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)

EXECUTIVE SUMMARY[1]

I. PRELIMINARY STATEMENT

The report presented by the Argentine State 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 enquire deeply into the public policies being conducted by the new administration to comply with the obligations of Argentina set forth in the ICCPR.

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

With a strict compliance with due process and full enforcement of defendants' right to defense, judicial investigations have been opened in almost all Argentine provinces in the past. In the last 10 years, 156 trials were held and completed, convicting 669 persons while 62 were acquitted.

In November of 2015, the report "Corporate responsibility in crimes against humanity: repression of workers during State terrorism" was made public. It provides 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, the National Congress created the **Bicameral Commission for Identifying Economic Complicity during the Last Military Dictatorship** that will have the goal of preparing a report with participation of civil society regarding the 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. The creation of this Commission was supported by special rapporteurs of the United Nations Human Rights Council. **However, unfortunately this Commission has not yet been formed and it is still uncertain whether it will actually be implemented**.

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

[1] In order to be brief, the executive summary does not contain the footnotes that are included in the main report. Please refer to the main report for any clarification. Also, **the main report contains suggested questions and recommendations in each section.**

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.

Regardless of the progress described above, given the advanced age of both defendants and victims, it continues to be worrisome the **slow progress in the cases** at their different stages, including appeals, particularly in provinces such as Mendoza. As of March 2016, 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. 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. It is thus necessary to implement the Federal Criminal Courts for Oral Trials. Doing so would alleviate the situation and speed up pending trials. This situation is replicated in most provinces. As of March 2016, only 16% of rulings have been **confirmed** by the Supreme Court.

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 was dissolved. This office was in charge of answering questions from the judicial branch on the action of security forces during the dictatorship. Furthermore, the "Dr. Fernando Ulloa" Center for Assistance to Victims of Violations of Human Rights, 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. Moreover, about 500 workers at the Ministry of Justice were terminated. The Ministry of Justice's Truth and Justice Program, 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.

All these government offices were in charge of memorial and human rights policies. These measures are a major concern that the Argentine State should attend to.

Among the measures adopted to prevent recurrence of intimidations and re-victimization of witnesses who are survivors of the last 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, 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, victims of crimes against humanity are alarmed that a former army member should be in charge of their safety and physical integrity.

In relation to the disappearance of Jorge Julio López, no progress has been made in the investigation. His whereabouts have not been determined and no one has been held responsible for the situation.

III. INSTITUTIONAL VIOLENCE. DEATHS AT THE HANDS OF THE SECURITY FORCES. ENFORCED DISAPPEARANCES. (ART. 6 ICCPR)

2014 was the year with most deaths caused by security forces in the Buenos Aires Metropolitan Region (RMBA, according to its initials in Spanish) since 2003. The 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 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 is of great concern that the **provincial government publicly reported this increase as a positive situation**. 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.** In contrast to the enforced disappearances in Argentina during State terrorism, which occurred in the context of massive human rights violations managed from 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.

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 the provincial police participated in his disappearance. The investigation of the disappearance 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 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. Moreover, in May 2015, after 6 years of investigation, on-duty 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. 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.

Other cases of concern

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

Gabriel Solano, from 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 belonging to the Rio Negro Province Police, and was placed in a police car with unknown destination. The judicial officers involved initially supported the police version claiming that Gabriel had been evicted from the nightclub for drunkenness and then was released at the corner by the Brigade. 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. Gabriel and some of his companions had on several occasions lodged complaints about the precariousness and labor exploitation they were subject to. The workers had organized a protest for November 7, one day after Gabriel Solano's disappearance. Early 2012, when a new government took office in Rio Negro Province, the judicial case began to make progress. 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 of the same year. 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

On Friday, August 14, 2015 at 5:45 a.m., Gerardo "Pichón" Escobar left the nightclub "La Tienda" located in 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 where he was beaten in a cell. 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.**

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 allows a series of measures to be taken to increase armed forces firepower. At the same time, the declaration of emergency weakens the control system for government procurement. 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.** 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". 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**.

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

Arbitrary incarceration of social leader in the Jujuy Province.

Milagro Sala is the leader of the Tupac Amaru Neighborhood Organization. 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, 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.

Likewise, it must be emphasized that before her arrest, Milagro Sala was elected as parliamentarian of Parlasur. In accordance with national law No. 27.120, this position guarantees immunity regarding arrest and expression enjoyed by congressional representatives in the Republic of Argentina. 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 Parliamentarians requested intervention in the case by the National Attorney General's Unit against Institutional Violence. 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.

