



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Fourth periodic report

ARGENTINA * **

[17 December 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

** Annexes can be consulted in the files of the secretariat.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INFORMATION IN RESPONSE TO THE CONCLUDING OBSERVATIONS.....	1 - 142	3
A. Paragraph 8 of the concluding observations	1 - 20	3
B. Paragraph 9 of the concluding observations	21 - 61	6
C. Paragraph 10 of the concluding observations	62 - 68	13
D. Paragraph 11 of the concluding observations	69 - 82	15
E. Paragraph 12 of the concluding observations	83 - 92	18
F. Paragraph 13 of the concluding observations	93 - 101	20
G. Paragraph 14 of the concluding observations	102 - 112	22
H. Paragraph 15 of the concluding observations	113 - 134	26
I. Paragraph 16 of the concluding observations	135 - 142	31
II. INFORMATION ON NEW DEVELOPMENTS, WHERE APPLICABLE, REGARDING PROGRESS IN THE FULL ENJOYMENT OF THE RIGHTS RECOGNIZED IN EACH OF THE ARTICLES OF THE COVENANT.....	143-383	33
A. Article 1	143 - 146	33
B. Article 2	147 - 158	33
C. Article 3	159 - 163	35
D. Article 6	164 - 174	35
E. Article 7	175	37
F. Article 8	176 - 204	37
G. Article 9	205 - 212	42
H. Articles 12 and 13	213 - 258	44
I. Article 14	259 - 287	51
J. Article 18	288 - 306	56
K. Article 20	307 - 309	58
L. Article 23	310 - 314	59
LL. Article 24	315 - 328	59
M. Article 26	329	62
N. Article 27	330 - 383	62

**FOURTH PERIODIC REPORT TO BE SUBMITTED BY STATES PARTIES UNDER
THE PROVISIONS OF ARTICLE 40 OF THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS**

Note: In accordance with the Human Rights Committee's guidelines for preparing periodic reports (CCPR/C/66/GUI/Rev.2), this report will have two starting points: the first will be the Committee's concluding observations on Argentina's third periodic report (CCPR/CO/70/ARG), dated 3 November 2000; reference will then be made to any new developments concerning progress made towards full enjoyment of the rights recognized under each of the articles of the Covenant.

PART I

INFORMATION IN RESPONSE TO THE CONCLUDING OBSERVATIONS

A. Paragraph 8 of the concluding observations:

" The Committee, recalling the responsibility of the State party itself with regard to the implementation of obligations under the Covenant, recommends that the status of Covenant rights be clarified in the fourth periodic report, including any specific examples of cases where Covenant rights have been invoked in the courts. The next report should also contain information on the legal and other measures taken to implement the Covenant at the provincial level to ensure that all persons are able to enjoy their rights throughout the territory of the State party."

1. As previously reported, the legal system in force in the Republic of Argentina is composed of legal provisions with their own rank and different fields of validity, all consistent with the standards set out in the Constitution.
2. Competence to conclude treaties lies with the Executive branch (Constitution, article 99, paragraph 11). Nonetheless, 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" (article 75, paragraph 22), which relates to 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 that will be binding on the country.
3. Article 31 of the Constitution establishes that treaties are the supreme law of the Nation. The Supreme Court, as interpreter of the constitutional provisions, 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.
4. On 7 July 1992, the Argentine Supreme Court, ruling in the case of Ekmekdjian v. Sofovich, modified this position, stating that "in our country international treaties take precedence over the national laws". This ruling took place before the constitutional reform of 1994. The Supreme Court, in its decision on an amparo application concerning the "right of reply" claimed by the plaintiff invoking the American Convention on Human Rights, based its ruling on that occasion on the provisions of the Vienna Convention on the Law of Treaties (ratified by Argentina on 5 December 1972 and made applicable nationally by Act No. 19,865). It stated as follows: "The Vienna Convention on the Law of Treaties is a constitutionally valid

international treaty, which, in its article 27, provides that 'A party cannot invoke the provisions of its domestic law as justification for non-compliance with a treaty.' The necessary application of this article requires the organs of the State of Argentina to give precedence to treaties whenever they are in conflict with domestic law."

5. Following the reform of the Constitution in August 1994, the new text of article 75, paragraph 22, provides that: "Treaties and concordats have a higher status than laws. The American Declaration on 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 its Optional Protocol; 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, within the terms of their application, have constitutional status, do not abrogate any article of the first part of this Constitution and should be understood as complementary to the rights and guarantees recognised by it. They can only be denounced, if required, by the national Executive, with the prior consent of two-thirds of all the members of each Chamber. Other human rights treaties and conventions, once adopted by the Congress, require the assenting vote of two-thirds of all the members of each Chamber to acquire constitutional rank."

6. Later, by Act No. 24,820 of 30 April 1997, the national Congress granted constitutional rank to the Inter-American Convention on Forced Disappearance of Persons.

7. Moreover, by Decree No. 579/2003 of August 2003, the President of the Nation declared Argentina's accession to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which had been adopted by the Congress under Act No. 24,584 of 1995. The preamble to the Decree refers to the fact that "the Argentine Republic has embarked on a new stage in which respect for essential human rights, for democratic institutions and for social justice have become the fundamental pillars of government action". It also states that "it is the prime intention of the national Executive to contribute to creating a nation whose foundation is full respect for human rights" and that "our country has given constitutional status to various international documents whose main aim is to protect the dignity and value of the human person".

8. On 20 August 2003 the Congress adopted Act No. 25,778, promulgated on 2 September of that year, giving constitutional status to the above-mentioned Convention, in accordance with the procedure established in article 75, para.22, of the Constitution.

9. From the foregoing it may be concluded that the international human rights instruments concerned are on an equal footing with the provisions of the Constitution and take precedence over national and provincial legislation. Various decisions of the Supreme Court confirm that pre-eminence. Likewise, in accordance with the provisions of articles 116 and 117 of the Constitution, the Supreme Court has judged that international custom and the general principles of law that are the sources of international law according to article 38 of the Statute of the International Court of Justice are an integral part of our legal order. For that reason, the Supreme Court has in many cases accorded merit to *jus gentium* and to "the general principles of international law" in applying various provisions of international law.

10. It should be emphasized that the provisions contained in human rights treaties ratified by our country are directly applicable in the domestic sphere - the rights, guarantees and freedoms stipulated in an international human rights treaty being by their nature operative.

11. With regard to the jurisprudence of the Supreme Court concerning the ranking of treaties, it should also be pointed out, in addition to the information previously given, that the High Court has confirmed the binding nature of decisions of the Inter-American Court of Human Rights as instruments for interpreting the content of international legislation, citing in support the words "under the conditions of its applicability". In this connection, it has stated in the Acosta precedent that the case law of the international courts for the interpretation and application of conventions incorporated in the Constitution "must serve as a guide for interpreting the provisions of the conventions" (Preamble, paragraph 10).

12. With respect to the recommendations of the Inter-American Commission on Human Rights, the Court has stated that "on the principle of good faith which governs the conduct of States in the fulfilment of their international obligations, maximum efforts must be made to respond favourably to the recommendations but this does not amount to establishing it as a duty for judges to give effect to their content, where it is not a question of decisions binding for the judiciary" but rather representing a "guide for the interpretation" of the rights at issue in the specific case (see also Felicetti, Roberto and others/review of case No.2813).

13. The international commitment and the obligation to investigate seriously and remedy violations of human rights have likewise been recognized by our Supreme Court in the "**Giroldi**" precedent, which deserves to be quoted in part in view of its wider significance. The Justices declared that "it is for this Court, within the scope of its jurisdiction, to apply the international treaties to which the country is bound ... for otherwise the Nation would be liable before the international community". Similarly, it was said, the Inter-American Convention should be applied and interpreted "under the conditions of its applicability", that is to say, in the same way as "it governs at the international level and with particular regard to its effective application through case law by the competent international courts for its interpretation and enforcement" (preamble, paragraphs 11 and 12).

14. In this connection, in accordance with the doctrine set out in the decision of the Inter-American Court of Human Rights in the "Barrios Altos" case, it must be recalled that "the origin of the international responsibility of the State may rest on any act or omission of any of the powers or agents of the State (whether of the Executive, or of the Legislative, or of the Judiciary)" (point 9 of the concurring opinion of Judge A. A. Cançado Trindade). This has also been made clear in the concurring opinion of Judges Boggiano and Bossert, in the "Acosta" precedent, where they stated that the obligations stemming from international treaties and other sources of international law could not be affected "by reason of acts or omissions of its internal bodies, a question which does not lie outside the jurisdiction of this Court inasmuch as it can constitutionally circumvent it", a duty which they say applies to all judges of any rank and area of competence (Rulings 321:3555, preambular paragraphs 15 and 16).

15. In this connection, reference may be made to Annex I containing a summary of domestic jurisprudence in cases where the International Covenant on Civil and Political Rights is invoked.

16. Finally, further to the information provided previously, it is important to note that since the submission of its third periodic report to the Human Rights Committee, the Argentine Republic has ratified the following human rights treaties: the Optional Protocol to the Convention on the

Rights of the Child on the sale of children, child prostitution and child pornography; the Optional Protocol on the Convention on the Rights of the Child on the involvement of children in armed conflicts; the 1999 International Labour Organization (ILO) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182); the Rome Statute of the International Criminal Court; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and the International Convention for the Protection of All Persons from Enforced Disappearance.

17. Moreover, in December 2006, the Argentine Republic signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty. The competent authorities are currently taking the necessary measures for the legislative adoption of this instrument, with a view to its subsequent ratification

18. In this connection, it is also important to mention that the Republic of Argentina has not only signed but also been a strong promoter of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, signed by the Republic in May 2007

19. At the regional level, the Argentine Republic has ratified the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the "San Salvador Protocol", and has signed the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

20. As may be seen, the Argentine Republic is close to completing ratification of all the existing international and regional instruments in the human rights field

B. Paragraph 9 of the concluding observations

“Despite positive measures taken recently to overcome past injustices, including the repeal in 1998 of the Law of Due Obedience and the Punto Final Law, the Committee is concerned that many persons whose actions were covered by these laws continue to serve in the military or in public office, with some having enjoyed promotions in the ensuing years. It therefore reiterates its concern at the atmosphere of impunity for those responsible for gross human rights violations under military rule. Gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary to bring their perpetrators to justice. The Committee recommends that rigorous efforts continue to be made in this area and that measures be taken to ensure that persons involved in gross human rights violations are removed from military or public service.”

1. Measures relating to the investigation of human rights violations that occurred during the last military dictatorship

21. The Argentine Republic has made significant progress in combating impunity in the form of the gross and systematic human rights violations that occurred in the country during the period of State terrorism (1976-1983).

22. In this connection, with reference to the applicability of the “Due Obedience” Act (No. 23521) and the “Clean Slate” Act (No.23492), repealed by Act of Congress No. 24952 of 25 March 1998, the National Chamber of Appeals for Criminal and Correctional Matters in December 2001 confirmed the ruling of Federal Judge Gabriel Cavallo, who some months

previously had declared the laws in question to be invalid. The Court of Criminal Cassation issued a similar ruling, and the case is currently being considered by the Supreme Court.

23. Likewise, in August 2003, the Congress adopted Act No. 25779, promulgated by Decree No. 6982 of September 2003, whereby Acts Nos. 23492 and 23521 were declared "null and void". Upon the adoption of this law, the Federal Chamber of the Federal Capital adopted various decisions ordering the reopening of cases that had been shelved as a result of the adoption of the Clean Slate and Due Obedience Acts. Shortly afterwards, most of the federal chambers in the country adopted the same decision.

24. In addition, as already indicated, the President of the Nation by Decree No. 579/2003 provided for accession to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which had been adopted by the Congress under Act No. 24584 of 1995.

25. For its part, the Supreme Court in 2004 ruled in the case of *Arancibia Clavel* that the gross violations of human rights perpetrated during the period of State terrorism, being crimes against humanity, were not subject to statutes of limitation.

26. Another important question concerning the validity of the "pardon laws" relating to the human rights violations during the period of military rule was raised with the decision of the Supreme Court on 14 July 2005 to declare unconstitutional the Due Obedience and Clean Slate Acts. By majority vote, the Court held that "while there is no doubt that article 75, paragraph 20, of the Constitution upholds the power of the legislature to prescribe general amnesties, its authority has been made subject to important limitations of scope. For the most part, amnesty laws have been used historically as instruments of social reconciliation, with the declared aim of resolving remaining conflicts following the end of armed civil struggles. Similarly, Acts Nos. 23492 and 23521 sought to put an end to the confrontations between civilians and the military. However, inasmuch as they were directed, as with any amnesty, towards the "oversight" of grave human rights violations, those laws were in contradiction with the provisions of the American Convention on Human Rights and the International Covenant on Civil and Political Rights, making them constitutionally unacceptable (article 75, paragraph 22, of the Argentine Constitution)".

27. With the declaration by the Congress in 2003 that the Due Obedience and Clean Slate Acts were null and void, and the subsequent declaration by the Supreme Court in 2005 that they were unconstitutional, together with the obligation to refer to the courts extradition requests reaching Argentina relating to those crimes (on which further information is provided below), the way was cleared to reopen over 1000 cases involving human rights violations.

28. In this particular historical and political context, the Attorney-General of the Nation, in accordance with the provisions of article 120 of the Constitution and articles 11, 25, and 33 of the Government Procurator's Office Organization Act (No.14946), issued resolution PGN No.163/04, dated 10 November 2004, establishing the Assistance Unit responsible for collaborating with judges in all federal chambers in cases under examination for human rights violations during the period of State terrorism. Subsequently, the Attorney-General issued other related resolutions extending the Unit's powers to intervene in cases involving the investigation or trial of offences within its remit in the judicial chambers of the Federal Capital, Rosario, Santiago del Estero, La Rioja, Neuquen and Jujuy (see Res. PGN 163/04, 11/05, 30/05, 109/05, 110/95, 23/06).

29. It should also be mentioned that on 10 November 2005 the Attorney-General decided to instruct judges to accelerate the investigation of cases involving human rights violations, speeding up the process of bringing to trial or instituting committal proceedings (see. Res. PGN 138/05). This decision was supplemented by Res. PGN 72/06, providing for the Assistance Unit to be involved as co-prosecutor, jointly or alternately, with the procurators-general in cases brought before the oral tribunals within the federal criminal jurisdiction to be heard by those responsible for cases involving the investigation of human rights violations during the period of State terrorism.

30. It should furthermore be noted that, with the re-opening of cases of human rights violations under the dictatorship, documentary and oral evidence obtained in the "right to truth" procedures dating from the period when legal cases were blocked has in many cases been incorporated in the relevant case files. All this helps to bring closer to completion the struggle against impunity that has been progressing by fits and starts in Argentina since the advent of democracy

31. Finally, it should be noted that progress made by Argentina in terms of measures to eradicate impunity was expressly commended by the United Nations Deputy High Commissioner for Human Rights at the time, Bertrand Ramcharan, who on 15 August 2003 highlighted "the efforts made by Argentina to combat impunity and bring to an end to one of the most painful episodes in its history". He emphasized in this connection the part played by the Judiciary and the Congress of Argentina, as well as the current President, in helping to ensure that those responsible for human rights violations during the period of military dictatorship were brought to justice.

32. The Deputy High Commissioner said that it was "encouraging to see the efforts being made to ensure that justice is done, despite the fact that some have done everything possible in the past to prevent this". In this regard, he expressed the view that "the Government of Argentina has demonstrated the will to put an end to impunity", emphasizing that it was an essential step towards "healing the wounds left by years of dictatorship and demonstrating that those who suffered those terrible violations of their human rights have not been forgotten".

2. Measures relating to international co-operation in criminal matters

33. In response to various requests for legal cooperation submitted by foreign judicial authorities relating to proceedings in other countries concerning events that had taken place in Argentina under the former military government, a Decree of 5 December 2001 stipulated rejection of requests for extradition for acts occurring in the national territory or places subject to national jurisdiction. The Decree also provided that requests for provisional arrest would be transmitted to the competent court, specifying that the Minister of Foreign Affairs, International Trade and Worship would act in accordance with the said Decree in responding to any request for extradition. It was also stated that any criminal record or documentary or other evidence accompanying the request would be forwarded to the judge in charge of the case or else to the duty judge or to the Government Procurator's Office in the form of a complaint.

34. With regard to the cases being heard before foreign courts, the Decree pointed out, among other things, that they concerned acts that had occurred in our country which, in the majority of cases, had been investigated and that those responsible had been condemned or the proceedings had been discontinued pursuant to laws enacted for the purpose, while other cases were being actively pursued. It was considered that to accede to requests from those courts would be detrimental to the legal authority of the Argentine courts, which had been and were taking the

appropriate steps, just as it would violate the principle of double jeopardy, enshrined in the Constitution and universally accepted. It would also be injurious to the essential interests of Argentina which, in a spirit of solidarity, had put into effect a legislative and judicial solution that had made domestic pacification possible and that it was determined to maintain.

35. Subsequently, on 25 July 2003, the President of the Nation issued a new decree annulling Decree No.1581/2001 and making legal proceedings compulsory in the case of requests for collaboration or extradition under Act No. 24767 concerning international cooperation on criminal matters and extradition. The new Decree provides that, once compliance with the formal requirements and conditions prescribed in the aforementioned law has been confirmed, judicial proceedings will begin through the Office of the Government Procurator in accordance with the relevant legal provisions. The preamble to the new Decree states that “the absolute separation imposed by Decree No. 1581/2001 is inadmissible from the perspective of the harmonious interaction between the different Republican branches. The Executive cannot arrogate to itself powers that properly belong to the Judiciary. The National Constitution, the division of powers within the Republic, the Cooperation Act, and the general principles applicable in this area are at odds with the provision”.

36. It should be mentioned that the International Cooperation in Criminal Matters Act has been in force in the Argentine Republic since January 1997. Article 1 of the Act stipulates that the Argentine Republic will provide any State so requesting with all possible help concerning the investigation, trial and punishment of offences coming within the latter’s jurisdiction. The authorities concerned will make every effort to ensure that the request is processed as expeditiously as possible so as not to detract from the assistance provided.

3. Measures relating to "pardons"

37. As the Committee is aware, Decrees No. 1002/89 and 1003/89 issued in 1989 granted pardons to a large group of individuals, military and civilian, who had been tried and sentenced; some were in detention, others in flight and still others under house arrest or imprisoned. In all, some 250 indicted persons were involved, falling into two categories: a) top military chiefs who had been tried and did not benefit from the Clean Slate and Due Obedience Acts, with the exception of ex-general Carlos Guillermo Suárez Mason, extradited from the United States of America (Decree N° 1002/89); b) a number of civilians accused of subversion and who were variously in-flight, detained, incarcerated or sentenced (including those freed, dead and "disappeared"), together with Uruguayan oppressors belonging to their country's army (Decree number 1003/89).

38. The following year, 1990, saw the signing of Decrees Nos. 2741/90 and 2746/90. In the first place, pardons were given to the commanders who had been convicted by the National Chamber of Appeals for Criminal and Correctional Matters in 1985 in the Federal Capital in the so-called "Junta trial", while the second Decree benefited Carlos Guillermo Suárez Mason.

39. Under proceedings for human rights violations during the dictatorship, numerous complaints were lodged with the courts of first instance, arguing that the pardons in question were unconstitutional. As a result, in addition to various federal tribunals of first instance, the National Chamber of Appeals for Criminal and Correctional Matters and the Córdoba Federal Chamber of Appeals issued rulings on the question. The first, on 1 April 2005, declared the granting of pardons under Decrees Nos. 1002/89 and 2746/90 to be unconstitutional and ordered the continued investigation of Juan Bautista Sasiaiñ, Jorge Carlos Olivera Rovere and Carlos

Guillermo Suárez Mason under interlocutory matter "Suárez Mason, Guillermo and others concerning the re/unconstitutionality of pardons, Decrees Nos. 1002/89 y 2746/90". The second ruled Decree No. 1002/89 to be unconstitutional in October 2005, in the proceedings *Pérez Esquivel Adolfo, Martínez María Elba r/submission*.

40. Finally, on 13 July 2007, the Supreme Court annulled the pardon granted in 1990 to the ex-Commander-in-Chief of Military Institutes, Santiago Omar Riveros.

41. While the Court's ruling in this instance referred to the particular case of ex-General Riveros, its effect may be extended to other pardons granted to military men and sundry members of the security forces, insofar as it provides an important future precedent where trials involving similar cases are submitted to the Court. Thus, in the ruling concerned, the Court anticipates that it would be equally unconstitutional if the pardon were applied to persons on trial who had not yet been sentenced or to persons already convicted.

