

# Reform of abortion law in Uruguay: context, process and lessons learned

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## Introduction

On October 22, 2012, President José Mujica signed into law the “Voluntary Interruption of Pregnancy” bill, making Uruguay the first country in South America to recognize the right to abortion on broad grounds. This change was the fruit of more than two decades of advocacy, led by feminist organizations in alliance with trade unions, student groups and other actors, including the medical sector and key political leaders.

Abortion reform in Uruguay has been the focus of several excellent studies.<sup>1,2</sup> This article, based on a descriptive study of the context and political processes for abortion reform,<sup>3</sup> aims to identify the strategies and facilitating factors that led to the legal reform and the limitations of the law, as well as to view the process through a political and feminist lens that draws attention to the limitations of the outcome from a women's rights perspective. In our interpretation this law has not meant a full recognition of women's autonomy, but rather a shift in the terms of state protection of women's health, which reflects the strong influence of a public health or biomedical viewpoint. Both the success of the legal reform and the persistence of state protection is understood through analysis of key actors' discourses and interpretation of the social, cultural and political conditions of the Uruguayan context and of the legal reform process itself.

## Methods

This study is based on 27 individual and group interviews with an intentional sample of key informants:

legislators from different parties, party and union leaders, public health officials, health practitioners, feminists and other social activists and scholars, selected for diverse professional and political background and experience, differential positions in regard to abortion, and distinct roles in the process of the reform. Research questions explored descriptions of the process, as well as political interpretations of what happened. This paper focuses on the latter, in order to show the particularities and complexities of the Uruguayan context.

With the oral consent of the interviewees, interviews were taped, transcribed and analysed using manual qualitative research techniques (basic content analysis). In addition, the wording of the proposed and approved bills and related health regulations, public statements made by the judiciary and legislators, and secondary sources, including statistics, public opinion surveys and social sciences studies, were examined. This *corpus* was analysed in order to reconstruct the political process, understand the dynamics of the negotiations, and interrogate different interpretations of the final result.

## Abortion law in Uruguay and factors that shaped change

Abortion had been criminalized under the Penal Code since 1898, except for a brief period between 1934 and 1938, when abortion was decriminalized due to public indignation over a woman's death from an unsafe abortion.<sup>4</sup> The 1938 law defined abortion as a crime, but the punishment could be mitigated in the case of rape, “family honour” (when the woman was an unmarried “virgin”,

regardless of whether the pregnancy resulted from rape), undue economic burden, or danger to the woman's life. The procedure, performed by a doctor, was available up to three months of gestation, except in the case of danger to the life of the woman, in which case there was no limit.

Uruguay lived under military dictatorship from 1973 to 1985. Once democracy was restored, feminist organizations mobilized around abortion. During the following years, four bills to decriminalize abortion were initiated. The first of these, in 1985, failed to make it to the parliament, because it was not considered a priority in the context of the transition to democracy and was not in the platform of the ruling parties. In 2004, another bill was defeated in the Senate by only four votes. With each of these efforts, the issue of abortion gained increased visibility.

In 2005, the Frente Amplio (Broad Front, or "Front"), a centre-left coalition of parties, assumed the presidency for the first time. In 2008, the Parliament approved a comprehensive Sexual and Reproductive Health Bill, including articles decriminalizing abortion up to 12 weeks without restriction and without a gestational limit in the case of rape, severe health risk, or foetal anomalies. The Front President Tabaré Vázquez, a medical doctor, signed the bill except for the abortion articles, which he singled out to veto, despite his own party being in favour of them.

### Passage of the law in 2012

Immediately following the 2008 veto, feminists and their allies, including political leaders within the Broad Front, mobilized to advocate for a new bill. In the 2009 elections, the Front elected José Mujica as president and retained a majority in parliament. A window of opportunity was opened for abortion to be addressed once again.

In Uruguay, both houses of parliament must approve a new law. In September 2012, the Senate passed an abortion bill, which included articles similar to those vetoed in 2008. Once the bill reached the House of Representatives, the Front realized that – despite their absolute majority – they did not have the votes necessary to approve the law due to opposition from just one member of the coalition. In the negotiations, Representative Iván Posada, from a small Christian Democratic Independent Party, offered the vote they needed. In exchange for his vote, however, Posada required the text to be modified. These alterations, which will be outlined below, voided the original

emphasis on women's rights and imposed numerous restrictions on access to abortion services.

The House passed the Voluntary Interruption of Pregnancy Law on September 25, 2012, with 50 votes in favour and 49 against. On the 17th of October, the Senate ratified the bill, as modified by the House. President Mujica signed it five days later. Characteristics of the Uruguayan political and social context help explain the legal reform process and the resulting law.

### Political culture and context

Since the beginning of the 20th century, Uruguayan political culture has been strongly secular, with a small, mostly urban, population and high levels of education. No religion has official status. For many years, two parties dominated Uruguayan politics.<sup>5</sup> In 1971, the Broad Front, an alliance of Leftist parties, was born, but two years later, a military coup led to dictatorship. With the return of democracy in 1985, the two traditional parties again won alternate elections, until the Front victory in 2004. Since then, the Front has held the presidency and a majority in parliament. The leadership of the Front historically favoured legal abortion.

Vázquez went against his own party alliance in 2008 when he vetoed decriminalization. Only three government ministers signed the veto, an indication of conflict within the Front.<sup>6</sup> Even his own party within the Front, the Socialists, repudiated the veto, leading Vázquez to quit the party, although he remained in the Front as an independent, and as such would be re-elected president in 2014.

The veto was criticized not only for the dismissal of women's rights, but also because it was perceived as authoritarian, unusual in Uruguayan political culture that emphasizes consensus. And it created "a political debt" on the part of the Front to those in favour of decriminalization, which was to be settled when President Mujica took office in 2009.

These political debates were unfolding in an environment in which public opinion was largely in favor of decriminalization. In practice, criminalization of abortion had rarely been enforced,<sup>4</sup> reflecting an attitude of acceptance. During the 1990s, public opinion polls showed that support for decriminalization hovered at about 60%.<sup>7</sup> In 2002, two deaths due to unsafe abortion were registered and, in a country in which abortion-related maternal mortality had historically been low, a public debate erupted.<sup>8</sup> In 2003, when the

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