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Conceiving While Poor, Imprisoned For Murder

Though the Salvadoran total abortion ban has been a rallying cry for the global abortion rights movement, these 17 Salvadoran women appear to have not even purposefully ended a pregnancy, but rather to have suffered from a combination of obstetrical complications and poverty.

One night in November 2011, María Teresa awoke in San Salvador with stomach cramping. She had felt fine all day, working at her factory job, and spending the evening laughing, talking, sharing dinner with her family, and helping her six-year-old son with his homework. When she later stumbled to the latrine outside her small, one-room home clutching her abdomen, she was horrified to feel a “little ball” drop from her body.

She cried for help and passed out, hemorrhaging severely. Her mother-in-law, Ana, called an ambulance. When hospital doctors realized she had just given birth, they asked what had happened to her baby. Stunned, María replied “what baby?” The police were contacted, and they soon found the dead fetus in the latrine.

Originally charged with “abortion,” María Teresa’s charges were upgraded to “aggravated homicide” and she was sentenced to 40 years in prison.

There are 17 women like María Teresa languishing in El Salvador’s prisons, and women’s activists throughout the country

are working hard to bring international attention to these cases. On April 1, a caravan of approximately 200 activists led by the Citizens’ Coalition for the Decriminalization of Abortion travelled from the Ilapongo’s Rehabilitation Center for Women, where many of the 17 women are being held, to the national Legislative Assembly, where they submitted requests to pardon these women, who are all imprisoned for the “homicide” or “attempted homicide” of their newborns. But as the Citizens’ Coalition argues, these women actually suffered a range of obstacles beyond their control, from stillbirths to complications resulting from self-birthing that led to the infant’s death. They have each been sentenced for 12 to 40 years, despite the absence of direct evidence of wrongdoing.

In court, María Teresa testified that she never knew she was pregnant, that her stomach never grew, and that she had been bleeding regularly, as if menstruating, for months prior to the stillbirth—all intimate details she has encouraged through written correspondence that I publish so her case

be well known and accurately reported. Her mother-in-law, Ana, reports that María Teresa had regularly visited the doctor prior to the surprise birth, but that even the doctors had failed to recognize that she was pregnant. “She went a lot for back pain,” Ana said. “They even told her, because she’s really big breasted, that maybe the pain was caused by her chest.”

Medical experts at María Teresa’s trial determined that the fetus was “full term,” but the evidence for this conclusion was sparse and contradictory. There were no marks on the tiny body to suspect foul play; the umbilical cord was torn and not cut, substantiating María Teresa’s claims that the baby fell directly into the latrine; and the autopsy found no evidence of feces in either the lungs or the stomach of the fetus, suggesting that it likely never took a breath. Nevertheless, the judge concluded that María Teresa must have known she was pregnant, and had the specific intention of killing her newborn.

María Teresa’s family and neighbors were astounded to learn she had given



A protest on July 1 for the 17 imprisoned women. CITIZENS' COALITION FOR THE DECRIMINALIZATION OF ABORTION

birth. Ana explained, “I lived in the same house, and I never saw that pregnancy. The whole world, the neighbors...we were all shocked.” While unusual, María Teresa’s lack of knowledge of her own pregnancy is actually common for a statistically significant percentage of women. A 2002 German study in the *British Medical Journal* concluded that one out of 475 pregnancies go unrecognized by the pregnant woman herself until late in the gestation.

Women most at risk for not knowing they are pregnant are often overweight and continue to have vaginal bleeding through gestation, like María Teresa. According to Dr. Christine Curry, a Boston-based obstetrician, María Teresa’s presentation of intermittent, painless bleeding could have been caused by what she calls “cervical incompetence,” a condition in which a woman’s cervix “dilates with few, if any, painful contractions.” For Dr. Curry, it’s not uncommon for women with this condition to “deliver into toilets due to their feeling of extreme

pressure without pain.”

Outside of these 17 cases, the large majority of Salvadoran women who experience a stillbirth or newborn death are not accused of murder, as those deaths often occur in a medical facility under the watchful eye of staff. However, under current legislation, Salvadoran women who enter the hospital post-partum, having already lost the fetus, are at high risk of being accused of homicide, especially if they have no witnesses to support their account.

All 17 women seeking the pardons in El Salvador’s courts gave birth outside a medical facility, and typically without any support. Like María Teresa, most were transported to the hospital with heavy bleeding and retained placentas, often losing consciousness. Some, like María Marina, testified in court documents that their babies were born dead, and medical reports provided no evidence to the contrary.

A legal review of the court documents suggests that judges’ decisions in nearly every case are

based on a presumption of the mother’s guilt. In many cases, exculpatory evidence is dismissed, and judgments center on whether women may have hidden their pregnancies, cheated on their male partners, or acted inappropriately according to presumed natural laws of motherhood.

Over the last several decades, abortion laws in Latin America have undergone striking changes. Previous laws for the most part outlawed abortion except when the life of mother is at risk, the pregnancy is a result of rape, or the fetus is severely deformed. A few places, like Uruguay and Mexico City, have recently followed the example of Cuba and liberalized women’s access to abortion. Others, such as El Salvador, Nicaragua, Honduras, Chile, and the Dominican Republic, criminalized all forms of abortion, while also amending their constitutions to define “life” as beginning at conception. Abortion laws have also recently been the subject of intense debate

in a host of other Latin American countries, including Brazil, Colombia, Bolivia, and Costa Rica.

