



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW - THIRD CYCLE

**Submission to the 34th Session of the Human Rights
Council's Universal Periodic Review Working Group**

March 2019, Geneva, Switzerland

EL SALVADOR

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why El Salvador must continue to uphold the right to life of all human beings, including the unborn, and why it should resist calls to liberalise access to abortion.

a) Right to life

3. El Salvador’s 1956 Penal Code explicitly prohibited abortion with very few exceptions.
4. The Penal Code of 1973 (“1973 Code”) legalized abortion in three instances: 1) endangerment of the life of the mother and abortion is the only means to preserve it; 2) rape or statutory rape; and 3) when the child has a serious congenital disorder.
5. According to the 1973 Code, negligently causing an abortion was exempted from prosecution. A woman in good standing received a reduced penalty when she consented to an illegal abortion, self-induced an abortion, or obtained an abortion to protect her reputation.
6. In 1997, following the reform of its Penal Code, El Salvador made abortion illegal in all circumstances. Undergoing an abortion currently carries a 12-year sentence if the expectant mother is convicted. Health professionals who assist in performing abortions can be sentenced for 6-12 years.
7. In 1999, El Salvador passed a constitutional amendment declaring that life begins at conception.
8. El Salvador signed the Convention on the Rights of Persons with Disabilities (“CRPD”) on March 30, 2007 and ratified it on December 14, 2007. Articles 10 and 12 of the CRPD protect and promote the lives of all persons with disabilities.
9. Pro-abortion advocates argue that liberalizing abortion laws is necessary to respect and fulfill women’s human rights, and that, for the sake of improving maternal health and reducing maternal mortality, El Salvador should fully decriminalize abortion and make it available on demand.

The right to life in international law

10. An international “right to abortion” is incompatible with various provisions of international human rights treaties that El Salvador has ratified, especially those relating to the right to life.
11. In particular, according to Article 6(1) of the International Covenant on Civil and Political Rights (“ICCPR”), which El Salvador signed on September 21, 1967 and ratified it on November 30, 1979, “Every human being has the inherent right to life”.

12. Article 6(5) of the same covenant states that the death sentence “shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” Although the ICCPR allows for the death penalty to be imposed upon both adult men and women in Article 6(2), it explicitly prohibits applying the death penalty to pregnant women. The ICCPR’s prohibition of the death penalty on pregnant women implicitly recognizes the right to life of the unborn. This clause must be understood as recognizing the unique identity of the unborn child, distinct from the mother, and protecting the unborn child’s right to life.
13. Early UN texts explaining the original text of said paragraph note that the intention of the paragraph “was inspired by humanitarian considerations and by consideration for the interests of the unborn child.”¹
14. Article 1 of the Convention of the Rights of the Child (“CRC”), to which El Salvador became a State Party in 1990, defines a child as “every human being below the age of eighteen years[.]” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds that “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

Legalizing abortion does not make it safer

15. Although medical infrastructure in El Salvador is of a relatively high standard, access to quality health-care services is less available in remote and poor areas. Women who receive abortions would still face the same poor conditions faced by women who give birth and deal with similar complications, such as bleeding and infection. Providing more access to abortion will mean more women will suffer from abortion complications.
16. High maternal mortality rates (“MMR”) have less to do with abortion legality and more with an inability to access obstetric care, especially for women living in poor or rural areas, lack of health workers, and lack of information.
17. El Salvador has significantly improved its health infrastructure all while prohibiting abortion. From 1990 to 2015, El Salvador has consistently reduced its MMR from 157 to 54 deaths per 100,000 women.² El Salvador’s MMR continues to decrease while abortion is outlawed, protecting the lives of both the mother and the child.
18. Almost all maternal deaths are preventable, particularly when skilled birth attendants are present to manage complications and the necessary drugs are available, such as oxytocin to prevent hemorrhage and magnesium sulfate to treat preeclampsia. Problems in many countries with high MMR include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.

¹ Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI, Article 10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N55/173/02/PDF/N5517302.pdf?OpenElement>.

² UNICEF, Maternal Mortality, <https://data.unicef.org/topic/maternal-health/maternal-mortality/>.

19. The World Health Organization (WHO) recommends a minimum of four prenatal visits with trained health workers in order to prevent, detect, and treat any health problems. Most women in El Salvador receive some level of prenatal care during their pregnancies, but it was estimated by UNICEF that in 2014, 10% of pregnant women did not receive even the recommended four visits.³
20. These issues must be remedied, but frequent calls to increase legal abortion access as a necessary precondition to solving them are misguided and factually inaccurate, as El Salvador has proven. Providing more access to abortion will mean more women will suffer from abortion complications.
21. Lastly, abortion is never safe because it always takes the life of an unborn child and harms the mother involved through the loss of her child.

Reducing abortion recourse

22. El Salvador has already made investments in maternal health, as opposed to liberalising access to abortion, and as a result, MMR have decreased steadily throughout the last 30 years.
23. El Salvador must continue to focus on introducing measures to reduce recourse to abortion instead of focusing on its legalization, in line with paragraph 8.25 of the Programme of Action of the International Conference on Population and Development. Measures to reduce abortion include improving access to education, which empowers women and leads to social and economic development, as well as facilitating healthy decision-making.
24. El Salvador must also focus on helping women get through pregnancy, childbirth, and motherhood safely after rather than assisting women in ending their pregnancies and killing an innocent life.

Recommendations

25. In light of the foregoing, ADF International suggests the following recommendations be made to El Salvador:
 - (a) Reject calls to further liberalise abortion, and instead reaffirm the legal duty of care and implement laws aimed at protecting the right to life of the unborn in all circumstances;
 - (b) Improve the health-care system and specifically provide further measures on infrastructure and resources to maternal health, including midwife training, with a focus on health care for mothers and babies through pregnancy and childbirth
 - (c) Focus on safely getting women and babies through pregnancy and childbirth, with special attention paid to improving healthcare access for women from poor or rural backgrounds.

³ UNICEF, Antenatal Care, <https://data.unicef.org/topic/maternal-health/antenatal-care/>.



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