

DESCRIPTION OF THE PRACTICES THROUGH WHICH INSTITUTIONAL AND NON-INSTITUTIONAL
VIOLENCE IS EXERCISED IN ARGENTINA.

ANALYSIS OF THE FACTORS THAT ENABLE OR PROMOTE THE VICTIMIZATION OF VULNERABLE
SECTORS OF THE POPULATION

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Analysis of the structural causes of violence, including torture, through a human rights
perspective: the relationship between socio-economic and institutional factors

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PART I – CONTEXTUAL INFORMATION ON ARGENTINA

1. Institutional organization and validity of the Rule of Law

*“The Argentine Nation adopts the representative republican federal form for its government”*¹. The Argentine State is formed by 23 provinces and the Autonomous City of Buenos Aires, seat of the National Government. According to the federal form of government, the provinces keep all the power not delegated by the National Constitution to the Federal Government, as well as the power they have expressly reserved for themselves. The attributions that the provinces keep include: dictating their own constitution in agreement with the principles, declarations and guarantees which appear in the National Constitution², electing their own local institutions and letting them rule and electing their authorities and local officers without the intervention of the Federal Government

Unlike what happens with the provinces, since it is the capital of the Republic, the Autonomous City of Buenos Aires has legislation and jurisdiction powers pursuant to what the National Congress³ established through law n°24.588, which guarantees the interests of the National State in the City.

The Constitution, the national laws enacted by the Congress and the treaties with foreign powers are the supreme law of the Nation⁴ and the authorities of every province are bound to conform to it, notwithstanding any provision to the contrary which the Provincial laws or constitutions may contain⁵. The 1994 constitutional amendment granted constitutional rank *“in the conditions of its validity”*⁶ to two statements and eight treaties on human rights⁷.

According to what is stipulated in the National Constitution, suffrage is universal, equal, secret and mandatory⁸. By virtue of the federal system adopted, the provinces and the city of Buenos Aires –also the Federal Capital, should it be transferred- make up electoral districts especially set by the Constitution.

The federal government is organized in three Powers: the Executive Power, the Legislative Power and the Judicial Power.

The Executive Power, vested in the President of the Nation, is also made up by the Vice presidency of the Nation, the Chief of the Board of Ministers⁹, ten Ministers, eight Secretaries

¹ Pursuant to Section 1 of the National Constitution.

² Pursuant to Section 5 of the National Constitution.

³ Pursuant to Section 129 of the National Constitution.

⁴ An uncertain number of treaties have been granted a higher standing than laws; some of them have been passed by military regimes without the consent of the Congress.

⁵ Pursuant Section 31 of the National Constitution.

⁶ I.e., with the reserves and declarations contained in the law of approval.

⁷ Pursuant to Section 75 Paragraph 22 of the National Constitution. It is about: 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 its Optional Protocol; the [International] Convention on the Prevention and Punishment 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, Inhumane or Degrading Treatment or Punishment; and the Convention on the Rights of the Child.

⁸ Pursuant to Section 37, reformed in 1994.

⁹ Position introduced by the 1994 amendment. His main responsibility is to coordinate the general administration of the country. This official is appointed and removed by the President of the Nation. In addition, his duty is to

which directly depend on the Presidency, the Military House and the Sindicatura General de la Nación¹⁰. The Executive Power is individual¹¹. The president and vice president are directly elected¹² and hold their office for the term of four years, and may be reelected or succeed each other for only one consecutive term¹³.

The President of the Nation has, among others, these powers¹⁴: he is the supreme chief of the Nation, chief of the government and is politically responsible for the general administration of the country. He participates in the enactment of laws according to the Constitution, he promulgates them and has them published. The Executive Power shall not issue regulations of a legislative nature whatsoever, except under extraordinary circumstances by means of urgency and necessity decrees. He appoints the judges of the Supreme Court with the consent of the Congress. He may grant pardons or commute punishments for crimes subject to federal jurisdiction. He annually opens Congress sessions, giving an account about the state on the Nation, of the reforms promised by the Constitution and recommends for the consideration of the Congress those measures he deems necessary and fit. He extends the regular sessions of the Congress or convenes it to extraordinary sessions. He is the Commander in Chief of all the Armed Forces of the Nation. He declares war and orders reprisals with the authorisation and approval of the Congress. He declares state of siege in one or several parts of the country. He decrees the federal intervention of a province or the city of Buenos Aires in the event of Congressional recess, and he must simultaneously convene the Congress to consider it.

With the exception of the president and the vice president, the rest of the appointments in the Executive Power, are made according to the personal criteria of the proper authority: the President of the Nation appoints the Chief of Ministers, the Ministers and the Secretaries to the Presidency. In turn, the Ministers and presidential Secretaries appoint Secretaries and Sub secretaries. In the same way, those in charge of the decentralized bodies are directly appointed by the President, except in cases of multisectorial and multijurisdictional entities.

The Legislative Power is vested in a complex body which consists of more than one person. It is called Congress of the Nation. It consists of two houses made by a plurality of members according to the democratic and federal principles, and evidencing two different principles of representation:

- 1) The House of Representatives acts for the people of the nation and is made up by 257 representatives elected by the direct vote of the citizens, through the mechanism of proportional representation. That is, the number of legislators for each district (23 provinces and the City of Buenos Aires) is determined according to the size of its population. They last in their office four renewable years. The renovation of this House is carried out in halves every second year.
- 2) The Senate represents the provinces and the City of Buenos Aires and is made up by 72 senators, in a proportion of 3 for each district. Until 1994 they were chosen by the provincial

communicate the Executive Power with the Legislative Power, informing the Congress on the progress of the government and attending once a month, alternately, each of the Houses of the National Congress.

¹⁰ The Sindicatura General de la Nación is the ruling agency of the Internal Control system of the National Executive Power. It is an entity with its own legal capacity and administrative and financing autarchy, which depends on the Presidency, and whose powers and duties are regulated by National Law n°24,156.

¹¹ Pursuant to Section 88 of the National Constitution, the Executive Power is only exercised by the Vice-president of the Nation in case of illness, absence from the Capital, death, resignation or removal of the president. The Vice-president of the Nation is the president of the House of Senators of the Nation, even though he is only allowed to cast a vote if there is a tie in the voting (Pursuant to Section 57 of the National Constitution).

¹² Pursuant to Section 94 of the National Constitution. In this case the whole national territory makes up a single district.

