

Argentina

# Women of the World: Laws and Policies Affecting Their Reproductive Lives



Latin America and the Caribbean

The Center for Reproductive Law and Policy  
DEMUS, Estudio para la Defensa de los Derechos de la Mujer

In collaboration with partners in

Argentina

Bolivia

Brazil

Colombia

El Salvador

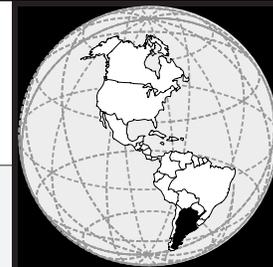
Guatemala

Jamaica

México

Perú

# Argentina



## Statistics

### GENERAL

#### *Population*

- Argentina has a total population of 34.2 million,<sup>1</sup> of which 50.5% are women.<sup>2</sup> The growth rate is approximately 1.3% per year. 31% of the population is under 15 years old, and 9% is over 65.<sup>3</sup>
- In 1995, 87% of the population lived in urban areas and 13% lived in rural areas.<sup>4</sup>

#### *Territory*

- Argentina has an area of 2,767,000 square kilometers.<sup>5</sup>

#### *Economy*

- In 1996, the gross national product per capita was estimated at U.S.\$8,629<sup>6</sup>
- From 1990 to 1994, the gross domestic product grew at an estimated rate of 7.6%.<sup>7</sup>
- In 1996, public health expenditures were 3% of the total national budget.<sup>8</sup>

#### *Employment*

- From April to May 1996, the employment rate in urban areas was 34.1%.<sup>9</sup> In 1994, approximately 13 million people were employed in Argentina. Women represented 30% of the labor force.<sup>10</sup>

### WOMEN'S STATUS

- The average life expectancy for women is 75 years, compared with 68 years for men.<sup>11</sup>
- 4% of citizens over 15 years of age are illiterate; this percentage is roughly the same for both men and women.<sup>12</sup>
- In October 1996, women made up 33% of the economically active population, 26.4% of the total employment rate, and 20.3% of the unemployment rate. Men made up 55.6%, 46.8%, and 15.7% respectively.<sup>13</sup>
- There is insufficient information on violence against women in Argentina. However, 1.3% of criminal acts in the country are categorized as "crimes against decency" — which includes rape.<sup>14</sup> In light of new "protection against domestic violence" legislation, it is hoped that data will be collected more systematically.<sup>15</sup>

### ADOLESCENTS

- Approximately 31% of the population of Argentina is under 15 years old.<sup>16</sup>
- The median age of first marriage is 22.9 years.<sup>17</sup>
- From 1990 to 1995, the fertility rate in adolescents between the ages of 15 and 19 years old was 66 per 1,000 inhabitants.<sup>18</sup>

### MATERNAL HEALTH

- From 1990 to 1995, the country's fertility rate was 2.77.<sup>19</sup>
- In 1991, the maternal mortality rate was 48 deaths per 100,000 live births.<sup>20</sup>
- In 1991, the reported causes for maternal mortality were as follows: 31.6% due to abortions, 60.3% due to direct causes, and 3.98% due to indirect causes.<sup>21</sup>
- In 1994, the infant mortality rate was estimated at 22 deaths per 1,000 live births.<sup>22</sup>
- In Argentina, 96% of births are attended by a health professional.<sup>23</sup>

### CONTRACEPTION AND ABORTION

- In 1994, 68.9% of women in Argentina used some form of contraception.<sup>24</sup>
- Unofficial figures estimate that there are between 350,000 and 400,000 abortions per year in Argentina.<sup>25</sup>

## HIV/AIDS AND STIs

- According to information from the AIDS Program (1997), 20% of all cases reported since the epidemic began were reported in 1996. In 1996, there was a rise of 19% from the previous year in the number of cases.<sup>26</sup>
- The number of women with AIDS grew 27% in 1995. The number of men with AIDS grew by 18%.<sup>27</sup>
- In 1990, there were 1,079 cases of sexually transmissible infections.<sup>28</sup>

## ENDNOTES

1. UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF THE WORLD POPULATION 1997, at 72 (1996).
2. UNITED NATIONS, THE WORLD'S WOMEN 1995: TRENDS AND STATISTICS, at 25 (1995).
3. THE WORLD ALMANAC AND BOOK OF FACTS 1997, at 739 (1996).
4. THE WORLD'S WOMEN, *supra* note 2, at 62.
5. WORLD BANK, WORLD DEVELOPMENT REPORT 1996: FROM PLAN TO MARKET, at 188 (1996).
6. Presentation by the Argentine delegation before the 17th session of the Committee on the Elimination of Discrimination Against Women (CEDAW), annex, table 6 (July 22, 1997) (on file with CRLP).
7. WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 208.
8. THE STATE OF WORLD POPULATION 1997, *supra* note 1, at 72.
9. Gender and Development Institute, Draft Report on Argentina, at 11 (Rosario, Argentina, Jan. 1997) (on file with CRLP).
10. WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 195.
11. THE WORLD ALMANAC, *supra* note 3, at 740.
12. THE STATE OF WORLD POPULATION, *supra* note 1, at 69.
13. Presentation by the Argentine Delegation, *supra* note 6, at 44.
14. Report of the Government of Argentina before the 17th Session of the Committee on the Elimination of Discrimination Against Women (CEDAW), at 10 (July, 22 1997).
15. Draft Report on Argentina, *supra* note 9 at 7.
16. THE WORLD ALMANAC, *supra* note 3, at 739.
17. THE WORLD'S WOMEN 1995, *supra* note 3, at 35.
18. *Id.*, at 86.
19. Draft Report on Argentina, *supra* note 9 at 8.
20. Presentation by the Argentine Delegation, *supra* note 6, at annex, graph 1.
21. *Id.*, at tbl. 2.
22. National Statistics and Census Institute. <www.indec.mecon.ar>
23. THE STATE OF WORLD POPULATION, *supra* note 1, at 72.
24. UNITED NATIONS POPULATION FUND (UNFPA), RESOURCE REQUIREMENTS FOR POPULATION AND REPRODUCTIVE HEALTH PROGRAMS, at 154 (1996).
25. LAW LIBRARY, LIBRARY OF CONGRESS, REPORT FOR CONGRESS, at 31 (1996).
26. Report of Argentina before CEDAW 1997, *supra* note 14, at 46.
27. *Id.*
28. Draft Argentina Report, *supra* note 9 at 10.

The Republic of Argentina is located in the southern region of South America.<sup>1</sup> Chile borders it to the west, Bolivia and Paraguay to the north, and Brazil and Uruguay to the northeast.<sup>2</sup> The official language is Spanish, though other native languages — Quechua, Guaraní, Guaicurú, and Tehuelche — and some foreign languages, such as Italian, are also spoken in Argentina.<sup>3</sup> Roman Catholicism is the official religion<sup>4</sup>, and 90% of the population is Catholic.<sup>5</sup> Argentina was a Spanish colony from 1515 to 1816,<sup>6</sup> when it won its independence. In the decades after 1880, there was massive immigration to Argentina from Italy, Germany, and Spain,<sup>7</sup> influencing the ethnic composition of the country. The country is predominantly white and of Spanish and Italian origin (85%). The next largest ethnic groups are mestizo and indigenous peoples.<sup>8</sup>

In 1976, a military junta overthrew Isabel Perón — the first woman to govern a country in the Western Hemisphere.<sup>9</sup> The military government ruled by a permanent “state of siege,” fighting armed guerrillas and Argentine left-wing political parties. The military killed an estimated 5,000 people and imprisoned and tortured thousands of others.<sup>10</sup> In 1983, democracy returned to Argentina,<sup>11</sup> and in 1985, five members of the previous ruling military junta were found guilty of political murders and human rights abuses, though they were later pardoned.<sup>12</sup> In 1989, the state initiated structural and economic reform in Argentina to halt inflation and encourage efficiency and economic competitiveness.<sup>13</sup> In 1996, the government implemented a second economic reform that attempted to advance the 1989 initiative.<sup>14</sup> The current president of Argentina, reelected for a second term in 1995, is Carlos Saúl Menem.<sup>15</sup>

## I. Setting the Stage: the Legal and Political Framework

To understand the various laws and policies affecting women’s reproductive rights in Argentina, it is necessary to consider the legal and political systems of the country. By considering the bases and structure of these systems, it is possible to attain a better understanding of how laws are made, interpreted, modified, and implemented as well as the process by which governments enact reproductive health and population policies.

### A. THE STRUCTURE OF NATIONAL GOVERNMENT

The Republic of Argentina has a representative, republican, and federal system of government.<sup>16</sup> The government is representative because the people govern through their representatives, who are empowered by national law.<sup>17</sup> The federal state is

composed of the union of Argentine provinces that together form a federal government. The National Constitution (the “Constitution”) establishes its functions and attributes.<sup>18</sup> The provinces “do not form a simple federal system” among independent entities. Rather, the federal state was created through an act of sovereign will by the Argentine nation.<sup>19</sup> The provinces retain all of the inherent powers of a duly qualified government, without limitations beyond those established in the Constitution.<sup>20</sup> The federal government provides the funds for the nation’s expenditures from the National Treasury.<sup>21</sup> It also intervenes in the provincial territories under certain prescribed circumstances: to maintain the republican form of government; to defend against foreign invasions; and, when requested by the provincial authorities, to support or reestablish their sovereignty, if they are threatened by sedition or by the invasion of another province.<sup>22</sup> The federal government resides in Buenos Aires, Argentina’s capital.<sup>23</sup> Separation of powers is one of the characteristics of the Argentine system of government.<sup>24</sup> The branches of the Republic of Argentina are the legislative, the executive, and the judicial.<sup>25</sup>

### *Executive Branch*

The president of Argentina heads the executive branch.<sup>26</sup> He or she is the head of state, head of the government, and has political responsibility for the general administration of the country.<sup>27</sup> Although he or she does not possess legislative functions, in exceptional circumstances, he or she can issue decrees “of necessity and urgency,” except on penal, fiscal and electoral matters or legislation regulating political parties.<sup>28</sup> According to the Constitution,<sup>29</sup> the president is directly elected by the people for a four-year term and can be reelected for an additional four years.<sup>30</sup> The president oversees the performance of the Minister who heads his or her cabinet (the “head of cabinet”) and the other ministers.<sup>31</sup> The president can appoint and remove ministers from their posts.<sup>32</sup> Another of his or her functions is to negotiate and sign treaties.<sup>33</sup> He or she is the commander-in-chief of the armed forces of the nation and, as such, he or she oversees them.<sup>34</sup> The president can declare war and order defensive reprisals with the authorization of the Congress of the Republic.<sup>35</sup>

The head of cabinet and the remaining ministers are in charge of “overseeing the nation’s business.”<sup>36</sup> They authenticate and countersign presidential acts to give them legal effect.<sup>37</sup> The head of cabinet is responsible for the general administration of the country<sup>38</sup> and must meet with Congress at least once a month to inform it of the workings of the government.<sup>39</sup> Congressional appeals to resolve a “vote of no confidence”<sup>40</sup> are made to the head of cabinet. He or she can be removed by an absolute majority vote in each of the chambers of Congress.<sup>41</sup>

### ***Legislative Branch***

Legislative power is exercised by a bicameral Congress: a National Chamber of Deputies and a Senate, each composed of members from the provinces and from the Federal District of Buenos Aires.<sup>42</sup> The Chamber of Deputies is made up of representatives elected directly from the provinces and Buenos Aires.<sup>43</sup> There is one representative for every 33,000 inhabitants. For example, to calculate the number of representatives from a given province, the total population of this province is divided by 33,000, and the resulting quotient is the number of representatives. If the remainder is more than 16,500 inhabitants, the province has one more representative.<sup>44</sup> The Senate is made up of three senators from each province and three from Buenos Aires, who are elected simultaneously and by direct vote.<sup>45</sup>

