

ARGENTINA

AMNESTY INTERNATIONAL'S CONCERNS ABOUT TORTURE AND ILL-TREATMENT

I. Introduction

Amnesty International submits this summary of its concerns regarding torture and ill-treatment in Argentina for the consideration of the Committee against Torture during its examination, in November 1997, of Argentina's third periodic report on measures taken to implement the provisions of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention against Torture").

Amnesty International is concerned that no effective action to eradicate the practice of torture and ill-treatment seems to have been taken by the Argentine authorities. Argentina has been a State Party to the Convention against Torture since 1987. This treaty prohibits the use of torture and other cruel, inhuman or degrading treatment or punishment. Article 22 of the 1994 Argentine Constitution, grants constitutional rank to all international treaties ("*Los tratados y concordatos tienen ... jerarquía constitucional.*") Article 18 states that all types of torment and beatings are abolished for ever ("*Quedan abolidos para siempre .. toda especie de tormento y los azotes*"). However, Amnesty International is concerned that this prohibition does not adequately meet the requirements of Article 1 of the Convention against Torture.

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

Amnesty International remains concerned at reports of torture and ill-treatment by the police in Argentina and the slow progress in investigating such reports. While investigations in some cases have been completed and judicial procedures initiated have led to sentences, many cases are still pending and no progress has been registered on cases denounced several years ago. The inadequate investigation of reports of torture does not meet the requirements of Article 12 of the Convention against Torture.

Amnesty International advocates the rapid and thorough investigation of all allegations of torture and ill-treatment. In Amnesty International's view, failure to provide effective public remedies for complainants may facilitate such illegal practices.

II. Allegations of torture and ill-treatment

Torture and other ill-treatment of detainees in police stations continue to be reported. Several of the cases reported involve youths or criminal suspects.

There is reasonable concern that the real number of cases is higher than those publicly known through media information or reported by local human rights organizations and lawyers as a result of official complaints filed by the victim or their relatives.

There are no official statistics available for the number of cases of ill-treatment and torture reported. According to the 1996 Annual Report of the Argentine non governmental organization *Centro de Estudios Legales y Sociales* (CELS), Center for Legal Social Studies, statistics of reports of victims of police violence, including deaths and torture and ill-treatment, in the Federal Capital, Buenos Aires, are not publicly available from the police stations and the only sources of information are the national press. In its report CELS registered over 1,200 victims of police violence between 1993 and 1996 in the Federal Capital and Greater Buenos Aires (*Ciudad de Buenos Aires y Gran Buenos Aires*). (See Appendix I: Summary of some cases of reported torture and ill-treatment by police)

i) Leandro Oliva

In February 1996, Leandro Oliva and his girlfriend, a minor, were allegedly arrested by a police patrol in Buenos Aires after 0.14 grams of cannabis was reportedly found in his possession. In his complaint filed before the Human Rights Undersecretariat in the Ministry of the Interior, Leandro Oliva stated that while en route to the fifth police station (*comisaria 5a.*) he was subjected to torture including being burnt with cigarettes. In the police station he says that both of them were handcuffed, beaten, and threatened with the same fate as Walter Bulacio, a youth who died in police custody in 1991.

ii.) Clarisa Andrea Lencina

Clarisa Andrea Lencina filed in March 1996 a legal complaint against two policemen of the third police station (*comisaria 3a.*) at Berazategui, Buenos Aires Province. In her complaint she stated that she had been subjected to beatings, near asphyxiation and sexual abuse (*manoseada y sometida a vejámenes*) on the two occasions when she was detained in February and March.

iii) Fernando Pérez Ferreira

Fernando Pérez Ferreira, a student, was arrested in July 1996 by members of the local police in San Carlos de Bariloche, Neuquén Province. According to the legal complaint filed by his parents, his arrest was initially denied by the police and he was severely beaten during the seven

hours of his detention. Three policemen have been reportedly suspended from duty and a police inquiry was announced.

iv) Group H.I.J.O.S.

