

The Abortion Issue in Brazil a study of the debate in Congress¹

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A bill was brought before the Brazilian Congress in March 1995 to amend the Constitution so as to prohibit induced abortion under any circumstances. If passed, this bill would have led to the immediate suppression of the only legal provisions that currently allow abortion: two items in the Penal Code providing for legal abortion when the life of the pregnant woman is at risk or when the pregnancy is the outcome of rape. Furthermore, banning abortion in the Constitution itself would have hindered a democratic debate on this grave problem.

In April 1996, the above-mentioned proposed amendment to the Constitution was voted down by a wide margin in the Chamber of Deputies, as discussed further on in this paper. However, the mere fact that it was submitted at all, not to mention the controversy it generated, reflects a longstanding debate in Brazilian society on an issue considered divisive. Above all, it reflects political discussions in Congress since the end of the 1940s, and still more

intensely in the 1980s and early 1990s alongside participation in the debate by a variety of extraparliamentary political and social groups. I referring to the Roman Catholic Church, segments of the medical profession, the women's movement and evangelicals, in the chronological order of their entry into the controversy.

My concern with the abortion question has always been motivated on the one hand by the gravity of the problem of abortion in Brazil and a social commitment to tackling it, and on the other by the dynamism of political debate about the issue and my interest in investigating it in depth. I set out to study the political process, the related parliamentary decision-making process, the involvement of the Executive branch and, above all, the activities of political and social interest groups involved in the abortion debate.

Before detailing the methodology and results of this investigation to date, however, this paper presents a brief description of the reproductive health situation in Brazil, focusing on fertility regulation as the context for any appraisal of abortion. As an introduction to this description, I shall first outline some key demographic data and the main factors determining them.

Some introductory information

In 1991, Brazil had a population of 146 825 475 inhabitants according to the Demographic Census conducted that year. Women accounted for 50.6 per cent of the total and men for 49.4 per cent. 75.6 per cent of Brazilians lived in towns and 24.4 per cent in the countryside. In the 1980s, the mean annual rate of population increase was 1.9 per cent, continuing the tendency for population growth to slow down since

¹ Paper presented in the seminar 'Socio Cultural and Political Aspects of Abortion from an Anthropological Perspective' organized by the International Union for the Scientific Study of Population (IUSSP), Trivandrum, India, March 1996. Portuguese version revised and updated in September 1996.

the 1960s. The annual rate of increase was about 3 per cent in the 1950s slipping to 2.9 per cent in the 1960s and to 2.5 per cent in the 1970s. Contributing to the deceleration was a sharp drop in the total fertility rate which was some 2.7 children per woman in the 1980s down from 4.4 in the 1970s, 5.6 in the 1960s and 6.3 in the 1950s showing an overall reduction of more than 50 per cent in the period.²

This decline in fertility took place alongside deep-seated changes in Brazilian society in the second half of the 20th century relating to the consolidation of Brazil's specific form of industrial capitalism. In a review of the theoretical debate about the issue in Brazil, Faria analyzes the role of the state as a mediator between the structural and proximate determinants of fertility. He particularly emphasizes the unexpected effects of non-demographic governmental policies.

The recent decline in fertility in Brazil is due to a complex set of processes associated with the pattern of development of the productive forces (development with accelerating urbanization, proletarianization and social exclusion) and the unanticipated consequences of government policy in telecommunications, consumer credit, social security and health care – all strategic dimensions of the process of change for the reproductive behaviour of the structured totality which is Brazilian society.³

These remarks bring us to the second item in this introduction which is the reproductive health situation in Brazil, especially the status of fertility regulation. The first point of relevance is social policy in this area which relates to the previous paragraph.

Consistently with the above quotation, it can be said that Brazil has never had an explicit population policy relating to fertility. In 1983 the government introduced a policy relating to human reproduction but it took the form of a health programme focusing

on integrated health care for women during all stages of their life cycle. This was PAISM (Programme of Integral Health Care for Women) subordinated to the Health Ministry. It included reproductive health care and family planning but did not have demographic objectives.⁴ Later on, the issue of fertility regulation was included without birth control purposes in the new federal Constitution enacted in 1988. Here family planning is defined as a right of married couples for which the state must provide. The Constitution also prohibits coercion by public or private entities in this sphere. A private member's bill is now before Congress to implement this constitutional provision through ordinary legislation. The bill reiterates the above points while adding new items that reinforce the distinction between full health care including family planning and population policy relating to fertility.

