

ARGENTINA: SHADOW REPORT FROM ONGS TO CEDAW COMMITTEE

July 2002

I.- GENERAL INTRODUCTION ON THE POLITICAL AND SOCIO-ECONOMIC - SITUATION AND ON THE DISCRIMINATION AGAINST WOMEN IN ARGENTINA

The non governmental organizations that subscribe the present report cannot avoid warning the Honorable Committee about the very serious institutional, economic and social situation that affects the Argentine Republic nowadays.

The crisis that was deepened during the last years of the 90 exploded in December 2001, when as it is well known Argentina passed a series of events that marked their institutional and political history sensibly. In around only fifteen days the country had five presidents, consolidated its financial default, left the iron exchange policy that had been enforced since 1991 and then devaluated the peso. All this in the middle of a socio-economic crisis that still demands extreme measures.

In a context of deep economic constrains and social inequity, ignited demonstrations of protest took place in all the territory. Against them, the State unfolded a strong repression that included the declaration of State of siege in all the Nation for a couple of days, and that concluded in thousands of imprisonments, hundreds of injured and dozens of deaths.

President Fernando de la Rúa, in office from December 1999, had to resign at the worse moment of the crisis¹. After several presidential successions, the Legislative Assembly designated Eduardo DUHALDE as the Chairman of the Government. Eduardo Duhalde assumed the presidency of the Nation from January 2002, till December 2003, date on which he would call for elections. Nevertheless, the institutional weakness that affects the country has provoked discussions on the possibility of advancing the date of the elections.

The socio-economic context and the structural adjustment started at the beginning of the 90', seriously affected the economic, social and cultural rights of all the population but, specially, of those more excluded, being the women, children, adolescents and young's the most affected.

Deep normative and institutional reforms have attacked the substance and quality of these rights, depriving them of their essential content and of the legal and institutional mechanisms to demand their inforcement. For example, on July 2001 a law was passed, (Nº 24.453) called Fiscal Balance Law, well-known as Deficit Zero Law, According to this law civil servants and retired people salaries depend on tax collection, reducing their wages in a 13%. In spite of the multiple claims before the justice, the administration continues applying this reduction. This Law also strongly hits social programs of Social Development and Environment, Health and Labour Ministries.

¹ After the temporary post of the provisional president of the Senate, Ramón Puerta, the governor of San Luis, Adolfo RODRIGUEZ SAÁ assumed the government, but one week after his designation he also had to resign the position in the middle of a deep social discomfort and of a delicate economic and political situation. After a brief interregnum, the President of the House of Representatives of the Nation, Eduardo CAAMAÑO assumed the Government.

The weakening of the social rights has been characterized by a concentration process of the wealth in a small portion of the society, by an increase of poverty and penury and by the increasing and consolidation of unemployment or under employment².

According to an official study of SIEMPRO (System of Information, Follow-up and Evaluation de Social Programmes)³, in Argentina there are 18,219,000 poor people, representing 51.4% of Argentinean population. From that total 7,777,000 are indigents. Also, 8,319,000 from total poor people in Argentina are children and adolescents⁴.

Unfortunately, —and although official registers were made in May, 2002— until July 2002, the government have no information disaggregated by sex, which would updated the data of nowadays women status in Argentina.

On the other hand, as it is informed in the following sections, citizens find it very difficult to access to public health services, justice and education and to the benefits of social security including retirement. Social benefits are focused only on certain groups and those who apply to be beneficiaries must qualify as addressees of an assistance based on their poverty status.⁵

The weakening of social rights in Argentina, is the result of economic policies carried out by different governments in the last years; that, before the demands of the international organisms of credit, only focused and still devote to fulfill them, without carrying out a serious analysis of the structural damages that these provoke as regards the reinforcement of the social rights of the Argentine male and female citizens. In this context, the high index of corruption is of major importance in the public administration which, in many cases, has been operative to the external interests and the weakening of the social rights.

Generally women discrimination is similar to that informed in 1997, except few exceptions. The government did not disseminate the remarks and suggestions made by the Committee in 1997⁶, which affected negatively on most of the reported violations which are still occurring or have become even more serious themselves. Specially, it is possible to indicate like paradigmatic examples of the mentioned worsening, the lack of hierarchic and institutional budgetary of the National Council of Women deepened as from January 2002 and that the Government on April 30, 2002 requested to retired the proposal to ratify the CEDAW Optional Protocol, that since the mid 2001 was in the Senate for its consideration, topic that will be dealt with in the following section.

Considering those mentioned as the most important situations, in this report we will centered in: sexual and reproductive rights, economic, social and cultural rights, women trafficking, migrating women and violence against women.

² The situation described is the result of the methodology that during all the decade has taken part to transform the "social rights" into mere "interests", turning those in welfare benefits deprived of any requirable content.

³ Entity dependant on the Presidency of the Nation, www.siempro.gov.ar.

⁴ Cf. Clarin Newspaper, Sunday 9 of June of 2002.

⁵ PAUTASSI, Laura; Reflections on work. "The access to the justice of the popular sectors", June 2000, mimeo.

⁶ Cf. United Nations, Final Observations of the Committee for the Elimination of the Discrimination against Women, Argentina, August 12th, 1997, A/52/38/Rev. 1 paragraphs 273-321.

II. MEASURES ADOPTED BY THE ARGENTINE GOVERNMENT TO ELIMINATE DISCRIMINATION AGAINST WOMEN (ARTICLES 1 TO 3)

In this part we will refer in first place to the lack of measures adopted by the Government to eliminate discrimination against women, and secondly to the maintenance of contradictory laws to the Convention still existing.

1. Governmental Mechanisms. Public policies and discriminatory practices:

The Equality Plan elaborated in 1998 by the National Government was never debated with the civil society. Although it was not derogated, it has not been put into practice in spite of the fact that it was created more than four years ago.

There are 24 districts⁷ and 6 of them do not have any specific offices to protect the rights of women and the parity between men and women (Cordoba, Formosa, Jujuy, Corrientes, Tucumán and Santa Fe). As regards the municipalities, only a third of the 2000 has offices to protect the rights of women. It is possible to indicate that the specific governmental women offices at National, Provincial and Municipal, are still low hierarchized, with little or null budget and very trimmed in its range areas.

It is necessary to inform to the Committee that the National Council of Women has undergone an institutional and budgetary lack of hierarchy, since January 2002 it is considered a program that depends on the National Council of Public Policies, suffering, since 1998, several reductions in its budget and its autonomy of management worsened even more since 2002.

On the other hand, there are no mechanisms of articulation between the different state agencies. As an example, there do not exist, except for sporadic forms or for precise matters, a procedure or a formal strategy of articulation, coordination, liaison and/or connection between the National Council of Women or the Direction of Women of Chancellery and the women's organizations.

There has not been elaboration of gender indicators on the part of the National Government, and although the ECLAC (Economic Commission for Latin America and the Caribbean) has developed them, the National Government has not applied them yet.

Gender perspective was still not incorporated in the National Budget nor in the provincial ones.

2. Legislation:

Although Argentina subscribed the CEDAW Optional Protocol, in 2001 was sent to the Senate to be ratified by law, on April 30 of 2002 the Government sent a message to the Senate requesting not to ratify it. The NGOs that subscribe the present report understand such decision was adopted due to the strong pressure exerted by the Catholic Church and to the decision of President Duhalde and Chancellor Ruckauf, to object it for understanding that it affects the national sovereignty and that "there does not exist

⁷ Argentina is a federal country, with 24 districts: 23 provinces and the autonomous government of Buenos Aires City.

sufficient defense as opposed to interpretations of the Convention and recommendations oriented to the promotion of abortion legalization".⁸

Regarding effective legislation, although the amendment recommended by the Committee to the Penal Code took place in 1999 in the chapter, which used to be called with the misconception Crimes against the Honesty —chapter that now receives the name of Crimes against Sexual Integrity— there still subsist a series of legal discriminatory rules. In particular, we refer to certain provisions of the Penal Code (articles 85 and 86), of the Civil Code (articles 1276, 1296 and 1302) and article 56 of the Law that rules the Personnel of the Federal Police (law 21.965)⁹.

III. VIOLENCE AGAINST WOMEN (ARTICLE5)

1. Rape and other sexual crimes

The recent reform¹⁰ to the Penal Code (law 25.087 of year 1999) replaced the title Crimes against the honesty by Crimes against sexual integrity, including three types of crimes: abuse, rape and encouragement to prostitution/traffic of women. It also increased the punishment¹¹ and sexual access by any via, was considered aggravated crime. This modification gave an end to the doctrinary and jurisprudential debate around the legal framework of oral sex. The figure of statutory rape of a minor was also modified, replacing the reference to the victim as an 'honest woman over twelve and under fifteen', by the one of person (of both sexes) under sixteen years old" All this denotes a favorable change, at legal level, in the conception of this problem.

However, other aspects of the law are controversial. The rule that established that the rapist was free of punishment if he married the victim was modified partially; the present text continues being dangerous for the victim. In fact: it replaced the notion of 'crime' by 'conflict', and under allegedly conditions of 'total equality' and " 'free consent ' of the victim, it is made possible an agreement with the accused and the suspension of the punishment. The undersigned NGO's consider this rule must be modified, since 'total equality' and 'free consent ' between the female raped and rapist, is a clearly sexist myth, that makes an attempt to hide the true destructive and hostile meaning of a rape. Therefore, it not only leaves the victim defenseless but it provides grounds for rape again and also attempts against her mental health. Another essential amendment is to include the figure of rape within marriage, since the Argentine penal law does not contemplate it. In addition, the legislation is incomplete on the subjects of harassment and sexual abuse. In such sense, harassment is not specifically classified as crime. The only figure contemplated is sexual abuse, and therefore there are assumptions nonanticipated by the penal law.

Due to all these defects, sexual violence against women continues being an action sometimes considered a crimegenerally unpunished, of which there are victims, mainly,

⁸ Message from the Government N 705/02 to the Senate of the Nation, April 30th, 2002, registered on folio 3, record N 107/02.

⁹ "The masculine staff will have priority on the feminine of the same degree and specialty, no matter their seniority in rank and in service".

¹⁰ Penal Code, Law 25.087. Passed on 14 of April 1999.

¹¹ It is established imprisonment or prison of six months to four years to any person committing a sexual abuse on a person of any sex when such a person were below 13 years old or when there were violence, threatening, coercive or intimidatory abuse in a relation of dependant work, or of authority, or of power, or taking advantage that the victim by any cause could not consent the action freely (section 119 of the Penal Code)

young women, specially those who have an urgent necessity to maintain the work. Its true importance and existence is very difficult to establish, due to the lack of reliable records. According to a recent study, the amount of condemnatory sentences is ten times less than the claims filed. Besides, it is estimated that only 10% of the cases are made public, so there would be 60,000 cases of sexual crimes a year, that is 16 cases a day.¹² As it is evident, we are in the presence of crimes that the Argentine State has never treated in an effective way. The procedure anticipated by the law, and its form of application actually, continues being as violating as the event itself, as it happens in most of the countries of the region. The complaint, the forensic medical examination and the taking of declaration continue starting off the mistrust for the honesty of the raped woman. Although some training courses to police officers have been made sporadically, and there exists a Department of Victim 's Assistance in the Federal Police and an Office of Integral Victim Assistance at the General Attorney of the Nation, the necessity to integrally protect the victims is neither reached and most of the cases are not assisted. These offices, are not known by the population in general. The accomplishment of dissemination campaigns and training courses for civil servants and magistrates are sporadic, without continuity, systematization and monitoring.

