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PREGNANCY, FEMICIDE, AND THE INDISPENSABILITY OF LEGALIZING ABORTION: A COMPARISON BETWEEN ARGENTINA AND IRELAND

INTRODUCTION

Although Argentina has relatively high levels of education, strong civil-society groups, and a long history of feminist activism, the country remains stagnant on change regarding women's rights, specifically, reproductive rights.¹ Among the long-standing human rights problems in Argentina is the "endemic violence against women, restrictions on abortion, [and] difficulty accessing reproductive services."² Argentine law considers abortion a crime with the exception of two narrowly defined circumstances: (a) if the abortion is carried out with the purpose of averting risk to the mother's life or health when that risk cannot be averted by any other measure; or (b) in the case of the rape of a mentally disabled woman.³ This kind of law perpetuates both the cultural and institutional restraints surrounding abortion that are "paradigmatic of how women's bodies are socially regulated in Argentina."⁴

Restricting abortion has severe implications—more violence against women. The United Nations, and other human rights organizations have, in recent decades, focused their attention on a specific form of violence, *gender-based violence*.⁵ Explicitly, *femicide* is generally characterized as the murder of

¹ *Violence Against Women, Murder and Machismo: Fighting Femicide in Argentina*, ECONOMIST (Nov. 5, 2016), <https://www.economist.com/the-americas/2016/11/05/murder-and-machismo>.

² Marcos Brindicci, *Argentina Events of 2017*, HUMAN RIGHTS WATCH (Jan. 2018), <https://www.hrw.org/world-report/2018/country-chapters/argentina>.

³ BARBARA SUTTON, *BODIES IN CRISIS: CULTURE, VIOLENCE AND WOMEN'S RESISTANCE IN NEOLIBERAL ARGENTINA*, 103 (Rutgers University Press, 2010); CÓDIGO PROCESAL PENAL DE LA NACIÓN [CÓD. PROC. PEN.] [CRIMINAL PROCEDURE CODE] art. 86 (Buenos Aires, 1984) (Arg.); *see also* Marianne Mollmann, *Decisions Denied: Woman's Access to Contraceptives and Abortion in Argentina*, HUMAN RIGHTS WATCH (June 14, 2005) <https://www.hrw.org/report/2005/06/14/decisions-denied/womens-access-contraceptives-and-abortion-argentina#>. The current penal code entered into force in the late 1880s and in 1922 was amended to allow for three exceptions to the prohibition on abortion: where the pregnant woman's life or health was in danger, where the pregnancy was the result of rape, or where the pregnant woman was mentally disabled. *Id.* at 15. During the 1976–1983 dictatorship, the penal code was changed and made stricter: the exceptions now required "grave" danger to a woman's life or health and the commencement of criminal proceedings in the case of rape. *Id.* After the reinstatement of a democratic government in 1984, the provisions were amended to return to the 1922 wording "with one small but substantive difference: a comma in the text was removed." *Id.* Pregnancies that were a result of rape were no longer permitted as non-punishable abortions unless the woman who had been raped was mentally disabled. *Id.* This is how the current penal code came to be and it still only provides for these two exceptions.

⁴ SUTTON, *supra* note 3, at 96.

⁵ Catherine T. Coyle et al., *The Relationship of Abortion and Violence Against Women: Violence Prevention Strategies and Research Needs*, 30 ISSUES L. & MED. 111, 112 (2015).

women because they are women.⁶ Femicide rates in Latin America are among the highest in the world.⁷ Sadly enough, femicide is portrayed as tragic “yet ultimately to be expected” within Latin America.⁸ Femicide can be linked specifically to pregnant women who could not get an abortion and continued facing violence from the man involved in the pregnancy, which ultimately then resulted in their death; the legalization of abortion could potentially reduce the rates of femicide of pregnant women and can definitely reduce the amount of violence against women.

Interestingly, a common stereotype specific to Latin America is that motherhood is an “expected, celebrated, idealized, and naturalized role for women”⁹ However, it is difficult to reconcile this conceptualization of motherhood in Latin America with the fact that one of the leading causes of death among pregnant and post-partum women is murder by an intimate partner.¹⁰ In fact, in most gender violence and femicide cases, the killer was the partner or former partner of the victim.¹¹ Femicide is an important yet “often unreported” cause of maternal mortality and there exists a link between abuse during pregnancy and attempted and completed femicides.¹²

Denying the legalization of abortion will have detrimental effects to the women of Argentina, especially pregnant woman. Without this avenue available as a choice, pregnant women face increased chances of becoming victims of femicide or continued abuse victims, since abuse during pregnancy and unwanted or unplanned pregnancies have been linked with femicide occurrences.¹³ In fact, studies have shown there specifically exists a connection between violence and access to abortion.¹⁴ The rates of violence by the man

⁶ WORLD HEALTH ORGANIZATION, UNDERSTANDING AND ADDRESSING VIOLENCE AGAINST WOMEN 1 (2012).

⁷ Roberta S. Jacobson, *Women and the Rule of Law: A View from the Americas*, 38 FLETCHER F. WORLD AFF. 101, 102 (2014).

⁸ Allie Pitchon, *Machismo, Honor Killings, and Femicide: The United States' Ethnocentric Rhetoric on Gender Violence*, BUBBLE (July 12, 2018, 5:55 PM), <http://www.thebubble.com/machismo-honor-killings-and-femicide-the-united-states-ethnocentric-rhetoric-on-gender-violence/>.

⁹ SUTTON, *supra* note 3, at 96.

¹⁰ Rachel Camp, *Coercing Pregnancy*, 21 WM. & MARY J. WOMEN & L. 275, 296 (2015).

¹¹ Mar Centenera, *With One Femicide Every 30 Hours, Gender Violence on Rise in Argentina*, EL PAÍS (Apr. 1, 2016), https://elpais.com/elpais/2016/04/01/inenglish/1459514254_172242.html.

¹² Judith McFarlane et al., *Abuse During Pregnancy and Femicide: Urgent Implications for Women's Health*, 100 OBSTETRICS & GYNECOLOGY 27, 27 (2002).

¹³ *See id.*

¹⁴ *See* Katie McDonough, *Study on Reproductive Rights and Domestic Violence: Being Denied an Abortion “Tethered Women to Violent Men,”* SALON (Sept. 30, 2014), https://www.salon.com/2014/09/29/study_on_reproductive_rights_and_domestic_violence_being_denied_an_abortion_tethered_women_to_violent_men/; *see also* M Antonia Biggs et al., *Risk of Violence From the Man*

involved in a pregnancy decreased among women who were able to have an abortion but remained consistent for women who continued their pregnancies to term.¹⁵ Terminating an unwanted pregnancy may allow women to avoid physical violence from the man involved in the pregnancy, while having the baby from an unwanted pregnancy results in sustained physical violence over time.¹⁶ Demographer Diana Greene Foster, who studies the effects of unintended pregnancies on women's lives, found that "being unable to have the abortion *tethered* women to violent men, while women who have the abortion were more able to escape abusive relationships."¹⁷ Policies restricting abortion may result in more women's inability to terminate unwanted pregnancies, potentially keeping them in contact with violent partners, and putting women at risk of femicide.¹⁸

Violence against women is influenced by a number of different factors operating at four different levels: (a) individual; (b) familial relationships; (c) community; and (d) a societal or structural level relating to laws, policies, and broader societal influences.¹⁹ As discussed below, the link between pregnancy and femicide is clear; this Comment argues that the legalization of abortion can have positive impacts in reducing the risk of pregnant women facing femicide and violence.

This past decade has been accompanied by a series of progressive reforms in Argentina, such as gay marriage, transgender rights, and sexual education policies.²⁰ In fact, before 2018, abortion was not a topic of conversation in Argentina, mainly due to "a combination of lack of political will and opposition from the influential Roman Catholic Church, fighting on Pope Francis' home turf."²¹ Argentina's conservative President, Mauricio Macri, although

Involved in the Pregnancy After Receiving or Being Denied an Abortion, BMC MED. 1, 1 (2014). The data in this research comes from the "Turnaway Study" a prospective cohort study of women who all sought, but did not all receive, abortions at 30 abortion facilities in the United States. *Id.* at 2. Participants were English and Spanish speaking women, 15 years of age or older, with no known fetal abnormalities or demise, who presented themselves at one of the study facilities between January 2008 and December 2010. *Id.* The study found that among women seeking an abortion, having an abortion was associated with a reduction over time in physical violence while carrying the pregnancy to term was not. *Id.* at 6.

¹⁵ Biggs et al., *supra* note 14, at 5.

¹⁶ *Id.*

¹⁷ See McDonough, *supra* note 14, at ¶ 3.

¹⁸ Biggs, et al., *supra* note 14, at 1.

¹⁹ WORLD HEALTH ORGANIZATION, *supra* note 6, at 4.

²⁰ Daniel Politi & Ernesto Londoño, *Argentina's Senate Narrowly Rejects Legalizing Abortion*, N.Y. TIMES (Aug. 9, 2018), <https://www.nytimes.com/2018/08/09/world/americas/argentina-abortion-vote.html>.

²¹ Jordana Timerman, *Misogyny, Femicide and an Unexpected Abortion Debate*, N.Y. TIMES (May 15, 2018), <https://www.nytimes.com/2018/05/15/opinion/argentina-abortion-ni-una-menos.html>.

personally opposed to legalization, said Congress needed to debate the abortion issue and stated he would sign the bill legalizing abortion into law if Congress passed it.²² A wave of support from activist groups in Argentina rallied and marched throughout the summer of 2018 while the legislature debated the bill. But on August 9, 2018, after sixteen hours of deliberation, Argentina's senate narrowly rejected the "Interrupción Voluntaria del Embarazo" bill.²³ This bill would have allowed women to terminate their pregnancy during the first fourteen weeks.²⁴

In a region where 97% of women live in countries where abortion is illegal, banned, or allowed only in very rare instances, Argentina's legalization would have set an example and marked a mile stone for women's rights in Latin America.²⁵ In Latin America, abortion is strictly prohibited in six countries, while nine other countries allow it almost exclusively to save the woman's life, with a small number of those countries offering limited exceptions for rape (Brazil, Chile, and Panama).²⁶ Currently, abortion is legal without restrictions in only three places in Latin America: Cuba, Uruguay, and Mexico City.²⁷ Experts estimate that about 14 million unintended pregnancies occur in Latin America and the Caribbean each year, almost half (46%) of which end in abortion.²⁸ Considering the law and numbers presented, women are turning to illegal methods which can result in serious health consequences. Whatever is behind the current impasse in law reform for women's benefit—"whether it is called stigma, misogyny, religion, morality, or political cowardice—few, if any, existing laws on abortion are fit for purpose."²⁹

Recently, Ireland repealed their constitution's Eighth Amendment which criminalized abortion as punishable by up to fourteen years in prison.³⁰ Like

²² Scott Squires, *Argentina Senate Rejects Measure to Legalize Abortion*, REUTERS (Aug. 9, 2018), <https://www.reuters.com/article/us-argentina-abortion/argentina-senate-rejects-measure-to-legalize-abortion-idUSKBN1KU0KL>.

