ALTERNATIVE REPORT

On the Implementation of the International Convention Against Torture and other Cruel, Inhuman or degrading Treatment or Punishment by the Argentina Republic

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SYNTHESIS

As will be detailed in this report, the torture situation in Argentina has worsened.

The Argentine State continues to fail in fulfilling its obligation to register and submit comprehensive information on all reports of torture or illegal harassment, which would enable a complete diagnosis with its accompanying characteristics to be made

across the entire national territory. The available figures are incomplete and do not provide an accurate account of the real size of the problem. However, this does not stop us from observing a marked increase in the amount of torture and harassment occurring across the country. By way of example, it is worth mentioning that since its creation in September 2000, the Registro de Denuncias de Apremios y Malos Tratos Físicos o Psíquicos en perjuicio de Menores Tutelados [Register for reporting torture and physical or mental ill-treatment against minors] in the Buenos Aires province has continued to receive reports, totalling 3914 by mid-2004. On the other hand, trials initiated by the National and Federal authorities for crimes of harassment and torture increased 44% in two years between 2000 (807 trials) and 2002 (1164 trials).

In addition, reports from victims, relatives and witnesses reveal the systematic nature of these practices and their inter-relation with the routines of the State security forces. Victims describe torture methods, such as the “dry submarine” and electric shock tactics which are aberrant practices, that are then followed by threats and attacks to both the victims and witnesses or potential informers, such as lawyers representing the interests of the State.

Some judicial officers in the Buenos Aires province, specifically committed to reporting and eradicating the practices of torture, are victims of personal attacks and judicial persecutions. Attempts, threats and harassments subjected to public servant victims such as the state lawyer María Dolores Gómez show an obvious intent to scare off human rights defenders from their tasks of promoting, upholding and protecting fundamental human rights.

A positive move which should be noted is the sanctioning of a set of laws that reflect a commitment to prevent, investigate, pass judgment and sanction harassment and torture. These laws include the ratification of the Rome Statute of the International Criminal Court (law 25.390), the null and void declaration of the Full Stop and Due Disobedience laws (law 25.779) and the approval of the Optional Protocol to the Convention against Torture (law 25.932).

However, approval of these regulations did not prevent the situation from worsening and these laws have not resulted in any improvement to controls or changes in practices by the security, police and prison institutions.Nor has this been reflected in a greater coùùitment from the Judicia Power to resolve the serious problems highlighted by the Committee Against Torture in 1997[1].

This lack of impact is paradoxically due to the fact that approval of the aforementioned guidelines was accompanied by the sanction of another set of regulations favouring the circumstances in which harassment and torture are perpetrated.

On the one hand, criminal and procedural criminal reforms, such as the generalized use of preventive detention, more punishment and tougher conditions enabling prison release, were introduced which significantly increased the number of people deprived of freedom. In this context, those held in federal prisons increased more than 50% in seven years, while the prison population rose 36% in only three years in the Buenos Aires province. This only worsened the inhuman and degrading conditions of detention, particularly in the Buenos Aires and Santa Fe provinces,

[1] A/53/44, paras. 52-69.

where people were kept in tiny enclosures without any appropriate ventilation, nutrition, hygiene or treatment. As will be highlighted in this report, violent practices inflicted by prison and police officials became common in detention centres under these conditions, as did promoting and accepting violent practices among those detained, thereby failing to observe the State's special obligations of care.

On the other hand, federal security officers were given broader powers with reduced judicial control (law 25.434). This reform gives way to an unacceptable return to "spontaneous confessions", which conceals practices of torture and harassment over detainees allowing the police, among other things, to question a suspect where he/she is apprehended. Similarly, the period during which a person can be held incommunicado without a court order was extended from six to ten hours. This last measure worsens the situation since, as expounded by the Special Rapporteur on Torture, "torture is practised with greater frequency during periods of isolation"[2]. Police officers are also allowed to practise (without a court order) body searches on people and inspections of their clothes or things in their possession without there being any prior circumstances requiring such a measure. Similar provisions were adopted in the Buenos Aires province, in some cases even before they were adopted nationally, while the Catamarca, Chubut, Mendoza and Entre Ríos provinces are attempting to grant their respective police forces with greater powers. These guidelines reduced the controls and limitations which the Committee had highlighted as positive advances in its 1997 report.

Along with the Executive and Legislative powers, the Judicial Power shares the responsibility for the increasing numbers of harassment and torture cases and the continuing aberrant conditions that have been described by the Committee as torture.

Thus, the unchallenged enforcement of laws that involves the massive enforcement of preventive detention – violating the principle of innocence – along with the delay in judicial processes, has contributed to 54.4% of detainees in the Servicio Penitenciario Federal [federal prison service] run units during mid-2004 to be held without any firm charge. The majority of them have not even been sentenced. The situation is even more serious in the Buenos Aires province, since those who found themselves in that situation at end 2003 represented 85.4% of those deprived of freedom held in Buenos Aires prisons and police stations. In addition, the abuse of the image of preventive detention involves depriving people of freedom in places that are not legally equipped to do so, under conditions that are inhuman and overcrowded. Despite the illegal use of police premises as a place for detention, the occupation of Buenos Aires prisons was 115.7% by end 2002, and from 1998, the number of people illegally held in police stations went from 2765 to 5441 in July 2004.

During the period referred to in this report, two judicial practices which the Committee Against Torture had already indicated as obstacles towards the enforcement of the convention have become more acute. These practices are the lack of appropriate investigation seen in cases of harassment and torture that are made aware to judges and public prosecutors, and the inadequate assessment of these actual facts. By way of example, it is worth mentioning

[2] Report presented by the Special Rapporteur, Sir Nigel Rodley, in fulfilment of resolution 2001/62 of the United Nations Human Rights Committee, 27 December 2001, E/CN, 4/2002/76.

that of the total number of illegal harassment and torture cases reported during 2000, 2001, 2002 and the first half of 2003 within the city of Buenos Aires and before the federal authority of the interior of the country, only 1.36% were brought to public trial. Comparably, of the total trials due to illegal harassment and torture within this same period and jurisdiction, only 1.39% were legally considered torture.

III. 3. ADVANCES AND SETBACKS IN THE APPLICATION OF THE CONVENTION AGAINST TORTURE

During the period of analysis (1998-2004), some **advances** were made by the Argentine State in the application of the Convention Against Torture.

From 1996, the Ley sobre Ejecución de la Pena Privativa de la Libertad [Law relating to the enforcement of custodial sentences] (law Nº 24.660) has been in force by the federal and ordinary authorities of Buenos Aires city. Furthermore, the Ley de Ejecución Penal Bonaerense [Law relating to Buenos Aires criminal enforcement] (law Nº 12.256), modified by laws Nº 12.543 dated 2000 and 13.177 dated 2004, was sanctioned in 1998 in the province of Buenos Aires. The purpose of these regulations is to determine the conditions and treatment required by persons deprived of their freedom, and latterly to establish permanent judicial control for this to be fulfilled. However, both laws enable broad discretion to be used in general matters.

Moreover, the first judicial resolution to determine the unconstitutional nature of the Full Stop (law 23.492) and Due Obedience (law 23.521) laws was issued at the beginning of 2001. This was subsequently confirmed by the Cámara Federal de Apelaciones en lo Criminal y Correccional [Federal criminal and correctional court of appeals] in November of the same year. Similarly, we should highlight the sanction of law 25.779 dated 21 August 2003 which declares the aforementioned laws of impunity null and void. This situation appears to pave the way for the possible punishment of those who committed massive and systematic human rights violations during the military dictatorship, though the Supreme Court of Justice of Argentina (hereinafter called “the Court”) has still not pronounced on any of the issues.

