

THE Nation.

Published on *The Nation* (<http://www.thenation.com>)

When Culture Trumps Law

Emma Sokoloff-Rubin | April 2, 2009



ZINA SAUNDERS

In November, Adriana gave birth to a child she never wanted and spent two months fighting not to have. The first time Adriana was raped, on January 29, 2008, a stranger forced her into his car and drove to a parking lot near the airport in João Pessoa, the capital of the state of Paraíba in northeast Brazil. The stranger's gang rented a house on her street. The second time, he drove a different car and threatened to go after her family if she told anyone what had happened.

Adriana, whose name has been changed to protect her privacy, stayed inside her home for four months. Each day, her attacker passed by the window, holding two pointed fingers to his head to remind her of what she stood to lose. When Adriana, 26 and a virgin before she was raped, realized she was pregnant, she knew she wanted an abortion, but she didn't dare ask anyone in her family for

help. She knew her evangelical father, in whose house she lived, would tell her to have the child, and that her mother would be ashamed. So in early June, when the gang finally left the house on her street and moved on, Adriana went to the local public hospital.

Under Brazil's penal code, abortion is a crime except in cases of rape or direct threat to the mother's life. When Adriana went to the public maternity hospital, Instituto Cândida Vargas, on June 10, she explained that she had been raped, estimated that she was nineteen weeks pregnant and asked for an abortion. The receptionist sent her to the hospital psychologist, who told her that women have a responsibility to have children. The doctor held up the stethoscope so she could hear the baby's heartbeat, told her the hospital only does abortions until twelve weeks and sent her away.

Adriana's case received far less attention than that of the 9-year-old girl who received an abortion in Recife, a nearby city in the state of Pernambuco. In early March, the Catholic Church excommunicated two doctors for performing the abortion, which fell under both exceptions to the penal code: the girl had been raped by her stepfather, and her hips were too narrow to safely give birth to the twins she was carrying. (Following an international uproar, the Church withdrew the excommunication.) The doctors agreed to the procedure, but in an interview on Brazilian national television the next day, Archbishop José Cardoso Sobrinho of Recife announced that when government laws and the "law of God" conflict, "the human law has no value."

Adriana knows what it means for a law to lose its meaning.

Adriana didn't know that the Brazilian Ministry of Health's recommended limit for abortions--the one cited in hospital policy--was twenty-two weeks, not twelve. She didn't know the law entitled her to an abortion and required the public hospital to perform it. She didn't know that within the past two years, João Pessoa, ten minutes from her house in Bayeux, a city of 92,000, established a government commission on women and opened a domestic violence center. Opposition to abortion in Brazil, the nation with the largest Roman Catholic population in the world and a growing evangelical movement, disproportionately affects women who don't have money for private abortion clinics or a sense of entitlement to services from public institutions. Adriana might have given up if a nurse hadn't suggested she visit a local feminist organization called Cunhã. Cunhã staff immediately brought her to the dignified purple-and-white house in the center of João Pessoa, where the government-funded domestic violence center opened in September 2007.

When Adriana arrived at the center in June, having been turned away by the hospital, it looked as if the law was one thing she had on her side. Within a few hours a team of dynamic lawyers, psychologists and other staff members decided that Adriana would go to the police station and report the rape, and someone would go with her. She would find a lawyer and collect the necessary paperwork. She would go back to the hospital and demand an ultrasound. And she would bring this information to a judge, who would issue an order for the abortion to which she was legally entitled.

Regina Alves, a psychologist at the center, insists that when it comes to working with a victim of violence, "what matters is what she says." Though Adriana arrived at the center without an ultrasound or proof that she had been raped, the staff immediately contacted hospitals in nearby cities to find out their abortion policies. Lila de Oliveira, a tall and outspoken social worker from the center, stood beside Adriana through weeks of testing and waiting. Adriana and Lila went to the public defender's office to ask a judge to intervene, then started putting together a file with an HIV test, a medical report and a police notice, hoping the evangelical judge put in charge of Adriana's case would order the hospital to carry out an abortion.

<!--pagebreak-->

By the time the tests and documentation the judge ordered came back from the police station and the hospital, it was June 30. I went with Lila and Douraci Vieira dos Santos, the head of the government commission on women, to meet Adriana at the bus stop and bring her to the hospital. Adriana came from tutoring students in her home and planned to go right back to teaching as soon as they set a date for her abortion. She was poised and steady next to me on the green couch in the bare white room, Lila on her left clutching the blue plastic folder of documents. Having the right documents takes on a certain urgency in a hospital where reported abortion protocol changes from one day to the next, and in a country where without proof of rape or threat to maternal health, victims and doctors who carry out abortions can be imprisoned for as long as three years.

