

# 'THEY NEVER SAW ME AS A PERSON, THEY SAW ME AS AN INCUBATOR

HOW THE STATE PROMOTES VIOLENCE AGAINST  
WOMEN – SEXUAL AND REPRODUCTIVE HEALTH  
IN LATIN AMERICA AND THE CARIBBEAN

CARCEL DE MUJERES

NO A LA CRIMINALIZACION  
DE LAS MUJERES

AMNESTY  
INTERNATIONAL







**MICHELLE**  
Mexico

Pregnant and found to be HIV-positive, she was sterilized against her will. She was subjected to discrimination and ill-treatment.

**ESPERANZA**  
Peru

She was sterilized against her will when she was pregnant. She later lost her baby and still suffers from the physical and mental aftereffects of the sterilization procedure.

**MAINUMBY**  
Paraguay

At the age of 10, she was pregnant as a result of rape. She was prevented from having an abortion, despite the risk to her life and physical and mental health.

**ROSAURA**

**Dominican Republic**

At the age of 16 and pregnant, she was found to have leukemia. Treatment that could have saved life was withheld so as to avoid a miscarriage.

**TEODORA**

**El Salvador**

She suffered an obstetric emergency and accused of having induced it herself. Despite the absence of evidence, she was sentenced to 30 years in prison.

**BELÉN**

**Argentina**

When she miscarried, her doctor reported her to the authorities. Despite the lack of any evidence, she was sentenced to eight years in prison for murder. She has spent more than two years in prison.

**TANIA**

**Chile**

Had an illegal abortion after her doctors endangered her life by refusing to continue her cancer treatment during pregnancy.

## SEXUAL AND REPRODUCTIVE RIGHTS

Sexual and reproductive rights are not new rights. They are recognized in human rights instruments. They include rights such as the right to privacy, to physical and mental integrity and to freedom from discrimination and torture or other ill-treatment.

Fundamental sexual and reproductive rights include: the freedom to decide whether or not to be sexually active; to engage in consensual sexual relationships, irrespective of sexual orientation; to have sex that is not linked to reproduction; to choose one's partner; to decide how many children to have and when; to freedom from violence and harmful practices; as well as access to information, to contraception and family planning services and to comprehensive sexuality education, especially for children and adolescents.

Sexual and reproductive rights are rooted in human rights set out in international and regional human rights treaties that most states in the region have ratified and committed to fulfil, including:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child
- American Convention on Human Rights
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)

All states that have ratified human rights treaties have an obligation to respect, protect and fulfil sexual and reproductive rights.

# GENDER STEREOTYPES GENERATE DISCRIMINATION, VIOLATING THE RIGHT TO EQUALITY SET OUT IN ALL INTERNATIONAL HUMAN RIGHTS TREATIES.

“Every woman wants to be and should be a mother”



“Poor and Indigenous women should not be allowed to have so many children”



“Every pregnant woman should carry the pregnancy to term regardless of her personal circumstances, health or even risk to her life”



“Teenagers aren’t capable of making decisions about their sexuality or whether they want to be mothers”



“Women living with HIV should be sterilized to stop the virus spreading”



“It doesn’t matter if she’s been raped, a pregnant girl should carry the pregnancy to term”



“Women, especially poor women, who come to the hospital with obstetric emergencies are lying; they’ve had abortions”



**Cover photo:** Demonstration demanding the release of Belen who was sentenced to eight years for a for having a miscarriage, Tucuman, Argentina.  
© Agencia de Prensa Alternativa (APA).

The spread of the Zika virus in Latin America and the Caribbean and its links to microcephaly in babies was declared an International Public Health Emergency by the World Health Organization in February 2016.<sup>1</sup> Some governments in the region have made a recommendation to women – men were not addressed – that they should avoid pregnancy for the immediate future. This bizarre recommendation has turned the spotlight on the huge challenges facing women in the region regarding sexual and reproductive rights.

Underlying each of the stories highlighted in this briefing, and the thousands of similar stories being experienced by women and girls throughout the region, is structural discrimination against women. This discrimination against women because they are women flourishes thanks to entrenched gender stereotypes in society and reaches its most pernicious levels in the area of sexuality and reproduction.



This briefing is based on the Amnesty International Report, *The state as a catalyst for violence against women*, published in March 2016 (Index: AMR 01/3388/2016) Original Language: Spanish. Available at <https://www.amnesty.org/en/documents/amr01/3388/2016/en/>. A summary of relevant human rights standards and a more detailed exposition of the arguments and issues highlighted in this briefing can be found in the original report.

<sup>1</sup> See World Health Organization, “WHO announces a Public Health Emergency of International Concern”, available at [http://www.paho.org/hq/index.php?option=com\\_content&view=article&id=11640%3A2016-who-statement-on-1st-meeting-ihr-2005-emergency-committee-on-zika-virus&lang=en](http://www.paho.org/hq/index.php?option=com_content&view=article&id=11640%3A2016-who-statement-on-1st-meeting-ihr-2005-emergency-committee-on-zika-virus&lang=en).