A serious problem for the judicial treatment of these crimes constitutes the same predicted legal procedure, since it requires evidence (testimonial or of any kind) that, due to the characteristic of the crime, cannot be always obtained. The other hindrance is the ideological formation of magistrates and judges, who very frequently tend to underestimate women claims, discouraging them.

2. Sexual harassment

As far as sexual harassment in the work, does not still have legislation for the private sector; and in the public administration, it is only ruled as grounds for punishment or suspension in three of the 24 districts of the country: the Province of Buenos Aires, the City of Buenos Aires and the Province of Santa Fe. In the 2001 the Tripartite Commission of Equality of Opportunities and treatment between Women and Men in Labor elaborated a law project presented in 2002 by a group of 15 female senators of all political parties. Nevertheless, the project hasn't been considered so far¹³.

3. Domestic violence

In its recommendations of year 2000 to the Argentine Government, the Committee of

¹² In the period between 1970 and 1996 there were registered, in average, approximately 6000 annual police denunciations of sexual crimes (rapes , statutory rape, sexual abuse and others). Although not all of them can be framed in the legal figure of rape , they imply in all cases coercion in sexual practices. Nevertheless, the average of condemnatory sentences for these crimes in the same period is of 622 sentences per year. The disproportion between complaints and sentences is evident. Cf. CECYM, Center of Meetings CULTURE and WOMAN: "The medical consultation in the cases of violation", Buenos Aires, 1997, p.11.

¹³ The project was made on a proposal of the ISPM, it contemplates the sexual, sexist and homophobic harassment that takes place at work, at the educational institutions, at the relations involving doctors and patients, at trade Unions, at political parties, at armed forces and security organizations. The project covers the protection of the labour position of the harassment victim and of the witnesses; it includes a series of presumptions that facilitates the proof of the evidence, the solidary responsibility of the employer and it does not require the pursuer to be of a superior hierarchy. Cf. LUBERTINO, María José, "if it bothers, it is harassment", 2002, in www.ispm.org.ar

Human rights declared in paragraph 15¹⁴: *... the Committee considers disquieting that, in spite of important progresses, the traditional attitudes towards women continue exerting a negative influence in their use of the rights enunciated in the Agreement. The Committee is especially concerned about the high incidence of cases of violence against women, including rape and domestic violence.*

It is also of concern sexual harassment and other forms of discrimination in the public and private sectors. The Committee also observes that information on these subjects does not have a systematic record, women have little knowledge of their rights and of resources which they have and that the denunciations are not properly treated. The Committee recommends to undertake an Information campaign to promote the knowledge of women about their rights and resources they can count on. The Committee urges to gather information systematically and trustworthy data are filed on the incidence of the violence and the discrimination against women in all their forms and that these data are included in the next periodic report . These recommendations haven't been carried out so far.

Out of the 24 districts, 3 still do not count with a Law on Domestic Violence (Salta, Formosa and Santa Cruz)¹⁵, the National Law of Protection against Domestic Violence¹⁶ defines it as the 'injuries or physical or psychological mistreatment' that undergoes a family member on the part of another one¹⁷. The victim will be able to denounce these facts in oral or written form before the judge with jurisdiction on family matters and to ask for preventive measures. It contemplates factual ties and it includes measures of protection like the exclusion of the aggressor of the house, prohibition from access to the house, etc. Most of the provinces have passed similar laws, but there are four provinces that have not done it yet, generating emptiness in the necessary protection that the State must offer on the subject. In addition, the existing laws grant to the judges a little margin of action.¹⁸ For cases in which the aggressor does not accept the protective measures, it is only left the penal denunciation, that we know is of little effectiveness. Another serious problem for an effective defense is: the probatory difficulties¹⁹, the necessity to refile lawsuits to maintain in the time the protective measures, and the judicial tendency to dictate ambiguous sentences, where the figure of the aggressor is diluted and the repair of damages does not exist²⁰.

Another problematic aspect is that most of the laws demand that, within the 48-72 hs. of having adopted the preventive measures, the judge summons the parties and the Public Ministry to a Hearing of compulsory Mediation²¹. There, it is usually recommended to the parties and the familiar group to attend educative or therapeutic programs. In this way, the victim of domestic violence is forced to participate in the hearing together with her aggressor. Numerous studies and the doctrine on the matter indicate that the mediation

¹⁴ Cf. United Nations, Final Observations of the Committee of Human Rights, Argentina, November 3rd, 2000, CCPR/CO/70/ARG.

¹⁵ ISPM, "In the whole country safety begins at home", Brochure of the massive campaign for the prevention of "Violence against Women", in www.ispm.org.ar/violencia/frames-respuestas.html.

¹⁶ National Law of Protection against the domestic violence, Law N° 24.417 passed on 7 December of 1994. (B.O.03/01/95). Only Applicable in the city of Buenos Aires, although some provincial legislatures have adopted similar rules.

¹⁷ Section 1, Law 24.417.

¹⁸ Cf. ESIPP, Group of Follow-up, research and Proposal of Policies, Constructing Citizenship, Strategies of Pursuit of the commitments of Cairo, Copenhagen and Beijing, Argentina, 1997, p.24.

¹⁹ Debates of the Commission for reform of the Domestic Violence Law. Women Program of the National Ministry of Justice .

²⁰ Cf. A Question of Life. A Regional Balance and Challenges about the right of women to a life free from violence, chapter Argentina, CLADEM, Lima 2000, p. 221, in www.CLADEM.org.

²¹ Law nro. 24.417, section 5.

only can be based on the voluntary participation and equality of conditions of the parties, and that it is clearly counter-productive for domestic violence, in which power is exerted in an unilateral way, mediation can become a new threat. Only the law of the province of Buenos Aires establishes the summon will be a day and hour different for each member of the couple.

Although the lack of statistical official information prevents to affirm seriously if it has increased or diminished the violence against women, it is estimated that in Argentina episodes of violence exist, at different degrees, in 1 of each 5 couples. 42% of the female homicide victims (whose author is discovered) were assassinated by their couples. 37% of the women battered by their spouses have been more than 20 years suffering those abuses. According to information of the I.A.D.B., it is estimated that 25% of the Argentine women are victims of violence and that 50% will undergo some violent situations at some moment of their life. More affected group is from 25 to 34 years old.²²

Public policies fulfilled by the State have aimed fundamentally at the welfare aspect, offering psychological and legal advice in their dependencies or through sponsoring NGOs of women for the provision of these services. In spite of it, there are no sufficient programmes of prevention that addressees directly the victims ; particularly, specific institutional resources for cases of extreme life risk do not exist. On the other hand, these services have heterogeneous methodologies and approaches, that not always contemplate suitably the perspective of gender nor the specific necessities of those who apply to them. As regards Shelter Homes, it is advisable to have one every 10,000 inhabitants, but in Argentina they exist only in some districts, and not always have the necessary permanence throughout the time, due to budgetary or political problems.²³ There is also lack of public policies and social resources for later social reintegration and rehabilitation (house, job, psycho-social follow-up, etc.) what favors long lasting and fortification of the violent circle and its generational transmission. It is not dealt in a sufficiently systematic way the training and sensitiveness of civil servants (police, penitentiary, military staff members) and magistrates of the judicial power. Although it is formally reported about their presence, it is of irregular implementation, their effectiveness is not monitored or it is not evaluated their putting into practice; there does not exist publicity on the matter, nor its results are of public access. On the other hand, the State does not cover other essential functions on the subject: it has not been managed to construct a good statistical system that registers quantitative and qualitative data for all the country of public access; the services are not followed up suitably; massive and systematic campaigns in the time have not lasted longer, nor has the subject been dealt with in every other areas of the State.

As it is seen, the recommendations of the Committee of Human rights of year 2000 mentioned above have not been taken into account sufficiently. The NGOs who subscribe the present report find it necessary for the State to give more importance and provoke a deep awareness and the horizontal link within different sectors of the State (health, education, etc.), the follow up and the statistical record. Is it propose the creation of a National Unified Registry of denounces of domestic violence, in order to facilitate the tracing of antecedents when denounces in different places, and a System of statistics on violence, designed on the base of specific common indicators.

²² ISPM, Violence against women is a problem of all of us. 1998.

²³ At the present time, it is known that shelter homes exist in the cities of: Saladillo (Province of Buenos Aires), Rosario (Province of Santa Fe) and in the City of Buenos Aires.

IV. THE SITUATION OF PROSTITUTION AND TRAFFIC OF PEOPLE (ARTICLE 6)

The Argentine Republic maintains an abolitionist tradition as regards prostitution. The traffic of women is punished, but not the individual exercise. This was the position maintained by Argentina in the Special Committee for the Elaboration of a Convention on the Transnational Organized Delinquency: execution and approval of the additional international legislative instrument to fight against Traffic of People, specially of Women and Children (Vienna from 2 to 6 of October of 2000). This protocol does not contradict, nor weakens the Convention of 2 December 1949. Women and children in prostitution are considered, in these cases, 'victims of the traffic', and they will be guaranteed the highest protection of their fundamental rights and at the same time it is demanded repression for the dealers.

In the final observations made on 12 August 1997 by the Committee for the Elimination of the Discrimination against Women to the Argentine Republic, concern was expressed on the facts that in the reports of the Argentine Government, there was a lack of data and there was missing an analysis on the situation of women who were object of traffic and exploitation with prostitution aims. In this sense it was suggested to the Government the inclusion in its next report of legal and sociological data related to section 6 of the Convention.

Although no formal studies have been made by the Argentine government, based on the general impoverishment of the population and the report elaborated by UNICEF in 2001²⁴, that the situation of women in prostitution has gotten worse considerably. It is very troublesome the increase of prostitution, inclusive at very early ages.

Besides, from the national and local mechanisms there do not exist policies to suppress or to diminish the exploitation of women.

There are no official programmes regarding women in prostitution, either to support them, give shelter to them or to reinsert them in other activities. This task, on the contrary, is only made by some feminists and confessional groups. In this way, the Argentine State breaches article 4 of the Protocol of Vienna called "Assistance and protection to the victims of traffic of people" (signed by Argentina), that indicates that the States will be committed to adopt this protection "when it comes the time and in the extent that it is allowed by the internal right".

On the other hand, all women in situation of prostitution, including those who vindicate themselves as sexual workers have been object of repeated abuses, illegal pressures and haltings by the police. To ever this situation there were presented different legal actions in all the country, being able to indicate by their importance —and among other presentations the one of the Association of Prostitute Women of Argentina (AMMAR), the National Institute against Discrimination (INADI), the Ombudsman Office and the Permanent Assembly for Human Rights, those appeared before the justice of La Plata City denouncing acts of permanent harassment and persecution by the Police against female sex workers in that city.

Prostitution as part of the organized crime at a world-wide level has in Argentina a heartrending example with the migrant women of Dominican Republic, those that can be considered by the serious situation in which they are, like true sexual slaves. These

²⁴ Cf. The prostituted childhood. Study on the infantile commercial sexual exploitation in Argentina. Unicef. Argentine Office. Buenos Aires, October of 2001.

women are brought to Buenos Aires by a procurer, repeating always the same pattern of behavior: the women are deceived with the promise of a legal work; in the destination place their documents are snatched and are confined to live under the rules of rape, punishments and abuse of drugs²⁵. Several denounces in the Argentine courts exist on the matter²⁶. The case has acquired relevance, from different actions developed by some NGO and from the information spread by mass media. Recently a national newspaper²⁷, published that "the political ramifications of this drug trafficking ring had been discovered".

