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# Social movements and constitutional politics in Latin America: reconfiguring alliances, framings and legal opportunities in the judicialisation of abortion rights in Brazil

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One of the main innovations in the interaction between social movements and the state in Latin America since the democratisation processes is the use of courts as venues for social change and the intervention of social actors in constitutional politics. Drawing from the empirical study of the process of strategic litigation for abortion rights in Brazil, this paper aims to show what type of changes can take place when social actors set out to pursue a legal strategy on a highly controversial matter, and in a transitional context, where courts are in the midst of a redefinition of their institutional role in the political system, and movements have not yet been central actors in judicialisation processes. The study highlights how feminist organisations adapted their framing of the abortion issue and developed new alliances with legal actors in order to pursue a rights strategy and to interact with the constitutional court. It also points out how, when dealing with the abortion controversy, the Brazilian constitutional court (*Supremo Tribunal Federal*) expanded the legal opportunity for the participation of civil society actors and, in its 2012 decision that liberalised the abortion law, acknowledged the legal arguments advanced by social actors in this field.

**Keywords:** social movements; legal mobilisation; judicialisation; constitutional courts; abortion; Brazil; Latin America

## Introduction

One of the main innovations in the interaction between social movements and the state in Latin America since the democratisation processes is the use of courts as venues for social change and the intervention of social actors in constitutional politics. The displacement of part of movements' actions to the legal arena has taken place particularly following constitutional and judicial reforms throughout the region, which expanded the legal opportunity for citizens' rights claims through the creation or reform of constitutional courts and the inclusion of new constitutional rights and legal remedies.[1] This process has involved changes in the strategies, framings and organisational structures of civil society actors in order to carry out new forms of collective action, including in particular legal mobilisation and strategic litigation. It has also implied changes in court decision-making processes, in order to take into consideration the presence and voices of new actors in constitutional politics.

The abortion rights controversy is a privileged field in which to observe the shifting relationship between social movements and courts in Latin America, as well as the institutional and

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discursive changes it has involved. The highly restrictive legal framework of abortion in Latin America (see Lamas, 2008, pp. 68–69) has started to change during the past decade, as legislative reforms and constitutional court decisions have liberalised, to different extents, the abortion law in Colombia, Mexico City, Argentina, Brazil and Uruguay.[2] Constitutional Courts have been central actors in most of these cases, and have sided for the first time in the region with feminists' demands to decriminalise abortion under certain circumstances. They have done so by upholding legislative decisions or by expanding themselves the scope of exceptions to abortion criminalisation. During the same period, Constitutional Courts have also been key actors in backlash processes in the field of reproductive rights and have upheld the claims of counter-movements.[3] Finally, the abortion issue prominently includes the crucial problem of implementation and compliance with legal decisions, and the interaction between courts and social movements has also been important in this regards in the region.[4]

Brazil is one of the two cases in Latin America, together with Colombia, in which Courts liberalised the abortion law, motivated by constitutional claims submitted by feminist organisations. In 2012, after a process of strategic litigation carried out since 2004 by the Institute of Bioethics, Human Rights and Gender (ANIS) and its partners in this legal action, the Brazilian Constitutional Court (*Supremo Tribunal Federal*) legalised abortion in cases of anencephaly. This is a narrow though significant change, considering that the Brazilian abortion law is among the most regressive in the world – as it does not include an indication for cases in which women's health is at risk – and it had not been modified since 1940. Furthermore, this was the first case of strategic litigation for women's rights, as well as the first case on abortion rights decided by Brazil's highest Court. Finally, the case shows that the decision of Brazil's highest Court incorporated the legal concepts and framing advanced by social actors, which confirms the claim by democratic constitutionalism scholars who argue that social movements can be central actors in the generation of a discourse that begins from the bottom and that may influence the content of norms officially sanctioned by the state (Siegel, 2004, p. 15).

Through the study of the Brazilian case, this paper analyses the changes that can take place both at the level of civil society and courts when a movement, or one of its organisations, sets out to pursue a legal strategy, and to interact with constitutional courts, in a transitional context in which these are still novel processes. In particular, it aims to contribute to understand the conditions under which social movements are able to use superior courts and become significant actors in constitutional politics, in a setting where movements have not yet been central actors in judicialisation processes, and the legal opportunity to litigate before the constitutional court has been expanded, but the court is still in the midst of redefining its institutional role in the political system, and has not yet played a key role in rights adjudication.

