabundo Martí para la Liberación Nacional (Farabundo Martí National Liberation Front, FMLN)—made loud and clear in a radio interview on March 12, a week after her party lost significant ground to the hard-right opposition party Alianza Republicana Nacionalista (Nationalist Republican Alliance, ARENA) in nationwide municipal and parliamentary elections ([NotiCen, March 15, 2018](#)).

“It’s urgent that abortion be decriminalized in four circumstances before the new legislature comes in, because ARENA doesn’t have the right to force women to die, to not be able to save their lives,” she said in reference to an FMLN-backed bill, submitted in October 2016, that would allow doctors to terminate pregnancies that result from sexual assault or statutory rape, put the mother’s life at risk, or involve a non-viable fetus.

“The legislature hasn’t approved the changes yet, because the other parties haven’t agreed to offer their votes, but they’ve got six weeks, more or less, to correct their ways and put themselves on the side of Salvadoran women,” Peña added during her appearance on the radio program *Pencho & Aída*.

The “other parties” she mentioned include the center-right Gran Alianza por la Unidad Nacional (Grand Alliance for National Unity, GANA) and Partido de Concertación Nacional (National Coalition Party, PCN), which currently have 17 of the AL’s 84 seats between them. ARENA has the largest legislative bloc, with 35 deputies, followed by the FMLN, which has 31 but controls the presidency under Salvador Sánchez Cerén, elected in 2014.

Come May 1, however, the balance of power in the legislature will shift significantly. ARENA will have 37 seats—six shy of a simple majority (43)—while the FMLN will be left with just 23. GANA will have 11 deputies, followed by the PCN with eight, and Partido Demócrata Cristiano (Christian Democratic Party, PDC) with three. The AL’s final two seats will be held by Juan José Martel of the center-left Cambio Democrático (Democratic Change, CD) and Leonardo Bonilla, an independent.

In the new legislature, “it’ll be more difficult to decriminalize abortion, because some very retrograde people, primarily from ARENA, will be coming in,” said Peña, an economist who has served in the AL since 2009. The lawmaker’s affiliation with the FMLN dates back to its origins as a coalition of guerrilla forces during El Salvador’s brutal civil war (1980-1992). Both she and President Sánchez Cerén were guerrilla commanders in the conflict.

Severe sentences

The rightist ARENA, co-founded by the late death-squad leader Roberto D'Aubuisson, was also founded during the war, and went on to control the presidency for two decades starting in 1989. It

was during that long tenure, in the late 1990s, that El Salvador modified the penal code to outlaw abortion in all cases, even when the mother's life is in danger.

A handful of other countries, including nearby Honduras and Nicaragua, also have blanket abortion bans. Chile did as well until just last year (NotiSur, Sept. 15, 2017). But none has El Salvador's demonstrated zeal for prosecuting and imprisoning suspected violators, including in cases where women experience obstetric emergencies such as miscarriages or stillbirths. In some such cases, prosecutors have even charged women with aggravated homicide and secured jail sentences of 30 years or more (NotiCen, Feb. 19, 2015).

"What has made El Salvador unique on the international stage is the fanatical over-application of the law by police, prosecutors, and judges. And the complicity of many doctors fearful of standing on the wrong side of the law," sociology professor Lisa Kowalchuk of the University of Guelph, in Canada, wrote in an April 12 article for the Australian non-profit media outlet The Conversation.

Rights groups like Amnesty International (AI) have complained for years about El Salvador's unusually harsh handling of the abortion issue. The Inter-American Commission on Human Rights (IACHR) has also taken the country to task, as has the UN high commissioner for human rights, Zeid Ra'ad Al Hussein.

"I am appalled that as a result of El Salvador's absolute prohibition on abortion, women are being punished for apparent miscarriages and other obstetric emergencies, accused and convicted of having induced termination of pregnancy," Al Hussein said in a statement last November.

Local groups like the Agrupación Ciudadana por la Despenalización del Aborto (Citizens' Group for the Decriminalization of Abortion) demand change as well, and have campaigned tirelessly in recent years on behalf of women who receive long prison sentences for abortion-related offenses that, as Al Hussein indicated, were in fact miscarriages or stillbirths.

