EVALUATION OF COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN ARGENTINA IN THE FRAMEWORK OF THE SUBMISSION OF THE FIFTH PERIODIC REPORT BEFORE THE HUMAN RIGHTS COMMITTEE 117° PERIOD OF SESSIONS REPORT FROM THE CENTER FOR LEGAL AND SOCIAL STUDIES (CELS)

MAY 2016

Dear Committee Experts,

We are writing to you on behalf of the Center for Legal and Social Studies (CELS), an organization dedicated since 1979 to defend and protect human rights in Argentina, with relation to the fifth periodic report submitted by the Argentine State on the ongoing enforcement of the International Covenant on Civil and Political Rights (hereinafter, the Covenant or ICCPR). The aim of this presentation is to make available to you the alternative report prepared by CELS describing the progress, regression, failures and omissions of the Argentine State with regard to its duty to respect, guarantee and enforce the right contained in the Covenant (Article 2). Please note that the information contained herein does not cover all issues related to the implementation of the ICCPR in Argentina.

This report includes questions and suggested recommendations for each issue, with the intention that they be taken into account by the Committee, both at the time of the interactive dialogue planned for 117° period of session, and when it issues its Final Observations on Argentina. It includes two appendices with information on various cases to illustrate the issues discussed herein.

Please do not hesitate to contact us for any further information or clarification you may need.

Yours sincerely,

Gastón Chillier
Executive Director

I. INTRODUCTORY STATEMENT

Before embarking on the analysis of various issues regarding the ongoing enforcement of the ICCPR in Argentina, it is worth mentioning that the report presented by the Argentine State to this Committee was prepared by a government administration that ended on December 10, 2015. We therefore consider it essential that when the Committee holds the interactive dialogue with current Argentine authorities, it should bear this in mind and enquire deeply into the public policies being conducted by the new administration, in order to assess whether they are consistent with Argentina's obligations pursuant to the International Covenant on Civil and Political Rights.

II. PROCESS OF TRUTH AND JUSTICE FOR GROSS HUMAN RIGHT VIOLATIONS COMMITTED DURING THE LAST CIVILIAN-MILITARY DICTATORSHIP (ICCPR, ARTS. 2 and 6)[1]

Status of trials for crimes against humanity

As we have duly informed this Committee, on June 14, 2005, Argentina's Supreme Court of Justice declared both the Full Stop Law (Ley de Punto Final, Law number 23.492) and the Law of Due Obedience (Ley de Obediencia Debida, number 23.521) to be invalid and unconstitutional in the "Simón" case, while on July 13, 2007, the pardons awarded to repressors in 1990 were annulled in the "Mazzeo" case. The legal scaffolding of a period characterized by impunity of perpetrators of gross human rights violations during the last military dictatorship was thus dismantled.

Since then, hundreds of judicial proceedings have been reopened throughout the country. In this regard, in the past 10 years, 156 trials were held and completed, convicting 669 persons and acquitting 62.[2] Between 2010, the year of the Fourth Report before this Committee, to 2015, an average 22 trials for crimes against humanity were held per year.[3]

Within this framework, it can be confirmed that Argentina has made **undeniable progress in justice and reparation**. Complying strictly with due process and full enforcement of defendants' right to defense, judicial investigations have been opened in almost all Argentine provinces and the scope has been widened in order to elucidate civilian responsibilities in crimes against humanity. The wide range of public policies implemented during recent years enabled significant progress towards providing comprehensive reparations to victims, restoring identities of appropriated grandchildren, uncovering information and systematizing archives, and creating memorial sites, among others. In addition, since 2010 progress has been made in prosecuting sexual violence[4] and cases investigating responsibilities of judicial officers, businesspeople and corporate directors involved in these crimes.

In November 2015, the Truth and Justice Program (Programa Verdad y Justicia) and the Secretariat of Human Rights, both under the authority of the National Ministry of Justice and Human Rights, the Economics and Technology Area of the Latin American School of Social Science (Facultad Latinoamericana de Ciencias Sociales, FLACSO) and CELS presented the results of an investigation on corporate responsibility in crimes against humanity to the Office of the Prosecutor for Crimes Against Humanity (Procuraduría de Crímenes contra la Humanidad) under the authority of the Office of the Attorney General (Procuración General de la Nación). The report "Corporate responsibility in crimes against humanity: repression of workers during State terrorism" ("*Responsabilidad empresarial en delitos de lesa humanidad: represión a trabajadores durante el terrorismo de Estado*")[5] provides

[1] The Committee issued its opinion on this subject in its latest final recommendations. Human Rights Committee, Final Observations, 98º period de sessions, CCPR/C/ARG/CO/4, March 22, 2010, paragraphs 9 and 21.

[2] According to the report by the Office of the Prosecutor for Crimes Against Humanity (Procuraduría de Crímenes contra la Humanidad) on the status of cases for crimes against humanity as of March 2016. Available at: http://www.fiscales.gob.ar/lesa-humanidad/el-estado-de-las-causas-por-delitos-de-lesa-humanidad-en-argentina-a-40-anos-del-golpe-10-anos-de-justicia/.

[3] The largest number of trials took place in 2012 and 2013, with 25 judgments issued per year. The pace slowed down in 2014 and 2015.

[4] In regards to prosecuting sexual violence, see: http://www.mpf.gov.ar/resoluciones/pgn/2012/PGN-0557-2012-002.pdf

[5] AA.VV, "Corporate responsibility in crimes against humanity: repression of workers during State terrorism" (*Responsabilidad empresarial en delitos de lesa humanidad. Represión a trabajadores durante el terrorismo de Estado),* Published by the Ministery of Justice and Human Rights, November 2015.

evidence of the responsibility of part of the national and foreign businesses in human rights violations committed against workers during the dictatorship.

Also in November 2015, Congress enacted Law 27.217 creating the **Bicameral Commission for Identifying Economic Complicity during the Last Military Dictatorship** (***Comisión Bicameral de Identificación de las Complicidades Económicas durante la última dictadura militar)*** that should consist of five national representatives and five national senators, which will have the goal of preparing a report with participation of civil society. The report should analyze the most outstanding aspects and consequences of the economic, monetary, industrial, commercial and financial policies adopted by the last civilian-military dictatorship and identify the economic and technical actors that contributed to and/or benefited from the dictatorship by contributing economic, technical, political, logistic or other support. The creation of this Commission was supported by experts and independent rapporteurs to the United Nations Human Rights Council,[6] the International Commission of Jurists and Amnesty International.[7] **However, unfortunately this Commission has not yet been formed and it is still uncertain whether it will actually be implemented**.

It should be highlighted that the largest number of obstacles hindering progress in investigations are encountered in cases investigating the responsibility of businesspeople, directors and/or corporate senior staff for being involved in crimes against humanity against workers during the last dictatorship. Even so, in March 2016, the first sentence was issued against a businessman for involvement in the kidnapping and torture of a union delegate at his company.[8]

Regardless of the progress described above, the Committee's latest recommendations to the Argentine State have already expressed concern regarding the **slow progress in the cases** at their different stages, including appeals, particularly in provinces such as Mendoza. Unfortunately, given the advanced age of both defendants and victims, this concern is still fully applicable. As of March 2016, according to the Office of the Prosecutor for Crimes against Humanity (Procuraduría de Crímenes contra la Humanidad), 113 cases have been referred to trial (23% of total cases being processed) and are awaiting the start of the trial at the competent court.[9] In general, in all jurisdictions, the lack of integration of courts and the low frequency of hearings mean that once the court is integrated and the debate has begun, processing and ruling are delayed.[10] It is thus necessary to implement the Federal Criminal Courts for Oral Trials (Tribunales Orales en lo Criminal Federal) created by Law 26.632 of August 11, 2010.[11] Doing so would alleviate the situation and speed up pending trials.

One of the jurisdictions with most delays in the start of oral trial is San Martín (in Buenos Aires Province), where 16 cases have been referred to trial and are pending oral debate.[12] The same is replicated in most provinces. Lawyers who defend individual victims in cases of crimes against humanity during the dictatorship say there are difficulties to start the oral trials in the jurisdictions of Misiones, Tucumán, Jujuy, Santa Fe, Santiago del Estero (where there is

---

Available at: http://www.infojus.gob.ar/responsabilidad-empresarial-delitos-lesa-humanidad-tomo-represion-trabajadores-durante-terrorismo-estado-ministerio-justicia-derechos-humanos-nacion-lb000183-2015-11/123456789-0abc-defg-g38-1000blsorbil (tome I) and http://www.infojus.gob.ar/responsabilidad-empresarial-delitos-lesa-humanidad-tomo-ii-represion-trabajadores-durante-terrorismo-estado-ministerio-justicia-derechos-humanos-nacion-lb000184-2015-11/123456789-0abc-defg-g48-1000blsorbil (tome II).

[6] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16733&LangID=E

[7] http://business-humanrights.org/es/argentina-aprueba-el-parlamento-crear-una-comisi%C3%B3n-bicameral-de-la-verdad-que-identifique-complicidades-empresarias-durante-la-dictadura#c130341 and http://www.amnistia.org.ar/noticias-y-documentos/archivo-de-noticias/argentina-134

[8] http://www.telam.com.ar/notas/201603/141128-condena-empresario-delitos-lesa-humanidad-represores-derechos-humanos.html

[9] Verhttp://www.fiscales.gob.ar/lesa-humanidad/el-estado-de-las-causas-por-delitos-de-lesa-humanidad-en-argentina-a-40-anos-del-golpe-10-anos-de-justicia/

[10] http://www.pagina12.com.ar/diario/elpais/1-289468-2016-01-03.html

[11] http://infoleg.mecon.gov.ar/infolegInternet/anexos/170000-174999/171596/norma.htm

[12] http://www.telam.com.ar/notas/201603/139340-campo-demayo-postulan-prioridades-en-tratamiento-de-16-causas-de-lesa-humanidad-elevadas-a-juicio-en-el-tof-1-de-san-martin.html

no court for oral trials) and Neuquén.[13] They also note the slowness of investigations and delays in the confirmation of the rulings by the Courts of Appeals in the jurisdictions of Tucumán, Salta, Rosario (Santa Fe), Comodoro Rivadavia (Chubut), Mendoza and Santiago del Estero (where there is no court of appeals).

Anther fact that shows the delay in processing judicial cases is the number of final rulings issued by the National Supreme Court of Justice. According to data from CELS, as of March 2016, only 16% of rulings have been confirmed by the Supreme Court.[14] Moreover, regarding appeals – at the Federal Chamber of Criminal Cassation and Federal Criminal and Correctional Court of Appeals – 32% of the rulings have been confirmed. Nevertheless, the delay in processing the cases did not cause the Inter-Branch Commission for hastening cases of crimes against humanity (created by agreement 42/08) to meet more frequently.[15]

To sum up, 40 years after the coup d'état it is urgent to coordinate the three branches of government in order to speed up the process of justice, consolidate achievements and make progress in judging civilians who perpetrated gross human rights violations.

Response from the Executive Branch regarding obstacles to the process of justice

The report submitted to this Committee by the Argentine State highlights the range of public policies designed and implemented with the aim of reinforcing the process of memory, truth and justice. Among them, it emphasizes the creation of the Office of the Prosecutor for Crimes against Humanity (Procuraduría de Crímenes contra la Humanidad) in the sphere of the Office of the National Attorney General (Procuración General de la Nación). It should be emphasized that the other areas mentioned in the response – in particular, the Secretariat of Human Rights (Secretaría de Derechos Humanos) and the Defense Ministry's Office of Human Rights and International Humanitarian Law (Dirección de Derechos Humanos y Derecho Internacional Humanitario) – make major contributions to the cases and **it is vital that their work continue.** The Defense Ministry's Office of Human Rights and International Humanitarian Law has teams working on document survey and analysis of the archives of the Armed Forces, and their reports have made a vital contribution to judicial processes, e.g. the Naval Higher School of Mechanics United (ESMA Unificada) case. It also works annually on controlling armed forces personnel eligible for promotion[16] by sending lists of candidate names to human rights organizations to be checked against their files. It is therefore a matter of **great concern** that ministerial authorities of the new government, who took office in December 2015, have stopped this consulting practice which ensures that no promotion is awarded to persons linked to human rights violations either during the dictatorship or in democracy.

It is also a matter of concern that the different areas and public offices designed for memory, truth and justice have undergone major reduction in staff through arbitrary terminations or have been dismantled by the new administration as from December 2015. **Trials for crimes against humanity require agreement among and active intervention of the three branches of government, wherefore the National Executive Branch should revoke these decisions.**

In late March 2016, the Security Ministry's National Office of Human Rights (Dirección Nacional de Derechos Humanos) was dissolved. This office was in charge of answering questions from the judicial branch on the action of security forces during the dictatorship. The office had an area in charge of surveying documentation produced by the security forces to analyze its structure and operation with the aim of providing reports to the Judicial Branch; an

[13] http://memoria.telam.com.ar/noticia/abogados-piden-participar-en-la-comision-interpoderes_n5493

[14] CELS statistics available at: http://www.cels.org.ar/blogs/estadisticas/

[15] http://www.cij.gov.ar/nota-17526-Lesa-humanidad--se-reuni--la-Comisi-n-Interpoderes--convocada-por-la-Corte-Suprema-de-Justicia.html

[16] On the system for the control of promotions, see: http://www.cels.org.ar/especiales/informe-anual-2015/wp-content/uploads/2015/12/1-El-control-de-ascensos.pdf pp. 52-70.

area in charge of identifying John Doe´s (NNs no names) – which found the corpse of Luciano Arruga[17] – and an area in charge of judicial assistance for the protection of victims during searches in cases of appropriation of children during terrorism of state.[18] Furthermore, the "Dr. Fernando Ulloa" Center for Assistance to Victims of Violations of Human Rights (Centro de Asistencia a las Víctimas de Violaciones a los Derechos Humanos), under the authority of the Secretariat for Human Rights, has been affected by terminations and have denounced uncertainty of their status and lack of political decision regarding whether their jobs will continue.[19] Moreover, about 500 workers at the Ministry of Justice were terminated, including 55 employed by the Secretariat of Human Rights who worked at the facility of the former clandestine detention, torture and extermination center that operated at the former Naval Higher School of Mechanics (Escuela de Mecánica de la Armada, ESMA) where during the dictatorship detention, torture and extermination were committed. Terminated workers include employees from the National Office of Attention to Groups in Situation of Vulnerability (Dirección Nacional de Atención a Grupos en Situación de Vulnerabilidad) in the sphere of the Office of Reparation Policy Management (Dirección de Gestión de Políticas Reparatorias), which arranged compensations to victims of terrorism of State, workers from the Unified Registry of Victims of Terrorism of State (Registro Unificado del Víctimas del Terrorismo de Estado) and from the historical site of the former ESMA Officers' Club (Casino de Oficiales de la ex ESMA).[20] Workers were also terminated at the Ministry of Justice news website – Infojus Noticias – who, among other duties, were in charge of publishing news on investigations, cases and rulings on institutional violence and crimes against humanity.[21]

With regard to the Ministry of Justice's Truth and Justice Program (Programa Verdad y Justicia), created after the disappearance in democracy of Jorge Julio López, in recent months, not only has staff been downsized through terminations but also, the program has been placed in the moved to the sphere of the National Secretariat of Human Rights, affecting its participation in judicial procedures. Workers claim that their reports will be questioned by the defense of defendants for crimes against humanity because the Secretariat of Human Rights is plaintiff at the trials. The Program is in charge of notifying witnesses in trials for crimes against humanity, so that they are not notified by security forces, and of preparing risk reports on witnesses and defendants.[22]

With regard to the Central Bank of the Republic of Argentina (BCRA, according to its initials in Spanish), in March 2016 the Sub-Management for Promotion of Human Rights (Subgerencia de Promoción de los Derechos Humanos) was dissolved after terminating all its employees. It was in charge of studying documentation linking the Central Bank and other economic actors to crimes of the dictatorship and illegal foreign debt.[23]

All these government offices were in charge of memorial and human rights policies. At a time when the cases of crimes against humanity committed during state terrorism need to be hastened in view of the advanced age of both defendants and the victims, these measures are a major concern that the Argentine State should consider.

Situation of human rights defenders, in particular those who promote these trials

In its latest recommendations, the Committee expressed concern about actions tending to intimidate persons participating as witnesses in trials for crimes involving gross human rights violations during the dictatorship, including the kidnapping and disappearance of Jorge Julio López (Covenant article 19).[24] Among the measures adopted to prevent recurrence of intimidations and re-victimization of witnesses who are survivors of the last

[17] Later on in this report we will discuss the case of Luciano Arruga in more detail. This case was noted by the Committee in its previous evaluation of Argentina.

[18] http://www.pagina12.com.ar/diario/elpais/1-295579-2016-03-28.html

[19] http://www.agenciapacourondo.com.ar/sociedad/93-trabajo/18324-denuncian-mas-despidos-en-el-area-de-derechos-humanos

[20] http://www.pagina12.com.ar/diario/elpais/1-291619-2016-02-02.html

[21] http://www.agenciapacourondo.com.ar/sociedad/medios/18724-comunicado-nuevos-despidos-en-infojus-noticias

[22] http://tiempoargentino.com/nota/202520/despidos-en-el-programa-verdad-y-justicia

[23] http://www.pagina12.com.ar/diario/elpais/1-295579-2016-03-28.html

[24] Human Rights Committee, Final observations of the Human Rights Committee, 98th period of sessions, CCPR/C/ARG/CO/4, March 22, 2010, par. 21.

dictatorship, the national State mentions in its report the Program for Truth and Justice, the Ulloa Center and the National Program for the Protection of Witnesses and Defendants. The former two have been discussed above.

With regard to the National Program for Protection of Witnesses and Defendants (Programa Nacional de Protección de Testigos e Imputados), it is a matter of concern that the new government has named a former member of the military as its director. Although his designation is temporary,[25] victims of crimes against humanity are alarmed that a former army member should be in charge of their safety and physical integrity.[26]

No progress has been made regarding the disappearance of Jorge Julio López. Almost ten years after his second disappearance, his whereabouts have not been determined and no one has been held responsible for the situation. The report by the Argentine State has omitted to answer this point. It is extremely important to make progress in the investigation of responsibilities regarding damages against López. In addition to urging the judiciary branch to advance on the case, the executive and legislative branches should promote other policies that would help find out what happened and identify the perpetrators of the disappearance.

