
PRESS RELEASE 151/16

Rapporteurship on the Rights of Persons Deprived of Liberty Visits Argentina

Washington, D.C. – The IACHR Rapporteurship on the Rights of Persons Deprived of Liberty conducted a working visit to Argentina from September 13 to 17, 2016. The main purpose of the visit was to monitor the human rights situation of persons deprived of liberty, in particular, to analyze the main improvements made by the Argentine State in reducing the use of pretrial detention and challenges to continued progress in that regard. The delegation was composed of Commissioner James Cavallaro, President of the Commission and Rapporteur on the Rights of Persons Deprived of Liberty, as well as staff of the Executive Secretariat. The visit took in the cities of Buenos Aires, La Plata (capital of the Province of Buenos Aires), Mendoza, and Santa Fe.

The IACHR would like to thank the State for the valuable cooperation and facilities provided in making this visit possible and underscores the willingness of the authorities to accommodate the Rapporteurship so that it could carry out its monitoring work. In that connection, it highlights that it was afforded unrestricted access to all the detention centers visited. In particular, the IACHR values what the Chief of the Cabinet of Ministers, Marcos Peña, speaking on behalf of the President of Argentina, Mauricio Macri, said with respect to supporting the inter-American human rights system, as a demonstration of the Government's commitment in that area. The Commission also acknowledges the transparency shown by the state institutions that supplied the information that it requested and it is particularly grateful to the Office of the Public Defender of the Nation (*Ministerio Público de la Defensa de la Nación*), the Office of the Government Attorney for Institutional Violence (*Procuraduría de la Violencia Institucional* - PROCUVIN) of the Attorney General's Office (*Ministerio Público Fiscal de la Nación*), the Office of the National Prisons Ombudsman (*Procuración Penitenciaria de la Nación*), the Local Mechanism for Prevention of Torture (*Mecanismo Local de Prevención de la Tortura*) in Mendoza, and the Provincial Truth Commission (*Comisión Provincial por la Memoria*) in Buenos Aires Province. The Commission would also like to thank Argentine civil society organizations for the information that they provided, especially the *Centro de Estudios Legales y Sociales* (CELS) and *Xumek - Asociación para la Promoción y Protección de los Derechos Humanos*.

At the national level, the IACHR Rapporteurship met various senior officials, including the Chief of the Cabinet of Ministers, Marcos Peña; the Minister of Foreign Affairs and Worship, Susana Mabel Malcorra; the Minister of Justice and Human Rights, Germán Carlos Garavano; the Special Ambassador Plenipotentiary and Special Representative for Human Rights, Leandro Despouy; the Secretary for Human Rights and Cultural Pluralism, Claudio Bernardo Avruj; the Chief of Staff of the Secretary for Human Rights, Leonardo Szuchet; the Undersecretary for Protection of Human Rights, José Brian Schapira; the Counsel to the Ministry of Justice and Human Rights, Siro de Martini; the Coordinator for International Legal Affairs of the Office of the Undersecretary for Protection of Human Rights of the Office of the Secretary for Human Rights and Cultural Pluralism, Ramiro Cristóbal Badía; the Director General for Human Rights of the Ministry of Foreign Affairs and Worship, Minister María Gabriela Quinteros; the Attorney General of the Nation, Alejandra Gils Carbó; and the Government Attorney to the Supreme Court of the Nation, Víctor Abramovich. The Rapporteur also had meetings with various corrections system officials, including the Undersecretary for Relations with the Judiciary and Penitentiary Affairs, Juan Bautista Mahiques; the National Director of the Federal Penitentiary Service, Emilio Blanco; the Director of the Bureau of Social Rehabilitation, Matías Hugo de Sanctis, and the National Prisons Ombudsman, Francisco Mugnolo.

In the Province of Buenos Aires, the IACHR delegation met with the Minister of Justice, Gustavo Ferrari, and the Secretary for Human Rights, Santiago A. Canton. In Mendoza, the IACHR had meetings with a number of officials, including the Minister of Justice, Dalmiro Garay; the Minister of Security, Gianni Venier; the Director General of the Penitentiary Service, Enrique Eduardo Orellana; the Director for Prison Affairs-Justice Liaison,

Juan Ignacio Mulet; and the Director for Human Rights, Luz Amanda Faingold. In the Province of Santa Fe, the Rapporteur met with the Prosecutor General of the Public Prosecutions Service (*Ministerio Público de la Acusación*), Julio de Olazábal; the Secretary-General of the Public Prosecutions Service, Mario Martin Barletta; the Deputy Prosecutor of the State Prosecutor's Office (*Fiscalía de Estado*), Juan Pablo Cifré; the Secretary for Human Rights, María Josefa Dal Dosso; the Undersecretary for Criminal Matters, Lisandro Martínez Gorostiaga; the Legal Undersecretary of the Ministry of Justice and Human Rights, Leandro Maiarota; and Provincial Director of Institutional Relations of the Penitentiary Service, Lucía Masneri Calderari. The Rapporteur also talked to the Public Defender of the Province of Santa Fe, Gabriel Ganón.

