



HONDURAS: SEXUAL VIOLENCE AND TOTAL BANS ON EMERGENCY CONTRACEPTION AND ABORTION

Honduras is one of the most violent countries in the world¹ with particularly high rates of sexual violence.² The harm suffered by victims of sexual violence in Honduras who are mainly women, is exponentially exacerbated by Honduras's restrictive reproductive health laws and policies. Currently, Honduras has an absolute ban on emergency contraception and abortion³ - leaving women with the dire choice between carrying a pregnancy to term or undergoing a clandestine, unsafe abortion. These prohibitions and their consequences violate international human rights law perpetuating a discriminatory framework for women that particularly violates their right to life and health.

Sexual Violence against Women

In Honduras, a person is murdered every 74 minutes, and thousands of others report being victims of kidnappings and acts of sexual violence.⁴ Honduras has some of the highest rates of sexual violence in the world.⁵ In 2013, 2,851 cases of sexual violence were reported, meaning that every three hours a complaint alleging sexual assault was filed.⁶ Adolescent women are often the most vulnerable to the consequences of sexual and gender-based violence. In 2014, of the 439,000 adolescent girls in Honduras who were in a relationship, 79% of them reported having been victims of some type of abuse by their partners—be it physical, psychological, or sexual.⁷ In 2012, the United Nations Office on Drugs and Crime (UNODC) reported 1,697 sexual violence-related offences, 1,492 rape offences, and 2,263 cases of sexual offences against children nationally.⁸

REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS

Legal restrictions on emergency contraception and abortion violate a broad range of women's human rights, including the rights to equality and nondiscrimination, life, health, freedom from cruel, inhumane and degrading treatment, and privacy by denying women the ability to make autonomous decisions about their reproductive capacities. When women are unable to decide whether and when to bear children, this impacts all facets of their lives, including their ability to finish school, enter the labor force, and participate equally in public and political life, and reinforces gender stereotypes characterizing women's primary role as child bearer. These restrictions are particularly harmful when they compel women to carry pregnancies to that have fetal impairments incompatible with life, that result from rape, or that pose a risk to their lives or health.

In accordance with international human rights standards, Honduras must reform its discriminatory laws that restrict women's reproductive rights, including its extreme prohibitions on accessing emergency contraception and abortion. Honduras should pass and implement legislation guaranteeing women's access to essential reproductive health services and provide information that will enable women to exercise reproductive autonomy, particularly protecting their right to health and life.

Honduras prohibits the use, distribution, and sale of emergency contraception

Emergency contraception is the most effective contraceptive method in preventing pregnancy in cases of rape or sexual abuse.⁹ However, in 2009, in spite of the high rates of sexual abuse in Honduras the Secretary of Health issued a ministerial agreement strictly prohibiting the sale, distribution, and use of emergency contraception in Honduras.¹⁰ Moreover, a decree that would also prohibit the sale, distribution, and use of emergency contraception, which was found to be constitutional by the Supreme Court, is currently pending in the Honduran Congress.¹¹

In considering this decree, the Court ruled that emergency contraception infringes upon the right to life and could be banned.¹² The Court based its reasoning on the Honduran Constitution's protection of life from the moment of conception and its misunderstanding of the mechanism of action of emergency contraception equating it to an early abortion.¹³ This decision asserting that emergency contraception violated the right to life contravenes international human rights standards. In its ruling on the scope of the protection of the right to life in Article 4 of the American Convention in the *Artavia Murillo et al. v. Costa Rica* case, the Inter-American Court of Human Rights (IACtHR) concluded that the protection of the right to life begins with implantation and not fertilization of an embryo.¹⁴ The IACtHR also decided that for purposes of Article 4 of the American Convention, the embryo is not considered a person and as such is not subject to the right to life.¹⁵ Additionally, both the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the Committee on the Rights of the Child have urged states parties to increase the availability of contraceptive services¹⁶. In accordance with the standards set by the IACtHR and United Nations Treaty Bodies, the Honduran Supreme Court ruling is in clear contravention of international human rights law.

State laws and policies that prohibit the use, distribution, and sale of emergency contraception as those in place in Honduras continue to disproportionately affect women, specifically those who have been victims of sexual violence.