Another case that deserves the attention of the Committee is that of Paraguayan women in prostitution, most of them being minor. According to the research made by a journalistic TV programme `Telenoche Investiga'²⁸ they would work in brothels located in Escobar and Tigre, province of Buenos Aires. These premises worked with the approval of public officers and politicians. The judicial investigations in course caused the resignation of the Head of Police of the province of Buenos Aires, who had to step down of his post by the supposed liaison with this crime. The case still follows pending.

Another denunciation of great importance presented before Amnesty International refers about the violent death or the disappearance of at least 26 women in Mar del Plata, province of Buenos Aires, many of them exercised prostitution. Although in an initial stage, the judicial investigations had attributed these crimes to a serial assassin, the judge of the cause determined later that 13 of the deaths and disappearances would be connected to an organization of police officers dedicated to prostitution and the drug trafficking.²⁹ We consider the statements from the Center of Support to the Battered Women (CAMM) troublesome, as they indicate that in the case of the assassinated prostitutes we have a clear example of discrimination due to their activity.

Infantile Prostitution and Traffic of Girls and Boys

In different places of the country, networks of children prostitution and sexual tourism with boys and girls and adolescents have been detected. The existence of great networks of prostitution and traffic have been denounced by diverse journals in which there is no distinction by nationality, social position, race, etc. of the girls who are recruited for sexual exploitation. Thus, investigations in the provinces of Santa Fe, Chubut and Chaco have been carried out without any concrete results.

Also, none of the state organisms which should be competent on the matter, such as the National Council of Women, the Ministry of Justice, the National Council of Childhood, Adolescence and Family, have developed active policies to eliminate children sexual exploitation. Thus, in a recent report of UNICEF on infantile prostitution in Argentina, it was stated that this exploitation form also exists not only in the streets but in hotels, cabarets, saunas, discos and other establishments with that purpose, reason why it is very difficult to approach this problem since it involves people and social groups of high economic and social level, which allows to maintain their identity reserved³⁰.

²⁵ LIPSZYC, Cecilia, "Xenophobia against Women", Magazine Maria, Maria, UNIFEM, June 2001.

²⁶ Cf. REDH (Solidary Network for the Human rights); Independent Newspaper. El Caribe Newspaper.

²⁷ Página 12 Newspaper, 19 of May of 2002.

²⁸ Channel 13 in the month of July of the 2000.

²⁹ Cf. Clarin Newspaper, 6 of October of 2001.

³⁰ Cf. UNICEF (Office in Argentina); Infantile prostitution. Research on the commercial sexual exploitation in Argentina, already quoted.

V. PARTICIPATION IN THE POLITICAL AND PUBLIC LIFE WITHOUT DISCRIMINATION (SECTION 7)

1. Government :

In the Dr Fernando de la Rúa administration (1999 - 2001) there were only two female ministers among 12 ministries. In the present government (President Duhalde) there are three female ministers among the same amount of ministries.

Over 24 districts, only in one (San Luis province) a woman assumed as governor, due to the resignation of the governor, who took the Presidency of the Nation for one week last December 2001.

There do not exist in the provincial or national scope, public policies or rules that establish positive actions (article 4 of the present Convention) as regards gender for the field of the governments, with the exception of the Constitution of Buenos Aires City (1996), that settles proportions in community organizations, decentralized and control organisms, that are not always reached³¹.

2. Judicial Power:

The representation of women in the highest courts continues being scarce. There are no women either in the Supreme Court of Justice of the Nation, or in the Superior Courts of the Provinces³².

Legislation establishing positive actions in the scope of the Judicial Power, does not exist except in the Constitution of Buenos Aires City that established quotas by gender for the Superior Court of the City, the Communitarian Tribunals and the Magistrature Council, since 1996³³.

3. Parliament :

The National Quota Law, N° 24.012³⁴, by means of which the participation of women in the House of Representatives was increased when establishing a minimum basis of 30% of women included in the lists of the political parties, it has just been applied for the renewal elections of the Senate in October of year 2001. Because, by ruling of the constitutional reform of 1994, the renewal had to be total, choosing three senators per province and due to the modification of the ruling of the law in 2001 by the Decree 1246/2000. Then, a 30% of women was incorporated in the Senate for the first time in our history³⁵.

After more than 10 years of passing the law, it is possible to affirm the floor became the ceiling, so that the 30% continues working like maximum limit., The women don't perform

³¹ LUBERTINO, Maria Jose, "Parity Democracy in Buenos Aires", 1996, in www.ispm.org.ar/documentos/index.htm.

³² LUBERTINO, Maria Jose, "The female quota Laws in the Argentine, federal system", 2001, in www.ispm.org.ar/paridad/index.htm.

³³ Ibid 31.

³⁴ Passed in the year 1991.

³⁵ At the Senate there was a registry of 34.72% of participation of women and in the House of Representatives the participation was of 29.57% (Ibid 32)

major positions in the Congress, unless in exceptional case, neither become chief of parliamentarionsblocks nor chairwomen of important legislative commissions. They accede to a percentage of elective positions but not to real power.

With respect to the provincial legislation in the matter of quota, it exists in 22 provinces on the total of the 24 that make up the Nation.

4. Political parties:

Although in the previous point we emphasized the evolvement of the system of political participation of women that took place with the National Law of Quotas and the provincial laws, it is not yet guaranteed the real participation of women in the party decision- making. In general, the political parties did not adapt their bylaws to the new rule established in the article 37 and transitory clause second of the Amended Constitution of 1994, that forces them, by means of positive actions, to incorporate a minimum of 30% of women in their Boards and Committees. The National Congress has not either passed any law ruling this article, since the majority of the parties have not done it spontaneously.

The qualitative analysis of the internal system of the political parties evidences that it is still the party establishment the one that defines the names of women and men who participate in the elections. For that reason, and to guarantee the access of women to the decision-making this is, to obtain a total parity between men and women in the exercise of the power, political parties are due to become more democratic, through the incorporation of what has been established in the new article 37 of the National Constitution: the D'Hont System in their elections and transparent mechanisms for fundraising and financing of campaigns and parties activities³⁶.

5. In the non -governmental and private field:

It continues being reduced the participation of women in the business chambers, trade unions; professional associations and companies. In general there does not exist legislation that establishes positive actions on the matter, except for some professionals associations in the f Buenos Aires City that introduced them, whether for the City law or by the reform of its statutes imposed by judicial battles conducted by itswomen members, like the Buenos Aires Public Lawyers Association.³⁷ Regarding participation in trade unions, the Quota law project prepared in the Ministry of Labor in 2001, was presented in the Senate by a group of female senators some months later..

6. University and scientific positions:

In Argentina there was never a full participation of women in university and scientific agencies, nor positive policies in order to promote it. Thus, the National Council of Scientific and Technical Investigations (CONICET) never had a woman as Chairwoman; the University of Buenos Aires (UBA) either did not have a female dean. The women are

³⁶ Only in this way, the constitutional warrant of the article 37 of the National Constitution and its temporary clause number two would be observed as long as they indicate that positive actions are to be taken to assure the equality of opportunities between men and women to access to the elective and party positions. Only the Buenos Aires City Cinstitution includes positive actions to financial political activities.

³⁷ Ibid.32

represented neither in the Presidency nor in the Board of the CONICET, whereas their participation in the Evaluation board and the Advisory Commissions is scarce. To give more evidence on this, at the CONICET 72% of the women occupy the two lower levels of the career, (attending and assistant), against 51% of the men in the same categories. Only 0.4% of the women occupied the high positions, while the 4.5% of the men hold them³⁸.

VI. LABOR RIGHTS WITHOUT DISCRIMINATION (ARTICLE 11)

Beyond the very serious situation which men and women suffer in Argentina, due to a constant increasing rate of unemployment (according to non official records, more than the 20% of the PEA is unemployed, which represents 3 million people³⁹, it is precise to inform the Committee that in the work field in Argentina is one of the scopes where the greater discrimination against women occurs. This is due to the existence of `...different opportunities by sex; the existence of unequal conditions and possibilities of employment for a group of equally productive officers...⁴⁰. On the matter, there are multiple forms of discrimination against women in the labor scope, being able to indicate by its relevance and without trying to exclude others⁴¹ the following violations to the rights protected by the CEDAW:

1. The violation of the right to equal remuneration (article 11.1.d)

In the income, it is observed an important inequality between men and women; the average income of women represents 60%⁴² of the one of the men on equal educational conditions. This disproportion in the labor remunerations is increased with the age and the qualification. Those that suffer greater disproportion are: women over 40, and those who work in activities by their own (like services sector, commerce or industry)⁴³ and those that have superior levels of education⁴⁴.

2. Lack of legislation that suitably rules domestic work (article 11.1.e)

Although in the report presented to the Committee in 1997 the State mentions a law project that would regulate the labor relations and the pensions plan of the female domestic employees, this law was never passed. At the moment decree 326 and its ruling decree 7979 continue effective, both of year 1956, with a labor regulation different from that of the rest of male and female workers, that prolongs the day work and limits enjoyment of holidays, retirement, etc. Such a job is highly weakened and most of those who carry it out are in informal market and "in illegal conditions", they practically lack

³⁸ Cf. MAFFÍA Diana; FRANCHI, Ana; KOCHEN, Silvia, "Women in The Science and Technology Systems", Notebooks of Iberoamerica, OEI (Organization of Iberoamerican States for Education, Science and Culture). Madrid, 2001.

³⁹ Cf. Clarin newspaper, July 2nd, 2002. In October 2001, unemployment rate was of 18.3%, which means during these months more than half million people have lost their jobs. The measure of a private consultant , includes "legal" as well as "illegal" staf in the private and public sectors.

⁴⁰ PAUTASSI, Laura, "The impact of the structural reforms and the new labor legislation on the Argentine woman", published in Law, Market and Discrimination. Gender at work, Buenos Aires, Biblos Editorial, 2000.

⁴¹ The problematic issues of the sexual harassment have been analyzed in section III of this report.

⁴² June 22, 2002 LUBERTINO, María José, "Women at Work", June 2000 in www.ispm.org/documentos.htm

⁴³ Cf. Undersecretary 's office of Women-MRECyC, 1999.

⁴⁴ At the professional level it reaches the 38.5%, according to Clarin newspaper, May 2001.

resources for their defense. Thus, the Argentine State pays no attention to a situation that prolongs in time the violation of the rights of women who work in domestic service to enjoy all the rights of labor legislation. The serious point of the situation resides exactly in the deeper the economic and social crisis is, the more are the women who are dedicated to this work to household in many cases all the family.

3. Reduction of family allocations (article 11.1.f)

On account of budgetary cuts demanded by the international financial organisms, as we informed at the beginning of the present report, the National Government has reduced the wages of male and female civil servants in 13% (2001). Family allocations of the private sector were also paid through a public entity called ANSES, were also reduced, since they are calculated proportionally to the wage. In case of female employees, allocations for pregnancy, childbirth and puerperium have been reduced in considerable form.