In May 2016, the story of Belén<sup>2</sup> caused a public outcry in Argentina and made international headlines.

**“I didn’t talk for two years. I did not feel like speaking. I was scared. I was told I would get a life sentence. But I am calm now, I know justice will be served. I am stronger today. I am very happy that I’m not alone. I am eternally grateful to all those who are helping me to make my voice heard. We will fight together to be heard, so no more women are imprisoned for abortion. Now their fight is my fight.”**

*Belen, June 2016*

Belén is 27 years old and has been in prison for more than two years in Tucumán Province, northern Argentina. Her “crime” was to have suffered pregnancy-related complications in a public hospital. Both doctors and police officers violated her right to privacy, unjustly accused her of a crime and ill-treated her.

In the early hours of the morning on 21 March 2014, Belén went to the out-of-hours clinic at the Avellaneda Hospital in San Miguel de Tucumán complaining of severe abdominal pains. From there, she was taken to the Gynaecology Department because she was bleeding profusely. Doctors told her that she was having a miscarriage and that she was around 22 weeks into her pregnancy. Belén was unaware that she was pregnant.

Earlier that day, hospital staff had found a foetus in a bathroom. Without any evidence or DNA analysis, they assumed that the foetus was Belén’s and reported her to the authorities. The case file states that the foetus that was found was 32 weeks old. According to the doctor treating her, Belén had suffered “a partial miscarriage without complications” at approximately 22 weeks; her medical file confirms this. Despite this clear discrepancy, Belén became a suspect and was treated like a criminal.

Belén said that a nurse brought the foetus to her in a box and insulted her for “what she had done”, claiming that it was her “son”. When Belén woke up following the procedure, her bed was surrounded by several police officers who were inspecting her intimate parts. The treatment she was subjected to was cruel, inhuman and degrading.

In addition to facing the prejudices of public officials, Belén’s right to privacy was violated. Doctors had a duty to protect the confidentiality of the information that they had obtained in the exercise of their profession and in the context of a doctor-patient relationship. They chose instead to report her.

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<sup>2</sup> Not her real name.

Belén never returned home after she set foot in the hospital. After being hospitalized for six days, she was taken directly to prison. She has been denied bail and detained for more than 26 months, accused of having induced an abortion. The Prosecutor in the case later changed the charge to aggravated premeditated murder of a close relative, which can carry a sentence of up to 25 years in prison.

On 19 April 2016, Tucumán Criminal Court No III sentenced Belén to eight years in prison for homicide. On 3 May, Belén’s defence lawyers lodged an appeal and called for her immediate release, challenging her continued detention, so that she could await the final judgment while out on bail. However, on 12 May, the same court that had convicted her rejected the request for Belén’s release.

At every opportunity, Belén had told the courts that the foetus was not hers, but the judges have refused to listen. Unfortunately, this is a situation that is all too common in Latin America where courts frequently dismiss women’s statements and testimonies. According to the Inter-American Commission on Human Rights, the discriminatory cultural patterns prevailing in the region have a negative influence on investigations and the assessment of the evidence, which are underpinned by stereotypical notions about how women should behave in their personal relationships.

**“I was sentenced only on the basis of other people words. I was sent to jail because I am poor, because I have to go to the hospital, because I have no money to go to a private clinic or to pay for a good lawyer.”**

*Belen, June 2016*

In Argentina, abortion is legal when the life or health of the woman is at risk or when the pregnancy is the result of rape. However, nearly four years after the Supreme Court of Justice confirmed that abortion in these circumstances is legal – and has been since 1921 – women are still denied access to the legal health care they need. The law is not protecting the thousands of women each year who suffer from complications resulting from unsafe abortions -- the leading single cause of maternal deaths in 17 of Argentina’s 24 provinces. It is estimated that more than 60,000 women a year, most from low-income groups, are admitted to a public hospital because of the consequences of abortions performed in unsafe conditions.<sup>3</sup>

In 2014, according to Ministry of Health statistics, 290 women died of pregnancy-related causes. This figure represents an increase over 2013 (243) and 2012 (258).

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<sup>3</sup> Edith Pantelides (Conicet y Cenep-Centro de Estudios de Población) and Silvia Mario (Instituto Gino Germani), *Estimación de la magnitud del aborto inducido en Argentina*, National Ministry of Health.



Demonstration to commemorate International day for the Elimination of Violence against Women, Asunción, Paraguay, 25 November 2015. © REUTERS

But this is only an estimated number. State officials have themselves acknowledged that statistics about “maternal mortality are often underestimated because of flaws in medical certification regarding the cause of death in the Death Statistics Report (Informe Estadístico de Defunción)”. As a result, the official figures do not reflect the total number of women and girls who have lost their lives as a result of pregnancy-related complications.

