



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Fourth periodic report due in 2000**

**Addendum**

**ARGENTINA\***

[5 July 2002]

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\* For the initial report submitted by the Government of Argentina, see CAT/C/5/Add.12(Rev.1) ; for its consideration by the Committee, see CAT/C/SR.30-31 and *Official Records of the General Assembly, forty-fifth session, Supplement No. 44 (A/45/44)*, paras. 150-174.

For the second periodic report, see CAT/C/17/Add.2 ; for its consideration by the Committee, see CAT/C/SR.122 and 123 and *Official Records of the General Assembly, forth-eighth session, Supplement No. 44 (A/48/44)*, paras. 88 to 115.

For the third periodic report, see CAT/C/34/ADD.5 ; for its consideration by the Committee, see CAT/C/SR.303 and 304 and *Official Records of the General Assembly, fifth-third session, Supplement No. 44 (A/53/44)*, paras. 52-69.

The information submitted in accordance with the consolidated guidelines for the initial part of reports of States parties is contained in document HRI/CORE/1/Add.74.

The annexes to the present report submitted by the Government of Argentina may be consulted in the Secretariat files.

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## **I. INTRODUCTION**

1. This report has been prepared in accordance with the general guidelines regarding the form and contents of periodic reports to be submitted by States Parties, adopted by the Committee at its 85<sup>th</sup> meeting (sixth session) on 30 April 1991 and revised at its 318<sup>th</sup> meeting (twentieth session) on 18 May 1998 (CAT/C/14/Rev.1).

## **II. PART ONE: INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION**

### **Article 2**

2. With regard to the constitutional provisions that grant recognition to the rights protected by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and without prejudice to the information already provided in the core document of the Argentine Republic (HRI/CORE/1/Add.74), it is important to note that article 75, paragraph 22 of the amended Constitution of 1994 gave treaties precedence over laws and conferred constitutional rank on 11 human rights instruments, including the Convention. Under the amended Constitution the Convention enjoys constitutional rank, does not rescind any article of Part One of the Constitution, and must be considered as complementing the rights and guarantees recognized by that instrument. The wording of article 75, over and beyond what is expressly recognized by the national courts and the Supreme Court of Justice of the Nation, indicates with absolute clarity the possibility of its being invoked before the judicial authorities of the Republic.

3. In the judgment handed down in April 1995 in the appeal case of Girolodi, Horacio David and others the Supreme Court of Justice of the Nation stated as follows:

That the constitutional rank enjoyed, as already stated, by the American Convention on Human Rights has been established by the express wish of the constituent organ, under the conditions of its applicability (art. 75, paragraph 22.2), i.e. inasmuch as the said Convention is effectively in force at the international level and with particular regard to its effective application through case law by the competent international courts for its interpretation and enforcement.

It follows therefrom that the afore-mentioned case law must serve as a guide for the interpretation of the provisions of the Convention to the extent that the Argentine State has recognized the competence of the Inter-American Court to exercise jurisdiction in all cases relating to the interpretation and application of the American Convention. Consequently, this Court, as the supreme organ of one of the branches of the federal Government, is responsible so far as its jurisdiction extends for applying the international treaties to which the country has adhered on the terms set forth above, since otherwise the responsibility might fall upon the nation vis-à-vis the international community.

[...]

That it follows from the above that the solution hereby adopted will make it possible, from the viewpoint of the guarantees to be provided in criminal procedure, to honour to the full the commitments entered into in regard to human rights by the national State.

4. In this connection, in accordance with the doctrine set out in the decision of the Inter-American Court of Human Rights in the Barrios Altos case, it must be recalled that "the origin of the international responsibility of the State may rest on any act or omission of any of the powers or agents of the State (whether of the Executive, or of the Legislative, or of the Judiciary)".<sup>1</sup>
5. This has also been made clear in the concurring opinion of the Ministers of the Supreme Court of Justice of the Nation, Mr. Boggiano and Mr. Bossert, in the Acosta precedent, where those judges stated that the obligations stemming from international treaties and other sources of international law could not be affected "by reason of acts or omissions of its internal bodies, a question which does not lie outside the jurisdiction of this Court inasmuch as it can constitutionally circumvent it", a duty which they say applies to all judges of any rank and area of competence.<sup>2</sup>
6. To similar effect, the Supreme Court has determined that: "... harmony and concordance between treaties and the Constitution is a fundamental precept. This has been so determined with reference to the treaties which were given constitutional ranking and therefore cannot nor could not abrogate the Constitution since that would be a contradiction in terms incapable of being attributed to the constituent body, which may not be presumed to have lacked foresight (...) and thus it must be understood that the provisions of the Constitution and those of treaties have the same standing, are complementary and therefore cannot supplant or cancel one another ...".<sup>3</sup>
7. Similarly, the high court has pronounced in favour of the binding nature of decisions of the Inter-American Court of Human Rights as an instrument for interpreting the content of the international legislation, with backing contained in the words "under the conditions of its applicability". In this connection it has stated in the Acosta precedent that the case law of the international courts for the interpretation and application of conventions incorporated into the Constitution "must serve as a guide for interpreting the provisions of the conventions".<sup>4</sup>
8. Nevertheless, with regard to the recommendations of the Inter-American Commission, it has stated that on the principle of good faith which governs the conduct of States in the fulfilment of their international obligations maximum efforts must be made to respond favourably to the recommendations but this does not amount to establishing it as a duty for judges to give effect to their content, where it is not a question of decisions binding for the judiciary part of judgements representing a "guide for the interpretation" of the rights at issue in the specific case.<sup>5</sup>

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<sup>1</sup> Inter-American Court of Human Rights, Barrios Altos case, judgement of 14 March 2001, series C, No. 75, concurring opinion of Judge A.A. Cançado Trindade, para. 9.

<sup>2</sup> Supreme Court of Justice of the Nation, judgements 321:3555, considerations 15 and 16.

<sup>3</sup> *Ibid*, case of Analía M. Monges v. U.B.A., decision 2314/95, judgement of 26 December 1996.

<sup>4</sup> *Ibid*, Acosta case, consideration 10.

<sup>5</sup> *Ibid*, case of Roberto Felicetti *et alia*, under review, case No. 2813 (The Stockyard), F. 787 XXXVI, 21/12/00, judgement T.323.

9. Likewise, article 75, paragraph 23 of the amended Constitution of 1994 included among the powers of Congress:

"To enact and promote positive measures guaranteeing truly equal opportunities and treatment, with full enjoyment and exercise of the rights recognized by this Constitution and by the international human rights treaties in force, particularly with regard to children, women, the aged and persons with disabilities".

10. Again, article 43 of the National Constitution, introduced under the 1994 amendments, provides in the following terms for recourse to protective measures and habeas corpus:

"Any person may bring an urgent and rapid action for amparo (protection), provided no other, more appropriate judicial means exists, against any act or omission on the part of public authorities or individuals which immediately or imminently damages, restricts, impairs or threatens, in a manifestly arbitrary way, rights and guarantees recognized by this Constitution, by a treaty or by a law. In such case, the judge may declare unconstitutional the legal rule on which the injurious act or omission is based.

Such action against any form of discrimination and in matters relating to rights for protecting the environment, to competition, to users and consumers, as also to rights of general public concern, may be filed by the injured party, by the ombudsman, or by associations furthering such ends and registered in accordance with the law, which shall determine the requirements and modalities of their organization.

Any person may file such an action to obtain information on the existence and purpose of data concerning him or her stored in public registers or databanks, or private ones designed to supply information, and in case of falsehood or discrimination to demand the suppression, rectification, confidentiality or updating of such data. The secrecy of journalists' sources may not thereby be impaired.

When the right which has been infringed, restricted, jeopardized or threatened is that of physical liberty, or in case of unlawful worsening of the form or conditions of detention or in that of enforced disappearance of persons, an application for habeas corpus may be filed by the affected party or by any person acting on his behalf, and the judge shall take an immediate decision, even if a state of siege is in force".

11. The *amparo* procedure, as indicated by the wording of the Constitution, is characterized by its prompt and expeditious nature, complementing other remedies and not a stopgap. It is appropriate should there exist no other more suitable judicial channel, which means that the existence of other legal remedies does not preclude resort to *amparo* if those remedies are less calculated to provide the immediate protection needed.

12. It is an allowable interpretation that in this reference to the most appropriate judicial means the fact that the rule makes no mention of administrative channels amounts to not raising obstacles to the propriety of *amparo* on the grounds that there exist administrative remedies or that a prior administrative channel for complaint has not been exhausted.

13. Article 43 of the National Constitution therefore eliminates a legal and jurisprudential obstacle which used to hamper resort to *amparo* and which could be overcome – with difficulty – only by arguing that to use administrative means before appealing for *amparo* caused irreparable damage to the appellant.
14. The constitutional provision authorizes recourse against acts committed whether by the State or by individuals and the characteristics of such injurious acts – including omissions – remain what they have traditionally been in Argentine *amparo* law: injury, restriction, impairment or threat, with manifest arbitrariness or illegality.
15. The injurious act complained of in the appeal for *amparo* may concern rights and guarantees recognized by the Constitution, by a treaty or by a law, the amended Constitution of 1994 having set aside contrary opinions, whether doctrinal or based on case law, according to which *amparo* was inappropriate if the injury infringed rights stemming from international treaties, or from laws.
16. Likewise, the court hearing the *amparo* appeal may declare unconstitutional the legal basis for the injurious act or omission.
17. The *habeas corpus* provided for in the last paragraph of article 43 does not introduce much that is new in relation to Act No. 23.098 which deals with this legal institution, except to add to the cases where it is appropriate those of enforced disappearance of persons.
18. As regards entitlement to file the action, recognition has been accorded both to that of the person whose physical liberty is impaired and that of any other person acting on his or her behalf, rather on the lines of a class action.
19. Finally, the provision lays down that *habeas corpus* may be pleaded even when a state of emergency is in force, as has been established for a considerable time in the case law of the Supreme Court, superseding interpretations that denied its admissibility or propriety at times when a state of siege prevailed.
20. Concurrently, as already mentioned in the third report, on 13 September 1995 Argentina approved by Act No. 24.556 the Inter-American Convention on Forced Disappearance of Persons, depositing the respective instrument of ratification with the OAS Secretariat General on 28 February 1996.
21. Further, under the procedure provided for in article 75, paragraph 22 *in fine* of the National Constitution, the Convention was recognized as having constitutional rank by Act No. 24.820 of 30 April 1997, taking its place alongside the 11 human rights instruments mentioned in article 75 of the National Constitution, which already possessed such status.
22. Meanwhile, during the period under review, Argentina has ratified the following international human rights conventions: Inter-American Convention Against Corruption (9 October 1997), Inter-American Convention on International Traffic in Minors (28 February 2000), International Labour Organization Convention No. 169 concerning indigenous

and tribal peoples in independent countries (3 July 2000), Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (10 January 2001) and Inter-American Convention on the International Return of Children (15 February 2001).

23. Likewise, in the context of the fifty-sixth and fifty-seventh sessions of the Commission on Human Rights, the Argentine Republic urged the drafting of an international convention for the prevention and punishment of enforced disappearance of persons.

24. For this, account was taken of national experience: the work carried out by the National Commission on Enforced Disappearance of Persons (CONADEP), the putting on trial of the military juntas, and the investigation conducted by the State Prosecutor made possible the compilation of a body of important data which were placed at the disposal of the Working Group on Enforced or Involuntary Disappearances and enabled an appreciable number of cases in Argentina to be cleared up.

25. An evaluation was made in the light of the international mechanisms and it was concluded that, while the achievements of the Working Group had been very valuable, the growing number of cases reported pointed to the need for the preparation of a legally-binding instrument of universal scope for the prevention and punishment of enforced disappearances of persons.

26. On 8 February 2001 Argentina duly deposited the instrument of ratification of the Rome Statute of the International Criminal Court, approved by Act No. 25.390. This treaty establishes the competence of the Court to try crimes of torture, whether as crimes against humanity or as war crimes, together with other related offences such as enforced disappearance of persons.

27. In virtue of the principle of complementarity set forth in the Rome Statute, which assigns to States the primary responsibility for prosecuting crimes within the competence of the Court, States must ensure that offences defined in the Statute are described in their domestic legislation and made subject to appropriate penalties, taking due account of their gravity. Accordingly, an interdepartmental study commission has been set up by the Government to adapt the internal legislation to the provisions of the Statute and has prepared a preliminary draft law on international crimes. Included in this draft are the categories of crimes assimilated to torture as they are defined in the Statute, with the minimum changes necessary to adapt them to Argentine criminal law.

28. With regard to the inadmissibility of invoking exceptional circumstances to justify torture, as determined in article 2, paragraph 2 of the Convention, it may be recalled that in carrying out the afore-mentioned revision of the Constitution the constituent assembly summoned for the purpose and consisting of members elected by popular vote decided to include within its provisions, under chapter 8 (New rights and guarantees), the following provisions:

“This Constitution shall hold sway even should its observance be interrupted by acts of force against the institutional order and the democratic system. Such acts shall be irreversibly void.

Their authors shall be punishable by the penalty provided for in article 29, permanently disqualified for public office and excluded from benefits of pardon and commutation of sentences.



The same penalties shall be incurred by any who, through such acts, usurp functions provided for by the authorities under this Constitution or those of the provinces, and who shall be civilly and criminally liable for their acts. Those acts shall not be subject to prescription.

29. In the legal area, 8 July 1996 saw the promulgation of Act No. 24.600 (see Annex 1) on execution of custodial sentences. This act incorporates various proposals and recommendations put forward earlier by the Procurator for the Prison System.

30. The said law, which supplements the Criminal Code of the Nation, reflects an approach emphasizing constitutional guarantees, providing for full control by the court in the carrying out of the custodial sentence. It is based on a humanist concept respectful of human rights, affirming the perfectibility of human beings and the possibility of success in any attempt at reintegrating them into society as useful elements turning away from crime. It is on that principle and with that end in view that the enforcement of the custodial sentence is organized, tailoring the conditions in which it is served to the requirements of the post-1994 revised National Constitution, whereby national and international recommendations are incorporated into positive law.

31. Article 3 of this enactment provides explicitly that “the execution of the custodial sentence, in all its aspects, shall be subject to ongoing judicial control. The enforcement judge or competent court shall ensure compliance with constitutional provisions, international treaties ratified by the Argentine Republic, and those rights of convicted persons which are not affected by the conviction or by the Act.”

32. Likewise, article 9 of Act No. 24.660 provides that “the sentence shall be carried out without resort to cruel, inhuman or degrading treatment. Whosoever orders, carries out or tolerates such excesses shall be liable to the penalties provided for in the Criminal Code, without prejudice to others that may be appropriate to the case.”

33. The Act provides for treatment based on progressivity in the prison regimen, emphasizes individualized treatment and institutes guided and continuous transition from closed to open establishments, and introduces into the enforcement of the penalty a wide repertoire of alternative patterns which in the near future may develop into individualized penal sanctions. Noteworthy innovations in this area include the pre-release programme (arts. 35 to 40), the assisted liberty scheme, day prison (art. 41), night prison (arts. 42 to 44), domiciliary prison (arts. 32 and 33), the social rehabilitation centres (arts. 50 to 53) and the new role of the enforcement judge.

34. In the organizational and institutional area, the new penal system provides for a judge in charge of the execution of the sentence (art. 30), whose area of responsibility is defined in article 490 of the procedural code, to which has been added a new section regulating the enforcement of custodial sentences.

### **Article 3**

35. Extradition proceedings in the Argentine Republic are conducted in accordance with rules designed to ensure that the guarantee referred to in this article is honoured.

36. On 16 January 1997 there came into force Act No. 24.767 on International Cooperation in Criminal Matters (see Annex II).

37. Article 8 of this Act cites various circumstances that make extradition inappropriate, in the light of the guarantee of due process set forth in the National Constitution and considering the human rights of the wanted person. Paragraph 8 (e) stipulates that extradition shall not be admissible “should there be justified grounds for believing that the wanted person may be subjected to torture or other cruel, inhuman or degrading treatment”. This paragraph constitutes a response to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

38. As an example of the application of the Act in question, we may cite the case of an application for refugee status submitted in 1998 to the Refugee Eligibility Committee, a body set up in 1995 within the Ministry of the Interior and responsible for handling applications for recognition as refugees. It is composed of officials of the National Directorate of Migration and a representative of the Ministry of Foreign Affairs. The office of the United Nations High Commissioner for Refugees is also represented on the Committee, with speaking but not voting rights. Appeals by asylum seekers against decisions of the Eligibility Committee are dealt with by the office of the Under-Secretary for Human Rights of the Ministry of Justice and Human Rights.

39. In the above-cited case the applicant stated that, while he had been residing in the Argentine Republic, he and his wife had been arrested in response to a request for pre-trial detention from the courts in his country. The applicant’s State asked for its national to be extradited in order to try him for the crime of terrorism. The applicant pleaded that he was afraid of being convicted without being afforded the minimum guarantees of due process and of being subjected to torture. At first, the Eligibility Committee refused the applicant refugee status. That decision was appealed against by the applicant and the case was referred to the office of the Under-Secretary for Human Rights of the Ministry of Justice and Human Rights.

40. The Under-Secretary’s office produced a report in which it examined the question of whether the applicant had well-grounded fears of persecution for political reasons, made reference to a considerable body of information on the human rights situation in his country as also to pronouncements by the Inter-American Commission on Human Rights and Court of Human Rights and concluding observations of the Committee on Human Rights and the Committee Against Torture and, taking into account the provisions of article 3 of the Convention, determined that there were substantial reasons for believing that the applicant would be in danger of not being afforded the requisite guarantees of due process, together with minimum protection in regard to his physical integrity, this constituting the required grounds for not returning him to his country of origin.

41. Finally, the Ministry of the Interior upheld the appeal lodged and the foreigner concerned was granted refugee status in the Argentine Republic.

42. On receiving the request for extradition, the Argentine courts refused to grant it in view of the wanted person’s refugee status.

43. Some of the extradition treaties entered into by the Argentine Republic also recognize the principle enshrined in the Convention. Some examples are: the Treaty on Extradition and Judicial Assistance in Criminal Matters signed with Spain and approved by Act No. 23.708; the Extradition Treaty signed with Australia and approved by Act No. 23.729; and the Extradition Treaty signed with the Republic of Korea and approved by Act No. 25.303.

#### **Article 4**

44. As stated in previous reports, torture is characterized as a crime in articles 3, 5 and 144 of the Criminal Code of the Nation. These articles were incorporated into the Code by Act No. 23.097 of 1984.

45. Enumerated below are some provincial Constitutions containing provisions that refer to protection of human rights in general and of life and physical integrity in particular. Some of them make express reference to the crime of torture. As examples we may single out:

(a) Constitution of the Province of Chaco, adopted in 1957 and revised in 1994.  
Regarding treatment in prison and prohibition of torture, this Constitution says:

“Article 27. Prisons and detention centres exist for security and not to humiliate the inmates; they constitute centres for social rehabilitation, education and work. Spiritual help shall be made available and private visits shall be authorized to preserve and develop the inmates’ emotional ties and family relations.

The Province shall establish special facilities for women, juveniles, accused persons, minor offenders and persons simply under arrest.

Nobody may be subjected to torture or humiliation, nor to cruel, degrading or inhuman treatment, even on the pretext of security.

Officials who perpetrate or take part in such crimes or who are accomplices or accessories therein shall be placed under investigation and dismissed from the service they belong to, and shall be disqualified for life for public employment. Due obedience does not absolve from this responsibility. In such cases the State shall compensate for the damage caused.”

(b) Constitution of the Province of San Luis, revised on 23 March 1987.

“Article 14. Torture. Nobody may be subjected to torture, nor to cruel, degrading or inhuman treatment. Responsibility for any act of this kind falls upon the authority that commits or allows it. An authority which, through negligence in the performance of its functions, produces similar effects is also held responsible. Due obedience does not absolve from this responsibility. The State compensates for the damage caused. Officials whose guilt is proved in respect of the offences designated in this article are placed under investigation and dismissed from the service they belong to, without prejudice to the penalties to which they are liable under the law.”

- (c) Constitution of the Province of La Rioja, adopted in 1986 and revised in 1998.

“Article 19. Human Rights. All inhabitants of the Province are by their nature free and independent and have a right to defend their lives, freedom, reputation, moral and physical integrity and personal safety. Nobody may be deprived of his or her freedom except through a penalty imposed in accordance with a law antedating the act for which the trial was held and after sentencing by a competent judge.

No special governmental organizations which, on the pretext of security, infringe or violate human rights may be created. Nobody may be subjected to torture or to cruel, degrading or inhuman treatment. Responsibility for any act of this kind falls upon the authority that orders, consents to, executes, instigates or is accessory to it, and the State shall compensate for any damage that the act causes. Due obedience does not absolve from this responsibility.”

- (d) Constitution of the Province of Formosa, approved on 30 November 1957.

“Article 19. Any kind of ill treatment, torture or humiliation is prohibited, on pain of instant dismissal and without prejudice to the criminal liabilities incurred by any officials or employees who apply, order, test or consent to them.”

- (e) Constitution of the Province of Jujuy, adopted on 22 October 1986.

“Article 20. Right to personal integrity

1. Everyone has a right to respect for his or her physical, psychological and moral integrity.

2. Nobody may be subjected to torture, bullying, or physical or psychological harassment, nor to cruel, inhuman or degrading punishment or treatment. Anyone deprived of liberty shall be treated with the respect due to the inherent dignity of the human individual.”

## Article 5

46. As has been reported in other connections, the Argentine Republic adheres to the basic principle of territoriality of criminal law.

47. With regard to the cases being heard before Italian, Spanish, German and French courts for enforced disappearance of persons, it must be borne in mind that they concern acts occurring in our country which, in the majority of cases, were investigated and that those responsible were condemned or the proceedings were discontinued pursuant to laws enacted for the purpose, while other cases are being actively pursued.

48. During the year 1998, the then President of the Nation issued a Decree (111/98) refusing the request for judicial assistance presented in the case *Preliminary proceedings 108/96-I* conducted by Central Examining Court No. 5 of the National High Court sitting in Madrid (Spain).

49. President Menem's Government considered that to accede to requests from those courts would be detrimental to the legal authority of the Argentine courts which have been and are taking the appropriate steps, as well as violating the principle of double jeopardy, enshrined in the Constitution and universally accepted. It would also be injurious to the essential interests of Argentina which, in a spirit of solidarity, has put into effect a legislative and judicial solution that has made domestic pacification possible and that it is determined to maintain.

50. In the light of the arguments put forward no action was taken upon the requests for judicial assistance submitted by the authorities of Spain, Italy, France and Germany.

51. While those requests were not acceded to, nevertheless wherever the information that transpired from them might prove of interest for the cases being heard before the Argentine courts, or where the acts reported had not been investigated in Argentina, action was taken to transmit the information to the appropriate court.

52. By way of example, we may mention the application from Judge Baltasar Barzón for seizure of the assets of Antonio Bussi, which was rejected on the strength of Decree No. 111/98. Nonetheless, the assets in question were placed under the jurisdiction of the Federal Court of the Province of Tucumán.

53. In another such case, on 1 June 2000 the Italian courts made a formal application to be enabled to put on trial in Rome Guillermo Suárez Mason for involvement in the disappearance of persons under the last military government.

54. In response, the Argentine Ministry of Foreign Affairs sent the judge in the case an authorization for the "temporary transfer" of the ex-officer in order to stand trial in the Rome Criminal Court. However, Mr Suárez Mason refused to be transferred, sheltering behind the provisions of Act No. 23.707 approving the international treaty between the Republic of Italy and Argentina on criminal matters, article 12 of which stipulates that transfer has to take place with the consent of the accused.

55. Later, on 5 November 2001, the Embassy of the Federal Republic of Germany submitted a further request for extradition of the Argentine citizen, *Carlos Guillermo Suárez Mason*, who was wanted by the Court of First Instance of Nuremberg for the crimes of illegal deprivation of liberty, torture and aggravated homicide, against the person of the German citizen *Elizabeth Käsemann* or *Kasserman*.

56. The wanted person was extradited from the United States of America for the crime of aggravated homicide, among other acts, against *Elizabeth Käsemann* or *Kasserman*, to be tried in case No. 450, *Suárez Mason Carlos Guillermo: in re homicide and illegal deprivation of liberty*, which was heard in the National Appeal Court for Federal Criminal and Correctional Cases.

57. In view of the fact that the person named was wanted for acts that had been investigated by the Argentine courts, and for which he had been amnestied by the national executive in exercise of the powers conferred upon it by the National Constitution and confirmed by the Supreme Court of Justice of the Nation, to accede to the request for extradition would have been prejudicial to our

country's sovereignty inasmuch as it would have meant invalidating or setting aside decisions adopted by the legitimate authorities in virtue of powers stemming from the National Constitution, in addition to violating the principle of double jeopardy enshrined in that Constitution.

58. Accordingly, by Resolution 3446 of 15 November 2001, the request for extradition submitted by the Federal Republic of Germany was rejected.

59. Mention should also be made of the requests from France and Italy for extradition of the Argentine citizen Alfredo Ignacio Astiz.

60. On 13 July 2001 the Embassy of France submitted a formal request for extradition of the Argentine citizen *Alfredo Ignacio Astiz* to serve the sentence of life imprisonment passed on 16 March 1990 by the Paris Court of Appeals for alleged crimes of complicity in unlawful detentions followed by physical torture and complicity in unlawful abductions, in the course of which the persons unlawfully arrested, detained or abducted were subjected to physical torture. Astiz is wanted for responsibility in the kidnapping and sequestration of the French nuns *Leonie Duquet* and *Alice Domon*.

61. The application for extradition was filed by the Procurator-General of the Paris Court of Appeal.

62. The acts to which the French request refers are the same concerning which a variety of courts in our country have tried a large number of cases where final decisions were handed down, or cases where the legal presumption of non-punishability which – evidence to the contrary not being admitted – was established by Act No. 23.521 was invoked.

63. Furthermore, there exist records which show that the Argentine courts have already dealt with previous requests for assistance and arrest where Mr Astiz was wanted by the French courts for the same acts, and which were rejected.

64. The acts for which Mr Astiz was wanted were committed in our country, investigated by Argentine courts and judged by the responsible persons, resulting in the condemnation of ex-Admiral Massera in case No. 13, while Alfredo Ignacio Astiz was put on trial and discharged in the case designated *Navy School of Engineering (ESMA) acts reported to have occurred* by the National Appeal Court for Federal Criminal and Correctional Cases in pursuance of article 1 of Act No. 23.521.

65. By Ministerial Resolution No. 2548 of 9 August 2001 the extradition request was rejected, on the grounds that to accede to it would constitute a disavowal of the action taken by the Argentine courts which had exercised jurisdiction, as well as violating the principle of double jeopardy enshrined in the Constitution.

66. Concurrently, on 30 July 2001, the Embassy of Italy submitted a formal request for extradition of the Argentine citizen *Alfredo Ignacio Astiz*, who was wanted by the Court of Preliminary Investigation of the Rome Court for the crime of homicide aggravated by premeditation and ill-treatment of persons or having acted cruelly towards them, the victims being *Angela Maria Aietta*, *Giovanni Pegoraro* and *Susana Pegoraro*.

67. The acts complained of in the extradition request occurred in Argentine territory. Competence to investigate and adjudicate upon the offence and the procedural situation of the person concerned lies with the Argentine courts, in accordance with the principle of territoriality. Accordingly, to accede to the extradition request would be prejudicial to national sovereignty.
68. By Ministerial Resolution No. 2549 of 9 August 2001 the extradition request was rejected.
69. With that, as there was no legal case on record in which the wanted person had been investigated for the disappearance of Giovanni Pegoraro, Susana Beatriz Pegoraro and Angela Maria Aietta, it was decided, in the same administrative act, that a copy of the proceedings should be transmitted for information to the competent duty court, considering that the facts set out in the extradition request might amount to the commission of offences that had not yet been investigated by the Argentine courts.
70. Concomitantly, on 18 January 2002, the Embassy of Sweden submitted a formal request for the extradition of Alfredo Ignacio Astiz, who is wanted by the Stockholm Court of First Instance for the crime of kidnapping committed upon the person of the Swedish citizen Dagmar Ingrid Hagelin.
71. The acts for which the person named is wanted were investigated by the Supreme Council of the Armed Forces, which acquitted him on the grounds that the acts he was accused of were not proven.
72. Division II of the National Appeal Court for Federal Criminal and Correctional Cases reviewed the verdict and declared prescription of the right of action in respect of the crimes of aggravated deprivation of liberty and gross injury imputed to Alfred Ignacio Astiz.
73. It may be noted that the court concerned is keeping open the *interlocutory matter of search for and identification of Dagmar Ingrid Hagelin* until such time as new facts are added which may enable the victim's final fate to be determined.
74. To accede to the request for extradition would be prejudicial to our country's sovereignty, inasmuch as, jurisdiction lying with the Argentine Republic, its courts had charge of the case; it would also violate the principle of double jeopardy enshrined in the Constitution and given effect in articles 10 and 11 and concordant provisions of Act No. 24.767 on International Cooperation in Criminal Matters.
75. Also applicable in the case concerned is Decree No. 1581/01, which stipulates rejection of requests for extradition for acts occurring in the national territory or places subject to national jurisdiction.
76. Accordingly, by Ministerial Resolution No. 113 of 28 January 2002, the application for extradition was rejected.
77. As was stipulated in the above-mentioned administrative act, a copy of the proceedings was transmitted to the National Appeal Court for Federal Criminal and Correctional Cases for inclusion in the file on the *interlocutory matter of search for and identification of Dagmar Ingrid Hagelin*.

78. In this connection, on 5 December 2001 the then President of the Nation, Fernando de la Rúa, issued Decree No. 1581/01 establishing the doctrine that was to be applied to requests for judicial assistance or extradition presented by foreign courts. This Decree concerns only requests for legal cooperation presented by foreign authorities in cases being heard in other countries concerning acts that occurred in Argentina between 24 March 1976 and 10 December 1983 and confirms the discontinuance of criminal proceedings for offences covered by Acts No. 23.521 and 23.498 (see Annex III).

79. As regards the proceedings being conducted for the offence of abduction of minors born in captivity during the period 1976 to 1983, the national judiciary has in hand a number of investigations to elucidate this matter. This is because Acts No. 23/521 (Due Obedience) and No. 23.492 (Clean Slate), now overridden by National Congress Act No. 24.952, of 25 March 1998, expressly excluded from their area of application the offence of abduction of minors.

80. Currently there are 16 persons on trial for the offence of abduction of minors committed during the former de facto Government (1976-1983). The object of the proceedings is to find the people politically responsible for those crimes, i.e. those who gave the orders and created the network of cover-ups so that the stealing of babies could take place.

81. These proceedings can take place because when the military juntas were put on trial in 1985 only six cases were investigated out of the 200 or so that had occurred. As regards the military men who were not tried in the course of those proceedings, the Clean Slate and Due Obedience Acts did not cover abduction and change of identity of minors.

82. The year 1988 saw the reactivation in the Argentine courts of proceedings aimed at investigating the possible existence of a systematic plan for appropriation of children of “disappeared” persons during the last military dictatorship. With that in view, the Federal Judge of San Isidro, Mr. Markevich, arrested ex-General Jorge Rafael Videla as suspected leader in a systematic plan for the appropriation of children and their subsequent handing over to substitute families.

83. In June 2000 the Appeal Court in San Martín decided that Mr. Markevich was not competent to conduct this investigation and ordered that the case should be handed over to the Federal Judge Mr. Bagnasco, who is now dealing with it.

