

SEPARATED FAMILIES, BROKEN TIES

EL SALVADOR: WOMEN IMPRISONED FOR OBSTETRIC EMERGENCIES AND THE IMPACT ON THEIR FAMILIES

[NO PICS-WITHOUT FORMAT]

1998 was a watershed moment for women's human rights in El Salvador. This was the year that the government decided to take a retrograde step. While most countries around the world were moving towards a liberalization of restrictive laws on abortion, El Salvador moved to criminalise abortion in all circumstances. Legislation that had previously allowed access to abortion in certain circumstances – namely, when the woman's life was in danger, when the pregnancy was the result of rape or incest, or in cases of severe foetal impairment – was amended. From then on abortion was considered a crime in all circumstances, without exception.

Amnesty International documented the grave impact of the total ban on abortion on women and girls and the resulting human rights violations in its report, *On the brink of death: Violence against women and the abortion ban in El Salvador*, published in 2014. In addition, many international human rights organizations have publicly expressed their concerns about the total ban on abortion, including the UN Human Rights Committee and the Inter-American Commission on Human Rights.

The legal framework in El Salvador not only criminalizes every woman who undergoes an induced termination of her pregnancy, it also creates an atmosphere of suspicion around women who are not receiving medical care when they miscarry or experience other obstetric emergencies. As a result, women who experience complications during pregnancy have been prosecuted on charges of abortion. Some have even been accused of aggravated homicide. Women and girls living in poverty and receiving inadequate medical care are especially vulnerable in this regard.

[BOX]

It's common for an assumption of guilt to be the starting point of investigations and of the criminal proceedings brought against these women. This starting point gives rise to further expressions of institutional violence, reflected in the attitude and behaviour of medical staff in the public health system, throughout the process of investigation, and in the proceedings of the criminal justice and penal systems.

[END]

The following testimonies of Teodora, María Teresa, and Berta¹ describe their unfair trials and imprisonment. However, the sentencing of these women has profoundly and negatively impacted their families as well.

The repercussions of the criminalization of abortion in all circumstances in El Salvador have far reaching consequences which extend beyond the individual accused and impact directly on the lives and the familial ties of their relatives. In order to document the devastating consequences that the unjust sentencing of Teodora, Maria Teresa and "Berta" had on their families Amnesty International spoke to Teodora's sister and mother, Cecilia and María; María Teresa's mother-in-law, Isabel; and Berta's mother, Virginia. The interviews with these family members has made it possible to identify the impact the criminalisation of abortion has had on the human rights of families and loved ones.

¹ Some of those who spoken to Amnesty International asked that their identity be withheld. Pseudonyms have been used to protect the privacy of those women, including Berta and Isabel, María Teresa's mother-in-law

1. TEODORA, MARÍA TERESA AND BERTA: THEIR STORIES

[BOX]

"[The authorities] are extremely diligent when it comes to sentencing women. But they are completely negligent in ensuring due process."

Rosalía Jovel, Deputy Human Rights Ombudsperson for the Rights of Women and the Family, speaking about the treatment of women sentenced to prison after having suffered obstetric emergencies, October 2015

[ENDS]

TEODORA DEL CARMEN VÁSQUEZ

Teodora del Carmen Vásquez is 32 years old and the sixth eldest of her 11 siblings. The family farm yields only a limited income and Teodora has had to work and contribute to the family's finances from a very early age. She was not able to complete her basic education and the family's difficult economic situation led to her leaving her home village at 17 for the city in order to find employment as a domestic worker. Teodora's wages have been a vital source of income for her family throughout her entire working life.

Teodora gave birth to her first child when she was 20; her son is now 12 years old. Cecilia, Teodora's sister, told Amnesty International how every year, Teodora "would celebrate his birthday with piñatas and music. She would decorate his room and they would go for a walk together, just the two of them."

On 13 July 2007, Teodora was in her ninth month of pregnancy when her whole world was turned upside down. That day, while she was at work, Teodora started to have pains and feel unwell.

"When the pain got too bad, I grabbed my phone and started to dial 911, because that was the only thing I could think of. A woman answered and said that she had made the request and help was on its way. But no one arrived to help me... I rang at least five times."

