

URGENT ACTION

COURT DENIES BELÉN'S RELEASE

Belén continues to be detained in Tucuman Province, northern Argentina, after suffering a miscarriage in a public hospital. On 3 May, her release was denied. Medical personnel and police officials violated her right to privacy and have unfairly accused and mistreated her.

On 21 March 2014, **Belén** went to the public Hospital Avellaneda in San Miguel de Tucuman complaining of abdominal pain. The doctor informed her that she was having a miscarriage. Belén said she was unaware that she was pregnant. Hospital staff later found a foetus in the bathroom and denounced Belén to the police claiming it was Belén's "son", without any evidence or DNA analysis to prove she had any relationship to the foetus. When Belén woke up in her bed after surgery, several police officers were surrounding her and she was subjected to an examination "in private parts of her body", which could amount to cruel, inhuman or degrading treatment. According to international law and standards, non-consensual disclosures of personal medical information, including to law enforcement officials, is a violation of the right to privacy.

Belén was accused of self-inducing an abortion and held in pre-trial detention for over two years, charged with abortion. The prosecutor then changed the accusation to aggravated murder, which entails a harsher penalty of up to 25 years. On 19 April 2016, the Third Chamber of the Criminal Chamber of Tucuman sentenced Belén to eight years in prison for murder. On 3 May Belén's defense appealed the decision and requested her immediate release. However, the court denied her release claiming she presents a flight risk. The court argued that Belén's defense did not provide evidence of her vulnerability and alleged lack of means to leave the province. Belén remains in preventive detention as her judgment has still not been signed. Preventive detention is an exception to the general rule that establishes freedom as a principle and, together with the presumption of innocence, the burden of proof falls on the State to justify her continued detention during this process.

Please write immediately in Spanish or in your own language:

- Urging the authorities to release Belen immediately and unconditionally, guaranteeing that no criminal process is conducted against her nor any other girl or woman who suffers a miscarriage or other obstetric complications;
- Calling on them to instruct health professionals to guarantee the doctor-patient duty of confidentiality and to guarantee mechanisms to sanction anyone who fails to protect women's right to privacy;
- Urging the authorities to open a prompt, impartial and independent investigation into the allegations of ill-treatment and infringements on the right to privacy committed both by health professionals and police officers.

PLEASE SEND APPEALS BEFORE 12 JULY 2016 TO:

General Prosecutor, Province of Tucumán

Edmundo Jesús Jiménez
Av. Samiento 431, 4000
San Miguel de Tucumán, Tucumán
Argentina

Fax: +54 381 4979135
Correo-e: edmundojimeneztuc@gmail.com
minfiscal@justucuman.gov.ar

Salutation: Dear Prosecutor/ Sr. Procurador

Health Ministry of Tucuman

Rossana Chahla
Calle 25 de Mayo 90 T4109ADB
San Miguel de Tucumán, Tucumán
Argentina

Fax: +54 381 4844000 ext. 504/505
Email: rchahla@msptucuman.gov.ar
Salutation: Dear Minister/ Sra. Ministra

And copies to:

Amnistía Internacional Argentina
Email: activismo@amnistia.org.ar

Also send copies to diplomatic representatives accredited to your country. HER EXCELLENCY MS ALICIA CASTRO, Embassy of the Argentine Republic, 65 Brook Street W1K 4AH, 020 7318 1300, Email info@argentine-embassy-uk.org

Please check with your section office if sending appeals after the above date. This is the first update of UA 95/16. Further information: www.amnesty.org/en/documents/amr13/3905/2016/en/

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ADDITIONAL INFORMATION

According to international human rights law, detention is an exception to the general rule that establishes freedom as a principle. Preventive detention is the most severe measure that can be applied to the persona accused of a crime, reason for which its application must have an exceptional nature, since it is limited by the principles of legality, the presumption of innocence, need, and proportionality, all of which are strictly necessary in a democratic society. The arbitrary extension of a preventive detention turns it into a punishment when it is inflicted without having proven the criminal responsibility of the person to whom this measure is applied. The principle of presumption of innocence constitutes a foundation for judicial guarantees. The presumption of innocence places the burden of proof on the prosecution and guarantees that no guilt can be presumed unless there is clear evidence of his criminal responsibility, beyond reasonable doubt, and must be acquitted if the latter is incomplete or insufficient.

Article 17 of the International Covenant on Civil and Political Rights and Article 11 of the American Convention on Human Rights, to which Argentina is a State party, protect the right to privacy and impose an obligation on States to ensure that adequate safeguards are in place to guarantee the confidentiality of medical information, particularly in health settings. Every girl or woman who seeks an abortion in a medical facility or who suffers a miscarriage or stillbirth is protected by doctor-patient confidentiality.

The person who causes an abortion can face prison from one to four years in Argentina. The law permits abortion when the life or health of a pregnant woman is at risk or when the pregnancy is the result of rape. Miscarriages or other complications during pregnancy are not criminalized.

The Committee on the Elimination of Discrimination against Women and other international human rights bodies have called on States to decriminalize abortion in all circumstances and ensure access to safe and legal abortion in law and practice as a minimum in cases where the pregnancy poses a risk to the life or health of the woman or girl, where the foetus suffers from severe malformation or is not viable, or where the pregnancy is the result of rape or incest.

Regardless of the legal status of abortion, States have the obligation to ensure access to quality and confidential health services for the treatment of complications arising from unsafe abortions and miscarriages. This treatment must be free from discrimination, coercion and violence.

Women and girls seeking sexual and reproductive health care in professional settings are often exposed to ill-treatment, including practices that inflict severe pain, or are subjected to coerced or unwanted procedures and examinations that may constitute torture or other cruel, inhuman or degrading treatment. The denial of certain services or ill-treatment in the context of sexual and reproductive healthcare; usually grounded in gender stereotypes; is discriminatory and constitutes a form of violence against women.

Sexual and reproductive rights are protected under international and regional human rights law, which enshrine the right of people to take informed decisions about their sexual and reproductive lives, free from violence, coercion or discrimination and to ensure that those decisions are respected. These include the right to health, personal integrity, autonomy and equality, among others.

Further information on UA: 95/16 Index: AMR 13/4104/2016 Issue Date: 31 May 2016