84. Those currently under trial are: Jorge Videla: First President of the de facto regime, who was arrested on 9 June 1998, is at present under house arrest, as provided for in the prison rules, in view of his advanced age, and is associated with ten cases of appropriation of minors; Emilio Massera: Commander-in-Chief of the Navy under the de facto Government, who was arrested on 24 November 1998. The judge hearing the case is trying him as intermediary in all the cases of child stealing that occurred at the Navy School of Engineering (ESMA); Rubén Franco: last Commander of the Navy during the dictatorship, who was arrested on 28 December 1998; Jorge Acosta: head of intelligence of the ESMA, who was arrested on 29 December 1998 after being on the run for two weeks; Antonio Vañek: Head of naval operations and President of the Legislative Advisory Commission that replaced the Congress of the Nation, who was arrested on 7 December 1998; Héctor Febres: Prefect who served at the ESMA and is alleged, after clandestine deliveries, to have handed over babies to substitute families, and who was arrested in



mid-December 1998; José Suppich: Rear-Admiral, former Head of the ESMA, who was arrested on 9 December 1998; Cristino Nicolaides: Last Army Commander-in-Chief under the dictatorship, who was arrested on 12 January 1999; Reynaldo B. Bignone: last de facto President, who was arrested on 20 January 1999; Omar Santiago Riveros; Juan B. Sasiain; Jorge Olivera Rovere; Jorge Luis Magnaco; Francisco Gómez, Teodoro Jofre and Policarpo Vazquez, who was granted release from custody by the Federal Court because over two years had elapsed during the handling of the case.

## **Article 6**

85. With regard to the provisions of this article, since January 1997 the Act on International Cooperation in Criminal Matters (see para. 36 above) has been in force in the Argentine Republic.

86. Article 1 of that Act stipulates that the Argentine Republic shall afford any State that asks for it the maximum possible help with the investigation, trial and punishment of offences within the jurisdiction of that State. The authorities involved shall make every effort to ensure that the proceedings are conducted with such dispatch that the assistance does not become useless.

87. Where there exists a treaty between the requesting State and the Argentine Republic, its provisions shall govern the assistance procedure. Without prejudice to that stipulation, the wording of such treaties shall be interpreted in accordance with the provisions of the Act, which shall apply to all matters on which the treaty contains no specific provisions.

88. The criterion for determining the competence of the requesting country with regard to the offence that gave rise to the request for aid shall be its own legislation. Should the offence also fall within Argentine jurisdiction that shall be deemed no bar to the provision of assistance.

89. Notwithstanding should the aid requested consist in extradition, the granting of the request shall be subject to the provisions of article 23 of the Act.

90. That article provides that it is for the executive to determine whether or not to grant the request for extradition. It may grant it provided that:

(a) the offence for which extradition is requested involves punishable conduct of significantly greater seriousness falling within the competence of the applicant State and lying outside Argentine jurisdiction; or

(b) the applicant State is in an obviously stronger position than the Argentine Republic to obtain proof of the offence.

91. Should the request be acceded to and extradition finally granted, the records of any proceedings being conducted in the Argentine courts shall be put on file. At the specific request of the applicant State, copies of the file and any evidence that has been collected shall be sent to it.

92. The Act on International Cooperation in Criminal Matters also provides for the possibility that the person wanted for trial may be an Argentine national. In such case, the person may choose to be tried by the Argentine courts, except where a treaty requiring extradition of nationals is applicable to the case.

93. The wanted person must have been an Argentine national at the time the act was committed and still be so at the time the choice is made.

94. Should the national exercise that option, extradition shall be refused. The national shall then be tried within the country, under Argentine criminal law, provided that the requesting State agrees thereto, waiving its own jurisdiction, and makes over all background information and evidence necessary for the trial.

95. Should the same person be wanted by several States for different offences, the Government shall determine which is to have preference, evaluating also the following circumstances:

- a) the degree of seriousness of the offences, according to Argentine law; and
- b) the possibility that, once extradition to one of the requesting States is granted, that State may then in turn agree to re-extradition of the wanted person to another such State.

96. Article 18 of the Act stipulates that the person extradited may not be accused, prosecuted or troubled, without Argentina's authorization, for acts prior to and separate from those constituting the offence for which extradition was granted.

97. Should the characterization of the act constituting the offence that gave rise to the extradition be subsequently modified in the course of the trial in the requesting State, the action may not be proceeded with unless the new characterization would have allowed extradition.

#### **Article 7**

98. Article 12 of Act No. 24.767 stipulates that refusal to extradite a national entails the obligation to put him or her on trial. Such trial shall take place provided the requesting State consents thereto and waives its jurisdiction. This recourse is accordingly not imposed upon the foreign country, to which it may well be of concern that the wanted person should not be tried in any other State.

99. The obligation to put the wanted person on trial when extradition is refused is confined strictly to the case of nationals; thus if extradition is not granted for any other reason, a trial in Argentina is not only not warranted but is inadmissible.

#### **Article 8**

100. Article 6 of Act No. 24.767 lays down that, for the extradition of a person to be admissible, the act giving rise to the proceedings must constitute an offence both under Argentine law and under the law of the requesting State, i.e. there must be double incrimination.

101. According to the article cited, the requirement of double incrimination is considered met if the punitive rules correspond, even if the non-penal provisions applicable to the category of offence differ. This provides a solution to the problem resulting from "blank" penal laws in regard to the principle concerned.

102. Argentina recognizes torture as an extraditable offence, provided that guarantees of due process are furnished and the requirements for granting extradition are met.

103. Extradition treaties that have come into force in recent years include: the Extradition Treaty concluded with the United States of America, approved by Act No. 25.126; the Extradition Treaty concluded with the Republic of Paraguay, approved by Act No. 25.302; the Extradition Treaty concluded with the Republic of Korea, approved by Act No. 25.303; and the Extradition Treaty concluded with the Eastern Republic of Uruguay, approved by Act No. 25.304.

### **Article 9**

104. Article 1 of Act No. 24.767 sets forth the principle of full and prompt cooperation.

105. In deference to that principle, the Act allows for cooperation even should the case fall within Argentine jurisdiction.

106. Should the aid consist in extradition, a specific decision is required regarding Argentina's interest in whether the offence should or should not be tried by a national court. The Act provides that the decision to grant extradition, and thereby to agree that the offence should be tried abroad and not within the country, must be taken by the executive (see art. 23).

107. If it is decided to go ahead with extradition and it is granted, the records of any proceedings under way in the Argentine courts shall be put on file and, if the applicant State so demands, it shall be sent copies of the file and any evidence that has been collected.

108. As an example of the application of Act No. 24.767 even when the alleged offences were committed prior to the entry into force of the Convention, we may mention to case of Mirko and Nada Sakic.

109. On 27 April 1994, the Government of Croatia requested the extradition of Mr. Dinko Ljubormir Sakic in order to place him at the disposal of the Croatian courts with a view to instituting criminal proceedings for the crimes, among others, of torture and murder, as also of war crimes against the civilian population.

110. According to the wording of the application, the wanted person had taken part, in his capacity as Vice-Commandant and Commandant of various concentration camps, in the execution of a large number of prisoners, some of them old and infirm, during the second world war.

111. The request was examined by the competent Argentine authorities, who noted that the extradition request met the formal requirements stipulated in the Act on International Cooperation in Criminal Matters, which was applicable to the case since there exists no convention on the matter between the Argentine Republic and the Republic of Croatia.

112. By Decree No. 583 of 15 May 1998 it was decided to grant the extradition requested and permission was given for the immediate handing over to Croatia of the naturalized Argentine citizen Mirko Sakic with a view to his being put on trial in the Zagreb Provincial Court, in accordance with the judgement announced on 4 May 1998 by the Federal Court of First Instance of Dolores, province of Buenos Aires.

113. Subsequently, on 11 May 1998, a further extradition request, concerning the same person, was received from the authorities of the Government of Yugoslavia. In this case, by Decree No. 619 of 22 June 1998, the application was refused as being based on the same acts for which Mr. Sakic was to be tried in Croatia.

114. On 24 July 1998 a parallel request was received for the extradition of his wife, Mrs. Nada Sakic, wanted by the Examining Court of the Belgrade District Tribunal on well-grounded suspicion that she had committed the crime of genocide.

115. Then again, on 30 July there came an extradition request from the Government of Croatia, saying that she was wanted by the Regional Court of the city of Zagreb because there were substantial grounds for suspecting that she had committed crimes against humanity.

116. It was deemed that the nature and characteristics of the acts alleged in both extradition requests warranted the conclusion that they concerned the same acts, discounting the dissimilarities in the characterization of the offences and the different degrees of precision of the stories told, which were to be expected considering the behaviour alleged. Such a situation is allowed for in article 15 of Act No. 24.767, which is applicable to cases where extradition for the same offence is requested by several States, one of which must be given preference depending on the circumstances of the offence.

117. The Directorate of Legal Affairs of the Argentine Ministry of Foreign Affairs ruled that preference should be accorded to the request from Croatia, but that both applications should nevertheless be sent to the responsible court, in view of the fact that the provisional arrest had taken place at the request of Yugoslavia.

118. Finally, by Decree No. 980 of 21 August 1998, it was decided to accede to the request for extradition of Mrs Nada Sakic submitted by Croatia on the grounds referred to above (see Annex IV).

### **Article 10**

119. There exist various clearly defined functions that must be performed whether by the police or by the prison staff and for which they must be specifically trained.

120. These functions are: general management, planning and supervision; direction, organization, guidance and supervision in the field; carrying out of activities in professional, sectoral and administrative spheres; control, guard and custodial duties; general support duties; and community relations.

121. The performance of these sets of functions must be of a sufficiently high standard to enable current needs to be met and plans for the future to be developed.

122. Certain requirements of internal consistency must be met in order to place activities on a methodical footing, keep individual rights and guarantees in balance with security needs, reconcile the demands of internees and their families with those of the community, and integrate prison work with the social environment in a coherent way, maintaining a flexible relationship with the judiciary and recognizing its role as supervisor of the enforcement of custodial sentences.

### **Training of police personnel, by respective provinces**

123. The provincial forces of the Federal Police are organized into two clearly differentiated groups: the officers and the non-commissioned officers or rank and file. These two groups are defined as such from the start of a police career, studying and receiving instruction at different types of school or institution.

124. For admission to schools for police officers men are required to be aged between 16 and 23 years and women between 18 and 23 years (or between 17 and 25 years for the Federal Police), be single, have completed secondary school, or at least the fourth year (in such cases the missing years can be made up at the police school) and meet certain minimum physical and mental standards. The duration of the course ranges from two to three years (three years for the Federal Police and termination of secondary studies; two years with prior secondary studies required for the province of Mendoza, for example).

125. For entry to the categories of non-commissioned officer or ranker candidates must, in most of the provincial police forces, have completed the course of primary studies, and be aged between 19 and 25 years, both for men and for women. Certain minimum mental and physical standards must also be met. Training courses last between three and six months and in some recent periods have been taken while the candidate is already performing operational functions.

126. According to a report by the Ministry of the Interior, 64.28% of members of the security forces in the country as a whole have completed primary studies. Another 31.73% have had full secondary education and only 3.60% have undertaken tertiary studies (university or equivalent advanced level).

127. In the police force of the province of Buenos Aires, 2% of the staff have finished university and 22% secondary school.

128. The main specialized study centre for the Federal Police is the University Institute, where seven four-year degree courses and three specialized training courses are given. This centre was established in 1977 with the title of Higher Academy of Police Studies. It operates under the supervision and control of the Ministry of Education of the Nation. The Federal Police have notified moves to make promotion to the rank of superintendent conditional on obtaining a university qualification in law.

129. The biggest problems regarding the specific education and instruction of the security forces arise in the provincial police forces.

130. Regarding the request addressed to police organizations, both those of the provinces and the Federal Police, for information on the education and training of police personnel in human rights and specifically with regard to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, a distinction must be drawn between the training of persons embarking on a police career and the advanced training of staff belonging to the force.

131. The training programmes include in general within their respective curricula subjects slanted towards the study of human rights.

132. The Argentine Federal Police, together with the police organizations of the provinces of Neuquén, Salta, San Juan, La Pampa and Río Negro, include in their various curricula subject matter connected with the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

133. It is important to mention that, in the light of the survey conducted with a view to the preparation of this report, the police authorities of the province of Entre Ríos have approved in principle, and will be giving consideration to, the inclusion of specific subjects concerned with prevention of torture and other cruel, inhuman or degrading treatment or punishment. This is independent of the fact that the organization concerned provides general training in human rights.

134. On the other hand, the responsible authorities of the Tucumán Higher Police School have reported that only refresher “talks” on criminal law and criminal procedure are held, showing that there are weaknesses in the human rights training of police staff.

135. Once they have been through the training course, which generally lasts between two and three years, the staff of the police forces of the provinces of La Pampa, Neuquén, Río Negro, San Juan and Chaco and of the Argentine Federal Police receive regular ongoing basic and advanced training through various programmes of in-service instruction, regular courses and seminars.

136. The situation described above is clearly illustrated in the following extracts, reproduced word for word from the reports drawn up by the provinces:

*Province of Chaco*

137. The police of the province of Chaco took part from 11 to 13 May 1998 in the symposium on “Training of Police Trainers” organized by the Office of the Under-Secretary for Human and Social Rights (Ministry of the Interior) in the city of Buenos Aires with the cooperation of the Office of the United Nations High Commissioner for Human Rights in connection with the United Nations Decade for Human Rights Education (1995-2004).

138. The police training curriculum planned for the year 2001 provides, under the heading of legal matters, for workshops on the following subjects: human rights as basic to the role of the police; legal framework of human rights at the international, national and provincial levels; provincial Act No. 4625/99 (medical examination of detainees); basic principles on the use of force and firearms by law enforcement officials; and code of conduct for law enforcement officials.

139. In connection with the information activities during the years 1999 and 2000 at the Higher Police School of the Province of Chaco, a printed edition was produced of the basic principles on the use of force and firearms by law enforcement officials and the code of conduct for law enforcement officials and was distributed to the senior and subordinate staff of the institution.

*Province of Río Negro*

140. In 2001 the course for trainee officers and police staff included a seminar on security, democracy and human rights conducted on an interdisciplinary basis under the public administration and political science programmes, with the participation of professionals from the national universities of Quilmes and Comahue.

*Province of San Juan*

141. At the Dr. Francisco Narciso Laprida School for Non-commissioned Officers and Police Staff the advanced training courses conducted for junior staff comprise a curriculum with course content in the socio-cultural-humanistic, legal and psycho-physico-social areas and elements of constitutional law, criminal law and procedure, police ethics and police legislation, where human rights issues inevitably come under consideration.

*Province of Buenos Aires*

142. In the various ministries and police organizations a number of planning mechanisms have been put into operation with a view to giving effect to the principles and action strategies worked out by the Interdisciplinary Committee for Technical and Professional Analysis of Public Security Matters, which among the various features of the Tactical, Strategic and General Reformulation Plan (PROTEGER) has set forth within the area of police education and training the following objectives, based on the development of mechanisms for cultural change: (a) to foster a new work ethos; (b) to develop police expertise and training; (c) to optimize the comprehensive development of operational leadership; and (d) to enhance civic involvement and integration.

143. In the light of its activities, the above-mentioned Committee found the situation to be such as to make it essential, for progress towards the assigned objectives, to reformulate the basic and specialized training curricula so as to produce a type of police official whose performance would be characterized by efficiency and transparency.

144. The rationale for the measures recently put into effect is that proper training fits the staff to respond appropriately to the various requirements of their work, in accordance with the constitutional principles outlined in article 16 of the National Constitution and article 103, paragraph 12 of the Basic Statute of the Province.

145. In pursuance of the above principles, the curricula of the various basic and specialized training centres include subject matter relating to constitutional law and supranational provisions contained in the Constitution.

146. The Office of General Coordination has circulated material designed to raise the awareness of police personnel regarding their role in assisting the judicial authorities, the treatment of persons housed on police premises, and matters concerning juveniles.

### **Legal sphere of action of police forces**

147. The unlawfulness of torture and other cruel, inhuman or degrading treatment or punishment is expressly covered in the general rules or instructions concerning the duties and functions of those serving in the police forces of the provinces of San Juan, Misiones and Entre Ríos.

148. This said, it is noteworthy that all the provisions concerned with organization, assignment of duties and functions or the disciplinary codes of the various police bodies refer expressly to higher ranking instruments such as the National Constitution, the international treaty provisions incorporated into it, the provincial constitutions, the Criminal Code of the Nation and the provincial codes of criminal procedure. The existence of those express references amounts to indirect inclusion of the ban on torture and other cruel, inhuman or degrading punishment or treatment in the rules governing police activities.

149. The same applies to all those police institutions whose rules do not contain the prohibition in question, if they do so in general terms by defining offences such as: failure to afford detainees the safeguards provided for in the regulations in force with regard to their treatment, their safety or the respect due to them; using the regulation firearm with a bullet in the chamber in normal conditions of service where there is no such need to keep it loaded; unwarranted use of weapons or violent procedures in the treatment of prisoners, or in order to control or escort arrested or detained persons; failing to search detained persons or allowing them to be searched without the formalities prescribed by law or regulation or not complying with those formalities in the seizure or return of money or confiscated items; to have been sentenced to an enforceable penalty for wilful wrongdoing incompatible with police functions; offences against the life, liberty and property of persons; failure to adopt at any time or place, when circumstances so require, the appropriate police procedure for maintaining public order and preventing or stopping the commission of offences.

150. Any such behaviour is classified as a serious or very serious breach of discipline and the penalties prescribed for such neglect of the duties and functions of police personnel range from arrest and suspension to separation from the service whether by relief from duties or by dismissal.



	Training of police personnel	Legal framework for police conduct		
		Express mention	General rules covering such conduct	Administrative penalties
Argentine Federal Police	For both senior and junior personnel. Ongoing training.	No express provision outlawing torture and other ill-treatment.	Police Organization Act. Personnel Act and its implementing regulations.	Penalties provided for.
Buenos Aires	For both senior and junior personnel. Ongoing training.	No information supplied.	No information supplied.	No information supplied.
Río Negro	For both senior and junior personnel. Ongoing training.	No express provision banning torture and other ill-treatment.	Art. 71 C.g characterizes as breaches of professional ethics such abuses of authority as do not amount to offences. Art. 72 A.c stipulates that detainees must be afforded the safeguards provided for in the regulations with regard to their treatment, their safety or the respect due to them.	Penalties provided for.
San Juan	For both senior and junior personnel.	Police organization Act. Special Act on rights and duties of police personnel.		Penalties provided for.
Salta	In the curricula. There also exist continuing basic, advanced and refresher training programmes.	No express provision banning torture and other ill-treatment.	Police Personnel Act No. 6193/83, Art. 30.	Penalties provided for.
Neuquen	In the curricula. There also exist ongoing courses.	No express provision banning torture and other ill-treatment.	Police Organization Act. Police Disciplinary Regulations.	Penalties provided for.
Entre Ríos	No curricular material on the subject.	General police regulations. General regulations for detainees.	—	Penalties provided for.
Tucumán	No curricular material on the subject.	No express provision banning torture and other ill-treatment.	Police Disciplinary Regulations, Art. 12	Penalties provided for.
MISIONES	For both senior and junior personnel. Of a general nature.	No express provision banning torture and other ill-treatment.	Police Disciplinary Regulations	Penalties provided for.
La Pampa	For both senior and junior personnel.	No express provision banning torture and other ill-treatment.	Provincial Law No. 1034. Police personnel regulations for La Pampa, arts. 62 and 63.	Penalties provided for.
Chaco	For both senior and junior personnel. Ongoing training.	No information supplied.	No information supplied.	

### Investigation of occurrences, acts or omissions that may entail disciplinary responsibility

151. The police authorities that responded to the request for information put out with a view to the preparation of this report intimated that they have internal regulations providing for action to determine all the circumstances and collect the evidence needed to elucidate the commission of the act and identify those responsible.

152. With regard to internal investigations, the data set out in the following table have been extracted from the reports submitted by the various police authorities.

	Administrative inquiries initiated			Status of inquiry		Results of completed inquiries	
	By police authority	By judicial authority	Total	In progress	Completed	Set aside *	Punitive action
Argentine Federal Police	–	9	9	3	6	5	1
Chaco	61	–	61	32	29	28	1
Río Negro	Not specified	Not specified	40	–	40	23	17
La Pampa	Not specified	Not specified	47	–	47	16	31
San Juan	4	–	4	–	4	3	1
Salta	149	15	164	65	99	28	71
Entre Ríos	15	25	40	16	24	15	9
Tucumán	25	–	25	18	7	7	–

\* Note that the reasons for shelving an internal administrative inquiry relate to the dismissal of proceedings against the official under investigation, but the figures in this column also include inquiries that ended in failure to identify the police personnel responsible.

153. From study and analysis of the data supplied and from the specific internal regulations in regard to administrative inquiries the following conclusions can be drawn: the various provincial police authorities of the Argentine Republic present a wide range of contrasting situations and this is due not only to budgetary or economic circumstances but to inadequate conceptual underpinning in the administrative organization relating to the rules that govern them.

#### *Training of prison personnel*

154. The training of prison personnel follows two mutually complementary patterns, namely:

- (a) systematic training, which takes place at the basic instructional level and in the pre-established general courses;
- (b) continuing training, which constitutes a process of updating of staff skills, consisting in participation in conferences, courses and various training activities, not conducted on any periodic basis.

155. The aim is that staff training should not be confined to imparting knowledge but, in view of the nature of the tasks they perform and their relations with the prison inmates, should also extend to ethical and disciplinary aspects.

156. The staff within their varying grades receive their systematic training at the institutes set up for that purpose, namely: the National Prison Service School, the School for Non-commissioned Officers of the Federal Prison Service, which trains junior staff, and the Higher Academy of Prison Studies, which trains senior staff. To coordinate staff training a Directorate of Staff Training Institutes has been set up.

157. Within the Federal Prison Service, for the training of recruits who will be passing out as non-commissioned officers, the curriculum of the Department of Humanistic Studies currently includes the subjects "Fundamentals of Ethics" and "Applied Ethics and Human Rights", whose content in its minimum form covers topics such as: the American Declaration of Human Rights, the American Convention on Human Rights, Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials.

158. Coverage is given under those headings to the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Note that these subjects are taught during the second year of training.

159. The authority concerned has also reported that the School for Non-commissioned Officers conducts theoretical and practical recruitment courses for non-commissioned officers, and has given particulars of the academic content of the subject "Technical aspects of prison procedures", which includes the study of rules relating to relations with and treatment of prisoners and to human rights.

160. Human rights have been taught as an extracurricular subject since 1999 in a course whose contents include: the prohibition of torture in the National Constitution, international standards, imprescriptibility and due obedience.

161. As regards the advanced courses for non-commissioned officers with the rank of warrant officer, fifth and fourth grades, studies in the area we are concerned with have been stepped up since 1998. The course content includes in particular: rules concerning torture in international law, and analysis of the following international instruments: Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; Resolutions of the General Assembly; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Code of Conduct for Law Enforcement Officials; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; American Convention on Human Rights; and Inter-American Convention to Prevent and Punish Torture.

162. In the training effort for officials aimed at preventing human rights violations within the prisons, the subject of penal enforcement law currently features on the curriculum.

163. Special mention must be made of the recent inclusion of the subject of human rights as an extracurricular assignment.

### Legal scope of action of prison staff

164. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the corresponding penalties are laid down in Act No. 24.660, in the General Regulations on Accused Persons (Decree No. 018/97), in the Disciplinary Regulations for Prison Inmates; in the Regulations Establishing the Disciplinary Code (Decree No. 1523/68) and in the Code of Conduct for Law Enforcement Officials (*Boletín Penitenciario* No. 1625/84).

165. The administrative penalties provided for under the internal rules of the Federal Prison Service for misconduct by prison staff characterized as very serious are suspension, discharge, termination and relief from duty.

166. Investigation of occurrences, actions or omissions that may involve disciplinary responsibility

	Administrative inquiries initiated			Status of inquiry		Results of completed inquiries	
	Total	By judicial authority	By prison service authority	In progress	Completed	Set aside *	Punitive action
Federal Prison Service	10	–	10	5	5	4	1
Cordoba	10	7	3	4	6	6	–
Santiago del Estero	1	–	1	–	1	1	–
Catamarca	2	1	1	2	–	–	–
Entre Ríos	1	–	1	1	–	–	–
San Juan	1	–	1	1	–	–	–
Jujuy*	5	–	5	–	–	–	–
La Rioja	No information supplied.						

\* Only the number of inquiries initiated was reported, without particulars of results.

### Continuing Training and Development Programme for Officers and Non-commissioned Officers of the Federal Prison Service, organized by the Office of the Under-Secretary for Prison Policy (2001)

167. The aim of this programme is to upgrade the training of Federal Prison Service staff to university level. It is taking a twofold approach towards raising the level of academic training of the human resources of the service: (a) a study on the feasibility of setting up a university college; and (b) arrangements with public and private universities in order to afford serving staff opportunities for attaining university level.

168. The specific objectives of this programme are:

(a) to conduct the requisite studies for determining the feasibility of setting up a university institute attached to the Federal Prison Service with the aim of progressively raising the training of prison staff to university level; and

(b) matching the current demand for university training of the human resources of the service with the supply of teaching services available in public and private universities, in order to promote access to study programmes relevant to prison career development.

169. The effective achievements and activities of the programme are as follows:

(a) comparative study of background data on institutions, as of 15 May 2001, reviewing the general characteristics and distinctive features of the university institutes studied and presenting practical conclusions and recommendations concerning their strengths and weakness so as to help determine the viability of the proposal to set up the university institute for the Federal Prison Service and the steps to be taken for its realization;

(b) analytical and synthetic guide to current policies and practices in the Ministry of Education and the National Committee on University Evaluation and Accreditation (CONEAU), as of 24 April 2001, for guidance in the finalization of the project;

(c) study of the current demand for university training of the human resources of the service, as of 5 June 2001, for guidance in identifying a source of university teaching expertise that is suited to the needs, regionalized, and economically and geographically accessible for the staff; and

(d) signature of the first agreement for cooperation with the university institute of the Argentine Federal Police for research and development, education and training of human resources and provision of technical services jointly by the two institutions.

### **Project for a revised training curriculum for the prison service**

170. Activities under this project hinge on the conduct of a process of revision and updating of current curricula for the initial training of prison officers and an evaluative study of the teaching body responsible for their development, with the central objective of producing a newly designed curriculum for career professionals, geared to the provisions of the draft personnel Act.

171. The specific objectives of this project are:

(a) to review and update the current curricula of training establishments for the prison service; and

(b) to design a new curriculum structure compatible with the single-scale professional career structure proposed in the new draft Federal Prison Service personnel Act.

172. The achievements of this project have consisted in the revision of the curricula and the design of the new curriculum structure, in implementing which technical assistance will be provided by the National Institute of Public Administration in connection with the modernization of the State championed by the Head of Government.

### **Project on design and organization of the continuing training system**

173. The essential idea of this project is to devise and organize a system of continuing training for the human resources of the Federal Prison Service. This system will be governed, through mechanisms for continuous observation and evaluation, by the specific demands and needs for refresher training and professional development of the managerial and junior staff of the service, which will serve as a template for the preparation of general and specific programmes. The training activities will be conducted by teaching institutions of recognized competence in the authorized subjects of study.

174. The objective of this project is to organize and put into operation the Continuing Training System of the Federal Prison System (SISCAP), with the aim of strengthening and modernizing the professional development of its human resources.

175. As regards the results of the project, a series of pilot training programmes on various subjects addressed to officers and non-commissioned officers has been launched in the light of the demand survey conducted by the Under-Secretary's Office, and training courses have been developed for Government negotiators on such topics as negotiation and conflict resolution, public ethics, strategic intelligence, disaster prevention, etc.

176. A project in the planning phase is the training programme for prison governors and supervisors which will be conducted regularly as from the academic year 2002, with the objective of developing the managerial capabilities of the senior officials who perform, or will be performing in the near future, directing functions within the institution.

### **National civic education and violence prevention programme**

177. This programme, an initiative of the Office of Crime Policy and Prison Affairs of the Ministry of Justice and Human Rights, has been put together by a technical team which includes the Minister's Advisory Unit, the National Directorate of Mediation and Alternative Conflict Resolution, and the National Directorate of Crime Policy.

178. The prime objective of the national civic education and violence prevention programme is to develop strategies for intervention, within the school environment, in the three key areas of prevention, resolution and containment of conflictual and violence-fraught situations, thereby committing the educational community to its share of responsibility in the prevention of violent acts and fostering the development of skills based on social support for mutually respectful and democratic coexistence.

179. The school environment constitutes a training ground for learning the principles of respect, equality and tolerance, and this socializing process is accomplished through the vital experience of coexistence in a community animated by those principles. If it is to train citizens, school must itself provide a foretaste of a democratic, just and participatory order.

180. The work of designing support material appropriate to the content of the programme has been completed and it is planned to conduct a pilot experiment in the locality of Lomas de Zamora.

*Courses organized by the Training, Promotion and Dissemination Unit of the Office of the Under-Secretary for Human and Social Rights of the Ministry of the Interior*<sup>6</sup>

181. From 30 June to 4 July 1997 a human rights course for senior police staff of the Patagonian region was given in the town of Viedma, province of Río Negro. It was attended by 47 senior officers of the police forces of Río Negro (35), Neuquén (5), Chubut (3), Santa Cruz (2) and Tierra del Fuego (2). The objectives of the course were to review those national and international rules in force in the human rights field which are important for the work of police officials and understand the specific role of the police in the prevention of violations and the protection of human rights. The majority of the participants were top-ranking officers attending voluntarily, including superintendents, inspectors and directors of police training institutes. The course content included consideration of regional problems presented at a forum where police officials taking part made presentations on topics that they considered important, such as indigenous people (Río Negro) and community policing (Chubut). Also present were a representative of a non-governmental organization and the Director of the Argentine Federal Police Centre for Care of Victims. Recordings made of the presentations will be processed by the Neuquén police for the production of a publication which will then be circulated among the respective police forces.

182. On 6 March of the same year a human rights training seminar for police and police trainers of Río Negro was held in Viedma. The objective was to promote knowledge of human rights principles and their relationship with police duties. It was attended by 30 police officials and 15 teachers from police training institutions.

183. On 22 April a seminar entitled "Inter-American Human Rights Protection System" was held in Concepción del Uruguay, province of Entre Ríos. It was attended by judges, prosecutors and assigned defence counsel of the criminal courts. The objective was to make known the Inter-American Human Rights Protection System and discuss the international responsibility of the State in that area. On 23 April a similar meeting was held in Paraná.

184. On 6 and 7 May a seminar entitled "Inter-American Human Rights Protection System" took place in the province of Mendoza. It was held for advocates and its objective was to promote understanding of the significance and the implications for professional practice of the assignment of constitutional rank to human rights treaties. Seventy professionals from the College of Advocates of the province were able to update their knowledge.

185. From 12 to 15 May the second seminar on the prison system and human rights for officials of the Federal Prison Service, prosecutors and judges was held in the city of Buenos Aires. Those present included foreign specialists. Its purpose was to review the conflict-fraught aspects of prison conditions and promote correct interpretation of constitutional provisions and the application of human rights standards in relation to the situation of persons deprived of liberty. Up-to-date knowledge was imparted to 60 persons involved with prison problems, who trained in workshops set up for the purpose.

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<sup>6</sup> Since December 1999 this Office has been operating under the authority of the Ministry of Justice and Human Rights.

