



Miscarriage: cases of unfair incrimination reveal weaknesses in the criminalization of abortion

Aborto espontáneo: casos de incriminación injusta revelan los puntos débiles en torno a la penalización del aborto

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ABSTRACT

The article examines the historical, religious and legal context of abortion, highlighting its criminalization in Ecuador and its impact on women's health and rights. Subsequently, it addresses the injustice of criminalization derived from a situation of spontaneous abortion and proposes to evaluate the theoretical elements that should be considered to avoid the issuance of sentences to women who experience this condition. To this end, the methodology employed focused on the analysis of representative cases. The cases analyzed include Sara, Marta, Paola and Maribel, who suffered unjust detentions and cruel treatment in the judicial system due to medical complications or situations of gender violence. The findings reveal a pattern of discrimination and stigmatization against low-income women and marginalized communities and conclude that the criminalization of abortion increases risks to women's health and lives, perpetuating gender-based violence and inequality. This ultimately

highlights the urgent need to reform abortion laws and policies in Ecuador to protect human rights and promote gender equality.

RESUMEN

El artículo examina el contexto histórico, religioso y legal del aborto, destacando su penalización en Ecuador y su impacto en la salud y los derechos de las mujeres. Posteriormente, aborda la injusticia de la criminalización derivada de una situación de aborto espontáneo y plantea evaluar los elementos teóricos que deberían considerarse para evitar la emisión de sentencias hacia las mujeres que experimentan esta condición. Para ello, la metodología empleada se centró en el análisis de casos representativos. Los casos analizados incluyen a Sara, Marta, Paola y Maribel, quienes sufrieron detenciones injustas y tratos crueles en el sistema judicial debido a complicaciones médicas o situaciones de violencia de género. Los resultados revelan un patrón de discriminación y estigmatización contra mujeres de bajos recursos y comunidades marginadas y concluye que la penalización del aborto aumenta los riesgos para la salud y la vida de las mujeres, perpetuando la violencia de género y la desigualdad. Esto, en última instancia, destaca la necesidad urgente de reformar las leyes y políticas sobre el aborto en Ecuador para proteger los derechos humanos y promover la igualdad de género.

Keywords / Palabras clave

spontaneous abortion, criminalization, judicial system, human rights, Ecuador.

aborto espontáneo, penalización, sistema judicial, derechos humanos, Ecuador.

Introduction

The subject of abortion has been the subject of study since ancient times, generating debates and reflections from various perspectives, such as scientific, religious, political and ideological. The origins of the repression of abortion date back to ancient Rome, including the Hammurabi code in 1728 BC, which already provided for penalties for the loss of the fruit of the womb. However, in Greek culture, abortion was considered useful in certain contexts, as indicated by Aristotle (Molina and Mármol 2021).

Throughout history, the Catholic Church has exerted a significant influence on social morality and policy making, condemning abortion as a morally wrong act (Puraye 2021). This religious influence led to the prohibition of abortion in many countries in the 19th century, criminalizing it except in cases of risk to the life of the mother. In addition, an evolution was observed in the legalization of abortion in some countries, such as in the Soviet Union in 1920 and in Mexico in 2007 (Molina 2020).

However, there are different types of abortion: spontaneous abortion, which occurs unintentionally due to complications in the fetus or the mother, and induced abortion, which is performed voluntarily by the woman. (World Health Organization 2022). In countries such as Ecuador, under Article 150 of the Comprehensive Organic Penal Code, induced abortion is illegal and criminalized, which has not only led to its clandestine practice with serious consequences for health (Cruz, Peñafiel and Del Pozo 2021) but has also led to the criminalization of hundreds of women who seek to terminate unwanted pregnancies (Cruz, Peñafiel and Del Pozo 2021). (Cruz, Peñafiel and Del Pozo 2021).

This situation creates an atmosphere of fear for both women and health professionals, and reflects contradictions and inefficiencies in legislation and its application. The situation becomes even more worrisome when, in the context of the criminalization of abortion, not only induced abortions are condemned, but also those that have occurred spontaneously due to conditions of abuse or illness.

