

Law (In)effectiveness in Women's lives: Family-First Ideologies, Anti-abortion, and Violence Against Women Laws in El Salvador

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Abstract:

El Salvador's Violence Against Women laws and anti-abortion law present optimal empirical ground to examine the intersection of familyism ideologies and laws that undermine women's rights and lives, and the state's central place at this confluence, which is relevant beyond this case. Through close analysis of laws, legal documents, reports, and newspaper accounts, we juxtapose these two ostensibly unrelated laws that have followed widely different applications within the same socio-legal context, same legal reasoning, and the same judicial structure to identify a common thread: the control of women's bodies and devaluation of women's lives. We center the state, as it interacts and responds to pressures from the international community and domestic political pressures to create these laws, which are aligned (anti-abortion) or misaligned (VAW) with predominant gender ideologies to produce divergent implementation. Both, however, prioritize family at the expense of women's rights and lives, especially poor and socially disadvantaged women.

Introduction

Salvadoran women suffer some of the most extreme forms of violence, made possible or sustained through the legal system. El Salvador has implemented one of the most restrictive anti-abortion laws in the world while at the same time its Violence Against Women (VAW) laws are lax. Abortion is strictly criminalized¹, stillbirths and miscarriages can lead to 30 years sentences for ‘aggravated homicide,’ while violence against women is unresolved due to impunity. Between 2000 and 2019, 181 adult women were accused and tried for abortion (46.5%) or aggravated homicides due to abortion (53.5%) (AC 2020, 23). At the same time, feminicides are the highest in the region (10.2 per 100,000 women), and domestic violence cases are in the thousands (41,710 cases between 2005-2020) (though not all cases are recorded formally, and an even smaller portion are prosecuted). Thus, Salvadoran law’s total ban on abortion in all circumstances permits the prosecution of abortion as homicide, which has led to the imprisonment even of women who have had spontaneous miscarriages for suspicion of abortion (AC, 2020).² In contrast, VAW laws are implemented by promoting reconciliation between partners in cases of domestic violence (Craske, 2003; Sylvia Chant 2003), seldom leading to prosecution and impunity is high, making El Salvador one of the most dangerous countries for women³. Despite several VAW laws, violence against women in the family is seen as a discord between a couple, which reconciliation will fix for the benefit of the family. How are these seemingly unrelated legal approaches connected?

In this work we juxtapose these two ostensibly unrelated laws that have followed widely different applications within the same socio-legal context, same legal reasoning, and the same judicial structure. This comparison allows us to identify a common thread that activates such seemingly dissimilar state responses: the control of women’s bodies and their devaluation in law

and in the social context where laws are implemented. Indeed, it is only when we contrast the origins, legal positioning, implementation, and outcomes of El Salvador's anti-abortion law versus VAW laws that we can discern an important link between the two. Within the same structure, historical time, and the socio-legal environment, anti-abortion law emerges as an effective punitive instrument against women because it is aligned with predominant gender ideologies. In contrast, VAW laws emerge as weak, symbolic legal actions with no implementation teeth because these laws do not align with predominant gender ideologies about women and their bodies. A comparison of El Salvador's VAW and anti-abortion laws therefore offers fertile ground to unveil these laws' common root in gender ideologies that through controlling and devaluing women's lives prioritize family unity (and the fetus) at the expense of women's safety. Importantly, this comparison also offers the opportunity to shine a light on women's responses through their activism, as through organizing they contest and seek to repeal laws that deeply harm them. Thus, the legal scenario we depict, and its effects are not static or passively accepted.

More generally, contrasting anti-abortion and VAW laws and their implementation allows us to shed light on how law works to control women's bodies, how state power aligns with predominant gender ideologies to produce seemingly different outcomes. Highlighting the role of the state does not lead to a static depiction of the state and deterministic arguments; instead, our approach demonstrates how the state interacts and responds to pressures from the international community and from internal political pressures, both from those advocating for women's rights (in the case of VAW laws) and those advocating for the sanctity of life and for the interests of the family above all (the anti-abortion law). In the post-war era (since the 1990s), the Salvadoran government has sought to improve its image in the international arena through

advancing both laws. As external and internal political pressures interact with predominant gender ideologies, they produce vastly different enforcement approaches to anti-abortion and to VAW laws. As such, this examination shows that, contrary to some explanations for the “gap” between the law in the books and the law in practice with regard to VAW law implementation (Ewig, 2009 & 2011), the Salvadoran state does have capacity to enforce laws, but only those that align with prevailing ideologies about women and the family, which are also enshrined in the country’s constitution.

Furthermore, contrasting these two laws allows us to unveil an important social class angle on the ground, which adds to the dynamic picture we present here of how ostensibly different laws are amplified or altered as they intersect with social markers on the ground. Anti-abortion law is almost overwhelmingly applied to poor young women who lack access to quality medical services and education (CRR, 2001). In cases of VAW, although the government seems disinclined to investigate all cases, the cases that it does investigate tend to be those of middle- or upper-class women. Thus, social class is central in the implementation of both anti-abortion and VAW laws, but the results are different: in both cases poor women bear the brunt of gender ideologies that devalue and control them along gender and social class lines. We focus on El Salvador, but this case should not be seen as exceptional or as an outlier, as similar confluences are present elsewhere. This empirical case offers the opportunity to examine the intersection of familyism ideologies and laws that undermine women’s rights and lives, and the state’s central place at this confluence, which is relevant beyond this specific case.

Previous Scholarship: gap in Sociolegal studies

The scholarship seeking to explain the inefficient application of VAW laws across various national contexts emphasizes a lack of resources, or state agents' lack of will to implement laws. For instance, Ghosh and Choudhri (2011) argue that the continuing rates of domestic violence and feminicides in India—despite a comprehensive reform in 2005—is due in part to police officers' apathy and disdain to process cases of violence against women (Medie 2015). In Honduras, state agencies have actively diverted resources from efforts to protect women from violence to address more “serious crimes,” thus belittling violence against women (Menjívar and Walsh 2017). However, when we examine VAW laws vis-à-vis anti-abortion law in El Salvador, a picture of state capacity to enforce laws emerges. For VAW laws implementation the state has far fewer capacities, but for anti-abortion law state capacity is outsized. Why are these two laws producing two seemingly different outcomes?