Similarly, in Buenos Aires and Mendoza Province the IACHR Rapporteurship had meetings with civil society organizations and other stakeholders, including *Asociación para la Promoción y Protección de los Derechos Humanos Xumek*; *Abogados y Abogadas del Noa en Derechos Humanos y Estudios Social* (ANDHES); *Asamblea Permanente por los Derechos Humanos* (APDH) *de La Matanza*; *Asociación Pensamiento Penal* (APP); *Asociación Civil de Familiares de Detenidos* (ACIFAD); *Comité Provincial de Prevención de la Tortura y Otros Tratos y Penas Crueles, Inhumanos y/o Degradantes en Chaco*; the Criminology Faculty of the Rosario National University (UNR); *Centro Angelelli*; International Prison Watch; *Comisión Provincial por la Memoria*; *Plataforma Regional por la Defensa de los Derechos de Niñas, Niños y Adolescentes con referentes adultos privados de libertad* (CWS/NNAPES); CELS; *Yo No Fui*; the Human Rights Committee of the Mendoza Province Bar Association; Cuyo National University; *Delegación Escolar de Contexto de Encierro*; Latin American Human Rights Center (CLADH); *Mendoza Law*; *Asociación de Ex Presos*, and *Humanery*. In Mendoza, the IACHR delegation also met the president of the Local Mechanism for Prevention of Torture, Fabricio Imparado. The Commission is especially grateful to CELS and Xumek for organizing the meetings with civil society organizations.

In addition, the Rapporteurship held a panel discussion on the measures adopted by the Argentine State to reduce pretrial detention. That activity, held in conjunction with the Argentine Ministry of Justice and Human Rights, was attended by members of all three branches of government as well as civil society representatives and scholars. Likewise, the President of the IACHR took part in one of the meetings organized by "Justice 2020", specifically with the Working Group on Penal Enforcement, Penitentiary System and Prisons. He also gave an address at the Public Defender's General National Discussions in the city of Santa Fe. Moreover, as part of the visit, meetings were held on the following precautionary measures: PM 35-14 Almafuerite and San Felipe Prison Complexes; PM 104-12 Penitentiary Services, Buenos Aires Province; and PM 496-14 and MC 37-15 Persons Deprived of Liberty in Six Police Stations in Lomas de Zamora and La Matanza. In relation to the last, the IACHR President expressed concern at the absence of the Ministry of Security of Buenos Aires Province.

The Rapporteurship also visited eight detention centers. In the Province of Buenos Aires, the Rapporteurship visited the Third Northeast Police Station in La Tablada (for women), which is covered by PM 496-14 and MC 37-15 (Persons Deprived of Liberty in Six Police Stations in Lomas de Zamora and La Matanza); the First East District Police Station in Gregorio de Laferrere; the Third West District Police Station in Rafael Castillo, and the Second East Police Station in Altos Laferrere. In the Province of Mendoza, the IACHR delegation visited San Felipe II Prison Complex, which is covered by PM 35-14 (Almafuerite and San Felipe Prison Complexes). In Santa Fe, the Rapporteurship visited the Women's Rehabilitation Institute - Unit 4, and the Fifth and Eleventh Sectional Police Stations in the city of Santa Fe. In the course of the visits, the delegation held meetings with officials in charge of the respective detention centers as well as talking to a significant number of detainees.

Based on the information gathered by the Rapporteurship on its working visit, the Commission highlights below several aspects related to the rights of persons deprived of liberty in Argentina.

I. STATISTICS, OVERCROWDING, AND USE OF POLICE FACILITIES

The majority of people deprived of their liberty in Argentina are housed in provincial and federal centers of detention, or penitentiary services, as they are called. The Argentine criminal system has three types of jurisdiction: federal, provincial, and so-called national. The last deals with ordinary criminal offenses committed in the territory of the Autonomous City of Buenos Aires until the transfer is completed of that

system of justice to the jurisdiction of the city's government, an autonomy process set in motion by the 1994 constitutional reform.

According to official statistics, as of December 2015 there was a total of 71,464 inmates in all the country's penitentiary services, whether federal or provincial. Remand prisoners (held in pretrial detention) made up 51% of the total prison population.¹ In that connection, the IACHR has received information from the Office of the National Prisons Ombudsman and PROCUVIN regarding the lack of rigor in collecting statistics, primarily because of the absence of a consolidated register of detainees that systematizes data in the national and federal justice systems on people deprived of their liberty in facilities not under the supervision of the federal penitentiary service, such as provincial penitentiary services, provincial police stations, facilities of other federal agencies, and juvenile detention centers.² That situation was also highlighted by the IACHR in relation to the prison population of the Province of Buenos Aires in press release 64/10 of June 21, 2010, relating to its last visit to Argentina in 2010. Bearing in mind the foregoing, the Inter-American Commission calls on the State to implement judicial and correctional information management systems at all detention centers so as to have accessible, up-to-date, information on the judicial proceedings and situation of everyone deprived of their liberty in the country. In that regard the effort should always be made to have the highest possible level of institutional coordination and uniformity of criteria among the different authorities involved.

The Rapporteurship was also provided information on the rise in the prison population in recent years. In that regard, the IACHR observes that Argentina's incarcerated population has grown 16% since the Rapporteurship's last visit to the country in 2010. In that time, federal prisons have seen their populations swell by 15.3% and those in the Province of Buenos Aires by 25%, while the prison population in the Province of Mendoza increased 53%.

