

Relatora Especial
sobre violencia contra la mujer,
sus causas y consecuencias
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ARGENTINE OMBUDSMAN REPORT¹

Special Rapporteur on violence against women, its causes and consequences Ms. Dubravka Simonovic

Once Resolution A/RES/70/1 was passed, *Transforming our world: the 2030 Agenda for Sustainable Development*, this National Human Rights Institution launched on January 1st, 2016 the *Follow-up and Review Programme of the 2030 Agenda for Sustainable Development Goals*, and thus a large number of investigations linked to the 17 Goals and its corresponding targets have been initiated; particularly those related to vulnerable groups such as women, girls, adolescents, LGTBI, individuals deprived of their liberty and indigenous people, all of them aimed at promoting, protecting and ensuring gender equality.

Violence against women

An investigation has been conducted in order to ascertain public policies and determine how to *eliminate all forms of violence against all women and girls in public and private spheres...* and which measures shall be taken in order to *adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels* (targets 5.2 and 5.c).

It should be noted that the National Women Council (CNM), on July 26th 2016, launched the *National Programme of Action for the Prevention, Assistance and Eradication of Violence against Women (2017-2019)*, according to the provisions of 26.485 Act on the *Comprehensive Protection to prevent, punish and eradicate violence against women*².

The Programme shall be carried out during the following **three years** (2017-2019). 69 measures and 137 actions have been taken covering different areas (health, education, labor, access to justice, communication, etc.). Although the Programme appears to be comprehensive, the majority of the goals to be fulfilled in 2017 are referred to training for health workers, security forces and governmental and Justice officials.

Furthermore, another investigation has been initiated in order to ascertain the public policies taken or to be taken concerning obstetric violence, according to 25.929³ and 26.465⁴ Acts. It must be underlined on this matter that the recent CNM Programme above mentioned intends to discuss the obstetric violence by the year 2019⁵, regardless the increase of this form of violence against women, with a poor State involvement and the lack of knowledge on penalties for health workers, despite the section 6 provisions of 25.929 Act on "Humanized Childbirth".

Observatory for Femicides

Taking into account that the femicides committed in our country amounted to 225 in 2014 and to 235 in 2015, it is now clear that the number of femicides, far from decreasing, is growing, despite the efforts currently undertaken by the government, as it declares, as part of its public policies. Therefore, this National Human Rights Institution, following the Recommendations issued by the Rapporteur in her A/71/398⁶ Report, point 83.1, passed Resolution DPA No. 00049/16, by means of which the OBSERVATORY FOR FEMICIDES OF THE ARGENTINE OMBUDSMAN OFFICE

¹ This Report could be published in the UN Website.

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² Consejo Nacional de las Mujeres (2016). *Plan Nacional de Acción para la Prevención, Asistencia y Erradicación de la Violencia contra las mujeres (2017-2019)*. Disponible en: <http://bit.ly/2f5rcw8>

³ Ley N° 25.929 del 24 de octubre de 2004. Disponible en: <http://bit.ly/2fZNNt0>

⁴ Ley N° 26.485 del 14 de abril de 2009. Disponible en: <http://bit.ly/2fYhWek>

⁵ Ibid., p. 94. (Medida n° 26 del Plan)

⁶ General Assembly Resolution A/71/398 on *Violence against women, its causes and consequences*. Retrieved from: <http://bit.ly/2eHPNbf>

(OBSERVATORIO DE FEMICIDOS DEL DEFENSOR DEL PUEBLO DE LA NACION) is created, aimed at collecting, producing, elaborating, systematizing, analyzing and communicating data and information on those femicides occurred in our country, and for this purpose the data and information obtained shall be firstly divided into two broad categories: one in which there exists a relationship between the victim and his/her perpetrator (partners or family members) and another one referred to those femicides which do not fall under that first categorization; the disaggregation and release of information by sex, age, racial and ethnic group, socio-economic status and area of residence shall be ensured. The Observatory annually shall make a survey of femicides, beginning on November 16th of each year and ending on November 15 of the following and such reports shall be published yearly on November 25th without any exception, on the date which marks the International Day of the Elimination of Violence against Women.

The Observatory, irrespective the main task for which it has been created, shall have the following duties, *inter alia*: to encourage the development of studies and research on the evolution, types and forms of violence against women; to invite civil society as a whole, to take part, cooperate and collaborate directly with the Observatory, according to the 2030 Agenda, goals 16 and 17; to create an information network aimed at disseminating the data collected and Observatory studies and activities, keeping an ongoing updated database open for the public; to develop action proposals seeking better comprehensive public policies on matters referred to violence against women; and to promote the organization and regular holding of open debates, involving research centers, academic institutions, civil society organizations, and representatives of public and private entities, both domestic or international, which deal with this matter, encouraging the interchanging of experiences and identifying issues and problems relevant to the public agenda.

