

ARGENTINA

IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

General Introduction

On 16 and 17 November 2004 the United Nations Committee against Torture met in Geneva to examine Argentina's fourth periodic report (CAT/C/55/Add.7) on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the State of Argentina, at its 622nd and 625th meetings. Conclusions and recommendations were subsequently adopted by the Committee (CAT/C/CR/33/1).

UN treaty bodies, such as the Committee against Torture (the Committee) hold governments directly accountable for compliance with their obligations under international human rights treaties. Since 1987 Argentina is State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), which prohibits the use of torture and other cruel, inhuman or degrading treatment or punishment.

Amnesty International presented a submission on its concerns relating to torture and ill-treatment for consideration before the Committee. The submission outlined concerns at the continuous reports of torture and ill-treatment of individuals detained by members of the security force, including minors, complaints of cruel inhuman or degrading treatment in prisons and detention centres and the lack of prompt, independent, exhaustive and conclusive investigations into such complaints. Amnesty International's submission included a Partial List of cases of torture and ill-treatment including 36 incidents of torture and ill-treatment affecting over 233 individuals. Amnesty International has not received information regarding the start, progress or outcome of investigations into most of the 233 cases included in the Partial List¹

In spite of assurance received by a delegation of Amnesty International who visited Argentina in February 2002, from provincial authorities indicating steps to improve the prisons system and to put an end to ill-treatment, and of public statements by the Buenos Aires Province Governor opposing the practice of torture, Amnesty International continues to be concerned about reports of torture and ill-treatment by members of the security forces. Although there have been some investigations, legal action and convictions, most cases continue unresolved

¹ See Appendix I – Partial list of cases of torture and ill-treatment which have been publicly reported. The list features cases from 2000 to 2004. It also includes three cases from 1988, 1991 and 1996 whose judicial investigations were completed only in 2002 and 2003.

and little progress has been made in the investigation of complaints submitted some years ago. The inadequate investigation of complaints of torture fails to comply with provisions of the Convention against Torture.

Since the last CAT examination in November 1997, Argentina has adopted several international agreements demonstrating its interest in protecting human rights. However, Amnesty International considers that there are reasons for concern about the Argentine State's compliance with the Convention against Torture, despite the judicial initiatives and ratification of international instruments that indicate the interest of the Argentine authorities in taking effective measures to prevent and eradicate torture throughout the national territory.

This Amnesty International external document provides the full text of Amnesty International's submission to the Committee against Torture for its examination in November 2004 of the fourth periodic report submitted by the Argentine State. It also includes in Appendix III the full text of the Conclusions and Recommendations of the Committee against Torture.²

The Committee session

The Committee against Torture sessions held on 16 and 17 November 2004 to consider the fourth periodic report of Argentina were attended by a delegation lead by the Chief of the Cabinet of Advisers for the Secretary of Human Rights in the Ministry of Justice, Security and Human Rights, Dr. Rodolfo Mattarollo, and included the Director of the Human Rights Office of the Province of Buenos Aires, Sr. Remo Carlotto; the National Head of the Prisons' Service, Sr. Francisco Mugnollo; representatives of the Ministry of Justice and the Office of the Secretary of Human Rights of the Ministry of Foreign Affairs as well as representatives of the Permanent Mission of Argentina to the United Nations Office at Geneva.

Representatives from the Argentine non-governmental human rights organization *Centro de Estudios Legales y Sociales* (CELS), Centre for legal and Social Studies were present at the sessions. CELS and lawyers human rights defenders from the Province of Mendoza submitted alternative reports for the consideration of the Committee.

Conclusion and Recommendations of the Committee

At the end of November 2004 the Committee made public its conclusions and recommendations.

The Committee welcomed Argentina's fourth periodic report, noting that it was submitted two years after the due date of June 2000. The Committee expressed appreciation to the constructive dialogue established with the high-level delegation and thanked the delegation for its frank and direct answers to the questions posed by the Committee.

² Argentina: Conclusions and Recommendations of the Committee against Torture, Thirty-third session, 15-26 November 2004 (CAT/C/CR/33/1/). The document is available in English and Spanish.

Positive aspects

The Committee underlined a number of positive aspects including the efforts made by Argentina to combat impunity in respect of crimes against humanity committed under the military dictatorship. In this context, the Committee pointed out at legislation passed in September 2003 declaring the “Due Obedience” and “Full Stop” Laws null and void; the initiation of a significant number of judicial investigations into cases of past human rights violations; and the repeal of the executive decree No. 1581/01 rejecting request for extradition in cases involving serious human rights violations committed during the military government.

The Committee also welcomed the ratification of the Optional Protocol to the Convention in November 2004; the ratification of the Rome Statute of the International Criminal Court in February 2001; the promulgation in January 2004 of the new Migration Act, No. 25.871, which lays down, *inter alia*, that a foreigner may be detained only by a judicial authority. It also welcomed the work accomplished by the National Commission for the Right to an Identity, which was entrusted with the task of locating children who “disappeared” under the military government.

Areas of Concern

In its areas of concern the Committee underlined 13 points. These included the lack of proportion between the high number of reports of torture and ill-treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, all of which, the Committee stated “contributes to the prevailing impunity in this area”.

The Committee established in its areas of concern the repeated judicial practice of treating the crime of torture as a minor offence “such as unlawful coercion” which carries a lesser punishment, when in fact such actions should be categorized as torture. It expressed concern at the “uneven application of the Convention in the various provinces of the state party”, establishing that the State party’s Constitution grants the Convention the same status as the Constitution itself.

The Committee noted with concern *inter alia*: the reports of arrests and detention of children, most of them “street children” and beggars and the alleged torture and ill-treatment they suffered, in some cases leading to death; the allegations of torture and ill-treatment of certain other vulnerable groups such as members of the indigenous communities, sexual minorities and women; the overcrowding and poor physical conditions prevailing in the prisons; and the high number of persons being held in pre-trial detention.

Recommendations

The Committee recommended that “the State party should take all necessary steps to prevent acts of torture and ill-treatment in the territory of the State of Argentina”, and underlined 19 specific recommendations to the state of Argentina including to:

- ◆ Take vigorous steps to eliminate the impunity of the perpetrators, carrying out prompt, impartial and exhaustive investigations, try, and where appropriate, convict the perpetrators of torture and ill-treatment, imposing appropriate sentences and properly compensating the victims;
- ◆ Guarantee that the obligations arising from the Convention will always be fulfilled in all provincial courts, ensuring its uniform application throughout the country. The Committee reminded the State party that the State’s international “responsibility is borne by the State at the national level even when violations have occurred at the provincial level”;
- ◆ Organize a national register of information from domestic courts on cases of torture and ill-treatment;
- ◆ Guarantee that, as promised by the delegation, the holding of minors in police units in the Province of Buenos Aires, be immediately banned, transferring minors to special centers and that a nationwide ban will be imposed on the detention of minors by police personnel on “welfare grounds”;
- ◆ Take effective steps to improve physical conditions in prisons, reduce the existing overcrowding and properly guarantee the fundamental needs of all persons in custody;
- ◆ Take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and from any unfavourable consequence of their action in making such a report;
- ◆ Include in its next periodic report detailed statistical data, especially in terms of types of offence, the age, ethnic group and sex of the victim and the category of the perpetrator, on reports of acts of torture and other cruel, inhuman or degrading punishment or treatment inflicted by State officials. Include also statistical data on investigations, proceedings and criminal and disciplinary punishments imposed following such reports and the consequences for the victims in terms of reparation and compensation;
- ◆ Establish and promote effective mechanism within the prison system to receive and investigate reports of sexual violence and provide protection and psychological and medical assistance to victims;
- ◆ Extensively publicize the reports submitted to the Committee by the State party, as well as the Committee's conclusions and recommendations, through official web sites, the media and non-governmental organizations;
- ◆ Submit its next periodic report, combining the fifth and sixth reports, at the latest by 25 June 2008, the scheduled date for the submission of the sixth report.

Amnesty International's Recommendations

Amnesty International calls on the Government of Argentina to take all necessary steps, including at national and provincial levels, to implement the recommendations formulated by the Committee, thereby ensuring that positive progress is made to prevent and eradicate torture in the Republic of Argentina. Equally, Amnesty International expects that Argentina will submit its next periodic report, by 29 June 2008, following the indication of the Committee to combine the fifth and sixth reports by that date.

ARGENTINA
SUMMARY OF AMNESTY INTERNATIONAL'S
CONCERNS
with regard to the Argentine Government's
implementation of the United Nations Convention
against Torture and other Cruel, Inhuman or
Degrading Treatment or Punishment

I. Introduction

Amnesty International is submitting this summary of its concerns about torture and ill-treatment in Argentina for consideration by the Committee Against Torture (CAT) during its examination, in November 2004, of the fourth periodic report presented by Argentina on the implementation of the provisions of the *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)*.

Amnesty International is concerned that the Argentine authorities have not managed to implement effective measures to eradicate torture and ill-treatment. Since 1987, Argentina is state party to the *Convention against Torture*, which prohibits the use of torture and other cruel, inhuman or degrading treatment or punishment.

Article 75.22 of the Argentine Constitution of 1994 states that "treaties and concordats have ... constitutional rank". The *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* is among these treaties. Article 75.22 also states that "[the treaties and concordats] do not repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognized herein". In the context of this principle, as set out in Article 75.22, and given that Article 18 of the Argentine Constitution, which states that "any kind of torments and whipping, are forever abolished", is not consistent with the definition of torture contained in the *Convention against Torture*, Amnesty International considers that steps should be taken to define torture and its prohibition clearly in national legislation, in compliance with the *Convention against Torture*.

Although Argentina is a federal state and the provinces have their own Constitution, article 31 of the National Constitution states that international commitments adopted by the State are binding on all provincial authorities. This means that the laws, regulations and other rules of

inferior rank are only applicable if they are compatible with the content and scope of the said treaties (the provisions of the treaties should apply if the other norms are not compatible). Similarly, decisions of the Argentine authorities must comply with the provisions of the said treaties. However, despite these safeguards, there are continued reports of torture and ill-treatment of detainees in police stations and prisons, by police in the provinces and the federal capital.

Amnesty International continues to be concerned about reports of torture and ill-treatment by members of the security forces in Argentina and also by the slowness of investigations into these reports. Although there have been some investigations, legal action and convictions, most cases continue unresolved and little progress has been made in the investigation of complaints submitted some years ago. The inadequate investigation of complaints of torture fails to comply with the provisions of article 12 of the *Convention against Torture*.

In February 2002, an Amnesty International delegation visited the cities of Buenos Aires and La Plata and submitted its concerns about complaints of torture to the national and provincial authorities.³ Information provided by the authorities in Buenos Aires Province indicated that measures are being taken to improve the prison system and put an end to ill-treatment. In March 2002, the Governor of Buenos Aires Province publicly stated his opposition to the practice of torture.⁴ Similarly, the Provincial Supreme Court of Justice informed Amnesty International about recent resolutions it has passed to ensure compliance with the provisions of Law 12,061, which obliges members of the *Ministerio Público*, Attorney-Generals Office, to carry out visits to places of detention and confinement within each legal department. Amnesty International has no information about whether these resolutions are being complied with in practice.

Amnesty International considers that all complaints of torture and ill-treatment must be investigated promptly and thoroughly. The lack of effective public remedies with regard to such complaints can facilitate these unlawful practices. Governments must clearly and unequivocally condemn torture wherever it occurs. They must also make it clear to all members of the security forces and the judiciary that, without doubt or exception torture must never be tolerated.

Steps to put an end to torture include the duty of governments to take responsibility and be accountable for such a serious violation of human rights, implementation of effective preventive measures within the security forces, effective measures to deal with the causes and

³. See: Argentina: Action Plan and Respect for Human Rights, 11-16 February 2002 Mission, AI Index: AMR 13/002/2002, March 2002

⁴. Argentine daily newspapers: Página 12, 3 March 2002. Speech by the Governor of the Province of Buenos Aires, Sr. Felipe Solá, at the inauguration of the 130th period of ordinary sessions of the Buenos Aires Province legislature.

other factors that contribute to this situation; the immediate and independent investigation of complaints; and the bringing to justice of those responsible.

i) International Treaties

Since the return to civilian government in 1983, Argentina has ratified several international instruments and has actively participated in international human rights issues. Since CAT's last examination of the periodic report presented by Argentina, in November 1997, the Argentine government has ratified international conventions and taken initiatives to protect human rights, including the issues of torture and cruel, inhuman or degrading treatment.

For example, Argentina has actively promoted the international convention to prevent and punish the "disappearance" of people, within the context of the work of the Human Rights Commission. In addition, with Law 25,390 of February 2001, Argentina ratified the Statute of Rome of the International Criminal Court, which establishes the Court's competence to deal with the crime of torture, either as a crime against humanity or as a war crime, as well as related issues such as "disappearances". In June 2004, the Argentine Senate passed a bill to adapt national legislation to the provisions of the Statute. Approval of the bill is pending.