186. From 30 June to 4 July, a “Human Rights Course for Senior Police Staff of the Patagonian Region” was held in Viedma, province of Río Negro, with the participation of international police experts in human rights. The participants reviewed the current national and international human rights legislation relevant to the work of police officials and inquired into the specific role of the police in the prevention of violations and the protection of human rights. Refresher training was given to the 47 senior police officials of the Patagonian provinces who took part.

187. The “Human Rights Course for the Public Attorneys’ Office of the Province of Salta” was held on 11 and 12 July. The participants were prosecutors and defence counsel of the provincial judiciary. The purpose was to learn about the functioning of the Inter-American Protection System and review the American Convention on Human Rights; refresher training was given to 36 prosecutors and assigned counsel of the provincial judiciary.

188. From 10 to 12 November there was held in La Plata, province of Buenos Aires, the “Human Rights Seminar” addressed to judges and advocates, with international experts in attendance. Discussion centred on the responsibility of judges and magistrates in the application of human rights standards and on recommendations and decisions of the inter-American human rights bodies.

189. In 1998 the National Directorate of Promotion of the Office of the Under-Secretary for Human and Social Rights, which was then attached to the Ministry of the Interior, conducted a television and radio campaign to publicize the Universal Declaration of Human Rights.

190. Copies of the Universal Declaration were produced and distributed in educational establishments and other public premises.

191. Informal programmes of human rights education were conducted with governmental bodies and non-governmental and international organizations with the aim of training public officials (employees of the national and provincial public administration) in the theoretical and practical aspects of human rights.

192. Under the cooperation agreement between the Argentine Government and the Office of the United Nations High Commissioner for Human Rights training was given to law enforcement officials (police and security forces, judges, etc.).

193. Cooperation and technical assistance agreements were signed with national and private universities in a large part of the country, and joint activities were developed.

194. Through the Federal Human Rights Council the proposal to conduct activities in connection with the United Nations Decade for Human Rights Education was extended to cover the whole interior of the country. The provinces of Mendoza, Río Negro, Neuquén, Salta, San Luis, Chaco, Santa Fe, Entre Ríos, Buenos Aires and La Rioja took part.

195. From 11 to 30 May 1998 a seminar on “Training of Police Trainers” was held in Buenos Aires. It was addressed to senior officers and responsible staff of police training institutions who had had previous training on the subject. The participants included international experts and professional staff of the National Directorate of Promotion of the Office of the Under-Secretary for Human and Social Rights of the Ministry of the Interior. In attendance were 15 participants from various police organizations: the Argentine Federal Police and the police forces of the provinces of



Río Negro, Santa Fe, Chaco, Neuquén and Chubut. The proceedings centred on the inclusion of human rights topics in the curricula of police training institutes for officers and non-commissioned officers, rapprochement between police and community, and the institutional ethos in police force organizations.

196. In May the first meeting with a view to forming a national team of human rights trainers for police took place in Buenos Aires, with the cooperation of the Office of the United Nations High Commissioner for Human Rights.

197. On 30 October a human rights course for senior police staff was held in San Luis, capital of the province of San Luis. It was organized by the Office of the Under-Secretary for Human and Social Rights and the Office of the Under-Secretary of State for Institutional Relations of the Ministry of the Interior, Education and Justice of the province of San Luis. It was addressed to senior officers of the provincial police and was attended by 62 officials. Contracts were issued to international experts from the National Police Force of Spain and a superintendent of the Río Negro police who had received prior training.

198. In all those cases copies were distributed of the human rights conventions with constitutional status and a folder of documents bearing on the human rights responsibilities of the security forces (Code of Conduct for Law Enforcement Officials, rules on the use of firearms, and rules for the treatment of delinquents and prisoners). The presentations were always complemented by workshop activities and discussion groups on problem situations.

*Activities organized by the Department of Crime, Prison and Social Rehabilitation Policy of the Ministry of Justice and Human Rights*

199. In 1997 a training exercise was held on the treatment model "Teaching Methodology for Socialization". Provision was made for systematic training of personnel with a view to the establishment and effective application of the model in areas equipped for its implementation.

200. In the same year, as one of the technical training activities for prison staff, study tours were arranged for staff of various grades and levels of seniority to countries where they were able to improve their skills and observe the efforts deployed by other prison administrations.

201. These teaching activities were supplemented by studies in Spain, Italy and France for all the senior officers who had graduated from the course corresponding to the grade of head warder.

202. The annual courses corresponding to the grades of principal assistant and head warder were held at the Higher Academy of Prison Studies. An instructors' course was started at the "Colonel Rómulo Pérez" School for Non-commissioned Officers.

203. On 21 October 1997 an agreement was signed between the Ministry of Justice and the United Nations Information Centre (UNIC) for Argentina and Uruguay. Various basic and advanced training and information activities were launched for the benefit of the staff of the Federal Prison Service, as also of prisoners awaiting trial or convicted. To that end the UNIC provides information material (brochures, books, magazines, videos, etc.) concerning human rights, education, crime prevention, drug dependence and drug trafficking, migration, social development, etc. This will supplement the bibliographical material in the libraries at the study centres of the

Federal Prison Service and of the various prison units for use by their inmates. It is also planned to give lectures and courses with an eye to reinforcing the socializing function of the centres by offering an extensive menu of training and information material.

204. A refresher training course was held for the multidisciplinary team of the staff of the Federal Prison Service. It was conducted as part of the project "Support for the Argentine Prison System" financed by the European Union and was held at the Higher Academy of Prison Studies, where specially selected personnel came to attend it. Throughout the course various aspects of criminological and prison work were studied in depth and the participants were introduced to the model of therapeutic community as theoretical basis of the methodology.

205. In 1998 MERCOSUR held its First Forum on Criminology and Crime Policy. It was held at the Faculty of Law of the Federal University of Río Grande do Sul, in the town of Porto Alegre. It dealt with items concerning, among other things, child and youth criminology, victimology, international criminal and penal cooperation, organized crime and environmental criminology.

#### *Medical staff*

206. The responsibilities of the staff physician of a penal institution are spelt out by the International Council of Prison Medical Services in the so-called "Oath of Athens" which lays down, among other things, the following obligations: not to authorize or approve any corporal punishment; to respect the confidentiality of any information obtained in the course of professional relations with imprisoned patients; and to base medical judgements on the needs of the patients and accord them priority over all non-medical aspects.

207. The role played by the physician of a prison establishment is dual: on the one hand he is the private physician of the prisoners, and on the other the advisor to the Director of the Unit, while at the same time his own responsibility is that of a health and sanitary official.

208. It would be highly desirable for the above-mentioned functions to be performed by different physicians, but this is not always possible and we must accordingly be alert to situations of incompatibility and conflicts of interest that may arise. In this regard it must be borne in mind that the physician's primary and essential function is to be a private doctor acting at the request and on behalf of an imprisoned patient.

### **Article 11**

209. With regard to rules and instructions for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, reference is made to the information under article 2 concerning the adoption of Act No. 24.660, which regulates the enforcement of custodial sentences (see para. 29 above).

210. This enactment incorporates many principles that make it highly flexible in its dynamics, amenable to implementation, respectful of regional legislation, institutions and socio-cultural patterns, with firm grounding in national tradition, the major recommendations issued by the United Nations, and projects and laws in force in other countries, not to mention its broad human rights

perspective, its effective correlation with the criminal and procedural legislation, meticulous coordination with the enforcement judge and the incorporation of an ample catalogue of alternative sanctions as a forerunner to subsequent individually tailored penalties.

211. Concurrently, Decree No. 303, issued on 26 March 1996, approved new regulations applicable to accused persons housed in detention centres administered by the Federal Prison Service (see Annex V).

212. Section 1 of those regulations lays down the general principles according to which persons under 18 years of age must not be admitted to prisons or jails administered by the service. It stipulates that the prison regimen, as well as ensuring custody and detention of accused persons, must have as its aim that they maintain or acquire standards of behaviour and interpersonal relations acceptable to society.

213. Among the major innovations in the regulations in force is the ban on exceeding the number of available places, in order to ensure decent accommodation, though the rule does not stipulate the measures that will have to be taken in case the number of available places is too small.

214. With regard to security procedures, a noteworthy feature is the provision that searches of persons, appurtenances, or premises occupied by prisoners, inventories and inspections of installations must be carried out with the guarantees provided for in the regulations and with due respect for human dignity.

215. Also of importance are the modifications introduced in the disciplinary sphere. With regard to assessment of the behaviour of prisoners, there is a substantial change in that the appraisal has to take account of the penalties effectively applied to the prisoner, who now has access to regulated administrative and judicial appeal procedures.

216. As regards verification of the prisoner's physical integrity, medical examinations are carried out at the time of entering and leaving the place of detention. As well as being able to appeal to the judge in the case should an infringement be alleged in this regard, prisoners can complain under the Federal Prison System to the Procurator for the Prison System, whose function is protection of the human rights of prisoners.

217. In another connection, when the Master Plan for the National Prison Policy was published (Decree No. 526 of 27 March 1995) the assigned objectives included the setting up of the Federal Political and Prison Reform Council, and that decision was taken over and amalgamated with the plan set out in chapter XVIII, entitled "Integration of the National Penal System", of Act No. 24.660.

218. The purview assigned to the Reform Council included, as priority matters belonging to its specific competence, the consideration of certain objectives such as: (a) coordinating and structuring prison policies agreed to between the nation and the member provinces; (b) standardizing the conditions of enforcement of custodial sentences as determined in the specific national legislation; (c) promoting and developing, within the terms of the national and provincial legislation, the widest possible mutual assistance between the prison services of the entire country; (d) establishing and implementing – to the extent possible – treatment programmes for social rehabilitation on similar lines, differentiated only by the idiosyncrasies of each region, its

possibilities and its social and cultural setting; (e) establishing common patterns of prison documentation for the entire national territory, e.g. a single criminological history, single judicial and social information files, and a single clinical history, in order to promote uniformity in the documentation system and open the way for documentary and even operational integration; (f) exploring and adopting the methods that must be applied in order to improve coordination between the various prison services and other institutions connected, directly or indirectly, with prison work; (g) studying the possibility of drawing up the general outlines of a single prison organization Act; (h) planning and implementing the Argentine system of prison statistics and putting forward proposals for the adoption of uniform guidelines and documentation throughout the country, all in accordance with the legislation in force; (i) exploring the possibility of creating under its auspices a national prison data processing centre with a master file of inmates and ex-inmates, with full indications of possible data and any other information considered useful for the attainment of the assigned objectives; (j) providing the various services or other agencies involved in prison work with the specific technical assistance they require; and (k) implementing programmes of training and career development for prison staff.

219. Initiatives of such scope are widely appreciated, standing out as conspicuous examples of a commendable change in the profile of penal enforcement, particularly conducive to successful unification of viewpoints and differing levels of achievement in the area having regard to the national outreach of the Act governing the enforcement of custodial sentences, respecting as it does the federal principle but seeking to ensure that all the provincial States are in a position to carry out uniform policies so that those for whom the system is designed can find appropriate answers, whatever the administrative district where they are assigned accommodation in order to serve their sentences.

220. We have here, in essence, an attempt to provide broad and genuine assistance, free from any suggestion of constraint, in order that the entire country may be in a position to offer an appropriate response to deprivation of liberty, subject to minimum objectives of an operational nature, without detriment to unconditional respect for human rights and in an endeavour to safeguard those principles through the instrumentality of a staff with attitudes and aptitudes attuned to present-day demands.

221. The hope is that the Act may thus become an instrument for unification in the enforcement of custodial sentences throughout the national territory, so that the provinces may organize prison services better adapted to the housing, treatment and subsequent social rehabilitation of their own prisoners, while seeking to prevent unjustified inequalities from arising between prisoners depending on the place where they will have to comply with the various arrangements associated with incarceration.

222. The spectrum exhibited by our country offers a wide variety of nuances. Some provinces have enacted enforcement laws, while others have subscribed to the principles set out in Act No. 24.660, not to mention those which have no provisions at all on the matter.

223. Thus the provinces of Santa Fe, Córdoba, Entre Ríos, Mendoza, San Juan, Tucumán and Santa Cruz have acceded through provincial laws to national Act No. 24.660 on enforcement of custodial sentences.

224. The province of Santa Fe, through Act No. 11.661<sup>7</sup>, has acceded partially to the national Act:

“Article 1. The province of Santa Fe accedes to the provisions of Act No. 24.660 (Enforcement of Custodial Sentences), additional to the Penal Code, within the scope and with the limitations stipulated in the present Act.”

225. The provinces of San Luís, La Rioja, Chaco, Jujuy, Salta and Neuquén have no laws to regulate the enforcement of penalties, nor have they acceded to Act No. 24.660, which is applied directly as additional to the Penal Code.

226. The situation is the same in the province of Catamarca, which has not acceded by provincial enactment to Act No. 24.660. The provincial courts apply it directly as additional to the Penal Code. The provincial executive has, however, issued regulations implementing principles established in Act No. 24.660, as for example the regulations to implement articles 17 and 33 and chapter IV of the Act.

227. In the preamble to the Decree, the wording is based on the provisions of article 228 of Act No. 24.660.

228. In another of the preambular paragraphs it is expressly stipulated that “the provincial executive, exercising the prerogatives conferred upon it by article 149 of the provincial Constitution, through regulatory channels and by virtue of the powers not delegated to the nation, may adjust the application of the Act to the specific prison problems of the province, its requirements and the local situation”.

229. In the province of Formosa the enforcement of custodial sentences is regulated by articles 455 ff of the Penal Code and in matters not regulated therein Act No. 24.660 applies.

230. The province of Santiago del Estero has adopted provincial prison Act No. 3981, whereby Act No. 24.660 applies in cases not provided for.

231. The provinces that have laws of their own applicable exclusively to them are those of Misiones, Tierra del Fuego, Río Negro and Buenos Aires.

232. The province of Misiones had adopted de facto the provisions formerly in force at the national level under Decree Law No. 412/58, ratified by Act No. 14467, before the replacement of that enactment by Act No. 24.660. In view of the innovative principles introduced by the latter into the prison system and the lack of provincial legislation on the subject, it was decided at the level of the provincial executive to prepare the draft law which was finally adopted as Act No. 3595 (Enforcement of Custodial Sentences).

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<sup>7</sup> Accession of the province to national Act No. 24.660, Santa Fe, 19 November 1998, *Boletín Oficial*, 11 January 1999.

233. Fundamental importance is attached to respect for the uniform pattern that exists in regard to enforcement of penalties at the national level and the undertaking to adapt it to the province's own needs and problems "...without losing sight of the need for uniform prison legislation conducive to better integration of the country's prison systems and, by virtue of the powers that it has not delegated adopting its own Provincial Prison Act."<sup>8</sup>

234. As regards the province of Tierra del Fuego, Act No. 441 to establish the General Prison Directorate states:

"Article 1. The Provincial System and the process of enforcement of custodial sentences shall be regulated by the provisions of National Act No. 24.660 wherever they are not incompatible with the provisions of the provincial Constitution.

[...]

The Congress of the nation adopted Act No. 24.660 [ . . . ] on enforcement of custodial sentences, a legislative edict which, by the authority of article 229 thereof, is complementary to the Penal Code.

Mindful of the provisions of article 229 of the Act and with due regard to article 228 of the same Act, the provincial executive concludes its message by revoking provincial Act No. 192, which regulated the provincial prison system.

Without prejudice to the adoption of the rules established by the national Act, there have been incorporated some regulations of a local operational nature such as will permit the progressive putting into effect of the prison organization, with due regard to national and international requirements.

Accordingly, the operation of the prison service will continue as the responsibility of the provincial police, with the cooperation of the professional bodies attached to the administration, in their respective areas, and under the surveillance of the legal authorities directly assigned to supervise the treatment of accused and convicted prisoners."

235. In the province of Río Negro, Act No. 3008 on the Provincial Prison System states:

**"Section 1 – Prison Regulations (articles 1 to 42)**

**Preliminary section**

Article 1. The present Act, recognizing its authority as deriving from article 23 of the Provincial Constitution, establishes the regulations for enforcement of custodial sentences imposed on convicted persons, who shall be accorded the treatment as internees and the conditions of detention of persons deprived of liberty as defendants in a criminal case or subjected to pre-trial imprisonment, who shall be accorded the treatment of accused persons.

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<sup>8</sup> Message dated 19 August 1998 from the executive.

## **Chapter I – Basic principles of enforcement (articles 2 to 5)**

Article 2. The purpose of the enforcement of custodial sentences is the social rehabilitation of prisoners so that, on their departure from the prison system, their reintegration into the community may be possible.

## **Chapter II – Progressive nature of the prison system (articles 3 to 12)**

Article 3. The prison system shall employ all means of prevention, curative treatments, and methods of an educational, occupational, moral, spiritual, social welfare or any other nature at its disposal, in line with the individualized treatment needs of prisoners and progress in the penitentiary and criminological sciences.

[...]

Article 6. The prison regime applied to inmates shall be of a progressive and technical nature, as stipulated in this Act, and shall include:

- (a) A diagnostic (observation) period: psycho-physical study and diagnosis of the inmate;
- (b) Rehabilitation (treatment) period: individualized treatment with individual and group techniques;
- (c) Pre-release (test) period: treatment with a less rigorous régime and in open prisons. The provisions of this paragraph shall be enforceable as determined by the regulations.

Article 7. For appropriate prison treatment the criminological classification of the inmate shall be taken into account and arrangements made for separation of those sentenced to short terms.

[...]

### **Means of restraint (articles 25 and 26)**

Article 26. Means of restraint such as handcuffs, fetters, chains and straightjackets must never be applied as punishment. Other means of restraint may be used only in the following cases:

- (a) As a precautionary measure against a probable escape or flight or during a transfer, provided that those methods are relinquished as soon as the prisoner appears before a judicial or administrative authority;
- (b) For medical reasons upon the physician's indication;

(c) By order of the Director or any other responsible official, if other means of controlling the prisoner have failed, and also for the purpose of preventing prisoners from injuring themselves or third parties or causing material damage.<sup>9</sup>

Article 26. The type and the method of application of authorized means of restraint shall be determined by the central prison authority, in accordance with the regulations, and they must not be used for longer than strictly necessary.

[...]

## **Chapter VI – Special rights. Rights of women, children and mentally ill persons (articles 31 to 35)**

Article 31. The prison regime applied to women under the system implemented by the present Act shall be exceptional in nature and shall guarantee the following rights:

(a) The use and occupation of installations in specific establishments equipped for the purpose;

(b) To be in the care exclusively of female staff, except that for professional reasons officials of the male sex, in particular physicians, may perform tasks in the establishment;

(c) The requisite care in case of pregnancy and childbirth, in a suitable environment;

(d) Facilities for caring directly and personally for their children under two years of age, within the establishment;

(e) Disciplinary sanctions are declared inadmissible or inappropriate within the 45 days before or after delivery;

(f) The right to pregnancy, delivery and post-delivery care, including care of the child;

(g) For the child's birth within the establishment not to be recorded in the birth certificate;

(h) To be assisted in regard to their rights by the enforcement judge and in the defence of their children's interests by assigned counsel.

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<sup>9</sup> "... Considerable care should be taken in legislating with regard to means of restraint which must be related to the physical event of 'restraining or holding in', not partaking of the utilization of coercion, because that does not refer to a physical event but to behaviour.

For the utilization of those means of restraint greater flexibility is required in the decision to apply them, so that the presence of the Director is not indispensable at the time the procedure is applied." Explanatory introduction to draft Act.



Article 32. The prison regime applied to minors shall be exceptional in nature and guarantee the following rights:

(a) No admission to the prison system of children under 18 years of age;

(b) For minors between the ages of 18 and 21 years, to be housed in prison establishments equipped for that purpose, thus ensuring complete separation from older persons.

236. To continue, in the province of Buenos Aires there began, towards the end of 1994, an intensive process of change such that, at the present time, the results obtained can be evaluated as highly satisfactory, considering the sensitivity of the area concerned.

237. Thus, though 1992 saw the start of a move towards renovation in the area of prison policy, it was only at the beginning of 1995 that what was at the time called the Buenos Aires Prison Plan got under way.

238. The prison system of the province, operating as it does in the area with the largest and most rapidly growing population, has in its charge the greatest number of prison inmates in the country: approximately 16,000, of whom 87% are awaiting trial. Three-quarters of the overall total belong to the Buenos Aires conurbation.

239. It was in this context that the provincial executive decided, as stated, upon steps to deal with the global emergency in the Buenos Aires prison system, which it empowered to implement a series of urgent measures to ensure a genuine solution.

240. The Buenos Aires Prison Plan was the blueprint for the provincial prison policy designed to overcome – within a period of five years – the physical and functional emergency confronting the system. In outline, it provided for a coordinated battery of measures to be implemented successively and/or simultaneously in the areas of infrastructure, health, retrenchment and training of officials.

241. One of the mainstays of the plan was the focusing of attention on the area of infrastructure. This involved three separate and complementary approaches, which in general terms made few budgetary demands and had an immediate effect in relieving the prison overpopulation.

242. These approaches were:

(a) Reconversion of units, as a continuation of the programme in operation since 1992, whereby area rehabilitation took place in 60% of the 23 already existing units. This measure enabled some 1,600 additional places to be made available;

(b) Construction of units, which enabled about 2,500 places to be made available. This was the origin of Units 21 (Campana), 23 and 24 (Florencio Varela), 29 (High Security – Romero) and 30 (Maximum Security – General Alvear), this last unit being built on the strength of a grassroots poll, which meant almost unanimous support from the community of General Alvear.

(c) Professionalization of prison staff. This reconversion of facilities and creation of new ones, which alleviated the most pressing problems of prison overpopulation and its effects, were not the sole initiatives under the plan. In reality, it involved measures that converged towards a much more ambitious and at the same time humanitarian objective: to dignify people deprived of their liberty by improving their conditions of accommodation and treatment, and to offer society effective, genuine and feasible solutions, in tune with the times and consistent with the guidelines laid down on the subject by international agencies. Accordingly, the plan also provided for the professionalization of prison staff, in the firm belief that the task performed in the social rehabilitation of prisoners necessitated constant refresher training, updating of skills and recognition. That is why particular emphasis has been laid on remodelling the curricula of the various training facilities so as to adapt them to the new situation facing the prison service and enable it to perform efficiently its dual function as a technical security and defence agency for society and as an agent in the rehabilitation of people deprived of their liberty.

243. Accordingly, an endeavour was made to redefine the profile of the prison officer on the basis of concrete actions that would facilitate, for example, the completion of secondary schooling for junior staff and encourage university and postgraduate studies for senior staff, at facilities of their own or else at public and private establishments, in compliance with the United Nations recommendations recognizing the education and training of personnel as one of the pillars of modern politics.

244. Since 1997 the plan has been virtually in place and a series of initiatives which, while not originally allowed for, are now providing for its continuity are beginning to take shape.

245. Thus the amendments made to the Buenos Aires Code of Penal Enforcement by Act No. 12.256 of 1998, while creating the position of penal enforcement judge with not only judicial but also administrative competence, also establish special régimes for young adults, pregnant women and mothers with children under four years old, the disabled and the terminally ill.

246. This enactment, on the basis of a package of programmed activities in the areas of communal living, education, work, free time and care, established for accused persons a care régime of two types, lenient and strict, and for convicted prisoners three régimes, open, semi-open and closed, with their corresponding characteristics.

247. In a different area, but on the same conceptual pattern, new agencies were created which helped to provide answers to the challenges of accelerated social change, notably the Department of Human Rights.

248. This department was set up in 1998 to ensure ongoing surveillance of the conditions of detention of persons deprived of their liberty and housed in premises of the Buenos Aires Prison Service, in pursuance of the humanization in the execution of penalties which is encouraged by interested national and international agencies.

249. Headed by a secretary and comprising two areas – legal and administrative – it is responsible, among other things, for proposing improvements to the living conditions of prisoners, promoting activities to bring prisoners closer to their family and social circle, and drawing attention to situations in which human dignity appears to be violated.

250. To that end, it has the authority to conduct periodic inspections of the various establishments, draw attention to irregularities and intervene in those conflicts characteristic of prison dynamics (mutinies, hunger strikes, etc.).

251. Concurrently, action has been taken within the Buenos Aires Prison Service to put into effect plans for education, sports, work and occupational training for the benefit of prisoners, together with training programmes for the prison staff.

252. The province of La Rioja has a prison service headed by a Director-General reporting to the Department of the Interior, Justice and Security of the Ministry of Internal Coordination.

253. The authorities who run the prison service have reported that currently work has been proceeding mainly on two projects:

(a) a physical planning project, which is providing the unit with improved security arrangements, both for the staff working there and for those persons deprived of liberty who are housed on the premises;

(b) a training project, considered by the authorities as a successful experiment, consisting in the establishment of the Provincial Prison School for both categories of staff, junior and senior, priority being given to the physical and mental training of the staff of the service.

254. In the province of Santa Fe the Provincial Prison Service is attached to the Office of the Under-Secretary for Public Security, Ministry of the Interior, Justice and Worship.

255. This province is not spared by the problems of prison overcrowding that affect the rest of the country, and has a considerable number of detainees housed on police premises, mostly at stations and branch stations in the main urban centres, as the prisons are short of places and cannot accommodate them.

256. To overcome this shortage, plans have been made to expand some detention centres and to build new facilities.

257. The prison system of the province of Mendoza comes under the Office of the Under-Secretary for Justice of the Ministry of Justice and Security.

258. There are a number of different areas in which the provincial authorities have carried out activities designed to improve the prison system of the province. As regards the education of persons deprived of liberty, as also the physical infrastructure, funds have been allocated to the education sector of the unit located in the provincial capital, with a view to initiating the instruction courses there. A noteworthy improvement has been obtained in the nutritional status of prisoners, by using the women inmates themselves as human resources for food preparation in the prison, under the supervision and effective control of professional nutritionists.

259. In another connection, an agreement is being negotiated with telephone companies to provide all the prison blocks with public telephones with a view to improving communication between prisoners and their families. For the same purpose a special section has been established to attend to prisoners' visitors and thus promote closer relations with them.

260. In the province of Río Negro, Chapter IV, paragraph 15 (i) of the Police Organization Act empowered the police to hold persons deprived of liberty in custody and under guard at the disposal of the courts in provincial establishments equipped for the purpose.

261. The legislature established by law the Provincial Prison Service, in consequence of which, and for the implementation of that enactment, the prison career service was established within the police organization.

262. The prison staff of the province of El Chaco consists of police personnel specially trained to perform their duties and is attached to the Department of Security and Protection of the Community, Ministry of the Interior, Justice and Labour.

263. At the end of the year 2000 the first cohort of police officers graduated with specialized prison training to deal exclusively with the sector of persons deprived of liberty. Their training was conducted with the support of the Federal Prison Service and professionals from various disciplines such as psychology, prison law, communications, public relations and human rights, all with solid experience.

264. Similarly, as regards women deprived of their liberty, a programme is also in course of preparation and design for their detention and advancement in new premises suited to their actual needs.

265. The prison service authorities of the province of Entre Ríos report that efforts have been concentrated on the building infrastructure as it is considered a basic priority.

266. Improvements have been made in the building layout. Plans are also under study for relocation of those units left within the city area, densely populated owing to urban spread.

267. Notwithstanding, building renovation has not been the sole activity. Work being considered as a basic right, prison workshops have been organized in order that persons deprived of their liberty may update their professional skills to help their future reintegration into free society.

268. In the province of Jujuy, the provisions regulating the organizational structure, tasks and functions of the prison service are set out in Decree No. 1508-G/99, which partially amends the Jujuy Prison Service Organization Act.

### **Work of the Office of the Under-Secretary for Prison Affairs**

269. The plan for the fiscal year 2001 at the Office of the Under-Secretary for Prison Affairs was drawn up with the basic political aim of tackling the necessary modernization and institutional strengthening of a specialized State service sector, the Federal Prison Service, with a view to optimizing its management capability.

270. The objective of this Plan is to initiate a process of change focused on the organizational structure and functioning of the Federal Prison Service, with a future-oriented, participatory and interdisciplinary approach, in interaction with those actually running the prison system and with a view to accomplishing more effectively its substantive aims.

271. Under this Plan, which is presented in the form of seven programmes constituting main pivots of the present policy and comprising, in turn, 19 action projects, the following activities have been developed:

**Programme on “Updating the regulatory framework of the Federal Prison Service”**

*Project No. 1: “Amendment of the Federal Prison Service Organization Act”*

*Objectives*

272. The project aims at bringing about a cultural change in the Federal Prison Service by including among its institutional responsibilities not only security, custody and surveillance but also the treatment of prisoners for their social rehabilitation. It introduces a fundamental change of concept into the purpose of the service, giving equal weight to the two essential aspects that guide its activities: the security, surveillance and custody of prisoners, and their treatment. The aim that current legislation assigns to the prison system is security, in a context of protection of society. By including specifically among the tasks of the service the management and treatment of prisoners for their social rehabilitation, the project not only brings those tasks into line with Act No. 24.660, but broadens the concept of security, extending it to prevention through the preparation of prisoners for their return to freedom. That is indeed what prison work is all about, in that the demands are adjusted to those of public order and, in addition, full recognition of human rights is guaranteed.

273. With regard to organization, the service is defined as a National Directorate attached to the Ministry of Justice and Human Rights. It is also laid down that it shall be run by a National Director and shall be made up of the National Subdirectorates, General Directorates, Principal Directorates, Directorates, a Coordination and Planning Council and Directorates of Prison Units, as shall be determined by its organizational structure. Note that the inclusion of the organizational category of Principal Directorate is seen as a flexible instrument for responding to the new organizational and administrative needs arising from the recent incorporation of prison complexes into the existing infrastructure.

274. The draft Act was presented in August 2001 to the Legal and Technical Secretariat of the Office of the President of the Nation.

*Activities on the ground*

275. Activities on the ground are as follows:

- (a) Work meetings between members of the committee appointed;
- (b) Study and analysis of enactments of other nations;
- (c) Study and analysis of the legislation in force (Act No. 20.416);
- (d) Study and analysis of the Prison Services Organization Act for the provinces; and
- (e) Signature and submission to the President of the preliminary draft statute.

*Project No. 2: "Formulation and application of the Internal Regulations for Prison Units"*

*Objectives*

276. The project is aimed at modernizing prison procedures and at regulating and expediting administrative formalities in order to enhance the efficiency of the operational system through the utilization of new technologies so as to enable Federal Prison Service staff to fulfil their role in regard to the custody, surveillance, security and social rehabilitation treatment of prisoners. The regulations currently in force for prison units date from the sixties and seventies and are not in keeping with the modern concepts set out in the international legislation and in Act No. 24.660 (Enforcement of Custodial Sentences). Hence the need for amendments that will take into account the conceptual changes in the service, which look not only towards security, custody or surveillance but also towards treatment of prisoners for their social reintegration.

*Activities on the ground*

227. Activities on the ground are:

- (a) Analysis of the experience of prison units in other provinces;
- (b) Analysis of the custodial experiences of developed countries;
- (c) Drafting of legislation to meet the needs of the prison community;
- (d) Analysis of the characteristics of each prison unit, broken down by level of security;
- (e) Analysis of treatment schedules and their relationship with the regulations;
- (f) Study of the levels of security, custody and surveillance to be taken into account in the regulatory provisions;
- (g) Analysis of the characteristics of the prison community;
- (h) Analysis and study of the technology to be applied in regard to distance between detention centres;
- (i) Analysis of the security, administrative and operational systems of prison units; and
- (j) Analysis and study of prison regulations of other countries and/or provinces.