¹³ Pursuant to Section 90 of the National Constitution. Prior to the 1994 amendment the office lasted 6 years.

¹⁴ Pursuant to Section 99 of the National Constitution.

legislatures. After the constitutional amendment, as of 2001, they are directly elected by the citizens of each district. The number of senators elected is: two from the list of the party which gets the most votes and a third one from the list following in the amount of suffrages. They last in their office for six years. The seats are renovated in thirds every second year.

The people's sovereignty lies in the Legislative Power. This body is responsible of producing the general and abstract regulations which have effect on the exercise of the subjective rights of the inhabitants. It is the duty of the Congress of the Nation to issue the content codes which are applied to the whole national territory –Civil, Commercial, Criminal, Mining, Labour and Social Security- in an unified body or separately¹⁵; to establish courts inferior to the Supreme Court of Justice; and to give consent to the judges of the Supreme Court of Justice¹⁶ appointed by the President of the Nation, among others. It is also their jurisdiction to impeach the president, the vice president, the chief of the Board of Ministers, the ministers and the members of the Supreme Court of the Nation, with the aim of making them leave their offices, thus preventing them from finishing their terms.

The Judicial Power has the duty of administering justice applying the law. It exercises the control of the constitutionality of the laws and of the actions of the government, ensuring the supremacy of the National Constitution.

The Judicial Power has a particular organizational characteristic: it is not vested in a single body, as it is the case with the Executive Power (vested in the President of the Republic) and the Legislative Power (vested in the Congress of the Nation). It is vested in the judges and courts of the different levels which form a pyramidal structure, whose superior body is the Supreme Court of Justice. The Judicial Council¹⁷ and the Trial Jury¹⁸ are also permanent bodies of the Judicial Power. The Supreme Court of Justice is the only court created by the National Constitution¹⁹, which does not state the exact number of its members. At the moment it is composed of nine judges.

As far as the criminal jurisdiction is concerned, the Judicial Power of the Nation has federal and ordinary competence, although the latter just in the territory of the City of Buenos Aires. The federal competence is an exception and is only limited to the topics established by the National Constitution, considering their solution represents the maintenance and well functioning of the federal State²⁰. The ordinary or local competence refers to non federal common offences, which take place in all the country and are the competence of the provincial judicial powers, except in

¹⁵ Pursuant to Section 75 Paragraph 12 of the National Constitution.

¹⁶ Pursuant to Section 75 Paragraph 20 of the National Constitution.

¹⁷ According to Section 114 of the National Constitution, the Judicial Council has the duty of selecting judges and administrating the Judicial Power of the Nation. It administers its revenues, exercises disciplinary powers over judges, and passes regulations regarding judicial organization, among other powers.

¹⁸ In charge of removing the judges of the lower courts of the Nation. It is made up by legislators, judges and federally licensed attorneys. Their decision, which shall be unappealable, has no effect other than to remove the accused party from office (Pursuant to Section 115 of the National Constitution).

¹⁹ Pursuant to Section 108 of the National Constitution.

²⁰ Federal competence crimes are those involving –as victims or offenders- certain kind of people or matters in relation to which the provinces delegated their jurisdiction in the Federal Government. There also is federal competence by virtue of the investiture of the people: State Chiefs, plenipotentiary ministers, ambassadors, foreign diplomatic representatives. It is necessary to emphasize that, in some cases, judges have understood that those criminal cases in which, either as offenders or as victims, federal officers are involved because of the exercise of their duties, are also the competence of the federal criminal justice. However, there is no general agreement on that matter. Unlike what happens in ordinary jurisdiction, in federal jurisdiction there is no competence division according to the seriousness of the crime: courts hear both correctional and criminal matters.

the city of Buenos Aires. Depending on the seriousness of the crime being tried –determined pursuant to the sentence abstractly provided in the Criminal Code- the competence may be correctional or criminal²¹.

The 1994 amendment granted constitutional hierarchy to the Public Ministry and defined it as an independent and autonomous body, which led to it being characterized as an extra power body²². The Public Ministry is organized in two branches. The Prosecution Public Ministry, directed by the Chief Prosecutor of the Nation, intervenes in the defence of legality and carries out legal actions in crimes of public standing. The Defence Public Ministry, its head being the Chief Public Defender of the Nation, intervenes in issues in which minor, disabled or absent people are involved and provides for the defence of prosecuted people in criminal actions, when required by legal or poverty reasons.

Between 1930 and 1983 Argentina experienced a period of institutional instability signed by six coups d'état²³ –promoted by the Armed Forces and supported by certain sectors of the civil society- which interrupted the constitutional life of the country and were subsequently followed by weak governments²⁴. The last of these interruptions took place on March 24th, 1976 when the Junta of Chief Commanders of the Armed Forces²⁵ overthrew the then constitutional president María E. Martínez de Perón, starting with the so-called “Process of National Reorganization”. A big part of the Argentine society received the coup in a passive way. Nevertheless, there were great differences between previous military governments and the policies and methodologies implemented in this opportunity, since they meant the beginning of State terrorism.

State terrorism meant the organic and systematic use of methods such as kidnapping, murder, torture, baby abduction, imprisonment for political reasons and exile and the disappearing of thousands of people. The military junta harboured repressive methods in a number of regulations and imposed institutional changes which made their performance easier: it dissolved the National Congress, the provincial and local legislatures and granted legislative powers to the Executive²⁶. It changed the composition of the Supreme Court of Justice and of the superior courts of the provinces. Thus, the Junta Commanders gathered the executive, legislative and judicial powers of the government. Civil rights and public freedoms were abolished and constitutional guarantees repealed, the activities of the political parties and every kind of public activity were suspended and the trade unions and workers federations intervened.

²¹ It is the duty of correctional judges to investigate and to punish crimes in cases in which the punishment shall not be the deprivation of freedom, or exceed three years imprisonment. Judges criminal in matter are competent in the investigation of crimes punished by deprivation of freedom for a period that exceeds 3 years. After the instruction stage, the oral courts in criminal matter are in charge of trying those who have allegedly committed crimes of criminal competence.

²² Pursuant to Section 120 of the National Constitution. It is the only constitutional body with these characteristics.

²³ They happened in 1930, 1943, 1955, 1962, 1966 and 1976.

