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## I. LAND AND PEOPLE

### A. People

1. According to the most recent national census held in 1991, the population of Argentina was 32,615,528. The National Statistics and Census Institute (INDEC) estimates that the current population (October 1995) is 34,586,635. It is projected that the population will be 37 million by the year 2000, and 41 million by the year 2010.

2. Women outnumber men and represent 50.91 per cent of the population. The proportion of children under the age of 15 is 28.72 per cent; persons over 65 account for 11.32 per cent. The median age of the population was 27.2 years in 1990 and is projected to be 27.8 years by the year 2000.

3. The urban population, urban areas being defined as those with 2,000 inhabitants or more, represented 88 per cent of the total in 1995 and is expected to reach 91 per cent by the year 2010. Argentina is currently the third most urbanized country in Latin America, after Venezuela and Uruguay. The urbanization process has been characterized by a strong concentration of population in the Buenos Aires Metropolitan Area (AMBA), which has begun to decelerate since the middle of the century: in 1947, 47.6 per cent of the urban population lived in the AMBA, but by 1991 that proportion had fallen to 39.7 per cent.

4. Spanish is the official language of Argentina. In addition, various other languages are used by indigenous communities.

5. Without prejudice to the recognition of freedom of worship in the first Argentine Constitution, that of 1853, it can be said that Argentina is basically a Catholic country owing to its historical and cultural traditions. Article 2 of the current Constitution accordingly states that "the National Government supports the Apostolic Roman Catholic faith", referring to the financial support given to the institutions of the Apostolic Roman Catholic Church.

6. The Department of Worship, which forms part of the Ministry of Foreign Affairs, International Trade and Worship, keeps a National Registry of religions, which lists the religious entities or organizations that are allowed to engage in activities within the national territory. The following provisional classification has been used for the main religious groups which exist in Argentina:

(a) Eastern Orthodox Churches (Armenian Apostolic Church and Orthodox Syrian Church of Antioch) and Orthodox Churches (Churches of the Patriarchates of Constantinople, Antioch and Moscow; Russian Orthodox Church Outside Russia; Churches of Serbia and Romania);

(b) Reformed churches and church communities: Anglican; Lutheran; Calvinist (Reformed, Presbyterian and Waldensian); Revivalists; Baptists, many of whose communities are grouped together in the Baptist Evangelical Convention; Methodists (mennonites); Free Evangelical Churches (biblical

fundamentalism); Free Churches (Salvation Army, Church of the Brethren, Church of Christ) and Pentecostals (Assemblies of God, Biblical Assemblies, Foursquare Gospel Church, Argentine Pentecostal Evangelical Church, the Church of God, etc., many of which belong to the Pentecostal Evangelical Confederation;

(c) Para-Christian churches or communities: Christian Scientists, the Church of Jesus Christ of Latter-Day Saints (Mormons) and Jehovah's Witnesses;

(d) Various forms of judaism: Orthodox, Conservative, Reformed (including Shuba Israel, Jewish Congregation of Argentina, Congregation Emanu-El, Congregation Beth-El, Sephardic Jewish Association Temple of Peace, and Jewish associations in the interior. Many of them belong to the Argentine Jewish Mutual Association;

(e) Islamic Communities, associated with the Islamic Centre;

(f) Buddhist groups;

(g) Asian syncretist movements (including Baha'is, World Unification Church or Church of the Reverend Moon, Messianic) or Afro-Brazilian syncretist movements (Umbandas);

(h) Spiritualist religions;

(i) Others, including Rosacrucians and Theosophists.

7. Many of the religious groups listed in (b) above belong to such organizations, federations or confederations as the Consultative Council of Churches, the Argentine Federation of Evangelical Churches, the Christian Alliance of Evangelical Churches of Argentina and the Latin American Evangelical Confederation. At the international level, most of the Orthodox and Eastern Churches and many of the Reformed Churches are members of the World Council of Churches. There are bilateral commissions for dialogue between the Orthodox and Eastern Churches and those affiliated with the main Protestant denominations and the Catholic Church.

#### B. Demographic data

8. According to 1991 data, life expectancy in Argentina was 71.93 years. Women usually live longer than men, with a life expectancy of 75.59 years as opposed to 68.44 for men. This gap increased until 1985, following which it has stabilized at about seven years.

9. The total fertility rate in Argentina, according to the 1991 national population and housing census, was 2.85 children per mother. Argentine women have an average of 1.75 births during their child-bearing years, but the rate is greater in rural areas, with an average of 2.40 births, than in urban areas, where the figure is 1.67 births.

10. The crude death rate in 1993 was 7.9 per 1,000, the same as in 1992. The infant mortality rate was 22.9 per 1,000 live births. The maternal

mortality rate for 1992 was 4.8 per 10,000 live births. Most deaths occurred in women aged 35 or over (rate above 10, reaching 12.1 per 10,000 in the 40 to 44 age group), but were also high in women under 15 (9.3 per 10,000 live births).

11. According to the 1991 census, there were 8,515,441 households in Argentina, with an average 3.6 persons per household. About 81.5 per cent of these were families. The proportion of women heads of households was 22.3 per cent increasing to about 32 per cent in the Federal Capital. Some 13.3 per cent of households consisted of one person; of these, 55 per cent were women living alone, most of them over the age of 65.

