



ARGENTINA

Illusions of Care

Lack of Accountability for Reproductive Rights in Argentina

HUMAN
RIGHTS
WATCH



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Summary

Pregnancy is not a debilitating illness. Yet every year, thousands of women and girls in Argentina experience entirely preventable suffering because of their reproductive capacity.

Many become pregnant due to negligent care that deprives them of the right to make independent decisions about their health and lives, such as when the government does not purchase or distribute contraceptive supplies that it has promised to provide, and legal sterilization procedures are arbitrarily denied. Others are forced to carry life-threatening pregnancies to term because medical providers refuse to provide abortion services that, in these circumstances, are legal. Some choose to seek alternative and at times highly unsafe abortions from unlicensed providers. Others forego care entirely, and some even die. In 2008, according to Argentina's national health ministry, over 20 percent of deaths recorded due to obstetric emergencies were caused by unsafe abortions. The ministry does not publish data on whether any of these cases pertained to abortions that might have been carried out legally.

Even in the best of circumstances, women's and girls' lives are intimately affected by their childbearing capacity. Pregnancy not only impacts their bodies, it also affects their access to education, employment, and public life. Where pregnancy is wanted, these changes can be anticipated. But where decisions about having, or not having, a child—such as taking contraception or having an abortion—are coerced or severely curtailed by circumstances, the resulting life changes can be unexpected and oppressive. Either way, women and girls have a constant and continuing need for reproductive health care services throughout their lives.

International human rights law recognizes this and provides support for women and girls to access needed health care and independent decision-making through the protection of the rights to life, health, nondiscrimination, physical integrity, freedom of expression and religion, and the right to decide independently the number and spacing of children.

In Argentina, these rights have been systematically flouted for years. In 2005 Human Rights Watch concluded that multiple barriers prevented women in Argentina from making independent decisions about their health and lives related to reproduction. These restrictions included inaccurate, incomplete or entirely absent information; domestic and sexual violence; and economic restraints that the government was not adequately addressing.

Official health data indicates that little has changed for the women and girls who depend on the public health system in the five years since Human Rights Watch first published a report on this topic. Their rights continue to be denied. Their suffering is routinely ignored. The question, which this report aims to answer, is why?

Part of the explanation is linked to the politicization of issues related to motherhood, population growth, and, at the most basic level, sex. Argentina was one of the last countries in the Latin America region to abandon a top-down population policy approach that subjected individual decision-making to a nationalist interest in population growth. Until 1985 the sale and use of contraception was entirely prohibited in the country, and politicians and even medical service providers still justify actions that curtail women's human rights by referring to a century-old maxim, "to populate is to govern." Indeed, anti-abortion and anti-contraception messages still carry political weight in a country where the government as recently as 1999 declared an annual national "Day of the Unborn Child," which some people still celebrate.

In the latest example of just how much political weight anti-abortion voices carry, in July 2010 the National Health Ministry immediately back-tracked on its declared intention to guarantee access to legal abortion after being aggressively questioned in the press.

In fact, the main problem is that laws and policies intended to benefit women and girls—such as the legal exceptions to the general criminalization of abortion—often go unimplemented. Moreover, the absence of oversight and accountability for this failure indicates that few in authority seem to care.

Over the past 10 years, Argentina has accumulated an impressive artillery of reproductive and sexual health related policies. Though they ignore key constituencies such as women with disabilities, these policies would, if implemented, go a long way to overcoming the suffering documented in this report and elsewhere. However, these laws and programs are spottily applied at best, and even when they are, the Argentine state fails to initiate accountability processes that could correct the lack of care. In fact, many public officials and medical providers interviewed by Human Rights Watch seemed confused about the content of the laws, regulations, and guidelines they are charged with executing, and were wholly unaware of potential sanctions or accountability procedures they could face if they did not carry out their charge.

A relatively complex and developed system does exist in Argentina for ensuring accountability, but it is rarely, if ever, used to benefit female reproductive health:

1. The National Health Ministry is tasked with overseeing implementation of the National Law on Sexual Health and Responsible Procreation, but does not gather, analyze, or publish comprehensive data on key issues such as illegal health care charges, complaints of arbitrary denial of care, or abusive behavior by medical personnel. The ministry also has the power to remove from state-funded institutions medical and other personnel who do not fully implement current laws and policies, yet doctors and nurses who refuse to provide services, or who mistreat women, remain in their jobs.
2. The Argentine government has a complex accountability system, involving analysis by state-funded auditors reporting to the administration and to the legislative branch. This system could hold the health ministry accountable for how it discharges its obligations in the area of women's reproductive health. However the reporting system has not been used to that end, despite the fact that, seven years into the implementation of the national program on sexual health, indicators on maternal health, unwanted pregnancies, and abortion have hardly budged.
3. Congress has an oversight function with respect to the government, which it can call on to report on the implementation of its programs and laws. The government has failed to provide adequate information when Congress has made limited attempts to call for such reporting, and members of Congress have failed to follow up and demand transparency in the use of public resources.
4. So far, individual complaint mechanisms have been limited to fully-fledged court cases, which are often too time-consuming, too expensive, and too public for women and girls who simply want, privately and without abuse, to access the treatment to which they are entitled. However, even this most basic accountability structure—the judicial system—seems to fail women miserably, as illustrated by recent court cases in the area of reproductive health, in which rape victims with cognitive disabilities have been denied abortion services that they are well within their legal right to demand.

The ultimate human consequence of this lack of accountability is suffering, and sometimes even death. For the state, the resulting and pressing public health concerns such as preventable maternal mortality, unsafe abortion, and unwanted pregnancies, are also costly. Moreover, spotty implementation and lack of accountability for policies directed at addressing these issues result in an inefficient, and at times negligent, use of public resources.

Human Rights Watch calls on the government to take all appropriate measures to implement existing Argentine law, including issuing needed regulations, exercising effective oversight functions, and sanctioning public officials who do not carry out their duties with regard to protecting and promoting women's and girls' reproductive health.

Recommendations

To the Government of Argentina

As in 2005, Human Rights Watch calls on Argentina's government to protect women's and girls' human rights to life, physical integrity, health, nondiscrimination, privacy, liberty, information, freedom of religion and conscience, equal protection under the law, and the right to make decisions about the number and spacing of children. Many of the recommendations that Human Rights Watch made to Argentina in 2005 remain outstanding, and are now, five years later, equally if not more urgent for women's dignity and rights. The following recommendations aim at ensuring effective oversight and accountability in the area of reproductive health.

To the President of the Republic of Argentina

- Publicly endorse the National Program on Sexual Health and Responsible Procreation, and advocate for adequate financial support for this program within the government's budget.
- Publicly support the right to immediate, unhindered access to safe abortion services in cases where abortion is currently not criminalized and in accordance with human rights standards. Urge provincial governments to take immediate steps to guarantee this right.

To the National Health Ministry (Ministerio de Salud de la Nación)

- Adopt a resolution incorporating the Technical Guide for Comprehensive Legal Abortion Services into the standards of care, and distribute it to all public hospitals and health centers in Argentina.
- Ensure training of all hospital directors with regard to the content of relevant laws, regulations, and guidelines on reproductive health, including the National Law on Sexual Health and Responsible Procreation, the Law on Surgical Contraception, the Technical Guide for Comprehensive Legal Abortion Services, and the Law on the National Program for Comprehensive Adolescent Health, as well as Penal Code provisions on criminal liability for public officials who do not carry out their charge.
- Gather data and information on the proper functioning of the National Program on Sexual Health and Responsible Procreation. To be useful, the data and information gathered must be broken down, at a minimum, by age, sex, distance to service provider, disability (if any), and level of education of the women seeking

- reproductive health services. Part of this data can come from the free information number on sexual health at the health ministry, launched in late May 2010. However, to be useful, data must also be collected more systematically.
- Analyze and publish this data in an annual public report on the implementation of the program.
 - Identify gaps and failures in the implementation of the program.
 - Where such gaps and failures are due to individual neglect, proactively carry out administrative investigations and sanction health personnel who do not follow ministerial guidelines, national regulations, or the law, with regard to provision of care. Sanctions should include suspending or revoking medical licenses for repeat offenders.
 - Where gaps and failures are due to systemic neglect, devise and implement systemic solutions to overcome them.
 - Ensure that all health professionals know, understand, and implement the guidelines on adolescents' access to contraceptives.
 - Develop and implement regulations that enable women and girls with disabilities to effectively enjoy their reproductive rights, including the right to accessible health information and services.
 - Work with prosecutors to file criminal charges against public officials who are criminally negligent in discharging their functions as related to women's and girls' reproductive health, such as, for example, those who deny access to legal abortion services to women whose life or health is threatened by their pregnancy, or those who deny life-saving treatment—such as chemotherapy—to pregnant women.

To the Syndicate-General of the Nation (Sindicatura General de la Nación)

- Examine the functioning of the National Program on Sexual Health and Responsible Procreation, and publish a comprehensive report, including information on whether or not the program is effectively and efficiently fulfilling its legal mandate.
- Develop impact indicators to monitor the fulfillment of the result objectives of the National Program on Sexual Health and Responsible Procreation.

To Congress

- Call for the General Auditor of the Nation (Auditoría General de la Nación) to examine the implementation of the National Law on Sexual Health and Responsible Procreation, and take immediate and effective steps to overcome any shortcomings this review identifies.

- Require the health minister to report annually on the functioning and effectiveness of the National Program on Sexual Health and Responsible Procreation.
- Repeal penal code provisions that criminalize abortion, especially those that punish women and girls who have had an abortion.

Methodology

This report is based on field research carried out by four Human Rights Watch researchers in Buenos Aires City and province in February and March 2010, and desk and phone research conducted from New York and Los Angeles during the first half of 2010. Human Rights Watch interviewed a total of 40 individuals for this report, mostly in individual interviews. It also conducted two small group interviews, with individual follow up for particular cases.

The interviewees consisted of nine activists, lawyers, or other civil society actors with expertise on women's reproductive health rights; 15 women with personal experience with the public health system in Buenos Aires City and province; nine government officials involved in the implementation or oversight of the National Program on Sexual Health and Responsible Procreation; and seven doctors from public hospitals or health centers who are directly involved in implementing the national program.

The conclusions of this report build on more extensive research that Human Rights Watch carried out in 2004 and 2005, reports by United Nations agencies and nongovernmental organizations (NGOs) based on field research and interviews since 2005; official health data; and recent health system evaluations published in medical journals, news outlets, and academic research journals.

While Human Rights Watch does not believe that the experiences of the women, doctors, and other people interviewed in this report represent a comprehensive picture of the status of reproductive health care access and rights in Argentina today, quantitative research and official data supports the conclusion that their experiences are not isolated or atypical.

All the names of the women interviewed have been changed to protect their identity. In certain cases, when requested, identifying information for government officials or health professionals has also been withheld.

All interviews were carried out in Spanish.

I. Background

History and Past Research

In Argentina, nationalistic interests combined with an orthodox Catholic discourse on “family values” have historically underpinned some of the most anti-contraception and pro-population-growth policies in the region.¹

The perception that population growth is automatically in the national interest—and that contraception impedes such growth—is very much alive. The director of one of Buenos Aires City’s larger hospitals told Human Rights Watch in 2010: “Family planning always sounds like control.... It’s not well-viewed. We have so many unpopulated areas in this country that perfectly well could be populated.”²

Indeed, Argentine women had to wait until the twenty-first century before they saw even the beginnings of a rights-based approach to reproductive health. In 2002, Argentina’s Congress—overcoming an 11-year all-out ban on the use and sale of contraceptives that had been repealed as recently as 1985, and vocal opposition from the Catholic church and conservative politicians—finally enacted meaningful support for women’s reproductive choices in the form of the National Law on Sexual Health and Responsible Procreation.³ The national policy and program created by this law, the National Program on Sexual Health and Responsible Procreation, focused on providing universal access to contraceptives and reproductive health related information, two laudable and considering the context and history quite radical objectives.

In 2005 Human Rights Watch published an initial assessment of the implementation of these objectives, and of the general situation regarding women’s and girls’ reproductive health rights in Argentina.⁴ Its conclusions were not favorable. It found that women in Argentina were prevented from making independent decisions about their health and lives in the area of reproduction due to multiple barriers, such as lack of information, inaccurate

¹ Human Rights Watch, *Decisions Denied: Women’s Access to Contraceptives and Abortion in Argentina*, ISBN: B1701, Vol. 17, No. 1, 2005, <http://www.hrw.org/en/reports/2005/06/14/decisions-denied-o> (accessed June 2, 2010), p. 11, “Nationalism and Women’s Role as Childbearers”.

² Human Rights Watch interview with Dr. José Lanés, director, Hospital Dr. Juan A. Fernández, Buenos Aires, March 8, 2010.

³ Ley Nacional 25.673 [National Law 25.673], *Creacion del Programa Nacional de Salud Sexual y Procreacion Responsable* [Creation of the National Program on Sexual Health and Responsible Procreation], October 30, 2002.

⁴ Human Rights Watch, *Decisions Denied: Women’s Access to Contraceptives and Abortion in Argentina*, 2005.

and incomplete information, domestic and sexual violence, and economic restraints the government was not adequately addressing.

Human Rights Watch's 2005 report also found that women were denied access to one of the safest and most effective forms of contraception—voluntary sterilization or tubal ligation—due to discriminatory restrictions and criteria that were arbitrarily imposed without legal basis. These restrictions—such as spousal consent or the number of existing children—were partly based on an ambiguous legal framework that caused confusion among medical providers with regard to the legality of sterilization.⁵

These restrictions on reproductive decision-making contributed to an extraordinarily large proportion of unwanted and unplanned pregnancies in Argentina in 2005. Moreover, an estimated 40 percent of pregnancies in 2005 ended in abortions, most of which were illegal and unsafe. This in turn contributed to entirely preventable maternal deaths. Indeed, unsafe abortion has been a leading cause of maternal mortality in the country for decades.⁶ In 2008, according to Argentina's national health ministry, over 20 percent of deaths recorded due to obstetric emergencies were caused by unsafe abortions.⁷

Official health data indicates that little has changed for the women and girls who depend on the public health system in the five years since Human Rights Watch first published a report on this topic.⁸ Complications after unsafe abortion continue to be a leading cause of maternal mortality in Argentina, despite a recent dip that has been linked to increased use of misoprostol—a drug that is prescribed to prevent ulcers in Argentina⁹—in home abortions,

⁵ Human Rights Watch, *Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina*, 2005, in particular section V.

⁶ See Human Rights Watch, *Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina*, 2005.

⁷ National Health Ministry, "Anuario Estadístico 2008 de la Dirección de Estadística e Información en Salud" [Statistical Yearbook 2008 from the Directorate of Statistics and Information on Health].

⁸ See Committee on the Elimination of Discrimination against Women, "Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth periodic report of States parties: Argentina," September 8, 2008, CEDAW/C/ARG/6.

