

SITUATION OF ABORTION IN ARGENTINA

Dear Committee Experts,

This report has been produced by *Abogados y Abogadas del NOA en Derechos Humanos y Estudios Sociales (ANDHES)*, *Asociación Católica por el Derecho a Decidir- Argentina (CDD)*, *Asociación Lola Mora*, *Centro de Estudios de Estado y Sociedad (CEDES)*, *Centro de Estudios Legales y Sociales (CELS)*, *Centro de la Mujer (CEDEM)*, *Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM)*, *Equipo Latinoamericano de Justicia y Género (ELA)*, *Fundación para Estudio e Investigación de la Mujer (FEIM)*, *Instituto de Género, Derecho y Desarrollo (INSGENAR)*, *Lesbianas y Feministas por la descriminalización del aborto*, *Mujeres por Mujeres*, *Mujeres Trabajando*, *Mujeres Autoconvocadas de Trelew*, *Secretaría de Género de Encuentro por la Democracia y la Equidad CABA (Nuevo Encuentro)* and the Gender-Based Violence Observatory under the Buenos Aires Province Ombudsman's Office).

The purpose of this submission is to present information on the situation in terms of access to abortion in Argentina to the United Nations Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee). We hope this information will be useful in assessing the Argentinean State's compliance with its obligations under the CEDAW Convention.

The report includes suggestions, questions and recommendations around each of the issues raised, in the hope that they will be taken into account by the Committee during the country review planned for its 65th session as well as at the time of issuing its Concluding Observations on Argentina.

I. The situation of abortion in Argentina¹

Abortion in Argentina: Legal Framework

Since 1921, Article 86 of the National Penal Code establishes exceptions for criminalizing abortion: a) when the woman's life is at risk; b) when the woman's health is in danger; c) in case of rape; d) in case of moral outrage against an "idiot or demented" woman. On March 13, 2012, the National Supreme Court of Justice (CSJN in Spanish) issued a landmark verdict for women's health and life in the case *F.A.L. on self-satisfying measure*^{2,3}. To put an end to the practice of bringing to Court, hindering and/or delaying access to the right to a non-punishable abortion, the Court reaffirmed in that verdict women's right to interrupt their pregnancies under all circumstances allowed by the law, that is, when her life or health are at risk or when the pregnancy is the product of rape, regardless of her intellectual or psychosocial capacity. The Court called for judicial officials in all jurisdictions to abstain from initiating legal procedures around access to legal abortion. And, finally, it urged national, provincial and Buenos Aires city authorities to implement and make operational through the highest level legal norms, hospital protocols to eliminate all barriers restricting access to medical services and also established different guidelines that the protocols must take into account.⁴

In June 2015, the National Ministry of Health published on its webpage a new "Protocol for Comprehensive Care of Persons Entitled to Legally Interrupt A Pregnancy".⁵ This Protocol is a revision and update of the medical, bioethical and legal information provided by the 2010 Technical Guide.⁶ Even though the new Protocol establishes that "it is mandatory to implement this Protocol in the entire Argentinean territory and by all health facilities, both public and privately owned", **reality shows that the document lacks the status of a Ministerial resolution just like its previous iterations of 2007 and 2010, and is not accompanied by a robust strategy to make it widely known and applied by federal authorities.** It was not available at the Ministry webpage during the entire month of September and it was put back online only after strong mobilization by women's groups.

Along the same lines, almost four years after the CSJN verdict mentioned above, only 9 of the country's 24 jurisdictions have care protocols for non-punishable abortions that follow the guidelines set by the Court.⁷ Eight jurisdictions approved protocols with requirements that rather than enabling, hinder women's access to safe abortion services to which they are entitled,⁸ and

¹The Committee referred to this in its 2010 Concluding Observations on Argentina. CEDAW Committee, CEDAW/C/ARG/CO/6, August 16 2010, paragraphs 37 and 38

²In Argentinean procedural law, a self-satisfying measure is a type of urgent appeal made to a Court that, if granted, will resolve the situation causing it and will not require further action by the Court.

³CSJN, Caso "F. A. L. s/ Medida autosatisfactiva", F. 259. XLVI, verdict issued on March 13 2012.

⁴Guidelines include the obligation to guarantee access to information and confidentiality; to avoid unnecessary delays; to not demand Court permission or a police report in case of rape but only an affidavit; that conscientious objection can only be expressed at the moment when the institution starts implementing the protocols or when it starts its activities in the case of new facilities; and punishment for health professionals hindering or stopping access to the procedure.

⁵Available at (in Spanish): <http://www.msal.gov.ar/images/stories/bes/graficos/0000000690cnt-Protocolo%20ILE%20Web.pdf>

⁶This new version has some remarkable changes such as the use of simple language and substituting the expression "non-punishable abortion" by "legal interruption of pregnancy". It also mainstreams a gender approach by including trans men among those rights-holders that might be in need of the procedure, in line with the national Gender Identity Law (Law 26743). It makes specific references to the grounds on which abortion is legal (on the grounds of health and of rape); incorporates the latest scientific and legal advances on the issue including the World Health Organization recommendations and the Supreme Court "F.A.L." decision, among others.

