

Overview – Latin America Reaffirms its Commitment to Life

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Every legal system reflects the interests and values that a certain society or state considers essential and Latin American nations are not an exception. The weight of social and cultural values shared by these peoples has always been reflected in their legislation.

In this regard, these nations have always acknowledged the right to life as the first of all rights, and have fully adhered to the principles established in international instruments of human rights affirming this perspective, not only meeting the demands in a specific historical moment, but mainly responding to their own history and identity, characterized by a long tradition of respect for life.²

Latin American nations have penalized abortion and strictly regulated its exceptions,³ and this publication is a good picture of this prevailing reality of



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2 The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Universal Declaration of the Rights of the Child and the International Covenant on the Rights of the Child at a world level, and the American Declaration of the Rights and Duties of Man and the American Convention of Human Rights at a regional level, have expressly acknowledged that every person is entitled to the right to life. However, Latin American nations had acknowledged the right to life long before ratifying these international treaties.

3 Chile, Honduras, El Salvador, Nicaragua and the Dominican Republic, for example, do not provide for any case of “allowed” abortion, while most of the countries provide for very few exceptions. The exceptions usually provided are based on the threat to the mother’s life or health, or pregnancies resulting from rape or incest. Some of these countries are Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Colombia, Costa Rica, Ecuador,

the entire continent. Chile and Honduras are two of the countries that forbid all kinds of abortion, Argentina and Paraguay provide for very restrictive exceptions, and Mexico—with a federal system of government—has legalized abortion in the Federal District only (the rest of the Mexican Federal States permit abortion only in limited cases). This publication describes their national and international laws and obligations, as well as the most relevant judicial and administrative decisions.

Also included is an analysis of two special cases: the 2006/2010 judicial activist decisions by the Constitutional Court of Colombia “legalizing” abortion (quite exceptional rulings, out of line with the rest of Latin America, and probably illegitimate under the Columbian constitution), and the impact of abortion in the last presidential elections in Brazil, the largest nation in Latin America.

Thus, although this publication does not examine abortion laws in all Latin American countries, the analysis of the ones chosen illustrates why Latin America is defined as a “pro-life” continent, that is, a continent where most nation’s laws forbid most kinds of abortion, but also a continent where pro-abortion forces work, through courts and legislatures, to try to undermine the commitment to human life.

It is therefore essential that these countries continue this pro-life path, progressively improving the legislation in force, adapting it to new realities and necessities –either by including further aspects of the right to life or by reinforcing the laws already established– and improving the conditions necessary to ensure the effective enjoyment of the right to life.

According to data provided by the Economic Commission for Latin America and the Caribbean (ECLAC), in 2002, the number of Latin Americans living in poverty reached 220 million, representing 43.4 % of the entire population,⁴ and, to date, it is still the region with greatest income inequalities in the world.⁵

These inequalities are strongly used as propaganda in favor of the legalization of abortion. Pro-abortion forces argue that the penalization of abortion actually criminalizes poverty, since only women with scarce economic resources would be subjected to “unsafe” clandestine practices, thus increasing maternal mortality

Granada, Guatemala, Haiti, Jamaica, Mexico, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela. Cuba and Puerto Rico are the only two countries that had legalized abortion.

4 <http://www.eclac.org/cgi-bin/getProd.asp?xml=/prensa/noticias/comunicados/4/12984/P12984.xml&xsl=/prensa/tpl/p6f.xsl>

5 <http://www.eclac.cl/cgi-bin/getProd.asp?xml=/publicaciones/xml/1/39991/P39991.xml&xsl=/tpl/p9f.xsl&base=/tpl/top-bottom.xsl>



rates. In other words, those who advocate in favor of “legal abortion” consider that poverty, clandestine abortions and maternal mortality are necessarily related, and offer abortion as the most adequate solution to those problems.⁶

However, two important realities must be pointed out here.

In the first place, high rates of maternal mortality are not related to the illegality of abortion, but are due to other causes, such as the lack of timely and effective access to maternal health services.

In this regard, the World Bank has calculated that, if every woman had access to medical services to address their complications during pregnancy, especially access to obstetric emergency care, 74% of women could be saved.⁷

The Inter-American Commission of Human Rights (IACHR) has expressed that in Peru, 74% of women in rural areas give birth at home without qualified professional care, as do 90% of women in indigenous communities, even though one of the factors recognized internationally as associated with reducing maternal morbidity and mortality is whether childbirth is attended by qualified personnel. In Bolivia, a country with the highest maternal mortality rate in the Andean region (290), the rate of maternal mortality varies significantly depending on geographic region (high plateau, valleys, or tablelands) and depending on place of residence (urban or rural), with obstetrical complications, hemorrhage, and infections being the main causes of maternal mortality.⁸

This shows that high rates of maternal mortality are not related to the criminalization of abortion, and the experience of countries like Honduras and Chile, two countries profiled herein, confirm this point. As a matter of fact, rates of maternal mortality in these countries have been reduced even while their

