

# ARGENTINA

## MEMORANDUM TO THE GOVERNOR OF MENDOZA PROVINCE

### Introduction

Amnesty International is writing to the Governor of Mendoza Province, Julio Cobos to convey our human rights concerns in the province of Mendoza, particularly with regard to prison conditions.

We would like, once again, to thank you and your office for the attention and help given to our delegation<sup>1</sup> during its research visit to the city of Mendoza in May of this year. We would also like to thank you and the members of your government<sup>2</sup> for the meetings held with our delegates and for the information provided concerning the serious concerns Amnesty International has with regard to the human rights situation in the province. We would also like to thank the authorities who granted us access to prisons in the province, including the *Penitenciaría de Mendoza*, Mendoza Prison.

Over the past two years Amnesty International has written to you on five occasions<sup>3</sup> about prison conditions in the province. In those communications the organization complained about the inhumane conditions in which most inmates of Mendoza prison establishments live, a complaint that has also been made by prisoners' relatives and human rights lawyers in the province who have turned to the provincial courts and bodies of the Organization of American States, such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, in an attempt to end the human rights violations suffered by the inmates and to bring about permanent changes in the Province's prisons policy.

Prison conditions in Mendoza Province amount to cruel, inhuman and degrading treatment. There is severe overcrowding in poor sanitary conditions, a shortage of drinking water and inadequate medical attention. A large number of prisoners have complained of ill-treatment by prison staff, the arbitrary infliction of punishments and delays in legal proceedings. These

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<sup>1</sup> Renzo Pomi, Amnesty International representative at the United Nations in New York, and Virginia Shoppée, researcher on Argentina at the International Secretariat of Amnesty International.

<sup>2</sup> Meetings were held with the following members of the Government of Mendoza Province: Governor Julio César Cleto Cobos, Deputy Governor Juan Carlos Jaliff, Alfredo Cornejo, Minister of Justice and Security, Alejandro Acosta, Undersecretary for Justice, Sergio Miranda, Director of Mendoza Prison, and María Angélica Elorza, Director of the Prison System.

<sup>3</sup> 17 February 2004 (Ref.: TG AMR 13/001/2005), 20 May 2004 (Ref.: TG AMR 13/08/2004), 25 October 2004 (Ref.: TG AMR 13/011/2004), 10 December 2004 (Ref.: AMR 13/13/2004) and 4 August 2005 (Ref.: TG AMR 13/19/2005).

factors seem to have contributed to the lack of security in the Provincial Prison where several riots have taken place in the past few years. Since 2000, over 40 inmates have reportedly died, 22 of them since February 2004, in facilities under the control of the provincial prison system in circumstances which have still not been fully clarified.<sup>4</sup>

Despite the fact that the Inter-American Court of Human Rights ordered provisional measures to be taken in November 2004 and again in June of this year, there has been no substantial improvement in prison conditions.

The purpose of this memorandum is to convey Amnesty International's concerns with regard to prison conditions in Mendoza Province with a view to urging the authorities to introduce genuine improvements and implement policies that will allow the minimum requirements established in international human rights standards, particularly those from the United Nations, to be met. The information provided below is based on data supplied by inmates, relatives, members of civil society and the church and human rights lawyers.<sup>5</sup> It also includes observations made by the Amnesty International delegates and documentation obtained during the delegation's visit in May of this year, as well as resolutions and other statements by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights and details of the agreement reached by national and provincial authorities in Asunción, Paraguay.<sup>6</sup>

## **CONCERNS**

- **the physical conditions in the prisons** (overcrowding, poor sanitation, excessive lockdown)
- **the ill-treatment of inmates**
- **the lack of medical care**
- **the holding of certain categories of prisoner together** (inmates on remand with convicted prisoners; adults with minors under 21)

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<sup>4</sup> The male prison system in Mendoza Province comprises three units: *la Penitenciaría de Mendoza*, Mendoza Prison, in the western part of the provincial capital, Mendoza, was opened at the beginning of the 20th century and is known as the *Penitenciaría Provincial de Mendoza "Boulogne Sur Mer"*, "Boulogne Sur Mer" Provincial Prison of Mendoza; *Granja* or *Colonia Penal Gustavo André*, Gustavo André Farm or Penal Colony, in Lavalley department, and *Cárcel de San Rafael*, San Rafael Prison, which is 240 km from the capital.

<sup>5</sup> Alfredo Ramón Guevara, Alfredo Guevara Escayola, Pablo Gabriel Salinas, Diego Lavado and Carlos Varela Álvarez, human rights lawyers from the province, Presbyterian minister Jorge Contreras from *Pastoral Social*, and Pablo Flores and Mercedes Santander, members of the *Comisión Local de Seguimiento de Políticas Penitenciarias*, Local Prisons Policy Monitoring Committee.

<sup>6</sup> See Appendix I, *Acta de Asunción de Paraguay*, Asunción, Paraguay Agreement.

- **the failure to investigate complaints of ill-treatment and deaths**
- **the ineffectiveness of the judicial system**

- **The physical conditions in the prisons**

There has been serious concern about the physical conditions in Mendoza Prison for several years and it has been called one of the worst prisons in Argentina. The overcrowding, shortcomings in sanitation and medical care and excessive lockdown that occur in prison establishments within Mendoza Province amount to cruel, inhuman or degrading treatment.

The Working Group on Arbitrary Detention from the United Nations Commission on Human Rights visited detention centres in several Argentinian provinces, including Mendoza, in September and October 2003. With regard to conditions of detention in prisons and police stations, the Working Group found “*overcrowding and poor conditions in the areas of security, health, food, clothing and sanitation in most of the detention centres that it visited*”.<sup>7</sup>

Although the Mendoza authorities have announced the construction of new wings in the area surrounding Mendoza Prison and that a new prison complex is to be built in the province in the future, the overcrowding and advanced deterioration and lack of maintenance of the most basic services, such as sanitation, sewers and drinking water, make Mendoza Prison uninhabitable for the more than 1,600 inmates held in facilities which were originally built for 600.<sup>8</sup>

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<sup>7</sup> UN document E/CN.4/2004/3/Add.3, 23 December 2003, paragraph 62.

<sup>8</sup> “We couldn’t work out where the toilets were, there’s no water or electricity and the sewers have collapsed; it is in a total state of neglect and isn’t even fit for animals [...] the inmates are living in subhuman conditions”. Statement by Commissioner Florentín Meléndez from the Inter-American Commission on Human Rights who led a visit to the Prison. (*Clarín*, 14 January 2005).

A written testimony handed to the Amnesty International delegates during their visit to Mendoza Prison on 14 May 2005 demonstrates the physical state of the prison:<sup>9</sup>

*“[...] ancient and “inadequate” facilities in the Provincial Prison, and I say “ancient” and “inadequate” because they are over one hundred years old [...] Something which has a harsh impact on how we lead our lives today because that same place accommodates over “two thousand prisoners”. This inhuman overcrowding is the reason why serious violations of constitutional guarantees and human rights have taken place: there have been seventeen violent deaths which have never been investigated or clarified and no one has been found responsible. The public [are being deceived] [...] with the announcement of the creation of new wings [...] two new wings which will only hold up to four hundred people while wing 6, with seventy-two cells, houses “three hundred inmates”. The lack of medical care and medicines which has led to several deaths from “natural causes” and numerous outbreaks of contagious diseases such as AIDS, hepatitis and scabies. On top of that, the unhealthy living conditions in which we are forced to sleep near rats, assassin bugs (vinchucas), lice and the human waste that accumulates inside the cells because they don’t have toilets and because there is only ten hours’ access to the toilets which are regularly smashed up by the Servicio de Requisas, Search Service, as a reprisal against inmates or rather as a form of intimidation.*

**Written testimony from Cayetano Grasso Alaniz, Dario Grasso Atencio and Sergio Grasso Atencio. (\*)  
Remand prisoners held in Wing No. 6 C.67**

(\*) This is a translation of the original written testimony which is reproduced verbatim in the Spanish version.