42. Far from being a minor matter, the Court's decision brought to a close a stage initiated three years previously, when the same Court had declared that cases of murder, kidnapping, torture and disappearances in the context of State terrorism were not subject to prescription.

4. The so-called "right to truth"

i) Concept of the right to truth

43. The right to truth is that owed to victims of serious violations of human rights and international humanitarian rights and also that owed to society as a whole, namely, the right to have full knowledge of what has occurred, in terms of individual events and responsibilities. The right to truth therefore also has a collective dimension, consisting in the right of the community to know what has happened in cases of gross and systematic violations of the most fundamental human rights.

44. This right has as its counterpart the duty of States, in particular, to fulfil the obligation to investigate and repair wrongs, independently of that of judging and punishing those responsible for the hurt caused.

ii) Progressive development

45. With a clear precedent in international humanitarian law, the right to truth has been developed in both legal doctrine and case law and has been recognized as applicable equally to situations of armed conflict and internal violence and to peacetime. This being said, the autonomous and independent nature of the right to truth was recognized internationally for the first time in 2005, when the Commission on Human Rights adopted by consensus a resolution on the subject, drafted by Argentina.

46. Since then, the Argentine Republic has drafted a number of resolutions, which have contributed (in terms of their significance and scope) to the progressive development of the right to truth, both internationally and at the regional and subregional levels.

47. The consensus of the international community regarding the need for States to recognize and guarantee the right to truth was ratified with the adoption in 2006 of the International Convention for the Protection of All Persons from Enforced Disappearance, the first legally binding international instrument to recognize the right to truth as well as to urge states to

guarantee it. In this connection, it should be pointed out that Argentina played a very active role in both the drafting and negotiation of the text of the Convention.

48. With specific reference to the development of the right to truth in our country, it should be noted out that, following the advent of democracy in 1983, successive governments have adopted measures designed to respond to the human rights violations that occurred under the last military government. The trial of the Juntas and the establishment of the National Commission on Enforced Disappearance of Persons (CONADEP), which was set up in order to elucidate what had occurred, were some of the salient measures.

49. Subsequently, as previously noted, the adoption of the Due Obedience and Clean Slate Acts (Nos. 23521 and 23492) in 1987, and the Pardon provisions in 1990, halted the legal proceedings relating to the violations in question.

50. It was in this context that the truth-finding proceedings took place, initiated for the most part by the families of those who had disappeared and by non-governmental human rights organizations, with the aim of learning the fate or whereabouts of their loved ones, as well as the motives and circumstances surrounding their disappearance. So it was that, in the year 2000, the Ad Hoc Committee of Prosecutors on truth-finding proceedings was established under Resolution PGN 15/00 at the request of the Special Representative for Human Rights in the International Sphere in connection with the follow-up of the Friendly Settlement Agreement in Case No. 12.059 of the Inter-American Commission on Human Rights (Lapacó case).

51. It should also be pointed out that, with the re-opening of the above cases, much of the documentary and oral evidence obtained in the "right to truth" proceedings dating from the time when the legal cases were being blocked was able to be incorporated in the case files. This helped to close a chapter in the fight against impunity, which had been underway in Argentina since the return of democracy. Far from being a minor matter, the inclusion of "right to truth" procedures in the present criminal cases underlines the intimate connection between the notions of truth and justice. Moreover, while it is true that criminal proceedings are currently taking place in the manner indicated, the truth-finding procedures continue to take place in some jurisdictions and, while they are conducted in parallel with the trials, they do not take place in watertight compartments and feed into the trials by providing a constant input of information.

52. Finally, it is important to note certain recent practices in the Argentine Republic that contribute to the effective exercise of the right to truth in terms of identity and memory. Notable in this regard are:

- a) The work carried out by the Argentine Forensic Anthropology Unit (EAAF). This organization has contributed to the quest for truth and justice for victims of human rights violations, their families and society in general. A key element in the work of this organization is the recovery, analysis and supply of information derived from criminal cases involving human rights violations, as well as the dissemination of such information to help guarantee the right enabling society to know the facts surrounding the massive and systematic violations of human rights. In this connection, it should be pointed out that the Argentine State, in conjunction with the Argentine Forensic Anthropology Team (EAAF), carries out international technical cooperation activities.

- b) The creation in 2003 of the National Memory Archive (ANM), responsible for obtaining, analyzing, classifying, digitalizing, archiving and disseminating testimonies and documents concerning human rights violations during the former military dictatorship.
- c) The participation of the Argentine Ministry of Foreign Affairs in the project implemented by the International Red Cross Committee (IRCC) entitled "Missing. The Right to Know". In this connection, recommendations are being addressed to various government bodies calling on them to observe the provisions of international law regarding the prevention of forced disappearance.

5. Investigations into the crime of abduction of minors

53. The Judiciary has in hand a number of investigations to elucidate the offence of the abduction of minors born in captivity during the period between 1976 and 1983 - the Due Obedience and Clean Slate Acts having at the time expressly excluded from their purview the offence of abduction of minors. The object of the proceedings is to find the people politically responsible for those crimes, i.e. those who gave the orders and created the network of cover-ups so that the stealing of babies could take place.

54. These proceedings can take place and have always remained open because when the military juntas were put on trial in 1985 only six cases were investigated out of the 200 or so that had occurred, given that reform of the Clean Slate and Due Obedience Laws did not cover abduction and change of identity of minors.

55. In this connection, in June 2004, the President set up under Decree N° 715/2004 the Special Investigation Unit (UEI) within the National Commission for the Right to Identity (CONADI), with the task of investigating cases of disappearance and illegal appropriation of children during the former military dictatorship.

56. This unit operates within CONADI, set up 12 years ago to identify the whereabouts of child victims of the military dictatorship, and is headed by the Secretary for Human Rights attached to the Ministry of Justice, Security and Human Rights, in his capacity as President of CONADI.

57. In the preamble to the Decree setting up this Unit, it is stated that "despite the efforts so far by various public and non-governmental bodies, the judicial investigations aimed at identifying the authors, accomplices and instigators of these offences and restoring their true identity to the victims have had but limited success, involving only a few participants in the criminal acts".

58. The UEI caters directly to the requirements of CONADI and to requests from the judiciary or prosecutors relating to cases within its remit, as well as to related investigations detached from the main files or in some way linked to them. It can also carry out investigations on its own initiative, provided it communicates its findings to the judiciary and to the Government Procurator's office.

59. Article 3 of the Decree setting up the Special Investigation Unit provides that all bodies dependent on the National Executive should give top priority to the Unit's requests aimed at elucidating the criminal acts that were the reason for its creation. In keeping with the aims and purposes of the Decree, the UEI may have direct access to all the archives of the National Executive's dependent bodies, including those of the Presidency, the Executive Office of the Cabinet of Ministers, its subordinate bodies, the Armed and Security Forces as well as registry

offices, and can submit direct requests to these bodies for archived information, evidence and documents relating to the substance of this Decree, to which they must respond within the deadline fixed by the request.

60. To this end, the Head of the Special Investigation Unit (UEI) has been assigned the following powers and responsibilities:

- a) Exercise direct supervision and management of the UEI;
- b) Represent the national Executive in contacts with national and foreign institutions and NGOs having an interest in the conduct of the investigation;
- c) Attend to the requirements of the Judiciary and the Government Procurator (MPF) in legal cases linked to the commission of acts of appropriation of identity;
- d) Coordinate with the Supreme Court and the Council of the Magistrature la in responding to requests for technical, human and material resources formulated by the judicial authorities or the Government Procurator in connection with the above-mentioned legal cases;
- e) Submit through the appropriate channels to institutions or provincial departments, as well as to foreign security and intelligence bodies, requests for collaboration, documentation or reports;
- f) Provide for all necessary measures to protect witnesses testifying in connection with investigations undertaken by the Special Investigation Unit, as well as witnesses and those involved in legal cases linked to instances of child stealing, where such protection is requested by the judge in the case.

61. The initiative in creating this body was welcomed by the main local human rights organizations, including the Association of Grandmothers of the Plaza de Mayo, whose President, Estela de Carlotto a, stressed that "we shall now work together with the State ... the resolve of a State President to change the direction of history is contagious and this will promote a chain of positive events to throw light on the past and above all enable us to meet our grandchildren".

C. Paragraph 10 of the concluding observations

"... the Committee reiterates its deep concern at the failure of the State party fully to ensure the principle of presumption of innocence in criminal proceedings. In this respect, the Committee considers it a matter of concern that the duration of pre-trial detention is determined by reference to the possible length of sentence following conviction rather than the need to bring the detainee before the courts. It stresses in this regard that the imposition of such detention should not be the norm but should be resorted to only as an exceptional measure to the extent necessary and consistent with due process of law and article 9 (3) of the Covenant. In this regard, there should not be any offences for which pre-trial detention is obligatory. All aspects of the system of pre-trial detention, including the determination of the length of detention, should be reformed in accordance with the requirements of article 9 and the principle of presumption of innocence under article 14. "

62. While the State shares the concern expressed by the Committee, the domestic legal system includes a specific provision in this regard. It is contained in Act N° 25430 (modifying Act N°

24390) of 2001, which regulates the duration of pre-trial detention and provides that: "Pre-trial imprisonment may not exceed two years without sentence having been pronounced. Notwithstanding, should the number of charges against the accused or the evident complexity of the case have prevented sentence from being passed within the time indicated, it may be extended for one year more, by a reasoned decision that must be immediately communicated to the competent higher court for due scrutiny." Article 2 stipulates that the time periods established in article 1 shall not be counted when the said periods are served after a verdict has been delivered, even if it is not binding.

63. The slow but steady change in the way pre-trial detention is viewed in case law must also be taken into consideration. Recent decisions of the Supreme Court expressly uphold the need to use pre-trial detention as an exceptional precautionary measure and to apply it in accordance with stringent legal criteria rather than indiscriminately.

64. Particular attention is drawn to the Supreme Court decision of 3 May 2005 in the case of "*Verbitsky, Horacio writ of habeas corpus*", in which the Court established standards for the protection of the rights of persons deprived of liberty that the various branches of government are required to respect in order to fulfil their obligations under the Constitution and international human rights treaties having constitutional rank. These obligations include ensuring that pretrial detention is reasonable, both in its application and in its duration.

65. Other recent decisions of the federal and criminal courts have established that the rights established in international treaties take precedence over procedural norms, as in the case of the Convention on the Rights of the Child, where female prisoners with under-age children may be released from prison so that their children may enjoy their right to live with their mothers.

66. In 2006, the Buenos Aires Supreme Court ruled unconstitutional article 24 of the Criminal Code, which regulated the way in which days of pre-trial detention were calculated for prisoners given life sentences. Specifically, this norm established that pretrial detention was to be calculated as follows: for two days of pretrial detention, one of imprisonment; for one day of pretrial detention, one of imprisonment or two of deprivation of civil rights or a fine in an amount ranging from 35 pesos to 175 pesos, to be determined by the court.

67. Among the legislative measures being taken to moderate the use of pretrial detention is a draft bill recently adopted by the Chamber of Deputies and pending in the Senate; the bill contemplates the option of house arrest for mothers of small children, elderly persons and persons whose health might be adversely affected by incarceration.

68. Lastly, it should be noted that in March 2006 the legislature of Buenos Aires province approved Act No. 13,449, amending the regulations governing prison release in the Code of Criminal Procedure. As a result of this reform, certain offences for which release was automatically ruled out no longer fall into this category. An individual shall be held in pretrial detention only when such detention is absolutely necessary to ascertain the truth, ensure continuation of the proceedings and apply the law.

D. Paragraph 11 of the concluding observations

“The Committee is deeply concerned that prison conditions fail to meet the requirements of articles 7 and 10 of the Covenant. It considers the severe overcrowding and the poor quality of basic necessities and services, including food, clothing and medical care, to be incompatible with the right to be treated with humanity and with respect for the inherent dignity of the human person to which all persons are entitled. It has been established, in addition, that there are abuses of authority by prison officials, such as torture and ill-treatment, and corruption. While noting the plans under way to construct new prison facilities, the Committee recommends that immediate attention be paid to the need to provide adequately for the basic necessities of all persons deprived of their liberty. With respect to complaints of ill-treatment or torture, it recommends that the State party include in its next report detailed information on the number of complaints received, including the recourse procedures that are available to complainants, the outcome of complaints to date, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.”

69. The conditions in Argentine prisons have been a source of concern both to the Argentine State and to various NGOs, which have filed protests and complaints with international organizations. In this regard, various measures have been taken to remedy the situation and ensure effective compliance with articles 7 and 8 of the Covenant.

70. Thus, on 29 July 1993, by Decree No. 1598, the office of the Government Procurator for Prisons was established as part of the Executive branch with the rank of Under-Secretary of State and with internal jurisdiction.⁶⁰

71. The primary role of the Procurator is to ensure protection of the human rights of persons held in the federal prison system, through the application of both domestic law and international instruments ratified by Argentina. In the performance of his or her tasks, this official is not bound by any mandatory terms of reference and should therefore operate with complete independence

72. Technically speaking, the office in question was designed as a form of “sectoral ombudsman’s office”, with the aim of exercising administrative oversight over the custodial conditions of persons in detention at the federal level.

73. The Procurator has the power to make periodic visits to all prisons holding national or federal detainees. In addition, the Procurator may, at his or her own initiative or on the request of any party, investigate any act or omission that might infringe the rights of inmates, and is under an obligation to file criminal charges as and when necessary.

74. The views of the Procurator may be formulated as recommendations to the Ministry of Justice, which is responsible for the monitoring and supervision of the national and federal prison system.

75. After years of experience in this field, the Procurator’s office undertook an external audit of the prison administration system, which involved a range of different activities:

- a) Attending meetings at the request of prisoners;
- b) Conducting spot checks of custodial facilities, to assess detention conditions and see how they were organized, and to monitor compliance with existing legislation;

- c) Requesting special reports on various aspects of the execution of sentences;
- d) Submitting recommendations to the Ministry of Justice or to the prison administration
- e) Instituting criminal proceedings, as a means of alerting the judicial authorities to the perpetration of criminal offences, a procedural requirement vested in the Procurator for Prisons;
- f) Filing an annual report to Congress.

76. Recognition of ten years' work by the Office of the Procurator of Prisons came with its inclusion, under Act N° 25875, within the legislative branch of government. This transfer established the functional autonomy of the Office. It has as its main objective "to protect the human rights of persons held in the federal prison system, of all persons deprived of their liberty for any reason under federal jurisdiction [... and also] of persons held in remand and convicted by the judicial authorities and held in provincial facilities, thus extending the Office's jurisdiction to facilities that were not included in Decree No. 1598/1993 (police stations, prisons and any premises where persons are held in custody"

77. With regard to specific steps taken to safeguard the physical integrity of the members of all vulnerable groups, visits were made to institutions housing children deprived of freedom (police stations, homes, institutes and prisons) in the provinces of Tucumán, Río Negro, Jujuy, Mendoza, Salta and the Autonomous City of a Buenos Aires. They were matched in every case by public reports and by the direct involvement of government, judicial and legislative authorities. The content and scope of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment were publicized in each of the jurisdictions visited.

78. As regards defence of the rights of persons deprived of liberty, it should also be mentioned that the Centre for Legal and Social Studies (CELS), one of the country's main human rights NGOs, in 2001 submitted a collective habeas corpus concerning the conditions of detention in police stations in the province of Buenos Aires. In the ruling of May 2005, in response to an application for judicial review by CELS in *Verbitsky, Horacio s/hábeas corpus*, the Supreme Court of Justice stated that " the United Nations Standard Minimum Rules for the Treatment of Prisoners, reflected in Act No. 24,660, set out basic guidelines covering any form of custody, in other words, that they should serve as a baseline in interpreting article 18 of the Constitution. In its decision the Supreme Court ruled that the legislation on pretrial detention and release from custody applicable in the province was inconsistent with the Constitution and international principles. It drew attention to the stipulation in article 18 of the Constitution that the country's prisons should be healthy and clean, that they were designed to provide security and not to punish the prisoners detained within them, and that any measure that, on the pretext of a precautionary action, resulted in their unnecessary humiliation, would engage the responsibility of the judge who authorized it". It also drew attention to the stipulation in article 18 of the Constitution "that the country's prisons should be healthy and clean, that they were designed to provide security and not to punish the prisoners detained within them, and that any measure that, on the pretext of a precautionary action, resulted in their unnecessary humiliation, would engage the responsibility of the judge who authorized it; it recognized the right of persons deprived of their liberty to be treated with dignity and humanity and, to ensure compliance with the law, also established effective judicial remedies (...).The United Nations Standard Minimum Rules for the Treatment of Prisoners - while they did not have the same status as treaties incorporated into the corpus of

federal constitutional law - had been transformed, through article 18 of the Constitution, into the international standard for persons deprived of their liberty. Those rules without any doubt provided a regulatory framework, of both national and international scope, which - if the situation in question was to be confirmed and continued, would clearly be being violated in the province of Buenos Aires”

79. The Court instructed the Supreme Court of the Province of Buenos Aires and the courts at all levels in the province to ensure that, in their respective areas of competence and by decision of the Supreme Court, or in accordance with the urgent nature of the case, an end was put to any situation of aggravated detention that involved cruel, inhuman or degrading treatment or any other circumstance likely to engage the international responsibility of the federal State. The Court stated that the holding of adolescents and sick people in police stations or police cells constituted a flagrant violation of the general principles of the Standard Minimum Rules and, in all likelihood, presented incontrovertible cases of cruel, inhuman or degrading treatment. The Court also ruled that the Supreme Court of the Province of Buenos Aires, through its competent courts, should put an end to the practice of detaining minors or sick people for up to 60 days in the province’s police stations. It also ordered that, every 60 days, the executive branch of the Buenos Aires provincial government should report to the Court on the steps that had been taken to improve the situation of detainees throughout the province. Finally, the Court urged the executive and legislative branches of the Buenos Aires provincial government to bring the province’s criminal procedure law relating to pretrial detention and release from custody and its criminal enforcement and prisons law into line with constitutional and international standards.

80. More recently, in October 2007, a public hearing was held in the Supreme Court of the Province of Buenos Aires to review the situation of persons deprived of their liberty. The participants at the hearing agreed on the need for an effective forum at which the issue could be discussed and solutions sought to the continuing use of pretrial detention. At the same time, it was agreed that there had been a marked decrease over the past two years in the number of detainees, primarily in police stations.

81. At the same time, in one of the paradigmatic examples of the serious prison situation in the province of Mendoza, an amicable agreement was reached at the Inter-American Commission on Human Rights whereby the Government of the province has not only accepted responsibility in the matter and for its legal consequences but has also agreed to adopt a series of crucial measures to neutralize the complex state of affairs that gave rise to the provisional measures ordered by the CIDH, by contributing significantly to institutional improvement in the State and ratifying its undertaking regarding the unrestricted observance of human rights, particularly in areas of extreme sensitivity such as the prison system.

82. Such measures include the creation of an "ad hoc" arbitration tribunal to determine the financial damages owed to victims, and a substantial package of non-financial, one-off compensation measures, such as the adoption of legal reforms, improvements in the living conditions of prisoners (with particular regard to recreation, lodging and work training), the creation of a preventive body within the framework of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the creation in Mendoza of a post of Ombudsman to be responsible for defending the human rights of the population as a whole (in the areas of health, education, security, development, environment, freedom of information and communication, consumer and user rights, etc), the establishment of a post of Procurator to safeguard the interests of persons deprived of liberty, the creation of an Office of Public Advocate to represent defendants in the criminal court, and the development of a

Prison Policy Action Plan to establish public policies in the short, medium and long-term, with appropriate financial support to enable it to be implemented.

E. Paragraph 12 of the concluding observations

Further, in relation to article 7 of the Covenant, the Committee regrets that questions of torture and excessive use of force by police officials were not adequately dealt with in the present report. The Committee is concerned at allegations it has received indicating that this is a widespread problem and that government mechanisms established to address it are inadequate. The Committee recommends that the State party include in its next report detailed information on the number of complaints received of torture and ill-treatment by the police, including the recourse procedures and remedies that are available to complainants, the outcomes of such complaints, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

83. Among the measures adopted by the State to tackle the problem of the prevention of torture, it should be noted that, in November 2004, Argentina ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, the first country in America and the first country in the world with a federal government to ratify the protocol.