**Programme on "Development of the Prison Information System"**

*Project: "Prison Information System"*

278. In summary, the project consists in designing, developing and putting into effect a system for bringing together the information that is relevant, in terms of growing degrees of complexity, updated and updateable, from the Federal Prison Service for public and internal use, in order to provide tools and make the managerial process transparent at its various levels.

### *Specific Objectives*

279. The project aims at developing an integrated system for communication between the various sectors of the prison service and incidentally with other institutions such as organs of the judiciary; to devise a system with technological tools that will enable the final user to operate independently for the preparation of reviews and reports; to establish an updated and updateable register of indicators needed to establish a profile of the Federal Prison Service; and to produce, on the basis of those indicators, the indices needed to evaluate and predict the behaviour of the service, data useful for decision-making on prison policy and the efficient and transparent discharge of the functions of the service.

### *Results, policies and activities on the ground*

280. The activities conducted to date have been as follows:

(a) The scope of the system (areas involved in the project) was determined; it includes judicial area, personnel area, Institute of Criminology – criminological services, education, medical care, social welfare, work (e.g. occupational therapy and training), treatment programmes, and visits and correspondence;

(b) An initial survey was conducted of the following areas: organizational structure, regulations, synoptic study of objectives, internal administrative channels and information requirements.<sup>10</sup>

(c) The data matrix for the personnel and judicial areas, from which the dictionary of data will be compiled, was defined. In this matrix was set out the entire range of data required by the sections, information derived from the initial survey, regulations in force and the mapping of the administrative channels. The results were transmitted to the areas for scrutiny, and the corrections they proposed were made. Work is currently proceeding on the treatment programmes, with a review of the administrative channels, the information recorded and the parameters for control and supervision of the activities being developed. The findings from this study will serve to complete the above-mentioned data matrix. In the medical care area, studies are proceeding, taking into account the clinical history determined, on the data and the way in which they can be presented in the system, with due regard to the confidentiality of that information under law.

(d) The pilot unit was set up to carry out the linkage tests and determine the software and hardware requirements for proceeding to implementation. Work is in progress to renovate buildings and extend the data network for the treatment areas.

### *Organizational improvements*

281. This project aims specifically at improving prison management in its relationship with the judiciary. An endeavour is being made to modernize the Federal Prison Service and make it into an organization in tune with the needs of the information age.

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<sup>10</sup> With regard to the internal regulations, information has been received to date only from the Directorate for Judicial Matters and the Institute of Criminology.

282. Communication between the various establishments of the service, which are geographically scattered, is poor and there are organizational limitations, including shortage of data-processing equipment, whose consequences range from problems of an administrative type to failure to comply with legal rules. This project aims at redesigning the system accordingly.

283. Action will be taken to integrate the various areas into a single administrative circuit, obviating duplication of information, and to determine the area responsible for generating data (whether for its own needs or for those of another department) and for ensuring availability of information within the system for exploitation.

#### *Specific initiatives*

284. As regards cost/benefit ratio, while this is a project involving initial commitment of resources for the acquisition of hardware, it amounts to a more rational way of handling communications which will result in an overall reduction in the costs of the system.

285. The determination of indicators for evaluation of the system aims, moreover, at promoting greater transparency in prison management.

### **Programme on “Strengthening of Educational Services for Prisoners”**

#### *Project “Strengthening and Equalization of Basic General Education Services”*

#### *Objectives*

286. To ensure completion of compulsory schooling for the prison population housed in Federal Prison Units, promoting markedly increased enrolment in the third year of Basic General Education (EGB) in all the units of the Ezeiza Area (Prison Complex I, Unit 3, Unit 31) and the Marcos Paz Area (Prison Complex II, Unit 24, Unit 26 and Malvinas Argentinas Annex) and at Rawson, Chubut (Unit 6).

#### *Results*

287. Initial EGB enrolment increased by 37% in the units located in Buenos Aires province and in Chubut, more than 10,000 school kits were distributed for use by prisoners and a set of 68 books acquired for use by teachers and pupils, and 50 new teachers designated by the provinces of Buenos Aires and Chubut were engaged.

#### *Policies and activities on the ground*

288. The policies and activities on the ground are:

- (a) Organization and holding of three special training seminars for teachers;
- (b) Acquisition of equipment (computers, television sets, videos) for installation of technology rooms;
- (c) Teacher training at health workshops: addictions, HIV/AIDS and health education.



*Organizational improvements*

289. The education sector has been markedly strengthened in the Federal Prison Service thanks to the recruitment of a contingent of 50 teachers appointed by Buenos Aires province, who are supplementing the teachers appointed by the service.

*Project “Strengthening and Extension of Teaching Methodology for Socialization”*

*Objectives*

290. The project aims at promoting and extending the application of the treatment programme “Teaching Methodology for Socialization”, in order to foster harmonious relations within prisons and prevent relapse into crime once sentences have been served.

*Results*

291. Though for budgetary reasons it has not been possible to increase the number of prison units implementing this treatment programme, progress has been made on a consensual basis in establishing the working rules for this new experiment in the resocialization of individuals deprived of liberty.

292. Application of a policy of encouragement for prisoners taking part in the Teaching Methodology for Socialization programme: work training grants, training with leave for outside work and computation workshop, audiovisual workshop and production of a special feature film in Unit 24 of the Federal Complex for Young Adults at Marcos Paz, Buenos Aires province.

*Policies and actions on the ground*

293. The policies and actions on the ground are as follows:

- (a) Organization of the Second Meeting of Managers and Technical Teams of the Programme on Teaching Methodology for Socialization in the province of La Pampa, July;
- (b) Evaluation of the implementation of the programme in Prison Units 13 and U30 (La Pampa), U14 (Viedma, Río Negro) and U24 (Marcos Paz, Buenos Aires);
- (c) Drafting of regulations for the Programme on Teaching Methodology for Socialization, incorporating the experience from three years of application;
- (d) Preparations for the Second National Meeting on Teaching Methodology for Socialization in the province of La Pampa, in November.

## **Programme on “Improvement of Prison Infrastructure”**

### *Project “Building of new prison units”*

#### *Objectives*

294. The project aims at supplementing and renovating the prison infrastructure of the system so as to provide accommodation for an additional 2,244 inmates, through the construction of the Federal Complex for Convicted Prisoners at Mercedes (Buenos Aires), the Federal Complex for Young Adults at Marcos Paz (Buenos Aires), the Federal Centre for the North-east at General Güemes (Salta) and the Federal Centre for the Coastal Area at Coronda (Buenos Aires).

#### *Policies and activities on the ground*

295. The policies and activities on the ground are:

- (a) Working and coordination meetings between staff of the Office of the Under-Secretary for Prison Affairs and the Federal Prison System;
- (b) Appointment of the interdisciplinary team of professionals to draw up the specifications and preliminary construction plans;
- (c) Feasibility study for installation of units in the localities determined;
- (d) Preparation of architects' proposals and drawing up of preliminary plans (in progress);
- (e) Study of alternative building technologies. Selection of the constructional system and working out of details (in progress);
- (f) Study of the rules applicable to the development of projects under the regulations for promotion of private participation in infrastructural development (Decree No. 1.299/00 of the Ministry of Infrastructure and Housing);
- (g) Plan for lock-ups: in view of the situation faced in the frontier posts of the Gendarmería Nacional in the provinces of Salta and Jujuy, and the possibility that the detainees may be housed in metal containers, the Ministry of Justice and Human Rights decided to intervene and do some emergency construction work, building with its own funds the blocks for detainees held by the Gendarmería Nacional (Group VII, Salta), with room for 32 prisoners, and Escudaron 53 (Jujuy) with room for 80 prisoners, including in both cases men and women in segregated accommodation. A plan was prepared for the construction of Federal Detention Centres 2001/2002, the first works contracts for which will be awarded in mid-December, in accordance with the rules in force.

#### *Organizational improvements*

296. Decree No. 1.162 of 7 September 2001 abrogated Decree No. 624 of 25 July 2000: Organizational Structure of the Ministry of Justice and Human Rights, establishing the first-level operational unit of the Directorate General of Prison Maintenance and Works, whose

responsibilities and activities will be taken over by the Office of the Under-Secretary for Prison Affairs. It is hoped that this, among other adjustments, will result in appropriate functional and political delimitation of areas and avoidance of overlapping, in operational effectiveness and in efficient discharge of the relevant responsibilities and functions.

*Specific initiatives*

297. The restructuring is yielding managerial economies by eliminating a first level operational unit. It is also enabling intermediate echelons to be eliminated, so that monitoring of the results of operations will be performed directly from the Office of the Under-Secretary for Prison Affairs.

**National Healthy Prisons Programme**

*Project “Health Promotion Among the Prison Population”*

*Objectives*

298. The project aims at implementing activities directed towards disease prevention and health promotion and care for inmates of the prison units and the staff of the Federal Prison Service, by means of training strategies addressed to prison teachers, prison staff, and inmates and their family circles.

*Results*

299. The results of the project are:

- (a) Wide press coverage to secure the topic a place in the media and thereby make the prison institution more receptive to dealing with subjects traditionally taboo in that milieu;
- (b) Organization, jointly with LUSIDA, of courses and talks on prevention of AIDS and HIV infection in Unit 2, Federal Prison Complex I, Unit 31, Unit 3 and the Federal Complex for Young Adults;
- (c) Distribution free of charge, jointly with LUSIDA, of 5,320 brochures, 4,000 condoms, 13 sets of posters and 2,000 stickers with the number of a telephone advice line;
- (d) The holding, jointly with the Office of Programming for Prevention of Drug Addiction and Control of Drug Trafficking, of four workshops for teachers and three for inmates in Module 4 of Prison Complex I (Ezeiza) and the Federal Complex for Young Adults (Marcos Paz) concerning basic measures for self-care and care of others, with incentives to reduce consumption of psychoactive substances;
- (e) Holding of group discussions aimed at reducing the prevalence of situations of gender-related violence and/or discrimination, in Units 3 and 31 and at the Devoto University Centre, jointly with the National Council of Women;
- (f) Papanicolaou testing and colposcopic examination of female inmates of Units 3 and 31;

(g) Vaccination against influenza, made available to all the inmates of the Federal Service and to retired staff, with an acceptance level of 40% (average).

*Policies and activities on the ground*

300. The policies and activities on the ground are:

(a) Stocking of condoms for distribution to inmates and placing of dispensers at points determined by the prison units to facilitate access to them;

(b) Holding of workshops for teachers and inmates, from April to October 2001, at various prison units, with optional attendance for the staff of the Federal Prison Service;

(c) Stocking of vaccines for administration to inmates and prison staff and administration of influenza vaccine to inmates.

*Organizational improvements*

301. The teaching activities were conducted with staff from other government bodies, who brought the human resources and the printed material that was distributed in the units.

302. The bringing in of teachers as multipliers of information on preventive health care topics has begun to open up a hitherto unexplored path that we shall continue to follow.

303. The holding of meetings with the participation of male and female inmates is a new and innovative experiment in outreach to persons deprived of liberty.

*Project "Care, Treatment and Welfare of Inmates"*

*Objectives*

304. The project aims at critically reviewing the main problems that have arisen in prison medical care, supporting and optimizing the human and technical resources and assuring the necessary inputs and installations.

*Results*

305. Considerable progress was made in putting into shape the Federal Prison Service's own hospital care system and a proposal was made, in agreement with the service, for redistribution of medical staff on a regionalized basis in order to improve management in the Marco Paz, Ezeiza and Federal Capital zones.

*Policies and activities on the ground*

306. A survey was carried out to determine the current status of the human and material resources of all the units of the Service, its Central Hospital, located in Federal Prison Complex I, was inaugurated, and the Central Prison Hospital of Unit 2, Devoto, was remodelled to make it more functional and productive.

*Organizational improvements*

307. The redeployment of professional staff according to when and where the units of the service require them means improved management without entailing outlay for new appointments or contracts.

*Specific initiatives*

308. The gradual and phased bringing into service of the Hospital at Federal Prison Complex I obviated having to face the expense of 325 new contracts.

309. The decision that medical specialists should not remain permanently in one unit, but rotate within the zone or region where their unit is located, is reflected in a substantial improvement in prison medical service management and a major economy of resources.

**Other projects implemented by the Department of Criminal Policy and Prison Affairs**

*Closing down of Units No. 1 and No. 16 (Caseros)*

310. Unit No. 1 in Caseros is emblematic of the prison model that has been left lagging behind the times, after being the most perfect example of a habitat absolutely incapable of producing in the inmates housed there any kind of change conducive to their eventual social rehabilitation.

311. Accordingly, the Department decided to embark upon this project for its definitive closure and subsequent demolition. Thus negotiations have been entered into with the Government of the City of Buenos Aires to decide on possible uses for the land and with the National Army for the dynamiting of Unit No. 1 and the demolition of Unit No. 16.

312. In these conditions, a critical path has been mapped out for the progressive transfer of the inmates housed in these units and the retraining of the staff for the performance of their functions in the new prison complexes.

313. This plan also involves inventorying and dismantling all items in the units (locks, bars, beds, equipment, etc.), that can be reused in other units of the Service.

314. So far the inventory has been completed and the negotiation of the agreement with the Army is in its final stages. Further, the Act on use of the land has been submitted to the Head of Government of the City for signature and transmission to the legislature. The State Property Administration Office will proceed to put the land on sale.

315. It remains to state, finally, that on 2 February admission of new inmates to Unit No. 1 ceased and the removal will be completed by early August.

*Implementation of the anti-corruption programme in the Federal Prison Service*

316. One of the central pillars of the Department's policy is the fight against corruption in the Federal Prison Service.

317. In line with this policy, the Department has encouraged an attitude of openness and ongoing cooperation with the judiciary, contributing information that was available in the service and had never before been put at the disposal of the courts. This attitude is illustrated by the number of official replies sent to courts investigating cases connected with acts of corruption committed by prison officers and supplying information for the furtherance of the inquiry.

318. The following enumeration indicates the number of official replies sent to each court:

- (a) National Court of Criminal Investigation No. 27, presiding Judge Mr. Jorge Baños: 35 letters;
- (b) National Court of Criminal Investigation No. 23, presiding Judge Mrs. Wilma López: seven letters;
- (c) Federal Court of First Instance, Viedma, presiding Judge Mr. Filipuzzi: three letters;
- (d) National Court of Criminal Investigation No. 17, presiding Judge Mr. Rodríguez Lubarry: two letters;
- (e) National Court of Criminal Investigation No. 7, presiding Judge Mr. Bértola: one letter.

*Situation of accused persons in detention facilities and prisons*

319. A topographical survey of detention facilities and prisons in the Argentine Republic was conducted by the Office of the Under-Secretary for Crime Policy and Prison Affairs and the findings can be consulted in Annex VI to this report.

**Activities carried out by the Public Attorneys' Office**

320. On 11 March 1998 the Public Attorneys' Office Organization Act (Act No. 24.946) was passed. This office had been established as an independent body in the constitutional reform carried out in 1994. The function assigned to the Public Attorneys' Office, which is staffed by a Procurator-General of the Nation and a Defender-General of the Nation, is that of auxiliary to the judiciary, consisting as it does of promoting the administration of justice in defence of the rule of law and the general interests of society and undertaking in the courts the defence of the State and of the legal order.

321. Section I of Act No. 24.946 lays down the functions and powers of the Public Attorneys' Office. Article 25 of the section states:

“It is the responsibility of the Public Attorneys' Office:

- (a) To promote the administration of justice in defence of the general interests of society;
- (b) To represent and defend the public interest in all cases and matters where it is called upon to do so in accordance with the law;

- (c) To promote and exercise public right of action in criminal and correctional cases, except where the initiation or pursuit of proceedings requires an application or request from a party in accordance with penal law;
- (d) To promote criminal indemnity action in those cases provided for by law;
- (e) To intervene in marriage annulment, divorce and filiation cases and in all proceedings concerning the civil status and names of persons, supplementary consent, and declarations of indigence;
- (f) In cases of alleged denial of justice;
- (g) To strive to ensure observance of the National Constitution and the laws of the Republic;
- (h) To strive to ensure effective enforcement of due process of law;
- (i) To initiate action or intervene in any relevant legal cases or affairs and press for all necessary measures designed to protect the person and property of minors, the disabled and the legally incompetent, in accordance with the respective laws, should they be without legal aid or representation; should it be necessary to make good the inaction of their legal assistants and representatives, parents or persons having them in their charge; or should the performance of those last require supervision;
- (j) To defend the jurisdiction and competence of the courts;
- (k) To conduct the defence of persons and of the rights of the parties whenever required in criminal cases, and in other courts should those parties be indigent or absent;
- (l) To be vigilant in the defence of human rights in penitentiary, judicial, police and psychiatric inpatient establishments, in order that prisoners and internees may be treated with the respect due to their persons, may not be subject to torture or to cruel, inhuman or degrading treatment, and may have such timely legal, medical, hospital or other assistance as may be necessary for the attainment of that objective, and to initiate appropriate action should violations occur;
- (m) To intervene in all legal proceedings where application is made for Argentine citizenship.”

322. In this connection, the Public Attorneys’ Office has carried out a series of programmes concerned with the subject matter of article 25, namely:

*Prison Monitoring Programme of the Public Attorneys' Office*

323. Taking into account the shortcomings of our system for administration of justice in the area of enforcement of penalties, particularly the prison system, it was deemed necessary to create an institutional structure suited to coping with the problems presented by the system and to defining the strategies that will enable the Public Attorneys' Office to discharge efficiently the important social obligation facing it.

324. The need for the Public Attorneys' Office to take part in the diagnosis and the search for solutions, as also in the continuous monitoring of the functioning of the system, emerges with crystal clarity from the constitutional provision that enjoins it "*to promote the operation of justice in defence of legality and of the general interests of society in coordination with the other authorities of the Republic*", as also from its Organization Act, article 25, paragraph 1 of which stipulates that "*it is the responsibility of the Public Attorneys' Office to be vigilant in the defence of human rights in penitentiary, judicial, police and psychiatric inpatient establishments, in order that prisoners and internees may be treated with the respect due to their persons, may not be subjected to torture or to cruel, inhuman or degrading treatment, and may have such timely legal, medical, hospital or other assistance as may be necessary for the attainment of that objective, and to initiate appropriate action should violations occur.*"

325. Accordingly, in face of a situation that is clearly extremely complex and involves a variety of actors, a first working meeting was held in June 2000 with those operators of the system and non-governmental organizations concerned in any way with the issue, for the purpose of establishing, on a more concrete basis, an up-to-date diagnosis of the various problems that exist, as also to discuss guidelines for action that could be carried out from this institution.

326. In this context, the Procurator-General was invited to consider the possibility of putting into effect a prison monitoring programme under which periodic meetings would be held with interested agencies, studies conducted in an endeavour to determine the role of the Public Attorneys' Office, and policies devised to help remedy, in so far as it lies with that body, the existing deficiencies.

327. To summarize the observations made at the meeting, the following problems concerning the Federal Prison Service may be mentioned:

- (a) Profile of staff
  - (i) need for integration;
  - (ii) deficiencies in the training of this force, essentially in everything concerned with the protection of human rights;
  - (iii) force that has been programmed for security and not for the social rehabilitation of prisoners;
  - (iv) reports of corruption of officers of the Service allegedly resulting from the system of progressivity instituted by Act No. 24.660 on penal enforcement;
  - (v) need for firm control over this force;



- (b) Serious infrastructural problems. Rise in the number of detainees owing to the restriction on resort to probation, in grossly overcrowded prisons;
- (c) Problems of organization of the penal enforcement system
  - (i) counterproductive effect of the establishment of enforcement courts in that, insufficient in number as they are, the remaining elements of the judiciary and of the Public Attorneys' Office have been released from responsibility without control being effectively exercised (owing to physical impossibility) by those entrusted with it by law;
  - (ii) a shortcoming in the rural areas is that the prosecutor in the oral trial is later the penal enforcement prosecutor;
- (d) Offences committed in prisons and generally not investigated (question to be tackled as a priority by the Public Attorneys' Office)
  - (i) need for statistics to provide an index of criminality and map the occurrence of offences within prison units;
  - (ii) need for concrete sanctions that will have a preventive effect;
- (e) Need to develop more effective control mechanisms
  - (i) too few visits to prisons by judges and prosecutors to monitor the situation in them and also perform a preventive function;
  - (ii) possibility of creating a supervisory body outside the prison system and perhaps attached to the Public Attorneys' Office;
  - (iii) need for amendment of the regulations of the Office of the Government Procurator for the Prison System to entitle it to act as complainant and not merely as informant;
  - (iv) need for a precise diagnosis of the situation so as to be able to devise or generate concrete policies.

328. In view of the complexity of the questions arising in regard to the topic under consideration and the multiplicity of interests involved, the Procurator-General of the Nation, by Resolution 55/00 of 10 October 2000 (see Annex VII), has put into operation, under the auspices of the Office of Criminal Policy and Services to the Community, a programme "... that involves all the actors committed to the end proposed and will make it possible, by creating a forum for joint discussion and study, to devise policies that will help to remedy the current material and regulatory deficiencies in this area".

*Assignments carried out by the Attorney-General's office*

329. In the brief time since the programme was launched, and as a first measure, a letter was sent to all the national examining and correctional court prosecutors of the Autonomous City of Buenos Aires requesting them to transmit to the Attorney-General's office certified copies of all the proceedings in which they had taken part in the past 12 months (the request also extending to possible future cases) where investigations of publicly actionable offences were being conducted against officers of the Federal Prison Service – whether or not individually identified – for offences of commission or omission in the exercise of their specific functions. This measure was also brought to the attention of the Senior Prosecutors to the National Appeal Court for Criminal and Correctional Cases of the Autonomous City of Buenos Aires.

330. Further, in order to provide a more effective institutional response regarding the activity of supervising the enforcement of penalties, a draft Act was prepared under the auspices of the Office of the Procurator-General for Crime Policy, and submitted for consideration to the Procurator-General of the Nation, for the establishment of two National Penal Enforcement Courts for the Federal Capital, seven registries that will service the National Penal Enforcement Courts of the Nation, one prosecutor's office and one defender's office for penal enforcement, thereby increasing the number of penal enforcement prosecutors' officers within the compass of the Federal Capital to a total of three, with their full complement of staff.

331. Concomitantly the proposal provides, as an imperative necessity, for the creation of the post of Assistant Prosecutor for Penal Enforcement, which would make it possible to optimize monitoring of the legality of State actions in this area, and thus reinforce the presence of the Public Attorneys' Office in prison establishments, a responsibility entrusted to that office in the legislation and imperative in view of the deficiencies under which the prison system currently labours.

332. As regards future activities, the following may be cited as the main ones:

(a) To pursue efforts to keep institutional channels open with a view to achieving the objectives set forth in Resolution PGN 55/00, particularly through the holding of periodic meetings with all agents legitimately interested in improving the functioning of the National Prison System;

(b) To continue the endeavour to define the role to be performed by the Public Attorneys' Office as an institution in the sphere of prison surveillance;

(c) To compile and process information concerning the commission of offences in the prison environment by federal prison officers, in order to draw up a map of prison crime and devise common strategies for its monitoring and investigation.

333. On another point, with regard to the stipulation in the article under discussion to the effect that the State must keep under systematic scrutiny the provisions for the custody and treatment of persons subjected to any form of arrest, detention or prison, article 493, paragraph 1 of the Code of Criminal Procedure provides that the enforcement judge shall have jurisdiction to ensure that all the constitutional guarantees and international treaties ratified by the Argentine Republic are respected in the treatment meted out to convicted and remand prisoners and persons to whom security measures are applied.

334. Further, on 13 June 2001 assent was given to Act No. 25.434 amending article 184 of the Code of Criminal Procedure with regard to the powers and duties, and limitations thereto, of officials of the police or security forces.

335. Article 1, paragraph 10 of this Act provides that officials of the police or security forces may not take statements from accused persons. They can only question them to determine their identity, after first informing them of the provisions of the Code of Criminal Procedure on rights and guarantees, which must be read aloud in this case, subject to quashing of the proceedings if this is not done, independently of the communication that the judge will address to the official's superiors with a view to the imposition of the appropriate administrative penalty for breach of rules.

336. While paragraph 8 of the same article does empower officials to apprehend suspected culprits in the cases and manners authorized by the code and have them held incommunicado, if a number of conditions are met, for a maximum of ten hours which cannot be extended for any reason without a court order, in such cases the Act provides that a medical report must be established in order to determine the psycho-physical state of the person at the time of arrest (see Annex VIII for Act and statement of reasons).

### **Articles 12 and 13**

337. As regards the right possessed by any individual who alleges he has been subjected to torture to complain to, and to have his case promptly and impartially examined by, the authorities, previous reports have given details of the provisions on this point of the Constitution and of procedural law, which remain in force.

338. As stated in the last report, the Office of the Government Procurator for the Prison System was established by Decree No. 1598, dated 29 July 1993, of the national executive, in consideration of the desirability of having a body independent of the Federal Prison Service for effective monitoring of the conduct of that institution in the specific function it performs in pursuance of the National Prison Act, at the outset, and of the Custodial Sentences Enforcement Act at the present time.

339. The task of this body is to investigate individual or collective complaints or claims from persons detained in units of the Service, with the aim of guaranteeing and protecting their rights as recognized and assured under Argentine positive law.

340. To that end, the Government Procurator for the Prison System is empowered to present recommendations to the officials of the Service and to the national authorities with which it rests to solve the problem that gave rise to the complaint.

341. To that same end, it is guaranteed that the correspondence addressed to the Procurator may not be subjected to prior scrutiny by the prison authorities nor withheld by them for any reason whatsoever.

342. The Government Procurator for the Prison System exercises his functions in respect of all convicted and remand prisoners subject to the federal prison regime who are housed in national establishments and also in respect of remand prisoners and persons convicted by the national courts who are held in provincial establishments. In this latter case, he will require the prior consent of the local authorities in charge of such establishments in order to enter them and perform his functions.

343. He must periodically visit prison establishments and submit to the Ministry of Justice of the Nation a report on the material and human conditions of the prisoners.

344. Similarly, he reports to the Minister of Justice periodically and whenever so requested. Once a year, through the national executive, he reports on his activities to the Argentine Congress.

345. The Procurator's Office also has a representative whose function is to visit the establishments located in the northern zone of the country (Units 7, 10, 11 and 17).

346. From the regulations providing for its creation and functioning it is evident that the Office of the Government Procurator for the Prison System, like any external and *a posteriori* monitoring organ, does not work in partnership with the Prison Service in regard to the tasks and functions assigned to the latter, but confines itself to inspection or appraisal of their execution.

347. During its years of activity, the Office of the Government Procurator has been coping with the demands presented by prisoners – remand and convicted – housed at the various units of the Federal Prison Service and the provincial services. In so doing, it has answered innumerable inquiries by telephone or direct contact, made visits to the various prison establishments, concluded agreements for cooperation or collaboration with official bodies in the provinces with a view to more effective discharge of its functions, conducted investigations, called for administrative inquiries to be instituted, framed general and individual recommendations, requests, petitions and complaints, judicial *amparo* and *amicus curiae* applications, taken part in meetings and organized events on topics within its sphere of competence and submitted draft Acts to the national Congress.

348. What is more, it has set out to organize its work on a methodical basis, determining the protection system, the rights protected, the procedures to be applied for handling individual complaints, guidance, good offices, and general inspections of prison units with its basic guide to such visits and activation of judicial or administrative proceedings.

### **Human rights protection mechanisms of the Office of the Government Procurator for the Prison System**

349. As outlined above, the Office has undertaken to organize the system for protection of the human rights concerned in the Decree that set it up. Thus it has mapped out the system, adopted the relevant procedural regulations, established the basic guide for inspections of prison units and determined the human rights protected and the most frequent acts that infringe them. For this it has availed itself of the experience accumulated in its years of operation and in the international standards generally accepted for this type of protection work, albeit adapting it to the specific nature of the custodial sentence enforcement regime and its collateral aspects taken into account in planning the guidance and assistance systems, the good offices and the activation of administrative or judicial proceedings.

350. In the work of human rights protection inter-agency cooperation is always sought with the non-governmental organizations specializing in defence and promotion of the human rights of persons housed in prison establishments.

351. Independently of the mechanism employed, the protective functions must be carried out with due coordination between the various areas of the institution, in order to achieve greater speed and effectiveness in providing protection.

352. It is stipulated that proceedings in cases submitted to the Office shall be free of charge, *ex officio* and straightforward, with only the essential formalities required by the respective case files. They must be conducted according to the principles of discretion and speed. The aim is to deal directly with complainants, victims, witnesses, authorities and those allegedly responsible, so as to obviate written communications that might retard the proceedings.

353. The human rights protection system of the Government Procurator's Office comprises the following mechanisms:

*Non-jurisdictional investigation of human rights violations on individual demand*

354. Investigation of alleged human rights violations may be undertaken *ex officio* or upon complaint. Any person may lodge a complaint about alleged human rights violations directly, without needing the authorization of the alleged victim. Legally recognized non-governmental organizations may also do so.

355. The denunciation may be submitted in writing, orally or through any other means of communication, provided it meets certain formal minimum requirements for admissibility.

356. Provision exists for the Procurator's Office to provide all the necessary facilities for ensuring that the complaint complies with the requirements previously established.

357. It is the duty of the staff of the Procurator's Office to inform the complainant, victim and witnesses of their right to have their identity kept confidential, should they so request.

358. Upon receiving the complaint, or at any stage in the proceedings, the Procurator's Office may request the adoption of such precautionary measures as it considers necessary and effective to prevent irreparable damage from being done to the individuals or to their rights. The adoption of such measures does not prejudice the eventual findings.

359. Once the admissibility of the complaint is determined, the official, institution, authority or person indicated as allegedly responsible, or whoever ranks above them, is invited to present a report on the occurrence and the measures taken in response to it, within a reasonable time limit. Should the said report not be presented, the assertions of the complainant shall be presumed true, barring the existence of proof to the contrary in the relevant file, and the investigation will be proceeded with.

360. Once the reports, additions thereto and other evidence collected for the purpose have been received, the Procurator may decide:

(a) to set the case aside if, in his own exclusive judgement, there are not sufficient grounds for suspecting human rights violations, which does not preclude reporting the occurrence to the authorities concerned and requesting their intervention if appropriate. Should new facts about the case later emerge, it can be reopened; or else

(b) to initiate an investigation of the case if there are adequate grounds for presuming, *prima facie*, that the violation complained of occurred. The investigation will be closed when, as determined exclusively by the Procurator for the Prison System, sufficient evidence has been collected to issue a fact-based judgement that may contain opinions, recommendations or conclusions which will be expressed formally through a resolution concerning the occurrence or otherwise of the violation complained of.

361. It is the responsibility of the person directly in charge of the investigation to keep up to date such reports on measures taken and legal and other opinions as prove necessary for its conduct. Supervision of this process will be entrusted to the Deputy Procurator for the Prison System.

362. Once the investigation is completed, the Procurator will issue a resolution on the basis of the evidence produced, in one or other of the following forms:

(a) Should the human rights violation be confirmed, he will prepare a report setting out the facts, his conclusions and the recommendations he deems appropriate for putting a stop to the injurious conduct and reinstating the rights violated. If he considers it desirable, he will make the appropriate recommendations for changing practices or reforming the laws, decrees, regulations, instructions and other prescriptive provisions involved.

(b) Again, he may call for the application of the appropriate administrative procedure against the person responsible and take whatever other measure he considers desirable for the safeguarding of human rights in general.

(c) If the investigation carried out does not bring to light any violation, he will set the case aside and order its final dismissal.