Our analysis detects a bifurcation in the responsibility into acts of omission and acts of commission. On the one hand, the state seems unwilling and/or unable to effectively prosecute cases of violence against women; on the other hand, it shows remarkable willingness and ability to prosecute abortion cases against women. In both cases, women's bodies have no priority, an ideology reflected in the writing and implementation of both laws. The Salvadoran state's simultaneous acts of omission and commission reveal the same disregard for women's lives. Acts of omission involve the mechanisms at work in the failure to provide protection, prosecution, and justice in the context of violence against women, as in the lack of effective implementation of VAW and femicide laws. Acts of commission involve the aggressive actions of the state in the enforcement of a regressive anti-abortion law that protects a fetus at the expense of endangering the mother's life. These two legal actions—omission to protect women

from violence and commission to implement one of the most extreme anti-abortion laws in the world—are two sides of the same social processes that reinforce gender-based violence against women that converges on women’s bodies. Decoupling the mechanisms at work in the approval and implementation of these seemingly incongruent laws allows us to understand the role and responsibility of the state in the perpetuation of gender-based violence.

The UN Special Rapporteur for the state’s accountability and due diligence outlines the states’ responsibilities for the elimination of violence against women. This responsibility is based on “acts or omissions committed either by state actors or by actors whose actions are attributable to the state,” (UN 2013) including the failure to exercise due diligence to prevent acts from other non-state actors. Under these guidelines, women’s rights are state matter and due diligence is the mechanism that holds states accountable. The state is obligated to control, regulate, investigate and prosecute non-state actions and to secure women’s rights and through due diligence to assess what constitutes a failure to act on the part of the state. To address violence against women, the 2006 Special Rapporteur’s mandate to the state was to “use the same level of commitment to prevent, investigate, and punish VAW as they do with other forms of violence” (UN 2006, 35).

Thus, in El Salvador the gap between the law in the books and the law in action is wide and alive regarding VAW laws, but it narrows tightly in anti-abortion law, especially for poor and vulnerable women. We examine how laws in the same national context work to subvert women’s lives and rights by prioritizing the viability of a fetus and family unity. The success/failure of anti-abortion and VAW laws, we argue, is not contradictory; both are expressions of the same gender violence manifested in the disregard for women’s lives and in the control of their bodies, instantiated in the state’s acts of omission and commission.

The State, Political Actors, and Women's Bodies

We understand the state not as a homogenous actor but rather as encompassing multiple institutions with ostensibly contradictory logics; thus, states can be progressive and regressive, extend some rights for women while restricting others (Htun and Weldon, 2017; O'Connor et al 1999). We expand this literature by arguing that both logics—progression and regression—are part of the state's infrastructural capacity (Mann, 1993) with their own mechanisms to exercise power and control over women and their bodies. Following this conceptualization, we examine how the state creates a differentiated approach to control women's bodies based on gender inequities and the state actions that create different mechanisms to reproduce these logics. Both, inaction to implement VAW laws and action to produce and enforce regressive reproduction policies that constrain women's lives reproduce extant power relations in society.

Thus, following Gal and Kligman (2012), we understand the state as constituted of different logics where differentiated and apparently contradictory conversations are carried out in different dimensions of society (e.g., civil society organizations, church, international agencies). Reproductive and violence against women laws build narratives about nationhood and become forms of political and moral legitimation of the state. "Rather than assuming there is a self-evident separation between 'state' and 'society'" we understand the state and its boundaries as shaped by cultural and ideological constructions between civil society and state agencies (Morgan and Orloff 2017, 3-4). We also understand that these conversations on reproductive politics, women's rights, and protection of women have contributed to build women organizations that defend women as a political group in dialogue with the state.

How does El Salvador govern over the bodies of women through two seemingly contradicting laws? In addition to what the state does, there is a range of political actors shaping

state actions, e.g., women groups, religious leaders, national and international activists, and donor organizations. The state responds to demands from these actors, some more powerful than others, and in so doing generates laws that seem unrelated and even contradictory but that ultimately sustain predominant gender ideologies. Thus, the Salvadoran state does not enact laws in isolation from external interests and domestic pressures (e.g., women's organizations, international organizations such as UN). It is through dynamic interaction with these non-state actors that the Salvadoran state governs and molds laws that control women's bodies.

Ultimately, state power to enforce certain laws while neglecting others reinforces the symbolic domination that render the "male order" as self-evident, taken for granted, and beyond the need for explicit justification (Bourdieu 1992, 171-73). The twin processes of devaluing and controlling women's bodies in society are naturalized in how laws are written and positioned within the legal hierarchy, their content, and how they implemented, reproducing the common sense of gender relations (Bourdieu 2001, 42-43). This legal violence (Adamson, Menjivar and Walsh 2020), justified in the idea that women can be equated to family, makes women vulnerable to physical and symbolic domination. Women do not exist as individuals and their needs are always subsumed under family needs. The differential treatment of these laws shows how the state helps to reify societal ideas of family unity and gender inequalities through law.

The symbolic violence that sustains these gender inequalities is rooted in familyism ideology. As a gender system, familyism prioritizes family unity over women's rights (and in many cases safety). Family unity is protected and prioritized, and women are praised as mothers, mostly by their capacity to suffer and sacrifice for their family (Menjivar, 2011). Women and their bodies preserve family unity, which is the basis of society. This ideology seeps through to

inform the content of laws, their legal positioning, and their implementation. As Velásquez Díaz et. al. (2016) observe, familyism in law is

“the idea that women and family are synonyms and therefore their needs and interests are the same. Family is taken as a whole, as a unit, where the particular realities of each of its members are irrelevant. This form of sexism is frequently used among administrators of justice when, regardless of the circumstances, women are encouraged to return to their aggressors, to forgive them, to give them a second chance, to think about their family, to think about them, and to do it for their children” (2016, 74).