More recently, in September 2004, Law 25,932 was approved, ratifying the *Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. At the time of writing, the corresponding ratification instrument has yet to be deposited.⁵

Since the last CAT examination in November 1997, Argentina has adopted other international agreements that demonstrate its interest in protecting human rights, and that directly or implicitly offer protection against torture and cruel, inhuman or degrading treatment, including the Inter-American Convention against the International Traffic of Minors, in February 2000; International Labour Office (ILO) Convention 169 on Indigenous and Tribal Peoples in Independent Countries, in July 2000; the Inter-American Convention for the Elimination of All Forms of Discrimination against Disabled People, in January 2001; and the Inter-American Convention on the International Return of Minors, in February 2001.

ii) Continuing concerns of Amnesty International

Amnesty International considers that there are reasons for concern about the Argentine State's compliance with the *Convention against Torture*, despite the judicial initiatives and ratification of international instruments that indicate the interest of the Argentine authorities in taking effective measures to prevent and eradicate torture throughout the national territory. This concern has increased over the course of the last seven years due to complaints received by Amnesty International, and made by individuals, non-governmental organizations and Argentine human rights lawyers, and to the regular publication by national newspapers of

⁵ The instrument of ratification of the Optional Protocol to the Convention was deposited in November 2004.

cases and facts concerning the use of torture and ill-treatment by members of the security forces and situations of cruel, inhuman or degrading treatment in the country's prisons.

The main reasons for Amnesty International's concern about the application of the *Convention against Torture* include the torture and ill-treatment of individuals detained by members of the security forces, including minors; complaints of cruel, inhuman or degrading treatment in prisons and detention centres and the lack of prompt, independent, exhaustive and conclusive investigations into such complaints.

II. Complaints of Torture and ill-treatment

i) Cases and situations in which complaints of torture and ill-treatment have been made

Article 1. "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person [...] when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity [...]."

Article 12. "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

Complaints of torture and cruel, inhuman or degrading treatment continue to be received and are extensively publicised in the national press and recorded by Argentine non-governmental organisations. According to the available information, most cases have either not been investigated or the progress of investigations that have been started is unknown.⁶

Below, we provide information on some cases which illustrate incidents of torture and ill-treatment of detainees by the security forces.

In January 1999, in Rincón del Medio, Mendoza Province police officers detained **Fabián Manríquez**, 18 years-old, under suspicion of having committed a robbery. According to reports, they hit him brutally and fired several shots at his feet. Later, at the local police station, they held his head underwater time and time again until they almost drowned him. They later took him to a local hospital. Medical staff denounced the condition that this young person was in due to the torture he had suffered. A judge rejected charges against the officers, accusing them instead of illegal pressures (*apremios ilegales*), which allowed them to be granted bail. Amnesty International is concerned that the vague term "illegal pressures" seems to have been used to describe acts categorised as torture by the *Convention against Torture*.

6. See Appendix I: Partial list of public complaints of torture and ill-treatment.

In August 2002, members of the provincial police raided homes in the **indigenous Toba community** in Formosa, Formosa Province, after the death of a police officer and the injury of another in disputed circumstances. According to reports, about 100 police officers, carrying firearms, destroyed belongings, beat and ill-treated adults and children. Those arrested, including a 74-year-old man, were allegedly tortured or ill-treated.⁷ In August 2003, Amnesty International received information from the provincial authorities indicating that five lawsuits had been filed at Courts of First Instance (*Juzgados de Instrucción*) in Formosa Province to investigate the events of 16 August 2002 and complaints about alleged illegal pressures. Amnesty International has not received information about the progress or the outcome of said investigations.

In this context, the report of the United Nations Special Rapporteur on Indigenous Peoples, published in February 2004, states in its observations that the Special Rapporteur is grateful for the reply provided by the government of Argentina about the case of the Toba indigenous people, notes the willingness of the Argentine government to cooperate with his mandate and requests the government to provide him with the final results of the investigations, as well as the measures adopted to redress the situation.⁸

ii) Social protest and demonstrations

The massive social protests about the economic situation in Argentina which started in December 2001 have continued. The protests that took place in December 2001 left over 30 dead, dozens injured and hundreds detained. Several detainees denounced that they had been ill-treated by the police. Amnesty International repeatedly reminded the Argentine authorities of their duty to ensure that any measures taken by the state to restore order should not infringe human rights.⁹ Investigations into the possible use of force during the protests and complaints of ill-treatment have yet to be concluded.

The organization has continued to register with concern at complaints of human rights violations during the demonstrations. In one of the most recent social protests, at **Caleta Oliva**, in Santa Cruz Province, on 2 October 2004, more than 30 people were detained at various police stations and Army installations. According to the information received and published by the media in Argentina, these detainees denounced ill-treatment by members of the provincial police and the *Gendarmerie*.¹⁰ Some detainees were released after a few days.

7. See Amnesty International communication TG AMR 13/24/2002 of 4 October 2002.

8. UN Document E/CN.4/2004/80/Add.1, 6 February 2004, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, I. Summary of cases transmitted and replies received, paragraphs 7 and 8.

9. Amnesty International Communications: TG AMR 13/12/2001 of 20 December 2001 and TG AMR 13/13/2001 of 21 December 2001; News releases of 20 December 2001 (AI Index: AMR 13/029/2001) and 21 December 2001 (AI Index: AMR 13/024/2001); Memorandum to the Government of Argentina, February 2002; Amnesty International Document: Action Plan and Respect for Human Rights, 11-16 February 2002 Mission, AI Index: AMR 13/002/2002, March 2002.

10. Argentine daily newspapers, *La Nación*, *Página 12*, of 5 October 2004; *Clarín*, 6 October 2004. Press release by the Argentine non-governmental organisation, *Centro de Estudios legales y Sociales* (CELS), Centre for Legal and Social Studies, 4 October 2004.

Members of Argentine non-governmental organisations and lawyers of the victims complained that the police hooded the detainees, beat them with sticks and fists and kicked them; that various detainees suffered fractures as a result of blows to the face and that attempts were made to rape a woman. Complaints of torture and ill-treatment were presented to the Public Prosecutor in Comodoro Rivadavia. Amnesty International has no information on the judicial initiatives taken to advance with the investigation.

III. Article 16. “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment [...]”

i) Prison conditions

There have been many complaints about cruel, inhuman or degrading treatment in several prisons and places of detention in the country. Complaints of overcrowding and deficiencies in sanitation and medical services, which constitute cruel, inhuman or degrading treatment, in most of the country’s prisons have been a constant cause for concern. In September and October 2003, the UN Human Rights Commission’s Working Group on Arbitrary Detention visited Argentina at the government’s invitation. The delegation visited detention centres in the federal capital and in the provinces of Buenos Aires, Mendoza and Salta. Public statements made by the delegation described conditions of detention in prisons and police stations as extremely severe, cruel and inhuman. In its December report, the Working Group concluded that *“the delegation has observed overcrowding and poor conditions in the areas of security, health, food, clothing and sanitation in most of the detention centres that it visited. Such poor conditions, which have been pointed out as persistent for a long time, could, and in fact do, restrict the right to a proper defence during the trial of persons deprived of their liberty. Although the Working Group realizes that public insecurity is a major concern in Argentina, neglect and disregard for prisoners’ rights do not constitute an effective means of dealing with this problem; on the contrary, it aggravates the problem.”*¹¹

In the report’s recommendations, the Working Group states: *“Urgent measures should be taken with regard to the number of the prison population, since overcrowding in prisons and police stations is at the root of the problems identified with regard to detention conditions [...] Consideration should be given to increasing the capacity of the prison system or reducing overcrowding by making use of alternative measures such as early release, release on bail, parole, house arrest, night imprisonment, daytime imprisonment, and furlough.”*¹²

11. UN Document. E/CN.4/2004/3/Add.3, 23, December 2003, paragraphs 62 and 68.

12 . See also Amnesty International Communication to the Governor of Mendoza Province, Ref: TG AMR 13/010/2004 of 22 October 2004.

In La Plata, Buenos Aires Province, the Buenos Aires Province Appeal Court Defender's database on torture recorded around one thousand complaints of torture in prisons and police stations over a period of two years. From March 2000 to February 2002, it recorded 994 cases in Buenos Aires Province prisons and police stations. The information reveals that 370 cases of torture in Buenos Aires Province police stations were not denounced and a further 320 were denounced to public prosecutors. The records show that the cases that were not denounced were recorded by defence lawyers appointed by the court during their visits to prisoners and that the victims had not denounced the facts for fear of reprisals.¹³

Publicly available information indicated in February 2002, that a commission composed of representatives of the Buenos Aires Province government, legislators and members of the provincial judiciary had been created to investigate and punish acts of torture committed in prisons of Buenos Aires Province. This investigative body was created after the complaint in December 2001 by the Provincial Appeal Court Defender about 176 cases of ill-treatment registered during the final months of 2001 in the prisons of Buenos Aires Province.¹⁴

According to the Appeal Court Defender, Dr. Mario Coriolano, this inter-institutional commission will deal with the prevention and punishment of acts of torture and ill-treatment of prisoners and will follow-up complaints, lawsuits and administrative sanctions against personnel implicated by such complaints.¹⁵

ii) Torture and ill-treatment of children

There were repeated public complaints of the ill-treatment of prisoners in detention centres in 2002, including ill-treatment of children. In 1998, there were repeated complaints of torture of children by members of the Buenos Aires police, who reportedly arbitrarily detained and attacked minors and street children.¹⁶

In January 2002, in a case that was widely reported by the provincial media and human rights lawyers, children begging in the city of Mendoza, Mendoza Province, were arrested by provincial police and detained in police stations. At least 30 children were registered as having been taken to the Third Police Station of Mendoza. According to reports, two girls, aged 11 and 13, stated that they had been kept in a padlocked cell, in darkness with one blanket, together with their six-year-old brother, who had to urinate in the cell as he was not taken to the toilet when he requested. A habeas corpus petition filed by human rights lawyers

13. See Appendix II attached: Resolution No. 153/01 of July 2001, by the Buenos Aires Province Appeal Court Defender, Dr Mario Coriolano, with regard to: Illegitimate Conditions of Detention and Inhuman Treatment, Torture and Obstructing of the Defence. Information provided to Amnesty International. (The Resolution is available only in Spanish.).

14. Argentine daily newspapers: *Clarín*, 13 February 2002; *El Día* de La Plata, 13 February 2002; Télam News Agency, 13 February 2002.

15. *Ibidem*.

16. See chapter on Argentina, Amnesty International Annual Report, 1999, page 80.

was initially rejected by the First Instance Court. Several hours later, the children were handed over to their families or transferred to the Detention Centre for Minors on the orders of a provincial judge.¹⁷

In October 2002, the UN Committee on the Rights of the Child expressed concern about the administration of juvenile justice and national legislation on children.¹⁸ The Committee raised concerns about institutional violence and reports of torture and ill-treatment of children in police stations, which in some cases had resulted in death. It also raised the issue of “trigger happy” (*gatillo fácil*) killings, which had led to the deaths of many children. The Committee recommended that Argentina bring laws and practices governing the juvenile justice system at national and provincial level into full compliance with the Convention. It urged Argentina to enforce a national plan to prevent and eradicate institutional violence; to investigate in an effective manner reports of killings, torture and ill-treatment of children; and to provide programmes to rehabilitate, reintegrate and compensate child victims of torture and ill-treatment.¹⁹

According to information received by Amnesty International, some provinces in Argentina have taken judicial measures to protect the rights of children detained at police stations. During the visit of an Amnesty International delegation, in February 2002, the organisation was informed about judicial decisions in this respect. For example, under the resolution passed on 19 March 2002, No. 064/02, a copy of which Amnesty International has received, the General Prosecutor’s Office of the Supreme Court of Justice for the Province of Buenos Aires determines that c) Members of the *Ministerio Púpilar*, Attorney-General’s Minors Office, will carry out monthly visits to establishments in which minors are confined and fortnightly visits to police stations in which minors are detained... Article 2 of the same resolution orders each member of the Attorney-General’s Office to give a monthly report of the visits carried out to the Attorney General or the *Defensor General*, General Defender, as appropriate.

Despite the announcement of these measures, concern continued at complaints of torture and ill-treatment of children at police stations in several provinces during 2003, including Buenos Aires Province. In **La Plata, Buenos Aires Province**, there were reports that many minors who had been detained in police stations needed treatment for cuts and bruises, but did not dare file complaints for fear of reprisals. Amnesty International has received no information that indicates the existence of investigations into these cases, their progress or their results. In

17. See Amnesty International communication to the Governor of Mendoza Province, Ref: TG AMR 13/01/2003 of 20 January 2003 and TG AMR13/03/2003 of 29 January 2003.

18. The UN Committee on the Rights of the Child expressed concern that national legislation on children dates back to 1919 and that provincial legislation often does not comply with the UN Convention on the Rights of the Child. Final observations of the Committee of the Rights of the Child: Doc. CRC/C/15/Add.187 of 4 October 2002, paragraphs: 15, 16, 36 and 37.

19. See Amnesty International document: Argentina: The Rights of the Child in Argentina, AI Index AMR 13/018/2002, December 2002.

