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**THE CASE OF MARIA TERESA RIVERA¹:
THE FIGHT FOR REPRODUCTIVE RIGHTS IN EL
SALVADOR**

Carisa Hatfield*

Introduction

In 2011, Maria Teresa Rivera, then a 27-year-old garment factory worker and single mother of a five-year-old son, was working an afternoon shift when she started bleeding. She left work for home and was found later passed out in the bathroom by her mother who took her to the hospital. There she learned she had suffered a miscarriage from a pregnancy that she did not know about, but instead of being treated and released, the hospital reported Maria to the police for aborting her unborn child. She was handcuffed to her hospital bed while seven police officers surrounded and questioned her for hours without an attorney. When she was discharged, she was arrested, charged with aggravated murder, sent to jail, and, after an eight-month trial, sentenced to forty years' imprisonment for the crime. Three years later, she is still in prison awaiting an appeal by her attorney for a pardon and release from prison. Her appeal is currently pending before the High Counsel of El Salvador.²

As horrifying as this case is, Rivera's case is not an isolated incident. Though her sentence has been the most extreme, there are seventeen women in El Salvadorian prisons with decades-long sen-

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1. Amnesty International, *El Salvador: Total ban on Abortion is Killing Women and Girls and Condemning Others to Decades Behind Bars*, AMNESTY INTERNATIONAL (September 24, 2014), <http://www.amnestyusa.org/news/news-item/el-salvador-total-ban-on-abortion-is-killing-women-and-girls-and-condemning-others-to-decades-behind>
2. *Id.*

tences all related to the crime of abortion.³ In 2013 alone, sixteen women and girls were charged with the crime of abortion.⁴ Six of these individuals were under the age of seventeen at the time the alleged abortion occurred.⁵

The Legal Framework of El Salvador's Total Abortion Ban

Section I, Article 1 of the El Salvadorian Constitution, added in February of 1999, states under the heading “The Human Person and the Ends of the State” that, “[El Salvador] recognizes as a human person every human being from the moment of conception.”⁶ The Constitution’s statement is further codified in Article 533 of the country’s penal code as a total ban on the choice to have or perform an abortion, with no exceptions in place for instances of sexual assault, fetus deformity, or the life or health of the mother.⁷ If a doctor or other health care provider is found to have performed an abortion, he or she faces up to a twelve-year sentence.⁸ A finding that a woman has had an abortion carries a sentence of two to eight years in prison.⁹ However, a woman suspected of aborting her fetus can also be charged with aggravated murder, as in the case of Rivera.¹⁰ Those facing an

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3. The seventeen here mentioned (“Las 17”) are not the only ones who have been imprisoned, though their cases are the ones being petitioned to the High Court of El Salvador for release. In total, 129 women have been prosecuted for abortion or aggravated murder related to abortion since the Constitution was amended in 1999. Twenty six of these were imprisoned for murder. Anastasia Moloney, *Hundreds Jailed for Abortion in El Salvador*, ALJAZEERA (November 11, 2014, 1:34 PM), <http://www.aljazeera.com/indepth/features/2014/11/hundreds-jailed-abortion-el-salvador-201411112375618297.html>.
 4. *Twelve facts about the abortion ban in El Salvador*, AMNESTY INTERNATIONAL (September 25, 2014), <http://www.amnesty.org/en/news/twelve-facts-about-abortion-ban-el-salvador-2014-09-25>.
 5. *Id.*
 6. *Constitution of El Salvador, Section I, Article 1*, CONSTITUTION NET, <http://www.constitutionnet.org/vl/constitution-republic-el-salvador>.
 7. Christa Elliot, *Situation of Human Rights of Women and Girls in El Salvador*, HUMAN RIGHTS BRIEF (March 24, 2013), <http://hrbrief.org/2013/03/situation-of-human-rights-of-women-and-girls-in-el-salvador/>
 8. *Supra* note 4.
 9. *Supra* note 4.
 10. *Supra* note 4.

aggravated murder charge can be sentenced to up to sixty years of imprisonment.¹¹

