

ARGENTINA

Implementation of the International Covenant on Civil and Political Rights by the Government of Argentina -- Amnesty International's concerns.

Introduction

On 25 and 26 October 2000 the United Nations Human Rights Committee (HRC) examined the third periodic report of Argentina (CCPR/C/ARG/98/3) at its 1883rd and 1884th meetings. The concluding observations of the Committee (CCPR/CO/70/ARG) were adopted by the Committee at its 1893rd meeting on 1 November 2000.

UN treaty bodies, such as the HRC, hold governments directly accountable for compliance with their obligations under international human rights treaties, in this case the International Covenant on Civil and Political Rights (ICCPR) which Argentina ratified on 8 August 1986.

Amnesty International was able to present information on the human rights situation in Argentina for consideration before the Committee. The summary outlines concerns at the countless complaints of torture and ill-treatment of detainees as well as extra judicial executions perpetrated by members of the federal and provincial police, the lack of thorough, independent and conclusive investigation into such reports, the lack of judicial redress for relatives and victims of human rights violations committed during the military government through the Full Stop and Due Obedience Laws passed in 1986 and 1987 respectively as well as the subsequent presidential pardons granted to members of the armed forces implicated in human rights violations.

This document includes an update on recent human rights developments in Argentina since the concluding observations were adopted by the Committee, a summary of these observations and the full text of the document on Amnesty International's concerns that was presented to members of the Committee. Also included is the full text of the Concluding observations of the Human Rights Committee: Argentina. 03/11/2000 CCPR/CO/70/ARG.

Recent developments in Amnesty International's concerns addressed by the Human Rights Committee

Amnesty Laws

Since the presentation of this summary to members of the HRC, Argentine Judge Gabriel Cavallo, declared the Due Obedience and Full Stop Laws - which until now have obstructed the investigation of past human rights violations in Argentina - unconstitutional and void¹. This decision of 6 March 2001 opens the way for judicial proceedings in thousands of cases concerning victims of “disappearance”, torture, and extrajudicial execution, committed during the time of the military governments between 1976 and 1983.

The Full Stop and Due Obedience laws, which were approved by the Argentine congress in 1986 and 1987 respectively, were repealed in March 1998. However, their repeal has been interpreted as not being effective retroactively, so that cases of human rights violations committed during the military governments continue to be covered by them. Judge Gabriel Cavallo's decision is the first to declare these laws void and to proceed to call those accused to submit statements.

Amnesty International welcomes Judge Gabriel Cavallo's ruling in response to the criminal complaint presented in October 2000 by the Centre for Legal and Social Studies (CELS) on the “disappearance” case of José Liborio Poblete Roa, his wife Gertrudis Marta Hlaczik and their daughter Claudia Victoria, in 1978. Claudia Victoria Poblete has been found but her parents remain “disappeared”. The ruling reiterates the decisions and recommendations formulated by various international organizations including the United Nations Human Rights Committee and the Inter-American Commission on Human Rights of the Organization of American States that amnesties and other measures designed to ensure that those responsible for human rights violations go unpunished are incompatible with the international obligations that are binding on all States.

This legal decision has been appealed. The appeal was rejected, and a further appeal can be filed before the Supreme Court. The ruling by Judge Gabriel Cavallo has set an important precedent. The opportunity presented by this recent court ruling makes it all the more imperative for the judiciary to proceed in its duty to investigate and prosecute past human rights violations which constitute crimes against humanity. Amnesty International hopes that the Supreme Court

¹Argentina: No Full Stop in the Quest for Justice. News Service 42, AI Index no.: AMR 13/004/2001, 7 March 2001 (www.web.amnesty.org/ai.nsf/index/amr130042001).

uphold Judge Cavallo's legal decision so that victims and relatives of victims of past human rights violations can find truth and justice in Argentina.

Amnesty International hopes that the Government of President Fernando de la Rúa will support this important legal ruling by ensuring that the Law of Due Obedience and the Full Stop Law are duly annulled, in compliance with Argentina's international obligations.

