

Thursday 14 December 2017

P8\_TA(2017)0498

**El Salvador: the cases of women prosecuted for miscarriage****European Parliament resolution of 14 December 2017 on El Salvador: the cases of women prosecuted for miscarriage (2017/3003(RSP))**

(2018/C 369/10)

*The European Parliament,*

- having regard to Articles 2 and 3 of the Treaty on European Union (TEU),
- having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 8, 19, 157, 216 and 218(6), second subparagraph, point (a) thereof,
- having regard to Chapter 7 of the EU-CELAC (Community of Latin American and Caribbean States) Action Plan 2015-2017 on Gender,
- having regard to the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women on 15 September 1995, and to the subsequent outcome documents adopted at the United Nations Beijing + 5 (2000), Beijing + 10 (2005), Beijing + 15 (2010) and Beijing + 20 (2015) special sessions,
- having regard to the EU Trio Presidency Declaration of 19 July 2017 by Estonia, Bulgaria and Austria on equality between women and men,
- having regard to its resolution of 14 December 2016 on the Annual Report on human rights and democracy in the world and the European Union's policy on the matter 2015 <sup>(1)</sup>,
- having regard to Regulation (EC) No 1567/2003 of the European Parliament and of the Council of 15 July 2003 on aid for policies and actions on reproductive and sexual health and rights in developing countries <sup>(2)</sup>,
- having regard to the fifth UN Millennium Development Goal — improving maternal health,
- having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women,
- having regard to the UN Committee on the Elimination of Discrimination against Women February 2017 review of women's rights in El Salvador and its concluding observations,
- having regard to Articles 6, 24 and 39 of the UN Convention on the Rights of the Child,
- having regard to the Convention against Torture, to which El Salvador has been a party since 1996,
- having regard to Article 144 of the Constitution of the Republic of El Salvador, which states that international treaties concluded with other states or international organisations constitute laws of the republic, and that, in cases where there is a conflict between the treaty and the law, the treaty prevails,
- having regard to the Framework for Gender Equality and Women's Empowerment: Transforming the Lives of Girls Through EU External Actions 2016-2020,

<sup>(1)</sup> Texts adopted, P8\_TA(2016)0502.

<sup>(2)</sup> OJ L 224, 6.9.2003, p. 1.

**Thursday 14 December 2017**

- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),
  - having regard to the statement of 11 May 2015 by the UN Working Group on the issue of discrimination against women in law and in practice,
  - having regard to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Convention of Belem do Para'),
  - having regard to Salvadorean Legislative Decree N° 520 ('Special Comprehensive Law for a Violence-free Life for Women'),
  - having regard to Articles 133, 135 and 136 of the Salvadorean Penal Code,
  - having regard to the statement by UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, at the end of his mission to El Salvador on 17 November 2017,
  - having regard to Article 1 of the Constitution of the Republic of El Salvador,
  - having regard to the Salvadorean Law on Equality, Equity and Elimination of Discrimination against Women adopted in 2016, the Law on a Violence-free Life for Women adopted in 2012, and the Law on the Comprehensive Protection of Children and Adolescents (LEPINA) adopted in April 2009, which mandates the Ministry of Education to provide education on gender and reproductive health and to tackle discrimination against women in the education system,
  - having regard to Rules 135(5) and 123(4) of its Rules of Procedure,
- A. whereas gender equality is a core value of the EU; whereas the right to equal treatment and non-discrimination is a fundamental right enshrined in the Treaties and in the European Charter of Fundamental Rights and should be fully respected, promoted and applied in legislation, practice, case law and daily life;
- B. whereas in Articles 36 and 37 of its concluding observations of its review on El Salvador's record on women's rights, the UN Committee on the Elimination of All Forms of Discrimination against Women calls for El Salvador's punitive abortion laws to be repealed;
- C. whereas since 2000, at least 120 women in El Salvador have been prosecuted for abortion or homicide when foetal death occurred in the last months of pregnancy, with 26 of these convicted of homicide and 23 convicted of abortion, and all those convicted serving extremely long sentences, despite not being criminals according to international standards; whereas most of these women were young, poor, with limited education, and from remote communities; whereas there are currently two cases pending under prosecution; whereas after spending the last ten years in prison, Teodora del Carmen Vásquez's case was reviewed by the Second Sentencing Tribunal on 13 December 2017 and her appeal was rejected, and Evelyn Beatriz Hernandez Cruz's sentence was confirmed in October 2017;
- D. whereas 'Las 17' were the women most severely punished, having been sentenced to decades in prison between 2000 and 2011; whereas a handful of them have also been released after courts overturned previous decisions;
- E. whereas gender-based violence is a major problem in El Salvador, with data showing that one woman is sexually assaulted every three hours, instances of rape often resulting in undesired pregnancies, and an appalling numbers of feminicides, only 5 % of which have been the subject of judicial proceedings;
- F. whereas public employees of any authority, including hospitals and clinics, are under the obligation to report patients who undergo obstetric emergencies, which is a violation of the right to patient confidentiality and creates an environment in which women suffer stigmatisation; whereas the obligation to report patients means that women who suffer serious complications during pregnancy opt not to seek healthcare assistance for fear of prosecution and imprisonment; whereas it is considered a blanket offence to fail to report;

