



Fundación para Estudio e
Investigación de la Mujer

WOMEN'S HUMAN RIGHTS: UNRESOLVED MATTERS OF THE ARGENTINE STATE

Report presented at the Human Rights Council for the session taking place April 7th to 18th, 2008

I. Presentation

The Foundation for Studies and Research on Women (FEIM) is a Non-governmental, not for profit organization from Argentina created in 1989 by a group of women gender specialists. Its objective is to develop research, studies, programs, projects, training and other activities to improve the social, labor, legal, political, economic, familial and health situation of women in Argentina. Since 2006, FEIM has held Consultative Status to the Economic and Social Commission of the United Nations.

Since its creation, FEIM has developed projects and programs addressing Women's Rights, Women and the Environment, Sexual and Reproductive Health, Adolescent Pregnancy, Sexuality, STIs and HIV/AIDS¹.

After years of economic recession, Argentina is now going through a process of sustained economic revival. The new reality of production, with historic surplus levels, is prone to growth. The data indicate that the economy will continue to grow with numbers similar to the latest figures and with a framework of institutional stability. However, the distribution of wealth is still an unresolved issue in that a great disparity continues to exist.

This period of stability has not been taken advantage of for the purposes of carrying out the opportune observations made by different United Nations Committees². Aside from a few isolated initiatives, one of the greatest debts of the Argentine State continues to be a clear agenda with respect to women's human rights. The lack of statistics and official records as well as explicit public policy continues to be the main obstacles, we should emphasize the absence of official data desegregated by sex, age and even existing ethnic groups.

The objective of this report is to provide a critical analysis of the obligations derived specifically from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Pact on Economic, Social and Cultural Rights (PIDESC), the International Pact on Civil and Political Rights (PIDCyP) and the Convention on the Rights of the Child, for the purpose of contributing to the complete, efficient and truthful evaluation of women's rights in Argentina.

II. VIOLENCE AGAINST WOMEN (ART. 1 CEDAW)

It is alarming that women and girls are more exposed to systematic forms of violence and abuse of power that put at risk their physical, sexual and mental health³. Gender based violence, which is a product of gender inequality, is an important factor in women's vulnerability to HIV infection. In this sense, the gravity of the situation illustrates that since

¹ These projects take place together with or in collaboration with municipalities, universities, neighborhood groups, women's NGOs, students and others in the community.

² Human Rights Committee 2000, Committee DESC 1999, Committee CEDAW 2004, Children's Rights Committee 2002.

³ According to the National Office of Criminal Policy from the year 2005, which reported 10,318 crimes against sexual integrity of which 3,154 were rapes (it is necessary to remember that in these cases there is significant under recording).

1987 when the first case of AIDS in a woman in Argentina was registered, the rate of male/female disease was 14 men for every woman while in 2005 that figure dropped to 2.24/1, indicating the feminization of the epidemic⁴.

The national and provincial legislation is obsolete, that those who suffer rape are revictimized and that access to justice is unequal. The governmental response to violence against women and girls are centered on domestic violence. Whatever their origins, the prevalent approach to these issues is generally the resolution of conflict, with a logic that prioritizes the preservation of family above the human rights of the individual. Although it is widely recognized that the principal victims of violence are women and girls, this is not incorporated into the analysis of the problem, with a perspective sensitive to gender.

On the other hand, rape within marriage is not recognized in national legislation. Only sexual abuse is expressly categorized as a crime while sexual harassment is not, which is why these acts remain outside the scope of the penal code⁵.

One of the most significant shortcomings of the government is a lack of a systematic national register providing credible and comparable data that facilitates access to information. This lack of data does not contribute to the visualization of the intersection between violence against women and girls and HIV/AIDS and neither does it provide support for judicial action nor awareness in favor of the creation of public policy on prevention and care.

The absence of articulate and trustworthy statistics with respect to the type of violent crime (physical, sexual, psychological) as well as the lack of a computerized and standardized database at the government and judicial levels is worrisome. *“There is no database that will recognize the extent, type and gravity of violence against women. The statistics that exist refer only to the official reports made and at the same time show that the official reports represent only a small percentage of the whole. Consequently, since there are no serious and trustworthy statistics that demonstrate the real scope of the problem of violence against women, there can be no definitions made nor measures adopted in public policy”*⁶.

