



September 9, 2002

The Committee on the Rights of the Child (CRC)

Re: Supplementary information on Argentina
Scheduled for review by the Committee on the Rights of the Child
on September 17, 2002

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by Argentina, which is scheduled to be reviewed by the Committee on the Rights of the Child during its 31st session. The Center for Reproductive Law and Policy (CRLP), an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the Convention on the Rights of the Child (Children's Rights Convention). This letter highlights several areas of concern related to the status of the reproductive health and rights of girls and adolescents in Argentina. Specifically, it focuses on discriminatory or inadequate laws and policies related to the reproductive rights of Argentine girls and adolescents.

Because reproductive rights are fundamental to adolescents' health and equality, states parties' commitment to ensuring them should receive serious attention. Further, adolescent reproductive health and rights receive broad protection under the Children's Rights Convention. Article 24 of the Children's Rights Convention recognizes girls' and adolescents' right "to the enjoyment of the highest standard of health and to facilities for the treatment of illness and rehabilitation of health." It also requires states parties to take appropriate measures "to develop family planning and education services." Yet, despite these protections, the reproductive rights of girls and adolescents in Argentina continue to be neglected and, at times, blatantly violated.

We wish to bring to the Committee's attention the following issues of concern, which directly affect the reproductive health and rights of girls and adolescents in Argentina.

1. The Right to Family Planning Services and Information (Article 24 of the Children's Rights Convention)

It is essential that adolescents have access to contraceptives and dual protection methods to prevent unwanted pregnancies and sexually transmissible infections (STIs). The CRC has regularly expressed concern in its Concluding Observations where adolescents have limited access to family planning services and contraceptive use is low, and has recommended that states parties work toward making family planning services more widely available.¹ In addition, the Committee has recommended that states parties strengthen their reproductive health education programs for adolescents in order to combat adolescent pregnancy and the spread of HIV/AIDS and other STIs.²

A. Contraception

While some provinces and municipalities in Argentina have sexual and reproductive health programs, there are no laws or policies at the national level to guarantee equitable access to family planning services and methods. Adolescent fertility rates therefore reflect profound inequality in access to health and family planning services across territorial divisions and income levels. A recent study revealed that the rate of adolescent pregnancy has increased from 3.3% in 1980 to 15.4% in 1999.³ In other words, there are 105,546 minors whose mothers are between the ages of 9 and 19, with such births concentrated in the provinces with the highest poverty rates, such as Buenos Aires, Santa Fe, Chaco and Salta. The study also revealed that 44% of adolescent mothers live in low-income homes, mostly concentrated in the provinces of northern and northeastern Argentina. In contrast, the Federal Capital only registered 6.4% of babies born to adolescent mothers.⁴ Women's sexual and reproductive health has been affected by growing poverty and increasing unemployment, which Argentina's current economic crisis has brought to critical levels.

Emergency contraception (EC) is legal in Argentina and there is no specific restriction on its use and distribution. However, low distribution means that the method is seldom used, making it ineffective in reducing unwanted pregnancies. In addition, a recent Supreme Court decision prohibits the sale of one brand of EC on the grounds that it is an abortifacient.⁵ Fortunately, the Supreme Court decision only reverses the authorization given by the National Drug, Food and Technology Administration (ANMAT) to manufacture, distribute and market IMEDIAT, a brand of EC that is no longer produced or sold in Argentina. The Court's decision is disturbing, however, since a similar case involving EC pills currently on the market could be brought before the Court at any time.

B. Prevention of HIV/AIDS

HIV/AIDS infection in Argentina is concentrated in marginalized and low-income urban areas, and has been marked by a process of rapid feminization.⁶ Proof of the feminization of HIV/AIDS is the change in the ratio of infected men to women. In 1988 it was 14:1, and in 2001 it was 3:1.⁷ The total number of cases reported from the beginning of the epidemic to September 30, 2001 was 20,713. However, after factoring in a delay for information transmission, the estimate rises to 23,000 cases.⁸

Argentina is the Latin American country with the highest percentage of children with HIV/AIDS. It is estimated that the number of children living with HIV/AIDS is 3,000,⁹ almost 90% of whom were infected by mother-to-child transmission. This is an indication of the high HIV/AIDS infection rate among young women of childbearing age. To deal with the situation, in 1998 the Ministry of Health and Social Welfare (MSAS) formulated a draft perinatal standard on HIV/AIDS that recommended “offering voluntary serology as part of routine prenatal care, to all pregnant women at their first check-up.”¹⁰ However, stopping the spread of HIV/AIDS requires a comprehensive legal and policy framework for sexual education and the promotion of sexual and reproductive health. Such a framework does not exist at the national level.

