

Women's Reproductive Rights in Argentina: A Shadow Report

www.reproductiverights.org

WOMENS REPRODUCTIVE RIGHTS IN ARGENTINA: A
SHADOW REPORT

Published by:
The Center for Reproductive Law and Policy
120 Wall Street
New York, NY 10005
USA

© 2000 The Center for Reproductive Law and Policy
(CRLP)

Any part of this report may be copied, translated, or adapted with permission from CRLP, provided that the parts copied are distributed free or at cost (not for profit), and CRLP and the respective author(s) are acknowledged. Any commercial reproduction requires prior written permission from CRLP. The authors would appreciate receiving a copy of any materials in which information from this report used.

Women's Reproductive Rights in Argentina A Shadow Report

Laws and Policies Affecting Women's Reproductive Lives Implementation and the Reality of Women's Reproductive Lives

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Principal Points of Concern	2
III. Women's Rights in Argentina Pursuant to Relevant Provisions of the International Covenant on Civil and Political Rights (ICCPR)	4
A. Women's Right to Reproductive Health: Access to Reproductive Health and Family Planning Services, Including Safe and Legal Abortion (Articles 3, 6, 23, and 26 of the ICCPR)	4
1. Access to Reproductive Health Services and Family Planning Services	4
2. Contraception	6
3. Abortion	7
4. Sterilization	9
5. HIV/AIDS and Sexually Transmissible Infections (STIs)	9
6. Reproductive Health of Adolescents	11
B. Sexual Violence Against Women, Including Minors (Articles 3, 6 and 7 of the ICCPR)	12
1. Rape and Other Sexual Offenses	13
2. Sexual Harassment	14
3. Domestic Violence	14
C. Family Relations, Including Equality Between Spouses, and in Marriage and Domestic Partnership (Articles 23, 24, and 25 of the ICCPR)	15
1. Equality Between Spouses, and in Marriage and Domestic Partnership	16
2. Divorce and Child Custody	16
3. Early Marriage	17
D. Right to Education (Articles 2, 3, 19, 24, and 26 of the ICCPR)	18
E. Women's Economic and Social Rights (Articles 3 and 26 of the ICCPR)	19
1. Property and Inheritance Rights	20
2. Labor Laws	20

I. Introduction

This document is intended to supplement, or “shadow,” the report of the government of Argentina to the Human Rights Committee (“the Committee”). As has been expressed by Committee members, non-governmental organizations (NGOs) can play an essential role in providing credible and reliable independent information regarding the legal framework and the real-life situation of reporting countries as well as the efforts made by the ratifying governments to comply with the International Covenant on Civil and Political Rights (ICCPR). Shadow reports can help the Committee focus its recommendations on the most pressing issues for the population of a given country, providing NGOs with valuable tools with which to pressure their governments to enact or implement legal and policy changes.

Discrimination against women permeates all societies and all facets of women’s lives. Clearly this discrimination requires urgent action. This report is focused particularly on laws and policies affecting reproductive rights. In a series of international conferences during the 1990s, including the 1994 International Conference on Population and Development held in Cairo and the 1995 Fourth World Conference on Women held in Beijing, the fundamental nature of reproductive rights was affirmed and further developed. This report discusses laws and public policies connected with such rights, as well as the current climate for women’s rights in Argentina.

Discriminatory regulations, policies and practices persist throughout Argentina. They affect women’s lives in a very real way, exposing them to serious risks and disadvantages. Persistent cultural bias and legislation constrain women’s rights. Women are exposed to grave violations of their human rights in the public as well as private spheres. This report links various fundamental reproductive rights issues to the relevant provision(s) of the ICCPR and calls on the government of Argentina to accept its obligation to respect, protect, and guarantee the human rights of women recognized in the ICCPR.

This report was compiled and written by Gloria Schuster of the Instituto de Género, Derecho y Desarrollo (IGDD) [Institute for Gender, Law and Development] with the assistance of Mariana García Jurado. Susana Chiarotti provided a general review. Luisa Cabal, Kathy Hall-Martínez, and Laura Katzive of CRLP reviewed and finalized the report with the help of Julia Zajkowski, Jimena Vásquez, Corinne Nakamoto, and Alina Sternberg.

IGDD is a member of the Comité de America Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM) [Latin American and Caribbean Committee for the Defense of Women’s Rights]. The report was published by the Center for Reproductive Law and Policy (CRLP), headquartered in New York City.

October 2000

II. Principal Points of Concern

Access to Sexual and Reproductive Health Services (Articles 6 and 23 of the ICCPR)

Some provinces and municipalities in Argentina have acted to meet reproductive health needs through Sexual and Reproductive Health Programs, or Programs to Promote Responsible Procreation. However, sexual and reproductive health must receive legal and policy-based recognition on a national level and be acknowledged as a basic human right of all Argentine citizens, both male and female. To achieve this goal, proposed legislation and policy must be adopted without inordinate delays. A clear political will is needed with a commitment to promoting human rights in general and progress for women in particular. Such a political will must be capable of withstanding and/or minimizing pressure from conservative groups, especially the Catholic Church, which historically has been an obstacle to success in this field.

Most sexual and reproductive health policies continue to focus on women as mothers. Thus, many such policies are implemented through mother-child health programs. This emphasis reinforces current gender patterns in sexual and reproductive practices that exclude men from responsibility.

Abortion (Articles 6 and 23 of the ICCPR)

Argentina's Penal Code allows therapeutic abortion to save a woman's life or preserve her health. However, whether women can access such procedures depends on the narrow interpretations and moral and religious standards of judges and magistrates. It is, therefore, crucial to review the therapeutic exceptions so that they are applied in light of the international consensus on human rights in matters of life and health.

Moreover, at present there are no health facilities providing legal abortion services. Although not required by law, requests for judicial approval of legal abortions are common, particularly in the government-run health sector, and these requests tend to be denied. In most cases, unreasonable delays ensue. These delays clearly show the government's failure to meet the duties imposed upon it by Argentine law.

The criminalization of abortion has driven it underground, thus exposing women, particularly the poorest and youngest, to serious health risks. Research has documented the dramatic effects of unsafe abortion on women's health and has also revealed that the barriers to their resolution are usually political rather than scientific. The reality of the situation calls for a governmental response that should begin with the repeal of the decree that has designated March 25 as the "Día del Niño por Nacer" (Day of the Unborn Child). This type of observance contradicts not only the right to plan one's family but also children's fundamental right to be wanted.

The urgent need for legislation and public policies is supported by figures showing that unsafe abortion is the primary cause of maternal mortality in Argentina. This statistic is particularly compelling considering that most such deaths could be avoided by adopting preventive sexual and reproductive health policies. Statistics reveal the inequalities that persist among Argentine women. The poorest women, as well as young women and those who live in rural areas, are hurt the most.

HIV/AIDS (Articles 6, 23, and 26 of the ICCPR)

In recent years, the rate of HIV infection has grown fastest among women, and more women are becoming infected through heterosexual relations. Women's greater vulnerability to HIV/AIDS infection, as well as the greater probability of infection from heterosexual relationships, is due to social, cultural, and biological factors. Cultural factors include such gender stereotypes as the subordinate role of women in the marriage relationship and women's difficulty in demanding that condoms be used during sex. Both factors contribute to the higher risk of infection and the rapidly growing number of women with AIDS in recent years. In addition, the feminization of poverty, a growing problem in Argentina as both the number of households headed by women and poverty indices among women increase, is clearly a factor that raises women's risks of contracting AIDS.

A number of factors suggest that there will be a significant worsening of the AIDS epidemic during the coming years, particularly among young women and children. These include a lack of government-sponsored prevention programs, the absence of public awareness programs stressing

the higher risk to young and poor women, the failure to distribute contraception to vulnerable groups, and the lack of sexual education in the schools.

Marriage (Articles 23 and 26 of the ICCPR)

Although most of Argentina's matrimonial laws are not on their face discriminatory, some laws do continue to discriminate and should therefore be abolished. These include the article in Argentina's Civil Code that grants the husband control over property of doubtful origin or whose origin cannot be determined.¹ Another discriminatory law calls for women to regard their husbands with *temor reverencial* ("reverential fear").² Still another denies a mother the right to challenge her husband's paternity rights over her children.

Education (Articles 19, 24, and 26 of the ICCPR)

According to statistics covering participation by women and girls in the educational system, girls are not denied access to school. However, access to the educational system does not bring equal access to the labor market. Women are required to have more academic preparation and higher qualifications than men for the same jobs, and women have lower incomes than men with the same level of education.

The institutionalization of sexual education programs in the educational system is critical for preventing unwanted pregnancies, especially among adolescents. It is also crucial for preventing transmission of sexually transmissible infections (STIs) and HIV/AIDS among adolescents. The government must prioritize sexual and reproductive health in all educational institutions, as well as the need for public access to services.

Opposition by conservative groups and the Catholic Church should not present an obstacle to adolescents' access to information and health services that could protect their sexual and reproductive health.

III. Women's Rights in Argentina Pursuant to Relevant Provisions of the International Covenant on Civil and Political Rights (ICCPR)

A. Women's Right to Reproductive Health: Access to Reproductive Health Care and Family Planning Services, Including Safe and Legal Abortion (Articles 3, 6, 23, and 26 of the ICCPR)

The ICCPR's guarantee of the right to life in Article 6 requires governments to take "positive measures" aimed at preserving life.³ Such measures should respond to the needs of both women and men, in keeping with Articles 3 and 26, which guarantee the right to equal enjoyment of the rights in the Covenant and equality before the law. Because reproductive health care is an essential condition for women's survival, these provisions collectively give rise to a governmental duty to ensure the full range of reproductive health services, including the means of preventing unwanted pregnancy.

The Human Rights Committee (hereinafter "the Committee") has recognized in its General Comment 19(39) the right to "procreate and live together," which by inference includes the right to reproductive health care and to all safe and appropriate forms of contraception.⁴ Accordingly, the Committee has found possible violations of the Covenant where women have difficulty accessing contraceptive methods to prevent unwanted pregnancies.⁵

The Committee has further acknowledged that States' duties to protect and ensure the right to life includes a duty to protect women who terminate their pregnancies.⁶ It has called upon States to take measures "to ensure that women do not risk life because of restrictive legal provisions on abortion," i.e. being forced to seek abortions under clandestine, unsafe conditions.⁷ In this regard, the Committee has recommended liberalization of laws that criminalize abortion.⁸

1. Access to Reproductive Health Services and Family Planning Services

Laws and Policies

Argentina has historically had a "pro-natalist" outlook that supports measures to promote births.⁹ It was only in 1987 that a decree established the right to make free and responsible decisions concerning reproduction, which includes the right to information and counseling services.¹⁰

Argentina still does not have national laws or policies that govern reproductive health. In 1997, a bill to establish a national Program for Responsible Procreation died in congress.¹¹ In 1998, the president approved a decree designating March 25 as the "Día del Niño por Nacer" (Day of the Unborn Child).¹²

In June 2000, the Reproductive Health and Responsible Procreation Act¹³ was approved for public hospitals in the city of Buenos Aires. This law guarantees free counseling for prevention of pregnancy and STIs. It also provides for the prescribing and provision of contraceptive methods that are reversible, as well as unrestricted medical attention and follow-up for adolescents.¹⁴ The law was passed despite strong opposition by sectors of the Catholic Church. These groups organized protests and inundated the media, arguing that the law would promote abortion and intrude upon the right of parents to teach their children about sex.¹⁵

Other provinces and municipalities have also begun to recognize the reproductive rights of women in their jurisdictions. The provinces¹⁶ of Jujuy, Córdoba, La Pampa, Mendoza, Neuquén, Río Negro, and Chaco and the municipalities of Rosario, Mendoza, Córdoba, and Buenos Aires have provincial laws and municipal ordinances, respectively, that create programs to promote sexual and reproductive health or "responsible procreation." The provincial or municipal health departments oversee these programs. Though they vary somewhat, all the programs are required to provide information and counseling on the use and availability of contraceptive methods, monitor health conditions before and after using birth control, ensure early detection of STIs, and provide information, infertility treatment, etc.¹⁷

