



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments submitted by the Government of ARGENTINA* **
on the conclusions and recommendations of the Committee
against Torture (CAT/C/CR/33/1)**

[22 October 2007]

* The annexes to the present report may be consulted in the secretariat files.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Recommendation (e)

Organize a national register of information from domestic courts on cases of torture and ill-treatment in the State party

1. The creation of a national register or database is one of the measures incorporated into draft legislation adopted by Argentina under Act No. 25,932 in order to implement the national preventive mechanism for torture and other cruel, inhuman or degrading treatment or punishment stipulated in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. As part of the obligations of the national preventive mechanism, the proposed legislation provides for the creation of a database containing statistical data on incidents of torture and other cruel, inhuman or degrading treatment or punishment.
3. As will be explained fully in the relevant paragraph, the aforementioned draft is currently being dealt with by the competent bodies of the National Public Administration before being submitted to the Congress for consideration and adoption. It is therefore too early at this stage to be able to determine when the national register will be ready for implementation.
4. However, it is worth mentioning that in mid-2006 this Human Rights Office prepared a questionnaire on the subject, in order to obtain up-to-date data on incidents of torture and ill-treatment of persons deprived of their liberty, drawing on the efforts made between 2001 and 2004 (annex 1).
5. The questionnaire was sent to the authorities in the provinces and the Autonomous City of Buenos Aires with jurisdiction on this matter, to enable the federal Government, which had not previously had a database containing statistical data on such offences committed nationwide, to fulfil the obligations arising from the aforementioned international instrument.
6. This tool was developed with the support of the Federal Council of Human Rights (comprising the provincial High Authorities and the Autonomous City of Buenos Aires with jurisdiction on this issue, assisted by our Office), a body with an important role in laying a common foundation for public policies concerning the promotion and protection of human rights.
7. However, in many cases, the provinces have reported difficulties in obtaining the required information in their respective areas, and our Office continues to receive replies to the questionnaire from the different provinces. It has therefore still not been possible to collect all the data required to carry out a complete quantitative and qualitative examination of the issue.
8. Nevertheless, it should be noted that the province of Buenos Aires has kept a register of criminal cases of torture and ill-treatment since 2001, administered by the province's Department of Human Rights, Prison Policy and Complaints of the Office of the Procurator-General in the Supreme Court. Until 2005, the register used to include offences related to economic crimes affecting the public interest and those committed by government officials in the exercise of their duties. Since 2005, the register has specifically covered only torture and unlawful coercion offences.

Recommendation (f)

Take specific steps to safeguard the physical integrity of the members of all vulnerable groups

Status report on children and young people

9. As highlighted in previous reports, the legal framework for the protection of the rights of persons under 18 years of age was established through Act No. 26,061 on the Comprehensive Protection of the Rights of Children and Young Persons, which provides a general outline for public policy planning on childhood issues (annex 2).

10. This Act abrogated Act No. 10,903 on the Child Welfare Agency, recognized that all persons up to the age of 18 are subjects of rights and created a System for the Comprehensive Protection of Rights, through which the administrative or judicial institutions are equipped with mechanisms that will be activated if rights of children and young people are violated or threatened.

11. The Act also regulates the protection measures that aim to provide comprehensive protection of rights through mechanisms that are activated should the rights of children and young people be threatened and/or violated, to ensure that those rights are fully, effectively and permanently exercised.

12. In addition, under the National Executive, the Act created the National Secretariat for Children, Young Persons and the Family and the Federal Council for Children, Young Persons and the Family; both institutions are operational. Furthermore, an Ombudsman for the Rights of Children and Young Persons is provided for under the legislature.

13. In 2006, decrees Nos. 415 and 416 were enacted, regulating various provisions contained in Act No. 26,061, and specifying in greater detail the protection for those in this vulnerable group (annex 3).

14. Meanwhile, there are several draft parliamentary bills aimed at abolishing the current criminal regime for juveniles established by Act No. 22,278 and introducing a new regime tailored to the principles stemming from the Convention on the Rights of the Child. This debate coincides with significant Court judgements calling into question the constitutionality of the current system.¹

15. Hence there is increasing agreement on the need for a new regime (the first step being the adoption of the law) that restricts State intervention in criminal matters, which today is still referred to in terms of *guardianship and protection*. The introduction of a new regime will ensure the beginning of a substantial improvement in the legal status of young people accused of breaking the law.

¹ Among such judgements are: Daniel Enrique Maldonado et al./aggravated armed robbery together with aggravated homicide - Case N+ 1174C- CSJN- handed down on 7 December 2005, and G.F.D et al./case file of 6 December 2006, Federal National Criminal and Correctional Chamber, 1st Chamber.

16. Additional measures implemented at institutional level have led to action being taken and progress made with respect to the protection of the rights of children and young people.

17. The Human Rights Office has also performed a number of tasks related to monitoring of the implementation of the Convention on the Rights of the Child and the protection of those rights, in some cases jointly with the Federal Human Rights Council.