Thursday 14 December 2017

- G. whereas the rate of gender-based killings of women and girls in El Salvador is appallingly high; whereas 1 097 women were murdered in 2015 and 2016 and 201 women were murdered between January and June 2017; whereas last year, the National Civil Police of El Salvador registered 3 947 complaints of sexual assault, of which 1 049 were cases of rape, including within families, and 1 873 of the victims were minors or classified as 'incapacitated', according to the Salvadoran Women's Organisation for Peace (ORMUSA);
- H. whereas El Salvador has a high adolescent pregnancy rate, which is also driven by the lack of sexual education in schools; whereas sexual abuse and rape are the main factors of early pregnancy; whereas according to the Ministry of Health, in 2015 there were 1 445 cases of pregnant girls aged between 10 and 14 years old;
- I. whereas in 1998, El Salvador criminalised abortion under all circumstances, including cases in which pregnancy has life-threatening complications for the woman or girl, and in cases of rape, incest or an unviable foetus; whereas, moreover, in 1999 a constitutional amendment was passed recognising an embryo as a human being from 'the moment of conception'; whereas any person who performs or self-induces an abortion, even before the foetal stage, is therefore liable to be prosecuted with a sentence of between two and eight years, but in many cases prosecutors have increased the charge to 'aggravated homicide', which carries up to 50 years' imprisonment; whereas legislation that potentially allows abortion under these circumstances has remained frozen in the National Assembly since October 2016, but debates are currently taking place to make further progress;
- J. whereas El Salvador continues, on religious, cultural and other grounds, to deny women and girls access to safe and legal abortion, thereby violating their right to health, life and physical and psychological integrity;
- K. whereas the Ministry of Education recently prepared materials to integrate sexual and reproductive health into the national school curriculum, but owing to resistance from various forces, the final edited materials focus instead on sexual abstinence instead, despite the fact that 42 % have been pregnant by the age of 20;
- L. whereas in Latin America the risk of maternal death is four times higher among adolescents under the age of 16; whereas 65 % of cases of obstetric fistula occur in the pregnancies of adolescents, with serious consequences for their lives, including severe health problems and social exclusion; whereas early pregnancies are also dangerous for the baby, with mortality rates 50 % higher than average; whereas up to 40 % of women in the region have been victims of sexual violence; whereas 95 % of abortions carried out in Latin America are unsafe;
- M. whereas the Ministry of Health reports that between 2011 and 2015, 14 women died of complications related to abortion, 13 women died of ectopic pregnancy and 63 women died under current abortion legislation; whereas suicide is the cause of 57 % of deaths of pregnant women aged between 10 and 19 years old; whereas many women are afraid to ask for medical assistance when they suffer complications related to pregnancy, which causes more deaths that could be prevented; whereas this particularly affects women with the least economic resources who cannot access sexual and reproductive health and rights services;
- N. whereas Human Rights Watch and Amnesty International note that women who have miscarriages or stillbirths in El Salvador are often prosecuted on suspicion of having undergone an abortion; whereas in such cases women are often reported by medical personnel and subsequently arrested while in hospital;
- O. whereas UN experts have warned that the Salvadorean authorities' decision is resulting in grave violations of women and girls' right to life, health and to their physical and mental integrity, thereby jeopardising their economic and social opportunities;