## INSTITUTIONAL VIOLENCE AGAINST WOMEN

Women and girls have a right to decide whether to be sexually active or not and whether to have children – and to have access to appropriate information and services in order to be able to exercise these rights autonomously and responsibly. However, although states in the region have signed international human rights treaties guaranteeing these rights, in practice they have put up insuperable barriers to women accessing these rights. The result is violence against women and, in numerous situations, torture or other ill-treatment.

When state institutions are organized in such a way as to restrict the fundamental rights of women, the state is sending a very clear message to its officials. That message is that women’s inequality, gender-based discrimination and violence against women are promoted or at the very least tolerated, by the state.

Laws and the actions of those who act with “state authority” (which includes health service providers) have an influence on culture, on politics and on how women are viewed in society. By upholding laws and practices that deny women their

fundamental human rights, the state itself acts as a catalyst, generating further violence.

**“International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender.”**

UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, February 2013<sup>4</sup>

## PATIENT CONFIDENTIALITY

Everyone has a right to privacy and medical information is an area where respect for this right takes on particular importance. Patient confidentiality must be guaranteed because if people fear that their privacy will not be protected in a health-care context, this can deter them from using services and so put their health at risk.<sup>5</sup>

<sup>4</sup> Human Rights Committee, General Comment No 28, 2000, para 11; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, February 2013, A/HRC/22/53, para 46.

<sup>5</sup> Committee on the Elimination of Discrimination against Women General recommendation No 24 UN, 2009; Committee on the Rights of the Child General Comment No 3, 2003.



Health professionals have an ethical duty to protect patient confidentiality and this acquires special relevance when women approach health personnel seeking support in contexts where restrictive legislation governs decisions on sexual and reproductive issues, as is the case in Latin America and the Caribbean.

Non-consensual disclosure of personal medical information is a violation of the right to privacy. States have an obligation to protect this right. However, as the case of Michelle from the State of Veracruz in Mexico shows, the regional pattern is unfortunately one of routine breaches of patient confidentiality in the context of sexual and reproductive health.

Michelle is a 23-year-old mother of two living with HIV. In 2014, when she was four months pregnant, the hospital informed her that she was HIV-positive. From that moment on, and even after the birth of her child, she was subjected to various forms of ill-treatment by health-care providers in the State of Veracruz.

The gynaecologist told her she would need surgery to prevent her having any more children. Michelle wanted to opt for another non-permanent method of contraception, but the doctor insisted. Michelle said: “The doctor even had a go at my mother, telling her that, as a mother, ‘she must understand’”. She recalls the doctor saying:

**“What are you waiting for? You have HIV and you’re about to bring a sick child into the world: Why do you want to get pregnant again?”**

On 27 September 2014, Michelle arrived at the General Hospital in labour, but the surgeon on duty did not want to carry out a caesarean section. She had to wait several hours for a doctor to arrive who was willing to carry out the procedure on women with HIV. While she was in the General Hospital, she was the target of verbal abuse and discriminatory treatment. A large sign was put above her bed bearing the letters “HIV”. When she suffered a haemorrhage, health personnel shouted at her to clear up the blood herself because they didn’t want to be infected. Michelle says she was always fed last, after all the other women in the ward had eaten.

Although Michelle said several times that she did not want the sterilization procedure, the operation went ahead without her consent. She learned about it when she woke up from her caesarean section:

**“It caused me a great deal of suffering; it is a scar that I will carry all my life. It wasn’t my decision. They did it to me by force.”**



Women’s rights activists protest in front of the Supreme Court, to demand the decriminalization of abortion, San Salvador, El Salvador, 15 May 2013. © REUTERS/Ulises Rodriguez

Michelle now works for a foundation that helps pregnant women living with HIV. The organization helped her to overcome the trauma and share her experiences with other women like herself who have undergone forced sterilization despite the fact that with appropriate interventions mother to child transmission of HIV can be reduced to less than 5%.<sup>6</sup>

The treatment of Michelle shows how human rights violations multiply in the context of sexual and reproductive health. Discrimination was at the heart of the ill-treatment she received and it denied her right to the same reproductive health services to which all women are entitled under international human rights standards. According to these standards contraceptives must be available and affordable and women must have the right to freely choose or reject family planning services (including sterilization).<sup>7</sup>

## THE IMPACT ON FAMILIES

Institutional violence against women, including torture, in sexual and reproductive health contexts can have devastating consequences for their families.

Mothers who try to defend their daughters' wellbeing, health and lives are often judged and blamed. This is especially so if they decide to raise their voices in defence of their daughters' sexual and reproductive rights, as the case of Mainumby's mother clearly shows.