However, for a firmer grasp of the reproductive health situation in Brazil, particularly concerning fertility policy, three further points must be highlighted. First, fertility regulation in Brazil has historically been a sphere in which the private sector has been active with greater or lesser intensity through family planning and birth control organizations, mainly funded from abroad. Second, progressive segments of society have historically taken a critical stance on birth control policies and the activities of these private bodies, such segments especially the women's movement acted as the motive force leading to formulation of the PAISM programme. And lastly, this programme has faced major implementation problems since its inception.⁵

⁴ROCHA, M. I. B. (1988) *População, Reprodução e Saúde: anotações sobre a questão de uma política social*. *Revista Brasileira de Estudos de População* Campinas vol. 5 no. 2 p. 21-33 July-Dec 1988.

⁵ROCHA, M. I. B. (1993) *Política Demográfica e Parlamento: debates e decisões sobre o controle da natalidade*. Campinas: Núcleo de Estudos da População (Textos NEPO 25). COSTA, A. M. (1992) *PAISM: uma política de assistência integral à mulher a ser resgatada*. São Paulo: Comissão de Cidadania e Reprodução (Cadernos CCR 1).

²FIBGE (1996) *População*. Home Page IBGE.

³FARIA, V. (1988) *Políticas de Governo e Regulação de Fecundidade: Consequências não antecipadas e efeitos perversos*. São Paulo: Mimeograph.

In connection with the above points and as part of an overall process of public spending cuts, particularly in the area of social policy it must be stressed that the field of reproductive health and within it the part relating to fertility regulation is highly problematic in Brazil

A nationwide survey conducted in 1986⁶ showed that some 70 per cent of formally or informally married women aged 15 to 54 used contraceptives of some kind. Surgical sterilization and the pill were by far the most prevalent methods used, with 44.4 per cent and 41.0 per cent respectively. The practice of surgical sterilization, a virtually irreversible method, is widespread in Brazil and has taken on a genuinely cultural nature, as shown in studies by Berquo. Attention has also been drawn to the excessive use of caesarean sections, accounting for some 34 per cent of all deliveries in 1990. Depending on the state, however, the proportion of caesarean sections exceeds 50 per cent. These operations are frequently performed without medical prescription, usually for the purpose of sterilization.⁷ Lastly, and very importantly, there is a strikingly high rate of maternal mortality, around 118.6 per 100,000 live births for 1992, the most recent datum available. In this context, abortions account for about 12% of maternal deaths; induced abortions specifically account for some 7.9%.⁸

I now return to the specific topic of abortion and conclude these introductory remarks. The number of abortions in Brazil is estimated to have totalled 1,443,350 in 1991, or about 44 per cent of live births.⁹ This high number

of abortions coexists with a legislation making abortion illegal, with the two exceptions mentioned above and with an intense debate on the subject in Congress and throughout society. It is to the debate in the legislative sphere that we now turn.

Methodology

The period analyzed ranges from the start of such discussions in Congress from the 1946 legislature until the present day, but with greater emphasis on recent debates. Both the research project and the political debate on which it focuses are still in progress. However, for the present purposes, I shall restrict my comments to the period including the legislature which adjourned in February 1995.

I endeavoured to detect not only the emergence of the issue but also its evolution in the Chamber of Deputies and Senate, Brazil's lower and upper houses, during the long period just defined. It is important to stress that the section of the Penal Code containing the provisions on abortion to which I referred at the outset was enacted in 1940 under the *Estado Novo* dictatorship, after President Getúlio Vargas had closed Congress. The Legislature did not resume normal activities until the Constituent Assembly of 1946.

The empirical research material consisted of parliamentary documents from the Chamber and Senate, mainly draft legislation and speeches by members of both houses. The speeches were used but not systematically incorporated during this stage of the project.¹⁰

⁶FIBGE (1991) *Anticoncepção 1986*. Rio de Janeiro: Fundação Instituto Brasileiro de Geografia e Estatística.

⁷BERQUÓ E (1995) *A Saúde Reprodutiva das Mulheres na Década Perdida*. Paper presented at the seminar 'Rapid fertility decline in Brazil and India: social determinants and consequences', Cambridge, April 1995. BERQUÓ E, ARAÚJO M J, SORRENTINO S (1995) *Fecundidade, Saúde Reprodutiva e Póbreza na América Latina: o caso brasileiro*. São Paulo: Mimeograph.

⁸BRASIL, Ministério da Saúde, *Mortalidade Brasil 1992*. Brasília: CENEPI, Fundação Nacional de Saú-

de 1996. In the data on maternal mortality, abortions are the fourth largest cause of death, while the second largest cause, post partum infection, and the third, hemorrhage, no doubt include many induced abortions. When performed clandestinely, abortions are also responsible for major sequelae in the morbidity profile of Brazilian women. COSTA, A M (1993) *Direitos reprodutivos riscos e encruzilhadas*. Paper written for teaching purposes and presented at the Program on Studies in Reproductive Health and Sexuality, Campinas: NEPO/UNICAMP.

