

USING RIGHTS TO DEEPEN DEMOCRACY: MAKING SENSE OF THE ROAD TO LEGAL ABORTION IN ARGENTINA

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ABSTRACT

This Article situates the 2020 passage of a law legalizing abortion as an inflection point for Argentine democracy and a case study of how rights concepts can be deployed to advance reproductive justice. First, beginning with the transition to democracy, this study traces shifts in opportunity structures including political and institutional changes; key judicial decisions as well as legal reforms; and the construction of relations among traditional feminist organizations, health professionals, and new actors including key politicians and other decision-makers. Second, the Article focuses specifically on the last fifteen years of legal and social mobilization, the evolving networks of actors engaged in advancing abortion rights, and how the issue became embedded in public debates within and beyond formal institutions of the state. The third stage describes the process of passing legislation in the Argentine Congress and the social decriminalization that was essential for the passage and implementation of the law. Finally, the Article provides a brief overview of trends in Argentina in the first year after the legislation went into effect. The Argentine case illustrates the constructivist and recursive nature of using rights to advance abortion access, whereby the framework of universal human rights in international law interacts dialectically with the interpretations and further adaptation at the national level.

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I. INTRODUCTION

In the early hours of December 30, 2020, tears of joy mixed with relief fell as cheers erupted outside the Congress in Buenos Aires and across the country, in public plazas and private living rooms alike.¹ The Senate had passed Law 27.610 after the Chamber of Deputies approved it some weeks earlier.² The landmark Law 27.610 legalized abortion for women in their fourteenth week of pregnancy and thereafter under certain circumstances (risk to life/health, and rape).³

The context could not have been stranger, given the COVID-19 pandemic and measures restricting people's movement, coupled with a crippling economic crisis.⁴ Given the ongoing pandemic many had given up, doubting whether abortion could be a priority. But in November of that year, President Alberto Fernández sent a draft of the Law to Congress, thus fulfilling a promise made in his electoral campaign.⁵ The feminist movement, which had successfully pushed the new government to honor its commitment to legalize "interrupción voluntaria del embarazo" (voluntary interruption of pregnancy, "IVE", for its acronym in Spanish), and multi-party collaboration, in a highly polarized political arena, had

1. See Hernán Gullco, *One Year of the IVE (Voluntary Interruption of Pregnancy) Law: a Highly Significant Advance for People's Rights*, POR LOS DERECHOS CIVILES (Dec. 30, 2021), <https://adc.org.ar/en/2021/12/30/one-year-of-the-ive-voluntary-interruption-of-pregnancy-law-a-highly-significant-advance-for-peoples-rights/> [https://perma.cc/4XJS-UTFE].

2. See Ana Cecilia Dinerstein, *The Rising Green Tide: Fighting for Reproductive Justice in Argentina*, RADICAL ECOLOGICAL DEMOCRACY (Feb. 8, 2021) <https://radicalecologicaldemocracy.org/the-rising-green-tide-fighting-for-reproductive-justice-in-argentina/> [https://perma.cc/8AV4-8HYM].

3. See Law No. 27.610, Dec. 29, 2020 (Arg.).

4. See *The World Bank in Argentina Overview*, THE WORLD BANK, <https://www.worldbank.org/en/country/argentina/overview> [https://perma.cc/5QS3-LUHF] (last visited Jan. 27, 2023).

5. See Facultad de Derecho UBA, *Alberto Fernández participó de la presentación del libro "Somos Belén" sobre el derecho al aborto*, TÉLAM DIGITAL (Nov. 14, 2019), <https://www.telam.com.ar/notas/201911/408864-alberto-fernandez-participo-de-la-presentacion-del-libro-somos-belen-sobre-el-derecho-al-aborto.html>; Argentinean president seeks to legalize abortion DW.com (Nov. 18, 2020) <https://www.dw.com/en/argentinas-president-sends-abortion-bill-to-congress-once-more/a-55642878> [https://perma.cc/Y9QT-EXQC].

made Argentina the largest country in Latin America to legalize voluntary abortion.⁶

Until 2020, like most Latin American countries, Argentina's criminal code provided exceptions for criminalization of abortion on the grounds of: (1) danger to the life or health of the woman; and (2) if the pregnancy is the result of rape of an "idiot or insane woman."⁷ For decades, the default of prohibition led to a web of informal and background rules that chilled the possibility of gaining access even when they met legal grounds, which contributed to high numbers of unsafe abortions, as well as to profound stigma around abortion until 2005 when a process of legalization began.⁸

Based on extensive literature reviews from Argentina and international human rights literature, we deploy methods of "process-tracing," to analyze how an array of resources and opportunities ("opportunity structures") were understood by different sets of actors, as over time national and international laws changed, public health evidence was built, political configurations in Argentina and the world shifted, technologies advanced, and the like.⁹ Throughout the Article, we pay particular attention to the relationship between domestic and international human rights law.

We conclude that the Argentine case offers critical insights to both broadening and deepening our understanding of effective use of rights for social transformation. This story reveals a constructivist process whereby universal rights in international

6. See *Aborto Legal 2020: Alberto tenés un atraso*, CUARTOPODER SALTA (Sept. 29, 2020), <https://cuartopodersalta.com.ar/aborto-legal-2020-alberto-tenes-un-atraso/> [https://perma.cc/PP98-6P37]; The Associated Press, *Argentina is Now Largest Latin American Nation With Legalized Elective Abortion*, NBC News (Jan. 25, 2021) <https://www.nbcnews.com/news/latino/argentina-now-largest-latin-american-nation-legalized-elective-abortion-n1255525> [https://perma.cc/9G3H-VB9B].

7. Código Penal [Cód. Pen.] [Criminal Code] art. 86 (B.O., Buenos Aires, 1985) (Arg.); Daniel Politi & Ernesto Londoño, *Argentina Legalizes Abortion, a Milestone in a Conservative Region*, N.Y. Times (Dec. 30, 2020), <https://www.nytimes.com/2020/12/30/world/americas/argentina-legalizes-abortion.html> [https://perma.cc/8BUS-BYEM].

8. See generally Paola Bergallo, *The Struggle Against Informal Rules on Abortion in Argentina*, in *ABORTION L. TRANSNAT'L PERSP.: CASES AND CONTROVERSIES* (Rebecca J. Cook et al. eds., 2015); see Agustina Ramón Michel, *El fenómeno de inaccesibilidad al aborto no punible*, in *ABORTO Y JUSTICIA REPRODUCTIVA* 137, 140 (Paola Bergallo, ed., 2011).

9. See David Collier, *Understanding Process Tracing*, 44 *POL. SCI. AND POL.* 823 (2011).

law were adapted, interpreted, and used by different actors to move abortion from a criminal and stigmatized issue to a question of rights exercised across domains, from community spaces and private homes to health institutions and deliberative political and judicial forums. In turn, the Argentine case had implications for the construction of abortion rights under international law, as well as in other countries.

II. FRAMEWORKS FOR UNDERSTANDING HOW HUMAN RIGHTS APPROACHES CREATE CHANGE

A. A Dialectical and Constructivist Process with Multiple Impacts

There is an abundance of literature regarding the impacts of ratification of international human rights treaties, and more broadly on what difference human rights makes—and how rights are used to create change at national level.¹⁰ In the international human rights literature two broad understandings of how human rights function to effect social change have circulated widely. In general terms, one model places substantial weight on the role of international norms and international actors in pressuring governments for compliance.¹¹ Others, including Beth Sommers, have argued that it is “bottom-up” domestic rights activism that generates ideational change through persuasion, and in turn leads to political and institutional change.¹²

With regard to health-related rights in particular, Benjamin Mason Meier, Margarita Cinha and Lawrence Gostin argue that human rights interact with social justice in the following manner: “[w]here social justice incites change from the ‘bottom up,’ driven by those who are most affected by social inequality, human rights

10. See, e.g., Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. OF CONFLICT RESOLUTION 925, 926 (2005); Jeong-Woo Koo & Francisco O. Ramirez, *National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966-2004*, 87 SOC. FORCES 1321, 1322 (2009); Peggy Levitt & Sally Merry, *Vernacularization on the Ground: Local Uses of Global Women’s Rights in Peru, China, India, and the United States*, 9 GLOB. NETWORKS 441, 443 (2009).

11. See generally Thomas Risse et al., *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* 1-60 (Thomas Risse et al. eds., 2013).

12. See BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS* 138-39 (2009).

law incites change from the ‘top down.’¹³ In this view, international human rights standards relating to health, including SRH, are “operationalized” downward by state bureaucracies based on guidance from global institutions.¹⁴ In the case of rights relating to health and SRH in particular, this conception emphasizes the role in norm generation, standard-setting and compliance monitoring played not just the official UN Human Rights system, but the “archipelago” of other international agencies involved in health, such as the World Health Organization (“WHO”).¹⁵ On the other hand, in this view, social justice movements operate on the proverbial ground, instrumentally pressuring the government to implement norms defined by experts in supra-national spaces.¹⁶ By contrast, in keeping with recent arguments in socio-legal scholarship, we argue that there is a messier and more dialectical relationship between a multiplicity of national actors and international norms, institutions and procedures than either of the two general models suggests. As de Búrca writes, “the human rights project is a dynamic one, which is activated, shaped, and given its meaning and impact through the ongoing mobilization of affected populations, groups and individuals, and through their iterative engagement with an array of domestic and international processes over time.”¹⁷

As this Article recounts, the relationship between global and national norm making is deeply recursive, where norms are created in relation to preceding ideas in the other space. In international human rights and constitutional law, recursivity is driven by multiple factors. These include the inherent indeterminacy of rights definitions, contradictions between national and international norms, and among international norms. Further, contestation over interpretation, and the diverse actors engaged in interpreting and applying norms, including health providers adds to the continually contested and evolving nature of

13. Benjamin Mason Meier et al., *Advancing Human Rights through Global Health Governance*, in FOUNDATIONS OF GLOBAL HEALTH & HUMAN RIGHTS 197 (Lawrence Gostin & Benjamin Mason Meier eds., 2020).

14. *Id.*

15. See Paul Hunt, *Configuring the UN Human Rights System in the Era of Implementation: Mainland and Archipelago*, HUM. RTS. Q. 489, 489 (2017).

16. See Eric A. Friedman et al., *Global Health Law*, in FOUND.'S GLOB. HEALTH & HUM. RTS 45 (Lawrence Gostin & Benjamin Mason Meier eds., 2020).

17. GRÁINNE DE BÚRCA, REFRAMING HUMAN RIGHTS IN A TURBULENT ERA 46 (2021).

norms. With respect to SRH and abortion specifically, recursivity is shaped not just by the indeterminacy of international standards and the incompleteness of formal norms at national level, but also importantly by informal and background rules. Informal rules relate to how conditions for exercising entitlements to abortion are deliberately misinterpreted or restricted to impose a default of criminalization, although some informal rules might foster access to abortion. Much of the struggle for abortion rights in Argentina can be characterized as a struggle against negative informal norms, as Bergallo argues.¹⁸ According to Rebouché, background rules, by contrast, relate to other factors such as how health institutions function with respect to such factors as decision-making processes and information sharing, which can be negative or positive but in the context of Argentina have also played a significant role in erecting barriers to abortion access in practice.¹⁹

In de Búrca's work on abortion struggles in Ireland and rights mobilization more generally, she points to the complex interactions among domestic activists, which also played out in Argentina.²⁰ For example, lawyers may identify wrongs and articulate them in rights terms, while women's movements generate awareness and move issues to the public agenda; gather and provide information; and challenge official accounts and advocate for political change.²¹ At the same time, independent institutions, including but not limited to courts and the media, provide domestic opportunity structures and catalyze pressure on the political organs of government, whether to issue protocols or adopt legislation. In turn, international institutions and transnational networks of scholars and researchers generate and pool information, develop legal standards, and promote external accountability, all of which amplifies the demands of domestic actors. In the case of Argentina, it is not just the proliferation of international standards but the adoption of an amended

18. See generally Bergallo, *supra* note 8, at 242.

19. See Rachel Rebouché, *A Functionalist Approach to Comparative Abortion Law*, in *ABORTION L. IN TRANSNAT'L PERSP.: CASES AND CONTROVERSIES* 109-12 (Rebecca J. Cook et al. eds., 2015).

20. See generally GRÁINNE DE BÚRCA, *LAW AND NEW GOVERNANCE IN THE EU AND THE US* (2006).

21. See *id.* at 157-82.

constitution in 1994—which not only reframed the social contract but significantly changed the role of high courts as spaces for the creation of social meaning as well as resolution of conflicts—and the nature of the dialogue between domestic and international rule-making courts.²²

In this context, Sally Engle Merry's theory of "vernacularization" is particularly useful in understanding the dynamics of rights mobilization in Argentina.²³ Merry describes how human rights ideas regarding gender equality and reproductive justice were translated by domestic activists from "the discourses and practices from the arena of international law and legal institutions to specific situations of suffering and violation" by advocates.²⁴ Applying Merry's theory to social rights constitutionalism in general in Latin America, Daniel Brinks, Varun Gauri and Kyle Shen note about that "although the language of [rights] used is indeed global, once they are constitutionalized these rights go through a process of vernacularization that selectively translates apparently universal aspirations into a much more localized version deeply grounded in local social and political realities. The extent to which they are universal, or, or effective, is a function of this process of vernacularization."²⁵ In the case of abortion rights, the vernacularization process was informed by and intersected with evolving constitutional "cosmologies" in a term that Bergallo has used to describe the move toward rational argumentation by courts and away from the formalistic application of rules.²⁶ Importantly, our argument is not that vernacularization is a one-way street, whereby domestic actors merely take onboard concepts offered in international law. On the contrary, the relationship is dialectical and messy, with the use of rights at

22. See generally Paola Bergallo, *La otra legalización del aborto*, in *DEBATES Y REFLEXIONES EN TORNO A LA DESPENALIZACIÓN DEL ABORTO EN CHILE* (Lidia Casas Becerra & Delfina Lawson, eds., 2016).