Law 23.077 of Defence of Democracy

Another development since the HRC met to examine the third periodic report of Argentina is in relation to the political prisoners of La Tablada who were tried in 1989 under law 23.077 of Defence of Democracy.

On 28 December 2000, a presidential decree (Decree N°1263) reduced the sentences to life imprisonment of eleven members of the *Movimiento Todos por la Patria (MTP)*, All for the Fatherland Movement² who were protesting at having been denied the right to appeal against their 1989 conviction³. However, Amnesty International remains concerned that this decree of 28 December 2000 reduced the sentences of only a number of the La Tablada political prisoners tried in 1989 under law 23.077 of Defence of Democracy.

Amnesty International remains concerned that the presidential decree failed to mention AI prisoner of conscience, Fray Antonio Puigjané, and other members of the MTP who were also sentenced under the Law of Defence of Democracy in 1989 which denied them the right to appeal.

Two draft bills submitted to Congress by National Deputy Ramón Torres Molina and President Fernando de la Rúa, to reform the Law of Defence of Democracy, were not debated by Congress. In mid-December 2000, the government filed an extraordinary appeal (*recurso extraordinario*) before the Supreme Court requesting it to recognize the right of appeal in order for the Appeals Court to review the La Tablada sentences. In a five to four vote the Supreme Court judges rejected the appeal on 21 December.

²Please note that although the presidential decree was signed on 28 December 2000 it was not announced until 29 December 2000.

³Nine prisoners had their sentences reduced to 20 years' imprisonment (Isabel Fernández (F), Miguel Angel Aguirre, Claudio Rodríguez, Carlos Motto, Gustavo Messutti, José Moreyra, Luis Alberto Díaz, Sergio Paz and Claudio Veiga), and Claudia Acosta (F) and Roberto Felicetti had theirs reduced to 22 and 25 years' imprisonment respectively. Most of them will now be eligible for provisional release.

To date law 23.077 of Defence of Democracy remains unchanged. The recommendation by the IACHR to make fully effective the judicial guarantee of the right of appeal for persons tried under law 23.077 is still to be complied with by the government of Argentina.

The concluding observations of the Human Rights Committee

The concluding observations of the Committee (CCPR/CO/70/ARG) were adopted by the Committee at its 1893rd meeting on 1 November 2000.

Principal subjects of concern and recommendations made by the Committee included observations in relation to impunity for those responsible for gross human rights violations under military rule and a lack of compliance with international obligations.

The HRC expressed concern "that many persons whose actions were covered by these laws [*Obediencia Debida* and *Punto Final*] continue to serve in the military or in public office, with some having enjoyed promotions in the ensuing years." The HRC went on to reiterate "its concern at the atmosphere of impunity for those responsible for gross human rights violations under military rule."

It specified that "gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary, to bring to justice their perpetrators." and recommended that "rigorous efforts continue to be made in this area, and that measures be taken to ensure that persons involved in gross human rights violations are removed from military or public service."⁴

With reference to a lack of compliance with international obligations the Committee expressed concern at the "continuing uncertainty over the status of Covenant rights in national law." It went on to specify that "despite assurances that the Covenant has constitutional status and is therefore directly invocable in courts, the Committee notes that it has been further described by the State party as being applied in a manner which is "complementary" to the Constitution, without further precision concerning that term. It also notes that the federal system of government confers upon the provinces responsibilities in critical areas, such as the administration of justice, which has resulted in uneven application of the Covenant in different areas of the State party's territory."

⁴Concluding Observations of the Human Rights Committee: Argentina. 03/11/2000. CCPR/CO/70/ARG.

Additional concerns expressed by the Committee included torture and ill-treatment by prison authorities and the failure of prison conditions to meet the requirements of articles 7 and 10 of the Covenant.

