ARGENTINA

CAT A/45/44 (1990)

150. The Committee considered the initial report of Argentina (CAT/C/5/Add.12/Rev.1) at its 30th and 31st meetings, held on 16 November 1989 (CAT/C/SR.30-31).

151. The representative of the State party introduced the report and stressed the determination of the constitutional Government of Argentina faithfully to fulfil its undertakings with respect to human rights at both the domestic and the international levels. In connection with the Convention, she informed the Committee about the Latin American course on the implementation of human rights instruments and the administration of justice which had been held at Buenos Aires in October 1989 with the support of the United Nations. She also referred to the main legislative measures taken by Argentina to abolish torture and to make it a criminal offence, and pointed out that Argentina had acceded to the Inter-American Convention to Prevent and Punish Torture, which had entered into force on 30 April 1989. Furthermore, her Government had co-sponsored the resolutions adopted by the Commission on Human Rights concerning torture and had supported the action of the Special Rapporteur of the Commission on Human Rights on questions relating to torture. Before the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had entered into force for Argentina, the Supreme Court had declared that it had full force in creating international responsibility for the State.

152. The members of the Committee welcomed the report, which gave evidence of a return to a legal system respecting human rights in Argentina after a distressing period of dictatorship, and thanked the representative for her introductory statement.

153. Questions were raised by members of the Committee with regard to the general framework in which the Convention was implemented in Argentina. It was noted that articles 3, 8 and 9 of the Convention did not seem to have any equivalent in Argentine legislation, and it was asked whether international instruments such as the Convention were directly applicable under the domestic law, whether the current national Constitution was the same as that in effect under the military regime, what was the relationship between the Convention and the Constitution and between the Convention and the provincial constitutions, how long the 1949 Geneva Conventions and their 1977 Additional Protocols relating to the protection of victims of armed conflicts had been in force in Argentina, how they were implemented and whether the national and provincial constitutions were in conformity with those instruments. It was recalled that States parties had an obligation to take preventive, enforcement and reparative measures under the Convention. In that connection, it was asked what the position of the Argentine Government was with regard to acts perpetrated before the entry into force of the Convention on 26 June 1987, whether it considered that the Convention did not apply to prior acts of torture and whether Argentina experienced any difficulties in carrying out its obligations under the Convention. It was also asked whether the provisions of the Penal Code mentioned in paragraph 15 of the report were not incompatible with those of Act No. 23,097 of 1984 amending the Penal Code .

154. With respect of article 2 of the Convention, members of the Committee wished to know whether the prohibition of torture in Argentina was as broad as envisaged under the Convention, especially in relation to threats to third parties, whether any provision had been made for direct reference to the Convention in the courts, and what new laws, guidelines and judicial sanctions had been put in place to prevent acts of torture. They also asked whether the Under-Secretariat for Human Rights established by the Government included lawyers, whether it was competent to carry out investigations concerning violations of human rights and, if so, whether there had been any conflict with other State bodies, including the police, with similar responsibilities. In connection with paragraph 3 of article 2 of the Convention, reference was made in particular to Act No. 23,521 of 4 June 1987, and it was asked whether the so-called "due obedience law" was in conformity with the Argentine Constitution in force at the time of its enactment and with the Geneva Conventions to which Argentina was a party, and how many people responsible for acts of torture had been arrested, detained or tried before and since the promulgation of Act No. 23,521.

155. With regard of article 3 of the Convention, it was inquired whether Argentina had taken specific measures to prevent extradition or refoulement of persons to another country where there was danger of torture being inflicted. In that connection, the attention of the representative of Argentina was drawn to the specific case of five persons who opposed extradition to Chile because they alleged that they risked being tortured in that country.

156. With reference to article 4 of the Convention, it was asked whether there were any statistical data concerning the number of government officials who had been prosecuted for allowing or perpetrating torture, what was the maximum term of imprisonment laid down in the Penal Code for the offence of torture and whether life imprisonment could be imposed. It was noted that penalties were provided when the offence was constituted by failure on the part of a judge to prosecute and punish the crime of torture, and it was asked who initiated proceedings against the judge in such a case and in what court, and whether judges had any kind of immunity.

