



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports of States parties under  
article 29 of the Convention**

**Reports of States parties under article 29, paragraph 1, of the  
Convention that are due in 2012**

**Argentina\***

[21 December 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

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## I. General legal framework prohibiting enforced disappearance

1. The prohibition of enforced disappearance is set out in Argentine domestic law in both the Constitution and the Criminal Code.
2. According to article 75, paragraph 22, of the Constitution, the Inter-American Convention on Forced Disappearance of Persons, adopted through Act No. 24556, has constitutional rank. Article 1 of this instrument stipulates that States parties shall undertake not to practise, permit or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees.
3. At the same time, article 142 ter of the Criminal Code establishes a sentence of 10 to 25 years' imprisonment and general disqualification for life from exercising any public office or private security duties for public officials or persons or members of a group of persons who, acting with the authorization, support or acquiescence of the State, deprive one or more persons of their freedom in any way, when this act is followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person.<sup>1</sup>
4. In addition, Act No. 26298 adopting the International Convention for the Protection of All Persons from Enforced Disappearance was enacted in November 2007.
5. At the international level, Argentina has signed various international instruments protecting persons from enforced disappearance, including: the Declaration on the Protection of All Persons from Enforced Disappearance; the Inter-American Convention on Forced Disappearance of Persons; the International Convention for the Protection of All Persons from Enforced Disappearance; the International Covenant on Civil and Political Rights; the Rome Statute of the International Criminal Court; the American Convention on Human Rights; and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.
6. Article 75, paragraph 22, of the constitutional reform of 1994 granted supralegal status to treaties and constitutional status to 11 human rights instruments. Thus, the International Convention for the Protection of All Persons from Enforced Disappearance does not yet enjoy constitutional status; the Inter-American Convention on Forced Disappearance of Persons does, however.
7. Prior to the constitutional reform, the country's domestic courts had already begun directly applying international human rights treaties in civil and criminal cases.
8. The international legal instruments with constitutional status and the other instruments ratified by Argentina form part of the current law. They may be invoked before the courts, the administration and independent human rights institutions by individuals, groups and communities for the promotion and defence of their rights, and should be applied directly by the domestic courts and State bodies.
9. Since the ratification of these international instruments by the executive branch, individuals, groups and communities now have recourse to an international judicial or quasi-judicial body in the event of violations of the rights recognized in those instruments.

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<sup>1</sup> For more information on this legal provision and other legal norms mentioned in this report, see the legislative information found on the website of the Documentation and Information Technology Centre of the Ministry of Economic Affairs and Finance, available at: <http://infoleg.mecon.gov.ar/>.

## II. Information on each substantive article of the Convention

### A. Information on articles 1 to 6 of the Convention

10. The offence of enforced disappearance of persons was introduced in the Argentine legal system in 2007 through the enactment of Act No. 26200.<sup>2</sup> The Act adopts the Rome Statute of the International Criminal Court and qualifies enforced disappearance as a crime against humanity committed by an individual.

11. Article 2, paragraph 2, of the Act refers as follows to the definition set out in the Rome Statute: “The acts described in articles 6, 7, 8 and 70 of the Rome Statute and any crimes and offences that may hereafter fall within the jurisdiction of the International Criminal Court shall be punishable in the Argentine Republic as provided for in this Act”.

12. Article 7, paragraphs 1 (i) and 2 (i), of the Rome Statute defines the crime against humanity of enforced disappearance of persons in the following terms:

“1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: ... (i) enforced disappearance of persons ...

2. For the purpose of paragraph 1: ... (i) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”.

13. The penalties for the crime against humanity of enforced disappearance of persons are set out in article 9 of Act No. 26200, which establishes that, “in the cases provided for in article 7 of the Rome Statute [,] the applicable penalty is 3 to 25 years’ imprisonment. If the crime results in death, the penalty shall be life imprisonment”. Act No. 26200 also establishes that under no circumstances may the penalty be less than that to which the perpetrator would be subject if convicted under the provisions of the Criminal Code (art. 12) and stipulates that statutory limitations do not apply to such acts (art. 11).

14. The Act further states that: “None of the offences set forth in the Rome Statute or in this Act shall be applied in violation of the principle of legality enshrined in article 18 of the Constitution. That being the case, these acts must be prosecuted in accordance with the provisions of existing laws”. Thus, if it is found that the requirement of legality is not fulfilled, the domestic court must prosecute the case under the normal rules of the Criminal Code.

15. Now as it happens, prior to the enactment of Act No. 26200 there was no criminal provision in the Argentine legal system punishing the offence of enforced disappearance of persons. However, as mentioned above, the State had already ratified and incorporated into domestic law the two international conventions on the subject (the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance<sup>3</sup>) and, according to the Supreme

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<sup>2</sup> Act No. 26.200 published in the *Boletín Oficial* on 9 January 2007.

<sup>3</sup> The Inter-American Convention on Forced Disappearance of Persons, adopted by the General Assembly of the Organization of American States on 9 June 1994, was ratified by Act No. 24556 of September 1995 and published in the *Boletín Oficial* on 11 October 1995. This Convention entered

Court case law established in the *Ekmekdjian* case (1992),<sup>4</sup> provisions of international treaties that are sufficiently precise are directly applicable.

16. Notwithstanding the above, on 13 April 2011 Act No. 26679 was enacted, which amended the Criminal Code and the Code of Criminal Procedure and incorporated into Argentine positive law provisions on the offence of the enforced disappearance of persons.

17. Ever since that legislative reform, the enforced disappearance of persons has been classified as an offence under title V, chapter I, of the Criminal Code, entitled “Offences against Freedom”.

18. Article 1 of Act No. 26679 incorporates article 142 ter of the Criminal Code, which reads as follows:

“A sentence of 10 to 25 years’ imprisonment and general disqualification for life from exercising any public office or private security duties shall be imposed on public officials or persons or members of a group of persons who, acting with the authorization, support or acquiescence of the State, deprive one or more persons of their freedom in any way, when this act is followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person.”

19. As is made clear in the provision quoted above, Argentine domestic law includes a definition of enforced disappearance that fully conforms with the definition set out in article 2 of the Convention.

20. The offence is described in the law as the act of depriving one or more persons of their freedom, regardless of the means used, when the act is carried out by State officials or by individuals or groups of persons acting with the authorization, support or acquiescence of the State. The deprivation of freedom must be followed by an absence of information or a refusal to acknowledge the deprivation of freedom or to give information on the whereabouts of the person, thereby preventing the exercise of the relevant legal remedies and procedural guarantees. The offence is composed of an action followed by an omission.

21. Enforced disappearance now constitutes a separate offence in the Argentine legal system and is distinguished from other offences that are related to, but different from, enforced disappearance, such as abduction, arbitrary detention, imprisonment, torture and deprivation of life or similar offences that are also included in the Criminal Code.<sup>5</sup>

22. Various legal rights are protected through the criminalization of this offence; however, the right to freedom as a driving force is protected above all.

23. As previously stated, article 142 ter of the Criminal Code prohibits the acts referred to in article 2 of the Convention when carried out by persons or groups of persons acting without the authorization, support or acquiescence of the State. Such acts are investigated and punished by justice officials (public prosecutors and judges).

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into force internationally and also for Argentina on 28 March 1996. It was granted constitutional status by Act No. 24.820 (published in the *Boletín Oficial* on 29 May 1997). The International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly on 20 December 2006, was ratified by Act No. 26298 and published in the *Boletín Oficial* on 30 November 2007. This Convention entered into force internationally and also for Argentina on 23 December 2010.

<sup>4</sup> Supreme Court, *Ekmekdjian, Miguel A. v. Sofovich, Gerardo and others*, La Ley 1992-C, 543.

<sup>5</sup> Articles 80, 142, 142 bis, 143, 144 bis, 144 ter, 146 and 170 of the Criminal Code. See also the provisions of article 170 of the Criminal Code, on the offence of extortion.

24. According to article 215 bis of the Criminal Code, “The judge shall not close cases involving investigations into the offence classified in article 142 ter of the Criminal Code until the victim has been found or their identity restored. The same restriction applies to the Public Prosecution Service”.

25. In addition, according to article 43 of the Constitution, “when the right violated, restricted, impaired or threatened is the right to physical freedom, or in the event of unlawful aggravation of the form or conditions of detention, or of enforced disappearance of persons, habeas corpus proceedings may be brought by the person concerned or by any other person on his behalf and the judge shall hand down an immediate decision, even during a state of siege”. That is to say, the right not to be subjected to enforced disappearance continues to apply even during a public emergency or situation of political instability. As can be seen, there are special constitutional mechanisms that provide protection in cases of enforced disappearance without exception.

26. Article 1 of the Inter-American Convention on Forced Disappearance of Persons — ratified by Act No. 24556 and with constitutional status — stipulates that the prohibition on the enforced disappearance of persons holds good even in a state of siege, emergency, exception or suspension of individual guarantees.

27. With regard to criminal liability for enforced disappearance as established in domestic law, according to the Criminal Code, due obedience is grounds for exemption from the punishment set out in article 34, paragraph 5 of the Code, which exempts from criminal liability subordinates who receive orders from a superior.

28. However, case law and doctrine, which have been firmed up in cases involving events during the last military dictatorship, have established that if one of the participants in or perpetrators or co-perpetrators of an offence is aware that the action is intentionally harmful, due obedience may not be used as a defence.