23. Sally Engle Merry, *Gender Violence and the CEDAW Process*, in *HUMAN RIGHTS & GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* 1–35, 72–102 (2006) [hereinafter Merry, *Gender Violence*]; see also Sally Engle Merry, *Transnational Rights and Local Activism*, 108 *AM. ANTHROPOLOGIST* 35, 39 (2006) [hereinafter Merry, *Transnational Rights*].

24. Merry, *Gender Violence*, *supra* note 23 at 72–102; see also Merry, *Transnational Violence*, *supra* note 23 at 39.

25. Daniel M. Brinks et al., *Social Rights Constitutionalism: Negotiating the Tension Between the Universal and the Particular*, 11 *ANN. R. OF L. AND SOC. SCI.* 289, 290 (1992).

26. See *id.*

national level feeding back into the elucidation of reproductive justice concepts in international law and forums.

B. Theorizing Impacts of Deploying Rights for Abortion Access

The way in which we measure change reflects our understanding of how rights operate, as well as what changes matter. Rachel Rebouché has asserted that comparative law methodologies related to abortion law focus unduly on formal law reform: “[t]he weakness of the methodology is that abortion law is evaluated, as well as legitimized, against a highly stylized, abstract set of rights” while leaving out or marginalizing questions of what abortion law achieves in practice.²⁷ The indirect effects of this stylized approach to measuring abortion access can also be seen in advocacy, including the deeply misleading and disastrous ruling by the US Supreme Court in *Dobbs v. Jackson Women’s Health Organization* where claims are made regarding comparative law by tallying countries that have more liberal or restrictive laws along the temporal dimension.²⁸

This formalistic approach to impact is exacerbated by the increasing tendency in global health and development, related to the top-down operationalization model discussed above, which uses quantitative indicators to capture SRR realization. For example, in the Sustainable Development Goals progress on target 5.6.2 “ensuring universal access to sexual and reproductive health and right (“SRHR”),” is measured by the existence (yes or no) of laws and regulations relating to SRHR in five areas including abortion, and then the answers are tallied and analyzed statistically.²⁹ In abortion, and SRR more generally, which are inherently the most contested and unstable of norms, we should be particularly circumspect in the inferences we draw from such abstracted legal indicators. More broadly, as Rosga and Satterthwaite assert, because such indicators “threaten to close space for democratic accountability and purport to turn an

27. Rebouché, *supra* note 19, at 101.

28. Brief of International and Comparative Law Scholars as Amici Curiae for Respondents at 24–27, *Dobbs v. Jackson Women’s Health Org.*, 141 S. Ct. 2619 (2021) (No. 13-1392).

29. Rep. of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, U.N. Doc. E/CN.3/2016/2/Rev.1, at 5.6.2 (2016).

exercise of judgment into one of technical measurement,” to be conducted by “experts,” “advocates of human rights should remain vigilant to effects of the elisions at work in the indicators project.”³⁰

Consistent with our understanding of how rights function to effect change, we argue for understanding the impacts of abortion legalization not just in terms of the momentous legislative reform of 2020. Rather, this account suggests that impacts are better understood as a narrative than a snapshot, and requires the more contingent and context-specific questions of how abortion rights were made real to different actors over time in Argentina: how services were revised and policy makers and local authorities were convinced that their practice must change, and as Alice Miller notes in general, how affected persons were “moved to act as if these rights could in fact underpin their actions and demands.”³¹ Evaluation of those impacts is a much trickier enterprise, which acknowledges the incommensurability of certain effects, and requires the capacity to accept “learnings” at multiple levels that are not always equivalent to static, decontextualized impacts.

Cesar Rodríguez-Garavito and Diana Rodríguez-Franco’s insightful work on socio-economic rights litigation clarifies broader socio-legal consequences of judicial decisions relating to abortion rights, which go beyond the direct effects on litigants.³² Here we liberally adopt some of their concepts of material and symbolic impacts, noting that the complex matrix of dialectical relationships discussed above implies that litigation is one source of rippling impacts but far from the only one.³³ Thus, for example, over the course of this history we can identify material impacts, which stem from court-mandated actions but also from the introductions of abortion protocols by federal or provincial ministries of health, which were not always in response to court

30. Ann Janette Rosga & Margaret L Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 *BERKELEY J. OF INTL. L.* 253, 258 (2009).

31. Alice M. Miller, *Sexual Orientation as a Human Rights Issue*, in *LEARNING TO DANCE: CASE STUDIES ON ADVANCING WOMEN’S REPRODUCTIVE HEALTH AND WELL-BEING FROM THE PERSPECTIVES OF PUBLIC HEALTH AND HUMAN RIGHTS* 159 (Alicia Ely Yamin ed., 2005).

32. See, e.g., CESAR RODRÍGUEZ GARAVITO & DIANA RODRÍGUEZ FRANCO, *CORTES Y CAMBIO SOCIAL: CÓMO LA CORTE CONSTITUCIONAL TRANSFORMÓ EL DESPLAZAMIENTO FORZADO EN COLOMBIA, DE JUSTICIA* (2010).

33. See generally *id.* at 62.

decisions. In such cases, there are tangible changes in abortion access. However, we also emphasize indirect material changes in organizational structures and procedures that reveal shifts in institutional agendas, and in turn in informal and background rules.

Although in the case of *L.M.R.*—involving an intellectually disabled teenager who had been raped (discussed below)—the provincial ministry of health responded before findings were issued from the UN Human Rights Committee,³⁴ it is worth underscoring that the involvement of international human rights forums in the abortion struggle, in Argentina and elsewhere, forces significant institutional and discursive shifts.³⁵ As a result of being sent to a supra-national forum, the issue immediately becomes a matter requiring a response from the Ministry of Foreign Affairs and the Ministry of Justice and not merely the Ministry of Health.³⁶ In turn, the spaces in which the question is considered shift the framework for defining the “problem” from a lapse in quality of care or a discretionary judgment by providers to a violation of dignity and rights (e.g., bodily autonomy, and freedom from cruel, inhuman and degrading treatment).³⁷

Rodríguez Garavito and Rodríguez Franco further emphasize the need to go beyond material effects —both direct and indirect— to examine “symbolic effects.” These include both direct symbolic effects (reframing of media coverage, shifts in public discourses around the issue of abortion) and indirect symbolic effects (the transformation of public opinion on the matter, appropriation of agency by ‘victims’ of rights violations).³⁸ In the Argentine case, there is no question that political and media discourses changed over time. We detail how especially beginning in 2018 with public debates, the issue of abortion was transformed from a taboo issue

34. HRC, Communication No. 1608/2007, *L.M.R. v. Argentina*, UN Doc. CCPR/C/101/D/1608 at para. 4.4 (2011).

35. See Mariana Carbajal, *Con un fallo de la Corte*, Página1/2 (Apr. 24, 2018), <https://www.pagina12.com.ar/110282-con-un-fallo-de-la-corte> [<https://perma.cc/66JG-YL26>].

36. See *id.*; ALICIA ELY YAMIN, *WHEN MISFORTUNE BECOMES INJUSTICE: EVOLVING HUMAN RIGHTS STRUGGLES FOR HEALTH AND SOCIAL EQUALITY* 102–22, 148–74 (2020) [hereinafter YAMIN, *WHEN MISFORTUNE BECOMES INJUSTICE*].

37. See YAMIN, *WHEN MISFORTUNE BECOMES INJUSTICE*, *supra* note 36, at 105, 151.

38. See GARAVITO & FRANCO, *supra* note 32, at 62.

of immorality to an issue of democracy and equality.³⁹ However, perhaps the most profound transformation has occurred in the consciousness of people of all genders, including health providers, who understand abortion as an issue of dignity and rights, and as a health practice.

III. *EN-GENDERING DEMOCRACY AND RIGHTS*

A. *Argentina's Democracy and the Struggle to Vindicate Women Rights*

In 1983, Raúl Alfonsín was elected president and Argentina emerged from over seven years of a brutal civic-military dictatorship.⁴⁰ The military Junta had explicitly promoted its defense of tradition, family and property and portrayed itself as the guardian of Christian values that in effect consigned women to essentialist roles.⁴¹ In the transition to democracy, human rights principles became a principal framing for official and civil society actors alike.⁴² These newly freedoms catalyzed opportunities for the feminist movement to build their agenda, within which abortion was to gain an increasingly prominent place.⁴³ Over the almost four decades since the country's restoration of democracy, iterative struggles for gender equality, including sexual orientation and gender identity ("SOGI") rights, created the scaffolding for the successful legalization of abortion.⁴⁴ These struggles were shaped

39. See *infra* Section III.F.

40. See Fiona Ortiz, *Raul Alfonsin, Hero of Argentine Democracy, Dies*, REUTERS (Mar. 31, 2009), <https://www.reuters.com/article/us-argentina-alfonsin/raul-alfonsin-hero-of-argentine-democracy-dies-idUSTRE5300DH20090401> [<https://perma.cc/2VPY-HACY>].

41. See The Political and Legal Systems in Argentina, INTER-AM. COMM'N HUM. RTS, <http://www.cidh.oas.org/countryrep/argentina80eng/chap.1.htm> [<https://perma.cc/TQ3V-8CKD>] (last visited Jan.27, 2023).

42. See Jennifer Adair, *Democratic Utopias: The Argentine Transition to Democracy through Letters, 1983–1989* 72 AM.'S 221, 228-29 (2015).

43. See Georgina Waylen, *Gender and Democratic Politics: A Comparative Analysis of Consolidation in Argentina and Chile*, 32 J. LATIN AM. STUD. 765, 769 (2000).

44. See JORDI DIAZ, *THE POLITICS OF GAY MARRIAGE IN LATIN AMERICA: ARGENTINA, CHILE, AND MEXICO* 27–47 (2015).

by domestic political and institutional shifts, evolving standards in international law, and the interaction between the two.⁴⁵

*B. 1970's: Setting the Stage Globally and Nationally;
Dictatorship*

As in many countries around the world, the inception of articulated claims for abortion rights can be traced back to the early 1970s.⁴⁶ In Argentina, the *Movimiento de Liberación Femenina* (Movement for Women's Liberation, "MLF") and the *Unión Feminista Argentina* (Argentine Feminist Union, "UFA") began exposing sex discrimination in existing laws as well as regulatory gaps (e.g., free daycare, public cafeterias), though few dared to mobilize for abortion.⁴⁷

During the third Perón mandate (1973–1976), contraception and abortion were officially considered to be strategies of imperialist domination of Third World regions by the United States.⁴⁸ In 1974, the United Nations convened the first inter-governmental political conference on population in Bucharest, Hungary, as an attempt to bridge gaps between North and South, and to establish criteria for demographic policies that respected the ability of couples and individuals to responsibly decide the number and spacing of their children.⁴⁹ Nonetheless, along with many other countries in the non-aligned movement and global South, Argentina focused instead on family policies, which were linked to socio-economic development, and on raising the income level of the poor.⁵⁰ This pro-natalist discourse was put into effect

45. Kathryn Sikink, *From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights*, 50 *LATIN AM. POL. & SOC'Y* 1, 3 (2008).

46. See MABEL BELLUCCI, *HISTORIA DE UNA DESOBEDIENCIA: ABORTO Y FEMINISMO* 161 (2020).

47. See *id.*

48. Karina Alejandra Felitti, *La política demográfica del tercer gobierno peronista: justificaciones, repercusiones y resistencias a las restricciones al control de la natalidad (1973-1976)*, *TRABAJOS Y COMUNICACIONES* 287 (2005); Susana Novick, *La posición argentina en las tres conferencias mundiales de población*, *PAPELES DE POBLACIÓN* 5 (1999).

49. See Naila Kabeer, *Tracking the Gender Politics of the Millennium Development Goals: Struggles for Interpretive Power in the International Development Agenda*, 36 *THIRD WORLD Q.* 377 (2015); Susana Novick, *La posición argentina en las tres conferencias mundiales de población*, *Papeles de población* 5, 27 (1999).

50. See generally U.N. World Populations Conference, *Report*, U.N. Doc. E/CONF.60/19 (1974).

with the ban on contraceptives,⁵¹ a policy that was reinforced during the dictatorship.⁵² Despite the differences in political affiliation of many of the feminist movements and internal discussions about the path to achieve the “emancipation of women,” Decree 659/74 drew them out into the street.⁵³

By the time the Convention on the Elimination of Discrimination Against Women (“CEDAW”) was promulgated and entered into force (1979/1981),⁵⁴ the military Junta had taken power. Although there were no mentions of abortion, CEDAW contained obligations regarding eliminating discrimination against women in health care, including recognizing that their reproductive needs called for differential entitlements and substantive non-discrimination.⁵⁵

Nevertheless, in Argentina, the civic-military dictatorship fiercely rejected these advances in women’s rights, and opposition to SRHR was at the core of the regime’s resistance.⁵⁶ During the dictatorship and the state of siege, raids, and waves of arbitrary and extra-judicial detentions that came with it, feminist groups largely self-dissolved and withdrew from public spaces.⁵⁷ It was only as the military Junta’s iron grip began progressively breaking down in the early 1980s that some feminist organizations started to regroup.⁵⁸

C. 1980s: The ‘Democratic Spring’

Human rights consciousness was at the center of official and activist discourses upon the transition to democracy with

51. *See generally* Decree 659, Aug. 29, 1974 (Arg.).