In El Salvador, a powerful pro-life movement led by the organization Yes to Life began campaigning for the total criminalization of abortion during a planned revision of the penal code in 1994. The

amendment from passing. The major media outlets in the nation, long affiliated with the political right, had strongly criticized the FMLN's stance in favor of limited abortion rights, and the party was divided and losing public support. The FMLN leadership decided to let party members "vote their

movement has made slow but significant gains in educating the public about the consequences of the total abortion ban. Nearly 97% of Salvadorans supported some form of anti-abortion legislation in a 2012 nationally-representative survey, but only 40% opposed abortion in situations where the pregnant woman's life is at risk. The Citizen's Coalition believes this number has decreased even further since the publicity surrounding the case of Beatriz, a woman whose life was recently endangered when Salvadoran law prohibited the abortion of her non-viable pregnancy.

While abortion rights movements around the world have reported on the Salvadoran legislation extensively, what is perhaps most compelling about the current cases is that the imprisoned women appear to have *not* purposefully ended a pregnancy, but rather to have suffered from a combination of obstetrical complications and poverty. When they sought medical attention in public health centers, they were reported to the police for suspected abortion, often by the very medical staff that treated them. Given that the anti-abortion law in El Salvador provides a two to five year sentence for abortion accomplices and those who fail to report a possible abortion, as outlined in the Salvadoran Criminal Code, such actions by medical personnel are understandable. As Morena Herrera of the Citizens' Coalition explained to me, "With the 1997 change in the legislation, the Attorney General's office became more interested in prosecuting the act of abortion. What happened was that

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right-wing National Republican Alliance (ARENA) political party allied with the pro-life movement, and in 1997, voted into law a new criminal code. The new code eliminated the previous law's allowance of abortion in cases of rape or grave fetal deformation, or when it would save the health of the mother. The left-wing Farabundo Martí National Liberation Front (FMLN) initially challenged ARENA, arguing that pregnant women should maintain limited options for safe abortions, particularly when pregnancy put their lives at risk. But the FMLN had too few votes to stop the passage of the total abortion ban.

In 1999, ARENA brought a constitutional amendment defining life as beginning at conception to the legislature for its final vote, and the left party again did not have enough votes to stop the

conscience" instead of proposing a party line. The overwhelming majority of FMLN deputies voted in favor of the constitutional reform. Although the FMLN has supported several other initiatives to improve women's rights since winning executive power in 2009, they have remained silent on the issue of abortion since 1999.

Amnesty International, the United Nations Committee on Economic, Social, and Cultural Rights, and the Inter-American Court on Human Rights have all criticized the Salvadoran law, arguing that requiring a woman to sacrifice her life for a fetus, or requiring a woman to carry an unviable fetus to term constitutes torture, discrimination, and a fundamental violation of human rights. Despite the right's powerful control over the Salvadoran media, the Salvadoran feminist

prosecution shifted its focus to the public hospitals.”

The cases of these 17 Salvadoran women are complicated by the failure of the Salvadoran criminal code to provide any legal definition of abortion, while the newly amended constitution explicitly defines life as beginning at conception. This blurs the legal line between abortion and homicide.

Dennis Munoz Estanley, a lawyer for the Citizens’ Coalition, explained to me in July how this blurring denies women the presumption of innocence: “At first, these women are accused in the public hospitals of abortion, but this is done without determining if there has been an induction of any sort. Then, as the investigation evolves, the medical experts say that the case doesn’t actually deal with abortion, as the uterine contractions that these women had were spontaneous. But if this was the case, then there was simply no reason for the abortion accusation in the first place.”

In the three months since the Citizen’s Coalition formally requested pardons on behalf of the 17 women, the Coalition reported to me in July that six more women have been charged with murder in El Salvador for what appear to be obstetrical emergencies. Several, like 19-year-old Kenia, have already received 30-year sentences.

In Kenia’s case, she called the authorities for help when she went into labor, but help never came—probably due to the high level of gang violence in her community, as the Coalition alleges. After she gave birth alone, her baby died. Kenia left the baby in her family’s storehouse, and went, bleeding,

with the placenta and the umbilical cord still attached to her uterus, into the street to look for the police. She had lost almost two liters of blood. The police took her to the hospital, and like in the other cases, she was charged with homicide and sentenced to 30 years.



Oscar, María Teresa’s son.

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María Teresa’s son Oscar’s eyes filled with tears as he spoke with me in July. The now nine-year-old boy hasn’t seen his mother in almost two years because his grandmother says he becomes seriously depressed after visiting her in prison, and because the trip requires many hours and financial resources that she cannot spare. Ana regularly struggles to make ends meet with the little store she runs out of their home, buying food in bulk and selling it piecemeal. If she earns two dollars a day, she reports, she feels very lucky. Oscar’s schoolwork has

suffered, even though neighbors help him because his grandmother is illiterate. And he has begun showing other signs of psychological stress as well.

When his grandmother announced that she could no longer continue to pay his tuition, his face fell. Ana desperately wants to avoid transferring him to the public school, where she says teachers have too many students and where violent gangs recruit their youngest members. But the funds are simply not there.

“Without María Teresa, I’ve felt very bad, in every way. She was like a daughter to me,” recounted Ana. “Now it’s a fight to figure out how to get by. She was the one who worked for all of us. Oscar misses her so much. She had paid for him to go to the mission school since he was in kindergarten, because she knew that the child would do well there, because education was always really important for her. She was everything to her child.”

In a country overwhelmed by poverty and violence, Oscar once seemed to be a child with a chance at social mobility. But when the judicial system imprisoned his mother for four decades, they also sentenced Oscar to limited educational opportunities, extreme psychological distress, and little escape from street violence. In its efforts to protect the life of the unborn, the Salvadoran legal system may be systematically destroying the lives of children like Oscar who are already here. ■

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