#### *Guidance and assistance*

363. In view of the fact that the service provided by the Procurator's Office is governed by the discretionary principle, complainants may, if deemed necessary, receive assistance in the form of procedural or legal guidance or an initial personal interview. A register of cases dealt with will be kept.

#### *Good offices*

364. The term "good offices" is applied to the various mechanisms for amicable settlement or conciliation operated by the Procurator's Office to enable a just resolution of the conflict to be reached, thereby serving the objective and purpose of the protective function assigned to the Office.

365. On completion of the good offices proceedings, the official in charge of the case will have it registered and the appropriate draft decision prepared.

366. That official will also transmit monthly to the Deputy Procurator a report covering all cases submitted and solved through this procedure.

*Inspections of prison units*

367. As previously reported, the purpose of these inspections is to determine whether or not human rights violations have occurred within the various prison units. They are conducted according to a guide prepared for the purpose and the directives issued by the Procurator for the Prison System.

*Activation of the justice system and the administration*

368. Provision exists for the Procurator, in the course of his functions, to make the requisite judicial and administrative submissions, according to the case, on the basis of the evidence in his possession.

369. The preparation of the draft submissions is the task of the legal assistants in accordance with the instructions issued to them for the purpose by the Procurator. They are also responsible for the follow-up of the submissions made.

**Activities of the Office of the Government Procurator for the Prison System during the period 1998-1999**

*Consultations and complaints*

370. During the period between October 1998 and September 1999 and the additional period extending through October and November 1999 this office continued its usual work of dealing with the requests for consultations and the complaints presented by prisoners, whether by telephone, by letter, by submissions made through third persons within the Office itself, or by direct and personal contact during visits to the various units of the Federal Prison Service.

371. The arrangements made for receiving requests for consultation and complaints are a major factor in the effectiveness of this body, since they constitute the starting point for putting into operation the system for protection of the rights of inmates.

372. The consultations referred to may be conducted by the following means:

(a) Through the free telephone service. In this case, it is important to point out that, to the extent that inmates have become aware that this system is in operation, they have been using it more; it has thereby been demonstrated that the system is a widely accepted one, available in all the prison units of the national territory and enabling certain anxieties and conflicts to be resolved inasmuch as the reply or advice is given, or the course of action taken, in real time, with the consultation taking place point by point between the interested party and the professional who takes

the call. In that case, depending on the importance of the subject of the consultation, the product may be a document giving rise to administrative action or else the relevant reply by telephone, given, as has already been said, concurrently with the handling of the call.

(b) Through the reception of written submissions, which invariably give rise to administrative action. While the number of such submissions from inmates, family members or relatives has declined somewhat, this constitutes the only means used by the various branches of the Governments (national or provincial) or non-governmental agencies and organizations; so in this regard the importance of this means of presentation has hitherto remained unchallengeable.

(c) Through personal submissions made directly at the Procurator's Office by family members or interested third parties, of whose concerns due note is taken in writing.

(d) Another means by which qualified advice can be given or complaints settled is through the personal interviews that take place in the prison units themselves on the occasion of the visits periodically made by the senior authorities, jointly with the professionals from each operational area of the system. In such cases, inmates express their views personally to their interlocutors.

(e) Finally, and *pari passu* with technological progress, inquiries are received by fax; arrangements are still pending – always subject to considerations of economic rationality – for the installation of electronic mail or Internet equipment.

### **Analysis of inquiries and complaints**

373. For adequate treatment the submissions, once registered, are referred according to type to different work areas. These areas, which are described in detail below, operate on an integrated and mutually complementary basis when the situations presented in the questions submitted for consideration so require. Actually, moreover, in many cases inmates submit up to three or four different types of inquiry and/or complaint in each submission.

374. The medical area is considered the most sensitive sector of the Office of the Government Procurator for the Prison System, on the basic principle that health care is a matter of highest priority in the protection of human and social rights. Assessments of health status (for example in cases of brawling or physical aggression among inmates) fall within this area.

375. In response to every request for medical care, the practitioner reports to the prison establishment and, following the interview with the patient, draws up the relevant medical care report, making such recommendation as he may deem necessary and entering it in the inmate's clinical history, where he indicates the latter's state of health. This report serves as a basis for subsequent interviews, as well as an official document if required in case of requests for information from defending counsel, judges and appeal courts.

376. Concerning the legal area, it can be stated that the role of the Office of the Government Procurator for the Prison System, in regard to intervention and advisory assistance on legal matters, is based on the good offices principle.



377. The professionals in this area handle inquiries mainly on the status of cases, assessment and reduction of penalties, habeas corpus, *amparo* and extradition.

378. The basis for the work of this sector is the system of telephone inquiries, which necessitates the involvement of legally qualified professionals to deal with the inquiries made by telephone and also by mail, in addition to the function of studying the cases they are handling in the various law courts, as a necessary step to processing the replies on each case, as required.

379. Here is a statistical breakdown of the subjects dealt with in the legal area:

Judicial	50.21%	1,077
Prison situation	19.17%	411
Health Care	11.74%	252
Social action	9.46%	203
Others	9.42%	202
<b>Total</b>	<b>100%</b>	<b>2,145</b>

380. A cursory analysis of the above figures shows that the dominant trend for the bulk of inmates has been to seek information on their judicial or legal situation. A lesser proportion of inmates' inquiries concern their actual stay in the custodial units and their relations with the management of the Federal Prison Service.

381. As regards the number of calls made per unit, while this is not reflected in the statistics, the data collected put Units 1, 2 and 3 ahead, with a percentage higher than the statistical mean as compared with the rest of the units.

#### Supplementary statistics, period 01/10/99 to 30/11/99

Location closer to family	7	Reduction of sentence	1
Prison quarters	5	Remuneration in general	9
Health care	47	Short outings	40
Assessment of penalties	1	Semi-liberty	2
Confidential	1	Prison situation	16
Inmates' correspondence	4	Request for information: Legal situation	17
Education in general	2	Request for information: transfers	24
Interviews	5	Request for documentation: various	2
Extradition	3	Work in general	2
Release under care	5	Processing of personal documents	1
Conditional release	20	Visits between prisons	18
Probation	5	Extraordinary visits	10
Permit to go out	2	Private visits	5
		<b>Total</b>	<b>254</b>

382. Regarding the Social Service area, considering that the human rights protection system of the Office of the Procurator for the Prison System comprises, among other mechanisms, those for guidance and assistance, good offices, and activation of the justice system and the administration, the Social Service has carried out its tasks systematically bearing in mind that “the human rights protection role assigned to this office by Decree No. 1598/93 is intended to provide the prison population with more effective and less bureaucratic procedures for the defence of their rights”.

383. On those principles the following activities of the Social Service have been conducted on a general and daily basis. Every day, by telephone, letter or visits to the units concerned, efforts have been made to:

(a) expedite arrangements with the Social Services of the various units regarding visits between prisons, private visits and extraordinary visits. Concerning the two former, the demand for permission is constant, since owing to the density of the prison population the processing of the application within the units and later at the National Prison Régime Directorate (the last stage in granting the request) entails bureaucratic delays that exacerbate the anxiety typically felt by the person deprived of liberty;

(b) guide and advise inmates on how to initiate proceedings with the Social Service of the units for the granting of visiting rights;

(c) provide guidance and advice on the initiation of proceedings for obtaining documentation required by inmates;

(d) expedite arrangements for referral to outside hospitals. Liaison with the Social Services of the various hospitals;

(e) contact assigned counsel by telephone or letter so as to channel inquiries on inmates' various problems (medical care, change of quarters, visits, transfers, legal cases, matters referred for study, etc.);

(f) receive and deal with the letters sent to this office by assigned counsel about the problems enumerated in the previous paragraph;

(g) coordinate efforts to solve questions of concern to inmates with the other areas, namely legal and medical, of the organization;

(h) arrange with any educational institutions where inmates have studied before being deprived of liberty for the relevant certificates to be issued so that they can continue their studies in their new situation as prisoners;

(i) ask for welfare reports from the prison units where inmates are housed in order to expedite the handling of requests for location closer to families, private visits or visits between prisons;

(j) negotiate by telephone or fax with the Medical Directors of prison hospitals in order to expedite proceedings for timely care of prisoners, whether inside or outside the establishment;

(k) advise inmates and their families concerning the steps required for the officialization of marriages, recognition of children and obtaining access for juveniles to the unit where there is no adult to accompany them;

(l) maintain permanent contact with the national consulates of prisoners housed in the units of the Service in order to request visits, legal or social assistance, or the services of interpreters to facilitate communication.

#### **Synopsis of subjects dealt with**

Judicial	419	18.02%
Health problems	352	15.14%
Social action	469	20.16%
Recommendations	316	13.58%
Others	770	33.10%
<b>Total</b>	<b>2,326</b>	<b>100%</b>

#### **Programme of mediation organized by the Office of the Government Procurator for the Prison System**

384. To keep their inmates under custody is unquestionably a primary function of prison centres, but this must not be seen as a limitation upon their treatment. The concept of “dynamic security” has now gained currency in the light of extensive and painful experience and replaced the old idea that it was the obligation of the authorities and prison staff alone to maintain treatment and security, which thus ceases to be a unilateral concern. The prisoner can cooperate to make it a success.

#### **Criminal complaints lodged by the Government Procurator for the Prison System**

385. The Procurator, in his capacity as external comptroller of the prison administration, has filed various complaints against the Federal Prison Service on the basis of reports from inmates whose accounts tally with certain proven facts.

386. Once cognizance is taken of the case through the mechanisms already referred to, the inmate is interviewed in private and the medical staff of the office, with his permission, conduct a medical examination to verify the lesions displayed, which will later serve as probative evidence for the criminal complaint filed.

387. In the past year more than ten criminal complaints for unlawful coercion have been received; they are still under investigation.

#### **Visits to prison establishments**

388. The Procurator or Deputy Procurator for the Prison System, accompanied by professionals from the office, have visited the various units located in the Autonomous City of Buenos Aires, greater Buenos Aires and the rest of the country, where they have had an opportunity not only to interview and talk with prisoners at group or individual hearings, and to appraise on the spot the state of the establishments and the living and treatment conditions, but also to establish contact with provincial officials entrusted with responsibility in the area and local non-governmental

organizations dedicated to helping inmates. In the course of their visits they have inspected living quarters, solitary confinement cells, workshops, kitchens, storerooms, study centres, dispensaries and prison hospitals.

389. For these visits the Procurator's Office adopted the relevant rules recommended by the Inter-American Institute of Human Rights.

390. On every visit they have received the fullest cooperation from the staff of the Prison Service, which has demonstrated its unconditional readiness to help the work of the office. Below are outlined the most salient points in the reports concerning the questions dealt with in them (Annex IX contains the report drawn up by the Office of the Government Procurator for the Prison System on the visits made to the various establishments).

### **Appointment of the Prison Ethics Committee**

391. The Prison Ethics Committee was set up by Resolution MJ and DH No. 269/00, of 10 April 2000. It consists of three members: a Chairman, appointed by the Department of Crime Policy and Prison Affairs, and two ordinary members, one proposed by the Under-Secretary for the Department and the other by the National Director of the Federal Prison Service.

392. The function of the Committee is to receive complaints of dereliction of duty, misconduct, or corruption of officials of the service by other officials of the service, inmates or members of their families, or private individuals, and conduct a preliminary investigation with a view to recommending to the Department administrative and/or criminal action to be taken in regard to each of the acts complained of. Complaints are received directly or in writing at the headquarters of the Department or by telephone on a line installed for the purpose. In the case of complaints by inmates, the Committee meets in the prison units to take their statements. The existence of the Committee has been publicized through notices that are posted at the units, both in the offices of the prison staff and in places where inmates, family members and council circulate.

393. To date 34 complaints have been received, 9 of which were rejected as not being within the competence of the Committee. One of the others gave rise to preliminary administrative proceedings and 11 to examination proceedings with a view to determining the identity of the officials possibly involved in the acts complained of. On the remainder, preliminary reports are being prepared to determine what action should be taken. Of the complaints received, 7 have been referred to the courts for investigation.

394. The Service reports every two weeks to the Committee on progress in the initial proceedings and inquiries initiated.

### **Office of care for prisoners and their families, attached to the Department of Crime Policy and Prison Affairs**

395. This office was set up in January 2000 with the following objectives: to be a focal point for applications from inmates and/or their families concerning the various situations that inmates live through during their stay in the units administered by the Federal Prison Service; to deal with the applications received; and to maintain an up-to-date situation chart regarding the day-to-day problems affecting inmates and their family members.

396. The Office receives applications by telephone or post, as also by personal contact with members of inmates' families at the headquarters of the Department of Crime Policy and Prison Affairs.

397. Each case is dealt with individually, as prescribed in the rules, and is followed up until the issue is settled. Note that this settlement does not always constitute a favourable response to what is requested, since various regulations governing life in prison must be complied with.

398. The Office has a database in which are recorded all the applications received together with the progress in the measures taken until proceedings are concluded with the reply to the person or persons concerned.

399. For entry into the database applications are classified by the applicant's gender. The classification is being progressively refined as questions are received that cannot be accommodated in the already existing categories. To date, the headings used are: inquiries, grievances, complaints, studies, remission and/or commutation of sentence, legal, medical, transfers and visits.

400. All applications, except those of an emergency nature, are requested in writing so that they are formally placed on record. They are channelled through the competent units or directorates of the Federal Prison Service. The request is made by telephone, formal memoranda being resorted to only where the extreme gravity of the situation requires that the communication be put authoritatively on record. This constitutes a different procedure from the one followed under the previous arrangement, which consisted in sending a memorandum to the National Director of the Service whenever an application was received from an inmate or members of his family, consigning the latter to a bureaucratic maze that rendered the communication useless. This new procedure has enabled more effective treatment to be given to applications received and reduced exchange of papers between the Department and the National Directorate.

401. The Office has proved to be an important means of communication for inmates or members of their families faced with exceptional situations that create emergencies in prison units. There have been many occasions where communications have been received alerting to some critical situation (unrest among inmates, violent searches, etc.).

402. The main problem areas identified in the units on the basis of the applications received are as follows: shortcomings in the medical care of inmates; questions in regard to the application of the progressivity of the prison régime; complaints of ill-treatment and threatening of visitors and inmates by those conducting searches; indiscriminate application of sanctions; transfer of inmates to units remote from where their families reside without help being provided to family members who do not have the means to travel (mainly in Unit 2) or increased costs owing to the need for families to move nearer; excessive time (up to three or four hours) required to complete the formalities preparatory to a visit; lack of proper information to inmates on the rules that govern their rights and life in prison; billeting of inmates without differentiating between their legal categories or personalities or taking account of the stage they have reached in the progressivity régime; shortcomings in referral of inmates to outside hospitals owing to delays that lead to missed turns for treatment or operations and shortage of ambulances to transport them; defects in the buildings occupied by units, in particular Units 1, 2, 3 and 16; lack of opportunities for inmates to study or work; lack of accommodation for drug-dependent adult inmates; shortage of social and psychiatric workers in the units; and shortcomings in the catering service.

403. From December 1999 to May 2000, 277 cases were dealt with and 83.4% of them were settled.

404. The largest number of applications came from Unit 2, with 40% of those registered compared with 16% from Unit 1 and 11% from the CPI.

405. With regard to subject matter, 39% of the applications concerned requests for transfers, 26% medical problems, and 9% questions of a judicial nature which cannot be favourably resolved owing to conflict with the regulations.

#### **Article 14**

406. Regarding the obligation of States Parties to ensure in their legal systems that the victim of an act of torture obtains redress and has a right to fair and adequate compensation, chapter I (Offences) of the Civil Code stipulates that “any offence entails the obligation to redress the damage resulting from it to another person” (art. 1077) and “should the offence consist in the infliction of physical wounds or injuries, the compensation shall consist in payment of all the costs of the injured party’s treatment and convalescence”.

407. Likewise, at the provincial level we find constitutional rules that contain similar provisions regarding the liability of the State for damages caused by its officials. By way of example we may cite:

(a) Constitution of the province of Jujuy

“Art. 10. Responsibility of the State and its agents

1. Every person performing public functions is responsible for his or her acts in accordance with the provisions of this Constitution and of the law.

2. The State is answerable for civil damage caused by its officials and employees in the discharge of their duties and attributable to the function or service performed, without prejudice to the obligation of the author of the damage to make reparation.”

(b) Constitution of the province of Chaco

“Responsibility of the State

Art. 76. The Province and its agents are responsible for any damage the latter cause to third parties by faulty performance in the exercise of their functions, unless the acts that caused it were performed outside their sphere of duties, in which case responsibility shall lie exclusively with the agent or agents who caused the damage.

The Province may be sued without need for authorization or prior complaints; should it be ordered to pay sums of money, its revenues shall not be subject to distraint unless the legislature has not allotted the necessary means to

effect payment during the session immediately following the date at which the coercive judgement became enforceable. Resources allotted to public services are in no circumstances subject to distraint.

The law may not provide for reduction, deferment, remission, or payment in other than legal tender, of debts for damage to the lives, health or well-being of persons, indemnifications for expropriation and remuneration of its agents and officials.

The provincial State, sued for acts of its agents, may demand that they be summoned to take part in the court proceedings, in order to determine their degree of responsibility. An official or representative who fails to respond to such a summons shall be answerable in person for the damages caused, without prejudice to the penalties that he or she may have incurred.”

408. It is noteworthy that, in pursuance of the redress policy of the national State for events of the recent past up till 10 December 1983, the date when democracy was restored, the national Government has paid, by way of compensation to the victims of State terrorism, an amount of almost 900 million pesos.

409. It is also worth mentioning that the Argentine State has implemented various measures to meet needs arising from the human rights violations that took place during the period 1976-1983.

410. Case files dealt with under Act No. 24.043/91 total 12,540, and work began on 2,700 during the last extension period. Payments have been made to date in 7,500 cases, representing a total of 570 million pesos. The amounts were credited in the form of series I and II savings bonds, in accordance with Act No. 23.982.

411. Act No. 24.321 establishes the category of “absent owing to enforced disappearance” applicable to anyone who disappeared on account of acts by the forces of repression up till 10 December 1983. The Office of the Under-Secretary for Human and Social Rights of the Ministry of the Interior, now operating as part of the Ministry of Justice and Human Rights, issues the certificate attesting to the deposition of the report on the enforced disappearance of a given person.

412. To date some 6,000 certificates have been issued. Others are still being processed owing to the need to supplement or collect documentation.

413. With regard to Act No. 24.411, which establishes a benefit for persons missing or dead as a result of repressive action prior to 10 December 1983, to date 7,578 applications for benefits have been submitted. The number of cases under consideration amounts to 6,780, of which 3,735 have been pronounced on by the Office of the Under-Secretary for Human and Social Rights of the Ministry of the Interior and 2,184 approved by the Ministry. So far 302,060,000 pesos has been paid out.

414. The Argentine Republic recognizes the principle according to which redress for human rights violations is not limited to payment of compensation, but in many cases this is the only form of redress actually available. Notwithstanding, it is important to point out that in assessing the compensation the Argentine State makes it a rule to include the non-material damage caused by proven human rights violation.

### **The “right to truth”**

415. Further to the above information on the redress policy of the National State, in the Argentine Republic actions have been in progress regarding what is called the “right to truth”. This right has been determined by case law in the Argentine courts and concerns the final fate of persons who have disappeared.

416. An important decision was taken by the Federal Court of Appeal for Criminal and Correctional Cases of the Federal Capital on 10 July 1996 when it ordered implementation, even *ex officio*, of whatever proceedings are considered appropriate in order to attain the objective consisting in the finding and identification of remains of missing persons, together with any contribution capable of bringing to light information useful for that purpose. Since then there have been a number of incidental pleas lodged to discover the final fate of certain missing persons.

417. This decision by the Federal Appeal Court has also had a multiplier effect in other courts. Thus, on 21 April 1998 the Federal Appeal Court of La Plata, province of Buenos Aires, decided by a majority to proclaim the right of members of the families of victims of State abuses committed under the previous *de facto* government (1976-1983) to know what had been the circumstances of their disappearance and, where applicable, the final fate of their remains.

418. With regard to protection by the Argentine Government of the “right to truth” and to justice of the families of missing persons and of victims of human rights violations, in the context of the case *Suárez Mason, Carlos Guillermo: in re homicide, unlawful deprivation of liberty*, Mrs. Claudia Aguiar de Lapacó entered an incidental plea in order to determine what had happened to her daughter, Alejandra Lapacó, arrested and missing since 17 March 1977, and to elucidate the final fate of her body, invoking the right to truth and the right to mourn.

419. In an initial decision, the Federal Court of Appeal for Criminal and Correctional Cases of the Federal Capital recognized this right and instituted some measures to make it effective. Later, the Court retracted, arguing its lack of competence to act in the matter.

420. On 18 July 1995 the Federal Court of Appeal of the Capital, by a vote of four of its members, declared the criminal action abated.

421. On 13 August 1998 the Supreme Court of Justice of the Nation rejected the appeal for special remedy filed against the ruling.

422. On 10 September 1998 the Defender-General of the Nation intervened in these proceedings as representative and guardian of the rights and interests of the missing persons, filing an application for remedy of clarification.



423. On 29 September 1998 the Supreme Court, in considering the Defender's submission, ruled that its prior decision "limits its effects in refusing the probative measures called for by the applicant to the circumstances of the case in which they were requested, because the subject of the action had been exhausted; that had certainly not implied initiating an action nor closing the various possible judicial and administrative channels available to the plaintiff to obtain the information she had attempted to elicit by an inappropriate procedure".

424. From the wording of both High Court decisions it is evident that the ruling does not deny Mrs. Aguár de Lapacó's right to truth but states that her request cannot be met at a terminated criminal trial without affecting the guarantee of *res judicata*, while the feasible and appropriate administrative and judicial channels remain open.

425. This reading of the rulings given in regard to the fate of Alejandra Lapacó is confirmed by a later judgement of the same High Court handed down on 15 October 1998 in the case of *Urteaga, Facundo Raúl v. National State – Joint Staff of the Armed Forces in re Amparo Act No. 16.986*, where the High Court refers expressly to the case of Alejandra Lapacó in preambular paragraph 6:

"6) That this Court, in determining on 13 August 1998 the inadmissibility of the probative measures demanded by Mrs. Carmen Aguár de Lapacó, mother of a missing person, in the case *Suárez Mason, Carlos Guillermo in re homicide, unlawful deprivation of liberty* stated that 'the application of the measures demanded would imply reopening the trial and thus taking legal action in the case of persons against whom proceedings have been dismissed for the conduct which gave rise to the bringing of the present case, so that the object of the proceedings demanded is not apparent, devoid as they are of any potential for collection of evidence for a prosecution without a passive subject against whom it could be applicable'. The decision obviously limited the effects of the refusal of the probative measures in the context of the criminal case referred to, since other judicial or administrative channels remained available."

426. In the *Urteaga* case referred to, the Supreme Court unanimously recognized the right of the plaintiff, brother of the victim, to obtain "such information existing in public registers or data banks as will enable the applicant to determine the demise of the missing person and, as the case may be, to learn the fate of that person's remains, i.e., have access to data the knowledge of which is the object of the guarantee in questions".

427. The case in point was an application for remedy of *habeas data* based on article 43 of the National Constitution, which provides that "any person may bring an urgent and rapid action for protection, provided no other, more appropriate judicial means exists, against any act or omission on the part of public authorities or individuals which immediately or imminently damages, restricts, impairs or threatens, in a manifestly arbitrary or unlawful way, rights and guarantees recognized by this Constitution, by a treaty or by a law. In such case, the judge may declare unconstitutional the legal rule on which the injurious act or omission is based ... Any person may file such an action to obtain information on the existence and purpose of data concerning him or her stored in public registers or data banks, or private ones designed to supply information, and in case of falsehood or discrimination to demand the suppression, rectification, confidentiality or updating of such data. The secrecy of journalists' sources may not thereby be impaired."

428. The special context of the adoption of the decisions in the proceedings initiated by Mrs. Aguár de Lapacó and Mr. Urteaga is universally emphasized in the doctrine. Thus the Minister Adolfo Vázquez points it out in the signed comments published in the newspaper *Clarín* on 3 November 1998: “There was not, as stated in the publications to which this article is a response, a change of position on the matter, as would have happened if the cases, being identical, had been resolved in different ways ... In both the cases concerned the court took exactly the same stand: that judicial *res judicata* must be maintained irrespective of any political contingency and that *amparo* applications by individuals are fully valid despite any legal flaw, since they are directly provided for today in our National Constitution, in international treaties, and in acts stemming from the Constitution”.

429. With the reasoning of the court thus presented, their decision cannot be construed as a refusal of the so-called right to truth – the essential question – when only the form of procedure chosen was rejected. Likewise, it is argued that a reading of the two resolutions which implies a human rights violation is not reasonable. It is not reasonable to suggest that the decision of 13 August 1998 amounts to an impairment of rights, because it did not deny jurisdiction but indicated that the appropriate remedy had not been chosen.

430. As of July 2001, some 3,570 cases of human rights violations and enforced disappearances that occurred under the last military government are being investigated in various truth-finding actions being conducted by a number of federal courts and judges throughout the country.

431. Truth-finding proceedings may be initiated *ex officio*, through the Ad Hoc Committee of Prosecutors established by the Procurator-General of the Nation, or at the request of an interested party.

**Ad Hoc Committee of Prosecutors set up by the Office of the Procurator-General of the Nation**

432. This Committee on truth-finding proceedings was set up by Resolution PGN 15/00 at the request of the Special Representative for Human Rights in the International Sphere in connection with the follow-up of the agreement on an amicable solution in case No. 12.059 of the Inter-American Commission on Human Rights (Lapacó case).

433. The Procurator-General’s office has been consistently maintaining that State responsibility for determining the truth about what occurred during the period of *de facto* government from 1976 to 1983 extends to the initiation of the truth-finding proceedings that guarantee the right to justice of all Argentines. It has also taken the view that the activities of the Public Attorneys’ Office should aim at achieving the following ends:

(a) elucidation of the facts about the repression that occurred in the various administrative districts of the country under the former military dictatorship, identifying victims and perpetrators;

(b) determination of the final fate of persons who disappeared by finding their remains, then identifying them and restoring them to their families; and

(c) retrieval of the identity of children appropriated and identification of their appropriators with a view to exercising public right of criminal action.

434. In pursuance of this course of political and criminal action and for the attainment of these ends the Committee of Prosecutors was set up by Resolution PGN 15/00, with the following mandate:

(a) to cooperate in the investigations conducted by the prosecutors in the cases concerning “establishment of the truth” of the facts relating to human rights violations between 1976 and 1983, should they so request;

(b) to develop the necessary mechanisms for interchange of the information being acquired in all the agencies concerned; and

(c) to raise, by means of coordinated actions, the levels of efficiency of the Public Attorneys’ Office in the conduct of proceedings in these cases.

435. As regards the functioning of the Committee, its members have been empowered to act in alternation, jointly and equally with the prosecutors taking part in the investigation of these facts should they so request.

436. A point of prime importance taken into account at the time of deciding the composition and functioning of the Committee was that there exist no rules expressly drawn up for these unprecedented actions, but rules deriving from solutions to problems and discussions arising in the judicial conduct of the proceedings.

437. Accordingly, instead of setting up a body of mobile prosecutors whose members would travel all over the country, it was decided to constitute a committee with the same prosecutors who at the time were officially representing the Public Attorneys’ Office in a truth-finding action. Thus it was envisaged that in their work its members would exchange experience and provide mutual support so as to take advantage of what had been learned by each of them in this activity.

### **Work of the Committee in general**

438. For the Committee to function as designed by the Committee and attain the above-mentioned objective, it was considered necessary to hold periodic meetings between the member prosecutors for exchange of information and discussion of investigation strategies. These meetings consisted of:

(a) meetings between all the prosecutors, organized at the Office of the Procurator-General of the Nation by the Procurator-General for Crime Policy and Community Services; and

(b) meetings arranged through contact between the prosecutors themselves to deal with needs arising in the day-to-day conduct of the proceedings.

439. It is also noteworthy that in the context of the promotion, sensitization to and publicizing of these proceedings some of the prosecutors sitting on the Committee have attended and reported on their experience at the periodic meetings of members of the judiciary and staff of the Public Attorneys' Office organized by the Provincial Remembrance Committee of the province of Buenos Aires. The purpose of these meetings is to exchange information, promote court actions and provide mutual input with regard to the proceedings taking place in the country (and any others that may be instituted). Several meetings have already been held for this purpose. Further, members of the Committee have been involved in the work of the Human Rights and Guarantees Committee of the Senate of the province of Buenos Aires and in various debates organized in various towns of the province of Buenos Aires with regard to truth-finding proceedings.

440. The functioning of the Committee has proved very satisfactory as regards the training and mutual support of its individual members, with resultant progress in the handling of the various cases. This effectiveness is also evidenced by the wish to join the Committee expressed by the Senior Prosecutor to the Chaco Oral Court when taking part in new truth-finding proceedings initiated in that province.

441. Also noteworthy is the attendance of the Senior Prosecutor, Mr. Cañon, at the hearings of the "truth trial" being conducted in the district of Mar del Plata.

442. All this notwithstanding, the fact cannot be evaded that in several cases difficulties have been encountered in the conduct of truth-finding proceedings, generally owing to behaviour not involving the Public Attorneys' Office and, in a few specific cases, to some perhaps questionable aspects of the part played by that office, which are amenable to correction in view of its hierarchical organization.

### **Role of members of the Public Attorneys' Office in truth-finding proceedings**

443. Examination of case file No. 66.769-M-3487, entitled Inquiry into the fate of missing persons in the case Menéndez, Luciano Benjamín and others *in re* crimes committed in the repression of subversion (Senior Prosecutor to the Federal Appeal Court of Mendoza, Mrs. María Susana Balmaceda) began on 30 November 2000. The competence of that Federal Court to handle the investigations in this case was upheld.

444. During the year 2001 a large body of evidence was heard with a view to determining the truth regarding the events under investigation and the fate of the persons who disappeared under the last military dictatorship.

445. The case has now been submitted to the National Court of Criminal Appeal upon application by assigned counsel.

446. No criminal indemnification proceedings have been brought in this case, despite the involvement of a considerable number of members of the families of missing persons.

447. On 1 June 1999 work began on the hearing of the *case Submission by the Permanent Assembly for Human Rights (APDH) of Neuquén-Bahía Blanca and others, in case 11/86 (c) demanding to know the fate of the missing persons* (Senior Prosecutor to the Federal Appeal Court

of Bahía Blanca, Mr. Hugo O. Cañón) and the constitution of case file No. 11 (d): *Submission of the APDH of Neuquén-Bahía Blanca and others in case 11/86, demanding to know the fate of the babies born in captivity.*

448. In view of the large body of testimony already received, and to facilitate its study by the court and the parties involved, instructions were given to open specific files, of which 23 have been constituted to date. Thus, for the evidence presented by the Senior Prosecutor's Office, nine files were opened, labelled: Hospitals, Federal Register of Persons, Army General Staff, Newspapers, Argentine Federal Police, Ministry of Justice and Security of the province of Buenos Aires, Police of the province of Río Negro and La Pampa, Buenos Aires Provincial Court, Juvenile Court No. 1, and General Writ Service of the Judicial Department of Bahía Blanca.

449. As regards the testimony provided by the Public Attorneys' Office, it was presented in the course of three series of hearings, the first of which began on 22 November 1999 and the last on 8 July 2000. To date, a total of 26 public hearings have been held.

450. So far statements have been made by 61 witnesses and three confrontations have taken place, the evidence given being recorded, together with all the vicissitudes of the hearings, in 43 video cassettes, of which copies have been made for delivery to each of the parties. Everything has been done to obtain the funds necessary for this, and the firm and staff to do the work have been selected.

