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**NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(A)
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1**

Argentina*

* The present document was not edited before being sent to the United Nations translation services.

I. METHODOLOGY FOR THE PREPARATION OF THE REPORT

1. The preparation of this report was coordinated by the Department of Human Rights of the Ministry of Foreign Affairs, which collated information supplied by various national agencies with competence in this area and by civil society. The report is based mainly on the recent periodic reports submitted by the Argentine State to the treaty bodies, which Argentina views as one of the major achievements of the universal system for ensuring compliance with the obligations assumed by States in the promotion and protection of human rights.
2. The report also took account of the Council's guidelines.¹ Because the report must not exceed 20 pages, priority has been given to the latest and most important achievements and the most troubling situations that merit greater attention on the State's part. For more detailed information on the realization of specific rights, the periodic reports submitted by Argentina to the various committees should be consulted.

II. LEGAL AND INSTITUTIONAL FRAMEWORK²

3. The political organization of Argentina is based on the federal republican representative form of government enshrined in the 1853 Constitution.
4. The system of government is presidential - which means, among other things, that the President is responsible for maintaining relations with international human rights bodies - and based on the separation of powers into executive, legislative and judicial branches. The country is organized into a federal system comprising 23 provinces and the Autonomous City of Buenos Aires.
5. Each province enacts its own constitution, by which it must provide for its own administration of justice and municipal autonomy and regulate the scope and content of its institutional, political, administrative, economic and financial system. Each province has the authority to regulate the promotion and protection of human rights, without prejudice to National Government's role in overall policy-setting and coordination.³
6. Following the August 1994 constitutional reform, under article 75, paragraph 22, of the new Constitution:

Treaties and concordats take precedence over laws. In the conditions of their validity, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child have constitutional rank, do not abrogate any article of the first part of this Constitution, and shall be interpreted as complementary to the rights and guarantees recognized thereby. They may be denounced, if necessary, only by the Executive, following approval by two thirds of the members of each Chamber. After being approved by Congress, other treaties and conventions on human rights shall require the vote of two thirds of the members of each Chamber in order to acquire constitutional rank.

7. Constitutional rank was subsequently also granted to the Inter-American Convention on the Forced Disappearance of Persons and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

8. These international human rights instruments have the same rank as all other constitutional provisions and prevail over national and provincial law. The constitutional status of human rights treaties facilitates access to justice, because with the constitutional reform it is now possible for any act of a federal or provincial public authority, in any of the three branches of government, that violates any provision of these treaties to be declared unconstitutional, without prejudice to any subsidiary remedies open to the inhabitants of Argentina in the human rights protection bodies within the regional and universal systems.

9. Moreover, with the recent ratification of the International Convention on the Protection of All Persons from Forced Disappearance, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Argentina has ratified nearly all existing international and regional human rights instruments.⁴

III. IMPLEMENTING AUTHORITIES FOR THE PROTECTION OF HUMAN RIGHTS

10. The implementing authorities in the Executive are the Office of the Secretary for Human Rights of the Ministry of Justice, Security and Human Rights⁵ and the Department of Human Rights of the Ministry of Foreign Affairs, International Trade and Worship.⁶

11. In the legislative branch there are various parliamentary commissions in the Senate and the Chamber of Deputies that deal with these issues.⁷ The position of Ombudsman is part of the legislative branch.⁸

12. In the judicial branch, provincial and federal courts have jurisdiction in human rights matters. It is the responsibility of the Supreme Court and lower courts to hear and decide all cases relating to matters governed by the Constitution, domestic law or treaties with foreign nations.⁹

13. There is also the Public Prosecutor's Office, which was established as an independent body with functional financial autonomy, and whose function is to promote the administration of justice in defence of the general interests of society, in coordination with the other State authorities.¹⁰

IV. ACHIEVEMENTS AND BEST PRACTICES

1. Promotion and protection of human rights as State policy

14. Since the restoration of democracy in 1983, Argentina has taken a principled position in the defence and promotion of human rights domestically, which has enabled it to contribute to the gradual development of international human rights law. For political, legal and institutional reasons having to do with the process of building a democracy as it emerged from a context of institutional breakdown and massive human rights violations, the State's policy on human rights has seen both progress and setbacks, particularly with regard to the investigation and punishment of those responsible for violations committed during the period of State terrorism.

15. The Office of the Secretary for Human Rights, the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights have convened a committee of independent experts to prepare a document entitled "Basis for a national

human rights plan under the Declaration and Plan of Action of the second World Conference on Human Rights (Vienna, 1993)". This task is coordinated by the Office of the Under-Secretary for the Promotion of Human Rights. By means of a survey of the human rights situation across the country, the committee will identify gaps, plot the degree of realization or violation of human rights and make proposals for the implementation of State policies and legislative reforms to help ensure their full implementation. This preparatory work will be an important source for the State in its elaboration of the National Human Rights Plan.

2. Combating impunity: memory, truth, justice and reparation

16. Since the advent of democracy in Argentina, successive governments have taken steps to address the human rights violations that occurred under the last military Government (1976-1983), including placing the juntas on trial and forming the National Commission on the Disappearance of Persons (CONADEP) to establish the facts and ensure full public disclosure of the truth.¹¹

17. The passing of the Due Obedience Act (No. 23,521) and the Clean Slate Act (No. 23,492) in 1987 made it impossible to pursue the judicial proceedings opened to deal with these violations and, as a result, pardons were granted in the 1990s to persons charged or tried in cases relating to incidents under the last military Government.

18. However, the national courts also tried to find alternatives to the Due Obedience and Clean Slate Acts so as to continue investigating the facts even though they were unable to pursue criminal prosecutions. The result was what were known as "truth trials",¹² intended to gather information about what had happened to the victims of the military dictatorship.

19. In 2003 there was a momentous change. For the first time all three branches of government successively adopted measures to reverse the process of impunity and press on with the investigation, trial and punishment of those responsible for violations committed during the period of State terrorism. First, in 2003, the Executive repealed the controversial Decree No. 1,581/01,¹³ thereby making judicial proceedings mandatory for requests for assistance or extradition under Act No. 24,767 on International Cooperation in Criminal Matters and Extradition.

20. Also in 2003, the legislature pronounced the Due Obedience and Clean Slate Acts null and void,¹⁴ anticipating their repeal and opening up the possibility of bringing to justice those responsible for serious human rights violations. Later, in the *Simón* case,¹⁵ the Supreme Court upheld a ruling of the National Appeal Court for Federal Criminal and Correctional Cases finding the Acts unconstitutional, thereby paving the way for the reopening of more than a thousand cases of human rights violations and for the arrest of hundreds of people.¹⁶

21. One example is the trial and conviction of former *represor* Miguel Etchecolaz,¹⁷ in which for the first time a domestic court applied the term "pattern of genocide" to events which had occurred in its own territory.¹⁸ The term was used again by the courts in other reopened cases that have had a major impact on public opinion.

22. On 13 July 2007 the Supreme Court¹⁹ declared the pardons granted in 1990 by then President Carlos Menem to the former Commander of Military Institutes, Santiago Omar Riveros, unconstitutional. Although the Court was ruling on a specific case, the decision can be applied to pardons granted to other soldiers and members of other security forces, insofar as this establishes an important precedent for admitting such cases to the Supreme Court.²⁰

23. The Court's decision marks the end of a process that started three years ago, when it ruled that the killings, abductions, torture and disappearances committed in the context of State terrorism are

not subject to the statute of limitations. One of the most important decisions was *Arancibia Clavel*,²¹ handed down on 24 August 2004, in which the Court ruled that such crimes should be considered crimes against humanity and therefore imprescriptible under the Convention on the Non-Applicability of the Statute of Limitations to War Crimes and Crimes against Humanity.

24. All of this is complemented with an active policy of recovery of historical memory, conducted by the State in accordance with the provisions of Commission on Human Rights resolution 2005/66 on the right to the truth, and on the basis that the right to the truth is not only a right of the victims of human rights violations and their relatives but a right of society as a whole to know the facts and circumstances surrounding such violations. In addition to the truth that emerges clearly from such judicial action, various other kinds of action - education and symbolic reparation, among others - have also been carried out.

The actions carried out include the following:

2.1 National Memory Archives

25. In 2003 the Executive created the National Memory Archives to collect, centralize and preserve information, testimony and documents on violations of human rights and fundamental freedoms that entail the State's responsibility, and information on social and institutional responses to these violations.

26. The Archives contain the historical documents of CONADEP, the files that were added following publication of the report *Nunca Más* (Never Again) and the files relating to reparation law.

