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El Salvador

# **Feminists in El Salvador Continue Fight for Justice for Women Imprisoned for Obstetrical Complications**

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**Guadalupe, pregnant at the age of 18 in El Salvador as the result of a rape, suffered obstetrical complications before she gave birth in the home where she worked as a domestic employee to a fetus that did not survive. After hours of hemorrhaging, her employer took her to the public hospital. There, medical personnel accused her of abortion, illegal under all circumstances in El Salvador, and turned her over to police. Prosecutors upgraded the charges to aggravated homicide, and the judge *sent her to prison for thirty years.***

With the support of the Salvadoran feminist group *La Agrupación Ciudadana por la Despenalización del Aborto* (Citizen Group for the Decriminalization of Abortion), Guadalupe was granted a pardon and freed from prison in February 2015 after serving more than seven years. They mounted a campaign on April 1, 2014 to gain pardons for 17 women (“Las 17”) imprisoned under strikingly similar unjust circumstances. While Guadalupe’s release is cause for great personal and political celebration, she was the only one of Las 17 to receive a pardon. The *Agrupación* is asking why and demanding justice for the other 15 still serving sentences of 15-40 years. (Another woman was released because she had completed her sentence.)

The 1997 Salvadoran law banning abortion under all circumstances is one of the most punitive in the world. One of the extreme consequences is a political climate and legal mechanisms which permit prosecutors and judges to convict poor, young women for terms of up to 50 years when they experience obstetrical complications, have unattended births resulting in the death of the neonate, and then seek emergency treatment in public hospitals. Medical personnel accuse them of abortion and turn them over to police. Then charges are amended to aggravated homicide. Against this draconian landscape the *Agrupación*, formed in 2009, works to free women who are unjustly imprisoned on abortion-related charges and to reform the laws banning abortion.

The Salvadoran Supreme Court’s decision on Guadalupe’s pardon noted “judicial errors.” [1] Once the Supreme Court approved her request for a pardon, the matter went to the National Legislature. In a nail-biting vote that yielded just the bare minimum number of votes necessary, the 31 leftist FMLN (Frente Farabundo Martí de Liberación Nacional) representatives and eight centrist allies in the Salvadoran legislature voted to grant her pardon. Within weeks President Salvador Sanchez-Ceren signed the pardon and Guadalupe was freed after more than seven years in prison.

The United Nations Human Rights Office called the decision to pardon Guadalupe “ground-breaking.” [2] They also urged a review of the legislation banning abortion. Rupert Collville, spokesperson for the UN Office of the High Commission on Human Rights, emphasized that several human rights organizations “have regularly expressed serious concern about the total ban and criminalization of abortion in El Salvador.” [3]

## Systematic pattern of rights violations

The *Agrupación* has always maintained that what happened to Las 17, along with other women accused of and incarcerated for abortion-related charges, comprises part of a systematic pattern of violations of human rights based on misogyny as well as class and social prejudices. Harvard sociologist Jocelyn Viterna and Salvadoran lawyer Santos Guardado published an extensive analysis of the violations of rights in *El Faro Académico*. [4] They described how in the women’s trials, prosecutors controlled the narrative in court and organized their version of the story to drive it toward a “logical” conclusion of a guilty verdict. The accused women did not testify, and their versions of their stories, which expert reports from physicians who reviewed the 17 cases find to be credible, are never heard.

Viterna and Guardado also found that:

- The police who investigated the alleged crimes only gathered evidence that would incriminate the women, and consistently failed to gather evidence that would corroborate the women's story.
- The doctors who treated the women post-partum routinely failed to investigate likely birth complications.
- In some cases [prosecutors] did not present evidence that favored the defendants' innocence, even when they had it in their possession.

They cited the story of Teresa, one of Las 17, a factory worker and single mother. She didn't know she was pregnant until she gave birth in a latrine, passed out, and found herself in the hospital charged with the death of the infant. Viterna and Guardado document numerous contradictions in the medical and legal records. The fetal autopsy says the baby was full-term, but it was never weighed because, the records say, "there was no scale." Teresa's story, which would put the pregnancy at about six months, was never heard in court. Nor were witnesses who could have corroborated her story allowed to testify. The judge told Teresa that it was not reasonable that she did not know she was pregnant, even though during those months Teresa went to two doctors, and neither diagnosed her pregnancy.

