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By Kathy Bougher

in collaboration with Alberto Romero and Sara García

Photos: Agrupación Ciudadana por la Despenalización del Aborto
Terapéutico, Ético y Eugenésico

(Originally published in Spanish as “Sigue la lucha por la libertad de
Las 17” in Atenea, a publication of the Center for Gender Studies at the
University of El Salvador, June 2015, http://genero.ues.edu.sv/images/ateneas_pdf/atenea14.pdf)

A publication of:

Citizen group for the decriminalization of therapeutic and ethical abortion
and abortion for reasons of fetal anomaly.

www.agrupacionciudadana.org

El Salvador, September 2015

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Introduction

Since 1998 the Salvadoran society has confronted one of its most difficult periods in the area of sexual and reproductive rights. This has included the persecution of women, especially women living in situations of poverty, and they constitute the majority of Salvadoran women.

The 1998 change in criminal law closed off any possibility of interrupting a pregnancy, even when the life or health of the woman was in danger. For this reason medical personnel see any intervention as impossible, even when their patients suffer serious health risks. For example, when facing ectopic pregnancies, or ovarian, tubal or abdominal pregnancies, medical personnel must wait until there no longer exists a fetal heartbeat in order to intervene. This also happens with women who suffer from pre-existing illnesses which can complicate a pregnancy. They go to a hospital searching for help, but the physicians have their hands tied because the laws prevent them from doing what their scientific knowledge tells them to do: interrupt the pregnancy.

A girl of nine or ten years old who becomes pregnant as the result of rape is obligated to continue and carry to term the pregnancy and become a mother in spite of the fact that her physical and emotional development are not adequate to confront this responsibility. This occurs in a country where eight of every ten cases of sexual aggression occur against minors under 18 years of age. Official data indicate that one of every three girls is a mother by age 18, while 29 of every 100 births nationally occurs in girls ages 10 to 19 years old. According to the Ministry of Health 11% of maternal death are among girls and adolescent females and, of these, 57% were caused by suicide.

For pregnant women who are diagnosed with a fetus with an anomaly incompatible with extra-uterine life, they have no other alternative than to carry the pregnancy to term, even though they know from the first weeks that the fetus they carry in their uterus has no probability of surviving the birth. This is in addition to the physical and emotional health risks this causes for the woman.

One of the saddest aspects of the application of this law is the persecution that women encounter when, for various reasons, they suffer obstetrical complications in the later stages of their pregnancies, and they lose the baby. When they arrive at hospitals with severe hemorrhaging, they are examined and immediately converted into suspects, and accused

of having provoked an abortion. Subsequently, the charges are upgraded and they are tried and convicted for aggravated homicide for having assassinated their babies. Evidence and testimony to the contrary are disregarded, and they are sentenced to 30, 35 and 40 years in prison.

From these circumstances the campaign struggle, “For the Freedom of “The 17,”” was born, although now there are more than 17 women imprisoned. In the months since we presented the requests for pardons for “The 17” women who were incarcerated on April 1, 2014, six more women have been convicted. The Citizen Group for the Decriminalization of Therapeutic and Ethical Abortion and Abortion for reasons of Fetal Anomaly, and other organizations with whom we launched this effort for access to justice for the imprisoned women, have a firm commitment to each one of them. We know it will not be easy to gain their freedom, but we are hopeful that we will do it. Since 2009 we have been working for this purpose, and to date we have helped ten women who were imprisoned gain their freedom.

In the following pages our ally Kathy Bougher shares a brief synthesis of the significant points in this process.



The Struggle Continues for the Freedom of Las 17



The campaign for the freedom of Las 17 continues to evolve since it was initiated on April 1, 2014. On that date the Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico (Citizen Group for the Decriminalization of Therapeutic, Ethical and Fetal Anomaly Abortion) and other human rights defenders submitted requests for pardons for 17 women unjustly convicted and imprisoned for aggravated or attempted aggravated homicide. Most were initially accused of abortion, part of the consequences of the absolute prohibition on abortion in El Salvador.