29. Clearly unlawful orders are not binding on subordinates: the responsible official is therefore criminally liable for offences committed by a subordinate in performing the unlawful action.

30. In the *Simón* case, it was established that “an order from a superior is not sufficient to cover subordinates who execute the order and to protect them from all criminal liability if the act is illegal and itself constitutes an offence, because subordinates are required to obey their superiors only in matters that fall within the scope of the latter’s authority”.<sup>6</sup>

31. With regard to a superior’s responsibility for the offence of enforced disappearance, national legislation considers any type of participation by superiors to be an offence, either of commission or of omission. Thus, if superiors are aware of an offence being committed by their subordinates and do not act accordingly, their conduct is punishable once brought to trial and could be categorized under various actions described in the Criminal Code.

32. For example, the conduct could be categorized under the offences described in article 142 ter, with the degree of responsibility depending on whether the person acted as a perpetrator, co-perpetrator, key participant or secondary participant.

33. Such conduct could also constitute dereliction of duty as a public servant, as defined in articles 248 ff. of the Criminal Code, on the obligation to report an offence to public officials.

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<sup>6</sup> Supreme Court, decision in the case “*Simón, Julio Héctor and others; Poblete Roa, José Liborio and others — case No. 17.768 — application for judicial review*”, 2005.

34. Subordinates, for their part, must refuse under any circumstances to obey an order that involves committing an offence. Otherwise, as indicated above, under the law they shall be held responsible for the offence, as participants in the appropriate degree.

35. In short, in Argentine law the concept of due obedience is not considered an applicable ground for exemption from criminal responsibility for any offence that is clearly unlawful.

## **B. Information on articles 7 to 8 of the Convention**

36. Article 142 ter of the Criminal Code establishes the range of penalties for the offence of enforced disappearance as 10 to 25 years' imprisonment and general disqualification for life from exercising any public office or private security duties.

37. With regard to aggravating factors, the same article establishes a punishment of life imprisonment in cases where the victim is (a) a pregnant woman, (b) a person under 18 years of age, (c) a person over 70 years of age, (d) a person with a disability, or (e) a person born during the enforced disappearance of his or her mother.

38. With regard to mitigating factors, the maximum penalty shall be reduced by one third and the minimum penalty shall be reduced by half if any person responsible for the offence releases the victim or provides information on the victim's whereabouts.

39. The maximum applicable penalty under the Criminal Code is life imprisonment.

40. With regard to the applicable statute of limitations, according to the provisions of article 63 of the Criminal Code, the statute of limitations starts to run from midnight on the day when the offence is committed, or, if the offence is a continuing offence, at midnight on the day it ceases.

41. In the case of enforced disappearance, as a continuing offence it is considered to cease once the whereabouts of the victim is known.

42. Thus, as previously mentioned, article 215 bis of the Code of Criminal Procedure stipulates that the judge shall not close cases of enforced disappearance until the victim has been found or their identity restored. The same restriction applies to the Public Prosecution Service.

43. In cases where the statute of limitations may be invoked, the time limit is 15 years for the criminal proceedings (Code of Criminal Procedure, art. 62) and 20 years for the punishment (Code of Criminal Procedure, art. 65).

44. There is no statute of limitations for crimes against humanity, as in cases of offences committed during the last military dictatorship.

45. The non-applicability of statutory limitations for the offence of enforced disappearance is now part of national law by virtue of the ratification of the relevant international treaties.

46. The remedies available to appeal the application of the statute of limitations are the same as those available to appeal any other judicial decision. That is to say, a decision calling for the application of the statute of limitations may be appealed pursuant to article 449 of the Code of Criminal Procedure.

### C. Information on articles 9 to 11 of the Convention

47. With regard to the legal framework enabling the national courts to exercise universal jurisdiction over the offence of enforced disappearance, the principles of universal justice have been a part of the national legal order since 1853, given that they are set out in article 118 of the Constitution. That article provides that the national courts have jurisdiction over offences against international law committed abroad.

48. Act No. 26200 implementing the Rome Statute — the instrument establishing the International Criminal Court — applies to offences that are committed or produce effects within the country's territory, or in places under its jurisdiction; offences committed abroad by Argentine officials or State employees in performance of their duties; offences committed outside Argentine territory by Argentine nationals or persons domiciled in Argentina, provided that they have not been acquitted or convicted abroad or, if convicted, that they have not served their sentence; and in the cases provided for in the international conventions to which Argentina is a party.

49. The Argentine justice system issued one of the first judgements in the world in which the concept of universal jurisdiction was applied, in the case of the Armenian people. It was a declaratory judgement issued by federal judge Norberto Oyarbide, who ruled that the State of Turkey had committed the crime of genocide against the Armenian people from 1915 to 1923.

50. The sentence does not have punitive effects but does allow the claimants to invoke the sentence as a precedent before other international forums.

51. The case was brought as the result of a claim filed in December 2000 by a notary public named Hairabedián, a descendant of murdered Armenians, who requested an investigation into the fate of 50 of his immediate family members in the Armenian provinces (vilayets) of Palu and Zeitun, which were then under the Ottoman Empire. Later, the Armenian community in Buenos Aires became a party to the complaint in relation to the massacres of the Armenian population in the provinces of Trebizond, Erzerum, Bitlis, Diyarbakir, Harput and Sivas, which, according to historical estimates, took the lives of 1.5 million Armenians in the first genocide of the twentieth century.

52. When the judgement was issued in April 2011, the then Secretary for Human Rights, Eduardo Duhalde, made the following statement: "The judgement by Dr. Oyarbide is in accordance with the principles of international human rights law, established by the United Nations in 1946, and in the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the American Convention on Human Rights". He added: "Crimes against humanity are an affront not only to their direct victims but to humanity as a whole; therefore, if the perpetrators are not tried in the place where the crimes were committed, any judge of any other country may assume jurisdiction".

53. Lastly, Duhalde said that, with this decision, the State of Argentina, in this case through its judiciary, reaffirmed the internationally recognized human rights policy that has made Argentina a leader in terms of respect for human dignity and the principles of memory, truth and justice.

54. With regard to existing measures to ensure fair treatment for alleged offenders at all stages of the proceedings, articles 16 and 18 of the Constitution establish a number of guarantees that govern the administration of justice, namely due process, presumption of innocence, the right to be tried in the competent court, *non bis in idem*, the right to a defence and the right to equal treatment. These principles protect the rights enjoyed by all defendants in any type of proceeding carried out in Argentina.



55. They are also enshrined in article 1 (due process, *non bis in idem*, the right to be tried in the competent court) and article 3 (presumption of innocence) of the Code of Criminal Procedure.
56. In addition, article 104 of the same Code establishes that all defendants must have legal assistance in criminal proceedings. All defendants have the right to be assisted by counsel of their choosing or to have one provided for them free of charge by the State.
57. All these principles and guarantees apply from the moment an investigation into a case of enforced disappearance is opened, regardless of whether the alleged offender is of Argentine or foreign nationality or where the crime was committed.
58. The authority responsible for investigating and prosecuting persons accused of enforced disappearance is the justice system for federal criminal and correctional cases, in accordance with the powers conferred upon it by the applicable laws.
59. The military authorities are not competent to prosecute persons accused of enforced disappearance or to investigate such acts.
60. Under Argentine law, the security forces are competent to investigate only as judicial auxiliaries.
61. At the same time, domestic law stipulates that jurisdiction shall be assumed even if the act was not committed in Argentina or did not produce effects in national territory (or if the offence was committed by Argentine officials abroad in performance of their duties – article 1 of the Criminal Code) in cases where extradition is denied, the alleged perpetrator is an Argentine national and the requesting State agrees that Argentina may try the person, thereby relinquishing its jurisdiction.
62. Thus, if Argentina refuses to extradite a person for any extraditable offence on grounds of the person's nationality, then the person must be tried in Argentina according to Argentine law, which shall be done provided that the requesting country agrees to the trial and relinquishes its own jurisdiction.
63. This scenario is regulated by article 12 of the Act on International Cooperation in Criminal Matters and applies only if the Argentine national exercises this option.
64. This option does not apply if there is any treaty in force requiring the extradition of Argentine nationals, and if the extradition of Argentina nationals is optional under the treaty in force, the option exercised by the Argentine national will be analysed by the Ministry of Foreign Affairs and Religion once the court has declared extradition admissible. Only if there is no extradition treaty with the requesting country does the Argentine national's exercise of the option automatically mean that extradition is denied and that they must be tried in Argentina.
65. The Ministry of Foreign Affairs and Religion is responsible for sending communications to foreign consular authorities about proceedings involving their nationals in cases heard by Argentine courts.
66. These communications are sent at the request of the authorities conducting the investigations.
67. Lastly, and as a practical example of foreign nationals being tried in cases of enforced disappearance, several foreigners have been charged and their extradition requested in the case involving events at the Automotores Orletti secret detention centre during the last military dictatorship.
68. In that connection, last January Manuel Cordero, a former member of the Uruguayan army, was arrested and is now the subject of criminal proceedings in which he enjoys the same rights and guarantees as Argentine nationals.

## D. Information on article 12 of the Convention

69. With regard to the procedure and mechanisms through which the competent authorities clarify and establish the facts in cases of enforced disappearance, the complaint mechanisms established by law (Code of Criminal Procedure, arts. 174 to 182, 183, 186, 196 and other relevant articles) are applicable for all offences committed within the national territory.