#### **- Overcrowding**

The prison population of Mendoza Prison is three times the capacity for which it was built. It has a capacity for 600 inmates but at present over 1,600 inmates, including convicted as well as remand prisoners, are registered. Most cells measure 2.6 x 1.8 metres and hold four or five inmates. There are not enough mattresses or blankets, thus forcing them to sleep on the floor. The overcrowding is exacerbated by the large numbers of detainees who are awaiting trial.

#### **- The electricity system**

There is no night lighting and so a system of clandestine electricity connections exists. On 15 August 2005, 20-year-old prisoner **Sergio César Sandes** was electrocuted in the *Complejo San Felipe*, San Felipe Complex, a section outside the main part of the prison, apparently

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<sup>9</sup> The matters of concern to Amnesty International which arose as a result of the delegation’s visit, including those described in the testimonies received, were immediately conveyed verbally to the then prison director, Sergio Miranda, the Undersecretary for Justice, Dr Alejandro Acosta and the Director of the Prison System, María Angélica Elorza.

because he was using a clandestine electricity connection. The precariousness of the electricity system in San Felipe Complex was pointed out by the *Juez de Ejecución Penal*, judge responsible for the enforcement of sentences, Eduardo Félix Mathus, following the inspection he carried out on 18 July 2005.

*On 15 August 2005, 20-year-old prisoner Sergio César Sandes Aguirre died after being electrocuted in San Felipe Complex, a section of Mendoza Prison outside of the main part. The Ministry of Justice said that “everything indicated that he was killed by the electrical discharge he received, because some cables could be seen that were related to some kind of clandestine connection”. The previous month Sergio César Sandes Aguirre had participated in a protest started by 14 adult minors (aged between 18 and 21). The prisoners sewed up their lips in demand of better living conditions and in protest against the punishments and excessive lockdown to which they had been subjected. Sergio César Sandes Aguirre had endured many hours of excessive lockdown. Amnesty International has no information about the progress of the investigation that was launched into his death.*

**- Excessive lockdown**

Some prisoners are locked up in their cells for 23 hours per day as demonstrated in the *habeas corpus* petition submitted by the mother of detainee Germán Sánchez. The constant use of excessive lockdown led examining magistrate Luis Correa Llano in August 2005 to order it to be banned.

*Liliana Alicia Sotomayor, the mother of inmate Germán Sánchez, lodged a petition of habeas corpus on behalf of her son who had been kept locked in his cell for 23 hours at a time for security reasons following two riots in June 2005. In a decision handed down on 25 August of the same year, examining magistrate Luis Correa Llano ordered that all inmates in the same situation should be given four hours per day of recreation outside their cell, to be extended to six hours per day after 15 days and to eight hours per day after 30 days.*

**- Sanitation**

The sanitary conditions in which the prisoners have to live are deplorable and unacceptable. In some wings, there is no drinking water and a serious shortage of toilets and showers, with those that do exist kept in a poor state of repair. Many inmates have to defecate into plastic

bags and use bottles for urine while inside the very cells in which they are kept locked up all day and which they share with at least three other people.

The sewer system, which in some parts of the prison dates from the early 20<sup>th</sup> century, is constantly blocked so that the corridors become flooded with raw sewage as well as rubbish that has piled up over several days. There are rats carrying infectious diseases in the toilets and there have reportedly been several cases of hepatitis among the inmates.

Such conditions are in breach of the United Nations (UN) *Standard Minimum Rules for the Treatment of Prisoners* as well as National Prison Law N° 24,660 (*Ley de Ejecución de la Pena Privativa de la Libertad*, Law on the enforcement of custodial sentences) which states that “the prison regime should guarantee and promote the psychological and physical wellbeing of the inmates”, “special attention shall be given to the environmental and hygienic state of the [prison] establishments” (article 58), “in order to ensure that accommodation is appropriate, the number of inmates within each establishment should be predetermined and not exceeded ” (article 59), and “each establishment should have sufficient and appropriate sanitary facilities and supply inmates with the essentials required for their hygiene” (article 60).

The information provided as a result of the inspection of the facilities at the San Felipe Complex, which is outside of the main part of Mendoza Prison, carried out on 18 July 2005 on the orders of Dr. Eduardo Félix Mathus, the judge responsible for enforcement of sentences, describes the overcrowding and sanitary conditions. The judicial authorities found, for example, that 185 inmates were being held in a complex designed for 60, that there were insufficient showers and latrines, with only three of each for 89 inmates in a building which used to house the college for training prison officers (*ex-Escuela Penitenciaria*), that hygienic conditions were appalling, with rubbish all over the place and a large amount of it in a state of decomposition, and that there was no water supply. They noted that the electricity supply was precarious and operated clandestinely and that there were not enough mattresses and blankets for the inmates.<sup>10</sup>

According to a public statement made by the head of the *Secretaría de Derechos Humanos de la Nación*, National Human Rights Secretariat, Rodolfo Mattarollo, “Prisons today are conducive to crime: they encourage criminal behaviour among the prisoners”.<sup>11</sup>

- **Lack of adequate medical care**

Inmates have only limited access to medical care and there is a serious shortage of medicines. Medical staff do not visit the prison wings and reportedly do not keep clinical records of the inmates who have received medical treatment. They are only summoned when an inmate dies.

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<sup>10</sup> File No. 8082/C, “*Constatación Penitenciaria Provincial – Complejo San Felipe*”, “Provincial Prison Inspection – San Felipe Complex”, 4 August 2005.

<sup>11</sup> Quoted in *Clarín*, 14 January 2005.

There are inmates with urgent and complex health problems which have not been dealt with.

A visit by members of the *Comisión Local de Seguimiento de Políticas Penitenciarias*, Local Prisons Policy Monitoring Committee, on 13 June 2005 found that inmate **Jesús Videla Godoy** had cut himself in order to get treatment for his left leg which had swollen up, that **Edgardo Germán Pereyra Villegas**, who was using a colostomy bag, had been refused an operation and that **Raúl Walter Bracamonte Antunez** had not been given any medicines for his chronic asthma or back problems. Prisoner **Carlos Pérez Ledesma** had a broken rib as a result of a beating but was afraid to report the incident to the prison authorities.

*“[...] My 64-year-old father is seriously ill with high blood pressure and his life is at risk. [He has] excess uric acid which affects his eating, septic arthrosis which makes it impossible for him to move around and is very painful, not to mention the fact that he sleeps on the floor. All these ailments, caused not only by the overcrowding and “serious” lack of medical supervision but also by the absence of medicines, make life in “prison” for my elderly father an interminable Dantean Calvary [...].”*

**Written testimony from Dario Grasso Atencio and Sergio Grasso Atencio, about the state of health of their father, Cayetano Grasso Alaniz.(\*). Remand prisoners held in Wing No. 6 C.67**

(\*). This is a translation of the original written testimony which is reproduced verbatim in the Spanish version.

Two doctors, Dr Guillermo Martínez Agüero and Dr Ricardo Vega, who visited the prison facilities together with human rights lawyers in November 2004, confirmed that conditions in the *Pabellón de Enfermos*, hospital wing, were unhygienic.<sup>12</sup>

The United Nations *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* stipulate the following: **Principle 24:** A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge. **Principle 26:** The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

**Principle 1** of the United Nations *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against*

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<sup>12</sup> Report prepared by the petitioners following a visit to Mendoza Prison carried out jointly with the National Government, point g., Medical Care, Hospital Wing.

*Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* states that: “Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained”.<sup>13</sup>

Article 143 of National Prison Law N° 24,660 also stipulates that “inmates have a right to health. They must be given full timely medical care, with no interference to their access to a doctor or any prescribed treatment”.

- **The holding of certain categories of prisoner together**

In Mendoza Prison remand prisoners are not kept separate from convicted prisoners. Young prisoners aged between 18 and 20 are also held together with adult prisoners and prisoners posing different degrees of risk share the same facilities.

Articles 8 b) and 8 d) of the United Nations *Standard Minimum Rules for the Treatment of Prisoners* state respectively that “Untried prisoners shall be kept separate from convicted prisoners” and “Young prisoners shall be kept separate from adults”. Article 297 of the Code of Criminal Procedure for Mendoza Province (Law 6,730) states the following with regard to the treatment of prisoners: “*those in pre-trial custody shall be held in different facilities from convicted prisoners; they shall be separated according to gender, age, educational level, past record and the type of offence of which they are accused*”.

- **The ill-treatment of inmates**

Complaints received by Amnesty International from relatives and prisoners as well as human rights lawyers or reported in the media confirm that inmates have been subjected to ill-treatment and torture. Of particular concern are the activities of groups of hooded prison guards who beat prisoners during general searches or outbreaks of rioting or for disciplinary reasons. Information gathered by human rights lawyers would seem to indicate that young officers from the period of military government between 1976 and 1983 who were involved in torture now hold senior posts within Mendoza Prison. It also shows that some prisoners do not report ill-treatment or make legitimate complaints for fear of reprisals or being subjected to disciplinary action.

National Prison Law N° 24,660 states that: “Sentence shall be enforced without resorting to cruel, inhuman or degrading treatment. Anyone who orders, carries out or tolerates such excesses shall be subject to the forms of punishment envisaged in the Penal Code, without prejudice to any others that might be appropriate”. (Article 9).

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<sup>13</sup> Adopted by General Assembly Resolution 37/194 of 18 December 1982.



*I am the father of Sebastián Jesús Valdés. He is now in maximum security in one of those new units they've got there. The reason for my visit is that my son has been the victim of ill-treatment, both physical and verbal. From the authorities in charge of that unit. [...] they are constantly threatening to kill him, that they will have him killed, that he should say nothing [...] And the only food he has to eat is what we take him [...] and if there's any left we have to take it away, otherwise no one is allowed in at the next visit and he ends up getting punished directly. They put it like that: PUNISHED! "Don't you say anything, otherwise you won't come in again. And so I keep quiet if I want to get in next time". "But listen..."[...] " look, I've got the judge's order here [...]". "The judges should shut up. We're in charge here, the judges don't have anything to do with it". "And your son? We could kill him at any time and give him to you in a box". [...] Four years he's been on remand, he was 16 when he was caught, now he's 20. He hasn't been convicted.*

*Three of our sons are dead, he's the only one left. He's my only son. And the police say they are going to kill us all so that there's no one left in this family. I ask the police to look at my record. At least I, my daughter and I, we don't have a record [...] They spit in his food, they don't let him wash his clothes, there's no hygiene, nothing. He's dirty and his clothes, the clothes we buy for him, go missing. He has no new clothes all week because there are none to put on.[...] They put the food out in the yard first so that the pigeons can eat it, we saw it on Thursday. They leave the trays out [...] And the pigeons and flies come and eat it.*

**Testimony from Mario Enrique Valdés and Noelia, father and sister of Sebastián Jesús Valdés, a remand prisoner held in a maximum security unit.**

During their visit to the prison, the Amnesty International delegates received documentation from **Cristian Alberto Pérez Ferrari**, a prisoner in Wing 3 who had sewn up his lips as a means of attracting the attention of the prison authorities to the requests he had made and which had not been answered. The documentation included a copy of a *recurso de inconstitucionalidad*, petition on grounds of unconstitutionality, concerning his sentence which had been submitted by his lawyer after he was arrested in August 2003 and sentenced to three years and six months for robbery, Case No. 4,617/108,558, and two *habeas corpus* petitions dated 10 May and 12 May which stated as follows:

*“to the duty attorney at the Provincial Court: [...]lodge a petition of habeas corpus for the following reasons: 1. I have been asking the officer in charge of Wing No. 3 to have me taken down to the infirmary since 1pm in order to be given a [hunger] strike check-up and see if I have an infection in the stitches I have in my mouth. 2. Having received no reply from the officer in charge of that wing and having been threatened on several occasions that I was going to be punished. 3. Given that I have a court hearing but now the officer in charge does not want to have me taken to the infirmary to have the hunger strike check-up. 4. Given the pressure to which I am being subjected by the officer in charge of Wing 3, I wish to submit a complaint on grounds of psychological pressure and breach of duty by a public official [...]”.*

*“To the Director, Mr Miranda: [...] Given that I am in a situation of which you are already aware, I hereby request your attention in order to inform you that on the date given herewith my visitor could not enter. I do not understand the reason for this decision because they had reached the gate and were unable to enter [...]”.*

**Cristian Alberto Pérez Ferrari,  
Convicted prison held in Wing 3**

(\*)This is a translation of the original written testimony which is reproduced verbatim in the Spanish version.

- **Impunity and the absence of investigations**

Since 2000 over 40 detainees have died in the Mendoza prison system in circumstances that have yet to be clarified. According to reports, so far progress has been made in only two investigations. They concern the death of several inmates in **Colonia Penal de Gustavo André de Lavalle**, Gustavo André Penal Colony, Lavalle, in which four inmates died from asphyxia following a fire in wings C and D. **Carlos Marcelo Villarroel, Mario Guillermo Andrada, José Alejo Falcón** and **Javier Antonio Gualpa**, died from asphyxia and **Sergio Darío Reynoso** died as a result of several injuries caused by a sharp instrument. This case is under investigation in the *3er. Juzgado de Instrucción*, Third Magistrates' Court.

The other investigation is that of the death and subsequent dismemberment of **Sergio Salinas Ares** on 4 December 2004 in Wing 7, allegedly a few metres away from the guard who was on duty.

The relatives of the victims and their lawyers have requested that the investigations into the causes of the tragedy in Gustavo André Penal Colony, Lavalle, and the deaths that took place get to the “real truth” of what happened and have stressed the ongoing worrying situation of the prisons in the province. Amnesty International has also made the same request, emphasizing the importance of carrying out investigations into all the deaths that have

occurred, that such investigations should be immediate, independent and thorough, and that the methods of investigation be made known and the results made public.<sup>14</sup>

Amnesty International has received no information from the authorities about the progress of the two investigations referred to above and does not know whether investigations have been opened into the rest of the deaths that have been recorded in the province's prisons.