Questions for the State

1. What measures have been taken or will be taken to speed up trials for gross human rights violations? What outcomes are expected from these measures? How will the State resolve the lack of judges at federal courts throughout the country? When will federal courts for oral trials created by law 26.632 be integrated? Will a system of replacements be implemented to prevent delays in ongoing judicial procedures?
2. What are the main obstacles identified by the State that hinder investigation and judgment of crimes committed by businesspeople, directors and/or corporate senior staff? What measures will be implemented to remove those obstacles? What are the expected outcomes of these measures? What progress has been made in the composition and startup of the Bicameral Commission for Identification of Economic and Financial Complicity during the last dictatorship?
3. Considering the dismantling of National State public offices and massive terminations in the human rights areas created to support the process of memory, truth and justice, will these areas be reestablished? Will the State re-hire terminated workers? How will judicial processes be supported and how will the requirements of the judiciary branch, the Public Prosecution Ministry, the Public Defense Ministry and the plaintiffs be met?
4. What memorial policies have been and/or will be implemented? Specifically with regard to reparation (both monetary and symbolic), memorial sites and archives that may contain information on victims and perpetrators of terrorism of State: have methods been considered for disclosing the process of justice in order to ensure no recurrence of these gross human rights violations? Have primary and secondary school syllabuses in Argentina included the subjects of the dictatorship and the process of memory, truth and justice?
5. What progress has been made in the judicial investigation of the disappearance of Jorge Julio López and the threats and intimidation suffered by witnesses and persons linked to cases of gross human rights violations during State terrorism? What progress has been made in determining judicial and administrative responsibilities for the homicide of coastguard Héctor Febrés? Has any information become available accounting for the number of witnesses in critical situations, and how many of them have been threatened in some way? How many requests for protection linked to cases of gross human rights violations have been received and what resolutions have been adopted on them and on what reasons are they based?

Recommendations to the State

[25] Administrative ruling available at: http://infoleg.mecon.gov.ar/infolegInternet/anexos/255000-259999/258482/norma.htm
[26] See http://www.pagina12.com.ar/diario/elpais/1-296096-2016-04-03.html

1. With regard to the delays in justice, conduct periodical evaluations to enable more efficient strategies to be designed and take concrete measures to unblock instances in which investigation of cases is stalled; drive changes needed for designating judges, reassigning resources at courts, courts for oral trials, among others, to speed up the processing of the cases. In particular, the judicial branch – headed by the National Supreme Court of Justice – and the Council of Magistrates should arrange the means required for effective administration of justice and for designing better strategies to speed up judicial processes for crimes against humanity.
2. With regard to the dismantling of areas created to support the process of justice in Argentina, re-hire staff specializing in the subject in order to reestablish the affected areas, resume work and design diagnostic and incidence tools to help continue with judicial investigations of crimes against humanity in Argentina.
3. Proceed with trials against businesspeople, directors and/or corporate senior staff from businesses linked to crimes against humanity. State offices should contribute to these investigations.
4. Speedily implement the Bicameral Commission for Identification of Economic and Financial Complicity during the last military dictatorship.
5. Continue with memorial policies about State terrorism by preserving archives and memorial sites. The State should make progress in disclosing ongoing investigations and trials, as well as court decisions regarding crimes against humanity. School syllabuses should include the dictatorship and the process of memory, truth and justice in Argentina.
6. Investigate and punish perpetrators of attacks, harassment and threats against human rights defenders who promote these trials. In particular, investigate and punish the perpetrators of the forced disappearance of Jorge Julio López.

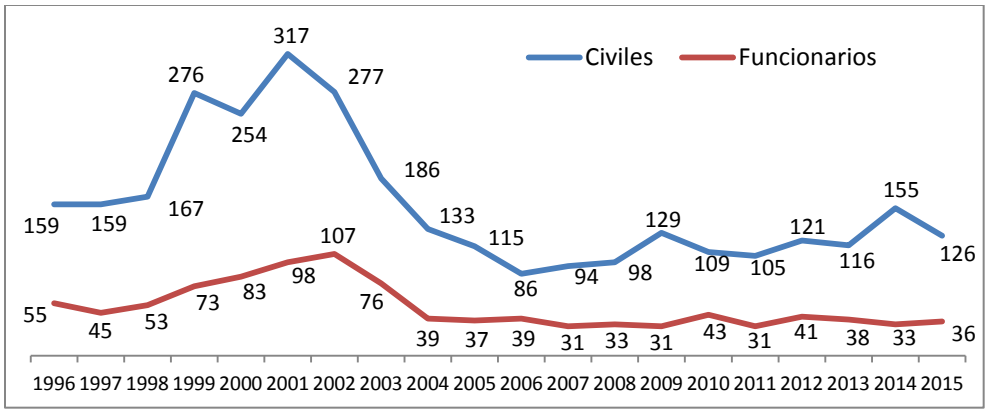
III. INSTITUTIONAL VIOLENCE. DEATHS AT THE HANDS OF THE SECURITY FORCES. ENFORCED DISAPPEARANCES. (ICCPR, ART. 6)[27][28]

The national State and the provinces **still do not produce statistical information on acts of violence performed by security forces.** Since 1996, CELS has been attempting to fill this gap using its own data based on journalistic sources. Although CELS database is not exhaustive, it enables valid trends to be visualized for Buenos Aires Metropolitan Region (RMBA, according to its initials in Spanish).

From 2009 to 2015 there were sustained levels of lethal violence by security forces, which the State has been unable to reduce. In fact, in some cases, authorities have indirectly encouraged police violence, e.g. in 2014 in Buenos Aires Province. The following graph shows that these political messages promoting police violence had consequences on levels of lethality, since **2014 was the year with most deaths caused by security forces in RMBA since 2003.**

[27] The Committee has already expressed its concern regarding this subject in paragraph 14 of its latest Final Observations to Argentina. Final Observations of the Human Rights Committee, 98º period of sessions, CCPR/C/ARG/CO/4, March 22, 2010, paragraph14

[28]The data mentioned in this section are based on data from "Facts of Institutional Violence" (Hechos de Violencia Institucional) by CELS, surveyed since 1996.



Blue: civilians
Red: members of security forces

Source: CELS. Does not include deaths caused by private security guards.

The massive presence of police on the streets, messages encouraging or tolerating police violence, use of arms by off-duty police and lack or weakening of mechanisms for governance and political control of security forces are some of the hypotheses that may explain the sustained number of persons killed by members of security forces.

During 2014, the Buenos Aires Province government regularly disclosed official data as part of its campaign to legitimize the policies adopted within the framework of the so-called "public security emergency". According to the latest official report, from April 5 to October 8 2014, Buenos Aires Province Police killed 111 persons "in shoot-outs". It reported this increase as a positive situation apparently reflecting the efficacy of the large number of police agents on duty. Comparison of the number of "criminals overcome" to the number of shoot-outs recorded shows that Buenos Aires Province Police lethality has increased while its deterrent capacity has decreased.

The irrational use of force by off-duty members of the security forces is still a serious problem. According to our database, in RMBA during 2015, 60% of victims of security force action were killed by an off-duty agent.

Some of the most relevant patterns of police violence are reflected by the following cases, which we have selected and are developed more fully in **Appendix I to this report**:

- Alan Tapia, age 19, killed by a member of the Argentine Federal Police elite force during a raid in a poor neighborhood.
- Lautaro Bugatto, age 20, soccer player, killed by an off-duty member of Buenos Aires Province Police Force.
- Lucas Cabello, age 20, injured and suffered serious after-effects after he was shot by a member of Buenos Aires City Metropolitan Police Force.

Moreover, in Argentina, one of the most worrying phenomena of institutional violence is **enforced disappearance as an extreme police method to ensure cover-up and/or to avoid or hamper investigations on abuse and other forms of everyday police violence against poor youths.**[29] In contrast to the enforced disappearances in Argentina during State terrorism, which occurred in the context of massive human rights violations managed from

[29] See the final observations of the United Nations Committee against Enforced Disappearances regarding the report presented by Argentina in November 2013. In particular, the Committee expressed concern about *"current existence of new cases of enforced disappearance of which the victims are in particular young persons in situations of extreme poverty and social marginality; these disappearances occur through application of violent police methods, making arbitrary use of arrest and using disappearance as a method to cover up the crimes committed and ensure impunity" (section 14).* Cf. CED/C/ARG/CO/1, December 12, 2013.
Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fARG%2fCO%2f1&Lang=en

the Executive Branch itself, these cases show patterns of human rights violations as a consequence of systematic practices of police abuse and forms of judicial and political negligence, indifference, inaction and/or judicial and political complicity in different jurisdictions in the country. These practices are enabled by wide-ranging police autonomy, lack of political governance to control their action effectively and lack of a system of justice to investigate and punish adequately. It cannot be ignored that in recent Argentine history the disappearance of persons is also an ominous message to other youths in similar situations as well as for families of victims, friends and witnesses who suffer threats and different forms of intimidation.

The Luciano Arruga case

Luciano Arruga remained missing for over five years. His family reported various forms of police harassment, as a result of which the main hypothesis is that there was police participation in his disappearance. Luciano was last seen in the early hours of January 31, 2009, a few blocks away from his home in Lomas del Mirador. Upon his disappearance, his mother, Mónica Alegre lodged a complaint and pointed at the local police, since her son had been receiving constant threats and different forms of violence from Buenos Aires Province Police agents.

The investigation of the disappearance (Case 7722/3) has been ongoing since the intervention of federal justice in 2013. As a result of a *habeas corpus* writ presented by his family along with La Matanza Permanent Assembly for Human Rights (APDH, according to its initials in Spanish) and CELS, Luciano's body was discovered on October 17, 2014, buried as a John Doe (NN) in the Chacarita cemetery. It later came to light that he had died on February 1, 2009, under circumstances that are under investigation. When Luciano Arruga's body was found, the date, time and circumstances of his death were determined: he ran across General Paz Avenue at 3.20 a.m. and was hit by a car in the fast lane. During the investigation, the driver stated that Luciano "ran across, he seemed desperate". Another witness saw a police car meters away from the site immediately after the accident.

In May 2015, after 6 years of investigation, officer Julio Diego Torales was given a ten-year prison sentence for torturing Luciano Arruga four months prior to his disappearance, while he was being held at the Lomas del Mirador precinct.[30] The sentence was confirmed by the Buenos Aires Province Court of Criminal Appeals on February 11, 2016. Although the prosecution took nearly 5 years to refer the case to trial, and even though the events had been classified as "ill-treatment", the efforts of CELS and the family as plaintiffs enabled the title of the case to be changed to "torture" and the criminal liability of this police officer in the events to be determined.[31]

Other cases of concern

During the period analyzed before this Committee, there were grave reports of enforced disappearance of persons. As we have emphasized, in these cases, disappearance seems to be an extreme form of police corporate concealment after an escalation of violent practices – a last resort seeking impunity for the abusive relations that are often established between the police and youth from poor neighborhoods in Argentina. State response to these events has been mostly inefficient. The Luciano Arruga case showed that adequate coordination among judicial officers and the Executive Branch and availability of adequate human and technical resources can be essential for the success of investigations for determining the whereabouts of missing persons. Unfortunately, this work plan has not been observed or followed in similar cases throughout the country. Judicial practices regarding these cases have been characterized by various forms of negligence, indifference, inaction or complicity with accused police agents.[32]

---

[30] See information at: http://cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=1937

[31] For further information see: http://cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=1994

[32] The United Nations Committee against Enforced Disappearances expressed concern, saying *"reports received on recent cases of forced disappearances, which have not been duly investigated, in particular cases where there was unjustified delay in beginning investigations or in which not all*

Disappearance of Gabriel Solano in Choele Choel, Río Negro Province.

Gabriel Solano, from the city of Tartagal, Salta Province, was in Choele Choel working as a migrant laborer in the fruit harvest. He was last seen alive on Saturday, November 5, 2011. According to several witnesses, that day he was beaten and thrown out of a nightclub by police from the Operations, Rescue and Anti-Riot Brigade (Brigada de Operaciones, Rescate y Antitumulto, BORA) belonging to the Rio Negro Province Police, and was placed in a police car with unknown destination. During the first month of investigation, the judicial officers involved supported the police version claiming that Gabriel had been evicted from the nightclub for drunkenness and released at the corner without being taken to the police station. None of the essential measures to drive the search for Gabriel were taken and no proof was preserved which might have been useful to identify the police agents present that night at the scene of the events. According to the Solano family lawyer, Gabriel and some of his companions had on several occasions lodged complaints about the precariousness and labor exploitation they were subject to. Workers lived in overcrowded, unhealthy accommodations and were regularly subjected to abusive inspections by BORA agents who acted as additional police at the plantation. The workers had organized a protest for November 7, one day after Gabriel Solano's disappearance.

It was only in early 2012, when a new government took office in Rio Negro Province, that the judicial case began to make progress. A prosecutor was named to work exclusively on this case, and suspect police agents were removed from their positions and their superiors accused of cover-up. Twenty-two police agents were charged with various crimes, 13 were prosecuted for failure to comply with the duties of a public official and for cover-up, and another seven were arrested and accused of Solano's homicide. They were detained until early 2015, when they were released for being remanded in custody for over three years without a sentence. The investigation was referred to trial in mid-2015 and maybe this year the trial will commence. However, **an issue of jurisdiction between provincial and federal justice threatens to delay the process even longer.** Meanwhile, Solano's lawyers and family have reported that **several of the accused police agents have been reincorporated to their posts and that no inspection has been conducted which might help to find the body.**

Disappearance of Franco Casco in Rosario, Santa Fe Province

Franco Casco, age 20, disappeared on October 7, 2014, after being held for "resistance against authority" at the 7th Precinct in Rosario, Santa Fe Province. His dead body was found submerged in the Paraná River on October 31, 2014. Forensic evidence confirmed that Franco was beaten up while detained. Santa Fe Police officers claim that Franco was released from the 7th precinct on the same day he was detained, after which he went to the Rosario train station to return to his home in the outskirts of Buenos Aires City. However, Franco was arrested and supposedly released without the intervention of an official public defender or judicial magistrate. Police station administrative books and records of entry and exit of detained persons showed evidence of adulteration. Traces of blood and remains of rope compatible with those found on Franco's limbs were detected in the cell where he had been held. In August 2015, the case was transferred to federal courts for investigation of potential enforced disappearance of persons followed by death, and a new autopsy was performed on the body to add information to a flawed first autopsy. **As of the date of this report, no perpetrator has been identified.**

Disappearance and homicide of Gerardo "Pichón" Escobar at the hands of Santa Fe Police

---

persons supposedly involved in the crime were investigated" and urged the Argentine State to *"adopt any measures required to ensure that investigations of all cases of enforced disappearance are exhaustive and fair, and performed diligently and effectively"* (sections 16 and 17). For the Committee's full report, see http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fARG%2fCO%2f1&Lang=en

On Friday, August 14, 2015 at 5:45 a.m., Gerardo "Pichón" Escobar left the nightclub "La Tienda" located in downtown Rosario City. Pursuant security footage from the nightclub shows that the youth was chased and beaten up by nightclub personnel (two of them members of the Santa Fe Province Police Force who performed additional duties at the nightclub). After that, he disappeared. According to witnesses, "Pichón" was transferred in a police car to the 3rd precinct. This police car, belonging to the 3rd precinct was permanently parked in front of a coffee shop. At the precinct, the youth was placed in a cell and beaten. On August 21, his body was found near Paraná River. Five persons, including two police officers have been accused of homicide of the teenager; **however, the line of investigation indicating that Escobar was held at the 3rd precinct has not been pursued.**

Questions for the State

1. Why are data and statistics on acts of violence involving security forces not systematically produced and disclosed?
2. What are the causes for the persistence of patterns of violence, including homicides and enforced disappearance of persons by federal, provincial and Buenos Aires City security forces in recent years? What concrete actions have been taken to prevent this type of occurrence and to guarantee enforcement of basic rules and standards regarding use of firearms by security force agents?
3. What administrative measures have been taken to so that agents involved in acts of violence from continue to work in the security forces? What measures have been taken or are planned for reforming the security force disciplinary system in order to facilitate the process of police agent accountability and the participation of victims and their families in these measures?
4. What progress has been made in the judicial and administrative investigations started to determine responsibilities in the deaths of Franco Casco, Gerardo Escobar, Alan Tapia, Lautaro Bugatto and the grave injuries of Lucas Cabello? What have been the responses of political control and reparation provided to the victims in these cases?
5. What progress has been made in judicial and administrative investigations initiated to determine the perpetrators of Daniel Solano's disappearance? What have been the responses of political control and reparation provided to the victims in these cases?

Recommendations to the State

1. Systematically produce and ensure public access to detailed statistical information and other types of data on acts of violence by security force agents, both on-duty and off-duty.
2. Promote relevant studies and analyses with the aim of determining the causes for the persistence of deaths during acts of violence at the hands of security forces for all jurisdictions in the country.
3. Adopt relevant administrative measures to terminate security force agents involved in this type of action.
4. Ensure effective judicial proceedings performed by independent, impartial courts for the deaths of Lautaro Bugatto, Alan Tapia, Franco Casco, Lucas Cabello, Johnatan Herrera and Gerardo Escobar and apply relevant criminal and administrative sanctions for the perpetrators.
5. Ensure effective judicial proceedings performed by independent and impartial courts for the disappearance of Daniel Solano.
6. Implement specific measures to protect vulnerable groups from police abuse, both by designing policies and by monitoring actions to prevent and detect police abuse. Monitoring should be political, judicial, parliamentary and from non-government agencies for monitoring and defending rights.
7. Develop policies for preventing harassment and persecution of adolescents and youths in situations of social vulnerability, leaders of social movements and other vulnerable groups such as migrants and children.

8. Develop protocols of action to homogenize institutional intervention throughout the country regarding cases of enforced disappearance of persons (early warnings, rapid intervention of federal investigation forces, etc.).
9. Design and implement policies for federal monitoring and responding to cases of enforced disappearance throughout the country.

Declaration of security emergency and adoption of a protocol for shooting down aircrafts

On January 21, 2016, the government signed Public Security Emergency Decree 228/16, which states that illegal drug trafficking is "the main threat to the security of Argentines", transforming it into an explanation of crime-related and violence-related issues. Drug trafficking is characterized as a threat to national sovereignty and therefore the Armed Forces are newly empowered to intervene in issues involving public security, not national defense.[33] Preventing the entry of drugs declared illegal into national territory is claimed to justify declaring a state of emergency and authorizing exceptional actions, many of them clearly militaristic.

The decree allows a series of measures to be taken to increase armed forces firepower, such as authorizing retired personnel to be recalled. This measure has already been adopted several times, and not only does it contribute anything positive, but also makes security forces unprofessional. At the same time, the declaration of emergency enables the executive branch to increase expenditure on technology and arms, and weakens the control system for government procurement.[34]

Appendix I to Decree 228/16 approves the so-called "Aerospace Protection Regulations," which enable the armed forces to shoot down aircrafts that fail to identify themselves correctly, without having to consult political authorities to do so and without the prerequisite of proving that the occupants of the aircraft are actually carrying drugs or any other prohibited material. **This measure is a covert summary death sentence, contradicting the standards of international human rights law.** International experience has shown that military intervention against drug trafficking produces no beneficial effect and only contributes to escalating violence.[35]

It is important to note that Argentina's Armed Forces have major logistic deficiencies which serve as an effective impediment to full implementation of the "Aerospace Protection Regulations". Indeed, as of the date hereof, there is no known case of an aircraft being shot down. Nevertheless, the fact that the Decree 228/16 is in force is a grave setback to the commitments taken on by the national State before the international community and leaves a door open to the **disturbing participation of the armed forces in matters of domestic security**.