²⁴ The general José Felix Uriburu (1930-1932) was the head of the first military coup in Argentine history, overthrowing Hipólito Yrigoyen who had taken office in 1928. This coup inaugurated the “infamous decade”, an era signed by corruption and electoral fraud which extended until 1943. In June of that year, a military movement led by the United Officers Group (GOU) overthrew President Ramón Castillo. In 1955, the so-called “Freedom Revolution” overthrew Juan D. Perón, constitutionally elected in 1945 and who was holding his second mandate. In 1958 elections were called for. In 1962 Arturo Frondizi was removed by a civil coup led by the provisional president of the Senate and virtual vice-president of the nation: José M. Guido. In 1966, the democratic system was replaced by a military government, whose objective was to make structural socioeconomic, political, cultural and technological changes. The president at the time, Arturo Illia, was overthrown by the “Argentine Revolution” –led by Juan Carlos Onganía- which ended in 1973, with new elections that meant the return of the Peronist Party to power.

²⁵ Formed by general Jorge R. Videla, admiral Emilio Massera and brigadier Héctor Agosti.

²⁶ The decrees of the government were written by a Legislative Counseling Commission (CAL), made up by nine officers of the Armed Forces.

The unsuccessful attempt to recover the Malvinas Islands* in 1982²⁷, meant the beginning of the end of the military regime. At the end of that year elections were called for and finally held on October 30, 1983. Raúl R. Alfonsín, candidate for the Radical Party (UCR) was elected president of the nation, thus starting a period of democratic continuity which still lasts nowadays²⁸.

The National Commission on the Disappearance of Persons (CONADEP)²⁹ was then set up – formed by independent and prestigious citizens- and it had the autonomy to investigate the disappearances. After a year of investigation the report “Nunca Más” (Never Again) was published, giving the first and fundamental elements for future judicial prosecutions against the top perpetrators of those crimes.

Between 4 October and 9 December 1985, the Junta was tried by the National Federal Court of Criminal and Correctional Appeals for the Federal Capital³⁰. During that period, almost a thousand witnesses spoke and a dozen thousand documents were gathered. After the oral and public hearing, five of the nine ex commanders were sentenced for serious human rights violations³¹. The sentence, with slight modifications was later ratified by the Supreme Court of Justice of the Nation.

As of 1986, taking advantage of the economic-social weakening of Alfonsín’s government, the top chiefs of the Armed forces spoke and made declarations claiming a solution for the officers prosecuted for humans rights violations during the last military regime. In order to lessen the pressure and give the trials an end, the executive power sent the bill of what would later be known as “full stop law”³² to the Congress. It states the end of the criminal action for those alleged to have participated in the offences and who were not summoned to make a statement within sixty days³³.

Shortly afterwards, facing military pressure, law n°23,521 -called “due obedience law”-³⁴ was enacted. In its first section it states: *“It is presumed, without admitting contrary proof, that those who at the time the deed was committed acted as chief officers, subordinate officers, sergeants and troop staff of the armed, security, police or penitentiary forces, shall not be punishable for the offences to which Section 10, Paragraph 1, Law N°23,049 refers, for having acted by virtue of due obedience. Said presumptions shall also be applied to superior officers who did not act as chief commanders, area chiefs, sub area chiefs or security, police or penitentiary force chiefs, should it not be judicially decided, within thirty days of the enactment of this law, that they had the*

* Translator’s Note: Also known as Falklands Islands

²⁷ Argentina surrendered on June 14 of that same year.

²⁸ Raúl Alfonsín took office on December 10th that year.

²⁹ Through decree n°187, December 15, 1983.

³⁰ The nine ex-commanders who siezed power between 1976 and 1983 were put to trial: Jorge Rafael Videla, Emilio Eduardo Massera, Orlando Ramon Agosti, Roberto Eduardo Viola, Armando Lambruschini, Omar Graffigna, Leopoldo Fortunato Galtieri, Jorge Isaac Anaya y Basilio Lami Dozo.

³¹ On 9 December 1985, sentences were read: life sentence for Videla, life imprisonment for Massera, four years and six months’ imprisonment for Agosti, 17 years’ imprisonment for Viola and 8 years’ imprisonment for Lambruschini.

³² Law n°23,492. Sanctioned on 22 December 1986; passed on the 24 and Published in the Official Gazzete on the 29, same month.

³³ Section 1 of the law establishes that: *“The right to bring a criminal action shall cease with respect to any person alleged to have participated in any capacity in the offences referred to in article 10 of Law 23,049, who is not a fugitive, has not been declared to be in default, or on whom a summons to make a statement has not been ordered to be served by a competent court within sixty days of the date of enactment of this law. The same conditions shall apply to any right of criminal action against any person who may have committed offences connected with the use of violent forms of political action prior to 10 December 1983.”*

³⁴ Sanctioned on 4 June 1987; passed on 8 June and published in the Official Gazzete on the 9, same month.

authority to decide or that they took part in the giving of the commands. In such cases the foregoing people shall be considered, in full right, to have acted in a state of restraint under subordination to a higher authority and in fulfilment of a command, without the power or the possibility of examination, opposition or resistance to them as to their opportunity or lawfulness."

As soon as he took office, in 1989, President Carlos Saúl Menem announced his intention of granting pardon to all those prosecuted and sentenced for political violence actions which took place in the country. On 6 October 1989, he enacted three decrees which benefited around 400 people, all of them undergoing a judicial process³⁵. Months later Menem enacted a new series of decrees which meant impunity, since the sentences passed years before against members of the Military Junta, among others, were left with no effect³⁶.

2. Main political, economic and social events which took place in the country during the past decade

After seven years of military dictatorship, towards the end of 1983 a constitutional government was elected and a new series of democratic governments started, all of them signed by questioning³⁷.

It is not easy to understand the main political, economic and social events which happened in the 90's in Argentina without looking into the socio-economic scheme which started being implemented during the military dictatorship, the consequent breaking of the "hegemonic draw"³⁸ between different social actors and the dissembling of the Welfare State. That course of action was later confirmed and deepened, once in democracy, through a big process of structural changes which, at first, caused an inflation decrease and an increase in the growth rates.

Then a set of structural adjustment measures was implemented, mainly suggested by international organizations of credit assistance, supposedly destined to fight State "inefficiency" and to improve the socio-economic indicators, reducing poverty levels.

³⁵ The first group was made up by military officials, policemen and civilians prosecuted for offences committed during the so-called anti subversive war between 1976 and 1983. The second one was composed by officers and sub officers of the Armed Forces and civilians taken before the courts for offences of rebellion and mutiny against the constitutional system after 1983. Finally, the third group was formed by civilians accused of belonging to guerrilla organizations, with pending causes.