Based on this case study, the paper points out three types of changes, along the three main analytical frameworks of social movement theory, and their application by legal studies. First, with regard to resource mobilisation, the case shows that, in the absence of its own support structure and legal expertise for strategic litigation, feminist actors established alliances with actors in the legal profession, who were external to the feminist movement. Second, with respect to framing, the pursuit of a legal strategy in this case entailed a moderation of the discourse and a renaming of the abortion procedure, in order to gain cultural resonance and public acceptance, which at the same time created intra-movement tensions. Third, with regards to opportunities, the case shows that the movement was able to use new institutional rules and legal instruments to reach the Court, and, most significantly, it shows that the Court itself, when dealing with the highly controversial abortion issue, expanded the legal opportunity for social actors' participation, opening new procedural opportunities for subsequent movements.

The analysis of the case study draws on semi-structured interviews conducted in 2013 with NGO activists, academics and jurists in three Brazilian cities: Rio de Janeiro, São Paulo and

Brasília, as well as on secondary sources and the case law. The paper's first section outlines the analytical perspective. The second section analyses the process of legal mobilisation, considering the organisational dimension, the construction of a new framing of the abortion issue in cases of anencephaly and the processing of the case before the *Supremo Tribunal Federal*, with emphasis on the expansion of the legal opportunity for the participation of social actors as well as on the reception by the Court of the legal concepts advanced by the claimants.

## Analytical perspective: social movements and courts in transition

The three main analytical frameworks of social movement theory have been used and further developed by socio-legal studies and constitutional theorists – particularly Reva Siegel – in their analysis of the interaction between social actors and the legal system. This section outlines the main insights of these frameworks, as applied in legal studies, for the analysis of the dynamics between courts and social actors particularly in a transitional context. By a transitional setting we mean one in which social movements' participation in constitutional politics as well as courts' role in the protection of rights are still recent processes, and legal practices and institutions are being reconfigured.

In the first place, drawing on the resource mobilisation paradigm developed by social movement theory, Epp (1998), working in the field of legal mobilisation studies, has pointed out the importance of the organisational dimension for the development of strategic rights advocacy, and has advanced the influential concept of *support structure for legal mobilisation*, which includes the presence of public interest lawyers, rights advocacy organisations and the availability of financing sources to sustain litigation (p. 18). In transitional contexts, where social movements have not yet developed their own support structure and legal expertise, we can expect that the decision by social actors to pursue a legal strategy leads them to search for new types of organisational means to carry out these actions. In these cases, movement actors may start building their own resources for legal mobilisation, for example by creating new organisations oriented to the legal defence of rights, or they may recourse to alliances with partners and allies in the legal profession, outside of the movement, including state actors working in the legal field.

Secondly, in line with frame theory in social movement studies, democratic constitutionalism scholar Reva Siegel has developed a comprehensive theory about the influence of legal strategies on framing transformation.[5] She argues that movements willing to influence legal change must subject their claims and framing to what she calls the *public value* condition; that is, they must frame their idiosyncratic demands into a discourse that appeals to public values and shared constitutional understandings (Siegel, 2004, pp. 11–12). In this process, movements usually moderate their claims and rhetoric, especially when confronting a counter-movement (Siegel, 2006, pp. 1354–1365). For example, movements may search for cultural resonance by aligning their framing with the dominant discourse of the state (Ferree, 2003).[6] Resonance may also be searched by other means that do not imply an alignment with dominant institutional discourses, but nonetheless entail a moderation of movement claims. Movements may, for example, reframe an issue by renaming and re-categorising it, in an attempt at eluding the discussion of its most controversial aspects. In any of these cases, subjecting a movement's claims to the public value condition can provoke disagreement between the more legalistic and the more radical groups within the movement.[7] This type of intra-movement conflict is more likely to appear in a transitional context, where movements have a history of political mobilisation but have not yet pursued legal strategies, and the legal discourse appears as a new component of movement framings.

