

VIEWPOINT

The Shift From Criminalization to Legalization of Abortion in Argentina

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After 100 years of considering abortion a criminal offense, Argentina underwent a major change in the legal framework on December 30, 2020, when Congress approved Law 27.610, Acceso a la Interrupción Voluntaria del Embarazo (Access to Voluntary Interruption of Pregnancy). With enactment of this law, the country transitioned from criminalization to legalization of abortion on request up to 14 weeks' gestational age while keeping the legal indications for abortion (ie, rape or risk to life or health of the pregnant person) as before.

This Viewpoint describes this transition and the changes that have resulted and provides some preliminary insights.

Legal and Medical Landscape in Argentina Prior to the 2021 Law

The shift in the legal framework toward legalization of abortion in Argentina had some judicial precedents prior to 2021. In 2006 and 2007, several cases were brought to public attention and triggered the issuance of guidelines related to the provision of abortions based on the legal indications of risk to health of the pregnant person or in cases of rape. In 2012, the Argentinian Supreme Court ruling in a landmark case clarified the scope of the rape indication and stated the duties of health care practitioners and law officials on confidentiality and the care for pregnant individuals. Until the 2012 Argentinian Supreme Court ruling, access to abortion under the

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allowable indications was extremely complicated. Lack of access, lack of confidentiality, and poor care were reported in studies and became emblematic cases.¹

In 2018, congressional debate brought abortion-related data and information to public attention. In Argentina, which has a population of 40 million, there were an estimated 400 000 abortions per year from 2000 to 2004, representing more than 1 abortion for every 2 live births. These data suggest that criminalization of abortion did not discourage people from terminating their pregnancies. Instead, it drove a marked increase in unsafe abortion. Abortion was the leading cause of ma-

ternal mortality from 1980 to 2016 and resulted in 3030 maternal deaths due to unsafe abortions, highlighting the adverse effects of a restrictive environment on women's health and lives.² Unsafe abortions accounted for 20% of all maternal deaths in Argentina between 2008 and 2012, much higher than the estimated 9.9% of maternal deaths related to unsafe abortions for the Latin American and Caribbean region.³ Each year, 49 000 women were discharged from Argentinian public hospitals for complications related to unsafe abortions.²

A gradual shift toward an approach that enabled abortion access was documented in public health institutions and certain cities.⁴ Hotlines and women's groups that provided information and assistance became more easily available to individuals seeking abortion services and challenged the health system with an approach to abortion decision-making and care that prioritized the individual's autonomy.⁵

Indicators at 18 Months Following Passage of the 2021 Law

In January 2021, Law 27.610 changed the principal rule governing legal aspects of abortion from a criminal to a liberal rule. It also represented a shift that accelerated and widened the views of acceptance of abortion as a legitimate individualized decision and a necessary health service.

Some key indicators of the effects of this law after 18 months include maternal mortality and morbidity due to unsafe abortion, availability and use of medication abortion, information on the number of abortions performed, and the evolution in antichoice expressions and litigation brought about by application of the law.

Maternal mortality due to unsafe abortion had decreased in years immediately prior to legalization. From 2018 through 2020, 8 of 24 provinces had not reported any maternal deaths due to abortion. In 2019, morbidity related to abortion measured as hospital discharges decreased to 38 599 cases, and the most common causes of morbidity were incomplete abortions. The widespread use of misoprostol at progressively earlier weeks of gestation may have had a positive influence on these indicators.⁶

Medication abortion, particularly with misoprostol as the only abortion drug registered in Argentina, enables outpatient care and allows for provision of care at clinics and hospitals, potentially expanding access to abortion. The amount of misoprostol purchased by the national government in 2021 (equivalent to 110 500 treatments) for distribution among the public health

services marked a significant change in the infrastructure put in place to guarantee access to abortion services.⁷

Despite the availability of misoprostol prior to 2021, trends after the passage of Law 27.610 highlight the favorable influence of the new law with a substantial increase in the purchase and availability of misoprostol. Before Law 27.610, health services were extremely cautious when deciding how much misoprostol to request, due to concerns about being questioned or having more stigma attached to them.

The 2021 legal decision also made existing services countable and visible. According to official data, 1327 public health institutions provided 73 487 legal abortions in 2021.⁸ Although these figures may represent underreporting of some cases, the systematic monitoring of the need for and use of abortion procedures contrasts with the lack of any national data in previous years and provides data to help evaluate progress regarding access.⁸ For example, Catamarca, a poor and conservative northern province, reported 554 legal abortions performed in the first year after passage of the law compared with 233 cases in 2020.

There is now improved data collection with official, detailed information regarding the number of abortions provided, number of institutions, expenditures to secure misoprostol, and number of health professionals being trained. Moreover, the government office in charge of the abortion policy publishes a periodical report⁸ that serves as an accountability mechanism. Additionally, individuals can report shortcomings in abortion services through a 0800 helpline as well as a consumer protection office for complaints against private insurance companies (resolution No. 139/2020).

These developments confirm an enabling cycle whereby legalization allows data collection and therefore better-informed policies and programs. This is already allowing identification and measurement of significant inequalities across the provinces. Taking into consideration the number of individuals of childbearing age by province, the city of Buenos Aires (with the highest socioeconomic indicators of the country) is the jurisdiction with the highest rate of registered abortions in public institutions (5.6 per 1000 women), followed by Tierra del Fuego in the south of the country (4.2 per 1000). In contrast, provinces in the northeast of the country (the poorest region) have substantially lower reported abortion rates (0.6 per 1000 women).⁷

Passage of the law did not immediately translate into a change of informal norms and practices that delayed access to abortion services. The text of the 2021 law included the recognition of conscientious objection by health professionals but also outlined duties of health professionals. Moreover, the law mandated that public hospitals guarantee access to abortion and imposed a duty to transfer the patient and assume the costs of referral on private health institutions when they have no professionals available to perform these services. Compliance in referring patients has increased, although this practice is not evenly distributed across different hospital types. There are judicial challenges related to Law 27.610, with at least 37 lawsuits filed by Catholic nongovernmental organizations and former legislators against the new law, making claims of its unconstitutionality due to its violation to the right to life of the fetus, among other claims.⁸ A consortium of nongovernmental organizations and government agencies have acted to defend the constitutionality of the law in these cases. So far, the results have favored Law 27.610, with petitions against it being dismissed (30 cases).⁸ Seven cases are still pending, 1 of which could soon reach the Argentinian Supreme Court, where the legality and legitimacy of this new legal framework could be reconsidered.

In the 18 months after enactment of Law 27.610, the criminalization and human rights frames have coexisted, with their respective languages, rules, ideas, and practices. For example, in 2021, a physician from Salta, a province in the north of the country, was prosecuted for having performed an illegal abortion even though, according to the patient's clinical record and other accounts, the patient claimed a health indication. Some women reportedly have been incarcerated and subjected to criminalization for obstetric events,⁹ including a woman who was detained and accused of aggravated homicide after experiencing a spontaneous abortion at her home. These cases highlight that despite legalization actions related to abortion, individuals can still end up in the criminal system.

Passage of Law 27.610 in Argentina was an essential step to institutionalize the human rights framework that had been gaining ground against the previous criminalization of abortion. However, the ongoing clinical issues and legal challenges to abortion demonstrate that, to achieve the goal of acceptance of abortion as a legitimate decision and a necessary health service, additional steps will be needed to build on Argentina's more liberalized legal framework.

ARTICLE INFORMATION

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