The Commission notes that this increase in prison population, has led to the country's prisons to a situation of overcrowding. The Chief of the Cabinet of Ministers, for his part, referred during the Rapporteur's visit to the overcrowding that exists in Argentina's corrections system. Likewise, in July this year, the United Nations Human Rights Committee expressed its concern about the high levels of overcrowding, which are manifested in, among other things, the use of police stations as permanent places of detention.³

In particular, the Inter-American Commission notes that the use of police stations as permanent detention centers stems mainly from the lack of room in prisons and abuse of pretrial detention. In that connection, the zone supervisor interviewed at the 11th Sectional Police Station of the city of Santa Fe said that "we can only remove people from the police station when space is freed up in prisons." As the IACHR noted in 2010 and again on this visit, the holding capacity shortfall in prisons means that detainees are held for months at police stations, which are designed as temporary holding facilities and are not equipped with the infrastructure and basic services to ensure decent conditions of detention. In addition, police personnel are not trained to serve as prison warders, a role that corresponds to the Provincial Penitentiary Service, whose officers are trained in the custody and handling of persons deprived of their liberty. The IACHR values the efforts of the State to resolve the situation, chiefly by expanding the Buenos Aires Mayoralities Program which aims to do away with housing detainees on police premises. However, it is concerned at the high number of people currently being held in police jails, which stood at 2,547 in September 2016,⁴ according to figures provided by the

¹ *Sistema Nacional de Estadísticas sobre Ejecución de la Pena* (National Penal Enforcement Statistics System), Annual Report, Argentina, SNEEP, 2015.

² *Procuración Penitenciaria de la Nación* (Office of the National Prisons Ombudsman), information provided to the IACHR in the context of the visit of the IACHR Rapporteur on the Rights of Persons Deprived of Liberty, October 5, 2016; and *Procuraduría de la Violencia Institucional* (PROCUVIN), information provided to the IACHR in the context of the visit of the IACHR Rapporteur on the Rights of Persons Deprived of Liberty, September 2016.

³ United Nations Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, 117th session, 20 June to 15 July 2016, para. 23.

⁴ Information provided by the Secretariat for Human Rights of the Province of Buenos Aires during the Rapporteurship's visit to Argentina, October 2016.

Government of the Province of Buenos Aires. As is analyzed below, the conditions of detention in police jails come up short of the basic standards that would make them compatible with prisoners' right to humane treatment. Accordingly, the IACHR appeals to the State to take the necessary urgent steps to end the use of police stations as permanent holding facilities for prisoners.

For its part, the Office of the Prisons Ombudsman has said that the State has addressed the issue of overcrowding by concealing the real extent of the problem and artificially increasing the number of places for prisoners by adding new mattresses.⁵ In that connection, the Local Mechanism for Prevention of Torture in Mendoza and civil society organizations told the IACHR that, despite the rise in the prison population in recent years (by 53% since 2010) no new detention centers have been built or existing ones expanded, and that "more beds have simply been added within the same physical space," allowing the government to report virtually the same level of overcrowding (12%) in 2010 and 2016. In that regard, the IACHR recalls that the holding capacity of prisons should be designed taking into account criteria such as actual available space per inmate, ventilation, heat, lighting, access to sanitary services, and number of hours that inmates spend locked up in their cells and outside, as well as other basic elements of infrastructure such as health clinics, and necessary space and equipment for work, education, and recreation. At the minimum, each inmate should have enough room to sleep lying down, to move around freely in their cell or sleeping quarters, and to store their personal effects

II. PRE-TRIAL DETENTION

1. Use of pretrial detention and alternatives to it

In its Report *Use of Pretrial Detention in the Americas*, the Commission concluded that the non-exceptional use of pretrial detention is one of the most serious and widespread problems faced by the member states of the OAS in terms of ensuring and observing the rights of persons deprived of liberty. Regarding the use of pretrial detention, the IACHR recalls that it must be strictly exceptional in nature and its implementation must be consistent with the principles of legality, presumption of innocence, reasonableness, necessity and proportionality.

In Argentina, according to official figures, the situation in terms of the number of people in pretrial detention in the jurisdictions covered by this report is as follows:

Jurisdiction	Date of statistics	Number of persons deprived of their liberty	Persons in pretrial detention	Percentage of persons in pretrial detention
Federal, national and provincial	December 2015	71,464	37,008	51%
Province of Buenos Aires	December 2015	37,895	22,865	56%
Province of Mendoza	October 2016	4,029	1,673	42%
Province of Santa Fe	June 2016	4,017	1,199	29.8%

The Inter-American Commission is concerned by the fact that approximately half of all persons deprived of their liberty are in that situation. The IACHR reiterates that having a significant percentage or a majority of the prison population in pretrial detention is "a symptomatic and troubling fact that ... should be addressed

⁵ Office of the Prisons Ombudsman, Statistical Report of the Office of the Prisons Ombudsman in the context of the colloquium on "Measures to Reduce Pretrial Detention in Argentina," Buenos Aires, September 13, 2016.