In its recommendations to the Argentine government for the year 2000, the United Nations Human Rights Committee declared in paragraph 15⁷: *“...the Committee considers it worrisome that apart from important progress, traditional attitudes toward women continue to have a negative influence on their right to enjoy the rights stated in the Pact. The high incidence of cases of violence against women, including rape and domestic violence is particularly troublesome to the Committee. Sexual harassment and other manifestations of discrimination in the public and private sectors are also troublesome. The Committee observes that information about these issues is not systematically widespread and that women have little knowledge of these rights and the resources available to them and that they do not duly report their crimes. The Committee recommends that a large scale information campaign be undertaken to promote awareness that women have rights and resources available to them. The Committee insists that reliable data on the incidence of all forms of violence and discrimination against women be systematically collected and archived and that these data be available for the next period’s report.”* As we will see, to this date these recommendations have not been followed.

Also, the steady decrease in the National Women’s Council budget since 2002⁸ is alarming; a situation that has been reported by the Women’s Movement and observed by the CEDAW Committee on numerous occasions⁹. Taking into

⁴ “Women Won’t Wait”: M.Bianco and F.Aranda, www.womenwontwait.org, October 2007.

⁵ Argentine Counter-report to the Committee of the Interamerican Convention to Prevent, Sanction and Eradicate Violence Against Women, October 2006. CLADEM Argentina.

⁶ Chiarotti, Susana. Violence Against Women in Latin America and the Caribbean. URL: <http://www.socialwatch.org/es/informesTematicos/61.html>.

⁷ United Nations, Final observations of the Human Rights Committee, Argentina, November 3rd, 2000, CCPR/CO/70/ARG.

⁸ Counter-report CEDAW 2002, Update 2004. Available at www.feim.org.ar.

⁹ Final Observations of the CEDAW Committee Argentina 2004.

account that the National Women's Council is the governmental institution for women's policies, this situation is especially grave.

III. TRAFFICKING AND EXPLOITATION OF WOMEN FOR PROSTITUTION (ART. 6 CEDAW)

As we've already mentioned, although there has not been any formal study done by the government on the basis of the general impoverishment of the country, UNICEF in 2001¹⁰ denounced the situation of women in prostitution worsened considerably and more and more including women of an increasingly younger age. However, from the perspective of national and local governments, there are no policies that will abolish or lessen the exploitation of women.

Regarding this matter, it can be affirmed that no official program exists geared toward women in prostitution whether it be for support, protection or training for participation in other activities. On the contrary, this work is only done by some feminist and religious groups. This is aggravated by constant abuses, pressures and illegal detentions that women in situations of prostitution suffer by the police.

The absence of rules and plans aimed at combating and eliminating the trafficking of women is worrisome in view of the numerous cases that demonstrate the existence of powerful networks connected to political and police sectors of extended sexual exploitation across the nation¹¹. Aside from cases periodically reported in the media of young people who have disappeared and then reappear after escaping from their captors to tell of how they had been kidnapped and sexually exploited in hidden brothels, there is practically no news about chains or police/judicial investigations that shed light on the guilty parties.

Just as we reported during the presentation of the Alternative Report of the CEDAW Committee, "...Argentina and women migrants from the Dominican Republic who can be considered sex slaves based on the grave situation they find themselves in, are a heart-rending example of prostitution as part of organized crime on the global level. These women are brought to Buenos Aires by pimps, invariably repeating the same *patterns of behavior*: The women are fooled by the promise of legal work; at their foreign destination they are stripped of their documents and are forced to live by the rules of rape, punishment and drug abuse"¹². There are many reports in the Argentine justice system with respect to this situation¹³.

Also, another case that deserves the attention of the Council is that of women of Paraguayan decent working in prostitution, the majority being underage. According to the research done by the T.V. news program "Telenoche Investigates"¹⁴ they would work in brothels located in the neighborhoods Escobar and Tigre in the province of Buenos Aires. These places ran with the cooperation of public and political officials. The judicial investigations provoked the resignation of the Chief of Police of the province of Buenos Aires.

Another serious formal complaint made by Amnesty International refers to the violent deaths or disappearance of at least 26 women in Mar del Plata, province of Buenos Aires, many of whom practice prostitution. Even if in an initial stage, the judicial investigations had attributed these crimes to a serial killer, the judge determined later that 13 of the deaths and disappearances could be connected to a police organization dedicated to prostitution and drug trafficking¹⁵.

IV. SEXUAL AND REPRODUCTIVE RIGHTS (ART. 12 CEDAW, ART. 12 PIDESC)

¹⁰ UNICEF (Argentina Office), *Childhood Prostitution. Study on childhood commercial sexual exploitation in Argentina*, Buenos Aires, October 2001.