It is necessary to emphasize that women, who are in charge of their children, must make more administrative procedures than men to receive family allocations, and in addition, if they are the economic support of the family, they do not receive any family allocation for their husband or partner..

4. Non remunerated work

The Argentine Government continues unfulfilling the demands which have been recommended in the final observations made by this Honorable Committee on August 1997 as regards assigning value to non- remunerated work and including it in the National Accounts in the form of subsidiary account. The non- remunerated work is the one that consumes the greater amount of productive time of women performing the tasks of a housewife, a mother, taking care of the elderly and ill members even in their own family companies⁴⁵. Researches made point out that women work outside the home an average of 7 hours, and then work in their house (care of children, cleaning, etc.) almost 4 hours, reason why in a day they perform a continuous labor task of approximately 12 hours, being remunerated only by 7⁴⁶. Nevertheless, there were no official systematic investigations, or of a national or provincial nature on this subject, or about the value of the work in the home and the care of boys and girls.

5. The Plan Male and Female Heads of Home for unemployed people

In the middle of a national economic recession during the past 4 years, and the lack of work sources -and of plans of government to stimulate their creation- recently the Argentine government has devised a social programme "Plan for Male and Female Heads of home". This plan is allegedly to have as an objective the effectiveness of the family right to social inclusion and it is aimed to unemployed males and females in charge of minors. The resources allotted to this programme are distributed by the Government through each one of the provinces and the different municipalities, being the local Consultative Councils in charge of the monitoring..

⁴⁵ KRITZ, Eduardo, "Women at Home" and "The female job. Housework Activity and Economic Crisis. Argentina's Case.", Editorial O.I.T., Peru, 1986. See also LIPZYC, Cecilia, GINES, Maria Emilia, BELUCCI, Mabel, "Making public the private", Editorial Catalogos, Buenos Aires, 1996.

⁴⁶ Survey made only in the city of Buenos Aires in 1999. Cf. Clarín Newspaper, 2 December 1999.

The allocation is of 150 \$⁴⁷ per month, equivalent approximately to less than the fourth part of the stated amount for basic goods and services (CBT) calculated in 625.94 \$ or to half of the minimum nourishing amount⁴⁸ (266,36 \$) for a standard family of 4 members, two of them being minors at a short age⁴⁹.

Another difficult subject to tackle is that it is not guaranteed the access in equal conditions of all persons who fulfill the qualifications for it. The National State has informed to the Committee that such a programme would benefit 2 million people. Nevertheless, it is important to emphasize that by the limitation of the financial resources, it is granted only to a smaller percentage than the predicted one. It would be advisable for the Committee to notice that homes with female heads are 30% of the total and that 70 % of them are poor. Nevertheless, the State has not established in the implementation of this programme any mechanism that contemplates this circumstance. Respect to the participation of women in the decision-making in this plan, the State informed on the subscription of an agreement of interinstitutionally integrated cooperation between the National Council of Women and the Ministry of Labor, Employment and Social Security. Nevertheless, we must inform that in this agreement the specific participation of women NGOs is not contemplated in the Consultative Councils. So it is not ensured the participation of civil society members who can contribute criteria, elements and specific information on the condition of women in the country, which are essential to make possible an equitable distribution of that social subsidies. It is not either possible to check up the organization and coverage of this plan.

6. Other issues of concern

Finally, and as it happens anywhere in the world, in the labour market, women continue segregated to certain branches and occupational categories, related to their roll of mother and care taker, and to positions of smaller hierarchy, prestige and remuneration. This, although the total university enrolment has become more feminine (though by a small margin). The women become qualified but they do not manage to reflect their qualification in the access to better jobs. The traditional "crystal ceiling" is perpetuated due to the lack of action of the State to revert it; and it is easy to anticipate that, in the days of high unemployment rates, it will be increased.

Also, fatherhood license are not regulated to allow equal sharing by men and women as well as the childbearing or their newly born or ill children.

On the other hand, 34% of the children of up to 5 years of working mothers go to nurseries⁵⁰; and only a minority of them has a service provided or financed by their employees, trade unions and social organizations. In the rest of the cases, the working women must pay the nursery or get cooperation from a relative in the care of the children⁵¹. With the present coverage, ç`the cost´ of the infantile care is 0.24% of the wage of the total staff. To cover all registered employees would represent 0,70%. In addition, the resources could come from sources that did not increase the cost of work⁵².

⁴⁷ Less than U\$S 40.

⁴⁸ It is known that below this line there appear serious nutritional problems, since it contemplates the basic caloric contribution for the life maintenance.

⁴⁹ Cf. Figures from INDEC, published in Clarin newspaper on 9th of June of 2002.

⁵⁰ BERGER y SZRETTTER, "Argentina, labour cost of the protection to maternity and child care" OIT 2001.

⁵¹ BERGER y SZRETTTER, "Labour Cost for sex in Argentina", August 2000, mimeo.

⁵² *ibid.*

VII.THE RIGHT TO HEALTH WITHOUT DISCRIMINATION (ARTICLE 12)

1. General Overview :

The access of the Argentine population in general to health services, being public, of the social security or private, is limited severely due to the present economic crisis and to the devaluation of the national currency. The increasing unemployment that has been occurring since 1994, meant, for great masses of population, the loss of the -health care coverage, and at the same time it worsened the services available. The public health services cannot meet the needs of the increasing demand, originated in the middle class groups that can no longer afford the cost of private medical insurances. In addition, by the crisis of the state, they lack supplies of any type. Social security services are on the brink of bankruptcy. Health Care compulsory coverage list of benefits that must be provided by social security and private health insurances—, was modified and trimmed. Private health care services increases its costs.⁵³

In this critical, context women are specially affected, either in the health care of their own health, or the one of their ill children or relatives, who they frequently care. Within the social security, it is of great concern PAMI the national social security for the retired people, that covers elderly people in which women predominate Due to a persistent bad administration throughout 25 years derived in the interruption of services and medicines supply. This is the other aspect of the emergency in the social security, in which the great majority of retired people perceive a salary equivalent to 50 to 70 U\$S.

Also it is worrisome that some important social security institutions such as the Institute of Medical Care (IOMA), discriminate women beneficiaries not allowing them to include their husbands or partners, although males and females beneficiaries contribute equally, men enjoy that benefit exclusively. In addition this social security institution does not allow to incorporate homosexual male and female couples.

2. Sexual and Reproductive health:

The Argentinean Government did not disseminate recommendations made by the Committee of Human rights in 2000, reason why the same ones continue to have total effectiveness: *It is of great concern to the Committee that the criminalization of the abortion dissuades doctors even to apply this procedure without judicial warrant when the law allows it for example, when a clear risk for the life or the health of the mother exists or when the pregnancy is a result from a rape of a woman mentally disable. The Committee also expresses its concern about the discriminatory aspects of the laws and public policies, that force poor women and those who live in the countryside to practice illegal and unsafe abortion*. The Committee recommended that the State takes measures to apply at national level legislation similar to the one passed in the City of Buenos Aires in July 2000, *"thanks to which advising will occur on family planning and contraceptives will be provided with the purpose of giving the women true alternatives"*. *The Committee recommends in addition that there should be a periodic revision of laws and public policies related to family planning. Women must be able to make use of family planning methods*

⁵³ Cf. CLADEM Argentina, Argentine Section in the Regional Diagnosis on Sexual and Reproductive Rights, CLADEM, (in press) in www.cladem.org.

and to the sterilization procedure and, in cases in which abortion can be practised legally, all obstacles will be avoided to do so. Legislation must be modified to authorize abortion in all cases of pregnancy due to rape ".

Historically, the Argentinean women have seen very affected their right to decide free and responsibly whether to have children or not, how many, when and how to have them, and in spite of the CEDAW and other instruments of human rights the situation has not been modified. The State, with a persistent pro-natalist and sensible tradition to the pressures of conservatory sectors inside and outside of the Catholic Church, did not manage to establish enough inclusive and persistent public policies to guarantee sexual and reproductive rights⁵⁴. This has not been modified since 1997, date of the last report to the CEDAW Committee.

A national law of sexual and reproductive health was not still passed, due to the resistance of traditional sectors that exert great pressure on parliamentarians and politicians. Two projects were passed in the House of Representatives. In Senate one lost parliamentary state in December of 1997, and the other still waits for its consideration.

As regards the provincial or municipal laws and/or decrees, they exist in less than half of the provinces of the country: City of Buenos Aires (2000) Cordoba (1996), Chaco (1996), Chubut (1999), La Pampa (1991), Mendoza (1996), Misiones (1998), Neuquen (1997), Rio Negro (1996), Jujuy (1999), Santa Fe (2001), Tierra del Fuego (2001), La Rioja (2000) (with a parcial veto)⁵⁵. In the Province of Buenos Aires, where almost a third of the population of the country resides, there is no law, although there was a limited program, that at present has been interrupted. Although they are heterogeneous, all provincial laws create programs or services of advise, attention and provision of contraceptive methods and care of reproductive health. In general they do not establish interactions with the educational system, nor with the social security. The municipalities of Rosario, Mendoza, Cordoba and some few of Greater Buenos Aires counties have on programmes of this type⁵⁶. Most of them exclude the Intrauterine Device –IUD- from contraceptive methods which are provided on a free basis as it is considered abortive.

It's alarming the recent jurisprudence of the National Supreme Court (March 2002), prohibiting the manufacture and sale of one of the pills of emergency contraception (this point is extended in the chapter of equality before the law, section 15 of the CEDAW). Due to the resistance of certain sectors, emergency contraception usually not provided in public health services, only in the City of Rosario (Prov. of Santa Fe) is offered.

The mere existence of laws does not guarantee the effective enjoyment of the rights. In spite of the mentioned legislation⁵⁷, it can be stated that the provision of suitable attention: nonsexist, based on good treatment and informed consent to men and women, in conditions of equity by sex, age and socioeconomic level, are not guaranteed in Argentina. The availability of services varies according to the situation of each province or

⁵⁴ ZURUTUZA, C., "Law as a warranty of the sexual and reproductive rights: Utopy or strategy?". In Healthy women, free citizens, by Bianco, M. and others, CLADEM-FEIM-FORUM DDSSRR-UNFPA, Buenos Aires, 1998. Page 45.

⁵⁵ Source. Surveyance and systematization of CNM, 2002.

⁵⁶ In general, they are focused on offering information, advising, provision and/or positioning of contraceptive methods, controls of health, early detection of STD and genital breast cancer, information and treatment of the infertility. There exist less institutions that promote cross-sectional actions with the educative system (sexual education in the schools) and training of the health personnel.

⁵⁷ Legislation that, on the other hand, covers less than half of the population, and usually includes partially the different aspects of the subject.

municipality. On the other hand, the increasing social inequity still aggravates even more this flaw⁵⁸. If more than 50% of the population is nowadays under the line of poverty, we can conclude that most of Argentine women live in a situation of serious unprotection of their health, specially sexual and reproductive one. This situation affects more seriously youngest and poor women with low education, and the rural population. Another aspect that aggravates the unprotection of sexual and reproductive rights is the persistence of cultural patterns that, in Argentina, still maintain sexuality like a taboo subject, in particular for women of popular sectors.

According to data of the National Institute of Statistics and Census of 1997, the percentage of sexually active women between 15 to 49 years of age of the main cities that used contraceptive methods varied between 53.2 and 64.6%. Among those with Unsatisfied Basic Needs (poor), this rate was reduced to 43.5% to 54.1%. This indicates a low level of use of contraceptives methods among poor women, that the economic crisis and the absence of programs of reproductive health have worsened.