with the greatest attention and seriousness by the respective States.”⁶ The Rapporteurship was also informed about the challenges that the State of Argentina faces in reducing the use of pretrial detention and promoting alternatives to it. The above has to do with a variety of factors, including policies on crime that encourage higher rates of incarceration, inadequate defense provided to persons in pretrial detention, and pressure from the media and public opinion to tackle insecurity by locking up offenders. With respect to the first of these, the IACHR received information about crime policies that propose higher incarceration levels as a solution to security problems, which translates into laws that foster the use of pretrial detention and restrict the possibility of noncustodial alternatives. This situation mainly manifests itself in the promotion of summary trials for in flagrante delicto cases and high incarceration rates for drug offenses (commonly referred to as Law 23.737 violations) which account for 33.7% of remand prisoners at the federal level⁷ and are among the top causes of imprisonment.⁸

Furthermore, the Inter-American Commission expresses concern at information from various sources that the media and public opinion advocate custodial sentences in tackling public security problems. In particular, the IACHR was told that judges refrained from ordering precautionary measures for fear of being punished or removed from office. In that connection, a judge on the National Cassation Chamber for Criminal and Correctional Matters of the Federal Capital told the Rapporteurship: “daily we overturn pretrial detention orders that were imposed as a punitive preventive measure as opposed to meeting the requirements for pretrial custody (i.e., that the accused represents a flight risk or could obstruct the investigation).” The Public Defender of the Court of Cassation of the Province of Buenos Aires, Mario Coriolano, said that “at the moment, for judges, ordering the release of a prisoner carries a higher political cost than keeping them in remand detention, because of the threat of impeachment or a media outcry.” In 2010, he IACHR expressed its concern with respect to that situation in press release No. 64/10 in relation to its last visit to Argentina, in which it said that judges opt for deprivation of liberty “in order to demonstrate efficiency and avoid complaints from society, the news media, and the political sector itself.”

The Commission recalls that the rational use of non-custodial precautionary measures of freedom, according to criteria of legality, necessity and proportionality, is not at odds with the rights of victims, nor constitutes a form of impunity. To hold otherwise would be to ignore the nature and purposes of pretrial detention in a democratic society. Therefore, it recommends the Argentine Government to adopt a different public-policy approach by ensuring that pretrial detention is used as an exceptional measure under its policies on crime and public security, avoiding a hardline approach that results in restrictions on the liberty of the accused during criminal proceedings in response to calls for greater public security. Furthermore, bearing in mind the impacts of pretrial detention, the IACHR urges the State to use alternative measures which, apart from helping to reduce overcrowding, are one of the most effective ways available to states to prevent community disintegration and stigmatization, reduce recidivism, and use public resources more efficiently.

As regards the function of the public-defender institution in Argentina, the IACHR received information that in Argentina, both at the federal level and in Buenos Aires province, the weakness of the Office of the Public Defender is directly related to its lack of independence and the absence of specific policies to give it more weight within the system. The IACHR notes that the Human Rights Committee this year expressed concern regarding the Office of the Public Defender’s lack of operational and budgetary independence, and that neither the Federal Office of the Public Defender, nor the offices of the public defender at the provincial level, may have sufficient resources to fully carry out their mandates.⁹ The bodies of the inter-American system

⁶ IACHR, [Report on the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II., Doc. 46/13, December 30, 2013, par. 295.

⁷ Office of the Prisons Ombudsman, Statistical Report of the Office of the Prisons Ombudsman in the context of the colloquium on “Measures to Reduce Pretrial Detention in Argentina,” Buenos Aires, September 13, 2016.

⁸ *Sistema Nacional de Estadísticas sobre Ejecución de la Pena* (National Penal Enforcement Statistics System), Annual Report, Argentina, SNEEP, 2015.

⁹ United Nations Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, 117th session, 20 June to 15 July 2016, para. 33.

have established that one of fundamental standards to be met in observing basic fair-trial guarantees in proceedings is the preservation of the functional and budgetary independence of public defender institutions from other agencies of the as well as from judges and prosecutors.¹⁰ Therefore, the IACHR calls upon the State to ensure that the public defender's office at both the federal and provincial level enjoy the necessary operational and budgetary independence.

2. Recent measures

The Commission sees that in recent years the Argentine State has adopted measures in the legislative, judicial, and administrative spheres in relation to the use of pretrial detention. At the federal level, the IACHR notes progress with significant initiatives in that connection. However, in the case of the Province of Mendoza, as is explained below, it regrets the steps taken by the provincial government against the jurisprudential effects of a habeas corpus decision issued by the Supreme Court of Mendoza on December 23, 2015.

The IACHR observes that in December 2015, Law 27,063 was passed introducing a new Code of Criminal Procedure in Argentina whose scope covered the country's federal jurisdiction and the so-called national system of justice of the Autonomous city of Buenos Aires.¹¹ However, its implementation, originally planned to begin for the national justice system on March 1, 2016, and, thereafter, gradually in the federal jurisdiction, was deferred by Presidential Decree 257/2015.¹² In that connection, the Public Defender Ministry and Argentine civil society have expressed concern about the uncertainty that surrounds the validity of the new Criminal Code. There are a series of problems with the Code of Criminal Procedure still in force concerning the use of pretrial detention and its compatibility with international standards, including, in particular, grounds for automatic imposition of pretrial detention based on "the circumstances and nature of the offense or the anticipated penalty"; the inclusion of mandatory remand offenses (*delitos inexcusables*); the omission of periodic reviews to examine continued existence of procedural risk and causes for cessation of pretrial detention; and bail bonds, personal guarantees, and personal recognizance as the only non-custodial alternatives to pre-trial detention.¹³ In particular, the IACHR notes that Law 27,063, which enacted the new Code of Criminal Procedure, makes significant strides in reducing pretrial detention. For example, it does away with mandatory incarceration offenses, includes a range of alternative (non-custodial) measures, and introduces rules governing the body that would be in charge of monitoring them.

