

GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
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CHILE

FIGHTING THE CRIMINALISATION OF ABORTION WITH ONLINE INFORMATION: THE CASE OF *ABORTO LIBRE*



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Introduction

Chile is one of the few countries where abortion is outlawed regardless of the particular case, along with Nicaragua, Malta, El Salvador, the Vatican and the Dominican Republic – with harsh penalties for those who perform abortions.¹ To date, there have been several attempts to push for legislation to legalise abortion in Chile, all of which have failed or remain hanging in Congress. However, this year might be a turning point: on 31 January, Chilean President Michelle Bachelet announced new legislation that contains three types of circumstance in which abortion would not be a crime.

The initiative is currently being debated in Congress, where the country's political elite remain divided between those who stand for women's rights to sexual and reproductive health, and the so-called "pro-life" supporters of the conservative wing.

In this political and social setting, the internet has become one of the most important platforms for sexual and reproductive health rights activists to express their opinions, provide information and exercise their rights. But at the same time the internet can invite harassment and infringement of communications privacy. In this report we examine the case of *Aborto Libre* (Free Abortion), a Chilean collective that uses technology to distribute information about abortion to women who need it.

Policy and political background

Abortion had been allowed in certain cases in Chile until 1989, when in the final year of Augusto Pinochet's rule (1973-1990), legislation was enacted to universally outlaw abortion. Since 1990 there have been a few attempts to end its criminalisation. Women who live in Chile have had to cope with a reality

in which, under the law, they are forced to continue gestating a foetus at any cost. Despite abortion being illegal, women in certain circumstances have continued to search for ways to terminate their pregnancy.² In the midst of severe restrictions on information about abortion, a polarised Congress, and a situation which forces unwanted pregnancies on them, desperate women have sometimes paid for clandestine procedures and more recently have resorted to purchasing drugs and pills of dubious origin.³

In 2009, a group of feminists formed the *Aborto Libre* collective and set up a telephone hotline to provide information to women contemplating abortion, replicating a similar foreign initiative. Today, *Aborto Libre* also has a website and an email account as well as a Facebook fan page.

In the face of crippling legal restrictions, Chilean women have managed to find a way to exercise their sexual and reproductive rights through the internet – from buying contraction-inducing pills online to finding information about how to end an unwanted pregnancy.

² It is hard to say what the actual percentage and numbers of clandestine abortions in Chile are. According to the University of Chile in 2005, some 200,000 clandestine abortions take place in our country every year. On the other hand, Pontificia Universidad Católica de Chile places the number around 160,000. See Universidad de Chile. (2005, 8 August). En Chile 200.000 mujeres interrumpen su embarazo. www.uchile.cl/undinz/actuales/noti4891.shtml and Oyarzún, E. (n/d). Por qué no innovar en la legislación sobre el aborto terapéutico. *Pontificia Universidad Católica de Chile*. escuela.med.puc.cl/publ/arsmedica/ArsMedica18/Porque.html.

³ In 1995, 1999, 2006 and 2014, the Committee on the Elimination of Discrimination against Women (CEDAW) publicly stated its concern and recommended that Chile legislate on therapeutic abortion. It also called on the state to take concrete measures to enhance women's access to health care, in particular with regard to sexual and reproductive health services. A group of visitors from the UN came to Chile last year and shared their concerns about the abortion legislation in this country. They were relieved to hear about the new legislation that was going to be announced.

On 26 February this year, UN Women Executive Director Phumzile Mlambo-Ngcuka gave an interview for CNN Chile in which she stated that abortion, given with proper medical care and a supportive legal framework, is a realisation of sexual and reproductive rights.

The interview can be viewed here: <https://www.youtube.com/watch?v=G6MPWc3fCA8>

¹ Halper, K. (2013, 21 May). 5 Countries That Would Let a Woman Die Before Getting an Abortion. *Care 2*. www.care2.com/causes/the-5-countries-that-would-let-a-woman-die-before-getting-an-abortion.html

The case of *Aborto Libre*

Aborto Libre is a group which stands for women's and lesbian rights and advocates free abortion. It defends a woman's right to abort regardless of circumstances. The group was formed because people thought it crucial to fight for female and lesbian rights and to distribute information regarding abortion. The group has stated that an induced abortion should be a normal right and procedure. But in Chile abortion entails a stressful and problematic situation where women have to resort to clandestine measures.