Recommendations to the State

1. Annul the provisions of Decree 228/16 and its Appendix I, which contradict the obligations of the Argentine State pursuant to the ICCPR.

2. Ensure ongoing prohibition of Armed Forces intervention in matters of domestic security.

IV. RIGHT TO PERSONAL LIBERTY. PRESUMPTION OF INNOCENCE (ART. 9 AND 14 ICCPR)

Arbitrary incarceration of social leader in the Jujuy Province.

[33] One of the **strongest multi-party agreements developed in Argentina since the recovery of democracy in 1983 is the principle of demarcation or separation between national defense and domestic security**, confirmed by Law 23.554 on National Defense (1988) and Law 24.059 (1992). For over 50 years, the Armed Forces played a leading part in the country's domestic affairs, but this new model assigns them the mission of defending the country's sovereignty and territorial integrity against attacks from foreign regular armed forces.
[34] For further information, see "In light og the Emergency in Security" ("Ante la Declaración de la Emergencia en Seguridad"), a declaration of the Democratic Security Agreement, at http://www.asd.org.ar/2016/01/ante-la-declaracion-de-la-emergencia-en-seguridad/
[35] See in this regard: http://www.cels.org.ar/common/Drogas_web_hojas.simples.pdf

Milagro Sala is the leader of the Tupac Amaru Neighborhood Organization (Organización Barrial Tupac Amaru).[36] For more than four months, Ms. Sala has been the victim of arbitrary incarceration.

On December 15, 2015 a criminal complaint was lodged against Milagro Sala by the provincial government for a protest which the Jujuy Social Organizations Network (ROS, according to its initials in Spanish), of which the Tupac Amaru Organization is a part, began one day earlier. Notwithstanding the vagueness of the accusation and the absence of a clear and precise description of the incident in question, Ms. Sala was accused in a criminal court of two crimes: organizing a protest (interpreted as the crime of obstructing traffic, whose commission she was accused of instigating) and rejecting a measure of the provincial government related to the work in the cooperatives of which she was a part (interpreted as sedition).

This entire judicial proceeding was actively pushed forward by Gerardo Morales, governor of the province, either through the State Prosecutor as intermediary or through his accession as plaintiff. The suit, which originally led to Milagro Sala's arrest, was carried out in the period during which the courts do not hold sessions. It was not requested by the prosecutor who could legitimately carry out this action (in fact, in December 2015, this regular prosecutor had requested the eviction of the camp but had NOT brought charges against Milagro Sala), nor was it determined by a judge who could legitimately order it.

During the night of January 15, the out-of-session prosecutor Liliana Fernández Montiel requested that Judge Gutiérrez order the social leader's detention without having motives to justify it. Supervisory Judge Raúl Gutiérrez accepted this request within hours, in the early morning of Saturday the 16th, and delegated its execution to Governor Gerardo Morales's Minister of Security, Ekel Meyer. That same Saturday, Judge Gutiérrez requested immediate leave. On that Saturday, the secretary of the Higher Court of Jujuy, Víctor Amado, and its President, Clara Langhe de Falcone, ex-congressional representative of the UCR, Governor Morales's party, were working in the office. Before 4:00 p.m. of that day, this judge designated Judge Gastón Mercau, her son-in-law, to replace Judge Gutiérrez. The search of her home and subsequent arrest of Milagro Sala were made the same day, Saturday, January 16, 2016. **Milagro Sala has been detained since that date.**

Ms. Sala's counsel immediately intervened with a cessation request of her detention. When a prompt response was not received, they presented a *habeas corpus* writ. On January 18, Control Judge No. 1, Gastón Mercau, denied the *habeas corpus*. Then, on January 29, 2016, and without any occurrence or circumstance different from those known on the day of her arrest, Judge Mercau ordered her release. This ruling was appealed by the Prosecutor's Office. However, Ms. Sala never left the prison since, three days earlier, the same judge had ordered her arrest for a second case in which she was accused of fraud in detriment to the state, extortion, and unlawful association. Without doubt, her arrest for this second charge was a maneuver designed to keep her custody in a detention center and thereby fetter her right to freedom of expression. No litigation risk was justified in this second arrest order (risk of escape or obstructing the investigation). To date, all of the defense's propositions for the cessation of her arrest have been denied, and other criminal charges have been initiated in order to keep Milagro Sala detained. **Appendix II** of this document is a specific report on the case which details the scope of the violation of the right to personal liberty and due process in this case.

Criminal complaint by Parliamentarians against judicial officials in Jujuy

Likewise, it must be emphasized that before her arrest, Milagro Sala was elected as parliamentarian of Parlasur.[37] In accordance with national law No. 27.120, this position guarantees immunity regarding arrest and expression

[36] The Organization is a political group with popular and indigenous bases founded in the late 1990s in the city of San Salvador de Jujuy, Province of Jujuy.

enjoyed by congressional representatives in the Republic of Argentina.[38] In this context, on February 16, 2016 a group of Mercosur parliamentarians filed a criminal complaint with the federal judiciary of the Province of Jujuy for illegal deprivation of liberty and prevarication because of the arrest of Milagro Sala. The complaint was filed in Federal Court No. 2 under the responsibility of Fernando Poviña.[39] The Parliamentarians requested intervention in the case by the National Attorney General's Unit Against Institutional Violence (PROCUVIN, according to its initials in Spanish). PROCUVIN is called upon to work with the corresponding prosecutor, in this case, Prosecutor Federico Zurueta, when there is a question of abusive use of coercive state power.[40] The specialized prosecutor's office then issued a compelling judgment in which it concluded that the deprivation of liberty of Milagro Sala constitutes an illegitimate and illegal arrest of a Parlasur representative. Prosecutor Federico Zurueta and the judge have not issued opinions regarding this judgment.

Questions to the State

1. What are the reasons why the status which, in virtue of law 27.120, protects Milagro Sala as an elected PARLASUR representative has not been observed, violating her physical liberty?
2. What are the reasons why Milagro Sala remains deprived of her liberty?

Recommendations to the State

1. That Milagro Sala's right to personal liberty be safeguarded.
2. That in Jujuy the standards of preventive detention set forth by local law and in the guidelines of different systems of international protection of human rights be observed and applied.
3. That the rights of defense, due process, and minimum guarantees in all judicial processes against Milagro Sala be safeguarded.

Police faculties of detention.[41]

Public policies on citizen safety in Argentina in recent years have been characterized by exponential growth in the number of active police officers, the proliferation of random inspections, and massive police interventions in low-income areas aimed at "pacifying" or "recovering" territory theoretically under the control of criminal groups or gangs. This approach implies inefficient police work that mobilizes large amounts of resources with little intelligence, and gives rise to situations of rights violations which hark back to the practices of the dictatorship and

---

[37] After Milagro Sala's arrest, the Bancada Progresista of Parlasur issued a statement repudiating the actions of the provincial government of Jujuy. Likewise, the president of Parlasur, Jorge Taiana, sent a letter of concern to Argentine Chancellor Susana Malcorra requesting information regarding the motives of the arrest. In this regard, see: http://bancadaprogresistaparlasur.org/2016/01/16/declaracion-de-la-bancada-progresista-ante-detencion-de-la-parlamentaria-milagro-sala/

[38] In *accordance with article 16 of Law 27.120: "… In all matters not established in the Constitutive Protocol of the Mercosur Parliament or not specifically regulated by the corresponding bodies, Mercosur parliamentarians, in representation of the citizens of Argentina, shall be included in the internal law applicable to national congressional representatives. In lieu of a specific provision, those provisions that regulate the condition of congressional representatives regarding parliamentary immunities and compensation, labor, social security and protocol systems shall be applicable." In this sense, articles 68, 69, and 70 of the Constitution of the Argentine Nation establish: "Article 68: No member of Congress may be accused, judicially interrogated, or disturbed for the opinions or discourses he or she issues in the performance of his or her legislative term." "Article 69: No senator or congressional representative, from the day of his or her election until that of his or her termination, may be arrested; except in the case of being caught in the commission of a crime that merits the death penalty, ignominious punishment, or a felony punishment; in which case the respective House shall be provided with summary information regarding the event." "Article 70.- When a written complaint is filed in ordinary courts against any senator or congressional representative, once the merit of the docket has been examined in a public trial, each House may, with a two-thirds vote, suspend the accused with regards to his or her functions, and place him or her at the disposal of the judge responsible for his or her trial."*

[39] The file number is 2674/16 and was labeled: "Complaint: Fernandez de Montiel L., Gutierrez R. and Mercau G. on inquiry into crime. Plaintiffs: Parliamentarians of MERCOSUR." Federal Prosecutor's Office No. 2 intervenes, under the responsibility of Federico Zurueta, and the registry number of this lawsuit in the prosecutor's office is 14.235/16.

[40] See https://www.mpf.gob.ar/procuvin/

[41] The Committee has already expressed its concern regarding this issue in paragraph 15 of its most recent Final Observations to Argentina. Final Observations of the Human Rights Committee, 98th period of sessions, CCPR/C/ARG/CO/4, 22 March, 2010, parr.15.

the so-called *razzias,* or raids, of the early years of democracy.[42] In this context, **multiple detentions are often carried out without a court order for a more or less protracted period of time, personal searches, and mass home search and seizure operations**.

For example, in 2014 in the area surrounding the city of Buenos Aires, so-called "interception operations" were carried out in public transportation buses, in which all male passengers were obligated to exit the bus to be patted down in search of weapons or narcotics. In the Province of Córdoba, the provincial police often carry out "saturation operations," mass search and seizure operations in low-income neighborhoods in which "suspects" are detained and later held in fenced-in areas of the street, called "paddocks," in which they are exposed to public view. These operations, justified as "policies for the prevention of crime" through arbitrary and selective arrests aimed basically at low-income youths, found legal support in the provincial Code of Misdemeanors sanctioned by law 8.431, which, among other things, criminalized behaviors that do not cause harm to any determined social value and allowed for the arrests of individuals without the necessity of obtaining a court order and without the individual having been caught in the commission of a crime. Sanctions could be imposed directly by an administrative public servant such as the Chief of Police. A new Code of Citizen Coexistence was sanctioned by the Legislature of Córdoba in March 2016 and took effect on the first of April of this year. Although the procedure was updated, instituting oral and jurisdictional intervention in the first instance or in appeals, some concepts such as "rural loitering" or "suspicious conduct" are still included, allowing security authorities to maintain wide margins of discretion to carry out mass arrests of citizens without objective elements that would lead authorities to believe that they may have committed a crime or are about to do so.

The problem of arbitrary or abusive arrests is aggravated by the persistence of legal norms, which grant security authorities powers to arrest individuals without a court order and outside cases of being caught in the commission of a crime. Both at the federal level and in the provincial sphere, there is a diverse range of norms, many of them in force before the inclusion of the constitutional bloc of international pacts regarding human rights, which give the police the power to arrest any individual for several hours for no other reason than to ascertain their criminal background.[43] Those norms are still in force and provide support for practices of mass arrests, even despite the fact that police currently have the technological tools necessary to determine any individual's criminal record in a brief period of time.

This situation is exacerbated since **the Judicial Power on many occasions has not carried out its function of guaranteeing respect for constitutional guarantees and rights**. On the contrary, it has recently issued rulings that validate mass or arbitrary arrests. These rulings are generally received and interpreted by security forces as authorization to continue on the path of mass and indiscriminate arrests of poor youths from low-income neighborhoods. This is the direction of **the ruling by the Superior Court of the City of Buenos Aires (TSJ, according to its initials in Spanish) by which, in December 2015, it validated the police practice of detaining individuals on public streets for the sole purpose of requesting their identification documents**.[44] In order to support its decision, the TSJ invoked the Organic Law of the Argentine Federal Police, Decree Law 333/58 and its Regulatory Decree No. 6580/58, which confers to the Federal Police broad implicit powers to act according to its

[42] For an exhaustive study of police practices regarding mass arrests of people in the City of Buenos Aires during the second half of the 1980s and the early 1990s, see: Tiscornia, Sofía: "Human Rights Activism and state bureaucracies: The Bulacio case" ("Activismo de los Derechos Humanos y burocracias estatales. El Caso Bulacio").

[43] Merely by way of example, to date, the Organic Law of the Argentine Federal Police (PFA) sanctioned by Decree Law 333/58 of 30 January, 1958 during the de facto government of General Pedro E. Aramburu, is still in force. This Law includes within the powers of the PFA that of maintaining a "neighborhood registry" in order to provide security in the territory under its jurisdiction (art 5, parr. 4) and "register and describe persons habitually dedicated to an activity that the police must suppress" (art. 5, parr. 3).

[44] File no. 11835/15 —Public Ministry —Prosecutor's Office of the Southern Chamber of CABA— on complaint regarding denied constitutional challenge in: _Vera, Lucas Abel on infr. art. 85, CC'll, 23.12.15. The complete judgment can be found at: http://www.tsjbaires.gov.ar/index.php?option=com_flexicontent&view=category&cid=29&Itemid=26

discretion as long as its exercise is essential *"for urgent motives of general interest regarding public order and security and the prevention of crime."*[45] This judgment certifies and vindicates, over and above other later regulations and court decisions, the antiquated organic law of the Argentine Federal Police which was enacted by a military government and contains the implicit powers mentioned above. The need for a reform of the organic police laws is evident, but the Superior Court has decided to validate them. The TSJ judges failed to analyze the standards established by the Inter-American Court of Human Rights in the case *Bulacio vs. Argentina*[46] of September 2003, in which the Argentine State was held responsible of having in force police regulations that granted security bodies discretional powers to deprive individuals of their liberty. They also failed to define what would happen if an individual who was detained was not carrying his or her identification document. The indirect admission of an arrest in these contacts and the silence regarding the possible consequences of not carrying documentation accrediting the detained individual's identity allow the police to generate their own regulations.[47]

Questions to the State

1. What measures is the federal State promoting to bring criminal and police function norms that allow security authorities to detain individuals without a court order and without catching them in the commission of a crime in line with human rights standards?
2. What measures has the State taken to fulfill the responsibilities it has accepted in the context of the decision of the Inter-American Court of Human Rights in *Bulacio vs. Argentina*?
3. What information is the State producing regarding police detentions and arrests?

Recommendations to the State

1. Bring the criminal and police organizational norms that grant security authorities the power to detain individuals without a court order and without catching them in the commission of a crime into line with international human rights standards, particularly those established by the Inter-American Court in the case *Bulacio vs. Argentina*.
2. Systematically produce quantitative and qualitative information open to public access regarding police detentions and arrests throughout the national territory.
3. Carry out the reform of organic laws which, since the period of the military dictatorship, have regulated the country's police forces, and move forward in the sanctioning of norms that establish a new framework for institutional operation and the actions of security authorities.

The abusive use of pretrial detention[48]

Despite the most recent recommendations by the Human Rights Committee, in its 5th Periodic Report the Argentine State has not provided information on the measures adopted to limit the use of pretrial detention to exceptional cases and in accordance with the International Covenant on Civil and Political Rights. It has simply briefly mentioned some of the proposals made by the Federal Penitentiary Service (SPF, according to its initials in Spanish), which require legislative reform in order to be implemented. On this point, the situation is troubling. **Both at the national level and in the Province of Buenos Aires, grossly abusive use of pretrial detention continues to be made**.

[45] Decree 6580/58 of 31 July, 1958, Chapter V.
[46] Cf. Inter-American Court of Human Rights "Bulacio Vs. Argentina", sentence dated 18 September, 2003 available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_100_esp.pdf
[47] For more information on the "Vera" case and its implications, see: http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=2021
[48] The Committee made statements regarding this issue in its most recent Final Observations. Human Rights Committee, Final Observations of the Human Rights Committee, 98th period of sessions, CCPR/C/ARG/CO/4, 22 March, 2010, parr. 16.

According to official information, 60.8% of the individuals deprived of their liberty in the Federal Penitentiary Service (SPF) still have no final judgment.[49] In the Province of Buenos Aires—which contains approximately 60% of the individuals deprived of their liberty in the country—60% of them have no final judgment.[50]

The number of individuals deprived of their liberty without judgment in the Province of Mendoza has increased by more than 10% since the year 2010.[51] At the end of the year 2015, 48% of the more than 4,000 detainees were detained by order of the Public Ministry or under the regimen of pretrial detention ordered by a judge. This alarming situation is due to the excessive use of this measure, contradicting international standards regarding its provenance, grounds, and period of duration. According to information recorded until February of 2014, in the Province of Santa Fe, 4512 individuals were deprived of their liberty. Of this total, 1778 were deprived of their liberty in police facilities without the basic conditions for housing individuals. 70% of the individuals held in jails had been convicted, while of those held in police stations, 16.3% had been convicted.

Questions to the State

1. What is the percentage of individuals deprived of their liberty throughout the country—including police facilities and those of other security authorities—that have not received final judgment (specifying those that have received at least a first trial); and what is the percentage in the provinces of Buenos Aires and Mendoza?
2. Notwithstanding the legally established period, what, in reality, is the average duration of criminal proceedings and the pretrial deprivation of liberty at the national level, in the federal jurisdiction and in each of the provincial jurisdictions?
3. What are the alternative systems to the use of pretrial detention that the State has implemented at the national and provincial level, particularly in the provinces of Buenos Aires and Mendoza?
4. Are reparation mechanisms foreseen for those individuals who were detained in pretrial detention and, after an oral trial, were acquitted? Are there jurisprudential precedents in which compensation has been granted in this type of case?
5. What measures are being promoted by the federal State to eliminate the abusive use, which exceeds the reasonable period of pretrial detention throughout the country, and, in particular, to bring the legislation in the provinces of Buenos Aires and Mendoza into line with the corresponding international and constitutional standards?
6. What measures are being promoted by the federal State to adapt the criminal and police function norms that allow security authorities to detain individuals without a judicial order and without catching them in the commission of a crime to human rights standards?

Recommendations to the State

1. Develop an appropriate public judicial information system that allows official information to be obtained for the entire country regarding individuals deprived of their liberty and their procedural status.
2. Design and implement legislative and judicial policies in order to eliminate abusive and unrestricted application which exceeds the reasonable duration of preventive detention. In particular, these policies must guarantee that pretrial incarceration shall be applied exceptionally when there is no less damaging precautionary measure to ensure that the accused will not prevent the efficient development of investigations, nor will be a flight risk; that the

[49] That percentage is equivalent to 6,276 individuals previously incarcerated in the SPF. Cf. Procuvin, Office of Registry and Databases "Population in the SPF. Systematization of monthly information" ("Población en el SPF. Sistematización de información mensual") updated 29/01/2016. Available at https://www.mpf.gob.ar/procuvin/files/2016/04/Reporte-de-informaci%C3%B3n-Poblaci%C3%B3n-penal-Enero-2016.pdf

[50] Source: CELS, based on the information of the Buenos Aires Penitentiary Service and the Security Ministry of the Province of Buenos Aires. The calculation of "arraigned" detainees includes detainees in police stations since it is presumed that, after preventive detention is dictated, these detainees are not moved to penitentiary units due to a lack of space. However, the Police of the Province of Buenos Aires does not have information on the legal situation of detainees in police facilities.