The process of the pardon was one legal avenue to fight against the injustices and was successful in freeing two of Las 17, Mirna and Guadalupe. The other 15 women remain imprisoned due to the injustices within the same system that provoked the initial persecution. The Agrupación continues developing strategies and options to free the other 15, as well as additional women who have been convicted during the past year. The collective fight for Las 17 has revealed the depth of the structural and systematic injustices that Salvadoran women experience, especially women living in poverty, as they confront the medical and judicial systems in their fight against misogyny, prejudices and stereotypes about women. It also demonstrates the intransigence of the fundamentalist and rightwing forces toward the changes that are necessary if the country is to comply with the requirements of a modern state that respects the human rights of women.

Achievements and lessons learned

The Coalition for the Freedom of Las 17, made up of the Agrupación, along with other community organizations, feminist groups, unionists, and LGBTI groups, among others, had to fight for more than a year to pressure the government to comply with the law. Although the Special Petition for Grace Law stipulates that the Salvadoran government had to reply to the pardon requests within three months, July 1, 2014 arrived with any response. On that date, and on many subsequent occasions, the Agrupación and other organizations demonstrated in front of the National Assembly (Legislature) asking for a response.

In September of 2014 Amnesty International made a visit to the country, led by its Secretary General, to present its report, “On the Brink of Death: Violence against Women and the Abortion Ban in El Salvador.” The presentation had a significant effect as it demonstrated the harsh brutality of the impact of the absolute criminalization of abortion in El Salvador and highlighted the denunciations on the part of diverse international organizations.

The campaign won the freedom of two women. Mirna was granted a pardon by the Supreme Court, although her twelve and a half year sentence for attempted aggravated homicide ended in November 2014, and she was freed before the National Assembly voted on her pardon request [a subsequent step in the process]. Guadalupe, who had served more than seven years of her 30 year prison sentence, received the votes necessary from the National Assembly in January 2014 and was freed in February. The Supreme Court did not approve the requests of any of the other 15 women, in spite of the similarities in the judicial errors that had been noted in Guadalupe's case.

In April 2015 Amnesty International returned with more than 350,000 signatures in favor of changes to the absolute prohibition on abortion in El Salvador. The signatures that had been gathered were delivered to the Supreme Court of Justice, to the Presidency of the Republic, to the Legislative Assembly, and to the Attorney General for the Defense of Human Rights. The campaign has placed the responsibility for the consequences of the existing legislation with the three powers of the Salvadoran government. In spite of this responsibility being so obvious, there exists a strong resistance to incorporating it into the various governmental agendas. One lesson learned is that the great majority of politicians, as well as service providers in health and criminal justice, are still unfamiliar with the effects that the current criminalizing legislation has on women.

Nevertheless, the campaign has made visible to social movements and the civil society





not only the consequences of this legislation that criminalizes all abortion, but also the consequences of a judicial system that criminalizes women without listening to them. The judicial practices contribute to the certainty that the way the women were judged violated their procedural rights, their right to doctor-patient confidentiality, and their right to the presumption of innocence. They were convicted based on deficient and inconclusive evidence and without direct evidence to justify their convictions.

The Institute of Legal (Forensic) Medicine continued using and defending a “scientific” test that international experts had declared “invalid” since 1900. This test was utilized to “prove” the guilt of at least eight of the 17 women. Various international medical, legal and academic experts reviewed the court records of Las 17 and noted serious errors and deficiencies in how the cases were managed. They concluded that in not one of the cases was there sufficient evidence to prove that a crime had been committed.

The campaign has built alliances with diverse national social movements, through the Coalition “Freedom for Las 17.” The movements recognize the problem of the criminalization of abortion as a reality which affects sectors in all the movements. In addition, the campaign created alliances with international human rights and women’s rights defenders, such as the Center for Reproductive Rights, CEJIL, IPAS, CAWN, Mesoamerican Initiative of Women’s Human Rights Defenders, 28th of September Campaign, WGNRR, and INKOTA, among others. The Agrupación has achieved the goal of humanizing and dignifying the lives and problems of the imprisoned women, giving them a face, and as such, helping the citizenry identify with the women who has had their rights violated. The public sees the problem of abortion with new eyes, getting beyond simplistic visions.