⁹ Although misoprostol is produced as gastric ulcer medication, one side-effect is that it causes uterine contractions and can lead to miscarriage. For this reason, it is often used as part of an abortion procedure to "ripen" (i.e. soften and dilate) the cervix so that further dilation will be less painful for the pregnant woman or girl. The label on misoprostol marketed as Cytotec—which is commonly sold in Argentina—reads: "Cytotec (Misoprostol) administration to women who are pregnant can cause abortion, premature birth, or birth defects. Uterine rupture has been reported when Cytotec was administered in pregnant women to induce labor or to induce abortion beyond the eighth week of pregnancy." Center for Drug Evaluation, "Cytotec" [online] <http://www.fda.gov/cder/foi/label/2002/19268slro37.pdf> (retrieved November 23, 2004). Clinical studies have shown misoprostol to be safe and effective for use in abortion procedures under adequate medical supervision and conditions. See Consensus Statement: Instructions for Use Abortion Induction with Misoprostol in Pregnancies up to 9 Weeks LMP. Expert Meeting on Misoprostol sponsored by Reproductive Health Technologies Project and Gynuity Health Projects. July 28, 2003. Washington DC., on file with Human Rights Watch.

rather than to a decrease in the number of attempted abortions.¹⁰ Official figures still estimate that 40 percent of pregnancies (460,000) per year end in illegal abortions.¹¹

In the words of Silvia Oizerovich, co-director of the Program of Sexual Health and Responsible Procreation in Buenos Aires City, “If you analyze all the data since the time the national program was launched, it’s depressing. It’s just not working.”¹²

Developments Since 2005

The National Program on Sexual Health and Responsible Procreation was first implemented by the government of President Nestor Kirchner.¹³ Argentine women’s rights activists have widely praised Ginés González García, the health minister during Kirchner’s presidency from May 2003 to December 2007, for genuinely supporting policies geared at enhancing women’s health.¹⁴

Human Rights Watch’s 2005 report identified a number of areas where clearer laws and guidelines might benefit women and girls in exercising their rights. A number of these recommendations were implemented during Kirchner’s administration:

- In August 2006, the law on surgical methods of contraception was adopted, correcting the legal ambiguity surrounding voluntary sterilization and vasectomy.¹⁵

¹⁰ Human Rights Watch interview with Dr. Daniel Lipchak, medical doctor, consultant with the National Health Ministry, Buenos Aires, March 3, 2010. See also National Health Ministry, *Guía Técnica para la Atención Integral de los Abortos No Punibles*, [Technical Guide for Comprehensive Legal Abortion Care], July 2010, p. 15.

¹¹ Valeria Perasso, “Argentina: Aborto por teléfono” [Argentina: abortion by telephone], *BBC Mundo*, September 4, 2009, http://www.bbc.co.uk/mundo/lg/america_latina/2009/09/090904_1632_aborto_argentina_mf.shtml accessed May 24, 2010, referring to data obtained from Argentina’s National Health Ministry. See also National Health Ministry, *Guía Técnica para la Atención Integral de los Abortos No Punibles*, [Technical Guide for Comprehensive Legal Abortion Care], p. 15

¹² Human Rights Watch interview with Silvia Oizerovich, co-director, Program on Sexual Health and Responsible Procreation for the Autonomous City of Buenos Aires, Buenos Aires, March 4, 2010.

¹³ As mentioned above, the national program was created by the National Law on Sexual Health and Responsible Procreation and is meant to be the government’s main vehicle for implementing the law.

¹⁴ Marcela Valente, “SALUD-ARGENTINA: Mujeres expuestas al aborto ilegal” [HEALTH-ARGENTINA: Women exposed to illegal abortion], IPS Noticias, at <http://ipsnoticias.net/print.asp?idnews=33981>, accessed on May 27, 2010.

¹⁵ Ley 26.230 [Law 26.130], *Contracepción quirúrgica* [Surgical contraception], adopted on August 9, 2006 and entered into law on August 28, 2006. Before 2006, Argentine law restricted access to tubal ligation to situations where the intervention is warranted by a “therapeutic reason.” While courts and experts interpreted this clause in different ways, medical doctors and public health officials often cited the restrictive law as justification for denying women access to voluntary tubal ligation. See Human Rights Watch, *Decisions Denied: Women’s Access to Contraceptives and Abortion in Argentina*, 2005, in particular section V. Law 26.130 establishes that any person who is legally of age has the right to receive tubal ligation or vasectomy services in the health system, subject to the informed consent of the patient. Law 26.130, in particular arts. 1 and 4.

- In October 2006, the law on sex education was passed, making comprehensive sex education mandatory in all public educational establishments for the first time in Argentina.¹⁶

In addition, under the tenure of health minister González García, the Argentine government issued several guidelines to clarify the intended scope of the Program on Sexual Health and Responsible Procreation. For example, in August 2005, the National Health Ministry published a comprehensive guide for post-abortion care, which was incorporated into the national program to guarantee quality health care.¹⁷ In March 2007, the ministry issued a resolution that added emergency contraception to the mandatory medical plan, obligating social and health workers in the health system to supply it for free.¹⁸ And in November 2007, the ministry published a guide for the provision of legal abortion services.¹⁹

However, the potential positive impact of these developments has been undermined by erratic implementation. Martha Rosenberg from CoNDeRS, a national coalition of NGOs monitoring implementation of the law on sexual health, commented: “Legal abortion and the guide for post-abortion care, those are issues that the [health] ministry is only half dealing with.... They just don’t take the necessary measures to implement [the applicable guidelines and laws].²⁰

Indeed, implementation of laws, policies, and guidelines related to women’s reproductive health seems directly related to who holds the presidency. In October 2007, Nestor

¹⁶ Ley 26.150 [Law no26.150], Programa nacional de educación sexual integral [National program on comprehensive sex education], adopted on October 4, 2006 and entered into force on October 23, 2006. This law establishes the right of all school children to receive comprehensive sex education in both public and private schools, from elementary to high school levels (“desde el nivel inicial hasta el nivel superior de formación docente y de educación técnica no universitaria” [“from the first level till the higher level of elementary education and non-university professional training”). The law defines comprehensive sex education as encompassing biological, psychological, social, emotional, and ethical perspectives. Law 26.150, in particular arts. 1 and 4.

¹⁷ National Health Ministry resolution 989/2005, “Apruébese la Guía para el Mejoramiento de la Atención Post Aborto e incorpórase la misma al Programa Nacional de Garantía de Calidad de la Atención Médica” [Approving the Guide for the improvement of post abortion care and incorporating the guide into the national program for the guarantee of quality health care].

¹⁸ The mandatory medical plan refers to services and medicines that must be made available to users of the public health system; National Health Ministry resolution 232/2007, “Programa Médico Obligatorio de Emergencia (PMOE)—Incorporación de la Anticoncepción Hormonal de Emergencia” [Mandatory Emergency Medical Program—Incorporation of Hormonal Emergency Contraception], March 3, 2007.

¹⁹ National Health Ministry, *Guía Técnica para la Atención Integral de los Abortos No Punibles* [Technical Guide for Comprehensive Legal Abortion Care], October 2007.

²⁰ Human Rights Watch interview with Martha Rosenberg, coordinator of CoNDeRS, Consorcio Nacional de Derechos Reproductivos y Sexuales [National Consortium for Reproductive and Sexual Rights], Buenos Aires, March 11, 2010.

Kirchner's wife, First Lady Cristina Fernández de Kirchner, who was also a senator, won the presidential elections in Argentina, and was sworn in on December 10, 2007.²¹

Human Rights Watch's research indicates that the December 2007 change in government has not improved women's ability to exercise their reproductive and health rights, and even reversed some gains. Incoming health minister, Graciela Ocaña, publicly declaring abortion to be solely a matter of criminal law and therefore not under her purview, repudiated the guide on legal abortion—although it remained in place.²² Ocaña noted that the law allowed for some exceptions, but emphasized the government's opposition to abortion in general.²³

The National Health Ministry did not endorse the guide, which hospital staff barely followed (or indeed knew about).²⁴ It was only in March 2010, after Juan Manzur had replaced Ocaña as health minister the previous year that the guide appeared on the ministry's website without any announcement.

On July 20 2010, however, the ministry publicly re-published the guide, including minor revisions to the 2007 version. The ministry initially stated that the guide was legally enforceable as a ministerial resolution, and even included the number of this new resolution on the web-version of the guide.²⁵ A mere 24 hours later, the ministry retracted these statements, noting that the guide was in force and would be distributed, but that it was not a resolution and had not been signed by the minister.²⁶ References to the alleged resolution were removed from the ministry's web-page.²⁷

²¹ "Argentina y su primera mujer presidente" [Argentina and its first woman president], *El Observador*, October 29, 2010, <http://www.elobservador.cl/admin/render/noticia/8908>, accessed May 27, 2010.

²² Mariana Carbajal, "El aborto, ¿es un asunto de política criminal o sanitaria?," [Is abortion a question of criminal law or public health policy?] *Página 12*, December 26, 2007, <http://www.pagina12.com.ar/diario/sociedad/3-96668-2007-12-26.html>, accessed May 24, 2010.

²³ Mariana Carbajal, "Las palabras de la ministra," [The words of the minister], *Página 12*, December 26, 2007, <http://www.pagina12.com.ar/diario/sociedad/subnotas/96668-30530-2007-12-26.html#arriba>, accessed May 24 2010.

²⁴ See, for example, Pedro Lipovich, "Un Ataque a la Sociedad," *Página 12*, February 26, 2010, <http://www.pagina12.com.ar/diario/sociedad/3-141051-2010-02-26.html>, accessed May 24, 2010.

²⁵ Mariana Carbajal, "La guía sigue vigente, pero firma no" [The guide is still in force, but hasn't been signed], *Página 12*, July 22, 2010, <http://www.pagina12.com.ar/diario/sociedad/3-149951-2010-07-22.html>, accessed July 23, 2010.

²⁶ Daniel Gallo, "Confusión por la guía sobre el aborto, que sigue vigente" [Confusion about the guidelines, which are still valid], *La Nación*, July 23, 2010, http://www.lanacion.com.ar/nota.asp?nota_id=1287135, accessed July 23, 2010.

²⁷ Mariana Carbajal, "La guía sigue vigente, pero firma no" [The guide is still in force, but hasn't been signed], *Página 12*, July 22, 2010, <http://www.pagina12.com.ar/diario/sociedad/3-149951-2010-07-22.html>, accessed July 23, 2010.

II. Access to Contraception and Abortion: An Obstacle Course

In 2010, Human Rights Watch documented continued problems in access to health services to which females in Argentina are legally entitled, including contraception, voluntary sterilization, legal abortion, and post-abortion care. Laws and guidelines governing delivery of these services are frequently unknown, ignored, and erratically implemented. As a result, women and girls cannot depend on the state for the reproductive health care to which they are entitled under Argentine law.

Lack of Access to Contraceptives

A number of obstacles circumvent women's decisions about contraceptive use, including supply issues, conscientious objection, unauthorized charges for supplies and care, severe delays in service provision and unnecessary referrals, illegal requirements for spousal authorization, and even sexual harassment in public health centers.

Supply Issues and Lack of Political Support

Since its inception in 2005, the National Program on Sexual Health and Responsible Procreation has been mired in problems related to lack of political support at various levels, as well as difficulties ensuring a steady provision of contraceptives to health centers. This is in turn particularly problematic because continuity is crucial to the success of reproductive health programs: women and girls are more likely to seek care if they trust that services and medicines are available as planned, and because several services require regularity, such as hormonal contraception.

Human Rights Watch interviews with women and girls revealed a lack of trust in the system's ability to deliver. María T., from Buenos Aires City, said: "Every time you want to get the pill, you have to get your slot three months in advance ... and then they give you pills that are past their sell-by date."²⁸ Some users, like Melisa B. in Buenos Aires province, viewed the lack of continuity as disregard for her reproductive choices: "I chose to use an IUD.... I went to the health center. They gave me six months' worth of pills, because that's what they had."²⁹

²⁸ Human Rights Watch interview with María T., Buenos Aires, March 9, 2010.

²⁹ Human Rights Watch interview with Melisa B., José C. Paz, Buenos Aires province, March 10, 2010.

All the health professionals and public servants whom Human Rights Watch interviewed for this report confirmed that the National Health Ministry's procurement and distribution of contraceptives had been a serious problem for years, and that has a profound effect on the program's effectiveness. According to Paola Ferro, the current national director of the program, "There is a history of many problems with the distribution.... These obstacles in terms of distribution mean that we don't manage to advance the program in other ways."³⁰

Silvina Ramos, a researcher with over a decade's experience researching reproductive and sexual health issues in Argentina, told Human Rights Watch that while the program had always had procurement and distribution issues, these problems became noticeably worse when the government changed at the end of 2007. "During 2008, the distribution problems became generalized and the National Health Ministry could not respond to the country's contraceptive needs during several months of that year."³¹

These problems were further compounded by the fact that the National Health Ministry at that stage changed its distribution policy on contraceptives. Until then, the ministry had organized and paid for the delivery of contraceptive supplies to the provinces. However, the new administration stopped this service, and the provinces simultaneously grappled with limited supply and a new need to organize and finance distribution themselves.³² Argentine newspapers reported on the crisis, citing high-level provincial health professionals who described massive service failures: one called the situation "chaotic" and "shameful."³³

The ostensible reason for the increasing lack of contraceptive supplies throughout 2008 was logistical: a shipment of hormonal contraceptives was stuck in port for a month, pending review by the customs authorities.³⁴ However, the new government showed little interest in general in providing support for the National Program on Sexual Health and Responsible Procreation. The supplies stuck in customs had been ordered by the previous health minister, and the national program operated for much of the new administration's first year

³⁰ Human Rights Watch interview with Paola Ferro, director, National Program on Sexual Health and Responsible Procreation, Buenos Aires, March 3, 2010.

³¹ Mariana Carbajal, "Demoras que cuestan demasiado" [Delays that cost too much], *Página 12*, August 23, 2008, <http://www.pagina12.com.ar/diario/sociedad/3-110207-2008-08-23.html>, accessed June 2, 2010.

³² E-mail note to Human Rights Watch from Silvina Ramos, senior researcher, Centro de Estudios de Estado y Sociedad (CEDES) [Center for Studies on State and Society], February 19, 2010.

³³ Mariana Carbajal, "Demoras que cuestan demasiado" [Delays that cost too much], *Página 12*, August 23, 2008.

³⁴ *Ibid.*

with key staff working with expired contracts and a director, Ana Suppa, who did not have the necessary authorization to carry out her functions.³⁵

Mabel Bianco, who at the time served on the civil society advisory board of the National Program on Sexual Health and Responsible Procreation, told Human Rights Watch of the early 2008 political changes in the program and their effect on its implementation:

There was a significant change, with the change in president and health minister as well as the head of the program.... The [lack of importance given to the program] was evident in the paralysis [of the program] which included failure to purchase supplies, failure to publish any new publications, and also failure to distribute those publications that already existed [such as the guidelines on access to legal abortion.] 2008 and 2009 were very difficult. [The ministry] put in place two program directors ... both without political support and also with little initiative.³⁶

Human Rights Watch spoke with various public health professionals from different jurisdictions who confirmed that supply and distribution problems are still common due to delays in procurement, delays in deliveries, and confusion over distribution issues.³⁷ Natalia Rodríguez from the health division at the human rights ombudsperson's office in Buenos Aires City noted with regard to 2010: "Up until 15 days ago, [the National Health Ministry] still had not bought the contraceptives they need for this year, and we are now in April."³⁸ One director of the Buenos Aires City program expressed her frustration that these issues become the focus of the program: "And all the time that this takes, everyone is focusing on getting the supplies, instead on focusing on how the program actually works."³⁹

³⁵ Human Rights Watch interview with Paola Bergallo, law professor, University of Palermo, Buenos Aires, March 8, 2010. See also, Mariana Carbajal, "Demoras que cuestan demasiado" [Delays that cost too much], *Página 12*, August 23, 2008.