⁷These provinces are Chaco, Chubut, Jujuy, La Rioja, Misiones, Río Negro, Santa Cruz, Santa Fe and Tierra del Fuego.

⁸Ciudad de Buenos Aires, Córdoba, Entre Ríos, La Pampa, Neuquén, Buenos Aires and Salta.

nine others have no protocol whatsoever as yet.⁹That is, **more than half of the country's jurisdictions still lack norms effectively guaranteeing that women can exercise a right granted to them since 1921.**

Barriers to access legal abortion

In spite of its legal framework, the reality of Argentina is much closer to that of legal contexts in which abortion is forbidden under all circumstances.

Throughout the years, legal abortion has been practically inaccessible to thousands of women, adolescents and girls living in Argentina, violating their rights to privacy, to health, to live free from cruel, inhuman and degrading treatment, to not be subjected to discrimination and, in some cases, even to their right to life.

The obstacles faced by women and girls to exercise their rights are many and varied: abusive use of conscientious objection by health practitioners; excessively taking to the Courts a health procedure in order to delay and hinder abortions; delaying requirements included in protocols issued to implement the CSJN's verdict,¹⁰ but that do not meet its standards; discriminatory health systems that expel women and girls through condemnatory remarks by hospital staff, bad faith on the part of health providers and public officers; violating confidentiality; harassment and persecution of women and girls; the Church's influence on national and local governments; lack of explicit legal recognition of the health procedures required for non-punishable abortions as an essential component of health services. All these are dilatory strategies that operate against the right to legal abortion and subject women and girls to institutional violence.

In recent months there have been some initiatives that raise the alarm about possible setbacks as they constitute attempts to restrict access to legal abortion services. Just to provide one example, in late November 2015 in Santa Fe province an appeal was submitted to local Courts demanding that the "Protocol for Comprehensive Care of Persons Entitled to Legally Interrupt A Pregnancy" be declared unconstitutional and inapplicable as it was considered a violation of the unborn person's 'right to life' and of the right to freedom of conscience.¹¹ Also, at the same time in Entre Ríos province, a bill seeking to forbid the practice of abortion in the province was submitted (and it even got a positive vote at the provincial Senate Health committee but then was withdrawn).¹²

In April 2011, the UN Human Rights Committee had condemned Argentina on the "LMR" case¹³ for illegitimate Court interference in LMR's life with her right to abortion unnecessarily taken to Court. This expelled her from the public health system and she was forced to resort to the clandestine circuit in order to interrupt her pregnancy, risking her life and health in the process. The Committee found that the State had violated her right to be free from cruel, inhuman and degrading treatment and from torture, along with her rights to privacy and to access to justice. Finally, the State acknowledged its international responsibility, a reparations event took place in

⁹Catamarca, Corrientes, Formosa, Mendoza, San Juan, San Luis, Santiago del Estero and Tucumán.

¹⁰ADC, *Acceso al aborto no punible en la Argentina. Estado de situación*, March 2015.

¹¹See the following media clips (in Spanish): "Presentan amparo contra el aborto en santa fe y piden su inconstitucionalidad", November 30, 2015, available at <http://www.unosantafe.com.ar/santafe/presentan-amparo-contra-el-aborto-en-santa-fe-y-piden-su-inconstitucionalidad-20151130-0040.html> or "Amparo para declarar la inconstitucionalidad del protocolo de aborto", December 1, 2015, available at <http://www.aica.org/20990-amparo-para-declarar-la-inconstitucionalidad-del-protocolo-de-aborto.html>

¹²"El Senado trataría el polémico proyecto que prohíbe los abortos en Entre Ríos", December 2, 2015, available at: <http://www.aimdigital.com.ar/2015/12/02/el-senado-trataria-la-polemica-ley-que-prohibe-los-abortos-en-entre-rios/>; "Quieren prohibir el aborto en Entre Ríos", December 2, 2015, available at: http://www.apfdigital.com.ar/despachos.asp?cod_des=262620&ID_Seccion=21.

¹³ Human Rights Committee, "L.M.R. vs Argentina", CCPR/C/101/D/1608/2007.

2014 and LMR was granted financial compensation in 2015.¹⁴ However, **the conditions leading to this case to be taken to the Human Rights Committee have not yet changed**, as we will see below through some examples from different parts of the country.