The criminalization of abortion, including in cases of spontaneous abortion, is a problem that affects women around the world. Despite the fact that spontaneous abortion is an involuntary and natural event, many countries continue to criminalize women who suffer it, seriously violating their human rights (Alvarez, 2022). According to data from the World Health Organization (WHO, 2022), approximately 10-15% of clinically recognized pregnancies end in miscarriage. However, the actual incidence is even higher, as many miscarriages occur before the woman knows she is pregnant. In Ecuador, it is estimated that between 2010 and 2018, at least 243 cases of women accused of abortion were prosecuted, often in obstetric emergency situations that were misinterpreted as induced abortions (Arrazola et al., 2018) that were tried under sentences such as homicide aggravated by the link and / or treachery, or that of abandonment of person followed by death and aggravated by the link (Álvarez, 2022)

The criminalization of spontaneous abortion represents a clear violation of women's human rights. In this regard, the Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1999) states that the criminalization of abortion violates women's rights to health, equality and non-discrimination. In addition, it forces women to face unwanted pregnancies, which can constitute cruel, inhuman and degrading treatment, especially in cases of rape.

In this context, in Ecuador, the criminalization of abortion, including spontaneous abortion, has led to the criminalization of hundreds of women, demonstrating how the Ecuadorian judicial system has failed to protect women's rights, unfairly trying and convicting them for induced abortion despite the fact that the abortions were spontaneous (Alvarez, 2022). These injustices are largely due to ingrained biases in Ecuadorian society, where the influence of religion and ideology have perpetuated gender discrimination and violence. In addition, the lack of training of judges and prosecutors in reproductive health issues has contributed to the misapplication of the law (Reséndiz, 2022).

To provide a solution to this problem, it is crucial that Ecuador review and reform its abortion laws to guarantee safe and legal access to abortion, especially in cases of spontaneous abortion (Árrazola et al., 2018). However, given the government's refusal to decriminalize this situation, this paper seeks to identify, through the analysis of cases of women criminalized for a spontaneous abortion, the theoretical elements that could be used to avoid convictions of women who, due to abuse or illness, had an abortion.

Materials and Methods

In order to examine in detail specific cases of women who have been affected by the criminalization of miscarriage in the judicial system and to identify the theoretical and legal elements that could prevent prosecution, judicial cases of a representative sample of women accused or convicted of abortion in different geographic and socioeconomic contexts were reviewed. To ensure the confidentiality and informed consent of the study participants, only the names of those affected were presented.

Case 1: Sara

In 2018, Sara, a 39-year-old Ecuadorian woman, was mistreated in a Quito hospital following a misdiagnosis of induced abortion,

wrongfully charged and imprisoned. Initially treated for a urinary tract infection at a public hospital in Quito, Sara became the victim of a system that, instead of providing adequate medical care, subjected her to unfair and degrading police interrogation. Despite having a medical diagnosis indicating a miscarriage due to the urinary tract infection, she was charged with intentional abortion and subsequently forced to plead guilty by her public defender, who failed to protect her rights during the judicial process. The hearing that followed showed a clear disregard for her dignity and well-being, as it was conducted in precarious conditions while Sara, still in a state of vulnerability and suffering the physical after-effects of the medical procedure, was surrounded by male figures from the judicial system.

Sara's case is not unique and reflects a disturbing pattern of women's rights abuses in Ecuador. According to research by Human Rights Watch, between 2010 and 2021, 148 cases were documented in which women, escorts, and health care providers were prosecuted for the crime of abortion, often in obstetric emergencies that were misinterpreted as intentional abortions (Human Rights Watch 2021). These cases reveal a systemic flaw in Ecuadorian laws and policies that criminalize abortion and allow medical professionals to act as judicial agents instead of providing necessary medical care. The situation of Sara and other women unjustly prosecuted underscores the urgent need for legal and policy reforms that respect women's reproductive rights and dignity in Ecuador.

Case 2: Marta

In 2016, Marta, a 24-year-old indigenous Ecuadorian woman, was charged with abortion after losing her pregnancy due to a severe kidney infection, spending eight years in pre-trial detention without hard evidence. The case of Marta, an Ecuadorian woman of indigenous descent, starkly illustrates the negative impacts of the criminalization of abortion in the judicial system. She initially sought medical attention at the hospital in Orellana due to a severe kidney infection that was causing her intense pain, but ended up being reported by the medical staff for alleged induced abortion. Although the premature delivery was a direct result of the kidney infection, the doctors accused her of having caused the abortion with the use of medication, which triggered a judicial process that kept her in pre-trial detention for eight years.