Health

As to non punishable abortions, a new draft on the matter was submitted to the House of Representatives on which promotes the voluntary interruption of pregnancy⁷. Reference should also be made in this context to an investigation carried out by this National Human Rights Institution, due to a complaint filed by the *Latin American and Caribbean Committee for the Protection of Women's Human Rights (Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres –CLADEM-)* on the implementation of protocols for non punishable abortion care.

Resolution No. 65/15⁸ was passed in October 2015, by means of which sanitary authorities were *exhorted* so that provinces should “take the necessary steps for formulating and implementing a protocol for non punishable abortion care or, if applicable, make provisions for joining the “*Protocol for the care of those individuals entitled to a legally termination of pregnancy*”, produced by the National Ministry of Health.”⁹

Despite the passage of almost six years of the Court decision: CSJN, “F., A. L. in re self-enforcing measure”, rta. 13/03/2011, F 259, XLVI¹⁰, only eight provinces complied with such Court order: Chubut, Santa Fé, Chaco Jujuy, Misiones, Tierra del Fuego, La Rioja and Santa Cruz. Other eight jurisdictions, Salta, La Pampa, Córdoba, Entre Ríos, Province of Buenos Aires, City of Buenos Aires, Río Negro and Neuquén partially obeyed the order by adding some requirements which restrict the access to abortion. Eight provinces still do not have protocols: Catamarca, Corrientes, Formosa, Mendoza, San Juan, San Luis, Santiago del Estero and Tucumán

Moreover, Resolution No. 00069/16 was passed on October 20th 2016 concerning the investigation No. 1243/16, by means of which the National Ministry of Health was exhorted in order to grant the corresponding status to the “*Protocol for the care of those individuals entitled to a legally termination of pregnancy*”¹¹, by taking administrative measures related to this field or alternatively, proposing the issuing of a decree which shows the compliance with the guidelines addressed to the National Government by international entities, encouraging the protection and promotion of the human rights of women.

⁷ Honorable Cámara de Diputados de la Nación. Expdte. 0666-D-2014. Trámite Parlamentario n° 51. Disponible en: <http://bit.ly/2fXBWtV>

⁸ Defensor del Pueblo de la Nación. Resolución DPN N° 65/15 <http://bit.ly/2di3Aq7>

⁹ Ministerio de Salud de la Nación (2015). *Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo*. Disponible en: <http://bit.ly/2gitfzw>

¹⁰ CSJN, F. 259. XLVI. “F., A. L. s/medida autosatisfactiva”, 13-03-12. Disponible en: <http://bit.ly/2eHaftd>

¹¹ *Ibidem*

The reason behind is that the *Protocol* has been published on the Website of the abovementioned Ministry, but it is not legally binding.

Another investigation has also been conducted: “*By 2030 ensure universal access to sexual and reproductive health care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes to achieve, in line with Goal 5, the absolute recognition of reproductive rights as agreed in accordance with the Programme of Action of the ICPD and the Beijing Platform for Action and the outcome documents of their review conferences*” (targets 3.7 and 5.6).

From a statistical point of view, 30 to 35 per cent of women of childbearing age have no social security coverage and also they have no access to private medical care, the reason why they turn to the health public system.

Since our country is a federal State with autonomous provinces, the compliance is unequal regarding reproductive and sexual rights, as a result of different public policies adopted in each jurisdiction.

There is neither a real and intensive campaign for the dissemination and education on sexual health care nor a comprehensive one, thus the challenge consists of ensuring the access to health care, especially sexual and reproductive rights, which enables that pregnancy may be planned and prevents from sexually transmitted diseases. There is also no campaign for a health care service awareness (public, social works or private) intended to give a due medical care, without bringing cases to Court when an ILE (legal termination of pregnancy) is requested or reporting women coming with an abortion in progress.

Education

The National Programme for a Comprehensive Sexuality Education has been created by 26.150¹² Act which states that the integral sexual education is in our country an inalienable right of boys, girls, adolescents and youngers of all educational levels. Moreover, it determines that the State has the responsibility to protect this right.

Since the enactment of this Act, the Federal Council of Education (CFE) which joins the main provincial educational authorities and those of the City of Buenos Aires and is chaired by the National Minister of Education, by means of Resolutions Nos. 43/08¹³ and 45/08¹⁴, approved The Curricular Guidelines for a Comprehensive Sexuality Education (ESI) intended to teacher training, from the initial to the higher level, including also the technical education.

The goals set out in the 26.150 Act are, *inter alia*: to include the comprehensive sexuality education into the educational proposals aimed at a harmonious, well-balanced and permanent training of individuals and a respect for students' rights, without any restrictions other than age, methods and educational level, and respecting their freedom of conscience.

