



## Asamblea Permanente por los Derechos Humanos

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The Permanent Assembly for Human Rights (APDH) greets the Committee on the Elimination of Discrimination against Women on the opportunity of its 46th meeting, at which time it is considering the sixth periodic report submitted by the Argentine State, and submits the following information on the status of the rights of women in the country.

### **Violence against women**

*(CEDAW Article 5 / pages 29-42 Argentine State's report)*

One of the biggest issues in the area of women's rights is gender violence, which permeates all social sectors and is present in all the regions of the country. Gender violence gravely alters women's capacities, possibilities for development and full participation, and equality in all spheres of life. Gender violence is understood as: "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."<sup>1</sup> Gender violence includes, but is not limited to, physical, sexual, and psychological violence that occurs in the family or within the general community, always with the consent of the State, wherever it occurs.

It is noteworthy that we understand gender violence as a violation of human rights of women in such a way that we includes generalized social practices that the State, whether through action or omission, supports or permits. Regarding this point, we would like to highlight that, when talking about human rights, we are referring to the obligations that compel the States; it is the State that is responsible to guarantee the fulfilment of human rights and consequently the only body that can violate them. As

Nikken<sup>2</sup> argues: "The effective vigilance of human rights is exclusively the responsibility of the State, whose primary function is the prevention and the punishment of all forms of

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<sup>1</sup> General Assembly of the United Nations. *Declaration of the Elimination of Violence against Women (A/RES/48/104)*. December 20<sup>th</sup>, 1993.

<sup>2</sup> Nikken, Pedro. *El Concepto de Derechos Humanos*. In CERDAS, Rodolfo and NIETO, Rafael (eds.). *Manual de Fuerzas Armadas*. IIDH. San José, Costa Rica. 1994.

crimes. The State is not in conditions of equality with persons or groups outside of the law, whatever is his or her purpose for being in such a situation. The State exists for the common good and its authority should be exercised with attachment to human dignity, in conformance with the law”.

The focus of gender violence as a question of human rights empowers women to position themselves as active citizens, with the right to count on effective public policies for the prevention and attention of this issue, as well as make claims to competent authorities to make their right to live without violence a reality.<sup>3</sup> The APDH acknowledges the efforts the State of Argentina has made after adapting its legal framework to approach the issue from that focus. The national legislation and the conventions and international commitments throughout the past few years constitute a legal framework that has permitted the incorporation of the problem of violence against women in the public agenda. But, despite these achieved advances, public policies still do not reflect an adequate manner that establishes our legal system, because of which we continue to have a major breach between the seriousness and extent of the problem and effective attention directed at the problem.

**At the present time, the information available on women is dispersed, not representative of the actual situation, and does not present an integral and serious focus that reflects the true magnitude of the issue. Even if only isolated or denounced cases are known and there is not a reliable statistics on the exact number of victims, it is estimated that every 36 hours a women dies of gender violence, and during 2009 a total of 231 homicides of women were investigated in the country.<sup>4</sup> This deplorable situation demonstrates the urgent necessity of national statistics regarding domestic violence that provide systematic and trustworthy data about the amplitude, characteristics, and evolution of the issue.**

On September 15<sup>th</sup>, 2008, The Office of Domestic Violence of the Supreme Court of Justice of the Nation (OVD; pages 40 and 41 of the Argentinean Report) was established, under the framework of the interagency initiative developed alongside the UNDP, UNICEF, and

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<sup>3</sup> FAUR, Eleonor. *Violencia contra las mujeres. Principio de derechos humanos para la implementación de políticas públicas en Argentina*. In FAILLACE, Magdalena (coord.). *Mujer: contra la violencia, por los derechos humanos*. UNFPA-UNIFEM. Buenos Aires. November 2008.

<sup>4</sup> Asociación Civil “La Casa del Encuentro”. *Informe de Investigación sobre Femicidios en Argentina 2009*. (<http://www.lacasadelenacimiento.com.ar/>)

UNIFEM. The OVD looks to “temper the effects of the dispersion court and unify the criteria for the registration of cases of domestic violence that in reality are not found to be specialized cases,”<sup>5</sup> guaranteeing the rapid access to the justice of the victims of whatever type of mistreatment in their homes, be these women, men, children, or adolescents. Only in its first year of activities, the OVD reviewed and handled 5,942 cases, with 82% of these cases being women affected by domestic violence.