70. A complaint may be filed with the courts, the prosecutor's office or the police. Article 180 of the Code of Criminal Procedure establishes that any judge who receives a complaint shall forward it to the prosecutor's office for investigation if appropriate. The investigation may be conducted by the judge or by the prosecution if so instructed by the court.

71. If the complaint is filed with a prosecuting attorney, they must inform the judge and launch the required investigation (Code of Criminal Procedure, arts. 181 and 196). If the police receive the complaint they must inform the judge and the duty prosecutor and, under their supervision, start gathering evidence, in their capacity as officials of the court (Code of Criminal Procedure, arts. 182 and 186).

72. Article 183 of the Code requires the police to investigate publicly prosecutable offences — on their own initiative, on the basis of a complaint or on orders from a competent authority — so as to prevent the acts committed from leading to further consequences, identify the perpetrators and collect evidence that can serve as the basis for an indictment.

73. Once a complaint has been filed, jurisdiction is assigned to a federal court of investigation and a prosecutor, and these will immediately launch an investigation.

74. Persons claiming that someone has been the victim of an enforced disappearance may file a complaint with the court and with the police.

75. Complainants have full access to independent and impartial judicial authorities, who will conduct the investigation in accordance with the rules established in the procedures.

76. Courts cannot refuse to investigate a case. If this should happen, the matter can be brought before a higher court by means of one of the remedies established by law (Code of Criminal Procedure, art. 180, para. 3).

77. Regarding mechanisms to protect complainants, their representatives, witnesses and other persons involved in the investigation, the prosecution or the trial from any kind of intimidation or ill-treatment, various programmes have been established under State policies with the aim of protecting and assisting witnesses and victims.

78. The Ministry of Justice and Human Rights operates the witness protection programme, which aims to protect both victims and witnesses who are being intimidated or threatened.

79. As explained in detail later in this report, the Human Rights Secretariat — through the Dr. Fernando Ulloa Assistance Centre for Victims of Human Rights Violations — provides assistance both to victims of State terrorism and to victims of serious human rights violations perpetrated by State officials.

80. The courts also have the authority to order various types of protective measures during proceedings in cases where they deem it appropriate.

81. Moreover, authorities conducting investigations as part of legal proceedings have unrestricted access to places of detention where there is reason to believe that a disappeared

person might be located, provided they have a warrant from the court in charge of the proceedings.

82. In order to prevent suspects from occupying positions that allow them to influence the investigation or threaten persons involved in the investigation of cases of enforced disappearances, article 194 bis of the Code of Criminal Procedure establishes that the judge must, *ex officio* or at the request of a party, exclude the police from the investigation if it emerges from the circumstances of the case that members of the police have committed or been involved in the acts under investigation, even if their involvement is only suspected.

## **E. Information on articles 13 to 16 of the Convention**

83. Argentina considers offences to be extraditable if they have a minimum penalty threshold and if there are no grounds for refusing the request. The penalty thresholds vary depending on whether an extradition treaty or the Act on International Cooperation in Criminal Matters applies (half of the sum of the minimum and maximum penalties must equal at least one year, or six months if the extradition is for the purpose of serving a sentence).

84. With regard to grounds for refusal, the Act stipulates that extradition shall not be carried out if “the offence in question is a political offence”. It also expressly states which offences shall not be considered political offences.

85. The Act establishes that, for extradition purposes, “offences for which Argentina has taken on an obligation under an international convention to extradite or prosecute” shall not be considered political offences.

86. Thus, taking into account the obligation arising from article 11 of the Convention, enforced disappearance cannot be considered as a political offence for the purposes of extradition requests received by Argentina.

87. Moreover, pursuant to article 2 of the Act on International Cooperation in Criminal Matters, the Convention can be used as a basis for requesting extradition from Argentina in the absence of an extradition treaty.

88. The Supreme Court has stated that, in the absence of an extradition treaty between Argentina and another country, the relevant multilateral conventions ratified by both countries shall apply when the offence for which extradition is requested is regulated in those conventions. “Disregarding these rules could make Argentine State liable for failure to fulfil its duties of international cooperation and legal assistance to punish crime” (decision on extradition issued in the case of Nelson Eliseo Ralph on 19 October 2000).

89. The Ministry of Foreign Affairs and Religion is the authority that decides whether a person is to be extradited, provided that extradition is declared admissible by the courts. Extradition procedures also include an initial pretrial administrative stage in the Ministry.

90. Regarding the safeguarding of human rights, the Act on International Cooperation in Criminal Matters (and extradition treaties signed by Argentina) includes grounds for refusal and inadmissibility in cases that may affect the constitutionally recognized guarantees or the human rights of the person whose extradition is requested.

91. Grounds for refusal include the existence of special commissions or *ad hoc* courts the possibility that the purpose of the proceedings giving rise to the extradition request is persecution on grounds of political opinion, nationality, race, sex or religion; reason to believe that the person may be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the fact that the person has already been tried in Argentina or in any other country for the offence for which extradition is being requested; the fact that the

conviction that is the basis for the extradition request has been handed down in absentia and no guarantees have been given that the case will be reopened; and the fact that the offence for which extradition is requested carries the death penalty.

92. Extradition shall not be granted in any of these cases.

93. Lastly, with regard to mutual judicial assistance, in addition to numerous mutual judicial assistance treaties, Argentina also has a specific law on the subject (the Act on International Cooperation in Criminal Matters, Act No. 24767) that sets out three basic premises: as a general rule to be applied system-wide, Argentina will fully cooperate with any State that asks it to do so when the matter falls within that State's jurisdiction; if the offence also falls within Argentine jurisdiction, this is not an impediment to cooperation; and dual criminality is not a prerequisite for cooperation.

## **F. Information on article 17 of the Convention**

94. The following relates to access to services and legal guarantees for persons deprived of their liberty.

95. The rights of the accused are specifically regulated by the Code of Criminal Procedure and in the codes of procedure of each of the Argentine provinces.

96. As previously mentioned, these rights are constitutional in nature; that is to say, the fundamental rights of every person accused of committing an offence are guaranteed by the Constitution (art. 18). On the basis of these constitutional guarantees, the codes of procedure set out regulations to ensure they are duly respected.

97. Article 18 of the Constitution states as follows:

“No resident of the country may be punished without a trial based on a law enacted before the act that gives rise to the proceedings, nor tried by special commissions, nor removed from the judges who were designated by law before the act giving rise to the case. No one may be compelled to testify against themselves, nor be arrested except by virtue of a warrant issued in writing by a competent authority. The defence of persons and rights in the courts may not be violated. A person's home is inviolable, as are their written correspondence and private papers; and the law shall determine in what cases and on what grounds search and seizure shall be allowed. The death penalty for political reasons, torture of any kind and flogging are forever abolished. The nation's prisons shall be healthy and clean, and intended for the security and not for the punishment of the prisoners confined there; and any measure taken on the pretext of precautionary action that results in unnecessary humiliation shall incur the liability of the judge who authorizes it”.

98. Article 43 further provides that:

“Any one may file a petition for a prompt and expeditious remedy of *amparo*, provided there is no other more appropriate legal remedy, against any act or omission of the public authorities or individuals that actually or imminently violates, restricts, impairs or threatens rights and guarantees recognized by this Constitution, a treaty or a law, in a manifestly arbitrary or unlawful manner. In such cases, the judge may declare unconstitutional the provision on which the act or omission is based.

“This remedy may be invoked by the injured party, the Ombudsman or associations that promote such ends and are registered according to a law determining the requirements and forms of their organization, against any form of discrimination and

with regard to rights protecting the environment, competition, users and consumers, as well as rights of general public interest.

“Any one may invoke this remedy to obtain information about data on themselves and the purpose of that data, stored in public registers or databases or in private ones set up to provide information; and if the information is false or discriminatory, to request that it be destroyed, corrected, made confidential or updated. The confidentiality of journalists’ sources of information shall not be violated.

“When the right violated, restricted, impaired or threatened is the right to physical freedom, or in the event of unlawful aggravation of the form or conditions of detention, or of enforced disappearance of persons, habeas corpus proceedings may be brought by the person concerned or by any other person on his behalf and the judge shall hand down an immediate decision, even during a state of siege.”

99. In answer to the information requested in the section of the Guidelines referring to article 17, the Code of Criminal Procedure includes the following provisions.

100. Firstly, no one shall be tried by judges other than those who have been appointed in accordance with the Constitution and who hold jurisdiction according to its regulations, nor may they be punished without a trial that is based on a law enacted before the act that gives rise to the proceedings and is substantiated in accordance with the provisions of that law, nor may they be considered guilty until a final judgement has countered the presumption of innocence enjoyed by all persons accused of an offence, nor may they be criminally prosecuted more than once for the same act (Code of Criminal Procedure, art. 1). Any legal provision that restricts personal freedom, limits the exercise of a granted right or establishes procedural penalties shall be interpreted restrictively. Criminal laws may not be applied by analogy (art. 2) and if any doubt exists they must be applied in the manner most favourable to the accused (art. 3).

#### **1. Rights of the accused. Identification**

101. The rights that the Code of Criminal Procedure grants to the accused may be invoked until the end of the proceedings by any person who is detained or in any way identified as someone who has participated in an offence. When detained, the accused or their family members may file a motion by any means with the official responsible for their detention, who shall immediately forward it to the relevant court (Code of Criminal Procedure, art. 72).

102. A person accused of committing an offence which is being investigated has the right, even if they have not been examined, to appear before the court in person with their defence lawyer in order to clarify the facts and provide any evidence they believe may be useful (Code of Criminal Procedure, art. 73).