52. *See generally* Decree 3938, 1978 (Arg.); Decree 659, Aug. 29, 1974 (Arg.) MÓNICA PETRACCI & SILVINA RAMOS, LA POLÍTICA PÚBLICA DE SALUD Y DERECHOS SEXUALES Y REPRODUCTIVOS EN LA ARGENTINA: APORTES PARA COMPRENDER SU HISTORIA, CEDES (2006).

53. Felitti, *supra* note 48, at 287.

54. U.N. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

55. *See id.*

56. *See* Lucía Cholakian Herrera, *Will Argentina’s Stolen Generation Be Forgotten?*, FOREIGN POL’Y (Apr. 30, 2022), <https://foreignpolicy.com/2022/04/30/argentina-disappeared-history-military-dictatorship-abuelas-memory-human-rights/> [<https://perma.cc/AZ7B-3UXZ>].

57. *See* MABEL BELLUCCI, *supra* note 46, at 226.

58. *See* Waylen, *supra* note 43, at 773–74 (2000).

Alfonsín's inauguration in late 1983.⁵⁹ Although not central to the agenda at the time, President Alfonsín did take several measures to eliminate policies that had drastically limited reproductive autonomy and gender equality.⁶⁰ A major victory came with the 1985 enactment of the Equal Parental Rights Law, which gave mothers equal guardianship rights as fathers and had symbolic as well as material importance as it began to redress the incompleteness of democracy.⁶¹ The parental rights law was quickly followed by other legislative landmarks: (1) equal protections for male and female workers with family responsibilities in 1986; (2) legalization of divorce in 1987; and (3) pension entitlement for married spouses in 1988.⁶²

In 1986, President Alfonsín repealed the ban on contraception and recognized "the right for a couple to decide freely on the number and spacing of children."⁶³ That same year, the government dissolved the National Commission for Demographic Policy created by the military Junta to "eliminate birth control activities" and "incentivize the protection of the family," putting an end to the demographic paradigm of population policy in Argentina.⁶⁴

In the newly democratic environment, mobilizations became commonplace; and "the climate was conducive to convenings, visibility, and initiation [into political consciousness],"⁶⁵ making 1983-1986 known as the "democratic spring."⁶⁶ During this period, the first commemorations of International Women's Day (March 8th), the *Multisectorial de la Mujer* (i.e., a large collective of women's groups near unions and other left-leaning groups), and the *Encuentros Nacionales de Mujeres* (National Women's Encounters) emerged,⁶⁷ all of which have continued to date. The appropriation of public space and the ability to collectively gather has been

59. See Julia Burton, Aproximaciones al movimiento de mujeres y al feminismo en Argentina, 37 JORNADAS DE SOCIOLOGÍA 1, 9 (2013).

60. See e.g., Decree No. 2274, Sept. 24, 1986 (Arg.); Cecilia Straw, *La visión socio-política de los derechos reproductivos en Argentina*, 35 REVISTA JURÍDICA 171, 174 (2017).

61. See Burton, *supra* note 59, at 1.

62. See Law No. 23.451 (Arg.); Law No. 23.515 (Arg.); Law No. 23.570 (Arg.).

63. Decree No. 2274, Sept. 24, 1986 (Arg.).

64. Straw, *supra* note 60, at 174.

65. BELLUCCI, *supra* note 46, at 10.

66. See JENNIFER ADAIR, IN SEARCH OF THE LOST DECADE: EVERYDAY RIGHTS IN POST DICTATORSHIP ARGENTINA 12 (2020).

67. See *id.* at 370-74.

pivotal to “socializing” ideas of reproductive autonomy as rights. As would occur later with “Not One Woman Less” (*Ni Una menos*)—the mobilization against gender violence that began in 2015—campaigns against violence towards women in the late 1980s and 1990s allowed for convergence of different feminisms.⁶⁸

Just as in other countries, it was also during these years that feminists and public health academics in Argentina recognized the need for more empirical research on women’s health and rights, and abortion in particular.⁶⁹ As late as 1991, a report by the UN entitled “The World’s Women: Trends and Statistics, 1970-1990,” called for data on basic issues of women’s rights, including domestic violence, which it described as “unmeasured but almost certainly very extensive.”⁷⁰ In access to reproductive health care, the situation was equally stark. In the 1970’s and early 1980’s women’s health was still largely measured in terms of fertility and treated as an appendage to child health.⁷¹ The clandestine nature of abortions made research especially difficult, but the political need for such data was clear.⁷² Within Argentina studies began to explore who was having abortions, who was providing them, what were the health effects of clandestine abortion, and the like.⁷³

During this decade, the newly formed *Red de Salud de las Mujeres Latinoamericanas y del Caribe* (“RSMLAC”), which firsts campaigns where about maternal mortality and women rights, became a space for global connections for some feminists activist after some many years of dictatorship.⁷⁴ Yet many Argentine

68. See Mariela Daby & Mason Moseley, *Feminist Mobilization and the Abortion Debate in Latin America: Lessons from Argentina*, 18 *POL. & GENDER* 359, 365 (2022); Elisabeth Jay Friedman & Costanza Tabbush, *#NiUnaMenos: Not One Woman Less, Not One More Death!*, *NACLA* (Nov. 1, 2016), <https://nacla.org/news/2016/11/01/niunamenos-not-one-woman-less-not-one-more-death> [<https://perma.cc/LU2K-8PKG>].

69. ADAIR, *supra* note 66, at 286-87.

70. *The World’s Women: 1970-1990 Trends and Statistics*, United Nations (1991), <https://unstats.un.org/unsd/demographic/products/worldswomen/WW1990.pdf> [<https://perma.cc/FN9D-DVQJ>].

71. Straw, *supra* note 60, at 171, 174.

72. See SILVINA RAMOS & JUAN JOSÉ LLOVET, *UNA INVESTIGACIÓN SOCIAL SOBRE ANTICONCEPCIÓN Y ABORTO*, MINISTERIO DE EDUCACIÓN Y JUSTICIA 49 (1987).

73. See *id.* at 25-26.

74. See *Nuestra Historia*, RED DE SALUD DE LAS MUJERES LATINOAMERICANAS Y DEL CARIBE, <https://www.reddesalud.org/es/nuestra-historia> [<https://perma.cc/NX5H-RKD4>] (last visited Jan. 23, 2023); Elsa Gómez Gómez, *HEALTH AND WOMEN IN LATIN AMERICA AND THE CARIBBEAN*, Women and Development Series 17 (1994) (Machine Translated by

feminist groups considered it an error to focus on these issues when the country was still facing a raft of political and economic problems inherited from the civic-military dictatorship.⁷⁵ It was not surprising therefore that most feminists chose to prioritize contraception, which led to the first SRH local programs and provincial laws on SRH.⁷⁶ (see Timeline 1980-1990)

D. 1990s: New International Frameworks, New Social Contract

The early 1990s ushered in tectonic shifts in the understanding of women's rights across the world.⁷⁷ At the Vienna Conference on Human Rights in 1993, there was a hugely successful global mobilization by feminist organizations, including from Argentina and Latin America.⁷⁸ The Vienna Declaration, in turn, was the beginning of international human rights norms being conceptualized in a gender sensitive way that was responsive to women's rights and experiences. As Rebecca Cook wrote, at the time, "[t]he reasons for [the] general failure to enforce women's human rights . . . include . . . the failure to recognize the need to characterize the subordination of women as a human rights violation; and a lack of state practice to condemn discrimination against women."⁷⁹

Following quickly on the mass mobilization of women's movements at Vienna, the International Conference on Population and Development in Cairo in 1994 ("ICPD") created a paradigm

Google) OLD PROBLEMS AND NEW APPROACHES at 9, https://repositorio.cepal.org/bitstream/handle/11362/5856/3/S9700135_es.pdf [<https://perma.cc/HMN3-5TEF>].

75. See BELLUCCI, *supra* note 46, at 274.

76. See PETRACCI & RAMOS, *supra* note 52, at 12; see generally Susana Novick, *Democracia y fecundidad: políticas relacionadas con la salud reproductiva y la anticoncepción. Argentina 1983-2001*, Instituto Gino Germani, <http://catedra-laicidad.unam.mx/sites/default/files/080101045.pdf> [<https://perma.cc/QYZ2-TXCF>].

77. Elisabeth Jay Friedman, *Gendering the agenda: the impact of the transnational women's rights movement at the UN conferences of the 1990s*, WOMEN'S STUDIES INTERNATIONAL FORUM 313, 313 (2003).

78. Naila Kabeer, *Tracking the Gender Politics of the Millennium Development Goals: Struggles for Interpretive Power in the International Development Agenda*, 36 THIRD WORLD Q. 377, 379 (2015).

79. Rebecca J. Cook, *Women's International Human Rights Law: The Way Forward*, 15 HUM. RTS. Q. 230, 231 (1993).

shift away from population as a matter of demographic imperatives to one of women being subjects of their own bodies and lives and having reproductive rights.⁸⁰ Just one year later, in 1995, the fourth World Conference on Women at Beijing built on all the activism that came out of ICPD and extended ideas of women's health from SRH across the life cycle.⁸¹ Nonetheless, abortion was still largely addressed in the context of "the health impact of unsafe abortions."⁸²

Meanwhile in Argentina, Alfonsín stepped down five months before the end of his term as inflation soared to well over 100 percent and the entire economy was shrinking, causing him to lose almost all the support he had enjoyed at the beginning of democracy.⁸³ Peronist president-elect Carlos Menem assumed power in July 1989 ushering in a much more conservative stance toward reproductive justice.⁸⁴

Despite the position adopted by the Menem administration on SRR, which aligned itself with conservative Islamic countries and the Holy See on official outcome documents, these shifts at the global level will proved to be pivotal for two intertwined reasons.⁸⁵ First, ICPD and Beijing deepened and broadened gendered

80. See *Programme of Action of International Conference on Population and Development*, UNITED NATIONS POPULATION FUND 1, 59-63 (1994), https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf [<https://perma.cc/CS4N-XCV3>] ("the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.").

81. See Martha Alter Chen, *Engendering World Conferences: The International Women's Movement and the United Nations*, 16 *THIRD WORLD Q.* 477, 477 (1995).

82. G.A. Res. 50/42, at para. 106(j) (Sept. 15, 1995); see *Fourth World Conference on Women, 4-15 September 1995, Beijing, China*, UNITED NATIONS, <https://www.un.org/en/conferences/women/beijing1995> [<https://perma.cc/W6X5-WJFL>] (last visited June 28, 2022).

83. See Charlene Smith, *Exit Alfonsin as Economy Disintegrates in Argentina*, *L.A. TIMES* (June 18, 1989) <https://www.latimes.com/archives/la-xpm-1989-06-18-op-3505-story.html> [<https://perma.cc/7CKX-9UXD>].

84. Debora Lopreite, *Gender Policies in Argentina After Neoliberalism Opportunities and Obstacles for Women's Rights*, 42 *LATIN AM. PERSP.* 64 (2005).

85. See Alanis M. Sippel, *A Calculating Alliance*, 20 *CONSCIENCE* 17 (1999). Susana Novick, *La posición argentina en las tres conferencias mundiales de población*, *PAPELES DE POBLACIÓN* 54 (1999).

readings of human rights under international law—including in relation to SRH.⁸⁶ Women’s health advocates from Argentina had participated in regional and international forums in the years leading up to the international conferences and were poised to use them to bring Cairo and Beijing home.⁸⁷ Second, Argentina’s amended constitution of 1994 included an array of economic and social rights together with a provision setting out equal right for women,⁸⁸ which opened the door for progressive interpretation.

The amended Constitution⁸⁹ of 1994 was part of a wave of new social constitutionalism in Latin America.⁹⁰ The incorporation of international standards into the Constitution, through a so-called “constitutional bloc,”⁹¹ transformed the nature of the harmonization between the national and international, and the iterative process of interpretation and adaptation of norms.⁹² The interpretation of rights required harmonizing national norms with a variety of international and regional norms and, in turn incorporating arguments about the meaning of broad concepts such as dignity, equality, and freedom into thickly socio-culturally determined understandings of those principles within Argentina, which had historically been heavily influenced by actors connected to the Catholic Church.⁹³

86. *See id.* at 17.

87. *Id.* at 30.

88. *See* Maria Teresa Flores, *Women’s Human Rights in the Framework of Argentine Domestic Law: Treatment Since the Return to Democracy*, 7 *J. of Gender Soc. Pol’y & the L.* 335, 336 (2011).

89. Constitución Nacional [Const. Nac]. (Arg.).

90. Roberto Gargarella, *The “New Latin American Constitutionalism,”* 27 *REV. URUG. CIENC. POLIT.* 109, 117 (2018).

91. *See* Flores, *supra* note 88 (“The treaty thus became part of what Bidart Campos calls ‘the bloc of federal constitutional law.’”); Daniel Brinks, *Social Rights Constitutionalism*, in *OXFORD HANDBOOK ON CONSTITUTIONAL LAW IN LATIN AMERICA*, 742–57 (2022).

92. *See* Janet K. Levit, *The Constitutionalization of Human Rights in Argentina: Problem or Promise?*, 37 *COLUM. J. TRANSNAT’L. L.* 281, 310 (1999) (“Article 75(22) endowed nine international human rights treaties with constitutional standing, and otherwise reaffirmed the Supreme Court’s decisions” by providing all other international treaties with supra-statutory standing. Thus, domestic law cannot trump an international norm, and certain international human rights norms, to be interpreted in harmony with the rest of the 1994 Constitution, stand on par with the Constitution itself.”).

93. *See* N. Zamberlin, *Derechos sexuales y reproductivos y acción colectiva en Argentina*, in *POR LOS DERECHOS-HOMBRES Y MUJERES EN LA ACCIÓN COLECTIVA* 79, 86, 91 (E. Jelin, S. Caggiano & L. Mombello eds., 2011).