In October 2012, a Buenos Aires City Court stopped a 32 year old woman who had been a victim of trafficking from accessing legal and safe abortion services. This case reached the CSJN that revoked the decision of the lower Court and finally the woman was able to undergo the procedure.¹⁵ Two similar cases took place in 2013 in Tucumán Province, involving a 13¹⁶ and a 16 year old¹⁷ girl, both of whom had been raped.¹⁸ Still another case was documented in Salta Province, also involving a legal minor girl who was denied the legal abortion she was entitled to by the Court and by health providers.¹⁹ This year (2016) a 28 year old woman in the 15th week of pregnancy learnt that **the foetus was anencephalic and anacraneal**, completely unable to survive outside the uterus. This young woman was entitled to a legal abortion but she only received denials, misinformation, attempts to dissuade her, cruel treatment and accusations by health practitioners in the two public hospitals with maternity services that Tucuman Province has (*Hospital del Este* and *Maternidad Nuestra Señora de las Mercedes*).

In Trelew, capital of Chubut Province, during 2015 a group of 10 women patients and 5 professionals (medical doctors and psychologists) sued the city's maternal and child health department for direct and indirect torture perpetrated against them during the process leading to and the actual performance of legal abortions. The women patients had been harassed by the hospital authorities, subjected to unnecessary delays that took entire weeks and to surgical abortions without anaesthetics. The medical doctors and psychologists authorizing the legal abortion procedures had been formally and informally punished and publicly exposed as criminals, while also being forced to witness how their patients suffered. This case has been pending for more than one year before the Federal Provincial Court with no significant movement. The National Council of Women has been asked to intervene but this has not yet been authorized.

In Salta Province, a *Wichi* (Indigenous) 12 year old girl had a caesarean delivery of an anencephalic foetus from the alleged rape perpetrated by eight *criollo* (non-Indigenous) men in the ancestral land that her community is claiming. The girl underwent almost seven months of pregnancy, risking her life and health, without access to the necessary care or to information about her right to access legal abortion. Representatives from the different public powers that could have acted on this case showed delayed responses due to strong media pressure.²⁰

¹⁴ See: <http://www.pagina12.com.ar/diario/sociedad/3-261711-2014-12-11.html> and <https://insgenar.wordpress.com/2014/12/11/pedido-de-perdon-a-lmr/>

¹⁵ This case is described and analysed in Hopp, Cecilia: El caso "pro familia": militancias y resistencias en torno al aborto legal. Available at: <http://www.pensamientopenal.com.ar/system/files/2014/12/doctrina39268.pdf>

¹⁶ This case was taken to Court. See <http://www.lanacion.com.ar/1924949-aborto-ilegal-una-practica-insegura-no-la-molestaran> and <http://www.lagaceta.com.ar/nota/635724/policiales/violaron-cuando-tenia-10-anos-fue-mama-sur-tucumano.html/>

¹⁷ In 2013, a 16 year old adolescent was not able to access legal interruption of her pregnancy even though it was contemplated in the law under the grounds of rape. At *Maternidad Nuestra Señora de la Merced* the staff not only refused to conduct the procedure but also took it to Court, violating the patient's confidentiality. The adolescent was not able to access the care she needed at any health facility in Tucuman and had to travel 1200 kilometres to Buenos Aires City where she was served by the Adolescent Health Service at (public) Hospital Argerich. Página 12: "Una adolescente sin derechos" (11 de Noviembre de 2013) <http://www.pagina12.com.ar/diario/elpais/1-233329-2013-11-11.html>

¹⁸ See information at <http://www.pagina12.com.ar/diario/elpais/1-233329-2013-11-11.html>

¹⁹ See information at <http://www.lanacion.com.ar/1648079-en-salta-impiden-a-una-nina-un-aborto-no-punible>

²⁰ See information at <http://www.pagina12.com.ar/diario/suplementos/las12/13-10633-2016-06-11.html>; <http://www.enredando.org.ar/2016/06/10/declaracion-ante-la-vulneracion-de-derechos-sobre-juana-nina-de-la-comunidad-wichi-en->

Abusive and arbitrary recourse to conscientious objection in sexual and reproductive health has constituted an illegitimate barrier to access legal abortion services in Argentina.²¹ In Buenos Aires province, doctors from *Hospital Mariano y Luciano de la Vegain* Moreno district refused to perform a legal abortion on a 13 year old girl who had been raped by her stepfather and was in a delicate state of health. The entire staff declared themselves conscientious objectors. Finally the girl was able to have a medical interruption of her pregnancy at a private practice and was provided medical follow-up in a public hospital located outside the Buenos Aires Province thanks to the support of local women's organizations who are members of the National Campaign for the Right to Legal, Safe and Free Abortion.²² In Cordoba province, a couple demanded that the Court recognized the right of M.C.E. to interrupt her pregnancy as she was carrying an anencephalic foetus. The victims had to resort to the Court after the doctors who were serving her and the entire clinic in which they worked refused to carry out the procedure on the basis of their **conscientious objection** as an institution. A provincial judge condoned this, allowing the "institutional **conscientious objection**".²³