157. In connection with article 5 of the Convention, more information was requested on how Argentina assumed a genuine universal jurisdiction over acts of torture and on the necessary judicial measures to be taken to that effect. It was noted, in particular, that the Penal Code also applied to crimes committed abroad by agents or employees of Argentina authorities in the discharge of their duties, and it was asked who brought cases against such persons before the Argentine courts and whether such a case had yet been brought.

158. In connection with article 6 of the Convention, it was asked who was empowered to carry out detentions or arrests after a complaint had been received against officials having that authority, and whether there were any time-limits for pre-trial detention without the right to correspondence and visits.

159. With regard to article 7 of the Convention, it was asked whether Argentine law provided that Argentine nationals could not be extradited for acts of torture and, if such a provision existed, what authorities in Argentina were competent to judge relevant cases.

160. Turning to article 11 of the Convention, members of the Committee wished to receive information about the treatment, rights and privileges accorded to persons in custody and the number

of cases of torture or inhuman or degrading treatment which had been brought before the courts. They also wished to know whether systematic inspections were carried out in places of detention in Argentina and whether the civil courts exercised effective control over military personnel, particularly when such personnel held individuals in custody.

161. With regard to article 12 of the Convention, reference was made to information received by members of the Committee about a confrontation between civilians and members of the armed services that had been taken place in La Tablada, in the province of Buenos Aires, on 23 and 24 January 1989. According to that information, the confrontation had resulted in deaths, and bodies bearing marks of torture had been found. It was asked in that connection whether the information was accurate and whether the offenders had been brought to trial.

162. With reference to article 14 of the Convention, members of the Committee wished to know what action Argentina had taken in the area of the psychiatric rehabilitation of torture victims of the earlier period of dictatorship, whether there was at present, after the promulgation of the "due obedience law" and the "finality act" of 24 December 1986, any way for those who had been victims of torture during the prior period to obtain redress, whether amnesty had allowed torture victims to seek civil compensation and, if so, in how many cases civil compensation had been granted for acts of torture committed under the dictatorship. It was also asked whether there was a possibility of asking for civil compensation before a criminal court as well as civil court, whether the victims were required to institute civil proceedings within prescribed time-limits in order to obtain compensation, or whether the Argentine Government, recognizing that it had a civil responsibility towards the victims, had undertaken to compensate them all in one form or another. Furthermore, members of the Committee wished to know whether, in addition to the financial compensation provided for in article 29 of the Argentine Penal Code, there was a possibility of medical rehabilitation for torture victims, whether positive law in Argentina provided for compensation to persons who had been in pre-trial custody or had benefitted from an order dismissing the proceedings when they had suffered serious prejudice, whether the two bills proposing a reform of the criminal procedure which had been submitted to the National Congress provided for compensation for victims of torture, and whether systematic efforts were being made by the Government to document and analyse what had happened to victims of torture .

163. With reference to article 15 of the Convention, it was asked whether there was a penalty in law for obtaining confessions by force or by torture.

164. In reply to the questions raised by the members of the Committee, the representative of Argentina stated that, under Argentine legislation, any individual could directly invoke the Convention before the courts since, under article 31 of the Constitution, it formed part of domestic legislation on the same footing as the laws of the nation. The representative further explained that article 5 of the Constitution established the conditions under which the provincial constitutions were safeguarded in so far as they conformed to the national Constitution. The Constitution at present in force was the same as during the military dictatorship from 1976 to 1983, but its application had then been modified by a national reorganization law. The Geneva Conventions of 1949 had been ratified by Argentina on 18 September 1956 and the Additional Protocols of 1977 on 26 November 1986. Since there was at present no international or national armed conflict in Argentina, only the provisions of those Conventions concerning the promotion of international humanitarian law were

in effect. With regard to acts perpetrated before the entry into force of the Convention for Argentina, the representative stated that, under article 18 of the Constitution, international instruments, particularly those containing penal provisions, were not applied retroactively, and that that was also in conformity with article 28 of the Vienna Convention on the Law of Treaties. With regard to the apparent conflict between the Penal Code and Act No. 23,097, the representative explained that, although the norms of both were applicable, only one would be applied in practice. In reality, the provisions of the Act were more specific and prevailed over the general provisions.

