

A young boy with dark hair, wearing a plaid jacket with a fur collar, is carrying a large stack of wrapped packages. He is walking past a wall made of reddish-brown bricks. The packages are wrapped in light-colored, textured material, possibly paper or fabric. The boy is looking down at the packages with a focused expression.

Rights of the Child in Argentina

OMCT

OPERATING THE **SOS-TORTURE** NETWORK



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The aim of OMCT country reports are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

Contents

I. INTRODUCTION	7
II. INTERNATIONAL STANDARDS	9
III. DEFINITION OF THE CHILD	10
IV. DISCRIMINATION	11
4.1 DISCRIMINATION AGAINST GIRLS	12
4.2 DISCRIMINATION AGAINST INDIGENOUS PEOPLE	13
V. PROTECTION FROM TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	15
5.1 ARGENTINA'S LEGAL FRAMEWORK	15
5.2 PRACTICE	17
VI. UNLAWFUL KILLINGS	19
VII. PROTECTION FROM OTHER FORMS OF VIOLENCE	23
7.1 VIOLENCE IN THE FAMILY	23
7.2 SEXUAL ABUSE AND EXPLOITATION	24
7.3 CHILD LABOUR AND EXPLOITATION	26
VIII. CHILDREN IN CONFLICT WITH THE LAW	29
8.1 AGE OF CRIMINAL RESPONSIBILITY AND JURISDICTION	29
8.2 GROUNDS OF ARREST AND DETENTION	31
8.3 CONDITIONS OF DETENTION	33
IV. CONCLUSION AND RECOMMENDATIONS	35

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COMMITTEE ON THE RIGHTS OF THE CHILD
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Report on the implementation
of the Convention
on the Rights of the Child
by the Argentina Republic

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Accession on
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1977

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1986

Accession on
March 18,
1976

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CRC/C/65/Ad
d.17

Ibid. para. 10

Ibid. para. 1

(a)

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the Senior Inter-
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I. Introduction

The implementation of the rights of the child, as a specific aspect of the situation of human rights, cannot be understood without linking it to a broader political, economic and social context. In Argentina, the current crisis, which results in the impoverishment of a dramatic part of the population, affects all human rights, including economic, social and cultural, and civil and political.¹ The social unrest caused by the crisis and the growing number of people living or working on the streets were simultaneously accompanied by an augmentation of institutional violence and the stigmatisation of certain sectors of the population, such as “violent juveniles” or “illegal immigrants”, as well as certain areas, such as “popular neighbourhoods”.²

As children are more vulnerable to the effects of violence than adults and might have limited capacity to understand, as well as express and defend themselves, they are particularly affected by the current crisis in Argentina and its consequences on the situation of their rights. Since the last report presented by Argentina to the Committee on

the Rights of the Child (the Committee), this situation has worsened and particularly serious cases of violations of children’s rights, such as extrajudicial executions, torture and other forms of violence, have been registered in Argentina.

OMCT welcomes the second periodic report submitted by Argentina to the Committee in accordance with article 44 (1) b of the Convention on the Rights of the Child (CRC). However, OMCT regrets that this report mainly describes legal provisions and proceedings and fails to show how the Convention is implemented in practice. OMCT also regrets that some recommendations made by the Committee during the previous session³ have been overlooked by the Argentinian Government.

OMCT’s alternative report to the Committee covers the provisions of the CRC which fall under the mandate of OMCT,

1 - See *The economic crisis in Argentina: a structural challenge to the enjoyment of all human rights*, OMCT urgent appeal, Case ARG 220801.ESCRC.

2 - CELS, *Informe sobre la situación de los derechos humanos en Argentina 2001*, Buenos Aires, 2001, p. 16ss.

3 - See *Concluding observation of the Committee on the Rights of the Child: Argentina*, 15/02/95, CRC/C/15/Add.35.

namely the right to life, the right to be protected from torture and other cruel, inhuman, or degrading treatment or punish-

ment, the rights of children in conflict with the law, and the right to be protected from any form of violence and discrimination.

II. International Standards

Argentina ratified the CRC on 29 June 1990 and it came into force on 03 January 1991. Despite a recommendation formulated in the last concluding observations of the Committee regarding the situation in Argentina⁴, the government still has not withdrawn its broad reservation on article 21 of the CRC.⁵

Argentina is also a party to other international instruments related to human rights, in particular the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

At a regional level, Argentina is a party to the American Convention on Human Rights ("Pact of San Jose"), the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belem do Para").

Article 75 paragraph 22 of the Argentinian Constitution provides that international treaties are hierarchically superior to domestic laws. It explicitly specifies that human rights treaties, including the CRC, have constitutional status and must be interpreted as complementary to the rights and guarantees recognized in the first part of the Constitution.⁶

However, OMCT deems that the effective status of the CRC in the domestic legislation still remains uncertain. In the *Ekmekdjian vs Sofovich Case*, the National Supreme Court of Justice held that State bodies are bound to apply ratified international treaties whenever these treaties include provisions sufficiently

4 - *Concluding observation of the Committee on the Rights of the Child: Argentina*, 15/02/95, CRC/C/15/Add.35, par. 8.

5 - "The Argentine Republic enters a reservation to subparagraphs (b), (c), (d) and (e) of article 21 of the Convention on the Rights of the Child and declares that those subparagraphs shall not apply in areas within its jurisdiction because, in its view, before they can be applied a strict mechanism must exist for the legal protection of children in matters of inter-country adoption, in order to prevent trafficking in and the sale of children".

6 - Constitución de Argentina : art. 75 par. 22 : "Los tratados y concordatos tienen jerarquía superior a las leyes. La Declaración Americana de los Derechos y Deberes del Hombre; (...) la Convención sobre los Derechos del Niño ; en las condiciones de su vigencia, tienen jerarquía constitucional, no derogan artículo alguno de la primera parte de esta Constitución y deben entenderse complementarios de los derechos y garantías por ella reconocidos".

concrete to make their immediate application possible.⁷ This jurisprudence implies that the effective implementation of the CRC may vary according to the content of each of its provisions. Therefore it attributes to the executive and judicial bodies of the State an excessive margin of interpretation, which creates legal insecurity and delays the effective implementation of the Convention. For example, OMCT regrets that articles 37 and 40 are ignored by judicial bodies on the basis of this jurisprudence.⁸

In October 2002, the Centre for legal and social studies (*Centro de estudios legales y so-*

ciales, CELS) also stated that, despite the adoption of article 75 paragraph 22 in 1994, “at national level, the ratification and posterior approbation of the Convention on the Rights of the Child only has had a rhetorical or political impact”.⁹

As a result, OMCT would recommend to the Government of Argentina to give more information on the legal status of the CRC in the domestic legislation and to adopt all necessary measures to ensure the full implementation of its provision at the national level.

III. Definition of the Child

Argentina made the following interpretative declaration at the time of its ratification of the CRC: “Concerning article 1 of the

Convention, the Argentine Republic declares that the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of eighteen”.

Under domestic law, this definition may vary according to legal fields. For example, the Civil Code defines “minors” as persons under 21 years of age.¹⁰ However, the age of majority may be attained earlier by marriage, by court verdict or by consent of those

7 - Corte Suprema de Justicia de la Nación, Fallo, “Ekmekdján M. A. c. Sofovich G. y otros”, 7 de Julio de 1992.

8 - See Mary Ana Beloff, *Niños y adolescentes: Los olvidados de siempre a propósito de la reforma procesal penal introducida por la ley 23.984*, p. 7.

9 - “A nivel nacional, es posible afirmar que la ratificación y posterior aprobación de la Convención Internacional de los Derechos del Niño sólo ha tenido un impacto retórico o político”. CELS, *Presentación ante el Comité de derechos humanos : Cuestiones a considerar en la evaluación del tercer informe periódico de Argentina en cumplimiento del art. 40 del Pacto internacional de derechos civiles y políticos*, 2000, Artículo 24 : Derechos del niño.

10 - Código Civil (Ley 340), 25 de septiembre de 1869, art. 126: “Son menores las personas que no hubieren cumplido la edad de veintiún años”.

who exercise parents' authority.¹¹ The Civil Code also provides that an individual must be considered as a "minor under the age of puberty" ("*menor impúber*") until his/her 14th birthday and as an "adult minor" ("*menor adulto*") from his/her 14th until his/her 21st birthday.¹² The former has absolute incapacity, whereas the latter enjoy capacity as authorized by law.¹³

According to labour law, children between 14 and 18 years of age, who live independently with the knowledge of their parents or tutor, have the legal capacity to work.¹⁴

Regarding the age of recruitment in the armed forces, the Law on Voluntary Military Service provides that volunteers between 18 and 24 years of age must carry out military service. In exceptional circumstances, the Government, with the approval of the National Congress, is entitled to reintroduce conscription. In such circumstances, Argentinian citizens may be recruited from the age of 17 for a maximum of one year.¹⁵

IV. Discrimination

OMCT believes that discrimination is one of the root causes of torture and other forms of violations of human rights. For this reason, it regrets that the State report only deals with this issue from a legal point of view, whereas disturbing situations are still in practice. With this regard, OMCT wishes to recall that, as State party to the Convention, Argentina is bound to treat all children living in its territory "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour,

sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".¹⁶

11 - Código Civil, art. 131.

12 - Código Civil, art. 127: "Son menores impúberes los que aún no tuvieren la edad de catorce años cumplidos, y adultos los que fueren de esta edad hasta los veintitún años cumplidos".

13 - Código Civil, art. 54 and 55.

14 - Ley de Contrato de Trabajo (20 744), 13 de Mayo de 1976, art. 32: "Los menores desde los dieciocho (18) años y la mujer casada, sin autorización del marido, pueden celebrar contrato de trabajo. Los mayores de catorce (14) años y menores de dieciocho (18), que con conocimiento de sus padres o tutores vivan independientemente de ellos, gozan de aquella misma capacidad (...)".

15 - Ley de servicio militar voluntario (24 429), 5 de enero de 1995.

16 - Art. 2 par. 1.

Article 16 of the Constitution of Argentina establishes that every inhabitant is equal before the law.¹⁷ Reality, however, shows that discrimination still affects various groups of Argentinian society. OMCT wishes to highlight the situation of girls and of indigenous children.

a. Discrimination against girls

Despite the comment already made by the Committee on this issue in its latest concluding observations on Argentina,¹⁸ the marriage ages for girls and boys still remain different in Argentinian law. The Civil Code establishes that girls under 16, and boys under 18 may not marry.¹⁹

The differentiation of the age of marriage as it is provided for by the law encourages boys

to be educated up to the age of 18, while girls' education can be stopped earlier, implying that they are of secondary importance. Dropping out of school or of professional training at an early age has serious consequences on the well-being of girls and women in terms of, notably, emancipation and paid employment. In its last concluding observations to Argentina, the UN Committee on the Elimination of Discrimination Against Women had expressed its concern “about the fact that the rate of unemployment for women (20.3 per cent) was five percentage points higher than that for men (15.7 per cent)”.²⁰

As a consequence, OMCT would recommend that the Argentinian authorities amend article 166 of the Civil Code so as to bring the minimum age for marriage for girls up to 18 and hence avoid the discriminatory consequences mentioned above.