Methods and Data

This study is based on a review of El Salvador’s anti-abortion and VAW laws (1970-2020) and archival and newspapers research covering the period between 1992 and 2019. We developed an inductive theoretical framework that connects familyism ideology to acts of state omission and commission to identify the mechanisms that undergird the twin developments we examine here: the lack of VAW laws enforcement and excessive criminalization in anti-abortion law. For our analysis we rely on the “extreme case” method (Gerring 2007, 101) which considers maximum outcomes—punishment of abortion and impunity for gender violence—to unveil the conditions for the state’s (un)responsiveness to protect women. El Salvador is prototypical and at the same time paradigmatic in the field of violence against women because it is a double outlier, both in the realm of VAW laws’ lack enforcement and anti-abortion law’ high criminalization. Employing this method reveals how familyism seeps through to inform the state’s acts of commission in the face of domestic and international pressure—approval and enforcement of anti-abortion through a strong and powerful national conservative coalition—, and omission—

approval and lax application of VAW laws in the face of international pressure but relatively weak domestic women's groups coalitions.

Despite the lack of reliable statistical databases on crimes against women or abortion prosecutions in El Salvador, we assembled data from different sources. Our primary data are the laws on the books in El Salvador that address both violence against women, including intrafamilial violence (El Salvador, 1996), femicide (2011), and anti-abortion articles in the penal code (1973 & 1998). We also reference the set of adjacent laws that support or undermine the implementation of VAW laws, such as the penal and procedural codes. Further, we rely on several sentences from the Supreme Court which discuss the constitutionality of the anti-abortion law in the country (El Salvador, 2007 & 2013). Secondary data sources include newspaper articles, reports from civil society organizations, and international and governmental reports to document the femicide and abortion cases in our study. To complete these resources, we use statistical data on violence against women collected by the *Organization of Salvadoran Women* (ORMUSA) and *Agrupación Ciudadana por la despenalización del aborto en El Salvador* (AC). These various sources allow for data triangulation on which we build our argument.

Familyism: Legal Contexts of Anti-abortion versus VAW laws Approval

The Salvadoran constitution (1983) enshrines the principles of exclusion and control of women and their bodies, which influences secondary laws, such as VAW and anti-abortion laws. Article 1 recognizes life from the moment of conception and guarantees its protection and physical integrity (Article 2). However, despite the assertion that everyone is equal before the law (Article 3), in reality women are subordinated to an inferior position when their rights are

equated to those of the family. The constitution declares that the family is the core of society. “It is the fundamental base of society and will have the protection of the state, who will dictate the necessary legislation and create the appropriate agencies and services for its integrity, well-being, and social, cultural and economic development. [...] The law will regulate the personal and patrimonial relations of the spouses between themselves and between them and their children. The state will also regulate family relations resulting from the stable union of a man and a woman” (Articles 32-33, El Salvador Constitution). Unlike other constitutions in the region (e.g., Nicaragua 1987, Article 48), the Salvadoran constitution does not recognize unequal gender-relations for which women would need protection.

In a context of unequal gender relations, family-first ideologies disfavor women by providing mechanisms to protect the family above women’s safety. The right to re-education and re-adaptation of offenders (Article 13), the rightful protection of minors without recognizing an equal need to protect women (Article 35), and the prohibition of access to a household without prior authorization of the owner—which are usually the male partners—become mechanisms to reinforce women’s subordinated position (Article 20). The goal is that the family should be protected over individuals, as established in Article 194 where the Attorney General’s first and most important responsibility is to protect the rights of the family as a unit above all. The constitution only mentions women in three instances: when defining marriage (article 33), when prohibiting women from performing high-risk jobs (article 38), and when establishing that women have a right to paid leave before and after childbirth, as well as to keep her job (article 42). The lack of recognition of women’s needs and rights outside the family unit reinforces the erroneous idea that women equate with family.

Anti-abortion and VAW laws fit into this context of family-first ideologies arising from disparate legal positions. El Salvador's constitution is the primary norm of the country (Article 83). All other laws and regulations are considered secondary and must abide by constitutional principles. In this legal framework, anti-abortion and VAW are both secondary laws; however, they are embedded in the normative hierarchy in dissimilar ways. Anti-abortion law was inserted in and regulated by the penal code (Oberman, 2013) and its application has had the full force of the penal and procedural codes. From its inception, therefore, anti-abortion law had detailed regulations and was aligned with other laws, hence the ease of its enforcement. Conversely, VAW laws were approved as stand-alone secondary laws, with little to no reference to the penal code. Without much regulation, VAW laws have lacked the regulatory footing of the penal code to prosecute violence against women, creating the need for separate laws and additional steps to align it with the penal and procedural codes. In principle, VAW laws should have had the same legal positioning as anti-abortion law because they protect the lives of women. But femicide and domestic violence are not treated with the rigor of crimes, which translates into empty, symbolic laws in the books without teeth at implementation.

Anti-abortion Law: legal positioning and approval process

El Salvador's draconian anti-abortion law took a more extreme form in 1997. Since 1973, abortion in El Salvador has been considered a crime, with few exceptions, such as unintentional (miscarriages) and therapeutic abortions,⁴ or in cases of rape (1973, Article 169). Abortions outside exceptional circumstances carried sentences between six months to eight years (Articles 161-168). But in 1997 an even more stringent anti-abortion decree (1030) revoked the 1973 law and reformed the penal code making *all* forms of abortion punishable with stiffer prison

sentences ranging from six months to thirty years. The total ban covers cases where a pregnancy is the result of rape, incest, or when a woman's life is at risk. Decree 1030 broadened the spectrum of who could be penalized under the law, including not only women but anyone involved in conducting, inducing, or encouraging an abortion (e.g., doctors, pharmacists, health care workers) (Supplementary Table 1). In 1999, this restrictive position was amplified when the Legislative Assembly approved an additional amendment (Decree 541) to Article 1 of the Constitution to redefine life at conception instead of at birth.⁵ These two legislative changes (1997 and 1999) “created the legal basis for the state to prosecute abortion-related crimes as homicides” (CRR, 2014), placing a woman's health and life at risk. Thus, an intentional abortion is already a crime but if the fetus is deemed viable, the crime is elevated to “aggravated homicide” and the penalty is the same as for first-degree murder: a prison sentence of thirty years (Patricio, 2019).

