



HUMAN
RIGHTS
WATCH

A CASE FOR LEGAL ABORTION

The Human Cost of Barriers to Sexual and Reproductive Rights in Argentina



A Case for Legal Abortion
The Human Cost of Barriers to
Sexual and Reproductive Rights in Argentina

Copyright © 2020 Human Rights Watch

All rights reserved.

Printed in the United States of America

ISBN: 978-1-62313-8462

Cover design by Rafael Jimenez

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.hrw.org>



A Case for Legal Abortion

The Human Cost of Barriers to Sexual and Reproductive Rights in Argentina

Summary	1
Recommendations	8
To the President of Argentina:	9
To the National Health Ministry:	9
To the National Administration of Drugs, Foods and Medical Devices (ANMAT):	12
To the National Congress:	12
To the National and Provincial Justice Systems:	13
To Provincial and Municipal Governments:	13
To Provincial Congresses:	15
Methodology	16
Terminology	17
Background on Argentina’s Legal Framework	20
Legal Framework.....	20
The National Protocol for Legal Abortion Care.....	23
Proposals for Reform	26
Abortion Data in Argentina.....	28
The Impact of Pregnancy in Adolescents and Girls	31
Barriers to Access Legal Abortions	35
Lack of Access to Free Contraception	35
Lack of Access to Information	38
Arbitrarily Imposed Time Limitations.....	40
Service-delivery Barriers	42
Restricting Medical Abortion.....	43
Economic Barriers to Legal and Safe Abortion	47
Mistreatment by Health Providers	48
Restrictive Interpretation of Legal Grounds.....	51
Unlawful Invocation of Conscientious Objection.....	53
Criminalization of Abortion	56
Covid-19’s Impact on Access to Abortion.....	62

Legalization of Abortion is a Human Rights Imperative.....	65
Right to Life	67
Right to Health.....	70
Right to be Free from Torture and Ill-Treatment	72
Rights to Equality and Non-Discrimination	74
International Law in Argentina’s Constitution	76
Acknowledgments	77

Summary

When the Argentine Senate narrowly rejected a bill to decriminalize abortion in 2018, the country missed a historic opportunity to advance sexual and reproductive rights. Rejection of the reform has left women, girls and pregnant people in Argentina, particularly those who are low income and live in rural areas, with limited access to abortion, seriously undermining their lives and health. The Covid-19 pandemic and the resulting lockdown create new barriers for women and girls to exercise their sexual and reproductive rights.

A nearly century-old “exceptions model” largely bans abortion in Argentina. Section 86 of the 1921 criminal code allows three exceptions to an otherwise blanket criminal prohibition. Abortion is allowed only when a pregnancy endangers the life or health of a woman, girl, or pregnant person or when it results from rape. In all other circumstances, abortion is banned and punished. The criminal code imposes prison sentences of up to 4 years on women who self-induce or consent to an abortion and up to 15 years on anyone who provides them.

The 2018 draft bill, proposed by the National Campaign for the Right to Legal, Safe and Free Abortion, a coalition of nongovernmental organizations throughout the country, would have largely done away with the exceptions model and decriminalized abortion. It would have granted anyone who becomes pregnant access to abortion for whatever reason in the first 14 weeks of pregnancy. After 14 weeks, the exceptions model of section 86 would have remained in force, but with an additional exception when the fetus has serious complications incompatible with life outside of the womb.

The debate in Congress was, highly contentious throughout the country, reflecting a deep rift in Argentine society. The green scarves of pro-choice champions and, to a lesser extent, the light blue scarves of opposition groups colored the streets, as demonstrations grew. The debate took over dinner-table conversations among families and friends. On June 13, 2018, the 257-member Chamber of Deputies approved the bill, moving it to the Senate. On August 8, the 72-member Senate rejected the bill by a seven-vote margin, with three abstentions.

While the rejection was a setback for human rights in Argentina, a broad range of experts and civil society representatives had participated in the Congressional debate, shedding new light on the need for access to safe and legal abortion. The discussion also exposed the fact that even pregnant people whose lives or health are in danger, or whose pregnancies resulted from rape, are often unable to obtain a safe and legal abortion under section 86 due to multiple barriers restricting their rights.

Authoritative interpretations of international human rights law establish that denying women and girls access to abortion is a form of discrimination and jeopardizes a range of human rights. Key international human rights are at risk when abortion is illegal or inaccessible. In this report, Human Rights Watch documents obstacles to access legal abortion that reveal that the “exception model” currently in place is far more restrictive in practice than what is allowed under the legal system.

Broad criminalization of abortion creates several obstacles to pregnant people seeking access to abortion, including lack of public information about the scope of the legal grounds for abortion, particularly regarding the health exception; unnecessary hurdles imposed by health facilities, such as illegal requirements that parents, partners, or judicial or child protection authorities authorize access to abortion or contraception; arbitrary waiting periods imposed by health facilities; and the illegal requirement of police reports or to obtain a court order to proceed with an abortion under the rape exception.

In response to Covid-19, Argentina’s government imposed a mandatory, nationwide quarantine on March 20 that limited mobility except in very specific circumstances.¹ The lockdown, which has been extended several times although local authorities gradually lifted certain restrictions, has forced many women and girls to stay at home, which could delay the detection of pregnancies and the request for legal abortions, especially for girls and adolescents.²

¹ Argentina National Government, “Social, Preventive and Mandatory Lockdown” (“Aislamiento Social, Preventivo y Obligatorio”), March 19, 2020, <https://www.boletinoficial.gob.ar/detalleAviso/primera/229113/20200512?busqueda=2> (accessed May 12, 2020).

² The “Social, Preventive and Mandatory Lockdown” was extended several times by an executive decree. “What measures is the government taking?” (“¿Qué medidas está tomando el gobierno?”), Argentina National Government, accessed May 12, 2020, <https://www.argentina.gob.ar/coronavirus/medidas-gobierno>.

Human Rights Watch research globally shows that limitations on travel and transport create further barriers for women and girls to access healthcare, abortion, and post-abortion services in a timely manner, as abortion-services are limited and not available in every health facility and hospital. This is certainly the case in Argentina, where given existing barriers described in this report, access to abortion will be even harder given the lockdown implemented by the government. Furthermore, the need to visit multiple health centers and travel sometimes for hours to obtain access to sexual and reproductive services multiply the risks of contagion.

In researching this report, Human Rights Watch interviewed five women and one girl who had tried to access legal abortion in Buenos Aires city and several provinces between October 2019 and February 2020. For many, the antiquated “exceptions model” of section 86 had proven an insurmountable barrier, making even legal abortion in Argentina difficult or inaccessible. We also documented 13 additional cases through interviews with 24 health providers, social workers, activists, and lawyers who had supported women and girls seeking abortions, and supporting documentation.

Access to legal abortion and post-abortion care after an illegal procedure depends heavily on the person’s socio-economic background and where they live. In some instances, health institutions arbitrarily imposed gestational limits on accessing legal procedures. In other cases, healthcare providers invoked conscientious objection in areas of the country where no effective referral mechanisms exist and other meaningful options were not available. In other cases, lack of access to safe and legal abortion methods or lack of nearby health facilities offering abortion made it harder for people to access abortion in a timely fashion.

Women, health professionals, and feminist activists told Human Rights Watch that fear of legal consequences, including criminal prosecution, and stigmatization deter pregnant people from seeking—and health professionals from providing—abortions, even when requirements for an exception under section 86 are met. Nineteen women, girls, activists, and health providers we interviewed had encountered abuse and mistreatment in their efforts to obtain or provide safe abortion and post-abortion care. This included cruel behavior and humiliation by healthcare providers, denial of access to or refusal to provide legal health services, and violation of medical confidentiality in health-care settings.

Argentina’s current criminal code has created an unworkable model. Five of Argentina’s 23 provinces³ have neither promulgated their own regulations for access to legal abortion nor adhered to the regulations adopted by the National Health Ministry. These regulations include technical guidelines and protocols adopted since 2007 and updated in 2010, 2015 and finally 2019 with the “National Protocol for Comprehensive Care of People Entitled to Legal Termination of Pregnancy,” the first to become a Ministerial Resolution.⁴

The lack of clear and consistent regulations across the country results in a patchwork of practices that disproportionately harm pregnant people of limited resources or with less access to information about their rights, exposing them to health complications or even death from unsafe abortions, because it forces them to seek the procedure outside the scope and regulation of the state.

Moreover, criminalizing abortion does not prevent pregnant people from ending unwanted pregnancies. Criminalization of the procedure does make it difficult for governments to monitor and ensure reliable data on abortion. Argentina does not systematically track the total number of abortions performed each year. Using a complex methodology based on data from 2004 and 2005, a study has estimated that between 371,965 and 522,000 abortions are performed annually. This estimate does not specify how many are unsafe or performed outside of the legal exceptions.⁵

³ Information provided to Human Rights Watch by the National Health Ministry, February 12, 2020. Of the 23 Argentine provinces and the Buenos Aires City, 9 – Buenos Aires, Entre Ríos, Jujuy, La Pampa, La Rioja, San Luis, Santa Fe, and Tierra del Fuego – have adhered to the Protocol for Comprehensive Care of People Entitled to Legal Termination of Pregnancy, which entered into force on December 13, 2019. Two provinces have a protocol of their own: Chubut and Río Negro. Seven provinces – Catamarca, Chaco, Córdoba, Mendoza, Misiones, Neuquén, and Santa Cruz – are below the normative standard of the F.A.L ruling of the Supreme Court of Justice and the 2019 National Protocol. The province of Salta adhered in 2018 to the National Protocol of 2015. Five provinces – Corrientes, Formosa, San Juan, Santiago del Estero and Tucumán – do not have their own regulations nor have adhered to the National Protocol.

⁴ “Non-punishable abortion: Five Changes that the new National Protocol introduces” (“Aborto no punible: los cinco cambios que introduce el nuevo protocolo de Nación”) *La Voz*, 14 de diciembre de 2019, <https://www.pagina12.com.ar/236219-gines-gonzalez-garcia-actualizo-el-protocolo-de-aborto-no-pu> (consultado el 15 de junio de 2020).

⁵ Edith Pantelides and Silvia Mario, “Estimation of the Magnitude of Induced Abortion” (“Estimación de la magnitud del aborto inducido”), *Notas De Población*, no. 87 (2009): 112, http://www.psi.uba.ar/academica/carrerasdegrado/psicologia/sitios_catedras/practicas_profesionales/825_rol_psicologo/material/descargas/unidad_4/obligatoria/pantelides.pdf (accessed January 14, 2020). This estimation was elaborated at the request of the National Ministry of Health using two methodologies: the method based on statistics of hospital admissions for abortion complications and the residual method. With the first method, the number of induced abortions in 2000 was 372,000 to 447,000. With the second method, the estimate for 2004 indicates that between 486,000 and 522,000 abortions took place annually in cities with more than 5,000 people. The National Health Ministry continues to use this estimation to date.

Criminalizing abortion forces many pregnant people in Argentina to seek abortions outside of the national health system, many of which are performed in unsafe conditions. Many of them, particularly those who are poor or live in rural areas, resort to risky self-induced abortions, or seek assistance from untrained providers. The World Health Organization determined that 3 out of 4 abortions performed in Africa and Latin America from 2010 through 2014 were unsafe.⁶ Several international health organizations link unsafe abortions to maternal deaths. Globally, the WHO reports that between 4.7 and 13.2 percent of maternal deaths every year can be attributed to unsafe abortions.⁷

In 2018, Argentina’s National Health Ministry reported 35 deaths resulting from abortion, including ectopic pregnancies, miscarriages, medical abortion, and failed attempt of abortion, representing more than 13 percent of all maternal deaths that year.⁸ Many of those deaths are preventable. The WHO elaborates that most maternal mortality could be avoided through “sex education, use of effective contraception, provision of safe, legal abortion and proper emergency treatment of abortion complications.”⁹

Unsafe abortion increases in the context of criminalization. Unsafe abortion can lead to short- or long-term consequences, including heavy bleeding, infection, and damage to the genital tract and internal organs.¹⁰ The Guttmacher Institute, a global reproductive rights research organization based in the United States, reports that about 40 percent of women worldwide who have a clandestine abortion “experience complications that require treatment.”¹¹

⁶ “Preventing unsafe abortion,” World Health Organization (WHO), June 26, 2019, <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion> (accessed January 22, 2020).

⁷ Ibid.

⁸ Ministry of Health, “Vital Statistics. Basic Information. Argentina – 2018” (“Estadísticas vitales. Información básica. Argentina – Año 2018”), Series 5 No. 6, December 2019, <http://www.deis.msal.gov.ar/wp-content/uploads/2020/01/Serie5Nro62.pdf> (accessed January 15, 2020).

⁹ “Preventing unsafe abortion,” WHO, June 26, 2019, <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion> (accessed January 22, 2020).

¹⁰ “Preventing unsafe abortion,” World Health Organization (WHO), June 26, 2019, <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion> (accessed January 22, 2020).

¹¹ Susan A. Cohen, “Facts and consequences: legality, incidence and safety of abortion worldwide,” *Guttmacher Policy Review*, 12.4 (2009), accessed January 13, 2020, <https://www.guttmacher.org/gpr/2009/11/facts-and-consequences-legality-incidence-and-safety-abortion-worldwide>.

In 2016, 39,025 women and girls were admitted to public hospitals for health issues arising from abortions or miscarriages.¹² Sixteen percent, or 6,164, were girls or adolescents ages 10 to 19. These numbers likely represent only a fraction of the total number of pregnant people who need medical care for health complications from unsafe abortions in Argentina, as they only capture those admitted in hospitals while leaving outside those who sought care in the private health sector, and those who were deterred from seeking care. Women, health professionals, and feminist activists told Human Rights Watch that fear of criminal prosecution and stigmatization often keeps women from seeking post-abortion care when they experience complications from abortions performed outside of the legal exceptions.

The decriminalization of abortion in Argentina is essential for pregnant people to fully exercise their sexual and reproductive rights. Authoritative interpretations of international human rights law establish that denying women and girls access to abortion jeopardizes a range of human rights, including the rights to life, health, freedom from cruel, inhuman and degrading treatment, physical integrity, nondiscrimination and equality, privacy, information, and the right to decide the number and spacing of children.

The Argentine national legislature has ratified the international human rights treaties that recognize these rights. The Argentine Constitution has incorporated the treaties and gives preeminence to international human rights standards for interpreting laws within Argentina. Yet, as long as Argentina criminalizes abortion, pregnant people, particularly those who rely on the public health system, and even more so those who live in provinces that lack or do not implement abortion regulations, will confront unjust challenges in exercising their rights.

Fifteen years after Human Rights Watch first released a report documenting barriers to abortion and post-abortion care in Argentina, our research for this report revealed that most barriers remain, and the rights of women, girls, and pregnant people continue to be

¹² National Health Ministry, “Hospital discharges of the official sector according to age by diagnostic groups” (“Egresos hospitalarios del sector oficial, según edad por grupos de diagnósticos”), accessed January 12, 2020, <http://www.deis.msal.gov.ar/index.php/causas-egresos/>.

denied.¹³ The consequence, we found, has been needless suffering, at times even death—a dreadful human cost preventable through the decriminalization of abortion.

¹³ Human Rights Watch, *Illusions of Care, Lack of Accountability for Reproductive Rights in Argentina*, August 2010, <https://www.hrw.org/report/2010/08/10/illusions-care/lack-accountability-reproductive-rights-argentina>; “Decisions Denied: Women’s Access to Contraceptives and Abortion in Argentina,” Human Rights Watch news release, June 15, 2005, <https://www.hrw.org/news/2005/06/15/decisions-denied-womens-access-contraceptives-and-abortion-argentina>.

Recommendations

Despite sporadic progress, many of the recommendations that Human Rights Watch made to the Argentine government in 2005 and 2010 remain pertinent, particularly regarding access to legal and safe abortion that meet the exception criteria contained in section 86 of the Criminal Code, and post-abortion services in all cases. However, additional steps should be taken to decriminalize abortion.

The following recommendations aim to guarantee the rights of all who can become pregnant to sexual and reproductive health through effective regulation of the healthcare system, accountability for discriminatory practices, and dissemination of accurate information. These recommendations aim at protecting the rights to life, physical integrity, health, nondiscrimination, privacy, liberty, information, equal protection under the law, freedom of religion and conscience, and decisions about the number and spacing of children.

In May 2020, Argentina's government joined dozens of other governments world-wide signing a statement to protect sexual and reproductive health and rights and to promote a gender-responsiveness in the Covid-19 crisis.¹⁴ To fulfill such commitment, in addition to the recommendations detailed below, the government of Argentina should, during the duration of the Covid-19 pandemic, ensure that abortion is treated as essential and time-sensitive health care, and guarantee sexual and reproductive health services, goods, and information in a timely manner, including at the provincial and municipal levels. It should also authorize and make available, in a timely manner, telehealth consultations for anyone who is seeking abortion care or information and adopt measures so these consultations are free or low cost and easily accessible for marginalized groups. The government should also ensure women and girls can access medical abortion from home, and doctors can prescribe the necessary abortion medication via telehealth.

¹⁴ "Protecting Sexual and Reproductive Health and Rights and Promoting Gender-responsiveness in the COVID-19 crisis", Government Offices of Sweden joint press statement, May 6, 2020, <https://www.government.se/statements/2020/05/joint-press-statement-protecting-sexual-and-reproductive-health-and-rights-and-promoting-gender-responsiveness-in-the-covid-19-crisis/> (accessed May 12, 2020).

To the President of Argentina:

- Propose a bill to the national Congress to decriminalize abortion in all circumstances and regulate it in a manner that fully respects the autonomy of pregnant people.
- Work jointly with civil society groups in drafting the bill and seek full support of the draft bill from legislators of various political parties and from civil society groups.
- Guarantee safe abortion services at various levels of health care¹⁵ and, following World Health Organization recommendations, consider broadening the range of practitioners qualified to perform abortions to include nursing assistants, nurses, midwives, non-clinical doctors, among others.¹⁶
- Urge provincial governments to take immediate steps to ensure access to safe, legal abortion and post-abortion services, including by adopting the National Protocol.
- Ensure public information is disseminated nationwide to the public, particularly to women and girls, national and local authorities and health professionals, that clarifies the circumstances under which abortion is currently legal, clearly stating the government's obligation to provide abortion and post-abortion services and detailing where they can be obtained.
- Urge the provincial governments of San Juan and Mendoza to work with their legislatures to repeal laws that prohibit the sale of Misoprostol in pharmacies.

To the National Health Ministry:

- Ensure the National Directorate of Sexual and Reproductive Health (*Dirección Nacional de Salud Sexual y Reproductiva*) has sufficient budget and personnel to work effectively with provincial authorities to guarantee access to sexual and reproductive health practices, including legal abortion, nationwide.

¹⁵ Primary health care centers provide essential health care in an accessible and equitable manner. The objective of the centers is to make a first contact between the patient and the health personnel, and they can, for example, provide outpatient first trimester abortions and, if necessary, refer patients to a hospital or other medical facilities of higher complexity.

¹⁶ World Health Organization, "Expanding health worker roles to help improve access to safe abortion and post-abortion care: WHO launches new guideline," July 29, 2015, https://www.who.int/reproductivehealth/topics/unsafe_abortion/abortion-task-shifting/en/ (accessed January 12, 2020).

- Guarantee access to free contraception, as stipulated in the “Responsible Sexual and Reproductive Health Law” of 2002, ensuring availability of different methods of contraception and training of health professionals, as well as implementing nationwide campaigns to disseminate relevant information on this law.¹⁷
- Extend the coverage of the National Plan for the Prevention of Unintended Pregnancy in Adolescence (ENIA) throughout the country, allocating sufficient funds to ensure its effective implementation.
- Monitor the implementation of foreseeable legal reforms including medical and surgical methods that the WHO considers best practices for safe abortion care in the National Mandatory Medical Program (*Programa médico obligatorio*, PMO), guaranteeing universal access to safe practices.¹⁸
- Expand monitoring through the Federal Health Council (*Consejo Federal de Salud*) of implementation of the Protocol for Comprehensive Care of People Entitled to Legal Termination of Pregnancy throughout the country.
- Work with provincial and municipal health authorities to identify deficiencies and barriers in access to legal abortion in each province and health jurisdiction. In particular, identify:
 - Cases of individual negligence and proactively urge administrative investigations and hold health personnel who do not comply with ministerial guidelines, regulations, or laws on service provision accountable;
 - Systemic conditions, including unavailability or accessibility of abortion and post abortion care, and design and implement solutions to overcome them; and
 - Emergency measures that should be taken to guarantee access to legal abortion for people needing immediate care while systemic reform is underway.
- Ensure the availability of necessary supplies to perform both medical and surgical abortions as required by law in all public health institutions nationwide.

¹⁷ Law 25.673, Responsible Sexual and Reproductive Health Law (Ley de salud sexual y procreación responsable), 2002, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/79831/norma.htm>.

¹⁸ In 1990, the Superintendency of Health Services (Superintendencia de Servicios de Salud)—an autonomous agency within the National Health Ministry—created the Mandatory Medical program (Programa Médico Obligatorio, PMO) that establishes the minimum package of services that all insurance plans (social security and private) must guarantee to their members.

- Develop technical training for safe abortion practices with the best technical standards and work with provincial governments to implement training in all provinces.
- Ensure that all national sexual and reproductive health protocols and provincial protocols and regulations, include the following:
 - A counselling process to determine whether pregnant people planned and want their pregnancies, and a discussion of their options and availability of referrals for psychosocial support when needed;
 - Harm reduction counseling on the safety and risk of different measures used to induce abortion and information on when and how to access post-abortion care for women and girls who may wish to terminate pregnancies but lack access to legal abortion under section 86;
 - Disseminate information and ensure effective implementation regarding guidelines for attending to patients with incomplete abortions or post-abortion complications according to best practices in a prompt, neutral, professional, rights-respecting, and non-discriminatory manner, including a specific requirement that patients not be denied pain management or left waiting as “punishment”;
 - Routine post-delivery and post-abortion contraceptive counseling to ensure all people of reproductive age have comprehensive and accurate information about how to prevent pregnancy; and
 - Availability of psychosocial support services for pregnant adolescent and girls when needed.
- Ensure that all hospital directors, health professionals, and health system personnel receive training on relevant laws, regulations, and technical guidelines on legal abortion and reproductive health and the provisions of the law regarding the criminal liability of public officials who do not fulfill their duties or who violate professional confidentiality.¹⁹ Work with provincial governments to ensure such training in all provinces.

¹⁹ Laws, regulations, and guidelines on reproductive health include the National Law on Sexual Health and Responsible Procreation, the Law on Surgical Contraception, the Law on the Creation of the National Program for Comprehensive Health in Adolescence, and Resolution 1/2020, “Program for the Comprehensive Care of People Entitled to Legal Termination of Pregnancy.”

