

## Conscientious Objection or Conscious Oppression?: The Uphill Battle to Access Abortion Services in Uruguay



Lucia Berro 11th September 2015 OXHRH

### Religion

In October 2012, Uruguay passed **Law 18,987** that waives criminal penalties for abortion in the first 12 weeks of gestation. Where the pregnancy results from rape, abortion is permitted in the first 14 weeks of gestation provided certain procedural requirements are met. No time constraints apply if the health of the mother is endangered or the embryo is unviable. Uruguay has also passed **Law 18,426** on sexual and reproductive health that recognized the duty of the state to guarantee the effective enjoyment of sexual and reproductive rights. However, access to safe and accessible abortion services remains an uphill battle for Uruguayan women.



On June 23, 2014 anti-abortion advocates attempted to overturn the country's abortion laws by calling for a referendum on the issue. They were supported by only 9 percent of the population, falling significantly short of the

25 percent that was needed for them to succeed. However, the strength of the campaign exposed the **influence of the Catholic Church** in Uruguay in spite of the fact that the country is officially secular. **Similar trends** have been observed **across Latin America**. Research conducted by **MYSU** at the **National Observatory on Sexual and Reproductive Health** indicates that an alarming number of doctors refuse to perform abortions on the grounds of conscientious objection (CO), with doctors usually citing religious and/or moral or philosophical reasons. The MY research found that refusal rates are as high as 87% in some areas of the country.

In November 2012 **decree n° 375/12** was enacted regulating the procedure of abortion and determining limitations to CO. Several doctors challenged the decree, arguing that it unduly restricted their right to freedom of thought. On 21 August 2015, in **Alonso Justo y otros contra Poder Ejecutivo**, the highest administrative court annulled several provisions limiting the exercise of CO. Among others, the court rendered null the requirement that physicians refrain from any form of value judgment regarding the patient's decision (article 12)—a clause that enables doctors to refuse participation in any steps relating to the termination of pregnancy (not only the abortion procedure).

International human rights standards state that although the right to freedom of thought, conscience and religion protected, the freedom to manifest one's religion or beliefs may be subject to limitations to protect the human rights of others. Specifically, human rights and health standards stipulate that health services should be organized to ensure that an effective exercise of the freedom of conscience of healthcare professionals does not prevent women from obtaining access to services to which they are entitled (**FIGO; Johnson et al, 2013; Zampas et al, 2012 IACHR, *Artavia Murillo v. Costa Rica***).

Reproductive healthcare is the only field in medicine where freedom of conscience is accepted as an argument to limit a patient's right to a legal medical treatment. It is the only example where the otherwise accepted standard evidence-based medicine is overruled by faith-based actions. It **has been argued** that the exercise of CO is a violation of medical ethics because it allows healthcare professionals to abuse their position of trust and authority by imposing their personal beliefs on patients.

The formulation of CO upheld by the court in its August 21 ruling prevents patients from receiving accurate, scientific and unbiased information about their options, and thus inhibits their ability to access such care (**Weitz and Berke Fogel, 2010**). This also results in inequities in access, creating disproportionate risks for poor and young women, those from ethnic minorities, and other women living in particularly vulnerable conditions, who have fewer alternatives for obtaining the services. It is no wonder that organizations across the world have criticised the ruling as **"restrictive and conservative"**.

Research shows that the legal availability of CO is routinely abused by anti-choice healthcare personnel in denying women their right to health (**Cook and Dickens, 2006; Dickens, 2006**). **Coppola** describes such practices as oppression towards women. In **Alegre's words** "[c]onscientious objection can sometimes constitute conscious oppression".

It is hoped that the Uruguayan parliament will revise the existing legal framework to eliminate barriers to accessing abortion—including a 5-day waiting period, multiple consultations and the requirement of filing a criminal complaint in rape cases—and strike a fair balance between the right to freedom of conscience and the reproductive rights of Uruguayan women.

## Author profile



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### Citations

Lucia Berro Pizzarossa, "Conscientious Objection or Conscious Oppression?: The Uphill Battle to Access Abortion Services in Uruguay" (OxHRH, 11 September 2015) <<http://ohrh.law.ox.ac.uk/conscientious-objection-or-conscious-oppression-the-uphill-battle-to-access-abortion-services-in-uruguay>> [Date of Access].

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## Comments

### Andrew

September 13, 2015 at 5:53 pm

Who, please, is to be set up as judge of whether a health worker's expression of conscientious objection is genuine or not? Who but that worker can know?

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