84. With the ratification of the Protocol, the Government of Argentina reinforced the undertaking it gave on 3 December 2002 in relation to the extra-conventional machinery of the Commission on Human Rights through the extension of an open invitation to attend all the Commission's special thematic proceedings. In making this an open invitation, the Government made clear that it would always permit the entry into our country of representatives and experts of the universal system for the promotion and protection of human rights. In this context, the ratification of the Protocol is wholly compatible with the policy pursued by Argentina since the restoration of democracy with regard to transparency and international monitoring.

85. In order to giving effect to the National Mechanism for the Prevention of Torture provided for in the above-mentioned Protocol, an interdisciplinary workforce was created to draw up a draft law providing for the creation of a National Committee for the Prevention of Torture with the duty of acting throughout the territory, directly or through the delegations created for that purpose. This Committee will coordinate its work with local bodies that are carrying out similar activities to those envisaged in the Optional Protocol

86. The main functions of the body concerned will include those set out in article 19 of the Protocol, namely (a) to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment; (b) to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; (c) to submit proposals and observations concerning existing or draft legislation.

87. With regard to the need to register cases of police abuse and instances of mistreatment, the draft law in question includes the creation of a specific database for recording this kind of case throughout the country.

88. However, this has not been the only measure for producing reliable records on cases of violence and abuse committed within penal establishments and by the police and security forces. Thus, for example, in January 2006 the Ministry of Justice asked the provincial Ministries of Justice for their assistance in producing a reliable register on the deaths that had occurred in all places of detention on the national territory, with the aim of following up these events and drawing up public policies to avoid them. Almost all the provinces have responded with official data, which will enable a register of these events to be produced and to keep them up to date. It must also be recorded that, while the number of persons deprived of liberty who have died in 2006 while under detention is high and some of the cases are particularly serious, the total number of cases in the last two years has been reduced by more than 50% in relation to 2005.

89. In addition, visits were made in the course of 2005 to different prison units and other facilities throughout the country where detainees were being held. The visits were made by teams from the Human Rights Office, sometimes with additional members from social and human rights groups. On these visits, the mechanism of the Optional Protocol was used, together with other associated instruments such as the Monitoring Manual for Sanctioning and Preventing Torture drafted by the Association for the Prevention of Torture (APT), so as to improve the use of visits as a system of control with a view to future implementation of the national mechanism.

90. Finally, in the interests of creating a reliable register unifying data on violent deaths in all places of detention, the Human Rights Secretariat produced a register of the deaths that have occurred in places of confinement on the basis of corroborative information received from various governmental and non-governmental sources, such as the Federal and the Provincial Penitentiary Services; the police and other security forces; persons deprived of liberty and their alleged family members; journalistic information; human rights organizations, and the information obtained from Secretariat personnel

91. For its part, under an agreement with the United Nations Development Programme (UNDP), the Office of the Secretary for Human Rights of the Ministry of Justice and Human Rights of the Nation, in a public presentation on 26 August 2005, announced the establishment of the first thematic Human Rights Observatory, on the conditions of detention in places of imprisonment in the Río Negro province,

92. Similarly, the Office of the Under-Secretary for Prison Affairs within the Ministry of Justice and Human Rights and the Office of the Procurator-General, in collaboration with the Argentine Foreign Office, organized a workshop on good prison practices, held from 12 to 16 November 2007 at the Faculty of Law in the University of Buenos Aires and at the Academy of the Federal Prison Service. The representatives of 19 Spanish-speaking States of the Organization of American States (OAS) participated in the seminar.

F. Paragraph 13 of the concluding observations

The Committee expresses concern over continuing attacks on human rights defenders, judges, complainants, representatives of human rights organizations and members of the media. In addition, persons who participate in peaceful demonstrations are reportedly subject to detention and penal action. Attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required. The State party should provide details in its next report on the results of such investigations and the procedures involved in disciplining or punishing offenders.

93. The Argentine State is conscious of the importance of the work carried out by the defenders, judges, prosecutors and others involved in the denunciation and investigation of human rights violations. For this reason, the State has reacted immediately to the attacks perpetrated on those concerned.

94. The State has also shown particular concern for developing effective systems of protection for the witnesses who have testified in over 1000 cases that were reopened to investigate human rights violations committed during the former military dictatorship. On this point, the case of the witness Julio López, who is still missing, shows the seriousness of the situation and the need for the State to pursue firmly policies aimed at combating impunity as well of those related to the protection of witnesses and the defenders of human rights.

95. On 23 April 2007, the Ministry of Justice and Human Rights issued a resolution (M. J. and D. H. No. 439/07) establishing that the National Directorate of the National Programme for the Protection of Witnesses and the Accused coming under the Office of Crime Policy and Prison Affairs of that Ministry would provide protection to individuals on the instruction of the judge or the Ministry in the context of legal processes related to human rights violations committed during the last dictatorship.

96. This resolution will be effective until the establishment of a program or body that serves to coordinate the activities to which the various ministries concerned contribute. The fundamental aim of the Plan is to safeguard not only the integrity of witnesses but also the value of their evidence and its social value in terms of the construction of a collective memory. To this end, the Plan involves providing support to witnesses and/or complainants, coordinating the relevant activities from an integrated psycho-juridical standpoint at the national level, and continuing to monitor cases in the interests of a more accurate evaluation of the replies provided in each particular situation.

97. At the provincial level there are also exist special protection programs, namely:

- a) Witness surveillance and assistance programme according to degree of exposure (Decree N° 2475/06 the province of Buenos Aires);
- b) Witness surveillance and care programme according to degree of exposure and risk (Decree N° 0076/07 of the province of Santa Fe).

98. As emerges from the first report, dated 29 September 2006, of the Assistance Unit concerned with cases involving human rights violations during the period of State terrorism, coming under the Office of the Procurator-General of the Nation, it was decided to send a note to all the officials in the Government Procurator's Office (MPF) requesting the following information:

- a) timetable of the oral proceedings scheduled for such trials;
- b) all the personal data of the witnesses proposed and/or summoned in future in these cases, at whatever stage they may be
- c) identify the information given by each witness that has testified and who on the basis of the prosecutor has provided crucial evidence or who is deemed to require special protection by the State

99. Information was also requested on the totality of the data in cases involving threats to judges, clerks and civil servants. In this regard, the report in question systematizes the following information:

- a) As regards the timetable for future oral proceedings, while a number of cases have reached the trial stage, in no case has the date for the trial's conclusion been fixed. The 5 trials concerned are based in Oral Court N° 5 in the city of Buenos Aires, with the participation of the Prosecutors from Federal Oral Courts Nos. 2 and 4, and of the Assistance Unit as an additional party.
- b) The Unit has made contact and stays in close touch with the Office for the Protection of Witnesses and Persons under Investigation coming under the Ministry of Justice and Human Rights (Act N° 25764). This Office has also served as a channel for requests from the Ministry of Security of the Buenos Aires province, on the basis of Decree N° 2475/06, to implement the Monitoring and Care Programme for Witnesses at Risk, intended for those citizens of the province of Buenos Aires who testify in cases involving military or police perpetrators.

100. Lastly, the Centre for the Protection of Victims' Rights of the Provincial Government of Buenos Aires made it known that it has provided for a Programme of Care and Protection of Witnesses, for which it has sought the co-operation of the Assistance Unit in cases involving human rights violations during the period of State terrorism

101. Finally, it should be noted that the number of witnesses reported totals 4.178; of these 360 are considered crucial by the prosecutors concerned; 17 have been threatened; 5 who have not been threatened require special protection in the judgement of the prosecutors; and the number of officials and judges belonging to the Federal Public Prosecutors Office is 19.

G. Paragraph 14 of the concluding observations

On the issue of reproductive health rights, the Committee is concerned that the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law, inter alia when there are clear health risks for the mother or when pregnancy results from rape of mentally disabled women. The Committee also expresses concern over discriminatory aspects of the laws and policies in force, which result in disproportionate resort to illegal, unsafe abortions by poor and rural women. The Committee recommends that the State party take measures to give effect to the Reproductive Health and Responsible Procreation Act of July 2000, by which family planning counselling and contraceptives are to be provided, in order to grant women real alternatives. It further recommends that the laws and policies with regard to family planning be reviewed on a regular basis. Women should be given access to family planning methods and sterilization procedures; and in cases where abortion procedures may lawfully be performed, all obstacles to obtaining them should be removed. Argentine law should be amended to permit abortions in all cases of pregnancy resulting from rape.

102. The Sexual Health and Responsible Parenthood Act (N° 25,673), promulgated on 30 October 2002, marked substantial progress towards guaranteeing women's health and exercise of their sexual and reproductive rights as well as representing an advance in relation to the opposition of powerful conservative social forces and the Catholic Church, given that for the first time reproductive and sexual health were placed on the public political agenda in the country.

103. The Act in question instituted the National Sexual Health and Responsible Parenthood Programme, under the responsibility of the Ministry of Health. One of the objectives of the Programme is to promote the highest level of sexual health and responsible parenthood among the population so that it is able to adopt decisions devoid of discrimination, coercion or violence; to reduce the causes of death among mothers and children; to prevent unwanted pregnancies; to promote the sexual health of adolescents; to contribute to the prevention and early detection of sexually transmitted diseases, HIV/AIDS and genital and mammarian pathologies; to guarantee access by all to information, guidance, methods and services related to sexual health and responsible parenthood; and to promote women's participation in decision-making on sexual health and responsible parenthood.

104. It recognizes the right of all to choose freely and individually, according to their convictions and on the basis of advice, a suitable, reversible, non-abortive and transitory contraceptive method so that each couple may decide how many children it wishes to have. It similarly supports the right of all people to health, which includes the possibility of leading a gratifying sexual life, without coercion and without fear of infection or unwanted pregnancies.

105. The Act also promotes the possibility of having free access to information concerning responsible parenthood through nationwide public health services, while promoting the early detection of genital and breast diseases by carrying out the PAP smear test on all women in the programme and contributing to the prevention and early detection of HIV/AIDS through link-ups with other programmes, at the same time placing suitable means of protection within the reach of the population.

106. Implementation of the programme covers the following:

- a) provision of contraception methods for free distribution in primary health care centres and public hospitals, on request by users and including specialised advice;;
- b) technical assistance and continuous training of health teams;
- c) technical assistance and support to the provincial authorities for the implementation of local programmes in all of the provinces;
- d) promotion social communication activities on sexual health and responsible parenthood, and provision of links with the National Anti-Aids Programme;
- e) monitoring, follow-up and evaluation of activities and results, as well as nominal coverage and individual follow-up of the beneficiaries;

107. More recently, in August 2006, Act No. 26,130 on surgical methods of contraception was adopted. It recognizes the right of all persons who are of legal age and capacity to have access under the health system, to the procedures of tubal ligation and vasectomy where formally requested and subject to their informed consent. It also provides that these surgical procedures should be carried out without charge in the public health system and by social security organisations and prepaid medicine bodies, which should include these practices in their coverage. The latter do not require the consent of the spouse or partner, nor authorisation of the courts.

108. The only exception mentioned in the Act refers to persons declared "legally incapable", for whom a court authorization requested by their legal representative is an "essential requirement".

109. The Act provides that doctors responsible for carrying out these operations should inform the patient of the "nature and health implications of the practice to be carried out", "the alternatives in the form of other authorized non-surgical contraceptive methods" and "the nature of the surgical procedure, a its reversibility and its risks and consequences". For their part, the medical or auxiliary personnel can exercise the right of "conscientious objection" by refusing to perform the practice, «without any professional consequence".

110. In this context, 23 October 2006 saw the adoption of Act No.26150I setting up the National Comprehensive Sex Education Programme coming under the Ministry of Education. It provides among other things that all those pursuing education have the right to receive comprehensive sex education in public educational establishments, under public or private management, at the national, provincial and municipal levels in the autonomous city of Buenos Aires. It also provides that it is the duty of each province to guarantee such education on the basis the essential content laid down by the Ministry of education, each educational community being obliged to draw up its draft institutional proposals having regard to the sociocultural context. It must also organize training facilities for parents.

111. With regard to the place of abortion in Argentine legislation, a committee of experts operating under the aegis of the Ministry of Justice, Security and Human Rights drafted a proposal for reform of the Argentine penal code, modifying the relevant articles. While the reform has not yet taken place, the proposal is an important tool for making legal progress in the matter, by extending the circumstances in which abortion is not punishable.

112. It should finally be mentioned that legislation on reproductive health has also been adopted at the provincial level, namely:

a) Province of Buenos Aires

Act N° 13066 (Provincial Reproductive Health and Responsible Parenthood Programme) (2003)

b) Province of Chaco

Act N° 4276 (Health Education and Responsible Parenthood Programme) (1996)

c) Province of Chubut

Act N° 4545 (Sexual and Reproductive Health Programme) (2000)

Act N° 4950 (Surgical Contraception) (2003)

d) Autonomous City of Buenos Aires

Act N° 418 (Reproductive Health and Responsible Parenthood)

Act N° 439 modifying Act N° 418 (Reproductive Health and Responsible Parenthood)

Resolution N° 874/2003 of the Public Health Secretariat of the Buenos Aires City Government

e) Province of Córdoba

Act N° 9073 (Responsible Maternity and Paternity Programme)

Act N° 9099 - accession of the province to national Act N° 25673 (National Sexual Health and Responsible Parenthood Programme)

f) Province of Corrientes

Resolution N° 878/03 of the Ministry of Public Health (Provincial Programme of Sexual Health and Responsible Parenthood)

Act N° 5527 - accession of the province to national Act N° 25673 (National Sexual Health and Responsible Parenthood Programme)

g) Province of Entre Ríos

Act N° 9501 (Provincial System of Sexual and Reproductive Health and Sexual Education)

h) Province of Jujuy

Act N° 5133 (Provincial Programme for Responsible Motherhood and Fatherhood and the Prevention of Sexually Transmitted Diseases)

Decree N° 2139/2000 - regulations for the implementation of Act N° 5133 (Provincial Reproductive Health Council)

- i) Province of La Pampa**
Act N° 1363 (Provincial Programme for Responsible Parenthood)
- j) Province of La Rioja**
Act N° 7425 - accession of the province to national Act N° 25673 (National Sexual Health and Responsible Parenthood Programme)
- k) Province of Mendoza**
Act N° 6433 (Provincial Reproductive Health Programme)

Resolution (N° 2492/2000) of the Ministry of Social Development and Health authorizing the tubal ligation procedure in provincial public hospitals
- l) Province of Misiones**
Decree N° 92/98 (Provincial Comprehensive Family Planning Programme)
- m) Provincia de Neuquén**
Act N° 2222 (Provincial Sexual Health and Reproduction Programme)

Decree N° 3331/98 as amended by Act N° 2431
- n) Province of Río Negro**
Act N° 3450 (Provincial Reproductive Health and Human Sexuality Programme)
- o) Province of Salta**
Act N° 7311 (Responsible Sexuality)
- p) Province of San Luis**
Act N° III-0068-2004 (5429 "R") (Responsible Parenthood - Reproductive Norms - Family Planning - Assistance)

Decree N° 127/2003 (Provincial Comprehensive Reproductive Health Programme)
- q) Province of Santa Cruz**
Act N° 2656 - accession to national Act N° 25673 (National Sexual Health and Responsible Parenthood Programme)
- r) Province of Santa Fe**
Act N° 11888 (Provincial Reproductive Health and Responsible Parenthood Programme) and amendments

Act N° 12323 (Surgical Contraception)

s) **Province of Tierra del Fuego**

Act N° 509 (Provincial Sexual and Reproductive Health Programme) and amendments

H. Paragraph 15 of the concluding observations

With regard to article 3 of the Covenant, the Committee is concerned that despite significant advances, traditional attitudes towards women continue to exercise a negative influence on their enjoyment of Covenant rights. The Committee is particularly concerned at the high incidence of violence against women, including rape and domestic violence. Sexual harassment and other manifestations of discrimination in both the public and private sectors are also a matter of concern. The Committee notes as well that information on these matters is not systematically maintained, that women have a low awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with. The Committee recommends that a large-scale information campaign be undertaken to promote awareness among women of their rights and the remedies available to them. It urges that reliable data be systematically collected and maintained on the incidence of violence and discrimination against women in all their forms, and provided in the next periodic report.

113. The domestic legislation of the Argentine Republic contains penal, civil and administrative norms aimed at preventing, penalizing and eradicating violence against women. In this connection, since the ratification of the Belém do Pará Convention most of the provincial laws on family violence have been adopted, penal legislation was modified in 1999 and a various administrative provisions have been promulgated.

114. In this context, it is important to note that, in 1993, the National Executive issued Decree No. 2385/93 making sexual harassment an offence under the regulations of the basic civil service code for staff in the central public administration. In 1994, under Ordinance No. 47506, AD 230-57 BM 17/1/9, sexual harassment likewise became a punishable offence in the disciplinary code applicable within the Autonomous City of Buenos Aires. The provinces of Buenos Aires, Santa Fe and Misiones have also adopted laws making the offence punishable in their respective jurisdictions, applicable in every case to the public sector.

115. It is likewise included expressly in the provincial laws on violence in the workplace and sexual harassment adopted in the provinces of Buenos Aires, Jujuy, Tucumán and the Autonomous City of Buenos Aires, limited in each case to the public sector.

116. Act No. 24417 on Protection against Family Violence was adopted in December 1994 and the regulatory provisions were issued in March 1996 under Decree No. 235/96.

117. In 1999 the Congress adopted Act No.25087 modifying Section 3 of the Part II of the Penal Code. Its main provisions are:

- a) To replace the section headed "Offences against honesty" by "Offences against sexual integrity". This represents a fundamental change in the conception of acts of aggression and humiliation affecting the integrity and the autonomous exercise of a person's sexuality. Rather than regarding such acts as affecting the victim's purity or chastity, or a man's honour, they are viewed in terms of the victim's integrity and dignity as persons;

- b) To eliminate the concept of honest woman;
- c) To recognize different types of sexual aggression, according to the harm caused: sexual abuse, aggravated sexual abuse and rape.
- d) To modify the definition of article 119 on rape, extending it to accommodate the notion that carnal intrusion can take many forms. The offence varies in its degree of seriousness, entailing punishments that range from eight to 20 years imprisonment, applicable in cases of aggravated sexual abuse involving serious outrage or the actual offence of rape.
- e) To rescind article 132 l exempting the offender from imprisonment in cases where he subsequently marries the victim, eliminating the possibility that the rapist may be excused punishment on the grounds that he has married the victim;
- f) To introduce the notion of a compromise (understanding or agreement). Where the victory is aged over 16 she may propose a compromise with the accused. The court may accept it exceptionally if it has been made freely, in a situation of complete equality and where there is evidence of a previous affectionate relationship. In this case, the criminal proceedings are discontinued.
- g) The victims can institute public criminal proceedings with the advice or representation of official or private not-for-profit institutions offering protection or help to victims.
- h) To separate the offences of corruption and prostitution, increasing the minimum prison sentences in the case of minors. In both cases, 18 years is fixed as the limit of minority. In the case of persons over this age, the offence is punishable when it involves deceit, abuse, a dependent or power relationship, violence, threat or any other means of intimidation or coercion;
- i) The offence of pornography should punish those who produce or publish pornographic images or live shows with the participation of minors below the age of 18 and those who facilitate access to or distribute it to those under 14 years of age.

118. In 1998 the Office of Comprehensive Assistance to Crime Victims was set up within the Procurator-General's Office and, subsequently a Specialized Prosecutor Unit was established within the MBF to investigate offences against sexual integrity, human trafficking and child prostitution.

119. In December 2003, the Health Secretary of the Buenos Aires City Government moreover adopted the Protocol on Measures to Assist the Victims of Violence, which makes it compulsory to provide victims with medical treatment geared to emergency contraception and the prevention of HIV/aids, establishing time limits for such treatment to begin. In this connection, through resolution number 140/04, police officials and those posted in offices of the City of Buenos Aires are urged to instruct the victims of sexual harassment in the possibility of receiving immediate medical help.

120. In 2003 the province of Misiones adopted Act No. 4013 "Protection and Assistance to the Victims of Offences against Sexual Integrity", which the Ministry of Public Health is responsible for implementing. The Attorney-General gives free legal advice, support and assistance so that

the complaint can be submitted if the victim so decides. The Ministry of the Interior is responsible for seeing to it that the necessary measures are taken in police stations and units to ensure that the complaints and/or statements are received.

121. Similarly, the province of Mendoza, through Act No. 7222 of 2004, provides for the creation of the register of offences against sexual integrity (RECIS) under the provincial justice system dependent on the Provincial Supreme Court of Justice. Subject to a court order, it is composed of the personal and physical details, date of sentence, punishment received and previous convictions of persons convicted for offences classified as offences of against sexual integrity, together with photographs and DNA records..

