

12-1-2017

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Recommended Citation

Conaway, Janelle. "Abortion Rights Still Face Challenges in Several Latin American Countries." (2017).
<https://digitalrepository.unm.edu/notisur/14566>

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Abortion Rights Still Face Challenges in Several Latin American Countries

by Janelle Conaway

Category/Department: Region

Published: 2017-12-01

Women's rights advocates marked a major victory this year when Chile rolled back its all-out ban on abortion ([NotiSur, Sept. 15, 2017](#)), but they have little to celebrate in the rest of the region.

In Brazil, women took to the streets by the thousands on Nov. 13 to protest a potential setback to their rights: A congressional committee had approved a proposed constitutional amendment that would make all abortions illegal. Brazilian law bans abortion, but allows three exceptions—when the pregnancy is the result of rape, when the mother's life is in danger, or if the fetus has anencephaly, this last exception adopted in response to the Zika crisis ([NotiSur, Feb. 19, 2016](#), [March 11, 2016](#), [Aug. 5, 2016](#)).

While news reports indicate that the measure, now before Congress, would have to overcome several hurdles to become law, some organizations have expressed concern.

"We want Congress to guarantee more rights, not to remove them," Jurema Werneck, Brazil director of Amnesty International, told the Thomson Reuters Foundation.

"It's a dangerous initiative," Diana Moreno, a legal fellow for Latin America and the Caribbean for the Center for Reproductive Rights, told the Latin America Digital Beat (LADB) in a telephone interview from the organization's regional office in Bogotá. Even though rights groups would have grounds to challenge such a law in court, she said, its approval would send the wrong "symbolic" message.

With several governments taking a more conservative turn and religious "anti-rights" groups becoming more active on the legal front, Moreno said, the region is seeing more threats to sexual and reproductive rights.

"There's a political environment conducive to giving back the progress of the last two decades," she said.

That could conceivably include Chile. Although public opinion polls show strong support for the recently enacted law establishing exceptions to the abortion ban, former President Sebastián Piñera (2010-2014)—who won the first round of this year's presidential election on Nov. 19—has said that he would change the law if elected. The runoff election is scheduled for Dec. 17 ([NotiSur, Dec. 1, 2017](#)).

Abortion is a crime in most of the region—Uruguay and Cuba are among a handful of places where it's legal—but most countries allow it under specific circumstances. Six countries have absolute abortion bans: the Dominican Republic, El Salvador, Haiti, Honduras, Nicaragua, and Suriname.

The issue was under debate in Honduras earlier this year as part of a wider discussion on amending the country's criminal code, but attempts to establish exceptions to the abortion ban failed.

The Dominican Republic has been having a similar debate. In October, Cinthya Velasco, executive director of the women's organization Colectiva Mujer y Salud, urged legislators to reform the

abortion ban “to protect the life, the health, and the dignity of women and their families,” and stressed that the Dominican Republic remains one of the few outliers in the region on this subject ([NotiCen, Feb. 9, 2017](#)).

“We need a Criminal Code that continues to go down the path of progress to achieve the nation’s social development, as has been done in 86% of the countries of the region,” she told Noticias SIN.

Nicaragua enacted a total ban on abortion in 2006. On the website of a group seeking to restore legal exceptions (Grupo Estratégico por la Despenalización del Aborto Terapéutico), a running clock marks off the time since “therapeutic abortion” was made illegal—11 years and counting. A bill that would have established exceptions to the abortion ban failed last year.

“We’re going to keep knocking on doors,” said Nicaraguan psychologist and women’s rights activist María Eugenia Delgadillo, who helps coordinate the Asociación de Mujeres Axayacatl, based in the western Nicaraguan city of Masaya.

In a telephone interview, Delgadillo said her organization has worked to raise awareness about the severe impact an unwanted pregnancy can have on girls and teens who have been abused or raped. A video that it produced, which has aired on national TV and has been shown in some schools, features poignant personal stories of girls whose lives were upended by these types of situations (their identities are protected). Delgadillo hopes the video will help people “open their minds” to such girls’ plight.

As in many countries, Delgadillo said, the ban on abortion affects poor women the most, as those with means can leave the country if they need abortion services. “Those who are most at risk for their health are women with very few resources,” she said.

