



Photo Credit: Meridith Kohut

# THE TOTAL CRIMINALIZATION OF ABORTION IN EL SALVADOR

## **El Salvador has one of the world's most restrictive abortion laws.<sup>1</sup>**

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.<sup>2</sup> 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.<sup>3</sup>

**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.<sup>4</sup> Between 2000 and 2011, 129 Salvadoran women were prosecuted for crimes related to abortion,<sup>5</sup> and myriad others were accused of having an abortion.<sup>6</sup> Today, there are 17 women in prison serving sentences for homicide, after having been accused of procuring an abortion.<sup>7</sup> 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.<sup>8</sup>

**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

## **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<sup>1</sup> before the Inter-American Commission on Human Rights in 2012.

a violation of doctor-patient confidentiality, and contravenes both medical ethics and the principle of beneficence.<sup>9</sup> 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.

## 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.<sup>10</sup>

- In El Salvador, 41% of the nationwide households are impoverished, with the percentage rising to 50% in rural areas.<sup>11</sup> Of those impoverished households in rural areas, 18% live in extreme poverty and 32% in relative poverty.<sup>12</sup>
- Illiteracy on a national scale stands at nearly 13%; 8% of women and 4.8% of men are illiterate.<sup>13</sup> In rural areas the illiteracy rate is 21%, of those, 12% are women.<sup>14</sup>
- 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 births<sup>15</sup>, as compared to the regional average of 66 maternal deaths per 100,000 live births.<sup>16</sup> Of these deaths, 11% were adolescent girls between the ages of 15 and 19.<sup>17</sup>
- 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.<sup>18</sup>

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.<sup>19</sup>

## 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.<sup>20</sup> 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.<sup>21</sup>
- Of the approximately 1,300 criminal complaints of sexual violence in 2007, only 47 resulted in convictions.<sup>22</sup>
- Sexual violence may result in unwanted pregnancy, a particularly devastating consequence given that the majority of victims of sexual violence are under the age of 17.<sup>23</sup>