Hospital director Eduardo Sergio swept in and said the fetus was 722 grams, too heavy to abort. The Ministry of Health recommends against aborting fetuses above 500 grams. After exceeding this weight, an aborted fetus is likely to come out breathing on its own, in which case the hospital is legally bound to do everything in its power to keep the premature baby alive. Though Douraci and Lila had begun putting together funding to fly Adriana to a hospital in another city, even doctors in Recife and São Paulo said it was too late to carry out an abortion. Adriana crumpled, almost imperceptibly, but she was sitting next to me and I could feel her shaking. She wrapped her arms around her stomach and spoke, audibly but quietly. "I don't want this inside of me. Why did you have to grow? I didn't want you to grow."

No single person stopped Adriana from having an abortion to which she was legally entitled. Adriana was forced to give birth to her rapist's child because of backs turned and services denied or delayed that together pushed the abortion off until it was too late. Between June 11 and June 30, Adriana and a representative from the center went to the hospital five times, the police station five times and the public defender's office three times. "There's an excuse in every case," Lila explained dryly, on the day the hospital staff announced that it would take a month to produce the results of a medical exam needed to show evidence of rape, and the policemen were on lunch break well into the afternoon.

Adrienne Germain, president of the International Women's Health Coalition, traces the problem to Brazil's restrictive abortion laws and lack of infrastructure for enforcing the legal exceptions that do exist. "Most people perceive, in Brazil and elsewhere, that abortion is illegal," Germain said. "But if it's legal for any reason, it must be provided safely. Every medical institution should provide training; every site should have equipment and personnel to provide a safe procedure."

In João Pessoa, not all professionals know the law, and those who do know don't necessarily follow it. When Douraci went to Cândida Vargas hospital asking for documentation of the protocol that limits abortions to twelve weeks, Dr. Sergio told her the standard they followed was twenty-one to twenty-two weeks, not twelve. Adriana had been eligible for an abortion the day she set foot in the hospital.

As director of the maternity hospital, Dr. Sergio has overseen abortion services at Cândida Vargas since 2005, when city government responded to pressure from the local women's movement to incorporate abortion services into João Pessoa's public healthcare system. Until then, women like Adriana could go to a private clinic or try to find care in another city. Dr. Sergio told me he wasn't at the hospital when Adriana first arrived. If he'd been there, he said, he would have done the abortion right away, since doctors have to "be careful that our social and religious values don't interfere with our process of attending to women." Douraci insists that whether or not Dr. Sergio knew about

Adriana's situation during her first visit to the hospital, she discussed the case on the phone with him that same week, when Adriana was less than twenty-two weeks pregnant and still within the recommended timeline for an abortion.

Adriana's case may seem to come down to technicalities like weeks and weight. But the cultural attitude toward abortion in Brazil is more deeply ingrained--and harder to change--than laws and numbers. The majority of abortions in Brazil are performed under illegal, unsafe conditions. Of the 1 million to 2 million Brazilian women who receive clandestine abortions annually, 250,000 end up in hospitals with complications resulting from the procedure. Reproductive rights activists had hoped that Luiz Inácio Lula da Silva, the leftist president elected in 2002, would introduce more progressive policies regarding women. In May 2007--a week after Mexico City legalized abortion through the third month of pregnancy--Lula identified illegal abortion as a public health concern because so many women die each year from them. Public health minister José Gomes Temporão questioned Brazil's conservative abortion law, particularly the legislated imprisonment of women who seek illegal abortions, and called for a national referendum on the issue. But in July 2008 a proposed bill to legalize abortion, on the table for seventeen years, was voted down by Congress, 57-4. Lula has appointed seven of Brazil's eleven Supreme Court justices. His most recent appointment, Carlos Alberto Menezes Direito, openly defends the notion of life beginning at conception, allying himself with at least three of Lula's six other appointments known for antichoice rulings.

Sixty-nine years after an amendment to the penal code made abortion legal in cases of rape, five of Brazil's twenty-six states don't have a facility that provides abortions. Even facilities designated for female victims of violence don't always support women's decisions. In 1985, Brazil established a network of all-female police stations designed to improve care for victims of rape and domestic violence. João Pessoa was the third city in the nation to open such a station, called a *delegacia da mulher*. Since Bayeux is too small to receive government funds for an all-female police station, Regina and Lila brought Adriana to the *delegacia* in João Pessoa. Though *delegacias* were designed as safe spaces for women to report crimes, Regina reported to her colleagues that "when they [*delegacia* policewomen] learned it was a case of rape and abortion, they didn't want to listen to what we had to say." Adriana then went to the police station in Bayeux, where she faced a line of policemen at the door, alerted to the case by their colleagues in João Pessoa and already prepared to turn her away.