³⁶ Email exchange with Mabel Bianco, president, Foundation for the Study and Research on Women [Fundación para Estudio e Investigación de la Mujer, FEIM], June 7, 2010.

³⁷ Human Rights Watch interview with Paola Ferro, director, National Program on Sexual Health and Responsible Procreation, Buenos Aires, March 3, 2010; with Gabriela Perrotta, co-director, Program on Sexual Health and Responsible Procreation for the Autonomous City of Buenos Aires, Buenos Aires, March 4, 2010; and Human Rights Watch phone interview with [name withheld], social worker, Ituzaingó, March 8, 2010.

³⁸ Human Rights Watch phone interview with Natalia Rodríguez, lawyer, Area of the Right to Health and Social Integration, human rights ombudsperson's office, Buenos Aires, April 15, 2010.

³⁹ Human Rights Watch interview with Gabriela Perrotta, co-director, Program on Sexual Health and Responsible Procreation for the Autonomous City of Buenos Aires, Buenos Aires, March 4, 2010.

Conscientious Objection

Women and girls are at times denied access to reproductive health services in the public health system because, they are told, providers are unwilling to carry out the service due to conscientious objection.

International law recognizes the importance of conscientious objection to the exercise of an individual's fundamental right to freedom of thought, conscience, and religion.⁴⁰ However, that right must be balanced against a woman's exercise of her human rights to life, health, physical integrity and nondiscrimination, and certainly cannot be allowed to deny women effective access to needed care, including abortions.⁴¹

Argentine law recognizes the right of individuals as well as private institutions to opt out of the provision of contraceptive methods, as long as certain conditions are met:

- Individual conscientious objectors must declare themselves as such, and must document the basis for their objection.
- An individual objector cannot provide services in a private health center that he or she objects to providing in the public health system.
- Private health centers must register as conscientious objectors with local health authorities, and must guarantee care by referring women to other centers that will provide the needed services.⁴²

⁴⁰ The right to freedom of conscience is recognized in multiple international treaties. See e.g. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Argentina on August 8, 1986, art 50; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by Argentina, October 2, 1968, art. (d)(vii) (recognizing the right of non-discrimination in the enjoyment of the right to freedom of conscience). The right of conscientious objection as a derivative of the right to freedom of conscience has been recognized by the Human Rights Committee, most often in reference to military service. UN Human Rights Committee, General Comment 22, Article 18: The Right to Freedom of Thought, Conscience and Religion, A/48/40 vol. I (1993) 208, paras. 11. See also UN Human Rights Committee, Concluding Observations on the Russian Federation, UN Doc. A/50/40 vol. I (1995) 65 at para. 382.'

⁴¹ See UN Committee on the Elimination of Discrimination against Women, General Recommendation 24, Women and Health (Twentieth session, 1999), U.N. Doc. A/54/38 at 5 (1999), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 271 (2003), para. 11; UN Committee on the Elimination of Discrimination against Women, Concluding Observations on Croatia, UN Doc. A/53/38 (1998), paras. 109, 117; Italy, UN Doc. A/52/38 Rev.1, Part II (1997), paras. 353, 360; South Africa, UN Doc. A/53/38/Rev.1 (1998), para. 113. The European Court of Human Rights has also upheld limitations on conscientious objection, finding against objecting pharmacists in one case on the ground that "as long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they can manifest those beliefs in many ways outside the professional sphere." *Pichon and Sajous v. France*, App. No. 49853/99, Decision of 02 October 2001, ECHR 2001-X, available at www.echr.coe.int, p. 4.

⁴² Ley Nacional 25.673 [National Law 25.673], art. 10 reads; "Las instituciones privadas de carácter confesional que brinden por sí o por terceros servicios de salud, podrán con fundamento en sus convicciones, exceptuarse del cumplimiento de lo

The law on voluntary sterilization and vasectomies further elaborates on conscientious objection with regard to the provision of that type of contraception specifically, noting that the health center hosting the conscientious objector has an obligation to ensure the immediate availability of alternative services.⁴³

Some jurisdictions within Argentina have developed more detailed policies on conscientious objection, with a view to balancing women's right to access services with the rights of the provider. These laws and regulations uniformly emphasize the need for the objector to register his or her stance explicitly and in advance, and the obligation of the health system to ensure services.⁴⁴

Even so, Human Rights Watch interviews and official research shows that conscientious objection often occurs without such registration and transparency. Natalia Rodríguez from the health division of the human rights ombudsperson's office in Buenos Aires City carried out an internal study of conscientious objection in Buenos Aires' public hospitals in 2007.

dispuesto en el artículo 6º, inciso b), de la presente ley.” [Private religious institutions which provide health services to themselves or to third parties, may, as based on their convictions, be excluded from fulfillment of that which is called for in this law], “Reglamentación de la ley 25.673” [Regulation of law 25.673], regulation on art. 10 reads: “Se respetará el derecho de los objetores de conciencia a ser exceptuados de su participación en el PROGRAMA NACIONAL DE SALUD SEXUAL Y PROCREACION RESPONSABLE previa fundamentación, y lo que se enmarcará en la reglamentación del ejercicio profesional de cada jurisdicción. Los objetores de conciencia lo serán tanto en la actividad pública institucional como en la privada. Los centros de salud privados deberán garantizar la atención y la implementación del Programa, pudiendo derivar a la población a otros Centros asistenciales, cuando por razones confesionales, en base a sus fines institucionales y/o convicciones de sus titulares, optaren por ser exceptuados del cumplimiento del artículo 6, inciso b) de la ley que se reglamenta, a cuyo fin deberán efectuar la presentación pertinente por ante las autoridades sanitarias locales, de conformidad a lo indicado en el primer párrafo de este artículo cuando corresponda.” [The right of conscientious objectors to be excluded from their participation in the NATIONAL PROGRAM ON SEXUAL HEALTH AND RESPONSIBLE PROCREATION shall be respected, pending previous documentation, and within the framework for the law for the exercise of professional duties in each jurisdiction. Conscientious objectors must be such [i.e. must object] both in the public and in the private sphere. Private health centers must guarantee care and the implementation of the program, through, if necessary, the derivation of the population to other centers, when, for confessional reasons, and as based on their institutional objectives and/or the conviction of their directors, these centers opt to be excluded from the fulfillment of article 6(b) [on the provision of contraception] of the law that is under regulation, for which purpose they must present the relevant documentation to the local health authorities in conformity with the first paragraph of this article as required.]

⁴³ Ley Nacional 26.130 [National Law 26.130], art. 6 reads: “Objeción de conciencia. Toda persona, ya sea medico/a o personal auxiliar del sistema de salud, tiene derecho a ejercer su objeción de conciencia sin consecuencia laboral alguna con respecto a las prácticas medicas enunciadas en el artículo 10 de la presente ley. La existencia de objetores de conciencia no exime de responsabilidad, respecto de la realización de las practicas requeridas, as las autoridades del establecimiento asistencial que corresponda quines estan obligados a disponer los reemplazos necesarios de manera inmediata.” [Conscientious objection. Anyone, whether medical or support personnel in the health system, has the right to exercise conscientious objection with regard to the medical practices spelled out in article 1 of this law, without any consequences for their career. The existence of conscientious objectors does not alleviate the authorities of any care facility of their responsibility to provide needed medical services, and they are obligated to provide alternatives immediately.]

⁴⁴ Marcelo Alegre, “Objeción de conciencia y salud sexual y reproductiva,” [Conscientious objection and reproductive and sexual health], *Hojas Informativas* [Factsheets] No. 10, June 2009. <http://www.despenalizacion.org.ar/hojas.html>, accessed May 13, 2010.

She told Human Rights Watch: “Even the hospital directors don’t know if anyone among their staff are conscientious objectors, and they don’t think it’s their responsibility to know.”⁴⁵

Human Rights Watch interviewed doctors from three major hospitals in Buenos Aires City, and only in one case did the hospital have a centralized registry of conscientious objectors. In the other two cases, the doctors interviewed said that a registry would probably only be created when a real need for one arose.⁴⁶ Rodríguez noted that in her research she had seen such a need: “People end up without services, because they [the doctors] are conscientious objectors, and they don’t declare it, and they don’t refer the patients [to someone else].”⁴⁷

Other Obstacles to Care

Every woman interviewed by Human Rights Watch who depended on the public health system for reproductive health services had at some point been made to pay for services, supplies and care that should have been free by law. “You have to pay for all the supplies [including contraception],” said Julia D., from Buenos Aires province. “They ask for a co-pay of three to five pesos.”⁴⁸ Melisa D. had a similar experience: “Every time they attend you, you have to go get an ultrasound, it costs 25 pesos, and you have to go back and forth [to get it].”⁴⁹

Women also told Human Rights Watch about long waiting hours that made them miss work and sometimes decide to forego care, and about referrals to other health centers or to hospitals, even for services that were urgent and did not require complicated medical equipment, such as emergency contraception.⁵⁰

In some cases, service providers apply their own criteria and decision to women’s choices, regardless of the law. This is particularly true in the case of tubal ligation (female

⁴⁵ Human Rights Watch phone interview with Natalia Rodríguez, lawyer, Area of the Right to Health and Social Integration, human rights ombudsperson’s office, Buenos Aires, April 15, 2010.

⁴⁶ Human Rights Watch interviews with Dr. Jorge Ortí, Maternal-Child Health, Hospital Dr. Juan A. Fernández, Buenos Aires, March 8, 2010; and Dr. Eduardo Valenti, Maternity Ward, Maternity Hospital Sardá, Buenos Aires, March 11, 2010.

⁴⁷ Human Rights Watch phone interview with Natalia Rodríguez, lawyer, Area of the Right to Health and Social Integration, human rights ombudsperson’s office, Buenos Aires, April 15, 2010.

⁴⁸ Human Rights Watch interview with Julia D., José C. Paz, Buenos Aires Province, March 10, 2010.

⁴⁹ Human Rights Watch interview with Melisa B., José C. Paz, Buenos Aires Province, March 10, 2010.

⁵⁰ Human Rights Watch interviews with Gloria M., José C. Paz, Buenos Aires Province, March 10, 2010; with Julia D., José C. Paz, Buenos Aires Province, March 10, 2010; with Mariana F., Buenos Aires, March 8, 2010; and Claudia M., Buenos Aires, March 9, 2010.

sterilization). Natalia Rodríguez relayed the results of her study on access to both male and female sterilization in the capital city:

There is a sort of conscientious objection that is not registered and that is played out in the privacy of the medical consultation. [The doctor will say] that [sterilization] is not legal, that you need a judicial authorization, that you need spousal authorization.... There is a resistance to the application of the law because some medical professionals feel that it's not enough that the patient wants [the sterilization], that it should only be done for medical reasons, or that she has to have children.⁵¹

Dr. José Lanés, the director of a large hospital in Buenos Aires City, inadvertently confirmed the imposition of illegal criteria for authorizing tubal ligation at that hospital: “We only do tubal ligation ... with the consent of the patient, and, if she is properly married, that of her partner.”⁵² Applicable Argentine law entitles any woman over the age of 21 to decide independently to be sterilized, and only requires judicial authorization if a person has been declared legally incompetent.⁵³ The requirement of spousal authorization runs counter to the right to privacy and the right to nondiscrimination in access to health care, and is contrary to applicable national guidelines.⁵⁴

Human Rights Watch also documented an account of sexual harassment in a public health clinic in Buenos Aires Province. Mariana F. recounted the experience of her 27-year-old

⁵¹ Human Rights Watch phone interview with Natalia Rodríguez, lawyer, Area of the Right to Health and Social Integration, human rights ombudperson's office, Buenos Aires, April 15, 2010.

⁵² Human Rights Watch interview with Dr. José Lanés, Director, Hospital Dr. Juan A. Fernández, Buenos Aires, March 8, 2010.

⁵³ Ley 26.130 [Law 26.130], Contracepción quirúrgica [Surgical contraception], adopted on August 9, 2006 and entered into law on August 28, 2006, Arts 1-3 read: “ARTICULO 1º - Objeto. Toda persona mayor de edad tiene derecho a acceder a la realización de las prácticas denominadas “ligadura de trompas de Falopio” y “ligadura de conductos deferentes o vasectomía” en los servicios del sistema de salud. ARTICULO 2º - Requisitos. Las prácticas médicas referidas en el artículo anterior están autorizadas para toda persona capaz y mayor de edad que lo requiera formalmente, siendo requisito previo inexcusable que otorgue su consentimiento informado. No se requiere consentimiento del cónyuge o conviviente ni autorización judicial, excepto en los casos contemplados por el artículo siguiente. ARTICULO 3º - Excepción. Cuando se tratare de una persona declarada judicialmente incapaz, es requisito ineludible la autorización judicial solicitada por el representante legal de aquélla.” [ARTICLE 1 – Focus. Every person of age has the right to access the practices known as “Fallopian tubal ligation” and “seminal duct ligation or vasectomy” in the health system. ARTICLE 2 – Requirements. The medical practices referred to in the previous article are authorized to any person who is mentally able and of age and who is formally asking for it, it being a nonderogable prerequisite that the person previously gives his or her informed consent. Spousal consent, or the consent of a cohabitant is not required, and neither is judicial authorization, except in the cases referred to in the following article. ARTICLE 3 – Exception. When it is a question of a person who has been declared legally incompetent, judicial authorization, asked for by the legal representative of the person, is a non-derogable prerequisite.]

⁵⁴ See Human Rights Watch, *Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina*, in particular part V on voluntary tubal ligation, for a full discussion of Argentina's international legal obligations not to submit women's reproductive decision-making to male authorization.

daughter: “[My daughter] uses the injection....⁵⁵ She went every month to the local health clinic.... Then this month, she went to get her injection ... and the [male] nurse wanted to grope her [in exchange] for the injection.... She said: ‘I’m not going to have sex with you, nor with anyone else, for an injection.’”⁵⁶ As a result of the harassment, Mariana’s daughter decided to stop going to the health clinic for her injections.

Failure to Provide Legal Abortions

No one wants to do it, because they’ll be called abortionists, because they are afraid of what others will say, because [they think] there is a judge out there who’s going to place an injunction on them, because of whatever it might be. There isn’t a very clear legal definition, and some doctors just don’t want to risk it.

—Dr. Daniel Lipchak, National Health Ministry consultant, Buenos Aires, March 3, 2010.⁵⁷

In theory, any woman or girl for whom a pregnancy poses a mental or physical health risk, or whose pregnancy is the result of rape, is entitled to a legal abortion in Argentina. Medical providers must provide the service at the moment it is solicited, and must interpret the law in the manner that is most favorable to the human rights of the patient.⁵⁸

However, in practice very few such abortions are ever carried out.⁵⁹ Often, women are unaware of the circumstances in which they could legally obtain an abortion. The few individuals who do solicit legal abortions are stonewalled by complicated procedures and hostile service providers in the health and justice systems. Many women with crisis

⁵⁵ Hormonal birth control methods include birth control pills, hormone implants, or injections. The most commonly used injectable contraceptive is Depro-Proveram, an intramuscular injection given every 12 weeks. See Robert A. Hatcher et al (eds.), *Contraceptive Technology* (Ardent Media: New York, 1998), 7th Edition, p. 467.

