



**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**

**Comments submitted by the Government of Argentina on the conclusions
and recommendations of the Committee against Torture (CAT/C/CR/33/1)**

[2 February 2006]

1. Following recommendations made by the Committee, information can be found annexed to the present document in response to the recommendations appearing below.
2. In paragraph 7, the Committee recommends that the State party should take all necessary steps to prevent acts of torture and ill-treatment in the territory of the State of Argentina, and in particular that it should:
 - (a) Organize a national register of information from domestic courts on cases of torture and ill-treatment in the State party, a measure stated by the State party to be feasible;
 - (b) Take specific steps to safeguard the physical integrity of the members of all vulnerable groups;

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

** The annexes to the present report may be consulted in the secretariat files.

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

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

3. Finally, the Government of Argentina promises to keep the Committee informed of progress in implementing the recommendations made subsequent to the oral introduction of Argentina's most recent periodic report.

Report of the Human Rights Office of the Ministry of Justice and Human Rights in reply to the recommendations by the United Nations Committee against Torture subsequent to the oral introduction by Argentina of its fourth periodic report before the Committee at its thirty-third session on 16 and 17 November 2004

4. The Committee produced a set of recommendations, asking that within a year a reply should be forthcoming on the specific measures adopted to give effect to four recommendations in particular. With regard to these, we would like to provide the information appearing below.

Recommendation (e)

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

5. When the Argentine delegation made its oral introduction of the fourth periodic report in November 2004, it was not in a position to provide adequate and full information from each province and the federal jurisdiction on cases of torture and ill-treatment of persons deprived of their freedom. Replies were received from only about half the provinces circulated, and those that did reply gave signs of having only a limited amount of adequate and reliable information.

6. In 2005 a working group was established comprising staff of the Office of Crime Policy and Prison Affairs, part of the Ministry of Justice and Human Rights. It considered the general situation and problems involved in sending complete information on torture and ill-treatment from the law courts, at both the federal level and that of the various provinces. Various options were evaluated, including that there was a need for a special database, created by executive decree, dealing with matters of federal interest, stemming from Argentina's obligations as a State party to an international instrument, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7. Since then, work has been proceeding on the associated legislative framework and various proposals for attaining the general goal, in which the instruments used by the Ombudsman before the Court of Appeal of Buenos Aires province were used as precedents; these are shown by way of example (annex 1).

8. In November 2005, when the draft decree for implementing the Optional Protocol to the Convention against Torture was being drawn up, an article was incorporated in it providing for the establishment of a national register or database for reporting on cases of torture and

ill-treatment. The draft decree is under consideration by the Minister of Justice and Human Rights, before being submitted to the President of the Republic for signature. It states: "Instruct the Minister of Justice and Human Rights to proceed to create, within sixty (60) days of publishing this decree, a database containing statistical information on incidents of torture and other cruel, inhuman or degrading punishment or acts." The database will be federal in scope, and gather information from around the country, employing specialized model data fields for providing information in varying formats differentiated by factual descriptions of the various situations. It will make it possible to retrieve detailed and reliable information on specific cases foreseen in the Convention against Torture and on the precedents established so far by the international courts on human rights issues.

9. Similarly, and with reference to incidents reported, the Under-Secretary for Prison Affairs of the Office of Crime Policy and Prison Affairs of the Ministry of Justice and Human Rights has, in order to obtain information on prisoners held in institutions of the federal penitentiary system who report being victims of torture or ill-treatment (*apremios ilegales* in the language of Argentina's Criminal Code) and identify prison staff involved, forwarded enquiries to the President of the National Appeal Court for Criminal and Correctional Cases, to the President of the National Appeal Court for Federal Criminal and Correctional Cases, and to the Presidents of the Federal Appeals Courts in different parts of the country, through whom it was asked whether the courts at any of these levels were recording cases stemming from reports of torture or ill-treatment. To give a clearer idea, copies of these enquiries, replies to which were being assembled as this report was being drafted, are annexed hereto (annex 2).

10. In addition, in the absence of a reliable register containing data on violent deaths occurring in any place of incarceration during 2005, staff of the Human Rights Office compiled a register of deaths in custody on the basis of cross-checked information from different sources, government and non-governmental, such as the federal and provincial prison services, police and other security forces, persons in jail and members of their immediate families, journalistic articles, human rights organizations and private information from staff of the Office. The aim is for this register to be organized with greater precision in 2006, to which end the different federal and provincial agencies are asked to submit the relevant information in periodic form to the Human Rights Office. A copy of the register is annexed hereto (annex 3).