27. In addition, a Federal Network of Memorial Sites²² has been created to coordinate the work of the government human rights agencies at the provincial and municipal levels and in the city of Buenos Aires that are responsible for managing the memorial sites of State terrorism, and to facilitate exchanges of experience on methodology and resources.²³

2.2 National Commission on the Right to an Identity

28. The Grandmothers of the Plaza de Mayo have worked on the right to an identity since the organization was founded in 1977.²⁴ In July 1992 they requested the establishment of a special technical committee, and the National Commission on the Right to an Identity (CONADI) was set up in November 1992, establishing a joint working relationship between NGOs and the State. Its original objective, to look for and locate children who disappeared during the last military dictatorship, was soon superseded as it received complaints about stealing and trafficking in children, dispossession of marginalized mothers, and adults with damaged identities.²⁵ To date 586 young people have applied to CONADI to clarify doubts about their identity.

2.3 Statutory provision on the award of benefits to the victims of human rights violations

29. Since 1991 a raft of legislation has been enacted at the national level to provide for financial compensation for the victims of State terrorism; the implementing authority is the Office of the Secretary for Human Rights. The following are examples:

(a) Act No. 24,043 (as amended by Act No. 24,096): this establishes a special benefit for people arrested between 6 November 1974 and 10 December 1983 and covers anyone who, despite being a civilian, was detained by order of a military court, whether or not they have initiated proceedings for damages in the ordinary courts.²⁶

(b) Act No. 24,411: this establishes a special benefit for cases of forced disappearance of persons and for killings presumed to have resulted from action taken before 10 December 1983 by the Armed Forces, security forces or paramilitary groups to suppress dissent.²⁷

(c) Act No. 25,192: this authorizes a lump sum payment for those killed in the course of action to put down the civil and military uprising against the military dictatorship established by the coup that overthrew President Juan Perón; coverage is limited to public or secret executions that took place between 9 and 12 June 1956.²⁸

(d) Act No. 25,914 (Children Act): this establishes a benefit for people born to mothers in prison or who, as children, were placed in detention with their parents, provided that one parent had been arrested and/or disappeared for political reasons, by order either of the Executive or of a military court. The benefit increases where the child was given a new identity or serious or very serious injury occurred, and applies whether they were born inside or outside prison or a detention centre.²⁹

30. All these actions on the part of the State and society at large are helping to bring closure in the battle against impunity that Argentina has waged more or less successfully since the advent of democracy. Significantly, the main driver of these changes has been the tireless struggle by civil society, i.e., Argentina's human rights movement, which has played a historic role in global efforts in defence of human rights and has been staunchly represented by organizations of global stature and scope such as the Mothers of the Plaza de Mayo and the Grandmothers of the Plaza de Mayo.

Combating discrimination

31. The National Institute against Discrimination, Xenophobia and Racism (INADI) is a decentralized agency set up in 1995 pursuant to Act No. 24,515,³⁰ which began work in 1997. Since March 2005, as prescribed by Presidential Decree No. 184, the Institute has come under the jurisdiction of the Ministry of Justice and Human Rights.

32. The governing board of INADI includes among its members representatives of the ministries of foreign affairs, international trade and worship, education, justice, security and human rights, and the interior. In addition, three non-governmental organizations are represented on the board of INADI: the Permanent Assembly for Human Rights (APDH), the Delegation of Argentine Jewish Associations (DAIA) and the Federation of Argentine-Arab Institutions (FEARAB).

33. The National Plan to Combat Discrimination, which was approved by Decree No. 1086/2005, entrusts INADI³¹ with coordinating and implementing the proposals which it contains.

34. With the adoption of this national plan, Argentina became one of the first countries in the world to have at its disposal a comprehensive analysis of discrimination within its society. The plan goes beyond the recommendations of the 2001 Durban Plan of Action, which were limited to advising States to take action against discrimination. For its part, Argentina's national plan provides an analysis of discrimination that covers three main areas: racism; poverty and social exclusion; and State and society.

35. The dialogue between religions forms part of efforts to combat discrimination, based on the harmonious coexistence in Argentine society of the major monotheistic religions. This dialogue is the fruit of national instruments that help to combat or protect against discrimination based on religion or belief.³²

36. These attainments at the domestic level have enabled Argentina to play an active role in this domain in the international arena. In this context, a number of initiatives have been mounted, such as the adoption of the document “Call for peace and dialogue among communities”.³³

37. Argentina has also played an active role in the meetings of the Preparatory Committee for the Durban Review Conference.

Protection of migrants

38. Argentina’s experience has shown that restrictive immigration policies do not solve problems: on the contrary, the erection of legal barriers only provokes further irregularities, leading to loss of life and boosting the profits of traffickers. Our country attaches fundamental importance to respect for the human rights of migrants, regardless of their immigration status, and believes it essential for States to take effective measures to facilitate the integration of migrants in their country of destination, eliminating all forms of discrimination, xenophobia or racism. In this conviction, Argentina has ratified the 2007 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

39. Similarly, Argentina has taken a leading role with regard to the protection of migrants, firmly believing that the increasing complexity of migratory flows in the twenty-first century necessitate a paradigm shift in the way in which international migration is handled: we must move away from a focus on security and frontier control - based exclusively on the concept of the nation-State - to a more holistic view of human rights, in which migrants and their families should be the focus of relevant government policy.

40. Argentina has taken this new paradigm as the basis for its migration policy, both in the provisions of the new National Migration Act (Act No. 25,871), in force in our country since January 2004, and also in its programmes to regularize the situation of immigrants.³⁴ This new law on migration, which was achieved through consultation and cooperation among different governmental and non-governmental sectors, reflects the commitment to full respect for the human rights of migrants and their families, while setting in place arrangements to make it easier for migrants to regularize their situation. The new law reflects our history, our geographical situation and our economic status in the region and, recognizing our tradition as an immigrant-receiving country, it helps ensure that migrants have every possibility to regularize their immigration status.

41. The enabling regulations for this law are currently being developed. The main respects in which it differs from the previous law, which remained in force for more than 20 years, are that the regulatory process is now much more difficult and provision must be made for situations of a new kind. Consultations are under way with all sectors of government involved, and also with non-governmental organizations working in this area. The regulatory process is being developed on the basis of respect for the principle that people have equal enjoyment of rights by virtue of their condition as human beings and not because of their nationality, and keeping in mind the need to avoid situations of reverse discrimination, in other words, not to introduce a kind of unequal treatment which is unfavourable to Argentine nationals. Until the new regulations are ratified by the Ministry of the Interior and the National Directorate of Immigration, however, steps are being taken to ensure that the spirit of Act No. 25,871 is duly upheld.³⁵

42. The organization Mercosur and its system of associate States are of great importance to our country. In 1966, the Meeting of Ministers of the Interior of Mercosur and its Associate States was

set up under the Mercosur framework, to work towards the adoption of agreed measures in this area falling within the jurisdiction of this inter-State body, and to this end two major themes were identified: migration and security.

43. Another fact of particular significance was the signing of the Agreement on Residence in Mercosur and its Associated States, currently being incorporated in domestic law by the countries of the bloc.³⁶ Argentina, without waiting for this instrument to enter into force in the bloc and without insisting on reciprocity, has launched its own national programme to regularize the status of migrants, entitled the “Patria Grande” programme.³⁷ Argentina has participated in a number of international forums at which the issue of migration has been discussed, and it has always stressed the need to approach this issue from a human rights standpoint.³⁸

Protection of refugees

44. As Argentina is a State party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the agency responsible for assigning refugee status in Argentina has supported a range of measures designed to improve the arrangements for establishing eligibility for refugee status and to speed up the assessment of applications.

45. This has helped substantially reduce the number of pending applications, compared to the situation in previous years, and has led to significant progress in protecting the rights of refugees. In turn, these efforts have earned the praise of the Office of the United Nations High Commissioner for Refugees (UNHCR). At the end of his visit to Argentina in April 2007, the Director of the UNHCR Bureau for the Americas commended the Argentine Government and the country’s civil society on the progress that had been made in providing support for the refugee population. He also expressed the appreciation of UNHCR to the Argentine people for the active support that they had rendered to refugees arriving in Argentina after fleeing armed conflict and persecution, and noted that the country’s legislation on refugees represented a major step forward. In concluding his visit to Argentina, the Director of the UNHCR Bureau for the Americas applauded the willingness shown by the Argentine Government to move swiftly to implement the Refugee Recognition and Protection Act and to continue exploring ways to help the refugee population become better integrated in Argentine society.³⁹

46. At the same time, UNHCR noted the importance of the statistics compiled by the secretariat of the Refugee Eligibility Committee, and the need to find innovative protection measures for refugees and to strengthen the procedures for assigning refugee status.⁴⁰

47. In Argentina the status of refugee is accorded to people who have suffered discrimination on religious grounds, to people who have been subject to sexually motivated persecution or persecution on grounds of sexual orientation and to conscientious objectors. In such cases Argentina has based its understanding of the definition of refugee on the most advanced criteria of currently applicable law, taking a broad view of the issue and approaching it from the standpoint of the full enjoyment of human rights, rather than that of State security. In addition, our country regularly accords refugee status to people who suffer persecution from non-State actors.