Reality

Women's sexual and reproductive health is affected by the larger problems of growing poverty and serious inequality. Poor people in Argentina are estimated to constitute 31% to 34% of the population; that is, between 11.2 million and 12.4 million people.¹⁸ Nearly 8 million people are in need and receive no public benefits whatsoever; Argentina's social security network only covers some 25% of poor families.¹⁹ At the same time, unemployment has caused many people to lose their health care coverage. An analysis according to age group shows that people between the ages of 20 and 29 have the lowest levels of health care coverage. Thus, women are least protected when they are most fertile and most in need of coverage.²⁰

In the government-run health system, coverage for reproductive health varies depending on the circumstances of each province or municipality. The differences arise because the system does not guarantee a basic level of coverage for all residents. Although the provinces do have some guidelines for "responsible procreation," in most cases implementation is weak and available resources are scarce. Moreover, family planning services are even less available in rural health clinics. For example, at US\$5 a month, oral contraceptives, the most popular form of contraception, are too expensive for most poor women.²¹

Lack of access to health services, medical attention, and information is a problem throughout Argentina.²² At the same time, access to family planning services, including methods and information, is irregular. Available data indicate considerable inequality in access to family planning according to age and social class. Adolescents and poor women are least able to obtain free, safe, and effective contraceptives.²³

Statistics indicate profound disparities in women's health. In 1997, the national maternal mortality rate²⁴ was 3.8 per 10,000 live births.²⁵ However, there are sizeable differences among the provinces. In Chaco, for example, the maternal mortality rate is over three times the nation's average, with 12.6 maternal deaths per 10,000 live births.²⁶ In Jujuy, San Juan, and Formosa, the incidence of maternal mortality is nearly that high.²⁷ Considering that women in Argentina bear 2.6 children on average, the maternal mortality rate is relatively high.²⁸ The fertility rate also varies widely by geographical area. Thus, the average fertility rates in northwest and northeast Argentina are double the average for the city of Buenos Aires, which is 1.7.²⁹

It is also important to emphasize that sexual and reproductive health policies continue to focus on women as mothers. Thus, they are implemented through mother-child health programs. This emphasis on motherhood fosters the existing gender-based patterns that discourage men from taking responsibility for the consequences of sexual and reproductive practices.³⁰

2. Contraception

Laws and Policies

Argentine law does not expressly regulate contraceptive methods, although sterilization is prohibited as a family planning method. The provincial laws and municipal ordinances previously outlined stipulate that reproductive health programs may supply only reversible contraceptive methods (Neuquén, Mendoza, Río Negro, and recently Buenos Aires), or methods that are not related to abortion (Córdoba, and Chaco).

There are no explicit regulations prohibiting distribution of information concerning contraceptive methods and family planning. Furthermore, a 1986 presidential decree mandates the dissemination of information and provision of counseling services related to family planning.³¹ Thus far, the government has not hindered compliance with this decree.

Reality

Field studies show that 50% of sexually active women use contraceptives. There are significant variances according to age: For those aged 15 to 19, the proportion using contraception varies from 31% to 45%, while for other women of childbearing age it ranges from 53% to 68%.³²

Information about the prevalence of contraceptive methods is limited in Argentina. The only information available, which pertains to some urban groups, comes from a survey of women conducted by a special unit assigned to monitoring social goals as part of the Household Survey in May 1994.³³ This survey showed that more than 50% of sexually active women use contraceptives.³⁴ In all cases, there were significant variances according to age group. For adolescents ranging in age from 15 to 19, the proportion varied from 31% to 45%. However, for the remaining women of reproductive age, the proportion ranged from 53% to 68%.³⁵ Adolescents in the city of Buenos Aires were atypical, reporting that 86% used contraception. This high percentage may be the result of the Program for Responsible Procreation, created in 1988, which facilitates access to contraception.³⁶

Unfortunately, using information obtained from the Household Survey, it is not possible to track the distribution by users of each type of contraception, except for the subcategory of adolescent girls. However, the statistics that are available reveal the following usage patterns for all groups: oral contraceptives, 52%; condoms, 34%; rhythm method, 20%; intra-uterine device 3%; diaphragm, 0.3%; and other methods, 4%.³⁷

All groups show a positive relationship between level of education and use of contraception methods. There is a similar corresponding relationship based on socio-economic level.³⁸ In many cases, the disparity in contraceptive use reflects unequal access to family planning. It is crucial to remember that there is considerable social inequality in access to contraception. To a large extent, access depends on one's age and social class.³⁹

Although there are no specific legal restrictions on the use and distribution of emergency contraception (EC),⁴⁰ its use as a method of contraception has not become sufficiently widespread to lower the number of unwanted pregnancies. Studies indicate that this is due to, among other factors, a lack of familiarity with EC among health care professionals who supply either incorrect

information regarding its use or no information at all because they erroneously consider EC a method of abortion. There is a general lack of awareness regarding EC and women do not know that it exists and that it can be obtained without restriction.⁴¹

3. Abortion

Laws and Policies

The Civil Code of the Republic of Argentina states that life begins at conception, with a person able to acquire some rights prior to birth “as though already born.”⁴² Moreover, abortion is illegal in Argentina and is classified by the Penal Code as a crime against human life.⁴³ Still, criminal law in Argentina provides two grounds on which abortion is not penalized. One is therapeutic, an abortion carried out when the woman’s life or health is in danger and when no other means can prevent such danger;⁴⁴ the second is when the pregnancy is the result of a rape or of “indecent intercourse” with a mentally disabled woman.⁴⁵ In either case, the woman must consent to the procedure, and it must be performed by a licensed physician.

The penalties in the Penal Code apply to whomever performs an abortion, and they vary according to whether it was done with or without the woman’s consent.⁴⁶ Penalties are more severe if the abortion causes the woman’s death or is performed on a girl under the age of 15. In addition, the law mandates a prison term and loss of professional license for doctors, surgeons, midwives, or pharmacists who use their expertise to cause an abortion or cooperate in causing an abortion.⁴⁷ The same penalties apply to anyone who through violence unwittingly causes an abortion if the patient’s pregnancy was obvious or known.⁴⁸ A woman who causes herself to abort or allows someone else to cause her to abort is subject to a prison term of one to four years. Attempted abortion is not punishable.⁴⁹

Reality

Unsafe abortion presents a public health problem that must be confronted. However, the government has ignored it. This is clear from both the absence of policies directed toward resolving the problem and from the failure of public health authorities to gather adequate abortion statistics.⁵⁰

The estimated number of abortions performed annually in Argentina ranges from 335,000 to 500,000. According to figures from the National Statistics and Census Bureau, 37% of pregnancies end in abortion.⁵¹ It is noteworthy that when the Buenos Aires City Council recently passed the Reproductive Health Law, its supporters presented data suggesting that 500,000 abortions are performed every year, which is equivalent to 1,300 abortions a day.⁵²

Forty-three percent of maternal deaths are caused by abortion.⁵³ Because abortion is illegal, it is performed under conditions that are dangerous to women’s health. Argentina’s poorest women are particularly affected. For example, the percentage of maternal deaths caused by abortion in the northwest and northeast regions is 85% and 89%, respectively.⁵⁴ For women ranging in age from 15 to 24 years and 25 to 34, abortion is the second most common cause of hospital stays.⁵⁵ The hospital treatment women receive when they arrive with complications from illegal abortions depends on the attitudes and “moral” principles of the staff in each particular case. Interviews conducted in the cities of Rosario and Córdoba have revealed cases of psychological and physical abuse (dilation and curettage without anesthesia), as well as a tendency to blame the women who come to the hospital under such circumstances. The criminalization of abortion and the resulting clandestine conditions expose women, particularly the poorest, to serious health risks.⁵⁶

While these figures allow us to estimate the prevalence of unsafe abortion and its relationship to high rates of maternal mortality and morbidity, we must bear in mind that more than 50% of maternal deaths go unreported, particularly those due to complications from abortions.⁵⁷ Thus, the lack of statistics and unreliability of the available data present an enormous obstacle to research in this area.⁵⁸

In addition to its impact on women's health, abortion has economic consequences. Unsafe abortion costs Argentina approximately US\$57 million a year; that is, the country spends more than US\$150,000 a day on women suffering from abortion-related complications.⁵⁹

Although Argentine law does allow abortion to save the woman's life or protect her health, and in some instances of rape, the application of these exceptions is based on the narrow interpretations and "moral" and religious standards of judges and magistrates.⁶⁰ There are no known statistics on the number of legal abortions performed in Argentina. It may be assumed that the number is low, given the medical and judicial resistance to permitting the procedure. Moreover, despite the legality of abortion under certain circumstances, there are no health services designated to provide abortions. In addition, fear of performing legal abortions is common, particularly in government-run health facilities. Indeed, the legal framework and the latent threats of legal sanctions against health care professionals affect the quality of care that the health services provide for abortion-related complications. Proof of this lies in the custom of requesting judicial authorization for legal abortions, even though the law contains no such requirement. When a woman requests an abortion, authorization usually entails a slow, circuitous process that can involve extremely burdensome delays.⁶¹

One example of narrow legal interpretation is the decision of a judge in the province of Misiones. The case involved a 15-year-old girl who was raped by her father. The judge did not approve an abortion, saying that "if the life of the mother is not in danger, we must give priority to the life now in gestation."⁶² Along the same lines, a recent decision of the Supreme Court of Santa Fe involved the violation of a woman's right to privacy as well as of medical confidentiality. The decision departed from current legal precedent because it held that there is no violation of medical confidentiality if a doctor in a public hospital becomes aware that an abortion has been performed and then reports it to authorities.⁶³ This decision is based in part on the view that there is just cause for breaching confidentiality because what is protected by law is the life of the unborn child, which has no other form of protection under law.⁶⁴

The trend of favoring ideological and fundamentalist views over basic, fundamental rights involving sexuality and reproduction diminishes the possibilities for liberalizing laws that punish abortion.⁶⁵ The December 1998 presidential decree designating March 25 as "Día del Niño por Nacer" (Day of the Unborn Child)⁶⁶ is illustrative of this new emphasis as well as of the influence of the Catholic Church.

4. Sterilization

Laws and Policies

Argentine law prohibits sterilization as a method of family planning. The Penal Code defines as “serious” any injury that permanently weakens an organ or limb.⁶⁷ The Code provides that loss of ability to reproduce or conceive is an extremely serious injury,⁶⁸ punishable by three to 15 years in prison.⁶⁹

The Medical Practice Law stipulates that sterilization is prohibited, “without incontrovertible therapeutic indications and without having exhausted all possible means to save the reproductive organs.”⁷⁰ In such cases, the doctors must obtain consent for the procedure from the woman’s husband or partner or risk criminal prosecution.⁷¹ However, the decision to perform the sterilization is at the doctor’s discretion although a judge may be asked to pre-approve the procedure.

Recently approved provincial laws concerning reproductive health prohibit sterilization as a method of family planning. In addition, municipal- and provincial-level laws prohibit all methods of contraception considered to be related to abortion, or otherwise permanent and irreversible. Moreover, the provincial and municipal laws concerning responsible procreation generally indicate that birth control methods must be reversible.