A group of 11 youths were violently arrested in July 1996 in Buenos Aires by armed police personnel wearing civilian clothes. The group was taken to the 21st police station in Buenos Aires where they were allegedly beaten and some were kept in incommunicado detention for 17 hours and interrogated on their attendance at a public meeting organized by H.I.J.O.S., a non-governmental group formed by children of the Argentine "disappeared". A complaint relating to this incident has been filed but there is no information on any inquiry having been initiated.

III. Torture of transvestites, transsexuals, lesbians and gay men. Legislation facilitating torture. (Article 2.1 of the Convention against Torture)

Amnesty International is concerned at the extent to which Article 2.1 of the Convention is undermined by weaknesses in provincial legislation, allowing extensive misuse of police by-laws to torture and ill-treat detainees. Article 2.1 establishes that "each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." ("*Todo Estado Parte tomará medidas legislativas, administrativas, judiciales o de otra índole eficaces para impedir los actos de tortura en todo territorio que este bajo su jurisdicción.*")

Provisions in provincial legislation allow for the detention of alleged suspects under the police by-laws Code of Misdemeanours (Código de Faltas). Youths and sexual minority groups tend to be targeted under the Code's provisions and be subjected to police harassment, ill-treatment and torture.

Transvestites, transsexuals, gay men and lesbians are frequently arrested in provincial cities under articles included in the police by-laws such as scandalous behaviour or offences against public modesty. They are held in conditions reported as cruel, inhuman and degrading and subjected to ill-treatment and torture, involving beatings, sexual harassment and extortion. They are often targeted solely on the basis of their sexual orientation. While many of the victims are reluctant to denounce the violence for fear of reprisals, the claims of those who file official complaints are often ignored by the authorities, and lawyers working on their behalf are reportedly threatened.

Amnesty International has received reports of ill-treatment and torture of sexual minorities in the Federal Capital Buenos Aires and the provincial cities of Rosario and Mendoza. Amnesty International has reasons to believe that the incidents reported are not isolated examples but in most cases the names of the victims are withheld as they fear for their physical safety.

i) Adriana Cortés

Adriana Cortés, a transsexual woman, was arrested in Mendoza, Mendoza Province, in February 1997 and taken to the III Police Station (*Comisaria III*). She was suffering from a toothache and requested an aspirin. Reportedly, the police guard only provided it after Adriana Cortés submitted to his demand to have sex in exchange for the medicine. After her release Adriana Cortés filed a complaint before the II Court (II Juzgado de Faltas). The local media published her complaint. The police officer was transferred to another police station and no further action is known to have been taken on this case.

IV. Failure to exercise legislation punishing torture (Article 4 of the Convention against Torture). Inadequate Investigations of reports of torture (Article 12 of the Convention against Torture)

Conditions under Article 4 of the Convention have been met by Argentine legislation "ensuring that all acts of torture are offenses under its criminal law". However, there is a persistent failure to make use of the legislation owing to the slow progress and inconclusive state of many investigations into cases of alleged torture. The lack of a "prompt and impartial investigation" fails to meet the conditions of Article 12.

Prison sentences of between eight and 25 years' imprisonment are established in Articles 144 tercero and 144 bis. 2o. and 3o. of the Argentine Penal Code for all government officials who use torture against a detainee. Lesser penalties of between two and six years are imposed on those who ill-treat a detainee or apply unlawful coercion (*apremios ilegales, severidades, vejaciones*). Life imprisonment is established under Article 144.2o. in cases of torture leading to death.

