

Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina

Decisions about contraception and abortion are difficult, deeply personal, and sometimes wrenching. In Argentina, women are routinely prevented from making such decisions. In a testament to women's lack of access to effective family planning services, approximately half a million illegal abortions occur every year in Argentina, representing 40 percent of all pregnancies. The consequences for women's health and lives are serious, sometimes literally fatal.

The Women's Rights Division of Human Rights Watch documents abuses of women's human rights and presses for changes worldwide.

In 2004, Human Rights Watch interviewed dozens of women in Argentina, documenting, through these women's own words, the series of imposing, sometimes insurmountable restrictions and obstacles women face in their access to contraceptives and abortion. These barriers include domestic and sexual violence at the hands of intimate partners which authorities are not moving aggressively enough to prevent and remedy. Another barrier is blatantly inaccurate or misleading information, too often propagated by public health care workers themselves. In addition, many poor women cannot afford contraceptives, and government promises of assistance often do not reach those who need it most. Voluntary access to one of the most effective forms of contraception—sterilization—is severely limited, and even women who qualify under existing law are often denied the procedure.

When women are unable or unwilling to carry an unwanted pregnancy to term, the only option for many is an illegal and therefore unsafe abortion. The toll on women's health and lives is immense: unsafe abortion is the leading cause of maternal mortality in Argentina today. The tragic personal consequences of Argentina's restrictions on women's reproductive rights are documented in Human Rights Watch's full-length report on this issue, "Decisions Denied," which this briefing paper summarizes.

Forty percent of all pregnancies end in abortion in Argentina. Unsafe abortion is the leading cause of maternal mortality in Argentina today.

In 2003, the government began implementing a much-needed national program on reproductive health, backed by a public information campaign in 2005. This national program places reproductive and

sexual health on the national political agenda for the first time in Argentina's history, for which the government deserves praise. Indeed, effective implementation of the program and other laws and policies already in place could go a long way toward addressing the concrete harms described in this briefing paper. However, if Argentina is to fulfill its international human rights obligations, legal reform is urgently needed to ensure women's access to safe and legal abortion and to guarantee voluntary access to a full range of safe contraceptives.

Barriers to Contraceptives

Human Rights Watch identified three primary barriers to women's access to contraceptives: domestic and sexual violence, the provision of inaccurate and inadequate information by public health officials, and economic constraints, including at times unauthorized fees for contraceptives and related health services.

Domestic and Sexual Violence

Domestic and sexual violence are some of the most persistent and dehumanizing violations of women's rights in the world, and, in Argentina, they constitute a significant barrier to women's independent decision-making in matters related to fertility, health, and contraceptives. Human Rights Watch's interviews with social workers, medical doctors, and women confirm that a significant number of abusive men deliberately sabotage their wife's or partner's access to contraceptives as part of the abuse.

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This was the experience of Gladis Morello, a thirty-two-year-old mother-of-eight. Morello had moved in with her husband when she was eighteen, and had had ten pregnancies during the fourteen-year physically and sexually abusive marriage, including two miscarriages due to the violence. She told Human Rights Watch: "I was with him for fourteen years. He beat me [and] the mistreatment had become normal. ... He always told me: 'I am going to fill you with children so that you can't leave my side'."

One fundamental deficiency in Argentina's response to violence is the lack of shelters for women affected by domestic and sexual violence. A community organizer told Human Rights Watch: "[The] institutions that deal with this subject [domestic violence] ... don't have anywhere to send the women so that they are not killed. Because they *are* killed."

The national program on reproductive health only addresses violence in passing, and implementing regulations offer no specifics as to how

to prevent intimate partner violence from posing an obstacle to women's independent decision-making in the area of reproductive health. The vast majority of the public hospitals and clinics implementing the program that Human Rights Watch visited were not required or encouraged to detect domestic or sexual violence in patients and counsel patients on these issues.

