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ARTIGOS

THE DEBATE CONCERNING FEMALE STERILIZATION IN THE BRAZILIAN NATIONAL CONGRESS

O DEBATE SOBRE A ESTERILIZAÇÃO FEMININA NO CONGRESSO NACIONAL BRASILEIRO

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Abstract: For many women in the world sterilization is the most appropriate contraceptive method. It can, though, be used as a control instrument when reproductive rights are not widely guaranteed. This paper analyzes the Bills at the Brazilian National Congress that propose amendments to the Family Planning Law regarding voluntary sterilization in an attempt to demonstrate that these Bills would imply restriction of the reproductive cycle of women. Documentary research was utilized in the texts of 15 bills in progress until 2020. It was verified that neo-Malthusian philosophy predominates among legislators and that the Bills are evidence of the advance of conservatism in the Brazilian National Congress. The legislators institutionalize, through the Bills, the oppression on women by offering easy access to a definitive procedure, as they know that women opt for surgery to contain their reproductive cycle in a context of absence of social policies and frailty of reproductive rights.
Keywords: Women's Reproductive Rights. Family Planning. Social Policy.

Resumo: Para muitas mulheres no mundo, a esterilização é o método contraceptivo mais apropriado. No entanto, este método pode ser usado como um instrumento de controle quando os direitos reprodutivos não são amplamente garantidos. Este artigo analisa os Projetos de Lei do Congresso Nacional que propõem emendas à Lei do Planejamento Familiar em relação à esterilização na tentativa de demonstrar que estas propostas implicam na restrição do ciclo reprodutivo das mulheres. A pesquisa documental foi utilizada para analisar 15 projetos de lei que tramitavam até 2020. Foi verificado que a filosofia neomalthusiana predomina entre os legisladores e que os projetos são evidências do avanço do conservadorismo no Congresso Nacional brasileiro. Os legisladores institucionalizam, por meio das suas propostas, a opressão sobre a mulher, oferecendo fácil acesso a um procedimento definitivo, pois sabem que a mulher opta pela cirurgia para conter seu ciclo reprodutivo num contexto de ausência de políticas sociais e de fragilidade dos direitos reprodutivos.
Palavras-chave: Direitos reprodutivos das mulheres. Planejamento familiar. Política social.

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Introduction

Female sterilization is one of the most used contraceptive methods in the world among women in reproductive age (15 to 49 years old) (UN, 2019). It is, though, mostly adopted as a contraceptive measure in developing countries (UN, 2015). Although in the United States more than 20% of married women and women in a stable conjugal relation from 15 to 49 years old use this method, it is not common in countries such as France (3.7%), the United Kingdom (8%), or Germany (8.4%) (UN, 2015). In countries such as India, Mexico and Colombia, the use of female sterilization increased from just over 25% in 1994 to values above 34% in 2015 (UN, 2015). However, in Brazil, the value changes in the opposite direction, going from 38.6% in 1994 – as a consequence of the high scale of tubal ligations period, which led to a percentage of 42% in 1986 – to 28.4% in 2015 (BRAZIL, 1993; UN, 2015), as an aftereffect of the sanctioning of the Family Planning Law.

In Brazil, the Family Planning Law (Law 9263 of 1996) regulates surgical sterilizations (male and female). The 1988 Federal Constitution and Law 9263/1996 support family planning, determining its scope beyond the field of procreation, involving "all the needs and aspirations of a family, including housing, food, study, leisure, etc." (COSTA, 1995, p. 2). In other words, it is a multi-sectorial program. However, the family planning program in Brazil has been treating reproductive rights in a fragile manner, restricting them to the use of contraceptives or sterilization surgery (FERREIRA; COSTA; MELO, 2014), without provision for assisted reproduction.

This paper analyzes the Bills at the Brazilian National Congress that propose amendments to the Family Planning Law regarding voluntary sterilization in an attempt to demonstrate that these Bills would imply restriction of the reproductive cycle of women. Though it is known that female sterilization, for many women, might be the most appropriate contraceptive method, it is important to highlight the fact that in countries with restrictive abortion laws, such as Brazil, this method could be used as a control instrument.

This article is an excerpt from the doctoral thesis of one of the authors. Although the time frame has covered a period prior to the approval of the bill that gave rise to Law 14443/2022, it should be noted that the approval and sanction of the law, with modifications to the original bill (7364/2014), do not invalidate the results obtained in the analysis. On the contrary, we remain critical of the elements presented by the legislators.

1. International Views of Family Planning

In 1945, with the creation of the United Nations (UN), a series of world conferences began in which population growth and development of poor countries was discussed (FINKLE; MCINTOCH, 2002). In 1946, the Population Commission was established to monitor and prepare studies on demographic and population issues. Resulting from these studies and from the concern with demographic dynamics, the first

World Conference took place in 1954. This was followed by the World Population Conference in 1965, with a tendency towards a neo-Malthusian[1] vision. Containing population growth was placed as an urgent agenda[2] and family planning programs were being implemented in developing countries (FINKLE; MCINTOCH, 2002).

The other side of this story concerns women. Relegated to the private sphere of the house and to the care of children and husband, working women are divided between domestic functions and precarious work. Their place in the labor market did not exempt them from the roles of housekeeper and responsibility for reproduction (FEDERICI, 2012). After the advent of the pill and other contraceptive methods disseminated by family planning programs, the possibility of controlling one's own body and deciding when to have children became a reality. Advances in reproductive medicine have also made it possible to separate sex for leisure and reproduction (VIEIRA, 2003).

In 1974, at the World Conference in Bucharest, countries did not agree on actions to reduce the families' size (BERQUÓ, 2014). However, all agreed that economic development depended on the rate of population growth. This conference was important for stating that women should have a right to equality in access "to education and participation in social, economic, cultural and political life" (BERQUÓ, 2014, p. 19). Thus, at the 1984 International Conference on Population in Mexico, the United Nations Fund for Population Activities (UNFPA) stated that less developed nations should improve the living standards of citizens and that this would be achieved by stabilizing population growth. This conference invested in the figure of women (and their rights), both because it was perceived that changing their role in society was a legitimate demand, and because the goal of curbing population growth was linked to this change (BERQUÓ, 2014).