Finally, following the political opportunity approach in social movement theory, legal mobilisation studies have developed the concept of legal opportunity to refer to the institutional settings and dynamics within the state structure that are directly related to movements' recourse to law and

the courts (Andersen, 2005; Hilson, 2002; Wilson & Cordero, 2006). This perspective assumes that there is a connection between institutional features and the types of claims and actors that reach the courts. In particular, the rules that regulate access and legal standing set incentives for parties to litigate and may affect the possibility of social movements to channel their claims through courts. Other types of rules, such as those that regulate public hearings and amicus curiae presentations, are also relevant for the interaction between courts and social actors. The relationship between courts and civil society may become an issue of particular concern by justices especially in contexts of redefinition of the institutional role of constitutional courts, following processes of political transition and judicial reform. In these contexts, highly contentious cases may become critical junctures for Courts to promote their interaction with social actors. As Siegel argues, in this type of case, justices may have an interest in citizens' engagement with constitutional interpretation, in order to make a decision informed by evolving social understandings and to find social support, which may allow courts to preserve their institutional authority (2001, p. 351). When dealing with these cases in transitional contexts, where courts have not yet modified their internal procedures in order to allow for the participation of external actors in their decision-making process, justices may find incentives to implement new institutional channels for social actors' claims; that is, they may decide to expand the legal opportunity, opening in this way new institutional venues for the claims of subsequent movements.

## Feminist legal mobilisation for abortion rights in the case of anencephaly in Brazil

### *Support structure for legal mobilisation and new alliances for a feminist legal claim*

During the past decades, Brazilian feminists have developed a strong movement for reproductive rights, and abortion rights in particular.[8] As in other Latin American cases, since the transition to democracy in the 1980s, the bulk of feminist advocacy for abortion law reform in Brazil has concentrated on pursuing legislative change. But, in Brazil – as in most cases in the region except from Uruguay and Mexico City – the political process under contemporary democratic governments has been closed so far for the liberalisation of abortion laws. As a result, despite several attempts at legislative reform, the Brazilian Criminal Code provisions drafted in 1940, which allow for abortions only in cases of rape and life-threatening circumstances, have not been modified by Congress. The acknowledgment by feminist organisations of the obstacles for the advancement of abortion legalisation through national politics has led a sector of the feminist movement in Brazil to turn to the judiciary in search of long-pursued reforms (Paranhos, 2012; Soares, 2012).

However, even after the constitutional reform of 1988, which brought about a more favourable legal opportunity for social movements' claims, the Brazilian feminist movement has not developed a strong legal expertise or a support structure for legal mobilisation. Several sociological factors contribute to explain the difficult relationship of feminist movements in Brazil – and in the region more generally – with legal systems that have historically reinforced patterns of gender discrimination. In the case of Brazil, interviewees for this study pointed out that one of the limitations for the development of legal mobilisation for women's rights is that there are still few feminist lawyers working in this field, and argued that this can be partly attributed to the lack of gender training at law schools, as well as to the lack of a human rights approach in legal education (Davis Mattar, 2012; Gonçalves, 2012). A further factor in this regards is that human rights movements in the country – which focus on issues such as public security, police violence and the violation of rights in the public space – have generally not included gender as a mainstream perspective. The lack of a gender approach by the human rights movement in Brazil can be partly explained by the fact that, since the dictatorship, this movement has been linked to the progressive

sectors of the Catholic Church[9]; and the decisive fight of this sector of the Church against social injustice especially during the democratic transition did not include questioning gender injustices (Gebara, 1995, p. 131).

In addition, the characteristics of the field of public interest litigation in Brazil have contributed to a scarce legal mobilisation by social movements in general until recent years. Two main factors help explain why social movements have not been central actors in public interest litigation: the role of state officials and agencies in this field, on the one hand, and the preeminence of individual claims over collective petitions, on the other. With regards to the role of state actors in this type of legal cases, Botelho (2003, p. 90) explains that the provision of alternative legal services in the country, which had its origin in the initiative of lawyers who defended political prisoners during the dictatorship, was linked to some degree to the Church but most prominently to leftist political parties, in particular the Workers' Party (PT). Due to the ascension to national power of political actors that had been on the resistance side during the dictatorship in the first years of the transition, and due to the increasing difficulty to obtain external financing, since the late 1990s and throughout the 2000s a partnership between alternative legal services and the State was developed (Botelho 2003, p. 91). Furthermore, reinforcing the role of the state in this field, the Public Ministry has been a key actor in the development of a more rights-oriented justice system and has taken the lead in the field of public interest litigation (Sarmento, 2012)[10]. According to Hoffman and Bentes (2008, p. 114), the proactive stance of the this institution in the defense of citizens' rights contributed to downplay the role of civil society's actors in this field, although this trend has started to change in recent years.[11] With regards to the preeminence of individual demands, even in cases in which social movement activism was the driving force behind social change, legal claims were carried out by individuals rather than by social movements. This has been the case, in particular, regarding the impressive judicialisation of the right to health in Brazil since the 2000s, which has been pursued by individual demands (Ferraz, 2011, p. 78), while the *Movemento Sanitarista* (public health reform movement) has been one of the most influential social movements in Brazil in terms of its influence on legislation and public policy.