48. In Argentina, the task of determining eligibility for refugee status is based on compliance with the recommendations of UNHCR, which are already being implemented in Argentina as a matter of course. Each application for refugee status is considered on an individual basis, rather than based on oral or group decisions. There is also a possibility of review of the case by the Ministry of the Interior, following consultations with the Office of the Secretary for Human Rights in the Ministry of Justice and Human Rights.

49. In this context, it may also be noted that a number of the protection targets set for the region have already been satisfactorily met in Argentina, but that these in turn raise new challenges, the most significant among which at the current time is the need to draw up enabling regulations for the new Refugee Recognition and Protection Act, ratified in November 2006 (Act No. 26,165).⁴¹

50. Generally speaking, the new law sets out the basic principles on the protection of refugees and applicants for refugee status enshrined in international instruments: non-refoulement, including a prohibition on turning people back at the border; non-discrimination; not penalizing illegal entry; confidentiality; non-discrimination and the integrity of the family. The act sets up the new National Commission for Refugees, to replace the Refugees Eligibility Committee (CEPARE), which until now has been made up of immigration and foreign affairs officials. Under the provisions of the new act, the new Commission will include among its members representatives of the Ministry of Justice and Human Rights, the National Institute against Discrimination, Xenophobia and Racism (INADI) and the Ministry of Social Development, thereby facilitating the Commission's work to assist the integration of refugees.⁴²

51. The act also clarifies the procedure for appealing at second instance against a negative decision by CONARE, assigning the authority to rule on such appeals to the Minister of the Interior, following consultations with the Office of the Secretary for Human Rights in the Ministry of Justice.

52. The act makes provision for the "prima facie" granting of refugee status in the event of a mass influx of refugees, under which a person may be recognized as a refugee by virtue of belonging to a specified group of individuals.

53. The act also provides for the possibility that persons who have been granted refugee status in another country, but are unable to remain in that country because their fundamental rights and freedoms would be at risk, may apply to any Argentine diplomatic mission to relocate to Argentina, and that mission will be responsible for receiving such applications and drawing up the relevant file, which it will promptly transmit to the secretariat of the Commission for it to process.

V. CHALLENGES AND LIMITATIONS: RESPONSE BY THE STATE

54. Argentina is aware that, notwithstanding certain achievements, there are still areas of concern in the human rights domain and it continues to work on these areas, as detailed below.

Witness protection

55. In the course of launching proceedings against those who committed massive and systematic violations of human rights during the last military dictatorship, the State has taken measures to ensure the protection of the witnesses, victims, lawyers and court officials involved.

56. Under the Ministry of Justice a national plan has been drawn up to support and assist complainants, victims and witnesses of State terrorism⁴³ and, under the Ministry's Office of Crime Policy, a national protection programme formulated for witnesses and defendants.⁴⁴

57. Pursuant to Decree No. 606/07 of 22 May 2007,⁴⁵ the "Truth and Justice Programme" has been drawn up, under the responsibility of the executive office of the Cabinet of Ministers, with the primary objective of strengthening arrangements and procedures for the containment, protection and safety of witnesses, victims, lawyers and court officials involved in court cases or investigations relating to crimes against humanity, and also of their families. The programme has among its

purposes to coordinate and arrange with the other branches of government any tasks necessary to foster and provide institutional back-up for the quest for truth and justice in connection with the crimes against humanity committed during the period of State terrorism.

58. In this context, the disappearance of Mr. Julio López is a matter of continuing concern and has led to a number of specific measures in addition to those already cited above. Immediately after his disappearance, the Government launched a series of actions to trace him and these are still under way. The search has been extended to Paraguay and Brazil: some 2,000 witnesses have come forward; information campaigns are still being run in the media; posters are being put up and pictures of López displayed in police stations; and the reward of \$400,000 for any crucial information on him remains in effect. A court order has been passed authorizing the tapping of some 250 telephones and the screening of calls, in the hope of finding links or any other clues that can be studied more deeply, in addition to other action taken by the Office of the Secretary for Intelligence to locate him. Admissions to morgues and psychiatric hospitals have been checked, and unclaimed bodies exhumed for identification purposes.

Prisons situation

(a) Detention conditions

59. Argentina is in the process of bringing its prison legislation in line with international human rights standards, through a range of measures taken by the three branches of government.

60. Thus, on 29 July 1993, by Decree No. 1598,⁴⁶ the office of Government Procurator for Prisons was established as part of the executive branch of government, with the rank of Under-Secretary of State and with internal jurisdiction.

61. The primary role of the Procurator is to ensure protection of the human rights of persons held in the federal prison system, through the application of both domestic law and international instruments ratified by Argentina. In the performance of his or her tasks this official is not bound by any mandatory terms of reference and in this way is able to operate with complete independence.

62. Technically speaking, the office in question was designed as a form of “sectoral ombudsman’s office”, with the aim of exercising administrative oversight over the custodial conditions of persons in detention at the federal level. The Procurator has the power to make periodic visits to all prisons holding national or federal detainees. In addition, the Procurator may, at his or her own initiative or on the request of any party, investigate any act or omission that might infringe the rights of inmates, and is under an obligation to file criminal charges as and when necessary. The views of the Procurator may be formulated as recommendations to the Ministry of Justice, which is responsible for the monitoring and supervision of the national and federal prison system.

63. After years of experience in this field, the Procurator’s office undertook to conduct an external audit of the prison administration system, which took the form of a range of different measures, namely:

- Attending meetings at the request of prisoners
- Conducting spot checks of custodial facilities, to assess their detention conditions and see how they were organized, and to monitor compliance with existing legislation
- Requesting special reports on various aspects of the execution of sentences

- Submitting recommendations to the Ministry of Justice or to the prison administration
- Instituting criminal proceedings, as a means of alerting the judicial authorities to the perpetration of criminal offences, a procedural requirement vested in the Procurator for Prisons
- Filing an annual report to Congress

64. In 2004 Act No. 25,875 was ratified, establishing the Office of the Procurator for Prisons within the legislative branch of government. Under the act, the Office exercises its functions “without receiving instructions from any other authority”.⁴⁷

65. As stipulated by the act, the Procurator for Prisons is elected by the National Congress, as is the Ombudsman. Until such time as the act was ratified, the Procurator’s office operated under the Ministry of Justice, as indicated above.

66. The primary objective of the Office of the Procurator for Prisons is to protect the human rights of persons held in the federal prison system, of all persons deprived of their liberty for any reason under federal jurisdiction, and also of persons held in remand and convicted by the judicial authorities and held in provincial facilities, thus extending the Office’s jurisdiction to facilities that were not included in Decree No. 1598/1993 (police stations, prisons and any premises where persons are held in custody).

67. Moreover, in the case “Verbistky, Horacio, writ of habeas corpus”,⁴⁸ the Supreme Court of Justice stated that the United Nations Standard Minimum Rules for the Treatment of Prisoners, reflected in Act No. 24,660, set out basic guidelines covering any form of custody, in other words, that they should serve as a baseline in interpreting article 18 of the Constitution. In its decision the Supreme Court ruled that the legislation on pretrial detention and release from custody applicable in the province was inconsistent with the Constitution and international principles. It drew attention to the stipulation in article 18 of the Constitution that the country’s prisons should be healthy and clean, that they were designed to provide security and not to punish the prisoners detained within them, and that any measure that, on the pretext of a precautionary action, resulted in their unnecessary humiliation, would engage the responsibility of the judge who authorized it; it recognized the right of persons deprived of their liberty to be treated with dignity and humanity and, to ensure compliance with the law, also established effective judicial remedies. The Supreme Court further observed that the United Nations Standard Minimum Rules for the Treatment of Prisoners - while they did not have the same status as treaties incorporated into the corpus of federal constitutional law - had been transformed, through article 18 of the Constitution, into the international standard for persons deprived of their liberty. Those rules without any doubt provided a regulatory framework, of both national and international scope, which was clearly being violated in the province of Buenos Aires if the current situation in the province was verified and continued to obtain.