Santiago del Estero, Province of Santiago del Estero, in September 2003, there were reports that children under the age of 12 who were arbitrarily arrested by police sustained bruises and injuries consistent with allegations of police ill-treatment.

Amnesty International has no knowledge of whether the judicial measures announced to protect minors in Buenos Aires Province has been extended to other provinces and has no statistics or official information on how the said measures have been implemented and with what results. Equally, the organisation has no knowledge of measures that the federal authorities have taken throughout the country to promote the necessary guarantees to protect the physical integrity of children and to ensure that they are not subjected to torture or ill-treatment.

IV. Conclusion

Torture is a very grave violation of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law.

Based on the complaints of torture it has received, Amnesty International considers that the eradication of the practice of torture and ill-treatment can only be achieved through vigorous and decisive action by the national and provincial authorities and by the Judiciary. Amnesty International considers it to be of vital importance that exhaustive and independent investigations are conducted into this kind of complaint, that the methods of investigation and their conclusions are made public and that those responsible are brought to justice. The apparent lack of action by the authorities in such situations gives the impression that such acts are tolerated and encourages repetition of these acts. The Argentine authorities must ensure that prison conditions comply with international standards for the treatment of prisoners and that these conditions do not constitute cruel, inhuman or degrading treatment.

Amnesty International considers that evolution in human rights international law, the measures taken by the Argentine government, at the national level, and in some provinces, that demonstrate the authorities' serious concern and interest in ending this scourge, should make it possible for Argentina to comply with its obligations under the *Convention against Torture*.

However, the organisation is increasingly concerned at the lack of exhaustive and conclusive investigations in all the cases denounced nationally and internationally. Amnesty International knows from experience that legislative prohibition on torture is not sufficient. It is necessary to take immediate measures to eradicate torture and other cruel, inhuman or degrading treatment or punishment. Political will is vital for the application of existing positive norms, the investigation of complaints of torture and ill-treatment, the dissemination of the results of these investigations and the punishment of those responsible. These measures will help to achieve effective compliance with the *Convention against Torture*, which occupies a superior position in the legal hierarchy that regulates the Argentine State.

APPENDIX I

ARGENTINA

PARTIAL LIST OF CASES OF TORTURE AND ILL-TREATMENT WHICH HAVE BEEN PUBLICLY REPORTED

Appendix to the Amnesty International report for CAT's examination of Argentina in November 2004.

N.B. This list only includes some examples of cases of torture and ill-treatment and does not aim to be exhaustive.

This partial list presents 36 incidents of torture and ill-treatment affecting over 233 individuals. The cases have been reported to Amnesty International, reported by human rights lawyers or published in the Argentine press.

Amnesty International has received no information regarding the start, progress or outcome of investigations into the cases in this partial list, except for those cases where specific mention is made.

Name of victim	Date and place of the incident	Information
Sergio Raúl Videla Sosa, Diego Nicolás Páez Díaz, Walter Javier Díaz García, Horacio Cevallos, Javier Marcelo Orellano Pereira, Santiago Luis Ramírez Quiroz, Omar Alexander Gómez Cortez, Jesús Centeno and Fabián Cedrón Ortiz	8 September 2004, Mendoza Provincial Prison, Mendoza, Mendoza Province	After an escape attempt, nine inmates of Mendoza Prison were continuously beaten and denied medical attention by prison officers. Their clothes and belongings were burned. The prisoners were kept for several days without clothes, naked or in their underpants. A habeas corpus petition was presented by their families to the First Criminal Court of Mendoza. The petition was rejected. An appeal was presented to the Criminal Chamber.
Rubén Ludueña, Juan Rojas Montenegro, Oscar Jiménez	January 2004, Buenos Aires	Ludueña, Montenegro and Jiménez Tello, prisoners in Unit 3 rd . of San Nicolás Prison, complained that a group of prisoners was tortured, in reprisal for previous complaints made in other prisons. They said they were awakened by

Tello		insults, blows and cries of pain. Prison staff wearing helmets that hid their faces came in to the cells and beat them up. Among the attackers, some of whom wore helmets or hoods, the prisoners said they recognised one of the prison officials and the prison's deputy director.
Claudia Zambrano	2 April 2004, San Martín de Los Andes, Neuquén Province	Police officers based at Neuquén 43 rd . Police Station, carried out an eviction order against the Zambrano family. They entered the family home after kicking the door in. Claudia Zambrano spoke to the officers and they punched her in the stomach. The officers beat her even though he was holding her two year old son in his arms. The police then grabbed the Social Development Secretary (who was helping to mediate in the eviction) by the hair and dragged her through the room and down a staircase, while other officers shoved, punched and kicked the children's grandparents. At that moment, a municipal official returned. He was pushed over by the police officers, who jumped on him and hit him while he was on the ground, keeping him there until they had completed the eviction.
Roberto Cisneros, Roberto Chivel Céspedes, Jorge Noyo Torres	January 2004, Buenos Aires	The prisoners Cisneros, Chivel and Céspedes were tortured in the 21 st . Prison Unit at Campana, according to the court appointed lawyer of San Isidro, María Gómez, and the clerk responsible for implementation of sentences, Diego Seitún. According to the habeas corpus petition, Roberto Cisneros was given electric shocks. Roberto Chivel Céspedes was kicked in the testicles and, once on the floor, given electric shocks to his arm and back with a tape recorder cable. "A kind of hood" was placed on Jorge Noyo Torres and he felt a strong burning sensation on his right shoulder and leg.
Alberto Duarte and Fabiana López	17 January 2004, 25 May, Buenos Aires Province	Two police officers went to the home of Duarte and his partner and demanded they go to the 25 May police station. At no time were they given any kind of explanation, nor shown any warrant. At the station, they were informed that they were suspected of robbery. One of the officers began to insult Duarte and hit him. They handcuffed him and took him to a cell and kept him there for one hour. At the end of this period, they took him out into the back yard of the police station where they took him by the scruff of the neck and started insulting and beating him again. Duarte decided to throw himself on the floor to stop them torturing him. He was handcuffed to a pole and left there. He was examined by the police doctor, while still wearing handcuffs. During the seven hours they were detained, Duarte and López were not allowed to call their families. Neither did the police station inform

		their families that the couple had been detained. The couple lodged a complaint before the 25 May Human Rights Commission.
Romina Vera, 17	8 December 2003, Santa Fe, Santa Fe Province	Vera, 17, and two months pregnant, was handcuffed and beaten at the 19 th . Police Station by a female police officer. According to the complaint, the beating occurred in full view of other families who were visiting inmates and put the woman at risk of losing her baby. She complained that blows left her with bruises on her legs and lip. Later, at the police station, her mother insisted the police release her daughter. She suffered a nervous breakdown when she saw her daughter in that state. The police then arrested the mother, accusing her of contravening regulations (Provincial Legislation). The two women lodged a complaint which was registered as “unlawful coercion”.
Carlos José Ocampo Correa	26 August 2003, Rodeo de la Cruz, Mendoza Province	Ocampo Correa was beaten up in the 9 th .Police Station. When an officer found out what was happening, he went to the room where the detained was being kept, and on seeing that he was hurt, immediately called for a police doctor. The doctor examined Ocampo Correa and recorded bruises on his face, back and wrist. When the public prosecutor, making a routine visit to the police station, discovered what had happened, she immediately made arrangements for an investigation. She summoned the responsible officers from the Guaymallén sector and Police Station 9 th . to give evidence.
Gumersindo Vergara, 42	4 September 2003, Chubut, Chubut Province	Vergara was allegedly tortured and killed in his cell in El Hoyo police station, located 13 kilometres from El Bolsón. According to his wife, there were boot marks and cigarette burns on his body. According to the police, Vergara hanged himself with a strip of elastic he had taken from the bed in his cell. According to the police superintendent, the Regional Head of Chubut Police, two investigations were initiated. “Administrative proceedings to determine if there was negligence by police officers and a judicial investigation in response to a complaint made by the family.” The Esquel Court dealt with the investigation into the complaint of “torture leading to death”. The Vergara family’s lawyer complained he was subjected to intimidation by police officers.
Juan José	2 February 2003,	This man and another two friends were chased by police

Gramajo, 27	Comodoro Rivadavia, Chubut Province	shooting at them and they took refuge in the yard of a house. None of them were armed. Five police officers entered the house and beat them. Gramajo died as a result of the kicks he received. Only one police officer was detained.
Martín, 17	3 October 2003, Coronel Dorrego, Buenos Aires Province	Martín was detained in the doorway of a local dance hall. He was handcuffed and made to get in a patrol car, where he was punched in the nose. At the Coronel Dorrego Police Station, the beating continued. The doctor that later examined him in hospital did not do so correctly, because "there were no batteries in the torch". Martín's mother lodged a complaint with the duty officer at the Police Station. She was informed that the family would be heard by a Family and Minor Judge on 4 March 2004.
Rubén Edgar Godoy	26 April 2003, Selva, Santiago del Estero Province	Godoy had an argument with a man in the street and was hit in the face. His friends took him to hospital on foot, where he was examined by a nurse. Godoy rudely refused to take a painkiller and the doctor called the police, who took him on foot to the local police station. At the police station, the police officers transferred a detainee to another cell and put Godoy in the vacated cell. The other detainee later informed the family that he had heard Godoy being beaten up and crying out for a while until no further sound came from the cell. On the following day, Godoy did not wake up and was taken to Selva Hospital. The doctor said that Godoy was drunk but his mother asked why he had still not woken up. The family took him to another hospital in the neighbouring province of Santa Fe, where the doctors said he was in a coma, and that he had a fractured skull and ribs. Godoy died on 3 May 2003 in the hospital. Complaints were lodged in Selva about the beating and in the capital Santiago del Estero about the death. The death certificate issued by the J.M. Cullen Hospital in Santa Fe Province, where Rubén Edgar Godoy died, states "questionable death".
Pío Enrique Gómez, 55	January 2002. La Plata, Buenos Aires Province	Pío Enrique Gómez was chased by a patrol car while he was driving a Ford F-100 lorry which had a confiscation order on it. The man was detained on charges of "vehicle theft, possession and use of a war weapon and resisting the authorities". Gómez assured the courts that he was "punched and kicked" in his cell at La Plata Police Station 1. Tests showed that the man had "severe" bruising on his face and body.
Pablo Garay, 20 and Fabricio, a	27 July 2002, Buenos Aires	Garay complained that after he tried to separate two individuals who were fighting at a dance, police officers beat

minor	Province	him and a minor in a police station. The minor's mother, Gladys Zamora, said her son, Fabricio, was taken to a room and beaten by officers with rubber truncheons, punched and kicked.
Andrea Elizabeth Viera, 30 and Gustavo Cardozo, 23	10 May 2002, Florencio Varela, Buenos Aires Province.	Viera and Cardozo were detained in Florencio Varela after being mistaken for thieves. The woman was ill and had just suffered a miscarriage. At the 1 st . Police Station the police officers handcuffed and beat them. They kept Cardozo handcuffed, on his knees and with his face against the wall. Each police officer that came into the room trampled on him or hit him. At first, groups of officers had taken it in turns to beat him, while he laid face up on a desk with his hands handcuffed behind his back. Cardozo heard the screams and appeals for help of his wife for hours, despite the fact that the police had raised the volume of the television. She died eleven days later. Seven police officers were detained and the authorities took administrative control of the police station. Although they are not accused in the lawsuit, the head and deputy head and a superintendent and deputy superintendent of Section 1 st . were dismissed from their posts.
José Ernesto Márquez, 18	21 July 2002, Buenos Aires Province	Márquez was riding his bicycle with a brother, when they were stopped by two patrol cars whose occupants, without any explanation, forcibly made them get into one of the patrol cars. They were taken to an internal office at the Monte Hermoso Police Station, where three police officers questioned them about several crimes against property. When Márquez said he did not know what they were talking about, two of the officers punched him in the neck and the nape of his neck and put a plastic bag over his mouth and nose, a practice known as "dry submarine". They were pushed into a cell, which already housed three unidentified individuals, to whom one of the police officers said, " <i>Este es el guapo de Monte Hermoso, el 'polenta', le roba a la gente pobre, tiene un hermano policía</i> ", "This is the cocky one from Monte Hermoso, the "polenta" (nickname) who robs the poor. One of his brothers is a police officer". The other prisoners hit him to the amusement of the police.
Juan Esteban Coronel, 18	20 July 2002, Buenos Aires Province	He was taken by police officers of the 25 May Police Station and beaten for a couple of hours with rubber truncheons by at least five police officers, who warned him not to make a complaint. He was detained under provincial bylaws for being

