



## Country File ARGENTINA

Last Updated: 14.12.2012

<b>Region</b>	Americas
<b>Legal System</b>	Civil Law
<b>UNCAT Ratification, Accession (a), or Succession (d)</b>	24 September 1986 (Law No. 23.338)
<b>Relevant Laws</b>  ▪ Stand-Alone Torture Law (Y/N)	- Constitution of Argentina, 1994 (Constitution) - Penal Code of Nation of Argentina, Law No. 11.179 (amended in 1984) (Penal Code)  No
<b>Relevant Articles</b>	
<b>Definition of Torture (General), (Article 1)</b>	
<b>Prohibition on Torture (Article 1)</b>	- Article 18 of the Constitution
<b>Crime of Torture (Article 4)</b> ▪ Definition  ▪ Statute of Limitations  ▪ Penalties  ▪ Other	- There is not a detailed definition of torture in the crime of torture in article 144 although it is specified in article 144(c)(3) that torture includes mental and physical harm.  - Articles 91, 142, 144(c), 144(d) and 144(e) of the Penal Code  Note Article 144(c) ¶ 1 also contains a penalty for torture committed by private individuals.
<b>Universal Jurisdiction &amp; Cooperation, (Articles 5, 9)</b>	

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<b>Investigations, (Articles 12, 13)</b>	
<b>Remedies and Reparations, (Article 14)</b>	
<b>Exclusion of Evidence (Article 15)</b>	
<b>Legal and Procedural Safeguards (Articles 2, 11, 16)</b>	
<b>Non-Refoulement (Article 3)</b>	
<b>Other</b>	<ul style="list-style-type: none"> <li>▪ <b>International Crimes</b> (War Crimes, Crimes Against Humanity, etc.) <ul style="list-style-type: none"> <li>- Law No. 26.200 of 2006 (implementation of the Rome statute) (not provided below)</li> </ul> </li> <li>▪ <b>CIDT</b> <ul style="list-style-type: none"> <li>- Article 144(b) of the Penal Code criminalizes ill treatment.</li> </ul> </li> </ul>
<b>Comments</b>	- The UN Convention against Torture “has constitutional rank in Argentina. This means that its contents are on a par with the constitutional provisions even if the source of the provision is different.” CAT, Consideration of Reports submitted by States Parties under article 19 of the Convention, Third Periodic Reports of States parties due in 1996, Addendum, Argentina ¶ 2, <a href="#">UN Doc. CAT/C/34/Add.5</a> (18 June 1997) (see excerpt of Article 75 of the Constitution of Argentina below).
<b>Languages Available</b>	- Spanish (official language) - English
<b>Links &amp; Sources</b>	<p>- Constitucion Nacional, (Human Rights Secretary, Argentina website) <i>available at:</i> <a href="http://www.derhuman.jus.gov.ar/pdfs/Constitucion_Nacional.pdf">http://www.derhuman.jus.gov.ar/pdfs/Constitucion_Nacional.pdf</a></p> <p>Constitution of Argentina, 1994 (English translation)(World Intellectual Property Organization website) <i>available at:</i> <a href="http://www.wipo.int/wipolex/en/details.jsp?id=7070">http://www.wipo.int/wipolex/en/details.jsp?id=7070</a></p> <p>-Codigo Penal de la Nacion Argentina, Ley 11.179 (T.O. 1984 actualizado) <i>available at:</i> <a href="http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#19">http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#19</a></p> <p>- Unofficial translation of relevant articles into English, on file with APT:</p>

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## Relevant Articles - ARGENTINA

### ➤ Constitucion Nacional

Primera Parte- Capítulo Primero. Declaraciones, derechos y garantías

#### **Artículo 18**

Ningún habitante de la Nación puede ser penado sin juicio previo fundado en ley anterior al hecho del proceso, ni juzgado por comisiones especiales, o sacado de los jueces designados por la ley antes del hecho de la causa. Nadie puede ser obligado a declarar contra sí mismo; ni arrestado sino en virtud de orden escrita de autoridad competente. Es inviolable la defensa en juicio de la persona y de los derechos. El domicilio es inviolable, como también la correspondencia epistolar y los papeles privados; y una ley determinará en qué casos y con qué justificativos podrá procederse a su allanamiento y ocupación. Quedan abolidos para siempre la pena de muerte por causas políticas, toda especie de tormento y los azotes. Las cárceles de la Nación serán sanas y limpias, para seguridad y no para castigo de los reos detenidos en ellas, y toda medida que a pretexto de precaución conduzca a mortificarlos más allá de lo que aquélla exija, hará responsable al juez que la autorice.