¹¹ Casos Marita Veron, Otoño Uriarte, Annagreth Wügler, Fernanda Aguirre, María Cristina Ojeda y Romina Gamarra.

¹² Lipszyc, Cecilia, "Xenophobia against women", *Magazine María, María*, UNIFEM, June 2001.

¹³ REDH (Network of Solidarity for Human Rights); Free Newspaper; Newspaper the Caribbean.

¹⁴ Channel 13 during the month of July 2000, Channel 13.

¹⁵ Clarín Newspaper, October 6, 2001.

After three failed attempts, only recently in 2002 was the National Law of Sexual Health and Responsible Procreation passed (National Law 25.673). The law creates the National Program for Sexual Health and Responsible Procreation (NPSHRP) within the Ministry of Health. This program, based on respecting sexual and reproductive rights, includes the provision of information and counseling on contraceptives, free access to contraceptives at all public health services as well as throughout social security and private health care systems; female reproductive cancer care and prevention, violence care and prevention and HIV/AIDS and STI care. Under the law, these services are provided to the general population, for all adolescents both male and female without any kind of discrimination. However, the implementation is very uneven depending on the interest and political will of the provincial authorities, personnel training and the efficiency of the channels of distribution of materials and supplies.

However, religious health centers are legally exempt from prescribing and administering contraceptive methods even though there is no adequate widespread registry naming those centers. The doctors and professionals at the state centers can “conscientiously object” in order to not give this kind of care, however it still must be assured and provided at the same center and without delay.

As a federal country, the provinces and the City of Buenos Aires must sanction laws equivalent to or adhering to the national laws¹⁶, which has not been done in three jurisdictions: Formosa, Tucumán y San Juan¹⁷. A great number of heterogeneous provincial laws exist. The national law as well as some of the provincial laws provoked actions against them by conservative groups who filed judicial complaints.

Even though contraceptive methods are provided for free, the quality of care is still very uneven. Advice about contraceptives and sexual and reproductive rights does not exist or are of poor quality. Since 2007 the Ministry of Health buys and distributes emergency contraception, but it is treated as a little known or used method with strong objection by the conservative sector for being considered abortive. In addition to this, the distribution of information among health personnel is scarce, for which reason coverage is very uneven.

In August of 2006 the National Law number 26.130 on Surgical Contraception was passed, which regulates the medical practice of “Falopian Tubal Ligation” and “Ligation of the Vas Deferens” or “Vasectomy” in every hospital and clinic, public or private in the country¹⁸. The law recognizes the right of all people capable and of legal age to access these practices of surgical contraception with informed consent previous to the operation.¹⁹

A year after the law’s passage, we must report that there are still many cases in public hospitals, both provincial and municipal, that have denied the practice based on conscious objection by professionals and authorities and sometimes due to doctors’ fear that they will be legally punished in court for malpractice²⁰.

Even though among the objectives of the NPSHRP is “...to provide information to the population (...) stimulate training through educators, social workers, community operators and health teams...”, the establishment of sexual education programs in public schools according to the Law 25673 has not taken effect. In 2006 the National Law 26.150 of Sexual Education was passed, which established that “all those receiving an education have the right to comprehensive sexual education in public education establishments, by public and private processes in national and provincial jurisdictions, of the City of Buenos Aires and municipalities...” and creates the National Program of Comprehensive Sexual Education within the National Ministry of Education.

¹⁶ 20 of the 25 districts in the country currently have legislation, the majority before the national law. The provinces that still do not have legislation are Formosa, San Juan and Tucumán. http://www.conders.org.ar/legisla_prov.html

¹⁷ Through Provincial Law 5930, the province of San Juan partially adopted the National Program of Sexual Health and Responsible Procreation.

¹⁸ Enforced September 7th, 2006. www.conders.org.ar

¹⁹ The treating physicians must relate in a clear and complete manner the characteristics and effects of the intervention adapting to the needs of the patient as well as the possibilities for accessing other non-surgical contraceptive methods.

²⁰ See www.pagina12.com.ar. Inaccessible Ligation for Poor People, July 28, 2007.

The sanction of this law is an auspicious act, but we regret that although there has been ample time, the National Ministry of Education (enforcing body of this law) has still not put this program into practice according to the specifications of the law.