122. In the same way, the province of Corrientes, under Act No. 5665 of 2005, proposes to implement a protocol concerning joint action for prevention, treatment and assistance to victims of violence through the Ministry of Health, the Human Development Secretariat and security bodies.

123. Likewise in 2005 a specialized office was set up within the Office of the National Procurator for Administrative Investigations to receive complaints concerning violence in the workplace (including sexual harassment) from state employees in the central administration.

124. The essential goal of national legislation and of all the provincial laws is that the complaint should be accompanied by a request for preventive measures or measures affording self-satisfaction (known in legal parlance as "urgent preventive solutions". The presiding judge can also provide for this kind of measure, in the light of the facts

125. The preventive measures envisaged are aimed, firstly, at protecting the victims of violence in situations of risk and/or ending situations of violence and/or avoiding their repetition, through the exclusion of the aggressor from the home and/or banning him or her from entering the place of residence, work or study; other measures, such as authorizing a return to the place of residence of somebody who has had to leave it, are on grounds of personal security. At the same time, they guarantee the right to food allowances, the custody of children as well as contact and communication with them.

126. These measures can be ordered by the judge without the need to cite the aggressor, on the grounds of danger to the victim. However, the aggressor must be heard immediately since he enjoys the right of due process. That is to say, once they are decided by the judge in the case, these measures enable the main points of conflict between members of the family group to be settled at once, albeit provisionally,. For example, exclusion from the home usually results immediately in the cessation of violence and restoration of peace within the family. At the same time, in fixing the amount of alimony, the custody of children and/or the timetable of visits, in accordance with each particular case, the judge resolves very weighty problems such as that of subsistence, place of residence and the contact of minors with the spouse excluded from the home.

127. Is also important to take into account that these measures are not restrictive and that the judge can adopt others he considers necessary to guard against potential risk or abuse by some member of the family group. For example, the law in the province of Buenos Aires provides expressly that the judge may take any other urgent measure he deems appropriate to ensure the custody and protection of the victim.

128. The safeguards that all these measures provide to victims dispel a series of limitations that weigh on the minds of women and which very often serve as an obstacle to the exercise of their rights, out of fear for the financial survival of the family group, the dispersal of the household, loss of custody of her children, etc.

1. Programmes and measures aimed at preventing, eradicating and caring for violence against women

- a) The National Women's Council is promoting and helping to draft a NATIONAL ACTION PLAN TO ERADICATE DOMESTIC VIOLENCE AGAINST WOMEN. To this end, an inter-institutional committee has been formed under the National Coordinating Council for Social Policies (Consejo Nacional Coordinador de Políticas Sociales - CNCPS), where representatives of its constituent Ministries meet, and contacts and interchanges have been maintained with various bodies of national scope having a strategic role to play in drawing up and implementing the above plan (Ministries of Justice, the Interior, Health, Education, Social Development, etc).
- b) As part of the activities designed to forge consensus in the formulation of the Plan, November 2004 saw the holding of the National Congress *Women and family links free of violence. Towards a National Plan to eradicate violence against women*, convened by the CNCPS and organized by the CNM with the main aim of laying the bases, building the basic agreements and uniting efforts to implement a National Plan for the eradication of violence against women. It benefited from the participation of government bodies and civil society at the national and provincial level.
- c) In 2005, the Inter-Institutional Cooperation Framework Agreement was signed between the Department of Security of the Ministry of the Interior and the CNM. for the joint implementation of initial and further training, research, promotion, dissemination and development activities relating to problems of mutual interest, with the aim of promoting and fulfilling the commitments made by Argentina when it approved, by Act No. 23179, the "Convention on the Elimination of all Forms of Discrimination Against Women", which has constitutional status, and Act No. 24632, adopting the "Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women".
- d) Through the Federal Health Council, under the Ministry of Health, work is proceeding to implement a specific protocol for the detection of violence against women in the health services (the priority concerns being: Primary Health Care (Atención Primaria de la Salud - APS), emergencies, obstetrics, climatology, paediatrics and mental health) and a protocol on health care and/or referral. Work is also taking place to restructure the integrated register of cases providing for the victims of violence.
- e) Through the National "Manos a la Obra" (Let's Get Down to Work) Plan, under the Ministry of Social Development, efforts are being made to strengthen women's independence by enabling them to be self-supporting. Under the Families Plan, support is given to mothers and their children exposed to violence.

129. In this connection, it is worth noting that, on the basis of agreements concluded with UNICEF in 1999, the National Programme of Training, Technical Assistance and Awareness-

raising Activities relating to Violence against Women became operational. The aim of this programme is to identify strategies at the level of central government, provincial and municipal women's offices and civil society organizations for creating and/or strengthening prevention and help services for women subject to violence.

130. Under this programme, the National Women's Council has prepared and published the series "Violence against Women in the Family" consisting of various materials on the subject. One of them is a handbook conceived as a tool to provide basic theoretical and methodological guidance for intervention in situations where women are exposed to domestic violence. It is intended for professionals and personnel working on this area in institutional or community settings (governmental and non-governmental) or interested in becoming involved in this particular field.

- a) 5000 copies of each volume were published, and a further 5000 copies of an updated version were published in 2002/2003. This series was accompanied by the nationwide distribution of 75,000 copies of the Belem do Pará Convention and over 100,000 information leaflets on the topic.
- b) The National Women's Council has a specialized technical team responsible for training and technical assistance, which is in continuous contact with other national government entities, with the provinces and with civil society organizations and provides information and referral services for consultations with private citizens.
- c) Among other activities, it has organized numerous national seminars/workshops involving governmental and non-governmental sectors on the presentation and delivery of materials for replication locally and in all the provinces, convened through the provincial and/or municipal women's offices, with assistance from health, educational and judicial personnel, from the security forces and from civil society organizations. In 2005, regional encounters brought together the participants in the 240 projects organized by PROFAM (Distance Education Course in Family and Non-Institutional Medicine), one of the workshops in each encounter being devoted to the topic of domestic violence..
- d) A priority of this programme is to promote the development of networks of provincial and/or municipal governments and civil society organizations to assist women victims of violence.

131. For its part, the National Women's Council has developed an information system to monitor violence against women in the home, having designed a tool for recording cases and a computer program for entering and analyzing information, with the aim of estimating the prevalence and incidence of institutional demand, that is to say, the cases dealt with by the specialized services as well as sociodemographic profile of the population concerned.

132. In this context, other entities working on the subject of violence against women include:

- a) "Victims against Violence" Programme established on 27 March 2006 by Resolution No. 314 of the Ministry of the Interior.
- b) Interdisciplinary Group on Protection against Family Violence, established under the Ministry of Justice and Human Rights in the framework of Act No. 24417 (Protection against Domestic Violence) and its regulatory Decree No. 235/96.

- c) Working Group of the Office in Charge of Cases of Domestic Violence set up by the Supreme Court of Justice in April 2006.
- d) "Women in Popular Libraries" Programme of the Cultural Secretariat of the Presidency. Initiated in April 2006, its aim is to promote and publicize the rights of women in popular libraries throughout the country.
- e) National "Juana Azurduy" Programme for Strengthening Women's Rights and Participation, in operation since July 2006.

133. Similarly, the National Women's Council is developing information and monitoring programme on domestic violence against women, designed to produce systematic and reliable data on the number of cases dealt with by services in different parts of the country. Currently, over 50 such services have signed memoranda of understanding with the Council in order to have access to the case-register tool and start to produce comparable data in a form that can be circulated. Although most of the services have already started to use this tool, they have not all begun to generate and transmit their data

134. Finally, it is important to mention that, besides the information produced through the National Women's Council's programme, the Women's Affairs Directorate of the Buenos Aires City Government's produces information on phone calls received and members of the public assisted in its various centres.

I. Paragraph 16 of the concluding observations

The Committee reiterates its concern that the preferential treatment, including financial subsidies, accorded to the Catholic Church over other religious denominations constitutes religious discrimination under article 26 of the Covenant.

135. The National Constitution, the basic statute of the Argentine State, recognizes the right of all its inhabitants to enjoy religious freedom. Provision for freedom of worship is contained in article 14, which guarantees the right of its inhabitants to profess their religion freely, and by article 20, which accords equal rights to foreigners within the territory of the Nation. It should also be noted that article 75, subparagraph 20, grants higher constitutional status to various international human rights treaties, including the International Pact on Civil and Political Rights, article 18 of which establishes the right to religious freedom. This multiple provision for religious freedom is significant, reflecting the importance that this right has for the Argentine Republic. The State is thus the guarantor of the rights laid down in the legal order in force, including freedom of religion, conscience and worship.

136. Argentina does not possess an "official religion" or "state religion". In this regard, the duty of the federal government to support the Catholic faith (article 2 of the Constitution) is limited to support of a material or financial kind, for which provision is made in the national budget. To this extent, the financial treatment accorded to the Catholic Church does not amount to State preference but rather to fulfilment of the mandate laid down by article 2 of the Constitution. The Supreme Court has also found in this sense¹.

¹ See, *inter alia*, the ruling in "Ignacio Villacampa v. Maria Angélica Villacampa", decision of 9 February 1989; "Sejean c/ Zaks de Sejean, decision of 27 November 1986.

137. The historical justification advanced in the diagnosis of religion in the National Plan against Discrimination² (of which detailed information will be provided in the second part of this report) is that it represents compensation by the State to the Catholic Church for the major confiscation of land and property that took place in 1821.

138. Various constitutionalists³ assert that such a relationship also implies recognition of the moral union between State and Church, as well as recognition of the Church as a legal person in public law, as distinct from other faiths which have to register as private legal persons in order to exercise their ministry.

139. At the end of the 19th century and beginning of the 20th, the country thus received a great flood of immigrants, freedom of worship being an important condition for their peaceful reception.

140. Furthermore, it should be pointed out that the religious bodies included in the national register of religions enjoy various tax exemptions that facilitate their spiritual task. In this way, an attempt is made to ensure that the support prescribed in article 2 of the Constitution does not involve discriminatory treatment towards other religious faiths in the country.

141. The requirements prescribed for the inclusion of religious organizations in the national register of religions were made more flexible in 2005 (Resolution No. 2092/05 of the Secretariat for Worship) to enable them to obtain the benefits that registration brings with it, including tax exemptions for the purpose of guaranteeing the effective and free exercise of religious freedom.

142. The entities included in the above register are granted visas and residences so that their authorities, ministers, students, academics, etc can carry out their spiritual task, as in the case of the Catholic Church. As for their fitness to run an education establishment from the initial stages through to university, the rules applicable are the same as for all the religious faiths existing in the Republic.

² Towards a National Plan to Combat Discrimination in Argentina, Diagnosis and Proposals, INADI 2005, III. Diagnosis. Areas of Analysis, Religion, pp.200 et seq.

³ Ibidem.

PART II

INFORMATION ON NEW DEVELOPMENTS, WHERE APPLICABLE, REGARDING PROGRESS IN THE FULL ENJOYMENT OF THE RIGHTS RECOGNIZED IN EACH OF THE ARTICLES OF THE COVENANT

A. ARTICLE 1

143. The Argentine State fully guarantees the exercise of the right to self-determination, not only to its population as a whole, but to every person within that population. The Argentine people freely determine their political, economic and social system. The separate communities making up that population, for their part, have the instruments they need to preserve and develop their culture. This latter aspect has been reinforced by constitutional provisions, which were added to the Constitution of the Republic as part of the 1994 reform.

144. In this context, it is important to mention that during the adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples (A/Res/61/295), the Argentine Delegation underlined the need to square the references in this Declaration to the right to self-determination with the principle of the territorial integrity, national unity and organizational structure of each State.

145. Efforts since then to resolve this question have produced the desired results through the inclusion in the first paragraph of article 46 of the terms governing the application of the Declaration, which make it fully compatible with the aforementioned principles.

146. Finally, reference is made to article 27 with regard to the measures adopted to guarantee the rights of indigenous minorities

B. ARTICLE 2

147. Concerning the new measures taken to combat discrimination, in addition to those reported by the Argentine Republic in its last report to the Committee on the Elimination of Racial Discrimination, to which we refer for the sake of brevity, it is important to point out the following:

8. Act No. 26162, adopted in November 2006, recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and examine communications from persons claiming to be the victims of violation of their rights by the State, in accordance with the provisions of article 14 of the Convention on the Elimination of all Forms of Racial Discrimination, establishing the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) as the national body competent to receive and examine petitions from persons or groups of persons.

1. National Antidiscrimination Plan

149. The Ministry of Foreign Affairs, together with INADI and the Human Rights Secretariat in the Ministry of Justice, coordinated the drafting of the National Antidiscrimination Plan, adopted by Decree no. 1086/2005 of 8 September 2005, in accordance with the commitments made at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001).

150. This Plan situates Argentina as one of the first countries in the world to possess such a wide-ranging and full diagnosis on discrimination in its society.

151. This is due to the fact that the Plan goes beyond the recommendations of the Durban Programme of Action (2001), which restricts itself to recommending that States should adopt antidiscrimination measures. Our Plan, on the other hand, constructs a diagnosis of discrimination covering three main areas: racism, poverty and social exclusion, and the State and society.

152. A particular feature of the preparation of this Plan is that its drafting did not take the form of an exclusively academic project but was the outcome of interdisciplinary work involving governmental and non-governmental organizations and comprising 300 interviews in various parts of the country with victims and victimized groups subject to discrimination.

153. This unprecedented undertaking benefited from a major financial contribution from the Office of United Nations High Commissioner for Human Rights (UNHCHR), administered by UNDP. As we have said previously, the Plan represents the most complete diagnosis ever carried out on discrimination in Argentine society and contains specific proposals to eradicate discrimination. It is hoped that these proposals for combating discrimination will have an impact in the framing of national policies.

154. The Plan consists of an introduction, a chapter on the international and national context, and a two-part section on research: a diagnosis of discrimination in Argentine society, comprising three crosscutting themes, fields of analysis and institutional spheres of application - together with strategic proposals for immediate action.

155. The various proposals were divided into: general (common to all spheres), legislative (legal initiatives), by institutional field of application (contains the bulk of the proposals proceeding from the administration of justice and legislation, public administration, education, security forces, communication media and health; these are in turn subdivided into: strategies of a general nature (to be applied progressively) and those calling for immediate action (needing to be implemented or initiated without delay)

156. Finally, the Plan includes a proposal for implementation, monitoring and supervision, having regard to the difficulties that may arise in applying the policies recommended by the Plan and the obstacles that can arise in the course of the monitoring of discrimination in Argentina. In addition to any changes needed to take account of the emergence of new problems, various entities have been designed to provide for the participation of the different components of the State and civil society.

157. To ensure the fullest possible implementation of this National Plan to Combat Discrimination, an organizational approach was suggested involving the participation of government sectors at the highest level (in the interest of greater effectiveness), specific government sectors (corresponding to the particular topics concerned), provincial representatives (to ensure its application nationwide) and NGOs (to ensure the participation and supervision of social movements and the incorporation of additions and corrections reflecting changes in the national situation regarding discrimination).

158. The specific measures already taken in accordance with this Plan include:

- a) The adoption of Act No. 26160, of 23 November 2006, prescribing a four-year emergency period, suspending the eviction of indigenous peoples, enabling the territory to be reorganized and communal property regularized through its inscription in the land register and the issuing of the corresponding title deed.
- b) The adoption of Act No. 26171, of December 2006, endorsing the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 6 October 1999.
- c) The adoption of Act No. 26130, of 7 September 2006, authorizing surgical contraception within the health system for any person over the age of majority.

C. ARTICLE 3

159. Without prejudice to what was stated by the Republic of Argentina in the last report submitted to the Committee on the Elimination of All Forms of Discrimination against Women, it is important to mention that, under Act No. 26171, the Argentine Republic ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, without reservations or interpretive clauses. This act represents a very important step towards gender equality.

160. In Argentina, the growth in the representation of women in the National Congress has been not only a quantitative, systematic and progressive increase but also a qualitative one. Currently, the women legislators entering Parliament do so in their capacity as heads of list as and leaders of their party groupings. Their entry into the arena is the power is no longer the result of personal or family ties but rather through their professional careers.

161. The “Gender Quota” Act in Argentina has been a success. Today women represent 42 per cent and 34 per cent in the Chamber of Senators and Chamber of Deputies respectively.

162. Furthermore, women have begun to consolidate their presence in the higher spheres of government. A symptomatic sign is that the new President Elect of the Republic of Argentina belongs to the female sex.

163. Similarly, for the first time in the history of our country, two women form part of the Supreme Court of Justice (Dr Elena Highton de Nolasco, Vice-President of the Court, and Dr Carmen Argibay), representing 28% of the membership of the highest court in the land.

D. ARTICLE 6

164. The Argentine Republic has always maintained a firm position against the imposition of the death penalty, on no matter what grounds.

165. This is why the Argentine Government has considered the signing and ratification of existing instruments, in the American continent and internationally, relating to abolition of the death penalty to be of the highest importance, believing that both Protocols represent an important step in the development of international human rights law and reflect the trend in other regions, such as Europe.

166. On December 2006, it accordingly signed the Protocol to the American Convention on Human Rights relating to abolition of the death penalty and on 20 December of the same year

signed the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty, adopted and proclaimed by the General Assembly in December 1989.

167. Currently, the appropriate authorities are taking the necessary steps to have both international instruments approved by the legislature, with a view to their subsequent ratification.

168. Our country has expressed itself forcefully on various occasions at the international level in rejecting the application of the death penalty, no matter what the offence. In this way, Argentina has associated itself with various pleas for clemency on behalf of Argentine citizens as well as those of other States sentenced to capital punishment in the region.

169. Finally, it is important to emphasize that Argentina has actively supported the international criminal tribunals such as the Criminal Tribunal for Ruanda, the Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal, whose statutes in no case provide for application of the death penalty, even when the said tribunals are judging, among other things, the commission of crimes against humanity.

1. Current legislation in the domestic sphere

a) The Constitution and the relevant international instruments ratified and in force for Argentina

170. The right to life is enshrined in the Argentine legal order through various provisions. One such is article 33 of the Constitution which, even before the reform of 1994, provides for the right to life under those rights that are implicit or that the Fundamental Act does not fail to recognize even when it does not make express provision for them. In parallel, article 18 of the Constitution provides that the “death penalty for political causes, any kind of tortures and whipping, are forever abolished”.

171. Through the 1994 reform of the Constitution, the right to life becomes explicitly recognized through the granting of constitutional hierarchy to certain fundamental international instruments that affirm it expressly, as set out in paragraph 22 of article 75. The provisions in question are: article 3 of the Universal Declaration of Human Rights, article 6 of the International Covenant on Civil and Political Rights, article 1 of the American Declaration of the Rights and Duties of Man, and article 4 of the American Convention on Human Rights.

172. Article 4 of the American Convention establishes the general principle relating to the right to live as a fundamental right for the full exercise of all the rights recognized expressly or implicitly, while restricting the application of the death penalty to very specific cases only, with the aim of moving towards its final abolition. Having regard to the actual situation in the different countries of the American hemisphere and to its own status as multilateral instrument, the Convention has accordingly provided for the progressive abolition of the death penalty, and the Inter-American Court of Human Rights, in its consultative capacity, has affirmed in Advisory Opinion 3/83 *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) of the American Convention on Human Rights)*⁴, the need for the progressive abolition of the death penalty in the States of the American hemisphere that still provide for it. Paragraph 56 of this Opinion states: “Here it is no longer a question of imposing strict conditions on the exceptional application or execution of the

⁴ Inter-Am. Ct. H.R., OC-3/83 *Restrictions to the Death Penalty*, 8 September 1983, Ser. A, No3

death penalty, but rather of establishing a cut off as far as the penalty is concerned and doing so by means of a progressive and irreversible process applicable to countries which have not decided to abolish the death penalty altogether as well as to those countries which have done so". Article 4 of the American Convention on Human Rights should therefore be interpreted in the light of the findings of the Inter-American Court in OC-3/83.

b) La pena de muerte y el Código de Justicia Militar

173. On 7 November 2007, the Chamber of Deputies gave preliminary approval to a draft bill stipulating a waiver to the Military Code of Justice, removing the only legal provision laying down the death penalty in Argentina. In this way, when the Senate converts this bill into law, the sentences passed upon members of the Armed Forces may be appealed to the federal courts.

174. Without prejudice to the foregoing, even when the provisions relating to the death penalty in the Code of Military Justice are not subject to an express waiver, the provisions contained in the Protocols aimed at abolishing the death penalty will prevail, given that international treaties take precedence over domestic law under the Argentine legal system. This being so, the current legal dispensation that allows the application of the death penalty will in practice be overruled.

