



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant pursuant  
to the optional reporting procedure**

**Fifth periodic reports of States parties due in 2015**

**Argentina\***

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## **I. General information on the national situation regarding human rights, including new measures and developments related to the implementation of the Covenant**

### **Progress and changes in the implementation of the rights recognized in the Covenant**

#### **Reply to paragraph 1 of the list of issues prior to the submission of the report (CCPR/C/ARG/QPR/5)**

##### *Regulatory framework*

1. It should be pointed out that the list is purely indicative; more details of progress in this area can be found on the website [www.infojus.gob.ar/](http://www.infojus.gob.ar/) which gives legal information for the whole country. The search can be refined by international/human rights law to access the details of the latest legislation adopted.

2. Furthermore, the full text of legislation for the period 2003/13 can be consulted at <http://inadi.gob.ar/promocion-y-desarrollo/publicaciones/10-anos-de-politicas-publicas-para-la-inclusion-y-la-igualdad>.

3. Relevant legislation is listed below:

(a) Exercise of civil and political rights:

- Act No. 26618: Equal-rights civil marriage;
- Act No. 26522 regulating audiovisual communication services throughout the country;
- Act No. 26653. Accessibility of information available on the Internet;
- Act No. 26861 on democracy and equal opportunities in recruitment to the judiciary and the Public Prosecution Service;
- Act No. 26913. Reparations system for former political prisoners;
- Act No. 26944. State responsibility for damage caused by its activity or inactivity to the property or rights of individuals;
- Act No. 27063. Code of Criminal Procedure, which will enter into force as determined by the relevant implementing regulation;

(b) Guarantee of rights:

- Act No. 26811 instituting the “National Day to Combat Institutional Violence” in remembrance of the serious human rights violations caused by the security forces, promoting the adoption of public security policies that respect human rights;
- Act No. 26827 establishing the national system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- Act No. 26892 promoting peaceful coexistence and addressing social conflict in educational institutions;
- Act No. 26894 extending until 2017 the state of emergency concerning the possession and ownership of the lands traditionally occupied by indigenous communities;

- Act No. 26899 introducing safety instructions in Braille on all domestic commercial flights;
- (c) Health, labour and social security:
- Act No. 26529 regulating the rights of patients in their relations with health professionals and institutions;
  - Act No. 26588: Diagnosis and treatment of coeliac disease;
  - Act No. 26657, on public health, implemented in May 2013, established the National Interministerial Commission on Mental Health and Addictions Policy;
  - Act No. 26845. Promotion in the education system of proposals and measures to raise awareness of the social importance of voluntary organ and tissue donation for transplants;
  - Act No. 26862 on medically assisted reproduction;
  - Act No. 26921. Convention on decent work for domestic workers;
  - Act No. 26928. Comprehensive protection system for transplant patients;
  - Act No. 27043. Declaration of national interest for the comprehensive and interdisciplinary approach to persons with autism spectrum disorders;
  - Act No. 27045 making early education in the national education system compulsory for children from four years of age;
  - Act No. 27054 establishing the Federal Health Legislation Council, an organization promoting common legislative policies for health throughout the country;
- (d) Laws approving international conventions:
- Act No. 26298 approving the International Convention for the Protection of All Persons from Enforced Disappearance;
  - Act No. 26305 approving the Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
  - Act No. 26378 approving the Convention on the Rights of Persons with Disabilities and its Optional Protocol;
  - Act No. 26663 approving the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
  - Act No. 26960. Convention on the Reduction of Statelessness;
  - Act No. 27044 granting constitutional rank to the Convention on the Rights of Persons with Disabilities;
- (e) Vulnerable groups:
- Act No. 26364. Prevention and punishment of trafficking in persons and assistance to victims;
  - Act No. 26390. Prohibition of child labour and the protection of adolescent workers;
  - Act No. 26425. Argentine Integrated Pension System. Unification of the pension system;

- Act No. 26485. Comprehensive protection for the prevention, punishment and elimination of violence against women;
- Act No. 26791 introducing the crime of femicide, amending the Criminal Code;
- Act No. 26842 amending Act No. 26364 on prevention and punishment of trafficking in persons and assistance to victims;
- Act No. 26844. Special employment contract regime for persons employed in private homes;
- Act No. 26847. Child labour, amending the Criminal Code to incorporate Article 148 *bis* punishing economic exploitation of child labour;
- Act No. 26879 on the National Register of genetic data related to crimes against sexual integrity;
- Act No. 26904 on grooming. Prison sentences for anyone grooming minors by electronic means;
- Act No. 27039 setting up a special fund to campaign against gender-based violence;
- Act No. 27046. Prevention of trafficking: obligation to display in a visible place a sign on the prevention of sexual exploitation of children and adolescents.

#### *Case law*

4. The Argentine Legal Information System has ample and accessible information on the case law of the Supreme Court of Justice, national, federal and provincial courts, opinions of the Public Prosecution Service, the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) and the National Treasury Prosecution Department.

5. The system comprises, for example, nearly 14,900 rulings of the Supreme Court, 45,774 opinions of the Public Prosecution Service, 704 opinions of INADI and 11,267 opinions of the National Treasury Prosecution Department.

#### *Institutional framework*

6. The executive branch set up the following programmes, units and bodies:
- Ministry of Science, Technology and Productive Innovation;
  - Ministry of Security (established in 2010, previously reporting to the Ministry of Justice and Human Rights), has a National Directorate of Human Rights;
  - Office for the Rescue of and Assistance to Victims of Trafficking within the Office of the Minister at the Ministry of Justice, Security and Human Rights;
  - Dr. Fernando Ulloa Assistance Centre for Victims of Human Rights Violations, within the Human Rights Secretariat;
  - National Human Rights Plan within the Human Rights Secretariat;
  - National programme for the assistance of persons with disabilities in their dealings with the bodies responsible for the administration of justice within the Ministry of Justice and Human Rights;
  - Indigenous Rights Directorate within INAI.

7. Within the Attorney General's Office, an independent body within the system of administration of justice, new prosecution services were set up or converted from existing units:

- Prosecution Unit for Crimes against Humanity, in order to continue the work done by the Coordination Unit that it replaced, expanding its functions and allocating better resources to it. Also, in connection with the Prosecution Unit for Crimes Against Humanity, Decision PGN 435/12 set up a specialist unit to handle abductions of children during the State terrorism period, to provide the specific skills and treatment required in cases of abduction.
- Prosecution Unit for Financial Crime and Money-Laundering (PROCELAC) established by Decision PGN 914/12 with a view to developing strategies to improve the efficiency of the administration of justice in relation to acts with institutional significance and socioeconomic impact for the prosecution of such offences.
- Prosecution Unit for Drug Crime (PROCUNAR), established by Decision PGN 208/13 to support the work of prosecutors investigating and prosecuting drug crime.
- Prosecution Unit on Human Trafficking and Exploitation (Protex), established by Decision PGN 805/13, replacing the Unit on Kidnapping for Ransom and Human Trafficking (UFASE) but retaining the same duties and powers.
- Prosecution Unit on Institutional Violence (PROCUVIN), established by Decision PGN 455/2013 with a view to adapting the institutions, bringing criminal proceedings and overseeing the investigation and prosecution of offences involving the use of institutional violence, the principal victims of which are persons in situations of vulnerability.

8. The salient measures in the legislative and judicial sphere are as follows:

- On 10 December 2013, International Human Rights Day, coinciding with the thirtieth anniversary of democracy in Argentina, the Human Rights Observatory was established within the Senate, with the aim of assisting legislators, gathering information and producing studies and analyses to monitor compliance with human rights legislation.
- Establishment of the Domestic Violence Office of the Supreme Court of Justice.
- Establishment of the Superintendency of Crimes against Humanity attached to the Supreme Court.
- Establishment of the Inter-Branch Commission, made up of representatives of the executive, legislative and judicial branches and the Office of the Attorney General. The Commission seeks to resolve difficulties encountered in the prosecution of cases involving human rights violations that occurred during the last military dictatorship.
- Establishment within the Southern Common Market (MERCOSUR) of the Human Rights Public Policy Institute as a body that promotes technical cooperation, research and public policy coordination on human rights among the member countries of this regional bloc.

#### **Reply to paragraph 2 of the list of issues**

9. Regarding progress on the protection of human rights in the federal system (CCPR/C/ARG/QPR/5, para. 2), the Human Rights Secretariat (SDH), through the Federal Human Rights Council, has designed and implemented a system of national periodic reports

(SIPEN) for gathering and analysing information on the human rights situation throughout the country and subsequently devising public policies that raise standards of human rights.

10. In 2012, during the presentation of the second universal periodic review (UPR), Argentina — as a federal state — made a voluntary commitment to continue with the design of a body for coordination and ongoing dialogue for exchanging information, experience and best practice with and between the provinces, for the promotion and protection of human rights, including international mechanisms for the protection of universal human rights at regional and subregional levels.

11. To that end, in May 2013 the authorities involved in the Federal Human Rights Council agreed to implement SIPEN, comprising:

- Provincial reports submitted by the local human rights areas with data on progress and challenges in priority areas of human rights (institutional violence; violence against women; remembrance, truth and justice; indigenous peoples; and economic, social and cultural rights). Between December 2013 and 2014, 23 of the 24 jurisdictions submitted their reports.
- Supplementary reports, prepared by the Federal Council, with data from political and institutional players in the provinces and social organizations with a regional presence, official data from national agencies, and the media.
- Reports of the national universities located in the provinces, for which an agreement was signed with the National Inter-University Council. These reports are expected to begin contributing to the system in its second cycle.

12. All reports are to be submitted every four years, while midterm reports will be submitted every two years and will serve as input to the SIPEN Federal Analysis Bureau, to enable it to make recommendations and analyse and monitor their implementation.

13. The recommendations made by the Federal Bureau for each province will be organized in a database. The provinces may accept, reject or take note of them. The Bureau will then monitor the implementing measures as soon as they are accepted.

14. The possibility is also being considered of the provinces giving voluntary undertakings in relation to local priority topics or emerging issues. In that case, progress made can be monitored.

### **Reply to paragraph 3 of the list of issues**

15. All points of the Committee's concluding observations on the fourth periodic report of Argentina (CCPR/C/ARG/CO/4) are answered under other relevant questions of this report, as listed below: on the recommendation in paragraph 9 of the concluding observations, see the reply to question 18 of the list of issues; on the recommendation in paragraph 10, see the reply to question 19; on the recommendation in paragraph 11, see the reply to question 6; on the recommendation in paragraph 13, see the reply to question 7; on the recommendation in paragraph 16, see the reply to question 13; on the recommendation in paragraph 17, see the reply to question 15; on the recommendation in paragraphs 18 and 14, see the reply to question 8.

## **II. Specific information on the implementation of articles 1 to 27 of the Covenant, including information on action taken in response to the Committee's previous recommendations**

### **Constitutional and legal framework for the implementation of the Covenant, right to an effective remedy (art. 2)**

#### **Reply to paragraph 4 of the list of issues**

16. Generally speaking, this point is answered by the information about the introduction of the SIPEN system.

17. Regarding the Views concerning Communication No. 1608/2007 (V.D.A./L.M.R.), various avenues of redress are currently being followed, such as the setting of an amount of compensation in the Province of Buenos Aires.

18. The enactment in 2009 of Act No. 26485 on comprehensive protection for the prevention, punishment and eradication of violence against women was the first reparative measure. Also, in the *F.A.L.* case on non-punishable abortions in cases of rape, the Supreme Court issued a ruling, basing its arguments on the Committee's Views in the *L.M.R.* case. The Views were published in national and provincial media and an act of reparation took place in the city of La Plata where the provincial and national authorities made a public apology to L.M.R. and her mother.

19. The Province of Buenos Aires undertook to: (a) take the necessary steps to ensure that L.M.R. receives a disability pension; (b) replace the periodic study grants that L.M.R. received for her integration into the labour market in accordance with the rules and expectations set out in provincial Act No. 10592; (c) meet with officials of the Directorate of Land, Planning and Housing for the acquisition of a home for L.M.R. and her mother.

20. In the case of *Ramona Rosa González*, regarding the measures taken to comply with the Views concerning Communication No. 1451458/2006, Official Gazette of the Province of Mendoza No. 29190 dated 26 July 2012 explicitly acknowledges that the opinion is the first international condemnation of the Province of Mendoza under the universal system for the protection of human rights conceived within the United Nations and that it tarnishes the image and undermines the credibility of the Province at international level.

21. The Gazette also notifies the approval of the amicable settlement reached, by which the Government of the Province of Mendoza accepted the petitioners' proposal for compensation, and authorized the payment of the agreed sums to compensate Ramona Rosa Gonzalez de Castañeda, I.D. card No. 5,686,546, mother of Roberto Castañeda González, for the material and moral damages suffered. More information is available on the official website of the Government of the Province of Mendoza ([www.gobernac.mendoza.gov.ar/boletin/pdf/20120726-29190-normas.pdf](http://www.gobernac.mendoza.gov.ar/boletin/pdf/20120726-29190-normas.pdf)).

### **Equality and non-discrimination (arts. 2 and 26)**

#### **Reply to paragraph 5 of the list of issues**

##### *Reply to paragraph 5 (a)*

22. The latest figures produced by the Ministry of Labour, Employment and Social Security indicate that between 2013 and 2014 the income gap between working men and



working women decreased from 27.8 per cent to 23.9 per cent. This change should be viewed in the light of the fact that in that period there was an increase in worker registration amid the growing importance of collective bargaining. This allowed access to male and female workers on incomes set by collective agreements that tend to reduce the disparity between men and women, reducing the gap in the sectors covered by this regulation (the gap was 39.4 per cent in 2013).<sup>1</sup>

23. Women make up 42 per cent of the economically active population and 41.5 per cent of the employed population and have an activity rate of 47.1 per cent, an employment rate of 43.1 per cent and an unemployment rate of 8.5 per cent. Moreover, women form the majority of employees in the public sector and a minority in the private sector, with female-male ratios of 54.7 per cent and 32 per cent respectively, in December 2013. In this context, Argentina included the following as one its national targets for achieving the Millennium Development Goal on gender equality: achieve by 2015 greater gender equality through higher participation of women in the economy and a reduction in wage disparity between men and women, while maintaining the levels of gender equality achieved up to 2000 in the educational sector, reducing wage disparity to 20 per cent by 2015.