*"We went to see Marcelo and Alejandro on the Friday and they had written a note asking to be moved because Alejandro was in wing 11 Alejandro and Marcelo in wing 2. We also sent a note asking if they could please move them because we could see that something was going to happen to them there. We went there on Friday and on the following Saturday they informed me that Alejandro was dead. They informed me on Saturday the 30th of October last year, 2004. The incident had taken place at 5pm and they informed me at 9.30 that night. They said, I have come to inform you that there was a fight and you have to go there because they need you there. I went and they said, it's your son who is dead. He was all slashed, there were cuts on his forehead. [...] We were sat there and the forensic pathologist passed by with all my son's organs in a bag. They handed him over to me at 10 o'clock the next morning and on Sunday at 5 in the afternoon I had to bury him. [...] Marcelo was in 2 and they moved him to 3 and men from the other wing went there and hit him and he was standing with his back to them drinking maté and they said what's going on and he said nothing and as he didn't want to get up, they started hitting him. There was no investigation because nobody could explain it and the only thing they said was that it was a fight, like they always do. That was on 21 November 2004. We were asking questions about a transfer because we wanted to get him [Marcelo] transferred to another prison, to San Rafael but they paid no attention because he also sent notes asking the same thing because he didn't want what happened to his brother to happen to him, he was also afraid and he told me that I should go and ask for him to be transferred so I went and talked to them and I asked and wrote but they never paid any attention to me, I never got a response from any of the authorities."*

**Testimony from Teresa Quiroga, mother of  
Marcelo Javier and Alejandro Ceferino Camargo Quiroga,  
aged 29 and 22 respectively**

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<sup>14</sup> Amnesty International communications TG AMR13/08/2004 of 20 May 2004 and TG AMR 13/19/2005 of 4 August 2005 addressed to the Governor of Mendoza Province, Julio César Cleto Cobos.

- **The ineffectiveness of the provincial judicial system**

**Delays in trial proceedings:** A large number of people are held on remand for long periods and it is almost impossible for them to obtain bail. Detainees, their relatives and lawyers have asked for a second *Juzgado de Ejecución Penal*, court responsible for the enforcement of sentences, to be set up to deal with the large number of cases and to speed up proceedings and trials. Amnesty International has learned that a second such court was created in March 2005 as a result of law 7340. However, the post remains vacant and the new *juez de ejecución penal*, judge responsible for the enforcement of sentences, has therefore not started work.

*“Request for a hearing, Art.67 of the CCP [Code of Criminal Procedure] related to human rights, Mr Cardozo:*

*[...] I am writing to request an urgent personal hearing with you. The reason for the hearing is my situation as a convicted prisoner has worsened since I was sentenced to two years and eight months of which I have served two years, six months and thirteen days. According to my calculations, based on the provisions of [...] I wish to inform the authorities of that institution that as of now my sentence will expire in one month and eighteen days and I have requested the officer in charge of internal security to move me on to the trust phase ( fase de confianza) but I have had no response at all. [...]*

**Written testimony from Eduardo José Gannini Ramírez  
Convicted prisoner held in Wing 3. (\*)**

(\*) This is a translation of the original written testimony which is reproduced verbatim in the Spanish version.

Article 7.5 of the American Convention on Human Rights states that “Any person detained [...] shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial” and “the right to a hearing, with due guarantees and within a reasonable time”, as envisaged under article 8.1.

The December 2003 report of the visit to Argentina by the Working Group on Arbitrary Detention of the UN Commission on Human Rights recommended that within the prisons “[c]onsideration should be given to increasing the capacity of the prison system or reducing overcrowding by making use of alternative measures such as early release, release on bail, parole, house arrest, night imprisonment, daytime imprisonment, and furlough”.<sup>15</sup>

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<sup>15</sup> UN document E/CN.4/2004/3/Add.3, 23 December 2003, paragraph 68.

At the beginning of February 2004 prisoners reportedly presented the provincial and prison authorities with a petition containing ten demands, including a request for privileges to be implemented, the setting up of *juzgados de ejecución penal*, courts responsible for the enforcement of sentences, as well as appeal courts to deal with such matters and improvements to the prison infrastructure. According to reports, the awarding and implementation of privileges that would improve conditions of detention and allow provisional or conditional release for inmates whose behaviour merits it does not appear to be done transparently or assessed fairly so that prisoners can access the privileges to which they are entitled under the law. There are said to be 400 detainees who should be considered for such privileges and whose adjudication process has suffered unjustified delays.

In July 2005 two riots took place within four days in Young Adults Wing N° 10 of the Provincial Prison. On 19 July, a group of 41 young adult inmates aged between 18 and 21 rioted taking one guard hostage. They made several demands, including improvements and more time for visits, mattresses, blankets, a telephone on the wing that works so that they can communicate and a request that examination of their cases to be speeded up. On 23 July, 40 prisoners from the same wing rioted and took one guard hostage, allegedly calling for an improvement in their conditions of detention and for their cases to be speeded up. In both cases, prisoners' relatives reported that prisoners had been beaten by prison staff but that many inmates were afraid to lodge complaints in case further reprisals were taken against them.<sup>16</sup>

### Minors

Petition N° 270, submitted by human rights lawyers from Mendoza, is currently before the Inter-American Commission of Human Rights for breach of article 37 of the Convention on the Rights of the Child in connection with three life sentences handed down by the *Tribunal Penal de Menores de Mendoza*, Mendoza Juvenile Court. One of the three, **Ricardo David Videla Fernández**, was found hanging from his belt in his cell on Wing 2 on 22 June of this year. Remand prisoners and convicted prisoners are held together in the wing and Ricardo David Videla Fernández was locked up for over 20 hours a day and his visits had been cut.

When interviewed about the young man's death, Rodolfo Mattarollo, the Undersecretary for Human Rights at national level, said that "*inhumane conditions of detention were found both on wing 2 and wing 11, conditions that are decidedly at odds with the international human rights standards ratified by Argentina and that have constitutional status [...] the fact that inmates of all ages are mixed up together is a breach of the principle of classification which makes it obligatory to separate remand prisoners from convicted prisoners and minors from adults*".<sup>17</sup>

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<sup>16</sup> "None of the changes made so far have been genuine. There needs to be fundamental change if there is to be peace" – comment made to the press by Liliana Alicia Sotomayor, mother of inmate Germán Sánchez. (*Diario Los Andes*, 2 August 2005)

<sup>17</sup> Quoted in *Página 12*, 23 June 2005.

### **Torture and other cruel, inhuman or degrading treatment or punishment**

Apart from reports of the physical ill-treatment of inmates, the overcrowded conditions, shortcomings in sanitation and medical care and the excessive periods of lockdown that take place in the prisons of Mendoza province also amount to cruel, inhuman or degrading treatment.

The Inter-American Court of Human Rights has stipulated that “one of the obligations which the State must inevitably assume in its position as guarantor, with the purpose of protecting and guaranteeing the right to life and physical integrity for people who are deprived of their freedom, is to provide them with the minimum conditions that are consistent with their dignity while they are held in detention centres”.<sup>18</sup>

Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment states the following: “*For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”. Article 16: “*Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment [...]*”.

Article 1 of the Inter-American Convention to Prevent and Punish Torture: “*For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.*”

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<sup>18</sup> Inter-American Court of Human Rights, Case of “Children’s Rehabilitation Centre vs. Paraguay”, Judgment of 2 September 2004. para. 159. [AI translation.]

[...] inmate held in this prison for 21 months on remand from the federal court [...] The purpose of this communication is to make a complaint against the Federal Court which, owing to the arbitrary way in which it conducts the preliminary investigation of cases, has violated all my rights and constitutional guarantees [...] by subjecting me to the jam-packed conditions I am suffering in this hell. [...] what they did was move me to wing 4 where I am now held and which is the oldest part of the jail and I am still suffering the worst human conditions, sharing a smaller cell with two others and apart from us, there are rats, bedbugs, lice, scabies and an infection we've got from hundreds of pigeons, we are still forced to lie on the floor because there are no beds, the state of the toilets is deplorable and nauseating, the stench is terrible [...] I was never presumed innocent neither was I granted all the necessary guarantees for my defence. [...] as a remand prisoner, I am not separated from the convicted prisoners and I am still being subjected to this terrible remand status by the federal court [...] We have lodged a complaint in the federal court for this violation of our human rights and file No. 86,138A was opened in the Second Prosecutor's Office (Segunda Fiscalía) and we also submitted a complaint to the Honourable Chamber of Deputies of the Mendoza legislature, where files 38,563 and 38,564 were opened but we have not received a response of any kind. [...] international agreements are just articles we see in our legislation but in practice no one respects them, given that the state of the legal proceedings for all the federal detainees in the prison is irregular and there is nobody watching out for us [...].