[51] Information provided by the XUMEK organization in Mendoza. Source: Office of Human Rights and Access to Justice – Supreme Court of Justice of Mendoza), General Office of Penitentiary Services, Provincial Commission for the Prevention of Torture.

personal characteristics of the suspected criminal and the seriousness of the crime of which he or she is accused are not enabling factors for the application of pretrial detention; ensure that preventive detention does not continue beyond the necessary period of time to guarantee the proposed procedural goal, and that if its grounds should disappear, the incarceration must end.
3. In particular, the modifications made to the Criminal Procedure Code of the Province of Buenos Aires must be repealed in order to guarantee the full force of the rule of liberty throughout criminal proceedings.
4. Guarantee the statutory establishment of a catalog of alternative measures to preventive detention in the criminal procedure codes in force in the country, which can be of benefit to all individuals deprived of their liberty.
5. Guarantee that judges who grant freedom during criminal proceedings shall not be arbitrarily harassed, in accordance with the standards of international human rights law.

V. CONDITIONS OF DETENTION OF PERSONS DEPRIVED OF THEIR LIBERTY (ARTS. 7 Y 10 ICCPR)[52]

The State's report claims that the Federal Penitentiary System is not overpopulated and that there are plans to build new facilities and renovate parts of existing facilities. However, it does not consider the problems arising from the sustained increase in prison population over the past six years or the limitations involved in building more capacity as the only measure for resolving overpopulation. Prison capacity should consider both the physical capacity of a facility and the quality and availability of all the services and human resources required to ensure decent living conditions for inmates. Neither does the report analyze the grave overpopulation of the Penitentiary System in Buenos Aires Province, among other jurisdictions in similar situations. The State report says nothing on the requirement for information on persons detained at police stations. However, as we shall see below, in recent years there has been an increase in the number of persons detained at police stations in Buenos Aires Province.

Population growth at the Federal Penitentiary Service (SPF, according to its initials in Spanish) has accelerated in recent years. In 2014 the number of prisoners in the system reached an all-time maximum (10,424 persons). **As of December 2015, there were 10,274 inmates, 1250 more than in 2006.** This sustained increase has given rise to cases of overpopulation. According to the diagnoses by the National Penitentiary Office (Procuración Penitenciaria de la Nación, PPN) and the Office against Institutional Violence (Procuraduría contra la Violencia Institucional) of the National Public Prosecution Ministry, there persists high levels of violence and grave human rights violations[53]. This exponential increase was not accompanied by policies aiming to reduce incarceration and/or mitigate the impact on the system caused by overpopulation.

The SPF reports prison capacity without clear, previously defined criteria on how to determine housing capacity at each facility[54]. There is no transparent accreditation system that can be monitored. The SPF usually sets capacity according to number of available beds. **A law should be enacted to control overpopulation and help regulate the situation.**

[52] The Committee has already expressed its concern regarding this issue in paragraph 17 of its latest Final Observations for Argentina. Final Observations of the Human Rights Committee, 98th period of sessions CCPR/C/ARG/CO/4, March 22, 2010, paragraph 17.
[53] See: Nation Penitentiary Office, "deaths in context of confinement. Analysis of violent deaths in Federal Penitentiary System facilities and judicial practices of investigation" (Procuración Penitenciaria de la Nación, "fallecimientos en contextos de encierro. Análisis de muertes violentas en Complejos del Servicio Penitenciario Federal y prácticas judiciales de investigación."(Available at: http://www.mpf.gob.ar/procuvin/files/2016/02/Informe-cualitativo-2015-FINAL.pdf
[54] In order to analyze the federal criminal incarceration system, we should consider its composition and distribution. Most detainees are from Buenos Aires City and Greater Buenos Aires. However, its prisons are scattered around the country, with major facilities in Buenos Aires Province, Chaco, Salta, Neuquén and Chubut. This means that some facilities house more detainees than they have capacity for, leading to some detainees being held permanently at facilities for temporary stays or places not designed for housing detainees. This leads to restrictions to detainee's access to basic rights (health, education, work, recreation, etc.) and potential violence among inmates and against SPF agents.

Buenos Aires Province is one of the jurisdictions with the highest levels of overcrowding, overpopulation and prison violence. The Buenos Aires Province Penitentiary System (SPB, according to its initials in Spanish) is overpopulated because levels of imprisonment have risen in recent years. This is a consequence of several issues, including implementation of measures such as "Public Safety Emergency" by the provincial Executive Branch in April 2014, which increased police powers for making detentions; the Office of the Attorney General (Procuración General) limiting judicial officials' authority to grant releases; legislative reforms toughening the penal system (limiting ability to grant releases, increasing prison terms) and political and media pressure on judges against them releasing detainees, among others.

Incarceration rate in Buenos Aires Province has been increasing constantly since 2013. **In 2015, the incarceration rate in the province was the highest in the past 10 years**. There were 216 prisoners deprived of their liberty per 100.000 inhabitants. Number of detained persons rose by 32% since 2007, growing even faster in the past three years. The number of persons incarcerated per month was 146 in 2013, while it was 234 in 2014; which represents 60% more. Final data for 2015 have not yet been published, but available data suggest an average 184 persons incarcerated per month.

Because the government does not report SPB capacity, it is impossible to calculate current overpopulation[55]. Given the uncertainty as a result of lack of reliable numbers, SPB overpopulation can be estimated by updating the number of beds established in the Building and Utilities Plan prepared by the provincial government in 2008[56]. Considering total beds in the Plan (17,858) and including facilities opened since then (848 beds), **current overpopulation in Buenos Aires Province would be 87%.**

In Mendoza, prison population has increased by over 50% in the past 5 years. Current incarceration rate is approximately 232 detainees per 100,000 inhabitants, much higher than the national rate which was 161.85 in December 2014[57], increasing overpopulation and overcrowding rates.

The **right to health** is a relevant issue. In the SPF and SPB, health care service at places of detention is provided by offices of the Federal penitentiary service or the Sub-secretariat of the Ministry of Justice in charge of the penitentiary agency. Access to health care at prisons is deficient and rather than being provided as a right, it is often provided by the Penitentiary Service as a benefit, thus very often leading to fatal consequences. In the Buenos Aires Province Penitentiary System, health issues are the main cause of death even though the population is very young (with over half the population younger than 34 years). An analysis of the information according to types of death in the SPB shows grave problems in State liability due to lack of health care. In 2014 there were 81 deaths as a result of health problems and lack of medical care, out of a total 121 deaths occurring that year. Deaths due to health problems and lack of medical care account for 67% of total deaths.

Although the penitentiary service has not disclosed data specifying causes of death due to health problems in recent years, analysis of the cases which become known shows **high incidence of diseases caused by lack of minimum care**[58]. Based on journalistic information and judicial presentations by official public defenders, we have

[55] Until a few years back, the SPB would set capacity discretionally and change it when incarcerated population increased. It was calculated according to the number of cots available in the system, failing to comply with international recommendations providing that housing capacity should be calculated considering material conditions and quality and availability of all services and human resources required to meet inmates' needs fully. However, when this discretional management was reported, the government decided to stop disclosing prison capacity.

[56] This plan was the last attempt to define incarceration capacity in Buenos Aires Province. It determined number of places following a criterion using certain reasonable parameters based on standards.

[57] According to the latest report from the National System of Statistics on Execution of Sentences (Sistema Nacional de Estadísticas sobre Ejecución de la Pena, SNEEP).

[58] Many of the diseases with fatal outcomes were contracted during detention and not treated adequately. An example of this situation is the fact that diseases such as HIV and tuberculosis, which have been under control in general society for several decades, still persist in prisons.

found that many deaths at different SPB facilities were caused by tuberculosis. One example of this situation occurred in January 2016 when an inmate at the prison "Unidad Penal N° 37" in Barker died of tuberculosis not treated adequately. The fact that he was housed in a common building until two weeks before dying reflects the lack of care and state of abandonment inmates are in.

This diagnosis is consistent with the findings of a group of independent auditors. In June 2015, the Department of Community Health and Institute of Collective Health at Lanús National University[59] presented a report which noted among the gravest situations the lack of health care, lack of supplies for personal and environmental hygiene, irregular monitoring of inmates with chronic diseases, lack of systematization of dental and gynecological checkups, and self-medication and psychiatric substance abuse issues. Moreover, auditors say that due to problems in the information provided by the provincial government for the audit, they were unable to perform a comprehensive evaluation of inmate health status. These deficiencies show that the Buenos Aires Province Ministry of Justice's Office for Direction of Penitentiary Health lacks accurate knowledge regarding the situation of health care service[60].

Situation of women deprived of liberty

The Committee should note the increase in incarcerated female population. This is happening throughout Latin America. There has been a much greater increase in the rate of female incarceration than male incarceration due to sentences for drug-related crimes. In Argentina, the female population jailed for drug-related crimes increased by 271% between 1989 and 2008[61]. According to a 2011 study, in Argentina nine out of ten foreign women incarcerated for federal drug-related crimes were drug couriers and 96% were first-time offenders, nearly all had custody of underage children and 64% were heads of single-parent households[62].

Another issue to highlight is the incarceration of women with their under-5-year-old children. As mentioned in our previous report, housing children with their mothers involves constant violation of their rights. Lives of children who grow up inside penitentiary facilities are marked by being locked up, presence of armed guards, witnessing mistreatment of their mothers, and poor nutrition and health care.[63]

Detention at police stations

In addition to the alarming overpopulation and overcrowding in provincial prisons described above, there are a number of persons detained at police stations. As noted in the 2010 report, it is illegal to hold persons at police stations because the buildings are inappropriate for long-term detainment.

---

[59] National University of Lanús (UNLA), Department of Community Health and Institute of Collective Health, "Auditory Report of the Buenos Aires Province Penitentiary System" ("Informe de auditoría del Sistema Penitenciario Bonaerense"). Buenos Aires, 2013-2014, UNLA, 2015.

[60] The report claims that the problems detected "prevent the use of epidemiological information received as input for analyzing health care outcomes and processes, showing that decision making, which is the very essence of management and administration, is not based on information."

[61] CELS, The impact of group policies in human rights. The experience of the American continent. (El impacto de las políticas de drogas en los derechos humanos. La experiencia del continente Americano), Buenos Aires, 2015, p. 38. Available at: http://www.cels.org.ar/common/Drogas_web_hojas.simples.pdf

[62] CELS - Ministerio Público de la Defensa de la Nación - Procuración Penitenciaria de la Nación, Women in prisión. The scope of punishment. (Mujeres en prisión. Los alcances del castigo), Buenos Aires, Siglo XXI, 2011, p. 154.

[63] In December 2015, a Buenos Aires Province Judge ordered house arrest for pregnant women and mothers who live with their children at Unit 33 in Los Hornos. This decision is consistent with Law 24.660, which states that judges can order house arrest for pregnant women and women with custody of children under 5 years of age. In the ruling, the Judge describes the conditions of extreme poverty in which women and children are detained: deficient infrastructure, lack of health care, and even death of children in prisons. Ruling of Execution Court N° 1 in San Isidro, Buenos Aires Province, in case Nº HC-12389, titled "Collective habeas corpus in favor of mothers of children and pregnant women housed in Unit No. 33 in Los Hornos" (Habeas corpus colectivo a favor de las mujeres madres con niños y mujeres embarazadas alojadas en la unidad nº33 de Los Hornos), November 25, 2015.

As of December 2015, there were 35,107 persons held at jails and police stations in Buenos Aires Province. The number rises to over 36,000 if it includes persons with electronic monitoring, the number of which has also increased. Altogether, **it is the highest number of persons deprived of liberty in the history of the province.** The increase in incarcerated population also generates an increase in people detained at police stations. As from the "Verbitsky"[64] judgment by the Supreme Court of Justice of the Nation and the 2007 amendment to the law of releases, the number of people held at police stations had declined, with ups and downs, to a minimum in 2012. **Unfortunately, this trend has reverted in recent years.** The rise led to almost 2300 people in custody at police stations in 2014. This was caused by pressure on the penitentiary system and the limitations in penitentiary units due to overcrowding.

In December 2015, the Supreme Court of Buenos Aires Province (resolution 2840/15) highlighted the obligations issuing from the "Verbitsky" judgment and conveyed to the Executive Branch its concern regarding "housing detainees in police stations that are closed down". The resolution urged "competent judges not to accept or order detention of persons in such places". However, **the Executive Branch administrative resolution to hold people in police stations has not been formally repealed.**

In Tucumán Province there are about 1200 persons detained in the sphere of the provincial Penitentiary Service and 400 in police stations. In April 2016 the Provincial Supreme Court established guidelines to begin applying criminal mediation as an alternative to the indiscriminate use of prison.[65]

Questions for the State

1. What initiatives have been designed and implemented to resolve the situation of overpopulation and overcrowding at detention centers and what concrete results have been achieved in each jurisdiction? What parameters are used to define the prison "capacity"? What institutional mechanisms exist in the different jurisdictions to control overpopulation?
2. What legal, administrative or judicial mechanisms are provided to deal with situations in which people are held in inhuman or degrading conditions?
3. What concrete measures are planned, in coordination with provincial jurisdictions, to ensure that police stations are no longer used as places for permanent detention? What institutional mechanism is planned to ensure the efficacy of the prohibition to house persons who are ill or underage at police stations?
4. Are there updated data on prison capacity using parameters defined per unit by the Federal Penitentiary System and the provincial systems? Is there an official study at national or provincial level on the dimension of the problem of traumatic death, torture and mistreatment at places of detention, and on procedural torture such as that associated to conditions of detention?
5. What measures are planned to ensure prisoner access to quality health care? What health care programs are implemented by the health authority at places of detention? Are updated data available on causes of death due to health problems and morbidity indicators in the penitentiary population?

Recommendations to the State

[64] Case V856/02, "Verbitsky, Horacio on habeas corpus writ", May 3, 2005.
Available at: http://www.cels.org.ar/common/documentos/fallo_csjn_comisarias_bonaerenses.pdf

[65] Also in Tucumán, in June 2015, two prosecuting attorneys submitted a collective habeas corpus writ due to the deplorable conditions in which prisoners were held at police stations. This writ demanded an end to holding prisoners at police stations and that prisoners should be transferred somewhere complying with minimum health requisites. The Provincial Court ruled favorably and forced the parties to hold conversations on how to implement this measure. See information at: http://andhes.org.ar/andhes-presento-un-amicus-curiae-en-el-marco-de-un-habeas-corpus-por-las-condiciones-de-las-comisarias-en-tucuman/

1. Ensure that people are not housed in overpopulated facilities in inhuman or degrading conditions.
2. Generate domestic legislation with international standards on decent conditions of detention and housing capacities. Ensure enforcement of the legislation by the relevant authorities and permanent judicial monitoring.
3. Ensure that regularly updated information on the number of available places at each prison, as well as on the real occupation rate at each facility, is permanently available to authorities and civil society.
4. Establish efficient institutional mechanisms to prevent and resolve housing of persons in excess of real capacity at detention centers. In particular, there should be a law prohibiting a detention center to house inmates in excess of the number of intended places, and there should be legal mechanisms for immediate correction of any situation where more persons are housed than the number of available places, such as adopting an alternative measure to imprisonment or amnesty.
5. The Judicial Branch should adopt appropriate corrective measures when a detention center houses more people than can be housed in decent conditions according to number of available places.
6. Forbid use of police stations as places of permanent detention of persons and create efficient institutional mechanisms to ensure that prohibition is observed.
7. Create measures to ensure adequate health care of persons deprived of their liberty. Health care should be placed under the responsibility of the Ministry of Health and taken away from the penitentiary services and Ministry of Justice.
8. Ensure a timely supply of medication and human and material resources which would be sufficient and adequate for treating health problems.
9. Ensure that alternative measures are applied to imprisonment for pregnant women or women with small children.

VI. TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT. ART. 7, ICCPR)[66]

Torture is still widespread in places of detention in Argentina. The report presented by the State in 2015 does not address policies implemented to combat cases of torture and ill-treatment at the federal level, it simply refers to the creation of a "unit of registration, systematization and follow-up," which is undoubtedly a fundamental element for the progress of any prevention policy[67] but does not constitute in itself a prevention policy. Statistical data is unavailable at the federal or provincial level on the topics requested by the Committee (filed complaints, prosecutions and disciplinary proceedings, trials, measures of protection and reparation). This is a problem because there is no precise data.

According to the last official report available from the National Register against Torture (RNCT, according to its initials in Spanish), in 2014, 72% people surveyed (876 of 1208) in federal penitentiary service (SPF, for its initials in Spanish) establishments indicated that they had suffered between one and three physical assaults during the two months prior to the interview. The case of Brian Nuñez, 19 years old, is emblematic. Brian was tortured for more than two hours at the Marcos Paz federal prison, on July 16, 2011. As a retaliation for having participated in a complaint made by youths in pavilion 8 who wanted to watch a soccer match, he was beaten and tortured by seven or eight prison guards: they handcuffed his hands and feet, stubbed out their cigarettes on his body, burned him with a cigarette lighter and tried to sexually abuse him.

Another practice that especially reflects prison violence is the use of **cavity searches**. RNCT surveyed at least 177 cases in the federal prison service, which included a higher proportion of completely naked strip searches, followed

[66] The Committee already expressed its concerns about this issue in its latest concluding observations, Human Rights Committee, Concluding observations of the Human Rights Committee, 98th period of sessions, CCPR/C/ARG/CO/4, March 22, 2010, paragraph 18
[67] As we will see later, there have not been any updates as to the registry.

by completely naked with curls and in fewer cases, partially naked. Despite complaints and recommendations made by human rights organizations[68] at a federal level, the Procedures Manual for Searches from the year 1991[69], which as we already indicated to the Committee in our 2010 report, allows the use of invasive inspections of inmates and their families, including the display of the genitals, buttocks, annus, and vagina. In recent years, scanners were incorporated for people and belongings to prisons and furthermore, in 2011, the "Guidelines to procedures for the use of trace detection systems in penitentiary facilities" was approved by resolution No. 829 of the National Ministry of Justice and Human Rights, to regulate their use. Even when, during RNCT inspections "scanners have been registered in all units in which we have carried out the field work for the Register, individual searches are still degrading: completely naked at all times and includes the opening of the buttocks, raising testes and even bending and flexing in several cases."[70]

Moreover, in prisons and in police stations throughout the country, especially in the province of Buenos Aires, violence against detainees continues to form part of the routines of prison and police officials as it has for decades. At the same time, impunity for acts of torture or ill-treatment, as well as those of corruption, are commonplace. In April 2012, at the request of CELS and the Provincial Commission for Memory (CPM, for its initials in Spanish), IACHR granted precautionary measures for the protection of life and physical integrity of detainees in the San Martín penitentiary in the Buenos Aires penitentiary service (SPB, for its initial in Spanish). Within the framework of these precautionary measures, a working group comprised of representatives of the national government, provisional authorities and petitioners was created.[71]

According to the data from the Court of Cassation of the province of Buenos Aires, between September and December 2015, defenders recorded 318 acts of torture and cruel treatment reported in prisons and police stations. 46% of the cases pointed to SPB personnel. Since the creation of the registry in 2000, there were 11,000 acts of ill-treatment and torture to persons deprived of their liberty. Despite the passage of time, the fact is that in almost half of the cases the victims prefer not to file a criminal complaint, for fear of retaliations.