24. The data for the fourth quarter of 2013 show that the gap in average incomes, between fully employed men and women, was 13.3 per cent; but it was wider when underemployment was taken into account because, as noted, women suffer more from underemployment through being overloaded with domestic and care work.<sup>2</sup>

25. Decision MTEySS 1553/2010 creates the “New Trades for Women Programme”, as a promotion and training strategy to overcome gender stereotypes in professions and sectors of activity to enable women to enter work and training, and thereby addresses vertical and horizontal segregation.

26. According to the survey by the National Statistics and Census Institute (INDEC) on unpaid work and the use of time, implemented as a module of the Annual Urban Household Survey, in the third quarter of 2013, the participation rate in domestic work was 88.9 per cent among women and just 58.2 per cent among men, with women spending an average of 6.4 hours on this, compared with 3.4 hours for men. In social time, women account for 76 per cent of the average number of 3.9 hours per day spent doing unpaid work, compared to just 24 per cent in the case of men.<sup>3</sup>

27. Argentina has enacted the Employment Contracts Act (No. 20744/74) defining the duties and rights of employers and workers, and assigning inspection and oversight functions to the Ministry of Labour, as the Act’s implementing authority. Each branch of activity signs its collective labour agreement, which is subsequently approved by the ministry, and it holds unrestricted annual negotiations on local conditions (*paritarias libres*). Specifically, registered female workers are entitled to at least three months’ paid maternity leave, with an extension as agreed in each sectoral collective bargaining agreement, and up to an additional six months without pay, while fathers have the right to two days’ leave, also extendible if provided for in the relevant collective agreement. For breast-feeding, female workers are entitled to two half-hour breaks during the day in the child’s first year of life. In addition, for low and medium-low paid workers, mothers or fathers without distinction receive a monetary allowance from the Government for each

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<sup>1</sup> For further information see the seventh periodic report submitted to the Committee on the Elimination of Discrimination against Women (CEDAW/C/ARG/7), para. 90.

<sup>2</sup> Source: <http://www.politicassociales.gov.ar/odm/PDF/IP2012.pdf>. Source: *Ibid.* and 2012 Country Report on MDGs.

<sup>3</sup> Source: [http://www.indec.mecon.gov.ar/nuevaweb/cuadros/novedades/tnr\\_04\\_14.pdf](http://www.indec.mecon.gov.ar/nuevaweb/cuadros/novedades/tnr_04_14.pdf).

child up to 18 years of age. Medium-high and highly paid workers with dependent children or family members are entitled to income-tax deductions.<sup>4</sup>

28. To protect pregnant women, from the twelfth week of gestation until birth or termination of the pregnancy, they are entitled to the pregnancy allowance, which is subsequently replaced by the universal child allowance. This allowance is subject only to registration in the SUMAR public health programme (except for domestic workers, seasonal workers and social taxpayers subject to the simplified system) and undergoing medical check-ups.

29. Furthermore, through the *INADI Portal: Management of diversity*, online training is provided for companies on the issue of gender and discrimination in employment. In addition, the Textbook Review Project provides training for illustrators and publishers about casting women in invisible roles, and gender stereotyping. INADI has also co-produced animated short films and series to raise awareness of gender issues.

30. During the years 2010 to 2014 inclusive, INADI received a total of 323 complaints alleging gender-based discriminatory practices in the workplace. Of these, 145 occurred in public employment and 176 in private employment. Six of them were resolved through conciliation, 14 by rapid conflict resolution and 87 by opinions, while 39 ended by withdrawal or inaction on the part of the complainant. The rest are pending.

*Reply to paragraph 5 (b)*

31. In April 2014, pursuant to the National Plan against Discrimination (Decree No. 1086/2005), MTEySS Agreement No. 165 was signed between the Ministry of Labour and the National Institute against Discrimination, Xenophobia and Racism (INADI), to protect and promote the rights of lesbian, gay, transgender, bisexual, and intersex people (LGTBI) in the employment domain. In this framework, the Information Manual for Labour Unions was produced, to provide information resources to help nurture employment environments that respect sexual and gender diversity.<sup>5</sup>

32. An advisory unit was set up on issues related to gender and sexual diversity within the Employment Secretariat of the Ministry; and a training and employment insurance programme was designed, targeting unemployed persons whose gender identity does not coincide with the sex assigned to them at birth (MTEySS Decision No. 331/2013).<sup>6</sup>

33. With the passing of the National Migration Act (No. 25871/2004), Argentina has undertaken to fully uphold the human rights of migrants and their families, and to provide mechanisms that make it easy for both male and female migrants to regularize their status. The rights created under the Act brought about the *Patria Grande* programme for normalizing migratory documents (Provision 53.25 3/2005), which aims to engage and integrate the migrant population by making it easier for all migrants from MERCOSUR and associate countries to regularize their status. The Migration Act ensures access to health, education, social assistance for the foreign population, irrespective of their migratory status; and it guarantees the right to family reunification and non-discriminatory treatment.

34. In addition, one aim of Act No. 26522, on audio-visual communication services, is to safeguard equality between men and women, along with diversified, egalitarian and non-stereotyped treatment, avoiding any discrimination based on gender or sexual orientation. The Act makes producers, distributors, and broadcasters of programmes or

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<sup>4</sup> Further information available at: [www.anses.gob.ar](http://www.anses.gob.ar) and [www.afip.gob.ar](http://www.afip.gob.ar).

<sup>5</sup> The manual is available at <http://inadi.gob.ar/promocion-y-desarrollo/publicaciones/guia-sindicatos/>.

<sup>6</sup> The text of the Decision is available at <http://www.infoleg.gob.ar/infolegInternet/anexos/210000-214999/213578/norma.htm>.

advertising responsible for ensuring compliance with a series of national laws that include the Violence against Women Act. In addition, the Federal Audiovisual Communication Authority, the implementing authority for the Act, supports the promotion of a toll-free phone line (144) through Decision No. 1222/13, which recommends that licence-holders, when broadcasting items on gender violence in their news bulletins and flashes, should insert a banner underneath stating “if you are a victim of or know someone who is suffering from gender violence, call 144, 24 hours a day”.

35. During the period 2010–2014, INADI processed complaints, also about the workplace: 251 complaints of discriminatory conduct against persons with disabilities (6 resolved by conciliation, 32 by rapid conflict resolution, 41 by opinions and 14 by withdrawal or inaction on the part of the complainant); another 178 concerning migrants (1 resolved by conciliation, 23 by rapid conflict resolution, 24 by opinions and 20 by withdrawal or inaction on the part of the complainant); 197 about homosexuals (3 resolved by conciliation, 17 by rapid conflict resolution 39 by opinions and 25 by withdrawal or inaction on the part of the complainant) and 47 about transgender people (3 resolved by conciliation, 2 by rapid conflict resolution, 10 by opinion and 3 by withdrawal or inaction on the part of the complainant).

36. It should be noted that Argentine legislation contains specific provisions designed to foster employment for people with disabilities and to eradicate discrimination in the workplace, disadvantageous situations and lack of opportunities.

37. The most important pieces of legislation on the subject include Act No. 22431 on the comprehensive protection system for persons with disabilities. Since the Act entered into force more than 30 years ago, it has been amended. For instance, article 8 of the Act has now been amended by Act No. 25689 to require the three branches of government, their decentralized or autonomous agencies, State enterprises and private enterprises under concession for public services to hire a minimum quota of 4 per cent of persons with disabilities who are qualified for the job being filled.

38. Furthermore, Decree No. 312/2010 requires all jurisdictions, decentralized bodies and entities falling within the scope of article 8 of Act No. 22431, as amended by Act No. 25689, within 30 working days of the enactment of the Decree, to notify the following to the Under-Secretary of Public Affairs and Employment of the Secretariat for Public Affairs of the Executive Office of the Cabinet of Ministers: (a) Number of posts filled by persons with disabilities, in relation to the total permanent and temporary staff; (b) Number of disabled persons employed in any form, in relation to all current contracts. The Decree also requires the Undersecretariat to provide the relevant information to the Ministry of Labour, Employment and Social Security. The jurisdictions, decentralized agencies and entities referred to in the article must update the relevant information as at 31 December and 30 June of each year, within 15 calendar days of those dates.

39. It should also be noted that the Executive Office of the Cabinet of Ministers has laid down general guidelines to ensure that persons with disabilities can take part in public recruitment competitions, requiring each jurisdiction to consider and make reasonable adjustments to put in place the conditions for making the changes and conducting interviews according to the specific case (Administrative decision No. 609/14).

## **Violence against women (arts. 2, 3, 7 and 26)**

### **Reply to paragraph 6 of the list of issues**

40. Act No. 26485 on preventing and eradicating violence against women within the scope of interpersonal relations was enacted in order to promote affirmative action to ensure that women can enjoy and exercise the rights recognized by the Constitution and

international treaties. The Act and its implementing Decree No. 1011/2010 represented a qualitative leap in legislation, incorporating the mandates of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, allowing a broader approach to gender violence, providing a systemic response, with a cross-cutting dimension that has an impact on all areas of life. Accordingly, the Act also addresses preventive, educational, social and judicial measures and assistance with regard to all types of violence.

41. Annex I to the implementing regulation of Act No. 26485 states that the National Women's Council (CNM), as the implementing authority, may set up an inter-agency committee composed of representatives of all areas of the executive branch of government referred to in the Act. The committee's function is to coordinate action between CNM and the ministries and departments represented, for the effective implementation of the Act. Of the 24 jurisdictions in the country, 17 provinces have ratified and implemented the law in full (Buenos Aires, the Autonomous City of Buenos Aires, La Rioja, Mendoza, La Pampa, Neuquén, Río Negro, Chubut, Santa Cruz, Jujuy, Santiago del Estero, Tucumán, Formosa, Corrientes, Chaco, Entre Ríos and Santa Fe). The provinces of Salta and Catamarca have a ratification bill which is provisionally approved. The provinces that have yet to ratify the Act are San Juan, San Luis, Tierra del Fuego, Misiones and Córdoba.

42. CNM is working to implement the National Plan of Action envisaged by the Act. In this regard, it is reported that, during 2014, the Federal Women's Council and the representatives of the women's units of 20 provinces in the country and the Autonomous City of Buenos Aires met twice, to validate the Plan that integrates, coordinates and defines measures for tackling the issue, taking account of the specific situation of each jurisdiction, in the Plan's federal and collective spirit.

43. The main lines of action for implementing Act No. 26485 are:

- The 144 helpline, launched in September 2013, which serves the whole country 24 hours a day, 365 days a year. It offers guidance, support and referral in cases of violence (art. 9 of Act No. 26485). The helpline has a national resources guide consisting of 6,058 national, provincial and municipal public institutions, as well as social organizations involved in this field. Since the launch and up to 31 October 2014 there have been 23,495 calls.
- The building of shelter homes providing comprehensive protection for women in situations of violence, together with their nuclear family; there are plans to build a total of 22 of these throughout the country, with the aim of providing a safe and decent temporary shelter, raising individual and collective awareness, with a view to promoting the autonomy of women and the full exercise of their rights for active citizenship. Based on a national survey of temporary accommodation available for women in situations of violence, the following data were obtained in October 2014 from a survey of 90 per cent of the total nationwide: of the total number of comprehensive protection shelters attached to governmental organizations and social organizations, 4.7 per cent are in the north-western region, 7 per cent in the north-eastern region, 11.6 per cent in Cuyo, 18.6 per cent in the central region, 20.9 per cent in Patagonia and 37.2 per cent in the Province of Buenos Aires. CNM is working on the construction, equipping or refurbishment of comprehensive protection shelters throughout the country in the following proportions: 9.1 per cent in the north-eastern region, 9.1 per cent in the north-western region, 13.6 per cent in Cuyo, 9.1 per cent in the central region, 22.7 per cent in Patagonia and 36.4 per cent in Buenos Aires.
- Installation of the georeferenced immediate location system (panic button). In September 2014, CNM signed an agreement, in the framework of the Federal

Women's Council, to conduct a survey in each province for the implementation of panic button systems. The mechanism is connected to a federal information centre. All events are recorded and are admissible as judicial evidence. The security ministry provided 1,000 warning devices for the first phase of this programme.<sup>7</sup>

## **Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 3, 6 and 7)**

### **Reply to paragraph 7 of the list of issues**

44. The practice of abortion is illegal in Argentina except in cases where it is not punishable, as established in article 86 of the Penal Code:

(a) If performed to avoid endangering the mother's life or health and if this danger cannot be prevented by other means; and

(b) If the pregnancy results from rape or indecent assault of a woman with a mental disability. In such cases, the consent of her legal representative must be obtained for the termination.

45. There have been a number of differing and conflicting interpretations of paragraph 2, which often result in the prosecution of cases of non-punishable abortion. Accordingly, in a ruling of March 2012 (*F.A.L. re: emergency order of protection*), in which a 15-year-old girl raped by her stepfather was unanimously authorized to have an abortion, the Supreme Court laid down three clear rules on the subject:

- The Argentine Constitution and human rights treaties prevent the punishment of any woman rape victim for having an abortion, and not only rape victims who suffer some mental disability, based on the principles of equality, dignity of the person and legality;
- In no circumstances do physicians have to request judicial authorization to perform this category of abortion, the sworn statement of the victim or her legal representative being sufficient;
- Judges must refrain from making access to such procedures subject to court approval.