SEGUNDA PARTE- *AUTORIDADES DE LA NACION*  
TITULO PRIMERO- GOBIERNO FEDERAL  
SECCION PRIMERA- DEL PODER LEGISLATIVO

Capitulo Cuarto- - *Atribuciones del Congreso*

#### **Artículo 75.-** Corresponde al Congreso:

22. Aprobar o desechar tratados concluidos con las demás naciones y con las organizaciones internacionales y los concordatos con la Santa Sede. Los tratados y concordatos tienen jerarquía superior a las leyes.

La Declaración Americana de los Derechos y Deberes del Hombre; la Declaración Universal de Derechos Humanos; la Convención Americana sobre Derechos Humanos; el Pacto Internacional de Derechos Económicos, Sociales y Culturales; el Pacto Internacional de Derechos Civiles y Políticos y su Protocolo Facultativo; la Convención sobre la Prevención y la Sanción del Delito de Genocidio; la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial; la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer; la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes; la Convención sobre los Derechos del Niño; en las condiciones de su vigencia, tienen jerarquía constitucional, no derogan artículo alguno de la primera parte de esta Constitución y deben entenderse complementarios de los derechos y garantías por ella reconocidos. Sólo podrán ser denunciados, en su caso, por el Poder Ejecutivo Nacional, previa aprobación de las dos terceras partes de la totalidad de los miembros de cada Cámara.

Los demás tratados y convenciones sobre derechos humanos, luego de ser aprobados por el Congreso, requerirán del voto de las dos terceras partes de la totalidad de los miembros de cada Cámara para gozar de la jerarquía constitucional.

## ➤ Constitution of Argentina

### PART I

#### Chapter One- Declarations, rights and guarantees

##### **Article 18** (English translation from WIPO website)

No inhabitant of the Nation may be punished without previous trial based on law prior to the process, nor tried by special commissions, or removed from the judges appointed by law before the offense was committed. No one can be compelled to testify against himself, nor be arrested except by written order of competent authority. The defence at trial of the person and rights. The home is inviolable, as well as correspondence and private papers and determines in what circumstances and for what reasons can be taken to their search and occupation. Are forever abolished the death penalty for political causes, any kind of torture and beating. The prisons of the Nation shall be healthy and clean for security and not for punishment of the prisoners confined therein, and any action taken with the pretext of precaution which may lead to mortify them beyond what it requires, be liable to the judge who authorizes it.

#### PART TWO - OFFICERS OF THE NATION TITLE I - FEDERAL GOVERNMENT SECTION ONE - THE LEGISLATURE Chapter Four - Powers of Congress

##### **Article 75** (Quoted in UN Doc. CAT/C/34/Add.5 at

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

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

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

➤ Código Penal de la Nación Argentina, Ley 11.179 (T.O. 1984 actualizado)

DELITOS CONTRA LA LIBERTAD

**ARTICULO 144 bis.**

Será reprimido con prisión o reclusión de uno a cinco años e inhabilitación especial por doble tiempo:

1. El funcionario público que, con abuso de sus funciones o sin las formalidades prescriptas por la ley, privase a alguno de su libertad personal;
2. El funcionario que desempeñando un acto de servicio cometiera cualquier vejación contra las personas o les aplicare apremios ilegales;
3. El funcionario público que impusiere a los presos que guarde, severidades, vejaciones, o apremios ilegales.

Si concurriere alguna de las circunstancias enumeradas en los incisos 1, 2, 3 y 5 del artículo 142, la pena privativa de la libertad será de reclusión o prisión de dos a seis años.

**ARTICULO 144 ter.-**

1. Será reprimido con reclusión o prisión de ocho a veinticinco años e inhabilitación absoluta y perpetua el funcionario público que impusiere a personas, legítima o ilegítimamente privadas de su libertad, cualquier clase de tortura.

Es indiferente que la víctima se encuentre jurídicamente a cargo del funcionario, bastando que éste tenga sobre aquélla poder de hecho.

Igual pena se impondrá a particulares que ejecutaren los hechos descritos.

2. Si con motivo u ocasión de la tortura resultare la muerte de la víctima, la pena privativa de libertad será de reclusión o prisión perpetua. Si se causare alguna de las lesiones previstas en el artículo 91, la pena privativa de libertad será de reclusión o prisión de diez a veinticinco años.

3. Por tortura se entenderá no solamente los tormentos físicos, sino también la imposición de sufrimientos psíquicos, cuando éstos tengan gravedad suficiente.

**ARTICULO 144 quater. –**

1º. Se impondrá prisión de tres a diez años al funcionario que omitiese evitar la comisión de alguno de los hechos del artículo anterior, cuando tuviese competencia para ello.

2º. La pena será de uno a cinco años de prisión para el funcionario que en razón de sus funciones tomase conocimiento de la comisión de alguno de los hechos del artículo anterior y, careciendo de la competencia a que alude el inciso precedente, omitiese denunciar dentro de las veinticuatro horas el hecho ante el funcionario, ministerio público o juez competente. Si el funcionario fuera médico se le impondrá,

además, inhabilitación especial para el ejercicio de su profesión por doble tiempo de la pena de prisión.