Between 1995 and 1997, sentences of life imprisonment have been handed down to members of the security forces (police) involved in five cases of torture followed by death that took place between 1992 and 1995. However, for many other cases registered before and during the same period, the investigations remain stalled.

i) Mario Humberto Gómez Yardez

In July 1990, Mario Humberto Gómez Yardez, a Chilean national, was arbitrarily arrested by members of the Mendoza Provincial police on suspicion of a common crime, subjected to torture and released a year later without charges. In his complaint filed before the 8th Court (*8vo. Juzgado de Instrucción*) on 6 September 1990, he stated that on route to the 17th police station

(*comisaria 17*) of the locality of Lavalle, Mendoza Province, he was repeatedly beaten and subjected to mock executions. In the police station, he was subjected to beatings, near asphyxiation, mock executions and electric shocks.

After his release, Mario Humberto Gómez Yardez started legal proceedings against members of the Mendoza police for subjecting him to torture. Some of the police officers involved in the case are currently held in detention awaiting the outcome of the trial which was due to start on 20 October 1997. However, the proceedings were cancelled due to the absence of one of the court judges and at the request of the defence lawyers. It is understood that the trial will start sometime in December 1997, but no fixed date has been officially set. Reportedly, Mario Humberto Gómez Yardez and his family have received death threats.

ii) La Tablada: Allegations of torture and ill-treatment

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

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

In November 1992, Argentina informed the Committee on Torture that "military personnel and police officers guilty of acts of torture at La Tablada in 1989 had been tried under ordinary law because the Defence of Democracy Act did not provide for penalties for such acts. As yet, not all sentences had been handed down and the Government of Argentina would communicate all relevant information to the Committee as soon as possible". More than eight years after these violations took place, Amnesty International is unaware of the outcome of such investigations or the progress of the trials.

Amnesty International is concerned that the delays in investigating the related complaints of torture and ill-treatment cannot be justified and that it amounts to a denial of the rights accorded to all detainees, irrespective of the crimes for which they have been accused, to have such complaints promptly, impartially and effectively investigated.

iii) Past human rights violations

Amnesty International has consistently called on the Argentine Government to fully and impartially investigate the very serious human rights violations committed by military governments during 1976 to 1983, and for those responsible to be brought to justice.

The right of judicial redress for relatives of the victims has been exhausted in Argentina through decree laws and presidential pardons which closed all cases of human rights violations committed during the military government. In November 1989 the Committee against Torture stated that, while the violations had been committed before the Convention had been signed by the Argentine Government, the adoption of legislation and measures to stop the investigation and trial of those found responsible "was incompatible with the spirit and purposes of the Convention" (*"es incompatible con el espíritu y los propósitos de la Convención"*). More recently, between October 1994 and April 1995, new evidence emerged of the systematic involvement of the armed forces in human rights violations, including torture, during the years of military rule. To the distress of relatives of the victims who appealed for their right to truth and justice, the Argentine Government failed again to investigate. Equally disturbing have been the attempts by the authorities to promote members of the armed forces accused of torture in the past.

The Argentine Government is bound under the Convention against Torture to promptly and impartially investigate cases of torture and to ensure that suspected torturers are prosecuted. Members of the Committee against Torture have expressed concern as to whether the presidential pardon of October 1989, as applied to military officers who had committed human rights violations under the previous regime, was in strict compliance with the Convention. Moreover, the continuing use of torture and ill-treatment against detainees by security forces, and the impunity granted to the perpetrators, prompted the Committee against Torture in November 1992 to express its deep concern at the "continuing vestiges of the former regime" and at practices "contrary to the requirements of the Convention".

Appendix I

ARGENTINA SUMMARY OF SOME CASES OF REPORTED TORTURE AND ILL-TREATMENT BY POLICE IN ARGENTINA

CASES

DATE

Rafael AGUIAR

18-04-93

Rene CAMPOS CORREA

Neuquén (Neuquén Province)

Both youths arrested and detained by police in San Lorenzo area of Neuquén.

On release, Rafael Aguiar filed an ill-treatment complaint. Examining doctors found evidence of beatings. A Neuquén court ordered the Provincial Government to compensate the youth for his injuries.