The functions of Congress include the passage of the civil, commercial, penal, mining, employment, and social security legal codes applicable nationwide.<sup>46</sup> These codes do not affect local jurisdiction over certain matters. Both federal and provincial tribunals must apply these codes.<sup>47</sup> As authorized by the Constitution, Congress also enacts other general laws that are applicable nationwide.<sup>48</sup> Specifically, Congress must “legislate and promote affirmative measures to guarantee real equality of opportunity and treatment and the full exercise and enjoyment of those rights”<sup>49</sup> recognized by the Constitution and international human rights treaties,<sup>50</sup> “in particular with respect to children, women, the elderly, and disabled persons.”<sup>51</sup> The Constitution also directs Congress to enact a “specific and comprehensive” social security regime for mothers during pregnancy and lactation.<sup>52</sup>

Under the Constitution, Congress also approves or rejects treaties with other nations, international bodies, or the Vatican;<sup>53</sup> creates courts lower than the Supreme Court; grants general amnesties;<sup>54</sup> and recognizes the ethnic and cultural preexistence of Argentine indigenous peoples, guaranteeing respect for their cultural identity, including bilingual and intercultural education and ownership of tribal lands.<sup>55</sup>

### ***Judicial Branch***

The Argentine legal system is a civil law system derived from Roman Law, as distinguished from English Common Law. Judicial power is conferred upon the Supreme Court of Justice and the lower courts created by Congress.<sup>56</sup> The principles of life tenure for judges and the responsibility of judicial functionaries form the basis of an independent federal judicial system.<sup>57</sup> These principles extend both to provincial and Buenos Aires justice systems.<sup>58</sup> Both the members of the Supreme Court and the lower court judges have life tenure contingent upon good conduct, but are still removable for cause.<sup>59</sup>

The President chooses Supreme Court judges, who then must be confirmed by the Senate.<sup>60</sup> A primary responsibility of the Supreme Court is to strengthen constitutional principles and precepts and to limit the scope of the powers of the other branches.<sup>61</sup> The Supreme Court and the lower courts decide all cases dealing with interpretation of the Constitution, the national laws, treaties, and foreign laws.<sup>62</sup>

The People’s Defender Office (“Ombudsman”), created during the 1994 constitutional reform, is among the independent entities whose function is to control the Argentine government.<sup>63</sup> This office enjoys functional autonomy, as well as the privileges and immunities granted to legislators.<sup>64</sup> The function of the Ombudsman is to defend and protect human rights and other rights and interests established in the Constitution from acts or omissions committed by the government.<sup>65</sup> The Ombudsman also monitors the exercise of state power.<sup>66</sup> He or she is elected by Congress for a five-year period. Special laws regulate the operation and organization of the office.<sup>67</sup>

## **B. THE STRUCTURE OF TERRITORIAL DIVISIONS**

### ***Regional and local governments***

The twenty-four provinces<sup>68</sup> and the federal capital<sup>69</sup> retain all powers not assigned to the Constitution by the federal government.<sup>70</sup> Each province has its own constitution under the republican system of government, in accordance with the principles, provisions, and guarantees of the Constitution.<sup>71</sup> The 1994 constitutional reform recognized the institutional autonomy of Buenos Aires, and as such, gives the city the prerogative to elect its own government and legislature.<sup>72</sup>

Without interference from the federal government, the provinces create their own local institutions and elect their governors, legislatures, and other provincial officials.<sup>73</sup> Each province must include within its constitution provisions affirming municipal autonomy and regulating the institutional, political, administrative, economic, and financial power of these municipalities.<sup>74</sup> The provinces can enter into international agreements as long as, in the view of the Argentine Congress, they are compatible with national foreign policy and do not affect the powers of the federal government.<sup>75</sup> Citizens of all the provinces share the same rights, privileges, and immunities.<sup>76</sup> In addition, public acts carried out and judicial decisions passed in one province must be recognized by the others.<sup>77</sup> Criminal extradition is mandatory between provinces.<sup>78</sup> Customs barriers exist only at the national level<sup>79</sup> and there is freedom of movement throughout the national territory for goods produced or made anywhere in the country.<sup>80</sup>

## C. SOURCES OF LAW

***Domestic sources of law***

The Constitution, and some human rights treaties specifically mentioned in the Constitution, are the highest legal authorities in the Argentine legal system.<sup>81</sup> The Convention on the Elimination of All Forms of Discrimination Against Women is among those treaties that possess constitutional authority.<sup>82</sup> The Congress can incorporate other human rights instruments into the list of treaties having constitutional authority.<sup>83</sup> In general, treaties have superior authority over other laws.<sup>84</sup> Similarly, norms prescribed by Congress as a result of “treaties of integration that delegate responsibilities and jurisdiction to suprapstate organizations” have superior authority over other domestic laws.<sup>85</sup>

Laws enacted by the federal government are mandatory nationwide,<sup>86</sup> whereas laws passed by a provincial government are binding only in that provincial territory.<sup>87</sup> To avoid conflicts that could arise from overlapping legislation at the federal and provincial levels, and to maintain the supremacy of the Constitution, of treaties with other countries, and of Federal law over provincial laws, the Constitution establishes that each of the above-mentioned sources constitutes “supreme law.” Provincial authorities are obliged to conform to these laws.<sup>88</sup>

***International sources of law***

In Argentina, treaties entered into with other countries, international organizations, and the Vatican, are incorporated into domestic law. They have an authority superior to that of other national laws,<sup>89</sup> but not all of them have legal status equivalent to that of the Constitution. As described in the previous section, only certain human rights treaties have this legal authority.<sup>90</sup>

Argentina is a member of the United Nations and the Organization of American States. As such, Argentina has ratified a number of international treaties from the Universal System of Human Rights<sup>91</sup> and from the Inter-American System of Human Rights.<sup>92</sup> One of the most recently adopted conventions is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”).<sup>93</sup>

## II. Examining Health and Reproductive Rights

In Argentina, women’s health issues are dealt with within the context of the country’s health and population policies. Thus, an understanding of reproductive rights in the country must be based on an analysis of health and population laws and policies.

## A. HEALTH LAWS AND POLICIES

In examining national health legislation and policies in Argentina, reference will be made to the federal government’s policies. However, in some cases, the focus will be on important aspects of provincial health policy, particularly reproductive health. As part of the Government Reform (1989–1994), the federal government transferred the provision of health and education services and assistance programs to the provinces.<sup>94</sup>

***Objectives of the health policy***

The Ministry of Health and Social Action (“MHSA”), which operates through the National Health Secretary, is the federal health authority.<sup>95</sup> In 1989, the Argentine government enacted legislation forming the current National Health Insurance System (“NHIS”),<sup>96</sup> which has the attributes of a national social security system, similar to those of other Latin American countries.<sup>97</sup> The Ministry of Health and Social Action enacts policies that constitute the framework for the functioning of the NHIS.<sup>98</sup> The National Health Secretary is the governmental authority that implements the NHIS.<sup>99</sup> The National Health Insurance Administration (“NHIA”), which is part of the National Health Secretary’s office, is specifically in charge of the management and supervision of the NHIS.<sup>100</sup> When the NHIS was created, the government indicated that its objective was to bring a comprehensive approach to the provision of health care; to affirm the role of government leadership in the health sector; and to encourage participation from midsize organizations of civil society in the direct provision of health care.<sup>101</sup> The policy objective of the NHIS is the provision of “equal, comprehensive and humanized”<sup>102</sup> health services of the highest quality that promote and protect health and facilitate recuperation and rehabilitation, without discrimination.<sup>103</sup>

The National Health Secretary is responsible for promoting the progressive decentralization of the NHIS in the provincial jurisdictions, the City of Buenos Aires, and the national territory of Tierra del Fuego, Antarctica, and the South Atlantic Islands.<sup>104</sup> As such, the policies issued by MHSA must be aimed at “articulating and coordinating” health services, offered by all “health insurance agencies” — both in the public and private spheres — under a decentralized system and in accordance with the federal organization of the political system.<sup>105</sup>

***Infrastructure of health services***

The infrastructure of health services in Argentina is governed by NHIS regulations.<sup>106</sup> The provision of services by the NHIS must be in accordance with national health policies and must fully use the existing infrastructure to meet health needs.<sup>107</sup> The NHIS works through health insurance agents.<sup>108</sup> These agents are legally independent entities<sup>109</sup> that offer health services through a contractual system established by the

There is a National Register of Health Insurance Agents,<sup>110</sup> which accredits them.<sup>111</sup> “Social welfare associations” are the principal health insurance agents in the NHIS.<sup>112</sup> These associations are governed by a separate law<sup>113</sup> and are primarily composed of associations of workers affiliated with social security. These associations focus on funding health and social services.<sup>114</sup> Along with other entities under the NHIS, social welfare associations offer health care services either directly or through contracts with other institutions or individuals known as “health insurance providers.”<sup>115</sup> The health insurance associations are expected to develop health service programs, some of which are established as obligatory by NHIA.<sup>116</sup> They also must ensure that their services provide the medicines required by such programs.<sup>117</sup>

The “health insurance providers” are the direct providers of health services.<sup>118</sup> They must be inscribed in the National Register of Health Care Providers.<sup>119</sup> All individuals, associations, or establishments, public or private, that assist with or provide health services; all associations that represent or contract services for their members; and those entities and private associations that offer direct medical services, must be included in the Register.<sup>120</sup>

Hospitals and other health care centers that depend on the government of Buenos Aires or the national territory of Tierra del Fuego, the Antarctic, and the South Atlantic Islands are also incorporated into NHIS as health care providers.<sup>121</sup> The provinces that form part of the NHIS do so through agreements with the National Health Secretary.<sup>122</sup> As such, the provinces are required to articulate their plans and programs according to NHIS guidelines and to comply with all technical and administrative requirements without ignoring adaptations in implementation that may render health services more appropriate for local circumstances.<sup>123</sup>

With regard to human resources, the average doctor-patient ratio in Argentina is one doctor per 376 inhabitants.<sup>124</sup> There is an average of one hospital bed per 227 patients.<sup>125</sup>

### **Cost of health services**

National health care expenditure in 1996 was 3% of the total national budget.<sup>126</sup> The financing of health services offered by the NHIS comes from the following sources: (a) funds available to social welfare associations, which designate 80% of contributions to health services;<sup>127</sup> (b) the contributions reserved both in the provinces and in the National General Budget (“NGB”) for the sector of the population lacking both financial resources and health coverage,<sup>128</sup> for which a special account was created known as the Common Redistribution Fund;<sup>129</sup> (c) the contribution by the National Treasury, determined by the NGB, to cover NHIS’s additional

financial needs;<sup>130</sup> and (d) contributions from the Solidarity and Redistribution Fund.<sup>131</sup>

Some provinces have established special rules to exempt certain sectors of the population from paying health care costs or contributing to social insurance. For example, in Rio Negro Province, there is a law providing that pregnant women who have no source of support or have only a partial source of support, have the right to free pre- and postnatal health care and to choose where they want to give birth. This assistance is provided by the Provincial Social Security Health Institute.<sup>132</sup>

