



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

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APT submission on Argentina

25 May 2016

Alternative report from the Association for the Prevention of Torture (APT) to the Human Rights Committee on the national implementation of articles 2(2) and 7 of the Covenant in relation to **ARGENTINA**, whose fifth report will be considered by the Committee during its 117th session in Geneva.

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

To achieve this vision we:

- *Promote transparency and monitoring of places of detention*
- *Advocate for legal and policy frameworks*
- *Strengthen capacities of torture prevention actors and facilitate exchanges*
- *Contribute to informed public policy debates*

1. Summary

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is recognised as a particularly effective way of preventing torture.

Argentina ratified the OPCAT in 2004 and decided to establish a complex structure, both at the federal and provincial level, to implement its obligations under the international treaty.

In 2013 – nine years after ratification - a legislation creating a National System to Prevent Torture entered into force, with the establishment of the following institutions: a National Committee to Prevent Torture; a Federal Council of Local Preventive Mechanisms; Local Preventive Mechanisms to be established in each of the 23 provinces and the autonomous city of Buenos Aires and other institutions relevant for the purpose of the OPCAT.

To date, the National System is not yet operational, as the National Committee to Prevent Torture's members have not been selected yet, and only five provinces have an operational local preventive mechanisms.

This submission is made in the framework of the List of Issues prior to reporting¹ (question 8) in which the Committee requested further information on *"the progress made in establishing a national mechanism for the prevention of torture at the federal level and in ensuring the operational independence of the mechanisms and its staff and the financial autonomy necessary in order for it to properly perform its functions; as well as information on the establishment of adequately funded independent mechanisms at the provincial level"*.

2. The role of the OPCAT in the prevention of torture

The risk of torture and other ill-treatment exists in all situations where people are deprived of their liberty, particularly in places closed to the outside world.

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly in 2002 and came into force in 2006. It aims to minimise the risks of abuse by opening up prisons, police stations, mental health institutions and all other places of detention to examination by independent watchdogs.

The basic premise behind the OPCAT is that the more open and transparent places of detention are, the lesser the risk for abuse.

3. Background information on Argentina

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

¹List of issues prior to the submission of the fifth periodic report of Argentina, UN Doc. CCPR/C/ARG/QPR/5, 28 April 2014.

devised, involving both the federal and provincial levels: the National System to Prevent Torture, established by law in January 2013². Although the Decree regulating the establishment of the National System was issued in April 2014³, the National System is not yet operational.

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

- A **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 comprising the National System. It will be attached to the National Congress and be composed of 13 members.
- A **Federal Council of Local Preventive Mechanisms**; comprised of one representative 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.

In July 2014, the Human Rights Secretariat of the Ministry of Justice of Argentina created a specific OPCAT Implementation Unit⁴, with dedicated staff, to promote OPCAT implementation at the national and provincial levels, resulting in progress in implementation at the provincial level (see below). Furthermore, the Unit elaborated specific recommendations for the creation and development of Local Preventive Mechanisms⁵, *"which sets out criteria and recommendations to be taken into consideration by the provinces for the establishment of their preventive mechanisms and the strengthening of existing ones"*⁶.

This Unit has been operational until December 2015 (change of government) and now remains to be staffed.

² Law n° 26.827, published on 11 January 2013, available at: <http://www.apr.ch/content/files/npm/americas/ley268271%20%282%29.pdf>

³ Implementing Decree 465/2014, from 9 April 2014, available at: <https://aldiaargentina.microjuris.com/2014/04/09/decreto-4652014-se-aprueba-la-reglamentacion-de-la-ley-26827-de-creacion-del-sistema-nacional-de-prevencion-de-la-tortura-y-otros-tratos-o-penas-cruels-inhumanos-o-degradantes/>

⁴ Área de Implementación del Protocolo Facultativo de la Convención contra la Tortura de las Naciones Unidas. For further information, see: <http://www.jus.gob.ar/derechoshumanos/areas-tematicas/protocolo-facultativo-de-la-convencion-contra-la-tortura-y-otros-tratos.aspx>. Last accessed on 26 May 2016.

⁵ See "Recomendaciones de la Secretaría de Derechos Humanos de la Nación para la creación y desarrollo de los Mecanismos Locales de Prevención de la Tortura", available at: <http://www.jus.gob.ar/media/2809188/5-conadi-recomendaciones-sobre-mlp.pdf>.

⁶ UN Doc. CAT/C/ARG/5-6, 13 January 2016, para 115.

3.1 Overview of the implementation at the national level

3.2.1 The National Committee for the Prevention of Torture

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)⁷
- 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 Congress⁸. It shall be mentioned that a public selection process is foreseen 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 come 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 SPT⁹ 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"*¹⁰.