²³ Politi & Londoño, *supra* note 20.

²⁴ Cámara de Diputados, *Interrupción Voluntaria del Embarazo*, PROYECTO DE LEY (June 13, 2018), <http://www.senado.gov.ar/parlamentario/comisiones/verExp/22.18/CD/PL>.

²⁵ Politi & Londoño, *supra* note 20.

²⁶ GUTTMACHER INSTITUTE, *Abortion in Latin America and the Caribbean* (2018), <https://www.guttmacher.org/fact-sheet/abortion-latin-america-and-caribbean>.

²⁷ Zeinab Mohammed Salih, *Argentina Wrestles with Legalizing Abortion*, U.S. NEWS (Aug. 8, 2018, 2:53 PM), <https://www.usnews.com/news/best-countries/articles/2018-08-08/argentina-wrestles-with-legalizing-abortion>; *see also* Politi & Londoño, *supra* note 20 (in the region, only Uruguay, Cuba, Guyana and Mexico City allow any woman to have an early-term abortion); *Abortion in Latin America and the Caribbean*, *supra* note 26.

²⁸ *Abortion in Latin America and the Caribbean*, *supra* note 26.

²⁹ Marge Berer, *Abortion Law and Policy Around the World: In Search of Decriminalization*, 19 HEALTH & HUM. RTS J. 13, 15 (2017).

³⁰ Mairead Enright et al., *Position Paper on The Updated General Scheme of the Health (Regulation of*

Argentina, Ireland is a predominantly Catholic country that has for years criminalized abortion with even stricter standards than Argentina. Yet, Ireland was able to repeal its amendment, and the Irish government is currently planning to bring legislation before the Dáil, the lower house of the Irish legislature, requesting an abortion period up to the twelfth week of pregnancy.³¹ Argentina, however, remains at the starting line.

This Comment suggests that Argentina can learn from Ireland and their current journey of attempting to codify the legalization of abortion. This Comment proposes that Argentina follow Ireland's lead and re-propose legislation to legalize abortion. This would be a slightly easier situation than Ireland's because the Argentine Constitution contains nothing about the criminalization of abortion.³² Argentina would, however, have to alter the Código Penal [Criminal Code] of Argentina which currently criminalizes abortion.³³ Legalizing abortion would not only expand women's rights, but it would also reduce the rates of femicide and violence against women in the country, which have been increasing every year since 2014.³⁴

This Comment proceeds in the following order: Part II provides an overview of Argentina's recent decision to deny legalizing abortion and provides an in-depth explanation of the denial's consequences. Part III focuses on the history and factors influencing women's rights in Latin America and the new grassroots activist movement that has sprung up in Argentina to fight for women's rights. Part IV analyzes Ireland's past and current situation as a point of comparison and explains how Ireland has advanced thus far after recently repealing an amendment in their constitution that criminalized abortion. Part V introduces the proposals and legal arguments as to why Argentina should follow Ireland's footsteps while Part VI summarizes the proposals suggested throughout this Comment and provides an overall conclusion to the issue at hand.

Termination of Pregnancy) Bill 2018, DUBLIN CITY UNIV., 1, 5 (2018), <https://lawyers4choice.files.wordpress.com/2018/08/position-paper-1.pdf>.

³¹ Harriet Sherwood, *Abortion in Ireland—What Happens Next?*, GUARDIAN (May 26, 2014), <https://www.theguardian.com/world/2018/may/26/abortion-ban-repealed-ireland-what-happens-next>.

³² See CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

³³ See CÓDIGO PROCESAL PENAL DE LA NACIÓN [CÓD. PROC. PEN.] [CRIMINAL PROCEDURE CODE] art. 86 (Buenos Aires, 1984) (Arg.).

³⁴ Traci Tong, *The Dangers of Reporting on Femicide in Argentina*, PUB. RADIO INT'L (Nov. 3, 2017, 4:30 PM), <https://www.pri.org/stories/2017-11-03/dangers-reporting-femicide-argentina>.

I. ARGENTINA'S RECENT DENIAL OF THE BILL LEGALIZING ABORTION

In June 2018, supporters of the “Interrupción Voluntaria del Embarazo” bill to legalize abortion and women’s rights activists scored an unexpected victory when the lower house of the Argentine Congress, the Chamber of Deputies, narrowly approved the bill allowing women the option to terminate their pregnancy.³⁵ Longstanding Argentine law allows abortions only in cases of rape or when a mother’s life is in danger.³⁶ Even in those circumstances, it remains extremely rare; high standards are imposed to avoid abortions happening at all.³⁷ In response to an information request from Amnesty International, the province of Buenos Aires reported that from 2010–2015 there were 612 legally permitted abortions within its jurisdiction.³⁸ The number is miniscule when compared to the estimated 500,000 clandestine abortions carried out in Argentina *per year*.³⁹

The bill the Senate debated would have allowed abortion procedures during the first 14 weeks of pregnancy while still maintaining the health and rape thresholds for procedures after the first fourteen weeks.⁴⁰ Emotions ran high as thousands of women and women’s rights activists organized marches and rallies supporting the bill.⁴¹ Supporters anxiously gathered outside the Senate and remained there all throughout the winter night while the Senate deliberated the bill.⁴² But in the end, after hours of deliberation that ended in the early morning of August, 9, 2018, thirty-eight lawmakers voted against the bill, thirty-one voted in favor of it, and two abstained.⁴³ The fact that the deliberation was so lengthy and came this far “signal[ed] a real shift in public opinion,” but it did not change anything for the women of Argentina who, when pregnant, face an increased risk of femicide or violence without the option of abortion as a potential avenue to save their lives.⁴⁴

³⁵ See Politi & Londoño, *supra* note 20.

³⁶ Politi & Londoño, *supra* note 20; Salih, *supra* note 27.

³⁷ See Nadia Berenstein, *Abortion in Argentina: Fact and Fantasy*, REWIRE NEWS (May 24, 2007), <https://rewire.news/article/2007/05/24/abortion-in-argentina-fact-and-fantasy/>. Abortion is unpunishable in cases where the health or life of the woman is endangered by the pregnancy or in cases where a mentally disabled or insane woman becomes pregnant after being raped. But in a country where abortion is illegal, there is no network of abortion providers. *Id.* So even these two exceptions from prosecution offer a false promise. *Id.* There is no standard policy by which doctors, hospitals, or the courts review cases and grant exceptions, therefore many times being up to the discretion of the judges to determine whether a woman meets the exception. *Id.*

³⁸ Tomás Brockenshire, *Abortion in Argentina by the Numbers*, BUBBLE (June 13, 2018), <http://www.thebubble.com/abortion-in-argentina-by-the-numbers/>.

³⁹ Salih, *supra* note 27; see also Brockenshire, *supra* note 38.

⁴⁰ Salih, *supra* note 27.

⁴¹ See Politi & Londoño, *supra* note 20, 5–6.

⁴² Squires, *supra* note 22.

⁴³ Politi & Londoño, *supra* note 20.

⁴⁴ *Id.*

A. *Criticisms and Consequences of the Bill Being Denied*

There is a prevalence of domestic violence against women who are seeking abortions. These abused women are less likely to inform their partner of the pregnancy or have their partner be involved in any decision they make throughout the process.⁴⁵ Why? Fear of more violence, abuse, or possible death. Men use violence against women as a result of: (a) “possessiveness and jealousy;” (b) an expectation concerning women’s work in the home; (c) a punishment for women for perceived wrongdoing; and (d) as a prop to male authority.⁴⁶

Unplanned or unwanted pregnancy is one factor that potentially influences the increased risk of violence against women.⁴⁷ A study found that physical violence from the man involved in the pregnancy decreased over time for women having abortions but not for women denied abortions, which is concerning in light of the number of restrictions that limit a woman’s access to abortion in Latin America.⁴⁸ A similar study that focused on abusive dynamics played out in two cases: (a) Woman A was able to terminate an unwanted pregnancy; and (b) Woman B was denied an abortion for an unwanted pregnancy.⁴⁹ The findings illustrated that both Woman A and Woman B experienced violence from the man involved in the pregnancy.⁵⁰ Woman B, who was denied an abortion, gave birth to the baby and by that time was no longer in a romantic relationship with the man she once considered her boyfriend.⁵¹ After the birth, she remained in contact with the man and described episodes of violence for the two years that followed her attempt to receive an abortion.⁵² Woman A also reported having symptoms of Post-Traumatic Stress Disorder (PTSD), which she believed she developed after being attacked by the man and having her baby taken temporarily from her by the police.⁵³ On the other hand, woman B who was given access to an abortion and obtained one, explained that she had been mentally abused by the man involved in the pregnancy and did not want to have a child with him.⁵⁴ At the time of conception, woman B was engaged to the man

⁴⁵ Gillian Aston & Susan Bewley, *Abortion and Domestic Violence*, 11 ROYAL C. OF OBSTETRICIANS & GYNECOLOGISTS, 163, 163 (2009).

⁴⁶ *Id.* at 165.

⁴⁷ See WORLD HEALTH ORGANIZATION, *supra* note 6, at 1.