### **Regulation of health care providers**

The practice of medicine is primarily regulated by rules issued at the provincial level.<sup>133</sup> A law in existence since 1967, which is applicable in the federal capital and the national territory of Tierra del Fuego, Antarctica, and the South Atlantic Islands, regulates the practice of medicine, dentistry, and practices referred to as “activities collaborating in the practice of medicine.”<sup>134</sup> This law delineates general professional obligations such as the obligation not to interrupt a patient’s treatment until it is possible to send him or her to another professional or to a public facility;<sup>135</sup> the duty not to engage in medical procedures that have not been formally presented to or approved by the country’s recognized institutions of medical science;<sup>136</sup> and the duty not to use secretly prepared products or products not authorized by competent authorities as part of medical treatment.<sup>137</sup> The Secretary of Public Health may impose sanctions against a health care provider if he or she violates this law.<sup>138</sup>

The Penal Code classifies the unauthorized practice of medicine as a crime against public health.<sup>139</sup> The relevant provisions penalize those who practice medical professions without a degree or a license and those who habitually exceed their authority in prescribing or applying medicine, solutions, electricity, hypnosis, or any other means used as treatment of persons with illnesses.<sup>140</sup> Additionally, those who are licensed and authorized to practice who promise to cure patients within a certain time frame or by secret or infallible means are also penalized<sup>141</sup> by fifteen days’ to one year’s imprisonment.<sup>142</sup> At the national level, the Medical Ethics Code,<sup>143</sup> approved by the Medical Conference of the Republic of Argentina, establishes ethical obligations for all medical professionals.<sup>144</sup> The Supreme Court of Justice has stated in its decisions that professional ethical codes carry great judicial weight and should not be limited in their application, since they serve to prevent the dehumanization of the healing arts.<sup>145</sup>

A 1991 law regulates health care in the capital city and in the areas under federal jurisdiction.<sup>146</sup> This law specifies the functions of health care providers as related to the prevention

of illnesses and to the promotion, recuperation, and rehabilitation of health.<sup>147</sup> The authority that administers this law is the Sub-Secretary of Health in the National Ministry of Health and Social Action.<sup>148</sup>

### ***Patients' rights***

In Argentine national legislation, a law enacted in 1967<sup>149</sup> and the medical ethics codes that regulate the medical profession determine the responsibilities of medical professionals toward patients.

According to the 1967 law, medical professionals are obligated to respect the will of their patients if they refuse medical treatment or to enter the hospital. The exceptions to this rule are cases of unconsciousness, psychological illness or grave wounds caused by accidents, suicide attempts, or crimes.<sup>150</sup> In "mutilating operations," the patient's written consent is required, except when the patient is unable to give consent and the operation is urgent, in which case, medical professionals must request the consent of the patient's representative.<sup>151</sup>

Both jurisprudence and scholarly studies have maintained the right of the patient to be informed about surgical procedures.<sup>152</sup> The patient should be fully aware of the nature and aims of the operation, the advantages and disadvantages, and the consequences to the patient if he or she decides not to have the surgery.<sup>153</sup> At a government level, patients' rights are protected by the MHSA, which is the highest national health authority under the National Health Secretary.<sup>154</sup> In each province there is a ministry and secretary of health that regulate the provision of health services.<sup>155</sup>

## **B. POPULATION, REPRODUCTIVE HEALTH, AND FAMILY PLANNING**

### ***Population laws and policies***

Argentine governments have considered slow demographic growth to be a major geopolitical problem and thus have traditionally followed pronatalist policies.<sup>156</sup> In 1974, the government endorsed, "for the first time in an explicit manner, ... a coercive approach to undermining the individual's right to regulate fertility."<sup>157</sup> In that year, the government enacted a decree that prohibited all activities related to voluntary birth control. The law provided for the monitoring of the commercialization and sale of contraceptives and established that they could be sold only with a medical prescription in triplicate.<sup>158</sup> Although the government campaign did not totally succeed and the prescription requirement was not fully implemented, sixty family planning centers were forced to close.<sup>159</sup>

In 1977, at the beginning of the last military dictatorship (1976–1983), the National Commission for Demographic Policies approved measures to combat any action appearing to support birth control.<sup>160</sup> The geopolitical issue of low population

growth became the touchstone of the government's demographic policies.<sup>161</sup> At the end of the military dictatorship, the first democratic government (1983–1989) did not issue a population policy, but the limited statements it did make with respect to population issues were noteworthy because they did not refer to demographic trends as determining population policy.<sup>162</sup> At the end of 1986, the government issued a national decree, which is still in force, reinstating the individual's right to decide the timing and number of his or her children.<sup>163</sup> At the same time, it was established that MHSA, through the Secretaries of Health and Human and Family Development must take action to promote better maternal and infant health care, while also working to strengthen families.<sup>164</sup> In order to strengthen the ability of the population to exercise their right to decide about their reproductive lives, "with greater freedom and responsibility," the government began campaigns to disseminate information and counseling.<sup>165</sup> In the same year, the National Commission for Family and Population Policies was created within the Health Ministry. Two years later, the National Commission for Demographic Policies was dissolved and in its place the Inter-ministerial Commission for Population Policies was created and given a mandate to coordinate all governmental actions in this field.<sup>166</sup>

In the 1994 constitutional reform, the Constitution established as a responsibility of Congress, the provision of measures for human development and the harmonious growth of the population.<sup>167</sup>

### ***Reproductive health and family planning laws and policies***

#### ***National sphere***

The current Argentine government issued reservations to the Platform for Action of the Fourth Women's World Conference held in Beijing in 1995 regarding the definition of "reproductive health." It was the government's view that the term as used in the platform includes abortion, illegal in Argentina, as a method of fertility regulation.<sup>168</sup> The government has also taken issue with "the link articulated between 'technology' and the reproductive roles of women [in that it] implies an acceptance of scientific developments that are not regulated in their ethical aspects."<sup>169</sup> The government has declared that, in Argentina, reproductive rights "are interpreted according to article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women and paragraph 41 of the Vienna Declaration and Program of Action, endorsed at the World Conference on Human Rights (Vienna, 1993)."<sup>170</sup>

Considering that CEDAW has constitutional authority in Argentina and that the government interpreted article 16 of this Convention as governing its reproductive health policies, the government should ensure, equally for men and women,

“the same rights and responsibilities as parents”<sup>171</sup> and “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to exercise these rights.”<sup>172</sup>

With respect to family planning, there is currently proposed legislation for a national law concerning responsible procreation.<sup>173</sup> It is pending passage by the National Congress and is “halfway there”<sup>174</sup> as it has been approved by the Chamber of Deputies.<sup>175</sup> The aim of this proposed legislation is to “contribute to the reduction in maternal and infant mortality and morbidity” and to “ensure that all citizens can freely and responsibly make procreative decisions.”<sup>176</sup>

The objectives of national reproductive health policy are contained in a federal decree, issued in 1987, which establishes MHSA as the body responsible for the promotion of practices strengthening family development and improving maternal and children's health.<sup>177</sup> This decree guarantees the right of the population to make free and responsible decisions about reproduction.<sup>178</sup> The Coordinating Council for Public Policies on Women<sup>179</sup> is the body in charge of developing and promoting research and information to evaluate and improve health policies relating to women. The Council's principal mandate is to achieve compliance with the commitments made by Argentina when it ratified CEDAW.<sup>180</sup> The Council also develops projects and programs related to women's health.<sup>181</sup>

National programs related to women's reproductive health currently carried out in Argentina emphasize care and attention to mothers and pregnant women.<sup>182</sup> As such, in 1994, the Ministry of Health and National Social Action implemented the Maternal-Infant Nutrition Program.<sup>183</sup> The program's aim is to reduce maternal and infant mortality rates through “better focus, design, application and coordination” of programs and services relating to health, nutrition, complementary food, and infant development.<sup>184</sup> The execution of the program included the creation of various subprograms that specifically focus on the needs of women of reproductive age, adolescent mothers, care during pregnancy, and responsible procreation.<sup>185</sup> Also in 1994, the MHSA implemented the Women's Health and Development Program.<sup>186</sup> The aim of this program is to improve women's health through “making women more aware of culturally determined gender inequalities”; promoting and protecting the health of women and their families by disseminating basic information about health care; and better integrating women into development processes as a means to improve their health and quality of life.<sup>187</sup> This program involves carrying out training workshops throughout the country with different community organizations.<sup>188</sup> Through this program approximately 60,000 women have been trained as promoters of preventive health.<sup>189</sup>

### *Capital city and the provincial sphere*

Buenos Aires and other provinces have their own reproductive health policies and legislation, as described below.

The Constitution of the City Buenos Aires<sup>190</sup> guarantees the right to comprehensive health care;<sup>191</sup> it establishes that health laws should promote responsible parenting;<sup>192</sup> and it ensures comprehensive health care for patients needing prenatal, maternal, and postnatal care services.<sup>193</sup> The Constitution also recognizes reproductive and sexual rights as basic human rights<sup>194</sup> and the right to be “free from coercion and violence” as a basic component of those rights. Particularly emphasized is the right “to responsibly decide about reproduction, the number of children and the interval between births.”<sup>195</sup>

In 1996, the Chaco province created the Program on Responsible Human Procreation and Health Education.<sup>196</sup> The objective of the program is to train health professionals working in health institutions in areas such as sexuality and human reproduction.<sup>197</sup> The program also proposes to initiate campaigns on responsible parenting, responsible human reproduction, sexuality, and sexually transmissible infections (“STIs”). The program is designed to coordinate with public, private, and nongovernmental institutions.<sup>198</sup> All of this is to be done in accordance with existing national law.<sup>199</sup>

In 1995, the province of Entre Rios passed a law creating the Program on Responsible Procreation and Reproductive Health.<sup>200</sup> The aim of the program is to achieve a reduction in perinatal and maternal mortality rates and abortions; and to promote a sexuality that is “humane, loving and fulfilling and where neither partner fears unwanted pregnancy.”<sup>201</sup> The program offers information and counseling on sex education, procreation, early detection of STIs, health consultations for the prescription of legal contraceptive methods, and training for community leaders and primary health workers.<sup>202</sup> It also proposes to reduce the disintegration of the family that results from “irresponsible and promiscuous relationships.”<sup>203</sup>

The Provincial Reproductive Health Program was created by law in 1996, in the province of Mendoza.<sup>204</sup> Its specific objectives are the promotion of parental responsibility; the reduction of perinatal and maternal mortality rates; and the prevention of high-risk or unwanted pregnancies.<sup>205</sup> It also proposes to avoid abortions, to prevent STIs, and to improve the quality of life for parents and children.<sup>206</sup>

In province of Cordoba, a similar program to those described above was created by law, but it was vetoed by the provincial executive branch and was, therefore, returned to the provincial parliament for further discussion.<sup>207</sup> At the municipal level, some city councils have also created sexual and reproductive health programs, such as the Responsible Procreation Program in Rosario (Santa Fe province)<sup>208</sup> and the

Reproductive Health, Sexuality and Family Planning Program in the city of Cordoba (Cordoba province).<sup>209</sup>

### ***Governmental delivery of family planning services***

There is no national legislation regulating the provision and distribution of forms of contraception— with the exception of sterilization, which is prohibited under national law.<sup>210</sup> In 1986, the Argentine government committed itself to undertake “actions whose aim is to disseminate information and to make counseling services available in order that individuals can exercise their right to decide about reproduction with increased responsibility and freedom.”<sup>211</sup> The provision of contraceptive methods was not included as part of this policy initiative, and there are no governmental programs<sup>212</sup> that offer information on contraceptives or contraceptive services.<sup>213</sup> In public health institutions and others supervised by the government, the provision of contraceptives as well as information about contraceptive methods continues to be restricted in practice.<sup>214</sup> When contraceptives are available from government-supported sources, their availability is irregular, sporadic, and dependent upon donations from foundations or pharmaceutical companies.<sup>215</sup>

Despite this situation, many municipal and provincial hospitals and health centers supply forms of contraception free of charge, particularly oral contraceptives.<sup>216</sup> These hospitals and centers provide family planning consultations or gynecological services that supply contraceptives, as well as information and advice about their use.<sup>217</sup>

In practice, in Argentina there is a double standard in the criteria regarding the provision of contraceptive services. In the public sector, political and legal restrictions and bans are “respected”; whereas, in the private sector, contraceptives and related services are widely available,<sup>218</sup> but only to those who can pay.<sup>219</sup>

## C. CONTRACEPTION

### ***Prevalence of contraceptives***

In Argentina, there are no recent official statistics measuring contraceptive prevalence. However, 1994 figures from the United Nations Populations Fund indicate that an average of 68.9% of Argentine women use some form of contraception.<sup>220</sup> According to a study by the National Statistics and Census Institute, carried out at the end of the 1980s, only 43.8% of Argentine women used some form of contraception. This figure was much lower among low-income women.<sup>221</sup>

Before contraception was banned in 1974, knowledge of methods of contraception in Buenos Aires was widespread: 97% of married women knew of at least one method of contraception, 78% declared that they had at some point used a

method of contraception, and 63% were using contraception at the time of the interview.<sup>222</sup> The most commonly used methods in the 1960s were the condom and the withdrawal method,<sup>223</sup> but modern methods were coming into wider use by that time, as the pill was the third most commonly used form of contraception.<sup>224</sup> The data showed a correlation between women’s socioeconomic status and their knowledge of contraceptive methods.<sup>225</sup> After this period, there is practically no official information on contraceptive prevalence or knowledge of contraception.