Teodora, October 2015

[BOX]

Teodora had not been able to attend prenatal check-up sessions during her pregnancy because she didn't have the money and she was working from six in the morning until nine at night. She didn't get the medical support she needed because she lacked the financial resources and the time.

[ENDS]

While she was waiting for help, Teodora felt a need to go to the toilet. As she made her way to the bathroom the pain got worse and she fell. She subsequently had an obstetric emergency in the bathroom, lost her pregnancy, and fainted while bleeding profusely. Several police officers arrived at her workplace. Teodora was handcuffed, accused of aggravated homicide on suspicion of having induced an "abortion" and detained. The following day, in her hospital bed and still confused and disorientated, she was confronted by the accusatory questioning of police officers who asked her: "Why did you do it?". She was then taken to prison.

Teodora's family has little access to financial resources and as a result was unable to pay for an effective legal defence. In 2008 she was sentenced to 30 years in prison. She has already served eight years (she has been in prison since 2007). Despite the sentence, she has continued to study and at the moment is studying for her high school diploma. From prison, Teodora told Amnesty International: "Every day I get up with a positive attitude, eager to learn something new."

MARÍA TERESA RIVERA

María Teresa Rivera had a difficult childhood; she grew up without her parents. In 2011, María Teresa was 28 years old and working as a seamstress in a clothing factory. As a single mother, she was living with her mother-in-law, Isabel, and had sole responsibility for her son.

“As a single parent I had to take special care of him [my son]. He was very ill when he was born and my work, everything, was for him... I used to oversee and help him with his studies, so as soon as I got home from work, we would start to study together or go over one of his classes from school. For me it was a huge privilege to do these things with my son because I never had a mother to support me in that way.”

María Teresa Rivera, October 2015

[BOX]

In 2011, the minimum hourly wage in factories in the textile and clothing industry was US\$0.781. María Teresa and her son were living with her in-laws that year. She and her mother-in-law, Isabel, would combine their salaries to be able to cover the basic needs of the family until the end of the month.

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María Teresa would scrimp to save enough to go out and spend some time with her son at the weekends. They used to go to the park or to the zoo.

One morning in November 2011, in the early hours, María Teresa felt an urgent need to go to the bathroom. She didn't know that she was pregnant. Isabel was woken by a sudden noise. She was shocked to find María Teresa lying on the floor and bleeding.

“It never occurred to me that she was pregnant; she wasn't showing. I called the hospital...What happened to her was an accident.”

María Teresa's mother-in-law, Isabel, September 2015

Still bleeding and in a state of semi-consciousness, Maria Teresa was taken to the hospital, where a health worker reported her to the police for “signs of having had an abortion”. She was accused of aggravated homicide, and detained and handcuffed as she lay in her hospital bed. She was then taken to a police cell where officers insulted her and took away the medication she had been prescribed in the hospital.

In July 2012, María Teresa Rivera, then aged 29, was sentenced to 40 years' imprisonment for aggravated homicide. During her trial, the court ruled that it was not possible that she did not know she was pregnant. The court accepted as evidence for this a statement made by one of María Teresa's managers, who asserted that Maria Teresa had informed her in January 2011 that she was pregnant. If this statement were true, then María Teresa would have had to have been 11 months pregnant at the time of her arrest.

María Teresa will be 33 on 28 December 2015. Despite nearly four years in prison, she still dreams of working, buying a house and starting a new life with her son, who is now 10 years old.

[BOX]

In November 2015, El Salvador's Human Rights Ombudperson declared that María Teresa Rivera's rights to equality and non-discrimination, as well as her right to due process, had not been respected. The Ombudsperson stated that the principle of the presumption of innocence had been violated and that María Teresa's guilt had not been proven.

[END BOX]

BERTA

Berta, the daughter of a single parent, grew up with her two sisters. Her mother worked as a cook and the eldest sister looked after the two younger girls. When she was 17, Berta became pregnant and had to leave school. At the time she was in year seven of elementary school. Berta worked from home, selling local food in her village. She owned a small maize mill which also added to the family income.