- Systematically gather data and information on access to legal abortions, availability of contraceptives, and training of health personnel. Analyze and publish an annual report on implementation of protocols, identifying deficiencies.
- Implement a national campaign to disseminate information about the 0800 Sexual Health line, administered by the National Health Ministry, which facilitates access to sexual and reproductive health information and services across the country.
- Ensure the availability of different contraceptive methods, and access to tubal ligation and vasectomies without discriminatory restrictions.
- Promote the approval of all drugs that are nationally and internationally recognized as the best standard for the provision of safe medical abortions, as recommended by the WHO, particularly Mifepristone, which is currently unavailable in Argentina.

To the National Administration of Drugs, Foods and Medical Devices (ANMAT):

- Approve any request from the National Health Ministry of production and/or distribution of Mifepristone as recommended by the WHO.
- Ensure the distribution of Misoprostol and Mifepristone in pharmacies under a monitoring system implemented by the National Health Ministry that guarantees the availability of medicines for the safe practice of outpatient abortions, which do not require hospitalization, as recommended by the WHO and other national and international organizations.

To the National Congress:

- Decriminalize abortion as a matter of urgency, by repealing the provisions of the criminal code that criminalize abortion and adopt a new legal framework that ensures people who become pregnant can safely and legally access abortion. Decriminalization must cover people providing or assisting in the provision of safe abortion care.
- Include medical and surgical methods that the WHO considers best practices for safe abortion care in the National Mandatory Medical Program (*Programa médico obligatorio*, PMO), guaranteeing universal access to safe practices.

To the National and Provincial Justice Systems:

- Issue clear guidelines to reinforce the prohibition for judicial officials to accept or act upon information divulged in violation of professional secrecy by health personnel, in particular to investigate allegations of abortion-related crimes.
- Collect and analyze data on the number of health professionals and people who have had abortions who have been investigated and/or punished for the crime of abortion.
- Comply with the Supreme Court ruling on the “F.A.L.” case,²⁰ which noted that the need to file a police report or obtain a court order to end a pregnancy resulting from rape is illegal.

To Provincial and Municipal Governments:

- Identify deficiencies and barriers to legal abortion in each province and health jurisdiction. In particular, identify:
 - Cases of individual negligence and proactively urge administrative investigations and hold health personnel who do not comply with ministerial guidelines, regulations, or laws on service provision accountable;
 - Systemic conditions, including unavailability or accessibility of abortion and post abortion care, and design and implement solutions to overcome them; and
 - Identify emergency measures that should be taken to guarantee access to legal abortion for people needing immediate care while systemic reform is underway.
- In the absence of provincial regulations governing legal abortion, or in cases in which provinces need to adjust their local regulations to constitutional and human rights standards, adopt or adhere to the National Protocol for Comprehensive Care of People Entitled to Legal Termination of Pregnancy to avoid disparities in access to the law in various provinces of the country.

²⁰ F.A.L. self-executing measure (F.A.L. s/medida autosatisfactiva), National Supreme Court of Justice of Argentina, Judgement 335:197, March 13, 2012, <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires--medida-autosatisfactiva-fa12000021-2012-03-13/123456789-120-0002-10ts-eupmocsollaf>.

- Implement a campaign to inform pregnant people who seek healthcare at provincial and municipal level facilities about all of the cases under which people have the right to request legal abortion under the health exception.
- Ensure that all public health facilities, regardless of their level of care, eliminate illegal and medically unnecessary requirements, such as partner authorization, more than one health professional's opinion, and certain medical tests, and have referral systems in place to avoid delays that hamper prompt access to medical care.
- Ensure that any health institution that may be called upon to perform an abortion or provide post-abortion care has sufficient staff to guarantee, on a permanent basis, the exercise of the rights to reproductive freedom conferred by law.
- Consider eliminating the possibility for individuals to invoke conscientious objection to refuse to perform abortion in public care services.
- So long as the possibility to invoke conscientious objection to refuse services exists, ensure both by law and in practice its invocation does not impose burdens or delays in accessing legal abortion services. Prohibit its exercise in emergency or other urgent care situations, and in any situation where a facility does not have in place an effective referral system to guarantee the person can and does have access to abortion services in another near facility in a timely manner.
- Require that all health facilities have sufficient willing, trained health professionals available to carry out abortion services in a timely manner when needed, and that they have a system in place to demonstrate that this is the case in practice. For example, to prevent health professionals arbitrarily invoking conscientious objection so that access could be denied, facilities should require providers to declare in advance if they intend to invoke conscientious objection to abortion services and only those who have made an advance declaration may invoke it. Develop affirmative provincial and municipal measures to increase the number of health personnel available to perform abortions, in places they are lacking.
- Provide technical training and ensure the supplies necessary for performing abortions according to the highest technical and medical standards are available.
- Ensure distribution of, and access to, the abortifacient Misoprostol in every province and municipality.

To Provincial Congresses:

- Discuss and adopt any pending bills that would lead to improvements at the provincial level in access to legal abortion and the termination of pregnancy on request, as follow-up to the legal reforms recommended above to the National Congress.
- Repeal any norms that hinder access to legal and safe abortion, including the regulations in San Juan and Mendoza that prohibit the sale of Misoprostol in pharmacies,²¹ and the norm in Buenos Aires City that forces pregnant people carrying anencephalic fetuses to continue pregnancies until week 24 or at the minimum gestational age for viability (Law 1044).²²

²¹ Law 008116/2009, Mendoza province, signed into law on November 11, 2009, <http://www.salud.mendoza.gov.ar/legal/l-008116-2009/>; Law 1133-Q, San Juan province, signed into law in 2009, <http://www.legisalud.gov.ar/atlas/djsj/1133-Q.pdf>.

²² Anencephaly Law (Ley Anencefalia), Buenos Aires City Government, Law 1044, 2003, http://www.psi.uba.ar/academica/carrerasdegrado/psicologia/sitios_catedras/obligatorias/723_etica2/material/normativas/ley_1044_anencefalia.pdf.

Methodology

This report is based on field research carried out in the provinces of Salta, Chaco, Santa Fe, Entre Ríos, and Buenos Aires, as well as Buenos Aires City, in November and December 2019. Desk research and additional interviews by phone, carried out during those months and in January and February 2020, also contributed to our findings. Human Rights Watch interviewed a total of 30 people, mostly individually. We interviewed eight activists, lawyers, and other civil society actors with expertise on sexual and reproductive health rights; five women and one girl who had a personal experience seeking abortion care in the public and private health system in the provinces of Salta, Chaco, Entre Ríos, Buenos Aires, and Buenos Aires City; and 16 doctors or health professionals from public hospitals and health centers in those provinces. Human Rights Watch identified interviewees with the assistance of non-governmental organizations (NGOs), advocates, feminist activists and lawyers, and service providers.

In January, Human Rights Watch met with Argentina's Health Minister and followed up with an information request to ministry staff involved in creating, implementing, and overseeing the National Protocol. In February, Human Rights Watch sent information requests to the Sexual and Reproductive Health Directorate of the National Health Ministry and the Attorney General's Office. The response from the Sexual and Reproductive Health Directorate of the National Health Ministry was received on February 11, 2020 is reflected in this report. The Attorney General's Office had not replied at time of writing.

Our conclusions build on extensive research conducted by Human Rights Watch in Argentina in 2004, 2005, and 2010. We also analyzed relevant national laws and policies; reports by United Nations agencies and NGOs; official health data and public health studies; and recent evaluations of the Argentine health system published in medical journals, news outlets, and academic research journals.

The analysis in this report is drawn from experiences recounted by women and girls, doctors and others interviewed with direct experience with barriers to accessing abortion care. It is not a comprehensive picture of reproductive health care access and rights in Argentina today. Qualitative research and official data support the report's conclusions.

In most cases, the names of the hospitals and cities where we conducted interviews—and the names of interviewees—have been withheld or changed to protect people’s privacy and safety. When requested, identifying information for government officials has also been withheld.

Human Rights Watch informed all interviewees about the purpose of the interview, its voluntary nature, and the ways in which the information would be used. Participants were informed that they could end the interview at any time or refuse to answer any of the questions, and that this would not have negative consequences. All the people interviewed expressed, in writing or orally, their informed consent to participate. This written consent is stored in a secure location within the possession of Human Rights Watch.

Care was taken with victims of trauma to minimize the risk that recounting their experiences could further traumatize them. Where appropriate, Human Rights Watch provided contact information for organizations offering legal, counseling, health, or social services.

Human Rights Watch did not provide any type of financial compensation or other incentives to those who participated.

All interviews were conducted in Spanish.

Terminology

Pregnant people: includes women, girls, trans men (people who have transitioned from female to male) and people who are non-binary (do not identify as female or male) and have ability to give birth.

Child: refers to anyone under the age of 18, with “girl” referring to a female child.

Abortion safety: “the spectrum of situations that constitute unsafe abortion and the continuum of risk they represent.”²³ They can be classified as falling into three categories: safe, less safe, and least safe.

- Safe abortion: “abortions done with a method recommended by WHO (medical abortion, vacuum aspiration, or dilatation and evacuation) that was appropriate to the pregnancy duration and if the person providing the abortion was trained.”
- Less safe abortion: “only one of the two criteria were met—i.e., either the abortion was done by a trained provider but with an outdated method (e.g., sharp curettage) or a safe method of abortion (e.g., misoprostol) was used but without adequate information or support from a trained individual.”
- Least safe abortion: abortions “provided by untrained individuals using dangerous methods, such as ingestion of caustic substances, insertion of foreign bodies, or use of traditional concoctions.”

Adolescent: describes children and young adults ages 10 to 19, consistent with the definition used by the WHO.

Duration of pregnancy (gestation): “size of the uterus, estimated in weeks, based on clinical examination, that corresponds to a pregnant uterus of the same gestational age dated by last menstrual period (LMP).”²⁴

Medical methods of abortion (medical abortion): “use of pharmacological drugs to terminate pregnancy.”²⁵

Mifepristone: “is an anti-progestin which binds to progesterone receptors, inhibiting the action of progesterone and hence interfering with the continuation of pregnancy.”²⁶

Misoprostol: “is a prostaglandin E1 analogue that can be used either in combination with mifepristone or on its own ...[for] a wide range of reproductive health applications,

²³See Bela Ganatra, Caitlin Gerdts et al., “Global, regional, and subregional classification of abortions by safety, 2010–14: estimates from a Bayesian hierarchical model,” *The Lancet*, 390 (2017): 2374, accessed March 15, 2020, [https://doi.org/10.1016/S0140-6736\(17\)31794-4](https://doi.org/10.1016/S0140-6736(17)31794-4).

²⁴ World Health Organization, “Medical management of abortion”, 2018, <https://www.who.int/reproductivehealth/publications/medical-management-abortion/en/> (accessed March 15, 2020).

²⁵ Ibid.

²⁶ Ibid.

including induction of labor, management of spontaneous and induced abortion, and prevention and treatment of postpartum hemorrhage.”²⁷

Surgical methods of abortion (surgical abortion): “use of transcervical procedures for terminating pregnancy, including vacuum aspiration and dilatation and evacuation (D&E).”²⁸

Vacuum manual aspiration (VMA): “is the recommended technique of surgical abortion for pregnancies of up to 12 to 14 weeks of gestation. The procedure should not be routinely completed by sharp curettage.”²⁹

Dilatation and curettage (D&C): “involves dilating the cervix with mechanical dilators or pharmacological agents and using sharp metal curettes to scrape the walls of the uterus.”³⁰

Pro-choice groups: describe people who seek to protect the right of every pregnant person, adult or child, regardless of how the pregnancy happened, to choose whether or not to continue the pregnancy.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ World Health Organization, “Safe abortion: technical and policy guidance for health systems, second edition”, 2012, https://apps.who.int/iris/bitstream/handle/10665/77079/9789243548432_spa.pdf?sequence=1 (accessed March 15, 2020).

Background on Argentina’s Legal Framework

Legal Framework

Access to abortion in Argentina is highly restricted. Section 86 of the 1921 criminal code imposes penalties on both women and girls who induce abortion and health personnel who perform abortion at any time during a pregnancy, except in cases of rape or risk to the pregnant woman’s life or health.³¹ The prison sentence for performing an illegal abortion with a pregnant woman’s consent ranges from one to four years in prison, and up to six years when the abortion causes the woman’s death.³² The penalty for performing an abortion without a woman’s consent ranges from three to ten years in prison and could be up to 15 years if the woman dies as a consequence. A pregnant woman who self-induces abortion or consents to anyone performing an abortion on her faces a sentence ranging from one to four years.³³

The lack of clear sanitary guidelines as well as the stigma that surrounded legal abortions caused that for many years, in practice, women could not access legal abortion services.³⁴ This situation prompted the creation of health guidelines in different jurisdictions to provide certainty about applicable legal standards. In 2007, the National Health Ministry issued its first guideline on the matter. Despite the regulations, the interpretation of the exceptions and their application, as well as access to legal abortion, continued to be very uneven throughout the country.

³¹ Criminal Code of the Nation of Argentina, Law 11,179 of 1984, Second Book, Title I, Chapter I, Section 86, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>.

³² Criminal Code of the Nation of Argentina, Law 11,179 of 1984, Second Book, Title I, Chapter I, Section 85, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>.

³³ Criminal Code of the Nation of Argentina, Law 11,179 of 1984, Second Book, Title I, Chapter I, Section 88, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>.

³⁴ Paola Bergallo, “The Struggle Against Informal Rules on Abortion in Argentina” (“La lucha contra las normas informales que regulaban el aborto en la Argentina”), in *Abortion Law in Transnational Perspective: Cases and Controversies*, ed. Rebecca J. Cook, Joanna N. Erdman, and Bernard M. Dickens (Mexico: Fondo de Cultura Económica, 2016), pp. 187-216, <https://reprohealthlaw.wordpress.com/2017/09/29/la-lucha-contra-las-normas-informales-que-regulaban-el-aborto-en-argentina-por-paola-bergallo/> (accessed August 10, 2020); Agustina Ramón Michel, and Sonia Ariza Navarrete, “Abortion legality in Argentina” (“La legalidad del aborto en Argentina”), *REDAAS*, 9 (2018), accessed August 10, 2020, https://cotser.org.ar/la-legalidad-del-aborto-en-argentina/?fbclid=IwAR29Po8C6rWM_n1Aots7sRzjHqSBebFv-IVkqTmCZzL7klxblZRtCcufNko.

On March 13, 2012, the Supreme Court of Justice of the Nation (CSJN) issued a landmark ruling in a case for reproductive and sexual health rights known as the “F.A.L.” case.³⁵ The ruling reaffirmed the right of women and girls to terminate their pregnancies in all circumstances permitted by law, and it required authorities to eliminate illegal hurdles (for example, the need to file a police report or obtain a court order to end a pregnancy resulting from rape) as well as regulatory barriers (such as narrow interpretations of “sexual abuse” or unnecessary waiting periods) to obtaining a safe, voluntary termination of pregnancy.³⁶

In June 2015, the National Health Ministry responded to the F.A.L. ruling by launching a Protocol for the Comprehensive Care of People Entitled to Legal Termination of Pregnancy (referred to as the National Protocol in the rest of this report), establishing guidelines to guarantee access to safe, legal abortion in a medical setting.³⁷

To access abortion legally, a pregnant person seeking the procedure should go to a health facility and request to terminate the pregnancy. Health professionals then have to verify if the case complies with one or both of the exceptions: risk to life or health, or rape. If one of these exceptions applies, the professional should provide information regarding available options, detailing health risks if there are any. If the person decides to go ahead with the abortion, the health professional should register the decision in the person’s medical history, require a written informed consent and according to the person’s preferences, perform any medical study necessary before the practice and proceed with the method chosen to perform the abortion.³⁸

³⁵ F.A.L. self-executing measure (F.A.L. s/medida autosatisfactiva), National Supreme Court of Justice of Argentina, Judgement 335:197, March 13, 2012, <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires--medida-autosatisfactiva-fa12000021-2012-03-13/123456789-120-0002-10ts-eupmocsollaf>.

³⁶ In the F.A.L. ruling the Supreme Court also guaranteed access to information and confidentiality of the user, urged the avoidance of unnecessary delays, required only a sworn statement by a woman seeking an abortion for rape, and requested that conscientious objection be expressed in the moment of the implementation of the Protocol or the beginning of the activities in the corresponding health establishment and a sanction to the professional who hinders or impedes access to the practice, among others. F.A.L. self-executing measure (F.A.L. s/medida autosatisfactiva), National Supreme Court of Justice of Argentina, Judgement 335:197, March 13, 2012, <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires--medida-autosatisfactiva-fa12000021-2012-03-13/123456789-120-0002-10ts-eupmocsollaf>.

³⁷ National Health Ministry, “Protocol for the comprehensive care of persons entitled to a legal termination of the pregnancy” (“Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo”), 2019, <http://www.msal.gob.ar/images/stories/bes/graficos/0000001792cnt-protocolo-ILE-2019-2edicion.pdf> (accessed December 27, 2019).

³⁸ Ibid.

Throughout the country, individuals eligible for legal abortion under the exceptions in the criminal code confront legal obstacles that restrict the exercise of their right to abortion and to post-abortion care.³⁹ Health providers and law enforcement officials sometimes misinterpret the law, denying legal abortions.⁴⁰ Argentine authorities have largely failed to educate the public on the legal framework, leaving women without essential information on their rights and on the availability of abortion services.⁴¹ In many communities, abortion remains taboo, a shameful practice to be kept secret, regardless of circumstances.⁴² Abortion stigma in Argentina is fueled, in part, by strong opposition to safe abortion care by the Catholic church hierarchy and other socially conservative and religious groups.

The criminalization of abortion, and the barriers in accessing legal abortion under the section 86 exceptions, place an unnecessary burden on people who become pregnant, often damaging their physical and mental health.⁴³ It propels them toward unsafe,⁴⁴

³⁹ See, for example, Marianela García, “Legal abortion in Buenos Aires province. Women’s lack of access to the health system” (“Aborto legal en la provincia de Buenos Aires. La inaccesibilidad de las mujeres al sistema de salud”), *Con X*, 4 (2018), accessed December 27, 2019, <https://dialnet.unirioja.es/servlet/articulo?codigo=7103975>.

⁴⁰ María Eugenia Monte and Juan Marco Vaggione, “Burst Courts. Abortion Conservative Judicialization in Argentina” (“Cortes irrumpidas. La judicialización conservadora del aborto en Argentina”), *Revista Rupturas*, 9.1 (2019): 104-122, accessed December 8, 2019, <https://dialnet.unirioja.es/servlet/articulo?codigo=6671417>.

⁴¹ Sandra Salomé Fernández Vázquez, “Difuse public policies: implementation of pre abortion and abortion counselling in Argentina” (“Políticas públicas difusas: la implementación de las consejerías pre y post aborto en Argentina”), *Revista de Investigaciones Políticas y Sociológicas*, 16.1 (2017): 87-98, accessed December 18, 2019, <https://www.redalyc.org/articulo.oa?id=38051452004>.

⁴² Martín Couto García, “Social criminalization of abortion in Latin America: an analysis on sociocultural attitudes towards abortion in Argentina” (“La penalización social del aborto en América Latina: análisis de las actitudes socioculturales hacia el aborto en Argentina, Brasil, Chile, Colombia, Ecuador, México, Perú y Uruguay”), 2018, <https://www.colibri.udelar.edu.uy/jspui/handle/20.500.12008/20437> (accessed January 9, 2020).

⁴³ World Health Organization, “Unsafe abortion incidence and mortality: global and regional levels in 2008 and trends during 1990-2008,” 2012, <https://apps.who.int/iris/handle/10665/75173> (accessed January 10, 2020).

⁴⁴ In a 2017 study published in *The Lancet*, researchers with the World Health Organization presented a three-tiered classification of abortion as safe, less safe, and least safe. By their definitions, abortions are classified as safe if they are provided by trained healthcare workers using methods recommended by WHO such as medical abortion or vacuum aspiration (a procedure using suction to remove tissue from the uterus) appropriate for the stage of the pregnancy. Less safe abortions are those done by trained providers using outdated or less safe methods (such as curettage, a procedure to remove tissue from the uterus by scraping with a sharp tool), or abortions done with safe methods (such as misoprostol, a medication that can induce abortion), but “without adequate information or support from a trained individual.” Least safe abortions are those done by untrained people using dangerous or invasive methods, “such as ingestion of caustic substances, insertion of foreign bodies, or use of traditional concoctions.” The vast majority of abortions in Latin America and the Caribbean—more than three-quarters—are unsafe (less safe or least safe, according to the model above). Nearly five million unsafe abortions occur in the region each year, and more than one million of those are considered “least safe” under the criteria described above. See Bela Ganatra, Caitlin Gerdtts et al., “Global, regional, and subregional classification of abortions by safety, 2010–14: estimates from a Bayesian hierarchical model,” *The Lancet*, 390 (2017): 2374, accessed February 12, 2020, [https://doi.org/10.1016/S0140-6736\(17\)31794-4](https://doi.org/10.1016/S0140-6736(17)31794-4).

clandestine abortions. Vulnerable groups, including the poor, adolescents, indigenous people, sexual minorities, and women with disabilities, are especially affected.⁴⁵

The National Protocol for Legal Abortion Care

On November 19, 2019, the National Health Secretary of the Ministry of Health published Resolution 3158/2019 in the Official Gazette, approving an update to the National Protocol.⁴⁶ Hours after its release and less than a month before the end of his term, President Macri issued a decree repealing the entire protocol. The Minister of Health resigned soon after.⁴⁷

But less than a month later, two days after President Alberto Fernandez took office on December 10, a new Health Minister, Gines González García, adopted Resolution 1/2019, restoring and updating the protocol.⁴⁸ The new regulation established that the first duty of medical professionals in responding to a pregnant person seeking termination of her pregnancy is to determine whether a section 86 exception to the ban applies.⁴⁹ It kept a broad interpretation of the health exception—including women who face a risk to their physical, mental, or social health.⁵⁰ That exception, which had been included in non-

⁴⁵ According to the WHO, “In countries where abortion is legally highly restricted, unequal access to safe abortion may result. In such contexts, abortions that meet safety requirements can become the privilege of the rich, while poor women have little choice but to resort to unsafe providers, which may cause disability and death.” In World Health Organization, “Safe abortion: Technical and Policy Guidelines for Health System,” 2012,

https://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/ (accessed December 18, 2019); Paola Bergallo, “The Struggle Against Informal Rules on Abortion in Argentina” (“La lucha contra las normas informales que regulaban el aborto en la Argentina”), in *Abortion Law in Transnational Perspective: Cases and Controversies*, ed. Rebecca J. Cook, Joanna N. Erdman, and Bernard M. Dickens (Mexico: Fondo de Cultura Económica, 2016), pp. 187-216, <https://reprohealthlaw.wordpress.com/2017/09/29/la-lucha-contra-las-normas-informales-que-regulaban-el-aborto-en-argentina-por-paola-bergallo/>; Iván Insúa, Mariana Romero, and Silvina Ramos, “An analysis of abortion in Argentina” (“Análisis de la situación del aborto en la Argentina”), *CEDES*, 67.1 (2018), accessed December 18, 2019, <http://repositorio.cedes.org/handle/123456789/3036>.