Recently, studies of small groups have been done. One such study was conducted with 123 working-class women, with two or three living children, who were primarily selected through general hospital registers in the northeast zone of greater Buenos Aires.<sup>226</sup> The study showed that up until the conception of the second or third child, 93 of the 121 women interviewed (77%) had used some form of contraception at least once.<sup>227</sup> The most commonly used contraceptive methods, in descending order, were the pill, the withdrawal method, injectable contraceptives, the condom, the rhythm method, intrauterine devices (“IUDs”), spermicides, and others.<sup>228</sup>

### ***Legal status of contraceptives***

Contraceptive methods are not explicitly regulated under Argentine law, except that sterilization is illegal as a method of family planning.<sup>229</sup> It is postulated by some that by not regulating contraception, the government is seeking to “avoid conflict with medical and church authorities opposing contraception.”<sup>230</sup> As there is no express law allowing the distribution of contraceptives, hospitals must justify their acquisition of birth control pills as medicines necessary for the regulation of the menstrual cycle, and IUDs are placed under the heading of disposable items.<sup>231</sup>

Generally, the National Medicine Law<sup>232</sup> regulates the importation, exportation, production, manufacture, division, distribution, and marketing (both with respect to commerce in areas under federal jurisdiction and within or between provinces) of drugs, chemical products, medicines and any other product that is used as human medicine.<sup>233</sup> The MHSA oversees compliance with this law.<sup>234</sup>

### ***Regulation of information on contraception***

There are no laws that specifically prohibit the provision of information concerning methods of contraception and family planning.<sup>235</sup> However, the Argentine government has failed to implement activities related to the dissemination of information on and general support for family planning to which it committed itself in a 1986 presidential decree.<sup>236</sup>

### ***Sterilization***

Under Argentine law, sterilization is a crime. The Penal Code defines the infliction of both a “grave injury” resulting in permanent debilitation of a reproductive organ or limb<sup>237</sup> and a “very grave injury” resulting in the loss of the capacity to conceive or procreate as criminal.<sup>238</sup> The punishment for such acts is imprisonment for three to fifteen years.<sup>239</sup> However, sterilizations are performed on women whose lives are at risk, although this exception is not expressly provided for by law.<sup>240</sup> In such cases, in order to protect themselves from criminal liability,<sup>241</sup> doctors request the consent of the woman’s spouse or partner before performing the surgery.<sup>242</sup> Even so, this procedure is left to the discretion of doctors or to judges when judicial authorization is sought. Recently, the Catholic Church and the Entre Rios provincial government opposed an authorization granted by the High Court of this province to a woman to have a tubal ligation performed after she gave birth. The High Court justified the permission because this woman had had her seventh child, suffered from diabetes and hypertension, and lived in extreme poverty.<sup>243</sup>

Recently passed provincial laws relating to reproductive health specifically prohibit sterilization as a contraceptive method, along with all forms of contraception considered abortifacients.<sup>244</sup> Furthermore, the proposed national law concerning “responsible procreation,” which is under consideration by Congress,<sup>245</sup> provides that “methods of contraception must be reversible and transitory.”<sup>246</sup>

#### D. ABORTION

### ***Legal status of abortion***

In Argentina, abortion is illegal and considered a crime against the person,<sup>247</sup> with two exceptions. These exceptions are, first, therapeutic abortion — an abortion carried out when the woman’s life or health is in danger and when no other means can avoid such danger, and second, eugenic abortion — defined as when the pregnancy is the result of a rape, or of “indecent intercourse” with a mentally disabled woman.<sup>248</sup>

The Argentine government entered a reservation to Chapter II, Principle 1 of the Final Report of the Program for Action of the International Conference on Population and Development (Cairo, 1994). The government indicated that it would support the relevant provision, “taking into account that life begins at conception and from that moment the person... enjoys the right to life, that being the foundation of all other individual rights.”<sup>249</sup> Referring to Paragraph 7.2 of Chapter VII of the Program of Action, the government declared that the Republic of Argentina would not accept “the inclusion of abortion as a health service or as a method of regulating fertility” as part of the concept of reproductive rights.<sup>250</sup>

The Civil Code of the Republic of Argentina provides that a person’s existence begins at conception, enabling the unborn to acquire certain rights “as if they had already been born.”<sup>251</sup>

### ***Requirements for obtaining a legal abortion***

Therapeutic abortion requires the woman’s consent and eugenic abortion requires consent from the woman’s legal representative.<sup>252</sup> A licensed doctor is the only person who can perform either procedure.<sup>253</sup> The Argentine government does not fund or subsidize abortion services and the large number of illegal abortions in Argentina are performed clandestinely.<sup>254</sup>

### ***Penalties for abortion***

A woman who induces her own abortion or agrees to let another perform it is subject to one to four years’ imprisonment.<sup>255</sup> Anyone who provides an abortion without the consent of the woman is sentenced to three to ten years in prison; when the pregnant woman consents to the abortion, the penalty is reduced to one to four years. In both cases, if the woman dies, the prison terms increase to fifteen and six years, respectively.<sup>256</sup>

Doctors, surgeons, midwives, or pharmacists who use their professional skills to perform or induce an abortion or who receive payment to cooperate, are subject to the same terms of imprisonment, plus professional suspension for double the time of the prison sentence.<sup>257</sup>

Anyone who causes an abortion through violence, without intending to do so, when the pregnancy is either evident or the person knew of the pregnancy, is punishable by six months to two years in prison.<sup>258</sup>

#### E. HIV/AIDS AND SEXUALLY TRANSMISSIBLE INFECTIONS (STIs)

Examining HIV/AIDS issues within a reproductive health framework is essential insofar as both are closely related from the medical and public health standpoints. Furthermore, a complete evaluation of the laws and policies that affect reproductive health in Argentina must examine the status of HIV/AIDS and STIs, because of the dimension and implications of both diseases as reflected in the following statistics. In 1990, there were 1,079 cases of hospitalization for STIs: 778 cases of syphilis, 169 cases of gonorrhea; and 122 of other STIs.<sup>259</sup> Women represented 52%, 48%, and 64%, respectively, of those hospitalized.<sup>260</sup>

Through April 1994, 3,761 cases of HIV/AIDS were reported, pursuant to a law requiring such reporting, 15.3% of which (577 cases) were women.<sup>261</sup> AIDS cases are increasing in Argentina. In 1996, there were 19% more patients than the previous year, which represents 20% of the total number of cases reported since the beginning of the epidemic.<sup>262</sup> The male-female ratio of AIDS sufferers has varied. In the beginning it seemed to be an epidemic almost exclusively affecting men,

but the number of women affected is growing steadily. In 1988, the ratio of men to women was 12.6 to 1;<sup>263</sup> by 1996, it had dropped to 3.6 to 1.<sup>264</sup> Despite the fact that around 30% of all cases are not reported — it is estimated that between 100,000 and 150,000 people are infected with HIV/AIDS in Argentina<sup>265</sup> — existing data demonstrates that certain behaviors, such as unprotected heterosexual intercourse, are increasingly becoming the primary means of HIV transmission.<sup>266</sup>

#### **Laws on HIV/AIDS and STIs**

A federal law concerning the issue of HIV/AIDS<sup>267</sup> declares it to be in the national interest to research the cause of HIV/AIDS and its diagnosis and treatment as well as its prevention, treatment, and rehabilitation. It also specifies measures to prevent its transmission, giving priority to popular education.<sup>268</sup> The law also provides that the disease should not be allowed to affect the dignity of the person; anyone with the disease must not be discriminated against or degraded; breaches of patient confidentiality must not occur, except as mandated by law; the right to privacy must not be invaded, such as by identifying individuals in files or other stored information; and patient information should be coded.<sup>269</sup> The authority charged with implementing and enforcing this law is the MHSA, through the Health Sub-Secretary.<sup>270</sup>

The law provides that the government must develop programs aimed at achieving certain objectives, such as promoting training and research, educating the population about the characteristics of AIDS, its possible causes and means of transmission, and implementing measures to prevent infection and ensure appropriate treatment.<sup>271</sup> It is obligatory to screen for the virus and its antibodies in human blood given for transfusion or in plasma and other human blood derivatives used for medical treatment.<sup>272</sup> Health professionals who detect the HIV virus or have grounds to believe that an individual is carrying the virus are required to inform the carrier about the nature of the virus, the ways of transmitting it, and their right to receive appropriate treatment.<sup>273</sup> Those diagnosed with the virus must be notified within forty-eight hours of confirmation of such diagnosis.<sup>274</sup> The law establishes penalties for those that commit acts or omissions that violate the preventive norms or rules outlined in the law.<sup>275</sup>

There is a provision in the Penal Code that makes it a crime punishable by three to fifteen years of imprisonment for anyone to knowingly infect another person with a transmissible venereal disease.<sup>276</sup>

#### **Policies on prevention and treatment of HIV/AIDS and STIs**

The Argentine government has established the National Program to Combat HIV/AIDS.<sup>277</sup> MHSA manages the program and carries out its main objective — an intense preven-

tion campaign carried out through television.<sup>278</sup> The program also seeks to incorporate the prevention of HIV/AIDS into the curricula at the primary, secondary and post-secondary levels of education.<sup>279</sup> To accomplish this, the Ministry of Culture and Education urges the governments of the provinces and the City of Buenos Aires to comply with this directive.<sup>280</sup>

Social welfare associations<sup>281</sup> and other affiliated agencies of the National Health System are required to provide medical, psychological, and drug treatment to people infected with the various human retro viruses, especially to those who suffer from AIDS. They are also required to implement AIDS prevention programs.<sup>282</sup> The program also provides that health care providers, along with the MHSA, must establish programs to cover certain requirements of the law. The national budget is supposed to set aside specific funds to meet these requirements.<sup>283</sup>

However, to date, the medical, psychological care, and drug treatment for people with AIDS who rely on the public sector is extremely deficient. This is especially true with respect to the supply of medication, given its high cost.<sup>284</sup> Despite the legal provisions in force, the coverage offered by social welfare associations and other health care providers is limited.<sup>285</sup>

## III. Understanding the Exercise of Reproductive Rights: Women's Legal Status

Women's health and reproductive rights cannot be fully evaluated without analyzing women's legal and social status. Not only do laws relating to women's legal status reflect societal attitudes that will affect reproductive rights, but such laws often have a direct impact on women's ability to exercise reproductive rights. The specific characteristics of family life and couple relations, as well as women's educational level and their access to economic resources and legal protection, determine women's ability to make decisions about their reproductive health care needs and to exercise their right to obtain health care services.