The judge relied heavily on a "floating lung test," used as decisive evidence in eight of the 17 women's trials. Forensic medicine expert Dr. Gregory Davis reviewed the cases and emphasized that the test has been known to be highly unreliable for more than one hundred years. [5] At the same time, the judge ignored the government autopsy report's finding that the neonate died from perinatal asphyxia, "a medical condition and not a criminal act," according to Viterna and Guardado. In Guadalupe's case, Viterna and Guardado noted that after listening to incomplete and contradictory testimony and evidence, the judge provided this description of the unspecified "action" that he alleges Guadalupe took to cause the death of her son:

"In accordance with the evidence obtained in the present case it is determined that the defendant, CARMEN, [Guadalupe], performed an action that affected a legally protected life, given that the defendant actively produced the death of a NEWBORN, who was her son...". [emphasis added]

## Abortion rights in El Salvador

El Salvador's twelve-year civil war between the U.S. backed Salvadoran rightwing government and military and the leftist FMLN guerrillas ended in 1992 with the signing of the Peace Accords, and the FMLN became a political party. However, the rightwing ARENA (Alianza Republicana Nacionalista) party maintained control of the government, dominating from the last few years of the war until 2009.

The fight for abortion rights in El Salvador has complex roots, tightly interwoven with the profound religious and social stigma around abortion and the reluctance of the traditional male-dominated left to take on the issue. The struggle for abortion rights has been included in the feminist agenda since the early days of the movement in the late 1980s, but not always as an action item. The tremendous social stigma, varying relationships with the left, and differences in visions around strategies play into the political complexities.

In 1997 feminists went to the Legislature to attempt to decriminalize all abortions. [6] At that time abortions were permitted only under three circumstances: when the life or health of the woman was at risk, when the pregnancy resulted from rape or incest; and when the fetus had abnormalities incompatible with life outside the uterus. However,

rightwing politicians, the Catholic Church and right-to-life groups organized a vociferous opposition to decriminalization and shocked feminists by managing to tighten the criminal code so that abortion was completely criminalized under all circumstance. The law abolished those three conditions and imposed a penalty for abortion of two to eight years in prison. [7] Additionally, medical personnel who participated in an abortion could be sentenced to six to 12 years in prison.

Then, religious fundamentalism won another round in 1998 when the legislature amended the Constitution to declare that life begins at conception. The FMLN split its vote, with some voting in favor of the constitutional reform, which allowed it to pass.

As Elaine Freedman explained in the Nicaraguan publication *envio* [8], the FMLN feared having a pro-abortion vote used against the party in upcoming elections. The Constitutional change created the mechanism whereby prosecutors could amend abortion charges to aggravated homicide, which carries a prison term of 30-50 years. More recently, when the *Agrupación* asked medical personnel why they reported women to police, several replied “off-the-record” that they felt strongly pressured to do so by prosecutors who had visited public hospitals to remind them of the law.

The vague 1997 law also includes prison terms of two to five years for those who “induced” a woman to have an abortion or who “facilitated” an abortion through economic or other means. Even many feminists feared that this meant that publicly advocating for legal changes could lead to imprisonment. However, the organizing continued over the years, sometimes more covertly than overtly.

Over time Salvadoran feminist organizations and other allies in the social movements have taken on the issue and spoken publicly. There exist diverse opinions within the feminist movement regarding strategies. Some groups favor working toward complete decriminalization right away, rather than starting with the reinstatement of the three conditions that were legal before 1997.

## The Importance of Data

Reliable data concerning abortion and the application of the anti-abortion law are hard to come by in a country where the practice is criminalized, miscarriages and stillbirths fall under the umbrella term “abortion,” and even saying the word aloud is stigmatized. However, the *Agrupación* took on the task of attempting to quantify and interpret data on abortion-related criminal charges. That meant visiting every courthouse in the country and manually reviewing all cases that might be relevant.

In 2015 the *Agrupación* is in the process of updating the data. According to their 2013 publication, *From the Hospital to the Jail*, during the period 2000-2011,

– 129 women were charged with abortion-related crimes, 49 were convicted, and 26 are serving prison terms—all with convictions for homicide. Most of received prison terms of three years or less, which were usually suspended.