103. Article 74 of the Code of Criminal Procedure states that the accused shall be identified by the relevant technical office according to their personal data, fingerprints and distinguishing marks. If this is not possible because the accused refuses to provide their personal details or provides false information, they shall be identified by witnesses using the eyewitness identification methods outlined in articles 270 ff. and by any other means deemed appropriate.

104. If the physical identity of the accused is known with certainty, doubts about the data provided and obtained shall not alter the proceedings, without prejudice to the fact that the data may be corrected at any stage of those proceedings or while the sentence is being served (Code of Criminal Procedure, art. 75).

105. The accused shall have the right to be defended by a registered lawyer of their choosing or by a public defender; they may also defend themselves, provided that this does

not undermine the effectiveness of the defence and does not obstruct the normal course of the proceedings (Code of Criminal Procedure, art. 104). The accused may appoint a defence lawyer by any means, even if they are being held in incommunicado detention. The permanent defence of the accused is also provided for, given that the accused's defence lawyer may not under any circumstances abandon the defence and leave their clients without a lawyer. If the lawyer does so, they shall immediately be replaced by a public defender (Code of Criminal Procedure, art. 112).

## **2. Incommunicado detention**

106. The judge may order that the detainee be held in incommunicado detention for a period of no longer than 48 hours, which may be extended for a further 24 hours by a substantiated order when there is reason to fear that the detainee may plot with third parties or impede the investigation in some other way (Code of Criminal Procedure, art. 205).

107. In cases where the police have exercised their powers under article 184, paragraph 8, the judge may only extend the period of incommunicado detention to a maximum of 72 hours. In no circumstances shall the fact that the detainee is being held incommunicado prevent them from communicating with their defence counsel immediately before making their statement or before any proceeding requiring their personal participation.

108. A person held incommunicado shall be permitted the use of books or any other objects they may request, provided that such objects cannot be used to evade incommunicado detention or endanger their own life or that of another person. They shall also be authorized to conclude civil acts that cannot be postponed, provided that such acts do not diminish their solvency or jeopardize the purposes of the investigation.

109. The Code of Criminal Procedure establishes the following rules on the length of time an individual may be detained without a review of the detention by a judge.

110. The powers, duties and limitations of police officials or members of the security forces include arresting suspects in the circumstances and manners authorized by this Code and placing them in incommunicado detention when the requirements set out in article 205 are met, for a maximum of 10 hours, which may not be extended for any reason without a court order (Code of Criminal Procedure, art. 184, para. 8).

111. Those responsible for prevention shall immediately inform the competent judge and the prosecutor when preventive measures are initiated (Code of Criminal Procedure, art. 186).

## **3. Restriction of liberty, detention, pretrial detention**

112. With regard to measures involving the restriction of liberty, the Code of Criminal Procedure stipulates that personal liberty may be restricted only when absolutely necessary to ensure that the truth is brought to light and the law is implemented (Code of Criminal Procedure, art. 280). The arrest or detention must be carried out with the least possible harm to the persons concerned and their reputation, and a document must be drawn up which they must sign, if they are able, informing them of the reason for the procedure, the place where they are to be taken, and the judge who will hear their case.

113. With regard to detention, the judge shall issue the warrant for the accused to be brought before the court, provided there is justification for examining them (Code of Criminal Procedure, art. 283). The warrant must be issued in writing and must contain the accused's personal data or other information identifying them and the act attributed to them, and they shall be notified at the time the warrant is executed or immediately thereafter, in accordance with article 142 of the Code of Criminal Procedure. In extremely

urgent cases, the judge may issue the warrant verbally or by telegraph, so recording in writing.

114. Article 284 of the Code of Criminal Procedure provides for cases in which an arrest may be made without a warrant.

115. As stipulated in article 312 of the Code of Criminal Procedure, pretrial detention is carried out when the judge issues a committal order, unless it is confirmed that conditional release has already been granted when (a) the offence or concurrence of offences attributed to the accused carries a custodial sentence and the judge is of the opinion, *prima facie*, that a suspended sentence is not appropriate; (b) even though the offence carries a custodial sentence with the possibility of suspension, conditional release is not appropriate under the provisions of article 319 of the Code of Criminal Procedure.

116. The provisions on pretrial detention shall not apply to persons under 18 years of age; instead, the relevant provisions of the specific legislation on minors shall apply (Code of Criminal Procedure, art. 315).

#### **4. Mechanisms to inspect places of detention**

##### **(a) National preventive mechanism**

117. On 29 November 2012, the law establishing the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment was adopted, thus fulfilling the country's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Argentina became a party in 2004.

118. More than 20 human rights organizations and the Office of the Prison System Ombudsman were involved in drafting the law.

119. The new law establishes the National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to comprising the National Committee for the Prevention of Torture, the Federal Council of Local Mechanisms, the local mechanisms themselves and other institutions involved in implementing the Optional Protocol.

120. The National Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will be responsible for monitoring, and its duties shall include making regular or extraordinary inspections of places of detention throughout the country. The National Committee will also act as a governing body, connecting and coordinating the National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

121. The Committee will be made up of 13 members, including 6 representatives of parliament who are not legislators, with 2 representing the majority and 1 representing the leading minority party in each house of Congress, the Prison System Ombudsman, and 2 representatives of the local prevention mechanisms elected by the Federal Council of Local Mechanisms, also established by this Act. Three representatives of NGOs dealing with the subject will also be elected and must appear at public hearings and be approved by both houses of Congress. Lastly, a representative of the National Human Rights Secretariat, who will not be a member of the secretariat.

122. Looking beyond this debate about the Committee's membership, which will be settled once that membership has been confirmed, the Committee will have extensive powers to make unannounced inspections of any place of detention and to collect and record information on the situation of persons deprived of their liberty. It may also, *inter alia*, request documentation, meet with relatives of persons deprived of their liberty and

summon officials or employees of places of confinement. A national register of cases of torture and a register of habeas corpus proceedings for aggravated conditions of detention will also be established.

**(b) Provincial mechanisms**

123. The provincial governments have also established local mechanisms for the prevention of torture. Five provinces now have such mechanisms in place (Chaco, Río Negro, Salta, Tucumán and Mendoza). The national mechanism sets an example and coordinates the various districts via the Federal Council of Local Mechanisms for the Prevention of Torture.

*Buenos Aires province*

124. In 2012 an Interministerial Commission for the Prevention of Torture and Other Cruel Treatment was established by decree. Its purpose is to design, coordinate and promote actions and policies aimed at guaranteeing rights related to the prevention and prohibition of torture and other cruel, inhuman or degrading treatment or punishment in Buenos Aires province. It is concerned with prisons, police stations and places of detention.

125. Its objectives include contributing to education, training and awareness-raising for law enforcement officials, and to the prevention, investigation and punishment of cases of torture and ill-treatment, and, in particular, providing the community with access to information about the living conditions of persons deprived of their liberty, relevant action taken by the Government and complaints of violations of the right to personal safety.

126. The commission will comprise representatives of the Secretariat for Children and Adolescents (which is responsible for institutes for minors); the Cultural Institute, the Ministry of Justice and Security (which is responsible for prisons and police stations), the Ministry of Health (which is responsible for psychiatric hospitals), the Ministry of the Interior and the executive office of the Cabinet of Ministers (which make decisions affecting the aforementioned institutions) and the Human Rights Secretariat (which is responsible for reporting and preventing the violations already taking place in the areas dealt with by the other members of the future Government commission).

127. The Senate of Buenos Aires has given preliminary approval to a bill on establishing mechanisms for the prevention of torture.

**(c) Other mechanisms to monitor places of detention**

*Office of the Prison System Ombudsman*

128. The Office of the Prison System Ombudsman is an independent oversight mechanism for federal prisons. It has a specific mandate to make regular inspections of federal prisons and other federal detention centres with the aim of protecting the human rights of persons deprived of their liberty. The inspections are periodic and unannounced. Its jurisdiction is limited to establishments within the federal prison system and all places of detention under federal jurisdiction, including police stations, prisons and any premises where persons are held in custody under federal or national jurisdiction (Act No. 25875, arts. 1 and 15). It also has the authority to inspect provincial prisons — with the prior approval or explicit consent of the provincial authorities (art. 16) — when persons prosecuted and convicted by national or federal courts are detained there.

129. The Office of the Prison System Ombudsman has established a procedure for monitoring federal places of detention (Procedure for monitoring federal prisons, resolution No. 36/09 PP).



130. This procedure serves as the Office's framework protocol for inspections, making it possible to carry out uniform surveys of the various prison facilities in the federal system and thus make comparisons between the different facilities. The instrument provides some general guidelines for monitoring that make it possible to evaluate the effective exercise of the human rights of persons deprived of their liberty in federal prisons and to obtain accurate data on rights violations. The experience of international prison inspection bodies was taken into account when drafting the procedure. It is based on the monitoring guide of the Association for the Prevention of Torture (APT), which was adapted to the situation in Argentina to create a country-specific guide.

131. On this basis the audit section, composed of professionals from different backgrounds, was established for the purpose of detecting human rights violations, for to do this job properly it is essential to have a special section whose main task is to conduct systematic surveys to verify the prison administration's compliance with its obligations.

*Chief Public Defender's Office, Prisons Commission*

132. The Prisons Commission of the Chief Public Defender's Office was established by resolution DGN No. 158/98. Its institutional mission is to verify the living conditions, food and medical care provided for prisoners in different prisons. Since 2007, the Commission has been coordinated by official public defenders, who serve as joint commissioners.