The 1994 constitutional reform incorporated provisions intended to implement the principle of equality for "all the nation's inhabitants."<sup>286</sup> The Constitution provides that "real equality of opportunity for men and women for elected and party posts will be guaranteed through affirmative action measures in political parties and in the electoral regime."<sup>287</sup> Even before the constitutional reform, a quota law existed,<sup>288</sup> which resulted in an increase of women in the National Chamber of Deputies from 5.8% of the total in 1991 to more than 28% in

March 1997.<sup>289</sup> The law is still in force and now has constitutional backing.<sup>290</sup>

#### A. CIVIL RIGHTS WITHIN MARRIAGE

##### **Marriage law**

The provisions concerning marriage contained in the Civil Code of the Republic of Argentina (“Civil Code”)<sup>291</sup> have been partially amended during recent years, principally to eliminate provisions that discriminate against women. However, some discriminatory laws remain that govern relations between partners.

Spouses must be mutually faithful and must support and assist each other.<sup>292</sup> They must live together in the same house in a mutually agreed upon location.<sup>293</sup> Each partner retains free management and disposition of his or her own property and earnings acquired through his or her work.<sup>294</sup> The consent of both partners is required in order to dispose of or encumber joint property acquired during marriage, real estate or registered personal property, or other property or tenure rights on real estate or registered personal property.<sup>295</sup> The consent of both spouses is also required for the disposal of real estate belonging to one of the partners, when young or disabled children reside therein as the family residence.<sup>296</sup> Married women may add their husbands’ last name to their own if they wish to do so.<sup>297</sup>

On the other hand, the law gives the husband control of property whose ownership is uncertain or impossible to determine.<sup>298</sup> The law does not permit a woman to dispute the presumption of her husband’s paternity of her children.<sup>299</sup> In addition, the Civil Code still has a provision assuming women feel “reverential fear” of their husband.<sup>300</sup>

##### **Regulation of domestic partnerships**

There are no specific laws governing domestic partnerships. These “concubines” or partners<sup>301</sup> have almost no legal protection in Argentina. Couples who live together in such a partnership do not have the same rights as men and women who are legally married.<sup>302</sup>

However, there are two cases where Argentine law grants domestic partners certain rights. Labor legislation<sup>303</sup> recognizes the right of such partners to receive a pension if their partner dies, provided the deceased was single, widowed, or legally separated or divorced, and the couple has lived together for a minimum of five years or has a child acknowledged as the product of their union.<sup>304</sup> In 1989, a law was passed that institutes a monthly, nonattachable, lifetime pension for mothers of seven or more children, whatever their age or marital status.<sup>305</sup>

##### **Divorce and custody law**

The Civil Code regulates separations — in which the marriage is not dissolved — and binding divorces.<sup>306</sup> The reasons for separation are adultery; grave slander; voluntary and malicious abandonment; an attack on the life of one of the spouses or the children by the other spouse (whether as the principal author, accomplice, or abettor); and when one of the spouses encourages the other to commit a crime.<sup>307</sup> The Civil Code considers a generic case for separation to be established if, after two years of marriage, the partners appear before a judge to jointly request a separation, stating significant reasons that make life together morally impossible.<sup>308</sup> In 1987, the Civil Code incorporated divorce following a joint petition or through mutual agreement.<sup>309</sup>

The law provides that the spouse who caused the separation or divorce must give assistance or alimony to the other.<sup>310</sup> When no one is declared responsible, the partner who does not have sufficient personal funds or the possibility of acquiring funds has the right to alimony when the other partner can afford it.<sup>311</sup> Mothers obtain maintenance for their children who are under 5 years old, except when it would be contrary to the interests of the child. Where the parents cannot agree on custody, the children over that age live with the parent whom the judge considers most suitable.<sup>312</sup> The parent who has legal custody of the children exercises parental authority, but without prejudice to the other parent’s right to have sufficient contact with the children and to supervise their education.<sup>313</sup>

#### B. ECONOMIC AND SOCIAL RIGHTS

##### **Property rights**

Women can hold, manage, transfer, and inherit property without any legal restriction, except the restriction on the disposal and encumbrance of joint property when it is real estate, rights related thereto, or registered assets. In such cases, the law requires the consent of both partners.<sup>314</sup>

##### **Labor rights**

The Constitution provides that all citizens enjoy the right to work<sup>315</sup> and establishes the principle granting “equal remuneration for equal work.”<sup>316</sup> The Argentine government has also ratified, among others, the International Labor Organization’s conventions relating to equality of remuneration for men and women for work of equal value (No. 100);<sup>317</sup> to employment discrimination (No. 111);<sup>318</sup> and to workers with family responsibilities (No. 156).<sup>319</sup>

In 1995, the government created the Special Procedure to Promote Employment, whose purpose was to encourage employers to contract those who have the most difficulty entering the labor market, including women, by granting

employers incentives such as 50% exemptions from social security contributions.<sup>320</sup>

The Labor Contract Law<sup>321</sup> prohibits any type of discrimination against workers on account of sex, race, nationality, religion, age, and political or professional association.<sup>322</sup> The law codifies the prohibition on establishing differences based on sex in remuneration for work of equal value,<sup>323</sup> and prohibits dismissal due to marriage.<sup>324</sup> The law bans women from performing difficult, dangerous, or unhealthy work.<sup>325</sup>

Pregnant women workers are specially protected by labor legislation that prohibits women from working forty-five days before and forty-five days after giving birth.<sup>326</sup> The law establishes a legal presumption that the dismissal of pregnant women during the seven and one-half months before and after a pregnancy considers pregnancy to be the cause of the dismissal.<sup>327</sup> In such a case, the law orders special indemnity payments to the woman equivalent to one year's remuneration.<sup>328</sup> In order for this presumption to apply, the law requires that a woman formally advise her employer that she is pregnant.<sup>329</sup> Following maternity leave, the woman can opt to return to work, rescind her employment contract, or take a leave of absence for a term of no less than three months and no more than six.<sup>330</sup> Where a woman elects to take a leave of absence, the employer must hold the post open during this period.<sup>331</sup> A working mother has the right to two half-hour breaks per day, in order to breast-feed her child.<sup>332</sup> To facilitate this, the employer must provide maternity rooms and nurseries in good condition for children until they reach an appropriate age.<sup>333</sup> The labor law grants the father two days off work for the birth of a child.<sup>334</sup>

#### **Access to credit**

Legally, men and women have equal access to bank loans, mortgages, and other forms of credit. In practice, the requirements established by the banking system result in sex-based differences.<sup>335</sup> To combat this, nongovernmental organizations of business women as part of the Global Credit Program for Micro and Small Businesses, organize courses in business management for women under the auspices of the Secretary of Industry and the National Women's Council.<sup>336</sup>

Through December 1996, the Credit and Technical Support Program for Small Agricultural Producers of Northeast Argentina had given 1,040 credits to women in rural areas, who represented 146% of those provided loans under the program.<sup>337</sup>

#### **Access to education**

In 1991, statistics on access to and attendance in the school system revealed that 4.7% of eligible students did not attend school.<sup>338</sup> Divided by gender, 4.5% of boys and 4.9% of girls did not attend school.<sup>339</sup> In 1997, the National Ministry for Culture

and Education initiated a Long Distance Program for Adults to Finish Primary School. The aim is to enable all Argentine citizens to become literate.<sup>340</sup>

At the national level, the government is developing the National Program for Equal Opportunities for Women in the Education Sector.<sup>341</sup> In its first stage, the program has focused on eliminating discriminatory stereotypes in teaching materials and using nonsexist language in the Federal Education Law.<sup>342</sup> Currently, a women's section has been formed in the Ministry of Education to secure and strengthen equality of men and women in all areas of the educational system.<sup>343</sup>

#### **Women's bureaus**

Governmental institutions have been formed to implement gender policies and to promote women's status. In 1992, the National Women's Council ("NWC")<sup>344</sup> was formed to implement the Convention on the Elimination of all Forms of Discrimination Against Women and to facilitate women's participation as much as possible in all spheres of life.<sup>345</sup> NWC has its own budget.<sup>346</sup> Within the Ministry of Foreign Relations, International Business and Culture, the Office of Human and Women's Rights is in charge of international relations regarding women's issues.<sup>347</sup> In the Ministry of Labor and Social Security, there is a separate Women's Department that is under the National Employment Office.<sup>348</sup>

An office on women exists in sixteen of the provinces, each of which seeks to develop public policies on the status of women.<sup>349</sup> There is a council on women operating within the government of the Buenos Aires municipality. Political and economic changes in the provinces have particularly affected the continuity and institutionalization of women's bureaus.<sup>350</sup> Women's institutions in the various provinces develop differently, as evidenced by the distinct formulations and applications among the provinces of public policies for women.<sup>351</sup> For example, in the Misiones province, the office on women has ministerial rank; in Mendoza, the Women's Institute has engendered significant development and change for women; in Tucumán, the office on women ranks equally with the Secretary of State and is dedicated specifically to women's issues without also having responsibility for other areas such as family and disability issues, among others, which is the situation in the majority of the provincial offices on women.<sup>352</sup>

### C. RIGHT TO PHYSICAL INTEGRITY

#### **Rape**

The crime of rape, together with statutory rape and other sexual offenses committed against adolescents and minors, is regulated under the title "Crimes against Decency" in the Argentine Penal Code.<sup>353</sup> The punishment for rape is six to fifteen years of imprisonment.<sup>354</sup> This punishment also applies to

those who have carnal intercourse using force or intimidation with a person of either sex, or for whomever has carnal intercourse with a person of either sex who is mentally disabled, unconscious, or who, because of illness or for any other reason, could not resist.<sup>355</sup> The punishment is increased when the health of the victim is severely impaired, when the crime is committed by a parent, grandparent, child, grandchild, sibling, other relative, priest, teacher, or guardian of the victim; or if the victim is raped by two or more people.<sup>356</sup> In these cases, the punishment increases to eight to ten years of imprisonment.<sup>357</sup> If the victim dies as a result of the rape, the punishment is between fifteen and twenty-five years' imprisonment.<sup>358</sup>

The Penal Code provides that a person convicted of rape, statutory rape, abduction for sexual purposes, or indecent assault of a single woman will be exempt from punishment if he marries the victim, with her consent.<sup>359</sup>

#### **Sexual harassment**

The only legal norm relating to sexual harassment is a decree in force in the field of public administration. It defines sexual harassment as "an act by an official who, in carrying out his or her duties, takes advantage of a superior relationship and compels the other party to agree to sexual requests, whether or not carnal access results."<sup>360</sup> Sexual harassment complaints and accusations can be made in accordance with general procedures in force for labor-related complaints or before the person responsible for this issue in the human resources department of the respective institution.<sup>361</sup> The above-mentioned decree only applies to those in paid employment in offices of the national executive branch or its legally decentralized entities. However, a long list of officials is immune from this rule: ministers and secretaries of the national executive branch; secretaries under the presidency; subsecretaries and other persons who have an equivalent rank to the posts mentioned; active diplomatic personnel; active security force and police personnel; official clergy; teaching staff covered by special statutes; and those in high-level positions in decentralized institutions.<sup>362</sup> Therefore, the scope of coverage of this regulation is very limited.

