

# Access denied

## Abortion rights in Latin America



Millions of Latin American women face serious barriers to their sexual and reproductive rights, and they suffer serious consequences as a result. Latin American countries maintain restrictive abortion laws in spite of social developments like economic growth, democratically elected governments, formal adoption of liberal constitutions and ideologies.

This brief explores the restrictions on abortion rights in Latin America. Challenging the belief that restrictive abortion laws is a consequence of traditions or religious beliefs, it argues that the causes are primarily political. Power alliances between democratic elected authorities and powerful conservative groups of the society – including both Catholic and Evangelical churches – play a main role in the restrictions on abortion, sexual and reproductive rights.

### **ABORTION IN LATIN AMERICA: PRACTICES AND ATTITUDES TOWARDS ABORTION**

In 2007 a 13 year old girl tried to commit suicide by jumping off a roof. She was pregnant. Her neighbor had sexually abused and raped her for years. Her country Peru would not grant her abortion. The abortion law in Peru does not allow abortion in the case of rape or incest, not even for young girls. She was seriously injured and brought to the hospital for medical treatment. The doctors refused to provide the required care because the operation could terminate the pregnancy. Even though the Peruvian law does allow therapeutic abortion

when the mother's life and health is in danger, the doctors viewed her case differently and she was denied abortion. Some months later, the girl had a spontaneous miscarriage. The corrective spinal surgery she now received was too late. She will be a quadriplegic for the rest of her life.

In most Latin American countries, access to legal abortion is highly restricted. But this does not mean that there are few abortions. The region has the highest unsafe abortion ratio in the world, with 31 unsafe abortions per 1,000 women between 15 and 44 years of age, and 39 unsafe abortions per 100 live births. In Costa Rica it is estimated that for every three complete pregnancies, there is one abortion. Chile, which has a total ban on abortions, has one of the highest rates of illegal abortions in Latin America. The legal restrictions, as well as social condemnation, force Latin American women to have illegal and unsafe abortions. This practice often ends up with serious consequences for the woman's health – or death.

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Of 1,100 maternal deaths in Latin America in 1998, 12 per cent were due to unsafe abortions (WHO, 2011). In the same year, about one million Latin American women were hospitalised for treatment of complications from unsafe abortions. Even Argentina, characterised by relatively high provision of state healthcare, abortion is the main cause of maternal deaths. In Peru, one of seven women who had an abortion is hospitalised for complications. In Brazil, statistics indicate that one in every five Brazilian women under the age of 40 had undergone at least one abortion, and of these, at least half of them were hospitalised for associated complications. In some countries, like El Salvador and Mexico, women are reported and imprisoned if they arrive at health care facilities seeking post abortion care. In some cases women have even been imprisoned after spontaneous miscarriages.

Those who suffer the most from restrictive abortion laws and policies tend to be the poor. While middle class women usually find ways to access safe abortions, the poor turn to abortions that are performed with dangerous methods or by unskilled practitioners. These often lead to health complications. Beside the pain and suffering, the treatment of such complications often has a high economic impact on poor families. Poor women suffering from complications from unsafe abortions, are also more likely to go to public health facilities for medical treatment, where are more exposed to be detected by the police or reported by health professionals, and then imprisoned.

#### **RESTRICTIVE ROLES ARE QUITE NEW IN SOME COUNTRIES**

An absolute ban on abortion has not been the norm in Latin America. The most restrictive laws currently in force were issued quite recently. In Chile, therapeutic abortion had been legal since 1931, but was abolished in 1989, towards the end of the dictatorship. The law has not been amended by the democratic governments. Nicaragua adopted a total ban on abortion in 2006. Previously, the 1891 Penal Code allowed therapeutic abortion to save the woman's life.

Similarly, in El Salvador, the 1973 Criminal Code authorized abortions for therapeutic or eugenic reasons and also in cases where the pregnancy resulted from rape. In 1997, the Salvadorian legislative Assembly modified the Criminal Code, withdrawing all grounds under which abortion was allowed, including the provision for saving the pregnant woman's life. A person who performs an abortion with the woman's consent, or a woman who self-induces or consents to someone else for inducing her abortion, can be imprisoned for two to eight years. El Salvador also amended its Constitution in January 1999 to recognize human life from the moment of conception.

Clauses recognising rights from the moment of conception has been introduced in several countries in the region in **new constitutions** or through **constitutional amendments** (see Box 1).