46. That ruling established that bureaucratic processes delaying legal termination of pregnancy not only contravene the State's obligations under article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women — approved by Act No. 24632 — with respect to any rape victim, but also that they can in themselves even be regarded as acts of institutional violence under Act No. 26485 (arts. 3 and 6).

47. With the aim of solving this, the judges urged the national and provincial authorities to implement hospital protocols for handling non-punishable abortions to remove obstacles to access to medical services, and to provide a system making it possible for health personnel to exercise the right of conscious objection, without this resulting in referrals or delays that might jeopardize the care of the woman requesting a non-punishable abortion.

48. To complement this approach, there is a handbook on improving post-abortion care, prepared by the National Ministry of Health in 2005 and approved by Decision No. 989/2005. The handbook states that care provision in cases of complications arising

<sup>7</sup> <https://cedawsombraesp.wordpress.com>.

from abortion should be framed by respect for reproductive rights as a fundamental component of a woman's human rights, and as a duty of all health professionals.

49. The Technical Guide on the Handling of Non-Punishable Abortions, produced in 2007, was updated and circulated in 2010. The guide considers the legal framework for non-punishable abortion, together with clinical, surgical and bioethical issues such as care, counselling and informed consent. It is designed for the use of health workers in general and teams working in the field of sexual and reproductive health in particular. Its aim is to remove obstacles preventing access to abortion in cases where the Argentine Criminal Code permits termination of pregnancy and to standardize clinical and surgical procedures for the provision of non-punishable abortions within the health system. It should be noted that, in view of the federal structure of Argentina, there are widely differing rates of adoption of the technical guide and implementation of procedures for handling non-punishable abortions.

50. The jurisdictions with procedures for handling non-punishable abortions are: Jujuy, Salta, Chaco, Misiones, Santa Fe, Entre Ríos, Córdoba, La Rioja, La Pampa, Neuquén, Río Negro, Chubut, Santa Cruz, Tierra del Fuego, Buenos Aires and the City of Buenos Aires.

51. The following provinces do not yet have procedures for handling non-punishable abortions: Corrientes, Formosa, Catamarca, Tucumán, Santiago del Estero, Mendoza, San Luis and San Juan.

52. The provinces using the national procedure are: Santa Fe, Chaco, Jujuy, La Rioja, Santa Cruz and Tierra del Fuego. Río Negro and Chubut have adopted the national procedure and have also issued their own.<sup>8</sup>

53. In that context, in April 2014 a bill on the voluntary termination of pregnancy was drafted with the support of over 60 members of parliament from across the political spectrum. The bill seeks to allow abortion during the first 12 weeks of gestation, together with access free of charge to the medical procedure in the public and private health systems, without prior judicial authorization. It also establishes that the gestation process may be terminated if the pregnancy was the outcome of a rape, if the mother's health is at risk, or if there are serious foetal malformations. The initiative also advocates major State intervention that goes beyond its legislative proposal and can be summarized in the phrase "Sex education to decide, contraceptives to avoid abortion, legal abortion to avoid death". At the present time, it is being considered by commissions of the National Congress and has parliamentary status.

54. Finally, since 2013 the Ministry of Health's National Sexual Health and Responsible Parenthood Programme has prioritized work on three strategic spheres of action: preventing unplanned pregnancy; reducing hospital discharges for abortion, particularly among adolescents; and reducing maternal morbidity and mortality as a result of abortion.

#### **Reply to paragraph 8 of the list of issues**

55. In 2012, Act No. 26827 establishing the National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was approved. It was enacted in January 2013, and the implementing regulation was adopted in April 2014 by Decree No. 465/2014.

56. Since July 2014, a specific unit of the Human Rights Secretariat has been operating with responsibility for implementing of the Optional Protocol to the Committee against Torture, which works with all branches of government and civil society. It operates in three

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<sup>8</sup> Source: CNM. Gender and Health Unit (1 December 2014).

areas: supporting the start-up of the national torture prevention mechanism; strengthening existing local torture prevention mechanisms; and providing technical assistance and political support to the provinces in the establishment and start-up of local torture prevention mechanisms.

57. At present seven provinces have a local torture prevention mechanism established by law: Chaco (Act No. 6483), Río Negro (Act No. 4621), Mendoza (Act No. 8284), Salta (Act No. 7733), Tucumán (Act No. 8523), Misiones (Act No. 65) and Tierra del Fuego (Act No. 857).

58. In the provinces of Buenos Aires, Córdoba, Santa Fe and San Luis bills have been drafted, while in Catamarca, Chubut, Entre Ríos, Formosa, La Rioja, Santiago del Estero, Santa Cruz and Tierra del Fuego and the Autonomous City of Buenos Aires, preliminary draft bills to establish a local torture prevention mechanism are at varying stages of advancement.

59. In the provinces of Jujuy, La Pampa, Neuquén and San Juan, the Human Rights Secretariat is working to build consensus for the drafting of bills to establish local torture prevention mechanisms.

#### **Reply to paragraph 9 of the list of issues**

60. In 2014, under Decision No. 30/2014, the Human Rights Secretariat set up an office to record, systematize and follow up on information regarding acts of torture, forced disappearances and other serious human rights violations, with a view to developing an information system as a basis for the conception of public policies on preventing acts or situations of institutional violence.

61. This office records, systematizes and follows up acts or situations arising from the imposition of inhumane conditions of detention and the abuse of State coercive power, among other practices that jeopardize people's integrity, dignity and lives, carried out by officers of the security forces, armed forces, prison personnel and all other public officials in contexts of restriction of autonomy and liberty.

62. In this context and in coordination with the SDH units tasked with receiving and processing complaints, presentations and claims in this field, two centralized working tools have been developed:

(a) First, the above-mentioned Decision approved the registration form for acts of institutional violence that is designed to unify the registration criteria and procedures for the systematization of information, and collects information on acts or situations involving gross violations of human rights reported to SDH.

(b) Secondly, the office has developed a database of all the information entered from the forms, to be accessed and used by all SDH units working in this field. The information entered in the database is monitored by the Registry Unit. This information is entered in the form of a record for each act or situation reported, and is assigned a unique record number.

#### *Province of Buenos Aires*

63. With regard to the policies implemented in the Province of Buenos Aires, under Decree No. 168/11, investigations of serious misconduct by prison officials are handled directly by civil authorities of the Ministry of Justice, with no involvement of the prison service.

64. The Under-Secretariat of Criminal Policy and Judicial Investigations is responsible for conducting, processing and deciding on all investigations launched on the grounds of

possible administrative corruption, torture, harassment, coercion, serious misconduct in health care, traumatic death of prisoners and any other event constituting a potential serious abuse of functions in the Buenos Aires Prison Service. Disciplinary procedures were reformed by Decree No. 121/13. In that context, important decisions have been taken regarding the punishment of acts of torture and ill-treatment and allegations of irregularities, resulting in the dismissal of nine provincial prison service officials.

65. Act No. 14211 on the Public Legal Service states in article 18, paragraph 5 that the criminal cassation defence counsel must keep a register of cases of torture and other cruel, inhuman or degrading treatment or punishment known to the members of the Public Defence Service and periodically notify such cases to the office of the provincial attorney general, the Supreme Court, the provincial governor, the legislature and international organizations.

66. Decree No. 1006 established the Interministerial Commission for the Prevention of Torture and Other Cruel Treatment, as part of the provincial Human Rights Secretariat, composed of the Ministry of Children and Adolescents, the Cultural Institute, the Ministries of Justice and Security, Health, Ministry of the Provincial Government and Executive Office of the Cabinet of Ministers, chaired by the provincial Human Rights Secretariat. 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.

67. The Provincial Memory Commission, set up by Act No. 12483, acts as an external oversight body, with full autonomy from the provincial executive. In addition, the regular visits by the judiciary are continuing, in line with the obligation of all the province's criminal judges, prosecutors and public defenders (numbering almost 2,000 staff) to go to the detention centres at least once a month.

68. Under Decision No. 114/13 of the Directorate General for Schools, a new professional training course for future prison officers was introduced, involving university teachers and experts on prisons, judges, public prosecutors, public defenders and officials of the executive branch. There are currently 1,050 students in total.

69. The Provincial Violence-Prevention Programme approved by Decision No. 1/10 of the Under-Secretariat for Crime Policy and Judicial Investigations of the provincial Ministry of Justice is still in operation. This programme consists of a group of social psychologists, addressing the problem of violence by conducting group meetings with inmates, their families and prison staff, in an attempt to create a space in which inmates can rejoin groups and society through voluntary participation.

70. Decision No. 1938/10 of the Ministry of Justice and Security requires detainees awaiting trial to be held separately from convicted prisoners. It also provides for them to be separated by age group, sex, type of offence, and criminal and psychosocial profile.

71. Decision No. 1481/13 of the Prison Service enshrines the exceptional nature of solitary confinement and regulates the procedures and time limits for the punishment, establishing precautions and guarantees to ensure compliance.

*Police station No. 11 in General Güemes, Salta Province*

72. With regard to progress made in investigating alleged acts of torture at the above-mentioned police station, following the broadcast of a video in which alleged officers of the provincial police could be seen engaged in acts of torture, case 91,342 was brought in July 2012 before Formal Court of Investigation No. 3, and charges were brought against eight provincial police officers who were on duty on the day of the incident



(Matias Cruz, Alberto Ontiveros, Leonardo Serrano, Marcos Gordillo, Héctor Ramirez, Roberto Barrionuevo, Luis Vivas and Beatriz Campos).

73. Five defendants were given pre-trial detention for the crime of inflicting torture, one for failure to report an offence and two for dereliction of duty. In March 2013 the first five indictments were confirmed, and the case went to trial in June 2014.

The case is currently before the Trial Court, Chamber III, at the stage of submission of evidence, and it is estimated that the hearings will be scheduled by the end of 2015.

*Ninth district police station in Florencia, Santa Fe province*

74. In 2012 proceedings were initiated in case *Gómez, Martín Alexander et al. re: complaint*; at the same time, the Special Internal Affairs Unit of the Security Forces Control Department initiated administrative proceedings, resulting in the suspension of four police officers of various ranks (Superintendent A.R. Gazzolla, Principal Officer D.F. Bernachea, Sub-Adjutant Officer F.A. Sanchez and Officer P.S. Fantin).

75. The Supreme Court of Justice subsequently arranged for the Provincial Legal Aid Centre (CAJ) to make contact with the complainants and presumed plaintiffs.<sup>9</sup> The complainants were informed of the role of CAJ and the service provided, and notified of the current status of the case. Mr. Prieto announced his intention to contact the Regional Public Defender and the Provincial Public Defender with a view to deciding how he would be represented. Relatives of Mr. Martín Alejandro Gómez were also contacted with an offer of the services of CAJ, as he had moved house to another province. All these circumstances were duly reported to the Supreme Court in the documents referred to.

*Fourth district police station in San Miguel de Tucumán*

76. The preliminary criminal investigation initiated at police station No 1 is currently pending, following the complaint by Miguel Ángel Agüero, registered under No. 5920/369 entitled "Sexual abuse with carnal intrusion and injury – Victim: Miguel Ángel Agüero – Defendants: Unknown persons and police personnel to be determined" for the event occurring between 23 and 29 November 2013, with the intervention of the criminal investigation prosecution service of the Fifth Branch.

77. Following the complaint made by Mr. Agüero, administrative proceedings were initiated under the heading of administrative inquiry and registered under No. 07/161, naming the following police personnel as perpetrators: Quiroga, Aldo, Chief Superintendent; Decima, José Luis, Superintendent; Gallardo, Roberto; Concha, Miguel Antonio, Sergeant; Ledesma, Ramón, First Corporal; Aguirre, Ruben, Officer, all of whom served at that time in the fourth district police station of San Miguel de Tucumán.

78. As ordered by Examining Court No 3, Gallardo, Concha, Aguirre, Ledesma and Trejo were arrested and placed in pre-trial detention.

79. Superintendents Quiroga and Decima were taken into custody as they each had independent responsibilities for the incident under investigation. Chief Superintendent Quiroga was subsequently suspended.

<sup>9</sup> In the proceedings *Prieto, Lucio Francisco – Constitutional challenge in proceedings Gómez, Martín and Prieto. Lucio Francisco re: appeal. Appeal (File 206/12) re: complaint for denial of constitutional challenge, 21-00508738-1.*

*Arruga case*

80. The court cases related to the disappearance of Luciano Arruga are:

- Case 7722/3 *Arruga re: missing person*, Federal Criminal and Correctional Court No. 1 of Morón;
- Case IPP 05-00-015475 *Torales Julio Diego re: harassment and ill-treatment of a detainee* Amparo Court No. 5 of Matanza;
- Case 3277, Oral Criminal Court No. 3 of La Matanza, sent up for oral proceedings in 2014.

81. The minor Luciano Nahuel Arruga was reported as having gone missing on 31 January 2009, between Ramos Mejía and Lomas del Mirador, in Buenos Aires Province. The case was presented by Vanessa Orieta, sister of the missing person, and was monitored by the National Programme Against Impunity in coordination with the National Register of Missing Children, both run by the Human Rights Secretariat.

82. The leading hypothesis is that provincial police officers were responsible for Arruga's disappearance. The officers concerned were initially taken into custody; the provincial Ministry of Security later decided to reinstate the eight officers of the police patrol of Lomas del Mirador involved in the *Arruga* case.

83. The lawyer for the Arruga family reiterated the irregularities in the case and the particular concern for the "poor performance of the prosecution service, the arbitrariness and impunity with which the eighth police station of Lomas del Mirador carried out its duties and the lack of cooperation on the part of the provincial Minister of Security". For three years the case was investigated to ascertain the child's whereabouts even though the leading hypothesis was always that the police were responsible for his disappearance.