Within the Labor Contract Law, there are generic rules that protect workers' psychological and physical integrity and dignity.<sup>363</sup>

#### **Domestic violence**

The National Law for Protection against Family Violence, promulgated in December 1994,<sup>364</sup> regulates acts of domestic violence, defining them as "physical or psychological abuse or injury" committed by one member of the family against another.<sup>365</sup> The victim can denounce acts of violence to a family law judge, verbally or in writing, and request protective measures.<sup>366</sup> Once the judge has heard the facts of the complaint, he or she may order that the author of the violence be removed from the family home; ban

the perpetrator from entering the home and the place of work or study of the victim; order the return to the home of those who may have had to leave for personal security reasons, except for the perpetrator; decree provisional maintenance, custody, and communication rights with the children.<sup>367</sup> The law requires that within forty-eight hours of the adoption of such precautionary measures the judge convoke a mediation hearing with the parties and the district attorney, urging the parties and the family group to participate in educational and therapy programs.<sup>368</sup> In this way, the victim of domestic violence is forced to participate in a mediation hearing with the aggressor.<sup>369</sup>

Domestic violence complaints must be reported to the National Council for the Family and Minors so that private and public services may be coordinated to overcome and prevent further mistreatment, abuse, and other types of violence within the family.<sup>370</sup> In March 1996, the government signed a decree implementing the aforementioned law, providing for the creation of information and counseling centers for physical and psychological violence. The aim of these centers is to provide consultation and guidance to those who present complaints under the existing law concerning the resources available for the prevention of and attention to family violence.<sup>371</sup>

## IV. Focusing on the Rights of a Special Group: Adolescents

The needs of adolescents are frequently ignored or neglected. Given that 31% of the Argentine population is below the age of 15,<sup>372</sup> it is particularly important to meet the reproductive health needs of this group. The effort to address issues of adolescent rights, including those related to reproductive health, are important for the right to self-determination and health of women in general.

### A. REPRODUCTIVE HEALTH AND ADOLESCENTS

Laws and policies relating to the reproductive health of adolescents are scarce and insufficient. Therefore, health workers find it very difficult to offer reproductive health services to adolescents. Because of the lack of statistics defining the scope of the issue, as well as laws or policies that explicitly regulate the provision by reproductive health services to adolescents, health care providers do not consider it legitimate to offer such services without the consent or authorization of the parents.<sup>373</sup> It is even more difficult for them to provide adolescents with information on and access to contraceptives. There are no specific programs aimed at adolescents on issues of reproductive health, STIs, HIV/AIDS or unwanted pregnancies. Messages concerning these themes have been repressive and lacking in information.<sup>374</sup>

Some provinces have made efforts to address the needs of pregnant adolescents. For example, in 1992, the legislature of Catamarca province passed a law offering free medical attention to pregnant adolescents who are not covered by health insurance.<sup>375</sup> The executive branch in this province provides prenatal care, including nutritional supplements and vitamins to the mother and covers the costs of normal delivery or cesarean operation.<sup>376</sup>

#### B. MARRIAGE AND ADOLESCENTS

The average age of marriage in 1980 was 22.7 years.<sup>377</sup> The minimum legal age for marriage is 16 for women and 18 for men.<sup>378</sup> Marriage can be validated at an earlier age with judicial permission if there are exceptional circumstances and only if it is considered to be in the interest of the minors.<sup>379</sup> In order to obtain permission a hearing is required with those that intend to marry and the parents or legal guardians of the minor.<sup>380</sup> As the age of majority in Argentina is 21, women between 16 and 21 and men between 18 and 21 who wish to marry, even though they are of age under the marriage laws, must have either parental consent, or consent from the person exercising parental authority or, failing that, from a judge.<sup>381</sup>

#### C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

Rape of a girl under 12 years of age is punishable under the Penal Code by six to fifteen years of imprisonment.<sup>382</sup> "Statutory rape" is the crime that occurs when a "decent" or "chaste" girl between 12 and 15 years" has sexual relations with someone, even if she has consented.<sup>383</sup> Thus, statutory rape applies to voluntary sexual relationships with young women between 12 and 15 and is punishable by three to six years' imprisonment,<sup>384</sup> provided the young woman is considered decent. Jurisprudence has indicated, in some contexts, that "decency" is synonymous with virginity.<sup>385</sup> Other legal opinions hold that decency requires appropriate conduct, and, as such, those who go out at night, those who behave improperly with a number of men, those who abandon their parental home, and who spend considerable amounts of time or sleep over either at a male friend's home or in places of ill-repute should be considered "indecent."<sup>386</sup>

#### D. SEXUAL EDUCATION

There are no national-level laws or policies related to sexual education. The current government has assumed a conservative position on this issue. This is evidenced by its express reservations regarding the Platform for Action of the Fourth Women's World Conference on Women in Beijing, stating that references to mandatory sex education contained in the plan do not alter the primary responsibility of parents to educate their children, in accordance with Article 5 of the Convention on the Rights of the Child.<sup>387</sup>

#### ENDNOTES

1. THE WORLD ALMANAC AND BOOK OF FACTS 1997, at 739 (1996).
2. *Id.*
3. *Id.*
4. National Constitution of Argentina, Santa Fe, Paraná. Approved by the General Constitutional Congress, May 1, 1853, reformed 1860, 1866, 1898, 1957, and 1994. Published in the Official National Bulletin (B.O.), Year CII, No. 29,759, Aug. 23, 1994, art. 2. (hereinafter ARG. CONST.).
5. THE WORLD ALMANAC, *supra* note 1, at 739.
6. *Id.*, at 741.
7. *Id.*
8. *Id.*, at 739.
9. *Id.*, at 740.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Report of the Government of Argentina before the Committee on the Elimination of Discrimination Against Women ("CEDAW"), Third Periodic Report by States Parties to the Convention on the Elimination of All Forms of Discrimination against Women*, Oct. 8, 1996, U.N. Doc. CEDAW/C/ARG/3, Spanish original (hereinafter *Report of Argentina before CEDAW 1996*) at 4.
14. *Id.*, at 5.
15. THE WORLD ALMANAC, *supra* note 1, at 740.
16. ARG. CONST., art. 1.
17. *Report of the Government of Argentina before the Committee on the Elimination of Discrimination Against Women ("CEDAW"), Second Periodic Reports of States Parties*, U.N. Doc. CEDAW/C/ARG/2/Add.2, Aug. 18, 1994, Spanish original, at 10 [hereinafter *Report of Argentina before CEDAW 1994*].
18. See footnote 4.
19. *Report of Argentina before CEDAW 1994, supra* note 17, at 10.
20. ARG. CONST., art. 121. See also, *Report of Argentina before CEDAW 1996, supra* note 13, at 2.
21. ARG. CONST., art. 4.
22. *Id.*, art. 6.
23. *Id.*, art. 3.
24. *Report of Argentina before CEDAW 1994, supra* note 17, at 10.
25. *Id.*
26. ARG. CONST., art. 100.
27. *Id.*, art. 99, cl. 1.
28. *Id.*, cl. 3.
29. *Id.*, art. 94.
30. *Id.*, art. 90.
31. *Id.*, art. 99, cls. 10 and 17.
32. *Id.*, cl. 7.
33. *Id.*, cl. 11.
34. *Id.*, cls. 12 and 14.
35. *Id.*, cl. 15.
36. *Id.*, art. 100.
37. *Id.*
38. *Id.*, art. 100, cl. 1.
39. *Id.*, art. 101.
40. *Id.*
41. *Id.*
42. ARG. CONST., art. 44.
43. *Id.*, art. 45.
44. *Id.*
45. *Id.*, art. 54.
46. *Id.*, art. 75, cl. 12.
47. *Id.*
48. *Id.*, cls. 1, 2, 3, 6, 12, 19 and 23.
49. *Id.*, cl. 23, first ¶.
50. *Id.*
51. *Id.*
52. *Id.*, second ¶.
53. *Id.*, art. 75, cl. 22, first ¶.
54. *Id.*, cl. 20.
55. *Id.*, art. 17.
56. *Id.*, art. 108.
57. *Id.*