**Thursday 14 December 2017**

- P. whereas in March 2015, the UN Committee on Economic, Social and Cultural Rights asked El Salvador to revise and amend its abortion legislation to ensure its compatibility with other rights, such as the rights to health and life; whereas physical, sexual and psychological violence against women constitutes a violation of human rights;
- Q. whereas El Salvador participated actively in the 61th session of the UN Commission on the Status of Women; whereas all parties should continue to promote the UN Beijing Platform for Action as regards, among other elements, access to education and health as basic human rights, and sexual and reproductive rights;
- R. whereas UN treaty monitoring bodies, including the Human Rights Committee (HRC) and the Committee on the Elimination of Discrimination against Women, have called on various Latin American states to establish exceptions to restrictive abortion laws in instances where pregnancy poses a risk to a woman's life or health, where there is severe foetal impairment, and where pregnancy is the result of rape or incest;
- S. whereas the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, expressed his concerns about the situation of women and girls in El Salvador after his visit to the country in November 2017; whereas he called upon El Salvador to introduce a moratorium on the application of Article 133 of the Penal Code and to review the cases of women in detention for abortion-related offences;
- T. whereas the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR) have explicitly recognised the connection between unsafe illegal abortion and high maternal mortality rates; whereas the Convention against Torture stipulates that states that have an absolute prohibition on abortion under any circumstances expose women and girls to circumstances in which they are being humiliated and treated with cruelty;
- U. whereas the UN Universal Periodic Review made 10 recommendations to the Salvadoran State to bring its abortion law in line with international human rights standards, all of which were rejected by the Government;
- V. whereas, according to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), women who have childcare responsibilities and pregnant women should, wherever possible and appropriate, receive non-custodial sentences;
- W. whereas the prevention of unplanned pregnancies and the reduction in the number of cases of adolescent motherhood through universal access to sexual and reproductive health services is one of the goals included in the Sustainable Development Goals (SDGs);
1. Expresses its deep concern over the situation of girls' and women's human rights, including sexual and reproductive health and rights, in El Salvador and condemns all forms of violence against women; recalls that they constitute a serious violation of the human rights and dignity of women and girls; emphasises that Article 7 of the Rome Statute of the International Criminal Court (which El Salvador ratified on 3 March 2016), defines forced pregnancy as a crime against humanity and a form of gender-based violence against women, which constitutes a serious violation of the human rights and dignity of women and girls;
  2. Strongly rejects the sentencing and imprisonment of women and girls suffering stillbirths or miscarriages and calls for their immediate and unconditional release; considers that no one should be imprisoned on the basis of these convictions;
  3. Condemns the prosecution of women for abortion, long periods in pre-trial detention and disproportionate criminal penalties applied to women seeking abortion, as well as the incarceration of women just after they have gone to hospital in need of care as a result of health personnel reporting them to authorities out of fear of being penalised themselves;

Thursday 14 December 2017

4. Condemns the absolute criminalisation of abortion according to Articles 133, 135 and 136 of the Penal Code, and its severe and discriminatory effects on women who are forced to resort to unsafe methods of abortion, thus facing serious risks to health and life; calls on the Legislative Assembly of El Salvador to follow the recommendations of the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, and the Committee on the Convention for the Elimination of All Forms of Discrimination Against Women's recommendation to place a moratorium on its application;
5. Calls on El Salvador to ensure that women and girls have access to safe and legal abortion; calls on the Legislative Assembly of El Salvador, in this context, to support the draft bill introducing a reform of Articles 133, 135 and 136 of the Penal Code in order to decriminalise abortion at minimum in cases where pregnancy poses a risk to the life or the physical or mental health of a pregnant woman or girl, where there is severe and fatal impairment of the foetus, or where the pregnancy is the result of rape or incest;
6. Calls on the authorities of El Salvador to introduce a moratorium on the enforcement of the current law and to review the detention of women accused of miscarriage, stillbirth or abortion-related offences, with the aim of ensuring their release, to ensure due process in abortion-related proceedings, to allow the accused women to await trial outside prison and to guarantee professional secrecy for all health personnel and confidentiality for patients; condemns all punitive measures against women and girls seeking an abortion, as well as for health care professionals and others who help obtain and carry out the procedure, and calls for the elimination of such measures;
7. Recalls the duty of the Salvadoran government to protect the rights of its citizens and to uphold the rule of law in respect to the principle of presumption of innocence, namely that individuals on trial should be treated as innocent until proven guilty, and that the burden of proof should be incumbent upon the prosecuting authorities and not the individual defendant, in keeping with the Rome Statute to which El Salvador is a ratifying party; calls on the authorities of El Salvador to give gender training to public officials, including members of the judiciary; calls on the EEAS and the Commission to fund and support such endeavours;
8. Condemns inhumane conditions in prisons such as torture, putting inmates in lockdown and suspending family visits; calls on the Salvadoran Government to ratify the Optional Protocol to the Convention against Torture as a measure to prevent torture and inhuman and degrading treatment in all prisons and places of detention; calls for international independent organisations to be granted access to the detention centres; urges the Salvadorean authorities to improve the conditions of imprisoned women, including by granting them access to hygiene products and thereby respecting their basic human rights;
9. Reminds the Government and the judiciary that they are bound to uphold international standards of equal access to justice and the principles guaranteeing a fair trial for all individuals, and that guilt can only be determined upon viewing concrete and sufficient evidence; requests that the Government make available sufficient public funds to support the legal representation of those who cannot afford it themselves;
10. Calls on the judicial system to ensure a fair trial with all guarantees for Teodora del Carmen Vásquez and Evelyn Beatriz Hernandez Cruz and to set aside their judgments; expresses solidarity with the campaign 'Las 17', women who have been unjustly imprisoned for up to 40 years for what amount to miscarriages, stillbirths, and other obstetric complications; extends its solidarity to each and every Salvadoran woman being prosecuted under similar grounds, or being convicted of 'aggravated homicide'; asks the competent authorities to review all cases with the view of granting them a pardon;
11. Expresses its grave concern about the high number of child pregnancies in El Salvador; urges the Salvadorean authorities to meet their international obligations and to protect human rights by ensuring that all girls have access to all possible information and medical services for the management of high-risk pregnancies resulting from rape;