Fear, Futility, and Faith: The Reality of Reproductive Rights in El Salvador

Abortion in Secret: The Risks of Clandestine Abortions

The criminal punishment of abortion in El Salvador has created a state of desperation for women and teenage girls. The El Salvadorian Ministry of Health reported that there were 19,290 clandestine abortions from 2005-2008, with many more suspected.¹² More than one-fourth were performed on girls under the age of eighteen.¹³ Methods used by those seeking this type of abortion—including ingesting rat poison, using knitting needles to stab the cervix, and using ulcer treatment drugs known to cause abortions—are risky in a best case scenario and fatal in the worst.¹⁴ According to the World Health Organization (WHO), eleven percent of the female population of El Salvador died as a result of clandestine abortions, with figures likely to be higher due to the secrecy of these procedures.¹⁵ Women and girls who choose to undergo these procedures rarely seek post-abortion medical care, and understandably so—when they do, they are questioned relentlessly by medical professionals and are often turned in on suspicion of having an abortion. The fear of prosecution and imprisonment associated with abortion ultimately results in the increased likelihood that a self-attempted abortion will result in death.

Nowhere to Turn: The Lack of Criminal Justice Response to Sexual Assault

Since no exception exists for sexual assault in the total abortion ban, women and girls who are subjected to these horrific crimes get

11. *Supra* note 4.

12. *Twelve facts about the abortion ban in El Salvador*, AMNESTY INTERNATIONAL (September 25, 2014), <http://www.amnesty.org/en/news/twelve-facts-about-abortion-ban-el-salvador-2014-09-25>.

13. *Id.*

14. *Id.*

15. *Id.*

little help from the legal system. Adding to the problem, the sexual assault of women and girls is a chronic issue in El Salvador, with over thirteen hundred women and girls reporting sexual assault in the country in 2013.¹⁶ Nearly two-thirds of these victims were under the age of fifteen or mentally incapacitated at the time of the assault.¹⁷ Historically, however, statistics show that less than six percent of sexual assault charges brought against those who commit sexual assault actually result in a judgment against them.¹⁸

Seeking Knowledge: Consequences of the Lack of Sexual Health Education

El Salvadorian women face these horrific odds without the benefit of education on basic family planning or contraceptive use. According to a twenty year survey done in the country along with four other Latin American nations, access to reproductive health care is limited for women and girls and sexual education is virtually non-existent for those without higher or secondary education.¹⁹ This has undoubtedly contributed to El Salvador having the dubious distinction of the highest rate of teen pregnancy in Latin America.²⁰ The no-exceptions policy of the Roman Catholic Church, the criminal justice system, and the lack of resources has created a no-win situation for women and girls who were either assaulted or are facing serious health risks as a result of a pregnancy, let alone negating the right to make informed decisions about whether, when, or how to have chil-

16. *Id.*

17. Twelve facts about the abortion ban in El Salvador, AMNESTY INTERNATIONAL (September 25, 2014), <http://www.amnesty.org/en/news/twelve-facts-about-abortion-ban-el-salvador-2014-09-25>.

18. Christa Elliot, Situation of Human Rights of Women and Girls in El Salvador, HUMAN RIGHTS BRIEF (March 20, 2014), <http://hrbrief.org/2013/03/situation-of-human-rights-of-women-and-girls-in-el-salvador>.

19. Ghazaleh Samandari & Ilene S. Speizer, Adolescent Sexual Behavior and Reproductive Outcomes in Central America: Trends over the Past Two Decades, *Int. Perspect. Sex Reprod. Health.*, Mar 2010, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2895925/>.

20. One fifth of teenage girls between ages fifteen and nineteen in El Salvador have been pregnant at least once, and nearly half had no intention of getting pregnant. *Supra* note 3.

dren.²¹ Tragically, El Salvadorian teenagers often choose to end their own lives rather than face the risks of their pregnancy, as evidenced by suicide accounting for fifty-seven percent of the deaths of pregnant teenage girls ages ten to nineteen.²²

International Critique and the El Salvadorian Response

The United Nations has condemned the total ban on abortion in countries like El Salvador. In 2011, around the same time Maria was put on trial for aggravated murder, the Rapporteur on Right to Health, a representative of the UN's Human Rights Council, urged nations to consider the ramifications of the criminalization of abortion.²³ The lack of resources for sexual education and family planning services in these countries, he said, reflect their "discriminatory notions of women's roles in the family and in society," and ultimately take away the autonomy and reproductive choice of the pregnant mother.²⁴ In May of 2014, the UN's Committee on Economic, Social, and Cultural Rights, in its 52nd Session, concluded their report on the total abortion ban in El Salvador by urging El Salvador to "review its legislation with regard to the total prohibition of abortion to make it compatible with other fundamental rights such as health and life of the woman, as well as with their dignity."²⁵

Despite strong pressure from the United Nations and other international human rights groups, including Amnesty International and The Inter-American Commission on Human Rights, El Salvador has yet to publicly consider either weakening or repealing the ban altogether. A great deal of this reluctance comes from the pressure placed on the legislature by the country's Roman Catholic and evangelical lobbying groups. These organizations prioritize the life of the unborn child from the moment of conception and advocate for legislative

21. Though the United Nations charter provides for the basic right to self-determination in Article I, Section 2 of the United Nations Charter, it does not specifically provide for the right to reproductive choice.