133. The Commission supplements and complements the work of each official public defender by providing support in dealing with requests, claims, and suggestions from detainees. Secondly, it monitors and examines the conditions of detention in the various prisons around the country.

*Official registries*

134. The National Data Centre on Detainees and Missing Persons was established in 1995 through the adoption of Act No. 24480. The Act stipulates that the Centre should operate under the aegis of the Supreme Court. However, the Supreme Court decided in Decision No. 45/95 that an Act of Congress could not invest the judiciary with the power to directly exercise prerogatives belonging to the executive branch, and declared the Act inapplicable. An evaluation of the legislation needed to establish and implement such a body within the Ministry of Justice and Human Rights is under way.

135. Argentina has established the National Registry of Repeat Offenders (Act No. 22117, as amended), to which all criminal courts must submit, within five days of issue, all pretrial detention orders or other equivalent measures provided for in the codes of procedure, as well as all convictions and their form of execution (art. 2 (b) and (i)). Prisons must also register all releases.

## **G. Information on article 18 of the Convention**

136. As mentioned previously, the right of any person with a legitimate interest to access information on a person deprived of their liberty is protected in the last paragraph of article 43 of the Constitution through the remedy of habeas corpus.

137. Also, Act No. 23098 regulates habeas corpus, which is a quick and simple judicial procedure that allows any person deprived of their liberty to be immediately brought before the competent court.

138. A petition for a writ of habeas corpus may be filed by the detainee, their spouse or partner, children, parents, siblings or legal representatives, the public prosecutor, the Ombudsman or the investigating judge.

139. The examining magistrate shall rule within 24 hours of receipt of the petition on the legality of the detention or arrest and the conditions in which it was carried out. Thus, the judge may order the detainee's release, if they were illegally deprived of their liberty; or that the situation of deprivation of liberty should continue in accordance with the relevant legal provisions, but, if the judge deems it necessary, in a different establishment or in the custody of different persons; or that the detainee should be brought before the court, if the legally established time limit on the detention has already expired.

140. There are no restrictions on the exercise of this right. The Constitution states that a petition for a writ of habeas corpus may be filed even during a state of siege.

## **H. Information on article 19 of the Convention**

141. The following relates to the collection, protection and storage of genetic data as referred to in article 19 of the Convention.

142. In addition to the progress made within the national Government, the activities of the National Genetic Data Bank have made possible considerable progress in identifying victims of enforced disappearances that occurred during the period of State terrorism.

### **1. Amicable settlement in the *Inocencia Luca de Pegoraro* case**

143. During the commemoration of the thirtieth anniversary of the historic visit of the Inter-American Commission on Human Rights to Argentina, the President announced that three bills would be submitted to parliament concerning the amicable settlement in the *Inocencia Luca de Pegoraro* case.<sup>7</sup>

144. The first bill established procedures for obtaining DNA samples. The second amended the Code of Criminal Procedure regarding access to justice for victims in cases involving the investigation of crimes against humanity or serious human rights violations, acknowledging that there is a collective interest in the investigation, prosecution and punishment of those responsible for such crimes.<sup>8</sup> The third dealt with issues relating to the functions and organizational position of the National Genetic Data Bank, with a view to promoting best practices in the identification of children of disappeared persons. These initiatives of the national executive branch have the force of national law.

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<sup>7</sup> Amicable settlement of 11 September 2009 signed by the national Government and the petitioner in Petition No. P-242-03 of the registry of the Inter-American Commission on Human Rights. Buenos Aires, 19 November 2009.

<sup>8</sup> Act No. 26.550, adopted on 18 November 2009. The Act states as follows:

Article 1 – Article 82 bis shall be incorporated into the Code of Criminal Procedure with the following text: Article 82 bis: collective interests. Associations or foundations, registered in accordance with the law, may act as plaintiff in proceedings involving the investigation of crimes against humanity or serious human rights violations, provided that their statutory purpose is directly related to defending the rights deemed to have been violated.

The fact that the persons referred to in article 82 also act as plaintiff shall not impede the exercise of this right.

Article 2 – Article 83 of the Code of Criminal Procedure shall be replaced with the following text:

Article 83: Form and content of the application. The request to act as plaintiff shall be made in writing, in person or through a representative specially empowered for that purpose, with legal counsel. The following information must be given for the request to be admissible:

- (1) Plaintiff's first name, last name or corporate name, and actual and legal domicile;
- (2) Brief statement of the facts on which the request is based.

## 2. Obtaining DNA samples

145. As one of the non-monetary reparation measures set out in the amicable settlement, in relation to the right to identity, the national executive agreed to submit to Congress a bill — which, as previously stated, has now become law — establishing a procedure for obtaining DNA samples that protects the rights of those involved while making a useful contribution to the investigation and adjudication of the abduction of children during the military dictatorship. As a result, Act No. 26549 was enacted in November of 2009.<sup>9</sup>

146. The Act states as follows:

“Article 218 bis: Obtaining deoxyribonucleic acid (DNA) samples. The judge may order that deoxyribonucleic acid (DNA) be obtained from the accused or from another person, when necessary to identify the accused or to verify facts that are important to the investigation. The judge shall issue a substantiated order stating, under penalty of nullity, the reasons why the order is necessary, proportional and reasonable in the specific case. Minimal amounts of blood, saliva, skin, hair or other biological samples may be taken for such purposes, and must be obtained following the rules of medical science, where there is no risk to the personal safety of the person from whom they are to be obtained, in light of general experience and in the opinion of the expert in charge of the operation.

“The sample shall be obtained in the manner least damaging to the person and without embarrassing them, giving particular consideration to their gender and other special circumstances. Under no circumstances may coercive measures be used against the person beyond what is strictly necessary to collect the samples. The judge may, if deemed appropriate, and if doing so would achieve equally reliable results, order that the deoxyribonucleic acid (DNA) samples be obtained by means other than a physical examination, such as seizure of objects containing cells already shed by the body, for which measures such as a search of the home or the person may be ordered. Likewise, for a publicly prosecutable offence, when deoxyribonucleic acid (DNA) is to be obtained from the alleged victim, the order shall be carried out taking their situation into account, so as to prevent their revictimization and safeguard their specific rights. In this regard, if the victim opposes the measures indicated in the second paragraph, the judge shall proceed as described in the fourth paragraph. The prohibitions set out in article 242 and the option of self-disqualification set out in article 243 shall not apply under any circumstances.”

## 3. National Genetic Data Bank

147. In response to the amicable settlement in the *Pegoraro* case, the National Congress passed Act No. 26548 to supplement the operations and objectives of the National Genetic Data Bank.<sup>10</sup>

148. First of all, it must be said that the establishment of this institution constituted a huge qualitative leap for this State in the field of genetics, with an impact that transcended national borders. It fulfilled the commitment made to the international community to attempt to find children abducted along with their fathers and mothers or born while their

<sup>9</sup> Act No. 26549, enacted on 18 November 2009. [www.infoleg.gov.ar](http://www.infoleg.gov.ar).

<sup>10</sup> One of the non-monetary reparation measures provided for in the amicable settlement reads as follows: (b) The National Executive of the Argentine Republic agrees to send to the Honourable Congress of the Nation a bill to amend the legislation governing the operation of the National Genetic Data Bank in order to bring it into line with scientific progress in this area.

parents were in prison and stolen by persons directly or indirectly linked to State terrorism and given a new identity. Together with the legitimate demand of the Association of Grandmothers of the Plaza de Mayo to establish a specific body to search for their grandchildren, this was an internationally unprecedented innovation. This policy was further strengthened through the establishment of the National Commission for the Right to Identity in 1992.

149. The National Genetic Data Bank has made it possible to identify with scientific certainty 107 of the abducted and stolen children and to restore their personal history and identity.

**(a) Regulatory framework**

150. Beyond the enactment in May 1987 of Act No. 23511 establishing the National Genetic Data Bank in order to obtain and store genetic information with a view to facilitating the settlement and clarification of filiation disputes, article 1 of the Act also defined its institutional location, namely within the immunology department of the Carlos A. Durand Hospital, which is now run by the government of the Autonomous City of Buenos Aires, and under the technical and administrative leadership of an expert in molecular biology or biochemistry with recognized experience in forensic genetics serving as director (article replaced by article 1 of Decree No. 511/2009). The Technical Director-General must testify as an official expert witness in court cases.

151. Decree No. 511/2009 amends Decree No. 700/89 in order to bring the operations of the National Genetic Data Bank into line with legal and technical standards in the field and specify how genetic information stored in the bank should be treated, with a view to safeguarding the aforementioned rights.

**(b) Maintaining the records**

152. The National Genetic Data Archive contains data from the years before the establishment of the National Genetic Data Bank to the present. The records it holds must be kept tamper-proof and stable so as to ensure that the evidence they contain shall remain fully valid (art. 8).

153. Article 14 of the Regulating Decree (No. 70/89, original text contained in Decree No. 511/2009) explains how the genetic information stored in the bank should be treated. It adds that the institution shall not provide information about the recorded data to individuals or to public or private entities, regardless of the reasons given. Information shall be provided only on the basis of a court order, in a particular case, to substantiate the conclusions put forward in the expert reports drafted by the National Genetic Data Bank and allow the parties' experts to verify them.