The favorable legal position of the anti-abortion law made for swift implementation. Instead of creating a separate “special law,” the anti-abortion law was directly embedded in the penal code as a chapter on “Crimes Against the Life of Human Beings in the First Stages of Development (El Salvador, 1997). Since its approval, the law was aligned with the penal code, stipulating the different stages of an abortion, from the woman to accomplice, and a detailed typology of abortions. All possible scenarios were considered in a parsimonious set of five articles with penalties associated with each crime. The only obstacle to the full implementation of the anti-abortion law was Article 1 of the constitution, which defined life at *birth*. Thus, shortly after passing the anti-abortion law in 1997, supporters drafted and approved a constitutional reform in 1999 to make the protection of life from *conception* the state's

responsibility (Article 1). The law was signed and included the codification of penalties and enforcement procedures and constitutional grounds.

The anti-abortion law of 1997 came into effect after a national conservative coalition joined efforts to reform the penal code of 1983 and Article 1 of the Constitution. Legislators, the media, the Catholic Church and conservative Catholic groups mounted a national campaign against abortion, founded on principles of family first and life at conception. In 1994 at the International Conference on Population and Development, El Salvador's First Lady declared her country's intention to protect life at conception. Afterward, legislators from the right-wing National Republican Alliance Party (ARENA) introduced a bill to remove exceptional circumstances for abortion (e.g., rape, deformities of the fetus, and protection of the mother's life) from the penal code and implement greater penalties to those who break the law. To support his political party's initiative, President Armando Calderón Sol⁶ and his Minister of Health⁷, made public statements in support of more stringent penalization of abortion. The leading conservative media outlets followed suit; *El Diario de Hoy* and *La Prensa Gráfica* took a stance on the matter, publishing editorials favoring the absolute criminalization of abortion presumably in an effort to eliminate the root causes of it: promiscuity and premature sex⁸ (CRLP 2001, 30-31). These newspapers became a voice for organizations who paid for advertisements demanding expansions of the penalization of abortion.

The government, legislators, and media efforts would have not come to fruition without the support of the Catholic Church and Conservative catholic groups. The Catholic Church, through El Salvador's Episcopal Conference, released an open statement in opposition to abortion, quoting Pope John Paul II. The letter declared: "if the right to life is not respected, no other right is safe, and laws become meaningless." The Church had the greatest impact in public

opinion due to ample media coverage. With financial support from the Church, conservative Catholic groups such as *Say Yes to Life Foundation*⁹ undertook a national campaign supporting the passage of the penal code's reform. They collected signatures in parishes, organized demonstrations in support of the bill, and mobilized students from San Salvador's Catholic schools to demonstrate against the right to abortion (CRLP 2001, 32). Their campaign argued that given medical progress, under obstetrical emergencies, it is possible to save the mother and the fetus. In this context, various conservative political parties¹⁰ joined efforts. On April 25 of 1997, the legislative assembly approved the new articles of the penal code for abortion prohibition without a debate about women's safety and right to health.

As the anti-abortion law came into effect, there was momentum for constitutional reform. The left leaning Farabundo Martí National Liberation Front party (FMNL¹¹) expressed the need to consider women's lives and opposed this reform. But as Viterna argues, "Voting for legal abortion in any form seemed a deeply unpopular move, and with upcoming legislative elections, FMLN deputies increasingly worried that the party line would equate to political suicide. The FMLN leadership relented, allowing their representatives to 'vote their conscience' in the final round" (2012, 251). In February 1999 the Legislative Assembly approved the constitutional amendment to recognize life from *conception* and to reinforce punitive charges to all forms of abortion without any regard to women's needs or lives, prioritizing the family (and the fetus).

Since the anti-abortion law was proposed women's groups have assiduously opposed it. In the 1990s, the Institute for Women's Studies (CEMUJER) expressed concern with the new anti-abortion law and other groups argued for maintaining the exceptions clauses, but they did not have public support (CRR 2001, 33; Guerrero 2002, 39). And even though women's rights groups (in which women who have been imprisoned for suspicion of abortion are active¹²)

continue to advocate tirelessly for an end to the extreme criminalization of abortion in El Salvador (Januwalla, 2016),¹³ regularly mounting campaigns to free imprisoned women under this law, the anti-abortion law continues to be strongly supported through a combination of political maneuvers and religious dogma. For instance, the political campaign for the mid-term elections held in February 2021 was infused with messages about family values and respect for life. A video created by a Catholic group in Spain that circulated widely as part of these campaigns, reminds Catholics of their obligation to vote in elections for the values of family and respect to life, and against corruption, laicity, and ‘gender ideologies.’¹⁴

VAW Laws: legal positioning and approval process

El Salvador has approved two laws to eradicate domestic and gender-based violence (Supplementary Table 2). In 1996, Decree 902, Law Against Domestic Violence (*Ley Contra la Violencia Intrafamiliar*) was approved. However, this law did not address violence against women; instead, it focused on the family and equal rights for “men, women, sons, and daughters” (Article 2). The generic approach to violence against any person prioritized family first and ignored the reality that women and children are the primary targets of domestic violence. The law’s main goal was to prevent acts of domestic violence, without prejudice to criminal liability. Instances of femicide were not included in this law. Decree 902 focused on the state’s broad responsibilities, creating the *Institute for the Development of Women*, and redefining the role of the national police to process domestic violence cases. Unlike the anti-abortion law, this VAW law was purely symbolic. It made no reference to specific penalties and sanctions in case of aggression,¹⁵ and made no substantive advancements in the protection of women.