Conservatives with strong ties to Opus Dei,⁹⁴ including the then-Minister of Justice, were unable to insert a total ban on abortion in the Constitution itself as part of the women's movement quickly organized a political coalition made up of activists and political party members to resist the incorporation of that clause.⁹⁵ Nonetheless, the conservatives quickly pivoted to arguing that Article 4.1 of the American Convention on Human Rights protected an absolute right to life of the unborn under, among other "constitutional and international human rights" arguments.⁹⁶

Progressive activists, on the other hand, used the conceptualizations of women's rights and reproductive rights as human rights articulated in Cairo, and Beijing as interpretative tools regarding the obligations of the Argentine state.⁹⁷ Indeed, a year after the Constitutional reform, advocates took the offensive, promoting a national bill on SRHR.⁹⁸ The bill was passed in Deputies but was blocked in the Senate by conservative groups with ties to the Catholic Church.⁹⁹ Nonetheless, the legislative discussions raised public awareness and began slowly to frame reproductive issues *as rights*.¹⁰⁰ (see Timeline 1990-2000)

94. "Opus Dei is an international lay Catholic group whose core ideal is the sanctification of work. But critics and some former members have accused the group of having cult-like practices and promoting a right-wing agenda." Terry Gross, *A Glimpse Inside a Catholic 'Force': Opus Dei*, NAT'L PUB. RADIO (Nov. 28, 2005), <https://www.npr.org/2005/11/28/5029154/a-glimpse-inside-a-catholic-force-opus-dei#:~:text=Opus%20Dei%20is%20an%20international,84%2C000%20members%20in%2080%20countries> [https://perma.cc/S3QG-N24H].

95. See Mónica Tarducci, *Escenas claves de la lucha por el derecho al aborto en Argentina*, 14 *SALUD COLECTIVA* 425, 428-29 (2018); Eduardo Videla, *Los únicos privilegiados son embriones*, Página12, <https://www.pagina12.com.ar/1998/98-12/98-12-09/pag03.htm> [https://perma.cc/JW6H-Z5QK]; *Un Arquitecto jurídico al servicio del menemismo*, https://www.clarin.com/politica/arquitecto-juridico-servicio-menemismo_0_rknxiU3gAte.html [https://perma.cc/JV6T-DKXV].

96. Paola Bergallo, *The Struggle Against Informal Rules on Abortion in Argentina, in ABORTION LAW IN TRANSNATIONAL PERSPECTIVE: CASES AND CONTROVERSIES* 146 (Rebecca J. Cook, Joanna B. Erdman & Bernard M. Dickens, eds., 2015).

97. See Straw, *supra* note 60, at 175.

98. See *id.* at 176.

99. See *id.*

100. See Zamberlin, *supra* note 93, at 89.

E. 2000s: Pushing for Institutionalization; Defending SRHR in the Courts

In 2001, the Millennium Development Goals (“MDGs”)—the world’s blueprint for development progress through 2015—focused attention on maternal health.¹⁰¹ The MDGs turned away from the broad transectoral ideas of political change necessary to achieve gender equality and reproductive rights that had been set out in the 1990’s UN conferences, and instead introduced a nested structure of goals, targets and indicators to measure achievements across countries.¹⁰² The shift from the transformative vision of institutional and social change embedded in ICPD and Beijing to a conservative, top-down agenda on maternal health was a blow to feminist movements around the world.

Nonetheless, in this time frame in Argentina, abortion was responsible for an estimated 30 percent of maternal mortality¹⁰³ and actors in the administration were committed to ensuring legal access as a matter of reproductive rights.¹⁰⁴ In 2002, in the middle of a crushing economic crisis in Argentina, the “National Reproductive Health Law” was enacted. The Minister of Health at the time, Ginés González García, one of the law’s most prominent defenders, declared that “[with this law], the country is able to move forward with an institutional framework that supported the effectiveness of sexual and reproductive rights.”¹⁰⁵ Law 25.673 was a breakthrough in the process by institutionalizing a rights-based approach to issues of sexuality and reproduction in the country, and the foundation for other key laws and public policies in line with the Cairo and Beijing frameworks.¹⁰⁶

101. See YAMIN, WHEN MISFORTUNE BECOMES INJUSTICE, *supra* note 36, at 105, 151 (2020); Alicia Ely Yamin & Vanessa M. Boulanger, *Embedding Sexual and Reproductive Health and Rights in a Transformational Development Framework: Lessons Learned from the MDG Targets and Indicators*, 21 REPROD. HEALTH MATTERS 74, 74–85 (2013).

102. *See id.*

103. *Abortion: Argentina, WOMAN HUM. RTS.*, <https://www.hrw.org/legacy/women/abortion/argentina.html> [<https://perma.cc/6PUS-GDQD>] (last visited Jan. 23, 2023); Lucía Martínez, *Romero: “Desde el regreso de la democracia 3.030 mujeres fallcieron por abortos*, CHEQUEADO (Apr. 17, 2018), <https://chequeado.com/ultimas-noticias/romero-desde-el-regreso-de-la-democracia-3-030-mujeres-fallecieron-por-abortos/> [<https://perma.cc/R8A5-MSNT>].

104. *See* Straw, *supra* note 60, at 176–77.

105. *Id.* at 176.

106. *See* Law No. 25.673 (Arg.).

However, implementation of the law faced huge obstacles. Argentina's dire economic situation, which plunged more than pervasive poverty, caused it to partially default on its massive external debt in December 2001.¹⁰⁷ In a fragmented health system based on employment status, many Argentines lost their health coverage through *obras aociales*.¹⁰⁸ In turn, basic health indicators relating to women's and children's quickly deteriorated.¹⁰⁹ With financing from the World Bank, in 2005 the Government launched *Plan Nacer* to increase access to health care to uninsured pregnant women and children under age six.¹¹⁰ This "results-based financing" plan focused on incentives regarding prenatal care, delivery care and well-child care.¹¹¹ In a global environment in which the MDGs focused on narrow approaches to maternal health, key aspects of reproductive rights remained without an adequate budget.

At the same time, faced with a liberalizing political and regulatory environment, conservatives deployed a variety of strategies, including turning to courts to restrict SRR.¹¹² In *Portal de Belén* (2002), a Catholic entity in the province of Córdoba filed suit against the Ministry of Health to prohibit the so-called "morning after pill."¹¹³ The Supreme Court ruled in favor of the

107. See *The Role of the IMF in Argentina, 1991-2002*, INT'L MONETARY FUND, <https://www.imf.org/external/np/ieo/2003/arg/index.htm#:~:text=Argentina%20was%20plunged%20into%20a,and%20political%20and%20social%20turmoil> [https://perma.cc/W5H6-H48Q] (last visited Jan. 24, 2023).

108. See *How to Ensure Quality Health Care and Coverage of Uninsured Populations: Argentina's Plan Nacer/Programa Sumar*, GLOB. DELIVERY INITIATIVE (Sept. 2015), <https://effectivecooperation.org/system/files/2021-06/GDI%20Case%20Study%20Argentina%20Plan%20Nacer.pdf> [https://perma.cc/CEZ5-SY3N].

109. See generally Carlos Bozzoli & Climent Quintana-Domeque, *The Weight of the Crisis: Evidence From Newborns in Argentina*, 96 *Rev. Econ. and Stat.* 550 (2014).

110. See *Argentina's Plan Nacer: Delivering Results for Mothers and Their Children*, WORLD BANK (Sept. 13, 2013), <https://www.worldbank.org/en/topic/health/brief/argentinas-plan-nacer-delivering-results-for-mothers-and-their-children> [https://perma.cc/B42J-J4FH].

111. *Id.*

112. María Angélica Peñas Defago & José Manuel Morán Faúndes, *Conservative Litigation Against Sexual and Reproductive Health Policies in Argentina*, 22 *REPROD. HEALTH MATTERS* 82, 82 (2014).

113. See *Portal de Belén/ Asociación Civil sin Fines de Lucro. Ministerio de Salud y Acción Social de la Nación amparo*, MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS ARGENTINA (Mar. 5, 2002), <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad->

group in 2002, accepting a series of openly religious arguments instead of using reasoning based on rights.¹¹⁴

Toward the end of the first decade of the millennium, a series of laws expanded sexual orientation and gender identity (SOGI) rights.¹¹⁵ The most prominent of these were Law on Same Sex Marriage, Law on Gender Identity, and Law on Comprehensive Access to Medically Assisted Human Reproduction Treatments, which allowed same-sex couples (as well as others) to obtain access to assisted reproduction.¹¹⁶ The reframing of reproduction as a choice as opposed to part of an essentialist role for women, was subsequently key in shifting the terms of the abortion struggle.¹¹⁷

IV. ARGENTINA'S PATH TO LEGALIZATION

A. *Evolving Actors and Fronts in the Struggle*

The Argentina abortion story case illustrates the inherently iterative nature of the use of rights for structural change. However, as Grainne de Búrca notes, this in no way implies that it is a “calmly adaptive, routine, mechanical process,” but that short-term mobilization or an isolated focus on one element of change rarely brings sustained shifts in legal and social norms and institutional practices.¹¹⁸ The Argentina case sharply reveals both the ongoing contestation across domains that occurs during the process of change, as well as the array of different actors involved that punctuate the process with disruptions.

autonoma-buenos-aires-portal-belen-asociacion-civil-sin-fines-lucro-ministerio-salud-accion-social-nacion-amparo-fa02000003-2002-03-05/123456789-300-0002-0ots-eupmocsollaf [https://perma.cc/J972-LME9]; Mariana Carbajal, *Hasta un falso Premio Nobel*, *Página/12* (Oct. 19, 2009), <https://www.pagina12.com.ar/diario/elpais/subnotas/133700-43138-2009-10-19.html> [https://perma.cc/5AP2-X767].

114. See Mariana Carbajal, *Hasta un falso Premio Nobel*, *Página/12* (Oct. 19, 2009), <https://www.pagina12.com.ar/diario/elpais/subnotas/133700-43138-2009-10-19.html> [https://perma.cc/5AP2-X767].

115. See Straw, *supra* note 60, at 182.

116. See Law No. 26.618 (Arg.); Law No. 26.743 (Arg.); Law No. 26.862 (Arg.).

117. Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006), <https://yogyakartaprinciples.org/> [https://perma.cc/HFL3-MX89].

118. BÚRCA, *supra* note 17, at 24.

B. Actors and Movements

While at the beginning feminist groups were largely advancing access to abortion rights on their own, new actors were drawn into the fray. In 1987, two women's groups emerged that would become key in mobilizing for the right to abortion: Catholics for Choice and the Commission for the Right to Abortion.¹¹⁹ At the beginning of the 1990s, other groups dedicated to the same cause emerged that would lead years later to the formation of the National Campaign for the Right to Legal, Safe and Free Abortion ("National Campaign").¹²⁰

It was after the dramatic social and economic crisis of 2001 that abortion became a central issue.¹²¹ During the 2003 National Women's Encounters more than 300 women participated in an "assembly for the right to abortion," including almost all of the country's feminist groups, workers, labor organizations, state workers, students, congressional representatives, members of leftist political parties, and the *Madres de la Plaza de Mayo*.¹²² These meetings paved the way for the creation of a nationwide campaign.¹²³

On 15 May 2005, the National Campaign for abortion was launched, with the aim to "advance the construction and the strengthening of a critical mass, capable of fighting for sexuality education to decide; contraception to not abort; legal abortion to not die."¹²⁴ Since then, more than 300 organizations from different parts of the country have joined.¹²⁵

119. See BELLUCCI, *supra* note 46, at 305.

120. See *id.* at 403.

121. See Barbara Sutton & Elizabeth Borland, *Framing Abortion Rights in Argentina's Encuentros Nacionales de Mujeres*, 39 *Feminist Stud.* 194, 200-01 (2013).

122. BARBARA SUTTON & NAYLA LUZ VACAREZZA, ABORTION AND DEMOCRACY: CONTENTIOUS BODY POLITICS IN ARGENTINA, CHILE, AND URUGUAY 160 (Aug. 5, 2021); María Chavez, *Historia de mujeres. Aborto y Encuentros de mujeres: como en 2023, ¿por el derecho decidir?*, RedInternacional (sept. 29, 2016), <https://www.laizquierdadiario.com/Aborto-y-Encuentros-de-Mujeres-como-en-2003-por-el-derecho-a-decidir> [<https://perma.cc/JK9U-3QL2>].

123. Amanda Alma & Paula Lorenzo, *Mujeres que se encuentran*, in TEMAS CONTEMPORÁNEOS 157 (2009).

124. Straw, *supra* note 60, at 180.

125. *Campana Nacional por el Derecho al Aborto Legal, Seguro y Gratuito*, ABORTO LEGAL, <http://www.abortolegal.com.ar/about/> [<https://perma.cc/YD36-TC78>].

At the same time, other press initiative such as the “Yo aborté” campaign (“I had an abortion”), in which women from various backgrounds “confessed” to having had an abortion had a significant impact in raising awareness and de-stigmatizing the issue.¹²⁶ For example, an interview with Zulema Yoma, ex-wife of President Menem, who, in the run-up to the 1999 presidential elections, made public that she had had an abortion with the support of her ex-husband, was particularly impactful.¹²⁷

By the end of the 1990s, the Central de Trabajadores Argentina, the principal confederation of trade unions, had decided to include the decriminalization of abortion in its platform, which was a major milestone in breaking through abortion being seen as a dissident or elitist issue.¹²⁸ In first decade of the 21st century, LGBTQ+ groups joined the fight, which permitted speaking of persons with the capacity to gestate, rather than just “women.”¹²⁹ The integration of mainstream human rights organizations, some of them originally linked to progressive sectors of the Catholic Church, took longer. When the Centro de Estudios Legales y Sociales (“CELS”)—one of the largest human rights organizations of Argentina—took an institutional stance in favor of abortion in 2009 and then join the National Campaign in 2012, the issue was squarely framed on the mainstream human rights agenda.¹³⁰

The inclusion of CELS, together with the Argentine chapter of Amnesty International, the Asociación por los Derechos Civiles (“ADC”), and the Equipo Latinoamericano de Justicia y Género (“ELA”), as well as other local organizations such as ANDHES in

126. See BELLUCCI, *supra* note 46, at 363–67.

127. See Mariana Carbajal, *Yo no puedo ser una hipócrita*, PÁGINA/12 (Sept. 16, 1999), <https://www.pagina12.com.ar/1999/99-09/99-09-16/pag03.htm> [<https://perma.cc/3QFZ-234W>].