V. SITUATION OF ABORTION (ARTS. 1 Y 12 CEDAW, ARTS. 1 Y 6 PIDCYP)

In Argentina abortion is classified by the penal code as a crime against life and person, which establishes imprisonment for anyone who performs one and for the woman who requested or consented to the practice. Article 86 recognizes two exceptions by which an abortion is not punishable: 1) if an abortion “has been done with the purpose of avoiding danger to the life or health of the mother and if this danger can not be avoided in any other way,” and 2) “if the pregnancy is the product of a rape or coerced intercourse of an idiot or demented woman. In this case, the consent of her legal representation will be required to perform the abortion.”²¹.

Aside from the fact that since 1984 close to 30 bills have been presented to the National Congress to partially or totally decriminalize abortion, to date none of them has been brought to the precincts.

At this time we would like to recognize the proposal to reform the Penal Code made by a commission of experts created in the Ministry of Justice and Human Rights in July of 2006. The amendment is to that which was considered “not punishable to the woman when the abortion is practiced with her consent and within the first three months after conception, only when the circumstances make it excusable”²². However, this draft bill did not continue to be discussed as it was set aside by the government.

Aside from the fact that the legislation contemplates the cases in which an abortion would not be punishable, women in these situations cannot access a safe and legal abortion at the public health services. The professionals at these health centers insist on judicial authorization for a procedure that will end a pregnancy. They are motivated by the fear of being legally penalized for the crime of abortion or for malpractice; other times they deny the procedure entirely for personal reasons: conscientious objection. In the last few years there have been numerous court sentences that have underscored the impunity of these abortions and that have considered this request inadmissible since it is a medically instructed procedure and the Penal Code is clear on the matter²³.

Recently, provinces like Buenos Aires and Mendoza as well as the City of Buenos Aires, have regulated non-punishable abortion care in public hospitals according to the Penal code. There still is no national rule set out by the National Ministry of Health with respect to these procedures.

In response to the period report presented by Argentina,²⁴ the United Nations Human Rights Committee pointed out in 2000 that, “it is worrisome to the Committee that the criminalization of abortion dissuades doctors from performing this procedure without a judicial mandate including when the law legally permits it.” The Committee recommends the elimination of all obstacles to abortion when it is not punishable by law and the modification of national legislation to authorize abortion in all cases of pregnancy as a result of rape²⁵.

Abortion in Argentina continues to be the principal cause of Maternal Mortality and constitutes a social injustice because it affects the poorest women. In 2000 the admittances to public hospitals for abortion increased 46% in

²¹ Penal Code, Second Book, Title I, Chapter I.

²² Commission for the Development of the Bill for Comprehensive Reform and Update of the Penal Code, Ministry of Justice and Human Rights: http://www.jus.gov.ar/guia/content_codigo_penal.htm.

²³ See the Information Sheet Number 03/ CEDES ,FEIM ,IPPF WH , June 2007 at www.despenalización.org.ar. Zamberlin, N., “El aborto en la Argentina”.

²⁴ Third Period Report (CCPR/C/ARG/98/3).

²⁵ Human Rights Committee, “Final Observations of the Human Rights Committee: Argentina 3/11/2000”, Document UN CCPR/CO/70/ARG, para. 14.

comparison to 1995²⁶. This increase can be related to the economic crisis, which could have caused more women to end pregnancies in risky conditions and because of a loss of social coverage by wide sectors of the population as a result of unemployment and precarious work situations.

Today many sectors of the country demand the decriminalization of abortion. It is essential to modify the law and that the State guarantees access to this kind of care in public hospitals for all women and girls without any kind of discrimination. This becomes more urgent taking into consideration the recent series of cases with broad medical implications²⁷ for those whom aside from having the legal resources to decide about their reproductive rights could not access those rights, were discriminated against, saw their right to access a safe abortion within the public health system violated, including the right to life. The case of Ana Maria Acevedo in the province of Santa Fe²⁸ is an example of the situations we report. She died because doctors would not give her a therapeutic abortion and denied her the necessary cancer treatment because of her pregnancy.

On the other hand, beyond the legality or illegality of abortion, the State must guarantee adequate post-abortion care to women with complications from unsafe abortions and must do everything within its reach to avoid the repetition of abortions and preserve women's health and life. Contraceptive counseling is not given in public services and a high proportion of these cases are released receiving neither counseling nor provision of contraceptive methods²⁹.