165. Turning to article 2 of the Convention, the representative stated that the domestic legislation of Argentina contained provisions of much wider scope than those of the Convention; under the Penal Code, in particular, acts of torture were assimilated to acts of homicide. She then explained that two Under-Secretariats for Human Rights had been established in Argentina primarily to ensure that the investigations into cases of disappearance and abduction of Argentine children were continued and to locate and identify any bodies found. They had also been set up as a preventive measure to ensure that what had taken place in the country in the past never occurred again. She provided detailed information on the activities of the Under-Secretariats and pointed out that the Under-Secretariat for Human Rights established within the Ministry of the Interior was responsible for receiving and analysing reports of violations of human rights on the same footing as a police officer, a judge or a prosecutor, but that it did not conflict with other State bodies. It was one more link in the chain for receipt of complaints. The representative further stated that every piece of Argentine legislation was in conformity with the national Constitution and with the international instruments ratified by Argentina.

166. In connection with article 3 of the Convention, the representative provided detailed information on the case of the five Chileans detained in Argentina who had been in danger of extradition to Chile. She explained the nature of the offences they had committed and the sentences imposed on them by Argentine law, and stressed that the Argentine Government had granted all the persons concerned refugee status to protect them from extradition to Chile, where they would have been in danger of torture.

167. With regard to article 4 of the Convention, the representative informed the Committee that the offence of torture could carry a sentence of life imprisonment if the act had been particularly cruel and had led to the victim's death. In other cases, the penalty varied between a minimum of 8 years and a maximum of 25 years of imprisonment. Two new articles, 144 quater and quinquies had been introduced in the Penal Code by Act No. 23,097, dealing with various derelictions of duty by officials, including judges, with respect to torture. However, judges could be prosecuted only if the immunity attached to their function was lifted.

168. Referring to article 5 of the Convention, the representative stated that the Argentine Supreme Court of Justice had already had occasion to apply the principle of universality in the case of an offence covered by international instruments, but that it had not so far had to take a decision on any case of torture.

169. With regard to article 6 of the Convention, the representative stated that every citizen or inhabitant of Argentina who considered himself or a person he knew to be a victim of an offence could report that offence. Under article 257 of the Code of Penal Procedure, the maximum length

of pre-trial detention without the right to correspondence and visits was three days.

170. With reference to article 11 of the Convention, the representative quoted articles 677, 678 and 679 of the Code of Penal Procedure regulating the treatment of detainees in prison. She added that, upon instruction of the Federal Court, the supreme legal authority of Argentina, every detainee had to undergo a full medical examination at the time of his imprisonment on the order of the judge. Military courts dealt with offences of an exclusively military nature that were not covered by the Penal Code.

171. In connection with article 12 of the Convention, the representative provided detailed information on the confrontation of civilians and military forces in La Tablada. She stated that the attack had been carried out by 50 armed civilians against military installations to obstruct the maintenance of constitutional order and, on the pretext of defending it, to undermine the establishment. Upon complaint of some of the participants in the attack, and investigation had been ordered to establish whether there had been any unlawful violence or acts of torture and to punish any persons found guilty. The Committee would be provided with the full text of all the judgements rendered following the events of La Tablada.

172. With regard to article 14 of the Convention, the representative pointed out that the so-called "finality act" and the "due obedience law" only had the effect of limiting penal proceedings against individuals responsible for political offences. In fact, all unlawful acts committed on the order of a superior remained unlawful and the victims could take combined civil and penal action to obtain compensation even in the event of an amnesty. Under the Civil Code, the time limit for a civil action was two years. That limitation could be suspended in a case of physical incapacity on the part of the person concerned. The representative further explained that, except in one case, no civil proceedings had been instituted by persons who had been victims of torture under the military dictatorship in order to claim compensation, mainly because it was extremely difficult for anyone who had suffered torture to claim monetary compensation and also because victims did not wish to destroy themselves by reviving the memory of their suffering. However, some persons had instituted civil proceedings to claim compensation because they had been victims of unlawful detention. Furthermore, without prejudice to civil claims for compensation, the Argentine Government had passed an Act granting pensions to members of the families of disappeared persons. At the beginning of 1989, 4,800 applications for a pension had been submitted and granted. In general terms, compensation under the Penal Code and the Civil Code could also cover the cost of any medical treatment for the victim, and Argentine law also provided for the right to compensation for injury suffered by anyone because of his detention in custody if the charge against him had been dismissed. The proposed reform of the criminal procedure did not affect compensation for victims of torture.