During the lengthy judicial process, Marta was deprived of her liberty and her right to the presumption of innocence, facing a situation where the evidence against her was scarce or non-existent. Despite the fact that the maximum penalty for the crime of abortion in Ecuador is two years, Marta spent more than four times that period in pre-trial detention. This case underscores the shortcomings and inherent injustice of the Ecuadorian judicial system, where the opinion of academically trained professionals seems to carry more weight than medical evidence and a woman's fundamental right to receive medical care without fear of criminal prosecution.

Case 3: Maribel

In 2019, Maribel, a woman of African descent, suffered an abortion after being beaten by her partner in a motel, being denounced and prosecuted while her aggressor went unpunished, exemplifying the lack of knowledge and proper enforcement of abortion laws in Ecuador. Despite having been physically assaulted by her partner, resulting in the loss of her pregnancy, Maribel was denounced by the medical personnel who attended her and subsequently prosecuted for consensual abortion. This situation reflects the discrimination and injustice faced by women in the judicial system, where they are unjustly blamed and penalized, while their aggressors go unpunished.

Maribel's case highlights the urgent need to provide legal training to medical professionals regarding abortion. Lack of understanding about the circumstances under which abortion is not punishable leads to the unfair judicialization of cases of miscarriage and other similar situations. This represents a clear violation of women's rights and highlights the importance of addressing these shortcomings in the judicial system to ensure equal justice and protect women's reproductive rights.

Results

The analysis of the cases presented in this essay reveals a disturbing pattern of violations of women's rights in Ecuador, where the judicial system has failed to protect their reproductive rights. These cases have in common that the women were tried and convicted for a crime they did not commit, despite the fact that medical evidence showed that the abortions were spontaneous, reflecting a profound gap between the theoretical recognition of women's rights and their practical application in Ecuadorian society.

This shows how the laws have a discriminatory and disproportionate impact on low-income women from marginalized communities and with specific characteristics. The resulting consequences are devastating, including both an increase in maternal mortality and morbidity, as well as obstacles to accessing sexual and reproductive health services. Women accused of abortion face violations of their fundamental rights, such as the right to the presumption of innocence, due process and medical confidentiality.

The cases analyzed show a pattern of unfair prosecution based on social and economic prejudices. The women prosecuted share similar characteristics, such as being of low income, from marginalized communities, with a history of gender-based violence and in many cases of indigenous or Afro-descendant ethnicity.

Illegal and coercive practices by medical and police authorities are identified, including obtaining testimonies under pressure, forced self-incrimination and arbitrary detention. The criminalization of abortion perpetuates stigmatization and discrimination against women, especially those belonging to marginalized groups.

On the other hand, the illegality of abortion leads to unsafe and clandestine abortions, increasing the risk of serious complications and even maternal death. The influence of conservative and religious groups in politics and legislation hinders public debate on the decriminalization of abortion and perpetuates the criminalization of women.

There is an urgent need to reform abortion laws in Ecuador to protect women's rights, ensure access to safe health services, and end the discrimination and stigma associated with the criminalization of abortion. A human rights and gender equality approach is needed to address this problem in a comprehensive and just manner.

This research sheds light on the significant impact of the criminalization of abortion in the Ecuadorian judicial system, especially with regard to women's rights. From a historical perspective, it observes how religious and conservative influence has shaped policies around abortion, leading to the criminalization of this practice in many countries, including Ecuador (Arrazola et al., 2018). This criminalization has resulted in serious consequences for women, as evidenced in the cases of Sara, Marta and Maribel, who were victims of a judicial system that failed to protect their rights and dignity.

The cases presented reveal an alarming pattern of women's rights abuses in Ecuador, where the criminalization of abortion has led to arbitrary detention, unfair trial and stigmatization of women facing obstetric emergencies. The lack of understanding and adequate training on abortion among medical professionals and judicial authorities has exacerbated injustice, perpetuating discrimination and violence against women (Alvarez, 2022).

