

Conservative litigation against sexual and reproductive health policies in Argentina

María Angélica Peñas Defago,^a José Manuel Morán Faúndes^b

^a Researcher, Sexual and Reproductive Rights Program; Doctoral fellow, CIJS-CONICET, School of Law and Social Sciences, National University of Córdoba, Argentina. *Correspondence:* angelicapdefago@hotmail.com

^b Fellow, CIJS-CONICET; and Researcher, Sexual and Reproductive Rights Program, School of Law and Social Science, National University of Córdoba, Argentina

Abstract: *In Argentina, campaigns for the recognition of sexual and reproductive rights have sparked opposition through litigation in which the dynamics of legal action have come from self-proclaimed “pro-life” NGOs, particularly since 1998, when the conservative NGO Portal de Belén successfully achieved the banning of emergency contraception through the courts. The activities of these groups, acting as a “civil arm” of religion, are focused primarily on obstructing access to legally permissible abortions and bringing about the withdrawal of a number of recognized public policies on sexual and reproductive health, particularly the 2002 National Programme for Sexual Health and Responsible Procreation. This paper analyzes the litigation strategies of these conservative NGOs and how their use of the courts in Argentina has changed over the years. It gives examples of efforts in local courts to block individual young women from accessing legal abortion following rape, despite a ruling by the National Supreme Court of Justice in 2012 that no judicial permission is required. In spite of major advances, the renewed influence of the Catholic hierarchy in the Argentine political scene with the accession of the new Pope poses challenges to the work by feminists and women’s movements to extend and consolidate sexual and reproductive rights. © 2014 Reproductive Health Matters*

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For the last ten years, Argentina has seen an increase in litigation related to sexual and reproductive rights. The dynamics between the actors and the ways in which these cases have made it into the courts have played out in different ways. On the one hand, LGBTIs* have turned to the courts in an attempt to widen the spectrum of sexual rights.^{1,2} It was in this way, for instance, that prior to the Civil Code reform legalizing same-sex marriage in 2010, the Argentinian Federation of Lesbians, Gays, Bisexuals and Trans (FALGT),[†] founded in 2006, launched a successful legal strategy to seek authorization of a series of same-sex marriages through the courts of justice. Their purpose was to open a national debate and set legal precedents that would lead to a transformation in the country’s legislation on marriage.

As far as reproductive rights are concerned, however, the dynamics of legal action have been different, as it has been conservative social actors who, from the 1990s and the beginning of the 21st century onwards, created an intense litigation environment surrounding the topic. Since 1998, when the conservative NGO *Portal de Belén* (Stable of Bethlehem) successfully took a case against emergency contraception, achieving the banning of the method in the country,³ several self-proclaimed “pro-life” NGOs have increased their legal activities in an attempt to obstruct access to legal abortion services and to bring about the withdrawal of a number of public policies on sexual and reproductive health.^{4–8}

The conservative litigation strategy is in direct response to advances in the recognition of the right to sexual and reproductive health, which started in the 20th century in Argentina. While there are still some sexual and reproductive rights to attain, such as the legalization of

*Lesbians, gays, bisexuals, transexuals and intersexuals.

[†]See: <http://www.falgbt.org>.

abortion,* a number of laws and policies favourable to these rights have been passed. In 2002, for example, Law 25.673 created the *Programa Nacional de Salud Sexual y Procreación Responsable* (National Programme for Sexual Health and Responsible Procreation), which aimed to lower maternal mortality and morbidity, prevent unwanted pregnancies, guarantee adolescents' access to sexual and reproductive health, and prevent sexually transmitted infections and HIV. In 2006, Law 26.130 eliminated restrictions on access to tubal ligation and vasectomy, which had been a criminal offence in the Penal Code until then. That same year, Law 26.150 introduced comprehensive sexual education. In 2010, Law 26.618 was amended, allowing same-sex couples the right to marry and adopt. Then in 2012, Law 26.743 guaranteed the right of recognition of self-defined gender identity.

In the context of these considerable advances in sexual and reproductive rights, the conservative sectors have found in the judicial arena a space to dispute and resist these new rights. This is a phenomenon that jeopardizes both our hard-won sexual rights and women's reproductive rights as well as access to sexual and reproductive health services, and needs further exploration.

This article aims at shedding some light on some of these matters. Firstly, it describes the emergence and historical evolution of the self-proclaimed "pro-life" NGOs in Argentina. Secondly, it analyzes the court challenges by the self-proclaimed "pro-life" NGOs to restrict the National Programme for Sexual Health and Responsible Procreation and the role and impact of the NGO *Portal de Belén* in the litigation against the National Programme. Thirdly, we analyze the main judicial interventions by conservative NGOs aimed at blocking women's access to legally permissible abortions in Argentina.

Our analysis is based on three different sources of information: online and paper documents published by the self-proclaimed "pro-life" NGOs concerned, details of the legal proceedings presented by these organizations in court in the years 1998–2013, and individual interviews with 14 members of these NGOs. Drawing upon these data, we have mapped the aims of these NGOs,

tracked their historic evolution and analyzed their main litigation strategies.

The development of the self-proclaimed "pro-life" NGOs in Argentina

While the conservative sectors upholding their version of sexual morality are made up of a multiplicity of actors,^{9,10} the academic literature in general has focused on the role that certain religious institutions play, especially the Catholic hierarchy and some Evangelical churches, who are key actors in the struggle against sexual and reproductive rights in Argentina.^{11–14} Nevertheless, and despite the central place that these religious groups hold in this field, the self-proclaimed "pro-life" NGOs have gained momentum as opponents of such rights.⁹ Whereas these organizations reinforce the actions carried out by some religious leaders, acting as a "civil arm" of religion, they have also allowed conservative activists to resort to strategies that lie beyond the scope of the churches involved.

These conservative NGOs came into existence in Argentina at the beginning of the 20th century. As Mallimacci and Giménez Béliveau¹⁵ point out, during the 1920s and 1930s, the Vatican put forward a proposal that took the name of "Integral Catholicism" in which they appealed to the Catholic community to occupy ground in the arenas of politics, trades unions and universities, among others, carrying Catholicism into the whole of society. It was in this context that Argentina saw the emergence of organizations in Buenos Aires such as the *Consortio de Médicos Católicos* (Consortium of Catholic Doctors, 1929), *Fundación Nueva Cristiandad* (New Christianity Foundation, 1930) and *Corporación de Abogados Católicos* (Association of Catholic Lawyers, 1935), all aiming to promote Catholicism in professional and/or educational arenas. Others, in contrast, were formed in the mid-20th century as a response to debates arising from social transformations that challenged the traditional roles of men and women in the domestic and public spheres. Such was the case, for example, of the *Liga por la Decencia* (League for Decency, Santa Fe, 1963) and in Buenos Aires the *Liga de Madres de Familia* (League of Mothers, 1951) and *Tradición, Familia y Propiedad* (Tradition, Family & Property, 1967). Their actions went hand in hand with a discourse strongly focused on the idea

*While abortion is penalized in Argentina, Article 86 of the Penal Code sets forth exceptions to the law in cases involving rape and risk to the health and life of the woman.

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