

# **DEFENDING THE HUMAN RIGHT TO LIFE IN URUGUAY**

## **-Executive Summary-<sup>1</sup>**

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The Republic of Uruguay has adopted for its Nation a republican and democratic way of government. It has adopted also the traditional tripartite division. The legislative branch is composed of a representative chamber and a senatorial chamber. The executive power resides in the president of the Republic who is responsible for international relations, command of the army, and administration of the country. The president has a vice president, who also presides over the congress. Finally the judicial branch is exercised independently by the Supreme Court of Justice and courts of different types and levels.

Regarding the National Constitution, its last modification was in 1967. Section II “Rights, Duties and Guarantees” numbers the fundamental rights. In relation to human rights, the constitution establishes that there is no difference whether the person is a citizen or not, a national or a foreigner, because human rights go beyond those qualities.

The Republic is part of the international community since it has signed several International treaties<sup>4</sup>.

The most important modification of the law in Uruguay recently was the law that provided for “Voluntary interruption of pregnancy”.

After a long parliamentary debate and having been approved by the minimum difference of one vote in the Chamber of Deputies on October 22, 2012, Law N°

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<sup>1</sup> This report is the executive summary of its complete version in Spanish. Available at: <http://defendiendovidas.org/uruguay.php>

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<sup>4</sup> Some of them are: The Charter of the United Nations and the Statute of the international court of Justice; Covenant of the protection of maternity; International Pact on Civil and Political Rights; International Pact on Economic, Social and Cultural Rights; Vienna Convention on the Law of Treaties; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on Protection of Children and Co-Operation in Respect of Inter-country Adoption; American Convention on Human Rights, etc.

18.987- "Voluntary Interruption of Pregnancy"- was enacted in Uruguay. A month later it was regulated by Decree N° 375/012 (hereafter, the "Decree").

The campaign for approval emphasized, among other things, that the law should not criminalize a woman who underwent an abortion. However, the Uruguayan courts had never sentenced a woman who had an abortion, only the persons who participated in the commission of the crime. Since 1938 the Uruguayan Penal Code has punished women who perform an abortion on themselves as well as third parties who perform or assist in the performance of an abortion. The crime is aggravated when it is done without the consent of the woman and when it results in injury or death. At the same time, mitigating and exculpatory causes are regulated for four cases:

- Abortion in order to preserve the honor of the woman
- Abortion committed when the pregnancy is the result of a sexual crime
- Abortion to protect the health of the mother
- Abortion for reasons of financial distress.

Law N°18.987 did not repeal these penal laws, but ordered that they not be applied if the abortion is performed: a) during the first 12 weeks of pregnancy, regardless of cause, b) during the first 14 weeks of pregnancy in case of rape, c) at any time during pregnancy, if there is serious risk to the health of the mother, and d) at any time during pregnancy, if the fetus's malformations are incompatible with life outside the mother's womb. In these cases, the abortion consented to by the woman is not penalized and its realization is an enforceable obligation on providers of health services, to the point that, if they oppose based on conscientious objection (or ideology, in the case of institutions), they still have the duty to refer the woman to another provider who will perform the abortion itself.

However, abortion will be considered a right in the previous cases, only if the woman goes through the following procedure: first, a consultation with an interdisciplinary team of three professionals (a gynecologist, a psychiatrist, and a psychologist or social worker). In theory, this team should inform the women of the content of law N° 18.987, of the risks inherent to abortion, and of alternatives to abortion. At that point the woman has a period of reflection of at least five days during which to decide whether or not to abort. If, after the deadline, the woman decides to abort, a medical exam is required.

In several respects (with regard to interdisciplinary consultation, conscientious objection by health personnel, etc.) the Decree has refined law N° 18.987, so that the procedure more easily leads to abortion. Thus, the content of the law was changed without going through the filter of parliamentary debate. Rather, the changes came down as a Decree issued by the Executive. Contrary to what its proponents claimed, Law N° 18.987 and its regulatory Decree cannot prevent illegal abortions being committed, since the performance of abortions still ignore the procedure and the terms provided by the law, and therefore remain formally illegal.

In an attempt to repeal this law, some pro-life organizations urged the promotion of a referendum. In the Uruguayan constitution, a referendum is a resource that citizens can use to repeal laws within the first year of their enforcement. The referendum must be requested by 25% of the citizens on a non-binding election day, that is, an election day on which voting is not mandatory. A group of people acquired the necessary signatures to convene such an event. It took place on June 23, 2013, but the total votes collected were equivalent to only 8% of the electorate. This lean vote prevented the possibility of repealing the law in this way.

Despite this sad scenario, the authors of the report offer legislative and political lines of action providing integral solutions. The authors note three kinds of laws that, as an historical matter, have developed one after the other. The first one is denominated "free choice" - when the woman has an alleged right to keep the life inside her or not. The second contemplates "abortion under certain circumstances". This kind of law sees abortion as a possible solution for the woman when she is under certain circumstances that can make the woman's condition worse. And finally the third generation laws are made under a premise: *Save both*.

These "save both" laws seek to preserve the life of the unborn and the mother. "Preserving the life of the mother" refers not only to the case where her life is at risk but also to freeing her from oppressive social conditions. Also these laws aim to find the real causes of the performing of abortions in order to provide real solutions. The authors show that this issue is not only juridical-penal or only medical. The answer must come from a multidisciplinary field to protect pregnant women, especially those who are in social exclusion conditions, such as poverty, the lack of a decent housing, a permanent job.

Some of the solutions are the following:

- *Familial Help: Generate the possibility that persons can directly contribute with economic support to help poor families, most of the times single mothers and her children in order to cover specifically the nurturing and the education of minor children. Also international sponsorship for a concrete person or child can create real ties of affection with the helper and beneficiary. This solution thus combines the dignity of the beneficiary family; the control of the benefactor of the destiny of his economic support, and maintenance of the child in his affective environment.*
- *Familial emergency assignment: This consists of economic help from the State to women in vulnerable conditions (such as poverty, the lack of a decent housing, a permanent job). This financial help already exists in Uruguay, but due to currency depreciation the amount given to the beneficiaries doesn't respect the "principle of sufficiency" that requires that adequate social security benefits be provided.*

- *Housing:* Uruguayan national constitution provides in article 45 the right to decent housing. The issue of the housing is one of the main problems that need a solution in order to promote a proper familial development. This initiative seeks to give preference to pregnant women in the governmental program of “social housing”, which provides access to affordable houses for poor people.
- *Adoption:* In Uruguay on average, the number of couples available to adopt is between four or six times greater than the number of children waiting to be adopted. The adoption process can be improved in two ways: First, shorten the delays of the process of adoption. And second, promote international adoption respecting the preferences of the natural parents and giving to the child the possibility to be heard in his preferences. Even though Uruguay has signed the International Covenant of Adoption this aim has proved hard to achieve.
- *Centers for Maternal Care:* The purpose of these centers is to provide periodical housing and medical/psychological assistance to pregnant women in vulnerable conditions, facilitating after the birth the nurturing of their children and also the possibility to find a job.

With this report the authors show the legislative, political and also jurisprudential aspect of the right to life in Uruguay. And also propose a positive change for the integral protection of all women and their dignity thus promoting a real solution to the problem of the sad consequences that generate abortions.