In 2010, Berta, who was 28 at the time, started to feel unwell. At the time she thought that this was a reaction to the contraception she was using. At first, she did not go to see a doctor because there was no public transport to take her to the nearest clinic.

As time progressed her symptoms worsened and she decided to see a doctor, who prescribed some medication. Early on the morning of 25 July 2010, Berta got out of bed and went to the bathroom and, suddenly, passed out. She tried to get up a couple of times, but fainted again. Her partner realized what was happening and, in the dark, as there was no electricity, helped her up and took her to hospital. At the hospital she was told that she had given birth and they asked where the new-born was. They then notified the authorities.

“I started to panic because I didn’t know what to do, what to say. I didn’t understand what was happening...I was completely paralysed.”

Berta, September 2015

In August 2010, while she was in hospital, Berta was arrested and accused of aggravated homicide. She was then detained. During the initial hearing, Berta was represented by a public defender who she met for the first time on the day of her hearing. The judge ordered that the case go to trial and that Berta remain in detention.

During the criminal proceedings, Berta had new, private, defence lawyers. Her family had gotten in touch with a local NGO, the Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico, which agreed to represent her without charging a fee. Thanks to the evidence presented by the new defence counsel, the judge ordered that the trial be temporarily suspended (through a provisional stay of proceedings) and lifted the detention order. Berta was released. However, the Attorney General’s Office appealed the ruling and, after a brief period at liberty, Berta was once again imprisoned.

Finally, in June 2011, Berta was pronounced innocent and released. The evidence presented in her defence was crucial in proving that no crime had been committed.

The criminal proceedings left an indelible mark on Berta’s life: “even though several years have passed, it stays here, deep inside”, said Berta. Nevertheless, Berta has retained her enthusiasm for life. After leaving prison, she had another son and, when talking about her future, she said: “We’re going to stay united whatever happens; we’re going to stay together, the three of us.”

The total ban on abortion and its ramifications impact on the ability to enjoy the right to due process, to health, to privacy, and to freedom from inhuman or degrading treatment and to non-discrimination.

2. THE FAMILIES

2.1 RELATIVES AS VICTIMS OF HUMAN RIGHTS VIOLATIONS

“The term ‘victim’ also includes, where appropriate, the immediate family or dependants of

the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN General Assembly resolution 40/43, adopted in 1985

In 1985, the international community adopted one of the first resolutions recognizing that the relatives of victims can also be considered victims themselves. In light of this development of the concept of victimhood the family members of Teodora, Maria Teresa, and “Berta”, can, given their experiences and the extent of the impact on their lives, also be considered injured parties and, therefore, victims of human rights violations.

[BOX]

“It’s obvious that there is a direct impact [on the families] and, therefore, that the rights of the families and close relatives have been violated. Whole families are suffering the consequences of the flawed process by which [the women] were sentenced.”

Rosalía Jovel, Deputy Human Rights Ombudsperson for the Rights of Women and the Family, October 2015

[END BOX]

The families of Teodora, María Teresa and Berta should not suffer the consequences of the women’s unjust imprisonment for one second longer. Criminalizing and imprisoning women because they experienced pregnancy-related complications is a clear violation of their human rights. Their unjust and unjustifiable absence also has a harmful impact on their loved ones.

2.2 THE EFFECTS ON FAMILIES

IMPACT ON THE CHILDREN OF CRIMINALIZED WOMEN

Living through all the stages of the criminal process – from the arrest through to the sentencing and imprisonment – can affect the children for the rest of their lives. The first visit to see their mothers in prison, for example, is an especially difficult moment.

“The first time that he saw me was traumatic for him. He was in shock and didn’t understand what had happened. He didn’t ask questions. He didn’t complain. We just hugged. He said he wanted to stay with me in the bartolinas [detention centre]. When the time came to say goodbye, that was an awful. My mother says he cried on the bus and that he wouldn’t eat anything.”

Berta, September 2015

“The first time that the boy saw her was hard. He was crying and hugging her, and did not want to leave the prison. I said, ‘let’s go, your mom can’t leave’. He cried on the bus. I stopped taking the child for a while, because I said, ‘he gets really sad, and so does she’. Then when he got a bit older, I took him again.

