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Salvadoran woman exonerated after being sentenced to 30 years in prison over stillbirth

A Salvadoran judge exonerated 21-year-old Evelyn Beatriz Hernández in a retrial Monday after she had been sentenced to 30 years in prison in 2017 on a charge of aggravated homicide for a stillbirth a year prior.

Walking out of the court after the hell she suffered for more than three years, Hernández told reporters between sobs, “I thank God, for justice has been done. I thank all of those who have been present and my mother who went through it all with me. I was innocent.”

The decision, however, which was based on irregularities in the prosecution’s case, in no way signals a retreat from the most draconian anti-abortion laws in the world, which continued to be enforced by the “progressive” Farabundo Martí National Liberation Front (FMLN), which ruled between 2009 and 2019. Now, under the ex-FMLN president Nayib Bukele, who also opposes this basic democratic right, the entire bourgeois establishment is veering further to the right.

Hernández, who lived in an impoverished rural area in eastern El Salvador, alleged that she was raped by a gang member when she was 18 years old. She did not report the incident out of fear of reprisals.

Nearly nine months went by without Hernández knowing that she was pregnant, until she had a spontaneous abortion at the house where she worked as a maid. At the time she was also studying nursing.

The pregnancy did not lead to a healthy birth because of the inhalation of toxic substances, possibly from Hernández's work, according to the forensic doctors at the trial. Due to the heavy bleeding, the young woman fainted and was taken to a public hospital, where she was handed over to the police.

Despite witness testimony confirming her version, the state prosecutors claimed that Hernández had deliberately aborted the fetus and gone to her house to drop the remains in a septic tank. She was charged with murder and after her first trial sentenced to 30 years in a women's prison in the capital, San Salvador.

Her lawyer appealed to the Supreme Court, which recognized the irregularities in the case and ordered a re-trial. The Prosecutor's Office then demanded a 40-year sentence, but the final ruling exonerated Hernández fully.

The question of the democratic right to abortion is a class question and exposes the anti-worker character of the political organizations that oppose it. A study by the Salvadoran Citizen's Group for the Decriminalization of Abortion found that, out of the 129 women prosecuted for abortion between 2000 and 2011, 51 percent had no stable income and 32 percent had a "very low" income level.

As described by a Salvadoran specialist interviewed by the BBC, "Those with money... don't even do it here in the country. And, if they do, they surely have the money to do it in better conditions. She doesn't have complications; she doesn't go to the public hospital; she is not reported; she is not prosecuted. That is the injustice and the social inequality."

Since 1997, El Salvador has been part of a select group of countries, including Nicaragua, the Dominican Republic, and Vatican City, that prohibit the procedure under all circumstances.

The UN has concluded that this legislation has contributed directly to a high maternal mortality rate, with abortion ranked among the top ten causes of female mortality in the country, as well as to adolescent pregnancies.

When the penal code was amended in 1997 to ban all abortions, the FMLN minority in the legislature voted as a bloc against the change. However, after demobilizing as a guerrilla movement in 1992 and becoming a bourgeois political party, the FMLN abandoned any pretense of struggle against the conservative and pro-corporate policies of the local financial and landed oligarchy, including the privatizations and austerity dictated by Wall Street.

This transformation from a petty-bourgeois nationalist guerrilla outfit into an integral part of the bourgeois state saw a shift toward supporting attacks against democratic rights as a conscious reflection of the capitalist class interests they were charged with defending against workers and peasants. This included a change in its position toward abortion, along with the open promotion of religious reaction and prejudice, which historically have been used by the propertied classes to ideologically subjugate the masses and impose intolerable social conditions.

During the civil war, about a third of the leadership of the FMLN was composed of women, many of whom were outspoken defenders of abortion. However, as the historian María Angélica Peñas Defago explains, several FMLN female leaders would go on to found conservative, anti-abortion NGOs during the following decade. When the abortion ban was put to a vote again in 1999, the FMLN leadership declared that “it is not a political question but one of the conscience.”

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Several FMLN legislators then voted against the right to abortion, with David Rodríguez arguing at the time, “As a Salvadoran, as a revolutionary and as a Christian, I’ve always had a deep respect for the human person, because Christian principles, to me, the human being is the king of creation, made out of the image of God.”

Once in power, the FMLN enforced the anti-abortion law despite massive popular opposition. A 2017 poll found that 79 percent of Salvadorans support more lenient legislation regarding abortion, while a campaign in 2015 gathered 300,000 signatures to decriminalize it fully.

There are numerous horror stories like that of Evelyn Hernández as a result of the abortion ban.

Guillermo Ortiz, a doctor at the National Maternity Hospital, described to the BBC the case of Beatriz, a 22-year-old with a life-threatening, immunological disease worsened by a pregnancy of a fetus with anencephaly (lacking a brain). The Supreme Court forced her to finish her pregnancy, with the newborn dying 5 hours later. “That anguish of going to bed knowing that what is inside your belly will not survive and that she might die in the process,” said Ortiz, “it’s unjust to subject women to such emotional torture.”

Thousands of clandestine abortions still occur each year in El Salvador, with the World Health Organization estimating that 11 percent of them cost the life of the girl or woman. At least seventeen women have been sentenced to prison terms for a miscarriage.

The FMLN is by no means a rarity in the broader array of “progressive” movements that came to power since the turn of the century across Latin America, all of which have upheld similar reactionary bans, except for the Uruguayan Broad Front, which legalized abortion in 2012:

- In Nicaragua, the ex-guerrilla Sandinista Front for National Liberation (FSLN) returned to power in 2007 in a coalition with the Catholic Church, promising to uphold a law approved the previous year banning abortions under all circumstances under penalty of up to 10 years in prison for both patients and physicians.

- In Chile, a similar across-the-board ban implemented by the Pinochet dictatorship remained in place through several governments led by the Socialist Party and supported by the Communist Party. Not until January 2018, two months before handing power to the openly right-wing government of Sebastián Piñera, did the PS President Michelle Bachelet allow abortions under limited circumstances: if the mother’s life is at risk, if the fetus will not survive, and in the case of rape during the first 12 weeks of pregnancy.

- In Argentina, the governments of Ernesto Kirchner and Cristina Fernández de Kirchner upheld an abortion ban, with Fernández declaring herself against the right to abortion repeatedly during her term.

- In Brazil, after the Workers Party (PT) dropped any mention of abortion from its platform in the 1994 elections, the PT governments did not change the existing legislation, which bans abortions, with prison terms of up to 3 years, except for cases of rape, risks to the woman’s life and anencephaly.

- Similar restrictions have remained in place in Venezuela. Hugo Chávez effectively vowed to fulfill Pope Benedict XVI’s demands, in a 2006 meeting, that he not water down the existing abortion ban.

- Ecuador’s Rafael Correa threatened to resign in 2013 if the prohibition on abortion, except if the pregnancy threatens the life of the woman, was weakened. In 2017, the government rejected calls by the UN to legalize abortion in cases of rape, and sentenced 62 women to prison terms.

- In Paraguay, where one-fourth of all deaths of young women are the result of illegal abortions, the only exception to the ban is in cases when the woman’s life is in danger. The “left” Catholic bishop Fernando Lugo, in power between 2008 and 2012, kept the law in place.

· Mexican president Andrés Manuel López Obrador came to power last year in a coalition with the far-right Evangelical Social Encounter Party (PES). On March 8, International Women’s Day, he declared that the decriminalization of abortion “is a debate we shouldn’t open.”

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