As regards legislative measures, it is worth noting that in June 2016, Law 8.869 entered into force in the Province of Mendoza, replacing and amending the articles contained in the Mendoza Code of Criminal Procedure governing the imposition of pretrial detention. According to civil society organizations, that law establishes pretrial detention as the rule and reflects the government's punitive approach. The IACHR notes that Law 8.869 recognizes, *inter alia*, the following grounds for ordering pretrial detention: offenses committed in flagrante delicto, offenses punishable with more than three years of imprisonment, and

¹⁰ IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, par. 192. See also, IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II. Doc. 44, adopted on December 5, 2013, pars. 45-48.

¹¹ Code of Criminal Procedure of the Nation, Law 27,063 (not in force), enacted on December 4, 2015, and published in the Official Gazette of December 10, 2014. Available at: <https://www.boletinoficial.gob.ar/#!DetalleNorma/116809/20141210>

¹² According to that decree, the new code "will come into force according to the progressive implementation schedule set by the Congressional Bicameral Committee to Monitor and Implement the New Code of Criminal Procedure of the Nation. Thus far, the bicameral committee has determined that the new code will go into force for the provinces of Salta and Tierra del Fuego Antártida e Islas del Atlántico Sur at the beginning of the second half of 2017. Office of the Public Defender of the Nation, Argentina. Response to the consultation questionnaire, submitted to the IACHR on June 22, 2016.

¹³ Office of the Public Defender of the Nation, Argentina. Response to the consultation questionnaire, submitted to the IACHR on June 22, 2016.

recidivism;¹⁴ that law also provides a period of 10 days for holding remand hearings, which may be extended by another 10 days at the request of the Attorney General's Office. In that connection, the IACHR considers that pretrial detention is a strictly extraordinary measure, and its application should comply with the principles of legality, presumption of innocence, reasonableness, necessity, and proportionality. This measure can only be ordered in the cases expressly provided by law and is permissible only when directed at accomplishing its legitimate aims, which are to prevent the accused from evading justice and to avoid obstruction of the investigation or the proceedings by the accused.¹⁵

As regards jurisprudence, the IACHR values the decision adopted by the Supreme Court of Justice of Mendoza on December 23, 2015, in which it issued a collective writ of habeas corpus, making significant improvements in terms of reducing pretrial detention, such as, the requirement to regularize the procedural situation of persons detained without a court order within 60 days; the requirement to submit detentions for judicial review within 24 hours; registration of pretrial detention in the Province; greater requirements to be met by procedural safeguard and preliminary hearing judges when ordering pretrial detention; and application of noncustodial alternatives measures in accordance with the principles of subsidiarity and progressiveness.¹⁶ However, in the wake of that decision, the Inter-American Commission noted that regressive steps were taken to counter its effects, including the adoption of Law 8.869 amending the Code of Criminal Procedure of Mendoza and the filing by the Office of the Attorney General of Mendoza of a special federal appeal with the Supreme Court of Justice of the Nation, seeking to block implementation of the above decision on the ground that it "usurps of legislative functions." The habeas corpus ruling is currently suspended while the Supreme Court of Justice of the Nation reaches a decision on the appeal.

Administratively speaking, one of the principal measures adopted by the Argentine State to reduce the use of pretrial detention and "mitigate the negative impact of deprivation of liberty" has been to implement electronic monitoring mechanisms in criminal proceedings as a noncustodial measure. In that regard, in the federal jurisdiction, the Ministry of Justice and Human Rights adopted Resolution No. 1379 of June 16, 2015, creating the Program of Assistance for Persons under Electronic Surveillance. Initially, the program covered people convicted or being prosecuted under the national or federal criminal justice systems who were eligible for house arrest and domiciled in the Autonomous City of Buenos Aires or different areas of the Province of Buenos Aires.¹⁷ Subsequently, Resolution No. 86/2016 of March 2016 widened the program's scope to include people convicted or being prosecuted under the national, federal, and provincial jurisdictions with domiciles anywhere in the territory of the Argentine State.¹⁸ The National Director for Social Rehabilitation

¹⁴ Law 8.869 amending Law 6.730 - Code of Criminal Procedure of Mendoza, Argentina, in force as of June 1, 2016. Article 1(a) (replacing Article 293 of the Code of Criminal Procedure) Available at: <http://www.sajj.gob.ar/8869-local-mendoza-modificatoria-ley-6730-codigo-procesal-penal-mendoza-lpm0008869-2016-06-01/123456789-0abc-defg-968-8000mvorpyel?&o=11&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Ley%7CFecha%7CTema%5B5%2C1%5D%7COrganismo%5B5%2C1%5D%7CAutor%5B5%2C1%5D%7CEstado%20de%20Vigencia/Vigente%2C%20de%20alcance%20general%7CJuridicci%F3n/Local%7CTribunal%5B5%2C1%5D%7CPublicaci%F3n%5B5%2C1%5D%7CColecci%F3n%20tem%E1tica%5B5%2C1%5D&t=23811>

¹⁵ IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II., Doc. 46/13, December 30, 2013, par. 319.