El Salvador has one of the region’s most strictly enforced anti-abortion laws ([NotiCen, May 18, 2017](#))—an issue the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, raised forcefully during a visit to the country in November.

“I am appalled that as a result of El Salvador’s absolute prohibition on abortion, women are being punished for apparent miscarriages and other obstetric emergencies, accused and convicted of having induced termination of pregnancy,” he said in a statement. Al Hussein visited women in a prison outside the capital of San Salvador who were serving 30-year sentences for obstetrics-related “aggravated homicide.”

“I have rarely been as moved as I was by their stories and the cruelty they have endured,” he said. “It only seems to be women from poor and humble backgrounds who are jailed, a telling feature of the injustice suffered.”

Al Hussein called on El Salvador to launch a moratorium on enforcing laws against abortion and review all detentions of women for abortion-related offenses to ensure that their cases met due process and the standards of a fair trial. He said he also reminded President Salvador Sánchez Cerén and the Legislative Assembly that the country “should comply with its international human rights obligations and lift the absolute prohibition on abortion.”

A recognition of rights

Sexual and reproductive rights have been gaining ground in international law for more than two decades, beginning with such events such as the International Conference on Population and

Development, held in Cairo in 1994, and the Fourth World Conference on Women, held in Beijing the following year.

Moreno, of the Center for Reproductive Rights, said that in the early years, UN agencies and other organizations focused on certain key issues—such as violence against women, birth control, teen pregnancy, and a woman’s right to decide on the number and spacing of her children—and tended not to address abortion rights explicitly. That has changed in the last few years within the UN system, she said, and very recently, the Inter-American Commission on Human Rights (IACHR) has come out with its first statements strongly supporting abortion rights.

In October, for example, the IACHR issued a press release that read in part: “The absolute criminalization of abortion, including in cases where the woman’s life is at risk and when the pregnancy results from a rape or incest, imposes a disproportionate burden on the exercise of women’s rights and creates a context that facilitates unsafe abortions and high rates of maternal mortality.” While a press release does not carry the weight of a decision on the merits of a case or a judgment by the Inter-American Court of Human Rights, Moreno said, it still sends an important signal at a time when anti-abortion groups have gained strength in the region.

“The lesson of Trump is clear for all of us in this regard,” she said. Moreno doesn’t blame the administration of US President Donald Trump for every conservative move against abortion in the region, but she is concerned about the effect of the so-called “Global Gag Rule” on women’s rights organizations in Latin America.

Shortly after taking office, Trump reinstated the rule—also called the “Mexico City Policy”—and expanded its reach. According to Human Rights Watch, the policy requires foreign nongovernmental organizations receiving aid from the US for health programs to certify that they do not use their own funds to provide abortion services, counsel patients about abortion or refer them for such services, or advocate for liberalized abortion laws.

“Women and girls have a human right—protected under international law—to make their own choices about whether and when to have children, and about how many children they have,” Human Rights Watch said. “Unintended pregnancies can affect a range of other rights, including by ending a girl’s education, contributing to child marriage, resulting in health complications, or putting a woman’s life at risk.”

The World Health Organization and the Guttmacher Institute released a study in September that found that the vast majority of unsafe abortions (97%) occur in developing countries in Africa, Asia, and Latin America. “Highly restrictive abortion laws are not associated with lower abortion rates,” the study concluded.

Of course, even in countries where women have a legal right to an abortion, it can sometimes be difficult to claim that right in practice. Witness the case of a pregnant, undocumented 17-year-old “Jane Doe” who was being held in immigrant detention in Texas in October. She wanted an abortion, but it took a month-long court battle by the American Civil Liberties Union for her to obtain it.

In many cases in Latin America, a woman who wants an abortion may encounter barriers even though she qualifies for the procedure under a legal exception, Moreno said. Women who live in rural areas, belong to minority ethnic groups, or have a disability tend to have little access to any

health services, much less abortion, Moreno said. Another example of an undue restriction: A health clinic that does not want to offer abortion services may tell a woman whose pregnancy results from rape that she first needs to prove there has been a legal conviction in the case—something that can take years and is not required by law.

Rights groups in the region have generally fought their battles around exceptions to abortion bans, because that was where they believed they could make progress, according to Moreno. The debate the region is generally not having, she said, is over a woman's right to make decisions about her own body and have reproductive autonomy.

"That discussion," she said, "is a long way off in Latin America."

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