#### C. Socio-economic indicators

12. According to provisional findings of the continuing household survey carried out by the National Statistics and Census Institute in October 1995, the overall unemployment rate was 17.4 per cent, which represents a decline from the record May 1995 figure of 20.2 per cent.

13. The activity rate grew again from 43.1 per cent in October 1994 to 44.2 per cent in October 1995, but the decreasing demand for labour led to an increase in the unemployment rate. The reduced demand was reflected in a declining employment rate (share of employed persons in the total population), which dropped from 37.4 per cent in October 1994 to 36.5 per cent, according to data from the continuing household survey conducted in October 1995.

14. The first six months of 1995 showed a cumulative retail inflation rate of 1.1 per cent, while wholesale prices grew by about 4.4 per cent. Following a 3.2 per cent increase in the gross domestic product (GDP) during the first quarter of 1995 over the same period of the previous year, the second quarter witnessed a sharp decline in production as a result of the credit shortage and its effects on the payments chain. GDP declined by 3.7 per cent, according to provisional estimates.

15. In 1991, according to the national census, 19.9 per cent of the population (1,410,876 households) were living in households where their basic needs were unmet.

16. Again according to the 1991 census, only 4 per cent of the population aged 15 or over declared themselves illiterate, 35 per cent less than in 1980. However, in the least developed provinces the illiteracy rate was 10 per cent. The proportion of the population aged 15 or over who had never attended school or had not completed the third level of primary school was 12.2 per cent, but that proportion was three fourths in the least developed provinces.

17. Of the total population aged 15 or over, 22.9 per cent had not completed primary school, while 32.3 per cent had. 12.2 per cent of the population had completed secondary school and 18.9 per cent had reached secondary level but had not completed it. Only 13.7 per cent had attained the level of higher or university studies, and 6.3 per cent had completed that level.

18. Of women aged 15 or over, 3.8 per cent had had no education whatsoever. Only 32.1 per cent had completed primary school and 12.8 per cent secondary school, only 7.1 per cent had completed their university or tertiary studies. Women comprise 52.3 per cent of all students in Argentine universities.

## II. GENERAL POLITICAL STRUCTURE

### A. The republican form of government

19. The political organization of Argentina is based on the federal republican representative form of government, enshrined in the Constitution adopted at Santa Fe on 1 May 1853 by the General Constituent Congress of the Argentine Confederation.

That text was amended in 1860, primarily to incorporate the province of Buenos Aires, which had not been a part of the Argentine Confederation in 1853. In 1949, a Constituent Convention replaced the 1853/1860 text with a new one, which was in turn annulled by the provisional Government through a proclamation of 27 April 1956, restoring the previous text. On 22 August 1994, the National Constituent Convention approved amendments to the Constitution, which came into effect on 24 August 1994. Those reforms are for the most part concerned with the organizational part of the Constitution.

20. The Argentine Republic comprises 23 provinces and the city of Buenos Aires, as follows: Buenos Aires, Catamarca, Corrientes, Córdoba, Chaco, Chubut, Entre Ríos, Formosa, Jujuy, La Pampa, La Rioja, Mendoza, Misiones, Neuquén, Río Negro, Salta, San Juan, San Luis, Santa Cruz, Santa Fe, Santiago del Estero, Tucumán and Tierra del Fuego.

21. Each province enacts its own constitution, by which it must provide for its own administration of justice and municipal autonomy, and regulates the scope and contents of the institutional, political, administrative, economic and financial system. It elects its own authorities: governor, legislators and other provincial officials. Through their local institutions, the provinces enact their own legislation and are empowered to enter into international agreements as long as they are not incompatible with national foreign policy and do not affect either the powers delegated to the Federal Government or the public standing of the Nation.

They may also enter into partial treaties concerning the administration of justice, economic interests or mutually beneficial works, after notifying the Federal Congress.

22. The provinces may not: enter into partial treaties of a political nature; enact laws on domestic or foreign trade or navigation; establish provincial Customs houses; coin money; establish banks empowered to issue banknotes, without the authorization of the Federal Government; enact civil, commercial, criminal or mining codes after Congress has approved them; enact laws on citizenship and naturalization, bankruptcy, forgery of State currency or documents; impose tonnage dues; commission warships; or appoint or receive foreign agents.

23. The constitutional legal system created this system of government for the Argentine Nation, as from 1853, based on the separation of the Legislature, the Executive and the Judiciary.

### B. The Federal Government

1. The Legislature

24. Under the Constitution, the Legislature comprises a bicameral congress: the Chamber of Deputies and the Senate (art. 44). The Chamber of Deputies is composed of representatives elected directly by simple majority vote of the people of the provinces and the city of Buenos Aires, and of the capital in the event of transfer. All of these are, for this purpose, considered electoral districts of a single State. The number of representatives is one for every 33,000 inhabitants or a number not less than 16,500. After each census, Congress determines representation based on that census, with the power to increase but not decrease the base for each representative (art. 45). Under the revised text of 1994, the city of Buenos Aires acquired autonomy, being empowered to designate its own representatives even if the Federal Capital is moved elsewhere. The deputies hold office for four years and may be re-elected; but half of the membership of the Senate is renewed every two years (art. 50).

