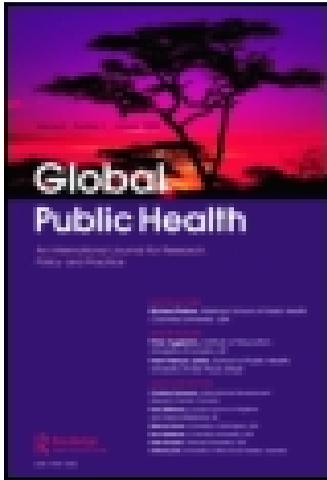


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The 'unexpected' Montevideo Consensus

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The ‘unexpected’ Montevideo Consensus

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This commentary examines the outcome of the First Latin American Regional Conference on Population and Development, held in Montevideo in August of 2013 to mark the twentieth anniversary of the International Conference on Population and Development (ICPD) and adopt forward-looking recommendations. While highly appraising the outcomes, this article maps the policy paradoxes of ICPD implementation in Latin America, in particular with regard to abortion, and charts challenges ahead to sustain the intersectional vision propelled by the 1994 Cairo Conference.

Keywords: ICPD; population and development; human rights; sexual and reproductive rights; abortion

Introduction

In an environment that, both globally and nationally, has become increasingly refractory to the human rights and health agenda consecrated in the 1994 International Conference on Population and Development (ICPD), the outcome of the First Latin American and Caribbean Regional Conference on Population and Development, held in Montevideo in August 2013, has captured the attention of policy-makers, researchers and activists in the most diverse quarters. This comment, collectively written by four feminist activists and researchers across generations – who have been engaged with the ongoing ICPD battles for many years – briefly charts factors and trends that may explain this successful story, while at the same time examining glaring policy and political gaps and paradoxes, which lie behind the irreproachable language of the Montevideo Consensus. The last section explores what may come next for the unfolding of the ICPD aspirational agenda in Latin America.¹

What may explain the Montevideo Consensus?

The outcome document of the First Latin American and Caribbean Conference on Population and Development that was held in Montevideo in August 2013 is indeed exceptional in its vision, its commitment to the Cairo Program of Action as well as forward-looking policies (Regional Conference on Population and Development in Latin America and the Caribbean, 2013). The Montevideo Consensus called states to effectively address one of the most neglected sexual and reproductive rights issues,

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women's rights to safe and legal abortion. The language of the final document in regard to reforming abortion laws using a public health and human rights approach, as had been defined in Cairo, strongly recommends that states review existing punitive laws:

We are concerned with the high rates of maternal mortality, due largely to difficulties in obtaining access to proper sexual health and reproductive health services or to unsafe abortions, and are aware that some experiences in the region have demonstrated that the penalization of abortion leads to higher rates of maternal mortality and morbidity and does not reduce the number of abortions, and that this holds the region back in its efforts to fulfil the Millennium Development Goals. (Regional Conference on Population and Development in Latin America and the Caribbean, 2013)

Furthermore, Paragraph 42 in the section on universal access to sexual and reproductive health services calls for states to ensure that:

In those cases where abortion is legal or decriminalized under the relevant national legislation, the availability of safe, good-quality abortion services for women with unwanted and unaccepted pregnancies needs to be ensured, and we urge all other States to consider amending their laws, regulations, strategies and public policies relating to the voluntary termination of pregnancy in order to protect the lives and health of women and adolescent girls, improve their quality of life, and reduce the number of abortions. (Regional Conference on Population and Development in Latin America and the Caribbean, 2013, para. 42)

In Montevideo, Latin American governments had also committed to eliminating social, economic and gender inequalities, fulfilling the human rights of all people and securing sexual and reproductive rights and health without discrimination based on sex, age, ethnicity, HIV status, sexual orientation or gender identity, among other factors. The Montevideo Consensus is the very first intergovernmental policy document that defines 'sexual rights' beyond women's human rights (as established in Beijing in 1995) as those prerogatives that:

Embrace the right to a safe and full sexual life, as well as the right to take free, informed, voluntary and responsible decisions about their sexuality, sexual orientation and gender identity, without coercion, discrimination or violence, and that guarantee the right to information and the means necessary for their sexual health and reproductive health. (Regional Conference on Population and Development in Latin America and the Caribbean, 2013, para. 34)

It does not seem excessive to say that the main outcome of the First Latin American Conference on Population and Development was that it radically transformed the terms of the debate. The Montevideo debates and final recommendations were not just about whether adolescents, women, persons of diverse sexualities and sex workers must have their human rights protected and ensured, including on matters related to reproductive autonomy and sexual practices. Rather, the debate was centred on how these aspirations are to be achieved and how to address the root causes of inequalities – deriving from gender, race, ethnicity, class, age, location in the territory and ableism – that hinder the full realisation of the ICPD normative and policy legacies.

