Abortion Decriminalization in Uruguay: Lessons and Liabilities

Cora Fernández Anderson

Editors’ note: As a new law in Uruguay makes abortion more accessible to women during their first trimester of pregnancy, this DifferenTakes looks at the advocacy campaign and political context that made it possible. While there are many reasons to celebrate, serious restrictions on women’s autonomy and abortion rights remain. The Uruguayan experience offers important lessons for similar struggles elsewhere in Latin America and the Caribbean.

— Betsy Hartmann and Anne Hendrixson

On October 17, 2012, Uruguay became the third country out of 33 in Latin America and the Caribbean to decriminalize abortion on demand during the first trimester. The region holds the lamentable record of having seven out of the ten countries in the world that ban abortion under all circumstances, even to save the woman’s life. Meanwhile 4.4 million abortions are practiced yearly throughout the continent, 95% of which are unsafe and are responsible for 12% of maternal mortality. Understanding the case of Uruguay and the reasons behind the successful passage of this new law is a useful first step for working towards abortion decriminalization in the rest of the region.

Uruguay’s abortion reform comes after 11 years of a campaign for decriminalization led by women’s organizations and seven failed attempts in Congress to pass a bill on the issue since the 1985 democratic transition. The new bill is not all women have struggled for. Importantly, it does not explicitly assert the right of a woman to control her own body. However, the campaign’s three-legged strategy — of raising awareness through skillful framing of the issue, obtaining support from key social actors to increase legitimacy, and working closely with leftist legislators — should be considered a main factor behind the partial success.

The new law improves access to abortion. Before its passage access was restricted by a 1938 law which considered abortion a crime under all circumstances, but which allowed the presiding judge to reduce or eliminate the sentence given certain extenuating factors. While the new law
allows women to have an abortion during the first trimester, they are subject to several requirements. They must justify their decision to a medical doctor who in turn will assemble a panel of three professionals (a gynecologist, a psychologist and a social worker) responsible for advising women on the letter of the law, the risks, and alternatives such as adoption. Women must then wait a minimum of five days in order to ‘reflect’ on their decision. All medical institutions are required to offer these services which will be free in public hospitals. Religious institutions and doctors who object to the law for reasons of conscience are required to ensure that their patients will have an alternative place to carry out the requested abortion.  

Not what women struggled for

The requirements specified above were added to the original bill during congressional negotiations to gather wider support. Senator Monica Xavier, who sponsored the bill and has been pushing for decriminalization since 1995, stated that it was the best “possible law” at this time. However, she expressed her will to continue the struggle to eliminate the requirements. Many women’s organizations disagree and have publicly criticized the law’s shortcomings.

Their core criticism is that the law does not decriminalize or legalize abortion since it is still defined as a crime. The law limits itself to suspending the enforcement of the established sentences if the woman follows the conditions stipulated in the new legislation. Since abortion continues to be defined as a crime, a woman can be reported even when she has followed all the steps demanded by the law. Thus abortion is still not considered a right and is stigmatized.

Secondly, these groups have criticized the notion that women will have to justify their choice to a doctor and face what seems very close to a “tribunal”. Time will tell to what extent these panels will become a way of deterring women from having abortions as intended by the law or simply become bureaucratic checklists. This will probably depend on the particular medical institution and its professionals’ views on abortion. This could create unequal access depending on where one lives in the country.

Thirdly, women fighting for abortion decriminalization object to the fact that abortions will only be legal if provided by doctors in medical institutions. Medical abortions through the use of misoprostol are deemed illegal even if performed in the first trimester and are thus subject to prosecution. The need to resort to a medical institution and to justify the decision to a doctor reinforces the worldview that women are incapable of making decisions about their own bodies, strengthens the medical establishment’s power over them, and may constitute a barrier to equal access for those in remote areas.

Finally, the law has been criticized for not stipulating sanctions against those medical institutions or doctors that do not guarantee access even when all the conditions are satisfied. If women are denied access to a requested abortion, the time to have a legal abortion might have passed and it will be women who will be punished for committing a crime, not the medical establishment.