68. In the same case, the Court instructed the Supreme Court of the Province of Buenos Aires and the courts at all levels in the province to ensure that, in their respective areas of competence and in accordance with the urgent nature of the case, an end was put to any situation of aggravated detention that involved cruel, inhuman or degrading treatment or any other circumstance likely to engage the international responsibility of the federal State. The Court stated that the holding of adolescents and sick people in police stations or police cells constituted a flagrant violation of the general principles of the Standard Minimum Rules and, in all likelihood, presented incontrovertible cases of cruel, inhuman or degrading treatment. The Court also ruled that the Supreme Court of the

Province of Buenos Aires, through its competent courts, should put an end to the practice of detaining minors⁴⁹ or sick people for up to 60 days in the province's police stations. It also ordered that, every 60 days, the executive branch of the Buenos Aires provincial government should report to the Court on the steps that had been taken to improve the situation of detainees throughout the province. Finally, the Court urged the executive and legislative branches of the Buenos Aires provincial government to bring the province's criminal procedure law relating to pretrial detention and release from custody and its criminal enforcement and prisons law into line with constitutional and international standards.

69. In October 2007, a public hearing was held in the Supreme Court of the Province of Buenos Aires to review the situation of persons deprived of their liberty. The participants at the hearing agreed on the need for an effective forum at which the issue could be discussed and solutions sought to the continuing use of pretrial detention. At the same time, it was agreed that there had been a marked decrease over the past two years in the number of detainees, primarily in police stations.

70. In addition, situations have been reported in Mendoza province where detention conditions have been found to be unacceptable. In particular, Boulogne-Sur-Mer prison in the city of Mendoza and the Gustavo André penal colony were the subjects of measures handed down by the Inter-American Court of Human Rights on 22 November 2004.

71. These measures were taken in response to serious acts of violence within the said establishments over the course of 2004 that left more than 20 people dead. The poor detention conditions, including overcrowding and lack of basic health services, inadequate health care, lack of any system to separate different categories of inmates, coupled with the shortage of prison staff and their lack of training, brought about a hostile prison climate which necessitated the intervention of the monitoring bodies of the inter-American human rights system.

72. In response to this situation, the State has embarked on a programme of joint work with the competent authorities in the province, the petitioners who reported this case to the Inter-American Commission on Human Rights and the Commission itself.

73. Since that time, among other measures, various sectors of the establishments concerned have been reconfigured, new security technology has been obtained, health services and health care improved, and a number of steps taken to ensure compliance with the standards set by the United Nations Standard Minimum Rules for the Treatment of Prisoners. The number of trained prison staff assigned to ensure the security of these facilities has also been increased.

74. A monitoring committee has also been set up, composed of representatives of the central Government, of the province and of the petitioners to the Inter-American Commission on Human Rights, responsible for monitoring compliance with the measures ordered by the Court.

75. In addition, during 2007, a new prison complex was opened in Campo Cacheuta, in Mendoza province, built according to the latest standards of prison architecture, which has significantly improved the living conditions of inmates.

76. Finally, it should be noted that the petitioners and the Mendoza provincial government, acting with the support of the central Government, have reached an amicable agreement which has ended litigation in this case before the Inter-American Commission.

77. To that end, the Mendoza provincial government agreed to accept its responsibility for the events that triggered international intervention and their legal consequences, and undertook to provide reparations, both in cash and in kind. A document to that effect was signed by the parties on 28 August 2007.

78. In that context and as part of a system of preventive measures for the prison system in general, advocated by the central Government in cooperation with the Inter-American Commission on Human Rights, the Special Rapporteur on the rights of persons deprived of freedom of the Inter-American Commission on Human Rights, working together with the Office of the Under-Secretary for Prison Affairs in the Ministry of Justice and Human Rights and the Ombudsman's Office, in collaboration with the Ministry of Foreign Affairs, organized a workshop on good prison practices, held from 12 to 16 November 2007 at the Faculty of Law in the University of Buenos Aires and at the Academy of the Federal Prison Service.⁵⁰

79. Finally, it should be noted that, in November 2004, Argentina ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, the first country in America and the first country in the world with a federal government to ratify the protocol.⁵¹ The central Government is working towards setting in place the national preventive mechanism specified in the Optional Protocol, in line with the established standards.

(b) Pretrial detention

80. Various measures have been taken, particularly in the judicial and legislative spheres, to temper the unrestrained use of pretrial detention.

81. Act No. 25,430 (amending Act No. 24,390) of 2001, which governs the duration of pretrial detention stipulates, in article 1, that: "Pretrial detention may not last for more than two years. However, when the number of offences attributed to the accused or the obvious complexity of the case may have rendered it impossible to conclude the trial within the prescribed time period, the period may be extended by one year on the basis of a reasoned decision that shall be immediately notified to the appropriate appeals court for review." Article 2 stipulates that the time periods established in article 1 shall not be counted when said periods are served after a verdict has been delivered, even if it is not binding.

82. The slow but steady change in the way pretrial detention is viewed in case law must also be taken into consideration. Recent decisions of the Supreme Court of Justice expressly uphold the need to use pretrial detention as an exceptional precautionary measure and to apply it in accordance with stringent legal criteria rather than indiscriminately.

83. Particular attention is drawn to the Supreme Court decision of 3 May 2005 in the case of "*Verbitsky, Horacio writ of habeas corpus*", in which the Court established standards for the protection of the rights of persons deprived of liberty that the various branches of government are required to respect in order to fulfil their obligations under the Constitution and international human rights treaties having constitutional rank. These obligations include ensuring that pretrial detention is reasonable, both in its application and in its duration.

84. Other recent decisions of the federal and criminal courts have established that the rights established in international treaties take precedence over procedural norms, as in the case of the Convention on the Rights of the Child, where female prisoners with minor children may be released from prison so that their children may enjoy their right to live with their mothers.

85. In 2006, the Supreme Court of Justice of Buenos Aires ruled unconstitutional article 24 of the Criminal Code, which regulated the way in which days of pretrial detention were calculated for prisoners given life sentences.⁵² Specifically, this norm established that pretrial detention was to be calculated as follows: for two days of pretrial detention, one of imprisonment; for one day of pretrial detention, one of imprisonment or two of deprivation of civil rights or a fine in an amount ranging from 35 pesos to 175 pesos, to be determined by the court.

86. Among the legislative measures being taken to moderate the use of pretrial detention is a draft bill recently adopted by the Chamber of Deputies and pending in the Senate; the bill contemplates the option of house arrest for mothers of small children, elderly persons and persons whose health might be adversely affected by incarceration.

87. Lastly, it should be noted that in March 2006 the legislature of Buenos Aires province approved Act No. 13,449, amending the regulations governing prison release in the Code of Criminal Procedure. As a result of this reform, certain offences for which release was automatically ruled out no longer fall into this category. An individual shall be held in pretrial detention only when such detention is absolutely necessary to ascertain the truth, ensure continuation of the proceedings and apply the law.

VI. THE HUMAN RIGHTS OF VULNERABLE GROUPS

Human rights of indigenous peoples

88. Within the context of the general legal framework, attention is drawn to article 75, paragraph 17, of the Constitution, which attributes the following responsibilities to Congress: “To recognize the ethnic and cultural pre-existence of the indigenous peoples of Argentina. To ensure respect for their identity and their right to a bilingual and intercultural education; to recognize the legal personality of their communities and the communal possession and ownership of the lands they traditionally occupy, and to regulate the transfer of other lands that are appropriate and adequate for human development, none of which may be entailed, transmitted or made subject to assessments or attachment. To ensure their participation in the management of their natural resources and other interests that affect them. The provinces may exercise these functions jointly.”

89. On the basis of this constitutional recommendation, a specific legal status has been developed for indigenous peoples that encompasses the obligation to adapt the framework of the State and its institutions in a way that recognizes this ethnic and cultural pluralism.

90. Without prejudice to the foregoing, Argentina is aware that the subject of land ownership has traditionally lain at the heart of the indigenous problem and has become the principal demand of Argentina’s indigenous peoples.

91. The National Institute of Indigenous Affairs (INAI)⁵³ is a national body created by Act No. 23,302 to develop and implement policies concerning the country’s indigenous peoples. It is a decentralized body that operates under the authority of the Ministry of Social Development. Its main purpose is to promote the comprehensive and sustainable development of indigenous communities.

92. To this end, INAI has established a programme to build communities and improve access to justice, through which it provides the indigenous community, upon request, resources to meet expenses incurred in defending or promoting legal action to regularize the status of their ancestral lands.