⁵⁶ Human Rights Watch interview with Mariana F., Buenos Aires, March 8, 2010.

⁵⁷ Human Rights Watch interview with Dr. Daniel Lipchak, medical doctor, Buenos Aires, March 3, 2010.

⁵⁸ Ministerio de Salud de la Nación [National Health Ministry], “Guía Técnica para la Atención Integral de los Abortos No Punibles” [Technical Guide for Comprehensive Care for Legal Abortions], p. 14: “Favorabilidad: En caso de dudas acerca del sentido de una norma o de su aplicación, debe adoptarse la interpretación o la aplicación que mejor se compadezca con los derechos de las mujeres.... Oportunidad: Los servicios de ANP deben prestarse en el momento en que las mujeres o quienes en cada caso se encuentren autorizados para requerirlo, soliciten la interrupción del embarazo.” [Favorability: Where there is doubt about the scope of the norm or about its implementation, the interpretation or implementation that is most favorable to the rights of the woman should be adopted.... Opportunity: Legal abortion services must be given at the moment when women, or those who are authorized to represent them, ask for the interruption of the pregnancy], p. 14.

⁵⁹ As in other countries where abortion is generally criminalized, it is very hard to get accurate numbers even on legal abortions. In 2009, the Senate asked the health ministry for figures on legal and illegal abortions. According to the secretary of the Senate Health Commission, this information was never provided. Human Rights Watch phone interview with Maricel Obon, permanent secretary, Commission on Health and Sports, National Senate, May 28, 2010.

pregnancies go directly to underground service providers, though some end up in the courts arguing for their right to health care, with varying success, as described below.

The net result is suffering and, at times, preventable death. The head of obstetric care at one of Buenos Aires City's larger hospitals reflected on this fact:

There must be so many women out there who could get a legal abortion, and they just do it on their own.... Apart from on International Women's Day, no one cares how many women die [from unsafe abortions] because rich women aren't the ones dying.⁶⁰

Lack of Information

Despite the clarity of the federal guidelines on the provision of legal abortion, confusion abounds among service providers and the general public alike.⁶¹ Human Rights Watch spoke with seven service providers with extensive experience in the field of public health, all of whom cited a different definition of legal abortion in Argentina. The National Health Ministry's whiplash statements regarding its federal guidelines in July 2010⁶² can only contribute to deepen this confusion.

⁶⁰ Human Rights Watch interview with Dr. Alicia Lapíus, obstetrician, Hospital Dr. Juan A. Fernández, Buenos Aires, March 8, 2010.

⁶¹ Ministerio de Salud de la Nación [National Health Ministry], "Guía Técnica para la Atención Integral de los Abortos No Punibles" [Technical Guide for Comprehensive Care for Legal Abortions], p. 15: "DEFINICIONES Y PROCEDIMIENTOS 3.1. ABORTO NO PUNIBLE La presente Guía Técnica es de aplicación a las situaciones previstas por el artículo 86 del Código Penal de la Nación, norma que regula los casos en los que se autoriza el aborto eximiendo de pena al médico y a la mujer que lo llevan adelante. Una interpretación de este artículo en consonancia con los principios citados y las normas nacionales e internacionales mencionados en el acápite 2, establece que para el Código Penal de la Nación el profesional de la salud y la mujer no incurrir en delito de aborto en las siguientes situaciones: a. en casos de peligro para la vida de la mujer (artículo 86, inciso 10, Código Penal de la Nación), b. en los casos de peligro para la salud de la mujer (artículo 86, inciso 10, Código Penal de la Nación), c. cuando el embarazo sea producto de una violación (artículo 86, inciso 20, Código Penal de la Nación), d. cuando el embarazo sea producto del atentado al pudor sobre mujer idiota o demente (artículo 86, inciso 20, Código Penal de la Nación). En este caso el consentimiento de su representante legal deberá ser requerido para el aborto. La interpretación de las causales de no punibilidad citadas debe realizarse a la luz de las normas constitucionales y de los tratados de derechos humanos de rango constitucional que reconocen los derechos a la igualdad, a la salud, a la autodeterminación, a la privacidad, y a la no discriminación." [DEFINITIONS AND PROCEDURES. 3.1. LEGAL ABORTION. This technical guide is for implementation of all the situations contemplated in Article 86 of the National Penal Code, a law which regulates the cases in which abortion is authorized and punishment is waived for both doctor and for the woman who has the abortion. An interpretation of this article, which is in line with the noted principles and the national and international norms mentioned under numeral 2, establishes that for the purposes of the National Penal Code, the health professional and the woman would not be engaging in the crime of abortion in the following cases: a. where the life of the woman is in danger (article 86, para. 1, National Penal Code), b. where the health of the women is in danger (article 86, para. 1 National Penal Code, c. where the pregnancy is the result of rape (article 86, para. 2, National Penal Code), d. where the pregnancy is the result of the attack on the honor of an idiot or demented woman (article 86, para. 2, National Penal Code). In this case the consent of the legal representative would be required for the abortion. The interpretation of the exceptions to punishment that are cited here are those that are owed to constitutional law and international human rights treaties of constitutional rank, and which recognize the right to equality, the right to health, to self-determination, to privacy, and to nondiscrimination.

⁶² See above at footnote s 25-27 and accompanying text.

Very few women who were interviewed knew that abortion might be legal in some circumstances. With the exception of a woman with a physical disability that severely restricts her mobility, none who were entitled to a legal abortion, were informed of this fact by the medical providers they turned to for help.

Human Rights Watch spoke to a woman who found herself in the absurd situation of citing medical advice back to the doctor who had given it to her in the first place. Silvia A., who learned that she suffers from a serious kidney disease during her first wanted pregnancy, had to remind her doctor at the public hospital in Buenos Aires City where she gave birth and is attended for her kidney disease, that another pregnancy could be near fatal for her:

When I told [my doctor] that I was pregnant again, she got really happy, though she had been the one to tell me [that I couldn't get pregnant again].... She said, we'll fight to make sure this baby is healthy.... I said, but you told me that I shouldn't have it!... And I have a really small child and I can't get worse, health-wise, I have to take care of myself.... I am close to needing dialysis as it is and with another pregnancy I could have already been with a plastic bag.... I said, are you going to guarantee that nothing will happen to my health?... She said, I can't guarantee that.⁶³

The doctor nevertheless insisted that Silvia would not be able to get a legal abortion at the public hospital. Silvia's pregnancy test later came out negative, and she does not know if she had a miscarriage or if she had not been pregnant in the first place.

Complicated Procedures for Access

Guidelines on access to legal abortion, such as those issued by the National Health Ministry in 2005 and republished in 2010, can provide relief for some women in distress. However, Human Rights Watch research indicates that the guidelines so far have been selectively implemented and routinely ignored. Moreover, experience from other countries with similar normative frameworks show that the general criminalization of abortion contributes to the stigmatization of legal abortion services, even where guidelines exist.⁶⁴

⁶³ Human Rights Watch interview with Silvia A., Buenos Aires, March 9, 2010.

⁶⁴ See Human Rights Watch, *The Second Assault: Obstructing Access to Legal Abortion After Rape in Mexico*, March 2006, Vol. 18, No. 1(B); and Human Rights Watch, *My Rights, and My Right to Know: Lack of Access to Therapeutic Abortion in Peru*, July 2008, ISBN 1-56432-347-1.

Argentina’s national guidelines for providing legal abortion services are very explicit about the procedures to be followed. In the case of a threat to the pregnant patient’s life or health, a qualified medical professional should carry out the necessary medical tests—including psychological tests where the perceived threat is to the mental health of the patient—and determine the legality of the abortion. In the case of rape, the doctor should ask to see proof that a complaint of the rape has been filed with the relevant authority, or simply accept an affidavit from the woman declaring that she has been raped, and proceed to carry out the termination without waiting for judicial authorization or the results of a police investigation.⁶⁵ The guidelines as republished in 2010 includes a warning that any other requirement, such as prior judicial authorization or the requirement that the woman present her case before an Ethics Committee, is a violation of her right to access a legal abortion.⁶⁶

Argentina’s 23 provinces and Buenos Aires City are empowered by the constitution to issue their own guidance on the proper implementation of federal and provincial laws, though these guidelines cannot provide lesser coverage than that guaranteed in federal law. At least five provinces, as well as Buenos Aires City, have developed guidelines for the provision of legal abortion services.⁶⁷ In many cases these guidelines set explicit benchmarks for both how a decision on providing such services is to be made, and how fast it should taken.

In Buenos Aires City, the local health ministry has added a requirement that health centers with obstetrics and gynecological services set up an interdisciplinary committee to oversee decisions regarding legal abortion made by individual doctors, when the doctor requests it.⁶⁸

⁶⁵ Ministerio de Salud de la Nación [National Health Ministry], “Guía Técnica para la Atención Integral de los Abortos No Punibles” [Technical Guide for Comprehensive Care for Legal Abortions], p. 28: “Para la constatación de los casos de violación o atentado al pudor cometido sobre mujer idiota o demente (artículo 86, inciso 2do. del CPN), el médico tratante deberá pedir que se le exhiba constancia de la denuncia policial o judicial de la violación o que la mujer suscriba una declaración jurada” [For cases of rape or attack on the honor of an idiot or demented woman (article 86, para. 2 of the National Penal Code), the doctor in charge of treating the patient must ask to be shown a receipt for denouncing the rape to the police or the courts, or that the women signs an affidavit]

⁶⁶ Ibid.

⁶⁷ These provinces include Buenos Aires City, Buenos Aires province, Chubut, Neuquén, Santa Fe, Tierra del Fuego, and La Pampa.

⁶⁸ Ministerio de Salud de la Ciudad de Buenos Aires [Health Ministry of the City of Buenos Aires], Resolución 1174-MSGC-07 [Resolution 1174-MSGC-07], “Aprueba el procedimiento para la atención profesional de prácticas de abortos no punibles” [Approving the procedure for the professional service provision of legal abortions]. Annex, paras. 2 and 7. Para 2: “En los supuestos contemplados en los incisos 1 y 2 del artículo 86 del Código Penal los profesionales intervinientes, previa acreditación y cumplimiento de los recaudos exigidos en dicha norma y con el consentimiento informado sujeto a la normativa vigente en el ámbito de la Ciudad de Buenos Aires, efectuarán la práctica terapéutica para la interrupción del embarazo, conforme a las reglas del arte de curar, sin necesidad de requerir autorización judicial. En caso de considerarlo necesario el profesional podrá requerir la asistencia de un equipo interdisciplinario acorde a lo establecido en el capítulo IV del presente. ... Para 7. Todos los efectores del Subsector Estatal del Sistema de Salud de la Ciudad de Buenos Aires que tengan servicios de tocoginecología deberán integrar equipos interdisciplinarios para la evaluación y contención de los casos que se presenten. Sólo intervendrán cuando el profesional interviniente considere necesario su opinión en virtud de las características del caso.” [Para. 2. In those cases contemplated by paras. 1 and 2 of article 86 of the Penal Code, the attending

As far as Human Rights Watch was able to ascertain, only one of 30 public health centers with such services in the city fulfills this requirement.⁶⁹

Whatever the procedure for authorization in any given hospital, women are generally not informed of their right to a legal abortion, or of how to proceed should they choose to terminate a pregnancy legally. A leading obstetrician at one of the largest public hospitals in the Buenos Aires City explained the procedure in that hospital, and its effect on women:

[For legal abortion] they would have to come very early in the pregnancy, because that would have to go to the ethical committee.... [The members of the committee] have to discuss it, then the directors have to agree, and so if she comes with a 14-week pregnancy, that's already late.... It's not that we are putting obstacles in her way, but sometimes we have to convince the committee.⁷⁰

According to the law and federal and local guidelines, neither the medical ethics committee, nor the interdisciplinary committee is required to validate a doctor's decision to perform a legal abortion. Guidelines for Buenos Aires City require the hospital director to validate the diagnosis established by the doctor.⁷¹

The Buenos Aires-based obstetrician quoted above said that, in her experience, the health consequences of carrying the pregnancy to term would have to be life-threatening for the petition to succeed: "Here at the hospital [the law] becomes very narrow, it becomes about

professionals, fully accredited and in fulfillment of that which is required by that law and having ensured informed consent in accordance with the current law of Buenos Aires City, will carry out the therapeutic service of interrupting the pregnancy, in accordance with medical practice [lit: the art of curing], without the need for judicial authorization. If s/he considers it necessary, the professional may seek assistance from an interdisciplinary team, in accordance with chapter IV of this regulation. ... Para 7. All health providers with obstetrical and gynecological services in the State Subsection of the Health System of Buenos Aires City must form interdisciplinary teams to evaluate and expedite those cases they receive. These teams will only intervene when the attending professional deems it necessary to seek their opinion because of the characteristics of the particular case.]

⁶⁹ The resolution refers to health centers with "tocoginecología" services, which translates as obstetrical and gynecological services. According to Buenos Aires City government, 30 health centers offer such services, three of them hospitals. See http://www.buenosaires.gov.ar/areas/salud/sistemas_salud/index.php?redir=1&texto=tocoginecologia&pag=1&orden, accessed May 31, 2010. Fifteen hospitals offer gynecological services (though not obstetrical services) and thus would not technically be covered by that provision of the resolution. See http://www.buenosaires.gov.ar/areas/salud/sistemas_salud/index.php?idtema=1&idcomuna=&idbarrio=&idtipo=&texto=ginecologia&Buscar2=Buscar&redir=1, accessed May 31, 2010.

⁷⁰ Human Rights Watch interview with Dr. Alicia Lapidus, obstetrician, Hospital Dr. A. Fernández, Buenos Aires, March 8, 2010.

⁷¹ Ministerio de Salud de la Ciudad de Buenos Aires [Health Ministry of the City of Buenos Aires], Resolución 1174-MSGC-07 [Resolution 1174-MSGC-07], "Aprueba el procedimiento para la atención profesional de prácticas de abortos no punibles" [Approving the procedure for the professional service provision of legal abortions], annex, para. 8.

a threat to the life.... Health is so subjective, in those cases it would have to come from the patient.... It's such a non-concrete definition, so in a hospital system, that's complicated."⁷²

As Silvia A.'s case shows, even when the petition comes from the patient, it is sometimes not honored.

The UN Human Rights Committee, which is charged with overseeing implementation of the International Covenant on Civil and Political Rights (ICCPR), has highlighted Argentina's failure to facilitate access to legal abortion in the context of the rights to life and equal enjoyment of all human rights. In March 2010, the committee issued the following statement with regard to Argentina:

The Committee expresses its concern at the restrictive legislation on abortion contained in article 86 of the Criminal Code and at the inconsistency in the courts' interpretations of the grounds of exemption from punishment set out in this [sic] articles (articles 3 and 6 of the Covenant). The State party should amend its legislation so that it effectively helps women to prevent unwanted pregnancies and protects them from having to resort to clandestine abortions that could endanger their lives. The State should also adopt measures for educating judges and health workers about the scope of article 86 of the Criminal Code.⁷³

Hostile Service Providers

The general stigmatization of abortion contributes to a climate where justice and health service providers seem to feel justified in mistreating the very women they are meant to support. Mónica P., who became pregnant when her ex-boyfriend forced his way into her apartment and raped her, recounted to Human Rights Watch how she had been turned away, mistrusted, and denied support throughout her attempt to seek justice for the rape and to terminate the pregnancy.