C. Sex Education

Sex education is lacking for most adolescents in Argentina. While provincial legislation provides for sex education in some jurisdictions,¹¹ it is not in the curriculum of most educational institutions, despite the fact that it is recognized in the Federal Education Act and in international instruments with constitutional status.¹²

2. The Right to Safe and Legal Abortion Services (Articles 6 and 24 of the Children’s Rights Convention)

Unsafe abortion poses a major threat to adolescents’ health in Argentina. The CRC has found that punitive abortion measures have a particularly negative impact on maternal mortality rates among adolescent girls.¹³

The criminalization of abortion in Argentina is a public health problem that needs serious attention. It is estimated that between 335,000 and 500,000 clandestine abortions are performed every year, and according to figures provided by National Institute of Statistics and the Census, 37% of pregnancies end in abortion.¹⁴

Since abortion is illegal, the conditions under which it is performed—except when provided in private clinics—are far from safe, particularly for the poorest women. Abortion is the second cause of maternal mortality, accounting for 31% of maternal deaths.¹⁵ The primary cause of pathology-related hospitalization in Argentina’s health services is abortion-related complications.¹⁶ Abortion is the second cause of hospital admission in women between the ages of 15 and 34.¹⁷ Furthermore, the punitive legal framework discourages the treatment of abortion-related complications by health services, due to fear and/or prejudice on the part of professionals.

Despite the fact that Argentina permits therapeutic abortion to save a woman’s life and preserve her health, the situations in which the exception applies are defined in an ambiguous manner and have not been elaborated upon in specific regulations. The result has been a pattern of exceedingly narrow interpretations of the therapeutic exception, colored by the moral and religious convictions of public officials and magistrates.¹⁸ In the public health

sector, there is a deep-rooted fear of practicing legal abortion. This fear is evidenced by the fact that health care personnel routinely request legal authorization to practice a legal abortion, even though there is no such requirement in the law.¹⁹

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

1. What legislation and policies have been adopted to address the barriers and social inequalities that young women face in accessing comprehensive and affordable reproductive health and family planning information and services?
2. Has the government presented any measures to ensure the availability of EC?
3. What steps have been taken to ensure that sex education is taught in all schools, and that the information is accurate and reflects objective scientific knowledge?
4. What efforts have been made to remove the obstacles that prevent young women entitled to legal abortions from obtaining abortion services?

There remains a significant gap between the provisions of the Children's Rights Convention and the reality of adolescents' reproductive health and lives. We appreciate the active interest that the Committee has taken in the reproductive health and rights of adolescents and the strong concluding observations and recommendations the Committee has issued to governments in the past, stressing the need 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 of the Children's Rights 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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¹ See *Concluding Observations of the Committee on the Rights of the Child: Central African Republic*, 25th Sess., paras. 60-61, U.N. Doc. CRC/C/15/Add.138 (2000); *Concluding Observations of the Committee on the Rights of the Child: Cambodia*, 24th Sess., paras. 52-53, U.N. Doc. CRC/C/15/Add.128 (2000); *Concluding Observations of the Committee on the Rights of the Child: Kyrgyzstan*, 24th Sess., para. 45-46, U.N. Doc. CRC/C/15/Add.127 (2000); *Concluding Observations of the Committee on the Rights of the Child: Lithuania*, 26th Sess., para. 40, U.N. Doc. CRC/C/15/Add.146 (2001); *Concluding Observations of the Committee on the Rights of the Child: Spain*, 30th Sess., para. 39, U.N. Doc. CRC/C/15/Add.185 (2002).

² See *Concluding Observations of the Committee on the Rights of the Child: Argentina*, 8th Sess., para. 19, U.N. Doc. CRC/C/15/Add.35 (1995); *Concluding Observations of the Committee on the Rights of the Child: Egypt*, 26th Sess., para. 44, U.N. Doc. CRC/C/15/Add.145 (2001); *Concluding Observations of the Committee on the Rights of the Child: Georgia*, 24th Sess., para. 47, U.N. Doc. CRC/C/15/Add.124 (2000); *Concluding Observations of the Committee on the Rights of the Child: Latvia*, 26th Sess., paras. 39-40, U.N. Doc. CRC/C/15/Add.142 (2001); *Concluding Observations of the Committee on the Rights of the Child: Russian Federation*, 22nd Sess., para. 48, U.N. Doc. CRC/C/15/Add.110 (1999).

³ See Sibila Camps, *De cada 100 bebés, 15 son de madres niñas o adolescentes [15 out of every 100 Babies are Born to Girl or Adolescent Mothers]*, CLARÍN, Apr. 18, 2001, available at <http://old.clarin.com/diario/2001/04/18/s-03904.htm> (last visited June 14, 2002).

⁴ See NATIONAL HEALTH STATISTICS PROGRAM, MINISTRY OF HEALTH, ANUARIO DE ESTADÍSTICAS VITALES [VITAL STATISTICS YEARBOOK] 24 (1999), available at http://www.unicef.org/argentina/datos_estadistica.php3 (last visited June 14, 2002) [hereinafter NATIONAL HEALTH STATISTICS PROGRAM, VITAL STATISTICS YEARBOOK].