Misleading, Inaccurate, or Incomplete Information

Women in Argentina have limited access to contraceptives for a host of reasons, some of which have to do with a generalized level of misinformation regarding reproduction and contraception. Argentina's government is making important strides toward addressing this issue, notably through the 2005 launch of a public information campaign announcing access to contraceptives as a legal right.

Public health officials provide misleading, incomplete, or inaccurate information about contraception.

However, the national government's demonstrated political will does not always overcome fear and opposition from the public officials who are directly responsible for the implementation of women's reproductive rights. Human Rights Watch found that public health officials at times contributed to the existing lack of understanding by providing women with misleading, incomplete, or inaccurate information about contraception. Some doctors in the public health system actively discouraged women from using the contraceptive devices donated by the state, either by telling them that the contraceptives are not of good quality, or by misinforming about some methods.

Paola Méndez, thirty-five and mother of ten, wanted to get an intrauterine device (IUD), but the public health doctor told her that it would not prevent pregnancies, and that it might, in fact, damage a future child: "I wanted to get an IUD, but you know they say that many are born with the IUD in their heads. The doctor himself explained to me that the majority, almost all of them, are born with the IUD in their heads." This claim is unfounded by medical science.

As a result of the misinformation, women are often left with severely limited choices with regard to when and if to have children, even within the already limited range of contraceptive methods legally available to them.

Economic Constraints

Most women Human Rights Watch interviewed felt that they could not afford to have more children without compromising the welfare of

their existing family, yet they were also unable to afford contraceptives.

This situation is not unique to Argentina. However, economic constraints on voluntary motherhood impose a particularly heavy burden on the many women in this country who are simultaneously denied the right to decide freely on the use and method of contraception, and on access, when needed, to safe abortions.

Jazmin Castaña, a twenty-four-year old mother-of-three, explained to Human Rights Watch that she would not be able to justify having another child in her current economic circumstances, should her method of contraception fail, and alluded to the impossible choice she felt she would face: “After the last [third] child, I don’t want to have any more. … I work in the head of household program for 150 pesos a months [U.S.\$50.14]. … As I am doing, there is not enough [money] to have another one. I think that if I had to do it [have an abortion], it hurts my soul and may God forgive me, but I don’t know that I wouldn’t do it. And I am telling you that I don’t agree with abortion.”

Public health officials charge for services and devices that should be provided for free.

The national program on reproductive health, which the government started to implement in 2003, provides certain contraceptive methods free of charge through government hospitals. However, Human Rights Watch found that some public health officials continue to charge for services and devices that they, by law, are required to provide for free. When the cost of a consultation, a medical analysis, or the transport to the public hospital where the program is implemented is added to the cost of the contraceptive method itself, some women are left to choose between food and shelter or paying for contraceptives.

Given this choice, many women chose to feed themselves and their families. Romina Redondo, thirty-two, exclaimed: “One does not have 30 pesos [U.S.\$10.10] every month for an injection. … Where do we get 30 pesos for an injection, when we are living off the head of household program with 150 pesos [U.S.\$50.14] a month?” Marisa Rossi, thirty-six, noted that sometimes the choice was between food and condoms: “[Condoms] cost 2.50 pesos for three. For that money, you can buy a kilo of bread or a couple of liters of milk.”

Women must choose between food and shelter or paying for contraceptives.

Voluntary Tubal Ligation: A Case Study in Denial of Access to Contraceptives

Women’s access to the contraceptive method of their choice is also subject to legal restrictions. Under Argentine law, voluntary access to one of the most effective forms of contraception—female sterilization

or tubal ligation—is limited to situations where the intervention is warranted by a “therapeutic reason.”

Courts and experts have interpreted this clause in different ways. However, medical doctors and public health officials often cite the restrictive law as justification for continuing to exercise control over women’s reproductive health. Some hospitals and doctors require women to seek judicial or spousal authorization for the operation.