22. *Supra* note 17.

23. Several Aspects of Sexual, Reproductive Health — Providing Information, Using Contraception, Abortion — Should Be 'Decriminalized', Third Committee Told, UNITED NATIONS (October 30, 2011), <http://www.un.org/press/en/2011/gashc4018.doc.htm>.

24. *Supra* note 11.

25. *UN Committee calls on El Salvador to decriminalise abortion*, REPRODUCTIVE HEALTH MATTERS (May 28, 2014), <http://www.rhmjournal.org.uk/news.php?newsID=1849>

policy based on the teachings of the Catholic Church, which opposes abortion. Politicians who oppose the ban, or are in favor of easing it, fear that they will lose the church and its voter base if they speak out against it. Politicians opposing the ban can easily be voted out of office due to the frequency of election cycles, with one happening approximately once every eighteen months. Interestingly, however, private citizens' attitudes towards abortion seem to be leaning away, at least a little, from the strict stance of the law and the church. For example, a newspaper poll conducted in El Salvador in 2013 revealed that seventy-four percent of those asked were in favor of a woman having the right to an abortion when her life was in danger.²⁶

Avenue for Change: The Impact of Maria's Case

How could Maria's case change the landscape of reproductive rights for women in El Salvador? When Maria's case came before the High Counsel of El Salvador, it was the second case in a year to consider reproductive rights of women in the country, with the first being the highly publicized case of "Beatriz" from 2012.²⁷ The surge of international pressure from both the United Nations and other human rights organizations has been building in the months leading up to Maria's November 2014 trial, putting El Salvador and countries with similar policies under the microscope. The High Counsel may eventually feel this pressure and feel obligated to make a different decision than they did with Beatriz. With the stalemate in the legislature, and no word from the left-wing president Salvador Sanchez Cerez,

26. *Twelve facts about the abortion ban in El Salvador*, AMNESTY INTERNATIONAL (September 25, 2014), <http://www.amnesty.org/en/news/twelve-facts-about-abortion-ban-el-salvador-2014-09-25>.

27. Beatriz was a rural twenty two year old woman who was pregnant with a malformed fetus, which doctors said would not survive more than a few hours outside the womb. Carrying it to term would have caused serious medical issues for Beatriz, who has lupus and other chronic diseases, but the lower courts refused to grant an abortion. In that case, the counsel, after initially refusing to grant an exception to the abortion ban, faced such pressure from the Inter-American Court on Human Rights and the world that it ultimately allowed Beatriz to have an emergency Caesarian section to remove the fetus. *El Salvador: Total Abortion Ban is Killing Women and Children and Condemning Others to Decades Behind Bars*, AMNESTY INTERNATIONAL (September 25, 2014), <http://www.amnesty.org/en/news/el-salvador-total-ban-abortion-killing-women-and-girls-and-condemning-others-decades-behind-bar>

elected in 2014, on trying to change the policies, the Court may be the only body who can spur change in the country's stance on abortion.

Conclusion

As for Maria Theresa Rivera, she has put her faith in her attorney and remains in prison awaiting the results of her appeal. Three years later, she still does not understand why the judge sentenced her so harshly. She mourns the loss of her relationship with her son who is now nine years old and cannot visit her in prison. He lives in poverty with his unemployed grandmother, Maria's mother. If all of Maria's appeals fail, her son will be 45 years old when she is released from jail. Maria fears that her child will no longer recognize her if she is forced to serve the entirety of her sentence. She faces harassment in prison for being a "baby killer" and has considered ending her own life.²⁸ Still, she holds out, waiting with the rest of the world to see what happens next. For women like Maria, the harsh realities of El Salvador's stance on women's reproductive rights have all-too-real consequences.

28. Anastasia Moloney, *Hundreds Jailed for Abortion in El Salvador*, ALJAZEERA (November 11, 2014, 1:34 PM), <http://www.aljazeera.com/indepth/features/2014/11/hundreds-jailed-abortion-el-salvador-2014111112375618297.html>.