Isabel, Maria Teresa’s mother-in-law, September 2015

“When the boy visited the prison for the first time I told him outside the prison that he must be brave, and not cry, that he must be strong for her. He was not yet four years old....When we left the prison, it was hard. He clung to her. ‘Mummy, I’m taking you with me’, he said to her. ‘Why don’t you turn into a dove and get out, and come with us? I don’t want to leave you here’.”

Teodora’s mother, María, September 2015

[BOX]

The detention of a mother inevitably involves punishing the children, given the fundamental nature of the mother-child relationship. If the child stays in prison with the mother, they too are detained. If they do not, every day they suffer the loss of their mother.

Patricio Varela, *Mujeres privadas de libertad*, UNICEF-Argentina and the Argentine Public Defender's Office, 2009

END BOX

The Convention on the Rights of the Child clearly states that the best interests of children must be the primary concern in making decisions that may affect them. It is on this basis that the UN Committee on the Rights of the Child has stated: "Where the defendant has childcaring responsibilities, the Committee recommends that the principle of the best interests of the child (art. 3) is carefully and independently considered by competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing" (CRC/C/THA/CO/2, 17 March 2006).

Accordingly, the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), state that women who have childcare responsibilities and pregnant women should, wherever possible and appropriate, receive non-custodial sentences.

[BOX]

THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD AND ADOLESCENT

When interpreting, applying and incorporating legislation; when taking judicial and administrative decisions; as well as when implementing and evaluating all public policies, there is an obligation to fulfil the principle of the best interests of the child and adolescent in order to ensure their overall development and their enjoyment of their rights and safeguards

Law for the Comprehensive Protection for Children and Adolescents, Article 12

At the time Teodora and María Teresa were sentenced, their children were three and six years old, respectively. Teodora's son visits her about once a year. María Teresa has seen her son only four times since she was imprisoned. Berta's son was 10 when she was sentenced and she did not see him for six months while she was in prison.

In addition to the fact that the three women should never have been tried, their treatment clearly begs the question: did the judiciary and the prosecution ensure that the best interests of the child were paramount when they called for and imposed such long sentences?

The reasons for which the children are unable to visit their mothers regularly are similar in many ways. The lack of economic resources and the distances involved are decisive factors. For example, it takes Teodora's mother and son three days to visit her in prison. This involves a significant amount of time and money, especially given that the child must be accompanied by an adult, which at least doubles the cost. María Teresa's family faces the same situation.

"I can't see my son. I hardly ever get visitors because of my mother-in-law's economic situation; we have limited means."

María Teresa, October 2015

RULE 26

Women prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all

reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.

Bangkok Rules, 2010

In addition, recent changes to the Prisons Law in El Salvador have caused confusion among relatives. It is not clear to the families what the new requirements entail. However, they have neither the time nor the money to obtain the additional documents required in order to enter the prison on visiting days. To date, there is no indication from the families that the state authorities have provided a detailed explanation of the changes to the law.

Although they cannot visit their mothers regularly, the children of Teodora, María Teresa and Berta cling to their memories. They look for ways to find out more about their mothers' situation and fight to maintain their relationships with them.

"He said to me once: 'Are you going to see my mum on Sunday morning?' 'Yes', I said. 'I've got a little card for her; will you take it to her?'" And he gave me a fistful of tiny pieces of paper and on each of them he'd written: 'Mum, I love you very much; I hope you get out'."

Berta's mother, Virginia, September 2015

"At first he used to cry, but as time went on he got used to it and, as he could hardly ever go to see her, he would ask me: 'Auntie, did you go to see my mum? How is she? Is she fat? Is she thin? Is she pretty?'"

Teodora's sister, Cecilia, September 2015

The importance of the family unit for society as a whole and for the harmonious development of children has been recognized by the principal international human rights instruments, such as the Convention on the Rights of the Child, the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and the International Convention on Economic, Social and Cultural Rights. This principle is also enshrined in the Constitution of El Salvador and the Law for the Comprehensive Protection of Children and Adolescents.