The International Conference on Population and Development in Cairo, in 1994, had a massive participation of non-governmental organizations, being guided by recognition of the reproductive health concept developed by the World Health Organization (WHO) (FINKLE; MCINTOCH, 2002). Feminists have severely criticized family planning programs around the world, condemning the use of monetary or material incentives, as well as other forms of persuasion for the acceptance of contraceptive methods, including tubal ligations, which in the conception of feminists limited the control over their reproductive cycle (BERQUÓ, 2014). UN also promoted International Conferences on Women, in which women's rights were discussed as human rights.

[1] Malthus (2000 [1798]) held that population grew in geometric progression while food production grew in arithmetic progression and that population increase raised the number of workers in jobs which consequently lowered wages and impoverished families. Thomas Malthus suggested as methods of contraception late marriages and sexual abstinence. Neo-Malthusian thinking emerged from the late nineteenth century. In this case, the prefix 'neo' indicates that, despite being based on the original theory of the thinker, the sympathizers of this theory accept methods of contraception that go beyond sexual abstinence and late marriage.

[2] In the 1960s, population growth started to be one of the main recipients of the United States financial aid. In 1967, after a US endowment, was created the United Nations Fund for Population Activities – currently United Nations Population Fund (UNFPA) (FINKLE; MCINTOSH, 2002).

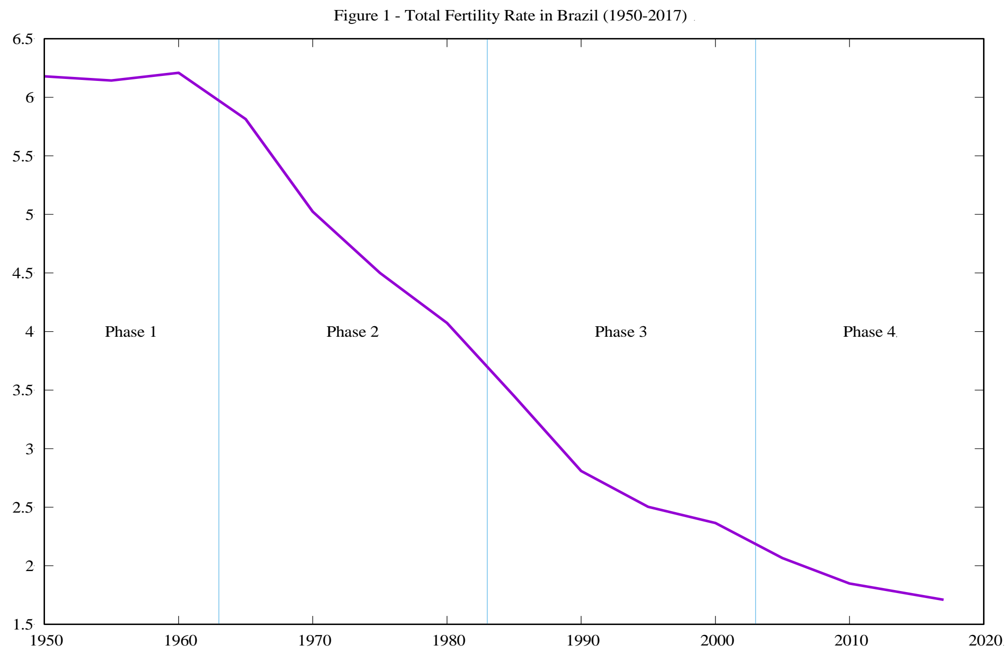
Despite participating in World Conferences and as a signatory to the UN, Brazil has historically presented many contradictions in its practices when it comes to women's health care and women's reproductive rights (FERREIRA; COSTA; MELO, 2014).

2. Phases in Brazil's Fertility Transition since 1950: an overview

This paper seeks to contextualize the changes in fertility behavior in Brazil since the mid-20th century to present day, recognizing that the international context influenced Brazilian governments and legislators in the decision-making on family planning in the country.

As Figure 1 shows the Brazilian Total Fertility Rate (TFR) has been declining since 1960, the decade in which modern family planning methods such as the birth control pill as well as female sterilization were introduced in the country. Nonetheless, the reasons for such a fast decline of fertility cannot be explained only by access to modern family planning, but reflect changes in the political, economic and social contexts of the country (BARSTED, 2003), and debates concerning attitudes towards family planning policies. The TFR decline in Brazil since 1960 can thus be classified into four phases as described in figure 1.

Figure 1 – Total Fertility Rate in Brazil (1950-2017)



Source: Compiled from: Gapminder (2017) and World Bank (2019a).

2.1 First Phase: up to 1960s

The First Phase is characterized by the adoption of pro-natalist policies designed to encourage high fertility rates (FONSECA SOBRINHO, 1993). Brazilian governments of the late 19th and early 20th

centuries had an interest in increasing the population in order to exploit the natural resources of the country. The agricultural exporting character of the economy required human labor in rural areas. The country had undergone a progressive process of industrialization and urbanization since the beginning of the 20th century. In the 1940s and 1950s, the process of industrialization intensified (FONSECA SOBRINHO, 1993) resulting in labor shortages. Thus, during this phase family planning was not deemed a political priority.

2.2 Second Phase: 1960s-1980s

The Second Phase extends from the 1960s until the beginning of the 1980s. This phase is marked by the military dictatorship, in a period of confrontation between pro-natalist and anti-natalist population movements (FONSECA SOBRINHO, 1993). Modern contraceptive methods were introduced into Brazil in the 1960s (COSTA, 2012). Although physicians were prohibited from prescribing birth control technologies to women by a 1941 law that prohibited the indication and use of methods that prevent pregnancy or cause abortion, the contraceptive pill was sold in drugstores and marketed as a hormone dysfunction regulator (BARSTED, 2003).