⁴⁸ Biggs, et al., *supra* note 14, at 6.

⁴⁹ McDonough, *supra* note 14, ¶ 5.

⁵⁰ *Id.* ¶ 6.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* ¶ 7.

involved in the pregnancy and after the abortion, they stopped being romantically involved.⁵⁵ Woman B reported no ongoing contact with the man at two years after the abortion.⁵⁶

Of course, while some women might be pressured into having an abortion in countries where abortion is legal, abortion protects women because they can discontinue unwanted pregnancies and escape violent relationships.⁵⁷ Women who might want an abortion and live in a country where it is illegal face the risk of either going to jail or might suffer seriously dangerous consequences if they chose to undergo a clandestine abortion.⁵⁸

The common ground between the “pro-choice” and “pro-life” lobbies should be that violence against women, especially pregnant women, is intolerable.⁵⁹ By legalizing abortion, a woman not only has the chance of escaping a violent relationship but has the opportunity to make her own choice, free from any pressure of her partner, and faces less of a risk of femicide and repeated violence or abuse. This Comment explains the connection between violence, pregnancy, access to abortion, as well as the criminal consequences of what getting an abortion entails, the health consequences from receiving a clandestine abortion, and the socioeconomic issues related to abortion in Argentina.

1. Femicide Motivated by Pregnancy

Women with unplanned or unwanted pregnancies are at increased risks of violence if they don't have safe access to abortions. And women that are currently in violent relationships, face an increased risk of femicide.⁶⁰ So it is no surprise that femicides typically end up being committed by current or former partners.⁶¹ Specifically, there is an increased risk of intimate partner femicide (IPF) for pregnant women.⁶²

In addition to abuse of women during pregnancy, an unwanted or unplanned pregnancy can also put a woman at risk for femicide. Empirical studies have proven that women who live in abusive relationships are less likely “to use modern contraceptive methods consistently, which in turn increases the

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Aston & Bewley, *supra* note 45, at 167.

⁵⁸ See Timerman, *supra* note 21; Politi & Londoño, *supra* note 20; *see also* Mollmann, *supra* note 3.

⁵⁹ Aston & Bewley, *supra* note 45, at 167.

⁶⁰ WORLD HEALTH ORGANIZATION, *supra* note 6, at 1.

⁶¹ *Id.*

⁶² *Id.*

likelihood of unintended pregnancies.”⁶³ One of the main risk factors for the prevalence of violence against women in developing countries is an unplanned pregnancy.⁶⁴ Therefore, without a means to prevent or end these pregnancies, women have limited options for protecting themselves from being potential femicide victims. Why? Because pregnancy can lead to abuse while abuse can lead to more unplanned or unwanted pregnancies, resulting in a higher and higher risk of IPF as the cycle continues.⁶⁵

The World Health Organization has gathered information from different studies conducted and found that:

intimate partner violence during pregnancy is a risk factor for women’s increased risk of being killed by an intimate partner. For example, an examination of police and medical examiner records in 11 US cities showed that pregnancy significantly increased women’s risk of becoming a victim of intimate partner homicide and that men who abuse their partners during pregnancy seem to be particularly dangerous and more likely to commit homicide.⁶⁶

A separate multi-country study on women’s health and violence against women conducted by the World Health Organization revealed that a large number of women who have been beaten prior to pregnancy reported physical abuse during pregnancy but around 50% of women in three different study sites stated that they were beaten for the first time during pregnancy.⁶⁷ Most of the women abused during pregnancy do not report it out of fear; “women reporting abuse during pregnancy are at a three-fold-risk of becoming an attempted or completed femicide victim.”⁶⁸ An eye-opening statistic explains that *more* pregnant women die from murder by an intimate partner than from pregnancy

⁶³ Leyla Ismayilova, *Intimate Partner Violence and Unintended Pregnancy in Azerbaijan, Moldova and Ukraine*, 1–22 (MEASURE Demographic and Health Survey, Working Paper No. 79, 2010).

⁶⁴ Khurram Nasir & Adnan A. Hyder, *Violence Against Pregnant Women in Developing Countries*, 13 EUR. J. OF PUB. HEALTH 105, 105 (2003).

⁶⁵ See WORLD HEALTH ORGANIZATION, *supra* note 6, at 1; Ismayilova, *supra* note 63.

⁶⁶ WORLD HEALTH ORGANIZATION, *INTIMATE PARTNER VIOLENCE DURING PREGNANCY* 1, 3 (2012).

⁶⁷ *Id.*

⁶⁸ McFarlane et al., *supra* note 12, at 33.

related bleeding or other complications.⁶⁹ Most women that are murdered during pregnancy experience “violent deaths” and die during their first trimester.⁷⁰

a. Abuse of Pregnant Women Points to Femicide

As established above, physical abuse can result in the femicide of pregnant women.⁷¹ The relationship between abuse during pregnancy and subsequent femicide is clear.⁷² Pregnancy, is a huge risk factor for femicide.⁷³ In some ethnic studies, women abused while pregnant reported more frequent and severe abuse compared with women abused before pregnancy but not during pregnancy.⁷⁴ Women abused during pregnancy are three times more likely to be murdered than women who were abused before becoming pregnant.⁷⁵

Studies from different countries have specifically linked intimate partner violence with maternal mortality.⁷⁶ To give an example, “a study from Mozambique found that violence was the fourth highest cause of maternal death at one hospital; and as much as 16% of maternal mortality was attributable to intimate partner violence in Maharashtra, India.”⁷⁷

A majority of physical violence during pregnancy is “routinely directed towards a woman’s womb.”⁷⁸ Clinicians have found that batterers beat their pregnant partners’ bellies because of their rage at the fetus and view that the fetus is in competition for their partner’s love.⁷⁹

Regarding the severity of abuse experienced by pregnant women, one study of 329 Hispanic women found that 30% of these pregnant women were

⁶⁹ Camp, *supra* note 10, at 296; *see also* Christie Lancaster Palladino, et al., *Homicide and Suicide During the Perinatal Period: Findings from the National Violent Death Reporting System*, 118 *OBSTETRICS & GYNECOLOGY* 1056, 1060 (“In total, we identified 233 pregnancy-associated violent deaths, yielding an overall pregnancy-associated violent death mortality rate of 4.9 per 100,000 live births; 64.8% of the pregnancy-associated violent deaths in our sample occurred during pregnancy In addition, the rates of pregnancy-associated homicide and suicide were each higher than mortality rates attributable to common obstetric causes.”).

⁷⁰ Camp, *supra* note 10, at 296.

⁷¹ McFarlane et al., *supra* note 12, at 27.

⁷² *Id.* at 28.

⁷³ WORLD HEALTH ORGANIZATION, *supra* note 6, at 4; *see also* Jacquelyn C. Campbell, et al., *Intimate Partner Homicide: Review and Implications of Research and Policy*, 8 *TRAUMA, VIOLENCE & ABUSE* 246, 269 (2007); Campbell, et al., *supra* note 65, at 1097; Naeemah Abrahams, et al., *Perpetration of Violence Against Intimate Partners: Health Care Implications from Global Data*, 179 *CANADIAN MED. ASS’N J.* 511, 512 (2008).

⁷⁴ McFarlane et al., *supra* note 12, at 28.

⁷⁵ Camp, *supra* note 10, at 296.

⁷⁶ WORLD HEALTH ORGANIZATION, *supra* note 6, at 4.

⁷⁷ *Id.*

⁷⁸ Camp, *supra* note 10, at 294.

⁷⁹ Coyle et al., *supra* note 5, at 113.

threatened with death while 11% of these pregnant women had a knife or gun used on them while pregnant.⁸⁰ Considering the findings of multiple different studies that have been conducted worldwide, it appears that abuse during pregnancy is a major threat to the health and survival of pregnant women.⁸¹

If pregnancy is a risk factor for femicide and increased abuse, a woman who was previously pregnant and experienced any abuse may not want to continue with another pregnancy. In fact, a study indicated that 27.3% of women decided to abort based on their experience with abuse during another pregnancy.⁸² But if an Argentine woman experienced abuse during a prior pregnancy, and wanted to avoid the same dangerous situation, she would have no recourse to do this because of the criminalization of abortion in Argentina.⁸³ The “health at risk” exception to abortion would not apply to women who would want an abortion to prevent abuse or pregnancy. As mentioned above, the standards to fit the exception in Argentina are high, strict, and hard to fit into. There is the possibility of obtaining a clandestine abortion, but as laid out in Part II(A)(3), there are many serious health risks involved with this option.

b. Intimate Partner Violence Leading to Unplanned or Unwanted Pregnancies

As laid out above, the risk factor for femicide increases significantly in women who have an unplanned or unwanted pregnancy and cannot have an abortion. Unintended pregnancies are likely to follow—or increase—intimate partner violence.⁸⁴ But one of the main risk factors for the prevalence of violence against women in developing countries is an unplanned pregnancy.⁸⁵ Essentially, women remain stuck in a cycle of abuse caused by pregnancy and pregnancy caused by abuse, with no escape route.

Women abused during pregnancy had an increased occurrence of unwanted or unplanned pregnancies.⁸⁶ One potential risk factor significantly associated with intimate partner violence during pregnancy is having an unwanted or unplanned pregnancy, as numerous population-based studies throughout the

⁸⁰ McFarlane et al., *supra* note 12, at 28.

⁸¹ *Id.*

⁸² Coyle et al., *supra* note 5, at 113.

⁸³ See CÓDIGO PROCESAL PENAL DE LA NACIÓN [CÓD. PROC. PEN.] [CRIMINAL PROCEDURE CODE] art. 86 (Buenos Aires, 1984) (Arg.).

⁸⁴ Camp, *supra* note 10, at 294.

⁸⁵ Nasir & Hyder, *supra* note 64, at 105.