84. In 2010, the Centre for Legal and Social Studies (CELS) appeared as aggrieved party in the case. This intervention succeeded in having one investigation opened into unlawful coercion — when Arruga was detained illegally and beaten at the police station, four months before his disappearance — and another for omission of a complaint. There is no record in the police station of Arruga's arrest, but the witnesses who testified in the case stated he was the victim of a beating. Several of these witnesses were threatened after making their statements.

85. It was not until January 2013 that the lawyers involved in the case called for Officer Torales (finally taken into custody) to be charged with ill-treatment of Luciano Arruga six months before his disappearance, and this measure was confirmed by the due process judge in the case. In February 2013 the case was referred to the federal judiciary, as a presumed forced disappearance due to the participation of police officers.

86. The Federal Criminal and Correctional Court of Moron No. 1, Secretariat No. 3, is handling the investigation into the disappearance of Luciano Arruga, under case No. 7722/3 as a crime of enforced disappearance.

87. In July 2014, the fourth chamber of the Federal Court of Criminal Cassation ordered the responsible federal court to grant the writ of habeas corpus filed by the Arruga family in April 2014, on the grounds that the action was appropriate for ascertaining the whereabouts of Arruga, independently of the investigation being carried out into the actions of the police allegedly involved in the disappearance, since those proceedings were concurrent and complementary.

88. In October 2014 Arruga's body was exhumed; he had been buried in an unmarked grave in the Chacarita cemetery. He had been admitted to Santojanni Hospital, and died as a

result of a traffic accident (crossing the fast lane of *General Paz* barefoot late in the early hours of the morning of his disappearance).

89. The case against Torales for unlawful coercion was brought to trial at Oral Criminal Court No. 3 of La Matanza.

*Sepulveda case*

90. On 13 January 2013, Damián Alejandro Sepulveda was detained for an offence in the town of General Madariaga by police officers Díaz and Montenegro, and referred to the Pinamar Magistrates' Court of the judicial district of Dolores, Buenos Aires Province. The detainee was examined at the municipal hospital by Dr. Blanco, and a statement was made to the effect that the detainee refused to give a blood sample, that he had no apparent injuries and had alcohol on his breath. He was later taken to the municipal police station and kept in the cell block. He was found dead at around 1 p.m., hanging by the neck from a garment attached to a grille. An initial autopsy was performed, witnessed by victim's family. Another autopsy was requested, on technical grounds and because the first one was considered incomplete, which was carried out on 8 February 2013.

91. The trial heard statements by the ambulance staff who assisted the victim on entering the cell, when he was already deceased; this tallied with the statements of witnesses who happened to be in the police station doing paperwork or making reports, who saw the detainee come in. A set of images of the surroundings of the police station and the municipal hospital were requested. The Court is actively pursuing the investigation.

92. In May 2013, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment requested information on the case in relation to the alleged acts of torture and subsequent murder of Sepulveda by police officers and a possible simulated suicide.

93. According to the report of the Internal Audit Office of the Ministry of Justice and Security of the Province of Buenos Aires, the administrative investigation proceedings are under way. Furthermore, the officer on duty at the time of the incident who was responsible for looking after the detainee (Officer Formentini) has been dismissed and the dismissal of Lieutenant Díaz and Sergeant Montenegro has been ordered on the grounds that they failed to perform their custodial duties.

**Reply to paragraph 10 of the list of issues**

94. First, during the second universal periodic review, Argentina received two recommendations regarding the prohibition by law of all forms of violence against children,<sup>10</sup> neither of which was accepted, since corporal punishment is not allowed under any circumstances.

95. Second, in recent years impetus has been given to two major developments in regard to the protection of minors. The most significant was undoubtedly the enactment in September 2005 of Act No. 26061 on the comprehensive protection of the rights of children and adolescents. The Act introduced the broadest framework of legal protection in the history of children in this country, bringing to an end almost a century of the child welfare agency.

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<sup>10</sup> Recommendations 99.66 and 99.67.

96. Another more recent step forward was the criminalization of child labour, with imprisonment of between one and four years for perpetrators, with aggravating factors in various circumstances.<sup>11</sup>

## **Elimination of slavery and servitude (art. 8)**

### **Reply to paragraph 11 of the list of issues**

97. Act No. 26364 on the prevention and punishment of trafficking in persons and assistance to victims was enacted in 2008, in response to demands from society, reformed in 2012 by Act No. 26842 and implemented in January 2015 by Decree No. 111/2015.

98. The Act eliminates the distinction between minors and adults in relation to consent and increases the penalties for the crime of trafficking and for related offences, adds new forms of exploitation and aggravating factors, and allows the State to act as plaintiff. From 2008 to December 2014, the federal government rescued 7,972 victims of trafficking. Fifty-three per cent of them were being exploited for labour, while the remaining 47 per cent were victims of sex trafficking.

99. The Trafficking Act set up a Federal Council, which aims to establish a permanent sphere of institutional action and coordination on the issue; it is an independent body composed of 36 representatives of the various provinces, the Public Prosecution Service, the legislative chambers and non-governmental organizations. Also in 2013, the Executive Committee to Combat Human Trafficking was set up, with functional autonomy and composed of ministerial representatives.

100. The measures taken by the State notably include the National Trafficking Victims Rescue and Assistance Programme, of the Ministry of Justice and Human Rights, which works with the federal security forces to combat and prevent trafficking and assist its victims. Moreover, comprehensive assistance and shelter accommodation for the victims is the responsibility of the Unit for the Prevention of Sexual Exploitation of Children and Human Trafficking of the Secretariat for Children, Young Persons and the Family (SENAF).

101. There is a nationwide toll-free number 145 to receive complaints 24 hours a day, 365 days a year. There is also a publication of 2013 which sets out the policies and demonstrates the need to eradicate trafficking.<sup>12</sup>

102. The Ministry of Security is responsible for the integrated crime information system for trafficking offences known as “SisTrata”, containing quantitative and qualitative information on action by the security forces in cases of trafficking. The Ministry has a handbook on receiving complaints and procedures for rescuing and detecting victims, especially at border crossings.

103. The Prosecution Department for Combating Human Trafficking and Exploitation (PROTEX) operates within the Public Prosecution Service, to provide assistance to prosecutors from across the country in handling cases of abduction and trafficking, and initiating preliminary investigations.

104. In 2014, PROTEX focused on two specific areas of work: “Institutional relations, training and statistics” and “Investigation, litigation and follow-up of cases”. An example of progress was the initiation of 157 preliminary investigations into possible cases of trafficking; 59 per cent of the complaints alleged trafficking for sexual exploitation and 17

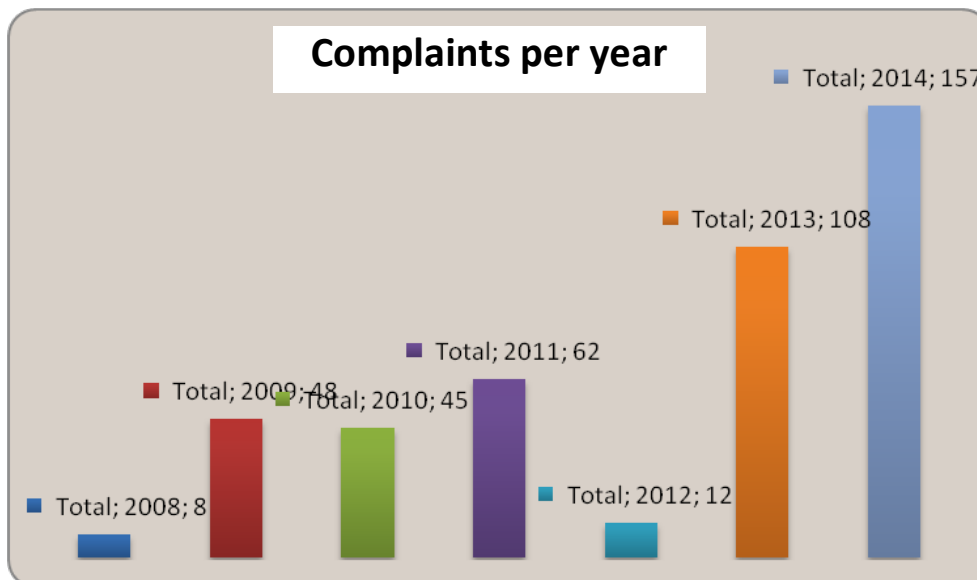
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<sup>11</sup> Act No. 26390 on the prohibition of child labour and the protection of adolescent workers.

<sup>12</sup> [http://www.jus.gob.ar/media/1008426/Trata\\_de\\_personas.pdf](http://www.jus.gob.ar/media/1008426/Trata_de_personas.pdf).

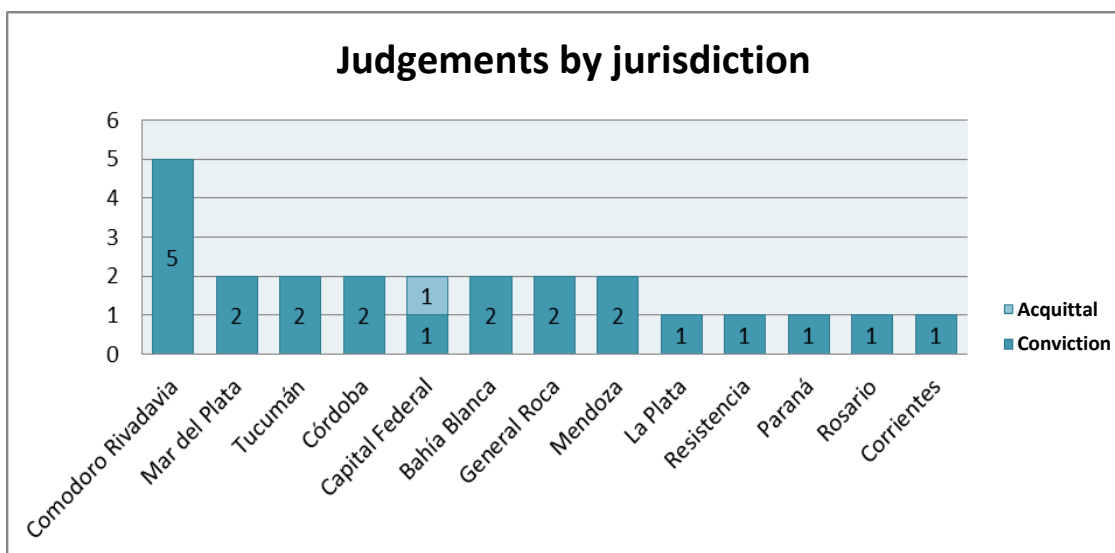
per cent for labour exploitation. The type of the remaining 24 per cent of complaints could not be established with certainty.

105. Since the entry into force of Act No. 26364 the number of complaints per year has gradually risen:



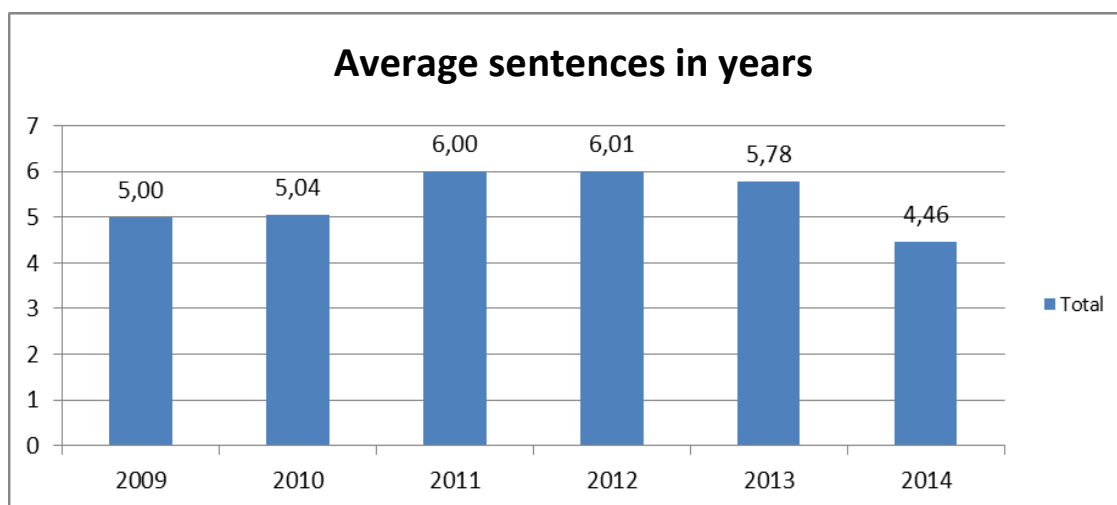
106. PROTEX has cooperated with a number of federal prosecution services in the country, offering many contributions ranging from simple queries to the drafting of judicial proceedings. During 2014, 129 cooperation initiatives were launched.

107. Since the adoption of Act No. 26364, 126 sentences have been handed down, 24 of which during 2014:



108. Regarding penalties, the lowest average (4.46 years of imprisonment) occurred in 2014, as the judgements related to events that took place before the Act was reformed. It is reasonable to assume that in the coming years the average penalties imposed will tend

to increase, as cases are tried for events that occurred when the new penalty scales were in force:



109. During 2014, 48 indictment proceedings were issued, 31 of which were committal orders; 62 per cent were on grounds of commercial sexual exploitation, while the remaining 38 per cent related to labour exploitation.

110. It should also be noted that the Ministry of Justice has published statistical information on trafficking on its website updated at October 2014: <http://www.jus.gov.ar/noalatrata.aspx>.

111. Under the country's international commitments on the fight against trafficking in persons, in February 2011 the Argentine Government began to appear as plaintiff in court cases alleging trafficking for labour exploitation.

