



Human Rights Situation for LGBTI Persons, Sexual Rights and Reproductive Rights in Argentina

**Lists of suggested issues submitted to the Working Group on the
Argentina report
Human Rights Committee,
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This report is submitted by

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Akahatá-Equipo de Trabajo en Sexualidades y Géneros (Sexualities and Genders Working Team) and Heartland Alliance for Human Needs & Human Rights' Global Initiative for Sexuality and Human Rights (GISHR) are honoured by this opportunity to submit the following issues to assist the Human Rights Committee in producing a List of Issues to review the implementation of the International Covenant on Civil and Political Rights by the Argentinean State.

Suggested Issues

Arbitrary arrests and torture of trans persons: Right to personal liberty and security and to a life free from torture; right to humane treatment for persons deprived of their liberty (Articles 7, 9 and 10)

1. Harassment, arbitrary detention and torture against trans women continue to be a concern in the country.
2. In recent months, in the capital city of Buenos Aires, Yhajaira Falcón was arrested on April 17, 2013 by police officers from Police Station 18, and accused of an armed robbery. In August 2013, and after having spent four months in the Ezeiza Women's Jail, Oral Penal Court No. 9 acquitted her¹. Also in Buenos Aires, on September 18 uniformed and plain clothes police from the same Station arbitrarily arrested and demanded identification of *travestis*² and trans women in the Constitución neighbourhood. Several of them were charged with contraventions to Article 81 of the Contravention Code³ and one was arrested for lacking identification papers.
3. According to the current law, the procedures under Article 81 must be framed in an open and solid investigation, ordered by an authorized Public Prosecutor and carried out by urban security personnel. Federal Police officers are only allowed to intervene if there is a conflict and a Public Prosecutor requires it. None of these requirements were fulfilled by the operatives described in the preceding paragraph.

¹ Telam, August 23, 2013. <http://www.telam.com.ar/multimedia/video/1975-absuelven-a-yhajaira-falcon-la-travesti-detenida-sin-pruebas/>

² T.N: In Argentina, *travestis* are persons assigned to a male identity at birth who later identify with a female identity in a permanent way; they adjust their bodies to their identity through a variety of cosmetic procedures and hormone treatments but rarely undergo genital surgery. They refuse to call themselves "women" and claim *travesti* as a gender identity of their own.

³ Article 81 of the Buenos Aires Contravention Code penalizes with 1-5 days of community work or a 200-400 Argentinean pesos fine (25-50 US\$. 1 US\$ = 7.84 Argentinean pesos, February 9, 2014) offering or soliciting sexual services in non-authorized public spaces. The Code explicitly says that nobody can be accused of this contravention merely on the basis of her/his clothing, appearance or mannerisms.

4. On November 26, 2013, in the city of San Miguel de Tucumán, a 24 year-old *travesti* named Ayelén⁴ was arrested by police personnel from Police Station 4. According to the report submitted after the attack, the police locked Ayelén in a cell with male inmates and then moved her to a room where she was raped by 5 policemen. She was then returned to the cell, and raped by some inmates. The next day, they forced her to clean the police station "as if she were a housewife". Ayelén managed to escape and went to the Health Centre Hospital, where she reported the attack. From there she went to the Court, and was referred to the Forensic Unit for tests. According to the official judicial records in this case, while undergoing the tests she was contacted by the city and police station authorities, who "convinced" her to withdraw the charges. She was even made to sign a statement affirming that everything she had exposed was a lie. Later on, following the advice of another *travesti*, Ayelén reported the facts to the local office of Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI, National Institute against Discrimination, Xenophobia and Racism), that requested the authorities of the Ministry of Security to intervene.

5. It is worth mentioning that most of these arrests are conducted invoking a variety of legal instruments such Police Edicts; Organic Laws and Regulations of the Federal and provincial police; provincial and local Contravention and Misdemeanour Codes⁵ that in most cases are used by the police to justify arbitrary detentions and dubious legal procedures. They also enable systematic criminal, persecutory and extortive practices by police personnel, public prosecutors, judges and other authorities, while also turning social and health problems that should be addressed by public policies into crimes that fall under the police and legal system's sphere of action.

Suggested questions:

6. What are the concrete measures that the Argentine State is taking to eliminate arbitrary detentions and torture against trans persons perpetrated by the police and prison systems?

7. What measures is the Argentinean State taking to ensure its Judicial system does not discriminate against but rather protects the rights of trans persons, including the right to express their gender identity, and adequately punishes those who violate their rights?

8. Is there any policy at the national level to review legislation that violates constitutional guarantees and that is used to arbitrarily arrest trans persons?