Santa Victoria AGUIRRE

01-09-94

Corrientes (Corrientes Province)

Santa Victoria Aguirre, arrested 01-09-94. For following 10 months imprisoned, with four young daughters, alongside male detainees in the *Escuadron VII de Gendarmeria*. Reportedly she was repeatedly raped, both by prisoners and guards, becoming pregnant as a result and subsequently suffered a miscarriage. She filed a legal complaint for rape.

Carina ALVAREZ

02-95

Buenos Aires Province

Carina Alvarez, (16), was allegedly kidnapped and tortured by three unidentified men. She is a friend of one of the two deceased conscripts in the case known as "Caso Granaderos", and a witness at the investigation into the deaths. Carina Alvarez had already been subject to intimidation.

Guido ARAYA (18)

07-96

Carlos MONTEROS (18)

Mario SIEBEN (21)

Maria Valeria ZABALA (18)

MARTORANO

and 6 unnamed youths**Palermo, Buenos Aires**

Eleven youths were illegally detained and beaten by non-uniformed police in the 21st Police Station. They had attended an event by the human rights group Children for Identity and Justice against Oblivion and Silence, *Hijos por la Identidad y la Justicia contra el Olvido y el Silencio (H.I.J.O.S.)*.

Erminio BENITEZ**03-11-96****Marcos BENITEZ****Hilario Jose MEDINA****Corrientes (Corrientes Province)**

The three men were arrested after a traffic dispute and detained by police. Between 25-35 officers were allegedly involved in beating them, various implements being used. Victims have lodged complaints with the Minister of Government, the Police and the Corrientes judiciary. There are witnesses to these events. An official police statement indicated that an investigation would take place.

Daniel Guillermo BLANCO**1996****Chilecito (La Rioja Province)**

Three police officers entered his house and beat members of the family, including an eight-year-old boy. Daniel Blanco had made a joke about three out of uniform police officers. The police officers were detained.

Miguel BRU**17-08-93****La Plata**

Bru "disappeared" in 1993. He remains "disappeared". In May 1995, police officer Lopez, accused of the murder of Miguel Bru, appeared before court. In July 1995, Lopez refused to testify, citing his constitutional right. By August 1995, one police officer was being held in connection with the case, charged with kidnapping and torture leading to death. In May 1996 two officers were detained on the orders of the court. One of the officers under investigation was released. A new witness testified that former police chief Ojeda, already implicated in the case, had been responsible for torturing Bru.

Walter BULACIO**19-04-91****Buenos Aires**

Seventeen years old. He died after being incarcerated in a police cell at 35th Police Station, amongst 72 other youths arrested after a rock concert. His physical condition became very poor.

He died within a week of a brain haemorrhage. By March 1996, the ex-chief of the 35th Police Station, where Bulacio was held had been charged with “injuries leading to death.” However the charge has been changed to “illegal detention”.

Mario Facundo CACERES

08-09-95

Burzaco (Buenos Aires Province)

Twenty years old. Last seen alive having papers checked by police. His body found the following day bearing clear signs of physical violence, although an official autopsy claims drink or drugs were to blame for his death. The family are contesting the case.

Juan CAGGIA

04- 1997

Quilmes, (Buenos Aires Province)

Victim’s body was found with signs of ill-treatment. By court order, the first Police Station in Quilmes was searched in connection with the case.

Cristian Ariel CAMPOS

09-03-96

Mar del Plata

Sixteen-year-old Campos was taken by police from his neighbourhood. Although witnessed, police denied knowledge of his whereabouts. His body was found a week later, shot in the back and partially burnt. Four police officers have been suspended and charged. One of the accused officers had detained Campos one year previously. Three of the accused officers have blamed the fourth for the murder of Campos. This officer has testified to the judge that the gun fired accidentally. The charge against three of the accused has been changed from illegal detention and manslaughter (*Privación ilegítima de la libertad y homicidio calificado*) to torture followed by death (*Tortura seguida de muerte*). The judge ordered preventative custody for the officers involved in the case. In March 1997 it was announced that the trial (*Juicio Oral y Publico*) of four police officers implicated in this case was to begin in June.