This outcome was made possible because of the leadership exerted in the conference by Uruguay, Argentina, Brazil, the Dominican Republic, Ecuador, Cuba, and to a certain extent, Colombia and Mexico. It is worth noting that in Cairo – and still more flagrantly in subsequent plus five reviews – Latin America had already sustained more advanced

positions than other global South regions. Additionally, these positions are to be interpreted as the effect of persistent advocacy performed in the last 20 years by civil society organisations committed to the ICPD agenda, in favourable, less favourable and even very hostile policy and political contexts. In these processes, experiences and success stories have been exchanged, such as between Mexico City and Uruguay concerning legal rights to safe abortion services. Cases of violations of sexual and reproductive rights have been presented to the regional and international human system of compliance with international human rights norms, with varied degrees of success.²

In Montevideo, various countries that usually express regressive positions in respect to the ICPD principles and policy definitions in global arenas – such as Chile, Guatemala, Honduras, El Salvador, Jamaica, Nicaragua and Costa Rica – remained mostly silent, and in the end joined the consensus; the same applies to countries such as Ecuador, where the national policy environment is fraught with controversies. It should also be noted that electoral processes under way for upcoming elections – August 2014 in the case of Chile – as well as the strictly technical and nonpoliticised composition of some delegations have contributed to this positive outcome. Not less importantly, the positions and views expressed from the very first moment of the conference by Alicia Barcena, general director of Economic Commission for Latin America and the Caribbean, strongly supporting gender equality and sexual and reproductive rights, including safe and legal abortion, were crucial to setting the tone of the debates that have followed.

Finally, the recent legal reforms on abortion and rights related to sexual orientation and gender identity – but also in respect to poverty reduction, social inclusion, transformed patterns of consumption and environmental protection – gave the government of Uruguay a solid platform for sustained progressive and forward-looking positions on the ICPD agenda, in ways that challenged regressive trends in regional politics on matters of sexuality and reproduction.

Even though governmental leadership and commitment is to be appraised, civil society advocacy was equally vital in terms of influencing government positions. Approximately 400 civil society representatives attended the conference and many governments had progressive civil society voices within their delegations favouring the adoption of progressive stands in moments where controversies could have potentially damaged the negotiations. The large presence and strong voices of youth, feminist, lesbian, gay, bisexual and trans activists (LGBT), Afro-Latino, indigenous and sex worker organisations have decidedly contributed to counter the pressures made by conservative governments, such as Guatemala, Honduras and Jamaica. It was also critical that feminist organisations, in particular a younger generation of feminist voices, that were knowledgeable of the ICPD agenda were part of many official delegations. Their presence has, in various circumstances, prevented governments from easily agreeing with the exclusion of controversial topics or of adopting weaker language in order to appease the more resistant states. Lastly, the total absence of conservative civil society and anti-abortion voices in Montevideo was also a key factor favouring the above-mentioned ground-breaking outcomes of the First Latin American and Caribbean Conference on Population and Development.

Gaps, obstacles and paradoxes

Since 1994, the effect of sustained advocacy mentioned above led to important strides in respect to the formal and legal recognition of sexual and reproductive rights (and health related policies). This can be exemplified by their recent enshrinement in the

constitutional reforms of Ecuador and Bolivia, or the legalisation of abortion in the first 12 weeks in Mexico City and Uruguay. High Court decisions have also expanded access to abortion in Colombia and Brazil, and a new protocol for safe abortion provision, in the case where it is legal, was also adopted in Argentina (Kane, 2008). Today, emergency contraception forms part of the basic health care package in Brazil, Mexico, Peru and Chile. Adolescent sexual and reproductive health care has been improved, including expanded access to contraceptives and HIV prevention throughout the region. In Chile, Ecuador and Peru, for example, adolescent health programmes appear to be properly financed and making progress.