The Committee expressed concern at "established... abuses of authority by prison officials, such as torture and ill treatment, and corruption" and at "allegations it has received indicating that [torture and excessive use of force by police officials] is a widespread problem and that Government mechanisms established to address it are inadequate." It also "considers the severe overcrowding and the poor quality of basic necessities and services, including food, clothing and medical care, to be incompatible with the right to be treated with humanity and with respect for the inherent dignity of the human person to which all persons are entitled".

The Committee also expressed concern over "continuing attacks on human rights defenders, judges, complainants and representatives of human rights organizations, and members of the media" and observed that "persons who participate in peaceful demonstrations are reportedly subject to detention and penal action". The Committee requested that "attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required."

The Committee requested that the fourth periodic report be submitted by 31 October 2005 and asked that it include clarification on various concerns.

With reference to complaints of ill-treatment, the Committee recommended that the next report include "detailed information on the number of complaints received, including the recourse procedures that are available to complainants, the outcome of complaints to date, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels". It also suggested that the report include "detailed information on the number of complaints received of torture and ill treatment by the police, including the recourse procedures and remedies that are available to complainants, the outcomes of such complaints, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels."

The Committee also requested clarification on the status of Covenant rights, asking that the report include specific examples of cases where they have been invoked in the courts and details on legal and other measures taken to implement the Covenant at the provincial level.

The Committee also requested that Argentina should provide details in its next report on the results of investigations into attacks against human rights defenders and persons participating in peaceful demonstrations and the procedures involved in disciplining or punishing offenders.

Text of the document presented to the Human Rights Committee in October 2000:

The purpose of this submission is to provide information on Amnesty International's concerns about the human rights situation in Argentina with regard to the implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR). Not all the articles in the covenant are being addressed. Suggestions to members of the Human Rights Committee of relevant questions concerning implementation of articles of the covenant are provided.

Amnesty International's major concerns in Argentina with regard to the implementation of the provisions of the ICCPR include countless complaints of torture and ill-treatment of detainees as well as extra judicial executions perpetrated by members of the federal and provincial police, the lack of thorough, independent and conclusive investigation into such reports, the lack of judicial redress for relatives and victims of human rights violations committed during the military government through the Full Stop and Due Obedience Laws passed in 1986 and 1987 respectively as well as the subsequent presidential pardons granted to members of the armed forces implicated in human rights violations.

Article 2 The right to effective remedy The Full Stop and Due Obedience Law (*Leyes de Punto Final y Obediencia Debida*)

The right of judicial redress for relatives of the victims has been exhausted in Argentina through decree laws and presidential pardons which closed all cases of human rights violations committed during the military government. Since the return to democratic government in Argentina, Amnesty International has followed with interest the developments in relation to the serious human rights violations committed during the years of military government. In recent years the organisation has registered the repeal of the Full Stop, *Punto Final*, and Due Obedience, *Obediencia Debida*, Laws and the proceedings initiated against some former members of the armed forces regarding the kidnapping of children. However, the repeal of the two laws does not apply retroactively to human rights violations committed under military rule between 1976 and 1983, and the fate of thousands of victims of enforced disappearance continues unresolved and the majority of those involved in violations committed during that period remain unpunished.

The organisation has constantly addressed the authorities asking for the amnesties and other measures adopted to grant impunity to be annulled. Indeed, this posture is reinforced by the

United Nations Declaration on the protection of all people against enforced disappearances, which establishes in its article 18 that the authors or presumed authors of enforced disappearances will not benefit from any special amnesty law or other similar measures that have the effect of exonerating them from any penal proceeding or sanction.

Furthermore, in April 1995 the United Nations Human Rights Committee stated that the Full Stop and Due Obedience Laws deny the effective remedy to the people who suffered human rights violations during the military period, which implies a violation of articles 2(2,3) and 9(5) of the International Pact on Civil and Political Rights. The Committee also expressed its belief that respect for human rights can weaken if perpetrators of violations of human rights enjoy impunity.