The latest such conviction was handed down last July, when Evelyn Beatriz Hernández Cruz, then 19, was sentenced to 30 years after having a stillbirth in a toilet. The young woman says the pregnancy was the result of repeated rape by a gang member with whom she was in a forced relationship.

"The judgment sentencing Evelyn to 30 years in prison shows how, in El Salvador, justice is applied without direct proof, without sufficient evidence that clarifies what a woman has done," the Agrupación Ciudadana's executive director, Morena Herrera, was quoted as saying in the British daily The Independent.

"In this case, Evelyn did not kill her newborn child," the activist added. "She simply experienced an obstetric emergency, and the state prosecutor has badly interpreted the facts, and unfortunately the judge hasn't listened to the witnesses who said there was no direct proof."

Partial victories

The Agrupación Ciudadana and other groups campaigning to protect women from the ultra-strict abortion controls may have failed to keep Hernández Cruz out of jail, but their efforts have been successful in helping a number of other women gain early release. Such was the case of Maira Verónica Figueroa Marroquín, 34, who spent 15 years in prison—half of the 30-year sentence she'd been given in 2003 after suffering a late-term miscarriage—before finally walking free on March 13.

"I want to study law to understand what happened to me and help other women," Figueroa Marroquín was reported as saying. "I'm going to start again and make up for lost time."

Less than a month earlier, on Feb. 15, another 34-year-old woman, Teodora del Carmen Vásquez, was also released from prison. Vásquez had spent nearly 11 years behind bars after being convicted for aggravated murder in connection with the stillborn death of her baby in 2007. In both the cases, El Salvador's high court, the Corte Suprema de Justicia (CSJ), decided to commute the sentences.

"Teodora's freedom is long overdue," said Nancy Northup, president of the New York City-based Center for Reproductive Rights (CCR). "The court finally affirmed that the sentence was unjust, excessive, and disproportionate."

And yet, neither woman was officially exonerated, meaning that in the eyes of the Salvadoran legal system, they are still officially guilty. That, rights groups say, is why these legal victories—as important as they are—are only partial.

"While it's a huge relief that Maira Verónica Figueroa Marroquín's sentence was reduced, and she has now been released, the real story here remains a tragedy," AI's Americas director, Érika Guevara-Rosas said last month.

"The fact that Maira has spent 15 years behind bars and had almost half of her life taken from her is a harrowing illustration of everything that is wrong with the justice system in El Salvador," the AI representative went on to say. "El Salvador must decriminalize abortion without delay, and immediately and unconditionally release all women and girls imprisoned for having had an abortion or having suffered obstetric emergencies."

Window of opportunity

Securing the release of women who've been unfairly prosecuted and sentenced is one thing, AI and other rights groups argue. Preventing it from happening again is another matter entirely, and requires changes to the law. For that, though, time appears to be running out, and quickly, as the FMLN's Peña stated on the eve of Figueroa Marroquín's release.

A year-and-a-half ago, Peña introduced legislation calling for the legalization of abortion in limited circumstances. Several months later, in February 2017, the AL hosted a public hearing on the issue ([NotiCen, May 18, 2017](#)). Lawmakers heard from numerous experts and organization representatives who spoke mostly in favor of abortion reform. Sara García, a campaigner with the Agrupación Ciudadana, described it at the time as a "historic moment" and a "qualitative shift."

More recently, in August 2017, the ARENA lawmaker Johnny Wright Sol also submitted a bill to allow certain exceptions to the all-out abortion ban. But others in his party remain vehemently opposed to any change. "It is a total lack of creativity to take the simple route to this problem and kill the baby," ARENA lawmaker Ricardo Velásquez said in response to Peña's radio comments in March. "It is assassinating a Salvadoran in the making."

Wright Sol and Peña, in the meantime, are down to their final days in the legislature, as neither sought reelection. And with ARENA set to pad its numbers advantage in the AL, there's little chance that reform will come after May 1, especially now that the political powers that be are turning their collective attention to the next presidential election, to take place in early 2019.

Still, debate over abortion won't simply disappear.

“If [the reform] is not approved in April, we must try again later,” Peña was quoted as saying in the London-based daily The Guardian. “I am convinced the debate cannot stop now. There cannot be another decade of silence regarding this issue.”

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