EFFECTS IN THE HEALTH SERVICES OF ABORTION REGARDING THE DIFFERENT PATHS TO DECRIMINALISE IT: CONSTITUTIONAL COURTS, LEGISLATIVE CHANGE OR REFERENDUM

By Carla Patiño Carreño

LL.M. LONG THESIS
COURSE: Human Rights
PROFESSOR: Mathias Möschel, Ph.D.
Central European University
1051 Budapest, Nador utca 9.
Hungary

Abstract

The criminalization of abortion is still a reality around the world. However, some countries in Latin America and other parts of the world have managed to implement different strategies for the decriminalization of abortion. This thesis argues that abortion is an issue of human rights and discusses what said rights involve, to then pose the question of which strategy would be the most appropriate to achieve decriminalization, improve health services, and protect the rights of women in the specific case of Ecuador. To answer this question, three case studies are presented analysing three different countries—Uruguay, Ireland, and Colombia—and the strategies they implemented to achieve the goal of decriminalization—by changing the law, by referendum, and by Constitutional Court. The analysis allows for the establishment of general conclusions regarding the process of decriminalization in different political, historical, and social contexts, always from a perspective of the defence of fundamental women's rights. Furthermore, the thesis analyses the contemporary situation regarding abortion in Ecuador, including statistics and a historical overview that sheds light on how women's rights continue to be impacted by criminalization. Finally, based on the lessons learned from the three case studies and the social, legal, political and historical context of the country, a path towards the decriminalization of abortion in Ecuador is proposed.

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Introduction

The criminalization of abortion is still a reality in many countries. However, voices and movements to decriminalize are on the rise.[1] At the same time, positions against it, most of them with religious foundations, are also on the rise. In the path towards decriminalization, it is easy to identify three main ways that some countries have chosen: challenge the constitutionality of criminalization through legal action, advocate for changing the law through representatives, or holding a referendum to change the law or even constitutions.

This thesis seeks to bring light to the question of which is the best strategy to address the issue of criminalization, improve health services, and protect the rights of women in Ecuador. The data available regarding Ecuador shows that it is especially poor women who are the most affected due to criminalization. It is well known that illegal abortions happen in all places, but women who have access to economic resources are less affected by the risk of being sued if they look for health services. The criminalization, in practice, is only for those with fewer economic possibilities, for the ones that cannot pay a private service—whether legal or illegal—and those who do not have knowledge of their rights. They are the ones who need not only a legal but also public and adequate service. Earlier this year, in April 2021, the Constitutional Court of Ecuador decriminalized abortion in cases of rape, but this is still not legislated and regulated. It is imperative to find the best way to decriminalize abortion in the Ecuadorian context but also to ensure the right to a dignified abortion in public services.

1 An example of this is the Latin American movement 'Ni una menos' (Spanish for 'Not one [woman] less') and the different street protests for the decriminalisation of abortion in Argentina.

The first part of this thesis reviews the legislation, both at international and national level, of 4 countries regarding the rights of women and abortion. The chapter outlines the different human rights and services involved in the issue of abortion.

In the medical context, 'abortion' refers to the termination of a pregnancy. Abortion can be the result of natural causes, or it can be induced.[2] 'Induced abortions' are managed differently according to the legislation of each country, and, in some Federal States, the law can even differ between provinces or states. The Center for Reproductive Rights classified world legislations into five categories: there are 26 countries listed under the "prohibited altogether" category, 39 countries listed under "to save the woman's life," 56 countries under "to preserve health," 14 countries under "broad social or economic grounds," and 66 countries under "on request," where gestational limits also vary.[3] According to this classification, Ecuador is in the category of "to preserve health," along with Colombia, with the difference that Colombia has an additional clause permitting abortion in cases of rape, incest or foetal impairment, which Ecuador excludes. On the contrary, Uruguay and Ireland are listed under the "on request" category.[4] These differences in legislation allowing or criminalizing abortion directly affect the exercise of women's rights in these countries.

The following chapters of the thesis present a review of the historical, political, and legislative situation of three countries which decriminalized abortion: Uruguay, Ireland, and

2 "Definition of ABORTION."
3 "The World's Abortion Laws | Center for Reproductive Rights."
4 The WHO in 2012 made a similar classification but their version separates physical health from mental health and includes a category of rape and incest. The year concerned is 2009 which differs significantly from the ones presented that are actually until 2019 with a total of 195 countries; 49 To save the woman's life, 34 To preserve physical health, 32 To preserve mental health, 25 Rape or incest, 24 Fetal impairment, 17 Economic or social reasons, 10 On request. World Health Organization, "Safe Abortion," 25.

Colombia. Uruguay, a country that shares some similarities with Ecuador, decriminalized abortion by changing the law several years ago. The Republic of Ireland achieved decriminalization with the support of the majority in the country, by conducting a referendum that overturned the constitutional ban on abortion. Colombia, a neighbouring country with which Ecuador has great similarities in terms of laws and culture, has partially decriminalized abortion through the constitutional court. The thesis shows the realities of these countries regarding public services and the actual access to the abortion they provide. It also presents the social and legal reality of abortion in Ecuador, in order to propose a roadmap for the decriminalization of abortion in this country.

Chapter 1. The Rights Involved in Abortion and the Right to Health Services for Abortion Procedures

Differences in the legislation of different countries, which allow or criminalize abortion, directly affect the exercise of women's rights. This chapter discusses why health services related to abortion and induced abortion—also called 'voluntary termination of pregnancy'—are a matter of rights, and what such rights involve.

1.1 Violation of the Rights of Women When Abortion is Not Available

The criminalization of and barriers to abortion affect women of all ages,[5] and affect different rights that are protected by international human rights treaties and national laws. The most basic rights of women are in danger. Criminalization and legal bans on abortion affect many rights of women: to life, to health and integrity, to protection from cruel, inhuman, and degrading treatment, to privacy, liberty, dignity, sexual and reproductive rights, and to the equality and nondiscrimination of women. In the following paragraphs, some of these rights will be analyzed in the context of criminalization of abortion. This chapter will outline the international, regional, and national provisions addressing these rights as applicable to the subject jurisdictions of this thesis.

1.1.1 Right to Nondiscrimination and Equality

First, we must understand that equality and nondiscrimination are not only rights, but also a principle that affects all other rights. This right is also an obligation of States, and there are many regional and international treaties recognizing it as such. For example, it is recognized in the

5 The terms 'women' and 'girls' are used throughout this work to refer to those who can be pregnant but recognizing that there are people who do not identify as women who are also affected.

Universal Declaration of Human Rights (UDHR) in the first article: "1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[6] In the International Covenant on Civil and Political Rights (ICCPR),[7] Article 26 expresses that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (..) sex."[8] As a State obligation, the American Convection of Human Rights (ACHR) states in Article 1 that "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."[9] Article 24 of the ACHR holds that "[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."[10]

The right to equality and the prohibition of discrimination is also recognized in the constitutions of the countries studied in this thesis. Colombia's Constitution states in Article 5 that "[t]he State recognizes, without any discrimination whatsoever, the primacy of the inalienable rights of the individual [...]"[11] and in Article 13 it recognizes that "all individuals are free and equal before the law" and shall receive equal protection, treatment, rights, freedoms and opportunities

6 General Assembly Resolution, Universal Declaration of Human Rights (UDHR).
7 Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, in accordance with Article 49.
8 United Nations, International Covenant on Civil and Political Rights, (ICCPR).
9 OAS, American Convention on Human Rights "Pact of San José, Costa Rica."
10 OAS.
11 Constitution of Colombia.

without discrimination.[12] According to this provision, the State shall also promote conditions of equality, with particular regard for the most vulnerable groups.[13] Finally, Article 43 explicitly provides that "[w]omen and men have equal rights and opportunities. Women cannot be subjected to any type of discrimination. During their periods of pregnancy and following delivery, women shall benefit from the special assistance and protection of the State [...]."[14]

Uruguay's Constitution is shorter and less detailed. It states in Article 8 that "[a]ll persons are equal before the law, no other distinctions being recognized among them save those of talent and virtue."[15] Ireland's Constitution recognizes in Article 40 that "1. All citizens shall, as human persons, be held equal before the law."[16] In the case of Ecuador's Constitution, Article 3.1 provides that "[t]he State's primary duties are: Guaranteeing without any discrimination whatsoever, the true possession of the rights set forth in the Constitution and in international instruments […]."[17] Article 6 recognizes that "[a]ll female and male Ecuadorians are citizens and shall enjoy the rights set forth in the Constitution."[18] Additionally, Article 11.2 states that one of the principles to the exercise of rights is equality.[19]

12 "All individuals are born free and equal before the law, shall receive equal protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination on account of gender […] The State shall promote the conditions so that equality may be real and effective and shall adopt measures in favor of groups that are discriminated against or marginalized. The State shall especially protect those individuals who on account of their economic, physical, or mental condition are in obviously vulnerable circumstances and shall sanction the abuses or ill-treatment perpetrated against them."
13 Constitution of Colombia.
14 Constitution of Colombia.
15 Constitution of Uruguay.
16 Ireland, *Bunreacht Na HÉireann = Constitution of Ireland*.
17 Asamblea Constituyente, Constitution of Ecuador.
18 Asamblea Constituyente.
19 2. All persons are equal and shall enjoy the same rights, duties and opportunities. No one shall be discriminated against for reasons of (…) sex, gender identity, (…), health status, (…) physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which may be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights. All forms of discrimination are punishable by law. Asamblea Constituyente.

The right to equality and nondiscrimination in particular has to be explicitly recognized given that the criminalization of abortion affects only the bodies of women[20]; women are the ones who die or fall ill as a consequence of malpractice or the inability to be treated by health practitioners. What this means is that the criminalization is specific only to women, since it is a crime that cannot be committed by men[21] under any circumstances. There are other crimes, such as facilitating an abortion or provoking an unwanted abortion, for which men can be held responsible,[22] but having a desire to abort either unilaterally or with help is itself a crime directed onto women, and by this very nature it is discrimination.

This is how the criminalization of abortion can, and does, affect the right to equality itself and, in turn, the equality of women. In 2014, the Statement of the Committee which supervises the implementation of the UN Convention on the Elimination of Discrimination against Women (hereinafter 'the Committee' and 'CEDAW,' respectively) on sexual and reproductive health and rights states that "failure of a State party to provide services and the criminalization of some services that only women require is a violation of women's reproductive rights and constitutes discrimination against them."[23]

From the words of the Committee, two issues can be identified. The first is criminalization in the sphere of the obligations of States with regards to respect, prohibition of harm, and non-

20 Terms in this paper such as 'women,' 'females,' and 'girls' will be used to refer to persons of female sex and anatomy, but recognizing that this includes persons who identify with another gender or who are gender non-conforming (e.g. cisgender women, transgender women, transitioning men, and non-binary persons).

21 Again, this statement refers to cisgender men, and may not apply to transgender men or non-binary persons.

22 The criminalization of these practices can vary from country to country.

23 Committee on the Elimination of Discrimination against Women, "Statement of the Committee on the Elimination of Discrimination against Women on Sexual and Reproductive Health and Rights: Beyond 2014 ICPD Review."

interference in the decision, body, integrity and/or liberty of women. To act otherwise would be a violation of human rights, and one directed only to women, which therefore constitutes discrimination. The second issue identified by the Commission is the services that, in the same way, are needed only by women. By this I mean all the gynecological and obstetric services used only by women that, for the most part, fall within the public health system (even when quality, warmth, and satisfaction levels are a matter of further discussion). Abortion is also a service needed only by women—sometimes even to save their lives—but it is not always provided by public services. This itself leads to an additional violation of women's human rights and the right to equality. The State in such a situation has the positive obligation to establish and implement the services that women need to save their lives, health, and integrity.

Regarding nondiscrimination and the right to equality, States must allow women to enjoy their rights without differential restrictions, such as criminalizing something which only they can be culpable of, or non-provision of or access to adequate health services needed only by them.

1.1.2 Right to Life

Second is the right to life. This is recognized in all human rights treaties and constitutions. Article 3 of the UDHR provides that "[e]veryone has the right to life, liberty and security of person."[24] The ICCPR states in article 6.1. that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."[25] The ACHR expresses in article 4.1. that "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily

24 General Assembly Resolution, Universal Declaration of Human Rights (UDHR).
25 United Nations, International Covenant on Civil and Political Rights, (ICCPR).

deprived of his life."[26] Similar provisions are also found in constitutions. For example, Article 11 of the Colombian Constitution expresses that "[t]he right to life is inviolate. There shall be no death penalty,"[27] and Article 7 of Uruguay's Constitution states that "[t]he inhabitants of the Republic have the right of protection of the enjoyment of life, honor, liberty, security, labor, and property. No one may be deprived of these rights except in conformity with laws which may be enacted for reasons of general interest."[28] In Ireland's Constitution, life is protected by Article 40 (3.2), which states that "the State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."[29] Before the 2018 referendum, Ireland had a provision similar to the Ecuadorian Constitution, in former Article 40 (3.3) which provided that "[t]he State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."[30] This provision, following the referendum, has since changed to: "Provision may be made by law for the regulation of termination of pregnancy."[31]

Article 43 of the Ecuadorian Constitution provides that "[t]he State shall guarantee the rights of pregnant and breast-feeding women to: 3. Priority protection and care of their integral health and life during pregnancy, childbirth and postpartum,"[32] and Article 45 that the State is required to "[…] recognize and guarantee life, including care and protection from the time of

26 OAS, American Convention on Human Rights "Pact of San José, Costa Rica."
27 Constitution of Colombia.
28 Constitution of Uruguay.
29 Ireland, *Bunreacht Na HÉireann = Constitution of Ireland*.
30 Book (eISB), "Electronic Irish Statute Book (EISB)."
31 Book (eISB).
32 Asamblea Constituyente, Constitution of Ecuador.

conception."[33] Article 66 expresses that "[t]he following rights of persons are recognized and guaranteed: 1. The right to the inviolability of life."[34] Other country's Constitutions also talk about quality of life, and decent or dignified life. These clauses can be found in the constitutions of Colombia, in articles 64, 334 and 336, Ecuador in articles 33, 37.66.2, among others. These clauses are very broad in nature but define 'life' not only as the absence or avoidance of death, but also include what life must have in order to be enjoyed. They appear in the newest Constitutions that have tried to be protective of a comprehensive wellbeing.

Denial of access to safe and legal abortion puts the lives of women and girls at risk. Abortion without secure conditions is the third leading cause of maternal death globally,[35] and the cause of 4.7% to 13.2% of all maternal deaths in the world.[36] The numbers are higher in Latin America and Africa.[37] "International human rights bodies and experts have repeatedly stated that restrictive abortion laws contribute to maternal deaths from unsafe abortions and jeopardize the right to life."[38] Removal of restrictions on abortion results in the reduction of maternal mortality.[39] This is evident given the numbers of maternal deaths in Latin America and Africa, where abortion laws are more restrictive than in other regions were abortion is permitted. Therefore, we argue that restriction in access to abortion causes women's deaths.

33 Asamblea Constituyente.
34 The clauses in Ecuadorian constitution may seem contradictory at first but include two different protections that are going to be analysed in the last chapter.
35 Guttmacher Institute and World Health Organization, Facts on Induced Abortion Worldwide (2012)
36 "Prevención del aborto peligroso."
37 Vlassoff et al., "Estimates of Health Care System Costs of Unsafe Abortion in Africa and Latin America."
38 Avenue, York, and t 1.212.290.4700, "Ecuador."
39 "Safe Abortion."

The right to life must also be connected with equality. Only women are capable of dying during abortion (as they are the only ones capable of becoming pregnant). "[L]egislation severely restrict[ing] access to voluntary abortion, even in cases of rape, lead […] to grave consequences, including the unnecessary deaths of women."[40] The high numbers representing unsafe abortion in the summary data of maternity deaths is solid evidence and surely must raise concerns about abortion as a reason for deaths of women. The lives of women of all ages are relativized with laws that prohibit it and result in a lack of services that provide a satisfactory solution for their needs. The lives of women (as well as their word and work) have a different value between States and societies as well as within States and societies. Women's lives lost in abortion are dehumanized by "the bad decision" that they made and the sentiment that, in the end, their lives are of less value than those of their peers.

1.1.3 Right to Integrity

Third, one needs to mention the right to integrity. Much like the previous rights, it is recognized in international treaties and national constitutions. It is recognized as a right of individuals, but additionally it constitutes a direct prohibition of infringing damage (by any state agent), and a state obligation to prevent and protect integrity from the damage that a person may exercise towards the integrity of another. Article 5 of the UDHR states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[41] The ICCPR in Article 7 determines that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific

40 COMMITTEE AGAINST TORTURE, "CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION Conclusions and Recommendations of the Committee against Torture."
41 General Assembly Resolution, Universal Declaration of Human Rights (UDHR).

experimentation."[42] Article 5 of the ACHR states: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."[43] There is an additional and specific international treaty, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which, in article 1, states that:

> 1. For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[44]

Article 12 of Colombia's Constitution recognizes the right to integrity in a negative or prohibitive form: "No one shall be subjected to forced sequestration, torture, cruel, inhuman, or degrading treatment or punishment."[45] Ireland, in article 40 (3.2) of its Constitution, declares that "[t]he State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."[46] Uruguay's Constitution holds in Article 7 that, "The inhabitants of the Republic have the right of protection in the enjoyment of life, honor, liberty, security, labor, and property."[47] The Ecuadorian Constitution details in Article 66 that, "3. The right to personal well-being, which includes: a. Bodily, psychological, moral and sexual safety. b. A life without violence in the public and private

42 United Nations, International Covenant on Civil and Political Rights, (ICCPR).
43 OAS, American Convention on Human Rights "Pact of San José, Costa Rica."
44 UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
45 Constitution of Colombia.
46 Ireland, *Bunreacht Na HÉireann = Constitution of Ireland*.
47 Constitution of Uruguay.

sectors. The State shall adopt the measures needed to prevent, eliminate, and punish all forms of violence, especially violence against women, (…) [and] c. Prohibition of torture, forced disappearance and cruel, inhuman or degrading treatments and punishments."[48] We can see from these provisions that integrity is associated with and somewhat synonymous to the prohibition of torture as a result if its inherent protection from violence. As a result, States have an obligation to prevent and protect their population from this personal harm.

General Comment 20 of the Human Rights Council on the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that Article 7 of the ICCPR "protects both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity."[49] The Council also added that "[t]he prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. (…) It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions."[50] General comment No. 28 of the Equality of Rights Between Men and Women included within the obligations of States the need for them to report on their compliance with article 7 concerning

48 Asamblea Constituyente, Constitution of Ecuador.
49 UN Human Rights Committee (HRC), "CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)."
50 Human Rights Committee, General Comment No. 20: Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (art. 7), 10 March 1992 (HRI/GEN/1/Rev.7, par. 2 and 5)

access to safe abortion for women who have become pregnant as a result of rape.[51] These practices are considered torture and can thereby trigger the responsibility of the State.

Applying the aforementioned definition in case No. 1153/2003 against Peru,[52] the Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, on the basis of General Comment 20 considered that the suffering of a woman as a result of the State failing to enable beneficial therapeutic abortion revealed a violation of Article 7 of the Covenant.

Similarly, the European Court of Human Rights (ECtHR or the Court) in the case of *P and S. v Poland* has held that unwanted pregnancy caused mental distress that increases over time, therefore, delays in facilitating voluntary abortion after rape cause severe suffering to the victim. Under these circumstances, it is not enough for States to decriminalize abortion, it is necessary to ensure that practices and law follow the international obligation of the State under the CAT. The Court added that "the general stigma attached to abortion and to sexual violence has been shown to deter women from seeking medical care, causing much distress and suffering, both physically and mentally."[53]

In the Inter-American regional system, the Follow-up Mechanism to the Convention of Belém Do Pará in 2014 declares that there are still laws "maintaining restrictions on access to safe abortions and absolute prohibitions of abortions, or the denial of access to post-abortion care that

51 UN Committee on the Elimination of Discrimination Against Women (CEDAW), "CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), Chap. I, Available at: Https://Www.Refworld.Org/Docid/453882a73.Html [Accessed 29 November 2019]."
52 Communication No. 1153/2003: Peru. 22/11/2005. CCPR/C/85/D/1153/2003. (Jurisprudence) 17 October – 3 November 2005.
53 "P. AND S. v. POLAND," para. 76.

contravenes the prohibition of torture and ill-treatment."[54] Such laws perpetuate the exercise of violence against women and girls and "re-victimize them[,] violating their sexual and reproductive rights, and […] violat[ing] the prohibition of torture." [55]

In his 2016 report to the Human Rights Council, the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Médez, also emphasized that "[h]ighly restrictive abortion laws that prohibit abortions even in cases of incest, rape or fetal impairment or to safeguard the life or health of the woman violate women's right to be free from torture and ill-treatment."[56] He continued:

> The denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount to torture or ill-treatment. States have an affirmative obligation to reform restrictive abortion legislation that perpetuates torture and ill-treatment by denying women safe access and care. Limited and conditional access to abortion-related care, especially where this care is withheld for the impermissible purpose of punishing or eliciting a confession, remains of concern. The practice of extracting, for prosecution purposes, confessions from women seeking emergency medical care as a result of illegal abortion in particular amounts to torture or ill-treatment.[57]

The suffering caused by the prohibition and obstruction of abortion services and post-abortion care for women who have an unwanted pregnancy is, therefore, considered as torture. As such, prohibition or obstruction of legal, safe, and accessible abortion services violates the right to integrity of women who need those services.

54 Follow-up Mechanism to the Convention of Belém Do Pará (Mesecvi) Comittee Of Experts (Cevi, "Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights".
55 Follow-up Mechanism to the Convention of Belém Do Pará (Mesecvi) Comittee Of Experts (Cevi.
56 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57 (2016), para 43
57 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57 (2016), para 44

1.1.4 Right to Health

Finally, and the main focus of this thesis, is the right to health. The right to health has been recognized as an essential human right in several international treaties as well as constitutions. The right involves positive actions from States, and even when said positive actions fall under the category of progressive development, there are some immediate steps and obligations that States have to take, regardless of resources.[58] The UDHR expresses in Article 25 that:

> (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.[59]

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that, "1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (…)."[60] The Protocol of San Salvador in Article 10 recognizes that:

> 1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. 2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a. Primary healthcare, that is, essential health care made available to all individuals and families in the community.[61]

58 American Convention, Article 26, "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."
59 General Assembly Resolution, Universal Declaration of Human Rights (UDHR).
60 International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27
61 ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR"

Additionally, State constitutions recognize the right to health in different manners. Colombia's Constitution, on the one hand, establishes in Article 49 that:

> Public health and environmental protection are public services for which the State is responsible. All individuals are guaranteed access to services that promote, protect, and restore health. It is the responsibility of the State to organize, direct, and regulate the provision of health services to the inhabitants and of environment protection in accordance with the principles of efficiency, universality, and solidarity; (…) An Act shall define the terms under which basic care for all inhabitants shall be free of charge and mandatory. Every individual has the right to have access to the integral care of his/her health and that of his/her community.[62]

Uruguay's Constitution, on the other hand, recognizes the right in a broader manner in its article 44:

> The State shall legislate on all questions connected with public health and hygiene, endeavoring to attain the physical, moral, and social improvement of all inhabitants of the country. It is the duty of all inhabitants to take care of their health as well as to receive treatment in case of illness. The State will provide by free the means of prevention and treatment to both indigents and those lacking sufficient means.[63]

Ireland's Constitution contains no explicit provision on the subject of health. Nevertheless, Article 45 (1) declares that, "[t]he State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life."[64] And Article 45 (4.2), concerning workers' health, declares that, "[t]he State shall endeavor to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength."[65]

62 Constitution of Colombia.
63 Constitution of Uruguay.
64 Ireland, *Bunreacht Na HÉireann = Constitution of Ireland*.
65 Ireland.

In contrast, Article 32 of the Ecuadorian Constitution establishes:

> Health is a right guaranteed by the State and whose fulfillment is linked to the exercise of other rights, (…) The State shall guarantee this right by means of economic, social, cultural, educational, and environmental policies, and the permanent, timely and non-exclusive access to programs, actions and services promoting and providing integral healthcare, sexual health, and reproductive health. The provision of healthcare services shall be governed by the principles of equity, universality, solidarity, interculturalism, quality, efficiency, effectiveness, prevention, and bioethics, with a gender and generational approach.[66]

The right to health has multiple aspects and is a complex right to fulfill. In Spanish, the word '*integral*' is used to refer to legal, emotional, physical, mental, family, and social components that are involved. The translation in English is often 'comprehensive,' but this word fails to encapsulate the totality of elements at play. A closer term is what the UDHR calls 'well-being'. This complex situation has also been highlighted in the Constitution of the World Health Organization (WHO), which notes that "[h]ealth is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[67] The WHO defines 'health' in a broader sense to include physical, mental, and social well-being, as some of the treaties and constitutions do. The right to health also includes sexual and reproductive rights as defined by the CEDAW and, similarly, by other constitutions. The CEDAW expresses that States Parties shall take measures to eliminate discrimination in the field of healthcare and ensure access to healthcare services, "including those related to family planning."[68]

The right to health has to be analyzed from the perspective of the body and the mind—from the perspective of physical integrity and psychological integrity—since these are the aspects

66 Asamblea Constituyente, Constitution of Ecuador.
67 "Preamble to the Constitution of WHO as Adopted by the International Health Conference, New York, 19 June - 22 July 1946; Signed on 22 July 1946 by the Representatives of 61 States (Official Records of WHO, No. 2, p. 100) and Entered into Force on 7 April 1948."
68 CEDAW Article 12

at play regarding health. In the specific case of abortion, physical and psychological integrity are in direct relationship with sexual rights and reproductive rights. The criminalization of abortion produces a real threat to the health of women. A study based on data provided by the WHO found that 45.1% of abortions each year were unsafe, and that 97% of them occurred in developing countries.[69] This means that "the proportion of unsafe abortions was significantly higher in countries with highly restrictive abortion laws than in those with less restrictive laws."[70] The relationship between unsafe abortions and their criminalization is clear; the more restrictions, the more unsafe and, by consequence, the greater potential of a violation of the right to health. All because of the lack of services.

