

June 25, 2004

The Committee on the Elimination of Discrimination against Women (The Committee)

Re: Supplementary information on Argentina
Scheduled for review during the CEDAW's 31st Session

Dear Committee Members:

The Center for Reproductive Rights (the Center), an independent nongovernmental organization (NGO), has prepared this letter to provide independent information relating to the enjoyment of reproductive rights in Argentina, as set forth by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹

Reproductive rights are fundamental to women's health and social equality, and an explicit part of the Committee's mandate under CEDAW. Specifically, the Convention commits States parties to: "ensure... access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning" [Article 10(h)]; "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning" [Article 12(1)]; and to "take all appropriate measures to eliminate discrimination against women in rural areas in order to assure... access to adequate health-care facilities, including information, counseling and services in family planning..." [Article 14(2)(b)]. The Committee's General Recommendation 24 (Women and Health) also expands upon the integral role of reproductive health and rights in ensuring women's rights.

The Committee has previously recognized the importance of assuring reproductive rights in Argentina. In 2002, the Committee's concluding observations on Argentina's fourth and fifth periodic reports recommended specifically "that the State party should guarantee women's access to health services, including sexual and reproductive health services, and that it should adopt the necessary measures to reduce the high maternal mortality rate."²

Unfortunately, there remains a significant gap between the provisions contained in the Convention and the reality of women's reproductive health and lives in Argentina. The Center has identified for the Committee the following specific issues of concern, which directly affect the reproductive health and lives of women in Argentina.

1. Scope and effectiveness of the new National Program for Sexual Health and Responsible Parenthood

We applaud the Argentine government's achievement in creating a national program to address sexual and reproductive health, as well as the tireless efforts of the Minister of Health to defend and implement the program, despite opposition. However, there are several issues of concern related to the implementation of this program, which we would direct to the Committee's attention.

a. Limitations on adolescents' access to reproductive health services

While the National Program for Sexual Health and Responsible Parenthood (National Program) is directed "to the general population, without any discrimination,"³ and has as one of its goals "to promote the sexual health of adolescents,"⁴ the ability of adolescent patients to access confidential and comprehensive services may be limited by law or in practice.

Health-care providers in Argentina have long been reluctant to extend reproductive health services to adolescents without the consent or authorization of parents.⁵ New regulations attached to the law creating the National Program appear to reinforce the notion that adolescent patients do not have the right to equal care. The regulations specify that when serving minors, providers should involve an adult in the consultation and should prescribe only the use of condoms, with additional methods made available only in exceptional cases.⁶

Since the age of majority in Argentina is 21,⁷ these restrictions severely affect the reproductive rights of young women. The denial of comprehensive and confidential reproductive health care impedes these women's ability to protect themselves from unwanted pregnancy—particularly for women who have difficulty negotiating condom use with their partners—and may deter young women from seeking out needed reproductive health services. We recommend that Argentina clarify the legal right of adolescent women to receive comprehensive and confidential reproductive care, and undertake a broad-based education campaign to ensure that health-care providers understand and respect this right.

b. Limits on contraceptive options available

Sterilization is the most popular method of birth control in Latin America, used by 23.2% of women of reproductive age.⁸ In Argentina, however, voluntary sterilization by tubal ligation or vasectomy is not only excluded from the subsidized services available under the National Program, it is legally prohibited. The National Medical Practice Code forbids doctors to perform these surgeries, even at the patient's petition and with informed consent,⁹ and doctors who provide this care may be criminally prosecuted.¹⁰ We recommend that Argentina reform its laws to recognize women's right to choose voluntary sterilization as a family planning method, with proper safeguards to ensure free and informed consent.