The struggle for recognition of lesbian, gay, bisexual and transgender people's human rights, as well as those of sex workers and people living with HIV, is more prominent than ever. In 2008, Ecuador approved the second constitution in the world banning discrimination on the basis of HIV status, sexual orientation and gender identity. The 2010 Argentinean law of equality in marriage tailed the Mexico City legislation of late 2009 allowing for same sex marriages and was followed by an equivalent legal change in Uruguay. These reforms indicate that across the region there is today greater social acceptance of LGBT rights and that concrete steps have been taken to ensure full civil and economic rights to same sex couples. In the cases of Brazil and Colombia, once again High Court decisions have granted the right to civil unions in the case of same sex persons, and in the Brazilian context this was taken a step further by an ordinance issued by the National Council of Justice that has granted the right to marriage.

Despite these strong signs of 'progress', huge gaps can still be identified between what is written in laws and policy documents and the reality almost everywhere. Gender equality and human rights institutional machineries, or else sexual and reproductive health policy structures, remain limited in their scope or extremely fragile in terms of budget allocation and programme implementation. More glaring yet, access to safe and legal abortion as a woman's human right is still far from being guaranteed (Ojito, 2013). The criminalisation of women is one major obstacle to reproductive rights in Chile, Central America and the Dominican Republic. In Mexico, voluntary interruption of pregnancy has been legal in Mexico City since 2007, but it remains criminalised in 17 other states where 679 women have been charged with the crime of abortion since 2007, of whom 127 have been incarcerated (GIRE, 2013). Furthermore, after 2007, 16 states have reformed their constitutions to include a right to life since conception clause. In Chile, El Salvador, Nicaragua, Dominican Republic and Honduras, abortion has been completely criminalised, including in cases of rape or to save the woman's life. The Honduran and Chilean abortion restrictions are relatively old (1985 and 1989, respectively), and the Salvadorian laws prohibiting abortion are from 1998 (Center for Reproductive Rights, 2003, 2013). But legal changes in Nicaragua and the Dominican Republic are much more recent, 2006 and 2009, respectively.³

In El Salvador, between 2000 and 2011, at least 129 women have been incarcerated for abortion, which is equated with homicide. During the same period, 49 of these women were sentenced to serve up to eight years in prison (Sahuquillo, 2013). The total ban on abortion generates a climate of fear, increases stigma and discrimination towards women and violates their basic human rights to control their bodies, their sexuality and their reproduction. More importantly, these draconian abortion laws lead women to seek clandestine abortions, which are often unsafe and can threaten their long-term health and even their lives.

This policy and legal environment is to be explained, as elsewhere in the world, by growing conservatism. Conservatism impacts public debates, affects the mainstream

media and, most principally, directly influences state institutions through elections and at the level of law-making and policy formation. In most settings, these conservative waves may be attributed to the long-standing influence and growing dogmatism of the Catholic Church. In some contexts, such as Brazil, the expanding effects of extremist Evangelical forces also need to be taken into account (Association for Women's Rights in Development [AWID], 2010).

However, concerns are also to be raised about the positions expressed by left wing governments, now in power in a large number of countries – which are strongly committed to pro-poor policies and social inclusion programmes – in respect to human rights claims in the realms of sexuality and reproduction. In Ecuador, for example, both sexual and reproductive health programmes and sexuality education curricula are hugely successful. But when access to safe abortion was brought to the attention of legislators, the president issued a statement saying he would veto any law that attempts to decriminalise abortion, calling those of his party who would vote for this reform 'traitors' (Picq, 2013). A few weeks after issuing this statement, President Correa delivered a public speech on homosexuality that openly contradicted the policy and legal definitions mentioned above. Rather, it resonated the content of the Letter to Catholic Bishops on the 'problematic' effects of gender issued by Cardinal Ratzinger in 2004 (Corrêa, Parker, & Petchesky, 2008). For a progressive leader who professes to seek well-being and good living for all his country's peoples ('buen vivir'), these views are at odds with the social revolution objectives aimed at ensuring social and economic liberation for all citizens.