Additionally, the National Programme for a Comprehensive Sexuality Education raises collaborative strategies for working together with jurisdictions, families, national and international entities, different areas of civil society and mass media, towards the achievement of the goals set out in 26.150 Act. However, there has been lack of resources and training since its enactment, Ten years after the passing of this rule which require us to talk about sexuality and it has not been implemented in all schools. Experts make sure that it has a dissimilar implementation and there still exists teacher and family resistance.

The governmental commitment in all levels, national, provincial and local is essential in order to achieve the full enforcement of the provisions stated in such Act.

Furthermore, there are no official statistics or investigations concerning the tasks actually undertaken in our classrooms. The most recurrent issues are focused on the dissimilar implementation of national rulings and an insufficient teacher-training which often depends on the goodwill of management teams and more qualified teachers, when actually, as Act provisions, they must be put into force systematically.

During the National Meeting of Women held in the City of Rosario, Province of Santa Fe on October 8th, 9th and 10th, 2016¹⁵, an initiative arises for the creation of a National Front for a Comprehensive Educational Sexuality. Progress and setbacks related to the enforcement of the Act throughout the country were discussed in this meeting, and the point was made that there is a risk inherent to the

¹² Ley N° 26.150 del 04 de octubre de 2006. Disponible en: <http://bit.ly/2fy1y3D>

¹³ Consejo Federal de Educación. Resolución CFE N°43/08. Disponible en: <http://bit.ly/2fYpOg3>

¹⁴ Consejo Federal de Educación. Resolución CFE N°45/08. Disponible en <http://bit.ly/2fxWDzC>

¹⁵ Encuentro Nacional de Mujeres (2016). Rosario, Pcia. de Santa Fe. Disponible en: <http://bit.ly/2fGwVGW>

continuity of this policy at a national level because there is a lack of provision in the 2017 National Budget proposed by the government for its implementation in provincial Programmes.

The 27.234 Act¹⁶ passed in 2015 by means of which the basis for carrying out a National Meeting “Educating on Equality, Prevention and Eradication of Gender-Based Violence” in all educational institutions throughout the country, public or private, at primary, secondary and tertiary levels, was established in the interest of developing and strengthening attitudes, skills, values and practices in students and teachers to help prevent and eradicate gender-based violence.

Leadership and Women’s participation in politics

The Province of Buenos Aires, whose population in December 2015 reaches to 16.659.931 (on a total of 43.416.755), passed the 14.848 Act¹⁷ with a view to including an equitable political involvement of both genders for all public elective positions within its district and also provided that the collegiate bodies positions shall be occupied fifty per cent (50%) for females and the other fifty per cent (50%) for males.

On October 19th, 2016 the Argentine Senate approved the gender parity draft (S-4297/15)¹⁸ for the State and Labor Unions; that is to say, fifty and fifty per cent as in the previous case. Moreover, it proposes that a female representation proportional to the amount of Judges, Prosecutors and Official Counsels shall be ensured in the whole judicial system. Such draft is currently being considered by the House of Representatives.

This Ombudsman Office employed 278 individuals; seventy per cent (70%) of its officials are females and four, out of seven, in charge of our thematic areas: Identity and Citizenship; Health and Education; Environment; Public Services; Social Security and Vulnerable Groups. Furthermore, the six Offices pertaining to the Vulnerable Groups Area: Persons Deprived of their Liberty; Trafficking in Persons and Smuggling of Migrants; Indigenous Peoples; Disabled People; Childhood and Adolescence; and Gender, are composed by eighty five per cent (85%) of women.

Protocol

This Ombudsman Office passed Resolution No. 0006/2016 on March 3th 2016, by means of which the “*Institutional Action Protocol for the Prevention and Intervention before Situations of Violence or of Gender-base Discrimination or of Sexual Orientation*” was approved and it shall be applied for all labor relations which occur in any Office section: its facilities and associated plants, and also through the telephone, virtually or other types, within the context of such same labor relations. It includes situations of gender-base violence, sexual harassment, sex and/or gender-base discrimination, sexual orientation, gender identity and gender expression which have as their object or effect the exclusion, restriction, limitation, degradation, humiliation or annulment of the recognition, enjoyment or exercise of rights, regardless the way in which they are committed, including the omission, and being them intended to a particular person or in general, to a group or community, based on gender reasons, gender identity or sexual orientation and capable to create a climate of intimidation, humiliation and hostility.

