



Abortion and
Reproductive Rights
in Latin America:
**IMPLICATIONS
FOR DEMOCRACY**

MARCH 2015

FOREWORD

We are pleased to present this report on women's reproductive rights in Latin America. In recent decades, women throughout the region have made tremendous strides towards securing equal rights in almost every sphere. Yet a number of challenges remain. Lack of access to reproductive health services, comprehensive sexuality education, and contraception prevent women from fully enjoying their rights as citizens.

Latin American countries have some of the most restrictive reproductive health laws and policies in the world, particularly with regard to abortion. In part this stems from not recognizing reproductive freedom as a fundamental human right. However, imposing legal restrictions on abortion does not reduce the likelihood that women will seek this reproductive health service. Instead, harsh laws compel women to risk their lives and health by seeking out unsafe abortions. In fact, Latin America has the highest proportional number of maternal deaths as a result of unsafe abortions in the world. An estimated 2,000 Latin American women die every year from unsafe abortions. To be sure, there has been increased pressure to liberalize abortion laws and align them with international human rights obligations. Still, some countries in the region have taken steps to criminalize abortion under all circumstances.

Against this backdrop, on June 10, 2014, the Center for Reproductive Rights and the Inter-American Dialogue organized a symposium to focus the Washington policy community's attention on the state of reproductive rights in Latin America. We wanted to bring to light both the troubling consequences of restrictive abortion laws and policies for the lives and human rights of Latin American women as well as the forces promoting more progressive laws in some countries. We also sought to explore the implications of this critical issue for democracy, social equity, and access to justice.


The event featured discussion comparing abortion laws in four different countries, from the most restrictive to the most liberal—El Salvador, Chile, Mexico, and Uruguay. Chilean Congressman Vlado Mirosevic Verdugo and Morena Herrera, president of the Citizen's Group for the Decriminalization of Therapeutic, Ethical and Eugenic Abortion in El Salvador, discussed the health and human rights consequences of total abortion bans in their respective countries. Mexican political scientist Denise Dresser and Uruguayan vice Minister of Health

Leonel Briozzo, a physician, assessed the effects of abortion liberalization on democracy and social equity in their countries.

Harvard professor Jocelyn Viterna discussed how abortion bans not only negatively affect reproductive health, but also how they criminalize women seeking essential reproductive care. Advisor for Catholics for the Right to Decide's Julian Cruzalta of Mexico, Chilean family law and international human rights attorney Macarena Sáez of American University's Washington College of Law, and O'Neill Institute for National and Global Health Law Director Oscar Cabrera closed the symposium by analyzing the implications of liberalizing or tightening abortion bans on women's civil rights and health.

We very much hope this report, which contains rich analysis and thoughtful recommendations offered by symposium panelists and participants, will improve understanding of the crucial connections among reproductive rights, democracy, and citizenship in Latin America. We regard this report as part of a continuing effort to make sure the region's governments adhere to international norms and standards as they relate to women's rights.

Sincerely,



Nancy Northup
President & CEO
Center for Reproductive Rights



Michael Shifter
President
Inter-American Dialogue

ABORTION AND REPRODUCTIVE RIGHTS IN LATIN AMERICA: IMPLICATIONS FOR DEMOCRACY

Some Latin American states have failed to recognize reproductive rights as human rights, leaving the region with some of the most restrictive abortion laws in the world, according to experts who gathered to deliberate the implications at an event organized by the Inter-American Dialogue and the Center for Reproductive Rights in Washington, DC.

The “Symposium on Reproductive Rights in Latin America” brought together nearly 100 representatives from governments, nonprofits, universities, human rights organizations, and church groups to discuss the region’s laws and national policies governing access to contraception and abortion. Panelists at the June 10, 2014 symposium discussed how those laws impact public health, autonomy, and the right to life and health of women, as well as why policies vary so dramatically from country to country.

Inter-American Dialogue president Michael Shifter said restrictions on reproductive rights have raised “concerns about democracy, justice, and equal access in the region.”

“The ability to make decisions over our reproductive rights is essential,” added Nancy Northup, president and CEO of the Center for Reproductive Rights. She further argued that laws in many Latin American countries infringe on a number of human rights guarantees, including the right to privacy and the right to due process.