> Some criminal and other legal restrictions in each of those areas [pregnancy; contraception and family planning], which are often discriminatory in nature, violate the right to health by restricting access to quality goods, services and information. They infringe human dignity by restricting the freedoms to which individuals are entitled under the right to health, particularly in respect of decision-making and bodily integrity. Moreover, the application of such laws as a means to achieving certain public health outcomes is often ineffective and disproportionate.[71]

"Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women's right to health and must be eliminated," and it is clear that criminalization of abortion has a "severe impact on mental health."[72] Even when we include abortion in the general right to health and in sexual and reproductive rights, as well as the right to decide the number of children that someone wishes to have (rights recognized by all humans), *unsafe* abortions and their consequences remain a threat to the health and rights specific to women. It is a woman's body that is affected. Moreover, unsafe and illegal abortions also have

69 Ganatra et al., "Global, Regional, and Subregional Classification of Abortions by Safety, 2010–14."
70 Ganatra et al.ibid. ibid
71 Report of the UN Special Rapporteur on the Right to Health, UN Doc. A/66/254, August 3, 2011,
72 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras A/HRC/29/33.

the potential to impact the mental health of women. "Short- and long-term physical and psychological consequences also arise due to unsafe abortions when women are forced to carry pregnancies to term against their will."[73]

Criminalization and restrictive laws are ineffective as public health interventions and fuel underreporting of health indicators. For instance, the work done has shown that legal restrictions on access to abortion services, comprehensive sexual and reproductive education and information, and contraception and family planning methods can have a serious detrimental impact on the enjoyment of the right to health. Evidence shows that this includes a negative impact not only on access to goods, services and information, but also on the enjoyment of fundamental freedoms and entitlements, and on the dignity and autonomy of individuals, in particular women.[74]

The existence of criminalization and barriers to safe abortion result in physical and mental detriments to the health of women, whether by reason of inaccessibility or safety of abortion, or by unwanted maternity. These two options that are left in such legal paradigms violate women's right to health as well to other rights previously explained.

1.2. The Right to Health Standards in Abortion Procedures

The right to health cannot be separated from the human rights standards of equality and nondiscrimination, as well as dignity or the protection of the integrity of each person. Fulfilling or guaranteeing the right to health requires several actions from the State: the elimination of obstacles to health services; the provision of information; the provision of public spaces for people; training

73 Special Rapporteur of the Human Rights Council Anand Grover, "Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," para. 36.
74 Dainius Pūras, "Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Dainius Pūras," para. 25.

for professionals, experts, and public servants, including training regarding the gender-specific nature and special conditions and situations that affect only or in disproportional manner girls and women, and the conditions of victims of gender violence. It is also important to note that, with regard to their obligations, States should be aware of the power asymmetries between authorities and private citizens and be prepared to address them to ensure balance.[75]

The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 recognized core obligations in relation to the right to health, including:

> (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; (…) (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs; (…) (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population (…) shall give particular attention to all vulnerable or marginalized groups. [76]

This Committee also defined obligations by way of priority and purpose: "(a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care; (…) (e) To provide appropriate training for health personnel, including education on health and human rights."[77]

The Special Rapporteur, on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in his 2014 report expressed that "the full enjoyment of

75 "Power asymmetries and imbalances may lead to scenarios where (a) preference in allocating budgets is given to expensive biomedical technologies which are not necessarily used in an ethical and cost-effective way; (b) there are increased incentives for corruptive practices when expensive specialized health-care interventions in public sector do not serve those in most need; (c) the filters (tiers) in health-care systems do not properly function, and mild cases flow into specialized care, placing the entire health-care system at risk of poor management of the principles of medical ethics and health economics. That has negative impact on the full realization of right to health and generates negative public health outcomes".

76 Committee on Economic, Social And Cultural Rights, "General Comment No. 14 The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)," para. 43,44.

77 Committee on Economic, Social And Cultural Rights, para. 43,44.

the right to health can only be operationalized through human rights-friendly and culturally relevant health promotion policies."[78] In order to identify the scope of the obligation, General Comment No.14 defines the right to health with essential elements which must be respected. These are availability, accessibility, acceptability, and quality of the services.[79] Abortion services, as part of this right to health, thus have to realize and satisfy these elements and conditions, which are further explained below.

Availability: General Comment 14 describes availability to mean "[f]unctioning public health and health-care facilities, goods and services, as well as programmes (…) available in sufficient quantity within the State party."[80] This includes health-related buildings such as hospitals or clinics, trained personnel and essential drugs defined by the WHO.[81]

The criminalization of abortion constitutes one of the most important obstacles to the availability of health services, but "legalization is an imperfect indicator of the availability of services providing safe abortion."[82] There are several additional factors that affect the availability of the service. The WHO explains that, in order to fulfil the necessities of the right to health, it is necessary to have "well-established infrastructure in primary health care" without which all

78 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras A/HRC/29/33 para 73
79 Committee on Economic, Social And Cultural Rights, "General Comment No. 14 The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)."
80 Committee on Economic, Social And Cultural Rights.
81 Committee on Economic, Social And Cultural Rights.
82 Hardy E et al. (1997) Comparison of women having clandestine and hospital abortions: Maputo, Mozambique. Reproductive Health Matters, 9: 108-l17. in World Health Organization, United Nations Population Fund, and Key Centre for Women's Health in Society, *Mental Health Aspects of Women's Reproductive Health*, 53.

modern science and advances could be useless, and the technology and discoveries will do no good or change people's daily lives.[83]

Regarding the essential drugs which must be available to everyone, in 2005 the WHO included in the list mifepristone and misoprostol.[84] These essential drugs are used in medical abortion. This inclusion supports the idea of abortion as an essential medical procedure.

The availability of abortion includes the disclosure of resources designated to make the procedure a real option for women who need it. Several topics are related to and intersect with its accessibility, but even when abortion has some legal restrictions, for cases permitted the health system has to consider at least: whether essential medical facilities are in close proximity and responsive, whether trained personnel can treat women who need an abortion in a respectful and professional manner, whether medicines needed for the procedures are obtainable, and whether the costs allow women to be assisted.

To deliver available abortion health care, it is important to consider that abortion procedures have to be available as primary care. The American Academy of Family Physicians explains primary care as having five components: primary care, primary care practice, primary care physician, non-primary care physicians providing primary care services, and non-physician primary care providers. The components imply that primary care is the first point of contact for patients in the healthcare system, not limited by the type of problem. Their service "includes health promotion, disease prevention, health maintenance, counseling, patient education, diagnosis and

83 World Health Organization, "Safe Abortion."
84 "WHO Drug Information Vol. 19, No. 3, 2005: Essential Medicines: Highlights of the 14th Model List of Essential Medicines: Mifepristone with Misoprostol."

treatment of acute and chronic illnesses in a variety of healthcare settings."[85] Primary care is performed by a physician or other health professionals, including by way of consultation or referral.[86] Primary care facilities are also available in the form of continuing care for patients, where they can receive preventive care throughout their reproductive years.[87] The Committee on Economic, Social and Cultural Rights understands that "primary health care typically deals with common and relatively minor illnesses and is provided by health professionals and/or generally trained doctors working within the community at relatively low cost."[88] Primary care is therefore basic health care.

Primary healthcare personnel generally includes nurses, midwives, healthcare assistants and also physicians.[89] These persons have the skills to "perform a bimanual pelvic examination to diagnose and date a pregnancy, and to perform a transcervical procedure such as intrauterine device (IUD) insertion."[90] In order to provide abortion services, the same skills are needed; personnel must have "the ability to assess gestational age, provide counseling, provide medications, perform manual or electric vacuum aspiration, and conduct post-abortion follow-up."[91] These skills and practices are already performed by the primary care services and personnel only need to be trained to perform vacuum aspiration.[92] Training in conducting abortion

85 "Primary Care."
86 "Primary Care."
87 Yanow, "It Is Time to Integrate Abortion Into Primary Care."
88 Committee on Economic, Social And Cultural Rights, "General Comment No. 14 The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)," n. 9.
89 World Health Organization, "Safe Abortion."
90 World Health Organization.
91 Yanow, "It Is Time to Integrate Abortion Into Primary Care."
92 World Health Organization, "Safe Abortion."

procedures is being included and offered in several healthcare programs for obstetrics and gynecology, internal medicine, and family medicine.[93]

Vacuum aspiration and medical abortion can be provided at the primary-care level given it does not require advanced technical knowledge or skills, modern or costly equipment or technology, or additional hospital staff.[94] Abortion care provided at the primary-care level and through outpatient services in higher-level settings is safe and minimizes costs while maximizing the convenience and timeliness of care for women.[95] Abortion is one of the safest medical procedures available; only 0.3% of abortion patients experience a complication that requires hospitalization.[96] Furthermore, a women-centered approach to primary care with high potential to facilitate the abortion process for women and make them feel more comfortable would enable women to get their abortion from the same family physician that they are familiar with or prefer.[97]

Primary care personnel should receive training programs that teach the full-spectrum of reproductive healthcare services in order to enable them to cover all the needs of their patients.[98] And with that, primary care services should include vacuum aspiration and medical abortion as well as the ability for referral to higher level healthcare when required.[99] This will make abortion

93 Godfrey et al., "Women's Preference for Receiving Abortion in Primary Care Settings."
94 World Health Organization, "Safe Abortion."
95 World Health Organization.
96 Henshaw SK. Unintended pregnancy and abortion: a public health perspective. In: Paul M, Lichtenberg ES, Borgatta L, Grimes DA, eds. A Clinician's Guide to Medical and Surgical Abortion. New York, NY: Churchill Livingstone; 1999:11---22
97 Rubin SE, Godfrey EM, Shapiro M, Gold M. Urban female patients' perceptions of the family medicine clinic as a site for abortion care. J Womens Health (Larchmt). 2010;19(4):735---740
98 Godfrey et al., "Women's Preference for Receiving Abortion in Primary Care Settings."
99 World Health Organization, "Safe Abortion."

procedures available to *all* women that need it and consequently satisfy the legal criteria established in General Comment No.14.

Accessibility: The Committee on Economic, Social and Cultural Rights expressed the view that "health facilities, goods and services have to be accessible to everyone."[100] They determined four dimensions of this; non-discrimination, physical accessibility, economic accessibility or affordability, and information accessibility. Healthcare has to be accessible and affordable to all and States have to pay special attention to the most vulnerable and marginalized sections of the population. This includes women. "Access to safe abortion depends not only on the availability of services, but also on the manner in which they are delivered and the treatment of women within the clinical context."[101] Accessibility also comprises the right to seek, receive and impart information and ideas concerning health issues.

According to the WHO, "safe abortion is a simple and inexpensive procedure" and it should be accessible in primary care.[102] In 2004, the Programme of Action of the International Conference on Population and Development (ICPD) recognized that "all countries should strive to make accessible through the primary health-care system, reproductive health to all individuals of

100 Committee on Economic, Social And Cultural Rights, "General Comment No. 14 The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)." Includes the underlying determinants of health outlined in paras 11 and 12 (a) health-related education and information, including on sexual and reproductive health para 12. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.
World Health Organization, "Safe Abortion," 64.
101 World Health Organization, "Safe Abortion."
102 Surgical vacuum aspiration is the preferred method in the first twelve weeks of gestation and medical abortion (using mifepristone and a prostaglandin) possible in early pregnancy. World Health Organization, United Nations Population Fund, and Key Centre for Women's Health in Society, *Mental Health Aspects of Women's Reproductive Health*, 51.

appropriate ages as soon as possible and no later than the year 2015."[103] The Programme also expressed that "reproductive health care in the context of primary health care should include: family-planning counselling, information, education, communication and services; education abortion as specified in paragraph 8.25, including management of the consequences of abortion; primary health care, including reproductive health-care programmes."[104] Paragraph 8.25 made explicit that States have to consider and deal with the impacts of unsafe abortion as a major public health issue, and that "women who have unwanted pregnancies should have ready access to reliable information and compassionate counselling," including in cases were abortion is criminalized, and that in "circumstances where abortion is not against the law, such abortion should be safe."[105]

Safe abortion is not accessible by women when it is obstructed by "procedural barriers, religious and cultural stigma, restrictive laws and a lack of clear guidelines for providers and health systems on how to implement abortion laws."[106] Criminalization is one of the biggest barriers to access to safe abortion, but there are other laws, as well as non-legal barriers, to access. One of them is the so-called "conscientious objection" which, if unregulated, can restrict women's access to health services, such as contraception, prenatal tests, abortion, among other services.[107] Conscientious objection laws commonly make legal abortion inaccessible by allowing healthcare personnel to refuse to provide abortion services or even information about procedures or referrals to alternative facilities and providers.[108] However, conscientious objection is not absolute. There

103 International Conference on Population and Development et al., *Programme of Action*, para. 7.6.
104 International Conference on Population and Development et al., para. 7.6.
105 International Conference on Population and Development et al., para. 8.25.
106 Skuster, "IMPLEMENTING THE MENTAL HEALTH INDICATION TO HELP ENSURE ACCESS TO SAFE ABORTION," 420.
107 Zampas and Andión-Ibañez, "Conscientious Objection to Sexual and Reproductive Health Services."
108 Shah and Åhman, "Unsafe Abortion."

are medical standards and international human rights that require "States [to] regulate conscientious objection to both accommodate health care providers' beliefs and also ensure women's access to adequate and timely sexual and reproductive health care services."[109] Any regulation must ensure providers are able to execute health services by determining the type and circumstances in which services can be blocked by way of conscientious objection and who can invoke it. In addition, procedures and mechanisms must be in place to ensure that referrals occur within appropriate timeframes, and that sanctions are in place for those who fail to fulfil said timeframes and conditions. The violation of women's right to health services should have appropriate remedies.[110] In the area of medicine, the World Medical Association Declaration on the Rights of the Patient states in the preamble that "while a physician should always act according to his/her conscience, and always in the best interests of the patient, equal effort must be made to guarantee patient autonomy and justice."[111] In addition, the International Federation of Gynecology and Obstetrics (FIGO) Code of Ethics states that while health care providers have the right to preserve their moral or religious values, this should not result in the imposition of such values onto others. In relation to conscientious objection, FIGO affirms that to behave ethically, practitioners shall: "4. In emergency situations, provide care regardless of practitioners' personal objections."[112] Nevertheless, at minimum, States must guarantee the availability of and accessibility to reproductive healthcare providers by employing staff who are able to deliver competent services in a timely manner and in convenient proximity.

109 Zampas and Andión-Ibañez, "Conscientious Objection to Sexual and Reproductive Health Services," 232.
110 Zampas and Andión-Ibañez, 232.
111 "WMA - The World Medical Association-WMA Declaration of Lisbon on the Rights of the Patient."
112 International Federation of Gynecology and Obstetrics, "Resolution on 'Conscientious Objection' Adopted by the FIGO General Assembly."

There are, however, some limits to the practice of conscientious objection. The first is that it is a personal right that can only be invoked by individuals performing treatment procedures. It cannot be invoked by their institutions, nor can it be invoked by staff who have general care functions or provide basic information services. Conscientious objection cannot be invoked in emergency situations either. With this, there are also some important obligations. For example, the provider of the health service has to give timely notice that they are conscientious objectors and must then refer the patient. The referral must also occur in a timely manner and to an accessible provider. All healthcare providers should be trained in all reproductive healthcare services so they can perform in emergencies situations. States have the obligation to supervise the practice of conscientious objection to ensure that women can access the services they need and that are their right. Additionally, States must provide legal remedies in cases where the practice of conscientious objection affects women and violates their rights.[113]

Other restrictions include: Laws prohibiting public funding of abortion care; requirements of counselling and mandatory waiting periods for women seeking to terminate a pregnancy; requirements that abortions be approved by more than one health-care provider; parental and spousal consent requirements; and laws that require health-care providers to report "suspected" cases of illegal abortion when women present for post-abortion care, including miscarriages.[114] These laws make safe abortions and post-abortion care unavailable, particularly for poor, displaced, and young women.

113 Zampas and Andión-Ibañez, "Conscientious Objection to Sexual and Reproductive Health Services."
114 Special Rapporteur of the Human Rights Council Anand Grover, "Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," para. 21.

The Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in their 2013 and 2016 reports, raised common concerns that "women and girls face significant difficulties in accessing legal abortion services due to administrative and bureaucratic hurdles, refusal on the part of health-care workers to adhere to medical protocols that guarantee legal rights, negative attitudes, official incompetence or disinterest."[115]

The Economic and Social Council emphasizes that wherever abortion is legal it must also be safe, which is accomplished by providing training to providers, as well as necessary equipment, materials and instruments, and making it accessible.[116]

Acceptability: This criterion refers to the idea that healthcare services should be appropriate to the culture and respect medical ethics. Services should also be sensitive to gender requirements, respect confidentiality, and strive to improve the health situation of those seeking attention.[117]

The acceptability of abortion procedures has to relate to the information provided in health care centers, education in sexual and reproductive rights, and health of patients and communities, as well as women-centered training approaches for health services personnel. These expectations will be further discussed in the following analysis of the 'quality' element of the right to health standards. Additionally, the adoption of abortion procedures allowing home-use of medical

115 Juan E. Méndez, "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," para. 44.
116 Economic and Social and Council, "ECONOMIC, SOCIAL AND CULTURAL RIGHTS The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health Report of the Special Rapporteur, Paul Hunt."
117 Committee on Economic, Social And Cultural Rights, "General Comment No. 14 The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)."

abortion can "improve the privacy, convenience and acceptability of services, without compromising on safety."[118]

Quality: This aspect refers to medical services which are "scientifically and medically appropriate and of good quality."[119] This includes "skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation."[120]

The quality aspect can be discussed from different points of view. Nevertheless, we can understand it to mean women feeling safe and comfortable, feeling that they can trust the personnel and process and, even when the success of medical procedures cannot be guaranteed, women being able to expect good treatment from staff and physicians and trustworthy safeguards in the process. For this to be practical, a patient-central healthcare system is imperative, and in this case a "women-central" approach to sexual and reproductive health is needed.[121] Mezzich and Perales describe person-centred care as: "Ethical commitment; Sensitivity and cultural response; Holistic framework; Communicative and relational focus; Individualized attention; Shared basis for diagnostic [strategy] understanding and decision making; Organization of integrated services focused on the community; Education and research focused on the person."[122]

118 World Health Organization, "Safe Abortion."
119 Whittaker, "Conceiving the Nation: Representations of Abortion in Thailand." 5.
120 Committee on Economic, Social And Cultural Rights, "General Comment No. 14 The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)."
121 Carmel Shalev, "Rights to Sexual and Reproductive Health," 68.
122 Mezzich and Perales (n 25). "Compromiso ético; Sensibilidad y respuesta cultural; Marco holístico; Foco comunicativo y relacional; Atención individualizada; Base compartida para el entendimiento diagnóstico y toma de decisiones; Organización de servicios integrados y centrados en la comunidad; Educación e investigación centradas en la persona."

A women-central approach means "each individual woman gaining the capacities to get on with her own life."[123] The processes revolve around women. The paradigm of paternalism and assistance is replaced by one of dignity and rights.[124] In this conception, the woman is placed in the centre and the paradigm works from the core idea that women have individual autonomy and freedom to decide. The concept of person-centred care sees the person as a whole and takes their context into account.[125] By positioning women at the centre, they should have access to comprehensive care which considers in a holistic way all the different aspects and context of the person; the physical, psychological, legal, social, familiar and educational, as well as her position in all of them.[126]

The Programme of Action adopted in Cairo in 1994 specifies that States should guarantee "access to quality services for the management of complications arising from abortion. Post-abortion counselling, education and family-planning services should be offered promptly, which will also help to avoid repeat abortions."[127]

As one of the less developed aspects, quality has to be considered within abortion and post-abortion services. This includes treatment by personnel as well as the suitability and safety of the procedure. These paradigms/approaches involved are all part of the evaluation of a quality service.

123 Ibid (location 1019 kindle edition).
124 Teresa Martinez, 'LA ATENCIÓN CENTRADA EN LA PERSONA. ALGUNAS CLAVES PARA AVANZAR EN LOS SERVICIOS GERONTOLÓGICOS'.
125 Juan Enrique Mezzich and Alberto Perales, 'Atención clínica centrada en la persona: principios y estrategias' (2016) 33 Revista Peruana de Medicina Experimental y Salud Pública 794.
126 Martinez (n 23).
127 International Conference on Population and Development et al., *Programme of Action*, para. 8.25.

To guarantee good-quality abortion care, it is necessary to provide "ongoing supervision, quality assurance, monitoring and evaluation" of services as well.[128]

Several measures have to be taken to ensure abortion services meet all the essential elements regarding the right to health. In this context, the UN special rapporteur emphasized that, "States must take measures to ensure that legal and safe abortion services are available, accessible, and of good quality."[129] However, safe abortions and the optimal conditions for them to be carried out will not be immediately available unless steps are taken, including establishing clinics, providing special training to all involved personnel, and guaranteeing the availability of medicines and equipment.[130]

1.3. Rights to Sexual and Reproductive Health

Sexual and reproductive rights are not found as such in the core human rights treaties such as the UDHR or the Covenants. Nevertheless, they have become recognized internationally and nationally in the last few years. Internationally, Article 16 (1) of the CEDAW provides that "States Parties shall take all appropriate measures to eliminate discrimination against women… (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."[131] In addition, the Vienna Declaration and Programme of Action also recognizes the rights of access to family planning and fertility methods and to appropriate health-care services. It is the basic right

128 World Health Organization, "Safe Abortion," 8.
129 Special Rapporteur of the Human Rights Council Anand Grover, "Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," para. 29.
130 Special Rapporteur of the Human Rights Council Anand Grover, para. 29.
131 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, , United Nations (CEDAW).

of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, as well as the right to attain the highest standard of sexual and reproductive health.

The right to sexual and reproductive health (or sexual and reproductive rights) are not always specified in a country's constitution. However, some have included them explicitly and others tacitly within the general articles, and other have specific laws which follow international principles and agreements. The Colombian Constitution, for instance, recognizes in Article 42 that "the couple has the right to decide freely and responsibly the number of their children"[132] and also expresses that sexual and reproductive rights are a fundamental part of human rights in its 2968 Act of 2010.[133] Uruguay published Law No 18426 in 2008 on the Defense of The Right to Sexual And Reproductive Health, of which article 1 obliges the State "[to] guarantee conditions for the full exercise of the sexual and reproductive rights of the entire population."[134] The Ecuadorian Constitution in article 32 explicitly provides that "the State shall guarantee this right [through] the permanent, timely and non-exclusive access to programs, actions and services promoting and providing integral healthcare, sexual health, and reproductive health."[135] In addition, article 66 of "rights of liberties"[136] affirms that each person has "10. The right to take free, responsible and informed decisions about one's health and reproductive life and to decide how many children to have."[137] Ecuador's Constitution requires the State to "guarantee respect for the reproductive rights

132 Constitution of Colombia.
133 Presidencia de Colombia, DECRETO 2968 DE 2010.
134 "Ley N° 18426."
135 Asamblea Constituyente, Constitution of Ecuador.
136 The Ecuadorian Constitution has a different classification of rights and one of them is "Derechos de Libertad", or Rights to Freedom.
137 Asamblea Constituyente, Constitution of Ecuador.

of all workers,"[138] and to "[ensure] sexual and reproductive health actions and services and [guarantee] the integral healthcare and the life of women, especially during pregnancy, childbirth and postpartum."[139] Ecuador's Constitution includes a lot more detail and it is more prescriptive regarding the protection of rights. However, the laws are not always in agreement with it.

Regarding international documents, the Beijing Platform of 1994 declares in paragraph 96 that: "The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."[140] With this recognition arose the notion that sexual and reproductive health has to be taken into account when considering the broader umbrella that is the right to health; reproductive health requires that everyone can freely decide to reproduce or not and when, that everyone must have access to information and methods of family planning, and that these methods should be "safe, effective, affordable and acceptable."[141] In the InterAmerican context, the Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights declares in its Recommendations that States should be "guaranteeing the sexual and reproductive health of women."[142] Similarly, the UN General Assembly, in their path to dignity, recognized that universal healthcare has to include "women's sexual and reproductive health and reproductive rights."[143] The definition given by the Committee on Economic, Social

138 Asamblea Constituyente. Article 332.
139 Asamblea Constituyente. Article 363
140 United Nations and Department of Public Information, *Beijing Declaration and Platform for Action.*
141 Committee on Economic, Social And Cultural Rights, "General Comment No. 14 The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)," n. 12.
142 Follow-up Mechanism to the Convention of Belém Do Pará (Mesecvi) Committee Of Experts (Cevi), "Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights," OEA/Ser.L/II.7.10, September 19th, 2014, Montevideo Uruguay.
143 UN General Assembly, "The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet," para. 70.

and Cultural Rights includes men and women and recognizes both as rights-holders, but the definition made a clarification related to pregnancy whereby only women or pregnant persons can have their rights violated by some practices and barriers or by legal or cultural prohibitions. This is what makes women special subjects of the right and State obligations.

Our understanding of sexual and reproductive rights has changed over time. At first, reproductive rights used to be viewed from the perspective of population control via women's capacity of reproduction. Then, "the new approach focused on women's empowerment to exercise personal autonomy in relation to their sexual and reproductive health within their social, economic, and political contexts."[144] The Human Rights Committee in General Comment 28 identifies interference in and discrimination against a woman's autonomy over her sexual and reproductive rights. This is because of the idea that women have an obligation to be a mother, which is also imprinted in the health system, for example, when a consultant asks for the husband's authorization for the termination or continuation of a pregnancy, or when there are age controls on access to sterilization or contraception.[145] On the other hand, a woman's consent to, for example, sterilization, is often not required.[146]

As a resolution to this interference, the CEDAW Committee has said that "States parties should ensure, without prejudice or discrimination, the right to sexual health information, education and services for all women and girls,"[147] including "the removal of all barriers to

144 Carmel Shalev, "Rights to Sexual and Reproductive Health," 40.
145 Human Rights Committee, "CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)," para. 20.
146 Carmel Shalev, "Rights to Sexual and Reproductive Health."
147 UN Committee on the Elimination of Discrimination Against Women (CEDAW), "CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), Chap. I, Available at: Https://Www.Refworld.Org/Docid/453882a73.Html [Accessed 29 November 2019]," para. 18.

women's access to health services, education and information, including in the area of sexual and reproductive health."[148] Moreover, the Parliamentary Assembly of the Council of Europe in 2008 made a clear connection between sexual and reproductive health on the one hand, and the autonomy and self-determination of women on the other. They affirmed:

> The right of all human beings, in particular women, to respect for their physical integrity and to freedom to control their own bodies. In this context, the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, who should have the means of exercising this right in an effective way.[149]

The morality that society exhibits in relation to male and female sexual expressions reflects a double standard: the same things that are allowed or even celebrated for men are forbidden and a source of condemnation to women. Usually, women do not enjoy the same freedom and pleasure allowing them free will or autonomous decisions regarding sex.[150] This "gender-differentiated norms of sexual expression lead to relationships in which women are deprived of dignity, health, happiness, and freedom."[151] States should not aggravate an already dismal and disadvantageous situation of women by using laws that restrict their "bodily autonomy and life opportunities in virtue of their sexual or parenting relations in ways that government does not restrict men's."[152]

Women have to be recognized in their full legal capacity and be free of discrimination. It is also important to recall that the enjoyment of other human rights, such as education, work and liberty for a woman will be limited by her level of exercise over reproductive choices.[153]

148 UN Committee on the Elimination of Discrimination Against Women (CEDAW), para. 31 (b).
149 "PACE - Resolution 1607 (2008) - Access to Safe and Legal Abortion in Europe," para. 6.
150 Siegel, "Sex Equality Arguments for Reproductive Rights," 817.
151 Siegel, 817.
152 Siegel, 816.
153 Carmel Shalev, "Rights to Sexual and Reproductive Health," 68.