Recommendation (f)

Take specific steps to safeguard the physical integrity of the members of all vulnerable groups

11. A necessary precondition for compliance with this recommendation is to have information that can be relied on in both qualitative and quantitative terms.

12. To this end, in November 2004 the Human Rights Office began to prepare a database that was afterwards refined with the assistance of the United Nations Children's Fund (UNICEF). An integrated picture of the situation at the national level and in each of the different provinces of Argentina has been produced, indicating the number of persons under 21 years of age held in jail, the number and type of institutions where they are held, and the reasons why they are confined.

13. As part of this survey, an event entitled “Days of Good Practice in Juvenile Criminal Justice” was held on 19 and 20 September 2005. Organized by the Human Rights Office and the National Council for Childhood, Adolescence and the Family, the event was sponsored by Argentina’s Senate, the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), and the Special Rapporteur on the rights of persons in confinement of the Inter-American Commission on Human Rights (for programme, see annex 4). The Days of Good Practice saw the presentation of the first data generated from the various provinces of Argentina, giving an estimate of 24,000 children and adolescents, confined for reasons of social insecurity in more than 80 per cent of cases (see final investigation report, annex 5). This cohort, children and adolescents of both sexes in custody, is the group whose rights are more widely and seriously affected than any other, both in numbers and in the degree of insecurity they suffer from.

14. In the context of this project involving research and subsequent action, visits were made to establishments where children were held in custody - police stations, centres, institutions and prisons - in the provinces of Tucumán, Río Negro, Jujuy, Mendoza, Salta, and the Autonomous City of Buenos Aires. In each of these cases, public inquiries were held and direct approaches were made to the executive, judiciary and legislature. Similarly, in each of the areas visited, publicity was given to the content and aims of the Optional Protocol to the Convention against Torture.

15. Special mention should be made of the province of Río Negro, where in June 2005 a thematic observatory for the study of conditions of detention in places of confinement was established, based on a joint project between the United Nations Development Programme (UNDP), the Human Rights Office of Argentina’s Ministry of Justice and Human Rights, and the Human Rights and Imprisoned Persons’ Group formed at the local university. As part of the work of the Observatory, major activities were conducted in two cities of Río Negro province: General Roca and Viedma. In General Roca a visit was undertaken for the first time to the Alfonsina Storni Home, a facility for single mothers with infants, girls and adolescents. The condition of the accommodation noted by the Observatory team led to a public outcry, and a number of changes were introduced by the authorities. In Viedma, where there is also a branch of the Observatory, following a visit to the local reformatory, where a meeting took place with two adolescents held in custody because of their social situation, a series of legal moves was begun in association with their families and the local authorities, with the aim of putting an end to their detention.

16. It should be noted that on 28 September 2005 the Argentine Parliament adopted the Act on the Comprehensive Protection of the Rights of the Child, promulgated on 26 October 2005. This norm, applicable to all minors under 18 years of age, lays down a series of “measures for the comprehensive protection of rights” which must be applied by the competent administrative authorities “if there are threats or violations of rights or guarantees of one or more children or adolescents individually considered, with the aim of preserving or restoring them, or remedying their consequences” (art. 33). The same article lays down that “lack of material resources of the parents, family, legal representatives or guardians of the children and adolescents, whether circumstantial, temporary or permanent, shall not constitute grounds for separation from their nuclear or extended family, or from those with whom they retain emotional ties, or for placing them in institutions”, ensuring that such measures of protection do not consist in loss of freedom (art. 36).

17. Act No. 26,061 meant no longer allowing the Child Welfare Agency, that is judges, to decide what happens to children and adolescents, a state of affairs which had resulted in 18,000 children being confined in various kinds of State and private institutions because of their own poverty or that of their families. The change in approach (from the concept of minors in an irregular situation to that of comprehensive protection of their rights) is a process that is fully under way. The State's responsibility for tackling the problem of children and adolescents from the standpoint of protecting their rights instead of confinement implies a series of structural changes and changes in institutional practice. The enactment of this norm is merely a first step.

18. Regarding arbitrary detentions of children and adolescents, a Day of Youth, Punishment and Rights, jointly organized by Argentina's National Youth Directorate (DINAJU) of the Ministry of Social Development, the Office of Crime Policy and Prison Affairs, and the Human Rights Office, was held on 9 September 2005.