451. Since July 2001 case 11 (c) has been virtually at a standstill, because all the proceedings have been referred – as ordered by the Supreme Court of Justice of the Nation – to Division IV of the National Court of Criminal Cassation, which has demanded the original of the case records in order to rule on an application for remedy of complaint filed by Julián Oscar Corres (who was heard as a witness) under interlocutory matter No. 11 (c) 2.

452. Through the intermediary of the Court Prosecution Office, urgent measures of evidence collection were ordered and carried out, including a visual inspection at the local municipal cemetery, resulting in the application of a writ of *non innovare* to the site inspected, where it is suspected that missing persons may have been buried.

453. The cases initiated on the basis of the submission by the *Permanent Assembly for Human Rights in re submission-investigation* (Senior Prosecutor to the Federal Appeal Court of La Plata, Mr. Julio A. Piaggio) are in reality an amalgam of 2,100 cases arising from the submission by the Permanent Assembly and as a derivative of the case it is conducting in the city of Mar del Plata. Most of them originate in the *habeas corpus* applications filed in the courts of first instance.

454. The subject of inquiry in these cases, as defined by the resolutions and decrees of the Federal Appeal Court of La Plata, is essentially the determination of what happened and the final fate of the missing persons.

455. During the year 2000 more than one hundred public hearings were held by the Federal Court. In addition, charges resulting from those cases were notified.

456. Among the most noteworthy developments is the discovery of Prison Service records containing information on arrests in the province of Buenos Aires and records of the police of the province. Though this information is still being processed, it has been possible to determine the pattern of transfers of prisoners and the existence of a system of arrests and repression in the district of La Plata.

457. The cases entrusted to the Senior Prosecutor to the Oral Court of Mar del Plata, Mr. García Berro, which are being heard by that Court, were brought before it by various human rights associations and the College of Advocates of that city in October 2000. At an initial stage when the question of competence was discussed with the Appeal Court of the district, the prosecutor to the lower court, Mr. García Berro, citing the provisions of Resolution PGN 78/98, upheld the competence of the oral court chosen by the petitioners, in order that the investigation should not be further delayed.

458. The next step was the methodical organization of the cases. In the light of testimony and evidence obtained it was determined that civilians had participated in the acts under investigation and on that basis orders were given for an action to be instituted in each case.

459. With the cooperation of the Directorate of Registration of Missing Persons attached to the Ministry of Security of the province of Buenos Aires, the Directorate of Case Records of the Provincial Police, the Argentine Forensic Anthropology Unit, and the Imaging Laboratory of the Engineering Faculty of the University of Mar del Plata, work is proceeding on the identification of corpses by examination of non-identified parts and a system of fingerprint enhancement, as a preliminary to the exhumation of corpses.

460. In the case *Pérez Esquivel, Adolfo, Martínez María Elba in re submission (case file No. 9481) and others* (Federal Prosecutor of Córdoba, Mrs. Graciela S. López de Filoñuk) the conduct of the proceedings for human rights violations under the former dictatorship has continued with the participation of Federal Court No. 3. During the present year much evidence has been collected, prominent among which are the statements of former accused who benefited from the Clean Slate, Due Obedience and Reprieve Acts. The refusal of several of them to make statements under oath resulted in arrests and the initiation of proceedings for perjury. In these cases active participation by the complainants is to be observed.

461. Case files *Cherry Teresita del Niño Jesús Noemí in re her petition (134/00; Pfeiffer Beatriz Guadalupe in re her petition (135/00); Wollert Vilma in re her petition (136/); Medina Luis Alberto in re his petition (137/00; Hormaeche Camilo in re his petition (1138/00); Suppo Silvia in re her petition (139/00); Bianchi, Adriana María in re investigation of historical truth (140/00); White, Guillermo Horacio in re investigation of historical truth (141/00); Madam Procurator Fiscal in re criminal complaint filed (142/00); Feresin Emilio in re investigation of historical truth (143/00); Rodríguez Marta and others in re presumption of clandestine jail (33/01)* (Prosecutor, Federal Court of First Instance No. 1, Santa Fe, Mrs. Griselda Tessio).

462. In 1998 efforts began at Federal Prosecutor's Office No. 1, Santa Fe, to re-establish the historical truth on the basis of the cases of Carlos Lorenzo Livieres Banks, a Montonero militant murdered in the town of Santa Fe in February 1976, and of Paula Cortasa (registered since her adoption as María Carolina Guallane) whose mother, Blanca Zapata, was murdered on 11 February 1997 and whose father, Enrique Cortasa, is still missing since the same date.

463. In parallel with the Prosecutor's Office, and on the basis of these legal submissions, a group of persons working independently directed their efforts to the elucidation of these events and also the determination of the identity of the persons who were buried as "unidentified" at the municipal cemetery of the town of Santa Fe.

464. As a result of the investigations, and with the participation of locally based lawyers, the first legal proceedings began aimed at the recovery and identification of remains and the exercise of the right to truth on the part of family members.

465. In this phase the cooperation of the Argentine Forensic Anthropology Unit made an important contribution to the recovery and identification of the remains of persons murdered under the last military dictatorship.

466. Meanwhile, and until the first exhumation operations began in 1999, the Federal Prosecutor's Office, subject to the budgetary limitations normal for a country in a state of crisis, devoted its efforts essentially to the retrieval of the documentation filed by the Federal Judiciary and to promoting the actions launched, with the support of the Office of the Under-Secretary for Human Rights, at that time attached to the Ministry of the Interior of the Nation.

467. When exhumations began at the Santa Fe municipal cemetery, the direct contact between the Federal Prosecutor's Office and the individuals who had independently committed themselves to the reinstatement of the truth bore fruit in the coordination of efforts and resources to achieve the common objective.

468. Further, the contact referred to in the previous paragraph made it possible to associate in the work the members of the Brothers Committee of the association Children for Identity and Justice Against Oblivion and Silence (HIJOS), who since it was set up have been working for the restoration of the identity and return to their families of those children who were abducted with their parents or born in captivity and later appropriated by the agents of repression.

469. Finally, on 5 January 2000, and on the model devised by Mr. Omar Cañon, Senior Prosecutor to the Federal Appeal Court of Bahía Blanca, a committee was appointed to support the investigative work being done by the Public Attorneys' Office and coordinated by the Secretary of the Federal Prosecutor's Office, Mr. Alejandro G. Luengo.

470. Through the joint efforts of many people a work plan was organized which at once began to produce substantial results and the foundations were laid for the application of an investigative method which is being constantly refined and has been adopted as a model by State and non-State organizations in various parts of the country.

471. In view of the large number of tasks undertaken, it was necessary to invite the cooperation of persons committed to the objectives of the Committee who, without formally joining it, contribute by their efforts to helping achieve them.

472. With the attainment of those objectives as its aim, the Truth Committee undertook the following tasks:

(a) Cemeteries: a survey is being made of the books and documentation existing in the record offices of the cemeteries of the towns of Santa Fe, Coronda and Rafaela, dating from 1975 to 1982.

(b) Civil register: a study is being made of the certificates of death from non-natural causes issued in the province of Santa Fe and, as regards birth certificates, their authenticity is being determined.

(c) Public hospitals: with the assent of the authorities of the Ministry of Health of the province of Santa Fe, the records for the Cullen and Iturraspe hospitals in the town of Santa Fe, which had remained "lost", were recovered and a study is being made of the records and clinical histories under the headings Maternity, Police Ward and Mortuary.

(d) Newspapers: a systematic study is being made of the news items concerning repressive acts by the State that appeared between the years 1975 and 1981 in the newspaper *El Litoral* of the town of Santa Fe, and a similar study will shortly begin of the items by local correspondents in the newspaper *La Capital* of the town of Rosario.

(e) Court records: with the authorization of Federal Court No. 1 of Santa Fe, a study is being made of the case records filed at the court. Regarding the records of the ordinary courts of the town of Santa Fe, a written request has been made for the transmittal of case files that may prove of interest to the Examining, Juvenile and Civil Courts (competent in matters of adoption during the period under investigation).

(f) Police records: with the authorization of the Ministry of the Interior of the Province of Santa Fé the Committee obtained access to the records of all the police units in the province and removed from police premises over 500 registers which proved of the greatest interest for the investigation and which remained in the custody of the Argentine Naval Prefecture. The information contained in the various registers is currently being processed by the Committee.

(g) Police photographs: among the records made available to the Federal Prosecutor's Office there were found, in the Police Photography Division, the negatives of photographs relating to repressive action, including those taken of dead and missing persons immediately after they had been murdered, which enabled some of them to be identified.

(h) Children: on the basis of the investigations undertaken using data collected by the members of the Committee, a systematic follow-up is being made of a total of 18 cases of young persons believed to be children of dead or missing persons.

(i) Family members: relations are being established with members of the families of dead and missing persons with a view to arriving at a historical reconstruction of what happened, as well as giving them legal help and advice.



(j) Witnesses: contacts are being sought with persons who, for whatever reasons, have information about acts of repression and could provide data on events investigated by the Committee.

(k) Clandestine burials: the investigations conducted by the Truth Committee identified some places where victims of State terrorism may have been secretly buried and work began with a view to confirming the reports.

(l) Truth-finding proceedings: through coordinated work with agencies in other parts of the country, the Committee promoted the submission of 36 cases in which the right to truth was asserted by court action.

(m) List of dead and missing persons: lists obtained from the National Commission on the Disappearance of Persons (CONADEP) and other sources were screened in order to delimit precisely the cases pertaining to this administrative area; the list is being constantly updated.

(n) Inspection of military units: the Committee carried out inspections in military units of the area to obtain information and documentation that might be useful for the investigations.

473. The work of the Truth Committee made it possible:

(a) to restore her real identity to Paula Cortasa;

(b) to identify the remains of Juan Carlos González Gentile, Cristina Ruíz, Osvaldo Pascual Zicardi, Horacio Lisandro Ferraza, Blanca Zapata, Silvia Woolert, Norma Meurzet, Nora Meurzet, Luís Alberto Vuistaz and Rolando E. Oviedo;

(c) to confirm that the remains of Adriana Bianchi had been interchanged with those of another militant whose identity is being kept confidential at the request of her family.

474. For all the above reasons it can be unequivocally stated that the activities of the Federal Prosecutor's Office working in concert with organized civil society have made a very real contribution to the creation of conditions that have enabled the commitment of scattered individuals to be mobilized in the service of a common objective.

475. Cases referred to the Federal Prosecutor, Mr. Eduardo R. Freiler, concerning abduction and appropriation of minors. Mr. Freiler has been appointed a member of the Committee in question; however, his cases are not truth-finding proceedings but are concerned with investigating the existence of a systematic plan for abduction and appropriation of children of missing persons.

### **Activities under the auspices of the Procurator-General of the Nation**

476. Directed from the Procurator-General's Office and in fulfilment of the commitment that has been accepted to the discovery of the historical truth for the rebuilding of the social fabric, various activities have been developed.

477. As an additional undertaking and to provide support to the members of the Attorney-Generals' Office and specifically to the members of the Committee, work began operating from the Crime Policy Documentation Centre, on the processing and regular updating of background data on "truth-finding proceedings" and "abduction of minors" of interest to the prosecutors in their work, so as to give them access to the most recent and important information on the subject.

478. Likewise, arrangements were made for the General Department of Crime Policy of the Procurator-General's Office to provide liaison and support to the Committee wherever required.

479. Finally, it must be reported that whenever the Procurator-General's Office has had occasion to make a statement before the Supreme Court of Justice of the Nation on any matter relevant to this subject, it has stressed the need to guarantee the full recognition and exercise of the right to truth.

480. On the strength of the Aguiar de Lapacó case (see para. 418 above), the Procurator-General of the Nation has maintained that cases of systematic human rights violations, such as occurred between 1976 and 1983 in our country, imperatively and inescapably necessitate, over and beyond the possibility of imposing sanctions, a committed search for the historical truth as a preliminary step towards a moral reconstruction of the social fabric and of the institutional mechanisms of the State.

481. This position was restated in the following cases: *Engel, Débora and another in re habeas data* (A 80/35, of 10 May 1999); *Adur, Jorge O. in re case No. 10191/97* (Comp. 108/35, of 20 April 1999); *Cabeza, Daniel V. in re complaint* (Comp. 525/36, of 31 May 2000); *Palacio de Lois, Graciela in re amparo* (P 252/36, of 12 June 2000); *Nicolaidis, Cristino in re abduction of minors* (Comp. 786/36, of 1 August 2000); *Videla, Jorge R. in re lack of jurisdiction and res judicata* (V 34/36, of 14 November 2000); *Corres, Julián in re complaint proceedings* (Comp. 1433/36, of 26 December 2000); and *Vázquez Ferrá, Karina in re deprivation of documents* (V 356/36, of 7 May 2001), where the court upheld the constitutionality of compulsory taking of a blood sample from a person presumed to be a daughter of missing persons and victim of appropriation.

482. The result of the position taken by the Procurator-General's Office was that the Supreme Court too, as early as its consideration of the Urteaga case (see para. 425 above) recognized the right of society to be told the truth about the human rights violations that occurred prior to the re-establishment of constitutional government and, in particular, the right of victims' families to know what happened to their loved ones as a prerequisite for the rebuilding of their family ties and, thereby, their identity.

483. This same line of thought and the same commitment were reflected in the adoption of the following resolutions:

RES. PGN 73/98 – Instruction to the prosecutors of all courts and levels of jurisdiction inviting them, in case on human rights violations between the years 1976 and 1983, to cooperate with all members of the families of persons who disappeared during those years seeking to obtain information on the fate of the victims.

RES. PGN 74/98 – Instruction to the Senior Prosecutor to the Federal Court of Appeal of La Plata, Mr. Julio A. Piaggio, inviting him to desist from the pleas of incompetence lodged with this court in regard to cases on human rights violations between the years 1976 and 1983.

RES. PGN 40/99 – Appointment of a Committee whose purpose will be to collaborate in assuring the coordination of investigations conducted by prosecutors in cases concerning offences connected with abduction of minors.

RES. PGN 15/00 – Appointment of a Committee whose purpose will be to cooperate in the investigations conducted by prosecutors in cases on ascertainment of the truth.

RES. PGN 41/00 – Instruction inviting the members of the Committee appointed by

RES PGN 40/99 to initiate proceedings on behalf of the right to truth before the National Court of Appeal for Federal Criminal and Correctional Cases of the Federal Capital.

484. It is important in this connection to mention that in parallel with the Committee appointed by Resolution PGN PGN 15/00 another committee of prosecutors has been working to deal with cases on abduction of minors (RES PGN 40/99). It has been processing the information on legal cases concerned with abduction of minors and taking part in the work of the Identity Committee. In the course of its activities instructions have been issued to its member prosecutors through Resolution PGN 41/00 inviting them to initiate truth-finding proceedings in the *Castro-Tortrino* case in pursuance of the commitment undertaken by the Argentine State regarding that case.

485. From the foregoing it may be concluded that the Committee appointed by Resolution PGN 15/00 has been carrying out the functions that were entrusted to it in fulfilment of the institutional obligation and commitment that rest with the Public Attorneys' Office as a State organ in the ascertainment of the historical truth of the events that occurred during the last military dictatorship.

### **Article 15**

486. The principle that nobody is obliged to make a statement against himself is set forth in article 18 of the National Constitution. Likewise, article 296 of the Code of Criminal Procedure of the Nation guarantees freedom in regard to statements:

“The accused may refrain from making a statement. In no case may he be required to swear or promise to tell the truth nor subjected to coercion or threat or any measure to oblige, induce or decide him to make a statement against his will, nor shall charges or counter-claims be made against him to obtain his confession. Violation of this rule shall make the act void without prejudice to any penal or disciplinary responsibility incurred.”

487. In many provincial laws, this principle extends to not having to make statements against one's ascendants, descendants, spouse or siblings, nor other relatives by adoption.

488. In parallel with these provisions, the case law of the national courts confirms the full validity of this principle.

489. On this subject, the National Constitution – especially since the 1984 reform whereby various international treaties were incorporated into it and automatically acquired constitutional rank – together with the Fundamental Acts of all the provinces establish, in addition to the ban on having to make a statement against oneself, a number of basic guarantees that were later made operationally effective in the various codes of criminal procedure in force. Thus all of them predicate a deep respect for the person and the freedom of the human individual.

490. Among many other principles of indisputable value as examples we may single out, in each of the fundamental legal texts of the provinces, those which provide that arrests may be made only in the exercise of competent authority, the principle of the legally competent judge, the impossibility of being punished except after being tried according to a law antedating the act that gave rise to the proceedings, the principle of *favor rei* (favour towards the accused) and *in dubio pro reo* (in doubt be for the accused), the rule of *non bis in idem* (not twice for the same offence), equality under the law, the mildest law principle, the principle of *nullum crimen nulla poena sine lege praevia* (no crime, no punishment without a previous law), the elimination of every kind of torture and flogging and the proscription of any humiliation going beyond the precautionary measures essential on prison premises.

491. Similarly, provisions exist banning the requirement to make statements against oneself (see art. 33 San Juan, art. 40 Córdoba, art. 22 Santa Cruz, art. 11 Corrientes, art. 22 Río Negro, art. 40 Chaco, art. 20 Formosa, art. 45 Chubut, art. 26 Mendoza, art. 29.5g Jujuy and art. 30 Catamarca) and establishing the inviolability of proceedings in defence of the individual and his rights (see art. 33.1 San Juan, art. 13 La Pampa, art. 22 Río Negro, art. 40 Córdoba, art. 16 Formosa, art. 20 Chaco, art. 44 Chubut, art. 35 Tierra del Fuego, art. 18 Salta and art. 29.1 Jujuy).

492. The principle of innocence – which is not expressly enshrined in the Constitution of the Nation, though the highest court of justice considers that it is implicit in the text – has been provided for in the Constitutions of the provinces (see art. 26 Misiones, art. 22 La Rioja, art. 43 Chubut, art. 39 San Luis, art. 24 Santa Cruz, art. 20 Salta, art. 29.4 Jujuy, art. 55 Santiago del Estero and art. 25 Catamarca).

493. This stated, an overall review of the constitutions of our autonomous provinces bears out the points we have made, inasmuch as they incorporate the basic principles already mentioned despite using, in some cases, their own specific wording in their respective texts.

494. However, a comparative study has also been made of a number of constitutions whose authors have been concerned to include other provisions, specifically connected with those already reviewed, so as to produce a compilation that will accurately reflect an attitude wholly committed to the provision of guarantees to safeguard the inalienable rights of citizens.

495. Thus, there are provisions that preclude ordering incommunicado detention in the absence of a reasoned decision by a competent judge, as well as establishing a maximum duration for such confinement (see art. 33 San Juan, art. 14 La Pampa, art. 22 Río Negro, art. 43 Córdoba, art. 9 Santa Fé, art. 20 Chaco and art. 19 Mendoza).

496. Likewise, there are provisions for abolition of the secrecy of examination proceedings for the parties involved, a clear example of this being the texts of the Constitutions of the provinces of Chaco, Formosa, San Juan and Jujuy (see arts. 20, 21, 33 and 29.6, respectively).

497. Other constitutions expressly stipulate a maximum period of custody until the detention measure is reported to the competent judge (see art. 31.3 San Juan, arts. 17 and 18 Río Negro, art. 27 Neuquén, art. 14 Misiones, art. 14 La Pampa, art. 24 La Rioja, art. 42 Córdoba, art. 15 Formosa, art. 9 Santa Fé, art. 21 Chaco, art. 47 Chubut, art. 32 Tucumán, arts. 17 and 21 Mendoza, art. 40 San Lu  s, art. 27.3 Jujuy and arts. 32 and 32 Salta), and also that nobody may be subjected to torture (see art 16 San Juan, art. 16 R  o Negro, art. 19 La Rioja, art. 29 Entre R  os and art. 14 San Luis – the foregoing articles prescribe penalties for such conduct – arts. 26 and 20, paras. 1, 2 and 7; art. 33 Tierra del Fuego, art. 19 Salta, art. 48 Chubut, art. 30 Santa Cruz, arts. 5.2 and 19 Formosa, and art. 22 Chaco), not to mention that regulations have also been enacted to prevent the application of measures which, on the pretext of being precautionary, would result in humiliation of inmates held in the respective prisons (see art. 39 San Juan, art. 15 La Pampa, art. 23 R  o Negro, art. 26 La Rioja and art. 15 Chubut).

498. Regarding statements by the accused on police premises, the basic laws of the provinces take two different positions. Certain constitutions, in referring to the police authority that is exercised in the investigation of an alleged offence, do not allow any statement to be taken from the accused (see. art. 33 San Juan and art. 40 C  rdoba), whereas others make the admissibility of a statement by the accused to the police subject to certain conditions, such as the presence of defending counsel when it is taken: “The police authority in charge of the investigation of a suspected offence may adopt any measures within its competence in order to determine the truth, but may not take a statement from the accused except in the presence of defending counsel” (art. 24 Misiones).

499. Concerning the value as evidence of a confession to police, there exist two viewpoints: according to one, the law may not ascribe any value as evidence to a confession made to the police (see art. 43 San Lu  s), while other provisions predetermine the evidentiary value of the confession, considering it as a mere indication (see art. 42 Neuqu  n, art. 19 Santa Cruz and art. 28 Entre R  os).

500. While both the National Constitution and the international human rights treaties with constitutional rank authorize measures of personal coercion that restrict the freedom of the accused during the criminal proceedings, the international agreements provide for a system of guarantees on behalf of the person deprived of liberty. These guarantees are expressly embodied in the provincial constitutions.

501. A clear example of this is provided notably by articles 39 and 40 of the Constitution of the province of Neuqu  n, which read:

“Article 39: No special police organizations or sections of a repressive nature may be created. Anyone torturing, harassing or ill treating prisoners shall be punished with the utmost rigour of the law, as also shall anyone ordering, consenting to or instigating such crimes against humanity. Obedience to orders from above does not absolve from guilt.

Article 40: Any measure which, on the pretext of being precautionary, results in the humiliation of imprisoned or detained persons, shall render civilly or criminally liable the judge who authorizes or consents to it, by act or omission, and shall entail the immediate dismissal of any officials and employees who order, apply, instigate or consent to it, independently of any penal responsibilities they may incur. No one undergoing or awaiting

trial may be housed in prisons for convicted persons or subjected to a prison régime. The Province shall compensate for any damage caused by being deprived of liberty in error or in manifest violation of the constitutional provisions.”

502. Provisions to the same effect are contained in article 39 San Juan, article 15 La Pampa, article 23 Río Negro, article 26 La Rioja, article 51 Chubut and article 44 San Lu  s.

503. As far as the institution of pre-trial imprisonment is concerned, some provincial constitutions provide that it cannot be extended beyond the time prescribed by law for the completion of the proceedings, on the expiry of which the prisoner shall be immediately restored to liberty (see art. 24 La Rioja).

504. Most of the fundamental Acts of the provinces provide expressly – over and beyond the requirement that penal establishments must be healthy, clean and organized for the primary purpose of achieving the re-education and rehabilitation of the prisoner – that persons suspected of having committed an offence must be housed in separate accommodation from those serving a sentence.

505. The possibility that an accused subjected to coercive measures may be restored to freedom during the conduct of the criminal proceedings is not expressly mentioned in our National Constitution, though regulations to that effect have been included in several provincial constitutions.

506. Legislation making express reference to the institution of bail and exemption from prison for a person giving a sworn undertaking or adequate recognizance include: article 9 Corrientes, article 40 San Lu  s and article 25 Santa Cruz, which also establish that: “When the act for which an accused person was arrested carries only a pecuniary penalty or a custodial sentence not exceeding two years’ imprisonment, or both together, pre-trial release may be ordered, subject to limitations established by law for cases of recidivism or repetition and provided that one or other of the guarantees prescribed by law is provided” (art. 22 Mendoza).

507. In reviewing these provisions we might also mention article 36 of the Constitution of the province of Catamarca, which states that: “Release from custody may be granted to any accused person who provides adequate guarantees to cover damages and injuries, except in cases where, by its nature, the offence is punishable by a custodial sentence exceeding that established by procedural law, or if the defendant is accused of the crime of cattle stealing.”

508. We note that within this range of essential guarantees certain constitutions include specific provisions aimed at ensuring that every criminal trial ends as quickly as possible and enjoining that justice be administered publicly and without procrastination (see art. 39 C  rdoba, art. 31 Corrientes, art. 44 Chubut, art. 34 Tierra del Fuego, art. 15 Buenos Aires and art. 29.3 Jujuy), not to omit the principle that no one may be prosecuted in court more than once for the same offence (see art. 26 Mendoza).

509. Displaying a commendable respect for human rights, the Constitution of the province of Chubut provides expressly that: “The rules concerning fundamental rights and freedoms recognized by the National Constitution and by this Constitution are interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on the same subject ratified by the Argentine Nation. Any official or law officer who orders, consents to or

instigates a violation of human rights or fails to take the requisite measures and precautions to safeguard them is responsible. Obedience to orders from above does not absolve from that responsibility” (art. 22). Likewise: “Any physical or moral violence exercised through psychological or any other kind of tests that alter the personality of an individual, whether or not subjected to any restriction on his freedom, is punishable. Nobody may on any account overstep the limits imposed by respect for the human individual. Officials of whatever rank who perpetrate, take part in or abet enforced disappearance of persons, cruel, degrading or in any way inhuman treatment, and any who tolerate or consent thereto, shall be dismissed from the service they belong to and disqualified for life for official employment, independently of such penalties as they may incur. Due obedience shall in no case absolve from this responsibility. The courts are responsible for ensuring compliance with these provisions until the sentence has been served on pain of dismissal” (art. 48).

510. Certain provisions embodied in the Constitution of the Autonomous City of Buenos Aires are well known, stating as they do that:

“All rights, declarations and guarantees in the National Constitution, laws of the Nation and international treaties ratified or to be ratified have force of law. Those instruments and this Constitution shall be interpreted in good faith. Rights and guarantees cannot be negated or restricted by the absence or inadequacy of regulations for their enforcement and their validity may not thereby be impaired.

[...]

Public security is a specific and binding responsibility of the State and is provided equitably to all inhabitants.

This service shall be entrusted to a security police force under the authority of the Executive and organized according to the following principles:

1. The conduct of police personnel must comply with the ethical rules for law enforcement officials drawn up by the United Nations.
2. A graded career and salary structure in the police force with job security and promotion strictly on merit.

The City Government contributes to civic security by developing multidisciplinary strategies and policies for the prevention of crime and violence, designing and providing mechanisms for community participation” (arts. 10 and 34, respectively).

511. Again, article 13 of the basic enactment states:

“The City guarantees the freedom of its inhabitants as intrinsic to the inviolable dignity of persons. Officials shall comply strictly with the following rules:

1. No one may be deprived of liberty without a written and reasoned order issued by a competent legal authority, except in case of *flagrante delicto*, which must be immediately reported to the judge.

2. Personal identity documents may not be confiscated.
3. The governing principles shall be legality, assessment, inviolability of the right to defence in court, judge appointed by law prior to the act tried, proportionality, system of indictment, two levels of jurisdiction, immediacy, openness and impartiality. Acts that infringe procedural guarantees and any evidence obtained thereby shall be void.
4. Any person arrested must be immediately informed of the reason and of his or her lawful rights.
5. Statements by arrested persons to the police authorities are prohibited.
6. No arrested person may be prevented from communicating immediately with whom he or she sees fit.
7. Any person arrested shall be guaranteed food, sanitary facilities, adequate ventilation, privacy, and psychic, physical and mental integrity. Appropriate measures shall be arranged where persons with special needs are concerned.
8. House searches, telephone tapping, and confiscation of papers and correspondence or stored personal information may be ordered only by the competent court.
9. Any provision that expressly or tacitly implies dangerousness without commission of an offence, and any manifestation of criminal law penalizing actions that do not affect individual or collective rights shall be expunged from the legislation of the City and may not be enacted in the future.
10. Any person sentenced to an enforceable penalty by judicial error has the right to be indemnified according to the law.
11. Pre-trial detention is not applicable to minor offences. In case of acts resulting in damage or danger that necessitate arrest, the person must be brought directly and immediately before the competent court.
12. Any minor offender not in a fit state to be at liberty must be referred to a care establishment.

### **Provincial Codes of Criminal Procedure**

512. In the previous section we have described how our constitutions, to a greater or lesser degree, have established a number of principles designed to regulate the placing of persons on trial and their rights, instituting rules to provide firm guarantees in order to obviate any abuse, giving precedence to the operation of justice and proclaiming freedom as the highest good of the citizen.
513. Resting on this scaffolding of the Constitutions, the various Codes of Criminal Procedure embody – almost unanimously – regulations to implement the constitutional guarantees enumerated, including provisions on certain basic subjects concerning, notably:



- (a) Due process and procedural guarantees;
- (b) Right to defence;
- (c) Nature of proceedings;
- (d) Incommunicado detention;
- (e) Statements by accused. Immunity;
- (f) Mental and physical examination. Body search;
- (g) Duration of trial. Complaint for judicial delay;
- (h) Annulment proceedings;
- (i) Personal freedom;  
Restrictions,  
Pre-trial imprisonment,  
Bail and exemption from imprisonment;
- (j) Treatment of persons deprived of liberty;
- (k) Police authority. Functions. Sanctions.
- (a) *Due process and procedural guarantees*

514. While the notion of due process is common to any type of case, be it civil, industrial or commercial, in the criminal sphere it assumes particular importance by virtue of what is at stake, namely the personal freedom of the accused.

515. The guarantee-oriented approach, as already stated, has been expressly embodied in most of the fundamental enactments of the Argentine provinces.

516. This approach embraces the guarantees relating to the legally competent judge, the right to be heard, the openness of proceedings, double jeopardy and the duration of the trial (see arts. 1, 2 and 4 Mendoza; arts. 1, 4 and 5 Santa Fé; arts. 1 and 4 Corrientes; arts. 1 and 4 Santa Cruz; art. 1 Buenos Aires; arts. 1 and 2 San Lu  s; arts. 1 to 5 Salta; arts. 1 to 4 San Juan; arts. 1 to 4 Misiones; arts. 1, 2 and 4 R  o Negro; art. 1 Catamarca; arts. 1 and 4 Neuqu  n; arts. 1 and 4 Formosa; arts. 1, 2 and 4 Santiago del Estero; arts. 1 and 4 La Pampa; art. 1 C  rdoba; and arts. 1 and 4 Chaco).

517. With regard to the presumption of innocence, a balance has to be sought between the legal state of innocence and the proof of guilt, which means that the former must be discredited by the evidence for the prosecution brought to bear by the State organ of penal enforcement, whereas the defence must exercise control over the way in which it is sought to demonstrate guilt, or in other words must try to establish innocence.

(b) *Right to defence*

518. Another essential right, inasmuch as it is a corollary of the dignity of the human individual, is that of defence, apart from the fact that it constitutes an indisputable prerequisite for ensuring that a trial takes place in a manner respectful of the values that must prevail under the genuine rule of law, which is why the constitutions and codes must embody principles inherent in such an age-old perception.

519. From the viewpoint of the provincial codes of criminal procedure reviewed, this principle can be defined as the possibility open to all accused persons to declare and prove their innocence, or mitigate their responsibility (see art. 33 San Juan; art. 13 La Pampa, art. 22 Río Negro; art. 40 Córdoba; art. 16 Formosa, art. 20 Chaco, art. 44 Chubut, art. 35 Tierra del Fuego; art. 18 Salta and art. 29.1 Jujuy).

