



**WOMEN'S HUMAN RIGHTS:
ARGENTINE STATE PENDING DEBTS**

**ALTERNATIVE REPORT FROM CIVIL SOCIETY ORGANIZATIONS
IN CONNECTION WITH THE SUBMISSION OF THE SIXTH
PERIODIC REPORT OF THE STATES PARTIES (CEDAW/C/ARG/6)
TO THE COMMITTEE FOR THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN**

46TH PERIOD OF SESSIONS

ARGENTINA, 2010

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EXECUTIVE SUMMARY

During the period covered by this Shadow Report, many relevant steps have been taken forward in the area of legislation; above all we must mention the ratification of the Optional Protocol of CEDAW in 2006, which enabled women victims of human rights violations to file international complaints so that the Committee can carry out official investigations in cases of grave or systematic violations of the rights of women.

However, we would like to mention that no necessary steps have been taken to reverse the vast majority of issues that were included as concerns and recommendations in the recent concluding observations on Argentina made by the Committee on the Convention on the Elimination of All Forms of Discrimination against Women, namely:

I. THE SOCIO-ECONOMIC CONTEXT. INCOME TRANSFER POLICIES (Arts. 1, 2, 11, 12, 13 and 14, CEDAW)

While in recent years the Argentine government has implemented several income transfer programs aimed at reducing poverty and lack of housing - including the positive implementation of the extension of family allowances through the Universal Allowance per Child for Social Protection - these policies have not incorporated a gender perspective in their design and implementation.

Therefore we ask the Committee to recommend to the Argentine State:

1. To promote policies aimed to reduce the high levels of poverty and extreme poverty existing in Argentina, which must include a gender perspective.
2. To promote measures to ensure the reliability of statistics and access to the information generated by the INDEC.
3. To promote the legal recognition of the Universal Allowance per child allowance (AUH in Spanish) and therefore provide it with greater institutional legitimacy. Also, to include within the scope of the AUH, the groups who are currently excluded.

II. MECHANISMS FOR THE PROMOTION OF THE RIGHTS OF WOMEN: THE SITUATION OF THE NATIONAL COUNCIL OF WOMEN (arts. 1, 2, 3 and 7 of CEDAW)

The National Council of Women, "CNM-hereinafter- has not yet overcome the structural errors that it has had almost since its inception (1992). Consequently, up to date it has had little power to affect the formulation, design and implementation of public policies. The existence of these weaknesses at the national level facilitates their reproduction in provinces and municipalities, repeating the same structures, with little or no budget at all and very tight into their scope.

Therefore we urge the Committee to recommend to the Argentine State:

1. To establish clear objectives for short, medium and long term periods in each of the matters addressed by the CNM.
2. To incorporate cross-gender policies and to provide the institution in charge with proper budget and hierarchical structure.
3. To strengthen local and provincial measures which are necessary to ensure a proper implementation of the CEDAW.

III. SEXUAL AND REPRODUCTIVE HEALTH

This report gives priority to the situation regarding sexual and reproductive health because it is the main problem that women in Argentina have in relation to their access to health. Besides being an indicator of the inequality among the regions of our country, it provides a clear example of the ineffective policies which have been set up to provide solutions to social phenomena such as teenage pregnancy, maternal mortality, the criminalization of all abortions permitted by law, or the lack of attention to girls and women in relation to cases of HIV / AIDS.

Therefore we urge the Committee to recommend to the Argentine State:

1. To fully implement the National Programme for Sexual Health and Responsible Procreation as a way to ensure the full implementation of all services in the sexual and reproductive health area, including the full functioning of the mechanism to provide contraceptives.
2. To adopt initiatives and specific programs to reduce the high rates of maternal mortality from unsafe abortions. This implies the need to take measures to ensure that cases of non-criminalized abortions can be performed within the public health system, consolidating an interpretation of the Article 86 of the Criminal Code according to national and international human rights instruments, and to promote a national legal framework on abortion in general, as it continues to criminalize women who interrupt a forced or unwanted pregnancy compelling them to undergo clandestine abortions placing them in situations of serious risk to their life and health.
3. To sanction the Technical Guide for the Attention of non- criminalized Abortion as a Ministerial Resolution by the Ministry of Health of the Nation and to encourage its dissemination, ensuring its implementation across the country through an agreement of COFESA.

IV. THE RIGHT OF GIRLS AND WOMEN TO A LIFE FREE OF VIOLENCE (art. 1 and 3 of the CEDAW)

Despite the recommendations of the Committee, violence against women in Argentina is still treated in a disjointed and fragmented way. Within this general framework, situations such as gender violence and HIV / AIDS and women, are not properly addressed as well as the investigation and punishment of sexual crimes as crimes against humanity which are being ventilated in Courts as crimes committed during the military dictatorship in our country.

Therefore we urge the Committee to recommend to the Argentine State:

1. To adopt specific initiatives and establish programs to get reliable information enabling the identification of the types of violence suffered by women and girls in our country and to plan actions for their eradication, considering the existing differences in the cases of women and girls.
2. To fully implement the National Plan of Action for prevention, attention and eradication of Violence against Women, under the conditions established by Law No. 26 485, ensuring the fulfilling of the commitments in the different areas on behalf of the State at national, provincial and municipal levels.
3. To carry out specific programs to address the problems that occur against vulnerable groups such as women and girls living with HIV / AIDS and the proper treatment by the judiciary of the sexual crimes committed during the dictatorship.

V. TRAFFICKING OF PERSONS (Art. 6 of the CEDAW)

In recent years Argentina has begun to put human trafficking on the public agenda of the national and provincial governments, as well as in the media. However, efforts to eliminate this serious crime that violates fundamental human rights, are still few and fragmented and they fail to address the complexity of a crime of international features.

Therefore, we ask that the Committee recommend to the Argentine State:

1. To develop at national and provincial levels, a comprehensive policy of assistance to victims, to consider their vulnerability previous to their victimization, the process of leaving a situation of trafficking and their reintegration in conditions that can not favor a new situation of this kind.
2. To implement measures to ensure a level of cooperation among the different jurisdictions involved in acts of trafficking.
3. To implement effective measures to identify trafficking networks.
4. To articulate national measures to eradicate trafficking of persons with the ones adopted within the framework of regional cooperation of the MERCOSUR.

VI. THE PARTICULAR SITUATION OF WOMEN DEPRIVED OF FREEDOM.

In Argentina, the inhuman conditions of detention of persons deprived of freedom constitute a scenario of systematic human rights violations, compromising the situation of the Argentine State as being responsible for safeguarding people under its care. This situation is exacerbated as there is no consideration of the specific needs of this group, which shows, among other

issues, the lack of adequate health programs, the persistent practices of violence, maltreatment, torture suffered by women subjected to arrest, and the recurrence of stereotyped job opportunities available in prisons. These situations have worsened the conditions of detention. This differential effect is especially detrimental because of the impact that the detention has on a woman in relation to her family networks and in particular with regards to the situation of her children.

Therefore, we ask that the Committee recommends to the Argentine State:

1. To promote the adoption of legal and judicial effective alternative measures to those of deprivation of freedom in cases of pregnant women and / or with young children, throughout the country.
2. To repeal and cancel any rules that enable the practice of a humiliating treatment to women prisoners and women and girls who visit detention centers, including Resolution 42/1991 of the Ministry of Justice of Argentina. Also to monitor the implementation of the ban.
3. To prohibit the use of police premises as places of permanent accommodation for people. To establish mechanisms to regularly monitor the compliance with the ban.
4. To prohibit the use of isolation and constant transfers as methods of punishment in places of detention. To monitor the compliance with the ban.
5. To prohibit the presence of male staff in detention facilities that accommodate women.

SHADOW REPORT

I. Introduction

Despite the clear recommendations of the Committee in 2004, during the period covered by this report there is no evidence on behalf of the Argentine State of an intention to incorporate a gender perspective into all its projects and policies, including those related to social and economic programs, to ensure gender equality and the fulfillment of women human rights. The lack of a hierarchical system within the mechanism of promotion of women's rights, (Section IV of this document), is the first example of this situation.

It is of particular concern the lack of disaggregated data of the official information, to analyze the impact of economic and social policies in order to be able to corroborate the setback of structural inequalities that show that women and minors are poorer than adult males, deepening the existing structural inequalities (see section II). The labor market has not undergone major transformations and women continue to suffer from greater insecurity in the area of employment. In general, social policies of transfer of revenue, including the one related to the positive extension of family allowances by recognizing a Universal Allowance per child for Social Protection - do not recognize a gender perspective (see section III).

It is also important to highlight the absence of effective policies and comprehensive approaches on specific problems faced by girls and women. Thus, this report will expose the flaws in the policies which are supposed to ensure their sexual and reproductive rights, and in particular, the lack of existence of appropriate responses to reduce maternal mortality (Section V), the lack of coordination among the programs to prevent and eradicate violence against women (section VI), in particular those to combat human trafficking for sexual exploitation (Section VII), and to eradicate the institutional violence perpetrated on women prisoners (Section VIII).

We, the organizations which subscribe the present Shadow Report, expect to contribute with the following information and conclusions to the evaluation that the Committee of the CEDAW will do on Argentina. By doing so, we hope to assist to build up a country with more equity and a country with equal opportunities for all, women and men, girls and boys.

II. SOCIO-ECONOMIC CONTEXT (ARTS. 1, 2, 11, 12 AND 14, CEDAW)

Despite the clear recommendations of the Committee in 2004¹, during the period covered by this report there is no evidence of concern on behalf of the Argentine State to incorporate gender perspectives into all its projects, policies and social and economic programs in order to ensure gender equality and the fulfillment of women's human rights.

It is of particular concern the lack of disaggregated data of the official information, to analyze the impact of economic and social policies in order to be able to setback the structural inequalities that have caused women and minors to become poorer than the male adults. The labor market has not undergone major transformations and women continue to suffer from greater insecurity in the area of employment.

II. a. State of affairs

Following the severe socio-economic crisis that Argentina went through reaching its peak at the end of 2001, in recent years the economy has begun to register signs of recovery. Since 2003, the country experienced a period of growth that generated nearly three million jobs and involved a significant increase in real wages. This process has not finished yet, but it helped to improve the plight against poverty and extreme poverty that affected more than 50% of Argentina's population.

The current scenario, however, in addition to these positive signs, presents some shadows. In 2007, when the salaries regained the level they had before the devaluation in 2002, there began a sustained increase in the prices of products of mass consumption. At the same time, since 2007 the reliability of the information produced by the National Institute of Statistics and Censuses (INDEC), was put in doubt as the INDEC restricted access to key information sources –and this situation affected not only the measurement of social and economic indicators, but also different indicators which were fundamental to the design of public policies²–. Thus it has obscured the increase of the number of people affected by economic problems making it difficult to generate a real discussion about poverty and the policies which are needed to eradicate it.

¹ CEDAW, *Observaciones Finales*, Argentina, A/59/38, 31° período de sesiones, 2004.

² It was a fact that from the second trimester of 2007 up to December 5th 2009 it was not possible to access to information from the Encuesta Permanente de Hogares (EPH)/Home Survey. It was only possible to access to press communiqués. Surprisingly that day some data was published in the Web Site. At the moment the Encuesta Nacional de Gastos de los Hogares (ENGH), done in 1996 and 2005 is not available.

According to the percentages submitted by the INDEC about the poverty index in the first half of 2009, 709 000 households (9.4%)³. were below the poverty line. Of this group, 232 000 households (3.1%) were below the extreme poverty line⁴. Private studies⁵ that were undertaken also show that homes experienced a sustained impoverishment of their economies during the period of 2008-2009⁶. The combined effect of inflation and economic slowdown has had a highly regressive nature and the main impact was suffered by the poorest households⁷.

Social indicators found in Argentina say that most children and adolescents are poor and that they represent the highest percentage of people living in poverty.⁸

Regarding the employment data, according to INDEC, the unemployment rate in the second quarter of 2009 was 8.8%⁹. Also in 2009 the agency reported that the existing unemployment affected strongly women especially those up to 29 years old. Within this segment, the unemployment rate was 15.4%, more than double the overall rate of 7.3%⁻¹⁰ “The ILO and UNDP in November 2009, reported that the employment situation of women heads of households varies according to the existing number of children, which is shown by the growth of informal jobs and those related to domestic service. While in homes with no children 59% of the jobs are found in the formal sector, in those homes with more than four children, the percentage falls down to 12.4%¹¹.

It is relevant to explain that while in the high middle class sectors, the unemployment rate remained at around 6%, in the poorest sectors it raised from 14.7% to 22.2% from one year to the other.

Finally, although there is an improvement in relation to the real salary since 2001, the fact is that on one hand the real income of the workers is still below the levels found in the 90s and, on the other hand, inflation is steadily increasing so it has also undermined the purchasing power of the population, a factor that is not mentioned in the report of the Argentine State.¹²

³ It represents 3.429.000 persons (13,9%)

⁴ Approximately 995.000 people under extreme poverty (4%)

⁵ Observatorio de la Deuda Social Argentina, Universidad Católica Argentina, *La situación social en la coyuntura 2008–2009, Condición económica de los hogares: La crisis afecta a todos los sectores pero golpea fundamentalmente a los segmentos más vulnerables de la sociedad*, available in http://www.uca.edu.ar/uca/common/grupo68/files/CONDICI-N_ECON-MICA_DE_LOS_HOGARES.pdf.

⁶ The proportion of homes whose income is not enough to afford a minimum standard of life, increased in one year from 37, 2% to 43,9%.

⁷ According to this data, while in 2008 58,1% of the poorest homes indicated that their level of income was not enough to afford their expenditure, in 2009 that percentage increased to 74,3%.

⁸ In this context it is relevant to mention the creation of the policy called Asignación Universal por Hijo, which will be analyzed later.

⁹The unemployment among Female and Male Heads of Households was 5%.

¹⁰ *Diario Clarín*, “Por la crisis, volvió a crecer la cifra de empleados “en negro”, March 27th 2009.

¹¹ Trabajo y Familia – Hoja Informativa Argentina, Buenos Aires, 24/11/2009. OIT/PNUD.

¹² Centro de Estudios para el Desarrollo Argentino, CENDA, *El trabajo en Argentina. Condiciones y Perspectivas*, Informe Trimestral N° 13, September,2007, pg. 1

III. Policies of Income transfer (arts. 1, 13 and 14, CEDAW)

III.a. Synthesis

In its latest recommendations to the Argentine State, the CEDAW Committee expressed concern about the policies of income transfer, while

"Women [are] mainly beneficiaries of these measures, instead of being participants and actors on an equal footing in their design and implementation. The Committee is concerned that this approach will perpetuate stereotypical views of the role of women and men that are in place to provide effective support to the political and economic empowerment of women.¹³”

However, the new policies of income transfer have not incorporated a gender perspective in its design and implementation.

During the period covered by this report, the Argentine government has implemented several income transfer programs aimed at reducing poverty, and yet it has maintained various social welfare programs as a tool to alleviate situations of extreme poverty. Looking back in time, we can say that the Plan for Female and Male Unemployed Heads of Household (PJJHD), emerged in 2002, is the first program which was massively implemented in the country. Subsequently, between 2003 and 2005 the State implemented new national social programs.

With the idea of including other sectors¹⁴, in October 2009 the State launched the "Universal allowance per Child for Social Protection." Although this measure does not involve a total universalization of the allowance per child, as it has been proposed for several years by many social and political actors, in few months it generated a strong and positive impact to reverse the situation of poverty and extreme poverty in Argentina.

¹³ CEDAW, *Observaciones Finales*, Argentina, A/59/38, 31^o period of sessions, 2004, parr. 330.

¹⁴ The family allowances are amounts of money given not as remuneration but subjected to certain conditions that vary according to each category. They are received by dependent employees who are the majority within this group-, persons who get the Unemployment Insurance, the ones who are contemplated by the Law on Working/Employment risks- *Ley de Riesgos de Trabajo* (24.557), persons included in as pensioners and the war heroes from the Falkland /Malvinas War. There exist different types of family allowances as the pre natal/pre birth payment, the one given to each son or daughter under 18 as a dependent in case of a child with discapacity; for school attendance aid; for birth, adoption, and finally for marriage.

III.b. Extension of family allowances by the Universal Allowance per Child for Social Protection¹⁵

In October 2009 the national government issued the Decree 1602¹⁶ creating the "Universal Allowance per child for Social Protection" which consists of an expansion of the program of family allowances in benefit of the informal sector and the unemployed.

The government's decision to extend family allowances is clearly encouraging to narrow the differences between those included and those excluded from the formal labor market as a mechanism to introduce levels of household income, reduce poverty and extreme poverty. Undoubtedly, in terms of access, coverage¹⁷ and the establishment of new amounts, the new policy implies an advance in relation to plans that implemented conditional cash transfers during all these years, as well as those based on a false dichotomy of differences of income between the inclusion through formal employment and through some other forms of income transfer.

While during these few months since its implementation, this measure has mitigated poverty and destitution, we want to warn of its negative impact as it has generated a sustained increase in prices, which has almost liquidized the amount of money assigned by the State¹⁸. Besides, no mechanisms have been provided to update those amounts.

This policy does not imply the universalization of an allowance per child as it focuses on those who are unemployed and become informal workers with an income below the minimum mobile salary¹⁹. There is no concept of children as subjects of rights or a governing principle of citizenship, as the policy focuses on the employment status of the parents, leaving out those who are independent workers, those informal workers who are paid more than the minimum wage and the mobile sectors who are beneficiaries of social plans such as the Plan for Unemployed

¹⁵ For a deeper analysis of the opportunities and deficits of this policy: CELS, *Derechos Humanos en Argentina, Informe 2010*, "Idas y vueltas en las políticas sociales: el protagonismo de la pobreza en la agenda política" in CELS, Siglo XXI, Buenos Aires, 2010.

¹⁶ It has been questioned the creation of this new allowance through an emergency decree, even though the existence of different legal proposals which having been approved would have given more legitimacy to this policy.

¹⁷ Cf. Mario Wainfeld, "Desafíos y Bretes", *Página 12*, 22-11-2009, available in <http://www.pagina12.com.ar/diario/elpais/subnotas/1-43745-2009-11-22.html>

¹⁸ SEL Consultores, *Newsletter sobre la situación laboral y social de la Argentina*, Marzo 2010. *Crítica*, "La asignación por hijo se quedó corta" 15-04-2010, available in: <http://www.criticadigital.com/index.php?secc=nota&nid=40749>; *Clarín*, "Por la inflación, pierde poder adquisitivo la asignación universal por hijo", 22-03-2010, available in <http://www.clarin.com/diario/2010/03/22/um/m-02165008.htm>; *La Nación*, "La asignación por hijo ya perdió el 16% de su poder de compra de alimentos", 22-03-2010, disponible en http://www.lanacion.com.ar/nota.asp?nota_id=1246230 y *La mañana Neuquén*, "La Asignación Universal por Hijo perdió poder adquisitivo ante la inflación", 23-03-2010, available in <http://www.lmneuquen.com.ar/noticias/2010/3/23/58395.php>.

¹⁹ Its implementation does not cover the total of children, boys, girls and adolescents.

Heads of Households, the Family Program for Social Inclusion, among others. Another element that is designed to ensure that the targeted status is that of a working adult is that this measure imposes a limited number of five children²⁰.

Another negative impact of the limitations in the universal allowance is that they can generate inequities. For example, the existence of fixed ceilings such as a minimum salary will make those at the lower levels to get the benefit but those found at the upper limit will not, and that shall be an immediate disadvantage.²¹

A clear difference between the "traditional" system of contributions of family allowances and the ones with no contributions is that in the second there are health and education conditionalities²² in relation to the child, which are not present in the first.²³ It would be important that the State focuses its attention on the shortage of demand in these fields of social policies, which have been overloaded in the first quarter of 2010²⁴. The State has not focused its attention in other subsidization already established by these regulations as the allowances per birth, per adoption or for school attendance.