⁴⁶ National Health Secretary of the Ministry of Health, Resolution 3158/2019, November 19, 2019, <https://www.boletinoficial.gob.ar/detalleAviso/primera/221438/20191120>.

⁴⁷ Santiago Dapelo, “Adolfo Rubinstein Resigned and Justified his Action with the Protocol on Abortion” (“Adolfo Rubinstein renunció y justificó su actuación con el protocolo sobre el aborto”), *La Nación*, November 22, 2019, <https://www.lanacion.com.ar/politica/adolfo-rubinstein-renuncia-como-secretario-salud-polemica-nid2308751> (accessed January 3, 2020).

⁴⁸ National Health Secretary of the Ministry of Health, Resolution 1/2019, December 12, 2019, <https://www.boletinoficial.gob.ar/detalleAviso/primera/223829/20191213>.

⁴⁹ National Health Ministry, “Protocol for the comprehensive care of persons entitled to a legal termination of pregnancy” (“Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo”), 2019, <http://www.msal.gob.ar/images/stories/bes/graficos/000001792cnt-protocolo-ILE-2019-2edicion.pdf> (accessed December 27, 2019), p. 21.

⁵⁰ *Ibid.*, p. 16.

binding regulations in 2007, 2010 and 2015,⁵¹ is consistent with the longstanding WHO definition of health, as reflected in its current technical standards.⁵²

The National Protocol in force stipulates that a legal abortion should be performed within 10 days of the initial request.⁵³ In addition, it reminds health professionals of civil and criminal penalties should they refuse to perform an abortion or try to change a patient’s mind. “Not providing complete information, giving inadequate information, and impeding the practice constitute acts of discrimination and violation of the right to equality before the law, enshrined not only in the National Constitution but also in International Human Rights Treaties,” and, in the case of personnel of the public health subsystem, “these actions may also be construed as the crime of non-compliance with the duties of a public official.”⁵⁴

The National Protocol stipulates that childbirth for anyone under the age of 15 is a health risk, in part because the pregnancy itself would increase risks to physical and mental health.⁵⁵ It stipulates that pregnant girls between 13 and 16 years old can consent autonomously to an abortion—without requiring involvement of a parent or legal guardian—, unless the procedure constitutes a serious risk to their health or life.⁵⁶ In cases of pregnant people under 13, a pregnancy is considered the product of rape in all cases.⁵⁷

⁵¹ The Health Ministry issued non-binding technical guides in 2007, 2010, and 2015. See National Health Ministry, “Technical Guide for the Comprehensive Care of Non-Punishable Abortions” (“Guía técnica para la Atención Integral de los Abortos No Punibles”), 2007, https://campus.unc.edu.ar/sites/default/files/01Guía_Tecnica_para_la_Atencion_Integral_de_los_Abortos_No_Punibles.pdf (accessed January 9, 2020); Ministry of Health, “Technical Guide for the Comprehensive Care of Non-Punishable Abortions” (“Guía Técnica para la Atención Integral de los Abortos No Punibles”), 2010, <http://www.msal.gob.ar/images/stories/bes/graficos/000000667cnt-Guia-tecnica-web.pdf> (accessed January 9, 2020); Ministry of Health, “Protocol for the comprehensive care of persons entitled to a legal termination of the pregnancy” (“Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo”), 2015, http://www.msal.gob.ar/images/stories/bes/graficos/000000875cnt-protocolo_ile_octubre%202016.pdf (accessed January 9, 2020).

⁵² “Constitution of the World Health Organization,” 1947, http://whqlibdoc.who.int/hist/official_records/constitution.pdf (accessed January 10, 2020).

⁵³ National Health Ministry, “Protocol for the comprehensive care of persons entitled to a legal termination of the pregnancy” (“Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo”), 2019, <http://www.msal.gob.ar/images/stories/bes/graficos/0000001792cnt-protocolo-ILE-2019-2edicion.pdf> (accessed December 27, 2019), p. 25.

⁵⁴ *Ibid.*, p. 16.

⁵⁵ *Ibid.*, p. 16.

⁵⁶ *Ibid.*, p. 20.

⁵⁷ *Ibid.*, p. 17.

The National Protocol establishes that health professionals may exercise a claim to conscientious objection to the “moral convictions” of the objector. The National Protocol, however, notes that the conscientious objection must not prevent the exercise of the patient’s rights. The conscientious objection is individual and cannot be invoked if no other health professionals are able to guarantee access to legal abortion or in cases of emergency. Providers wishing to exercise a conscientious objection must notify their health establishment’s administrators. This means that conscientious objection can only be exercised when it has previously been declared before relevant authorities. The conscientious objector has the obligation to inform the pregnant person, in a clear and timely manner, of their right to access legal abortion and refer them to another provider immediately.

According to a document by the National Campaign for the Right to Legal, Safe and Free Abortion,⁵⁸ nine of the 23 Argentine provinces and the Buenos Aires City—Buenos Aires, Entre Ríos, Jujuy, La Pampa, La Rioja, San Luis, Santa Fe, Tierra del Fuego, and Buenos Aires City—have adhered to the National Protocol, which entered into force on December 13, 2019. Two provinces have a protocol of their own: Chubut and Río Negro. According to the National Health Ministry, seven provinces—Catamarca, Chaco, Córdoba, Mendoza, Misiones, Neuquén, and Santa Cruz,—fail to meet constitutional and legal standards set forth in the F.A.L. ruling of the Supreme Court of Justice and the 2019 National Protocol as they impose unnecessary legal barriers or have not updated their public health systems to comport with the standards. The province of Salta adhered in 2018 to the National Protocol of 2015. Five provinces—Corrientes, Formosa, San Juan, Santiago del Estero, and Tucumán—neither adhere to the National Protocol nor have their own regulations.⁵⁹

The adoption of the National Protocol is not mandatory for the provinces. The absence of clear and consistent abortion regulations under section 86, including requirements for accessible abortion and post-abortion services—and lack of or deficient implementation of national and local laws, regulations, and protocols⁶⁰—has led to a system that grants legal

⁵⁸ National Campaign for the Right to Legal, Safe and Free Abortion (Campaña Nacional por el Derecho al Aborto Seguro, Legal y Gratuito), “Legal Abortion. Regulations by Jurisdictions” (“Interrupción Legal del Embarazo. Regulación por Jurisdicciones”), <http://www.abortolegal.com.ar/wp-content/uploads/2020/07/ile-2020.pdf> (accessed August 10, 2020).

⁵⁹ Information provided to Human Rights Watch by the National Health Ministry, February 12, 2020 (copy on file at Human Rights Watch).

⁶⁰ Paola Bergallo, “From the Failure of the Procedural Turn to the Infeasibility of the Causal Model” (“Del fracaso del giro procedimental a la inviabilidad del modelo de causales”), in *El aborto en América Latina: Estrategias jurídicas para luchar*

abortions unevenly, depending on the province or municipality, as well as the health facility at which a pregnant person seeks care.

The lack of effective institutional mechanisms to regulate and enforce existing national and local procedural standards and protocols regulating abortion care within the health system has *de facto* created a complex, informal, and parallel system of illegal and unsafe abortions.⁶¹ When women and girls are arbitrarily denied legal abortions, they are forced to choose between continuing a pregnancy against their wishes, or seeking abortion outside the health system. Though feminist abortion support groups are working to provide information about safer abortion methods, some people still resort to riskier and potentially life-threatening practices that include the insertion of household objects into the vagina, or the use of parsley plants.⁶²

Proposals for Reform

Starting in 2005, the National Campaign for the Right to Legal, Safe and Free Abortion,⁶³ a coalition of nongovernmental organizations throughout the country, began introducing bills to expand legal access to abortion. The initial bill proposed legalizing abortion for any reason within the first 12 weeks of pregnancy; later bills extended it to the first 14 weeks. For years, conservative and religious groups have since repeatedly exercised their considerable legislative power to block discussion of the bills.⁶⁴

por su legalización y enfrentar las resistencias conservadoras, ed. Paola Bergallo, Isabel Cristina Jaramillo Sierra, and Juan Marco Vaggione (Mexico: Siglo XXI Editores, 2019), <https://www.cmi.no/publications/file/6584-movimiento-transnacional-contra-el-derecho-al.pdf> (accessed January 27, 2020), p. 158.

⁶¹ Paola Bergallo, “The Struggle Against Informal Rules on Abortion in Argentina” (“La lucha contra las normas informales que regulaban el aborto en la Argentina”), in *Abortion Law in Transnational Perspective: Cases and Controversies*, ed. Rebecca J. Cook, Joanna N. Erdman, and Bernard M. Dickens (Mexico: Fondo de Cultura Económica, 2016), pp. 187-216 (accessed January 7, 2020).

⁶² Mariana Iglesias, “Catheter and parsley: a practice for clandestine abortions as dangerous as widespread and used” (“Sigue el debate Sondas y perejil: una práctica para abortos clandestinos tan peligrosa como vigente y extendida”), *El Clarín*, August 15, 2018, https://www.clarin.com/sociedad/sondas-perejil-practica-abortos-clandestinos-peligrosa-vigente-extendida_o_BJXrlyM8Q.html (accessed January 7, 2020).

⁶³ The National Campaign for the Right to Legal, Safe, and Free Abortion is a broad and diverse federal alliance, composed of several feminist groups. It pursues of the right to legal, safe, and free abortion. It arose during the XVIII National Meeting of Women held in Rosario in 2003 and the XIX National Meeting of Women developed in Mendoza in 2004; see “Quiénes Somos” (“Who are we”), Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito, <http://www.abortolegal.com.ar/about/> (accessed November 29, 2020).

⁶⁴ Daniel Pardo, “Abortion in Argentina: 4 reasons that explain why the bill was rejected (and what their promoters will have to do to raise it again)” (“Aborto en Argentina: 4 claves que explican por qué ganó el rechazo a la nueva ley (y qué tendrán que hacer sus promotores para volverlo a plantear)”), *BBC Mundo*, August 9, 2018, <https://www.bbc.com/mundo/noticias-america-latina-45124523> (accessed January 9, 2020).

In 2015, the feminist movement #NiUnaMenos (Spanish for “Not One Woman Less”) began protesting gender-based violence and contributing to the movement to legalize abortion.⁶⁵

At the start of the 2018 legislative session, former President Mauricio Macri supported a “mature and respectful debate” on the issue, although he said he was “in favor of life”—by which he meant opposed to abortion. In February, he announced his readiness to enable a parliamentary debate on abortion. On March 6, under the slogan “Sex education for choice, contraception to prevent abortion, legal abortion to prevent death” (*Educación sexual para decidir, anticonceptivos para no abortar, aborto legal para no morir*), the National Campaign for the Right to Legal, Safe and Free Abortion presented a bill, for the seventh time since 2005, to decriminalize and legalize abortion in the first 14 weeks of pregnancy. After that period, section 86 would remain applicable but with an additional exception when the fetus has serious complications incompatible with life outside of the womb.

The bill sparked an unprecedented level of public discussion around abortion, with more than 800 civil society representatives participating in Congressional sessions, arguing for or against the bill, and massive public demonstrations in the streets.⁶⁶ In a historic vote on June 13, 2018, the Chamber of Deputies approved the bill, moving it to the Senate.⁶⁷ On August 9, by a slim, seven-vote margin, the Senate defeated it.⁶⁸ Women’s rights activists claimed the narrow loss as a victory in a halting advance toward reproductive rights.

⁶⁵ Vanessa Yemanja Chesnut, “Not One Woman Less: Protesting Femicide in Buenos Aires,” *Huffpost*, October 22, 2016, https://www.huffpost.com/entry/not-one-woman-less-protesting-femicide-in-buenos-aires_b_580b4758e4bob1bd89fdb2e9 (accessed January 8, 2020).

⁶⁶ Human Rights Watch testified before the Family, Women, Children and Adolescents Congressional Commission in the Argentine Congress on June 12, 2018, <https://www.hrw.org/news/2018/06/12/testimony-argentine-congress-decriminalization-abortion>.

⁶⁷ “Historic: the abortion bill was granted half a sanction in the House of Representatives” (“Histórico: el proyecto de aborto legal consiguió media sanción en Diputados”), *El Cronista*, June 14, 2018, <https://www.cronista.com/economiapolitica/Historico-el-proyecto-de-aborto-legal-consiguio-media-sancion-en-Diputados-20180613-0068.html> (accessed January 7, 2020).

⁶⁸ Mar Centenera, “The Argentine Senate says ‘no’ to abortion and leaves the country with a 1921 law” (“El Senado de Argentina dice ‘no’ al aborto y deja al país con una ley de 1921”), *El País*, August 9, 2018, https://elpais.com/internacional/2018/08/08/argentina/1533714679_728325.html (accessed January 6, 2020).

Abortion Data in Argentina

Argentina does not systematically track the number of abortions—legal or otherwise—performed each year, and available statistics provide only a partial view.⁶⁹ At the national level, publicly available data seriously underestimate the incidence of abortion. Figures come only from public hospitals and count hospitalizations for incomplete miscarriages, legal abortions, and health issues arising from abortions in unsafe conditions. Outpatient abortions—medical abortions and manual vacuum aspiration (VMA) with no hospitalization even if legal—and those performed in private facilities are not reflected in national statistics.⁷⁰

The deaths of women who arrive at hospitals after unsafe abortions and experience complications, moreover, are sometimes counted instead as deaths from other obstetric causes such as sepsis or hemorrhage.⁷¹ Health personnel sometimes resist recording a death as abortion-related, fearing the case might result in a criminal proceeding. Though the exceptions to the ban—allowing abortion in cases of rape or risk to health or life—are clearly defined in the criminal code, practitioners fear their interpretation might be subject to judicial review and they might be punished. The stigma of being categorized as an abortion provider is another factor deterring professionals from properly recording such deaths as abortion-related.⁷²

⁶⁹ “What official statistics say about legal abortions in the City of Buenos Aires in the last 5 years” (“Qué dicen las estadísticas oficiales sobre los abortos legales en la Ciudad de Buenos Aires en los últimos 5 años”), *La Nación*, November 20, 2019, <https://www.lanacion.com.ar/sociedad/que-dicen-estadisticas-oficiales-abortos-legales-ciudad-nid2308135> (accessed January 4, 2020); Latin American Team on Justice and Gender (ELA), Center for State and Society Studies (CEDES), and Access to Safe Abortion Network (REDAAS), “Abortion Figures in Argentina” (“Las Cifras del Aborto en la Argentina”), 2018, <http://larevuelta.com.ar/wp-content/uploads/2018/03/El-aborto-en-cifras-CEDES-ELA-REDAAS-1.pdf> (accessed January 4, 2020).

⁷⁰ Access to Safe Abortion Network (REDAAS), “Abortion data in Argentina” (“Las cifras del aborto en Argentina”), March 2018, <https://bit.ly/2Q8ZSwE> (accessed January 8, 2020).

⁷¹ Valeria Sampedro, “Abortion numbers: alarming figures” (“Los números del aborto: cifras que alarman”), *Todo Noticias*, February 25, 2018, https://tn.com.ar/sociedad/los-numeros-del-aborto-cifras-que-alarman_853154 (accessed January 7, 2020).

⁷² Latin American Team on Justice and Gender (ELA), Center for State and Society Studies (CEDES), and Access to Safe Abortion Network (REDAAS), “Abortion Figures in Argentina” (“Las Cifras del Aborto en la Argentina”), 2018, <http://larevuelta.com.ar/wp-content/uploads/2018/03/El-aborto-en-cifras-CEDES-ELA-REDAAS-1.pdf> (accessed January 4, 2020).

There is also no data on the number of deaths due to clandestine or unsafe abortions.⁷³ One of the initiatives proposed to Congress by a number of deputies shortly after the rejection of the 2018 abortion bill was precisely to create a statistical registry of deaths resulting from unsafe abortions.⁷⁴ Such a registry could improve the quality of information available not only on deaths but also on hospitalizations and health complications from abortion procedures conducted in unsafe conditions. The project was not considered by the legislature.

In a study published in 2014, the Guttmacher Institute, the reproductive rights research organization, found that, during 2010 and 2014, an “estimated 6.5 million induced abortions occurred each year in Latin America and the Caribbean.”⁷⁵ In South America, the annual rate of abortion is estimated at 48 per 1,000 women of reproductive age (15 to 44 years old); an estimated 34 percent of all pregnancies in the region end in abortions. In 2014, the Guttmacher Institute found, “at least 10 percent of maternal deaths in Latin America and the Caribbean resulted from unsafe abortions.”⁷⁶

The latest data released by Argentina’s National Health Ministry reveal that between 2011 and 2016, public hospitals admitted 273,418 women and girls for abortions. This includes the total number of women hospitalized in the public health system for an abortion complication, as defined by the International Classification of Diseases (ICD-10) from the World Health Organization (WHO).⁷⁷ In 2016 alone, that figure reached 39,025.⁷⁸

⁷³ Fundación Soberanía Sanitaria, “Unsafe abortion: an urgent public health problem” (“Aborto inseguro: un problema urgente de salud pública”), 2018, <https://aduba.org.ar/aborto-inseguro-problema-urgente-salud-publica-informe-fundacion-soberania-sanitaria/> (accessed January 11, 2020).

⁷⁴ Clara Fernández Escudero, “An official registry of deaths by clandestine abortions is promoted” (“Impulsan un registro oficial de muertes por abortos clandestinos”), *Perfil*, September 29, 2018, <https://www.perfil.com/noticias/sociedad/impulsan-un-registro-oficial-de-muertes-por-abortos-clandestinos.phtml> (accessed January 10, 2020).

⁷⁵ Guttmacher Institute, “Abortion in Latin America and the Caribbean,” <https://www.guttmacher.org/sites/default/files/factsheet/fs-aww-lac-es.pdf> (accessed January 11, 2020).

⁷⁶ *Ibid.*

⁷⁷ National Health Ministry, “Hospital discharges from the official sector, according to age by groups of diagnoses”, (“Egresos hospitalarios del sector oficial, según edad por grupos de diagnósticos”), <http://www.deis.msal.gov.ar/index.php/causas-egresos/> (accessed January 16, 2020).

⁷⁸ Information provided to Human Rights Watch by the National Health Ministry, February 12, 2020.

Counting all kinds of abortions, it is estimated that between 371,965 and 522,000 abortions are performed each year in Argentina.⁷⁹ Although official statistics do not distinguish between legal and illegal abortions, the ministry acknowledges that “in general”, they are performed in unsafe conditions.⁸⁰ The World Health Organization reports that almost all deaths and complications—morbidity—⁸¹from unsafe abortions occur in countries where “abortion is severely restricted in law and/or in practice.”⁸² As mentioned, the day-to-day practice of the exception model in Argentina is extremely restrictive due to several *de facto* barriers.⁸³ Although a WHO study published in 2014 did not estimate the ratio of safe to unsafe abortions in Argentina, it concluded that between 2010 and 2014, “in Latin America, only 1 in 4 abortions was safe.”⁸⁴

The Guttmacher Institute report determined that, globally, “8 percent to 11 percent of all maternal deaths are related to abortion.”⁸⁵ In 2018, Argentina’s National Health Ministry reported 35 deaths resulting from abortions.⁸⁶ Thirty-five deaths represented more than 13 percent of all maternal deaths that year.⁸⁷ Two of those who died in 2018 were under 19

⁷⁹ Edith Pantelides and Silvia Mario, “Estimation of the Magnitude of Induced Abortion” (“Estimación de la magnitud del aborto inducido”), *Notas De Población*, 87 (2009): 112, accessed January 14, 2020, http://www.psi.uba.ar/academica/carrerasdegrado/psicologia/sitios_catedras/practicas_profesionales/825_rol_psicologo/material/descargas/unidad_4/obligatoria/pantelides.pdf.

⁸⁰ National Health Ministry, “Protocol for the Comprehensive Care of Persons Entitled to a Legal Termination of Pregnancy” (“Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo”), 2015, <http://www.msal.gov.ar/images/stories/bes/graficos/000000695cnt-000000587cnt-Guia-para-la-atencion-integral-de-mujeres-que-cursan-un-aborto.pdf> (accessed January 3, 2020).

⁸¹ According to the WHO, “maternal morbidity can be conceptualized as a spectrum ranging, at its most severe, from a “maternal near miss” –defined by the World Health Organization (WHO) as the near death of a woman who has survived a complication occurring during pregnancy or childbirth or within 42 days of the termination of pregnancy) – to non-life-threatening morbidity, which is more common by far.” See World Health Organization, “Measuring maternal health: focus on maternal morbidity”, June 7, 2013, <https://www.who.int/bulletin/volumes/91/10/13-117564/en/#:~:text=Maternal%20morbidity%20can%20be%20conceptualized,termination%20of%20pregnancy%5%20%E2%80%93%20to> (accessed January 3, 2020).

⁸² World Health Organization, “Safe Abortion: Technical & Policy Guidance for Health Systems,” June 2015, https://www.who.int/reproductivehealth/publications/unsafe_abortion/sa_legal_policy_considerations/en/ (accessed January 7, 2020).

⁸³ Paola Bergallo, “Constitutional Challenges and Argentine Abortion”, Universidad de San Andrés and Universidad de Buenos Aires, <https://www.ialsnet.org/meetings/constit/papers/BergalloPaola%28Argentina%29.pdf> (accessed January 4, 2020).

⁸⁴ World Health Organization, “Preventing unsafe abortion,” June 26, 2019, <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion> (accessed January 9, 2020).

⁸⁵ Susheela Singh, Lisa Remez, et al., “Abortion Worldwide 2017: Uneven Progress and Unequal Access”, marzo de 2018, consultado el 9 de enero de 2020, <https://www.guttmacher.org/report/abortion-worldwide-2017>.

⁸⁶ National Health Ministry, “Vital Statistics. Basic Information. Argentina - 2018” (“Estadísticas vitales. Información básica. Argentina - Año 2018”), Series 5 No. 6, December 2019, <http://www.deis.msal.gov.ar/wp-content/uploads/2020/01/SeriesNro62.pdf> (accessed January 15, 2020).