58. *Id.*
59. *Id.*, art. 110.
60. *Id.*, art. 99, cl. 4.
61. *Id.*, art. 112.
62. *Id.*, art. 116.
63. *Report of Argentina before CEDAW 1994*, at 8.
64. ARG. CONST., art. 86.
65. *Id.*
66. *Id.*
67. *Id.* Laws No. 24284 and 24379 (n.d.) regulate the operation and organization of the Ombudsman.
68. *Id.* The Argentine Constitution recognizes the institutional autonomy of the city of Buenos Aires which is the capital of the Republic.
69. ARG. CONST., art. 121.
70. *Report of the Government of Argentina before the Committee on the Elimination of Discrimination against Women ("CEDAW")*, U.N. Doc. A/52/38/Rev. 1, Jul. 22, 1997 (hereinafter *Report of Argentina before CEDAW 1997*) at 2.
71. *Id.*, art. 5.
72. *Report of Argentina before CEDAW 1996*, *supra* note 13, at 8.
73. ARG. CONST., art. 122.
74. *Id.*, art. 123.
75. *Id.*, art. 124.
76. *Id.*, art. 8.
77. *Id.*, art. 7.
78. *Id.*, art. 8.
79. *Id.*, art. 9.
80. *Id.*, art. 10.
81. *Id.*, art. 75, cl. 22. The Argentine Constitution recognizes the constitutional authority of the following human rights treaties: The American Declaration of the Rights and Duties of Man, *adopted* 1948, OEA/SER.L.V/IL92 Doc. 31 rev.3 May 3, 1996; The Universal Declaration of Human Rights, *adopted* Dec. 10, 1948; The American Convention on Human Rights, *signed* Nov. 22, 1969, 9 I.L.M. 101 (entry into force Jul. 18, 1978); The International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (entry into force Sept. 3, 1976); The International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S.171 (entry into force Mar. 23, 1976) and Optional Protocol to the International Covenant on Civil and Political Rights, *adopted and opened for signature* Dec. 16, 1966, 6 I.L.M. 383 (1967) (entry into force Mar. 23, 1976); The Convention on the Prevention and Punishment of the Crime of Genocide, *approved and proposed for signature* Dec. 9, 1948, 28 I.L.M. 761 (1989) (entry into force Jan. 12, 1951); The International Convention for the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entry into force Jan. 4, 1969); The Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entry into force Sep. 3, 1981); The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *concluded* Dec. 10, 1984, S. Treaty Doc. 100-20, 23 I.L.M. 1027(1984), as *modified* 24 I.L.M. 535 (entry into force Jun. 26, 1987); The Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 28 I.L.M. 1448 (entry into force Sept. 2, 1990). See also *Report of Argentina before CEDAW 1997*, *supra* note 68, at 19.
82. ARG. CONST., art. 75, cl. 22.
83. *Report of Argentina before CEDAW 1997*, *supra* note 68, at 19.
84. ARG. CONST., art. 75, cl. 22.
85. *Id.*, cl. 24.
86. Instituto Género y Desarrollo [Gender and Development Institute], Rosario, Argentina, Draft chapter on Argentina, at 5 (1997) (on file with CRLP).
87. *Id.*
88. ARG. CONST., art. 31.
89. *Id.*, art. 75, cl. 22.
90. *Report of Argentina before CEDAW 1997*, *supra* note 68, at 19.
91. Among other treaties, the Argentine government has signed and ratified the following international conventions for the protection of human rights: The International Covenant on Civil and Political Rights (ratified by Argentina on Aug. 8, 1986), *supra* note 81; The International Covenant on Economic, Social and Cultural Rights (ratified by Argentina on Aug. 8, 1986), *supra* note 81; The International Convention for the Elimination of All Forms of Racial Discrimination (ratified by Argentina on Oct. 2, 1968), *supra* note 81.
92. The Argentine government has signed and ratified the following regional conventions: The American Convention on Human Rights (ratified by Argentina on Sep. 5, 1984), *supra* note 81; The Inter-American Convention to Prevent and Punish Torture, *adopted* Feb. 28, 1987 OEA/SER.L.V/IL92 doc. 31 rev. 3 May 3, 1996 (ratified by Argentina on Mar. 31, 1989); The Inter-American Convention on the Forced Disappearance of Persons, *adopted* Mar. 28, 1996 OEA/SER.L.V/IL92 doc. 31 rev. 3 May 3, 1996 (ratified by Argentina on Feb. 28, 1996).
93. *Approved* by Law No. 24632 (B.O. Apr. 9, 1996).
94. *Report of Argentina before CEDAW 1996*, *supra* note 13, at 4.
95. Ley de Creación del Sistema Nacional de Seguro de Salud [Law for the Creation of a National Health Security System], Law No. 23661, B.O. Jan. 20, 1989 (hereinafter Health Security Law).
96. *Id.*
97. *Id.*, art. 1.
98. *Id.*, art. 3.
99. *Id.*, art. 7.
100. *Id.*, art. 9.
101. *Id.*, art. 1.
102. *Id.*, art. 2.
103. *Id.*
104. *Id.*, art. 4.
105. *Id.*, arts. 3 and 4.
106. *Id.*, chapters IV and VI.
107. Health Security Law, *supra* note 95, art. 25.
108. *Id.*, art. 2, second ¶ and chapter IV.
109. *Id.*, art. 2, second ¶. See also Ley de Obras Sociales [Social Welfare Agency Law], Law No. 23660 (B.O. Jan. 20, 1989), arts. 2, 3 and 4.
110. Social Welfare Agency Law, *supra* note 109, art. 7 and 27.
111. Health Security Law, *supra* note 95, art. 17.
112. *Id.*, art. 15.
113. Social Welfare Agency Law, *supra* note 109, art. 3.
114. *Id.*
115. Health Security Law, *supra* note 95, arts. 26, 27 and 29.
116. *Id.*, art. 28.
117. *Id.*
118. *Id.*, art. 29 cl. e. "Those persons or entities that offer services through third parties, cannot be included in the Register of Health Insurance Agents nor receive payment for services rendered."
119. *Id.*, art. 29.
120. *Id.*
121. *Id.*, art. 30.
122. *Id.*, art. 48.
123. *Id.*
124. THE WORLD ALMANAC, *supra* note 1, at 740.
125. *Id.*
126. UNITED NATIONS POPULATIONS FUND (UNFPA), THE STATE OF THE WORLD POPULATION 1997, at 72 (1996).
127. Health Security Law, *supra* note 95, art. 21, cl. a.
128. *Id.*, cl. b.
129. *Id.*, art. 22.
130. *Id.*, art. 21, cl. c.
131. *Id.*, cl. d. This Fund is composed of: (a) 10%–15% of contributions from social welfare associations, according to whether or not the members of the association are management personnel; (b) 50% of social welfare association resources designated for services other than health; (c) amounts reassigned from financial contributions and their interest; (d) amounts from fines for infringements of NHIS law; (e) income from investments made with assets from the Fund; (f) subsidies, bequests and donations and other assets given to the Fund; (g) contributions from NGB; (h) 5% of the total income of the National Institute for Social Services for Retired Persons and Pensioners; (i) contributions agreed upon with social welfare agencies and other provincial associations which support the NHIS; (j) the balance from the liquidation of the Redistribution Fund, created by Law No. 22,269, as well as credits assigned to it. Health Security Law, *supra* note 95, art. 22, cls. a-k.
132. Law No. 1860 of Rio Negro Province, B.O. Aug. 27, 1994.
133. Draft chapter on Argentina, *supra* note 86, at 36.
134. Law No. 17132, B.O. Jan. 31, 1967. This law also regulates duties and restrictions on the following professionals: obstetricians; kinesiologists; physical therapists; occupational therapists; opticians; dietitians; radiology assistants; psychiatric assistants; laboratory assistants; anesthesiology assistants; and speech therapists, among others.
135. *Id.*, art. 19, cl. 2.
136. *Id.*, art. 30, cl. 7.
137. *Id.*, art. 20, cl. 8.

138. Draft chapter on Argentina, *supra* note 86, at 37.
139. The Republic of Argentina Penal Code, Law No. 11,719, text codified by Decree No. 3992, Dec. 21, 1984 (B.O. Jan. 16, 1985), art. 208. (hereinafter PENAL CODE).
140. *Id.*
141. *Id.*
142. *Id.*
143. The Medical Ethics Code was passed on April 17, 1955, by the Medical Conference of the Republic of Argentina.
144. *Id.*
145. SUSANA ALBANESE, CASOS MÉDICOS: RELACIONES JURÍDICAS EMERGENTES DEL EJERCICIO DE LA MEDICINA [MEDICAL CASES: EMERGING JUDICIAL RELATIONS IN THE PRACTICE OF MEDICINE] 64 (1994).
146. Law No. 24004, B.O. Oct. 28, 1991.
147. *Id.*
148. *Id.*
149. Law No. 17132, B.O. Jan. 31, 1967.
150. *Id.*, art. 19 cl. 3.
151. *Id.*
152. MEDICAL CASES, *supra* note 145, at 55–56.
153. *Id.*
154. Draft chapter on Argentina, *supra* note 86, at 69.
155. *Id.*
156. *Id.*, at 38.
157. SUSANA TORRADQ, PROCREACIÓN EN LA ARGENTINA: HECHOS E IDEAS [PROCREATION IN ARGENTINA: FACTS AND IDEAS] 274 (1993).
158. Decree No. 659/74 (n.d.).
159. MARIA CHRISTINA GRANERO, MÉTODOS ANTICONCEPTIVOS. MITOS Y REALIDADES EN DERECHOS O DEBERES REPRODUCTIVOS [FORMS OF CONTRACEPTION, MYTHS AND REALITIES IN REPRODUCTIVE RIGHTS AND OBLIGATIONS] 10 (CLADEM, n.d.).
160. Decree No. 3.938/77 (n.d.).
161. Juan Jose Llovet and Silvina Ramos, *La Planificación Familiar en la Argentina: Salud Pública y Derechos Humanos* [Family Planning in Argentina: Public Health and Human Rights] 38 I. SOC. MED. OF THE CENTER FOR HEALTH STUDIES 27 (Dec. 1986).
162. REPRODUCTION IN ARGENTINA, *supra* note 157, at 276.
163. Decree No. 2.274 (B.O. Mar. 27, 1987).
164. *Id.*, art. 1. This decree revokes Decree No. 659/74 promulgated during the military dictatorship.
165. *Id.*, art. 2.
166. Draft chapter on Argentina, *supra* note 86, at 40.
167. ARG. CONST., art. 75, cl. 19.
168. Draft chapter on Argentina, *supra* note 86, at 42.
169. *Id.*
170. *Id.*
171. The Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 81, art. 16, cl. 1, ¶ d.
172. *Id.*, ¶ e.
173. Proposal for National Law on Responsible Reproduction. No. 20014/95 (n.d.). This proposal relates to the creation of the National Program for Responsible Reproduction, which would be the responsibility of the National Ministry of Health and Social Action.
174. This means that the proposal must still be considered and passed by the National Senate.
175. *Report of Argentina before CEDAW 1996*, *supra* note 13, at 39.
176. Proposal for National Law on Responsible Reproduction, art. 1.
177. Decree No. 2274, B.O. Mar. 27, 1987, art. 2.
178. *Id.*
179. Decree No. 378/91, Mar. 1991. More detail about its function in Women's Bureaus section.
180. *Id.*
181. *Report of Argentina before CEDAW 1994*, *supra* note 17, at 16 and 17. In 1994, the council reported on two projects "aimed at obtaining technical and financial assistance from international organizations." The first is the Girl-Woman-Girl-Mother program. The objective of this program was to develop the National Plan for the Prevention of Adolescent Pregnancy and to protect homeless adolescent mothers. The second is the Women and AIDS Program which was formed to organize women's organizations to actively "study and contribute to" the design of public policies for the prevention of AIDS.
182. NATIONAL WOMEN'S COUNCIL, WOMEN'S HEALTH IN ARGENTINA, ch. 6, point 6.1 (1994) (Graciela Di Marco, consultant and Graciela Fabi, collaborator).
183. *Report of Argentina before CEDAW 1997*, *supra* note 68, at 11. The Maternal-Infant Nutrition Program, initiated in 1994, is to run for six years in the provinces and municipalities, using funding from the World Bank.
184. *Id.*
185. *Id.*
186. *Id.*
187. *Id.*
188. *Id.*
189. *Id.*
190. Constitution of the City of Buenos Aires, enacted on Oct. 1, 1996, Ch. II, Tit. II, art. 20.
191. *Id.*
192. *Id.* art. 21, cls. 4 and 5.
193. *Id.*
194. *Id.*, art. 37.
195. *Id.*
196. Law No. 4726 of Chaco province, Apr. 10, 1996.
197. *Id.*, art. 2, cl. a and b.
198. *Id.*, cls. c and d.
199. *Id.*, art. 1.
200. Law in Entre Rios province, Nov. 21, 1995.
201. *Id.*, art. 2.
202. *Id.*, art. 4.
203. *Id.*, art. 2.
204. Law No. 6433, Oct. 22, 1996.
205. *Id.*, art. 2, cl. a, b and c.
206. *Id.*, art. 2, cls. d, e, f and g.
207. Project for Law in Cordoba province, CLADEM, Argentina Bulletin, Year 6, No. 7/8, at 21.
208. Municipal Order No. 6244, Sept. 12, 1996, arts. 1 and 2. This order established the Responsible Procreation Program, under the authority of the Public Health Secretary in the Municipality of Rosario.
209. Cordoba Municipal Order No. 9479, art. 2. This order creates the Reproductive Health, Sexuality and Family Planning Program under the scope of Municipal Public Health Secretary, whose aim is promoting responsible procreation.
210. See section on Sterilization below.
211. Decree No. 2.274, B.O. Mar. 27, 1987.
212. SUSANA CHECA AND MARTHA ROSENBERG, ABORTO HOSPITALIZADO: UNA CUESTIÓN DE DERECHOS REPRODUCTIVOS, UN PROBLEMA DE SALUD PÚBLICA [HOSPITALIZED ABORTION: A QUESTION OF REPRODUCTIVE RIGHTS, A PROBLEM OF PUBLIC HEALTH] 73 (1996).
213. Draft chapter on Argentina, *supra* note 86, at 49.
214. *Id.*
215. HOSPITALIZED ABORTION, *supra* note 212, at 74.
216. *Id.*
217. *Id.*
218. Family Planning Association of Argentina, *Comunicaciones*, 2 POBLACIÓN Y DESARROLLO [Communications, POPULATION AND DEVELOPMENT] 8 (No. 3, 1995).
219. *Id.*
220. UNITED NATIONS POPULATION FUND (UNFPA), RESOURCE REQUIREMENTS FOR POPULATION AND REPRODUCTIVE HEALTH PROGRAMS, at 154 (1996).
221. I.N.D.E.C., LA POBREZA URBANA EN LA ARGENTINA [URBAN POVERTY IN ARGENTINA] (1990).
222. *Family Planning in Argentina*, *supra* note 161, at 31 (citing data taken from CELADE, FECUNDIDAD EN BUENOS AIRES. INFORME SOBRE LOS RESULTADOS DE LA ENCUESTA DE FECUNDIDAD EN EL ÁREA DEL CAPITAL Y GRAN BUENOS AIRES [FERTILITY IN BUENOS AIRES: REPORT ON THE RESULTS OF FERTILITY INVESTIGATION IN THE CAPITAL AND GREATER BUENOS AIRES], Series A, No. 132 (1964).
223. *Id.*
224. *Id.*
225. *Id.*
226. *Family Planning in Argentina*, *supra* note 161, at 31 (citing data taken from CEDES, LA INSTITUCIÓN MÉDICO HOSPITALARIO Y EL CONTROL SOCIAL DE LA REPRODUCCIÓN: UN ESTUDIO DE LOS SECTORES POPULARES DE BUENOS AIRES [THE MEDICAL HOSPITAL INSTITUTE AND THE SOCIAL CONTROL OF REPRODUCTION: A STUDY OF WORKING CLASS AREAS OF BUENOS AIRES], (n.d.).
227. *Id.*
228. *Id.*
229. For a detailed analysis of the legal regime regulating sterilization, see the section on this

issue below.