⁹THE ALAN GUTTMACHER INSTITUTE (1994) *Aborto Clandestino: uma realidade latinoamericana*. New York: The Alan Guttmacher Institute.

This analysis of parliamentary documents will be supplemented in the future by information deriving from interviews with members of Congress and interest groups. Interviews have been held with all parliamentarians who submitted bills to the last legislature in the period analyzed and the information thereby obtained has already enriched the ongoing research work to a significant extent.

For the purposes of analysis the parliamentary documents were divided into four stages based on the political evolution of the debate in Congress and in society at large. The resulting periodization comprised stages that included differing numbers of legislatures and legislative proposals. Thus the first stage covering the period 1946-71 comprised six legislatures to which three proposals were submitted and saw the start of the debate as Congress reopened after the fall of the *Estado Novo* dictatorship. The second stage covering the period 1971-83 comprised three legislatures to which 13 proposals were presented; the debate became more heated during this stage although social and political interest groups did not yet participate intensely. The third stage covering the period 1983-91 comprised two legislatures to which 15 proposals were submitted; this was when the debate intensified sharply under the influence both of redemocratization after a long period of military rule and of the women's movement. The fourth and last stage covering the period 1991-95 contained one legislature to which 18 proposals were submitted and is when the debate was at its most intense to date.

The study outlined in this paper was based on an examination of the abortion debate in all four stages. For each stage the following items were produced: a foreword presenting background information on the period; a chart containing a description of the bills submitted to Congress which was the source of most of the data used; and

an analysis of the legislative proposals described in the chart. This methodological approach produced a historical accompaniment to the debate itself leading up to the present and showing how the past evolution of discussions on abortion has given rise to the current status quo.¹¹

Before moving on to a summary of the parliamentary debates on abortion it is necessary to outline a number of characteristics of the Brazilian legislation on this matter especially those provisions which members of Congress have endeavoured to change. The legislative proposals submitted are of various kinds. Some are bills designed to amend existing provisions; others aim to repeal them while some seek to introduce an entirely new legislative framework without precedent in Brazilian jurisprudence. The majority refer to the Penal Code. The rest refer in descending order to the Misdemeanours Act, the Consolidated Labour Laws and in a single case to the federal Constitution of Brazil. The Penal Code of 1940¹² in the section entitled 'Crimes Against Life' defines as crimes (with their respective penalties) an abortion deliberately caused by a woman bearing a foetus or with her consent (article 124) and an abortion caused by a third party with or without the woman's consent (arts 125 and 126 respectively). In addition the Code stipulates more severe penalties for abortions by third parties if they cause grave bodily harm or the death of the mother (art 127). Lastly art 128 exempts from punishment any medical doctor who carries out an abortion defined as

¹¹ ROCHA MIB (1994) *O Congresso Nacional e a Questão do Aborto*. Campinas (mimeo). Research report submitted to the MacArthur Foundation. This study entitled 'The National Congress and the Abortion Issue' has been developed with the *Núcleo de Estudos de População (NEPO)* at the *Universidade Estadual de Campinas*. It was originally supported by the MacArthur Foundation which provided me with a grant from 1991 to 1994. In 1994 I began receiving a research grant from the *CNPq* the Brazilian National Research Council with an expanded research project including the current study. Jurist Sílvia Pimentel now acts as consultant and sociologist Tania Margatto as research assistant.

¹² Decree Law 2848 Dec 7 1940

¹⁰ Parliamentary sources are not included in the references because they are not relevant to the present purpose.

necessary i.e. when the pregnant woman's life cannot be saved by other means or when the woman has become pregnant as a result of rape

The Misdemeanours Act of 1941¹³ in a section entitled 'Misdemeanours Against Persons' defines as a punishable offence the advertising of a process, substance or object designed to bring about an abortion (art. 20). It is worth recording that until 1979 this article also prohibited advertising of methods for avoiding pregnancy.

The Consolidated Labour Laws of 1943¹⁴ when dealing in a section entitled 'Annual Paid Leave' with absences from the workplace not taken into account for the purpose of computing vacation entitlement stipulates that a female employee must be given such leave when pregnant or for a non-criminal abortion (art. 131, clause II). This provision was partially suppressed under the last legislature analysed.