⁴ La Gaceta Tucumán December 3, 2013. <http://www.lagaceta.com.ar/nota/570773/policiales/cinco-policias-abusaron-travesti-comisaria.html>

⁵ See "Informe sobre códigos contravencionales y de faltas de las provincias de la República Argentina y la Ciudad Autónoma de Buenos Aires en relación con la discriminación y la represión a gays, lesbianas, bisexuales y trans*" Federación Argentina LGBTI http://www.lgbt.org.ar/archivos/codigos_contravencionalesyfaltas.pdf

Harassment and discrimination against LGBTI persons in the school system: Right to equal enjoyment of all civil and political rights; to not be subjected to torture, cruel, inhuman or degrading punishment or treatment; to personal security; and the right of all children to the protection measures required by their condition on the part of the family and the State (Articles 3,7,9 and 24)

9. Harassment in school, also known as bullying, is a reality in most school facilities in Argentina and has acquired massive proportions as social violence and street crime increased. News of attacks of different degrees and types, ranging from verbal violence to physical attacks against girls, boys and adolescents are becoming increasingly more frequent.
10. Statistics show that, in this context, bullying based on sexual orientation and/or gender identity or expression in the school system, is among the most common⁶. This violence constitutes a violation of the Covenant articles mentioned in the title of this section and also of Principle 16 of the Yogyakarta Principles.
11. The impact of this violence on girls, boys and adolescents is wide and includes lack of attention in class, dropping-out, physical and emotional damage and in extreme cases, murder or suicide.
12. According to the Second Regional Comparative and Explanatory Study (SERCE)⁷ conducted in 2010 by the United Nations' Organization for Education, Science and Culture (UNESCO) among 6th year students (11 years old on average) in 16 countries of Latin America, Argentina is the country with the highest rate of physical violence among students (23.5%)
13. Two regrettable cases of under-18 suicides motivated by *bullying* have been registered in Argentina. On April 2011, in Chepes, La Rioja province, Carlos Nicolás Agüero (17), killed himself because of the daily harassment he suffered from his schoolmates and neighbours because of his alleged homosexuality⁸.

⁶ Respuestas del Sector de Educación Frente al Bullying Homofóbico – UNESCO 2012
<http://www.oei.es/70cd/publication.pdf>

⁷ See Segundo Estudio Regional Comparativo y Explicativo (SERCE
<http://unesdoc.unesco.org/images/0018/001867/186769S.pdf>). English version:
<http://www.unesco.org/new/en/santiago/education/education-assessment/second-regional-comparative-and-explanatory-study-serce/>

⁸ See <http://www.sentidog.com/lat/2011/04/joven-riojano-se-suicida-tras-sufrir-acoso-homofobico.html>

14. A year later, in Temperley, Lomas de Zamora district, Buenos Aires province, Victor Feletto⁹ (12), killed himself because of the chronic abuse he had to endure during Physical Education classes.
15. On September 11, 2013, the National Parliament passed Law 26892 or "Law to promote coexistence and address social conflicts in educational institutions"¹⁰.

Suggested questions:

16. Does the National Ministry of Education have any policy to address school harassment based on sexual orientation and gender identity and/or expression?
17. What measures is the Argentinean State taking to effectively implement Law 26892?

Maternal mortality and restrictions to access therapeutic abortion: Right to life, to integrity and to not be discriminated against (Articles 3,6 and 7)

18. Maternal mortality rates are still high in Argentina. There are marked differences between the percentage of deaths recorded for the higher and the lower income populations¹¹, because women and girls face considerable obstacles to access gynaecology and obstetric services providing counseling on sexual and reproductive health, as the Programa Nacional de Salud Sexual y Procreación Responsable (PNSSyPR, National Programme for Sexual Health and Responsible Procreation)¹² prescribes. Several provinces lack provincial laws to implement Law 23673 that regulates the implementation of the PNSSyPR.
19. Even though progress has been made, implementation of the Sexual Health and Responsible Procreation Programme is irregular. Not all health facilities in the country have these services and even though the Programme indicates that free access to all contraceptive methods - including emergency contraception - should be provided to all women and adolescents, the distribution of contraceptives is highly irregular. In many districts, health professionals are not adequately trained, lack proper materials and equipment, and are overwhelmed by the number of patients requiring their services.
20. At the local and provincial levels, health agents and professionals resist intrauterine devices and emergency contraception. For instance, in the provinces

⁹ Newspaper La Nación, April 4, 2012 <http://www.lanacion.com.ar/1462039-se-suicidio-un-alumno-de-12-anos-por-acoso-escolar>

¹⁰ <http://www.infojus.gov.ar/resource/kbee:/sajj-portal/content/legislacion/norma/nacional/legislativo/2013/9/NV6155/NV6155/ley26892.pdf>

¹¹ 70% of maternal mortality cases correspond to the provinces with the highest poverty levels. In the capital city, Buenos Aires, the maternal mortality rate is 1.8% while in Jujuy province it reaches 16.5%.