⁸⁷ Ibid.

years old. Although data available from the Argentine government are not sufficiently disaggregated to reveal the extent of the role played by unsafe abortions in maternal mortality, the WHO reports that, globally, between 4.7 percent and 13.2 percent of maternal deaths every year can be attributed to unsafe abortions.⁸⁸ The agency has, for decades, called unsafe abortion one of the leading causes of maternal mortality in Argentina.⁸⁹

The Impact of Pregnancy in Adolescents and Girls

Unintended pregnancies contribute to the prevalence of abortion in Argentina. One estimate puts the percentage of unplanned or unwanted pregnancies at 65 percent.⁹⁰ Adolescents have a particularly high rate of unintended pregnancy. The national ministries for Health and for Education, Culture, Science and Technology cited data that in 2015, almost 7 of 10 pregnancies of people under age 19 were unintended.⁹¹

There are several determinants for girls and adolescents' unintended pregnancies. For girls aged 10 to 14, pregnancies are generally a consequence of sexual abuse and coercion.⁹² Between 15 to 19, unintended pregnancies are mostly related to structural inequality and poverty, being outside of the education system, lack of access to comprehensive sexual and reproductive health information, including in schools, the high cost of contraceptives, and limited availability of contraceptive methods.⁹³ Nine out of ten people who gave birth aged 15 to 19 belong to 30 percent of the lowest-income households.⁹⁴

⁸⁸ World Health Organization, "Preventing unsafe abortion," June 26, 2019, <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion> (accessed January 9, 2020).

⁸⁹ Silvina Ramos et al., "A comprehensive assessment of maternal deaths in Argentina: translating multicentre collaborative research into action," *Bulletin of the World Health Organization* 85.8 (2007): 615-622, accessed January 10, 2020, <http://dx.doi.org/10.2471/BLT.06.032334>.

⁹⁰ Celina Palena et al., "High rate of unintended pregnancy among pregnant women in a maternity hospital in Córdoba, Argentina: a pilot study," *Reprod Health* 6.11 (2009), accessed in March 13, 2020, doi: 10.1186/1742-4755-6-11.

⁹¹ National Health Ministry and Education, Culture, Science and Technology Ministry, "National Plan for The Prevention Of Unintended Pregnancy In Adolescents" ("Plan Nacional de Prevención del Embarazo no Intencional en la Adolescencia"), 2019, https://www.argentina.gob.ar/sites/default/files/documento_oficial_plan_2019.pdf (accessed January 8, 2020), p. 5.

⁹² United Nations Children's Fund (UNICEF), "Sexual Abuse against boys, girls and adolescents: A guide to take action and protect their rights" ("Abuso sexual contra niños, niñas y adolescentes: Una guía para tomar acciones y proteger sus derechos"), 2016, https://www.unicef.org/argentina/spanish/proteccion-AbusoSexual_contra_NNyA-2016.pdf (accessed March 13, 2020).

⁹³ National Health Ministry and Education, Culture, Science and Technology Ministry, "National Plan for The Prevention Of Unintended Pregnancy In Adolescents" ("Plan Nacional de Prevención del Embarazo no Intencional en la Adolescencia"), 2019, https://www.argentina.gob.ar/sites/default/files/documento_oficial_plan_2019.pdf (accessed January 8, 2020), p. 5

⁹⁴ Implementation Center of Public Policies for Equity and Growth (Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento, CIPPEC), "Adolescent Pregnancy is both the cause and the consequence of young people's rights

Barriers in accessing contraception contribute to high rates of unintended pregnancy among adolescents. A 2004 study by the Argentine Child-Juvenile Gynecology Society found that 34.4 percent of those interviewed, ages 10 to 20, did not use any contraceptive for their first sexual experience. Of that total, 47.4 percent lacked correct information and 33.3 percent said their partners did not want to use any contraceptive.⁹⁵ Adolescent pregnancy rates in Latin America and the Caribbean is estimated at 66.5 births per 1,000 girls and young women aged 15-19 years.⁹⁶ As for the cohort of girls aged 10-14, the region presents birth rates between one and five births per 1,000 girls aged 10-14.⁹⁷ In 2017, Argentina's adolescent fertility rate for girls between 10 and 14 was 1.5 births per 1,000 girls. For ages ranging 15 to 19, the rate was 53.1 births per 1,000 girls and young women.⁹⁸

The provinces in the north of the country show higher adolescent pregnancy rates for 15- to 19-year-olds than the national average (13.6 percent): Formosa, 21.7 percent; Chaco, 20.4 percent; Misiones, 18.8 percent; Santiago del Estero, 18.8 percent; Corrientes, 18.3 percent; and Salta, 18.3 percent.⁹⁹

being violated" ("El embarazo en la adolescencia es causa y consecuencia de que se vulneren los derechos de los jóvenes"), March 23, 2018, <https://www.cippeec.org/textual/el-embarazo-en-la-adolescencia-es-causa-y-consecuencia-de-que-se-vulneren-los-derechos-de-los-jovenes/> (accessed March 13, 2020).

⁹⁵ Silvia Oizerovich et al., "Exploratory research on growth characteristics, development and care of sexual and reproductive health in adolescent population" ("Investigación exploratoria sobre características de crecimiento desarrollo y cuidados de la salud sexual y reproductiva en población adolescente"), *Revista Sociedad Argentina Ginecológica Infanto Juvenil* 11.3 (2004): 219-229, <http://conders.feim.org.ar/pdf/sagij.pdf> (accessed February 5, 2020)

⁹⁶ Pan American Health Organization/World Health Organization (PAHO/WHO), United Nations Children's Fund (UNICEF), and the United Nations Population Fund (UNFPA), "Latin America and the Caribbean have the second highest adolescent pregnancy rates in the world", February 28, 2018, https://www.paho.org/hq/index.php?option=com_content&view=article&id=14163:latin-america-and-the-caribbean-have-the-second-highest-adolescent-pregnancy-rates-in-the-world&Itemid=1926&lang=en (accessed March 13, 2020).

⁹⁷ United Nations, Department of Economic and Social Affairs, Population Division, "Fertility among very young adolescents aged 10-14 years," (ST/ESA/SER.A/448), 2020, <https://www.un.org/en/development/desa/population/publications/pdf/fertility/Fertility-young-adolescents-2020.pdf> (accessed March 13, 2020), p.11.

⁹⁸ Directorate of Statistics and Health Information, National Health Ministry, "Statistics on the Vital Facts of the Adolescent Population in Argentina" ("Estadísticas de los Hechos Vitales de la Población Adolescente en la Argentina"), July 2019, <http://www.deis.msal.gov.ar/wp-content/uploads/2019/07/Poblacion-adolescente-2.pdf> (accessed March 13, 2020).

⁹⁹ *Ibid.*, p. 47.

In 2018, according to the National Health Ministry, about 12.7 percent of total births (87,118) were from young women and girls under age 20.¹⁰⁰ Of those births, 2,350 were from girls under 15.¹⁰¹

Young women and girls who become mothers experience consequences that can affect their lives in the long-term. Indeed, mothers between 10 and 19 years old are more propense to experience health complications deriving from their pregnancies, including increased risks of bleeding postpartum, uterine infections, pre-delivery term, less development for the gestational age, and a likelihood to suffer from severe neonatal conditions. These risks affect in particular girls below 15 years old, who are 4 times more likely to die from their pregnancy, have the highest risk of neonatal death (within 27 days of delivery) and 40 percent more chance of maternal anemia compared to the age group 20-24.

Abortion restrictions do not deter young women and girls from seeking an abortion, but rather, they force them into clandestine and sometimes unsafe settings that affect their lives and health. The National Health Ministry reported that 15 percent of unsafe abortions in the world occur to young women and girls below the age of 19.¹⁰² In 2016, of the 39,025 hospital discharges nationally for abortion complications—either legal or illegal—, 16 percent—6,164—were young women and girls between 10 and 19 years old.¹⁰³ To face some of these challenges, in 2017, the Argentine government created the National Plan for the Prevention of Unintentional Pregnancy in Adolescence (Plan ENIA).¹⁰⁴ The National Plan’s objectives were to educate people on the importance of preventing and diminishing unintended pregnancies; improve sexual and reproductive services including their availability, accessibility, and quality; increase awareness among girls and boys of sexual

¹⁰⁰ Directorate of Statistics and Health Information, National Health Ministry, “Statistics on Vital Facts. Basic Information. 2018” (“Estadísticas de los Hechos. Información Básica. Año 2018”), December 2019, <http://www.deis.msal.gov.ar/wp-content/uploads/2020/01/Serie5Nro62.pdf> (accessed March 13, 2020).

¹⁰¹ *Ibid.*, p. 47.

¹⁰² National Health Ministry, “National Plan for the Prevention of Unintentional Pregnancy in Adolescence” (“Plan Nacional de Prevención del Embarazo No Intencional en la Adolescencia”), https://www.argentina.gob.ar/sites/default/files/documento_oficial_plan_2019.pdf (accessed January 18, 2020).

¹⁰³ *Ibid.*, p.11.

¹⁰⁴ “Hospital discharges from the official sector, according to age by groups of diagnoses”, (“Egresos hospitalarios del sector oficial, según edad por grupos de diagnósticos”), <http://www.deis.msal.gov.ar/index.php/causas-egresos/> (accessed January 16, 2020).

and reproductive rights; strengthen public policies to prevent sexual abuse and violence; and ensure legal and safe abortion under the current law.

Shortly after the Senate rejected the decriminalization bill, the National Plan was implemented in 11 provinces—Salta, Jujuy, Tucumán, Santiago del Estero, Formosa, Chaco, Misiones, Catamarca, Entre Ríos, Corrientes, and La Rioja—and six municipalities from Buenos Aires Province (Lanús, San Isidro, Quilmes, Almirante Brown, San Martín, and Morón.)¹⁰⁵ The National Plan said authorities would provide training for teachers and health professionals and distributed free long-acting reversible contraception methods (such as the intra-uterine device and subdermal implants), condoms, oral and injectable contraceptives, as well as sexual and reproductive health counselling through the public health system. Since the National Plan was implemented in 2018, the National Health Ministry registered 6,961 fewer pregnancies among people under age 19 than in 2017.¹⁰⁶

¹⁰⁵ Fabiola Czubaj, “Births under 19-years-old dropped 25,5 percent in Argentina” (“Disminuyeron un 25,5% los nacimientos en menores de 19 años en la Argentina”), *La Nación*, October 16, 2019, <https://www.lanacion.com.ar/sociedad/disminuyeron-un-255-los-nacimientos-en-menores-de-19-anos-en-la-argentina-nid2297521> (accessed February 3, 2020).

¹⁰⁶ Julia Frenkel, “Teenage pregnancies in Argentina” (“El embarazo adolescente en la Argentina”), *Centro de Estudios para el Cambio Estructural*, November 26, 2019, <http://fcece.org.ar/el-embarazo-adolescente-en-la-argentina/> (accessed June 15, 2020).

Barriers to Access Legal Abortions

In practice, pregnant people experience a number of barriers when seeking abortion care even when they have a right to access abortion under the exceptions provided in the current legal framework. Existing interpretations regarding the scope of these exceptions are, in some cases, restrictive and discretionary. Criminalization of abortion has also created fear of prosecution and contributed to stigmatizing abortion, impacting both health professionals and pregnant people alike. Other limitations to exercise this right include lack of access to information, service-delivery barriers, lack of medical and surgical methods of abortion, and lack of access to affordable methods of contraception. The impact has been stronger on vulnerable groups, including the poor, people living in rural areas, and adolescents, often reproducing inequality.

Lack of Access to Free Contraception

Given the obstacles to access contraception, particularly economic barriers faced by vulnerable groups, in 2002, Congress passed the “Responsible Sexual and Reproductive Health” law, which created a Sexual Health and Responsible Procreation Directorate within the Health Ministry and established that the public health system should provide free access to contraception nationwide.¹⁰⁷ Private health providers are also mandated to grant free access to contraception in the Mandatory Medical Plan (*Plan Médico Obligatorio*), which regulates obligations for providers in the private sector.

The law provides the right to access reversible contraception methods, including condoms, pills, IUDs (intrauterine contraceptive device), and emergency contraceptives. In public hospitals and health facilities, free contraception includes a subdermal implant for people up to 24 years old, and the IUD with hormones for people with specific health conditions.

Since 2006, surgical contraception including tubal ligation and vasectomy are authorized as part of the free contraception regime, provided informed consent, both in the public and

¹⁰⁷ Responsible Sexual and Reproductive Health Law (Ley de salud sexual y procreación responsable), No. 25.673, 2002, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/79831/norma.htm>.

private health system.¹⁰⁸ Although the legislation authorized surgical contraception for people over 18 years of age, the systematic interpretation of this right, considering the standard of progressive autonomy and the right to have control over their own body, also applies to girls and adolescents for whom this is a recommended method, provided that they express their informed, autonomous or assisted consent.¹⁰⁹

Despite existing legislation, only half of the women who use contraceptives get them for free in the public health system, and poor and rural women and girls are disproportionately less likely to have access to free contraceptives, according to the local organization the Foundation for the Study and Research of Women (*Fundación para el Estudio e Investigación de la Mujer*).¹¹⁰

One of the main barriers of access to contraceptives is limited access to information regarding reproduction and contraception. Although a 2006 law on sex education established a nationwide, comprehensive sex education curriculum for public institutions that administer public and private schools, over a decade after its adoption, the program is poorly implemented.¹¹¹ According to a 2018 study, only two out of ten girls and boys receive sex education on a regular basis in schools of Buenos Aires province and city, both within the private and public education systems.¹¹²

Another reason for the low take up of free contraception is the lack of diverse contraceptive methods available under the scheme that leaves women and girls with few options so they resort to paying for their preferred method, or not using contraception at

¹⁰⁸ Regime for Surgical Contraception Interventions (Régimen para las Intervenciones de Contracepción Quirúrgica), No. 26.130, 2006, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/115000-119999/119260/norma.htm>.

¹⁰⁹ Civil and Commercial Code of Argentina (Código Civil y Comercial de la Nación), 2014, http://www.saij.gob.ar/docs-f/codigo/Codigo_Civil_y_Comercial_de_la_Nacion.pdf (accessed August 10, 2020), article 26; National Health Ministry, Resolution 65/2016, (Resolución 65/2016), 2016, <http://www.msal.gob.ar/images/stories/CD-65-2016-RESOLUCION.pdf> (accessed August 10, 2020).

¹¹⁰ Mabel Bianco, “Attention and Cost of Sexual and Reproductive Health in Argentina” (“Atención y Costo de la Salud Sexual y Reproductiva en Argentina”), 2015, <http://feim.org.ar/2015/12/27/atencion-y-costo-de-la-salud-sexual-y-reproductiva-en-argentina/> (accessed April 23, 2020).

¹¹¹ Comprehensive Sex Education National Program (Programa Nacional de Educación Sexual Integral), No. 26.150, 2006, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/121222/norma.htm>.

¹¹² Julieta Roffo, “Only two out of ten students receive sexual education in classrooms on a regular basis” (“Sólo dos de cada diez alumnos reciben en el aula educación sexual de manera habitual”), *Clarín*, 2018, https://www.clarin.com/sociedad/solo-alumnos-reciben-aula-educacion-sexual-manera-habitual_o_H1Y1kOdFG.html (accessed April 24, 2020).

all.¹¹³ Furthermore, men are sometimes deterred from seeking contraceptives because the healthcare facilities where they are more readily available are associated with gynecology services or specific for women healthcare.¹¹⁴

In other cases, health professionals actively misinform or discourage women from using contraceptives due to different reasons, including personal and religious beliefs and lack of knowledge regarding different contraceptive methods.¹¹⁵

Veronica R., 25, was receiving contraceptive injections at a health facility when, in February 2019, the providers told her that based on her new home address she would have to attend a hospital closer to her home to continue accessing free contraceptive services. At the hospital, she requested a tubal ligation, she told Human Rights Watch, and a gynecologist told her “she was too young and might want to have children in the future.” The gynecologist, however, also refused to provide Veronica with any form of contraception based on his personal beliefs. Veronica had neither sufficient time nor resources to find an alternative source for her to obtain contraceptives and, in April 2019, she became pregnant. At six weeks, relying on the health exception, Veronica sought an abortion at a clinic in a small provincial city. Healthcare providers there refused to provide the service offering no reasons why, so she went to another clinic, where a healthcare provider told her that she was too many weeks pregnant to receive an abortion at that facility. Veronica became so desperate that she considered getting hit by a car to end the pregnancy, she said. At 20 weeks, she found a feminist organization that referred her to a medical team that performed the abortion in a city located a 4-hour drive from where she lived.¹¹⁶

¹¹³ Mabel Bianco, “Attention and Cost of Sexual and Reproductive Health in Argentina” (“Atención y Costo de la Salud Sexual y Reproductiva en Argentina”), 2015, <http://feim.org.ar/2015/12/27/atencion-y-costo-de-la-salud-sexual-y-reproductiva-en-argentina/> (accessed April 23, 2020).

¹¹⁴ *Ibid.*, p. 15.

¹¹⁵ *Ibid.*, p. 15.

¹¹⁶ Human Rights Watch phone interviews with Veronica R., December 7, 2019; Human Rights Watch interview with feminist activist, December 6, 2019.

Lack of Access to Information

Pregnant people encounter significant barriers in accessing information on how to obtain legal and safe abortions. They are, at times, unaware of their rights to access legal abortion and the circumstances in which they can legally access an abortion. In cases where they cannot access information to request a legal abortion, some turn to clandestine or unsafe methods or do not get an abortion; others, however, turn to networks of activists who, in practice, have replaced the state as a provider of information regarding abortion rights and services.¹¹⁷ Lack of access to information in a timely manner also causes pregnant people to visit a health facility at a relatively late stage of their pregnancies.

Jessica S., 28, told Human Rights Watch that she became pregnant last year after a cousin raped her. She wanted to end the pregnancy, but she did not know she had the right to seek an abortion until she confided in a friend, who explained that abortion is legal for a pregnancy resulting from rape. On September 23, 2019, Jessica visited a primary healthcare center in an Argentine province to seek an abortion. By then, she was 20 weeks pregnant, and the primary healthcare center was unable to perform the procedure given they only provide first-trimester abortions without health complications. But the center got her an appointment at a provincial hospital in a city 100 kilometers away from her home. Jessica, who is unemployed and lives in a modest home with her 4- and 7-year-old children, her mother, and other family members, had to pay bus fare for the hour-and-a-half journey for herself and her sister, who accompanied her. When she arrived, one doctor explained the risks of having an abortion and noted that if the fetus “weighed more than 500 grams,” they would need to “prepare a death certificate.” Jessica reported she was scared but she nonetheless decided to sign the informed consent required for the abortion. The doctor then told her “she has the hardest part.” If she changed her mind, the doctor told her, she could sign a document to opt out. The doctor did not explain what the procedure would entail, she said, but assigned her to a hospital bed; her sister was not allowed to stay with her. She did not receive any pain medication either. The

¹¹⁷ Julia Burton, “Feminist practices around abortion in Argentina: approaches to the collective actions of the Lifeguards Network” (“Prácticas feministas en torno al derecho al aborto en Argentina: aproximaciones a las acciones colectivas de Socorristas en Red”), *Revista Punto Género* 7 (2017), accessed January 27, 2020, doi: 10.5354/0719-0417.2017.46268; Human Rights Watch phone interview with feminist activist, December 6, 2019.

doctor administered a first dose of Misoprostol, the only approved medicine for medical abortion in Argentina. Jessica started feeling unwell, she told Human Rights Watch, and she got scared and left the hospital. Although she had not received all the prescribed doses, she said that nobody tried to stop her. As she left, she told us, a nurse assured her that she had made the right decision: “God will help you raise your child,” the nurse said. “I felt alone, anguished, and scared; I thought I would die,” Jessica told Human Rights Watch. A few days later, Jessica sought information from a network of women’s rights activists, who told her how to take medication at home to end the pregnancy, which she did on her own and without the care of a health professional, to which she was legally entitled.¹¹⁸

Since the Senate voted down the 2018 bill, authorities in the northern provinces of Jujuy, Salta, Chaco, and Tucuman have restricted efforts to provide information, training, and workshops on access to legal abortion.¹¹⁹ The governor of Chaco, for instance, vetoed legislation that would have obliged health professionals, under the National Protocol, to give accurate information to pregnant people on their right to terminate pregnancies and, in October 2019, he suspended a technical training for abortion providers that would have been carried out by local officials in collaboration with a civil society group and national experts.¹²⁰ A doctor and an expert on sexual and reproductive health in Argentina told Human Rights Watch that they believe there is an informal agreement between administrators of medical facilities and provincial government officials that in practice prevents primary, low-complexity clinics—the type of medical facility available to rural women and girls—from performing abortions.¹²¹ Human Rights Watch was able to verify a document from a primary health director, which forbids health workers to perform abortion in the Province of Buenos Aires. Such agreement, if it indeed exists, would be incompatible with Chaco provincial regulations and laws that provide that abortion care

¹¹⁸ Human Rights Watch interview with Jessica S., December 12, 2019.

¹¹⁹ Human Rights Watch interview with doctor, November 2019; Human Rights Watch interview with lawyer, October 2019; Human Rights Watch interview with doctor, October 2019.

¹²⁰ Julia Lorenzo, “Chaco: Peppo vetoed the law guaranteeing access to information on legal abortion” (“Chaco: Peppo vetó la ley que garantiza acceso a información para interrupción legal del embarazo”), *La Izquierda Diario*, October 11, 2019, <http://www.laizquierdadiario.com/Chaco-Peppo-veto-la-ley-que-garantiza-acceso-a-informacion-para-interrupcion-legal-del-embarazo> (accessed January 24, 2020); Human Rights Watch interview with health professional, November 2019.

¹²¹ Human Rights Watch interview with doctor, November 2019; Human Rights Watch interview with a protocol specialist, November 2019.

should be available in every level of the health system and referrals should be in place for advanced pregnancies.¹²²

Arbitrarily Imposed Time Limitations

The stage of the pregnancy is one of the most common reasons for denying a person a legal abortion. Section 86 of the 1921 criminal code does not establish any gestational limit for legal abortions, but hospitals often impose informal rules, refusing, for example in the Buenos Aires Province, to perform an abortion after 16 weeks of gestation.¹²³ Such arbitrary imposition of gestational limits, given they have no legal basis, can be particularly problematic for adolescent girls, including those pregnant from sexual violence, as they often lack the sexual education and institutional support needed for early detection of pregnancies, and make their first visit to a health facility at a relatively late stage.¹²⁴

Women who live in places where medical facilities do not perform abortions often have to find a way to travel long distances to access abortion services, delaying their care and leaving them vulnerable to being denied abortion services because of informal rules about pregnancy stage.¹²⁵

Human Rights Watch documented five cases of women in various provinces who sought legal abortions and faced arbitrary limits based on weeks of pregnancy imposed by healthcare facilities, causing, in most of the cases, bureaucratic delay, unnecessary waiting periods, risks to the woman, and emotional distress. The prospect of such delays may frighten women and girls and deter them from seeking legal abortions, in which case they may resort to unsafe ones and only seek care in the health system if they experience health complications. When they do have complications, Human Rights Watch found that some women faced negligence, mistreatment, or abuse by health personnel when they sought medical attention for complications from abortions outside of the health system.

