ARGENTINA

Follow-up - Jurisprudence
   Action by State Party

CAT A/45/44 (1990)

Annex VI

Reply from the Government of Argentina

In respect of the request of the Committee against Torture for information contained in paragraph 10 of the Committee's decision on admissibility in communications Nos. 1/1988, 2/1988 and 3/1988 (see annex V above), the following reply from the State party was transmitted to the Committee under cover of a note from the Permanent Mission of Argentina to the United Nations Office at Geneva, dated 12 March 1990:

The claims for damages lodged by victims of events that occurred while the last de facto government was in power are of a comprehensive nature as regards the subjects covered. In other words, no records are kept from which to determine how many claims were based on acts of torture, although most of them were.

Such claims are heard in the federal courts throughout the country.

Information on cases within the jurisdiction of the federal capital is centralized and readily accessible, since in all cases the National Treasury Attorney's Office has taken responsibility for representing the State, in accordance with the provisions of Decree No. 1895/84.

In 229 cases in which the National Treasury Attorney's Office represented the State pursuant to the above-mentioned Decree, actions were brought for damages or compensation for moral injury as a result of detention in the following circumstances: deprivation of liberty in the custody of the National Executive Power, deprivation of liberty without action by the National Executive Power, disappearance of persons and inclusion in the institutional acts of 1976.

In 92 cases, the action was declared to have lapsed on the grounds that the claimants had not prosecuted it. Thus, out of an effective total of 137 cases, in 30 the application of the statute of limitations claimed by the State was rejected; some of the cases have already ended with a ruling in favour of the claimants and in others substantive proceedings are continuing, with the strong likelihood of a decision favourable to the claimants. Sixty-one claims fell under the statute of limitations and in one other a plea of res judicata was accepted. A further 45 cases are sub judice.

In the cases brought before the courts, representation of the State was not centralized but entrusted to members of the Public Prosecutor's Department in the various courts. Consequently information on these cases is not at present available. The Argentine Government would be grateful if the Committee would inform it of its interest in this respect in order that it may make appropriate arrangements for this purpose.

In any event, and without prejudice to what was stated in the previous paragraph, the claims in question have the same characteristics as those heard in the course of the federal capital.

On 30 October 1986, the National Congress adopted Act No. 23,466, which was actually promulgated on 10 December 1986. Under this Act a non-contributory pension is awarded to relatives of missing persons. The beneficiaries of this pension are children under 21 years of age who produce evidence of the enforced disappearance of one or both parents (which occurred before 10 December 1983) in a complaint filed with a competent judicial authority, CONADEP, or the Under-Secretariat for Human Rights of the Ministry of the Interior. The benefit also extends to the spouse, or a person cohabiting in apparent matrimony for at least five years immediately prior to the disappearance, together, with minor children if any; parents and/or siblings who are unfit for work and are not engaged in any gainful activity or in receipt of any retirement pay, pension or non-contributory benefits; and minor siblings who have lost both parents and who habitually lived with the missing person before his disappearance.

To date 4,856 pension applications have been made under Act. No. 23,466. Of these, 3,558 have been granted, 160 have been rejected on the grounds that they did not fall within the provisions of the Act, and 1,138 are being processed.