Lastly, the federal Constitution of 1988¹⁵ in article 5 of the section on 'Individual and Collective Rights and Duties' defines as inviolable the right to life (without referring to conception), freedom, equality, security and property, in the context of several fundamental rights and guarantees.

As already mentioned, the abortion debate in Congress revolves essentially around these legal provisions, and the next section deals precisely with this debate.

The abortion debate in Congress

The question of abortion has a strong appeal for members of Congress, who submitted a total of 49 legislative proposals during the period analyzed. Forty-six of these were bills, including resubmissions and substitutions, and the remaining three were documents of a different nature (one was an indicative draft and two were requests for information from the Executive). The number of proposals submitted increased

from one stage of the analysis to the next, despite the fact that each stage comprised a shorter period of time. It is worth recalling here that three proposals were submitted during the first stage, which covered 25 years; 13 during the second, which lasted 12 years; 15 in the third, lasting eight years; and 18 in the fourth, lasting only four years. This is an indication of the extent to which the debate has intensified as time passes. Almost all the proposals examined (43) originated in the Chamber of Deputies, the lower house, with four coming from the Senate and two from the Executive. It should be noted that the documents submitted by the Executive are in fact portions of comprehensive draft legislation designed to reformulate the Penal Code and Misdemeanours Act.

The majority of the bills submitted (26) deal with proposed amendments to provisions of the Penal Code or include new provisions changing the legal approach adopted in the Code. Eleven refer to the Misdemeanours Act and two to the Consolidated Labour Laws. Two bills set out to oblige the National Health Service to perform abortions permitted by law. One bill refers to the federal Constitution. Three of the remaining four bills propose to authorize contraceptive activities and practices but exclude those capable of causing abortions. Lastly, one bill provides for the issuance of civil certificates for fetuses.

Only two of all the bills submitted to date have ever been passed by Congress. While they do not relate to issues that are central to the debate, they indicate a change of attitude towards abortion. The first was submitted by Senator Aloysio Chaves to amend article 20 of the Misdemeanours Act by striking out the ban on advertising for processes, substances or objects relating to contraceptive methods. However, the prohibition regarding abortion was retained. Although this measure did not change the law on abortion, it had the effect of reiterating a prohibition already stipulated in the legislation in force.

¹³ Decree Law 3688, Oct. 3, 1941.

¹⁴ Decree Law 5452, May 1, 1943.

¹⁵ Constitution of the Federal Republic of Brazil, Oct. 5, 1988.

It should be stressed that several other bills with a similar content had been submitted previously until one of them was finally passed in 1979 in a climate of governmental concern about population increase. Most of these bills were influenced by Bemfam (Society for Family Wellbeing in Brazil) an organization whose stated aims included lobbying Congress to remove legal obstacles to birth control and family planning.

The other bill passed which became law during the last legislature analyzed differed from the first by taking a position that was roughly speaking favourable to the permissibility of abortion. It was submitted by Deputies Eduardo Jorge and Sandra Starling, both progressive politicians who supported the ideas of the women's movement. The bill amended clause II of article 131 of the Consolidated Labour Laws so as to ensure that absences from work due to abortion are not deducted from annual paid leave regardless of the circumstances. In practice this means allowing women to take time off work even for an illegal abortion, by contrast with the previous legislation which did so only for non-criminal abortions. According to Jorge and Starling, it is inadmissible that women who undergo abortion should be doubly punished, whether an abortion is legal or illegal, it entails physical, psychological and social suffering for the woman in question who needs time to recover before returning to work.

With regard to the stance on abortion taken in these bills, 25 were favourable to permissibility whereas 21 were against. An analysis of the evolution of this attitude over time shows that in the first three periods bills implicitly or explicitly opposed to permissibility were in the majority, although the number of bills favouring permissibility gradually increased. The fourth period marked a turning-point in the sense that the vast majority of the bills submitted, 13 out of 16, were favourable to allowing abortion in one way or another.

In fact, even in the first three stages the predominant trend among the bills relating

directly to the issue - those referring to the Penal Code - was favourable to permitting abortion. However, the underlying definition of a favourable attitude here covers a broad spectrum of positions embodied in these bills, which ranged between two extremes, from providing for a single new exception to the general ban on abortion to changing the legislation more radically by decriminalizing and/or legalizing abortion altogether.

The various tendencies or attitudes expressed by bills, and the differences among these tendencies in terms of their ideologies and goals, in turn reflect the diversity of the political and social groups participating in the debate. Congress indeed functions as a sounding board for the interest groups involved. As mentioned above, these groups are as follows, in the chronological order of their entry into the debate: the Roman Catholic Church, segments of the medical profession, the women's movement and the evangelical churches. These groups have appeared on the scene at different times and continue to participate in the action today.