All children have the right to live in family and environmental circumstances which facilitate their comprehensive development; to this end they shall enjoy the protection of the State.

Constitution of El Salvador, Article 34

FAMILIES' TREATMENT BY PROSECUTORS AND MEDICAL STAFF

"Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system."

UN Guidelines on the Role of Prosecutors, 1990

"The prosecutor asked me what she [Berta] had done with the child, that she [Berta] had killed the child ... She wanted to see what I would say... I didn't have anything to tell her... I told her that I didn't know that she had been pregnant. It was as though they [the prosecutors] were blaming me, as though I knew something and had assisted her."

Berta's mother, Virginia, September 2015

According to documentation received by Amnesty International, the statement made by Berta's mother, Virginia, was classified in the court files as that of an "injured party". However, according to Virginia, she never accused her daughter. Instead, her only recollection of

interacting with the prosecutor is of being contacted, asked to describe what she knew - without a lawyer present - and then being asked to put her fingerprint on a document.

“When the prosecutor arrived [at the house], she seemed annoyed. She asked me if I had been involved in what had happened.”

Isabel, María Teresa’s mother-in-law, September 2015

At times members of the medical team in the hospital not only breached professional confidentiality, but went so far as to accuse the families of being accomplices in the alleged crimes. As a general rule, health professionals have no authority to interrogate either suspects or potential witnesses.

“At the hospital they asked me questions. They said: ‘Where has your daughter put the child?...Your daughter was pregnant and you knew it’. It was horrible to be accused like that...From the moment we arrived at the hospital all we got from the nurses were accusations.”

Berta’s mother, Virginia, September 2015

The “veiled” accusations directed at Virginia and Isabel caused them further stress and suffering. They had to endure accusatory questioning at a time when they were already trying to deal with the traumatic situation faced by their daughter and daughter-in-law.

THE PSYCHOLOGICAL, PHYSICAL AND EMOTIONAL CONSEQUENCES

“[T]he next of kin of the victims of violations of human rights may be, in turn, victims themselves. The Court considers that the right to the psychological and moral integrity of the victims ‘next of kin has been violated as a result of the additional suffering they have endured due to the specific circumstances of the violations committed against their beloved persons and to the subsequent actions or failure to act by the State officials regarding such facts”

Inter-American Court of Human Rights, *Case of Ximenes-Lopes vs Brazil*, 2006, para 156

At times women were detained without being given an opportunity to inform their families. For example, in Teodora’s case, her mother said that, far from receiving a call from her daughter or a state official, she heard about the detention from Teodora’s employer, who only gave her very limited information about where her daughter was being held and why. This caused her considerable distress and concern. Article 82 of the Salvadoran Code of Criminal Procedure states that the accused has the right to name the person or entity that should be informed of their apprehension and that those identified should be contacted with immediate effect. Similarly, Article 275 states that the police must contact the accused’s relatives or other named person immediately on arrest and inform them of the place where the accused will be detained.

“[W]hen the detainee is deprived of his liberty and before making his first statement before the authorities, the detainee must be informed of his right to establish contact with another person, for example, a next of kin [...] to inform this person that he has been taken into custody by the State. Notification to a next of kin or to a close relation is especially significant, for this person to know the whereabouts and the circumstances of the accused and to provide him with the appropriate assistance and protection.”

Inter-American Court of Human Rights, *Case of Tibi vs Ecuador*, 2004, para 112

Sometimes, relatives were not allowed to visit the women while they were detained in the police station following arrest. They were therefore unable to reassure themselves of the state of health of the women, who may well have needed medical care following their obstetric emergencies. This caused the families intense suffering and anxiety.

“I couldn’t see her. I could only bring her some food. They wouldn’t let me see her.”

María Teresa's mother-in-law, Isabel, September 2015

The experience has scarred the families and affected their health. Berta's mother Virginia described to Amnesty International how she relives her daughter's detention every night:

"When I go to sleep I can't use the covers, because back in those days, when she was in the holding cells, I would start to think that she was suffering from the cold and so I wouldn't cover myself, as though in that way I could experience her suffering. And now, I can't use the covers even when I'm cold, so I know I'm still affected by it. Now, the pillow feels like a stone to me...I'm not the person I used to be."