⁸⁶ *Id.* at 106.

world demonstrate.⁸⁷ A U.S. population-based survey also showed that women who had mistimed or unwanted pregnancies reported significantly higher levels of abuse during pregnancy compared to women who had intended pregnancies.⁸⁸

Although previously pregnant women who were abused might want an abortion to prevent further abuse, women who have never been pregnant or have an unwanted or unplanned pregnancy, with no intention to keep the baby, are too scared to have an abortion. Many times, women who have an affair, women who are raped, and even adolescent girls who end up with an unwanted pregnancy, become victims of femicide because they refused to have an abortion. “There have been a number of reports concerning women who were assaulted or murdered by the impregnating man because they would not submit to abortion.”⁸⁹ These women would likely have an abortion if it was a viable option, but because of the criminal consequences discussed in section I(A)(2) and because of the health consequences related to clandestine abortions discussed below in section I(A)(3), a lot of women living in Latin America would not seek an abortion for these reasons. The result: violence leading to femicide.

In September 2017, Manuel Mansilla was found guilty of murdering his pregnant girlfriend, 14-year-old Chiara Páez, and was sentenced to 21 years in prison.⁹⁰ Páez’s mother claimed the boyfriend’s family didn’t want Páez to have the baby; he had beat her to death and buried her in his grandparent’s backyard.⁹¹

Despite the tragedy, Páez’s killing sparked a massive movement to protest violence against women in Argentina discussed in section I(B) below.⁹² This movement not only started advocating for the deterrence of violence against women, but also for the legalization of abortion.⁹³ One of the movement’s main slogans quickly became “contraception to prevent abortion and abortion to prevent death.”⁹⁴

⁸⁷ WORLD HEALTH ORGANIZATION, *supra* note 66, at 3.

⁸⁸ *Id.*

⁸⁹ Coyle et al., *supra* note 5, at 117.

⁹⁰ Brindicci, *supra* note 2.

⁹¹ Politi & Londoño, *supra* note 20. See Charles C. Camosy, *The Abortion Debate in Argentina v. Ireland: What Made the Difference?*, AM. MAG. (Aug. 10, 2018), <https://www.americamagazine.org/faith/2018/08/10/abortion-debate-argentina-vs-ireland-what-made-difference>.

⁹² Brindicci, *supra* note 2.

⁹³ *Id.*

⁹⁴ SUTTON, *supra* note 3, at 100.

2. *Criminal Consequences of Abortion in Argentina*

Abortion is illegal in Argentina, except in cases of rape or when the life of the woman is at risk. This was established by law in 1921, in Article 86 of the “Código Penal de la Nación.”⁹⁵ But even in the “exception” cases, which have extremely high standards, women and girls are sometimes subject to criminal prosecution for seeking abortions.⁹⁶ The rampant use of “conscientious objector” laws, gives doctors and hospitals the right to refuse to provide these procedures, making access to abortions, even under these circumstances, extremely limited.⁹⁷ Argentine women also have trouble accessing reproductive services, such as contraception and voluntary sterilization.⁹⁸

In general, abortion cases are ruthlessly prosecuted, and in some instances, women have received decade-long prison sentences on charges of aggravated homicide.⁹⁹ In 2016, “Belen” a 27-year-old woman from the Tucumán province was sentenced to eight years in prison for aggravated homicide after suffering a miscarriage.¹⁰⁰ Belen had gone to the hospital in her province while suffering from abdominal pain.¹⁰¹ Upon examining her, the doctors referred her to a gynecologist after observing heavy bleeding.¹⁰² They informed her she was having a miscarriage after 22 weeks of pregnancy.¹⁰³ Until this point, Belen was *completely unaware* of her pregnancy.¹⁰⁴ Yet, Belen was accused of self-inducing a miscarriage, which is considered an abortion, and after spending two years in a pre-trial detention facility on charges of abortion, she was subsequently arrested and charged with aggravated murder.¹⁰⁵ On April 19, 2016, the Third Chamber of the Criminal Chamber of Tucumán sentenced Belen to eight years in prison, and the Court decided not share its final arguments with the public.¹⁰⁶

⁹⁵ The Argentinian Model Penal Code. CÓDIGO PROCESAL PENAL DE LA NACIÓN [CÓD. PROC. PEN.] [CRIMINAL PROCEDURE CODE] art. 86 (Buenos Aires, 1984) (Arg.).

⁹⁶ Brindicci, *supra* note 2.

⁹⁷ Timerman, *supra* note 21.

⁹⁸ Brindicci, *supra* note 2.

⁹⁹ Timerman, *supra* note 21.

¹⁰⁰ Brindicci, *supra* note 2.

¹⁰¹ Debbie Shamak & Magdalena Medley, *Sentenced to Eight Years in Jail for a Miscarriage*, AMNESTY INT’L, <https://www.amnestyusa.org/sentenced-to-eight-years-in-jail-for-a-miscarriage/>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Although there are criminal consequences for women receiving an abortion, there is an unequal treatment in attempting to punish, or actually punishing the perpetrators of femicide. A number of femicides go unpunished or are not punished severely enough. In 2016, the National Registry of Femicides, reported 254 femicides, but only 22 convictions for these femicides.¹⁰⁷ Jose Acre, the man who hired a hitman in 2009 to shoot Rosana Galliano, his wife, to death, is currently serving his sentence under house arrest while living with their two children.¹⁰⁸

In 2009, the Argentine Congress passed a law, motivated by the protests that followed Rosana Galliano's femicide; the law strips parental rights from those parents who kill, injure, or sexually abuse their partners.¹⁰⁹ Then later in 2012, the Congress stipulated life in prison for men found guilty of murders involving gender-based violence; before this, murders resulting from domestic violence were treated as manslaughter with a maximum of 25 years in prison.¹¹⁰ In 2014, La Casa del Encuentro, an Argentinean organization that combats abuse and violence against women, submitted a draft law, aimed at removing parental responsibility from those who commit femicide.¹¹¹ However, even by setting forth comprehensive measures to prevent and punish violence against women, the unpunished killing of women remains a serious concern. Legalizing abortion can prevent the deaths of women in situations similar to that of Chiara Páez. Additionally, legalization would facilitate the idea that women have a right to their body. As for now, women remain haunted by the fact and social acceptance that "a society that doesn't recognize women's bodies as their own is precisely one where they can be killed with impunity."¹¹²

3. *Health Consequences of Clandestine Abortions*

Because abortion is illegal in Argentina, many women must resort to clandestine abortions, usually suffering serious medical consequences. Complications as a result of clandestine abortions are the single leading cause of maternal deaths in the country, according to Mariana Romero, a researcher at the Center for the Study of the State and Society, a nonprofit organization.¹¹³

¹⁰⁷ Brindicci, *supra* note 2.

¹⁰⁸ Daniel Gutman, *Men Who Commit Femicide Lose Rights Over Their Children in Argentina*, IPS NEWS AGENCY (June 16, 2017), <http://www.ipsnews.net/2017/06/men-commit-femicide-lose-rights-children-argentina/>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Timerman, *supra* note 21.

¹¹³ Politi & Londoño, *supra* note 20; *see also* Mollmann, *supra* note 3 (For women who are unable or unwilling to carry a pregnancy to term, the only option is to receive an illegal and therefore unsafe abortion.

The exact number of illegal abortions carried out yearly is unknown but expected to be high:

The Center for Criminal Studies at the University of Palermo says 350,000 to 450,000 [abortions] are annually performed. The country's government estimates the figure to be between 370,000 to 500,000 abortions, according to the Buenos Aires Times. But that estimate is from 2009 and Human Rights Watch, an international NGO, says the half million figure is closer to the truth.¹¹⁴

Argentine doctor, Cecilia Ousset, spoke about witnessing patients who had tried to perform the procedure on themselves.¹¹⁵ Dr. Ousset stated that her record was 18 of such patients in one day, many of which were suffering from complications after getting the procedure in "precarious conditions."¹¹⁶ Dr. Ousset recounted that "some patients had abortions using knitting needles."¹¹⁷ She explained that most of the women arrive terrified, knowing that they could go to jail for receiving an abortion.¹¹⁸

As mentioned above, although Argentina allows abortion in the case of rape or a health risk to the mother, threshold to qualify for the exemption is extremely high and vague.¹¹⁹ This makes it difficult for any woman to actually receive approval for the procedure. In 2007, a young mother of three was refused an early abortion that she needed to get to receive cancer treatment.¹²⁰ "She died, as did her baby."¹²¹

Because of the social stigma in Latin America regarding abortion, many women who want to get one, either to prevent abuse or because of an unwanted pregnancy, or even because of their health, might be deterred from the option. Not only is the social stigma a deterring factor, but unfortunately, there are high

This has had an enormous toll on women's health; "unsafe abortion is the leading cause of maternal mortality in Argentina today." In Argentina, more than 40% of all pregnancies end in illegal abortions, indicating women's lack of opportunity to control their fertility and health.).

¹¹⁴ Salih, *supra* note 27.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Abortion is unpunishable in cases where the health or life of the woman is endangered by the pregnancy or in cases where a mentally disabled or insane woman becomes pregnant after being raped. *See* Berenstein, *supra* note 37. But in a country where abortion is illegal, there is no network of abortion providers. *Id.* So even these two exceptions from prosecution offer a false promise. There is no standard policy by which doctors, hospitals, or the courts review cases and grant exceptions, therefore many times being up to the discretion of the judges to determine whether a woman meets the exception. *See id.*

¹²⁰ Timerman, *supra* note 21.

¹²¹ *Id.*

health risks associated with abortions. However, these health risks are avoidable and minimal as “[a]bortion is one of the safest medical procedures if done following the World Health Organization’s guidance.”¹²² Making abortion safe is no a hard task—simply having it legally available upon a woman’s request would suffice.¹²³ Ensuring affordability and accessibility could alone save so many women’s lives. When abortion is illegal and women have to turn to secretly getting one, commonly called a clandestine abortion, the majority of the time it involves unsafe procedures.¹²⁴ “The World Health Organi[z]ation defines an unsafe abortion as a procedure to terminate unintended pregnancy that is performed by individuals without the necessary skills, or in an environment that does not conform to medical standards, or both.”¹²⁵ Approximately 70,000 maternal deaths per year occur due to complications from unsafe abortion procedures.¹²⁶

As an example, in yet another Latin American case, a nineteen-year-old girl who was raped by her married godfather was forced to have an unsafe abortion.¹²⁷ As abortion was illegal in her country, and she was facing pressure from the man, this was truly her only option.¹²⁸ Because of this unsafe procedure, she had become septic as a result of a “perforated uterus” and spent weeks on the verge of death, receiving inpatient care by a nurse.¹²⁹ Luckily, she was able to recover, but the only reason she went through with the abortion in the first place is because she was threatened by her godfather who wanted to keep his family in the dark from what he had done.¹³⁰

If the option to abort was legally available, fewer women would die from health complications connected to the unprofessional, unsafe, and unsanitary conditions that accompany clandestine abortions. The availability of safe

¹²² Berer, *supra* note 29, at 15.