173. In connection with article 15 of the Convention, the representative referred to legal provisions, in particular article 316 of the Code of the Penal Procedure, under which confessions made under torture or any type of physical or psychological pressure were considered null and void.

174. In concluding the consideration of the report, the members of the Committee expressed satisfaction at the measures that had been taken by Argentina in the field of legislation and organization to protect human rights and thanked the representative of the Argentine Government for the information provided. The members also noted with satisfaction that Argentina would

provide the Committee in writing with the statistical information it had requested and with the texts of the judgements rendered following the events of La Tablada.

CAT A/48/44 (1993)

88. The second periodic report of Argentina (CAT/C/17/Add.2) was considered by the Committee at its 122nd to 124th meetings, on 11 and 12 November 1992 (see CAT/C/SR.122, 123 and 124/Add.1).

89. The report was introduced by the representative of the reporting State, who stated that, in accordance with article 27 of the Vienna Convention on the Law of Treaties, Argentina gave precedence to an international convention to which it was a party when it was in conflict with domestic law. When Argentina ratified an international instrument, the provisions immediately became applicable by domestic administrative and judicial bodies.

90. The representative also provided information on various initiatives taken by his Government with regard to the training of prison staff, changes within the legal system, new administrative measures and the provision of compensation to victims of human rights violations.

91. With regard to the training of prison officials, he indicated that the curriculum designed for them included courses on constitutional law, ethics and human rights, and public and criminal law, and that their educational programmes were placing increased emphasis on teaching tolerance and respect for human rights and dignity.

92. Concerning legislative changes, the representative stated that Act No. 23,950/91 amending Act No. 14,467 on the treatment of prisoners stipulated that no individual could be detained without a court order. If the police had sufficient reasons to detain and individual, it could do so for no more than 10 hours to check his record, as against 48 hours previously. The Code of Penal Procedure provided, inter alia, that maximum period for which an individual could be held incommunicado had been reduced from 10 days to 72 hours. Detainees had the right to communicate with their defence counsel before being detained incommunicado. A medical examination was compulsory at the beginning of detention. The new Code of Penal Procedure also abolished the validity of "spontaneous statements" at police stations. The accused could make a statement only before a judge. The system for prison visits had been amended by the new Code, which had entered into force on 5 September 1992. The post of judge for the enforcement of sentences had been created to deal with problems in prisons, with the assistance of medical, psychological and social welfare experts who monitored conditions of detention in prison.

93. With regard to recent administrative measures, the representative made reference to decision No. 36/91, which contains a general instruction to the members of the Public Prosecutor's Office recalling that they must comply faithfully with their legal obligations with respect to the matters dealt with in the Convention. In addition, decision No. 2/92 had been adopted, under which a computerized register containing allegations of unlawful coercion had been established.

94. With regard to compensation for victims of human rights violations, the representative stated that under Act No. 24,043, compensation to victims of detention ordered by a military court had been granted to 8,200 persons. The total compensation had amounted to $700 million. Morever, under Decree No. 70/91, pertaining to the provision of compensation to persons detained by the

police, a total of $12 million was to be granted in 470 cases and half that amount had already been paid out.

95. The members of the Committee expressed their gratitude to the Government of Argentina for its timely report and to the Government's representative for his introductory statement. Nevertheless, they observed that more information was necessary on the implementation of the Convention at the provincial level and, in this connection, they requested clarification as to the awareness existing throughout the country of the State party's obligations under the Convention. In addition, they wished to know of any specific legislation or jurisprudence which had established the precedence of provisions of international instruments over those of domestic law, especially in view of information received that the Supreme Court had handed down certain judgements in which international conventions had not been given such precedence. Members of the Committee also made reference to the 1853 National Constitution and asked whether the State party intended to replace or amend it. In addition, they requested further information on matters relating to the independence of the judiciary, particularly with regard to reported shortcomings in the selection and promotion of judges, and asked whether any legislative measures were anticipated to reform such procedures. They also wished to receive further information on the effectiveness of the methods used by the office of the Attorney General of the nation to monitor the Government's powers in matters relating to the lack of jurisdictional response to complaints about torture-related crimes. Furthermore, member of the Committee wished to know whether any national human rights institution existed in Argentina and how it was composed and what the content was of recent reports of the National Department of Human Rights of the Ministry of the Interior.

