The debate on abortion and Zika: lessons from the AIDS epidemic

O debate sobre aborto e Zika: lições da epidemia de AIDS

El debate sobre el aborto y Zika: lecciones de la epidemia del SIDA

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The Zika epidemic has brought renewed attention to (the lack of) abortion rights in Brazil. This current debate bears similarities with discussions regarding Rubella that took place in several countries in the mid-20th century. In Brazil, however, this debate never happened. At that time, abortion was not the focus of public debate, and this silence would remain well into the 1970s [1]. Nonetheless, there is one national parallel that is of interest to the current debate, and it concerns HIV.

Once the AIDS epidemic began, most developed countries had already legalized abortion. In Brazil, though, abortion was, and remains, largely illegal. In the early 1990s, the growing number of women who were HIV-positive, coupled with a lack of effective treatments for AIDS, raised the issue of whether or not these women should be allowed to have abortions. This exception was never added to the legislation and the subsequent development of treatments that not only made AIDS manageable, but also reduced the likelihood of vertical transmission, rendered the discussion moot. Still, when contrasting both discussions, we can better understand the paths the abortion debate has followed in Brazil and better position ourselves within it.

The first notable difference between the two debates concerns the leading actors in Congress. In the early 1990s, all three law proposals that discussed HIV and abortion sought to expand access to abortion rights in Brazil. Two – *PL 2,023/1991* and *PL 3,005/1992* – sought exclusively to make abortion legal for women who were HIV-positive, while the third – *PL 1,174/1991* – sought to make abortion legal in cases of "*severe and hereditary illness*", among which the authors included AIDS. Cut to 2016, when the only law proposal concerning abortion and Zika – *PL 4,396/2016* – seeks to increase jail time for abortions carried out "*due to microcephaly or other fetal anomaly*".

This change reflects a broader dynamic in Congress. As Brazil returned to democracy, most law proposals seeking to change abortion laws were pro-choice. In the past 20 years, this situation was reversed [2], especially due to the increasingly larger numbers of evangelical Christian representatives. If pro-choice advocates were never successful in passing legislation, they nonetheless were able to block further restrictions to abortion rights, and used their proposals as a way to help set the terms for the abortion debate. The current legislature leaves very little room for that. Any path that requires changing the legislation will first require considerable mobilization to elect more progressive politicians to the House of Representatives and the Senate.

The second major difference concerns the reach of the public debate. A search through the archives of four major Brazilian newspapers – *Jornal do Brasil*, *O Globo*, *O Estado de S. Paulo* and *Folha de S. Paulo* – between 1989 and 1999 turned up only one story on abortion rights for women who were HIV-positive [3]. Even a cur-

sory search through any search engine turns up articles on abortion and Zika from every major national news organization, as well as several international publications. Clearly, far more people are now paying attention, and this is not necessarily good news.

Htun [4] argues that initial abortion reforms in the 1940s in Brazil were carried out "*through reasoned deliberation among elites*" and that the public "*was hardly involved*" (p. 145). Even the feminist movement was not involved with the issue at the time [5]. After feminists began mobilizing for the right to have an abortion in the late 1970s, they nonetheless had far more success acting within a more technical and restricted setting, namely, government health bodies at the local and federal levels.

Feminists, activists from the Health Reform movement and professional medical associations successfully joined together to push for the creation of legal abortion services in Brazil, first in the city of São Paulo, then at the national level [6]. In the first case, an ordinance issued by then-mayor Luiza Erundina established the services. In the second, the Brazilian Ministry of Health issued a technical norm establishing guidelines for treating victims of sexual violence, leading to the establishment of legal abortion services in most states. More recently, the Brazilian Supreme Court ruled to include anencephaly among the exceptions to the law that prohibits abortion. None of these involve mass public participation, nor can they be deemed especially democratic forums for decision-making.

Once abortion did become a topic for broader discussion, it was mostly as a result of conservative groups' actions. Conservative politicians, especially those with connections to the catholic and evangelical Christian churches, have increasingly made abortion a focus of their legislative work [7]. Abortion was a central issue in the 2010 presidential election, and many believe then-candidate Dilma Rousseff's earlier support for legalization harmed her campaign. Abortion was likely not as important in the 2014 election only because all major candidates made their opposition to its legalization known even before the campaign began.