³⁶ Decrees nº2741 to nº2746, 29 December 1990.

³⁷ Since then, several military and one civilian uprising took place. The first one occurred on 20 April 1987 in Campo de Mayo, when the "carapintada" (because of the painted faces of the rebels) uprising happened, led by Lieutenant Colonel Aldo Rico. The next day, the top political parties and social forces signed the "Democratic Compromise Act", in which they made clear their strong decision of supporting the institutions. The surrender of the rebels only happened after president Raul Alfonsín promised to pass due obedience law (see note 34 above). The Carapintadas were not appeased. In 1988 there were two new uprisings. The first one -once again led by Colonel Aldo Rico- happened in Monte Caseros, in the Province of Corrientes. The second one, on 4 December in Villa Martelli, Buenos Aires, was led by Mohamed Alí Seineldín. In both cases they negotiated reaching compromises. Finally, on 23 January 1989, 50 militants of the Movimiento Todos por la Patria (M.T.P) political party, directed by Enrique Gorriarán Merlo, tried to gain Barrack 3 of La Tablada, in Buenos Aires. The attack was repressed with a result of 39 deaths. Those responsible were taken to oral and public trial and were severely sentenced. (see Mignone, Emilio; Derechos Humanos y Sociedad. El caso argentino; Ediciones del Pensamiento Nacional/CELS; Buenos Aires, 1991).

³⁸ The concept "hegemonic draw" refers to a particular relation of forces which existed between, on one side, the large landowners bourgeoisie and on the other, industrial bourgeoisie and the working class. The military dictatorship tried to take this alliance between industrial interests and the internal market to pieces (see O'Donnell, Guillermo: "Estado y alianzas en la política argentina" in Desarrollo Económico, Buenos Aires, 1977).

The Convertibility Law³⁹ is core to understand the process carried out. Passed in 1991, it was the first economic reform which established the strict convertibility between the local currency and the American dollar, binding the monetary offer with an almost full coverage of the Central Bank reserves and some proportion of the bonds in foreign currency issued by the government⁴⁰. The stabilizing impact of this measure, together with a positive international financial context and the support of the multilateral institutions of credit, facilitated further economic reforms⁴¹.

In very few years, almost all the public service enterprises (telephone, gas, electricity, water, transport, the iron and steel industry) were sold off to private investors; home economy was opened to the free flow of financial capital; the import tariff was strongly reduced; most of the non tariff barriers were removed, while the conformation of a commercial agreement with neighbouring countries (Mercosur⁴²) started to move forward; the foreign debt was negotiated pledging to strictly fulfil the payments according to the Brady Plan⁴³, at the same time engaging into a new and higher debt⁴⁴; the labour legislation was modified, reducing stability in the job position, lowering hiring and dismissal costs, lessening the employer's responsibility towards job accidents and company's bankruptcy; deep changes in public administration took place; the fiscal policy was modified, reducing the traditional financing sources of social policies, among other changes.

These measures not only sought to reduce public expenditure (thus paying both the home and foreign debt) but also to open new fields of activity to the private sector through the acquisition of clearly underrated enterprise's assets, and to transfer to consumers the burden of financing investments that were, until then, the responsibility of the public sector⁴⁵.

The economy started depending on the external sector and on the possibility of keeping growth rates high. In this way, the expanding cycle of the Convertibility Plan weakened progressively, until the 1995 crisis of the international financial markets, originated in Mexico⁴⁶, changed the scenery to one of recession. Subsequently the economy started growing again, but with lower rates than when the decade began. This expanding effect was less important and the economy

³⁹ Law N 23,928, of Austral Convertibility. Passed and Published on 27 March 1991.

⁴⁰ Section 4 of the Law reads: "*The unrestricted reserves of the CENTRAL BANK OF THE ARGENTINE REPUBLIC in gold and foreign currency shall always be equivalent to, at least, A HUNDRED PERCENT (100%) of the reserve money. To the purposes of this Law, whenever reserves are invested in deposits, other interest-earning operations, domestic and foreign government bonds payable in gold, precious metals, US dollars or other similarly sound currency, the estimation thereof shall be based on market values.*" Emphasized in the original document.

⁴¹ An analysis of the process can be obtained from: Lo Vuolo, R.; Barbeito, A.; Pautassi, L. y Rodríguez, C.; "La pobreza de la política contra la pobreza", CIEPP/Miño y Davila editors, Buenos Aires, 1999.

⁴² Common South Market (MERCOSUR) is a commercial treaty signed on 26 March 1991 by Argentina, Brazil, Paraguay and Uruguay. It also has associated states: Chile and Bolivia with whom it has established commercial agreements. The aim of the Treaty was to extend the size of the national markets of each of the parties, through integration.

⁴³ Argentina renegotiated its public debt in the early 90s according to the Brady Plan of re-structuring of foreign liabilities in Latin America, called like that because of its creator, the Treasury Secretary of the US, Nicholas Brady. The conditions of the short and long term rescheduling were agreed upon in 1992, in Santo Domingo, Dominican Republic, between a Committee of Creditor Banks and the Argentine Government, presided by Carlos Menem and Domingo Cavallo, the Economy Minister.

⁴⁴ From 1966 until 2002, in a term of three decades and a half, the external public debt in Argentina grew 45 times. In 1966, Argentina owed 3,276 million dollars. In early 2002 the debt had increased to 147,600 million dollars. Source: Agencia de Noticias de la República Argentina Telam, http://www.telam.com.ar/central_especial12.htm.

⁴⁵ See CELS; "Políticas Sociales ¿fin del 'modelo'?", in *Derechos Humanos en Argentina. Informe 2002*; Chapter VIII; Siglo XXI – Catálogos; Buenos Aires; 2002.

⁴⁶ Its impact popularly known as "Tequila Effect".

stopped again in the middle of 1998, coming later to a complete standstill⁴⁷. (See Annex I, tables 1 and 2).

Opposite to what was announced, the moderate economic recovery did not bring about productive employment opportunities. The open unemployment rate remained constant at 15% with surprising peaks⁴⁸ and only decreased when counting as employees the almost 2 million who received the benefit of the Unemployed Heads of Family Plan⁴⁹ –main social plan implemented by the government- while job conditions in informal activities grew worse and precarious and “under the table” jobs increased and poverty reached shocking levels. In May 2003 unemployment topped 15.6% of the economically active population (PEA) and underemployment 18.8%⁵⁰. Nevertheless, these same official statistics allow an alternative analysis of this situation: had those who benefit from the Heads of Family Plan not been considered employed, then unemployment in the whole country would have been as much as 21.4%⁵¹ (see Annex I, table 3). This situation had a different impact on men and women.