E. ARTICLE 7

175. Reference is made to what has already been said in relation to paragraphs 10, 11 and 12 of the Committee's concluding observations in the first part of this report.

F. ARTICLE 8

176. With regard to the progress made in connection with the provisions of article 8 of the Covenant, mention should be made of the measures taken in our country to prevent and combat trafficking in persons, Argentina having ratified in 2000 the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.

177. In terms of a general framework, it is relevant to mention the open migration policy established in Argentina with the adoption of the new Migration Act. This is premised on the understanding that when the right to enter or leave a particular country is limited, restricted or even made impossible, migratory flows are channelled towards irregular migration, with migrants either employing their own means or the mechanisms of human trafficking. In this connection, 20 January 2004 marked the promulgation of the Migration Act (No.25 871). This new law, the product of a consensus between different governmental and non-governmental sectors, reflects the undertaking by the Argentine Republic to guarantee full respect for the human rights of migrants and their families, while establishing mechanisms to ensure ready access to regular forms of migration, believing that such regularization is vital to achieving the full integration of foreigners in the receiving society. (More information on the new migration policy is provided in this report in connection with articles 12 and 13 of the Covenant).

178. The new law provides for penalization of the offence of illegal trafficking in persons and increases the sentence where it has endangered the life, health or integrity of the migrant or when a minor is involved. In chapter 7, it characterizes for the first time in Argentine migratory legislation the notion of trafficking in migrants. It provides for prison sentences of from one to six years, even increasing to 20 years where there are aggravating circumstances.

179. In another connection, it should be noted that the Republic of Argentina plays an active role in the international and regional sphere in seeking common approaches, coordinating measures and establishing mechanisms of international co-operation to combat the trafficking in persons and provide assistance and protection to the victims. At the regional level, our country participated in the Meeting of National Authorities on the question of trafficking in persons, held from 14 to 17 March 2006 in Isla Margarita, Republic of Venezuela. This meeting was the outcome of the Fifth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA V), as well as corresponding to the mandates of various resolutions of the OEA General Assembly.

180. MERCOSUR provides the framework for various initiatives and agreements aimed at combating trafficking, involving Ministers of the Interior and also meetings of ministers or secretariats responsible for human rights. At the last Special Meeting on Women (REM) held in the second half of 2006, it was furthermore agreed to pursue joint activities, beginning with a regional campaign to prevent human trafficking.

181. At their 19th meeting, the Ministers of the Interior of MERCOSUR and associated countries signed an agreement (MERCOSUR/RMI/AGREEMENT No.01/06) undertaking to develop a "MERCOSUR plan of action to combat trafficking in persons".

182. With regard to standard-setting, the Senate in December 2006 provisionally adopted the law making trafficking in persons an offence. It penalizes "the capture, transport or transfer of persons for the purposes of exploitation". The law refers not only to prostitution but also to capture for the purposes of "reduction to servitude" or "forced labour", which would make it apply to clandestine workshops, and it even envisages the possibility that somebody might be captured for the "illicit extraction of organs". The draft adopted classifies trafficking as a federal offence, taking into account the fact that, in the case of prostitution, the victims are often recruited in one province and exploited in another

183. The draft law defines "trafficking in persons over 18 years of age" as "the capture, transport or transfer, the acceptance or reception, whether within the country or from or towards another country, with the aim of exploitation, when involving deceit, fraud, violence, threat or any other means of intimidation or coercion, abuse of authority or situation of vulnerability, or payment or advantage to obtain the consent of the person having authority over the victim, even where there is consent by the latter". The penalty prescribed for this offence is from three to six years' imprisonment, which may be increased to up to 10 years if the guilty party is spouse or close relative, civil servant, or if a criminal organization is involved, i.e. "if the offence is committed by three or more persons" or "if the victims number three or more".

184. In cases of persons under 18, "the offering, capture, transport or transfer" constitute trafficking even where the other conditions are not met" and "the consent of the victim will be irrelevant". The penalty may be up to 15 years' imprisonment.

185. However, the existing penal code contains concepts that form part of the offence of trafficking in persons and can be used to prosecute the offence and punish the offenders. They include: offences against sexual integrity and facilitating the corruption of minors (article 125), promoting the prostitution of minors (article 125bis), or adults through deception or coercion (article 126), the exploitation of foreigners engaged in prostitution(article 127), facilitating entry or departure from the country to enable a person to engage in prostitution, an offence aggravated by age and where involving deception, violence or threat (article 127bis), the abduction or

retention of a person by means of force, intimidation or fraud, with the intention of impairing his or her sexual integrity (article 130), offences against individual freedom, the reduction to slavery or an analogous condition (article 140), illegal deprivation of freedom (article 141), and threats aimed at frightening one or more or more persons to carry out actions against their will (article 149bis).

186. Finally it should be noted that on 2 October 2007, the Executive Power issued Decree No.1281/2007 instituting the "National Programme for the Prevention and Eradication of Trafficking in Persons and Assistance to its Victims", under the Ministry of the Interior. (see Annex II containing the text of Decree 31281/2007)

187. This Programme has been designed to coordinate the State's efforts to achieve greater effectiveness in the task of preventing trafficking in persons and in measures to assist victims.

188. To this end, the Programme will be responsible for all activities aimed at preventing and eradicating the trafficking in persons. Notable among these are: increasing the capacity for detaining, prosecuting and dismantling the trafficking networks; ensuring respect for and exercise of the victims rights; forestalling and preventing re-victimization; promoting study and greater awareness of the problem; overseeing compliance with the relevant legal provisions; creating a register of data linked to the offence of trafficking in persons; and making available a free telephone line for the receipt of complaints.

1. Measures to provide legal assistance and protection to the victims of trafficking

189. Various institutions are involved in providing psychological, medical, social and legal assistance in specific cases involving the trafficking in persons. Among them, the Office for Comprehensive Assistance for Victims of Crime (OFAVI), attached to the Office of the Attorney-General and established under Resolution No.58/98 of the Attorney-General of the Nation, has been operating since 8 September 1998.

190. The functions of the Office are as follows: to provide legal advice to victims of an offence on the possibility of their receiving state assistance, particularly victims lacking resources; to advise victims with particularly complex social profiles by providing guidance on the State and non-governmental structures offering support and assistance; to undertake criminological studies of social sectors particularly vulnerable to victimization, to submit suggestions to the responsible bodies to lessen such vulnerability and to develop strategies for increasing the effectiveness of criminal investigations under the responsibility of government prosecutors; to undertake social communication campaigns to provide effective information to the community on the procedures for gaining access to the Supreme Court; to organize the necessary administrative and legal links to ensure maximum effectiveness of the services currently provided by specific NGOs to citizens suffering the consequences of the offence in question and to further the coordination of activities with other Offices engaged in similar tasks.

191. Since it was set up, OFAVI has seen a progressive increase in the demand for its help in providing legal, psychological and social assistance in each particular case. It has also made recommendations to the Government Procurator's Office (Ministerio Público Fiscal - MPF) and the national judiciary, aimed at avoiding secondary victimization of those assisted

192. For its part, the Ministry of Human Development of the City of Buenos Aires provides social assistance to victims, and certain hospitals, such as the Hospital Álvarez, are training

specialized teams. Coordination also takes place with the International Organization for Migration (IOM), which is the only body at the moment that possesses an organized programme of social assistance geared to the victims of trafficking. However, the IOM is in principle only competent to assist victims of international trafficking.

193. The Human Rights Department of the Ministry of Justice, Security and Human Rights also follows up certain cases of trafficking that come to light in the courts, which it attends in an observer capacity. Coordination of activities also takes place through the Federal Human Rights Council in specific cases of trafficking between different provinces. An example is that of a minor recruited through a deceptive job advertisement offering work in the province of El Chaco, whose destination turned out to be a brothel in the city of Río Gallegos, in the province of Santa Cruz. The person concerned was rescued thanks to a swift complaint by her mother and the intervention of the Complex Crime Investigation Department and the Interministerial Human Rights Commission in the Chaco province and the Human Rights Secretariat in the province of Santa Cruz.

194. At the same time, in December 2003, the Health Department of the Government of the Autonomous City of Buenos Aires adopted the Protocol of Action for Rape Victims (Resolution No.2557 of the Health Department) to spell out to all hospitals that they come under the Department's authority. The Protocol makes it compulsory to provide rape victims with drugs as an emergency contraception and anti-HIV/AIDS measure, setting minimum periods for the start of treatment so as to significantly reduce the chance of infection. In the legislative field, as a result of the adoption of Act No. 25852 (adopted 4 December 2003 and promulgated on 6 January 2004) articles 250 bis and 250 ter were incorporated in the Penal Code, laying down the special conditions for recording the evidence of victims of offences against sexual integrity or injuries when minors under 16 were concerned. Article 250 bis lays down that children's evidence must be recorded by a professional psychologist, in an office appropriate to the age and the degree of maturity of the child. It also provides for the possibility, at the request of the parties concerned or at the wish of the court, of employing a Gesell Chamber to film the evidence and to exclude contacts between the accused and the child victim during the trial proceedings. At the same time, article 250 ter prescribes the duty to evaluate the need to employ the method described in article 250 bis when the victim is aged between 16 and 18.

195. The "Victims against Violence" Programme was created in 2006 within the Ministry of the Interior to deal with emergencies in cases of domestic violence and sexual abuse. The main aim of the Programme is to care for victims in general and to assist victims of sexual violence in particular. Furthermore, it confronts the victims in an active setting, which calls on them to cooperate as responsible citizens. The program functions like this: when the Federal Police detects a case of domestic violence or sexual abuse it has to call up an "emergency mobile unit", made up of a psychologist and a social worker who, within the space of 20 minutes, must be alongside the victim, explaining the importance of maintaining the complaint against his or her aggressor. The Programme includes a plan of action to combat the sexual exploitation of children and a proposal for preparing a draft law against domestic violence, drawing on the best examples of provincial legislation in the matter. The second aspect of the Programme involves the preparation of a draft law on domestic violence to help victims consisting mainly of women, children, old people and the handicapped. The third component is to consider measures to combat the commercial sexual exploitation of children. The Programme includes a freephone number to receive complaints and information on trafficking and sexual tourism.

2. Awareness-raising and training activities

196. The Human Rights Department of the Ministry of Justice, Security and Human Rights is organizing systematic awareness-raising and training activities for civil servants at the federal, national and provincial levels, in particular for members of the police force. Part of this work is carried out in liaison with the National Police Training Programme being run by the Internal Security Department of the Ministry of the Interior.

197. In this context, a seminar focused on human trafficking was organized on 30 and 31 May with the participation of over 70 officials from the security forces (provincial police, federal police, the prefecture, the gendarmerie) belonging to the Rio Negro, Chubut and La Pampa Provinces. The same seminar took place at the headquarters of the Ministry of the Interior in Chubut, in the city of Rawson. It was repeated on 12th and 13 June in the Metropolitan Auditorium of the National Institute of Public Administration, with the participation of 60 police officers from the Buenos Aires Province.

198. With the support of the Spanish Technical Cooperation Office, an awareness-raising and training programme was held in October 2006 on the trafficking of persons and human rights, with the participation of two Spanish experts - a lieutenant with the Guardia Civil and a victim assistance specialist. The programme was conducted in the provinces of Santiago del Estero, Chubut and the City of Buenos Aires for the benefit of state civil servants, justice workers and NGOs. It was attended in all by some 300 civil servants from different government departments and by the members of NGOs.

199. The meeting explored the concept of primary prevention, which involves training social organizations, in particular women's organizations, well-established throughout the country. In this way, they collaborate by alerting to the forms of recruitment used by traffickers and by identifying local propaganda and deceptive advertisements. As a result of this training, this Department has received complaints from the San Miguel municipality in Buenos Aires Province, which have been forwarded to the courts through the Internal Security Department.

200. In 2006, the International Organization for Migration (IOM) initiated a programme to promote awareness of the trafficking in persons (FOINTRA I) in the provinces of Chubut, Jujuy, Misiones and Buenos Aires. It plans to launch the FOINTRA II programme in the provinces Río Negro, Tucumán, Córdoba and Entre Ríos.

3. Human trafficking and the National Antidiscrimination Plan

201. The Argentine Foreign Office, together with the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) and the Human Rights Department of the Ministry of Justice, coordinated the preparation of a National Antidiscrimination Plan, adopted by National Decree 1086/2005 of 8 September 2005, in keeping with the commitments made at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001).

202. A particular feature of this Plan is that it was not prepared exclusively on the model of an academic project but was rather the outcome of an interdisciplinary effort on the part of governmental and non-governmental organizations involved in its preparation, and over 300 interviews conducted in different parts of the country with victims and victimized groups subject

to discrimination. The Plan also contains a series of specific proposals for implementing measures to combat discrimination.

203. In the chapter on gender discrimination there is a section dealing with the issue of trafficking in women. It is noted that "Trafficking in women for the purpose of prostitution is a murky trade that is on the increase in our country. Two trafficking networks were discovered in recent years: one involved Dominican women and the other women from Paraguay. Generally, those concerned are young women tempted with the false promise of finding work in our country and who, when they arrive, have their documents taken away and are reduced to conditions of sexual slavery. Trafficking also concerns women from the Argentine provinces. Our country does not have adequate or sufficient institutional mechanisms to concern themselves systematically with the prevention, investigation and punishment of the trafficking in persons, nor with the women who are sexually exploited".

204. The proposals contained in the National Plan on the subject of trafficking in persons include the following in particular:

Proposal 24: "Further the adoption of a law that incorporates in the Criminal Code the criminal offence of trafficking in persons, in accordance with the provisions of the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, making such offences federal in character".

Proposal 49: "Create a procurator's department specializing in the investigation of the offence of trafficking in persons, especially women and children".

Proposal 91: "Develop public policies to prevent, investigate and punish national and international trafficking in women, ensuring the protection and physical and psychological rehabilitation of the victims, by establishing mechanisms for their professional and economic reintegration".

G. ARTICLE 9

205. Further to what was said in Argentina's third periodic report with regard to the provisions of article 9 of the Covenant, we provide below updated information on the measures taken in the framework of the National Redress Policy

206. As the Committee is aware, this redress policy was preceded by Decree 70/91, which granted certain *ex-gratia* monetary payments to former detainees, and was extended by Act No.24043, which provided for the payment of an exceptional benefit to persons detained between 6 November 1974 (when the state of siege was declared) and 10 December 1983, when the popularly elected government took office, bringing the military dictatorship to a formal end.

207. This was followed by the introduction of Act No. 24,411, accompanied by Act No.24823. This establishes a special benefit for cases of forced disappearance of persons and for killings presumed to have resulted from action taken before 10 December 1983 by the Armed Forces, security forces or paramilitary groups to suppress dissent.

208. Act No. 25,192, for its part, established the same benefit for persons who had died as a result of the repressive action of the *civico-military* uprising against the military dictatorship installed by the *coup d'état* that ousted the legitimate President of the Argentine Nation,

Lieutenant-General Juan Domingo Peron, limiting the period of the public or clandestine executions to those that had occurred between 9 and 12 June 1956.

209. Subsequently came the adoption of Act No.25,914, which established benefits for persons born during the period when their mothers were subject to deprivation of freedom, or who had been detained as minors alongside their parents, provided that neither of their parents had been detained and/or disappeared for political reasons, whether on the instructions of the Executive Power and/or that of the military tribunals. The exceptional benefits are increased where substitution of the child's identity may have been involved or where serious or gross injury is involved, applicable equally to those born within and outside prison establishments or places of detention.

210. The benefits to which the above laws refer are currently handled by the Human Rights Department, in the Ministry of Justice and Human Rights, and where there is doubt as to the validity of the benefit in question the principle to be applied shall be that most favourable to the beneficiary.

211. As requested, we set out below information on the administrative proceedings initiated with this Department with the aim of obtaining the benefits established by Laws 24043, 24411, 25192 and 25914.

212. In accordance with the above-mentioned provision, the following quantity of data has been processed:

a) Act No. 24,043

Applications submitted: 22.434
Applications designated as files: 19.515
Files pending: 8.930
Applications granted: 9.776
Total days accorded: 11.172.393
Value in pesos: 834.130.860

b) Files submitted under Act No.24,043 requesting exile

Applications submitted: 4.950
Files pending: 4.725
Applications granted: 420
Total days accorded: 62.799
Amount paid in bonds: 4.688.573

c) Act No.24,411

Applications submitted: 9.422
Files submitted: 9.373
Files pending: 1.713
Applications granted: 7.660
Amount paid in bonds: 171.584.000

d) Act No.25,192

Files in progress: 31
Applications granted: 25
Amount paid in bonds: 5.600.000

e) Act No.25,914

Files in progress: 607
Applications granted: 219
Amount paid: 7.826.560

H. ARTICLES 12 AND 13

213. Since the submission of Argentina's third periodic report, very significant progress has taken place with regard to protection of the human rights of migrants and refugees.

1. Protection of migrants

214. Argentina's experience has shown that restrictive immigration policies do not solve problems: on the contrary, the erection of legal barriers only provokes further irregularities, leading to loss of life and boosting the profits of traffickers.

215. Our country attaches fundamental importance to respect for the human rights of migrants, regardless of their immigration status, and believes it essential for States to take effective measures to facilitate the integration of migrants in their country of destination, eliminating all forms of discrimination, xenophobia or racism.

216. In this conviction, Argentina ratified in February 2007 the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

217. Our country considers that legality is the basis of any democratic society and that it is vital to ensure that the foreigner is fully integrated in the receiving society. It is for this reason that it has devised procedures to facilitate access to regular channels of migration.

218. We believe that policies designed to check illegal immigration should take special account of the need to identify those persons who have left their countries because they require international protection and should guarantee them access to the country concerned and to efficient asylum procedures, respecting international humanitarian law and the international rights of refugees.

219. Under the present Government, Argentina has taken a leading role with regard to the protection of migrants, firmly believing that the increasing complexity of migratory flows in the twenty-first century necessitates a paradigm shift in the way in which international migration is handled: we must move away from a focus on security and frontier control - based exclusively on the concept of the nation-State - to a more holistic view of human rights, in which migrants and their families should be the focus of relevant government policy.

220. Argentina has taken this new paradigm as the basis for its migration policy, both in the provisions of the new National Migration Act (Act No. 25,871), in force in our country since

January 2004, and also in its programmes to regularize the situation of immigrants.(See Annex III containing Act No.25,871).

221. This new law on migration, which was achieved through consultation and cooperation among different governmental and non-governmental sectors, reflects the commitment to full respect for the human rights of migrants and their families, while setting in place arrangements to make it easier for migrants to regularize their situation. The new law reflects our history, our geographical situation and our economic status in the region and, recognizing our tradition as an immigrant-receiving country, it helps ensure that migrants have every possibility to regularize their immigration status.

222. By way of example, it is worth drawing attention to a number of paragraphs in the legal instrument concerned:

- a) Respect for human rights and related international commitments: Article 3 "The aims of the present Law are a)... to comply with the Republic's international commitments with respect to human rights, integration and the mobility of migrants...f.) to ensure that any person requesting admission to the Argentine republic benefits from non-discriminatory standards and procedures in terms with the rights and guarantees established by the National Constitution, international treaties, bilateral conventions in force and the law... g) to promote and disseminate the obligations, rights and guarantees of migrants, in accordance with the provisions of the National Constitution, international commitments and the law, upholding Argentina's humanitarian and open tradition with regard to migrants and their families".
- b) Right to migration: Article 4 "The right to migration is an essential and inalienable right of the person and the Argentine Republic guarantees it on the basis of the principles of equality and universality
- c) Equality of treatment: Article 5 "The State will ensure the existence of conditions that guarantee effective equality of treatment whereby foreigners may enjoy their rights and fulfil their obligations..."Article 6 "The State in all its areas of jurisdiction will ensure equality of access to immigrants and their families so that they enjoy the same measure of protection, assistance and rights as nationals, with particular reference to social services, public property, health, education, justice, work, employment and social security" Article 13 " For the purposes of this Law, all acts or omissions will be considered discriminatory when motivated by considerations such as ethnic origin, religion, nationality, ideology, political or trade union opinion, gender, economic situation or physical characteristics, which arbitrarily prevent, obstruct or restrict the full exercise of rights and guarantees on the basis of equality.
- d) Right to education: article 7 "In no case shall the fact of a foreigner being an illegal immigrants prevent his or her admission as a pupil or student in an educational establishment, whether public or private, national, provincial or municipal, or at the primary, secondary, tertiary or university stage. The authorities of educational establishments shall provide guidance and advice with regard to the relevant procedures for rectifying migratory irregularity".