The effects of criminalization of abortion

As we showed in the previous section, the criminalization of abortion has a negative impact on access to legal abortion. In a recent report, the UN Special Rapporteur on the right to health analysed the impact of laws punishing or otherwise restricting abortion – for instance, when certain behaviours during pregnancy are punished, when access to contraceptive and family planning methods is restricted, information is denied, and education on sexual and reproductive health is not provided. The Rapporteur pointed out that these restrictions are of a discriminatory nature and violate the right to health as they limit access to quality assets, services and information.²⁴ He added that "Criminalization generates and perpetuates stigma; restricts women's ability to make full use of available sexual and reproductive health-care goods, services and information; denies their full participation in society; and distorts perceptions among health-care professionals which, as a consequence, can hinder their access to health-care services."²⁵

In Tierra del Fuego Province a young woman in a very vulnerable situation and a victim of gender-based violence faced a legal process that lasted six years for having undergone an abortion with a *curandera* (healer) in an impoverished neighbourhood of the provincial capital. The lack of access to legal abortion forced her to go underground, risking her health and life, to then be subjected to legal persecution for having exercised what should have been her right. This happens in spite of the fact that a minimum obligation for States that have ratified CEDAW is to decriminalize abortion and to guarantee that women can access abortion services at least when their lives or health are at risk, when the pregnancy is the product of rape or incest or when the foetus has a serious malformation.²⁶ Thanks to the *amici curiae* interposed by different human rights bodies this young woman was finally acquitted.²⁷

[salta/;](http://www.infobae.com/2016/06/03/1815949-interrumpen-el-embarazo-una-nina-wichi-victima-una-violacion-colectiva-salta/) [https://notas.org.ar/2016/06/08/justicia-inaccion-embarazo-nina-wichi-violada/;](https://notas.org.ar/2016/06/08/justicia-inaccion-embarazo-nina-wichi-violada/)
<http://www.infobae.com/2016/06/03/1815949-interrumpen-el-embarazo-una-nina-wichi-victima-una-violacion-colectiva-salta/>

21 Sonia Ariza Navarrete, Resistencias al acceso al aborto no punible: la objeción de conciencia. Revista Derecho Penal. Año I Nº 2 Ediciones Infojus.

22. Information available at <http://www.abortolegal.com.ar/?p=2172> y <http://www.telam.com.ar/notas/201404/61237-la-directora-del-hospital-reafirma-que-un-aborto-pone-en-riesgo-la-vida-de-la-nena-violada.html>

23 ADC, 2015 op.cit. Page 37

24 Special Rapporteur of the Human Rights Council on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, A/66/254, 3 August 2011, para. 25

25 Special Rapporteur, 2011, op.cit., para. 17

26 CEDAW, Concluding Observation on the Combined Third to Seventh Reports by Senegal, July 2015, available at

Recently, another case became public and made evident how criminal law interferes with women's sexual and reproductive lives. Belén²⁸, a 25 year old woman, was deprived of her freedom for more than two years in Tucuman Province, north of Argentina, after having a miscarriage in a public hospital, as documented in her medical records. Doctors and police violated her right to privacy, accused her unfairly and abused her. In the early hours of March 21, 2014, Belén went to the emergency services of Hospital de Clínicas Avellaneda in the city of San Miguel de Tucumán because she had abdominal pain. She was referred to the Gynaecology ward because she was bleeding profusely. The doctors told her she was miscarrying a foetus of approximately 22 weeks. Belén did not know she was pregnant. After being treated in a degrading way by health practitioners, she was reported to the police guarding the hospital in what constitutes a clear violation of confidentiality protecting the doctor-client relationship.²⁹ Belén went to a public hospital asking for help but she was abused, criminally accused and deprived of her liberty from that very moment. First, she was charged for abortion followed by homicide, a non-existent crime. The Prosecutor then changed it to "homicide doubly aggravated because of the relationship to the victim and with malice", punished with up to 25 years of imprisonment. Belén spent more than 2 years in preventive arrest. On April 19, 2016, she was condemned to 8 years of imprisonment after a trial in which her rights were violated from the very beginning, as she was never heard. On May 12, 2016, the Court refused the release request submitted by Belén's defence. On April 15, the Provincial Supreme Court Justice decided on her release understanding that there was no reason to extend her arrest. **However, no final decision has been made yet and the matter is still under review.**³⁰

On July 15, 2016, the UN Human Rights Committee issued its Concluding Observations after the 5th Periodic Review of Argentina on State compliance with obligations acquired after ratifying the International Covenant on Civil and Political Rights. After expressing its concern about the lack of implementation of access to legal abortions,³¹ the Committee refers directly to the case of Belén and urges Argentina to **"review the Belén case in light of relevant international standards, with a view to her prompt release"**.³²

