A Decade of Implementation

Promises and Pitfalls of the Uruguayan Abortion Law

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Uruguay gained international praise in 2012 when it passed one of the most liberal abortion laws on the continent. While the law undoubtedly represents a step in the right direction, ten years have passed, and the law and its implementation could not live up to the expectations. The Uruguayan abortion law over-medicalizes, paternalizes, and imposes a series of very burdensome requirements on people wishing to access abortion services, in violation of human rights law.

The current legal framework in Uruguay

Abortion was regulated as a crime in the Uruguayan system from 1907 to 2012, and the law imposed a three-year to nine-year prison sentence on women undergoing abortions. However, like in many other jurisdictions, the legal restrictions did not have any deterrent effect, and an estimated 30,000 to 50,000 clandestine abortions were still performed yearly. During the period 1997-2001, research shows that, although maternal mortality rates in Uruguay were similar to those of comparably developed countries, death from unsafe abortion was the main contributor and was amongst the highest rates in the world. Unsafe abortion accounted for almost 1/3 of maternal deaths, disproportionally affecting people in vulnerable situations.

Various initiatives were submitted to liberalize abortion. Moreover, the two most important ones—in 2002 and 2008—failed to be adopted; the president in power vetoed the latter.

Current law

In 2012, the Uruguayan Voluntary Termination of Pregnancy Act (Abortion Law N° 18.987) was adopted. The law resulted from arduous negotiations, a sharp shift to the more palatable "public health" rationale passed by a very narrow margin after strong social mobilization and a shift to the more palatable "public health" rationale. After the passing of the law, Regulatory Decree 375/2012 was introduced, containing further details outlining the abortion procedure. An essential element herein concerns the refusal to provide abortion services based on conscientious objection.

This law waives criminal penalties for abortion in the first 12 weeks of gestation, provided specific requirements are met. Where the pregnancy results from rape, abortion is permitted in the first 14 weeks of gestation, and there are no time limits when the health of the pregnant person is endangered, or the embryo is unviable. In order for the termination to be legal—and thus not a crime, punished accordingly in line with the previous regime—the pregnant person needs to go through the following chronological steps: (a) a medical consultation with an obstetrician/gynecologist; (b) a second consultation with an interdisciplinary team, in order to inform the woman of the procedure, its "inherent health risks," and the alternatives that exist; (c) a mandatory waiting period of five days; (d) a consultation to confirm the woman's willingness to follow through with the procedure; (e) the abortion itself (generally an at-home abortion with a combination of misoprostol and mifepristone prescribed by the doctor, and self-use by the person); and (f) a post-abortion consultation.

Since its adoption, the law has been the target of many legal and political challenges. Firstly, anti-abortion activists, with the support of local politicians, called for a national referendum to overturn the law. The process did not succeed, and they fell significantly short of the percentage threshold needed to take the matter to the popular vote. Various articles of the

regulatory decree were challenged by a group of gynecologists and effectively annulled several provisions that limit the exercise of conscientious objection.

Promises and pitfalls

The law is a transactional solution to decades of negotiations that resulted in a complex model of access that legalizes abortion but poses a series of burdensome barriers to accessing the services.

Firstly, abortion is a crime under Uruguayan law; the criminal penalties are waived when the extensive requirements are met. The model followed by the Uruguayan abortion law reflects not a decriminalization of abortion but an affirmation of abortion's illegality—except in certain circumstances, this is, when obtained according to the process/timelines/methods set in the law and after complying with an extensive list of requirements. Feminist organizations criticized this compromise as abortion continues to fall within the realm of criminal law and "cannot be interpreted as a full recognition of women's rights, but rather as a modified protectionist approach that circumscribes women's autonomy."

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"Conscientious Objection" or "Conscious Oppression"

The scope of conscientious objection (CO) is generally regulated by Law 18.987 and Regulatory Decree 375/2012. The law recognizes an individual right to "conscientious objection" and a collective right of "objeción de ideario" or "ideological objection." The latter refers to the right of private medical institutions to raise institutional objections and refuse abortion services. However, the "ideological objection" has been heavily criticized because the religious freedom that underpins the right to refuse abortion belongs to the individual and can hardly be considered a right of an institution, let alone a medical corporation.

The law did not provide for any limits to its exercise, accountability mechanisms, and measures to ensure the adequate provision of the services in cases of institutional objections. Empirical evidence gathered in these ten years of implementation shows that CO is being used ad hoc and unregulated and as a means to oppose abortion on expansive grounds. Authors speak of "civil disobedience" to resist the law's implementation. Conscientious objection is not, strictly speaking, configured just by opposing the law, and the Uruguayan scenario demands additional oversight and responsibility to guarantee the efficient delivery of the service.

It is nearly impossible to get timely access to treatments since, according to research done up until 2021, up to 100% of medical service providers in various regions of the country refuse to provide the abortion services recognized in the law.

Media reported that pregnant people had traveled 2,400km seeking access to abortion services. Moreover, in some regions with high numbers of objectors, respondents explained that women are required "to travel 200 or even 300 km just to get a prescription" for medical abortion. The numerous obstacles that pregnant people encounter in accessing healthcare—including discrimination, stigma, financial burdens, a lack of information, problems with transportation, and limited autonomy to make decisions about their own bodies—are exacerbated when a provider refuses to provide abortion services.

The discussion could be reframed as "refusal to provide services" or "denial of services based on conscience claims". Subverting in this way the power imbalance that currently exists between doctors and patients would take into account the freedom of belief of the woman seeking services—which may include the right to choose their care providers accordingly.