III.c. Program for Unemployed Female and Male Heads of Household (PJJHD) - Families for Social Inclusion (PF) - Employment and Training insurance- National Plan of Integrated Approach (Plan "AHI") - Social Income Working Program (Argentina Trabaja).

Since 2002 the National State has implemented a series of income transfer programs. This is the PJJHD, Families for Social Inclusion, the National Plan of Integrated Approach (Plan AHI²⁵)

²⁰ The Decree does not mention any reason about the fixed limit.

Within the excluded groups we find migrants, those who do not have residence for 3 or more years, the ones who do not have ID, the ones deprived of freedom and those affected and secluded in a mental institution.

²¹ Cf. Mario Wainfeld, *Página 12*, "Ciudadanos bajitos", 20-11-2009, available in <http://www.pagina12.com.ar/diario/elpais/subnotas/137342-44263-2009-12-20.html>

²² As sanitary controls, vaccination plans and school attendance.

²³ To subject the transfers to other conditionalities is to respond to the idea that is necessary to generate a commitment among the poor to combat their poverty assuming that they do not perform their care services by themselves.

²⁴ *La Nación*, "Ya hay un 25% más de alumnos por la asignación universal", 20-03-2010, available in http://www.lanacion.com.ar/nota.asp?nota_id=1245342; El Protagonista en la Web, "Kaufmann: "Hay problemas para la inserción en la escuela secundaria", 29-03-2010, available in <http://www.elprotagonistaweb.com.ar/index.php?go=v&id=4372>; y *Télam*, "Faltan bancos porque muchos chicos vuelven a la escuela", afirmó el ministro de Educación", 23-03-2010, available in <http://www.telam.com.ar/vernota.php?tipo=N&idPub=181369&id=346763&dis=1&sec=1>

²⁵ In 2008, the National Government created el *Plan Nacional de Abordaje Integral —Plan "Ahi"*—. However since its creation there has not been clarity regarding the objectives or actions within the plan. This program ends promoting a welfare approach within a fragmented social policy view.

and the Social Income Working Program (Argentina Trabaja)²⁶ -under the patronage of the Ministry of Social Development, and the Employment and Training Insurance, under the patronage of the Ministry of Labour, Employment and Social Security.

This separation is consistent with some embedded logic, under which social policies are presented in specific areas with little or no interaction among each of the included sectors and clearly establishing differences between "productive / employable" from the "under assistance / unemployable".

The first massive program of income transfer was the *PJJHD*, emerging from a scenario of economic crisis and high levels of social unrest that marked the last years in Argentina. It is a program focused on the payment of monetary aid²⁷, through the rhetoric of "guaranteeing the family right to social inclusion."²⁸

Undoubtedly, one of its main achievements was the extent of its quantitative achievement in a short period of time.²⁹ However, by April 2010 it had only 18 965 recipients. The decline was mainly due to the transfer of the recipients to other programs such as the Family Plan and the Training and Employment Insurance first, and most recently to the Universal Allowance Per Child for Child Social Protection (AUH).³⁰

While at a formal level, the creation of PJJHD incorporates a language of rights, this spirit is not reflected in its actual design or implementation. The policy remained being focused on providing assistance. There was established an undifferentiated amount of money to be entitled to each unemployed Head of a Household with no distinction according to the household composition. Thus, the greater the number of household members was, the lower was the incidence of the benefit in terms of achieving the objectives, thus affecting the principle of

²⁶ In 2009 it was announced the creation of *Programa de Ingreso Social con Trabajo – Argentina Trabaja*. This program encourages the creation of working cooperatives to maintain and sustain plans for local infrastructure. This policy responds to a focalized point of view regarding implementation and it can be criticized as the other programmes. There are lots of questions regarding its lack of transparency and the assignation of plans to certain municipalities and cooperatives disregarding others. On March 18th a public meeting took place before the National Congress revealing all this clientele approach. (<http://audienciapublicaargentinatrabaja.blogspot.com/>)

²⁷ De \$ 150- USD 39 por titular.

²⁸ Cf. Decreto 565/02. According to this Decree, the program had the following objectives: a) to ensure school attendance and health control; b) to incorporate the beneficiaries of formal education and /or labor training activities to generate conditions for their future labor integration; c) to incorporate the recipients to productive projects or community service under a labor modality.

²⁹ In June 2003 it reached 1.992.497 people.

³⁰ During the first trimestre of 2010: 50.000 people have been removed from the plan. Cf. Resolución 253/2010 de la Secretaría de Empleo.

equality before the law.³¹ Another issue that deserved attention was the lack of implementation of administrative mechanisms and / or judicial remedies that were initially contemplated by the regulations of the plan.³²

A few years later, in March 2006 and in a context of economic growth, it was announced the creation of the Training and Employment Insurance. The beneficiaries were the recipients of the Plan for Female and Male Heads of Households who were considered "employable" or "potentially employable".³³

For those deemed "unemployable" and among others, those *women with family* members it was created the Family Plan/ Plan Familias. According to the latest official data provided in October 2009, this program had targeted 600,000 families who receive a benefit which varies according to the number of children under 19 years old or those families with disabled dependents of any age³⁴.

In general, these programs do not respect any human rights standards. Specifically, they do not guarantee a "minimum standard" which can be acceptable through the lens of social rights; they violate the principles of equality, nondiscrimination, universality and access to justice. Therefore, beyond the discourse in terms of "rights", its design and implementation continue to think the logic of "benefits" as opposed to that expressed in the State report related to the existence of a shift towards universal rights standards. In fact, despite the significant magnitude of the social programs that have been implemented, the reduction of poverty and extreme poverty rate between 2002 and 2007 can hardly be attributed to these programs, whose contribution can be described more as a "relief" than a strategy for the "improvement" of the poverty situation.³⁵ It should also be noted that these programs are closed so the only access we can get is through Courts.

³¹ If we take a family of ten members, a simple mathematical calculation shows that the amount established in the plan would be of around \$ 0,50 daily (US\$ 0.16) per member. This alone deserves no comments.. Paradoxically according to a study done by the Secretaría de Empleo del Ministerio de Trabajo, the homes which were getting the benefit established by the plan, had in 2003 an average of 4,5 members (MTEySS, 2003).

³² CELS, *Derechos Humanos en Argentina, Informe 2007*, CELS/Siglo XXI editores, Buenos Aires, 2007, pages. 311 and following-available in www.cels.org.ar.

³³ Decreto 336/2006. The monthly Benedit was \$225 pesos —USD 58—: \$75 pesos —USD 19— more than the economic aid of the Program called Jefas y Jefes de Hogar.

³⁴ The Basic amount is \$155 (USD 40) with one minor and this amount can go up to \$305 (USD 79), with 6 minors (as they can later get the pension for those mothers of 7 or more children) who get \$390 (USD 100).

³⁵ According to data established by INDEC, during the second semester of 2006, the income coming from the Plan Jefas y Jefes provoked an absolute reduction of around 0,7 on the extreme poverty line and of 0,3 on the poverty line (from 11,9% to 11,2%, and from 31,7% to 31,4% respectively). Source www.indec.gov.ar.

As well as in the case of the AUH, the figures established by the plans have been increasingly depreciated because of the rising inflation and the significant failure to update the established amounts. In general the amounts of subsidies are obviously insufficient to meet the basic food needs of a family and much less to allow access to essential items that ensure an adequate standard of living.

According to the information given by the State, 91.6% of the holders of the Family Plan are women.³⁶ That is why it is unacceptable the total lack of gender perspective in its design and implementation which is in absolute contradiction to what has been recommended repeatedly by various experts in the field.³⁷

In relation to the principles of equality and non discrimination, we want to express serious concern on the emphasis that the design of this plan has had on the characterization of people, categorizing them as “employable” or “unemployable”³⁸. The latter group would be conformed not only of those who are over 60 years old, but also of women with family responsibilities, whose stay in inactivity is associated with the difficulty in resolving the tension between paid work and unpaid care work within a context of lack of specific policies for child care.

IV. MECHANISMS FOR THE PROMOTION OF THE RIGHTS OF WOMEN: THE SITUATION OF THE NATIONAL COUNCIL OF WOMEN (arts. 1, 2, 3 and 7 of CEDAW)

In its latest recommendations by the government, the CEDAW Committee expressed concern that

"The mechanism for the advancement of women lacks of adequate financial and human resources to effectively promote the advancement of women and gender equality in the present political, economic and social stage" and "that the National Council of Women has a limited role in the government structure and that it is not part of the Presidential Cabinet".³⁹.

³⁶ Web Site/Página Web del Ministerio de Desarrollo Social (MDS), Características del Programa Familias, <http://www.desarrollosocial.gov.ar/Planes/PF/pf.asp>

³⁷ See CEDAW, *Observaciones Finales*, Argentina, A/59/38, 31° period of sessions, 2004, Parr. 330.

³⁸ On the other side, according to decree 1506/04 it is part of the roles of the Ministries of Labour and Social development to “classify” the possible recipients according to their potential of joining the remunerated labor market.

³⁹ CEDAW, *Observaciones Finales*, Argentina, A/59/38, 31° period of sessions, 2004, parrs. 328 and 329

Despite this recommendation, as discussed in this section, the National Council of Women⁴⁰-CNM-hereinafter- as a public institution primarily responsible for directing the necessary actions for an effective implementation of human rights of all women in the country, did not change the structural error that had since its inception (in 1992). Its budget is insufficient, little more than 5.5 million dollars that even in 2008 could not run in full-. It has very few professional staff members and has a low institutional hierarchy level within the State organization. Therefore, until now, it has not acted as a true benchmark within the national government and it continues to have little power to impact the formulation, design and implementation of public policies.

IV.a. Deconstructing of the CNM

As reported by the Argentine state, and as emerges from its official website⁴¹ - the CNM has among its main objectives: to achieve the institutionalization of gender policies and mainstreaming them in different areas of the national government, provincial and local governments, promoting community awareness of the rights of women and the equality policies. Under the current organizational structure, the CNM is under a National Coordination Council for Social Policy, whose presidency is exercised by the Ministry of Social Development, and finally falls under the Presidency of the Nation.⁴²,

Since its inception, the National Council of Women (now called "Council of Women") has acquired new functions: besides being the governing body for a gender policy in our country, under the mandate derived from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) it must also carry out the follow-up of the Convention on the Prevention, Punishment and Eradication of Violence against Women or "Convention of Belém do Pará."⁴³ It has also been designated as the authority of enforcement, and coordination for several different matters such as actions related to the Beijing Platform and

⁴⁰ The decree 326/2010, published in the Boletín Oficial on March 8th 2010 (available in <http://www.infoleg.gov.ar/infolegInternet/anexos/160000-164999/164958/norma.htm>), amended the name Consejo Nacional de la Mujer, for the name of "Consejo Nacional de las Mujeres".

⁴¹ See www.cnm.gov.ar

⁴² This Council was created by Decree N° 357/02 "with the aim of establishing a space for planning and coordination of the National Social Policy to improve the State performance with regards of drafting coordinated and integral policies, optimizing resources" (art 4). However up to date it has not been possible to know which actions have been implemented. Cf. Decreto 357/2002 de fecha 21 de febrero de 002. Available in-- <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=72486>

⁴³ Approved by the National Congress by Law 24.632 on March 13th 1996, promulgated on April 1st 1996 and Published in the Official Gazette on April 9th 1996.

to the Plan for Equal Opportunities between Men and Women in the Workplace⁴⁴", or related to that of equity in the enjoyment of rights of women in relation to the Millennium Development Goals. In many cases these responsibilities are shared with the Special Representative for Women Affairs of the Foreign Ministry that represents the country on women's issues.

In addition, since 2009 with the passage of the 26 485 ACT - "Integral Protection Act to prevent, punish and eradicate violence against women in areas where they develop their interpersonal relationships" – it also became its executive body, expanding its responsibilities. However, despite the clear recommendations made by the CEDAW Committee in its recent Concluding Observations to Argentina,⁴⁵ this tendency to assign more and greater responsibilities has not been accompanied by the consequent increase in human, material and economic resources, let alone the ranking or standard needed to be able to negotiate with the ministries in charge of planning and the implementation of public policies, making it even more effective mainstreaming of gender perspective into all public policies and institutions.^{46, 47}

Additionally, we note that up to date, June 2010, the law 26 485 has not yet been regulated. The only progress we can point out about the announcement made on 18th March 2010, at a public event, was the creation of an Ad-honorem Advisory Council of the Law 26 485 and the formalization of the operation of the Inter-institutional Commission under the National Plan of Action for the Prevention, Assistance and Eradication of Violence against Women.⁴⁸

IV.B. Insufficient budget

Regarding the budgetary situation of the CNM, although the government report noted an increase in the 2008 budget, we must highlight that this is still insufficient, especially for the

⁴⁴ Decree 254/1998 that follows up the Beijing Declaration and Platform of Action of the 5th Women Conference which assigns it the duties of coordination over the actions led to improve the level of equity in the labor market, such as the Plan de Igualdad de Oportunidades entre Varones y Mujeres en el Mundo Laboral".

⁴⁵ CEDAW, *Observaciones Finales, Argentina, A/59/38*, 31° period of sessions, 2004. (O A/57/38 (SUPP) (23/08/2002)).

⁴⁶ Although there are formal instances of articulation, every ministry or government institution acts independently. There are no responsible instances in charge of the improvement of the condition and status of women and girls. It is a matter of concern the lack of existence of programmes based on a gender perspective to fulfill economic rights such as the access to housing or social security. This lack of connection and appropriation of the gender perspective by government institutions is an evidence of the incapacity of the CNM to establish priorities and be able to generate an impact in every area of the national public administration or even be able to supervise them.

⁴⁷ However all these weaknesses and lack of administrative policy were revealed during the discussions before the Congress about the new Law on the Integral protection to Women victims of any kind of Violence, these observations were not taken into account.

⁴⁸ According to the resolution of the creation of the Consultation Committee, this would be formed by: "representatives of organizations of the civil society and the academia specialized in violence against women, who besides holding a number of year of expertise in the topic, must be representatives of the social and cultural diversity that exist in our country" See Press Communiqué CNM. <http://www.cnm.gov.ar/home.htm>. March 18th 2010.

development and implementation of public policies, an item that has been assigned with \$ 537,000 an estimated 10 , 6% of the total budget. Its total budget is approximately 5.5 million pesos (about U.S. \$ 1.3 million); however what the State fails to report is that much of the increased budget was for CNM and its social plan for family protection ⁴⁹and not for the plight of women.

On the other hand, the increase in the budget must be considered in the light of the inflationary process that our country has been suffering, which has resulted in, among other things, wage increases for public employees, a significant percentage of the budget of the CNM. Moreover, it is striking that while the law 26 485 of -March 2009 - increases its functions, it does not provided for a budget increase of the CNM to develop them.

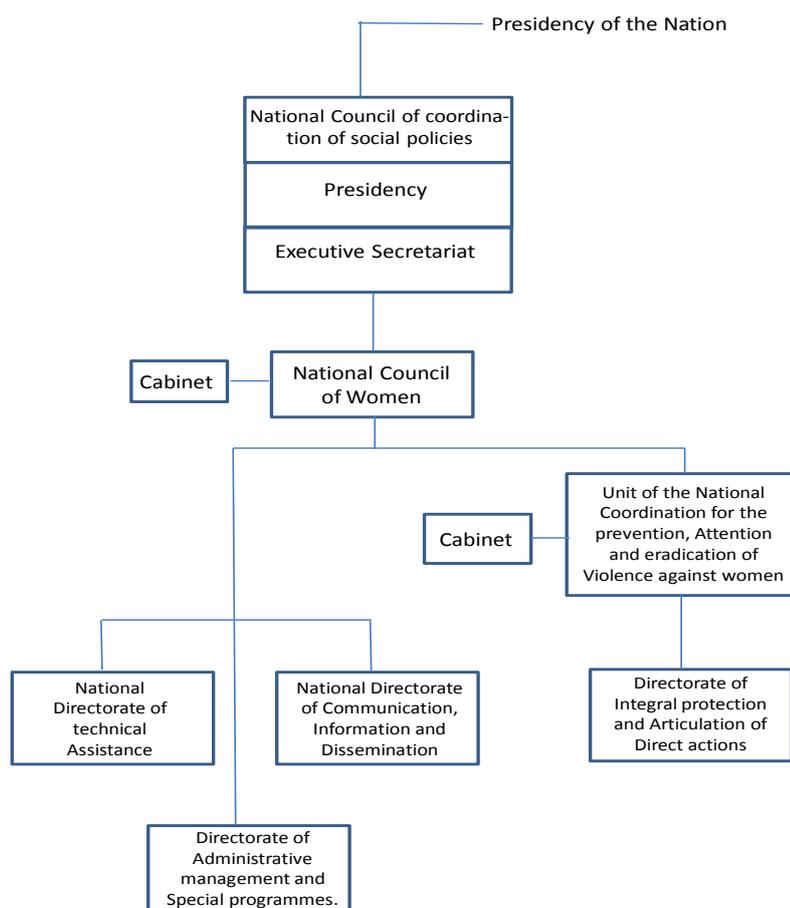
IV.C. Weak professional technical structure

Another feature of the CNM is that its technical staff is inadequate and unable to draft specific policies and guiding activities in this field. While in November 2009, through the Decree 1836/2009⁵⁰, changes were made to its structure, the team has only 28 people in total, and it is difficult to imagine how this team could perform all these tasks assigned by law. By that Decree it acquired a National Coordinating Unit for the Prevention, Assistance and Eradication of Violence against Women, "which shall act as the highest authority of the Executive, with Under Secretary rank and hierarchy", with the CNM comprising of the following structure⁵¹:

⁴⁹ Information given to FEIM as a request for public information that agrees with the report done by the State.

⁵⁰ Decreto 1836/2009, Publisher in Boletín Oficial on November 24th 2009, available in <http://www.infoleg.gov.ar/infolegInternet/anexos/160000-164999/160686/texact.htm>

⁵¹ Decree 1836/2009, previously included, Annex Ic.



It is important that the Committee warns that up to date no officials have been appointed to be in charge and there have been no definition of objectives, aims and functions for this Unit.

In addition to being an inadequate institutional structure it also does not perform its work properly.⁵² There is a lack of specific objectives, goals for each of their units, adding to the lack of results and indicators and lack of a structured working plan based on proper analysis of needs or strategic approaches. In fact, the President of CNM was inexperienced and was not well known in the women's movement at the time of her appointment⁵³.

⁵² As the State reports, the CNM implements different programmes: “*Los derechos de las Mujeres son Derechos Humanos*”; “*Mujer, Equidad y Trabajo*”; “*Que la Violencia no nos sea familiar*”; “*Salud Integral de las Mujeres*”; “*Género y Discapacidad*”, “*Observatorio de Discriminación*”; “*Decir Mujer es Decir Trabajo: Encuestas sobre Uso del Tiempo y campañas masivas de difusión*”. However it has not been possible to know the aims, objectives and the scopes of these programmes or the policies they rely on..

⁵³ *Página 12*, “Una nueva cara en el Consejo”, July 1st 2008, available in <http://www.pagina12.com.ar/diario/sociedad/3-106995-2008-07-01.html>, date of access: March 28th 2010.

The CNM does not have studies and statistics throughout the country even in a subject that is of its direct responsibility such as violence against women. It does not have its own reliable data in relation to the status of human rights of women and girls in our country in all areas that can facilitate the drafting of priorities, goals based on medium and long term indicators.