**Written testimony from Alberto Adrian Torazzi Gonzalez (\*)**

(\*)This is a translation of the original written testimony which is reproduced verbatim in the Spanish version.

### **Provincial, national and international legislation**

#### **Provincial legislation**

Article 23 of the Constitution of Mendoza Province stipulates that “*prisons are made for security and not to inflict suffering on the detainees and shall, together with penal colonies, be regulated in such a way that they constitute centres for work and raising moral standards. Any authorities who use unnecessary force shall be held accountable*”.

Despite the existence of this article, numerous states of prison emergency have had to be declared (Law 6724 of 02/11/1999, Law 6863 of 27/12/2000, Law 6964 of 11/12/2001, Law 7094 of 14/01/2003 and Law 7327 of 29/12/2004) and countless *habeas corpus* petitions have been settled in the petitioners' favour. Despite that, there has been no improvement in prison conditions.

### **National legislation**

- Article 18 of the Argentinian Constitution states that “[...] The nation’s prisons shall be sanitary and clean, [used] for security and not to punish those detained in them, and any judge who authorizes measures which, as a precaution, end up causing more suffering than that requires shall be held accountable”.

### **International legislation**

Under the Argentinian federal system, the Province of Mendoza has authority over its own legislative and judicial system. However, the Argentinian Government is responsible for implementing international conventions and treaties which have been ratified by the Argentinian State. Article 75, paragraph 22, of the 1994 Constitution states that “treaties and concordats take precedence over laws”.

The international obligations contracted by Argentina include implementation of treaties and concordats, as well as those that stem from international instruments such as the *United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, the *United Nations Standard Minimum Rules for the Treatment of Prisoners* and the *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, the *International Covenant on Civil and Political Rights* and the *American Convention on Human Rights*.

Point 1 of the *United Nations Basic Principles for the Treatment of Prisoners*, states that: “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.”

#### **On minors:**

- Article 37, paragraph a), of the *United Nations Convention on the Rights of the Child* states that “[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”.

- Paragraph 29 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* states that “[i]n all detention facilities juveniles should be separated from adults, unless they are members of the same family”.

### **The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights**

Defence lawyers representing inmates successfully requested the Inter-American Commission on Human Rights to adopt precautionary measures. The Inter-American Court on Human Rights later ordered provisional measures to be taken in a case entitled “The Mendoza Prisons”, which was assigned number 923-04 in the Commission and Ref: CDH-S /1791 in the Inter-American Court.



This was only the second time that the inter-American human rights system had granted provisional measures for detainees in the Americas.

**In a decision dated 22 November 2004, the Inter-American Court of Human Rights requested the Argentinian Government to:**

- immediately adopt whatever measures “are necessary to protect the lives and physical integrity of all persons deprived of their freedom in Mendoza Provincial Prison and the Gustavo André unit in Lavalle, as well as all people inside them”;
- investigate “the incidents that led to the adoption of these provisional measures, in order to identify those responsible and impose the appropriate penalties”;
- keep on informing the Court every two months about the provisional measures that have been adopted.

- on “... the serious state of security, infrastructure, overcrowding, detention conditions and sanitation currently prevailing in the prisons”, the Commission has argued that “such conditions may provoke further incidents as well as further murders and acts of violence.”

“Although it appreciates the measures introduced by the State, the Commission believes that, given the dangerous situation, action that has an immediate effect needs to be taken.”

In a **decision dated 18 June 2005**, the Court reiterated that the Argentine State should carry on applying the provisional measures adopted on 22 November 2004 and keep the Court informed of any steps taken to comply with everything that it had ordered.

**Visit by the Inter-American Commission on Human Rights**

A delegation from the Inter-American Commission on Human Rights visited Mendoza province in December 2004 to examine the situation within the prisons. The delegation was made up of Commissioner Florentín Meléndez, Commission Secretary Santiago Cantón and lawyers Juan Pablo Alban and Elizabeth Abi-Mershed.

It was only the second time that the Commission had visited Argentina and the first time since the return to democracy, since the previous visit took place in 1979 during the period of military rule.

**Hearing held by the Inter-American Court of Human Rights in Asunción, Paraguay**

The Inter-American Court of Human Rights held its 26<sup>th</sup> extraordinary session in Asunción, Paraguay, between 9 and 13 May 2005 in order to hold public hearings on cases in dispute and provisional measures. On 11 May, the Court heard arguments from the Inter-American Commission on Human Rights and representatives of the beneficiaries of the provisional measures and the Argentine State concerning the provisional measures ordered by the Court with regard to the situation in the prisons of Mendoza. During the hearing, an agreement was

signed by a representative of the Inter-American Commission on Human Rights, officials from the Argentine Foreign Ministry and Human Rights Secretariat, petitioning lawyers and representatives of the Mendoza Government. In the agreement, the Mendoza Government promised to take various measures, including separating inmates by category and gradually improving the conditions of detention.<sup>19</sup>

### **Update on the situation in the prisons**

#### **Written submission to the Inter-American Commission on Human Rights**

A written submission prepared by petitioning lawyer Dr. Carlos Varela Álvarez was presented to the Inter-American Commission on Human Rights on 18 October 2005. The document updates the situation in Mendoza's prisons following the meeting held in Asunción, Paraguay, on 11 May this year. The update is based on information obtained at meetings with the following: delegates and/or representatives of several wings within Mendoza Prison, the Prison Director, Dr Omar Botti, prison officers, inmates from Sector 10B, Unit 10C and the *Módulos A/B fases de confianza* (A/B trust phase units), officials from the Foreign Ministry and the Anti-Impunity Programme of the Argentine Human Rights Secretariat. Information was also obtained from a visual inspection of the adult minor units and behavioural units.

The written submission reveals that, although some of the national and provincial authorities have "a better attitude towards the issue", *"to date we have been unable to find any significant progress with regard to the contents of the agreement"*.

According to the document, the improvements found include a lowering of tensions between inmates as well as between inmates and prison staff, improvements to sanitation and privileges in some sectors, and increased space resulting from the use of units that were left empty following the transfer elsewhere of witnesses held for their own protection and female detainees. There had also been some improvement as far as overcrowding and health situation in the facilities in San Felipe Complex were concerned. However, inmates on remand and convicted prisoners were still being held together in many wings. As regards the issue of overcrowding, over 1,200 prisoners are being held in Mendoza Prison where up to eight inmates reportedly have to share a cell.

There has been no improvement in the poor sanitary conditions. *"A failure to provide items required for personal hygiene on a regular basis and to collect rubbish and waste continues to be the trend, together with a lack of lighting and surveillance cameras in the prison"*. There is no drinking water and many prisoners do not have mattresses and the ones that are provided are of very poor quality.

There is an absence of occupational facilities and training workshops thus preventing inmates from gaining preparation for their future return to society.

Normally prisoners are locked up from 1900h until 0700h the next day but inmates who have

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<sup>19</sup> See Appendix II – Agreement reached in Asunción, Paraguay.

earned privileges related to the trust phase are not locked up until 2200h. In Sector 10B lockdown lasts 21 hours with 2½ hours' recreation, supposedly because in that unit the adult minors get into fights. According to the petitioning lawyer, locking them up for such a long period is "*absolutely inhumane and degrading because those people have to spend all those hours together in their cells*".