In 2011, El Salvador approved Decree 520 on the Special Comprehensive Law for a Life Free of Violence for Women (*Ley Especial Integral para una vida libre de Violencia para las Mujeres*). This law recognized women's right to a life free of stereotypical behaviors, social and cultural practices based on concepts of inferiority and subordination (Articles 2). For the first time, a law declared that women had the right to physical and psychological safety and moral integrity, and to equal protection under the law. The principle of secularity was included, preventing appeals to costumes, traditions, or religious considerations to justify violence against women¹⁶. One of the main contributions of Decree 520 (Law Against Domestic Violence) is the classification of femicidal violence as an extreme form of gender-based violence. Additionally, the law included a chapter on “budget, finances and special fund.” For the first time a VAW law had allocation from the national budget, but with funds to finance projects for women victims (Article 33-36). The principles of the law were commendable (e.g., right to education, reduction of risks, right to protection by the state, police, and governmental institutions) but unlike the anti-abortion law, it fell short in outlining specific procedures to conduct investigations in cases of domestic violence or femicide. Thus, the law had loopholes that fostered impunity.

In the legal context, VAW laws passed as “special secondary laws” and were placed in a lower hierarchical position than for instance, anti-abortion law. Their overarching scope encompassed multiple dimensions of domestic and gender-based violence¹⁷ making them wide-ranging and vague. Unlike anti-abortion law, neither VAW Decrees—902 and 520— were in agreement with the penal code, making their implementation staggered and weak. In many cases, other laws in the normative structure supersede any rights and protections under VAW laws (Walsh and Menjívar, 2016). Lacking appropriate prosecution procedures, the regulation of VAW laws was left for future legislation. For example, after its approval, Decree 902 had four

reforms, an additional associated law—on specialized courts—and four postponements for its implementation. Decree 520 (Special Comprehensive Law for a Life Free of Violence for Women) had a similar trajectory, with four reforms between 2016 and 2019. Despite having 106 articles, the lack of regulation and concordance with the penal code, and the absence of specialized courts, vacated VAW laws from grounds to protect women.

VAW laws came into effect in response to demands from a coalition between international organizations advocating for gender equality and the indefatigable mobilization of Salvadoran women's groups. As part of a regional trend in the 1990s and 2000s, international pressure to protect women against violence lead to the approval of VAW laws, and governments modified parts of their legal corpus to comply with such international demands. In the early 1990s, international organizations promoted the 19th Recommendation of the Convention on the Elimination of All Forms of Discrimination against Women (UN, CEDAW 1992). Signatory countries committed to developing effective measures to eradicate public and private gender-based violence, provide protection, investigate cases, and train public servants. Additionally, the Organization of American States (OAS) signed the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, the “Convention of Belém do Pará” (1994). This convention was binding and required states to adapt their internal legislation and assign resources to eradicate gender-based violence. During the implementation of VAW laws, “advocates in regional bodies worked with civil society to apply pressure on states to adopt regional-level norms through legislation. Although domestic violence laws were adopted across the region, they did not initially reflect these norms; unfavorable contextual gender inequality regimes privileged family unity over women's rights (Friedman 2009).

El Salvador approved its VAW laws in this context of regional dissemination of women's protection laws. The Domestic Violence Bill (1996) was part of the first generation of VAW laws. During this period, the *Red de Acción contra la Violencia de Género en El Salvador* emerged as a leading network in the country. As members of regional networks, they created awareness and dissemination campaigns, joined efforts with *Las Dignas* to launch the campaign “*Nada Justifica la Violencia Sexual. ¡Mi cuerpo se respeta!*” (Guerrero 2002, 39), and deployed research and support groups for gender violence victims. Other women's groups, such as *La Colectiva*, also have worked tirelessly for a life free of violence against women by providing shelter and education to women victims (Ríos, 2019).

El Salvador approved Decree Law 902 (Law Against Domestic Violence) to comply with international requirements, but in practice gender-based proceedings were addressed through customary law where women's rights are not recognized and are subordinated to male authority (Macaulay 2006). The first wave of VAW laws legislation ‘underplayed the gendered aspects of the violence’ by implying that family members are ‘equally likely to be perpetrators and victims’ (Craske 2003, 37). As such, this approach reinscribed gender-based violence into VAW laws by prioritizing the family unit over women's rights and naturalizing “domestic violence by implying that a couple can, or should, be reconciled even when one systematically abuses the other” (Macaulay 2006, 110; see also IACHR 2007, 90). In El Salvador, as in other countries, ‘reconciliation’ or ‘mediation’ is a first step in the legal proceedings, even when it is recognized that this strategy disfavors women and even places them at greater risk (Walsh and Menjívar 2016, 593). In El Salvador, domestic violence offenders are processed in reconciliation or mediation courts rather than in civil or penal courts. Although El Salvador seemed to be complying with international pressure to protect women, what this strategy showed was the

privilege of the “well-being of the family unit” over the rights of abused women. Internationally, however, such measures are not recommended (IACHR 2007, 67).

In light of the failure of the Law Against Domestic Violence (Decree 902), the Special Comprehensive Law for a Life Free of Violence for Women (Decree 520) was approved in the second generation of VAW laws. In 2011, after 4,000 women marched to the National Assembly on November 25 (International Day for the Elimination of Violence against Women¹⁸), the legislature passed the bill with the support of the Salvadoran Women’s Parliamentary Group.