Reality

Given that both female and male sterilization are usually illegal in Argentina, there are no available statistics that record frequency of occurrence. However, there appears to be significant demand for female sterilization, while demand for sterilization among males is nonexistent.⁷²

Although judicial approval is not required for tubal ligation for therapeutic reasons, public hospitals will not perform the procedure without first seeking judicial authorization. Similarly, in cases where the law provides for sterilization, tubal ligation is subject to the doctor’s judgment or to judicial approval. In many cases the criteria are based on “pro-natalist” and/or religious beliefs.⁷³

One important development has come from the Ombudsman’s Office of Buenos Aires, where officials recently passed a resolution recommending that the Ministry of Health allow women with certain medical conditions to have tubal ligations performed in public institutions without prior judicial approval.⁷⁴

5. HIV/AIDS and Sexually Transmissible Infections (STIs)

Laws and Policies

There is a national law on the treatment of HIV/AIDS.⁷⁵ The law states that it is in the national interest to research the causes and diagnosis of the disease, as well as its prevention, care, and treatment, and to develop measures aimed at curbing its spread. Priority is given to education.⁷⁶ According to the law, personal dignity may not be compromised, and any action that marginalizes or degrades another person is prohibited. Moreover, all actions must respect medical confidentiality

and must not encroach on the privacy of any persons or name such persons through records or data storage, which must be handled in coded form.⁷⁷ The Ministry of Health and Social Action through the Undersecretary of Health is responsible for applying and enforcing this law.⁷⁸

At the same time, the law states that the government must develop programs aimed at meeting the objectives of the law. These programs should include training, research, and public education about the characteristics of AIDS, its possible causes and means of transmission, measures recommended for its prevention, and the appropriate treatments for its symptoms.⁷⁹ The law imposes mandatory testing to detect the virus and its antibodies in human blood intended for transfusion and in plasma and other blood derivatives of human origin prepared for any therapeutic use.⁸⁰ Professionals who detect the human immunodeficiency virus (HIV) in a person or have reason to believe an individual is a carrier must inform this person of the nature of the infection, the means and forms of transmission, and his or her right to receive appropriate care.⁸¹

With regard to the spread of STIs, a provision of the Penal Code specifies punishment by imprisonment of three to 15 years for any person who knowingly transmits an STI to another person.⁸² The latest revision of the Penal Code sets forth the following as an aggravating factor: the perpetrator knew that he or she was a carrier of a serious STI and was aware of the danger of contagion.⁸³

The National Program to Fight Human Retroviruses and AIDS, a department of the Ministry of Health and Social Action, was created in 1992. Its objectives include the provision of medicine free of charge to people of limited resources; the study of completely confidential virus detection; education and training of educators and assistants as agents of prevention in each province; and the provision of resources for the prevention, diagnosis, and treatment of HIV/AIDS.⁸⁴

Reality

HIV infection in Argentina is concentrated in the poorest, most marginalized, urban areas and is increasing among female populations.⁸⁵ Evidence of the feminization of the HIV/AIDS epidemic may be found in the increase of infected women in relation to men: in 1987 it was 1:84 and in 1997 it was 1:3.⁸⁶ The total number of recorded cases from the start of the epidemic to March 31, 1999 is 14,289. However, taking into account the delay in the receiving of information, the current number is estimated at 16,831 cases.⁸⁷

HIV/AIDS is affecting women at an earlier age than men. Forty percent of HIV positive men are between the ages of 15 and 29, while 47% of the total number of infected women fall in the same age group. However, whereas 45% of HIV positive men are between the ages of 30 to 44, only 31% of all HIV positive women fall in this age group.⁸⁸ This clearly indicates that women are infected at an earlier age than men. On average, most infected women are 10 years younger than infected men, a trend also seen in other parts of the world.⁸⁹

STI statistics are weakened by a high level of underreporting, and they are not disaggregated by sex. Furthermore, general information is received only from public services, and no information is received from private establishments and physicians.⁹⁰ Services for STIs have traditionally targeted men and women involved in the practice of prostitution. This approach has tended to be male-centered and stigmatizing, and it has perpetuated a perception that women are responsible for infections. This type of environment and the conduct of the health care community tend to discourage women from being examined.⁹¹

Forty-seven percent of HIV/AIDS cases are transmitted sexually, the most common mode of transmission.⁹² Heterosexual transmission has shown the highest rate of growth in the last few years. In 1996, the number of cases involving heterosexual transmission was 90 times greater than in 1987.⁹³ Heterosexual sex is the principal mode of infection for women.⁹⁴ Cultural factors related to gender, including women's subordinate role in relationships and the difficulty of demanding the use of a condom during sexual relations, has led to the high risk of infection and the rapid increase of infected women during the last few years. The feminization of poverty, a growing phenomenon

in Argentina, which has seen an increase in women heads of household and a rise in the poverty indices within this group, clearly increases a female's risk of contracting the infection.⁹⁵

Argentina has the highest percentage of pediatric AIDS in Latin America, and 79% of infections are due to mother-child transmission.⁹⁶ This is an indicator of the high incidence of HIV among young women of childbearing age. In response to this, in 1997 the Ministry of Health prepared a proposal for prenatal guidelines with regard to AIDS, which recommends offering voluntary serology as part of routine prenatal monitoring for all pregnancies at the time of the first consultation. The guidelines state that pregnant women who are HIV positive should be "clearly and simply" informed of the risks of transmission and the results of AZT administration.⁹⁷ Tests for the detection of HIV are frequently part of a routine examination without informed consent and without appropriate psychological care.⁹⁸

Health care institutions and agencies of the National Health Service are required⁹⁹ to include, as mandatory services, coverage for medical, psychological, and pharmacological treatments for people infected by some of the human retroviruses. This specifically includes those suffering from AIDS. However, this coverage is inadequate. Moreover, access to health centers to monitor the course of the HIV infection (determination of CD4 and viral load), as well as specific pharmacological treatment, is practically impossible for many women. The immunological monitoring is performed in only a few locations within the Federal District and the medications of the National Program are frequently in short supply.¹⁰⁰

A number of factors suggest that there will be a significant rise in the epidemic during the next few years. These include a lack of government-sponsored prevention programs, the absence of public awareness campaigns warning of the greater risk for young and poor women, the need for condom distribution to vulnerable groups, and the absence of sex education in the schools.¹⁰¹

6. Reproductive Health of Adolescents

Laws and Policies

There are very few laws and policies regarding access to reproductive health services by adolescents. There are no specific prevention programs for adolescents regarding STIs, HIV/AIDS or unwanted pregnancy. Some provinces do serve the needs of adolescent expectant mothers. For example, the legislature of the province of Catamarca has approved a law to provide free medical attention to pregnant adolescents without health insurance coverage.¹⁰² Neuquén's objectives include a focus on the sexual and reproductive health of adolescents.¹⁰³

Río Negro has introduced the Provincial Reproductive Health and Human Sexuality Program, which has no age requirements.¹⁰⁴

Reality

Adolescent fertility in Argentina is relatively high in comparison with the general level of fertility.¹⁰⁵ Although it has begun to decline since its peak (38.7 per thousand) in 1980, it was still high in 1995 at 31.7 per thousand.¹⁰⁶ According to data extracted from the preamble to the reproductive health bill of the Province of Buenos Aires, between 20% and 25% of all births are to adolescent mothers. In Argentina, 120,000 births each year are to mothers younger than 19. Thirty-five percent of them are the second or third child of these mothers. The most recent figure available regarding adolescent pregnancies is for 1995, which shows that 23% of hospital admissions for childbirth are for women younger than 20.¹⁰⁷

While the data is incomplete, relevant studies show that "adolescent mothers" (ages 9 to 13) have had children with men who exceed them in age by at least 10 years (in 80% of the cases).¹⁰⁸ This tends to indicate a strong possibility of abuse, rape, or even incest. The high number of adolescent pregnancies is especially worrisome because it indicates that health services have not developed the expertise and resources to address this situation¹⁰⁹ and it underscores the fact that adolescent

pregnancy and maternity chiefly affect girls with low levels of education. Along with the rural population and low-income women, adolescents are among the groups that experience the most difficulty in accessing family planning services.¹¹⁰

The principal causes of maternal death in adolescents are related to abortions (between 40% and 50%). Of those, a high percentage are young women. The rate of maternal mortality for adolescents younger than 15 is 12.2 deaths per 10,000 live births, a figure that illustrates the vulnerability of this age group. This is surpassed only by the rate for women between 40 and 44, which is 13.9 per 10,000 live births.¹¹¹ This figure demonstrates that age and parity, in addition to spacing between births, are risk factors for both mother and child.¹¹²

B. Sexual Violence Against Women, Including Minors (Articles 3, 6 and 7 of the ICCPR)

Article 7 of the ICCPR states that no one shall be subjected to torture, inhuman or degrading treatment, or punishment. Article 6 ensures the individual's right to life. Both of these rights are potentially violated when women are subjected to rape and domestic violence. Article 3, which provides for the equal enjoyment by both sexes of the Covenant's rights, is violated if women are not protected from violence by law and the government's diligent enforcement of such law.

The Committee has urged States to promulgate laws providing effective protection against rape, sexual abuse, and violence against women.¹¹³ It has also said that making rape a privately prosecutable crime (so that survivors, rather than the state, must file an action), and subjecting abortion to criminal penalties even in the case of rape, are incompatible with Articles 3, 6, and 7 of the Covenant.¹¹⁴ In addition, the Committee has expressed concern over legal provisions that exempt a rapist from punishment if he marries his victim,¹¹⁵ and has criticized States that do not consider rape in marriage an offense.¹¹⁶ It has further expressed concern over the high incidence of sexual harassment in the workplace¹¹⁷ and commented that such acts of discrimination should "be established as punishable crimes."¹¹⁸

The Committee has acknowledged that certain groups are particularly vulnerable to violence and has emphasized the importance of full participation of States Parties in the disclosure of information concerning violence and sexual abuse against female detainees and prisoners.¹¹⁹

1. Rape and Other Sexual Offenses

Laws and Policies

A recent amendment to the Penal Code in 1999 replaced the title "Offenses against chastity" with "Offenses against sexual integrity," signaling a favorable change in the perception of the problem of sexual violence.¹²⁰ Punishment by imprisonment of six months to four years is specified for any person who sexually abuses another person of either sex when such person is under 13 years of age; or for any person who through violence, threats, coercive abuse, or intimidation in a relationship of dependency, authority, or power takes advantage of a victim who for any reason was unable to consent freely to the action.¹²¹ Persons of either sex may be considered victims of sexual abuse. Penetration of any kind ("carnal access") is classified as an aggravating factor and sexual abuse, depending on the duration and circumstances, constitutes a sexual subjugation which is an offense to the victim.¹²² Moreover, the amendment provides for aggravating circumstances based on the status of the perpetrator of the offense or the circumstance in which the punishable act was performed.¹²³

The Penal Code also amends the definition of statutory rape by replacing the requirement that the victim be an "honest woman older than 12 and younger than 15" with the simple requirement that the victim be a "person younger than 16."¹²⁴

It is also noteworthy that the reformed law eliminated the former provision which exempted a rapist who marries his victim from punishment. However, conciliation between a rapist and victim is still possible, thus replacing the notion of a crime with that of a conflict open to negotiation. The law establishes that this is possible if the proposal has been freely made among persons who are equals; thus, a marriage proposal is considered "a better safeguard of the interests of the victim."¹²⁵ This presupposes conditions of full equality, which are unthinkable between a rapist and his victim.

Argentine criminal law does not specifically recognize marital rape.

Reality

According to the Centro de Encuentros Cultura y Mujer (Center for Women and Culture) (CECYM),¹²⁶ from 1970 to 1996 there were, on average, approximately 6,000 sexual offenses annually reported to the police (rape, statutory rape, sexual assault, and others). Although they do not all fit within the legal definition of rape, all deal with coercive sexual practices.