1.4. Mental Health

In 2015, the Special Rapporteur made two assertions at the Human Rights Council on the issue of mental health: "[T]here is no health without mental health," and "[G]ood mental health means much more than absence of a mental impairment."[154] In 1999, the United States Surgeon General defined mental health in reference to "the successful performance of mental function, resulting in productive activities, fulfilling relationships with other people, and the ability to adapt to change and to cope with adversity."[155]

However, there is still a lack of attention given to mental health. Mental-health issues affect people of all ages and in every society, regardless of geographic location or economic situations. According to the WHO, 14% of the global population is burdened by these issues, most of whom do not have access to treatment.[156] Compared to physical health, such persons have inadequately low priority in resources, both human and financial.[157]

"Mental health includes good emotional and social well-being, healthy non-violent relations between individuals and groups with mutual trust of, tolerance of and respect for the dignity of every person."[158] In our societies, the burden of responsibilities that fall to women as wives, mothers, caretakers, and even economic providers, situates them in a special place of risk of mental health disorders.[159] States must take mental health afflictions seriously and consider

154 Dainius Pūras, "Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Dainius Pūras," para. 76.
155 Rockville, Md.: Dept. of Health and Human Services, U.S. Public Health Service, "Mental Health."
156 "WHO | WHO Mental Health Gap Action Programme (MhGAP)."
157 Dainius Pūras, "Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Dainius Pūras," para. 79.
158 Dainius Pūras, para. 77.
159 Skuster, "IMPLEMENTING THE MENTAL HEALTH INDICATION TO HELP ENSURE ACCESS TO SAFE ABORTION," 420.

them a real risk, including the severe impact that criminalization of abortion can have on a woman's mental health.

Women who seek an abortion in a hostile environment—including but not limited to criminalization—face general shame because of the stigmatization of the procedure and thus, of women. In the healthcare system, women are constantly subject to expedient and insensitive treatment from medical staff, violations of their privacy and confidentiality and, in some cases, refusal to offer pain relief. Women are labelled as "selfish, sexually irresponsible, unfeeling and morally blind individuals who kill their own children for convenience," "morally corrupt" or as displaying "unrestrained hedonism, vice and temptation," and otherwise "assumed to be promiscuous and conniving, or vulnerable and needing protection."[160] Worldwide, anti-abortion groups protesting outside or near abortion-providing clinics threaten women and providers with "verbal abuse, intimidation and violence."[161]

In this hostile setting, women suffer clandestine and unsafe abortions, social exclusion and, in cases where abortions are illegal, the threat of imprisonment.[162] As a result, women denied abortions are four times more likely to live in poverty.[163] Cumulatively, and understandably, all these factors and experiences can be severely detrimental to one's mental-health and wellbeing. Some additional health problems for women unable to obtain a desired safe and legal abortion include an elevated risk of complications during pregnancy, such as eclampsia or death, anxiety

[160] Andrea Whittaker (2001) Conceiving the nation: representations of abortion in Thailand, Asian Studies Review, 25:4, 423-451, DOI: 10.1080/10357820108713320
[161] World Health Organization, United Nations Population Fund, and Key Centre for Women's Health in Society, *Mental Health Aspects of Women's Reproductive Health*, 53.
162 World Health Organization, United Nations Population Fund, and Key Centre for Women's Health in Society, 52.
163 "Turnaway Study | ANSIRH."

and loss of self-esteem, difficulty creating aspirational life plans,[164] depressive episodes and higher levels of depressive symptoms,[165] and, ultimately, can drive them to commit suicide.[166]

The negative mental consequences of denial of abortion are worse in cases where the pregnancy is surrounded by or a product of violence, battering, rape, incest, marital rape, prohibition of contraceptives, etc. Victims are forced to give birth or to seek illegal abortion and "both options can cause enormous anguish."[167] The possible serious impact on women's mental health in such scenarios (if they have to continue with an unwanted pregnancy) is recognized in laws that permit abortion to protect a woman's health and, specifically, those protecting her mental health.[168] The idea that "access to abortion can alleviate risk to mental health is largely supported by legal authorities and psychological research."[169] Women's mental health and well-being is more greatly affected by the denial of an abortion than by receiving the procedure they want.[170]

Being denied an abortion also has grave implications for the unborn child and children that are born from and unwanted pregnancy, as well as other children in the family.[171] Such effects include problems in mother–infant attachment, poor maternal bonding,[172] and later, higher rates of

164 Advancing New Standards in Reproductive Health (ANSIRH) is a collaborative research group at the University of California, San Francisco. The Turnaway Study is ANSIRH's prospective longitudinal study examining the effects of unintended pregnancy on women's lives. "Turnaway Study | ANSIRH."
165 Herd et al., "The Implications of Unintended Pregnancies for Mental Health in Later Life."
166 World Health Organization, United Nations Population Fund, and Key Centre for Women's Health in Society, *Mental Health Aspects of Women's Reproductive Health*, 52.
167 Special Rapporteur of the Human Rights Council Anand Grover, "Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," para. 36.
168 Skuster, "IMPLEMENTING THE MENTAL HEALTH INDICATION TO HELP ENSURE ACCESS TO SAFE ABORTION."
169 Skuster, 424.
170 Biggs et al., "Women's Mental Health and Well-Being 5 Years after Receiving or Being Denied an Abortion."
171 "Turnaway Study | ANSIRH."
172 University of California, San Francisco | UCSF Medical Center | Bixby Center for Global Reproductive Health Access to abortion improves children's lives: Issue Brief, January 2019, page 2

adverse development in the children when compared to those born from a desired pregnancy.[173] It has also been shown that, in correlation with the likelihood of women having sought an abortion as mentioned previously, children born from an unwanted pregnancy are more likely to live in poverty.[174]

Mental health needs to be accessible and available to everyone, both in primary and specialized care levels. It is necessary to bridge the gap between physical health and mental health in law, politics and healthcare, including statutes and codes, resources, professionals, and others.[175] The focus on mental health will bring a different approach to abortion procedures and recognition of the effects that prohibition, attitudes and barriers cause, especially for women and children. A key recommendation established in this chapter is the possibility to sue for phycological violence and/or torture where abortion procedures are unsafe. This can change the discriminatory and worrying health situation for women.

173 World Health Organization, United Nations Population Fund, and Key Centre for Women's Health in Society, *Mental Health Aspects of Women's Reproductive Health*, 51.
174 University of California, San Francisco | UCSF Medical Center | Bixby Center for Global Reproductive Health Access to abortion improves children's lives: Issue Brief, January 2019, page 2
175 "Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health."

Chapter 2. Decriminalization of Abortion by Changing the Law: The Experience of Uruguay

2.1. General Information About Uruguay

Uruguay is one of the most developed and stable countries in Latin America.[176] While they certainly have some challenges to overcome, they have a lot of advantages compared with the rest of our countries in the region. Regarding abortion, their story of decriminalization is one of the earliest conquests in relationship to the rest of the region. Uruguay is the first country to decriminalize abortion by request in South America, and one of the 4 countries in Latin America to do so, the others being Cuba, Guyana, some parts of Mexico, and Argentina, which has recently decriminalized it as well. Uruguay is also the second country in America with lowest rates of maternal death, only after Canada,[177] and shows a low rate of abortions—11 for every thousand women ages 15 to 44. The legalization of abortion and their public policies on education and contraception are some of the reasons behind these low rates.[178] In Uruguay, the decriminalization of abortion was made by legislative change. Activists wagered since the beginning of the claims to bring about change by trusting their Parliament and political parties and their capacity to decide and change the law.

176 Development has been measured in data such as the **Human Development Index** created by the United Nations Development Program (UNDP). This is an indicator that analyzes the level of development that countries have (HDI), taking into account life expectancy, education, income, and it has also been adjusted for equality issues. Uruguay in 2019 (latest report) had an index of 0.817 points, placing this country in the first group. Until 2019, Chile, Argentina, and Uruguay were the countries with the best index in the region. https://datosmacro.expansion.com/idh/uruguay July 21, 2021. In addition, if the poverty and inequality indices are taken into account, it can be seen that it is one of the most developed countries in the region. https://repositorio.cepal.org/bitstream/handle/11362/44969/5/S1901133_es.pdf

177 "Las lecciones de Uruguay tras cinco años de aborto legal."

178 Clarín.com, "Cómo funciona el aborto legal en Uruguay."

To better understand the process of decriminalization of abortion, it is important to consider general information regarding Uruguay's Constitution and way of functioning. The current Constitution of the Republic of Uruguay was issued in 1967, and was modified by plebiscite in 1989, 1994, 1996 and 2004.[179] Article 82 of the Constitution provides: "The nation adopts the democratic republican form of government. Its sovereignty shall be exercised directly by the voters through election, initiative, and referendum, and indirectly by the representative powers which this Constitution establishes." The Constitution declares Uruguay to be secular,[180] and voting is compulsory.[181]

Elections for the Legislative and Executive powers are held every five years and candidates have to represent a political party.[182] Political parties must exercise internal democracy and provide maximum publicity to their Organic Acts and Programs of Principles.[183] In the country, the Legislative Power is exercised by the General Assembly,[184] which is composed of two Chambers: one of Representatives and one of Senators.[185] There are 99 Representatives[186] and 30 Senators,[187] all of which are elected directly by the people and hold office for five-year periods.[188]

The General Assembly has the competency to enact laws, including laws for the protection of all individual rights.[189] Any member of the two Chambers can present a bill.[190] Every bill has to

179 "Constitución de La República | Parlamento."
180 Art 5
181 Art 77 num 2
182 Art 77. 9
183 Art 77.11 The candidate to President of the Republic has to be appointed by internal elections. Art 77.12
184 Art 83
185 Art 84
186 Art 88
187 Art 94
188 Art 89 and 97
189 Art 85.3
190 Art 133

be revised by the two Chambers. Once approved in the Chamber where it originated, the bill is then transmitted to the other Chamber where it can be approved, amended, augmented, or rejected.[191] The bill approved by the second Chamber is then transmitted to the Executive, and "[i]f, upon receipt of a bill, the Executive Power has objections or observations to make, the bill shall be returned to the General Assembly within the prescribed period of ten days."[192] The Constitution also gives the possibility to the people to pronounce themselves regarding promulgated laws by referendum, which has to take place within one year following their promulgation. To hold a referendum against the laws, twenty-five percent of all persons registered and qualified to vote have to demand it.[193]

2.2. History of Abortion in Uruguay

The debate on the criminalization and decriminalization of abortion in Uruguay has lasted a long time. The first time that abortion with the consent of the woman was not a crime was in 1933.[194] The Criminal Code approved during that year, in a context of dictatorship, included this provision.[195] At that time, decriminalization caused strong reactions and provoked new political agreements. In 1938, while the dictatorship was still ongoing in Uruguay, law Nº 9.763 was issued, which meant a return to the criminalization of abortion, and which modified the criminal code.[196] Nevertheless, the enacted provision considered several mitigating and exculpatory cases that made

191 Art 134
192 Art 137
193 Art 79
194 Johnson et al., *(Des)penalización del aborto en Uruguay*.
195 "A principios del siglo pasado, el aborto era legal en Uruguay."
196 "La lucha por la despenalización del aborto en Uruguay."

it more permissive that some of the current laws that are applied today in other Latin American countries. The law read as follows:[197]

> Article 1. Change Chapter IV, Title XII of Book II of the Penal Code promulgated by Law No. 9.155 of December 4, 1933, and declares abortion as a criminal offence, the sanction of which will be carried out in the following terms:
>
> Article 325 (Abortion with the woman's consent). A woman who causes her abortion or consents to it, will be punished with imprisonment, from three to nine months.
>
> Article 325-BIS (Abortion performed with the collaboration of a third party with the woman's consent). Anyone who collaborates in the abortion of a woman with her consent, performing acts of principal or secondary participation, will be punished with six to twenty-four months in prison.
>
> Article 325-TER (Abortion without the woman's consent). Whoever causes a woman's abortion, without her consent, will be punished with two to eight years of penitentiary.

In addition, Article 326 established a punishment in case of injury or death of the woman as result of the offences of Article 325 BIS and TER.

The mitigating and exculpatory causes that the law provides were: first, the protection of one's honor, the wife's honor, or the honor of another member of the family, but this provision does not protect the member of the family who is the author of the pregnancy; second, in cases were pregnancy is a result of rape; third, for women with serious health issues, and fourth, due to financial distress. In all these cases the penalty could be reduced or exempted completely. Attenuations and exemptions of punishment applied only in cases where the abortion was performed by a doctor within the first three months of conception.[198] Article 3 of the law stated that if the judge decided that there is no proof, or if the case is one of no punishment, the proceeding was over and could not be appealed or re-opened. The law as it was presented in 1938, even when

197 "Código Penal."
198 Article 328 Law Nº 9.763

it criminalized the practice, offered causes for mitigation or exculpation, making it one of the most permissive in the region and also one of the most difficult to apply in practice. Before the return to democracy, a commission of Ministries created a bill to reform the law for the decriminalization of abortion in cases where this was the will of the woman before twelve weeks of pregnancy. The military hierarchy discussed the project and rejected it.[199] This bill was the first of many that were discussed before the one that was approved.

Dictatorship ended in Uruguay in 1985.[200] The return to democracy opened the space to start talking about rights. However, abortion was still a taboo topic and in this first period, feminist and women's organizations, who were its main promoters, did not have a unified position.[201] Some of them were afraid that publicly supporting abortion would generate rejection from the women that they wanted to uplift regarding other topics and rights.

In the context of the new democracy in Uruguay, several women that were in feminist and pro legalization groups were also militants in political parties, especially from left. They started to position the issue within their parties. One of the parties, *Partido Colorado*, included abortion in their program of principles of 1983,[202] even though they were not in favour of decriminalization in several bills introduced later on.

Before the law changed, and after the dictatorship, there were five bills introduced and dismissed that had the aim of decriminalizing abortion and modifying Law No. 9.763 of 1938. In

199 Rocha, Rostagnol, and Gutiérrez, "Aborto y Parlamento."
200 Busquets and Delbono, "La dictadura cívico-militar en Uruguay (1973-1985)."
201 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*, 20.
202 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.

this period, only feminist groups were actively promoting the decriminalization of abortion, but some individuals of other institutions and political parties started to promote legislative initiatives for decriminalization independently, and to speak publicly on the topic.[203]

The first organization that brought abortion to a public debate in Uruguay was *Cotidiano Mujer*. In 1985, they started a publication that over time became constant. At that time, they received criticism of those who said that abortion was an issue for a few radical women and not a necessity of the whole movement.[204]

The first bill was introduced in 1985 by the *Partido Colorado*. This project intended to decriminalize abortion in all cases except when practiced without the woman's consent. The bill was never discussed in Parliament and was archived.[205]

Until 1987, women were congregated in *Concertación de Mujeres*, an organization created in the transition to democracy where abortion was recognized as a health issue, but they did not agree on decriminalization as a necessity, and the organization eventually dissolved. In 1987, *Coordinación de Mujeres* was formed. A collective of different organizations that had representation and participated in events that aligned with their goals, this group created a new opportunity to fight for abortion.[206]

A second group joined the abortion claim in 1988: Catholics For The Right to Choose. They advocated for the recognition of sexual and reproductive rights. In addition, *Casa de la Mujer*

203 Johnson, Rocha, and Schenck.
204 Johnson et al., *(Des)penalización del aborto en Uruguay*.
205 Mario Pecheny, Sonia Correa. *Abortus interruptus*. (Montevideo, Uruguay: Mujer y Salud en Uruguay (MYSU), 2016).
206 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.

María Albella was the first centre to provide health care to women that was linked to the *Red de Salud de las Mujeres de America Latina y el Caribe* [Network of Women's health in Latin America and the Caribbean].[207]

During the second half of the 80s, feminist groups highlighted two main aspects through their discourse. The first was giving a voice to women, and the second was in relation to the patriarchy and its oppression of women through penalization.[208] In relation to the first point, they demanded to be taken into account in the discussions and decision making, questioning the male representatives and institutions that had dominated the debate, arguing that this is a women's issue. They also argued that no one is in favour of abortion, that no woman chooses it if they can avoid it, and that no one does it because they like it. They highlighted that this is not an issue of in favour of or against abortion, it is against or in favour of legalization. You must be a woman and be in a situation of necessity to understand that this is the last resource. It is bad faith to claim that legalization is promoting abortion or imposing the use of it.

The position taken by women who raised the issue made it clear that it was necessary to build an answer to the problem as a collective, to shift from the personal and individual to the political. Their question was: How many of us see this as a social problem? Abortion requires a process of collective awareness from women and men, the recognition that, in practice, both women and men legitimize abortion because abortions do occur, although they may be afraid of

207 Mario Pecheny, Sonia Correa. *Abortus interruptus*. (Montevideo, Uruguay: Mujer y Salud en Uruguay (MYSU), 2016), 32.
208 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*, 50.

social and criminal sanctions and therefore do not assume the risk of raising it as a legitimate claim.[209]

Regarding the second point, feminists groups argued that the patriarchal system criminalizes abortion but does not stop women from aborting, forcing them to do it with risks and in unsafe environments, as a way of maintaining control over women: "The criminalization of abortion is a way to submit us women to the domestic role, to impose limits on our sexual autonomy and personal liberty […] Deciding over our fertility and revendicating our right to pleasure in sexual relationships are attitudes that go against the sacred pillars of male domination."[210] The right of women to choose and control their bodies, sexuality and reproductive capacity is opposed to the idea of the woman-mother. "Maternity is not a divine destiny," it is a free option related to the sovereignty of women's bodies.[211]

In addition to these two arguments, the agenda included other arguments such as social justice and class discrimination: "The clandestinity of abortion has only led to and deepened the social injustices derived from class differences, because safety and hygienic conditions are directly related to economic possibilities."[212] They expressed that abortion was viewed as a privilege and not a right. Women in exploited classes have to abort under circumstances that can be compared to torture, with pain and fear, and in many cases resulting in death. Women of the bourgeoisie can go to clinics with medical support and acceptable sanitary conditions.

209 Johnson, Rocha, and Schenck, 49.
210 Johnson, Rocha, and Schenck, 50.
211 Cotidiano Mujer, "Yo aborto, tu abortas, Todos callamos," *Ediciones Cotidiano Mujer*, 1989.
212 Lilián Abracinskas, "Aborto y salud", *Cotidiano Mujer*, Vol. 2, Nº 22, p. 6.

An important milestone took place in 1989, with the publication of the book "Yo aborto, tu abortas, todos callamos" [I Abort, You Abort, We All Keep Quiet], which narrated the direct experience of women. The book was published before the elections with the intention of discussing the topic in the political agenda from "the voices women, the ones who get pregnant, give birth and raise the children, the voice of those that for several reasons decide to abort, the voices of the ones that in many cases suffer injuries or bleed out, that is the voice of the key actors."[213]

In 1989 new elections were held, but abortion was not part of the discussion during election time. All the parties preferred to not debate the subject, claiming there were other important and urgent issues that were the priority.[214] In 1990, the president and parliament changed.[215] During this term it was evident that political parties were not homogeneous in their answer to abortion. In 1991, some lawmakers of all parties were against changing the law. The majority belonged to right-wing parties, but not a single party was completely in favour or against it.[216] There was a bill regarding abortion, but this bill did not decriminalize it. Nevertheless, it was not even discussed in Parliament.

In the early 90s, the NGO *Mujer y Salud en Uruguay* [Women and Health in Uruguay, MYSU], was born as a space of coordination among feminist organizations, and specifically to work on the follow-up of state obligations regarding the Cairo and Beijing conferences, and the

213 Prólogo I", Cotidiano Mujer 1989: 7 in Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.
214 Johnson, Rocha, and Schenck, 27.
215 In 1990, Luis Alberto Lacalle was elected president, followed by Julio María Danguinetti in 1995, Jorge Batlle in 2000, Tabaré Vázquez in 2005, José Mujica in 2010, and Tabaré Vázquez again in 2015.
216 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*, 27.

September 28 campaign[217] for the right to abortion.[218] *Coordinación de Mujeres* and the group *Espacio Feminista,* created in 1992, offered new opportunities to collectively present and discuss the topic. Nevertheless, the reduction of militancy in these spaces made these two groups disappear.

In 1993, a new actor became active, known as the *Sindicato Médico del Uruguay* [Medical Union of Uruguay, SMU]. One of their actions was to organize a Seminar about Legislation and Bioethics. The aim was to debate the validity of Uruguay's legislation concerning the new approaches and advances in international legislation. The seminar included the presence of national and international experts, feminist groups, and lawmakers. By the end of the seminar, abortion was legitimized as a pending problem in Uruguay.[219]

At the end of 1993, the second bill to decriminalize abortion was presented to the Parliament. It was led by a representative of the *Frente Amplio* party,[220] and included the personal signature of legislators from four parties when introduced to Parliament.[221] The project established the right of all women to decide before the 12th week of pregnancy, and included other specific circumstances, time frames, and conditions for later abortion, as well as the responsibility of private and public health services to offer the technical and professional conditions to allow women access to the abortion process within the time frames established by the law. It also allowed

217 The V Latin American and Caribbean Feminist Encounter in Argentina of 1990, decided to declare September 28 as the day of the right to abortion for the women of Latin America and Caribe. "Campaña 28 de Septiembre: Aborto Legal Para No Morir."
218 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*, 22.
219 Johnson, Rocha, and Schenck, 39.
220 The leader in parliament was Rafael Sanseviero, in some references we found as "Sanseverino Project".
221 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*, 39.

for conscientious objection for doctors, but health services were required to have some professionals in their staff that were willing to perform abortion procedures.[222]

On the first trimester of 1994, a woman died because of abortion malpractice, which helped the bill to be taken seriously.[223] The Bioethics Commission discussed and approved the bill,[224] which was then approved for debate by the Chamber of Representatives,[225] for which they invited several actors to express their views. Feminist groups were received in parliament. During their speech they presented the same arguments that they had been working on since 1985: it is a women's issue, only women are able to speak the truth about the experiences and discuss the reality of abortion, and it cannot be reduced to a subject to be broached simply from legal, medical, or psychological approaches.[226, 227]

However, 1994 was an election year, and candidates did not want to compromise on the issue. The president from the *Frente Amplio* party, Tabaré Velázquez, was against decriminalization. For him, it was an issue of conscience and he publicly expressed that if he had to compromise on the issue then he would not run as a candidate.[228] His party had been the one to

222 Rocha, Rostagnol, and Gutiérrez, "Aborto y Parlamento."
223 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*, 40.
224 Johnson, Rocha, and Schenck, 39.
225 "Ficha Asunto | Parlamento."
226 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.
227 Lilián Abracinskas, shorthand version of the session of the Bioethics Commission, No 1652 (05/26/1994), p. 7.
228 "Posición de Vázquez sobre el aborto encendió la mecha: 'Es un tema de conciencia'", Estediario (15/08/1994), p. 3. "Si esto implica –y lo digo públicamente– que por ser candidato me tenga que comprometer con un tema que en conciencia no estoy de acuerdo y eso es un obstáculo para que sea candidato, no soy candidato."

previously support the law to decriminalize abortion. He did not win the elections, but the decriminalization of abortion was, once again, out of the Parliament.

In the period beginning in 1995, feminist groups thought that this was not a good moment to present the law to Parliament again. The efforts were targeted to other objectives, starting with specialized research on the reality of abortion in Uruguay, and the creation of arguments related to new discourses of sexual and reproductive rights that were developed after Cairo and Beijing, as well as contact with feminist groups in other countries. They put their efforts towards building a social foundation to support the claim of decriminalization of abortion.[229]

In 1998, a journalistic investigation spoke of the closure of a clandestine abortion clinic and the prosecution of the people involved in it, which reopened the debate.[230] The 1993 bill was again presented with some modifications. It was not discussed in Parliament,[231] but was archived instead.[232]

In 1999, a new election period began, and one of the candidates, Jorge Batlle from *Partido Colorado* made an agreement to not support any decriminalization of abortion in return for the support of some sectors.[233] During the 1999 elections, decriminalization as such was not part of Women's Agenda, but what did appear was the need to promote solutions to unsafe abortions, which were understood as an issue of sexual and reproductive health.[234]

229 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*, 44.
230 Rocha, Rostagnol, and Gutiérrez, "Aborto y Parlamento."
231 Johnson et al., *(Des)penalización del aborto en Uruguay*, 187.
232 "Ficha Asunto | Parlamento."
233 "Batlle prometió o apoyar iniciativa sobre el aborto", Ultimas Noticias (17/11/1999).
234 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.

In 2001, the death of women as a result of post-abortion complications was raised again as an issue. This reunited part of the medical community, which realized the problem that the criminalization of abortion was causing regarding the life and health of women. They created the *Iniciativas Sanitarias* association and started looking for alternative solutions to reduce mortality rates resulting from abortion. The action of physicians positioned medical professionals as key actors in the debate for decriminalization, allowing women experiencing insecure abortions to be treated, and allowing women to talk about abortion with their gynecologist without the danger of being sanctioned.[235]

In the decade of 2000, the problem of the risks that women took, and the deaths of women, became general and public knowledge, and the position taken by health practitioners added a new voice to the debate and to medical practices. During this time when the law was not approved, health practitioners provided advice to women who wanted to abort even when they could not perform the practice.[236]

In June of 2001, all the bills presented up to that time were revised by the Special Gender and Equality Commission from the House of Representatives. The Commission also heard several people and institutions regarding the topic, and in 2002 it decided to elaborate and present a new bill.

Several citizen actions had taken place to draw the attention of political actors and society in general. One of them was the construction of a 10-meter tower covered by 3000 images of parts of the body as a statement that the body is political. This was done during the time of the electoral

235 Rocha, Rostagnol, and Gutiérrez, "Aborto y Parlamento."
236 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.

campaigns of 2004.[237] During this time, the discourse of feminist groups and organizations, on top of their previously held arguments regarding women's voices and oppression, added data regarding maternal death and risks involved in the clandestine abortions that did take place despite criminalization.

