



association pour la prévention de la torture  
asociación para la prevención de la tortura  
association for the prevention of torture

## UN Committee against Torture

### APT submission on Argentina

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20 March 2017

Alternative report from the Association for the Prevention of Torture (APT) to the Committee against Torture providing background information and suggested questions and recommendations on torture prevention and the Optional Protocol to the UN Convention against Torture (OPCAT) for **Argentina**, whose fifth and sixth periodic reports will be reviewed by the Committee during its 60th session in Geneva.

*The Association for the Prevention of Torture (APT) is an independent NGO based in Geneva. We work for a world free from torture, where the rights and dignity of all persons deprived of liberty are respected.*

*To achieve this vision we:*

- *Advocate for strengthened legal and policy frameworks,*
- *Promote improved detention practices, and*
- *Advise on effective public oversight.*

## 1. Key facts

OPCAT ratification: 15 November 2004

NPM designated: National System to Prevent Torture, comprising:

- National Committee for the Prevention of Torture (composed of 13 members, including the Ombudsperson for Federal Prisons (Procurador Penitenciario de la Nación);
- a Federal Council of Local Preventive Mechanisms; and
- Local preventive mechanisms (to be created or designated) in each of the 24 provinces; and public institutions and NGOs interested in the compliance of the OPCAT's goals.

## 2. NPM establishment

Argentina was the first state in Latin America to ratify the OPCAT in 2004. To implement its obligations under the international treaty, a complex system was devised, involving both the federal and provincial levels: the National System to Prevent Torture, established by law in January 2013.<sup>1</sup> Although the Decree regulating the establishment of the National System was issued in April 2014,<sup>2</sup> the National System is not yet operational.

The National System to Prevent Torture comprises various institutions at the federal and provincial levels:

- **National Committee for the Prevention of Torture**, acting in subsidiarity in all jurisdictions, and in charge of coordinating, articulating and harmonizing standards of the monitoring bodies forming the National System. It will be attached to the National Congress and be composed of 13 members.
- **Federal Council of Local Preventive Mechanisms**; comprised of one representative of each of the 24 local preventive mechanisms (LPMs) established in the provinces, in charge of evaluating LPMs and make proposals and studies to improve the functioning of the National Committee. The Federal Council will meet twice a year.
- **Local Preventive Mechanisms** to be established in each of the 23 provinces and in the Autonomous City of Buenos Aires (CABA); and
- **Other institutions** relevant for the purpose of the OPCAT.

### 2.1. At the national level

The National Committee for the Prevention of Torture

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<sup>1</sup> Law n° 26.827, published on 11 January 2013, available at:

<http://www.apr.org.ar/content/files/npm/americas/ley268271%20%282%29.pdf>.

<sup>2</sup> Implementing Decree 465/2014, from 9 April 2014, available at:

<https://aldiaargentina.microjuris.com/2014/04/09/decreto-4652014-se-aprueba-lareglamentacion-de-la-ley-26827-de-creacion-del-sistema-nacional-de-prevencion-de-latortura-y-otros-tratos-o-penas-cruels-inhumanos-o-degradantes/>.

According to the 2013 legislation, the National Committee for the Prevention of Torture shall be composed of 13 members, as follows:

- Parliamentary representatives (6)
- The Ombudsperson for Federal Prisons (1)
- Representatives from the Local Preventive Mechanisms elected by the Federal Council of LPMs (2)
- Representatives from civil society organisations (3)
- Representative from the Human Rights Secretariat of the Ministry of Justice and Human Rights (1)

The National Committee's members shall be appointed by the National Congress after a selection process, led by the Bicameral Commission for the Ombudsperson's Office of the National Congress.<sup>3</sup>

A public selection process shall be undertaken for the three representatives from civil society organisations, while the six parliamentary representatives shall be elected by their political parties according to their representation in Congress, and then presented to the Bicameral Commission for a public hearing.

Once established, the National Committee for the Prevention of Torture will have a President and an Executive Secretariat to assist the members. The Secretariat will be selected after a public recruitment process, with participation from all sectors.