OMCT also regrets that the State did not adopt a gender specific perspective in its report. Concern has been raised about the high incidence of violence against women and girls in Argentina, including rape, domestic violence, sexual harassment, exploitation and other manifestations of discrimination in both the public and private sector.²¹

17 - Constitución nacional, art. 16: “La Nación Argentina no admite prerrogativas de sangre, ni de nacimiento: no hay en ella fueros personales ni títulos de nobleza. Todos sus habitantes son iguales ante la ley, y admisibles en los empleos sin otra condición que la idoneidad. La igualdad es la base del impuesto y de las cargas públicas”.

18 - *Concluding observation of the Committee on the Rights of the Child: Argentina*, 15/02/95, CRC/C/15/Add.35, par. 10.

19 - Código Civil, art. 166: “Son impedimentos para contraer matrimonio: (...) 5. Tener la mujer menos de dieciseis años y el hombre menos de dieciocho años; (...)”.

20 - *Concluding observations of the Committee on the Elimination of Discrimination Against Women : Argentina*, 12/08/97, A/52/38/Rev.1, PartII, par. 301.

21 - See *Concluding observations of the Human Rights Committee: Argentina*, 03/11/2000, CCPR/CO/70/ARG, par. 15, *Concluding observations of the Committee on the Elimination of Discrimination Against Women: Argentina*, 12/08/97, A/52/38/Rev.1, Part. II, par. 299.

However, as noted by the UN Human Rights Committee, information on these matters is not systematically maintained, women have a low awareness of their rights and the remedies available to them, and complaints are not being adequately dealt with.²²

OMCT would recommend that reliable data on violence and discrimination affecting girls be systematically collected and that information campaigns be undertaken to promote awareness among them of their rights and the remedies available to them.

b. Discrimination against indigenous people

OMCT is concerned about discrimination affecting indigenous peoples, including children. In its April 2001 Report on Argentina, the UN Committee on the Elimination of Racial Discrimination had noted that “the territories in which indigenous peoples have settled coincide with the areas with the highest index of unmet basic needs, and that the poverty and unemployment indices among indigenous populations and other vulnerable groups have risen as a result of the economic crisis”.²³

In addition to this general consideration, OMCT wishes to emphasize the particular situation of the Mapuche community, whose members, especially children, seriously suffer from the gradual contamination of the water tables in their region. The Mapuche community is settled in the Loma de la Lata zone, in the area of Neuquén. This region contains the most important gas and petroleum deposits in South America. According to reliable information received by OMCT, the REPSOL-YPF company, which is exploiting these resources, is allegedly responsible for the contamination and thus the poisoning which affects the community.²⁴

A study carried out by the under-secretary for Health in Neuquén indicates that the Mapuche living in the Loma de la Lata region, particularly children and elderly people, are the victims of a high concentration of heavy metal, mainly lead, in their blood and their urine. This is allegedly due to the fact that drinking water, plant matter and animals are all contaminated. As a result, children suffer from difficulties of concentration, progressive loss of

22 - *Concluding observations of the Human Rights Committee: Argentina*, 03/11/2000, CCPR/CO/70/ARG, par. 15.

23 - *Concluding observations of the Committee on the Elimination of Racial Discrimination: Argentina*, 27/04/2001, CERD/C/304/Add.112, par. 9.

24 - See OMCT, Child Concern, Case ARG 261001.EE/ESCRC.

eyesight, painful joints and kidney problems.

The response of the Government has been so far inadequate. The Argentine justice system has ordered the Neuquén government to provide a daily supply of 250 litres of non-contaminated water to each member of the community. However, OMCT deems that this response is largely incomplete, since it only focuses on the consequences of the contamination, and does not address the source of the problem. In addition, the State intervention remains partially theoretical, since the members of the Mapuche community, according to the information received by OMCT, never received their full entitlement of water.

OMCT regrets that the State report does not address the situation of indigenous children in Argentina in general, and of the Mapuche community in particular, and would therefore urge the government to supply additional information on this issue.

OMCT would call on the Argentinian Government to take all the necessary measures so as to guarantee the physical and psychological integrity of the Mapuche children, bearing in mind that these children are entitled to the application of the rights enshrined in the Convention without any discrimination, in particular the rights to health, to survival and to life.

22 - *Concluding observations of the Human Rights Committee: Argentina*, 03/11/2000, CCPR/CO/70/ARG, par. 15.

23 - *Concluding observations of the Committee on the Elimination of Racial Discrimination: Argentina*, 27/04/2001, CERD/C/304/Add.112, par. 9.

24 - See OMCT, Child Concern, Case ARG 261001.EE/ESCRC.

V. Protection from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

OMCT believes that the Government report's handling of the issue of torture and other forms of ill-treatment is insufficient. The report provides very little information on *de facto* cases of torture or ill-treatment of children and *de jure* protection. Thus, OMCT believes that the Committee should be provided with more information thereon.

a. Argentina's legal framework

Article 18 of the Argentinian Constitution broadly stipulates that death penalty for political reasons, all forms of torment and whipping remain abolished.²⁵

Torture is explicitly prohibited by article 144 paragraph 3 of the Criminal Code, which provides that the state agent, who imposes any kind of torture to people who are legitimately or illegitimately deprived of their liberty, shall be sentenced to 25 years of seclusion or imprisonment and to absolute and perpetual barring from public office.²⁶ In this context, torture includes not only

physical torment, but also the imposition of psychological suffering, when such harms are sufficiently serious.²⁷

OMCT welcomes this definition which has broader contents than the definition provided by article 1 of the UN Convention Against Torture. It thus allows better protection to victims of torture.²⁸ In particular, it does not require that the perpetrator act with a specific purpose. On the contrary, it explicitly provides that a state agent may be held responsible for failing to prevent or denounce acts of torture. Furthermore, article 144 specifically states that it is not necessary that the victim be legally under the control of the state agent, since a actual power over the victim is sufficient to imply the responsibility of the perpetrator. Finally, the prohibition of torture is not limited to acts

25 - Constitución, art. 18: "(...) Quedan abolidos para siempre la pena de muerte por causas políticas, toda especie de tormento y los azotes (...)".

26 - Código penal, art. 144 tercero (1): "Será reprimido con reclusión o prisión de ocho a veinticinco años e inhabilitación absoluta y perpetua el funcionario público que impusiere a personas, legítima o ilegítimamente privadas de su libertad, cualquier clase de tortura (...)".

27 - Código penal, art. 144 tercero (3): " Por tortura se entenderá no solamente los tormentos físicos, sino también la imposición de sufrimientos psíquicos, cuando éstos tengan gravedad suficiente ".

28 - Código penal, art. 144 cuarto.

committed by state agents, but also extends to private actors.²⁹

In the case of torture leading to death, the sentence provided is life imprisonment.³⁰

In less serious cases, such as degrading treatment or unlawful coercion (“*severidades, vejaciones, o apremios ilegales*”), the sen-

tence may vary between one to six years of imprisonment and special barring from public office for twice as much.³¹

As pointed out by the UN Committee against Torture, the Code of Criminal Procedure also contains provisions whose implementation should help to prevent the practice of torture.³² Among the most important ones, article 184 strictly describes situations in which the police may detain persons without a court order, in particular limiting such possibilities to a time period of six hours. In these cases, a doctor must check the psychological and physical state of the detainee.³³ The same provision also prohibits the police from taking a statement from a person who has been charged.³⁴ Article 205 also limits the length of *incommunicado* detention to 72 hours and stipulates that under no circumstances shall such detention prevent the detainee from communicating with her/his defence counsel before any proceeding requiring her/his personal intervention.³⁵

Regarding the last provision, OMCT deems that such measure is not in conformity with children’s rights. OMCT considers that *incommunicado* detention, especially when it can be extended to such a duration, con-

29 - Código penal, art. 144 tercero (1): “(...) Es indiferente que la víctima se encuentre jurídicamente a cargo del funcionario, bastando que éste tenga sobre aquélla poder de hecho. Igual pena se impondrá a particulares que ejecutaren los hechos descriptos”.

30 - Código penal, art. 144 tercero (2).

31 - Código penal, art. 144 bis.

32 - *Concluding observation of the Committee against Torture: Argentina*, 21/11/97, A/53/44, par. 58.

33 - Código Processal Penal, art. 184: " Los funcionarios de la policía o de las fuerzas de seguridad tendrán las siguientes atribuciones: (...) (8)Aprehender a los presuntos culpables en los casos y formas que este Código autoriza y disponer su incomunicación cuando concurran los requisitos del artículo 205, por un término máximo de seis (6) horas, que no podrá prolongarse por ningún motivo sin orden judicial.En tales supuestos, deberá practicarse un informe médico a efectos de verificar el estado psicofísico de la persona al momento de su aprehensión ”.

34 - Código Processal Penal, art. 184: " Los funcionarios de la policía o de las fuerzas de seguridad tendrán las siguientes atribuciones: (...) (9) Usar de la fuerza pública en la medida de la necesidad. No podrán recibir declaración al imputado ”.

35 - Código Processal Penal, art. 205: " El juez podrá decretar la incomunicación del detenido por un término no mayor de cuarenta y ocho (48) horas, prorrogable por otras veinticuatro (24) mediante auto fundado, cuando existan motivos para temer que se pondrá de acuerdo con terceros u obstaculizará de otro modo la investigación. Cuando la autoridad policial haya ejercitado la facultad que le confiere el inciso 8) del artículo 184, el juez sólo podrá prolongar la incomunicación hasta completar un máximo de setenta y dos (72) horas. En ningún caso la incomunicación del detenido impedirá que éste se comuniquen con su defensor inmediatamente antes de comenzar su declaración o antes de cualquier acto que requiera su intervención personal ”.

tradicts the right of every child deprived of liberty to be treated “in a manner which takes into account the needs of persons of his or her age”³⁶, even though some possibility to communicate with her or his defence counsel is allowed. Furthermore, such a measure also infringes on the right of a child deprived of liberty to maintain contact with her or his family.³⁷

Therefore, OMCT would recommend to the Government to amend article 205 of the Code of Criminal Procedure in order to ensure that children not be kept in *incomunicado* detention under any circumstances.

b. Practice

Torture and other forms of ill-treatment are still frequent in Argentina, especially in police stations of the Buenos Aires area.³⁸ In July 2001, Mario Coriolano, the Chief Defence Attorney attached to the Criminal Appeals Court of the Buenos Aires Province, issued a report presenting 602 cases of torture and other forms of ill-treatment perpetrated in jails and police stations in the province between March 2000 and June 2001. Such practice, applied both to adults

and children, included beatings, hooding with plastic bags, and the application of electric shocks on sensitive parts of the body. Following the presentation of this report, three federal judges condemned the general and systematic practice of torture perpetrated in all its forms during investigation and detention, especially in the Buenos Aires Province.