The bill presented in 2002 was approved by Representatives and was pending approval from the Senators, but two years later, in 2004, it was rejected by the Senate.[238] During this time, the influence of President Jorge Batlle was decisive, as he threatened to veto the project and several legislators claimed that his vote against it was a result of party discipline.[239]

The polls showed that public opinion was increasingly positive regarding the issue, with numbers rising from the beginning of the decade up to 63% as shown by a 2004 poll.[240] In this same year, after the failed attempt at decriminalization of abortion, the Ministry of Health approved a norm regarding pre and post abortion care, leaving out the specific procedure of abortion, as well as reaffirming the right to confidentiality of women with the intention to decrease mortality rates related to the procedure.[241]

In 2005, *Cotidiano Mujer* organized new events and actions which had an impact on the media. One of these was to put several parsley plants in the Parliament building and give to each

237 Adlatina, "Todos los ganadores de los Campana de Oro 2005 | Adlatina."
238 "La lucha por la despenalización del aborto en Uruguay." Johnson et al., *(Des)penalización del aborto en Uruguay*, 187.
239 Rafael Sanseviero, "Análisis de prácticas feministas," *El Blog "Yo Aborté" en Uruguay,"* June 2007, http://docplayer.es/197252567-Analisis-de-practicas-feministas.html 22 julio
240 Lucía Selios, "La opinión pública, la democracia representativa y el aborto," *Aborto en debate Dilemas y desafíos del Uruguay democrático Proceso político y social 2001 – 2004*, (pp.151-166) https://www.researchgate.net/publication/281638120_La_opinion_publica_la_democracia_representativa_y_el_aborto
241 Rocha, Rostagnol, and Gutiérrez, "Aborto y Parlamento."

member of Parliament a small bunch of parsley, alluding to a practice where the herb is used to induce at-home abortion, and to the women who die with bunches of the herb when practicing clandestine abortions.[242] In that same year, Tabaré became president. He had pronounced himself against any laws seeking to decriminalize abortion. However, a new bill was presented in 2006.

Another important element of the campaign carried out by the organizations was the orange hand, which became a symbol of the efforts toward decriminalization. Orange hands were placed in different locations where president Tabaré attended public events. Tabaré even threatened to dissolve the Chambers if the Project was carried out through General Assembly. Later on, he proposed that they waited until he left the presidency to resume the bill.

In 2007, a woman was reported by her doctor and prosecuted for the crime of abortion, leading to the campaign '*Nosotras y Nosotros También*' [Us (Men and Women) Too]. In this campaign, participants gave their signatures, declaring that all those who signed were guilty of the crime, because "we do it, we finance it, we accompany it, and we know of abortions, and we didn't denounce them to affirm that either we all are criminals or that the law is unjust."[243] The impact of this campaign resulted in a reopening of the legal debate in spite of the President's declarations, as 6000 signatures were presented to the President of the General Assembly.

During this time, abortion claims transformed from a feminist claim to a citizen claim, with the creation of the *Coordinación Nacional de Organizaciones Sociales por la Defensa de la Salud Reproductiva* [National Coordination of Social Organizations for the Defense of Reproductive

242 Rafael Sanseviero, "Análisis de prácticas feministas," *El Blog "Yo Aborté" en Uruguay,"* June 2007, http://docplayer.es/197252567-Analisis-de-practicas-feministas.html 22 julio
243 Susana Rostagnol. *Aborto voluntario y relaciones de género*. (Uruguay: Universidad de la República, 2016).

Health], which involved feminist groups, human rights groups, workers and youth movements, LGBT groups, and even religious organizations. Efforts were focused on campaigning, spreading the orange hand as one of the symbols of legal change, different cultural and scholarly events, and spreading informative materials.[244]

The bill presented in 2006 by a group of senators of the *Frente Amplio* party was on the "Defense of the rights of sexual and reproductive health." This bill presented the partial decriminalization of abortion in a big picture of sexual and reproductive rights. The bill was transferred to the Chamber of Senators in 2007 and approved, becoming law No. 18 426 in 2008, but President Tabaré, who was also a member of *Frente Amplio*, executed his veto power regarding the articles dealing specifically with the decriminalization of abortion. The project recognized sexual and reproductive rights and the norms outlined by the Ministry of Health but continued to regard abortion as a crime.[245]

Even when the criminalization of abortion was the norm, the number of prosecuted cases was very low, and most of them occurred when women died. An average of 0,04% of the estimated abortions per year were taken to court, demonstrating that abortion was a broad and tolerated practice, but almost no cases took place within the bounds of exculpatory clauses contemplated by the law.[246]

[244] Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.
[245] Chapters II, III y IV of the law, i.e., articles 7º through 20º. Johnson et al., *(Des)penalización del aborto en Uruguay*, 187. "La lucha por la despenalización del aborto en Uruguay."
[246] Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.

It was not until 2009 that abortion appeared as part of the items to be discussed during the meetings of women's groups, where the goal was to "approve a law that decriminalizes and depenalizes abortion, recognizing the right of women to decide on the termination of a pregnancy and ensure access to legal abortion services."[247]

In 2010, the position of "Coordinator in Defense of Legal Abortion" was created as part of a coalition seeking to change the law. In the context of March 8th, the Coordinator organized an urban intervention which consisted of wallpapering emblematic places around the city with orange colour in defence of the decriminalization of abortion. This was one of the most visible actions coming from civil society.

In 2010, José Mujica was elected president. Unlike his predecessor, he did not oppose the decriminalization of abortion. In 2011, a new bill was presented, which was greatly modified as it progressed through the legislature. Initially, the bill had women at the centre. However, as the parliamentary discussion progressed, women's rights diminished. Several concessions were made along the way, such as changing legalization into decriminalization. Some requisites were imposed, but, in the end, Law 18.987 was finally approved on October 22, 2012.[248] The bill that was presented made clear reference to abortion as a right for women, but the approved law did not take a step in this direction, no not mention directly towards this right.[249]

[247] Johnson, Rocha, and Schenck. pg 63
248 Rostagnol, *Aborto Voluntario y Relaciones de Género*, 64.
249 Vazquez, "ALGUNOS COMENTARIOS SOBRE LOS PROYECTOS DE INTERRUPCION DE LA GRAVIDEZ."

Women's organizations were not satisfied with this Law and believed that the bill did not decriminalize abortion but instead diminished the application of penalties and was insufficient.[250] They also criticized the tutelage in relation to women's capacity to decide and the requisites that would hinder its real application.[251] They considered that the imposed process of discussing the procedure with a team of three people regarding the decision of terminating a pregnancy meant they would have to compromise their privacy,[252] since these professionals had as their intent to "inform the woman of the characteristics and risks of terminating pregnancy and of alternatives to abortion." However, given the context of Latin America, the law was considered a step forward.

After the law was approved, some efforts against it continued. A new national commission, *Comisión Pro Referendum* [Pro Referendum Commission], was created with the aim to collect signatures to derogate the abortion law, but no political party took these initiatives under their umbrella, it was more a matter of personal initiatives.[253] Some organizations which opposed abortion also refused to support the initiative since they considered that, from a human rights perspective, said rights should not be questioned. For this process to be carried out, the Electoral Court had to call a non-mandatory pre-referendum, and in case the results were 25% in favour, then a mandatory call would be made.[254] Feminist groups organized a campaign called *Yo no voto,*

250 Alejandra López Gómez, "Tensiones y desafíos para garantizar el acceso al aborto seguro," *Universidad De la República Uruguay*, November 12, 2012. http://www.universidad.edu.uy/prensa/renderItem/itemId/32050/refererPageId/12

251 Cecilia Rocha, Marcela Schenck y Niki Johnson. *La inserción del aborto en la agenda político-pública uruguaya 1985-2013*. (Montevideo, Uruguay: Cotidiano Mujer, 2015).

252 "Frente a la Ley de Interrupción voluntaria del embarazo," *Colectivo Cotidiano Mujer*, October 19, 2012. https://www.cotidianomujer.org.uy/sitio/otras-editoriales/73-proyectos/aborto/campana-aborto3?start=32

253 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*, 104.

254 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.

¿y vos? [I will not vote, will you?], in which public figures defended the law: "I stand for the law for voluntary termination of pregnancy; I will not vote on the 23rd."[255] The results of the pre-referendum were clear: only 8,92% of the population that could vote supported the referendum.[256]

2.3. The Law and The Regulations

Law 18.987 from 2012 contains 15 articles and deals exclusively with voluntary termination of pregnancy. Chapter 1 of the law discusses circumstances, timeframes, and requisites for the procedure. The law provides that during the first 12 weeks, voluntary termination of pregnancy will not be prosecuted as long as the established requisites are fulfilled. For this, the woman must: first, go for a consultation in the National Integrated Health System, and make known the circumstances derived from the conditions of conception or situations of social, economic, or family hardship that prevent her from continuing with the pregnancy. The doctor must immediately arrange for a consultation with an interdisciplinary team for that day or the next.

The second step is to attend an appointment with the interdisciplinary team (gynaecologist, professional of social area, professional of mental health). The team has the responsibility of informing the woman regarding the law, the characteristics of the abortion procedure and the risks involved, and alternatives such as social or economic programs and adoption. The law establishes that the team should offer "psychological support in order to contribute to overcome the causes leading her to the abortion," to guarantee that she makes a responsible and conscious choice. After this meeting, the woman must have a reflection time of minimum 5 days. After that time, if the woman continues to want an abortion, she has to have a third consultation with the gynaecologist

255 Johnson, Rocha, and Schenck, 106.
256 "Aborto legal en Uruguay."

to carry out the termination of the pregnancy with the best process available for her case. The ratification of the will has to be expressed via an informed consent that is then incorporated to her clinical history.[257] After the procedure, the woman has to have a fourth consultation post-abortion to monitor her development and receive advice regarding contraceptives.[258]

The law also includes exceptions outside the 12-week period when the pregnancy represents a risk for the woman's health, when malformations are detected that are incompatible with extrauterine life, and when the pregnancy is the result of rape. In this last case, a new period of 14 weeks is in place.[259] In the case of teenagers, the law requires the consent of the woman's representatives, and in cases where this is not possible, the teenage woman has to appear before a competent judge. The judge then has 3 days to make a decision.[260]

The law establishes that the staff and institutions have to abide by the principles of confidentiality, informed consent, and respect for the autonomy and will of the woman. They must abstain from denying or authorizing the termination.[261] However, the law allows for conscientious objection on the part of doctors and health personnel, stating that they can refuse to participate in the procedure for the termination of a pregnancy,[262] but not on the pre or post procedures. In addition, the objection must be express and in advance, and not occur at the time of the request. Conscientious objection is not stipulated for health services. However, it is recognized that institutions that have objections of ideology, pre-existent to the validity of the law, may agree with

257 Article 3 Poder Legislativo, Ley 18.987.
258 Johnson, Rocha, and Schenck, *La inserción del aborto en la agenda politico-pública uruguaya 1985-2013*.
259 Poder Legislativo, Ley 18.987 Article 6.
260 Poder Legislativo Article 7.
261 Poder Legislativo Article 4.e.
262 Articl 11. Establece que se pueden negar al procedimiento expresado en el inciso 5 del articulo 3 y Articulo 6.. Poder Legislativo.

the Ministry of Public Health on the ways in which their users will have access to the procedures of this law.[263]

2.4. The Experience of Abortion in Uruguay

The law widened the range of rights, but regulation is not the end of the road, as many activists have said. Along the way, the bill lost the recognition of women at the centre of the issue, and application of the law has also brought about difficulties.

In order to be applied effectively, it is necessary for institutions to adapt, train, and sensitize professionals and disseminate the service so that the population knows that it is available and can make use of it. There are also cultural changes needed, which are usually slower. This abortion law implies a new beginning, as Lilián Abracinskas, director of the NGO Woman and Health in Uruguay [Mujer y Salud en Uruguay], has stated.[264]

Some of the difficulties that the law introduced include the inability to put together the interdisciplinary team, or the time that it takes for a woman to go to a different locality, since in some areas it is impossible to get the procedure because all justice operators are conscientious objectors. The norms guarantee travel to the nearest health centre. Data from the Ministry of Health shows that 40% of professionals in Uruguay have declared themselves as conscientious objectors to the "Ruta IVE" (Termination of Pregnancy Route),[265] and many are clustered in rural areas.[266]

263 Article 10 Poder Legislativo.
264 Clarín.com, "Cómo funciona el aborto legal en Uruguay."
265 Clarín.com.
266 "Ficha IVE.Pdf."

The stigma around abortion is another main barrier to women who are seeking to terminate their pregnancy and a challenge to abortion service providers.[267] Roosbelinda Cárdenas, in her article "The Abortion Stigma After Decriminalization in Uruguay,"[268] takes the definition of stigma put forth by Erving Goffman, as "an attribute that is deeply discrediting," that "reduces an individual from a whole and usual person to a tainted, discounted one." Goffman presents three types of stigmas: "blemishes of character, deformations of the body, and group identity […] explain it as a social process in which individuals are marked as different, associated with negative attributes, conceived of as 'others,' separated from society, and subject to loss of status and discrimination."[269]

One of the ideas that Cárdenas presents is that a woman who seeks an abortion "transgresses socially-accepted concepts, such as that sexual relations are only for reproductive purposes; that maternity is inherent in the condition of being a woman, and therefore inevitable; and that the role established for women is motherhood and the nurturing of children."[270] These ideas are also present in the law. In most cases, stigma come from personnel that is not directly involved in abortion services as medical staff but have contact with the women—they can be broad administrative staff and objectors even if the law does not allow them to be.

Another barrier that can be presented, and one of the most discussed topics regarding Uruguay's law, is the mandatory five-day reflection period. Most of the actors involved are against this rule. According to Cárdenas, interviewees in her study refer to it as "excessive, unnecessary,

267 Cárdenas et al., "It's Something That Marks You."
268 Cárdenas et al.
269 Cárdenas et al.
270 Cárdenas et al.

and torturous."[271] The five days could be understood as disrespectful to the patient, challenging a decision that in many cases has already been made. It is a "distrust of the women's decision […] questions a woman's motives and would seem to implicitly suggest that the ideal decision would be to continue the pregnancy."[272] In most cases, women seek access to the service after thinking about it, maybe talking it over with friends or family. Simply asking for an abortion is not a first step, especially because of the stigmatization involved in approaching the services in the first place.

Using abortion medications exclusively without introducing women to other alternatives can negatively affect their experience. This can serve as evidence of the stigmatization on the part of doctors, who do not wish to get their hands dirty and prefer to distance themselves from participating in the procedure directly.

Regarding official data on voluntary interruption of pregnancy in Uruguay, it can be seen that between 2013 and 2019, out of 100% of the consultations for IVE, 94% maintained their decision to carry out the abortion. This percentage only decreased in 2014 to 92%. In other words, the vast majority of women came to the consultation with a decision made beforehand, which would confirm that the 5 days of mandatory waiting are only a delay in carrying out the procedure and can be a burden for the woman. The age group that represents a marked majority in terms of having IVE are women over 20 years of age. In relation to women under 15, the figure was reduced

271 Cárdenas et al.
272 Cárdenas et al.

by half, despite the fact that the total number of interruptions showed an increase of around 40% percent.[273] This may be due to better sex education or more barriers for adolescent girls.

Deaths due to abortion recorded in 2001 represented 40% of maternal deaths in the year. From 2004 onward, when the policy of harm reduction and an obligation to care for a woman at risk was enforced, that figure dropped, reaching 0% in 2008, and climbing back up to 40% in 2012, but reduced in number.[274] Between 2013 and 2019 with the current law, the number of deaths has been between 0 and 2 per year, which is evidence of the improvement in the attention to the sexual and reproductive health of women.

Although data is only available up to 2019, at the beginning of 2021 a new death occurred in an adolescent.[275] The case has not been clarified yet, but there is question about what procedure was followed since the death was caused by septicaemia, despite having followed the IVE route which, with adequate medical care, could have been avoided, so it is suspected that it may have been malpractice, an oversight, or an application of the norm without real concern for the woman on the part of health personnel. In the same way, it cannot be ignored that even today women outside the capital have much more difficulty in accessing the procedure than those found in the capital or larger cities, either because the service is not available or because of the stigma that the procedure itself carries.[276]

273 "Datos de IVE 3 ocurridos en Uruguay por año: Continuación de embarazo," Ministry of Public Health. https://www.gub.uy/ministerio-salud-publica/sites/ministerio-salud-publica/files/2021-01/Respuesta%20y%20resoluci%C3%B3n%20parcial%20Jorge%20Alvear%20%281%29_removed%20%281%29.pdf

274 El 40 % en 2001 son 16 casos mientras el 40% en 2012 son 4 casos.

275 "Denuncian la muerte de una adolescente tras realizarse un aborto en el marco legal," *La Diaria Feminismos*. January 22, 2012. https://ladiaria.com.uy/feminismos/articulo/2021/1/denuncian-la-muerte-de-una-adolescente-tras-realizarse-un-aborto-en-el-marco-legal/

276 Cárdenas et al., "'It's Something That Marks You.'"

2.5. Conclusion

Achieving the decriminalization of abortion through legislative change in Latin America has been seen as a race over time. There are currently two examples: Uruguay achieved it almost ten years ago, and Argentina just last year. The law in Argentina came about in the same ways as in the case of Uruguay, after several attempts in the legislative power and a lot of social pressure, perhaps the strongest that has been seen in terms of people organizing direct demonstrations.

2.5.1. Regarding the Process

It is a race over time, and proper timing is required to implement strategies to demand changes in the law. Legal change involves some necessary scenarios and actions. It is not a change that comes about on its own. Another important factor is the arguments and actors who participated in the process.

The arguments that were put forth in Uruguay were several and evolved over time, incorporating new actors. They can be summarized as follows: clandestine unsafe abortion is a health risk; it should be treated as a public health problem; it is also a problem of social justice because it affects those who do not have resources; the right to abortion as a human rights issue as part of sexual and reproductive rights.

Another factor in the Uruguayan process was that people's views over decriminalization changed over time, from 41% of the population agreeing to it in 2001, to 51% and then to 55% of the population agreeing with it in 2012.[277] The most educated sector of the population reached a

[277] Sonia Correa, "Beijing + 5 y la descriminalización del aborto en América Latina," *Aborto en Debate* (2000).

65% of agreement.[278] Although it was not a determining factor, such as the case of change through referendum seen in Ireland, it did affect the will of legislators who, in the end, represent the people. The change from using the term 'legalization' to 'decriminalization' also influenced public opinion and helped undecisive legislators feel more comfortable with the term. However, this also resulted in a change of focus for the law itself.

One basic element in achieving the law was the organizational capacity and political incidence of feminist groups, of women who believed in the project despite not belonging to groups, of human rights groups, and youths and professionals involved, even at an international level, as they managed to articulate networks, influence the content of the bill, and offer recommendations. This organizational capacity was supported by the generation of different types of content, such as academic, opinion, and research from different areas and actors that professionalized the debate but without ceasing to give a voice to women as main actors. Different publications and mass media campaigns gave visibility to the movement. The voices in the campaigns were diverse in terms of organizations and approaches, which helped overcome the historic polarization of "pro rights" vs "pro life."[279] One of the main actors were doctors who sought harm reduction even without decriminalization, but establishing clinical guidelines that acknowledged obligations including confidentiality, providing information, and providing attention for any abortion in progress without reporting. This positioned the issue as one of public health and reduced the rates of deaths due to clandestine abortions.

[278] "CIFRA Consultoría Privada."
[279] Rafael Sanseviero, "Análisis de prácticas feministas," *El Blog "Yo Aborté" en Uruguay,"* June 2007, http://docplayer.es/197252567-Analisis-de-practicas-feministas.html, accessed july 22.

The political scenario cannot be ignored. Uruguay has a fairly stable and traditional political party system compared to Ecuador, where the parties are more conjunctural groups. In the same way, the figure of the President and his power to threaten and veto the regulations was a decisive point in delaying the approval of the law, so the great influence that the head of state can exercise cannot be ignored, especially if his criteria and personal beliefs contravene precepts such as the Secular state. In Uruguay, two Presidents were clear opponents of the law, preventing the issue from advancing, and sometimes from even being discussed, during their terms. It was social pressure and the decision of when to put the issue in the public arena that allowed the law to finally be approved.

2.5.2. Regarding the Law

Decriminalization has contributed to improving the social perception of abortion and the reduction of clandestine abortions as well as related deaths. Many women see abortion as their right, although in any case the guilt that comes from stigmatization is still present.[280]

Law 18,987 currently in force in Uruguay represents an advance in the recognition of rights and autonomy of women. However, some doubts arise, for example, in the event that a person performs an abortion within 12 weeks but without complying with the requirements, they may or may not be criminally sanctioned.

Similarly, although the law opens the possibility of voluntary interruption, the woman's will is questioned, she is faced with having to explain the reasons and, although the law does not explicitly state that she must convince the technical or medical team, it does list some of the reasons

[280] Cárdenas et al., "'It's Something That Marks You.'"

which are considered valid, including age or economic and family issues, while completely disregarding the woman's life project and whether she intends to be a mother or not. In addition, in terms of the role of the technical team, the way the law is worded seems aimed at "convincing" the woman not to have an abortion, trying to address the causes that lead her to make that decision and not merely providing objective and impartial information on the procedure and the alternatives.

Finally, decriminalization through legislative change allowed for the existence of a norm that requires the establishment of protocols and resources from official instances, forcing the generation of a public policy that, added to that of sexual and reproductive health, contributes to the well-being and rights of women who need to terminate their pregnancy. This reflects a change and approval, at least partial, from society and allows progress in the exercise of rights. Despite this, the issue remains complex as there are many conscientious objectors and people opposed to the procedures who seem untouchable due to technical, medical, or legal reasons and will continue to hinder the application of the law no matter what. The importance of recognizing abortion as a right lies precisely in how to demand it, which is perhaps the main flaw in the Uruguayan law.

The Argentine Law presents some advances in relation to the Uruguayan law. For example, it extends the period to 14 weeks, it does not impose attention from a team or a period of reflection, it modifies the criminal code and clarifies that an abortion carried out after the 14 week limit would be punished if there is no other cause, and also establishes the need to provide training to people who will be involved.[281] Thus, it covers more related issues and puts women's rights at the centre

[281] https://oig.cepal.org/sites/default/files/2020_ley27610_arg.pdf

of the law. Time will tell how it develops in practice since people contrary to the law continue to try to hinder its implementation.

Chapter 3. Decriminalization of Abortion by Referendum: The Experience of Ireland

3.1. General Information About Ireland

Ireland is a member country of the European Union. On the Island of Ireland is the Republic of Ireland (south) and Northern Ireland. The Republic of Ireland was part of Great Britain until 1922. During this time there was a struggle between Nationalists and Unionists, between those who wanted to remain with Great Britain and those who wanted a separate republic. After a War for Independence was fought, an Anglo-Irish Treaty was signed, and Ireland separated from Great Britain and became a free Republic. Northern Ireland continues to be part of Great Britain and its internal wars were devastating until 1998. However, conflicts between Catholics and Protestants are not completely resolved.[282]

The Constitution of Ireland was adopted in 1937. Since then, it has undergone 38 amendments, all but two approved by referendum. In 2018 and 2019, as a result of the approval of the last two amendments, abortion was decriminalized and the conditions for obtaining divorce were reduced.[283]

In contrast to Latin America, the most liberal abortion policies are found in Europe and Northern America. Both Northern American governments and 73% of European governments allow abortion on demand.[284] The first countries to legalize abortion were Iceland in 1935 due to

[282] "Por qué Irlanda se dividió en dos hace 100 años." *BBC News Mundo,* BBC, https://www.bbc.com/mundo/noticias-internacional-56935706/

[283] "Irlanda: República de Irlanda." *Oficina de Información Diplomática,* (March 2021). http://www.exteriores.gob.es/Documents/FichasPais/IRLANDA_FICHA%20PAIS.pdf

[284] Vereinte Nationen, *Abortion Policies and Reproductive Health around the World,* 5.

the health risks involved in the procedure, and the Soviet Union in 1920, the first country to allow free abortion with some limitations, although it was again prohibited between 1936 and 1955.[285] Ireland, however, was one of the most conservative and restrictive countries in terms of abortion policies in the region. It is a country with a strong religious influence, where 73.6% of the population identify as Catholic Christian.[286]

Ireland's abortion ban originated in 1861, when the Offences Against the Person Act made it illegal for a woman to seek to obtain an abortion on her own (sections 58 and 59). Following Ireland's independence from the United Kingdom in 1922, this was codified into Irish law, and in 1983, a referendum modified the Constitution to include a specific right to life for the "unborn." The Eighth Amendment became article 40.3.3 of the Constitution, strengthening the restriction on abortion and equating, in legal terms, the life of a woman and a foetus.[287]

Regarding recent history that shows the fight to decriminalize abortion, we must consider that until 2007, Ireland had a great economic development. It was known as The Celtic Tiger[288] and recognized as an exemplary model, having high standards of living and employment, and being an example of a poor country that developed into a rich one. Ireland's GNP per capita was among the highest in Europe. However, in 2008 it had a big drop in its development as part of the global economic crisis. The loss of jobs was very high in the first years of the recession, and several

[285] Paloma de Salas, "Aborto: El mapa del aborto en el mundo." *RTVE,* May 30, 2018. https://www.rtve.es/noticias/20180530/mapa-del-aborto-mundo/1741461.shtml
[286] "Irlanda: República de Irlanda." *Oficina de Información Diplomática,* (March 2021). http://www.exteriores.gob.es/Documents/FichasPais/IRLANDA_FICHA%20PAIS.pdf
[287] Cullen and Korolczuk, "Challenging Abortion Stigma."
[288] Eoin O'Leary, "Reflecting on the 'Celtic Tiger': before, during and after" *Irish Economic and Social History* Vol. 38 (2011), pp. 73-88.

austerity measures were imposed,[289] and public sector wages were reduced.[290] With this, the budget for social services and health services was also affected. Cuts occurred, among others, in the Health Service Executive (HSE), primary care and the medical card scheme and clinical spending. Austerity policies also diminished food, housing, and health-care subsidies, all of which are important social benefits for women, particularly single mothers.

It is commonly known that the poorest of the poor are women, who are frequently the heads of homes responsible for providing for children, the elderly, or sick family members. Women are commonly the ones who come to rely on the social services that austerity policies remove, and they are the ones who suffer the most as a result of these cuts, particularly poor or marginalized women.[291] Under times of economic distress, gender equality is relegated to the background as a minor concern in the broader context of the national crisis.[292] This particular crisis lasted until 2014-2015, when Ireland was able to recover in economic terms.