- e) Right to health: Article 8 "Access to the right to health, social assistance or health care may in no case be denied or restricted with respect to all foreigners requesting it, whatever their migratory situation
- f) Right to information: Article 9 "Migrants and their families shall have the right to require that the State provide them with information on a) their rights and obligations in accordance with the legislation in force, be) the requirements for their admission, sojourn and departure".
- g) Promotion of integration: Article 14 "The State in all its areas of jurisdiction, whether national, provincial or municipal, shall furthrt initiatives for the integration of foreigners in their community of residence".
- h) Ready access to regularization of their migratory situation in order to become a national of a State belonging to or associated with MERCOSUR, as the basis for access to legal residency (Article 23, paragraph 1)
- i) Necessary judicial involvement in the processes of expulsion: Section V, Chapter 1
- j) Detention of the foreigner to give effect to expulsion as the exclusive power of the courts: Section V, Chapter II.
- k) Punishment of the offence of illegal trafficking in persons. Increased penalty when the events in question have endangered the life, health or integrity of the migrant or when a minor is involved. Chapter VI. For the first time the concept of trafficking in migrants is defined in Argentine legislation concerning migration. Provision is made for for imprisonment of between one to six years, which may be extended to 20 years where there are aggravating circumstances.

223. The enabling regulations for this law are currently being developed. The main respects in which it differs from the previous law, which remained in force for more than 20 years, are that the regulatory process is now much more difficult and provision must be made for situations of a new kind. Consultations are under way with all sectors of government involved, and also with non-governmental organizations working in this area. It has to be recognized that the adverse state of the economy and the rate of unemployment currently being experienced by Argentina are not the ideal setting for the regulation and application of a Law of this kind. The regulatory process is being developed on the basis of respect for the principle that people have equal enjoyment of rights by virtue of their condition as human beings and not because of their nationality, and keeping in mind the need to avoid situations of reverse discrimination, in other words, not to introduce a kind of unequal treatment which is unfavourable to Argentine nationals.

224. Without prejudice to what is said in the preceding paragraph, and until the new regulations are ratified, the Ministry of the Interior and the National Directorate of Immigration have taken a series of measures to ensure that the spirit of Act No. 25,871 is duly upheld.

225. Such measures include;

- a) Suspension of expulsions or warnings to leave the country involving nationals of neighbouring countries: provision number 2074/04 DNM issued on 28 January 2004. The aim of this provision is to safeguard the rights of those citizens from neighbouring countries who are able to regularize their situation under the new law

once its enabling regulations have been adopted. This provision does not apply to expulsions ordered because of the existence of a criminal record

- b) Rescinding all the related precautionary detentions or fines prescribed by the National Directorate of Migration in accordance with powers granted to it under repealed Act No. 22,439: Provision 17,627 DNM, issued on 23 April 2004. As noted in earlier paragraphs, the National Directorate of Migration under Act No. 22,439 was empowered to detain those foreigners threatened with an expulsion order. Such detention took place with the sole purpose of carrying out the expulsion. The new Migration Act provides that the authority to detain a foreigner rests exclusively with the courts. For this reason, the Migration Directorate, without prejudice to the fact that, under the provisions of Act No. 25,871 no longer has the power to impose any detentions or fines in that regard, rescinded all the corresponding measures adopted under the previous law that were pending execution
- c) Reduction of immigration taxes payable by foreigners appealing their resident status with the Argentine Consulate: Provision DN M20 1085, issued on 17 June 2004.

a) Immigration policy in the framework of MERCOSUR

226. The organization Mercosur and its system of associate States are of great importance to our country. This regional process today includes Brazil, Paraguay, Uruguay, Venezuela and Argentina as full members and Chile, Bolivia, Ecuador and Colombia as Associate States. In 1966, the Meeting of Ministers of the Interior of Mercosur and its Associate States was set up under the Mercosur framework, to work towards the adoption of agreed measures in this area falling within the jurisdiction of this inter-State body, and to this end two major themes were identified: migration and security. In both respects, as a result of the joint work of the countries making up this block, progress has been made towards policies based on the need to observe human rights and the search for the well-being of the population.

227. Another fact of particular significance was the signing of the Agreement on Residence in Mercosur and its Associated States, currently being incorporated in domestic law by the countries of the bloc, enabling anyone born in a country within it to obtain regular residence in another country belonging to the bloc, through a procedure based exclusively on the nationality of the applicant and the absence of a criminal record.

228. Argentina, without waiting for this instrument to enter into force within the bloc and without insisting on reciprocity, has launched its own national programme to regularize the status of migrants, entitled the "Patria Grande" programme.

229. Under the "Patria Grande" programme, the migrant status of 333,011 foreigners living in the Federal Capital and Greater Buenos Aires was regularized between 17 April 2006 and 18 January 2007; and it is estimated that with the extension of the programme to the country as a whole the figure will rise to 700,000.

230. A central feature of the Programme is the direct involvement of the provinces, municipalities and social organizations in the collection of applications, which are then forwarded to the National Directorate of Migration. Ninety-eight data-collection centres, directly in contact with immigrants, currently interact with the Government.

231. It should be emphasized that to achieve this called for the convening of a government meeting and a collaborative response on the part of the Church, trade unions, immigrants organizations and national NGOs, which ceased to confine themselves to denouncing or defending the rights of immigrants and became key actors in the process.

232. Without the involvement of the above-mentioned institutions, the National Directorate of Migration could not have processed in 60 days the 184,351 persons who had already received legal status under the Patria Grande programme, since it would have required approximately 667 days

233. It is worth mentioning that the Patria Grande programme is not an amnesty, is not of limited validity; it is designed as state policy and will in future be applicable to nationals of MERCOSUR already present in Argentina as well as those who will enter in the future. It even offers the possibility of applying for permission in our consulates in the applicant's country of origin, enabling the person to enter the country with resident permit already granted.

234. To obtain such a permit, applicants need only show that they are nationals of a member country of MERCOSUR and its Associated States and that they do not have a criminal record. In return, they will receive a temporary residence permit of two years at the end of which they will obtain a permanent document.

235. It may be noted that implementation of the Patria Grande programme in the Republic of Argentina earned the congratulations and support of the other countries of MERCOSUR and Associated States in a declaration to that effect signed at the Meeting of Ministers of the Interior of the countries concerned, who undertook to adopt similar procedures.

236. Between 2003 and 2006 (as far as the figures go), as a consequence of the new migration policy, some 334,300 foreigners obtained legal residency in Argentina. At the same time, according to the information produced by the official statistics body - INDEC - unemployment fell by 10.4% in the second quarter of 2006.

237. How this equation is to be squared is obvious; economic growth and increased employment are related more to wise economic policy than to the reduction of immigrant flows.

238. Another observable fact - this time related to the topic of security. Knowing that your country contains a number of foreigners whose identity is unknown is more worrying, in terms of insecurity, than regularizing their status as immigrants.

239. The Argentine authorities believe that if immigrants are allowed to regularize their situation through a simple procedure requiring them to show that they have no criminal background, and if their presence in the country and their identity are brought out into the open, they will in this way recover their identity and, in the event of their committing a crime, will be able to be localized and deported if necessary.

240. In this context, the Argentine Republic has pointed out at various meetings that it is essential to approach the question of security and migration from the standpoint of rights, so that measures adopted in the interests of international security do not have a negative impact on the effective exercise of the fundamental human rights of migrants.

241. Our country has participated in various international forums where the subject of migration has been discussed, arguing the need to approach the question from the human rights standpoint.

It spoke to this effect at the High-Level Dialogue on International Migration and Development, where it submitted a position paper on the subject, at the Ibero-American Encounter on Migration, and at the 15th Ibero-American Summit in Montevideo. More recently, at the World Summit on Migration, the Argentine delegation made every effort to have the question of the human rights of migrants included in the agenda.

b) Migrants in the National Antidiscrimination Plan

242. Drawing on the provisions of the Durban Declaration and Programme of Action, a chapter on migrants was included in the National Antidiscrimination Plan, forming part of the diagnosis carried out in its preparation, analyzing the forms of discrimination to which this group are subject in our country.

243. The Plan highlights a series of examples throughout the 20th century, indicating the persistence of discrimination towards certain groups of immigrants - in recent times, towards those coming from neighbouring countries. Some of these reactions are racist in character, affirming that "these immigrants are responsible for our hardships...This kind of response helps to create and perpetuate a discriminatory stereotype, whereby social frustrations are projected on the immigrant communities: victims are chosen, they are presented as victimizers, and the different responsibilities are in this way shifted".

2. Protection of refugees

a) Information on the policy of the Argentine Republic concerning the protection of refugee-seekers and refugees

244. As Argentina is a State party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Human Rights Directorate of the Foreign Office, as the agency responsible for assigning refugee status in Argentina, has supported a range of measures designed to improve the arrangements for establishing eligibility for refugee status and to speed up the assessment of applications.

245. This has helped substantially reduce the number of pending applications, compared to the situation in previous years, and has led to significant progress in protecting the rights of refugees, Argentina being among the countries offering refugees and immigrants, even those without documents, the highest standards in the world.

246. These efforts have earned the praise of the Office of the United Nations High Commissioner for Refugees (UNHCR), which declared that Argentina possesses the best level of technical analysis in the region and that it has fully accepted the most up-to-date legal interpretations in various fields that continue to be the subject of debate and pose problems of application. Thus, Argentina has recognized as refugees "persons who have felt themselves discriminated against on grounds of religion, conscientious objection, gender or sexual orientation". It is notable that in this kind of case Argentina has interpreted the meaning of refugee in the most progressive terms found in any legal system, approaching the question broadly and from the standpoint of the full implementation of human rights rather than as a question of state security. In this way, our country regularly grants refugee status to persons suffering persecution by non-estate agents..

247. In this connection, the UNHCR regional office for southern Latin America noted with satisfaction the progress achieved by Argentina with regard to the protection of refugees, as well

as the efforts to strengthen the secretariat of the body responsible for assessing their status, by providing it with adequate resources and, through the Ministry of the Interior, incorporating a professionally qualified team, including some 16 psychologists and lawyers (compared with the Secretariat's initial staff of 4).

248. At the same time, UNHCR emphasised the importance of the official statistics prepared by the Secretariat, together with the adoption of innovative protection solutions and measures to strengthen the procedure for assessing the status of refugees

249. The work of UNHCR in the Argentine Republic with regard to assessment of the status of refugees may be said to be centred on overseeing and advising the authorities in the area of technical analysis. In this sense, the work of establishing the eligibility of refugees is based on compliance with the UNHCR recommendations, which are our country is regularly applying.

250. In our country, each refugee application receives personal treatment and registration (as distinct from most countries, whose decisions are grouped and/or communicated verbally). Similarly, there exists a review or higher-level process, undertaken by the Ministry of the Interior, on the basis of a report by the Human Rights Secretariat of the Ministry of Justice, Security and Human Rights.

251. In this context, it may also be noted that a number of the protection targets set for the region have already been satisfactorily met in Argentina, but that these in turn raise new challenges, the most significant among which at the current time is the need to draw up at the earliest opportunity a law on refugees that systematizes the existing provisions and opens the way to international cooperation in this field, as well as bringing together in institutional form the main state departments concerned with the optimum integration of refugees at the local level, which have not been hitherto represented on the Refugees Eligibility Committee.

252. Finally, in November 2006, the National Congress adopted General Act No.26,165, Refugee Recognition and Protection Act (see Annex IV)

b) Refugee Recognition and Protection Act

253. The new law sets out the basic principles on the protection of refugees and applicants for refugee status enshrined in international instruments: non-refoulement, including a prohibition on turning people back at the border; non-discrimination; not penalizing illegal entry; confidentiality; non-discrimination and the integrity of the family.

254. The act sets up the new National Commission for Refugees, to replace the Refugees Eligibility Committee (CEPARE), which until now has been made up of immigration and foreign affairs officials. Under the provisions of the new act, the new Commission will include among its members representatives of the Ministry of Justice and Human Rights, the National Institute against Discrimination, Xenophobia and Racism (INADI) and the Ministry of Social Development.

255. The inclusion of this last Ministry will make it possible for work to begin on assisting refugees through their inclusion in national, provincial and municipal programmes, with particular reference to the most vulnerable groups: unaccompanied minors, women heads of family, the elderly, the sick, etc, since up to now CEPARE's functions included no more than assessing refugee status.

256. The act also clarifies the procedure for appealing at second instance against a negative decision by CONARE, assigning the authority to rule on such appeals to the Minister of the Interior, following consultations with the Office of the Secretary for Human Rights in the Ministry of Justice.

257. The act makes provision for the “prima facie” granting of refugee status in the event of a mass influx of refugees, under which a person may be recognized as a refugee by virtue of belonging to a specified group of individuals.

258. The act also provides for the possibility that persons who have been granted refugee status in another country, but are unable to remain in that country because their fundamental rights and freedoms would be at risk, may apply to any Argentine diplomatic mission to relocate to Argentina, and that mission will be responsible for receiving such applications and drawing up the relevant file, which it will promptly transmit to the secretariat of the Commission for it to process.

I. ARTICLE 14

259. With reference to the provisions of article 14 of the Covenant, attention should be drawn to the measures being taken by the Argentine Government to lend greater transparency to the system for administering justice in our country and also to the struggle against impunity, particularly in relation to the human rights violations that took place during the last military government, an approach matching the initiatives taken in the legislative and judicial fields.

260. As background to these measures, we can point to the existence of serious charges with respect to the lack of independence and impartiality of the Supreme Court of Justice, which created a serious lack of confidence on the part of the general public with respect to the administration of justice in our country. Society took a negative view of the functioning of the High Court, giving rise to questioning in many quarters, including representatives of the main political parties, professionals, journalists and NGOs. Many of these groups argued that the institutional crisis of the judicial system had led to a situation involving the systematic denial of justice, brought about by the objective fear of a lack of independent and impartial justice on the part of the Supreme Court, and by the irregular conduct of its members in their function as the ultimate interpreters of the law and as the supreme judicial guarantors of fundamental rights.

261. One of the alleged reasons for the lack of legitimacy of the Court highlighted its composition, given that it had turned itself into an "automatic majority", supposedly answerable to the political power in office. The crisis of legitimacy affecting the Supreme Court also had to do with the fact that the appointment of judges was clearly politically biased and took no account of background, public career and prestige necessary to fill the office.

262. In view of the numerous irregularities observed in the conduct of the Supreme Court, voices were raised among members of the general public, sections of the press, the judiciary and the academic community denouncing the lack of independence of the justices of the Supreme Court. So it was that, in the 1990s, a growing number of demands were made in the Chamber of Deputies calling for the Supreme Court Justices to be held to political account, which led to their defeat for lack of political support.

263. In these circumstances, to ensure greater transparency in the system for electing judges to sit in the Supreme Court, the procedure for exercising the power of appointment was spelt out in

Decree No.222/2003 of 19 June 2003, which under article 99, paragraph 4, of the Argentine Constitution made it the responsibility of the President of the Nation to appoint justices of the Supreme Court.

264. The article in question provides that the President is responsible for appointing the justices of the Supreme Court, with the consent of the Senate by two-thirds of its members present, in a public meeting convened for that purpose.

265. The preamble to Decree 222/03 stresses the need for the exercise of this responsibility by the Executive Power to be governed by rules establishing the parameters to be taken into account to ensure that the best candidates are selected, so that their appointment will serve to improve the justice system, which is a guarantee owed by the State to all citizens, together with strengthening of the Republican system and improvement of the quality of institutions.

266. The Decree also underlines the need, in exercising this responsibility, to take into account the circumstances relating to the overall composition of the Supreme Court as regards gender diversity, professional specialties and a proper balance of regional and federal sensibilities, together with the requirements of the candidate in terms of moral integrity and technical competence, commitment to democracy and the defence of human rights.

267. At the same time, it is said to be advisable in the interests of the optimum discharge of the incumbent's functions, with the express agreement of the person or persons in respect of whom the request for assent is being made, to provide for accreditation in terms of professional and academic background, public and private commitments, consistency with the requirements laid down in the Ethical Standards for Public Officials Act, and fulfilment of tax obligations.

268. The Decree also refers to the importance of creating certain structures enabling citizens, individually or collectively, collegiate bodies and associations in the professional, academic or scientific sphere, and NGOs with an interest and involvement in the area concerned to make known in a timely manner any arguments, points of view and objections they may have with regard to the projected appointment.

269. The ultimate aim of the procedures prescribed in the Decree is the pre-selection of candidates for filling the vacancies in the Supreme Court, having due regard to the good name and integrity of the proposed candidates, proper assessment of their moral qualities, their technical and legal suitability, their past careers and their commitment to the defence of human rights and democratic values qualifying them for such an important office.

270. Article 4 of the Decree provides that "when a vacancy arises in the Supreme Court of Justice, the name and curriculum of the person or persons being considered to fill the vacancy will be published within a maximum of 30 days in the *Official Bulletin* and in a minimum of two daily national newspapers for a period of three days. At the same time, the information will be posted on the official page of the Ministry of Justice and Human Rights website."
(www.jus.gov.ar)

271. The persons included in the publication established under article 4 of the Decree must submit a sworn declaration listing all personal property, that of their spouse and/or partner, that constituting the assets of the couple's joint company, and that of their children under 18, in accordance with the terms and conditions of article 6 of the Ethical Standards for Public Officials Act and its regulatory provisions. This must be accompanied by another declaration listing civic

associations and commercial companies to which they are or have been a part in the last eight years, lawyers' practices to which they have belonged or belong, a list of their clients or contractors over at least the last eight years, consistent with the prescribed standards of professional ethics, and more generally any type of commitment that it may affect the impartiality of their judgement having regard to their own activities, those of their spouse, of their ancestors or descendants in the first degree, so as to enable an objective evaluation to be made of possible incompatibilities or conflicts of interest.

272. Article 6 of the Decree provides that "citizens in general, NGOs, collegiate or professional bodies and academic and human rights organizations can, within a period of 15 days from the final publication in the official bulletin, submit to the Ministry of Justice and Human Rights, in writing and supported by arguments and documentation, the positions, observations and circumstances they consider to be relevant concerning those persons included in the process of pre-selection, together with a sworn declaration as to their own objectivity in respect of the proposals". Without prejudice to such submissions, the opinion of relevant professional, legal, academic, social, political and human rights organizations may be sought during the same period for the purposes of their evaluation.

273. With regard to exercise of the above-mentioned provisions of article 6, the Ministry of Justice and Human Rights (responsible for the Decree's application) will accept submissions in writing delivered by post or in person. Statements or observations concerning the candidate should be limited to the following topics: fulfilment of the constitutional requirements to accede to the post of justice of the Supreme Court; moral qualifications; technical or legal suitability; career; and commitment to defence of the constitutional order, human rights and democratic values.

274. Those making submissions should back up their statements or observations and provide any documentary evidence in their possession, or indicate its provenance, always provided it serves to support the statements made in the submissions. The persons directly concerned should provide evidence of their identity and those countersigning the submissions that should state on oath that the facts in question are true and that there is no reason to doubt the objectivity of the person making the submission concerning the proposed candidate.

275. Submissions made on behalf of legal entities must indicate whether the latter were created by legal or regulatory provision. Those who sign on behalf of them must state on what basis they claim to represent them or must indicate the domicile or headquarters of the entities concerned.

276. Such submissions should also contain a sworn declaration signed by the person who officially represents the entity in question, concerning the truthfulness of the above data and the absence of any reason to doubt its objectivity in relation to the candidate.

277. In any case, whether in the case of a natural person or legal entity, the author of the submission must state under oath whether he/she is linked in any way to the candidate for the Supreme Court, in any of the ways envisaged in the Code of Civil and Commercial Procedure:

- a) the author of the submission is related to the candidate within the fourth degree of consanguinity and the second of affinity;
- b) he/she, or a relative by consanguinity or affinity within the degree indicated in the previous subparagraph, has an interest in the appointment of one or other of the

- candidates or in a company or community involving one of the candidates, with the exception of a joint-stock company;
- c) he/she has a legal dispute pending with one of the candidates;
 - d) he/she is a creditor, debtor, or surety of one of the candidates
 - e) he/she is or has been the author of a complaint or lawsuit against one of the candidates, or has previously been the subject of a complaint or lawsuit by one of them;
 - f) he/she is or has been the counsel of one of the candidates or has issued an opinion or ruling or made recommendations concerning the selection procedure;
 - g) he/she has received significant benefits from one of the candidates;
 - h) he/she has a friendship with one of the candidates that is manifested by great familiarity or frequent interaction;
 - i) he/she has publicly displayed enmity, hatred or resentment towards one of the candidates.