Similarly, in July 2001, Carlos Eduardo Bigalli, the Child Counsellor (*Asesor de niños*) of the San Isidro Judicial Department, Buenos Aires Province, presented a report on torture and other forms of ill treatment to the Supreme Court of the province. Between July 1998 and July 2001, he established that torture and other forms of ill-treatment were systematically perpetrated against children in various police stations and institutions run by the Province Council of the Minor (*Consejo provincial del menor*). Such treatment consisted of beatings, including the use of guns or sticks, imprisonment with adults, lack of minimum adequate food, administration of psychomedicine, and obligation to sleep on the ground. A girl also filed a complaint for a rape attempt.

36 - CRC, art. 37 (c).

37 - *Ibid.*

38 - Human Rights Watch, World Report 2002, Argentina.

In addition to these practices, the victims were threatened, in order to prevent them from informing their parents, the medical staff of the police station or judicial authorities. During the period under review, Carlos Bigalli recorded 576 cases of torture and other ill-treatment of children in police stations. He also established that the number of complaints had significantly increased from the year 2000.³⁹ Following this report, the Supreme Court decided to open a special file to register complaints of abuse perpetrated against children.⁴⁰

Whereas OMCT welcomes investigations made by Argentinian authorities on those cases, it wishes to express its deep concern about the seriousness of this situation and to emphasize that some sectors of the State still do not fully cooperate to clarify the circumstances of these violations of the rights of the child and to identify those responsible. In particular, it has been demonstrated that judiciary investigations are often impeded by the attitude of the police. In its last report on Argentina, the UN Committee against Torture had estimated that the information received on a number of cases of

torture was “indicative not only of a lack of effective and prompt police cooperation in judicial inquiries into complaints of torture and ill-treatment, but also of impediments to those inquiries denoting a relatively systematic modus operandi, rather than occasional failure to cooperate faithfully with the inquiries”.⁴¹

Hence, OMCT would ask the Government of Argentina to ensure that prosecutors and judges, with the support of the police, diligently investigate all allegations of torture and ill-treatment made by child detainees and adopt adequate sanctions whenever necessary.

As a preventive measure, OMCT would also recommend that the Government ensure that independent and qualified medical personnel be required to carry out examinations of child detainees in order to identify possible cases of physical torture or ill-treatment, as well as psychological trauma potentially attributable to mental torture or ill-treatment.

OMCT would also recommend that the Government implement effective procedures for internal monitoring and disciplining of the behaviour of public officials, including

39 - SERPAJ-Argentina, Recopilación de denuncias efectuadas por el Defensor del Departamento Judicial de San Isidro, Provincia de Buenos Aires, Noviembre 2001.

40 - CELS, Informe sobre la situación de los derechos humanos en Argentina 2001, Buenos Aires, 2001, p. 93.

41 - *Concluding observations of the Committee against Torture: Argentina*, 21/11/97. A/53/44, par. 52-69, par. 63.

sanctions for failure to provide children with a lawyer or to inform them of their right to notify their next of kin of their detention.

Furthermore, OMCT would request the Government to elaborate and implement preventive programmes, in particular by ensuring education and training for all personnel involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. As prescribed in article 85 of the UN Rules for the Protection of Juveniles Deprived of

their Liberty, this should include specific training in child psychology, child welfare and international standards and norms of human rights and the rights of the child.

Finally, OMCT would recommend that victims of torture obtain fair and adequate compensation. Child victims must also be entitled to measures promoting their physical and psychological recovery and social reintegration in an environment which fosters their health, self-respect and dignity.

VI. Unlawful Killings

Although no official statistics on police violence are available in Argentina, numerous cases of unlawful killings have been recorded within the last few years.⁴² These cases included extrajudicial executions officially presented as armed confrontations, the indiscriminate use of force leading to the death of bystanders during armed confrontations, death in police custody under suspicious circumstances, frequently following acts of torture, and excessive use of force during demonstration. These practices mostly occurred in the main cities of

Argentina, the victims being both adults and children.

In October 2001, the Buenos Aires provincial Supreme Court recognized that the Buenos Aires provincial police arranged armed confrontations in order to hide the execution of at least 60 children between 1999 and 2000. These children, the majority of whom were between 14 and 17 years-old, had presented complaints against the police

⁴² - See for example, CELS and Human Rights Watch, *Exacerbating Insecurity: Police Brutality in Argentina, 1998*, 238 p. SERPAJ-Argentina, *La violencia institucional extrema como forma de regulación social*, Informe sobre los derechos del niño en Argentina, 2002, p. 23.

for ill-treatment. Some of them were found dead in the jurisdiction of the police station against which they had filed their complaint.⁴³

These events illustrate a general trend towards increasing institutional violence in Argentina, in particular in the Gran Buenos Aires area. In a report covering the period 1983/1998, the *Coordinadora Contra la Represión Policial e Institucional* (CORREPI) counted the deaths of 470 people killed by members of the State security forces in situations where they did not constitute threats to public order.⁴⁴ Most of the victims were children, since their average age was 17 years old. According to CORREPI, the majority of them belonged to the most disadvantaged sectors of the society. Only 10% of the cases had been solved by the judicial system.

The victims had been killed in various areas under the responsibilities of different jurisdictions. Therefore, the report showed that these killings were not due to the initiative of a few isolated police agents, but were the consequence of a common modality of the province police.⁴⁵

As examples, OMCT wishes to mention some cases collected by CELS during this period. On 2 April 1997, Nora González (16) was killed in a hotel, in Sáenz Peña, El Chaco Province, by Daniel Randazzo, a sub officer of the local police. The murderer was then helped by another state agent to transfer the body of the victim to the open country and to erase the traces of their crime in the hotel.⁴⁶

On 2 July 1997, a sub officer of the Santiago del Estero Province police killed José Luis González (15) and seriously harmed Federico Saracco (16). The victims and three other boys had taken a few posters in a shop. The police officer followed them and shot at them several times. An autopsy performed on the body of José Luis showed that he had been shot from a distance of 5 meters as he was kneeling down on the ground. Various witnesses confirmed these facts.⁴⁷

43 - Suprema Corte de la Provincia de Buenos Aires, Acordada 3012, 24 de Octubre 2001. See Equipo Nikzor, *La Suprema Corte de la provincia de Buenos Aires reconoció que la policía bonaerense fraguó tiroteos para ocultar la muerte de 60 menores de edad*, Información y solidaridad urgente, 30 octubre 2001 y Asamblea permanente por los derechos humanos (APDH), *Reclamo de la APDH por violencia contra niños y adolescentes en la provincia de Buenos Aires*, 2001.

44 - Coordinadora contra la represión policial e institucional (CORREPI), *Archivos de casos 1983-1998, Recopilación de muertes de personas a manos las fuerzas de seguridad en Argentina*, <http://www.derechos.org/correpimuerτες.html>.

45 - See SERPAJ-Argentina, *Recopilación de denuncias efectuadas por el Defensor del Departamento Judicial de San Isidro, Provincia de Buenos Aires*, Noviembre 2001.

46 - CELS, *Informe sobre la situación de los derechos humanos en Argentina 1997*, Buenos Aires, 1998, p. 85.

47 - *Ibid.*, 1998, p. 86.

On 3 September 1997, Damián Villalba, died in the police sub-station 20 of Rosario City. The boy's father was informed by personnel of the sub-station that his son hanged himself with his belt. A forensic examination showed that Damián died by asphyxia and had a bruise as large as a fist on the forehead, thus casting doubts on the official version.⁴⁸

On 28 September 1997, members of the police station 2 of the Concordia city, Entre Rios Province, arrested and detained Gastón Lescano (17). On 2 October 1997, the boy was found dead in an open ground.⁴⁹

On 22 May 1998, Hector Peñalba, a sub officer of the Buenos Aires Province police, shot at Diego Pavón (16), and killed him. The policeman argued that the victim was armed and that his death resulted from an armed confrontation. However, this fact was never proved. The investigation was affected by several irregularities. In particular, it was carried out by the investigation brigade of the same area, and not by the relevant jurisdiction. In addition, the sub officer Peñalba kept working in the same neighbourhood where the boy had been killed. As a result, various witnesses refused to give

testimonies, fearing retaliation. The case was eventually dismissed.⁵⁰

On 16 December 1998, Pedro Miguel Almaraz, a member of the Buenos Aires Province, searched four people in the street. As one of them, Daniel Bravo (16), began to talk, the policeman gave him a strong blow on the back with the butt of his gun. Daniel fell and began to breathe heavily, but the policeman did not assist him and left. The victim died a while later.⁵¹

According to data collected by CELS, the number of civilians killed by members of the security forces in 1999 in the Gran Buenos Aires area showed an augmentation of 100 %, whereas the number of state agents killed was 23 % higher. OMCT is particularly concerned by the fact that a high percentage of the civilian victims, 26 percent, were children.⁵² In the following years, the quantity of victims stayed at a high level. According to CELS, in 2001, the security forces killed

48 - Ibid., 1998, p. 88.

49 - Ibid., 1998, p. 89.

50 - CELS, *Informe sobre la situación de los derechos humanos en Argentina 1998*, Buenos Aires, 1999.

51 - Ibid.

52 - CELS, *Informe sobre muertes en enfrentamientos en el Gran Buenos Aires*, 30.03.2001,

http://www.cels.org.ar/background/archivos/info2001/info_36_20010330.htm

61 people, including 3 children, in the city of Buenos Aires, and 183 people, including 31 children, in the Gran Buenos Aires area.⁵³

OMCT regrets that the Government report does not give any information on the growing practice of unlawful killings affecting children, in particular in the Gran Buenos Aires area.

OMCT would recommend to the Government of Argentina not to leave those responsible for such practice unpunished. Accordingly, OMCT would urge the government to guarantee a thorough investiga-

tion into each case of unlawful killings, in order to identify those responsible, bring them before a civil competent and impartial tribunal and apply the appropriate penal, civil and/or administrative sanctions.

In order to put an end to this problem, OMCT would also recommend to the Government to elaborate and implement preventive programmes, in particular by ensuring education and training for officials in the armed forces. This should include specific training on international standards on the rights of the child, as well as on the use of force.

53 - CELS, *Informe sobre la situación de los derechos humanos en Argentina 2001*, Buenos Aires, 2001, p. 115, 123 and 124

VII. Protection from other forms of violence

Article 19 of the CRC requires children’s protection “(...) from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.