The Vienna Declaration and Programme of Action, adopted by states on 25 June 1993, during the UN World Conference on Human Rights, reaffirmed the need for states to "abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violation, thereby providing a firm basis for the rule of law" (*UN Doc. A/CONF.157/23, para. 60.*)

To the distress of relatives of the victims who appealed for their right to truth and justice, the Argentine Government failed again to investigate. Equally disturbing have been the attempts by the authorities to promote and the promotions granted in 1998 to members of the armed forces accused of past human rights violations and who have not been removed from active service.

The Committee is urged to enquire into steps taken by the Government of Argentina to adopt the necessary measures to annul the Full Stop and Due Obedience Laws, therefore removing the legislation that obstructs investigation on human rights violations committed during the military government and ensuring that those responsible be brought to justice.

Article 6 Right to Life Death In Custody

Amnesty International is concerned at the extent to which provisions in provincial legislation allow extensive misuse of police by-laws for the detention of alleged suspects under the police by-laws Code of Misdemeanours (*Código de Faltas*). There have been reports that detainees have died as a result of torture while under police custody following arrest under provincial legislation. Such is the case of Vanesa Lorena Ledesma, a transvestite whose legal name is "Miguel Angel" Ledesma, who had died in custody on 16 February 2000, following five days of incommunicado detention in a police station in the city of Córdoba. Amnesty International has received reports that her body showed signs of torture.

According to reports, on 11 February 2000 Vanesa Lorena Ledesma, an activist and member of the *Asociación Travestis Unidas de Córdoba* (ATUC), United Transvestites Association of Córdoba, was detained in the Mikons bar in the city of Córdoba during a fight and charged with damage to the bar premises. She was initially taken to police station 19 (*Precinto 19*) and subsequently transferred to *Precinto 18* where she was reportedly segregated from other detainees not for her protection but apparently to prevent them from having to share with a "sick" person. Reportedly, Vanesa Lorena Ledesma was HIV positive attending the local hospital for periodic check ups and in good health.

No further news was available about Vanesa from the time of her arrest until five days later, when a police report attributed her death to a "cardiac arrest". It has been reported that the results of an autopsy carried out on 16 February indicate that her body showed strong evidence of torture. Reportedly her body showed that she had been beaten while being handcuffed.

Amnesty International is concerned about reports that the police, invoking provincial legislation, have targeted sexual minority groups subjecting them to harassment, ill-treatment and torture, in the context of the wide-spread application of police by-laws (*Edictos Policiales*) and the provincial code of misdemeanours (*Código de Faltas*). This provincial legislation allows police to impose detentions or sanction for infractions that do not constitute a criminal offence. Certain articles in police by-laws, such as those regarding scandalous conduct or crimes against public decency, are reportedly frequently used to detain transvestites, transsexuals, gay men and lesbians. Reports indicate that they are detained in police stations in cruel, inhuman and degrading conditions, and that they are subject to torture, beatings, sexual harassment and extortion. This information appears to indicate that these groups are persecuted because of their sexual orientation or gender identity.

Enquiries by the Committee into specific steps being taken to phase out the application of provincial legislation which facilitates human rights violations under incommunicado detention and the measures which are being taken to safeguard the rights of detainees would be worthwhile.

Enquiries by the Committee into specific steps taken by the government to combat discrimination based on sexual orientation or gender identity which contribute to human rights violations would be worthwhile.

Article 7 Prohibition of Torture

Amnesty International is concerned that no effective action to eradicate the practice of torture and ill-treatment seems to have been taken by the Argentine authorities. Articles 7 and 10 of the ICCPR, prohibits torture and other cruel, inhuman or degrading treatment or punishment. Article

22 of the 1994 Argentine Constitution, grants constitutional rank to all international treaties ("*Los tratados y concordatos tienen ... jerarquía constitucional.*") Article 18 states that all types of torment and beatings are abolished for ever ("*Quedan abolidos para siempre .. toda especie de tormento y los azotes*"). However, Amnesty International is concerned that this prohibition does not adequately meet the requirements of the ICCPR.