93. INAI also acts as the implementing body for Emergency Act No. 26,160, on possession and ownership; under this Act, a four-year emergency is declared with regard to possession and ownership of lands traditionally occupied by the country's indigenous communities.

94. In addition, INAI has defined the manner in which the Indigenous Communities Partnership Programme (PACI) is to be implemented; this programme seeks to launch a new process for improving living conditions through the consolidation of identity, and its benefits cover all indigenous peoples of Argentina.

95. Lastly, INAI has set up the Indigenous Participation Council (CPI) as a body in which indigenous peoples can participate in the design of public policies affecting them. CPI is composed of representatives of all autochthonous peoples in each province. They are elected in the representative assemblies of their communities, and this ensures that they are genuinely representative.

96. After an application for the remedy of amparo was filed with the Supreme Court of Justice by the Ombudsman, the Court ordered that the national Government and the Government of Chaco province should provide food and drinking water and means of transport and communication to health posts of the indigenous communities in that province, the majority of whom are Toba.

97. Since 2007, the Ministry of Social Development and the Ministry of Health have continued to implement comprehensive assistance programmes while the provincial authorities have declared a health, food and education emergency (Provincial Decree No. 115/07) with a view to addressing this situation. The Instituto del Aborigen Chaqueño (IDACH) is an active participant in these initiatives.

Women's rights

98. In recent years Argentina has been conducting a review of public policies from the standpoint of social inclusion with a view to ensuring equal opportunities for men and women.

99. To this end it has sought to introduce a cross-cutting gender perspective in the State structure through various offices and agencies, such as the establishment in 2006, within the Ministry of Social Development, of the Juana Azurduy Programme to Strengthen Women's Rights and Participation, and the institutionalization in 2007 within the Ministry of Defence of the Observatory for Women in the Armed Forces, which acts as a mechanism for compiling, studying and drawing conclusions from information on the situation of women and their integration in the military.

100. It should also be noted that the National Women's Council has become the body responsible for implementing and following up the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW) and the main national body for the advancement of women. In addition, the Ad Hoc Committee for Follow-up to the Platform for Action of the Fourth World Conference on Women, held in Beijing, China, continues in operation; it is coordinated by the Special International Office of Women's Affairs of the Ministry of Foreign Affairs and is an additional mechanism for monitoring the implementation of the commitments undertaken by Argentina in regional and international forums relating to women.

101. At the same time, Argentina has taken affirmative action measures in support of efforts to make women more visible in the public arena and enhance their access to decision-making positions. It was in this spirit that Act No. 24,012, or the Women's Quota Act, was adopted; as a result of this legislation, 38.89 per cent of the Senate and 39.61 per cent of the Chamber of Deputies are now women. It should be noted that the 2007 elections saw, for the first time in the history of

the country, the election of a woman President, five women Vice-Governors (in Misiones, Santa Fe, La Rioja, Catamarca and Neuquén provinces) and one Deputy Head of Government, in the Autonomous City of Buenos Aires. In addition, and again for the first time, a woman was elected Governor of Tierra del Fuego province.

102. Against this backdrop of high-level participation by Argentine women in the country's political life, concern regarding women's participation in the economy and their integration in the labour force on an equal footing with men has become a priority of the Argentine Government. Thus, taking into account the wage gap that still exists between men and women and the lack of economic recognition for domestic work performed by women (the only type of work from which there is no retirement), changes to the regulations of the Argentine retirement and pension systems⁵⁴ have led to a real turning point. As a result of this reform, women aged 60 who do not have 30 years of contributions or have not reached the minimum retirement age are now entitled to a minimum income and to obtain family allowances and benevolent society coverage. It should be noted that as of August 2007, the number of beneficiaries of this temporary reform totalled 1,419,001, or 88 per cent of all women, which represents tangible recognition by the State of the real contribution women make to the national economy.⁵⁵

103. Argentina has also attached priority to combating violence, which has women as its principal victims, although it also has direct impact on the family and society in general. To this end it has instituted, through the National Women's Council, a National Plan for the Eradication of Violence against Women and a unified protocol on support.

104. In March 2007 Argentina ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and hosted the third meeting of experts of the monitoring mechanism for the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (the Belén do Pará Convention), which was held in July 2007 in Buenos Aires, thus demonstrating Argentina's commitment to and follow-up of the commitments it has undertaken with a view to combating, punishing and eradicating violence against women.

105. With regard to women's sexual and reproductive rights, in 2002 the country adopted Act No. 25,673, establishing the National Sexual Health and Responsible Procreation Programme within the framework of the Ministry of Health.

106. This Act recognizes that the right to health includes sexual health and the autonomy of all persons in choosing, individually and freely, on the basis of information and counselling, an appropriate and reversible method of contraception that will allow them to determine the number of children they wish to have, when they wish to have them and the spacing between births. It also advocates the establishment of a sexual and reproductive health counselling service within the country's public health services and encourages the prevention and timely detection of diseases of the genitals and breasts, thereby promoting the prevention and early detection of HIV/AIDS infection. By the end of 2006, more than 1,600 health centres and hospitals received services from this programme, with assistance provided to 1.9 million persons.⁵⁶

107. Furthermore, 2006 saw the adoption of Act No. 26,150, establishing the National Sex Education Programme. This Act is premised on the notion that women are full subjects of law, and it promotes the full exercise of women's citizenship by making it possible for women to take decisions that will allow them to integrate their domestic and working roles more effectively. The Ministry of Education, Science and Technology is currently developing materials for inclusion in school curricula.

108. Lastly, Act No. 25,929, on the rights of parents and children during childbirth, known as the Humanized Childbirth Act, was adopted in September 2004, while Act No. 26,130, on surgical methods of contraception, was adopted in August 2006. The latter regulates such medical procedures as tubal ligation and vasectomies in all public and private hospitals and clinics in Argentina. It recognizes the right of all persons who are of legal age and capacity to access to such surgical methods of contraception, subject to their informed consent.

The rights of children and adolescents

109. In 2005, the Comprehensive Child and Adolescent Protection Act, Act No. 26,061,⁵⁷ was adopted; this Act repealed Act No. 10,903, known as the Welfare Act, which had been in force since 1919 and was the product of a system that viewed children as being in need of protection, thus giving rise to what was known as the “system of custodianship” or the “doctrine of irregular situations”.

110. Article 2 of this Act makes the application of the Convention on the Rights of the Child compulsory in every administrative, judicial or other act, decision or measure adopted in respect of persons under 18 years of age.

111. Under Argentine law, the principle of the best interest of the child is a general rule, given that it is established in an international treaty having constitutional hierarchy. The firm commitment of the nation’s courts to providing special protection for children’s best interests is reflected in the variety of jurisprudence establishing such protection.⁵⁸

112. Article 43 of the aforementioned Act establishes the National Secretariat for Children, Adolescents and the Family⁵⁹ placed under the executive branch as a specialized body dealing with the rights of children and adolescents; it is composed of representatives of the various ministries and of civil society organizations. Decree No. 416/2006⁶⁰ placed the Secretariat under the authority of the Ministry of Social Development. In addition to this body, a Federal Council on Children, Adolescents and the Family, comprising a representative from each province and from the Autonomous City of Buenos Aires, was established, and this has conferred an unprecedented federal character on public policy regarding children.

113. With regard to the Ombudsman for the Rights of Children and Adolescents, established in article 47, it should be noted that a bicameral congressional committee has been established to appoint the Ombudsman, even though the institution itself has not yet become operational.

114. The Ombudsman for the Rights of Children and Adolescents is required to submit annual reports on his or her work to Congress. The Ombudsman must also attend, on a rotating quarterly basis, meetings of the standing committees specializing in this area in each house of Congress to submit any reports that they may require, or at any time the committee so requires.

VII. SOCIAL EXCLUSION: EFFECTIVE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

115. Despite economic growth and the gradual improvement in the poverty, extreme poverty and unemployment indices in recent years, a large segment of Argentina’s population continues to suffer from social exclusion and an inability to fully enjoy their economic, social and cultural rights. Accordingly, efforts to combat poverty and exclusion are one of the State’s principal objectives.

116. After the serious political, social and economic crisis of December 2001, the sharp increase in prices (primarily of foodstuffs, which account for 46 per cent of the income of low-income

households) in 2002 aggravated the social situation. The percentage of the population classified as poor reached 57.5 per cent in October 2002, representing 13,870,000 persons in 3,198,000 households, which indicated that 45.7 per cent were living in extreme poverty.