128. Tarducci, *supra* note 95, at 429.

129. See Verónica Gago, *On the Precipice of Decision: The Struggle for Abortion Rights in Argentina*, VERSO (Dec. 29, 2020), <https://www.versobooks.com/blogs/4958-on-the-precipice-of-decision-the-struggle-for-abortion-rights-in-argentina>; Omar G. Encarnación, Latin America's Rights Riddle, *Foreign Policy Magazine* (Aug. 27, 2018) <https://foreignpolicy.com/2018/08/27/latin-americas-rights-riddle/> [<https://perma.cc/R6YC-EBBM>].

130. See Chantal Medici, *Estrategias para el aborto legal: la incidencia internacional. Argentina (2000-2017)*, 23 INSTITUTO DE CULTURA JURÍDICA Y MAESTRÍA EN SOCIOLOGÍA JURÍDICA 70, 76 (2020); Silvina Ramos et al., *El aborto no punible: una cuestión de derechos humanos*, en CENTRO DE ESTUDIOS LEGALES Y SOCIALES (CELS) INFORME ANUAL (2009).

Tucumán, among others, was key to further develop rights-based arguments.¹³¹ These alliances among organizations at multiple levels allowed for taking action to establish legal accountability for abortions denials in health services, as well as for strategic litigation and actions in regional and international forums, which was essential when domestic avenues of redress were closed. Indeed, the presentation of “shadow reports” that included various issues regarding abortion to human rights treaty-monitoring bodies was one crucial strategy and led to these bodies issuing observations and recommendations in this regard.¹³² These concluding recommendations again converted issues from being “technical” failings in access to care to being issues of injustice, which required intervention from actors outside of the health system.¹³³ The use of shadow reports, and the ensuing concluding recommendations, also enabled activists to maintain public attention on the issue.

The strength of the National Campaign came from the diversity of strategies its members adopted and continuously absorbing new actors. However, absorbing so many diverse actors also implied continual reaccommodation. For example, by 2014, *Socorristas*, a network of feminist groups, was not just advocating for legal change but was providing information and accompaniment to women who need an abortion using misoprostol.¹³⁴ The shift from claims for “legal abortion in the hospital” to “abortion anywhere,” captures the tensions within the abortion movement.¹³⁵

At the same time as community providers such as the *Socorristas* were building momentum, initiatives to collectively

131. Medici, *supra* note 130, 76.

132. *Id.*

133. *See id.* at 76 (describing the human rights organizations production of shadow reports as a way to frame legal and political arguments).

134. *See Quiénes somos*, SOCORRISTAS EN RED (FEMINISTAS QUE ABORTAMOS) (2022), <https://socorristasenred.org/quienes-somos/> [<https://perma.cc/DL6L-SE2D>]; Gabby De Cicco, *Socorristas en Red – Socorro Rosa: A feminist practice for the right to choose in Argentina*, AWID (June 13, 2014), <https://www.awid.org/news-and-analysis/socorristas-en-red-socorro-rosa-feminist-practice-right-choose-argentina> [<https://perma.cc/QGB8-DBWS>].

135. Agustina Paz Frontera, *Entrevista con Ruth Zurbriggen: Abortar en cualquier lugar en cuarentena*, LATFEM (April 20, 2020), <https://latfem.org/entrevista-con-ruth-zurbriggen-abortar-en-cualquier-lugar-en-cuarentena/>.

gather health professionals who were providing abortion under exceptions to criminalization (non-punishable abortions) took shape.¹³⁶ In 2011, the Center for the Study of the State and Society (“CEDES”) and partners organized a series of trainings and meeting with the few abortion providers in the country, which would later become the Argentine Safe Abortion Access Network (“REDAAS,” for its Spanish acronym), the first abortion network of health and legal professionals associated with public and community health services in the Americas that used a contextualized rights-based approach to make sense of entitlements and responsibilities in the particular setting of reproductive health services for health providers as well as patients.¹³⁷ A few years later, a network of health professionals for choice was formed and became part of the National Campaign.¹³⁸

C. Exposing Barriers to “Non-Punishable Abortions”: the Intersection between Rights and Institutional Practices in the Health System

In the early years of the new millennium, with the mobilization of feminist groups, the launch of the National Campaign, the appointment of a national health minister committed to legal abortion, and the creation of networks of health-care professionals among other factors, women began demanding their rights to abortions under the legal grounds provided for in Section 86 of the Criminal Code.¹³⁹ At the time, access to abortion at health services was still denied, based on the continuing power of negative informal norms.¹⁴⁰ By 2005, the Campaign decided to make public documented cases in which

136. Agustina Ramón Michel & Sonia Ariza, *La legalidad del aborto*, REDAAS (Sept. 2018), <https://www.redaas.org.ar/archivos-actividades/129-09.%20Legalidad%20del%20Aborto%20-%20ARM%20y%20SAN.pdf> [https://perma.cc/QY5A-HQPG].

137. See *id.*; *About Us*, REDAAS, <http://www.redaas.org.ar/english> [https://perma.cc/8JYT-YU62] (last visited Feb. 10, 2023); Fagioli Ann Paula, Red de profesionales de salud por el derecho a decidir, Clacadi Digital, <https://clacaidigital.info/bitstream/handle/123456789/879/Red.profes.salud.derecho.decidir.pdf?sequence=5&isAllowed=y> [https://perma.cc/W9EJ-Z5EF].

138. See *About Us*, REDAAS, *supra* note 137; Daby & Moseley, *supra* note 68, at 365.

139. See Bergallo, *supra* note 8, at 2.

140. See *id.* at 1.

pregnant women facing health risks, and adolescents who had been raped, were inappropriately forced to undergo judicial proceedings to access their legal rights.¹⁴¹

Among these was the *L.M.R. case*, in which a minor with a mental disability was denied an abortion by a public hospital after being raped, despite her mother complying with onerous reporting requirements.¹⁴² Although the Supreme Court of Buenos Aires ultimately agreed with petitioner, the delays in the hospital argued that the gestation was too far advanced to perform an abortion. L.M.R. eventually had an abortion outside the formal health system.¹⁴³ In response to this case, the first guidelines on non-punishable abortion were issued by the health ministry of the province of Buenos Aires in 2007, to give clear standards and duties to health providers.¹⁴⁴ That same year *L.M.R.'s case* had been taken to the UN Human Rights Committee, alleging that the delays and re-victimization had amounted to cruel, inhuman and degrading treatment.¹⁴⁵ Four years later, in 2011, the UN Human Rights Committee condemned Argentina.¹⁴⁶ The case added to a growing normative consensus under international law regarding the need to ensure access to therapeutic abortion in practice; it also broadened the debate within Argentine society and government sectors because it had become a matter of compliance with international human rights.¹⁴⁷ In the first decade of the 2000's, the cases brought across the country, as well as petitions and reporting

141. See Medici, *supra* note 130, at 74; Sabrina Cartabia Groba & Sonia Ariza, *A Case for Legal Abortion*, HUM. RTS WATCH (Aug. 31, 2020), <https://www.hrw.org/report/2020/08/31/case-legal-abortion/human-cost-barriers-sexual-and-reproductive-rights-argentina> [<https://perma.cc/D4VQ-WZTW>].

142. See HRC, Communication No. 1608/2007, *L.M.R. v. Argentina*, UN Doc. CCPR/C/101/D/1608 at paras. 2.1-2.4 (2011).

143. See *Report on Abortion in Argentina*, CEDAW, https://www.cels.org.ar/common/CEDAW_Report%20on%20abortion%20in%20Argentina_ENG_Final.pdf [<https://perma.cc/4H9E-BCBS>].

144. See generally Bergallo, *supra* note 8, at 198.

145. See Medici, *supra* note 130, at 73.

146. See *id.*; Groba & Ariza, *supra* note 141.

147. See generally MARIANA CARBAJAL, *EL ABORTO EN DEBATE. APORTES PARA UNA DISCUSIÓN PENDIENTE* (2010); Sabrina Cartabia Groba & Sonia Ariza, *A Case for Legal Abortion*, HUM. RTS WATCH (Aug. 31, 2020), <https://www.hrw.org/report/2020/08/31/case-legal-abortion/human-cost-barriers-sexual-and-reproductive-rights-argentina> [<https://perma.cc/D4VQ-WZTW>].

to supra-national forums, were not carried out in isolation.¹⁴⁸ Increasingly feminist lawyers had benefit of networks not just through the National Campaign, liberal academics and few human rights organizations, but also from across the region.¹⁴⁹

The *Red de Académica/os del Derecho* (“Red ALAS”) is a network of feminist law professors had been established in 2004 to counter some of the conservative pedagogy in law schools, and promote gender perspectives.¹⁵⁰ Transforming the education of lawyers and in turn judges was a long-term strategy for creating new “cosmologies” of legal reasoning about rights, equality and sexuality.¹⁵¹ In 2004, the *Consortio Latinoamericano Contra el Aborto Inseguro* (Latin American Consortium Against Unsafe Abortion, “CLACAI”), a regional network of abortion activists was founded, which further facilitated the intense exchanges of information and strategy that Margaret Keck and Kathryn Sikkink note regarding actors in human rights advocacy more broadly.¹⁵²

In 2010, the UN Human Rights Committee, in its Final Observations for Argentina, expressed its concern about the restrictive legislation on the matter, as well as the inconsistent interpretation of the grounds for non-punishment of Article 86 by courts and health services.¹⁵³ It also, requested the State to train

148. See CARBAJAL, *supra* note 147.

149. See generally Alba Ruibal & Cora Fernández Anderson, *Legal Obstacles and Social Change: Strategies of the Abortion Rights Movement in Argentina*, 8 POL., GROUPS, AND IDENTITIES 1 (Nov. 2018).

150. See *Who Are We?*, RED ALAS 1 (2022) <https://repositorio.redalas.net/sites/default/files/2022-07/Brochure%20RED%20ALAS%20%28English%29.pdf> [https://perma.cc/K879-UHX8]; *Integrantes de la Red*, RED ALAS, <https://redalas.net/red/integrantes> [https://perma.cc/A97C-6WVH] (last visited Jan. 27, 2023).

151. *Who Are We?*, RED ALAS 1, 7 (2022) <https://repositorio.redalas.net/sites/default/files/2022-07/Brochure%20RED%20ALAS%20%28English%29.pdf> [https://perma.cc/K879-UHX8].

152. See *2015-2019 Strategic plan*, Latin Am. Consortium Against Unsafe Abortion 1, 7 (Feb. 2015), <https://clacai.org/wp-content/uploads/StrategicPlan20152019Clacai.pdf> [https://perma.cc/57ZL-DKUX]; see generally Margaret E. Keck & Kathryn Sikkink, *Transnational Advocacy Networks in International and Regional Politics*, 68 INTL. SOC. SCI. J. 65 (2018).

153. See Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, U.N. Doc. CCPR/C/ARG/CO/4, at para. 13 (Mar. 31, 2010).

officials on the proper scope of these indications.¹⁵⁴ And finally, the committee modified the norm in such a way that it helps women avoid unwanted pregnancies and clandestine abortions.¹⁵⁵

The regional coalitions of legal scholars and advocates played a crucial role in *Artavia Murillo v. Costa Rica*, a case about access to in vitro fertilization.¹⁵⁶ In that case, the Inter-American Court of Human Rights held, among other things, that the protection of life under Article 4 of the American Convention of Human Rights is not absolute, but incremental, and that embryos do not have the status of persons.¹⁵⁷ As suggested by the framework set out by Rodríguez-Garavito and Rodríguez Franco, the effects of this case went far beyond material impacts on the claimants for IVF in Costa Rica; the indirect effects regarding abortion were extraordinarily significant throughout a region that had incorporated international law into domestic constitutions, including Argentina.¹⁵⁸ The conservative appeal to international standards regarding life from conception, which had been a key rallying cry since the incorporation of international standards in the 1994 Constitution, could no longer be reasonably claimed.

D. The Supreme Court Reframes the Debate: F, A. L. and Abortion in Case of Rape

The same year that the UN Human Rights Committee condemned Argentina in *L.M.R.* and *Artavia Murillo* was heard and decided by the Inter-American Court, the Argentine Supreme Court issued a landmark judgment in case of *F, A. L.* (2012).¹⁵⁹ In *F, A. L.*, the Court recognized non-punishable abortion as a woman's right, and established that the rape indication for abortion applied to

154. *See id.*

155. *See id.*

156. *See Artavia Murillo et al. v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C.) No. 257, 264 (Nov. 28, 2012); Julieta Lemaitre & Rachel Sieder, *The Moderating Influence of International Courts on Social Movements: Evidence from the IVF Case Against Costa Rica*, 19 HEALTH AND HUM. RTS J. 149, 151 (2017).

157. *See Artavia Murillo et al. v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C.) No. 257, 264 (Nov. 28, 2012).