In the province of Buenos Aires, Patricio Barros Cisneros, 26 years old, was beaten to death by a group of SPB prison guards on January 28, 2012. That day, Patricio's girlfriend, a 19-year-old four months pregnant, went to visit him in the unit. After Patrick requested to hold the visit in a roofed and closed-in place, an argument ensued with the prison guards, which led to a beating. The reaction of seven to ten guards was to handcuff him, spray him in the face with pepper spray, beat him with their fists and kick him. The torture session took place in a hallway with prison bars within the view of SPB personnel, other inmates and visitors, including his girlfriend. Barros Cisneros died in the act.[72]

The SPB has a fundamental role in the generation of violence, because it is the entity that directly exercises it (in specific episodes of retaliations or punishment such as during routine tasks) or it generates incentives for it to occur between detainees (alleged indirect violence). **The management axis of the Buenos Aires penitentiary service is still the delegation of the control of violence in groups of detainees, which is combined with the use of**

---

[68] National Penitentiary Office, File 3018, recommendation concerning the procedure of personal search, July 2011. Available at: http://www.ppn.gov.ar/sites/default/files/Recomendacion%20746_0.pdf

[69] Resolution 42/1991 of the former Sub-Secretariat of Justice.

[70] See RNCT 2014 report. Available at: http://gespydhiigg.sociales.uba.ar/files/2013/08/RNCT-2014-VERSIN-PARA-PUBLICAR.pdf

[71] More information at: http://cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=&idc=1496

[72] In May 2015, the Oral Criminal Court No. 4 of San Martin sentenced SPB prison guards Hector Mario, Rodrigo Emilio Chaparro, Gerardo Rodolfo Luna, Víctor Miguel Gallego and Juan Manuel Liberto to life imprisonment for the crime of torture followed by death. Claudio Javier Keem was acquitted and César Raúl Benítez, another one of the guards involved, remains at large. The Court also requested an investigation of the chiefs for aggravated cover-up, for trying to build a false version of events. Information available at: http://cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=1935. For more information about the case, see: http://www.cels.org.ar/common/documentos/Informe_Barros_1anoFINAL.pdf This sentencing is absolutely exceptional within a general context of impunity for acts of torture in the province of Buenos Aires.

direct violence by prison staff, generating a large space of self-regulation and self-management, which results in practices of violence, corruption and abuse.

A high proportion of homicides in prisons in Buenos Aires province are due to fights with "*facas*" (rudimentary made switchblades*)* and many of them are related to conflicts or abuse by groups of inmates and disputes over control of certain areas of the prison as well as the illegal networks operating inside the jails with complicity of the Buenos Aires penitentiary service. Official statistics are produced so that this type of phenomena cannot be described, and, therefore, we must rely on other sources to be able to register it, such as journalistic news stories that sporadically bring these cases to light. Via this channel, and that was later ratified by the government, we have been able to trace that in the month between July 17 and August 14, 2015, five deaths occurred as a result of aggression between inmates armed with switchblades in units No. 9 in La Plata, No. 41 in Campana, No. 30 in General Alvear, No. 15 in Batán and No. 31 in Florencio Varela.

Between 2014 and 2015 the rate of violent deaths in places of detention in the province of Buenos Aires, which includes homicides, suicides and accidents, increased by 25%, climbing from 12 to 15 violent deaths every 10,000 inmates. This increase had already been seen in units close to Greater Buenos Aires between 2012 and 2015, when they increased more than double fold. For example: in the Florencio Varela penitentiary, the rate of violent deaths went from 8 to 18 for every 10,000 inmates; in Campana, the rate rose from 15 to 35 for every 10,000 inmates in just three years. Even in smaller jails, such as Unit 39 of Ituzaingó, the rate rose from 0 to 15 violent deaths every 10,000. On the other hand, **between 2010 and 2015, the percentage of deaths from violent causes increased among the total number of deaths**, which went from representing less than a third (28.6%) to almost half of all deaths, with violent deaths representing 41.3% of all cases in the province of Buenos Aires[73].

One of the routines of the prison service of the province of Buenos Aires that concentrates informal practices of the abusive use of force and arbitrary rules of procedure are pavilion searches. There are frequent complaints about degrading searches in which inmates are forced to go out onto the patio at dawn, with prolonged exposure to the cold while their cells are searched, invasive body searches, imposition of degrading positions, theft of personal items whose ownership is permitted. In its latest report, corresponding to the year 2014, RNCT examined 55 cases of degrading body searches in the penitentiaries of the province of Buenos Aires.[74]

With respect to the use of force in 2015, as a result of a complaint filed by CELS and the CPM, the "Protocol on principles for the rational use of force by the SPB" (resolution 20/15) was enacted. It defines an "exceptional" use of weapons inside units and certain rules of conduct for prison officials. However, to date, none of the corresponding trainings needed for the Protocol to be successful have been organized, nor is there any record that reflects whether the Protocol has been implemented or not. Furthermore, on October 7, 2013 the security office of the SPB repealed the "Manual of practices for group searches in prison units" in effect since 2006, and replaced it with Resolution 2/2014[75] which only regulates searches of visitors. The new protocol has some deficiencies that leave room for arbitrariness and violations of the rights of persons in custody or their visitors. It does not regulate inmate searches, which is a critical issue for eradicating the discretion of prison guards on inmates' lives and belongings.

[73] In this period, violent deaths increased from 38 to 50 cases, with oscillations in the intervening years.

[74] In 2014, photographs were taken by prison guards at the provincial penitentiary San Luis during a search procedure in a pavilion of young adults (18-21 years). Photographs revealed the plight of detainees during collective searches: they were naked, forced to kneel and handcuffed with their hands behind their back, foreheads placed on the floor of the courtyard while prison guards allowed German shepherds to sniff at the detainees.

[75] The "Protocol of searches of visitors of persons deprived of liberty in the Buenos Aires penitentiary service," resolution 2/2014.

In turn, there are records of **oppressive transfers** in which detainees are kept locked in obsolete trucks for hours, with high temperatures, without food or water, held incommunicado under total uncertainty about the amount of time they will remain there and where they will be transferred.[76]

In the province of Mendoza, the Provincial Committee for the Prevention of Torture received in just one year and a half more than 300 complaints relating to situations of violence between inmates (often provoked or not prevented by security personnel) and at the hands of prison officials and acts of psychological violence or threats. Only in one-quarter of the cases examined did the victims wanted to file a formal complaint with administrative or criminal authorities of the public prosecutor's office or courts. This low percentage has a direct relation with the existing problems in the Justice system to effectively protect those who file a complaint and to move forward with the punishment of the perpetrators of these acts.

Analysis of some of the implemented policies reported by the State

In its 2015 report, the State describes some policies implemented in this context in the province of Buenos Aires, but which have been unable to lower the high rates of violence. Although there are no impact studies which allow us to precisely evaluate the scope of the programs mentioned in the State's report, the proposed initiatives show problems in the diagnosis upon which they are based. The provincial government's policy does not attack the core of the problem since it does not recognize the institutional nature of violence and does not consider the SPB to be a part of it. Therefore, from the implementation phase, the instrumented programs do not have the necessary mechanisms to overcome the obstacles derived from this force's low capacity for political and civil control.

The public prosecutor's office of the province of Buenos Aires does not have a criminal policy focused on investigating crimes committed by state officials in confinement aimed at reversing the general resistance to investigating this kind of incident. This situation is not exclusive to instances of torture, but rather occurs in general with crimes committed by state agents in detention centers. This is exacerbated by the low level of credibility granted to claims made by the detainee or his or her family, and the manner in which officials naturalize prison violence, which implies that they rarely see in the reports crimes that merit investigation.

There are deficiencies specific to the justice system regarding the investigation of cases with any degree of complexity or cases in which security authorities are involved, which can become visible in protracted investigations without a clear line of investigation that collects and safeguards pieces of evidence rapidly and effectively. This leads to very few suits making it to trial, and in few cases is a conviction achieved.

In this context, in the framework of the Working Group created for the implementation of the precautionary measure ordered by the Inter-American Commission on Human Rights, CELS, and the CPM, the General Attorney´s Office of Buenos Aires published two resolutions, a "Guide for the Investigation of Torture and other Mistreatment"[77] and an order for prosecutors to investigate all deaths that occur in provincial prisons.[78] However, the Public Ministry does not control the application of these guidelines in different prosecution investigations, highlighting the refusal of the body responsible for criminal prosecution to seriously investigate and sanction incidents that occur in confinement.[79] In four years with the Working Group, the provincial General Attorney´s Office was not able to

[76] According to the RNCT (2014) "6 of every 10 inmates (interviewed in the province of Buenos Aires) were subjected to constant transfers for more than six months, and within that range, 42% were in this situation for more than one year." The phenomenon known as the "merry-go-round" is part of the logic used to govern the prison population. This partly explains the persistence of arbitrary transfers without judicial authorization.

[77] Resolution 271/15 of the General Attorney´s Office of the Province of Buenos Aires. Available at; http://www.mpba.gov.ar/web/Resoluciones/271-15.pdf

[78] Resolution 115/13 of the General Attorney´s Office of the Province of Buenos Aires. Available at; http://www.mpba.gov.ar/web/Resoluciones/115-13.pdf

[79] This can be seen, for example, in the case of detainee Hugo Marcelo García Denevi, who passed away on January 29, 2016 in the Public Hospital of Mar del Plata. In this case, proceedings were never initiated to investigate the causes of death. The investigation was the responsibility of UFI 8 of Mar del Plata. Upon the CPM's inquiry, the Attorney´s Office informed in writing that proceedings were not initiated "given that it was a death due to illness which occurred in the Hospital."

provide a trustworthy record of cases initiated due to torture and violence which gives an account of the number of incidents which enter the system and the response of the different actors who intervene in the investigation and trial.

In August 2015, in response to our complaints, the SCBA issued resolution 1535-15, in which it requested a broad report from the Provincial Public Ministry in order to evaluate the efficiency of criminal investigation of these crimes. In this resolution, the Supreme Court referred to Law 14.687, which created 21 Functional Investigation and Trial Units (UFIJ, according to its initials in Spanish) specialized in Institutional Violence, and which has not yet been implemented. It therein requested information regarding its initiation and created a joint commission with the General Attorney´s Office in charge of analyzing the problems, guidelines, and measures necessary to implement the law, prioritizing the discussion regarding the implementation of the Witness Protection Program and intervention by the Expert Corps of this Supreme Court to prepare medical reports on the victims. The authorities have not reported on the development of this commission.

As such, the measures which have been implemented to reform judicial practices and the response to torture are partial and imply little coordinated work between different state agencies. The protocols and provisions regarding what and how to investigate must be accompanied by instances of control in order to transform institutional incentives and have an impact on the practices of judicial officials. The obstacles in investigations can be classified into three groups: detainees' difficulties in accessing justice and presenting their complaints; the capacity of correctional bureaucracy to silence and cover up institutional violence through its official version of events; and the unequal relationship between detainees and guard forces, which prevents prioritization of the detainees' hypothesis over the reported incidents. In this sense, the difficulty both of there being witnesses and of evidence being obtained is clear. The sluggishness and inefficiency of justice and the implicit or explicit criminal policy which prioritizes interventions are commonplace in cases in which institutional violence is being investigated.

The register of cases of torture and mistreatment at the national level

There is currently a multitude of databases and registries of incidents and victims of torture in the federal sphere and also in the Province of Buenos Aires. However, these differ regarding the definition, universe, unit of analysis, sample framework, manner of recordkeeping, and institutional objectives with which they were created. This fragmentation can become problematic when one tries to generate a longitudinal analysis or make comparisons. **For example, it is not currently possible to obtain information that provides an account of judicial treatment of a court case on torture, given that there is no coordination between the agencies that process the information until the case is brought to trial and those who process it from that point on, through the conclusion of the court proceeding**. This creates difficulties in evaluating specific problems in the judicial response to incidents of torture which are reported, and in understanding how this affects the possibilities of victims who decide to file reports.

Given that the Law 26.827, which established the National System to Prevent Torture, recognizes the existing monitoring networks and that the civil organizations are integrated into the prevention system, the generation of information in these areas becomes increasingly important. Currently, the state record with the highest degree of national coverage is the National Register of Cases of Torture (RNCT), created in 2010 within an inter-institutional agreement between two monitoring organizations and a university: the Committee against Torture of the Memory Commission of the Province of Buenos Aires, the National Penitentiary Office, and the Group of Studes on the Penal System and Human Rights at the Gino Germani Institute of the School of Social Sciences of UBA. As such, while diverse state agencies are moving ahead with the creation of databases and registries, it is not possible to claim that the executive power and the judicial branch are producing consolidated information regarding reports or cases of torture and ill-treatment or cruel, inhuman, and degrading punishments.

In other provinces, such as Mendoza, no type of aggregated data or uniform record is collected of torture cases, number of prosecutions, sanctions imposed, and protection measures for victims of these cases.

Mechanisms for the Prevention of Torture

From CELS, we are pushing forward the creation of a collective of organizations throughout the country with which we create and promote a specific proposal for a National Prevention System through a bill that was presented with the signature of national legislators in representation of different political forces. This bill was passed and approved in November 2012, and the national executive branch enacted it in 2013. However, **to date, the National Prevention Mechanism has yet to be formed, and therefore has not been put into action.**

The content of the "National System to Prevent Torture" law is innovative, in accordance with the principles and demands of the Optional Protocol, and would place Argentina at the vanguard of the construction of institutions for the prevention of torture. Unfortunately, the lack of implementation of this national mechanism is having an impact on the provincial establishment of organizations, given that the provinces are beginning to implement their own system of torture prevention but with differing structures. By way of example, we can cite the mechanism approved in Tucuman, which is incorporated by various government officials, granting them broad decision-making power within it, violating the requirement of independence, which is fundamental for this body to be able to fulfill its mandate.

In the case of the Province of Mendoza, Law No. 8.284 of 2011 (along with its regulatory decree 2207/11), ordered the creation of the "Provincial Commission for the Prevention of Torture, Cruel, Inhuman, or Degrading Punishment or Treatment," which, in the local context, meant the body which applies the Optional Protocol. The public tender for the position of Attorney General for Persons Deprived of their Liberty, president of the mechanism created, was held in late July 2012, and became operational on April 24, 2014. The Commission is made up of the Office of the Attorney General for Persons Deprived of their Liberty and the Local Committee for the Prevention of Torture. It is a collegial body made up of representatives of the human rights organizations in the province with history and recognition in their fight for the observance of fundamental human rights. For its formation it considered a female quota and territorial representation. In its two years of operation, **it has not anticipated a budget allocation, structure, or material resources,** such that the work of the local mechanism continues solely through the efforts, will, and personal commitment of its members. In consequence, many of the areas within the Mechanism's competency receive no attention. The designation process to make up the Executive Secretariat has not yet begun, and this office is of the utmost importance for the structure of the Commission since it will be responsible for its organizational aspects.

The situation at the national level and the report of the situation in two provinces give an account of the need to definitively implement the National Mechanism. Despite the good indicators of development in its approval and enactment, and the fact that the regulatory decree itself established April 1, 2015 as the maximum deadline for starting the selection process for its members, to date, it has not yet been started. **It is utterly imperative that the Bicameral Commission of the Public Defender's Office of the National Congress meet, regulate the process established by law 26827, and begin to carry out the first steps in the selection which, according to the regulation itself, must not last more than 100 days. Only then can the National Mechanism required by the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment become truly operational.**

<u>Questions for the State</u>

1. After the creation of the National Register of torture cases, how many reports of incidents of torture have been recorded in the last four years? How many sentences have been handed down in these cases? Have there been convictions? If so, under what legal qualification?
2. Beyond the prosecution of crimes against humanity of the last dictatorship, what are Argentina's policies regarding the prevention and punishment of torture and ill-treatment which occur in places of deprivation of liberty in a democratic society? Is there an official registry in which we may observe the impact of these measures and the progress of the indicators?
3. In addition to the prosecutor's offices, are there administrative bodies that are external and independent from the penitentiary and security institutions to carry out investigations and monitoring of the personnel and establishments accused of practices of torture? Are there records of administrative inquiries (and their results) initiated in response to reports of torture and ill-treatment of detainees?
4. To what degree does the Argentine State at the federal and provincial level guarantee the provisions established in the Istanbul Protocol, through which the first investigations into incidents of torture must be carried out by officials external to security and penitentiary institutions? What measures have been taken to improve judicial investigations of reports of torture and the resolution rate of these cases? Are there records which show some impact of these measures?
5. Is there current information of a country-wide scope regarding the total number of individuals deprived of their liberty, specified according to variables such as procedural status, place of incarceration, duration of incarceration, etc.? Is there any official study at the national or provincial level regarding the importance of the problem of deaths due to injury, torture, and ill-treatment in detention facilities, and in relation to both procedural torture and that related to incarceration conditions?
6. What measures have been adopted or are to be adopted to guarantee judicial and control of civil society of transfers of individuals deprived of their liberty?
7. Why has the National Mechanism for the Prevention of Torture not been implemented in Argentina? What are the reasons why the regulations set forth in Law 26.827 for the implementation of the National Mechanism for the Prevention of Torture have not yet been debated in the National Congress? How does the State plan to guarantee civil society participation in the discussion and subsequent implementation of the National Mechanism for the Prevention of Torture?

Recommendations to the State

1. Implement the National Mechanism for the Prevention of Torture established in the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through a transparent procedure with strong civil society participation, ensuring that in its implementation, the effective articulation between the federal system and the provincial sphere is guaranteed in order to monitor and control detention facilities throughout the country; and that the National System for the Prevention of Torture raise the current minimum of existing state and social capacities and provide added value to contribute to improving the activities aimed at the prevention, investigation, and punishment of torture and ill-treatment in Argentina.
2. Create an accurate diagnosis of the practices that lead to violence during incarceration, especially those that, given their severity, constitute torture or ill-treatment.
3. Promote specific policies for the prevention of torture and cruel, inhuman, or degrading treatment in Argentina. Create a system of indicators that allows for the measurement of the problem and evaluate the policies that are implemented.
4. Deepen the registries and develop specific policies for the prevention and punishment of torture and ill-treatment such as: programs to monitor and analyze deaths during incarceration; use of force programs; external monitoring and control devices (identification of agents and signage in cell blocks; admittance of entry of photo and/or video cameras in inspections and monitoring by external actors; mechanisms for access to information).