7.1 Violence in the family

Argentinian law 24.417 on Protection Against Violence in the Family provides that any victim of physical or psychological ill-treatment by any member of her/his family is allowed to denounce the situation before a civil judge and solicit precautionary measures.⁵⁴ These measures include the exclusion of the perpetrator from the home, prohibition of the perpetrator’s access to the home, the reintegration of the victim into the home and the adoption of adequate measures regarding food, custody, and communication with the children.⁵⁵ Child victims are specifically allowed to directly inform the general attorney. Education and social

services, health professionals and any public agent concerned by a case of violence against a child in the family are also obliged to present a complaint.⁵⁶

OMCT welcomes the provisions of this law, which respond to the recommendation made by the Committee in its last concluding observations regarding the situation of the rights of the child in Argentina.⁵⁷ However, OMCT regrets that this legislation seems only aimed at preventing the recurrence of violence against children in the family and does not provide for the sanction of the perpetrator. Accordingly, OMCT would recommend that the State give more information thereon.

OMCT also welcomes the creation of the Office of Integral Assistance for the Victim of Offences (*Oficina de Asistencia Integral a la Víctima del Delito*, OFAVI), which pro-

54 - Ley 24.417 de Protección contra la violencia familiar, art. 1.

55 - *Ibid.*, art. 4.

56 - *Ibid.*, art. 2.

57 - *Concluding observation of the Committee on the Rights of the Child: Argentina*, 15/02/95, CRC/C/15/Add.35, par. 20: “The Committee suggests that the State party considers the possibility of introducing more effective legislation and follow-up mechanisms to prevent violence within the family in the spirit of article 19”.

poses, among other things, medical assistance to victims of violence in the family, child nurseries and homes for single mothers. However, OMCT regrets that the State report does not give concrete information on the implementation of this programme.

7.2 Sexual abuse and exploitation

The CRC provides that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- b) The exploitative use of children in prostitution or other unlawful sexual practices;

- c) The exploitative use of children in pornographic performances and materials”.

Argentinian legislation protects children against sexual abuse. The Penal Code provides for sentences of up to 4 years of imprisonment when a victim of sexual abuse is less than 13 years of age or when she/he was not able to freely consent to the act. The sentence may be extended up to 10 years when the abuse is “seriously outrageous”, and up to 15 years in case of “physical penetration”.⁵⁸ In case of aggravating circumstances, such as causing serious physical or psychological damage to the victim, the sentence may be extended to 20 years.⁵⁹

Moreover, the Penal Code prohibits the promotion or facilitation of child prostitution, even when the victim agrees. If the victim is a minor of less than 13 years, the maximum sentence provided is 15 years of imprisonment. If he/she is a minor of less than 18 years, it is 10 years.⁶⁰

The Penal Code also deals with child trafficking with the purpose of prostitution. When the victim is a minor of less than 13 years, the maximum sentence is 15 years of imprisonment. When he/she is a minor of less than 18 years, it is 10 years of imprison-

58 - Código penal, art. 119 par. 1, 2 y 3: “Será reprimido con reclusión o prisión de seis meses a cuatro años el que abusare sexualmente de persona de uno u otro sexo cuando, ésta fuera menor de trece años (...).

La pena será de cuatro a diez años de reclusión o prisión cuando el abuso por su duración o circunstancias de su realización, hubiere configurado un sometimiento sexual gravemente ultrajante para la víctima.

La pena será de seis a quince años de reclusión o prisión cuando mediando las circunstancias del primer párrafo hubiere acceso carnal por cualquier vía”.

59 - Código penal, art. 119 par. 4.

60 - Código penal, art. 125 bis.

ment. In case of aggravating circumstances, such as the use of intimidation or coercion, the sentence may be extended up to 15 years.⁶¹

Finally, the Penal Code punishes the production, publication or distribution of pornographic images showing minors under 18 years, as well as the organisation of pornographic performances involving children.⁶²

Despite this set of legislation, sexual violence perpetrated against children in Argentina remains an issue of particular concern. Although there are no detailed statistics on this problem, a general investigation carried out by UNICEF-Argentina on commercial sexual exploitation of children has shown that “the presence of children and youth in the sexual offer network cannot be considered as isolated nor of little significance, but as usual”.⁶³ The same source also concluded that this is not a regional or local problem, but a generalized one.⁶⁴

This investigation also confirmed that child prostitution takes place both in closed (brothels, clubs, saunas etc.) and open (discotheques, bars, etc.) places or on the street. The majority of children are integrated in

the network of commercial sexual exploitation between 12 and 16 years old, but there were cases of exploited children as young as 8 years old.⁶⁵

Despite the seriousness of the situation, the reaction of the State is largely insufficient. Very few cases of sexual exploitation of children are brought to criminal courts and many judiciary agents admit that they receive little information on this issue from the police.⁶⁶ In addition, State institutions, which are aimed at protecting child victims of sexual exploitation, are not adapted to the needs of these children either. Due to their internal organisation, which is similar in many cases to prison conditions, these institutions, tend to victimize the children, rather than protect them. Furthermore, in some cases, there were allegations of ill-treatment and sexual abuse within the institutions themselves. As a result, many children prefer avoiding any contact with them.⁶⁷

61 - Código penal, art. 127 bis.

62 - Código penal, art. 128.

63 - " La presencia de niñas, niños o adolescentes en circuitos de oferta sexual no puede calificarse ni de aislada ni de poco significativa, sino de habitual " (OMCT's translation). Silvia Chejter, *La niñez prostituida: Estudio sobre explotación sexual comercial infantil en la Argentina*, UNICEF, Oficina de Argentina, 2001, p. 33.

64 - *Ibid.*

65 - *Ibid.*, p. 37.

66 - *Ibid.*, p. 193 and 200.

67 - *Ibid.*, p. 233.

It is true that in 1993 the National Council for Children and the Family (Consejo nacional del menor y la familia), a decentralized body of the federal administration, created a specific programme to attend to children exploited by adults in sexual, begging, working or illegal activities. However, OMCT regrets that the State report does not give concrete information on the implementation of this programme, in particular on the issue of sexual violence. For example, the State explains that one of the main tasks of the programme is the collection of cases in order to perform a study on the modalities of child exploitation, the adults involved and the child victims. However, the State does not say if this study has been carried out and, if so, what its results are.

Therefore, OMCT would call on the Government of Argentina to collect relevant and complete data on sexual violence against and exploitation of children in order to formulate preventive policies and seek international assistance in this regard.

OMCT also would urge the Government of Argentina to adopt and implement a criminal policy which seeks to investigate and

punish those responsible for sexual violence against and exploitation of children and to reintegrate the child victims, rather than victimize them.

7.3 Child labour and exploitation

In addition to article 19 of the CRC already mentioned, which protects children against any form of violence, article 32 paragraph 1 specifically recognizes “the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”. For this purpose, art. 32 par. 2 requires States Parties to “take legislative, administrative, social and educational measures to ensure the implementation of the present article (...)”.

The Argentinian Law on Work Contract provides that the minimum age for admission to employment is 14 years old.⁶⁸ The tutelary judge may grant exceptional authorization, when the child is occupied in her/his own family enterprise or when her/his work is indispensable for her/his own or her/his

68 - Ley 20.744 Ley de contrato de trabajo, 13 de Mayo de 1976, art. 187 and 189.

family's subsistence. In any case, the tutelary judge must be sure that the child will not be employed in hazardous or dangerous activities and that her/his minimum education will not be affected.⁶⁹ The Argentinian law on mining also allows ten-year-old children to work in mines.⁷⁰

In this regard, OMCT wishes to recall that ILO Convention 138, to which Argentina is a party, provides that the minimum age for admission to employment must not be less than the age of completion of compulsory schooling and, in any case, must not be less than 15 years.⁷¹ The same instrument adds that the minimum age to an employment which is likely to jeopardise the health, safety or morals of children must not be less than 18 years.⁷²

The Law on Work Contract also prohibits employing a child more than 6 hours a day and 36 hours a week. The administrative authority may grant an exceptional authorization for children older than 16 years old. In this case, the limits are 8 hours a day and 48 hours a week. Child night labour is also forbidden.⁷³

In practice, it has been demonstrated that these safeguards are frequently not re-

spected. In a report on child labour published in 2001, the *Asamblea permanente por los derechos humanos* (APDH) presented the results of a study on the consequences of the economic crisis on child labour in Argentina.⁷⁴ Due to the increasing poverty of Argentinian families, more and more children are obliged to work in precarious and hazardous conditions in order to contribute to the survival of their families. In particular, a great number of children spend their time looking for recyclable objects in rubbish dumps. Then these objects are sold to be reintroduced as inputs into the economic process. According to APDH, around 200 000 children are involved in this activity in the sole area of Gran Buenos Aires.

Due to the hard conditions of this work, which usually takes place at night, children do not have the energy necessary to go to school in the morning. As a result, most of them prefer dropping out of school. In addition, the unsanitary conditions in which

69 - Ibid., art. 189.

70 - Ley 1.919, Código de minería, 21 de Mayo de 1997, art. 239: " No debe emplearse en las minas niños menores de 10 años, ni ocuparse en los trabajos internos niños impúberes ni mujeres ".

71 - ILO Convention 138 concerning minimum age for admission to employment, 19 June 1976, art. 2 par. 3.

72 - Art. 3 par. 1.

73 - Ley 20.744 Ley de contrato de trabajo, 13 de Mayo de 1976, art. 190.

74 - See a summary of the main conclusions in Serpaj-Argentina, "*Precariedad laboral, marginalidad y trabajo infantil*", Informe sobre los derechos del niño en Argentina, Anexo I.

they carry out their activities are very harmful to their health. Around 60 diseases coming from contacts with the rubbish have been identified. These include skin diseases, different types of diarrhoeas, deformities, and cancer.

An other issue of concern related to working conditions is the development of clandestine sweatshops involving children. In her Report 2001, the Special Rapporteur on the sale of children, child prostitution and child pornography denounced that 56 Bolivian children and young persons aged between 9 and 20 years had been discovered by the Argentinian police. They were held in captivity and forced to work in conditions of slavery. They were kept under armed guard in appalling conditions and allowed to eat only once a day and shower once a week. The children had been illegally brought into Argentina, hidden in trucks and sedated. Police had searched for them for two months around *La Matanza* area of Buenos Aires, and had eventually found them working in four clandestine sweatshops.⁷⁵ According to the President of the *Asociaciones Civiles Bolivianas* in Argentina, similar situations are constantly being reported and there are many more

clandestine sweatshops in the area.⁷⁶

OMCT is deeply preoccupied by the situation of working children in Argentina, which has recently been aggravated with the development of the economic crisis. For this reason, OMCT wishes to emphasize the particular need to implement strict legal safeguards in order to protect children from exploitation and dangerous or hazardous employment.

OMCT would recommend to the Argentinian State to adapt its child labour laws to international standards, in particular to ILO Convention 138, by establishing, as a general rule, that the minimum age for admission to employment be 15 years, and that it be raised to 18 years in case of employment, such as mining, that is likely to jeopardise the health, safety or morals of children.