It should also be mentioned that, on 8 February 2001, the State ratified the Rome Statute of the International Criminal Court (law 25.390). The treaty came into force on 1st July 2002. The Court is authorised to exercise its jurisdiction on persons concerning crimes of most serious international significance like torture. Its jurisdiction complements the national jurisdictions and is an important step towards the individual criminal sanctioning of those who commit crimes against humanity. Although it should be noted that the Argentine State initially had a clear wish to support the constitution of a permanent international criminal court, this is not reflected in the sanctioning of a law which implements the Statute at home[3].

The Penal Prosecutor figure gained autonomy and acquired greater functions and powers when law Nº 25.875 was sanctioned on 17 December 2003[4]. Subsequently, this led to the consolidation of an institution whose creation was highly regarded by

[3] There is a bill for the effective implementation within domestic legislation of all crimes classified in the Statute of the Court, which despite being recognised in various international treaties, are not incorporated in our penal code. However, the latter has not yet been sanctioned.

[4] Actually promulgated on 20 January 2004 and published in the Boletín Oficial [official bulletin] Nº 30.323 dated 22 January of the same year.

the Committee Against Torture in its Final Observations to Argentina on 21 November 1997.

However, there were significant **setbacks** during this period which we will broach as this report develops. As a major setback, we will highlight the fact that the Argentine State did not completely satisfy the recommendations made by different international bodies whose aim is to monitor the fulfilment of human rights treaties concerning the torture situation.

In its Final Observations of 1997, the Committee qualified various provisions incorporated into the National Criminal Procedural Code sanctioned in 1991 as positive. These included the prohibition of police to be given evidence by the charged party and the setting of a maximum period of detention of six hours without a court order. However, these advances did not sustain the test of time. Law 25.434 (sanctioned on 13 June 2001) gave way to an unacceptable return to "spontaneous confessions", which conceals practices of torture and harassment over detainees allowing the police, among other things, to question a suspect where he/she is apprehended. It also extended the maximum period during which a person can be held incommunicado without a court order to ten hours.

Moreover, despite the passing of time, many of the negative situations highlighted by the Committee in 1997 continue unchanged. Thus, for example, the legal system continues to identify incidents of torture as illegal harassment, a less serious type of crime which receives less significant penalties. In addition, only a minimal number of the most limited judicial cases that go to court result in a sentence.

Also in its Final Observations, the Committee had demanded from the Argentine State "[…] that, in future, information concerning meeting obligations imposed by the Committee should be representative of the situation in the entire country". At a later date in 2000, the Human Rights Committee made observations to the third report on Argentina, in which it voiced its concern over the existence of abuses in authority by prison service officers that result in torture, ill-treatment, corruption and other practices. In this respect, it recommended that the State include detailed information on the number of complaints, the type of sanction imposed to those committing the crimes and the exact responsibilities held by the State bodies in its next report. Moreover, it regretted that issues of torture and the excessive use of force by the police were not properly discussed in the report. The Committee concluded that torture was a general problem and that there were no appropriate mechanisms in place for it to be resolved. These warnings, however, did not have the desired effects – even with the creation of different databases on torture, illegal harassment and ill-treatment, the Argentine State is still not in a position to report on the number of incidents registered nationally or on the results obtained from the judicial investigations[5]. The different criteria for collecting and processing data (for

[5] Among the databases created within the province of Buenos Aires are included the *Banco de Datos de casos de tortura y otros tratos o penas crueles, inhumanos o degradantes* [Database of cases of torture and other treatments or cruel, inhuman or degrading hardships] established in March 2000 by the Prosecutor's Office before the Court of Cassation, the *Registro de Denuncias de Apremios y Malos Tratos Físicos o Psíquicos en perjuicio de Menores Tutelados* [Register for reporting torture and physical or mental ill-treatment against minors] created by the provincial Supreme Court of Justice in September 2000, and the *Estudio Estadístico sobre Violaciones a los Derechos Humanos* [Statistical study of human rights violations] database created end 2003 by the Comisión Provincial por la Memoria [Provincial commission for Memory]. The Departamento de Estadística de la Procuración General [Statistical department of the attorney general's office] and the Subsecretaría de Política Penitenciaria y Readapación Social [Subsecretary of the prison

example, sources, definitions, periodicity, etc.) resulted in databases with incomplete registers that do not complement one another and are difficult to compare. In August 2001, the Ministerio de Justicia y Seguridad y Derechos Humanos de la Nación [Ministry of justice, security and human rights of Argentina] attempted to overcome this situation by confronting the *Primer relevamiento nacional [first national survey] over trials in which crimes of illegal loss of liberty, illegal harassment, torture and failure to complain committed by public officers were officially reported or investigated*[6]. Its results, however, were poor since only unreliable data from some jurisdictions was gathered together.

In 2002, the Special Rapporteur on Torture issued two urgent calls. The first concerned the situation of the young man, Juan David Enríquez, who since 1998 has been subjected to permanent harassment, persecution, arbitrary detention, lesions, abuse and death threats by the police of the Buenos Aires province. Since then, Enriquez' situation has not substantially changed. The second concerned the situation of the indigenous community of Toba Nam Qom in Formosa where members of this community have been persecuted and tortured.

Thus, for example, in the Final Observations of the Committee on Children's Rights concerning the second report presented in 1999 by the State on the application of the Convention on Children's Rights, the Committee on Children's Rights expressed its deep concern in 2002 concerning the institutional violence and the reports of torture and ill-treatment of minors by the police. Data taken from the Registro de Denuncias de Apremios y Malos Tratos Físicos o Psíquicos en perjuicio de Menores Tutelados [Register for reporting torture and physical or mental ill-treatment against minors] in the Buenos Aires province indicates that, despite warnings from the Committee, the situation has worsened year on year.

In 2001, the Inter-American Commission on Human Rights sued the Argentine State for the torture, among other violations, of Walter Bulacio. The Inter-American Court of Human Rights found the State guilty in 2003 of violating article 5 of the American Convention on Human Rights, which covers the right to human treatment[7].

Unfortunately, as we will see, Argentina is far from having fulfilled the different recommendations made by international bodies dedicated to safeguarding human rights.

a. National overpopulation and overcrowding

According to information from the **Sistema Nacional de Estadística sobre Ejecución de la Pena (SNEEP)** [National system of statistics relating to the enforcement of punishment] developed by the **Dirección Nacional de Política Criminal, Ministerio de Justicia y Derechos Humanos de la Nación** [National office for criminal policy, ministry of justice and human rights of Argentina] there were **44969** people residing in prisons all over the country by October 2002[8], of which **59%**

policy and social reintegration] also hold registers of these incidents.

6 Jointly carried out by the Dirección Nacional de Política Criminal [National office for criminal policy] and the Subsecretaría de Derechos Humanos [Subsecretary of human rights].

7 **Inter-American Court of Human Rights, Bulacio Case, Sentence dated 18 September 2003, (Ser. C) No. 100 (2003).**

8 The survey included persons deprived of freedom held in buildings run by the (federal and provincial) prison services or the police in the case of those provinces with no prison services.

had been prosecuted and only **39% had already been sentenced**. That same information base states that there is an estimated **overpopulation** of **17% in the entire country**[9].

A survey carried out in 2001 by the Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación [Ministry of justice and human rights of Argentina] revealed information on how long prosecuted persons deprived of freedom had been detained in federal prisons.