At the provincial and municipal institutional landscape we find more or less a similar situation regarding the protection of human rights of women and girls in the country.⁵⁴ The existence of these weaknesses at the national level are being reproduced into provinces and municipalities, repeating the same pattern of low hierarchical structures, with little or no budget and very strictly into their business.⁵⁵ The Federal Government should be actively involved to ensure that provincial level can strengthen institutional capacities in the entities dedicated to ensure a gender perspective in the public administration. It should, for example, establish minimum standards and ensure guidelines on how to make this possible.

In summary, despite the recommendations of the Committee, the National Council of Women (CNM), as an agency whose mission is to ensure fulfillment of the objectives of the CEDAW in the country, has not properly achieved its role and has continued to maintain a traditional, patriarchal view of the role of women in the society.

V. SEXUAL AND REPRODUCTIVE HEALTH. (Article 12, CEDAW)

In its latest recommendations by the government, the CEDAW Committee expressed concern on the

"Lack of information on the [National Plan for Sexual Health and Responsible Parenthood], the high rate of teenage pregnancy, high maternal mortality rate, the third of which is due to illegal abortions and the increase of sexually transmitted diseases, including HIV/AIDS. Similarly, problems of women and girls to access to health services, particularly those related to reproductive and sexual health"⁵⁶.

Despite this, the maternal mortality rate remains unjustifiably high and serious problems continue to exist regarding access to sexual and reproductive health services which has

⁵⁴ In clear lack of knowledge of the last observations of the committee (See CEDAW, Final Observations, Argentina, A/59/38, 31^o period of sessions, 2004 (O A/57/38 (SUPP) (23/08/2002))

⁵⁶ CEDAW, *Observaciones Finales, Argentina, A/59/38, 31^o period of sessions, 2004 (O A/57/38 (SUPP) (23/08/2002)*. Párr. 338 and 339

worsened as the HIV status shows. Girls, adolescents and women continue to suffer from lack of access to safe abortions in the event that they are legal, even when their lives are at stake.

V.A. The National Programme of Sexual and Reproductive Health

Regarding women's health, we decided to prioritize the information on sexual and reproductive health because it is the main problem of access to health by women in Argentina.

The approval of Law 25 673, October 2002, which created the National Sexual and Reproductive Health Programme (PNSSandPRo Program) was a milestone. In March 2003, it was launched the National Programme of Sexual Health and Responsible Parenthood. This program has been operating since then, increasingly being implemented throughout the country, reaching almost all public health sectors including hospitals, primary health care services among others. With regard to contraceptive methods distributed by the Programme, in 2007 the Emergency Hormonal Contraception, joined the oral contraceptives, breastfeeding related ones, injections, IUDs and condoms. All of them are purchased by the Ministry of Health of the Nation and are distributed to healthcare workers in all provinces.

Although since 2008 almost all public services are connected to these PNSSandPR activities, we would like to highlight the wide disparity and heterogeneity of the services provided regarding both issues: the type of personnel involved and their training, and the extent of the benefits provided. Regarding the type of personnel, it is very diverse. In general obstetricians and gynecologists predominate along with general community practitioners. The other most commonly found staff members are nurses and midwives, and there are rarely found psychologists and social workers. Regarding the extent of a specific training on sexual and reproductive rights and the beneficiaries, there is a significant deficit on this area.

At the end of 2007 there was a change in the authorities of the Ministry of Health.⁵⁷ From then onwards until mid-2009 there were problems in the provision of contraceptive methods by the National Government. This lack of regular supply affected many women, especially the poorest, who had to discontinue the use of contraceptives and in many cases there were an increase in the number of unplanned pregnancies. Additionally, this generated a deterioration in the level of confidence in the PNSSandPR on behalf of the population, an attitude that is still observed and which affects the coverage of the population, especially the neediest.

⁵⁷ The change of Minister (from Ginés González to Graciela Ocaña first and then to Juan Luis Manzur much later) occurred during the change of the Presidential period..

In 2007 the law 26130 was passed, which incorporated the surgical contraception to the demand for contraceptive methods, recognizing tubal ligation for women and vasectomy for men, which were excluded by law 25 673. While the new law is clear and precise about its application, there is resistance and there is refusal to implement these types of contraception in many parts of the country.

In this sense, one of the greatest challenges of the program is to be able to run fairly throughout the country. Even today, seven years after its creation, the provincial authorities and the staff involved show dissimilar responses and commitment in this area. In particular, one can notice some differences in views regarding contraception methods such as the intrauterine device (IUD) and the hormonal emergency contraception. In many cases, authorities and providers themselves are reluctant to provide them, which means that many sectors of the population does not have access to them and to do so, they must file legal claims and / or pay private providers, or move to other health care centers.

The National Consortium on Reproductive and Sexual Rights, (CONDERS) which brings together over 70 organizations and groups that monitor the implementation of the law 25675 and related legislation- found several claims due to rejections at different public hospitals to conduct such interventions, especially tubal ligation. In 2007, in the province of Cordoba, a hospital consistently rejected these methods, which required CONDERS to file a complaint before the media and the Ministry of Health of the province. After the complaint the provincial authorities involved reversed the situation. In 2008, in the Municipality of Olavarria, in the province of Buenos Aires, CONDERS detected that the Municipal Hospital was requiring from women who sought a tubal ligation, to certify their consent signing a letter of consent before a notary, implying an extra step and cost. When this situation was reported to the local mayor, it was decided that a program manager would oversee its operation in all public health services. In the municipalities of San Fernando and San Isidro, also in the province of Buenos Aires, since 2007 there have been recorded several instances of explicit refusals to perform tubal ligations, breaking the law, which made it necessary to file complaints and legal actions to get them. Although in some individual cases, CONDERS succeeded in filing the cases, it is a matter of concern that the interventions are not done at the mere request of women, as prescribed by law. The complaints and actions of women's organizations and monitoring groups like CONDERS improved the application and implementation of the law, but there are still many refusals in different parts of the country.

In 2009 a report of the General Syndicate of the Nation (SIGEN) evaluated the implementation of the Programme in the province of Tucumán and revealed that the population is not informed about its scope and, among other things, that contraceptives are not duly ordered by lot and expiration date, noting that there were emergency contraception devices ready to expire.⁵⁸

We will now continue to discuss some of the most stressful issues on sexual and reproductive rights.

V.b. Teen Pregnancy

The teenage pregnancy, or that affecting women under the age of 20, remains an issue not faced by the Argentine State in all three levels, national, provincial and local. According to the Ministry of Health in 2008⁵⁹ 112 034 live births were found related to mothers under 20 years, which corresponds to 15% of total births (746 460). This implies an increase compared to 2001, when there were found 100 082 which corresponded to 14.6% of total births. Births to mothers under 15 years of age also show a rising trend in Argentina. While in 2005 there were 2699 births attributed to mothers under 15 years of age, which corresponded to 2.3% of all births to mothers under 20 years, in 2008⁶⁰ there were 2937 children born to mothers under 15, corresponding to 2.6% of births to mothers under 20 years. Even there are births registered to mothers under 10 years old.⁶¹

The adolescent fertility rate reaches the number of 64 per 1000, the lowest rates being found in Buenos Aires (34 per 1000) while in the provinces of Chaco, Formosa, Misiones, Santa Cruz and Santiago del Estero the rate increases to 80 per 1000.⁶²

This rate (fertility rate of girls aged 15 to 19 years) has changed dramatically. In 1980 it was 78.3 per 1000, then it decreased to 56,4 in 2003 - but since then there has been an increase: 62.8

⁵⁸ See *Diario La Gaceta*, “La Sigen alertó sobre anticonceptivos sin distribuir en CAPS”, November 14th 2009, in http://www.elauditor.info/inf_sint_ampliado.php?id=279&PHPSESSID=1d7d848acd752ff6eb55bf6a4fb5b08d

⁵⁹ Ministerio de Salud. Presidencia de la Nación. Dirección de Estadísticas e Información de Salud. *Anuario Estadísticas Vitales*, Serie 5, N° 51, Basic information year 2007. December 2008. Argentina. 2008.

⁶⁰ Ministerio de Salud. Presidencia de la Nación, Secretaria de Políticas, Regulación e Institutos. Dirección de Estadísticas e Información de Salud: *Estadísticas Vitales: Información Básica- 2008*, serie 5 – Nro. 52. December 2009. Argentina. 2009.

⁶¹ Cf. Ministerio de Salud. Presidencia de la Nación y Organización Panamericana de la Salud, *Indicadores Básicos 2009*. Argentina 2009; y *Diario Pagina12/Las 12*, “Ciento por Ciento. Mapa de las mujeres en la Argentina. La situación de la mujer en la Argentina actual según las estadísticas”, January 4th 2010, available in <http://www.pagina12.com.ar/diario/suplementos/las12/index-2010-04-01.html>.

⁶² Programa Naciones Unidas para el Desarrollo- PNUD-UNFPA: *Situación de la población en Argentina / coordinado por Edith Pantelides y Martín J. Moreno*. - 1a ed. - Buenos Aires. Argentina. 2009

in 2004 , 63.7 in 2005 and recent available data indicates that the current level of adolescent fertility rate in Argentina reaches 64 per 1000. While this rate is below the average for Latin America and the Caribbean -76.2 per 1000 for the period 2000-2005 - and also below the average for South America, estimated at 81.5 per 1000 for the same period⁶³, the increase in the fertility rate among adolescents aged 15 to 19 years is disturbing and may be linked to increased poverty, lack of comprehensive sex education in schools and non-care attention for adolescents in public health services unless accompanied by an adult, among the main reasons. This figure exceeded the average recorded in the less developed countries, according to a study by the Center for Population Studies (CENEP)⁶⁴.

Moreover, one consequence of the increased fertility rate among adolescents aged 15 to 19 years old and the growth of births among girls under 15 years, is that the situation is affecting the education of these female teenagers and girls. These girls usually drop out when they finish high school, or leave without completing it. As a consequence this situation affects their labor choices for their future relegating them to the informal sector or the domestic service. While the legislation specifies that these teenage mothers have to continue schooling, it is very difficult for them, among other reasons, due to the lack of free public nurseries to leave the babies under care. In the city of Buenos Aires since 2006 there are nurseries in some public schools where mothers and / or parents can leave their children while attending classes.

Regarding the age of sexual initiation, more than two fifth of women started before the age of 19⁶⁵. The same study indicates that among women who start their sexual life during adolescence, one-fifth do so before the age of 15 and other similar proportion after the age of 17, while the remaining 60% become sexually active between 15 and 16 years old. Another recent study of teenage mothers who gave birth in public hospitals establishes that most of their sexual initiation occurred at early ages and in general with boyfriends (86.1%). However, in 9 cases (0.5%) the girls explicitly recognized that they were forced, a fact that becomes important as the possible "tip of the iceberg" of a phenomenon that has not been visibilized and which is presumably more common than what it has been recorded⁶⁶.

⁶³ Data from PNUD.

⁶⁴ *Diario Página 12*, "Tras 25 años aumento la fertilidad adolescente", August 13th 2007, available in <http://www.pagina12.com.ar/diario/elpais/1-89636-2007-08-13.html>.

⁶⁵ According to a research done on students of third and fifth grades (Secondary schools-ages between 13 and 21 years old) of a sample of 161 public schools in the country.

⁶⁶ . Gogna points out the scarce bibliography available on psychological and emotional health regarding girls-mothers even though it has been corroborated that most of the pregnancies were due to non- consensual acts. The author expresses that the health professionals expressed there was evidence of abuse and sexual violence against girls under 15 years old. That is why Gogna considers there is a debt on behalf of the health services of the nation regarding the identification and attention of this kind of cases of sexual violence and domestic violence. (cf. Gogna, Mónica (compiladora), *Embarazo y Maternidad en la adolescencia. Estereotipos, evidencias y propuestas para políticas*

Another problem facing these teenage mothers is the highest morbidity and mortality of their children in the first year of life or during their first five years. The situation of poverty and deprivation experienced by these adolescents and their children, and the difficulty of access to health services, which are restricted to public health services which are located closer to home, often of low quality, these are the main factors that threaten the health and life of those mothers and their children.

Among the women who died in 2008 due to complications in pregnancy, childbirth or puerperium, the figures include four girls aged 10 to 14 years old and 39 other teenagers from 15 to 19 years old. It is also a matter of concern the registration of four maternal deaths involving girls under 15 years old due to complications from unsafe abortions.⁶⁷

V.c. Maternal Mortality

The maternal mortality rate in Argentina is unacceptably high if it is linked with the socio health indicators in the country. The official report states that the rate has declined since 1980 but does not consider the latest developments, stating that since the mid-90s there is a resistance to decrease. In fact, in 2005 the maternal mortality rate was 3.9 per 10,000 live births, in 2006 was 4.8 per 10,000 live births, in 2007 was 4.4, and in 2008 fell to 4 per 10,000 live births.

In relation to the main causes, the official report indicates that complications in cases of abortion appear again in 2008 as the leading cause of maternal death. While official statistics separate those deaths from those occurred from direct obstetric causes, its inclusion in this category allows to emphasize that death of healthy women can only be explained by its relation to pregnancy termination.⁶⁸

It should be noted that complications from unsafe abortions have been the leading cause of maternal death in Argentina in the last 20 years, representing between 25% and 30% of these

públicas, UNICEF, CEDES, Argentina Salud, Ministerio de Salud y Ambiente, Buenos Aires, Argentina. August 2005).

⁶⁷ As we will see in the next section, most of the maternal deaths affect the group between 20 and 40 years old: 229 (FEIM, *Datos y contexto para instalar en agenda los temas de las mujeres*, N° 2, Mortalidad Materna, 2010).

⁶⁸ “Defunciones obstétricas directas” or Direct obstetric deaths, are the ones who occur as a result of obstetric complications during the pregnancy (pregnancy, delivery and puerperio), because of incorrect interventions, omissions or a number of events linked to the situations mentioned before.

deaths and that Argentina, along with Jamaica and Trinidad and Tobago are the only countries in the region where abortion is the leading cause of death.⁶⁹

The increase in maternal mortality involves the breach of the commitment made to the United Nations in 2000 when we adopted the Millennium Development Goals. In 2004 the Health Ministers of all provinces, with the National Minister, in the Federal Health Council (COFESA) - signed a pledge to reduce maternal mortality. That document specified the commitment that

"Women who are in situations of abortion must not be discriminated and must receive fast and effective care, providing them with advice, attention and contraceptive supplies." They agreed to "Ensure that access to abortion care is not criminalized (that is when accepted by law) in Public Hospitals in compliance with the provisions of the Penal Code."⁷⁰

From the perspective of Public Health, the high rate of maternal mortality from unsafe abortions is an indicator of the failure by the Government to provide adequate care for women in situation of abortion as well as the failure to act according to their duty to provide care services when the abortion is legal.

In relation to post-abortion attention, the then Minister of Health of the Nation approved by Ministerial Resolution No. 989/2005 the "Guide for the improvement of Post Abortion Attention" to be implemented throughout the country.

Although since 2006 it has been developed a training program in the provinces, its implementation in all health services has been uneven and unsystematic.

V.d. Current state of the legislation in relation to non- criminalized abortion.

It is also a matter of concern that while the most serious cases have been made public and while high social commitment to introduce legal changes has been shown, there is little legislative progress in both the regulation of non-criminalized abortion in different jurisdictions (federal,

⁶⁹ OPS, *La salud en las Américas*, 2007, vol. I, available in <http://www.paho.org/hia/home.html>

⁷⁰ "Compromiso para la Reducción de la Mortalidad Materna", Dirección Nacional de Salud Materno Infantil, Ministerio de Salud de la Nación. http://www.conders.org.ar/pdf/Compromiso_reduc_MM.pdf

provincial and municipal) and regarding the necessary amendments of the Penal Code which criminalizes abortion.⁷¹

In some cases, some Courts moved forward⁷² but later the local executive authorities proceeded to veto the initiatives.⁷³

During the year 2008 it was listed before the Deputy Chambers of the Congress a draft of an amendment to the Penal Code regulating non criminalized abortions which was signed by the presidents of the Committees on Criminal Law and Women and Families and the president of the Health Commission.⁷⁴ The project received contributions from feminist and women's organizations and from public debates. However, up to date, no approval has been obtained and the commission has not continued this work.

Given the current Argentine context, the existence of regulatory or legal reforms to ensure access to non criminalized abortion is crucial.⁷⁵

As we reported, the Ministry of Health of the Nation "under the National Programme for Sexual Health and Responsible Parenthood, commissioned the development of the" Technical Guide for comprehensive care of non criminalized abortions.⁷⁶ It is worrying that following the change of management, this Guide has not become a Ministerial resolution, which in practice it has resulted in lack of education and training undermining its legitimacy.

⁷¹ Only the province of Buenos Aires and the city of Rosario of the province of Santa Fe have a protocol of attention for these cases..

⁷² Only in 2007 some provinces-those with relevant cases in which access to abortion to women and girls was denied even though they fell under the exceptions of art 86 of the CC— went ahead with protocols of attention for non criminalized abortions. The first one was the province of Buenos Aires, followed by the city of Buenos Aires. Later the province of Neuquén and the municipality of Rosario, in the province of Santa Fe approved regulations. In November 2007 the Ministry of Health published a “Guía técnica para la atención integral de los abortos no punibles”, but its online version had to wait till March 2010 to be possible to access. That guide was approved by the Ministry of Health of the Province of Santa Fe. The Province of Chubut approved a law that regulates the attention that health services must provide in cases on non-criminalized abortions.

⁷³ This is the case of a veto done by the Governor of la Pampa regarding the provincial law of non criminalized abortions that was approved by 2/3 of the provincial legislators.

⁷⁴ N° of the file 5212-D-2008 Trámite Parlamentario 126. Authors: Dip. Nora César, Juliana Di Tulio and Juan Sylvestre Begnis.

⁷⁵ There is an enormous pressure exercised by the religious fundamentalists groups on different levels of the State apparatus and the Medical Collage to apply the exceptions of the Criminal Code. They try to provide of a restrictive interpretation of the law of article 86 of the CC and that is why in many cases it has ended with the procedures being ventilated in Court and even being dismissed.

⁷⁶ The official document of October 2007, was elaborated by a team of experts called by the Secretaría de Programas Sanitarios, with the support of the Pan-American Health Organization. This technical guide covers the procedure to follow in cases of petitions for the interruption of a pregnancy according to art 86 of the Criminal Code and provides the legal framework so that the health team of medical practitioners could feel supported during the practice. Besides it includes a description of the basic medical and surgical procedures recommended by the WHO in its publication *Aborto sin riesgos. Guía técnica y de políticas para sistemas de salud*. (Organización Mundial de la Salud, “*Aborto sin riesgos. Guía técnica y de políticas para sistemas de salud*”, 2003, available in http://www.who.int/reproductive-health/publications/es/safe_abortion/index.html)

Impaired access to abortion when it is legal

Situation of raped girls: During the period covered by this report there were cases in which the judiciary did not allow abortions in cases of raped girls. This position is contrary to the concept of health defined by the WHO and the international human rights instruments, recognized by the Supreme Court of Justice of the Nation.⁷⁷ For example, the province of Mendoza is an evidence of an extreme case of violation of human rights of girls who have suffered sexual violence and incest—and because of coming from low income sectors, therefore they do not have any other option but to go to the public health system.⁷⁸ The violations for not providing proper attention to girls between 11 and 14 years of age who became pregnant as a result of rape and whose mothers requested the termination of those pregnancies were perpetrated by the provincial public health services and the operators of justice as well.^{79, 80} In one case, a body examination was performed under pressure on an illiterate immigrant woman and without the precautions imposed by the due process established by law, violating her right to privacy.⁸¹ In some cases and in some jurisdictions the law was considered and abortion to a girl who was raped was finally granted on therapeutic reasons⁸²; however, it is disturbing that these cases end up being generally taken before Courts and even being dismissed.