OMCT would also recommend that the State collect reliable and complete data on child labour in Argentina in order to set up a global policy aimed at fully implementing the requirement of article 32 of the CRC.

75 - Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos, E/CN.4/2001/78, 25 January 2001, par. 21 s.

76 - Ibid., par. 23.

VIII. Children in Conflict with the Law

Argentinian law applicable to children is dangerously ambiguous, since it does not clearly distinguish legal treatment provided to children in conflict with the law on the one hand, and protection measures applicable to child victims of offences or of socio-economical precariousness on the other hand. In both cases, it allows for coercive intervention decided by criminal jurisdictions on the basis of undetermined legal categories.

This situation, however, is currently under debate in the parliament. A draft law on the legal regime applicable to minors under 18 years in conflict with criminal law was presented to the Senate at the end of the year 2000.⁷⁷ Among various innovations, this project proposes a clear distinction between child victims and child offenders.⁷⁸ Another draft law on the global protection of children's rights also clearly prohibits treating children suffering from poverty or lacking family as delinquents.⁷⁹

8.1 Age of criminal responsibility and jurisdiction

The Criminal Regime of Minority establishes the minimum age of criminal responsibility at 16 years.⁸⁰ Under this limit, children may not be charged under any circumstances. The same rule applies to minors under 18 years in case of misdemeanours which are punished by less than two years of deprivation of liberty, a fine or barring from public office.

Between 16 and 18 years, a child is subject to relative imputation. This means that she/he is subject to tutelary treatment for at least one year. According to the result of the treatment, the judge may then decide to condemn the accused, reducing the sanction

77 - *Régimen Legal Aplicable a las Personas Menores de Dieciocho Años Infractoras a la Ley Pena*, Proyecto de ley 320/00.

78 - CELS, *Informe sobre la situación de los derechos humanos en Argentina 2001*, Buenos Aires, 2001, p. 227.

79 - Políticas de Protección Integral de los Derechos de los Niños, Niñas y Adolescentes, Proyecto de ley 2321/00, art. 18.

80 - Régimen Penal de la Minoridad, Ley 22 278/22803, art. 1.

normally applied to adults for the same offence, or to acquit her/him.⁸¹

The Criminal Code of Procedure establishes two specific jurisdictions for children. The general jurisdiction for offences committed by persons under 18 years belongs to the judge for minors. When the offence is punished with a sentence of more than three years of deprivation of liberty, the Tribunal for Minors is competent.⁸²

The criminal majority is fixed at 18 years. From this age, the perpetrator is subject to the general criminal law.⁸³ The only exception to this principle provides that a sen-

tence of deprivation of liberty must be carried out in specialized institutions when the convicted person is between 18 and 21 years old.

OMCT notes with satisfaction that this legislation is compatible with article 40 (3) of the CRC, which invites States Parties “to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”.

However, OMCT also notes that the same legislation provides that both the judge for minors and the Tribunal for Minors adopt their decisions at a unique level of jurisdiction.⁸⁴ As a result, OMCT regrets that the Argentinian law does not ensure the right to appeal provided by article 40 paragraph 2 of the CRC.

OMCT would recommend to the Government to amend the Criminal Code of Procedure in order that every child considered to have infringed the penal law be allowed to have this decision and any measure imposed in consequence thereof reviewed by a higher competent, independent and impartial body.

81 - Régimen Penal de la Minoridad, Ley 22 273/22803, art. 2, 3, 4. See CELS, *Presentación ante el Comité de derechos humanos : Cuestiones a considerar en la evaluación del tercer informe periódico de Argentina en cumplimiento del art. 40 del Pacto internacional de derechos civiles y políticos*, 2000, p. 115s.

82 - Código Processal Penal, art. 28: " El Tribunal de Menores juzgará en única instancia en los delitos cometidos por menores que no hayan cumplido, dieciocho (18) años al tiempo de la comisión del hecho, aunque hubiese excedido dicha edad al tiempo de juzgamiento, y que estén reprimidos con pena privativa de la libertad mayor de tres (3) años) ". Art. 29: " El juez de menores conocerá: 1ro) En la investigación de los delitos de acción pública cometidos por menores que no hayan cumplido dieciocho (18) años al tiempo de la comisión del hecho. 2do) En el juzgamiento en única instancia en los delitos y contravenciones cometidos por menores que no hayan cumplido dieciocho (18) años al tiempo de la comisión del hecho y que estén reprimidos con pena no privativa de la libertad o pena privativa de la libertad que no exceda de tres (3) años. 3ro) En los casos de simple inconducta, abandono material o peligro moral de menores que no hayan cumplido dieciocho (18) años al tiempo de encontrarse en esa situación, conforme lo establecen las leyes especiales ".

83 - Mary Ana Beloff, *Niños y adolescentes: Los olvidados de siempre a propósito de la reforma procesal penal introducida por la ley 23.984*, p. 3.

84 - Código Processal Penal, art. 28 and 29.

8.2 Grounds of arrest and detention

Article 411 of the Criminal Code of Procedure provides that the detention of a minor shall take place, only when there are grounds for believing that she/he will not comply with a summons, or will attempt to destroy the traces of the act, or will collude with her/his accomplices, or will induce false statements to be made.⁸⁵ Despite this provision, which fixes strict limits to the deprivation of liberty of children, OMCT regrets that the Argentinian law, taken as a whole, does not respect article 37 (b) of the CRC, which requires that the detention of a child be used only as a measure of last resort.

Indeed, under Argentinian law, measures of deprivation of liberty may be imposed on children not only for violating criminal provisions, but also for non-penal reasons. The Criminal Regime of Minority establishes for example that the judge must adopt tutelary measures when the child is abandoned, in a state of material or moral danger, presents behaviour problems or lacks assistance.⁸⁶ These measures may be applied even to children who are not criminally imputable.

The Law on Patronage of Minors, applicable in the city of Buenos Aires, also provides that judges of the criminal and correctional jurisdictions must intervene as a preventive measure when a minor under 18 years, accused or victim of an offence, is materially or morally abandoned or in a state of moral danger.⁸⁷ This category may include, for example, “begging”, “vagrancy”, “frequenting immoral places” or “being employed at work likely to harm the morals or health”.⁸⁸ If necessary, the judge is entitled to impose preventive detention.⁸⁹

In August 2001, in the Buenos Aires Province, the Ministry of Security also sent guidelines to the department headquarters asking for detention operations against children who were, amongst other things, “unprotected in the street and/or begging”.⁹⁰

85 - Código Processal Penal, art. 411: " La detención de un menor sólo procederá cuando hubiera motivos para presumir que no cumplirá la orden de citación, o intentará destruir los rastros del hecho, o se pondrá de acuerdo con sus cómplices, o inducirá a falsas declaraciones (...)".

86 - Régimen Penal de la Minoridad, Ley 22 278/22803, art. 1 in fine.

87 - Ley de Patronato (10 903), art. 14.

88 - Ley de Patronato (10 903), art. 21. See Mary Ana Beloff, *Niños y adolescentes: Los olvidados de siempre a propósito de la reforma procesal penal introducida por la ley 23.984*, p. 6.

89 - Ley de Patronato (10 903), art. 14.

90 - “Desprotegidos en la vía pública y/o pidiendo limosna”, Circular del Ministerio de Seguridad Bonaerense, August 2000. See SERPAJ-Argentina, *La violencia institucional extrema como forma de regulación social*, Informe sobre los derechos del niño en Argentina, p. 28.

OMCT is concerned by these legal categories which promote coercive measures, rather than the protection and reintegration of child victims of precarious socio-economic conditions. Due to their broad contents, they extend the possibilities of arrest and detention of children, whereas such a decision should be an exceptional measure. As a result, article 411 of the Criminal Proceeding Code does not have any impact, since the judge may decide on the restriction of liberty on the basis of the Law on Patronage of Minors and the Criminal Regime of Minority. In practice, it has been established that the judges never take into account article 411.⁹¹ In addition, because of their vagueness, these legislations increase the risk of arbitrary practices.

OMCT wishes to recall article 37 (b) of the CRC which lays down that “no child shall be deprived of his or her liberty unlawfully or arbitrarily” and that “the arrest, detention or imprisonment of a child shall be used only as a measure of last resort”.⁹²

OMCT also regrets that the criminal regime applicable to children does not separate penal and tutelary criteria when it allows the

adoption of measures of deprivation of liberty. Thus it allows adoption of these measures on the basis of a social situation, and not only on the basis of a suspected illegal action. This system, which blurs the distinction between sanction and protection, between offence and social marginalisation, tends to weaken the requirement of culpability and the presumption of innocence in the judiciary process, and thus appears contrary to due process of law requirements protected by article 40 of the CRC.

It must also be highlighted that, due to the economic and social crisis that Argentina is currently undergoing, there is a risk that these provisions especially affect socially and economically disadvantaged groups, such as street children. Indeed, these children are more likely to be perceived by State authorities as being “materially or morally abandoned or in a state of moral danger” or “unprotected in the street”, and thus more likely to be targeted with coercive intervention. As a result, these provisions promote an attitude of discrimination and repression against children living in a particularly difficult situation. Such an attitude would be incompatible with article 2 of the CRC, which obliges States Parties to respect the CRC “without discrimination of any

91 - See CELS, Presentación ante el Comité de derechos humanos: Cuestiones a considerar en la evaluación del tercer informe periódico de Argentina en cumplimiento del art. 40 del Pacto internacional de derechos civiles y políticos, 2000, p. 116.

92 - See also art. 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

kind”, and with article 6, which requires that they “ensure to the maximum extent possible the survival and development of the child”.

Thus, OMCT would recommend that the State amend its legislation so as to establish a clear distinction between child offenders and child victims, in order for the latter to be protected and assisted, rather than submitted to criminal jurisdictions. More precisely, OMCT would urge the State to abrogate all provisions allowing coercive measures against children belonging to certain categories of the population, even when no offence was committed.

8.3 Conditions of detention

OMCT welcomes the fact that the Argentinian Code of Criminal Procedure and Criminal Code provide for the establishment of specific facilities for children in pre-trial detention or condemned to imprisonment sentences.⁹³ Reality shows, however, that this requirement is not fully applied in practice and that the conditions prevailing in child detention centres do not meet international juvenile justice standards.

The Argentinian prison system is still largely inadequate. In the Buenos Aires Province for example, since there are not enough penal institutions, a large number of children in conflict with the law are incarcerated in local police stations. Due mainly to a lack of financial and material resources, these children are incarcerated in overcrowded cells, without sufficient sanitation conditions and adequate food. In addition, they often are subject to ill-treatment from the police and held with adult detainees.⁹⁴

OMCT is also very concerned by the situation of children held in institutions. In the Buenos Aires Province, some 800 children are detained in penal institutions, and some other 8000 live in assistance institutions, in conditions similar to a prison regime.⁹⁵ Following an investigation made in 1998 in various child institutions, *Serpaj-Argentina* and the association *Don Bosco Hogares* concluded that these institutions constitute real prisons for children. In par-

93 - Código procesal penal, art. 411, Código penal, art. 8.