		“drunk and disorderly in a public place”.
Pablo Ariel Mocdece	15 February 2002, San Luis, San Luis Province	Imprisoned in the provincial prison, he was beaten by five prison officers while handcuffed. Four doctors certified that he had bruises on his wrists, shoulders, one eye, pelvis, arms and stomach. According to the complaint made to the public prosecutor, Mocdece was beaten by the officers in response to his request to make a phone call.
Roberto Rojas	2 November 2002, Ushuaia, Tierra del Fuego Province	Beaten up by a group of police officers in the street at midnight. According to reports, he was detained for acting suspiciously. A complaint was made to the public prosecutor at the provincial court.
Diego Miguel Ferradás, Cristian Leiva, Gabriel Lezana and other inmates	25 November 2002, Catamarca, Catamarca Province	A number of inmates transferred from the Penitentiary Service Unit to the Nueva Alcaidia Unit were beaten and ill-treated, according to their families. They alleged that the officers in charge of the transfer beat the inmates, leaving them with serious bruising and practically naked. A complaint against the prison authorities for unlawful coercion was lodged with the public prosecutor.
Julio Daniel “Tata” Aguirre, minor	8 January 2001, Santa Rosa, La Pampa Province	Provincial police officers from the First Section of the Investigations Brigade and the <i>Comando Radio eléctrico</i> , Radioelectric Command, raided the home of Julio Daniel’s parents. Julio Daniel and his three younger brothers were detained, handcuffed and taken to the First Santa Rosa Police Station. They were all brutally beaten. Julio Daniel received blows to the head, testicles and the rest of his body. According to reports, some police officers jumped on him. His cries could be heard by the other children. Their parents went to look for them but were prevented from seeing Julio Daniel, who was transferred to the Fifth Police Station, in Toay. When they managed to see their son, they found he had been beaten and was bruised. He described the ill-treatment he had suffered. Eight days later, he was transferred to the Family and Minor’s Court. Julio Daniel’s health deteriorated and with the permission of the minors’ judge, he was transferred to a hospital in Buenos Aires. He was declared to be in a coma on arrival. Julio Daniel was again transferred to Santa Rosa, without the authorisation of his parents and died in the ambulance. His parents made a complaint. According to the report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions (Doc.E/CN.4./2003/3/Add.1, February 2003, paragraph 26),

		the Argentine government stated, in November 2002, that criminal proceedings had been initiated and that the outcome of the investigation established that his death was not caused by torture.
Javier Villanueva, 24	21 October 2001. Lomas de Zamora, Buenos Aires Province	Six police officers (one deputy superintendent, one inspector, two corporals and two other police officers) from Police Station 7 th , Villa Centenario, a dependency of Lomas de Zamora, were detained and accused of torturing Javier Villanueva with an electric cable, with which another individual had hanged himself and which was being kept as evidence. The superintendent was dismissed.
Gastón “el Monito” Galván and Miguel “Piti” Burgos, 14 and 16	24 April 2001. Don Torcuato, Buenos Aires Province.	Their bodies were found tied up, with 11 and 6 bullets respectively, finished off with a bullet in the back of the neck. The head of one of them was covered by a bag. According to the children’s parents, one of the police officers, known as “karateist”, practiced on the detained minors, striking them with expert kicks to the chest. Galván told his mother shortly before the killings about how they made him stand up for more than 12 hours in a cell. His mother said that his feet had sores and blisters all over them, but he had pleaded with her not to make a complaint because they had sworn they were going to kill him. Two sergeants and two other police officers from Don Torcuato 3 rd . Police Station, were remanded in custody, on suspicion of killing Galván and Burgos.
Pablo Ariel Fernández, 23	24 November 2001, Córdoba, Córdoba Province	Fernández was involved in a fight with the son of a police officer. Both were arrested and taken to the Despeñaderos Police Station, about 50 kilometres south of the city of Córdoba. The son of the police officer was released a few hours later. According to the official report, Pablo was found “hanging from the bars” and had “hung himself with his own shirt”. The police doctors reported a “hanging”, but later reports said that the boy had been beaten up, his sinuses destroyed, the bones of his nose and upper jawbone broken and that he had been strangled and not hung. The prosecutor of the case described the fact as “ <i>homicidio simple</i> ”, “homicide”. No information has been received about the detention or suspension of the police officers implicated in the case.

Marcelo "Popó" Brandán Juárez, 33 and Víctor Esquivel Barrionuevo (39	November 2001, Buenos Aires Province.	Juárez and Barrionuevo, inmates at Melchor Romero prison, complained that prison officers tortured and threatened to kill them. One of them said: "they took me to Admission and hit me with clubs and rubber truncheons and punched and kicked me, while handcuffed; in the Health department, they took my clothes off and hit me. In the shower, where there is a sink, they gave me the submarine, they held on to my feet and put my head underwater". Both were transferred to another prison.
Daniel Eliseo Celesia	8 November 2001. San Martín, Buenos Aires Province.	A superintendent, a deputy inspector and a police officer from Billingham were detained and accused of torturing Celesia. They hit him in the stomach and demanded money in exchange for not inventing charges against him. Police sources added that prior to being detained, complaints had already been made against the police officers for similar practices with other victims.
Juan Ramón González Sosa, 21 .	30 November 2001, Buenos Aires.	González Sosa died as a result of burns sustained while he was in the punishment cell at U28, Magdalena prison. According to his wife, his death was in reprisal for having testified about the torture of another detainee, when he was prisoner in Unit 30 of General Alvear [see also the case of Daniel Chocobar Guaimas]. The prosecutor ruled out the expert advice of the judiciary and entrusted the autopsy to the medical staff at the police morgue. According to the report of the United Nations Special Rapporteur on extrajudicial, summary and arbitrary executions, (Doc.E/CN.4./2003/3/Add.1 of February 2003, paragraph 26), the Argentine government reported, in November 2002, that a preliminary criminal investigation had begun into the death of Juan Ramón González Sosa and that the Buenos Aires Province prison service had begun summary administrative proceedings.
176 cases	Between March 2000 and December 2001, Buenos Aires Province	The database of the Buenos Aires Province Appeal Court Defender contains 157 judicial complaints of cases of torture. A further 19 were revealed in secret to court appointed lawyers in various jurisdictions. The provincial Supreme Court issued an alert about the ill-treatment of detained minors: it spoke of more than 1,000 cases. It also revealed that adolescents who had complained about torture later appeared dead after alleged shoot-outs with the police.
Sebastián Ruiz, 20	12 November 2001, Río Negro, Río Negro	Sebastián Ruiz was detained and beaten by police officers of Police Station 31 in the early hours of the morning while walking back to his house. According to reports, this ill-

	Province	treatment left him with broken ribs. He was accused of attempted robbery and resisting arrest. His family complained to the provincial prosecutor.
Osvaldo De Vicente, Claudio Javier Gil	October 2001, La Rioja, La Rioja Province	Two officers of the Provincial Prison Service were detained for allegedly being responsible for the crime of unlawful coercion against the inmates, Osvaldo De Vicente and Claudio Javier Gil. Medical tests proved that the prisoners had sustained several injuries.
Carlos Fabián Ruiz	29 October 2001, Trelew, Chubut Province	Carlos Fabián Ruiz was beaten by officers of the Third Police Station, Trelew, while detained for unlawful entry, threatening behaviour and offering resistance to the authorities. According to his testimony, he received various kicks to the head, including to the left eye, which left visible marks. The complaint was made to Number Three Court of First Instance.
Darío Alberto Minetto and Daniel Chocobar Guaimas,	Minetto: 21 November 2001, Chocobar: 17 June 2001, San Isidro, Buenos Aires	Minetto was in Unit 9 of La Plata prison, where he received an injury in the region of his ribs. He was taken to Florencio Varela (Unit 24) prison to move him away from his attackers. However, he died in the ambulance that was taking him to the hospital, on 21 November 2001. Chocobar died in San Martín Hospital where he was taken after being stabbed in Unit 9 at La Plata on 17 June. He was found in his cell with a “ <i>faca</i> ” wound (rudimentary knife made by the prisoners). He was being held on remand and would have left the prison, because a date had not been set for his trial. He was accused of theft and illegal captivity. Minetto and Chocobar died after an alleged fight between prisoners, but the judge of Court III of the San Isidro Criminal Court believes that they were killed in reprisals by prison officers because the two prisoners had complained of ill-treatment and alleged beatings by prison officers. One of the complaints dated from 2000, when Chocobar was in General Alvear prison, and a habeas corpus petition was submitted by families of 31 defendants. The detainees told the court that the prison officers did nocturnal rounds “every two hours” to stop them from resting and hosed them down with fire extinguishers hoses at dawn. They also alleged the existence of a “reception committee” to beat up newly arrived prisoners.
Ángel Blanco,	1 November 2000.	According to information provided by a sergeant and a police

16	Don Torcuato, Buenos Aires.	officer, there had been a shoot-out with Blanco, who had assaulted a neighbour. Although the police officers said they did not know Blanco, it transpired that a few months previously, the boy had complained that they had beaten him up in Don Torcuato Police Station, where he was well-known. According to reports, the mother of the dead boy stated that he had been continuously threatened by another two police officers based at Don Torcuato. One of the latter is the only officer arrested, but on another charge, which was investigated in the jurisdiction of San Martín. The case of Blanco was registered in the jurisdiction of San Isidro.
Fernando Monteza Spinetta, Peruvian citizen	12 May 2000, Buenos Aires	Monteza Spinetta was detained by the brigade of the 16 th .Police Station at Constitución, and accused of selling drugs. At the police station, a group of police officers beat him so badly that they broke three ribs. They also made him undress, threw water on him and tried to give him electric shocks. They failed in this because the soldering cable they were using was too short. The investigation found three officers responsible (there were a total of five suspects). Three police officers were tried, found guilty of being co-authors of “unlawful coercion” and sentenced to terms of three and a half years imprisonment, to be served in full.
Ariel Esteban Simonini, 25	8 September 2000. San Martín, Buenos Aires.	Four former Buenos Aires police officers and an agent of the <i>Secretaría de Inteligencia del Estado</i> (SIDE), State Intelligence Secretariat, tortured Ariel Esteban Simonini in Sáenz Peña Police Station. According to another prisoner: "while one of the police officers thumped him in the stomach, the other covered his mouth with his hands and another held his arms. He was then taken to the bathroom. To drown his screams, the police officers turned the volume of the television up”.
Carlos Trillo	Between 20 and the early morning of 22 December 1996. Parque Patricios, Buenos Aires.	On 20 December 1996, a gang robbed the armoured transport company, Firme S.A., of 18 million pesos. Eleven individuals were detained and sent for trial. The judiciary determined that the police had caught the gang by torturing a company employee in the 32 nd .Police Station. After being beaten and his family threatened, Carlos Trillo confessed and was detained. After complaining about the torture, he was found hung in his cell at Caseros prison on 8 May 1997. His wife claims that he was murdered. Trillo was beaten, insulted and threatened. Six years later, in 2003, a judge ordered the detention of the superintendent inspector (currently retired), the head of the Theft and Robbery Division at the time of the robbery, and a superintendent, former head of the 32 nd . Police Station, at Parque Patricios.

Armando Caraballo	1991. Santa Fe, Santa Fe Province	According to the police, Armando Caraballo was detained for drunkenness in contravention of the provincial by laws (<i>edictos policiales</i>), and taken to the 18 th .Police Station, at San Cristóbal. He was taken to hospital with head injuries, where he died from his injuries a month and a half later. Among many other contradictions, that required 11 years to clarify, the police claimed that the detainee had tripped over. A superintendent, Santa Fe Province Chief of Police, was detained incommunicado by order of a Buenos Aires judge, and accused of torture leading to death.
Oswaldo Britos, 28	9 March 1988, Santiago del Estero	A police officer was detained 14 years after being implicated in the killing of Britos. The officer tried to make the death appear to be an accident and that Britos had been struck by lightning. The autopsy carried out by judicial forensic scientists indicated that the death of Britos was caused by “severe head injuries”.

Appendix II
from Amnesty International's submission to the Committee
against Torture

Decision No. 153/01 of July 2001, from the Appeal Court Defender from Buenos Aires Province, Dr. Mario Coriolano, with regard to: Illegitimate Conditions of Detention and Inhuman Treatment, Torture and Obstructing of the Defence. Information provided to Amnesty International.

IN SPANISH ONLY

//Plata, de julio de 2001.

VISTO:

La información recibida de los distintos departamentos judiciales de la provincia a través de los señores Defensores Generales y de las áreas de ejecución en el Banco de Datos de casos de tortura y otros tratos o penas crueles, inhumanos o degradantes (Res. 13/00); y

CONSIDERANDO:

I.-

A) CONDICIONES ILEGÍTIMAS DE DETENCIÓN Y TRATO INHUMANO;

B) TORTURAS ;

C) OBSTACULIZACIÓN AL EJERCICIO DE LA DEFENSA;

A) CONDICIONES ILEGÍTIMAS DE DETENCIÓN Y TRATO INHUMANO

A.1.- Con fecha 30 de mayo de 2000, mediante la Resolución N° 37 de la Defensoría de Casación, se impulsaron y solicitaron medidas a la Suprema Corte, al Sr. Procurador General ante la misma, al Tribunal de Casación, a los Sres. Defensores Generales Departamentales y a la Comisión Bicameral de Seguridad de la Legislatura provincial.

Ello ante la constatación de agravamientos ilegítimos en la forma y las condiciones en que se cumplían ciertas privaciones de libertad, constitutivas de tratos inhumanos. En la resolución antes aludida se especificaron numerosas violaciones a la ley, citándose a su vez, distintos informes de la CIDH y sentencias de la Corte Interamericana de Derechos Humanos.