117. During the first half of 2003, more than half the population was considered to be poor (54 per cent), representing 11,074,000 persons living in 2,524,000 households. At the same time, the extreme poverty level reached 27.7 per cent of the population in urban areas covered by the permanent household survey, meaning that 4,749,000 persons living in 1,044,000 households were living below the extreme poverty line.

118. According to figures from the National Statistical and Census Institute (INDEC), by December 2006 the situation had improved significantly, as some 1,571,000 households had emerged from the shadow of poverty, with 791,000 of them ceasing to live in extreme poverty.

119. The Ministry of Social Development⁶¹ has implemented social plans and programmes with a view to improving the situation of excluded families. An example is the Manos a la Obra [Get to Work] Plan designed to promote economically sustainable development that will generate employment and improve families' quality of life. The plan seeks to promote social inclusion through job creation and participation in community life.

120. From its inception, the plan has sought to increase the income of vulnerable groups, promote the social economy sector and strengthen public and private organizations while encouraging the creation of associations and networks aimed at improving local social development processes. It is directed chiefly at persons, families and groups living in poverty, without employment and/or in a state of social vulnerability, and seeks to involve them in socio-productive experiences.

121. Another example is the Families Plan, which promotes respect for human rights, the protection of elderly persons, the integration of persons with disabilities, and equal treatment and opportunities for men and women within the family, while endeavouring to provide family education, including a sound grasp of motherhood as a social function.

122. This plan is designed to include activities in the areas of prevention, promotion and assistance, such as income-related programmes (Families for Social Inclusion, non-contributory pensions, assistance in dealing with climate-related emergencies, etc.). The plan is cross-cutting vis-à-vis the two other plans and is integrated with them.

123. Lastly, mention should be made of the National Food Security Plan. This plan is intended for families who live in socially disadvantaged situations characterized by nutritional vulnerability. Since it became operational, it has become a cornerstone of State food policy that goes beyond emergencies, since it seeks to raise the standard of living of the entire population and bring about improvements in health and nutrition in the medium and long terms.

124. Persons covered by this plan are children under the age of 14, pregnant women, malnourished persons, persons with disabilities and elderly persons living in socially disadvantaged conditions who show evidence of nutritional vulnerability.

125. It must also be noted that the courts are increasingly adopting decisions mandating assistance to families living in extreme poverty, even in situations where the provision of basic services is in the hands of private companies (as is the case with drinking water, for example).⁶² These decisions have their fundamental basis in international norms and standards relating to economic, social and cultural rights, and they are gradually constituting a body of jurisprudence in the area of economic, social and cultural rights.⁶³

Notes

¹ Resolución 6/102 del Consejo de Derechos Humanos.

² Información detalla y actualizada se encuentra en el último informe periódico de la Argentina presentado al CERD.

³ Como ejemplo de las facultades de coordinación que tiene el Gobierno Nacional merece destacarse que desde el año 2003, la Secretaría de Derechos Humanos ha propiciado la creación o jerarquización de las áreas provinciales de derechos humanos, con el propósito de contribuir al fortalecimiento de los derechos humanos en todo el país. Asimismo se consideró necesario constituir un ámbito integrado por Altas Autoridades en Derechos Humanos de la Nación, Provincias y Ciudad Autónoma de Buenos Aires (conocido también como Consejo Federal de Derechos Humanos) en el cual se debaten iniciativas, y se coordinan diversos temas que refieren a la promoción y protección de derechos humanos.

⁴ Recientemente, firmó la Convención sobre los Derechos de las Personas con Discapacidad, el Protocolo a la Convención Americana sobre Derechos Humanos relativo a la Abolición de la Pena de Muerte y el Segundo Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos destinado a abolir la Pena de Muerte. Asimismo, reconoció la competencia del Comité para la Eliminación de la Discriminación Racial para recibir y examinar comunicaciones.

⁵ La Secretaría de Derechos Humanos del Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación (www.derhuman.jus.gov.ar) en su función de promoción y protección de los derechos humanos, realiza múltiples acciones con la finalidad de velar por el cumplimiento de las normas que reconocen y reglamentan los derechos fundamentales del país y de garantizar la igualdad de oportunidades y la no discriminación de grupos y personas. Conforme surge del Decreto 21/2007, la Secretaría de Derechos Humanos, cuenta con una Subsecretaría de Protección y una Subsecretaría de Promoción de Derechos humanos. Algunos de sus objetivos pueden enunciarse sintéticamente de la siguiente forma: a) elaboración, ejecución y seguimiento de las políticas, planes y programas para la promoción y la protección de los derechos civiles, políticos, económicos, sociales, culturales, comunitarios y los derechos de incidencia colectiva en general; b) Coordinación de acciones vinculadas a la promoción y protección de los derechos humanos con otros Ministerios del Poder Ejecutivo Nacional, Poder Judicial, Ministerio Público, Defensor del Pueblo y el Congreso de la Nación y con las organizaciones de la sociedad civil, en especial las organizaciones no gubernamentales de derechos humanos; c) Planificación, coordinación y supervisión de la ejecución de las actividades de formación y fortalecimiento institucional en materia de derechos humanos y derecho internacional humanitario, tanto en el ámbito estatal como en lo atinente a la sociedad civil; d) Coordinación de las acciones del Consejo Federal de Derechos Humanos e implementar las delegaciones de la Secretaría De Derechos Humanos en el interior; e) Ejercicio de la representación del Estado Nacional, que incumbe al Ministerio ante los organismos internacionales de derechos humanos; f) Asistencia en lo relativo a la adecuación normativa del derecho interno con el derecho internacional de los derechos humanos; g) Observación activa, el seguimiento y la denuncia de casos y situaciones relativos a los derechos humanos, civiles, políticos, económicos, sociales, culturales, comunitarios y de incidencia colectiva, conjuntamente con los organismos nacionales, provinciales, municipales y organizaciones de la sociedad civil vinculados a esta temática.

⁶ La Dirección General de Derechos Humanos (www.mrecic.gov.ar) identifica, elabora y propone planes, programas, proyectos y objetivos de política exterior en materia de derechos humanos y actúa en la conducción de la política exterior vinculada a esos temas ante los organismos, entidades o comisiones especiales internacionales. Asimismo, participa en el estudio de las adecuaciones de la legislación a los compromisos contraídos en el ámbito internacional en materia de derechos humanos, en la celebración y conclusión de tratados y en la determinación de la elegibilidad de los refugiados. Tiene asignada la competencia primaria en la participación de la República Argentina en las sesiones de todos los organismos de las Naciones Unidas en materia de Derechos Humanos.

⁷ En el área del Poder Legislativo se han establecido instancias especiales con competencia en materia de derechos humanos. El Senado de la Nación, creó en diciembre de 1983 una Comisión de Derechos y Garantías. El ejemplo fue emulado por la Cámara de Diputados el 30 de septiembre de 1992, donde se crearon las siguientes comisiones de Familia, Niñez, Mujer y Adolescencia, de la Tercera Edad y de Discapacidad. En ambos casos, la integración de las comisiones incluye parlamentarios provenientes de todos los partidos políticos con representación parlamentaria. Para más información ver www.senado.gov.ar y www.diputados.gov.ar.

⁸ El 1 de diciembre de 1993, el Congreso de la Nación sancionó la ley N° 24.284 que creó, en el ámbito del Poder Legislativo, la Defensoría del Pueblo.

Finalmente la figura quedó incorporada en el artículo 86 de la Constitución Nacional reformada en 1994 establece: "El Defensor del Pueblo es un órgano independiente instituido en el ámbito del Congreso de la Nación, que actuará con plena autonomía funcional, sin recibir instrucciones de ninguna autoridad. Su misión es la defensa y

protección de los derechos humanos y demás derechos, garantías e intereses tutelados en esta Constitución y las leyes, ante hechos, actos u omisiones de la Administración; y el control del ejercicio de las funciones administrativas públicas.

El Defensor del Pueblo tiene legitimación procesal. Es designado y removido por el Congreso con el voto de las dos terceras partes de miembros presentes de cada una de las Cámaras. Goza de las inmunidades y privilegios de los legisladores. Durará en su cargo cinco años, pudiendo ser nuevamente designado por una sola vez. La organización y funcionamiento de esta institución serán regulados por una ley especial”.

Para más información ver www.defensor.gov.ar.

⁹ Para mayor información ver www.pjn.gov.ar.

¹⁰ Tiene por función promover la actuación de la justicia, en defensa de la legalidad, de los intereses generales de la sociedad, en coordinación con las demás autoridades de la República (Art. 120 de la C.N.). El Ministerio Público está integrado por un procurador general de la Nación y un defensor general de la Nación.