Thursday 14 December 2017

12. Deplores that women's and girls' bodies, specifically with respect to their sexual health and reproductive rights, still remain an ideological battleground, and calls on El Salvador to recognise the inalienable rights of women and girls to bodily integrity and autonomous decision-making as regards, inter alia, the right to access to voluntary family planning and safe and legal abortion; believes that the general prohibition on therapeutic abortion and the abortion of pregnancies resulting from rape and incest, and the refusal to provide free health cover in cases of rape, amounts to torture;
  13. Commends the adoption of the 'Special Comprehensive law for a Violence-free Life for Women', following a united cross-party vote by female members of the Salvadoran Legislative Assembly, and reminds Salvadorean authorities of the need to fully implement it, particularly with regard to the commitment to protect women and girls from violence;
  14. Welcomes the recent establishment of El Salvador's policy on sexual and reproductive health and the new programme 'Ciudad Mujer', which has developed services for 1,5 million women across the country, in particular through raising awareness and providing information on sexual and reproductive health and rights, supports its endeavour and urges the government of El Salvador to ensure access to modern contraceptive information and services, and to make efforts to provide comprehensive sex education in public schools;
  15. Urges the Council to speed up its work to enable the EU to ratify and implement the Istanbul Convention, so as to ensure coherence between the EU's internal and external action on violence against children, women and girls;
  16. Calls on the Council to include the issue of safe and legal abortion in the EU Guidelines on rape and violence against women and girls; underscores the fact that universal access to health, in particular sexual and reproductive health and the associated rights, is a fundamental human right;
  17. Calls on the EU-CELAC Heads of State or Government, at their summit, to enhance the chapter on gender-based violence in the EU-CELAC Action Plan with a view to establishing a clear calendar of action and implementing measures intended to guarantee due diligence in relation to the prevention and investigation of, and sanctions for, all acts of violence against women and to offer adequate compensation to victims;
  18. Welcomes the efforts of the EU Delegation in El Salvador to engage with the national authorities on women's rights, including on the criminalisation of abortion; insists that this matter be considered a high priority, and calls on the EEAS to regularly report back to Parliament on its action in this field; insists that the EU Delegation provide all appropriate support to the women currently in jail for abortion-related offences, including through regular visits, support for their relatives and offering legal assistance;
  19. Reminds the EU of its commitments under the Framework for Gender Equality and Women's Empowerment through EU External Relations 2016-2020; asks the EEAS to closely follow the revision cases in loco and asks the Commission to ensure that European development cooperation follows an approach that is based on human rights, with a particular emphasis on gender equality and combating all forms of sexual violence against women and girls; calls on the EU Member States and institutions to increase their support for local human rights defenders and NGOs campaigning for the rights of women and girls, especially sexual and reproductive health and rights and family planning in El Salvador, including funding;
  20. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the authorities of El Salvador, the Office of the UN High Commissioner for Human Rights, the Central American Parliament, the Latin American Parliament, the Euro-Latin American Parliamentary Assembly and the Secretary-General of the Organisation of American States.
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