**Despite the advance that the OVD’s creation represents, it is necessary to point out that up to date, its field of competence is restricted to the City of Buenos Aires and its services extend in a very limited manner to free legal action before the courts of justice. It is necessary that the Argentine State adopts measures so that the services that the OVD provides are accessible in every part of the country, and that they guarantee free legal assistance in cases of domestic violence that arrive at the courts. In order for women to effectively enjoy the right to live without violence, it is essential to expand the ways and conditions for their access to justice, and the support of victims during the judicial process.**

By the end of 2008, all of the provinces had enacted laws pertaining to family violence, that provided a series of indispensable services, ranging from attention in the police stations, health centers, centers of specialized attention, psychological assistance, counselling and legal assistance to facilitating the access to justice and the rapid and expeditious resolution in the situations of risk, etc. However, “almost half of these laws have not been regulated, and still in those cases that they are regulated, governmental agencies, specialists, and civil society organizations show through their experience that in the provinces where they previously had developed programs of prevention and attention of violence, these programs have now disappeared, are implemented in a deficient manner, or lack the necessary resources for their upkeep.”<sup>6</sup>

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<sup>5</sup> Office of Domestic Violence. Supreme Court of Justice of the Nation. Republic of Argentina. (<http://www.csjn.gov.ar/ovd/ovdhome.jsp>)

<sup>6</sup> SANZ, Susana. *Agenda pública de la violencia de género: lo logrado y lo pendiente...* In FAILLACE, Magdalena (coord.). *Mujer: contra la violencia, por los derechos humanos*. UNFPA-UNIFEM. Buenos Aires. November 2008.

On March 11, 2009, after a long struggle by women's groups, the national legislators enacted Law 26.485 of "Integral Protection to Prevent, Punish, and Eradicate Violence against Women in the areas in which their interpersonal relationships develop." In addition to this law, there are other norms of great importance to recognize violence against women in the country, including: Law 24.417 of Protection against Family Violence, Law 26.364 of the Prevention and Punishment of the Treatment and Assistance of Persons and their Victims, Law 26.061 of the Integral Protection of the Rights of Children and Adolescents, Law 26.171 of the Ratification of the Optional Protocol of CEDAW, and Law 24.632 of the Approval of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women (Convention of Belém do Pará).

Law 26.485 allows society to become aware of the existence of distinct types of violence towards women (physical, psychological, sexual, economic and patrimonial, and symbolic) in distinct realms of their private and public lives, as well as require the State to prevent, punish, and eradicate this issue. The law includes not only domestic violence, but also protects against institutional, labour, media, and delivery violence, and reproductive freedom. It looks to guarantee the appropriateness of the complaints procedures, free care and specialized health centres, economic assistance, and legal and employment counselling. It provides the creation of specialized agencies at the national, provincial, and municipal level, as well as the strengthening of those that already exist, and establishes an Observatory of Violence to monitor the path of public policies and systematize data and information about this issue.<sup>7</sup>

At a national level, the National Council of the Woman (CNM) is the governmental space responsible for the fulfilment, in all areas, of the Convention for the Elimination of all Forms of Discrimination against Women, which has a constitutional status. In this agency of the nation's Presidency "dedicated to the public policies for the advancement of women,"<sup>8</sup> one of the primary themes of the CNM is precisely violence against women. However, up to today, this agency has not given public signs for promoting the regulation of this law, allocate adequate economic resources, or give orientations or the corresponding training to the institutions to guarantee its implementation.