En el ámbito del Ministerio Público existe una Fiscalía de Política Criminal, Derechos Humanos y Servicios Comunitarios y una Unidad de Asistencia para los casos de violaciones de derechos humanos durante el terrorismo de Estado.

Para más información ver www.mpf.gov.ar.

¹¹ Dicha Comisión emitió un informe que fue publicado en el título de “Nunca más”. A pesar que no incluyó la determinación de responsabilidades individuales, tuvo por objeto presentar una crónica objetiva de los hechos. Así, la CONADEP puede ser calificada como una Comisión de la Verdad, que estableció las bases para futuros casos judiciales.

¹² Uno de los primeros casos fue el de las monjas francesas que desaparecieron durante la dictadura militar. En el marco de ese caso, el Equipo de Antropología Forense ha localizado los cuerpos de la religiosa francesa Leonie Duquet y de una de las fundadoras de la agrupación Madres de Plaza de Mayo, Azucena Villaflor, probándose de esta forma la metodología de los llamados “vuelos de la muerte”.

¹³ Dicha norma disponía el rechazo automático de los exhortos por hechos sucedidos en el marco de terrorismo de Estado, apelando, principalmente, a los principios de territorialidad y cosa juzgada. Dicho decreto permitió garantizar la impunidad de represores frente a procesos judiciales realizados en otros países. Ver texto completo de la ley en www.infoleg.gov.ar.

¹⁴ La nulidad de tales leyes fue declarada a través de la Ley N° 25.779.

¹⁵ “*RECURSO DE HECHO Simón, Julio Héctor y otros s/privación ilegítima de la libertad*”, Causa N° 17.768 (Poblete), Corte Suprema de Justicia de la Nación, 14/06/2005.

¹⁶ Cabe hacer notar que según información provista por el Procurador General de la Nación, el número de denuncias por los hechos ocurridos asciende a más de 1.200 en todo el país. A su vez, el número de individuos actualmente en prisión preventiva por estas causas es de aproximadamente 245. La Procuración General de la Nación, a través de la resolución N° 163/04, creó la Unidad de Asistencia para los casos de violaciones de derechos humanos durante el terrorismo de Estado.

¹⁷ “*Etchecolaz, Miguel s/ homicidio calificado y asociación ilícita y otros*”, C.N° 2251/06, Tribunal Oral Federal n° 1 de La Plata, del 19/9/06.

¹⁸ Hasta el momento, todas las decisiones judiciales que dictaminaron la existencia de un cuadro de genocidio fueron producto de tribunales internacionales (i.e. Nuremberg, Rwanda), o de decisiones judiciales de un tribunal de un país pero respecto a hechos sucedidos en otro (i.e. las decisiones judiciales en España respecto a hechos ocurridos en Argentina y Guatemala).

¹⁹ “*Mazzeo, Julio y otros s/recurso de inconstitucionalidad*”, Corte Suprema de Justicia de la Nación, 13/7/2007.

²⁰ Asimismo, en el fallo de referencia, la Corte anticipa que resulta igualmente inconstitucional si el indulto se aplicó a personas procesadas que aún no tienen sentencia, o a personas que ya fueron condenadas.

²¹ “*Arancibia Clavel, Enrique Lautaro s/ homicidio calificado y asociación ilícita y otros*- Causa N° 1516/93-B”, Corte Suprema de Justicia de la Nación, 24/08/2004.

²² Secretaría de Derechos Humanos, Resolución 14/2007.

²³ Como ejemplos se señala que el 24 de marzo de 2004, el Presidente, Néstor Kirchner, transfirió el predio donde funcionó el centro clandestino de detención conocido como “ESMA” (Escuela de Mecánica de la Armada) para la creación de un “Espacio para la Memoria y para la Promoción y Defensa de los Derechos Humanos”. El 24 de marzo de 2007, el Poder Ejecutivo Nacional y la Comisión Provincial de la Memoria de Córdoba celebraron un acuerdo en el que establecieron el centro clandestino de detención conocido como “La Perla”, ubicado en la provincia de Córdoba como Sitio de Memoria. Experiencias similares se están llevando adelante en la provincia de Tucumán, en la ciudad de Mar del Plata y en otras regiones de la Argentina.

²⁴ A febrero de 2007, el número de niños encontrados ascendía a 86.

²⁵ Por disposición de la Resolución N° 1328/92 de la entonces Subsecretaría de Derechos Humanos y Sociales del Ministerio del Interior, se creó una comisión técnica destinada a promover la búsqueda de los niños desaparecidos cuyas identidades eran conocidas y de los niños nacidos de madres en cautiverio. El artículo 5 de esta resolución autorizó a la Comisión a requerir la colaboración y asesoramiento del Banco Nacional de Datos Genéticos. En septiembre de 2001, la Ley N° 25.457 fue sancionada, otorgándole a la CONADI un marco legal, y en la actualidad, la Comisión funciona en el ámbito del Ministerio de Justicia y Derechos Humanos. En 2004, el Poder Ejecutivo Nacional creó una Unidad Especial de Investigación de Niños Desaparecidos como Consecuencia del Accionar del Terrorismo de Estado que asiste en los casos vinculados con este tema y además está facultada para iniciar sus propias investigaciones, debiendo transmitir los resultados a las autoridades judiciales.

²⁶ A diciembre de 2007 la Secretaría ha recibido 21.335 solicitudes para recibir este beneficio y se resolvieron favorablemente 15.573.

²⁷ A diciembre de 2007 la Secretaría ha recibido 9.541 solicitudes para recibir este beneficio de las cuales se resolvieron favorablemente 7.785.

²⁸ A marzo de 2007 la Secretaría ha recibido 31 solicitudes para recibir este beneficio, de las cuales se resolvieron favorablemente 25.

²⁹ Textos completos de las leyes pueden consultarse en www.infoleg.gov.ar.

³⁰ Ver texto completo de la ley en www.infoleg.gov.ar.

³¹ El INADI posee un Centro de Denuncias que está destinado a la recepción, análisis, asistencia y asesoramiento de personas o grupos que se consideran víctimas de prácticas discriminatorias. Para mayor información sobre competencia y funciones del INADI ver www.inadi.gov.ar.

³² Dichas garantía o derechos se encuentran en: la Constitución Nacional, leyes nacionales, entre otras se destaca la Ley 23.592 (Actos discriminatorios) y todos los instrumentos internacionales de derechos humanos adoptados por el Estado Argentino en especial la Declaración y Programa de Acción de la III Conferencia Mundial contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia. (Durban, Sudáfrica 2001).

³³ Como parte del llamado a la paz ante la violencia suscitada en Medio Oriente, se promovió la firma del documento “La vocación de paz y el diálogo entre las comunidades”, suscripto por Luis Grynwald, presidente de la Asociación Mutual Israelita Argentina (AMIA); Samir Saleh, presidente del Centro Islámico de la República Argentina (CIRA); Monseñor Horacio Benites Astoul, por el Arzobispado de Buenos Aires, y el Embajador Guillermo Oliveri, Secretario de Culto de la Nación.

³⁴ Texto de la ley se encuentra disponible en www.infoleg.gov.ar.

³⁵ Entre tales medidas se destacan: la suspensión de las expulsiones por el órgano de controlar ante la constatación de una permanencia irregular. En estos casos, la autoridad migratoria procede a conminar a la persona a regularizar su situación, para que luego, en caso de que la persona no lo haga, dar intervención al juez competente. (Disposición 2074/04 DNM).

³⁶ El acuerdo posibilita que aquel que haya nacido en un país del bloque pueda obtener una residencia regular en otro país del bloque, mediante un trámite basado exclusivamente en la nacionalidad del peticionante y su carencia de antecedentes penales.

³⁷ El llamado “Programa Patria Grande” tiene como pilar fundamental la intervención directa en la toma de las inscripciones a las provincias, los municipios y diversas organizaciones sociales, quienes los remiten a la Dirección Nacional de Migraciones. Hoy interactúan con el gobierno 98 bocas de tomas de datos directamente en contacto con el inmigrante. (www.patriagrande.gov.ar).

Es de destacar que para que ello sucediera fue necesario una convocatoria gubernamental y la respuesta colaborativa de la Iglesia, sindicatos, organizaciones representativas de los inmigrantes y ONG nacionales que dejaron de actuar como meros denunciantes o defensores de los derechos de los inmigrantes para pasar a ser actores fundamentales del proceso. Sin la intervención de estas instituciones mencionadas en el párrafo anterior la Dirección Nacional de Migraciones no hubiera podido legalizar en 60 días a las 184.351 personas ya regularizadas bajo el Programa Patria Grande, hubiera necesitado aproximadamente 667 días.