3. Subjects of special concern:

a) Voluntary sterilization:

The tie of tubes and/or vasectomy, specifically are prohibited in most of the provincial and local laws of reproductive health⁵⁹. Also, the Penal Code considers it a crime, classifying it like very serious injury. The Medical Doctors regulation law follows the same line, except in case of women life danger⁶⁰. It is possible to emphasize recent advance in the Province of Rio Negro, where medical doctor regulation law allows surgical contraception such as tie of Fallopian tubes and vasectomy at request of the patient in every and all public or private health care institutions⁶¹.

The decisions on the own body are of private nature and the State should not have to interfere in them, whenever health agents act responsibly providing information and assuring informed consent. According to what has been stated beforehand, it is necessary to derogate all type of legislation that prevents voluntary sterilization as to allow it does not mean to establish it in an obligatory way⁶².

b) Abortion:

This is another subject of concern in Argentina by its high incidence. Abortion continues being illegal in Argentina: one is classified in the Penal Code like a crime against the life of people⁶³. Although in 1997 the Committee recommended to revise the legislation referred

⁵⁸ "The poorest and youngest women are those who have less access to the contraception, and therefore they are the ones who are loaded with the greater costs, in terms of mortality and emotional and psychic costs". (Cf. Silvina Ramos, CLARIN newspaper, 19 of May 2002).

⁵⁹ The provincial laws and municipal regulations establish that the contraceptive methods that will be provided by the programs of reproductive health should be "temporary and with the ability to be reversed" (Neuquén, Mendoza), or "not abortive" (Cordoba, Chaco). As therein established in the project approved for the City of Buenos Aires.

⁶⁰ ZURUTUZA, C., "Women and reproductive rights: Reflection and fight for a new society" in *Summits, Consentus and later...*, Regional Seminar on Female Human Rights. CLADEM, Lima 1996.

⁶¹ Laws 3059, 3448 and 3450.

⁶² Cf. Chapter "Argentina", in Women of the World: Laws and policies that affect their reproductive lifes- Latin America and the Caribbean, Centre for the Legislation and Reproductive Policies (CRLP) and an Study for the Defense of the Rights of Women (Demus) 1997, p.24.

⁶³ Penal Code, Book II, title 1-Crimes against people, Chapter 1- Crimes against life.

to abortion, there is no action in this sense. On the contrary, in 1998, by presidential decree, the "Day of the Child To be born" (25 of March of every year)⁶⁴ was created. The Plan of Action of ICPD+5 had not advanced in the application of paragraph 63 iii (,1999), in which " the governments are urged to train the personnel and to adapt the health care services to take care of abortion complications in countries where abortion was not legalized."

Today more than ever, by the deepening of the crisis, women use abortion by lack of public policies that guarantee the access to contraception⁶⁵. As it was presented in previous information, and according to official data, it is estimated that in Argentina, there are around 400,000 annual abortions (Report CNM 2000). According to the INDEC 37% of the pregnancies end up in abortion. Complications of abortion are the first cause of hospitalization in gynecological services⁶⁶. As it is an illegal practice there are not reliable statistics so research had many obstacles⁶⁷.

Nonpunishable abortion⁶⁸ is not made suitably in every day life. Doctors do not always make the legally allowed abortions in time and form, and in many cases they ask legal authorization, when such a procedure is unnecessary. The penal act is confusing and restrictive, and has been interpreted in a more contradictory way still by the courts in all levels. Recently, some judges have imposed administrative or economic punishments to doctors who acted accordingly. Others, on the contrary, tried to process women.⁶⁹ The State would have to disseminate the existence of nonpunishable abortion and the necessity to act consequently, with the required speed and responsibility.

Penalization of abortion and the lack of an appropriate implementation of the legal exceptions, specially in the case of therapeutic abortion, are clear violations of Section 12 of the Convention as it has been understood by the aforementioned general Recommendation 24 from the Committee of CEDAW in the item 14, last paragraph, which points out: "the access of women to an adequate medical health care finds also other obstacles, like rules that penalize some medical surgeries that affect women exclusively and punish those women who undergo them".

c) *Maternal Mortality and Morbidity:*

⁶⁴ Decree 1406/98. (B.O. 10/12/1998) the ruling recommends to the Secretary of Worship of the Presidency of the Nation, to the Ambassador of the Republic before the Holy See and to the Presidential Adviser for the Protection of the Rights of the Person To be born, the organization of the events for the spreading and celebration of the day of the child to be born on the next 25 of March of 1999.

⁶⁵ "Due to the lack of access to an education on responsible procreation, these women use the abortion as a familiar planning method", according to Dr Emilio Carlos Gambaro, head of the department of tocogynecologist of the Paroissien Hospital (La Matanza, Greater Buenos Aires)(Cf. La Nacion Newspaper), 27 of May 2002).

⁶⁶ CLARIN newspaper, 11 July 2000, p.40.

⁶⁷ Walter Barbato, explains that to make investigations on the practice of the abortion "there is a hiding of information", and that the weight of the illegality and the lack of registration are important obstacles, (Cf. CIUDADANO Newspaper -Rosario - 18 of October of 1999).

⁶⁸ The Penal Code establishes two causes of legalization: for therapeutic reasons and for eugenic reasons, whenever made by a graduated doctor with the consent of the woman.

⁶⁹ Some isolated sentences exist that, without pronouncing themselves on the requested matter, have established that the demand for authorization before the judicial entity does not correspond, because it is not considered by law.

Rates of "maternal death"⁷⁰ continue high in Argentina (event women NGO's have been denouncing for more than 20 years) in relation to other health indicators of the country, and also in relation with other countries of the region. At national level, for the year 2000, last data available in the National Ministry of Health, it is 39 per 100,000 children born alive; it stays similar to the registered one in 1997. There are still serious differences according to age, the socioeconomic and education level. The more vulnerable age group is the one 40 to 44 years (139 of 100,000 born alive), followed closely by minors of 15 years old⁷¹ (122 each 100,000 born alive ones). In the year 2000, for the first time, maternal deaths in minors of 15 years old were registered⁷². As far as socioeconomic level, for example, in the province of Jujuy is of 102 per 100,000, in the province of Chaco of 132 per 100,000 and in the province of Formosa of 177 per 100,000⁷³.

The recommendation of the Committee with respect to "increase the efforts to reduce Maternal Mortality and Morbidity" was not taken by the State during this period. By the contrary it would get worse, in particular among poorest women and less educated. When causes of maternal deaths are analyzed, it is observed that 29% were due to abortion, 15% to sepsis and other complications of puerperium, 15% to other direct obstetrical causes, 14% to hypertension and edema (toxemia), 10% to indirect obstetrical causes, 9% to hemorrhages and 8% to previous placenta, loosening or hemorrhages prechildbirth. It is evident that 90% of these deaths are avoidable and that, as indicated by specific studies⁷⁴, the percentage due to abortion would increase if there were data adjustments including information of clinical records.

Another indicator of abortion as maternal deaths cause is the proportion of hospital admissions due to abortion complications in public hospitals. Although data updated at national level do not exist, previous studies indicate an increase of abortion complications between 1980 and 1990⁷⁵. In 90s one of each 4 women admitted to a public hospital were due to abortion⁷⁶. Experts and special studies estimate an under registration of approximately 50% due to mistake in causal death certificate, and that women who abort hide the fact⁷⁷. Another aspect that indicates deficiencies in the health care of pregnancy and childbirth is the high index of toxemias, avoidable cause with a suitable prenatal control, even made by paramedic personnel⁷⁸. Since 70%⁷⁹ of maternal morbimortality

⁷⁰ Health and Social Welfare Ministry, Department of Statistics and Health Information, in Vital Statistics and Basic Information 2000".

⁷¹ Cf. Clarin Newspaper, Statistical Annuary of the Argentine Republic 1999, based on information provided by INDEC.

⁷² BIANCO, Mabel, "Trade, Liberalization and Sexual and Reproductive Health in Argentina, March 2002.

⁷³ That is the reason why CHECA and ROSEMBERG propose to modify the concept "maternal mortality when the cause is the abortion for the name "death for pregnancy". Cf. CHECA S., and ROSEMBERG M. "Hospitalized Abortion a question of reproductive rights, a problem of Public Health", Bs. As., 1996. Ed. El cielo.

⁷⁴ A Study of the Ministry of Health of the Nation on the maternal deaths in the City of Buenos Aires, correcting the data on the basis of clinical histories, observed a subregistry of 30 to 50%. (Cf. BIANCO, Mabel, *For a maternity without risks*, FEIM/UNICEF, 1993).

⁷⁵ BIANCO, Mabel. *Fecundity, Health and Poverty in Latin America, The Argentinean Case*, FEIM/UNFPA, 1996.

⁷⁶ CHECA, S and ROSENBERG M., already quoted, 1996.

⁷⁷ Newspaper La Nacion date 27 of May 2002: "only a small percentage of these women recognizes to have made abortion maneuvers, "as they consider them shameful and for fear of the judicial punishment, to undergo retaliation., All this happens because a lot of women are desperate and they realize that they could not prevent an unwanted pregnancy. The fact is that they do not have the means and the education that allow them to decide how many children they will have, if they will be able to feed them or to educate them."

⁷⁸ Bianco, Mabel, "The impact of economic policies on women's reproductive rights and health: The Argentinean Case", in *Risks, Rights and Reforms*, WEDO, March 1999, New York, USA, pages 109-152.

causes are avoidable, and that the country spends a lot of money on health care of abortion complications, it is clear barriers for their solution are not scientific but political⁸⁰.

d) Adolescent Pregnancy :

In Argentina pregnancy in adolescenc⁸¹ continues growing. 15.5% of children born alive are from mothers under 20 years old. The proportion varies in different regions of the country and studies indicate that adolescent pregnancy affect mainly girls/teenagers less educated.⁸² Also it is strongly related to socioeconomic level. The proportion of mothers under 15 years old has increased in the last 5 years: it raised from 0.4% of the total of born alive, to 0.5%. Indicative studies show that in the case of "child mothers" (9 to 13 years of age) they have had children with men who are older than them in at least 10 years (in 80 % of the cases), which relates them with sexual abuse, rapes or including incest.

Persistence of high rates of adolescent pregnancies indicates health care and education institution did not offered knowledge and resources to avoid it⁸³. Cultural patterns that considers female teenagers as the only one responsible of child bearing. It is necessary to include men in childbearing and the raising. To sum up, in Argentina, the limitations persist and increased so adolescents can not obtain information and sexual education and free provision of contraceptive methods.

Sexual education, although included formally in official curricular contents, is not implemented in most schools. Teachers fear to be sanctioned by superiors, and also to possible adverse reactions from religious- oriented families.

e) HIV/AIDS and Sexually transmitted Diseases (STD):

According to data of the Ministry of Health, at the 31 December 2001 AIDS patients are 21.251, of which 22.6% (4057) were women. The ratio males/females is 2.8 men by each woman. This indicates an accelerated growth of AIDS among women, since in 1990, when this ratio was 6.9:1. In men and women heterosexual transmission continued growing ; in women it reaches to 64.2%. The transmission by use of intravenous drugs –IDU- is very high; although it predominates in men (43.4%) in women is 29%. Mother to child transmission corresponds to 6.7% of all patients, it is a high value in relation to other countries of the region, and indicates the high level of HIV infection among women in fertile age in Argentina. If age is considered, women become ill at earlier ages than men. AIDS constitutes the first cause of death in women between 15 and 44 years of age in City of Buenos Aires and the second in Province of Buenos Aires. In all the country it is the third cause of death in women.