19. Following the interventions by family members of young persons killed by security forces and the presentations made by Mariano Cascallares, Director of DINAJU, Alejandro Slokar, Secretary for Criminal Policy and Prison Affairs, and Eduardo Luis Duhalde, Secretary for Human Rights, all taking part in the event, some 100 members of youth organizations and officials from the relevant areas, met in three commissions, formulating conclusions that included:

(a) The need to promote suitable education for police officers, including general education, training in treaties, laws, specific practical training and precise guidelines via the chain of command on the limits of their authority and on respect for human rights (disciplinary rules);

(b) Information on the rights of young people and adolescents, exploiting the potential offered by the media;

(c) Increasing the effectiveness of the criminal investigation police;

(d) Encouraging mediation as an alternative system for conflict resolution;

(e) Promoting the formulation and submission of general reform proposals on criminal provisions, analysing and reviewing the decriminalization of certain types of conduct and de-emphasizing arrest as a response.

20. The event formed part of efforts by Argentina to comply with the judgement of the Inter-American Court on Human Rights in the case of Walter Bulacio, the aim being to use that case and others in which violations of human rights have been perpetrated by the security forces as a basis for discussion of policies on the rights of young people.

21. Regarding care for imprisoned persons, the Under-Secretary's Office for Prison Affairs reports that "health checks on the prison population in establishments of the Federal Prison Service" are being implemented in full. The programme is aimed at undertaking a medical examination of all imprisoned persons, in particular those whose rights are most ignored: women, persons with psychiatric disorders, drug addicts, young adults and children confined with their mothers. At the same time, on 26 December 2005 a foetal monitoring team visited

Prison Unit 31 of the Federal Prison Service to examine pregnant women held in jail there (25 out of a total of 232). The examinations were requested by Stella Maris Martinez, Deputy Ombudsman of Argentina, in response to a request from women imprisoned in that unit.

Recommendation (I)

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

22. It should be pointed out here with regard to the procedure for body searches in places of detention, in the provinces and in cases covered by the Convention against Torture, that body searches and inspections of items are still conducted manually.

23. However, with regard to the regulations in force in the area of the Federal Prison Service, which reports to the Ministry of Justice and Human Rights, a draft revision is under way of the “Guide to Body Search Procedures”, decision No. 42 of 15 March 1991, issued by the then Under-Secretary for Prison Affairs; the new regulations will reflect the revised criteria for procedures used by Spain’s prison security judges approved at the VIII meeting (Madrid, November 1994), item D; the recommendations made by the Inter-American Commission on Human Rights in its report No. 38/96 on case 10,506, dated 15 October 1996; and two memorandums, 84/2000 from the Department of Prisons and 109/01 from the Department of Corrections, which lay down that body searches must be external and respect the integrity of the prisoner.

24. It should be noted that report No. 38/96 of the Inter-American Commission on Human Rights refers to a submission made by the mother of a 13-year-old girl, complaining that both she and her daughter had been subjected to vaginal examinations when going to a federal prison to visit the husband of the complainant and father of the child.

25. The Commission found the case admissible and concluded that “the lawfulness of a vaginal search or examination, in a particular case, must meet a four-part test”, namely:

- (a) It must be absolutely necessary to achieve the security objective in the particular case;
- (b) There must not exist an alternative option;
- (c) It should in principle be determined by judicial order; and
- (d) It must be carried out solely by health professionals.

26. Since in this specific instance, there was no judicial order, and no adequate medical guarantees had been provided, the Commission concluded that the State of Argentina had violated the rights of both mother and daughter, guaranteed in articles 5, 11 and 17 of the American Convention on Human Rights, in relation to article 1.1, which requires the Argentine State to respect and guarantee the full and free exercise of all the provisions recognized in the Convention. In the case of the daughter, the Commission concluded that the State of Argentina also violated article 19 of the Convention.

27. In consequence, it recommended that the State should “adopt the necessary legislation in order to adjust its provisions to the obligations established by the Convention as expressed in the present conclusions and recommendations”.

28. The authorities responsible for prison affairs began in 2000 with a proposal to implement non-invasive procedures in prison units of the Federal Prison Service but, although detectors were installed, they were never put into operation, which gave rise to various recommendations by the Office of the Government Procurator for the Prison System following complaints by prisoners, family members and close relatives.

29. The decision taken by the Under-Secretary for Prison Affairs, referred to previously, was in the final revision stage by that body as the present report was being drafted (2 January 2006), after which it was to be forwarded to the International Centre for Prison Studies at King’s College, London, two of whose staff members, Andrew Coyle and James Haines, recently undertook a cooperation and collaboration visit to Argentina, organized jointly by the Human Rights Office and the British Embassy in Buenos Aires.

Recommendation (o)

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

30. After signing the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 15 November 2004, and depositing the associated instruments, the Human Rights Office decided to begin a process that would lead to its effective enforcement by establishing and putting into effect the national prevention mechanism foreseen in article 17 et seq.