The survey examined a sample of 1974 prosecuted inmates (a 40.4% of 4880 people held in preventive detention in the Servicio Penitenciario Federal [federal prison service] units in 2001) and established that almost 40% of them went beyond at least one year of preventive detention, while some of them even exceeded eight years of detention with no firm charge (see Statistical Annexe, Table 4).

Within this context of serious prison crisis, it is inexplicable for the State to have changed law 24.390, which allowed for reparation to be made to detainees who were in preventive detention for more than two years[10].

The highly marked increase in the population deprived of freedom has led to the collapse in the capacity of prisons in various provinces. With this situation, the strategy adopted by the respective local governments was to use police buildings as places of detention. This method of incarceration is openly legal according to internal regulations and that provided for in article 16 of the Convention against Torture.

A provisional survey performed by the **Dirección Nacional de Política Criminal, Ministerio de Justicia y Derechos Humanos de la Nación** [National office for criminal policy, ministry of justice and human rights of Argentina], within the context of the **SNEEP**, concerning some people deprived of freedom and held in police stations at 31 December 2002, found that the **Buenos Aires** province had **7031 persons** held in police buildings, while **Santa Fe** had **2100**, **Chaco 1.194**, **Córdoba 639**, **Salta 190** and **Entre Ríos 190**.

The overpopulation and overcrowding in places of detention in the Buenos Aires province worsened particularly after the sanction of law 12.405. This law came into force on 15 March 2000 modifying and restricting the conditions of prison release. It provides that judges, when faced with certain types of crime, are obliged to enforce preventive detention without examining the characteristics of each case (characteristics that served as an exceptional requirement for enforcing the measure). The generalized use of the exception measure was therefore advanced.

In 2001, the provincial Executive Power declared the *"physical and functional emergency of the prison system in the Buenos Aires province"* and also recognised that the municipal infrastructure in prisons, along with the overpopulation, was leading to the profound deterioration of security levels (decree 1.132 dated 16/05/01). For some years now, the governmental strategy for confronting this

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[9] Even though it is expected that this survey be performed annually, the 2003 report was still not available at 19 October 2004.

[10] This law provided for a system by which those who were held for two years in preventive detention were given, at the time of sentencing, a further two days of punishment for each day spent in preventive detention that would exceed two years.

problem was to use police buildings as places of detention – a strategy which has worsened the situation.

Over the past years, the population held in police stations has doubled from 2765 detainees in 1998 to 5441 in July 2004 after reaching a record number of 7507 detainees in October 2002 (see Statistical Annexe, Table 5).
This detention method used by the provincial government is illegitimate and the authorities remain indifferent to the situation. The National Constitution and the law provide that detained persons be transferred to specialized centres. Once the brief duration of this exceptional detention as limited by law has expired, there is no legal basis for the person to remain incarcerated in police premises.

This obvious illegal situation is accompanied by detention conditions that are just as illegal. Overpopulation and overcrowding in police stations more than exceed the levels noticed in prisons.

The police stations are not in socially accountable conditions to hold detained persons over long periods of time, nor is the police personnel capable of handling this situation, which entails a flagrant violation of the most basic individual rights of the detainees.

The detainees are held in prison cells in a deplorable maintenance and hygiene situation[11], that generally lack ventilation and natural light and in which the humidity and heat are oppressive. The prison cells have no furniture whatsoever, which means all inmates' activities take place on the floor. Turning over to sleep, for example, cannot be done by everyone all at once because of the lack of space. There are not enough bathroom facilities for everyone to use and the inmates are not guaranteed appropriate nutrition. The risk of the spread of transmittable diseases, such as HIV/AIDS or tuberculosis, is very high, and the increase in cases of physical and sexual violence among the actual inmates is more than significant.

Therefore, it is possible to state that the provincial State is administrating justice through illegal means, even more so when considering that **90% of the total detained are prisoners without charge**, many of whom remain in this procedural situation for a large number of years.

According to a CELS (Centre for Legal and Social Studies) commissioned report made by the Buenos Aires prison service and dated 5 July 2002, this institution was responsible at that time for the care of 15208 accused inmates, 2285 convicts and 544 in another procedural situation (case dismissed, case adjourned en banc, etc.)[12]. Of the total number of people fulfilling a term of preventive detention, 384 had between 6 and 10 years of detention, 41 people had between 11 and 15 years of detention, 5 people had between 16 and 20 years of detention, 1 person had between 26 and 30 years of detention, and 7 people had more than 30 years.

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[11] In many establishments, the detainees use holes made in the cell floor as toilets.

[12] The following stands out from the answer given by this institution: "the information requested is approximate, insofar as the prison service is not provided with details on the procedural stage of each of the inmates, and in many instances, the inmate is punished with a firm sentence, and due to the lack of any written notification from the courts to which they are assigned, our registers do not include changes to the procedural state and the information available to this institution is many a time out of date by up to one year".

b. Overpopulation and crowding in Buenos Aires Province

As we pointed out above, there are no records for the country as a whole supplying data on the number of minors deprived of freedom, on the facilities available, or on the length of confinement, etc. Accordingly, here we shall only present data from Buenos Aires Province, which, however, in themselves attest to a grave situation.

According to data from the Department of Statistics of the Office of the Attorney General for the Provincial Supreme Court, in 2001 there were 10,196 minors deprived of freedom being held in police stations, juvenile institutions, and prison facilities in Buenos Aires Province, more than 80% of them there for reasons having to do with welfare.[13]

According to the records of the Provincial Council for Minors, almost half the children detained are housed in institutions not directly connected with that body, the authority that oversees this situation. In many instances the establishments in question function without the necessary special authorization and do not have state subsidies, paying their operating costs from private donations or charity, and carrying out their work without official control and monitoring of the conditions of detention.

In Decree No. 3012 of October 24, 2001, The Supreme Court of Buenos Aires Province reported that of the persons deprived of liberty and held in police stations approximately 140 were adolescents. In the provincial court's own words, "… in such surroundings [these young people] suffer restriction on their liberty without receiving the required processing, a limitation which at times means they wait months before being transferred to the appropriate specialized establishment."

Confining boys and girls or adolescents at police stations is illegal. Police personnel do not have the training to manage the custody of minors, who, as such, merit special treatment according to the rule of law. The doctrine upheld by the various bodies of the UN as to the best interest of the child requires that juveniles be housed in suitable establishments; thus the province is also breaking commitments made in regard to children.

IV.3. JUDICIAL REACTION TO THIS TYPE OF CASE

The response of the judiciary to cases involving accusations of torture or cruel, inhumane, and degrading treatment is in many instances inadequate. This pattern is particularly relevant because in order to prevent and eradicate torture it is not enough to pass a great number of measures on the matter; it is also necessary to apply such laws concretely and effectively in every case that arises.[14]

Judicial inquiries into cases of torture tend to be too accommodating to the accused. Substantial progress toward prosecuting these crimes has not been reported, despite

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[13] See University of Buenos Aires (UBA) and the Center for Legal and Social Studies (CELS) Situación de niños, niñas y adolescentes privados de libertad en la Provincia de Buenos Aires (The situation of boys, girls, and adolescents deprived of freedom in Buenos Aires Province) CELS/UNICEF, Buenos Aires, 2003.

[14] In this regard, the Committee against Torture's closing observations on Argentina (A/53/44) made the following point: "The Committee notes that there is a dichotomy between the preceptive regulations set up by the state for the prevention and punishment of torture—which in quantity and quality satisfy the principles of the Convention—and the reality that information is being received on the continuing occurrence of instances of torture and ill treatment by police and prison personnel, both in the provinces and Buenos Aires. This information appears to show a failure to take effective action to eradicate these deviant practices."

the fact that in many instances there exists evidence and documents that would make it possible to pass sentence on perpetrators of acts of torture.