⁷⁹ Ministry of Health of the Nation.

⁸⁰ RAMOS, Silvina, "Contributions of the social investigation to the activities of advocacy in the field of the induced abortion in Latin America", *The Promotion and Protection of the Sexual and Reproductive Rights in the Region, final Reporting*, meeting from 14 to the 16 June of 1999 in Santiago, Chile

⁸¹ Clarin Newspaper, interview to Mbel Bianco, `Early Pregnancies it is a reality impossible to ignore., 16 July 2000,.

⁸² GOGNA, Mónica, LLOVET, Juan José, et al., "Challenges of Reproductive Health: Human Rights and Social Equity" in *The Argentina to come*, Aldo Isuani, Daniel Filmus (comps), Norma Editorial Group. Buenos Aires, 1998, page 240.

⁸³ Ramos, S., already quoted, p.99.

It 's necessary to signal the difficulties to develop prevention actions of HIV by the national Government and the provincial ones. In 1997, when project LUSIDA jointly developed with the World Bank began, accomplishment of a mass media prevention campaign was included. This one only could be executed in 2001, because up to the change of government in 2000, it was impossible to promote condom use, requirement stated in the World Bank agreement. The mass media prevention campaign developed from May to December 2001 incorporated specific messages for women prevention as well as in the hot line established since August 2000.

Although National AIDS law establishes the obligation of the National Ministry of Health to provide free treatment to AIDS patients, conflicts are periodically registered in the continuity of this provision.⁸⁴ In 2002 with the economic crisis and the increase of prices there is an important shortage of supplies that affects many drugs, interrupting the treatments to many of almost the 16,000 people under treatment for AIDS in the Ministry of Health. On the other hand, a study made in 2001 indicated that AIDS mortality between 1998 —when it began to provide the triple therapy and 2000—, did not diminish mortality in women, but it really worked on men and children. This indicates the necessity to adopt special measures for women health care to guarantee their continuity and focus on approaches about their specific problems.

STD's, strongly related to poverty and lack of instruction, are interrelated with cultural patterns that maintain women discrimination. On one side, this appears to be recognized in the discourse but on the other side, their special needs of care are not taken into account. Women have a high vulnerability to STD in heterosexual relations, determined by social, cultural and biological factors.. Women disempowerment in relation to men prevents them from requiring the use of condom. All these factors collaborate to increase so women vulnerability to HIV / AIDS. In popular sectors, the myth stays that women are, by themselves, cause of the infection. In health care services consultation for women is usually discouraged.⁸⁵ The health system covers the antiretroviral medication on a free basis, but periodically problems of supplience, distribution and/or amplitude of the coverage arise. The Argentine State does not make sufficient and effective educative actions nor dissemination to aware men about values on respect, mutual care and shared responsibility to their sexual couples.

4. Proposals:

All the detailed information indicates the lack, shortage or inadequacy of policies and state actions to promote a cultural change on the rights of women about their sexuality and their reproduction, as well as to provide the basic health care services to assure their access to health care. For that reason, respectfully we address to the Committee to ask it is recommended to the Argentine State:

⁸⁴ In the year 1998, a group of NGO, presented a claim for preventive measures so that the Ministry of Health provided the necessary medications for AIDS patients. This proceeding for the protection of a constitutional right that was violated, although appealed by the State, it was given a favorable sentence in all judicial instances. However, these preventive measures are collective and still in force, there have been conflicts in the continuity of the provision in all these years.(Human Rights and access to treatment for HIV/AIDS", case study by UNAIDS /LACCASO, by Bianco,M and als, Bs.As 1999.)

⁸⁵ BIANCO, Mabel. "What services and Who for?", in *Healthy Women, Free Citizens or the right to decide*, FEIM/ CLADEM/ Forum for the Reproductive Rights/UNFPA, Buenos Aires, 1998, p. 87.

- To guarantee the free access to decentralized health care services of high quality (in particular, in poor zones).
- To assure the application, in all the country, of the subsection 63 iii of the Program of Action of the Conference on Population and Development+5⁸⁶.
- To train male and female health agents to provide a humanized health care with gender perspective.
- To program, implement and control programmes of sexual education in schools, in all levels and branches.
- To make mass media campaigns to promote cultural changes and healthful habits in sexuality and reproduction.
- To guarantee in all the country the application of nonrestrictive laws by age or type of contraceptive methods (Including IUD, emergency contraception, voluntary sterilization), that assure especially free access to all the population, including adolescents, with no need of authorization whatsoever.
- To ask the Argentine State not to incriminate abortion.

VIII. EQUALITY OF MEN AND WOMEN BEFORE LAW (ARTICLE 15)

1. Discrimination in the juridical-legal scope

In Argentina, the administration of justice is severely questioned and it is considered that it does not fulfill its mission equally for all its inhabitants. Nevertheless, it is possible to affirm that particularly affected groups are ones with less resources and education, and the wrongly called 'discriminated minorities', among them the women⁸⁷. The jurisprudence on the application of international treaties of human rights incorporated to the National Constitution by Section 75 subsection. 22 in 1994, has had an unequal development according to the rights that each international treaty contains and protects. Thus, in the case of CEDAW, local courts have not applied it in an appropriate and systematic way in legal actions in which the rights of women and gender equality are involved. Also, the National Supreme Court of Justice has not interpreted nor applied CEDAW in any case.

An investigation sponsored by the World Bank made an exhaustive analysis of the jurisprudence in Argentina and pointed out "*the lack of development of a comprehensive body of doctrine related to the gender equality and subjects that affect women. Not only the Court has solved only a few cases in relation to the rights of women and gender equality, but it lacks a significant development of ideas and the conceptualization of relevant subjects for their total enjoyment and exercise. Despite of having decided important cases related to the application of international treaties of human rights in the local scope, the Court has not made a development of the equality and non discriminative clauses nor has applied the Convention on the Elimination against All Forms of*

⁸⁶ Adopted by the Socio-economic Council, E/CN. 9/1996/8, United Nations, New York, 1999. This plan of action consists in the obligation of the States to provide adequate and accessible attention of the non-punible abortion.

⁸⁷ ZURUTUZA C., "Women and Reproductive Rights: Reflection and fights for a new society, already mentioned.

*Discrimination against Women*⁸⁸.

With the intention to clarify what has been expressed, we will include some cases that we consider paradigmatic of this situation:

a) On the nonpunible abortion, that —as seen before— in many cases there is resistance on the part of the health personnel for its practice. In spite of the fact that Argentina admits the exception of the therapeutic abortion in case of risk for the health or the life of the woman, its application is strongly restricted to the narrow interpretations and the moral and religious guidelines of judges and magistrates. The National Supreme Court of Justice only limited to pronounce solely on aspects of procedure and substantive questions have not been treated⁸⁹.

b) Unfortunately the provincial courts are not an exception⁹⁰. A resolution of the Supreme Court of Justice of the province of Santa Fe in the case "INSAURRALDE, Mirta — Provoked Abortion— on Resource of Unconstitutionality" (Expte. C.S.J. N 1105, year 1996) issued on 12 of August of 1998, solved that it did not exist violation of the professional secret on the part of a Doctor who denounced a woman attended in a public hospital with abortion complications, as this person considered that it was in danger the right to life of the unborn. This sentence absolutely does not recognize the right to health of the woman, who when attending in search of medical care with danger of life runs the risk of being criminally denounced. The General Recommendation 24 specifically has established in its section 12 d) that the lack of respect of the confidential character of the information affects both men and women, but it can dissuade women from obtaining advising and treatment and, therefore, to affect her health and well being negatively. Due to that reason, women will be less disposed to obtain medical attention to treat diseases on the genital organs, to use contraceptive methods or to treat cases of incomplete abortions, and in the cases in which they have been victims of sexual or physical violence".

c) It is a clear example a specific case that was presented before the Supreme Court of Justice of the Nation⁹¹, by virtue of a request of interruption of pregnancy by anencephalia of the fetus⁹², diagnosed in the fifth month of gestation. The woman was forced to apply for a judicial authorization due to the refusal of the hospital to perform this practice. The action was presented the 17 October of 2000, having the plaintiff five months pregnancy, and the sentence of the highest court was issued on 11 of January of 2001, being at that moment in a eight months pregnancy. In a resolution with votes divided most of the members of the Supreme Court decided to authorize "...the induction of the birth once the development of the pregnancy assures...the delivery of a child with full possibilities of developing and living"⁹³. In this way, it was based on concepts of respect for the life from the moment of conception, traditional in our law. This resolution, although apparently is favorable to the request of the woman, it is based on conceptions of moral and religious type which do not

⁸⁸ In MOTTA and RODRIGUEZ: "WOMEN AND JUSTICE. The Argentinean Case", World Bank, pages 102-103.

⁸⁹ AUCIA, Analía y JURADO, Mariana, *Survey of the Argentine jurisprudence on sexual and reproductive rights*, mimeo, Institute of Law, Gender and Development, Rosario, 2002. See also CABAL, "Argentina", Chapter 1 of the Book *Body and Law: Legislation and Jurisprudence in Latin America*, TEMIS, 2001, p.93.

⁹⁰ Idem pages 96, 97.

⁹¹ "T.S. vs Government of the City of Buenos Aires", published by J.A. Magazine 6242 of April 18, 2001.

⁹² The anencephalia is one of the disorders of the formation of the brain which provoked by the failure of the embryonic development at early stages of the mechanism of closing of the neural tube called the tube of dorsal induction.

⁹³ Cf. Votes of Dr. Moliné O'Connor, Fayt, Belluscio and López.

take into consideration the elementary human rights recognized to women by our legal system. The magistrates, in spite of knowing that the diagnosis of anencephalia means null viability in the extrauterine life, dictated their sentence as if there existed a collision of rights between the unborn and the woman, and making sure to arrive at 8 months of pregnancy to make possible `the delivery of a child with total possibilities of being developed and of living´. We truly believe that the Supreme Court does not respect the right to the health of the woman, who is clearly affected in her psychic health, only caring specifically on the life of the "child to be born"⁹⁴.

d) The prohibition of emergency contraception medicine dictated by the National Supreme Court in the case `Portal de Belen —Civil nonprofit Association— versus National Ministry of Health and Social Welfare on shelter", in contradicts women human rights protected by CEDAW article 12 In the pass sentence the 5 March 2002, the Supreme Court ordered to the National Ministry of Health and Social Welfare, National Food, Drugs and Technical Administration— to avoid the authorization and prohibited the manufacture, distribution and commercialization of "Imediat"(emergency contraception medicine). Although the decision turned to be abstract since it was withdrawn from the market by the pharmaceutical company due to a new one, this decision implies the reaffirmation of criteria already ruled by the same court with respect to:

- 1) the beginning of the human life since conception
- 2) the right to the human life as a preexisting natural right to all positive legislation. In fact, the Supreme Court considers human life begins since fertilization due to the existence of a human being.