In this context, in Brazil, as it happened in other countries in the region, feminist organisations that intended to pursue litigation strategies had to start building their own organisational resources for legal mobilisation,[12] or they had to forge alliances with partners and allies in the legal profession, outside the feminist movement, including state actors. The latter was the strategy pursued by ANIS in Brazil when, in 2004, it decided to start a process of judicialisation of abortion rights in cases of anencephaly before the *Supremo Tribunal Federal* (STF). ANIS, founded in Brasilia in 1999, is a feminist NGO devoted to academic research, information, education and advocacy on bioethical issues related to human reproduction. Without counting on its own legal expertise, or on the presence of legal organisations within the feminist movement, this organisation searched from legal advice and support by external actors. In 2004, it held a meeting with then-Public Prosecutor Daniel Sarmento, in order to analyse the most effective way to carry out a legal strategy for abortion rights in cases of anencephaly that could have general effects. Sarmento is one of the main constitutionalist jurists working in the field of minority rights and sexual and reproductive rights in Brazil. He proposed to use the Allegation of Violation of a Fundamental Precept (*Argüição de descumprimento de preceito fundamental*, ADPF), which is one of four types of abstract review cases in Brazil – filed directly with the STF – and is only admitted when there is no alternative remedy to protect a fundamental precept of the Constitution.[13] Given Sarmento's position as a state official, he could not carry out the legal action, and suggested Luís Roberto Barroso – one of the most renowned Brazilian constitutionalists, who in 2013 became justice at the STF – as a possible litigant-lawyer in this case. Barroso agreed to carry out the legal demand pro bono (Paranhos, 2012).

The ADPF was still not a familiar type of claim in the Brazilian legal field, and a key issue to be resolved in this case was the selection of an appropriate actor, with legal standing to present the claim.[14] Given that national union confederations are among the actors legally allowed to submit abstract constitutional claims before the STF, Barroso suggested that the National Confederation of Health Workers (CNTS) would be a proper claimant, for it had already been granted legal standing in previous cases before the Court (Paranhos, 2012). The CNTS agreed to pursue the case on humanitarian grounds as well as due to the specific interest of the medical profession in the resolution of this issue (Barroso, 2004). Throughout the legal process, ANIS worked in partnership with Barroso, and provided bioethical and human rights arguments, as well as a theoretical and philosophical perspective to the argumentation of the case (Paranhos, 2012). The process of strategic litigation included various campaigns of public awareness, in which ANIS worked together with several other feminist organisations, in particular Catholics for Choice Brazil (*Católicas pelo Direito de Decidir*), GEA (Group of Studies on Abortion) and *Redesaúde* (Paranhos, 2012).

### *Reframing abortion in cases of anencephaly: The social construction of a legal claim, and intra-movement dissent*

The core argument of the demand, which was presented by the CNTS before the STF on 17 June 2004, was that the interruption of the pregnancy of an anencephalic foetus does not fit into the penal definition of abortion, because anencephaly was a malformation incompatible with life outside of the womb, and therefore in such cases the factual support required by the law to criminalise abortion (the potentiality of life) was absent.[15] This argument had been developed by ANIS, and more specifically by Debora Diniz in her bioethical work and her ethnographic research.

In fact, this process had its origin in 2003, when Debora Diniz, ANIS's founder and Director – who is also Professor of Anthropology at the University of Brasilia and a leading actor in the abortion debate in Brazil – was carrying out ethnographic research at two public hospitals in Brasilia (*Hospital Regional da Asa Sul* and *Hospital Universitário de Brasília*) which provide legal abortion services. There, she was confronted with overwhelming cases of pregnant women who were going through medical treatment for cases of foetal anencephaly (Diniz, 2004, p. 23). She found that after receiving such a diagnosis, women did not use the word abortion, but they talked about anticipating unavoidable suffering and anticipating delivery. The same was found by Diaulas Costa Ribeiro during his work as Promoter of Justice for the Defense of Users of the Health System at the Public Ministry of Brasilia. This led them to redefine the procedure in this circumstance in order to have it reflect women's actual experiences (Diniz, 2004, pp. 22–23). The reasoning was that given that the abortion legislation aims to protect potential life, only the foetus with a physiological capacity to live outside of the womb could be subject to the crime of abortion; without that condition, there existed no juridical good to protect, and no grounds to prohibit a woman from interrupting her pregnancy (Diniz & Costa Ribeiro, 2003, p. 106). Within this framework, Diniz and Costa Ribeiro advanced a definition of the medical procedure in these cases as a 'therapeutic anticipation of birth', which became a central reference during the legal process.