Discriminatory and arbitrary extraneous intervention

Most of the women we interviewed who had sought to obtain a tubal ligation were required to go through arbitrary and discriminatory procedures—including the requirement of spousal consent—as a condition for access to voluntary tubal ligation in the public health system, and the majority were denied the operation even when they fulfilled the criteria.

Romina Redondo, thirty-two, was pregnant with her tenth child when Human Rights Watch spoke to her. She explained that when pregnant with her eighth child, she had completed all the steps required by one local public hospital to have a tubal ligation. Her doctor still denied her the operation at the last moment. After an unplanned pregnancy while taking hormonal contraception, a birth, and another unplanned pregnancy, Redondo was attempting to gather the paperwork to have a tubal ligation at another public hospital, when we spoke to her in September 2004.

Redondo described an onerous process including endless paperwork and consultations, the requirement that her husband sign a consent form in the presence of two witnesses, and at least six separate trips to the hospital carrying her youngest children with her. Even so, Redondo was told that the ultimate outcome depended on her own ability to convince the individual doctor who was to carry out the operation: “The social worker told me that I have to insist and insist, because there are doctors who don’t want to do it.”

The legal and procedural restrictions on voluntary sterilization in Argentina subject women’s decision-making in the most intimate area of their lives to male authority or arbitrary medical intervention in violation of authoritative interpretations of women’s rights to health, privacy, nondiscrimination, and to decide on the number and spacing of their children.

Voluntary sterilization—one of the most effective forms of contraception—is severely restricted by law and in practice.

Women are required to get authorization from their husbands to obtain sterilization operations.

Requiring Judicial Authorization

Argentina's law does not specifically require judicial authorization for tubal ligation. However, many doctors, government officials, NGO representatives, and individual women believed this to be a requirement, or saw the legal provisions as ambiguous enough that they felt compelled to seek authorization to avoid legal action.

Laura Passaglia, thirty-two, had had nine pregnancies, including two miscarriages and a premature child that died soon after birth. Passaglia tried to get a tubal ligation for the first time when she plunged into deep depression after that child died: "The fourth child was the baby that died. ... I was in a state, I didn't want anything, neither the children that I already had, nor the ones that might come. ... I was asking around for a tubal ligation. They said no."

After several subsequent unplanned pregnancies, Passaglia again consulted her doctor at the local public hospital about the possibility of having a tubal ligation: "I asked the doctor, and she said no. ... I thought I was going to die, but I wanted to do it, because I thought it was my decision to make. ... The head of the hospital told me that it was the same as having an abortion."

Some physicians and hospitals require women to seek judicial authorization for sterilizations.

Passaglia filed a case for judicial authorization. The court that reviewed Passaglia's case admitted that the evidence presented proved that she had high blood pressure and repeated urinary tract infections; that the medicine she received did not help her; and that she was under medical order only to carry out light tasks and not to walk around, but that she was unable to do so because of her other children.

The court nevertheless denied Passaglia the tubal ligation based on the testimony of the expert witness chosen by the court, who noted that there was "no medical reason" for the operation even though he considered Passaglia's pregnancy-related health problems serious enough to add that Passaglia should seek medical attention.

Not all women who have asked for judicial authorization for tubal ligation have been denied the operation. Some courts have ordered hospitals to honor such petitions. However, the fact remains that women's right to access voluntary tubal ligation—a safe, highly effective contraceptive method—depends on spouses, judges, doctors, social workers, and personal finances.

Obstacles to the Right to Decide in Matters Concerning Abortion

Women who face unwanted pregnancies are often at the end of a long line of decisions they were not allowed to make: decisions they were denied. The only option for many is an illegal and therefore unsafe abortion. An estimated half a million illegal abortions occur every year in Argentina, representing 40 percent of all pregnancies. Unsafe abortions have constituted the leading cause of maternal mortality in the country for decades.

An estimated half a million illegal and therefore generally unsafe abortions occur every year in Argentina.