Saul CANESSA

1992

Buenos Aires

In July 1996, four officers and three doctors were detained by order of the judge accused of conspiracy to conceal a deed and negligence followed by death (*conspirar en el ocultamiento de una causa por abandono de persona seguido de muerte*). Canessa, 21 years old, had been detained accused of drunkenness, but later fell ill and died in hospital. He received no attention in the police station.

Raúl FLECHA**09.96****Santa Fé (Santa Fé Province)**

In September 1996, Raúl Flecha's brother filed a complaint regarding his "disappearance", suspecting that he had been detained by the police. Raúl Flecha's body, showing signs of torture, was found in a local river. The investigating judge ordered a second autopsy to determine if the victim had been drunk at the time of his death, as this was the reason for his detention by police.

Raúl GÁRGANO**1995****Buenos Aires**

Gárgano, a taxi-driver, was detained and beaten after refusing to give three police officers a free ride. The Chief of the 26th Police Station claims the accusation unfounded. According to local police chiefs, Gárgano, unarmed, allegedly attacked the three armed officers.

Juan Ignacio Marcelo GOMEZ**12-1995****Santiago del Estero (Santiago del Estero Province)**

Gómez died through smoke inhalation in his prison cell, provoking rooftop protests by inmates who claimed that prison officers, though hearing his cries for help, allowed him to asphyxiate.

Mario Humberto GOMEZ YARDEZ**23-07-90****Mendoza (Mendoza Province)**

Gómez Yardez was taken from his house by members of the "Cuerpo Motorizado". He was falsely accused of rape and put in prison for 13 months, much of which he spent in solitary confinement, fearing for his safety in the general prison population. He was tortured. By November 1994, eight police officers of varying rank have been detained in connection with the case. The trial scheduled for 20 October 1997 was cancelled.

Mauricio HEREDIA(18)**05-03-95****Córdoba (Córdoba Province)**

Youth beaten and left paraplegic by a policeman working off-duty as a security man in a Córdoba disco. The case was in the hands of Police Internal Affairs. Investigations into this case are being instigated both by the judiciary and by the provincial police. Police have admitted that an off-duty police officer was involved.

Clarisa Andrea LENCINA

03-96

La Plata

Detained by police after refusing suggestions that she was soliciting. She was subjected to beatings, near asphyxiation and sexual abuse (*manoseada y sometida a vejámenes*). Clarisa Andrea Lencina filed a complaint before the local court against two police officers.

MINOR -Hijo de Lorenzo MIRANDA

10-96

General Pico, Santa Rosa (La Pampa Province)

The minor was arrested suspected of riding a stolen bicycle. Allegedly he was put in a darkened cell and beaten by a policeman to make him to confess. His family has lodged a complaint before the district court. No arrests have been recorded.

Andres NUÑEZ

09-90

La Plata

Nuñez "disappeared" after being taken by members of the Police Brigade of La Plata. In 1995 his body was found after information was given by a police officer. In June 96, according to declarations made by two fellow officers, Nuñez had been tortured to death by three officers in "Brigada de Investigaciones de La Plata". The three accused have been fugitives since the investigation began in July 1993. Four officers of the Investigations Brigade of La Plata, including the ex-head, are under investigation by a judge for falsification of the entry book "libro de guardia". Two suspects in the case said that the book was tampered with on the orders of the Brigade Chief. In May 1997, 11 officers accused in the case were amongst 366 Buenos Aires police officers who were retired from the police force.

Mario Ramon OLIVA

1995

Chamical, (La Rioja Province)

Oliva, arrested for drunkenness, died of burns in his cell. The five policemen on duty at the time were detained by orders of the appointed judge.

Claudio PAREDES

06-95

Posadas (Misiones Province)

Paredes, 19-year-old, was reportedly killed by three police officers in the Posadas Botanical Gardens. He was lured into the bushes by the men, tortured and killed. These three, and Paredes' ex-girlfriend - also involved - were arrested.