278. The Ministry of Justice and Human Rights reserves the right where necessary to call for supporting documents relating to the identity of the authors of submissions, in the case of natural persons, or to the legal capacity and authority of the signatories of the submission, in the case of legal entities.

279. At the same time, Decree No. 222/03 provides that the Federal Tax Administration will be asked to provide - while observing tax confidentiality - a report on the fulfilment of tax obligations by such persons as may be proposed. Within a maximum of 15 days following the deadline for the submission of opinions and observations, the national Executive will decide whether to submit the proposal in question. If the decision is positive, it will send the corresponding nomination, together with its decision, to the Senate so that it may grant its agreement.

1. Reforms carried out in the Senate

280. Alongside with the measure taken by the national Executive, the Senate was likewise called upon to undertake a series of reforms to its rules. In July 2003 it was therefore proposed to reform its rules to ensure greater transparency and civil society involvement in the process of confirming the appointment of judges in the High Court. Essentially, the proposal was that each candidate for appointment to the Court should participate in a hearing and public debate.

281. While the Senate approved changes to its rules and envisaged the possibility of representatives of civil society submitting written observations on the candidatures, it rejected the idea that civil society should participate directly in the hearings. Nor did it agree that the debate in which the candidate was to reply to the senator's questions should be broadcast directly on television. Two other subjects left pending with regard to the new rules were that the Confirmation Committee should take account of the observations submitted to the Executive and that the Senate's decision should be taken by nominal vote. However, for that occasion the process of confirming judges for the Supreme Court was explicitly excluded.

2. Reforms in the processes of appointing other judges

282. On 13 August 2003, the President of the Nation signed Decree No. 588/3002, making it obligatory to apply the system of public evaluation established under Decree No. 222/032 in the appointment of any judge, procurator or ombudsman within the national federal system. In this way, candidate judges should declare their resources, and an authority should be empowered to submit observations and carry out consultations on a candidate's qualities.

283. Similarly, on 24 September 2003, the Head of Government of the Autonomous City of Buenos Aires signed Decree No. 1620 with the aim of self-limiting his powers to propose candidates to the Supreme Court of Justice and to the municipal Attorney-General's Office (covering the Attorney-General, the Ombudsman and the Legal Assessor). This Decree establishes that the Executive must submit for consideration by the citizens of the city the name of the candidate being proposed, before transmitting it to the legislature for its approval. The only significant difference with the process laid down in Decree 222/03 is the time limit of 60 days within which the executive must submit candidates to fill in the vacancy that has arisen and publish his or her name and résumé.

3. Reform of the Council of the Magistrature and the Impeachment Jury

284. On 20 November 2005, the Congress began to consider a draft law to reform the Council of the Magistrature, this being finally adopted in December 2006 (Act No. 26,080). The Council was set up in 1994 with the aim of limiting political power in the appointment of judges. Its function is to participate in the nomination of new judges through the organization of technical competitions and to administer non-jurisdictional questions relating to the judiciary, such as training, disciplinary procedures and management of the justice budget (excluding the Supreme Court).

285. Following the reform, the Council was composed as follows: seven political representatives (three members of Congress, two from the majority and one from the minority, three senators with equal representation, and one member of the Executive), three judges, two lawyers and one academic. The Senate was not represented (its President had previously also presided over the Council).

286. The main reasons underlying the reform were: to achieve greater efficiency, to break with corporatism, and to give the Council greater political weight.

287. Similarly, there were changes in the composition of the Impeachment Jury, the body responsible for deciding on the removal of lower-level judges on the accusation of the Council of the Magistrature. Following the reform, a membership of nine (three legislators, three judges and three lawyers) was reduced to seven (four legislators, two judges and a lawyer), and election began to be by lot. As in the case of the Council, the aim of this change was to limit bureaucracy and give the Jury greater political weight.

J. ARTICLE 18

288. Further to what was said in the first part of this report in connection with paragraph 16 of the concluding observations, relating to freedom of worship in the Argentine Republic, attention is drawn to the following:

289. The 1994 constitutional reform abolished three controversial constitutional provisions in force since 1853 relating to discriminatory topics in the religious field:

- a) Conversion of indigenous people to Catholicism. The 1994 reform includes a generous clause (article 67, subparagraph 17) recognizing the ethnic and cultural preexistence of indigenous peoples and accords them rights conducive to their protection in terms of material well-being and cultural identity.
- b) Requirement that the President and Vice President of the Nation should be Catholic. The 1994 reform not only abolished the requirement of belonging to the Roman Catholic Apostolic Religion (article 89) but stated that the taking of the oath before the Congress should respect [different] religious beliefs (article 93)
- c) State Head of the Church. This refers to the involvement of the State in the appointment of the high dignitaries of the Church, a practice that goes back to the colonial era and gave rise to many disputes between the State and the Catholic Church. This was rectified in the 1994 reform with the abolition of notion of the State Head of the Church.

290. The Argentine Republic possesses national instruments that provide safeguards or help protect against discrimination based on religion or faith. Such guarantees or rights are to be found in: the Constitution, various laws including Act No. 23,592 (Discriminatory Acts) and all the international human rights instruments adopted by the Argentine State, particularly the Declaration and Programme of Action adopted by Argentina at the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, 2001).

291. With regard to national policies, mention may be made of the National Plan to Combat Discrimination⁵, approved by Decree No. 1086/2005, which entrusts INADI with coordinating and implementing the proposals it contains.

292. INADI is also carrying out a campaign of prevention through debate, production of materials, etc, which helps to alert the community to any kind of discrimination against religions.

293. INADI likewise receives complaints through its complaints centre, with which the person affected or any other person or institution can lodge a complaint concerning the circulation of contents injurious to one or other religion. The Institute promotes efforts to remedy the situation and issues a report on the subject. When a legal investigation is under way, the judge generally incorporates INADI's report as an element in the case against those responsible for the acts in question.

⁵ The content and development of the National Antidiscrimination Plan were described earlier.

294. In this context, the media (radio and television) are on the alert and condemn any statement containing racist ideas and xenophobia or that targets a particular religion. The Federal Broadcasting Committee (COMFER) is the body charged with acting against those responsible

295. INADI recently organized the Communication Media Forum. This Forum, comprising organizations of journalists and communicators, is focusing its sights on monitoring the information circulating in the media, which could help to promote violence, xenophobia and intolerance etc, and is calling on INADI to take action in cases that come to light.

296. In the meantime, the recently approved Federal Education Act represents a significant step forward in the treatment of religious diversity as a topic for inclusion in basic education. However, the difficulty of ensuring equal treatment throughout the country has not yet been overcome given that the inclusion of contents in the school curriculum is not at the same stage of development in all the provinces.

297. Attention should also be drawn, as an integral part of the measures being adopted, to the changes taking place in the prison service with the introduction of chaplaincies serving all religions. This system is already operating in a large number of jails throughout the country.

298. It may also be noted that access to primary and secondary education is guaranteed for all religious groups. Public-sector education in Argentina is secular and free of charge. While it is true that the State subsidizes Catholic schools, this is currently a topic of public debate, given that the situation would seem to be unfair to other, non-Catholic forms of worship, which do not receive any contribution from the State.

299. Through its anti-discriminatory policies, INADI has staged a series of awareness campaigns to promote the debate on diversity in the cultural, religious and other spheres. It is furthering efforts to deal with all forms of diversity and is designing specific projects of national scope. These proposals are developed jointly with representatives of the different religions.

300. The Secretariat for Worship⁶, for its part, promotes reflection, analysis and exchanges of information and opinion through the organization of conferences entrusted to recognized national and foreign specialists - such as the symposium "Holocaust-Shoa: its Impact on Theology and Christian life in Argentina and Latin America"; the international congress "Latin America and the Islamic world: Civilization and Culture"; and the round table entitled "Assisi - the profession of faith of John Paul II (1986-2006)".

301. On the occasion of the "International Day of Commemoration in Memory of the Victims of the Holocaust" and in tribute to the men and women of religion who fell victim to state terrorism, ceremonies were held to mark the 30th anniversary of the last military coup.

302. To symbolize a firm and rational appeal for peace in the face of the violence in the Middle East, a ceremony was organized for the signing of a document entitled "The vocation of peace and the dialogue between communities", endorsed by Luis Grynwald, President of the Asociación

⁶ An institutional State network comprising various religious organizations in Argentina and discharging a number of administrative and legal responsibilities. However, apart from these formal obligations, what characterizes its management is the capacity for transforming public commitment into specific policies. Distinctive among these is the promotion of freedom of religion and conscience, the culture of peace and the development of active policies promoting openness and inclusion.

Mutual Israelita Argentina (AMIA); Samir Salech, President of the Islamic Centre of the Argentine Republic (CIRA); Monseñor Horacio Benites Astoul, for the Archbishop of Buenos Aires; and Ambassador Guillermo Oliveri, National Secretary for Worship.

303. An historic acknowledgement of aboriginal spirituality took place with the inscription in the National Register of Religions of two native communities: the Mbyá Guaraní Community from Santa Ana Mirí (Misiones) and the Pomis Isawo Community from the province of Salta.

304. A greater sense of proximity to various religions was experienced through visits to their temples, together with renewed recognition of the historic presence of some of them.

305. Meetings attended included numerous religious functions and ceremonies, disseminating the values of pluralism and coexistence. Thus, the Secretary for Worship took part in the panel discussion "The Globalization of Solidarity" in Assisi, Italy; in the Eighth World Conference on Religion and Peace held in Kyoto, Japan; and in the 13th International Law and Religion Symposium in Brigham Young University, Provo, Utah, United States of America, and in Caracas (Venezuela), where the Mercosur Seminar on Worship pursued its previous work.

306. Finally, mention should be made of the strengthening of pluralism, interchange and coexistence among pupils and teachers from various religious communities through the joint organization, with the Department of Sports and the National Youth Directorate, of a "Sport for Peaceful Coexistence" seminar. An "Education through Freedom of Religion and Conscience" seminar was organized in conjunction with the National and Buenos Aires City Ministries of Education.

K. ARTICLE 20

307. Without prejudice to what has been said throughout this report, as well as in the last report submitted to the Committee on the Elimination of Racial Discrimination, the following should be mentioned.

308. With reference to the question of incitement to and encouragement of incitement to national, religious or racial hatred in the political arena and to the promotion of discrimination from political platforms, it is important to bear in mind the considerations contained in the National Antidiscrimination Plan: "among the measures adopted to counter any discriminatory or racist discourse by political parties, reference must be made to article 38 of the National Constitution, which lays down that political parties should be organized in such a way as to observe the main international human rights conventions, including naturally the International Convention on the Elimination of All Forms of Racial Discrimination, and to the National Constitution, which in article 75, subparagraph 22, affirms that the international human rights treaties it enumerates have hierarchical superiority over national laws".

309. Similarly, Act No. 23,592 on discriminatory acts and article 16 of Organic Act No. 23,298 on political parties specifically embodies these principles by declaring that the name of the party "cannot contain personal designations, nor derivatives of them, nor Argentine, national or international expressions or their derivatives, nor those whose meaning affects or might affect the Nation's international relations, nor words that express antagonisms based on race, class, religion or tend to provoke them".

L. ARTICLE 23

310. In December 2002, the legislature of the autonomous city of Buenos Aires promulgated Act No. 1004 defining civil union as one "formed freely by two persons independent of their sex or sexual orientation".

311. This provision reflects the understanding that the text of both the National Constitution and international treaties guarantees the right of persons to contract a marriage and found a family. In this respect, it is argued that there is no definition of family that restricts its meaning to the union between a man and a woman, just as there is no prohibition whatsoever regarding marriage between two persons of the same sex.

312. Despite the absence of a law on gender identity guaranteeing trans-persons the right to their identity, that is to say, legal recognition of their name and rectification of their identity documents, it should be pointed out that this right has been recognized in Argentina both in terms of doctrine and of legal practice.

313. In this connection, it may be noted that on 21 March 2007, in the city of La Plata, province of Buenos Aires, the Supreme Court issues a ruling on case C. 86.197, "C. H. C. Cambio de nombre". In its decision, it admitted the extraordinary appeal lodged by a transsexual and ordered that the birth certificate issued by the Civil Registry of the City of Buenos Aires should be amended so that her designation as male in that part of the document where the sex of the person is noted should be corrected and that she should be recorded as belonging to the female sex. The Court also ordered the name to be changed.

314. The Court furthermore ordered that a new identity document should be issued, that the name and sex of the person concerned should be corrected, and that the data concerned should be amended in any public or private document.

LL. ARTICLE 24

315. Firstly, it is important to bear in mind that the periodical reports submitted by the Argentine Republic under article 44 of the Convention on the Rights of the Child contain information on the protection of children and young people in our country.

316. Without prejudice to the above, it should be noted that in September 2005 Act No. 26,061 on the Comprehensive Protection of Children and Adolescents (see annex V) was adopted with the aim of guaranteeing full, effective and permanent exercise and enjoyment of those rights recognized under the national legal system and the international treaties to which Argentina is a party.

317. The Law provides that the rights it embodies are guaranteed to the maximum degree possible and are founded on the principle of the superior interest of the child. Failure to carry out the duties for which the governmental organs of the State are responsible entitles any citizen to take the necessary administrative and legal action to restore the exercise and enjoyment of such rights, through rapid and effective measures.

318. Article 2 makes the application of the Convention on the Rights of the Child compulsory in every administrative, judicial or other act, decision or measure adopted in respect of persons under 18 years of age.

319. As regards the principle of nondiscrimination, article 28 of the Law establishes that its provisions "shall apply equally to all children and adolescents, without discrimination of any kind on grounds of race, sex, colour, age, language, religion, belief, political opinion, culture, economic situation, social or ethnic origin, special abilities, health, physical appearance or impediment, birth or other status of the child or his or her parents or legal guardian".

320. Under Argentine law, the principle of the best interest of the child is a general rule, given that it is established in an international treaty having constitutional hierarchy. It has been incorporated, as noted out previously, in the Comprehensive Protection of Children and Adolescents Act, to be understood as "maximum satisfaction, comprehensive and simultaneous, of the rights and guarantees recognized under the Act, involving respect for: a) their status as the subject of rights; b) the right of children and adolescents to be heard and for their opinions to be taken into account; c) respect for the full personal development of their rights within their family, social and cultural setting; d) their age, degree of maturity, capacity for discernment and other personal circumstances; e) the balance between the rights and guarantees of children and adolescents and the requirements of the common good; f.) their focus of existence. This is to be understood as the place where children and adolescents have passed in legitimate circumstances most of their lives. When there is a conflict between the rights and interests of children and adolescents in relation to other equally legitimate rights and interests, the former shall prevail".

321. The firm commitment of the national courts to provide special protection for children's best interests is reflected in the variety of jurisprudence establishing such protection. In this connection, the courts have noted: "The best-interests principle is weak in relation to other weighty influences, such as power and money, even though such influences may operate in the most irreproachable and transparent legality. There is therefore a need for firm and decisive jurisprudence which shows the community which road must be followed for the protection of its children, especially when the school and the family appear powerless to check the advance of journalistic enterprises, which cannot be allowed to interfere in children's lives under cover of the right to freedom of expression and the right to publish news without prior censorship". (CNCiv., Chamber C, 3 October 1996 - P., V.A.)

322. The courts have also observed that "Children are entitled to special protection. The defence of their rights must therefore prevail as the primary consideration in any judicial matter, so that in any conflict of interests of equal weight the moral and material interests of the child must be given priority over any other circumstance of the case." (CNCiv., Chamber A, 28 May 1996.)

323. The Comprehensive Protection of Children and Adolescents Act provides for the creation of the National Secretariat for Children, Adolescents and the Family placed under the executive branch as a specialized body dealing with the rights of children and adolescents; it is composed of representatives of the various ministries and of civil society organizations.

324. Decree No. 416/2006 placed the Secretariat under the authority of the Ministry of Social Development, with the functions of:

- a) defining operating guidelines to be observed by public or private institutions providing assistance and protection in relation to the rights of the child;
- b) supporting NGOs in defining their institutional objectives for promoting the rights of children and adolescents and preventing their institutionalisation;

- c) coordinating joint actions with governmental and non-governmental bodies to encourage the active participation of children and adolescents;
- d) providing technical assistance and training activities to provincial and municipal bodies and community agents
- e) organizing a single decentralized information system that includes indicators for monitoring, evaluation and control of policies and programmes relating to children, adolescents and the family;
- f) drawing up the reports in accordance with article 44 of the Convention on the Rights of the Child, and representing the State as depository of the recommendations submitted.

325. The Act in question also provides for the establishment of the Federal Council on Children, Adolescents and the Family. It is made up of the National Secretariat for Children, Adolescents and the Family, which occupies the presidency, and the representatives of existing organizations for protection of the rights of children, adolescents and the family or those to be created in each of the provinces and in the autonomous city of Belsize.

326. The Federal Council on Children, Adolescents and the Family is responsible for reflection and consultation activities, proposal formulation and policy coordination, whose scope and content will be defined in its Constitution. Its functions include coordinating and implementing policies for the comprehensive protection of the rights of children, adolescents and their families; participating in the preparation, in coordination with the National Secretariat for Children, Adolescents and the Family, of a National Plan of Action in the form of a rights charter in the area concerned; and promoting legislative and institutional reform to give effect to the principles embodied in the Convention on the Rights of the Child.

327. The Act also provides for the creation of the post of Ombudsman for the Rights of Children and Adolescents, to be responsible for the protection and promotion of the children's rights established in the Constitution, the Convention on the Rights of the Child and national laws. The Ombudsman will be nominated, appointed and removed by the National Congress, which will designate a bicameral committee with the task of evaluating the appointment by means of public competition. The functions of the Ombudsman are:

- a) promoting measures to protect the individual and collective interests of children and adolescents;
- b) acting to protect the rights of children and adolescents in any proceedings, trial or court;
- c) ensuring proper respect for the rights and legal entitlements of children and adolescents by instituting judicial and extrajudicial measures, as required. For this purpose, the Ombudsman may take statements from the claimant, hear directly the person or authority against who the claim is made, and formulate recommendations aimed at improving public and private services caring for children and adolescents, setting a reasonable time limit for completion of the task;

- d) initiating measures for the imposition of sanctions for infringements of the rules for the protection of children and adolescents, without prejudice to the civil and criminal responsibility of the offender, as appropriate;
- e) supervising private and public institutions caring for children and adolescents by providing them with temporary or permanent shelter or by carrying out non-institutional care measures, and reporting to the competent public authorities any irregularity that threatens or infringes the rights of children or adolescents;
- f) seeking the help of the police force and of the medical or education services, whether public or private;
- g) providing advice of whatever nature to children and adolescents and to their families, via a suitable organization;
- h) advising children and adolescents concerning the public, private and community resources available for solving their problems;
- i) intervening with the advisory, mediation or conciliation authority;
- j) receiving any kind of claim made by a child and any complaint made in connection with a child either in person or by a permanent free telephone helpline, with immediate action to be taken on such claim or complaint.

328. Finally, it should be noted that the Ombudsman for the Rights of Children and Adolescents is required to submit annual reports on his or her work to Congress. The Ombudsman must also attend, on a rotating quarterly basis, meetings of the standing committees specializing in this area in each house of Congress to submit any reports that they may require, or at any time the committee so requires.

M. ARTICLE 26

329. Without prejudice to what has been said throughout this report, reference is made to the information provided in the most recent Argentine report to the Committee for the Elimination of Racial Discrimination(CERD/C/476/Add.2,) for further information on action by the Argentine Republic in compliance with this article.

N. ARTICLE 27

330. With regard to the indigenous minorities in the Argentine Republic, as noted in Argentina's third periodic report, article 75, subparagraph 17, of the Argentine Constitution provides: "Congress is empowered (...) To recognize the ethnic and cultural pre-existence of indigenous peoples of Argentina. To guarantee respect for the identity and the right to bilingual and intercultural education; to recognize the legal capacity of their communities, and the community possession and ownership of the lands they traditionally occupy; and to regulate the granting of other lands adequate and sufficient for human development; none of them shall be sold, transmitted or subject to liens or attachments. To guarantee their participation in issues related to their natural resources and in other interests affecting them. The provinces may jointly exercise these powers".

331. On the basis of this constitutional recommendation, a specific legal status has been developed for indigenous peoples that encompasses the obligation to adapt the framework of the State and its institutions in a way that recognizes this ethnic and cultural pluralism.