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<sup>7</sup> Argentine campaign for the equality of gender and against violence. UNDP Argentina. *We can live without violence*. April 2009. (<http://www.undp.org/ar/programa/Proyectos/genero.html>)

<sup>8</sup> National Counsel of Women. President of the Nation. (<http://www.cnm.gov.ar/>)

**It is an urgent necessity to guarantee not only the regulation of Law 26.485, but also the adoption of the measures to guarantee an endowed budget that permits its effective application throughout the entire country. The State should generate public policies that translate the legislative marks in concrete actions that address the different phases of the issue, from its prevention to access to justice. To counteract this scourge, more and more shelters are required, as an adequate social, psychological, and economic outlet for women who are victims of gender violence. At the same time, the economic and social policies that support the empowerment of women are needed, as well as programs that promote nonviolence as a positive image of women in the media.**

Violence against women is an acute manifestation of the persistence of stereotypes and hierarchies between both genders. It is an urgent need to guarantee the right of a life free from violence and for freedom of opportunities and treatment between men and women. For this to happen, all the responsible authorities: the Executive Power, the National Council of Women, the provincial legislators, the Judicial Powers, including the State and its distinct instances, must adapt the mechanisms for the regulation, procedures and implementation of the law of integral protection for women, and put in effect public policies for the efficient prevention at a national reach.

**Indigenous women: right to education and access to justice**

*(Articles 10, 14 and 15 CEDAW / pages 48-51 and 74-76 Argentine State's report)*

Indigenous women face specific problems as they are subject to a triple discrimination for being women, for being part of indigenous communities and for being poor. “They share with other women, indigenous and non-indigenous, difficulties due to their gender: discrimination in the field of employment, domestic violence, lack of attention to their health problems, feminization of poverty, disempowerment, lack of access to economic resources, and sexual

harassment.”<sup>9</sup> At the same time they are victims of the expropriation of their lands and natural resources, the expulsion or forced relocation, the subjugation of their culture, a growing impoverishment, systemic discrimination and racism, acts of violence, brutality and criminalization of the exercise of rights.<sup>10</sup>

Some of the consequences of the impact of poverty in indigenous women are the disparities based in economic power-sharing, which have a negative influence on female gender, their housing conditions, the access to basic services such as water and electricity, the limited access of women to power, education, training and productive resources, the power asymmetries that exist in society from the perspective of gender, among others.<sup>11</sup> Meanwhile, the marginality for being indigenous consists in the oppression, exclusion and racism faced by indigenous women as part of native peoples, and is related to the specific problems affecting their dignity on domestic, economic, cultural, social and political issues.

Within an inadequate public policy framework for the protection and promotion of the rights of native peoples, in particular with regard to the gender perspective, the APDH stresses the lack of specific national policies to eliminate barriers to indigenous women access to full citizenship. Although in recent decades there was a process to amend rules relating to the rights of indigenous peoples, which is significant in several aspects, such as Law No. 23.302 creating the National Institute for Indigenous Affairs (INAI) and Law No. 26.160 that boosts the technical and legal cadastral survey of indigenous communities; there is still a vacuum in regard to the implementation of strategies for ensuring the full participation of indigenous women in order to achieve gender equity. Actually, we still find discretionary applications and practices that continue to put obstacles to the genuine participation of indigenous women. This means integrating indigenous women by facilitating their access to land, housing, credit, legal advisory and social services, allowing them also to participate in educational processes and production projects, in the decision making regarding the development of policies for indigenous problems of which they are protagonists, in the labor market through professional

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<sup>9</sup> See *Indigenous Women and Convention 169*. Inter-American Institute of Human Rights (IHR). (In <http://www.iidh.ed.cr>)

<sup>10</sup> See *First World Report of the United Nations on the situation of indigenous peoples*. Secretariat of the Permanent Forum on Indigenous Issues. UN. April 2010.

<sup>11</sup> See SÁNCHEZ OLVERA, Alma Rosa. *Signs of a triple oppression: being female, indigenous and poor*. In *The indigenous world from today's perspective*. MAYNEZ, Pilar and REINOSO. Mariel Publishers. Mexico DF. 2009.

training and having the same access to jobs and equal pay as men, and even as non-indigenous women, among others.