Supreme Court of Justice of the Province of Mendoza, "Corrective and Collective Habeas Corpus (Mendoza Penitentiary)," Case 13-03815694-7, December 23, 2015. Available at:

<http://ministeriopublico.jus.mendoza.gov.ar/resoluciones/2015/recursohabeascorpuz.pdf>; Centro de Estudios Legales y Sociales (CELS), Argentina. Response to the consultation questionnaire, submitted to the IACHR on July 13, 2016.

¹⁷ Ministry of Justice and Human Rights, Resolution No. 1379/2015, June 26, 2015. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do%3Bjsessionid=92E209D73D72CFEA49D40A53CB5D28CA?i d=248758>

¹⁸ Ministry of Justice and Human Rights, Resolution No. 86/2016, March 23, 2016. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do%3Bjsessionid=DE37328BDB5924F8F4E4745F9C72659E?i d=260030>

informed the Rapporteurship that efforts are underway to replicate the Program in several provinces, including Mendoza, Jujuy, San Juan, Tucumán, and Buenos Aires. He also said that an additional advantage of the program is that it offers psychosocial coaching to all its beneficiaries.¹⁹ At the date of this press release, according to information provided by the Office of the Undersecretary for Relations with the Judiciary and Penitentiary Affairs, there were 192 people in the federal jurisdiction wearing electronic bracelets; the majority (79%) were in pretrial detention; 63% of beneficiaries were women and 37% were men.²⁰ According to information provided by the Secretariat for Human Rights of the Province of Buenos Aires, there are 1,245 people in the program.²¹ In Mendoza, according to figures provided by the province's Penitentiary Service, a total of 68 people have been fitted with these electronic devices and arrangements are being made for the delivery of 400 more.²² In view of the exceptional nature of preventive detention, the IACHR has called upon States to adopt alternative measures, including, in particular, tracking or physical location positioning devices.

Finally, the IACHR welcomes the implementation of Justice 2020, a program launched in March 2016 on the initiative of the Ministry of Justice and Human Rights that serves as a mechanism for dialogue between the government and civil society with the aim of devising, implementing, and evaluating policies on access to justice.²³ Justice 2020 is a government program that has been underway for the past four years. It has the following core lines of action: institutional, civil law, criminal justice, access to justice, human rights, and justice and the community.²⁴ One of the Program's objectives is to encourage the use of alternative noncustodial measures, especially where pretrial detention is concerned.²⁵ At the meeting of September 13, 2016, Commission President James Cavallaro referred to the importance of the initiative and praised the level of involvement of the program's participants in the conversation on the country's corrections system.²⁶

III. NATIONAL AND PROVINCIAL MECHANISMS FOR PREVENTION OF TORTURE

The Commission welcomes the adoption of Law No. 26.827 in November 2012, creating the National System for Prevention of Torture; however, it notes that this mechanism has not yet been implemented because the national authorities have not started the process of selecting and appointing its personnel. At the provincial level, despite the fact that Article 32 of the above law provides for the creation of local prevention mechanisms, the Office of the Public Defender of the Nation informed the IACHR about the "irregular implementation" of the prevention mechanisms and restrictions on access to detention centers. As a result of the situation, only five such mechanisms are reportedly operational: in the provinces of Chaco, Corrientes, Mendoza, Río Negro, and Salta. With respect to the last of those provinces, the Office of the Rapporteur was

¹⁹ Information provided by the National Director for Social Rehabilitation, Matías Hugo de Santis. Rapporteurship's visit to Argentina, September 2016.

²⁰ Office of the Undersecretary for Relations with the Judiciary and Penitentiary Affairs, Program of Assistance for Persons under Electronic Surveillance. Information provided to the IACHR during the Rapporteurship's visit to Argentina, October 2016.

²¹ Information provided by the Secretariat for Human Rights of the Province of Buenos Aires during the Rapporteurship's visit to Argentina, October 2016.

²² Information provided by the Director General of the Penitentiary Service of Mendoza during the Rapporteurship's visit to Argentina, October 2016.

²³ Ministry of Justice and Human Rights, [Justicia 2020](#).

²⁴ Information provided by the Ministry of Justice and Human Rights during the Rapporteurship's visit to Argentina, October 2016.

²⁵ Information provided by the Ministry of Justice and Human Rights during the Rapporteurship's visit to Argentina, October 2016; Information provided by the Undersecretary for Relations with the Judiciary and Penitentiary Affairs, Juan Bautista Mahiques, at the Colloquium on measures to reduce pretrial detention in Argentina. IACHR, Visit to Argentina, September 2016.

²⁶ Ministry of Justice and Human Rights, ["El Presidente de la Comisión Interamericana de Derechos Humanos participó del debate sobre política pública penitenciaria."](#) September 14, 2016.

told by the president of the provincial mechanism, Fabricio Imparado, that it went into operation in 2014, in spite of which, however, its budget, structure, and material resources for its operations have not been approved.