From a human rights-based legal perspective, the criminalization of abortion in Ecuador violates multiple fundamental rights, such as the right to health, the right to non-discrimination, the right to due process and the right to a life free of violence. The implementation of Article 150 of the COIP (2014) for example, has represented a significant setback, lacking a logical basis and a deep reflection that considers women's rights. This code has prioritized the social pressure of a conservative society that criminalizes women who choose to terminate their pregnancy (Sucuzhañay et al. 2020)..

Continuing with the legal aspect, the CEDAW (CEDAW 1999) has pointed out that the criminalization of abortion violates women's rights, including the right to health and equality. Because of this, it is crucial that States respect and adopt the provisions of international law to guarantee women's rights. In this sense, decriminalization of abortion is a necessary measure to protect women's lives and health, as well as to promote gender equality and women's autonomy in all spheres of life.

Although this is what is proposed at the local level, at the international level, the impact of the criminalization of abortion in the judicial system has generated concern, especially in the context of the rights of women and girls. In this regard, the Convention on the Rights of the Child (CRC) has warned about the risks of death and illness during adolescence, especially due to unsafe abortions, which highlights the need to analyze the decriminalization of abortion in special cases, such as that of girls pregnant as a result of rape, in order to protect their rights. (UNICEF 2006).

Following this line, the CRC Committee's analysis of the case of Ecuador revealed great concern about the high rate of teenage pregnancies resulting from sexual violence and the consequent practice of clandestine abortions. It was highlighted that Ecuadorian legislation has a punitive approach that violates the rights of girls, especially by not allowing them access to abortion in cases of rape,

forcing them to carry unwanted pregnancies to term (United Nations 2017).

At the international level, human rights support the decriminalization of abortion as an essential element in guaranteeing the rights of girls, adolescents and women in general. The struggle for autonomy over their lives is constant, as women face various forms of violence and restrictions on access to contraceptive methods, which places them in situations of vulnerability (United Nations 2017).

The American Convention on Human Rights (ACHR) recognizes the right to life from conception, but the Inter-American Human Rights System has interpreted that this provision should not be an obstacle to the decriminalization of abortion in exceptional cases, such as those involving risk to the life or health of the woman. (OAS 1969).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) urges States to promote women's health by decriminalizing abortion, since legal restrictions especially affect the most vulnerable sectors, such as low-income women (United Nations 1966). (United Nations 1966).

The criminalization of abortion has also been linked to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as it forces women to face unwanted pregnancies, which can constitute cruel and inhuman treatment, especially in cases of rape. (United Nations 1984).

The 2008 constitutional reform in Ecuador marked a significant change in the recognition and application of international standards in the area of abortion. Prior to this reform, the Ecuadorian Constitution maintained absolute supremacy, giving full priority to its provisions over any international treaty (Hidalgo and Zotaminga 2022)..

The 2008 constitutional amendment in Ecuador gave greater weight to recognized international treaties, especially in the area of human rights, including those related to abortion (Hidalgo and Zotaminga 2022). (Hidalgo and Zotaminga 2022).. This constitutional dynamic allowed the State to consider binding international treaties on sensitive issues such as abortion, giving them absolute hierarchy and direct applicability at the national level.

Although the Monist doctrine prevails, the Constitution recognizes the immediate applicability of human rights established in international instruments, which implies a control of conventionality to privilege the most favorable law in the protection of the rights of individuals, especially in the context of abortion (Hidalgo and Zotaminga, 2022).

Constitutional interpretation plays a crucial role, giving priority to the norm, whether national or international, that most effectively guarantees human rights, ensuring that international standards prevail over domestic legal provisions when they offer better protection of rights.

Principle of the form

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Ecuador has the responsibility to adopt international obligations derived from its participation in international treaties. It is essential to emphasize that, as a State party, Ecuador has the obligation to adjust its internal regulations to international human rights standards, as established in various instruments ratified by the country. (Trujillo 2021).