⁵ It is worth mentioning that, with this decision, Argentina's highest court ignored the prevailing position in the international medical community, including the World Health Organization, which has stated that EC does not end pregnancy, but rather prevents it, and therefore is not a form of abortion. See WORLD HEALTH ORGANIZATION (WHO), EMERGENCY CONTRACEPTION, A GUIDE FOR SERVICE DELIVERY 20 (1998). WHO describes emergency contraception as a method that can be used by women during the first days following unprotected sexual intercourse to prevent unwanted pregnancy. *Id.*

⁶ See Mabel Bianco et al., *Derechos Humanos y acceso a tratamiento para VIH/SIDA en Argentina [Human Rights and Access to Treatment for HIV/AIDS in Argentina]*, in SERIE, ESTUDIO DE CASOS SOBRE DERECHOS HUMANOS [SERIES: CASE STUDIES ON HUMAN RIGHTS] 20 (1999).

⁷ See Ministry of Health, *El SIDA en la Argentina: Situación al 30 de setiembre de 2001 [AIDS in Argentina: The Situation as of September 30, 2001]*, at <http://www.msal.gov.ar/hm/site/lusida/separatas/separata092001/separata092001.htm> (last visited June 14, 2002).

⁸ See *id.*

⁹ See UNAIDS & WORLD HEALTH ORGANIZATION (WHO), ARGENTINA EPIDEMIOLOGICAL FACT SHEETS ON HIV/AIDS AND SEXUALLY TRANSMITTED INFECTIONS 2 (2002) available at http://www.unaids.org/hivaidsinfo/statistics/fact_sheets/pdfs/Argentina_en.pdf.

¹⁰ See Mabel Bianco, *¿Qué servicios y para quienes? [Which Services and for Whom?]*, in MUJERES SANAS, CIUDADANAS LIBRES (O EL PODER DE DECIDIR) [HEALTHY WOMEN, FREE CITIZENS (OR THE POWER TO DECIDE)] 88 (Mabel Bianco, et al. eds., 1998) [hereinafter Bianco, *Which Services and for Whom?*].

¹¹ For example, Río Negro's regulation stipulates that educational institutions throughout the province "shall effectively incorporate teaching on sexual education beginning at the preschool level. In middle school, advice and information on the prevention of unwanted pregnancies and sexually transmissible infections will be provided, as well as on the services available in public assistance centers." Law No. 3059 of the Province of Río Negro. Similarly, the bylaws of the city of Córdoba specifically stipulate: "[t]he present program expressly reserves the right of the parents or those with paternal authority over underage children to accept or reject, according to their religious or moral beliefs, the sexual education program provided in municipal schools."

¹² See Bianco, *Which Services and for Whom?*, *supra* note 10, at 79.

¹³ See *Concluding Observations of the Committee on the Rights of the Child: Chad*, 21st Sess., para. 30, U.N. Doc. CRC/C/15/Add.127 (1999).

¹⁴ See MABEL BIANCO, APORTES PARA SALUD [INPUT FOR HEALTH] 2 (2000) (Mimeograph on file with CRLP) [hereinafter BIANCO, INPUT FOR HEALTH].

¹⁵ See NATIONAL HEALTH STATISTICS PROGRAM, VITAL STATISTICS YEARBOOK, *supra* note 4, at 53.

¹⁶ See *Olivera va a proponer cambios a la Ley de Salud Reproductiva* [*Olivera Will Propose Changes to Reproductive Health Law*], CLARÍN, July 11, 2000, available at <http://old.clarin.com/diario/2000/07/11/s-04001.htm> (last visited July 14, 2002).

¹⁷ See BIANCO, INPUT FOR HEALTH, *supra* note 14, at 2.

¹⁸ Narrow and contradictory judicial decisions in Argentina with regard to requiring legal authorization to perform an abortion and granting such authorization illustrate the obstacles and complications faced by women who wish to obtain a legal abortion. In this respect it is worth mentioning the sentence handed down by the judge of Misiones who, in the case of a 15 year-old girl raped by her father, refused to authorize the abortion, stating that “if the mother’s life is not in danger, priority must be given to the life that is in the womb.” See Instituto de Género, Derechos y Desarrollo (IGDD), INFORME BORRADOR: MUJERES DEL MUNDO [DRAFT REPORT: WOMEN OF THE WORLD] 29 (1999) (on file with CRLP) [hereinafter IGDD, DRAFT REPORT: WOMEN OF THE WORLD]. Equally illustrative are rulings by the Supreme Court of the Nation and the Supreme Court of Buenos Aires, which handed down contradictory sentences in two similar cases where legal authorization was sought to induce labor for a fetus with no possibility of life outside the uterus. See Supreme Court of the Nation, sent Jan. 11, 2001, and Supreme Court of Justice of Buenos Aires, Ac. 82.058, “B.A. Autorización Judicial” (B.A. Legal Authorization), June 22, 2001.

¹⁹ There are some isolated rulings that, without giving an opinion on the request, have established that the application for authorization from the judicial body is not appropriate, since the law does not provide for it. See *id.*, citing Instituto de Género, Derechos y Desarrollo (IGDD), INFORME BORRADOR: MUJERES DEL MUNDO [DRAFT REPORT: WOMEN OF THE WORLD] 29-30 (1999) (on file with CRLP) [hereinafter IGDD, DRAFT REPORT: WOMEN OF THE WORLD].