The group started out by providing general information to women who live in Chile via a telephone hotline. They offered advice on how to induce an abortion through the use of Misoprostol pills, and also gave lectures on the subject.⁴

The decision to migrate towards using the internet was taken to expand the scope of their work with Chilean women. According to *Aborto Libre*, in Chile almost all women have an email account or a Facebook profile: "Today the internet opens up a lot of possibilities to share information with women that we cannot reach physically, who live in outlying regions and isolated places."⁵ It is *Aborto Libre's* strategy to circumvent legal restrictions by refraining from saying where or how to buy Misoprostol on any of its communications platforms, in this way evading possible legal consequences within the current legal framework. Instead, they merely provide information about how to use these pills – asserting the right to give and access information, and stating clearly that they are only communicating what is already available in World Health Organization (WHO) directives.

The internet has also been particularly useful for *Aborto Libre* to share information with the outside world about the legal status of abortion in Chile. Despite it being impossible under the current laws to maintain a presence in local mass media, *Aborto Libre* has been featured in reports in international media.⁶ The group's members believe this has provided an affirmation of their work and acted "as a safeguard when something happens. [...] We assume that international exposure will protect us."⁷

The threats that *Aborto Libre* faces can be divided into two categories: surveillance and online harassment.

Surveillance of sexual rights advocacy

Members of *Aborto Libre* have reportedly been investigated on at least three occasions.⁸ The most significant attempt was when the public prosecutor investigated the group for the felonies of inciting the commission of a crime and criminal association. Although no formal charges were filed, it was the most serious threat of prosecution faced so far, which the organisation perceived as a violation of the right to due process of law. Police officers interrogated group members' relatives about their activities. As a result, some activists based in the north, in Iquique, got scared and closed the group's email account.

The group further suspects that their communications are prone to being intercepted. Despite being a group that aims to raise public awareness and offer support to the public regarding abortion, they do not have a strong presence in mass media, which means the state can only find out about their activities by tracking their communications. For this reason, the members of *Aborto Libre* are careful with the information they publish on their communications platforms. However, the real threat to privacy occurs when women call in or write to *Aborto Libre*. On such occasions, a lot of personal information is shared and could be intercepted.

Online harassment and hatred

Aborto Libre has faced online harassment and has received aggressive messages through email, in the comments section on their website, and via their Facebook page. The activists downplay these comments, and label them as "insults" and "religiously inspired comments", even though they entail name-calling, death threats and attempts at shaming women for having intercourse. The Facebook page has been taken down several times because of user notifications to Facebook denouncing the page's content, even though it is not illegal in any way.⁹

The frequency of the messages has decreased over the years due to the group's preventive measures – such as closing the comments section on the website and on a Facebook post, or simply not replying.

4 *Aborto Libre*, using this name, started its operations in 2012, but by their own account most of the members were originally part of the hotline associated with the group *Feministas Bío Bío de Concepción*. This group was the first to bring the pro-choice initiative to Chile in 2005 through financing from the Dutch association Women on Waves and Coordinadora Juvenil de Ecuador. *Aborto Libre* is the current embodiment of this ongoing project in Chile.

5 Interview with members of *Aborto Libre* by Derechos Digitales on 26 June 2015.

6 Nelsen, A. (2013, 3 January). Taking Calls on Abortion, and Risks, in Chile. *The New York Times*. www.nytimes.com/2013/01/04/world/americas/in-chile-abortion-hot-line-is-in-legal-gray-area.html?smid=tw-nytimesworld&seid=auto&_r=2

7 Interview with members of *Aborto Libre* by Derechos Digitales on 26 June 2015.

8 Universidad Diego Portales (2013). *Informe Anual sobre Derechos Humanos en Chile*.

9 The group has avoided troubles with NIC Chile by hosting its website in a foreign country, with a domain name not ending in .CL. At the same time, all the domains registered in Chile that contain the word "abort" or "abortion" are owned by anti-choice groups or are not currently available for registration, as we observed when searching for these terms in NIC Chile on 11 May 2015.

In fact, they say the main reason for shutting down the comments sections on their communications platforms was to avoid receiving advertisements for Misoprostol from suspicious sources.

The legal framework and finding solutions

Harsh public opposition against abortion providers and pro-choice activists is a reality in various parts of the world, and many activists label some of that opposition as hate speech.¹⁰ Although there is little research being done in Chile on hate speech and the internet, evidence of why pro-choice women in the country consider themselves victims of hate speech is readily available.¹¹

Chilean law does not provide specifics on hate speech outside the mainstream press. The “Anti-Discrimination Law”¹² does not really cover the issue, nor does the Penal Code.

In the case of *Aborto Libre*, it is clear how the internet is not only a platform for distributing necessary information to women regarding abortion, but is also a space where those seeking and providing such information are harassed. It is interesting to see how the activists have managed to neutralise the harassment, minimising its impact, even if this means they have had to adapt their normal behaviour to do this. However, it is more important to keep in mind that the real threat to activists and their work is the law which criminalises women who have an abortion, as well as how the law provides a pretext for harassment and the infringement of women’s privacy through technology.