These duties include the guarantee of women's fundamental rights, especially with regard to sexual and reproductive health. It is recognized that the criminalization of abortion not only violates these rights, but also contributes to the perpetuation of clandestine practices that are risky for the life and health of women. (Jaureguiberry and Farré 2020)..

International bodies responsible for monitoring compliance with the treaties ratified by Ecuador have expressed concern about the prohibitive laws related to abortion in the country. There have been repeated calls to review and reform these laws to ensure safe and legal access to abortion, especially in cases of rape or risk to the woman's life.

It also highlights the importance of protecting and promoting human rights, including the right to comprehensive sexual education, the right to be free from violence, the right to due process, the right to privacy, the right to non-discrimination and equality, the right to be free from cruel, inhuman or degrading treatment, the right to health and the right to life.

It is clear that the criminalization of abortion not only contravenes these fundamental rights, but also places women in a situation of

extreme vulnerability, putting their health, life and dignity at risk. Therefore, it is imperative that Ecuador take concrete measures to bring its domestic laws in line with international human rights standards and guarantee the full exercise of women's rights in the country.

It is crucial to recognize that decriminalization of abortion is a necessary measure to protect women's rights, ensure safe access to reproductive health services and promote gender equality. In this sense, legal and policy reform in Ecuador should be based on the principles of human rights and social justice, addressing the underlying causes of the criminalization of abortion and adopting a comprehensive approach that respects women's autonomy and dignity (Jiménez and Vera, 2024).

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Ultimately, the criminalization of abortion in Ecuador reflects the urgent need to reform laws and policies to align them with international human rights standards. This implies guaranteeing equitable access to comprehensive sexuality education, preventing gender-based violence, protecting the right to due process, and promoting a culture of respect for women's reproductive rights (González, 2023). Only through an approach based on human rights and gender equality can justice and well-being be achieved for all women in Ecuador.

Likewise, it is evident that the total decriminalization of abortion and the elimination of criminal sanctions, including in cases of spontaneous abortion, would avoid cases of injustice, such as those previously described (Arrazola et al., 2018). In this sense, it is also necessary to guarantee effective access to legal abortion in all cases permitted by law, without obstacles or judicialization, mandatory training of health professionals and the judicial system on women's reproductive rights and appropriate protocols for care in cases of spontaneous abortion, and the establishment of accountability mechanisms and sanctions to prevent the violation of women's rights by authorities and medical personnel (González, 2023).

Ultimately, it is also necessary to stress the importance of recognizing the presumption of innocence and due process in cases of miscarriage, in order to avoid unjustified pretrial detention.

Conclusions

The criminalization of abortion in Ecuador has led to an alarming situation of violations of women's rights, where the judicial system has failed to protect their reproductive rights. The cases of Sara, Marta, and Maribel illustrate how women have been unjustly tried and convicted for miscarriages, even though medical evidence showed that the abortions were natural. These cases reveal a profound gap between the theoretical recognition of women's rights and their practical application in Ecuadorian society.

The criminalization of abortion has led to arbitrary detention, unfair trial, and stigmatization of women facing obstetric emergencies. In addition, the lack of knowledge and proper enforcement of abortion laws in Ecuador has allowed medical professionals to act as judicial agents instead of providing necessary medical care. This has resulted in the unjust judicialization of miscarriage cases and other similar situations, violating women's rights and highlighting the importance of addressing these deficiencies in the judicial system.

To address this problem, it is urgent to reform abortion laws in Ecuador to protect women's rights, ensure access to safe health services, and end the discrimination and stigma associated with the criminalization of abortion. Thus, not only is it necessary to adopt an approach based on human rights and gender equality to address this problem in a comprehensive and fair manner, but it is imperative to generate policies that promote the total decriminalization of abortion and the elimination of criminal penalties, including in cases of spontaneous abortion. It is also required that all legal processes guarantee effective access to legal abortion in all cases permitted by law, without obstacles or judicialization, that health professionals and the judicial system be trained on women's reproductive rights and the appropriate protocols for care in cases of spontaneous abortion, that accountability mechanisms and sanctions be stipulated to prevent the violation of women's rights by authorities and medical personnel and, finally, that the presumption of innocence and due process be recognized in cases of spontaneous abortion, avoiding unjustified pretrial detention.

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