Thus the Argentinean government is not fulfilling its obligation to adopt effective judicial measures to prevent acts of torture on its territory, an obligation spelled out in Article 2 of the Convention against Torture. Similarly, there is no doubt that the lack of diligent response by the justice system when confronted with such deeds is a transgression of the provisions of Articles 12 and 13 of the Convention.

Also, in many instances, although sentences are handed down for these acts, they are inappropriate because the actions being judged have been classified incorrectly. Judges fit these deeds into the category of lesser offenses, which is not suitable.[15] This leads to the imposing of minor penalties on the perpetrators of such crimes, which does not go along with the gravity of these aberrant practices, thus violating the provisions of Article 4, paragraph 2 of the Convention against Torture.

Likewise there can be noted a lack of interest in approaching seriously a problem that is nationwide and extremely grave, just as with the growing overpopulation in prisons and the impact of that situation on minors.

a. Legal Activity by the Federal and National Justice Systems of the Autonomous City of Buenos Aires

According to information from the National Attorney General's Office, of the total cases of unlawful harassment and torture reported during 2000, 2001, 2002, and the first half of 2003 in the area of the city of Buenos Aires and before federal justice in the country's interior, only 1.36 % became the subject of an oral public pleading and barely .32% ended in a sentence being handed down. (see Statistical Appendix, Tables 6-9).

- Total of cases initiated, for the period mentioned, in the Federal Capital and in the federal jurisdiction in the interior, for offenses of unlawful harassment and torture: 3461
- Cases initiated for unlawful harassment:3413
- Cases initiated for torture: 48
- Cases brought to trial: 47
- Cases resulting in sentences: 11

As these figures show, only 1.39% of these cases ended up classified legally as tortures, which means that a large number of the cases reaching the judges are not punished in accordance with the seriousness of the offense. Moreover, it should be emphasized that of the cases brought to trial during the period examined only one fit into the category of the offense of torture, and no sentence was handed down for that crime.

The government usually attributes this low level of effectiveness of justice in investigating cases of harassment and torture to a general problem of inefficiency in

[15] Our legal code differentiates between torture resulting in death, torture, and unlawful harassment, basing such distinctions on the intensity of the pain suffered, that is, on the causing of physical or psychological pain of a specific degree of gravity. These distinctions lead to a considerable difference in penalties: in the case of torture, life imprisonment if death results from the torments suffered; without a death, the penalty is 8 to 25 years in prison; if the deed does not fit the criminal type of torture but does constitute unlawful harassment, the sentence is from 1 to 5 years.

the country's justice system, a problem not simply restricted to this kind of crime. But, although certainly in general Argentinean justice does not respond adequately, it is important to emphasize that when it is a matter of torture or harassment, the proportion of cases resulting in trial and sentencing in relation to the total number of cases initiated turns out to be much lower than the general average. This can be verified by comparing the rates of going to trial and of sentencing for these two offenses with the rates of judicial activity for clearing up crimes against property or persons, homicide especially (see Statistical Appendix, tables 10 and 11.)

b. Legal Activity by the Justice System of Buenos Aires Province

The secretary of Human Rights for the Government of Buenos Aires Province. emphasized in November 2002, "the practically nonexistent response of the penal system when confronted with cases of torture and harassment," which, she pointed out, "contributes to impunity for these cases, a phenomenon that feeds back into the occurrence of new cases." In the same document, it was also asserted that one of the principal causes of the acceptance of impunity is the misrepresentation of the types of crime.[16]

The secretary of Human Rights reached that conclusion after examining the number of cases of harassment and torture initiated and processed in the Province of Buenos Aires for the period of 1998-2002 (first months). Using a study by the Office of the Attorney General of the Supreme Court of the Province covering 12 judicial departments (out of 18) and a total of 3013 cases whose titles referred to offenses of torture or harassment, she determined the following:

- 1062 cases were at the processing stage (preliminary investigation).
- for 1921 cases it was esteemed there was no merit in the accusation (1856 were filed; 54 were rejected; 3 were dismissed; 7 were deferred; in one case, the trial was suspended).
- only 30 cases went to trial.

This means that in only 1.5% of the cases initiated for these offenses did the matter go to trial; moreover, it should be kept in mind—as the secretary's report makes clear—that these prosecutions did not all necessarily end in a sentence being pronounced. In addition, the only 3 cases categorized as tortures were filed.

As has already been mentioned, one of the practices conspiring against an effective response of the State to acts of torture is the misrepresentation of the type of crime. In her report, the secretary of Human Rights points out that there exists in Buenos Aires Province "a general utilization of harassment as the category into which are fit behaviors that clearly fall into the orbit of torture; it may suffice to mention among these instances the recent classifying of practices such as the 'submarino seco' [putting a plastic bag over the victim's head] as unlawful harassment or the classifying of an act of torture leading to death as 'felonious homicide'."

Of a total of 3013 cases, 3010 qualify as harassment, and only 3 as torture; that is, 99.9% of the cases initiated are classified as harassment and the rest as torture. This means that the judiciary—depending on the circumstances—would rather

[16] Document entitled: "El tratamiento de la tortura ante el systema penal de la Provincia de Buenos Aires" (handling torture in the penal system of Buenos Aires Province) prepared in connection with the work of the above-mentioned secretary under the Provincial Program for the Prevention of Torture.

prosecute torturers for less serious crimes, an approach that leads to punishing with minor penalties and with a decreased deterrent effect.

Lastly, the secretary acknowledged there are a large number of acts of torture not denounced officially to the justice system, a state of affairs that "tells us of a phenomenon that can mean a) fear of making a denunciation b) belief that an investigation would not produce concrete results."

The report acknowledges that "the inclusion of anonymous denunciations not leading to criminal trials constitutes an effort of great importance being carried out by the Defender's Office before the Court of Cassation; such reports are another way of beginning to reveal the facts about torture." But the document concludes that "these facts compel the adoption of concrete measures designed to reverse the situation in question; to that end, joint action by all three powers of the State is required, as well as action by the community as a whole."

IV. 4. INSTITUTIONAL POLICIES THAT PROMOTE TORTURE AND CRUEL, INHUMAN, AND DEGRADING TREATMENT

Torture is one of the most extreme manifestations of institutional violence in Argentina, and in many instances is aided by those in power who do not carry out concrete, effective action to eradicate abuses by members of government forces.

The weakness of various projects of police reform designed, among other things, to eliminate violent practices by security forces is also a consequence of the inability of political actors to put the required changes in motion.

Various political functionaries have only made this disturbing picture of human rights enforcement worse; they have furthered violence coming from the State by reducing controls on security forces and by violations of the law, considering these appropriate means of staving off inhabitants' demands for security.

a. Legislative reforms leading to an increase in police powers

In June 2001. the National Congress approved Law No. 25.434, which established significant changes in Argentina's Code of Criminal Procedure, granting greater powers to police and federal security forces and reducing judicial control over those forces.

The changes allow the police, among other things, to interrogate suspects at the place they are apprehended. Permitting the police to take a statement from a suspect used to be expressly prohibited, in an effort to do away with "spontaneous confessions" behind which lay harassment and torture of detainees. The reform favored a lamentable return to such practices. At the same time, the length of time a person could be held incommunicado without a court order was extended from six hours to ten. That measure creates a worse situation for detainees, since, as the special rapporteur against torture states, "torture is practiced more frequently during periods of incommunicado detention."[17]

Police are also allowed (without a court order) to make use of personal searches—before the changes reasons of "urgency" were required to obviate the appropriate

[17] Report presented by the special rapporteur, Sir Nigel Rodley, in compliance with Resolution 2001/62 of the United Nations Commission on Human Rights, 27 December 2001, E/CN, 4/2002/76.

court order. In the same vein, police are authorized to search a person's body, clothes, and things in his possession, without there being prior circumstances justifying such a search.