Some years ago, in 2012, in the same province another woman (known as 'María Magdalena') came to the hospital with an abortion in progress. The doctors called the police into the delivery room, performed the surgery without anaesthesia and applying the same logic as in the Belén case, pressed charged against María Magdalena for abortion. This case is now before the National

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSEN%2fCO%2f3-7&Lang=en

²⁷ On this case, see the report by newspaper Página 12: <http://www.pagina12.com.ar/diario/sociedad/3-299868-2016-05-21.html>

²⁸ The victim has requested that a pseudonym is used. See more information at <http://www.amnistia.org.ar/rau/argentina3>; <http://www.pagina12.com.ar/diario/suplementos/las12/13-10537-2016-04-29.html>; <http://www.pagina12.com.ar/diario/sociedad/3-298129-2016-04-29.html>

²⁹ In its General Recommendations No. 24 and 33, the CEDAW Committee already warned on the link between respecting women's right to privacy in terms of abortion and women's health: "While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence". It also addressed the role of the justice system in this regard, understanding that "The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and of their legal responsibility when they violate the law". That is, **punishing those hindering or violating women's confidentiality** that places their lives at risk by action or by omission.

³⁰ See more information at <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=2107>

³¹ UN, Human Rights Committee, Concluding Observations on Argentina 5th Periodic Report, para. 12, ICCPR/C/ARG/CO/5, July 15 2016.

³² UN, Human Rights Committee, Concluding Observations on Argentina 5th Periodic Report, para. 12, ICCPR/C/ARG/CO/5, July 15 2016. Bold ours.

Supreme Court of Justice to investigate the responsibility of the doctors for violating confidentiality and for the violence perpetrated against the patient.³³

In different jurisdictions across the country, similar cases have been documented and there are also initiatives encouraging health professionals to report women seeking health services in violation of national and international jurisprudence on the matter.³⁴ In Buenos Aires Province, the provincial Ombudsman through its Gender-Based Violence Observatory, submitted a contribution to the Provincial Supreme Court of Justice towards setting up guidelines for annulling criminal investigations originating from reports by health professionals that violate confidentiality.

Lack of access to medicines³⁵

Another outcome of criminalization is the fact that it sustains a market mobilizing around US\$ 1 billion a year in clandestine abortions.³⁶ Even though criminal law allows legal abortion on certain grounds, the Supreme Court has recognized the right to abortion in those cases, and the Ministry of Health recommends medical abortion, in Argentina, health authorities have not yet formally endorsed any medicine for abortion even though Misoprostol is recommended in the non-punishable abortion protocol issued by the National Ministry of Health mentioned earlier and also in different legal verdicts.³⁷

Producing and selling *Mifepristone*, one of the medicines that the World Health Organization (WHO) recommends for inducing abortion is not authorized in Argentina. But what is produced and sold is *Misoprostol*, the recommended drug when Mifepristone is not available.³⁸ It is worth mentioning that both are considered "essential medicines" by the WHO as they are not expensive, safe, and culturally acceptable for having safe abortions without hospitalization during the first trimester of pregnancy and with medical follow-up in later stages. In Argentina there is only one lab producing and selling Misoprostol (*Laboratorios Beta*, a national company) combined with *Diclofenac Sodicum* under the commercial name of *Oxaprost*.

Oxaprost is approved by the National Administration of Medicines, Food Products and Medical Technology (ANMAT in Spanish) exclusively for stomach-related treatment, without recognizing its obstetrical uses and can only be sold under very restrictive parameters that make it hard to access. This lab, with the monopoly of production and commercialization, abuses its dominant position

³³ Página 12 "Dos médicas con objeción de Hipócrates". (August 13 2012) <http://www.pagina12.com.ar/diario/sociedad/3-200919-2012-08-13.html>

³⁴ See more information at: <http://www.enredando.org.ar/2016/09/21/el-aborto-es-ilegal-solo-para-las-mujeres-pobres/>, http://www.diarioregistrado.com/conurbano-registrado/grave--denunciaron-a-una-mujer-por-aborto-en-el-hospital-de-pilar-y-queda-demorada_a57c89d67da77603d0f31c817

³⁵ See more information at: <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=2130>

³⁶ Based on a report by civil society organization *Lesbianas y Feministas por la Descriminalización del Aborto* with data from the hotline "Abortion: more information, less risks" that they run. See <http://www.abortoconpastillas.info/>

³⁷ See "Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo" available at <http://www.msal.gov.ar/images/stories/bes/graficos/000000690cnt-Protocolo%20ILE%20Web.pdf> and the "Guía para la atención integral de mujeres que cursan un aborto" available at: <http://www.ms.gba.gov.ar/sitios/tocoginecologia/files/2014/09/Gu%C3%ADa-para-la-atenci%C3%B3n-integral-de-mujeres-que-cursan-un-aborto.pdf>

³⁸ See the WHO's 2012 "Clinical practice handbook for Safe Abortion" at http://apps.who.int/iris/bitstream/10665/97415/1/9789241548717_eng.pdf.

and demands exorbitant prices for this medicine. *Misoprostol* is not included in the Compulsory Medical Plan, that is, the set of medical services and products that private and union-based health providers must cover. This medicine is stigmatized to the point that two provinces have passed dubiously constitutional norms prohibiting the selling of medicines that include Misoprostol except by hospitals and health providers.³⁹

In Argentina, a medicine that has proven to fulfil a key role in lowering the rate of maternal morbidity and mortality in Latin America has been withdrawn from the pharmacies and greater restrictions are imposed on women needing access to it.

