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Advancement of women

Letter dated 15 October 2002 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General

I have the honour to write to you in connection with your report entitled “Working towards the elimination of crimes against women committed in the name of honour” (A/57/169).

Paragraph 26 of that document reiterates ideas contained in the report submitted by the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, to the Commission at its fifty-eighth session, in which the Argentine Republic is included as one of the countries whose legislative provisions are said to allow for partial or complete defence in cases where it is alleged that a crime has been committed in the name of honour.

If “crimes committed in the name of honour” are understood as crimes in which the perpetrator invokes the need to conceal or efface a stain on his or her honour or that of a spouse or family member as justification, seeking in this way to evade culpability, and as an attenuating circumstance leading to a reduction of sentence or even as a cause of inimputability, then I wish to inform you that Argentine legislation does not envisage this circumstance.

Article 80 of the Penal Code imposes a longer sentence, aggravated by the existence of a family tie, on “anyone who knowingly kills his or her parent, child or spouse”. The attenuating circumstance envisaged in Argentine legislation is the so-called “state of violent emotion” in which the person committing the crime is not aware of the seriousness of the act because of a temporary psychic impairment. Violent emotion functions as an attenuating circumstance leading to a reduction of sentence for the crime of homicide in accordance with article 81, paragraph 1, of the Penal Code, and in certain situations may even lead to the inimputability of the actor. This attenuating circumstance must certainly be demonstrated at the evidentiary stage and through expert testimony in the trial; it is on this basis that the judge will determine whether violent emotion was present or whether intention or premeditation went into the commission of the act. It should be noted that the

attenuating circumstance of violent emotion is applicable whether the defendant is a man or a woman.

In the past there have been isolated cases in Argentina in which the attenuation of sentence was based on protecting the honour of the victim or that of his or her family; the most recent of these cases dates from 1962. Such judgements were the result of ideas and mindsets that have been evolving mainly as a result of the international movement in defence of women's human rights, which during the 1980s led to the ratification in Argentina of the principal international human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women; all of these instruments have had constitutional ranking since 1994. Thus, since the 1970s and 1980s, situations of this type have disappeared from judicial precedents.

This change of mindset has also contributed to the evolution of the concept of chastity into the concept of "sexual integrity". That is to say, contemporary Argentine penal legislation provides an adequate notion of sexual assault by conceptualizing it as an insult to the victim's integrity, and not as an affront to purity or to the honour of any male, an interpretation to which the previous wording might have given rise.

It should be noted, moreover, that on 16 August 2002 Argentina submitted its fourth and fifth report to the Committee on the Elimination of Discrimination against Women, and at no time did the Committee point out to Argentina any supposed legislative error in this regard.

For the foregoing reasons, attention is drawn in particular to the ambiguity of the concepts used by the Special Rapporteur and the disregard of Argentine legislation, as well as the fact that the sources that provided such information are not identified. We regret the reiteration of these ideas in document A/57/169.

I should be grateful if you would have this letter circulated as a document of the General Assembly under agenda item 102.

(Signed) **Arnoldo M. Listre**
Ambassador
Permanent Representative