Implementation Context

Anti-Abortion Law

After the anti-abortion law passed, its implementation was swift. In the first year after its approval (April 1998-August 1999) 69 prosecutions—mostly from urban areas—were recorded (CRR 2001, 43-53). These cases included women (46), providers (11),¹⁹ and cases of fetuses found in public spaces (12). The women accused of abortion and placed in proceedings were 12-40 years of age—29 between 15 and 24, and 3 were 12-13 years old. Although the penal code only applies to adults, 17 minors were prosecuted with this penal law.²⁰ Most of these women were single (31) and 18 had children. According to the Center for Reproductive Rights, “women most affected by the total criminalization of abortion in El Salvador belong to a specific and vulnerable segment of the population: young, single women, many of whom have at least one child” (2001, 47). Their socioeconomic status is a major factor; poor women are much more likely to be prosecuted with this law and they are also the most likely to have a miscarriage (which automatically leads to suspicion of abortion) because of a life of malnourishment and lack of access to health care throughout their lives (CRR, 2014). The prosecuted women were

housekeepers (18) and factory workers or messengers (7), all with only elementary school. Thus, the anti-abortion law targets young, single, low-income, and lower-educated women, who are also more likely to be accused in criminal court.

El Salvador does not keep reliable abortion data²¹ precisely due to its high criminalization; however, non-profit organizations (e.g., *AC*) have collected information on court proceedings against prosecuted women since 2000. According to these records, 181 adult women were processed for abortion accusations between 2000 and 2019.²² And abortion cases have high levels of prosecution; between 2002 and 2019, 54% of the cases reported to the National Police—139 of 259—were tried in court as abortion crimes (46.5%) and as aggravated homicides (53.5%) (*AC* 2020, 23). Of the 181 cases, 66% (121) of women were between 18-25 years of age. Only 96 of the cases reported education; 9% of women were illiterate, 61% had some elementary school, and 20% had some high school. Most of the women were single (126 or 70%). Their main economic activity was homemaker (38%) housekeeper (13%), factory worker (8%), or informal street vendor (3%); 76% of the women earned minimum wage or had no income at all (*AC* 2001, 40). Between 2000 and 2019 the government continued to aggressively target for prosecution lower-educated, poor, single women who were suspected of abortions, often because they had a spontaneous miscarriage.

The total ban on abortion directly affects maternal mortality. In 2017, 32% of maternal deaths²³ were attributed to high-risk pregnancies that could have been prevented with therapeutic abortion (*AC* 2001, 27). At the age of 33, Manuela suffered an obstetric emergency that led to a miscarriage. She was detained on suspicion of abortion. She lacked the financial resources for a private attorney and was assigned a public defender she met the day of her hearing. That same day, she was sentenced to 30 years in prison for aggravated homicide. Due to her public

defendant's negligence, she could not appeal. Manuela was only offered medical care after the trial. Her miscarriage was due to the lack of medical care for a cancer—Hodgkin's lymphoma—she was enduring. She died in the hospital away from her family—her elderly parents, and two children— (CRR and AC 2014, 11). Manuela's human rights and basic procedural guarantees were violated because she was a rural, low-income and semi-literate woman, as most women prosecuted by anti-abortion law of El Salvador. The extreme criminalization of abortion and lack of access to health care and legal counseling put women at higher risk of prosecution.

The anti-abortion law has been applied with full force from its creation because it had comprehensive policy with political will behind it and different state agencies were committed to its implementation. Unlike VAW laws, anti-abortion law had the technical support of Public Hospitals, National Police, Criminal Courts, and even the expertise of the National Institute of Forensic Medicine in the prosecution of women from the first day it was implemented. Anti-abortion law served as catalyst for conservative coalition pressures; it solidified a move toward the prioritization of the family over the needs of women, exacerbated through extreme criminalization in the following decades.

VAW Laws

In a context suffused with family-first ideologies, the implementation of VAW laws has faltered since their inception. Decree 902 of 1996 (Law Against Domestic Violence) has undergone four reforms aiming to correct what was acknowledged to be family ideology biases, as this decree did not recognize that women were the primary targets of violence. First, it was reformed on 2002 (Decree 892, 2002) to acknowledge “power inequalities” within the family, define patrimonial violence as a form of domestic violence, assign prosecution responsibilities to

specific entities of the state, declare the need for specialized gender units within the police, and promote research into the causes and consequences of domestic violence. Two years passed, and a second reform (Decree 403, 2004) incorporated the use of forensic medical examinations to document assaults on the victim and assigned the responsibility of collecting evidence to the National Institute of Forensic Medicine. The 2004 reform did not come without pitfalls. It incorporated an article recommending the treatment of an aggressor in self-help groups and programs “developed by institutions of family protection” (Article, 2). Additionally, two more reforms were passed in 2014 and 2016. The third reform defined the role and extent of police protection for victims (Decree 591, 2014) while the fourth reform included guidelines for the prosecution of criminal cases of domestic violence (Decree 546, 2016). The implementation of the Law Against Domestic Violence (Decree 902, 1996) suffered serious setbacks. The lack of regulation and specific mechanisms for the evaluation, documentation, and prosecution of domestic violence were obstacles that had to be amended with over a decade of reforms (2002-2016) of the Law Against Domestic Violence law.

Decree 520 of 2011 (Special Comprehensive Law for a Life Free of Violence for Women) made substantial progress to eradicate violence against women; however, its implementation posed several challenges. This legislation was the first to define femicidal violence, in addition to other forms of individual and collective gender-based violence. It specified the responsibilities of state agencies, declared the need for a national policy, and pointed to the need to collect data and statistics on gender violence. One of the greatest advances was its chapter on “Crimes and Sanctions.” This chapter defines femicide and aggravated femicide as crimes punishable with twenty to fifty years of prison. However, it lacked agreement with the penal and procedural codes. Only until 2015 was Decree 520 of 2011 brought

in line with the penal and national laws (Decree 1001, 2015). Perhaps the biggest challenge was leaving out of the creation of specialized courts for the prosecution of gender violence cases. Chapter II on “Specific Procedural Provisions” required a specialized jurisdiction with trained judges and multidisciplinary professionals. Seven years after the Special Comprehensive Law for a Life Free of Violence for Women (Decree 520 of 2011) passed in the legislature were these courts created, in March of 2016. Decree 286 approved the specialized courts, but the implementation had four consecutive extensions and their roll out was delayed. Finally, in July of 2017, the specialized courts came into operation. As judge Glenda Baires Escobar from the specialized court observed, “the creation of these new courts means that we are fulfilling commitments that the state has ratified in international conventions.” Three years after they were established, in 2019, the special courts collapsed.