94 - Equipo Nikzor, *La Suprema Corte de la provincia de Buenos Aires reconoció que la policía bonaerense fraguó tiroteos para ocultar la muerte de 60 menores de edad*, *Información y solidaridad urgente*, 30 octubre 2001 and Asamblea permanente por los derechos humanos (APDH), *Reclamo de la APDH por violencia contra niños y adolescentes en la provincia de Buenos Aires*, 2001.

95 - Equipo Nikzor, *La Suprema Corte de la provincia de Buenos Aires reconoció que la policía bonaerense fraguó tiroteos para ocultar la muerte de 60 menores de edad*, *Información y solidaridad urgente*, 30 octubre 2001. See also SERPAJ/Argentina, *Hogares Don Bosco, Informe carcel y niños*, 1998.

ticular, they emphasized the fact that the children, both perpetrators and victims, are permanently incarcerated, subject to disciplinary sanctions, such as confinement in chastisement cells and corporal punishment, and restricted in their family contacts.⁹⁶ Moreover, these institutions do not provide adequate medical attention or treatment to cure drug addiction.⁹⁷

Obviously, this situation does not meet various requirements established in article 37 of the CRC and in the UN Rules for the Protection of Juveniles Deprived of their Liberty. Regarding the latter instrument, OMCT wishes to emphasise rule 31, which states “the right to facilities and services that meet all the requirements of health and human dignity”. OMCT also wishes to recall rule 32, which requires that these facilities take into account “the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities”.

The same study also showed that the selection of staff working in Argentinian institutions is not adapted to international

standards, since most employees are not trained to attend children. In this respect, OMCT would like to recall rule 81 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, according to which the personnel of juvenile detention facilities “should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists”.

OMCT would then urge the Argentinian Government to adapt its child detention centres in order to meet the requirements of article 37 (c) of the CRC, which states that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”.

96 - SERPAJ/Argentina, Hogares Don Bosco, *Informe carcel y niños*, 1998, p. 2.

97 - SERPAJ/Argentina, Hogares Don Bosco, *Informe carcel y niños*, 1998, p. 3 ss.

VI. Conclusions and Recommendations

The International Secretariat of OMCT is profoundly concerned with the situation of children in Argentina, in particular, with the degree of risk that street children face of extrajudicial executions and torture. OMCT believes that a number of safeguards, both legal and practical, must be implemented in order to fully guarantee the rights of children enshrined in the CRC.

Regarding the legal system of Argentina, OMCT recommends that the Committee on the Rights of the Child:

- ask the Argentinian Government to:
 - give more information on the legal status of the CRC in the domestic legislation;
 - undertake all appropriate legislative, administrative, and other measures to ensure the full implementation of the provision the CRC at national level.

Regarding discrimination, OMCT recommends that the Committee on the Rights of the Child:

- urge the Argentinian Government to:
 - amend article 166 of the Civil Code so as to establish 18 years old as the minimum age for marriage for both girls and boys;
 - systematically collect reliable data on discrimination and violence affecting girls in order to set up a comprehensive policy aimed at fully implementing the requirement of article 2 of the CRC;
 - undertake an information campaign to promote awareness among girls of their rights and the remedies available to them;
 - provide information on the situation of indigenous children in Argentina in general, and of the Mapuche community in particular;

- take all the necessary measures so as to guarantee that Mapuche children might fully enjoy their rights to health, survival and life.

Regarding torture and other cruel, inhuman or degrading treatment or punishment of children, OMCT recommends that the Committee on the Rights of the Child:

- urge the Argentinian Government to:
 - ensure that prosecutors and judges, with the support of the police, diligently investigate all allegations of torture and ill-treatment made by child detainees and adopt adequate sanctions whenever necessary;
 - implement effective procedures for internal monitoring and disciplining of the behaviour of public officials, including sanctions for failure to provide children with a lawyer or to inform them of their right to notify their next of kin of their detention;
 - adopt and enforce appropriate sanctions for public officials who are found to have held a child in custody without

immediately notifying the prosecutor, or interrogated a child without the presence of a prosecutor or a lawyer;

- ensure that independent and qualified medical personnel be required to carry out regular examinations of child detainees;
- ensure that sentences for torture or ill-treatment are commensurate with the gravity of the crime;
- elaborate and implement preventive programmes, in particular by ensuring education and training for all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. This should include specific training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, in particular the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty;
- ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation. Child

victims must also be entitled to measures to promote their physical and psychological recovery and social reintegration in an environment which fosters their health, self-respect and dignity.

Regarding unlawful killings, OMCT recommends that the Committee on the Rights of the Child:

- urge the Argentinian Government to:
 - guarantee thorough investigations into alleged violations of the right to life of children in detention or in the street, identify those responsible, bring them before a civil competent and impartial tribunal and apply the appropriate penal, civil and/or administrative sanctions;
 - elaborate and implement preventive programmes, in particular by ensuring education and training for police agents. This should include specific training on the Convention on the Rights of the Child, as well as on the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Regarding violence in the family, OMCT recommends that the Committee on the Rights of the Child:

- urge the Argentinian Government to:
 - supply information on penal sanctions applicable to perpetrators of violence against children within the family;
 - supply information on concrete measures aimed at providing assistance and protection to child victims, in particular on the programme elaborated by the Office of Integral Assistance for the Victim of Offences.

Regarding sexual abuse against and exploitation of children, OMCT recommends that the Committee on the Rights of the Child:

- urge the Argentinian Government to:
 - collect reliable and complete data on sexual violence in Argentina in order to set up a comprehensive policy aimed at fully implementing the requirement of article 34 of the CRC;

- adopt and implement a criminal policy which seeks to investigate and punish those responsible for sexual violence against children, including service providers, customers and intermediaries in child prostitution, child trafficking and child pornography;
- adopt preventive measures, through education, training, information and other forms of awareness raising, health services and monitoring mechanisms;
- supply information on concrete measures aimed at providing assistance and protection to child victims, in particular on the programme elaborated by the National Board of the Minor and the Family for the attendance of sexually exploited children;
- provide for recovery and reintegration of child victims through, inter alia, social, medical, psychological and other support, effective actions to prevent or remove social stigmatisation and legal criminalisation, and the promotion of alternative means of livelihood.

Regarding child labour, OMCT recommends that the Committee on the Rights of the Child:

- urge the Argentinian Government to:
 - adapt its child labour law to international standards, in particular to ILO Convention 138, by establishing, as a general rule, that the minimum age for admission to employment be 15 years, and that it be raised to 18 years in case of employment, such as mining, likely to jeopardise the health, safety or morals of children;
 - collect reliable and complete data on child labour in Argentina in order to set up a comprehensive policy aimed at fully implementing the requirement of article 32 of the CRC.

Regarding the juvenile justice system, OMCT recommends that the Committee on the Rights of the Child:

- urge the Argentinian Government to:
 - launch a thorough reform of the juvenile justice system in accordance with

the provisions of the CRC, in particular with the necessity to establish a clear distinction between child offenders and child victims, in order for the latter to be protected and assisted, rather than submitted to criminal jurisdictions;

- amend the Criminal Code of Procedure in order that every child considered to have infringed the penal law be allowed to have this decision and any measure imposed in consequence thereof reviewed by a higher competent, independent and impartial body;
- strictly define the possible grounds of arrest and detention which might be applied to children in order to ensure that the deprivation of liberty is a last resort for all children in conformity with article 37(b) of the CRC;
- ensure that child detainees are kept separately from adults, unless it is in their best interests not to do so;
- provide for adequate alternative measures to detention and pre-trial detention, so as to stop keeping children in

conflict with the law incarcerated in police stations;

- ensure that life conditions in police stations and child institutions be in conformity with article 37 of the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty, in particular by resolving overcrowding problems, poor hygiene, lack of food and restrictions on family visits;
- give information regarding the training activities developed for all professionals involved in the system of juvenile justice, on the provisions of the CRC and other relevant international instruments in the field of juvenile justice, including the "Beijing Rules", the "Riyadh Guidelines" and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.



COMMITTEE ON THE RIGHTS OF THE CHILD
31st Session - Geneva, 18 september - 4 October 2002

Concluding observations
of the Committee
on the Rights of the Child:
Argentina

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. The Committee considered the second periodic report of Argentina (CRC/C/70/Add.10), submitted on 12 August 1999, at its 807th and 808th meetings (see CRC/C/SR.807-808), held on 17 September 2002, and adopted the following concluding observations at its 833rd meeting, held on 4 October 2002.

A. INTRODUCTION

2. The Committee welcomes the submission of the State party's second periodic report but it notes with regret that it does not follow the guidelines for reporting. It further regrets the late and incomplete submission of the written replies to its list of issues (CRC/C/Q/ARG.2). It welcomes, however, the senior and well-informed delegation sent by the State party and the frank dialogue and the positive reactions to the suggestions and recommendations made during the discussion.

B. FOLLOW-UP MEASURES UNDERTAKEN AND PROGRESS ACHIEVED BY THE STATE PARTY

3. The Committee notes with satisfaction that the state legislation regarding children in some of the provinces, such as in the case Mendoza, Chubut and the City of Buenos Aires, complies with the provisions and principles of the Convention.

4. The Committee welcomes the adoption of Law 24.417 on protection against domestic violence.

5. The Committee notes the recent establishment of the National Council for Children, Adolescents and the Family and the creation of the Office for Comprehensive Assistance for Victims of Crime (OFAVI), as recommended in the previous Concluding Observations (*idem*, para.20).

6. The Committee welcomes the improvement in the cooperation between the State party and non-governmental organisations working on children's rights issues.

7. The Committee welcomes the signature of a Memorandum of Understanding with IPEC and the establishment in 2000 of a National Commission for the Eradication of Child Labour (CONAETI).

8. The Committee notes with satisfaction the adoption of a National Plan of Action against the Sexual Commercial Exploitation of Children

9. The Committee welcomes the ratification of the Optional Protocol to the Convention on the involvement of children in armed conflicts.

C. FACTORS AND DIFFICULTIES IMPEDING PROGRESS IN THE IMPLEMENTATION OF THE CONVENTION

10. The Committee acknowledges that the State party is facing many difficulties in the implementation of the Convention, in particular due to the economic, political and social crises affecting the country and that the increasing poverty is impeding the full achievement and enjoyment of the rights recognised in the Convention.