The Catholic Church manifested its thinking on the issue from the beginning of the period analyzed. Back in 1949, during the first legislature after the end of the *Estado Novo*, Deputy Arruda Câmara, a Monsignor, submitted a bill to remove the two exceptions to the ban on abortion from the Penal Code. Many years later, in 1986, when a tense debate on abortion was proceeding in Congress, Deputy Nilson Gibson submitted a bill that was also inspired by the ideas of the Catholic hierarchy. In 1994, when the controversy was particularly heated in civil society,¹⁶ Deputy Osmâio

¹⁶ During this period, a number of national and international factors came together to heat up the debate in Brazilian society. Included amongst these was the Vatican's position with regard to issues that were to be dealt with at the International Conference on Population and Development, including abortion, the debate waged in the Workers' Party over whether to include the abortion issue in its campaign platform for the 1994 Presidential elections, the disclosure by renowned physicians

Pereira representing the official position of the Catholic Church submitted the latest bill itemized in this stage of the research project. It sought to insert a clause on the inviolability of the right to life at all times starting with conception into the section of the federal Constitution dealing with individual and collective rights and duties. The bill also defined abortion as a heinous crime against life and proposed to amend the Constitution so as to prohibit any future attempt to pass legislation decriminalizing or legalizing abortion.

Although the official position of the Catholic Church appears transparently in only three of the bills analyzed, it was effectively manifested throughout the period studied in debates on bills relating to abortion and in speeches by members of Congress with ties to the Church. Most of these speeches were delivered as attacks on bills designed to increase the number of situations in which abortion would be allowed. More recently the position of the Catholic hierarchy has been expressed through the activities of pro-life movements which are of a religious nature but not exclusively Catholic and have been lobbying Congress as part of their fight against legalization of abortion. However, Catholic influence can also be seen to point in the opposite direction. An example is a group called Catholics for Free Choice which recently began lobbying Congress. These Christian feminists who identify with the women's movement on the issue of reproductive rights have taken part in debates with members of both houses of Congress and members of the Catholic hierarchy. They disagree with the Vatican on this issue but see themselves as members of the Church and constitute a new interlocutor in Congress's deliberations on the abortion issue.

The medical profession began to have a perceptible influence on the congressional debate in the second half of the 1960s and

especially in the 1970s. Senator Vasconcelos Torres, for example, submitted a bill to make abortion permissible under certain conditions based on a paper delivered to the 19th Brazilian Conference of Gynaecologists and Obstetricians. Another example is the attack led by members of the National Academy of Medicine and Bemfam on a bill providing for therapeutic abortion submitted by Deputy Jose Sampaio. During this period moreover members of Congress frequently made references in speeches to a report published by physicians in Rio de Janeiro when endeavouring to legitimate their stance against making abortion legal. Bemfam's participation in the debate during this period was also significant especially as regards its ties with the medical profession. Bemfam was set up in 1965 by gynaecologists and obstetricians during their 15th Brazilian Conference and in 1967 it joined the International Planned Parenthood Federation. This interest group can be considered a key participant in the debate on abortion inside and outside Congress. As already mentioned it influenced several bills that set out to allow contraceptives to be distributed while maintaining the ban on advertising or dissemination of abortion. There are also recent examples of participation in the debate by segments of the medical profession. In the 1990s they have advocated permission for abortion in two situations: when the mother is HIV-positive and when there is evidence of a grave and irreversible foetal anomaly. Discussions on these issues, especially the latter, went so far as to cause the drafting of a bill by the Federal Council of Medicine and its analysis by several of the profession's regional councils. A bill dealing specifically with abortion justified by a grave foetal anomaly submitted by Deputy Luiz Moreira during the last legislature studied was not directly influenced by the Council but indirectly reflects the Council's participation in the debate in Congress. Indeed this medical organization was represented in two public meetings held on the premises of Congress to debate the issue in the second half of 1993.

Anibal Faundes and Thomaz Gollop that abortions were performed in clinics headed by them in cases of serious and irreversible foetal malformations so as to be incompatible with life.

The women's movement began participating in discussions on abortion in Congress in the 1980s and as time went by became the most active of the interest groups involved. Taking a position in favour of permitting abortion, it directly or indirectly influenced the submission of a number of bills, the organization of public meetings in Congress to debate the issue and the contents of speeches delivered by several parliamentarians. This active role was largely made possible by the fact that Congress now had women members and by the movement's proximity to parliamentarians of a progressive tendency, especially in the Chamber of Deputies.