A su vez, se señaló en dicha oportunidad “que la nueva regulación en materia de excarcelaciones en la provincia de Buenos Aires [marzo de 2000] ha provocado y provocará un considerable aumento en el

número de detenidos que, en el actual cuadro de situación de alojamiento de personas en unidades penitenciarias y dependencias policiales en las condiciones aludidas, profundiza la crisis ya existente de manera acuciante...”

a.2 En la **actualidad** las condiciones de detención en comisarías se ha visto **agravada** de manera **legalmente insostenible**: a mediados del mes de noviembre de 1999, había **2100** presos alojados en comisarías mientras que en la actualidad –información obtenida del Ministerio de Seguridad con fecha 16 de abril de 2001– las comisarías alojan a **5797** personas.

Así, en las seccionales policiales de los departamentos judiciales del *Conurbano* –La Matanza, La Plata, Lomas de Zamora, Morón, Quilmes, San Isidro y San Martín– **la capacidad de alojamiento es de 2068 personas, encontrándose encerradas** –a la fecha arriba citada– **4603**; a la fecha de esta resolución, el número de detenidos ha aumentado. Tal superpoblación es constitutiva de penas o tratos crueles, inhumanos y degradantes.

No se cumple tampoco con lo que establecen los arts. 4º y 5º de la ley 12.256 y cctes. que establecen respecto a los detenidos que: “...el fin último de la presente ley es la adecuada reinserción social de los procesados y condenados a través de la asistencia, tratamiento y control” que “... estarán dirigidos al **fortalecimiento de la dignidad humana.**”

También prescriben el fin de la readaptación social, el art. 5º inc. 6 Convención Americana de Derechos Humanos (CADH) y el art. 10º inc. 3º del Pacto Internacional de Derechos Civiles y Políticos (PIDCP).

A modo de ejemplo, destaco las siguientes situaciones:

Dpto. Judicial La Matanza

El informe del Área de Ejecución Penal de la Defensoría General de La Matanza, a cargo de la Dra. Mariana Iacona– constató “...conforme al relevamiento realizado,

casi todas las comisarías se encuentran alojando más de tres veces su capacidad. En estas dependencias, las personas privadas de su libertad deben **convivir en estado de hacinamiento y sin espacio físico para la más mínima movilidad.** // A modo de ejemplo, en la **comisaría de Lomas del Mirador, una persona dormía sentada en una silla en el baño**, pues no tenía ni espacio físico ni colchón para ello. // En la comisaría de San Alberto, se alojaba a 36 personas en un espacio físico para 10. // En San Justo se alojaba 54 personas donde existe capacidad para 25. // Se destaca asimismo que, a consecuencia de la superpoblación, muchas personas deben pernoctar en el piso, debiendo realizarse al menos dos turnos para poder dormir [...] los **sanitarios** en todas las dependencias resultan escasos, San Alberto posee **dos baños para 34 personas** alojadas; Villa Luzuriaga, **un baño para 22 personas**; González Catán, **un baño para 45 personas...** Don Bosco es la única dependencia que posee artefactos sanitarios (que han sido colocados por una persona detenida), todas las

demás **tienen letrina o simplemente agujeros en el piso, casi ningún baño posee lavatorio** y lo que oficia de “ducha” son caños que emergen de la pared [...] // Otro gran problema con respecto a los **baños** es que en muchas dependencias se encuentran **fuera de los calabozos**, lo que implica que **durante la noche no puedan ser utilizados y deban suplirse por baldes** [...] Las personas detenidas manifiestan que conviven con chinches, cucarachas, piojos y otros insectos, y que no se les provee de ningún tipo de desinfectante [...] Las **visitas [de familiares]** se desarrollan una vez por semana y dentro de los mismos calabozos, ninguna dependencia posee un espacio destinado a las visitas. [...] el trato brindado a los familiares no resulta el adecuado dado que deben sufrir incomodidades como largas horas de espera en fila que deben formar en la calle, soportando las inclemencias climáticas y antes de ingresar son revisados minuciosamente, muchas veces ofendiendo el pudor de las mujeres [...] **a las mujeres las revisan en un despacho con vidrio espejado y son observadas por la policía sin que éstas lo noten**”.

Dpto. Judicial La Plata

Según informe realizado por la Secretaria de Ejecución, Dra. Fabiana Ripani, la Seccional 1^a de La Plata, “...tiene una capacidad informada por la Delegación de Obra Departamental para 3 detenidos y 4 contraventores encontrándose alojadas 30 personas. [...] Dicha seccional está constituida por un pabellón con tres celdas, y un patio donde también se alojan detenidos. En este sector, con capacidad para 3, se alojan 20 detenidos. Hay tres bases de cemento para apoyar un colchón, los demás apoyan los colchones en el suelo, sobre el pasillo, y en el sector marcado como patio. El área que figura en el plano para alojar contraventores, de aproximadamente 1,8 x 2,5m aloja 10 detenidos. [...] El pabellón que aloja a 20 detenidos posee baño con letrina y ducha en regulares condiciones de higiene. En el pabellón que aloja 10 detenidos, se improvisó en un rincón del espacio, un baño con inodoro y ducha, sin ventilación ni luz natural, el cual se encuentra en penumbras, al carecer de luz natural. [...] Se constata un grave hacinamiento [...] Es grave la situación del sector que figuraría para contraventores (aloja 10 detenidos). No está preparada para tener detenidos”.

Dpto. Judicial Lomas de Zamora

El cupo legal máximo para alojar personas en seccionales policiales en dicho departamento es de **529** plazas, encontrándose alojadas **1137** personas.

Cabe señalar **–respecto al limite legal de alojamiento–** que, según el art. 26 del Reglamento de Detenidos de la Policía de la Provincia de Buenos Aires, se establece que “las celdas individuales tendrán 2,8m de largo, 2m de ancho, 2,5m de alto; y las celdas comunes tendrán 4,8m de largo, 4,8m de ancho, 2,5m de alto, debiendo asegurar luz solar y ventilación directa”.

El informe de los señores Defensores Oficiales señala “...como conclusión debemos resaltar que las condiciones de detención de las personas actualmente alojadas en las comisarías de ese departamento judicial son inhumanas en casi todos los casos. Debemos destacar que a fin de evitar o tratar de prevenir el estallido de motines en comisarías, como los que se vienen sucediendo en distintos lugares del Gran Bs. As., resulta crucial prestarle atención a las cuestiones referidas precedentes”.

Dpto. Judicial Mercedes

En este caso, del informe del Área de Ejecución Penal de la Defensoría General de dicho departamento –a cargo del Dr. Ricardo Oliveira Buscarini– se advierte que “...en la Seccional de Moreno 4ª hay alojados quince internos siendo el cupo límite de 4, habiéndose constatado pésimas condiciones de alojamiento, constatándose que se encuentran alojados en forma conjunta presuntos homicidas, violadores, e imputados de hurto simple y lesiones. // En la comisaría de Moreno 6ª, no obstante que el cupo máximo es para tres internos, se encuentran alojadas quince personas, habiéndose constatado carencia de iluminación y ventilación”, informando el Secretario de Ejecución “...una sensación térmica superior a los 40 grados centígrados en el interior de las celdas...”.

Depto. Judicial Morón

- *Comisaría Hurlingham 1ª*, con capacidad para alojar **12** detenidos, se constató el alojamiento de **34** en pésimas condiciones;
- *Comisaría Merlo 1ª*, con capacidad para **18**, hay alojados **48**;
- *Comisaría Haedo 2ª*, capacidad para **12**, se aloja a **34**;
- *Comisaría Ituzaingó 1ª*, capacidad para **15**, hay alojados **41**.

El informe de los señores Defensores Oficiales del Dpto. Judicial Morón indica –con fecha 26-2-01–: “...respecto de las comisarías señaladas, y como consecuencia de la superpoblación reinante en todas ellas, **las condiciones de higiene y vida son pésimas**, y en las que los procesados **deben turnarse para dormir**, sin dejar de recalcar que el incremento de detenidos en las mismas no fue acompañado con mejoras a nivel edilicio, ya que la estructura no ha variado en lo más mínimo, y en muchas de las dependencias aludidas, por falta de recursos, parte de sus instalaciones han sido clausuradas por no poder acondicionarlas o repararlas. // Se debe hacer especial mención que, en lo que respecta a las comisarías de Hurlingham 1ª, Ituzaingó 3ª y Morón 6ª, éstas tienen problemas con **los pozos ciegos**, ya que **se derrumban y no tienen forma de hacer otros nuevos**, lo que trae aparejado que los **sanitarios** de las celdas se encuentren **desbordados**, provocando ello no sólo **olores nauseabundos** sino **condiciones de vida intolerables**.// Comentario aparte merece la comisaría de Hurlingham 2ª, ya que si bien esta es la que **debe alojar a menores de edad**, al ser visitada pude advertir que **había dos personas mayores**, haciendo un total de 7 individuos (entre mayores y menores); que, si bien la infraestructura es adecuada para ese número de personas, la higiene y **estado de la celda es por demás malo**, a lo que debe sumársele que uno de los mayores padece de **tuberculosis**”.

Dpto. Judicial Quilmes

En la seccional de Florencio Varela 4ª, los Sres. Defensores Oficiales informaron que había **17** detenidos alojados (siendo la capacidad para **8**) como asimismo una “...falta total de ventilación, la absoluta imposibilidad de ingreso de aire impide respirar a los detenidos dentro

de los calabozos y nosotros no ahogábamos en la visita. El lugar carece de luz natural, ya que no posee ventanas ni ningún tipo de acceso para la entrada de luz. Las condiciones en que se encuentran los detenidos es peor que animales en una jaula. Es imposible utilizar palabras precisas para narrar el horror. Si esta Defensoría hubiera observado animales en esas condiciones deberíamos hacer una denuncia penal. Observar esas condiciones infrahumanas que ofenden la dignidad humana en que están nuestros defendidos conmueve profundamente. No alcanzan las palabras que implican normalizar el horror, es decir, describir un campo de concentración, un campo de batalla, terapia intensiva. Durante la visita observamos que los presos las celdas, tamaño jaula, estaban inundadas por los deshechos cloacales, pisados por mis defendidos...”

Se informan similares condiciones respecto de la Secc. 4ª de Berazategui.

En esa situación encontramos que “...la comisaría –Secc. 5ª. de Quilmes- aloja actualmente a **27** detenidos en dos celdas con **capacidad para no más de tres o cuatro personas cada una**. Posee cada una de ellas una letrina en mal estado de higiene. Carece por completo de iluminación natural. Entre ambas celdas existe un pasillo de 3m por 1m que también es utilizado para pernoctar ...”

Dpto. Judicial San Isidro

El Dr. Adrián Angulo, Secretario de Ejecución, da cuenta numéricamente de la situación, en el informe que eleva, mediante una comparación entre la capacidad máxima de alojamiento y el número de personas realmente alojada:

<i>Seccional</i>	<i>Capacidad legal máxima</i>	<i>Cantidad de alojados</i>
Vicente López Primera –Olivos-	8	22
Vicente López Segunda –Florida-	12	26
Vicente López Cuarta	9	22
San Isidro Primera	12	27
San Isidro Segunda	16	31
San Isidro Quinta	9	18
Tigre Segunda -Pacheco-	10	25
Tigre Tercera -Torcuato-	12	24
Pilar Segunda	8	20
Pilar Tercera -Del Viso-	4	14

Depto. Judicial San Martín

Según informe elevado por el Secretario de Ejecución, Dr. Juan Manuel Casolatti, la Seccional 4ª de San Martín (José León Suárez), tiene capacidad para 15 personas,

encontrándose en la actualidad alojados 29 detenidos. Una vez en el sector de calabozos informa que el mismo se compone “de un compartimento con capacidad para 8 personas [...] Este lugar no tiene nada de ventilación, excepto por la reja que comunica a un pasillo común y en el cual hay colocado un extractor de aire. También posee un pequeño baño en el que hay un pozo y una canilla en la pared. Luego hay otro compartimento dividido en dos celdas donde hay 9 detenidos en cada una, con dos baños precarios [...] no hay nada de luz natural...”.