Clandestine abortions

It is estimated that between 460,000 and 600,000 clandestine abortions are performed in Argentina every year.⁴⁰ In public hospitals across the country, 53,000 women are checked-in for abortion related causes every year.⁴¹ About 15% are adolescents and girls younger than 20 and about 50% of them are young women between 20 and 29 years old.

In the last 30 years, complications related to unsafe abortion have been the **first cause of maternal mortality (MM)** and have contributed to a third of the total number of maternal deaths.⁴² Statistics for the 2007-2011 period show that 23% of maternal deaths were due to unsafe abortion.⁴³

Maternal mortality figures

Even though Argentina has a low fertility rate, women are exposed to disproportionate risk when getting pregnant: according to the Vital Statistics published by the National Ministry of Health, in 2013, 243 women lost their lives due to pregnancy-related causes.⁴⁴ In 2012, the number was 258.

Maternal deaths due to indirect obstetric causes⁴⁵ constitute 1/4 of all maternal deaths.⁴⁶ This suggests, among other things, that probably many women could not access information, opportunities or the decision to interrupt their pregnancy on health grounds.

Argentina has to also acknowledge that "maternal mortality is often underestimated due to poor medical recording of causes of death in the Statistical Death Report",⁴⁷ so even official figures do not represent all women and girls who have lost their lives.

The Millennium Development Goals (MDGs) that the Argentinean State committed to before the international community established a reduction of the MM rate from 52 women per 100,000 live births (1990) to 13 per 100,000 in 2015. The latest official available data is from 2013 and shows

³⁹ See Law 8116 (2009) from Mendoza Province and Law 8291 (2012) of San Juan Province.

⁴⁰ Ministerio de Salud de la Nación, *Estimación de la magnitud del aborto inducido en Argentina*, Edith Pantelides (Conicet y Cenepp-Centro de Estudios de Población) y Silvia Mario (Instituto Gino Germani), pages 111 and 112. Just like in other Latin American countries, in Argentina there are estimated figures only for the number of abortions induced every year. This estimation was done upon request by the National Ministry of Health using two internationally validated methodologies: the method based on hospital releases due to abortion-related complications and the residual method. With the first method, the number of induced abortions in 2000 was between 372,000 and 447,000 with the abortion vs delivery rate at 0.53-0.64, that is, more than 1 abortion for every 2 births. With the second method, the estimated figure for 2004 was between 486,000 and 522,000 abortions per year.

⁴¹ Dirección de Estadísticas e Información de Salud (DEIS), Ministerio de Salud de la Nación, Egresos de establecimientos oficiales por diagnóstico 2010, December 2012, p. 19.

⁴² Ministerio de Salud de la Nación. Dirección de Estadísticas e Información de Salud. Estadísticas vitales. Información básica 2010. www.deis.gov.ar.

Ministerio de Salud de la Nación. Dirección de Estadísticas e Información de Salud. Estadísticas vitales. Información básica 2010. www.deis.gov.ar.

⁴⁴ DEIS, 2014.

⁴⁵ Women dying out of pathologies aggravated as a result of pregnancy, delivery or puerperium.

⁴⁶ Romero, Ábalos, & Ramos, 2013

⁴⁷ Romero op. cit

that the MM rate was 32 deaths related to pregnancy, delivery and puerperium for every 100,000 live births.⁴⁸ According to data submitted by a UNICEF report in 2015, between 1990 and 2015 Argentina lowered its maternal mortality rate by 17.5%⁴⁹ (instead of the 75% committed to).