(c) *Nature of proceedings*

520. The openness of the proceedings is designed to ensure defence in the widest sense by allowing the necessary direct approach to the evidence. It also enables others – not themselves involved in the trial – to follow the proceedings, ensuring transparency through genuine grassroots supervision (see art. 210 Catamarca; art. 186 Neuquén; arts. 21 and 187 Formosa; art. 183 La Pampa; arts. 337 and 346 Córdoba; arts. 20, 335 and 344 Chaco; art. 215 Mendoza; art. 205 Santa Fé; art. 212 Corrientes; art. 196 Santa Cruz; art. 212 San Juan; art. 196 Misiones and art. 29.6 Jujuy).

(d) *Incommunicado detention*

521. An intrusive element with a close bearing on this essential aim of providing constitutional guarantees is incommunicado detention of the accused which, viewed as an act of coercion to the detriment of a person clinging to a legally innocent status, can be justified only by the overriding need to safeguard one of the fundamental purposes of the trial, namely the elucidation of the truth regarding a suspected act infringing the established legal order, an argument which leads to the conclusion that the measure concerned must be only temporary in nature, hedged around by the establishment of time limits, preferably stipulated in the basic procedural rules (see art. 33 San Juan; art. 43 Córdoba; art. 27.3 Jujuy; art. 20 Chaco; art. 14 La Pampa; art. 9 Santa Fé, art. 34 Catamarca, art. 19 Mendoza, art. 22 Misiones, art. 37 Tierra del Fuego and art. 22 Río Negro).

(e) *Statement by the accused. Immunity*

522. This guarantee concerns the freedom accorded to the accused to decide whether or not to make a statement during the criminal trial. As regards the scope of this minimum guarantee, it covers only the spoken word, i.e. what the accused says. Hence the accused cannot be obliged to make a formal statement, to take part in a confrontation or in the reconstruction of an act, or to

make any written declaration (see art. 33 San Juan; art. 40 Córdoba; art. 22 Santa Cruz, art. 11 Corrientes, art. 22 Río Negro, art. 20 Chaco; art. 20 Formosa; art. 44 Chubut, art. 26 Mendoza, art. 30 Catamarca and art. 29.5g Jujuy).

523. Accordingly silence, i.e. refraining from making a statement, creates no presumption of the accused's guilt.

(f) *Body search. Mental and physical examination*

524. Regulations both on body searches and on mental and physical examinations have been included in the various codes of criminal procedure of the provinces.

525. A body search can be carried out only if there are well-grounded suspicions that the person is hiding objects connected with the offence under investigation. Where such a suspicion exists, a reasoned order must be given for the application of the measure.

526. Such measures may also be ordered for the protection of the accused and of third parties.

(g) *Duration of the trial*

527. One of the basic requirements of due process in criminal law is that the proceedings should extend only over a reasonable time. It is for the codes of criminal procedure to lay down regulations providing for this constitutional requirement of due process, according to the exigencies of their own judicial systems (see art. 44 Chubut; art. 31 Corrientes; art. 29.3 Jujuy, art. 34 Tierra del Fuego and art. 34 Córdoba).

528. In deference to principles of long standing in criminal prosecutions, the Fundamental Acts of some provincial States (see articles 21, 22, 30 and 29.7 respectively of the provincial Constitutions of Formosa, Chaco, San Juan and Jujuy) have abolished the anachronistic institution of stay of proceedings, severely criticized by an eminent school of current doctrine, as also in the light of the conclusions reached at various congresses on the subject, in that it meant leaving the trial in a state of dormancy, while at the same time placing the accused in a situation of exasperating uncertainty, the argument being that: "If justice is to be effectively guaranteed, the criminal trial must have an end",<sup>11</sup> considering that it is intolerable to live under a sword of Damocles until the punitive intent is abated.

529. The most advanced procedural laws of the country provide for only one kind of stay of proceedings, namely dismissal, basing it on principles of justice and humanity, though it has been concluded, rightly, that "it would be an illusory advantage to have been acquitted if accusers had the cruel right to reiterate endlessly their charges against the same defendant and if the latter could hope for no refuge except in the grave"<sup>12</sup>.

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<sup>11</sup> Raúl Eduardo Torres Bas, *El Sobreseimiento*, Buenos Aires, Plus Ultra, 1971, p 120.

<sup>12</sup> Escriche, *Dictionary of Legislation and Jurisprudence*, Paris, Eugenio Maillefert, 1863, p. 270.

530. In view of the foregoing considerations, the abolition of stay of proceedings is absolutely justified, particularly as it is beyond question that, on the pretext of a doubt on the judge's part about the act or the criminal responsibility of the accused – to employ a broad and general terminology – it merely creates a way of indefinitely suspending the proceedings which, according to experience with the majority of known legal cases, amounted to a way of finally settling the case since the situation that had arisen rarely changed.

(h) *Annulments*

531. In general, procedural acts will be nullified only where the requirements expressly set out, on pain of nullity, have not been met.

532. Requirements that must always be met on pain of nullity include: appointment, capacity and constitution of the judge or court; involvement of the Public Attorneys' Office in the trial and its participation in those proceedings where it is obligatory; the involvement, presence and representation of the accused, in those ways and those cases that the law determines, and the involvement, presence and representation of the civil claimants, in those cases and those ways that the law determines.

(i) *Personal freedom*

533. Whatever concerns personal coercion of the accused is closely bound up with the type of trial being conducted since, if it is authoritarian – i.e. with an undisguisable stigmatizing effect – that coercion can be used as a sort of advance punishment threatening the defendant, in this way, with the mere suspicion or simple appearance of guilt, while if one adheres to an accusatory philosophy there will be no resort either to a trial or to deprivation of liberty with punitive implications, taking into account that, until guilt is demonstrated, the accused is presumed innocent.

534. On the basis of the structure of enactments that supports our constitutional system – represented by the Constitution itself and the international treaties incorporated into it, and ranking equally with it, by virtue of article 75, paragraph 22 – personal coercion of the accused becomes an exceptional measure, admissible in so far as it is indispensable for ensuring that the trial takes place without obstruction until its culmination, that the verdict is able to take into account all the evidence, and that the accused serves the sentence that is inflicted.

535. Because a constitutionally protected right is involved – with obvious reference to the freedom of movement specified in article 14 of the Fundamental Act – the measures essential to its realization must draw support from the respective provincial constitutions and the procedural Acts regulating their application, subject to what is laid down in article 31 of the National Constitution, which means that precise and impassable limits must be set so that the coercion in question is applied legitimately, since otherwise it will bear the stamp of manifest arbitrariness.

536. As we have stated, the international human rights treaties incorporated into our National Constitution contain a number of provisions specially concerned with the right to freedom of movement, confirming its special nature and establishing on what grounds and conditions its restriction is admissible; these aims are reflected in the core provisions of the actual constitutions

and procedural laws that govern the matter, without overlooking the importance of a court decision, delivered without delay and in a reasonable time, as also of a judicial remedy for examination of the legality of such a measure.

537. During the criminal trial, the accused continues to enjoy the right to personal liberty, whose restriction is admissible only if the defendant is suspected of intending to evade justice – which confirms the precautionary nature of the measure – in order that the purposes of the trial shall not be frustrated.

538. In principle, any rule that limits personal liberty should be interpreted restrictively.

539. The various provincial codes of criminal procedure stipulate a number of conditions that must be met for measures of coercion to be ordered, namely, (a) *fumus bonis iuris*, i.e. that the act under investigation is criminal in nature and the accused probably committed or took part in it; (b) *periculum in mora*, i.e. danger in delay, meaning risk that the accused will take advantage of his personal liberty and attempt to evade justice; and (c) proportionality between the punishment to come and the time spent in custody by the accused.

540. These provisions confirm the exceptional nature and restricted scope of measures of personal coercion (see art. 32 Córdoba; art. 49 Chubut; art. 37 Tierra del Fuego; art. 19 Salta; art. 56 Santiago del Estero and art. 27.2 Jujuy).

541. With regard to arrest and placing at the disposal of the court, it is the codes of criminal procedure which determine the conditions for their admissibility and the formalities that must be complied with at the time of making an arrest.

542. Arrest, as a measure of personal coercion, can be defined as the physical act by which a person is deprived of personal liberty.

543. In principle it must be ordered by the court – which is the competent authority – but, exceptionally, police officials may make an arrest without a court order, and so can even private individuals by what is called private arrest or apprehension.

544. Most of the country's codes of criminal procedure concur in making arrest admissible when the same does not apply to summons, which is another milder measure of personal coercion that does not involve deprivation of liberty and is adopted where there exist reasons for obtaining a statement from the accused.

545. The digests of criminal procedure also set out in detail the formalities to be complied with in making the order for arrest which, in principle, must be in writing but, in very urgent cases, may even be oral or telegraphic.

546. Thus all the bodies of legislation provide for arrest, with or without court order, and for arrest by private individuals (see art. 27 Neuquén; art. 14 Misiones; art. 21 San Juan; art. 17 Río Negro; art. 14 La Pampa; art. 24 La Rioja; art. 32 Córdoba; art. 15 Formosa; art. 9 Santa Fé; art. 21 Chaco; art. 47 Chubut; art. 32 Tucumán; arts. 17 and 21 Mendoza; art. 40 San Luís; arts. 32 and 34 Catamarca and art. 27.3 Jujuy).

547. With regard to arrest, it is not only the need to ensure justice that provides the constitutional basis for measures of personal coercion restricting the liberty of the accused, but also the power of arrest stipulated in article 18 of the Constitution and in the relevant articles of the provincial Constitutions.

548. In exercise of this power, the court may apply measures of personal coercion, restricting the freedom of movement of the accused, where there is a possibility that the latter may evade or cheat justice.

549. But this restriction is by way of precaution, i.e. an exceptional and temporary measure pending the settlement of the accused's fate by condemnation or acquittal, since throughout the whole criminal trial the principle of freedom of movement prevails.

550. Regarding pre-trial imprisonment, within the range of coercive measures we see this one as the most constraining, since it will extend throughout the whole duration of the criminal trial.

551. Pre-trial detention is one of the basic themes of the law of criminal procedure. If we consider that in preventive imprisonment it is the physical liberty of the accused which is involved, this highlights the importance attaching to its study and analysis, if we are to ensure that the rights and guarantees enjoyed by the defendant during pre-trial detention are not violated.

552. While pre-trial imprisonment is not expressly dealt with in our Constitution – as has already been indicated, though in its case law the Supreme Court of Justice of the Nation recognizes that it has constitutional roots – the various provincial codes refer specifically to that measure.

553. Deeply committed to providing guarantees, they set specific limits to its scope: pre-trial detention must not be the general rule, so throughout the entire criminal trial the accused must remain at liberty and restrictions on that freedom can be imposed only exceptionally; pre-trial imprisonment cannot be extended indefinitely, but must be subject to a time limit, based on considerations of reasonableness.

554. Nevertheless, the expression “reasonable time”, used in the procedural rules in reference to the maximum duration of pre-trial imprisonment, has been difficult to define.

555. This is shown by the case law developed by the Supreme Court, foremost interpreter of the law and responsible for monitoring the constitutionality of the laws enacted by the Nation and the provinces. Thus, in the case *Firmenich, Mario E.* it ruled that: “reasonable interpretation of art. 75 of the Inter-American Convention on Human Rights leads us to determine that a decision on prolongation of precautionary deprivation of liberty must take into consideration the concrete circumstances of the case”<sup>13</sup>.

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<sup>13</sup> Supreme Court of Justice of the Nation, decision of 28 July 1987 (1987-IV-139).

556. Again, taking a realistic view adapted to our country's legal structures, Division II of the Court of Criminal Appeal of Rosario decided that: "The apt expression reasonable time, used to refer to the time within which the situation of the accused must be determined in the criminal trial, allows us to assess equitably the observance of the rule in the various countries and according to the minimum conditions prevailing in each of them"<sup>14</sup>.

557. Regarding bail and exemption from prison, regulations governing both procedures are set out in all the provincial codes of criminal procedure. Bail – which unlike exemption operates through release of the accused – is granted on security in all cases, which are covered in the procedural provisions, without major variations, except in the case of the province of Jujuy (see art. 9 Corrientes; art. 22 Mendoza; art. 36 Catamarca; art. 25 Santa Cruz; art. 26 Misiones; art. 22 La Rioja; art. 43 Chubut; art. 39 San Lu  s; art. 24 Santa Cruz; art. 20 Salta; art. 29.4 Jujuy; art. 55 Santiago del Estero and art. 25 Catamarca).

(j) *Treatment of persons deprived of liberty*

558. The principles of human dignity have been incorporated into various procedural rules which refer to conditions of detention and deal with a number of aspects that can be grouped under three heads: (a) place of detention; (b) separation between convicted and unconvicted prisoners; and (c) separation of adults from minors (see art. 44 C  rdoba; art. 24 La Rioja; art. 18 R  o Negro; art. 31 San Juan; art. 14 La Pampa; art. 10 Corrientes; art. 9 Santa F  ; art. 18 Formosa; art. 21 Chaco; art. 51 Chubut; art. 39 Tierra del Fuego; art. 24 Mendoza; art. 40 San Lu  s; art. 20 Jujuy; art. 21 Salta; art. 57 Santiago de Estero; art. 33 Catamarca; art. 15 Misiones and art. 28 Santa Cruz).

(k) *Police authority. Functions. Sanctions*

559. Dealing selectively with its establishment, functions, powers and duties and with sanctions, a large number of codes have laid down regulations for this institution (arts. 186, 189 and 190 Catamarca; arts. 167, 168 and 170 Neuqu  n; arts. 167, 168, 170 and 171 Formosa; arts. 133, 136 and 142 Santiago del Estero; arts. 162, 163, 165 and 167 La Pampa; arts. 321, 322, 324 and 327 C  rdoba; arts. 319, 321, 322 and 325 Chaco; arts. 189, 190, 192 and 196 Mendoza; arts. 190 and 196 Santa F  ; arts. 186, 191 and 193 Corrientes; arts. 175, 176 and 179 Santa Cruz; arts. 296 and 297 Buenos Aires; arts. 103 and 105 San Lu  s; arts. 180 and 183 Salta; arts. 193 and 195 San Juan; arts. 171 and 178 Misiones; arts. 176, 178 and 179 Rio Negro; arts. 172 and 175 Tierra del Fuego).

560. For the rest, it can be shown that, barring some exceptions, most of the constitutional texts and codes of criminal procedure offer a constellation of rules that seek to satisfy the concerns referred to above, from which it can be seen that the authors of our Constitution and our legislators have been markedly anxious to safeguard the inalienable rights of citizens, despite possible shortcomings in the performance of the various individuals operating the system.

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<sup>14</sup> Court of Appeal for Criminal Cases of Rosario, decision of 26 March 1991 (1991-IV-336).

## Article 16

561. The information given in this report concerning the crime of torture as covered in article 144<sup>ter</sup> of the Argentine Criminal Code is applicable also to cases where the treatment does not constitute torture according to the definition in article 1 of the Convention.

562. In addition to the crime of torture, the legal instrument referred to also covers the crimes of ill-treatment, harassment and unlawful coercion.

### III. PART TWO: ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

563. Regarding the concern expressed by the Committee about Argentina's policy on *refoulement* of aliens, the grounds on which an alien can be expelled are exhaustively set out in Act No. 22.439 (General Migration and Promotion of Immigration Act) and in Decree No. 1023/94 to implement it, so that the official called on to make the decision is left no margin to base the expulsion on any grounds different from those provided for under the legal system.

564. Furthermore, in accordance with the general rules of administrative procedure, every administrative decision must be issued by a competent authority and mention the rule on which it is based (see art. 7 of Act No. 19.549 on Administrative Procedures, which specifies the essential requirements to be met by any administrative action).

565. As for the alien's right to appeal against an expulsion order issued, this is guaranteed both in the general rules of administrative procedure and in the regulations on migration.

566. Thus, Title IV of Act No. 19.549 (Administrative Procedures Act) provides for the possibility of challenging in court any administrative decision qualified as final, i.e. against which all administrative remedies have been exhausted.

567. For its part, Title VIII of Act No. 22.439 (Migration and Promotion of Immigration Act) specifies the administrative remedies that can be brought against expulsion orders, which will be subject to reconsideration or appeal under the authority that issued the order against which right of appeal is claimed (see arts. 73 to 82).

568. Regarding the rules governing the appeal system, the Migration Regulations approved by Decree No. 1023/94 deal with the matter under Title VIII (see arts. 126 to 138).

569. In answer to the Committee's request for information concerning the Historical Redress Fund established in our country, we can report that on 9 December 1998 the National Congress passed an act granting a monthly subsidy of 25,000 pesos to the Association of Grandmothers of the Plaza de Mayo to meet the costs of tracing, identifying and returning children who were abducted and also those born in captivity. This contribution became effective from January 1999 for two consecutive years.

570. The specific purposes stipulated for the Fund are as follows:

- (a) to promote progress in the tracing of children who disappeared;



- (b) to complete the information on all the families in the National Genetic Data Bank;
- (c) to complete the information stored in the Genetic Data Bank of the Association of Grandmothers of the Plaza de Mayo;
- (d) to complete the investigations in progress, so that the findings can be presented in court;
- (e) to re-establish the true identity of the children (now young people) who disappeared;
- (f) to ensure the continuity of the psychological support afforded to young persons who have been returned and to their families;
- (g) to create conditions that will prevent the repetition of such real-life situations in the future.

571. Concerning the Committee's recommendation that the information on compliance with the obligations arising from the Convention should be representative of the situation everywhere in the country, particulars to that effect have been given throughout the present report.

572. In this connection, a constituent instrument of 29 July 1993, ratified and appended on 16 April 2000, set up the Federal Human Rights Council, on which all the provincial courts competent in that sphere are represented and which has its own operating regulations. Its overall objective of promoting respect for and enjoyment of human rights in Argentina comprises the specific objective of preparing technical and focused reports on special situations and topics, with the aim of promoting appropriate public policies. The Council is chaired by a representative of the Office of the Secretary for Human Rights of the Ministry of Justice and Human Rights of the Nation.

573. Accordingly, at its XI meeting the Federal Council approved a proposal by the then Office of the Under-Secretary for Human Rights that it should draw up a report on torture in Argentina in view of the importance and widespread topicality of the subject throughout the country.

574. The Office of the Secretary for Human Rights is currently developing a plan approved by all the administrative areas for a study on torture. This plan can be consulted in Annex XIV to this report.

575. Meanwhile, details are given below of a number of cases during the period under review in which violations of the rights proclaimed in the Convention were alleged and have been investigated by the national and provincial courts and, where applicable, by international human rights bodies. Information is also given on the various activities carried out at the provincial level.

### **Province of Jujuy**

576. In the records of the Directorate of Legal Affairs – formerly Office of Juridical Advisory Services – of the Jujuy Prison Service particulars are filed of complaints relating to ill-treatment or unlawful coercion.

577. Two complaints were filed in 1997 and three in 1999. Further, the Director of Police Data Processing, reporting on complaints lodged since 1996 alleging torture, ill-treatment or unlawful coercion in which police personnel were involved, provided the following information:

Year	Torture	Ill-treatment	Unlawful coercion
1996	---	---	---
1997	---	---	1
1998	1	---	---
1999	---	---	3
2000	---	---	1

## **Province of Córdoba**

### **Cases coming before the judiciary of the province**

578. With regard to cases filed, the judiciary of the province reported that, during the period 1998, 1999 and up till June 2000, 19 legal actions were registered for unlawful coercion, 1 for torture, 17 for harassment and 11 for harsh treatment (see Annex X).

### **Public officials and employees accused**

579. According to data recorded by the Office of the Attorney-General for the province, up till June 2000 there were 24 cases involving public officials accused of the crimes of aggravated unlawful coercion, harassment, abuse of weapons, coercion and threats, coercion with minor injuries, unlawful coercion and ideological falsehood, and repeated severe treatment.

### **Juvenile courts**

580. Visits by judges serving on the Juvenile, Preventive and Correctional Courts to institutions where juveniles are housed are very frequent and due regard is paid to all the aspects involved in adequate material care and protection of juveniles. The text of the reports submitted to the Higher Court of Justice by the Juvenile Court judges on the visits made is appended (see Annex X).

### **Measures taken by the judiciary of the province of Córdoba**

581. Regulatory Order No. 483, Series A of 18 May 1999, created the Office of Human Rights and Justice, attached to the Higher Court of Justice, one of whose main objectives is to provide help, information and guidance in the various areas of care provision to the citizens in situations arising from conflicts associated with human rights violations.

582. Its functions include in particular:

- (a) promoting respect for and defence of human rights;
- (b) attending to, informing and routing persons who apply to the Justice Administration with human rights problems;

(c) dealing with cases and documentation originating from the Office of the Under-Secretary for Human Rights of the Nation and from the Office of the Secretary for Human Rights attached to the Ministry of the Interior of the province of Córdoba and coordinating its activities with both those agencies, national and provincial;

(d) dealing with inquiries from governmental and non-governmental human rights agencies, especially regarding the Remembrance and Historical Redress Acts;

(e) Framing such recommendations as are considered desirable for upholding fundamental human rights principles.

583. Instructions were issued to the Criminal Courts stressing the importance of cases concerning acts of torture and other cruel, inhuman or degrading treatment and the responsibility of the judiciary.

584. A system of coordination with the Office of the Attorney-General of the province was organized for obtaining updated information on the status of the criminal trials referred to.

585. A register was established of input to the Criminal Court reception desk concerning cases involving government officials, with particular reference to acts specified in the Convention.

586. A decision was issued by the High Court of Justice emphasizing the duty and responsibility to provide information to the nation on criminal actions initiated for crimes of torture, unlawful coercion, harassment and other acts concerned by the Convention.

### **Preventive measures**

587. Visits were made to defence lawyers, prosecutors and staff of the Office of Human Rights and Justice and to detainees housed at police stations and sub-stations in the various administrative districts of the province of Córdoba.

588. Assistant prosecutors were present at all the police stations of the City of Córdoba, as provided for in the new Code of Criminal Procedure of the province of Córdoba.

589. The Office of Human Rights and Justice published a book entitled *United Nations Documents on protection of persons detained or in prison*, which has been distributed to magistrates, officials, assessors, advocates, the prison service, the police and technical teams.

590. Visits were made to prison facilities by:

(a) the High Court of Justice with Trial Courts;

(b) courts or magistrates individually, visiting adults or juveniles at the places where they are housed; and

(c) staff of the Office of Human Rights and Justice.

### Provincial Prison Service

591. In the province of Córdoba no register at all is kept of any complaints or claims concerning torture, ill-treatment or unlawful coercion that may have been lodged by the inmates housed in the prison facilities of that province. This is because such complaints are filed with the judiciary by members of the families of inmates or by the latter when they appear before the courts.

592. Despite this, it is also common for inmates to route their complaints to the courts through applications for *habeas corpus* or remedies of *amparo*, which in all cases are easily transmitted from the unit where the inmate is housed to the rota judicial authority and whose wording does not always show the content of the complaint made.

593. Regarding those complaints lodged by inmates which make reference to the absence of regulations to implement Act No. 24.660 (Enforcement of Custodial Sentences), as also to other aspects having to do with housing conditions, it is worth mentioning that between 1996 and the present date the inmates of Prison Facility No. 2 in Buenos Aires began on 28 June 1999 a “work stoppage” which was accompanied by a set of demands addressed to the legislature, constituting the most focused and wide-ranging complaint, and which lasted 24 days.

594. On that occasion legislators from various parties in the Chamber of Deputies of the province came in person and undertook to take the necessary steps with regard to the enactment in question.

595. In this connection, on 22 January 1999 the deaths occurred of seven youths in Precinct No. 5 of the capital. Judicial proceedings were therefore initiated (case No. 012/46). They were conducted under the heading of “proceedings instituted” and were referred by final decision to the Third Rota Examining Court of Judicial District II on 5 February 1999. The investigation concerns the deaths of Adrián Edgardo Moreno, Gabriel Emilio Carreras, Mariano Exequiel Nieto, Hugo Gonzalez, José Alberto Luna, César Fernando Barboza and David Américo Charras. According to the findings of the post mortem examinations, the immediate cause of the victims’ deaths was complex asphyctic syndrome due to strangling and gaseous asphyxia, except in the case of the victim César Barboza, in whose case it was concluded that the immediate cause of death was hypovolaemic shock due to extensive burns.

596. A charge of repeated culpable homicide was therefore brought against the persons who were on guard at the time of the events: Julio César Allende, Claudio César Mendoza, Carlos Esteban Moyano and Julio César Roja, and proceedings are currently at the pre-trial stage (see Annex X).

597. Further, on 24 January 2000 a mutiny took place in Prison Facility No. 1 – Prisoners on Trial, Capital. Accordingly, under Case File No. 0011-30491/00 administrative proceedings were instituted, in which Judicial Unit 5 of the Directorate of Judicial Police took part (see Annex X).

598. Concurrently, at Prison Facility No. 5 of the town of Villa María, the inmate Jorge Anibal Capri began a hunger strike to protest at the time taken in the handling of his case and complain of ill-treatment in prison (see Annex X).

**Case of Vanesa Lorena Ledesma**

599. Vanesa Lorena Ledesma, whose legal name was Miguel Angel Ledesma, died in Precinct 18 of the town of Córdoba on 15 February 2000 in a confused episode which was extensively covered by the local press media. According to what was reported at the Office of the Under-Secretary for Human Rights of the Ministry of Justice and Human Rights of the Nation by the victim's family's lawyer, the death would seem to have been connected with ill-treatment by the police. Various human rights associations filed a criminal complaint with the rota prosecutor's office of the provincial courts calling for an inquiry into the suspected commission of offences by the police and enclosing 27 photographs taken of the corpse which showed that the victim had apparently been severely beaten, so that while indeed death occurred from cardiorespiratory arrest the cause appears to have been a brutal beating by the police.

600. This complaint was received by the second rota prosecutor's office, District 5 and, as far as the Office of the Under-Secretary for Human Rights is aware, nobody was accused or arrested as a result and it was not known whether any accused's statement had been taken from the police personnel responsible for guarding the victim.

601. The associations seeking elucidation of the matter find themselves barred from taking criminal indemnification action since the provincial code of procedure accords that right only to close family members, which limits the possibilities of taking part in the proceedings and properly following the course of the investigation.

602. The victim was a transvestite and suffered from AIDS, despite which he was housed in a cell shared with the rest of the prisoners, before eventually being transferred to Precinct 18 and placed in isolation for security reasons.

603. For information it may be stated that in connection with this case three actions have been initiated. The first, filed as Ledesma Miguel Angel *in re* damage and minor injuries, began with the arrest of Ledesma and his being charged with the offence of damage to private property and minor injuries for an incident that occurred in a bar in the town of Córdoba. It was handled by the second rota Prosecutor's Office, District 5, which dismissed it in view of the accused's death. A second action, initiated upon the death of the prisoner, was brought before the third rota Prosecutor's Office, District 5, in an endeavour to elucidate the causes of the death of Vanesa Lorena Ledesma. A third action, brought before the second rota Prosecutor's Office, District 5 was initiated upon the complaint filed by four human rights bodies to determine whether the death was connected with ill-treatment by the police.

604. Among the many steps taken, the Office of the Under-Secretary for Human Rights sent the third rota Prosecutor, District 5, on 7 June 2000 a memorandum to which there has not yet been a reply; there has, however, been one to another démarche, which elicited an answer from the Secretary for Human Rights of the Ministry of the Interior of the province of Córdoba.

605. The Office of the Under-Secretary for Human Rights has also received 77 complaints, mostly coming from abroad, including petitions from Amnesty International, which is taking an interest in the case (see Annex X).

## **Province of Buenos Aires**

### **Case of José Luís Ojeda**

606. Because of a complaint addressed to the police in 1996, Mr. José Luís Ojeda was allegedly subjected to harassment and threats, in particular being falsely accused of two offences. In answer to inquiries made on that occasion, the prison authority concerned reported that Mr. Ojeda had been detained in Prison Unit No. 1 and placed at the disposal of Examining Court No. 2, Registry No. 107, from 17 September to 21 November 1997, accused of the offence of robbery and discharging a firearm. On the latter date the entire proceedings were declared void because there had been irregularities in the trial and an order was given for the defendant to be freed. On 4 December of the same year the order was given for the case to be set aside.

607. On 7 January 1998 he was registered as having been recommitted to the prison unit concerned and placed at the disposal of National Juvenile Court No. 6, Registry 17, which is handling case No. 4810/17 brought against Mr. Ojeda and others for the crime of homicide. In this latter case, on 20 January of the same year his prosecution was ordered under article 95 of the Argentine Criminal Code (homicide in a brawl). Mr. Ojeda's freedom of movement was restored on that same date as the offence in question was eligible for bail.

608. The Central Prison Hospital, for its part, reported that throughout the time when Mr. Ojeda was on Federal Prison Service premises he was fit, free of injuries, in good general condition and needing no medical care of any kind.

609. Meanwhile, the Office of the Under-Secretary for Human and Social Rights of the Ministry of the Interior reported in due time that it had held an interview with Mr. Ojeda, members of his family, and lawyers representing him. Following that, the Under-Secretary's Office got in touch with the Superintendent of Metropolitan Security, who undertook to ensure the protection of Mr. Ojeda and his family, even denying the acts he was accused of.

610. On 6 April 1999 Mr. Ojeda was shot at twice by persons suspected of being police officials in an attack against his life and personal safety.

611. It is alleged that those acts were committed for the apparent purpose of punishing Mr. Ojeda for having given evidence in court on 22 March 1999, together with his wife, identifying the person who may have actually inflicted the beating he had received during the search conducted in his dwelling on 6 January 1998.

612. With regard to this crime of which Mr. Ojeda was allegedly a victim, on 6 April last proceedings were instituted before Examining Court No. 14, Registry No. 143, to protect Mr. Ojeda's physical integrity and life. The court hearing the case ruled that his custody should be entrusted to the Argentine Aeronautical Police, which proceeded to house him at the Aeronautical Hospital together with his family.

613. An order has also been given for the initiation of an administrative inquiry which is being conducted before the Directorate General of Internal Affairs of the Argentine Federal Police and in which the part played by police personnel in the act complained of by the person concerned is being investigated.

614. The Centre for Legal and Social Studies requested the intervention of the Office of Comprehensive Assistance to Crime Victims, attached to the Procurator-General's Office, in order to provide assistance to Mr. Ojeda.
615. The Director of the Office of Comprehensive Assistance to Victims arranged for a psychologist and a doctor to provide him with care in the place where he is accommodated.
616. The psychological care included support for Mr. Ojeda and his family, particularly in view of the presence of signs and symptoms that suggested the existence of a post-traumatic stress syndrome. As for medical care, when it was ascertained that none was being provided by the Aeronautical Hospital, a schedule of indicated medication to be administered was drawn up and passed to the Office, which proceeded to apply the appropriate treatments to the wounds exhibited by the victim, arranging with the medical staff of the hospital for a subsequent check on Mr. Ojeda's state of health.
617. On 18 April 1999, in view of the request submitted by Mr. Ojeda that the order given for his custody should be rescinded, the above-mentioned Office made an evaluation of the security issues involved in the case and the psychological state of the victim and his family.
618. For the purposes of that evaluation a meeting was held at the headquarters of the Office with Mr. and Mrs. Ojeda and the advocates of the Centre for Legal and Social Studies (CELS).
619. In view of the fact that CELS was able to have at its disposal a property in the province of Entre Ríos for housing the Ojeda family, it undertook to organize their transfer and installation and the Office to arrange for them to receive psychological and social care in their new abode.
620. The content of the agreement reached at that meeting was communicated to the judge handling the case, who ruled that, once the complaint filed by Mr. Ojeda had been upheld, the custody order in his case would cease to be effective and permission would be given for his transfer, which duly took place on 23 April.
621. Unfortunately, for reasons that had nothing to do with the Office of Comprehensive Assistance to Crime Victims and even the CELS, Mr. Ojeda and his family returned to the Federal Capital on 25 April.
622. On 26 April, Mr. Ojeda and his wife went in person to the Office, where the opportunity was taken to offer them accommodation in a hotel that met the stipulated security requirements regarding the secrecy of their place of residence. This offer was not accepted by Mr. Ojeda.
623. Mr. Ojeda and his wife rejected the offer of assistance made, stating that they would stay with relatives and planned to sell their dwelling and buy another belonging to a welfare housing scheme of the Argentine Army, in which Mr. Ojeda serves in a civilian capacity.
624. From that date onwards, contact took place with the victim on only one occasion for the handing over of Mr. Ojeda's identity papers, the formalities for which had begun and had to be completed on Federal Police premises, which was why he requested that the arrangements should be handled by the Assistance Office.