Dpto. Judicial Zárate-Campana

Los Defensores Oficiales interpusieron con fecha 15 de mayo de 2001 acción de habeas corpus correctivo en favor de la totalidad de los sujetos alojados en calidad de detenidos en la comisaría de Zárate 1ª en base a que “la comisaría se halla superpoblada en relación al cupo que Infraestructura de Jefatura de la Policía bonaerense tiene previsto [capacidad para 8; población, 19] [...] Los calabozos cuentan únicamente con ocho camas individuales, y a la inspección, se observan colchones, colchonetas y mantas apoyados directamente sobre el piso [...] algunos detenidos se ven obligados a compartir un mismo colchón. La iluminación es artificial y deficiente, las celdas carecen de aberturas que permitan el ingreso de luz natural. La totalidad de la población cuenta únicamente con un sanitario estilo letrina en deplorable estado de higiene [...] Algunos de los detenidos han manifestado en oportunidad de comparecer ante esta defensoría que es habitual que deban depositar sus excrementos en bolsas de nylon para luego tirarlas en recipientes fuera de las celdas [...] El baño carece de puerta así como de agua caliente [...] el ambiente resulta virtualmente irrespirable [...] se observa [...] que existen varios recipientes conteniendo orina dentro del mismo habitáculo donde duermen en el piso numerosos detenidos. Junto a los bidones y tachos de orina se halla parte de la comida y bebida de quienes ocupan las celdas”. Concluyen los señores Defensores su presentación sosteniendo que “la situación de alojamiento a la que los detenidos se hallan sometidos –en algunos casos, durante meses– debe ser modificada sin más, ya sea a partir del realojamiento [...] o bien a partir de la agilización de la derivación de los detenidos a centros de detención dependientes del Servicio Penitenciario”.

A.3 Situación Carcelaria

Cabe señalar –según los informes remitidos por las Áreas de Ejecución de los distintos departamentos judiciales a mayo de 2001– que, mientras en algunas Unidades Carcelarias ese encuentra excedido el cupo legal máximo (v.g. Unidad N° 1 (Olmos): capacidad: **2182**, población: **2552**; Unidad N° 2 (Sierra Chica): capacidad: **780**, población: **1092**; Unidad N° 3: capacidad: **280**, población: **346**; Unidad 30 (General Alvear): capacidad: **972**, población: **1717**), en otros establecimientos la capacidad no ha sido superada (por ejemplo, Unidad N° 35: capacidad: **912**, población: **824**; Unidad N° 31: capacidad: **470**, población: **437**).

B) TORTURAS

De la información que remiten los Defensores Generales, Defensores Oficiales y los responsables de las Áreas de Ejecución –incorporada ya al Banco de Datos– surge la existencia de **602** casos de torturas. De dicho relevamiento surgen **340** casos denunciados ante los señores Fiscales respectivos y otros **262** casos puestos en conocimiento de los distintos abogados que integran la Defensa Oficial de la Provincia –bajo secreto profesional– y que no han merecido la formulación de denuncias judiciales ante el temor a represalias.

Departamento Judicial	Casos Denunciados	Hechos no Denunciados	Totales
<i>AZUL</i>	52	1	53
<i>BAHIA BLANCA</i>	13	7	20
<i>DOLORES</i>	28	2	30
<i>JUNIN</i>	-	-	-
<i>LA MATANZA</i>	21	61	82
<i>LA PLATA</i>	34	12	46
<i>LOMAS DE ZAMORA</i>	22	101	123
<i>MERCEDES</i>	1	0	1
<i>MORON</i>	5	6	11
<i>MAR DEL PLATA</i>	11	4	15
<i>NECOCHEA</i>	1	1	2
<i>PERGAMINO</i>	-	-	-
<i>QUILMES</i>	30	27	57
<i>SAN ISIDRO</i>	34	7	41
<i>SAN MARTÍN</i>	5	20	25
<i>SAN NICOLAS</i>	59	10	69
<i>TRENQUE LAUQUEN</i>	2	0	2
<i>ZARATE CAMPANA</i>	22	3	25
TOTALES	340	262	602

Un somero análisis de los numerosos casos de tortura que vienen ocurriendo en el territorio provincial pone en evidencia que los mismos son cometidos por personal integrante de la policía de seguridad, al practicarse detenciones de los sospechosos de delitos, al ser alojados preventivamente o bien en ocasión de efectuarse interrogatorios relacionados con el motivo de la detención.

Se advierten, también, numerosos casos de tortura por parte del personal del Servicio Penitenciario de Buenos Aires, victimizándose a los internos de distintas unidades penitenciarias por diversos motivos: requisas o bien ante la negativa por parte de internos a realizar actividades que les piden que realicen.

La modalidad comisiva consiste, en la mayoría de los casos, en golpes de puño y patadas en varias zonas del cuerpo; golpes con bastones; amenazas (en algunos casos, con arma de fuego).

También se han registrado casos de aplicación de **picana eléctrica** –v.g. personal policial del Comando de Patrullas de Bahía Blanca, de la Seccional 21 de La Matanza– y **submarino seco** –por ej., personal policial de la Comisaría 3ª de La Matanza–.

Cabe destacar los numerosos casos de tortura que no fueron seguidos de la formulación de denuncia judicial por miedo a represalias, toda vez que las víctimas señalan que, de haberlas realizado, las consecuencias para su integridad física serían gravísimas.

Desde luego que este relevamiento debería ser completado con la información que al respecto obra en las Fiscalías de Cámara departamentales.

A modo de ejemplo, se citan los siguientes casos:

- *Depto. Judicial Azul*

Presentación efectuada ante la Fiscalía de Instrucción N°5 con fecha 11 de mayo de 2000:

“Denuncia: [...] que está cumpliendo condena en este Establecimiento (Unidad N° 2 de Sierra Chica). Que hasta hace quince días estuvo gozando de buena conducta, teniendo permisos extramuros [...] hasta que aproximadamente en esa fecha es llamado por XX, ZZ e YY, quienes le manifiestan que ‘habría la posibilidad de una salida (refiriéndose a una fuga), siempre y cuando le entregara la suma de 20 mil pesos’, manifestándole el declarante que le era imposible conseguir dicha suma, manifestando en consecuencia el director del penal que se le terminarían todos los beneficios y desde ese día pierde la posibilidad de trabajar, ir al colegio [...], comenzando a ser objeto de agresiones, como así se le propuso junto a los internos AA y BB proceder a darle muerte a CC [...] diciéndoles que debían quemarlo tirándole petróleo, entregándosele las llaves de la celda, cosa que se negaron a hacer [...]. Manifiesta que hace una semana que está siendo víctima de maltratos cada vez más graves, hasta que el día 10 de mayo del corriente, en horas de la mañana personal de penitenciaría le abren la puerta del calabozo [...], le tiran dos pedazos de colchón encendido y cierran la puerta. El dicente pedía que la abrieran, y como no lo hacían, toma una bolsa de nylon de azúcar y empieza a respirar a través de ella [...] pasados diez minutos le abrieron la puerta, escuchando el dicente que decían las personas que estaban afuera ‘YA ESTA, YA ESTA’, por

lo que sale corriendo el declarante, siendo tomado a golpes de puño y patadas por el encargado, un karateca...”

- *Depto. Judicial Bahía Blanca*

El Sr. Secretario de Ejecución, Dr. Germán Kiefl con fecha 25 de enero de 2001, informó:

“...al momento de ser aprehendidas las víctimas [de los apremios] se los lleva a las dependencias del Comando Patrullas, y se les aplica “picana” eléctrica. Una serie de detenidos ha manifestado que al momento de ser aprehendidos, son llevados las dependencias del citado Comando, y en una habitación que se encuentra en la parte superior del edificio, son sometidos mediante el uso de picana eléctrica. La modalidad de este procedimiento, refieren los aprehendidos, consiste en aplicar corriente en las esposas y en el dedo gordo del pie. Las víctimas de estos delitos **no han querido formular denuncia por temor a represalias**”.

- *Depto. Judicial Quilmes*

Presentación efectuada ante la Oficina de Denuncias de la Fiscalía de Cámaras con fecha 28 de febrero de 2001:

“...en el día de la fecha, se hace presente en este ministerio público el ciudadano más arriba mencionado y manifiesta que es interno en la Unidad Penitenciaria N° 29 [...] Menciona que el día 25 de enero [...] un grupo conformado por ocho o diez personas pertenecientes al personal penitenciario al mando del Oficial XX lo condujo violentamente al sector llamado admisión [...] que una vez llegado al lugar fue sometido a todo tipo de torturas, golpes de palo, goma, patadas, trompadas, durante un lapso que no puede precisar [...] que una vez a solas con el oficial mencionado se inicia el siguiente monólogo. ‘Vos sos un buchón, pero hay otro mucho más buchón que vos que nos perjudicó a todos [...] necesito que me hagas un favor ¿Vos querés salir de acá?, te puedo parar la paliza, te puedo postular para la próxima junta y te saco’. ¿Sabés lo que tenés que hacer? ‘¿Sabés de qué buchón te hablo? Vos lo conocés, es YY, tenés que darle un par de puñaladas y nada más, no hace falta que lo mates, después nos encargamos nosotros’ Que el declarante respondió en forma negativa [...] Que el día 11 del mes de febrero [...] un policía de quien no conoce datos pero podría reconocer en caso de volver a verlo, le hace entrega de un elemento punzante de aproximadamente 25 cm de largo [...] que el arma que le fuera entregada para apuñalar a YY se encuentra en el pabellón 00 en la ventana que da al patio”

- *Depto. Judicial San Martín*

El Sr. Defensor Oficial, Dr. Andrés Harfuch, informó con fecha 29 de abril de 2000:

“...el imputado al bajar del patrullero fue golpeado. Manifestó ser asmático y le pegaron culatazos en la cabeza. Le pasaron una navaja por el cuello y la cara, manifestándole que

lo iban a matar si no confesaba que había robado el auto. ‘Ahora vas a ver lo que es la maldita policía’ le dijeron en una piecita de la Comisaría de San Miguel 2^a (Bella Vista) y le pegaron entre varios. Allí le agarró una convulsión asmática y se cayó al suelo. Lo levantaron de los cabellos, lo empezaron a cachetear, le apretaron fortísimo las esposas y lo llevaron a tribunales”

- *Depto. Judicial San Nicolás*

Presentación efectuada ante la Oficina de Instructores Judiciales, el 29 de julio de 2000:

“que procede a mantener una entrevista personal con cada uno de los detenidos que se hallaban en los calabozos de la comisaría (Seccional 1^a de San Nicolás) [...] que entrevistado el detenido XX [...] el mismo manifestó que al momento de su detención fue pisado en su cabeza como así también recibió tres patadas en los testículos por parte de dos efectivos policiales [...] manifestó que nunca fue examinado aunque lo vio el médico de policía y que hallándose en la Comisaría Primera, el mismo día de la detención, en un pasillo que va hacia los calabozos XX e YY le habían acercado un aparato negro en los dedos que transmitía electricidad”.

C) OBSTACULIZACIÓN AL ADECUADO EJERCICIO DE LA DEFENSA

Con motivo de la reunión del Consejo de Defensores realizada el 29 de mayo de este año en la ciudad de Morón, se analizó “...la reticencia por parte de las autoridades [del Servicio Penitenciario de la Provincia de Buenos Aires] a aportar información sobre los hechos, habiéndose negado a la remisión de legajos o de informes solicitados. Se pone en conocimiento que en el día de la fecha y ante una visita sorpresiva a la Unidad 29 se verificó la llegada a la unidad de un interno trasladado desde Bahía Blanca –donde fuera visto sin lesiones– con señales de haber sido fuertemente golpeado, y como toda explicación se indicó ‘que se golpeó en el camión’. La Dra. Cortázar [Defensora General de Bahía Blanca] hace saber que el oficial Barrionuevo [Jefe de la Unidad Penitenciaria 29], que controló toda la visita a la Unidad, tuvo para con la Defensora expresiones amenazantes y de falta de consideración hacia sus funciones.[...] Sobre pedido de informes y explicaciones, les son negados a la Defensa, a quien se le indica debe ‘dar motivo’ de por qué se piden explicaciones. Es alarmante el ocultamiento de todos los procesos de calificación que se realizan. La Dra. Sara Peña Guzmán [Defensora General de Quilmes] manifiesta haber sido objeto de expresiones similares [a las referidas por la Dra. Cortázar] por parte del referido funcionario [Barrionuevo]”.

Cabe agregar todo lo referido a las reiteradas amenazas y agresiones –lesiones, ser denunciada, con motivo del ejercicio de su función– que recibiera la Defensora General de San Isidro, Dra. María Dolores Gómez.

La actitud por parte de integrantes del Servicio Penitenciario de impedir el contacto directo y privado de los Defensores o Secretarios de Ejecución con distintos detenidos ha ido –en algunos casos– acompañada de la invocación de directivas al respecto por parte de la superioridad, exhibiéndose incluso copia de una resolución respaldatoria para interferir en el contacto con los detenidos.

Es conveniente señalar que fueron perjudicados en el libre ejercicio profesional, además de los mencionados, la Defensora Oficial, Dra. Marcela Piñero; el Secretario de Ejecución, Dr. Eduardo Madar –ambos de Lomas de Zamora–; y los Secretarios de Ejecución de San Isidro, Dres. Adrián Angulo y Gabriel David.

II.

Normativa violada

a.-

El cuadro de situación descripto pone en evidencia el incumplimiento de normas destinadas a impedir que el trato inhumano y las condiciones ilegítimas de detención aumenten sin límite alguno o no se pongan en movimiento los mecanismos establecidos para prevenirlas y/o sancionarlas.

Me refiero al plexo normativo que conforman los arts. 18 de la C.N., 30 de la Constitución provincial, 144 bis incs. 2 y 3 y 144 ter del C.P.; 25 inc. 3 del C.P.P.– según arts. 7 y 8 de la ley 12.060–; 65 inc. 2 de la ley 12.061.