158. *See GARAVITO & FRANCO, supra note 32, at 62.*

159. *See F, A. L. s/ Medida Autosatisfactiva*, SUP. CT. JUST. NATION: ARGENTINA 9, https://www.law.utoronto.ca/sites/default/files/documents/reprohealth/Case-Argentina_abortion_rape_English.pdf [<https://perma.cc/LN63-D8YA>].

anyone, and not only to those with mental disabilities.¹⁶⁰ *F., A. L.* was critical not just for expanding specific grounds for legality but also in changing public discourses and consciousness regarding abortion.¹⁶¹ The court was emphatic in its use of human rights language and arguments to defend access to abortion in the case of rape, which echoes arguments presented in *amicus curiae* not just by national organizations but regional and international actors.¹⁶² By contrast, conservative actors did not prevail upon arguments that the American Convention on Human Rights, and the Convention on the Rights of the Child (art. 6) prohibited abortion.¹⁶³

Moreover, the Court directed local courts, health ministries and governments to dramatically reform their practices and guarantee access to abortion when it was legal, including through issuing protocols.¹⁶⁴ Even though, given the Argentine constitutional review system, the Supreme Court's decisions do not automatically apply to all similar cases, the case had sweeping impacts, both material and symbolic. *After F., A. L.*, the National Ministry of Health updated its protocol to comply both with the judgment and other relevant statutes—particularly with regard to the consent of girls, adolescents and persons with disabilities—and the latest medical recommendations of WHO (2012).¹⁶⁵ Moreover, the updated 2015 “National Protocol for the comprehensive care of people entitled to legal interruption of pregnancy”—changed the framework from “non-punishable abortion” to “legal interruption of pregnancy.”¹⁶⁶ More than a

160. *See id.*

161. *See* Sandra Salomé Fernández Vázquez & Josefina Brown, *From Stigma to Pride: Health Professionals and Abortion Policies in the Metropolitan Area of Buenos Aires*, PUBMED CENT. (Nov. 27, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7888029/> [<https://perma.cc/3FYZ-V6SE>].

162. *See e.g., F., A. L. s/ Medida Autosatisfactiva*, SUP. CT. JUST. NATION: ARGENTINA 9, https://www.law.utoronto.ca/sites/default/files/documents/reprohealth/Case-Argentina_abortion_rape_English.pdf [<https://perma.cc/LN63-D8YA>].

163. *See* Organization of American States, American Convention on Human Rights, art. 4.1, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; *id.* at 11, 15–16.

164. *See id.* at 27–28.

165. *See* Defago & José Manuel Morán Faúndes, *supra* note 112, at 86.

166. *See generally* Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo, MINISTERIO DE SALUD: ARGENTINA (2019), <http://iah.salud.gob.ar/doc/433.pdf> [<https://perma.cc/T9GG-HSHJ>].

semantic change, this paradigm shift placed emphasis on the legality of the practice and not on the conditions for criminalization or decriminalization.¹⁶⁷

Indeed, the new 2015 version of the protocol was explicitly framed in terms of SRR, and was aimed at eroding the implementation gaps and lack of clarity that had underpinned informal rules erecting barriers to access in practice. For example, in what is highly unusual for a technical guideline for practitioners, it included discussions of the relevance of international human rights norms for the practice of health providers. This express inclusion of rights language and frameworks contrasted sharply with the traditional medical language in such protocols, which had addressed abortion as criminal issue, or at best as an issue of maternal mortality.¹⁶⁸

Moreover, some key standards in this protocol adopted and adapted international standards to the local challenges regarding those informal and background norms in health care settings. For example, the right to receive information regarding the right to access an abortion to those who might not be aware of the option as a proactive duty on the part of health providers and judicial actors (called “active transparency” obligation).¹⁶⁹ One of the more pressing problems of the “indications” model at that time was that most women did not know that they have a right to ask for an abortion.¹⁷⁰ The local formulation of information with transparency, developed originally by the Inter-American Commission on Human Rights¹⁷¹ that was key to destabilize background rules operating in the health system, and was adopted by feminist lawyers connected to regional and global environments who were engaged in the drafting of the updated protocol. This was the first time that a version of the transparent duty/right related to information was incorporated in a legal document in Argentina.¹⁷² The subsequent abortion protocols (e.g., Protocol

167. See Michel & Ariza, *supra* note 137, at 6.

168. See Groba & Ariza, *supra* note 141.

169. See *id.*

170. See *id.*

171. See Inter-Am. C.H.R., Access to Information on Reproductive Health from a Human Rights Perspective, OEA/Ser.L/V/II.Doc.61 (2011).

172. See *id.*

2021) and also the Law 27. 610 continued to include this active transparency obligation, which is still widely used in trainings and declarations by women organizations and health providers committed to abortion quality care.¹⁷³

Nonetheless, despite the 2012 Supreme Court ruling, and immense progress in the the national and some local ministries of health, noncompliance and pushback persisted across many of the more conservative provinces, and in pockets of more progressive provinces. Conservatives mobilized to challenge the federal and provincial protocols in court, and there was what Paola Bergallo has termed a “stickiness” of informal negative norms operating within the health system as well.¹⁷⁴

A paradigmatic case exemplifying the persistence the criminalization paradigm was “*Belén*.” In that case, an impoverished young woman was detained for almost 900 days after being charged homicide after having an abortion.¹⁷⁵ In March 2014, Belén arrived at a public hospital with intense vaginal bleeding, and had a miscarriage of a 20-week pregnancy.¹⁷⁶ Belén was accused by health providers of having given birth to “a baby” and trying to kill him, and was subsequently sentenced by to 8 years in prison.¹⁷⁷ A year after the initial Kafkaesque trial, a new feminist lawyer,¹⁷⁸ accompanied by the National Campaign and

173. See Michel & Ariza, *supra* note 137, at 6.

174. Bergallo, *supra* note 8, at 187, 188; see e.g. Cecilia Gebruers & Natalia Gherardi, *El aborto legal en Argentina: la justicia después de la sentencia de la Corte Suprema de Justicia en el caso 'F.A.L.'*, REDAAS (2015), <https://www.ela.org.ar/a2/objetos/adjunto.cfm?aplicacion=app187&cnl=87&opc=53&odcontenido=2147&codcampo=20> [<https://perma.cc/8ELL-K264>].

175. See Interview with Soledad Deza, Lawyer of Belén (Aug. 29, 2016); Press Release, Amnesty International, Argentina: Ruling to Release Woman Jailed after Miscarriage, a Step Forward for Human Rights (Aug. 17, 2016).

176. See Anna, *Miscarriage is Not a Crime: Free Belén*, AMNESTY INT'L UK (June 10, 2016), <https://www.amnesty.org.uk/blogs/urgent-action-network/argentina-miscarriage-not-crime-free-belen> [<https://perma.cc/6HYM-TVXK>].

177. See Florencia Halfon Laksman, *El “caso Belén”: libre*, ANFIBIA (Aug. 24, 2016), <http://revistaanfibia.com/cronica/libre/> [<https://perma.cc/P3FH-BLFS>].

178. Case Belén, *Cronología*, MXM Fundación (July 5, 2017), <https://mujeresxmujeres.org.ar/el-caso-belen-soledad-deza-y-su-defensa-tecnica/> [<https://perma.cc/Q74S-3W2X>].

others human right actors, appealed and prevailed at the Tucuman Provincial Supreme Court.¹⁷⁹

E. Building Relationships Among Lawyers, Policymakers, and Formal and Informal Providers

Resistance to legal abortion within the formal health sector had led to the creation of networks offering extra-systemic responses such as Lesbians and Feminists for the Decriminalization of Abortion, which by 2009 was one of the first helpline of the kind in Latin America.¹⁸⁰ The availability of misoprostol was key to enabling these possibilities, allowing more women to safely terminate their pregnancy within or outside of the health system.¹⁸¹ A few years later, the *Socorristas* was established, which built relationships with feminist lawyers, public health researchers, human rights NGOs and with some health professionals within the system.¹⁸²

In 2010, the 0800 helpline launched by the government's Sexual and Reproductive Health Directorate also began providing information about health services and opportunities to submit complaints for mistreatment or obstruction of access to legal abortion, which would continue to these days.¹⁸³ The establishment of the helpline was important in signalling a shift

179. See Mar Centenera, *Argentinean Woman Jailed for Abortion Acquitted After Two Years*, EL PAIS (Mar. 28, 2017), https://english.elpais.com/elpais/2017/03/28/inenglish/1490694996_147107.html [https://perma.cc/Z93P-6RAD].

180. See BELÉN GROSSO & RUTH ZURBRIGGEN, COALICIONES Y ALIANZAS ENTRE ACTIVISTAS FEMINISTAS Y EL SISTEMA DE SALUD: RELATO DE UNA EXPERIENCIA SITUADA EN POS DEL DERECHO A ABORTAR 8 (2016); Alba Ruibal & Cora Fernandez Anderson, *Legal Obstacles and Social Change: Strategies of the Abortion Rights Movement in Argentina*, 8 POL., GRP.'S., AND IDENTITIES 1, 10 (2018).

181. See *id.* at 11.

182. See BELÉN GROSSO & RUTH ZURBRIGGEN, COALICIONES Y ALIANZAS ENTRE ACTIVISTAS FEMINISTAS Y EL SISTEMA DE SALUD: RELATO DE UNA EXPERIENCIA SITUADA EN POS DEL DERECHO A ABORTAR 8, 10 (2016).

183. *Línea 0800 Salud Sexual*, ARGENTINA UNIDA, <https://www.argentina.gob.ar/salud/saludsexual/lineasaludsexual> [https://perma.cc/28AS-Y6BG] (last visited Feb. 11, 2023); Human Rights Council, General Assembly, A/HRC/WG.6/28/ARG/1, at 9, 11 (Aug. 24, 2017). (explaining on page 9 that the "National Programme was established in 2010 and on page 11 that the ational Programme" established the helpline).

from massive government indifference to violations of pregnant persons' rights to one of acknowledgement and responsibility.

In addition to the new protocols discussed above, dialogue and time were required to overcome misunderstandings regarding the legal status of abortion and build trust among stakeholders within the system. Over time, rights language came to be a way for abortion providers to legitimize and combat the stigma associated with this practice.¹⁸⁴ When feminist lawyers and actors from the women's movement began working closely with health professionals toward the end of the first decade of the millennium, there was a small group of "champions" within the formal health system who were willing to provide abortion under the legal grounds though the professional and political environment was conservative in this regard.¹⁸⁵ In the decade preceding legalization, this engagement slowly led to an increasing number of providers in formal health system appropriating identities as "guarantors of rights," and engaging in advocacy.¹⁸⁶

F. 2018: Abortion Arrives in Congress

Courts and ministries of health were the two institutional settings in which the production of norms regarding abortion access primarily occurred.¹⁸⁷ Congress and provincial legislatures were generally reactive until 2018.¹⁸⁸ In March of that year,

184. See *Conversatorio "El abordaje de la IVE en el marco de la ESI"*, MINISTERIO DE EDUCACIÓN ARGENTINA UNIDA (July 2, 2021), <https://www.argentina.gob.ar/noticias/conversatorio-el-abordaje-de-la-ive-en-el-marco-de-la-esi> [<https://perma.cc/U27L-G8W9>] (last visited Feb. 11, 2023); Andrea F. Noguera, *Argentina's Path to Legalizing Abortion: a Comparative Analysis of Ireland, the United States and Argentina*, 25 SW. J. INT'L L. 359, 374-76 (2019).

185. See Agustina Ramón Michel & Sonia Ariza, *La legalidad del aborto*, REDAAS (Sept. 2018), <https://www.redaas.org.ar/archivos-actividades/129-09.%20Legalidad%20del%20Aborto%20-%20ARM%20y%20SAN.pdf> [<https://perma.cc/QY5A-HQPG>].

186. REDAAS, *Summary of the Debate: What Are the Abortion Figures in Argentina?*, YOUTUBE (2018), <https://www.youtube.com/watch?v=ISFMMden8io&t=1s> [<https://www.youtube.com/watch?v=ISFMMden8io&t=1s>].

187. See generally Bergallo, *supra* note 8.

188. See Agustina Ramón Michel & Sonia Ariza, *La legalidad del aborto*, REDAAS (Sept. 2018), <https://www.redaas.org.ar/archivos-actividades/129-09.%20Legalidad%20del%20Aborto%20-%20ARM%20y%20SAN.pdf> [<https://perma.cc/QY5A-HQPG>].

President Macri, who himself did not support abortion nevertheless, gave the green light for a congressional debate.¹⁸⁹ In a matter of weeks seven similar bills were introduced.¹⁹⁰

The debate in the Chamber of Deputies included weeks of hearings, where more than 700 people testified.¹⁹¹ Impassioned testimonies on both sides of the debate came from activists, legal scholars, clergy, health providers, researchers, civil servants, legislators, students, victims of barriers to legal abortion, and an array of international experts.¹⁹²

The deeply polarized context for this debate was matched by a polarizing global context, and the Congressional debates in Argentina were a site of contestation in those global debates as well as local ones. By 2018, a clear divergence was evident relating to abortion and other SRR across the globe.¹⁹³ Unlike the Millennium Development Goals, the Sustainable Development Agenda in both the health goal (3) and the gender equality goal (5) included SRH and reproductive rights explicitly.¹⁹⁴ On the other hand, conservative used opposition to “gender ideology” as a symbolic glue and mobilizing political force.¹⁹⁵

189. See Louise Andres Henao, *Argentina President Urges Congress to Start Abortion Debate*, WASH. POST (Mar. 1, 2018), https://www.washingtonpost.com/world/the_americas/argentina-president-urges-congress-to-start-abortion-debate/2018/03/01/225a02e4-1d86-11e8-98f5-ceedfa8741b6_story.html [https://perma.cc/58DJ-V3PM].