¹²³ *Id.* at 15.

¹²⁴ Many of these clandestine abortions result in incomplete abortions or infections. *See* Mollmann, *supra* note 3. Women who have gotten unsafe abortions and later needed medical care received “inhumane and sometimes grossly inadequate treatment.” *Id.* A social worker from Santa Fe Province mentioned how a woman who had received an illegal abortion later got an infection and was hemorrhaging and when the doctor started to examine her, and he realized she had gotten an abortion, he threw his instruments on the floor and stated, “this is an abortion, you go ahead and die!” *Id.*

¹²⁵ Rohini Boddu, *A Review of Abortion in Ireland*, 4 ROYAL C. OF SURGEONS IN IRELAND STUDENT MED. J. 78, 78 (2011).

¹²⁶ *Id.*

¹²⁷ *See* Samantha M. Luffy, Violence, Unintended Pregnancy, and the Total Ban on Abortion: A Qualitative Examination of Threats to Women’s Autonomy in Ocotal, Nicaragua, 48 (2015) (unpublished MPH dissertation, Emory University) (on file with MacMillan Library, Emory University).

¹²⁸ *See id.*

¹²⁹ *See id.*

¹³⁰ *See id.*

abortions depends not only on permissive legislation, but also on political support from the respective country as well as the support of health professionals to make abortion available.¹³¹ When a woman cannot legally get an abortion or refuses to do so, either out of fear for the criminal or health consequences involved, men might turn to violence to resolve the problem as evidenced by the story of Chiara Páez and many others.

a. Social Problem for Women of Low Socioeconomic Status

Abortion access and rights in Argentina also must be understood through a socioeconomic lens. Wealthy women in Argentina who might want to get an illegal abortion have the money to do so, while women of low socio-economic status do not get the same luxury. In fact, most femicide victims belong to lower income brackets.¹³²

Julia Arana, a journalist in Argentina, says two years ago she paid a doctor about \$3,000 to secretly perform an abortion.¹³³ She explained feeling like a criminal because “you have to hide it and you have to pay a lot money to do it.”¹³⁴ She expressed her concern over not being familiar with the doctor who performed the procedure.¹³⁵ “Women with money can go to fancy hospital[s] and pay a lot of money and low income women, go to low income doctors and die because of it, the studies [show] that women are dying because of this,” Ms. Arana explained in an interview.¹³⁶ Legislation that makes it almost impossible for women to access safe abortions, particularly poor women, influences the high proportion of abortion-related deaths in Argentina.¹³⁷ Restrictive abortion laws—leftover from another age—are responsible for the deaths and millions of injuries to women who cannot afford to pay for a safe illegal abortion.¹³⁸

B. Ni Una Menos

Argentina stands out in the activism that was stirred up as a response to violence against women and femicides.¹³⁹ Ni Una Menos, the grassroots

¹³¹ Berer, *supra* note 29, at 19.

¹³² See McFarlane et al., *supra* note 12, at 30; see also WORLD HEALTH ORGANIZATION, *supra* note 6, at

4.

¹³³ Salih, *supra* note 27.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ SUTTON, *supra* note 3, at 119.

¹³⁸ Berer, *supra* note 29, at 14.

¹³⁹ *Violence Against Women, Murder and Machismo: Fighting Femicide in Argentina*, *supra* note 1.

movement to expose femicide in Argentina, translates to “Not one [woman] less.”¹⁴⁰ On June 3, 2015, the Ni Una Menos march took place for the first time, and thousands of women gathered together and marched throughout eighty Argentinean cities.¹⁴¹ This new movement has spread throughout other countries in Latin America as more and more repressed women are now fighting for an expansion of women’s rights, primarily, for the legalization of abortion.

One of the most significant achievements of Ni Una Menos is that it raised awareness of the femicide issue in Argentina that had been assumed to be a part of life in Latin America, a very “machista” region.¹⁴² It began in 2015 as a protest against a growing number of femicides that claimed the lives of 235 women that year.¹⁴³ In fact, a major incident that sparked this movement was the brutal murder of pregnant 14-year-old, Chiara Páez.¹⁴⁴ Women began to realize that unfortunately this “narrative is typical, though the gory specifics vary.”¹⁴⁵

Originally, the Ni Una Menos movement began as a response to the murders of hundreds of women and girls, but activists later realized that “stopping femicide also requires targeting the machista mind-set that fuels it”¹⁴⁶ Women and members of the movement started to fight for legislative and policy reforms to punish gender-based violence, provide support for victims of violence, and demand that legislators make changes in the education system in an effort to eradicate this violence geared toward women.¹⁴⁷ “Abortion quickly became a key demand as well.”¹⁴⁸

The Ni Una Menos members currently organize marches and demonstrations in the country’s capital, Buenos Aires, to denounce Argentina’s high rates of femicide—estimated at one death every thirty hours.¹⁴⁹ This group of activist women was influential in getting the lower house of Argentina’s government to initially pass the bill. Although its goal of having abortion legalized was not met, the influence and positive impact this group has had remains strong and growing;

¹⁴⁰ Tong, *supra* note 34.

¹⁴¹ Eugenia Rosales Matienzo, *Femicides in Argentina*, COUNCIL ON HEMISPHERIC AFF. (Mar. 7, 2018), <http://www.coha.org/femicides-in-argentina/>.

¹⁴² Tong, *supra* note 34.

¹⁴³ *See Femicidios 2015*, Corte Suprema de Justicia de la Nación, 2015, REGISTRO NACIONAL DE FEMICIDIOS DE LA JUSTICIA ARGENTINA.

¹⁴⁴ Timerman, *supra* note 21.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Pitchon, *supra* note 8.

Ni Una Menos groups and marches have spread to México, El Salvador, Bolivia, Chile, Paraguay, and Uruguay.¹⁵⁰

II. HISTORY AND INFLUENCING FACTORS OF WOMEN'S RIGHTS IN LATIN AMERICA

Like many other countries in Latin America, Argentina has been marked a conservative “machista” society since its colonization in the 16th century.¹⁵¹ The emphasis and importance of a masculine and “patriarchal society generates the idea that the male is the ‘head of the household,’ . . . [while] the female, on the other hand, is valued by her passivity, dependence, religiosity, and domestic skills. . . .”¹⁵² Along with machismo, the legacy of dictatorship in the country, which was actually also influenced by machismo, still influences decisions that are made today. Lastly, although church and state are separate, the influence of the Catholic Church in Argentina remains strong; in the most recent debate over the legalization of abortion, Catholic representatives spoke openly about their opposition to the bill and even influenced the decision of some lawmakers.¹⁵³

A. *Machismo*

Since the beginning of Argentina’s formation throughout present-day, machismo has long served a role in Argentine society, prevailing in dictating familial life and carving out “traditional roles” for women.¹⁵⁴ Machismo is a social construct that perpetuates the idea of gender inequality. “The term ‘machismo’ is most commonly used to describe male behaviors that are sexist, hyper masculine, violent, or chauvinistic towards women.”¹⁵⁵ Machismo is supported in patriarchal societies because it reinforces the idea of male dominance over women.¹⁵⁶ Behaviors that are common to machismo tend to “legitimize” the idea of a patriarchy because these behaviors reinforce traditional gender roles and are used in efforts to limit or control women, who are usually perceived as “inferior.”¹⁵⁷ “Often, when discussing violence against women in Latin America, an age-old, ethnocentric rhetoric comes into play—one that

¹⁵⁰ Polly Terzian, *The Ni Una Menos Movement in 21st Century Argentina: Combating More Than Femicide*, 12 (May 21, 2017) (unpublished honors thesis, Dickinson College) (on file with author).

¹⁵¹ Michelle Rocha, *Argentina: How Long Will You Deny the Existence of Femicide in Your Own Backyard 2* (June 2015) (unpublished essay, University of South Florida) (on file with author).

¹⁵² *Id.*

¹⁵³ Politi & Londoño, *supra* note 20.

¹⁵⁴ *See* Rocha, *supra* note 151, at 9.

¹⁵⁵ Luffy, *supra* note 127, at 22.

¹⁵⁶ Terzian, *supra* note 150, at 71.

¹⁵⁷ Luffy, *supra* note 127, at 22.

points to regional culture, mainly ‘machismo,’ as being the culprit for cases of gender violence in Argentina and beyond.”¹⁵⁸ In fact, in 2015, when an estimated 235 women in Argentina became victims of femicide, U.S. media outlets were quick to point to the cultural endemic of Latin American machismo as the culprit of such violence.¹⁵⁹

Women have openly spoken about machismo as a common cause of violence against women and femicide.¹⁶⁰ The Belém do Pará Convention established that violence against women is a specific type of violence, a “‘manifestation of the historically unequal power relations between women and men.’”¹⁶¹ Machismo emphasizes the idea that these “unequal powers” are still present and that “violence against women will not rapidly decline since it is mainly linked to cultural factors very marked in society, such as the greater value put on men in all fields,” according to Dr. Mabel Bianco, the head of the Foundation for Women’s Studies and Research.¹⁶²

“The gendered division of housework and care work in Argentina is one way by which the sacrificial attributes of maternal embodiment are produced and reinforced.”¹⁶³ The maternal body refers not only to pregnant or nursing bodies, but also to one that displays the traits culturally associated with motherhood, especially nurturance and sacrifice on behalf of others.¹⁶⁴ Having this “maternal body” image in mind, it was common thought that women’s “proper roles” were motherhood, domesticity, and femininity.¹⁶⁵ Not legalizing abortion feeds into the machismo mindset that women ought to be limited and controlled.¹⁶⁶ In a modernizing world, the “subtle shift” in masculinity has been largely in part because of feminist activism, activism that must continue its efforts to overrun

¹⁵⁸ Pitchon, *supra* note 8. See also Aston & Bewley, *supra* note 45, at 163 (“Cultural awareness is paramount because fear of familial shame and dishonor[] were important factors in deterring women from seeking assistance.”)