For the children of women imprisoned after having obstetric emergencies, the trauma of the various stages of criminal proceedings against their mothers -- from arrest to sentencing and imprisonment -- can affect them for the rest of their lives.

Teodora del Carmen Vásquez is 31 and has a son, who is now 12 years old. Teodora's sister, told Amnesty International how every year Teodora "would celebrate his birthday with piñatas and music. She would decorate his room and they would go for a walk together, just the two of them."

In 2006 Teodora became pregnant for a second time, but she couldn't attend prenatal check-ups because she didn't have the money and she was working from six in the morning until nine at night. In July 2007, when she was nine months pregnant, Teodora was at work when she started to have pains and feel unwell. Teodora described what happened:

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<sup>6</sup> UNAIDS, Global Plan towards the elimination of new HIV infections among children by 2015 and keeping their mothers alive, 2011, p. 8 and World Health Organization, see <http://www.who.int/hiv/topics/mtct/en/>.

<sup>7</sup> *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, 2014, available at: [http://www.unaids.org/sites/default/files/media\\_asset/201405\\_sterilization\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/201405_sterilization_en.pdf)

**"When the pain got too bad, I grabbed my phone and started to dial 911, because that was the only number I could think of. A woman answered and said that she had made the request and help was on its way. But no one arrived to help me... I rang at least five times."**

Teodora had a miscarriage in the bathroom and passed out, bleeding profusely. Several police officers arrived, handcuffed her and accused her of aggravated homicide on suspicion of having induced an "abortion".

Her family did not have the money to pay for an effective legal defence and in 2008 Teodora was sentenced to 30 years in prison. She has already served eight years.

**"When the boy went [to the prison] the first time... He was not yet four years old... When we left the prison, that was hard. He clung to her. 'Mummy, I'm taking you with me', he said. 'Why don't you turn into a dove and get out, and come with us? I don't want to leave you here'."**

*María, Teodora's mother*

Teodora is studying for her baccalaureate. From her prison cell, she told Amnesty International: "Every day I get up with a positive attitude, eager to learn something new."<sup>8</sup>

In El Salvador, the law turns pregnant women into suspects and criminals. Women suffering from obstetric emergencies are almost invariably suspected of a "crime" and can face up to 40 years' imprisonment.

**"They say that if you do not report this type of situation, you are part of the crime, you are an accomplice and you risk losing your job. They are stopping us from being doctors and turning us into policemen. My bosses have raised this with me several times. But I tell them that I can't breach the doctor-patient confidentiality I owe my patients."**

*Dr "Lemus", El Salvador*

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<sup>8</sup> To read more about the story of Teodora and other women in a similar situation in El Salvador, see Amnesty International, *Separated families, Broken Ties*, November 2015 (Index: AMR 29/2873/2015).



While some may claim that laws criminalizing abortion in all circumstances with no or few exceptions aims to prevent abortions, the evidence is clear: criminalization does not reduce the number of abortions. What it does do, however, is increase maternal mortality and morbidity because it forces women and girls to seek clandestine abortions, putting their lives and health at risk.<sup>9</sup> The rate of unsafe abortions in Latin America and the Caribbean is estimated to be the highest in the world.<sup>10</sup>

## WHOSE RIGHT? WHOSE LIFE?

The power of medical personnel, state officials and certain religious groups to impose their opinions on women and girls can be seen in women's experiences throughout the region. This power is frequently exercised at the expense of women's human rights to health, physical integrity, autonomy, privacy and life.

Recent years have seen an increasing trend in the region towards establishing absolute protection of the foetus and prioritizing this over the human rights of women and girls. Several countries in the region have integrated the concept of absolute protection into the criminal law by means of a total prohibition of abortion in all circumstances (as, for example, in El Salvador, the Dominican Republic and Chile) or through partial bans on abortion, which often in practice become absolute bans (as, for example, in Argentina and Paraguay). These laws inflict huge suffering and violence on women and girls.

No international human rights body has ever recognized the foetus as the object of protection under the right to life or other provisions of international human rights treaties, including the Convention on the Rights of the Child.<sup>11</sup>

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<sup>9</sup> Department of Reproductive Health and Research, World Health Organization, *Unsafe abortion: global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008*, 6a ed., Geneva, WHO, 2011.

<sup>10</sup> *Trends in Maternal Mortality: 1990 to 2013: Estimates by WHO, UNICEF, UNFPA, The World Bank and the United Nations Population Division*, Geneva, 2014, available at: <http://www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2013/en/>.

<sup>11</sup> See R. Copeland *et al*, "Human Rights Being at Birth: International Law and the Claim of Fetal Rights", *Reproductive Health Matters* (2005), vol. 13, issue 26, pp120-129. The legislative history of the Convention on the Rights of the Child clarifies that safeguards "before birth" should not affect the choice of women to terminate an unwanted pregnancy.