Without an official family planning program, institutions funded by international organizations began activities in Brazil in this phase. With the discourse of concern about the high number of abortions in the country, the Brazilian Civil Society Family Well-Being (BEMFAM) instituted the discussion of the legalization of family planning as a matter of urgency, and started to distribute contraceptives (COSTA, 2012). The Centre for Research on Integrated Care for Women and Children (CPAIMC) also carried out contraceptive actions in the country, with a direct influence on the university education of health professionals (COSTA, 2012). Statistical data on the TFR of Brazilian women showed a decline from 6.2 children per woman in 1960 to 5.8 in 1965 and 4.5 in 1975 (GAPMINDER, 2017; IBGE, 2013). Only after 1974 did Brazil start to have a political discussion on the legalization of family planning, and its role as either a population control strategy or as a fundamental human right. This debate was observed in the position of the Brazilian representatives at the Bucharest Conference (BERQUÓ, 2014).

2.3 Third Phase: 1980s-2000s

With the demise of the military dictatorship and with the movement that became known as re-democratization, Brazil received back exiled intellectuals and a third phase in Brazil's fertility transition began. Among the returnees were women who had been in contact with feminists abroad, who reinvigorated the country's feminist movement. These feminist intellectuals also worked on the frontline of the women's health movement, affirming the need to extrapolate maternity issues (focused on the child), involving themes considered polemic, such as sexuality, abortion and family planning. In 1983 the Program of Integral

Assistance to Women's Health (PAISM) was established, which represented a revolution in the way women's health was viewed.

It was at the end of the 1980s, with the participation of several segments of the Brazilian population, such as feminists, workers' unions, neighborhood communities, and non-governmental organizations (NGOs), among others that the Federal Constitution of 1988 was written and endorsed. This Constitution led to the consolidation of Social Security based on three pillars: social security; health care; and social assistance. Thus, health was instituted as a right of all and a State duty and, after Law 8080 of 1990, was regulated the Unified Health System (Sistema Único de Saúde – SUS)[3]. As far as the official existence of family planning in Brazil, the constitutional text instituted it as a right and dissociated it from demographic control (VIEIRA, 2003).

Between the promulgation of the 1988 Federal Constitution and the sanctioning of Law 9263, in 1996 (that finally regulated family planning), the Brazilian National Congress (BNC) held a Mixed Parliamentary Inquiry Commission (CPMI) to investigate abuses, mainly in the poorer regions of the country, which had resulted in the mass sterilization of women (BRAZIL, 1993). According to the CPMI Final Report there were 312,418 sterilized women in Brazil up to 1970. In 1986, a new survey revealed that 5,900,238 women had been sterilized, the majority in the Northeast and Centre-West regions. The report pointed out the fact that a lot of the sterilizations happened during childbirth especially during cesarean sections, which in 1992 represented 32% of deliveries (BRAZIL, 1993).

After discussion and debate in the BNC, Law 9263 that regulated family planning was sanctioned by then President Fernando Henrique Cardoso on 12th January 1996. Cardoso, however, vetoed Articles 10, 11, 15 and the sole paragraph of Article 14 (all these articles and the single paragraph referred to voluntary sterilization). This fact surprised the feminist movement, the BNC women's bloc, as well as representatives with more progressive ideals, since the Bill that underpinned law 9263 had been widely discussed since 1991 including the vetoed articles. The vetoes to the law were revoked in August 1997, when the articles came into force (CAETANO; POTTER, 2004).

2.4 Fourth Phase: 2003-present

The Fourth Phase begins in 2003, after the election of the Worker's Party to the presidency (Lula da Silva). In 2004, the First National Conference for Women's Policies was attended by approximately 120,000 women and represented a milestone in the quest for visibility of women and the discussion of women's needs (BRAZIL, 2005). The National Plan of Women's Policy (PNPM) was instituted in 2005, after the First National Conference for Women's Policies. This Plan contained 199 actions – into four lines of action (Autonomy, equality in the labor world and citizenship; Inclusive and non-sexist education;

[3] SUS is also known, in English, as Brazilian Unified Health System or Brazilian National Health System. It is important to say that the public spending with SUS has never been above 3.9% of National Gross Product since its creation (FIGUEIREDO *et al.*, 2018).

Women's health, sexual rights and reproductive rights; and Confrontation of violence against women), with the aim to guarantee women's rights (BRAZIL, 2005). Three other National Conferences for Women's Policies occurred during the mandates of the two presidents from the Worker's Party: in 2007 (Lula's government); 2011 and 2016 (Dilma Rousseff's governments). The PNPM was reaffirmed by those conferences, with great popular participation. However, few changes in the lived lives of women in Brazil were observed (GONÇALVES; ABREU, 2018).

The alliance of the Worker's Party with part of the conservative sector was in effect since the campaign won by Lula da Silva for the presidency, maintaining the neoliberal political and economic practices (FILGUEIRAS, 2006). Thus, in 2016, when President Dilma Rousseff was ousted from the presidency by conservative forces in the BNC, the post was filled by Vice-President Michel Temer. In December 2016 Temer sent to BNC, and it subsequently approved, the 95th Constitutional Amendment, which freezes public spending for 20 years (MARIANO, 2017), drastically reducing investment in public policies for women (GONÇALVES; ABREU, 2018). At the end of 2018, Jair Bolsonaro was elected President of Brazil, and he maintained the cuts in policies directed towards women. In 2019 he started his government and appointed a Ministry of Women, Family and Human Rights that defended sexual abstinence as a method of contraception (BORGES, 2020).