Despite these various legislative actions, conditions for women in El Salvador have not improved. Mediation and reconciliation continue to be used in El Salvador despite its prohibition by the VAW laws. Statistics on feminicides and domestic violence continue to be some the highest in the region (CEPAL, 2019). Between 2005 and 2020, El Salvador had 41,780 domestic violence cases. Between 2005 and 2009, the National Police reported an average of 4,400 cases per year, with a drop to an average of 1800 cases per year between 2010-2020. Due to a general lack of reliable data, these numbers only reflect reports and not prosecutions, which are lower. For example, during 2019 the police received 1,459 complaints, but the Attorney General’s office only reported 1,162 cases processed through the judicial system. Feminicides follow a similar pattern. In 2017, for example, El Salvador registered 10.2 feminicides per 100,000 women, the highest in the region by far, followed only by Honduras with 5.1 (per 100,000) (CEPAL 2018). Before the Special Comprehensive Law for a Life Free of Violence for Women

of 2011 year was approved, El Salvador reported 2,440 feminicides in the period between 1999 and 2007, but this figure does not reflect the absence of the legal definition of these homicides as feminicides (ORMUSA, 2021). After the Special Comprehensive Law for a Life Free of Violence for Women of 2011 passage and with legal tools to define these crimes, El Salvador registered 4,355 femicide cases between 2010-2020. As the data show, despite changes in the legal system and phased improvements for implementation, women continue to endure high levels of gender-based violence.

Importantly, gender ideologies that subvert women's right to protection interact with social class, but not always in the expected direction, as in the case of the anti-abortion law, which overwhelmingly target poor, socially vulnerable women. Many of the femicide cases remain pending in the courts, even the highly publicized ones of middle-class women go unresolved for many years. For example, Lidia Maria Huevo's case, the first recorded femicide in El Salvador after the approval of the Special Law for a Life Free of Violence Against Women in 2011, is still pending as of this writing. Lidia's husband, Manuel D. Gutierrez, a wealthy businessman, was accused of killing his wife in 2012. According to preliminary witness reports and the suspect's own recollection, Gutierrez killed his wife at his home with his gun. After the hearings, Gutierrez was released and acquitted of charges. The District Attorney's office appealed the verdict, and the penal court overturned the first sentence arguing that the prior judge went against the rules of sound reasoning and did not consider all the evidence. A new trial was ordered, but it was not called to session until two years later. The first trial suffered from procedural flaws on the part of the justice system, including the dismissal of experts' testimonies and previous episodes of intrafamilial violence documented by the attorney's office (Vaquerano 2016). Given the lack of alignment between the VAW law with the penal code and absence of

specialized courts in a context of familyism ideologies that privilege family over women's protection, even with great effort, cases like Lidia's go unsolved for years or even decades. In 2015, Gutierrez was charged again for Lidia's femicide and called to trial, but he never showed up to court and remains a fugitive of the law since then. Thus, the first femicide case in El Salvador is still unresolved eight years later because through his lawyers the accused claims that the procedures do not ensure him due process and a fair trial, which risks violating his rights in the court of law.

Crimes against women are normalized in a context that family takes precedence over women's bodies, rights, and protection. In El Salvador, domestic violence and the femicide laws—as in other cases of Latin American—, serve a “legitimacy- endeavor, rather than policy with political will behind it (Friedman, 2009 & Guerrero, 2002). What seems to be a commitment on the part of the state is nothing but a window-dressing strategy or external legitimacy-building. In practice, VAW laws have been addressed through customary law where women's rights are not recognized in law but instead are subordinated to men's authority. The creation of VAW laws has responded to international and domestic women's organizations pressures; however, they represent a symbolic gesture to bring the country in line with international expectations and demands, not a substantive legal process to serve justice to women.

Discussion

Our comparative approach to examine two seemingly different laws in El Salvador, within the same national context, allows us to identify a common thread to reveal a lack of protection for women through state inactions (i.e., VAW and femicide laws) and actions (i.e.,

strict enforcement of anti-abortion laws against women). Precisely the same context (during the same historical time) and the same judicial structure led to different applications of the law but both are connected through a powerful ideology: the devaluation of women's lives and prioritization of the family unity and family-first ideologies.

Despite seemingly different laws, the implementation of anti-abortion and VAW laws is fundamentally related through the control they exert over women's bodies and the formal treatment of women before the law. Both laws control and police of women's bodies while prioritizing family-related concerns (e.g., family unity, family first, reconciliation, fetuses) over women's health and life (Menjívar and Walsh, 2017). The main question is: why these two laws are implemented so differently by the same government/state during the same period of time?

Thus, on the one hand, we see a large gap between law in the books and law in action regarding VAW law and, on the other hand, the gap is much narrower with respect to anti-abortion law. These laws are situated quite differently within the legal structure; thus, from their inception they reflect the same disregard for women's lives and rights. Analyzing the legal connections (or disconnections) of anti-abortion and VAW laws within the legal system helps us to understand why the former undermines women's rights and the latter often fail to protect women from gender-based violence (Shelton 2017). Examining the administrative ruling of these laws, that is, the normative hierarchy, sheds light on the lower position that VAW laws hold within the legal landscape, which precludes implementation. In practice, this positioning reflects a legal reasoning that is hierarchical, establishing levels of precedence among existing laws that undermine women's rights. On the other hand, anti-abortion law is embedded within the penal code, protecting this law from any further interpretation or regulation. Hence, whereas in the case of VAW laws the state seems unable to enforce the laws, in the case of anti-abortion law,

the state demonstrates formidable capacity of enforcement, deploying all resources and human power to do so (especially on vulnerable women). Thus, laws will have enforceable teeth only when they conform with predominant gender ideologies that prioritize family unity (VAW) or others in the family (anti-abortion). Both laws stem from the same ideology that devalues women's rights and lives, especially those of poor women.