Similarly, worrying signs can also be detected elsewhere in the arc of progressive administrations now governing the region. In Brazil – which has been a champion of sexual rights in the past and where the successes of policy responses to HIV/AIDS have been internationally recognised – since 2011, educational materials devoted to promote the respect for sexual diversity in the public school system and to expand access to HIV education and prevention to vulnerable groups have been openly censored. These policy regressions resulted from direct pressures from dogmatic religious forces now well positioned in legislative bodies at all levels over the federal administration (de la Dehesa, 2013). In Nicaragua, during the last week of January 2014, the National Assembly approved a constitutional reform that establishes that the state will be guided by Christian values, Socialist ideals and solidarity practices, and making the family the centre of state policy concerns, while in parallel a Family Code is also being developed that defines the family as a unit composed of a (female) mother, a (male) father and children, a definition that excludes, for example, expanded family formations and female headed households.

These strong signals of secular states institution being infiltrated by religious values in policy-making are explained by the fact that wherever political forces situated in left quarters of the political spectrum are now in power governability is, more often than not, being assured through systemic negotiations with conservative sectors, including dogmatic religious forces (Fernandez, 2013). In some cases, charismatic leaders – such as Daniel Ortega, Rafael Correa, Tabaré Vázquez and Evo Morales – are in fact transporting their personal views to statecraft in the domains of sexuality and reproduction. In others – as in the case of Luiz Inácio 'Lula' da Silva, Michelle Bachelet, Dilma Rousseff and Cristina Fernández – what mainly blocks progress in these areas are the electoral agreements sustaining the administrations. The case of Cristina Fernández is quite illustrative of these paradoxes. Although she has been widely recognised as a champion of LGBT rights, more than once she has openly expressed flagrant regressive views with respect to legalising abortion. Fernández's position, however, is not unique; as

in many other countries, the current tendency is of a greater institutional acceptance of LGBT rights hand in hand with vehement opposition to legally expanding access to safe abortion.⁴

In this paradoxical landscape, the exceptionality of Uruguay and Mexico City's policy settings are to be noted as sharp examples that it is possible for progressive or left wing governments to sustain a vision and a practice of economic and social transformation that does not exclude or demonise rights and health demands in the realms of sexuality and reproduction. Lastly and not less relevant, despite the gaps and paradoxes briefly examined above, Latin American states' progressive agreements and speech acts in respect to sexual and reproductive health and rights are decidedly to be appraised and politically sustained, as illustrated by the 2013 Montevideo Consensus and the positions taken by the regional group in the April 2014, 46th Session of the UN Commission on Population and Development (CPD). RESURJ (2014) in its assessment of the 2014 ICPD outcomes informs that – in a harsh negotiation when regressive positions prevailed in the positioning of other southern regional groupings – most Latin American governments supported the vision that the sexual and reproductive rights of all individuals must be protected as to fulfil the goals of social justice and equitable development.⁵

Looking forward: is there a future for ICPD in Latin America?

Since 1994, Latin American countries have adopted progressive health policies and legislation on sexual and reproductive rights in accordance with human rights principles and standards. Yet, as mentioned before, huge gaps remain in respect to what is written in law and the daily realities of those who claim these rights and services. Equity in access, availability and quality of health care remain a major challenge due to great disparity across and within countries. On the other hand, the development of an increasingly consistent human rights framework to hold countries accountable for the commitments made in Cairo is also a major step forward to be noted. In the region, this step forward has been particularly significant in regard to violations related to unsafe abortion, maternal mortality and forced sterilisation, as human rights treaties have declared countries responsible for violating the human rights of women due to restrictive abortion laws, poor quality maternal health care or forced procedures. However, the processing of cases presented to the international system is long and cumbersome and does not always lead to positive outcomes, either because states refrain from or delay compliance. Furthermore, positive outcomes from an individual human rights case do not automatically translate into policies that respond to the needs and aspirations of many. The full realisation of sexual and reproductive rights in Latin America continues, therefore, to be a moving target.

However, the deep and wide cultural change achieved since 1994 through efforts aimed at the recognition of human rights in the realms of reproductive and sexual autonomy as well as sexual diversity and gender identity will keep moving the agenda forward. Today, a myriad of social justice movements – from human rights to climate change – are incorporating sexual and reproductive rights into their visions. This diffusion and spread has the potential to keep feeding and enlarging claims for equality, justice and human rights despite the resistances or even regressions manifested by governments now in power. The region must also pay particular attention to ensure that the vision and realisation of these rights encompasses everyone and, in particular, the most marginalised populations: adolescents, indigenous peoples, migrants, afro-descendants and the poor. Efforts aimed at eradicating poverty, overcoming racism, xenophobia

and social exclusion, improving working conditions and promoting environmental sustainability are some of the challenges moving forward. Perhaps the main challenge to be tackled is the fragmentation of social agendas and human rights claims that, more than often, derive from modalities of statecraft that isolate comprehensive demands in confined silos, or merely replicate the game of ‘governing differences’, which states have played since the early days of independence in the nineteenth century (DAWN, 2013; Gil, 2011).