154. Thus, one of the functions of the National Genetic Data Bank is to carefully protect the information it contains, taking the necessary measures to ensure that it remains tamper-proof and uncorrupted. This is in strict accordance with the need to protect personal data stored in public databases, in order to guarantee the rights recognized in the Constitution (art. 43) and Act No. 25326 on Protection of Personal Data.

155. Act No. 26548, enacted in late 2009, expanded the operations and objectives of the National Genetic Data Bank. The Act adds that the objective of the National Genetic Data Bank is to ensure the gathering, storage and analysis of the genetic information needed as evidence to shed light on crimes against humanity carried out by the State up to 10 December 1983. The purpose is to promote and achieve (a) the search for and identification of children of disappeared persons abducted with their parents or born while their mothers were in prison; (b) support for the judiciary and/or governmental and non-governmental

organizations specializing in this field in the genetic identification of the remains of victims of enforced disappearance (art. 2).

156. Article 3 outlines other functions performed by the institution, including:

- (a) Conducting and promoting studies and research on the subject;
- (b) Organizing, managing and continuously updating the National Genetic Data Archive, safeguarding and maintaining the data and information in the Archive pursuant to Act No. 25326 on Protection of Personal Data and the ethical requirements for genetic databases established by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO);
- (c) Through its Technical Director-General and staff, acting as sole Government expert witnesses before the competent judges in criminal cases aimed at identifying the persons referred to in article 2 (a) of Act No. 26548, issuing technical opinions and performing genetic testing when required;
- (d) Drafting and adopting the provisions necessary to ensure the accuracy and truth of the studies, analyses, opinions and reports it produces;
- (e) Coordinating protocols, indicators, guidelines and joint actions with other bodies, organizations and institutions, both public and private, that perform related work at the local, municipal, provincial, national and international levels;
- (f) Proposing public policies for the various areas and levels of the State by issuing rules and regulations related to its field of competence.

157. Under the Act, the technical advances made in the field of genetics have been incorporated into the procedures performed by the National Genetic Data Bank. This is reflected mainly in article 12 (a), which refers to studies of autosomal DNA markers, mitochondrial DNA, X- and Y-chromosome haplotypes, single-nucleotide polymorphism (SNPs) and any other type of test that becomes relevant in the light of scientific developments.

**(c) Scope of operations**

158. The Act that established the National Genetic Data Bank in 1987 stipulates that its scope of operations is limited to the municipality of Buenos Aires. Act No. 26548 of 2009 states that it is an autonomous and self-governing body and that its institutional location is the Ministry of Science, Technology and Productive Innovation.

159. The work performed over the years by the National Genetic Data Bank is essential, not only because it has led to the identification of many people, but also because of all the cases it is now involved in and those in which it might be asked to intervene.

**I. Information on article 20 of the Convention**

160. There are no national laws restricting access to information on persons deprived of their liberty for those with a legitimate interest in them.

161. As stated above with regard to the rights of the accused, the Code of Criminal Procedure stipulates that either the accused or their family members may file a motion by any means with the official responsible for their detention, who shall immediately forward it to the relevant court (Code of Criminal Procedure, art. 72).

162. The accused may appoint a defence lawyer by any means, even if they are being held in incommunicado detention. The permanent defence of the accused is also provided for, given that the accused's counsel may not under any circumstances abandon the defence

and leave their clients without a lawyer. If the lawyer does so, they shall immediately be replaced by a public defender (Code of Criminal Procedure, art. 112).

163. Concerning the remedies that may be sought when faced with a refusal to disclose information on persons deprived of their liberty, see the information provided above on the writ of habeas corpus, which is regulated both in article 43 of the Constitution and in Act No. 23098.

#### **J. Information on article 21 of the Convention**

164. With regard to this point, see the information provided concerning article 17 of the Convention.

#### **K. Information on article 22 of the Convention**

165. As previously mentioned, Act No. 23098 on the writ of habeas corpus regulates what is set out in article 43 of the Constitution.

166. This regulation applies when freedom of movement is limited or threatened without any warrant from the competent authority or there is aggravation of the form and conditions of detention.

167. A petition for a writ of habeas corpus may be filed by the victim or any other person on their behalf in order to put an end to the unlawful threat or deprivation of liberty or to re-establish suitable conditions if the deprivation of liberty is lawful.

168. With regard to punishment for public officials, article 143 of the Criminal Code provides that, if an official keeps a detainee or prisoner in custody when their release should have been ordered or carried out; or unduly prolongs a person's detention without bringing them before the competent judge, or unduly holds a detainee incommunicado; or if the director of a prison or other penal establishment or their deputy, receives a prisoner without proof of the enforceable judgement imposing the penalty, or places them in parts of the establishment other than those intended for that purpose; or if a prison warden or security officer receives a prisoner without an order from the competent authority, except in cases of flagrante delicto; or if a competent official is made aware of an unlawful detention and fails or refuses to put an end to the detention or to report it to the appropriate authority, or delays doing so, they shall be punished with 1 to 3 years' detention or imprisonment and specific disqualification for twice that length of time.

#### **L. Information on article 23 of the Convention**

169. The following relates to the training provided for members of the security forces.

170. The Office of the Under-Secretary for the Promotion of Human Rights of the National Human Rights Secretariat has provided information on the following human rights training activities for the police and security forces.

##### **1. Online courses**

##### **(a) Introduction to human rights and gender mainstreaming in the police and security forces**

171. This is an ongoing training programme organized at the request of and in conjunction with the Ministry of Security. The programme's objective is to provide tools

that will encourage the participants to think of themselves and others as rights holders, so that they may adopt a responsible, sensitive and respectful attitude towards different customs, values and practices. (Duration: 60 hours//Target audience: Members of the police and security forces throughout the country – Federal Police, Gendarmería, Coast Guard and Airport Police.) The first course was held from 27 October to 15 December 2011 with the participation of 107 persons. The second course was held from 26 March to 4 June 2012 with the participation of 180 members of the police and security forces, the third from 18 June to 13 August 2012 (210), the fourth from 1 October to 23 November 2012 (370). A total of 867 persons received training.

**(b) Gender mainstreaming in the international system of protection for the individual, in conjunction with the Ministry of Defence**

172. This was organized in conjunction with the National Directorate of Human Rights and International Humanitarian Law of the Ministry of Defence. Its features include the following:

(a) Objectives: Participants will:

- Become familiar with the basic standards and structure of the international system of protection for the individual;
- Become familiar with the basic elements of international human rights law, international humanitarian law and international criminal law;
- Understand the gender perspective in accordance with the parameters set out in the international system of protection for the individual;
- Understand and internalize the main concepts of gender mainstreaming and human rights so as to optimize their performance throughout their professional military career.

(b) Intended for: members of the Armed Forces. Duration: 8 weeks. Total training time: 72 hours. First course: 20 October to 12 December 2011. Total number of persons registered: 159, 15 per cent women and 85 per cent men.

**2. Classroom courses**

**(a) Human rights training course for the Federal Prison Service, with a special focus on torture and inhuman, cruel or degrading treatment**

173. This course aims to provide the staff of the Federal Prison Service with more in-depth training on the prevention of torture and inhuman, cruel or degrading treatment, using as guidelines the relevant international treaties and instruments in force for Argentina, and to raise awareness among the staff of the Federal Prison Service about all procedures that may violate the dignity of the person. It is conducted in coordination with the Office of the Under-Secretary for Prison Affairs and the National Directorate of the Federal Prison Service. Target audience: senior officers of the Federal Prison Service. Total training time: 8 classes of 90 minutes each. The first course was held from 15 May to 4 July 2012 with the participation of 86 persons. A total of 86 persons were trained in the second quarter of 2012.

**(b) Human rights training for provincial security forces**

174. The programme's objective is to provide tools that will encourage the participants to think of themselves and others as rights holders, so that they may adopt a responsible, sensitive and respectful attitude towards different customs, values and practices. Target audience: Officers of the provincial police and security forces. Total training time: 16 hours

(divided into two sessions of 8 hours each). Ushuaia, Province of Tierra del Fuego: 21, 22 and 25 June 2012 (the third session was on trafficking). Total number of participants: 60 police officers from the cities of Ushuaia, Tolhuin and Río Grande, and 6 officers from the Provincial Prison Service. Ushuaia and Río Grande, Province of Tierra del Fuego: June 2010. Total number of participants: 80 from Río Grande and 70 from Ushuaia. Gualeguaychú, Province of Entre Ríos: June 2011. Total number of participants: 42. Total number of persons trained: 248.

## **M. Information on article 24 of the Convention**

### **1. Definition of victim in national law**

175. According to current criminal law, the concept of the victim, or the passive subject of an offence, applies to a person who suffers the direct consequences described in the law. It refers to the material victim, that is, the person who is deprived of their liberty and who also often suffers violations of their physical integrity, right to life and other fundamental human rights.

176. However, article 1079 of the Civil Code establishes the obligation to redress the harm caused by an offence to anyone who has been directly or indirectly harmed. That is to say, family members of the material victims of enforced disappearance, who suffer deep distress and psychological suffering because they do not know the fate or whereabouts of their loved ones may file a civil claim before the competent judicial authorities.

177. With regard to mechanisms guaranteeing the right to know the truth about the circumstances of the enforced disappearance and the fate of the disappeared person, it should be pointed out that all judicial proceedings are public, which means that the judgements pronounced may be freely accessed. All victims in judicial investigations have every right to know the circumstances of the case and the progress made.