María Sánchez, Teodora's mother, standing in what had been Teodora's bedroom, before she was imprisoned, El Salvador, 2015. © Amnesty International





The American Convention on Human Rights is the only treaty which contains a clause stating that the right to life shall be protected “in general, from the moment of conception” (Article 4.1). In interpreting this clause, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have said that such protection is not absolute. When interpreting this clause, the Inter-American Court echoed international and national jurisprudence on the subject, which clearly states that the direct object of protection is fundamentally the pregnant woman, given that the defence of the foetus is essentially achieved through the protection of the woman. In addition, the Inter-American Court of Human Rights has established that any interest states may have in protecting the foetus, should be gradual and incremental, in accordance with the development of the foetus, and cannot be absolute.<sup>12</sup>

International human rights bodies have, however, spoken out against violence against women, torture and ill-treatment, all prohibited by international human rights treaties that these same states have promised to promote and yet which they appear more than willing to disregard when it comes to women’s sexual and reproductive rights, as the case of Mainumby<sup>13</sup>, a girl from Paraguay, clearly shows.

Mainumby was 10 years old and weighed just 34kgs. She was also 21 weeks pregnant as a result of rape in a country where the law allows abortion only in cases where the woman or girl’s life is at risk. The effect of systematic prejudice and the actions of the state combined to subject her to grievous human rights violations.

**“No one can understand the agony you feel seeing your daughter like that. She is a little girl who should be playing, studying, sharing things with her friends. No one can put themselves in my shoes. When the baby wakes, I have to wake up my daughter so she can breastfeed her”.**

*Mainumby’s mother, Paraguay*

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<sup>12</sup> See, for example, Inter-American Court of Human Rights, the case of Artavia Murillo (in vitro fertilization) et al vs Costa Rica.

<sup>13</sup> Not her real name.

Mainumby lives with her mother in a disadvantaged neighbourhood of Asunción in Paraguay. In January 2014, Mainumby's mother began to suspect that her daughter was being abused by the girl's stepfather, so she reported him to the authorities. But they dismissed her complaint and took no action to keep Mainumby's abuser away. Had they done so, she would not have continued to be raped.

In January 2015, Mainumby began to complain of stomach pains and said she was feeling unwell. Her mother took her to two different public health centres and both diagnosed a parasitic infection. But Mainumby continued to feel ill and in mid-April her mother took her to a private hospital where she was diagnosed with a possible tumour and an ultrasound was requested. On 21 April 2015, the ultrasound revealed that Mainumby was 20-21 weeks pregnant.

The hospital provided comprehensive care and the hospital Director publicly stated that this was a high-risk pregnancy because the girl was so young and her uterus was not developed enough to carry a baby. According to press reports, the hospital Director said that, "in the event that the girl's life or health is at risk, a termination will be considered. We are legally mandated to do so."<sup>14</sup> From that moment, organizations with religious affiliations mobilized to apply concerted pressure to prevent Mainumby getting the medical treatment she needed and that the law allowed.

Mainumby was interned in a hospital, initially with her mother and then on her own after her mother was detained and charged with failing to exercise her duty of care and complicity in the abuse of her daughter. The charges against Mainumby's mother have since been dropped, but she has lost her job. Mainumby's rapist, meanwhile, remained at large. Mainumby was interned in a home, by judicial order, with strictly limited access to visitors. On 24 May, Mainumby's 11<sup>th</sup> birthday, her mother was able to visit her for the first time for 15 minutes.

Mainumby gave birth by caesarean section on 13 August 2015 and was discharged 10 days later. What the impact of all this will be on her is not yet clear. What is clear is that she is having enormous difficulty in getting hold of the medicines she needs to recover and the milk for the newborn that would enable her to pursue important aspects of her own development as a child, including going to school; this is virtually impossible while she is having to breastfeed the baby.

It is difficult to fully comprehend the extreme cruelty involved in forcing a child to continue a pregnancy which is a daily

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<sup>14</sup> "Si la vida de niña embarazada corre riesgo, interrumpirán gestación, dicen", ABC Color, quoting Dr Ricardo Oviedo, Director of the Holy Trinity Maternity Hospital; 24 April 2015, available at: <http://www.abc.com.py/edicion-impresa/locales/si-la-vida-de-nina-embarazada-corre-riesgo-interrumpiran-gestacion-dicen-1359702.html>.

reminder of rape and then to give birth and breastfeed a newborn baby. The treatment of Mainumby exhibits the severe pain or suffering, either physical or mental, intentionally inflicted for a specific purpose – in this case discrimination – with the consent of public officials – which characterizes torture.