No adequate active surveillance system for maternal deaths is being implemented. Some efforts have been made to estimate MM –on the basis of available information through the Vital Statistics System that does not allow for obtaining information in "real time"⁵⁰ and the National System for Epidemiological Surveillance (SINAVE in Spanish)⁵¹ –but only in 2007 were these deaths included among the ones for which notification is mandatory. MM surveillance and analysis have been proposed at the facility, provincial and national levels⁵² but they operate at best in an erratic manner. The National Commission for Maternal Morbi/Mortality Surveillance and Control met for the first time in 2005 and since then has been functioning irregularly.⁵³ The only report available online⁵⁴ produced by this Commission is from 2005. Health professionals who are members of these commissions have not received focused training and do not have a specifically assigned time to perform its duties.⁵⁵

Inequalities within the country show the multiple discrimination faced by women outside urban and more privileged areas. In some provinces, the rate for MM is twice or even thrice the national rate. At present, abortion continues to be the main cause of maternal mortality in more than half of the provinces across the country. Complications due to unsafe abortion are the first cause of individual maternal mortality in 17 out of 24 provinces. In the two provinces in which the leading cause of death are "other reasons directly related to obstetrics", abortion continues to be the second cause.⁵⁶ This situation shows that women living in provinces like Formosa or Chaco are exposed to a disproportionate risk when compared to those in Buenos Aires City, Córdoba or Buenos Aires province.

Information on the practice of legal abortion

The national official record system does not mention all legal abortions performed in the country. These omissions and shortcomings in the national record system have an impact on the quality of health policies required to guarantee access to legal abortion as they make it impossible to have adequate data on potential, actual and effective demand; necessary material and human resources; barriers and hindrances to service provision; problems and standards of quality in service provisions.

Also, the health records produced have limitations arising from the fact that they do not cover certain sections of the health system, as all available health data comes from the public health sector with the exclusion of other systems (pre-paid or union health schemes) that might have very different features and even alter the statistical median.

The yearly report on sexual and reproductive health services provided by the National Ministry of

⁴⁸ DEIS, 2014

⁴⁹ http://www.unicef.org/argentina/spanish/monitoreo_ODM_actualiza.pdf

⁵⁰ The period between the fact and its reporting is between nine months to one year

⁵¹ This is the ongoing and systematic information gathered on specific health issues among populations, its processing, analysis and timely use to see changes in the trend or distribution of health problems and for the use of those in-charge of making decisions about interventions (Ortiz & Esandi, 2010).

⁵² *Comisión Nacional de Vigilancia y Control de la Morbimortalidad Materna* was created in 2002 (Resolution N° 672, Ministerio de Salud de la Nación). A previous Commission had been created in 1996. The new Commission met for the first time in 2005 and since then has been functioning in an irregular way. Ortiz & Esandi, 2010.

⁵³ Ortiz & Esandi, 2010.

⁵⁴ By February 25, 2015.

⁵⁵ Ortiz & Esandi, 2010.

⁵⁶ Romero, Ábalos, & Ramos, 2013

Health that tracks the performance of the National Programme for Sexual Health and Responsible Procreation in all provinces ("Management Report"), contains data on the number and geographical origin of non-punishable abortions reported by local health systems. According to the Management Report 2013, out of 24 jurisdictions, 14 provided data on non-punishable abortions and 12 said that they had not performed this procedure while 4 referred patients to other jurisdictions when identifying cases that did not fall within the grounds on which abortion is non-punishable.⁵⁷

Eighteen provinces reported having at least one health provider performing non-punishable abortion; 6 reported improvements in legal abortion related health care processes and 8 reported problems in accessing materials needed to perform them as well as other kinds of obstacles for the provision of non-punishable or legal abortion services.

Three other provinces reported that they had no non-punishable abortion services at the local level and the remaining ones provided no information in this regard.

Epidemiological data about a particular population is key for planning and evaluating how a health system works. This data is particularly important for populations requiring specific health services. In these cases, identifying the size of the demand and the features of the population, and the available and required services becomes an essential tool to design and improve public health policies.

Access to and production of data

The importance of accessing, producing and recording data with regard to access to legal abortion is related not only to the need to make legal and safe abortion more visible through recording cases but also to assess the design of public policies in general as well as specifically with regard to sexual and reproductive health and for guaranteeing access to legal abortion; to diagnose potential, actual and effective demand for legal abortion; and to review and optimize State measures to improve service provision, to allocate the necessary budget (resources and materials), to define criteria and deploy adequate efforts to face barriers and obstacles in service provision.⁵⁸

As a federal country, in Argentina the federal State and its provincial counterparts are responsible for producing official data on the health system through different systems for compiling and organizing health data. However, as we have stated, in Argentina no data on legal interruption of pregnancy is recorded: the number of legal abortions performed is not known, there are no performance indicators for the provision of legal abortions by the health system. These gaps in registration render invisible the serious inequalities and injustices in conditions to access legal abortion at the provincial/local level and between the public and private health systems in the country.

Women, lesbians, bisexuals, girls and trans men still face important obstacles in accessing information and services related to their sexual and reproductive rights in Argentina.

