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Challenges and opportunities for access to legal and safe abortion in Latin America based on the scenarios in Brazil, Argentina, and Uruguay

Desafios e oportunidades para o acesso ao aborto legal e seguro na América Latina a partir dos cenários do Brasil, da Argentina e do Uruguai

Desafíos y oportunidades para el acceso al aborto legal y seguro en Latinoamérica a partir de los escenarios de Brasil, Argentina y Uruguay

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Introduction

The issue of decriminalization and legalization of abortion sparks controversies of a moral, religious, philosophical, and legal order. Regardless of individual positions, it is the State's duty to guarantee public policies and laws for all women, without discrimination, for them to have the capacity to decide if, when, how often, and with whom they want to have children. States have the duty to prevent avoidable deaths and sequelae from unsafe abortions. Restrictive abortion laws violate the human rights of women and adolescents, including the right to life, the right to physical and psychological integrity, the right to sexual and reproductive health, the right to equality and nondiscrimination, the right to be free of torture and inhumane and degrading treatment, and the right to live a life free of violence, among other rights [1].

Due to restrictive laws and policies, every year in the world, approximately 22 million women risk their lives through unsafe abortion procedures, and 47,000 women die from this avoidable cause [2]. Some 25% of the world population lives in countries with restrictive abortion laws [3]. Women with the greatest risk of death and sequelae from unsafe abortions are young, indigenous, and black and living in poor urban or rural areas with less access to formal education and less information on sexual and reproductive health and contraceptive methods, besides being more exposed to abusive relationships and/or to being victims of sexual violence [4].

Latin America is the region of the world with the most restrictive laws and the most induced abortions, most of which in unsafe conditions [5]. In countries where access to legal abortion is limited, women turn to unsafe abortion [6], with devastating consequences for their health, lives, and families. Only three countries in the region have laws favorable to legal termination of pregnancy at the woman's request (Cuba, Guyana, and Uruguay), while four countries totally criminalize abortion (El Salvador, Honduras, Nicaragua, and the Dominican Republic) [7]. An important aspect in the Latin American scenario is the growing number of women criminally indicted for abortion. Most of these women are reported to authorities by health professionals when they turn to healthcare services for treatment of obstetric complications [8].

The agencies for monitoring and overseeing compliance with international human rights treaties have developed a growing interpretation that acknowledges human rights related to sexual and reproductive autonomy. On several occasions, the Committees have recommended that countries revise

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their restrictive criminal laws that disproportionally affect the right to life and the right to health for more vulnerable groups of women [9]. Nevertheless, the path to conquering reproductive rights for all women is long and hard. We will now discuss three scenarios on processes to reform abortion laws in Brazil, Argentina, and Uruguay that demonstrate the mismatch between Latin American countries in relation to the recognition and guarantee of reproductive rights.

Threats to rights won in Brazil

In Brazil, the criminalization of abortion hampers knowledge on the problem's real magnitude, since the practice is clandestine and data are thus underreported. The most recent estimated data are from the *National Survey on Abortion* in 2016, indicating that one out of five Brazilian women have undergone an abortion by age 40 [10]. Abortion is now the fourth cause of avoidable maternal death in Brazil, next to pregnancy-induced hypertension, hemorrhage, and infecctions [11].

The main victims of clandestine abortion are women with the greatest social vulnerability, affected by limited coverage of services, low quality of care, and more exposure to institutional racism and sexism [12].

There are currently three situations in which abortion is not punishable in Brazil: risk to the woman's life, rape, and fetal anencephaly [13]. However, even in these three situations allowed by law, women's access to legal abortion is still precarious [14]. Studies on the issue showed that the referral services are in different stages of implementation. According to the data, the procedure is not performed due to systematic refusal by physicians, who doubt the victim's word. Systematic refusal by health professionals to treat women who are victims of sexual violence in these cases runs counter to official Ministry of Health guidelines [15].

In the Legislative area, recent years have witnessed an increase in the number of bills aiming to deny women's access to abortion, under the argument of the absolute right to life for embryos and fetuses starting at conception. For example, *Congressional Amendment n. 29* of 2015 proposes to alter Article 5 of the *Brazilian National Constitution* to include the inviolability of the right to life starting at conception [16].