The National Committee for the Prevention of Torture will be attached to the National Congress and according to the National System to Prevent Torture's law. The National Committee's budget will be drawn from the National Congress, and shall not be less than three percent of the overall National Congress' budget.

#### Main challenges:

##### *Independence*

Following its visit in April 2012, the SPT recommended Argentina to "ensure that the national preventive mechanism enjoys operational autonomy and independence and that it should refrain from appointing members to that mechanism who hold positions which could raise questions of conflicts of interest".<sup>4</sup>

Taking into consideration the SPT recommendations, Argentina responded to the SPT report and mentioned – in relation to the independence of the National Committee's members that "some legal points have been regulated in order to strengthen the articles that guarantee the functional independence of the members of the national preventive mechanism".<sup>5</sup>

However, the National Committee's current structure does not comply with the independence required by Article 18.1 of the OPCAT, as:

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<sup>3</sup> Comisión Bicameral de la Defensoría del Pueblo del Congreso Nacional.

<sup>4</sup> Report of the visit of the SPT to Argentina, UN Doc. CAT/OP/ARG/1, 27 November 2013, §18.

<sup>5</sup> Report of the visit of the SPT to Argentina, Replies of Argentina to the recommendations and requests for information made by the Subcommittee, Para 1(b) UN Doc. CAT/OP/ARG/1/Add.1, 21 January 2014.

- One of the National Committee's members is a representative from the executive power (e.g the Human Rights Secretariat of the Ministry of Justice and Human Rights).
- The National Committee will be attached to the Congress, which could represent an impediment to its operational and financial autonomy once in place.

Furthermore, the fact that the six parliamentary representatives are elected by their political parties represent a high risk of politicisation of the selection process, and hence of the whole NPM.

### *Implementation*

As of March 2017, the National Committee is still not operational, and none of its members have been selected. However, the APT is pleased to note that the Bicameral Commission initiated the selection process on 16 March 2017.<sup>6</sup>

The APT hopes that the selection process will be conducted promptly and in a transparent manner, taking into consideration the requirements of the OPCAT, which promotes, inter alia, independence, multidisciplinary skills, gender balance and ethnic and minority representation of national members.

In the absence of an operational National Committee, the whole National System to Prevent Torture is not able to function properly and cannot fill the existing gap in the independent oversight of places of deprivation of liberty in Argentina.

### The Federal Council of Local Preventive Mechanisms

In October 2014, the Federal Council of Local Preventive Mechanisms was established by the Federal Ombudsperson for Prisons and the then four operational LPMs. However, this Council has not been operational in practice. As foreseen by Article 24 of the Law, the Federal Council will start operating once the President of the National Committee has been designated. In the absence of such a Committee, and despite the existence of six operational local preventive mechanisms, the Federal Council is not able to operate.

## **2.2. Overview of the implementation at the provincial level**

Some progress has been made at the provincial level in the majority of the jurisdictions (see below).<sup>7</sup> However, the three provinces of Buenos Aires, Córdoba and Santa Fe, which together represent more than half of the national prison population, have yet to establish their LPMs.

As of March 2017, according to our information, the latest progress at provincial level may be summarised as follows:

- **6 operational LPMs**, established by law in six provinces: Chaco (Law No. 6483 from 2010), Río Negro (Law No. 4621 from 2011, modified in 2014), Mendoza

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<sup>6</sup> See <http://www.parlamentario.com/noticia-99517.html>.

<sup>7</sup> See an Implementation map from the Human Rights Secretariat of Argentina, available at: [http://www.jus.gob.ar/media/2901464/mapa\\_al\\_27-05-15.pdf](http://www.jus.gob.ar/media/2901464/mapa_al_27-05-15.pdf).

(Law No. 8284 from 2011), Salta (Act No. 7733 from 2012), Corrientes (Law No. 6280 from 2014) and Misiones (Law No. IV-65 from 2014).