96. Members of the Committee were particularly concerned at the apparent persistence in Argentina of ill-treatment and torture practised by sections of the police and armed forces and the apparent leniency shown by the authorities towards officials responsible for acts of torture. Reference was made, in this connection, to reports received from Amnesty International and Americas Watch, particularly with regard to the 733 allegations of ill-treatment and torture for the period 1989-1991 and that such victims appeared to be young, from poor districts and frequently dark-skinned or indigenous people. Other reports provided information about confessions obtained under torture from persons who had attacked La Tablada military barracks in 1989 and allegations of ill-treatment of detainees by the police in the capital and in Chaco and Mendoza provinces. In this connection, attention was drawn to mass media reports of the death of a 17-year-old person, Sergio Gustavo Duran, at Police Precinct No. 1 in Moron, Buenos Aires. Members of the Committee observed that intensified measures were required to deal with those situations and that those measures should focus on compensation of the tortured; punishment of the torturers; and education of the public in general and police and doctors in particular.

97. Concerning the implementation of the article 2 of the Convention, members of the Committee requested further information on the new Code of Penal Procedure, especially with regard to establishment of mechanisms for its application. They also noted that under that Code the period of incommunicado detention had been reduced from 10 to 3 days and they expressed concern both at the continued practice of incommunicado detention and at the inadequacy of the advance access to a lawyer as a means of protecting persons in such circumstances. In addition, members of the Committee recalled that derogations from certain provisions of the Convention were not allowed in times of state of emergency or siege, and asked for more information on the actions taken by

Argentina to ensure conformity with its obligations in this regard.

98. With regard to article 4 of the Convention, members of the Committee requested further information on the punishment of tortures, especially as information contained in the report indicated hat in one case the punishment provided for in article 144 (3) of the Penal Code had not been applied to the person found guilty of the crime of torture. In addition, attention was drawn to information about the participation of doctors in cases of torture and the need to punish such practitioners. Moreover, members of the Committee expressed concern as to whether the presidential pardon of October 1989, as applied to military officers who had committed human rights violations under the previous regime, was in strict compliance with the Convention. In illustration of this point, mention was made of two cases where investigations had not been pursued or where clemency had been granted before the holding of a trial.

99. Concerning article 10 of the Convention, members of the Committee emphasized the importance of introducing a medical ethics component into medical curricula as a means of preventing the practice of torture by doctors.

100. With regard to article 11 of the Convention, more information was sought as to the arrangement existing in Cordoba city by which lawyers could be present in all police stations and whether this arrangement was to be extended to other parts of the country.

101. In connection with article 12 of the Convention, members of the Committee drew the attention of the Government of Argentina to information received from Amnesty International and other non-governmental organizations on the alleged practice of torture during the period 1989 to 1991 and to their concern that some of the lower levels of the judiciary were failing to fulfil their obligations with regard to investigating into acts of torture. In this light, information was requested on the progress being made in police and judicial investigations into all those allegations.

102. Concerning article 13 of the Convention, members of the Committee sought additional information as to its implementation in practice, particularly with regard to a specific case brought before the court in the province of Mendoza.

103. With respect to article 14 of the Convention, members of the Committee requested further information on the provision of compensation to victims of torture. They also requested clarification as to whether legal provisions existed for paying compensation to the families of persons who had disappeared and to persons who had been detained and held at the disposal of the National Executive. Moreover, they asked why applications for compensation had to be submitted to the Ministry of the Interior for approval and whether judicial appeals against the Ministry's decision had been provided for. It was also stressed that, in addition to financial compensation, it was important for victims of torture to receive moral and medical compensation and treatment for the injury they had suffered.