A chronological analysis of this movement's participation points first to the activities of Cristina Tavares, a deputy who submitted two bills on abortion, one in 1983 which was the first bill ever submitted to Congress under the influence of the women's movement. Another salient feature of the 1980s was the presence of Jose Genoio, who also submitted two bills on abortion, and of Luiz Salomão, who submitted one. Both of these deputies identified with the demands of the women's movement.

Three of these bills sponsored by Tavares, Genoio and Salomão were submitted after the new Constitution was promulgated in 1988. During the Constituent Assembly, when abortion was one of the most controversial issues, even the portion of the women's movement that insisted on the importance of including a clause on abortion in the Constitution eventually agreed with progressive parliamentarians that this was not the appropriate way to deal with the issue. The National Council for Women's Rights played a key role in this decision.

The influence of the women's movement on routine congressional activities intensified during the early 1990s, especially during the last legislature analyzed. Five bills submitted by Deputy Eduardo Jorge, in certain cases jointly with Deputy Sandra Starling, were influenced one way or another by the movement, as were a bill re-submitted by Genoio and particularly a substitutive bill by Deputy Fatima Pelaes.

The movement also influenced two bills submitted by Deputy Jandira Feghali and Senator Eva Blay, both feminists. On different occasions while debates were going on in Congress, these women led two seminars and a public hearing. Their intention in conducting such activities was to involve more people in the discussion, both in Congress itself and in society at large.

The women's movement was active during the last decade in the sphere of Congress, including the period of intense debate by the Constituent Assembly, which is not covered by this paper. More recently, the movement reinforced its opportunities to influence the political and legislative process by setting up the Feminist Centre for Studies and Parliamentary Assistance (CFEMEA) in 1991. Headquartered in the capital, Brasília, this organization is an important instrument for lobbying Congress and publicizing its activities in relation to women's rights, besides joining forces with other feminist individuals and groups to provide assistance to parliamentarians on discussions of abortion.

In the second half of the 1980s a new social actor comes onto the stage, as the latest of the groups I have mentioned so far, the evangelical churches. Like the Roman Catholic hierarchy, evangelicals advocate the right to life from the moment of conception, expounding this position in speeches and bills. Examples of the latter are two bills submitted in the penultimate and last legislatures analyzed, by Deputy Matheus Iensen, a Protestant pastor proposing more severe penalties for abortion in the Penal Code, and another submitted by Deputy Francisco Dias to allow civil certificates to be issued for foetuses. Besides the social groups mentioned above, which entered the political and juridical debate in Congress at different times, it is also worth registering the presence of the Executive and the participation, albeit limited, of the political parties. The Executive submitted two bills on abortion in the 1970s during the period of authoritarian military rule, when the issue was not yet intensely debated in Brazil.

These measures involved a number of proposed changes to the Penal Code of 1969 as amended in 1973 neither of which versions of the Code was enforced and set out to introduce a new law on misdemeanours

Specifically with regard to abortion the first bill included a provision on the legality of abortion when pregnancy is the outcome of rape. Such a provision had been struck out of the Penal Code by the 1973 amendments. The second bill repeated the ban on abortion advertising in the Misdemeanours Act but increased the amount of the fine imposed as a penalty. These proposals submitted by a dictatorial regime merely reiterated existing provisions enacted by the equally dictatorial *Estado Novo* government.

Since 1979 when a gradual move to restore democracy was timidly begun by the generals and particularly after redemocratization gathered momentum in 1985 the Executive has taken further initiatives to revise the Penal Code.

In 1984 the general section of the Code was reformulated and the Executive circulated a draft of a new special section although Congress did not debate it. This draft retained the definition of abortion as a crime but included a new exception that allowed abortions in cases of foetal anomaly.¹⁷

Moving up to the 1990s two initiatives have been taken recently to revise the Penal Code. The first was originated by the administration of President Itamar Franco the predecessor to the present Executive and the second under the incumbent administration of President Fernando Henrique Cardoso who took office in 1995. Both involved the creation of a special committee subordinated to the Justice Ministry charged with proposing amendments to the Penal Code. The first committee did not complete its mission but maintained

some contacts with segments of civil society including the women's movement and drafted preliminary texts indicating an increase in the number of exceptions to the ban on abortion. The second committee set up in April 1995 has not resumed the work done by the first committee but has also received proposals from segments of civil society.¹⁸

With regard to political parties their participation in the debate in Congress was negligible throughout the entire period analyzed. Only very recently did the issue of abortion appear on the political agendas of the Communist Party of Brazil (PC do B) especially its congresswomen and the Workers' Party (PT). Abortion is a highly divisive issue for this latter party however which is strongly influenced by the Roman Catholic Church. The degree of controversy provoked by the issue is illustrated by the decision to exclude the abortion question entirely from the PT's election manifesto in 1994 when the party's candidate Lula was considered a clear favourite for much of the campaign.