Michael Shifter
Nancy Northup



Morena Herrera

The State Of The Region

Within Latin America, only Cuba, Uruguay, and Mexico City allow abortion without restriction as to reason in the first twelve weeks of pregnancy. Other countries in the region permit the procedure only if the woman's life is in danger or, in some countries, if her physical or mental health is compromised, if she is a victim of rape or incest, or in cases of fetal impairment. According to the Guttmacher Institute, 95 percent of the 4.4 million abortions performed in the region in 2008 were unsafe. Every year, one million women require hospital treatment as a result of unsafe abortions. Unsafe abortion accounts for 12 percent of maternal deaths in the region.¹

The symposium opened with a panel that reviewed the cases of El Salvador and Chile, countries that ban abortion in all circumstances.

El Salvador

Morena Herrera, president of El Salvador's Citizen Group for the Decriminalization of Therapeutic, Ethical and Eugenic Abortion and member of Feminist Collective (Agrupación ciudadana por la despenalización del aborto terapéutico, ético y eugenésico, Colectiva Feminista), said that her country's 1998 ban on abortion stems from the penal code enacted after the Salvadoran civil war ended.

Herrera argued that the law carries "enormous consequences for women's health and ... democracy," as exemplified in the case of "Beatriz," a 22-year old pregnant woman suffering from kidney disease and lupus. Her story drew international headlines in 2013 when El Salvador's Supreme Court ruled that she could not have the abortion doctors believed necessary to save her life.

In response to this ruling, the Inter-American Court of Human Rights, through provisional measures, ordered El Salvador to protect Beatriz's right to life, personal integrity, and health, including mental health. The Court ordered the State to adopt all the necessary measures so that doctors, without interference from the authorities, could perform all necessary medical treatment to protect Beatriz's rights. Immediately following the Court's decision, Beatriz underwent an emergency cesarean. She was five months pregnant, and the premature baby did not survive.

Herrera noted that an investigation conducted by her organization and the Center for Reproductive Rights found that El Salvador's ban on abortion most seriously affects young, poor, and uneducated women. Moreover, she added, her organization has documented the cases of 40

¹ Guttmacher Institute, *Facts on Abortion in Latin America and the Caribbean, In Brief*, January 2012, http://www.guttmacher.org/pubs/IB_AWW-Latin-America.pdf.

teenagers who have faced abortion-related criminal charges.

“In the last eight years, at least 70 women have committed suicide because they were pregnant, most of them adolescents,” Herrera noted. She added that fourteen other women who died from ectopic pregnancies or other medical complications “might have survived if the pregnancy had been interrupted.”

There are no reliable statistics on abortions in El Salvador because of the illegality of the procedure, but Herrera stated that PAHO (Pan-American Health Organization) estimates approximately 35,000 clandestine procedures take place in the country annually.

El Salvador distinguishes itself from its neighbors by the extraordinarily harsh criminal penalties it levies in abortion-related cases. Under the current law, in place since 1998, the punishment for an individual who performs an abortion with a pregnant woman’s consent, or for a self-induced abortion, is up to eight years in prison. Rather than using that law, however, Salvadoran authorities frequently prosecute women for aggravated assault, and even homicide, a crime that has incurred sentences of up to 40 years of prison.

At the time of the symposium, at least nineteen Salvadoran women were serving prison sentences of 30 to 40 years on abortion-related charges. Some of these women suffered miscarriages and did not intentionally terminate their pregnancies, but did not have access to the forensic resources to prove it.

Herrera explained that hospital employees, including non-medical personnel, are under pressure to report suspected abortions to the authorities to avoid being charged as accomplices. Half of all abortion



Vlado Mirosevic Verdugo

accusations begin in public hospitals, and evidence is often unscientific or speculative.

Herrera underscored that the criminalization of abortion equates to social injustice, as it is clearly geared towards the most vulnerable women. The cases of Manuela² and Beatriz are examples of a systematic pattern of state prosecution of women.

Chile

Chilean Congressman **Vlado Mirosevic Verdugo**, from the Liberal Party, predicted that public pressure will force a loosening of the anti-abortion law in his country.

He explained that therapeutic abortion—to save the life of a pregnant woman—was legal in Chile from 1931 until 1989, when the Pinochet regime altered the constitution. The Catholic Church clearly influenced provisions of the new constitution. “They not only withdrew the therapeutic abortion exception, they penalized the procedure—for both doctors and pregnant women, even if the woman’s life is in danger,” Mirosevic said.