18. Special mention should be made of the following action taken:

(a) The drafting of bills and decrees, as well as the provision of advice on human rights standards to legislators and government bodies at both national and provincial level;

(b) The drafting of a report entitled "Deprived of liberty: Status of children and young people in Argentina". This report offers a clear diagnosis of the situation with respect to deprivation of liberty and an assessment of the actual status of the issue as at 31 December 2005 (annex 4);

(c) The strengthening of non-custodial measures and those for children deprived of or lacking in parental care.

19. Our Office has also launched a new initiative on data collection, since the aforementioned report on children deprived of liberty would give rise to 195 non-custodial schemes, sometimes known as "alternative" or "substitute" programmes. It was therefore decided to seek further information through the National Department for Direct Assistance to Vulnerable Persons and Groups, which comes under this Office. The objectives were:

(a) To find examples of existing schemes in the country in order to become familiar with the approach and methodology used;

(b) To encourage forums for dialogue with the provinces to review progress made and difficulties encountered in implementing programmes;

(c) To follow up the implementation of Act No. 26,061 and observe its impact on local legislation, on institutions and in practice;

(d) To publicize relevant experience;

(e) To strengthen non-custodial measures and those for children deprived of liberty or lacking in parental care and in conflict with the law.

20. In order to achieve these objectives, data collection forms were designed in compliance with human rights standards, both for the schemes dealing with criminal matters and for children deprived of liberty or lacking in parental care. To date, information has been obtained from several provinces, with excellent results, and the task is ongoing.

21. A report entitled "Minimum standards of human rights for a new criminal justice law for juveniles", published in May 2005 with the assistance of UNICEF, is being updated.

22. Finally, it should be pointed out that, apart from the visits our Office makes to detention centres for children and young people in different provinces and in the Autonomous City of Buenos Aires, the Commission to Monitor the Institutional Treatment of Children and Young Persons, which operates under the Office of the Advocate-General in the Public Prosecutor's Office, carries out significant work, making periodic visits to the various internment centres under federal jurisdiction. This mechanism for periodic visits ensures that the rights of interned children and young people are respected and that referrals, complaints and requests for reports are made to the competent bodies.

Recommendation (l)

Take appropriate steps to guarantee that body searches respect the dignity of the rights of all persons in compliance with international standards

23. The additional information requested by the Rapporteur falls under the substantive competence of the office of the Under-Secretary for Prison Affairs in the Ministry of Justice and Human Rights, which therefore needed to be consulted. The office confirmed that bringing domestic regulations into line with international standards with regard to creating registers of persons in federal prison establishments has not yet been finalized.

24. The office pointed out that, since some of the provisions of the "Guide to body search procedures", approved by the then Under-Secretary for Justice by resolution No. 42/91, do not follow the guidelines, the current Under-Secretary intended to replace it. A text was therefore drafted, in consultation with State agencies and non-governmental organizations specializing in the area of respect for human rights in prison establishments in Argentina, which was forwarded for review by the expert Andrew Coyle of the International Centre for Prison Studies (ICPS) in the United Kingdom.

25. The office later stated that the guide could enter into force once domestic requirements had been met as to its planned relationship to other rules, while clarifying that the principles set out in the guide are already being implemented in the federal prison establishments, on specific instructions from the Under-Secretary's office.

Recommendation (o)

Establish national prevention machinery with authority to make periodic visits to federal and provincial detention centres for the purpose of fully implementing the Optional Protocol to the Convention

26. As indicated in previous paragraphs, Argentina does not yet have national machinery for the prevention of torture and other cruel, inhuman or degrading treatment with the powers and the independence stipulated in the Protocol.

27. The reason is that, when the draft decree was forwarded for consideration to the relevant government departments, they made a number of comments relating mainly to the relationship between the decree and other legislation. The objections raised, to the effect that the national

prevention machinery should be introduced through the adoption of a law by the National Congress, were aimed at ensuring that the machinery operated in the most efficient and effective manner and that the organization and its members enjoyed independence in decision-making.

28. Accordingly, this Office reformulated the draft decree to allow the creation under national law of an organization with legal personality and economic and financial autonomy and to precisely specify its sphere of competence, thus ensuring it fully exercises the functions envisaged in the Optional Protocol.

29. A series of meetings were held, in which non-governmental organizations specializing in the area participated and expressed their opinions with respect to the proposed measure, leading to a number of agreements to strengthen public participation in both policy-making and decision-making.

30. Against this background, in 2006 meetings and exchanges took place with various governmental and non-governmental organizations concerned with defending the rights of persons deprived of liberty, such as representatives from the Human Rights Office of the province of Buenos Aires and the human rights offices of the provinces; the Committee Against Torture of the Buenos Aires Provincial Memory Commission; the Centre for Legal and Social Studies (CELS); the Institute for Comparative Studies in Criminal and Social Sciences (INECIP); the Xumek Association of Mendoza province; the Argentine Women's Group; the Pampas Movement for Human Rights; the Fundación de Detenidos Sociales (FUNDESCO); and the International Red Cross.

31. On 4 May 2007, the Federal Council of Human Rights met to specifically to discuss the draft law. That meeting offered a further opportunity to collate important opinions and information on shared experience that enhanced the draft legislation.