There is one doctor for every 100 inmates. According to the information obtained by the petitioning lawyer, the health of inmates is "*pitiful and deplorable. The doctors do not go to the wings and guards do not take sick prisoners out in an emergency*". He also points out that the amount and quality of the medicines available is poor.

There is an absence of other types of health care staff, such as medical specialists, psychologists, psychiatrists, nurses and dentists. Inmates reportedly do not receive sufficient care in those types of cases.

There are no internal surveillance cameras and there has been no increase in the number of prison staff. The special hooded groups are also reported to still be in use.

As far as the judicial system is concerned, the document says that, despite the fact that national and provincial standards grant full equality to convicted and remand prisoners, convicted prisoners in Mendoza Prison have to wait long periods to be granted their rights and the criteria for doing so is very restrictive. Remand prisoners have to spend an average of ten months in detention before receiving their initial sentence.

A resolution of 14 July 2005 (Case 8051/GV) handed down by the *Juzgado de Ejecución Penal*, court responsible for the enforcement of sentences, found conditions for people in the prison to be subhuman. In another court ruling, the prosecutor acting in proceedings P N° 49240/05 ("*F C/ Miranda Sergio P/ Av. Delito*") sent a report to the Supreme Court of Justice of Mendoza condemning the current institutional failures.

In cases in which petitioners have brought witnesses and given evidence, there has been some progress. However, investigations into deaths classified as suicide in recent years have still not been clarified.

As regards prison staff, *Ley de Personal*, Staff Law, 3777 of 1977, from the military era, is still in force. There has been no improvement in working conditions for prison staff. They work a 24-hour day followed by a 48-hour break. In reality they work 24 hours with only a 36-hour break. This means that they suffer from pressure of work as well as the concomitant aggressiveness and lack of job motivation.

Prison staff lack basic tools such as handcuffs, which are needed when transferring inmates, and in the San Felipe sector there are no vehicles to transfer inmates. The absence of an appropriate security system means that prison staff use their own security methods when transferring inmates, in some cases to the detriment of the physical integrity of the detainees concerned. There is no career path for determining how promotion is awarded and at present it is the bosses who decide who gets promoted. The current system lacks transparency. There are significant differences between the training, preparation and pay received by prison staff and that received by police despite the fact that both come under the Ministry of Justice and face

similar risks.

The lower grade staff lack the basic essentials to do their work such as disposable gloves and appropriate work clothes and have to use obsolete bullet-proof jackets.

They do not have the necessary training to treat the different types of inmates and illnesses with which they are confronted in the prison and do not have their own infirmary to work in.

### **The State's response**

For its part the State, represented in Washington by authorities from the Foreign Relations Secretariat and the Human Rights Secretariat<sup>20</sup>, and in the presence of representatives of the Inter-American Commission on Human Rights<sup>21</sup>, signed an agreement with regard to the hearing held concerning petition 1231-04 - "Inmates of Mendoza Prison".

The agreement dated 19 October 2005, which takes account of what was said at the hearing attended by the petitioners and authorities from Mendoza<sup>22</sup> as well as the subsequent analysis, places the following on record:

1) that the State endorses its commitment to adopt the necessary measures "to join with the province in fully carrying out the commitments made in the Asunción Agreement of 11 May 2005," by proposing an agenda for work which includes:

- a) evaluating the programmes the national authorities can provide with regard to the training of prison staff;
- b) a proposal to set up an Ad Hoc Commission to investigate the violent incidents that have taken place in Mendoza Prison - (Point 7 of the Asunción Agreement)
- c) looking at options for improving technological capabilities with regard to security and monitoring systems;
- d) analyzing the plans to set up a *Defensoría de ejecución*, Office of Court-Appointed Defence Lawyers responsible for enforcement of sentences, and create a *Defensor de los Derechos de las Personas Privadas de la Libertad*, Ombudsman of the rights of people deprived of their freedom.
- e) carrying out an in-depth study into the situation of young adults in order to implement specific programmes that jointly address containment and rehabilitation;
- f) evaluating specific measures to ensure the effective implementation of the rights of remand and convicted prisoners (holding defendants on remand only as an exception and establishing

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<sup>20</sup> Representatives of the State: Special Representative for Human Rights in the International Arena, Ambassador Horacio Mendez Carreras, representative of the Foreign Relations Secretariat of the Foreign Ministry, Dr Jorge Cardozo, and representatives of the National Human Rights Secretariat, Dr Andrea Gualde, Dr Ana Badillos and Dr Claudia Cesaroni.

<sup>21</sup> For the Inter-American Commission on Human Rights, the Rapporteur on Argentina, Commissioner Florentin Melendez, and Dr Elizabeth Abi-Mershed.

<sup>22</sup> For Mendoza province: the Undersecretary of Justice, Dr Alejandro Acosta; for the petitioners: Dr Carlos Varela Alvarez.

a progressive prison regime).

## **CONCLUSIONS AND RECOMMENDATIONS**

*“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.”*

Principle 1 of the United Nations *Basic Principles for the Treatment of Prisoners*.

### **Conclusions**

Amnesty International welcomes the pledges made by the Mendoza authorities to improve the prison system in the province and takes note of reports indicating that some improvements are already under way. However, the organization believes that only if the provincial government makes a firm long-term commitment to address the prisons problem can a major deterioration in the situation of inmates be avoided, thereby also preventing further violence erupting in the event that no radical changes are made.

It is important to stress that the written submission to the Commission contains a number of points that were agreed as a result of meetings held with inmates and the provincial authorities. These include: the right for each wing to appoint someone to take responsibility for negotiations within the different sections of the prison and for putting forward the views of the inmates; a daily visit by a doctor to each wing; and a commitment from the provincial government to speed up the appointment of a second *Juez de Ejecución*, judge responsible for the enforcement of sentences, before the end of this year.

However, with regard to the commitments made in the Paraguay Agreement, there is no news of a census of the prison population having been carried out, the health census and corresponding clinical history included in the agreement has not been done and the important point in the agreement relating to the purging of prison officers has not been complied with.

The current reality is that ill-treatment, the lack of medical care and the generally inhumane conditions of imprisonment do not make for human dignity or offer any chance of rehabilitation for inmates. The conditions in which the inmates of the Mendoza prison system live do not prepare them for their eventual return to society. In its 2003 report on the state of prisons in Argentina, the Working Group on Arbitrary Detention of the UN Commission on Human Rights said that “[a]lthough the Working Group realizes that public insecurity is a major concern in Argentina, neglect and disregard for prisoners’ rights do not constitute an effective means of dealing with this problem; on the contrary, it aggravates the problem”.<sup>23</sup> [When interviewed about the state of prisons in Mendoza, the head of the National Human Rights Secretariat, Rodolfo Mattarollo, said that “[p]risons today are conducive to crime:

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<sup>23</sup> UN document E/CN.4/2004/3/Add.3, 23 December 2003, paragraph 62.

*they encourage criminal behaviour among the prisoners”.24]*

The *Procurador Penitenciario de la Nación*, National Procurator for Prisons, Francisco Mugnolo, informed Amnesty International that, given the large number of federal detainees in Mendoza Prison, he and two advisers went there to see the conditions. He said that, in his report to officials from the *Secretaría de Justicia y Asuntos Penitenciarios*, Secretariat for Justice and Prison Affairs at the Ministry of Justice, he had alerted them to “the serious situation facing detainees due to the fact that the current overpopulation means that four or five detainees are sharing small cells in which there is nowhere for them to wash themselves or go to the toilet”. He also pointed out that “conditions do not meet the minimum standards required for human dignity or comply with Law 24,660 on enforcement of sentences”.<sup>25</sup>

Amnesty International also believes that the working conditions for prison staff have a negative influence on the province’s prison system. Lack of training and preparation for staff and the shortage of basic equipment to enable them to do their work adversely affects the running of prison units. There is no career path for prison staff and the promotions system is not transparent. Staff are not trained to deal with the different types of inmates and illnesses they come up against.