However, on average, the number of convictions for these offenses during the same period was 622. The disproportion of reported offenses to convictions is apparent.¹²⁷ Many reported crimes never reach the trial stage and when they do, they frequently do not result in convictions. In both cases, the most frequent explanation for the failure to punish is lack of evidence.¹²⁸

Rehabilitation programs are available for men who engage in domestic violence, but none are designated specifically for rapists. Few institutions have rehabilitation groups and shelters for domestic violence victims are very scarce. There is one shelter in the city of Buenos Aires and one additional shelter in the greater Buenos Aires region. While certain religious homes and other institutions operate as temporary shelters, they do not have sufficient resources. Nor can they function as long-term shelters.¹²⁹

2. Sexual Harassment

An amendment to the Penal Code recognizes sexual harassment, which is regulated in the section on rape.¹³⁰ The rule sets forth punishment by imprisonment of six months to four years for any person who sexually abuses through violence, threats, coercive abuse, or intimidation in a relationship of dependency, authority, or power, or takes advantage of a victim who for any reason was unable to consent freely to the action.¹³¹

There are generic rules within the Law on Employment Contracts that protect the integrity and dignity of workers.¹³² The city of Buenos Aires has an ordinance whose disciplinary regime lists sexual harassment as a punishable misdemeanor, subject to penalty or dismissal.¹³³ The implementation and impact of the application of these rules have not yet been evaluated.

3. Domestic Violence

Laws and Policies

The National Law on Protection Against Domestic Violence (Domestic Violence Law),¹³⁴ promulgated in 1994, governs domestic violence, defining it as psychological or physical injury or mistreatment suffered by one member of the family at the hands of another member.¹³⁵ The victim may report these acts in oral or written form to a judge with jurisdiction in family matters and request temporary or permanent protective measures.¹³⁶ The protection extended to members of the family group (through marriage or common-law marriage) includes such measures as: barring the offender from the home, prohibiting access to the victim's place of residence and other areas, reintegrating those who were forced to leave for safety reasons back into their home, providing food, and denying custody and communication with children.¹³⁷

The Domestic Violence Law requires that within 48 hours of adopting protective measures, the judge must convene the parties and the Public Minister (similar to a public prosecutor) for a

mediation hearing in which the parties are urged to attend therapeutic and educational programs. This means that the victim of an act of domestic violence is forced to participate jointly with the offender in a mediation hearing.¹³⁸ This practice runs contrary to basic principles of mediation, which should be based on voluntary participation and conditions of equality.¹³⁹

Reports of intrafamilial violence must be brought to the attention of the National Board of Minors and the Family, for purposes of coordinating private and public services in order to counter and/or overcome the causes of mistreatment, abuse, and all types of domestic violence.¹⁴⁰

In March of 1996, the decree containing regulations to implement the Domestic Violence Law was signed. The decree provides for the creation of information and counseling centers for victims of psychological and physical violence. The purpose of these centers will be to offer counseling and guidance.¹⁴¹

Reality

In Argentina, one out of every five couples experiences domestic violence. In 42% of the cases in which a woman was killed, her spouse committed the crime. Thirty-seven percent of women battered by their spouses endured the abuse for 20 or more years. Based on information from the Inter-American Development Bank (IDB), it is estimated that 25% of Argentine women are victims of violence and that 50% will encounter a violent situation at some time in their lives.¹⁴²

According to government data from the city of Buenos Aires, cases of domestic violence reported by battered women in the Federal District have increased. In 1999, there were 25,530 reported cases of battered women, 2,000 more than in 1998 and 10,000 more than in 1996.¹⁴³ In 82% of the cases, the offenders were the spouses of their victims, and in 45% of the reported cases, the battered women spent more than six years living under these violent conditions. Women between the ages of 25 to 34 were most affected.¹⁴⁴

Attorneys in cases of domestic violence have identified difficulties in enforcement of the law, such as problems with evidence¹⁴⁵ and the need to reissue protective measures in order to maintain them over time. Trials very rarely end in convictions where appropriate penalties are applied and redress of the injury is ordered and guaranteed.¹⁴⁶ While the law gives the victim the means to report the crime, it give judges little room for action.¹⁴⁷ If the offender fails to obey the protective measures, filing a criminal complaint is the only other option, which is ineffective and leaves women without other recourse.¹⁴⁸

C. Family Relations, Including Equality between Spouses, and in Marriage and Domestic Partnership (Articles 23, 24, and 26 of the ICCPR)

Article 23 of the ICCPR declares the family to be the “natural and fundamental” unit of society and proclaims that the family is entitled to protection by the State. This provision also guarantees the right to marry and affirms the duty of States to ensure equality of rights and responsibilities of both parties to marriage.

The Committee has elaborated upon the ICCPR’s provisions on marriage and family life. While the Covenant does not endorse any particular age of marriage, the Committee has noted that the age chosen by a State “should be such as to enable each of the intending spouses to give his or her consent in a form and under conditions prescribed by law.”¹⁴⁹ The Committee has further recommended that States parties introduce a uniform minimum age for marriage of males and females to comply with the requirements of article 23 of the Covenant.¹⁵⁰ It has expressed serious concern over legal provisions that discriminate against women in marriage¹⁵¹ including differences in legal age of marriage for women and men. The Committee has clearly stated that such provisions are incompatible with articles 3, 23, 24 and 26 of the Covenant.¹⁵²

The Committee has made firm statements regarding divorce and the rights of women. It has criticized laws in some States that instruct judges in divorce cases to take into account the

education, habits, and conduct of both spouses, since these considerations may lead to discrimination against women.¹⁵³ It has also asserted that “any discriminatory treatment in regard to the grounds and procedures for divorce, child custody, maintenance or alimony or the loss of recovery of parental authority must be prohibited.”¹⁵⁴ Furthermore, the Committee has expressed concern over the denial of access to divorce, which may leave married women permanently subject to discriminatory property laws. The Committee views such circumstances as a potential violation of article 23.¹⁵⁵

1. Equality Between Spouses, and in Marriage and Domestic Partnership

Laws and Policies

The Civil Code governs the rules of marriage and common-law marriage. Spouses owe each other fidelity, aid, and support.¹⁵⁶ Where couples live together, both parties must, by mutual agreement, determine the place of residence for the family.¹⁵⁷ The Civil Code also grants the husband control over property of doubtful origin or whose origin is impossible to determine;¹⁵⁸ it denies a mother the right to challenge her husband's paternity rights;¹⁵⁹ and recognizes the so-called "reverential fear" that women must have for their husbands.¹⁶⁰

In Argentina, because there are no laws governing the financial conditions of common-law marriages, these unions do not give rise to any rights. One exception is found in the labor law,¹⁶¹ which recognizes the right of a common-law wife to receive a pension upon the death of her partner, provided that they lived together for a period of at least five years before the death occurred. This is also the case if the common-law marriage produces legitimate descendants and if the deceased was not otherwise legally married or was a widower, legally separated, or divorced.¹⁶² Moreover, since 1989, mothers of seven or more children, whatever their age or marital status, have had the right to a lifetime, monthly pension that is nonseizable.¹⁶³

Reality

The marriage rate per thousand inhabitants was 7.7 in 1970, declining to 5.9 in 1980 and 4.7 in 1992.¹⁶⁴ Statistical studies of marriage trends show that during the last 20 years, in relative terms, most of Argentina's population has shown a decreased tendency to enter into marriage.¹⁶⁵

Before 1987 there was no legal divorce, which precludes any comparison of marriage trends and the rate of divorce or separation. Indicators show that Argentina, like the rest of Latin America during the last 20 years, has experienced a constant or declining rate of marriage while the divorce rate has increased significantly.¹⁶⁶

Although most marriage laws in general do not formally discriminate, some laws that undervalue women persist and therefore should be abolished. These include the reverential fear law¹⁶⁷ and the law granting the husband control of property of doubtful origin.¹⁶⁸ The legal effects and property of common-law marriages should be comparable to those of a marriage.

2. Divorce and Child Custody

Laws and Policies

Argentine law permits divorce, giving spouses the right to remarry.¹⁶⁹ Both spouses have equal legal standing, and men are no longer presumed to be heads of households. The use of the husband's surname by a woman is optional, and the decision regarding the place of residence is by mutual agreement of husband and wife, ending the exclusive authority of the husband in this domain.¹⁷⁰

The law establishes the duty of aid and support as the responsibility of the spouse that brought about the separation and divorce, in favor of the non-initiating spouse.¹⁷¹ When there is no declaration of culpability by either of the spouses, the one without resources and no reasonable means of obtaining them has the right to have subsistence needs met by the other spouse, if that spouse has adequate means to do so.¹⁷² Custody of children younger than five is given to the mother, unless there are serious grounds that would affect the interests of the children. Children of legal age, barring an agreement between the spouses, become the responsibility of the spouse deemed by a judge to be the most fit.¹⁷³

The law grants shared parental authority to the mother and father with regard to minors.¹⁷⁴ In the case of separated or divorced parents, the exercise of parental authority is the responsibility of the parent who has custody, without prejudice to the right of the other to have adequate communication with the child and supervise his or her education.¹⁷⁵ Preferences for male children have been eliminated, thus establishing the equality of children before the law.¹⁷⁶

The city of Buenos Aires recently adopted a legal penalty in order to enforce payment of child support. This law creates a “registry of debtors with child support in arrears.” Those who appear on the list will have difficulty obtaining access to credit at banks in the city, selling or purchasing businesses, holding public offices, running for political office, or renewing drivers licenses.¹⁷⁷

Reality

Buenos Aires city court statistics show that 70% of separated, noncustodial parents either do not pay the child support stipulated by the judge or make late or incomplete payments. Between 1989 and 1995, in the capital, 17,000 claims against parents who neglected their children were initiated.¹⁷⁸

Women receive custody of children in most cases, which adds to the burden on the growing number of female heads of household, now numbering 25% of all households. For 27% of households in greater Buenos Aires, the principal provider of support is a woman (even where she is not defined as the head of household). Those households headed by women are the poorest and most vulnerable.¹⁷⁹ Among women who are heads of household, there is a significant level of underemployment, and many work in unskilled and low wage earning jobs.¹⁸⁰

3. Early Marriage

Laws and Policies

The minimum legal age of marriage is 16 for the woman and 18 for the man.¹⁸¹ However, individuals may legally marry before reaching the required age with permission of the court, which is granted rarely and only if it is in the best interests of the minors.¹⁸² In order to obtain the permission of the court, a prior hearing with the interested parties, and the parents or legal representatives of the minor/s is required.¹⁸³

Reality

The legal disparity in the age of marriage for women and men is not seen as discriminatory by Argentine society. Women are commonly thought to mature at a younger age. The age of marriage is tied to the socio-economic and educational level of the couple: the higher the level of education and income, the higher the ages of the couple at the time of marriage.

Based on research at the national level, there is a high percentage of young people older than 14 with a stable partner (about 60% in 1980). Most are married, while only 6.8% say they are unmarried and living together consensually.¹⁸⁴

There is still no information available from the 1991 census on the marital status of the population, broken down by age and sex (the 1980 census only published information on the female population). In any case, women begin to live in couple relationships at an earlier age than men, and they generally do so with older men. This trend is more apparent in rural than in urban areas.¹⁸⁵ In this regard, information from the 1980 census confirms this trend: Only 9.4% of urban women between the ages of 14 and 19 said they live or have lived with a partner, whereas that percentage was 14.7% in the case of rural women of the same age group.¹⁸⁶

D. Right to Education (Articles 2, 3, 19, 24, and 26 of the ICCPR)

Education is necessary for the exercise of all other rights, including the right to make informed decisions about reproductive health and one's reproductive capacity. Articles 2, 3, and 26 guarantee equal enjoyment of rights and equality under the law, which imply that men and women should have equal access to education, including sexual education. Article 19 provides for freedom of expression and opinions. It is an integral part of an individual's ability to exercise this right. Because education provides the knowledge one needs to form opinions and beliefs, Article 24 guarantees children special protection. Education is a crucial source of protection, for it prepares girls to participate on an equal footing with their male counterparts in the public and private spheres. In the reproductive context, education allows young women to protect themselves against unwanted pregnancies and STIs.