² For a description of the Manuela case, please see paragraph 4 under “A broader view on the region” on page 4.

“My country changed, but the political class—and the law—didn’t. The legislation is always very far behind the public’s desires.”

—Vlado Mirosevic Verdugo,
Congress of Chile

Subsequent democratic governments in Chile took no steps to address the issue, and an estimated 60,000 to 70,000³ clandestine abortions now take place in the country annually.

Mirosevic characterized Chile’s abortion ban as part of a larger “violation of human rights that is supported by legislation that openly interferes with personal freedom.” He noted that divorce has been legal in his country for only a decade, and that both civil unions for gay couples⁴ and euthanasia remain illegal. Mirosevic added: “There are thousands of people marching to liberalize laws. And there has been a new agenda on reproductive rights and individual freedoms put forward.”

Similar to their counterparts in Uruguay, many Chileans now frame the reproductive rights issue in their country as a public health concern rather than a morality issue, Mirosevic noted. Furthermore, the recent election weakened the conservative bloc so that it no longer has the number of votes necessary to veto legislation. “[President] Michelle Bachelet has said she will legalize abortion under three circumstances: when there is a threat to a woman’s life, when the pregnancy is not viable, and in the case of rape,” the lawmaker said. “Legislation will be introduced this year and there seems to be a majority in favor.”

A Broader View On The Region

Lilian Sepúlveda, director of the Global Legal Program at the Center for Reproductive Rights, served as commentator during the first symposium panel. She asserted that proponents of social justice and democracy in Latin America have failed to be sufficiently forceful when making the case against restrictive abortion laws.

Sepúlveda also provided background about the devastating human rights and public health effects that absolute bans on abortion have had in the region. Later, when commenting on the speakers’ presentations, Sepúlveda highlighted the important role that litigation and advocacy concerning human rights have played in advancing reproductive rights.

Herrera stated that media coverage in El Salvador is disproportionately anti-abortion. Salvadoran Catholics who favor legalizing abortion lack the clout to effect change, and legislators fear the backlash that could result from legalizing abortion. Although Beatriz’s case sparked debate in schools, hospitals, clinics, and on the street, Herrera argued, it also provoked strong pushback from the Catholic Church, which used its Sunday sermons to condemn pro-choice advocates.

Herrera also referenced the case of *Manuela v. El Salvador*, which she filed along with the Center before the Inter-American Commission on Human Rights. Manuela was a 33-year-old Salvadoran mother of two who was convicted of murder and sentenced to 30 years in prison after suffering severe complications giving birth. She was sentenced without ever having a chance to meet with her lawyer, without an opportunity to speak in her own defense, and without the right to appeal the decision.

³ A resolution from the United Nations Human Rights Committee, published on July 24, 2014, estimated about 150,000 abortions a year.

⁴ On January 28, 2015, Chile’s legislature approved the Acuerdo de Unión Civil (AUC), a bill allowing civil unions for same-sex couples. Though not signed as of publication, President Bachelet promised to pass the AUC during her latest presidential campaign.

While in prison, Manuela was diagnosed with advanced Hodgkin's lymphoma, a condition which could have been caught earlier had the medical personnel treating her during her obstetric emergency noticed the condition. She died in prison less than one year after her miscarriage. Herrera explained that Manuela is representative of the Salvadoran woman who is most likely to be a victim of the criminalization of abortion: she lived in a rural area, had no formal education, and was unable to access adequate healthcare. Herrera characterized Manuela's story as one example of El Salvador's widespread institutional violence against women.

In Chile, Mirosevic explained, the public, not the legislature, is pushing for change. "My country changed, but the political class—and the law—didn't. The legislation is always very far behind the public's desires."

Trending Toward Greater Freedom

If Chile eases restrictions on abortion, it will follow a path similar to other countries and jurisdictions in Latin America. Acknowledging the emergence of new efforts to lift or loosen restrictions on reproductive rights, the symposium's second panel discussed two places where lawmakers have liberalized such laws: Mexico City and Uruguay.