Just over twenty-five years after the enactment of Law 9263/1996, Brazil is a country with some of the highest use of modern contraceptive methods in the world (UN, 2015), occupying the second place in Latin America, with 65.3%, of prevalence in the use of contraceptives by women in reproductive age (UN, 2019). The TFR fell from 6.2 in 1960 to 1.7 in 2017 (GAPMINDER, 2017; WORLD BANK, 2019a). Family planning programs are driven by a primary health care approach. Under the law, multidisciplinary teams, composed of nurses, physicians, social workers and psychologists, should advise the patient seeking surgical sterilization. The result is that the number of female surgical sterilizations dropped from 38.6% in 1994 to 28.4% in 2015 (UN, 2015).

The fourth phase is also a period of intense discussion concerning female sterilization with law makers constantly challenging Law 9263/1996, and proposing 25 new bills revising Law 9263/1996. Twelve of these focused on changes to voluntary sterilization procedures. An analysis of these bills exemplifies how in Brazil the discussion of family planning law is shrouded in a moral, ideological, economic, and political dispute (FERREIRA; COSTA; MELO, 2014). Given this, it is necessary to understand that the proposals for change in this law are imbued with conceptions of the world and intentionality that are not neutral or impartial and that contribute to maintaining the old or instituting new ways of seeing reproductive rights and family planning.

3. Methods

Documentary research is the basis of this paper, using a qualitative approach.

In total, 45 Bills were presented, between 1997 and 2020, proposing changes to the Family Planning Law at the BNC. Of this total, 20 Bills were archived for diverse reasons, with 28 Bills remaining.[4] For this work, only Bills were selected that suggest changes to Article 10 – which propose changes to voluntary sterilization – and which were being processed until December 2020, totaling 15 Bills at the end of this selection.[5]

Thus, the headnote and the justification texts of the selected Bills were analyzed. The headnotes were integrally translated, as in Table 1. The justification is a one to three pages' text submitted with the Bill explaining its intention and justifying the proposition. In this case, were highlighted the fragments[6] that were considered as key parts of the text.

Content analysis (BARDIN, 2016) was used to analyze the headnotes and justifications of these Bills. Understanding content analysis as a set of technics (BARDIN, 2016), discourse analysis and categorical analysis techniques were chosen, to decipher the legislators' propositions. From the category Sterilization, the units of analysis 'individual freedom', 'tubal ligation', 'poor', 'right to the body', and 'bureaucracy' were identified.

4. What do the Bills intend to change?

The Family Planning Law (Law 9263/1996) "Regulates paragraph 7 of article 226 of the 1988 Federal Constitution, which deals with family planning, establishes penalties and gives other measures" (BRAZIL, 1996, without page). This law has 25 Articles and is divided into 3 chapters: one about family planning (Articles 1 to 14), one on crimes and penalties (Articles 15 to 21) and the final provisions chapter (Articles 22 to 25). Despite being widely discussed for six years prior to its being signed into law, involving different sectors of society including feminist organizations, physicians, NGOs, etc. there are still pressures to change it.

This paper analyzes only the Bills which were in progress until 2020, that proposed changes to Art. 10. This article regulates that male and female sterilization:

> […] is only permitted in the following situations: I – in men and women with **full civil capacity and over twenty-five years of age or at least with two living children**, provided that the **minimum period of sixty days** between the manifestation of the will and the surgical act, a period in which the interested person will be provided with **access to fertility regulation service**, including **counselling by a multidisciplinary team**, in

[4] Of the 20 suspended Bills – archived for diverse reasons – six suggested changes to Article 10 (207/2003, 5061/2005, 7438/2006, 284/2006, 3326/2008, and 291/2018).

[5] These Bills (headnote and justification) can be found, in Portuguese language, at the BNC website (BRAZIL, 2020a; 2020b).

[6] The selected extracts were translated by the authors.

order to **discourage early sterilization**; II – **risk to the life or health of the woman or the future concept**, witnessed in a written report signed by two physicians. § 1 – It is a condition for sterilization to be performed the **record of express manifestation of the will in a written document and signed**, after information about the risks of surgery, possible side effects, difficulties in its reversal and options of existing reversible contraception. § 2 – **Surgical sterilization in women during periods of delivery or abortion is prohibited**, except in cases of proven need, by successive previous cesarean sections. […] § 5 – **In the term of a marital partnership, sterilization depends on the express consent of both spouses** […] (BRAZIL, 1996, without page number, translated by the authors).

The proposed Bills (proposed either by the House of Representatives or by the Senate), which were in progress in December 2020 are presented in Table 1, along with headnote text and clarification.