178. Any victim is entitled to become a party to the proceedings regarding the act that harmed them. This entitlement is regulated by article 82 of the Code of Criminal Procedure, which states as follows:

“Any civil person of full capacity who is personally harmed by a publicly prosecutable offence shall have the right to appear as a plaintiff and as such take proceedings, provide evidence, argue their case and appeal, within the limits established in this Code.

“In the case of persons without full legal capacity, their legal guardian shall act on their behalf.

“In the case of an offence that results in the victim’s death, the victim’s surviving spouse, parents, children or last legal guardian may exercise this right.

“If the plaintiff also acts as a civil party, they may do so as part of the same proceedings, complying with the requirements for both institutions.”

179. Article 82 bis — incorporated into the Code of Criminal Procedure in accordance with the amicable settlement in the *Inocencia Luca de Pegoraro* case — establishes that “associations or foundations registered in accordance with the law, may act as plaintiff in proceedings involving crimes against humanity or serious human rights violations, provided that their statutory purpose is directly related to defending the rights deemed to have been violated.”



**2. Framework of public policies on reparations for victims of enforced disappearance carried out under State terrorism**

180. The unique situation Argentina faces in its fight against impunity is the result of a convergence of political, legal and ethical will in the three branches of the State and the unwavering demands for memory, truth and justice made by the human rights movement over the past few decades.

181. The three branches of the State have made significant progress in the investigation, prosecution and punishment of those responsible for the serious offences committed during the last military dictatorship.

182. The Human Rights Secretariat provides essential support for this commitment to memory, truth and justice as a central Government policy. In this regard, the following should be noted.

**(a) Complaints**

183. The Human Rights Secretariat has acted as plaintiff in 155 legal cases.

**(b) Legislation on Reparations**

184. The Reparations Policy Directorate is responsible for coordinating plans and programmes to provide reparations for human rights violations inflicted by the State. This includes implementing Reparations Act No. 24043, No. 24411, No. 25192 and No. 25914 and any other regulations on the subject that may be enacted in the future.

185. Act No. 24411: regulates compensation for successors or heirs of persons subjected to enforced disappearance or of persons who have died as a result of actions by the Armed Forces, security forces or any paramilitary group before 10 December 1983.

186. Act No. 24321: establishes the category of “absent by reason of enforced disappearance”.

187. Act No. 24043: grants benefits to persons who were detained by the National Executive during the state of siege from 6 November 1974 to 19 December 1983 or, though civilians, were detained by order of the military authorities.

188. Act No. 25914: grants benefits to persons who were born during their mother’s deprivation of liberty, or, though minors, were detained with their parents, if either of the parents was detained and/or disappeared for political reasons, either by the National Executive or by military courts or military units, regardless of their legal situation. It also grants benefits to persons who were given a new identity.

189. Act No. 26564: provides for the payment of damages, expanding the benefits granted under Acts No. 24043 and No. 24411 and their supplementary regulations to cover the following recipients:

- Persons who were detained, were victims of enforced disappearance or were killed in any of the conditions and circumstances set forth in those Acts between 16 June 1955 and 9 December 1983;
- Victims of actions by the rebels during the uprisings of 16 June 1955 and 16 September 1955, regardless of whether the acts were carried out by members of the Armed Forces, security or police forces, or by paramilitary or civil groups attached to any of the forces;
- Active members of the military who suffered defamation, marginalization and/or dismissal because they refused to join the rebellion against the constitutional Government;

- Persons who were detained, prosecuted, convicted and/or brought before the courts or court-martialed during that period, pursuant to Decree No. 4161/55 or the Conintes Plan to deal with internal disruption of the State and/or Acts No. 20840, No. 21322, No. 21323, No. 21325, No. 21264, No. 21463, No. 21459 and No. 21886;
- Persons who were detained for political reasons by federal or provincial courts and/or subjected to detention regimes pursuant to any regulation that could be defined as political detention under international treaties and doctrine.

190. In the event of the death of the detained or disappeared person, the Act provides that the benefits should be granted to their successors in accordance with the terms set out in Acts No. 24043 and No. 24411.

**(c) National Memory Archive**

191. The National Memory Archive is responsible for preserving and studying the documentation on human rights violations in Argentina, which involves the safekeeping and analysis of, inter alia, the testimony in the archives of the National Commission on the Enforced Disappearance of Persons, as provided for in Decree No. 3090 of 20 September 1984; the testimony that the Human Rights Secretariat has received and continues to receive to this day following the historic work of the National Commission on the Enforced Disappearance of Persons; and the numerous court cases involving acts of State terrorism. It is also responsible for collecting, analysing, classifying, duplicating, digitizing and archiving information, testimony and documents on violations of human rights and fundamental freedoms for which the Argentine State is responsible and on the social and institutional response to those violations.

192. The National Memory Archive seeks to retrieve the information spread among various Government departments (including the Armed Forces and security forces), in the firm belief that the analysis of this material is a valuable tool for shedding light on the many situations created by the illegal repression and for uncovering the mechanisms used by the State to curb resistance and discipline society.

193. In order to retrieve this information, the destruction, modification, alteration, or correction of the documentation held by State bodies has been prohibited, and measures have been implemented to safeguard such documentation until it is submitted to the Archive.

194. In addition to the management of documents and audiovisual records through the National Memory Archive, throughout the country various actions have been taken to restore and mark places where secret detention centres operated during the last military dictatorship (1976–1983).

195. These focuses of State terror and other places where the Argentine State committed offences in the past, such as the Trelew Massacre in August 1972, Operation Independence in Tucumán in 1975 or the shootings of rural labourers during the Patagonian strikes of 1921, have also been marked with plaques or installations that continue today to denounce these acts and honour the memory of the victims and their struggles.

196. In addition to being identified in this way, some of these sites or buildings have been completely reconverted into memorial sites and museums where a variety of educational, cultural, artistic and political activities are carried out for purposes of research, awareness-raising, discussion and debate on State terrorism and genocide, and on the struggles historically waged by the poorer sections of the population in defence of their rights and dignity and for a fairer society.

197. The importance of the various initiatives carried out at the national level and in different provinces and municipalities, together with the reopening of judicial proceedings for crimes against humanity, and the progress made, have highlighted the need to coordinate and give more exposure to each and every one of these policies and to show the links between them.

*Federal Network of Memory Sites*

198. Thus, in 2006, the National Memory Archive pressed for the establishment of the Federal Network of Memory Sites, a body that brings together provincial and municipal governments that implement public policies on memory and human rights. The National Memory Archive is responsible for the overall coordination of the Federal Network of Memory Sites.

199. The purpose of the Federal Network of Memory Sites, as established by resolution SDH No. 14/07, is to coordinate policies and promote the exchange of experiences, methodologies and resources between the National Memory Archive and the human rights units of the provincial and municipal governments that administer public policies on research and remembrance regarding acts of State terrorism, their causes and consequences and society's response to the State's systematic violation of rights.

200. The work of the Federal Network of Memory Sites centres on three main themes:

- Marking former secret detention centres;
- Coordinating and administering memory sites;
- Coordinating research into acts of State terrorism by exchanging and collating data and developing a body of research among the Federal Network of Memory Sites.

201. The following sites were marked in 2012 (as at 14 December): the first district police station secret detention centre, Escoba; the Azopardo Garage secret detention centre; the Ford factory, Tigre, where workers were abducted; the Seré Mansion secret detention centre, Morón; the house of Haroldo Conti, Tigre; the Escuelita secret detention centre, Bahía Blanca; the Quinta de los Méndez secret detention centre, Tandil; the Criminal Investigation Division secret detention centre, San Nicolás de los Arroyos; Criminal Unit No. 2, Villa Devoto; Libertador Gral. San Martín Ledesma sugar factory, Jujuy province; forty-first district police station, Calilegua, Jujuy, used for transit to illegal detention; twenty-fourth district police station, Ledesma, Jujuy; the Gendarmería Nacional, Ledesma, Jujuy; the Escuelita secret detention centre, Famaillá, Tucumán; Laguna Paiva Military Camp, San Pedro, Santa Fe; Zar Naval Base, Trelew, Chubut; Tiro Federal secret detention centre, Campana, Buenos Aires province; third district police station secret detention centre, Lanús; Criminal Unit No. 7, Resistencia, Chaco.

202. In addition to these sites, as at November, 49 others throughout the country that are connected with acts of State terrorism have also been marked.

**(d) Dr. Fernando Ulloa Assistance Centre for Victims of Human Rights Violations**

203. Also within this framework of national State reparations policies, the Dr. Fernando Ulloa Assistance Centre for Victims of Human Rights Violations was established. The Centre expands on and consolidates the work conducted throughout the country by the Human Rights Secretariat through the Present-day Consequences of State Terrorism Programme.

204. This programme was created in 2005, but Ministerial Resolution No. 1207, which formally established it, was adopted in 2009. Among other duties, in 2007 it assumed responsibility for the national plan to provide comprehensive assistance and support to

plaintiffs and witnesses who have been victims of State terrorism, established by resolution SDH No. 003.

205. The work carried out in the framework of the trials for crimes against humanity has been coordinated from the outset with the National Programme for the Protection of Witnesses and Accused and the Truth and Justice Programme, both run by the national Ministry of Justice and Human Rights. The Programme also works in continuous collaboration with the Public Prosecution Service, the judiciary and human rights bodies to assist, support and protect victim witnesses.