⁷⁷ CSJN Y. 112. XL. Habeas Corpus. Right to health. Intervention of tubal ligation. "YAPURA Gloria Catalina C/ Nuevo Hospital El Milagro y Provincia de Salta S/ Amparo, (06-06-2006) " ...constitutional regulations that define the right to health in an extended way related to the psychological and physical balance of a person, the right to life, to a free determination, to privacy, to the development of the person in a maximum possible way and the integral protection of his/her family (Articles bis, 16, 19 y 75 inc. 22) of the National Constitution and International Instruments."

⁷⁸ In the case of I. V. —a 13 year old girl raped by her biological father—the Dirección del Hospital Lagomaggiore denied the petition for abortion requested by her mother and the judge was of the same view. In the case of L.B —a 12 years old girl raped by her father, her mother asked for the interruption of the pregnancy with the consent of the girl who was admitted by order of the Grupo de Alto Riesgo to the Hospital Pediátrico Notti. However under the pressure of a group of strangers, these people obtained a decision against the abortion by the same girl. The lawyers also expressed their concern and denounced acts of threat and intimidation against them on behalf of the provincial authorities of the Executive and the Judiciary. In this province there are also intimidations against women who have undergone abortions before.

⁷⁹ "Last Wednesday during early hours in the morning, a 11 years old girl was admitted to the hospital Teodoro Schestakow of San Rafael after being raped. The girl had become pregnant. Her mother filed a complaint before a police station and immediately asked Courts to allow the termination of the pregnancy. Justice Pablo Peñazco declared himself out of jurisdiction expressing that the event happened in La Pampa, where the girl and her mother live. Even though the medical examinations were done in the Cuyana province, the cause of rape and the violation of the petition for an abortion would have to be filed in La Pampa" (cf. *Diario Página 12*, "Un derecho con jurisdicción", 07/02/09, available in www.pagina12.com.ar).

⁸⁰ So in these cases there were administrative and procedural irregularities including deprivation of freedom such as the admittance in an institution to avoid the pregnancy to be terminated, the unnecessary judicial action, the free access of total strangers to the situation—those belonging to fundamentalist groups to exercise pressure on the girls, the creation of obstacles to the contact of the petitioner-mother with the girl and the pressure to give custody to the grandmother who expressed her disagreement with the petition for abortion, the harassment of the lawyers and the denial of access to justice invoking lack of jurisdiction.

⁸¹ In the case of M. V. (2008) the Cámara de Apelaciones of Mendoza annulled the procedure ordered by the prosecution and the Judge in the city of Mendoza.

⁸² For example the Cámara de Apelación en lo Civil y Comercial, Sala Segunda, in the case of O. M. V. —victim of sexual abuse, in 2007 invoked numerals 1 y 2 of art. 86 of the CC.

Situation of raped women with discapacities: As we saw in these cases abortion is not criminalized, but is legal. However, even in such cases, orders are also hampered by the prosecution. The abuse of officials and magistrates in court, the harassment done by fundamentalists against the families to not to continue with the orders of termination of pregnancy without taking appropriate security measures and the judicial decisions that restrict the freedom of movement or exercise control over the continuity of the pregnancy - to the detriment of the life and health of disabled women, have been a common denominator in recent years.⁸³ Also, in several cases under surveillance, it was found a relationship between the judges involved and religious groups that oppose abortion.⁸⁴

The status of therapeutic abortion

In such cases the reactions are different depending on the jurisdictions where the cases occur, but generally they are not provided attention through the public health system. In the province of Buenos Aires, for example, after a case in 2005⁸⁵ which led to a decision of the Superior Court of Buenos Aires for an abortion to be practiced on a woman who was in the fifth month of pregnancy, there is a protocol of attention and there have not been more cases filed before Courts. In contrast, in the province of Santa Fe a hospital's refusal to perform an abortion on a pregnant teenager who had cancer claimed the life of the woman and the life of the baby girl who was born premature due to the serious condition of the mother. In this case, as in that of L. M. R.⁸⁶ – the opposition was based on the religious conviction of the staff involved.⁸⁷

⁸³ For example in the case of L. M. R, a young woman with a mental discapacity and a mental age of 8 years old, the judge in charge of Children affairs mentioned that : to dismiss what it has been a petition to practice abortion on a minor and as a mean for protection of a child and a child to be born, it is ordered the periodical-monthly attendance of the minor before Court to control the development of the pregnancy and the Court orders the *Subsecretaría de Minoridad to be in charge of the administration of all the measures needed to protect the physical and mental health of the minor and the child to be born (Expediente judicial fs. 59/64vta.)*”. In other case, the case of M. C., of the city of Paraná, provincia de Entre Ríos, the young woman suffering discapacity was kept during one night in a home of the Consejo del Menor along with other pregnant girls, separating her from her mother who was imposed of visiting hours. She stayed there for 5 days and she was later taken to the Hospital de Niños San Roque keeping her in a room of intensive care for high risk pregnancies. She was under the surveillance of the Consejo Provincial del Menor to take care of the fetus. (See Annex).

⁸⁴ In the city of Bahía Blanca, province of Buenos Aires, in 2008, a family Tribunal intervened to revoke the suspension of a legal abortion. The suspension of the medical procedure was ordered by Judge Longás, because of a married couple who asked the child to be given for adoption. The pregnant girl, a 18 years old girl with mental discapacity had been raped several times during her outings from the Patronato de la Infancia.

⁸⁵ A. K. de P. (in 2005) went through all the legal instances of the province till obtaining a favorable resolution in the Supreme Court, increasing the risks for the life and health of the petitioner. (See Annex).

⁸⁶ The case of LMR is not an isolated case. It is part of a number of similar cases which occurred in different places in the country: in Lomas de Zamora (2005), Rosario (January 2006, 2009), Mendoza, (August 2006, 2008, 2009), Corrientes (November, 2006), Entre Ríos (2007), Mar del Plata (January 2007), and Santa Fe (May 2007, 2008, 2009), among others.

⁸⁷ In the case L. M. R (2006) Judge Siro publicly declared that her religious convictions were an obstacle to proceed with the abortion. In the case of A. M. A. (2.007) the Comité de Bioética of the hospital asked “ if in any moment it was considered a therapeutic abortion? Based on convictions, religious, cultural questions, in this hospital (and in Santa Fe): NO. ” (See Annex).

C. Case LMR VS. Argentina

LMR is a young woman with mental disability, who was 19 when she became pregnant after being raped by her uncle. She has been diagnosed with a mental age of 8 to 10 years old. She lives with her mother in a half-built house in Guernica, a city 100 km distant of La Plata, province of Buenos Aires. The mother, who is separated from her husband and works as a maid for a family, decided to file action for the legal termination of the pregnancy of her daughter. The case falls within the exceptions of non criminalized abortions under the Penal Code (art. 86, paragraph 2), and any hospital should perform the abortion free of charge. When this was going to be materialized in a hospital in La Plata, a legal order interfered preventing the practice.

Although there are resolutions that indicate that these cases should not be taken to Courts, it was started a long procedure that lasted several weeks, while the pregnancy was progressing. There were resolutions of different views in first and second instances, until the case reached the Supreme Court of the Province of Buenos Aires that ruled in favor of the abortion. This Court decision was issued almost a month and a half after the alleged rape and the abortion request. At that time the hospital refused to perform the abortion, arguing that the pregnancy was well advanced. However, the real reason was the large number of pressures and threats received by the fundamentalist groups, including letters threatening to excommunicate the health professionals who dared to be involved.

LMR and her family were harassed by the press and by conservative groups that had propaganda, and housing subsidies provided, suggesting continuing the pregnancy and giving the baby later for adoption. For several weeks, LMR and her family were forced to undertake a series of long, harrowing steps that demanded long hours and days of waiting in public institutions. This damaged the already fragile economy of the family, and subsequently caused the loss of the work of VA, her mother. Parallel to this, LMR's sister, who accompanied her mother and sister in this whole process, lost her job in a shop in the area. Finally, the family had to resort to a clandestine circuit to perform the abortion.

Despite having a legal action to decide on her reproductive rights, LMR could not access it. She was discriminated regarding her right to access to reproductive health, violating her right to privacy and access to a safe abortion within the health system.

The Institute of Gender, Law and Development of Rosario (INSGENAR), the Catholic Association for the Right to Decide of Cordoba (CDD) and the Latin America and the Caribbean Committee for the Defense of Women's Rights (CLADEM) then submitted an individual communication before the Human Rights Committee (HRC) of the United Nations on May 25th, 2007. The complaint alleged violation of Articles 2, 3, 6, 7, 17 and 18 of the International Covenant on Civil and Political Rights, Article 12 of CEDAW, as well as articles of the American Convention on Human

Rights and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women.

While at first the Argentine government requested the case not to be admitted -based on an opinion from the Ministry of Justice of the Province of Buenos Aires, a few months later it was filed an opinion from the Human Rights Secretariat of the Nation, acknowledging that the case should be admitted and that Argentina violated the rights here claimed. Upon recognition of responsibility in August 2008, it began a process of dialogue among the petitioners, the private institutions and the public institutions involved, to discuss an agenda of reparation for the victim and her family and to ensure non-repetition of the events. However, such talks have continued and up to date, there has been no repair to LMR or her family, not even taken all appropriate measures to ensure quick and secure access to legal abortions in all country.

V.e. Girls, adolescents, women and HIV / AIDS

During the period covered by this report, HIV/AIDS continues to target more women, especially those young and poor. The ratio of male / female AIDS patients dropped from 20 to 1 in 1984 to 2.8 to 1 in 2008⁸⁸. In cases of HIV infection the ratio is even lower: 1.6 men for every diagnosed woman⁸⁹. The male / female ratio show differences according to age groups: In the group of 15 to-24 years old it is established at 0.9, while in the range of 35 to 44 years old is 2.2. As shown by a 2002 study, the feminization of poverty coincides with the increase of HIV cases in the female group. The investigations confirm that in all regions of the country, women infected with HIV have less levels of education than men⁹⁰.

Overall, we see the need to put an emphasis on addressing preventive measures. The predominant mode of transmission is unprotected sexual intercourse for both men and women. For the latter, 87% of infections are due to unprotected sex with men⁹¹. Of particular concern is

⁸⁸ Dirección de Sida y Enfermedades de Transmisión Sexual (ETS), *Boletín sobre el VIH-sida en Argentina*, año XII, N° 26, November 2009.

⁸⁹ Bianco, M; Correa, C; Pagani, L y Re, M.I, *Los enfoques culturales que guían las estrategias de prevención del VIH/SIDA en el Gran Buenos Aires: un estudio de situación. Un Enfoque Cultural de la Prevención y la Atención del VIH/SIDA (Programa de Investigación UNESCO/ONUSIDA)*, FEIM/UNESCO, 2003, AVAILABLE IN <http://www.feim.org.ar/pdf/publicaciones/UNESCO-FEIM.pdf>

⁹⁰ DSyETS, *Boletín sobre el VIH-sida en Argentina*, año XII, N° 26, November 2009.

⁹¹ Bianco, Mabel y Mariño, A., *VIH/SIDA + VIOLENCIA. Dos caras de una misma realidad. Violencia contra las mujeres y feminización del VIH/sida. Estudio cuantitativo y cualitativo en cuatro países del MERCOSUR. Informe Nacional Argentina*, FEIM, Buenos Aires, 2009. The study revealed that “The decision making process respect of protected or not sexual relations was done by women in a percentage of 58.4% of the cases , and along with their partners in only 22.8% (...)of the cases. Lots of women spoke about difficulties when trying to practice it with their partners, showing that the use of condoms does not only depend on the level of information but the level of empowerment and reaffirmation of their sexual and reproductive rights”.

the lack of prevention or protection of adolescents and young women (15-24 years old) in relation to the possibility of becoming infected with HIV, due to the lack of sex education in schools, the lack of campaigns aimed at this population and the resistance of providing sexual health services and reproductive care to adolescents and young women who are unaccompanied by an adult and to provide them with condoms⁹².

It is rather recent and punctual⁹³ - the articulation among the programs of the Ministry of Health which are responsible for the conduction of actions of prevention, diagnosis and treatment of HIV/AIDS, hindering its prevention and early detection. This situation does not impact the vulnerability of young women to become infected and the epidemic situation continues to grow.

Since the late 90s, a Protocol for the Prevention of the mother-child transmission has been implemented, contributing to the decrease of the transmission and to lower rates of infection in newborns. In the year 2008, there were reported 113 cases of HIV infection through perinatal transmission, representing 2.8% of all notifications of cases of infection⁹⁴. There are still problems that must be attended urgently^{95, 96}. It is still common that the test done on women during their pregnancy does not occur through an appropriate informed consent⁹⁷, or with a consulting team that specializes in pre and / or post-tests advice^{98, 99}. Unfortunately this failure is applicable to other users of health services.

In relation to the implementation of a national protocol to normalize a comprehensive attention in benefit of women victims of rape which can specify the provision of AHE (emergency

⁹² It is interesting to mention that if that teenager becomes pregnant she will receive medical attention even in the absence of an adult.

⁹³ During the years 2008 and 2009, the sexual and reproductive health programmes and those related to HIV/AIDS worked together in the draft of a National Protocol of attention to victims of sexual violence and a Guide for a comprehensive attention of women infected by HIV.

⁹⁴ DSyETS, *Boletín sobre el VIH-sida en Argentina*, año XII, N° 26, November 2009.

⁹⁵ Even when a test is required during the pregnancy, frequently the results take a long time to be delivered and then women are not able to complete the treatment before the delivery. Another inconvenience is that women sometimes take a long time to go for a first consultation during their pregnancy, according to Bianco, M; Barreda, V. y Mariño, A., *Monitoreo de los compromisos asumidos frente al Sida en Salud Sexual y Reproductiva*, FEIM/GESTOS, 2008, available in http://www.feim.org.ar/pdf/publicaciones/Info_ungass_feim_res_cast.pdf

⁹⁶ There has not been yet implemented a programme for the prevention of the transmission mother-child that would guarantee the control and treatment of the whole family of a pregnant woman. Testing is not being offered to a couple but a woman and that would allow to face in a better way the health of the family and would avoid the discrimination that is faced by the families of the pregnant women who are found HIV positive.

⁹⁷ A research done in 2009 by the Dirección de SIDA y ETS, *Dónde estamos? ¿Adónde queremos ir? Respuesta al VIH-sida desde el sistema público de salud*, was done in 332 public health institutions⁹⁷, and revealed that 23% of them did not work with the informed consent of pregnant women.

⁹⁸ The same investigation found that only 25% had a specialized team in counseling and advise regarding pre and post HIV tests. DSyETS, *Boletín sobre el VIH-sida en Argentina*, año XII, N° 26, November 2009.

⁹⁹ The voluntary examination and HIV advise are key issues in the treatment and other HIV services as well as to prevent violence especially alter revealing the diagnosis..

hormonal contraception) to prevent pregnancy, the Post Exposure Prophylaxis for HIV Prevention and prevention of sexually transmitted diseases and psycho-social care, it has not yet been approved and therefore is not being implemented nationwide.

In Argentina, antiretroviral (ARV) drugs are being provided free of charge through government hospitals. Women generally receive similar doses or based on the experience of the medication in male patients, with the subsequent problems that this involves¹⁰⁰. Nothing has been done in relation to providing medicine in less traumatic ways¹⁰¹.

Another important debt that the Argentine State has is in relation to the attention of the sexual and reproductive health of women living with HIV / AIDS. In general if they inform about their condition at sexual and reproductive services they are more discriminated and the tendency is not to provide them with attention, often being considered that they should only use condoms in all their sexual relations and dual protection is not advised on a regular basis¹⁰². In recent times, it is more common for women under treatment to express their interest in having children, which is not always accepted by the medical doctors in charge, who still often considered they should not have children because of the risk of HIV transmission, and many even believe that they should not have sex. A monitoring study of the sexual and reproductive health of women living with HIV – the UNGASS Report, conducted in 2007 and repeated in 2009 -showed that there is a tendency to promote the sterilization of women living with HIV. Even unsafe abortion is being encouraged, even with the higher risks involved for these women such as the risks of infections, bleeding and other problems that put their life in higher risk.

VI. TRAFFICKING OF PERSONS (Art. 6 of the CEDAW)

VI.A. Summary of the situation

This is the first time the Committee will have an opportunity to discuss the public policies designed in our country to prevent, prevent, punish and eradicate the crime of trafficking of

¹⁰⁰ This causes that many women suffer of changes in their metabolism of fats and therefore fat is deposited in different areas of their bodies causing deformation and consequent discomfort. Unfortunately, even though they are registered, there are still no solutions or studies to improve the administration of ARV medicine in the case of women.

¹⁰¹ Therefore it is important that the ARV medication that is distributed can have presentations that can allow better doses of the drugs to intake, be easier to use and in quantities that cannot give evidence of the treatment while the person is working or in the school, for example.

¹⁰²The study done by FEIM in 2009¹⁰² indicates that 65 women HIV positive who were interviewed use some contraceptive method while only 13 use dual protection —mainly condoms associated to contraceptive pills, while the rest only use condoms.

girls, adolescents and women. Unfortunately, regarding this issue, the State faces the reality of lack of articulation and high levels of improvisation.

While in recent years the theme has began to appear in the public agenda of the national and provincial governments, as well as the media, efforts to eliminate this serious crime that violates fundamental human rights are still poor, fragmented and fail to address the complexity of this crime of international features.

This report focuses on trafficking in women for sexual exploitation, mainly for two reasons: firstly, this purpose is one that involves the largest number of women subjected to trafficking and, second, sexual exploitation is the cause for trafficking which is more frequently identified, followed by the one connected to forced labor¹⁰³.

According to a research conducted by the International Organization for Migration (IOM) in 2006, in Argentina there is a predominance of internal over international links. Some provinces operate as a point of origin, others as point of destination, but eventually all the provinces are involved, including in some cases both characteristics co-exist¹⁰⁴.

Other investigations find that the Northeast region of Argentina (NEA) is where 90% of victims of trafficking for sexual exploitation come from¹⁰⁵. Other provinces included as points of origin are Santa Fe and Tucumán. The main destinations are the provinces of Buenos Aires, Cordoba, Entre Rios, La Pampa, Chubut, Santa Cruz and Tierra del Fuego. This hypothesis was confirmed in late 2009 by the Fiscal Unit for Research Assistance of kidnapping for extortion and trafficking of persons (UFASE)¹⁰⁶. Furthermore, the IOM also notes that "... Santa Fe,

¹⁰³ See, Unidad Fiscal para la Asistencia en la Investigación de Secuestros Extorsivos y Trata de Personas (UFASE) de la Procuración General de la Nación (Ministerio Público Fiscal), *Informe Anual 2009*, available in www.mpf.gov.ar. Also read Oficina de las Naciones Unidas contra la Droga y el Delito, *Informe Mundial sobre la Trata de Personas. Año 2009*, available in <http://www.unodc.org>

¹⁰⁴ OIM, *Estudio exploratorio sobre Trata de personas con fines de explotación sexual en Argentina, Chile y Uruguay*, diciembre de 2006, available in www.oimconosur.org [Acceded on March 13th 2009].

¹⁰⁵ This involves the provinces of Chaco, Formosa, Corrientes and Misiones. Cf. Gil Lozano, Fernanda, "Trata, Tráfico y Corrupción en la Argentina", January 22nd 2009, available in www.coalicioncivica.org.ar, [accessed on february 2nd 2009]. Also read, *Diario Época*, "El 90% de las víctimas del turismo sexual proviene del NEA", January 26th 2009, available in www.diarioepoca.com [Acceded on March 10th 2009]. The IOM has declared that Misiones has been identified as "one of the main areas of recruiting of women victims of human trafficking in the country" (cf. OIM, op. cit., pg. 103).