Table 1 Bills (Art. 10 - Law 9263 of 1996) in process until December 2019

Type Bill / Year	Headnote	Headnote Clarification
Bill 313/2007	Amends Law No. 9263, of January 12, 1996, which regulates § 7 of Art. 226 of the Federal Constitution.	This Bill establishes the offer of at least three reversible methods of contraception, an irreversible method for man and one for woman. It allows voluntary sterilization starting at **age twenty-three**.
Bill 3050/2011	Alters § 2 of art. 10 of Law 9263 of January 12, 1996, in order to allow tubal ligation during periods of childbirth or abortion in the case of previous cesarean section.	This Bill **removes the impediment** of surgical sterilization in women **during periods of childbirth** or **abortion**, in addition to the cases of proven need, by previous cesarean section.
Bill 3637/2012	Suppresses § 5, of art. 10 of Law No. 9263 of January 12, 1996.	This Bill **suppresses** the paragraph that establishes that in a conjugal society, the sterilization depends on the express **consent of both spouses**.
Bill 7364/2014	Repeals § 5 of art. 10 of Law No. 9263 of January 12, 1996.	This Bill **repeals the need** for the **spouse's express consent** for voluntary sterilization.
Bill 14/2015	Changes the wording of item I and § 1, and repeals § 2 of art. 10 and item I of art. 15, all of Law No. 9263, of January 12, 1996, to modify the rules for conducting voluntary sterilization.	This Bill withdraws **the need for recognition of signature** in a notary's office of the document that certifies the manifestation of the will, being **revoked** § 2 of art. 10 [which **prohibits surgery during childbirth and abortion**] and item I of art. 15 of Law 9263 of January 12, 1996.
Bill 917/2015	Amends Law No. 9263 of January 12, 1996.	Among other propositions, the following can be found: **permission** of **surgical sterilization** in women during the **immediate postpartum** period as well as **in cases of abortion**.
Bill 3233/2015	Amends Law 9263, of January 12, 1996.	This Bill reduces from twenty-five to **eighteen years the age** at which voluntary sterilization is allowed. **Repeals the consent requirement of both spouses** for sterilization to be performed.
Bill 4909/2016	Regulates § 7 of Art. 226 of the Federal Constitution.	This Bill changes the art. 10 of Law No. 9263, of January 12, 1996, to define as an **exclusive** requirement for voluntary sterilization **the manifestation of the individual's will.**
Bill 1803/2019	Alters the wording of § 5 of Art. 10 of Law 9263, of January 12, 1996, which deals with family planning.	**Vetoes** the obligation of a **partner consent** to allow the sterilization to occur.
Bill 4083/2020	Amends Law No. 9,263, of 12 January 1996, to remove the need for spousal consent for sterilization procedures.	**Amends** Law No. 9,263, of 12 January 1996, to remove the need for spousal consent for sterilization procedures.

Bill 4515/2020	Amends Article 10 of Law No. 9,263, of 12 January 1996, to define criteria for voluntary sterilization.	The **minimum age** for surgical sterilization procedure is **reduced to 20 years**.
Bill 5276/2020	Amends Law No. 9,263, of 12 January 1996, to facilitate access to male and female sterilization surgery and makes other provisions.	**Facilitate access** to sterilization surgery.
Senate Bill 107/2018	Amends Law No. 9263 of January 12, 1996, which deals with family planning, with the aim of facilitating access to vasectomy and tubal ligation procedures.	This Bill amends the Family Planning Law to **facilitate access** to tubal ligation and vasectomy procedures.
Senate Bill 406/2018	Amends Law No. 9263, of January 12, 1996, which regulates § 7 of Art. 226 of the Federal Constitution, which deals with family planning, establishes penalties and other measures, to revoke the requirements that discourage the option of surgical sterilization as a contraceptive method and impose difficulties to perform the procedure in the health services.	This Bill **cuts down on the bureaucracy** in the offer of voluntary sterilization and facilitates the accomplishment of the procedure in the health services, **removing obstacles** that prevent users of Brazilian Public Health System (SUS) from undergoing **tubal ligation** when they so wish.
Senate Bill 5832/2019	Amends Law No. 9263 of January 12, 1996, which deals with family planning, reducing from 25 to 21 years the minimum age required for the surgical sterilization.	Reduces to **twenty one years** the minimum age to opt for realizing fertility control through **tubal ligation** or **vasectomy** surgery.

Source: Brazil (2020a, 2020b), systematization and translation by the authors.

4.1 Focus on female sterilization

Despite the law applying to both female and male sterilization, it was noted that legislators focused their justifications solely on female sterilization:

> This proposition has the objective of allowing **tubal ligation** at the moment of birth or abortion […] (3050/2011).
> The access to the procedures of **surgical sterilization** have provide these **women** the ease of being able to, as already occurred to wealthier women, appropriate themselves of their fecundity and sexuality […] (3637/2012).
> […] It is unfathomable the reason for the proscription, provided by the Law […] of the performance of [tubal] **ligation** in the same anesthetic procedure, of normal delivery or cesarean section and, in the immediate post-abortion […] (917/2015).
> One other changed promoted by the proposition is to amplify in the regulation the possibility of realization of [tubal] **ligation** at the moment of birth […] (107/2018).
> […] Under this scenario, the safest option for **women** who already had the children they wanted is the surgical sterilization (406/2018).
> [...] We also thought of suppressing paragraph 2, which forbids **tubal ligation** in the postpartum or postabortion periods [...] (4515/2020).

In 12 justifications by members of Congress (Bills 313/2007, 3050/2011, 3637/2012, 7364/2014, 14/2015, 917/2015, 107/2018, 406/2018, 5832/2019, 4083/2020, 4515/2020 and 5276/2020) the text

focused on female sterilization (or synonymous terms such as ligation or permanent method of contraception). The prevailing attitude of congress is to indicate only tubal ligation as the best and most effective method of preventing conception, which appears to support a belief that women are solely responsible for contraception.

4.2 Decreasing the minimum age requirement for voluntary sterilization surgery

Eight Bills suggest decreasing the minimum age requirement for voluntary sterilization surgery (313/2007, 14/2015, 3233/2015, 4909/2016, 406/2018, 5832/2019, 4515/2020 and 5276/2020), and Bill 4909/2016 suppresses the need for the applicant to have full civil capacity.

> […] the Law […] that deals with family planning, while establishing the rules for voluntary sterilization, **imposes conditions that impede**, in many occasions, the "free decision of the couple", **such as the minimum age of 25 years** or two children [...] (14/2015).
> […] currently, to demand that, to have access to tubal ligation or to vasectomy, the person must have **25 years, is no longer compatible** with reality. At **eighteen years** one assumes full civil capacity. Thus, it seems to us that one is **perfectly capable** of making choices as stern as mentioned (3233/2015).
> Another **problem** is that the Law allows surgical sterilization only to people who are **more than 25 years old** or with at least two children. Nowadays, however, this does not make sense anymore (406/2018).
> […] **it does not make sense** to keep the requirement for people to have reached the **age of 25 years** to have access to more permanent measures to control fecundity. **It is not necessary to wait for this age** for people to know if they want to have more children (5832/2019).