112. To that end, the Human Rights Secretariat was given the role of plaintiff in the cases of labour trafficking arising out of the numerous complaints made by the Federal Administration of Public Revenues (AFIP) on account of the inhumane working conditions of workers in sectors such as agriculture in the country's interior, textile and clothing sweatshops in the City of Buenos Aires and Greater Buenos Aires in the Province of Buenos Aires.

113. The Human Rights Secretariat also coordinated a joint workshop on labour trafficking with the Ministry of Labour, Employment and Social Security; Ministry of Social Development; the Rescue Office of the Ministry of Justice and Human Rights; AFIP and PROTEX of the Public Prosecution Service. The coordination of all the bodies involved allowed joint strategies to be devised for gathering sufficient information to prosecute those responsible for these crimes, to prevent labour exploitation and to provide adequate assistance to victims.

### **Treatment of persons deprived of their liberty, independence of the judiciary and fair trials (arts. 2, 9, 10 and 14)**

#### **Reply to paragraph 12 of the list of issues**

114. Article 12 of the Code of Criminal Procedure provides for the power to detain persons for up to 10 hours, which may not be extended without court authorization. It also

requires a physical and psychological check-up, and determines what questions may be asked, with possible exceptions.

115. In 15 provinces of the country (Chubut, Neuquén, La Pampa, Córdoba, Mendoza, San Juan, La Rioja, Catamarca, Santiago del Estero, Tucumán, Salta, Formosa, Chaco, Corrientes and Misiones), the Code of Criminal Procedure stipulates that anyone arrested in flagrante delicto by the police must be brought immediately before a criminal court or the nearest judicial authority.

116. In other provinces the maximum periods of arrest are as follows: Tierra del Fuego and Santa Cruz, no more than 6 hours, which may be extended only by court order and up to 72 hours; Río Negro and the Province of Buenos Aires, no more than 12 hours, which may be extended only by court order and up to 48 hours; in Entre Ríos, 12 hours, extendible by court order up to three days; in San Luis, any authority detaining a person must hand them over to the nearest judge.

117. Since May 2013 the Ministry of Security has been broadcasting a notice to the population on mechanisms for preventing police abuse. The same notice is displayed in places of detention belonging to the Federal Police Force.

118. Federal police stations have to keep a log book of detainees' calls, noting down all communications made, with the date and time and whether they were successful.

119. The Code of Criminal Procedure requires a medical examination and medical care while in police custody. They are conducted by police medical examiners, implementing the basic principles of the Istanbul Protocol.

#### **Reply to paragraph 13 of the list of issues**

120. The Federal Prison Service, in conjunction with the Ministry of Justice, has proposed a number of alternatives to detention — requiring legislative reform — aimed at specific groups.

121. The proposals include: implementation of electronic tagging for 114 persons deprived of their liberty (mothers with children in units and older persons with health problems); alternative measures for addicts subject to criminal proceedings; banishment and deportation and expulsions from the country for foreign prisoners.

#### **Reply to paragraph 14 of the list of issues**

122. The Mental Health Act (No. 26657), implemented in May 2013, established the National Interministerial Commission on Mental Health and Addictions Policy.

123. Decree No. 603/2013, on the protection of the rights of people with mental illness, approved the implementing regulations of the Act. Its recitals expressly state: "this Act gives special preference, among other concordant and pre-existing rights recognized by the Constitution and international treaties of constitutional rank (pursuant to article 75, paragraph 22 of the Constitution), to everyone's rights to the best available care for mental health and addictions, decent, respectful and equitable treatment. The State has inalienable responsibility for guaranteeing the right to receive personalized treatment in a suitable environment with community-based care, and internment is a restrictive measure to be used in treatment only as a last resort".

124. The Federal Prison Service launched the Suicide Prevention Programme under which 8,868 risk assessments were conducted. A preventive check-up is carried out by professionals in the Central Prison Service when inmates enter the system. An interdisciplinary committee was set up to investigate deaths in prison, with a view to

defining the parameters that explain the events and circumstances leading up to a death, and hence improve the prevention of such events.

125. The mortality rate associated with HIV/AIDS fell by 50 per cent in relation to 2013. In that vein, the average age of death is tending to rise, probably on account of the improvements in the health services provided by the institution.

**Reply to paragraph 15 of the list of issues**

126. Regarding the request to provide statistical information, the Annual Report of the National Statistical System on the Execution of Sentences (SNEEP) on the Argentine Republic for 2013 is available, published by the Under-Secretariat for Crime Policy of the Secretariat for Justice, part of the Ministry of Justice. Given the size of this publication, it can be consulted at: [www.jus.gob.ar/media/2736750/Informe%20SNEEP%20ARGENTINA%202013.pdf](http://www.jus.gob.ar/media/2736750/Informe%20SNEEP%20ARGENTINA%202013.pdf).

127. It contains statistics, such as the evolution of the prison population of the Federal Prison Service until December 2013 (p. 2); the prison census 2013, broken down by jurisdiction and unit and by conditions of detention (p. 4, convicted, awaiting trial, non-liable, minors or unclassified); capacity and population by jurisdiction and unit (p. 23); types of crime, number of years in prison, conduct of inmates, types of prison penalties and offences, education and job training, educational attainment and employment status at the time of internment.

128. The SNEEP Annual Report of the Federal Prison Service for 2013 is also available at: [www.jus.gob.ar/media/2736753/Informe%20SNEEP%20SPF%202013.pdf](http://www.jus.gob.ar/media/2736753/Informe%20SNEEP%20SPF%202013.pdf).

129. In recent years, the executive branch has allocated budget for building new prisons equipped with technology for the treatment and rehabilitation of prisoners. The available places currently number around 10,560 across the country and the prison population is kept constant within that figure. It is planned to meet the needs of the regions with the highest demand that are affected by drug trafficking, and the provinces that have an ageing prison structure, outside the forecasts of Act No. 24660 on the enforcement of custodial sentences.

130. There is no overpopulation in the Federal Prison System. To prevent overcrowding, specific sectorization programmes were implemented, new establishments were opened and sectors were refurbished: (a) A parameter for measuring places was introduced in line with Decision No. 2892/2008 of the Ministry of Justice, which incorporates International Committee of the Red Cross standards. (b) The Federal Prison Complex of North-West Argentina was opened in Salta Province. It consists of two units: the Federal Institute for Male Prisoners of Salta and the Correctional Institute for Women. It has capacity for 200 women and 294 men, and the blocks have individual accommodation. The units have specific areas for carrying out the criminological, psychological and social assistance assessments involved in the treatment programmes. They also have offices for health care and admissions, a visiting room, a chapel, classrooms, workshops and outdoor recreation spaces. Outside the prison, the institute for women has a day-care centre that deals with the issue of incarcerated mothers who are accompanied by their children. (c) The executive branch increased the budget of the prison service by 573 million pesos for the construction of two new establishments and the addition of 2,300 new places by 2015. Decree No. 903/14 provides for the construction and expansion of Federal Prisons in the provinces of Salta, Córdoba, Corrientes, Misiones, Santa Fe, Buenos Aires and Chaco. (d) A prison monitoring and inspection service was established by Decision No. 1088/2014, on the premise that persons deprived of their liberty are vulnerable and at risk in any detention centre. They should therefore be offered greater protection by monitoring the conditions of their detention and visits *in situ*. These tasks are performed in accordance with the basic principles set out in the Training Manual on Human Rights Monitoring.



131. The Federal Prison Service applies an admission procedure that specifies how to comply with the right to information and privacy of persons deprived of their liberty, and what comprehensive protection measures are to be applied to groups that are in a particularly vulnerable situation. It also regulates the use of force on the principle that it should be exceptional, proportional, rational and lawful. This procedure provides guidance for the work of the officials who have to support, assist and advise detainees at this stage, bearing in mind that it is a critical time for them.

132. Prisoners are provided with the Manual of Basic Information for Inmates, which offers a simple description of the admission procedures; the progressive system for the enforcement of sentences; their fundamental rights; the authorities to which they should address requests or complaints; the system of communications and visits; items permitted and prohibited in the cell blocks and other aspects covered by Act No. 24660.

133. The Federal Prison Service has a digital database for registering detainees, containing the personal file of every person admitted to prison; they are separated into the following categories: sentenced; awaiting trial; and sentenced with other charges pending. Each personal file is assigned a number that all federal prisons in the country must use. Furthermore, the Digital Biometric Register, that facilitates identification at the admission stage, is at the initial stage of implementation.

134. Regarding the measures taken to separate those in pre-trial detention from convicted prisoners, decisions have been issued to group inmates on a more objective basis and an initial risk classification system is being developed in order to establish standard procedures for admission to federal prisons.

135. Regarding the separation of those bound over for trial from prisoners in the national prison system, the Federal Prison Service has taken decisions to group inmates on a more objective basis and an initial risk classification system is being developed.

136. Currently 62 per cent of inmates have been bound over for trial and 38 per cent are convicted prisoners; these percentages arise from the way in which the criminal justice system operates, and the federal prison system is at almost 98 per cent capacity. This situation makes absolute separation difficult to achieve, yet the classification criteria have been improved with a view to complying with the provisions of Act No. 24660 on the enforcement of sentences. Moreover, the Federal Prison Service and the Ministry of Justice have proposed a series of alternative measures requiring legislative reform for the enforcement of sentences for specific groups.

#### **Reply to paragraph 16 of the list of issues**

137. The Strategic Plan 2012–2015, approved by Decision of the Ministry of Justice, carries forward the strategic challenge of developing public policies for social integration. In this regard, prison activities for providing full facilities for treating persons deprived of their liberty are based on education, work, medical, psychological, social and spiritual support, and security of the premises.

138. To that end, a number of measures have been taken, covering recasting the regulations, treatment, security, personnel and infrastructure, to take account of key issues such as the right to life, physical integrity, dignity, and the preservation and safeguarding of human rights.

139. A draft organic law of the Federal Prison Service is in preparation that introduces a fundamental shift in the concept of the prison mission, focusing on two essential aspects: secure custody, and treatment of inmates.

140. To guarantee the right to decent accommodation, the Prison Service has 33 establishments, consisting of 6 prison complexes, 17 prison units, 1 prison for infectious

diseases and 9 federal jails. In April 2014, inmates totalled 10,018, while capacity was 10,848 places.

141. The current plan will cover future infrastructure requirements, with premises appropriate to the progressive prison system, and that have a distribution of the various treatment activities appropriate to the type of prison population (young adults, women, older persons), areas for recreation, workshops, education, and accessibility for persons with reduced mobility.

142. The new buildings meet the criteria set out in the “basic living conditions”, in line with parameters based on the international standards laid down by the International Committee of the Red Cross.

143. The fitting of security devices using the latest electronic technology has improved the tasks of monitoring and supervision, providing early warning of any disturbances. They included inspection and registration systems, and a control centre was set up for monitoring the fleet of transfer vehicles.

144. Videoconferencing rooms have been implemented as a new means of communication between prisoners and the judicial authorities, allowing hearings to take place without the need for physical transfers.

#### **Reply to paragraph 17 of the list of issues**

145. After the tragic disappearance of Jorge Julio López, several initiatives were taken to prevent a recurrence of this aberrant act.

146. First, under the aegis of the Ministry of Justice, is the witness protection system governed by the National Programme for the Protection of Witnesses and Defendants. This programme is aimed at witnesses and defendants — collaborators of justice or reformed criminals — who are at risk as a result of making an outstanding contribution to a judicial investigation under federal jurisdiction (drug trafficking, kidnapping and terrorism, crimes against humanity committed in the period 1976–1983, trafficking in persons).

147. The initiatives taken notably include the extension of the powers of the witness protection programme. This enables intervention in cases of crimes against humanity as a last resort of protection with unique powers and resources for witnesses and their families who come under serious threat.

148. Furthermore, agreements were signed with 15 provincial governments for the training of guard units specifically tasked with protecting witnesses.

149. Another initiative taken was the setting-up of the Truth and Justice Programme of the Ministry of Justice, designed to coordinate all the measures needed to promote and strengthen at institutional level the process of truth and justice linked to crimes against humanity committed by State terrorism.

150. Its duties notably include coordination and liaison with the Supreme Court, Council of the Magistrature, Attorney General’s Office and the Chief Public Defender’s Office, which are necessary for effectively meeting the requirements of technical, human and material resources of the judicial authorities, prosecutors and defenders, in relation to the issues covered by the programme.

151. Also within the purview of the Ministry of Justice, the BUSCAR Programme (the national programme to coordinate efforts to locate persons wanted by the judicial authorities) was set up as a necessary legal framework to enable citizens to assist the judicial authorities, by offering monetary rewards and absolute confidentiality about their identity.

152. The aim of the BUSCAR programme is to obtain information that helps to apprehend persons wanted by the judicial authorities for crimes against humanity or to restore the identity of persons who were abducted as minors during the last military dictatorship.

153. Finally, as reported above, the Ulloa Centre was set up under the Human Rights Secretariat.

**Reply to paragraph 18 of the list of issues**

154. First, the measures adopted to speed up the various stages of judicial proceedings notably include the creation of the Prosecution Unit for Crimes against Humanity. The Unit's main duties are: "(i) (a) the development of a complete and up-to-date nationwide register of cases of human rights violations committed during the period of State terrorism; (b) periodic processing and organization of information on the progress of the trial process; (c) undertaking the measures necessary to implement the criteria laid down by the Attorney General's Office in Decision PGN 13/08; (d) inter-institutional coordination to facilitate progress with the cases".

155. In March 2014 a total of 531 sentenced persons were recorded, 110 of whom with final convictions. The number of persons awaiting trial was 1,135. Of that number, 561 had one or more cases sent up to trial and 156 had a case requested to be sent up. This means that 63.17 per cent (717) of all persons awaiting trial had a case sent up for trial or for which a trial had been requested.