3.2. The Situation of Women Who Needed an Abortion in Ireland Before the Referendum

Ireland presented two situations in relation to abortion that differ from the experiences in Latin America, involving distance, cost, and viability. There is no evidence of as many clinics and clandestine abortions, however, Irish women who needed an abortion for decades had travelled to perform it safely in neighbouring countries, the most common destinations being London and the

[289] "Q&A: Irish Republic bail-out." *BBC New*s, 29 November 2010. https://www.bbc.com/news/business-11766346
[290] McGinnity et al., *Winners and Losers?*
[291] Karina Doorley, Maxime Bercholz et al. "The Gender Impact of Irish Budgetary Policy 2008-2018." *Economic and Social Research Institute and Parliamentary Budget Office* (Dublin, 2018).
[292] Barry & Conroy, 2013, slide 23

Netherlands. In addition, many women chose to order abortive pills by mail. These are two situations for which there is no data in Latin American countries. More than 170,252[293] women had travelled from Ireland to have abortions until 2016. The data is obtained from women who have had abortions in England and the Netherlands and whose residence is Ireland, which shows that it is possible that there are even more in other locations or that have not given their address in Ireland. The number of trips decreased in recent years due to the use of contraceptives[294] and abortions at home, with medicines ordered online. This method was also prohibited in Ireland and it is not possible to know how many women had abortions in this way. However, several packages were intercepted in 2015, and an article mentioned that Health Products Regulatory Authority seized packages with 635 pills in 2011 and by 2014 the seized tablets reached 1017.[295] These numbers reflect only the ones that did not reach their destination, and many women have given his testimony on how they performed these abortions through transnational activist networks.[296]

As in other countries where abortion is a crime, the women who can access these forms of abortion, which are relatively safe, are those who have the economic means, in this case to pay for travel, accommodation, and to leave their jobs, as well as the knowledge and legal status to travel. This leaves many women without the possibility to abort. For example, asylum seekers who need to abort outside the country face both economic problems due to the cost of travel and also bureaucratic problems by having to apply for visas to the country in which they would carry out

[293] Sarah Bardon, "Fact check: Have more than 170,000 Irish women travelled abroad for an abortion?" *The Irish Times,* 2 May 2018. Accessed 5 March 2019. https://www.irishtimes.com/news/politics/fact-check-have-more-than-170-000-irish-women-travelled-abroad-for-an-abortion-1.3481581
[294] Ibid.
[295] Kitty Holland, "Emily's story: An illegal abortion in Ireland." *The Irish Times,* 3 October 2015. Accessed 5 March 2019. https://www.irishtimes.com/life-and-style/people/emily-s-story-an-illegal-abortion-in-ireland-1.2376568
[296] Calkin, "Transnational Abortion Pill Flows and the Political Geography of Abortion in Ireland."

the procedure and then for re-entry visas. The time-consuming nature of this process, combined with the great costs, makes this almost impossible to accomplish for women seeking asylum.[297]

If a woman aborted illegally in Ireland, she could be sentenced to 14 years in prison. For their part, healthcare providers referring women to abortion services abroad faced fines of up to 4,000 Euros.[298]

In Ireland, the inability of the foetus to survive was not considered a cause for legal abortion, so women sometimes had to give birth to babies they knew would not live or travel to get an abortion.[299] The only case where abortion could be legal was when the life of the woman was threatened. However, the parameters and norms were not clear, and access was restricted, as discussed below.

The eighth amendment of 1983 equated the woman with the foetus, so that the woman lost her rights.[300] Women were driven to seek reproductive healthcare overseas or underground as a result of these abortion constructions and restrictions.

3.3. History of abortion in Ireland

In 1981, the Pro-Life Amendment Campaign, PLAC, was created in response to a judicial case in the United States and the liberalisation of abortion in the UK and other countries. Even though

[297] Tanya Saroj Bakhru, "Reproductive Health and Human Rights: Lessons from Ireland." *Journal of International Women's Studies*, 18(2), 2017, 27-44. Available at: https://vc.bridgew.edu/jiws/vol18/iss2
[298] "Ireland's abortion law forced her to carry a pregnancy with no future," *Amnesty International*, 1 January 2016. https://www.amnesty.org/es/latest/campaigns/2016/01/ireland-abortion-law-forced-her-to-carry-a-pregnancy-with-no-future/
[299] "ACNUDH | Prohibición Del Aborto En Irlanda Causa Sufrimiento y Discriminación a Una Mujer – Expertos de La ONU."
[300] Shiromi Pinto, "6 outrageous facts about abortion in Ireland." *Amnesty International,* 9 June 2015. https://www.amnesty.org/es/latest/campaigns/2015/06/6-outrageous-facts-about-abortion-in-ireland/

abortion was prohibited by the 1861 Offences Against the Person Act I, PLAC's goal was to lock the possibility of a law change or a judicial decision that challenged the Act, making any chance of legalization more difficult. PLAC led the campaign for the approval of the Eighth Amendment.[301] Against this provision, the Anti-Amendment Campaign was formed.[302] On September 7, 1983, 841.233 people voted in favour of the proposal (66.44 %) and 416,136 voted against it (32.8 %) (turnout of 1,265,994 or 53.67%),[303] and the amendment was approved. The eighth amendment enacted was: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."[304]

In 1992, Ireland faced a case of a teenager (Case X) who was raped and became pregnant as a result. The girl had a breakdown and became suicidal. The parents reported the case, and after deciding to travel to the UK for an abortion, they asked the authorities if the product of the abortion could be used in the investigation to identify the perpetrator. The General Attorney, with the information of the intention to get an abortion abroad, requested a restraining order to prevent them from travelling for nine months. The injunction was extended but the family appealed arguing that the life of the teenager was in severe risk because of her own intentions to take her life. Finally, the court decided that "there is a real and substantial risk to the life of the mother by self-destruction

[301] Field, "The Abortion Referendum of 2018 and a Timeline of Abortion Politics in Ireland to Date."
[302] "1982 Leaflet from The Anti Amendment Campaign."
[303] "Plebiscite on the Draft Constitution 1937," 37. Department of the Environment, Community and Local Government. (2016, August 26). Referendum results 1937-2015. Government of Ireland. Retrieved from http://
www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/LocalGovernment/Voting/referendum_results_1937-2015.pdf
[304] Electronic Irish Statute Book (eISB), 'Electronic Irish Statute Book (EISB)' <http://www.irishstatutebook.ie/eli/cons/en#part2> accessed 5 March 2019.

which could only be avoided by the termination of her pregnancy," and the orders preventing them from travelling were annulled.[305]

With the Case X ruling, the discussion of abortion mobilised again; the so-called pro-life groups advocated for a new amendment. They proposed the Twelfth Amendment: "It shall be unlawful to terminate the life of an unborn unless such termination is necessary to save the life, as distinct from the health, of the mother where there is an illness or disorder of the mother giving rise to a real and substantial risk to her life, not being a risk of self-destruction."[306] In the same referendum, the Thirteenth and Fourteenth Amendments were voted regarding the protection of life. The amendments were: 13th, "This subsection shall not limit freedom to travel between the State and another state," and 14th, "This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state."[307] The advocates for the Twelfth amendment also campaigned against the Thirteenth and were critical of the Fourteenth amendment proposal.[308] The pro-choice organisation also advocated for the referendum in favour of the latter two amendments.[309]

On December 23, 1992, the people of Ireland voted for the three proposed amendments. The outcome was the rejection of the Twelfth and the approval of the Thirteenth and Fourteenth. This was an important step towards the future decriminalization of abortion. If the Twelfth Amendment had been approved, it would have overridden the decision on Case X because it

[305] Attorney General v X and Others.
[306] "Plebiscite on the Draft Constitution 1937."
[307] "Plebiscite on the Draft Constitution 1937."
[308] Field, "The Abortion Referendum of 2018 and a Timeline of Abortion Politics in Ireland to Date."
[309] Field.

expressly excludes suicide as a risk for life and therefore as grounds for abortion. The discussion and approval of the 13th and 14th amendment shows the evident situation of women who sought abortions in Ireland. The ban, far from preventing abortion, made women seek information and travel, and these amendments maintained at least these rights at that time.[310] Situating sexual and reproductive health within the context of human rights calls on government bodies not only to recognize sexual and reproductive health matters as legitimate but also to protect women's sexual and reproductive health through funding services and protect against the erosion of access to public services.[311]

From 1969 onwards, one of the organizations involved in decriminalization, the Irish Family Planning Association (IFPA), sought to transform social perceptions in relation to reproductive health and family planning, providing services and information that could reach all people. In addition to providing services and advocating for rights, their stance on abortion was based on seeking action based on human rights theories.

After 2008, while reductions were made to social services, IFPA requested there be an increase to support women's health: "IFPA called on the Irish state to take responsibility for the provision of health care services and protection of women's bodily integrity in light of the intense burden which economically disadvantaged women in Ireland suffered as a part of the implementation of post-2008 recession austerity measures."[312]

[310] There were further attempts to regulate and restrict abortion in 2002 with the Twenty-Fifth Amendment but the voters did not accept it Book (eISB), "Electronic Irish Statute Book (EISB)."
[311] Berer, "Sexuality, Rights and Social Justice."
[312] Tanya Saroj Bakhru, "Reproductive Health and Human Rights: Lessons from Ireland." *Journal of International Women's Studies*, 18(2), 2017, 27-44. Available at: https://vc.bridgew.edu/jiws/vol18/iss2

One of the strategies of the IFPA in those years was to present the issue constantly at a national level, as well as international spaces for the protection of rights, especially in those to which Ireland was a signatory, showing gaps, contradictions and legal ambiguities, as well as the restrictive and discriminatory services that women had to undergo in terms of sexual health. In 2008 they made a submission to the UN Human Rights Committee, in 2011 they sent information to the UN Committee Against Torture and the Universal Period Review, among others. The information sent referred to Ireland's non-compliance with international treaties, especially in relation to the prohibition and protection of women against non-discrimination and bodily integrity, arguing that men can access all the medications they need while abortions that are required only by women are not available, so it is a difference that generates a violation of the principle of non-discrimination. Likewise, they sought to show that the interference in the bodies that has been kept as a private matter affects the personal integrity of women.[313]

In 2010, the European Court of Human Rights decided on case *A, B and C v Ireland*. The case was raised for violation of Article 8 of the European Convention on Human Rights, which refers to protecting people from arbitrary interference in their private and family life. The Court ruled that this imposes positive obligations on the State to guarantee respect to this right. The 3 applicants had to leave Ireland in 2005 to have an abortion. The ruling in this case was quite conservative in terms of the advances that could have been made in the rights of women in relation to abortion. The resolution regarding the case of A and B was that the state had not violated Article 8, since it fell within the margin of appreciation.

[313] Ibid.

Regarding case C, the court carried out a different analysis because the applicant suffered a disease which meant that, when pregnant, it threatened her life. Therefore, the Court considered whether there was an obligation of the State to establish a legal procedure to determine the legality of an abortion and carry it out.[314] The State's response did not determine if the process existed and, on the contrary, claimed that the woman could have requested that the Constitutional Court define the legality of her abortion and force the process to be carried out. In its resolution, the European Court determined that, regarding the third applicant, C, the state did violate the rights contained in Article 8 of the Convention.

> 267 […] the authorities failed to comply with their positive obligation to secure to the third applicant effective respect for her private life by reason of the absence of any implementing legislative or regulatory regime providing an accessible and effective procedure by which the third applicant could have established whether she qualified for a lawful abortion in Ireland in accordance with Article 40.3.3 of the Constitution.
>
> 268. Accordingly, the Court finds that there has been a violation of Article 8 of the Convention."[315]

This ruling once again opened the debate on abortion and the restrictions imposed, as well as on the impossibility of even performing abortions that were permitted by law. Several United Nations Committees, as well as the Council of Europe Commissioner for Human Rights, expressed concern about the strict abortion restrictions in Ireland as the state failed to explain the possibilities of a legal abortion.[316]

Then, years after the last constitutional discussion on abortion, in 2012 the death of Savita Halappanavar brought back the debate. Savita was a 31-year-old dentist who went to the hospital as she was experiencing a natural miscarriage of a 17-week pregnancy, but the doctors did not help

[314] Parragraphs 243 to 268.
[315] GRAND CHAMBER CASE OF A, B AND C v. IRELAND (Application no. 25579/05) JUDGMENT STRASBOURG 16 December 2010 European Court of Human Rights.
[316] Tanya Saroj Bakhru, "Reproductive Health and Human Rights: Lessons from Ireland."

her terminate the pregnancy because they found a heartbeat, and Savita died of septicaemia.[317] People mobilised with the case. "Never again" was one of the slogans of the protests, which asked for legislation to prevent new cases of women's deaths because of the abortion amendment.[318] Civil organisations arose and engaged, advocating for awareness in the 2013 elections, supporting the candidates that engaged with the topic.[319] A law was passed based on Case X, twenty-one years after the fact.[320]

Here Pro-choice Campaign and Abortions Rights Campaign were born and started to work. Law 35 of 2013, "Protection of Life During Pregnancy Act 2013," refers to the risk of losing life due to physical illness, physical illness in emergency, and suicide. For the first case, two doctors must have the opinion that the pregnancy should be terminated to save the woman's life. In the second case, a doctor must consider that there is an immediate risk that the woman will lose her life and the process is immediately necessary. In the third case, 3 doctors must agree that there is a real risk. In all cases it must be carried out by a doctor.

In 2016, another case was resolved internationally. This case referred to Amanda Mellet, who in 2011, with 21 weeks of pregnancy, received from the doctors the information that her pregnancy was not viable, that the foetus would die in utero or at birth. She was informed that she could not undergo an abortion in Ireland, that she could carry out the pregnancy or travel, without being given any further explanation about what process she could carry out, where, or what it would consist of. She travelled and had an abortion in London which was costly and traumatic, as

[317] Holl and Cullen, "Woman 'denied a Termination' Dies in Hospital."
[318] Sinead O'Carroll, 'Savita Halappanavar: Her Tragic Death and How She Became Part of Ireland's Abortion Debate' (*TheJournal.ie*) <http://www.thejournal.ie/eighth-amendment-4-3977441-Apr2018/> accessed 5 March 2019.
[319] Field, "The Abortion Referendum of 2018 and a Timeline of Abortion Politics in Ireland to Date."
[320] O'Carroll, "This Is the Moment the Dáil Passed X Case Legislation."

she had to return immediately, receive the ashes by mail, and submit herself to the stigmatization of the process. Regarding her request sent to the Human Rights Committee, in 2016 the Human Rights Committee adopted an opinion which stated that Ireland violated several articles of the Covenant on Civil and Political Rights of which it is a party, and by having submitted to the protocol of said Pact, Ireland had to comply with the corresponding obligations and the observations of the Committee. The Committee declared a violation by Ireland of: Article 7, on the prohibition for the state to subject people to torture or cruel, inhuman or degrading treatment; Article 17, on arbitrary interference with privacy; and Article 26, on non-discrimination.

Among its considerations, the Committee mentions that "the fact that a specific conduct or action is legal under domestic law does not mean that it cannot violate Article 7 of the Covenant." It acknowledges that the State subjected the pregnant woman to a situation of intense physical and psychological suffering that was aggravated by not being able to receive medical attention or adequate information in the Irish system. It expresses that much of the suffering could have been avoided if she was granted the health benefits that she required. In the same way, the interference in the possible decision of the woman regarding a non-viable pregnancy, despite being supported by the law, was not reasonable and was arbitrary. Finally, it makes reference to the fact that "the differential treatment to which the author was subjected in relation to other similarly situated women failed to adequately take into account her medical needs and socioeconomic circumstances and did not meet the requirements of reasonableness, objectivity and legitimacy of purpose,"[321] stating that by not rendering the woman the services she required, she was discriminated against. It also takes note of the affirmation of the woman in the case that refers to the gender-based stereotype to which she was subjected, when the state imposes a reproductive function on women

[321] Parr 7.11

mainly as a mother, and that by stereotyping her as a reproductive instrument, she was subjected to discrimination. The Committee established that Ireland had an obligation to take measures to prevent similar violations in the future, and review its legislation and Constitution to guarantee compliance with the Pact.[322]

Feminist movements framed abortion as a common component of sexual and reproductive rights, as well as seeking empathy and solidarity for women in need, which resulted in the massive mobilizations indispensable to eliminate criminalization in Ireland.[323]

In July 2016, deliberative democracy was put in play in Ireland.[324] The government established The Citizens' Assembly to deal with five topics, the first of them being the Eight Amendment. This institution is integrated by 99 randomly selected (and representatively distributed) citizens and the chairperson.[325] In 2017, a committee known as the Joint Oireachtas Committee on the Eighth Amendment of the Constitution worked on recommendations regarding the issue.[326] After their report, the Prime Minister, Taoiseach Leo Varadkar, announced on January 29 that the government would propose a referendum. The proposed Thirty-Sixth Amendment repealed the Eighth Amendment ,[327] and replaced it with the following text: "Provision may be made by law for the regulation of termination of pregnancies."[328] A video of The Irish Time in

[322] Opinion approved by the Committee pursuant to article 5, paragraph 4, of the Optional Protocol, regarding communication No. 2324/2013. CCPR/C/116/D/2324/2013 General District, 17 November 2016.
[323] Cullen and Korolczuk, "Challenging Abortion Stigma."
[324] "A User's Guide to the Citizen's Assembly."
[325] "Welcome to the Citizens' Assembly - The Citizens' Assembly."
[326] Bardon, "Oireachtas Committee on Eighth Amendment Publishes 40-Page Report."
[327] It also eliminates the Thirteenth and Fourteenth amendment that does not have reason to exist without the ban of abortion.
[328] Book (eISB), "Electronic Irish Statute Book (EISB)."

reference to the Campaign stated that it should officially start after legislative approval but, "in reality, in a political sense, the campaign is already on."[329]

The website for 'Together for Yes,' "The National Campaign to Remove the Eighth Amendment,"[330] is still online. The home page shows a big Thank You and the text: *"On 25th May 2018, 1,429,981 people said Yes to a more compassionate Ireland where a woman can make her own decisions in pregnancy and access abortion if she needs it here in her own country."*

3.4. 'Together For Yes' Campaign

The 'Together For Yes' campaign launched in March 2018, and it finished along with the referendum in May of the same year. The campaign can be called a "short term campaign," as it was indeed short, but as we see from the previous context, it was not born out of thin air. Many of the organisations that supported it had long worked in the field and were part of the force that made the referendum a reality. One of the most representative was the Abortion Rights Campaign.

'Together For Yes' was a self-called umbrella group co-led by the Abortion Rights Campaign, the National Women's Council, and the Coalition To Repeal The 8th Amendment. Their team had 3 co-directors (from the previous organisations), 5 members and 2 managers. The campaign was supported by more than 90 organisations who joined the cause from March 10 onwards. Between them, some groups and alliances were directly related to the repeal, but others, such as the Anti-Racism group, had no direct relation. The list of the organisations shows the diversity of the support from different professions, work backgrounds, conditions, and beliefs.

[329] "'Safe, Legal and Rare.'"
[330] The web page of the campaign is www.togetherforyes.ie

"We are a huge grassroots movement built from the ground up over the last three decades and which has support in every community, village and town in Ireland. This broad groundswell of support shows that the overwhelming majority of Irish people want to change our abortion laws because they are too harsh."[331]

The diversity of organisations, alliances and all the open discussions made the campaign come with a solid and unified plan, managing what was one of the most important aspects to their success: they gained support across society.[332] The opportunity for the referendum could not be wasted; it was the sole chance to actually change the situation, a point reached after several years of campaigning. The joint aim was clear: to win the referendum and repeal the Eighth Amendment.

In contrast to the majority of advocacy campaigns, Together For Yes did not address change makers.[333] Instead, it directly targeted all voters, the ones that were living in Ireland but also the ones that could travel to vote. The campaign addressed the question of, "Who has the power to make the change?" It found the answer in the general public.[334] This represented a significant challenge: the diversity of people that had to be reached.

Paul M. Pietroski, Professor of Philosophy and Cognitive Science at Rutgers University, stated that managing to make messages with specific values could create a "framing effect,"[335] which is what the Yes campaign did. They framed the issue to address in a unique way an "Irish

[331] "Who We Are."
[332] Ian Chandler, Advocacy and Campaigning: How To Guide (London: BOND, February 2013)
[333] The Campaign addressing change makers had been placed before in order to get the referendum.
[334] IFEX, *Campaigning for Freedom of Expression: A handbook for advocates* (International Freedom of Expression Exchange (IFEX): 2005) p 13.
[335] Pietroski, *Events and Framing*.

solution to an Irish problem,"[336] and give to it a value specifically for them. Even when the criminalization of abortion is a problem for several countries, the campaign framed it in its own special way and with their own stories. The "fresh" campaign also re-named the reasons and problems that the referendum would solve. All the cases of women who had abortion stories were framed into: rape or non-consensual sex, life threatening pregnancies, fatal foetal diagnosis, and crisis of pregnancy. Crisis of pregnancy was used to make abortion free for everyone who needed it without explanation. But the presented narrative was clearly different from the previous "free, safe, and legal."

The message from the campaign for abortion was based on care and compassion, not the right: "the referendum is a critical opportunity for all of us to create a compassionate, supportive environment for anyone who needs abortions in Ireland. Sometimes a private matter needs public support."[337] The idea behind the campaign was to raise awareness of the necessity of change to protect women and prevent more damage. In order to do that, they presented several real-life stories. On their website and social media there were videos,[338] texts and audios with different stories of real women who live in Ireland and had an abortion illegally there or somewhere else.[339] Moreover, they presented people who supported the Yes campaign even when they were personally against abortion and the reasons for it. An important issue to address is the fact that the campaign for Yes had a special positivity to it, and one of the slogans they used was "someday a woman you care may need your Yes."

[336] Video of the Campaign upload in Facebook page accessed 5 March 2019
[337] Reporter and Carswell, "Repeal Campaigners to Focus on 'Care, Compassion, Change.'"
[338] All the videos at the time are not available because they erase the YouTube channel. However, some videos are on Facebook.
[339] "Who We Are."

The Yes campaign reframed the situation, offering a fresh perspective but also the solidity of the previous research and work. Medical arguments were the most substantial force behind their messages. The campaign had two main position papers, "General Scheme of a Bill to Regulate Termination of Pregnancy," and "Briefing on the Proposal to Regulate Termination of Pregnancy in Early Pregnancy (12 weeks): Medical Abortion." The first one is a response to the government's legal proposal for the law, which is aligned with the way the Yes campaign framed the cases. It seemed to be an approval of what the government proposed and an alliance to work in the same direction.

Regarding the diversity of the target audience, on the event page it is possible to see the diversity of activities that the campaign organized. From the middle of January until late May of 2018, there were hundreds of activities in all kinds of settings: book clubs, concerts, café discussions, poetry, round tables, massive events, running, yoga, among others. In March, up to four events could take place in one day. By May, up to eleven events could take place in a day. The diversity of these events helped reach different audiences. They also had a strong presence in the papers and communication media, turning the news into a way of advocacy.

Regarding money, up to June 6th, the Campaign raised 1.64 million Euros through different fundraising methods (online fundraising, events, and personal donations) throughout the country. The support came from Irish citizens on the island or living abroad, and from organisations based in Ireland. They did not receive funds from outside the country or from the government. The money raised was used in "leaflets, posters, events, training for campaigners, merchandise, advertising

and more," and most of the people working and supporting the campaign were volunteers.[340] There is no available information about the use of the money or a final report.

On the other hand, it was clear that the campaign for the No, or 'Retain Eighth,' did not have a unified message. Efforts to "Save the 8th" focused on a narrative of saving children with Down Syndrome, and Renua, the right-wing political party, launched a campaign with the slogan, "Be My Voice." The self-called Pro-Life Campaign's message was "Love Both." They relied on negative and combative messages, and "used a combination of U.S.-style attack ads, scare tactics, and fake news articles while the repeal side played it relatively clean."[341]

By Becker's standards,[342] the Yes Campaign did all the right things, having multiple arguments, making alliances, taking a unique opportunity, basing their efforts on solid research, and giving a voice to the ones that are most affected. In this case the leadership was in the organisations, but the voices were diverse. The Yes campaign was a successful one—they achieved the objective. As was mentioned, there were several things that made it succeed: the decision of a coalition and joint campaign was the first right step, even when some of the organisations had abortion as the main issue, such as the Abortion Rights Campaign, the union in this case had much more force. The Abortion Rights Campaign as an organisation will continue working to provide "free, safe and legal" advice in all Ireland, but for the purposes of the referendum, they joined others.

[340] "Our Fundraising Principles."
[341] Adorjani, "Shady Tactics on Social Media Failed to Pay off in Ireland's Divisive Abortion Referendum."
[342] J Becker, "5 Ways to a Successful Human Rights Campaign", International Service for Human Rights, 31 January 2014

The Together for Yes campaign had a clear aim and objectives and a convincing message with strong arguments. The new perspective from the right for the care and compassion allowed them to involve more people and to not engage in the discussion of the rights of the foetus, and this framing provided new opportunities. They delivered the messages in different ways with the face of different people and stories, selected diverse types of media, and put a lot of effort into person-to-person campaigning. A vital strategy was that they built trust and partnerships and made a lot of effort to thank people. The correct use of social media and the messages both produced "pretty messages" and showed an understanding of the central concerns.[343] Some of the videos also contained practical information that the public would find useful.

The interaction with the government seems to be another important issue. The Campaign supported the law proposal and gave their own reasons, but this relationship was not new. The organisations that constituted the Yes campaign were part of the advocates for the referendum in the first place. The relationship is also linked with other professional sectors, not only in the field of medicine, but also in other non-related fields, such as farmers. The capacity of the movement to be open to different sectors played a significant role in the results.

Ireland is an especially democratic country. The involvement of their citizenship in political matters appears to be higher than in other places. The advocates for abortion were aware of such a unique characteristic. The work done by the Abortion Rights Campaign since 2013 and other organisations for several years was part of what made the Together For Yes campaign successful, and this could not have been possible without their previous work, relationships and

[343] Hornik, *Why Can't We Sell Human Rights Like We Sell Soap?*

public trust. The way they conducted this campaign leaves many lessons for future abortion campaigns.

3.5. The Law and Regulations

On May 25, 2018, 64.51% of the voting population in Ireland decided to remove the 8th Amendment.[344] However, the implementation and access has not been fast or easy.

In December 2018, the Health (Regulation of Termination of Pregnancy) Act 2018 was approved:

> An Act to provide for and regulate termination of pregnancy; to make provision for reviews at the instigation of a pregnant woman, or a person on her behalf, of certain medical opinions given in respect of pregnancy; to make available without charge certain services to women for the purpose of termination of pregnancy in accordance with this Act and, for that purpose, to amend the Health Act 1970 and certain other enactments; to provide for offences in respect of the intentional ending of the life of a foetus otherwise than in accordance with this Act; to amend the Bail Act 1997; to repeal the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995, the Protection of Life During Pregnancy Act 2013 and provisions of certain other enactments; and to provide for matters connected therewith.

The law establishes abortion in cases of risk to the life or health of the woman, risk to the life or health of the woman in emergency, conditions likely to lead to the death of the foetus (before birth or in less than 28 days of birth), and early pregnancy. In all cases, the woman must have medical certificates of the conditions (2 doctors) or the weeks of pregnancy (1 doctor).

In the case of pregnancies of less than 12 weeks, in which the woman can freely decide, the doctor must give a certificate of the weeks after which a period of no less than 3 days must pass. After this, the woman can access an abortion as long as it is before 12 weeks have elapsed.