Lack of access to formal education is one of the main factors that shape inequality and exclusion of indigenous peoples, deepening when it comes to women. The traditional educational models do not yield good results in terms of social integration and access to a quality education that does not mean a loss of their identity to communities, focusing decisively on the job placement issue. In this sense, one of the greatest challenges is the promotion of bilingualism and literacy as a fundamental tool to achieve equality, especially for indigenous women, bearing in mind that men have a greater experience in handling and practicing Spanish, obtaining greater opportunities to assume responsibilities in new organizations. An exemplary data on this subject is that 48% of *Collas* mothers and 75% of the *Tobas* are illiterate or did not complete primary education.<sup>12</sup>

The lack of indigenous women access to education demonstrates in severe difficulties to express themselves in public or in Spanish, preventing the completion of formalities outside the community, and in a subsequent inability to fill leadership roles in society. It is essential to design and implement specific public programs that encourage bilingualism as a way of approaching gender equality.<sup>13</sup>

Another social gap in Argentinean educational system, as well as an obstacle to the equal exercise of rights, is the close relationship between early motherhood and early school leaving, which occurs most frequently among the poorest women with lower levels of education, and makes even more difficult the development of a life project with better employment prospects. In this sense, it is of vital importance to design programs that promote training in sexual and reproductive rights and include indigenous women: sexual education is not only a way to prepare and inform women, but also a way to include them.<sup>14</sup> This way, the school constitutes a sexual and reproductive health learning place for indigenous women.

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<sup>12</sup> See *Report on Gender and Human Rights (2005-2008). Validity and Respect of Women's Rights in Argentina*. Latin American Team on Justice and Gender (ELA).

<sup>13</sup> *Discrimination in Argentina. Diagnosis and proposals*. Page 259 et seq. EUDEBA Publisher. Buenos Aires. 2006.

<sup>14</sup> CONDORI, Isabel. In *Training Conference on sexual and reproductive rights*. Indigenous Women Continental Network of the Americas-South America & United Nations Population Fund (UNFPA Argentina). November 2009.

To overcome the existing barriers in access to health care, it is important to promote and implement policies that work on the difficulties that doctors have to communicate with patients in their native languages, and the lack of recognition to folk medicine knowledge and ancestral customs that characterize native populations. The right of indigenous women not to be assimilated or forced to accept other cultural practices that violate their cultural identity should be considered. For this reason, the programs of access to health must be designed within a framework of respect for peoples' customs.

A disturbing issue is the barrier in access to justice by indigenous women, since in most cases their claims are not heard or are resolved from a viewpoint that disregards the culture of their community and allows the introduction of Western female stereotypes. On the other hand, access to justice requires the implementation of a judicial system that permits the guarantee of rights and other parallel measures, such as mechanisms and programs to provide free legal assistance, both in criminal and in civil matters.

We stress that to counteract this obstruction to access to justice, it is important to advance public policies that foster an environment of respect in the relationship of all state strata with indigenous peoples, and which seek to equal protection of the rights of all members of this multicultural society. The law must try not only to equal all citizens legally, but also to consider the diversity among individuals. In response to this diversity, it must also be ensured that everyone has the right to equal access to independent courts, that is, attend to certain population groups specifically, offering a distinct protection.

The absence of public policies to eliminate barriers to access to justice for all people has a higher incidence in sectors in vulnerable situations, such as indigenous women. An equal treatment for women and men should be promoted both in the field of the internal organization of the administration of justice and in its service, as well as the punishment of any kind of practice that perpetuates this inequality. In this regard, we must bear in mind the special value of the contents of "Rules on Access to Justice for People in Vulnerable Conditions"<sup>15</sup>, as it can be taken into consideration by those responsible for public policy. It gives special attention to indigenous communities' membership and gender as potential

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<sup>15</sup> See *Rules on Access to Justice for Persons in Vulnerable Conditions*. XIV Ibero-American Judicial Summit. 2008.



causes of individual vulnerability assessment. It is important that institutional policies are designed and promoted within the framework of that document.

It is imperative to note that to achieve integration and multiculturalism and to overcome gender discrimination, we must recognize indigenous women as individuals with equal rights and create a specific institutional policy area to pursue gender equality from the perspective of the social inclusion of indigenous women.