¹⁰⁶ "The Northwest and Northeast of Argentina are regions of recruiting of people to be exploited (especially for sexual exploitation), and used as transit areas with the purpose of human trafficking for exploitation (mainly men for forced labour coming from different places in Bolivia and women from different locations in Paraguay)" (UFASE, *Informe anual 2009*, cit.).

Mendoza and Entre Rios provinces are those places where the majority of major traffickers operate their networks." ¹⁰⁷.

In 2008, non-governmental organizations working on trafficking¹⁰⁸ estimated that "about 500 women had disappeared." ¹⁰⁹ However, the Head of the Trafficking Division of the police in the province of Entre Rios said: "We know that in Argentina, according to statistics compiled by various NGOs, some 400,000 people are being exploited for sexual purposes and forced labor, but there is no official data on the subject" ¹¹⁰.

According to information provided by the Ministry of Justice, Security and Human Rights of the Nation, from the enactment of Law No. 26 364- For the Prevention and Punishment of Trafficking of Persons and to provide Assistance to the Victim ", effective from April 2008 until the month of January 2010, there had been a total of 388 raids, resulting in a total of 621 victims being rescued with a total of 404 detainees. This information is not disaggregated by the purpose or differentiated by sex, origin, age groups, methods of recruitment, etc.

A report by UNICEF¹¹¹ places the province of Entre Rios as one of the most important territories in the circuit of commercial and sexual exploitation of minors, while Misiones appears as the main one for recruiting children. UNICEF notes that in the Triple Border area (Argentina, Paraguay and Brazil) and its surroundings "more than 3,500 children under 18 suffer from some form of sexual violence, abuse at home or in closed spaces¹¹²." Is important to mention that the child population that is most targeted by the traffickers, is related to the children who live in the streets, who come from families in a situation of exclusion, who suffer violence , addictions and have low levels of schooling; in short, those found in extreme vulnerable conditions. Those who operate as intermediaries or as recruiters do

¹⁰⁷ The IOM has pointed out that the traffickers send women under the system of vacancies to different cabarets and bars or whiskerías all over the country, especially to Córdoba, La Pampa, Entre Ríos, Chubut and Santa Cruz, where they are sexually abused." (IOM, op. cit., pg. 47). Also read 26 NOTICIAS. "Entre Ríos funciona como "zona liberada" para la explotación sexual infantil" (available in www.26noticias.com.ar [Acceded on March 14th 2009]).

¹⁰⁸ As there is insufficient official data we must highlight the role played by NGOs that work in this area such as Fundación María de los Ángeles; Red No A La Trata, Red Nacional Alto al Tráfico y la Trata, Programa Esclavitud Cero, etc.— and also media sources.

¹⁰⁹ Quoted in the report done by Congress woman Fernanda Gil Lozano, *Trata, Tráfico y Corrupción en la Argentina*, cit..

¹¹⁰ Victorino Borré, "Trata de personas: el Estado apunta a un abordaje integral para luchar contra prácticas naturalizadas por muchos sectores, available in <http://www.entrerios.gov.ar> (Fecha de la noticia: 08 de diciembre de 2008).

¹¹¹ UNICEF, *Situación de la niñez y adolescencia en la triple frontera de Argentina, Brasil y Paraguay: Desafíos y recomendaciones*, 2005, available in www.iin.oea.org

¹¹² See 26 NOTICIAS, "Entre Ríos funciona como "zona liberada" para la explotación sexual infantil", cit.

"not seek for any child in particular and try to reduce the possibility that someone will look for them or try to claim them"¹¹³.

Undoubtedly, the first obstacle to overcome is centralizing and updating the official statistics of all national agencies and of the provincial States in order to improve the design of public policies and social policies of intervention.

VI.B. Reference to international trafficking

The World Report on Trafficking of Persons done by the UN Office on Drugs and Crime¹¹⁴, states that human trafficking has increased in recent years in Argentina. The country is one that provides conditions of place of origin and destination for victims of trafficking. Sexual and labor exploitation in the case of international trafficking, would present similar proportions. Media sources relating to the rescue of victims of trafficking for sexual exploitation indicate that the origin of women, mostly, is Paraguayan¹¹⁵ and to a lesser extent there are cases related to Bolivian, Dominican, Brazilian, Peruvian and Uruguayan women. The IOM indicates that the entrance of foreign women occurs at border crossing points where they are legally entitled to. In the province of Misiones there are 39 border crossings with the countries of Paraguay and Brazil. It was found that a possible cause of this problem is that these steps are controlled by the National Gendarmerie and the Coast Guard and not by the National Migration Office, which handles only international bridges.¹¹⁶

VI.C. An analysis of existing legislation (Law No. 26 364)

On April 9th, 2008 it was enacted Law No. 26 364 on the Prevention and Punishment of Trafficking and Provision of Victim's Assistance¹¹⁷. While its promulgation represents an important step forward, the standards in place have some shortcomings as mentioned below.

¹¹³ Ídem.

¹¹⁴ <http://www.unodc.org>

¹¹⁵ The Paraguayan women enter through the provinces of Misiones and Entre Ríos.

¹¹⁶ The corridors are San Roque González —which joins Posadas with Encarnación— and Tancredo Neves —that joins Puerto Iguazú with Foz do Iguazú— and the ports of Iguazú and Posadas (IOM, pp. cit., pg. 153).

¹¹⁷ When this law was promulgated it did not take into consideration the opinion of the civil society organizations that asked to be heard before the debate commissions of the parliament. Once it was promulgated some NGOs filed a petition of veto against the law that was not accepted by the Executive.

In terms of content, however the law is based on the Palermo Protocol¹¹⁸, this is insufficient compared with the existing international standards on human rights of women.¹¹⁹ First, a distinction is done between the crime of trafficking a person who is over 18 years old and one who is under 18 years, a distinction that is based on the importance assigned to the consent of the victim. In the case of girls under 18 years any consent is irrelevant, while in the case of the ones above, it requires proof of the existence of defects of consent (deception, fraud, violence, threats or abuse of authority or a situation of vulnerability) in order to criminalize the conduct. In this regard, it should only require proof that the dealers carried out the actions without investigating the victims to determine whether their consent was tainted or not¹²⁰. The consent should not have any effect. In any case, the age of the victim should operate only as an aggravating factor¹²¹.

Second, although the highest percentage of victims of the crime of trafficking involve women and children¹²², the law does not incorporate a gender perspective in its terminology and content, and does not take into account the conditions of slavery, underground and violence that characterize the way in which this crime is committed, especially in the case of trafficking for sexual exploitation.

Third, in relation to the means used to commit the crime, the law does not include common forms of trafficking, including sex tourism and servile marriage.

In relation to the penalties imposed, although there is a proven link between public officials and police with the networks in question, the law does not provide for the specific aggravated failure to report the crime of trafficking on behalf of government officials. Nor any offense is introduced to penalize those who consume the "offer" that creates the crime of trafficking¹²³.

The law also provides for preventive measures to avoid the media-newspapers, radio, television, etc. to continue their profit from advertising the supply or demand for women with explicit or implicit references to prostitution.

¹¹⁸ Protocol to prevent, combat and sanction human trafficking, especially the one against women and children that complements the UN Convention against Organized Transnational Crimes (ratified by Argentina in November 2002).

¹¹⁹ The recommendations done by the Committees for the monitoring of international instruments of human rights or the ones formulated by the UN in relation to prevention and eradication of violence against women, particularly in relation to prostitution and female human trafficking.

¹²⁰ Gil Lozano, Fernanda, *Trata, Tráfico y Corrupción en la Argentina*, cit.

¹²¹ Opinión of the organizations Red No a la Trata and the Coalición Argentina contra la Trata y Tráfico de Personas (catw-argentina@arnet.com.ar).

¹²² IOM op. cit..

¹²³ We need to highlight that in a meeting of the Ministers of Justice and Interior of the MERCOSUR and the associated States it was decided to present before the UN a number of measures to punish the figure of the client of any activity that encourages human trafficking (cf. *Página 12*, "Penalizar al cliente de trata", May 8th 2010).

As for the remedies available to the victim, unfortunately the law does not provide for example special controls on the patrimony of the ones charged with the crime to ensure compensation¹²⁴. There are no specific measures to provide safe shelters for victims, medical assistance, psychological and social legal aid (for litigation based on both before criminal and civil courts) and in the language of the victim; articulated work for the return and reintegration of the victim, employment skills, employment opportunities and free expedited national identity cards and passports, educational alternatives, housing, etc.¹²⁵.

Finally, the Argentine State has not established any legal regulation for the purpose of strengthening international cooperation mechanisms at bilateral, regional and multilateral levels in order to optimize the comprehensive fight against human trafficking.

VI.D. Public policies for investigation and punishment

- Investigation: the work of the Public Prosecutor

The Fiscal Unit for kidnappings and Trafficking of Persons (UFASE) is part of the Public Prosecution Office. Despite the valuable efforts displayed by this institution it suffers from two characteristics that limit its effectiveness. On one hand, while this unit works with cases of kidnapping for ransom, perhaps by assuming that the deprivation of liberty constitutes its main feature¹²⁶ – it shows a lack of specificity and fails to address the complexity and scale that characterizes the crime of trafficking. Secondly, the UFASE is physically located in the capital of Argentina, Ciudad Autónoma de Buenos Aires, and does not have representations in the rest of the country, despite its large territorial extension. It also has limited staff involved in both

¹²⁴ The IOM and the Public Prosecution office warned that: “The patrimonial investigation of the perpetrators is another key issue that is not given proper attention during the main investigation”. That is why they reaffirmed the need to guarantee the implementation of economic sanctions related to the crime that was committed. The compensations to the victims (...), economic sanctions to be applied as the crime was committed with the aim of getting economic benefit (...), the embargo of the items or money earned from the crime (...) and the legal costs of the process (...). They also expressed that the money is being circulated through illegal bank accounts and there is the need to investigate on this. The goods and money that were confiscated should be added to the State budget to guarantee the attention and compensation to the victims (cf. *Nuevo escenario en la lucha contra la trata de personas en la Argentina*, October 2009, pg. 59).

¹²⁵ See Principios y Directrices recomendados sobre Derechos Humanos y Trata de Personas, de la Oficina del Alto Comisionado para los Derechos Humanos (text presented before the ECOSOC as addendum to the report of the UN High Commissioner for Human Rights (E/2002/68/Add.1)).

¹²⁶ Resolution PGN N° 100/08, available in www.mpf.gov.ar However the deprivation of freedom is not a measure established with the aim to degrade human beings; there is a diversity of human rights affected by this situation (for example the right to personal autonomy, to a dignified life, to personal integrity, to work, to social security; to health; to a minimum wage; to identity; to a family unit and finally to freedom of movement).

crimes (kidnapping for ransom and trafficking) for the entire country, which means that it cannot give a proper response to every situation that is faced by them.¹²⁷

It is necessary that the UFASE has more resources to strengthen the training and service provided by the prosecutors across the country. Indeed, a further strengthening will generate a greater visibility of the problem.

As for the investigation of this crime, it should be emphasized that many of the criminal investigations are initiated by indirect mechanisms: third-party complaint, investigative reporting, escapades of the victims of trafficking, discovery of the networks and due to other related cases such as drug trafficking and counterfeiting¹²⁸. In this sense, we understand that both the Judiciary and the Public Ministry, in a coordinated manner, should promote their own investigations to effectively identify acts of human trafficking.

- The penalty: the Judiciary

Although there are statistical records of prosecutions for this crime, there are currently almost 200 open cases, 60 indictments and four convictions for crimes related to human trafficking:

"The absence, or inadequacy, of this type of information is an obstacle (...) for example, to investigate the incident as a crime done in stages (capture, transport and reception for exploitation), (...) in public areas of recruitment, with common steps, common transit zones and operating geographies. (...) Also the efforts to coordinate preventive and investigative measures remain futile and poor"¹²⁹

There are few lawsuits initiated in relation to the crime of trafficking in comparison to the magnitude of the phenomenon in Argentina and, specifically, the number of women reported

¹²⁷ Its main activity consists in the collaboration with the public prosecutors office of all over the country. The promulgation of Law N° 26.364, expanded the UFASE and also in terms of its functions and duties in relation to human trafficking, and so it is an important step taken by the State. For more information please visit www.mpf.gov.ar

¹²⁸ IOM op. cit., pg. 64. Same opinion has been given by the general coordinator of the Programme "Las víctimas contra las violencias", which falls under the Ministry of Justice, Security and Human Rights, in the sense that in many cases the own clients relate to the complaints of the slavery of women in brothels and whiskerías". The UFASE, points out that private complaints are usually the ones starting an investigation in 29% of the cases (UFASE, *Informe Anual 2009*, op. cit.).

¹²⁹ IOM and the Ministerio Público Fiscal, *Nuevo escenario en la lucha contra la trata de personas en la Argentina*, op. cit., pg. 44.

missing.¹³⁰ Also those persons who are prosecuted and convicted for this crime are, in most cases, the weakest in the network of power in the trafficking network¹³¹. Most seem to be open cases with similar characteristics: small family businesses run by members of the household and / or close friends. This may be due to the shortcomings of judicial or in connivance with some members of the security force.

- Law enforcement administrators and other public officials

In some provinces there have been established special investigation divisions for the crime of trafficking, particularly within the security forces. However, these divisions do not work in practice or do so with limited extent.¹³²

According to the IOM, in Argentina

"There is a set of individuals characterized by facilitating the implementation of the activities of traffickers by providing means of protection. First, there are members of the security forces, representatives of the political power and judiciary that for a weekly or monthly sum of money provide "protection" to the traffickers. "¹³³

Several complaints of the existence of brothels unmasked "the police and their protection business covering the operation of such a network."¹³⁴ Many cases have been documented in which it appears there is an involvement of the police force. Furthermore, several policemen were laid off, by the same police force, when they investigated cases of trafficking for sexual

¹³⁰ The media reports and the ones produced by NGOs show that the prostitution networks are highly extended in Argentina, involving adults as well as minors. The dismantling of these networks by the Police and the justice system has been really low in numbers.

¹³¹ In general it refers to the recruiters and the ones in charge of brothels, many of them being women. This also shows that women involved in these crimes are made more visible by the police investigations.

¹³² For example in Corrientes within the police structure it was created the "División Delitos de Trata de Personas y Tráfico de Menores", but it does not really work (cf. *La República*, "Aunque ya existe la división de delitos para combatir la trata, aún no funciona", March 13th 2009, available in www.diariolarepublica.com.ar, [Date of Access on March 17th 2009]). It was also denounced the lack of operativity of the División de Trata of the province of Salta (*La Otra Voz Digital*, "Denuncian inoperancia en la actuación de la División Trata", 12 de marzo de 2009, available in <http://www.laotrazvozdigital.com> [Accessed on 15th March 2009]). In Santa Fe in 2007 it was created the Unidad de Trata de Personas within the Police Structure that does not really operate (*DERF Agencia Federal de Noticias*, "Un delito pendiente de solución. Santa Fe: La trata de personas, un negocio que mueve dinero y poder", November 2008, available in www.derf.com.ar [Date of access February 8th 2009]).

¹³³ IOM, op. cit., pg. 50.

¹³⁴ In a case it was indicated that from the telephone hearings and the reports that were obtained, "it might be deduced the commission of crimes of public action, where police officers may be involved and provincial and federal authorities too, who were asking for money or free sexual services to over look the cases (*Página/12*, "Cuando se destapó la olla en Mar del Plata", February 2nd 2010).

exploitation and in which senior officers were implicated related to organized crime networks.

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Another situation is the failure to stop the activities conducted by the brothel owners whose businesses are not closed and continue to work in other hands.¹³⁶ To order the closing of brothels would be "an effective measure to prevent the commission of crimes of trafficking and exploitation of prostitution, while being an ideal instrument to halt the crime of trafficking and combat its effects."¹³⁷

VII. THE LAW OF GIRLS AND WOMEN TO A LIFE WITHOUT VIOLENCE (ARTS.1 and 3, CEDAW)

VII A. Synthesis

First, it is important to note that the Committee, on the occasion of the last report submitted by the Argentine State, has urged that it is necessary to:

"Ensure the implementation of a comprehensive approach in relation to violence against women and girls, taking into account general recommendation 19 on violence against women. This must include the effective enforcement of the existing legislation at the provincial level, to combat all forms of violence against women. The Committee also urges the State party to consider the possibility of sanctioning a federal law that can be applicable throughout the country, in order to combat and eradicate violence against women and ensure that women who are victims of violence and sexual harassment have access to protection and effective redress and that perpetrators are effectively prosecuted and punished while women are effectively protected against reprisals. "

¹³⁵ *Diario Río Negro*, "Preocupación por situación de un oficial de la policía de la provincia de Río Negro", available in www.rionegro.com.ar/blog/hijasdeeva/index.php?mode=viewid&post_id=144; *Página 12*, "Al rescate de las mujeres atrapadas en la red", September 23rd 2009; *Rosario/12, Pagina/12*, "Otro ex comisario proxeneta", October 9th 2009; *Página/12*, "Cuando se destapó la olla en Mar del Plata", February 2nd 2010; *ARGENPRESS*, "Policías son propietarios de la mayoría de los prostíbulos en Tucumán", December 2008, available in www.argenpress.info [Accessed on 11th March 2009], among others. The information reveals that the fact that the police officers are friends of the owners of the establishments allowing them to know when the inspections will be performed and as a consequence a great evidence of the true activities that they perform can be dismantled."...

¹³⁶ A peculiar case showing the deals that take place occurred in the city of Mar del Plata in the province of Buenos Aires: "It is believed that in Mar del Plata there are 400 brothels where four thousand women are supposed to be sexually exploited and being under slavery conditions". This crime moves almost 5,5 millions of pesos per month during high season". This generated a judicial scandal among the public prosecutors asking for the closure of the denounced places and the judges who were of the view that nothing could be done because in Mar del Plata to be in charge of a brothel is not a crime (*Página/12*, "Cuando se destapó la olla en Mar del Plata", February 2nd 2010).

¹³⁷ Prosecutor Gustavo Rodríguez in "Primera respuesta para tratar la trata". *Página/12*, February 5th 2010.

The Committee also recommended that

"The State party undertakes a national public awareness campaign on violence against women and promotes the social and moral unacceptability of such violence, especially in the difficult period that the country now experiences, increasing its efforts to provide public officials in particular the staff involved in law enforcement, judicial personnel and health professionals, of sensitive training in gender issues regarding violence against women which constitutes a violation of the human rights of women. "

However, up to date, the State has not yet completed the necessary actions for the purpose of complying with these recommendations. As it has been reported, currently in Argentina the problem of violence against women is addressed in a disjointed and fragmented way, through agencies that depend on the ministries of Justice, Home Affairs, Development, and other governmental entities dedicated to women issues, at national, provincial and municipal levels. Also, since 2008 – The Supreme Court, the Bar Associations through free legal services, and the NGOs, especially the women's organizations, are making efforts to address this problem. However, there is no mapping of the situation of violence against girls and women in Argentina.

C. Case LNP vs. Argentina

LNP is a young girl from Qom, known as the Toba, who lives in El Espinillo, in the Chaco province, Northeast of Argentina. On October 3rd 2003, when she was 15, was raped by three young "criollos".

Despite the threats of not to denounce, LNP went to the police station, where she was retained for several hours without being able to file her complaint. It was accepted from the girl's mother only when the whole community stood opposite the police station and pressed for the complaint to be taken. The mother made the complaint without a translator, speaking little Spanish. LNP was examined by a health center physician who, without considering her wounds, touched her in the affected areas. At no time LNP received a word of support.