Mainumby's case is one of extreme violence, but hers is not an isolated case either in Paraguay or, indeed, in the region, which has the second highest rate of teenage pregnancies in the world.<sup>15</sup> The pregnancy rate for girls under 14 in the region is not known. However, very worryingly, preliminary studies indicate that it is a problem in almost all countries in Latin America and the Caribbean and affects above all families living in poverty and rural and Indigenous communities.<sup>16</sup>

The experiences described in this briefing open a window onto what is a deeply problematic and complex situation. More than half of all pregnancies in Latin America and the Caribbean are unwanted or unplanned. This rate has remained unchanged since 1985<sup>17</sup> despite an increase in the use of modern contraceptives. There are many reasons for this such as very high levels of sexual violence, including intimate partner violence;<sup>18</sup> lack of access to contraception,<sup>19</sup> including emergency contraception; and deeply entrenched attitudes that promote the role of women first and foremost as mothers.

This discrimination has a profound and enduring impact on the lives of women and girls: 97% of women of reproductive age in Latin America and the Caribbean live in countries where abortion is severely restricted by law<sup>20</sup> – no other life-saving procedure is intentionally denied by law to any other group.

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<sup>15</sup> UNFPA Paraguay, *JOPARE*, July 2013, [www.unfpa.org.py](http://www.unfpa.org.py).

<sup>16</sup> Planned Parenthood, Federation of America, Global: *Stolen Lives*; CLADEM, *Niñas Madres. Embarazo y maternidad infantil forzada en América Latina y el Caribe*, available at <http://www.cladem.org/pdf/nin%CC%83as-madres-balance-regional>.

<sup>17</sup> *Seguimiento de la CIPD en América Latina y el Caribe después de 2014: documento técnico*, p25, available in Spanish only at: <http://www.clacaidigital.info:8080/xmlui/handle/123456789/535>.

<sup>18</sup> 29.8% of women experience either physical and/or sexual intimate partner violence or sexual violence by a non-partner, <http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>.

<sup>19</sup> WHO, Family planning/Contraception: Fact sheet N°351, updated May 2015, available at: <http://www.who.int/mediacentre/factsheets/fs351/en/>.

<sup>20</sup> Guttmacher Institute, "Facts on Abortion in Latin America and the Caribbean", November 2015, available at: [https://www.guttmacher.org/pubs/IB\\_AWW-Latin-America.pdf](https://www.guttmacher.org/pubs/IB_AWW-Latin-America.pdf).





Demonstration commemorating International Day for the Elimination of Violence against Women, Santo Domingo, Dominican Republic, 25 November 2014. © Erika Santelices

When 16-year-old Rosaura Arisleida Almonte Hernández suddenly developed a high temperature and intense abdominal pain on 2 July 2012, her mother, Rosa, immediately took her to the local medical centre in Santo Domingo in the Dominican Republic. Rosaura was eventually diagnosed with a form of leukaemia that would kill her in weeks if she did not get urgent treatment. Rosaura was just over seven weeks pregnant and the doctor recommended she have a therapeutic abortion so that they could start treatment for the leukaemia immediately. Both mother and daughter clearly and repeatedly told doctors that they wanted to go ahead with a termination and start the treatment for leukaemia immediately. However, the hospital authorities claimed a termination was “prohibited by the Constitution” and stopped the procedure from going ahead.

Eventually, on 26 July (24 days after Rosaura was hospitalized) doctors began to treat her for leukaemia. On 16 August Rosaura suffered a miscarriage. She died the following day at 8am.

**“Nothing will give me back my daughter, but I can’t just let this pass without demanding that they admit clearly that what they did in this case was wrong. Until this is clarified and it’s established where responsibility lies, there’s nothing to stop another mother having to live through what I did trying to get them to care for my daughter”.**

*Rosa Hernández, Dominican Republic*

In December 2014, the Dominican Republic approved a new Criminal Code that decriminalized abortion when the life or health of a woman is at risk, when malformations mean the foetus is not viable or when pregnancy is the result of rape or incest. However, in December 2015, the Constitutional Court declared the new legislation unconstitutional, leaving in place the previous Criminal Code of 1884. So, the Dominican Republic has returned to the 19<sup>th</sup> century with laws that criminalize abortion in all circumstances. Significantly,





Esperanza Huayama, President of the Women's Association of Huancabamba, Peru, October 2015. © Amnesty International / Raúl García Pereira

maternal mortality and teenage pregnancy rates in the Dominican Republic are among the highest in the region.<sup>21</sup>

In 2014, at least 10% of all maternal deaths in Latin America and the Caribbean were due to unsafe abortions.<sup>22</sup> El Salvador is one of only eight countries in the world where the number of maternal deaths has risen since 2003.<sup>23</sup> Around 760,000 women in the region are hospitalized each year for complications linked to unsafe abortions.<sup>24</sup> As always happens in this, the most unequal region in the world, the unmet need for sexual and reproductive health disproportionately affects people living in poverty and marginalized communities.

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<sup>21</sup> More than 20% of women under 20 are either pregnant or have children (Women and Health Collective, *Boletín Ciudadanas 2015*, "28 de Mayo. Día Internacional de Acción por la Salud de las Mujeres" pp. 2-3).