In some countries with restrictive abortion laws in place, new abortion rights have been gained. In October 2012, Uruguay approved a bill waiving criminal penalties for abortion in the first 12 weeks of gestation, and in the first 14 weeks of gestation in cases of rape.

In 2007, Mexico City legalised abortion on request to any woman up to 12 weeks into a pregnancy; in 2012 the Brazilian Supreme Court decided to decriminalise abortion in cases of anencephalic foetus; and the Argentine Supreme Court decided in 2012 to decriminalise abortion in case of rape. These are not minor changes. It can be argued that in the cases of Argentina and Brazil, the decisions only clarified a law that was already in place. However, they show developments towards the recognition of abortion rights. In Argentina, the amendment includes all women. In Brazil it clarifies the cases of anencephalic foetus. In Colombia, the decision from the Constitutional Court called for a major legislative change in a country that used to have highly restrictive abortion laws.

Even where there is a legal recognition of abortion rights, however, this does not guarantee women's access to abortion. In Colombia, where abortion is legal when there is a danger to the life and health of the mother, it is estimated that 99% of all abortions performed continue to be unsafe. In Peru where therapeutic abortions have been allowed since 1924, access is very restricted due to the lack of regulation, clinical guidelines, and information, both to health workers and to users. Attempts to develop clinical guidelines have been effectively stopped by the Catholic Church and conservative political leaders.

Another strategy from opponents of abortion rights have been to promote legislation to allow health workers conscientious objection. For example in Mexico City, since abortion in the first trimester was legalized in 2007, opponents

#### **BOX 1: CONSTITUTIONAL RECOGNITION OF HUMAN LIFE (WITH RIGHTS) FROM THE MOMENT OF CONCEPTION**

##### **Articles in new constitutions:**

Peru (1993), El Salvador (1999), Ecuador (2008), Dominican Republic (2009)

##### **Constitutional amendments:**

State constitutions of the Mexican states of Baja California (2008), Colima (2009), Chiapas (2009), Durango (2009), Guanajuato (2009) Jalisco (2009), Querétaro (2009), Morelos- (2008), Nayarit (2009), Oaxaca (2009), Puebla (2009), Quintana (2009), San Luis Potosí (2009) Sonora (2008), Tamaulipas (2010) Veracruz (2009), Sonora (2008) and Yucatán (2009)

have launched a campaign calling upon health workers to utilise conscientious objection. This strategy is not exclusive to Latin America. Appeals to the right to conscientious objection are also increasing in the United States, Europe (including Norway) and South Africa.

Public opinion is divided over abortion rights. According to the Latinobarometro (2013), in 16 out of the 25 countries surveyed, more than 50 percent of the population support abortion in cases where the health of the mother is in danger. This includes the three Latin American countries where there is a total abortion ban (Chile, El Salvador and Nicaragua). Context and religious background influence people's attitudes towards abortion: People living in countries where abortion is criminalised on all grounds, people with a Catholic or Evangelical identity, and people who say that religion is important in their lives, are less supportive of abortion rights. (Latinobarometro, 2013). However, religious women also have abortions. For example, according to the record on legal abortion in Mexico city, 82% of the women who had a legal abortion were Catholic.

#### **ABORTION RIGHTS RESISTANCE: FAITH BASED OR POLITICAL STRUGGLES**

The legal shifts described above should be understood in the context of the political debate in Latin America, where positions on abortion is perceived as crucial in mobilising votes, i.e. to decide elections. This also influences the strategies of ambitious women in politics. During their presidential campaigns, the current presidents of Brazil, Dilma Rousseff, and Costa Rica, Laura Chinchilla, were asked to take a stand on abortion. Both of them promised not to expand abortion rights in their countries.

Similarly, "progressive" or "left wing" leaders are not necessarily in favor of abortion rights. The decision of the left wing Uruguayan President José Mujica to sign a bill expanding abortion rights into law, stands in stark contrast to the position of other Latin American left-wing leaders. President Daniel Ortega supported the legislation that totally banned abortion in Nicaragua. In October 2013, Ecuador's President, Rafael Correa, threatened to resign if Parliament decriminalized abortion as part of the reform of the Criminal Code.

On the other side of the political spectrum, right-wing leaders such as Chile's President Sebastian Piñeira, and the Guatemalan President Otto Perez Molina have made their stand against abortion public.

While it is not possible to predict the position of Latin American leaders towards abortion based on their general political ideology, their stand on abortion makes sense in light of the alliances that they make to stay in power.