### **Women in detention**

*(CEDAW Article 4)*

In Argentina, the prison population is under the custody of a plurality of institutions located under different legal and political powers. On one hand, there is a Federal Prison System, and on the other, each province has its own provincial system. Nevertheless, as a whole, the Argentine prison system has serious shortcomings with regards to the treatment of female population. The structural flaws of the Federal Penitentiary Service and various provincial systems are compounded when it comes to treating women.

The state of helplessness and vulnerability of detained women is determined by the lack of contact with their defenders and judges, the extreme extension of judicial processes, the inadequacy of the places for accommodation, and an absolute invisibility in the Criminal Procedure of the domestic violence many of them have suffered.

Prisons are not adequately prepared to guarantee access to the resources and specialized care in relation to food, exercise, clothing, medicines and medical care. This evidences an exposure to the discrimination suffered by women deprived of their liberty.

"The shortcomings of the infrastructure, the lack of programs to ensure decent living conditions, the search to ensure the internal security of the prison through the use of excessive violence, are some of the particular issues that become aggravated in prisons for women and that produce further vulnerability."<sup>16</sup>

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<sup>16</sup> BASCARY, Lourdes, *Violencia contra las mujeres privadas de la libertad*, Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM Argentina).

On regards to the defense in the different procedural steps, the capacity of the official defense is insufficient to give appropriate answers and meet the duties of contact of women, as well as the number of functions and diversity in the claims received. The absence of feedback loops on the status of their criminal cases accentuates their vulnerability.

Moreover, in recent years the number of women detained in the Federal Prison System significantly increased: in the last 15 years female prison population grew by approximately 240% versus 145% growth of the male prison population.

60% of the female prison population is being detained in preventive prison without a trial. It is important to highlight that the excessive and unfounded use of preventive prison is even greater than in the case of men<sup>17</sup>. Also, it is important to add that 68% of women are imprisoned for nonviolent offenses, such as being used as *mules* for drug trafficking<sup>18</sup>.

Remarkable is the enactment of Law 26,472 enacted on 12/01/2009, which regulates the possibility of granting house arrest to pregnant women and mothers of children under five years, or persons with disabilities.

On this regard, it is noteworthy that there are no public policies that stipulate how the *sorties* of the prison units are to be carried out nor the link of children living in prison with their families, all which leads the Prison Service to carry out arbitrary and illegal actions. It should also be remembered that the daughters and sons that do not stay with their mothers in these establishments experience large psychosocial problems such as depression, hyperactivity, aggressive or dependent behaviour, regression, eating disorders, among others<sup>19</sup>.

Many of the women detained in various prison units are victims of numerous manifestations of violence: institutional, physical, psychological, sexual and symbolic. The violence is usually exercised through formal disciplinary punishment mechanisms, such as solitary

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<sup>17</sup> Ver *Informe Preliminar sobre Acceso a la justicia de las mujeres detenidas en la Provincia de Buenos Aires*, Comité Contra la Tortura-Comisión Provincial por la Memoria-Colectivo de Investigación y Acción Jurídica.

<sup>18</sup> Ver *Mujeres presas. La situación de las mujeres embarazadas o con hijos/as menores de edad. Limitaciones al encarcelamiento*, Defensoría General de la Nación – UNICEF Argentina

<sup>19</sup> Ver *Mujeres en la cárcel e hijos de madres encarceladas. Informe para los Amigos*, Quaker United Nations Office, 2007.

confinement in isolated or restricted cells, periodic transfers of detainees to different prison units in an arbitrary manner, individual and collective requisition, and repression in its most traditional manners.

Particular mention must be given to the symbolic nature of violence, which manifests itself in the invisibility of women's specific problems on regards to regulations, prison infrastructure and the strengthening of roles assigned to women. A situation that illustrates the concept of violence against detainees is that of the Province of Buenos Aires, where 25% of the women interviewed by the *Comisión Provincial por la Memoria* in various prisons said to have been assaulted by staff prison during the year 2008<sup>20</sup>.