Each doctor who examined Adriana told her to have the child. Finally she asked one of them, "And if you were in my place? What would you do?" The doctor didn't answer. He left the room.

<!--pagebreak-->

When I asked Rosana de Lucena, director of the domestic violence center, why so many officials stood in the way of an abortion, she responded that "they don't want to grapple with this fear"--the fear felt by women like Adriana, who face family members who don't believe in abortion, and by public officials concerned about their careers. It's one thing to choose to work at a domestic violence center, Rosana explained, and "another thing to work at a hospital where suddenly you're told you're dealing with violence against women." Doctors, in particular, fear prosecution. Without proof that the mother's life is on the line or that a rape occurred, carrying out an abortion in Brazil means committing a crime.

"There's a large gap between the law and the application of the law," notes Mayor Ricardo Coutinho, the first mayor to require the local maternity hospital to provide abortion services. As mayor, he says,

it's easier to change the laws than to change how people are treated in public facilities. Even in cases where abortion is legal, "the medical professionals are very reluctant because there exists a kind of professional terrorism. There's a lot of pressure on them because of efforts to characterize them as baby killers, as murderers."

Dr. Sergio sees the case as unfortunate but inevitable. He knows it could have turned out differently, but in his view each decision was necessary to protect Adriana's safety and the hospital's reputation. I met with him during his overnight shift. Women in a mix of street clothes and hospital gowns lined up outside his office, and he continued to usher them in and out as he spoke, stopping his conversation with me only to help a woman off the examining table and explain why she needed to stay in the hospital overnight. He told me that as head of the hospital, he was responsible for carrying out an abortion if the doctor on duty refused to do so. I asked when he had carried out this procedure, but Dr. Sergio didn't answer directly and instead explained why the responsibility fell to him. "In the same way that these women were victims and still have their rights and their liberties," he told me, "I can't force someone to carry out a procedure he doesn't believe in from a religious or social standpoint."

Efforts to fully legalize abortion, and to obtain abortions in cases where the procedure is already legal, take place against a strong current of religious opposition. At the national level, mobilized religious groups in Brazil's Congress are pushing proposals to recognize fetuses for tax purposes and create a national Day of the Unborn. The staff of the domestic violence center in João Pessoa work with women from all sorts of religious backgrounds; in almost every case, they told me, religion shapes a woman's beliefs on abortion and the way she is treated at home and in public institutions. The Catholic Church has a firm stance on abortion: any woman who has an abortion, or any doctor who aids in the procedure, is automatically excommunicated. The case of the 9-year-old girl in Recife shows that this is not an empty threat.

While each staff member at the domestic violence center is deeply invested in individual cases, as a team they've learned to take a long view and focus on crafting a model for a public institution that treats people with dignity and respect for their choices. In April, the women who worked on Adriana's case will meet with feminist leaders in two northeastern states, Rio Grande do Norte and Pernambuco, to build a regional coalition out of their many local initiatives. This follows a history of strong women's rights activism in Brazil. Brazilian women were the first in Latin America to introduce abortion information into medical school curriculums and among the first to develop underground abortion networks for poor women. In partnership with Cunhã and the government commission on women, the domestic violence center in João Pessoa used Adriana's case to hold the hospital accountable for repeated attempts to stop women from having abortions. Based on a report they submitted to the Ministry of Health about Adriana's case, the ministry removed Dr. Sergio from his position as director of the hospital; but he didn't lose his place as an influential physician until another rape victim reported that she, too, had sought an abortion at Cândida Vargas and was turned away.

In Brazil, the public battle for abortion rights--the one that makes it into international newspapers--is a legal one. But the less visible battles are equally important. Cases like Adriana's are battles to make the law mean something to people on the ground, and the people waging them have taken on more than a single doctor who refuses to do an abortion. They also confront what Douraci calls "the inequalities, the power of machismo, the violence and the silence" that shape women's lives in João Pessoa and throughout Brazil. When I interviewed Douraci during the week that Adriana began prenatal care and newspapers reported that Congress voted against a bill to legalize abortion, she insisted that simply enacting new policies for women "does not further the debate on gender relations in those women's lives." That debate takes place outside state legislatures: in the waiting rooms of

domestic violence centers and in the hallways of public hospitals, where what the law says doesn't correspond to what the doctors do. Legal rights are put to the test in these waiting rooms and hallways, where people fight to turn rights on paper into rights in reality.

Source URL: <http://www.thenation.com/article/when-culture-trumps-law>