Observing the different parts of the PEA, the lack of balance in the labour market can begin to be understood. In 1999 the urban PEA in Argentina was formed by 13.7 million people, 60% men and 40% women. Of this total amount, 11.9 million were employed and 1.8 million actively looked for remunerated jobs without any success. The structure of the PEA changed throughout the decade, both in relation to the condition of the activity of the people (the relative participation of those unemployed increased) and to their gender (the relative participation of women increased).

While the number of active men grew 22% throughout the decade, women increased their market share by 41%. This significant increase in the urban PEA (30% between 1990 and 1999) was revealed in an unequal growth of employment and unemployment. While the total number of employed people increased by almost 20% throughout the decade, the number of those unemployed grew by 170%. Once more, the relative share of women in both fields of the labour market was greater. Employed women increased by 30% (compared with a 13% increase of employed men) and unemployed women increased by almost 200% (compared with a 150% increase of unemployed men)⁵².

⁴⁷ The Monthly Calculator of Economic Activity (EMAE) elaborated by the National Institute of Statistics and Censuses started giving positive results in December 2002, showing an increase of 8.7% in November 2003 compared with the same month the previous year. Source: La Nación, “La economía creció 8.7%; la reactivación cumplió un año”, 22 January, 2004.

⁴⁸ From 18% after the “Tequila Effect” in 1995, close to 20% at the end of 2001, and with a historical record in May 2002, when it reached 21.5% of the economically active population. (Source: National Institute of Statistics and Censuses -INDEC), Permanent Home Survey (EPH), May 2002). The EPH is a national program which permanently produces social indicators and its objective is to find out the socioeconomic characteristics of the population. It is carried out by the INDEC and the Provincial Secretaries of Statistics (DPE). The economically active population (PEA) is made up by those who have a job or that, not having one, are actively looking for it. It is composed of employed plus unemployed population.

⁴⁹ The Unemployed Heads of Family Plan was definitely regulated in May 2002. The Plan settled the payment of an economical “non remunerative” help of \$150 to those unemployed heads of families with under age children, in exchange for a series of activities (for instance, to start studying, or to participate in labour training courses, or to carry out projects or activities which create a local productive impact or to do communitarian services). According to information from the Labour, Job and Social Security Ministry, in September 2003, those who benefited from the program were 1,917,216. In order to get an evaluation of the plan see: CELS, “Plan Jefes y Jefas ¿Derecho social o beneficio sin derechos?”, working paper, May 2003. Available at: www.cels.org.ar.

⁵⁰ Of the economically active population studied by the EPH in May 2003, 1,583,000 out of 10,153,000 were unemployed and 1,917,000 were underemployed.

⁵¹ Source: INDEC, EPH, May 2003.

⁵² See CELS, “Políticas sociales ¿fin del ‘modelo’?”, op.cit.

The social structure of the country, which used to include a large middle class and an ascending social mobility, was critically transformed.

In this sense, when comparing the lowest with the highest income decile, it can be verified that in October 2002 the poorest 10% in Argentina kept just 1.4% of the total income while the richest 10% kept 37.4%. This gap explains, at least in part, the social disintegration of Argentina nowadays.

1. In May 2002 this relation was one of 30.4 times, perhaps the highest ever. The subsequent fall is exclusively due to the influence on the measuring of the allowance granted by the Heads of Family Plan. For comparative reasons, it can be quoted that in 1974 the gap between the lowest and the highest income decile was of the order of magnitude of 12.3 times and, in 1989, during the hyperinflation process it topped 23.1 times⁵³.

In a country with a 3,761,274 km² territory and with a population that grew throughout the years (See Annex I, table 4) also progressive and dramatic was the increase of the number of people whose standard of living dropped under the poverty and indigence lines during this decade⁵⁴. In 2002, this process reached shocking levels. The evolution of these indexes showed that the economic policies implemented did nothing but take social emergency to levels incompatible with a real democracy.

In May 2003, 54.7% of the population (slightly less than 20 million people) was below the poverty line. This information confirmed the tendency identified in the 2002 analysis, when the INDEC began to consider that over half of the population was undergoing a poverty situation, which meant an increase of almost 50% compared to the measure conducted in October 2001⁵⁵.

When analysing the evolution of the figures of the people in a situation of indigence, the result is even more shocking. According to the facts analyzed by the INDEC, in May 2003 26.3% of the population (roughly 9.5 million people) was below the indigence line. This figure meant an increase of almost 100% compared to the measure carried out in October 2001 (See Annex I, table 5).

The poverty increase had a different impact on the different sectors of the population. In this context, the situation of children is more serious: in October 2002, three out of four (75%) children under 18 were below the poverty line, while 42.7% survived in an indigent situation. This is reflected in an unacceptable child malnutrition picture, which in children under 1 year old can cause irreversible neurological damage. It is estimated that every year roughly 13,000 children under one year old die, most of them due to avoidable causes⁵⁶. According to the United Nations

⁵³ Source: Equipos de Investigación Social (Equis), "Estudio Distribución del Ingreso y brecha entre ricos y pobres. Participación en el Producto Bruto Interno (PBI) y disponibilidad de ingreso anual y diario para la población total desagregados por el decil de hogares. Comparación con países seleccionados según datos PNUD/ONY y entre provincias. Evolución de los últimos 25 años", November 2001, and data from the EPH of the INDEC, May and October 2002.

⁵⁴ According to the methodology used by the INDEC in the EPH, the measuring of poverty with the method "poverty line" consists in establishing, considering home incomes, if they are able to satisfy –through the purchase of goods and services- a group of alimentary and non alimentary essential needs. The concept "indigence line" used by INDEC establishes if the homes' income is enough to buy the food to satisfy the minimum threshold of energy and protein needs. In this way, homes which do not pass this threshold, or line, are considered indigent.

⁵⁵ Source: INDEC, Permanent Home Survey (EPH), May 2003.

⁵⁶ Puga, Teodoro; "Los derechos del niño", document presented in the XXXII Argentine Congress of Pediatrics, Salta, 27-30 September 2000. Available at: www.sap.org.ar

Children's Fund (UNICEF), almost 11,649 babies died in 2000⁵⁷. 4,138,000 out of 8,319,000 poor children in Argentina are indigent, that is, they belong to families that cannot support their basic nutrition.