This reform got its momentum from the setting up of a false dichotomy between constitutional rights and guarantees on the one hand and an effective pursuit of crime on the other. Individual rights are considered obstacles to the "fight against delinquency," it being forgotten that the only justification for acts of coercion practiced by the state is the preservation and advancement of the individual rights of all the country's inhabitants.

Along these same lines and in advance of the changes on the national level just discussed, in the year 2000 the Province of Buenos Aires reformed its Code of Criminal Procedure, restoring to the Buenos Aires Police the power to "require the suspect to give information or indications that would be of use in the immediate pursuit of the investigation." Also, police powers relating to personal searches were substantially broadened.

These laws are clearly an infringement of the provisions of Article 15 of the Convention against Torture.

The provinces of Catamarca, Chubut, Mendoza, and Entre Ríos are following in the footsteps of the national government and those of Buenos Aires by changing—or attempting to change—their procedural codes so they too can grant greater powers to their police forces.

b. Acquisition of torture equipment by authorities of the government of Buenos Aires Province

The Buenos Aires Prison Service acquired torture equipment and used it in the province's prisons. According to information published in several local newspapers in January 2004, the Prison Service bought electric rods and shields on at least two occasions, in 1993 and in 1996 (both under the government of Eduardo Duhalde). The acquisition was confirmed by Felipe Solá, current governor of the province, and by Eduardo Di Rocco, the Buenos Aires minister of justice, after the news leaked out that a denunciation had been made by a group of detainees in Prison Unit 3, San Nicolás. The prisoners, Rubén Ludueña, Juan Rojas Montenegro, Oscar Giménez Tello, Sergio López Mandri, Rubén Segovia, and Sergio Maturana reported being tortured with electric current by penitentiary personnel in that prison.

Following the prisoners' denunciation, Governor Solá admitted that equipment for applying electric current had been purchased. He said he did not know who had ordered the tools or when, and he maintained that "in no way are torture tools used in the Prison Service."[18]

Minister Di Rocco confirmed that on 25 June 1996, through purchase order No. 707/96, sticks and shields capable of a producing a 9-volt shock were acquired and that a similar purchase had been made in 1993.[19] The company making the sale was

[18] The daily, *Página/*12, "En otros tiempos" [in other times], 20 January 2004; the daily, *Hoy,* "Reconocen que el Servicio Penitenciaro adquirió picanas" [they admit that the Prison Service acquired electric prods], 20 January 2004; the daily, *Clarín*, "Picanas en cárceles bonaerenses" [electric prods in Buenos Aires prisons], 21 January 2004.

[19] *Página/12,* "Cuatro delincuentes" [four offenders], 27 January 2004; *Clarín "*Picanas en cárceles

Deoval S. A.[20] Di Rocco maintained the torture tools—characterized as "electrical instruments of deterrence"—were out of use and that at the present time the province's prisons did not possess "any other instruments similar to these sticks and shields."[21] According to the official, the prods and shields are stored in a warehouse at Prison no. 3, Lisandro Olmos. Di Rocco announced at the same press conference that the order had been given to destroy these torture tools within 48 hours under the supervision of the government's General Notary Office.

Information on the number of prods and shields acquired (adding together the two separate purchases) is not very precise: while some media sources state that it is a matter of 4 sticks and 15 shields,[22] others claim that the number of sticks is a high as 8 or 9.[23] Information on the voltage of the shocks produced also varies: some media sources put the figure at 9 volts, other say it is actually 12 volts.

The matter is extremely serious, constituting a flagrant violation of Article 2 of the Convention against Torture, and should compel the State to provide irrefutable proof that it has destroyed all the instruments of torture and to guarantee that it will never again make use of such tools

c. Elimination of the "Data Base of cases of torture and other cruel, inhumane, and degrading treatment and punishment," created by the Defender's Office of the Buenos Aires Criminal Court of Cassation

As has already been explained, the "Data Base of cases of torture and other cruel, inhumane, and degrading treatment or punishment" (henceforth, simply the "data base") was created and implemented by the Official Defender's Office of the Province of Buenos Aires Criminal Court of Cassation.

The data base was envisioned as a tool to increase the effectiveness of the work of prevention and punishment of torture by enabling a better reading of the general situation in the province. The data base collects information on cases of torture and ill treatment; this information is provided by public defenders and enforcement secretaries[24] in the 18 judicial departments of the province. In almost half the cases recorded, persons deprived of their liberty who are victims of torture do not make formal denunciations for fear of reprisals. Nevertheless, they tell their defender of the act. In such instances the defender is supposed to present the information about the case without revealing data that would make it possible to identify the victim. Up to the present time, 45.5% of the denunciations received have been of a confidential

bonaerenses [electric prods in Buenos Aires prisons], 21 January 2004; radio station *Emisora del Sol* (100.7 Mhz, Mar del Plata, Buenos Aires Province), 21 January 2004, text published on their web site http://www.emisoradelsol.net/article.php?sid=1930.

20 *Hoy,* "Los bastones eléctricos que compró la Provincia serán destruidos" [the electric sticks bought by the province will be destroyed], 21 January 2004 (digital edition); *Clarín*, "Picanas en cárceles bonaerenses," 21 January 2004.

21 *Página/12*, "Las picanas desactivadas" [the deactivated prods], 21 January 2004.

22 *Hoy,*"Destruirán 'picanas' y escudos eléctricos que compró el Servicio Penitenciario bonaerense" [They will destroy the electric prods and shields bought by the Buenos Aires Prison Service], 21 January 2004 (digital edition); *Clarín,* "Picanas en cárceles bonaerenses,"21 January 2004.

23 *Página/12*, "Las picanas desactivadas," 21 January 2004; *Hoy* "Los bastones eléctricos que compró la Provincia serán destruidos," 21 January 2004 (digital edition).

24 Enforcement secretaries are officials of the defense system; their work consists of visiting jails and police stations, assisting in various coordinated ways those persons in the province deprived of liberty. These officials draw up denunciations in cases of inhumane conditions of detention, ill treatment, or torture, and provide information for the data base.

character. The development and use of this data base has made it possible to establish a true picture of the torture and ill treatment taking place in the province.

It should be emphasized that it is precisely this data base that was used to enlighten public opinion and various international bodies about the torture situation in Buenos Aires Province. Along the same lines, much of the information in the present report comes from this data base.

However, on 10 July 2002, the then Attorney General of the province,[25] Eduardo Matías De la Cruz, decided to eliminate the "Data Base of cases of torture and other cruel, inhuman, and degrading treatment or punishment" and remove the enforcement secretaries from the Office of the Public Defender.

These measures were adopted as a component of a decision by the Attorney General that the official defender before the Criminal Court of Cassation, Mario Corioloano, was to be relieved of his powers to supervise public defense and that all decisions made by said defender in the exercise of his duties were to be repealed.[26]

At the same time the attorney general[27] ordered said defender to adjust the operations of his office in accordance with the newly arranged limitations on his duties, thus indicating that his section was being substantially reduced.