The constitutional claim presented at the STF dealt with a condition that allowed the petitioners to circumvent the question of the beginning of life. They even framed the demand as a case that did not refer to abortion. In fact, the legal action, and its eight-year legal process before the STF, inevitably carved out a broad public discursive space on abortion and elicited a discussion that went far beyond the specific case of anencephaly, including broader arguments about women's reproductive freedoms. ANIS had anticipated the potentiality of the case in this

regard, but it decided to maintain a type of discourse that allowed it to gain legitimacy to access the STF (Paranhos, 2012). By renaming the abortion procedure in cases of anencephaly, the legal strategy pursued by ANIS implied a moderation of the discourse by some feminist actors, in contrast with more radicalised feminist framings and strategies, which do not concede to elude the term abortion and ground their demands on a claim about women's right to their own bodies. This was one of the reasons why, especially at the beginning of the process, ANIS' legal strategy was critically characterised as 'gradualist' by some sectors of the movement, although with time most of them modified their opinion in light of the wide public debate provoked by the legal action (Paranhos, 2012).

This happened in the context of a large and diverse feminist movement in which, beyond basic agreements among the different sectors with regards to the abortion issue,[16] there exist strong disagreements regarding strategies and framing. Both types of disagreements are related to the pursuit of legal mobilisation. For example, while the more legalised sector of the movement, represented by *RedeSaúde* among others, holds that it is not always necessary to mention the word abortion (for, it is argued, it may discourage some actors, in particular doctors who do not talk about abortion but about the legal interruption of pregnancy and the exceptions in which it is lawful), more radical sectors, such as the Brazilian Women's Articulation, argue that not using the word abortion openly would mean a concession to false morals (Negrão, 2012). Another point of conflict refers to the convenience of pursuing a gradualist strategy: while some sectors defend working for the implementation of legal abortion and advocating for the extension of the indications model, other groups argue that emphasis should be placed on campaigning for unconditional abortion rights for all women (Rodrigues, 2012; Vieira Villela, 2012). For example, a member of the World March of Women maintains that while the gradualist approach contributes to placing the abortion issue on the public agenda, it circumscribes the limits of the abortion debate, consumes the energies of the movement and obliges it to develop a distorted argumentation, instead of openly advocating for abortion rights on grounds of women's autonomy and right to decide (Godinho, 2009, p. 65). Further disagreement within the movement is related to the idea of balancing constitutional values in the abortion controversy, although it has started to gain wider support (Corrêa, 2005, p. 212).

### *New legal opportunity and the incorporation of social actors' claims in court proceedings and decision*

The demand was eventually upheld by the STF on 12 April 2012. The Court declared the unconstitutionality of the application of the abortion criminal law to cases of anencephaly, and established the right of pregnant women in that situation to have access to adequate medical procedures for the interruption of pregnancy, without previous judicial authorisation.

The eight-year process of the case before the Court took place at a time in which the STF was undergoing a process of redefinition of its institutional role. In fact, the legal opportunity for claiming citizen rights in Brazil had been expanded by the 1988 Constitution, which is well known globally for the inclusion of generous social provisions. The Constitution also widened the review powers of the STF, created new instruments for the defense of fundamental rights and expanded access for social and political actors to present claims before this Court.[17]

However, for several years after the promulgation of the 1988 Constitution, the bulk of the STF work concentrated on cases related either to economic governance or to the distribution of political power (Kapiszewski, 2011, p. 154), and the Court was not a significant player in the field of rights adjudication. Moreover, for some time it was seen as an appellate instance more than as a constitutional court (Martins, 2009, p. 46).[18] However, in recent years, the STF has gained influence in the political scene, and it has decided prominent rights-related cases,

including issues such as access to AIDS medication (2000), stem-cell research (2008), same-sex civil unions (2011), racial quotas at universities (2012) and the demarcation of indigenous territories (2012) (see Barroso, 2012; Martins, 2009). The Court's decision on abortion rights in cases of anencephaly was part of this process.