### **Sexual and reproductive rights**

*(Article 12 CEDAW / pages 61-72 of the State's report)*

In the subject of sexual and reproductive health of women, the Argentine State has made significant progress, largely linked to the enactment of Law 25,673 (2002), which created the National Sexual Health and Responsible Parenthood Program. The National Ministry of Health is responsible for the implementation of the mentioned Programme as well as of Provincial Sexual and Reproductive Health Programs in almost every province.

Moreover, the law that created the program 26,150 that created the National Comprehensive Sexual Education Program (*Programa Nacional de Educación Sexual Integral*), Law 26,130 which establishes the regime for Surgery interventions and the Law 25,929, known as "Act of Humanized Childbirth". Furthermore, the implementation of Plan Nacer and the Maternal Child Program, are both aimed at the prevention of maternal and child mortality, and to Secondary Prevention Programs of Breast Cancer and Early Cervical Cancer detection. In relation to HIV / AIDS, it is important to highlight that the National Plan against the Human Retroviruses, AIDS and STDs, which approach includes a gender perspective<sup>21</sup>.

Ensuring sexual and reproductive health requires specific actions for women and men. To do this, it is important both, access to materials for STD prevention and contraception, as well as access to information and education. The latter becomes evident

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<sup>20</sup> Ver *Informe Anual 2009*, Comité contra la Tortura-Comisión Provincial por la Memoria.

<sup>21</sup> FAUR, Eleonor (coord.). *Desafíos para la igualdad de género en la Argentina*. PNUD Argentina. Buenos Aires. Junio de 2008.

with respect to exercising the right to choose the moment of motherhood and the number of children. According to the 2001 census, women have an average of 2.4 children; yet significant differences are observed when analyzing the fertility rate *vis-à-vis* socioeconomic, regional and age variables.

The issue of adolescent fertility is of extreme importance, since it exposes existing inequalities amongst the overall society and within different regions. Among the poorest women disparities are higher. There are significant differences between provinces, which refers not only to the different socio-cultural patterns, but also to the serious inequalities in access to information, resources and care. While in 2007 the national average women under 20 years becoming giving birth was 15.6% in the province of Chaco the percentage reached 24.5%<sup>22</sup>

Specifically, maternal mortality is a key indicator to assess the level equity and human development of a society. Improving maternal health and preventing these deaths is a central human rights issue. On regards to our country, in 2002 CEDAW expressed concern on the high rate of maternal mortality and lack of protection for women, especially those in situation of vulnerability, of their right to comprehensive health care in particular sexual and reproductive health<sup>23</sup>. Currently, the national rate remains relatively high compared with other indicators of sexual and reproductive health (4.4 per 10,000 live births in 2007), although lower than that registered in countries classified as with high maternal mortality. However, the national average conceals significant disparities between the provinces: those with the worst socio-economic indicators present a maternal mortality rate three times above the national average.

It is noteworthy that abortion remains the main determinant of maternal deaths (24.2% of total registered deaths in 2007 according to official statistics, and 29% according to figures from ELA<sup>24</sup>), although the majority of maternal deaths is produced by various direct obstetric

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<sup>22</sup> Consejo Nacional de Coordinación de Políticas Sociales. Presidencia de la Nación. *República Argentina: Objetivos de Desarrollo del Milenio. Informe País 2009*. PNUD Argentina. Septiembre de 2009.

<sup>23</sup> Comité para la Eliminación de la Discriminación contra la Mujer. *Observaciones Finales del Comité - CEDAW: Argentina (A/57/38, párr. 339-369)*. 23 de agosto de 2002.

<sup>24</sup> Equipo Latinoamericano de Justicia y Género. *Informe sobre Género y Derechos Humanos (2005-2008). Vigencia y respeto de los derechos humanos de las mujeres en Argentina*. Editorial Biblos. Buenos Aires. 2008.

causes. The phenomenon is worsened in low-income sectors in which this procedure is more risky because of the precarious conditions in which the interventions are made.