25. The Constitution in force until 24 August 1994 provided that the Senate was composed of two senators for each province, elected by majority vote of their legislature, and two for the Federal Capital, elected by an electoral college.

The Senate currently consists of three senators for each province and three for the city of Buenos Aires, elected directly and jointly, with two seats going to the political party that obtains the largest number of votes and the rest to the political party receiving the next largest number. Each senator has one vote (art. 54). A transitional provision stipulates that the current members of the Senate shall remain in office until the end of their respective mandates.

26. As a result of the reform, senators hold office for six years and can be re-elected indefinitely, but the Senate has to renew itself by one third of the electoral districts every two years (art. 56). Until now, the term of office was nine years and renewal occurred every three years. A transitional provision stipulates that, in the two months preceding 10 December 2001, all members of the Senate shall be elected in the manner indicated, it being decided by lottery at a meeting at which they are all present which of them shall leave office in the first and which in the second biennium.

27. The preparation and approval of laws is a function which, through the procedures laid down in the Constitution, is the responsibility of the Legislature.

Another function of Congress is to declare a state of siege in one or more parts of the country in the event of internal disturbance, and to approve or suspend a state of siege declared by the Executive when Congress is in recess.

28. The constitutional reform in effect since 24 August 1994 brought the Office of the Auditor General of the Nation and the Ombudsman into the realm of the Legislature. The Office of the Auditor General is a technical assistance body of Congress, with functional autonomy, established to ensure external control of the national public sector in the area of resources and economic, financial and operational matters, as a specific function of the Legislature (art. 85). The Office of the Ombudsman is an independent body instituted within the ambit of Congress, with full functional autonomy and a mandate to defend and protect human rights and other rights, guarantees and interests safeguarded by the Constitution and the law, with regard to decisions, acts or omissions of the Administration (art. 86).

## 2. The Executive

29. The National Executive Power is exercised by a citizen with the title of "President of the Argentine Nation" (art. 87). The reform abolished the requirement that that person must "belong to the Apostolic Roman Catholic Church".

30. In conformity with the new Constitution, the President and Vice-President hold office for a term of four years and may be re-elected or succeed one another for a single consecutive term. If they have been re-elected or have succeeded one another, they may not be elected to either of these offices until one term of office has elapsed (art. 90). A transitional provision states that, for the purposes of that article, the term of the President holding office at the time the reform was approved must be considered as a first term. Prior to the reform, the presidential term was six years, with the possibility of re-election after one intervening term. Also under the reforms, the President leaves office the day the four-year term ends, and no event that may have interrupted his term may be considered a ground for completing it later (art. 91).

31. In the event of illness, absence from the capital, death, resignation or removal of the President from office, the executive power is exercised by the Vice-President. In the event of the removal, death, resignation or disability of the President and the Vice-President, Congress determines which official shall act as President until the disability has ceased or a new President has been elected (art. 88).

32. The procedure for the election of the President and Vice-President by an electoral college (indirect election) provided for in the 1853 Constitution was changed. The new text provides that both are to be elected directly by the people in two rounds, the national territory being considered as a single district (art. 94). The election takes place within the two months prior to the conclusion of the term of the serving President (art. 95). If a second round of voting is necessary, it is held between the two slates of candidates receiving the most votes, within 30 days of the first round (art. 96). There is no second round if the slate receiving the most votes in the first round obtains more than 45 per cent of the valid votes (art. 97) or if it receives at least 40 per cent of such votes and at least 10 percentage points more than the valid votes cast for the second-ranking slate (art. 98).

33. The reform created the office of Chief of the Cabinet of Ministers, who reports to Congress and undertakes the overall administration of the country through the acts and regulations necessary for that purpose and those delegated to him by the President, with the approval of the Secretary-Minister of the relevant department. He coordinates, prepares and convenes meetings of the Cabinet of Ministers, presiding over them in the President's absence. He must attend Congress at least once a month, alternating between the two Chambers, to report on the progress of government, and he may also be expressly called or summoned by an absolute majority vote of all the members of either Chamber. Once Congress is in session, he, together with the other Ministers, presents a detailed report on the state of the Nation relating to the affairs of the various departments. He also produces any oral or written reports and explanations that either Chamber may request of the Executive, and is entitled to attend the sessions of Congress and participate in its

deliberations without the right to vote. He countersigns decrees by which the powers delegated by Congress are exercised, subject to the control of the Standing Bicameral Commission. Along with the other Ministers, he also countersigns decrees of necessity or emergency and decrees by which laws are partially promulgated, personally submitting them, once they have been approved, for consideration by the Standing Bicameral Commission (arts. 100 and 101).

### 3. The Judiciary

34. Judicial power is exercised by the Supreme Court of Justice and other lower courts established by Congress within the national territory (art. 108). In no circumstances may the President exercise judicial functions, assume jurisdiction over pending cases or reopen cases that have been closed (art. 109).