In fact, according to the Justice in charge of organising and directing this case (Justice-Rapporteur), Marco Aurélio Mello, this has been one of the most important cases heard by the STF in its institutional history.[19] The controversial nature of the case, and its acknowledged institutional relevance for the Court help explain why, when dealing with it, the STF decided to expand the legal opportunity structure for the participation of social actors by convoking for the first time a public hearing at the STF, which was held in 2008, and was followed by three more.[20] The Justice-Rapporteur also accepted the request made in the ADPF that ANIS be admitted as amicus curiae in the case.[21]

The Court's decision was aligned with the arguments developed by the claimants, and originally constructed by ANIS. With a clear resonance with those arguments, in its opening paragraphs the decision frames the problem by stating that 'there is a difference between abortion and the therapeutic anticipation of birth' (ADPF 54, p. 32). It also declares that the question involves women's dignity, freedom, health and sexual and reproductive rights, and it mentions the tension between those rights and society's interest in the protection of its members, but concludes that in this case there is no real conflict between fundamental rights. In analysing the question of anencephaly, the decision draws heavily on scientific information presented at the public hearings. In fact, it explicitly states that 'the information and data revealed at public hearings greatly contributed to clarifying what anencephaly is' (ADPF 54, p. 46). On the basis of those arguments, it argues that there is no right to life or dignity of the unborn opposing women's rights, because life is not viable in the case of anencephaly. The decision also acknowledged the informational value of the opinions heard during public hearings with regards to women's agency to make a decision in these cases (ADPF 54, p. 80).

## Conclusion

This paper has analysed the social construction of a legal claim that had its origin in the ethnographic research of feminist actors was further developed in an unconstitutionality action, and was eventually incorporated by the STF in its decision that liberalised the abortion law. In this regards, the case confirms democratic constitutionalism's argument that social movements can be key agents in the development of legal arguments that courts may incorporate into institutionalised law.

The study intended to show that the interaction between social movements and tribunals in this type of processes implies changes both at the level of social moments and courts: it leads to changes in terms of the discoursive and organisational strategies of actors in civil society, as well as in courts' decision-making processes. In the Brazilian case, the study shows how the displacement of the movement's claims to the legal arena implied organisational changes in terms of the forging of new alliances with actors outside the feminist camp. In effect, in its intent to pursue a strategic litigation case before the STF, ANIS contacted renowned actors in the field of public law in Brazil, who provided their resources and legal expertise for the development of the case.

Secondly, the case study confirms Siegel's claim that movements usually moderate their framings when they intend to achieve legal change through courts. Most interestingly, the reframing of the abortion issue on cases of anencephaly had its roots in ANIS' ethnographic perspective and empirical work, which reflects the construction of a legal claim grounded on the discourse of the persons who were directly related to the situation that was being denounced.

Finally, the study also highlights how the intervention of social movements in constitutional politics on highly controversial cases can generate incentives for constitutional courts to incorporate the voices of these actors in the judicial decision-making process. In contexts of judicial transition, this may entail the implementation of institutional channels for the participation of social actors in court proceedings, such as public hearings, that had never been used before by the Court.

## Disclosure statement

No potential conflict of interest was reported by the author.