Due to this crisis, the government launched the National Alimentary Emergency Plan which entailed the transference of resources from the federal government to the provinces with the objective of palliating the basic alimentary needs of the population. Also, after the malnutrition matter won a preponderant place in the public agenda, the government implemented the so-called "Rescue Plan", destined to lending assistance to the poorest sectors of the population⁵⁸.

Together with the alimentary crisis, during the last months of 2001 and the beginning of 2002 Argentina experienced a situation of health emergency consequence of the lack of medicines and basic supplies in public hospitals⁵⁹.

Educative crisis added to alimentary and sanitary crises. Even if the literacy rate is 96.2%, the last evaluation on education in all the country, based on information about the year 2000, indicated that only one third of students who finished high school got the basic and essential knowledge for that level. This is related to the fact that, due to the crisis, schools have become aiding rather than learning places. Also, the educational budget tended to go down or to remain stable while there was a vegetative growth of the schooling population. Thus, more children are educated but with less funds.

The available information shows that 1,272,000 youngsters between 15 and 24 years old -19.1% of that segment of the population- live in a state of complete inactivity: they don't work, study or look for a job. In only 12 months 127,000 people added to this picture and the tendency grew by 38.4% in four years⁶⁰ (See Annex I, tables 6 and 7).

The judicial system also suffered the impact of this crisis. For many years, the non-fulfilment of the expectations deposited in justice eroded the credibility and appreciation of the Judicial Power and its members, causing uneasiness and increasing the suffering of the citizens⁶¹. However, between 2002 and 2003 became –for the first time- one of the most relevant issues in the public agenda. On the one hand, due to the hardening of the social protest for an independent and

⁵⁷ UNICEF – Argentine Office / Health Ministry of the Nation / INDEC; "Evolución de la mortalidad infantil durante la década de los noventa en la Argentina"; in *Instantáneas*, September 2002, First Year, Number 2; Buenos Aires City. Available at: www.unicef.org/argentina.

⁵⁸ The Plan was devised after a dozen children died of malnutrition. It was conducted by the Social Policies Coordinator, Hilda González de Duhalde, and three members of the national board and it started in the province of Tucumán towards the end of November 2002.

⁵⁹ This sanitary crisis was characterized by the difficulty to get medicines, which was even more serious for poor people who depend on state provision and for those who have deficient social health plans with scarce budget; among these, the Social Medicine Institute for Retired Persons and Pensioners (PAMI). PAMI is the biggest social health service in Latin America, with around 3,382,067 affiliates and whose budget is incorporated to the national budget. Of all the affiliates, around 750,000 –equivalent to 23% of the total amount- are under 60 years old. Around 1,500,000 are between 60 and 74 years, which stand for approximately 45%. The other million (32%) is over 75 years old; Tobar, Federico; "Economía de la Reforma de los Seguros de Salud en Argentina", Fundación ISALUD, Buenos Aires, July 2001. Available at: www.isalud.org.

⁶⁰ Source: Clarín, "Un estudio de la UNESCO confirma que empeora la calidad educativa", 1 July 2003.

⁶¹ A national survey conducted by Gallup Argentina indicates that in 2000 the justice had the worst image since 1984, while that of the judges and prosecutors had fallen 68,4% in 16 years (La Nación, 23 January 2001). That same survey company revealed, in 2002, that only 19% of the people trusted the judiciary (La Nación, 6 August 2002). Another survey carried out by Analogías consulting revealed that 89% of Argentine people have negative opinion of the Supreme Court of Justice of the Nation (Clarín, 24 February 2002).

reliable justice⁶². On the other hand, because during this period, and for the first time in many years, Supreme Court Justices started being removed and appointed⁶³.

The social consequence of the deep socio-economic transformation which took place during the 90s encouraged a growing number of people to claim for rights. This kind of claiming to the State came together with the emergence of new actors, new topics, new forms of protest and new arguments progressively incorporated to public consideration⁶⁴.

The most outstanding example of this situation is the growing number of road blockades or “piquetes”, new way of protesting that arises as an answer to the growth of unemployment and to the dismantling of the social security institutions since 1990. It was used as a form of pressure to get job positions, subsidies and an increase of social expenditure on food, health and education. Thus, the typical demonstrations of big trade union organizations linked to the traditional job relations, were replaced by new forms of protest created by the most deprived sectors, victims of unemployment and recession⁶⁵ (see Annex I, table 8).

In December 16th, 1993, Santiago del Estero went up in arms against the corruption of the provincial government and the lack of answers from the State to popular protest. The so-called “santiagueñazo” showed the social face of the adjustment policies and the annoyance caused by the never fulfilled electoral promises. In their turn, Cutral-Có and Plaza Huincul, two towns in the province of Neuquén, started in 1996 an era of struggle with new social actors. The term “piquetero” started being used to refer to the men and women who blocked national road 22, in order to call the attention of the national government. Piqueteros used public spaces with the

⁶² Particularly since the adoption of measures such as imposing a financial “corralito” in December 2001, the administration of justice, in general, and the Supreme Court of Justice of the Nation, in particular, became the centre of criticism and demands. On a weekly basis, ‘money savers’ and professional associations marched to the Court Palace demanding a ruling which would put an end to the situation of systematic justice privation. Thus, the new demands combined with those historical demands for justice: for example, because of social rights violations, against the impunity in cases of police violence, for the AMIA case, etc.

⁶³ In 2002 there was an attempt to impeach the nine members of the Supreme Court of Justice. Even though the impeachment never took place, the resignation to his office of Judge Gustavo Bossert -21 October of that year- enabled the first change in the highest court: in December 2002, the Executive Power, hastily –in order to avoid the participation and discussion of the civil society- nominated provisional president of the Senate, Juan Carlos Maqueda. With the consent of the Senate, Maqueda was appointed a Justice of the Supreme Court. A further attempt to impeach some members of the court led to the resignations of Julio Nazareno (27 July 2003) and of Guillermo López (1 December 2003). The only member of the Supreme Court removed as a consequence of impeachment, was Eduardo Moliné O’Connor who, on 3 December 2003, was found guilty of the ill performing of his duties in two out of nine charges for which he was prosecuted. In October 2003, and replacing Julio Nazareno, criminal attorney Eugenio Raúl Zaffaroni was appointed Minister of the Supreme Court of Justice of the Nation. President Kirchner proposed Judge Carmen Argibay, as candidate to cover another of the vacancies, but until March 2004, she had not been appointed yet.