Mónica had sought support, first, from the government anti-violence helpline: "I said, I can't have [the child] because I am going crazy.... She said: 'but it's not the baby's fault.'" Mónica then went to seek to have a criminal complaint filed against the rapist.

⁷² Human Rights Watch interview with Dr. Alicia Lapídez, obstetrician, Hospital Dr. A. Fernández, Buenos Aires, March 8, 2010.

⁷³ Human Rights Committee, "Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations by the Human Rights Committee: Argentina," CCPR/C/ARG/CO/4, March 31, 2010, para. 13.

I went alone to file the complaint at 3 in the morning.... It was the judge, a social worker and a psychologist.... [The psychologist] tried to make me keep the baby and realize that, really, I wanted it.... The judge looked at my clothes and said that I wasn't really all that affected [by the rape because I was well-dressed].... It was the one day I had dressed up, because I was going to see a judge! ... They were only talking about the abortion, at no point did they ask me what happened [with the rape.]... It was my words against their words, and in the [official] record, it's all their words.⁷⁴

Mónica found help from a local women's rights organization that helped her direct her petition for a legal abortion to the most likely public hospital to accept it. Even there, however, the first reaction of the doctors was to offer money for Mónica to get a legal abortion in a private clinic, rather than having to do it at the hospital.⁷⁵ Mónica was ultimately able to procure a safe abortion at a public hospital, but the intervention was never registered as a legal abortion.

Some health providers display particular hostility toward women they suspect of having had an illegal abortion. Mariana F. told Human Rights Watch of the mistreatment she received at the public hospital in Buenos Aires province in 2004 after a miscarriage:

The doctor had told me that I needed to be in complete bed rest for the pregnancy, but I had to keep working even so.... When I noticed [that I was having a miscarriage], the fetus was almost all the way outside of me.... I went to the hospital in Moreno.... They let me in, and the midwife comes, and she starts to scream at me, had I stuck parsley into myself, had I taken something, had I stuck a knitting needle in.... It was a wanted pregnancy, and I started to cry. She said, are you crying because you regret what you have done?⁷⁶

Mariana had felt assaulted and mistreated: "Why do they have that mentality, that if you lose a child it must be that you made it happen?"⁷⁷

⁷⁴ Human Rights Watch interview with Mónica P., Buenos Aires, March 9, 2010.

⁷⁵ Human Rights Watch interview with [lawyer involved with Mónica's case], Buenos Aires, March 9, 2010.

⁷⁶ Human Rights Watch interview with Mariana F., Buenos Aires, March 8, 2010.

⁷⁷ Ibid.

Patricia G., also in Buenos Aires province, had witnessed similar treatment of a teenage girl in 2009: “When I was pregnant [last year] there was a girl who came in to the hospital, she had had an abortion, and they said, what did you do, what did you take?... They spoke to her in bad words.... Shouting.... They left her suffering.”⁷⁸

Many interviewees—service-users, members of civil society, and medical providers alike—referred to the existence of “friendly services” as a solution for the abuse some women receive in the public health centers. In Buenos Aires City, for example, one particular hospital was singled out by many interviewees as the place to go when services are denied elsewhere: “They say, we just send them to Hospital Alvarez,” said Natalie Rodríguez from the Buenos Aires City human rights ombudsperson’s office, referring to directors from hospitals who do not want to provide legal services such as tubal ligation.⁷⁹ The head of the maternity ward at Hospital Dr. T. Alvarez confirmed that the hospital receives many patients from other hospitals, both in cases of tubal ligation and in cases of legal abortion:

We have many patients coming to us here [at Hospital Dr. T. Alvarez] because they don’t even want to do a tubal ligation in other places. Much less are they going to do a legal abortion.⁸⁰

While referring patients to a hospital where services are less likely to be denied solves access problems for some individuals, it does nothing to strengthen compliance with the law overall. As noted by Natalia Rodríguez from the Buenos Aires human rights ombudsperson’s office: “There shouldn’t be any ‘friendly’ hospitals. All the services should comply with the law.... And what this [focusing on ‘friendly’ services] does is to naturalize that there are hospitals where the law is not complied with.”⁸¹

Abortion and Contraception in the Courts

The combination of patchy implementation of guidelines, and criminal provisions on health services that are not uniformly interpreted by the legal and medical professions, have led to extensive use of the courts to authorize health services that are, in principle, completely

⁷⁸ Human Rights Watch interview with Patricia G., José C. Paz, Buenos Aires province, March 10, 2010.

⁷⁹ Human Rights Watch phone interview with Natalia Rodríguez, lawyer, Area of the Right to Health and Social Integration, human rights ombudsperson’s office, Buenos Aires, April 15, 2010.

⁸⁰ Human Rights Watch interview with Dr. Marcelo Guz, head of unit, Maternity Ward, Hospital Dr. T. Alvarez, Buenos Aires, March 5, 2010.

⁸¹ Human Rights Watch phone interview with Natalia Rodríguez, lawyer, Area of the Right to Health and Social Integration, human rights ombudsperson’s office, Buenos Aires, April 15, 2010.

legal. Doctors and hospital directors are particularly reluctant to provide voluntary sterilization or vasectomies, and abortions where the pregnant woman's life or health is threatened, or where the pregnancy is the result of rape, in particular where the rape victim is not mentally disabled or a minor.⁸² Many such cases therefore end up in the courts, either because the doctors or hospitals seek judicial authorization instead of denying the services outright; because individuals who have services denied, and their families, seek help from the court system to force the provision of services; or because prosecutors take it upon themselves to issue injunctions to try to prevent legal abortions from taking place.⁸³

It is apparent that courts get less involved when there is more clarity in the law. Natalia Rodríguez, from the human rights ombudsperson's office in Buenos Aires City, told Human Rights Watch that the office had received many more complaints regarding over-judicialization and denial of legal sterilization (tubal ligation and vasectomy) services before the law was enacted that explicitly allowed these services.⁸⁴

However, regardless the specificity of the law, medical providers are reluctant to provide some legal services, especially legal abortion. For example, courts have on numerous occasions been asked to authorize (or have taken it upon themselves to prevent) the termination of pregnancies for underage rape victims with cognitive disabilities, cases that are well within even the narrowest interpretation of the penal code.⁸⁵

There are two main reasons for this over-judicialization of legal services. First, doctors fear the social and legal consequences of providing some health services, in particular abortions.

⁸² The National Health Ministry's 2010 guide on access to legal abortion speaks to the many barriers women and girls encounter in accessing these services, including frequent "institutional violence." Ministerio de Salud de la Nación [National Health Ministry], "Guía Técnica para la Atención Integral de los Abortos No Punibles" [Technical Guide for Comprehensive Care for Legal Abortions], p. 16. See also *supra* footnote 58 and accompanying text.

⁸³ Mariana Carbajal, *El Aborto en Debate: Aportes para una Discusión Pendiente* [Abortion on Debate: Contributions for a Discussion that Needs to Happen], (Paídos: Buenos Aires, 2009), pp. 138-154: "La Historia de L.M.R., Un Caso Emblemático" [The Story of L.M.R., An Emblematic Case]. L.M.R. was a 19-year-old girl from Buenos Aires province with a severe mental disability who had become pregnant as the result of rape in 2006. After considerable back-and-forth in the courts over the legality of the termination of her pregnancy, L.M.R. obtained the authorization for her abortion from the Supreme Court of the province a full month-and-a-half after she had filed a complaint about her rape. Even so, the public hospital denied her the service to which she was entitled, and she ended up having to pay for an abortion in a private clinic.

⁸⁴ Human Rights Watch phone interview with Natalia Rodríguez, lawyer, Area of the Right to Health and Social Integration, human rights ombudsperson's office, Buenos Aires, April 15, 2010.

⁸⁵ See Mariana Carbajal, *El Aborto en Debate: Aportes para una Discusión Pendiente* [Abortion on Debate: Contributions for a Discussion that Needs to Happen], (Paídos: Buenos Aires, 2009), pp.135-200 ("El aborto en primera persona" [Abortion in first person perspective]; "Aborto, entre la legalidad y los derechos de las argentinas" [Abortion, between legality and Argentine women's Rights], CIMAC noticias, September 28, 2006, <http://www.cimacnoticias.com/site/o6092801-Aborto-entre-la-le.1264.o.html>, accessed on June 15, 2010; and "Otro pedido de aborto para una discapacitada" [Another abortion request for a disabled woman], La Nación, August 18, 2006, http://www.lanacion.com.ar/nota.asp?nota_id=832494, accessed on June 15, 2010.

Second, many doctors still do not know the law. Dr. José Lanés, director of one of the main public hospitals in Buenos Aires City, explained his vision of the law to Human Rights Watch, with a demonstrated bias towards seeking clarity from the courts: “It’s a medical decision when we call it a therapeutic abortion, and when it’s for rape or because it’s a minor, it has to go to the courts.”⁸⁶

Whatever the reason for over-judicialization may be, the consequences for women and girls are severe delays or outright denial of what should be an entitlement. Paola Ferro, the head of the National Program on Sexual Health and Responsible Procreation, acknowledged that delays—sometimes for several weeks—are often linked to the erroneous judicialization of access to legal abortion, because once a case goes to court, doctors feel they have to wait for the court decision to provide services they could have provided legally without delay.⁸⁷ Silvia Oizerovich, who co-directs the provision of reproductive health services in Buenos Aires City, lamented: “[Doctors] don’t understand that for a legal abortion, you don’t need to go to a court, and so then they don’t do it.... They don’t even do a vasectomy.”⁸⁸

The resulting delays can have health consequences for the pregnant woman or girl. Abortion is generally a safe medical procedure if carried out under proper conditions. It is safest when provided within the first eight weeks of the pregnancy. As the pregnancy progresses, “[t]he relative risk of dying as the consequence of abortion approximately doubles for each 2 weeks after 8 weeks gestation.”⁸⁹

Key Constituencies Ignored

The general difficulties in accessing reproductive health care services are magnified for two key constituencies: adolescents and women with disabilities. For adolescents, it is mostly a case of lax implementation and supervision. For women with disabilities, it is worse still: their needs and additional difficulties in accessing services and information are simply ignored. Gabriela Perrotta, co-director for the sexual health program in Buenos Aires City acknowledged: “We have a blind spot there.”⁹⁰

⁸⁶ Human Rights Watch interview with Dr. José Lanés, director, Hospital Dr. Juan A. Fernandez, Buenos Aires, March 8, 2010.

⁸⁷ Human Rights Watch interview with Paola Ferro, Director, National Program on Sexual Health and Responsible Procreation, Buenos Aires, March 3, 2010.

⁸⁸ Human Rights Watch interview with Silvia Oizerovich, co-director, Program on Sexual Health and Responsible Procreation for the Autonomous City of Buenos Aires, Buenos Aires, March 4, 2010.

⁸⁹ F. Gary Cunningham, Kenneth L. Leveno et al, *Williams Obstetrics* 23rd Edition (McGraw-Hill: 2005) ISBN 978-0-07-149701-5, chapter 9.

⁹⁰ Human Rights Watch interview with Gabriela Perrotta, co-director, Program on Sexual Health and Responsible Procreation for the Autonomous City of Buenos Aires, Buenos Aires, March 4, 2010.

Adolescent Girls

Early teenage sexual activity and pregnancy is a serious public health issue across Latin America, and Argentina is no exception. In Argentina, the average age of sexual initiation is 15 for girls and 16 for boys, and while teenage fertility rates appear to have been in decline since 1980, as an overall figure, they continue at alarmingly high rates in the poorer provinces and among girls with lower levels of education.⁹¹ Teenage pregnancy is particularly prevalent amongst those who depend solely on the public health system for care, indicating a potential lack of prevention efforts, and certainly underscoring the importance of teenage mothers receiving appropriate care and attention from the state.⁹²

In principle, Argentina has taken a relatively comprehensive approach to adolescent sexuality. Applicable law and policy indicate the need to include all children as beneficiaries of sexual and reproductive health programs.⁹³ In 2007 the National Health Ministry created a comprehensive health program for adolescents.⁹⁴ In addition, the regulation related to the National Program on Sexual Health and Responsible Procreation attempts to balance the need for older adolescents to have independent access to care with

⁹¹ María Cecilia Tosi, "Sexualidad adolescente: la edad de la desinhibición," [Adolescent sexuality: the age of no inhibition], *La Nación* (Buenos Aires), Dec. 2, 2007; Edith Alejandra Pantelices and Georgina Binstock, "La fecundidad adolescente en la Argentina al comienzo del Siglo XXI," [Adolescent fertility in Argentina at the beginning of the 21st Century], *Revista Argentina de Sociología* Año 5 No 9 [Argentine Journal of Sociology, Year 5 No 9], ISSN 1667-9261 (2007), pp. 24-43.

⁹² Edith Alejandra Pantelices and Georgina Binstock, "La fecundidad adolescente en la Argentina al comienzo del Siglo XXI," [Adolescent fertility in Argentina at the beginning of the 21st Century], *Revista Argentina de Sociología* Año 5 No 9 [Argentine Journal of Sociology, Year 5 No 9], ISSN 1667-9261 (2007), pp. 27-28.

⁹³ National Health Ministry, "REGLAMENTACION DE LA LEY N° 25.673" [Regulation of Law No. 25.673], art. 4 reads: "A los efectos de la satisfacción del interés superior del niño, considérese al mismo beneficiario, sin excepción ni discriminación alguna, del más alto nivel de salud y dentro de ella de las políticas de prevención y atención en la salud sexual y reproductiva en consonancia con la evolución de sus facultades. En las consultas se propiciará un clima de confianza y empatía, procurando la asistencia de un adulto de referencia, en particular en los casos de los adolescentes menores de CATORCE (14) años. Las personas menores de edad tendrán derecho a recibir, a su pedido y de acuerdo a su desarrollo, información clara, completa y oportuna; manteniendo confidencialidad sobre la misma y respetando su privacidad. En todos los casos y cuando corresponda, por indicación del profesional interviniente, se prescribirán preferentemente métodos de barrera, en particular el uso de preservativo, a los fines de prevenir infecciones de transmisión sexual y VIH/ SIDA. En casos excepcionales, y cuando el profesional así lo considere, podrá prescribir, además, otros métodos de los autorizados por la ADMINISTRACION NACIONAL DE MEDICAMENTOS, ALIMENTOS Y TECNOLOGIA MEDICA (ANMAT) debiendo asistir las personas menores de CATORCE (14) años, con sus padres o un adulto responsable." [For the purposes of satisfying the best interest of the child, the child will be considered a beneficiary, without any exception or discrimination, of the highest level of health and within that of prevention and care policies in the area of sexual and reproductive health according to the development of his or her abilities. In the consultations, a climate of trust and empathy will be fostered, procuring the assistance of an adult of reference, especially in cases of adolescents under fourteen (14) years of age. Minors have a right to receive, at their request and according to their development, clear, complete, and timely information; confidentiality regarding this information, and with respect for their privacy. In all cases and as necessary, by indication from the attending professional, barrier methods will preferably be prescribed, especially condoms, with a view to preventing sexually transmitted infections and HIV/AIDS. In exceptional cases, and where the professional believes it necessary, other [approved] methods can be prescribed, in the case of those younger than fourteen (14) years of age, with the presence of their parents or a responsible adult.]