En efecto, la directiva de la Constitución Nacional que, mediante su art. 18, manda que las cárceles serán sanas y limpias para seguridad y no para castigo de los reos detenidos en ella, y toda medida que a pretexto de precaución conduzca a mortificarlos mas allá de lo que aquella exija, hará responsable al juez que la autorice.

En similar sentido lo prescripto por el art. 30 de la Constitución provincial.

Desde luego que los arts. 144 bis incs. 2 y 3 del C.P. también son atingentes y deben integrarse con lo relativo al *cupo legal máximo* para alojar detenidos en un establecimiento pues, a partir de dicho límite, el alojamiento de un detenido pasa a ser ilegal y que pone en juego responsabilidades concretas.

A su vez, el art. 26 del Reglamento de Detenidos de la Policía de la Provincia de Buenos Aires contiene una clara prescripción sobre el límite de cantidad de detenidos por inmueble.

Y las normas contenidas en la *Reglas Mínimas para el Tratamiento de Reclusos de la ONU* establecen el límite para los restantes ámbitos carcelarios, o sea, las unidades penitenciarias provinciales. Así, la

regla 9 –en sus apartados 1 y 2– establece, por ejemplo, que las celdas para aislamiento nocturno será ocupadas por un solo recluso.

A su vez, en el ámbito provincial existen dos normas paradigmáticas con relación a este tema, me refiero a los arts. 65 inc. 2 de la ley 12.061 y 25 inc. 3 del C.P.P.–según arts. 7 y 8 de la ley 12.060–, que permitiría soluciones concretas (v.g. arts. 145 primer párrafo, 159 y 163 del C.P.P.)

b.-

Por otra parte, *el derecho de todas las personas privadas de libertad a ser tratadas humanamente* y con el respeto debido a la dignidad inherente al ser humano está protegido, también, por numerosas normas de derecho internacional (artículo 10 del PIDCP), artículo 5.2 de la Convención Americana de Derechos Humanos (Convención Americana), artículo XXV de la Declaración Americana de los Derechos y Deberes del Hombre (Declaración Americana) y Principio 1 del Conjunto de Principios para la Protección de Todas las Personas Sometidas a Cualquier Forma de Detención o Prisión (Conjunto de Principios).

Estas normas imponen a los Estados la obligación de garantizar condiciones mínimas de detención y de proteger los derechos de cada detenido mientras esté privado de su libertad.

El *Comité de Derechos Humanos* ha manifestado que las personas privadas de libertad no pueden ser “sometidas (...) a penurias o a restricciones que no sean las que resulten de la privación de la libertad (...) Los Estados no pueden argumentar falta de recursos materiales ni dificultades económicas como justificación de un trato inhumano (Comité de Derechos Humanos, Observación General 21, párrafos 3 y 6) y están obligados a proporcionar a todos los detenidos y presos servicios que satisfagan sus necesidades básicas (casos *Kelly v. Jamaica*, (253/1987), 8 de abril de 1991, informe del CDH (A/46/40), 1991; y *Párkányi v. Hungary* (410/1990), 27 de julio de 1992, Informe del CDH, (A/47/40, 1992).

c.-

A su vez, *el derecho a no ser torturado ni maltratado* debe ser especialmente respetado y garantizado en el caso de las personas privadas de su libertad. Se trata de un derecho absoluto y no derogable, que se aplica a todas las personas. Nunca puede ser suspendido, ni siquiera en tiempos de guerra, amenaza de guerra, inestabilidad política interna o estados de excepción (artículo 4 del PIDCP y artículo 27.2 de la Convención Americana).

Todos los *funcionarios encargados de hacer cumplir la ley tienen prohibido infligir, instigar o tolerar la tortura u otros tratos o penas crueles, inhumanos o degradantes a cualquier persona.* (artículo 2.3 de la Convención contra la Tortura, artículos 5 y 8 del Código de Conducta para Funcionarios Encargados de Hacer Cumplir la Ley, artículo 3 de la Convención Interamericana contra la tortura).

d.-

Los ***Estados deben garantizar*** a toda persona que denuncie haber sido sometida a tortura en el ámbito de su jurisdicción que el caso sea examinado imparcialmente. Asimismo, cuando exista denuncia o razón fundada para creer que se ha cometido un acto de tortura en el ámbito de su jurisdicción, el Estado garantizará que sus autoridades procederán de oficio y de inmediato a realizar una investigación sobre el caso y a iniciar, cuando corresponda, el respectivo proceso penal (artículo 8, párrafos 1 y 2 de la Convención Americana para Prevenir y Sancionar la Tortura).

Con relación a la obligación de garantizar dichos derechos, la *Corte Interamericana de Derechos Humanos*, en el caso Velásquez Rodríguez, ha especificado que ella “implica el deber de los Estados Parte de organizar todo el aparato gubernamental y, en general, todas las estructuras a través de las cuales se manifiesta el ejercicio del poder público, de manera que sean capaces de asegurar jurídicamente el libre y pleno ejercicio de los derechos humanos. Como consecuencia de esta obligación los Estados deben prevenir, investigar y sancionar toda violación de los derechos reconocidos por la Convención y procurar, además, el restablecimiento, si es posible, del derecho conculcado y, en su caso, la reparación de los daños producidos por la violación de los derechos humanos” [...] “la obligación de garantizar el libre y pleno ejercicio de los derechos humanos no se agota con la existencia de un orden normativo dirigido a hacer posible el cumplimiento de esta obligación, sino que comporta la necesidad de una conducta gubernamental que asegure la existencia, en la realidad, de una eficaz garantía del libre y pleno ejercicio de los derechos humanos” (ver CIDH, caso Velásquez Rodríguez, párr. 166 y 167).

Asimismo, la Convención contra la Tortura y la Convención Americana para Prevenir y Sancionar la Tortura establecen obligaciones para los Estados Parte destinadas a prevenir, investigar, sancionar y reparar la tortura.

e.-

Por último, el Estado tiene el deber de garantizar que los abogados puedan desempeñar todas sus funciones profesionales sin intimidaciones, obstáculos, acosos o interferencias indebidas y que,

cuando la seguridad de los mismos se viese amenazada a raíz del ejercicio de sus funciones, reciban de las autoridades protección adecuada (principios 12, b, 15, 16 y 17).

Los Principios Básicos sobre la Función de los Abogados de la ONU establecen que los abogados están obligados y son responsables de velar lealmente por los intereses de sus clientes y de prestarles asistencia en todas las formas adecuadas así como de adoptar medidas jurídicas para protegerlos o defender sus intereses. Los gobiernos, por su parte, deben garantizar que los abogados puedan desempeñar todas sus funciones profesionales sin intimidaciones, obstáculos, acosos o interferencias indebidas. Cuando la seguridad de los abogados se viese amenazada a raíz del ejercicio de sus funciones, deben recibir de las autoridades protección adecuada (principios 12, b, 15, 16 y 17).

Por su parte, el artículo 13 de la Convención contra la Tortura establece que el Estado debe asegurar que toda persona que presente una queja con relación a un caso de tortura y a otros tratos o penas crueles, inhumanos o degradantes y los testigos estén protegidos contra malos tratos o intimidación como consecuencia de la queja o del testimonio prestado.

En el mismo sentido, el Principio 33 del Conjunto de Principios para la Protección de Todas las Personas Sometidas a Cualquier Forma de Detención o Prisión establece que las personas detenidas o presas o su abogado, o un familiar de la víctima u otra persona que tenga conocimiento de un acto de torturas u otros tratos crueles inhumanos o degradantes tiene derecho a presentar a las autoridades encargadas del lugar de detención y a las autoridades superiores y, de ser necesario, a las autoridades competentes que tengan atribuciones fiscalizadoras o correctivas una petición o recurso, que podrán ser confidenciales si así lo pidiere el recurrente. Si la petición o recurso fueren rechazados o hubiere retraso excesivo, el recurrente tendrá derecho a presentar una petición o recurso ante un juez u otra autoridad. Ni las víctimas ni los recurrentes sufrirán perjuicios por haberlos presentado.

III.

Situación institucional: responsabilidades

A.-

En el seno del Ministerio Público de la Defensa, al impulsar las correspondientes visitas a establecimientos carcelarios, lugares de internación y comisarías –art. 6 Ley 12.061–, como así con motivo del desempeño de la función en sus diversos aspectos, se ha ido constatando una compleja situación de trato inhumano a los detenidos y de aplicación de torturas, lo que condujo a la creación de

un Banco de Datos provincial de la Defensa, para sistematizar dicha información y utilizarla en aras del cumplimiento de nuestras obligaciones funcionales.

A su vez se concretaron numerosas presentaciones –hábeas corpus, denuncias, peticiones departamentales– con dispares resultados.

Incluso el pedido efectuado mediante la Resolución N°37 (30/5/00) de que los traslados sean efectuados con previa decisión al respecto del juez a cuya disposición se encuentra el detenido– fue mayoritariamente desoído.

Debo poner de relieve lo informado insistentemente por los señores *Defensores Oficiales* acerca de la falta de impulso de la gran mayoría de las causas originadas con relación a la temática que motiva la presente por parte de los señores *Agentes Fiscales intervinientes*.

También se advierte por parte de dichos Magistrados requirentes que, frente a la realidad referida a los detenidos en seccionales policiales, no se cumplen con las directivas legales que marca el **art. 65 de la ley 12.061**.

Asimismo debe destacarse una notoria ausencia de control por parte de los *jueces* a cuya disposición se encuentran los detenidos alojados en comisarías como así el escaso **control judicial** de las situaciones de los detenidos en unidades carcelarias (**arts. 25 del C.P.P.** y **7 y 8 de la Ley 12.060 y Acordada 2061 de la SCBA**).

Tampoco se advierte que en miles de detenidos –v.g. los casi 6000 alojados en comisarías– se esté efectuando un tratamiento –sean procesados o penados– que, fortaleciendo la dignidad humana, esté orientado a la búsqueda de una adecuada inserción social de los mismos; por el contrario, se está generando o profundizando en ellos sentimientos de odio o resentimiento (Arts. 5 ap.6 de la CADH, 10 inc. 3 del PIDCP y 4 y 5 de la ley provincial 12.256, entre otros)

Es evidente que la aplicación de *torturas* por parte de personal de la *policía de seguridad – con motivo de la realización de actividades investigativas–* como así también por parte de *personal de Servicio Penitenciario –respecto de la personas alojadas en Unidades carcelarias–* reclama tanto medidas como actitudes de integrantes de dichas instituciones como de los *responsables* de las mismas y de los distintos sectores del Poder Judicial, de manera urgente.

Por último, es preocupante la actitud de obstrucción, por parte del *Servicio Penitenciario provincial*, a la realización del correspondiente *control judicial* que, entre otros, debemos llevar a cabo los integrantes del Ministerio Público de la Defensa.

En sus observaciones sobre Argentina de noviembre de 2000, el *Comité de Derechos Humanos* expresó “su preocupación ante los ataques continuos de que son víctimas los defensores de los derechos humanos, jueces, denunciadores y representantes de las organizaciones de derechos humanos, así como

los representantes de los medios de comunicación social. Asimismo, recomendó que “los ataques contra los defensores de los derechos humanos ... se deben investigar con prontitud y se han de imponer a los autores las sanciones disciplinarias o punitivas que procedan. El Estado Parte debe dar detalles en su próximo informe sobre los resultados de estas investigaciones y sobre los procedimientos seguidos para imponer sanciones disciplinarias o punitivas a los autores de esta clase de actos” (ver Observaciones finales del Comité de Derechos Humanos: Argentina. 3/11/2000 CCPR/CO/70/ARG (*Concluding Observations/ Comments*)).

El *Comité Contra la Tortura* –órgano de supervisión del cumplimiento de la Convención contra la Tortura y otros tratos o penas crueles, inhumanos o degradantes– en sus últimas observaciones sobre la Argentina en 1997, expresó que: “El Comité aprecia dicotomía entre la regulación normativa de que se ha dotado el Estado, destinada a la prevención y sanción de la tortura, que en calidad y cantidad satisfacen las prescripciones de la Convención, y la realidad que revela la información que sigue recibiendo sobre la ocurrencia de casos de tortura y malos tratos por parte de la policía y el personal penitenciario, tanto en las provincias como en la Capital Federal, que parecen revelar omisión de acciones efectivas para erradicar la práctica de esas conductas desviadas. // El examen de los antecedentes de varios casos de torturas recibidos por el Comité son indicativos no sólo de la falta de colaboración eficaz y pronta por parte de la policía en las investigaciones judiciales de las denuncias de tortura y malos tratos, sino también acciones de entorpecimientos de esas investigaciones que más que incumplimientos excepcionales del deber de colaborar fielmente en la investigación de esos crímenes pareciera revelar un *modus operandi* relativamente frecuente. // Preocupa también al Comité la información que ha conocido sobre el incremento en cantidad y gravedad de prácticas de violencia policial, muchas con resultado de muerte o lesiones graves de las víctimas y que no obstante no ser constitutivas de tortura, en los términos del artículo 1 de la Convención configuran tratos crueles, inhumanos y degradantes, que el Estado tiene el deber de reprimir y sancionar, como dispone el artículo 16 de la Convención” (ver Observaciones finales del Comité contra la Tortura: Argentina. 21/11/97, A/54/44, paras. 52-69 (*Concluding Observations/Comments*)).