190. *Presentan en Diputados el proyecto de aborto legal*, INFOBAE (March 6, 2018), <https://www.infobae.com/politica/2018/03/06/con-las-firmas-de-71-diputados-presentaran-en-el-congreso-el-proyecto-de-aborto-legal/> [https://perma.cc/2R7S-HJY8].

191. See generally Alberto Kornblihtt, *Why I Testified in the Argentina Abortion Debate*, 559 NATURE 303 (2018).

192. See REDAAS, *Summary of the Debate: What Are the Abortion Figures in Argentina?*, YOUTUBE (2018), <https://www.youtube.com/watch?v=ISFMMden8io&t=1s> [https://www.youtube.com/watch?v=ISFMMden8io&t=1s.].

193. Lucía Berro Pizzarossa, *Here to Stay: The Evolution of Sexual and Reproductive Health and Rights in International Human Rights Law*, 7 MDPI 29, 36 (2018).

194. See *Sustainable Development Goals*, Goal 5: Achieve Gender Equality and Empower All Women and Girls, UNITED NATIONS (2016), <https://www.un.org/sustainabledevelopment/gender-equality/> [https://perma.cc/M2TQ-GY2X].

195. See Weronika Grzebalska, Eszter Kováts & Andrea Petó, *Gender as Symbolic Glue: How “Gender” Became an Umbrella Term for the Rejection of the (Neo)liberal Order*, POLI. CRITIQUE (Jan. 13, 2017), <http://politicalcritique.org/long-read/2017/gender-as-symbolic-glue-how-gender-became-an-umbrella-term-for-the-rejection-of-the-neoliberal-order/> [https://perma.cc/3K8R-U7H2]; Sofia Antonellini, *About “Gender Ideology” and Other Myths: A Decolonial Critique of Antigender Discourse in Contemporary*

By the time of the Congressional debate, despite fierce conservative opposition, feminist advocates and scholars had developed facility with drawing on upon comparative and international law. Indeed, by the mid 2010's soft law had absorbed many of the arguments and developments at country-level, including in Argentina. As a result, there was a clear trend in international human rights law toward expanding legal access to abortion.¹⁹⁶ That is, in its 2016 General Comment 22, the UN Committee on Economic, Social and Cultural Rights, explicitly addressed the lack of availability and accessibility of abortion services as a violation of the SRHR.¹⁹⁷ In 2017, the CEDAW Committee adopted General Recommendation No. 35, which construes restrictive abortion laws as a form of structural violence against women.¹⁹⁸ Despite approaching safe abortion from distinct perspectives, the UN treaty bodies' collective conclusions establish an overlapping consensus for the protections of women's health rights and reproductive justice.¹⁹⁹

Feminist lawyers in Argentina drew explicitly on the further elaboration of these standards in comparative as well as international law and on networks of support formed and experience gained in the abortion field over years, while conservative networks and actors (including Pope Francis himself, who is Argentine) weighed in against abortion.²⁰⁰ The hearings, which were livestreamed, fostered an intense debates across Argentine society: among family members, in schools and universities, on television and radio shows, on social media, within health services unions and political parties, and even on the

Argentina, LINKÖPING UNIV. 1, 17-18 (2019), <http://liu.diva-portal.org/smash/get/diva2:1382140/FULLTEXT01.pdf> [<https://perma.cc/LZQ2-N7PJ>].

196. See Pizzarossa, *supra* note 193, at 35.

197. See CESCR, Gen. Comment No. 22: (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), at 4-5, U.N. Doc. E/C.12/GC/22 (2016).

198. See Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

199. See YAMIN, WHEN MISFORTUNE BECOMES INJUSTICE, *supra* note 36, at 157-60.

200. See Eliza Mackintosh & Euan McKirdy, *Argentina's Senate Rejects Proposed Bill to Legalize Abortion*, CNN (Aug. 9, 2018) <https://www.cnn.com/2018/08/09/americas/argentina-abortion-vote-intl/index> [<https://perma.cc/4JPL-XBP4>].

streets.²⁰¹ This degree of public learning and debate about a piece of legislation was unprecedented in Argentine history, and was essential to the social decriminalization of abortion.

As the white kerchief has been the symbol of Mothers of the Plaza de Mayo, the green scarf became a symbol tied around necks and attached to backpacks and handbags of thousands of people in the country, as well as across Latin America.²⁰² While thousands of people gathered in Buenos Aires to watch the vote on a giant screen outside Congress, with thousands more in other public plazas or their homes watching on television and YouTube, on the morning of June 14, 2018, after a session of over 30 hours, the lower Chamber of Deputies passed the bill.²⁰³ The inter-generational “Green Wave” as it had come to be called, starring “the revolution of the daughters”²⁰⁴ and supported by the older “pioneers” literally swayed collectively as activists clung to each other with joy.²⁰⁵

Passing the legislation in the Chamber of Deputies, could only have been achieved because representatives from different parties –the so-called “sororas”– worked tirelessly together, setting aside their party differences.²⁰⁶ In a highly charged political culture with

201. See Amy Boyle, “They Should Have Never Given Us Uniforms If They Didn’t Want Us to Be an Army”: *The Handmaid’s Tale* as Transmedia Feminism, 45 J. Women in Culture and Soc’y 845, 848 (2020).

202. See Karina Felitti & Rosario Encartes Ramírez Morales, *Pañuelos verdes por el aborto legal: historia, significados y circulaciones en Argentina y México*, ENCARTES 111 (2020).

203. See Latin America News Dispatch, *Argentine Chamber of Deputies Passes Abortion Bill, With Vote by Senate to Follow*, LATINO USA (June 14, 2018), <https://www.latinousa.org/2018/06/14/argentinaabortionbill/> [https://perma.cc/K5C7-LT2P].

204. *La Revolución De Las Hijas*, ANFIBIA (Aug. 6, 2018), <https://www.revistaanfibia.com/la-revolucion-de-las-hijas/> [https://perma.cc/CR3T-892E]; see Giselle Carino, *The Green Wave and a Historic Win for Abortion Rights in Argentina*, CTR. FOR INT’L POL’Y STUD. (Apr. 21, 2021), <https://www.cips-cepi.ca/2021/04/21/abortion-and-rights-in-argentina/> [https://perma.cc/TL4Y-24C3].

205. María Florencia Alcaraz, *Crónica de l@s soror@s*, ANFIBIA (June 14, 2018), <https://www.revistaanfibia.com/cronica-de-ls-sorors-2/> [https://perma.cc/EY5S-UJQ4]; see María Florencia Alcaraz, *Hasta que sea ley*, ANFIBIA (Sept. 11, 2018), <http://revistaanfibia.com/cronica/hasta-que-sea-ley-2/> [https://perma.cc/VS4C-77KJ].

206. See María Florencia Alcaraz, *Crónica de l@s soror@s*, ANFIBIA (June 14, 2018), <https://www.revistaanfibia.com/cronica-de-ls-sorors-2/> [https://perma.cc/EY5S-UJQ4]; María Florencia Alcaraz, *Hasta que sea ley*, ANFIBIA (Sept. 11, 2018), <http://revistaanfibia.com/cronica/hasta-que-sea-ley-2/> [https://perma.cc/VS4C-77KJ].

deep party divisions, this was only possible as a result of trust having been built over time among the sororas. The experience of having worked together on the Law on Gender Parity in Spheres of Political Representation, enacted in 2017, proved fundamental.²⁰⁷ Sororas also connected individually and collectively with National Campaign activists, NGOs, health experts, feminist lawyers, public officials as well as like-minded politicians outside of Congress to negotiate the bill.²⁰⁸

In August 2018, the Senate rejected the bill narrowly, but the struggle did not end there.²⁰⁹ The Green Wave continued, in schools and universities, and among health providers and was carried forward through various policies in the Ministry of Health.²¹⁰ Moreover, #SeráLey (“#It will be Law”) was integrated into the social demand for “*Ni una menos*” (“Not one woman less”) which arose as a broad social clamor beginning around 2015 due to the high rates of femicide.²¹¹ The linkage to this massively supported social demand further changed social views in Argentina about abortion, and undercut the opposing narrative that this was a dissident, elitist or internationally-imposed agenda

G. *The Final Push in a Complicated National and Global Context*

By the time President Alberto Fernández took office on December 10, 2019, the country was clearly facing another dramatic economic and social crisis.²¹² Indeed, the Executive

207. See Vanina Escalles, *Las primeras sororas: históricas y vigentes*, LATFEM (June 19, 2019), <http://latfem.org/las-primeras-sororas-historicas-y-> [<https://perma.cc/9ACF-CHLA>].

208. See María Florencia Alcaraz, *Crónica de I@s soror@s*, ANFIBIA (June 14, 2018), <https://www.revistaanfibia.com/cronica-de-ls-sorors-2/> [<https://perma.cc/EY5S-UJQ4>]; María Florencia Alcaraz, *Hasta que sea ley*, ANFIBIA (Sept. 11, 2018), <http://revistaanfibia.com/cronica/hasta-que-sea-ley-2/> [<https://perma.cc/VS4C-77KJ>].

209. See Mackintosh & McKirdy *supra* note 200.

210. See María Florencia Alcaraz, *Crónica de I@s soror@s*, ANFIBIA (June 14, 2018), <https://www.revistaanfibia.com/cronica-de-ls-sorors-2/> [<https://perma.cc/EY5S-UJQ4>]; María Florencia Alcaraz, *Hasta que sea ley*, ANFIBIA (Sept. 11, 2018), <http://revistaanfibia.com/cronica/hasta-que-sea-ley-2/> [<https://perma.cc/VS4C-77KJ>].

211. See Daby & Moseley, *supra* note 68, at 359.

212. See Natalie Alcoba, *Facing Economic Crisis, Argentina Picks Fernandez as president*, ALJAZEERA (Oct. 28, 2019),

assumed emergency powers before the pandemic broke out in early 2020.²¹³ The sweeping devastation of the pandemic, in health and economic impacts, coupled with the Fernández administration's responses, were a source of extreme partisan divisiveness in an already polarized context.²¹⁴

Nonetheless, the work built to consolidate trust between the *sororas* was maintained. In 2020, coordination began between officials in the administration and congressional representatives from different political parties.²¹⁵ In particular, the Chief of the Office of Legal Counsel of the Presidency, Vilma Ibarra— who had long been a pioneering advocate for abortion rights— worked with the then-Health Minister, Ginés González García, who was again in office; and the Minister of Women and Gender, Elizabeth Gómez Alcorta.²¹⁶

In around November 2020, the Congressional debate was reopened.²¹⁷ The bill called for decriminalizing “voluntary interruption of pregnancy” (“IVE”) until 14 weeks of gestation, and maintained the grounds that had been in force thereafter, known as Legal Interruption of Pregnancy (“ILE”).²¹⁸ Additionally, Law

<https://www.aljazeera.com/news/2019/10/28/facing-economic-crisis-argentina-picks-fernandez-as-president> [https://perma.cc/N8CZ-NLUZ].

213. La Bicameral de Trámite Legislativo Avaló Los DNU en el Marco de la Emergencia Sanitaria, DIPUTADOS ARGENTINA (May 18, 2020), https://www.hcdn.gob.ar/prensa/noticias/2020/noticias_1275.html [https://perma.cc/9KNR-Z94Y].

214. See Roberto Gargarella, *Argentina: Facing Coronavirus in the Shadow of the Rule of Law*, BILL HEALTH (June 8, 2020), <https://blog.petrieflom.law.harvard.edu/2020/06/08/argentina-global-responses-covid19/> [https://perma.cc/2YGF-KGYG]; Roberto Gargarella, *Concerns Mount About Rule of Law in Argentina During COVID-19*, BILL HEALTH (Sept. 15, 2020), <https://blog.petrieflom.law.harvard.edu/2020/09/15/argentina-covid19-democracy-rule-of-law/> [https://perma.cc/8Q7R-JP6V].

215. *Congress Begins Debate on Bill to Legalise Abortion*, BUENOS AIRES TIMES (Jan. 12, 2020), <https://www.batimes.com.ar/news/argentina/congress-begins-debate-on-bill-to-legalise-abortion.phtml>.

216. See *Congress Begins Debate on Bill to Legalise Abortion*, BUENOS AIRES TIMES (JAN. 12, 2020), <https://www.batimes.com.ar/news/argentina/congress-begins-debate-on-bill-to-legalise-abortion.phtml> [HTTPS://PERMA.CC/7T2L-NP38];

217. See Giulia Miraglia, *Argentina: History Has Been Made*, LA TENIQUE PREFACE <https://www.latonique.news/articles/argentina-history-has-been-made> [https://perma.cc/S2CZ-N92D] (last visited Jan. 27, 2022).

218. Carla Patino Carreno, *Effects in the Health Services of Abortion Regarding the Different Paths to Decriminalize it: Constitutional Courts, Legislative Change or Referendum*, CENT. EUR. UNIV. 1, 69-70 (Aug. 2021).

27.610 guaranteed coverage for abortion granting a right to conscientious objection to individual health professionals, but not to institutions, with a set of explicit limits and duties.²¹⁹ Further, in an effort to present a comprehensive policy on women's and children's health rights, President Fernández also presented the bill for the "Comprehensive Health Care and Attention during Pregnancy and Early Childhood Law," known as the "1,000-Day Plan."²²⁰

By comparison with the 2018 debate, the arguments made by so-called "Green" legislators before and during the 2020 debate were more strongly anchored in public health, although alongside the rights arguments.²²¹ Another strategic difference with respect to 2018, resulting in part from 2018 lessons, was that the text of the law was informally agreed upon among "Green Senators," before being approved in the Chamber of Deputies in order to avoid attempts to modify it.