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

- <sup>1</sup> The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill. For more information on our work in El Salvador, please visit our website at <http://www.reproductiverights.org/en/our-regions/latin-america-caribbean/el-salvador>, and see our report on El Salvador. CENTER FOR REPRODUCTIVE RIGHTS, (CRR), MARGINALIZED, PERSECUTED, AND IMPRISONED: THE EFFECTS OF EL SALVADOR'S TOTAL CRIMINALIZATION OF ABORTION 20 (2014), available at <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/El-Salvador-CriminalizationOfAbortion-Report.pdf> [hereinafter CRR, MARGINALIZED, PERSECUTED, AND IMPRISONED (2014)].
- <sup>2</sup> EL SALVADOR'S PENAL CODE, art. 169 (1973).
- <sup>3</sup> POLITICAL CONSTITUTION OF EL SALVADOR, art. 1 (1998).
- <sup>4</sup> Special Rapporteur on violence against women, its causes and consequences, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo - Addendum - Follow-up mission to El Salvador, para. 66, U.N. Doc. A/HRC/17/26/Add.2 (Feb. 14, 2011) [hereinafter Rashida Manjoo, Follow-up mission to El Salvador]; Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: El Salvador*, paras. 35-36, UN Doc. CEDAWC/SLV/Co/7 (2008); Committee on the Rights of the Child, (CRC Committee), *Concluding Observations: El Salvador*, paras. 60, 61(d), UN Doc. CRC/C/SLV/Co/3-4 (2010); HRC Committee, *Concluding Observations: El Salvador*, para. 14, UN Doc. CCPR/Co/78/SLV (2003); *El Salvador*, para. 10, UN Doc. ONUCCPR/C/SLV/Co/6 (2010).
- <sup>5</sup> CRR, MARGINALIZED, PERSECUTED, AND IMPRISONED (2014), *supra* note 1, at 38, citing research conducted by Agrupación Ciudadana por la Despenalización del Abortion Terapéutico between 2011 and 2012.
- <sup>6</sup> *Id.* at 38, citing research conducted by Agrupación Ciudadana por la Despenalización del Abortion Terapéutico between 2011 and 2012.
- <sup>7</sup> Agrupación Ciudadana por la Despenalización del Abortion, *Las 17: No dejemos que sus vidas se marchiten* (2014).
- <sup>8</sup> For more information please visit <http://agrupacionciudadana.org/>.
- <sup>9</sup> CRR, MARGINALIZED, PERSECUTED, AND IMPRISONED (2014), *supra* note 1, at 49 citing research conducted by Agrupación Ciudadana por la Despenalización del Abortion Terapéutico between 2011 and 2012. The Belmont Report, a summary of basic ethical principles identified by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, defines beneficence as persons being "treated in an ethical manner not only by respecting their decisions and protecting them from harm, but also by making efforts to secure their well-being." NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH, THE BELMONT REPORT 43 (1978).
- <sup>10</sup> Rashida Manjoo, Follow-up mission to El Salvador, *supra* note 4, para. 64.
- <sup>11</sup> ECONOMY MINISTRY, GENERAL DIRECTORATE OF STATISTICS AND CENSUS, MULTIPURPOSE HOME SURVEY (EL SALVADOR) 22 (2012).
- <sup>12</sup> *Id.* at 21-22.
- <sup>13</sup> *Id.* at 4.
- <sup>14</sup> *Id.*
- <sup>15</sup> WORLD HEALTH ORGANIZATION (WHO), 2011 WORLD HEALTH STATISTICS 26, 62 (2011) [hereinafter WHO, WORLD HEALTH STATISTICS 2011]. Nevertheless, in 2012, El Salvador's Ministry of Health reported that the 2011 maternal mortality rate was 50.8 per 100,000 live births in hospitals. Accord No. 1181, Política de Salud Sexual y Reproductiva, Aug. 9, 2012, vol. 396 No. 149, p. 41, LA GACETA, GOVERNMENT NEWSPAPER [L.G.] Aug. 15, 2012 (El Sal.), available at <http://www.salud.gob.sv/servicios/descargas/documentos/func-startdown/684/> [hereinafter Política de Salud Sexual y Reproductiva 2012].
- <sup>16</sup> WHO, WORLD HEALTH STATISTICS 2011, *supra* note 15, at 26.
- <sup>17</sup> Política de Salud Sexual y Reproductiva 2012, *supra* note 15, at 41.
- <sup>18</sup> STATE'S ATTORNEY FOR THE DEFENSE OF HUMAN RIGHTS, PRIMER INFORME SITUACIONAL SOBRE EMBARAZO EN ADOLESCENTES Y SU IMPACTO EN EL DERECHO A LA EDUCACIÓN [FIRST SITUATIONAL REPORT ON PREGNANCY AMONG ADOLESCENTS AND ITS IMPACT ON THE RIGHT TO EDUCATION] 22 (2009).
- <sup>19</sup> CRR, MARGINALIZED, PERSECUTED, AND IMPRISONED (2014), *supra* note 1, at 49, citing research conducted by Agrupación Ciudadana por la Despenalización del Abortion Terapéutico between 2011 and 2012.
- <sup>20</sup> *Id.* at 25.
- <sup>21</sup> BALANCE ANUAL DE LOS DERECHOS DE LA NINEZ Y LA ADOLESCENCIA [ANNUAL ASSESSMENT OF THE RIGHTS TO CHILDHOOD AND ADOLESCENCE]: EL SALVADOR (2010) 9 (2010).
- <sup>22</sup> SALVADORIAN INSTITUTE FOR THE DEVELOPMENT OF WOMEN (ISDEMU in its Spanish Acronym), SECOND NATIONAL REPORT ON THE SITUATION OF VIOLENCE AGAINST WOMEN IN EL SALVADOR 2010: A PUBLIC SAFETY ISSUE 44-45 (2011); INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Access to justice for women victims of sexual violence in Mesoamerica*, para. 78, OAS/SER.L/V/II., doc. 63 (Dec. 9, 2011).
- <sup>23</sup> CRR, MARGINALIZED, PERSECUTED, AND IMPRISONED (2014), *supra* note 1, at 49, citing research conducted by Agrupación Ciudadana por la Despenalización del Abortion Terapéutico between 2011 and 2012.

## Textbox

- <sup>1</sup> The Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico (Citizen's Association for the Decriminalization of Therapeutic, Ethical, and Eugenic Abortion) is a multidisciplinary organization formed by men and women in El Salvador in 2009. For more information, visit <http://agrupacionciudadana.org/>.