Although Argentina is a federal state and provinces have their own constitution, international commitments undertaken by the State must be adhered to by all provincial authorities according to Article 31 of the Constitution. In spite of these safeguards, reports of torture and ill-treatment by the police in the provinces and the Federal Capital continue, particularly of detainees held at police stations (*comisarías*), often under provincial police by-laws (*edictos policiales y códigos de faltas*).

Amnesty International remains concerned at reports of torture and ill-treatment by the police in Argentina and the slow progress in investigating such reports. While investigations in some cases have been completed and judicial procedures initiated have led to sentences, many cases are still pending and no progress has been registered on cases denounced several years ago. There is reasonable concern that the real number of cases is higher than those publicly known through media information or reported by local human rights organizations and lawyers as a result of official complaints filed by the victim or their relatives.

Amnesty International advocates the rapid and thorough investigation of all allegations of torture and ill-treatment. In Amnesty International's view, failure to provide effective public remedies for complainants may facilitate such illegal practices. Torture and other ill-treatment of detainees in police stations continue to be reported. Several of the cases reported involve youths or criminal suspects.

Amnesty International considers it to be vital that all denunciations of torture and ill-treatment be promptly, fully and impartially investigated and that those found responsible be suspended from active service and brought to justice. The United Nations Human Rights Committee, which monitors states' compliance with the Covenant on Civil and Political Rights, made a pronouncement in this respect in July 1996 indicating that it is "*imperative to adopt strict measures to confront the question of impunity guaranteeing that denunciations of human rights violations are investigated in an immediate and thorough manner, that the authors are judged, that appropriate penalties are imposed on those who are found guilty and that victims are compensated in an appropriate way.*"[@] The Committee established that "*the members of the security forces who have been found guilty of serious crimes should be permanently removed from the forces and that the members of these against whom investigations of such crimes are being carried out be suspended from duties until the investigation is completed.*"[@]

Enquiries by the Committee on what effective steps have been taken to protect detainees and others who are deprived of their liberty from torture and ill-treatment would be worthwhile.

Equally has it been considered by the authorities the establishment of an independent body to receive complaints, with power to investigate such complaints and what records are there to show that authorities at all levels have been made clear that torture and ill-treatment will never be tolerated.

Article 14 Right to a fair trial

In January 1989 members of a political organization, All for the Fatherland Movement, *Movimiento Todos por la Patria* (MTP) attacked the third Mechanized Infantry Regiment (RIM3) barracks at La Tablada in the Province of Buenos Aires. In the attack, nine soldiers and two police officers were killed. Twenty eight of the MTP assailants were listed as having died in combat. Twenty members of the MTP were found guilty and given sentences ranging from 10 years' to life imprisonment.

There was disturbing evidence that some MTP members listed as dead in combat may have been summarily executed after having surrendered; that three others "disappeared" after having been captured; that those held under military and Federal Police custody were subjected to torture and that, while held in incommunicado detention, members of the MTP were kept in conditions which amounted to cruel, inhuman or degrading treatment.

The members of the MTP were tried under the Law of Defense of Democracy (Law No. 23.077), as a result of the events of January 1989. Twenty members of the MTP were tried by the San Martín Federal Court and sentenced in October 1989 to terms ranging from ten years to life imprisonment. An extraordinary appeal against the sentence, submitted by the defense counsel, was rejected by the Federal Court. Similarly another appeal submitted in March 1992 to the Supreme Court of Justice was also rejected.

In their report No.55/97 of 18 November 1997, the Inter-American Commission recommended to the Argentine State to "*take the necessary actions under its constitutional system, to make fully effective ... the judicial guarantee of the right to appeal for persons tried under Law 23.077*". Law 23.077 restricted the right to appeal of the accused, contravening articles of the Inter-American Convention on Human Rights. The Inter-American Commission considered that the failure of the authorities to allow an appeal amounted to a violation in the fundamental rights of those convicted in 1989.