Taking into consideration the SPT recommendations, the state of 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*

⁷ Procurador Penitenciario de la Nación.

⁸ Comisión Bicameral de la Defensoría del Pueblo del Congreso Nacional.

⁹ Report of the visit of the SPT to Argentina, UN Doc. CAT/OP/ARG/1, 27 November 2013, para 18.

¹⁰ Guidelines on national preventive mechanisms, UN Doc. CAT/OP/12/5, paras. 12 and 18.

strengthen the articles that guarantee the functional independence of the members of the national preventive mechanism”¹¹.

However, the National Committee’s current structure does not comply with the independence required by the OPCAT, in particular with Article 18.1 of the OPCAT¹², as:

- 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.

Implementation

Some progress towards the selection of the National Committee was made in 2014, as follows:

- Draft internal regulations for the selection of civil society representatives (3) and parliamentary representatives (6), were presented to the Bicameral Commission (August 2014).
- The Human Rights Secretariat of the Ministry of Justice and Human Rights designated its Representative (June 2014).
- The Federal Council of Local Mechanisms was established (October 2014).

However, as of May 2016, the National Committee is not operational as its members have not been selected yet. The APT is concerned that, in the absence of an operational National Committee, the whole National System to Prevent Torture is not able to function properly, prevent effectively torture and ill-treatment and cannot fill the existing gap in the external oversight of places of deprivation of liberty in Argentina.

3.2.2 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.

Effectively, the National System to Prevent Torture’s legislation (Article 24) foresees that the Federal Council will start operating with the President of the National Committee. In the absence of such a Committee, and despite the existence of five operational local preventive mechanisms, the Federal Council is not able to operate.

¹¹ 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.

¹² Article 18.1 of the OPCAT reads as follows: “The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel”.

3.2 Overview of the implementation at the provincial level

Although some progress has been made at the provincial level in the majority of the jurisdictions (see below)¹³, the three provinces of Buenos Aires, Córdoba and Santa Fe concentrating more than half of the country prison population, have not yet established their LPMs.

As of May 2016, there are:

- **5 operational LPMS**, established by law in five provinces: Chaco (Law No. 6483 from 2010), Río Negro (Law No. 4621 from 2011, modified in 2014), Mendoza (Law No. 8284 from 2011), Salta (Act No. 7733 from 2012) and Corrientes (Law No. 6280 from 2014).
- **2 designated LPMs** by law, but not yet established: Tucumán (Law No. 8523 from 2012) and Misiones (Law No. IV-65 from 2014).
- **9 draft LPM bills** are currently being considered by the legislatures in nine jurisdictions; e.g in 8 provinces (Buenos Aires, Santa Fe, San Luis, Neuquén, Tierra del Fuego, Entre Ríos, La Rioja, Catamarca) and in the City of Buenos Aires.
- 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

Most of the existing operational LPMs have been established prior to the adoption and entry into force of the National System to Prevent Torture's legislation. All but one (Mendoza¹⁴) follow the same 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. Taking this situation into consideration, some of the LPM legislations have been amended (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, all of the operational LPMs are facing serious budgetary challenges, as they are not granted adequate and sufficient financial resources to allow them to implement their mandate effectively.

¹³ See an Implementation map from November 2015, available at: http://www.jus.gob.ar/media/2901464/mapa_al_27-05-15.pdf

¹⁴ 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).

3.3 SPT Recommendations

The UN Subcommittee for the Prevention of Torture visited Argentina in April 2012 and made a recommendation regarding the National Preventive Mechanism as foreseen at that time (see above). Furthermore, the SPT made numerous recommendations on the system of deprivation of liberty and highlighted its concerns regarding conditions of detention in the country. Argentina demonstrated its commitment for transparency and made public both the SPT report and its responses.

4. Suggested questions and recommendations

In light of the background material above, the APT proposes that the Human Rights Committee make the following questions and recommendations to the delegation from **Argentina** in the examination of the state's compliance with Article 7 of the Covenant:

- Could you please provide further information regarding the measures taken to ensure the continuity of the work of the OPCAT Implementation Unit within the Human Rights Secretary, in particular regarding the promotion and implementation of its recommendations with relevant provinces.
- Could you please provide further information regarding the measures being taken 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.
- Could you please provide further information on the measures being taken to ensure the prompt functioning of the Federal Council of Local Preventive Mechanisms.
- Could you please provide further information on the planned schedule to implement the National System to Prevent Torture.

- Recommend that the Argentinean state fulfills 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.
- Recommend that the Argentinean state guarantees the effective implementation of the National System to Prevent Torture, including through encouraging provincial states to establish by law independent local preventive mechanisms.
- 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.