For criminal investigation purposes, Chilean law imposes an obligation on internet service providers (ISPs) to retain metadata on the activities of all registered IP addresses for at least one year.¹³ Under court authorisation, public prosecutors can ask for this data to be disclosed, but ISPs

are simultaneously required to protect their users’ privacy.¹⁴ Sadly, there have been many cases where law enforcement entities have not followed regular procedures, asking for the IP addresses of a range of users based on mere suspicion, often with service providers complying with such requests even without court orders.¹⁵

Public prosecutors can also request the interception of private communications. The Chilean Criminal Procedure Code states that it is necessary to get court authorisation for interception. But several unrelated accounts of abuse regarding information technology by law enforcement officials have come to light, with no reports of consequences for those officials.

Given the dubious legal context, *Aborto Libre*’s fears about surveillance are not unrealistic. Rather, they are probably understated.

Conclusions

Abortion in Chile is banned regardless of circumstance, and an infringement of the law entails criminal penalties for those involved. As a result, proponents of the right to abortion resort to the internet to circumvent the restrictions placed on them by the Chilean legal system. The internet allows people to access information about abortion and about the means to practice an abortion.

However, for activists such as the members of *Aborto Libre*, the threat of the “offline” world remains: even though they do not think of online harassment as something dangerous, they have had to change their online behaviour to avoid the threats they receive. And apart from a legal framework which criminalises all types of abortion, the technology exists to monitor activists, putting their own privacy and the personal data of women who seek help at risk.

In such situations, a technical response, including encryption, makes sense.

Answers on the legal front are also needed. The law in Chile has to progress to a state where the anonymity and personal data of activists, human rights defenders and vulnerable groups are protected, with improved legislation on hate speech and freedom of expression (especially as regards the internet), and liability for those responsible for infringements. In addition, the authorities have to respect due process and respect privacy,

10 Arthur, J. (2011, 21 September). The Limits of Free Speech. *RH Reality Check*. rhealitycheck.org/article/2011/09/21/limits-free-speech-5/

11 After a pro-choice rally in 2013, some people instigated riots in the main Catholic cathedral in Santiago. The executive director at Observatorio de Género, the feminist NGO behind the organisation of the rally, said: “There has been constant political action from institutions such as the Catholic church and other churches, to impose their lifestyle and point of view on the entire country. [...] As long as the conflict incited through hate speech is not addressed, these situations will continue happening.” See *Cooperativa.cl*. (2013, 27 July). Organizadora de marcha pro aborto: La Iglesia tiene un discurso de odio y violencia sistemática. *Cooperativa.cl*. www.cooperativa.cl/noticias/pais/mujer/organizadora-de-marcha-pro-aborto-la-iglesia-tiene-un-discurso-de-odio-y-violencia-sistemática/2013-07-27/091056.html

12 Ministerio Secretaría General de Gobierno. (2012). *Ley N° 20.609 Establece Medidas contra la Discriminación*. www.leychile.cl/Navegar?idNorma=1042092

13 Article 24 H, Telecommunications Law. www.leychile.cl/Navegar?idNorma=29591

14 Article 222, Criminal Procedure Code.

15 Derechos Digitales. (2010). *Policía de Investigaciones de nuevo vulnera privacidad en Internet*.

<https://www.derechosdigitales.org/1925/policia-de-investigaciones-de-nuevo-vulnera-privacidad-en-internet>

transparency and accountability in matters of communications surveillance.

But halfway through the current discussions on the draft bill on abortion, we should nevertheless realise that the internet is probably not the most suitable medium to address the problems of advocacy; engaging in public policy processes is. Chile has to address the current reality in which women for various reasons have to put their lives and their freedom at risk when they use the web, either for buying the necessary drugs illegally or trying to obtain information – information that might often not be accurate or safe.

Action steps

The following advocacy steps are recommended for Chile:

- Educate both the general population and medical workers to acknowledge and respect the need for sexual and reproductive health rights and the privacy rights of women.
- Encourage intermediaries to include gender sensitivity in their policies, and to include measures that protect freedom of expression around sexual and reproductive rights on the internet.
- Strive for the enactment of legislation on hate speech (especially on the internet) so that those responsible for infringements are legally liable.
- Consider including more protection for privacy and freedom of expression rights in the new Chilean Data Protection Law, especially with regard to vulnerable groups.
- Encourage local activism to achieve a secure and encrypted internet.
- Hold civil society workshops offering technical training in online security, especially for vulnerable groups and human rights activists.

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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