Latin America is strongly religious, with

a strong presence of the Catholic Church (about 40% of the world's Roman Catholics live in Latin America) as well as the rapidly growing Evangelical churches. In this context, Latin American political leaders often make alliances with religious groups characterised by traditional family values and absolute, inviolable religious principles. These conservative groups have traditionally been linked to the economic elites, which helps explain why they are liberal and market oriented in their economic policies but conservative on issues like sexual and reproductive rights.

Also leaders who once favored abortion rights, need to ally with conservative groups in order to stay in power. Hence the former president of Venezuela, Hugo Chavez, Ecuador's President Correa, and Nicaragua's President Ortega started portraying themselves as practicing Catholics, far from the image of left-wing leaders who confronted conservative church hierarchies during the 60', 70' and 80'.

Despite the "formal" division of church and state, religious hierarchies generate political pressure on elected officials, and those running for office. Clerics commonly issue public statements, using mass and other religious celebrations to expound upon their political opinions. In the case of Evangelical churches, several of their leaders are also politicians, including members of parliaments.

Conservative religious orders like the Catholic Opus Dei, have a strong influence in the region. In Peru, the Catholic Church hierarchy is dominated by members of the Opus Dei. In 2010, half of the country's bishops were members of Opus Dei, as was the leader of the Catholic Church in Peru, the cardinal of Lima, Juan Luis Cipriani. They have also controlled or influenced key cabinet positions. In Honduras in 2006, the Minister of Education, and a member of the Opus Dei successfully blocked the implementation of sexual education in Honduras. In Peru, the Ministry of Health was led by people close to the Opus Dei between 2001 and 2003. They developed a policy which reduced the support for contraceptives. The Colombian Attorney General, who is close to the conservative groups of the Catholic Church, has put barriers to the access to legal abortion and repeatedly sought to revoke the 2006 Constitutional Court ruling that significantly extended the right to abortion.

Religion is a resource for existential security for many people, and becomes a powerful tool for the religious hierarchy, especially in poor and unequal societies. Research have shown that the socio-economic development of societies play a major role in secularisation. Societies which do not provide their citizens with a minimal level of existential security, are also societies where religious values are strongest (Norris & Inglehart, 2004). Latin America continues to be a region with serious inequalities. Despite some major developments, millions of Latin Americans still live in poverty (approximately 28

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percent of the population live under the poverty line). This could help explain the relationship between religious authorities and elected governments and politicians.

The church has the power to provide existential security to those in need. This authority legitimises the political participation of religious leaders. Religious leaders represent trusted authorities which can be transferred from one sphere to another. Religious groups provide easy access to important sectors of the society, this access has always been always a valuable asset for politicians. In Honduras, where 66.5% of

the population live in poverty, and 90% of the population are believers, the role of the church played a prominent role in the 2013 presidential elections. They supported some candidates, and openly attacked candidates who advocated sexual and reproductive rights for women. This is not exceptional in the region.

#### CONCLUSIONS

There is a need to better understand the dynamics behind the legal battles over abortion rights in Latin America. As this brief has shown, religious traditions cannot fully explain the current situation, where some countries have highly – and increasingly – restrictive abortion laws while other countries have more flexible laws.

Scholars have noted the key role played by religious groups both at the national and the international level in promoting restriction of sexual and reproductive rights (Løkeland 2004, Reuterswård, Zetterberg et al. 2011, Richardson and Birn 2011, Finer and Fine 2013, Scanteam 2013). Research on religion and public policy have also described the role played by religiosity in the definition of public policy and how this can be more influential than the institutional separation of church and state (Inglehart and Baker 2000, Minkenbergh 2002). More research is needed to analyse the role played by religiosity in the legal battles for abortion rights. We need to understand when and how religion shapes legal mobilisation and public policies.

#### BOX 2: GLOSSARY

**Unsafe abortion:** Procedure for terminating an unwanted pregnancy either by persons lacking the necessary skills or in an environment lacking minimal medical standards or both. Unsafe abortions are a result of unmet need for family planning, contraceptive failure, a lack of information about contraception, and restricted access to safe abortion services.

**Therapeutic abortion:** Abortion induced when pregnancy constitutes a threat to the physical or mental health of the mother.

**Eugenic abortion:** Abortion induced when it is detected the fetus will be born with severe abnormalities.

**Illegal abortion:** An abortion performed contrary to the laws regulating abortion. Usually, illegal abortions are unsafe.