⁶⁴ More on the articulation of the new forms of protest can be found at CELS, Derechos Humanos. Argentina 2001: Siglo XXI/Catálogos, Buenos Aires, 2001.

⁶⁵ According to a report of the Centro de Estudios Nueva Mayoría, in 1997 an average of 11 blockades a month was registered, in 1998 only 4, in 1999 they reached 21 a month, in 2000, 43. In 2001 they almost increased 3 times, topping 115, increasing even more in 2002: 194 blockades a month while in January 2003, 104 were registered. An analysis of the blockades in each province reveals that: 27% (1,291) took place in Buenos Aires, 15% in Jujuy (694), 13% in the Federal Capital (624), 7% in Salta (331), 5% in Tucumán (258), Córdoba (234) and Santa Fe (227), and 4% in Neuquén (191). It is useful to emphasize that Jujuy, with only 2% of the national population, concentrates 15% of the total amount of blockades, Neuquén also with 2% of the population, concentrates 5% of the blockades and Salta with similar population concentrates 7%. Because of their population, these four provinces are the ones which show the highest tension in these kinds of protests. Source: “Sensible disminución de los cortes de rutas en enero”, 10 February 2003, report available at: www.nuevamayoria.com. The Justice, Security and Human Rights Ministry of the Nation, states that social protests have slightly gone down since April 2002. Source: Economy Ministry of the Argentine Republic, “Argentina. Indicadores Económicos”, February 2004. Documents available at: www.cei.gov.ar.

objective of requesting the government real solutions to real problems. Tartagal and General Mosconi, in the province of Salta, followed the uprising in Neuquén. Protests and road blockades spread all over the country. Organized in assemblies and movements, “piqueteros” started getting together and nowadays they show a high level of organization which positively takes advantages of all efforts and brings forward social bonds of solidarity and restraint⁶⁶.

This new method of organization of the most deprived sectors of society was strongly repressed by the different governments. In March 1997, Teresa Rodríguez was murdered during a repression in a demonstration of Neuquén youngsters. The metallurgist worker Víctor Choque had been murdered in 1995, in a demonstration in Tierra del Fuego. Tartagal and Mosconi in Salta, were also the background to confrontations with the security forces⁶⁷.

Darío Santillán and Maximiliano Kosteki were also killed in popular demonstrations. On June 26th, 2002, when several unemployed organizations planned a protest day which consisted in the blockade of major arteries to the city of Buenos Aires, two thousand five hundred demonstrators tried to block Pueyrredón Bridge, which connects the city of Buenos Aires with the Avellaneda district, in the province of Buenos Aires. The security forces repressed with tear gases and rubber bullets. The results of this confrontation were 90 injured people and the killings of these two young men of 21 and 24 years old. They both belonged to the Unemployed Workers Movement (MTD), the Aníbal Verón current⁶⁸.

The popular unrest caused by the deterioration of the socio-economic situation led to the political-institutional events which took place in December 2001⁶⁹. In just fifteen days the country had five presidents, it consolidated its financial default, changed the strong convertibility policy it had had since 1991 and devaluated the peso.⁷⁰

In a context of deep economic stagnation and social inequity, vivid demonstrations of protest and stores looting took place in all the country⁷¹. The National Executive Power declared the siege in the whole of the country⁷², measure that caused a generalized rejection in the population. The

⁶⁶ See: CELS, El Estado frente a la protesta social 1996-2002, Siglo Veintiuno Editores Argentina/CELS; Buenos Aires, 2003. Chapter 1.

⁶⁷ For more information about the circumstances in which this killings occurred see, Part II, section 2.5.3.4 below and CELS; El Estado frente a la protesta social 1996-2002, op.cit.

⁶⁸ About these two extrajudicial executions see Part II, section 2.5.3.4 below.

⁶⁹ About the December crisis see CELS, “La protesta social en Argentina durante diciembre 2001”, document available at: www.cels.org.ar and CELS, El Estado frente a la protesta social 1996-2002, op.cit.

⁷⁰ In December 2001, the situation in the country was delicate. The crisis was considered by many to be terminal. In this complex picture, during the first days of December, the national government adopted a series of important restrictions on cash withdrawals from bank accounts. Monetary transfers were limited and almost all payments had to be done through bank transfers. The “corralito”, established by decree 157/01 of the Executive Power, locked up the deposits of an important part of the weak local middle class and harmed all the sectors of the informal economy.

⁷¹ On 19 December there were several store lootings all over the country. In some cases, in particular in the city of Buenos Aires, the police did not intervene effectively. In many others, there were unnecessary confrontations with the police officers.

⁷² In Section 23 the National Constitution states: “In the event of internal disorder or foreign attack that endangers the exercise of this Constitution and of the authorities created thereby, the Province or territory in which the disturbance of order exists shall be declared in a state of siege and the constitutional guarantees shall be suspended therein. But during such suspension the President of the Republic may not convict or apply punishment upon his own authority. His power shall be limited in such a case, with respect to persons, to arresting them or transferring them from one point of the Nation to another, should they prefer not to leave Argentine territory.”

state repression that followed caused around thirty murders and other 4500 people were arrested⁷³.

The president Fernando De la Rúa, in office since December 1999, had to resign in the worst moment of the crisis. After the temporary office of the president of the Senate, Ramón Puerta, Adolfo Rodríguez Saá, governor of the province of San Luis, took office of the National Executive Power, but a week after his designation, he also had to leave the position amidst a deep social discontent and a serious economic and political setting. After a small interregnum, during which the president of the House of Representatives, Eduardo Camaño, was in charge, the Legislative Assembly appointed Senator Eduardo Duhalde as head of the Executive Power, to finish De la Rúa's Mandate. After his appointment, the biggest tension factors seemed to slightly calm down. However, the structural context which had caused the conflicts had not really changed and protest manifestations persisted in many parts of the country. The murders of Darío Santillán and Maximiliano Kosteki, on 26 June 2002, speeded the institutional normalization: after having won the national elections, on 25 May 2003, Néstor Kirchner, until then governor of the province of Santa Cruz, took office as the President of the Argentine Republic.