If anything, Brazilians can be counted upon to make it more difficult, not less, for women to have safe, legal abortions: most Brazilians are opposed to making abortion legal and a slightly smaller majority oppose the right to abortion when the fetus has microcephaly [8]. How to change this is something pro-choice advocates have struggled with for many years. Gaining public support will only become more important, as an increasingly conservative Congress risks closing doors even to those parts of government that were previously more receptive to legalizing abortion. After all, Brazilian Presidents have to form broad coalitions in order to govern [9], which can require concessions to the more conservative groups in Congress.

The last major difference between the two debates is the issue of judicialization. In her book on reproductive rights in Brazil [10], Miriam Ventura writes that she found no judicial decisions concerning AIDS and reproductive health. This stands in contrast with the increasing number of women who turned to the courts so they could legally terminated pregnancies of anencephalic fetuses from the early 2000s onward. This culminated in the 2004 *Ação de Descumprimento de Preceito Fundamental* (ADPF) that successfully argued for the inclusion of anencephaly among the exceptions to the abortion law. In 2012, the Brazilian Supreme Court decided in favor of the ADPF, ruling that, since anencephalic fetuses cannot survive after birth, no life is terminated as a result of an abortion, and no crime exists. Further, forcing women to carry a pregnancy to term only to watch their child die mere hours or days later is a violation of their right not to be tortured [11].

This trend toward judicialization is also present for Zika. The same group that filed the anencephaly ADPF (Anis – Instituto de Bioética) is already preparing a new ADPF, this time to guarantee the right to have an abortion for cases of microcephaly [12]. The previous ruling is by no means a guarantee that they will be successful. There is a fundamental difference between anencephaly and microcephaly, one that Anis director Debora Diniz acknowledges: anencephalic fetuses are incapable of surviving birth, while children with microcephaly survive in most cases. These children will also have severe disabilities, which raises concerns about eugenic abortions. Even if the Supreme Court eventually rules in favor of women's right to abortion in these circumstances, it is a safe bet they will take a long time to arrive at their decision.

On this, the parallel with the HIV debate is helpful, not because of differences, but because of similarities. Babies with HIV were also expected to survive birth, even before anti-retroviral treatments were widely available. Concerns were also raised regarding eugenic abortions and because of the possibility that abortion would become not an option, but a requirement for women who were HIV-positive due to stigma and social pressure [10]. Though zika does not carry the same stigma as AIDS, women who carry a microcephalic fetus are nonetheless caught between competing social pressures. While they are legally required

to carry the pregnancy to term, their partners in many cases simply leave, and they must face the challenges of raising a child with severe disabilities on their own. This must be taken into account when fighting for their right to choose.

Ultimately, this focus – the right to choose, rather than the right to have an abortion – must be the goal of any mobilization. The difference may seem subtle; it is not. As Ferree [13] notes, in the United States, abortion rights were won based on a right to privacy that severely limited the State's obligation to pay for abortions or to support poor mothers' child rearing. By disconnecting the fight for abortion rights from the social circumstances in which women become pregnant, terminate pregnancies and raise their children, American feminists have, in a sense, "abandoned" poor women and women of color, who are "*disproportionately among the women who do not feel that they have a choice to bear a child and who may feel instead compelled and coerced into sterilization, adoption, or abortion*" [13] (p. 336). This is particularly relevant for babies with microcephaly caused by Zika, who will require extensive medical care and support and whose mothers are disproportionately likely to be poor. The right to choose must then be both the legal right to terminate the pregnancy, including access to safe, public abortion services, and the right to carry the pregnancy to term, with full social support. Pro-choice advocates must join disability advocates in guaranteeing that these children and their mothers have access to all services they need. Anis has signaled this will be part of the microcephaly ADPF, but we cannot leave this issue to be decided by the courts. Though facing a broader political crisis, we must commit to a broad, public debate on abortion, one that can finally swing public opinion and legislators' views toward the right to choose.

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