31. As a result, a working group from the Office of Crime Policy and Prison Affairs drew up a draft decree regulating Act No. 25,932 ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the object of which is to establish a national prevention mechanism (a copy of the preliminary draft decree is appended as annex 6). The work was carried out with the assistance of a legal and technical team drawn from both offices.

32. At the time the present report was drawn up, the question was under consideration by the Minister of Justice and Human Rights.

33. In addition to drawing up this draft decree, visits were made in the course of 2005 to different prison units and other facilities throughout the country where detainees were being held. The visits were made by teams from the Human Rights Office, with additional members from social and human rights groups on occasion. On these visits, the mechanism of the Optional Protocol was used, together with other associated instruments such as the Monitoring Manual for Sanctioning and Preventing Torture drafted by the Association for the Prevention of Torture (APT), so as to improve the use of visits as a system of control with a view to future implementation of the national mechanism. Mention may be made of inspections at prisons

(Mendoza Penitentiary, Mendoza Women's Unit, known as El Borbollón, General Roca Remand Centre and Viedma No. 1 Penal Establishment, both in Río Negro province; Unit 11 in Neuquén; Penitentiary Unit No. 31 of the Penitentiary Service in Buenos Aires province; Villa Urquiza Prison in Tucumán province; the federal units in the provinces of Río Negro, Neuquén, Córdoba, and the Federal Capital and Buenos Aires province); various psychiatric centres, institutions, and homes where children and adolescents are held.

34. Similarly, as part of outreach work in connection with implementation of the Optional Protocol, the following publicity and preparatory work may be mentioned:

(a) The Human Rights Office, together with Argentina's Centre for Legal and Social Studies (CELS) and the Association for the Prevention of Torture (Switzerland), held a seminar for judges, prosecutors and defence lawyers on the prevention and punishment of torture. Discussions were held on the "Combating Torture" manual, published by the University of Essex, United Kingdom (see programme in annex 7). The seminar ran from 26 to 28 April 2005, with the inaugural ceremony being held in the main lecture theatre of the Faculty of Law of the National University of Buenos Aires, with the panels and discussions continuing in the Ministry of Justice and Human Rights. The goal of the seminar was to make available to judges and officials the Essex manual as a major tool for prevention, detection, follow-up and evaluation for investigation and suitable punishment of torture cases, and an exchange of practical experience and existing regulations among the various experts. One reason why the event, which was also attended by representatives from both outside and inside the country, was successful was because it could be repeated in various provinces of Argentina, depending on its content, a goal that is under way this year;

(b) Through a delegation made up of officials from the Ministry of Foreign Relations, International Trade and Religious Affairs, the Office of the Government Procurator for the Prison System, and the Human Rights Office, Argentina took part as a federal State in a seminar entitled "The Optional Protocol to the United Nations Convention against Torture: Implementation in federal and decentralized States", in Sao Paulo, Brazil, from 22 to 24 June 2005. One of the main aims of the seminar was to consider ways and means of implementation for federal States a type of politico-institutional organization that poses particular problems of implementation given the autonomous character of the constituent provinces and states. During the seminar, the Argentine delegation introduced initiatives and made proposals for defining the preliminary drafts of legislative instruments mentioned earlier and methods of application in federal States;

(c) A similar objective - discussions on the implementation of the Optional Protocol in federal States - was the object of the meeting in Mexico, on 13 and 14 July 2005, through an international seminar entitled "Exchange of experience on implementation of the Optional Protocol to the Convention against Torture in Mexico", organized by Mexico's Ministry of Foreign Affairs, the United Nations High Commissioner for Human Rights and the Association for the Prevention of Torture. To show the challenges presented by implementation of the Optional Protocol in States that are organized along federal lines, the Under-Secretary for the Promotion and Protection of Human Rights, Rodolfo Mattarollo, outlined the case of Argentina (see copy of his speech in annex 8);

(d) As mentioned above, pursuant to an agreement with the United Nations Development Programme, the Human Rights Office has set up the first observatory for human rights on a thematic basis, on conditions of detention in places of confinement in Rio Negro province. In a public presentation on 26 August 2005 in the city of General Roca, Rodolfo Mattarollo publicized the aims of the Optional Protocol as well as the importance of implementing it in our country.

As part of the outreach work associated with publicizing and setting up the Observatory, workshops entitled “Visits to places of confinement as a method of preventing torture” were held in the cities of General Roca, Bariloche and Viedma. The workshops, arranged by experts from the Human Rights Office, were attended by a total of 80 law and prison officers, members of social bodies and religious organizations, as well as family members of imprisoned persons.