In 2016, the CEDAW Committee recommended that Uruguay "introduce[s] stricter justification requirements to prevent the blanket use by medical practitioners of their right to conscientious objection to performing an abortion." No action has been taken in this regard.

Right to Benefit from Scientific Progress and access the available range of methods

Ten years after adopting the law, pregnant people still struggle to access the range of services envisaged in the law, and little has been done in terms of capacity building of personnel.

The Ministry of Health strongly favored medication abortion in their "Technical Guide for the Voluntary Termination of Pregnancy". Indeed, since the law's adoption, around 98 percent of abortions were carried out with medicines prescribed by the gynecologist and self-administered by the pregnant person at home.

Favoring medication abortions was reportedly a "practical, logistical, and political decision" that primarily considered the medical establishment and doctors themselves. Medication abortion was simpler to implement, and since it requires little involvement, it may reduce the number of conscientious objectors. As reported by Stifani, Couto, and López Gómez, a key stakeholder, considered that "[t]here is a lot less conscientious objection to prescribing a termination than there is for performing a termination with instrumentation."

Other methods are rarely used, and training has not been made available to medical professionals. Despite their many advantages (i.e., the process takes 10 minutes and is inexpensive), manual or electric vacuum aspiration has not been included in the array of services offered for abortion. A high-quality abortion service should offer people a choice between abortion methods and provide the one preferred.

This limitation and the considerations surrounding it show that pregnant people's needs were not at the center of the policies. The literature reports that pregnant people are "not asked about their preferences" and that "this may in fact not be an ideal model in the eyes of women seeking an abortion." The model failed in terms of the political acceptability of medication abortion, given the high numbers of objectors.

Obstetric violence

Linked to the considerations made above, it is also significant that the law's paradigm permits a high level of violence that the system has not been designed to handle. The most recent data collected in the National Survey on Prevalence of Gender-Based Violence included a question related to violence during the abortion access process. The survey examined different experiences such as being pressured to continue the pregnancy, making the person feel guilty, having received offensive or disqualifying comments, receiving insinuations about her ability to make decisions, threatening with not respecting the confidentiality of the consultation, and others. The results show that 54.4% of women aged 15 or over who decided to undergo an abortion process after passing the law state that they have experienced some of the above-mentioned violent situations during this process. A more recent study about obstetric violence shows that 53% of the people who participated in the survey were forced to look at ultrasounds, 25% were made to listen to them, and 11% received derogatory comments from medical professionals during the exam.

While Uruguay has a law that explicitly recognizes obstetric violence as a form of gender-based violence, no action has been taken on this matter, and there are very few effective accountability mechanisms to denounce this kind of violence.

Non-discrimination based on citizenship/nationality

According to Article 13 of the abortion law, only women with Uruguayan nationality or who have lived there permanently for at least a year are allowed access to abortions. The parliamentary discussions reveal that this was aimed at preventing "abortion tourism" and positioning Uruguay "as a country in which it is possible to obtain abortions" in the region. This creates an exception to the protections granted by the Constitution and the statute governing the healthcare system, which applies to all "inhabitants" of the national territory. No other health service is subject to these criteria.

Article 7 of Law 19.580 exempts migrant women from the requirements of citizenship/residence in cases when they are victims of domestic violence. While legal exemptions provide a path to access, we must recognize the symbolic significance of a rule that divides women into distinct categories and, consequently, different categories of abortions. The legal system views women who experience violence as ethically and legally deserving of protection. Requiring migrant women to be victims of gender-based violence to access essential healthcare services continues to place unfair burdens on an already vulnerable population.

Human Rights Standards and Stereotyping

The persistent refusal of the law and political-legal discourse in Uruguay to recognize that the termination of a pregnancy is a decision that fundamentally belongs to the woman is rooted in gender stereotypes enforcing the generalized view that women should be mothers. Article 2(f) and Article 5 of CEDAW impose the obligation to transform laws, policies, and institutions.

My research engages with the various salient images that emerge from the parliamentary debates on the Uruguayan abortion law and concludes that although the law undoubtedly represents a step forward—as criminal penalties for abortion may be waived in certain circumstances—it fails to promote the change in cultural patterns that international human rights standards require. Women seeking to terminate their pregnancies are presented in the law's parliamentary discussions as victims and selfish, irrational, and incompetent decision-makers. All these images are complex and layered and correspond to a large extent to the political intentions of the parliamentarians. However, they share the same underlying ideas: women are (and should be) naturally mothers, women are (and should be) naturally more capable of nurturing, women are (and should be) self-sacrificial and prioritize community interests above their desires.

Fundamentally, they all allude to the stereotype that views parenting as "women's privileged vocation or the embodiment of an authentic or natural female practice," which confounds womanhood and motherhood. The argument that abortion is a necessary and standard healthcare treatment does not appeal to the liberalization of abortion backers in the same way that the idea of women as victims does.

Furthermore, the women that emerge from the parliamentary debates form a monolithic group. In order to comprehend the vast diversity of people's experiences with abortion and how our identities impact those experiences, additional work is needed to envisage many ways in which the law can reflect on the critical concerns concerning age, class, racism, and more.

These stereotypes served as the foundation for both the reform's supporters' and detractors' arguments, and the law resulting from the debates echoes these clichés. Gender stereotypes that reinforce the widely held belief that women should be mothers are at the foundation of Uruguay's continuing failure of the law and political-legal discourse to recognize that the decision to discontinue a pregnancy truly belongs to the woman. While unquestionably a positive start, the law fails to encourage the shift in cultural norms that CEDAW calls for because it is based on damaging gender stereotypes. As a result, Uruguay's abortion laws violate its international obligations.

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