4.3 Withdrawal of spousal consent

A total of 11 Bills (313/2007, 3637/2012, 7364/2014, 3233/2015, 4909/2016, 107/2018, 406/2018, 1803/2019, 4083/2020, 4515/2020 and 5276/2020) propose the withdrawal of the need for spousal consent in the case of a conjugal partnership. Of these Bills, four suggest alteration only to the paragraph regarding the spouse consent (3637/2012, 7364/2014, 1803/2019 and 4083/2020). In addition, it is important to note that the proposals generally deal with tubal ligation and disregard vasectomy which requires the written consent of wives.

> It is not fair that **the spouse** upon whom befalls the greatest responsibility and more work in the upbringing of children, in general **the woman**, has to depend on the consent of the partner to undergo voluntary sterilization (313/2007).
> At the same time in which the legislator conceded the Brazilian citizens the propriety over their own bodies, so that they decided if and when they wanted to procreate, it was imposed upon the couples an absurd requirement of **consent from the spouse** for legal access to the sterilization procedures (3637/2012).

> Despite all the legally positive norms to equal men and women and at the same time treat individually, as human beings in command of their wills, **women are not totally free and independent** to take determinate decisions. In the case of sterilization, **women continue attached to some form of license or consent from the spouse** […] (7364/2014).

4.4 Permitting sterilization during the period of childbirth and abortion

Eight Bills (3050/2011, 14/2015, 917/2015, 4909/2016, 107/2018, 406/2018, 4515/2020 and 5276/2020) propose to allow sterilization surgery to be performed in the period of childbirth and abortion. Bill 3050/2011 also allows the surgery in these situations, but with a requirement of an earlier cesarean delivery, while Senate Bill 107/2018 maintains the requirement for successive cesarean sections but adds permission in 'other situations', which are not mentioned.

> When the **cesarean section** is medically indicated, the [tubal] ligation can be performed, as it is, customarily […] In all the cases listed above, **the performance of the** [tubal] **ligation on the same anesthetic procedure** implies in a more dignifying treatment to the parturient (917/2015).
> The first difficulty arises when the Law, while **not making explicit** the possibility that the [tubal] **ligation can occur in the immediate post-partum**, left an open field for the regulation of the matter to act for **practically preventing** access of women to the procedure (107/2018).
> This obliges the patient to undergo **two hospitalizations, one for the birth and another for the sterilization surgery**, what increases her exposure to a hospital environment and to nosocomial infections, forces the nursing mother to abandon the care for the baby and entail higher costs for health services (406/2018).

For lawmakers, the prohibition of sterilization surgery during childbirth (except in cases of proven need, as the law states) deprives women of their right to choose tubal ligation. However, data recorded by the Ministry of Health indicate the opposite: the number of tubal ligation surgeries performed during childbirth, per 10,000 women between 15 and 49 years old, has increased since the law was sanctioned: from 0.3 in 2000 to 6.7 in 2018. The increase in this measurement is marked in 2017 (Temer Government), when the yearly increase was 18.5%, opposed to an average 4.4% during Rousseff's presidency (BRAZIL, 2019b). The withdrawal of the article that prohibits sterilization at delivery would likely represent a higher rate of tubal ligation at birth, increasing the already large number of cesarean sections in the country: in 2018, 56.5% of the deliveries were cesarean sections (BRAZIL, 2019b), which is well above the WHO recommended value – between 10% to 15% (WHO, 2014).

4.5 Reducing bureaucracy

The theme of reducing 'bureaucracy' is also recurrent in the Bills. It is present in such proposals as: decreasing the age for sterilization; withdrawal of the 60 days' requirement between the manifestation of will and the surgical procedure (Bills 14/2015, 917/2015, 4909/2016, 406/2018 and 5276/2020) and

permission to perform the surgery in the period of childbirth and abortion. Also, the withdrawal of the need for a multidisciplinary health team, thus focusing on the physician. In addition, what legislators call bureaucracy is, in fact, a set of devices that protects women against possible arbitrariness by health services.

> […] the Law […] by establishing the rules for voluntary sterilization, imposes **conditions** that **hinder**, in many occasions, the "free decision from the couple", such as the minimum age of 25 years or two children, besides **unnecessarily bureaucratizing** the surgical intervention (14/2015).
> It is absolutely unacceptable that the legal order should establish different treatment between different socioeconomic classes, creating **bureaucratic obstacles** for **needier people** and imposing unnecessary risk and suffering upon them (917/2015).
> The present proposition has the objective to **minimize the legal barriers, of a bureaucratic and administrative nature**, currently existent in the Law […] for the performance of voluntary sterilization […] (4909/2016).
> For these reasons, we propose the reformulation of the Family Planning Law, **in order to de-bureaucratize** the offer of voluntary sterilization and facilitate the performance of the procedure in the health services, **removing all the hurdles** that preclude SUS users to undergo tubal ligation […] (406/2018).
> The State cannot hinder the realization of the legally permitted will, with **bureaucracies** and rules that **hinder the effective will** of the citizen (5276/2020).

4.6 Public versus Private health sectors

According to the Bills it can be seen that, in general, lawmakers are not aware that Law 9263 of 1996 and that family planning actions are applicable to both public (SUS) and private health sectors. An example of this is that in these projects it is believed that the law applies only to SUS and the poor, and that the private sector (private doctors and hospitals and/or health insurance) may operate differently from what the law dictates. Thus, the legislators' discourse is that women who access private health services undergo surgery more easily than women who access public services. However, data shows that 1,111,548 tubal ligations were performed in Brazil between 2000 and 2020 (including public and private sectors), and 57.24% of female sterilization surgeries were performed in the public sector (BRAZIL, 2022, systematized by the authors), demonstrating that the public system performs a higher number than the private sector.