The use of emergency contraception (EC) is also unduly restricted by the Argentine government. A decision of the Supreme Court recently banned the production and distribution of one emergency contraceptive, sold under the brand name Imediat.¹¹ The Court erroneously

classified the drug as an abortifacient, despite its recognition as a contraceptive by the World Health Organization (WHO).¹² Moreover, the Ministry of Health's new Guide to the Use of Contraceptive Methods, intended to assist family planning educators and health-care providers in implementing the new National Program, indicates that the use of all emergency contraceptives should be restricted to cases of rape or failure of another contraceptive method.¹³ We recommend that EC be made available to all women without discrimination.

c. Need for research and data to ensure effective implementation

To track the effectiveness of the new program in enabling women to exercise their right to reproductive decision-making, reliable data on the rate of unintended pregnancies is needed. At present the national census tracks fertility, but does not ask whether the births were wanted or unwanted. Such data is essential to measure the effectiveness of the National Program and to identify continuing gaps between national efforts and full enjoyment of the rights outlined in the Convention. Additionally, given the particular challenges faced by rural and adolescent women in accessing services, special attention must be paid to evaluating the effectiveness of the program in serving these groups.

2. Failure to implement sexual and reproductive education for adolescents

This Committee has previously noted with concern rising rates of HIV infection in Argentina.¹⁴ However, reported cases of sexually transmitted infections other than HIV are also increasing rapidly; between 1998 and 2002, newly reported cases of syphilis nearly *doubled*, while cases of genital lesions more than *tripled*.¹⁵ At the same time, little progress has been made in reducing teen pregnancy; from 1991 to 2001, the proportion of births to women under 20 barely budged, from 14.9% to 14.6%.¹⁶ According to the most recent available statistics, approximately 3,270 children are born each year to mothers under age 15 in Argentina, while 98,483 births occur among the 15-19 age group.¹⁷ These figures do not include pregnancies that end in induced abortion, estimated at one third of all pregnancies in Argentina.¹⁸

These statistics indicate the need for broad-based preventive reproductive health education; however, the government of Argentina has been reluctant to undertake this task with respect to adolescents. Although the National Program calls on public educational institutions to promote reproductive and sexual health information and awareness among adolescents,¹⁹ Argentina has yet to implement this stated policy goal by adopting a nation-wide program of sexual health education in public schools.²⁰

3. Rising Rates of Maternal Mortality and Unsafe Abortion

According to the data of the Ministry of Health, maternal mortality has actually increased in recent years, from 3.8 deaths per 10,000 live births in 1997 to 4.3 deaths per 10,000 live births in 2001, the most recent year for which data are available.²¹ This represents a 13% increase in maternal mortality in just four years.

Approximately one third of maternal mortality is attributable to complications of abortion.²² Abortion is criminalized in Argentina, with extremely narrow exceptions (discussed below). Nevertheless, the Ministry of Health estimates that about one third of pregnancies end in abortion, over 500,000 per year.²³

According to multiple sources, middle-class women are generally able to obtain safe clandestine abortions in the private medical sector; it is primarily poor and rural women who bear the brunt of abortion's criminalization.²⁴ In 2001, 92 women died in Argentina from complications of abortion.²⁵ Additionally, a study by an Argentine non-governmental organization revealed widespread practices of cruel and degrading treatment of women who present for abortion complications in public hospitals.²⁶

A recent study by the Ministry of Health indicates that women who died from complications of abortion delayed seeking medical attention longer than women whose deaths were due to other forms of maternal mortality, a consequence of the fear and stigma imposed by criminalization.²⁷ The study recommends that the law on abortion be revised, "given that the evidence shows that its clandestine practice exposes women—especially the poorest—to practices that put their health and life at risk."²⁸

4. Barriers to Abortion where Permitted by Law

The Argentine Penal Code provides for legal abortion in only two circumstances: risk to the life or health of the mother that cannot be averted through other means, and rape or "indecent intercourse" with a mentally disabled woman.²⁹ In theory, medical professionals may determine when these circumstances apply. However, the fear of prosecution leads many hospitals to refuse to perform a legally permissible abortion unless the woman is able to obtain specific judicial authorization, although legally no such authorization is required.³⁰

Although the Human Rights Committee recommended in 2000 that Argentina take action to make abortion safely and legally available to all rape victims,³¹ the government has taken no action to modify its laws.³² Thus currently in Argentina rape victims are often doubly violated, forced to bear the child of the man that abused them or to seek an illegal abortion. In one recent case, a judge refused to authorize an abortion for a 14-year-old girl who sought to have an abortion resulting from sexual abuse by her stepfather, despite the girl's evident mental anguish and threats of suicide if forced to continue the pregnancy.³³

We hope the Committee will consider addressing the following questions to the Argentine government:

1. Is the right of minor women to receive confidential and comprehensive access to reproductive health-care services recognized in Argentina, and if so, what efforts are being taken to ensure that health-care providers understand and comply with this right?