35. Prior to the reforms, judges were appointed by the Executive with the approval of the Senate. In future, appointments will be based on a binding list of three candidates proposed by the Council of the Magistrature (art. 114). This Council will be reconstituted periodically in such a way as to achieve balanced representation of the political bodies resulting from the popular election, judges from all the courts, and lawyers on the federal register, as well as other persons from the academic and scientific fields, the size and structure of the Council being spelled out in the special law establishing it.

36. The judges of the Supreme Court and lower courts retain their posts as long as they maintain a good standard of conduct (art. 110). They may be removed from office by the decision of an impeachment jury composed of legislators, magistrates and registered lawyers (art. 115), on grounds of poor performance or professional misconduct or for ordinary offences (art. 53).

37. It is the responsibility of the Supreme Court and lower courts to hear and decide all cases relating to matters governed by the Constitution, the laws of the Nation or treaties with foreign nations; the Supreme Court exercises jurisdiction over appeals in accordance with the rules and exceptions prescribed by Congress.

38. The foregoing notwithstanding, the Supreme Court has primary and exclusive competence in: cases concerning ambassadors, government procurators and foreign consuls; cases involving the admiralty and maritime jurisdiction; matters in which the Nation is a party; and cases arising between two or more provinces, between one province and the residents of another province, between the residents of different provinces, and between one province and its residents against a foreign State or citizen.



## III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Legal framework

39. The legal system in force in Argentina is composed of legal provisions with their own rank and different fields of validity; all conform with the standards set out in the Constitution.

40. Competence to conclude treaties lies with the Executive (Constitution, art. 99, para. 11). None the less, between the signing of a treaty and the declaration of consent to be bound thereby, the Constitution provides for a substantive formality to be performed by the Legislature, "to approve or reject treaties concluded with other nations and with international organizations" (art. 75, para. 22), which concerns the principle of the separation of powers and its correlative checks and balances. This procedure guarantees the participation of the representatives of the people and of the provinces in decision-making on matters which will be binding on the country.

41. Article 31 of the Constitution, which was not amended, establishes that treaties are the supreme law of the nation. The Supreme Court, the authentic interpreter of the constitutional provisions, has undertaken an exegesis of the provisions relating to treaties, from them it has concluded that they are equal in rank to national laws. This jurisprudence, which was expressed in the Martin and Company v. General Ports Administration decision of 1963, was uncontested until 1992.

42. On 7 July 1992, the Supreme Court handed down its judgement in the Ekmekdjian v. Sofovich case, ruling that "when the Nation ratifies a treaty which it has signed with another State, it is making an international commitment that its administrative and jurisdictional bodies will apply that treaty to the cases covered thereby, provided that it contains sufficiently specific descriptions of such cases to permit its immediate application" (Act 1992/C:547). This decision had the merit of recognizing that, as of 7 July 1992, treaties have taken precedence over national legislation in Argentina, thereby eliminating any legal conflicts which jeopardized the international responsibility of the State whenever a subsequent law contradicted an earlier treaty.

43. Furthermore, it should be pointed out that the Supreme Court has adopted the constant and unchanging position, that treaties may not be assimilated to the instrument by which they are approved, nor are they reducible to any other source, i.e. the law applicable by the courts is international law. The Supreme Court has stated that a treaty "acquires legal validity by virtue of the law by which it is approved, but that does not mean that it ceases to have the character of an autonomous legal statute, the interpretation of which depends on its own text and nature, regardless of the law by which it was approved" (decisions 202:353).

44. Article 75, paragraph 22, of the new Constitution, which has been in effect since 24 August 1994, provides that:

"... treaties and agreements take precedence over laws.

In the conditions of their validity, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, have constitutional rank, do not abrogate any article of the first part of this Constitution, and must be interpreted as complementary to the rights and guarantees recognized thereby. They may be denounced, if necessary, only by the Executive, following approval by two thirds of the members of each Chamber.

After being approved by Congress, other treaties and conventions on human rights shall require the vote of two thirds of the members of each Chamber in order to acquire constitutional rank."

45. Likewise, in conformity with articles 116 and 117 of the Constitution, the Supreme Court has ruled that international custom and the general principles of law - the sources of international law, in accordance with article 38 of the Statute of the International Court of Justice - directly constitute the legal system. In a number of cases, therefore, the Supreme Court has upheld the "law of peoples" and the "general principles of international law" in applying various rules of international law.

#### B. Competent authorities

##### 1. Judicial authorities

46. Under the Argentine legal system, the administration of justice is a power shared by the Nation and the provinces. Articles 5 and 123 of the Constitution provide that each province shall enact its own constitution in accordance with the principles, declarations and guarantees of the supreme law, "which ensures its administration of justice". The provinces elect their own officials and judges, without intervention by the Federal Government (art. 122). At the same time, article 31 of the Constitution provides that the Constitution itself, the laws enacted by Congress in pursuance thereof, and treaties with foreign Powers are the supreme law of the Nation, and the authorities of each province are bound thereby, notwithstanding any provision to the contrary which the provincial laws or constitutions may contain.