- **2 designated LPM by law**, but not yet established: Tucumán (Law No. 8523 from 2012) and the City of Buenos Aires (Law N° 5.787, from 2017).
- **8 draft LPM bills** are currently being considered by the legislatures in eight provinces (Buenos Aires, Santa Fe, San Luis, Neuquén, Tierra del Fuego, Entre Ríos, La Rioja, Catamarca).
- **In 5 provinces**, discussions are ongoing within the provincial executive power on draft LPM bills (Chubut, Formosa, Córdoba, Santa Cruz and Santiago del Estero).

Main challenges:

*Independence*

Out of the six existing operational LPMs, four of them have been established prior to the adoption and entry into force of the National System to Prevent Torture's legislation. All of them but one (Mendoza)<sup>8</sup> have a similar structure: a committee with representatives from all sectors, including from civil society organisations and from the legislature, the judicial power and the executive power, thus falling short in terms of independence as required by the OPCAT.

As a result of this challenge, some effort has been made to amend some of the LPM laws (such as the one from Rio Negro, which however still foresees the participation of representatives from the legislature).

*Resources*

As far as the APT is aware, most of the operational LPMs are facing serious budgetary challenges. Currently, financial resources have not been made available to allow them to implement their mandates effectively. The most recent LPM which was established in 2016 (Misiones) has been granted with sufficient budgetary and logistical resources.

### **3. Conditions of detention**

Police custody

The use of police stations as permanent detention centers is common in Argentina, more specifically in the Province of Buenos Aires. This issue stems mainly from the lack of space in prisons and the excessive use of pretrial detention.<sup>9</sup> However, the Supreme Court of Justice of Buenos Aires Province, in 2015, issued a resolution that urged "competent judges not to accept or order detention of persons in police stations" due to the high level of overcrowding (105 per cent).<sup>10</sup>

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<sup>8</sup> In the case of Mendoza, the LPM is composed of a Provincial Commission for the Prevention of Torture and Ill-treatment, comprising an Ombudsperson for Persons Deprived of their Liberty and a Local Committee for the Prevention of Torture (made of civil society organisations).

<sup>9</sup> IACHR, Press Release N° 64/20, IACHR Rapporteurship confirms grave detention conditions in Buenos Aires, (2010), <http://www.cidh.org/Comunicados/English/2010/64-10eng.htm>.

<sup>10</sup> CELS, *Evaluation of Compliance with the International Covenant on Civil and Political Rights in Argentina* (2016).

In 2017, overcrowding still prevails in police custody, leading to tragic, yet foreseeable consequences: for instance, on 2 March 2017, seven prisoners died due to a fire in Police Station N° 1 of Pergamino, in Buenos Aires' Province.<sup>11</sup>

In addition, international expert bodies have also drawn attention to the absence of the implementation of fundamental safeguards during police custody. The SPT, in its report, noted that persons in police custody scarcely received information regarding their rights at the time of their arrest.<sup>12</sup> It also found that a large number of persons detained faced difficulties to notify a third person that they were under arrest.<sup>13</sup>

### Prison conditions

In Argentina, the prison population has grown 16% since 2010. According to the IACHR, federal prisons have seen their populations increased by 15.3%, while the prison population in the Province of Mendoza increased by 53%.<sup>14</sup> In federal and provincial prisons, a high number of persons are held in pre-trial detention. In 2015, out of the total number of prisoners (72 693), 37 073 of them were awaiting trial, i.e. 51% of the prison population.<sup>15</sup>

Although detention conditions vary considerably from one facility to another, several international expert bodies have expressed concerns regarding persistent problems, in both federal and provincial prison system, such as:

- a) Prison overcrowding.<sup>16</sup>
- b) Deficient measures to separate convicted prisoners and remand prisoners in detention centers.<sup>17</sup>
- c) Deficient conditions and lack of basic services, including health care services.<sup>18</sup>
- d) Unexceptional use of isolation regime.<sup>19</sup>
- e) Use of torture as a disciplinary measure.<sup>20</sup>

In 2015, four prison guards of the Federal Penitentiary Service were sentenced for committing torture against a 19 years old inmate. This was the first time that staff members of the Penitentiary System have been convicted for the crime of torture.<sup>21</sup>

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<sup>11</sup> IACHR, Press Release IACHR Laments Deaths in Fire at Police Jail in Buenos Aires, Argentina, 9 March 2017, [http://www.oas.org/en/iachr/media\\_center/PReleases/2017/026.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/026.asp).