¹² Created by Law 25673/2003. <http://www.msal.gov.ar/saludsexual/ley.php>

of Salta, Mendoza, Jujuy and Tucuman, health professionals discourage the use of Misoprostol, on the basis of their personal bias and beliefs. The lack of updated scientific knowledge supported by the National Ministry of Health often compounds this problem¹³.

21. Abortion-related complications are the second cause of maternal deaths in most of the Argentinean provinces¹⁴. Abortion is criminalized in the country¹⁵. This prohibition affects women's lives and health, as it encourages clandestine abortions that are often done in awful sanitary conditions particularly in the case of the most impoverished women. More than 500,000 abortions are performed in Argentina every year, and more than one woman dies every day due to abortion-related complications¹⁶.

22. In late 2011, a proposal to legalize abortion began to be discussed in Parliamentary commissions but there was no agreement to take it to the plenary of the Deputies Chamber. By continuing to criminalize abortion, the State is not fulfilling its responsibility to protect and guarantee women's and adolescents' human rights, particularly their right to life, to sexual integrity, to health, to autonomy and to live a life free from violence.

23. The Penal Code contemplates two exceptions to criminalizing abortions: a) when the woman's life and health is at risk, and b) when a mentally disabled woman is raped. Recently, the Supreme Court of Justice made the decriminalization of abortion extensive to all cases in which the pregnancy has resulted from a rape¹⁷.

24. But still after the Supreme Court verdict, the women's rights it sought to protect had been systematically violated, as in most public hospital the Directors and medical professionals have refused to follow what the law prescribes invoking "conscientious objections" and/or scientifically wrong arguments. Women, girls and adolescents are subjected to unnecessary and delaying judicial manipulations, and their families are pressurised by the doctors to delay and in the end stop those

¹³ CONDERS, "Monitoreo Social y Exigibilidad sobre los Derechos Sexuales y Reproductivos en Argentina". Informe 2010. <http://www.conders.org.ar/pdf/conders2010.pdf>

¹⁴ 3.5 deaths for every 10,000 live births (2012), according to the National Ministry of Health statistics.

¹⁵ Articles 86.1, 86.2 and 88 of the Penal Code criminalize women and those who help them perform an abortion with prison.

¹⁶ Newspaper Pagina 12. – May 27, 2011 - <http://www.pagina12.com.ar/diario/suplementos/las12/13-6537-2011-05-28.html>

¹⁷ http://www.lacapital.com.ar/export/sites/diariolacapital/pdf/Fallo_completo.pdf, Agencia de Noticias del Poder Judicial, F.259.XLVI; F.,A. L. s/medida autosatisfactiva

legal abortions from being performed. This results in violations against the rights of women, girls and adolescents mentioned in the title of this section¹⁸.

25. In 2007, the National Ministry of Health approved the distribution of a Technical Guide for Legal Abortion Care throughout the health sector, but the Guide did not reach everywhere in the country. Also, health professionals were not trained on how to use it. Thus, in many provinces the Technical Guide and its Protocols are not applied to treat legal abortion cases. The same can be said about the care protocols for rape and sexual abuse against women and girls. Their application could stop discretionary and/or arbitrary actions on the part of health professionals and facilities.

Suggested questions:

26. What concrete actions is the State implementing, at the national level, to guarantee that legal abortions are performed as prescribed by the Penal Code as well as to guarantee compliance with the Supreme Court's verdict on the matter?
27. What effective measures and actions is the State taking at the national level to guarantee that all health services - public and private - have professional teams and other health personnel ready to fulfill their medical duty according to the current law - particularly in legal abortion cases - without biases or reservations of religious or any other nature?
28. What actions is the State implementing to guarantee that women who had to resort to clandestine abortion receive dignified and adequate post-abortion care without any kind of punishment, including legal actions taken against them?

¹⁸ In recent years, there have been many cases in which the access to legal abortion has not been granted, in violation of women's and girls' rights mentioned in the title of this section": in Misiones province (2011), Entre Ríos and La Rioja provinces (early 2012) and at the time of writing this report (December 2013) a similar case was taking place in Salta city. In all cases, girls or adolescents were affected. Their cases were unnecessarily taken to Court, the abortion procedures were denied due to medical or legal pressures, in violation of Argentina's obligations towards the human rights of women, girls and adolescents. In March 2011, Argentina was condemned by the Human Rights Committee for failing to guarantee that legal abortions be performed. See CCPR/C/101/D/1608/20