230. HOSPITALIZATION FOR ABORTION, *supra* note 212, at 74.
231. Draft chapter on Argentina, *supra* note 86, at 49.
232. National Medicine Law, Law No. 16.463, B.O. Aug. 8, 1964.
233. *Id.*
234. *Id.*, arts. 1 and 2.
235. Draft chapter on Argentina, *supra* note 86, at 56.
236. See Presidential Decree No. 2.274, B.O. Mar. 27 1987.
237. PENAL CODE, art. 90.
238. *Id.*, art. 91.
239. *Id.*, art. 92.
240. Draft chapter on Argentina, *supra* note 86, at 56.
241. *Id.*
242. *Id.*
243. "Página 12" Newspaper, on Dec. 12, 1996.
244. Law No. 4276, *supra* note 110, art. 6.
245. The proposed law is half way to approval by Congress.
246. *Id.*, art. 5.
247. PENAL CODE, Bk. II, Tit. II, Ch. I.
248. *Id.*, art. 86, second ¶.
249. Written declarations to the *Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5-13 Sept. 1994*, in REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, at 21, U.N. Doc.A/CONF171/13/Rev.1, U.N. Sales No. 95.XIII.18 (1995).
250. *Id.*
251. Civil Code of the Republic of Argentina, Law No. 340, Sept. 25, 1969 art. 70.
252. *Id.*
253. *Id.*
254. Draft chapter on Argentina, *supra* note 86, at 59.
255. PENAL CODE, art. 88.
256. *Id.*, art. 85.
257. *Id.*, art. 86, first ¶.
258. *Id.*, art. 87.
259. NATIONAL WOMEN'S COUNCIL, *supra* note 182, ch. 1, point 1.2.2.2.
260. *Id.*
261. *Id.*, point 1.4.
262. *Report of Argentina before CEDAW 1997, supra* note 68, at 46.
263. NATIONAL WOMEN'S COUNCIL, *supra* note 182, point 1.4.
264. *Report of Argentina before CEDAW 1997, supra* note 68, at 46.
265. NATIONAL WOMEN'S COUNCIL, *supra* note 182, point 1.4.
266. *Id.*
267. Law to Combat AIDS, Law No. 23.798 (B.O. Sept. 20, 1990).
268. *Id.*, art. 1.
269. *Id.*, art. 2.
270. *Id.*, art. 3.
271. *Id.*, art. 4.
272. *Id.*, art. 7.
273. *Id.*, art. 8.
274. *Id.*, art. 10.
275. *Id.*, art. 13.
276. Law No. 12.331, codified at PENAL CODE, art. 18.
277. *Report of Argentina before CEDAW 1997, supra* note 68, at 46.
278. *Id.*
279. Decree No. 1.244/91 (B.O. Jul. 8, 1991).
280. *Id.*
281. For more detail about this institution, see section on "Infrastructure of Health Services".
282. Law No. 24.455 (B.O. Mar. 8, 1995), art. 1.
283. *Id.*, art. 4.
284. Draft chapter on Argentina, *supra* note 86, at 46.
285. *Id.*
286. ARG. CONST., art. 16.
287. *Id.*, art. 37.
288. Law No. 24.012, 1991.
289. *Report of Argentina before CEDAW 1997, supra* note 68, at 28.
290. *Id.*
291. See note 150. It is important to note that the Civil Code of the Republic of Argentina has undergone isolated and fragmented reforms since its original adoption. The most

- important was in 1968 (Law No. 17.711), through which women's juridical status was made almost equal to that of men, especially in the administration and disposition of community property. In 1987, parental authority was modified, giving equal weight to the authority of the mother and father over their children (Law No. 23.264). In the same year, the last Civil Code reform was passed introducing divorce and giving equal rights and obligations to both partners, substantially modifying personal rights within family relations (Law No. 23.515).
292. CIVIL CODE, art. 198.
293. *Id.*, arts. 199 and 200.
294. *Id.*, art. 1276.
295. *Id.*, art. 1277, first ¶.
296. *Id.*, second ¶.
297. *Report of Argentina before CEDAW 1994, supra* note 17, at 102.
298. *Id.*, art. 1276. A proposed law pending in the National Parliament would repeal this provision in the Civil Code. *Report of Argentina before CEDAW 1997, supra* note 68, at 13.
299. CIVIL CODE, art. 259.
300. *Id.*, art. 940.
301. The term "concubines" is used in Argentine legislation to refer to men and women who cohabit in a domestic partnership.
302. *Report of Argentina before CEDAW 1997, supra* note 68, at 51.
303. Law No. 23.226 (B.O. Oct. 2, 1985).
304. *Id.*
305. Law No. 23.746 (B.O. Oct. 24, 1989).
306. *Report of Argentina before CEDAW 1994, supra* note 17, at 102. Divorce was incorporated into the Civil Code in 1987 by Law No. 23.515.
307. CIVIL CODE, art. 206.
308. *Id.*, art. 205.
309. *Report of Argentina before CEDAW 1994, supra* note 17, at 103.
310. CIVIL CODE, art. 207.
311. *Id.*, art. 209.
312. *Id.*, art. 206.
313. *Id.*, art. 264, cl. 2.
314. CIVIL CODE, art. 1277.
315. ARG. CONST., art. 14.
316. *Id.*
317. Convention No. 100 of the International Labor Organization, Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, *adopted* Jun. 29, 1951 (visited Dec. 8, 1997) <<http://iloex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>> (*entry into force* May 23) (ratified by Argentina on Sept. 24, 1956).
318. Convention No. 111 of the International Labor Organization, Convention Concerning Discrimination in Respect of Employment and Occupation, *adopted* Jun. 25, 1958 (visited Dec. 8, 1997) <<http://iloex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>> (*entry into force* Jun. 15, 1960) (ratified by Argentina on Jun. 18, 1968).
319. Convention No. 156 of the International Labor Organization, Workers with Family Responsibilities, *adopted* Jun. 23, 1981 (visited Dec. 8, 1997) <<http://iloex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>> (*entry into force* Aug. 11, 1983) (ratified by Argentina on Mar. 17, 1988).
320. *Report of Argentina before CEDAW 1997, supra* note 68, at 43.
321. The Labor Contract Law and Modifications, Law No. 20.744. Text codified by Decree No. 390/76 (B.O. May 21, 1976).
322. *Id.*, art. 17.
323. *Id.*, art. 172.
324. *Id.*, art. 181.
325. *Id.*, art. 176.
326. *Id.*, art. 177.
327. *Id.*, art. 178.
328. *Id.*, art. 182.
329. This requirement was introduced by an amendment to the Labor Contract Law, passed during the military dictatorship (1976), which substantially restricts legal protection for maternity and lactation. Prior to this amendment, formal notification was not required and the woman enjoyed rights to job stability from the moment of conception.
330. Labor Contract Law, art. 177.
331. *Id.*, arts. 183 and 184.
332. *Id.*, art. 179.
333. *Id.*
334. *Id.*, art. 158, cl. a.
335. Draft Chapter on Argentina, *supra* note 86, at 48.

336. *Report of Argentina before CEDAW 1994*, *supra* note 17, at 12. For more detail about the National Women's Council, see the section on Women's Bureaus.
337. *Report of Argentina before CEDAW 1997*, *supra* note 68, at 12.
338. *Id.*, at 40.
339. *Id.*
340. *Id.*
341. *Id.*, at 26.
342. *Id.*, at 39.
343. *Id.*
344. Decree No. 1426/92 (B.O. Aug. 13, 1992).
345. *Report of Argentina before CEDAW 1994*, *supra* note 17, at 21.
346. *Id.*
347. *Report of Argentina before CEDAW 1994*, *supra* note 17, at 16.
348. *Id.*, at 20.
349. NATIONAL COORDINATING CENTER FOR PREPARATION FOR THE FOURTH WORLD CONFERENCE ON WOMEN AND THE NATIONAL WOMEN'S COUNCIL, INFORME NACIONAL SITUACIÓN DE LA MUJER EN LA ÚLTIMA DÉCADA EN LA REPÚBLICA ARGENTINA [NATIONAL REPORT ON THE STATUS OF WOMEN IN ARGENTINA IN THE LAST DECADE], at 28, 29 and 30 (Sept. 23, 1994).
350. *Id.*
351. *Id.*
352. *Id.*
353. PENAL CODE, Bk. II, Tit. 3. For more detail about sexual offenses against adolescents and minors, see the section under that title below.
354. *Id.*, art. 119.
355. *Id.*
356. *Id.*, art. 122.
357. *Id.*
358. *Id.*, art. 124.
359. *Id.*, art. 132.
360. Decree No. 2385/93 (B.O. Jan. 23, 1993), art. 1.
361. *Id.*
362. Law No. 22.140. Basic Juridical Regime of public functions, B.O. Jan. 25, 1980 and errata, B.O. Nov. 13, 1980 and Nov. 27, 1980, arts. 1, 2 and 3.
363. Labor Contract Law, art. 75.
364. Law for Protection Against Family Violence, Law No. # 24417, Dec. 7, 1994 (B.O. Jan. 3, 1995).
365. *Id.*, art. 1.
366. *Id.*
367. *Id.*, art. 4.
368. *Id.*, art. 5.
369. *Id.*
370. *Id.*
371. Decree No. 235, B.O. Mar. 7, 1996, art. 1.
372. The World Almanac, *supra* note 1, at 739.
373. Draft chapter on Argentina, *supra* note 86, at 70.
374. Family Planning Association of Argentina, "Comunicaciones: Cómo vives tu sexualidad hoy? Declaración sobre anticonceptivos para adolescentes [Communications: How Do You Live Your Sexuality? Declaration About Contraceptives for Adolescents], YOUTH JOURNAL 1994, at 23. (Year 1, 1994).
375. Law No. 4713 of Catamarca province (B.O. Nov. 6, 1992).
376. *Id.*
377. REPRODUCTION IN ARGENTINA, *supra* note 157, at 129.
378. Law No. 23.515. Civil Code Modification, art. 166, cl. 5.
379. CIVIL CODE, art. 167.
380. *Id.*
381. *Id.*, art. 168.
382. PENAL CODE, art. 119.
383. *Id.*, art. 120.
384. *Id.*
385. SEBASTIAN SOLER, III PENAL LAW IN ARGENTINA 356 (Second Edition, 1953).
386. *Id.*
387. "The State Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized by the present Convention." The Convention on the Rights of the Child, *supra* note 81, at art. 5.