[344] Jon Henley, "Irish abortion referendum: yes wins with 66.4% – as it happened," *The Guardian,* 29 May 2018. https://www.theguardian.com/world/live/2018/may/26/irish-abortion-referendum-result-count-begins-live

The law establishes that the weeks are counted since the woman's last period. The law recognizes conscientious objection and generally says that women who require these processes should be referred to another doctor. Criminalization is maintained for whoever causes a woman to have an abortion outside the law, however this does not apply to the woman in her own pregnancy. This law orders the Health Service Executive to provide the service at no cost to all female residents who require it.[345]

The Institute of Obstetricians and Gynecologists and the Royal College of General Practitioners (RCGP) also produced clinical guidelines. There is a Guide for each of the subjects of the law (Danger to the life and health of women, Incompatibility of the foetus with life, and Early pregnancies). The early termination of pregnancy is the safest for women, so the guide recommends that it be widely available. The Guide deals with all the necessary medical issues and includes a list of 31 medical recommendations, which refers to when to carry out certain tests or not, give medications, and solve certain dilemmas. Of the recommendations there are several that dignify the woman and her experience that are not always present, such as establishing that an ultrasound is not mandatory if the woman is sure of her dates and there is no risk of ectopic pregnancy, and in cases where it is done, women should be asked whether or not they want to see the screen. Recommendation 24 states, "Many women have decided to have a termination of pregnancy before seeking care, and this decision should be respected. A woman should not be compelled to attend mandatory counseling." However, counseling must be widely available and by suitable personnel for any woman who requires it at any stage of her pregnancy or abortion process. The information that must be given in all cases prior to the termination of a pregnancy includes information on what the process is like and what happens after it, what the woman is most

[345] Number 31 of 2018, Health (Regulation of Termination of Pregnancy) Act 2018.

likely to experience, the time it takes, risks and complications, as well as the possibilities for managing pain. For home pill abortions, expert clinical advice should be available 24/7 for women. Many women have questions that must be answered by medical personnel available at any time. All personnel who will be part of the pregnancy termination processes must be trained with scientific evidence. And, from a holistic perspective, training must also address how not to give directive information, separate beliefs and personal values to understand the needs of women, their well-being, among others.

3.6. Experiences of Abortion in Ireland

In 2019, 375 women still traveled from Ireland to have abortions in England. This is 87% less, however it shows that not all women who needed it were able to access the service in Ireland.[346]

Currently there is a state support line to identify an abortion service provider. In addition, the IFPA and other organizations have a number and facilities for the access to service providers and medication.[347] However, Ireland still faces some problems in accessing legal termination of pregnancy.

One of the real barriers to access to legal abortion in Ireland is, as in other countries, the allegation of conscientious objection. No doctor can be forced to perform a voluntary abortion. On this issue, Ireland has identified conscientious providers, doctors who are available to perform the

[346] Órla Ryan, "375 women travelled from Ireland to UK for abortions in 2019 - an 87% decrease on 2018," *TheJournal.ie*, 11 June 2020. https://www.thejournal.ie/how-many-women-travel-from-ireland-to-uk-for-abortions-5120161-Jun2020/
[347] The Irish Family Planning Association (IFPA): https://www.ifpa.ie/get-care/abortion/

procedures,[348] and who must register to provide the service.[349] However, this has meant that the service is not available in all parts of the country, both for community-based abortion care and abortion care provided in hospitals. On this topic, Donnelly and Murray explain that healthcare providers are also experiencing a learning curve because even medical schools have no history of providing pregnancy termination training. Additionally, clinicians who are willing to provide the service are often isolated, surrounded by fellow objectors and as such also discriminated against. With this, conscientious objection has often become obstruction. Anti-abortion groups also maintain their presence in the country and attack service providers as well as try to intercept women in clinics and hospitals,[350] which is why there is now talk of the possibility of having "Exclusion Zones" where anti-abortion protesters cannot bother women and medical personnel. There are also alerts for offers of fake clinics to attract women. This continues to generate a feeling that this is something not allowed for many women, adding to the fact that some must travel to another town where the service is available but still have to wait for the 3 days of reflection period.[351]

3.7. Conclusions

Ireland has a history of very strong direct democracy. The ban on abortion as such was introduced via referendum, so the path for them was always direct reform and a new referendum. The situation

[348] Paul Cullen, "Abortion in Ireland: A guide to how it will work," *The Irish Times*, 16 August 2021. https://www.irishtimes.com/news/health/abortion-in-ireland-a-guide-to-how-it-will-work-1.3724020
[349] Ceylan Yeginsu, "El aborto legal en Irlanda se topa contra viejos obstáculos," *The New York Times En Español*, 30 January 2019. https://www.nytimes.com/es/2019/01/30/espanol/aborto-irlanda.html
[350] Laura Hogan, "Renewed calls for safe access zones near centres providing abortions," *RTE*, 18 February 2019. https://www.rte.ie/news/health/2019/0218/1031284-abortion-services/
[351] Ceylan Yeginsu, "El aborto legal en Irlanda se topa contra viejos obstáculos."

of women who needed to have an abortion also has different peculiarities from those we find in Latin America. Ireland was surrounded by countries where abortion was free.

Ireland presents a very different situation from Latin American countries, including the possibility of traveling or "importing" the pills. In Latin American countries there are no close and really viable alternatives to which women can travel to get an abortion. Only people with high economic resources can accomplish this, which is why it is much more common for clandestine clinics to exist, which still have high costs but not comparable with what a trip would cost, or clandestine clinics with lower costs but which are dangerous in terms of health and risk of death.

The discourse and strategies used by women's groups in the positioning of the issue are an example over time. Some aspects that stand out include: the use of international forums and treaties, the litigation of cases in a diversity of national, universal, regional instances. Each one of the cases gave impetus and new legitimacy to the process of removing the Eighth Amendment.

Some cases litigated or simply exposed in the media in Ireland were especially critical and allowed for the social impulse to find the necessary empathy in the citizenship that would eventually vote for change. Although the cases that resonated most were those of women who could fall into what in other laws are grounds for abortion, the abortion liberation campaign included the so-called pregnancy crises where abortion by request is included, explaining what these pregnancy crises generated in women.

The position was not only for abortion but for sexual and reproductive health, which allowed to attack the stigma and discrimination that occurs around abortion.[352] It was precisely

[352] Cullen and Korolczuk, "Challenging Abortion Stigma."

this approach from rights and with human rights regulations, the request for non-interference in private channels and non-discrimination, that were some of the most important aspects.

As a campaign, it was very different from others in that the direct target was not decision-makers but actual citizens. Empathy, emotion, and the real day to day circumstances of the issue were central points, instead of general ideas or law in the abstract. Rather, it was about presenting women. Two of the messages that seem more powerful to me were that some women you know and love may need your Yes, and that private problems sometimes need public support.

In 2017, common graves of more than 800 babies between 35 weeks and 3 years of age were discovered in Ireland. They were found in a house for single mothers and orphan children that used to be run by Catholic groups. Although this is not an official part of the fight to decriminalize abortion, it cannot be ignored that the horror that it generated in many people also turned them towards accepting abortion as something more humane,[353] compared to the reality of women with a pregnancy crisis.

The legitimacy of the reform by referendum is very high and allows for resources and almost immediate changes, much faster than in other countries, despite the fact that there is still opposition.

In Ireland, the bill was known even before the referendum was held, which is why, as in the case of Uruguay, some political concessions were made. A waiting period was established, although there is no health reason that supports the 3 days of reflection and "the effect in practice

[353] In the year 2017 a mass grave containing the remains of babies and children was discovered at a former Catholic care home in Ireland for unmarried mothers and their children. Allegedly, up to 800 died, with victims between 35 weeks to three years old.

is to fragment and delay the delivery of care."[354] This is not part of the constitutional amendment as such and could be eliminated in a legal reform through the legislative process.

On the other hand, when reading Irish Law, women are practically invisible. The Law does not recognize abortion either as a right or as part of sexual and reproductive health, and it is dedicated to regulating parts of the process and conditioning it. However, the medical guide officially requested by the executive plays an important role in placing women as subjects of rights, recognizing their dignity in their decisions and also providing elements for their protection during the process. This Guide can be a good reference in the recognition of rights in the process, and guaranteeing standards for women, an issue that not many laws speak of.

It is striking not to see specific references to adolescent girls or underage women. Authorizations or autonomy has not been taken into account, which in practice could lead to obstacles.

Although the example of Ireland is encouraging, the social and legal conditions are quite distant from those in countries like Ecuador, and this also raises the question of whether human rights should in fact be a matter of the majority. We do not protect rights because all people are in agreement and, on the contrary, on many occasions the citizenship would surely vote for restricting and violating rights. Therefore, the use of these mechanisms can be very dangerous in relation to the limits of popular power. However, the practices of visibility and introduction of the subject at the social level must be recognized.

[354] Donnelly and Murray.

Chapter 4. Decriminalization of Abortion by Constitutional Court: The Experience of Colombia

One of the paths to liberate abortion is the litigation of unconstitutionality of the provisions that contain the criminalization. Some countries have followed this strategy, sometimes because legislative change is not a real option in States were religion and social and public pressure does not allow it. Mexico[355] and Colombia are examples of at least partial decriminalization of abortion by Constitutional Court. This chapter presents some legal aspects of the initial Ruling of the Colombian Constitutional Court related to the unconstitutionality and the several following rulings that correspond to *tutelas*.[356]

Decriminalization through court rulings was more impactful in the case of the United States, where the historic ruling of *Roe v Wade* in 1973 marked the decriminalization of abortion without grounds but with some conditions in that country. However, the legal system of the United States is far from that of Ecuador, so it is more pertinent to analyze the most recent case of Colombia, with whom Ecuador shares both constitutional and institutional similarities.

4.1. General Information About Colombia

Colombia is a South American country with many similarities to Ecuador in terms of multiculturalism, culture, climate, and natural regions. They are neighboring countries. In relation

[355] More information about Mexico can be found in Beltrán y Puga, "2. La Jurisprudencia Constitucional Sobre El Aborto En México."
[356] In Colombia, a *tutela* is a legal remedy to demand the protection of fundamental constitutional rights.

to their legislation, they also share forms of presidential government and the existence of a Constitutional Court as the maximum guarantor of the constitution and rights.

Colombia is a much larger country than Ecuador and is economically stronger, being the fourth largest economy in Latin America. For approximately sixty years, Colombia has suffered from an armed conflict that has involved the state and other political actors and has affected the entire country.[357] Peace agreements have recently been signed.

The current Constitution of Colombia from 1991 defines it as "a social state of law organized in the form of a unitary, semi-centralized republic, which takes into account in the same way the autonomy of its territorial entities, democratic, participatory and pluralistic. It is based on respect for human rights and nature."[358] In its preamble it establishes that all its actions will be "in defense of reason, truth, science and free thought."[359]

The Criminal Code of Colombia establishes in Chapter Four, Article 122: "Abortion. The woman who causes her abortion or allows another to cause it will incur a prison term of one (1) to three (3) years. To the same sanction will be subject those who, with the consent of the woman, perform the act provided in the previous paragraph."[360] With this provision, abortion or voluntary termination of pregnancy was banned regardless of the will of the woman. The following article

[357] "Colombia: República de Colombia." *Dirección General de Comunicación, Diplomacia Pública y Redes.* http://www.exteriores.gob.es/documents/fichaspais/colombia_ficha%20pais.pdf
[358] Ariculo 1 of the Colombian Constitution.
[359] See full Preamble in note 365.
[360] Translation by the author from Art. 122. Aborto. La mujer que causare su aborto o permitiere que otro se lo cause, incurrirá en prisión de uno (1) a tres (3) años. A la misma sanción estará sujeto quien, con el consentimiento de la mujer, realice la conducta prevista en el inciso anterior.

(123) invalidates the possibility of a woman under fourteen years to give consent for an abortion and puts in on the same level as an abortion without consent.[361]

Finally, Article 124 provides some attenuations to the previous crime: "The penalty indicated for the crime of abortion will be reduced by three-quarters when the pregnancy is the result of conduct constituting sexual intercourse without consent, abusive, artificial insemination or transfer of fertilized ovule without consent."[362]

Unconstitutionality is a remedy in the Colombian Constitution that allows people to challenge the constitutionality of a law, statute, act, or any provision that contradicts the Constitution; it does not need a direct victim. On the other hand, a *tutela* is the remedy that allows victims to protect their rights. In this case, Colombia made an initial ruling regarding constitutionality in 2006, after which there were several cases of people affected in different ways regarding the rights granted by the ruling, for which several *tutelas* were enforced.

The decriminalization of abortion in Colombia has more than 30 years in the legal and political panorama of that country and, although the historical milestone is marked by the ruling of the Constitutional Court C-355 of 2006, it is important to highlight the different stages and

[361] Article 123.— Abortion without consent. The one who causes the abortion without the consent of the woman or in a woman under the age of fourteen years will incur a prison term of four (4) to ten (10) years. (Translation by the author). Art. 123.— Aborto sin consentimiento. El que causare el aborto sin consentimiento de la mujer o en mujer menor de catorce años, incurrirá en prisión de cuatro (4) a diez (10) años.

[362] Art. 124.— Circunstancias de atenuación punitiva. La pena señalada para el delito de aborto se disminuirá en las tres cuartas partes cuando el embarazo sea resultado de una conducta constitutiva de acceso carnal o acto sexual sin consentimiento, abusivo, de inseminación artificial o transferencia de óvulo fecundado no consentidas.
PAR.— En los eventos del inciso anterior, cuando se realice el aborto en extraordinarias condiciones anormales de motivación, el funcionario judicial podrá prescindir de la pena cuando ella no resulte necesaria en el caso concreto.

processes that previously took place in the framework of the fight for the defense of women's rights and that, after the aforementioned ruling, have continued to be carried out. Decriminalization in Colombia is not total, that is, it is not decriminalized solely by will of the woman. However, the progress made is considerable.

4.2. History of Abortion in Colombia

In the 1970s, the struggle of feminist movements in Colombia experienced a new awakening, after having exhausted a first stage, characterized by the struggle for the right to vote for women. With more force in the cities of Cali, Medellín and Bogotá, women's groups were formed around self-awareness and reflections on the body. This awakening of feminist groups coincided worldwide with the second wave of feminism that began in 1968 and that, unlike the first wave, no longer simply expressed ideals of equality with respect to men, but also incorporated the concept of difference, which supposes the recognition of differences with respect to men but demands equal opportunities.

At that time, feminism was not defined as a social movement, but rather its activities revolved around self-awareness. "There were no networks, only groups of friends who talked about the body, about discrimination…"[363]

It was at the beginning of the government of Julio César Turbay Ayala, who was president between 1978 and 1982, that the feminist movement joined the International Socialist League, "For the right to abortion, contraception and against forced sterilizations: women decide." As part of this campaign, a series of public events were held to discuss the issue and a march for abortion

[363] Interview with Beatriz Quintero, in *La Mesa por la Vida y Salud de las Mujeres*, 2009

rights. Thus, the feminist movement in Colombia supported the initiative to regulate abortion that, in principle, senator Iván López Botero was going to present before Congress and was later resumed by representative Consuelo Lleras.

This issue also led to support for a campaign for the right to abortion, which led to a massive worldwide demonstration on March 31, 1979. Campaign documents were distributed, videos were presented, various meetings, exchanges and rallies were held, etc. On November 23, 1979, there was a rally for free abortion on demand in the Plaza de las Nieves in Bogotá that was repressed by the public force, and during the march, slogans such as "contraceptives so we don't abort, free abortion so we don't die," and "we fight for better living conditions, our fight is for life" were used. The Bogotá Women's Collective, the Women's Commission of the Socialist Workers Party, the Women's Commission of the Revolutionary Socialist Party, the publication My Body is Mine, the Broad Front of Women, the Women's Circle, the *Firmes* Movement, the Union of Democratic Women of Colombia (UMDC), FENALTRASE, CSTC, the Revolutionary Communist League, the María Cano Trade Union Institute and dozens of independent women and men, as they called themselves, participated.[364]

Then, in the 1980s, feminist abortion services emerged. These centers were created in various parts of the country and due to their illegality, in some cases they did not take a public stance for the defense of the decriminalization of abortion, but instead focused their efforts on the training of women, especially around autonomy and their right to decide about their body. At this time, in addition, the approach to abortion began as a public health problem and as a threat to the lives of the poorest women.

[364] *La Mesa por la Vida y Salud de las Mujeres*, 2009.

At this time, the First Latin American and Caribbean Feminist Encounter stands out, organized by feminist groups, with the participation of 300 women from different parts of the continent, whose discussion focused on sexuality, abortion and sexual option on the one hand, and on the other, on the double militancy and the class struggle; the two thematic axes that marked the 1980s. In addition, November 25 was defined as the day of non-violence against women and progress was made in the decision to continue with these spaces for reflection around the continent.

The 1980s allowed the women's movement to make political issues that were traditionally considered private. The problem of violence against women became the central focus of the movement's actions, and the motto of Chilean feminists, "democracy in the country and at home," was reproduced in different Latin American contexts. Colombia ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), under Law 051 of 81, thus incorporating the main international instrument on women's rights into its domestic legislation. The claims of the right to decide on the body by women's groups addressed issues such as the decriminalization of abortion. Birth control, sexual pleasure, and freedoms associated with civil and political rights also continued to be demanded. However, in the 1980s, the groups began to specialize in different topics and there was a fragmentation in the women's movement that also took place in other countries in the continent. Difficulties in generating joint advocacy proposals in the State became evident due to the tensions of double militancy, internal political situations and the fact that for an important group of feminists, the State, by reproducing the patriarchal system, should not intervene since its transformation was not possible. A total cultural transformation had to be achieved. Added to these tensions were discussions associated with representation in political settings. All these issues, added to the preeminence of the problem

of violence and the specialization of women's NGOs, made the demand for the decriminalization of abortion continue to focus on legal reform.[365]

In the 1990s, the women's social movement saw in the 1991 Constituent Assembly an opportunity to include the gender perspective in State affairs by demanding that the principles of the Convention on the Elimination of All Forms of Discrimination against Women obtained constitutional status. Thus, the Women and Constituent Network was formed, made up of ten organizations from six cities in the country, with the purpose of presenting the demands of women that should be included in the new constitutional text. In less than two weeks, ninety groups of women joined the Network. Among the topics proposed by the women were: the autonomy of women to decide on their maternity, social security and rights related to sexual and reproductive health, among others. In addition, efforts were made so that the right to life was not enshrined from the moment of conception and, on the other hand, the right to free choice of motherhood was enshrined.

Finally, the 1991 Constitution guaranteed important rights for women by guaranteeing the principle of equality and non-discrimination, as well as strengthening the constitutional block with the recognition of the hierarchy of international human rights treaties and conventions. This block of constitutionality, as part of a new wave of constitutionalism in the region, allows the incorporation of international treaties with constitutional rank.[366]

Additionally, it is worth mentioning the international and regional context of the struggles of the women's movement. The fact that Latin American and Caribbean feminists proposed

[365] Ibid.
[366] Undurraga and Cook, "Constitutional Incorporation of International and Comparative Human Rights Law," 224.

September 28 as the day for the decriminalization of abortion is highlighted, which served as a platform to launch the campaign for the decriminalization of abortion in Latin America and the Caribbean. Colombian women's organizations joined the campaign in 1996 and formed the National Network for Sexual and Reproductive Rights (Rederdex), which promoted the total decriminalization of abortion.

Also, at the international level, the United Nations Organization held important international conferences that dealt with the problem of sexual and reproductive rights. These conferences ratified what was established in the Human Rights Conference held in Vienna (1993), in which it was recognized for the first time that women's rights are human rights and that the State must guarantee them.

Colombia adhered to the commitments of the Third Conference on Population and Development held in Cairo in 1994 and the Fourth World Conference on Women held in Beijing in 1995, with special emphasis on the issue of sexual and reproductive rights, where one of the points was to consider abortion as a public health problem.

It is also worth mentioning, in this context, the observations submitted by international human rights organizations, regarding the criminalization of abortion in Colombia and the consequent violation of women's human rights, health and life.

Several authors point out that, despite all the possibilities that the first years of the 90s presented for women's rights, both in terms of public policies and regulations, the demands of women in Colombia focused on the problems of violence and political participation, leaving in the background the claims around the decriminalization of abortion.

However, discussions around abortion continued, both in the women's movement and in academia, and thus *La Mesa por la Vida y Salud de las Mujeres* [Board for Women's Life and Health] was formed, which, in 1998, developed an advocacy strategy aimed at guaranteeing comprehensive care in matters of sexual and reproductive health for women. *La Mesa* was consolidated as a permanent space for discussion and participation in the different scenarios in which the issue was debated, accompanying both the actions at the legislative level and in the Constitutional Court.

In the framework of Beijing+5, the government of President Andrés Pastrana made the following statement:

> Faced with the pain suffered by the Colombian people due to the generalized violence, we have an unequivocal commitment to the right to life. Therefore, we strongly reject any action that constitutes a threat to it, including induced abortion. The right to life is a supreme right enshrined in our political charter and ratified by our legislation.[367]

With this declaration, the government at that time expressed its position against starting a debate in the country that would lead to the decriminalization of abortion. However, from other state bodies, such as the Ombudsman's Office, this debate was promoted, and was treated as a public health problem.

In 2003, the Ministry of Social Protection produced the National Policy on Sexual and Reproductive Health, incorporating the commitments acquired by Colombia in international human rights agreements and in world conferences, adopting actions on sexual and reproductive health within the framework of human rights.

[367] *La Mesa por la Vida y Salud de las Mujeres*, 2009.

Towards the middle of 2004, *La Mesa por la Vida y Salud de las Mujeres* was the first stage in which the possibility of decriminalizing abortion through the constitution was debated. In a presentation made to the plenary of *La Mesa*, a high-impact strategic litigation process began to liberalize abortion in Colombia through a lawsuit before the Constitutional Court led by Mónica Roa, Director of the organization *Women's Link Worldwide*.

The lawsuit argued that the criminalization of abortion when the life or health of the woman is in danger, when the pregnancy is the result of rape and/or when there is a serious malformation of the fetus incompatible with extra-uterine life violates the right to equality and non-discrimination, the right to life, health and physical integrity, and the right to dignity, reproductive autonomy and free development of the personality.

This is how the *LAICIA: Litigio de Alto Impacto en Colombia: la Inconstitucionalidad del Aborto* [High Impact Litigation in Colombia: The Unconstitutionality of Abortion] project was born. It was consolidated as a network of alliances with interest groups to strengthen the lawsuit filed before the Constitutional Court, with a comprehensive strategy that included a communications element so that the problem of abortion could be approached as a matter of public health, gender equality, and social justice.

4.3. Process Towards the Decriminalization of Abortion

In Colombia, before the enforcement of ruling C-355 of 2006, four legal reforms related to the crime of abortion were identified that emerged in the years 1890, 1936, 1980, and 2000.

The Penal Codes of 1837 and 1890 established prison sentences for those who, through violence, tried to make a pregnant woman abort without her consent (articles 368, 1890) and the

penalty was different when the abortion was consummated. Then, in the Penal Code of 1936, the general elements of the modern classification of the crime were introduced, thus, the crime of consensual abortion was criminalized when the woman caused it or allowed another to cause it. Non-consensual abortion was also criminalized (article 389) and a punitive reduction was established for the so-called *honoris causa* abortion. The punishment was both for the woman who consented to it and for the person who produced it. In this Code, abortion was punishable by one to four years in prison for women who caused or allowed another to cause an abortion and, when the abortion had been caused to save the honor of the mother, the woman, the descendant, adopted daughter or sister, the sanction could be reduced to two thirds, or a judicial pardon could be granted.

In 1975, coinciding with the year of the First Women's Conference organized by the United Nations, the first bill to decriminalize abortion was presented. Its purpose was to regulate "the therapeutic interruption of pregnancy in Colombia." Said bill, authored by liberal senator Iván López Botero, sought to regulate the therapeutic interruption of pregnancy within a time limit of twelve weeks. It proposed the surgical interruption for married or single women carried out by the medical authority or hospital of their residence when the following situations occurred: the danger to the life and health of the mother was established or the "scientifically founded" possibility that "the child that is about to be born" had a disease or genetic injury recognized as incurable at the time of diagnosis, after the opinion of two doctors.[368]

Some of the demands made included: that one of the doctors who gave the authorization work in a hospital in the public sector; that the woman who requested it was under 45 years of age

[368] Ibid.

and over 15 and that she had not had an interruption of pregnancy in the last twelve months. It is noteworthy that this bill proposed that in cases where the mother was married, she needed the authorization of the husband and, if she was single and a minor, she had to present the authorization of the person exercising parental authority. Finally, it considered that the voluntary interruption of pregnancy should not constitute a practice of regulation of births or birth control and emphasized the obligation of official health centers to inform, advise and help women who came to request a termination of pregnancy. This project was not approved.[369]

Likewise, in 1979 a new project for the partial decriminalization of abortion was presented by the representative of the liberal party, Consuelo Lleras, which aimed to protect "the health and life of women living in Colombia." This project indicated the twelve weeks of gestation as the time limit for the interruption and proposed the decriminalization in cases in which the pregnancy was a consequence of violent or abusive carnal access, when it presented a danger to the woman's life or to her physical and mental health, or when there was malformation or pathological processes in the fetus. It established that the first cause had to be summarily proven before a judge and that a medical opinion was sufficient for the other two causes.

Like the 1975 bill, the 1979 bill stipulated that for the application of the procedure, in cases in which the woman was married, this should be done jointly with the husband and that, in the cases of women under 16 years of age, the request would be made by the legal representative. In both cases, it stated that, if the husband or legal representative refused, the judge would be in charge of resolving the situation. It also stated that the procedure had to be performed in public hospitals or authorized sites. Likewise, it emphasized that it was not an instrument for birth control.

[369] *La Mesa por la Vida y Salud de las Mujeres*, 2009.

In the explanatory memorandum, the author pointed out abortion as a social problem that affects the poorest women, as well as highlighted the problems associated with clandestine circumstances and the risk to women's lives. However, it did not leave the decision only to the woman and her doctor, and it did not use the concepts of women's liberation either, but sought the modernization of the law. In short, it argued that the goal was to ensure that "underprivileged women" had access to responsible medical care in the event of abortion. This project was supported by ninety members of parliament, but it was not approved.[370]

Subsequently, in the 1980 Penal Code, the so-called *honoris causa* abortion was eliminated and a punitive mitigation was introduced for abortion when the pregnancy was the result of violent, abusive carnal access or non-consensual artificial insemination (Article 328). In this norm, the penalties were reduced to one to three years (article 343) and by including, in addition, specific circumstances (such as violent carnal access), the sentence was also reduced to four months up to one year.