However it can be said that in the 1980s as redemocratization advanced and the struggle to decriminalize and/or legalize abortion intensified many parliamentarians belonging to progressive parties some of them women individually identified with the demands of the women's movement. From the standpoint of the research project discussed here this demonstrates that the abortion debate reflects a political dimension of the social movement rather than a party political configuration.

Past or future decisions on abortion by Congress - to maintain the law as it stands partially modify it or profoundly reformulate it - depend on the balance of forces among the various political and social groups which lobby or are active in Congress. The strongest political tension at present however is located in the following on one hand initiatives to decriminalize and/or legalize abortion by the organized

¹⁷ BARSTED L.L. (1992) Legalization and Decriminalization of Abortion in Brazil: Ten Years of Feminist Struggle. *Estudos Feministas* Rio de Janeiro no 0 p 169-186.

¹⁸ CFEMEA (1995) A Reformulação do Código e as Mulheres. *Femea* Brasília no 33 p 8.

women's movement and progressive parliamentarians allied with it and on the other the stance adopted by the Roman Catholic hierarchy and evangelical churches to oppose legal abortion usually as a reaction to the former initiatives¹⁹

1995-96 the debate proceeds

When Congress reconvened in February 1995 the topic of abortion almost immediately became the object of bills including both ones from the previous legislative period which were brought up for debate again as well as a proposed constitutional amendment (PEC 25/95) as mentioned at the beginning of this paper. The debate on these bills intensified during the latter half of 1995 and continued albeit less intensively in 1996 an election year.

Five bills from the previous legislature continued before Congress and four new proposals were submitted. All nine were originated by the Chamber of Deputies and seven were favourable to allowing abortion. Of the two remaining bills one is explicitly against allowing abortion while the other takes an ambiguous stance on the issue. Six of the nine bills refer directly or indirectly to changes in the Penal Code. Two seek to decriminalize and/or legalize abortion fully or partially (in the latter case without incriminating pregnant women who have an abortion). They were submitted by Deputies Jose Genoio and Eduardo Jorge respectively. The other four are designed to increase the number of situations in which abortion is legal. Each addresses one or more specific cases authorizing abortion in the following situations: when the pregnant woman is HIV-positive; when pregnancy represents a health hazard and/or when grave and irreversible foetal anomalies are detected

when such a foetal anomaly is detected and when the foetus is incapable of surviving due to a malformation incompatible with life or an incurable degenerative disease. The first two of these four were submitted by Eduardo Jorge and the latter two by Luiz Moreira and Marta Suplicy respectively.

As one can observe three of the bills in question were submitted by Deputy Eduardo Jorge in some cases jointly with Deputy Sandra Starling. Jorge's strategy in the current legislature has been to take a gradualistic approach submitting various bills focusing on specific situations in which abortion is to be permitted. He also submitted another bill to oblige the National Health Service to perform abortions permitted under the Penal Code.

It is worth briefly commenting on this latter bill which was responsible for much of the abortion debate in 1995.

The rapporteur for this bill and most of the others being examined by the Social Security & Family Affairs Committee is Deputy Jandira Feghali who like Jorge is a progressive politician and a campaigner for women's rights. Pressured by parliamentary rules and aware of the findings of an opinion survey conducted among members of Congress by CFEMEA indicating that one of the bills on abortion stood a strong chance of being passed Feghali took measures to speed up the committee stage backed by segments of the women's movement. The result was an intense debate at hearings of the Social Security & Family Affairs Committee which finally passed the bill by a narrow margin.

This bill is to be discussed and voted on by the Constitution & Justice Committee. The first rapporteur was Deputy Helio Bicudo who identifies with the official position of the Catholic Church on abortion to the point of submitting an alternative bill to the Committee. However Deputy Bicudo has moved to another Standing Committee and the current rapporteur is Zulaia Cobra a congresswoman who is sensitive to the ideas of the women's movement.