Failure to Implement Existing Abortion Legislation

Argentina's penal code stipulates that abortion is a crime in all circumstances, though the penalty may be waived if the life or health of the pregnant woman is in danger or if the pregnancy results from the rape of a mentally disabled woman. In practice, such "non-punishable" abortions are rare. A public health official told Human Rights Watch: "People have demonized abortion, that's what has happened. ... This has closed the possibility for serious discussion to the extent that where the penal code allows [for abortion] it is not known. It is as if it were completely criminalized."

Desperate Measures

The criminalization of abortion leads women to take desperate measures, such as attempting to abort with knitting needles, rubber tubes, parsley sprigs, or the use of abortive medicines without adequate medical assistance. "You get overwhelmed by desperation," said Paola Méndez, thirty-five, "You seek all the ways out, pills, anything. But if there is no way out, then you take a knife or a knitting needle."

Women abort with knitting needles, rubber tubes, parsley sprigs, or the use of abortive medicines without adequate medical assistance.

Many women in Argentina also self-induce abortion by ingesting one or several pills containing misoprostol, an anti-inflammatory medicine known to induce contractions. This method in theory carries a lower risk of infection than the introduction of foreign objects into the cervix, though its relative safety requires access to medical services before and after taking the pills.

Some doctors Human Rights Watch interviewed said they recommended misoprostol to low income women seeking abortions, considering that the alternative would be a rubber tube or knitting needle. One doctor said that—regardless what he thought about abortion—he felt that, as a doctor, he was obligated to tell women how to avoid a deadly infection. "I can't stop her from aborting," he said, "but I can at least tell her what not to do."

Whether induced by foreign objects or pills, the health consequences of illegal and unsafe abortions can be dire. Teresa Mariani, twenty-four, experienced this first hand. Mariani was raped repeatedly by her husband, resulting in five abortions and one full-term pregnancy and birth over four years. She was only able to pay for an assisted abortion once, otherwise resorting to misoprostol. She told Human Rights Watch: “I did it with pills. I don’t know how I didn’t die. ... The second time I was afraid, and I went to a private clinic. ... [The first time] I had my period twenty days in a row, at first normal, then with big clots, and then it stopped. ... Then after a month the hemorrhaging begins, and then a bag of blood. ... It was a two month pregnancy. ... [Another time] I ended up hospitalized with a very low blood count.”

The health consequences of illegal abortions can be dire, and even fatal.

Lack of Medical Accountability

The criminalization of abortion enables clandestine abortion “clinics” to operate with little regard for women’s health and lives. Romina Parma, forty-two, had personally experienced the blatant disregard for women’s health displayed by illegal abortion providers. Parma was living with her sexually and physically abusive partner when she got pregnant for the sixth time. Parma sought out an abortion provider who asked her to choose between an abortion with or without antibiotics—an option that would be unthinkable if abortion were legal: “She told me: “It will cost you 250 pesos without antibiotics and 300 pesos with antibiotic [U.S.\$250-300, at that time’s exchange rate].”

While doctors and midwives who practice illegal abortions can be and occasionally are convicted for causing a woman to abort, they have no legal responsibility toward the woman if the procedure is badly done. In fact, due to the clandestine nature of the clinics, the illegal providers may not even be held accountable when the women die.

Clandestine abortion clinics operate with little regard for women’s health and lives.

Yanina Carlotto was all too aware of this. Carlotto accompanied a friend to have an abortion at an illegal clinic where the friend died under anesthesia. She recalled: “[My friend] went into [the illegal clinic] and she never came out. They said that it was a problem with the anesthesia. She died in that very place. ... They said that she died of a heart attack. ... Legally, it was like nothing had happened.”

Inadequate or Inhumane Post-Abortion Care

When women hemorrhaging or suffering from life-threatening infections or injuries caused by botched abortions show up at public hospitals, health care personnel sometimes scorn them and deny them treatment. A social worker said: “A woman [we work with] went to the

hospital in a very bad state with an abortion and she was infected and hemorrhaging. A doctor started to examine her, and when he started to see her and realized, he threw down his instruments on the floor. He said: "This is an abortion, you go ahead and die!"