⁹⁴ National Health Ministry, "Resolución Ministerial No. 619/2007. Crea el Programa Nacional de Salud Integral en la Adolescencia," [Ministerial resolution No 619/2007. Creating the National Program for Comprehensive Health for Adolescents], May 10, 2007.

the need to ensure adequate support for younger girls. Girls over 14 have a right to access and receive reproductive and sexual health care without an accompanying adult, and the law notes explicitly that an adult's presence is only required when adolescents under 14 need contraception other than condoms.⁹⁵

However, Human Rights Watch interviewed several services providers and parents who expressed serious concerns about the reproductive health care actually available to adolescents.

A first set of concerns related to overbroad interpretation of the clause requiring adult supervision when adolescents under 14 visit health centers. The regulation states that the adult need not be the child's parent, and that their presence is only required where contraceptives other than condoms are prescribed. However, the health professionals and health care users Human Rights Watch spoke to were confused on this point. A social worker from Buenos Aires Province with more than a decade experience in reproductive and sexual health explained to Human Rights Watch that, in her experience, most Argentine teenagers do not want to approach their parents for help in accessing contraception and therefore don't go to health centers. She said girls under 14 were essentially left unprotected by the fact that the law is routinely thought to require parental presence. "If there is no law to protect the doctor [in providing services to a girl under 14 without a parent present], we're always going to have a problem."⁹⁶

Officials from NGOs told Human Rights Watch that many adolescents, regardless of their age or adult supervision, face serious obstacles in accessing the reproductive health services they need. Many health centers are reluctant to provide services even to girls over the age of 14, without a parent present, as documented in a study on adolescent access to reproductive health services published in 2008 by the National Consortium for Reproductive and Sexual Rights, a nongovernmental umbrella organization set up to monitor reproductive health access in Argentina.⁹⁷ The study reviews adolescent access to contraceptives and sex

⁹⁵ See footnote 87 above. There is no guidance in the law on the need for adult supervision of adolescent decisions regarding abortions, which theoretically could be an issue where a teenage girl's life or health was seriously threatened by her pregnancy and she therefore, by law, would be entitled to a legal abortion should she choose to procure one. However, access to legal abortion is seriously curtailed for all who are pregnant, whether they are adult women or girls.

⁹⁶ Human Rights Watch phone interview with [name withheld], social worker, Buenos Aires Province, March 8, 2010.

⁹⁷ Alejandra Brener and Gabriela Ramos, *La Adolescencia: Sus Derechos y Sus Prácticas de Sexualidad Saludable* [Adolescence: Their Rights and Their Health Sexuality Habits], (CoNDeRS: Buenos Aires, 2008), ISBN 978-987-24407-1-8.

education in several provinces in Argentina, and concludes that in many cases access depends on the attitude and good will of the medical providers, regardless of the law.⁹⁸

“In all the legal provisions it’s indicated that after the age of 14 you can get services without an adult chaperone.... But in many cases, this does not happen,” said Martha Rosenberg, the coordinator of CoNDeRS.⁹⁹ She also noted that some girls under 13 are also not given contraception, even with parental supervision. Human Rights Watch documented one such case.

Mariana F., a 46-year-old woman who lives in Buenos Aires province, told Human Rights Watch that her 13-year-old neighbor was already living with her boyfriend, in her mother’s house. However, when she went to get hormonal contraception at the clinic with her mother, she was denied: “The gynecologist said, no, that they were too young [to be having sex]... That he couldn’t give her contraception at 13, that their parents were wrong in allowing them to live together.”¹⁰⁰

Another issue frequently raised by interviewees was the virtually non-existent efforts to prevent unwanted pregnancies in adolescents, for example in the form of comprehensive sex education to delay sexual initiation and promote general gender equality. The social worker from Buenos Aires province lamented:

When you don’t even have enough personnel to deal with emergencies, much less are you going to be able to do prevention work.... That would require at least tripling the amount of social workers.... We just have one social worker per health unit.... We can take up the case when the girl is already pregnant, but we’ll never be able to prevent that [in the current set-up].¹⁰¹

Many of these concerns were echoed in a study carried out by a nongovernmental organization in one particular part of Buenos Aires province in August 2008. This study consisted of interviewing health professionals from all 16 health centers in the municipality of San Miguel, most of whom noted that 95 percent of teenage pregnancies in that locality

⁹⁸ *Ibid.*, pp. 15-17.

⁹⁹ Human Rights Watch interview with Martha Rosenberg, coordinator of CoNDeRS, Consorcio Nacional de Derechos Reproductivos y Sexuales [National Consortium for Reproductive and Sexual Rights], Buenos Aires, March 11, 2010.

¹⁰⁰ Human Rights Watch interview with Mariana F., Buenos Aires, March 8, 2010.

¹⁰¹ Human Rights Watch phone interview with [name withheld], social worker, Buenos Aires province, March 8, 2010.

are unwanted. In some of the centers the adolescents were served without adult supervision; in others supervision was required; and in one the parents were required to be present “for the safety of the medical professional.”¹⁰²

Paola Ferro, head of the National Program on Sexual Health and Responsible Procreation, told Human Rights Watch that even during their pregnancies, adolescent girls may not be getting the specialized attention they are entitled to, such as age-specific prenatal care: “The problem is that although it’s an adolescent girl, because she is a mother, she enters the system as a mother, and is treated as a mother and not as an adolescent.”¹⁰³

The Committee on the Rights of the Child (CRC), which oversees implementation of the Convention on the Rights of the Child, and the Committee on Economic, Social and Cultural Rights (CESCR), which oversees the implementation of the International Covenant on Economic, Social and Cultural Rights have both put special emphasis on the sexual and reproductive content of the right to health for adolescents.¹⁰⁴ The Committee on the Rights of the Child has specified that “those [adolescent girls] who become pregnant should have access to health services that are sensitive to their rights and particular needs.”¹⁰⁵

Furthermore, the CRC has indicated that, while parents or legal guardians have a role to play in creating a trusting and safe environment for adolescents to exercise their health rights, the best interests of the child are paramount.¹⁰⁶ The Committee has been particularly pointed on access to information in this regard:

¹⁰² CESPPEDH, “Informe sobre el funcionamiento del programa nacional de salud sexual y reproductiva, programa provincial de salud reproductiva y procreación responsable, ley 26.130 sobre ligadura de trompas de falopía y vasectomía, protocolo de atención post aborto. Centros de Atención Primaria del Partido de San Miguel, año 2008” [Report on the functioning of the national program on sexual and reproductive health, the provincial program on reproductive health and responsible procreation, law 26.130 on fallopian tube ligation and vasectomy, protocol on post-abortion care, Primary Health Care Centers, Municipality of San Miguel, Year 2008], on file with Human Rights Watch, p. 4.

¹⁰³ Human Rights Watch interview with Paola Ferro, director, National Program on Sexual Health and Responsible Procreation, Buenos Aires, March 3, 2010.

¹⁰⁴ Convention on the Rights of the Child, G.A. Res. 44/25, entered into force September 2, 1990 and ratified by Argentina on December 4, 1990; International Covenant on Economic, Social and Cultural Rights (ICESCR), GA res. 2200A (XXI), entered into force January 3, 1976, and ratified by Argentina on August 8, 1986; Committee on Economic, Social and Cultural Rights, “The right to the highest attainable standard of health (General Comments), General Comment 14,” August 11, 2000, *U.N. Doc. E/C.12/2000/4*, para. 23; and Committee on the Rights of the Child, “General Comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child,” July 1, 2003, *U.N. Doc CRC/GC/2003/4*, in particular paras. 16, 26, 28, 30, 31, 39(c), and 40(a).

¹⁰⁵ Committee on the Rights of the Child, “General Comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child,” July 1, 2003, *U.N. Doc CRC/GC/2003/4*, para. 31.

¹⁰⁶ *Ibid.*, para. 32.

[S]tates parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In addition, States parties should ensure that they have access to appropriate information, *regardless of ... whether their parents or guardians consent.*¹⁰⁷

The Committee also underscored the need for states to enact legal guarantees to ensure “the possibility of medical treatment without parental consent.”¹⁰⁸

Argentina’s legal regulations are in line with this understanding of adolescents’ right to access medical treatment and information on contraceptives with or without their parents’ consent, but the common understanding and implementation of them are most often not.

Women with Disabilities

Women and girls with disabilities are all but invisible in the reproductive health system. This invisibility is reflected in the absence of logistical measures that would accommodate access for women and girls with disabilities to the system. Access to services and information is complicated for able-bodied individuals and can be nearly impossible for those with physical disabilities, in particular in resource-poor settings. “It’s very complicated,” said Verónica González, a journalist and disability rights activist. “There is no accessible information produced.... Not on contraception, not on HIV.... And if we are talking about women with physical [mobility] disabilities, it’s hard for them to get to the hospitals ... because of architectural difficulties.”¹⁰⁹

In addition to the absence of logistical accommodation, myths and stereotypes persist regarding the sexual lives and reproductive capacities of women with both physical and mental disabilities. “Everything that has to do with sex [for persons with disabilities] is taboo,” said Silvia Valori, a disability rights activist.¹¹⁰ Verónica González concurred: “A parent to a kid with Down’s syndrome [for example] ... is going to say, my child ... does not have children, does not have abortions.... My child does not even have sex.... They infantilize

¹⁰⁷ Ibid., para. 28 (Human Rights Watch’s emphasis).

¹⁰⁸ Committee on the Rights of the Child, “General Comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child,” July 1, 2003, *U.N. Doc CRC/GC/2003/4*, para. 9.

¹⁰⁹ Human Rights Watch interview with Verónica González, journalist, Buenos Aires, March 5, 2010.

¹¹⁰ Human Rights Watch interview with Silvia Valori, activist on the rights of persons with disabilities, Buenos Aires, March 4, 2010.

you.”¹¹¹ González told Human Rights Watch that some doctors thought her incapable of remembering to take her daily contraceptive pill because she is blind. She also recounted the testimony of a close friend, also blind, who was told by hospital staff after she gave birth that she would not be able to take care of her baby herself because of her blindness. González said this infantilization had a lasting effect on her friend: “Instead of giving her confidence, the doctor created distance between her and her baby. Add to this an over-protective family, and you have an explosive cocktail.”¹¹²

Sometimes the myths may be converted into morbid curiosity which is experienced like an invasion of privacy. “The doctor asked a friend of mine, in wheelchair, how she went about having children,” González said.¹¹³

The Convention on the Rights of Persons with Disabilities, which Argentina ratified in 2008, explicitly recognizes that women with disabilities face multiple types of discrimination, and confers on States parties the obligation to ensure that all persons with disabilities can effectively exercise their rights to “decide freely and responsibly on the number and spacing of their children [,] to have access to age-appropriate information, reproductive and family planning education ... and [that] the means necessary to enable them to exercise these rights are provided.”¹¹⁴ The Convention further specifies that States parties must “[p]rovide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes.”¹¹⁵

In Argentina, there are no structures in place to ensure that these rights are systematically upheld. The country adopted a law creating a System for the Comprehensive Protection of Persons with Disabilities in 1981, focusing mostly on including persons with disabilities in existing social protection schemes such as pensions and social security, and adding rehabilitation for persons with physical disabilities to the basket of basic medical care.¹¹⁶ Additional regulations related to this law were issued in 2010, as part of the government’s

¹¹¹ Human Rights Watch interview with Verónica González, journalist, Buenos Aires, March 5, 2010.

¹¹² Email message from Verónica González to Human Rights Watch, journalist, Buenos Aires, February 25, 2010.

¹¹³ Ibid.

¹¹⁴ Convention on the Rights of Persons with Disabilities, U.N. Doc. A/61/611, entered into force on May 3, 2008, and ratified by Argentina on September 2, 2008. Argentina also ratified the Optional Protocol to this convention, also on September 2, 2008; Convention on the Rights of Persons with Disabilities, arts. 6 and 23(b).

¹¹⁵ Convention on the Rights of Persons with Disabilities, art. 25(a).

¹¹⁶ Ley Nacional No. 22.431 [National law no. 22.431], Sistema de protección integral de las personas discapacitadas [System of comprehensive protection for persons with disabilities], adopted on March 16, 1981, entered into force on March 16, 1981.

plan to implement the provisions of the Convention on the Rights of Persons with Disabilities, with specific focus on achieving a higher percentage of public officials and government employees with disabilities.¹¹⁷

Neither the law nor the regulation mentions the reproductive and sexual health needs and rights of women living with disabilities.

¹¹⁷ Reglamentación de la Ley No. 22.431 [regulation of law no 22.431], adopted on March 2, 2010.

III. Lack of Accountability

Everyone should be held responsible, and regulation should be centralized, because otherwise it's just everyone in their own corner, and everyone else looks the other way.

—Dr. Diana Galimberti, director of public hospital in Buenos Aires City.¹¹⁸

Argentina's legal and policy framework, while not perfectly in line with the country's international human rights obligations, would, if implemented, go far to ensure reproductive and sexual health rights for women and girls. However, it is rarely adhered to.

A key reason for this is a lack of effective oversight and accountability. Data about program effectiveness and implementation is haphazardly collected, and few if any resources are allocated to processing the data. Those who uphold the law and implement the programs are not necessarily supported, and those who do not comply are rarely sanctioned. In fact, Human Rights Watch's research suggests that the Argentine state is failing women and girls at all levels of accountability with regard to their reproductive and sexual health.

Erratic Data Collection and Oversight at the Programmatic Level

Accountability for how the National Program on Sexual Health and Responsible Procreation functions should include an assessment of whether resources appropriated for the national and provincial programs on Sexual Health and Responsible Procreation are used effectively and for the purposes for which they were appropriated. This assessment should also include an analysis of whether the resources used are benefiting those most in need. In this regard, accountability promotes fiscal responsibility, and ensures the effective enjoyment of rights.

Programmatic oversight and accountability is closely linked to data collection: if the National Health Ministry does not collect information on the use and results of its activities, it cannot know if its programs are effective or indeed if they are being implemented at all. In Argentina, there is a pronounced failure to collect appropriate data on reproductive health care services and indicators, and to process the data that is collected. "There is data from the health centers, but none from the hospitals," said Silvia Oizerovich, the co-director for

¹¹⁸ Human Rights Watch interview with Diana Galimberti, Director, Hospital Dr. T. Alvarez, Buenos Aires, March 5, 2010.

the sexual health program in Buenos Aires City.¹¹⁹ Gabriela Perrotta, the other co-director said an additional problem was that lack of manpower also rendered existing data useless: “For three years, we have not had personnel capacity to enter any data into the system.”¹²⁰

Human Rights Watch interviewed several activists, government officials, and service providers who noted that the data collected by the state regarding the use of state resources was seriously deficient and acted as a barrier to effective oversight and accountability.

A key problem with data collected by the National Health Ministry is the fact that it covers neither the private health system nor activities undertaken under the authority of the provincial governments. This leads to poor planning and contributes to the distribution problems previously cited. Paola Ferro, responsible for the implementation of the National Program at the National Health Ministry, told Human Rights Watch that the only data that the ministry requires is a tally of the number of contraceptives, disaggregated by type of method, provided by the federal government to the federal states: “Whatever they [the state-level governments] buy themselves, they can distribute as they like, but they have to give us an account of how they use [i.e. distribute] whatever we send to them.”¹²¹ Given the fact that many provinces use their own budgets to provide a large part of contraceptive supplies — especially since the distribution debacle in 2008— the tally of federal-bought contraceptives cannot give even a rudimentary picture of the need for, and use of, contraceptives in the country as a whole.¹²² As a result, the National Health Ministry has inadequate oversight over universal access to modern contraceptive methods, one of the key objectives of the National Program on Sexual Health and Responsible Procreation.