Since 2007, first trimester abortion has been legal in Mexico City, although the procedure remains illegal elsewhere in the country. **Denise Dresser**, a professor at the Instituto Tecnológico Autónomo de México, said the shift resulted from a "more liberal and tolerant" atmosphere in Mexico City coupled with pro-choice activists and lawmakers engaging in new strategies.

In light of Mexico's maternal mortality rate, which ranked among the



Denise Dresser

highest in the world, pro-choice forces successfully reframed the debate as one of health, not morality.

"This was not a political theme. Advocates tried to move away from an 'abortion: yes or no' theme to a focus on who decides about abortion," Dresser said. "Feminists began to link with other sectors of society and they earned great symbolic capital." Abortion advocates also drummed up support from well-known Mexicans, including author Octavio Paz. The historically close 2006 presidential election, meanwhile, afforded women's votes greater significance.

Mexico City lawmakers supporting a woman's right to choose voted in a coalition so that opponents would not blame their political parties. Constant media coverage also helped the reformers, said Dresser, who writes a column for *Reforma* newspaper.

Although the strategy proved successful, the Catholic Church and communities outside Mexico City pushed back. Some states responded by enacting abortion laws that are stricter than before.

“In the world, Uruguay has one of the lowest abortion rates. If you are really against abortion, you need to fight against the criminalization of it.”

—*Leonel Briozzo,
Ministry of Health of Uruguay*

“They started to punish women where they hadn’t punished them before,” Dresser explained. “The counterattack wasn’t because the women exercised their rights but because they sought the right to exercise their rights.”

Women with economic resources can still travel to Mexico City to terminate pregnancies, but poor and indigenous women are disproportionately denied access, increasing the likelihood that they will undergo unregulated, unsafe abortions.

“We are an incomplete democracy for many women,” Dresser said. “We want to build a real republic where men have their rights and nothing more, and women have their rights and nothing less.”

Uruguay’s Deputy Health Minister **Leonel Briozzo** noted that the decriminalization of abortion in his country coincided with progressive policies on other social issues. The abortion debate, he said, shifted from focusing on women’s rights and the rights of the fetus to emphasizing public health.

“Maternal mortality worldwide was 13 percent, in Latin America it was 21 percent, and in Uruguay it was 29 percent,” Briozzo said. “Or, if you looked just at public hospitals, it was 48 percent.”

“These women died as a result of illegal abortions. They died because they were outside the health system. They died due to poverty, and they died because they had low levels of education,” he asserted.

Moreover, Briozzo argued, the most effective approach to decriminalizing abortion and ensuring women their reproductive rights is to frame these concepts within the context of the right to health. “The health covenant includes the right to health,” he explained. “We need to look at abortion from a public health perspective.”

In 2007, Uruguay reformed its health care system and became the first Latin American country to offer a comprehensive and equal health care plan for the entire population. The plan explicitly describes the medical services guaranteed to Uruguayans. Briozzo emphasized that the Uruguayan government provides easily accessible information and counseling around family planning, with the ultimate goal of reducing the number of abortions.

“In the world, Uruguay has one of the lowest abortion rates,” Briozzo said. “If you are really against abortion, you need to fight against the criminalization of it.”

Since the law was liberalized in 2012, Uruguay now has the third-lowest maternal death rate in the Americas after Canada and the United States. Following the change in law, 6,676 abortions were performed; no women died as a result of the procedure, and only two experienced complications. Nine out of ten Uruguayan women who undergo medical abortions terminate their pregnancies through the use of self-administered pharmaceutical drugs such as misoprostol.

Briozzo emphasized that authorities have referred to the new law as “pro-life” because it both saves women’s lives and benefits the children whose mothers are no longer forced to undergo risky illegal abortions. “The model [for the law] acknowledges that a woman has autonomy to make the best decisions about her life,” Briozzo added.

Jocelyn Viterna, associate professor of sociology and of social studies at Harvard University, moderated the second panel, and argued that several factors have influenced how different countries and populations in the region view abortion. In particular, she cited ideology and the influence of the Catholic Church and various organizations. Most significantly, the anti-choice movement effectively capitalized on these factors, Viterna asserted.

“We need to take a lesson from the anti-choice movement,” Viterna contended. “The anti-choice movement is tightly transnational, powerful, and

wealthy.” She pointed to its many connections and activities, including its presence on news shows, as examples.