5. Promote the implementation and correct use of the protocols for judicial investigation of reports of torture and ill-treatment and the measures recommended in the Istanbul Protocol; in particular, guarantee that the first investigations into incidents of torture be carried out by officials external to the security and penitentiary institutions;
6. Guarantee the existence of administrative bodies that are external and independent from the penitentiary and security institutions in order to carry out investigations into personnel and establishments accused of practices of torture and ill-treatment; and permit access to these dockets to victims and organizations that specialize in this area;
7. Review the policies for appointing penitentiary and judicial officials in order to prevent the selection of those who have a record of practices of torture or ill-treatment, or of not investigating such cases; and grant citizen participation in this type of procedures through contestation systems.
8. Develop protection plans for victims and witnesses who have reported incidents of torture and/or ill-treatment.
9. Implement provincial Law No. 14.424, which creates the judicial police or Corps of Judicial Investigators, which constitutes another indispensable tool such that the investigation of court cases may be carried out by judicial officials.
10. Adopt necessary measures to guarantee that personal searches fully respect the dignity and human rights of every individual, in full compliance with international human rights regulations; and such that the transfer of individuals deprived of their liberty be controlled by the justice system, and that the physical integrity of detainees be respected.

VII. FUNCTIONAL AND BUDGET AUTONOMY OF THE OFFICE OF PUBLIC DEFENSE. (ART. 14, ICCPR)[80]

One of the most important debates during 2012 was the discussion of how to provide autonomy for the Office of Public Defense in the Province of Buenos Aires. In the final month of that year, a bill was approved which modified the Public Ministry law and created the position of defender general (Law 14.422). Without breaking with current logic, the defender general remains in the sphere of the General Attorney´s office, but with new powers which grant him or her greater functional and budget autonomy. Despite the time that has elapsed since the approval of Law 14.422, to date, it **has not been implemented**.[81]

The lack of implementation of a Public Defense Ministry to guarantee this autonomy impairs the appropriate carrying out of the fundamental task of promoting and protecting the rights of the most vulnerable sectors and conspires against the guarantee of defense in trials in the terms of article 14 of the International Covenant on Civil and Political Rights. The daily work of defenders in the Province of Buenos Aires shows a significant lack of homogeneity with regards to the proposals of the different judicial departments. This lack of autonomy also implies that the most active public defenders are vulnerable to pressures from the Attorney General's Office and the provincial executive power. Considering the difficulties in accessing justice for the most vulnerable sectors, we identify the need to promote a strong public defense. The weakness of defense is directly related to its lack of autonomy.

[80] The Committee has already expressed its concern regarding this issue in paragraph 20 of its most recent Final Observations to Argentina. Final Observations of the Human Rights Committee, 98th period of sessions, CCPR/C/ARG/CO/4, March 22, 2010, paragraph 20.

[81] The General Attorney of the Province of Buenos Aires presented an action of unconstitutionality before the provincial Supreme Court in order to achieve the suspension of the regulation's implementation. Although she did not achieve her goal through an express judgment of the SCBA, she achieved it de facto since none of the powers of the provincial State that must carry out tasks to open the tender for Defender General have done so. This creates problems both regarding the quality of the technical defense given a lack of resources, and also in the ability to autonomously intervene in instances in which issues are in dispute between prosecutors and defenders. The decision by the General Attorney of the Province of Buenos Aires always tends to be contrary to the vision of the defenders, and deliberately omits strengthening their role and designing specific policies for public defense.

In the Province of Chaco, we see an extremely troubling situation that is repeated in places like the Province of Buenos Aires. Public defender Lorena Laura Padován is undergoing investigation by the Attorney General's Office of the Province of Chaco due to her active intervention in the context of the procedures in which she acted as defender. In this framework, several punitive procedures were initiated because she actively exercised technical defense, that is, constantly appealing to resolutions which harmed beneficiaries. In this context, the regulations dating from the year 2013 which establishes the position of Defender General was recently put into effect in April 2016. This situation can also be seen in the Province of Mendoza and in the Province of Tucuman. Public defense is within the sphere of the Provincial Attorney General´s Office, which creates unequal treatment. The Office of Public Defense has fewer human and material resources to carry out its role and there is no control by superior authorities regarding the work it carries out. This, in addition to the great magnitude of cases under its charge, leads to a complete lack of active participation by Official Defenders in the cases for which they are responsible.

Questions for the State

1. Is there a plan to initiate implementation of the law for the Autonomy of Public Defense in Buenos Aires, no. 14422? When will an invitation be opened to appoint the provincial Defender General?

Recommendation to the State

1. In the province of Buenos Aires, the Office of Public Defense must be given autonomy of management and action in providing its services, creating a mixed system of public defense "structured on the basis of a Defender General of the Province, who is the political and functional head of the provincial public defense system" with functional autonomy and technical independence, and whose final administrative instance is limited to him or herself.
2. Prosecutions of civil servants in the Office of Public Defense for activities related to their role must be avoided.
3. Guarantee its autonomy to carry out the functions of control of the rights of individuals deprived of their liberty in accordance with its institutional mission according to local regulations in force.

VIII. SERIOUS INFRINGEMENT OF INTERNATIONAL STANDARDS IN THE FIELD OF FREEDOM OF EXPRESSION (ICCPR ART. 19)

During its first month of government, the new administration, which assumed office at the end of 2015, issued three decrees that **completely disarticulated Law 26.522 of Audiovisual Communications Services** (LSCA, for its initials in Spanish).[82]

In 2009, after a long process of public participation and parliamentary debate, the National Congress sanctioned Law 26.522 in replacement of the regulatory framework imposed by the dictatorship through Decree-law 22.228, which involved a change of paradigm in the field of protection of freedom of expression and the right to information.[83] The LSCA established various restrictions on the concentration of ownership of audiovisual media, intended to prevent the formation of information and communication monopolies and oligopolies. Also the law included rules intended to promote the production of content and signals by non-profit community actors and decentralized state actors, such as universities, granting them percentages of exclusive licenses to these actors.

[82] See http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=2019 and http://cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=2066

[83] This law was a pioneer in the Latin American region and commended by the IACHR and United Nations special rapporteurs on freedom of expression. See, for example, the report of the Special Rapporteur of freedom of expression of the IACHR in 2009, paragraph 11, available at: http://www.oas.org/es/cidh/expresion/docs/informes/anuales/Informe%20Anual%202009%201%20ESP.pdf

The LSCA created an institutional regulatory architecture aimed at ensuring the independence and plurality in the supervisory bodies. This led to the formation of the Federal Authority of Audiovisual Communication Services (AFSCA, for its initials in Spanish), a decentralized and autarchic competition authority, within the scope of the national executive branch, with regulated mechanisms to appoint and remove its directors in order to ensure their independence and autonomy from political and economic interests. Also, the creation of the Federal Council for Audiovisual Communications (COFECA, for its initials in Spanish) was signed as the body of plural integration and federal, with extensive involvement of the provinces and various non-governmental social actors.

The process to dismantle the LSCA began the same day that the new government came into office, with the Emergency and Necessity Decree[84] 13/15 which amended the law of ministries and duplicated AFSCA's functions. Article 23 decies of the Decree ordered the creation of the Ministry of Communications, assigning it several competencies that Law 26.522 granted AFSCA as enforcement authority.

On December 23, 2015, the government, alleging a so-called malfunctioning of the federal enforcement authority, issued Decree 236/15 ordering its intervention[85] and termination of the services of the seven members of the board of directors. In their place, the executive branch appointed a former legislator of the ruling political party as auditor for a renewable period of 180 days. He also ordered the intervention of the Federal Authority of Information Technologies and Communication (AFTIC, for its initials in Spanish), enforcement authority of Law 27.078 of Digital Argentina.

Finally, by a the Urgency and Necessity Decree 267/15—published January 04, 2016—the executive branch introduced substantial and permanent reforms to the Audiovisual Communication Services Law and the Argentina Digital Law. These regulatory changes put in place by initially by Decree represent a very serious and unacceptable backpedaling in terms of protection of freedom of expression and the right to information in the Argentina. The Urgency and Necessity Decrees should be addressed by both chambers of the National Congress. On April 6, 2016, the Chamber of Deputies confirmed the validity of these decrees but the Senate has not issued a decision to date.

First, the DNU 267/15 created a new **enforcement entity** called the Nacional Communications Authority (**ENACOM**, for its initials in Spanish), under the scope of the national executive branch, in replacement of the enforcement entities created by Law 26.552 (AFSCA) and Law 27.078 Digital Argentina (AFTIC). The regulation of DNU 267/15 does not include mechanisms of selection, appointment and removal of members of the new enforcement authority, which would guarantee their autonomy and independence. On the contrary, the executive decree states that five of the seven board members will be appointed by the ruling political force[86] and that any of them can be removed by the executive branch without cause. A very different scenario from AFSCA[87]. At the same time, in article 29, the decree dissolved the **Federal Multisector Councils** created by the reformed laws. In the name of 'convergence', all social participation was eliminated, abolishing agencies that ensured a wide

[84] The Urgency and Necessity Decrees (DNU for its initials in Spanish) is an expression of a legislative faculty exclusive of the executive branch, referred to in article 99.3 of the Argentine Constitution. A DNU has the force of law and its enactment requires that exceptional circumstances make it impossible to follow the regular legislative procedure and that it be a matter that must be regulated by law and its regulation is urgent (so much so regular legislative procedure cannot be followed).

[85] In Argentina, intervention is used by the executive branch under which it assumes jurisdiction over the management of a central government agency. It is generally accepted when it comes to bodies created by the executive branch, while if the body is established by law, a law that allows its intervention is needed (as in the case of universities, see Law 22,207).

[86] Article 5 of the DNU 267/15 establishes a board of directors with seven members, comprised of a president and three directors appointed by the national executive power and three directors proposed by a joint congressional committee: one from the majority or first minority, one from the second minority and another from the third minority. Meaning, five appointed by the ruling party and two by the opposition.

[87] Law 26.522 contemplates a AFSCA board of directors with seven members, of which the executive branch nominated two (the president and a director). These two members were joined by three directors nominated by the joint committee (in the same proportion as ENACOM) and two directors nominated by COFECA, one of them being an academic representative of the universities. In addition, directors could only be removed by a nominal vote of two-thirds of the members of the COFECA, for poor performance of their duties, in a process in which their right to council is guaranteed.

representation of different social actors.[88] It should be noted that, in accordance with Law 26.522, COFECA was responsible for confirming the removal of AFSCA directors, among other tasks.

In regard to the regulation of **license** extensions, the LSCA anticipated one-time extensions for a period of ten years and following a public hearing in the town where the service is provided. At the end of the extension, the licensee could bid again in a tender for the award of the license. (Article 40, LSCA) Whereas, article 15 of the DNU 267 established that licenses are subject to successive extensions without limit, ensuring, moreover, a first automatic five-year extension, which all licensees are entitled to. After this automatic extension, subsequent extensions will be granted every ten years. At the same time, in regard to the **licenses in force**, article 158 of the LSCA was that current license holders who had obtained a renewal or extension could not request another extension, and must bid on a tender. However, the DNU 267/15 eliminated this limitation, enabling existing licensees to apply for a new 10-year extension, without having to wait for the expiration of the current license, in addition to an automatic extension of five years. In this way, the presidential decree almost automatically granted operating licenses for 15 years to existing holders (article 20, DNU 267).

In terms of the **transfer of licenses**, the LSCA established as a rule that the authorizations and licenses are non-transferrable, defining exceptional conditions in which it would be appropriate, prior to nominal and express authorization of the AFSCA (article 41, LSCA). In this regard, Decree 267/15 (article 15 and 16) eliminated this norm by enabling licensees for profit to freely transfer their licenses. ENACOM must be given notice of the transfer operation within 30 days of completion and after 90 days it shall be considered approved unless ENACOM expressly rejects it. Furthermore, the new regulation maintained anti-transfer standard regarding licenses granted to privately run non-profit providers. In regard to the **multiplicity of licenses**, the LSCA contemplated a scheme of thresholds of tenure in order to ensure the greatest possible plurality, preventing the formation and consolidation of oligopolies or dominant positions in the market. Article 17 of the Decree (amending article 45 of the LSCA) expanded by nearly 50% the spectrum ownership limits. Moreover, article 44 of the Law 26.522 **prohibited the delegation** of the distribution of audiovisual communication services to a third-party, sanctioning it as a serious offense. However, DNU article 22 repealed this prohibition, enabled third-party delegation, contributing to the lack of transparency in terms of ownership and exploitation of audiovisual media. In addition, DNU article 22 provided for the repeal of LSCA article 73, which required pay-tv broadcasters to offer a **social discounted subscription rate** according to the regulations issued.

Liberalization of regulations pertaining to transfers of audiovisual communication services licenses and permissiveness regarding outsourcing of its exploitation clears the way for the return to less transparent practices regarding the ownership of the property of the audiovisual communication services, which violates the principles established by UNESCO internationally. These measures, along with a rise in the limit of licenses and the 15-year extension for existing licenses, with the possibility of unlimited successive extensions, can only lead to greater concentration, violating freedom of expression and the right to communication.

Finally, article 7 of the decree equates pay-tv broadcasting service providers with **Information Technology and Communications (TIC)** service providers indicating that the Argentina Digital Law will apply to them. As a result, the decree exempts cable-TV providers from complying with specific obligations of the Law 26.522, as the provisions of *must-carry regulations*, production of their own proprietary content or the programming schedule.

[88] Article 16 of the LSCA stated that the COFECA included one representative of each province and the city of Buenos Aires, three representatives of private commercial service providers, three non-profit service providers, one representative of the broadcasters of the national universities, one representative of the schools of communication of the national universities, one representative of the state media, three union representatives, one representative of the copyright associations and one representative of the indigenous peoples.

In the face of claims from various actors in the communications sector, and following the hearing held before the Inter-American Commission on Human Rights at the beginning of April 2016, ENACOM issued resolution 1394 on April 15, 2016, in which annex I established the "General regulation of pay-tv broadcasting services using a physical and/radioelectric link." Article 12 of the regulation established much more basic *mustcarry* regulations for licensees of the Single Argentina Digital License than those laid out in LSCA article 65. Unlike Law 26.522, the regulation obliges the broadcast of the Catholic Church's channels, but excludes the signals of the municipalities and universities. In addition, the regulation omits any requirement that the program schedule be organized by genre, with preference given national, regional and local channels, as well as the obligation to include signals of proprietary production and the inclusion of a minimum of channels from Mercosur and Latin American countries. By means of a regulation of a hierarchy inferior to the law, a central aspect for Argentine's enjoyment of access to the information is poorly regulated, especially considering that 83% of all households access TV through some kind of paid service.[89]

In summary, the Decree 267/15, in addition to replacing representative and pluralistic entities provided for in the Law of Audiovisual Communication Services—AFSCA and COFECA—by a body at complete disposal of the PEN, it greatly expanded the limits for ownership of licenses, extended licenses already granted for 15 years and abolished limits on extensions and the obligation to bid; it repealed the restriction on the transfer of licenses, eliminated the prohibition of delegating the exploitation of licenses to third parties, and excluded cable television service providers from LSCA compliance. **All changes made to the regulations that were in force until December 2015 infringe upon a diverse and pluralistic spectrum of audiovisual communication, favoring a concentration of licenses, the creation of dominant positions and a lack of transparency in regard to media ownership**.

Questions for the State

1. How does the current Argentine legislation seek to ensure compliance with the standards relating to the principle of legality, pluralism, diversity and control of undue concentration in the communications sector?
2. How can the independence of the enforcement authority of the system of audiovisual communication services be ensured?

Recommendations to the State

1. Adopt the necessary measures to ensure the full applicability of the principles of legality, pluralism, diversity and control of undue concentration in the communication sector, as well as the independence of the enforcement authority of the system of audiovisual communication services.
2. Ensure that debate about new regulations that could be launched comply with standards of transparency and participation through the call for regional public hearings with public record. Call to participate community media, SMEs, universities, trade unions, indigenous peoples and human rights organizations.

IX. ACCESS TO PUBLIC INFORMATION (ART.19 ICCPR)

Although there are various provincial legal norms that regulate access to the provincial public information, there is no general norm that ensures this right at the federal level in the Argentina. In 2003 the national executive branch tried to partially remedy this regulatory gap with decree 1172/03, regulating the access to public information within the scope of the central national administration. However, given the very limited scope of the decree in terms of authorities responsible (only the national executive branch), the limited effective adherence to obligations contained

[89] Becerra, Martín, presentation to the Inter-American Commission on Human Rights, hearing on "Right to freedom of expression and changes to the law of services of Audiovisual Communication in Argentina", April 8, 2016. "Argentina exhibits high levels of concentration in communication. For example, nearly 40% of broadcast television licenses are in the hands of two groups (Telefónica and Clarín). While in paid television, which is how 83% of all households access tv, almost 70% of subscribers is controlled by two groups (Clarín and AT&T)."

herein and divergent criteria that apply to the authorities responsible, the establishment of a systematic and comprehensive regulatory framework is essential; it must ensure access to public information in all the branches of the state with the widest scope possible.

In December 2015, the new government summoned various organizations of civil society to participate in the drafting of a bill. There was no further contact. Then, in April 2016, the executive branch unilaterally sent its own bill to Congress.[90] Certainly the momentum of a bill by the executive branch is a step forward in terms of the improvement of Argentina's institutional quality, however, the project contained several problems that compromised their effectiveness as a tool for the exercise of rights. CELS presented specific remarks with proposals for concrete changes,[91] many of which were accepted and included in the opinion of the committees of the House of Representatives. However, several problems remain, the most worrying of which is the reference to **the lack of autonomy of the enforcement and regulatory authority**. In accordance with international standards of human rights, the enforcement authority of a law on access to public information must be an independent and autonomous body with various democratic guarantees for the nomination and removal of its members, with the participation of other powers of the state and civil society.

On the contrary, the proposed bill that the government is supporting in Congress contemplates the creation of a one-person enforcement authority directly dependent on the executive branch, without even a single guarantee of tenure to ensure their functional independence. The project was recently approved by the House of Representatives and must still be debated in the Senate.[92]

Questions for the State

1. What will be done to ensure the independence and autonomy of the implementing entity of the law on Access to Public Information being debated in National Congress?

Recommendations to the State

1. Adopt concrete measures to ensure the approval of a national law on access to public information that is respectful of international human rights standards, which ensure the independence of its enforcement authority.

X. USE OF FORCE BY THE SECURITY FORCES IN DEMONSTRATIONS AND PUBLIC PROTESTS. RIGHTS OF FREEDOM OF ASSOCIATION, ASSEMBLY, AND PETITION TO AUTHORITIES (ICCPR ART. 21 AND 22)

In the period covered by this report, some progress has been made and later serious setbacks occurred in regulation and performance of the security forces in public protests. **The security forces in Argentina, both federal and provincial, have been responsible for gross violations of human rights, product of its participation in operations of repression of social protest**, such as those that took place in Indoamericano Park, or by omission and collusion, as in the case of the murder of activist Mariano Ferreyra **(see annex of cases**). Both events took place in 2010, with a few weeks' difference. As a political response, the national government decided to create in December of that year the National Ministry of Security.