332. The National Institute of Indigenous Affairs (INAI) is a national body created by Act No. 23,302 to develop and implement policies concerning the country's indigenous peoples. It is a decentralized body that operates under the authority of the Ministry of Social Development.

333. In this connection, regarding the consultations on this topic carried out by the Committee when examining the third Argentine report, attention is drawn to the following:

1. ILO Convention No. 169

334. In 1992, the Argentine Republic signed Convention No. 169 of the International Labour Organization (ILO) concerning "Indigenous and Tribal Peoples in Independent Countries". This instrument was approved under Act No. 24, 071, and ratified on 3 July 2000. The importance of this Convention lies in the fact that it is one of the first international treaties to treat indigenous populations as protagonists, and that it includes the first legally valid definition of indigenous peoples.

2. Supplementary survey of indigenous peoples

335. Argentina does not possess sufficient information to determine precisely the sociodemographic situation and geographical location of the indigenous peoples and their communities. While the Supplementary Survey of Indigenous Peoples, carried out by the National Statistics and Census Institute (INDEC) represents the first national attempt to measure the indigenous population in the context of a general population census, it cannot be said to be a valid sample given that it was not possible to take account, in absolute numbers, of the quantity and basic characteristics of these populations. The data arrived at by the ECPI may be consulted on the organization's webpage: http://www.indec.mecon.gov.ar/webcenso/ECPI/index_ecpi.asp.

336. A socio-economic survey is currently being carried out in all the indigenous communities. It is hoped in this way that more will be learned of trends in the different variables and that light will be thrown on the social life of these communities and their particular characteristics: population, living accommodation, education, health, economy, work, social programs, main problems, etc.

3. Document regularización programme

337. With regard to information on Document Regularization Programmes for the indigenous population, the State has for several years been applying legislative measures to extend access to the identity document.

338. In Decree No. 262/03, for example, it declared that all children up to six months old in the country would be granted the initial national identity document free of charge.

339. With specific regard to indigenous peoples, INAI is financing document regularisation in the province of Misiones, having detected that it has one of the highest percentage of indigenous people lacking documentation.

340. This project was initiated in 2005 in response to a request from the Council of Ancients and Spiritual Guides of the Mbya Guaraní Nation, coming under the Ministry of the Interior of the province of Misiones. While various activities have been carried out by different State agencies, there is currently no specific document regularization programme for the indigenous populations.

4. The National Institute of Indigenous Affairs

341. In April 2006, Decree P.E.N. No. 410/06 was issued, adopting the organizational structure of the National Institute of Indigenous Affairs (INAI). Its organization chart provides for a Presidency, a Vice-Presidency, two directorates - the Directorate of Lands and the National Registry of Indigenous Communities, and two councils - the Coordination Council and the Advisory Council.

342. To fulfil its mandate of promoting the comprehensive and sustainable development of indigenous communities, INAI has developed a work plan designed to:

- Ensure the exercise of full citizenship by members of the indigenous peoples, guaranteeing respect for their constitutional rights and other rights recognized internationally and their traditional forms of organization, furthering the strengthening of their ethnic and cultural identities and facilitating their participation in the formulation and management of State policies involving them.
- Create the bases for comprehensive and sustainable development compatible with preservation of the environment and the territories in which the indigenous communities live, ensuring access to goods and services in the lands they occupy, guaranteeing access to a better quality of life, diversifying the sources of their income and generating improvements in local conditions.
- Within this general framework, the activities promoted through the Institute correspond to a strategy of involvement based not just on the transfer of goods and services to the beneficiaries, but also on developing and strengthening operative and management capabilities for project formulation, implementation and evaluation, by means of training activities, management courses and technical and financial support for the initiatives of the communities themselves.

5. Indigenous Participation Council

343. INAI is currently in the process of designing and consolidating mechanisms for effective participation by the indigenous peoples in the development, adoption, execution and oversight of the public policies affecting them.

344. Their participation takes place through the Indigenous Participation Council (CPI), - created by Resolution No. 152 of 6 August 2004 and modified by Resolution No. 301/04 - and, more recently, through the Coordination Council established by Act No. 23,302 (article 5).

345. The CPI determines the process for appointing the indigenous representatives to the Coordination Council. This body, which participates in the framing of public policies, corresponds to the mandate contained in article 75, subparagraph 17, of the Constitution and in Act No. 24,071 (Adoption of ILO Convention No.169).

346. The establishment of the CPI in the framework of the INAI was the start of a process of consultation and participation between the national State and the indigenous peoples; it is a forum for discussing all the topics affecting the latter.

347. In the course 2005, assemblies of the different indigenous peoples took place in each of the provinces, 37 in all, to elect representatives to the CPI. The authorities of the communities took part in these assemblies, observing the organizational and cultural guidelines of each people.

348. During these elections, regional meetings took place to initiate the process of participating in the identification of common problems and the search for corresponding solutions.,

349. These meetings marked the start of a new stage in which indigenous communities and peoples, through their representatives, began to play a leading role so as to make their voices heard and be able to discuss the best way of effecting the necessary changes to improve the life of their communities. Participation of the aboriginal representatives in the CPI will ensure that public policy measures concerning the indigenous population reflect the urgent needs and genuine demands of the communities concerned and will establish mechanisms for preserving and protecting their traditional knowledge, as well as for consulting them.

350. The second stage will involve the setting up of the Coordinating Council, which will consist of indigenous representatives and representatives of the Ministries of the Interior, Economy, Labour, Education and Justice and of all the provinces that have approved Act No. 23, 302 and exercise the functions set out *inter alia* in article 7 of Decree No. 155/89:

- a) carry out the necessary studies on the situation of indigenous communities and isolate the problems affecting them;
- b) propose to the President an order of priorities for solving the problems identified, the means and measures for solving them, and INAI's objectives and programmes of activity in the medium and long-term;
- c) examine plans for allocating and, where appropriate, expropriating land within the meaning of Law No. 23,302 and develop exploitation projects through the ad hoc commissions and the participation of the communities themselves so as to bring them to the attention of the President
- d) take cognizance of and approve the analysis of the situation of indigenous communities in the country, the report on activities, and the evaluation of their results. Approve economic and financial management prior to its transfer to the Ministry of Social Development;
- e) consider the arrangements to be suggested to the indigenous communities to enable them to elect their representatives in accordance with the provisions of article 3, subparagraph 2, together with the procedures whereby the communities acquire a formal organizational structure for the purposes envisaged in Law No. 23,302 and in the present regulations;
- f) Supervise and assess the functioning of the National Register of Indigenous Communities and report thereon to the President;
- g) assess the land assignment programmes in operation;

- h) offer an assessment on any other matter submitted for your consideration..

351. It should be emphasized that the indigenous representatives serving on the Participation Council should be members of a community of peoples belonging to the country, having their permanent domicile there and participating in its ways of life and habitual activities. The aim is to ensure the best possible participation so that the delegates are authentic representatives of the communities in question.

6. Directorate of Land and National Register of Indigenous Communities

352. The primary responsibility of the Directorate of Land and National Register of Indigenous Communities (RENACI) is to plan, develop and implement land-title regularization programmes with the aim of recognizing community possession and ownership of the lands that the indigenous communities traditionally occupy, and regulating the granting of other lands adequate and sufficient for human development; and to analyze and accept applications for enrolment in RENACI

353. Land ownership has traditionally lain at the heart of the indigenous problem and has become the principal demand of Argentina's indigenous peoples. Article 75, subparagraph 17, of the Constitution mentions two distinct situations that need to be taken into account in implementing policies relating to the lands of indigenous peoples:

- a) It refers to recognition of "the legal capacity of their communities, and the community possession and ownership of the lands they traditionally occupy"; the State accepts a practical reality that bestows rights of constitutional scope.
- b) It speaks of the State's power "to regulate the granting of other lands adequate and sufficient for human development", which implies a duty on the part of the State to provide for the present and future needs of the indigenous peoples in terms of land.

354. For its part, article 7 of Act No. 233 02 provides for: "granting property rights to duly registered indigenous communities within the country in respect of lands adequate and sufficient for crop and animal farming, forestry, mining and industrial and handicraft activities, in accordance with practices specific to each community...In granting such rights, preference will be given to communities lacking or having insufficient lands".

355. For its part, Act 24,071 ratifying ILO Convention 169 instructs governments to "guarantee effective protection of (the) rights of ownership and possession" of the lands the peoples concerned traditionally occupy, establishing for that purpose "adequate procedures (...) within the national legal system"

356. INAI is involved in recording indigenous territory; devising, implementing and financing, together with provincial governments and communities, programmes for regularizing title deeds in respect of land traditionally inhabited; and carrying out and financing the processes of expropriation and purchase.

357. INAI is conscious, with regard to the indigenous possession of land, that it is considerably different from that regulated by the Civil Code. While they may be subtle in appearance, the sites of periodic settlement, the water holes, the wells, the hunting grounds, the harvesting or fishing areas, the almost imperceptible cemeteries, etc are indelibly inscribed in the historical memory of indigenous peoples

358. This historical memory, inseparable from geography, is the main sign of traditional possession, which now has constitutional rank and which INAI must respect in its land policies. Traditionally, territoriality is not accompanied by any concept of ownership implying exclusive rights of possession and use of land.

359. In the constitutional reform that INAI must implement, the intention of the legislator in referring to the concept of territory, when speaking of "the lands they traditionally occupy " - and not to the small plots in which they may find themselves confined - is strengthened and supported by the indissoluble character he assigns to these territories in prescribing restriction of ownership in terms of its "inalienability, non-attachability and non-transferability ".

360. INAI maintains that community ownership is the concept that comes closest to describing to the kind of relationship with the land that these peoples have and reinforces the justification for using the institutional category of community in order to classify legally in joint form. We are dealing here with a novel institution, recognized and accepted by the existing legislation but for which there exists no unified standard for its characterization, given that some laws wrongly assimilate it to associative forms accepted by the Civil Code. This confusion has recently been redeemed by the constitutional reform, which grants constitutional status to this form of ownership while at the same time establishing that it should be defined having respect for the identity and regard to the ethnic and cultural pre-existence of the indigenous population. We thus discern the challenge to INAI in terms of the need to promote the adaptation of legislative provisions to the new legal situation.

7. Activities

361. INAI, through this Directorate, is undertaking various activities to meet the above objectives and challenges, namely:

- a) Acting as the implementing body for Emergency Act No. 26,160, on possession and ownership of lands traditionally occupied by the indigenous communities;
- b) Carrying out a technical, legal and cadastral survey of the situation regarding ownership of the lands occupied by the indigenous communities;
- c) Identifying, in conjunction with the National Fiscal Land (Arraigo) Programme, lands available for subsequent assignment to indigenous communities
- d) Ensuring that the execution and financing of the processes of land expropriation in favour of the indigenous communities, as prescribed in the laws adopted by the National Congress, correspond to the constitutional requirement to recognize "the community possession and ownership of the lands they traditionally occupy, and to regulate the granting of other lands adequate and sufficient for human development".
- e) Intervening in requests for land purchase by communities that do not possess lands adequate and sufficient for human development;
- f) Advising the Presidency of the National Institute for Indigenous Affairs and assisting indigenous communities in carrying out election procedures, according to the traditions and cultural norms specific to each of them, for the appointment of their representatives and their integration in the Coordinating Council;

- g) Assisting the indigenous communities in the process of mediating in conflicts between them and in their relations with other social actors, especially those that impede their access and rational use of the natural resources of the land that they inhabit;
- h) Providing technical assistance to indigenous communities that request it so that, through processes of self-management, they achieve a form of organization based on their traditions and cultural patterns, furthering their registration in RENACI.
- i) Organizing, updating and publicizing RENACI. Coordinating the activities of RENACI with that of similar registries in provincial and municipal jurisdictions. Analyzing activities and issuing technical reports on related procedures to that end.

Act No.26160

362. From the start of 2006, INAI promoted the processing of a draft emergency law on indigenous community property, which received the support of the Indigenous Participation Council (CPI). This law was adopted by the Congress in November 2006. It declares a four-year emergency with respect to the possession and ownership of lands traditionally occupied by the indigenous communities in the country, and it suspends the execution of judgements and procedural or administrative acts involving eviction from or vacation of lands. Possession of the lands should be current, traditional, public and properly authenticated.

363. During the first three years, INAI must undertake a technical, legal and cadastral survey of the situation regarding ownership of the lands occupied by the indigenous communities.

364. For this purpose, a Special Fund of \$30 million has been set up to assist the indigenous communities. This Fund, which will be administered by INAI, is intended to meet the cost of the following::

- a) The technical, legal and cadastral survey of the situation regarding ownership of the lands occupied by the indigenous communities;
- b) Professional work in legal and extra-legal cases;
- c) Land-title regularization programmes.

365. The emergency proclaimed will apply to indigenous communities registered with the National Registry of Indigenous Communities, the competent provincial body, and also to those that have not yet registered their legal status.

366. INAI will approve the programmes required for the effective implementation of the technical, legal and cadastral survey of the situation regarding ownership of the lands occupied by the indigenous communities belonging to the country's original peoples, in order to give effect to the constitutional recognition of community possession and property. The said programmes will safeguard the worldview and cultural references of each people and will enjoy the participation of the representatives of the CPI for the purposes of their formulation and implementation.

367. The representatives of the CPI were and are consulted on the development of these programmes, in accordance with the constitutional right to participate in matters affecting them

368. In accordance with Act No. 26,160, INAI seeks to ensure

- a) Recognition of community possession and ownership of the lands traditionally occupied by the indigenous communities;
- b) Promotion of indigenous participation - through the CPI - in the formulation, execution and follow-up of projects deriving from the Programme

For:

- c) Promoting legal recognition of the rights of indigenous communities over territories and resources;
- d) Preventing any evictions from traditionally occupied community territories
- e) Requiring the "effective" participation of the CPI throughout the programme cycle
- f) Involving the indigenous peoples - through the CPI - in the implementation, monitoring and evaluation of the programme.

369. The survey is designed to:

- a) update information on the indigenous peoples and communities belonging to the different groups registered in the Argentine Republic, at the national and provincial levels, even though they have not registered their legal status;
- b) develop social awareness concerning the scope of the law: dissemination, community assemblies and training in the implementation of Act No. 26,160 and in community surveys;
- c) survey community organization in the framework of the people to which it belongs;
- d) survey forms of social production and natural resources
- e) carry out a technical, legal and cadastral survey of community territory traditionally, currently and publicly;
- f) verify by means of a survey - with the active participation of the communities concerned - the occupancy of families settled on particular lands so as to have up-to-date figures; respecting the forms of land use and cultural practices; include rural and urban patterns,
- g) carry out a cadastral survey; measure communities and settlements and/or urban centres in the provinces by:
 - i) setting the parameters and conditions for measurement;
 - ii) awarding and drawing up contracts for measurement;
 - iii) carrying out the measurements;
 - iv) approval of plans.

- h) preparing two-monthly and annual progress reports;
- i) evaluate tools for land-ownership regularization
- j) implement the land-ownership regularization programme

8. Legal status

a) National Registry of Indigenous Communities (RENACI)⁷

370. To establish the preconditions and promote respect for identity in the fullest sense of the term, clarifying ambiguities and assigning forms in keeping with the legal character of the entities concerned, the former Secretariat for Social Development reporting to the Office of the President, on which INAI depended, issued Resolution N° 4811/96 adjusting the criteria for authorizing the registration of communities, simplifying the requirements and setting out the rules for the involvement of the provinces.

371. On the basis of this resolution, indigenous communities wishing to enrol as legal entities are not obliged to adopt a particular model of statute, but have simply to describe their own form of organization. Similarly, communities are not obliged to keep authorized records or to produce certified accounts. They can keep internal registers that do not need to be certified or authorized by any other body.

372. Legal status enables the communities to organize their own affairs directly, without the need of a third party, whether a public or private institution. For example, it enables the community to receive funding for development projects, keep a title to land in their own name, etc.

b) Objectives

373. The aims of RENACI are:

- a) to promote the registration of indigenous communities and help them deal with the procedures and justify the circumstances necessary for registration. Advice is sometimes provided in the form of training workshops aimed at facilitating the procedures;
- b) to keep an up-to-date record on the registered and nonregistered indigenous communities;
- c) to coordinate its work with existing institutes of indigenous affairs in the provincial and municipal areas. The aim is to standardize rules for registration, recognition and identification of registered groups in terms of particular indigenous communities, in order to be able to establish a single database.

⁷ Registering legal status as an indigenous community is done through the INAI and in the provincial registries of indigenous communities in the provinces of Misiones, Chubut, Jujuy and Río Negro. In the latter two cases, INAI has signed agreements with the provinces, with the aim of unifying the requirements for registration and recognition of the legal status of indigenous communities and of creating a data base. In the other provinces, the communities register their legal status in the form of a civil association, for which they must meet the usual requirements applying thereto.

- d) establish local registers in the provinces or agree with the provinces on the way they operate.

374. The legal status remains in force so long as the community continues to exist and so long as the rules governing its functioning, described by the community itself, continued to be observed.

Overall total of communities registered by INAI or by an authorized provincial body

<i>Province</i>	<i>Communities</i>
Buenos Aires	20
Catamarca	2
Chaco	86
Chubut	26
Corrientes	1
Entre Ríos	1
Formosa	99
Jujuy	175
La Pampa	5
Misiones	62
Mendoza	13
Neuquén	54
Río Negro	14
Salta	326
San Juan	2
Santa Cruz	1
Santa Fe	32
Santiago del Estero	21
Tucumán	19
Tierra del Fuego	1
Total	960

375. The main achievements are as follows:

- a) A database has been created containing the data supplied by the provincial community registers and the provincial departments concerned with legal status and comprising 565 registered indigenous communities and civic associations. This figure is approximate since the various provincial bodies do not yet have a standard format for reporting new registrations to INAI.

- b) Briefly, there are at present some 960 entities with national or provincial legal status, whether in the form of indigenous communities or other kinds of association.
- c) 145 applications for legal status are currently being processed. In most cases, the delay is due to internal conflicts in the communities, incompatibilities and overlaps between different applications for registration, and/or a lack of supporting documents.
- d) Training workshops on recognition of legal status in the remote provinces have been organized, in many cases linked to the land-title regularization programme. Similarly, a start has been made on the process of re-converting to its traditional forms legal status granted under the civil law system.

c) Land-title regularization programmes

376. Land-title regularization programmes represent one of the main measures for meeting the constitutional requirement of recognizing community possession and ownership of the lands occupied by the indigenous communities. Under this programme, the following measures have been and continue to be taken:

377. Under the land-title regularization programme, work is under way, in conjunction with provincial governments and the indigenous communities, to devise, implement and finance regularization of the situation in the lands inhabited by these communities (Río Negro province, Chubut and Jujuy, where the aboriginal communities of the Department of Susques were recently awarded community title to some 300,000 hectares of land. This programme pays special attention to putting in place the means to ensure that ownership of the land is in no circumstance alienable, transmissible or subject to encumbrance or embargo.

378. Under Resolution No. 235/04, the Community Strengthening Programme is responsible for subsidizing indigenous communities at their request for the purpose of meeting the expenses incurred in defending or pursuing legal actions aimed at regularizing the ownership of ancestral lands. This covers the hiring of suitable professionals, committed to community causes and specialized in indigenous law. The work will be for legal actions and/or defence: legal/financial advice, relevant training, and land measurement and registration.

379. INAI can also always undertake technical supervision work, for which it will need access to community documents and to any further information it deems necessary

d) Aboriginal Communities Association *Lhaka Honat*

380. With reference to the long-standing conflict involving the land-title claim by the indigenous communities living in lots 55 and 14 of the Department of Rivadavia in the province of Salta (covering approximately 600,000 hectares), it should be noted that the Aboriginal Communities Association *Lhaka Honat* submitted a request to the IACHR for the adoption of precautionary measures, thereby initiating the process of friendly settlement that is still in progress.

381. Since then, meetings chaired by IACHR have taken place between the Argentine State, the Government of the province of Salta and the petitioners, at which the State undertook not to continue with the practice of partial land allocations.

382. Between 2000 and October 2004, periodic meetings took place between the different parties concerned with the aim of arriving at an agreed solution to the conflict.

383. Finally it can be reported that in 2007 the Executive of the province of Salta issued Decree No. 27/86 on the regularizing fiscal lots 55 and 14. It approves the consensus agreement between Salta and Lhaka Honat, signed on 17 October 2007, whereby both parties agree to allocate 400,000 hectares to the indigenous communities.