Amnesty International would like to highlight the vitally important work done by human rights lawyers, organizations from civil society and individual members of social and church groups who are interested in improving prison conditions for detainees. The work they do, which includes monitoring implementation by the provincial and national authorities of the treaties ratified by the Argentine State, should be supported publicly and in practical ways by the Mendoza authorities.

In conclusion, the Government of the Province of Mendoza should fulfil the commitments contained both in Argentina’s provincial and national legislation and in international human rights treaties. Amnesty International would like to stress the importance of fully and immediately implementing all 25 points contained in the Paraguay Agreement of May 2005 as well as the provisional measures ordered by the Inter-American Court of Human Rights.

In May of this year, the Governor said that “*we want a Mendoza [...] [to be] a State that brings well-being to the people [...] we want to improve the quality of life of everyone in Mendoza*”.<sup>26</sup> If this is to be done, the Mendoza authorities must not forget those of its citizens who are imprisoned. As the Inter-American Court of Human Rights has stated, “*the fundamental principle of respecting the dignity of the human person unquestionably extends to all human beings, whatever their circumstances, including those who are deprived of their*

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<sup>24</sup> Quote from *Clarín*, 14 January 2005.

<sup>25</sup> Communication from the National Procurator for Prisons to Amnesty International, Note No. 3052/P.P/04, 16 December 2004.

<sup>26</sup> Mensaje del Gobernador Julio César Cobos por la apertura de las sesiones ordinarias de la H. Asamblea Legislativa de Mendoza, (Message from Governor Julio César Cobos on the opening of the ordinary session of the Mendoza Legislative Assembly), 1 May 2005, <http://www.mendoza.gov.ar/Paginas/discurso2.htm>

freedom”.<sup>27</sup>

### **Recommendations**

As a first step towards improving living conditions for people held in the province’s prisons, Amnesty International urges the authorities of the province of Mendoza to comply with the rulings adopted by the inter-American human rights system, especially the provisional measures ordered by the Inter-American Court of Human Rights on 22 November 2004 and confirmed on 18 June 2005. In particular, the organization urges the provincial authorities to implement the measures contained in the agreement signed by the Inter-American Commission, representatives of the beneficiaries of the measures and the Argentine State on 11 May 2005, as ordered by the Inter-American Court in its decision dated 18 June 2005.

Given the concerns described in this document, Amnesty International is also calling on the provincial authorities to draw up a **Prisons Policy Plan** in consultation with non-governmental organizations and relevant members of civil society. The plan should be implemented with an appropriate budget that allows provision of the funding necessary to move forward with improvements both to the buildings and the operation of detention centres, including:

#### **Eradicating cruel, inhuman and degrading treatment**

- ◆ Immediate steps should be taken to ensure that detainees on remand and prisoners who have been convicted are held in conditions that meet international standards, including putting an end to overcrowding.
- ◆ The prisons should be restructured – end the chronic overcrowding.
- ◆ Recreation time should be extended and excessive lockdown should be brought to an end – the resolution of 25 August 2005 handed down by examining magistrate Luis Correa Llano should be implemented.

#### **Separating prisoners by category**

- ◆ Remand prisoners should be separated from convicted prisoners, high-risk prisoners should be kept separate from the rest of the prison population and minors under 21 should be separated from adults.

#### **Thorough impartial investigations**

- ◆ Amnesty International reiterates its call for all complaints brought by the relatives of inmates or their lawyers with regard to the death or ill-treatment of inmates to be investigated promptly, impartially and thoroughly.

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<sup>27</sup> Concurring opinion of Judge A. A. Cançado Trindade, decision of the Inter-American Court of Human Rights on provisional measures in the case of *The Mendoza Prisons*, 18 June 2005, para. 24. [AI translation]

◆ In the event that State officials are implicated in such deaths, fair and appropriate reparation should be made to the victims and their relatives, in accordance with the obligations incumbent on the Argentinian State under the relevant international human rights standards.

◆ Any prison official who is implicated in the torture or ill-treatment of inmates should be immediately removed from service while a thorough and impartial investigation is carried out, the results of which should be made public. Officials thought to be responsible for torture or ill-treatment should be brought to trial.

#### **Medical care**

◆ A programme to provide medical care and improve the conditions of hygiene should be implemented. All detainees and prisoners should receive medical care and treatment whenever it is necessary.

#### **The speeding up of trial proceedings**

◆ The provisions of National Prison Law 24,660 and its corresponding provincial law should be complied with.

◆ The post of *Juez de Ejecución Penal*, judge responsible for the enforcement of sentences, should be appointed in accordance with Law 7340 of 9 March 2005 to move procedures and trials forward in order to speed up legal proceedings for inmates. There should be two such judges.

◆ Create the post of *Procurador penitenciario*, Procurator for Prisons, who would be responsible for guaranteeing the rights of inmates who are being held on remand and of convicted prisoners.

#### **Prison staff**

◆ Increase the number of prison staff, including those involved in looking after the physical and psychological health of inmates, until it is sufficient to guarantee the lives and physical integrity of the inmates.

◆ Ensure that the groups of hooded prison guards who have beaten prisoners are no longer in operation; investigate and punish any staff responsible for such violations.

#### **Up-to-date register of all inmates**

◆ There should be an up-to-date bound register with numbered pages showing the following information for each detainee: a) his/her identity; b) the grounds for his/her detention and the competent authority which ordered it; c) the date and time of admission and departure”, as



established in the United Nations *Standard Minimum Rules for the Treatment of Prisoners* and recommended by the Inter-American Court in its decision of 22 November 2004.

**Supporting the work of human rights defenders**

◆ Support and protect organizations of civil society and lawyers working to defend the human rights of inmates and improve prison conditions.

## APPENDIX I

### LIST OF PRISONER DEATHS IN MENDOZA PRISON ESTABLISHMENTS BETWEEN 2004 AND 2005

NAME OF PRISONER	DATE OF DEATH	PLACE OF DEATH	DETAILS
<b>Alaniz Morales,</b> Roberto Damián (19 years old)	21 March 2004	Mendoza Prison Wing 2	killed by a sharp instrument
<b>Argüello Quiroga,</b> Pablo Javier (22)	6 July 2004	Mendoza Prison Wing 7	died following injuries received from a sharp instrument
<b>Camargo Quiroga,</b> Alejandro	30 October 2004	Gustavo André Penal Colony	died after being stabbed five times by a group of prisoners
<b>Camargo Quiroga,</b> Marcelo (28; brother of Alejandro)	3 February 2005	Mendoza Prison Wing 13	died in Hospital Lagomaggiore from injuries received from a sharp instrument on 21 November 2004
<b>Carreño Contreras,</b> Roy Antonio (21)	27 July 2004	Mendoza Prison Wing 6	attacked with a sharp instrument; taken to Hospital Lagomaggiore but did not recover.
<b>Castro Irazoque,</b> Ángel Patricio (29)	27 September 2004	Mendoza Prison Wing 13	attacked with a sharp instrument
<b>Cuellar Vázquez,</b> Luis	17 March 2005	Mendoza Prison Wing 5	stabbed to death
<b>García Contrera,</b> Esteban Apolinario (25)	27 March 2004	Mendoza Prison Wing 4	had been attacked with a sharp instrument on 16 March – died 11 days later in Hospital Central