In the opposite direction, jurisprudence in the Brazilian Supreme Court has tended to acknowledge women's reproductive rights [17]. With the more favorable scenario in the Judiciary Branch vis-à-vis acknowledgment of reproductive autonomy, on March 8, 2017, the Party for Socialism and Freedom (PSOL) filed the *Argument on Noncompliance with Fundamental Principle 442* (ADPF 442), claiming the unconstitutionality of articles 124 and 126 of Brazil's *Criminal Code*.

The green wave and social mobilization in Argentina

Unsafe abortions have been the leading cause of avoidable maternal death in Argentina since 1980 [18]. Since 1921, according to article 86 of the *Criminal Code*, and based on a Supreme Court (STJN) ruling in 2012 in the case known as "F.A.L.", abortion is legal under the following circumstances: risk to the pregnant person's life; risk to the pregnant person's physical, emotional, and social well-being; or rape. The same ruling urges the provincial governments to provide the necessary conditions for rapid, accessible, and safe legal terminations of pregnancy [19]. Even so, there are frequent situations involving denial to provide healthcare services, even in cases that meet the legal requirements.

Following several previous unsuccessful attempts, the bill on voluntary termination of pregnancy was submitted again in 2018, when it passed in the Chamber of Deputies and was rejected in the Senate [20]. The bill proposed a more advanced law, with legal timeframes and conditions, allowing abortion in the first 14 weeks of pregnancy for women and persons with the capacity to carry a pregnancy and, in specific cases, danger to the pregnant person's life or health, sexual violence, or extrauterine fetal unviability. The ruling by the Inter-American Court of Human Rights in Artavia Murillo vs. Costa Rica was cited as emblematic for the recognition of reproductive rights and the right to access health services for women and couples in the region [21].

The case was submitted to the Inter-American Court of Human Rights in 2011 by nine infertile couples from Costa Rica, through the Inter-American Commission on Human Rights (IACHR), arguing that by declaring in vitro fertilization unconstitutional in 2000, the government of Costa Rica had denied infertile couples the alternative means to have the children they wanted, resulting in a violation of their rights to the protection of private and family life. The Court examined the the decision established that legal protection of life in gestations is gradual. The approach defending embryo's absolute right to life violates the human rights to reproductive life, health, liberty, and autonomy, to equality and non- discrimination, and to women's sexual and reproductive self-determination.

Challenges for access to legal and safe abortion in Uruguay

Uruguay was a pioneer in the implementation of a risk- and harm-reduction model for the prevention of unsafe abortion in public health services, achieving an important reduction in maternal mortality rates from unsafe abortion [22].

On October 22, 2012, the country enacted *Law n. 18,987* on *Voluntary Termination of Pregnancy*. The law authorizes abortion at the woman's request up to 12 weeks of pregnancy, up to 14 weeks in case of rape, and with no time limit if the woman's health is at risk or in case of malformations incompatible with life [23].

The law includes some stages that can act as barriers for women seeking abortion. First, the woman must communicate her intent to terminate the pregnancy to a health professional. Next, she must seek pre-abortion counseling from a three-person interdisciplinary team (physician, social worker, mental health professional), followed by a mandatory five-day period of reflection preceding the procedure. The third appointment must be with the gynecologist that will perform the surgical procedure or prescribe the medication for the medical abortion. A fourth appointment is also required for post-abortion follow-up and contraceptive counseling [24].

Despite obvious progress with the new law, there are still obstacles to full access to termination of pregnancy for women in Uruguay [25]. One limitation to access to abortion has been the number of health professionals that refuse to perform the procedure, claiming conscientious objection, considered a barrier and representing 50% of the staff at a primary care service in the capital city, Montevideo [26].

Conclusions

The Latin American countries with the most restrictive abortion laws show high induced abortion rates among childbearing-age women, as well as deaths and sequelae from unsafe abortions, as in Brazil and Argentina. On the other hand, countries that have legalized women's autonomy to decide on their pregnancies have faced challenges, as in Uruguay. Women's access to abortion procedures is hindered by various factors: lack of services in sufficient number and persistent social stigma, interfering in the quality of care and in the attitude by health professionals who refuse to provide the care or who report women who come to health services while in process of abortion [27].

The experiences with legal reforms to expand access to safe abortion have increased, despite the growth of political sectors contrary to liberalization. More studies are needed to understand the different scenarios and to help develop technical and scientific arguments to deepen the debate with the moral and religious rhetoric.

Additional information

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