The Committee has encouraged measures, including affirmative action, to remedy discrimination, "as identified in articles 2 and 26," in such areas as education.¹⁸⁷ It has suggested "education and information campaigns" as means that can be used to prevent and eliminate persisting discriminatory attitudes and prejudices against women."¹⁸⁸ Further indicating its focus on education, the Committee has suggested that steps be taken to publish educational material in the most-used vernacular languages in States where there are multiple dialects.¹⁸⁹

Laws and Policies

The Constitution of Argentina states that education up to the secondary level is mandatory and free at public institutions.¹⁹⁰ In 1997, the Ministry of National Culture and Education implemented a program for adults to complete primary education through distance learning, with the goal of achieving literacy for all citizens of Argentina.¹⁹¹ There is also a National Program of Equal Opportunity for the Education of Women.¹⁹² During its first stage of implementation, the program focused on the elimination of discriminatory stereotypes in instructional materials and the use of nonsexist language in the Federal Education Law.¹⁹³ At present, there is an institutional mechanism for the advancement of women within the Ministry of Education with the objective of using education to ensure and strengthen the equality of men and women in all sectors in society.¹⁹⁴

There are no national laws or policies regarding sex education.

Reality

According to census data, at the primary education level (mandatory attendance), girls and boys have similar participation rates (for every 100 girls of primary-school age, 97.5% attend school, while the rate is 97.3% for boys). This percentage begins to change at higher educational levels, while at the same time total attendance decreases significantly. At the middle level, 73.2% of girls attend school, whereas the percentage of boys decreases to 70.7%. At the university level, for every 100 women aged 19 to 29, 16.4% receive university training, compared with 13.3% for men of the same age group.¹⁹⁵

Based on statistics concerning female participation, access to the educational system is not discriminatory against women. However, this is not reflected in access to the labor market.¹⁹⁶ In fact, women generally are required to have more training and higher qualifications to obtain jobs equivalent to those of men, particularly in the more skilled positions.¹⁹⁷ This disparity suggests that the educational system offers women equality only in a narrow sense.¹⁹⁸

While the Federal Education Law recognizes the importance of sex education in schools, most of the country's educational institutions have not developed or implemented it.¹⁹⁹ One exception is the province of Río Negro, which has a law requiring all educational institutions throughout the province to provide sex education.²⁰⁰ Also, an ordinance of the city of Córdoba requires school curricula to include programs on reproduction and sexuality. However, the scope and impact of this rule is limited by a provision that reads: "This program expressly reserves the right of parents or those who exert parental authority to accept or reject the municipal schools' sex education program for their minor children, according to their religious or moral beliefs."²⁰¹

Within this context, a number of NGOs have stated that there is an urgent need for sexual and reproductive education in all educational institutions. The limited access to information, and especially to guidance and counseling services for adolescents, demonstrates the difficulty of recognizing the sexual and reproductive autonomy of young people in Argentina.

The status of pregnant adolescents in the educational system varies. After a case involving the expulsion of pregnant adolescents reached the courts and was exposed in the press, this form of discrimination was more widely acknowledged by the public.²⁰² This case prompted the drafting of a bill that would prohibit the expulsion of pregnant students in Argentina's schools. It has been asserted that "this case illustrates the situation faced by many young girls who are discriminated against because they are females and adolescents. And in other cases, just for being poor."²⁰³

E. Women's Economic and Social Rights (Articles 3 and 26 of the ICCPR)

Reproductive health and rights cannot be fully evaluated without investigating women's economic and social standing in the societies in which they live. Not only does women's socioeconomic status reflect societal attitudes that affect reproductive rights, it also often has a direct impact on women's ability to exercise their reproductive rights. For example, laws affecting a woman's economic status can contribute to the promotion or hindrance of her access to reproductive health care and her ability to make voluntary, informed decisions about such care.

The Committee has recognized that economic and social rights, such as the right to work, intersect with other rights found in the Covenant, which have an important impact on women's reproductive lives. The Committee has affirmed that inequality of access to the labor market is a violation of the Covenant and has made strong recommendations that States parties eliminate *de jure* as well as *de facto* discrimination against women in this domain.²⁰⁴ The Committee has also expressed serious concern over discriminatory practices in employment, particularly the requirement that women prove that they are not pregnant or that they have been sterilized.²⁰⁵

In further recommendations regarding economic and social rights, the Committee has voiced its concern over "the application of customary laws in matters of personal status . . . and inheritance rights which reinforce attitudes concerning the role and status of women."²⁰⁶

1. Property and Inheritance Rights

Women may hold, maintain, transfer, and inherit property without any legal restriction based on sex, except the disposition or encumbrance of community property when it involves real property, registered rights or registered property. In these latter cases, the law requires the consent of both spouses.²⁰⁷ Men and women are equal before the law in matters involving inheritance rights.

2. Labor Laws

Laws and Policies

The Constitution sets forth that all people of Argentina enjoy the right to work,²⁰⁸ and it codifies the principle of “equal pay for equal work.”²⁰⁹ The Law on Employment Contracts prohibits any type of discrimination among workers based on sex, race, nationality, religion, political or trade union affiliation, or age.²¹⁰ Establishing different levels of compensation for women and men for work of equal value is prohibited,²¹¹ as is dismissal because of marital status.²¹²

In September 1998, a labor law amendment was approved²¹³ that introduces the concept of discriminatory dismissal and specifies an increased damages award, which is 30% higher than the one contemplated for simple dismissal. Discriminatory dismissals include those based on race, sex, or religion.²¹⁴

Through a decree in March 1998, the Executive Branch approved the Plan for Equal Opportunities for Men and Women in the Labor Force, coordinated by the National Council of Women.²¹⁵

Pregnant women have special protection under the labor law, and it is prohibited for women to work during the period from 45 days before to 45 days after giving birth.²¹⁶ The law sets forth the legal presumption that the dismissal of a pregnant worker within the period between 7.5 months before and after giving birth is a result of the pregnancy.²¹⁷ Working mothers have the right to two daily rest periods of one-half hour per work shift in order to nurse a child.²¹⁸ It is important to note that four deputies have introduced a bill, which is now being reviewed, to increase the amount of leave for male workers upon the birth of a child (currently two days).²¹⁹

Reality

The economically active population (EAP) of Argentina is estimated at 9,535,665. This is made up of 40% women (3,874,180) and 60% men (5,661,485).²²⁰ For this population, the rate of employment for men is 46%, whereas that for women is 28%.²²¹ At the same time, the average rate of unemployment totals 13.7%, or 12.9% for men and 14.9% for women.²²²

This comparison by sex shows that within the female EAP there is a higher percentage of unmarried women than of married women, although married women make up 40% of the female workforce.²²³ One-fourth of all households are headed by women.²²⁴

During recent years, the female workforce has grown markedly, as have the problems associated with women entering full-time occupations. This is illustrated by an increase in the number of female workers entering the workforce as well as an increase in unemployment and underemployment in the last few years. The significant number of women who have been added to the labor market is associated with the increase in underemployment, given that the economy has not recorded an equal growth in productivity that would allow their absorption into full-time work.²²⁵

In terms of salaries, women are at a disadvantage because they earn, on average, 71% of what men earn in all occupational categories. The largest salary gaps between men and women are recorded among those over the age of 40 and at the highest levels of education: The average income of women is 60% that of men in equal circumstances. This form of discrimination is illustrative of the fact that, even under the best working conditions, women continue to be disadvantaged.²²⁶

ENDNOTES

¹ CÓDIGO CIVIL [CÓD.CIV.] art. 1276.

² *Id.*, art. 940.

³ Human Rights Committee, *Right to Life (Article 6)*, General Comment 6, July 30, 1982, ¶ 5.

⁴ UNITED NATIONS CENTER FOR HUMAN RIGHTS, 120 MANUAL DE PREPARACIÓN DE INFORMES SOBRE LOS DERECHOS HUMANOS 113 (1991) U.N. Doc. HR/PUB/91/1 [hereinafter MANUAL ON HUMAN RIGHTS REPORTING].

⁵ *Id.*, ¶ 239.

⁶ *Concluding Observations of the Human Rights Committee: Chile*, 65th Sess., 1733-1734th mtg. ¶ 15, U.N. Doc. CCPR/C/79/Add.104 (1999) [hereinafter *Concluding Observations of the Human Rights Committee: Chile*].

⁷ *Report of the Human Rights Committee*, 52nd Sess. ¶ 167, U.N. Doc. A/52/40 (1997) [hereinafter 52nd Sess. Report of the Human Rights Committee].

⁸ *Concluding Observations of the Human Rights Committee: Chile*, *supra* note 6, ¶ 15.

⁹ Mabel Bianco, *¿Qué Servicios y para Quiénes?*, in MUJERES SANAS, CIUDADANAS LIBRES (O EL PODER PARA DECIDIR) 82 (Foro por los Derechos Reproductivos et al. eds., 1998) [hereinafter Bianco, *What services and for whom*].

¹⁰ See CENTER FOR REPRODUCTIVE LAW AND POLICY (CRLP) & ESTUDIO PARA LA DEFENSA DE LOS DERECHOS DE LA MUJER (DEMUS), WOMEN OF THE WORLD: LAWS AND POLICIES THAT AFFECT WOMEN'S REPRODUCTIVE LIVES IN LATIN AMERICA 22 (1997), *citing* Decree No. 2.274, Mar. 27, 1987, B.O., art. 2.

¹¹ In late 1995, the Chamber of Deputies partially approved a bill to create a national Program for Responsible Procreation. After approval by the Senate, it was stalled for a long time, until it died in 1997 following strong pressure from the Catholic Church.

¹² See Decree No. 1406/98, Dec. 10, 1998, [29.040] B.O., art. 2. March 25 is designated Day of the Unborn Child. The regulation entrusts the Secretary of Culture of the Executive Office of the President, the Argentine ambassador to the Holy See, and the President's Advisor for the Protection of the Unborn Child to organize events designed to publicize and observe the Day of the Unborn Child on March 25, 1999.

¹³ Law No. 418, June 22, 2000, B.O.

¹⁴ See *id.* art. 6. See also *Por ley, los hospitales públicos ayudarán a prevenir embarazos*, CLARÍN DIGITAL, June 23, 2000, <http://www.clarin.com.ar/diario/2000-06-23/s-03601.htm> (last visited June 28, 2000).

¹⁵ Although it is true that these services were already in place for more than 10 years in some Buenos Aires hospitals, the law imposes a legal framework that allows for financing and guarantees, as well as a widespread publicity effort that makes it easier to attract people who are interested. Marta Dillon, *El derecho a decidir*, PÁGINA 12 (Argentina), June 23, 2000, LAS Supplement, <http://www.pagina12.com.ar/2000/suple/las12/00-06-23/nota1.htm> (last visited August 10, 2000).

¹⁶ Argentina has 23 provinces plus the autonomous city of Buenos Aires.

¹⁷ Neuquén Provincial Law No. 2.222, Provincial Program for Sexual and Reproductive Health (B.O. Dec. 12, 1997); La Pampa Provincial Law No. 1.363, Provincial Program for Responsible Procreation (B.O. Jan. 10, 1992); Mendoza Provincial Law No. 6.433, Provincial Program for Reproductive Health (B.O. Nov. 25, 1996); Río Negro Provincial Law No. 3.059, Provincial Program for Reproductive Health and Human Sexuality (B.O. Jan. 12, 1997); Córdoba Provincial Law No. 8.535 creation of Program for Reproductive Health and Sexuality (B.O. Aug. 9, 1996); Chaco Provincial Law No. 1.273, Program for Health Education and Responsible Human Procreation; Jujuy Provincial Law of June 6, 1999, Provincial Program for Maternity and Prevention of Sexually Transmissible Infections; Municipal Ordinance of Rosario No. 6.244 (Sept. 12, 1996); Municipal Decree of Buenos Aires No. 2.274/88.