In 2004 the national and provincial health authorities agreed on the need to decrease maternal mortality and "guarantee that women in situations of abortion are not discriminated against and receive humanized, quick and effective care with counseling and provision of contraceptive methods"³⁰. This has still not been done in the majority of the provinces, as is evidenced by the last case of a young woman from the province of Entre Rios with mental disabilities who became pregnant as a result of a rape. In order to receive the medical care requested by her mother and denied her by public health services in her home province as the result of a legal action imposed by a Judge for minors, she had to be taken to the province of Buenos Aires for care³¹.

The Federal Health Plan developed by the Federal Health Council for the period of 2004-2007 included goals regarding post-abortion care that were not carried out³². In the year 2005 the National Ministry of Health developed the "Guide for managing incomplete abortion"³³, which put together a series of guidelines for professionals who intervene in care, but this still has not been applied all over the country.

VII. RECOMMENDATIONS

- Eradicate sexist cultural stereotypes that persist in society and continue to be perpetuated through the culture, education and in families.
- Guarantee reliable and adequate data that allow for monitoring and improved public policy design. Assure official statistics and data separated by sex, age, ethnic group and above all reference to violence against women and girls and the implementation of sexual and reproductive rights including HIV/AIDS.

²⁶ The 46% increase applies to the national average. In some provinces the increase of hospitalizations for abortion complication between 1995 and 2000 are triple the national average: Province of Buenos Aires 70%, La Rioja 143%, Misiones 62%, San Luis 148% y Santa Cruz 69%. Information Sheet Number 03/ CEDES ,FEIM ,IPPF WH , June 2007 at www.despenalización.org.ar, Zamberlin, N., "Abortion in Argentina".

²⁷ <http://www.clarin.com/diario/2005/06/29/um/m-1004763.htm>; <http://www.clarin.com/diario/2006/11/15/um/m-01309945.htm>; <http://www.clarin.com/diario/2006/11/16/um/m-01310708.htm>; <http://www.pagina12.com.ar/diario/elpais/1-71329-2006-08-13.html>

²⁸ <http://www.pagina12.com.ar/diario/suplementos/rosario/10-2007-05-21.html>.

²⁹ A study in a public hospital in the City of Buenos Aires showed that 55% of the women hospitalized for abortion did not receive information about contraceptive methods before being discharged (Romero, M.; Zamberlin, N. Y Gianni, M.C.: "Quality of Care for Abortion Complications: A Public Health and Human Rights Challenge." Work presented at the 11th Global Conference on Public Health, Rio de Janeiro, Brazil, 2006).

³⁰ "Commitment to Reducing Maternal Mortality" National Office for Mother-Child Health, National Ministry of Health, October 6, 2004. www.conders.org.ar

³¹ <http://www.pagina12.com.ar/diario/sociedad/3-91886-2007-09-24.html>.

³² Informative Sheet Number 03/ CEDES ,FEIM ,IPPF WH , June 2007 at www.despenalización.org.ar, Zamberlin, N., "Abortion in Argentina.-".

³³ www.msal.gov.ar/hm/site/promin/UCMISALUD/publicaciones/publicaciones.htm.

- Adopt public policy that faces the relationship between violence against women and HIV/SIDA, promoting comprehensive treatment and prevention.
- Develop and implement protocols for care for all women and girls victims of familial and sexual violence, to be implemented in health, justice and security services that aid victims, guaranteeing that in the case of rape, post exposure to HIV profilaxis is given as well as hormonal emergency contraception to prevent pregnancy and other forms of emergency care including the those legal and psychological.
- Legislate and universalize standards on sexual harassment at work and guarantee the process.
- Combat in an effective way the trafficking of women and their sexual exploitation.
- Guarantee compliance with the National Law of Sexual Health and Responsible Procreation (National Law 25.673) in the entire country and work for the acceptance of this law in provinces where it has not yet been passed.
- Effective implementation of Sexual Education with a gender perspective in the public and private schools of the formal educational system at all levels. Creation of the National Sexual Education Program at the National Ministry of Education and more rapid and effective implementation nationally.
- Guarantee effective access to public sexual and reproductive health programs for women and adolescents, which should improve the quality of their care (informed consent, counseling, trained personnel, provision of all contraceptive methods, including emergency contraception).
- Decriminalize abortion. Guarantee adequate and free non-punishable abortion care at different levels of the public health system, without the need for judicial intervention through a national law applicable in all provinces and municipalities.
- Guarantee adequate post-abortion care that includes advice as well as counseling on and provision of contraception for all women admitted for abortion.
- Develop affirmative actions and equal opportunity plans within work environments and in the fight against poverty, as well as within national, provincial and local institutions.

Buenos Aires, 19 de noviembre de 2007