¹²² Chaco Province Law 7064, August 29, 2012, <http://www.notivida.org/legprovincial/ChacoLey7064ANP.html>.

¹²³ For example, in the Entre Rios province, there's only one hospital where legal abortions of pregnancies over 12 weeks are performed, health workers told Human Rights Watch. Human Rights Watch interview with a health worker, December 5, 2019.

¹²⁴ Edith A. Pantelides and María de las Mercedes Fernández, "Mothers under 15 years-old. The Argentine Case" ("Las madres menores de 15 años. El caso argentino"), *Coyuntura Demográfica* 11 (2017): 27-33, accessed January 18, 2020, https://www.researchgate.net/publication/312393045_LAS_MADRES_MENORES_DE_15_ANOS_EL_CASO_ARGENTINO; Human Rights Watch interview with doctor, October 2019; Human Rights Watch interview with doctor, November 2019.

¹²⁵ Human Rights Watch interview with a doctor, October 2019.

The trauma of resorting to the health system only after an unsafe abortion often damages pregnant people’s physical and mental health.¹²⁶

In September 2019, Leticia H., 19, went to a public hospital in northern Argentina seeking to end a pregnancy caused by a rape. She was 17 weeks pregnant. The hospital denied the abortion, citing an informal rule, lacking legal grounding, that the hospital provided abortions only up to 16 weeks pregnancy. Leticia took medication to induce an abortion on her own, a lawyer involved in the case told Human Rights Watch, but the abortion was incomplete (meaning tissue remained in her uterus), placing her at risk of infection. Recognizing something was wrong and she needed medical intervention, Leticia went to a hospital, and health personnel left her waiting for two hours before treating her. “If you liked having an abortion, now you have to wait” a hospital employee told her. She was bleeding profusely and lost consciousness several times in the emergency room corridor.¹²⁷

Diagnosed with depression as a child, Lorena J., 25, had a history of psychosocial difficulties for which she was prescribed psychiatric medications contraindicated in pregnancy. A social worker involved in her care told Human Rights Watch that when Lorena learned she was pregnant, she said she could not have a child. She told the social worker that she wanted to “solve this problem” and that if the social worker did not help her, she would “solve it in a way you wouldn’t want”, meaning she would take her own life. The social worker referred Lorena to a health center with an interdisciplinary medical team, where she reiterated her desire to end the pregnancy. Learning of her suicidal thoughts, the medical team determined that, given the pregnancy posed a risk to her mental health, she was eligible for a legal abortion. But, because she was slightly over 16 weeks pregnant, they said they could not perform the abortion there. Thus began a 3-week ordeal of shunting from one facility to the next. Hospital staff in her hometown told her she was “irresponsible” for getting

¹²⁶ World Health Organization, “Safe abortion: Technical and Policy Guidelines for Health System,” 2012, https://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/ (accessed December 18, 2019), p. 29.

¹²⁷ Human Rights Watch interview with a lawyer with knowledge about this case, and feminist activist, October 2019.

pregnant “while taking psychiatric medicine,” the social worker involved in the case told Human Rights Watch. The staff told her that, because she was over 16 weeks pregnant, an abortion was “very risky” and they “could not help her.” So Lorena went alone to a hospital in a city 200 kilometers away. It took her about two hours by train and bus. She was not able to get an immediate appointment with a gynecologist, so she returned home. She eventually obtained an appointment at another hospital, an hour’s bus ride from home. Lorena was 19 weeks pregnant by the time a gynecologist performed the abortion.¹²⁸

Service-delivery Barriers

Public primary-care facilities have, in recent years, assumed a fundamental role in providing access to early abortion. In many communities, they constitute the only available nearby care and they are typically the first place within the public health system to which women and girls seeking abortion go. Yet health facilities that provide a high complexity of care, such as hospitals, have refused to accept referrals for abortions from primary-care clinics. This is mostly due to “dissimilar criteria” in determining whether an abortion will be legal, a doctor told Human Rights Watch.¹²⁹

Some primary care facilities have created interdisciplinary medical teams that offer medical abortion and then monitor a patient’s health. Yet it is not common for the state to support such practices, and, in some cases, the state creates obstacles to the functioning of abortion services, three doctors and two social workers told Human Rights Watch.¹³⁰ One lawyer and two health professionals told Human Rights Watch that authorities hinder the ability of public primary care facilities to provide abortions by, for instance, restricting supplies for medical or manual vacuum aspiration (MVA) abortions, or relocating or firing personnel trained in performing the procedure.¹³¹

¹²⁸ Human Rights Watch interview with a doctor and a social worker, November 18, 2019.

¹²⁹ Human Rights Watch interview with health professional, October 24, 2019.

¹³⁰ Human Rights Watch interview with health professional, October 24, 2019; Human Rights Watch interview with health professional, October 22, 2019; Human Rights Watch interview with social worker, November 29, 2019; Human Rights Watch interview with social worker, October 30, 2019; Human Rights Watch interview with health professional, October 21, 2019.

¹³¹ Human Rights Watch Interview with social worker, November 2019; Human Rights Watch interview with health professional, November 2019; Human Rights Watch interview with a lawyer, November 2019.

Two doctors interviewed by Human Rights Watch emphasized that at all levels of the health system, lack of healthcare providers who are trained or willing to perform abortion makes it hard for women and girls to obtain safe abortions. This is aggravated by the fact that in some cases health professionals “do not give district referral, which is necessary to transfer the case to another facility.”¹³² In other cases, “referrals are ineffective and generate delays that further makes access difficult.”¹³³ “Weeks go by,” one of the doctors interviewed said, “and patients get lost along the way.”¹³⁴ When that happens, pregnancies extend past 16 weeks, and, as described above, women and girls come up against hospitals’ self-imposed arbitrary limits based on weeks of pregnancy.

In some cases, healthcare providers in both private and public facilities require third-party authorization from one or more medical professionals, courts, parents, or guardians before agreeing to perform an abortion, health professionals told Human Rights Watch.¹³⁵ Generally, these requirements—not established in legislation—hinder the ability of women and girls to obtain abortions in an effective, safe, and timely manner, affecting their rights to equality and non-discrimination, among others.

Restricting Medical Abortion

The World Health Organization deems medical abortion as safe and highly effective.¹³⁶ The WHO recommends, as a gold standard for safe abortion provision, a combination of the medications Mifepristone and Misoprostol to end a pregnancy. Where Mifepristone is not available, the WHO recommends exclusive use of Misoprostol as the second-best recommended scheme. Both medicines are on the WHO list of essential medicines.

Yet, in Argentina, the National Health Ministry’s pharmaceutical authority (Administración Nacional de Medicamentos, Alimentos y Tecnología Médica, ANMAT) has yet to authorize general production and distribution of Mifepristone for gynecological purposes.

¹³² Human Rights Watch interview with health professional, November 2019.

¹³³ Human Rights Watch interview with health professional, October 22, 2019.

¹³⁴ Ibid.

¹³⁵ Human Rights Watch interview with a social worker, October 2019; Human Rights Watch interview with psychologist, November 2019; Human Rights Watch interview with physician, October 2019; Human Rights Watch interview with lawyer, October 2019; Human Rights Watch interview with an obstetrician, November 2019.

¹³⁶ World Health Organization, “Medical management of abortion,” 2018, <https://apps.who.int/iris/bitstream/handle/10665/278968/9789241550406-eng.pdf?ua=1> (accessed March 13, 2020).

Mifepristone is not available, since neither the National Health Ministry nor a private laboratory have asked ANMAT to register it.¹³⁷ Regulations governing the use of Misoprostol have discouraged healthcare providers from prescribing it. For example, in the provinces of San Juan and Mendoza, local laws forbid pharmacies from selling Misoprostol.¹³⁸

Some steps taken by authorities in the past two years have improved access to Misoprostol. In January 2018, a state-owned laboratory—the Pharmaceutical Industrial Laboratory of Santa Fe province—started producing it for gynecological purposes. In September 2019, the laboratory began distributing Misoprostol in Santa Fe hospitals and health facilities, including pharmacies.¹³⁹ The idea was that a state-owned laboratory would be able to make the drug more affordable and more widely available than private laboratories would. In 2019, the laboratory produced 200,000 Misoprostol pills, enough for use in more than 16,000 safe, first-trimester abortions.¹⁴⁰ While the Santa Fe laboratory has ANMAT’s approval to operate in the province, at time of writing it was awaiting permission to distribute the medicine nationally.

Until the state-owned laboratory launched production of Misoprostol for safe abortion, only one private laboratory in Argentina, Beta Laboratory (Laboratorios Beta), had produced and commercialized the drug—and not for abortions: “Oxaprost” was labeled for gastroenterological uses (for treatment of the digestive system). It contained Misoprostol, as well as another drug not indicated for inducing abortion. Oxaprost was, however, used off-label to induce abortion.¹⁴¹ Shortly after the Senate voted down the abortion bill in

¹³⁷ NOA lawyers in Human Rights and Social Studies, ANDHES et al., “Access to abortion in Argentina” (“Acceso al aborto en Argentina”), September 11, 2018, https://www.cels.org.ar/web/wp-content/uploads/2018/09/20180911_Aborto_ComiteDESC.pdf (accessed February 10, 2020).

¹³⁸ Misoprostol: Terms of Sale (Misoprostol: Condiciones de Venta), Law 008116/2009, Mendoza Province, 2009, <http://www.salud.mendoza.gov.ar/legal/l-008116-2009/>; Law 1133-Q, San Juan Province, 2014, <http://www.legisla.gov.ar/atlas/djsj/1133-Q.pdf>.

¹³⁹ Irene Hartmann, “It costs a third of what private laboratories charge: Santa Fe started to distribute Misoprostol of its own production at hospitals and health centers” (“Cuesta un tercio que el de laboratorios privados Santa Fe empezó a distribuir misoprostol de su propia producción en hospitales y centros de su salud”), *Clarín*, November 19, 2019, https://www.clarin.com/sociedad/santa-fe-empezo-distribuir-Misoprostol-propia-produccion-hospitales-centros-salud_o_tLyRXa6o.html (accessed February 11, 2020).

¹⁴⁰ Sonia Tessa, “Misoprostol: when the pill is the truth” (“Misoprostol: cuando la pastilla es la verdad”), *Página 12*, November 1, 2019, <https://www.pagina12.com.ar/228360-misoprostol-cuando-la-pastilla-es-la-verdad> (accessed February 13, 2020).

¹⁴¹ Fabiola Czubaj, “Misoprostol: the long road to approve the pill that terminates a pregnancy” (“Misoprostol: el largo recorrido para aprobar la pastilla que interrumpe el embarazo”), *La Nación*, October 30, 2018,

2018, ANMAT authorized a private laboratory, Dominguez Laboratory (Laboratorios Domínguez), for the first time, to produce Misoprostol for abortion. In October 2018, ANMAT determined that the drug would be sold in sets of 12 pills—the dose needed to terminate a pregnancy in the first trimester—and stipulated that it could be purchased by archived prescription in pharmacies.¹⁴²

Despite this progress, the amount of Misoprostol distributed to the provinces continues to be low in relation to demand and to the number of abortions known to have been provided in the past. The majority of doctors we interviewed said that National Health Ministry deliveries of drugs for medical abortion to their province are insufficient and that provinces and municipalities are buying them at their own discretion and expense.¹⁴³ In December 2019, National Health Minister Ginés González García announced that his team would promote state production of Misoprostol.¹⁴⁴

The availability of Misoprostol also depends on local legislation. Despite ANMAT's October 2018 approval of prescription sales in pharmacies nationally, the provinces of Mendoza and San Juan do not allow the drug.¹⁴⁵ Laws requiring gynecological medicines to be used only in hospitals and public-health institutions are still in force in those provinces, although there have been legislative initiatives to revert this restrictions at the local

<https://www.lanacion.com.ar/sociedad/Misoprostol-largo-recorrido-aprobar-pastilla-interrumpe-embarazo-nid2186832> (accessed February 3, 2020).

¹⁴² Estefanía Pozzo, “The ANMAT approved the sale of gynecological Misoprostol in pharmacies” (“La ANMAT aprobó la venta de misoprostol ginecológico en farmacias”), *La Cronista*, October 29, 2018, <https://www.cronista.com/negocios/La-ANMAT-aprobo-la-venta-de-Misoprostol-ginecologico-en-farmacias--20181029-0036.html> (accessed February 10, 2020); “The Buenos Aires Province bought 80 thousand misoprostol tablets” (“La Provincia de Buenos Aires compró 80 mil comprimidos de misoprostol”), *Ambito*, March 7, 2020, <https://www.ambito.com/politica/salud/la-provincia-buenos-aires-compro-80-mil-comprimidos-misoprostol-n5087304> (accessed August 10, 2020).

¹⁴³ Human Rights Watch interview with health professional, October 22, 2019; “Buenos Aires Province bought 80 thousand misoprostol tablets” (“La Provincia de Buenos Aires compró 80 mil comprimidos de misoprostol”), *Ambito*, March 7, 2020, <https://www.ambito.com/politica/salud/la-provincia-buenos-aires-compro-80-mil-comprimidos-misoprostol-n5087304> (accessed August 10, 2020).

¹⁴⁴ “Ginés González García said that state production of Misoprostol will be stimulated” (“Ginés González García adelantó que se va a estimular la producción estatal de misoprostol”), *Infobae*, December 17, 2019, <https://www.infobae.com/politica/2019/12/17/gines-gonzalez-garcia-adelanto-que-se-va-a-estimular-la-produccion-estatal-de-Misoprostol/> (accessed February, 2020).

¹⁴⁵ Misoprostol: Terms of Sale (Misoprostol: Condiciones de Venta), Law 008116/2009, Mendoza Province, 2009, <http://www.salud.mendoza.gov.ar/legal/l-008116-2009/>; Law 1133-Q, San Juan Province, 2014, <http://www.legislaud.gov.ar/atlas/djsj/1133-Q.pdf>.

level.¹⁴⁶ Catamarca province permits the sale of Misoprostol in pharmacies, but each pharmacy has discretion to decide whether to sell it.¹⁴⁷ Such laws create daunting obstacles for women and girls who are legally eligible for abortions.

In some cases, setbacks in the provision of Misoprostol followed the 2018 debate in Congress. The health authorities of many municipalities in Buenos Aires province, including La Plata, Berisso, and Ensenada, stopped providing the drug to primary-care health facilities.¹⁴⁸ The amount of Misoprostol distributed in the municipality of Moron, for example, has decreased, a doctor there told us, which forces medical professionals to prioritize some cases over others. Given the shortage of Misoprostol, the doctor said, she has been forced to prioritize treatment of women whose circumstances are most dire, leaving some women without access to the drug and therefore without access to abortion.¹⁴⁹

In May 2019, in the northern province of Misiones, the legislature considered—and rejected—a bill to restrict Misoprostol use to hospitals and health facilities and render it unavailable in pharmacies.¹⁵⁰

In October 2019, two anti-choice groups, the Belén Portal (Portal de Belén, in Spanish)¹⁵¹ and the Association for the Promotion of Civil Rights (Asociación para la Promoción de los Derechos Civiles),¹⁵² filed an injunction requesting the suspension of both the National

¹⁴⁶ Carla Romanello, “[A deputy] pushes for Misoprostol to be sold at pharmacies” (“Buscan que el misoprostol se pueda conseguir en farmacias mendocinas”), *Los Andes*, August 11, 2018, <https://www.losandes.com.ar/buscan-que-el-misoprostol-se-pueda-conseguir-en-farmacias/> (accessed June 28, 2020).

¹⁴⁷ “Misoprostol at the pharmacy: what is the situation in Catamarca” (“Misoprostol en farmacias: cuál es la situación en Catamarca”), *El Esquiú*, November 2, 2018, <https://www.lesquiú.com/sociedad/2018/11/2/misoprostol-en-farmacias-cuales-la-situacion-en-catamarca-304918.html> (accessed February 8, 2020).

¹⁴⁸ Human Rights Watch interview with health professional, October 21, 2019; Human Rights Watch interview with health professional, October 29, 2019.

¹⁴⁹ Human Rights Watch interview with doctor, November 18, 2019.

¹⁵⁰ House of Representatives, Misiones Province, draft bill, http://www.diputadosmisiones.gob.ar/web_camara/archivos/proyectos/P51510.pdf.

¹⁵¹ According to its Facebook profile, Portal de Belén is a non-governmental institution in the province of Córdoba. Its mission is to “help and defend human life from its conception, supporting mothers in risk situations, pregnant women with children, providing emotional, legal, psychological, educational support through homes and shelters.” Portal de Belén’s Facebook page, https://www.facebook.com/pg/portaldebelenonline/about/?ref=page_internal (accessed January 7, 2020)

¹⁵² PRODECI is an organization of lawyers from 12 Argentine provinces. According to their website, “the objective of the organization is to promote family, life and values, from the law, justice, communication, civil participation and dissemination, assisting those like-minded to these principles.” “Who are we?” (“¿Quiénes somos?”), PRODECI, <http://prodeci.com.ar/> (accessed January 7, 2020).

Protocol and the sale of Misoprostol in pharmacies throughout the country. They argued that the National Protocol is unconstitutional for violating the right to life of the fetus.¹⁵³ On December 6, 2019, a judge granted a precautionary measure suspending sale of Misoprostol in pharmacies; then, on appeal, she suspended the precautionary measure, allowing sales to resume.¹⁵⁴

Economic Barriers to Legal and Safe Abortion

Even if a pregnant person is legally able to access an abortion, the costs associated with obtaining one can be insurmountable. Buying Misoprostol in its 12-pill format costs 5,222 Argentine pesos (approximately US\$69 at the official exchange rate at the time of writing), representing almost a quarter of the mandatory minimum monthly wage, which was 16,875 Argentine pesos (US\$267) in July 2020.¹⁵⁵ Oxaprost is even more expensive, with the price oscillating, in September 2019, around 8,725 Argentine pesos (approximately US\$116 at the official exchange rate at the time of writing).

Many women and girls, particularly the poor and indigenous, are unable to pay these prices and they turn to less safe methods to end their pregnancies. “We are witnessing a return to parsley,” a feminist activist told Human Rights Watch, referring to cases in which women or girls insert parsley or celery stalks into their vaginas up to the uterus to provoke bleeding and end pregnancies. It is “cheap, easy to get, and hurts less than other unsafe methods,” she said, “including probes, knitting needles, and coat hangers.”¹⁵⁶

¹⁵³ Soledad Vallejos, “Abortion: anti-choice groups target the Protocol and the Misoprostol” (“Aborto: los antiderechos van por el Protocolo y el misoprostol”), *Página 12*, October 11, 2019, <https://www.pagina12.com.ar/224535-aborto-los-antiderechos-van-por-el-protocolo-y-el-misoprosto> (accessed January 18, 2020).

¹⁵⁴ “The Belen Portal again: a Buenos Aires judge gave rise to an amparo against the sale of Misoprostol in pharmacies” (“Otra vez portal de Belén: una jueza porteña hizo lugar a un amparo contra la venta de misoprostol en farmacia”), *ENREDACCIÓN*, December 2, 2019, <https://enredaccion.com.ar/otra-vez-portal-de-belen-una-jueza-portena-hizo-lugar-a-un-amparo-contra-la-venta-de-misoprostol-en-farmacias/> (accessed January 18, 2020).

¹⁵⁵ “The government established a 35% raise in the minimum salary in three installments” (“El Gobierno estableció el aumento del 35% del salario mínimo en tres cuotas”), *Clarín*, November 9, 2019, https://www.clarin.com/economia/gobierno-establecio-aumento-35-salario-minimo-cuotas_o_gycyWX-tj.html (accessed January 19, 2020).

¹⁵⁶ Mariana Iglesias, “Catheter and parsley: a practice for clandestine abortions as dangerous as it is widespread and used” (“Sigue el debate Sondas y perejil: una práctica para abortos clandestinos tan peligrosa como vigente y extendida”), *Clarín*, August 15, 2018, https://www.clarin.com/sociedad/sondas-perejil-practica-abortos-clandestinos-peligrosa-vigente-extendida_o_BJXrlyM8Q.html (accessed January 7, 2020).

Unsafe abortion can lead to serious infections, and even death.¹⁵⁷ In June 2019, a 28-year-old woman died in a Buenos Aires hospital as a result of an unsafe abortion that caused severe bleeding and a uterine infection, according to news reports.¹⁵⁸ In May 2019, a 30-year-old woman died in Catamarca province, the media reported, after trying to end her pregnancy with a branch of parsley.¹⁵⁹

Mistreatment by Health Providers

Pregnant people seeking legal abortions are often subject to restrictions based on arbitrary criteria imposed by doctors and other healthcare providers. Health professionals sometimes invoke personal or religious beliefs to deny abortions, despite having no legal basis to do so. Healthcare providers who are supposed to support women seeking legal abortions often make cruel, hostile comments, as the vast majority of interviews conducted by Human Rights Watch indicate.¹⁶⁰

Ana S., an 11-year-old indigenous girl, became pregnant after she was raped by a family member. In May 2018, doctors at a public hospital confirmed she was 14-weeks pregnant but failed to provide her or her mother with information about the possibility of a legal abortion, a doctor and a health authority told Human Rights Watch. Ana stopped eating and drinking water and said she did not want to have the baby, so her mother reached out to a friend of the family who was able to secure support for Ana to

¹⁵⁷ Tadele Melese et al., “High levels of post-abortion complication in a setting where abortion service is not legalized,” *PLoS one* 12.1(2017), accessed January 3, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5217963/>; Doctors Without Borders, “Consequences of Unsafe Abortion” (“Las Consecuencias Del Aborto No Seguro”), <https://www.msf.es/las-consecuencias-del-aborto-no-seguro> (accessed January 3, 2020).

¹⁵⁸ Agustina Arredondo, “Parsley continues to kill in the shadows” (“El perejil sigue matando en las sombras”), *Página 12*, June 3, 2019, <https://www.pagina12.com.ar/197808-el-perejil-sigue-matando-en-las-sombras> (accessed January 5, 2020).

¹⁵⁹ “The deaths due to clandestine abortions continue” (“Siguen las muertes por abortos clandestinos”), *Página 12*, March 19, 2019, <https://www.pagina12.com.ar/181307-siguen-las-muertes-por-abortos-clandestinos> (accessed January 5, 2020).