¹⁵⁹ *Id.*

¹⁶⁰ Luffy, *supra* note 127, at 37.

¹⁶¹ *Id.* at 22.

¹⁶² Gutman, *supra* note 108.

¹⁶³ SUTTON, *supra* note 3, at 97.

¹⁶⁴ *Id.* at 96.

¹⁶⁵ *Id.* at 136.

¹⁶⁶ The idea of “male dominance” would be hindered if a woman could freely choose to get an abortion on her own so, not having access to abortion endorses the thought that women should not be able to choose freely what they want to do with their bodies. This “machismo” is so prevalent in Argentina, that some public hospitals even require a husband’s consent if a woman seeks any sort of sterilization procedure. See Mollmann, *supra* note 3.

the machismo mindset that fuels the idea women don't have a right to their own bodies.¹⁶⁷

B. *Legacy of Dictatorship*

"In Argentina, the legacy of the dictatorship is a reminder that, in order to maintain power, systems of oppression often resort to repressive and coercive means of bodily control, such as physical-psychological torment and violent killings."¹⁶⁸ The threat of violence, abuse, and femicide women face is similar to the threat Argentinians faced during the times of military dictatorship. During the era of dictatorships, many activist women were tortured for not being submissive to the government, and this built on the gendered notions of "women's proper place" in Argentine society.¹⁶⁹ Through fear and violence, the government was able to maintain domination over fearful residents for many years. Similarly, by restricting abortion and inducing fear of criminal penalty or serious health risks, women are being "dictated" as to what they can and cannot do with their bodies.

C. *The Catholic Church*

"Powerful ideological influences embedded in Argentina's cultural norms and institutions have encouraged women always to embrace motherhood regardless of their own needs and aspirations."¹⁷⁰ The biggest and most powerful of these influences is the Catholic Church. Most of the population in Argentina is nominally Catholic and the Church has traditionally had strong ties to the state.¹⁷¹ The Catholic Church has always promoted the Virgin Mary, "the embodiment of both chastity and abnegated motherhood."¹⁷²

"In Argentina the Catholic Church hierarchy has historically and contemporaneously opposed abortion, contraceptive methods, and any sexual activity outside of marriage."¹⁷³ These specific perspectives of the Catholic

¹⁶⁷ See Luffy, *supra* note 127, at 31.

¹⁶⁸ SUTTON, *supra* note 3, at 135.

¹⁶⁹ *Id.* at 135; *see also* Mollmann, *supra* note 3. Argentinean government opposition to contraceptives and information about contraceptives gathered force during military dictatorship and continued more than a decade later, even when there was a democratic government. *Id.* Argentina ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985 to repeal the ban on contraceptives. *Id.*

¹⁷⁰ *Id.* ("Across the South American region, many governments and legislators have historically declared their opposition to modern birth control methods, usually with reference to Catholic church doctrine.")

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

Church are not inconsequential for women's rights.¹⁷⁴ Activists fought hard this summer in hopes of influencing the government to pass the bill legalizing abortion, and many individuals supporting the bill hoped Argentina would "begin a sea of change in reproductive rights in a largely Catholic region."¹⁷⁵ But after the bill was passed in the lower house and moved onto the Senate for discussion, opposition in Argentina hardened as Catholic Church leaders spoke out "forcefully" against abortion.¹⁷⁶

Legalization in the heavily Catholic country, which happens to be the birthplace of Pope Francis, would have sent "signals of social mores slowly changing in Latin America."¹⁷⁷ In Brazil, home to the world's largest population of Catholics, the Supreme Court is currently "weighing whether to allow elective abortion through the first 12 weeks of pregnancy."¹⁷⁸ Although church and state are supposed to be separate, the denial of the bill this summer demonstrates that this is far from true.¹⁷⁹ The Catholic Church continues to be involved in state politics and has attempted to mold Argentina's attitudes and behaviors on sexual and reproductive matters; its views are constantly propagated through religious, educational, charity and media organizations.¹⁸⁰ Many practicing Catholics in Argentina have their own ideas about abortion and reproductive rights which contradict the Church's ideologies on contraception and abortion.¹⁸¹

III. IRELAND: AN EXAMPLE TO FOLLOW

Currently, the "Regulation of the Termination of Pregnancy Bill" is being presented to the Irish Parliament in attempts of finally legalizing abortion in Ireland.¹⁸² The health minister of Ireland stated that this bill "marks a new beginning for women's health."¹⁸³ Abortion has been a criminal offense in Ireland since 1861, but in 1983 Ireland adopted and implemented the Eighth Amendment into the Irish Constitution, which made abortion illegal.¹⁸⁴ So after

¹⁷⁴ *Id.*

¹⁷⁵ Politi & Londoño, *supra* note 20.

¹⁷⁶ *Id.*

¹⁷⁷ Salih, *supra* note 27.

¹⁷⁸ *Id.*

¹⁷⁹ Politi & Londoño, *supra* note 20.

¹⁸⁰ SUTTON, *supra* note 3, at 104.

¹⁸¹ *Id.* at 114.

¹⁸² Davi Merchan, *Ireland Could Legalize Abortion for Women Up to 12 Weeks Pregnant Under New Bill*, ABC NEWS (Oct. 5, 2018), <https://abcnews.go.com/International/ireland-legalize-abortion-women-12-weeks-pregnant-bill/story?id=58306539>.

¹⁸³ *Id.*

¹⁸⁴ Ciara Nugent, *Ireland May Be About to Repeal One of Europe's Strictest Abortion Laws: The History Behind the Referendum*, TIME (May 23, 2018), <http://time.com/5286910/ireland-abortion-laws-history/>.

1983, this law was not just present in the country's criminal code, but was also implemented and embedded into their constitution. The Eight Amendment ensured that the "mother and unborn child [had] 'an equal right to life,'" making Ireland's abortion law among the strictest in Europe and the world.¹⁸⁵ Ironically, Ireland, the country with one of the strictest laws on abortion, repealed one of its constitutional amendments, the Eighth Amendment, and is now in the process of legalizing abortion for women who are up to 12 weeks pregnant. Argentina, who has nothing regarding abortion in its constitution, could simply pass new abortion legislation and subsequently update its criminal code to reflect the new changes.¹⁸⁶

A. *Irish Influences and History*

Femicide is a worldwide problem affecting not only women in Argentina, but women all over the globe. Similar to the numbers in Argentina, 88% of women murdered in Ireland are killed by men they know.¹⁸⁷ Research also found that 56% of the killers were current or former intimate partners.¹⁸⁸ There is a strong connection between the killing of women and domestic violence with abuse during pregnancy specifically being a risk factor for femicide.¹⁸⁹

Like Argentina, Catholicism has traditionally played a powerful role in Irish society; "abortion remains such a taboo that it's rare for women to speak openly about it."¹⁹⁰ Before the referendum, a public admission about receiving an illegal abortion could have resulted in imprisonment of up to 14 years.¹⁹¹ Even the United Nations Human Rights Commission had criticized Ireland's abortion laws as cruel and inhumane.¹⁹²

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Men's Violence is Killing Women—Femicide Watch 2017*, WOMEN'S AID (Nov. 24, 2017), <https://www.womensaid.ie/about/newsevents/news/2017/11/24/mens-violence-is-killing-women-femicide-watch-2017/>.

¹⁸⁸ *Id.*

¹⁸⁹ *See* Media Release, Women's Aid Calls for Review of Domestic Killings, Nov. 23, 2018, <https://www.womensaid.ie/about/newsevents/news/2018/11/23/media-release-womens-aid-calls-for-review-of-domes/>.

¹⁹⁰ Saphora Smith & Ziad Jaber, *Ireland's Abortion Referendum Tests its Catholic Traditions*, NBC NEWS (last updated May 24, 2018), <https://www.nbcnews.com/news/world/ireland-s-catholic-traditions-tested-abortion-referendum-looms-n857671>.

¹⁹¹ *Id.*

¹⁹² Nugent, *supra* note 184.

Historically, the family unit was the basis of Irish life.¹⁹³ The woman's traditional role within the home was that of a home-maker, and the conception of femininity portrayed women as inherently concerned with peace and creation.¹⁹⁴ The idea revolved around the thought that women were "passive objects" who were always to be cared for and provided for as dependents.¹⁹⁵

However, despite all the facts that played into the notion of keeping abortion illegal, Ireland, the country with the strictest abortion laws in Europe apart from Malta, managed to repeal the Eighth Amendment of its constitution and is working on legislation regarding further legalization of abortion in their country.¹⁹⁶

B. Irish Abortion Laws

1. The Past

The Eighth Amendment to the Irish Constitution was ratified in 1983 with 66.9% of voters supporting the amendment.¹⁹⁷ The Eighth Amendment states that "the State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."¹⁹⁸ This provision has come "to ground a near-absolute prohibition on abortion in Irish law."¹⁹⁹

It was a crime for anyone to provide or access abortion in Ireland except as a life-saving measure under the Protection of Life During Pregnancy Act ("Act"), which was enacted in 2013.²⁰⁰ Under the Act, a woman is allowed to obtain an abortion when her life is at a "real and substantial risk."²⁰¹ However, the test of "real and substantial risk" is vague; a risk to the pregnant person's life

¹⁹³ CATHERINE NASH, MEN AGAIN: IRISH MASCULINITY, NATURE AND NATIONHOOD IN THE EARLY TWENTIETH CENTURY, 442 (Arnold 1996).

¹⁹⁴ *Id.* at 442–43.

¹⁹⁵ *Id.* at 443.

¹⁹⁶ Smith & Jaber, *supra* note 190; *see also* Enright, et al., *supra* note 30, at 5.