However, the Court opposed to this drug without making an exhaustive and serious research on the matter, as it states the action of this drug `constitute an effective and imminent threat to the legal right of life´ and adds that `any method which prevents the nesting of the egg should be considered abortist⁹⁵. Such arguments are wrong, as this drug action prevents fertilization so the ovum did not meet with the spermatozoon; so it is nothing to nest in the uterus,.

e) Another sentence in first instance of Buenos Aires City, 2001 favorably solved a proceeding to protect the human rights presented by three adolescents fathers against the reproductive health law. These three fathers, in their capacity objected this law allowed their teenagers children to access to health care services and provide them of contraceptive methods in public hospitals without paternal authorization, attempting against their parental authority, which is false, since the law does not force the adolescents to these services. Therefore, the exercise of their parental authority is not affected. Luckily,, the proceedings only involves the sons and daughters of these fathers, but obviously it is a controversial antecedent. The legal decision was appealed by the Government of the Buenos Aires City pending its resolution.

f) It is important to point out that there have begun to appear —although limited— signs that some judges and officers (generally of a lower rank) rule with a broad and democratic conceptions. Thus, a female judge of Vicente Lopez, a district in Greater Buenos Aires province, in the present year, before a similar presentation of a group of parents of her

⁹⁴ Idem.

⁹⁵ Latin American Association of Female Investigators in Human Reproduction (ALIRH), Emergency Anticonception, Mechanism of Action, Meeting XVII, Curitiba, Paraua, Brazil, April 27, 2001.

jurisdiction⁹⁶, declared null the proceedings for protection of the human rights on the grounds that this law does not force the use of reproductive health care services,, it does not attempt against the parental authority by the contrary complements it⁹⁷. The Civil Court of San Isidro (Suburbs of Bs. As. province) agreed confirming the sentence of first instance from the female judge of Vicente Lopez, in favor of the decree that prevails in its Municipality that allows minors to receive information on sexual and reproductive education and health care services.

g) A serious case of discrimination against woman based on her sexual orientation must be denounced. Karina Lucero, a civil servant in the province of Chubut since 1999, was separated from her office when her chief found out she is lesbian, and her couple became pregnant. Although the Argentine Homosexual Community (CHA) denounced it on the basis of discrimination in the National Ombudsman Office, soon the subject was sent to the National Institute against Discrimination and Xenophobia (INADI), there has not been an official answer so far on the adopted measures to revert the situation and to find a remedy for the caused violation⁹⁸.

The undersigned NGOs understand that the reviewed sentences also constitute a clear violation on the part of the Argentine State of article 12 of the Convention, since as having been interpreted in the General Recommendation 24 of the CEDAW in sub-section 13, *It constitutes an obligation for the States Members to assure, in conditions of equality between men and women, the access to the services of medical attention, information and education, and it involves the obligation to respect and to protect the rights of women in the matter of medical attention and protect its exercise. The States Members have to guarantee the fulfillment of those three obligations in their legislation, their executive measures and their policies. Also they must establish a system that guarantees the effectiveness of the judicial measures. The breach of the responsibilities arising herein will constitute a violation of article 12'.*

2. International mechanism of protection

Another problem that contributes to the lack of effectiveness of the human rights of women is the resistance of the Senate of the Nation to ratify the Optional Protocol of the CEDAW. Although Argentina signed the protocol, and in 2001 the Government had sent to the Senate the project of the ratification law, in April of the 2002 the Government requested the withdrawal, stating that this kind of instrument attempts against the national sovereignty, that the contraceptive policies would facilitate and that `...there does not exist sufficient grounds for a defense as opposed to the interpretations of the Convention and the recommendations oriented to the promotion of the legalization of the abortion´. On the other hand a decisive action of the Argentine Episcopacy can be noticed, that since mid 2001 exerted pressure on senators to impede the ratification. On the contrary, unfortunately till today civil society, including the women organizations who support the protocol could not present their arguments to Senators. It is an alarming situation that,

⁹⁶ It dealt with the promoted action for protection of a group of catholic married couples that opposed to the application to their children. The female judge expressed in her sentence: " an state policy which seeks to preserve the sexual and reproductive health of the minors does not seem to be unreasonable or violating the rights of the parents exercising the parental custody". It is worthy to mention that the health secretary of Vicente López explained to Clarin Newspaper that the Program of Municipal Sexual Health has started to be applied in a very slow way in the hospitals of the district, precisely for the protection claims presented against it.

⁹⁷ Cf. Clarin Newspaper, June 5th, 2002.

⁹⁸ Cf. Pagina 12 Newspaper, June 10, 2001

before an international instrument on human rights with procedural characteristics, whose main objective is to facilitate the monitoring of the Convention, the Argentine State resorts to seriously harmful concepts of its spirit. In this way, the so mentioned inclusion of international treaties on human rights in the National Constitution (amended 1994) would be without any sense.

In accordance to what has been stated, the NGOs that subscribe this report do respectfully ask to the Honorable Committee to make the Argentine State to ratify the Optional Protocol.

IX. DISCRIMINATION IN THE MARRIAGE AND FAMILY RELATIONS (article16)

1. The inequality in the administration and disposition of goods:

A series of laws exists that violate this article of the Convention. In this sense, the second part of article 1276 of the Civil Code establishes that if it were not determined the origin of the goods or the evidence were doubtful, the administration and disposal of these goods during the marriage correspond to the husband.

Also, article 1302 of the Civil Code establishes solely for the wife with a settlement of marital property the obligation to apply for a judicial authorization, for the acts of disposal or of constitution of real rights, respect to her real estate; and the husband shall have no limitations whatsoever in the same situation.

In the same case we can find the prescription of article 1296 of the Civil Code, that enables the husband to oppose to the settlement of marital property, giving guarantees or mortgages that assure the goods of the woman.

2. The inequality in the age to contract marriage:

A profound inequality is established by the law establishing age of marriage, fixed for woman the age of 16 and of 18 in men. This rule constitutes a discrimination act since the equality principle demands that the restriction of age to contract marriage were identical for men and women.

On the matter the Committee of Human rights in the General Observation number 28 had the opportunity to express that *the minimum age to contract marriage... would have to be fixed by the State on the base of the equality of criteria for men and women*⁹⁹, for considering it a special situation of discrimination against women, because a very low age legalizes certain patriarchal ideas about the marriage and of the roll of women in it. The use of the biological differences between men and women —when establishing different ages— respond to the stereotype of women who raise the children and they are limited to domestic work, whereas it allows men to have a greater amount of years of preparation, education and experience to fulfill the roll of "supplier".

3. The inequality between men and women who separate:

⁹⁹ CCPR/C/21/Rev.1/Add. 10, October 29th, 2000, paragraph 23.

Another one of the most common inequalities between men and women who separate relates to the custody of the children and the consequent standard of living. It is worrisome that there does not exist statistics regards who holds the custody of the children in case of divorce, nor about the way to distribute the property between man and woman. Unfortunately there is lack of precise data on this, since it is easily recognizable that the standard of living of the divorced women diminishes remarkably after a divorce and that this diminution is lower in men cases, who in general lead a life with a higher level compared to the one which they maintained when they were married¹⁰⁰.

With respect to the alimony for spouses and children, the State does not include in its report data on the amount of legal claims filed per year on the subject, how many are solved and with what outcome. This is a subject of main importance since women continue with the main responsibility of child bearing. In many cases they must resort to justice to demand foods, and hire the services of a lawyer. Although, there are no sufficient services of free legal sponsorship which fully guarantee the access to the justice of women who need to claim food for their children. On the other hand, it is not always easy to demonstrate the income of the father because his labor relation may not be legal. The penal processes by breach are long lasting and the number of sentences are very low.

On the other hand, it can be clearly seen that the application of the law which is at present effective continues being faulty. According to data of the Consultant's office of Minors of the National Civil Chamber, only three of each 10 separated women who file a case on alimony for their children against their ex- husbands are able to receive the amount stated; the remaining 70% receives the monthly fee late, badly or never, according to a report made in 1997.

X. OTHER FORMS OF DISCRIMINATION AGAINST WOMEN

1. Discrimination against migrating women:

Although during the century XIX Argentina had a widely receptive immigrant policy,¹⁰¹ in particular respect to European immigration, the National Migrations Law in force allows the systematic violation of the fundamental rights of the immigrants.

The effective Migration Law (Nº 22.439) was passed during the last military dictatorship¹⁰², and violates the right of the foreigners to legal process, the access to the jurisdiction, the right to health, work and education, among others.

Also, an 'industry of the agency' exists nowadays, that prevents the possibility of the immigrants—in particular of those coming from neighbours countries—to regularize their immigratory situation. Even for those who obtain a work contract these proceedings can cost between 500 to 800 \$ on taxes, stamp fees, legalizations, etc. (amount not gathered easily).

¹⁰⁰ AUCIA, A. And JURADO, M., "Survey on Jurisprudence...", already mentioned.

¹⁰¹ It was shaped in law 817, passed in 1876.

¹⁰² The Law 22.439, was passed in 1981. The Direction of Migrations was considered strategic, among other reasons, to fulfill the necessities of the "Cóndor Plan" designed by the dictatorships of Argentina, Chile, Brazil, Uruguay and Paraguay for the joint implementation in those countries of the forced disappearance of people. The migratory laws and mechanisms date from that time and they have been little modified. Cf. LIPSZYC, Cecilia, "Xenophobia against women", already quoted.

In this way, the continuous status of being 'illegal migrants' increases the vulnerability of these groups, they are condemned to be exposed to servilism and slavery in their labor relations. Thus, illegality generates vulnerability, rendering grounds for exploitation, to administrative arbitrariness and police abuse.

A recent report of the National Institute against Discrimination and Xenophobia (INADI), points out that 'From the point of view of the legislation, the first issue that catches the attention in relation to the entrance of foreigners from bordering countries, is the absence of a consistent normative body. Really, the fragmentation of the migratory norm is parallel to the change in the composition of the flows (overseas to bordering) and the transformation of laws into decrees of the Executive Power, that constitute the almost totality of the migratory legislation and such transformation is giving an opposite direction to the original spirit of the Avellaneda Law. At the same time and independently of the precise subjects to which they are directed, a great part of these decrees delegate more power of police in the administrative instances in charge of controlling the entrance and the permanence of foreigners'.¹⁰³

Within the migratory population, women undergo different forms of discrimination that worsens even more their living conditions. In this sense, the new migrations are different from the ones of the previous centuries, because they present the characteristic of having become more feminine by the increasing majority of the women on the totality of the migrants.

The most significant example of immigration having become more feminine is the one of Peruvian immigration, conformed in its majority by women who have entered single to Argentina. With different intensity, it is repeated in the case of Bolivian and Paraguayan women.

According to an investigation made by the O.I.M. (Intergovernmental Organization for Migrations), on the base of a Census made by the Consulate of Peru and some NGO, within Peruvian immigration, more than 52 % are women in active ages, and their majority with a degree on secondary or superior schooling level. Nevertheless, more than 74 % of these women work in domestic service, which makes them feel very concerned, due to their condition mainly of educated women and with labor and professional antecedents of a higher level than the one which they perform in Argentina. In the majority of the cases, they are in charge of the children of the family reason why they participate in the scholastic life,¹⁰⁴ the communitarian life and the programs of maternal-infantile health that are related to their children. On the one hand, it has been stated that the Peruvian women only have differential access to the health center that depend on the "willingness" of the doctors for their assistance.