Why was this possible in Uruguay? Lessons for the rest of Latin America

The main factor that explains Uruguay’s abortion reform is the existence of a strong campaign for decriminalization initiated by women’s organizations. Their strength didn’t come from mobilizing large numbers of women — although they did organize public demonstrations, these were never massively attended. Rather, the key to their success was framing the issue in ways that resonated within their society, gathering the support of crucial social actors and collaborating closely with sympathetic legislators in Congress. Abortion bills have been introduced by leftist legislators in every Congress since 1985. However, only after the decriminalization campaign was launched in 2001 were these bills actually discussed in Congress instead of lying dormant in legislators’ drawers. They gradually obtained more support which ended up in the recent passage of the new law.

In 2001, faced with an increase in maternal deaths due to unsafe abortions, three women’s organizations came together to demand decriminalization. These organizations, which would become key actors in the struggle, were MYSU (Mujer y Salud Uruguay), CNS (Comisión Nacional de Seguimiento por Democracia, Equidad y Ciudadanía) and CLADEM Uruguay (Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer). During the course of that year around 60 other women’s organizations joined the campaign and together created a new space to discuss strategies and courses of action called Iniciativa Ciudadana Contra el Aborto Inseguro, which evolved into the National Coordination Campaign in 2003.
In 2002 the campaign worked with a group of committed legislators to draft a bill entitled “Defense of Reproductive Health” which passed in the Lower Chamber only to be later defeated in the Senate. Subsequent efforts also met with opposition, but the women’s groups continued to work closely with progressive legislators from the Frente Amplio, a coalition of leftist parties which have included abortion reform in their platform.

As part of their strategy, they worked on raising awareness in society, coupled with creating and strengthening bonds with key social actors. They traveled around the country informing people about the status of abortion and how the bill would improve women’s health and rights. They launched a media campaign which included TV spots. Crucially, in their media campaigns they chose to define abortion as a public health and social justice issue. They re-appropriated the “pro-life” frame by focusing on increased maternal deaths due to unsafe abortion and highlighting the disproportionate number of deaths of young and poor women from illegal abortion. They also framed abortion as a human rights issue, a notion that resonated with Uruguayan society. From 1973-1985, the country went through a period of military dictatorship and state terrorism that gave it the negative distinction of having the highest number of political prisoners per capita in the world during the 1970s. Finally, abortion reform was defined as an important prerequisite for democracy.

Democratization has brought political and civil rights to Uruguayans, but if women have no right to control their bodies, they cannot be full citizens.

In terms of getting support from key social actors, from early on the campaign managed to receive official recognition and sponsorship from the main public university (Universidad de la República), the Union of Doctors of Uruguay, the central workers’ union (PIT CNT), and the Methodist and the Valdense Churches. According to women I interviewed, this increased the legitimacy of their claims which could not be discredited as being that of a small group of “radical feminists”.

Finally, the campaign took advantage of and strengthened the links between women working in civil society and those feminist legislators committed to abortion reform. The close collaboration they developed throughout this past decade was made possible due to a common history of activism against the military dictatorship. During the democratization process women activists and those who decided to work within political parties drafted a gender agenda for the new democratic government which included the need for abortion decriminalization. They have been fighting for abortion reform both within and outside government ever since.

The collaboration between the women’s campaign and the committed legislators was very tight. Apart from regular meetings, women’s groups wrote technical documents on abortion that legislators could use when debating the bill, talked to all parties and legislators to map how each was going to vote and organized demonstrations when the legislators expressed the need for social support to back their bills and put pressure on other congressional members.

**What lies ahead**

Even though the new law is not the ideal women’s organizations have been struggling for, the campaign’s resilience and persistence over time are an indication that Uruguayan women will not stop here. Aside from fighting for the elimination of the special requirements, the campaign will now need to monitor the implementation of the new law to ensure the professional panels and conscientious objectors are not stripping women of their rights.

In addition, the conservative Partido Nacional has already stated their will to conduct a referendum over the new law. In this case, the campaign will have to lead the task of defending the current law, even when it may not be all they have aspired for.

The structural and contextual differences across Latin America may make it difficult to replicate the campaign’s experience. Relative to other countries Uruguay is considered more secular and has always been at the forefront of civil rights reforms. However, despite these differences, it is clear that this partial success in decriminalizing abortion will be an inspiration that will re-energize the movement throughout the region and counterbalance the recent hardening of abortion legislation in countries such as Nicaragua and El Salvador. The national campaigns are already in coordination with each other through the September 28th Latin American Campaign to decriminalize abortion so the spaces and networks to reflect on and learn from the Uruguayan case are already in place.