The public debate created in the first week of September after an educational talk on sexual and reproductive health and particularly about methods and practices for safe abortion organized in a

⁵⁷ Programa Nacional de Salud Sexual y Procreación Responsable. Informe de gestión anual, año 2013. Informe provincias. Available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARG/INT_CEDAW_ADR_ARG_19577_O.pdf

⁵⁸ MESECVI, Progress Indicators for Measuring the Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Belém do Pará Convention", adopted by the Committee of Experts (CEVI), May 21, 2013. OEA/Ser.L/II.7.10

(public) high school –that even led to "Pro-Life" groups demanding that the school principal submit his resignation –shows the state of the art in this regard. Resistance to the spread of this kind of information is strong. The position of the National Health Ministry, that publicly declared that it had nothing to say on the matter, was a concern.⁵⁹ After the debate, the City Health Ministry decided that these kinds of talks would require prior authorization by the Ministry, placing an additional barrier on the access to information.⁶⁰

There is a need for implementing public policies, at the national and provincial levels, to actively circulate accessible, updated and responsible information on the different aspects involved in fully enjoying sexual and reproductive health for women, girls and trans persons in Argentina.

Taking into account the information provided in this report, we suggest the following questions and recommendations for the State.

II. Questions for the State

1. What specific actions have been taken to reduce maternal mortality as a product of unsafe abortion?
2. What measures are planned to guarantee health care for legal or non-punishable abortion consistent with the call made by the CSJN to the different levels of government in March 2012 in the framework of the F.A.L. case for the entire country?
3. What is the ministerial status of the Health-Care Guide drafted by the Ministry of Health in 2008 and its updates (including the "Protocol for Comprehensive Care of Persons Entitled to Legally Interrupt A Pregnancy")? Why has it not yet been granted the corresponding ministerial status?
4. What measures have been adopted by the National Ministry of Health to unify public policies with regard to the legal interruption of pregnancy consistent with the recommendation of the CSJN in the F.A.L. verdict?
5. Please explain how the "Protocol for Comprehensive Care of Persons Entitled to Legally Interrupt A Pregnancy" is currently distributed and how its use is recommended to health-care professionals and institutions. How will the National Ministry of Health and its provincial counterparts unify protocols as recommended by the CSJN?
6. Has the National Ministry of Health requested the Federal Health Council (COFESA in Spanish) to approve the "Protocol for Comprehensive Care of Persons Entitled to Legally Interrupt A Pregnancy" as recommended by the CSJN?
7. What measures has been adopted to guarantee access to medicines recommended by the World Health Organization (WHO) to perform abortions? (Misoprostol and Mifepristone)
8. What is the status of Parliamentary discussions about decriminalizing abortion? Has the national Executive Power considered to engage with the national Legislative Power to consider bills to expand the grounds under which it is legally possible to interrupt a pregnancy? What disciplinary measures have been implemented in the different jurisdictions against public officers hindering access to rights and in particular against those engaging in institutional violence as

⁵⁹ On the debate, see the following media clips: http://www.clarin.com/sociedad/colegio-Pellegrini-autorizo-pastillas-abortivas_0_1646235544.html and <http://www.telam.com.ar/notas/201609/162364-aborto-colegio-carlos-pellegrini-rector-ong.html>. On the statement by the Minister of Health, Mr. Lemus, who said the Ministry lacked information in this regard, see <http://www.lanacion.com.ar/1924949-aborto-ilegal-una-practica-insegura>

⁶⁰ See available information at: <http://www.pagina12.com.ar/diario/suplementos/las12/13-10888-2016-09-26.html>

defined by Law 26485 when restricting women's rights to a legal abortion or criminalizing women facing an obstetric emergency who are accused of having attempted an abortion?

9. What measures has the State taken to guarantee that health professionals respect doctor-client confidentiality and abstain from criminalizing women going through an abortion?

III. Recommendations to the State

1. To guarantee access to legal abortion in all jurisdictions, supported by public information campaigns to promote a broader awareness of the right to legally interrupting a pregnancy in the cases in which it applies.

2. To guarantee provision and access to contraceptives and essential medicines in all jurisdictions within the framework of the National Sexual and Reproductive Health Programme.

3. To adopt specific initiatives and programmes to reduce high maternal mortality rates as a consequence of unsafe abortions, including training for all health facilities and professionals.

4. To adopt the necessary measures to guarantee that non-punishable abortions are performed within the public health system.

5. To take the necessary measures to implement a recording system for abortions performed according to legal norms.

6. To incorporate those health services needed to interrupt pregnancies in the cases in which it is legal to do so at the federal level and as a basic service whose provision is mandatory. This should include all evidence-based, effective, safe and preferred methods as established by the WHO.

7. To periodically guarantee the availability of updated information on safe abortion counselling services across the country (location, functioning, working hours).

8. To train health practitioners on the value of confidentiality when dealing with spontaneous or induced abortions.

9. To approve the health-care protocol for legally interrupting a pregnancy as a Ministerial Resolution.

10. To consider, at the level of the Federal Health Council (COFESA), adopting a national health-care protocol for women seeking an abortion as a way to implement the recommendation of the CSJN and guarantee this right to all women across the country.

11. To promote discussion and later approval of a law on legal, safe and free abortion.