156. In August 2014 there were 17 oral proceedings pending, taking place in six provinces and the Autonomous City of Buenos Aires:

- Total number of defendants: 313;
- Total number of victims: 2,369;
- Two written proceedings pending in the Autonomous City of Buenos Aires and in Entre Ríos;
- Total number of defendants: 15;
- Total number of victims: 56;
- Three trials scheduled;
- Total number of defendants: 11;
- Total number of victims: 72.

157. The national Human Rights Secretariat acts as plaintiff in proceedings investigating crimes committed during the civil-military dictatorship, liaising with other departments of the State and other private plaintiffs.

158. The Human Rights Secretariat also has a Unified Investigation and Registration Unit for Victims of State Terrorism, which aims to learn more about repressive methods, i.e. describe its repressive mode of operation, according to the victims and the places where the events unfolded.

159. The Unified Victims Register interacts with other units of the Secretariat such as Reparatory Laws, the Legal Unit, the Latin American Initiative for the Identification of Disappeared Persons, the Federal Human Rights Council, the Digital Archive, Documentary Collections and Remembrance Sites, building an array of data to provide organized information.

160. To achieve the proposed objective, the work takes place in two areas, one focused on demand (requests for information from relatives, government agencies and non-governmental organizations, committees, requests for reparatory laws to provide the necessary evidence in the files, requests from the judiciary, reports for crimes against humanity cases), while the other consists of investigations into militia groups, clandestine centres and victims, as required in line with progress on reconstruction and systematization research.

161. Furthermore, the Directorate of Human Rights and Humanitarian Law of the Ministry of Defence is developing a plan to work with historical archives with the aim of inventorying, conserving, digitizing and disseminating documents of the armed forces. It is also supplying the information required in the process of investigating those responsible for human rights violations committed during the period of State terrorism.

162. Decree No. 44/07 laid down the obligation of secrecy for armed forces and security personnel when making statements in court and Decree No. 1578/08 ordered the intelligence agencies to send information on the facts surrounding the *La Tablada* attack; Decree No. 1137/09 removed the “Secret and Strictly Confidential” classification from intelligence documentation needed in judicial proceedings.

163. Decree No. 4/2010 declassified all information related to the actions of the armed forces during the years 1976–1983, together with all related information. The documentation is available on the Internet.<sup>13</sup>

164. In particular, documentation found in the Air Force’s Condor Building allowed access to information of the military juntas, comprising 280 original documents; information related to doctrinal documents, future plans for the “National Reorganization Process”, conceptual contributions from business organizations, and blacklists of intellectuals, musicians, journalists and artists.

165. The Directorate cooperates on the enforcement of final judgements sentencing members or former members of the armed forces for committing crimes against humanity during the period of State terrorism, applying Articles 19 and 20 of the Criminal Code.<sup>14</sup>

*Updated information on measures implemented as part of the State Reparations Policy*

166. Following Act No. 25914, Act No. 26913 was promulgated, establishing *ex gratia* pensions for persons who, before 10 December 1983, were deprived of their liberty and held in the custody of the national executive for political, trade union or student reasons.

167. It is important to highlight the work done by the Human Rights Secretariat together with the Argentine Forensic Anthropology Team (EAAF), in the framework of the Latin American Initiative for the Identification of Missing Persons (ILID). Focusing its efforts on increasing the number of identifications of human remains of victims of enforced disappearance and completing the Family Blood Bank, in December 2012 the Human Rights Secretariat signed a cooperation agreement with EAAF and the Human Rights Secretariat of the Province of Buenos Aires.

168. The Human Rights Secretariat’s Unified Registry of Victims of State Terrorism is a large body of data records generated over time in the Secretariat’s various units. It consists of a set of applications originally developed pursuant to Act No 24321 on the forced

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<sup>13</sup> See <http://www.archivosabiertos.com>.

<sup>14</sup> Suspension, as part of the sentence, of the receipt of any military retirement or pension, or of any other military privilege.

disappearance of persons, whose history is linked to the CoNaDeP/SDH file. They were developed in coordination with the Register of Deaths under Act No. 24411 (RedeFa) and maintained in the research work of both units. A second merger took place in 2004 with all complaints received and verified by RedeFa; this was achieved in conjunction with the National Commission on the Right to an Identity (CoNaDI).

169. The historical management of the National Genetic Data Bank has made it possible to identify with scientific certainty 116<sup>15</sup> of the abducted and stolen children and to restore their personal history and identity.

170. As mentioned above, the Special Unit for cases of children abducted during the period of State terrorism was set up within the Prosecution Unit for Crimes against Humanity (Decision PGN 435/12) to provide the special treatment required in cases of children abducted during the period of State terrorism.

#### **Reply to paragraph 19 of the list of issues**

171. The judicial reform, also called the “democratization of justice”, is a series of reforms proposed by the judiciary, presented as a set of bills at the opening session of Congress in early 2013. One of the reforms is related to the functioning and composition of the Council of the Magistrature, which was signed into law in May 2013 as Act No. 26855 (amending earlier Acts Nos. 24937, 11672, 19362, 17928, 23853, 24156 and 26376).

172. Subsequently, on 18 June 2013, the Supreme Court of Justice, in the ruling known as the *Rizzo* case, declared the reform unconstitutional because it stated that the representatives of the judges, lawyers and academics in the Council of the Magistrature should be elected by popular vote rather than by their peers. The unconstitutionality relates to articles 2, 4, 18 and 30 of Act No. 26855 and Decree No. 577/13. The ruling deemed unconstitutional the new composition of the Council of the Magistrature provided for by the reform and declared inapplicable the amendments to Act No. 26855 regarding the quorum provided for in article 7, the majority system and the composition of the committees of the Council of the Magistrature, in accordance with the provisions of article 29 of the Act, nullifying the summons for the election of councillors.<sup>16</sup>

173. Furthermore, Act No. 26861 on equal access to the justice system, passed by the National Congress in May 2013, provides for equal opportunities for staff entering the judiciary and the Public Legal Service. The Act lays down the requirements as to the qualifications of the candidates in the various jurisdictions and levels of the judicial authorities on the basis of the principles of openness, competition, equality and transparency. It also provides that at least 4 per cent of the posts to be filled should be occupied by persons with disabilities who are qualified for the position.

174. Act No. 26857 on ethics in the exercise of public office, passed in May 2013, provides for the mandatory online publication of the decisions of the Supreme Court of Justice, federal courts of appeal and National Chambers of Appeals. The measure is based on the transparency and openness of government management as a pillar of a democratic society, and on citizens’ right to access public information. Similarly, Act No. 26856 provides for the publication of all judgements of oral chambers and courts through the Judicial Information Centre (ICJ).

175. Act No. 26854, also from May 2013, regulates precautionary measures in cases in which the federal government or one of its decentralized entities is a party. The Act seeks to

<sup>15</sup> Figures for March 2015.

<sup>16</sup> For the full ruling see: <http://www.casi.com.ar/sites/default/files/a%20fallo%20Corte%2018%2006%2013%20inconstituc%20Ref%20Jud.pdf>.

mitigate the burdensome consequences of excessively long precautionary measures on common goods and values protected by the public interest. However, it states that the precaution of the deadline does not apply where it would jeopardize a decent living as per the American Convention on Human Rights, health or entitlement to maintenance.

#### **Reply to paragraph 20 of the list of issues**

176. Since the enactment of the new Code of Criminal Procedure, all sentences are open to review, regardless of which court or judge handed them down. Specifically, article 309 provides that sentences may be challenged and article 311<sup>17</sup> enumerates the grounds on which a verdict may be challenged.

177. It is noteworthy that, in terms of case law, the Supreme Court had already established in the *Casal* ruling (judgement of 20 September 2005), following the jurisprudence of the Inter-American Court of Human Rights in *Herrera Ulloa v. Costa Rica*, that a broad and full review of the judgement must be performed in cassation, not restricted solely to points of law. The Court's interpretation was that "article 456 of the Code of Criminal Procedure must be understood to mean that it enables a full review of the judgement. It must be sufficiently broad to give the cassation judges ample scope to review it, commensurate with the possibilities and particulars of each case, without overstating matters that can be only be apprehended directly, that are unavoidable only because of the requirements of oral proceedings in accordance with the nature of things". This doctrine has been followed by provincial jurisdictions, allowing a full review of the judgements of the trial courts, as provided by the Supreme Court (in accordance with rulings 329:530).

178. Furthermore, and more recently, in the case *Duarte, Felicia* (judgement of 5 August 2014), the Supreme Court recognized the right to a review of the initial verdict, following the case law of the Inter-American Court of Human Rights in *Mohamed v. Argentina*. In this case, the defendant Duarte had been acquitted by the Federal Oral Tribunal of Formosa and then sentenced by the Federal Court of Criminal Cassation. The Supreme Court admitted the extraordinary federal appeal and referred the case to the Court of Cassation for a review of the sentence by another chamber.

#### **Reply to paragraph 21 of the list of issues**

179. The country's return to democracy prompted a process of change and adaptation of the State institutions. Both the federal government and the provinces redefined the inquisitorial models of procedure, replacing them with adversarial models, safeguarding the constitutional guarantees during the trial and judging during the legal proceedings. Furthermore, the adversarial system is based on oral proceedings.

180. At national level, the Public Attorneys' Office Organization Act (Act No. 24946) establishes that the Public Defence Service and the Public Prosecution Service are

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<sup>17</sup> ARTICLE 311 – Verdict. A verdict may be challenged on the following grounds: (a) if it is alleged that a constitutional or legal precept or guarantee has not be observed; (b) if criminal law has been applied in error; (c) if it is not sufficiently reasoned or if the reasoning is contradictory, unreasonable or arbitrary; (d) if it is based on illegal evidence or evidence incorporated by reading in cases not authorized by this code; (e) if decisive evidence is not taken into consideration or if non-existent evidence is taken into consideration; (f) if evidence or certain facts underlying the verdict and the sentence have been wrongly assessed; (g) if the rules relating to the correlation between the charge and the verdict have not observed; (h) if the essential requirements of the verdict are not met; (i) if any of the circumstances apply that enable the final verdict to be reviewed; (j) if the deliberations have not been properly divided into stages.

independent, the Public Prosecution Service being headed by the Attorney General, and the Public Defence Service by the Chief Public Defender.

181. At provincial level, an adversarial system (in which the investigation and prosecution are conducted by the prosecutor and the judges are responsible for reviewing legality and the trial) is used in the provinces of Buenos Aires, Catamarca, Córdoba, Chaco, Chubut, Entre Ríos, La Pampa, Mendoza, Salta and Santiago del Estero.

182. The following have a mixed system (shared investigative and judicial functions in some or all cases): Corrientes, Formosa, Misiones, Río Negro, San Juan, San Luis, Santa Fe, Santa Cruz, Tucumán and Tierra del Fuego. This is also the case at national level, which performs the penal and correctional judicial function in the City of Buenos Aires, transferring powers for some less serious offences to the judicial authorities of the City.

183. The Code of Procedure for the Province of Corrientes provides that the investigation is directed by the investigating judge; the same applies in Formosa, Misiones, Río Negro, San Juan, San Luis, Santa Fe, Santa Cruz, Tucumán and Tierra del Fuego. The Code of Criminal Procedure of La Rioja also allocates the investigative functions to the investigating judge. However, there was an amendment to the Code in 2009 introducing changes where persons are caught in the act of committing a crime, making prosecutors responsible for the investigation in what is known as a summary investigation.

184. The relationship of the Public Legal Service with the judiciary varies over the various jurisdictions of the country; in some places the Service is attached to the High Courts of Justice, but not in others.

185. For example, Catamarca does not have a specific law on the Public Legal Service, but is governed by the Organization of Justice Act, and although it states that it is independent, it follows that it reports to the head of the judiciary. Formosa has an Organization of Justice Act, which covers both the Public Prosecution Service and the Public Defence Service, under the authority of the High Court. As in Jujuy, the Organization of Justice Act of Misiones places the Public Legal Service under the authority of the Provincial High Court, and the Attorney General heads the Public Legal Service, which has prosecutors and defenders. The Organization of Justice Act of San Luis governs all the functions, rights and duties of the entire judiciary, judges and officials of the Public Legal Service, the latter being combined with the Public Prosecution Service and the Ministry responsible for the interests of young persons. It includes defenders and assessors headed by the Attorney General. In Santa Cruz, the Organization of Justice Act is also the only one governing the whole structure of the judiciary, under the authority of the provincial High Court. In Córdoba, the Public Prosecution Service Organization Act states that it is independent and autonomous of the High Court. The Act does not cover legal defence, however, but there is a Legal Aid Act which provides that free legal aid is to be provided by the judiciary, through the Standing Committee on Care and the Legal Advisers' Association, and the Bar Association of each judicial district.

186. One of the jurisdictions that has systems with greater independence is Entre Ríos. It has a Public Prosecution Service Organization Act, which states that the Service "... shall be organizationally and functionally independent, and shall be responsible for promoting the work of the judiciary in upholding the law and the general interests of society. It shall perform its duties with unity of action and independence, in coordination with the other authorities of the province, but not subordinate to or subject to instructions or orders issued by bodies outside its structure". Chubut has a Public Prosecution Service Organization Act and a Public Defence Service Organization Act, each of which stipulates that the Service concerned is independent. Neuquén has three organizational acts defining the independence of anyone exercising the functions of the judiciary, the public defence, and the prosecution in the provincial government.

187. Meanwhile, Santa Fe has a Public Prosecution Service Act and a Public Criminal Defence Service Act, which provides for the hiring of private lawyers. However, the Organization of the Judiciary Act covers judicial officials, including those of the Public Legal Service, comprising the Attorney General of the Supreme Court, and prosecutors, defenders and advisers. Santiago del Estero has a single Public Legal Service Act, but both the Public Prosecution Service and the Public Defence Service are on an equal footing.