The absence of a national mechanism and the challenges faced by local mechanisms in fulfilling their mandate is particularly troubling to the Inter-American Commission, especially considering allegations by autonomous public-sector entities and civil society organizations that torture and mistreatment are rampant in the Argentine State's detention centers. It is worth noting that the United Nations Human Rights Committee expressed its concern in that respect in July 2016. In view of the fundamental nature of the human rights that may come into play with the act of confinement, the management of prisons in general should be governed by strict criteria of transparency, openness, and independent oversight. In this regard, the Inter-American Court has established as a fundamental criterion that "the way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee's vulnerability." In light of the foregoing, the Inter-American Commission urges the Argentine State to take the necessary steps to implement the national mechanism and to provide provincial mechanisms with sufficient resources and the necessary institutional support to carry out their mandates effectively and with the requisite autonomy and independence, bearing in mind the nature of their monitoring functions.

IV. VISITS TO DETENTION CENTERS

1. Overcrowding and lack of separation of remand and convicted prisoners

In first place, the IACHR expresses its concern at the overcrowding in the San Felipe Prison Complex in Mendoza and in police jails in the provinces of Santa Fe and Buenos Aires. As of September 15, 2016, there were 991 inmates housed at the San Felipe Complex, despite only having capacity for 660; in other words, its occupancy rate was 150%. The Inter-American Commission was told that the situation might actually be worse, given that prison authorities in that province allegedly conceal the real scale of overcrowding "by adding new mattresses." Furthermore, the President of the Provincial Mechanism for Prevention of Torture and civil society organizations informed the Rapporteurship that the situation of overcrowding is a particularly serious bearing in mind the "levels of violence among detainees and the general breakdown in their different areas."

For its part, Altos de Laferrere Police Station, in La Matanza, Buenos Aires, which has the capacity to hold 4 people, had a total of 15 detainees in its cells. The 11th Sectional Police Station in the city of Santa Fe, with capacity for 7 people, was holding twice that number on the day of the Rapporteurship's visit. The zone supervisor mentioned that that police station usually houses between 15 and 20 people deprived of their liberty at any given time. As the IACHR has previously stated, a consequence of overcrowding is that it makes it impossible to classify inmates by category, which in practice creates a general situation that goes against the provisions established in Article 5(4) of the American Convention as well as the State's duty to treat the remand prisoners differently, in keeping with the rights to personal liberty and to be presumed innocent. In particular, the Inter-American Commission noted the failure to separate remand prisoners from convicted inmates at the Women's Rehabilitation Institute in Santa Fe and the Penitentiary Complex in Mendoza.

1. General conditions of detention

Based on its observation of the detention centers that it visited, the Rapporteurship considers that the conditions of detention are incompatible with the personal dignity of individuals in deprived of their liberty. In particular, the delegation of the IACHR found that the physical infrastructure at the Women's Rehabilitation Institute in Santa Fe was very old and was in need of structural repairs, modifications, and maintenance. In addition, the inmates told the Rapporteurship that the food they were served was insufficient and "unfit to eat," they engaged in no recreational activities, and that the healthcare was inadequate. In that connection, one of the inmates said: "I'm pregnant. I asked for a test to be done three months ago and was told that there was no doctor to take a blood sample." At San Felipe Prison in Mendoza, the Rapporteurship noted similar structural conditions to those it saw at the Women's Rehabilitation Institute. However, due to

the fact that the Rapporteurship only visited the isolation units at that prison, the conditions of detention are analyzed in a separate section.

At all the police stations visited in the provinces of Buenos Aires and Santa Fe—with the exception of the First East District Police Station in Laferrere, which closed on September 7, 2016—the Rapporteurship noticed the same kind of problems with the conditions of detention, including overcrowding, lack of sunlight, dim lighting, no ventilation, mattresses in poor condition, a lack of hot water, damp, precarious sanitary facilities, and squalor. At all the police stations, the IACHR delegation heard generalized complaints of lack of healthcare and insufficient and poor quality food, which was reportedly only served once a day. As a result, detainees rely on relatives to provide them with food and medicines. In particular, overcrowding and conditions such as lack of ventilation, pose a health risk to people detained at police stations. In that connection, the Rapporteurship noted with concern that at Altos de Laferrere Police Station in Buenos Aires, of the population of 15 confined in a space meant for 4, 6 had influenza and fever. Likewise, the Rapporteurship heard several testimonies expressing the desperation felt by detainees as a result of their inactivity and prolonged stay in overcrowded quarters.

The IACHR Rapporteurship is deeply concerned by the conditions in which the people deprived of their liberty at the various detention centers that it visited were being held, particularly the conditions at police stations, which, as the Commission has previously noted, amount to gross violations of human rights, given that such facilities were not originally designed, nor offer suitable conditions, for housing persons for extended periods of time.

2. Solitary confinement or isolation

One of the main complaints received from civil society organizations regarding conditions of detention had to do with the use of solitary confinement or isolation in violation of international standards, a situation that the Rapporteurship saw for itself at two detention centers.