¹⁶⁰ Human Rights Watch interview with Carmela Toledo, Buenos Aires Province, December 9, 2019; Human Rights Watch phone interview with Veronica R., December 7, 2019; Human Rights Watch interview with Nadia R. and her lawyer, December 6, 2019; Human Rights Watch with Jessica S., November 18, 2019; Human Rights Watch interview with a lawyer with knowledge in this case, and a feminist activist, October, 2019; Human Rights Watch interview with a doctor and a social worker, November 18, 2019; Human Rights Watch phone interview with the doctor who performed the abortion, December 6, 2019; Human Rights Watch interview with a lawyer with knowledge on this case, December 5, 2019; Human Rights Watch interview with member of feminist network who provided support to the woman and a lawyer with knowledge about this case, December 6, 2019); Human Rights Watch interview with pediatrician and sexual health provincial worker who worked on the case, November 27 and 28, 2019; Human Rights Watch interviews with two health professionals, December 6 and 7, 2019); Human Rights Watch interview with a doctor who worked on the Estrella T. and Lucia P. case, November 18, 2019.

travel to the provincial capital to seek care at a maternity hospital. By then, she was 16 weeks pregnant. The first doctor, who was also a priest, prayed during the appointment “for the life of the fetus” and did not want to allow her access to an abortion even though it was her right. The friend then found another health professional, who assisted the girl in gaining access to a legal abortion.¹⁶¹ The ill-treatment by health professionals produced high levels of stress for both Ana and her mother.

Some healthcare professionals deny pregnant people seeking an abortion food or pain treatment, four women and a doctor told Human Rights Watch.¹⁶² They “neglect them,” the doctor said. “For example, if they have a fever,” he said, healthcare professionals “do not provide the same quality of care” as for other patients. Such mistreatment discourages and stigmatizes legal abortion, and endangers women’s and girls’ health and lives. Similarly when patients present with incomplete abortions initiated under unsafe or non-legal procedures, interviewees said doctors on call sometimes refuse to perform the procedure to remove tissue from the uterus or leave patients waiting for long periods.¹⁶³

Two social workers and three doctors told Human Rights Watch that municipal healthcare officials cautioned them to provide counseling or abortion care only in compliance with restrictive municipal regulations or informal rules. Some healthcare professionals want to provide legal abortions, one doctor said, but feel that they are “not authorized to do so” because of informal instructions from municipal authorities. This is true, the doctor said, even in cases in which national law clearly authorizes an abortion.¹⁶⁴

¹⁶¹ Human Rights Watch interview with pediatrician and sexual health provincial worker who worked on the case, November 27 and 28, 2019.

¹⁶² Human Rights Watch interview with health professional, December 6, 2019; Human Rights Watch interview with Jessica S.; November 18, 2019; Human Rights Watch interview with health professional who practiced the abortion, December 6, 2019; Human Rights Watch interview with lawyer from network of feminist activists, December 5, 2019; Human Rights Watch interview with network of feminist who provide support to access legal abortions and a lawyer providing support to the network, December 6, 2019; Human Rights Watch interview with member of feminist network who provided support to Milagros and lawyer, December 6, 2019.

¹⁶³ Human Rights Watch interview with health professional, December 6, 2019; Human Rights Watch interview with health professional, October 21, 2019.

¹⁶⁴ Human Rights Watch interview with health professional, October 21, 2019.

A woman with a planned pregnancy was told by doctors the fetus had various congenital anomalies, including cyclopia and trisomy, a condition that makes it difficult for the fetus to survive, decided to have an abortion in July 2019, at week 25, two health professionals told Human Rights Watch. The head of one of the woman’s medical teams asked her if she thought she was God to decide to take “her baby’s life.” The head of the medical team told her she would regret the decision her whole life, and the guilt would drive her to suicide.¹⁶⁵

In early 2019, Graciela R., 32, filed a criminal complaint accusing her partner of physical and psychological violence against her. She continued to see him, as he promised to change. At a party she attended without her partner’s knowledge, several men drugged and raped her. She did not report the abuse, as they were part of her social circle.

As a result of the rape she got pregnant. So she reached out to a group she found online that claimed to provide support to women facing unwanted pregnancies. While providing a free ultrasound, members of the group tried to convince Graciela to continue the pregnancy. Graciela told a doctor associated with the group that she did not want to continue the pregnancy, not only because it resulted from a rape, but because she was afraid of her father’s and her boyfriend’s reactions. They offered to help her with adoption. Graciela kept insisting she wanted to terminate the pregnancy, but on various visits, the group’s health providers pressured her to continue the pregnancy, pressing her to listen to the heartbeat, and watch, on an ultrasound, as the fetus moved.

When Graciela was 22 weeks into her pregnancy, she reached out to a network of feminist activists, who connected her with doctors at a local public maternity hospital. Graciela was admitted to the hospital on a Friday, when health providers induced a medical abortion.

The next day, when a different set of health providers were on duty, Graciela needed additional treatment and pain management. None of the healthcare providers on duty over the weekend would help Graciela. Instead, they humiliated and mistreated her.

¹⁶⁵ Human Rights Watch interview with health professional, December 6, 2019.

Nurses and healthcare assistants withheld pain medication. They called Graciela “the one who wants to abort a big fetus.” One asked in a loud voice, “How is it possible that she wants to kill a son that is about to be born?” After the abortion was complete, on Sunday, several nurses took pictures of the tissue and circulated them on Facebook and WhatsApp.¹⁶⁶ The following day several nurses invited a priest to the hospital, who loudly condemned abortion practices and those who had performed the abortion, so that Graciela could hear.¹⁶⁷

Restrictive Interpretation of Legal Grounds

Uncertainty about the scope of legal exceptions to criminalization adds a barrier for women and girls seeking abortions because healthcare providers do not want to risk prosecution. Section 86 of the criminal code specifies the circumstances in which pregnant people can legally have an abortion, as noted above: in cases of rape or risk to the life or health of the pregnant woman or girl. However, in practice, health providers have interpreted those exceptions in ways that undermine access to legal abortions, according to health professionals and women interviewed by Human Rights Watch.¹⁶⁸

When a pregnancy results from rape, section 86 stipulates that a woman or girl has the right to a legal abortion. For that stipulation to be meaningful, though, health professionals must provide clear information regarding available options to pregnant people, including access to legal abortion services. Under the National Protocol, if the person decides to terminate the pregnancy, they must sign an “informed consent” form and an affidavit swearing that the pregnancy resulted from rape. In practice, healthcare professionals sometimes interpret sexual violence narrowly, denying an abortion if, for example, the perpetrator was the partner of the pregnant person, an activist and a doctor told Human Rights Watch.¹⁶⁹

¹⁶⁶ Copies of pictures on file at Human Rights Watch.

¹⁶⁷ Human Rights Watch telephone interview with the doctor who performed the abortion, December 6, 2019; Human Rights Watch interview with a lawyer with knowledge on this case, December 5, 2019.

¹⁶⁸ Human Rights Watch interview with health professional, November 2019; Human Rights Watch interview with Catalina P., December 29, 2019; Human Rights Watch interview with Carmela Toledo, Buenos Aires Province, December 9, 2019.

¹⁶⁹ Human Rights Watch interview with doctor, October 2019; Human Rights Watch interview with feminist activist, October 24, 2019.

Similarly, and despite the broad definition of what constitutes a health exception to access legal abortion under the National Protocol, the Argentine health system has inconsistently and arbitrarily interpreted what constitutes a threat to a pregnant person's health. Often, risks to a pregnant person's mental health or social circumstances influencing physical or mental health are not considered sufficient to grant access to a legal abortion.¹⁷⁰ In practice, as a feminist activist told Human Rights Watch, "everything depends on which medical center the woman goes to."¹⁷¹

In November 2018, Carmela Toledo, 23, found out that she was carrying a fetus with anencephaly, a fatal condition in which the brain and skull are underdeveloped. She was 25 weeks pregnant. Carmela went to a public hospital in Buenos Aires province to request a legal abortion, but doctors told her that the law to decriminalize abortion had not passed and added, falsely, that abortion was completely illegal. The doctors said Carmela had to wait until she was 7 months pregnant so they could say she had had a premature birth. When she was seven months pregnant, health professionals tried unsuccessfully to induce birth. The treating doctor scared Carmela by outlining risks, including the possibility of difficulties in having a child later. This pushed Carmela to decide to continue with the pregnancy. Throughout the pregnancy, when she felt the fetus move, she cried. She had a cesarean section at week 41, and her daughter died eight days later.¹⁷²

The December 2019 National Protocol reaffirms the WHO description of health as a "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." Application of this definition could expand the type of cases in which legal abortion is allowed in Argentina, but implementation of the National Protocol is in the very

¹⁷⁰ "Access to abortion under the health exception" ("Acceso al aborto por motivos de salud mental"), 2008, <http://www.redaas.org.ar/archivos-recursos/ABORMHSo8.pdf> (accessed february 21, 2020); Perrotta, G., "Hardships to access legal abortion in the health system: a form of gender violence, The role of the psychologist" ("Dificultades en el acceso al aborto no punible en el sistema de salud: una forma de violencia de género. El rol del psicólogo/a."), Actas VII Congreso Internacional de Investigación y Práctica Profesional en Psicología XXII Jornadas de Investigación XI Encuentro de Investigadores en Psicología del MERCOSUR, 2015, https://www.psi.uba.ar/academica/carrerasdegrado/psicologia/sitios_catedras/electivas/816_rol_psicologo/material/unidad5/complementaria/aborto_no_punible.pdf (accessed February 20, 2020).

¹⁷¹ Human Rights Watch interview with feminist activist, November 6, 2019.

¹⁷² Human Rights Watch interview with Carmela Toledo, Buenos Aires Province, December 9, 2019.

early stages and it has not been fully adopted across the country. Health professionals still lack a comprehensive understanding of what the health exception covers and may refuse to adopt the definition due to personal and religious beliefs or because they fear prosecution if their interpretation of the exception is challenged.¹⁷³

Unlawful Invocation of Conscientious Objection

In Argentina, conscientious objection is protected under individual's right to autonomy, freedom of thought, conscience, and religion.¹⁷⁴ The exercise of that right is, however, not absolute. The F.A.L. ruling established that public and private health services must ensure that an individual's conscientious objection does not prevent patients from accessing healthcare and does not interfere with needed services.¹⁷⁵

In practice, however, healthcare professionals invoke conscientious objection to refuse provision of sexual and reproductive services in circumstances that seriously impede access to legal abortion in Argentina.¹⁷⁶ The number of conscientious objectors varies by province and by health facility and the government does not keep data on conscientious objectors.¹⁷⁷ According to reports and the testimony of a doctor and a social worker, however, establishes that providers often refuse to provide services and they or their facilities fail to ensure that patients are properly referred to doctors who can perform the needed procedures.¹⁷⁸

¹⁷³ "Constitution of the World Health Organization," Forty-fifth edition Supplement, 2006, https://www.who.int/governance/eb/who_constitution_en.pdf (accessed December 22, 2019).

¹⁷⁴ National Constitution of The Argentine Republic, Article 29.

¹⁷⁵ F.A.L. s/ self-executing measure, National Supreme Court of Justice (Corte Suprema de Justicia de la Nación), Ruling 335:197, March 13, 2012.

¹⁷⁶ See Sonia Ariza Navarrete and Agustina Ramón Michel, "Unforeseen Uses and Responses to Conscientious Objection in Legal Abortion" ("Usos imprevistos y respuestas ante la objeción de conciencia en el aborto legal"), 2019, <http://www.redaas.org.ar/nuestro-trabajo-documento.php?a=161> (accessed August 10, 2020).

¹⁷⁷ Brenda Struminger, "Abortion Debate: what is the conscientious objection," *La Nación*, April 6, 2018, <https://www.lanacion.com.ar/sociedad/objecion-de-conciencia-nid2119281> (accessed January 14, 2020).

¹⁷⁸ Human Rights Watch interview with doctor, December 7, 2019; Juan Carlos Vergara, Health Minister in La Rioja Province said "the reality [referring to conscientious objection in La Rioja] is that the majority will be against it [performing an abortion] and I know this because I know all the gynecologists in La Rioja, with very few exceptions." "Vergara stated that La Rioja will apply the new non-punishable abortion" ("Vergara aseguró que La Rioja aplicará el nuevo protocolo de ILE"), *Marea Verde*, December 12, 2019, <https://www.mareaverde.com.ar/post/vergara-asegur%C3%B3-que-la-rioja-aplicar%C3%A1-el-nuevo-protocolo-de-ile> (accessed April 30, 2020); Ernesto Azarkevich, "Legal Abortion: doctors in Misiones launched a register of conscientious objection" ("Aborto legal: en Misiones los médicos lanzaron un registro de objetores de conciencia"), *Clarín*, 2019, https://www.clarin.com/sociedad/aborto-legal-misiones-medicos-lanzaron-registro-objetores-conciencia_o_mlrQY1et.html (accessed May 5, 2020); Human Rights Watch interview with feminist activist and social worker, November, 2019.

Failure to ensure referral when conscientious objection is invoked, violates the rights of women and girls. In provinces where there are conscientious objectors—even in provinces that adhere to the National Protocol—in practice effective referral for a timely abortion is virtually impossible.¹⁷⁹ Given entire facilities have claimed conscientious objection, even with referrals, pregnant people face undue delays when alternative health facilities are far from home, and many medical facilities lack staff who are able and willing to provide legal abortions, as two women and health professionals told Human Rights Watch.

Catalina P., 35, was 12 weeks pregnant when she found out that she was carrying a fetus with anencephaly, a fatal condition in which the brain and skull are underdeveloped. She went to a private hospital in Buenos Aires City to request a legal abortion, but hospital personnel refused, citing an institutional conscientious objection. One doctor told Catalina that, because the fetus had a heartbeat, the abortion was illegal. Another said that, under the city’s Anencephalic Law, she needed the pregnancy to end on its own, to carry the pregnancy to term or wait until her 24th week of pregnancy.¹⁸⁰ The doctors did ultrasounds every 48 hours to monitor the heart rate, which Catalina said was “like torture.” During one, a health professional forced Catalina to watch the fetus and listen to the heart rate. Several doctors informally suggested she seek an illegal and unsafe abortion outside the hospital, Catalina told Human Rights Watch, but she quickly discarded that option, as it was expensive. Instead, Catalina sought help at a public primary-care facility, which prescribed Oxaprost to induce the abortion. The Oxaprost failed to end the pregnancy. When Catalina returned to the primary healthcare facility, doctors prescribed a brand of pure Misoprostol, and that too failed. Catalina went to a public hospital in Buenos Aires City, where she was admitted for “threat of abortion.” She stayed in the obstetrics ward for four days, watching other women give birth. Another medical abortion treatment there also failed. After conducting some medical tests, the doctors at the public hospital realized the pills were not working because of a complication with her

¹⁷⁹ Human Rights Watch Interview with health professional, December 12, 2019; “All gynecologists at the Regional Hospital are conscientious objectors” (“Todos los ginecólogos del Hospital Regional son objetores de conciencia”), *Tiempo Sur*, April 17, 2018, <https://www.tiemposur.com.ar/nota/149314-todos-los-ginecologos-del-hospital-regional-son-objetores-de-conciencia> (accessed January 23, 2020).

¹⁸⁰ Anencephaly Law (Ley Anencefalia), Buenos Aires City Government, Law 1044, 2003, http://www.psi.uba.ar/academica/carrerasdegrado/psicologia/sitios_catedras/obligatorias/723_etica2/material/normativas/ley_1044_anencefalia.pdf.

placenta. Doctors at the public hospital were finally able to end the pregnancy surgically.¹⁸¹

In December 2019, Laura T, 15, went to a public hospital, when she was 17 weeks pregnant to seek an abortion of a pregnancy that resulted from a rape by a family member. At the hospital, she was told by a health professional that there were no health providers willing to perform the abortion as they were all conscientious objectors. She was referred to a hospital that was a 4-hour drive away, where she finally had the procedure.¹⁸²

One doctor willing to perform legal abortions, interviewed by Human Rights Watch, said her supervisor threatens her frequently with relocation or firing because she has not registered as an objector.¹⁸³ A social worker we interviewed was fired for providing abortion services.¹⁸⁴ Nearly every other doctor at her hospital is a conscientious objector, one doctor said. She said the providers who have registered objections, including her team members and supervisors, seek to stigmatize her through comments and weird looks. The few other doctors open to performing an abortion are also stigmatized. “Even though I want to guarantee access to legal abortions,” she said, “I can’t do anything.”¹⁸⁵ In practice, she performs no abortions, she says, because her superiors discourage them at their facility, and she is afraid to step forward and offer her services.

The barrier to healthcare that invocation of conscientious objection creates for pregnant persons has raised broad concern among human rights bodies, which have also called for reforms around claims to conscientious objection by medical practitioners. For example, the UN Special Rapporteur on violence against women, its causes and consequences, noted the need in Argentina for application of strict justification requirements for evocation of conscientious objection by medical practitioners refusing to perform

¹⁸¹ Human Rights Watch interview with Catalina P., December 29, 2019.

¹⁸² Human Rights Watch interview with Laura T. and her mother, December 6, 2019.

¹⁸³ Human Rights Watch interview with doctor, December 7, 2019.

¹⁸⁴ Human Rights Watch interview with a social worker, November 18, 2019.

¹⁸⁵ Human Rights Watch interview with doctor, December 7, 2019.

abortions;¹⁸⁶ and the UN Committee on Economic, Social and Cultural Rights called on the Argentine government to take proactive measures to ensure that all regulation and practice concerning conscientious objection does not obstruct prompt and effective access to abortion.¹⁸⁷

Human Rights Watch notes that international law does not require states to provide for conscientious objection in health care and, bearing in mind both that a government's primary duty of care is to those seeking healthcare services, and the evidence that conscientious objection routinely functions to impede access to abortion services, believes states should refrain from enacting legal provisions allowing such claims.

If Argentina continues to provide for conscientious objection in health care, it must be exercisable only by individual healthcare providers, and entire institutions should not be able to invoke conscientious objection to refuse to provide abortion services, in law or practice. The government should ensure that conscientious objection can only be exercised if there are in practice effective referral mechanisms and not in emergency and other urgent care situations. The law should limit the scope of persons eligible to invoke conscientious objection to those directly involved in or connected to the performance of abortion procedures, and invocation of conscientious objection, should not cause distress to pregnant persons seeking abortion care.

Criminalization of Abortion

As described earlier, access to abortion in Argentina is, in practice, highly restrictive despite the exceptions model, exposing pregnant people seeking access to safe practices to a variety of legal and illegal, and regulatory barriers. Criminalization of abortion has a two-fold negative impact: on the one hand, it deters pregnant people from seeking access to safe practices, forcing them out of the health system; on the other, it reinforces the social stigma around abortion and creates fear of prosecution among health professionals.

¹⁸⁶ Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, visit to Argentina, A/HRC/35/30/Add.3, April 12, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/091/54/PDF/G1709154.pdf?OpenElement> (accessed January 17, 2020), para 85.

¹⁸⁷ Committee on Economic, Social and Cultural Rights, "Concluding observations on the fourth periodic report of Argentina," E/C.12/ARG/CO/4, November 1, 2018, <https://digitallibrary.un.org/record/1656196?ln=en> (accessed January 18, 2020), para. 56.

In practice, though, the criminalization of abortion works more through its symbolic power than through enforcement. The current punitive model impacts social constructions around abortion, adding to the negative stereotypes associated with the practice. Criminal investigations of women and girls for the crime of securing an abortion are relatively small in number, and convictions are rare.¹⁸⁸ What is sought by this model is not to enforce an effective punishment—going to prison or facing a criminal process—but rather to create a chilling effect on pregnant people with the right to an abortion and the health professionals that provide it.

Data are scarce. From March 1, 2011 through February 29, 2016, prosecutors opened 167 criminal cases against women for self-induced abortion, according to the Public Defender’s Office. In 73 cases, the office could not provide us with official information about the procedural status of the case; in four cases, the intervening court declared itself incompetent and closed the cases. Of the 89 cases left, by June 2018, 63 had been rejected by courts, 24 were still underway, and 2 had resulted in convictions for the women involved.¹⁸⁹ Seven of the women accused of self-induced abortion were detained in jail during the investigation and prosecution of the alleged crimes for periods ranging from 10 to 26 days. In at least seven cases, the case started when women tried to seek medical help.¹⁹⁰

Criminalization of abortion can create painful situations when women or girls face an obstetric emergency. In some cases, women have at times been wrongly prosecuted when a pregnancy ended through spontaneous miscarriage or in cases where the conditions for accessing legal abortion have been met. In these cases, women have not only been charged with the crime of abortion by consent but in some cases with aggravated homicide.

¹⁸⁸ “According to the Public Defender’s Office, a report published by the National Ombudsman’s Office demonstrates that initiating criminal cases for abortion crimes is a form of punishment in and of itself, even though convictions are the exception” (“Según un informe de la Defensoría General de la Nación, los procesos penales por el delito de aborto operan en sí mismos como castigo y las condenas son la excepción”) Public Defense Ministry, <https://www.mpd.gov.ar/index.php/noticias-feed/4258-segun-un-informe-de-la-defensoria-general-de-la-nacion-los-procesos-penales-por-el-delito-de-aborto-operan-en-si-mismos-como-castigo-y-las-condenas-son-la-excepcion> (accessed January 10, 2020).

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

In one well publicized case, Belén, 25, was admitted to a public hospital in Tucumán province for serious vaginal bleeding in 2014. The doctor who treated her diagnosed a miscarriage, yet Tucumán prosecutors charged her with aggravated homicide, falsely accusing her of having an illegal abortion. She was found guilty and sentenced to 8 years in prison. In 2016, the United Nations Human Rights Committee noted that, in light of the Belén case, Argentina “should consider decriminalizing abortion, and should review the Belén case in light of relevant international standards, with a view to her prompt release.” Belén served two years in prison and was released in March 2017, amid massive protests championing her case.¹⁹¹

Such prosecutions are not new. In 2010, media reported that 28-year-old Natalia (pseudonym) was four weeks pregnant when she obtained an illegal abortion in the province of Tierra del Fuego.¹⁹² Although the pregnancy was the result of rape, she was charged with the crime of abortion, and the trial lasted six years. She was first assigned a public defender who, according to her testimony, mistreated her throughout the process. “If you’ve done this, now you will have to live with the consequences,” she said the public defender told her. In 2016, after seeking new legal representation, she was acquitted.¹⁹³

More recently, in September 2018, a 21-year-old woman suffered sudden weakness and felt dizzy. She called the emergency service in Córdoba province and was taken from her home to the nearest hospital. The medical team that assisted her claimed they recognized certain symptoms consistent with an abortion. When she recovered, she filed a judicial complaint against the doctor who allegedly had performed the abortion. Even though the doctor said he only treated her for post-abortion complications, a prosecutor criminally charged her and the doctor for the crime of abortion. At a press interview, the prosecutor incorrectly asserted that abortion is “totally banned in the Criminal Code.”¹⁹⁴

¹⁹¹ Mar Centenera, “An Argentine girl who was imprisoned for two years for having an abortion is released” (“Absuelta una joven argentina que estuvo dos años presa por un aborto”), *El País*, March 28, 2017, https://elpais.com/internacional/2017/03/27/argentina/1490648400_185209.html (accessed December 22, 2019).