In 2011, the Ministry approved the "Minimum Criteria for the Development of Protocols of Action of the Police and Federal Security Forces in public demonstrations." These minimum criteria, condensed in 21 short points, establish the prohibition of possession of regulation firearms for all police officials that may come into contact with the

[90] This situation upset some of the organizations involved. http://poderciudadano.org/la-sociedad-civil-ante-los-nuevos-proyectos-de-ley-de-acceso-a-la-informacion-publica/

[91] See remarks made by CELS at http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=2074

[92] See information at: http://www.lanacion.com.ar/1900085-diputados-aprobo-la-ley-de-acceso-a-la-informacion-publica-y-resta-la-sancion-del-senado

protesters, all the police officers and their units must be properly identified, the protection of particularly vulnerable groups and the need to provide spaces for dialogue to resolve conflicts in a peaceful manner[93]. **The minimum criteria should be materialized in action protocols for all security forces, a process that was halted in 2013 and has not been reactivated by the new authorities.**

Repressive acts of protest and nomative regressions under the new government

As we have highlighted, a new administration took office on December 10, 2015. In the few months since they came into power, there have been serious acts of repression and criminalization of social protest, including the arrest of social leader Milagro Sala in Jujuy, which is described in greater detail in this document and in **annex II**. Other extremely serious cases form part of **Annex I** of this document.

In February 2016, the new authorities of the National Ministry of Security presented the "Standard operating protocol for state security forces at public demonstrations." **This document includes serious restrictions on the exercise of freedom of expression, subordinating it to a vague and ambiguous notion of "public order," and considerably expands police powers to repress and criminalize social protest**.[94] If you compare the text of this new protocol with the guidelines established by the minimum criteria mentioned above, multiple setbacks become apparent. For example, it does not expressly prohibit police personnel from carrying and using firearms and rubber bullets to break up a protest; it does not impose obligations related to the identification of police personnel and service units; and, it enables the restriction of movements of members of the press who want to cover the demonstrations, among other issues.

In general terms, instead of clarifying and limiting the police's scope of action in the case of social demonstrations, the protocol confers security forces a blank check to act in any way they deem convenient. The new National Minister of Security, Patricia Bullrich, when explaining publicly the effects and scope of the new protocol, said that, in the event of demonstrations that completely prevent vehicular transit along a street *"we will give them 5 or 10 minutes. They will be asked nicely to please withdraw and take the demonstration elsewhere. If they don't, we will remove them."* At the time of writing this report, the status of this protocol remains uncertain, since authorities alternate between claims that it is in effect and it is under study. This lack of definition generates additional concern in social organizations because they don't know which regulation to follow.

There is a project being debated by the deliberating council of the city of La Plata, in the province of Buenos Aires, along these same lines. The project replicates the "Protocol of Action of state security forces in public demonstrations", presented at the national level.[95]

Questions for the State

1. What are the measures taken by the State to avoid the disproportionate use of force in the event of social demonstrations? What concrete country-wide measures has the State implemented to guarantee the uniform application of minimum standards regarding use of force by the security forces in demonstrations, protests and other conflicts in public space?
2. What measures have been carried out to prevent abusive and disproportionate use of criminal charges by the judicial system, in order to criminalize protests and illegitimately restrict the right to assemble and the right to petition authorities?

[93] The full text can be found at: http://www.minseg.gob.ar/sites/default/files/files/upload/documentos/Res210-11.pdf
[94] See http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=2074
[95] Various social organizations have expressed their objection to the project. See: http://ciaj.com.ar/notas/el-ciaj-rechaza-en-comision-de-seguridad-y-ddhh-el-proyecto-de-protocolo-de-actuacion-en-manifestaciones/

3. What measures have been taken and what measures will be adopted to prevent security officials involved in crimes against the integrity of persons from participating in security operations in protests and public demonstrations?
4. What are the specific actions undertaken by the Ministry of Security, the Ministry of Defense, the Federal Intelligence Agency, the National Congressional Joint Committee of Control of Intelligence and Armed Forces Entities and Activities to prevent and investigate illegal acts of information gathering targeting demonstrators or social activists? What progress has been made in the implementation of the principles referred to in Law 27.126 pertaining to the reform of the national intelligence system, in particular those aimed at increasing the mechanisms of control of the activity of intelligence agencies, to ensure transparency of their operations?
5. What controls and precautions are the different State bodies competent in the matter taking to prevent recurrence of episodes of illegal gathering of information by the national gendarmerie and several provincial police forces?

Recommendations to the State

1. Support investigations into the criminal and administrative responsibilities of all officers of the security forces involved in the repression of the indigenous community Potae Napocna Navogoh Qom, La Primavera[96], as well as the individuals responsible for acts of repression that took place in the provinces of Tucumán, Neuquén and the city of Buenos Aires, among others.
2. Carry out legislative initiatives necessary to ensure the uniform application of standards respectful of human rights in regard to the use of force by the security forces in demonstrations and other conflicts in public spaces. The "Minimum Criteria for the Development of Protocols of Action of Federal Police and Security Forces in public demonstrations" approved by the National Ministry of Security in 2011 is the model that all police forces in the country should follow for the development of their own protocols in contexts of public demonstrations.
3. Instruct judicial branch officials in the proper education and training contexts as to how to avoid the use of criminal charges as a way to illegitimately restrict the right to assembly and right to petition authorities.
4. Encourage the review, reform, adaptation and repeal, as appropriate, of all practices, regulations and internal standards that go against the principles of the reform of the National Intelligence System, Law 25.520.

XI. EQUALITY OF RIGHTS BETWEEN MEN AND WOMEN. EQUALITY AND NON DISCRIMINATION (ICCPR ART. 2 AND 26)

GENDER-BASED VIOLENCE[97]

Law 26.485 of the Comprehensive Protection to Prevent, Punish and Eliminate Violence against Women in their Interpersonal Relations enacted in 2009 was issued in 2010. Despite the progress the law's enactment represented, its implementation is not homogeneous at the national or provincial level, and, in general terms, still very poor.

In June 2015, a call to action entitled "Not one less" (*Ni una menos*) mobilized 400,000 people at 120 points of the country, with a large multitude concentrated in front of the National Congress. On that occasion, a document was presented. It brought together a series of claims that highlighted the dire situation of gender violence in Argentina: the need for reliable information for policy planning; an integrated approach to gender-based violence that goes

[96] The description of this case is part of a specific report on the rights of indigenous peoples the CELS has drafted in partnership with a group of organizations specializing in the matter, submitted as a stand-alone document.
[97] This section was compiled on the basis of the chapter "Not one less. Institutional violence in the light of the Law for the Comprehensive Protection of Women" (Ni una menos. La violencia institucional a la luz de la Ley de Protección Integral de las Mujeres"), CELS report, Human Rights in Argentina, 2015 report, in press. In relation to the situation of violence and discrimination against transgender individuals, we refer to the report prepared by the Gender Violence Observatory of the Ombudsman's Office of the province of Buenos Aires.

beyond the security perspective; the judicial branch's ineffective response to the complainants reflected in the high proportion of women killed despite they had restraining orders against their abusers but were ineffective; the way some media outlets seek the reasons for a murder in the victim's behavior.[98] In the absence of official records on homicide caused by gender-based violence, data was compiled outside of the State. The "Adriana Marisel Zambrano" Femicide Observatory of the not-for-profit organization La Casa del Encuentro recorded from 2008 until 2015: **2,094 femicides**.[99]

Following the demonstration, several initiatives at the State level were announced. They highlighted many of the relegated human rights issues pertaining to women: the Human Rights Secretariat formalized the Femicide Registration Unit; the National Supreme Court of Justice called on judicial authorities to collaborate on a National Femicide Register; the National Women's Council (CNM for its initials in Spanish) presented the Single Registry of Cases of Violence against Women (RUCVM for its initials in Spanish); and the National Public Ministry created the Special Prosecution Unit for Violence against Women (UFEM for its initials in Spanish). **However, even today, despite various government announcements and claims, there is no single, systematic and orderly registry that ensures the availability of official statistical information about gender-based violence**. On the other hand, the Federal Council of Education approved resolution 253/15, in which the organism pledged to strengthen the implementation of program based on the Integral Sexual Education and Comprehensive Protection of Women; and in November 2015, the enactment of Law 27.210 created an association of lawyers for victims of gender-based violence within the scope of the Justice Secretariat of the National Ministry of Justice and Human Rights, with the mission of "ensuring victims of gender violence access to justice in line with the statutory requirements of Law 26.485." **So far there is no news regarding its implementation, or how it will be organized in order to comply with the mandate that it must be nationwide.** At the same time, the implementation of the National Comprehensive Action Plan for Prevention, Assistance and Eradication of Violence against Women pursuant to the law is still pending. According to the text of the law, this action plan is a key tool to articulate comprehensive policies at different levels of the State throughout the country.

On the other hand, with the enactment of Law 26.485, as well as those issued as a result in some provinces, emphasis has been placed on complaints filed by the women themselves (the female victims) as a mechanism to access the judicial system. However, mechanisms for handling situations of violence against women in other areas other than domestic ones have not been contemplated. National legislation has defined other forms of violence against women (institutional, obstetrics, employment, media, sexual and reproductive health) but formal mechanisms for processing complaints or claims before the State in these cases have not been provided for.[100]

Questions for the State

1. What statistical mechanism has the State developed to have reliable information about cases of violence against women and girls that make it possible to understand the dimensions and characteristics of violence in the country? What mechanism was adopted to provide reliable information on gender-based violence, in particular on femicide?

[98] For more information about the call to action and the document presented, go to http://niunamenos.com.ar/?page_id=6. This document is one of the sources used in this section.

[99] La Casa del Encuentro collected and systematized information reported by media from all over the country from 2008 until 2015 in the absence of official statistics on femicide in Argentina. More information available at: http://www.lacasadelencuentro.org/femicidios.html

[100] The 2015 report from the Gender Violence Observatory of the Ombudsman's Office of the province of Buenos Aires: monitoring of public policies and gender-based violence. Available at: http://www.defensorba.org.ar/pdfs/comunicados/Informe-OVG-2014-2015-Monitoreo-de-Politicas-Publicas-y-Violencia-de-Genero.pdf

2. To what extent was Law 26.485 been implemented? How do you plan to implement it? What public policies have been adopted to prevent, respond and punish violence against women and girls? What developments have been made and since when?
3. Bearing in mind the enactment of Law 27.210 creating the association of lawyers for the victims of gender-based violence within the scope of the Justice Secretariat of the National Ministry of Justice and Human Rights, what measures were adopted to ensure its application nationwide and what other measures are being planned to ensure free legal advice and representation?
4. What measures were adopted to eradicate institutional violence against women deprived of their liberty and institutionalized?
5. Are there specific budget items to ensure the implementation of the National Plan on Violence against Women?

Recommendations to the State

1. Implement Law 26.485 in its entirety with the allocation of a sufficient budget and put into place the national plan outlined therein.
2. That the State collect, systematize and publish official statistics on violence against women, including femicide rates.
3. That the State guarantee victims' access to justice with trained personnel to receive complaints of this type in prosecutor's offices and police stations around the country, and that it put into place the free legal representation for victims of gender-based violence throughout the judicial process.
4. Ensure that government employees, security agents and judicial operators, as well as professionals who work with the theme of violence in various official agencies across the country complete mandatory training on gender-based violence.

RIGHT TO ACCESS A LEGAL ABORTION (ART. 6 AND 3, ICCPR)

Here we refer to another specific report prepared by the CELS along with other organizations specializing in the subject.[101] This report is submitted to the Committee along with this document.

XII. THE RIGHTS OF INDIGENOUS PEOPLES AND MIGRANTS, REFUGEES AND ASYLUM SEEKERS

For this point, we refer to two other reports that complement this one. They were produced by CELS in collaboration with agencies specialized in the rights of indigenous peoples[102] and the rights of migrants.[103] Both of these reports are being submitted to the Committee along with this document.

[101] Report prepared by Amnesty International Argentina (AIAR for its initials in Spanish), the Association of Catholics for the right to decide - Argentina (CDD for its initials in Spanish), the Center for Legal and Social Studies (CELS) and the Latin American Team for Justice and Gender (ELA for its initials in Spanish).

[102] The report was prepared by the Parliament of First Nations, the Observatory on Human Rights and Indigenous Peoples (ODHPI), Human Rights Attorneys of Northern Argentina (ANDHES), Chaco Argentina Agroforestry Network (REDAF), Association of Lawyers in Indigenous Law (AADI), (the Social Accompaniment group of the Anglican Church of Northern Argentina (ASOCIANA), the Civil Association for the Rights of Indigenous Peoples (ADEPI-Formosa), the Center for Legal and Social Studies (CELS), the United Board of Missions (JUM-Chaco), the National Secretariat of Indigenous Peoples of the Permanent Assembly for Human Rights (APDH), the National Pastoral Indigenous Team (ENDEPA), OCLADE (Claretian work for development) and the Masters Program in Human Rights of the National University of Salta.

[103] Report prepared by the Center for Legal and Social Studies (CELS), the Argentina Commission for Refugees and Migrants (CAREF, for its initials in Spanish) and the Migration and Asylum Program of the Center for Justice and Human Rights of Universidad Nacional de Lanús (UNLa, for its initials in Spanish).

XIII. RIGHTS OF PERSONS WITH PSYCHOSOCIAL DISABILITIES (ART. 2, 9, 14, 16 AND 26, ICCPR)[104]

In 2008, the Argentine government ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The regulation of the national Mental Health Law 26.657, which was enacted in 2010, was finally approved in 2013. These legal instruments contain the most advanced standards in matters related to the rights of persons with psychosocial disabilities and they represent a new paradigm, which views individuals as persons endowed with rights. In addition to envisioning the characteristics of an individual approach respectful of rights, one of the Mental Health Law's goals is the total substitution of psychiatric institutions as single-specialty hospitals with community-based care facilities by the year 2020.

Human rights violations committed in contexts of psychiatric confinement (Art. 6, 7 and 9)

Despite the regulatory progress made, as has been documented systematically by different government agencies[105] as well as civil society,[106] there are still serious violations of the human rights of persons with psychosocial disabilities within the framework of psychiatric admissions; the most structural of them is the perpetuation commitment in psychiatric hospitals mainly for social reasons, without patients being offered other alternatives to go back to living in their community. Compulsive use of institutionalization as a health response in the face of the absence of less coercive methods or as a measure of control and its prolongation without clinical justification[107] is a naturalized practice of illegitimate deprivation of liberty.[108]

There are records of violent acts which constitute torture or cruel, inhuman and degrading treatment, including isolation, physical restraints, over-medication and involuntary sedation during psychiatric hospitalization, as well as in other situations of deprivation of liberty.

Also, the use of direct or indirect violence by hospital staff on hospitalized persons, or between themselves as a form of conflict management, situation control or punishment in the face of certain actions progressively impair physical and mental integrity of persons confined to these spaces.

In relation to persons with psychosocial disabilities, there are still deep flaws in the guarantee of free and informed consent of invasive medical practices, those with adverse side effects or potentially irreversible consequences,

[104] The Committee already expressed concern about this issue in paragraph 24 of its latest Final Observations for Argentina. Final observations of the Human Rights Committee, 98th period of sessions, CCPR/C/ARG/CO/4, March 22, 2010, par. 24.

[105] The National Review Board for Mental Health, an entity under the National Public Defense Ministry, detected serious human rights abuses in the context of psychiatric confinement as part of their monitoring activities of public and private institutions and through complaints filed about specific cases in different jurisdictions around the country. An example is the ruling issued by this body regarding the status of the institutions in the province of Córdoba. Available at: http://goo.gl/5KBYLd

[106] The Center for Legal and Social Studies (CELS) has monitored and systematically documented this situation for more than one decade. Detailed information about this situation can be found in the chapters on mental health contained in CELS annual reports since 2004 (the most recent ones are 2009, 2012, 2013, and 2015) and in the books *Devastated lives: the situation of persons in the Argentine psychiatric asylums (Vidas arrasadas: la situación de las personas en los asilos psiquiátricos argentinos)* (2008) and *Crossing the wall: challenges and proposals for release from mental hospitals* (*Cruzar el muro: desafíos y propuestas para la externación del manicomio*) (2015). These and other documents are available at: www.cels.org.ar

[107] Within the framework of the judicial processes driven by the situation of Dr. Alexander Korn Hospital in the province of Buenos Aires, CELS became aware of the case of female patient "T," who had been committed for 71 years uninterruptedly; she passed away there in October 2015 at 93 years of age. Psychopharmacological treatment was indicated until 1992, after which she remained hospitalized without a specific treatment program. According to her medical history, "T" was the subject of electroconvulsive therapy (ECT), with the use of mechanical and chemical restraint. In all of her years of confinement, there is no record of her receiving permission to leave the hospital.

[108] Committee on the Rights of Persons with Disabilities. Guidelines regarding article 14 of the Convention on the Rights of Persons with Disabilities: the right to freedom and security. Adopted in the 14th session of the Committee, in September 2015.

such as electroconvulsive therapy (ECT),[109] as well as in the rigorous control over the administration of medication.[110]

The naturalization of the widespread deterioration of individuals who are institutionalized in psychiatric asylums generates that access to quality care in health, particularly in physical health, is not guaranteed. It is common for people who are institutionalized in psychiatric institutions (or even those who were at some point) are rejected when they try to access other general public health services, and from there be re-directed toward their "original" hospital[111]. Similarly, the underestimation of the cumulative harmful effects of psychotropic drugs or their use as a form of punishment or to control behavior also exposes the integrity of these people to a risk that could be avoided.

This growing neglect toward the different aspects of the overall health of persons with psychosocial disabilities, plus the emerging conditions of a place with precarious hygiene and habitability conditions, among other factors, results in a number of deaths exceeding the average of other health facilities and are even higher than those recorded in other contexts of deprivation of liberty.[112]

A paradigmatic case that demonstrates the deplorable conditions in which persons are left in these institutions and the lethal consequences of ill-treatment perpetrated is the criminal investigation into the death of Matías Emmanuel Carbonell during his time as involuntary admission over the course of three years (2007/October 2010), in precarious conditions, in the neuropsychiatric hospital Dr. José T. Borda, one of largest single-specialty public hospitals in the autonomous city of Buenos Aires.[113]

Another example is that of Dr. Alejandro Korn Neuropsychiatric Hospital in the city of La Plata (also known as "Melchor Romero"), whose worrying situation prompted the momentum of two judicial actions by human rights organizations: a collective *amparo* writ filed by CELS and a collective habeas corpus for the entire population confined in psychiatric hospitals in this province, by the Provincial Commission for Memory (CPM). In the Melchor Romero Hospital, an alarming number of un-investigated deaths of patients have been identified. CPM reported that 133 people have died over the years 2012, 2013 and 2014 (65 in 2012, 59 in 2013 and 9 during the months of January and February in 2014).[114]

---

[109] In its resolution 17/14 of 2014, the National Review Board of Mental Health, an entity under the Public Defense Ministry, recommended to national and provincial health authorities and all healthcare providers that the use of the electroconvulsive therapy in patients with a psychiatric diagnosis be prohibited. Available at: http://goo.gl/Na4pWw

[110] In all the surveys of institutional violence in psychiatric institutions, into allegations of specific cases and applied research on this topic, over-medication, the inappropriate use of drugs as a form of control and punishment, the use of outdated versions of drugs or their inadequate administration emerge as the main and most naturalized form of violence in these contexts.