Berta's mother, Virginia, September 2015

PUSHING FAMILIES INTO POVERTY

"It's absolutely clear that the life and prospects of the family as a whole are affected, because, in most of these cases, the women were the main providers for these families ... The children are left with their grandmothers, who are living in intense poverty."

Rosalía Jovel, Deputy Human Rights Ombudsperson for the Rights of Women and the Family, October 2015

The wages that Teodora, María Teresa, and "Berta" earned were absolutely crucial to the family income and allowed them to provide for their children. Their detention sent the family finances spiralling into decline.

"I had to work to cover household expenses. I don't know how my mother-in-law is managing. I want to be with them and work to pay for the things my family needs."

María Teresa, October 2015

The detention of these women increases the risk that their families will be reduced to living in poverty. This harms the family's quality of life and creates obstacles to the family's ability to exercise their rights to education, to food, to adequate housing, and to health, among others.

"She [Teodora] was the one who paid for the school [for her son]; she gave me money for the house; pay from her job covered all our main needs. When she was sent there [to prison], I could see that I wouldn't be able to manage."

Teodora's mother, María, September 2015

In addition, during the trial and while the woman is serving her sentence, the family budget is reduced not only by the fact that their salaries are no longer coming in, but also by the additional costs linked to the arrest, the trial and the imprisonment.

Halfway through the criminal trial, the private lawyer hired by Teodora's family asked for more money. Teodora told Amnesty International: "But my parents didn't have any more money to give him; so instead he asked for a house, a car or a piece of land". The family was unable to pay more and so the lawyer dropped the case.

While the women are serving their sentences, the costs continue. The families, who live far from the prison, have to pay for public transport and other costs associated with visiting their loved ones.

"It costs us [going to the prison] because my husband no longer earns a salary.... Sometimes we barely have enough money to eat."

Teodora's mother, María, talking about prison visits, October 2015

3. THE SITUATION CAN CHANGE, EL SALVADOR MUST TAKE ACTION

It is unacceptable that the families of Teodora, María Teresa, “Berta” and of other women who have been unjustly imprisoned should suffer the consequences of prison sentences that are the result of human rights violations. From the testimony of their family members, we can clearly see how the criminalisation and imprisonment of these women creates a vicious cycle of impacts which does not limit itself to the lives of the women who have been incarcerated, but rather causes permanent damage to the rights and to the lives of their relatives as well

Therefore, Amnesty International continues to call on El Salvador to:

- Repeal laws that criminalize abortion and, at a minimum, guarantee access to abortion in cases where pregnancy poses a risk to the life or to the physical or mental health of the woman or girl, in cases where the foetus will be unable to survive outside the womb, and in cases where the pregnancy is the result of rape or incest. Such legal reforms would also have an impact on women criminalized and imprisoned for experiencing obstetric emergencies, including miscarriages.
- Immediately and unconditionally release all the women and girls imprisoned for having had an abortion or experiencing obstetric emergencies. In addition, urge the authorities to remove documentation of this from all criminal records and ensure that women and girls are given access to an appropriate remedy for the human rights violations they have suffered. The state should also ensure reparations for women who have been released after being accused of abortion or aggravated homicide.
- Ensure that doctors and health care providers fulfil their professional obligations to maintain confidentiality in cases where, while carrying out their duties, they discover that their patient has had an abortion, or where pregnancy-related complications give rise to a suspicion that this might be the case. Breaches of confidentiality regarding women seeking medical attention violate their rights to privacy and health.
- Ensure that all women have access to comprehensive sexual and reproductive health information and services, including modern and good quality contraception.
- Ensure that the rights of family members, relatives, and especially of the children of women sentenced to prison, are respected, and take steps to ensure reparations.

“The boy says that he’s going to go to work for her [Teodora], for when she is older. He says: ‘I’m going to build a house for my mum’. Even though he doesn’t see her, he still feels the love, the longing that one day she will be with him.”

Teodora’s mother, María, September 2015