<sup>22</sup> Guttmacher Institute, "Facts on Abortion in Latin America and the Caribbean, available at [https://www.guttmacher.org/pubs/IB\\_AWW-Latin-America.pdf](https://www.guttmacher.org/pubs/IB_AWW-Latin-America.pdf).

<sup>23</sup> Institute for health metrics and evaluation, available at: <http://www.healthdata.org/news-release/sharp-decline-maternal-and-child-deaths-globally-new-data-show>

<sup>24</sup> Guttmacher Institute, "Facts on Abortion in Latin America and the Caribbean", available at [https://www.guttmacher.org/pubs/IB\\_AWW-Latin-America.pdf](https://www.guttmacher.org/pubs/IB_AWW-Latin-America.pdf).

It is the state that promotes and legitimizes the structural discrimination that underpins all gender-based violence. All the work done on these issues by local women's organizations, human rights groups and international human rights bodies and by Amnesty International itself has led the organization to a clear conclusion: violence against women will not be eradicated unless and until states in the region change discriminatory legislation, public policies and practices on sexual and reproductive health.

At present, far from eliminating violence against women, legislation and state practices are actually acting as a catalyst, generating further violence. This violence ranges from ill-treating and denying women and girls services in health-care institutions; breaching patient confidentiality; imposing decisions on women and girls that ignore their wishes in pursuit of other moral or religious agendas; and multiple forms of discrimination. The current context creates an environment where some health-care professionals feel they can impose their beliefs or exercise their right to conscientious objection without any regard for the rights of the women and girls they are supposed to care for or the consequences on their health and lives. This belief that women's lives and views are of lesser value has its roots in institutionalized discrimination and its fruits are institutionalized violence against women.



## THE STRUGGLE FOR JUSTICE

The movements for women's rights and gender justice in Latin America and the Caribbean are growing in strength. They are becoming more organized and more sophisticated in their analysis of rights and more effective in their advocacy. However, a crucial factor entrenching discrimination and exacerbating suffering throughout the region is the lack of access to justice in order to lodge complaints and obtain redress for the human rights violations described in the report.

Esperanza is a 59-year-old mother of nine from the northern Andean region of Peru. She told Amnesty International that in 1998 "health promoters were coming to the villages to see us and tell us that a group of doctors from Lima was coming to the area. They told us to come so we could get food and help. So lots of us went along."

When Esperanza arrived at the polyclinic, she learned that they had brought them there to have their tubes sealed as part of the Family Planning Programme. During the operation, Esperanza overheard the doctor and the nurse talking about the fact that she was pregnant. She described how she begged them not to harm the foetus, but they ignored her and went ahead with the procedure:

**"I lost my baby against my will because of what those doctors did. They didn't care about my life or my baby. The pain of losing my baby never leaves me".**

Esperanza still lives with the scars of that forced sterilization:

**"Sometimes, a few of us who had our tubes sealed get together. They have backaches and headaches too. They suffer from the same aches and pains as I do. Some have been left in very poor health; they can barely walk... We don't get to see specialist doctors... We've been forgotten".**

Esperanza is the current President of the Women's Association of Huancabamba Province (Asociación de Mujeres de la Provincia de Huancabamba, AMHBA) and is still fighting for justice:

**"Although people say I am illiterate, it doesn't discourage me, because as a member of the organization I have learned to be strong, to hold my own so that they don't try to fool me, so that they don't mock us as Indigenous women. In the AMHBA we have organized ourselves to defend the rights of sterilized women."**

The policy and practice of mass sterilizations in Peru have now ended, but those responsible for violating the human rights of Esperanza and all the other women sterilized without their consent during that period continue to enjoy total impunity. By failing to guarantee truth, justice and reparations for such serious human rights violations, the state is subjecting the victims of forced sterilizations to further and ongoing violence.

In April 2015, the Public Prosecutor's Office in Peru reopened an investigation into the systematic practice of forced sterilization in the country as a grave violation of human rights. At the time of writing, the investigation was continuing. In November 2015, the government began recording the names of victims of forced sterilization in order to provide them with psychological and medical support and to facilitate their access to justice.

Tania, then a 31-year-old mother of three, living in Chile was undergoing cancer treatment when she discovered she was pregnant with a fourth child. Tania told Amnesty International that the doctor treating her for cancer withheld crucial information, and did not make it clear to her that the pregnancy meant her treatment for cancer would stop and that her life would be in danger as a result.

**"They never saw me as a person, as a whole human being. They saw me as an incubator, someone who could bring children into this world. And afterwards, it didn't matter if I raised them or not, if I died, if we would go hungry – to them that didn't matter. They see us as incubators. As machines, machines for reproduction."**

Tania decided to have an abortion so she could get the medical treatment she needed to save her life. The procedure was illegal, with all that entails in terms of additional stress and anxiety. However, Tania was fortunate in that she had the resources to ensure the procedure was carried out safely in a clinic. For many, many women in Latin America and the Caribbean, this is not an option.