The first of these was the San Felipe Complex in Mendoza, where the Rapporteurship visited two isolation units: Unit IV-A for “minors” aged 18 to 21, and Unit 5-B for “adults.” At the time of the visit, those units were holding 53 and 60 inmates, respectively. According to officials at the institution, both areas are used to “protect the integrity” of inmates with “coexistence problems.” The isolation cells measure approximately 2.5 x 3 meters and are shared by three or four inmates who are locked up for 22 hours a day and spend two or three hours a day in the yard at alternating times to prevent inmates from coming into contact with others in the same unit. The Rapporteurship was extremely concerned by the dilapidated infrastructure and squalid conditions in those units, the unventilated sleeping quarters, lack of privacy when using toilets, and damaged and exposed electrical fittings. In both units, the Rapporteurship heard several testimonies alleging the deficiency and insufficiency of the food provided, negligent healthcare, a lack of water, and an absence of educational or recreational activities. The IACHR delegation was also informed about the serious lack of ventilation and the resulting transmission of infectious diseases. One inmate of Unit 5-B told the Rapporteurship: “When one of us gets sick, everyone gets infected. The virus has nowhere to go.” The Mechanism for Prevention of Torture in Mendoza informed the Commission about the high incidence of violence in those units, which results in deaths and injuries.

The other location where the IACHR delegation noted the use of solitary confinement/isolation was La Tablada Police Station. The Rapporteurship found that three young women were being held in an isolation cell because “they were a danger to the others”; the women had been in isolation for seven days prior to the Rapporteurship’s visit, were locked up for 24 hours a day, and only let out to use the sanitary facilities. The isolation cell measured 2 x 3 meters, had a small window that overlooked the interior of the police station and, therefore, did not let in any natural light or provide proper ventilation; there were no mattresses, and the general conditions were deplorable. The Inter-American Commission was particularly concerned by the situation of two of the women in isolation; one was pregnant; the other was having a psychotic episode. The pregnant woman said that she had not received any healthcare and that she was also the mother of a six-month-old baby who had not been breast-fed because the admittance of children to police stations was prohibited. The other woman was having a psychotic episode, which was evident from her highly anxious

state, the self-harm that she was causing by attempting to pull out her hair, and the hallucinations that she was suffering at the time of the visit. She said: “Being locked up in here is the worst. I feel like I may kill myself.” The IACHR especially condemns the exacerbation of this woman’s particular situation, given that the isolation in which she had already been held for a week posed an imminent risk to her well-being and to the other two women in the cell with her.

The Inter-American Commission has said with respect to solitary confinement that it should only be used on an exceptional basis, for the shortest amount of time possible, and only as a measure of last resort.²⁷ In addition, its use must always be subject to strict judicial oversight and the circumstances in which it can be used must be expressly established by law.²⁸ The IACHR recalls that, under international law, solitary confinement of pregnant women and people with mental disabilities is prohibited. The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas also ban solitary confinement of pregnant women.²⁹ According to the United Nations Special Rapporteur on torture, Juan E. Méndez, solitary confinement of people with mental or intellectual disabilities is banned “in all places of deprivation of liberty.”³⁰ In light of the foregoing, the IACHR urges the State strictly to limit the use of isolation cells to the situations and conditions established in international law and, in particular, to prohibit solitary confinement of pregnant women and people with mental disabilities.

3. Searches

One of the leading complaints made by both civil society organizations and detainees at all the detention centers visited had to do with the mistreatment dished out to persons deprived of their liberty during searches carried out inside facilities. According to information provided to the IACHR, the officers in charge of performing these searches are in the habit of striking prisoners and destroying their belongings without justification. In that connection, a prisoner at the 11th Sectional Police Station in Santa Fe said: “They strip us bare and throw us to the ground. They hit us with sticks. We are scarred.” Another detainee at that police station said: “We have been deprived of our liberty, but we have our other rights.” A prisoner at Rafael Castillo Third West District Police Station in Buenos Aires said: “If they find something, we all get hit with nightsticks.” In addition, at the Fifth and Eleventh Sectional Police Stations in Santa Fe, Rafael Castillo Third West District Police Station, and Altos Laferrere Second East District Police Station, inmates showed the IACHR delegation marks of the blows that they had allegedly received from guards during searches.

In that connection, the Inter-American Commission recalls that searches or inspections at facilities should be performed in keeping with protocols and processes that are clearly established by law and in a way that respects the fundamental rights of the individuals deprived of liberty. Otherwise, they could become a mechanism that is used to arbitrarily punish and assault inmates.³¹ Accordingly, the IACHR urges the Argentine State to adopt the necessary control and monitoring measures to ensure that searches at detention centers are conducted in a way that respects inmates’ right to humane treatment, in particular, refraining from disproportionate use of force, and that searches are not used as a means to and humiliate prisoners.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a

²⁷ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II. Doc 64, December 31, 2011, par. 411.

²⁸ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II. Doc 64, December 31, 2011, par. 411.

²⁹ IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* (Approved by the Commission during its 131st regular period of sessions, held from March 3 to 14, 2008), No. XXIII (3).

³⁰ [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez](#), A/HRC/22/53, 1 February 2013.

³¹ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II. Doc 64, December 31, 2011, par. 419.

mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this area. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.