3°. Sufrirá la pena prevista en el inciso 1° de este artículo el juez que, tomando conocimiento en razón de su función de alguno de los hechos a que se refiere el artículo anterior, no instruyere sumario o no denunciare el hecho al juez competente dentro de las veinticuatro horas.

4°. En los casos previstos en este artículo, se impondrá, además, inhabilitación especial perpetua para desempeñarse en cargos públicos. La inhabilitación comprenderá la de tener o portar armas de todo tipo.

#### **ARTICULO 144 quinto.-**

Si se ejecutase el hecho previsto en el artículo 144 tercero, se impondrá prisión de seis meses a dos años e inhabilitación especial de tres a seis años al funcionario a cargo de la repartición, establecimiento, departamento, dependencia o cualquier otro organismo, si las circunstancias del caso permiten establecer que el hecho no se hubiese cometido de haber mediado la debida vigilancia o adoptado los recaudos necesarios por dicho funcionario.

#### ➤ Penal Code of Nation of Argentina, Law No. 11.179 (amended in 1984) (Unofficial English translation on file with APT)

**Section 91.-** If the injury results in a mental or corporeal disease, which is certainly or probably incurable, or in a permanent incapacity in his work, or in the loss of a sense, an organ or a member, or the use of an organ or the speech, or in the incapacity to procreate, the punishment shall be imprisonment or jailing from three to ten years.

**Section 142.-** Jailing or imprisonment from two to six years shall be applied if, in depriving another from his liberty, any of the following circumstances concur:

- 1) If the crime is committed by means of violence or threat, or with religious purpose or with the purpose or revenge;
- 2) If the crime is committed on the person of an ascendant, brother, spouse, or other person to whom the perpetrator owes particular respect;
- 3) If serious injury results to the person of the victim, to his health or to his business provided that the act does not constitute another crime for which the law prescribes a higher punishment;
- 4) If the crime is committed by impersonating a public official or by simulating order of public official;
- 5) If the liberty deprived lasts for more than more month.

**Section 144 (b).-** Jailing or imprisonment from one to five years and special disqualification for twice that period of time shall be imposed upon:

- 1) Any public official who, misusing his powers or without acting according to the law, deprives anybody of his personal liberty;
- 2) Any public official who, in the exercise of his duties, commits any ill treatment or exerts any illegal pressure on any person;
- 3) Any public official who imposes on prisoners whom are under his jurisdiction any hardships, ill treatment, or illegal pressures.

If any of the circumstances enumerated in Section 142, subsections 1, 2 ,3 and 5 are present, imprisonment or jailing shall be from two to six years.

**Section 144 (c )**.- 1. Imprisonment or jailing from eight to twenty five years and absolute perpetual disqualification shall be imposed upon any public official who inflicts any kind of torture on persons legitimately or illegitimately deprived of their personal freedom. It is not necessary for the victim to be legally under the jurisdiction of the public official, being the *de facto* power of the author over the victim sufficient for this crime.

The same punishment shall be imposed upon any civilian who perpetrates any of the deeds described above;

2. If the death of the victim occurs during or as a result of the torture, the punishment shall be of life imprisonment or jailing. If any of the injures described in Section 91 herein are caused, imprisonment or jailing from ten to twenty five years shall be imposed.
3. The term “torture” comprises not only physical torments, but the imposing of psychological as well, provided that they are sufficiently serious.

**Section 144 (d)**.- 1. Jailing from three to ten years shall be imposed upon the public official who, being competent to do so does not impede the perpetration of any of the deeds described in the previous article:

2. Jailing from one to five years shall be imposed upon the public official who, having taken notice by reason of his office of the perpetration of any of the deeds described in the previous Section and, lacking the competence to impede such perpetration, does not denounce the crime to the proper official, district attorney or judge within the period of twenty-four hours. If the public official is a physician, special disqualification regarding the exercise of such profession for a period of time which shall double that of the sentence shall be imposed;
3. The punishment set forth by subsection 1 of this Section shall be imposed upon any judge that, having taken notice by reason of his office of the perpetration of any of the deeds described in the previous Article, does not initiate the corresponding investigation or does not denounce the crime to the competent judge within the period of twenty four hours;
4. In all cases described in this article, in addition to the corresponding punishment of jailing or imprisonment, special disqualification regarding the exercise of any public office shall be imposed. Such disqualification will also apply to the faculty to bear or possess weapons of any kind.

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**Section 144 (e).**- Whenever the deed described in Section 144 (3) is perpetrated, jailing from six months to two years shall be imposed upon the official in charge of the division, establishment, department or any other organism where the crime took place if the circumstances allow to determine that it would not have been committed in an appropriate supervision would have been implemented or the necessary precautions would have been adopted by such official.

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