47. The Judiciary of each province is responsible for the administration of ordinary justice within that province's territory, applying the codes mentioned in article 75, paragraph 12, namely, the Civil, Commercial, Criminal, Mining, Labour and Social Security Codes - depending on the jurisdiction under which matters or persons lie.

48. As to national justice, under article 116 of the Constitution the Supreme Court and the lower courts hear and decide all cases relating to matters governed by the Constitution and the laws of the Nation, except those matters falling to the provincial jurisdictions. In these cases, according to article 117, the Supreme Court exercises jurisdiction over appeals.

## 2. Administrative authorities

49. At the national level, two human rights offices have been established within the Executive, one in the Ministry of the Interior and the other in the Ministry of Foreign Affairs, International Trade and Worship. This preliminary organizational structure has recently received substantial support, enhancing and diversifying the possibilities of guaranteeing full observance of human rights in Argentina.

### Office of the Under-Secretary for Human Rights within the Ministry of the Interior

50. By Decree No. 3090/1984, the Office of the Under-Secretary for Human Rights was established within the Ministry of the Interior. Its essential function is the promotion and protection of human rights in Argentina. The Office of the Under-Secretary for Human and Social Rights, as it is now called, currently carries out the following activities and programmes:

Complaints and procedures programme, consisting of the receipt of complaints from individuals relating to conflicts which may constitute violations of human rights; it assists complainants and forwards cases to the competent national authority;

Legislation drafting programme: participates in and assists the congressional human rights commissions and, during 1996, the National Constituent Convention;

Institutional relations programme, intended to promote and maintain smooth relations with public and private national organizations and foreign organizations working in the field of human rights;

Federal Council of Human Rights, aimed at linking and coordinating policies for the promotion and guarantee of human rights between the Federal Government and the provincial governments, and ensuring efficient coordination and smooth communication to produce a centralized setting for policy-making and decentralized action, taking into account the situation of each province;

Historical reparation programme: the Office of the Under-Secretary for Human Rights is responsible for processing benefits for former detainees of the Executive, civilians tried by military courts prior to the restoration of democracy on 10 December 1993 and the successors of disappeared persons;

National Commission for the Right to an Identity, whose objective is to encourage the search for disappeared children and determine the whereabouts of children of unknown identity who were kidnapped or disappeared, of children born while their mothers were illegally deprived of their liberty, and of

other children who do not know their identity because for various reasons they were separated from their biological parents;

National Commission on the Disappearance of Persons (CONADEP): this body is responsible for the custody and updating of its files;

Child priority programme, the purpose of which is to guarantee the full effectiveness of the rights of the child and promote the necessary actions to comply with the Convention on the Rights of the Child, to encourage a policy for conflict prevention and to develop actions aimed at guaranteeing the rights of street children;

Institute for the Promotion of Human Rights: established with the cooperation of the United Nations Centre for Human Rights to disseminate information and offer training in the field of human rights. Its objectives are to provide documentation, information and training services, encourage research, lend assistance in the field of human rights to relevant sectors, and promote education and dissemination policies directed at the general public.

#### Office of the Under-Secretary for Human Rights at the international level

51. Decree No. 932 of 11 June 1986 established the Office of the Under-Secretary for Human Rights at the international level which, in its new form, is concerned with human rights and women's rights. Its primary responsibility is to identify, develop and propose plans, programmes, projects and objectives for foreign policy in the field of human rights and the status and situation of women, and to help formulate related foreign policy vis-à-vis international organizations, entities or ad hoc commissions.

52. Through two departments, the Human Rights Department and the Women's Rights Department, the Office of the Under-Secretary for Human Rights within the Ministry of Foreign Affairs, International Trade and Worship participates in action to determine how legislation may be adapted to the international commitments undertaken in the field of human rights, in the signing and conclusion of treaties, in activities to bring about the return of Argentinians residing abroad and in determination of the eligibility of refugees.

53. In providing a medium for and promoting the implementation of international decisions in the field of human rights, this Office has somehow become a mechanism for adapting internal provisions and structures for the purpose of enhanced and more effective observance of human rights in Argentina. The Office has primary competence with regard to Argentina's participation in the meetings of all United Nations bodies.

#### Government Procurator for the Prison System

54. Also entailing duties at the national level and forming part of the Executive is the office of Government Procurator for the prison system, created by Decree No. 1598 of 29 July 1993, with the rank of Under-Secretary of State and a renewable four-year term. The Procurator's main function is to protect the human rights of inmates in the federal prison system, as those rights are provided for in the national legal system and the relevant international conventions to which Argentina is a party. In performing his duties, the Procurator is not subject to any binding

mandate and may not receive instructions from any authority; he must carry out his tasks independently, according to his judgement, and determines which cases he will pursue.

55. The Procurator's mandate entitles him to make periodic visits to all prison establishments in which national or federal inmates are being held. At his own initiative or on the application of another party, he may investigate any act or omission which may infringe the rights of detainees, and he is obliged to file criminal charges if necessary. His opinions or views become recommendations to the Ministry of Justice, which is responsible for the monitoring and supervision of the national and federal prison system; the recommendations are given effect by the Minister of Justice through administrative decisions.