Another key problem with the data collected by the National Health Ministry is that it does not necessarily provide the information needed to assess progress towards the program’s objectives. For example, even a comprehensive tally of the number of contraceptives distributed and used across the country would not measure effective access to contraception. Christian Gruenberg, a lawyer who has studied accountability measures for

¹¹⁹ Human Rights Watch interview with Silvia Oizerovich, co-director, National Program on Sexual Health and Responsible Procreation for the Autonomous City of Buenos Aires, Buenos Aires, March 4, 2010. Though no fixed numbers are available, commentators note that many more women are likely to be treated in the hospitals than in the health centers in Buenos Aires City. This is all the more true because the Buenos Aires City hospitals also service women from Buenos Aires province, who find transport to these hospitals easier and faster than within the province.

¹²⁰ Human Rights Watch interview with Gabriela Perrotta, co-director, National Program on Sexual Health and Responsible Procreation for the Autonomous City of Buenos Aires, Buenos Aires, March 4, 2010.

¹²¹ Human Rights Watch interview with Paola Ferro, director, National Program on Sexual Health and Responsible Procreation, Buenos Aires, March 3, 2010.

¹²² Mariana Carbajal, “Anticonceptivos con marca estatal” [Government-brand contraceptives] *Página 12*, March 10, 2009. See also section on supply issues and lack of political support above at p. 15.

social policies directed at women in Argentina, told Human Rights Watch that counting contraceptives was deceptive:

The federal ministry compares the number of contraceptives sent to the provinces with the number distributed through those health centers, subtracts one from the other, and then looks at what is left in stock.... But they don't look at the fact that in some health centers, the contraceptives are in a locked closet in the cellar, and that women only can get them every other week.¹²³

Nongovernmental organizations registered their frustration with the lack of direct programmatic oversight and transparency. Martha Rosenberg from CoNDeRS, a national coalition of NGOs monitoring the implementation of the law on sexual health, said the National Health Ministry almost appeared to be approaching the program as a theoretical rather than practical matter, with real implications for accountability:

The [health] minister should present an annual report on implementation [of the law].... There are NGO reports, women's groups' reports, human rights reports, but nothing from the state.... They don't intervene, they don't register that in that province this many women died from [unsafe] abortion, and what did the ministry do to prevent it? ... They operate on a very high level of abstraction.¹²⁴

For example, while the Health Ministry publishes overall statistics on the number of women in the fertile age, live births, and maternal mortality by direct and indirect causes on its website, the data is dated, general, and does not specify unsafe abortion as a cause of maternal mortality.¹²⁵

The National Health Ministry does have a support structure that could facilitate the kind of oversight, and the transparent and comprehensive reporting that Rosenberg suggests. Among other accountability structures, the National Program on Sexual Health and

¹²³ Human Rights Watch interview with Christian Gruenberg, attorney, *Lesbianas y Feministas por la Despenalización del Aborto* [Lesbians and Feminists for the Decriminalization of Abortion], Buenos Aires, March 9, 2010.

¹²⁴ Human Rights Watch interview with Martha Rosenberg, coordinator of CoNDeRS, *Consortio Nacional de Derechos Reproductivos y Sexuales* [National Consortium for Reproductive and Sexual Rights], Buenos Aires, March 11, 2010.

¹²⁵ See Ministerio de Salud e [National Health Ministry], "Estadísticas" [Statistics], <http://www.msal.gov.ar/saludsexual/estadisticas.asp>, accessed June 9, 2010. The most recent available maternal mortality figures uploaded were from 2007.

Responsible Procreation in principle has an advisory council, created by ministerial resolution in January 2007.¹²⁶ This council originally consisted of 10 experts from NGOs, UN agencies, public health institutions, and academia, who are charged with gathering, analyzing, and facilitating exchange of information on sexual and reproductive health for the purposes of enhancing the functioning of the program.

A current member of the council told Human Rights Watch that the council was meeting on a monthly basis throughout 2007, but that from 2008 onwards the council's meetings became less frequent and less regular, and the focus of its meetings became the problematic contraception supply and distribution situation that persisted during that year.¹²⁷ Another member of the council said that it had played a key consultative role in developing guidelines and norms on emergency contraception and tubal ligation during 2007, but that the incoming administration in 2008 and beyond had significantly downplayed the importance of the program and effectively sidelined the council and its advice.¹²⁸

The council was reactivated in mid 2009, and expanded to 19 members. However, it operates without a budget, and has no direct reporting link to the health minister or to the deputy minister in charge of maternal health. In addition, the role of the council has been limited to information-sharing rather than strategic input, as originally conceived.¹²⁹ Moreover, the sharing has not fed into transparent annual reporting from the ministry.

The Committee on the Elimination of Discrimination against Women has on several occasions lamented the lack of effective evaluation of the National Program on Sexual Health and Responsible Procreation.¹³⁰ Most recently, in 2008, the Committee noted the lack of statistical information on 4 out of 10 of the programmatic objectives.¹³¹ In fact, the government had provided more recent information on process indicators (such as number of

¹²⁶ Ministerio de Salud de la Nación [National Health Ministry], "Res. 1/2007 La creación de un consejo asesor del programa nacional de salud sexual y procreación responsable" [Res. 1/2007 Creation of an advisory council for the national program on sexual health and responsible procreation], January 19, 2007.

¹²⁷ E-mail communication to Human Rights Watch from Silvina Ramos, senior researcher, Centro de Estudios de Estado y Sociedad (CEDES) [Center for Studies on State and Society], February 19, 2010.

¹²⁸ E-mail communication to Human Rights Watch from Mabel Bianco, president, Foundation for the Study and Research on Women [Fundación para Estudio e Investigación de la Mujer, FEIM], June 7, 2010.

¹²⁹ Ibid.

¹³⁰ Committee on the Elimination of Discrimination against Women, "Concluding comments of the Committee - CEDAW : Argentina," August 18, 2004, A/59/38(SUPP), para. 380; and Committee on the Elimination of Discrimination against Women "List of issues and questions with regard to the consideration of periodic reports: Argentina," December 1, 2008, CEDAW/C/ARG/Q/6, para. 22.

¹³¹ Committee on the Elimination of Discrimination against Women "List of issues and questions with regard to the consideration of periodic reports: Argentina," December 1, 2008, CEDAW/C/ARG/Q/6, para. 22.

laws adopted, number of workshops held), and not on impact indicators (such as fluctuations in maternal mortality rates, the number of abortion-related hospitalization, and teenage-pregnancies). The government at that stage argued that the lack of evaluation of the program's impact was due to failure to consolidate statistical information from 2005.¹³²

The Committee on the Rights of the Child has also questioned the Argentine government about its lack of information on the program's impact, as well as the new law mandating sexual education, and in March 2010 asked the government to provide information related to the effective implementation of both.¹³³

Underuse of Public Auditing Functions for Health Accountability

Argentina has a relatively complex and developed system of public auditing, designed to ensure the appropriate use of public funds. The system has functions attached to both the executive and legislative branch, and has decentralized auditing offices in the provinces that report back to capital. The stated objectives of the system is a comprehensive auditing function, which focuses not only on the appropriate use of funds, but also on ethical and political aspects of oversight, such as economy, legality, efficiency, and effectiveness.¹³⁴

The Office of the Syndicate-General of the Nation was created by law in 1992, and reports directly to the president.¹³⁵ A key role of the Syndicate-General is to provide analytical input both to the presidency and to the Auditor-General of the Nation, and to allow these offices to assess the extent to which public policies and programs are fulfilling their prescribed functions and using the resources allocated to them legally, efficiently, and appropriately.¹³⁶

¹³² Committee on the Elimination of Discrimination against Women "List of issues and questions with regard to the consideration of periodic reports: Argentina," December 1, 2008, CEDAW/C/ARG/Q/6, para. 22; and Committee on the Elimination of Discrimination against Women, "Consideration of reports submitted by States or parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth periodic report of States parties: Argentina," September 8, 2008, CEDAW/C/ARG/6

¹³³ Committee on the Rights of the Child, "List of issues to be taken up in connection with the consideration of the third and fourth periodic reports of Argentina (CRC/C/ARG/3-4)," March 3, 2010, CRC/C/ARG/Q/3-4, para. 7.

¹³⁴ Ley 24.156, Ley de Administración Financiera y de los Sistemas de Control del Sector Público Nacional. Título VI 'Del sistema de control interno.' Texto Title VI 'Of the internal control system.' art. 103.

¹³⁵ *Ibid.*, art. 96.

¹³⁶ *Ibid.*, Art. 104 (c) and (e): "Son funciones de la Sindicatura General de la Nación: ... (c) Realizar o coordinar la realización por parte de estudios profesionales de auditores independientes, de auditorías financieras, de legalidad y de gestión, investigaciones especiales, pericias de carácter financiero o de otro tipo, así como orientar la evaluación de programas, proyectos y operaciones; ... (e) Supervisar el adecuado funcionamiento del sistema de control interno, facilitando el desarrollo de las actividades de la Auditoría General de la Nación ... " [The functions of the Syndicate-General of the Nation are: ... (c) To carry out or coordinate the carrying out of professional studies by independent auditors, or financial, legal, and managerial audits, specialized studies, expert witness statements of financial or other character, and to provide input for the evaluation of programs, projects and operations; ... (e) To supervise the adequate functioning of the internal control system, facilitating the development of the activities of the Auditor-General of the Nation].

This office serves an internal accountability function for the executive branch, and issues non-binding reports intended to highlight financial and legal discrepancies in the implementation of public programs, thus serving as a correctional tool for the government itself.

The Office of the Auditor-General of the Nation was also created by law in 1992, and serves a similar function as that of the Syndicate-General, though reporting to Congress.¹³⁷ The National Congress is empowered to ask this office for reports on the financial and legal aspects of program implementation.¹³⁸ This oversight function is thus external to the administration, though it often operates with the same information as the internal auditing function described above.

The Office of the Syndicate-General has issued hundreds of reports since the inception of the National Program on Sexual Health and Responsible Procreation. Despite this, and the very public contraceptive distribution and supply problems in 2008, only one report has focused on the proper running of the program, and it specifically focused on one province: Tucumán.¹³⁹ An additional report focused on the distribution of all basic medications in the province of Córdoba, including some contraceptive methods.¹⁴⁰ As far as Human Rights Watch has been able to ascertain, the Syndicate-General has, so far, not carried out an overall assessment of the use of public resources for the protection of women's reproductive health rights.

¹³⁷ Ibid., art. 116.: "Créase la Auditoría General de la Nación, ente de control externo del Sector Público Nacional, dependiente del Congreso Nacional" [The Auditor-General of the Nation is created as an external control entity of the National Public Sector, reporting to the National Congress].

¹³⁸ Ibid., art. 118 (g): [On the functions of the Auditor-General of the Nation] "Realizar exámenes especiales de actos y contratos de significación económica, por sí o por indicación de las Cámaras del Congreso o de la Comisión Parlamentaria Mixta Revisora de Cuentas" [Carry out special review of acts and contracts that have economic importance, on its own accord, or by indication from the Houses of Congress or from the joint parliamentary auditing commission of parliament.]

¹³⁹ Sindicatura-General de la Nación [Syndicate General of the Nation], "Ministerio de Salud. Evaluar la ejecución del 'Programa de Salud Sexual y Procreación Responsable' en el ámbito de la Provincia de Tucumán, Informe No. 1" [Health Ministry. Evaluate the execution of the 'Program of Sexual Health and Responsible Procreation' in the context of the Province of Tucumán, Report No. 1], June 2009. This report concludes that the program suffers from a pronounced lack of oversight and accountability.

¹⁴⁰ Sindicatura-General de la Nación [Syndicate General of the Nation], "Ministerio de Salud. Tribunal de Cuentas de la Provincia de Córdoba; Evaluar la gestión llevada a cabo por la Provincia de Córdoba en el Marco del Programa REMEDIAR, perteneciente al Ministerio de Salud de la Nación, en lo referente a recepción, distribución, almacenamiento y entrega a los beneficiarios, de los medicamentos incluidos en los botiquines remitidos por el citado programa a los diferentes Centro de Atención Primaria de la Salud (CAPS) de la provincia.-Informe de Auditoría Nº 01/2009." [Ministry of Health. Accounting Court of the Province of Córdoba. Evaluate the management by the Province of Córdoba in the context of the REMEDIAR program, which belongs to the National Health Ministry, with regard to the reception, distribution, stocking and transfer to the beneficiaries, of the medicines included in the boxes sent by the program to the different Primary Health Care Centers (CAPS) of the province. Auditing report no. 01/2009", March 2009. This report concludes that medicines are generally distributed to the health centers as planned, but does not evaluate the adequacy of the planning.

The legislative branch has also not called the administration to account with regard to the proper use of the resources allocated to the National Program on Sexual Health and Responsible Procreation. There are several reasons for this.

First, the legislative branch does not receive the information it needs from the executive branch to carry out its oversight function. The head of the council of ministers is supposed to issue regular reports on all topics of interest to the legislative branch, which would allow it to evaluate the implementation of laws and programs. In 2008, the report included two questions from Congress regarding access to legal abortion:

- What has been the impact of the distribution to the health system, health providers, and the justice system, of the Guide on Legal Abortion, developed by the National Health Ministry?
- What are the results indicators developed for this purpose?¹⁴¹

In both cases, the government noted that it did not have the information requested and committed to providing it within five working days. In 2009 the Senate also asked for a number of statistics on maternal mortality, illegal abortions, and the methodology used to collect this information.¹⁴² According to an official from Argentina's National Congress, much of this information was not provided.¹⁴³

In 2009 the House of Representatives repeated its questions, along with a number of more pointed queries, about the implementation of the guide on legal abortions and what actions had been taken to reduce the number of maternal deaths due to illegal abortions. The health ministry answered that medical professionals had been trained to treat women respectfully, and that the guide on legal abortion was being revised internally in the ministry for potential legal errors.¹⁴⁴

¹⁴¹ Sergio Tomás Massa, "Informe del Jefe de Gabinete de Ministros a la Honorable Cámara de Diputados de la Nación, Informe No. 74" [Report from the Head of the Council of Ministers to the Honorable House of Representatives of the Nation, Report No. 74], October 2008, p. 564.

¹⁴² "Informe de Jefe Gabinete de Ministros a la Honorable Cámara de Senadores de la Nación, Informe No. 75" [Report from the Head of the Council of Ministers to the Honorable Senate of the Nation, Report No. 75], September 2009, p. 217.

¹⁴³ Human Rights Watch phone interview with Maricel Obon, permanent secretary, Commission on Health and Sports, National Senate, May 28, 2010.

¹⁴⁴ Aníbel Domingo Fernández, "Informe del Jefe de Gabinete de Ministros a la Honorable Cámara de Diputados de la Nación, Informe No. 76" [Report from the Head of the Council of Ministers to the Honorable House of Representatives of the Nation, Report No. 76], November 2009, pp. 595-596.