Thus, an important angle of the seemingly contradicting implementation of anti-abortion and VAW law is social class. The implementation of these laws is amplified as they intersect with social markers. Anti-abortion law is forcefully applied to young, poor, single women who all their lives have lacked access to medical services, education and resources for their defense (CRR, 2001) and thus are in a very unfavorable position to confront the justice system. At the same time, VAW cases are overwhelmingly neglected—or prosecuted with reconciliation in family hearing, and the few cases that are investigated are of women who are middle-upper class (but without much success). Even though there is disparate implementation of anti-abortion and VAW laws, in both cases it is poor women who bear the strongest effects of gender and family first ideologies devaluing their bodies and rights.

We focus on El Salvador to underscore how family-first and familyism ideologies shape legislation that leaves women unprotected (VAW) or punished (anti-abortion). Although El Salvador is an extreme case in both counts, it is not isolated, as other countries adopt similar approaches to control women's bodies through laws infused with family-first ideologies. We have called attention to how family-first ideologies that relegate women's rights and safety as secondary seep through legal systems to shape seemingly disparate laws to the detriment of women's rights and safety.

NOTES

1. Amnesty International 2016. What el Salvador's total abortion ban means for women and girls.

Retrieved on March 9 2021. <https://www.amnestyusa.org/what-el-salvadors-total-abortion-ban-means-for-women-and-girls/>

2. More than 140 Salvadoran women have been prosecuted for crimes related to abortion since the law passed in 1998, many of whom were sentenced to up to 35 years in prison

(<https://www.cbsnews.com/news/miscarriages-abortion-jail-el-salvador/> Accessed February 5, 2021;

https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/GLP_FS_ElSalvador-Final.pdf Accessed February 5, 2021)

3. Amnesty International. El Salvador 2019. Retrieved March 11, 2021.

<https://www.amnesty.org/en/countries/americas/el-salvador/report-el-salvador/>

4. Therapeutic abortions are performed to avoid a foreseeable deformity of the fetus or to protect the woman's life.

5. This context extends stringent penalization even to sales of abortion medication or their advertisement (penal code, Articles 373-374).

6. El Diario de Hoy. April 22, 1997. "Rechazo General al Aborto."

7. La Prensa Gráfica. April 24, 1997. “Salud se pronuncia contra el Aborto.”

8. La Prensa Gráfica, April 6, 1997. Jose Coto. El Derecho a Vivir: “To terminate a pregnancy amounts to disrespect for the sexual act, debasing it to the level of hedonism, sex for pleasure, without taking responsibility for its consequences” (CRLP 2001, 31)

9. The Foundation published sensationalist ads in newspapers presenting disputable arguments. For more on this, see CRLP 2001, 99ff

10. The Nationalist Republican Alliance (ARENA), the National Conciliation Party (PCN), and the Christian Social Union (USC).

11. The FMLN was a former guerrilla that became a political party in 1992 after 12 years of Civil War in El Salvador. During war the guerrilla implemented family planning and abortions (Viterna, 2006 & 2012).

12. <https://www.nytimes.com/2018/04/09/world/americas/el-salvador-abortion.html>

13. Several international organizations have expressed concerned and condemned El Salvador’s anti-abortion law, including the UN Human Rights Committee, CEDAW, and the Committee on Economic, Social, and Cultural Rights, as this law violates women’s rights to health and life enshrined in several human rights conventions.

14.https://vimeo.com/ondemand/defendiendolibertades?1&ref=fb-share&fbclid=IwAR12ZFklStEAE_EXNDI1KR4QMITgS-mGW_LNfTYrW5JKsFCRG9ct-T6I_Dc

15. In many instances, the penalties were left at the discretion of the ruling authority or left unspecified. For example, Article 23 of the Chapter on Measurements and Judicial Interventions was regulated 20 years later in November of 2016 (Decree Law 546).

16. “The types and modalities of violence contemplated in the law originate from the unequal relationship of power or trust, in which the woman is at a disadvantage with respect to men.” (Article 7).

17. These laws included multiple topics, power relations, types of violence, and state agencies and responsibilities.

18. UN. March 21, 2011. El Salvador: Women in parliament unite on new law against violence. Retrieve on February 19, 2021. <https://www.undp.org/content/undp/en/home/news-centre/announcements/2011/03/21/el-salvador-women-in-parliament-unite-on-new-law-against-violence/>

19. These cases involve midwives and gynecologists, aiming to find the women who had the abortion, but were dropped due to lack of evidence.

20. In El Salvador, girls endure high levels of rape and pregnancy. In 2013, 1,540 cases of children pregnancies (girls 14 years and under) were recorded (CLADEM, 2016). Between January and March of 2020, the national police reported 372 rapes, and 144 pregnancies of girls between 0 and 14 year. Retrieved in December 2020.

<https://www.elsalvador.com/noticias/nacional/144-%E2%80%A6Hubo/>

21. For example, The Asociación Demográfica Salvadoreña (Pro-Familia)—a non-profit that delivers family planning services to poor, marginalized, and under-served groups—does not include questions on abortion because they might be forced by law to violate their confidentiality agreements. Similarly, The Ministry of Health only collected data in 2017, 7,993 abortions were reported (MINSAL, 2017). The Census Bureau (DIGESTYC) does not collect abortion rates data.

22. Due to legal restrictions, information on abortion and aggravated homicide cases against minors (12-18) is limited. AC found 24 proceedings of minors between 2000-2011. Four were processed as adults.

23. In 2011, suicide was the third cause of maternal mortality in El Salvador.

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