¹⁸ See Instituto de Género, Derecho y Desarrollo (IGDD), Los derechos humanos de las mujeres en Argentina. Un informe sombra 26 (June 1999) (Argentina shadow report draft, on file with CRLP) [hereinafter IGDD, Shadow report draft], *citing* PÁGINA 12 (Argentina), July 9, 2000, Economic Supplement, <http://www.pagina12.com.ar/2000/00-07/00-07-09/pag17.htm>. Nearly 4.5 million young people under the age of 14 live in poverty. Of 2 million young people between the ages of 14 and 24, almost one-half million live in poverty.

- ¹⁹ See Maximiliano Montenegro, *Hay 8 millones de pobres sin ninguna ayuda oficial*, PÁGINA 12, July 12, 2000, <http://www.pagina12.com.ar/2000/suple/las12/00-06-23/nota1.htm> (last visited August 11, 2000). During the last decade in Argentina, both poverty and inequality in income distribution have worsened.
- ²⁰ Public hospitals are the only places where these women can get medical attention, thus heightening the demands made on public hospitals. Bianco, *What services and for whom*, *supra* note 9, at 77.
- ²¹ Notes from Mabel Bianco on *Aportes para la Salud* 3 (May 2000) (on file with CRLP) [hereinafter Bianco, Contributions to Health].
- ²² See Mónica Gogna et al., *Los retos de la salud reproductiva: derechos humanos y equidad social*, in LA ARGENTINA QUE VIENE: ANÁLISIS Y PROPUESTAS PARA UNA SOCIEDAD EN TRANSICIÓN 355 (Aldo Isuani & Daniel Filmus eds., 1998).
- ²³ See Bianco, Contributions to Health, *supra* note 21, at 3. Because of the Buenos Aires City Council's recent approval of the Reproductive Health and Responsible Procreation Law, the media has drawn attention to inequalities that generally affect the poor with respect to their right to health care. The media has also highlighted the inequalities affecting women, who suffer the most, as noted by Deputy Clori Yelicic: "It is a law that attempts to reverse inequalities, injustices, and suffering for many women, especially those who are poor." Mariana Carbajal, *La noche en que los cruzados perdieron la batall*, PÁGINA 12, June 23, 2000, <http://www.pagina12.com.ar/2000/00-06/00-06-23/pag03.htm> (last visited August 10, 2000).
- ²⁴ In this sense, the Institute for Gender, Law and Development, a coauthor of this report, understands that the concept of "maternal mortality" must be revised when abortion is the cause. The term "pregnancy-related death" has been proposed in SUSANA CHECA AND MARTHA ROSENBERG, ABORTO HOSPITALIZADO: UNA CUESTIÓN DE DERECHOS REPRODUCTIVOS, UN PROBLEMA DE SALUD PÚBLICA 34-6 (El cielo ed., 1996).
- ²⁵ Numbers were rising in 1995 and 1996; rates were 3.9 in 1994, 4.4 in 1995, and 4.7 in 1996. See INSTITUTO NACIONAL DE ESTADÍSTICA Y CENSOS, ANUARIO ESTADÍSTICO DE LA REPÚBLICA ARGENTINA (2000), http://www.indec.mecon.ar/anuario/index_infonac.htm (last visited Feb. 23, 2001) [hereinafter STATISTICAL ANNUAL].
- ²⁶ Gogna et al., *supra* note 22, at 340.
- ²⁷ Bianco, Contributions to Health, *supra* note 21, at 1.
- ²⁸ The Regional Action Plan to reduce maternal mortality in the Americas places Argentina among countries with high maternal mortality. MABEL BIANCO et al., FUNDACIÓN PARA ESTUDIO E INVESTIGACIÓN DE LA MUJER, FECUNDIDAD, SALUD Y POBREZA EN AMÉRICA LATINA: EL CASO ARGENTINO 67 (1996) [hereinafter BIANCO, FERTILITY, HEALTH AND POVERTY].
- ²⁹ INSTITUTO NACIONAL DE ESTADÍSTICA Y CENSOS (INDEC), 4 SITUACIÓN Y EVOLUCIÓN SOCIAL 30 (1998).
- ³⁰ See Bianco, Contributions to Health, *supra* note 21, at 1. Young women are commonly perceived as the sole party responsible in the relationship with the child. This first instance of invisibility is followed by the absence of men in raising children. Thus, when sexual and reproductive health policies are designed, it is important to include men with respect to sexual and reproductive rights.
- ³¹ Decree No. 2.274, Mar. 27, 1987 [03/03/87] B.O., cited in CRLP & DEMUS, *supra* note 10, at 23.
- ³² See Teresa Durand & María Alicia Gutiérrez, *Cuerpo de mujer: Consideraciones sobre los derechos sociales, sexuales y reproductivos en la Argentina*, in MUJERES SANAS, CIUDADANAS LIBRES (O EL PODER PARA DECIDIR) 27 (Foro por los Derechos Reproductivos et al. eds., 1998).
- ³³ Gogna et al., *supra* note 22, at 345. Data have been published for Greater Buenos Aires, Greater Rosario, Greater Mendoza, Paraná, Salta, Neuquén and Río Gallegos. The survey only covered a few urban areas in Argentina and it yielded no information about the kinds of methods used nor reasons why they were used.
- ³⁴ *Id.* at 345-6. Paraná showed the lowest usage (53.2%) and Greater Buenos Aires the most (64.6%). The percentage for the Federal District was 72.8%, while it was 62% for suburban areas.
- ³⁵ *Id.* at 346.
- ³⁶ Durand & Gutiérrez, *supra* note 32, at 27.
- ³⁷ Gogna et al., *supra* note 22, at 347.
- ³⁸ *Id.* at 346-7.
- ³⁹ Silvina Ramos, *Qué Son los Derechos Reproductivos y Sexuales?*, in TRIBUNAL PERMANENTE POR LOS DERECHOS DE LAS MUJERES A LA SALUD 103 (Foro Permanente por los Derechos de las Mujeres ed., 1997) [hereinafter PERMANENT TRIBUNAL FOR WOMEN'S RIGHTS TO HEALTH].

⁴⁰ Emergency contraception consists of substances that were approved by health authorities many years ago, and they are found in several brands of regularly used oral contraceptives. Instituto de Género, Derecho y Desarrollo (IGDD), *Mujeres del mundo: leyes y políticas que afectan sus vidas reproductivas*, Argentina chapter, 26-7 (June 1999) (Women of the World Update Draft Report: Argentina Chapter, on file with CRLP) [hereinafter IGDD, Women of the World Update].

⁴¹ See Zulema Palma, *La anticoncepción de emergencia, un aporte para los derechos sexuales y reproductivos de las mujeres*, in AVANCES EN LA INVESTIGACIÓN SOCIAL EN SALUD REPRODUCTIVA Y SEXUALIDAD 331-342 (Asociación de Estudios de Población de la Argentina et al. eds., 1998).

⁴² Cód. Civ. art. 70.

⁴³ Código Penal [Cód. Pen.] art. 85.

⁴⁴ The Code states that abortion is not punishable “if it was performed for the purpose of preventing danger to the life or health of the mother and if this danger could not have been prevented by other means.” *Id.* art. 86, ¶ 1.

⁴⁵ The Code states that abortion is not punishable “if the pregnancy resulted from the rape or sexual assault of a woman who is mentally disabled or insane.” *Id.* art. 86, ¶ 2.

⁴⁶ *Id.* art. 85, ¶ 1-2.

⁴⁷ *Id.* art. 86.

⁴⁸ *Id.* art. 87.

⁴⁹ *Id.* art. 88.

⁵⁰ See Bianco, Contributions to Health, *supra* note 21, at 2. According to well-known Argentine activist Silvina Ramos, “regional studies have not only documented the dramatic nature of the major issues surrounding abortion but also made clear that the obstacles to their resolution are far from scientific. Rather, they are in large part political.” Silvina Ramos, *Aportes de la Investigación Social a las Actividades de Advocía en el Campo del Aborto Inducido en América Latina*, LA PROMOCIÓN Y PROTECCIÓN DE LOS DERECHOS SEXUALES Y REPRODUCTIVOS EN LA REGIÓN 55 (1999) [hereinafter PROMOTION AND PROTECTION OF SEXUAL AND REPRODUCTIVE RIGHTS].

⁵¹ See Bianco, Contributions to Health, *supra* note 21, at 2.

⁵² See Olivera *va a proponer cambios a la Ley de Salud Reproductiva*, CLARÍN DIGITAL, July 11, 2000, <http://www.ar.clarin.com/diario/2000-07-11/s-04001.htm> (last visited Nov. 9, 2000). Estimates suggest that the number of unsafe abortions in Argentina is on the rise. This takes three variables into consideration: the lower absolute number of births per year, lower sales of birth control pills and an increase in poverty and marginalization. See IGDD, Shadow report draft, *supra* note 18, at 6, *citing* MARÍA CORREIA, LAS RELACIONES DE GÉNERO EN LA ARGENTINA. UN PANORAMA SECTORIAL 14 (World Bank, 1999) [hereinafter CORREIA].

⁵³ See Bianco, Contributions to Health, *supra* note 21, at 2.

⁵⁴ See CORREIA, *supra* note 52, at 14.

⁵⁵ See Bianco, Contributions to Health, *supra* note 21, at 2.

⁵⁶ See Ramos, *supra* note 39, at 98.

⁵⁷ See CORREIA, *supra* note 52, at 14, *citing* Vital Statistics, Ministry of Health and Social Action.

⁵⁸ Walter Barbato explains that in research on abortion, data is underestimated and illegality and lack of records are significant obstacles to obtaining accurate data. IGDD, Shadow report draft, *supra* note 18, at 6, 28, *citing* CIUDADANO (Rosario), Oct. 18, 1999 (Daily newspaper).

⁵⁹ See Bianco, Contributions to Health, *supra* note 21, at 2.

⁶⁰ Although the law does not specify that therapeutic abortion is legal only in cases where physical health is concerned, interpretation is restricted to consideration of biological health. Thus, it is crucial to review these criteria in light of what we understand today concerning life and health from the international consensus on human rights. See *in general* ABORTO NO PUNIBLE, (Foro por los Derechos Reproductivos ed., 2000) [hereinafter ABORTION THAT CARRIES NO PENALTY]. It is a publication stemming from an essay contest that proposed to redefine therapeutic abortion in Argentina as “a danger to the mother’s life and health,” which is its current meaning in Article 86 of the Penal Code. Moreover, according to the World Health Organization, health “is a state of complete physical, mental and social well-being, not simply the absence of pain and sickness.” WORLD HEALTH ORGANIZATION, DOCUMENTO BÁSICO 1 (42 ed., 1999), *cited in* IGDD, Shadow report draft, *supra* note 18, at 28-9. Life means not only survival but also living with dignity, fullness, and

health. This is a right guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other agreements.

⁶¹ Some isolated decisions have stated that the request for court authorization is inappropriate because it is not provided for by law. Thus, they have not rendered judgment. Court of First Instance, signed Nov. 4, 1988, [1988-E] L.L. 375, *cited in* IGDD, Women of the World Update, *supra* note 40, at 29-30.

⁶² In this case, the judge admitted to following personal “pro-life” principles. The young woman who had requested judicial authorization for an abortion tried to commit suicide. Her psychological well-being had been severely damaged by the dramatic situation of which she was a victim. IGDD, Women of the World Update, *supra* note 40, at 29-30, *citing* PÁGINA 12, Dec. 13, 1996.

⁶³ SCSanta Fe, Aug. 12, 1998, [1998_F] L.L. 547, *cited in* IGDD, Women of the World Update, *supra* note 40, at 31. Prior to this case, legal precedent had established that criminal proceedings could not be brought against a woman who tried to abort a child, if the events came to light based on a report made by a medical professional who learned of the act while exercising his or her profession or job (in an official capacity or not). Such a report was considered to be a violation of medical confidentiality. This judicial decision was adopted by the majority of courts in Argentina. CNCriminal y Correccional, Aug. 26, 1966. Frías, Natividad. ED, 16-3. (Computer Record: 208), (C) 1998 Albremática S.A., *cited in* IGDD, Women of the World Update, *supra* note 40, at 30.