188. In the Province of Buenos Aires the Public Legal Service is headed by the Attorney General, who supervises the other members of the Service pursuant to the provincial constitution. The Public Legal Service is composed of the Public Prosecution Service and the Public Defence Service as functionally autonomous units. In Chaco, the Public Legal Service Organization Act states that the Public Legal Service is part of the judiciary and organizationally and functionally independent and autonomous, although the prosecutors and defenders report to the same body, similarly to the system in Corrientes. In La Rioja, under its constitution, “The Attorney General’s Office and the Public Defence Service are part of the judiciary; they have functional and financial independence, and discharge their duties through their own organizational units in accordance with the principles of unity of action, legality and objectivity. The Public Legal Service and the Public Defence Service are headed by the Procurator General and the Chief Public Defender respectively...”.

189. Independence, however, is ensured by the Attorney General, who enjoys full powers of representation of the Public Legal Service and the authority to supervise its members. Mendoza has a Public Legal Service Organization Act, which places the Attorney General as the hierarchical superior of the Public Prosecution Service, Public Defence Service and the Ministry responsible for the interests of young persons. Salta province does not establish any ranking between the Attorney General, the Procurator General and the General Assessor of Incompetence, who are all members of the Governing College. In San Juan, the Public Legal Service Organization Act describes the Service as unique, consisting of a Procurator General of the Court of Justice, who supervises the entire body, including prosecutors, assessors and defenders.

## **Protection of the rights of children (arts. 7 and 24)**

### **Reply to paragraph 22 of the list of issues**

#### *Reply to paragraph 22 (a)*

190. “Strict confinement and isolation” is not practised in the closed centres of the National Secretariat for Children, Young Persons and the Family. The peaceful coexistence and rights of adolescent and young inmates in the centres is regulated by Decision No. 991/2009.

#### *Reply to paragraph 22 (b)*

191. Article 19 of implementing Decree No. 415 of Act No. 26061 provides that, under the current legislation, deprivation of personal liberty may not entail the violation of other rights, and also states that the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the United Nations Guidelines for the Prevention of Juvenile Delinquency and the United Nations Standard Minimum Rules for Non-custodial Measures are deemed to be an integral part of that article. The National Directorate for Adolescent Offenders has the Úrsula Inchausti Admission and Referral Centre, whose function is to urge the judiciary to refrain from imposing custodial measures, proposing alternative measures to the overseeing judge after a thorough assessment of the circumstances of adolescents, or to impose any necessary custodial measures for as short a



time as possible. The system ensures that apprehended minors are housed in a fully specialized environment. The decision to impose a custodial sentence falls solely to the judiciary.

192. Furthermore, over the past five years there has been a significant reduction in the number of adolescents and young people deprived of their liberty, and in the time spent in closed centres.

*Reply to paragraph 22 (c)*

193. All adolescents in the juvenile criminal legal system have a legal defence. Argentina has a Juvenile Court Counsel, a Chief Juvenile Inspector of the Criminal Chamber, and a Public Defender that the Argentine State offers to young people who cannot afford a technical defence, and any proceedings in which no legal defence has been provided are totally null and void.

*Reply to paragraph 22 (d)*

194. In Argentina no one has been directly or indirectly sentenced to life imprisonment before or after the *Maldonado* case in the Supreme Court. After the ruling of the Inter-American Court of Human Rights against the Argentine Republic, which the federal government acknowledged, a review was conducted of all convictions covered by that ruling and all others that it did not cover. To sum up, no adolescents are currently serving a life sentence.

*Reply to paragraph 22 (e)*

195. The Public Legal Services (independent of both the executive and the judiciary under article 120 of the Constitution) and the judiciary, among other institutions, exercise their right to supervise closed centres, make suggestions and propose measures that contribute to the observance of human rights in juvenile criminal matters.

196. Decision No. 158/1998 established the Prisons Commission within the Public Defence Service, with aim of ensuring intensive monitoring of detention facilities by checking the general conditions of accommodation, relations with and treatment of prisoners. The Commission's principal objectives include: to assess conditions of accommodation in prisons; to promote compliance with international minimum standards of detention; to lodge any appeal or take any measure as required to make them effective; to provide persons deprived of their liberty with an advisory service and enable them to communicate with institutions and Offices of the Public Defender about issues relating to their trials and conditions of detention, and to support the Offices of the Public Defender in cases of individual complaints that were not successful.

197. Decision DGN 841/2006 established the Commission for Oversight of the Institutional Treatment of Children and Adolescents, a specialized body in the Office of the Chief Public Defender. Its main objective is to coordinate checks of the general conditions of accommodation for children and adolescents in various institutions around the country.

198. In turn, the Prosecution Unit on Institutional Violence, established by Decision PGN 455/2013 within the Public Prosecution Service, has the role of addressing the reality of torture, ill-treatment and inhuman living conditions to which prison inmates are subjected.

*Public policies on the prevention of juvenile delinquency*

199. In general, it is understood that the best prevention policy in juvenile criminal justice in this country is to expand policies that promote, protect and restore the rights of children and adolescents in general.

**Freedom of opinion and expression and the right to privacy  
(arts. 17 and 19)****Reply to paragraph 23 of the list of issues**

200. With regard to steps taken to ensure the safety of journalists, substantial progress has been made on freedom of expression. Alongside the legislative changes made, the Ministry of Security issued Decision No. 210/2011 establishing a working group responsible for developing operating procedures for the security forces in connection with public demonstrations. The Decision expressly states that members of such forces must respect, protect and safeguard the work of journalists; and that no one working as a journalist may be harassed, detained, moved or undergo any other restriction of their rights by the mere fact of exercising their profession during the conduct of public demonstrations. Police officers must also refrain from taking any action to prevent the recording of images or interviewing of witnesses in such circumstances. The law reflects the national government's commitment not to repress public demonstrations or rallies. The Decision expressly states that demonstrations are a way of exercising freedom of expression and petitioning the authorities.

201. Regarding the criteria used for allocating government spending on advertisements in the media, this is classed not as spending but as "public advertising investment". From the operational point of view, public bodies wishing to broadcast a particular message — through a number of communication channels (television, radio, internet, print or on a public thoroughfare) — apply to the Secretariat for the Mass Media. The State agency Telam plans the distribution of official advertising, in the various media, according to criteria of federalization, subsidiarity and decentralization, to reach the widest possible audience, in accordance with article 19, paragraph 1 of the Covenant.

202. The criterion of federalization tends to increase the level of participation by local media, which are generally smaller scale, in the distribution of public guidelines, and tends to avoid government advertising being too concentrated.

203. The criterion of subsidiarity promotes the development of media with a small share of the private advertising market. This enables support to be given to media — generally local and small-scale — that would otherwise wither away for lack of funding.

204. The criterion of decentralization fosters broadcasting among the widest possible range of small- and medium-scale media, preventing most of it being concentrated in oligopolistic media, which attract most private advertising. It seeks to achieve a wide range of expression, and to democratize information as a way of ensuring a diversity and plurality of views.

205. These criteria, which are a corollary to article 13 of the Pact of San Jose, Costa Rica (closely related to article 19 of the International Covenant on Civil and Political Rights)<sup>18</sup>

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<sup>18</sup> Article 13 of the American Convention on Human Rights: Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

and its interpretation by the Special Rapporteur on Freedom of Expression, tend to promote universal distribution of and access to information, satisfying the social communication needs of communities, with a broad outreach to the whole population and not just to those who are concentrated in the major cities.

206. The approach of the Argentine Government in institutional advertising and freedom of expression is in line with this Rapporteur's statement to the effect that government advertising can offset the vast communication resources controlled by business interests or financial circles, and can give a greater voice to journalists and local media, smaller media and those who criticize business.<sup>19</sup>

207. The protection of personal data is ensured in Argentina through the action of habeas data pursuant to the third paragraph of article 43 of the Constitution. Act No. 25326 on the protection of personal data, public regulations governing the principles applicable in this area, as well as the habeas data procedure falling under federal jurisdiction, regulates comprehensive protection of personal data in files, records, data banks or other data processing media.

208. Act No. 25326 was implemented by Decree No. 1558/01 and amended by a similar Decree No. 1160/10. The applicable legislation is supplemented by the provisions issued by the National Directorate for the Protection of Personal Data, as monitoring authority for the Act.

209. The National Directorate for the Protection of Personal Data (DNPDP) — part of the Ministry of Justice — is responsible for the National Registry of Databases, set up to register and monitor the databases that exist in the country. Its functions include advising and assisting holders of personal data, receiving complaints and claims against those responsible for records, files, data banks or databases for violating rights to information, access, correction, updating, deletion and confidentiality in the processing of data. Complaints lodged with DNPDP are solely to reveal deficiencies or breaches of the regulations applicable to the processing of personal data in data files, records, banks or databases.<sup>20</sup>

210. A worthwhile initiative for ensuring access to information was the adoption of the Audio-visual Communications Services Act (No. 26522), which treats communication as a human right and promotes the democratization of service providers' voices. This Act embodied, in a regulatory context, a deepening of democratization, taking account of technical progress and seeking, in a genuinely federal manner, a multiplicity of voices, plurality and inclusion in relation to the right to information. The new Act, which conceives communication in an inclusive manner, is a ground-breaking pluralistic and anti-monopolistic measure.

211. As for the criteria used for allocating government spending on advertising, the preamble of Decision No. 111/2013 on the Ombudsman for Audiovisual Communication Services states that "the State shall consider the criteria of equity and fairness in distributing government investment in advertising, taking account of the communication objectives of the message in question". Article 1 *et seq.* relate to the system of government advertising.

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The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.

<sup>19</sup> IACHR. Special Rapporteur on Freedom of Expression. Freedom of Expression Standards for Free and Inclusive Broadcasting 2009.

<sup>20</sup> <http://www.jus.gob.ar/datos-personales/cumpli-con-la-ley/%C2%BFcuales-son-tus-obligaciones.aspx>.

212. In particular, article 10 lays down the government procurement procedure: “Official advertising announcements shall be distributed among the various communication media entered in the Register of Mass Media in line with the following guidelines: (a) 33.3 per cent of the budget for government advertising shall be allocated to independent non-profit privately managed or owned media, agencies or producers; (b) 33.3 per cent of the budget for government advertising shall be allocated to public state and non-state media, agencies or producers and national universities; (c) 33.3 per cent of the budget for government advertising shall be allocated to independent media, agencies or producers managed or owned for profit by natural or legal persons. Where there are insufficient entries in the DPSCA Register of Mass Media to fill the above quota, the balance of the budget may be reallocated.”

213. The Decision also sets up the Register of Government Advertising of the Ombudsman for Audiovisual Communication Services, which will be kept by the Directorate for Institutional Communication.<sup>21</sup>

### **Equality and non-discrimination and the protection of the rights of persons belonging to ethnic minorities (arts. 2, 26 and 27)**

#### **Reply to paragraph 24 of the list of issues**

214. The communities of indigenous peoples living in Argentina occupy a substantial proportion of the national territory in traditional lifestyles. Under national Act No. 26160, as extended by Acts Nos. 26554 and 26737, traditional possession by these communities is being surveyed and demarcated by the National Indigenous Communities Land Survey Programme (RETECI) implemented by the National Institute of Indigenous Affairs (INAI). At December 2014 a total of 5,325,091 ha had been surveyed in the 578 communities that live in the provinces of Buenos Aires, Catamarca, Chaco, Chubut, Corrientes, Formosa, Jujuy, La Pampa, Mendoza, Misiones, Río Negro, San Juan, Salta, Santa Fe, Santa Cruz, Santiago del Estero, Tierra del Fuego and Tucumán. The Council on Indigenous Participation (CPI) plays an important part in implementing RETECI at national and provincial levels (INAI Decision No. 587/2007).

215. In addition, through special provincial laws, policies and programmes, and also through the National Parks Administration, progress has been made in the registration of possession and the issuance of title deeds to lands. The total area of lands identified or assigned title amounts to some 4,500,000 ha.

- Lands assigned title. The total area of lands that have been assigned title or surveyed is 2,983,259 ha. These are lands inhabited by communities of the following peoples: Qom (Toba), Mocoví, Wichi, Mapuche, Mapuche-Tehuelche, Pilagá, Kolla, Guaraní, Huarpe, Mbyá Guaraní, Omaguaca, Atacama, Diaguita, Ranquel and Selk'nam in the provinces of Buenos Aires, Chaco, Chubut, Formosa, Jujuy, La Pampa, Mendoza, Misiones, Neuquén, Río Negro, Salta, Santa Fe, San Luis, Tierra del Fuego and Tucumán.
- Noteworthy among the provincial programmes for documenting community possession is the programme of Jujuy Province in agreement with INAI, ratified by Act No. 5031, which has issued community title deeds, subject to the restrictions on ownership laid down in the Constitution, regularizing a total of 1,251,498 ha; and it has carried out surveys and georeferencing to regularize an area of 482,423 ha.

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<sup>21</sup> <http://www.infoleg.gov.ar/infolegInternet/anexos/220000-224999/222418/norma.htm>.