625. On that occasion the offer of housing made to him was repeated and was again declined.

### **Mirabete case**

626. As was described in the previous report, on 20 February 1996 Alejandro Mirabete, aged 17 years, and a group of friends were having a beer in a district of the Federal Capital, when a group of officers from Police Station 3 ordered the young people to identify themselves. For some reason Mirabete took fright and ran away. One of the policemen managed to overtake him. The boy received a bullet wound in the back of the head and, after lingering for ten days, died.

Case No. 13.758/96, filed as *Miranda, Mario Eduardo in re ordinary homicide. Injured party: Mirabete, Alejandro* was originally brought before Juvenile Court No. 6, Registry 17. At that time the title of the case file was "Attempted homicide". Upon Alejandro Mirabete's death the Juvenile Court judge declared herself incompetent, handing the proceedings over to Examining Court No. 30, Registry No. 109, on 4 March 1996. There, on 5 March, the accused's statement of the police officer Miranda was amended to refer to the crime of ordinary homicide. Next day a reconstruction of the incident under investigation took place with the help of officially appointed experts from the Gendarmería Nacional. An order for the prosecution and pre-trial imprisonment of the officer Miranda was issued on 7 March and confirmed by the competent court of appeal on 22 April. On 25 September 1997 Oral Court for Criminal Cases No. 28 of the Federal Capital sentenced Federal Police Sergeant Mario Miranda to 18 years' imprisonment after finding him guilty of ordinary homicide committed upon the youth. In reaching their decision, the magistrates took into consideration that on the night of 20 February 1996 the non-commissioned officer had fired point blank at the victim's head without the latter having offered any resistance or carried any weapon.

### **Case of Luís Cufre**

627. This person, aged 18, was apparently arrested on 18 September 1997 at 10.55 p.m. on Constitution Square in the City of Buenos Aires by police belonging to the Mitre Division. When the arrest took place, Luís Cufre was allegedly thrown violently on to the roadway at the moment when a lorry or similar vehicle was passing and as a result was seriously injured. According to information received, he sustained fractures at the base of the skull, fractured cheekbones, jaw and collarbone, severe lung injuries, surgical removal of the spleen and cardiac complications. Several boys who were with him said they had heard one of the policemen urge another to leave the boy in the street, saying that it would just mean one less. In answer to the complaints made to the police they later claimed that in the course of the police action there had been a traffic accident involving a vehicle that had failed to stop, and that the police personnel had tried to save the boy and been injured. The alleged reason for the arrest was suspected involvement in four attempted robberies which had apparently been reported for criminal action to National Criminal Court No. 15, Registry 146.

628. It was there that case No. 83708/97, filed as *Orlinda Olga Ramuya and Luís Alberto Cufre in re abandonment of persons and injuries*, was instituted, with police personnel in the role of accused. When the complaint was heard, it was found that the nature of the offence made the court incompetent to try it. Accordingly, on 17 November 1997 the case was transferred to National Correctional Court No. 13, Registry 79, under file No. 5724 entitled *Cufre, Luís Alberto and Mesa, Carlos Alberto in re article 94 of Criminal Code (Punishable Injuries)*. The accused in the case



were Carlos Alberto Mesa, Sergeant First Class, Mitre Division, SS Ferroviaria, who was on his way to work when the events took place, and José Ignacio Esquivel, driver of the van belonging to the garbage collection and street cleaning firm MANLIBA, who had knocked down Mesa and Cufre.

629. The case file contains an expert report on Luís Cufre, signed by Dr. Abel Kohan Miller and Dr. Mora Rébora, diagnosing severe multiple injuries and coma.

630. Luís Cufre, who had been given treatment by the Emergency Medical Care System, was transferred to the Argerich Hospital and then, on 19 September 1997, to the Fernandez Hospital.

631. Luís Cufre's case has been taken up by the National Council for Young Persons and the Family, Department of Street Children, which is assisting him in various regards, ranging from documentation to recovery care.

632. This case is still under active investigation as arising from a traffic accident whose nature and cause have not been determined.

633. Under the same case file, folio 199/200, an investigation was instituted into the suspected initial irregularity of the police proceedings. This has been referred to National Correctional Court No. 4, Registry 66, under case No. 25679, filed as *Complaint in re violation of duties of public official v. police personnel*. These proceedings are also at the examination stage.

#### **Case of Cristián Ariel Campos**

634. As described in the previous report, this 16-year-old boy was abducted on 2 March 1996 in the town of Mar del Plata, province of Buenos Aires, and his cremated body was found a week later. The case resulted in the then Chief of the Buenos Aires Police, Pedro Klodczyk, submitting his resignation to the Governor Duhalde, who at the time rejected it. Nevertheless, the Governor of the province ordered the retirement of the Director of the Security Force, Superintendent Rolando Roblero, number three in rank in the provincial police and Supreme Chief of the Buenos Aires patrols, to which the police officers involved belonged.

635. The court proceedings conducted resulted in the conviction of four police officials for "illegal deprivation of liberty and torture followed by death", three of them being sentenced to life imprisonment, one to 15 years, and all to dismissal from the force.

#### **Case of Miguel Quintana**

636. The State of Buenos Aires will have to pay 160,000 pesos in compensation to the family of Miguel Quintana, a hunter who died from a shot fired by a Buenos Aires police sergeant. Such was the decision of Judge Elbio Bautista Sagarra, in an action for damage and injury filed by Silvia Liliana Peñalva, the victim's wife. The episode occurred on 4 July 1993, in El Hornero, near Rauch, 200 kilometres from La Plata. According to the court records, Mr. Quintana was driving in a van with Carlos Alberto Rocha and Pedro Rosario González. They had been to hunt hares. When Mr. Quintana and his companions passed by the Los Angeles farm, shots began to be fired from a patrol car. Travelling in the police vehicle were non-commissioned officers César Peralta and Hugo Campos. One of the bullets went through the door of the van and wounded Mr. Quintana. He did

not reach hospital alive, but died in the van. In the criminal trial, the evidence collected by the court was not sufficient to determine which police official was the one who had killed Mr. Quintana. The Azul Court of Appeal therefore acquitted the accused of culpable homicide.

### **Case of Cristian Dominguez Domenichetti**

637. While being detained in Prison Unit No. XV, of the Prison Service of the province of Buenos Aires, the above-named died from repeated blows on his body inflicted by staff of the said establishment.

638. From this episode arose case No. 40.774, filed as *Melián Hugo and others, Torture leading to death*. In the resultant proceedings, originating from the death of the prisoner Dominguez Domenichetti, held for trial by Criminal and Correctional Court No. 3 of the Judicial Department of Bahía Blanca, in case No. 24793 for the offences of aggravated robbery, aggravated unlawful deprivation of liberty and automobile theft, the Court of Appeal for Criminal and Correctional Cases, Division I, pronounced on 24 March 1997 the following sentence: 2. Unanimously sentences Carlos Alberto Laino to 13 years' imprisonment and general disqualification for life, legal incidents and costs; Gerardo Luís de Benedetti to 11 years imprisonment and general disqualification for life, legal incidents and costs; and Hugo Anibal Melian to one year and six months' imprisonment, considered as served with the time spent in pre-trial detention, and specific disqualification for service in security posts and dealing with prisoners for a period of three years.

### **Case of Marcelo Atencio**

639. This 18 year old youth was allegedly arrested on 20 March 1998 between 4.30 and 5.30 p.m. at his place of work by Buenos Aires police belonging to Station No. 1, San Miguel, province of Buenos Aires, and taken to police premises. The next day he allegedly arrived home at about 6 p.m. with his face terribly disfigured.

640. The complaint lodged by Fabián Marcelo Atencio's father was registered as Injuries and referred to Transitional Criminal and Correctional Court No. 3 of the Judicial Department of San Martín. The case began with the complaint from the victim's father filed with Police Station 2, José C. Paz, province of Buenos Aires, on 21 March 1998.

641. According to the father's account, Fabián Atencio left home to go to his job in San Miguel at 7 a.m. on 20 March 1998. He says that his son should have come home at about 8 p.m. but did not arrive. He therefore went out to look for him, but without success. Towards the evening of the following day he learnt that his son had been detained at Police Station No. 1 in San Miguel. There he was told that his son had been detained since the previous afternoon for being in an inebriated state and that he had been released at 8.30 p.m. on the current day.

642. The complainant says that on returning home he found his son with bruised lips and hair cut very short. His son allegedly told him that while in the police cell he had been attacked by other detainees who had punched him on the face and body and cut his hair with scissors. He says his son told him that the police personnel watched and laughed when this was happening, without taking part in it.

643. Fabián Marcelo Atencio was arrested for the offence of being in an inebriated condition, the judgement of which devolved upon the San Miguel Magistrates' Court, and he was also charged with the criminal offences of forcible entry and threats, to be tried by Criminal and Correctional Court No. 2, San Martín.

644. At 10.30 p.m. on 21 March he was examined by Dr. Daniel Horacio Viñas, who certified as follows: "Physical examination shows haematomas on the scalp, nasal dorsum, left cheekbone and lips. He complains of pain in several parts of his body. The injuries result from a bruising action exerted some 24 hours previously and are minor in nature".

645. Proceedings having been instituted in the above-mentioned court, the magistrate ordered that the following measures should be taken: to request from the Magistrate's Court in San Miguel the records concerning the minor offence of which Mr. Atencio had been accused; to ask Criminal and Correctional Court No. 2 in San Martín whether in the case brought against Mr. Atencio a medical report had been established, and if so to provide a copy; to request District Station 1, San Miguel, of the police of the province of Buenos Aires to be good enough to take the following steps:

(a) to provide a list of the personnel on duty between 5 p.m. on 21 March and 6 p.m. on 22 March;

(b) to send a copy of the register of persons housed at that station as offenders and/or detainees on that same date;

(c) to provide particulars of any persons who had been cellmates of the complainant, Mr. Atencio;

(d) to provide information on personnel responsible for the safety of persons detained in cells;

(e) to indicate whether the complainant had undergone a medical examination during the time he had spent in detention.

646. The results of the request made to District Station 1 in San Miguel were as follows: a list was sent of the personnel on duty at the time indicated by the magistrate; a copy of the station's register was sent showing which persons had been detained with Mr. Atencio; a copy of the register of offenders was sent showing who had been arrested with Mr. Atencio; information was provided to the effect that the District Station had three cell sectors, one for juvenile detainees, the second for adults and the third for holding offenders and detainees to check their personal particulars; and that in the first two sectors, where prisoners serving sentences were also held, police were assigned as day or night guards, while in the third there is no guard but constant surveillance by the Service and Judicial Officer and the Guard Sergeant. Mr. Atencio was examined by the police physician on duty and a copy was attached of the report issued by the latter at the time, the relevant part of which reads: "... at the time of the examination the subject displayed logorrhoea, slight temporal and spatial disorientation, alcoholic breath, aggressive response to questioning on medical history, bloodshot eyes and unsteady gait, signs compatible with first or second degree alcoholic intoxication, rendering him unfit to make a statement for at least 12 to 18 hours from the time of the present examination. On physical examination he displays haematoma on the scalp, haematomas on the left cheekbone, on the upper and lower lips and in the nasal region at the left ala. Those lesions

are due to bruising sustained a few hours previously and are compatible with those produced by a blow or impact against a hard, blunt and compact object. Barring complications, they should heal in less than a month, during which time he will be unfit for work ...". The report was signed in San Miguel, on 20 March 1998 at 8.15 p.m.

647. The case records requested concerning the accusations of minor and serious offences did not provide any further information.

648. On 22 June 1998 the court ordered a stay of proceedings since it had not been possible to identify the author or authors of the criminal injuries. On 25 June 1998 this was notified to the prosecution official appointed to Prosecutor's Office No. 3 in San Martín.

*Action taken by the judiciary of the province of Buenos Aires to eradicate torture*

649. In Decision No. 3012, handed down on 24 October 2001, the Supreme Court of Justice of the province of Buenos Aires reported that in the years 1999 and 2000, 60 juveniles had died in alleged clashes with the police. To make it worse, several of the victims who died in custody had complained of threats or ill-treatment on the part of the personnel of the police stations within whose precincts the confrontation later took place.

650. Further, the Supreme Court of Justice reported to the Governor of the province of Buenos Aires on the ill-treatment, including inhuman housing conditions, to which juveniles are subjected on police premises.

651. As a result it was decided that some of those police premises, such as the district stations of Villa Elisa, Villa Maipú, Los Hornos, San Miguel, Berisso, Benavidez and Barracas, should be legally declared unfit for use.

652. Concurrently, the Senior Advocate-General of the Court of Criminal Cassation of the province of Buenos Aires submitted to the judicial authorities of the province Resolution No. 153/01, of July 2001, concerning overcrowding and the conditions in places of detention where "the unjustifiable worsening observed in the manner and conditions in which certain custodial sentences are served amount to inhuman treatment". In his Resolution the Advocate-General stated that he had in his records 602 cases of torture detected in police stations and prisons between March 2000 and June 2001. He also reported on the serious overcrowding and deplorable living and sanitary conditions of detainees, as also on the obstacles raised by the authorities of the prison service of the province to the proper functioning of the defence.

653. Annex XXI contains the texts of the decisions of principle on this issue handed down by the Supreme Court of the province of Buenos Aires since April 1997. Copies are also appended of the Resolutions of the Office of the President of the Supreme Court issued since the adoption of Decision No. 3012 (see para. 649 above).

*Establishment of the Department of Human Rights of the province of Buenos Aires*

654. On 22 January 2002 the Senate and Chamber of Deputies of the province of Buenos Aires approved Act No. 12.856 (Ministries Act) establishing the Department of Human Rights in the province. It has the rank of Ministry, as it operates under the direct authority of the Governor of the province.

655. The Department is responsible for assisting the Governor to implement the plans, programmes and policies relating to promotion and defence of human rights, to equality of opportunity and to eliminating discrimination against groups or persons. Among the powers vested in it by the Act is the authority to devise and promote initiatives for the establishment or revision of rules or programmes aimed at maintaining and guaranteeing the full protection of human rights.

656. One of the priorities of the Government of the province of Buenos Aires is the implementation of a provincial programme against torture, in pursuance of a decision announced by the Governor in his speech to the legislative assembly when he opened the sessions of Congress in the current year.

657. Among the preliminary measures that led to the establishment of the provincial programme were the decisions of the judiciary of the province (see paras. 649 to 655 above).

658. The aim of this provincial programme, which the Department of Human Rights is responsible for coordinating, is to guarantee the effective exercise of the right to personal integrity and humane treatment throughout the territory of the province of Buenos Aires.

**Province of Mendoza**

**Garrido and Baigorria cases**

659. By Decree No. 1105, dated 17 July 1999, the executive of the province of Mendoza declared to be justified expenditure the amounts allotted for the indemnification of the families of Adolfo Argentino Garrido Calderón and Raúl Baigorria Balmaceda, as determined in the sentence of 27 August 1998. The amount of 214,000 pesos was paid by way of compensation, following a petition submitted to the Inter-American Commission on Human Rights.

660. As regards non-pecuniary redress, in fulfilment of the obligation to investigate the acts committed and punish the perpetrators, accessories before and after the fact, and anyone else who had participated in them, a ministerial resolution ordering compulsory retirement discharged from the provincial police force Medardo Heredi Ortubia, Assistant Superintendent in the Commando Unit, and Francisco Edgardo Bullones Prudencio, Principal Officer in the Commando Unit.

**Cristian Guardatti case**

661. In the Guardatti case, which was also the subject of a petition to the Inter-American Commission on Human Rights, the amicable solution procedure was applied. It was negotiated with the province of Mendoza, resulting in the payment to the petitioner of the amount of 136,000 pesos.

### **Sebastián Bordón case**

662. Twelve days after the finding of the corpse of Sebastián Bordón, in the province of Mendoza, the judge in the case reviewed a list of seven Mendoza police officers who were under suspicion. The proceedings had been referred to the court of Mr. Waldo Yacante. The story told by the Mendoza police when the body was found, on 12 October 1997, failed to convince the judge. Apparently the first expert reports, decisive in this case, had already declared it proven that the body displayed lesions resembling those produced by blows; that, judging by the state of the clothing, the body had been dragged along (bearing out the theory that it had been placed at the bottom of the ravine); that the boy lay in his death throes for many hours; and that he could hardly have been dead when he was found. The investigation seems to point towards the police detachment of El Nihuil, where Bordón was seen for the last time.

### **Province of Neuquén**

#### **Omar Carrasco case**

663. In January 1996 three members of the military were sentenced to 15 years for his death. The case is currently before the Criminal Court of Cassation following the appeal lodged by the defence on behalf of the convicted persons, found guilty by the Neuquén Oral Court for Federal Criminal Cases on 31 February 1996. The sentences for ordinary homicide ranged from ten years imprisonment (for two of the victim's military service comrades) to 15 years imprisonment (for a sub-lieutenant of the force), while a non-commissioned army officer was found guilty of being an accessory after the fact and was sentenced to three years' imprisonment. The repercussions of this case led to the abolition of compulsory military service and its replacement by a voluntary, professionalized service.

664. In this connection and with further regard to the Committee's remarks to the effect that the information supplied should be representative of the situation throughout the country, the information on complaints received for crimes of torture, ill-treatment, unlawful coercion, etc. contained in the present report include data relating to a number of provinces, namely, Misiones, La Pampa, San Juan, Chubut, Entre Ríos and Salta (see Annexes XV to XX).

665. The information in question covers approximately the period 1997-2000. An updated version will be transmitted to the Committee in due course after finalization of the review currently being conducted as part of the study on torture planned by the Federal Human Rights Council, in cooperation with the Department of Crime Policy.

#### **IV. PART THREE: COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS**

666. As for the Committee's recommendation "to revise criminal procedure legislation by setting a reasonable time limit for preliminary investigations"<sup>15</sup> and with regard to the backlog of pending cases in the courts, the lengthy legal delays and the large number of persons in prison awaiting trial, the Committee is informed that various measures have been implemented to speed up the handling of the proceedings in all courts.

667. A draft Act has been submitted to Congress setting up two Penal Enforcement Courts and seven Registries, since currently there exist only three Penal Enforcement Courts which must take cognizance of and supervise the executory or suspended prison sentences, the probationary measures and the security measures imposed by a total of 132 courts, single-judge and collegiate. The same draft provides for amendment of article 293 of the Code of Criminal Procedure regulating conditional suspension of proceedings, or probation.

668. As currently worded this article provides that the competent body shall, at the single hearing stipulated in the rule, specify in detail the instructions and conditions to which the accused shall be subject and shall immediately inform the enforcement judge of the decision placing the accused on probation. The proposed rule, on the other hand, entrusts to the judicial body that granted probation the follow-up of the instructions and conditions laid down and that body will also be the one responsible for granting a new hearing to the accused in case of failure to comply with the instructions and conditions, after which it will decide upon the annulment or maintenance of probation. In other words, the criminal enforcement judges are relieved of the supervision and follow-up of accused persons granted probation.

669. As regards the Committee's recommendation concerning the requirement to set a reasonable time limit for pre-trial imprisonment,<sup>16</sup> Act No. 25.430, passed on 9 May 2001, provides that the duration of pre-trial imprisonment may not exceed two years without sentence having been pronounced. Notwithstanding, should the number of charges against the accused or the evident complexity of the case have prevented sentence from being passed within the time indicated, it may be extended for one year more, by a reasoned decision that must be immediately communicated to the competent higher court for due scrutiny (see Annex XI for legislative history).

670. As regards the recommendation made by the Committee in section 5 of its concluding remarks on the third report of Argentina<sup>17</sup>, Annex XII features a compilation of statistical data on crime prepared by the Procurator-General's Office on the basis of information supplied by the following institutions: National Prosecutors' Offices for Correctional Cases; Examining Prosecutors' Offices; Oral Prosecutors' Offices; Juvenile Prosecutors' Offices of the First Instance; Offices of the Prosecutors' to the Juvenile Oral Courts; Oral Prosecutors' Offices for Federal Criminal and Correctional Cases; Federal Prosecutors' Offices of the First Instance and Federal Oral Prosecutors' Office for the rural areas.

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<sup>15</sup> Official records of the General Assembly, fifty-third session, Supplement No. 44 (A/53/44), para. 68.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid, paras. 66 to 69.

**Report on the appointment and functioning of the Committee to investigate rigged criminal proceedings, established by resolution of the Procurator-General of the Nation  
(prepared by the Attorney-General, Mr. Maximiliane Rusconi, on the basis  
of the preliminary report by Mr. Daniel Eduardo Rafecas)**

**Background information**

671. In April 2000, the Prosecutor in charge of Senior Prosecutor's Office No. 2 to the Federal Oral Courts of the City of Buenos Aires, Mr. Daniel Eduardo Rafecas, presented a report he had written informing his superior, the Attorney-General Mr. Maximiliano Rusconi, of a series of court cases in which reliable indications had been repeatedly detected that Federal Police Personnel had "fabricated" criminal proceedings using innocent persons, in order to obtain promotion in the force or for other reasons that it had not yet been possible to determine.

672. The report mentions at the outset that the investigation started from what happened in the Molfese case brought before Federal Oral Court No. 6; that it covered cases detected both in the Federal and in the ordinary criminal courts; that in all the cases the method resorted to had been the same and that they had all ended in stay of proceedings or acquittal of the accused. In all, Mr. Rafecas gave a brief account of 13 individual cases, which shared the same essential features:

- (a) A man ("the bait"), after winning the confidence of someone with limited reaction potential – illiterate, immigrant, drug addict, unemployed or drop-out – persuades the person to come with him, generally with the promise of a job;
- (b) Usually he takes the victim with him in a taxi or hired car;
- (c) He takes the victim into a railway station, a shopping centre or some other public place (drugs) or close to a bank or a security vehicle (assault, possession of weapons);
- (d) In many cases he offers the victim a drink or something to eat;
- (e) He makes some telephone calls, using a mobile or public telephone;
- (f) Then he leaves the victim alone for a few moments, making some excuse;
- (g) Thereupon the police immediately go into action, making straight for the person and successfully making their arrest, followed in nearly all cases by the immediate arrival of the press;
- (h) The places where unemployed persons looking for odd jobs are, it seems, regularly tricked are the labour exchange in the parish of San Cayetano and the square located in the Flores district, on Cobo and Curapaligüe Streets. In other cases they have been approached in the vicinity of the Retiro and Constitución stations or their own abodes.

673. The report points out that "this series of coincidences, as well as bearing out the account given by the accused in their statements to the court, faces us with an inescapable dilemma: either it is a big plot concocted in all these cases to besmirch the image of the police, or alternatively we have here a group of police officers and non-commissioned officers who fabricate proceedings to



improve their work statistics, or for goodness knows what unavowed purpose. What is certain is that, for that purpose, they have no compunction about taking to prison persons they know to be innocent, they avail themselves of the resources supplied to them by the State, use mobile telephones, discharge firearms, occupy staff and set in motion legal proceedings that bring into play witnesses, experts and advocates and involve judges, prosecutors and court officials, not to mention the further question of how they obtain the drugs, weapons and explosives that have been confiscated in the proceedings”.

### **Urgent measures taken at the Attorney-General's Office**

674. This being so, and in view of the seriousness of the situation described in the report, on 25 April 2000 the Attorney-General ordered that its contents should be brought to the attention of all criminal court prosecutors so that they could report on any similar cases detected, and at the same time the Procurator-General was invited to consider the desirability of doing the same with the authorities of the judiciary and the Federal Police.

### **Appointment of the Investigating Committee by Resolution PGN 35/00**

675. In view of the considerable number of affirmative replies received from the prosecutors, which fully confirmed the seriousness of the matter, on 27 June 2000 the Procurator-General ordered, by Resolution PGN 35/00, the appointment within the Attorney-General's Office of a Committee consisting of Mr. Luís Cevalco, Mr. Raúl Cavallini, Mr. Gerardo Di Masi, Mr. Pablo Lanusse, Mr. Raúl Perotti and Mr. Daniel Rafecas, together with Mr. Rusconi as coordinator. The Committee's terms of reference were: “to collect on a continuing basis information on new cases with a bearing on the possible existence of rigged police proceedings, to help ensure coordination of the investigations initiated by the prosecutors upon the detection of possible irregularities in the activities of the crime prevention units and, in pursuance of Act No. 24.946, second part, article 26, to take whatever measures prove appropriate to frame further charges in cases that so require.

### **Tasks performed since then by the Attorney-General's Office in its capacity as Coordinator of the Committee**

676. From then on the Attorney-General's Office was intensely busy processing all the information and documentation steadily coming in, and meanwhile the report that had originated from 13 cases grew to include a total of 30 by July 2000, which prompted a further distribution of copies of the new Report (No. 2/00) to everyone involved in operating the penal system.

677. Accordingly, at the respective meetings organized for the purpose, the Attorney-General, Mr. Rusconi, informed the Presidents of the Court of Criminal Appeal, the Federal Court of Appeal, and the National Court of Criminal Cassation, the Defender-General of the Nation, the Federal Police Chief and the Ministry of the Interior of the concerns that had led to the appointment of the Committee, and in every case Report No. 2/100 was annexed to highlight the progress achieved.

678. In addition, copies of Report No. 3/00, which now covers 42 cases detected, were distributed to the Senior Prosecutors to the Court of Criminal Appeal and the Federal Court of Appeal.

679. Likewise, many inquiries were answered from private citizens, press media, legislators, various agencies, courts and prosecutors' offices about the subject of the Committee's inquiry, and continuous contact was maintained at all times with the Internal Affairs Division of the Federal Police, which in all the cases investigated has instituted parallel administrative inquiries concerning the police officers involved and is keeping the Committee's Coordinator regularly updated as to their progress. That Division has also been sent, for its own purposes, copies of exhibits from a series of cases where, though the matter under investigation was not directly relevant to the Committee's mandate, it could in any case prove of interest to the Division in view of the involvement of police personnel in various irregularities and offences.

680. In connection with the work of this Committee, moreover, the Attorney-General's Office got into touch with various institutions that showed interest in its objectives, such as the Centre for Legal and Social Studies and the Association of Magistrates.

681. Furthermore, within the Attorney-General's Office two internal work coordination meetings were organized, in which most of the members of the Committee and other collaborators took part, while the Public Defenders, Mr. Kilmann and Mr. Michero, who had been striving for some time to have these occurrences elucidated, were invited as guests. At these meetings information was exchanged and future strategies for steering the Committee's work in the right direction were considered.

## Results

682. Foremost among the visible results of the work undertaken in this context was the immediate impact produced by the news of the appointment of the Investigating Committee – magnified by being echoed in nearly all the major press media: from then until the present date no new cases have been detected, despite the certain knowledge that the practice continued uninterruptedly at least from 1995 onwards.

683. The “preventive” effect produced can no doubt extend to bringing the existence of the Committee and the contents of the successive reports to the attention of practically all those serving the system in a legal capacity, be they prosecutors, judges or defence counsel.

684. But mention may also be made of substantial results, this time not general but specific, achieved through the efforts of the Attorney-General's Office in some particular instances. Thus, in cases where the rigged criminal actions had not yet been discovered and the criminal proceedings against the accused were still being actively pursued (with people even in prison), a special follow-up of such cases was conducted so that at least the prosecutor taking part would have all the available information: those cases were Chipana and others at Examining Magistrate's Court No. 13 (where three persons had been detained for about six months and it ended with stay of execution and request for investigation of the activities of the police); Godoy at Federal Court No. 12 (*idem*); Lanuti/Leyton at Oral Court for Criminal Cases No. 1 (two persons detained for a year and a half, ended in acquittal and request for investigation of police activities); Bastián/Rodriguez at Oral Court for Federal Criminal Cases No. 1 (a person detained for about five months, acquittal), among others. At present, proceedings are actively continuing in other cases that the Committee has identified (Murúa at Correctional Court No. 11; Rodriguez Carabetta at Senior Prosecutor's Office No. 2 to the Oral Courts for Federal Criminal Cases; Ortigoza at Oral Criminal Court No. 5; Varela at Oral Court for Federal Criminal Cases No. 6, etc.)

685. From the coordination area, assistance and information have been provided to the prosecutors responsible for investigating police behaviour in the light of the evidence elicited by the courts that originally handled these rigged proceedings, there being at the time more than ten criminal trials in full operation. Thus, letters enclosing copies of the relevant exhibits available have been delivered to the incumbents of Examining Prosecutors' Offices 11, 15 and 37 and to Federal Prosecutors' Offices 7 and 12. An answer has also been sent to a letter from Federal Court No. 4 requesting information.

686. Finally, preparations are being made at the Attorney-General's Office to lodge criminal complaints in at least three serious cases detected where, for various reasons, after stay of proceedings or acquittal had been pronounced, orders were not automatically given to investigate police behaviour, which is one of the objectives specifically mentioned by the Procurator-General in Resolution PGN 35/00.

### **Future activities**

687. The main activities planned for the future are:

- (a) to continue efforts to keep all the actors in the legal system and other public or private agencies with a genuine interest in the subject abreast of the work of the Committee;
- (b) to include any new cases that may be detected where the same method was used and that took place up until 1999, and be alert to the emergence of more recent cases;
- (c) to provide assistance and processed information both to prosecutors and judges dealing with pending cases that may have been initiated through a rigged police proceeding and also to those taking part in pre-trial proceedings where the accused are the crime prevention personnel involved, thereby increasing their investigatory capacity;
- (d) to prepare and lodge criminal complaints wherever it is deemed appropriate.

### **Conclusion**

688. The work undertaken to date by the Attorney-General in his capacity as Coordinator of the functioning of the Committee, and due to continue in the future according to the directives indicated above, is believed to be contributing to the attainment of the objectives mapped out for the Attorney-General's Office in the annual report for 1999, in that:

- (a) It is helping to promote awareness that the Public Attorneys' Office must become a leading actor in the implementation of policy on crime;
- (b) The investigatory capacity of the prosecutors is increasing vis-à-vis crimes that are of major importance to society in that they affect basic human rights;
- (c) It is helping to raise levels of transparency regarding the efficiency not only of the institution itself but also (and especially) of the police agency;

(d) The institutional mechanisms whereby closer relations with the community can be fostered are being strengthened;

(e) The tasks being performed are essentially strategies that make possible an enhanced relationship between the respective stages of crime prevention and operation of the criminal justice system;

(f) The institution's commitment to human rights protection is being deepened.

689. On this subject, see Annex XIII for enumeration and analysis of cases detected, broken down by police unit participating.

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