Doctors performing post-abortion curettage—the highly painful scraping of a woman's uterus with a sharp instrument—also sometimes do so without anesthesia. A psychologist who worked at a public hospital told Human Rights Watch that, at her hospital, doctors carried out curettage without anesthesia as a form of vigilantism until very recently, and that she believed they still would do so if she did not act as a watchdog.

Women seeking life-saving post-abortion care are scorned, mistreated, or denied treatment altogether.

Many doctors believe they have an obligation to report women who come to hospitals for post-abortion care to the police. Consequently, women who fear criminal prosecution are discouraged from seeking post-abortion care, often to the serious detriment of their health.

Argentina's government has started addressing this issue, following sustained pressure from women's and human rights groups. In October 2004, Argentina's provincial health ministries committed to reduce maternal mortality in the country, *inter alia* through the provision of humane, fast, and effective post-abortion care, and through guaranteeing access to safe abortions where they are not penalized by law.

In mid 2005, the national government started distributing a guide on how to provide humane post-abortion care in public hospitals. Our interviews with public health providers in several provinces suggest that the guide's effectiveness could be enhanced tremendously if backed by a legal mandate, such as a ministerial resolution, requiring the application of the model, or if accompanied by a sustained training program for public health providers.

Recommendations for Action

Human Rights Watch calls on Argentina's government, the relevant medical association, and international donors to address the discrimination and abuse against women in Argentina in the area of reproductive health. Essential first steps include:

To the Government

Programmatic Reform:

- Provide a full range of contraceptives, including voluntary female sterilization and emergency contraception.
- Develop a national regulatory framework for access to female sterilization according to international standards.
- Develop a regulatory framework to guarantee access to voluntary safe abortion where the penal code waives the punishment.
- Require the implementation of the guide for the provision of humane post-abortion care by resolution or other legal mandate.

Oversight and Implementation:

- Call for oversight hearings to examine shortcomings in the implementations of the national program on reproductive health.
- Investigate and sanction all health personnel who willfully provide inaccurate or incomplete information on contraceptive methods.

Information, Education and Training:

- Disseminate full and accurate information on all safe contraceptive methods, including through public information campaigns.
- Sustain and enhance the public information campaign on the national program on reproductive health, its content and services.
- Ensure that all women know that they will be provided with humane post-abortion care at all health centers and hospitals.
- Ensure access to accurate science-based sex education in primary and secondary schools, both private and public.
- Include comprehensive information on reproductive and sexual rights in university and higher education curricula.

Legal Reform:

- Amend the penal code to explicitly criminalize marital rape.
- Legalize and ensure access to voluntary sterilization.
- Enact laws that allow women to have access to voluntary and safe abortions.
- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

To the Medical Association working with OB/GYNs (FASGO)

- Develop and promote ethical guidelines on the provision of humane post-abortion care.
- Encourage its members to engage women in informed decision-making about their fertility and reproductive health.
- Offer regular courses on women's reproductive and sexual rights through the FASGO school of gynecology and obstetrics.

To Donors

- Engage with Argentina to ensure that all women have access to information, sex education, and a full range of contraceptives.
- Advocate for Argentina to remove legal restrictions on abortion and to ensure women access to safe and legal abortions.
- Expand funding for reproductive health related programs in Argentina. Support information campaigns seeking to educate women about their reproductive and sexual rights.

Conclusion

Women in Argentina are prevented from making independent decisions about their health and lives in the area of reproduction, in violation of their human rights. If Argentina is to fulfill its international obligations on women's human rights, reform is urgently needed to ensure women's access to safe and legal abortion and to guarantee access to contraceptives and related information. For all women it is a question of equality. For some, it is a question of life or death.

To download free of charge the text of Human Rights Watch's full-length report on this issue, "Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina," please visit Human Rights Watch's website at

<http://hrw.org/reports/2005/argentina0605/>

Pseudonyms are used for all women in this document to preserve their privacy.

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