¹⁹⁷ FIONA DE LONDRAS & MÁIRÉAD ENRIGHT, REPEALING THE 8TH: REFORMING IRISH ABORTION LAW, 1 (Policy Press 2018).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 4, 6; *see* Smith & Jaber, *supra* note 190 ("Abortion is only permitted in Ireland if a woman's life is in danger, which includes the risk of suicide. It is not permitted in cases of rape, incest or fetal abnormalities.").

²⁰¹ DE LONDRAS & ENRIGHT, *supra* note 197, at 4. This includes risk of suicide and any other risks which may only be avoided by terminating the pregnancy. *Id.*

may not be immediate or imminent before the procedure can be offered.²⁰² In adhering to the Constitution, a doctor may be required to place a pregnant patient's long-term health, or life, at active risk before the pregnancy can be terminated.²⁰³

Abortion travel has been the “escape hatch” in Ireland's law.²⁰⁴ Women seeking abortions were motivated to travel to England or neighboring countries in order to receive the abortion procedure they wanted or needed.²⁰⁵ In October 2012, the death of a 31-year-old woman, Savita Halappanavar, brought global media attention to the country's extremely strict laws on abortion.²⁰⁶ Dr. Halappanavar, a dentist, and her husband, an engineer, were anticipating and preparing for the birth of their first child when at 17 weeks, Dr. Halappanavar went to the hospital in Galway with serious backpain.²⁰⁷ Doctors determined that she was suffering a miscarriage, and she was told her fetus would not survive.²⁰⁸ While she had asked staff to terminate her pregnancy, the staff refused, telling her that Ireland was “a Catholic country” and that it would be illegal to terminate the pregnancy if the fetus still had a heartbeat.²⁰⁹ She was repeatedly refused an abortion and waited days until the heartbeat stopped.²¹⁰ The contents of her womb were removed on October 27, 2012, but Dr. Halappanavar unfortunately died from severe sepsis the following morning—five days after she started miscarrying.²¹¹

After analysis by Ireland's Health Service Executive, it was determined that “confusion over the country's abortion law was a contributing factor in her death.”²¹² Halappanavar's case caused anger and frustration in many people who

²⁰² *Id.* at 6.

²⁰³ DE LONDRAS & ENRIGHT, *supra* note 197, at 6.

²⁰⁴ *Id.* at 4.

²⁰⁵ *Id.* at 4–5. As more and more women traveled across the country's borders to ensure the possibility of receiving a safe abortion, women began protesting and marching for their right to be able to receive the same treatment in their country. Like the women in Argentina, many feminist marches were organized in Ireland all leading up to the repeal of the eighth amendment. One of the slogans women marched with was “we refuse to ship our shame across the sea” pointing at the social stigma that comes with abortion and referring to the thousands of women that travel yearly to receive abortions in other countries. *See* Smith & Jaber, *supra* note 190.

²⁰⁶ Nugent, *supra* note 184.

²⁰⁷ Megan Specia, *How Savita Halappanavar's Death Spurred Ireland's Abortion Rights Campaign*, N.Y. TIMES (May 27, 2018), <https://www.nytimes.com/2018/05/27/world/europe/savita-halappanavar-ireland-abortion.html>.

²⁰⁸ Nugent, *supra* note 184; Specia, *supra* note 207.

²⁰⁹ *Id.*; *see also* DE LONDRAS & ENRIGHT, *supra* note 197, at 13.

²¹⁰ Specia, *supra* note 207.

²¹¹ *Id.*; Nugent, *supra* note 184.

²¹² Specia, *supra* note 207.

had been previously been apathetic about abortion laws.²¹³ For a number of young Irish women, her story was “the first tangible story of how the Eighth Amendment, which was introduced in 1983, could affect them.”²¹⁴

2. *The Present*

The Eighth Amendment, Article 40.3.3 of the Irish Constitution, which previously prohibited abortion, was repealed on May 25, 2018 and will be replaced with the following language: “provision may be made by law for the regulation of termination of pregnancy.”²¹⁵ After a long debate, 66.4% of people voted for the repeal.²¹⁶ Some people living abroad or traveling flew back to Ireland specifically to vote on the referendum.²¹⁷

The Updated General Scheme of the Health (Regulation of Termination of Pregnancy) Bill 2018 (“General Scheme”)—the subject of the referendum—exemplifies an immense step forward for Ireland in the goal of ensuring “equitable and agency-respecting access” to abortion care.²¹⁸ The General Scheme will now take the necessary steps for a post-repeal Constitution which not only provides women with the right to receive an abortion but also acknowledges a woman’s right to privacy, bodily integrity, liberty, and equality among other things.²¹⁹

The General Scheme maintains from the Eighth Amendment that carrying out an abortion is a crime carrying a penalty of up to 14 years in prison.²²⁰ However, this offense is now subject to a small number of narrow exceptions.²²¹ These exceptions include: (1) where the pregnancy has not exceeded 12 weeks; (2) where two medical practitioners are satisfied that there is a risk to the pregnant person’s life, the pregnancy is not yet viable, and abortion is appropriate; (3) where two medical practitioners are satisfied that there is a risk of serious harm to the pregnant person’s health, the pregnancy is not yet viable, and abortion is appropriate; (4) in an emergency where there is an immediate risk to the pregnant person’s life or an immediate risk of serious harm to her

²¹³ Nugent, *supra* note 184.

²¹⁴ Specia, *supra* note 207.

²¹⁵ Sherwood, *supra* note 31.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Enright et al., *supra* note 30, at 5.

²¹⁹ *Id.*; GENERAL SCHEME OF A BILL TO REGULATE TERMINATION OF PREGNANCY (Mar. 27, 2018), <https://health.gov.ie/wp-content/uploads/2018/03/General-Scheme-for-Publication.pdf>.

²²⁰ Ireland has one of the most punitive abortion laws in the world. *See* Enright, et al., *supra* note 30, at 5.

²²¹ Enright, et al., *supra* note 30, at 5.

health, and termination is immediately necessary to avoid that risk; or (5) where two medical practitioners are satisfied that there is present a condition affecting the fetus which is likely to lead to its death before birth or within 28 days of birth.²²²

The General Scheme provides for a new summary offense with a maximum penalty of 12 months.²²³ Under the General Scheme, before 12 weeks, doctors have no role in judging the validity of a person's reasons for terminating a pregnancy.²²⁴ Between 12 and 24 weeks, abortion will be available only in certain cases including fetal abnormality, a risk to a woman's life, or a risk of serious harm to the health of the mother.²²⁵ The "risk to a woman's life" could possibly be interpreted to cover women who were previously abused during pregnancy or who have an unwanted or unplanned pregnancy that might result in violence or abuse.²²⁶ After 24 weeks, termination will be possible in cases of fatal fetal abnormality.²²⁷

With the Eighth Amendment stricken from the books, women in Ireland will not only be able to access abortions now, but the health minister says that women won't have to pay for abortion services in the country.²²⁸ After years of having some of the most restrictive abortion laws in the world, which caused women to travel outside of the country to receive the procedure, women will now be able to stay within their country's borders and obtain a legal, safe, and free procedure.

IV. THE NEED TO FOLLOW IRELAND'S FOOTSTEPS

In 2009, the government of then-president Cristina Fernández de Kirchner enacted the "women's comprehensive protection law," which pledged to "prevent, punish and eradicate" violence against women.²²⁹ Female activists in Argentina already have scored a victory with the passage of a law that seeks to have an equal number of male and female lawmakers in the country.²³⁰ Through legislation, the word *femicida* (femicide) was incorporated into the Argentine

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *See id.*

²²⁷ Sherwood, *supra* note 31.

²²⁸ Bill Chappel, *Ireland Plans to Offer Abortions for Free, As Ban is Officially Repealed*, NAT'L PUB. RADIO (Sep. 20, 2018), <https://www.npr.org/2018/09/20/649959209/ireland-plans-to-offer-abortions-for-free-as-ban-is-officially-repealed>.

²²⁹ *Violence Against Women, Murder and Machismo: Fighting Femicide in Argentina*, *supra* note 1.

²³⁰ Politi & Londoño, *supra* note 20.

Penal Code (Law 26.791) in 2012, in order to punish gender-based violence.²³¹ The Argentine government joined others in Latin America in introducing anti-femicide laws, which raised the maximum prison sentence from 25 years to life.²³² Despite some marked progress, women are still woefully underrepresented in terms of political participation at the highest levels of government and as leaders in the private sector.²³³ And currently, without the option of obtaining legal abortions, women remain without control or say of what they want to do with their own bodies.

International human rights legal instruments that have been ratified by Argentina guarantee a woman's right to life, physical integrity, health, non-discrimination, privacy, and the right to make independent decisions regarding family size and spacing of children.²³⁴ This body of law, as well as interpretations of this law by U.N. experts, "compels the conclusion that women have a right to decide in matters relating to abortion."²³⁵ Legal, accessible, and safe abortions are essential to women's health and autonomy.²³⁶ The legalization of abortion would be the most efficient and direct way to stop the preventable deaths of women who receive illegal, unregulated abortions in the country.²³⁷

Denying women access to abortions increases the already elevated risk of death or injury for women in Latin America, specifically poorer women.²³⁸ Poorer women "suffer the most" from not being able to receive an abortion because without resources to access a safer, yet still illegal abortion, they face serious health risks and increased risks of sexual violence and stigma in their communities.²³⁹ This recent failure of congressional efforts to legalize abortion in Argentina will continue to affect women, especially women of lower economic status who will continue to die as a result of abortion-related complications or as victims of femicide and violence.²⁴⁰

²³¹ Matienzo, *supra* note 141.

²³² *Violence Against Women, Murder and Machismo: Fighting Femicide in Argentina*, *supra* note 1.

²³³ Jacobson, *supra* note 7, at 103.

²³⁴ Mollmann, *supra* note 3.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Tamar Ziff & Anna Egas, *Abortion Access and Violence Against Women in Latin America*, THE DIALOGUE (Sep. 14, 2018), <https://www.thedialogue.org/blogs/2018/09/abortion-access-and-violence-against-women-in-latin-america/>.