Members of the Women's Association of Huancabamba gather to discuss forced sterilizations, Huancabamba, Peru, October 2015. © Amnesty International / Raúl García Pereira

Chile is one of seven countries in the region (along with El Salvador, Haiti, Honduras, Nicaragua, Suriname and the Dominican Republic) that criminalize abortion in all circumstances. The total ban creates an environment in which health professionals are prevented from responding appropriately to the medical needs of pregnant women and girls.

In January 2015, Chilean President Michelle Bachelet presented a bill to Congress to introduce three exceptions to the total ban on abortion: when the life of the woman is at risk, when the foetus is not viable and when the pregnancy is the result of rape. The bill has since been approved by the Chamber of Deputies and only needs to be passed by the Senate to become law.

**“The issue is whether I wait until a woman is in intensive care because of a grave complication ... before taking action, or whether I’m going to forestall this... before I get to that point... the focus should be on the woman’s own decision.”**

*René Castro, Obstetrician, Chile*



# CONCLUSIONS AND RECOMMENDATIONS

Amnesty International is adding its voice to that of hundreds of women's rights organizations throughout the region demanding the eradication of violence against women.

The pandemic of violence against women in Latin America and the Caribbean is a clear reflection of the lack of political will by states in the region to protect the rights of women and girls. States can and should do more to prevent and eradicate gender-based violence. The measures needed are well known; numerous national and international organizations have produced evidence and information on this.

Amnesty International believes that violence against women will not be eliminated unless and until states in the region change laws, public policies and discriminatory practices in the area of sexual and reproductive health. These laws and practices not only violate many human rights, they also generate institutional violence, including torture and other cruel, inhuman or degrading treatment. As the experiences of women highlighted in this briefing show, the state is imposing these discriminatory practices based on gender stereotypes, acting as a catalyst for further violence against women.

## This situation can change – it must change.

**Amnesty International calls on states in Latin America and the Caribbean to:**

- Amend all laws, regulations, practices and public policies relating to sexual and reproductive health that may produce institutional violence, torture or other cruel, inhuman or degrading treatment or punishment.
- Implement measures to eliminate discrimination against women and stereotyped patterns of behaviour that promote the unequal treatment of women in society, especially in the area of sexual and reproductive health care, including special measures to address multiple discrimination.
- Prevent institutional violence, torture or other ill-treatment in the area of sexual and reproductive health and ensure the availability of mechanisms to provide effective, appropriate and impartial access to justice for victims as well as comprehensive reparation.
- Create protocols on how to respond to and investigate sexual violence. Ensure the availability of emergency contraception for all women and girls, and especially for those who have been raped.

- Regulate the exercise of conscientious objection by health professionals to ensure that there is no risk to the health of the patient and that the patient's right to receive services and contraceptives, a termination, or any other necessary health-care service is guaranteed. Implement mechanisms to ensure that health professionals who can provide this care are always accessible.

- Taking into account the principles of the Convention on the Rights of the Child, in particular the best interests of girls, develop public policies to protect them from forced pregnancy and maternity.

In addition, Amnesty International calls on the Inter-American System for the protection of human rights, in light of its influence on countries in the region and given the context of structural discrimination, to become more involved in this crucial debate for the region.

## OTHER REPORTS ON SEXUAL AND REPRODUCTIVE RIGHTS IN THE LATIN AMERICA REGION



### AMERICAS: DEFENDERS UNDER ATTACK! PROMOTING SEXUAL AND REPRODUCTIVE RIGHTS IN THE AMERICAS

<https://www.amnesty.org/en/documents/amr01/2775/2015/en/>

### EL SALVADOR: SEPARATED FAMILIES, BROKEN TIES: WOMEN IMPRISONED FOR OBSTETRIC EMERGENCIES AND THE IMPACT ON THEIR FAMILIES

<https://www.amnesty.org/en/documents/amr29/2873/2015/en/>

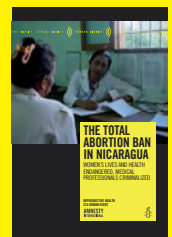


### NICARAGUA: LISTEN TO THEIR VOICES AND ACT: STOP THE RAPE AND SEXUAL ABUSE OF GIRLS IN NICARAGUA

<https://www.amnesty.org/en/documents/amr43/008/2010/en/>

### NICARAGUA: THE TOTAL ABORTION BAN IN NICARAGUA: WOMEN'S LIVES AND HEALTH ENDANGERED, MEDICAL PROFESSIONALS CRIMINALIZED

<https://www.amnesty.org/en/documents/amr43/001/2009/en/>



Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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