<b>Manrique Inglés,</b> Marcelo Javier (27)	30 June 2004	Mendoza Prison Wing 8	attacked by another prisoner with a sharp instrument during an argument.
<b>Naranjo Nievas,</b> Federico Daniel (22); and Javier Orlando <b>Chacón Araujo</b> (26)	28 June 2004	Mendoza Prison Wings 11 and 12	died after being shot at by prison staff in an alleged escape attempt.
<b>Reales Reynoso,</b> Sergio Darío; José Alejo <b>Falcón Porrás</b> ; Javier Antonio <b>Gualpa</b> ; Mario Guillermo <b>Andrada Molfa</b> y Carlos Marcelo <b>Villaruel Murúa</b> ;	1 May 2004	Gustavo André Penal Colony	Sergio Darío Reales Reynoso died from injuries sustained from a sharp instrument during a fight with other inmates. The others died from suffocation following a fire started by inmates in protest at disciplinary measures introduced as a punishment for the fight.
<b>Roldán di Benedetto,</b> Jorge Antonio	28 August 2004		killed by a sharp instrument.
<b>Saez,</b> Ramón Pedro	4 June 2004	Mendoza Prison Gustavo André Penal Colony	died in Hospital Sicoli de Lavalle from burns sustained during the events of 1 May 2004 mentioned above.
<b>Salinas Ares,</b> Sergio Norberto (24)	4 December 2004	Mendoza Prison Wing 7	murdered and then dismembered.
<b>Sandes Aguirre,</b> Sergio César (20 años)	13 August 2005	Mendoza Prison Wing 11 (San Felipe Complex)	died from electrocution. According to official sources, this was caused by his handling of a clandestine electrical connection.
<b>Videla Fernández,</b> Ricardo David	22 June 2005	Mendoza Prison Wing 2	found hung by a belt in his cell. He had been confined to his cell for more than 20 hours a day and his visits had been restricted.

## **APPENDIX II AGREEMENT REACHED IN ASUNCION, PARAGUAY**

In the city of Asunción, Paraguay, on the 11<sup>th</sup> day of May 2005, in the context of a hearing called by the Inter-American Court of Human Rights in connection with the provisional measures issued in the “Case of the Mendoza Prisons”, the following people met: For the Inter-American Commission on Human Rights, the Rapporteur for Argentina, Commissioner Florentín Meléndez; for the State, Dr Jorge Nelson Cardozo (on behalf of the Foreign Relations Secretariat of the Ministry of Foreign Affairs, International Trade and Worship), Dr Claudia Cesaroni and Dr Ciro Annicchiarico (both on behalf of the Human Rights Secretariat of the National Ministry of Justice and Human Rights) and Dr Alejandro Acosta (Undersecretary for Justice for the Province of Mendoza); and for the beneficiaries of the provisional measures: their representatives, Dr Carlos Varela Álvarez and Dr Pablo Gabriel Salinas.

Having concluded their deliberations, the parties consented to keep the provisional measures in place and agreed to forward for the consideration of the Honourable Inter-American Court of Human Rights the following package of measures so that it can assess the possibility of specifically determining the contents of the resolution dated 22 November 2004, in order to guarantee the lives and physical integrity of the beneficiaries of that resolution:

1. With regard to prison staff, adopt measures that are designed to:

- a. In the immediate future: increase the prison staff assigned to guaranteeing security within the [prison] establishments;
- b. change the systems for guarding inmates so that there is proper monitoring and an effective presence in the wings;
- c. in the medium term: carry out a purge of the corps of prison officials in order to ensure that the service provided is appropriate;
- d. on a continuing basis, ensure that prison staff are given ongoing training and preparation; and
- e. order the authorities from the *Inspección General de Seguridad de la Provincia*, General Provincial Security Inspectorate, to report on the outcome of the investigations into official responsibility for the deaths and injuries in Mendoza Prison and [the death] of Gustavo André during 2004/2005 and to come to a decision with regard to the administrative proceedings that are under way.

2. Separating inmates by category:

a. In the immediate future: take the necessary steps to separate remand prisoners from convicted prisoners and young adults from adults; and

b. gradually: develop a classification mechanism that as a minimum takes account of the criteria established in article 8 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

3. Measures to prevent the presence of weapons inside [prison] establishments:

Take action so that weapons of any kind that might exist within the [prison] establishments are immediately seized. This should be done with appropriate monitoring, including judicial presence and inspection, in order to ensure its legality. At the same time, any measures that might be necessary to prevent weapons from being smuggled into the prison, including inspection of the areas used by prison guards, should be taken.

4. Disciplinary regime:

a. In the immediate future: all necessary steps should be taken to ensure that the defence lawyer of anyone subjected to disciplinary proceedings likely to result in punishment is notified as soon as possible in order to ensure that their right to legal representation can be properly exercised; and

b. in the medium term: all necessary legislative or other measures should be adopted in order to establish a disciplinary regime that accords with the American Convention on Human Rights and other relevant international human rights instruments.

5. Gradual improvements to the conditions of detention:

a. In the immediate future: under the responsibility of the Mendoza Ministry of Justice and Security, carry out a survey of the people interned in the province's prisons; provide access to working showers and toilets; supply toiletries on a weekly basis; ensure access to sufficient drinking water; take the necessary measures to ensure that all areas of the prison have lighting; prohibit excessive lockdown, the hooded repressive groups and restrictions on visits; ban staff with dogs from entering the wings as well as the area where visits takes place;

b. in the medium term: expand [the data recorded in] the register of inmates as recommended by the Inter-American Court of Human Rights in the Bulacio case, paragraph 132;

c. report every two months on the results of the survey of the state of health of the inmates including the clinical histories that were prepared and the treatment recommended and ensure that the medicines and diets suggested are provided;

d. in the medium term: provide psychological, psychiatric, dental and ophthalmological care;

e. guarantee inmates fair access to work programmes, recreation and formal and non-formal education and set up other programmes linked to rehabilitation;

f. reduce overcrowding by cutting the number of people held on remand (according to the criteria established in the recent ruling by the CSJN [National Supreme Court] with regard to Buenos Aires prisons), for which alternative mechanisms such as release on bail should be used; and

g. as far as overcrowding is concerned, it should be ensured that a progressive prison regime is properly implemented.

6. Activating the judicial system:

a. The time limits for trial proceedings established in the American Convention on Human Rights and the Code of Criminal Procedure for Mendoza province should be properly implemented;

b. the violence that took place in Mendoza Prison and Gustavo André [Penal Colony] should be investigated;

c. the obligation on judges, prosecutors and court-appointed defence lawyers to carry out periodic visits to prisons to meet with detainees and/or defendants who are held on the orders of the part of the judiciary with which they work should be properly implemented.

7. The setting up of an *ad hoc* Commission of Enquiry:

a. The purpose will be to investigate the violence and deaths that have taken place in the prisons of Mendoza province from January 2004 until now;

b. the said commission shall be specialized, independent and impartial in nature. It shall carry out its work within the framework of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions recommended by the UN Economic and Social Council in Resolution 1989/65 of 24 May 1989; and

c. shall be appointed by the national and provincial governments in accordance with the guidelines referred to previously.

8. Strengthening of the *Comisión de Seguimiento*, Monitoring Committee:

Membership of the monitoring committee set up in November 2004, which is made up of the national government, the Mendoza government, national senator Marita Perceval, the provincial Supreme Court and the petitioners, shall be enlarged in order to optimize its horizon of operation, with consideration being given to the possibility of including the national Interior Ministry, the national Cabinet Office and the Justice

Secretariat of the national Ministry of Justice and Human Rights.

9. Assistance and cooperation:

The national State commits itself to assisting the province of Mendoza by providing the resources necessary to implement the measures established in this document.