As a consequence of these measures, still in effect, the data base functions irregularly, receiving information from only a few defense offices.

c. Harassment of defenders of human rights

Some officers of public defense in the province of Buenos Aires, people especially committed to the eradication of the practice of torture, are victims of personal attacks and judicial persecution. These assaults, threats, and acts of harassment show a patent effort to frighten defenders of human rights as they pursue their task of advancing, making known, and protecting fundamental rights. As an example, here is the story of one woman, an official defender who became a victim.

María Dolores Gómez has a post as an official defender in the Judicial Department of San Isidro, Buenos Aires Province, and in the course of her work has denounced to the courts—on repeated occasions—the degrading conditions of detention prevailing in the province as well as the systematic use of torture occurring in several jails and prisons.

This official defender was the subject of physical attacks and repeated threats pressuring her to halt her denunciations against agents of the Buenos Aires Prison Service.

In spite of the seriousness of the accusations, there has been no significant progress in the ongoing judicial investigations initiated to get to the bottom of the attacks on Dr. Gómez and her family, indicating the government's lack of concern over

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[25] The attorney general of the province's Supreme Court is in charge of all the official prosecutors and all the official defenders in the province. Along these lines, it is questionable whether the same authority should take on the power to organize functions opposed to each other *per se*, as are accusation and defense in the context of the criminal process.

[26] Resolution no.255/02, 10 July 2002.

[27] Resolution no.259/02, 10 July 2002.

identifying and punishing those who are putting the Gómez family's well-being and lives in jeopardy.

It should be pointed out that these events occasioned a request to the Interamerican Commission on Human Rights (CIDH) for the taking of protective measures, which were granted 5 June 2001 and extended for six months in July 2002. CIDH recommended that the Argentinean government adopt protective measures on behalf of María Dolores Gómez and her family, as a matter of urgency.

One of the provisional measures recommended was "the investigation of the origin of the threats and the bringing to justice of those responsible so as to put an end to the dangerous situation endured by the person under protection and her family." A measure which, as we have seen, has clearly not been implemented by the Argentinean government.

It should be emphasized that up to now the government has complied with only one of the measures set out by CIDH, the providing of police protection for Defender María Dolores Gómez. Indeed, although at the moment the victim and her family members do have police protection, it has not been provided by the state on a regular basis, having once been cut off abruptly for a certain period of time.

María Dolores Gómez herself reported on her situation, in a letter to CIDH, dated 10 May 2001, in which she told of the occurrence of new acts demonstrating that her life and physical well-being continued to be in danger,[28] also pointing out the lack of progress in the investigation initiated as a result of her denunciations.

On 19 July 2002 CIDH decided to extend the term of the protective measures on behalf of María Dolores Gómez and her family. Later, on 15 July 2003 the CIDH decided to consider the matter at an end, lifting the protective measures that had been appropriately imposed, without the Argentinean government having fulfilled its obligation to duly investigate the denounced acts. The threats and harassment to which María Dolores Gómez continues to be subjected show that the work she does angers authorities compromised by her denunciations, the Buenos Aires Prison Service in particular.

In face of the lifting of the protective measures granted by CIDH on behalf of María Dolores Gómez, on 17 October 2003 CELS presented a petition against Argentina for violating the right to life and well-being and the right to legal guarantees and protection under the law to the detriment of María Dolores Gómez and her family. This year, on 29 September, CIDH gave the Argentinean government a copy of the petition, seeking to have its comments on the matter within the next two months.

IV. 5. OBSTACLES TO PURSUING AND PUNISHING CRIMES COMMITTED DURING THE LAST MILITARY DICTATORSHIP

There is no doubt that the sanction of laws 23.482 (Punto Final) and 23.521 (Obediencia Debida) constitutes one of the major obstacles to pursuing and punishing the aberrant crimes committed during the last military dictatorship. These two laws violate provisions of the Convention against Torture that prohibit justifying

[28] In April 2001, when she took her car to a mechanic because of loose wheel nuts, she found out that the fuel pump had been intentionally damaged so as to create a gas leak that could cause an explosion. Moreover, she stated that her clients were still hearing remarks from Buenos Aires Prison Service personnel about a plan to kill her.

torture by invoking unusual circumstances such as internal political instability or some other public emergency (Art. 2.2), or by declaring there was an order from a superior officer or a public authority (Art. 2.3).

In August 2003, the National Congress approved Law 25.779, nullifying the laws of Obediencia Debida [due obedience] and Punto Final [full stop]. Despite that, Argentina's Supreme Court has not yet pronounced on the constitutionality of the two laws; therefore the impunity that reigns in respect to crimes committed during those years has not been reversed.

At the same time, it should be pointed out that a significant obstacle in the struggle against impunity is the refusal of the Argentinean state to apply the criterion of Article 7 of the Convention against Torture, according to which a state must extradite any person on its territory who is responsible for torture, or else "submit the case to the nation's appropriate jurisdiction for trial." Recently, President Kirchner's administration changed the position—which had been contrary to the Convention—held by the Argentinean government.

There is also another serious problem in respect to this matter: even after the reestablishment of democracy, members of the military forces continue to vindicate and support the aberrant practices carried out during the last dictatorship.

a. Pursuing crimes committed during the last military dictatorship. Unconstitutionality of the impunity laws.

Despite numerous efforts by the state to impede the investigation, judgment, and punishment of those responsible for serious crimes—among them, acts of torture—committed under state terrorism, paths toward justice have been opened. The government's efforts began during the 80s, with the sanction of the laws of Punto Final and Obediencia Debida, whose provisions are very similar to amnesties and confer impunity for crimes of humanity committed during the last military dictatorship.

One court case with great repercussions, in which Argentinean magistrates applied the precepts of the Convention against Torture—among other human rights instruments—is case No. 8686/000 "*Simón, Julio and others, for child abduction,"* which came up before the Criminal and Correctional Federal Court of the Federal Capital No. 4, Department. No. 7. This case was initiated for the offenses of illegal seizure and change of identity of Claudia Poblete, who was abducted at the age of 8 months along with her parents, José Poblete and Gertrudis Hlaczik, who remain disappeared. CELS was the plaintiff in the case and requested that the scope of the matter be expanded to include investigating the torture and subsequent disappearance of the minor's parents, who were detained in the secret center known as "el Olimpo."

On 6 March, 2001, Judge Gabriel Cavallo—who then presided over Court No. 4, which was handling the proceedings—handed down a decision of historic importance in which he declared both laws in question unconstitutional and null, their being contrary to the aims and purposes of the Convention against Torture and Cruel, Inhuman, and Degrading Treatment or Punishment (as well as being contrary to other rules and standards).

On 9 November 2001, Court II of the Federal Cámara (a second-level court) confirmed Judge Cavallo's decision unanimously and declared the laws of Punto Final and Obediencia Debida unconstitutional in the Poblete-Hlaczik case. "In the present context of our domestic law the invalidation and declaration of unconstitutionality of these laws does not constitute an alternative. It is an obligation," agreed the magistrates.

Later, other magistrates adopted similar decisions. For example, 1 October 2001, in the matter of the investigation of the forced disappearance of lawyer Conrado Gómez (mentioned above), Judge Claudio Bonadio declared the impunity laws unconstitutional and null. This pronouncement was to be confirmed by the Court of Appeals. Along the same lines, the federal prosecutor of Santa Fe, Alejandro G. Luengo, requested that a similar decision be made in another case, this one initiated in connection with the Foreign Ministry's rejection of an extradition request from Spanish Judge Baltasar Garzón, which resulted in investigation of the acts for which Garzón was seeking extradition so they could be judged in Argentinean courts instead. Federal Judge Reinaldo Rubén Rodríguez examined Prosecutor Luengo's request, and on 14 August, declared the impunity laws unconstitutional. On 6 March 2003, Carlos Skidelsky, the federal judge in Resistencia, Chaco Province, also declared Laws 23.492 and 23.521 invalid and unconstitutional. The federal judiciary in Salta made a similar decision, later confirmed by the Appeals Court on 29 July 2003. It was the federal judge in Salta Province, Miguel Antonio Medina, who, in May 2002, had declared the laws of impunity unconstitutional. and had reopened the matter of the "massacre of Palomitas" of 6 July 1976, when twelve political prisoners were murdered.