The Inter-American Commission concluded that the Argentine State had violated the right to life of nine members of the MTP, who had been the victims of extrajudicial executions during the

events of January 1989, and the right to humane treatment of another 20 detainees who had been tortured on the same occasion by members of the security forces. In this respect the Inter-American Commission recommended to the Argentine State "to undertake an independent, complete and impartial investigation into the events" in January 1989 "for the purpose of identifying and punishing all the persons who may be responsible for the human rights violations".

Amnesty International has adopted Fray Antonio PuigjanJ as a prisoner of conscience. Fray Antonio PuigjanJ, a leading member of the MTP, was convicted on the basis of allegations which he denied and which were never substantiated. He appeared voluntarily before the authorities after the events in "La Tablada". Since June 1998, due to his age (he is over 70 years of age), Fray PuigjanJ is under house arrest serving a 20-year sentence.

In July 2000 a delegation of the Inter-American Commission on Human Rights travelled to Argentina to meet with Government Authorities and parliamentarians to discuss the case of "La Tablada". In a statement to the press, following a meeting with the delegation on 3 July, the then Minister of Justice, Ricardo Gil Lavedra, reportedly affirmed the Argentine State's commitment to reform the Law of Defense of Democracy under which the members of the MTP were tried: *"Es importante que la legislación argentina se adecue a las normas internacionales. Que el Parlamento pueda dar sanción a la ley que dé posibilidad de recursos a los condenados."*

("It is important that Argentine legislation is in line with international norms. That Parliament can approve the law that allows those condemned the possibility of appeal.")

The Minister of Justice also recognized that the prisoners of "La Tablada" were condemned in a process in which the constitutional guarantee of the right to appeal was lacking. ("*Los presos de la Tablada*) fueron condenados en un proceso donde falta un elemento, el derecho de gozar de una garantía constitucional que rige para todos: la posibilidad de apelar su condena").

According to recent press reports as a result of the international pressure on the government, the new Minister for Justice and Human Rights, Jorge de la Rda, has begun to lobby parliamentarians asking them to support a new law project. In a statement of 12 October President Fernando de la Rda called for the legislative chambers to accelerate the passing of the law project ("*que las Cámaras legislativas*) intensifiquen el tratamiento del proyecto de ley").

In a letter to Amnesty International, received on 8 June 2000, the Undersecretary for Human Rights (*Subsecretaria de Derechos Humanos*) of the Ministry of Justice and Human Rights, Diana Conti, assured the organization that the current government supports the law project presented by the National Deputy Ram\ñ Torres Molina, which would allow the benefit of the right to appeal ("*Así lo hemos manifestado en las presentaciones efectuadas, a partir de la*

asunción de las nuevas autoridades del Gobierno Nacional, como también hemos estado en concordancia e impulsado el proyecto de Ley presentado por el Diputado Nacional Ramón Torres Molina, que permite interponer recurso de Casación estableciendo la doble instancia...").

However, despite these government assurances the law project presented by the National Deputy Ram\ñ Torres Molina has not so far been debated. Proposed debates have been postponed on various occasions.

Despite the recent recognition by representatives of the Argentine authorities of the flaws in the judicial process against the "La Tablada" prisoners and the stated willingness to promote law reform in accordance with the recommendations of the Inter-American Commission, Amnesty International remains concerned about the real commitment of the authorities to make these reforms a political priority for the administration and secure sufficient support in both chambers of the legislature.

The Committee should enquire into measure taken by the government to ensure compliance with its international obligations to fully implement the recommendations of the Inter- American Commission; and the fact that after more than 11 year of imprisonment, the prisoners of "La Tablada", sentenced under the Law of Defense of Democracy, have still not been able to lodge an annulment appeal (*Recurso de Casaci\ñ*).