The trial was conducted first in Castelli, over 100 km. from the town and then in Roque Sáenz Peña, located at 300 km f El Espinillo without translators of the language Toba Qom. She was represented by a defender while the defendants hired lawyers. After several months in which they mainly investigated the victim, on August 31st 2004, the three defendants were acquitted and released. And with no appeal, the decision became final.

The ruling is a compendium of discriminatory stereotypes. Important evidence was left out, like the testimony of three witnesses, because they were tobas and the judge raised issues regarding to their saying expressing that "it is preposterous... because the reason for this is the suspicion and discrimination existing in this area between criollos and tobas".

The judge echoed the statement of the main accused, who confessed that he had carnal access, but that she had consented to the act, that she is a prostitute, who he usually paid for sexual favors that were done in a tire shop in the area. This assertion was contradicted by the tire shop owner, who confessed that the defendants offered him money to lie, money he did not accept. Despite that, the judge sent a social worker to the village to investigate whether LNP was engaged or not in prostitution

The judge also held that "in the crime of rape the prosecution gets confused by the sexual violence that may be present in a consensual act, for which (the violence) the data is irrelevant." And suggested that the resistance of the victim must be "serious and ongoing ", that "although the victim said to have shouted, no one in the square that was 70 meters from that place heard her."

The judge also admitted that "the materiality of the facts alleged in the complaint, penetration through the anus-is a circumstance that is fully and clearly proven." The wounds are explained by the judge "because in cases of anal penetration lubrication does not occur naturally as in the case of the vagina and because of the impetus of the attempt of penetration (...) especially if we take into account the youth of the active subject when sexual arousal is usually much stronger and even more with alcohol intake, which was recognized by the author and verified by the doctor, and that all this produce wild reactions "

Two women's organizations-the Institute of Gender, Law and Development (INSGENAR) of Rosario and the Committee on Latin America and the Caribbean for the Defense of the Rights of Women (CLADEM) - took up the case and filed a complaint before the Human Rights Committee of the UN on May 25th, 2007. The petitioners demanded the violation of human rights enshrined in the articles 7, 14, 17 inc.1, 24 and 26 of the International Covenant on Civil and Political Rights, articles 1, 2 paragraphs c and d, 5 paragraph 1 of the CEDAW, Articles 3, 4 paragraphs. a, b, c, d, e, f, g, 7 a, b, and g, 8, subparagraphs b and c, and 9 of the Convention on the Prevention, Punishment and Eradication of Violence against Women, as well as articles 1, 5 inc.1 and 2, 7, 8, inc.1, 11 inc. 2, 3 and 24 of the American Convention on Human Rights.

It is important to mention that the Argentine government recognized its responsibility in the case at both provincial and federal levels. In the province of El Chaco compensation was awarded to the

victim. However, this case is an example of the difficulties that women face in Argentina when seeking justice in cases related to sexual violence, especially if they belong to indigenous populations.

Thus, both the provincial and national state must now take steps to ensure non-recurrence of such cases as well as access to justice in cases of sexual violence campaigns and design policies to eradicate stereotypes and discriminatory cultural practices that support abuses against women.

VII.B. Available quantitative information

In this section we will provide quantitative information that comes from various sources, some from official sources and other from NGOs.

According to the National Directorate of Criminal Policy of the Ministry of Justice, Security and Human Rights of the Nation, in 2007, 10 557 crimes against sexual integrity were reported, out of which 3276 were related to rape¹³⁸. According to the report, from of all crimes against sexual integrity only 1347 ended in convictions (12.7%). In 2008, around the country it was registered a complaint of rape every 150 minutes. According to these data, and in half the cases, the victims were minors.

On the other hand, a report of the National Council of Women, which refers to the information produced by members of the network using user services to record cases of domestic violence against women¹³⁹, from 3171 cases reported, 77.5% relate to physical violence, 90.5% to psychological violence, 58% to economic violence and 37% to sexual violence. In all cases, the highest percentage of offenders relate to a partner or spouse, followed by former partners. Both categories are between 80% and 90% of cases. With respect to the education level of victims of violence, they are found among all levels.

A non-governmental organization (Asociación Civil La Casa del Encuentro) released data on cases of murder of women in the country. According to the "Report on Female homicides in Argentina", in the period from January 1st to December 31st, 2009, there were 231 killings of women in women and girls, which meant an increase of 11% of domestic violence killings, in relation to 2008.

¹³⁸ It is calculated that only 10% of the cases are denounced.

¹³⁹ The report includes the data of the cases in the following jurisdictions: province of Buenos Aires (Tigre, San Isidro y Lanús), province of Chubut (Comodoro Rivadavia), and province of Santiago del Estero (Capital).

Regarding violence against women in the city of Buenos Aires, where different government agencies (national, local, executive and judiciary) coexist - the figures vary but they all refer to the gravity of the situation. On one hand, the telephone line 137 of the Brigades for Victims on the Intervention Program on Violence against women of the Ministry of Justice, Security and Human Rights Office, reported that between 70% and 75% of the calls during last year were made by battered women. On the other hand, according to calls made to the hotline of the Directorate General of Women of the Government of the City of Buenos Aires during 2009 there were reported 14 147 cases of violence, and the figures indicate that there is a strong increase compared to 2005 ¹⁴⁰

According to the Office of Domestic Violence Supreme Court (cases only related to the city of Buenos Aires), only in one year (from September 2008 to September 2009), there were more than 7000 cases: 82% (6021) of those affected were women. Of this group, 15% were girls (0-18 years), 5% young women (19-21 years old) and 51% adults (22-39 years old). As for the type of violence reported, 89% was related to psychological violence, 68% to physical, 30% economic and 14% to sexual violence. ¹⁴¹.

Regarding the situation in the province of Buenos Aires, the Provincial Program Services for Women Victims of Violence, which depends on the Human Rights Secretariat of the Province of Buenos Aires, offered during the month of January 2010 advice to 942 women victims of physical or mental violence. They reported that since the program's inception in 2008 until 2009, 12 011 women were attended. In terms of age, the highest percentage of victims in 2009 (45%) were women between 25 and 44 years of age. They also reported that 47% of the cases were related to violence perpetrated by the domestic partner of the victim and 21% of violence perpetrated by the former spouse or cohabiting partner. ¹⁴².. This data differ with respect to that provided by the Directorate of Gender Policy, the Ministry of Security of the Province of Buenos Aires which reported that only in the first quarter of 2008, there had been 19,741 domestic violence complaints and 712 complaints of sexual abuse. ¹⁴³

On the other hand, in relation to the Unified Register of Domestic Violence Cases, whose creation has been reported by the State, it is still very limited in data collection, as there are only

¹⁴⁰ Cf. http://www.buenosaires.gov.ar/areas/des_social/mujer/observatorio_genero.

¹⁴¹ Corte Suprema de Justicia de la Nación, Oficina de Violencia Domestica, data from the first year of activities, available in www.csjn.gov.ar

¹⁴² *Diario El Popular*, March 8th 2010, available in <http://www.elpopular.com.ar/diario/2010/03/08/nota.html?idnota=74237>

¹⁴³ Secretaría de Derechos Humanos, XIX Reunión Especializada de la Mujer del Mercosur, Informe Provincia de Buenos Aires, May 2008.

agreements with some parts of the country, none of them at provincial level. For this reason, the reports of this record have little outreach and impact.

It is important to note that in addition to the obvious quantitative difference according to each of the sources, the available data does not differentiate according to the socio-economic profile, ethnicity, religion or other data relevant of women victims of violence. Also, the information on age is incomplete and erratic. Undoubtedly, the lack of rigor in relation to quantitative information prevents the drafting of a reliable diagnose of the situation across the country, and hence it creates obstacles to formulate effective policies to prevent and eradicate violence against women.

VII.c. Regulatory aspects: some progress.

A breakthrough was able to settle the absence of a specific act of violence against women. This happened in March 2009 with the enactment of the national law N ° 26 485 on comprehensive measures of protection to prevent, punish and eradicate violence against women in areas where they develop their interpersonal relationships.

This law covers all forms of gender violence: physical, psychological, sexual, labor, media, reproductive, obstetrics-by-health services, economic, patrimonial and symbolic in any field, not just domestic. It also establishes the obligation to deliver prevention measures to assist women victims.

Is worrying that after more than one year the law, has not yet been regulated, thus hampering the adoption of specific public policies. Just one year after a penalty, on 18th March 2010, it was announced the creation of an ad honorem Advisory Council established by law and the formalization of the functioning of the Interinstitutional Commission on the National Plan of Action for the Prevention, Combat and Eradication of Violence against Women. As we reported, while the CNM is the agency responsible for the enforcement of the law 26 485, as well as the design, implementation and monitoring of a National Action Plan for its implementation, it does not have the hierarchy, it does not have neither the structure nor the adequate budget to do it. ¹⁴⁴.

¹⁴⁴ More information in the section regarding CNM, section IV.

Although the law 26 485 makes provisions for training, continuing education for public officials in the field of justice, police and security forces as well as legislators , it still has not taken any action to enforce this.

The only national campaign, which however could not be sustained over a long period of time, was an initiative of an NGO, the UNDP, the Ministry of Education and the Media Secretariat of the Nation-which joined the National Council Women-with radio and TV spots.

¹⁴⁵.

To this we must also add the limited availability of houses or "shelters" for women in situations of violence around the country. There is no information available on the numbers that are in operation.

VII.D. The spaces of the Executive in relation to prevention, combat and eradication of all forms of violence against women

In 1996, the National Council of Women launched the National Plan for Training, Technical Assistance and Awareness on the Theme of Violence against Women, but it has worked with the limitations and shortcomings mentioned above.

Furthermore, in 2006, the Ministry of Justice, Security and Human Rights created the National Program against Violence Victims. This program provides assistance to victims of sexual crimes, domestic violence, child abuse and child sexual exploitation. Although a national program, its scope since its creation is limited to the City of Buenos Aires. The program has three Emergency Mobile Brigades, composed of psychologists and social workers, which operate 24 hours a day, 365 days a year and through the 137 hotline to assist victims of family violence. The Brigades are intended to contain and accompany the victim as well as advice on the importance of the complaint. It should be noted that this advice covers only a week. In 2008, this program was joined by an interdisciplinary body on Family Violence.

VII.E. The initiative of the Supreme Court of the Nation

In September 2008 they opened the Office of Domestic Violence established by the Supreme Court of the Nation, with the objective of providing specialized care 24 hours a day. While

¹⁴⁵ Campaña argentina por la Equidad de Género y contra la Violencia "Otra Vida es posible" www.vivirsinviolencia.gov.ar

being a national unit, it works only in the City of Buenos Aires, as a pilot programme. The organization provides legal, medical, psychological and social counseling through seven interdisciplinary teams.

VII.f. Some of the provincial policies

While it has not been yet implemented a national action plan to prevent, punish and eradicate violence against women, at different levels of government there is a diversity of programs and services for women in situations of violence which, together with the services provided by some NGOs, work without proper territorial articulation presenting different approaches to the problem.

The Autonomous City of Buenos Aires, for example, has the Department of Care and Victim Assistance, under the Directorate General of Women, but the Women's Comprehensive Centers to provide counseling and psychological treatment, legal advice and sponsorship Counsel, since 2008 have restricted their functions and resources. A Programme on Violent relationships was discontinued from 2009. There is also an Integral Assistance to Domestic and Sexual Violence, which is toll-free. The City also has a Counseling Center for Victims, established in 1991, currently under the Directorate General of Operations of the Superintendencia de Seguridad Federal of the Metropolitan Police which provides of care, counseling and guidance through relevant services.

In the province of Buenos Aires through a reform of the Code of Criminal Procedure, there were created in 1998 the Centers for Victim Assistance (CAV), whose function is to advise and control the criminal process starting from the time a person files a criminal complaint in matters of family violence, child abuse and sex crimes requesting trial. Each Judicial Department has formed its CAV, at the discretion of the Attorney General of that department, so each CAV approaches differ, and also they differ in relation to the number of professionals and the functions they perform.¹⁴⁶

The province of Buenos Aires also has 25 police stations for women, of the Directorate General for Policy Coordination Gender provincial Ministry of Security. The stations provide comprehensive care to women in situations of violence through interdisciplinary teams. Unfortunately, these stations have been limited in their operation, there were no new ones created in recent years and training has not been given to the staff. The Commissioners for

¹⁴⁶ Each of them has an interdisciplinary team, formed by lawyers, social workers and psychologists. The CAV operate in the Head offices of the Public Prosecution depending on the Fiscalía General de la Procuración General de la Suprema Corte de Justicia of the province.

Women of Quilmes and the Commissioner for Women of La Plata are used also to accommodate female detainees in situations of overcrowding, violating women's fundamental rights.¹⁴⁷

The province of Cordoba with the Family Violence Program, under the Directorate for Assistance to Victims of Crime and Family Violence of the Ministry of Justice has 12 offices for women with interdisciplinary teams of lawyers, psychologists and social workers who provide direct assistance to people experiencing violence. Also, in December 2009 it was presented the Protocol of policing domestic violence situations, "prepared by the Directorate of Family Violence, the Ministry of Justice in conjunction with the Police, the Public Prosecutor and the High Court of the province, being the first province to adopt this instrument. In the case of the province of Santa Fe, Law 11202 created the Centers for Victims and Witnesses, which depends on the Ombudsman's Office and are found in the cities of Santa Fe and Rosario. This province also has Guidance Centers for Victims of Sexual Violence and Family. In the municipality of Rosario it was recently structured a program for relationships without Violence.

Locally, some municipalities have their own assistance programs for violence against women. For example, in the city of Mendoza, in the province of the same name, there exists the Department of Prevention and Care of Family Violence, under the Directorate of Social Action, Ministry of Government. Other programmes are found in the city of Rosario (Santa Fe) the Program for Prevention and Attention to Domestic Violence, which depends on the area of Women of the Secretariat of Social Promotion of the Municipality. In the city of Bahía Blanca (Buenos Aires) Support Service there is a programme on Prevention of Family Violence and Child Abuse, Children under the Department of the Ministry of Welfare of the Municipality. It is worth mentioning that none of the provincial programs or specialized legal organizations have specific budgets for the immediate needs of women victims of violence (moving, furniture, subsistence, etc.) The municipalities are the entities which assume these costs.

VII.g. Sexual crimes as autonomous crimes against humanity;

Argentina is one of the countries with the highest number of open legal proceedings to trial perpetrators of state terrorism that struck the country during the period of 1976 to 1983. This process of truth and justice is possible after having been able to overcome certain conditions which guaranteed impunity, now presented as a state policy, supported by most political and

¹⁴⁷See the report "Mujeres privadas de libertad en Argentina"/Women deprived of freedom in Argentina.

social sectors in Argentina.¹⁴⁸ However, there are still some obstacles facing the investigations that have resulted in an excessive delay in seeking justice for victims, families, human rights organizations and the society as a whole, during more than 30 years.

Also, with regard to sexual violence committed by state agents under kidnappings, especially in the clandestine detention centers¹⁴⁹ – of all the detainees, but especially against women, justice has not been fulfilled. That is why the Human Rights Committee, in its last Concluding Observations on Argentina, said the State should ensure that serious human rights violations, including those with sexual content and those relating to the abduction of children, do not go unpunished.

In this sense, judicial officials have not targeted the investigation of sex crimes, with the same intensity that they have done for other crimes regarding illegal deprivation of liberty, application of torture, executions, kidnapping of children, etc. -. In general, investigations are often not promoted by specific questions, and advice is not given to the victims during the investigation of the causes, hindering prosecution, as the victims themselves must file a complaint and impulse trial.¹⁵⁰

Since the reopening of the processes, new oral trials have been opened and more have begun to emerge more with more evidence that shows that sexual violence is affecting hundreds of victims across the country. However, not all trial judges and prosecutors are keen to seek the investigation of these serious allegations to clarify the responsibilities for these events. Furthermore, in the cases of sexual violence, an extra difficulty exists as proof that "sexual intercourse," occurred according to the definition of the Penal Code, as it is impossible to obtain after more than 30 years. Recently, some judges have accepted as evidence the testimony of victims and other witnesses who were also detained during those years. Such is the case with the recent ruling by the officer Gregorio Rafael Molina, sentenced to life imprisonment because of , among other crimes, that of aggravated sexual violation¹⁵¹ .. It is a valuable historical precedent - achieved through the action of some organizations¹⁵² - which other judges should consider.

¹⁴⁸As an example, before the Bicentenary of Argentina (May 25th 2010), the Deputy Chamber of the congress approved unanimously a declaration of support of trials on serious violations of human rights, and the need for a public policy to be sustained beyond electoral processes.

¹⁴⁹ Sexual violence was used as a mean to inflict pain, intimidation, punishment, degradation, destruction and affect people who are in detention towards their physical and/or psychological elimination, particularly in the case of women..(See among others, CONADEP, *Nunca Más*).

¹⁵⁰The crimes against sexual integrity, according to our criminal procedure, are of private action. This implies that the victim through a complaint must press so justice can be met and the events start to be investigated.

¹⁵¹ Judicial resolution dated June 9th 2010 by the Tribunal Oral Federal de Mar del Plata.

¹⁵² The **Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)** Argentina and the **Instituto de Género, Derecho y Desarrollo (INSGENAR)**, have started a number of strategies to make these cases visible through the file of *amicus curiae* in open cases. One of the amicus filed had a lot of

Along with lead impunity, the lack of judicial treatment of sex crimes hinders the need for opportunities to bring out these crimes, and promote a discussion about sexual violence in general. The high visibility of the process of truth and justice of the crimes of state terrorism has contributed to a collective discussion on a topic of great current interest.

Violence against girls and women and HIV / AIDS:

In the field of public policies there are no government programs to articulate strategies to mitigate the pandemics of gender-based violence and HIV / AIDS in the case of women.¹⁵³

One study found that 9 out of 10 MVVS suffered some type of violence throughout their lives and 79.2% of those surveyed suffered some type of violence before the diagnosis of HIV¹⁵⁴, a figure that indicates the strong association between the two pandemics and how violence is a relevant factor associated to the risk of HIV. However, the attention of the State on this phenomenon is minimal¹⁵⁵. While in some jurisdictions and the cities of Buenos Aires, Rosario and others joined the protocol of care for rape victims in relation to the provision of AHE (Emergency Hormonal Contraception) to reduce the risk of pregnancy and post exposure prophylaxis for cases of HIV and STDs, it still has not been applied throughout the country. The programs and services related to violence against women and HIV/AIDS work in a disjointed and fragmented way that is aggravated by the absence of trained staff who can work with victims of violence, HIV and sexual and reproductive health and the links between the two pandemics.

repercussion and influenced in the conviction of crimes against humanity in a case in the city of Santa Fe. There the Oral Federal Tribunal considered that the exercise of sexual violence against the victims of state terrorism must be considered a crime against humanity. This sentence established an important jurisprudence but at the moment of the typification of the conduct of the accused the tribunal considered the sexual crimes within the figure of torture. The *amicus curiae* presented before the Juzgado Federal en lo Criminal y Correccional n° 2 of San Martín, province of Buenos Aires (causa N° 4012 under the name “Riveros, Santiago Omar y otros por privación ilegal de la libertad, tormentos, homicidio, etc.”), can be read in www.cladem.org.

¹⁵³ Since 2008 FEIM has developed a study aimed to explore the existence of situations of violence in women living with AIDS/HIV (here after MVVS) and the links between both.