²³⁹ *Id.*

²⁴⁰ *Id.*

A woman's control over her reproduction can be central to her sense of autonomy and self-identity.²⁴¹ Taking away a woman's ability to control her decision regarding motherhood can be severely damaging to a woman's very sense of self; a "denial of decision-making divides women from their wombs and uses their wombs for purposes unrelated to women's own aspirations."²⁴² If Argentina legalized abortion, the country would become an anomaly in a region where conservative approaches dominate—and where violence against women remains rampant.²⁴³

While Ireland, like Argentina, is a predominantly Catholic country and previously had one of the strictest abortion laws in the world, its Eighth Amendment has officially been repealed and it is now in the process of passing legislation regarding the legalization of abortion.²⁴⁴ Although Argentina is also extremely Catholic, the country has seen a series of progressive reforms in the most recent years ranging from gay marriage rights to transgender rights. Yet, the most recent attempt to expand women's rights failed. This will continue to negatively affect women, either from detrimental health consequences related to clandestine abortions or from becoming victims of femicide and increased violence for not having the resources to terminate an unwanted pregnancy.

A. *Proposal: Argentina Should Strive to Follow Ireland's Lead*

Argentina should look at Ireland and follow its example in decriminalizing abortion. Ireland had to take measures that were more "extreme" than Argentina because the criminalization of abortion was embedded in its constitution since 1983. Argentina would simply have to update its criminal code to reflect the new changes with regard to decriminalizing abortion up to a certain number of weeks and set out certain exceptions to meet the standard afterwards.

The decriminalization of abortion means removing specific criminal sanctions against abortion from the law, and changing the law and related policies and regulations to achieve the following:²⁴⁵ (1) no legal or criminal consequence for providing a safe abortion; (2) no legal or criminal consequence for having an abortion that falls within the time frames or exceptions specified in the law; (3) no police involvement regarding the investigation or prosecution

²⁴¹ Camp, *supra* note 10, at 298.

²⁴² *Id.* at 299.

²⁴³ Timerman, *supra* note 21.

²⁴⁴ *See generally*, Nugent, *supra* note 184; DE LONDRAS & ENRIGHT, *supra* note 197, at 13; Sherwood, *supra* note 31.

²⁴⁵ Berer, *supra* note 29, at 13.

of safe abortion practice; (4) no court involvement in determining whether or not to allow an abortion; and lastly (5) treating abortion like every other form of health care which includes, “using the best practice in service delivery, the training of providers, and the development and application of evidence-based guidelines, and applying existing law to deal with any dangerous or negligent practices.”²⁴⁶

There should be no legal or criminal consequence to any provider or doctor performing a safe abortion or any patient receiving one; this means that no legal fines should be imposed on those who want to obtain or perform abortions and no criminal charges or “citations” should be given to those same individuals. Laws need to be implemented about the standards that these practitioners should follow and, as any other medical treatment or procedure, abortions should be performed by highly trained providers that follow the specific guidelines of how to perform the procedure safely. Of course, the standards of what constitutes a “safe abortion” would have to be clearly outlined in this new law. However, organizations like the World Health Organization, have already published and set out standards, which most countries in which abortion is legal follow. Thus, there would not be a big issue in deciding what the standards should be.

In addition to the issues of violence and femicide, so many women resort to getting clandestine abortions which has caused entirely preventable maternal deaths. Argentina’s failure to reform its laws, forces women to result to clandestine abortions, making Argentina complicit in the deaths of these women. The proof is in the numbers: women who have access to legal abortions face less risk of violence, femicide, and have almost no health risk when the procedure is performed following standard procedures and guidelines. Argentina needs to reform its abortion laws not only to reduce incidences of violence against women but most importantly, to save the lives of women who are so desperate to find a solution that they put their lives at risk by relying on illegal and unregulated procedures.

Thankfully, in recent years, state policies preventing adequate access to contraception have slowly evolved and changed for the better.²⁴⁷ Yet, while public opinion and policy in Argentina reflect a greater willingness to expand access to sex education and contraception, abortion continues to remain a more serious issue that faces backlash, even though this is the closest the country has ever come to legalizing the procedure.²⁴⁸

²⁴⁶ *Id.*

²⁴⁷ SUTTON, *supra* note 3, at 128.

²⁴⁸ *Id.*

Because Argentina is a predominantly Catholic country, the country will inevitably face pushback if it ever decides to legalize abortion. Intense lobbying by Catholic Church leaders and strong opposition in conservative northern provinces were enough to persuade Senators to vote against the bill in August 2018.²⁴⁹ And of course, being in the Pope's homeland, many anti-abortion activists fought strongly against legalization.²⁵⁰ However, the bill has inspired women across Latin America to join the "Ni Una Menos" movement and to continue fighting for this right. Young women were mobilized and are now driven by the memory that they "almost won" this right, as it had been approved in the lower chamber of Congress and was narrowly rejected in the Senate.²⁵¹ Women in Brazil are now writing a petition before Brazil's Supreme Court challenging the constitutionality of its anti-abortion laws.²⁵² The president of the International Women's Health Coalition, which supports legal abortion, explained that the movement in Argentina is intergenerational and "the new generation of teenage girls who came out in such numbers will not be stopped."²⁵³ Although the legalization of abortion will undoubtedly face backlash from some, there continues to be a growing wave of support for the legalization of abortion, not only in Argentina, but now, inspired by the women of Argentina, throughout other Latin American countries as well. The fact that Argentina's bill was so close to passing means there are high hopes for future reform. Specifically, setting Ireland, a country with similar views and religious beliefs, as an example and leader to follow, should give Argentina the push and motivation it needs to reform its criminal code and set up new laws dealing with the legalization of abortion.

As debates about violence against women on social media grew into wider conversations about women's rights, young female lawmakers in Argentina gave a fresh push to an abortion bill that had been presented repeatedly in the past without going anywhere.²⁵⁴ These lawmakers need to continue fighting for what every woman deserves—the opportunity to make her own choice. This opportunity will not only empower women and give them a voice they previously were lacking but will also give them the chance to escape violent relationships and decrease their risk of femicide and continued violence. As

²⁴⁹ Daniel Politi & Ernesto Londoño, *Abortion Bill fails in Argentina, but Movement Takes Hold Across Latin America*, IRISH TIMES (Aug. 12, 2018), <https://www.irishtimes.com/news/world/abortion-bill-fails-in-argentina-but-movement-takes-hold-across-latin-america-1.3593856>.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ Politi & Londoño, *supra* note 20.

discussed throughout this Comment, the statistics clearly demonstrate that in restricting access to abortion, women are unable to terminate unwanted pregnancies, potentially keeping them in contact with violent partners and putting them at risk for continued violence which can lead to femicide.²⁵⁵ Legalizing abortion will reduce femicides and episodes of violence that women, especially pregnant women, continue to face.

CONCLUSION

Activists in Argentina faced defeat with the denial of the bill attempting to legalize abortion. However, the fight continues and although the road to legal reform is long and difficult, Argentinian activists will continue to push for the legalization of abortion.²⁵⁶ In order to achieve the right to safe abortion, advocates will need to study the political, health system, legal, juridical, and socio-cultural realities surrounding existing law and policy in their countries and decide what kind of law they want (if any).²⁵⁷ Because Ireland, a country of similar background, has recently repealed its Eighth Amendment and is now working on legislation of how abortion access will be provided for Irish women, Argentina should look to Ireland as an example. This is not to say Argentina will not face backlash from anti-abortion activists, however, if Ireland was able to manage this enormous change, it is an attainable change for Argentina in the near future, especially with the increasing support from countries all over Latin America.

The influence of abuse and machismo will be perpetuated without the legalization of abortion, and this perpetuation will cause femicides and violence against women to continue to increase in Argentina. Women who lack the option of terminating a pregnancy will continue to face abuse from their partners. Coercing a pregnancy and the corresponding violence that accompanies it may simply be a means to the same end—both can significantly limit a woman's freedom to leave a relationship out of fear or need (or both) or can result in her death.²⁵⁸ Statistical evidence discussed previously in this Comment proved that women who were able to obtain an abortion experienced much less to no violence from the man involved in their pregnancy after the abortion.

Although “killing a pregnant partner appears to defeat the offered explanation that men coerce pregnancy to leave a legacy, or to bind the coercer

²⁵⁵ See Biggs, et al., *supra* note 14, at 6.

²⁵⁶ Berer, *supra* note 29, at 13.

²⁵⁷ *Id.*

²⁵⁸ Camp, *supra* note 10, at 297.

and the coerced together through a child,” many victims of femicide were impregnated through rape or an affair.²⁵⁹ These women may be hesitant to get an illegal abortion because of the serious health risks involved, facing the risk of death like Chiara Perez.²⁶⁰

Criminalizing abortion continues to be a way in which the state regulates women’s bodies, “forcing women into involuntary motherhood or into illegality, and in the case of women with few economic resources, into the bodily health risks or death associated with unsafe abortion practices.”²⁶¹ “We will no longer be silent, and we won’t let them win,” said Jimena Del Potro, a 33-year-old designer who fought back tears as she spoke; “Abortion will be legal soon. Very soon.”²⁶² If the bill had passed it would have sent a powerful message across Latin America—Argentina would have become the most populous nation in the region to legalize abortion.²⁶³

Until the Argentine Congress decriminalizes access to abortion, the Ministerio de Salud y Ambiente de la Nación (National Health and Environment Ministry) should ensure access to voluntary safe abortions when the woman meets the threshold of receiving one.²⁶⁴ The Argentine Congress should also legalize and ensure access to voluntary surgical sterilization and clarify that women do not require spousal or judicial authorization to access any form of contraceptive method.²⁶⁵

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²⁵⁹ *Id.*

²⁶⁰ See Brindicci, *supra* note 2; Politi & Londoño, *supra* note 20; Camosy, *supra* note 91.

²⁶¹ SUTTON, *supra* note 3, at 128.

²⁶² Politi & Londoño, *supra* note 20.

²⁶³ Salih, *supra* note 27.

²⁶⁴ This includes where the woman’s life or health is in dangers and where the pregnancy is the result of the rape of a mentally disabled woman. See Mollmann, *supra* note 3.

²⁶⁵ Mollmann, *supra* note 3.

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