National Institute to Combat Discrimination, Xenophobia and Racism

56. On 5 July 1995, Congress adopted Act No. 24,515, which was promulgated on 28 July of the same year and established the National Institute to Combat Discrimination, Xenophobia and Racism (INADI), as a decentralized body within the Ministry of the Interior. Its purpose is to develop national policies and practical measures to combat discrimination, xenophobia and racism, and encourage and carry out initiatives to that end. Under Act No. 24,515, the Institute has broad functions:

(a) prevention/dissemination: disseminating the principles and legal standards relating to non-discrimination and informing public opinion; (b) education: planning and promoting education campaigns; (c) investigation: receiving, centralizing and recording complaints relating to discriminatory, xenophobic or racist behaviour; (d) services: counselling victims, providing free protection; advising the Public Prosecutor's Office on issues within its purview; (e) documentation: collecting and updating information on relevant domestic, international and comparative law; establishing its own documentation register; (f) cooperation: establishing ties with other bodies sharing the same objectives; and concluding agreements.

57. As regards the presence in Argentina of individuals who, during or after the Second World War, allegedly took part in the extermination of peoples or the killing and persecution of individuals because of their race, religion, nationality or political opinions, the Act provides that the Institute may: verify their presence, promote and institute legal and administrative proceedings when it has sufficient evidence to do so, and propose the signing of new extradition treaties.

(It should be noted that by Decree No. 232/92, any reservation for reasons of State which may have applied to documents concerning Nazi criminals was declared null and void, and national organizations possessing such documents were ordered to make them available to the General Archives of the Nation within 30 days).

### 3. Parliamentary commissions

58. Special forums with competence in the field of human rights have also been established within the context of the Legislature. The Senate, composed of representatives of the 23 provinces and the Federal Capital, in December 1983 set up a Commission on Human Rights and Guarantees. Its example was emulated on 30 September 1992, by the Chamber of Deputies which formed a similar commission.

The members of both commissions include parliamentarians from all political parties represented in Congress.

59. The work of these commissions is enriched by the contribution of government officials who are periodically invited to present reports, and of national and international experts. In addition to constituting a natural forum for debate on various subjects which later gives rise to draft laws, these commissions request reports from the Executive on questions within its competence. The provinces have also followed this example, their legislatures having set up their own human rights forums.

### 4. The Ombudsman

60. On 1 December 1993, Congress adopted Act No. 24,284, by which the Defensoría del Pueblo was established within the ambit of the Legislature. The Defensor del Pueblo, also known as the Ombudsman, carries out his functions without taking instructions from any authority and is mandated to protect the rights and interests of individuals and the community regarding deeds, acts and omissions of the Administration. His duties include the initiation of investigations, either on his own initiative or upon the application of a third party, of acts by the Administration which may infringe those rights and interests, including extended or collective interests.

61. At the municipal level, the City of Buenos Aires had already had experience with a human rights procurator. The Constitutional reform of 22 August 1994 introduced a new article relating to the Ombudsman.

### C. Remedies

62. All the inhabitants of Argentina have available to them a number of remedies of various kinds which enable situations in which a fundamental right has been violated to be resolved. These remedies are regulated by ordinary legislation and vary according to their purpose. This fact notwithstanding, the constitutional reform introduced a new article, article 43, which states:

"Any person may initiate prompt and rapid amparo proceedings provided no other more appropriate judicial remedy exists, against any act or omission by public authorities or private individuals which actually or potentially infringes, restricts, jeopardizes or threatens rights and guarantees recognized by this Constitution, a treaty or a law, in a manifestly arbitrary or illegal manner. In such instances, the judge may declare unconstitutional the provision on which the injurious act or omission is based.

This action may be taken against any form of discrimination and in regard to the rights that protect the environment, competition, users and consumers, as well as collective rights in general, by the party concerned, the Ombudsman and associations that share those goals and are registered in accordance with the law, which shall determine the conditions and form of their organization. This action may be undertaken by any person in order to obtain information about the content and purpose of data relating to himself contained in public or private records or data banks intended for reports, and, if the information is false or discriminatory, to demand that it be destroyed, corrected, made confidential or updated. The confidentiality of journalists' sources of information may not be affected.

When the right which has been infringed, restricted, jeopardized or threatened concerns physical liberty, in the event of the illegal worsening of the form or conditions of detention, or in the case of the enforced disappearance of persons, an application for habeas corpus may be filed by the affected party or any person acting on his behalf, and the judge shall hand down a decision immediately, even if a state of siege is in force".

#### 1. Complaints

63. Article 174 of the Code of Criminal Procedure which has been in force since September 1992, states that "Any person who considers himself to have been harmed by an offence prosecutable ex officio or who, while not claiming to have been harmed, learns of such an offence, may file a complaint with a judge, government attorney or the police. When the criminal action is a private action, only the person entitled to bring charges may file the complaint, in conformity with the relevant provisions of the Criminal Code. Subject to the formalities set forth in book I, title IV, chapter IV, the person reporting the offence may ask to be considered as a plaintiff".