LGTBI Group

An investigation has been initiated In the context of the *Follow-up and Review Programme of the 2030 Agenda for Sustainable Development Goals* in order to ascertain the public policies that were and will be applied to lesbians, gays, bisexuals and trans in Argentina according to the United Nations view, and also, taking into account the report that the Argentine LGBTI Federation has produced with PNUD support.¹⁹ Such investigation follows the document A/RES/63/635²⁰ submitted

¹⁶ Ley 27.234 del 26 de noviembre de 2015. Disponible en: <http://bit.ly/2fishON>

¹⁷ Ley N° 18.848. Boletín Oficial de la Provincia de Buenos Aires, Buenos Aires, Argentina, 26 de octubre de 2016. Disponible en: <http://bit.ly/2fXtwTj>

¹⁸ Honorable Cámara de Senadores de la Nación. Expdte. S-4297/15. Proyecto de Ley de Paridad de Género en el Estado y Asociaciones Sindicales. Disponible en: [file:///C:/Users/Usuario/Downloads/S4297-15PL%20\(3\).pdf](file:///C:/Users/Usuario/Downloads/S4297-15PL%20(3).pdf)

¹⁹ Plan de ciudadanía LGBT: De la Igualdad Legal a la Igualdad Real. Buenos Aires: Programa Naciones Unidas para el Desarrollo - PNUD; ONUSIDA, FALGBT, 2013. Disponible en: <http://bit.ly/1QXxV8P>
Documento completo en <http://bit.ly/1mg6kTG>

²⁰ General Assembly resolution A/RES/63/635 on Letter dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly. Retrieved from: <http://bit.ly/2fZ2H57>

to the General Assembly (UN) by the UN Permanent Representatives from Argentina, Brazil, Croatia, France, Gabon, Japan, Norway and the Netherlands, and additionally the UN document A/HR/C/29/23²¹, entitled “*Discrimination and Violence against individuals based on their Sexual Orientation and Gender Identity*”. Furthermore, the Campaign “UN Free and Equal”, developed by the UNHCHR and its five recommendations are taken into consideration.

Likewise, the Yogyakarta Principles which have not yet been adopted definitely by the United Nations (see Additional Recommendations, page 35) or ratified from our country are very useful by giving grounds for determining public policies. Moreover, this institution shall require the H. Congress the enactment of a new Act on this issue. Besides, the National Plan against Discrimination. Discrimination in Argentina (2005, INADI- UNHCHR)²² has been taken into account.

It should be noted that our country signed the United Nations Development Partnership Framework (UNDPF) 2016-2020²³ as well as the complementary Country Programme Action Plan 2016 to 2020²⁴, subscribed on July 21st 2016, which make special reference to the LGTBI group as one of the main groups in vulnerable situations. That is how the Plan explained it, particularly on Part IV, point 4.6. “Citizenship and Human Rights”, taking into account the UNDPF provisions, where the Argentine Ombudsman has been considered as a strategic partner in that field, as shown its Appendix I, page 41

The Ombudsman Office, in the context of the abovementioned investigation that is currently being conducted, has reached at this first stage, the next conclusions: The State is responsible for carrying out, *inter alia*, the following actions, namely: **a.** The Design and Implementation of a Comprehensive Programme for the Trans Community with the purpose of providing company in all fields and incorporating inclusion and equality programmes; **b.** Development of labor inclusion policies; **c.** Implementation of policies and guidelines that allow the full enjoyment of rights granted by the Gender Identity Act, particularly section 11, and that remove all obstacles towards the access to a Trans comprehensive health care; **d.** Ensure the universal and comprehensive access to assisted reproductive treatments for all LGTBI community; **e.** Development of those public policies where the surrogated pregnancy be considered as a reproductive right. **f.** Intensification in the entire country of an immediate enforcement of the regulatory framework established by 26.150 Act on Sexual Comprehensive Education (SIE); **g.** Training and education of security and military forces, aimed at including a sexual diversity perspective; **h.** Creation of a Crime Observatory based on sexual orientation and gender identity of victims; **i.** Creation of special procedures for security forces and the Judiciary in order to denounce violence and persecution on grounds of sexual orientation and gender identity or its expression.

²¹ General Assembly resolution A/HR/C/29/23 on *Discrimination and violence against individuals based on their sexual orientation and gender identity*. Retrieved from: <http://bit.ly/2fiNdVJ>

²² INADI – ACNUDH (2005). *Hacia un plan nacional contra la discriminación: la discriminación en Argentina. La Discriminación en Argentina: diagnóstico y propuestas*. Disponible en: <http://bit.ly/2fYrB4M>

²³ Gobierno de la República Argentina y Sistema de Naciones Unidas en Argentina. *Marco Estratégico de Cooperación del Sistema de Naciones Unidas para el Desarrollo, República Argentina, 2016 – 2020*. Disponible en: <http://uni.cf/2fi2pm2>

²⁴ Plan de Acción del Programa del País 2016 a 2020 suscrito entre el Gobierno de Argentina y el PNUD. Disponible en: <http://bit.ly/2gkxwBA>