HONDURAS BEFORE THE UNITED NATIONS

United Nations human rights bodies have consistently urged Honduras to guarantee women's reproductive rights. In 2006, the Human Rights Committee recommended that Honduras "*amend its legislation so as to help women avoid unwanted pregnancies and ensure that women need not resort to clandestine abortions, which could endanger their lives.*"²³

In 2007, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) recommended that Honduras annul the agreement that prohibits the distribution of emergency contraception²⁴ and asked the State to give "*high priority to its law reform process and to modify or repeal, without delay and within a clear time frame, discriminatory legislation, procedural codes and regulations...*"²⁵ The CEDAW Committee also pointed out that one of the obligations that Honduras must adhere to as a State Party of the Convention on the Elimination of Discrimination against Women is to review "*the law relating to abortion with a view to identifying circumstances under which abortion could be permitted, such as therapeutic abortions and abortions in cases of pregnancies resulting from rape or incest, and removing punitive provisions imposed on women who undergo abortion.*"²⁶

During Honduras' Universal Periodic Review (UPR) in 2011, the State received 129 recommendations.²⁷ Of these, seven recommendations established the need to implement all measures necessary to eradicate discrimination against women in all spheres of society to allow them full enjoyment of their human rights.²⁸ The prohibition of emergency contraception and the absolute criminalization of abortion are state policies that disproportionately affect Honduran women, violate international human rights law, and are discriminatory.

Honduras criminalizes abortion under all circumstances

In 1983, despite penal code reforms in Honduras that authorized abortions in cases of sexual violence, when a woman's health was endangered, or in cases of malformations incompatible with life, these provisions were repealed before the penal code entered into force.¹⁷ In 1996, Honduras reformed the Penal Code and included three substantial changes related to abortion.¹⁸ The reforms increased sentences for abortion-related crimes as well as for medical professionals who do not report suspicions of abortion-related crimes, and also redefined the crime of abortion as a 'homicide' practiced against another human being during pregnancy or at the moment of birth.¹⁹

Current penal law in Honduras criminalizes abortions under all circumstances.²⁰ This restriction is directed at woman who undergo the medical procedure, as well as doctors and any other medical professional who assists with the procedure. Under this law, women who undergo abortions are imprisoned from three to six years in cases where there is no consent to the abortion; six to eight years in cases where the woman has consented to the procedure and it was carried out by someone else; and eight to ten years in cases where the woman uses intimidation, violence or deception to have a third party perform the procedure.²¹ This criminalization of abortion under all circumstances in Honduras constitutes a violation of international human rights law.

In accordance with standards established in the *L.C. v. Peru* decision from the CEDAW Committee, the criminalization of abortion in cases of sexual violence violates women's right to health without discrimination, and contravenes the obligations of the state to adopt measures to eliminate gender stereotypes and to guarantee women's sexual and reproductive rights.²²