Furthermore, the abortion and gay marriage reforms in some Latin American countries prove the Catholic Church is no longer an invincible obstacle. In particular, the legalization of abortion in Mexico City in 2007 shows that even a country with a powerful Catholic Church and a large number of practicing Catholics can...
take a stand against this institution. Uruguayan secularism might not have been the deciding factor after all. Women’s activism in the form of a strongly organized campaign, that as in Uruguay develops diverse strategies to target public opinion, key social actors and legislators while being sensitive to the national context, is what will finally put an end to the restrictive abortion laws that reign in most of Latin America.

Cora Fernández Anderson is a Five College Andrew W. Mellon Postdoctoral Fellow in Comparative Reproductive Politics. She holds an M.A. in International Peace Studies and a Ph.D in political science from the University of Notre Dame. Her research focuses on human rights and women’s movements in Latin America. She is currently working on a project to explain the successes and failures of the campaigns for the decriminalization of abortion in Argentina, Chile and Uruguay.

Notes
1. Uruguay is the third after Cuba and Guyana. Mexico City decriminalized abortion in 2007 but this is limited to the capital city. Other Mexican states have actually strengthened restrictions to abortion after this. Thirteen out of 31 states have amended their constitutions to define life as beginning at conception.

2. These countries are Chile, Dominican Republic, El Salvador, Haiti, Honduras, Nicaragua and Suriname. The non-Latin American countries are the Philippines, Malta and Vatican City.


4. These factors are: if the abortion was performed in the first trimester and was the result of rape, a risk to the mother’s health, the lack of economic means to support a child or an attempt to guard the honor of the woman.

5. In the case of rape, abortion will be allowed until week 14. In cases of risk to the mother’s health or malformations that make life outside the womb impossible, women will have access to a late term abortion. In case of religious institutions and doctors that have conscience objections to this law, they should ensure that their patients will have an alternative place to carry out the requested abortion.

6. The negotiations took place between the majority party Frente Amplio (a coalition of leftist parties that has been in power in Uruguay since 2004), and one legislator of the Independent Party who promised to support the bill – adding the one vote that was needed to pass the law – if these amendments were introduced.


9. This is the case since the 1938 law has not been repealed.

10. The law states that the role of the panel is to give the woman the “psychological and social support that will help her overcome the causes that are pushing her to interrupt her pregnancy.” See Law 18.987, http://www.mysu.org.uy/Hoy-se-vota-ley-del-aborto.

11. MYSU (Women and Health Uruguay) was created in 1996 by women activists to offer a space for players acting in the arena of women’s health to meet and coordinate their activities. By 2004 it became an NGO.

12. CNS (National Commission for Democracy, Equity and Citizenship) was created in 1996 to monitor the commitments assumed by the Uruguayan state in the international conferences of the UN system (Cairo 1994 and Beijing 1995).

13. CLADEM (Latin American and Caribbean Committee for the Defense of Women’s Rights) is a network of women’s organizations fighting for women’s rights in the region. It was created in 1987 in San José de Costa Rica, and has regional offices in at least fourteen countries, including Uruguay since 2001.

14. Citizen Initiative against Unsafe Abortion

15. Uruguay’s index of Church’s hegemony (which measures the percentage of the population that self identifies as Roman Catholics and participates in religious services at least once a week) is one of the lowest in the hemisphere. In Uruguay only 13% of self defined Catholics go to church at least once a week (compare with 36% in Brazil and 62% in Mexico) and 50% stated they never attend service. See Frances Hagopian, “Latin American Catholicism in an Age of Religious and Political Pluralism: A Framework for Analysis,” Comparative Politics Vol. 40, No. 2 (2008).

16. Reforms such as divorce (1907), civil union (2008), gender identity laws (2009), and equal rights to adoption for gay couples (2009). The gay marriage bill is still pending approval in Congress.

17. The September 28th campaign to decriminalize abortion in Latin America emerged in 1990 for each country’s activists to have a space to communicate and share their experiences among each other.

18. Catholic Church’s hegemony is comparatively low in Chile which holds the most restrictive abortion policy and high in Mexico with 62% of people attending religious services at least once a week. Hagopian ibid.