- Land identified by special regulations. Furthermore, under special provincial regulations and national and provincial expropriation laws, in the process of implementation, community lands have been identified in the provinces of Catamarca, Chaco, Chubut, Jujuy, Mendoza, Río Negro, Salta and Santa Fe, inhabited by the Mapuche, Kolla, Guaraní, Wichi, Mocoví, Qom (Toba), Huarpe, Chorote, Chulupí and Tapiete peoples. The main ones are:
  - The community lands inhabited by the Los Morteritos Indian Community of the Calchaquí Diaguita (Las Cuevas) people and the Atacameño Antofalla community of the Kolla people in Catamarca Province, surveyed under Act No. 26160 with a total area of 790,012 ha.
  - The El Impenetrable Mowitob nature reserve (created by Decrees Nos. 480/91 and 1732/96) with an area of 306,800 ha, which is intended for the three peoples living in Chaco Province and which have formed the Mowitob non-governmental association to formalize the community ownership.
  - In Mendoza Province, provincial Act No. 6920 recognized the ethnic and cultural pre-existence of the Huarpe Milcallac people living in that province and the expropriation of some 700,000 ha in the department of General Lavalle for the Huarpes Milcallac communities, with a legal personality recognized by INAI that attests to the occupation. The Act was challenged as unconstitutional but was upheld by a ruling of the Supreme Court of that province. Progress has been made in the award by Decree No. 633/2010 of 72,647 ha to the Lagunas del Rosario community.
  - Progress on regularizing the land of the Wichí, Chorote, Chulupí, Tapiete and Qom (toba) peoples inhabiting ex lots 55 and 14, under Decree No. 1498/2014 which orders an area of 400,00 ha to be formalized and registered with the Directorate General for Property of the Province in the name of those communities. The Ministry of Agriculture, Livestock and Fisheries and the National Secretariat of the Environment, together with INAI, the Human Rights Secretariat and the Province of Salta are currently conducting the documentation programme for the community property of lots 55 and 14 (Department of Rivadavia).

216. Regarding the measures taken, under the Community Strengthening Programme (INAI Decision No. 235/04), INAI has implemented community legal services, coordinated by the regional organizations of the peoples with the aim of providing legal assistance to the communities of a people living in the jurisdiction, thereby strengthening community organization and the common strategies for defending their land. This was principally in the provinces of Río Negro (Mapuche people), Salta (Tastil, Guaraní and Wichi peoples), Neuquén (Mapuche people), Tucumán (Diaguita and Lule peoples), Santiago del Estero (Tonokoté, Cacano Diaguita, Guaycurú, Lule Vilela, Vilela and Sanavirón peoples), Mendoza (Mapuche people), La Pampa (Ranquel people), Buenos Aires (organizations of various peoples) and Jujuy (Ocloya people).

217. This averted a large number of evictions, notably of the Paichil Antriao community (Neuquén Province), the Las Paylas community, the El Divisadero community, the Finca Las Costas community and the Cholonkas community in the Province of Salta; the Colonia Makallé Qom indigenous community (Chaco Province), the Los Toldos community (Buenos Aires Province) and the Santa Rosa community of Leleque (Chubut Province).

218. In a number of cases involving conflicts over land possession, INAI carried out a centralized land survey, and the survey maps were a substantive element for territorial decision-making. The cases included the Huaytekas community (Río Negro Province); the

Santa Rosa de Leleque community and the Sepulveda community (Chubut Province); the Paichil Antriao community (Neuquén Province) and the Las Paylas community and El Divisadero community (Salta Province).

219. Also, the Human Rights Secretariat through the Directorate of Support to Social Sectors for Citizenship Education, has focused on protecting and promoting land rights and access to other rights of indigenous and peasant communities, in coordination with the bodies with primary responsibility in those areas, namely INAI and the Secretariat for Family Agriculture respectively. Among other action, local representatives of the Human Rights Secretariat accompany the Indigenous Participation Council and regional organizations in the territory and in coordination with the relevant provincial agencies; they request reports from the courts and police stations involved and appear as *amicus curiae*.

220. The legislation notably includes the new Code of Criminal Procedure, approved by Act No. 27063, which guarantees that the customs of indigenous peoples are taken into account when events involve their members (art. 24) and recognizes them as victims when the collective rights recognized in the Constitution are affected, particularly acts that discriminate against some of their members and genocide (art. 78 (e)).

221. The policy introduced by national Act No. 26160 is consistent with settled case law which has reaffirmed the State's responsibility for taking the necessary action to safeguard possession of the lands and territories occupied by the communities. In this regard, the Federal Appeals Court of Salta has ordered the federal government to conduct the technical, legal and cadastral survey where the communities hold the rights for the identification and regularization of the ownership of the areas they occupy (*El Traslado Wichí communities, leader Roberto Sánchez and the Zopota and El Escrito community, leader Bautista Frías v. federal government re: amparo, 23 February 2011*).

222. Over the past 10 years progress has been made in rulings favouring the rights of indigenous peoples, at both national and provincial levels. With regard to the state of emergency declared by Act No. 26160, there have been developments in the criminalization of land-related issues. Case law indicates that the historic moment created by national Act No. 26160 entails the need to address the historical context of the facts because "it is a time of recognition, recovery and reaffirmation of the rights enshrined in the Constitution" (among others, *Cámara Federal de Resistencia, SANTILLAN, Augustín et al. re: interruption of means of communication and land transportation – art. 194 of the Penal Code, judgement of 3 August 2012*).

223. The following noteworthy regulatory and institutional developments have taken place in the provincial jurisdictions:

- Recognition of indigenous justice (September 2014). The judiciary of Neuquén recognized indigenous justice for criminal disputes between communities, for all the Mapuche communities in the province that have a registered legal personality; the list of requirements states that the conflict must be subject to criminal law, involving only members of indigenous communities, occurring in recognized indigenous territory, "the fact must not seriously affect the public interest" and the penalty imposed must respect human rights (General Instruction 06: "Instructions for recognition and respect for custom and methods of indigenous peoples for resolving their conflicts").
- In Chaco Province, Act No. 6712 created the post of aboriginal translator/interpreter. It is planned to appoint a total of seven aboriginal translators and interpreters, one for each judicial district, as an expert in the district's predominant aboriginal language. The Act introduces an amendment incorporating indigenous languages and interpreters or translators of those languages into the Code.

- Act No. 4777 of Río Negro Province amends the province's Code of Civil and Commercial Procedure to incorporate free legal aid in proceedings with a collective impact on the rights of all indigenous communities in Argentina and its representative bodies.
- Act No. 2784 of the Province of Neuquén approved the Code of Criminal Procedure, which stipulates that "Where an act is committed by a member of an indigenous people, article 9.2 of International Labour Organization Convention No. 169 shall apply directly".
- The Public Defender Service of the Province of Chubut (Act No. 4920) has organized working groups that handle access to justice for indigenous peoples. Since 2007, in the judicial district based in Esquel a public defender has been appointed, specializing in civil matters and new rights, who advises and provides free legal aid for communities of indigenous peoples.

224. In the case of the Potae Napocna Navogh (La Primavera) Toba Qom community, the official Public Defender Service has given legal aid to the community in the courts of first and second instance in the city of Resistencia, Formosa. With regard to precautionary measure 404/2010 issued by the Inter-American Commission on Human Rights on 21 April 2011 (MC-404/10 "Potae Qom (La Primavera) indigenous community") the national government has been implementing measures together with the Government of Formosa Province and the petitioners in the Supplementary Provincial Council for Domestic Security. To this end, regular meetings are held, attended by representatives of the Ministry of Security, the Ministry of Foreign Affairs and Worship, the Human Rights Secretariat, representatives of the petitioners, who include Mr. Felix Díaz, and representatives of the provincial government. The meetings are chaired by the Minister of the Provincial Government, Justice, Security and Labour of the Province of Formosa. One outcome has been the development in agreement with the petitioners of the operational protocol for the security and police forces operating in the jurisdiction of the community, signed on 10 April 2013. The protocol defines the roles of the National Gendarmerie and Provincial Police and the community's assessment bodies.

#### **Reply to paragraph 25 of the list of issues**

225. While no law has yet been passed governing the right to consultation and participation in matters affecting their interests, provided for in the Constitution and Convention No. 169, the Directorate for Affirmation of Indigenous Rights was established within INAI by Decree No. 702/2010, with a view to promoting greater participation by indigenous peoples in the design and implementation of public policies that affect them and provide the tools necessary for the full exercise of their rights.

226. Moreover, by Federal Education Council Decision No. N1119/2010, the Autonomous Education Council of Indigenous Peoples (CEAPI) is recognized as a consultative and advisory body of the Ministry of Education.

227. In terms of regulation, progress has been made on best practices, which include the processes of consultation and participation in the enactment of national laws. The Education Act (No. 26206) introduced bilingual intercultural education as an educational approach. Act No. 26522 on Audiovisual Communication Services recognizes indigenous peoples as subjects of non-State public law, guarantees access to their own media (allocating radio and television frequencies and the use of their own languages) and states that native peoples must be represented in the Federal Council of Communication, adopting the proposal made by a group of indigenous organizations on "communication with identity".

228. Nationally, the Ministry of Agriculture's Rural Change Unit has implemented the right to consultation and participation with the establishment of the "Guidelines and procedures for indigenous peoples" (2012). These guidelines form the conceptual and operational framework for all rural development programmes and projects that have indigenous peoples as subjects of rights or that affect them, implementing mechanisms to ensure their effective participation and consultation, recognizing native peoples as producers, rights holders and recipients of public investment in infrastructure and production services.

229. Regarding the participation of the communities in administrative processes relating to mining, by Decree No. 5772-P/2010, the Province of Jujuy gives the communities concerned three opportunities to take part in the approval of natural-resource projects before the adoption of the Environmental Impact Assessment Report (I.I.A). The communities involved are those who have titles to their land, or georeferenced or surveyed records pending, and those that the Human Rights Secretariat of the province identifies as having territory in the area of the project.

230. The new national Civil and Commercial Code approved by Act No. 26994, recognizes the right of indigenous communities to possess and own the lands they traditionally occupy and such other lands as are suitable and sufficient for human development (art. 18). It also has a transitional rule (art. 9) providing that "The rights of indigenous peoples, in particular community ownership of the lands they traditionally occupy and such other lands as are suitable and sufficient for human development, shall be the subject of a special law". This is how the Congress accepted the demands and observations submitted by the indigenous organizations in the many consultative bodies that the special joint commission organizes for consultation on the reform.

#### **Reply to paragraph 26 of the list of issues**

231. As part of the policy that the national government has been pursuing since 2003 with indigenous peoples, focusing on a dialogue that will enable joint conception of national public policy, progress has been made in building universal public policies with an intercultural perspective. The main ones include: visibility and recognition; identity, social security (universal child allowance, pregnancy allowance, pensions, retirements, other social security programmes) bilingual and intercultural education, launching the "National Campaign against Racism in Schools", teacher training workshops and in middle schools, a revision of textbooks at primary level to tackle any stereotypes and prejudices that may be present, health and habitat.

232. More than 35 indigenous peoples live in all provinces of Argentina, representing 2.4 per cent of the population and 3 per cent of households (National Census of Population, Households and Housing 2010). The majority of the population and households are in urban areas. The province with the highest number of households in which one or more persons are recognized as indigenous is the province of Buenos Aires, followed by the Autonomous City of Buenos Aires, Salta, Córdoba, Jujuy, Santa Fe and Río Negro. However, in relative terms, the provinces with the highest population density — according to the proportion of the population claiming indigenous descent in relation to the total population — are Chubut (8.7 per cent), Neuquén (8 per cent), Jujuy (7.9 per cent) Río Negro (7.2 per cent), Salta (6.6 per cent) and Formosa (6.1 per cent). These figures coincide with the provinces with a significant presence of rural indigenous communities (INDEC: Census 2010, Table 5, p. 289).

233. Regarding level of education, 3.7 per cent of the indigenous population is illiterate, with the highest concentration in adult groups over 50 years of age. Meanwhile, in the population aged 10 to 19 the percentage drops to 1.6 per cent, which is indicative of a significant level of inclusion in the educational system.



234. Some 52.6 per cent of the indigenous population has health coverage, and the majority (75.2 per cent) has social security cover. Of the six provinces with the highest percentage of indigenous population, three have higher health cover than the national average: Chubut (64 per cent), Río Negro (57 per cent) and Neuquén (54 per cent). Meanwhile, cover in Salta (30.3 per cent), Jujuy (47 per cent) and Formosa (20.3 per cent) is below the national average.

235. Pension coverage of the indigenous population aged 65 and over indicates a significant level of inclusion: 89 per cent receive a retirement benefit or pension, according to the national growth of retirement or other pension coverage (from 70.2 per cent in 2001 to 93 per cent in 2010). The percentage is rising in the provinces of Chubut (91.2 per cent) and is declining between 2 and 7 per cent in the provinces of Formosa (82.5 per cent), Chaco (86.3 per cent), Jujuy (86.8 per cent) and Salta (87.4 per cent).

236. It should be noted that an essential requirement for access to rights, such as the national identity document, is provided for members of indigenous peoples, of whatever age, under a special regime that allows the procedures to be carried out without prior judicial information, under an administrative system that takes account of the agreement in the Federal Population Council and which is reflected in Decree No. 278/2011, extended until March 2017.

237. A noteworthy development with regard to political participation is Agreement No. 54/2013 of the National Electoral Court approving the programme to promote political and electoral participation by indigenous peoples, which assesses, proposes and adopts measures to foster the exercise of political and electoral rights by members of indigenous communities. In the preamble the Court states that under article 75, paragraph 17 of the Constitution, “the constitutional protection for the participation of indigenous peoples in the management of the interests that affect them is an aspect that clearly includes full exercise of citizenship and the various forms of political and electoral participation, through the direct and representative instruments of democracy under current legislation in the various institutional systems”. Without prejudice to other future actions, measures aimed at greater participation include the geographical identification of indigenous communities on the current electoral maps, in order to promote the establishment of polling stations that take account of the specific nature of each community; the designation of polling station authorities that are bilingual or selected from members of the community and the development of supplementary election materials in the language of the indigenous people concerned. Finally, the selection of proper voting facilities and — in view of the spirit and intent of the programme — the encouragement of members of all communities to take part.

238. INADI has a mechanism for receiving complaints under which it recorded six cases of discrimination against persons of African descent and 47 complaints related to indigenous peoples (in the areas of health, education and employment).

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