– 68 percent of the women charged with abortion-related crimes are between 18 and 25 years old. What is particularly alarming is that 25 percent of the women are between 18 and 20 years old. Twenty-seven percent are illiterate or have no more than a third-grade education, while 52 percent have no income and the rest have minimum wages jobs. [9]

Understanding that the law has only been applied to poor, young women who rely on public hospitals means

understanding that women with the economic means utilize private clinics and hospitals or travel outside the country to receive appropriate medical care.

## Prejudices and myths

Just what constitutes the crime of “abortion” is not clearly defined in the statute. Additionally, the term abortion is highly stigmatized in Salvadoran society, and for many even pronouncing the word aloud is shameful. Abortion is synonymous with “assassin” and “baby-killer.” The word abortion remains a catch-all to name a broad swath of possible events including miscarriage, stillbirth, precipitous birth, or other obstetrical complications that result in termination of a pregnancy. The more precise terms and phenomena are not part of the popular lexicon in the society, nor that of most of the medical and legal personnel involved in the women’s cases.

Elaine Freedman explained some of the patriarchal myths that feminists associate with criminalizing abortion. “[M]otherhood is women’s most important role and therefore, since it is their ‘natural’ duty, all women should be mothers. Another is that every woman’s duty is to sacrifice herself for her children.... Collaterally, a third is that a woman who thinks about herself is ‘irresponsible.’” Therefore, says Freedman, feminists perceive anti-abortion politics not as a way to save babies’ lives, but as a way to “keep women in their traditional roles.” This helps clarify why so many of the judges and prosecutors justified convicting Las 17 by accusing them of not doing everything possible to save the life of the child, even when the woman was in shock or unconscious. [\[10\]](#)

## The Case of Beatriz

The horrifying realities in El Salvador gained international attention in 2013 with Beatriz, a young mother with life-threatening illnesses who became pregnant. Her doctors determined that in addition to the medical threat to her life, the fetus was anencephalic (lacking a brain) and would not survive outside uterus. Based on her doctors’ advice, Beatriz requested an abortion, which was of course illegal in the country. With the support of the *Agrupación*, she took her case to the Salvadoran Supreme Court, which ruled against her, and then to the Interamerican Human Rights Court, which eventually ruled that the Salvadoran government had the responsibility to take the necessary actions to protect her life and health.

At 26 weeks of pregnancy, doctors performed a procedure to deliver the baby, which lived five hours before dying. Beatriz survived, although her health remains precarious. Beatriz became dinner-table conversation and pushed Salvadorans to talk about a real woman and a real story and to try to imagine what they would do if they or a family member were Beatriz. Her story helped shift the narrative from the fuzzy fundamentalist fear-mongering to the stark realities Salvadoran women confront. By then the FMLN held the presidency for the first time in history, and feminists pressured President Mauricio Funes to make a statement. At a public event feminists displayed a banner reading, “If Beatriz were your daughter, what would you do?” Funes stated that Beatriz “has the right to decide about her life.” [\[11\]](#)

Beatriz’s struggle was an uncomfortable one for the government, and most officials stayed silent, with the notable exception of the Ministry of Health. The physicians treating Beatriz and the highly respected Minister of Health at the time, Dr. Maria Isabel Rodriguez, actively advocated on Beatriz’s behalf in spite of the fact that the only legal avenue for the *Agrupación* to take the case to the courts was to file suit against those same physicians for not performing an abortion. [\[12\]](#) The major efforts to get justice and save Beatriz’s life came largely from the *Agrupación* and not from the government that is charged with protecting the life and health of its citizens.

## From Beatriz to Las 17

The campaign for Las 17 has again brought the issue into the public storm, and the political landscape is evolving little by little. A few days after the *Agrupación* filed the pardon requests, the FMLN legislative block sent an official letter to the *Agrupación*, signed by every member, stating their support. Three months later, on July 1, the *Agrupación* convened a large demonstration in front of the National Legislature and attempted to speak directly with legislators. The date marked three months since the filing of the petitions and the end of the time frame legally specified for a response.

Despite requests for appointments two weeks earlier, not one legislator was available. However, in December 2014 Sigfrido Reyes, President of the National Legislature, took the public position that “the cases of the women should be reviewed, and in some cases pardoned.” [13] Then, when the petition reached the Legislative, the FMLN voted unanimously in support, even with legislative elections looming just six weeks later. Those 31 votes, along with 12 other independent votes, provided the bare minimum necessary for passage. The legislative plenary sessions were marked by vicious comments against Guadalupe from ARENA legislators.