Concluding observations of the Human Rights Committee : Argentina. 03/11/2000. CCPR/CO/70/ARG. (Concluding Observations/Comments)

HUMAN RIGHTS COMMITTEE
Seventieth session
UNEDITED VERSION

CONSIDERATION OF REPORTS SUBMITTED UNDER ARTICLE 40

Concluding observations of the Human Rights Committee

ARGENTINA

1. The Committee examined the third periodic report of Argentina (CCPR/C/ARG/98/3) at its 1883rd and 1884th meetings, held on 25 and 26 October 2000. At its 1893rd meeting on 1 November 2000, the Committee adopted the following concluding observations.

Introduction

2. The Committee welcomes the frank and constructive elaboration by the delegation of measures undertaken by the State party, since the presentation of its second periodic report, to ensure respect for rights guaranteed by the Covenant. It also appreciates the additional information provided orally by the delegation during the examination of the report and in response to members' questions.

3. The Committee observes that the federal system of government in the State party entails provincial involvement in the implementation of many of the rights provided for in the Covenant, and that it therefore requires additional information on the laws and measures undertaken at the provincial level, in order to assess progress in ensuring Covenant rights, in accordance with article 50 of the Covenant.

Positive aspects

4. The Committee welcomes the consolidation of democratic processes and measures taken to promote national reconciliation following the years of military rule when many basic human rights were flagrantly violated. In this regard, the Committee notes with satisfaction the

operation of a number of institutions and programmes designed to serve as a channel of redress for victims of past abuses, including, *inter alia*, the Historical Reparation Programme, the National Commission on the Disappearance of Persons, and the National Commission for the Right to an Identity. The Committee also appreciates the efforts being made to provide financial and other compensation to victims of arbitrary detention and the families of persons who died or disappeared under the military regime.

5. The Committee welcomes recent developments in which some of those responsible for the most serious violations of human rights, including forced disappearances, torture, and removal of children from their parents for purposes of illegal adoption or trafficking, are being brought to trial. It particularly welcomes the establishment of a mechanism, without time restriction on its activities, to restore the identities of children who were forcibly removed from their families.

6. The Committee is pleased to note the recent reforms enacted to promote the independence of the judiciary, particularly the creation of a competitive selection process for judges.

7. The Committee also notes with satisfaction the advances made in the protection of the rights of the indigenous peoples, the devolution of national and provincial land to indigenous communities through the National Registry of Indigenous Communities, and the promotion of multicultural and multilingual education.

Principal subjects of concern and recommendations

8. The Committee is concerned at the continuing uncertainty over the status of Covenant rights in national law. Despite assurances that the Covenant has constitutional status and is therefore directly invocable in courts, the Committee notes that it has been further described by the State party as being applied in a manner which is "complementary" to the Constitution, without further precision concerning that term. It also notes that the federal system of government confers upon the provinces responsibilities in critical areas, such as the administration of justice, which has resulted in uneven application of the Covenant in different areas of the State party's territory. The Committee, recalling the responsibility of the State party itself with regard to implementation of obligations under the Covenant, recommends that clarification of the status of Covenant rights be included in the fourth periodic report, including any specific examples of cases where Covenant rights have been invoked in the courts. The next report should also contain information on the legal and other measures taken to implement the Covenant at the provincial level to ensure that all persons are able to enjoy their rights throughout the territory of the State party.

9. Despite positive measures taken recently to overcome past injustices, including the repeal in 1998 of the Law of Due Obedience and the Punto Final Law, the Committee is concerned that many persons whose actions were covered by these laws continue to serve in the military or

in public office, with some having enjoyed promotions in the ensuing years. It therefore reiterates its concern at the atmosphere of impunity for those responsible for gross human rights violations under military rule.

Gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary, to bring to justice their perpetrators. The Committee recommends that rigorous efforts continue to be made in this area, and that measures be taken to ensure that persons involved in gross human rights violations are removed from military or public service.