64. As to the obligation incumbent on public officials, article 177 of the Code of Criminal Procedure states that "The following have an obligation to file complaints concerning offences prosecutable ex officio: (i) public officials or employees who learn of such offences in the course of their work; (ii) doctors, midwives, pharmacists and other persons engaged in any of the health professions, with regard to offences they learn of while providing their professional services, unless the acts of which they have knowledge are protected by professional secrecy".

#### 2. Amparo proceedings

65. Act No. 16,986 governs amparo proceedings against any act or omission by the public authorities which actually or potentially infringes, restricts, jeopardizes or threatens, in a manifestly arbitrary or illegal manner, the rights or guarantees explicitly or implicitly recognized by the Constitution, with the exception of individual liberty, which is protected by habeas corpus.

66. The cases in which amparo is inadmissible are expressly laid down in article 2 of the above-mentioned Act. These cases are the following: (a) judicial or administrative resources or remedies exist which enable the constitutional right or guarantee in question to be protected; (b) the act which is being challenged emanates from a judicial body or has been adopted by express implementation of

Act No. 16,970; (c) judicial intervention would directly or indirectly compromise the regularity, continuity and efficiency with which a public service is provided or the performance of essential State activities; (d) the determination of the act's invalidity would require further deliberations or evidence, or a declaration of unconstitutionality of laws, decrees or ordinances; (e) the application was not made within 15 working days of the date on which the act was committed or was to have taken place.

67. The proceedings must be brought before a judge of first instance with jurisdiction in the place where the act occurred, took effect or might have taken effect. If the proceedings are admissible, the judge will order the appropriate authority to prepare a detailed report on the background to and basis for the contested measure, the report to be completed within a reasonable time as determined by the judge (usually five days). When the report has been produced or the time-limit set has expired without its being submitted, and the plaintiff has no evidence to produce, a substantiated decision will be rendered within 48 hours, either to grant or deny amparo.

68. The final decision declaring the existence or non-existence of an arbitrary or manifestly illegal infringement restriction, jeopardization or threat against a constitutional right or guarantee constitutes res judicata with regard to amparo, leaving open the exercise of those actions or remedies other than amparo which may be available to the parties. The only decisions which may be appealed against, are the final decision, the decision by which the proceedings are declared inadmissible and decisions that provide for measures involving no new action or suspending the effects of the contested act.

69. Amparo proceedings against an act or omission by a private individual are governed by article 321 of the Code of Civil and Commercial Procedure, as follows: "The procedure established under article 498 (summary procedure) shall be applicable ... when a claim is made against an act or omission by a private individual which, actually or potentially, infringes, restricts, jeopardizes or threatens in an arbitrary or manifestly illegal manner any right or guarantee explicitly or implicitly recognized by the Constitution, provided that the urgent redress of the injury or immediate cessation of the effects of the act is necessary and, because of its nature, the matter should not be dealt with by any of the procedures established by this Code or other laws".

70. The rules on summary procedure apply to these proceedings with the following modifications: no counterclaims or pleas of previous and special pronouncement are permitted; all time-limits are two days, except if the claim is being challenged, in which case they are five days, and the time-limit for evidence, which is set by the judge; only final judgements and preventive injunctions may be appealed against.

71. Article 28 of the Administrative Procedures Act (No. 19,549), as amended by Act No. 21,686 defines the action for amparo against administrative delay in the following terms: "Any person who was a party to administrative proceedings may fill a judicial application for an order for prompt action. This order shall be admissible if the administrative authority has allowed the time-limits to expire, and, should there have been no such time-limits, if it has taken a longer than reasonable time to issue either the report or the procedural or substantive decision requested by the party concerned. Once the application



has been submitted, the judge shall rule on its admissibility, bearing in mind the circumstances of the case and, if he deems it appropriate, order the administrative authority involved to state the reasons for the alleged delay within the time-limit set by him. The judge's decision shall be final. If the order has been challenged or if the time-limit expires without the above statement being made, the appropriate decision shall be taken with regard to the delay and, if appropriate, an order issued for the administrative authority responsible to take the necessary action within a reasonable period, to be determined in accordance with the nature and complexity of the pending report or procedures."

### 3. Application for habeas corpus

72. Act No. 23,098 provides that an appeal for habeas corpus is admissible when an act or omission by a public authority is reported and involves:  
(i) actual restriction on or threat to freedom of movement, without a written order from a competent authority; or (ii) illegal aggravation of the form and conditions of detention, without prejudice to the powers of the trial judge if there is one.

73. If a person's freedom is restricted owing to the declaration of a state of siege, the aim of the habeas corpus procedure may be to demonstrate in the specific case: (i) the legitimacy of the declaration of the state of siege; (ii) the relationship between the detention order and the situation that gave rise to the declaration of a state of siege; (iii) the illegal aggravation of the form and conditions of detention, which may in no circumstances be served in establishments intended for the enforcement of penalties; (iv) the effective exercise of the right to choose to leave the national territory.

74. In cases of detention, once the complaint has been filed the judge must immediately order the authority summoned, if there is one, to bring the detainee before him with a detailed report on the reasons for the measure, the form and conditions of detention, whether it was carried out by written order from a competent authority - in which case that order should be attached, and whether the detainee was placed at the disposal of another authority, and if so, which authority, for what reason and on what occasion the transfer took place. In cases of actual threat of detention, the judge must order the authority summoned to submit the report.