## The discourse from the right

The Salvadoran right is notoriously conservative, fundamentalist and misogynist, as evidenced by their actions and statements. They control mainstream media, and columnists representing groups such as Si a la Vida, an anti-abortion group, and the Catholic fundamentalist group Opus Dei, have easy access to the opinion pages. In addition, members of Opus Dei and Si a la Vida hold key positions in governmental institutions that make decisions about accused women. [14]

The right-controlled media utilize provocative and hateful rhetoric, highlighting and distorting the most sensationalist details of Las 17. They continually deny that any woman is imprisoned for abortion, and all are heartless assassins of their babies, who were all born alive. While technically none of Las 17 was imprisoned for abortion, all of their convictions grow out of the existence of and misapplication of the anti-abortion law coupled with extreme misogyny.

This writer analyzed examples of this type of inflammatory discourse in the media in RH Reality Check [15]:

“Tragic occurrences do happen, but they are not always the result of a deliberate action. [Rightwing columnists] extract from their proper context particularly lurid autopsy details. The context lacking is not just textual, but also the social and political contexts in which the women live. The document utilizes passive constructions such as, 'In many cases asphyxia occurred,' conjuring a terrible image of a woman asphyxiating her baby without explaining how asphyxia can occur before and during birth and omitting the distinct possibility that it happened without any criminal action. Medical professionals concur that asphyxia can be the result of complicated, unassisted births, which all of Las 17 experienced. [16] This reflects extreme poverty, not criminal intent.”

## Moving forward

In March 2015, President Salvador Sanchez-Ceren of the FMLN, called for an end to “machismo” in the country. [17] Although he did not specifically mention abortion, *Agrupación* President Morena Herrera responded to his declaration by calling on the President to assume “public responsibility for the grave situation of violations of human rights, such

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as that of 15 women whom [the Supreme Court left imprisoned].” [18] Herrera affirmed the position of the *Agrupación*, that the Salvadoran State has the responsibility to correct the errors that have been made and to secure justice for women unjustly convicted and to be sure that the situation does not repeat itself.

However, with longtime partners such as Amnesty International [19], the *Agrupación* also moves forward with plans to explore other national and international strategies for freeing the rest of Las 17 and changing the law. As Guadalupe pointed out in a press conference following her release, “the world is paying attention.” [20]

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[1] *The Telegraph* [“El Salvadoran woman released from prison after pardon for miscarriage”](#).

[2] UN News Centre [“El Salvador: UN rights office welcomes ‘ground-breaking’ pardon of woman in abortion case”](#).

[3] [Ibid.](#)

[4] El Faro [“Principios legales versus discriminación de género. El caso de las 17.”](#)

[5] RH Reality Check [“Report: ‘Scientific’ Test Used to Convict Women in El Salvador Is Anything But”](#).

[6] Envío digital [“The case of Beatriz: Who gets to decide?”](#).

[7] PDF [CODIGO PENAL DE EL SALVADOR](#).

[8] Envío digital [Ibid.](#)

[9] Colectiva feminista [La Penalización Absoluta del Aborto en El Salvador: Del Hospital a la Carcel](#).

[10] envío [Ibid.](#)

[11] La Pagina [Funes afirma que “Beatriz” tiene derecho a decidir sobre su vida](#).

[12] envío [Ibid.](#)

[13] DiarioCoLatino [“Presidente de congreso pide indulto para 17 mujeres encarceladas por supuesto aborto”](#).

[14] envío [Ibid.](#)

[15] RH Reality Check [“El Salvador’s Right-Wing Media Begins Sustained Campaign Against Releasing 17 Women Imprisoned on Abortion-Related Charges”](#).

[16] CMAJ-JAMC [Causes of Birth Asphyxia and Trauma](#).

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[17] Telesur [Sánchez Cerén llama a acabar con el machismo en El Salvador](#).

[18] ContraPunto [¿Por supuesto SeÑor Presidente, acabemos con el machismo en nuestro paÃ-s!](#).

[19] Amnesty International [El Salvador must release women imprisoned after pregnancy related complications](#)] and the Center for Reproductive Rights [[Center for Reproductive Rights [FREE THE EL SALVADOR 17](#)].

[20] RH Reality Check [Miscarriage of Justice](#).