10. In light of articles 9 and 14 of the Covenant, the Committee reiterates its deep concern at the failure of the State party fully to ensure the principle of presumption of innocence in criminal proceedings. In this respect, the Committee considers it a matter of concern that the duration of such detention is determined by reference to the possible length of sentence following conviction rather than the need to bring the detainee before the courts. It stresses in this regard that the imposition of pre-trial detention should not be the norm but should be resorted to only as an exceptional measure to the extent necessary and consistent with due process of law and article 9(3) of the Covenant. In this regard, there should not be any offenses for which pre-trial detention is obligatory.

All aspects of the system of pre-trial detention, including the determination of the length of detention, should be reformed in accordance with the requirements of article 9 and the principle of presumption of innocence under article 14.

11. The Committee is deeply concerned that prison conditions fail to meet the requirements of articles 7 and 10 of the Covenant. It considers the severe overcrowding and the poor quality of basic necessities and services, including food, clothing and medical care, to be incompatible with the right to be treated with humanity and with respect for the inherent dignity of the human person to which all persons are entitled. It has been established, in addition, that there are abuses of authority by prison officials, such as torture and ill treatment, and corruption.

While noting the plans underway to construct new prison facilities, the Committee recommends that immediate attention be paid to the need to provide adequately for the basic necessities of all persons deprived of their liberty. With respect to complaints of ill-treatment or torture, it recommends that the State party include in its next report detailed information on the number of complaints received, including the recourse procedures that are available to complainants, the outcome of complaints to date, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

12. Further in relation to article 7 of the Covenant, the Committee regrets that questions of torture and excessive use of force by police officials were not adequately dealt with in the present report. The Committee is concerned at allegations it has received indicating that this is

a widespread problem and that Government mechanisms established to address it are inadequate.

The Committee recommends that the State party include in its next report detailed information on the number of complaints received of torture and ill treatment by the police, including the recourse procedures and remedies that are available to complainants, the outcomes of such complaints, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

13. The Committee expresses concern over continuing attacks on human rights defenders, judges, complainants and representatives of human rights organizations, and members of the media. In addition, persons who participate in peaceful demonstrations are reportedly subject to detention and penal action.

Attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required. The State party should provide details in its next report on the results of such investigations and the procedures involved in disciplining or punishing offenders.

14. On the issue of reproductive health rights, the Committee is concerned that the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law, *inter alia*, when there are clear health risks for the mother or when pregnancy results from rape of mentally disabled women. The Committee also expresses concern over discriminatory aspects of the laws and policies in force, which result in disproportionate resort to illegal, unsafe abortions by poor and rural women.

The Committee recommends that the State party take measures to give effect to the Reproductive Health and Responsible Procreation Act of July 2000, by which family planning counselling and contraceptives are to be provided, in order to grant women real alternatives. It further recommends that the laws and policies with regard to family planning be reviewed on a regular basis. Women should be given access to family planning methods and sterilization procedures; and in cases where abortion procedures may lawfully be performed, all obstacles to obtaining them should be removed. Argentine law should be amended to permit abortions in all cases of pregnancy caused by rape.

15. With regard to article 3 of the Covenant, the Committee is concerned that, despite significant advances, traditional attitudes toward women continue to exercise a negative influence on their enjoyment of Covenant rights. The Committee is particularly concerned at the high incidence of violence against women, including rape and domestic violence. Sexual harassment, and other manifestations of discrimination in both the public and private sectors are also a matter of concern. The Committee notes as well that information on these matters is not

systematically maintained, that women have a low awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with.

The Committee recommends that a large-scale information campaign be undertaken to promote awareness among women of their rights and the remedies available to them. It urges that reliable data be systematically collected and maintained on the incidence of violence and discrimination against women in all their forms, and provided in the next periodic report.

16. The Committee reiterates its concern at the preferential treatment, including financial subsidies, accorded to the Catholic Church as against other religious denominations, constitutes religious discrimination under article 26 of the Covenant.

17. The Committee requests that the fourth periodic report to be submitted by 31 October 2005. It also requests that appropriate disaggregated statistics on major areas of concern be provided in the report.

The Committee further requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society and non-governmental organisations operating in the State party.