In addition, members of congress have not shown the interest needed to push for oversight hearings or further information. As previously mentioned, the Argentine congress can ask the auditor-general for a comprehensive review of the implementation of the National Law on Sexual Health and Responsible Procreation. So far, this has not happened.

Failure to Sanction Public Officials for Not Upholding the Law

It may appear tautological, but it is worth repeating that in the case of exercising public health, the **guarantor is the State**.

—Resolution No. 1576, Court of First Instance of Criminal Correction of the Fifth Branch of Santa Fe¹⁴⁵

Argentina’s penal code articulates the criminal responsibility incurred by a public official who does not carry out his or her function:

A public official ... who does not execute those laws he or she is charged with fulfilling is punishable with prison of one month to two years and removal from office of twice this time.¹⁴⁶

Though this provision allows ample room for the government to investigate and sanction those responsible for the lax implementation of laws and regulations related to women’s reproductive health, it has rarely been used to that end.

However, in one case in the province of Santa Fe in 2007, the parents of a young woman who died of cancer after being denied an abortion that would have allowed her to start lifesaving chemotherapy, brought a case against the doctors who had denied her the procedure, and prevailed: the court found the doctors involved to be criminally neglectful. A key component of the charges was failure to comply with the duties of a public official.

At the time of her death in May 2007, Ana María Acevedo had already experienced months of medical negligence. Even before she was diagnosed with cancer, she had asked to be sterilized at the birth of her second child, but the operation was never carried out.¹⁴⁷ The

¹⁴⁵ Court of First Instance of Criminal Correction, of the Fifth Branch of Santa Fe, “*Judicial Summons before Investigating Prosecutor N^o 21 Relating to the Death of Ana Maria Acevedo*” Case N^o 2165 2007, August 11, 2008, Part II], p. 43 (p. 492 in the court’s 18th book of judgments), emphasis in the original.

¹⁴⁶ Ley Nacional 11.179 [National Law 11.179], Código Penal de la Nación Argentina [Penal Code of Argentina], Chapter IV, Abuse of authority and violations of the duties of public officials, article 248.

¹⁴⁷ Human Rights Watch phone interview with Paula Condrac, lawyer, March 19, 2010.

rural hospital she first went to for severe mouth pains spent five months treating her for non-existent dental problems, instead of detecting the cancer that in fact was causing the pain. The initial court findings on this part of Acevedo's ordeal state that her treatment was "subject to unnecessary delay and not carried out at all, in fact limited to finally 'referring' her to another provider in the province."¹⁴⁸

When Acevedo transferred—on her own accord—to a larger hospital in Santa Fe City at the end of 2006, she received the only instance of adequate care she would during her ordeal. Her cancer was detected and removed, and her treating doctor transferred her to another hospital with explicit instructions to provide lifesaving chemotherapy and radiation.

At this point Acevedo discovered that she was pregnant, and a medical file from December 20, 2006, noted that she could not be given radiation due to the pregnancy.¹⁴⁹ Two days later, Acevedo was noted in hospital files as leaving the hospital without waiting for the doctor to discharge her.¹⁵⁰ Acevedo returned to the hospital in February 2007 with severe pains, and petitioned for a therapeutic abortion to start the treatment she needed for her cancer. Her petition was denied on the grounds that the hospital and doctors did not believe in abortion. A doctor who was present during the hospital's ethics committee's deliberations of Acevedo's case told the court that "when I asked about the possibility of a therapeutic abortion I was told, not in this hospital, as if I had said something insane."¹⁵¹

Acevedo lawyer's told Human Rights Watch what happened next:

On April 26 2007, [Acevedo] was already in pre-mortem stage, with internal organs shutting down, and they did a surgical intervention.... It was a C-section, the result was a baby weighing less than 500 grams [1.1 lb] that lived for less than 17 hours.... After that, now she is weakened by the intervention, and she is in pre-mortem stage, and then they start giving her radiation therapy ... To receive radiation, a person has to be in a good state.... She died on May 17, 2007.¹⁵²

¹⁴⁸ Court of First Instance of Criminal Correction, of the Fifth Branch of Santa Fe, "*Judicial Summons before Investigating Prosecutor N^o 21 Relating to the Death of Ana María Acevedo*" Case N^o 2165 2007, August 11, 2008, Part II, p. 46 (p. 493 in the court's 18th book of judgments).

¹⁴⁹ *Ibid.*, p. 12 (p. 476 in the court's 18th book of judgments).

¹⁵⁰ *Ibid.*, p. 35 (p. 488 in the court's 18th book of judgments).

¹⁵¹ *Ibid.*, p. 34 (p. 487 in the court's 18th book of judgments).

¹⁵² Human Rights Watch phone interview with Paula Condrac, lawyer, March 19, 2010. This account is confirmed by the medical files cited in the court papers.

After Acevedo's death, her parents filed a complaint against a number of the doctors who were involved on charges of negligence leading to grave harm and criminal failure to fulfill the duties of a public official under article 248 of the penal code. The court had sufficient proof to find six doctors guilty of not complying with the duties of a public official. Three of these doctors were also held culpable for injuries suffered by Acevedo due to that dereliction of duty.¹⁵³ However, they were not sentenced, and according to Acevedo's lawyer, "are still at work."¹⁵⁴

Acevedo's case illustrates that public officials can neglect their duties by omission as well as by actions. It also makes it clear that public officials have a duty to provide services defined by the state as entitlements (such as access to contraceptives and legal abortion). The court lists among its reasons for finding for Acevedo:

The fact that [the public officials in charge], who knew about the existence of the pregnancy of the patient from the very beginning of the gestation, who knew about the illness of the mother, and given the risk to her life and the fact that she had consented [to an abortion], did not offer the interruption of [the pregnancy] as an alternative to be able to treat the tumor, knowing that without such treatment it would be impossible for her to carry the pregnancy to term and give birth.¹⁵⁵

Lack of Transparency for Individual Complaint Mechanisms

Individual complaint mechanisms are often seen as synonymous with accountability, though in fact they are only a small part of a functioning system of accountability. Where individuals are not aware of their rights, empowered to seek redress, and encouraged to follow through on complaints, any complaint mechanism will be doomed to fail. This is true in Argentina.

Few individuals are aware that they have a right to receive the contraceptive method of their choice, and to access legal abortion services in the public health system when their health or life is threatened by the pregnancy, or where it is the result of rape. Few individuals know about individual complaint mechanisms, or have the resources to pursue a complaint.

¹⁵³ Court of First Instance of Criminal Correction, of the Fifth Branch of Santa Fe, "*Judicial Summons before Investigating Prosecutor N°1 Relating to the Death of Ana Maria Acevedo*" Case N° 2165 2007, August 11, 2008, Part II, p. 1 (p. 471 in the court's 18th book of judgments).

¹⁵⁴ Human Rights Watch phone interview with Paula Condrac, lawyer, March 19, 2010.

¹⁵⁵ Court of First Instance of Criminal Correction, of the Fifth Branch of Santa Fe, "*Judicial Summons before Investigating Prosecutor N°1 Relating to the Death of Ana Maria Acevedo*" Case N° 2165 2007, August 11, 2008, Part II, p. 36 (p. 488 in the court's 18th book of judgments).

Information on the general functioning of the national and provincial programs on sexual health—which could support an individual complaint procedure—is spottily collected, rarely consolidated, and largely inaccessible to the general public.

As a result, complaints are rarely filed, and when they are, it is not until a situation is beyond desperate: a girl is refused an abortion for a pregnancy that is the result of rape by her stepfather, or a young woman is denied life-saving cancer-treatment because she is pregnant.¹⁵⁶

Another common misperception is that a lawsuit is the only way to review individual complaints. In fact, court cases require a large investment of time and money and—especially when their focus is controversial—some degree of public exposure for the affected individual. For these reasons, many women and girls who encounter abuse, mistreatment, or neglect in the public health system in Argentina may not wish to launch a court case.

This built-in discouragement impacts general accountability. For accountability structures to fulfill one of their key functions—identifying what is not working so that it can be adjusted—individual users must be encouraged to report instances of malfunction, resulting in information that can then form the basis for needed programmatic adjustments. But this can only happen where individuals are able to file complaints quickly, conveniently, cheaply, and with safeguards to protect their privacy where necessary.

Until now, Argentina has had no real individual complaint mechanism with these key features. For a decade, the National Health Ministry has operated a free telephone line with information on HIV/AIDS, which over the years has been expanded to cover other health topics as well. But individuals have so far had no place that they can call with concerns and questions regarding access to sexual and reproductive health services.

There are signs this could change. On May 27, 2010, the ministry launched an additional phone line to monitor the implementation of the national and provincial programs on sexual health and responsible procreation. According to the general coordinator of the ministry's call-center, Dolores Fenoy, the people operating the free call-in number for sexual health and

¹⁵⁶ Ana Tronfi, "Chubut: la Justicia autorizó el aborto a una joven" [Chubut: the courts authorize abortion for girl], *La Nación*, March 8, 2010, http://www.lanacion.com.ar/nota.asp?nota_id=1241318, accessed May 27, 2010. In early 2010, the province of Chubut made headlines as two separate teenage girls sued the state's public health system for denying them access to legal abortion after they had allegedly been raped by their respective stepfathers. After many weeks, both girls were eventually granted the right to a legal abortion, though one case was originally denied; "Caso Acevedo: el pedido de aborto estaba hecho," [Acevedo case: the demand for an abortion had been made], *El Litoral.com* (online edition), June 1, 2007, http://www.ellitoral.com/index.php/id_um/22036, accessed May 27, 2010.

responsible procreation have received training that allows them to provide information on available services and where to access them; to gather information on abuse in health centers; and, where necessary, to refer individuals to a team of lawyers at the National Ministry of Health for follow up.¹⁵⁷

¹⁵⁷ Human Rights Watch phone interview with Dolores Fenoy, coordinator of call-center, National Health Ministry, May 27, 2010.

IV. International Law and Health Accountability

Accountability has been called the “raison d’être of a rights-based approach.”¹⁵⁸ It has two main components: redressing past grievances, and correcting systemic failure to prevent future harm. The Special Rapporteur on the right to the highest attainable standard of health has elaborated upon the meaning of accountability in the context of providing health care:

What it means is that there must be accessible, transparent and effective mechanisms of accountability in relation to health and human rights.... Accountability is also sometimes narrowly understood to mean blame and punishment, whereas it is more accurately regarded as a process to determine what is working (so it can be repeated) and what is not (so it can be adjusted).¹⁵⁹

Accountability to correct systemic failures in the implementation of a health program—such as frequent contraceptive supply problems, or the inability to prevent unwanted pregnancies—cannot be achieved without regular monitoring of the health system and the underlying physical and socio-economic determinants of health that affect women’s health and ability to exercise their rights.¹⁶⁰ States should develop “appropriate indicators to monitor progress made, and to highlight where policy adjustments may be needed.”¹⁶¹ Monitoring helps states parties develop a better understanding of the “problems and shortcomings encountered” in realizing rights, providing them with the “framework within which more appropriate policies can be devised.”¹⁶²

Monitoring is also a basic component of the state obligation to adopt and implement a national public health strategy and plan of action, including right to health indicators and

¹⁵⁸ For a full analysis of the international law components of accountability, please see Human Rights Watch, *No Tally of the Anguish: Accountability in Maternal Healthcare in India*, October 2009, pp.109-124.; Office of the High Commissioner for Human Rights, *Claiming the Millennium Development Goals: A human rights approach* (Geneva: United Nations), 2008, p. 15.

¹⁵⁹ Special Rapporteur on the right to health, “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt,” January 17, 2007, A/HRC/4/28, para. 46.

¹⁶⁰ Office of the High Commissioner on Human Rights, “Report of the Office of the High Commission on Human Rights on preventable maternal mortality and morbidity and human rights,” April 2010, A/HRC/14/39, para. 36.

¹⁶¹ Special Rapporteur on the right to health, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” September 2006, A/61/338, para. 28 (e).

¹⁶² Committee on Economic, Social, and Cultural Rights, “Reporting by States Parties,” General Comment 1, E/1989/22, 1989, para. 3.

benchmarks by which progress can be closely monitored.¹⁶³ Data based on appropriate indicators should be disaggregated on the basis of the prohibited grounds of discrimination to monitor the elimination of discrimination, as well as ensure that vulnerable communities are benefiting from healthcare schemes.¹⁶⁴

The principle of accountability is closely linked to the right of victims to a remedy, including reparation.¹⁶⁵ Effective access to remedies and reparation contribute to a constructive accountability framework by focusing on system failures and encouraging repair.

Transparency is the corollary of accountability: the Committee on Economic, Social and Cultural Rights has pointed out that a “[national health] strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process.”¹⁶⁶ The Special Rapporteur on the Right to Health has added, in the context of reducing maternal mortality, that “[w]hile a State will decide which [monitoring and accountability mechanisms] are most appropriate in its particular case, all mechanisms must be effective, accessible and transparent.”¹⁶⁷

Lack of transparency places added obstacles to accountability processes because it prevents citizens from fully participating in reviewing and refocusing public policies.¹⁶⁸ Until Argentina effectively guarantees women’s and girls’ reproductive rights, many will continue to suffer unnecessarily.

¹⁶³ Committee on Economic, Social, and Cultural Rights, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights,” General Comment No. 14, The Right to the Highest Attainable Standard of Health, 2000, E/C.12/2000/4 (2000), para. 43 (f).

¹⁶⁴ *Ibid.*, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art 2, para 2), June 10, 2009, E/C.12/GC/20, para. 41.

¹⁶⁵ *Ibid.*, General Comment No. 14, para. 59.

¹⁶⁶ *Ibid.*, General Comment No. 14, para. 43 (f).

¹⁶⁷ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, September 2006, A/61/338, para. 65.

¹⁶⁸ See for example, Committee on Economic Social and Cultural Rights, General Comment No. 20, para. 40.

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Illusions of Care

Lack of Accountability for Reproductive Rights in Argentina

Pregnancy is not a debilitating illness. Yet every year, thousands of women and girls in Argentina experience entirely preventable suffering because of their reproductive capacity.

Many become pregnant due to negligent care that deprives them of the right to make independent decisions about their health and lives. Others are forced to carry life-threatening pregnancies to term because medical providers refuse to provide abortions services that, in these circumstances, are legal. Some choose to seek alternative and at times highly unsafe abortions from unlicensed providers. Others forego care entirely, and some even die. In 2008, according to Argentina's national health ministry, over 20 percent of deaths recorded due to obstetric emergencies were caused by unsafe abortions.

Over the past 10 years, Argentina has accumulated an impressive artillery of reproductive and sexual health related policies. Though they ignore key constituencies such as women with disabilities, these policies would, if implemented, go a long way to overcoming the suffering documented in this report and elsewhere.

But the laws and policies intended to benefit women and girls—such as the legal exceptions to the general criminalization of abortion—often go unimplemented. Moreover, the absence of oversight and accountability for this failure indicates that few in authority seem to care.

For the state, the resulting and pressing public health concerns such as preventable maternal mortality, unsafe abortion, and unwanted pregnancies, are also costly. The ultimate human consequence of this lack of accountability is suffering, and sometimes even death.



*Graffiti on the wall of the maternity ward
in a public hospital, Hospital Alvarez,
Buenos Aires, Argentina.*