The challenges

The same fundamentalist religious thinking that promoted the absolute prohibition on abortion still has a hegemonic presence in El Salvador. Fundamentalists, utilizing the mainstream media, have exploited the fear of criminalization under the law in order to generate fear in progressive sectors, which has resulted in a certain silence on the issue.

In an aggressive media campaign, fundamentalist sectors continually published opinion pieces in the media that were threatening to the Agrupación and Las 17. . They published the full names of Las 17 and accused them of being “assassins” while pressuring legislators and judges not to grant the pardons. They attacked the defenders of Las 17 with articles such as “Lying Feminists,” “A Business with the Blood of Innocents,” and “17 Babies, Murdered Here, They Speak from Heaven to their Mothers.” In August 2014 El Diario de Hoy (mainstream daily newspaper) published some of the Agrupación’s data and funding information, in a manipulated form, as part of a sensationalist investigation.

The Agrupación recognized the possibility that the right was creating the conditions to be able to make the charge of “inducing” abortion [illegal under the law, but not clearly defined]. The Agrupación decided to demand the right to response [provided for by Salvadoran law] and held press conferences to refute the information. They received a positive reaction from the international media and from social organizations, such that the newspaper published an interview in which the Agrupación and the Feminist Colectiva refuted the errors and reaffirmed their right to defend rights.

The Director of the Institute of Legal [Forensic] Medicine is allied with fundamentalist sectors connected to Opus Dei [conservative Catholic organization]. As Director he is responsible for the forensic reports [part of the pardon process] that were full of inconsistencies, serious errors, and incriminating conclusions. He took advantage of his position as he systematically made statements and participated in television interviews in which he accused the women of being assassins, presented photos of the cadavers of the fetuses and exploited his “authority as a physician,” although he is not a forensic specialist, but rather a psychiatrist.

The Agrupación has filed suit against the Director in a governmental ethics court for abuse of his office. A significant factor was the report of the Criminological Council, prepared by the Institute for Legal Medicine, which evaluates prisoners who request pardons. The Council utilizes highly discriminatory criteria as the basis for a negative report, such as coming from a non-intact home, or having low educational levels, low-level job skills, and low income.

Clearly all the women come from sectors of society that live in poverty. In addition, the women did not admit to committing a crime, since they did not commit one, and thus do show repentance. Therefore, the report judged them to not be making efforts to reinsert themselves in society, and therefore not deserving of a pardon. This contributed to the fact that in the end only two women received favorable results.



Aggressions against Defenders of

In El Salvador the exercise of the defense of rights, especially when it relates to sexual and reproductive rights has been the object of multiple aggressions, insults and accusations without cause by ultra-conservative groups and individuals, who, with the objective of imposing their fundamentalist ideas, do not hesitate to call for hateful and violent actions.

They have called us assassins for defending and fighting for the freedom of “Las 17,” The 17; they threatened us with

labels claiming we support criminal activity because we want to change the law that criminalizes all abortion; they insist that the Prosecutor's Office investigate us for supposed "business deals and profiting" related to our fight; they denounce the fact that in February 2014 the Citizen Group for the Decriminalization of Abortion received official legal status in El Salvador. They initiate personal and collective campaigns of disparagement against our individual members and organizations. All of this is done with the purpose of silencing and stopping us.

We reaffirm our commitment to the Freedom for "The 17 and More" Women," unjustly imprisoned, and to the civic exercise of pushing for legal reforms more closely tied to the realities in which women live. We are convinced that motherhood is a right of free exercise and no woman should be obligated to live a pregnancy imposed by a rape, because no woman should be obligated to renounce her right to life and health in cases where pregnancies threaten her vital condition and her health.





The Struggle Continues for the Freedom of Las 17



HEINRICH BÖLL STIFTUNG
MÉXICO, CENTROAMÉRICA Y EL CARIBE