In July 1987 a new bill for the decriminalization of abortion was presented by the liberal senator Eduardo Romo Rosero. The project sought the partial legalization of abortion in cases of danger to the life and physical and mental health of women, when the pregnancy was the result of rape, violent carnal access or non-consensual artificial insemination, due to physical or mental defects or defects of the fetus, and when the woman was a drug addict with physical problems. Then, in 1989, another liberal senator, Emilio Urrea, presented a new bill for the legalization of abortion with a maximum term of ninety days in cases of serious danger to the physical and mental health of women, in relation to their health status, economic, social or family conditions, the

[370] Ibid.

circumstances in which the conception occurred, or provisions of anomalies or deformations of the conceived.

To carry out the abortion, the woman required a medical consultation from the public or private sector. The doctor had to issue a document declaring the status of the pregnancy and the request for interruption, which also had to be signed by the woman. In said document, the woman would be invited to desist from her purpose for seven days. After this time had elapsed, the procedure could be carried out. Additionally, the project contemplated the reorganization of the health system in order to coordinate the performance of the procedures and consolidate the information systems. This project was not approved.[371]

In 1993, representative Ana García de Pechtalt filed a bill in Congress in which "the rights of women were defined and protected and the voluntary interruption of the gestation period was decriminalized."[372] This project stipulated a period of ninety days to guarantee the right of every woman to voluntarily interrupt pregnancy in cases of danger to the physical or mental health of the woman, due to the socioeconomic conditions of the woman, or in the circumstances of attack on women's sexual freedom, non-consensual artificial insemination, and knowledge of anomalies, malformations or diseases such as AIDS in the conceived. The project was based on the country's maternal mortality data, the conditions of clandestine abortion, and made reference to the concept of public health as well as the concept of human life and quality of life.

In that same year, Senator Vera Grave of the M-19 Democratic Alliance presented another initiative: the bill "by which the constitutional rights to the protection and free choice of

[371] Ibid.
[372] Ibid.

motherhood and the protection of children under one year are outlined." This project proposed that in exercise of the right to decide the number of children that one wishes to procreate, the woman could opt for the voluntary interruption of the gestation period up until the first ninety days had elapsed, when the conception was a consequence of the crime of rape or non-consensual artificial insemination. In the first case, the crime had to be reported. It also considered as causes the serious threat to the life or health of the pregnant woman and serious physical or mental malformations, for which a medical opinion was required. The procedure would be in charge of public and private health centers.

In 1995, Senator Piedad Córdoba presented Bill 43/95 "through which rules on reproductive health are dictated." In this project, although the themes of the full realization of sexual and reproductive life, the free choice of motherhood/fatherhood and voluntary and responsible planning were developed, an article that directly sought to decriminalize abortion was not incorporated. Later, in the 1997 bill, Senator Córdoba once again proposed the decriminalization of abortion for specific reasons such as violent carnal access, non-consensual insemination, or danger of the mother's life. These projects were not approved.

By the end of the 90s, during the process of reforming the Criminal Code of 1998, Senator Margarita Londoño presented some suggestions regarding articles 123, 124 and 125 that criminalize abortion. The article proposed, in relation to the circumstances for exempting responsibility, that the criminal action:

> […] would not proceed in the circumstances of pregnancy as a result of carnal access without consent, abusive, artificial insemination or transfer of non-consensual ovum; medical or genetic pathologies in the fetus incompatible with human life; danger to the life of the woman and when the psychological or socio-economic conditions of the woman endanger her physical or psychological health, causing intense suffering or serious

> permanent ailments difficult to bear because they degrade her life as a woman and violate her fundamental rights.[373]

At that same time, the Office of the Attorney General of the Nation also presented a reform to article 125 on the circumstances of punitive mitigation, in order that the penalty for the crime of abortion would be reduced by three-quarters when it occurred in any of the following circumstances: "(…) that the pregnancy is the result of a conduct that constitutes carnal access without consent, abusive, of artificial insemination or transfer of non-consensual fertilized ovum and in the cases in which medical or genetic pathologies are established in the foetus of such gravity that they are incompatible with human life."

Then came the legal reform of the year 2000. In this year's Penal Code, the general features of the criminalization and mitigation of the crime were maintained, but the judicial official was empowered to dispense with the penalty.

In 2002, Senator Piedad Córdoba again presented a bill "by which regulations on sexual and reproductive health are dictated." The project included an extensive explanatory statement based on international human rights law adopted by the Colombian State and on data on world legislation on abortion and made use of the jurisprudence of the Constitutional Court.

Parallel to the discussion in the legislative body, the Constitutional Court had also issued criteria regarding abortion. By that time, it had ruled on several occasions recognizing that the unborn is the holder of the right to life. For example, they did so in ruling C-133 of 1994. Three magistrates opposed this ruling of the Constitutional Court, whose dissenting opinion caused an interesting controversy that highlighted the need to promote amongst public opinion a serious

[373] Draft law to reform the Criminal Code of 1998, articles 123, 124 and 125 that criminalized abortion, presented by Senator Margarita Londoño. In *La Mesa por la Vida y Salud de las Mujeres*, 2009.

debate on the subject. The opposing magistrates argued that there was no basis for equating the unborn with a human person and, therefore, confusing the protection of life with the fundamental right to life.

In 1995 another lawsuit was filed with the Constitutional Court in which it was proposed to reinforce the provisions of the Civil Code with respect to the legal existence of the person from the moment they are detached from the mother, the protection of the unborn, and the rights of the unborn that are assigned only from birth. The recognition of the born child as a person was retaken from the Civil Code, as well as the fact that from that moment the quality of subject of rights was granted. The Constitutional Court in its judgment C-591 of 1995 affirmed the norms of the Civil Code that grant legal existence to the person from the moment they "detached from the mother" and those that provide that the rights of the unborn be deferred. It affirmed that the legal existence of the subjects begins at the moment of birth, but that life begins from conception.

Likewise, in 1997 a third judgment C-013 of 1997 was issued in which the Court decided that the accused norms that establish circumstances of mitigation of the penalty for the crime of abortion when the pregnancy has been produced by "violent carnal access" did not in any way violate the Constitution, since the legislator is free to establish the graduations of sentences. Likewise, the Court considered the low level of sanctions provided for this type of crime to be adjusted because the antecedents of pregnancy in these cases have been violence or deception and, consequently, the Court declared the constitutionality of the norms. This criterion was ratified in judgment C-213 of 1997.

Two new lawsuits were filed in 2001. In the first one, the plaintiff argued that article 118 of the Penal Code on pre-intentional childbirth or abortion, a norm that penalizes abortion caused

by an inferred injury, violates the right to equality by establishing that the penalties attributed to it increase by one-third to one-half, unlike those attributed to the actions described in article 105 of the Penal Code, pre-intentional homicide.

In this regard, the Constitutional Court declared the constitutionality of the norm that sanctions pre-intentional childbirth or abortion, considering that the configuration power attributed to the legislator in criminal matters not only allows this conduct to be punished more severely without exceeding the criteria of reasonableness and proportionality, but also that, in the case, regarding the comparison raised by the plaintiff (pre-intentional childbirth or abortion versus pre-intentional homicide), no violation of article 13 of the Constitution is glimpsed as they are crimes with different violated elements and legal rights, without the denomination of pre-intentional behavior indicated in both cases contradicting this circumstance. On this occasion, the Court ratified the constitutionality of the norm that allows the judge not to sanction the conduct of abortion when the pregnancy is the result of a violent carnal access, of involuntary artificial insemination or of the transfer of a fertilized ovum without consent.

Later, in 2002, a demand was again presented for the Court to desist from the paragraph that mitigates the penalties at the discretion of the judge for whoever commits an abortion when the pregnancy is the result of violent carnal access, or non-consensual artificial insemination or fertilized egg transfer. However, the Court considered that there was already *res judicata* relative to the defendant and decided to abide in that regard to what was decided in judgment C-647-01 in which the constitutionality of the article was declared.

4.4. Ruling C-355

In 2005, three complaints about the constitutionality of the articles mentioned above had reached the Colombian Constitutional Court. The Court decided to combine the cases.

The petitioner alleged that the Criminal Code, through the articles regarding abortion, violated several rights in the Constitution: the right to dignity, reproductive autonomy, free development of personality, privacy, non-discrimination and equality, free determination, health, integrity, the right to be free of cruel, inhuman, and degrading treatments, and the obligations of

the State regarding international human rights laws. (Preamble[374] and Articles 1[375], 11[376], 12[377], 13[378] 15[379], 16,[380]42[381] 43,[382] 49[383], 93[384]).

[374] PREAMBLE: The people of Colombia, in the exercise of their sovereign power, represented by their delegates to the National Constituent Assembly, invoking the protection of God, and in order to strengthen the unity of the nation and ensure to its members life, peaceful coexistence, work, justice, equality, understanding, freedom, and peace within a legal, democratic, and participatory framework that may guarantee a just political, economic, and social order and committed to promote the integration of the Latin American community, decree, authorize, and promulgate the following:

[375] Art 1. Colombia is a social state under the rule of law, organized in the form of a unitary republic, decentralized, with autonomy of its territorial units, democratic, participatory, and pluralistic, based on the respect of human dignity, the work and solidarity of the individuals who belong to it, and the prevalence of the general interest.

[376] Art 11The right to life is inviolate. There shall be no death penalty.

[377] Art 12 No one shall be subjected to forced sequestration, torture, cruel, inhuman, or degrading treatment or punishment.

[378] Art 13 All individuals are born free and equal before the law, shall receive equal protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination on account of gender, race, national or family origin, language, religion, political opinion, or philosophy.

The State shall promote the conditions so that equality may be real and effective and shall adopt measures in favour of groups that are discriminated against or marginalised.

The State shall especially protect those individuals who on account of their economic, physical, or mental condition are in obviously vulnerable circumstances and shall sanction the abuses or ill-treatment perpetrated against them.

[379] Art 15. All individuals have the right to personal and family privacy and their good reputation, and the State has to respect them and to make others respect them. […]

[380] Art 16. All individuals are entitled to the unrestricted development of their identity without limitations other than those imposed by the rights of others and the legal order.

[381] Art 42. The family is the essential nucleus of society. It is formed on the basis of natural or legal ties, through the free decision of a man and woman to contract matrimony or through the responsible resolve to comply with it.

The state and society guarantee the integral protection of the family. […] The family's honour, dignity, and intimacy are inviolable.

Family relations are based on the equality of rights and duties of the couple and the reciprocal respect of all its members. […]

[382] Art 43. Women and men have equal rights and opportunities. Women cannot be subjected to any kind of discrimination. During their periods of pregnancy and following delivery, women shall benefit from the special assistance and protection of the State and shall receive from the latter food subsidies if they should after that find themselves unemployed or abandoned.

The State shall support the female head of a household in a particular way

[383] Art 49 Public health and environmental protection are public services for which the State is responsible. All individuals are guaranteed access to services that promote, protect, and restore health.

It is the responsibility of the State to organize, direct, and regulate the provision of health services to the inhabitants and of environmental protection in accordance with the principles of efficiency, universality, and solidarity; in addition, to establish policies for the provision of health services by private entities and to exercise oversight and control over them; and to establish the competences of the nation, territorial

During the process, the Court heard the applicants, government institutions such as the Colombian Institute of Welfare and Family and the Ombudsman, but also listened to hundreds of citizens who expressed their views regarding their rights as individuals or as representatives of other groups. There were about twenty interventions in favor of the declaration of unconstitutionality, but over one hundred were presented in favour of criminalisation, several of them containing the signature of at least seven hundred citizens.[385]

In their submissions, the Colombian Institute of Welfare and Family and the Ministry of Social Protection stated that abortion is a problem of public health and that the most vulnerable are poor and adolescent women.

To reach the ruling, this high-impact strategy was joined by the Ministry of Social Protection and the Center for Reproductive Rights, various organizations such as Catholics for the Right to Decide, in addition to scientists such as the Bioethics Committee of the National University of Colombia and the Colombian Federation of Obstetric Societies.

In the project to decriminalize abortion in Colombia, led by the NGO Women's Link Worldwide, the strategy of modifying the public discourse on abortion had a preponderant importance and implied an active assemblage on the part of this organization and numerous allies. The great difficulties encountered in achieving decriminalization have many times led the feminist movement to the conclusion that the defense of the decriminalization of abortion is neither tactical

entities, and individuals, and to determine the subsidies to their tasks in the terms and conditions established by statute. […]

[384] Art 93 International treaties and agreements ratified by Congress that recognise human rights and prohibit their limitation in states of emergency have domestic priority.
The rights and duties mentioned in this Charter shall be interpreted in accordance with international treaties on human rights ratified by Colombia. […]

[385] Ruling C-355/06.

nor strategic, since it generates a very negative and counterproductive symbolic mark at the political level.[386] This led to questions about which were the best strategies used by Women's Link Worldwide throughout the lawsuit process that resulted in ruling C-355 of 2006.

Authors Isabel Jaramillo Sierra and Tatiana Alfonso (2008) argue that there was a high-impact litigation strategy that began in January 2005 and culminated in May 2006 with the ruling of the Court. To them, this case had a local and regional impact since, for the first time, the decriminalization of abortion as a cause of the feminist movement was the subject of public debate, including the media and academia.

The lawsuit was named LAICIA, *Litigio de alto impacto en Colombia: la inconstitucionalidad del aborto* [High Impact Litigation in Colombia: the Unconstitutionality of Abortion] and it transformed the assumptions of social movements in Colombia, such as that the media are against feminist claims due to their ideological biases, that the stages of the transformation are the Congress, the public administration entities and the social bases, and that the high courts do not have a relevant role in important social reforms for women. For this, the work undertaken had, from the beginning, a strategic approach that observed both the risks and the opportunities, analyzing the resonance of the different circulating arguments both in the constitutional debate and in the media. In this sense, what the authors call a shift towards legal mobilization means putting the different legal instruments at the service of the agenda of social movements.[387]

[386] "10 años de la despenalización parcial del aborto en Colombia."
[387] Jaramillo and Alfonso, 2008.

In summary, the LAICIA project was accompanied by a legal strategy that positioned international human rights law, generated various alliances, and maintained a communication tactic that involved raising awareness, launching a campaign, maintaining it, and the effects after the ruling.

The communication and awareness campaign was marked by key messages, the use of a database of journalists, distributing medical information to the press, public health statistics, international standards on women's human rights, and monitoring of media publications.[388]

Thus, on May 10, 2006, the Constitutional Court of Colombia, through judgment C-355, reported the result of the unconstitutionality claim of articles 122, 123, 124 and numeral 7 of Law 599 of 2000 of the Penal Code, that criminalized abortion in all cases.

In a judicial decision that constitutes a milestone in the fight for women's rights, it decriminalized abortion in three circumstances: (i) when the continuation of the pregnancy constitutes a danger to the life or health of the woman, certified by a doctor; (ii) when there is a serious malformation of the fetus that makes its life unviable, certified by a doctor, and (iii) when the pregnancy is the result of a conduct, duly reported, constituting carnal access or abusive sexual act or artificial insemination without consent, or non-consensual egg transfer or incest.[389]

[388] Ibid.
[389] Ruling C-355/06.

This ruling included the interventions of numerous Colombian and foreign citizens, as well as State organizations and civil society, and a presentation with a favorable view towards decriminalization of then Attorney General of the Nation, Edgardo Maya.[390]

The Court focused the ruling on debates such as: the constitutionality block, of which international treaties are part; the collision and balance between the duty to protect life and the other rights established by the Colombian constitutional bloc; and, the fundamental rights of wome. It also focused on defining the status of prenatal life. In the ruling, the Court affirms that the 1991 Constitution establishes the duty to initiate positive actions in order to protect life as a constitutional value, but that not all the laws that have this objective are justified because it is not a value or a law in absolute terms and therefore must be weighed with other assets equally protected by the constitutional order, as well as with the fundamental rights established therein.[391]

The ruling indicates that the right to life assumes the existence of a person who exercises it and does not give this ownership to the embryo or fetus, while life protection is also given to those who have not reached this condition. Therefore, although the fetus is protected by the Constitution, it is not protected to the same extent as born persons. In this sense, the Court argued that, although the life of the unborn child is protected by law, in cases where this protection collides with the rights of a person, it cannot be preponderant.[392]

[390] Yira Lazala, "10 años de la despenalización parcial del aborto en Colombia," paper presented during the conference *La criminalización de las mujeres en América Latina*, Geneva, Switzerland, March 2017. Accessed 31 July 2021. https://ridh.org/news/10-anos-de-la-despenalizacion-parcial-del-aborto-en-colombia/#:~:text=Un%20hito%20hist%C3%B3rico%20lo%20marca,la%20salud%20de%20la%20mujer
[391] Ibid.
[392] Ruling C-355/06 paragraph 5.

The Court considered that the State's fundamental duty is to protect human dignity, which includes the autonomy of individuals and the minimum conditions for their existence and the right to live free from humiliation, which is why this is the limit of criminal law. It also argued that the measures that the legislative body has adopted to protect certain constitutionally relevant values may be disproportionate to the extent that they violate fundamental rights. In addition, it appealed to the principle of proportionality, which establishes that legislative measures of criminal law cannot disproportionately restrict fundamental rights, impose models of conduct, force people to renounce their rights in favor of the general interest, or privilege the position of other assets under protection. Thus, it indicates that it is necessary to carry out a proportionality examination of the provisions of Colombian criminal law regarding abortion in order to establish whether or not they disproportionately affect the rights of women.[393]

Regarding dignity, the court has stated that:

> [In] cases in which human dignity is used argumentatively as a relevant criterion for deciding, it is understood that it protects: (i) the autonomy or possibility of designing a life plan and of being self-determined according to one's characteristics (live according to one's choice), (ii) certain concrete material conditions of existence (living well), (iii) the intangibility of non-patrimonial assets, physical integrity and moral integrity (living without humiliation)."[394]

With this reasoning, the Court establishes that women cannot be treated as a reproductive instrument and that the legislation should not impose a procreative role on women if this is not their will, so the absolute prohibition of abortion and its criminalization does not respect the dignity of women.[395]

[393] Ruling C-355/06 at 9.4.
[394] Undurraga and Cook, "Constitutional Incorporation of International and Comparative Human Rights Law," para. 8.1.
[395] Undurraga and Cook.

The 2006 ruling gave rise to new causes related to abortion, which were also resolved in rulings. Below is a summary of them:[396]

- Ruling T-171/2007: This ruling reiterates the duty of judicial and health entities to protect the right to voluntary interruption of pregnancy (of a woman who presents a pregnancy with a serious malformation of the fetus that makes life outside the uterus unviable).
- Ruling T-636/2007: This judgment reiterates the protection of the constitutional right to health by action of *tutelas* (legal instrument for the immediate protection of fundamental rights) and clarifies that the right to diagnosis is part of it.

- Ruling T-988/2007: This judgment reiterates the right to voluntary interruption of pregnancy for the cause of rape for a woman with a disability, prevented from expressing her will. Defining that in any circumstance one must act for her benefit in accordance with Article 13 of the National Constitution and Ruling C-355 of 2006.
- Ruling T-209/2008: This ruling defines the conditions to appeal to conscientious objection as applied individually by a doctor, who will only be able to make use of it if they guarantee an effective referral for the provision of the voluntary interruption of pregnancy service to another competent professional.
- Ruling T-946/2008: This judgment reiterates that the only requirement to access the right of voluntary interruption of pregnancy in the event of rape, incest or non-consensual artificial insemination is the report of the fact and considers any other requirement as a barrier to access to women's sexual and reproductive rights.

[396] Taken from the Gender Equality Observatory of Latin America and the Caribbean (s.f.).

- Ruling T-009/2009: It establishes that the right to human dignity is violated if the autonomy of a woman is not respected to make the decision of voluntary interruption of pregnancy and emphasizes that the woman involved is the only person who can decide in this regard.
- Ruling T-388/2009: This judgment reiterates that the health causal does not refer only to physical health, certified by a doctor, but also to the affectation of mental health certified by a professional of psychology. In addition, it orders the implementation of massive educational processes on sexual health and reproductive rights.
- Ruling T-585/2010: Establishes that sexual and reproductive rights, including the voluntary interruption of pregnancy, are part of the fundamental rights recognized in the 1991 Constitution.
- Ruling T-636/2011: Establishes the responsibility of the Health Promoting Entities to evaluate whether the voluntary interruption of pregnancy is appropriate in each specific case under scientific criteria and in compliance with jurisprudence.
- Ruling T-841/2011: Establishes that the risk to the mental health of women is sufficient reason to carry out a voluntary interruption of pregnancy. A period of 5 days is reiterated for Health Promoting Entities to respond to the requests and carry out the procedures in the cases in which it is permitted.

Parallel to the issuance of the aforementioned rulings, there are also secondary normative instruments that are worth mentioning, among them are:

- Resolution 4905 of the Technical Standard (2006) of the Ministry of Health and Social Protection, by which the Technical Standard for Voluntary Termination of Pregnancy (2006) is adopted, which establishes characteristics of the service (coding of procedures,

admission of the pregnant woman, advice, information, informed consent), procedures and methods of voluntary interruption of pregnancy and follow-up.

- Agreement 350 (2006) of the National Council for Social Security in Health (CNSSS), which includes care for voluntary interruption of pregnancy in the Compulsory Health Plan of the Contributory Regime and the Subsidized Regime.
- Circular 031 (2007) of the Ministry of Health and Social Protection to departmental and district health directors, managers of entities, instructions for the collection of information on the provision of safe services of voluntary interruption of pregnancy, not constituting the crime of abortion.

4.5. Experience of abortion in Colombia

In the period between 2006 and 2017, the Congress of the Republic discussed 37 bills related to abortion and reproductive autonomy: 51% of them in the first period, 35% in the second, and 14% in the third. This reflects a significant decline in the interest of congressmen to legislate on the matter. Throughout the three Congresses elected in that period, there is a significant decrease in projects that directly addressed measures against abortion. Hence, it follows that between 2014 and 2017 the environment for debate was more favorable (*La Mesa por la Vida y Salud de las Mujeres*, 2019).

In 2020, the highest constitutional court refused to rule on a proposal to legalize abortion during the first 16 weeks of gestation. Six magistrates voted in favor of refusing, against three, who abstained from voting.[397] The arguments of the president of the court, Alberto Rojas, were

[397] "Aborto en Colombia: Corte Constitucional se inhibe y deja la ley de interrupción del embarazo tal y como estaba," BBC News Mundo. Accessed July 30 2021. https://www.bbc.com/mundo/noticias-america-latina-51715902

that the lawsuit "was not legally viable" due to errors in the presentation format. However, the feminist movement in Colombia continues to organize to achieve the total decriminalization of abortion in that country.

The numerous cases of *tutela* that have reached the Constitutional Court during this time show various problems and barriers that women encounter when trying to access a voluntary termination of pregnancy. Subsequent rulings have shed light on how to proceed, for example, Ruling T-388/2009 establishes that health risks are not only related to physical health but also include the risks to mental and emotional health.

Some of the existing barriers nowadays, as is the case in other countries, continue to put women's health and lives at risk, often leading them to seek out clandestine solutions once again.[398] The barriers are of various types. The ignorance of women regarding their own rights is one of the main ones. The stigma, prejudice and rejection that many women find in society and also in health service providers in relation to voluntary termination of pregnancy is a widespread barrier. Barriers are the result of actions or omissions and limit the effective access of women to the services they require. *La Mesa por la Vida y Salud de las Mujeres* has accompanied and advised many women, and from the cases raised, three types of barriers are identified: lack of knowledge of the legal framework, restrictive interpretation of the legal framework, and failures in the provision of health services.[399]

[398] "La despenalización del aborto, un camino para avanzar en materia de derechos y salud pública en Colombia." *Prensa y comunicados Profamilia*, 2020. https://profamilia.org.co/wp-content/uploads/2020/01/La-despenalizacion-del-aborto-es-el-camino-Comunicado-Profamilia.pdf

[399] "Casos y barreras: Barreras de acceso a la interrupción voluntaria del embarazo." 25 November 2019. https://derechoalaborto.com/casos-y-barreras/

This is the case, for instance, when women go to hospitals and no one explains their rights and the reasons for which they could access those rights and, on the contrary, they offer information based on personal conceptions and not on science, such as that it can be harmful to their health, even when the pregnancy is a product of sexual violence. Not all health service providers have routes for care and diagnosis, and, in some cases, they violate the right to privacy of women. At times, requirements are made that are not in the norms and are arbitrary, or there is an institutional use of conscientious objection. Other times, the grounds of health risk is interpreted as only physical health, or the people who must attend to the requests of women do not act appropriately or on time.

These barriers are more marked in rural areas.

Although there are several barriers, it is possible to find online several organizations that provide information and care on sexual and reproductive health and that include voluntary termination of pregnancy processes. They include Health Provider Institutions, other advisory groups, *La Mesa por la Vida y Salud de las Mujeres*, *Oriéntame*, *Mía* and Profamilia, which are the most visible examples. In one of the sites, it is even possible to find the costs of the process when done through private institutions, ranging from 104 USD to 160 USD.[400] Although the procedure can be done in public centers, this is where the vast majority of barriers are found, especially in terms of the necessary certifications, so again the safest process and with fewer barriers is available for women with access to economic, technological, and educational resources.

[400] Estimates come from sites such as: https://profamilia.org, https://orientame.org.co/, https://despenalizaciondelaborto.org.co/preguntas/, https://mia.com.co/informate-con-mia/#panorama

Data from the Ministry of Health and Social Protection of Colombia shows that unplanned pregnancies reach 52% among pregnancies, and that 70 women die each year from complications derived from unsafe and/or clandestine abortions. These data are far from the figures presented, for example, by Uruguay.

In 2020, several organizations launched the *Causa Justa* [Just Cause] movement: "CAUSA JUSTA is a movement that seeks to enable women to make free and informed decisions based on their own moral conscience; and recognize abortion as a true fundamental right and not a partial right."[401] This movement has been slowed down as of December 2020. However, there are currently 4 lawsuits pending for the decriminalization of abortion in Colombia, one of them presented by the *Causa Justa* collective.[402]

Within the new case in 2020, the prosecution presented several data that are of interest. Since 2006, there have been 5,646 processes registered for the crime of abortion, 2,290 women were criminalized for the crime of abortion, of which 551 were minors. In 15 years, 259 people were convicted.[403] From the data presented, it can be concluded that more than 73 percent of the cases were reported by a hospital center or by health personnel, which shows the stigma and criminalization that exists in these centers and the reason why many women do not attend. The possibility of being prosecuted and convicted is real, regardless of the grounds. Among the data of indicted women were 3 girls of 12 and 13 years old, when sexual relations at that age are

[401] https://causajustaporelaborto.org/
[402] Ibid.
[403] "La despenalización del aborto, un camino para avanzar en materia de derechos y salud pública en Colombia." *Prensa y comunicados Profamilia*, 2020.

understood as rape, which would automatically make them enter one of the permitted grounds for a legal abortion.