75. If the competent court or judge learns on the basis of reliable evidence that a person is being held in custody, detention or confinement by an official subordinate to it/him or by a lower-ranking administrative, political or military official and that that person is likely to be transferred out of the territory over which he/it has jurisdiction or made to suffer irreparable injury before he can be assisted by means of a writ of habeas corpus, such a writ may be issued ex officio, ordering the person responsible for the detention or any administrative officer, police officer or other employee, to bring the person detained or threatened with detention before it/him in order to resolve the case according to law.

### 4. Extraordinary appeal

76. Article 14 of Act No. 48 governs extraordinary appeal to the Supreme Court. It establishes that an appeal can be made against a final judgement in the following cases: (i) where the validity of a treaty, act of Congress or authority exercised in the name of the Nation has been called in question during the proceedings, and the decision has gone against its validity; (ii) where the validity of a provincial law, decree or authority has been called in question on the ground of being contrary

to the Constitution, treaties or acts of Congress, and the decision has been in favour of the validity of the provincial law or authority; (iii) where the interpretation of a clause of the Constitution, of a treaty or of an act of Congress, or a task undertaken in the name of the Nation has been challenged and the decision has been against the validity of the deed, right, privilege or exemption based on that clause and which is in dispute.

77. The case law of the Supreme Court has extended extraordinary appeal to cases of arbitrary judgements, in other words, decisions which in some way - for example, by applying laws not in force, by disregarding evidence or by omitting questions that have already been raised - violate the guarantee of the right to a defence.

#### 5. Administrative appeals

78. The Administrative Procedures Act (No. 19,549) governs appeals that may be lodged against decisions by the administration. Such appeals are the application for reconsideration, before the body responsible for the decision appealed against and the hierarchical appeal, lodged before the same authority but which must be resolved by the minister within whose competence the decision was made. The President resolves hierarchical appeals lodged against decisions by his ministers.

#### 6. Systems of compensation

79. Compensation as redress for injury is consequent upon responsibility. As such, it is for the judicial authorities to determine compensation both in criminal proceedings and in other sorts of proceedings.

### IV. INFORMATION AND PUBLICITY

80. Argentina is a State party to the following human rights treaties:

Convention on the Prevention and Punishment of the Crime of Genocide;

Geneva Conventions on international humanitarian law;

Additional Protocols to the Geneva Conventions on international humanitarian law;

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;

Convention relating to the Status of Refugees (without any geographical reservations);

Protocol relating to the Status of Refugees;

Convention on the Political Rights of Women;

Convention relating to the Status of Stateless Persons;

Supplementary Convention of the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

Convention against Discrimination in Education;

International Convention on the Elimination of All Forms of Racial Discrimination;

American Convention on Human Rights;

International Covenant on Civil and Political Rights and the Optional Protocol thereto;

International Covenant on Economic, Social and Cultural Rights;

International Convention on the Suppression and Punishment of the Crime of Apartheid;

Convention on the Elimination of All Forms of Discrimination against Women;

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

Inter-American Convention to Prevent and Punish Torture;

Convention on the Rights of the Child;

Inter-American Convention on Forced Disappearance of Persons.

(Other treaties containing human rights clauses and those adopted within ILO are not included.)

81. It should be recalled that, of the above-mentioned instruments, the following have constitutional rank: Convention on the Repression and Punishment of the Crime of Genocide; International Convention on the Elimination of All Forms of Racial Discrimination; American Convention on Human Rights; International Covenant on Civil and Political Rights and the Optional Protocol thereto; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child. The same hierarchical ranking applies to the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights.

82. The National Directorate for Development within the Office of the Under-Secretary for Human and Social Rights (Ministry of the Interior) has specific functions in the field of information, for which purpose it has set itself the following objectives: (a) to promote the inclusion of education on human rights and democracy at all levels of the formal educational system, as support for civic ethics, to guarantee human rights and to prevent violations; (b) to carry out informal human rights education programmes jointly with governmental, non-governmental and international organizations; (c) to train public officials (employees of national and provincial public administrations) in the theoretical and practical aspects of human rights, given that they have operational responsibility for the implementation of public policies; (d) to train police officers and security forces to carry out their work with due respect for the rules and principles laid down by the laws in force and in accordance with the recommendations of the United Nations; (e) to encourage the work of the human rights

documentation centre administered by the Directorate; and (f) to promote publications that support the dissemination, theoretical study and teaching of human rights.

83. These activities are without prejudice to any that may be organized and carried out by the various human rights departments in the provinces. In addition it should be noted that various national universities include courses on human rights in their curricula. This is also the case with the curricula of secondary schools administered by the city of Buenos Aires.

84. Disseminating information on human rights is also a major task of the non-governmental community working in that field. There are now a large number of non-governmental organizations (NGOs) working on various issues in Argentina. Many of them are local, while others are national branches of international groups. Several Argentine NGOs have consultative status with the Economic and Social Council of the United Nations.

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