Endnotes

- ¹ UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL STUDY ON HOMICIDE 2013: TRENDS, CONTEXT, DATA (2014), http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.
- ² MSF USA, *supra* note; ASOCIADAS POR LO JUSTO, CENTRO DE DERECHOS DE MUJERES & CENTRO DE ESTUDIOS DE LA MUJER HONDURAS, INFORME DE ORGANIZACIONES FEMINISTAS DE HONDURAS: SITUACIÓN DE LA VIOLENCIA CONTRA LAS MUJERES EN HONDURAS (2014), https://www.justassociates.org/sites/justassociates.org/files/informe-violencia-mujeres-honduras-relatoranonu-junio2014_0.pdf; United Nations Office on Drugs and Crime, *supra* note 1.
- ³ SECRETARÍA DE SALUD, ACUERDO No. 2744 (HONDURAS) (2009), [Secretariat of Health, Agreement No. 2744 of 2009] and DECRETO No. 144-83 (CÓDIGO PENAL, HONDURAS), (1983), [Decree No. 144-83 (Penal Code, Honduras), (1983), CRR translation], <http://www.ccit.hn/wp-content/uploads/2013/12/Codigo-Pena-Honduras.pdf>.
- ⁴ Honduras: Prioritizing Care for Survivors of Sexual Violence, MSF USA, <http://www.doctorswithoutborders.org/news-stories/field-news/honduras-prioritizing-care-survivors-sexual-violence> (last visited November 19, 2014).
- ⁵ United Nations Office on Drugs and Crime, *supra* note 2.
- ⁶ ASOCIADAS POR LO JUSTO, CENTRO DE DERECHOS DE MUJERES, AND CENTRO DE ESTUDIOS DE LA MUJER HONDURAS, *supra* note 2.
- ⁷ GUTTMACHER INSTITUTE & INTERNATIONAL PLANNED PARENTHOOD FEDERATION, DESMITIFICANDO DATOS, HOJA INFORMATIVA: SALUD SEXUAL Y REPRODUCTIVA DE LAS MUJERES JÓVENES DE HONDURAS (2014), <http://www.guttmacher.org/pubs/FB-DD-Honduras-SP.pdf>.
- ⁸ United Nations Office on Drugs and Crime, *supra* note 2.
- ⁹ WHO | Emergency contraception, WHO, <http://www.who.int/mediacentre/factsheets/fs244/en/> (last visited Feb 17, 2015).
- ¹⁰ SECRETARÍA DE SALUD, *supra* note 3.
- ¹¹ In 2009, the Honduran Congress passed a decree prohibiting the sale, distribution, and use of emergency contraception. The then president vetoed the decree, arguing that the prohibition of emergency contraception contravened international human rights standards. This veto sent the decree immediately to Honduras' Supreme Court for constitutional review. That same year the Supreme Court upheld the Decree, finding it constitutional. As abortion is criminalized under all circumstances in Honduras, the interpretation of the Supreme Court would permit the prosecution of women using emergency contraception to prevent pregnancy.
- ¹² Corte Suprema de Justicia de Honduras, Sentencia, 1 de febrero de 2012, (2012). [Supreme Court of Justice of Honduras, Sentence, February 1, 2012, (2012), CRR Translation]
- ¹³ *Id.*
- ¹⁴ Inter-American Court of Human Rights, Case of Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica, (2012), http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf.
- ¹⁵ *Id.* Para. 264.
- ¹⁶ See, e.g., CEDAW COMMITTEE, CONCLUDING OBSERVATIONS: CHILE, U.N. Doc. A/54/38 (1999); CEDAW COMMITTEE, CONCLUDING OBSERVATIONS: MEXICO, U.N. Doc. CEDAW/C/MEX/CO/6 (2006); CEDAW COMMITTEE, CONCLUDING OBSERVATIONS: VENEZUELA, A/52/38/REV.1 (1997); COMMITTEE ON THE RIGHTS OF THE CHILD, CONCLUDING OBSERVATIONS: ARGENTINA, U.N. Doc. CRC/C/15/Add.35 (1995).
- ¹⁷ United Nations Population Division | Department of Economic and Social Affairs, HONDURAS, ABORTION POLICY AND REPRODUCTIVE HEALTH CONTEXT, www.un.org/esa/population/publications/abortion/doc/honduras.doc (last visited November 28, 2014).
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ CODIGO PENAL [PENAL CODE], *supra* note 3. Art. 126
- ²¹ United Nations Population Division | Department of Economic and Social Affairs, *supra* note 17.
- ²² COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, FIFTIETH SESSION, L.C. vs. PERU, COMMUNICATION No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011), Para. 8.18; 9, http://www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/CEDAW-C-50-D-22-2009_en.pdf.
- ²³ HUMAN RIGHTS COMMITTEE (EIGHTY-EIGHTH SESSION), CONCLUDING OBSERVATIONS: HONDURAS, U.N. Doc. CCPR/C/HND/CO/1, <http://www.refworld.org/docid/45f6c1ac2.html>. Para. 8
- ²⁴ COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (THIRTY-NINTH SESSION), CONCLUDING COMMENTS: HONDURAS, U.N. Doc. CEDAW/C/HON/CO/6 (2007), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fHON%2fCO%2f6&Lang=en.
- ²⁵ COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (THIRTY-NINTH SESSION), *supra* note 24., Para. 15.
- ²⁶ *Id.* Para 25.
- ²⁷ HUMAN RIGHTS COUNCIL (SIXTEENTH SESSION), REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW- HONDURAS, U.N. Doc. A/HRC/16/10 (2011), http://ap.ohchr.org/documents/alldocs.aspx?doc_id=18040.
- ²⁸ *Id.* Recommendations 82.21; 82.42; 82.43; 82.44; 82.45; 83.2; 83.7.