The criminalization of voluntary termination of pregnancy represents a barrier to access not only to that service but also to sexual health services in general and puts the lives of women who are in a medical emergency at risk.

4.6. Conclusions

The Colombian scenario is perhaps the closest to what happens in Ecuador. However, in 2006 it already had some comparative advantages and advances.

The lawsuit for unconstitutionality represented a well-planned strategy but it was not the first, it came about after several attempts by both sides to regulate the issue of abortion. It was accomplished with many endorsements and was proposed as a general decriminalization. However, the Court defines it as decriminalization on grounds, offering broad grounds that should allow a fairly general access, especially with the health grounds that include the effects on mental and emotional health, that is, allowing to see the woman as a subject of rights and as a social and complex being. The Court achieved a very important milestone by giving a different status to the embryo or fetus versus the woman as a subject of law. This is fundamental when considering rights and establishing voluntary termination of pregnancy as a women's right. In this way, it has been understood in Colombia as a right that, however, like many others, not all people can enjoy.

As in the other countries studied, the union of many sectors and the pantomime of several strategies have been fundamental. However, unlike legal changes or by referendum, the arguments focused much more on the legal and technical aspects, and the debate took place in Court rather

than in the public arena and through raising public awareness on the issue, taking into account the idiosyncrasy of the Colombian population, which, as in many Latin American countries, is very conservative.

The Colombian Constitutional Court, by 2006, already had a strong track record of guaranteeing rights through rulings, as well as a progressive history of constitutionality and motivation, both in international instruments and in human rights doctrine.

Despite this, we can see that decriminalization by means of a ruling brings some inconveniences in its application, such as the lack of agreement for a subsequent law or regulations that clearly and directly regulate the procedures. The different actors may or may not be alluded to, and many take a long time to give the necessary answers, or it becomes necessary to have new cases and rulings so that what the first ruling is effectively guaranteed.

The ruling leaves open several points that should be regulated by law, but that have not been clarified and that bring confusion to both women and health providers. The actors involved do not feel bound by the ruling as they do or would by a law. The limits and even the sanctions are not clear, unlike when a law regulates it.

Stigmatization continues to be broad and although the rulings have contributed, the continued existence of criminalization in the penal code makes it impossible to erase it or work it more broadly.

State resources are also unclear on the subject, and a recognized right to which resources are not assigned will not be guaranteed in a broad and general way, so women who mostly make use of this right recognized by the court are those that have access to education, information on

their rights, the possibility of locating a service provider that is usually private, and the means to pay for it, even when this involves traveling to another location.

Rulings in a constitutional system such as that of Colombia and Ecuador are a very important starting point and perhaps the only gateway, but we must be aware that they will not immediately bring the service to the women who need it most.

Concluding Relevance for Ecuador

Ecuador is a Latin American country with a presidential democratic system. Like other countries in the region, it has had recent changes in its constitution, first in 1998, and most recently in 2008. These were not mere reforms, but brand-new constitutions. A Constituent Assembly was created in charge of developing and drafting the new Constitution, which, like that of Colombia, recognizes international human rights treaties at the same level as constitutional precepts, which make up the "constitutionality block."

The Constitution provides the need for a popular referendum as a way to modify it and establishes some conditions. Regarding the issuance of regulations, Ecuador has a National Assembly with a single chamber composed of 137 assembly members and a legislative process that requires an absolute majority for the approval of laws.

The Legislation

The debate on sexual and reproductive rights of women against the "right to life from conception" began in the legal sphere in Ecuador in 2008. While drafting the new Constitution, the Constituent Assembly largely discussed the provision that would lead to Article 45,[404] which provides: "The State will recognize and guarantee life, including care and protection from the moment of conception." This article does not establish the right to life from conception, but rather protection, which allows for discussion in the same terms as in the Colombian ruling of 2006.

[404] Castello-Starkoff, "Despenalización del aborto y nuevo proyecto constitucional."

Later on, the debate moved to the National Assembly, with attempts to include the decriminalization of abortion in all cases of rape in 2012, 2014, and in 2019. However, these proposals were not approved. In both 2012 and 2014, Rafael Correa, then President of Ecuador, expressed his direct disagreement with decriminalization, threatening to resign if his co-leaders voted in favor of decriminalization in cases of rape and if the law was approved.

The voluntary termination of pregnancy or abortion is regulated in Ecuadorian law by article 149 of the Criminal Code (COIP by the acronym in Spanish),[405] which provides: "The person who provokes an abortion to a woman who has consented to it, shall be punished with imprisonment of one to three years. The woman who causes her own abortion or allows another to cause it will be punished with imprisonment from six months to two years."[406]

The current COIP was issued in 2014 by the National Assembly. The provisions are almost the same as in the previous Criminal Code from 1938,[407] without considering new cases of non-punishable abortion. Not even cases of rape in girls or teenagers were considered a cause for non-punishable abortion until this present year (2021). The law permitted non-punishable abortion only: "1. If it has been practised to avoid a danger to the life or health of the pregnant woman and if this danger cannot be avoided by other means. 2. If the pregnancy is the result of a rape of a woman who has a mental disability."[408] The debates around abortion in 2008 and 2014 brought

[405] Ecuador, Código Orgánico Integral Penal.
[406] Art. 149.-La persona que haga abortar a una mujer que ha consentido en ello, será sancionada con pena privativa de libertad de uno a tres años. La mujer que cause su aborto o permita que otro se lo cause, será sancionada con pena privativa de libertad de seis meses a dos años. (translation by the author)
[407] El Código Penal de 1938 fue publicado en el Registro Auténtico de 22 de marzo de 1938.
[408] 1. Si se ha practicado para evitar un peligro para la vida o salud de la mujer embarazada y si este peligro no puede ser evitado por otros medios. 2. Si el embarazo es consecuencia de una violación en una mujer que padezca de discapacidad mental.(translation by the author)

attention to the issue and effectively increased the number of prosecutions over crimes of abortion against women. Before that time, women were rarely accused and prosecuted.[409]

Ecuadorian law classifies abortion as a crime but does not offer a proper definition of said crime.[410] As Renaum and Olivares argue:

> The treatment given to abortion from the law responds to a series of questions of a more general nature, which have been analyzed by the literature on the subject, and which have to do with the treatment of women in criminal law since ancient times. In this sense, Alda Facio (1999) points out that the law, being part of a process of social construction, is imbued with existing power relations and reproduces inequalities based on gender, therefore, the law in general is not neutral as it applies a patriarchal and masculine vision to determine behaviors as crimes and judge women (Renaum and Olivares, 2013).[411]

However, Article 66 of the constitution recognizes:

> 9. The right to make free, informed, voluntary and responsible decisions about one's sexuality, and one's sexual life and orientation. The State will promote access to the necessary means so that these decisions are made in safe conditions.
>
> 10. The right to make free, responsible and informed decisions about one's health and reproductive life and to decide when and how many children one has.

In other words, the current Constitution of Ecuador recognizes that women have the right to decide about their sexuality and about their maternity and imposes on the State the obligation to guarantee these rights.

[409] Zaragocin et al., "Mapeando La Criminalización Del Aborto En El Ecuador."

[410] El único instrumento normativo que define al aborto en Ecuador es la Guía de Práctica Clínica denominada *Atención del aborto terapéutico*, adaptada por la Dirección Nacional de Normatización del Ministerio de Salud Pública y publicada en el Acuerdo Ministerial 5195, Registro Oficial Suplemento 395 de 12 diciembre de 2014. Este instrumento recoge la definición de aborto de la Organización Mundial de la Salud (OMS) y señala que se trata de la terminación del embarazo posterior a la implantación del huevo fecundado en la cavidad endometrial, antes que el feto logre la viabilidad (menor de 22 semanas de edad gestacional, con un peso fetal menor de 500 gramos y una longitud céfalo-caudal menor que 25 cm).

[411] Renaum y Olivares (2013, p. 101) citan a Alicia Ruiz para señalar que el "derecho es un discurso social que dota de sentido a los comportamientos de las personas y les convierte en sujetos, al mismo tiempo que opera como legitimador del poder que habla, convence, seduce e impone a través de las palabras de la ley".

Forced maternity in cases of rape, especially in cases where the victim is a girl or an adolescent, have triggered the discussion about decriminalisation. In 2017, the Committee on the Rights of the Child in their report related to Ecuador in paragraph 35 e) expressed their recommendations to the State to: "Ensure that girls have access to sexual and reproductive health services, including therapeutic abortion and consider decriminalizing abortion, with particular attention to the age of the pregnant girl and cases of incest and sexual violence."[412]

Recently, the Constitutional Court issued the ruling of CASE No. 34-19-IN AND ACCUMULATED, which responded to seven claims of unconstitutionality to seek to make abortion possible in all cases of rape, eliminating the phrase "who has a mental disability" as grounds. The ruling, that constitutes a historic milestone for Ecuador, now allows abortion in cases of rape to not be punished.[413] The court determined that the Ombudsman's Office had to deliver a bill to the Assembly within a period of no more than 3 months to regulate the service, and the Assembly would have a period of 6 months to enact the law. So far, the law has been handed over to the Assembly, but it has not been discussed.

Current Status of Abortion in Ecuador

Currently in Ecuador there are multiple barriers to access legal abortions and even more so for post-abortion care. As in the other countries studied, stigmatization and mistreatment by health service providers is perhaps the first barrier. Despite the existence of the cause of life and health of the woman, there is no law that determines how to apply it and its interpretation has been restrictive. This, added to the judicialization of cases and complaints by health providers, means

[412] Committee on the Rights of the Child, "Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Ecuador CRC/C/ECU/CO/5-6."
[413] Ruling No. 34-19-IN/21 Y ACUMULADOS 28 abril 2021.

that women do not have access to safe abortions even when they would have the grounds to do so.[414]

Regarding abortion, there are several social problems, including the criminalisation of poor women, death due to unsafe conditions, and the degrading treatment of women who are forced to bear the children conceived as a result of sexual violence and thus continue to suffer.

According to official data, it is estimated that in Ecuador there were 5,927 induced abortions in 2019,[415] as well as 10,271 spontaneous abortions. Although the information was published in 2020, they reflect the reality of abortions in the country.

The situation of maternal deaths and little access to sexual and reproductive health in Ecuador is critical, which makes abortion even more difficult. According to official data from 2020, 191 maternal deaths were registered.[416] Records include the death of one girl and sixteen adolescents, and although the causes of these deaths are not disaggregated, they are related to their pregnancies. According to data from the Ministry of Public Health of Ecuador, deaths from abortion in 2020 were 10, the ages of the women and the causes of abortion are not known, but among the defined causes of death are: Complicated abortion with haemorrhage, Incomplete

[414] "Ecuador."
[415] Yearbook of Beds and Hospital Discharges provided by the National Institute of Statistics and Censuses of Ecuador (Instituto Nacional de Estadísticas y Censos, INEC). "Anuario camas y egresos hospitalarios", INEC, 2020, Sheet 3.1.11. Column B and C, Rows 1038-1042. https://www.ecuadorencifras.gob.ec/camas-y-egresos-hospitalarios/
[416] Plan V. "La mortalidad materna se disparó 20 puntos en Ecuador durante la pandemia."

abortion, Hydatidiform mole, Post abortion sepsis, and Post abortion haemorrhage.[417] All of these medical emergencies are preventable.

While in other countries a single death related to abortion has managed to generate changes, in Ecuador, the alarming numbers have only served to decriminalize abortion in cases of rape.

A recent Human Rights Watch (HRW) investigation found that 73 percent of the cases analysed began after a health professional reported a patient to the police, violating professional secrecy.[418] Some health professionals have assumed the role of prosecutors, interrogating women and not responding to their medical needs, seeking evidence that the abortion was induced, and performing invasive medical examinations that are not a legitimate part of the necessary treatments and without the women's consent. The organization also detected that in a high percentage of cases the police questioned the woman in the hospital during a medical emergency and without a lawyer, also violating her rights to due process and defence.

Between January 2013 and September 2018, 326 women have been criminalized for seeking an abortion in Ecuador.[419] For the HRW investigation, the Prosecutor's Office reported that from August 2014 to June 2019, charges had been filed in 286 cases. Although the data do not agree, from the Judicial Council it was reported that 122 cases did not reach a conclusion, and that 99 had been resolved. These differences between public institutions make it difficult to study cases

[417] "Gaceta Epidemiológica de Muerte Materna SE 53 Ecuador 2020," Subsecretaría Nacional De Vigilancia de la Salud Pública, Dirección Nacional de Vigilancia Epidemiológica, *Ministerio de Salud Pública.* https://www.salud.gob.ec/wp-content/uploads/2021/01/Gaceta-SE-53-MM.pdf

[418] "¿Por qué me quieren volver a hacer sufrir?: El impacto de la criminalización del aborto en Ecuador," *Human Rights Watch.* July 2021. https://www.hrw.org/sites/default/files/media_2021/07/ecuador0721sp_web.pdf

[419] In some of the cases women have been reported for seeking an abortion when they arrived at the health facilities with an abortion in progress that had natural causes.

of both abortion and violence. In several cases that could be studied by HRW, women were sanctioned, in some cases with imprisonment and in other cases to community tasks in orphanages and therapies "aimed at making them good mothers,"[420] demonstrating the stigma and the deep-rooted segregation of women to the family sphere, and especially to motherhood as an obligation. The criminalized women all share the same characteristics: being poor, belonging to a disadvantaged ethnic group, without access to privacy in health services, without a mechanism for preventing unwanted pregnancy, among others. This shows that the provision does not target all women but is an extra way of criminalization of poverty. The criminalization of abortion does not make it non-existent in the country; it only makes it clandestine.

Clandestine conditions imply a threat to the life of women. The procedure is usually expensive—an abortion performed by a doctor could cost around 350 USD dollars in 2018,[421] while the minimum wage in the country was around 370 USD dollars per month. Without economic resources, abortion becomes truly dangerous for women because it is practised without a physician and in bad conditions. In Ecuador, numbers are higher than the rest of Latin America: 15.6% of maternal deaths are related to unsafe abortions, being the third cause of maternal death and the fifth cause of all deaths.[422] Criminalisation threatens the life of many women, but especially the ones that have fewer economic resources and no access to private clandestine facilities.

Another alarming figure that accounts for the sexual violence suffered by girls and women in the country, as well as the scarce access to sexual and reproductive health services and even

[420] "¿Por qué me quieren volver a hacer sufrir?: El impacto de la criminalización del aborto en Ecuador," *Human Rights Watch.* July 2021. https://www.hrw.org/sites/default/files/media_2021/07/ecuador0721sp_web.pdf
[421] E.A., Interview with the author via Skype call.
[422] Ministerio de Salud Pública, "PLAN NACIONAL DE SS Y SR 2017-2021.Pdf."

education, is the number of babies born to girls and adolescents. In 2020, 1,631 children of girls between 10 and 14 years old were registered, that is, 2 out of every 1000 girls of that age are mothers.[423] These numbers have been even higher in previous years.[424] The Ecuadorian Criminal Code establishes that when a woman is younger than 14 years old, sexual intercourse is considered rape,[425] which means that at least 1631 births are the product of rape. However, the majority of these pregnancies do not have a legal case regarding sexual abuse, and the girls were not considered victims, but were forced to become mothers. This number is even higher in adolescents, with 54.6 live births per 1,000 adolescents.[426] However, it was not possible to determine how many of these pregnancies are the product of rapes. With the judgment of the Court, at least the cases of rape may be integrated as legal abortions, however, due to the beliefs and practices of health service providers, it will not be easy for this to be recognized.

Women in Ecuador continue to be second-class citizens. Although the Constitution and all international treaties recognize equality, in practice, machismo and misogyny are found in all areas of women's lives, and the burden is heavier because of the intersectionality in the lives of indigenous and Afro-Ecuadorian women, racialized women, and also women who do not have economic resources. Violence rates are a reality for more than half that of the women, as at least 6 out of 10 women have suffered violence in Ecuador.[427] Physical, psychological, and sexual violence is a constant threat to any woman in Ecuador.

[423] "Registros Estadísticos de Nacidos Vivos y Defunciones Fetales," Instituto Nacional de Estadísticas y Censos INEC, 2020, sheet 14. https://www.ecuadorencifras.gob.ec/nacidos-vivos-y-defunciones-fetales/
[424] Wambra, "Las niñas invisibles de Ecuador."
[425] Art.171 Ecuador, Código Orgánico Integral Penal COIP.
[426] "Registros Estadísticos de Nacidos Vivos y Defunciones Fetales," sheet 15.
[427] Statistics on violence against women provided by the National Institute of Statistics and Censuses of Ecuador (Instituto Nacional de Estadísticas y Censos, INEC). "Encuesta de violencia contra las mujeres," INEC, 2020, Sheets 8-10. https://www.ecuadorencifras.gob.ec/violencia-de-genero/

This violence is closely linked to barriers to services such as abortion and gyneco-obstetric violence. This violence occurs precisely on the part of doctors and nurses and is based on various prejudices against women: the belief that women should be mothers because this is their role in society; the belief that doctors and all men always know more and infantilize women; that everything that happens to a woman is the woman's fault. The UN Special Rapporteur on violence against women stated that, "Widespread violence and mistreatment of women during childbirth are human rights violations. They are not isolated incidents or sporadic episodes experienced by women in the course of their lives, but it is part of a continuum of the gender based violence that occurs in the wider context of structural inequality, discrimination and patriarchy, and is also the result of a lack of proper education and training as well as lack of respect for women's dignity, equal status, and human rights".[428]

Although this work focuses on access to abortion, the violence suffered by women extends to all areas and is materialized in unwanted pregnancies as a result of sexual violence, social pressures, and other forms of violence by their partner. Sexual violence within the couple is still an issue that is not discussed or acknowledged. Many women still see it as part of their marriage obligations. And despite not wanting to have sex and not wanting to get pregnant, they get pregnant. Violence in relation to abortion is re-materialized in the treatment they receive from health services, in the responses that the System gives to women seeking care, whether they seek to end the pregnancy or even those who want to continue with it. They are continually infantilized, belittled, and their autonomy is annulled with decisions disguised as techniques, for example,

[428] Dubravka Šimonović, "A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence," *OHCHR Report of the Special Procedure of the Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, A/74/251 26a Advancement of women. WOMEN'S ADVANCEMENT. 11 July 2019. https://digitallibrary.un.org/record/3823698.

examinations that doctors perform that do not respond to clinical needs. And finally, there is the violence that is exercised against them if they decide to terminate their pregnancy, with cases that could be covered by legal grounds but women are not informed of their rights, when what matters is, as was said before, that they fulfill the expectation of becoming mothers and the roles assigned to them regardless their own life, identity, and health. And when they have already had an abortion or have a spontaneous abortion, violence is again exercised on them, as they are questioned, stigmatized, and even imprisoned, even when they are experiencing medical emergencies. "Abuse and violence against women not only violates the right of women to live a life free of violence, but can also endanger their right to life, health, physical integrity, privacy, autonomy, and their right to no longer suffer discrimination."[429]

In the context of maternal and reproductive health services, the conditions and limitations of the health system are underlying causes of abuse and violence against women. The poor conditions of professionals and the over-representation of men in gynaecological care are some of the causes for which States do not comply with their obligations to guarantee adequate quality and, above all, decent services. The staff is not always trained. The budget for women's health care is a basic starting point.[430]

In this scenario, it is essential to identify that the decriminalization of abortion will, of course, make women less afraid of requesting health services, but will not automatically generate access to the service.

[429] Ibid.
[430] Ibid.

Ecuador currently has a very large debt in terms of sexual and reproductive health as well as in terms of attention and management of cases of violence. If we do not work in an integral way in all these aspects, the lives of women will continue to be threatened and violated.

General Conclusions

When I set out to answer the proposed question for this thesis, my hope was to find a path for the decriminalization of abortion in Ecuador. However, the study of the different cases leaves some general conclusions, even if they are not entire new, worth discussing beforehand.

1. The women most affected by the criminalization of abortion in all the cases and countries investigated are those with less access to economic resources, racialized, and with less access to education and information on their rights. In the case of Ecuador, they are the only ones that have been properly criminalized. Women with resources do abort, but do not suffer these consequences.
2. The idea that women are complete subjects and can make our own decisions is not yet reflected in the legal field. Even in the countries that liberate abortion, there are still ideas on how to regulate it, to prevent it from getting "out of hand". The services that women require are minimized and associated with the needs of the minority, as if women did not constitute half or more of the population.
3. We cannot lose sight of the fact that the law and legislation, and in this particular case criminalization, are patriarchal constructions, and that even when the law seeks to protect women, it sees them as objects of protection. The administration of justice puts them at a disadvantage, especially in terms of their autonomy. The law, and especially criminal law, is not neutral, it does not make visible the specific needs of women, and it penalizes

behaviors that only women could engage in, so they are criminalized as women. This is the case of abortion. In addition to the need to reinforce the socially assigned role of women as mothers, criminal law becomes a space for discrimination against women disguised as neutrality.[431]

4. If the country does not have public health services prior to decriminalization that are stable, complete, comprehensive, accessible, and dignified for women; abortion, regardless of the path taken towards decriminalization, will be a tortuous service in the public sphere and very difficult to access, while in the private sphere it will be established as an additional service, only now legally.
5. The rights of women must be recognized and guaranteed as a whole. Attention to violence, policies for non-discrimination, effectively understanding women as equals, the inclusion of gender perspectives in all aspects, will all be basic to achieve decriminalization. The law, being a social and cultural construction within a patriarchal system, includes the idea of inferiority of women and this transcends legal institutions. It is necessary to find the exclusions, for this an analysis with a gender perspective of all areas and services is vital.

Regarding the experiences of decriminalization, it is worth identifying some common points of action as well as conflicts or problems when implementing the service:

1. In all the cases studied, public opinion has played an important role in ensuring that changes are made. Although from a human rights perspective, said rights should not be put to a vote and technical reasoning should prevail for the changes, we cannot ignore that the more favorable the social climate is, the more likely it is that the reforms will take place and the

[431] Amicus Curiae presented by *Fundación Idea Dignidad*, Carla Patiño Carreño and others during the process of decriminalizing abortion in cases of rape in Ecuador.

better the implementation of the service may be. Even if there is a Court that sanctions in favor of abortion, if we do not educate doctors, health and hospital personnel, perhaps abortion will no longer be a crime, but women will continue to be unable to access the service and victimized in the processes.

2. The use of cases and experiences of concrete and real women to affect public opinion and decision-makers was fundamental. In some experiences we see that the prosecution of cases leads to certain advances and criteria that, although they do not refer to decriminalization, are helping to pave the way.
3. Social organization and alliances with various groups has also been a common characteristic in the 3 processes studied. All three countries have a history of organization that has grown stronger. The feminist positions were joined by technical voices from different areas of human rights, medicine, and other sciences. These diverse voices made it possible to raise the issue as a more global problem and not as the claim of a few women who can be branded or accused according to the opinion of the authorities or the media.
4. Another aspect that could be seen especially in the cases of law changes by legislative body and referendum was the holding of various public events, some massive, others smaller, some with specific topics, others broader, some with a more academic nature, others more social, trying to reach different people and guilds.
5. Relying on international treaties has allowed a broader range of recognition of rights. In the different experiences presented, both international treaties and the resolutions of international bodies for the protection of rights have paved the way and provided more elements for reforms.[432]

[432] Undurraga and Cook, "Constitutional Incorporation of International and Comparative Human Rights Law," 225.

6. One perspective that seems absent in relation to abortion is freedom of expression and its limits. Many of those who are against abortion spread unscientific, unsubstantiated, and even invasive information. There are direct lies and omissions in the information that even doctors and health personnel provide. What are the limits to these expressions? What is the responsibility of people who give false information or who omit vital information for women? What is the legal limit of possible indoctrination? In more than one country there is talk of putting limits on where opposers can protest and demonstrate, on the pressure they exert outside the clinics. Do they really have the right to those expressions that affect the integrity of women in search of information solutions? What are the forms that the rejection of abortion can and cannot take? These issues have not been addressed in this study and they were not central issues in the case studies and demands consulted. However, the problem they represent in the lives of the people involved, women, accompanying women, and health personnel, is evident.
7. Conscientious objection is a right and as such it must be respected, however it must be regulated to establish its limits and to ensure that it does not translate to an obstruction and denial of services. This applies both to abortion and to all sexual and reproductive health services.

Decriminalization in Ecuador

As seen above, there is still a gap present between Ecuador and other countries analysed regarding women's rights. It is necessary to raise the issue of real access to sexual and reproductive health, to contraceptive education, and decent medical care.

Regarding the initial question of which is the best way for Ecuador to decriminalize abortion and be able to provide an adequate health service, it is important to take into account the time in which we find ourselves. Unlike other countries including Colombia that have been discussing the subject in the public arena, in Ecuador, the subject is relatively recent and requires the addition of actors and strategies. Due to the highly populist political climate, it is possible that the change through the Assembly is not possible yet. As for the option of a referendum, although it can give social legitimacy to an issue, it would set a very bad precedent in terms of human rights, as these should not be consulted or up for debate. In the same way, given Ecuador's social climate and religious beliefs, it is very possible that it is not a viable solution either. Therefore, the Constitutional path is possibly the best for Ecuador, without forgetting that a Constitutional ruling by itself will not change the reality of access to the service, but at least it will avoid criminalization and from there it will help to work on reducing stigmatization.

For this, awareness-raising, training, and a paradigm shift regarding women's rights is still in early stages, and without these elements, decriminalization will not be achievable very soon. Therefore, some basic elements are identified based on what is known and applying what has worked in other countries.

1. Raising public awareness on the issue, bringing cases closer to people as an issue that touches all of us in all economic and social strata, in all regions.
2. Seek out various alliances, new voices, start talking about the issue in forums and spaces other than those where it has already been discussed.

3. Seek to hold events in different ways, as well as academic studies and promotion in public spaces.
4. Exert pressure from organizations and social sectors for adequate attention to women in terms of their sexual health and reproductive health, and seek education on rights so that women themselves can raise their voices and denounce the violation of rights that currently are recognized.
5. Discussing and regulating professional secrecy in terms of medical care. Medical schools have a very important work in this regard, as well as in preparing future doctors with a gender perspective.
6. Exert pressure so that secondary norms and medical practice guidelines have a gender focus, are socialized and complied with at the national level, and, in case of non-compliance, people are sanctioned.

There are several organizations that have carried out or are carrying out several of these actions, and the joining and incorporation of new actors could be key to success.

And although I consider that challenge the constitutionality of the criminalisation is the is the most viable path, alliances with the Assembly and other decision makers should not be ruled out, since in the end they are the ones who would have to legislate on the subject once a ruling is handed down. This would prevent the situation in Colombia from being repeated, where after 20 years the legislature still has not approved the law, and in practice the public health do not have the service completely available and adequate.

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