⁶⁴ SCSanta Fe, Aug. 12, 1998, [1998_F] L.L. 547, *cited in* IGDD, Women of the World Update, *supra* note 40, at 31.

⁶⁵ Gaby Ore Aguilar, *Introduction to PROMOTION AND PROTECTION OF SEXUAL AND REPRODUCTIVE RIGHTS*, *supra* note 50, at 3. The new trend is characterized by arguments and strategies that make the human rights framework more relative, and ignore the advances in international and regional legislation that protect women's rights.

⁶⁶ Decree No. 1406/98 *cited in* IGDD, Women of the World Update, *supra* note 40, at 28. March 25 is designated Day of the Unborn Child. The explanatory statement announced that it was deemed suitable for the observation to take place on the day when “Christians celebrate the Annunciation of the Virgin Mary, given that the most celebrated birth throughout the world, by Christians and non-Christians, is that of the Baby Jesus, who was conceived on that day ...” and “That—particularly before birth—the child is an extremely fragile and defenseless being, except for the natural protection offered by its mother....That the quality of existence, of being an entity capable of acquiring rights and taking on obligations, derives from a constitutional provision, and that as stated by our Constitution and Civil and Penal Law, life begins at conception.”

⁶⁷ Cód. PEN. art. 90.

⁶⁸ *Id.* art. 91.

⁶⁹ *Id.* art. 92.

⁷⁰ Susana Chiarotti et al., *El embarazo forzado y el aborto terapéutico en el marco de los derechos humanos in* ABORTION THAT CARRIES NO PENALTY, *supra* note 61, at 41, *citing* Law No. 17.132 (effective nationwide, including the Federal District).

⁷¹ See CRLP & DEMUS, *supra* note 10, at 24, *citing* Instituto de Género, Derecho y Desarrollo 61 (Jan. 1997) (Argentina report draft, on file with CRLP).

⁷² See CORREIA, *supra* note 52, at 15, *citing* reports from the Argentine Family Protection Association.

⁷³ This is evidenced in the case of a woman who sought to have a tubal ligation performed after the birth of her seventh child. She was suffering from diabetes and hypertension, and living in misery. See CRLP & DEMUS, *supra* note 10, at 24, *citing* PÁGINA 12, Dec. 6, 1996.

⁷⁴ See Resolution No. 223/00 of Buenos Aires, Mar. 2000, B.O. In this matter, some people, such as Diana Maffia, philosopher and associate with the Buenos Aires City Ombudsman's Office, have said that tubal ligations, which are a typical procedure in the private health care system, are difficult to obtain in public hospitals and that health care should be accessible for everyone, not just those who can pay. See Luciana Peker, *Sin pedir permiso. Ombudsman a favor de la esterilización*, 819 LUNA (Argentina), at 32-3.

⁷⁵ Law No. 23.798, Sept. 20, 1990, B.O.

⁷⁶ *Id.*, art. 1.

⁷⁷ *Id.*, art. 2.

⁷⁸ *Id.*, art. 3.

⁷⁹ *Id.*, art. 4.

⁸⁰ *Id.*, art. 7.

⁸¹ *Id.*, art. 8.

⁸² CÓD. PEN. art. 202.

⁸³ *Id.*, art. 119c

⁸⁴ See DOLORES FENOY, *SIDA: Tendencias en la Evolución del SIDA*, in PERMANENT TRIBUNAL FOR WOMEN'S RIGHTS TO HEALTH, *supra* note 39, at 111.

⁸⁵ See MABEL BIANCO et.al, DERECHOS HUMANOS Y ACCESO A TRATAMIENTO PARA VIH/SIDA, SERIE. ESTUDIO DE CASOS SOBRE DERECHOS HUMANOS, 20 (LACASSO & UNAIDS eds., 1999), *citing* the Official Gazette on AIDS in Argentina.

⁸⁶ See *id.* at 17.

⁸⁷ For information on the number of total AIDS cases in Argentina according to gender and age group, see FUNDAMIND, *La epidemia en Argentina*, SIDA: BOLETÍN OFICIAL DE ARGENTINA, <http://www.fundamind.org.ar/sida/lusida/marzo99/epidemia.htm> (last visited March 30, 2000).

⁸⁸ See *id.* The average age of men with AIDS is 32 for but only 26 for women.

⁸⁹ See BIANCO, FERTILITY, HEALTH AND POVERTY *supra* note 28, at 89.

⁹⁰ See *id.* at 88.

⁹¹ See Bianco, *What services and for whom*, *supra* note 9, at 87.

⁹² See FUNDAMIND, *supra* note 88.

⁹³ Pace of growth of AIDS cases in those over 13, *see id.*

⁹⁴ See FENOY, *supra* note 85, at 108. The significant increase in heterosexual transmission explains the increase in women with the disease. In view of this, we must recognize women's greater vulnerability to the HIV/AIDS infection and their higher probability of infection in a heterosexual relationship because of social, cultural, and biological factors.

⁹⁵ See Bianco, *Contributions to Health*, *supra* note 21, at 6. The impoverishment of the epidemic is present elsewhere in the world and is also on record in Argentina. Looking at the level of education (as one of the indicators of socio-economic level) the trend is evident. AIDS cases are more and more associated with low levels of education. The percentage of children who fail to complete primary education has gone from 2% in 1990 to 18% in 1998. While 55% of all students completed secondary school at the beginning of the 1990s, only 22% completed secondary school in 1998. See FUNDAMIND, *supra* note 88.

⁹⁶ See BIANCO, FERTILITY, HEALTH AND POVERTY *supra* note 28, at 92.

⁹⁷ Bianco, *What services and for whom*, *supra* note 9, at 88.

⁹⁸ See FENOY, *supra* note 85, at 110.

⁹⁹ See Law No. 24.455, Mar. 8, 1995, B.O., art 1, *cited in* CRLP & DEMUS, *supra* note 10, at 25-6.

¹⁰⁰ See FENOY, *supra* note 85, at 110.

¹⁰¹ See BIANCO, FERTILITY, HEALTH AND POVERTY, *supra* note 28, at 95.

¹⁰² See Law No. 4.713 of Catamarca, [06/11/92] B.O., *cited in* CRLP & DEMUS, *supra* note 10, at 29.

¹⁰³ See Law No. 2.222 of Neuquén, [12/12/97] B.O., *cited in* IGDD, *Women of the World Update*, *supra* note 40, at 48.

¹⁰⁴ Law No. 3.059 of Río Negro, [12/01/97] B.O., art. 1.

¹⁰⁵ "Adolescent Fertility" is understood to mean the fertility of women younger than 20, with a distinction between early fertility (ages 10 to 14) and late fertility (ages 15 to 19).

¹⁰⁶ It is important to note that the decrease is due to a decline in late fertility (76.8 in 1980 to 60.6 in 1995), given that early fertility remained constant and even rose in some provinces (2.2 in 1980 to 2.5 in 1995). See Gogna et al., *supra* note 22, at 335.

¹⁰⁷ If regional disparities and the socio-economic status of adolescents are incorporated into the analysis, we can see that while in the city of Buenos Aires the rate of adolescent fertility is similar to that of European countries (14.2 per thousand), in Chubut, Formosa, Misiones, Río Negro, and Salta, the rates are similar to those of low-income Latin American countries (more than 50 per thousand). See Bianco, *Contributions to Health*, *supra* note 21, at 4.

¹⁰⁸ See Ramos, *supra* note 39, at 99.

¹⁰⁹ See *id.*

¹¹⁰ See *id.*

-
- ¹¹¹ See STATISTICAL ANNUAL, *supra* note 25.
- ¹¹² See Bianco, Contributions to Health, *supra* note 21, at 5.
- ¹¹³ 52nd Sess. Report of the Human Rights Committee, *supra* note 7, ¶ 167.
- ¹¹⁴ *Id.*
- ¹¹⁵ *Id.* ¶ 431.
- ¹¹⁶ *Id.*
- ¹¹⁷ Concluding Observations of the Human Rights Committee: Chile, *supra* note 6, ¶ 18.
- ¹¹⁸ *Id.*
- ¹¹⁹ See *id.*, ¶ 13.
- ¹²⁰ Law No. 25.087, Apr. 14, 1999, B.O., art., ¶ 18.
- ¹²¹ CÓD. PEN. art. 119, ¶ 1.
- ¹²² *Id.* art. 2, ¶ 3. This amendment ends with a debate between legal scholarship and case law on the legal classification of oral sex. The law expands the definition of rape, which goes beyond violent penetration either vaginally or orally.
- ¹²³ In effect, punishment by imprisonment increases from eight to 20 years if the rape results in serious injury to the physical or mental health of the victim; if the act was committed by an older relative, a descendant, a direct relative, guardian, trustee, minister of any religion, any person responsible for education or guardianship; if the perpetrator knew that he or she was a carrier of a sexually transmissible infection and was aware of the danger of contagion; if the act was committed by two or more persons or with weapons; or by personnel of the security or police forces while on duty; or was committed against a minor younger than 18 by taking advantage of a preexisting condition of living with the victim. *Id.* art. 119, ¶ 3, a-f.
- ¹²⁴ The Code specifies imprisonment of three to six years for any person who commits any of the acts classified under offenses against the sexual integrity of a minor younger than 16, by taking advantage of the victim's sexual immaturity in relation to the age of the perpetrator, his or her rank in relation to the victim or other equal circumstance, provided that the offense is not one subject to more severe punishment. *Id.* art. 120.
- ¹²⁵ See *id.*, art. 132.
- ¹²⁶ See CENTRO DE ENCUENTROS CULTURA Y MUJER, LA CONSULTA MÉDICA EN LOS CASOS DE VIOLACIÓN 11 (1997).
- ¹²⁷ Bearing in mind that it is estimated that only 10% of the cases are reported, there would be 60,000 cases of sexual offenses per year, or 16 cases daily. See *id.*
- ¹²⁸ See *id.*
- ¹²⁹ See Interview by Centro de Encuentros Cultura y Mujer with Gloria Schuster, Instituto Social y Político de la Mujer, via electronic mail, July 10, 2000, *cited in* IGDD, Shadow report draft, *supra* note 18, at 14.
- ¹³⁰ CÓD. PEN. art. 119.
- ¹³¹ *Id.*
- ¹³² Law No. 20.744, May 13, 1976, [21/05/76] B.O.
- ¹³³ Buenos Aires, Ordinance 47.506, (B.M. Jan. 17, 1994), AD 230-57, *cited in* IGDD, Shadow report draft, *supra* note 18, at 16.
- ¹³⁴ Law No. 24.417, Dec. 28, 1994, [03/01/95] B.O.
- ¹³⁵ *Id.*, art. 1.
- ¹³⁶ *Id.*
- ¹³⁷ *Id.*, art. 4. See also IGDD, Shadow report draft, *supra* note 18, at 14, *citing* COMITÉ DE AMÉRICA LATINA Y EL CARIBE PARA LA DEFENSA DE LOS DERECHOS DE LA MUJER (CLADEM), CUESTIÓN DE VIDA: BALANCE REGIONAL Y DESAFÍOS SOBRE EL DERECHO DE LAS MUJERES A UNA VIDA LIBRE DE VIOLENCIA 114 (2000) [hereinafter QUESTION OF LIFE].
- ¹³⁸ Law No. 24.417, Dec. 28, 1994, [03/01/95] B.O., art. 5.
- ¹³⁹ QUESTIONS OF LIFE, *supra* note 138, at 117.
- ¹⁴⁰ Law No. 24.417, Dec. 28, 1994, [03/01/95] B.O., art. 7.
- ¹⁴¹ Decree 235/90 of Buenos Aires, [07/03/96] B.O., art. 1.
- ¹⁴² See Consejo Nacional de la Mujer, *Estadística/ Violencia*, (cited from Instituto Social y Político de la Mujer), <http://www.cnm.gov.ar> (last visited on July 1, 1999), *cited in* IGDD, Shadow report draft, *supra* note 18, at 15.