Because the decision in the Poblete case was appealed before the Court, a prerequisite established by that tribunal had to be complied with: a non-binding legal opinion from the nation's attorney general. Thus, on 29 August 2002, the attorney general pronounced in favor of the non-validity and the unconstitutionality of the laws of impunity in regard to the two matters mentioned above: the investigation into the disappearance of Conrado Gómez and the investigation of the disappearance of the Poblete-Hlaczik couple.

As of the date mentioned the Court had all that was necessary to decide the matter. However, on 30 September 2003, the Court decided to send the dossier of the case investigating the disappearance of the Poblete-Hlaczik couple to the National Court of Criminal Cassation. As we pointed out, this case was ready to be settled as of August 2002, when the attorney general had handed down his opinion. Nevertheless, the Court delayed more than a year before deciding to go ahead with a mere formality. In making such a move, the court has put off giving an opinion on the underlying question here, something it must inevitably do.

b. Complicity of the Judiciary in Crimes Committed During the Dictatorship

As previously mentioned, various federal judges within the country are investigating events that occurred during the last military dictatorship. One such case, which took place on 13 December 1976, involves the murder of a group of prisoners being held in the Resistencia prison in Chaco. Prior to the execution, they were brutally tortured

and some of them had been castrated. This event was known as the 'Margarita Belén Massacre'.

In May 2001, the Centre for Legal and Social Studies (CELS) brought criminal charges against all those responsible for the crimes of aggravated homicide, forced disappearance, genocide and torture. These crimes were committed against seventeen identified people, and five more whose identities have still not been determined. Several of those who may be responsible for the massacre have not thus far been legally linked to it. One such person accused in the case is the former Army Chief-of-Staff, General Ricardo Brinzoni, who was secretary general of the Chaco provincial government when the events took place. The massacre not only involved military personnel, but members of the Public Ministry and Judiciary as well.

On 6 March 2003, Federal Judge Carlos Skidelsky declared Laws 23.492 and 23.521 to be unconstitutional. On 17 June, he ordered the detention of 10 persons accused of forming the convoy that transported the 22 prisoners who were later murdered. Carlos Pujol, defence counsel for the military personnel, presented a writ of habeas corpus considering the detention order to be illegal as it was issued by a judge who lacked jurisdiction. The habeas corpus was rejected by the first instance court and, as a result, the case was referred to the Federal Chamber in Resistencia. This court upheld the habeas corpus, ordering the immediate release of those detained and declaring, indirectly, that Judge Skidelsky lacked jurisdiction in the case.

Improper conduct by court officials is implicated.[29] Firstly, the Chamber judges decided on the merits of the case in the scope of habeas corpus - not the appropriate method for discussing a judge's jurisdiction - thus contradicting applicable legislation and case law. Then, when deciding, prejudging occurred in view of the fact that the judges pronounced on the territorial jurisdiction of the first instance judge before ruling on the case of jurisdiction that is still pending and to be decided by the same court. Finally, by the use of habeas corpus, the defence tried to prevent the plaintiffs from being heard. The judges were the architects of this manoeuvre by supporting it and thus displaying their lack of impartiality.

As regards the proceeding by the Public Ministry, both the first instance prosecutor, Carlos Flores Leyes, and Chamber Prosecutor, Roberto Mazzoni, disqualified themselves from acting in the habeas corpus proceeding as they were involved in the case. Nevertheless, their subordinates were involved: Ana Maria Torres, secretary of the Prosecutor's Office, and Carlos Sansserri, Flores Leyes's assistant. This intervention by the prosecution resulted in complete complicity with the defence strategy.

On 8 July 2003, a Spanish judge, Baltasar Garzón renewed a petition for the extradition of 41 military personnel, four members of the security forces and one civilian accused of genocide, torture and terrorism. By virtue of such request, Judge Canicoba Corral ordered the detention of said persons. As we will explain later, at the time of the request by the foreign judge, there was a presidential decree that prevented the extraditions. On 25 July 2003 this decree was annulled.

On 11 August, President Nestor Kirchner signed Decree 579/2003 ratifying the Convention on the Non-applicability of Statutory Limitations to War Crimes and

[29] Translator's note: One or more words appears to be missing from this sentence in the original text.

Crimes against Humanity. Under this instrument, States Parties to the convention must declare that statutory limitations on crimes against humanity are non-applicable, regardless of when such crimes were committed. The convention came into force in 1970 and it was approved by the National Congress of Argentina in 1995 under Law No. 24.584. However, the ratification document had not yet been deposited. Later, draft legislation was submitted to the Legislative Power to grant constitutional status to this treaty.

In August 2003, the National Congress approved the bill giving constitutional status to the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Law 25.779 was later approved, which declared the Full Stop and Due Obedience Laws irrevocably null and void.

This brought about the reopening of various cases which had remained closed in the late 1980's as a result of said laws. One such case was the judicial proceeding investigating events occurring at the *Escuela Superior de Mecanica de la Armada*, the Naval Mechanics School [Case No. 14.217/03, entitled 'E.S.M.A. - *delito de acción pública* (offence for which a public prosecution can be brought)', conducted in Court No. 12, Office No. 13].

On 29 December 2003, the prosecutor acting in the case requested oral proceedings for 76 cases of torture (torture, according to penal legislation in force when the acts were committed). The prosecutor considered that these acts were not barred from statute of limitations as they involved crimes against humanity. This request is pending in view of the fact that notice has been served on the parties, and following this, the case judge will give his verdict.

Another case that has been reopened as a result of Law 25.779 involves crimes committed in the jurisdiction of the First Army Corps (case 14.216/2003, entitled 'Suarez Mason, Guillermo and others - aggravated homicide, aggravated unlawful deprivation of freedom'.., conducted in Court No. 3, Office No. 6). On 16 December 2003, following representations made by the defence regarding the unconstitutionality of Law 25.779, the judge ruled that said law was valid. This decision has been appealed and the ruling of the Court of Appeals is pending.

c. Legal proceedings abroad. Obligation to judge or extradite.

Since democracy returned, political and legal authorities in European countries have sought the extradition of Argentine soldiers and civilians accused of serious human rights violations during the last military dictatorship.

The handling of this type of situation – in which one State solicits the extradition of a national from another State – is governed by national and international laws. In Argentina, extraditions – their granting or rejection – are governed by law 24,767 on International Cooperation in Criminal Matters, by the principles of international law and, from the end of 2001 until July 2003, by decree 1581/01. Law 24,767 sets out two stages for the extradition procedure: a legal stage, in which the legal

requirements of the application are analysed, and subsequently a political stage, carried out by the Ministry for Foreign Affairs, International Trade and Worship.

Decree Nº 1581/01 stipulated that, in requests for legal assistance or extradition lodged by foreign courts, the principle of the territoriality of the penal code will apply and that the Ministry for Foreign Affairs will therefore reject all extradition requests for events which took place on national territory or places subject to national jurisdiction (article 2). Despite this decision, the regulation stipulates that requests for temporary arrest will be sent to the competent judge stating that the Ministry for Foreign Affairs, International Trade and Worship will act in accordance with this decree when presented with a possible extradition request". In other words, the judges were obliged to accept the order to arrest and comply with it, knowing that the final political decision would be to reject the extradition request.