[111] A detailed analysis of discrimination in the field of public health toward people with psychiatric diagnoses can be found in Chapter 3 of the book *Crossing the wall: challenges and proposals for release from mental hospitals (Cruzar el muro: desafíos y propuestas para la externación del manicomio)* (CELS, 2015). Available at: http://goo.gl/ASGUU0

[112] A report generated by the Attorney General´s Office for Institutional Violence (Procuvin, according to its initials in Spanish), a specialized unit of the Office of the Public Prosecutor in 2013, based on the information gathered in a raid on the Hospital Interdisciplinario Psicoasistencial "Dr. José Tiburcio Borda" in the city of Buenos Aires within the framework of the investigation into the death of Carbonell, showed that in 2009 and 2010 46 people died in this institution. Procuvin stated in its report that this figure exceeds the average number of deaths at other institutions that deprive people of their freedom, such as prisons. News story at: http://goo.gl/LwB5wT

[113] On Sunday, October 17, 2010, Matias returned to the Borda Hospital after spending the weekend with his family. A day and half later, on Tuesday, October 19, he was sent to a general hospital of high complexity in the same city (Penna Hospital) in a state of unconsciousness, cyanotic, febrile, with signs of aspiration and a series of observable physical lesions compatible with B-type burns caused by the passage of electric current. Despite the quick and appropriate intervention of the Penna Hospital physicians, Matías died on November 12, 2010, after 24 days of agony, which is why professionals who received him filed a police complaint. Matias was receiving multiple psychiatric drugs, in very high doses, which was not indicated for the diagnosis he had been given, and without registration of the corresponding controls, which could only respond to a purpose of sedation and social control. This medication could have generated a state of sedation that led to a pulmonary aspiration of gastric contents, the cause of his eventual death.

[114] Despite the lack of specific epidemiological data for a contextualized reading about the number of deaths, such a high number is still alarming for a total population of about 750 patients and in such a brief period of time. However, if data on mortality of the Argentine population over 20 years of age are taken into account, it can be said that the risk of dying for a person admitted to this Hospital is between four to seven times greater than the general population. At Melchior Romero, 53 people out of a population of 750 died between January and September 2014. It's a death rate 15 times higher than that of the prisons in the province of Buenos Aires.

The State still does not have a widespread, efficient and effective system for supervising and monitoring institutions with psychiatric admissions, especially those with persons with psychosocial disabilities living in a chronic situation. This misinformation is prone to the invisibilization of the serious human rights violations that occur in such places. These shortcomings in the periodic monitoring also extends to private mental health and addiction institutions, over which the State has equal obligation to ensure the rights of the people confined there, which has a differential impact on the sub-national entities (provinces) with less technical and institutional capacity for this function, where in some cases the private health care system is the only available option.

An important development generated by the LNSMA is the establishment of the **National Review Board for Health Mental**, an entity with broad responsibilities for monitoring of the mental health institutions and the implementation of the law, and knowledge of specific cases of violations of the rights established by the law. LNSMA establishes that at the provincial level similar review bodies should be created to enable the exercise of that function throughout the country. **To date, only three provinces of the 24 in the country have formed these organisms**[115].

Meanwhile, in addition to these serious situations, the State has not produced measures for LNSMA's full implementation. To date, the only operating plan[116] generated by the State to provide any direction suffers from major shortcomings in relation to its consistency with the concrete steps needed to achieve this goal. The plan is characterized by the ambiguity in the definitions, lack of sequentially in the various actions, the laxity in the definition of the strategic objectives and the absence of deadlines to contextualize the different actions.[117] The financial resources that are needed for re-directing public policy on mental health toward a model of guarantor of human rights are still below the minimum established by the LNSMA (10%); the vast majority (80%) is still being destined to sustain substantial expenditures that large single-specialty psychiatric hospitals generate.[118]

Questions for the State

1. What concrete measures is the State taking to prevent, eradicate and punish human rights violations committed in contexts of psychiatric confinement?
2. What concrete measures is the State taking to prevent indefinite periods of institutionalization of people with psychosocial disabilities in psychiatric institutions for social reasons?
3. What concrete measures is the State taking to prevent, eradicate and punish the use of non-consensual, medically unnecessary and/or potentially irreversible harmful medical practices to persons with psychosocial disabilities?
4. How has the State formalized the documentation and investigation pertaining to the suspicious deaths within the framework of hospitalization for psychiatric reasons?
5. What progress has the State made in the optimization of the registry of relevant information on persons with psychosocial disabilities institutionalized for psychiatric reasons?
6. How has the State implemented effective, efficient, rigorous and general monitoring of the situation of persons hospitalized in public and private institutions for psychiatric reasons?

---

[115] To date, only the provinces of Buenos Aires, Chaco and Santa Cruz have formed their respective mental health review board. In June 2015, an advocacy event of the local review boards was held from a perspective of participation of civil society, with the participation of representatives of the State and organizations of civil society from 15 provinces and the city of Buenos Aires, where the political will of different governmental and social sectors were expressed about the formation of local bodies. The progress made in each jurisdiction was assessed and commitments were made to actively promote the necessary actions to create a local board. Las memorias del encuentro están disponibles en: http://goo.gl/pEuWIZ

[116] National Mental Health Plan (2013) of the National Health Ministry. Available at: http://goo.gl/6WkuA5

[117] In the chapter on mental health of CELS 2015 annual report, a detailed analysis of the National Mental Health Plan was conducted. Available at: http://goo.gl/A7vRQd

[118] In CELS 2015 annual report, a thorough analysis of the budgetary distribution in mental health between 2010 and 2014 in the city of Buenos Aires was conducted; two key conclusions emerge from this: the percentage of the health budget does not reach the minimum of 10% set by the LNSMA, and of the total allocated, 80% is destined to the financing of the four main single-specialty hospitals and the rest to outpatient care programs; funds were not allocated for community programs with a social inclusion perspective. Available at: http://goo.gl/A7vRQd Another study on this subject was conducted by ACIJ and REDI: http://goo.gl/KvRVcU

7. What criteria has the State established for the authorization and supervision of these institutions?
8. What concrete measures is the State taking to promote the creation of the mental health review boards in those provinces where they have not yet been formed?
9. What concrete measures is the State taking to ensure persons with psychosocial disabilities a homogeneous enjoyment of their rights included in the CRPD, the LNSMA and other regulations in every jurisdiction nationwide?
10. How has the State implemented the generation of efficient spaces of inter-institutional and inter-sectoral articulation for the design, monitoring and evaluation of public policies for mental health?
11. How has the State implemented efficient spaces for dialogue and participation of civil society, and particularly groups of people with disabilities and their families, in the design, monitoring and evaluation of public policies for mental health?
12. What mechanisms is the State using to plan the implementation process of the rights contained in the mental health regulation?
13. What concrete measures is the State taking to ensure a uniform implementation of the LNSMA and the CRPD in every jurisdiction nationwide?

Recommendations to the State

1. Use public policy to provide the material, human and social conditions necessary to avoid prolonged hospitalization of persons committed for psychiatric reasons and that those who are already in that situation obtain additional State measures so that they can reverse that reality.
2. Generate effective controls and protocols to prevent medical treatments in the context of psychiatric care from constituting acts of torture and cruel, inhuman or degrading treatment (e. g., electroconvulsive therapy, psychosurgery, physical restraints, medicated containment, etc.) in regard to their mode of management and their effects.
3. Create an efficient mechanism of rigorous record keeping of relevant information of persons hospitalized for psychiatric reasons.
4. Establish a mechanism of registration of deaths and criminal investigation into their causes as State policy for all deaths that occur in contexts of psychiatric confinement.
5. Generate an efficient mechanism for the comprehensive monitoring of the living conditions of persons institutionalized for psychiatric reasons.
6. Establish and implement rigorous criteria for the authorization and supervision of public and private institutions that provide psychiatric institutionalization.
7. Implement a national and inter-sectoral program for the promotion of the creation of mental health review boards in every province nationwide.

***Debts in moving towards the total replacement of crippling legal measures and single-specialty psychiatric hospitals* - (Art. 14, 17 and 25).**

The Argentine government, in addition to maintaining asylum confinement in psychiatric hospitals at the center of public health policy for people with psychosocial disabilities, who enter and remain in that circuit mainly due to social conditions, also supports a number of protective and incapacitating legal measures, in addition to the obstruction of the possibilities of this group to live in dignity and insert themselves in the community.

In the most recent reform of the Civil and Commercial Code of Argentina which came into effect on August 1, 2015, still includes the possibility of legally restricting the exercise of the legal capacity of persons with psychosocial

disabilities[119]. The institutional adjustments generated as a result of the enactment of the new code vary in different jurisdictions of the country,[120] although in general they are characterized by a nominal change in positions and the reallocation of duties to existing entities,[121] However, judicial officials (guardians) are still being designated via a judgment to play a substitute role in exercising the legal capacity of persons with disabilities, for whom this right is restricted.

Questions for the State

1. What executive, legislative and judicial measures has the State taken to comply with its obligations in order to guarantee people with psychosocial disabilities the rights to equality before the law, the full recognition of their legal capacity and access to justice?
2. What executive, legislative and judicial measures has the State taken to build support systems so people with psychosocial disabilities can make decisions based on a non-substitute nor guardianship model?
3. What concrete measures has the State taken to gradually replace single-specialty psychiatric hospitals by focusing on community mental healthcare units? How many of these types of hospitals have been replaced to date?
4. What measures is the State taking to ensure an adequate interpretation of the National Civil and Commercial Code in regard to informed consent and support systems?

Recommendations to the State

1. Implement executive, legislative and judicial measures needed to guarantee people with psychosocial disabilities the rights to equality before the law, the full recognition of their legal capacity and access to justice.
2. Strengthen the operational capacity of the mechanisms of inter-institutional and inter-sectoral articulation for the design, monitoring and evaluation of public policies for mental health.
3. Strengthen and deepen the level of dialogue, consultation and participation of civil society organizations, particularly groups of people with disabilities and their families, in the design, monitoring and evaluation of public policies for mental health.
4. Create a national mental health plan aimed at the fulfillment of the rights contained in the LNSMA and the CRPD, with a perspective and federal scope and active participation of civil society organizations.

XIV. FREEDOM OF WORSHIP AND PROHIBITION OF ANY DEFENSE OF ANY NATIONAL, RACIAL OR RELIGIOUS HATRED (ART. 18 AND 20, ICCPR)

Over the 22 years since the bomb attack on July 18, 1994 on the headquarters of the Argentine Israeli Mutual Aid Society (AMIA, for its initials in Spanish) and the Delegation of Israeli Argentine Associations (DAIA, for its initials in Spanish), which killed 85 people and injured more than 700, the judicial investigation was developed in the middle of a web of local and international political interests, which undermined the quest for justice and enjoy impunity to

[119] Although the reform of the National Civil and Commercial Code aimed to specifically make progress in regard to the recognition of rights of persons with disabilities by introducing the figure of support systems, these are contained in the section that refers to the restriction of legal capacity, which does not clearly exclude them from other measures embedded in the guardianship logic. This ambiguity in the definitions implies the need of normatively regulated support systems from the perspective outlined by CRPD and undertake the adaptations of other related regulations also in that sense.

[120] An interesting step forward in this direction was the creation of an interdisciplinary team for the evaluation of people with cases involving judicial determination of legal capacity within the scope of the National Office of Mental Health and Addictions. This responded to the need to generate an alternative evaluation in line with LNSMA's guidelines—concentrated on exercising the capacity through decision-making with support—in the face of serious deficiencies of the official expert bodies in that regard. As of January 2016, by internal order of this office, the duties of that team were suspended and they were ordered to return more than 800 records that were in the process evaluation to the courts of origin. This is the setback for a valuable initiative linked to the possibility of an interdisciplinary and focused evaluation into the full exercise of their legal capacity.

[121] Article 46 of the Organic Law of the Public Defense Ministry 27.149/2015 establishes the duties and powers of the public defenders (guardians), including those assigned simultaneously to "exercise a technical defense," "exercise the duty of representation" and "exercise a support function" in the context of processes of restriction of the exercise of legal capacity. The allocation of these duties does not distinguish between a trustee-substitute role and a support role according to CPDP provisions.

the present day. The case was mired in political fights, judicial internal conflicts, clashes between domestic and foreign intelligence and the ineptitude and corruption of the federal security forces, which hindered the clarification of the facts.

Not only was the attack not prevented due to serious failures of the intelligence apparatus but also the State was unable to investigate and to find out the truth and give some sort of response and reparation to the victims. The participation of intelligence agents in the investigation revealed the relations between the political system and the judicial branch of the intelligence and security forces, and revealed the state of profound crisis of the criminal investigation system when it must face situations involving medium or high complexity; for example, the involvement of a criminal organization or the State.

As the Committee is aware, the oral proceedings during which the alleged "local connection" of the attack were completed on October 29, 2004 with the acquittal of the accused and the annulment of all acts of the former judge, Juan José Galeano, due to the serious irregularities identified in the investigation. The Inter-American Commission on Human Rights (IACHR) recorded the irregularities in a report prepared by Commissioner Claudio Grossman, who acted as an observer of the trial, after a petition was filed in 1999 by the victims that form part of Active Memory (*Memoria Activa*), with the sponsorship of CELS, due to the lack of prevention and the absence of justice.

Many of these irregularities constitute allegations for cover-ups that are currently being discussed at oral public proceedings (underway since August 2015), against the former Argentine President Carlos Menem; his then Secretary of intelligence, Hugo Anzorreguy; the former judge in the case, Juan José Galeano, and prosecutors Mullen and Barbaccia; as well as former leader of the Jewish community, then President of DAIA, Rubén Beraja, among eight other defendants. The criminal complaint for the cover-up dates back to 1997. However, after many long years of tireless complaints and active participation of the victims, driving the investigation forward, just last year a date was set to start the trial, in part as a reaction to the political situation stemming from the death in 2015 of Prosecutor Alberto Nisman, who was in charge of the entire investigation. The investigation into the cause of his death is ongoing although the information known so far would indicate that there is no participation of third parties at the time of the shooting and that it is a case of suicide.

It is worth mentioning here the recognition of international responsibility for the lack of prevention and investigation into the attack conducted by the Argentine government under Decree 812/05, within the context of a petition filed by the victims association Active Memory[122] and CELS before the Inter-American Commission on Human Rights. Unfortunately, to this day, many of these commitments still have not been implemented. They include strengthening the criminal investigation into the attack and its cover-up. The death of the prosecutor illustrated, once again, the problems in the federal criminal investigation system caused by the fighting and conflicts between political power and the justice system. Furthermore, after his death, major deficiencies in the investigation carried out over the past 10 years were revealed.

Transparency in the management of reserved funds from the Secretariat of State Intelligence was not met either. In January 2015, a reform of the law of intelligence was undertaken, which involved general principles to ensure transparent use of AFI resources and to achieve greater control over reserved funds, which represented a first step in the fulfillment of that point of Decree 812/2005. Furthermore, in July 2015, regulatory decree No. 1311/15 regulated administrative procedures so that all costs of reserved funds are recorded. For the first time, it was established that secrecy was not the rule of the administrative and budgetary structure of the central intelligence agency but rather an exception when certain issues require it. However, on Monday, May 9, 2016, Decree No. 656/2016 was issued repealing the "Management Regime of AFI funds" created by Decree 1311/15, on the grounds

[122] It is an organization that represents families and friends of the victims of the attack.

of "hastening the regular administrative situations of management," which represented a strong decline in the fulfillment of the State's international commitment.[123]

Questions for the State

1. What measures have been taken to ensure justice for the victims and their families and for the irregularities committed within the framework of the State's investigation of the attack? How will it comply with its commitments made in Decree 812/05, which recognized its international responsibility for the attack and the irregularities committed within the framework of the State's investigation of the attack?
2. What measures and policies ensure the victims and their families the right to the truth in respect to the classification of intelligence files and diplomatic cables linked to the attack?
3. What are the concrete measures to be taken in the management of the intelligence activity to align them with the international standards and the principles established by Law 27.126?

Recommendations to the State

1. Carry out all measures to ensure the victims and their families the right to truth and justice in regard to the attack as well as the irregularities committed within the framework of the State's investigation.
2. Ensure the transparency of the intelligence activity and declassification of information (unrelated to operational issues requiring secrecy for security reasons) to comply with international standards in the matter and Law 27.126.

XV. MECHANISMS FOR COMPLYING WITH DECISIONS OF INTERNATIONAL HUMAN RIGHTS ORGANISMS.

As we highlighted in our last report to the Committee, one of the major challenges faced from the point of view of the internal implementation of international human rights law and the legitimacy of international mechanisms of international protection is to achieve a mechanism wherein decisions of the international or regional human rights protection organizations and entities are complied with. Undoubtedly, the federal structure of the Argentine State partly conditions the way that international decisions are complied with. However, this distribution of powers between the federation and its component units does not relieve the federal State from adopting--when it cannot do so through its territorial units--the necessary measures to ensure that the rights recognized by human rights treaties are effectively respected. It is unacceptable that the implementation of reports, statements or concluding observations made by the international human rights organisms is subject to the discretionary will of autonomous governments or the partisan identity or political affinity between local representatives and the federal government. So far, **procedures of intergovernmental coordination and articulation between the national government and the provinces have been based on "ad hoc" responses, case by case, without being able to establish a uniform practice determining responsibilities between the Federal State and the provinces.**

The federal government must have the sufficient means and resources to ensure that the provisions of ratified international human rights instruments are respected in every province in provincial legislation and in practice; so that the government should equip itself with the necessary tools to require full compliance by the autonomous administrations; and establish monitoring mechanisms so that the recommendations and respective decisions are respected.

Argentina still does not have a mechanism or institutional procedure to implement the decisions of the organs of protection of human rights and, thereby, achieve effective protection of the rights of persons.

[123] More information at: https://www.facebook.com/notes/cels-centro-de-estudios-legales-y-sociales/sistema-de-inteligencia-los-fondos-de-la-afi-bajo-secreto/1017077351680108

Questions for the State

1. What measures does the State plan to adopt in order to promote the creation of an institutional mechanism of compliance with international decisions in the domestic sphere?

Recommendations to the State

1. Establish an institutional compliance mechanism with the decisions made by international organs that protect human rights.