Gabriel PÉREZ 1992**San Isidro, (Buenos Aires Province)**

In September 1996, a sentence of 10 months to three years was asked for in the case of seven police officers accused of negligence in the case of Pérez, who hanged himself while in police custody. The Pérez family have received threats since his death.

Fernando PÉREZ FERREIRA 07-96**San Carlos de Bariloche (Neuquen Province)**

Pérez Ferreira, 18-year-old student, was arrested in July 1996. According to the legal complaint filed by his parents, he was severely beaten by members of the provincial police and his detention was initially denied by the police. Three policemen have been reportedly suspended and a police inquiry was announced.

Former police TORRES 1989**Buenos Aires**

In December 1996, a former police officer who spent five years in prison wrongly convicted for the murder of Norberto Montes was exonerated. Torres claimed he had been beaten and tortured to extract the confession in the *comisaria primera* of Florencio Varela.

Leonardo VATTEONE 07-96**Javier FLORES****Buenos Aires**

Vatteone (15) and Flores (16) driving the Vatteone family car -without permission - were pursued by police, who opened fire, wounding both boys. The car ran into a tree. Reportedly two police officers pulled the victims from the car and assaulted them while a third officer remonstrated with the culprits. In the aftermath, a fellow officer tampered with evidence. The case is under investigation by the Court in Moron.

CASES TRIED AND SENTENCES PASSED:**Cristian Daniel DOMINGUEZ** 15-02-95**Mar del Plata**

Beaten to death in Batán prison by two prison guards. Prosecutor asking for life sentences for both, and also for their superior officer, present at the time. Deputy Head of the prison of Batán

and four of his subordinates were arrested by police in March 1995. The men were arrested in relation to the charges of “torture leading to death” which applies to the case of Domínguez. In March 1997, the two prison guards were convicted of Domínguez’ murder and sentenced to 13 and 11 years’ imprisonment by the “*Sala Primera de la Cámara de Apelaciones*”. Also convicted was the Head of the prison, given 18 months in jail. All three were banned from positions in the public service. Another official was found not guilty.

Sergio DURAN

06-08-92

Morón, Buenos Aires

Seventeen years old. In October 1995 a police officer was given a life sentence for the torture and subsequent death of Sergio Durán. Since the return of civilian government this is the first time that this sentence has been passed down in a case of this nature. Durán died after being subjected to electric shock torture. In October 1996, two policemen , fugitives for three years since being accused of taking part in the torture and murder of Durán, were captured.

“FJM”

28-04-93

Moreno (Buenos Aires Province)

In November 1995, a police officer and four prisoners given jail sentences up to 22 years for the beating, torture and rape of a youth in the police station of Moreno (no full name given).

Cristian LUNA

12-94

Lomas de Zamora (Buenos Aires Province)

Luna was beaten and shot dead by an off-duty police officer who took exception at the victim urinating in public. In December 1995, the officer was sentenced by Court of Appeal to 11 years’ imprisonment.

Juan Freddy PAZOS

13-08-93

Viedma, (Rio Negro Province)

Parents of the victim filed a civil demand against the state for damages in this case. In July 1996, two provincial police officers were sentenced to life imprisonment for the killing and torture of Juan Freddy Pazos. For the first time in Rio Negro, the prosecution was based on a charge incorporated into the Penal Code in 1984, “torture leading to death”.

Diego RODRIGUEZ LAGUENS**20-01-94****Jujuy (Jujuy Province)**

Diego Rodriguez Laguens died in February 1994 while in the custody of the provincial Police in San Pedro (Jujuy Province). The trial concerning his torture and death against members of the Jujuy police was scheduled for October 1995 and lasted until May 1996. A witness claimed to have seen three policemen speed off in their car from the site where Rodriguez Laguens' dead body was found. Three police officers were convicted and sentenced to 16 years' imprisonment for the abduction and murder of Diego Rodriguez Laguens.