¹⁹² “The story of a woman from Tierra del Fuego who had an abortion and a criminal case for 6 years” (“La historia de una fueguina que se hizo un aborto y tuvo 6 años una causa penal”), *Minuto Fuego*, August 6, 2018, <https://www.minutofuego.com.ar/locales/provinciales/2018/8/6/la-historia-de-una-fueguina-que-se-hizo-un-aborto-tuvo-anos-una-causa-penal-22504.html> (accessed December 13, 2019).

¹⁹³ *Ibid.*

¹⁹⁴ “Río Cuarto Province: a woman was charged for abortion” (“Río Cuarto: una joven fue imputada por un aborto”), *La Voz*, September 26, 2018, <https://www.lavoz.com.ar/ciudadanos/rio-cuarto-una-joven-fue-imputada-por-un-aborto> (accessed December 16, 2019).

In February 2019, Nadia R., 35, a hospital cleaner at a public hospital, sought an abortion at the hospital, but she was told no health worker provided abortions there. Nadia's partner was a drug user, and she had learned that he had another family, she told Human Rights Watch. She had been so anxious about the pregnancy that she felt sick. She resorted to a different hospital that provided the abortion deeming the pregnancy a risk to her mental health. Nadia's partner then went to the hospital where she worked and threatened her, saying she would lose her job because she had an abortion. He filed a criminal complaint, accusing her of having had an illegal abortion. The prosecutor summoned Nadia, as well as the two doctors who had treated her, and requested her medical history from the hospital. The case was eventually dismissed, and she kept her job, but Nadia told us, "I felt persecuted."¹⁹⁵

Criminalization also deters health professionals from providing legal abortion. In 2015, for example, two doctors from the City of Buenos Aires provided health care to a woman to terminate her pregnancy by providing Oxaprost. The woman was a victim of violence by her partner, and after assessing her case, the doctors concluded her case was covered under the health exception given her mental health was at risk because she was emotionally very distressed. The woman's partner denounced the two doctors of committing the crime of abortion, arguing that they did not provide evidence that the pregnancy was unwanted or a risk to the woman's health. The case went to trial, and the judge dismissed the case confirming that the violence suffered by the woman had put her mental health at risk.¹⁹⁶

In August 2018, a healthcare provider filed a court complaint in San Juan province, arguing that two colleagues who performed an abortion on a 14-year-old girl with a psychosocial disability who had been raped, had no legal grounds to perform the abortion. The San Juan Health Ministry released a statement supporting the doctors that had provided the abortion, and regretting that "acting in compliance with current legislation and in order to guarantee the right of access to public health" the two health providers had been

¹⁹⁵ Human Rights Watch interview with Nadia R. and her lawyer, December 6, 2019.

¹⁹⁶ Case N° 28.580/2015, National Court of First Instance in Criminal Investigation, N° 16, (Juzgado Nacional de 1a Instancia en lo Criminal de Instrucción Nro. 16), "B., A.; M., N.; T., M. A. s/ art. 86, inc. 2°," June 28, 2016, <http://www.redaas.org.ar/archivos-recursos/426-Fallo%20Aborto%202016.pdf>.

“harassed with anonymous, totally unfounded, injurious, and disqualifying” messages.¹⁹⁷ The case was eventually dismissed.¹⁹⁸

Lucía (pseudonym), 11, was 21 weeks pregnant when a hospital in Tucumán province admitted her on January 29, 2019. She had been raped by her grandmother’s partner. “[I] want to remove what the old man placed inside me,” she told health personnel.¹⁹⁹ Even though Lucía was legally entitled to an abortion under section 86 because she was raped and because the pregnancy posed a serious risk to her health and life because of her young age, the Tucumán Attorney General’s Office opened a criminal investigation and warned the hospital that terminating the pregnancy could involve the commission of a crime.²⁰⁰ In Tucumán, only two public hospitals perform legal abortions, and few doctors who work in them are available to perform abortions, as almost all claim conscientious objection. Only two doctors at the hospital who had admitted Lucía were not listed as conscientious objectors and both refused to perform the procedure due to fear of prosecution.²⁰¹

After four weeks of highly publicized dispute—amid anti-choice protests with banners in favor of “saving the two lives”—Tucumán’s courts cleared the doctors to perform an abortion. But by that time, the health professionals told the press, it was too late in the pregnancy because Lucía’s low weight would have been put at risk with the abortion. The doctors’ assertion was that the doctors should perform a cesarean section because Lucía was 25 weeks pregnant by the time the doctors were able to perform it. On February 26, they performed the cesarean section. At 10 days old, the baby died.

¹⁹⁷ “A doctor sued his colleagues for providing an abortion to a disabled girl” (“Un médico denunció a sus colegas por realizarle un aborto a una chica discapacitada”), *La Nación*, August 27, 2020, <https://www.lanacion.com.ar/sociedad/un-medico-denuncio-a-sus-colegas-porque-le-hicieron-un-aborto-a-una-chica-discapacitada-nid2166281> (accessed March 13, 2020).

¹⁹⁸ “Scandal over the abortion of a 14-year-old disabled girl who had been raped” (“Escándalo por el aborto de una chica de 14 años discapacitada y abusada”), *Perfil*, August 27, 2018, <https://www.perfil.com/noticias/sociedad/escandalo-en-san-juan-por-el-aborto-de-una-chica-de-14-anos-discapacitada-y-abusada.phtml> (accessed February 2, 2020).

¹⁹⁹ Daniel Politi, “The case of a 11-year-old girl forced to give birth shocks Argentina” (“El caso de una niña de 11 años forzada a dar a luz conmociona a la Argentina”), *The New York Times*, March 1, 2019, <https://www.nytimes.com/es/2019/03/01/espanol/america-latina/argentina-aborto-lucia.html> (accessed January 3, 2019).

²⁰⁰ “Lucía’s case: the homicide charge was qualified as “legal nonsense” (“Caso ‘Lucía’: calificaron de ‘disparate jurídico’ la denuncia por homicidio”), *El Tucumano*, March 13, 2019, <https://www.eltucumano.com/noticia/actualidad/254399/caso-lucia-calificaron-de-disparate-juridico-la-denuncia-por-homicidio> (accessed January 5, 2019).

²⁰¹ Mar Centenera, “The calvary of a raped girl who was trying to have an abortion in Argentina” (“El calvario de una niña violada que intentaba abortar en Argentina”), *El País*, March 28, 2019, https://elpais.com/sociedad/2019/03/26/actualidad/1553601793_174624.html (accessed January 6, 2019).

Lucía’s mother told reporters that she, as well as her daughter, were subject to intimidation throughout the process. One doctor said, within earshot of Lucía’s mother, that if Lucía had an abortion, she might die, and it would be the mother’s fault. A priest who visited Lucía in the hospital told her, “God does not want death.” Lucía and her mother had to repeatedly face anti-choice activists shouting “assassin!” each time they entered the hospital.²⁰²

The two health providers who performed the caesarian section in Lucía’s case were charged with “qualified homicide,” which carries a maximum penalty of life imprisonment.²⁰³ They became the target of threats and insults and saw their children barred from schools.²⁰⁴ The criminal case against both doctors continued at time of writing.²⁰⁵

Also in the province of Tucumán, in November 2019, a prosecutor opened a criminal investigation against a medical team that performed a legal abortion for a 13-year-old girl, who requested the abortion after being sexually abused.²⁰⁶ Several non-governmental organizations expressed their concern about what they thought was a “criminal prosecution against the health professionals to discourage them to continue providing legal abortions.”²⁰⁷ The case was pending at time of writing.

²⁰² “The dramatic story of the tortures experienced by Lucía, the 11-year-old girl who was forced to give birth” (“El dramático relato de las torturas que vivió Lucía, la nena de 11 años forzada a parir”), *Perfil*, May 1, 2019, <https://www.perfil.com/noticias/sociedad/el-escalofriante-relato-de-las-torturas-que-vivio-lucia-la-nena-de-11-anos-forzada-a-parir.phtml> (accessed January 5, 2020).

²⁰³ Fabián Lopez, “Doctors were charged for performing an abortion to the raped girl in Tucumán” (“Denunciaron penalmente a los médicos que le hicieron una cesárea a la chica violada en Tucumán”), *La Nación*, March 11, 2019, <https://www.lanacion.com.ar/sociedad/denunciaron-penalmente-medicos-le-hicieron-cesarea-nena-nid2227505> (accessed January 3, 2020).

²⁰⁴ Mar Centenera, “The calvary of a raped girl who was trying to have an abortion in Argentina” (“El calvario de una niña violada que intentaba abortar en Argentina”), *El País*, March 28, 2019, https://elpais.com/sociedad/2019/03/26/actualidad/1553601793_174624.html (accessed January 6, 2019); Daniel Politi, “The case of a 11-year-old girl who was forced to give birth shocks Argentina” (“El caso de una niña de 11 años forzada a dar a luz conmociona a la Argentina”), *The New York Times*, March 1, 2019, <https://www.nytimes.com/es/2019/03/01/espanol/america-latina/argentina-aborto-lucia.html> (accessed January 3, 2019).

²⁰⁵ “Lucía’s case: the trial against the doctors charged with homicide for performing a cesarean section begins” (“Caso Lucía: arranca el juicio contra los médicos denunciados por homicidio luego de practicar la cesárea”), *Info Judicial*, February 14, 2020, <https://infojudicial.com.ar/caso-lucia-arranca-el-juicio-contra-los-medicos-denunciados-por-homicidio-luego-de-practicar-la-cesarea/> (accessed February 20, 2020).

²⁰⁶ Mariana Carbajal, “An attorney is investigating doctors who have performed legal abortions” (“Una fiscal investiga a médicos que actuaron en un aborto legal”), *Página 12*, November 29, 2019, <https://www.pagina12.com.ar/233633-una-fiscal-investiga-a-medicos-que-actuaron-en-un-aborto-leg> (accessed January 4, 2020).

²⁰⁷ *Ibid.*

Reprisals against legal abortion providers continue to be reported. A doctor and a social worker told Human Rights Watch that during 2018, to break up medical teams that were providing abortion services, authorities transferred healthcare providers who performed abortions to other medical facilities or fired them from the public medical system.²⁰⁸ Some were “forced by their superiors to declare themselves as conscientious objectors” or to refuse to provide the service.²⁰⁹

Covid-19’s Impact on Access to Abortion

Preliminary reports warn that globally Covid-19 will increase unintended and unwanted pregnancies due to a host of reasons, including increased domestic violence and the lack of access and availability of contraceptive supplies, including in cases where people will not be able to bear the cost of contraception.²¹⁰

According to the United Nations Population Fund (UNFPA) estimates, “some 47 million women in low-and-middle-income countries are projected to be unable to use modern contraceptives if the average lockdown ...continues for six months with major disruption to services.”²¹¹ The UNFPA estimates reveal that “an additional 7 million unintended pregnancies are expected to occur” if the lockdown stretches for 6 months.²¹²

As abortion is an essential and time-sensitive service, delays and denials within the public health system, as well as uncertainty of available services under a state of emergency, could push pregnant people to unsafe abortions. At the same time, restriction on movement can impact the capacity even of clandestine abortion services to provide abortions, as circulation is heavily controlled, leaving many to resort to unsafe homemade methods.

²⁰⁸ Human Rights Watch interview with social worker, , November 2019; Human Rights Watch interview with doctor, , November 2019; Human Rights Watch interview with health authority, , November 2019.

²⁰⁹ Ibid.

²¹⁰ United Nations Population Fund, “Impact of the COVID-19 Pandemic on Family Planning and Ending Gender-based Violence, Female Genital Mutilation and Child Marriage,” April 27, 2020, https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_impact_brief_for_UNFPA_24_April_2020_1.pdf (accessed May 12, 2020).

²¹¹ Ibid., p. 1

²¹² Ibid., p. 1.

Since March 20, Argentina implemented a nationwide, mandatory, lockdown that only allowed residents to leave their homes for specific reasons, including to work on essential businesses or services, and to buy food or medicine. The lockdown was extended until August 30²¹³, with gradual openings by local and provincial governments in certain parts of the country.

The limited mobility further compounds existing barriers to access abortion described in the report, and the need to travel and visit several health care providers to access sexual and reproductive health services, including abortion, exposes pregnant people to risk of contagion.

There have been some media reports that in the early weeks of the national quarantine “security agents were turning women away from hospitals because of a directive to only allow access for emergencies or COVID-19 cases.”²¹⁴ In the province of Cordoba, doctors reported shortages of Misoprostol and methods of contraception in April.²¹⁵ Media reported that on April 28, a 22-year-old woman died in Formosa province after attempting an unsafe abortion at home.²¹⁶ On May 19, a 41-year-old woman reportedly died at a hospital from unsafe abortion complications in the Province of Buenos Aires.²¹⁷

Some health authorities have acknowledged the need to prioritize abortion services. On April 13, the National Ministry of Health clarified that provision of legal abortion and free contraceptives is considered an essential service.²¹⁸

²¹³ This information is current as of August 27, 2020.

²¹⁴ Ciara Nugent, “How a Network of Activists Are Helping Women Get Abortions in Argentina During Coronavirus Lockdown,” *Time*, May 1, 2020, <https://time.com/5830687/argentina-abortion-coronavirus/> (accessed May 14, 2020).

²¹⁵ Giubergia Laura, “Non-punishable abortion in the context of the pandemic: doctors complain of Misoprostol shortages” (“Aborto no punible en tiempos de pandemia: médicos denuncian que falta misoprostol”), *La Voz*, April 16, 2020, <https://www.lavoz.com.ar/ciudadanos/aborto-no-punible-en-tiempos-de-pandemia-medicos-denuncian-que-falta-misoprostol> (accessed May 14, 2020).

²¹⁶ “Clandestine abortion amid the pandemic: a woman dies in Formosa” (“Clandestinidad en la pandemia: muere una mujer en Formosa”), *La Izquierda Diario*, April 28, 2020, <http://www.laizquierdadiario.com/Clandestinidad-en-la-pandemia-muere-una-mujer-en-Formosa> (accessed May 14, 2020).

²¹⁷ “The campaign demands the immediate legalization of abortion and reports the death of a 41-year-old woman due to an unsafe abortion” (“La campaña exige la ‘inmediata’ legalización e informa muerte de mujer de 41 años por aborto inseguro”), *Télam*, June 21, 2020, <https://www.telam.com.ar/notas/202006/479604-campana-exige-inmediata-legalizacion-e-informa-muerte-de-mujer-de-41-anos-por-aborto-inseguro.html> (accessed June 28, 2020).

²¹⁸ “Coronavirus in Argentina: the government clarified that legal abortion is an essential service” (“Coronavirus en la Argentina: el Gobierno aclaró que la interrupción legal del embarazo es un ‘servicio esencial’”), *Todo Noticias*, April 13, 2020, https://tn.com.ar/sociedad/coronavirus-en-la-argentina-el-gobierno-aclaro-que-la-interrupcion-legal-del-embarazo-es-un-servicio_1060509 (accessed May 14, 2020).

On April 27, the Health Ministry of the Buenos Aires Province, where nearly half of Argentina’s population lives, released a “Protocol for Comprehensive Care of People Entitled to Legal Termination of Pregnancy and Access to Contraception, amid the Covid-19 pandemic.”²¹⁹ The Protocol stipulates that abortion is an essential and emergency service and establishes that any appointment at a health facility for people seeking access to legal abortion cannot be postponed, and if there is a lack of assistance capacity they should be timely referred to another health facility. The Protocol stipulates that for pregnancies under 12 weeks, if the pregnant person is entitled to a legal abortion and does not have a record of health complications, it can be performed in just one medical appointment using misoprostol pills, and patient will be monitored remotely via phone or video call at home.²²⁰

It is critical that health authorities ensure the adequate implementation of these guidelines nationwide.

²¹⁹ Buenos Aires Province Health Ministry, “Protocol for the Comprehensive Care of People Entitled to the Legal Termination of Pregnancy and for Access to Contraception amid the Covid-19 pandemic” (“Protocolo para la Atención Integral de las Personas con Derecho a Interrumpir el Embarazo y el Acceso a Métodos Anticonceptivos, en el Marco de la Pandemia por Coronavirus”), 2020, <http://www.redaas.org.ar/recurso.php?r=493> (accessed May 14, 2020).

²²⁰ On June 26, the National Directorate of Sexual and Reproductive Health distributed a virtual brochure to be used in health facilities on how to perform an abortion with pills, available at <http://www.redaas.org.ar/archivos-recursos/499-Folleto%20ILE%20con%20medicamentos%20-%20Digital%20accesible.pdf> (accessed August 10, 2020).

Legalization of Abortion is a Human Rights Imperative

Access to safe abortion is a human rights imperative. Authoritative interpretations of international human rights law establish that denying women and girls access to abortion is a form of discrimination and jeopardizes a range of human rights. UN human rights treaty bodies regularly call for governments to decriminalize abortion in all cases, to legalize abortion in certain circumstances at a minimum, and to ensure access to safe, legal abortion.

Key international human rights are at risk when abortion is illegal or inaccessible, including the rights to life, health, freedom from cruel, inhuman and degrading treatment, nondiscrimination and equality, privacy, information, and the right to decide the number and spacing of children.

Argentina is obligated to respect, protect, and fulfil the rights guaranteed under the international and regional human rights treaties to which it is a party. These include but are not limited to the International Covenant on Civil and Political Rights (ICCPR),²²¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²²² the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),²²³ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),²²⁴ the Convention on the Rights of the Child,²²⁵ and the American

²²¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Argentina in 1986.

²²² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Argentina on August 8, 1986.

²²³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, signed by Argentina 1985 and ratified in 1986.

²²⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Argentina 1985.

²²⁵ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Argentina on December 4, 1990.

Convention on Human Rights.²²⁶ Fulfilment of Argentina’s obligations under these and other relevant treaties includes ensuring that abortion is safe, legal, and accessible.

For women and girls in Argentina, the full enjoyment of sexual and reproductive health rights remains a challenge. In recent years, several UN international human rights bodies—including the CEDAW Committee, the Committee on the Rights of the Child, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights (ESCR)—have encouraged Argentina to adopt a bill decriminalizing and legalizing abortion in compliance with human rights standards promoting women’s and girl’s reproductive and sexual health rights, as mentioned below.

In 2016 the CEDAW Committee called on Argentina to “accelerate the adoption” of a bill to increase “legal access to abortion...not only in cases of rape and risk to the life or health of the pregnant woman but also other circumstances such as incest and when there is a risk of severe fetal impairment.”²²⁷

In the same year, the Human Rights Committee took particular notice of the obstacles women and girls face when seeking access to abortion services in Argentina. The committee established that, in Argentina, “legal abortion is often inaccessible due to a failure to establish medical protocols and the exercise of individual conscientious objection by health workers and other de facto barriers.” The committee called upon Argentina to “consider decriminalizing abortion.”²²⁸

Two years later in 2018, the Committee on the Rights of the Child released its final observations on Argentina “noting with concern the barriers that adolescents continue to face in their access to sexual and reproductive health-care services and education, the high incidence of teenage pregnancy and the elevated risks of maternal mortality among

²²⁶ American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), ratified by Argentina on August 14, 1984.

²²⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee), “Concluding observations on the seventh periodic report of Argentina,” CEDAW/C/ARG/CO/7, November 18, 2016, <https://www.refworld.org/es/country,,CEDAW,,ARG,,59cd43e64,o.html> (accessed February 1), para. 32, p. 14.

²²⁸ UN Human Rights Committee (HRC), “Concluding observations on the fifth periodic report of Argentina,” CCPR/C/ARG/CO/5, August 10, 2016, <https://www.refworld.org/docid/58763ad74.html> (accessed February 2, 2020), para. 12, p. 3.

adolescent mothers, and the insufficient access to modern methods of contraception and family planning.”²²⁹

The Committee on Economic, Social and Cultural Rights has stated that “there exists a wide range of laws, policies and practices that undermine autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws...”²³⁰ In the case of Argentina, the committee expressed concern “about the high number of unsafe abortions in the State party, which is directly linked to maternal mortality; the obstacles that women encounter when they seek abortion on the grounds provided for by law; the lack of necessary medications; and the adverse impact of conscientious objection by doctors.” The committee also regretted that the bill to decriminalize abortion had not been adopted.²³¹

Right to Life

International human rights bodies have continually highlighted the linkage between restrictive abortion laws and risks to life for those who become pregnant. For instance, the Human Rights Committee has urged states to “help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions.”²³² The CEDAW Committee has also addressed the issue of maternal mortality due to unsafe abortion, noting that it constitutes a violation of women’s and girl’s right to

²²⁹ Committee on the Rights of the Child, “Concluding observations on the combined fifth and sixth periodic reports of Argentina,” CRC/C/ARG/CO/5-6, October 1, 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/ARG/CO/5-6&Lang=En (accessed March 13, 2020), párr.32.

²³⁰ UN Committee on Economic, Social, and Cultural Rights (ESCR Committee), General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, May 2, 2016, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1aoSzabooXTdlmnsJZZVQfQejF41Tob4CvljeTiAP6sU9x9eXOonzmOMzdytOOLx1%2BaoaWAKy4%2BuhMA8PLnWfJ4z4216PjNj67NdUrGT87> (accessed March 13, 2020), para. 34.

²³¹ UN Committee on Economic, Social and Cultural Rights (ESCR Committee), “Concluding observations on the fourth periodic report of Argentina,” E/C.12/ARG/CO/4, November 10, 2018, <https://www.ohchr.org/EN/countries/LACRegion/Pages/ARIndex.aspx> (accessed March 13, 2020), Para. 55.