D. PRINCIPAL AREAS OF CONCERN AND RECOMMENDATION

1. General Measures of Implementation (arts. 4, 42 and 44, paragraph 6 of the Convention) Committee's previous recommendations

11. The Committee regrets that most of the concerns and recommendations (CRC/C/ 15/Add.35 of 15 February 1995) it made upon consideration of the State party's initial report (CRC/C/8/Add.12 and 17) have been insufficiently addressed, particularly those contained in paras.14 (reservations), 15 (coordination) and 16 (review of budgetary measures). The Committee notes that those concerns and recommendations are reiterated in the present document.

12. The Committee urges the State party to make every effort to address those recommendations from the concluding observations of the initial report that have not yet been implemented and to address the list of concerns contained in the present concluding observations on the second periodic report.

Reservations

13. The Committee reiterates its concern about the reservations (*idem*, para.8) entered by the Government of Argentina upon the ratification of the Convention with respect to article 21 (b), (c), (d), and (e).

14. The Committee reiterates its recommendation (*idem*, para.14) that the State party consider reviewing the reservations entered upon ratification of the Convention with a view of withdrawing it.

Legislation

15. The Committee is concerned that that the current legislation on children, Law 10.903 (*Ley de Patronato*), dates back to 1919 and is based on the doctrine of “irregular situation” where children are an object of “judicial protection”. Although the Chamber of Deputies passed a draft law on the comprehensive protection of the rights of the child in November 2001, it has not yet been enacted (*media sanción*), so that there is no legislation in force at the federal level which considers the child as a subject of rights. Further, the Committee also notes that provincial legislation often does not comply with the

provisions and principles of the Convention.

16. The Committee recommends that the State party:

- a) Take all the necessary measures for the adoption as a priority by Parliament without delay of the draft law on the comprehensive protection of the rights of the child;
- b) Once enacted, ensure the full implementation of the law on the comprehensive protection of the rights of the child in compliance with the Convention, paying particular attention to the need for adequate structures by allocating the necessary human and financial resources;
- c) Ensure that legislation at provincial level as a whole fully complies with provisions and principles of the Convention;
- d) Seek technical assistance from, among others, UNICEF. Coordination

17. While noting the recent efforts of the National Council for Children, Adolescents and the Family to improve coordination and the establishment of monitoring teams in 17 provinces, the Committee regrets that its

previous recommendation about assuring better co-ordination between mechanisms and institutions dealing with the promotion and protection of the rights of children (*idem*, para.15) was not fully followed up, and that State party still lacks a clearly defined and comprehensive child rights policy and plan of action for the Convention's implementation.

18. The Committee reiterates its previous recommendation (*idem*, para.15) that the State party take a comprehensive approach in implementing the Convention in particular by:

- a) improving the coordination between various mechanisms and institutions already in place to deal with the promotion and protection of children's rights; and
- b) strengthening its children's rights policy and developing a National Plan of Action for the implementation of the Convention, which should be prepared through an open, consultative and participatory process.

Resources for children

19. The Committee expresses its concern that budgetary allocations for children are still in-

sufficient to respond to federal, provincial and local priorities for the protection and promotion of children's rights and to overcome and remedy existing disparities between rural and urban areas, as well as within urban areas in particular Buenos Aires, with respect to public services provided to children. It notes with deep concern that, according to recent statistics mentioned by the State party in its reply to the list of issues, 69.2% of children in Argentina live in poverty, of which 35.4 live in extreme poverty.

20. In light of article 4 of the Convention, the Committee encourages the State party:

- a) to review economic and social policies and allocations in of resources in the budget with a view to ensuring that the maximum amount of available resources is allocated to promote and protect the rights of the child at the federal, regional and local levels, especially in the fields of health, education, social welfare and security, as previously recommended (*idem*, para.16)
- b) to identify the amount and proportion of resources spent on children at the national and local levels in order to evaluate the impact and effect of the expenditures on children.

Independent monitoring

21. While noting the existence of the Defensor del Pueblo, the Committee is concerned at the absence of an overall national mechanism with the mandate to regularly monitor and evaluate progress in the implementation of the Convention and which is empowered to receive and address complaints by children. It further notes that the draft law on the comprehensive protection of the rights of the child, which has not yet been enacted, includes provisions for the creation of a Child Rights Defender.

22. The Committee encourages the State party, as previously recommended (*idem*, para.15), to establish an independent and effective mechanism in accordance with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134), either as a part of a National Institution on Human Rights or as a separate body, such as a Children Ombudsman, which should be provided with adequate human and financial resources and easily accessible to children, that:

a) monitors the implementation of the Convention;

b) deals with complaints from children in a child-sensitive and expeditious manner; and

c) provides remedies for violations of their rights under the Convention.

In this regard, the Committee further recommends that the State party consider seeking technical assistance from, among others, UNICEF and OHCHR.

Data collection

23. The Committee notes the establishment of a unified system of collecting data, yet remains concerned that statistical data about children do not cover sufficiently and in a disaggregated way all areas covered under the Convention and that, when available, are not used in an adequate way to assess trends and as a basis for policy-making in the field of children's rights.

24. The Committee recommends that the State party:

a) improve its system of data collection with a view to incorporating all the areas covered by the Convention in a disaggregated

manner. Such a system should cover all children below the age of 18 years, with specific emphasis on those who are particularly vulnerable, including children with disabilities; and

- b) effectively use these indicators and data for the formulation and evaluation of policies and programmes for the implementation and monitoring of the Convention.

2. Definition of the child (article 1 of the Convention)

25. The Committee reiterates its concern at the disparity of marriage ages for boys and girls in Argentine law (*idem*, para.10).

26. In light of articles 1, 2 and other related provisions of the Convention, the Committee recommends that the State party review its legislation with a view to increasing the minimum age of marriage of girls to the one of boys.

3. General principles (arts. 2, 3, 6 and 12 of the Convention)

General principles

27. The Committee is concerned that the principles of non-discrimination (art. 2 of the Convention), best interests of the child (art. 3), right to life, survival and development of the child (art.6) and respect for the views of the child (art. 12) are not fully reflected in the State party's legislation and administrative and judicial decisions, as well as in policies and programmes relevant to children at federal, provincial and local levels.

28. The Committee recommends that the State party:

- a) appropriately integrate general principles of the Convention, namely articles 2, 3, 6 and 12, in all relevant legislation concerning children;
- b) apply them in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on all children; and
- c) apply these principles in planning and policy-making at every level, as well as

in actions taken by social and health welfare and educational institutions, courts of law and administrative authorities.

Non-discrimination

29. The Committee is concerned that the principle of non-discrimination (art. 2 of the Convention) is not fully implemented for children living in poverty, indigenous children, children of migrant workers, primarily those from neighbouring countries, street children, children with disabilities and marginalised adolescents who are neither studying nor working, especially with regard to their access to adequate health care and educational facilities.

30. The Committee recommends that the State party:

- a) monitor the situation of children, in particular those belonging to the abovementioned vulnerable groups, who are exposed to discrimination; and
- b) develop, on the basis of the results of this monitoring, comprehensive strategies containing specific and well targeted actions aimed at eliminating all forms of discrimination.

31. The Committee requests that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of General Comment no. 1 on article 29(1) of the Convention (aims of education).

Respect for the views of the child

32. The Committee notes that the right to participate in schools, as well as outside, and the right to be heard for all children needs to be further strengthened.

33. In light of article 12, the Committee recommends that the State party:

- a) Follow up on the Committee's previous recommendation (idem, para.21) that further steps be taken to encourage the active participation of children in schools, and society in general, in the spirit of article 12 of the Convention;

- b) make sure that all children mature enough to express their views are heard in all judicial and administrative procedures affecting them; and
- c) undertake campaigns to make children, parents, professionals working with and for children and the public at large aware that children have the right to be heard and to have their views taken seriously.

4. Civil rights and freedoms (arts. 7, 8, 13-17 and 37 (a) of the Convention)

Preservation of identity

34. The Committee recognises the work done by the National Commission for the Right to an Identity (CONADI) to recover missing children during the military rule from 1976 to 1983 and notes that out of an estimated 500 cases of disappearances of children, 73 have been found.

35. In light of article 8 of the Convention, the Committee encourages the State party to continue and strengthen its efforts to recover the children who disappeared during the military rule.

Right not to be subjected to torture

36. The Committee expresses its deep concern about institutional violence and specific reports of torture and ill-treatment of children held at police stations (Commissarias) which in some cases have resulted in death. It is also extremely concerned at additional reports of police brutality, specifically the phenomena of gatillo fácil (easy trigger syndrome), especially in the Province of Buenos Aires, which has led to the death of many children. It notes that, according to the Supreme Court of Justice of the Province of Buenos Aires, several of the children who died, had previously denounced pressures and torture by the provincial police and that the majority of the cases are not adequately investigated and perpetrators not brought to justice.

37. In light of article 37(a) of the Convention, the Committee urges the State party to:

- a) Undertake a study on the above mentioned issues in order to assess the extent, scope and nature of these practices;
- b) Enforce the recently signed National Plan of Action for the Prevention and Elimination of Institutional Violence;

- c) investigate in an effective way and within a reasonable time reported cases of killings, torture and ill treatment of children;
- d) urgently take measures to transfer from active duty or suspend alleged perpetrators, as appropriate, while they are under investigation, and release them if convicted;
- e) provide a systematic training of law enforcement personnel on human and children's rights and on how to avoid the use of force;
- f) establish a complaint mechanism, which should be easily accessible and child sensitive and inform children of their rights, including the right to complain;
- g) ensure that independent and qualified medical personnel be required to carry out regular examinations of child detainees; and
- h) in light of article 39, take all appropriate measures to ensure physical and psychological recovery and social reintegration for child victims of torture and/or ill treatment, and that they receive compensation.

Corporal punishment

38. The Committee notes with concern that there is no explicit prohibition of corporal punishment under law and that it is still widely practiced in the home and in some institutions.

39. The Committee recommends that the State party expressly prohibit corporal punishment in the home and all institutions, and carry out public education campaigns to promote positive, non-violent forms of discipline as an alternative to corporal punishment.

5. Family environment and alternative care (arts.5; 18 (paras.1-2); 9-11; 19-21; 25; 27 (para.4); and 39 of the Convention) Children deprived of family environment

40. The Committee is deeply concerned that Law N.10.903 of 1919 and Law N.22.278, which are currently still in force and based on the doctrine of "irregular situation", do not distinguish between children in need of care and protection and those in conflict with the law in terms of judicial procedures and treatment.

41. The Committee recommends that the State party establish appropriate mechanisms and

procedures to address the situation of children in need of care and protection that can be implemented immediately once the draft law on the comprehensive protection of the rights of the child currently under consideration (media sanction) comes into force, thereby replacing Law N.10.903 and N.22.278.

42. The Committee expresses its serious concern about the number of children, in particular children coming from poor families, who are deprived of a family environment and placed in public assistance institutions or residential homes, often far from their home.