Symposium participants also commented that the arguments that have historically driven pro-choice efforts have shifted to reflect scientific and technological advances around pregnancies. Religious organizations have experienced waning influence. Pro-choice Catholics have become more outspoken and evangelical churches’ footprints in the region have grown.

Strategies For The Future

The symposium concluded with a panel discussion titled “Liberalization of abortion laws and abortion bans in Latin America: Perspectives on the implications for democracy, social equity, and health” facilitated by Michael Shifter, president of the Inter-American Dialogue.

The panelists included **Julián Cruzalta**, advisor for Catholics for the Right to Decide in Mexico; **Macarena**



Nearly 100 people attended the half-day symposium in Washington, DC.



Julián Cruzalta
Oscar Cabrera

Sáez, a fellow at the International Legal Studies Program and faculty director of Washington College of Law’s Impact Litigation Project at American University; and **Oscar Cabrera**, executive director of the O’Neill Institute for National and Global Health Law at Georgetown University Law Center.

Cruzalta began the discussion by noting how governments in the region, despite legal separation between church and state, have allowed the Catholic Church to exert its influence over reproductive freedom. However, the increasing presence of other religions has somewhat diluted the Catholic Church’s clout in the region, he conceded.

Cruzalta also discussed canon law, the body of laws governing the Catholic Church, and the often-repeated fear among Catholics that the church automatically excommunicates those who have abortions or support legal abortions. In addition, noting that canon law can change, and has changed historically, Cruzalta contended that the Catholic Church has had a long

tradition around the concept of “personal choice.” Given these circumstances, Cruzalta asserted that abortion is an act of conscience.

For Sáez, anti-abortion laws illustrate “one more trend toward restricting women’s rights in the public sphere.” She argued that, just as women did not gain the right to vote in many Latin American countries until the second half of the 20th century, citizenship—and all that goes with it—has not yet been granted equally to women in the region.

“Women have struggled to participate in democracy,” Sáez said. “The right to vote is not the full definition of democracy. There are more complex rights that have to do with due process. Abortion rights have something to do with this.”

Noting Uruguay’s recent health care reform, Cabrera argued that the country’s approach better ensures both healthcare for vulnerable populations and the protection of reproductive rights in the long term. “Once you have achieved a right, it is

hard to take it away. How can we use this to prevent governments from going back and making reforms?” Cabrera said.

“If you have a policy to decriminalize abortion, you need to think about how to protect it afterward,” he added.

As moderator of the panel, Shifter noted that human rights have been at the core of the Dialogue’s agenda for the last 30 years. The Inter-American Dialogue has played an active role informing the discussion around women’s issues in Latin America, but the symposium was the organization’s first event focused exclusively on reproductive rights.

“There’s a lot to learn. There’s a lot to talk about,” he said. “This issue is only going to become more and more relevant.”

“The challenge is to figure out where we go from here.”

Conclusions:

The conclusions set forth here gather the most important highlights of the discussion that took place during the symposium, and were topics addressed by either the moderators or the panelists during their interventions:

- The criminalization of abortion not only violates human rights but also disproportionately affects women of the most vulnerable groups in society.

- The lack of statistical data prevents the state from understanding the real dimensions and far-reaching implications of the criminalization of abortion, including how it affects the exercise of women’s human rights, while also preventing the government from adopting critical public health measures, placing women’s health and lives at even greater risk.

- Chilean lawmakers are pushing for legislation that protects personal freedoms, while the general public favors changing the obsolete laws regarding abortion and enacting laws that protect women’s health and rights.

- The liberalization of Uruguay’s abortion legislation directly resulted in the dramatic reduction of the country’s maternal mortality rates.

- Access to safe and legal abortion, along with access to contraception, emergency contraception, and scientific and comprehensive sexual education, is an essential component of an effective public health policy.

- The right to health, as understood by human rights law, includes reproductive rights and compels states to comply with such standards.

- For women to exercise their rights and full citizenship, they must be able to freely exercise their reproductive rights.

PANELIST PROFILES

Leonel Briozzo, MD (Uruguay) is the deputy minister of health of Uruguay and founder of *Iniciativas Sanitarias*, an organization of health professionals who specialize in sexual and reproductive health, which he led from 2001 to 2010. Briozzo served as president of the Fourth Latin American and First Uruguayan Sexual and Reproductive Health and Rights Congresses.