6 For instance, the International Planned Parenthood Federation has stated, in its publication titled “Death and Denial: Unsafe Abortion and Poverty”, that “millions of women have no access to reproductive health services; many more have little or no control in choosing whether to become pregnant. As a result, every year, some 19 million women have no other choice than to have an unsafe abortion. Many of these women will die as a result; many more are permanently injured. Nearly all the women who die or are injured are poor and live in poor countries”. http://www.ippfwhr.org/sites/default/files/files/Death_Denial_Sp_0.pdf

7 WAGSTAFF, A. and M. CLAESON, 2004 *The Millennium Development Goals for Health: Rising to the Challenges*. Washington DC: The World Bank, cited by the Inter-American Commission of Human Rights, *Access to Maternal Health Care from a Human Rights Perspective*, Organization of American States, Washington DC, 2010, p. 3.

8 Inter-American Commission of Human Rights, *Access to Maternal Health Care from a Human Rights Perspective*, Organization of American States, Washington DC, 2010, p. 3 and 5.

criminal laws against abortion were strengthened, revoking all cases of “allowed” abortion.⁹

In the second place, and related to what has been presented above, it should be noted that under no circumstances does the solution to problems related to maternity in situations of poverty lie in the legalization of abortion. On the contrary, each nation must evaluate the best way of assisting women facing problematic pregnancies, guaranteeing the accessibility to basic services, in pursuit of a comprehensive protection that ensures that women and their children, born and unborn, are fully assisted in their needs.¹⁰

Finally, it is important to denounce the fact that nowadays Latin American states are attacked and pressured by national and international organizations that promote the legalization of abortion. These organizations assert that Latin American laws violate treaties on human rights.¹¹

This is obviously a self-contradictory and incoherent position, since the right

9 Honduras has reported a 40% decrease approximately of maternal mortality from 1990 to date (Please see the article corresponding to Honduras in this publication) and Chile now has the highest standard of maternal health in Latin America, and is the second country—after Canada—with the lowest maternal mortality rate: 18.8 per 100,000 live births. As a matter of fact, the maternal mortality rate in Chile decreased from 293.7 per 100,000 live births in 1962 to 18.2 per 100,000 live births in 2007. These figures reflect a 93.8 % total decrease of maternal mortality rate in that period of time. It is worth noting that the complete prohibition of abortion in Chile occurred in 1989, without affecting the tendency of progressive reduction of said mortality rate. <http://es.scribd.com/doc/63446440/Aborto-y-mortalidad-materna-en-Chile-Presentacion-del-Dr-Koch-ante-Senado-2011>

10 That means that each state must analyze the conveniences of guaranteeing this protection by means of direct governmental services or by means of private service providers, encouraged and favored by tax exemptions or other ways of promotion, the state in that case having a subsidiary participation. However, regardless of the method that each state chooses to protect maternity, it is undeniable that this protection is an essential duty, which must be effectively fulfilled in order to ensure the right to life of the most vulnerable ones, i.e. the unborn. In this regard, some legislative guidelines are hereby proposed in this publication, in pursuit of the above objective.

11 Amnesty International is one of the organizations that has put a lot of pressure on governments. For example, it has asserted that the complete prohibition of abortion in Nicaragua is a “serious deviation from the government’s commitment to improve social equality, and has serious consequences on the protection of women’s and girls’ human rights”. Please visit <http://www.amnestyusa.org/pdfs/amr430012009spa.pdf>.



to life has been expressly protected in several treaties and declarations, none of which acknowledges—either expressly or implicitly—a right to abortion.

In this regard, it has to be mentioned that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), though having several provisions to protect pregnant women and the unborn, has a Committee that has improperly questioned the validity of laws that forbid or criminalize abortion, urging nations to review their national legislation in this matter in order to enact new laws permitting the “termination of pregnancy”.¹²

That is why in this publication¹³ a governmental interpretation of CEDAW and its Optional Protocol is proposed so as to ensure that the national legal systems are not subjugated by recommendations made by international organizations which, lacking legal powers and popular support, nevertheless intend to impose pro-abortion changes to the laws.

Indeed, one of the chief purposes of this book is to provide suggestions to politicians and citizens in Latin America seeking to strengthen pro-life protections. Those suggestions appear in the following chapter of this book, “Legislative Guidelines for Latin America”.

In this way—and adhering to the principle of national sovereignty, which recognizes the right of every state to reject any arbitrary foreign interference, as the starting point—Latin American countries will continue following their historical tradition, protecting their legal systems, gradually increasing the legal recognition of the right to life, and making the enjoyment of this right—the first human right—fully effective in practice. In this way, Latin American states can continue to ensure, even more effectively, that every person enjoys fundamental rights, beginning with the first right of all, the human right to life.

12 In its periodic reports, the Committee of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has criticized several countries such as Chile, Paraguay and Mexico for having restrictive laws in this matter. Please see the article corresponding to each country in this publication. This Committee has also criticized the State of Belize. Please visit http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/spanish/CONCLUDING_COMMENTS/Belize/Belize-CO-1-2.pdf.

13 See the section on model laws herein.