¹⁴³ See Alba Piotto, *Capital: cada vez hay más mujeres golpeadas*, CLARÍN DIGITAL, March 1, 2000, <http://www.ar.clarin.com/diario/2000-03-01/e-03601d.htm>, (last visited Nov. 9, 2000).

¹⁴⁴ See *id.*

¹⁴⁵ See QUESTIONS OF LIFE, *supra* note 138, at 117, *citing* debate of the Commission for Revision of the Domestic Violence Law, Meeting of the Women's Program of the Ministry of Justice of Argentina.

¹⁴⁶ See *id.*

¹⁴⁷ See EQUIPO DE SEGUIMIENTO, INVESTIGACIÓN Y PROPUESTA DE POLÍTICAS (ESIPP), CONSTRUYENDO CIUDADANÍA, ESTRATEGIAS DE SEGUIMIENTO DE LOS COMPROMISOS DE EL CAIRO, COPENHAGEN Y BEIJING 24 (1997).

¹⁴⁸ See *id.*

¹⁴⁹ MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 4, at 113.

¹⁵⁰ *Concluding Observations of the Human Rights Committee: Chile*, *supra* note 6, ¶ 21.

¹⁵¹ *Id.*, ¶ 16.

¹⁵² *Concluding Observations of the Human Rights Committee: Peru*, 58th Sess., 1547-1548th mtg. ¶ 14, U.N. Doc. CCPR/C/79/Add.72 (1996).

¹⁵³ 52nd Sess. Report of the Human Rights Committee, *supra* note 7, ¶ 161.

¹⁵⁴ MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 4, at 113.

¹⁵⁵ *Concluding Observations of the Human Rights Committee: Chile*, *supra* note 6, ¶ 17.

¹⁵⁶ CÓD.CIV. art. 198.

¹⁵⁷ *Id.*, arts. 199-200.

¹⁵⁸ *Id.*, art. 1276.

¹⁵⁹ *Id.*, art 259.

¹⁶⁰ *Id.*, art 940.

¹⁶¹ See Law No. 23.226, Sept. 13, 1985, [02/10/85] B.O., *cited in* CRLP & DEMUS, *supra* note 10, at 36.

¹⁶² See *id.*

¹⁶³ See Law No. 23.746, Oct. 24, 1989, B.O., *cited in* CRLP & DEMUS, *supra* note 10, at 36.

¹⁶⁴ See Facultad Latinoamericana de Ciencias Sociales, *Situación conyugal*, www.eurosur.org/FLACSO/mujeres/argentina/demo-6.htm (visited Aug. 7, 2000) [hereinafter FLACSO].

¹⁶⁵ See *id.*

¹⁶⁶ See *id.*

¹⁶⁷ See CÓD. CIV. art. 940.

¹⁶⁸ See *id.* art. 1276.

¹⁶⁹ See in general Law No. 23.515, June 3, 1987, B.O. The law also establishes adultery as grounds for separation and divorce. *Id.*, art. 214, ¶ 1.

¹⁷⁰ *Id.* art. 206.

¹⁷¹ *Id.* art. 207.

¹⁷² *Id.* art. 209.

¹⁷³ *Id.* art. 206.

¹⁷⁴ Law No. 23.264, Sept. 25, 1985, B.O., art. 264.

¹⁷⁵ *Id.* ¶ 2.

¹⁷⁶ *Id.*

¹⁷⁷ This registry, after a judge's ruling, includes men and women who owe three or more consecutive support payments to their children and those who owe five *nonconsecutive* payments. This law is intended to cause "social disapproval" for those who do not pay, so they will feel compelled to pay. However, it has a limited reach not only because it is restricted to the capital city, but also because it applies primarily to debtors with resources. GABRIEL RECHES, *Una nueva ley para proteger a los hijos de divorciados*, CLARÍN DIGITAL, Nov. 12, 1999, <http://www.ar.clarin.com/diario/99-11-12/e-03601d.htm> (last visited Nov. 9, 2000).

¹⁷⁸ See *Por alimentos, 2 juicios diarios*, CLARÍN DIGITAL, Nov. 12, 1999, <http://www.ar.clarin.com/diario/99-11-12/e-03705d.htm> (last visited Nov. 9, 2000).

¹⁷⁹ Among women heads of household, 8% are younger than 30, 11% are between 30 and 39. Most women heads of household are over 40, 17% are between 40 and 49, 19% are between 50 and 59, and almost half are over 59. We note among women heads of household the high percentage of widows, who represent about half

of households headed by women; almost one-fourth are separated or divorced and 21% are single. Those women heads of household who are married or living with a partner account for little more than 10%. See SUBSECRETARÍA DE LA MUJER, MINISTERIO DE RELACIONES EXTERIORES, COMERCIO INTERNACIONAL Y CULTO, *Mujeres y Trabajo en la Argentina—Población Urbana Octubre 1997*, 79-80, <http://www.mujer.gov.ar/entrar.htm> (last visited Feb. 26, 2001) [hereinafter *Women and Work in Argentina*].

¹⁸⁰ See *id.* at 89.

¹⁸¹ CÓD. CIV. art. 166, ¶ 5.

¹⁸² *Id.* art. 167.

¹⁸³ *Id.*

¹⁸⁴ See FLACSO, *supra* note 165.

¹⁸⁵ See *id.*

¹⁸⁶ See *id.*

¹⁸⁷ *Report of the Human Rights Committee*, 51st Sess. ¶ 158, U.N. Doc. A/51/40 (1996) [hereinafter *51st Sess. Report of the Human Rights Committee*].

¹⁸⁸ *52nd Sess. Report of the Human Rights Committee*, *supra* note 7, ¶ 300.

¹⁸⁹ *51st Sess. Report of the Human Rights Committee*, *supra* note 188, ¶ 166.

¹⁹⁰ See CONSTITUCIÓN ARGENTINA [CONST. ARG.] art 17, *cited in* IGDD, *Women of the World Update*, *supra* note 40, at 1-5, 19, 42.

¹⁹¹ See Informe presentado por la Delegación del Gobierno Argentino ante el Comité para la Eliminación de Discriminación contra la Mujer (CEDAW), 17th Sess., 40 (July 22, 1997) (Report presented before the Committee on the Elimination of Discrimination Against Women by the Argentine Government Delegation, on file with CRLP).

¹⁹² See *id.* at 26.

¹⁹³ See *id.* at 39.

¹⁹⁴ See *id.*

¹⁹⁵ It is interesting to note that women comprise only 109,600 out of a total of 615,796 university students in Argentina, but at the National Technological University 25,500 out of 55,748 students are women. See CONSEJO NACIONAL DE LA MUJER, 13 (LA) REVISTA, CONSEJO NACIONAL DE LA MUJER, 77 (1999), *citing* 1991 statistics from the Instituto Nacional de Estadística y Censos.

¹⁹⁶ See *id.*

¹⁹⁷ See *id.*

¹⁹⁸ See *id.*

¹⁹⁹ Law No. 24.195, Apr. 29, 1993, [05/05/93] B.O.

²⁰⁰ The law requires that sex education must be given starting with preschool. Upon beginning middle-level education, counseling and information on the prevention of unwanted pregnancies and STIs are included, as well as the services of the public assistance centers to which pupils may turn. Law No. 3.059 of Río Negro, [12/01/97] B.O.

²⁰¹ Law No. 8.535 of Córdoba, [09/08/96] B.O., *cited in* IGDD, *Women of the World Update*, *supra* note 40, at 49. The most conservative sectors and the Catholic Church support the need for parental authorization for education and access to services in matters of reproductive and sexual health. During the most recent debate over approval of the reproductive law for Buenos Aires (cited A. 1.), these sectors argued that parental rights were being violated if the law gave minors access to information and services. As Mabel Bianco has said, "It is good that there are parents who want to be involved in the sexual and reproductive health of their children ... but, not all families are safe places and thus it is the government that has to monitor the sexual and reproductive health of the population." *¿Por qué es importante esta ley?*, PÁGINA 12, June 23, 2000, (interview with Mabel Bianco on the occasion of the approval of the Reproductive Health Law of the city of Buenos Aires), <http://www.pagina12.com.ar/2000/00-06/00-06-23/pag03.htm>, (last visited Aug. 10, 2000).

²⁰² This conflict occurred at the Instituto Santa Isabel, a religious school in Formosa, where a pregnant adolescent was expelled, bringing the problem of pregnant adolescents into the public eye. The student appealed for protection [*amparo*] based on discrimination, whereby the Superior Tribunal of Justice of Formosa compelled the school to register and allow the return of the student. There is also another case that reached the courts and the press. In 1990 in Buenos Aires, a 17-year-old pregnant student was expelled by a private school. It is important to bear in mind that there have been no cases of expulsion in the public schools.

See Eduardo Videla, *Las monjas perdieron su batalla contra una estudiante embarazada*, PÁGINA 12, April 12, 2000, <http://www.pagina12.com.ar/2000/00-04/00-04-12/pag16.htm> (last visited Jan. 24, 2001).

²⁰³ Adriana Puigross, doctor of education and a deputy of the Alliance Party, believes there is an "urgent" need for Argentine law "to protect" these girls. "Middle schools must begin to look at this issue not as an isolated case but as an actual problem." Mariana Carbajal, *Para evitar la exclusión*, PÁGINA 12, Apr. 15, 2000, <http://www.pagina12.com.ar/2000/00-04/00-04-15/pag17.htm> (last visited Jan. 24, 2001).

²⁰⁴ 51st Sess. Report of the Human Rights Committee, *supra* note 188, ¶ 318.

²⁰⁵ See *id.*, ¶ 335.

²⁰⁶ *Id.*, ¶ 195.

²⁰⁷ Cód. Civ. art. 1277.

²⁰⁸ CONST. ARG., art. 14.

²⁰⁹ *Id.*

²¹⁰ Law No. 20.744, May 13, 1976, [21/05/76] B.O., art. 17.

²¹¹ *Id.* art. 172.

²¹² *Id.* art. 181.

²¹³ Law No. 25.013, Sept. 22, 1998, [24/09/98] B.O.

²¹⁴ The law also would include nationality, sexual orientation, ideology, and trade union or political opinion. These terms were noted in a partial veto by the Executive Branch, which stated in the whereas clauses of the decree that it was excessive to include other definitions in this regime that were different from those contemplated by the authority introducing the bill without furnishing an explanation in that regard. *Id.*

²¹⁵ Decree No. 254/98 of Buenos Aires, Mar. 9, 1998, B.O.

²¹⁶ Law No. 20.744, May 13, 1976, [21/05/76] B.O., art. 177.

²¹⁷ *Id.* art. 178.

²¹⁸ *Id.* art. 179.

²¹⁹ The deputies asserted that this would correct the "pseudo-privilege" granted to women. They say preferential leaves of absence work against women because at the time of hiring, companies believe that hiring a man assures lower costs. The bill also aims to make the installation of child care facilities mandatory in establishments with more than 40 workers of any sex (currently the law requires it when more than 40 of the workers are women).

²²⁰ 42.6% of the active population is concentrated in urban areas. See SISTEMA DE INFORMACIÓN, MONITOREO Y EVALUACIÓN, MINISTERIO DE DESARROLLO SOCIAL Y MEDIO AMBIENTE, (based on data from the Instituto Nacional de Estadística y Censos) 2000, www.siempro.org.ar/apps/sisco/gen, (updated Oct. 1999, only for urban areas in Argentina) (last visited July 6, 2000), *cited in* IGDD, Shadow report draft, *supra* note 18, at 24.

²²¹ See *id.*

²²² See *id.*

²²³ See *Women and Work in Argentina*, *supra* note 180, at 5. These data consider the economically active urban population in 1997

²²⁴ See *id.* at 3.

²²⁵ See *id.* at 4-5.

²²⁶ See *id.* at 44, 52.