104. Replying to the questions raised with regard to the legal framework for the application of the Convention, the representative of the reporting State explained that international conventions applied throughout the federal territory of Argentina and provincial jurisdiction was transferred to the federal level. International instruments ratified by Argentina were directly applicable in the courts

in the same way as domestic legislation and took precedence over it. In addition, he explained that, under new legislation, the system in force in the city of Cordoba, whereby lawyers could be present in police stations, would be extended to all parts of the country. He also indicated that the 1853 Constitution of Argentina fully guaranteed the rights of individuals and the freedom of citizens. Its article 18 prohibited the use of ill-treatment and torture and plans to amend that text were in the early stages. Concerning the procedure for the appointment of judges, the representative informed the Committee that judges were nominated by the executive through the Ministry of Justice and appointed by agreement of the Senate. To strengthen that procedure, a Council for the Judiciary had been set up, composed of officials who took part in the appointment and dismissal of judges. Regarding the matter of national institutions established for the protection of human rights, the representative informed the Committee that two governmental bodies existed to which non-governmental organizations and citizens could make appeals in the event of alleged violations of human rights. One was the General Department of Human Rights and the Status of Women of the Ministry of Foreign Affairs and Worship and the other was the National Department of Human Rights of the Ministry of the Interior. Those two bodies could refer complaints to the courts. The Report of the National Department of Human Rights of the Ministry of the Interior indicated that his Government was eager to conduct more efficient investigations of cases of unlawful coercion.

105. With reference to allegations of ill-treatment and torture reported by non-governmental organizations, the representative stated that he did not have the information necessary to provide a detailed reply. However, if Amnesty International had specific offences to denounce, it should apply to the appropriate authorities so that, if enough evidence could be collected to warrant a serious investigation, the cases would be followed up in the normal way and brought before the courts. He also indicated that his Government would reply in writing to the request for clarifications about the death of Sergio Gustavo Duran. In addition, he stated that the military personnel and police officers guilty of acts of torture at La Tablada in 1989 had been tried under ordinary law because the Defence of Democracy Act did not provide for penalties for such acts. As yet, not all sentences had been handed down and the Government of Argentina would communicate all relevant information to the Committee as soon as possible.

106. Concerning article 2 of the Convention, the representative referred to the new Code of Penal Procedure and explained that the Argentinian legal system had recently been thoroughly reorganized and that the relevant organization act had established a number of new courts. He also indicated that it had been necessary to proclaim a state of siege in the country on two occasions as a result of social tensions during the establishment of a fully democratic regime. The state of siege had not lasted more than 30 days and only freedoms of assembly and movement had been restricted. The state of siege had been declared only in certain regions of the country and article 4, paragraph 2, of the International Covenant on Civil and Political Rights, prohibiting derogation from certain fundamental rights, had been fully respected.

107. With regard to article 4 of the Convention, the representative indicated that he would refer to the competent authorities the question raised on the application of article 144 (3) of the Penal Code in the case mentioned in the report. He also agreed that doctors involved in cases of torture should not be allowed to go unpunished. With regard to the questions raised about the compliance of the presidential pardon of October 1989 with the provisions of the Convention, the representative stated that pardon removed the penal consequences without wiping out an offence or the infamy attached

to it.

108. In connection with article 10 of the Convention, the representative informed the Committee of the ethical training provided to doctors in Argentina. He also indicated that the University of Buenos Aires had created a chair of human rights in the School of Medicine and other faculties and that Argentina was one of the most advanced countries in that regard.

109. Regarding article 11 of the Convention, the representative explained that prohibition of access to persons being held in detention applied to members of the family and other persons, not to defence counsel. The new Code of Penal Procedure, which had reduced the period during which as person could be held incommunicado, provided that the first right of a detained person was to communicate with a lawyer, within 10 hours of his arrest.

110. In connection with articles 12 and 13 of the Convention and the concerns raised as to the non-fulfilment of the judiciary's obligations in investigating into acts of torture, the representative stated that judges had to enforce the laws as from the day following their publication; a judge who failed to do so was dismissed. With regard to the case brought to court in Mendoza, the representative informed that Committee that all the senior police officers of that Province had been dismissed.

111. With regard to article 14 of the Convention, the representative stated that the families and relatives of persons who had disappeared before 10 December 1983 received tax-exempt pensions once their claims had been made to, and approved by, a competent court. To date, 5,000 persons had received such pensions. In addition, under Decree No. 70/91, a compensation scheme had been set up for persons who had been detained and held at the disposal of the National Executive and for civilians who had been detained on the orders of the military courts before 10 December 1983. Such persons could claim for the benefits of the Decree provided that they had not received any compensation as a result of a court judgement. If a claimant's case did not correspond to the conditions of compensation laid down by the law, the claimant could appeal to the ordinary courts, which were not bound by pre-established time limits for the amount of compensation to be awarded. Additionally, victims who considered the compensation to be inadequate could appeal directly to the State of court. Under article 3 of Act No. 24,043, a claimant for compensation benefit could appeal against the partial or total rejection by the Ministry of the Interior of his application within 10 days to the Federal Administrative Court, which must then rule on the matter within 20 days.