¹⁵⁴ <http://doscarasdeunamismarealidad.blogspot.com/>

¹⁵⁵ The work in relation to the connection between both is recent and comes from the non governmental sector, especially from FEIM that since March 2006 has been promoting a campaign “Las mujeres no esperamos, acabemos la violencia contra las mujeres y el VIH/Sida. YA!”. This brought along legal actions and research to promote the implementation of programmes and specific public policies. The study of these connections generated the association of many organizations among them, especially the ones related to women living with AIDS/HIV considering Argentina as a central point for the Latin-American and the Caribbean movement of women with HIV/AIDS as well as the Argentine Network of women affected by HIV/AIDS..

VIII. The situation of women prisoners¹⁵⁶

In Argentina, the inhuman conditions of detention of the detainees present a scenario of systematic human rights violations. This has happened due to, in part, the sustained increase in the prison population in recent years which has resulted in soaring rates of overcrowding, and overcrowding-and the persistence of practices of violence and abuse within detention facilities.

¹⁵⁷.

In this section, we will provide the Committee with information on the serious situation that women prisoners in the area of Federal Penitentiary Service (FPS) and of the Province of Buenos Aires (Buenos Aires Prison Service-SPB) face, in which around 70% of women deprived of their liberty in Argentina are accommodated.¹⁵⁸ In recent times there has been a steady increase in women prisoners in both jurisdictions. For example, while in 1995 there were 562 women incarcerated in federal prisons in 2010 this figure increased to 802 women prisoners.¹⁵⁹

The number of detained female population in prison units of the province of Buenos Aires has also grown. While the year 2007 accounted for fewer than 3% of the total prison population, in 2009 it represented 4.51%. There are presently 883 women detained in prisons in the province of Buenos Aires.

Of all the women detained at the federal level, about 60% were arrested for violating the drug trafficking law. In the province of Buenos Aires, this figure is 40%.¹⁶⁰ These women (mostly of foreign origin) are detained at the border with small amounts of banned substances. These people, usually the poorest, are easily criminalized because of the activity they perform within

¹⁵⁶ This section of the Shadow Report was elaborated by the Centro de Estudios Legales y Sociales (CELS) and the Comité contra la Tortura de la Comisión Provincial por la Memoria (CPM). A relevant section of the information regarding women deprived of freedom in the province of Buenos Aires, is a product of the periodical inspections done by the Comité contra la Tortura de la CPM to provincial centers of detention. The inspections include interviews to detained women and the staff of the Buenos Aires penitentiary service.

¹⁵⁷ See Comité de Derechos Humanos de la Organización de las Naciones Unidas (ONU), Observaciones Finales sobre Argentina, 22 de marzo de 2010, CCPR/C/ARG/CO/4; Informe del Consejo de Derechos Humanos de la ONU, en el marco del Primer Examen Periódico Universal sobre la situación de los Derechos Humanos en la Argentina, 11 de junio de 2008, A/HRC/8/34 and Corr.1.

¹⁵⁸ Data according official sources.

¹⁵⁹ According to the latest available official information up to March 26th 2010. See: http://www.spf.gov.ar/index.php?option=com_content&view=article&id=101&Itemid=80ni This information does not include female detainees in units belonging to the Gendarmería Nacional and the Prefectura Naval, population that is not included in any official number.

¹⁶⁰ The statistics belong to self made statistics from the information given by Unidades Penales N° 46 and N° 52 of the province of Buenos Aires. According to available data through inspections and reports, on 18 % of the population of female detainees in the province, 36% are accused of being involved in crimes against property, 40% crimes of abstract danger and 24 % for crimes against people..

the division of labor in drug trafficking. So the burden of criminal prosecution rests once again in the most vulnerable of the drug trafficking chain, logic of a selective justice system.¹⁶¹

In turn, it is remarkable the number of women who are detained under the preventive detention system. In the case of SPF, only 39% of the female population was sentenced¹⁶². In the province of Buenos Aires, of the total population, the average of women in detention being processed is 76%.¹⁶³

The imprisonment has a differential effect in the case of women and the Argentine government fails to take into consideration the specific needs of this group, which is shown, among other issues, by the lack of adequate health programs, the persistent acts of violence, abuse, torture of female detainees, and the recourse to stereotypes in employment opportunities in prisons. All these situations worsen their conditions of detention. This differential effect is especially detrimental because of the impact that the detention of a woman generates on her family networks, particularly with regards to the situation of their children.

It is relevant to mention that the lack of adequate public policies formulated by the Argentine State is clearly shown as reference to the problems that women deprived of their liberty face has not even been mentioned in its report to this Committee.

1. Terms and Conditions of the regime of detention

a) Inhumane conditions of detention and degrading treatment (Article 3 of CEDAW)

Within the SPF prison there are six units that house women.¹⁶⁴ While official figures show that the capacity of the SPF has not been exceeded as a whole, there are serious deficiencies in setting up the prison quotas.¹⁶⁵

¹⁶¹ Cf. Información del Sistema Nacional de Estadísticas sobre Ejecución de la Pena (SNEEP), according to the last information available. See <http://www2.jus.gov.ar/politicacriminal/inicio.asp> (Acceded on 30/04/09).

¹⁶² Percentage extracted from official data of the SPF up to March 26th 2010, available in http://www.spf.gov.ar/index.php?option=com_content&view=article&id=101&Itemid=80 (accessed on: 13/04/10).

¹⁶³ Data from “*Plan edilicio y del Servicio de Unidades penitenciarias*” presented by the Executive of the Province of Buenos Aires in the case P.83909, Suprema Corte de Justicia of the province of Buenos Aires.

¹⁶⁴ Instituto Correccional de Mujeres (Unidad N° 3) de Ezeiza, Instituto Correccional de Mujeres (Unidad N° 13) de La Pampa, Cárcel Federal de Jujuy (Unidad N° 22), Cárcel Federal de Salta (Unidad N° 23), Unidad Servicio Psiquiátrico Central de Mujeres (Unidad N° 27), Centro Federal de Detención de Mujeres (Unidad N° 31) de Ezeiza.

¹⁶⁵ For example in Unit 13 of La Pampa, women are accommodated in collective pavilions, staying there for many hours. There they eat, sleep and perform their main activities. Toilets are located inside the pavilions and they are only separated by curtains. See PPN, “Visita al Instituto Correccional de Mujeres “Nuestra Señora del Carmen” – U 13 – de la provincia de La Pampa”, August 2008, available in <http://www.ppn.gov.ar>.

The authorities have implemented measures in some units with a view to reducing overpopulation, but in some cases it has proved highly problematic¹⁶⁶ and had not resulted in improvements in specific situations that were previously attributed to these factors, as the case of poor health services and deficient access to education and work.¹⁶⁷

In the province of Buenos Aires, the population of women in prison is divided into female prison units, and annexes of male prison units.¹⁶⁸

Although the number of female prisoners has grown in recent years according to official data, overcrowding and overpopulation are not the characteristics of these places of detention. However, even though the majority of women prisoners in the province of Buenos Aires are from districts near the city of Buenos Aires, the SPB distributed detainees in a manner that overcrowding has been created in the prison units far from the Buenos Aires province, leaving as sub-occupied the units which are located nearby. Thus, the way the prison service acts according to the distribution of the population is an additional aggravating informal punitive condition added on the already deteriorated conditions.

As highlighted, another major issue concerning the conditions of detention is given by the serious deficiencies in safe buildings and the provision of health care.¹⁶⁹

¹⁶⁶ For example in the SPF, it was decided the transfer of a great number of women primarily detained in Unit 3 to a module within the Complejo Penitenciario Federal N° 1 de Ezeiza (Resolución N° 4396 de la Dirección Nacional del SPF, October 11th 2007), a maximum security prison that accommodates male prisoners. This decision was much criticized regarding the effects of both female and male groups living in the same building. The transfer was very traumatic. The Procuración Penitenciaria de la Nación (PPN), as well as the Comisión de Cárceles de la Defensoría General de la Nación (Comisión de Cárceles) expressed that the female detainees had expressed they were taken without being informed about their destination or the characteristics of the new place. The regulations of the places differed in relation to the groups that were being accommodated. At the same time being a prison of maximum security the cell would be closed much of the time, there were security cameras all over the building including in the shower sector, the revision practiced to them was highly invasive and intensive; the female detainees were compelled to walk with their hands on their back, looking at the floor as under a military system. The same criticism was expressed by the PPN in the "Monitoreo del Complejo Penitenciario Federal I – Ezeiza. Informe Integral 2007-2008". According to the Comisión de Cárceles, several of these abuses stopped in November 2008. The PPN is an organization of control within the structure of the Legislative Power regulated by Law 25.875. It monitors the administration of the federal penitentiary system to guarantee the execution of the law respecting the human rights of all prisoners. The Comisión de Cárceles was created by Resolución de la Defensoría General de la Nación N° 158/98 with the aim of "... verifying the conditions of accommodation, food and medical attention of prisoners in all units in the country...".

¹⁶⁷ This situation was verified by the following official reports: Comisión de Cárceles, "Visita Oficial efectuada a la Unidad N° 3 del Servicio Penitenciario Federal, Ezeiza", May 30th 2007 and June 4th 2008; and PPN, "Monitoreo del Complejo Penitenciario Federal I – Ezeiza, Informe Integral 2007-2008".

¹⁶⁸ Unidades carcelarias femeninas de la provincia de Buenos Aires: Complejo Penitenciario N° 8; Complejo Penitenciario N° 33; Complejo Penitenciario Femenino Batán (UP N° 50); Complejo Penitenciario Femenino Magdalena (UP N° 51); Complejo Penitenciario Femenino Azul (UP N° 52). Anexos femeninos: Anexo Femenino San Nicolás (UP N° 3); Anexo Femenino Bahía Blanca (UP N° 4); Anexo Femenino Mercedes (UP N° 5); Anexo Femenino Melchor Romero (UP N° 29); Anexo Femenino La Matanza (UP N° 40); Anexo Femenino San Martín (UP N° 46).

In turn, in some units there are no differentiated sectors and for those who have been convicted and those who are being prosecuted under preventive detention. In the province of Buenos Aires this situation is aggravated by the lack of specific locations to accommodate pregnant women, those with children and those women with psychiatric disorders.

b) Deficiencies in health care services in detention centers (violation of Article 12 of the CEDAW-the right to health care ")

Many complaints made by women prisoners reflect inadequate, poor quality and slow medical care.¹⁷⁰

Several reports indicate that there are no adequate and appropriate preventive practices such as medical check-ups, as well as clinical and genital/breast examinations. At the same time, it is disturbing that medical studies that are performed upon admission to the units are inadequate for proper diagnosis and treatment. Most detention facilities that house women lack of primary health care services¹⁷¹s. In many cases, the lack of medical personnel, transport facilities¹⁷², and the access to external health care are severely restricted¹⁷³.

The information provided by the various organs of state control accounts, both in the province of Buenos Aires and in the units of the SPF, of poor care in relation to sexual and reproductive

¹⁶⁹Specifically the main deficiencies are linked to the structure and material resources of the health areas of the units; the lack of heating facilities and natural gas provision in all criminal units; the lack of existence of units provided for intimate visits, workshops and labour training; lack of porter mattresses, inadequate building structures to accommodate women with children and women with psychiatric pathologies.

¹⁷⁰ See Comisión de Cárceres, "Informe de la Visita Oficial efectuada a la Unidad n° 3 del SPF el día 4 de junio de 2008", op. cit., y PPN, "Monitoreo del Complejo Penitenciario Federal I-Ezeiza, Informe integral 2007-2008", op. cit.

¹⁷¹ For example in Unit 23 of the SPF of Salta the detainees were examined in the patio, as there were no medical chambers. See PPN, "Informe de la visita a cárceles y centros de detención federales de las provincias de Salta y Jujuy", March 2008. In Unit 45 of the province of Buenos Aires (Melchor Romero), in the female annex accommodating women with psychiatric pathologies, there are no proper medical chambers to provide specialized medical attention. The female detainees must be transferred to the chambers in the male units. This situation creates obstacles to provide adequate emergency medical care. In Unit N° 46 of San Martín, no medical professionals were appointed for the attention of the female detainees and there is no equipment or medicine to be given.

¹⁷² The government of the province of Buenos Aires, determined through decree 950 of 2005, to suppress the Dirección de Sanidad (created by decree 1300/80) and the restructure of the health administration in all penitentiary units in the province. From that time onwards the penitentiary units depend on the Dirección General de Salud penitenciaria. This situation generates serious problems of coordination between the penitentiary personnel in charge of the security and the personnel who works for the health services. The security personnel is the one in charge of the transfers of the female detainees to external health centers, the compliance of medicine supplies and special diets. This generates lack of coordination and lack of resources, professional and material ones, for an efficient medical attention.

¹⁷³ See PPN, "Informe de la visita de la PPN a cárceles y centros de detención federales de las provincias de Salta y Jujuy, March 2008," op. cit. Only Unit 33 of Los Hornos, province of Buenos Aires, has an ambulance service for the transfer of female detainees.

health care for sexual abused women.¹⁷⁴ In both jurisdictions, there have been numerous cases where women have not received treatment or have not been given information about the transmission factors and ways to prevent HIV / AIDS.¹⁷⁵

c) Work and education in situation of detention (violation of Article 10-Right to Education "and 11" Right to Work "of the Convention)

The type of work of women in detention centers reproduces social gender stereotypes and acts as a mechanism for the submission of women. There is clearly the need to include a gender perspective that can overcome the traditional job offers which stigmatize the role and image of women.¹⁷⁶

Moreover, despite obtaining financial resources for the sustainability of people under their charge this is a key issue for women who are "heads of household and who incidentally are deprived of their freedom; most of them in reality they lack access to work. Access to education for women prisoners is really low.¹⁷⁷ Official statistics, interviews with officials and surveys done of female detainees come to the conclusion that there is a gap in the provision of education in prisons and that in some units there is a high degree of illiteracy¹⁷⁸.

d) Women in police custody in the province of Buenos Aires

The increase in the number of incarcerated women has been followed by their stay in police

¹⁷⁴In various units of the SPF this situation was denounced. For example in the Complejo Penitenciario Federal N° 1 the female interns denounced that they "have not been given contraceptives and that almost all of them do not have access to medicine". *In this place the situation the medical attention is unfavourable as there are no adequate personnel or material enough for them. In Unit N° 13 of La Pampa the female detainees claimed for the lack of Basic items for their personal hygiene to be able to maintain their health standards.* (See Comisión de Cárceles, "Informe de Visita Oficial a la Unidad 3", June 4th 2008, quoted; PPN, "Monitoreo del Complejo Penitenciario Federal I – Ezeiza, Informe Integral 2007-2008", and "Informe de visita al Instituto Correccional de Mujeres "Nuestra Señora del Carmen" – U 13 – de la provincia de La Pampa", August 2008.

¹⁷⁵ Up to 2007 Unit 3 of the SPF registered a number of 39 female detainees (5,6% of the total population) living with HIV/AIDS. From them, only 25 were receiving an antirretroviral treatment (TARV). Only in one case the treatment is not provided due to expressed will of a patient (cfr. PPN, "Informe Anual 2007", available in www.ppn.gov.ar (accessed on 30/04/09). According to official data of the SPB, 2%¹⁷⁵ of the population of female detainees in the province lives with HIV/AIDS (cfr. Datos provistos por las áreas de sanidad de las unidades penales que alojan mujeres, publicadas por la Comisión Provincial por la Memoria, December 2008. Available in www.comisionporlamemoria.org

The work done by the majority of female detainees is the *fajina* —which includes the clearing of pavilions, patios, corridors and common areas. It is followed by pillow making, sewing and bakery. In the province of Buenos Aires, none of the units have a training offer beyond those of activities related to cosmetics, beauty, gardening and ceramics.

¹⁷⁷ PPN, "Informe principal Año 2007, Monitoreo del Instituto Correccional de Mujeres – Unit N° 3", op. cit.

¹⁷⁸ PPN, "Visita al Instituto Correccional de Mujeres "Nuestra Señora del Carmen" – U 13 – de la provincia de La Pampa", op. cit. In the criminal units of the province of Bs. As, it is necessary to mention the low percentage of female detainees that have access to formal education and the reduced quota existing for primary and secondary education. This is more noticeable in the case to access to university education.

stations. Women detained in these facilities suffer from a system and detention conditions that generate situations of violence and discrimination.

First, the current conditions of these units are poor and insecure. The number of beds and / or chairs is less than the number of women who are accommodated, the cells have no ventilation or natural lighting, electrical supply and water connections are poor; access to showers and bathrooms is mediated by security personnel.

Besides police agencies do not have health care facilities, a situation that violates the access to health of these women; their care depends exclusively on the possibility of being treated in a hospital, prior judicial authorization, the existence of vehicles and personnel designated to request the appointments and make the transfers. This situation becomes even more critical for women with HIV / AIDS, and those with advanced pregnancy.

The women held in police stations and police stations experience a differential lifestyle. Thus, they have no access to working¹⁷⁹, recreational or educational¹⁸⁰ activities. The regime of visits with family, especially with their minor children¹⁸¹, is very strict and, due to lack of adequate infrastructure, they are unable to maintain intimate relationships with their partners¹⁸².

2. Deaths in situation of detention (Art. 3 of the Convention)

A situation that motivates much concern is the number of deaths that occur in detention centers in Argentina compromising the State responsibility as guarantor of life regarding the physical integrity and the health of the detainees who are under its custody. In the SPF, as well as in places of detention in the province, there occur many violent deaths and deaths from diseases. It is important to mention that the existing official information on deaths in prison is not easily

¹⁷⁹ The female detainees do not have any access to labor training. They can only take part in very rudimentary handcraft activities due to a budget limitation and limitations to use of certain objects and there are no workshops available. In the police stations there is no access to workshops or labour training programmes.

¹⁸⁰ The female detainees cannot access to any level of education while being detained.

¹⁸¹ The regime of visits is strictly conditioned to the discretion of the security personnel and much of the loss of the contact of the mother s with their children is due to this..

¹⁸² Other problems occur due to the lack of telephone access and the control of the existing written communication among detainees and the presence and contact of the male staff with the female detainees. There are no possibilities for them to perform any physical activity out of their prison cells because there is no patio or yard to do it or because they do not have access to them,. There are no recreational programmes created by the Ministry of Security provided for female detainees.

accessible, and there are differences among the various data sources¹⁸³. In this sense, the SPF-registered from 2006 to April 2010, 9 deaths of women incarcerated in federal units.¹⁸⁴

In the area of the province of Buenos Aires, 10 women were killed in prison, during the same period of time.¹⁸⁵ Also, in the criminal units in the province of Buenos Aires there are recurrent acts of arson and / or accidents in the halls and cells. However, the staff is not ready to face this situation and there is no equipment to respond effectively and be able to prevent the death of the detainees.¹⁸⁶

In addition, since 2004, six children living in prison with their mothers died in Buenos Aires prison units. Children detained with their mothers often suffer of respiratory and skin diseases due to the conditions of detention.¹⁸⁷

It is also a matter of serious concern how deaths in prisons are recorded in the province of Buenos Aires. In this sense, the underlying causes of death of a detainee with HIV / AIDS are not investigated by the legal system and the death is classified by the prison service as non-traumatic ", ie" natural death. " This classification underestimates any kind of investigation (by Courts) on the role played by the terms and conditions of detention for the proper treatment of the disease: poor nutrition, poor hygiene, lack of appropriate municipal conditions, lack of medical treatments and lack of adequate and regular supply of medical items.¹⁸⁸ This will dilute the responsibilities of the public officials in the deaths.

¹⁸³ See "La situación carcelaria: una deuda pendiente de nuestra democracia", en CELS, *Informe Anual 2009*, Siglo XXI, Buenos Aires, 2009.