Police faculties of detention.

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. 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 searches 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.

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. There is a diverse range of norms; of these some give the police the power to arrest any individual for several hours for no other reason than to ascertain their criminal background. 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. 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**. 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 discretion as long as its exercise is essential *"for urgent motives of general interest regarding public order and security and the prevention of crime."* 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 TSJ judges failed to analyze the standards established by the Inter-American Court of Human Rights in the case "Bulacio vs. Argentina" 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. 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.

The abusive use of pretrial detention

Both at the national level and in the Province of Buenos Aires, grossly abusive use of pretrial detention continues to be made. According to official information, 60.8% of the individuals deprived of their liberty in the Federal Penitentiary Service (SPF) still have no final judgment. 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. 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.

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

Population growth at the Federal Penitentiary Service (SPF) 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. 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. 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.**

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) is overpopulated because levels of imprisonment have risen in recent years. This is a consequence of several issues, including implementation of measures such as the "Public Safety Emergency" by the provincial Executive Branch in April 2014, which increased police powers for making detentions; the Office of the Attorney General limiting judicial officials' authority to grant releases; legislative reforms toughening the penal system 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**. Because the government does not report SPB capacity, it is impossible to calculate current overpopulation. 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. 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, 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. 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. There are grave problems in State liability due to lack of health care. 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.**

Situation of women deprived of liberty

In Argentina, the female population jailed for drug-related crimes increased by 271% between 1989 and 2008. 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. Another issue to highlight is the incarceration of women with their under-5-year-old children involves constant violation of their rights.

Detention at police stations

It is illegal to hold persons at police stations because the buildings are inappropriate for long-term detainment. 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" 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. In December 2015, the Supreme Court of Buenos Aires Province 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". 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.

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

Torture is still widespread in places of detention in Argentina. According to the last official report available from the National Register against Torture (RNCT) of 2014, 72% people surveyed (876 of 1208) in federal penitentiary service (SPF) establishments indicated that they had suffered between one and three physical assaults during the two months prior to the interview.

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 by completely naked with curls and in fewer cases, partially naked. Despite complaints and recommendations made by human rights organizations at a federal level, the Procedures Manual for Searches from the year 1991 allows the use of invasive inspections of inmates and their families, including the display of the genitals, buttocks, annus, and vagina.

According to the data from the Court of Cassation of the province of Buenos Aires, between September and December 2015, it 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. 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.

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 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. **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.**

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. 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 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.

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.

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.

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. 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” and an order for prosecutors to investigate all deaths that occur in provincial prisons. 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. In four years with the Working Group, the provincial General Attorney´s Office was not able to 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 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.**

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**.

National Preventive Mechanism

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.** Moreover, **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. 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.

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. **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.**

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

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. At the end of 2015, during the new government´s first month, it issued three decrees that **completely disarticulated Law 26.522 of Audiovisual Communications Services** (LSCA).The process to dismantle the LSCA began the same day that the new government came into office, with the Emergency and Necessity Decree (DNU) 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. Then, the government issued Decree 236/15 ordering its intervention 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.

Finally, by a the Urgency and Necessity Decree 267/15 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.

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 Executive branch of the government, 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. 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. **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**.

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

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. 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 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. **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.**

In the few months since the new government 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." 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 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. 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.

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

GENDER-BASED VIOLENCE

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" 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: the need for reliable information for policy planning; an integrated approach to gender-based violence that goes 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. **However, despite the claims and various government announcements, there is no single, systematic and orderly registry that ensures the availability of official statistical information about gender-based violence**.

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. **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.**

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. This report is submitted to the Committee along with this document.

X. 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 and the rights of migrants.

XI. RIGHTS OF PERSONS WITH PSYCHOSOCIAL DISABILITIES (ART. 2, 9, 14, 16 AND 26, ICCPR)

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.

Despite the regulatory progress made, as has been documented systematically by different government agencies, 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 is a naturalized practice of illegitimate deprivation of liberty. 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, such as electroconvulsive therapy (ECT), as well as in the rigorous control over the administration of medication.

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**. 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. 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).

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.** Meanwhile, in addition to these serious situations, the State has not produced measures for LNSMA's full implementation. To date, the only operating plan 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 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.

Meanwhile, 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. The institutional adjustments generated as a result of the enactment of the new code vary in different jurisdictions of the country, although in general they are characterized by a nominal change in positions and the reallocation of duties to existing entities, 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.

XII. 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 the present day. 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. Many of these irregularities constitute allegations for cover-ups that are currently being discussed at oral public proceedings (underway since August 2015). 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.

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