**This situation, described on pages 66-69 of the Argentinean Report, exposes the urgency of designing universal education and health policies that enable all women to plan their motherhood and have access to the adequate resources to have a safe pregnancy, mitigating social inequalities that condition the use of health services. Actions to promote and guarantee rights to sexual and reproductive health are required. Specially, with an emphasis on the prevention of undesired pregnancies, through actions that provide both access to information and inputs for contraceptives. At the same time, the State must ensure that women in situations of abortion are not victims of discrimination and that they receive quick and effective assistance, including counselling and provision of contraceptive methods and practices.**

While our Criminal Code, in its Article 86 defines abortion as a crime against a life and a person, and provides imprisonment for those who carry it out and for woman who would cause or consent to that practice, it also provides two exceptions in which the abortion is not punishable (pages 28-29 and 65 of the Argentinean Report). These assumptions are: a) if the abortion has been made in order to avoid danger to life or health of the mother and whether this danger cannot be avoided by other means; and b) if the pregnancy is the result of rape or a sexual assault to an idiot or insane woman.

However, despite the cases in which the abortion is not punishable, exceptional times women in these situations can access safe and legal abortion. Often, professionals in health institutions require judicial authorization to proceed to terminate a pregnancy, due to fear of prosecution for the crime of abortion or malpractice.

The authorization requirement for a legal abortion is not provided by law and its demand may prevent the enjoyment of the right to health and autonomy. This requirement especially affects poor women and causes a discrimination by socioeconomic status, while women who have more economic resources have larger possibilities to access a safe abortion at private clinics or bear the cost to access to justice. That is why the medical staff's refusal to perform

not punishable abortions violates the most fundamental rights of women, like the right to life, health, integrity and non-discrimination.

In the year 2000, the United Nations Human Rights Committee (CCPR) expressed, in response to the third periodic report submitted by the Argentine State, its concern "that the criminalization of the abortion deters medical professionals from providing this procedure without a judicial order, even when the law permits."<sup>25</sup> The Committee recommended eliminating all obstacles to abortion when this is not punishable by law and the amendment of national legislation as to authorize it in all cases of pregnancy resulting from rape.

In the Concluding Observations of the last review of the Argentine State, conducted in March 2010, the Committee reiterated its concern "at the restrictive legislation of abortion contained in Article 86 of the Penal Code, and by the inconsistent interpretation by the courts of the causes of non punishment contained therein."<sup>26</sup> It recommended the State to "amend its legislation so that it effectively helps women to avoid undesired pregnancies, and so that they don't have to resort to illegal abortions that could endanger their lives." Moreover, it noted that the State should "adopt measures for the training of judges and health personnel on the scope" of the mentioned article.

In recent years, various courts, including the Supreme Court of the Province of Buenos Aires, issued rulings on cases of women with medical indications for therapeutic abortion, or in cases of incompetent women that resulted pregnant after being rape, that highlight that these abortions are not punishable and consider the medical indication to be sufficient. It is also worth noting a report from the Attorney General City of Buenos Aires in 2004, in which, at the request of a hospital to perform an abortion on a woman whose pregnancy entailed a risk to her life, emphasized the responsibility of the professional and of the State against the possible consequences for the lives of the woman if the abortion was not performed.

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<sup>25</sup> Comité de Derechos Humanos. Pacto Internacional de Derechos Civiles y Políticos. Naciones Unidas. *Examen de los informes presentados por los estados partes de conformidad con el artículo 40 del pacto (CCPR/CO/70/ARG)*. Pág. 4. 15 de noviembre de 2000.

<sup>26</sup> Comité de Derechos Humanos. Pacto Internacional de Derechos Civiles y Políticos. Naciones Unidas. *Examen de los informes presentados por los estados partes con arreglo al artículo 40 del pacto (CCPR/C/ARG/CO/4)*. Pág. 3. 22 de marzo de 2010.

It is worth highlighting the ruling of a juvenile judge of first instance in the city Mar del Plata, which authorized the execution of an abortion on a 14 year old girl who had been raped by her stepfather, under Article 86 paragraph 1 of the Penal Code. The judge relied in the definition of health of the World Health Organization: "Health is a state of complete physical, mental and social well being and not merely the absence of disease"<sup>27</sup>. She authorized the practice to avoid further damaging the girl's mental and physical health. Moreover, the second instance court upheld the first instance and it also considered that the case fell within paragraph 2 of Article 86 of the Criminal Code because it is a pregnancy resulting from rape. According to the constitutional Andrés Gil Dominguez, the ruling suggests that this paragraph is for any woman who has been raped, not only for those who have mental disabilities.