Whilst the decree 1581/01 was in force, there was a direct violation of article 7 of the Convention against Torture: a State must extradite any person responsible for torture present on its territory or "submit the case to its competent authorities for the purposes of prosecution".

Human rights organisations issued a condemnation, stating both publicly and before the Inter-American Commission on Human Rights that decree 1581/01 of the then President De la Rúa violated the international principle of "judgement or extradition", in view of the fact that the Argentine State was not guaranteeing to fulfil its obligation to refer the matter to the competent authorities for prosecution (owing to the laws of impunity in force).

On 25 July 2003, the Executive Power repealed the decree preventing extraditions. The repeal of decree 1581/01 established a new system of compulsory recourse to the law in the case of any request for collaboration or extradition from another State. Likewise, the Prosecution and the judge are under obligation to support the legal action and make the necessary arrests, until the judge on duty decides upon the extradition request.

d. Military statements claiming responsibility for torture

Also of importance during this period were the declarations by various senior officials from the last military dictatorship on unlawful repression. Between 31 August and 2 September 2003, a local newspaper published three interviews carried out by the French journalist, Marie-Monique Robin, with General (Rtd) Ramón Díaz Bessone, Division General (Rtd) Albano Eduardo Harguindeguy and General (Rtd) Reynaldo Benito Antonio Bignone. In these interviews[30] the aforementioned persons claimed responsibility in various ways for the torture practices used during the period of State Terrorism.

Thus, General Díaz Bessone, a major in the Second Army Corps (from December 1975 until October 1976) and subsequently Minister for Planning (from October 1976 until December 1977), made reference in the interview to several details about the repressive system implemented by the last military dictatorship. He explained that the intelligence service "identifies the cells. It takes a subversive person prisoner.

[30] Published in the national circuation newspaper Página 12.

This man is part of a cell of 3 – 5 people. It is necessary to interrogate him so that others can be found. Once the cell has been reconstructed, only one of them will be connected with the other cell. In this way, it is possible to continue reconstructing the fabric, piecing together a picture with the names of those who belong to the cell, then the cell with which they are linked and so forth until they reach the top, the leadership", explains Díaz Bessone, who has come out in support of the statement that "**the only means of putting an end to a terrorist network is through intelligence and tough questioning to solicit information"** (…) **"How can you can obtain information (from someone in custody) if you do not put pressure on him, if you do not torture him?"** he asked[31].

For his part, Albano Eduardo Harguindeguy, Home Office Minister from March 1976 to March 1981, commented that "the struggle in cities is terribly difficult. You can be walking along calle Florida and someone can brush past you who, unknown to you, is a guerrilla. As a result, everyone is under suspicion. Many are arrested by legal forces and until they are checked out, **they suffer at the hands of the military operation. This can lead to abuses**"[32].

Lastly, Reynaldo Benito Antonio Bignone, the country's de facto president from June 1982 until 10 December 1983, declared that "the criminal must be aware that if he enters the police station, at the very least he will get a beating". He went on to say that the electric prod was always used "all over the place", and that in Argentina it was first used "in Perón's era" (…) "If you want to avoid your house being bombed, however much care you take, it can still happen. The only means of avoiding it is killing the guy who is going to leave the bomb before he puts it there"[33].

On 19 October 2004, Court IV of the National Criminal Appeals Court, comprised of the judges Gustavo Hornos, Ana María Durañona y Vedia, and Pedro David, ruled that the former generals Ramón Díaz Bessone, Reynaldo Bignone and Albano Harguindeguy did not commit military crimes and decided to refer the investigation to the Supreme Council of the Armed Forces for its files.

e. Instruction in the practice of torture

On 12 January this year the National Government informed members of human rights organisations of the existence of photographs which provided evidence of the instruction of various torture practices, all of which were used in the last military dictatorship, in the context of command courses given by the Argentine army. The photos probably date from after 1986 and, according to an official investigation, this form of military practice continued until the middle of the nineties. The Minister of Defence, José Pampuro, and the Army chief, Roberto Bendini, have commented that the practice of military training seen in these papers was eradicated for good in 1994. The photos show individuals who appear to be kept prisoner in a "cloak", as if waiting to be questioned. They all have their heads covered with a hood and are handcuffed behind their backs, just like the prisoners during the last military dictatorship. Elsewhere two persons are shown being subjected to a torture practice known as the "submarine"; this involves submerging the individual in water to the point of drowning. Finally, the photos show evidence of the electric prod being applied to someone being restrained by an undetermined number of officials. According to information

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31 Página 12, 31 August 2003

32 Página 12, 1 September 2003.

33 Página 12, 2 September2003.

supplied by Bendini, these training courses probably took place in “Quebrada de la Cancha”, in Córdoba Province. Those in the photographs were identified as officers and NCOs from the various armed and security forces.

These photos are proof that practices typical of State Terrorism continued to be taught long after the end of the dictatorship. The number of people involved in this type of training and frequency of the latter mean that it is impossible for the police authorities and respective headquarters to have been unaware of their existence.

IV. 6. COMPENSATION POLICIES IN CASES OF FORCED DISAPPEARANCES AND TORTURE WHICH TOOK PLACE DURING THE LAST MILITARY DICTATORSHIP

In 1994, the Argentine state passed law 24,411 on financial compensation for victims of state terrorism during the last military dictatorship. This law was a response to agreements made internationally by Argentina.

The manner in which this compensation can be obtained by the victims’ successors was regulated by decree Nº 403 of 1995, which established the Undersecretary of Human Rights of the Nation’s Home Office Ministry[34] as the means of applying the law.

However, the actual distribution of the economic compensation was regulated later through another decree, Nº 726 of 1997. This decree established payment of the benefit through government stock consolidation bonds. Article 1 authorised the Ministry of Finance to issue shares in the national debt in pesos. Article 2, in turn, authorised shares in the national debt to be issued in dollars.

Thus, in the majority of cases, in order to meet its legal and international obligation to offer compensation for gross human rights violations, the State distributed *Second Series Debt Consolidation Bonds (Pro 4) in dollars* (our italics).

In the context of the deep economic and social crisis previously described, law 25,561 on Public Emergency and Reform of the Exchange System was passed, giving the national Executive Power the authority, inter alia, to proceed with re-legislating the financial and banking system and the exchange market.

Taking this into account, as of December 2001, the bonds were no longer being credited to the beneficiaries. In addition, they were subjected to a compulsory pesification in consideration of decree Nº 471 in 2002.

Thus, the State is attempting to justify through the its announcement of a general emergency, the various regulations resulting from the different departments of the National Executive Power. As a whole, the result is an erratic and confused policy, in breach of the right of victims to comprehensive and appropriate compensation.

The right to just compensation, as one of the fundamental rights of victims, is recognised both by international law and jurisprudence and by proven practice in human rights matters[35].

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[34] By decree Nº 20/99 — of 15 December 1999— the Undersecretaryship of Human Rights passed to the Ministry of Justice and Human Rights of the Nation, with the rank of Secretaryship of Human Rights.

[35] In particular, article 14 of the Convention against Torture and Other Cruel , Inhman or Degrading Treatment or Punishment

At the current moment, the State has decided to pay the financial services for any bonds submitted – as per the law on compensation 24,411 – but their value has been reduced by 70%, through devaluation.