On December 11, 2020, Members of the Chamber of Deputies approved both bills.²²² A few weeks later, on December 30, the Senate, by 38 votes in favor to 29 against, passed both bills.²²³ After fifteen years of building precedents, and decades of struggle for women's full equality in Argentina's democracy, in the midst of the Christmas holiday at the end of a devastating pandemic year, Law 27.610 became the law of the land.

219. See Law No. 27.610, Dec. 29, 2020 (Arg.).

220. See Tanya Wadhwa, *Right to Abortion Is One Step Closer to Becoming Law in Argentina*, PEOPLES DISPATCH (Nov. 20, 2020), <https://peoplesdispatch.org/2020/11/20/right-to-abortion-is-one-step-closer-to-becoming-law-in-argentina/> [<https://perma.cc/GT5V-MNCL>].

221. See Paloma Dulbecco et al., *Mensajes en disputa. El debate legislativo del proyecto de Ley de Interrupción Voluntaria del Embarazo*, in *EL ABORTO EN EL CONGRESO: ARGENTINA 2018-2020* 5-7 (2021).

222. See Kim D. Ricardo, *The U.S. Could Learn From Argentina's Groundbreaking Plan to Reduce Maternal and Childhood Mortality*, MS MAG. (Apr. 19, 2022), <https://msmagazine.com/2022/04/19/pro-life-laws-argentina-1000-day-plan-maternal-mortality/#:~:text=The%201%2C000%2DDay%20Plan%20won,pregnant%20people%20and%20infant%20children> [<https://perma.cc/62QM-MCFX>].

223. See Diego Laje & Kara Fox, *Argentina's Senate Approves Historic Bill to Legalize Abortion*, CNN (Dec. 30, 2020), <https://www.cnn.com/2020/12/30/americas/argentina-abortion-senate-vote-intl/index.html> [<https://perma.cc/RZ6Q-LMY8>].

*V. THE FIRST YEAR OF THE NEW ABORTION LAW: CHANGING
PARADIGM, RULES AND PRACTICES.*

Passing Law 27.610 was an essential step to institutionalize a paradigm of abortion based on reproductive justice. Nevertheless, there is still a long way to go to make effective access to abortion a reality for poor women and other pregnant persons in practice. In the first year after the law took effect, criminalization and rights paradigms coexisted, with their respective languages, ideas, and practices.

For example, on the one hand, a young female physician from Salta, a province in the north of the country, was accused of having performed an illegal abortion even though, according to the patient's clinical history and other accounts, the procedure was legal.²²⁴ On the other hand, the national government doubled the amount of misoprostol it purchased from the previous year, which was a tectonic change in the infrastructure necessary to guarantee access to abortions.²²⁵

Misoprostol enables abortions to be offered in primary care centers as well as hospitals, which in turn exponentially expands access in Argentina's health system.²²⁶ The change in the law triggered material changes in the purchase and accessibility of Misoprostol.²²⁷ It also, importantly, triggered a symbolic change in the perception of misoprostol, and medication abortion. Although it has been used for more than two decades, most health professionals avoided even mentioning misoprostol.²²⁸ Before Law 27.610, the health services that performed legal abortions were extremely cautious when deciding "how much" misoprostol to request from the Ministry of Health, for fear of being informally

224. See *La médica detenida por practicar una ILE ahora fue denunciada por la paciente*, TELAM DIGIT. (Sept. 7, 2021), <https://www.telam.com.ar/notas/202109/567815-medica-detenida-ile-denunciada-paciente-salta-aborto.html> [https://perma.cc/294T-KGMR].

225. See Mariana Romero et al., *Proyecto mirar: a un año de la ley de aborto en Argentina*, CEDES AND IBIS REPROD. HEALTH 25 (Dec. 2021).

226. See Mariana Romero & Agustina Ramón Michel, *The Shift From Criminalization to Legalization of Abortion in Argentina*, 328 JAMA 1699, 1699 (Nov. 1, 2022).

227. See Law No. 27.610, Dec. 29, 2020 (Arg.).

228. See Romero & Michel, *supra* note 226, at 1700.

sanctioned, of being questioned (i.e., why so much?) or of having the stigma of “*aborteros*” (abortionists) attached to them.²²⁹

Legalization has changed these attitudes and practices radically. At the present, all local governments request misoprostol from the national health ministry. Moreover, Buenos Aires province, the most populous of the country, for the first time in its history decided to buy misoprostol to assure care for legal abortion.²³⁰ Along these lines, the province of Mendoza lifted the restrictions on the purchase of misoprostol in pharmacies that it had imposed a few years earlier; according to the local authorities, “a contrary analysis [decision] implies violating recognized rights by the recently sanctioned National Law 27. 610.”²³¹

According to official data, in the first six months of 2021, almost 26 thousand legal abortions were performed.²³² Although this figure may omit some cases, the systematic monitoring of the need for and use of the procedure contrasts with the lack of any national data (only some provinces reported the abortions performed) in previous years.²³³ Once abortion is legalized and data can be collected, it can be used to inform better policies.

For example, the data collected during the first year of legalization reflects significant inequalities across the provinces. Considering the number of women of childbearing age by province, the Autonomous City of Buenos Aires (the richest in the country and with the best socioeconomic indicators), is the jurisdiction with the highest number of registered abortions (5.6 per thousand women), followed by Tierra del Fuego (the southernmost province

229. *See id.*

230. *See El gobierno compró 80 mil comprimidos de misoprostol para garantizar la interrupción legal del embarazo*, IDEP SALUD (2020), <https://idepsalud.org/pcia-bs-as-compro-misoprostol-para-garantizar-ile/> [<https://perma.cc/96XH-FMPE>].

231. *Mendoza eliminó las restricciones para la compra de misoprostol*, PÁGINA/12 (Feb. 26, 2021), <https://www.pagina12.com.ar/326329-mendoza-elimino-las-restricciones-para-la-compra-de-misopros> [<https://perma.cc/5ZCD-NWVE>].

232. *See* Nayla Luz Vacarezza, *Legal Abortion in Argentina Policy Recommendations Based on Community and Professional Providers' Perspectives* 3 (Colum. Univ. Inst. Latin Am. Stud.).

233. *See* Mariana Romero & Silvina Moisés, *El aborto en cifras*, REDAAS 1, 4 (Dec. 2020), <https://repositorio.cedes.org/bitstream/123456789/4581/1/187-El%20aborto%20en%20cifras%2c%202020%20-%20MR%20y%20SM%20-%20REDAAS.pdf> [<https://perma.cc/Ry89-T6QW>]; Groba & Ariza, *supra* note 141.

of the country), where it was 4.3.²³⁴ On the other side of the spectrum are the provinces in the northeast of the country, which is the poorest region, with approximately 0.6 abortions per thousand women.²³⁵ In Catamarca, another poor and conservative northern province in the northwest: the 554 legal abortions were performed in the first year of Law 27,610 compared with the 233 from 2019.²³⁶ In short, the data suggests both positive advances and the need to focus on barriers to the enjoyment of other social rights, sub-national state capacities and responsiveness. Argentina's experience reveals that abortion rights cannot be advocated for in a silo-ized manner if they are to yield changes in the agency women and pregnant persons exercise over their lives.

The passage of the law did not magically do away with informal and background norms that result in delays or denial of access within the health care system either. However, compliance with referring patients has increased, some hospitals with many objectors have hired providers amenable to providing abortions, and administrative actions were filed against professionals who misused conscientious objection; which shows some degree of accountability.²³⁷ Here the text of Law 27. 610, was important in imposing obligations on objecting providers. It mandates that public hospitals guarantee the practice (creating a service model different from that of Mexico City, for example, which has specialized public abortion clinics), and imposing a duty to transfer and assume the costs of referral on private health institutions when they do not have professionals available. Individuals and family members can denounce violations through the 0800

234. Romero et al., *supra* note 225.

235. These provinces include Misiones, Formosa, and Corrientes. See Mariana Romero et al., *supra* note 225.

236. *Mendoza eliminó las restricciones para la compra de misoprostol*, PÁGINA/12 (Feb. 26, 2021), <https://www.pagina12.com.ar/326329-mendoza-elimino-las-restricciones-para-la-compra-de-misopros> [<https://perma.cc/WA7T-MN9H>].

237. See Agustina Ramón Michel & Dana Repka, *Malos usos*, in INFORME SOBRE MINOTOREO NACIONAL SOBRE OBJECCIÓN DE CONCIENCIA 2021, REDAAS (2022); Agustina Ramón Michel et al., *Regulating Conscientious Objection to Legal Abortion in Argentina: Taking into Consideration Its Uses and Consequences*, 22 HEALTH AND HUM. RTS. J. 271 (Dec. 8 2020), <https://www.hhrjournal.org/2020/12/regulating-conscientious-objection-to-legal-abortion-in-argentina-taking-into-consideration-its-uses-and-consequences/> [<https://perma.cc/AE79-F6F6>].

helpline and bring consumer protection complaints against their private insurance companies.²³⁸

The courts have also continued to be a site of contestation. During its first year, 37 lawsuits were filed by Catholic NGOs and former legislators against the law, requesting its unconstitutionality, either by way of *amparo* (Proceeding for the protection of a constitutional right that was violated) or unconstitutionality actions.²³⁹ On the other hand, a coalition of NGOs and government agencies, have appeared in these cases to defend the constitutionality of the law.²⁴⁰ To date, the results are favorable to Law 27. 610, either because the petitions against it have been rejected (26 cases), or they were shelved (4).²⁴¹ Nevertheless, seven (7) of these cases are still pending, where the case involving criminal proceedings against the health provider in Salta we mentioned early in this section may well end up in the Supreme Court.²⁴²

Meanwhile, actors large and small—from the *socorristas* to mainstream human rights NGOs such as Amnesty International—are engaged in outreach to continue to “socialize” the new law into all corners of the country, with the goal of allowing women and persons who gestate see rights as underpinning their claims to access essential health care.²⁴³

238. See Resolution 139/ 2020 (Arg.); Romero & Michel, *supra* note 226, at 1700.

239. See DIRECCIÓN NACIONAL DE SALUD SEXUAL Y REPRODUCTIVA, SEGUNDO INFORME SOBRE CAUSAS JUDICIALES CONTRA LA LEY 27.610 25, 46 (2022); *Implementar IVE-ILE, Ley 27610: Informe annual 2021*, MINISTERIO DE SALUD: ARGENTINA (July 2022), <https://bancos.salud.gob.ar/recurso/implementar-ive-ile-ley-27610-informe-anual-2021> [<https://perma.cc/7S7Q-HJNC>].

240. See Mariana Romero et al., *supra* note 225, at 25, 48.

241. *Acceso a Métodos Anticonceptivos y a Interrupción Voluntaria y Legal del Embarazo: Reporte Bimestral en base a secuencias del 0800 46 Julio-Agosto 2021*, MINISTERIO DE SALUD: ARGENTINA (2021), https://bancos.salud.gob.ar/sites/default/files/2021-12/Informe_0800_Reporte_jul-ago_2021.pdf [<https://perma.cc/36ZQ-G4PL>].

242. See Liz Mason-Deese, *A Year After Legalization, Argentina’s Abortion Activists Turn Fight to Unequal Access*, 54 NACLA REPORT ON AM.’S 132 (2022); See Romero & Michel, *supra* note 226, at 1700.

243. *El Derecho al Aborto es Ley*, SOCORRISTAS EN RED, <https://socorristasenred.org/esley/> [<https://perma.cc/D7U8-45L3>]; *Derecho al Aborto*, AMNESTY INT’L, <https://amnistia.org.ar/derechoalaborto/>.

VI. CONCLUSION

The passage of Law 27.610 in Argentina is a tremendous milestone in a long struggle that in this Article we have traced from the transition to democracy in 1983. The implementation has already begun and shows how inequality and “sticky” negative informal norms are not easily overcome. Far from mechanical “implementation” the Argentine case illustrates how an array of national actors were active agents in both the deconstruction of historical and cultural narratives regarding morality and sex, and in turn the affirmative production and negotiation of new normative and social meanings regarding sexual and reproductive decisions. Yet the new law has institutionalized a rights framework that has been building for decades and allows women, health providers, policy makers, judicial actors, and citizens in general to have a shared language to think and debate policies and programs for abortion which will continue sustaining and creating social meanings in the future.

In this Article we have underscored ways in which this case study highlights the complex impacts of using rights for social change. In the course of challenging and overturning the criminalization paradigm, diverse actors vernacularized the abstract conceptualizations of rights in international law to make them meaningful in the domestic context, through judicialization, regulations and health protocols, social debates, trainings and political relationships. Those actions, in turn, influence the further elucidation and elaboration of norms and arguments in international and comparative law. In short, this is a story of recursive and evolving interaction, as opportunity structures evolved, between an array of national actors—from administrative agencies and courts to advocates to health providers—and international actors and normative standards, as well as global development paradigms. The importance of the iterative and recursive dialogue between national and international actors and institutions was critical. Moreover, the cosmopolitanism with which constitutional norms were permeated by comparative and international norms presents a marked difference with the United States.

Nonetheless, in countries where we now see dramatic retrogression in terms of reproductive justice and abortion rights, such as the United States, the Argentina case provides key

lessons for progressive actors. For example, constructing abortion rights in Argentina called for dismantling not just formal, but also those informal and background rules impeding effective access. This struggle also required enlarging social discourses around democratic citizenship and equality and taking measures to “socially decriminalize” abortion in addition to legally decriminalize it. The Argentine case confirms the importance of understanding SRHR as Gráinne de Búrca argues about human rights generally: “as the product of ongoing interaction and contestation between an array of actors, institutions and norms,”²⁴⁴ including the claims and demands of people affected, the international normative standards and domestic institutions which reinforce and support claims.

244. BÚRCA, *supra* note 17, at 3-4.