Under the obstacles in the implementation of the Criminal Code and the delays to which women are subject when seeking termination of their pregnancy in situations where abortion is not punishable, the National and Provincial Ministries of Health noted the need to ensure access to abortion in public hospitals, in those cases where it is not punishable, in compliance with the provisions of criminal law.

The Ministry of Health of the Province of Buenos Aires was the first one to prepare a resolution stating that termination of pregnancy in cases in which abortion is not punishable will not require court approval, and has a protocol outlining the procedure for health institutions should follow in such situations<sup>28</sup>. In October 2007, the National Ministry of Health published a Technical Guide for the comprehensive care of non-punishable abortions, which is currently being updated<sup>29</sup>. Unfortunately, this guide has not been yet endorsed by a ministerial resolution that will make it mandatory. It is alarming that, up to date, several rulings have denied abortion in cases in which it was clear that these were not punishable and that, therefore, did not require court authorization. Examples of this situation are the recent

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<sup>27</sup> OMS. *Constitución de la Organización Mundial de la Salud*. 22 de julio de 1946. (En: <http://www.who.int/es/>)

<sup>28</sup> Programa provincial de salud para la prevención de la violencia familiar y sexual y la asistencia a las víctimas. Ministerio de Salud de la Provincia de Buenos Aires. *Protocolo abortos no punibles*. Marzo de 2007. (En: <http://www.ms.gba.gov.ar/>)

<sup>29</sup> ROMERO, Mariana y BERGALLO, Paola. RAMOS, Silvina (coord.). *Guía técnica para la atención integral de los abortos no punibles*. Ministerio de Salud y Ambiente de la Nación. Buenos Aires. Octubre de 2007.

cases occurred in the province of Chubut, where two 15 year-old teenagers, victims of rape were denied the interruption of their respective pregnancies<sup>30</sup>.

While both the National Ministry of Health and the Ministries of Health of the Provinces pledged to ensure the attention of non-punishable abortions in public institutions, the fact is that these cases are still legally sanctioned given that the legislation still lacks clarity in its wording and endangers the health and lives of women and adolescents victims of rape. In these cases, the denial to safe abortion is a serious human rights violation and the lack of access to secure abortion means a double punishment for the girls and women who have been victims of rape.

Moreover, we find that, at least, the understanding of "maternal health" as established in Article 86 paragraph 1 of the Criminal Code is subject to discussion. Its interpretation must take into account in the same level women' physical, mental and social health<sup>31</sup>.

For these reasons, the Argentine State must ensure that health professionals may perform not punishable abortions without fear of being criminally prosecuted, as stipulated by international human rights standards. In this regard, the adoption of protocols for action with clear guidelines for the professionals and that ensure the provision of free health care is key. Another issue that should be ensured by the State is the unrestricted interpretation of therapeutic abortion. The risk health to women must be understood in accordance to the definition of World Health Organization quoted above, which implies that all danger has to be considered, and that abortion is not punishable when there is a risk for the physical, mental and social health of women.

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New York, June 25<sup>th</sup> 2010.

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<sup>30</sup> Human Rights Watch-Amnesty International. *Argentina: Aborto seguro para jóvenes víctimas de violación sexual*. 8 de marzo de 2010. (En: <http://www.hrw.org/es/news/2010/03/09/argentina-aborto-seguro-para-j-venes-v-ctimas-deviolaci-n-sexual> y <http://www.amnesty.org.ar/noticias-y-documentos/archivo-de-noticias/argentina-8>)

<sup>31</sup> MINYERSKY, Nelly. Aborto no punible. Análisis del artículo 86 del Código Penal. En Acceso Universal a la Salud Sexual y Reproductiva. Un desafío para las Políticas Públicas. Católicas por el Derecho a Decidir-UNFPA. Córdoba. 2009.