Conclusions and recommendations

112. The Committee expressed its thanks to the Government of Argentina for having submitted its second periodic report within the time period stipulated in article 19 of the Convention and for the information and clarifications provided by the representative of the State party. The Committee also expressed its appreciation for the efforts made by Argentina to improve the human rights situation in the country, in particular, in the area of laws which relate to the purposes of the Convention.

113. The aforementioned efforts notwithstanding, the Committee expressed its deep concern at the continuing vestiges of the former regime, at the disturbing use of violent methods and torture in many cases, and at the clemency and impunity enjoyed by the perpetrators of such acts contrary to the requirements of the Convention.

114. The committee expressed the hope that the Government of Argentina would redouble its efforts to take all legislative, judicial, administrative and other measures which would be sufficiently effective to halt and prevent the practice of torture and of all cruel, inhuman or degrading treatment or punishment and, where necessary, to punish the perpetrators of such acts.

115. The committee further expressed the hope that the Government would submit to it as soon as possible the additional information requested by its members.

CAT A/53/44 (1998)

52. The Committee considered the third periodic report of Argentina (CAT/C/34/Add.5) at its 303rd, 304th and 306th meetings, on 12 and 13 November 1997 (CAT/C/SR.303, 304 and 306), and adopted the following conclusions and recommendations.

1. Introduction

53. Argentina ratified the Convention without reservation on 24 September 1986 and, on the same date, made the declarations provided for in articles 21 and 22.

54. Like its two predecessors, the third report was submitted within the time limits provided for in article 19 of the Convention and was drafted in accordance with the Committee's general guidelines regarding the form and content of periodic reports. The information it contains was supplemented and updated orally by the representative of the State party at the beginning of the Committee's consideration of the report.

2. Positive aspects

55. The text of article 75, paragraph 22, of the Constitution of Argentina, added as part of the 1994 constitutional reform, bestows constitutional rank on the various international human rights treaties and conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and also provides that they should be interpreted as complimentary to the rights and guarantees recognized in the first part of the Constitution.

56. Another welcome development is Argentina's ratification of the Inter-American Convention of the Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Those two international instruments contain provisions and lay down obligations whose observance will contribute to the prevention and punishment of torture and the compensation of victims.

57. The bilateral treaties on extradition and judicial assistance recently concluded by the State party contain provisions consistent with article 8 of the Convention.

58. The new Code of Criminal Procedure, which entered into force during the period covered by the report, contains provisions whose implementation should help to prevent the practice of torture. Especially important for the achievement of that goal are the provisions prohibiting the police from taking a statement from a person who has been charged; strictly limiting cases in which the police may detain persons without a court order and obliging them to bring the detainee before the competent judicial authority immediately or within six hours; limiting the length of incommunicado detention; and stipulating that the fact that an individual is being held incommunicado may under no circumstances prevent him from communicating with his defence counsel before making any statement or before any proceeding requiring his personal participation.

59. The creation of the Office of Government Procurator for the Prison System as a mechanism to

monitor respect for the human rights of persons being held in prisons administered by the federal prison service, with the power to receive and investigate complaints and claims, to make recommendations to the competent authorities and to initiate criminal complaints, introduces an external supervisory procedure into an environment which, as the facts have shown, lends itself particularly to abuse, victimization and torture of persons in a vulnerable and unprotected situation.

3. Factors and difficulties impeding the application of the provisions of the Convention

60. The severe penalties laid down in article 144 *ter* of the Penal Code for acts of torture, particularly torture resulting in the death of the victim, although formally satisfying the requirements of article 4 of the Convention, are weakened in their practical application by the courts, which, as the Committee has noted in its consideration of a large number of cases, often prefer to try the offenders on less serious charges attracting lighter penalties, thus reducing the deterrent effect. The Committee notes that, while there have been many cases of death resulting from torture since the entry into force of the reform of the Penal Code, which introduced this penal provision, in only six cases have the culprits been sentenced to life imprisonment, which the law prescribes as the only penalty.