206. Over the years a network of professionals has been established to assist victims of State terrorism, including by supporting witnesses in trials for crimes against humanity. This work is now being continued and expanded by providing assistance to victims of present-day serious human rights violations committed by State officials.

207. All this work involves multiple efforts to provide reparations for the consequences and damages suffered by the persons directly affected and their family members. However, it also aims to highlight the effects on society as a whole, based on the premise that a democracy is built by fully respecting human rights, supporting processes to encourage individual and collective memory in order to prevent the recurrence of atrocities, and continuously seeking truth and justice so as to move forward towards a fairer society for all.

208. The State's efforts in this regard, begun in 2003 with the abrogation of the impunity laws, respond to the challenge of finding ever more innovative ways to repair the damage caused by State terrorism, including present-day acts of institutional violence.

209. The establishment of the Dr. Fernando Ulloa Assistance Centre for Victims of Human Rights Violations by Decree No. 141/11 embodies the State's response, many years overdue, to the victims of human rights violations, in terms of comprehensive assistance as part of public policy on reparation.

210. In accordance with the purpose for which it was established, the Ulloa Centre has undertaken the following actions:

(i) *Comprehensive assistance*

(a) Assistance and follow-up on cases

211. The main objectives of the Ulloa Centre include ensuring "comprehensive assistance, psychological support, guidance, and a clinical approach for all victims of State terrorism and for victims of present-day human rights violations resulting from abuses of power by State officials".

212. Under paragraph 1 of Decree No. 141/11, the Ulloa Centre shall: "Carry out actions to provide comprehensive assistance to victims of State terrorism and to victims of abuses of power subjected to severely traumatic situations that could involve infringements of their fundamental rights, and/or to their family members, where comprehensive assistance is understood to include psychological support, guidance and referral of the victims and/or their family members in accordance with the needs identified".

(b) Support for victim testifying in trials for human rights violations

213. Comprehensive assistance includes support for plaintiffs and witnesses who have suffered human rights violations.

214. In the light of the scars left by State terror and their situation as witnesses and participants in trials for crimes against humanity, victims deserve to be supported and accompanied during this complex process. To avoid revictimization in the pursuit of

justice, efforts are still being made to implement the national plan to provide assistance and support to plaintiffs and witnesses who have been victims of State terrorism.

215. Paragraph 3 of Decree No. 141/11 establishes that the Ulloa Centre's responsibilities include coordinating actions to assist victims, witnesses and plaintiffs who are to appear in court, particularly in trials for crimes against humanity, for whom the Centre shall provide psychological support and assistance during the hearings when needed.

216. The actions described above are carried out at the national level, with dedicated representatives in the following provinces: Córdoba, Salta, Jujuy, Mendoza, Entre Ríos, Tucumán, the Federal Capital and Buenos Aires province.

217. Based on the Centre's experiences supporting and assisting victims testifying in trials for crimes against humanity, and on interactions with other stakeholders, primarily the judicial officials responsible for carrying out the proceedings, a protocol on the treatment of victim witnesses in legal proceedings was developed in partnership with Criminal and Correctional Court No. 12. The protocol was formally submitted to the Supreme Court on 6 October 2011 in the presence of the President of the Court, Dr. Lorenzetti.

(c) **Creation and coordination of the National Support Network**

218. A national network of public-sector health-care specialists has been established and is continuously being expanded throughout the country. The network carries out effective and interdisciplinary work with professionals who support public policies on human rights and who want to contribute their knowledge and experience to assist victims of State terrorism and other human rights violations. This has made it possible to conduct joint actions and follow-up on the cases dealt with. To that end there are activities involving exchange, supervision and the creation of new resources and mechanisms for dealing with situations as they arise.

219. Under paragraph 5 of Decree No. 141/11, the Ulloa Centre's responsibilities include implementing strategies and public policies on a therapeutic approach in order to build and consolidate a national network of mental health specialists allowing referrals to the public sector, thereby building trust with the specialists to make it possible to work together in following up on the cases dealt with.

220. In that regard, the Ulloa Centre is responsible for coordinating actions with State bodies at the national, provincial and municipal levels and with civil society organizations, with a view to creating a national support network for victims of human rights violations.

221. As at October 2012, a total of 519 persons throughout the country had received support and assistance and referral had been arranged in 240 cases.

**3. Recognition of the disappeared person's legal status**

(a) **Declaration of absence by reason of enforced disappearance, Act No. 24321**

222. Act No. 24321 establishes the category of "absent by reason of enforced disappearance" and sets out the procedure and effects of a court ruling on absence by reason of enforced disappearance; this status must be declared by a court.

223. In addition, the Human Rights Secretariat issues a certificate indicating that a complaint has been filed regarding a person's disappearance. Provincial secretariats and human rights bodies also receive complaints and refer them to the Human Rights Secretariat.

**(b) Identification of voters declared absent by reason of enforced disappearance**

224. Executive Decree No. 935/2010 regulates the use of new technologies in the National Electoral Roll and implements a procedure for recording in existing and future electoral rolls the situation of citizens declared absent due to enforced disappearance.

225. The National Electoral Roll shall indicate the status of “voter absent by reason of enforced disappearance” in cases where the person has been declared as such pursuant to Act No. 24321.

**N. Information on article 25 of the Convention**

226. With regard to national legislation on the abduction of child victims of enforced disappearance, children whose parents were victims of enforced disappearance and children who were born to mothers in prison who were victims of enforced disappearance, the Criminal Code establishes a penalty of life imprisonment if the victim of the deprivation of liberty followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person (art. 142 ter, para. 1) is a pregnant woman or a child under 18 years of age, or if the victim is a person born during their mother’s enforced disappearance (art. 143 ter, para. 2).

227. In addition, article 146 of the Criminal Code stipulates that anyone who takes a child under 10 years of age away from their parents, guardian or the person responsible for them, and anyone who detains or hides the child, shall be liable to 5 to 15 years’ imprisonment.

**Procedures to guarantee the right of disappeared children to recover their true identity****(a) National Commission for the Right to an Identity**

228. As part of their demands to the national Government, in July 1992 the Grandmothers of the Plaza de Mayo asked that a special technical commission be established, comprising persons who had received thorough training for that work.

229. The National Commission for the Right to an Identity was established in November 1992, thereby creating a new form of collaboration between an NGO and the Argentine State.

230. Its original objective, to look for and locate children who disappeared during the last military dictatorship, was soon superseded as it received complaints about stealing and trafficking in children, dispossession of marginalized mothers, and adults with damaged identities. The initial objective was expanded given that it was the only national State body specializing in and devoted to guaranteeing the right to an identity.

231. Provision No. 1328/92 of the then Office of the Under-Secretary for Human and Social Rights of the Ministry of the Interior established a technical commission to search for disappeared children whose identity was known and children born to mothers in prison, thereby helping to fulfil the State’s obligation stemming from its ratification of the Convention on the Rights of the Child with regard to the right to an identity.

232. Subsequently, resolution No. 1392/98 of the Ministry of the Interior established the National Commission for the Right to an Identity, which has the same functions and make-up as the previous commission, namely:

- Two representatives of the Public Prosecution Service (one from the Attorney-General’s Office and one from the Chief Public Defender’s Office);
- Two representatives of the Association of Grandmothers of the Plaza de Mayo; and

- Two representatives of the executive, nominated by the Office of the Under-Secretary for Human and Social Rights.

The Under-Secretary for Human and Social Rights chairs the Commission.

233. Article 5 of the resolution authorizes the Commission to require the National Genetic Data Bank to collaborate, advise and conduct genetic testing.

234. Resolution No. 83 of the Ministry of Justice fully ratifies the contents of the resolution issued by the Ministry of the Interior, particularly in relation to the Commission's mission and objectives and its power to require the National Genetic Data Bank to collaborate, advise and conduct genetic testing when appropriate. Article 2 of that resolution also recommends that the Office of the Under-Secretary should give special priority to the Commission.

235. In September 2001 Act No. 25457 was passed by parliament, giving higher status to the National Commission for the Right to an Identity by relocating it in the Ministry of Justice and Human Rights.

236. The work that the National Commission for the Right to an Identity, a State body, carries out jointly with the Association of Grandmothers of the Plaza de Mayo has thus far made it possible for 107 children stolen during the dictatorship to recover their identity.

**(b) Act 25914 unit**

237. The Act establishes benefits for persons who were born during their mother's deprivation of liberty, or who, as minors, were detained with their parents, if either of the parents was detained and/or disappeared for political reasons, either by the National Executive or by military courts; and for persons who were given a new identity under any of those circumstances.

238. Article 1 also establishes a special benefit for persons who, under any of those circumstances, were victims of identity substitution, which is understood to mean any violation of the right to an identity.

239. As previously mentioned, a unit within the Human Rights Secretariat is responsible for implementing the Act.

**(c) Special Judicial Assistance Group**

240. The Special Group is part of the Ministry of Security, was established by resolution No. 166/2011, and is responsible for conducting raids, searches and seizures of objects for the purpose of obtaining DNA samples in cases involving the abduction of minors under 10 years of age, the wrongful detention of minors, falsification of public documents or identity substitution during the period of State terrorism from 1976 to 1983.

241. The Group operates under the aegis of the National Human Rights Directorate and is made up of specialists from the federal police and security forces. Membership of the Group is voluntary, and it has jurisdiction throughout Argentinean territory at the request of the federal courts.

242. Article 5 of the resolution provides that the members of the Group must undergo training provided by the National Commission for the Right to an Identity and the National Genetic Data Bank.