<sup>12</sup> Report of the visit of the SPT to Argentina, UN Doc. CAT/OP/ARG/1, 27 November 2013, §7.

<sup>13</sup> *Ibid.*

<sup>14</sup> IACHR, Press Release Rapporteurship on the Rights of Persons Deprived of Liberty Visits Argentina, 19 October 2016, at [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/151.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/151.asp).

<sup>15</sup> Ministry of Justice of Argentina, National Statistical System Annual Report 2015, available at: [http://www.jus.gob.ar/media/3191517/informe\\_sneep\\_argentina\\_2015.pdf](http://www.jus.gob.ar/media/3191517/informe_sneep_argentina_2015.pdf).

<sup>16</sup> UN Human Rights Committee, Concluding Observations on Argentina, UN Doc CCPR/C/ARG/CO/5, 2016, § 21.

<sup>17</sup> UN Committee Against Torture (CAT), Concluding Observations: Argentina, CAT/C/CR/33/110 November 2004.

<sup>18</sup> CELS, Evaluation of Compliance with the International Covenant on Civil and Political Rights in Argentina (2016)

<sup>19</sup> Report of the visit of the SPT to Argentina, UN Doc. CAT/OP/ARG/1, 27 November 2013, §7.

<sup>20</sup> *Ibid.*

<sup>21</sup> Judicial Power of the Nation, resolution 30 June 2015 Case N° 2838, available here: [http://www.pensamientopenal.com.ar/system/files/2015/07/fallos41498\\_0.pdf](http://www.pensamientopenal.com.ar/system/files/2015/07/fallos41498_0.pdf).

#### 4. Legal reform on the definition of torture

The article 144 of the Criminal Code of Argentina establishes torture as a specific crime.<sup>22</sup> Section 3.c of this Article provides that torture includes mental and physical harm. Nevertheless, it does not provide a detailed definition of torture, and does not extend liability over a sufficiently wide category of secondary participants to capture all those anticipated by Article 1 of the Convention.

#### 5. Suggested questions and recommendations

In light of the background material above, the APT proposes that the Committee formulates the following questions and recommendations to Argentina:

##### Articles 1 and 4

###### ***Suggested questions***

- Please provide information on the measures that the State party intends to take to adopt a comprehensive anti-torture law, compliant with Article 1 of the UNCAT, and indicate a timeline for such adoption.

###### ***Suggested recommendations***

- Recommend that Argentina adopts a definition of torture which covers all elements of the definition contained in Article 1 of the Convention and amend its domestic criminal law accordingly.

##### Articles 2, 11, and 16

###### ***Suggested questions***

- Please provide information on the measures that the State party is taking to ensure that the National Committee's members are designated promptly, while avoiding any potential conflicts of interest and respecting the OPCAT requirements regarding independence. Please provide detailed information on how the selection process of the members will be carried out, in particular regarding the representative of the Human Rights Secretariat.
- Please provide further information on the measures being taken to ensure the prompt functioning of the Federal Council of Local Preventive Mechanisms.

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<sup>22</sup> See Article 144 of the Criminal Code of Argentina: "*Artículo 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.*

- Please provide further information on the measures being taken to support operational local preventive mechanisms and to support provinces which are currently establishing local preventive mechanisms.
- Please provide further information on the planned schedule to implement the National System to Prevent Torture.

***Suggested recommendations***

- Recommend that Argentina fulfils its obligation under the OPCAT by establishing the National Committee to Prevent Torture as soon as possible; granting it all the necessary human, financial and material resources to operate effectively and independently, including through an open and transparent process of selection of the members.
- Recommend that Argentina guarantees the effective implementation of the National System to Prevent Torture, including through encouraging provincial states to establish by law independent local preventive mechanisms, compliant with the OPCAT requirements.
- Recommend that existing and future Local Preventive Mechanisms be granted all the necessary human, financial and material resources to operate effectively by federal and provincial authorities.