61. The protracted nature of judicial inquiries into complaints of torture nullifies the exemplary and deterrent effect which the prosecution of the perpetrators of such crimes should have. The report refers to cases of torture resulting in death, or of torture aggravated by the clandestine disposal of the victim's remains, where investigations have still not been completed, six or seven years after the events. Such slow procedures intensify the suffering of relatives, inducing them to give up their legitimate demands for the punishment of the guilty parties and delaying the moral and material redress to which they are entitled.

4. Subjects of concern

62. The Committee notes a discrepancy between the body of legislation adopted by the State for the prevention and punishment of the practice of torture, which contains provisions that qualitatively and quantitatively meet the requirements of the Convention, and the actual situation as revealed by the information which continues to be received on instances of torture and ill-treatment by police and prison staff both in the provinces and in the federal capital; this seems to indicate a failure to take effective action to eliminate these reprehensible practices.

63. The information received by the Committee on a number of cases of torture is indicative not only of a lack of effective and prompt police co-operation in judicial inquiries into complaints of torture and ill-treatment, but also of impediments to those inquiries denoting a relatively systematic modus operandi, rather than occasional failure to cooperate faithfully with the inquiries.

64. The Committee is also concerned about information brought to its attention showing an increase in the number and gravity of instances of police brutality, many of which result in the death of or serious injury to the victim and which, while not constituting torture as defined in article 1 of the Convention, represent cruel, inhuman and degrading treatment which the State party is obligated to punish, under article 16 of the Convention.

65. The Committee is also concerned about the fact that, despite the mandatory limitations on the situations in which the police can make arrests without a court order, the provisions for the protection of the safety of citizens are infringed by the application of lesser rules or provisions such as police regulations concerning misdemeanours and arrests for identity checks. According to the information provided to the Committee, the arrests made under such provisions represent a large proportion of the cases of police detention and only a minimal proportion of the arrests were authorized by court order.

5. Recommendations

66. The Committee recalls that, during its consideration of the preceding report, it had informed the representatives of the State party that it would like future information on compliance with the obligations arising from the Convention to be representative of the situation throughout the country. At that time, the State party pointed out that a register of cases of illegal detention and ill-treatment had been established in the Office of the Attorney-General to be used, according to the delegation, to record information from all courts throughout the country and provide data enabling action for the prevention and punishment of such illegal acts to be made more effective, thus bringing the general situation under tighter control. The Committee has recently learned that the register has been done away with and notes that the report suffers from the shortcoming already observed, namely, that it does not adequately reflect the situation throughout the country. The Committee calls upon the authorities of the State party to take all necessary measures to remedy that deficiency.

67. Also during its consideration of the previous report, the Committee was informed of a decision by the Attorney General in October 1991 instructing prosecutors in appeal courts to urge prosecutors in criminal courts of first instance to comply faithfully with their obligations, with particular emphasis on the exercise of their functions in order to exhaust all avenues of inquiry and all means of obtaining evidence during the investigation of the unlawful acts characterized in articles 144, 144 *bis* and 144 *ter* of the Penal Code. The Committee notes that, seven years after that decision was taken, investigations into illegal acts proceed at the same slow pace and with the same inefficiency that prompted the decision in the first place. It calls upon the competent authorities of the State party to monitor closely the way in which State law enforcement bodies and officials comply with their obligations, particularly regarding the offences characterized in the above-mentioned provisions of the Penal Code.

68. The Committee calls upon the competent authorities of the State party to revise criminal procedure legislation by seeing a reasonable time limit for preliminary investigations since, although article 207 of the Code of Criminal Procedure sets a time limit of four months, the unlimited extension provided for in the last paragraph of that article as a special measure appears to be the general rule. In the view of the Committee, the undue prolongation of this pre-trial stage represents a form of cruel treatment of the individual concerned, even if he is not deprived of his freedom. The law should also specify a reasonable time limit for pre-trial detention and for the completion of criminal proceedings.

69. The Committee requests the State party to provide it with early replies to those questions raised during the consideration of the report to which no answers or only partial or inadequate answers were given. It also calls upon the State party to provide it with information on the performance of

the obligations arising from the Convention which are representative of the situation throughout the country, as soon as that information becomes available and without waiting for the submission of the next periodic report.