Notes

1. The elaboration of this collective comment was triggered by the invitation made by the *Global Public Health* editors to Sonia Corrêa to write an analysis of the ICPD +20 process. Sonia Corrêa, however, recognising that she had not followed the policy process properly – except through partial engagement in the preparation of the Brazilian civil society position for Montevideo – thought this could be an opportunity for a broader Latin American view on Cairo +20 in the region. She then invited Alexandra Garita, Beatriz Galli and Lilian Abracinskas to respond to three questions in writing: (1) What made Montevideo possible? (2) What are the gaps and contradictions between the consensus language reached in Montevideo and ground level realities of sexual and reproductive health and rights policies and politics? (3) Is there a future for the ICPD agenda in Latin America? If so what is in store for the future? As the manuscript was being revised, in April 2014, the 46th Session of the UN CPD devoted to reaffirm the ICPD agenda took place and additional information from this negotiation has been added to the original draft. This exercise would not have been possible if it was not for the positive and rapid response of all three invited authors.
2. Examples to be mentioned are the Mexico and Nicaragua cases of Paulina and Amalia that deal with access to abortion (see *Paulina del Carmen Ramirez Jacinto v. Mexico*, Case 161-02, Report No. 21/07, Inter-Am. C.H.R., OEA/Ser.L/V/II.130 Doc. 22, rev. 1 [2007]). Available online: <http://www1.umn.edu/humanrts/cases/21-07.html>. In Brazil, there is the case of Maria da Penha and domestic violence (see Comision Interamericana de Derechos Humanos, INFORME N° 54/01, CASO 12.051, MARIA DA PENHA MAIA FERNANDES v. BRASIL, 16 de abril de 2001). Available online: <http://www.cidh.org/women/brasil12.051.htm>. There is also the case of Alyne on maternal mortality (see Comité CEDAW, Caso Alyne da Silva Pimentel v. Brazil. Comunicación N° 17/2008, 25 de julio de 2011, párrafos 7.2, 7.3, 7.6 y 8.2.a). Available online: <http://www2.ohchr.org/english/law/docs/CEDAW-C-49-D-17-2008.pdf>. Lastly, in Chile there is the Attala case on the right to custody of a lesbian mother (see Corte IDH, Caso AtalaRiffo y niñas v. Chile. Fondo, reparaciones y costas. Sentencia, 24 de febrero de 2012, párrafo 162). Available online: http://www.corteidh.or.cr/docs/casos/articulos/serie-c_239_esp.pdf.
3. In Chile, abortion has been totally illegal since 1989, when still under the Pinochet regime the Supreme Court eliminated the possibility of therapeutic abortion. The Honduran legal definition on abortion pertains to the Penal Code 1985 reform, but penalties were aggravated in 1996, and in 2012 the Supreme Court entirely banned access to emergency contraception. In El Salvador, the 1998 Penal Code reform struck down the three possibilities to access abortion as defined by the 1973 criminal law (women’s life risk, statutory rape and grave foetal abnormality). The 2006 criminal reform in Nicaragua has also eliminated the possibility of therapeutic abortion enshrined in the law since the late nineteenth century. In the Dominican Republic, since September 2009, a constitutional amendment declaring the right to life ‘inviolable from conception until death’ was approved in Congress, which was confirmed by the country’s Supreme Court in 2013.
4. It does not seem excessive to say that this trend was inaugurated by the 2006 Nicaraguan Penal Code reform that simultaneously struck down the crime of sodomy and banned the possibility of therapeutic abortion. Since then, in many other countries we have been witnessing state actors easily trading abortion rights with conservative political sectors, while at the same time advancing the LGBT rights agenda. In other words, these state actors appear to be selling abortion rights to preserve the advancement of LGBT rights and sustain their image as modernisers in the realm of sexual diversity.
5. South Africa, Ghana, Philippines, Nepal and India and, eventually, more flexible positions in Lebanon.

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