2. How does the government justify its prohibition on voluntary sterilization, in light of this Committee's previous clarification that "the obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals?"³⁴
3. What research is being done to evaluate the effectiveness of the National Program, particularly among vulnerable populations of women, including the poor, rural communities, and adolescents?
4. What percentage of adolescents receives basic education in sexual and reproductive health? What steps is the government taking to increase adolescent women's awareness of how to protect themselves from sexually transmitted diseases and unwanted pregnancy?
5. How does the government explain the increase in rates of maternal mortality in recent years and what steps are being taken to reverse this trend? Specifically, is a reform of abortion law contemplated in light of the hundreds of women who die each year from unsafe abortions?
6. What actions are contemplated by the government to eliminate barriers that prevent women from exercising their right to an abortion where legally permitted, and to reform the law to make abortion accessible for all rape victims?

We appreciate the active interest that the Committee has taken in reproductive health and rights and the strong concluding observations and recommendations the Committee has issued to governments in the past, stressing the need for governments to take steps to ensure the realization of these rights. We hope that this information is useful during the Committee's review of the Argentine government's compliance with the provisions contained in the Convention. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Very truly yours,

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Center for Reproductive Rights

¹ Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N.GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].

² Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Argentina*, Sess. 27b, Part III ¶ 361, CEDAW/A/57/38 (2002) [hereinafter CEDAW Committee].

³ Law No. 25673, art. 3 (Nov. 22, 2002), *available at* http://www.msal.gov.ar/htm/site/ley_25673.asp.

⁴ *Id.* at art. 2.

⁵ CENTER FOR REPRODUCTIVE RIGHTS (CRR) & ESTUDIO PARA LA DEFENSA DE LOS DERECHOS DE LA MUJER (DEMUS), *WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES: LATIN AMERICA AND THE CARIBBEAN* 28 (1997) [hereinafter *WOMEN OF THE WORLD*] (copy on file with CRR).

⁶ National Decree 1282/2003, art. 4 (May 23, 2003), *available at* http://www.msal.gov.ar/htm/site/ley_25673.asp.

⁷ *WOMEN OF THE WORLD*, *supra* note 5, at 29.

⁸ CENTRO LATINOAMERICANO SALUD Y MUJER (CELSAM), *La anticoncepción en América Latina*, MANUAL EN LÍNEA, http://www.celsam.org/manual.asp?cve_manual=6 (last visited June 23, 2004).

⁹ Law 17132/67, art. 20, sec. 18 (1967), *available at*

http://www.msal.gov.ar/htm/site/Digesto_Rec_Hum_Salud/leyes/ley_17132.html.

¹⁰ *See* DERECHOS HUMANOS DE LAS MUJERES: ASIGNATURAS PENDIENTES DEL ESTADO ARGENTINO, CONTRAINFORME PRESENTADO POR UN GRUPO DE ONGS AL COMITÉ DE LA CEDAW PARA LA SESIÓN DE AGOSTO 2002, 20 (2002) [hereinafter NGO SHADOW REPORT TO CEDAW] (copy on file with the Center for Reproductive Rights).

¹¹ *Portal de Belén*, Corte Suprema de Justicia de la Nación XXXVI -709 (5 March 2002).

¹² WORLD HEALTH ORGANIZATION (WHO), *EMERGENCY CONTRACEPTION: A GUIDE FOR SERVICE DELIVERY* 20, (1998), http://whqlibdoc.who.int/hq/1998/WHO_FRH_FPP_98.19.pdf (last visited June 23, 2004).

¹³ MINISTERIO DE SALUD DE LA NACIÓN, *GUÍA PARA EL USO DE MÉTODOS ANTICONCEPTIVOS* 58-59 (October 2002).

¹⁴ CEDAW Committee, *supra* note 2, at ¶¶ 360-361.