43. In light of article 20 of the Convention, the Committee recommends that the State party:

- a) Take effective measures to increase and strengthen foster care, family-type foster homes and other family-based alternative care;
- b) Place children in institutions only as a measure of last resort;
- c) Take all necessary measures to improve conditions in institutions;
- d) Provide support and training for personnel working in institutions;

- e) Establish effective mechanisms to receive and address complaints from children in care, to monitor standards of care and, in light of article 25 of the Convention, to establish regular periodic review of placement.

Abuse and neglect

44. The Committee, while noting the adoption of Law 24.417 on protection against domestic violence, remains concerned about the extent of domestic violence, the lack of standardised procedures for the identification and reporting of cases of neglect, ill-treatment and abuse, and the limited services for the support of victims especially in the provinces.

45. In light of article 19 of the Convention, the Committee recommends that the State party:

- a) Undertake studies on domestic violence, violence against children, ill-treatment and abuse, including sexual abuse, and increase the statistical system for the whole country to keep a record of incidents of physical and mental violence and neglect against children, in order to assess the extent, scope and nature of these practices;

- b) Adopt and implement effectively adequate measures and policies, including public campaigns on alternative forms of discipline, and contribute to changing attitudes;
- c) Investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy;
- d) Increase measures to provide support services to children in legal proceedings, and for the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment and violence, in accordance with article 39 of the Convention;
- e) Take into account the Committee's recommendations adopted at its days of general discussion on "Violence Against Children within the Family and in Schools" (CRC/C/111) and on "State Violence against Children" (CRC/C/100).

6. Basic health and welfare (arts. 6; 18, para. 3; 23; 24; 26; 27, paras 1-3 of the Convention)

Health and health services

46. While noting the decrease in the infant, child and maternal mortality rates, the Committee is nevertheless concerned that the rates remain high and that there are great disparities existing within these rates, in particular with regard to children with a lower socio-economical origin, those living in rural areas, in particular in the northern provinces, and indigenous children. It also notes that 6 out of 10 infant deaths could be avoided with low cost actions.

47. The Committee recommends that the State party:

- a) Allocate appropriate resources and develop comprehensive policies and programmes to improve the health situation of all children without discrimination, in particular by focusing more on health promotion and prevention;
- b) In order to further decrease child mortality and morbidity and maternal mortality rate, take measures to implement the

Reproductive Health and Responsible Procreation Act of July 2000;

- c) and provide adequate antenatal and post-natal health-care services and develop campaigns to inform parents about basic child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation, family planning and reproductive health, especially in the provinces.

Malnutrition

48. The Committee notes with deep concern that the increasing rates of malnutrition are affecting, according to the most recent statistics, more than 4 million children, in particular newborn children and those living in the northern provinces. It further notes that the impact of the economic crisis on children's state of health and nutrition was not yet assessed.

49. The Committee recommends that the State party:

- a) Undertake a study on child malnutrition, and create a unified statistical system to keep a record of malnutrition cases in

order to assess the extent, scope and nature of this practice;

- b) develop a comprehensive nutritional programme in order to prevent and combat malnutrition;
- c) and seek international cooperation from, among others, UNICEF and WHO.

Adolescent health

50. The Committee notes with concern the growing number of cases of HIV/AIDS among the youth, notwithstanding an existing National Plan of Action for HIV/AIDS, and reiterates its concern (*idem*, para.12) about the number of teenage pregnancies, in particular in some of the provinces.

51. The Committee recommends that the State party:

- a) Review and reactivate its programmes against HIV/AIDS and increase its efforts to promote adolescent health policies. Due attention should be given particularly to reproductive health and the programme of health and sexual education in schools should be further strengthened;

- b) Undertake a comprehensive and multi-disciplinary study to assess the scope and nature of adolescent health problems, including the negative impact of STDs and HIV/AIDS, and continue to develop adequate policies and programmes;
- c) Undertake further measures, including the allocation of adequate human and financial resources, to evaluate the effectiveness of training programmes in health education, in particular as regards reproductive health, and to develop youthsensitive and confidential counselling, care and rehabilitation facilities that are accessible without parental consent when this is in the best interests of the child; and
- d) Seek technical cooperation from, among others, UNFPA, UNICEF, WHO and UNAIDS.

Children with disabilities

52. The Committee notes with concern that there is a lack of information about children with disabilities in Argentina. It further notes with concern that there are cases when children are institutionalised because of

insufficient support to poor families with disabled children.

53. In light of article 23 of the Convention, the Committee recommends that the State party:

- a) Undertake studies on the situation of children with disabilities in order to assess its extent, scope and nature;
- b) Undertake measures to ensure that the situation of children with disabilities is monitored in order to assess their situation and address their needs effectively;
- c) Conduct public awareness campaigns to raise awareness of the situation and the rights of children with disabilities;
- d) Allocate the necessary resources for programmes and facilities for all children with disabilities, especially the ones living in provinces, and strengthen community-based programmes to enable them to stay at home with their families;
- e) Support the parents of children with disabilities with counselling and, when necessary, financial support;

f) In light of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (General Assembly Resolution 48/96) and the Committee's recommendations adopted at its day of general discussion on "The Rights of Children with Disabilities" (CRC/C/69, paras.310-339), further encourage their integration into the regular educational system and inclusion into society, including by providing special training to teachers and by making schools more accessible.

Standard of living

54. The Committee notes with concern that the recent economic, political and social crises have caused increased poverty, particularly among children and vulnerable groups.

55. The Committee recommends that the State party continue its efforts to prevent, including through a comprehensive poverty reduction strategy which incorporates human rights principles, the decline in living standards of families, in particular, among vulnerable groups.

7. Education, leisure and cultural activities (arts. 28, 29, 31 of the Convention)

Education

56. The Committee, while noting the increase in school enrolment for both primary and secondary schools, remains concerned at the limited access to education, high drop-out and repetition rates, especially at secondary school level, which affects in particular children from marginalised urban and rural areas, indigenous children and the ones belonging to migrant families, particularly when illegal. It further notes with concern the reduction in education spending which affects in particular poorer children.

57. In light of articles 28 and 29 of the Convention, the Committee recommends that the State party:

- a) Increase the budget allocated to education;
- b) Enforce the Social Plan of Education in order to ensure regular attendance at schools and the reduction of drop-out rates, especially with regard to the most vulnerable children;
- c) Strengthen programmes of subsidies and

scholarships for the children who are most affected by the economic crisis;

- d) Strengthen and expand education in human and children's rights;
- e) Improve the quality of education in order to achieve the goals mentioned in article 29(1), in line with the Committee's general comments No.1 on the aims of education.

8. Special protection measures (arts. 22, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)

Economic exploitation

58. The Committee, while noting that the State party ratified ILO Conventions No.138 concerning Minimum Age for Admission to Employment in 1996 and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in 2001, notes with deep concern the growing number of children under 14 who are exploited economically, in particular in rural areas, because of the economic crisis. It is also concerned at the lack of data and information with regard to this issue.

59. In light of article 32 of the Convention, the Committee recommends that the State party:

- a) Undertake a comprehensive study on child labour in order to assess the extent, scope and nature of this problem;
- b) Continue to enforce and strengthen its legislation protecting working children in accordance with ILO Conventions No. 138 and 182, also with a view to increasing the minimum age to 15;
- c) Continue to develop and ensure the adoption of the National Plan to Prevent and Eradicate Child Labour;
- d) Establish a reliable system to gather information on child labour;
- e) Combat and eradicate as effectively as possible all forms of child labour, including by strengthening its cooperation with ILO/IPEC and UNICEF.

Sexual exploitation and trafficking

60. The Committee is concerned that the phenomenon of child prostitution, especially in big cities, is increasing. It further notes that,

although a National Plan of action to combat commercial sexual exploitation of children was adopted in 2000, there are not yet coordinated policies and programmes on this.

61. In light of articles 32 to 36 of the Convention, the Committee recommends that the State party:

- a) Undertake a study on the issue of commercial sexual exploitation and trafficking of children in order to assess its scope and causes and develop effective monitoring and other preventive measures;
- b) Combat and eliminate commercial sexual exploitation and trafficking of children, including through the enforcement of the National Plan of Action, the development of social integration programmes, and policies and programmes for the rehabilitation and recovery of child victims according to the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;

Administration of juvenile justice

62. The Committee notes with satisfaction the enactment of the Bill on the Criminal Responsibility of Juveniles which establishes limits juvenile criminal responsibility and procedures to be followed, in accordance with art. 40 (3) of the Convention. Yet, it reiterates its deep concern that Law N.10.903 of 1919 and Law N.22.278, currently in force and based on the doctrine of "irregular situation", does not make a clear distinction between children in need of care and protection and those in conflict with the law. In this regard, the Committee notes that there are several draft laws for the reform of the juvenile justice system under discussion before Parliament, under which a judge can order the detention of children without due process only because of their social situation and that this decision cannot be appealed. In addition, it expresses its concern at the fact that, under art.205 of the Code of Criminal Procedure, there is a possibility of *incommunicado* detention of a child for a maximum of 72 hours. It further notes with concern the poor conditions of children in detention, including the lack of adequate basic services such as education and health, the absence of adequately trained staff, and the use of corporal punishment and isolation.

63. The Committee recommends that the State party:

- a) Review laws and practices regarding the juvenile justice system in order to bring it as soon as possible into full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);
- b) Expedite its establishment, including by allocating adequate human and financial resources;
- c) Ensure that there is a clear distinction in terms of procedures and treatment between children in conflict with the law and children in need of protection;
- d) Use detention, including pre-trial detention, only as a measure of last resort, for as short a time as possible and for no longer than the period prescribed by law and ensure that children are always separated from adults;

- e) Use alternative measures to pre-trial detention and other forms of deprivation of liberty whenever possible;
- f) Incorporate into its legislation and practices the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, in particular to guarantee them access to effective complaints procedures covering all aspects of their treatment;
- g) Take the necessary measures to improve detention conditions;
- h) In light of article 39, take appropriate measures to promote the recovery and social reintegration of the children involved in the juvenile justice system;
- i) Seek assistance from, inter alia, OHCHR, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice, UNICEF, and through the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.

9. Optional protocols

64. The Committee welcomes the State party's ratification of the Optional Protocol on the involvement of children in armed conflict, but notes that it has not yet ratified Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

65. The Committee recommends that the State party continue to pursue ongoing efforts for the ratification of the Optional Protocol on the sale of children, child prostitution and child pornography.

10. Dissemination of reports

66. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the second periodic report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the

Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organisations.

11. Next reports

67. The Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States' responsibilities to children under the Convention includes ensuring that the UN Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by State parties is crucial. The Committee recognises that some State parties experience difficulties in initiating timely and regular reporting. As an exceptional measure, in order to help the State party catch up with its reporting obligations in full compliance with the Convention, the Committee invites the State party to submit its next periodic report before the due date established under the Convention for the fourth periodic report, on 2 January 2008. This report will combine the third and fourth periodic reports.

The World Organisation
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