> […] It is unfathomable the reason for the proscription, provided by the Law, **to a SUS parturient**, of the performance of **ligation** in the same anesthetic procedure, of normal delivery or cesarean section and, in the immediate post-abortion […] (917/2015).
> This restriction creates **problems** for the women who depend on the **Unified Health System (SUS)** to undergo tubal ligation, since it generates the necessity of a second hospitalization, a new surgical preparation and, consequently, an increase of the risks of complications for the woman, without ignoring the undesirable consequences produced by the withdrawal of the mother from the newborn (107/2018).
> However, the Family Planning Law created countless obstacles and poses significant **difficulties** to the performance of the ligation procedure in **SUS** services (406/2018).

4.7 Protecting individual freedoms?

The legislative discourse is permeated by contradictions: all the 15 Bills appear to defend individual freedom when it is about defending the autonomy of people to undergo a surgery that removes the freedom to change one's mind in the future. However, none of these same legislators, though, propose legalization of abortion[7] and broadening of women's sexual and reproductive rights.

> The **body**, nevertheless, is **the right of each and every one**, and it is not fitting, in our understanding, the preservation of this prescription to access the fruits of scientific knowledge and of medical technique (3637/2012).
> […] such legal demand leaves on the sidelines the individual right of the human beings, of **autonomy over their own bodies** […] (7364/2014).
> In the same way, with respect to the current autonomy, on people's freedom, even those involved in conjugal societies or other forms of coexistence arrangements, we propose that the **individual will** be assured when reproductive capacity is considered (3233/2015).
> We will understand that the option for this type of surgical procedure, with the consequent interruption of the reproductive capacity, should be an intimate decision, an **authentic manifest of the individual freedom** (4909/2016).
> In our opinion, the **autonomy to decide about one's body** must be preserved at all costs, without external interference (4515/2020).

4.8 Neo-Malthusian ideas: targeting poor women

What all the proposals have in common is their understanding that changes in the law are necessary to facilitate the sterilization of women. In this sense, the unit 'poor' appears veiled, using synonyms, such as 'low-income women', 'women without resources' or 'women from the poorest strata'. This terminology is used to conceal the real intentionality in changing the letter of the law. In 2017, Brazil registered 43.9 million people below the poverty line (WORLD BANK, 2019b). Most of these people are black women. Therefore, changes in the law have definite recipients. Legislators do not propose gender equality, higher schooling or improvement in the living conditions of these women, but instead propose to terminate women's reproductive cycle as a way out of poverty. The Bills are also evidence that legislators underestimate the intellectual capacity of poor women as if they were unable to adopt their own strategies for coping with their own reproductive cycle and living conditions.

> But it is exactly **among the poorer women** that are observed the higher birth rates, **perpetuating a cycle of misery for millions and millions of Brazilian men and women** [...] Without measures to guarantee this right the country **is condemned** to **underdevelopment**, to **low indices of**

[7] Since 2007 is in process in the BNC the Bill known as the Unborn Statute. This Bill defends the fetus rights, understanding them as superior to the mother's, and criminalizes abortion in any circumstances, including the cases of pregnancy by rape, mother's life threats, and anencephalic fetus. It is important to emphasize that, notwithstanding underreporting, unsafe abortion figures among the major causes of maternal mortality in Brazil (CARDOSO; VIEIRA; SARACENI, 2020).

quality of life and to **perpetuation of all the social maladies such as violence, unemployment, slums, child and adolescent prostitution, infant mortality, very high indexes of abortion and maternal mortality**, among other problems (313/2007).
Although the mean birth rates of the country have gradually fallen in the last two decades, this fall **is visibly** verifiable in **the middle and upper classes** […] The needier classes still suffer with the lack of information and the difficulty of access to contraceptive means, that ultimately make family planning unviable and, consequently, **aggravate the picture of misery** and **ignorance in the country** […] (3050/2011).
Brazil faces, currently, **crises in the electric sector** and of **water supply** which are largely due to the **exacerbate demographic growth** […] the federal government, with the "Brasil Carinhoso" Program, offers a R$70 (seventy reais) aid[8] for each child up to 17 years of age, sponsoring, thus, the irresponsible and rampant paternity (14/2015).

5. Between the lines: deciphering the speech conveyed on the Bills

Considered as a strategy to reduce clandestine abortions in poor countries, as a means to achieve development, as a way to reduce poverty and hunger, as a strategy to preserve the environment and natural reserves, or as a significant advance in reproductive rights of women, family planning has gained prominence and expression since the mid-20th century (BERQUÓ, 2014; FINKLE; MCINTOCH, 2002). Since this time, Brazil has developed actions – initially non-officially – with respect to population natality control (FONSECA SOBRINHO, 1993; BARSTED, 2003; COSTA, 2012; FERREIRA; COSTA; MELO, 2014).

Despite participating in World Conferences and as a signatory to UN Conventions, Brazil has historically presented many contradictions in its policies and practices when it comes to women's health and women's reproductive rights, restricting these to the distribution of contraceptives and suggesting sterilization surgery. This is well illustrated by the debates in the BNC concerning female sterilization. In Brazil, Law 9263/1996 represented an advance in the field of reproductive rights, since concepts and elements which were broadly discussed in the several International Conferences were incorporated to the text, dissociating family planning of demographic control (BRAZIL, 1996), besides regulating voluntary sterilization.

The analysis of the Bills indicated that Brazilian lawmakers were concerned by a perceived high fertility rate, which led them to review the law, in a setback to an ideology which seemed to have been left behind since the Cairo Conference, in 1994 (FINKLE; MCINTOCH, 2002). However, according to the data presented here, Brazil shows a significant decline in its fertility rate in recent decades. This is corroborated by UN (2015; 2019) data, which illustrate that Brazil is one of the countries where contraceptive methods are most widely used worldwide.

[8] The Brasil Carinhoso Program (Affectionate Brazil) provides financial AID for babies from 0 to 48 months of life enrolled in public nurseries or government authorized nurseries whose families are already attended by the Bolsa Família Program (BRAZIL, 2020c). The aim of the program is to promote food security, besides guaranteeing the permanence of the children in the nurseries.