¹⁵ Cases of syphilis rose from 1,370 (1998) to 2,591 (2002); while cases of genital lesions rose from 7,146 (1998) to 29,042 (2002). Ministry of Health data, <http://www.indec.mecon.ar/nuevaweb/cuadros/65/p030215.xls>.

¹⁶ Ministry of Health data published at http://www.indec.mecon.ar/nuevaweb/cuadros/65/Ses4_17.xls (1991) and <http://www.indec.mecon.ar/nuevaweb/cuadros/2/Mujerescuadro34.xls> (2001) (last visited June 23, 2004).

¹⁷ MINISTERIO DE SALUD DE LA NACIÓN, *ESTADÍSTICAS VITALES – INFORMACIÓN BÁSICA AÑO 2002*, 7, Table 2 (2003), <http://www.deis.gov.ar/publicaciones/archivos/anuario2002.pdf> (last visited June 23, 2004).

¹⁸ Interview with Minister of Health, Ginés Gonzales García, 5 May 2004, published at the web site of the Ministry of Health, http://www.msal.gov.ar/htm/site/desgrabaciones_Des.asp?ID=46 (last visited June 23, 2004) [hereinafter Interview with Minister of Health].

¹⁹ Law 25673, *supra* note 3, art. 9.

²⁰ *Report of the Government of Argentina before the Committee on the Elimination of Discrimination Against Women (Follow-up to the Fourth and Fifth Reports of States Parties)*, Sess. 31, CEDAW/C/ARG/5/Add.1, 16-17 (2004) (describing sexual health education in public schools as limited to the city of Buenos Aires).

²¹ Ministry of Health data published at <http://www.indec.mecon.ar/nuevaweb/cuadros/2/Mujerescuadro31.xls> [hereinafter Ministry of Health data].

²² *Id.* The official data are: 30.9% (1997), 29.4% (2000), and 31.0% (2001). However, maternal deaths are generally undercounted, and particularly those due to abortion, suggesting that the actual figure may be substantially higher; MARÍA CORREIA, *LAS RELACIONES DE GÉNERO EN LA ARGENTINA. UN PANORAMA SECTORIAL* 14 (1999).

²³ Interview with Minister of Health, *supra* note 18.

²⁴ MALA HTUN, *SEX AND THE STATE: ABORTION, DIVORCE AND THE FAMILY UNDER LATIN AMERICAN DICTATORSHIPS AND DEMOCRACIES* 6 (2003); INSTITUTO DE GÉNERO, *DERECHO Y DESARROLLO (INSGENAR), CON TODO AL AIRE: REPORTE DE DERECHOS HUMANOS SOBRE ATENCIÓN EN SALUD REPRODUCTIVA EN HOSPITALES PÚBLICOS* 33 (2003) [hereinafter INSGENAR] (copy on file with the Center for Reproductive Rights).

²⁵ Ministry of Health data, *supra* note 21.

²⁶ INSGENAR, *supra* note 24, at 32-36.

²⁷ MINISTERIO DE SALUD DE LA NACIÓN, *MORTALIDAD MATERNA EN ARGENTINA*, Executive Summary, VI (May 2004), <http://www.msal.gov.ar/htm/site/pdf/ConsolidadoResumenejecutivo.pdf> (last visited June 23, 2004).

²⁸ *Id.* at VIII (translated by the Center for Reproductive Rights).

²⁹ CÓD. PEN., art. 86(1-2), <http://infoleg.mecon.gov.ar/txtnorma/codpenal.rtf>.

³⁰ NGO SHADOW REPORT TO CEDAW, *supra* note 10, at 18 & 21.

³¹ Human Rights Committee, *Concluding observations of the Human Rights Committee: Argentina*, 70th Sess., ¶ 14, CCPR/CO/70/ARG (2000).

³² NGO SHADOW REPORT TO CEDAW, *supra* note 10, at 18.

³³ Carlos Rodríguez, *Un calvario sin fin*, PÁGINA/12 (Buenos Aires), Dec. 22, 2003, <http://www.pagina12web.com.ar/diario/elpais/1-29614.html>.

³⁴ Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 24*, ¶ 14, CEDAW A/543/38/Rev.1.