²³² Human Rights Committee, General Comment No. 28: The equality of rights between men and women (article 3), CCPR/C/21/Rev.1/Add.10, March 29, 2000, [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/b\)GeneralCommentNo28Theequalityofrightsbetweenmenandwomen\(article3\)\(2000\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/b)GeneralCommentNo28Theequalityofrightsbetweenmenandwomen(article3)(2000).aspx) (accessed January 23, 2020), para. 10.

life.²³³ In the case of Argentina, the CEDAW Committee expressed “concern about the stagnation of the maternal mortality rate, attributable in part to unsafe abortions.”²³⁴ The WHO elaborates that most maternal mortality could be avoided through “sex education, use of effective contraception, provision of safe, legal abortion and proper emergency treatment of abortion complications.”²³⁵

The Human Rights Committee has made clear that states’ obligations on the right to life include preventing situations when lack of access to health care would expose a person to a reasonably foreseeable risk that can result in loss of life.²³⁶

In 2018 when it issued authoritative guidance to governments, known as a general comment, on the scope of the right to life and state obligations, the committee emphasized that restrictions on abortion pose a risk to life and that any regulation must not violate the right to life or other rights of pregnant people under the covenant. The committee said that states should eliminate barriers to safe and legal abortion and ensure that any restrictions do not subject pregnant people to physical or mental pain or suffering. The general comment calls on governments to fully decriminalize and “provide safe, legal and effective access to abortion” in a range of circumstances.²³⁷

The UN Committee on the Rights of the Child has repeatedly called on states that are party to the Convention on the Rights of the Child, including Argentina, to decriminalize abortion for the protection, in particular, of the right to life of girls and adolescents. The Committee has noted that “the risk of death and disease during the adolescent years is real, including

²³³ CEDAW Committee, “Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review,” 57th Session (2014), <http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf> (accessed March 17, 2020); CEDAW Committee, General Recommendation 24, Article 12 of the Convention (women and health) (Twentieth session, 1999), <https://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf> (accessed January 30, 2020).

²³⁴ CEDAW Committee, “Concluding observations on the seventh periodic report of Argentina,” CEDAW/C/ARG/CO/7, November 18, 2016, <https://www.refworld.org/docid/583862e94.html> (accessed February 1, 2020), para. 32, p. 11.

²³⁵ “Preventing unsafe abortion,” WHO, June 26, 2019, <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion> (accessed January 22, 2020).

²³⁶ Human Rights Committee, “Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2348/2014,” CCPR/C/123/D/2348/2014, August 30, 2018, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsjvfljqil84ZFd1DNP1S9EJVTcVMfawTKJ%2BRXq2O5JWTSgTnqTy75GKOXxb7hx6EgOYtEQpL%2Fn7H%2Ba4od%2Fy1Ohh59uBxiQarPPAonoGpmckvufp6eNHP%2F%2FGSVfP5aixAg%3D%3D> (accessed March 2, 2020), para 11.3.

²³⁷ Human Rights Committee, General Comment No. 36, Article 6: right to life, U.N. Doc. CCPR/C/GC/36 (2019), <https://www.refworld.org/docid/5e5e75e04.html> (accessed January 22, 2020), para. 8.

from preventable causes such as... unsafe abortions” and urged states to “decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.”²³⁸ The Committee, noting “the elevated risks of the maternal mortality among adolescent mothers,” reiterated this call specifically to Argentina in 2018.²³⁹

The Special Rapporteur on violence against women following a mission to Argentina in 2017 noted that in order to reduce maternal mortality Argentina should ensure “access to safe legal abortions and post-abortion services for women and girls”.²⁴⁰

Some have tried to argue that the Inter-American Convention on Human Rights does not protect access to abortion because in article 4(1) it provides that “every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception.”²⁴¹ However the Inter-American Commission on Human Rights, one of the bodies responsible for interpreting the Convention, clarified in the *United States v. Baby Boy* case that it is “incorrect to read the declaration as incorporating the notion that the right to life exists from the moment of conception.”²⁴² The Inter-American Court on Human Rights reaffirmed that interpretation in 2012 in *Artavia Murillo and others v. Costa Rica*, further clarifying that “the object and purpose of the expression ‘in general’ is to permit, should a conflict between rights arise, the possibility of invoking exceptions to the

²³⁸ Committee on the Rights of the Child, General Comment No. 20 on the implementation of the rights of the child during adolescence, U.N. Doc. CRC/C/GC/20 (2016), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2F5FovH%2BgoBeHNYSXl2ulaelW9Y1jn%2Ba4Z2iaNPMKlJhzvzg%2BBPHd5dvVM1aQpaih1nCQKMKsmTkxWuZUDLtwpmjwRZN> (accessed January 21, 2020), paras. 13 and 60.

²³⁹ Committee on the Rights of the Child, “Concluding observations on the combined fifth and sixth combined periodic reports of Argentina,” CRC/C/ARG/CO/5-6, October 1, 2018, <https://digitallibrary.un.org/record/1648066?ln=en> (accessed February 20, 2020), para. 32.

²⁴⁰ UN Office of the High Commissioner for Human Rights, “Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Argentina,” A/HRC/35/30/Add.3, April 12, 2017, <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Pages/ListReports.aspx> (accessed February 21, 2020), para. 85.

²⁴¹ American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), ratified by Argentina on August 14, 1984, https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.htm (accessed August 10, 2020), art. 4(1).

²⁴² Inter-American Commission on Human Rights, White and Potter (“Baby Boy Case”), Resolution No. 23/81, Case No. 2141, U.S., March 6, 1981, OAS/Ser.L/V/II.54, Doc. 9 Rev. 1, October 16, 1981, <https://www.cidh.oas.org/annualrep/80.81sp/EstadosUnidos2141a.htm> (accessed August 10, 2020), para. 14(a).

protection of the right to life from the moment of conception. In other words, the object and purpose of Article 4(1) of the Convention is that the right to life should not be understood as an absolute right, the alleged protection of which can justify the total negation of other rights.” The court in the case also noted that the “historic and systematic interpretation of precedents that exist in the Inter-American system confirms that it is not admissible to grant the status of person to the embryo.”²⁴³

Right to Health

The right to health—including both physical and mental—is protected in numerous human rights treaties. International bodies have repeatedly stated that criminalization of or unreasonable restrictions on access to abortion violate the right to health.

To enjoy reproductive and sexual health, as guaranteed by the International Covenant on Economic Social and Cultural Rights, women and men must have the “freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth.”²⁴⁴

In 2016, the Committee on Economic, Social and Cultural Rights issued its general comment on the right to sexual and reproductive health telling states that “the right to sexual and reproductive health is indivisible from and interdependent with other human rights,” including “the rights to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and respect for family life; and non-discrimination and equality.”²⁴⁵ The Committee called on states to implement

²⁴³ Interamerican Court of Human Rights, Case of Artavia Murillo et al. (“in vitro fertilization”) v. Costa Rica, November 28, 2012, paras. 258 and 223, http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf.

²⁴⁴ UN Office of the High Commissioner for Human Rights (OHCHR), UN Population Fund, and the Danish Institute for Human Rights, “Reproductive Rights are Human Rights: A Handbook for National Human Rights Institutions,” 2014, HR/PUB/14/6, <https://www.ohchr.org/Documents/Publications/NHRIHandbook.pdf> (accessed February 2, 2020).

²⁴⁵ ESCR Committee, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/22 (2016), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1aoSzabooXTdlmnsjZZVQfQejF41Tob4CvIjeTiAP6sGFQktiae1vlbbOAekmaOwDOWsUe7N8Tlm%2BP3HJPzjHySkUoHMavD%2Fpyfcp3YlZg> (accessed January 21, 2020). para. 10.

“appropriate legislative, administrative, budgetary, judicial, promotional and other measures to ensure the full realization of the right to sexual and reproductive health.”²⁴⁶

In 2018, the CESCR called on Argentina to “establish the necessary legal framework and services to ensure access to abortion in the cases provided for under existing law, with a view to decreasing the number of preventable maternal deaths, and guarantee access to health-care facilities, supplies and services to meet pre- and post-abortion health-care needs.”²⁴⁷ It called for “all necessary measures to liberalize the conditions for legal abortion and, in any case, ensure that women who obtain abortions are never criminalized” recommending that Argentina ensure:

- all provinces adopt protocols for providing effective access and comprehensive care to girls and women who obtain abortions in the cases provided for under existing law;
- access to medications for safe abortion, including misoprostol and mifepristone;
- the ongoing supply of short- and long-term contraceptives throughout the national territory, ensuring their accessibility and effective use; and
- laws, regulations and practices concerning conscientious objection, on the part of medical personnel, to performing or assisting in the performance of legal abortions do not obstruct prompt and effective access to abortion and that all persons who seek access to abortion services are treated in a professional manner and with respect for their human dignity.

As noted above, the CEDAW Committee consistently recommends decriminalization of abortion and withdrawal of punitive measures for women who undergo abortion.²⁴⁸

The Committee on the Rights of the Child has warned of the danger of unsafe abortion to adolescent girls’ health. It has often urged states to decriminalize abortion in all

²⁴⁶ *Ibid.*, para. 45.

²⁴⁷ UN Committee on Economic, Social and Cultural Rights (ESCR Committee), “Concluding observations on the fourth periodic report of Argentina,” E/C.12/ARG/CO/4, November 10, 2018, <https://www.ohchr.org/EN/countries/LACRegion/Pages/ARIndex.aspx> (accessed March 13, 2020).

²⁴⁸ CEDAW Committee, General Recommendation 24: Article 12 of the Convention (women and health), U.N. Doc. CEDAW/C/GC/24 (1999), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4738_E.pdf (accessed January 30, 2020).

circumstances, and to ensure that adolescent girls have access to safe abortions.²⁴⁹ To Argentina specifically, the Committee requested the government to ensure access to safe abortion services for adolescent girls and to sexual and reproductive health education.²⁵⁰

The Special Rapporteur on the right to health has also recommended that states decriminalize abortion.²⁵¹ He has stated that “criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women’s right to health must be eliminated,” and that the criminalization of abortion has a “severe impact on mental health.”

Right to be Free from Torture and Ill-Treatment

Criminalization and inaccessibility of abortion is incompatible with the right to freedom from torture and other cruel, inhuman, or degrading treatment or punishment. The UN Committee against Torture, which monitors compliance with the Convention Against Torture—to which Argentina is a party—, has said that criminalization of abortion with few exceptions may result in women experiencing severe pain and suffering if they are compelled to continue a pregnancy. In 2013, it expressed “concerns about restrictions on access to abortion and about absolute bans on abortion as violating the prohibition of torture and ill-treatment.”²⁵²

It has expressed concern at the severe physical and mental anguish and distress experienced by women and girls due to abortion restrictions. On multiple occasions it has underscored that denying access to abortion in cases of sexual violence means that the women concerned are constantly reminded of the violation committed against them, which

²⁴⁹ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, U.N. Doc CRC/C/GC/20 (2016), <https://www.refworld.org/docid/589dad3d4.html> (accessed March 11, 2020), paras. 13 and 60.

²⁵⁰ Committee on the Rights of the Child, “Concluding observations on the combined fifth and sixth periodic reports of Argentina,” CRC/C/ARG/CO/5-6, October 1, 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/ARG/CO/5-6&Lang=En (accessed March 14, 2020).

²⁵¹ UN Human Rights Council, Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/66/254, August 3, 2011, <https://undocs.org/pdf?symbol=es/A/66/254> (accessed January 15, 2020), para. 65(h).

²⁵² UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, March 5, 2015, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53_sp.pdf (accessed January 16, 2020).

causes serious traumatic stress and carries a risk of long-lasting psychological problems.²⁵³

In many cases, women and girls seeking access to abortion and post-abortion care encounter abuse and mistreatment including, but not limited to, cruel treatment and humiliation in health facilities, denial of legally available health services, violations of medical secrecy and confidentiality in health-care settings, mandatory waiting periods, and requirements of third-party authorization for access to abortion or contraception.²⁵⁴

In addition, the CEDAW Committee determined that “violations of women’s sexual and reproductive health and rights, such as forced sterilization, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”²⁵⁵

Similarly, the Human Rights Committee has ruled in individual cases against Ireland, Peru, and Argentina that the governments violated the right to freedom from torture or other cruel, inhuman or degrading treatment by failing to ensure access to abortion services.²⁵⁶ The Committee pointed out that this right relates not only to physical pain, but also to mental suffering.²⁵⁷ In *LMR vs. Argentina*, the committee considered that “the State party’s omission, in failing to guarantee L.M.R.’s right to a termination of pregnancy, as provided under article 86.2 of the Criminal Code, when her family so requested, caused L.M.R.

²⁵³ See UN Committee against Torture, “Consideration of reports submitted by states parties under article 19 of the convention, Concluding Observations: Nicaragua,” CAT/C/NIC/CO/1, June 10, 2009, <https://digitallibrary.un.org/record/657569?ln=en> (accessed February 2, 2020), para. 16.

²⁵⁴ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A_HRC_31_57_E.doc (accessed January 16, 2020).

²⁵⁵ “Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, July 14, 2017, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf (accessed January 6, 2020).

²⁵⁶ Whelan v. Ireland, CCPR/C/119/D/2425/2014 (2017); Mellet v. Ireland, CCPR/C/116/D/2324/2013 (2016); K.L. v. Peru, CCPR/C/85/D/1153/2003 (2005); and L.M.R. v. Argentina, CCPR/C/101/D/1608/2007 (2011).

²⁵⁷ Ibid.

physical and mental suffering constituting a violation of article 7 of the Covenant that was made especially serious by the victim’s status as a young girl with a disability.”²⁵⁸

The UN Special Rapporteur on torture has said that “[h]ighly restrictive abortion laws that prohibit abortions even in cases of incest, rape or fetal impairment or to safeguard the life or health of the woman violate women’s right to be free from torture and ill-treatment.”²⁵⁹ According to the Rapporteur:

The denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount to torture or ill-treatment. States have an affirmative obligation to reform restrictive abortion legislation that perpetuates torture and ill-treatment by denying women safe access and care.²⁶⁰

Rights to Equality and Non-Discrimination

Because women bear the health consequences of childbearing and, often, the sole tasks of childcare, lack of abortion services can also affect their rights to equality and non-discrimination. In 1999, the CEDAW Committee made clear that provision of reproductive health services is crucial to women’s equality, and that it is “discriminatory for a state party to refuse to provide legally for the performance of certain reproductive health services for women.”²⁶¹

In a 2014 statement, the CEDAW Committee observed that “failure of a State party to provide services and the criminalization of some services that only women require is a

²⁵⁸ L.M.R. v. Argentina, CCPR/C/101/D/1608/2007 (2011).

²⁵⁹ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, <https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/001/00/PDF/G1600100.pdf?OpenElement> (accessed January 16, 2020), para. 43.

²⁶⁰ *Ibid.*, para. 44.

²⁶¹ United Nations Committee on the Elimination of Discrimination against Women, Recommendation No. 24, Women and Health (Twentieth session, 1999) <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24> (accessed on August 10, 2020), para. 11.

violation of women’s reproductive rights and constitutes discrimination against them.”²⁶² In its general recommendation on women and health, the CEDAW Committee noted that “barriers to women’s access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo these procedures.”²⁶³

Moreover, the Human Rights Committee has held that lack of availability of reproductive health information and services, including abortion, undermines women’s right to nondiscrimination. In the case *LMR v. Argentina*, it found that “the impossibility of obtaining an abortion constituted a violation of the right to equality and non-discrimination established under article 3 of the Covenant...” and that “the State’s failure to exercise due diligence in safeguarding a legal right to a procedure required solely by women resulted in discriminatory treatment of L.M.R.”²⁶⁴

Similarly, the Committee on the Rights of the Child has also said that punitive abortion laws constitute a violation of children’s right to freedom from discrimination.²⁶⁵ The Committee on Economic, Social and Cultural Rights has said, “A wide range of laws, policies and practices undermine the autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws.”²⁶⁶ It has also noted that abortion restrictions particularly affect poor and less educated women.²⁶⁷

²⁶² CEDAW Committee, “Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review” (Feb. 2014), <https://www.acnur.org/fileadmin/Documentos/BDL/2001/1280.pdf>.

²⁶³ CEDAW Committee, Recommendation No. 24, Women and Health (Twentieth session, 1999), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4738_E.pdf (accessed March 16, 2020), para. 14.

²⁶⁴ *L.M.R. v. Argentina*, CCPR/C/101/D/1608/2007 (2011).

²⁶⁵ See, for example, UN Committee on the Rights of the Child, “Concluding observations on the consolidated second and third periodic reports of Namibia, adopted by the Committee at its sixty-first session (17 September–5 October 2012),” CRC/C/NAM/CO/2-3, October 16, 2012 https://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-NAM-CO-2-3_en.pdf (accessed March 13, 2020).

²⁶⁶ ESCR Committee, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/22 (2016), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F22&Lang=en (accessed August 10, 2020 date), para. 34.

²⁶⁷ See, for example, ESCR Committee, “Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador,” E/C.12/SLV/CO/3-5, June 19, 2014, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/SLV/CO/3-5&Lang=En (accessed March 11, 2020); ESCR Committee, “Concluding observations on the third periodic report of Nepal,” E/C.12/NPL/CO/3, December 12, 2014,

International Law in Argentina’s Constitution

Since Argentina undertook a major reform of its constitution in 1994, its international human rights obligations have taken precedence over domestic laws.²⁶⁸ The Argentine Supreme Court (Corte Suprema de Justicia de la Nación, CSJN) has consistently recognized the constitutional hierarchy of international treaties.²⁶⁹ Regarding abortion specifically, in the F.A.L ruling,²⁷⁰ the CSJN reaffirmed the constitutionality of international human rights treaties as enshrined in the National Constitution.²⁷¹ The CSJN concluded that all human rights treaties are compatible with abortion. In particular, it clarified that the American Convention on Human Rights does not establish “absolute protection” of an embryo’s “right to life.”²⁷² The CSJN urged national and provincial authorities to remove barriers to access by implementing protocols for effective provision of legal abortions.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/NPL/CO/3&Lang=En (accessed March 18, 2020).

²⁶⁸ Constitution of Argentina, art. 75 (22).

²⁶⁹ See, for example, “Ekmekdjian, Miguel Angel c/ Sofovich, Gerardo et al”, rta. 7/07/1992, Ruling 315:1492; “Giroldi, Horacio David et al. on/appeal - causa n.32/93”, answer 7/04/1995, Ruling 318:514”.

²⁷⁰ F.A.L. self-executing measure (F.A.L. s/medida autosatisfactiva), National Supreme Court of Justice of Argentina, Judgement 335:197, March 13, 2012, <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires--medida-autosatisfactiva-fa12000021-2012-03-13/123456789-120-0002-1ots-eupmocsollaf> (accessed on August 12, 2020).

²⁷¹ “... in light of the pronouncements of different international organizations whose jurisdiction the Argentine State has accepted through the subscription of treaties, pacts and conventions that since 1994 integrate the constitutional legal system as law Supreme of the Nation (Article 75, paragraph 22, of the National Constitution), and whose opinions they generate, in the event of a breach express, international responsibilities.”

²⁷² F.A.L. self-executing measure (F.A.L. s/medida autosatisfactiva), National Supreme Court of Justice of Argentina, Judgement 335:197, March 13, 2012, <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires--medida-autosatisfactiva-fa12000021-2012-03-13/123456789-120-0002-1ots-eupmocsollaf> (accessed on August 12, 2020).

Acknowledgments

This report was researched and written by Sabrina Cartabia Groba and Sonia Ariza Navarrete, consultants with the Americas Division of Human Rights Watch, and Paula Ini, Americas research assistant. It was reviewed and edited by Tamara Taraciuk Broner, acting Americas deputy director; José Miguel Vivanco, Americas executive director; Dan Baum, Americas senior researcher, Margaret Knox, Americas senior researcher, Amanda Klasing and Ximena Casas, Women's Rights Division; Margaret Wurth, Children's Rights Division, Carlos Ríos-Espinosa and Jane Buchanan, Disability Rights Division, Cristian González Cabrera, LGBT Rights Division; and Megan McLemore, Health and Human Rights Division. Joe Saunders, acting program director; and Aisling Reidy and Maria McFarland Sánchez-Moreno, senior legal advisors, provided program and legal review, respectively.

Americas Division associates Megan Monteleone, Vira Tarnavska, and Oriana Van Praag contributed to the report production. The report was prepared for publication by Fitzroy Hepkins, administrative manager, and José Martínez, senior administration coordinator. It was translated into Spanish by Gabriela Haymes.

Human Rights Watch would like to thank the numerous individuals who contributed to this report, including health professionals and networks of women's rights activists who have been providing support to women struggling to obtain access to legal abortions in Argentina and advocating for legal reforms to increase such access. We would like to specially recognize the support provided by the Feminist Network (Socorristas en Red), the Professionals for the Right to Choose Network (Red de Profesionales por el Derechos a Decidir), and the Hoguera Counseling Services (Consejería la Hoguera). We appreciate the feedback on this report provided by Paola Bergallo, Associate Professor at Di Tella University School of Law and Adjunct Researcher at the Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET), and Cecilia Hopp, law professor, Buenos Aires University.

Human Rights Watch is deeply grateful to the victims and their family members who, despite often incredibly difficult circumstances, shared their testimonies with us.

A CASE FOR LEGAL ABORTION

The Human Cost of Barriers to Sexual and Reproductive Rights in Argentina

When the Argentine Senate narrowly rejected a bill to decriminalize abortion in 2018, the country missed a historic opportunity to advance sexual and reproductive rights. This left pregnant people in Argentina—particularly those with low income and who live in rural areas—with limited access to abortion, seriously undermining their rights to life and health.

Currently, abortion is illegal in Argentina except in cases of rape or when the life or health of the woman is at risk. In all other circumstances, abortion is criminally banned and punished.

A Case for Legal Abortion documents cases of women and girls whose situations fell within the exceptions but faced an array of obstacles when they tried to access legal abortion in Buenos Aires city and several Argentine provinces. Their stories reveal that only allowing abortions in the specific circumstances authorized by the Criminal Code has proven an insurmountable barrier, making even legal abortion in Argentina difficult or inaccessible. Some of the obstacles include arbitrarily imposed gestational limits by health facilities, lack of access to providers, unavailability of abortion methods, fear of criminal prosecution, stigmatization, and mistreatment by health professionals. The barriers have been aggravated by Covid-19 and the resulting lockdown.

Criminalizing abortion forces pregnant people to seek abortions outside of the health system, many of which occur in unsafe conditions, exposing them to short- or long-term health consequences or even death.

The consequence has been needless suffering—a dreadful human cost preventable through the decriminalization of abortion. The Argentine government should introduce legislation to decriminalize abortion and lead efforts to implement health protocols nationwide to ensure pregnant people can fully exercise their sexual and reproductive rights. Legislators have the opportunity to adopt legal reforms that will enable Argentina to improve the lives of women and girls. They should seize it.



Thousands of pro-choice activists wave their iconic green handkerchiefs and demonstrate in favor of decriminalizing abortion outside Congress in Buenos Aires, Argentina, on February 19, 2020.

© 2020 Natacha Pisarenko/AP Photo