B.-

El marco normativo y las distintas resoluciones de los órganos internacionales de protección de las Naciones Unidas –Comisión de Derechos Humanos, Comité de Derechos Humanos del Pacto Internacional de Derechos Civiles y Políticos y Comité contra la Tortura–, como de la

OEA –Comisión Interamericana de Derechos Humanos y Corte Interamericana de Derechos Humanos–, marcan un camino que deja en evidencia la necesidad de poner en marcha distintos mecanismos y medidas a los cuales, los que integramos distintos sectores del Estado, estamos obligados.

Por un lado, para la verificación de los incumplimientos de obligaciones que ha asumido el Estado Provincial, poniendo ello en conocimiento de las autoridades correspondientes, para las pertinentes investigaciones y sanciones que hubiere lugar –administrativas, civiles, penales–.

Y, a su vez, estamos obligados a impulsar medidas y mecanismos concretos de prevención, frente a casos de tortura como así de condiciones ilegítimas de detención y/o tratos o penas crueles, inhumanos y degradantes.

La sistematización de información a través del Banco de Datos del Ministerio Público de la Defensa de la Provincia de Buenos Aires, se enmarca en la toma de medidas concretas para la verificación y prevención de los actos violatorios de derechos humanos aludidos, pero son necesarias medidas de mejoramiento en el relevamiento y sistematización de información, como así del contralor de cumplimiento (arts. 2-1., 13 y 14 de la Convención contra la Tortura y otros tratos o penas crueles, inhumanos y degradantes).

La situación de “*hacinamiento*” o “*superpoblación carcelaria*” –encierro de personas mas allá del cupo legal máximo– origina gravísimos problemas de salud, seguridad, alimentación, supervivencia, visitas, (y, desde luego, impide tareas de resocialización básicas, a saber: educación y trabajo) poniéndose en serio riesgo la vida y la salud de los detenidos así como las del personal policial y penitenciario.

POR TODO ELLO, y en uso de las atribuciones legales pertinentes, el señor Defensor de Casación de la Provincia de Buenos Aires,

RESUELVE:

1. Elevar a conocimiento y consideración de la Suprema Corte provincial y del Sr. Procurador General copia de la presente a los fines que estimen corresponder.
2. Peticionar a la Suprema Corte provincial se contemple la posibilidad de impulsar visitas de inspección y control con mayor frecuencia a establecimientos carcelarios y comisarías por parte de los señores Jueces que tienen la responsabilidad de supervisar las condiciones en que se cumplen las privaciones de libertad de las personas –procesadas o penadas–, considerándose en ese marco, la viabilidad de sistematizar en un registro el efectivo cumplimiento de tales actividades, a través de informes mensuales que deberían elevar a

V.V.E.E.. Así también resultaría pertinente adecuar el Acuerdo 2061/84 incluyendo en la obligación de visitas a las dependencias policiales.

3. Peticionar al señor Procurador General ante la Suprema Corte provincial contemple la posibilidad de impulsar visitas sistemáticas de inspección por parte de los señores Fiscales a los establecimientos carcelarios, lugares de internación y –en especial– a comisarías, en virtud de lo normado por el art. 65 de la Ley 12.061, con informes periódicos que permitan controlar el efectivo cumplimiento de tales visitas.
4. Solicitar al señor Procurador General ante la Suprema Corte provincial se arbitren las medidas necesarias para que se dé el debido impulso a las distintas causas originadas con motivo de la posible comisión de los delitos de torturas y otros tipos de tratos crueles, inhumanos o degradantes.
5. Peticionar a la Suprema Corte y al Sr. Procurador General la creación de una comisión provincial con la finalidad de designar comisiones departamentales de control de la situación de detenidos en cárceles y comisarías, que informe periódicamente en forma conjunta.

Dichas comisiones departamentales deberían estar integradas por un Juez, un Fiscal, un Defensor Oficial, un representante del Colegio de Abogados departamental, un Legislador y un miembro del Poder Ejecutivo, teniendo a su cargo la tarea de realizar visitas regulares, como así también no programadas a los lugares de detención.

6. Peticionar a los Sres. Ministros de Seguridad y de Justicia a fin de que se arbitren los medios para que de manera urgente no se alojen detenidos en los establecimientos bajo su responsabilidad, mas allá del cupo legal máximo.
7. Solicitar al Sr. Ministro de Justicia provincial se dispongan las medidas necesarias a fin de no obstaculizar las visitas carcelarias de distinto tipo que deben realizar los integrantes del Ministerio Público de la Defensa.
8. Peticionar a la Suprema Corte, al Sr. Procurador General, al Sr. Gobernador y a los Sres. Presidentes de las Cámaras de Senadores y Diputados, se arbitren las medidas necesarias para la urgente puesta en funcionamiento de la Justicia de Ejecución en su totalidad, que –de manera efectiva– permita ejercer la competencia propia de dicho fuero (arts. 25, 497 y sgts. del C.P.P.B.A.)
9. Peticionar a las autoridades mencionadas en el punto anterior se arbitren las medidas necesarias para la urgente implementación de la Policía Judicial, de manera que las

investigaciones judiciales no sean llevadas a cabo por personal de la policía de seguridad provincial (Art. 166 in fine de la Constitución provincial).

10. Encomendar a las Áreas de Ejecución de esta Defensoría y de los 18 departamentos judiciales la elaboración de un proyecto de planilla modelo para el relevamiento de información que nutre el Banco de Datos. Tal tarea deberá llevarse a cabo en el Seminario Permanente de Capacitación para Secretarios de Ejecución.
11. Encomendar al Área Disciplinaria de esta Defensoría el control del cumplimiento de las tareas de verificación y protección relacionadas con la temática que se aborda en la presente, por parte de los distintos integrantes del Ministerio Público de la Defensa.
12. Regístrese y comuníquese.

APPENDIX III

COMMITTEE AGAINST TORTURE Thirty-third session 15-26 November 2004	CAT/C/CR/33/1 10 December 2004 ENGLISH Original: SPANISH
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION
Conclusions and recommendations of the Committee against Torture**

Argentina

1. The Committee considered the fourth periodic report of Argentina (CAT/C/55/Add.7) at its 622nd and 625th meetings, held on 16 and 17 November 2004 (CAT/C/SR.622 and 625), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the fourth periodic report of Argentina, though noting that it was received two years after the due date of June 2000. The Committee appreciates the constructive dialogue established with a high-level representative delegation and thanks it for the frank and direct answers provided to the questions posed by the Committee.

B. Positive aspects

3. The Committee welcomes with satisfaction the efforts made by the State party to combat impunity in respect of crimes against humanity committed under the military dictatorship, and in particular:

- (a) The promulgation of Act No. 25.779 in September 2003, declaring the "Due Obedience" and "Clean Slate" Acts absolutely null and void;
- (b) The initiation of a significant number of cases in which such violations are being investigated;
- (c) The repeal in 2003 of executive decree No. 1581/01, which required the automatic rejection of requests for extradition in cases involving serious and flagrant violations of human rights under the military dictatorship.

4. The Committee also warmly welcomes the following positive developments:

- (a) The recent ratification of the Optional Protocol to the Convention in November 2004;
- (b) The ratification of the Rome Statute of the International Criminal Court in February 2001;
- (c) The promulgation in January 2004 of the new Migration Act, No. 25.871, which lays down, inter alia, that a foreigner may be detained only by a judicial authority;
- (d) The work accomplished by the National Commission for the Right to an Identity, which was entrusted with the task of locating children who disappeared under the military dictatorship.

C. Factors and difficulties impeding the application of the Convention

5. The Committee takes note of the difficulties encountered by the State party, especially those of an economic and social nature. However, it points out that there are no exceptional circumstances of any kind which may be invoked to justify torture.

D. Subjects of concern

6. The Committee expresses its concern at the following:

- (a) The many allegations of torture and ill-treatment committed in a widespread and habitual manner by the State's security forces and agencies, both in the provinces and in the federal capital;
- (b) The lack of proportion between the high number of reports of torture and ill-treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, all of which contributes to the prevailing impunity in this area;
- (c) The repeated practice of miscategorization of actions by judicial officials, who treat the crime of torture as a minor offence (such as unlawful coercion), which carries a lesser punishment, when in fact such actions should be categorized as torture;
- (d) The uneven application of the Convention in the various provinces of the State party, and the lack of machinery for accommodating the requirements of the Convention to the federal structure of the country, despite the fact that the State party's Constitution grants those provisions the same status as the Constitution itself;
- (e) The information supplied by the State party on compliance with the obligations imposed by the Convention still fails to reflect the situation in the country as a whole, as the Committee has stated when considering previous reports by the State party. The Committee also notes with concern that the national register of information from domestic courts on cases of torture and ill-treatment in the State party has still not been established;

- (f) The reports of arrests and detention of children below the age of criminal responsibility, most of them "street children" and beggars, in police stations, where they are held together with adults, as well as on the alleged torture and ill-treatment suffered by such children, leading to death in some cases;
- (g) Allegations of torture and ill-treatment of certain other vulnerable groups, such as members of the indigenous communities, sexual minorities and women;
- (h) The overcrowding and poor physical conditions prevailing in the prisons, and particularly the lack of hygiene, adequate food and appropriate medical care, which may be tantamount to inhuman and degrading treatment;
- (i) The high number of persons being held in pre-trial detention, which according to the State party is as high as 78 per cent in the Buenos Aires prison system;
- (j) The failure to apply the principle of separation between convicted prisoners and remand prisoners in detention centres, and between them and immigrants who have been served with expulsion orders;
- (k) Alleged reprisals, intimidation and threats received by persons reporting acts of torture and ill-treatment;
- (l) Humiliation and degrading treatment during body searches of persons visiting prisons;
- (m) The fact that medical staff in prisons are not independent but are members of the prison service.

E. Recommendations

7. The Committee recommends that the State party should take all necessary steps to prevent acts of torture and ill-treatment in the territory of the State of Argentina, and in particular that it should:

- (a) Take vigorous steps to eliminate the impunity of the alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims;
- (b) Provide training for judicial officials in order to enhance the efficiency of investigations and bring judicial decisions into line with the relevant international standards;
- (c) Improve the quality of the State's security forces and agencies and enhance their training in respect of human rights, and specifically in respect of the requirements stemming from the Convention;
- (d) Guarantee that the obligations arising from the Convention will always be fulfilled in all provincial courts, with the aim of ensuring the uniform application of the Convention throughout the State party. The State party is reminded that the State's international

responsibility is borne by the State at the national level even when violations have occurred at the provincial level;

(e) Organize a national register of information from domestic courts on cases of torture and ill-treatment in the State party, a measure stated by the State party to be feasible;

(f) Take specific steps to safeguard the physical integrity of the members of all vulnerable groups;

(g) As promised by the delegation of the State party in the case of the province of Buenos Aires, guarantee that the holding of minors in police units will be immediately banned, that minors currently in police units will be transferred to special centres, and that a nationwide ban will be imposed on the detention of minors by police personnel on "welfare grounds";

(h) Take effective steps to improve physical conditions in prisons, reduce the existing overcrowding and properly guarantee the fundamental needs of all persons in custody;

(i) Consider amending its legislation and practice relating to pre-trial detention, so that such detention is imposed only as an exceptional measure, taking into account the recommendations on alternatives to pre-trial detention adopted by the Working Group on Arbitrary Detention in December 2003;

(j) Take the necessary steps to guarantee the principle of separation between convicted prisoners and remand prisoners, and between them and immigrants who have been served with expulsion orders in detention centres;

(k) Take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and from any unfavourable consequence of their action in making such a report;

(l) Take appropriate steps to guarantee full respect for the dignity and human rights of all persons during body searches, in full compliance with international standards;

(m) Take the necessary steps to guarantee the presence of independent, qualified medical personnel to carry out periodic examinations of persons in detention;

(n) Include in its next periodic report detailed statistical data, especially in terms of types of offence, the age, ethnic group and sex of the victim and the category of the perpetrator, on reports of acts of torture and other cruel, inhuman or degrading punishment or treatment inflicted by State officials, as well as on investigations, proceedings and criminal and disciplinary punishments imposed following such reports and the consequences for the victims in terms of reparation and compensation;

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

(p) Establish and promote effective machinery within the prison system to receive and investigate reports of sexual violence and provide protection and psychological and medical assistance to victims;

(q) Extensively publicize the reports submitted to the Committee by the State party, as well as the Committee's conclusions and recommendations, through official web sites, the media and non-governmental organizations;

(r) Inform the Committee within a year of the specific steps taken in pursuance of the recommendations set out in subparagraphs (e), (f), (l) and (o) above;

(s) Submit its next periodic report, combining the fifth and sixth reports, at the latest by 25 June 2008, the scheduled date for the submission of the sixth report.