In spite of being theoretically outdated and a practically exhausted view, the arguments of neo-Malthusian inspiration can be verified in the justifications of the proposals, sometimes clearly (Bills 313/2007, 3050/2011, 14/2015), sometimes in a veiled way (Bills 917/2015, 107/2018), and it is a shrewd discourse that holds families accountable not only by their own situation of poverty, as well as by the economic situation of the country, removing responsibility from the State. Thus, the action identified as a solution is not to expand social policies and female reproductive rights, but to be effective in containing the growth of the population by means of an irreversible method, in a context of illegality of abortion in most situations.

Regarding health policy, which supports family planning, legislators describe it as bureaucratic, inefficient and with a specific destination: the poor. This ideology is dangerous, since health is the only social policy with a character of universality in Brazil and that has had serious challenges since its creation. Lawmakers criticize this policy, but do not propose forms of investment to make it efficient. On the contrary, lawmakers voted for the public spending freeze with the 95th Constitutional Amendment in 2016, which directly affects SUS and policies for women (GONÇALVES; ABREU, 2018). The lack of funding prevents the principles of the SUS – universality, equity and integrality – to become effective (FIGUEIREDO *et al.*, 2018). Thus, the priority of women's health care remains linked to actions aimed at reproduction: prenatal care, childbirth and contraception, harming the principle of integrality. Furthermore, even within this biological approach, the programs lack funding and accessibility leaves important actions as the reduction of maternal mortality unaddressed. The family planning program distances itself from the constitutional text – which assures assistance in all levels of family life (COSTA, 1995) – and is reduced to the distribution of contraceptive methods and indication for sterilization (FERREIRA; COSTA; MELO, 2014).

The discussion within the Bills, fostered by federal legislators, does not contribute to the advancement of achievements in the arena of women's reproductive rights in Brazil. The texts in question generate a smokescreen, obscuring actual data – provided by the Ministry of Health and revealing women's search for the definitive method of preventing pregnancy. The advance in the struggle for women's rights, it seems, will not come from the current configuration of the BNC. Even the Bills that propose the withdrawal of the spousal consent – that is in agreement with the defense of reproductive rights as individual rights (BARSTED, 2003) – bring contradictory justifications focused on female sterilization, which end up placing the burden and legitimating all the responsibility of reproduction on women.

The categories 'tubal ligation' and 'right to the body' appear intimately linked, forming a perverse logical argument. It suggests that the woman has the right to her body and therefore can undergo surgery at any age and in any situation where 'will' or 'necessity' is demonstrated, without discussion about the conditions that lead to a woman demanding such a procedure, about arbitrary situations that are possible to occur during childbirth and abortion (as in the 1980s), and about the future implications of an irreversible surgery. Implicit in these propositions, though, are important observations: that regrets after surgery are

ignored, especially in cases where it is performed early; and fears of a return to a very recent past when poor women were mass sterilized in Brazil. About early sterilization, Vieira (2007) affirms that the estimate of the regret rate among sterilized women was around 10% to 15% at the time of her research. The younger the woman is when sterilized, the greater the chances of regret.

The recurrence in the texts of statements that having many children impoverishes families (MALTHUS, 2000 [1798]), that large families hinder the economic growth of the country, or that demographic growth is responsible for crises in the water and energy sectors (EHRLICH, 1968), demonstrates that neo-Malthusian ideology is predominant among members of congress. This ideology takes responsibility from the current stage of capitalism and attributes it to women, as if they were to blame for all the existing problems that concern population growth and the use of natural resources. Furthermore, the idea of the danger of overpopulation in Brazil, however, goes in the opposite direction to what can be observed in the current population statistics that show that Brazilian fertility is below the number indicated for population replacement (WORLD BANK, 2019a).

The proposals also highlight the advancement of the BNC's conservatism, resulting in more control actions on families and on women's bodies. This can be observed from the amount of Bills put forward by the legislators and that remain in process at the BNC, since 2015 (11 of the 15 Bills), occasion when the conservative forces were already joining to oust President Dilma Rousseff. In this way, Brazilian legislators avoid any discussion about the expansion of reproductive rights, placing themselves as pro-life. It is sought, therefore, to allow sterilization surgery as a way to put an end to the reproductive cycle of women, controlling the number of their births, and keeping the punishment of women who dare to abort. Also implicit in the Bills is the ideology of the need for medicalization of birth by cesarean sections, which are currently exceptionally high in Brazil, to facilitate sterilization surgery.

Therefore, instead of introducing social policies that stimulate gender equality – and the end of gender discrimination, as endorsed by the international conferences (UN, 2014 [1995]), – access to housing, agrarian reform and universal assistance policies that support even aging, the Bills focus only on the individual and the medicalization of the female body. Thus, the neoliberal ideal shows its face in the discourses of legislators, diminishing the use of social policies.

Final remarks

The analyzed Bills seem to suggest the extension or creation of rights for women, but in essence, they propose the withdrawal of women's reproductive rights. The legislators propose a pattern of reproductive cycle control supported on the biological model, ignoring and denying all the steps that were taken towards protection and increases in women's reproductive rights achieved by women themselves in past decades. That is, the aim appears to facilitate access to a definitive surgical procedure, while no discussion on the expansion of women's reproductive rights, including the decriminalization of abortion

and its implementation by the SUS, and the expansion of social policies that support families, are even mentioned in the proposals.

The texts of the justifications for the Bills indicate above all, the oppression of women, since they offer easy access to a procedure that should be adopted in the last instance, knowing that working women will opt for it in desperation to contain their reproductive cycle in a context of poverty and the absence of social policies. The analysis of the documents showed that, if left up to the legislators, social policies tend to become increasingly reduced, empty of the notion of rights, directed exclusively to the poor population and contingent on requirements to the beneficiaries. Among these contingencies is the decrease in the number of children per woman in an obvious attempt to control the bodies of poor women and reducing the size of their families.

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