## Notes

1. Since the mid-1980s, most Latin American countries have carried out reforms to their judicial institutions, which have prominently included the empowerment of constitutional courts (Navia & Ríos-Figueroa, 2005).
2. In 2006, the Colombian Constitutional Court established that abortion should be legal in cases of rape, risk to the woman's life or health and serious foetal malformation. In 2007, Mexico City's Legislative Assembly legalised abortion during the first trimester. In 2012, the Brazilian *Supremo Tribunal Federal* legalised abortion in cases of anencephaly; Argentina's Supreme Court established that the rape exception introduced in 1921 covered all cases of rape; and Uruguaýs National Congress decriminalised abortion during the first trimester.
3. Examples, among others, are Costa Rica's Supreme Court ruling in 2000 to prohibit in-vitro fertilisation (which was reversed by the Inter-American Human Rights Court in 2012) and the 2007 Chilean Constitutional Court ruling to declare unconstitutional the distribution of the emergency contraception pills.
4. In particular, the Colombian Constitutional Court has played a vanguard role in the implementation of abortion legal reform, and in countering backlash, by upholding feminist claims regarding the full implementation of its 2006 Decision that liberalised the abortion law (Roa & Klugman, 2014).
5. Other aspects involved in legal framing can be found in legal mobilisation studies (for example, Andersen, 2005; Marshall, 2003).
6. According to this perspective, in the West German case feminists aligned their frameworks with the official view on abortion, through the stigmatisation of abortion as a criminal and immoral act, and the depiction of women who decided to have an abortion as victims of this situation (Ferree, 2003, p. 304).
7. See Ferree (2003), Bagenstos (2009) and Vanhala (2011), working in the field of legal mobilisation, for thorough studies on intra-movement contestation on framing and tactics.
8. *RedeSaúde* (the National Feminist Network for Sexual and Reproductive Health and Rights), founded in 1991, is the biggest and most structured feminist network in the country, conjoining more than 300 entities (Negrão, interview, 2012), and the Brazilian Initiative for the Right to a Safe and Legal Abortion (*Jornadas Brasileiras pelo Direito ao Aborto Legal e Seguro*), created in 2004 as an offspring of *RedeSaúde*, is a single-issue coalition that coordinates different networks, organisations and advocates throughout the country.
9. In the first decade after the democratic transition, more than half of the groups that make up the National Movement for Human Rights were related to religious institutions, and particularly to the Catholic Church (Cleary, 1997, p. 268).
10. Hoffman and Bentes (2008, p. 114) affirm that the Public Ministry has played the role of a citizens' ombudsperson in the fields of health and education. In particular the Federal Public Ministry does not understand its role as an accusatory organ, but as a defender of human rights, minority rights and collective rights, and it is an independent power (Sarmento, Author interview, 2012).
11. While at the beginning of the 2000s, 9 out of 10 public interest actions were promoted by the Public Ministry, nowadays that proportion is 5 out of 10, which is due to the growth of the protagonism of civil society in this field (Sarmento, author interview, 2012).
12. This was the case in Colombia, where Colombian feminist lawyer Mónica Roa, supported by the organisation Women's Link Worldwide, established an office of this organisation in Bogota in 2005, with the specific aim of developing a litigation strategy for the liberalisation of the abortion law.

13. Fundamental precepts are more comprehensive than constitutional principles established in Articles 1–4, and they are not exactly defined by the Constitution or the legislation, so it is a competence of the STF to establish their scope and meaning.
14. The ADPF, as other abstract review petitions in Brazil, can be brought before the Court by several state actors, by the Federal Section of the Brazilian Association of Advocates (*Ordem dos Advogados do Brasil*), by any political party with representation in Congress and by national unions or class-representing entities (constitutional article 103).
15. ADPF 54/DF, *Supremo Tribunal Federal*, April 12 2012. The text of this decision can be retrieved from: http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADPF54.pdf.
16. There exists consensus within the movement about the need to advocate for the legalisation of abortion during the first trimester, despite conservatives' accusations that the movement promotes abortion during the whole period of pregnancy (Soares, interview, 2012). The movement also shares the view that abortion should be framed not as a matter of privacy *vis-à-vis* the State, but as a right that should include the provision of the service by the State (Corrêa, 2005, P. 210).
17. Until then, there was an abstract claim of unconstitutionality, but its scope was limited and the only legitimated actor to present it was the attorney-general of the Republic who directly reported to the President.
18. The STF is both a constitutional court, in that it exercises concentrate abstract review, and it is also the ultimate appellate instance in concrete constitutional review cases.
19. Vote of Justice Marco Aurélio Mello, ADPF 54, Supremo Tribunal Federal, 12 April 2012. Retrieved from: http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADPF54.pdf.
20. The procedure for public hearings at the STF had been established in 1999, by Law 9.868, but it had not been implemented by the Court.
21. Internal regulations of the STF establish that one of the justices (*Ministro Relator*, Justice-Rapporteur) should be in charge of organising and directing the process in a case. It is a competence of the Justice-Rapporteur to convene public hearings with expert actors in cases of institutional and public relevance, as well as to accept amicus curiae briefs (see the STF's internal procedural regulations (*Regimento Interno*) retrieved from: http://www.stf.jus.br/arquivo/cms/legislacaoregimentointerno/anexo/ristf_120anos.pdf).

## Notes on contributor

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