¹⁸⁴ Information available in www.ppn.gov.ar (date of access 30/04/09).

¹⁸⁵ Data compiled by the health services of the criminal units that accommodate women in the Province of Buenos Aires to the Comisión Provincial por la Memoria: 3 deaths due to suicide, four due to fire occurred in the cell or as burning mattresses as a sign of protest. The rest of deaths were informed under the category of "non-traumatic deaths".

¹⁸⁶ It is of serious concern to mention the occurrence of two violent deaths during 2009 that took place in Unit N° 3 of the SPF. Both deaths were produced by hanging that could be linked to suicide. However the peculiar circumstances and stories surrounding these events create some doubts. On other side, five deaths were product of diseases and in these cases the detainees did not get adequate attention, a situation that was aggravated by the conditions of detention. Regarding the other 3 deaths, the main cause appears to be relate to HIV/AIDS and an inadequate response. This situation was already included in the report we presented before the Committee in 2002, and has not been changed. On July 11th 2005, two female detainees died in Unit N° 33 of Los Hornos, due to asphyxia caused by burning of a mattress inside the prison cell. The staff took more than 45 minutes to help the detainees, just using a FIRE extinguisher through the dish entrance. Three days later in the Area called Separación de Convivencia of the same unit another female detainee died from the same reason without getting the assistance of the staff. In both investigations no responsible has been identified.

¹⁸⁷ In front of this situation the female detainees filed several petitions before the officials to get proper health facilities and provide proper attention to the children. The Comisión Provincial por la Memoria, through the Comité Contra la Tortura asked the Ministry of Justice of the province —through a collective habeas corpus and a human rights petition later to guarantee the access to health for all the children accommodated in prisons through proper medical personnel, proper equipment, external transfers and linking programs with public hospitals. In July 2007, in Unit N° 33 of Los Hornos, a five months old baby died of lack of proper medical care of his bronchial infection.

¹⁸⁸ On March 31st 2008 Erika Paredes Farias, suffering from HIV/AIDS died in Unit N° 33 de Los Hornos. She died in the San Martín Hospital. The Fiscal unit N° 7, was supposed to intervene but it did not open a file or any search

3. The subjection of women prisoners to abuse and torture (Article 3 of the Convention)

a) Violating types of inspections

In detention centers in Argentina, the prison power acts directly on women's bodies, through the deployment of a complete exercise of control and subjugation by the use of isolation as a mechanism of punishment and personal and collective inspections as humiliating and degrading treatment.

According to a report of the NPP, in units of the SPF body inspections are often found more in violation of rights of detained women than those of men. .¹⁸⁹

In the province of Buenos Aires, an inspection is practiced on a totally naked detainee and it is often done by the prison staff as a threat or as punishment, particularly against those female inmates who have made complaints against the Prison Service¹⁹⁰. In women's prisons this form of violence exceeds abuses and has set up a degrading routine of practices of strong material and symbolic impact.¹⁹¹

Note that this invasion of the bodies is entitled by law at the federal level. Nationally, the vaginal inspection is regulated by the "Guide to the Civil Procedures inspections" of 1991 which remains in force, despite repeated complaints¹⁹². This level of invasion of the body that

about the facts or in relation to the medical doctors who intervened. In March 2010 Rosa Guerra died; she was a detainee who suffered a condition due to lack of treatment of HIV/AIDS and she had been accommodated in a Psychiatric Pavilion of Unit N° 45 of Melchor Romero. After some judicial actions done by the Committee against Torture of the Comisión Provincial por la Memoria claiming for the worsening of the conditions affecting Mrs. Guerra and the psychiatric and medical reports asking for *"the cease of the security measure as she was not dangerous for herself or others"*. The Tribunal refused to look at this matter and refused to order her accommodation in an external hospital. The Comité contra la Tortura de la CPM filed then criminal action so the behaviour of the medical team and the judiciary could be investigated.

¹⁸⁹ From the total of detainees who were interviewed 69,9% expressed that they suffered a nudity inspection being compelled to move up and down, 50,3% was compelled to be in total nudity; 72,2% to partial nudity and 84,6% to a manipulative inspection against percentages of 17,8%, 88%, 42,6% y 75,3% in relation to male detainees. Cf. PPN, "Malos tratos físicos y tortura. Un estudio sobre procedimientos de requisa, sanción de aislamiento y agresiones físicas en cárceles federales", April 2008, available in www.ppn.gov.ar

¹⁹⁰ During 2008, The Comisión Provincial por la Memoria has received many complaints of the detainees of Units N° 8 and N° 33 of the Province of Buenos Aires based on suffering invasive inspections being compelled to be totally naked when facing a transfer and also when they asked to be ready to go for an external medical check.

¹⁹¹ In the province of Buenos Aires, these practices continue to exist despite legislation that establishes that inspection of certain private areas of the bodies of women will not be allowed to be conducted (...) and in case of the existence of a factual event when circumstances will compel to perform one, it will be advisable to follow the regulations of the Interamerican Convention article 32-2, about all requirements to be able to perform and legitimize the said practice. (Cf. Disposición 01/07 de la Dirección General de Seguridad del SPB).

¹⁹² Cf. Resolución 42/1991 of the Subsecretaría de Justicia de la Nación, Ministerio de Justicia de la Nación. The regulations establish the times and modalities of the ocular and physical inspections in prison establishments and includes check ups of the female interns and their relatives, no matter their age, including the exhibitions of genitals, anus and vagina.

represents cruel, inhuman and degrading treatment according to national and international standards of human rights remains considered to be “legal”.¹⁹³.

However, in breach of its international commitments, the Argentine government continues with no change in the federal and provincial regulatory framework, and has failed to take appropriate mechanisms and means to replace these practices. The inspections are still carried out under the same conditions that violate human rights of women.

b) Isolation

On the other hand, isolation as a mean of punishment is another practice to which women are subjected in detention.¹⁹⁴ The younger prisoners are more often under this type of sanction. Thus, the prison service generally uses isolation as a penalty or punishment exercised without any judicial control.

In most of the units and schedules of women, the cells in the isolation ward have no natural light, and in some cases have a minimal artificial light. The detainees remain imprisoned there without access to a patio, education or other activities. The move to these cells is not always accompanied by personal items. The outlets for personal hygiene vary with the mode set for each unit, but never get past the hour. The isolation as a means of punishment entails, in addition, a number of psychological disorders that cause suicide attempts and injuries inflicted in the body by the detainees.

In addition, the systematic isolation is used as a measure of punishment to discipline women removing them from their reference ties. The number of female prison units is low compared to the number of male institutions, so they tend to centralize the accommodation of women in remote locations from their centers of family ties and social and judicial ownership.¹⁹⁵.

¹⁹³ In relation to this, the Interamerican commission of HR (CIDH), when examining a case of Argentina related to some inspections practiced on women and girls visiting their relatives in prison, determined that “when imposing an illegal condition to the visits without a judicial order or without guaranteeing medical conditions, the Argentine state violates the rights contemplated in arts 5, 11 and 17 of the Convention in relation to article 1.1 that establishes the duty of the Argentine State to respect and guarantee all rights recognized in the Convention” That is why it was recommended the adoption of all legislative measures as well as those of other kind to adjust all regulations to those of the Convention.

Later in 2004, the Committee against Torture/el Comité contra la Tortura de ONU (CAT) formulated recommendations to the Argentine State to adopt the necessary measures to guarantee that the inspections and check up can respect the dignity of all persons according to international norms.

¹⁹⁴ In interviews done in 2008, the Comisión Provincial por la Memoria verified the existence of cases of detainees who were more than 5 months isolated in degrading conditions. The punishment of isolation is defined by the authorities of the prison and can be used indistinctively in isolated cells, in an own cell or in specific areas as the dedicated to health services.

¹⁹⁵ Specifically the main deficiencies are related to poor material structures of the health areas, lack of heating or natural gas services, lack of existence of intimacy cells for their visits, workshops, education, and labour activities.

This in itself causes isolation of the detainees, already highly affected by the economic difficulties of their families that have to move to remote prison units and by extreme prolonged and judicial processes and penalties complicate compliance with the maintenance of family and social ties.

c) Constant Transfers as a mean of torture in detention

In the SPB there is a practice for various units to order transfers arbitrarily and without the intervention of the jurisdictions. By analyzing how these devices are applied, we see that this is a technique of imposing punishment and discipline.¹⁹⁶ This situation, which affects the entire prison population of the province, has particular connotations in women and, especially, in those who live in prison with their children or who have dependent children. Younger women prisoners, those with less time spent in custody are the ones who suffer more transfers.

The conditions and regime of transfer of female detainees, pregnant women prisoners or with children in detention constitute forms of violence that affects their fundamental rights, especially their right to access to justice and to maintain contact with their children. When making transfers, women are placed in an enclosed space, which are described as a "can",¹⁹⁷ with capacity for two detainees, although most of the time they are used for four or five women. Women often share transfers with male detainees. The conditions of travel of these women compel them to travel with male security personnel that in many cases threaten them physically and sexually.

d) Violence against detained women perpetrated by male security personnel.

In the province of Buenos Aires, the presence of male staff in criminal units that accommodate do not refer solely to their intervention in situations of mayor conflict but that they perform security and administrative functions on a permanent basis, contrary to the provisions of the international legislation.¹⁹⁸

Lack of proper mattresses, inadequate facilities to accommodate mothers and children., and those with psychological needs.

¹⁹⁶ According to the information compiled by Comisión Provincial por la Memoria, 25 % of the detainees who were interviewed have stayed in an average of 4 and 7 units during their period of detention..

¹⁹⁷ In this situation they must stay standing or on their heels during many hours in a space of one meter and a half without access to toilets or food and most of the time they are handcuffed.

¹⁹⁸ Art 53.1, of the Minimum Rules for the Treatment of Detainees of the UN..

The prison staff does not differentiate between women and men regarding the modality and deployment of violence against their bodies: punches, kicks, use of batons, use of cold water, pulling hair, pushes, spits, insults and threats.¹⁹⁹ To this is added an additional punitive damage: sexual abuse. Violent practices are perpetrated by male prison staff but by female staff too.²⁰⁰

d.1) Paradigmatic Cases in Unit No. 33 of Los Hornos

During the year 2009 in Unit No. 33 of Los Hornos, Buenos Aires, a place where we find most of the women arrested with their children as well as pregnant female detainees in the province, two acts of repression took place in front of claims done by female detainees. In both situations, the collective demand of women was based on the poor health system, especially regarding the care of pregnant women and children living in prison with their mothers.²⁰¹

The Special Operations Group under the Bonaerense Prison Service, composed entirely of male staff members, was found responsible for a number of repressive actions which injured more than 40 women, all mothers who lived in prison with their children, including pregnant women.

e) Lack of implementation of the National Mechanism for the Prevention of Torture.

Despite the gravity of the situation described here, Argentina continues to flout its obligation to implement a National Mechanism for the Prevention of Torture (MNP), as established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. Argentina ratified the Protocol in 2004²⁰². However, the period of one year in order to fulfill the international commitment, since the ratification²⁰³ - is clearly up.²⁰⁴ The various

¹⁹⁹The Committee against Torture has collected this data during their visits to places of detention..

²⁰⁰ These practices involve more than one official and the motives can vary, for example as a response to insults and /or aggressions on behalf of the detainee, claims done by an injured mate, to ask for a telephone call or not to adjust to any timetable. These events have occurred in places with a female annex.. Female personnel are in charge of female detainees in these annexes and articulate interventions with the security forces that control the male area. In other words, the female personnel authorize the contact of the male personnel with the female detainees.

²⁰¹ This claim took the form of hunger strikes, and the presentation of collective demands to the different authorities. During the first days of April 2009, the detained women accommodated in Unit N° 33 organized a hunger strike claiming for an adequate health area and participation in the educational process of their children who are living with them in prison.

²⁰²On September 8th 2004 it was approved the Law 25.932, which established the protocol. The Law was promulgated on September 29th and published on October 1st in the BO. On November 16th it was deposited in the UNO Secretariat.

²⁰³ See art. 17 of the Protocol.

bills under consideration in the House of Deputies have not yet been discussed and forums for dialogue and debate that can allow the participation of civil society organizations dedicated to monitoring the situation of persons deprived of liberty in the discussions on the implementation of this National Machinery have not been created.²⁰⁵

IV. The situation of pregnant women and detained women with their children.

Under the National Criminal Enforcement LAW (No. 24.660) women can stay with their children in the small units. The law regulates and strengthens the need for a space for women. However, the permanence of children in prison units has not been accompanied by the design of suitable sites for their accommodation. The children share the same inhuman and degrading conditions as their mothers. Thus, it is imperative to grant alternative measures for women with dependent children.

In the context of the SPF, about 7.5% of women in custody are pregnant or detained with children under 4 years old.²⁰⁶

The problems of overcrowding, poor nutrition, poor hygiene and lack of adequate medical care, are of particular concern in those units where the children live.²⁰⁷

It should be noted that on December 17th, 2008, by Law No. 26,472 it was amended the National Law of Criminal Enforcement, extending the hypothesis to grant house arrest to

²⁰⁴ In April 2008, during the First Periodical Evaluation before the HR Council of the UN, the representative of Argentina was questioned and was issued recommendations about the need to create a National Mechanism. The Argentine State assumed its duty to implement as soon as possible a Protocol (See "Informe del Consejo de Derechos Humanos de la ONU", A/HRC/8/34 and Corr.1, June 11th 2008).

²⁰⁵ At this point the Sub Committee for the Prevention of Torture and other degrading and cruel treatments has been clear to express that the national mechanism of prevention will be created through a public inclusive and transparent procedure, which has to include the civil society and those interested in the prevention of torture (see, Subcomité para la Prevención de la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes, *Primer Informe Anual* — February 2007 to march 2008—, May 14th 2008, CAT/C/40/2, párr. 28.b).

²⁰⁶ Presently in the SPF there are at least 13 arrested pregnant women and 51 boys and girls who live with their mothers deprived of freedom. Sntesis semanal de la Población General alojada al 26/3/10 elaborada por la Dirección de Judiciales del SPF, available in http://www.spf.gov.ar/index.php?option=com_content&view=article&id=101&Itemid=80

²⁰⁷ Official reports done on Unit 31 of the SPF highlighted the overcrowding of the areas where some mothers live with their children and they pointed out the existence of complaints due to the lack of quality medical care, insufficient food for the children, problems in toilets and kitchens, virus spread and deficiencies in the heater system which causes exposure to low temperatures during winter (See PPN, "Informe principal Año 2006, Monitoreo del Centro Federal de Detención de Mujeres "Nuestra Señora del Rosario de San Nicolás" – Unit 31", op cit. In November 2008, six of the seven pavilions where you find women with children or pregnant women in Federal Unit N° 31 of Ezeiza they organized a hunger strike in protest of the conditions of arrest (cf. *Diario La Nación*, "Mujeres presas reclaman alimentos para sus hijos", 23 de noviembre de 2008, available in http://www.lanacion.com.ar/nota.asp?nota_id=1072621).

pregnant women and mothers with children under five years old or with disabled dependents²⁰⁸. However, since then there have been some cases where judges have denied this benefit to women who were eligible to access this benefit.²⁰⁹

In the province of Buenos Aires, the increase of the female population is proportional to the increase in women prisoners housed with their children including pregnant women. While in July 2008, in the province of Buenos Aires 74 women with children and 23 pregnant women were accommodated in jail, in the month of October 2009 that number increased to 89 women children and 26 pregnant women. This situation, which shows overcrowding in the units designed to accommodate women, was not accompanied by structural modifications and adaptations of the units that accommodate women prisoners with children and pregnant women. The cells have no place which is available and suitable for children. On the other hand, there is no assigned budget to meet the specific needs of children who are accommodated in the prison units. In addition, the provincial State has no adequate public policies designed to ensure their fundamental rights, such as right to health, education or to be in contact with their families.²¹⁰

At the same time, pregnant women are often victims of harassment and physical abuse when the transfers occur.

²⁰⁸It is an amendment of art. 33 of the Law 24.660. The new text established that” There could be put under house arrest: a) the convicted who is older than seventy years old; b) the convicted who suffers of a terminal illness C0 The one who suffers serious illness or discapacity needed of attention that can not be given in the prison ward; d) pregnant women e) The mother of a child less under 5 years old or with a person with a discapacity”. This modification is under the regulation of the Convention on the Rights of the Child that in art.2.2 expresses: The State Parties will undertake all necessary measures to guarantee the protection of a child against all forms of discrimination or punishment resulting from the opinions or acts done by their parents, tutors or relatives”.

²⁰⁹ See Cámara Federal en lo Criminal y Correccional Sala VII, causa “Ortiz Galeano, Claudia E., Arresto domiciliario. Armed robbery. Instr. 42/106”, N° 36.224. Also see *LaCalle online*, “Rechazan la prisión domiciliaria a la madre de un niño menor”, available in <http://www.lacalle-online.com/interior.php?ID=158836> (date of access 30/04/09).

²¹⁰ Only in Unit N° 33 in Los Hornos there is a special sector for pregnant women or those with children without any differentiated conditions. In the rest of the units, pregnant women and those with children have to share the same space with the other detainees. There was filed a Collective Action in the name of all the children who live in prison with their mothers in the province of Buenos Aires, “Comisión Provincial por la Memoria c/ Ministerio de Justicia. s/ amparo”, File. N° 2679.

Sexual harassment as a form of violence

The State does not include "sexual harassment" as a specific form of violence whose victims are mainly women. Despite the recommendations that the CEDAW Committee made to the Argentine state in 1997, during the monitoring report of the second and third report of the State, sexual harassment has not yet been incorporated into the Employment Contracts Act, and that is why it is not penalized in the private sector. This vacuum gets worse because it has not been incorporated into the country's Criminal Code as a crime.

At the same time when trying to address it, it is often confused with "Violence in the workplace," a term which is broader than the concept of harassment and involves other forms of violence in the workplace. This confusion comes in the Sixth report of the Argentine State.

The meager legislation in this area consists of five laws, decrees and ordinances that are poor in protecting the rights of victims, and that only consider prosecution of the offense and the sanction, in the area of public administration²¹¹, while the person who files the complaint remains in the same place with the perpetrator. Furthermore, it does not provide mechanisms to safeguard employment and sees the conduct of "harassment" within hierarchical labor relations despite the research done on the subject.

Neither the state nor the national provinces have proper registration or database of sexual harassment situations. There are no awareness campaigns or of prevention of sexual harassment,²¹² which can provide assistance to women victims of this form of violence, to sensitize on this violence to be seen as a form of gender-based violence and, therefore, not to experience it as a natural form of the attitude of men towards women that must be endured, suffering health consequences²¹³ adding it as a ground for job instability²¹⁴.

²¹¹ The legislation on Sexual Harassment at national level is (Decreto 2.385/93), in the city of Buenos Aires (Ordenanza municipal 47.506), in the Province of Buenos Aires (Ley 12.764), in the Province of Misiones (Ley 3.307), and in Santa Fe (Ley 11.948).

²¹² There are no offices belonging to the Ministry of Labor in the 23 Argentine provinces so that the victims of violence in the workplace can get counseling, assistance and protection in cases of sexual harassment.

²¹³ The women who are victims of sexual harassment suffer many health problems such as anxiety, anger, tension that in many cases can lead to depression and stress, lack of sleep and other problems such as migraines, stomach problems, skin allergies, etc."

²¹⁴ Sexual harassment can motivate that a woman decides to resign from her job not to face the problem or she can be fired or lose her expectations for a promotion because she refused to accept the "conditions" formulated by the perpetrator. ISPM, *Violencia laboral*. Available in: www.ispm.org.ar/violencia_laboral_trabajo.html [Date of access: March 12th 2009].