El Programa Patria Grande no es una amnistía y no tiene una vigencia acotada. Su aspiración es de política de Estado y regirá de ahora en más, para los nacionales del MERCOSUR que se encuentren en territorio argentino y para aquellos que ingresen en el futuro. Otorga incluso la posibilidad de hacer la tramitación en nuestros consulados del país de origen del peticionante e ingresar al territorio argentino con su residencia ya acordada.

Para obtener el beneficio, el solicitante sólo debe acreditar ser nacional de un país integrante del MERCOSUR y Estados Asociados y carecer de antecedentes penales. Como contrapartida recibe una residencia temporaria de dos años transcurridos los cuales obtiene la residencia permanente.

La implementación del Programa Patria Grande en la República Argentina fue motivo de felicitación y adhesión de los otros países que componen el MERCOSUR y Estados Asociados mediante una declaración suscrita a tal efecto en el ámbito de la Reunión de Ministros de Interior del bloque manifestando el compromiso de aplicar mecanismos similares.

Como resultado de la nueva política migratoria, entre el año 2003 y el 2007 han obtenido residencia legal en Argentina 776.742 extranjeros.

Actualmente, el Programa ya se encuentra en su segunda etapa donde el extranjero (ya regularizado y censado) debe presentar la documentación solicitada en una primera etapa, junto con su credencial de residencia precaria, en la Institución Social Colaboradora en la cual diera inicio a su solicitud de radicación.

³⁸ La Argentina intervino en el Diálogo de Alto Nivel sobre Migración y Desarrollo de Naciones Unidas, el cual tuvo lugar en la Sede de Naciones Unidas en Nueva York en el mes de septiembre de 2006, en donde presentó un documento de posición titulado: "Un cambio de paradigma: El tratamiento de la cuestión migratoria bajo la perspectiva de derechos humanos." Más recientemente, en el marco de las reuniones del Foro Mundial sobre Migración y Desarrollo desarrolladas a partir del año 2007, la República Argentina, junto a otras delegaciones ha participado activamente a efectos de incorporar en el temario de las reuniones la cuestión de los derechos humanos de los migrantes, cosa que finalmente se logró.

³⁹ www.acnur.org/index.php/id_pag=6262.

⁴⁰ Las estadísticas pueden consultarse en www.migraciones.gov.ar.

⁴¹ Ver texto completo de la ley en www.infoleg.gov.ar.

⁴² A través de la inclusión de este último Ministerio podrá comenzarse a trabajar en la asistencia a los refugiados a través de su incorporación a programas nacionales, provinciales o municipales, sobre todo para los grupos más vulnerables: menores no acompañados, mujeres cabeza de familia, ancianos, enfermos, etc., ya que hasta ahora el CEPARE sólo tenía entre sus competencias determinar la condición de refugiado, y no otras.

⁴³ Resolución de la Secretaría de Derechos Humanos (SDH N° 003/07) del 19 de enero de 2007.

⁴⁴ Resolución n° 439/07 del 23 de Abril de 2007.

⁴⁵ Texto de la norma puede verse en www.infoleg.gov.ar.

⁴⁶ Texto de la norma puede verse en www.infoleg.gov.ar.

⁴⁷ www.ppn.gov.ar.

⁴⁸ "Recurso de hecho deducido por el CELS en la causa Verbistky, Horacio s/habeas corpus", Corte Suprema de Justicia de la Nación, 3/4/ 2005

⁴⁹ En lo que respecta a la justicia penal juvenil, existen numerosos avances jurisprudenciales basados en la aplicación de los estándares derechos humanos y en la protección de los adolescentes y jóvenes privados de libertad. Ver Corte Suprema de Justicia de la Nación "Maldonado, Daniel Enrique y otro s/ robo agravado por el uso de armas en concurso real con homicidio calificado -causa N° 1174C - CSJN - 07/12/2005", Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal, Sala 1ª. Incidente de Incompetencia en autos G.F.D. y O. s/ expediente tutelar -.06/12/06, Cámara Nacional de Casación Penal Causa N° 7537 caratulada "García Méndez, Emilio y Musa, Laura Cristina

s/recurso de casación”, Tribunal de Menores N°3 Causa “XX-XH- Mar del Plata” Expte. XP Mayo de 05”, Juzgado de Menores de Tunuyán “Expte.N° 3786 “M.,G.A.R.P/Medidas de Protección” 18 de diciembre de 2006. (se coincidiría con esta inclusión).

⁵⁰ Dicho evento fue de alcance regional y contó con la participación de representantes de los diecinueve Estados de habla hispana miembros de la Organización de Estados Americanos (OEA), cuyo objeto consistió en intercambiar información y experiencias entre los distintos operadores de los sistemas penitenciarios de la región, incluyendo organizaciones de la sociedad civil y expertos de la Comisión, para la promoción de buenas prácticas penitenciarias y la adecuación de los sistemas internos en materia de ejecución de la pena a estándares internacionales.

⁵¹ Ver estado de ratificaciones en www2.ohchr.org/english/bodies/ratification/9_b.htm.

⁵² Causa “N.E. s/ cómputo de pena”, Suprema Corte de Justicia de la Provincia de Buenos Aires, del 4/10/2006.

⁵³ Para más información ver www.desarrollosocial.gov.ar.

⁵⁴ La reforma previsional incluye la Ley 24476/06 o “*ley de jubilación sin aportes*” y la Ley 25.994 o “*ley de jubilación anticipada*”.

⁵⁵ Fuente: Consejo Nacional de la Mujer, www.cnm.gov.ar.

⁵⁶ Fuente: Consejo Nacional de la Mujer, www.cnm.gov.ar.

⁵⁷ Ver texto completo de la ley en www.infoleg.gov.ar.

⁵⁸ De esta forma los tribunales han expresado: “El interés superior de los niños es débil frente a otros poderosos, como son el interés del poder y del dinero, aunque todos ellos se desarrollen en la más pura y diáfana legalidad. Por ello, es necesaria una firme y comprometida jurisprudencia que muestre a la comunidad cuál es el camino para el amparo de sus niños, máxime cuando la familia y la escuela aparecen impotentes frente al avance de las empresas periodísticas, quienes no pueden entrometerse en la vida de los niños amparándose en el derecho a la libertad de expresión y a la publicación de noticias sin censura previa (CNCiv., Sala C, octubre 3, 1996 - P., V.A). También los tribunales han señalado que “El niño tiene derecho a una protección especial. Por ello, la tutela de sus derechos debe prevalecer como factor primordial de toda relación judicial de modo que, ante cualquier conflicto de intereses de igual rango, el interés moral y material de los menores debe tener prioridad sobre cualquier otra circunstancia que ocurra en cada caso” (CNCiv., Sala A, mayo 28, 1996).

⁵⁹ Para más información ver www.desarrollosocial.gov.ar.

⁶⁰ Ver texto completo de la norma en www.infoleg.gov.ar.

⁶¹ Para mayor información ver www.desarrollosocial.gov.ar.

⁶² Tribunal Superior de la Ciudad de Buenos Aires, “Asociación civil por la igualdad y la justicia contra GCBA sobre amparo (art. 14 CCABA)”, EXP 20898/0, del 18 de julio de 2007. El Tribunal sostuvo “...Así las cosas, ante la decisión asumida por la accionada -en forma previa a la promoción de esta demanda- de proveer de agua potable a la población que reside en las manzanas 11 a 14 de la Villa 31 bis, se encuentra obligada, en virtud de la teoría de los actos propios, a continuar dando el señalado servicio”.

⁶³ La Corte Suprema de Justicia de la Nación ha sostenido que “el Estado no sólo debe abstenerse de interferir en el ejercicio de los derechos individuales sino que tiene además, el deber de realizar prestaciones positivas, de manera tal que el ejercicio de aquéllos no se torne ilusorio” (CSJN, “ASOCIACIÓN BENGHALENSIS y otros c/MINISTERIO de SALUD y ACCIÓN SOCIAL -ESTADO NACIONAL- s/amparo ley 16.986”, sentencia del 01/06/2000, Causa A.186 LXXXIV). A su vez, ha dicho la Corte, en relación con el derecho a la salud, que a partir de lo dispuesto en los tratados internacionales que tienen jerarquía constitucional, existe una obligación impostergable de la autoridad pública de garantizar ese derecho con acciones positivas (CSJN, “CAMPODÓNICO DE BEVIACQUA, Ana Carina c/MINISTERIO).