Oscar Cabrera (Venezuela) is the executive director of the O'Neill Institute for National and Global Health Law and a visiting professor of law at Georgetown University Law Center. Cabrera worked on projects involving international health law with the World Health Organization, Centers for Disease Control and Prevention, and Campaign for Tobacco Free Kids.

Julián Cruzalta (Mexico) is a member of the pro-choice movement within the Catholic Church. He is a chaplain for Catholics for the Right to Decide, the Latin America partner of Catholics for Choice. Cruzalta speaks internationally on the role of the state with respect to sexual and reproductive rights issues in Latin America.

Denise Dresser (Mexico) is a political science professor at the Instituto Tecnológico Autónomo de México (ITAM) and columnist for the Mexican periodical *Reforma*. She received the National Journalism Prize in May 2010. Her two volume work, *Screams and Whispers*, tells the personal stories of a diverse array of Mexican women.

Morena Herrera (El Salvador) is president of Citizen Group for the Decriminalization of Therapeutic, Ethical and Eugenic Abortion, Feminist Collective. In 1990, she founded *Las Dignas*, a feminist non-governmental organization that provides legal, educational, and emotional support to local women in need.

Vlado Mirosevic Verdugo (Chile) is a national deputy in the Congress of Chile and president of the Liberal Party. Mirosevic was director of the digital newspaper *El Morrocotudo*. As a student, he led the Arica and Parinacota Secondary School Students Federation. He supports efforts in the Chilean Congress to decriminalize abortion in certain cases.

Nancy Northup is president and CEO of the Center for Reproductive Rights. Northup joined the Center in 2003 with experience as a constitutional litigator, federal prosecutor, and women's rights advocate. She was founding director of the Democracy Program at the Brennan Center for Justice at NYU School of Law. From 1989 to 1996, Northup served as a prosecutor and deputy chief of appeals in the US Attorney's Office for the Southern District of New York.

Macarena Saez (Chile) is a fellow in the International Legal Studies Program and teaches at American University's Washington College of Law in the areas of family law, comparative law, and international human rights. She is a member of the Executive Committee of the Network of Latin American Scholars on Gender, Sexuality, and Legal Education (ALAS). Saez was a faculty member at the University of Chile Law School.

Michael Shifter is president of the Inter-American Dialogue and adjunct professor of Latin American politics at Georgetown University's School of Foreign Service. Shifter directed the Latin American and Caribbean program at the National Endowment for Democracy and the Ford Foundation's governance and human rights program in the Andean region and Southern Cone. He also served as a representative at the Inter-American Foundation for the Brazil program.

Lilian Sepulveda (Chile) has served as director of the Global Legal Program at the Center for Reproductive Rights since 2012. Before that, she was legal fellow and deputy director. Sepulveda has directly litigated two landmark cases and coordinated overall litigation for the Center's Latin American and Caribbean regional team.

Jocelyn Viterna (United States) is associate professor of Sociology at Harvard University, a position she has held since 2007. Previously, Viterna was assistant professor at Tulane University. Viterna's research focuses on the state-civil society relationship in countries undergoing political transitions; democratization and women's legislative representation in developing countries; and gender and class in Latin America.



The Center's Mission

The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.

The Center's Vision

Reproductive freedom lies at the heart of the promise of human dignity, self-determination, and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. We envision a world where every woman is free to decide whether and when to have children; where every woman has access to the best health care available; and where every woman can exercise her choices without coercion or discrimination. More simply put, we envision a world where every woman participates with full dignity as an equal member of society.

www.reproductiverights.org

About The Dialogue

The Inter-American Dialogue engages its network of global leaders to foster democratic governance, prosperity, and social equity in Latin America and the Caribbean. Together we work to shape policy debate, devise solutions, and enhance cooperation within the Western Hemisphere.

The Dialogue's select membership of 100 distinguished citizens from throughout the Americas includes political, business, academic, media, and other nongovernmental leaders. Sixteen Dialogue members served as presidents of their countries and more than three dozen have served at the cabinet level.

Dialogue activities are directed to generating new policy ideas and practical proposals for action, and getting these ideas and proposals to government and private decision makers.

www.thedialogue.org