On the other hand, the services sector is the main source of employment for the migrant women, that is oriented specially to the domestic service and, to a lesser extent, to the

¹⁰³ INADI. National report on migrant women in Argentina. (LIPZIC, Cecilia., Coordinator. Team: PACCECA, M., YANOV, N., DIPP, V.) presented in the World Conference of the United Nations on Xenophobia, Racial Discrimination and other forms of Intolerance, Durban 2001.

¹⁰⁴ In the City and in the Province of Buenos Aires there are legal procedures so that boys/girls without identification papers can enter and leave the educative system in the primary and secondary levels, but it is not possible for the University level. But it is very usual that the headmistresses of an educative institution do not allow them to enrol there, in a clear discriminatory mechanism. In other establishments it has been stated that the psico-pedagogical cabinets transfer them to special schools, simply because they respond to other cultural patterns, fact which provokes a new load on the migrant mothers.

care and attention of ill people, to street sales and to another type of labor activity in the field of the informal work market. Besides they are usually employed as workers of the textile industry, contracted by small and medium manufacturers, who informally contract women, in absolutely precarious conditions¹⁰⁵. These conditions are the ones which expose the migrant women to a greater marginal situation, causing them multiple discrimination, as regards to their sex, to their place of origin and their social class, leading their life in an isolation, uprooting and solitude situation.

As we have already explained, the situation of "illegality" to which many of the immigrants in Argentina are forced prevents them to accede to basic rights, like the health. In October of 2001, the CELS and the Ombudsman took knowledge of two cases of immigrant women with the Acquired Immune Deficiency Syndrome (AIDS), to whom the National Ministry of Health denied the access to Viral Load and CD4, essential to make an integral, suitable and continuous treatment to fight the disease. The Ministry of Health denied based on the Migration Law in force, that established the Ministry not to offer care to those not having the National Identity Card or a certificate evidencing that their migratory condition is regularized, as if this circumstance were of higher priority to the right of every person to accede to such an essential medical treatment. At the same time, both were making the preliminary proceedings in order to gather the necessary papers to apply for a permission to settle down to be presented before the National Migrations Department.

These facts motivated the presentation of two resources for statutory protection against the Ministry, both with a request for preventive measures in order to avoid an unbendable damage on the right to life and on the health of the female patients. In both cases the magistrates immediately sustained the requested preliminary measure, ordering the Ministry to provide an integral, continuous and suitable treatment for the requesting parties. Nevertheless, it was necessary that the judges demand the Ministry to carry out what has been ruled, since when the women attended to fetch the medication, the Ministry refused to give it, unfulfilling the judicial warrant, and adducing the mentioned law. When the Ministry of Health authorized the accomplishment of the required studies and gave the necessary medication, it was too late. In one of the cases ("E.R. F. P and others versus Ministry of Health on Shelter ", file 8709/2001) on 18 of February of 2002 one of the female youngster passed away, just of 23 years of age, leaving a daughter of only a year and a half an orphan, since her husband had passed away due to the same disease.

Also, an increasing xenophobia in the society has been detected, through the continuous attacks on the migrants. A frightening case of xenophobia took place the 10 January of 2001. Marcelina Meneses —of Bolivian nationality— was traveling by train carrying her baby in arms. At a certain moment Marcelina grazed with one of her bags on a man, who reacted violently insulting her and attacking her, finally throwing her out of the train together with her baby; event which provoked them the death. This case has not been totally clarified by the police, and there is suspicious that the railway company tried to bribe one of the witnesses who narrated the facts. As a result of this fact, the Bolivian Movement for the Human rights has pronounced itself organizing a mobilization and expressing `... that we are workers, that there is exploitation and reduction to servitude of our compatriots, and that we demand our women and children be able to go out without being victims of violence and attacks...`¹⁰⁶.

¹⁰⁵ In the City of Buenos Aires, there have been searchings in textile factories where Bolivian women carried out their tasks in absolutely servile conditions.

¹⁰⁶ Cf. Pagina 12 Newspaper, 2 of June of 2002.

2. Refugee Women:

Unfortunately the Argentine State does not provide information respect the situation of the refugee women who reside in Argentina.

Although Argentina ratified the Geneva Convention of 1951 and its protocol of 1967, up today it has not passed a law that rules the protection of the male and female refugee. There only exists a decree of 1985 that creates the Committee of Eligibility for the Refugees, entity integrated by the Ministry of the Internal Affairs and the State Department—together with ACNUR—which qualify the requests of the applicants for Shelter.

It is calculated that in the country there are more than 5000 applicants, 52% of them are women. At the moment there are 2500 approved refugees, 51% of them are women. There does not exist any information about population of their children.

At the moment there are not any public policies which guarantee the physical and mental health of the refugees, only the ACNUR makes an effort and has celebrated an agreement with some hospitals of the Federal Capital City.

The great majority of the refugee women have professional studies; nevertheless they are not granted the opportunity to practice their profession because it is demanded the revalidation of the degree and such proceedings are expensive, tedious and bureaucratic. Many refugees have undergone cruel and inhumane treatments in police stations due to their condition of refugees.

2. Discrimination against women deprived of freedom:

a) Introduction.

One of the main problems on human rights in Argentina, no doubt about it, is the violence that many institutions of the State exert on male and female citizens of the country. In this section, we will talk about the situation suffered by women deprived of freedom in Argentine jails, who suffer manifold violations to their human rights, which constitute a special form of discrimination against women.

Historically women constituted a minimum percentage in prisons total population. Nevertheless lately an important percentage increase of women has taken place on the total amount of the prison population. Thus, taking as an example the total population from Federal Penitentiary System (SPF), in the year 1984 the imprisoned women represented 4.2% of the total of the prison population of the SPF, in 1993 the percentage ascended to 6.2 %; in 1996 it represented 8,66%; in 1997 7,55%; and in 1998 7,95%¹⁰⁷.

On the other hand, the Secretary of Penitentiary Policy and Social Rehabilitation of the National Ministry of Justice and Human rights elaborated in 1999 an executive report in which it is detailed that on an approximated total of 3000 people detained at the disposal of the federal justice, 60% were lodged in dependencies of the Federal Penitentiary System, being 23% of these people women.

¹⁰⁷ Cf. data of the National Registry of Recidivism and Criminal Statistics published in the Internet website of the Ministry of Justice and Human rights.

The sustained increase of the feminine prison population, brought like result a series of violations to their rights that infringe the CEDAW directly, that is to say:

b) Violation of the right to the health in the feminine penitentiary population:

The Minimum Rules for the Treatment of the Inmates¹⁰⁸, state as regards the services of health, that `All penitentiary establishment will have at least the services of a qualified doctor who must have some psychiatric knowledge´ (Rule 22 paragraph 1). Also that `In the institutions for women there must exist special facilities for the treatment of the pregnant inmates, of those who have recently given birth and of the convalescent ones. To a lessen extent, measures will be taken so that the childbirth is delivered in a civil hospital...´ (Rule 23, paragraph 1).

Women deprived of freedom need very concrete medical attention, taking into account the high levels of violence which many of them may have suffered before their imprisonment. In this sense, the inmates, like group, represent a nucleus of high risk with respect to the problems of reproductive health. In other words, the feminine jails require a specific system of medical assistance for the woman, which focuses on the reproductive health, the mental health, the abuse of toxic substances and advising to the victims of mistreatments and sexual abuses. Simultaneously, in different studies it is indicated that the inmates present a greater risk of contracting some type of cancer of the reproductive apparatus and other similar diseases.

Nevertheless, the Argentine State has not oriented public policies to suitably care about the health of women imprisoned. As an example, the gynecological and obsterics services existing t in the halting are far from being enough and appropriate, as they should be¹⁰⁹.

The Federal Penitentiary System only has three doctors for the care of all inmates. Although in some cases males or females are taken to municipal hospitals so they are assisted there, we should indicate that often a violent situation of discrimination is generated towards these people, on the part of the personnel of the hospital.¹¹⁰

c) The HIV/AIDS and women in jails:

It is very worrisome that in the prison facilities of Argentina the advisable measures are not taken to make both an effective prevention campaign against the HIV/AIDS and a suitable treatment against the infection.

Thus, we can indicate —among other cases— that in Argrentinean prissons no provision of condoms occurred. In 2001 for the first time due to an agreement between the Ministry of Health and the Justice Ministry, provision of condoms as well as training on HIV prevention was done in one National women prison. Since December 2001 this program

¹⁰⁸ Adopted by the First Congress of the United Nations on Prevention of the Crime and Treatment of the Offender, held in Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of 31 of July of 1957 and 2076 (LXII) of 13 of May of 1977.

¹⁰⁹ RODRIGUEZ, Marcela and HONISCH, Paula. "Situation of women in the penitentiary system", Human rights in Argentina, Annual Report 2000, CELS, EUDEBA, Buenos Aires, 2001.

¹¹⁰ RODRIGUEZ, Marcela and HONISCH, Paula. "Situation of women in the penitentiary system", mentioned.

was interrupted. The lack of condoms distribution demonstrates a clear omission of HIV prevention, considering the amount of female inmates that maintain conjugal visits. On the other hand, concrete measures are not adopted either to avoid some of the transmission factors that are specially involved, especially in the case of the maternal breast-feeding, and "loan of breasts"¹¹¹.

On the other hand, there is a great defect in the information on the prevention and transmission mechanisms, not only on the part of the inmates but also on the members of the penitentiary personnel. In some cases, only the internal ones infected are the ones who know certain risks (e.g. vertical transmission), and in general some flaws about the information are noticed (e.g. buccal hygiene and oral sex).

d) Abusive Treatments to women who go to the jails:

Women who go to pay visits on their relatives and couples deprived of freedom are subject to undergo the abuses of the guards, abusive controls, insults and constant extortion. Each woman is subject to anal and vaginal examinations on the part of the guards on duty, no matter the age or the health condition. Thus, they must bear examinations, rumpling and humiliations and get on a long queue, loading food, clothes and basic needs articles. They are intimidated so that they do not denounce any situations, saying to them that the retaliation will be on their relatives and couples.

This troublesome issue was object of the presentation of a file before the Inter-American Commission of Human rights, the one that in its Report N° 38/96 (case 10.506) the 15 October 1996 determined that `when imposing an illegal condition to the accomplishment of the visits to a penitentiary institution, without having a judicial warrant nor offering the appropriate medical guarantees and when making controls and inspections under those conditions, the Argentine State has violated the rights of the woman and her daughter as therein stated in articles 5, 11 and 17 of the Convention in relation to the section 1,1 in which it has determined that the obligation of the Argentine State is to respect and to guarantee the plenary and free exercise of all the rights recognized in the Convention ´. For that reason, the Inter-American Commission recommended the Argentine State to adopt the legislative measures or any other proceedings which may be considered appropriate for the accomplishment of the obligations established in the Convention.

Nevertheless, having passed more than five years of that resolution, the Argentine State has not put into practice these recommendations. Modifications to the normative frame have not been made nor there have been introduced any mechanisms or suitable technical means to replace the manual search. These inspections continue being made in the same abusive conditions which violate the human rights of women.

Buenos Aires, July 2002

¹¹¹ PLAT, Gustavo; FILIPPINI, Leonardo and PLAZAS, Florencia, "AIDS and jails from the rights perspective, in the Center for Social and Legal Studies (CELS) - Project LUSIDA, the HIV/AIDS in the federal penitentiary system. Change of habits and practices for the correct prevention and treatment", Buenos Aires, 2002 (in press).