It is relevant to point out that the only bill explicitly opposed to abortion was

¹⁹ The second and third parts of this article are a revised and updated version of two sections from the study 'The National Congress and the abortion issue in Brazil'. The work was published at the 9th Meeting of Population Studies in the first issue of the *Cadernos do CIM* and at the 1st Meeting of Researchers on Induced Abortion in Latin America and the Caribbean during the latter half of 1994.

submitted precisely when the debate in the Social Security & Family Affairs Committee was at its fiercest. Sponsored by Deputy Osmânio Pereira, also a supporter of the official Catholic position, this bill states that voluntary interruption of pregnancy (and euthanasia) are heinous crimes against life, violating article 5 of the federal Constitution. The bill considers article 128 of the Penal Code unconstitutional as it does any legislation creating exceptions that allow abortions (or euthanasia) or aimed at their legalization or decriminalization. The concerns were similar to those of the alternative bill sponsored by Deputy Helió Bicudo, and Pereira's bill ended up being withdrawn by the sponsoring deputy.

The last bill to be mentioned is that of Deputy Wilson Leite Passos, submitted in July 1996. It authorizes medical professionals to refuse to perform abortions under whatever pretext in both public and private health care institutions. Submitted to the Chamber of Deputies and referred to the Constitution & Justice Committee precisely now when this Committee is reviewing the previously mentioned bill obliging the National Health Service to treat the cases provided for under the Penal Code, it would appear that the Leite Passos bill is a reaction to the one ensuring legal abortion. It is relevant to note that the project on legal abortion allows the individual physician to refuse to perform an abortion on the basis of personal objections, while obliging the Health Service as a whole to comply with the law under any circumstances.

Thus it can be seen that the political conflict over the issue is intense, and it is no accident that this conflict manifested itself once again when the above mentioned bill to amend the constitution was submitted, particularly when a special committee was set up to examine the bill. In the midst of a comprehensive review of the federal Constitution, with many committees being set up to discuss important amendments on a variety of issues, it is striking that groups advocating 'the right to life from the moment of conception' had the political strength to set up a special committee to

discuss the abortion issue.²⁰

However, as stated in the title of this concluding section, the debate proceeds. Following the creation of this special committee in October 1995, the opposing camps in the abortion debate firmly entrenched themselves on the battlefield and at once began lobbying to influence the choice of members to sit on the committee and expert witnesses to be called, working hard to explain their viewpoints to the parliamentarians involved and publicizing their ideas in the media.

As mentioned previously, the committee completed its work in the first half of 1996. The constitutional amendment (PEC 25/95) proposed by Deputy Severino Cavalcanti received an unfavorable opinion from rapporteur Deputy Armando Atilio; it was subsequently voted down 9 to 2 by the Special Committee itself and later by the floor of the Chamber of Deputies, with 351 against, 33 in favor and 16 abstaining. The vote was conducted by Deputies Marta Suplicy and José Genoíno, campaigning against the amendment, and the author of the bill in favor.

In fact, it would be no easy matter to pass this proposed constitutional amendment. In addition to the political pressure brought to bear against it, it would have required a three-fifths majority to pass, a difficult vote to reach, quite apart from the fact that it is a radical proposal on a controversial issue. Furthermore, few political parties in Brazil have a clear position on abortion, and all three representatives of the Executive branch who gave witness before the special committee stated their opposition to the amendment.

Rejection of bill PEC 25/95 prevented a legal measure from being incorporated into the Brazilian Constitution that would have ruled out the possibility of performing abortions in the two situations already provided for under the Penal Code, and which would thus have had dire results for the health - indeed even the lives - of Brazilian

²⁰ CFEMEA (1995) *Aborto Polariza Discussão no Congresso Femea Brasília* no 35 p. 2

women. From a political perspective rejection of PEC 25/95 avoided constraints being placed on a democratic debate in Brazil over the issue of induced abortion. In fact, the debate will soon proceed in the National Congress focusing now on the bill concerning legal abortion, which as mentioned previously is under study by the Constitution & Justice Committee of the Chamber of Deputies.

Such are the pitfalls of the political game. Although it may appear contradictory, recent developments in effect indicate a tendency for events in the political sphere to proceed by chain reaction. Intensification of the debate on abortion both in Congress and in other national and international fora has led to a conservative and fundamentalist religious backlash in Brazil. The latter position, confronting an organized movement by groups taking a progressive stance on abortion, has in turn triggered an even stronger response

by progressives in defence of the Penal Code's provisions permitting abortion on which some existing health services are based, in denunciation of the grave public health hazard caused by the need to perform abortions in secret, for dissemination of the idea that abortion is one of women's reproductive rights and publicizing the decisions taken on the abortion issue by the International Conference on Population & Development and on Women.

It is opportune to recall, in conclusion, that Brazil unreservedly signed the documents produced at both of these Conferences: the former recognizing abortion as a grave problem of public health and the latter recommending that signatory states consider the possibility of revising the laws that contain punitive measures against women who have illegal abortions.