

# Op-Ed The real reason El Salvador jails women for stillbirths? It's called 'moral panic'



Guadalupe Vasquez, left, was sent to prison after her baby died at birth. Sara Garcia, an activist working to free women like Vasquez, speaks in San Salvador, El Salvador on March 23, 2015. (Los Angeles Times)

By **Jocelyn Viterna**

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**A** 19-year-old woman in El Salvador, Evelyn Beatriz Hernandez Cruz, was found guilty of “aggravated homicide” this month after giving birth to a premature, most likely stillborn baby in the pit latrine of her family home. She was sentenced to 30 years in prison.

Hernandez Cruz’s case is not unique. Since 2000, at least 35 Salvadoran women have been convicted of killing their newborns. They have all been imprisoned — not for violating El Salvador’s draconian abortion law, the charge for which many of them were initially arrested, but for pumped-up charges of aggravated homicide, attempted aggravated homicide or manslaughter.

All of these women gave birth unexpectedly, often prematurely, and without medical support. All reported that their newborns were either born dead or died shortly after delivery due to circumstances beyond their control. The women who were convicted of aggravated homicide received sentences of 25 to 40 years in prison. The few convicted of attempted aggravated homicide — because their babies survived — received sentences of 12 to 15 years.

Activists offer competing explanations for why women like Hernandez Cruz are charged with homicide and imprisoned in El Salvador. On one side, abortion rights advocates and human-rights organizations such as Amnesty International [argue](#) that the country's abortion law, which criminalizes abortion in all circumstances, is the main culprit driving the prosecutions. Get rid of the law, they imply, and you get rid of the problem. On the other side, antiabortion activists insist that Hernandez Cruz and the other women really did murder their babies — that the circumstances surrounding the alleged stillbirths are fabrications created by what they call the “pro-abortion lobby” as part of a campaign to change El Salvador's abortion law.

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## **The Salvadoran authorities routinely and flagrantly disregarded evidence in order to pursue guilty verdicts — grist for the panic mill.**

In my view, understanding these cases requires going beyond the debate about El Salvador's abortion law and grasping a larger phenomenon at play. As a sociologist, I have reviewed the court papers for 20 cases in which Salvadoran women were convicted of aggravated homicide of their newborns, soliciting expertise from forensic pathologists, obstetricians and legal scholars when needed. My analysis has uncovered extensive evidence of a sociological concept known as “moral panic.”

The South African sociologist Stanley Cohen introduced the idea of moral panic in 1972 to describe a collective hysteria that can erupt when societies undergo a period of upheaval that threatens to transform traditional power relations. Moral panic works to reimpose the traditional social order by targeting as villains, or “folk devils,” the marginalized group that appears to be gaining power. Such villains are often charged by the media and other powerful institutions with harming innocent, defenseless victims. States typically respond to moral panic by adopting punitive laws to punish the group.

In the 1990s, the decade before it started incarcerating women for stillbirths, El Salvador was in the early throes of such an upheaval. The country had recently emerged from a 12-year civil war. As a condition of United Nations-brokered peace accords, the political elite was required to share the Legislative Assembly

with the same leftist insurgents it had fought in the war. Right-wing political groups seized on antiabortion rhetoric as a uniquely effective means of demonizing the newly powerful left as antifamily and antireligion.

Working with the local Catholic Church, these right-wing political parties eventually collaborated to pass the abortion ban in 1997, followed by a constitutional amendment in 1999 requiring the state to protect human life from the moment of conception.

According to Cohen's theory, the media plays a crucial role in whipping up moral panic. In El Salvador, mainstream media outlets went into overdrive to foment the frenzy over abortion, calling on the state to do more to capture homicidal mothers and using the words "abortion" and "homicide" interchangeably. One newspaper article reported that "the number of newborns being thrown into latrines, trash receptacles, or vacant lots by their own mothers is alarming." Often, such articles did not cite a single case to support their claims, yet offered provocative descriptions of the evil women who carried out the crimes. "They are human beings who only lived the nine months that they were in their mothers' wombs," reported one newspaper. "Upon birth, they await the sweet hands of a mother, but what they find instead are the talons of soulless women."

It is in this larger context that these heavy prison sentences must be understood. In the 20 cases I examined, the Salvadoran authorities routinely and flagrantly disregarded evidence in order to pursue guilty verdicts — grist for the panic mill.

Police and government lawyers failed to acknowledge the possibility of an unanticipated birth and consistently argued that women like Hernandez Cruz "launched" or "threw" their newborns into the latrine. Forensic specialists used unreliable tests and flawed reasoning to conclude that the babies were killed, even when their own autopsies documented fetal anomalies that were likely to have caused natural stillbirths. In the few cases where an infant did appear to have been subjected to a violent death, officials investigated only the mother, ignoring evidence that pointed to other possible suspects. Most glaring, Salvadoran judges excluded information that would have supported the women's testimony, accepting unexplainable inconsistencies in the forensic reports or prosecutors' arguments, and offering presumptions rather than evidence in determining guilt.

In the case of Hernandez Cruz, authorities flouted the defendant's plausible account of events. Hernandez Cruz was only 30 weeks pregnant when she gave birth. She said that she had not realized she was pregnant because she had experienced regular vaginal bleeding and interpreted this as menstruation. When she began having painful stomach cramps, she went to the outhouse, expecting to have a bowel movement.

Legal and medical experts say there is no reason to doubt Hernandez Cruz's story. A surprising number of

women do not realize they are pregnant until they have delivered, even in affluent countries. Moreover, vaginal bleeding in the second or third trimester is a universal sign of pregnancy complications. It could indicate an abnormal placenta, for instance, which can interrupt the flow of blood or oxygen to the fetus.

And yet, authorities disregarded Hernandez Cruz's story outright. They did so despite the fact that her infant was found to have inhaled meconium while in utero — another sign of fetal distress — and even though Hernandez Cruz was diagnosed with a bladder infection, a condition strongly associated with premature birth.

The judge concluded simply that Hernandez Cruz was lying when she said she did not realize she was pregnant, that she had not wanted anyone to find out that she was pregnant, and that she therefore had planned to get rid of the baby. This series of assumptions served as the sole basis for a guilty verdict.

A brazen presumption of guilt is evident in the handling of all 20 cases. In one especially egregious case, the autopsy reported at least three biological abnormalities that could account for a stillbirth. The report also stated explicitly that no signs of trauma were found on the infant's body. Nevertheless, when indicating the cause of death, the forensic examiner simply wrote the word "violent."

Salvadoran legislators are considering a bill that would legalize abortion in a few specific circumstances, such as when pregnancy endangers a woman's life. This law would save many Salvadoran women's lives. But protecting teenagers like Hernandez Cruz from spending a lifetime in jail will require more than legislation.

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