3. Ratification of treaties on human rights and reporting record

The Argentine Constitution states in article 22, paragraph 75, that the National Congress shall have power to:

"To approve or reject treaties entered with other nations and with international organizations, and concordats with the Holy See. Treaties and concordats have higher standing than laws. 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 its Optional Protocol; the [International] Convention on the Prevention and Punishment 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, Inhumane or Degrading Treatment or Punishment; and the Convention on the Rights of the Child, in the conditions of their validity they have constitutional standing, they do not abolish any section of the first part of this Constitution and are to be understood as complementary to the rights and guarantees provided therein. They may only be denounced, if such is to be the case, by the National Executive Power, after prior approval by two-thirds of the totality of the members of each House. Other treaties and conventions

⁷³ After passing the decree, the president addressed the country in a TV message. In his speech he unsuccessfully convoked the opposing forces to help him keep his office. Almost simultaneously in all the country, and specially in the City of Buenos Aires, a lot of people went out of their houses and met in a massive popular protest, expressed banging pots, they won the streets and spontaneously marched in big groups towards Plaza de Mayo. After midnight, certain press versions about possible resignations in the Board started circulating. The first person to abandon his office was Economy Minister, Domingo Cavallo. Finally all the Board of Fernando De la Rúa resigned that night in order to give the president the possibility of negotiating with the opposition. At one in the morning on Thursday 20 December, when Domingo Cavallo's resignation was announced on television, the Federal Police who was in Plaza de Mayo started throwing tear gases to demonstrators who had peacefully and noisily gathered there. The reaction of the police was unjustified. In response to that, many demonstrators went back home or far away from the area of Plaza de Mayo and the Two Congresses Park. However, big groups, more active ones, stayed there and resisted police intervention. Late in the morning, many demonstrators went back to gather in Plaza de Mayo and the National Congress. Even though the situation was quiet, the Federal Police intervened once again repressing the people who were peacefully demonstrating. In this context at least six people were bullet wounded and died, at least five more were injured with lead bullets; many other, countless, were hit, also by horses and suffered the effects of tear gases.

on human rights, after being approved by Congress, shall require the vote of two-thirds of the totality of the members of each Chamber in order to enjoy standing on the same level as the Constitution.

3.1 Regional System

- American Convention on Human Rights. "Pact of San José, Costa Rica"

Adopted at San José, Costa Rica, on 22 November 1969, at the Inter-American Specialized Conference on Human Rights.

Entry into force: 18 July 1978, in accordance with section 74.2 of the Convention.

Signature: 2 February 1984

Approbation: law n°23,054, passed on 1 March 1984 and published in the Official Gazette on 27 March same year.

Ratification deposit: 5 September 1984

Acceptance of the competence of the Inter-American Court on Human Rights: 5 September 1984.

In the document of ratification, date 14 August, 1984, deposited 5 September 1984 in the General Secretary of the OEA, the government of the Argentine Republic acknowledges the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights with no defined time limit and under condition of strict reciprocity, about cases related to the interpretation or application of such Convention, with the partial reservation and bearing into account the interpretative declarations stated in the Document of Ratification. Furthermore, it is stated that the obligations contracted by virtue of the Convention shall only have effects in relation with topics which took place after the ratification of such document.

Reservations and interpretative declarations (made at the time of signature)

I. Reservations

Article 21 is subject to the following reservation: *"The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of 'public utility' and 'social interest', nor anything they may understand to be 'fair compensation'."*

II. Interpretative Declarations:

Article 5, paragraph 3, shall be interpreted to mean that a punishment shall not be applied to any person other than the criminal, that is, that there shall be no vicarious criminal punishment.

Article 7, paragraph 7, shall be interpreted to mean that the prohibition against "detention for debt" does not involve prohibiting the state from basing punishment on default of certain debts, when the punishment is not imposed for default itself but rather for a prior independent, illegal, punishable act.

Article 10 shall be interpreted to mean that the "miscarriage of justice" has been established by a national court.

- Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights. "Protocol of San Salvador"

Adopted at San Salvador, El Salvador, on 17 November, 1988 at the eighteenth regular session of the General Assembly of the Organization of American States.

Entry into force: 16 November 1999
Signature: 17 November 1988
Ratification deposit: 23 October 2003

- Convention on Territorial Asylum

Adopted at Caracas, Venezuela, on 28 March 1954 in the Tenth Inter-American Conference.

Entry into force: 29 December 1954, in accordance with Section XIV of the Convention.
Signature: 28 March 1954
Approval: law n°24,055, sanctioned on 17 December 1991, passed on 8 January 1992 and published in the Official Gazette on 14 January same year.

Reservation (made at the time of signature)

"The Delegation of Argentina has voted in favor of the convention regarding Territorial Asylum, but makes express reservation in regard to Article VII, as it believes that the latter does not duly consider nor satisfactorily resolve the problem arising from the exercise, on the part of political asylees, of the right to the free expression of thought."

- Convention on Diplomatic Asylum

Adopted at Caracas, Venezuela, 28 March 1954 in the Tenth Inter-American Conference.

Entry into force: 29 December 1954, in accordance with Section XXIII of the Convention.
Signature: 28 March 1954
Approval: law n°24,056, sanctioned on 17 December 1991, passed on 8 January 1992 and published in the Official Gazette on 14 January same year.
Ratification: 15 February 1993.

- Inter-American Convention to Prevent and Punish Torture

Adopted at Cartagena de Indias, Colombia, 9 December 1985, at the fifteenth regular session of the General Assembly.

Entry into force: 28 February 1987, according to Section 22 of the Convention
Signature: 10 February 1986
Approval: law n°23,652, sanctioned on 20 October 1988, published in the Official Gazette on 2 November same year.
Ratification: 18 November 1988.
Ratification deposit: 31 March 1989.

- Inter-American Convention on Forced Disappearance of Persons

Adopted at Belém do Pará, Brazil, on 9 June 1994, at the twenty-fourth regular session of the General Assembly.

Entry into force: 28 March 1996.
Signature: 10 June 1994.
Ratification deposit: 28 February 1996.

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém do Pará"

Adopted at Belém do Pará, Brazil, on 9 June 1994, at the twenty-fourth regular session of the General Assembly.

Entry into force: 5 March 1995.

Signature: 10 June 1994.

Approbation: law n°24,632, sanctioned on 13 March 1996, passed on 1 April and published in the Official Gazette on 9 same month.

Ratification deposit: 5 July 1996.

- Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities.

Adopted at Guatemala, Guatemala, on 7 June 1999, at the twenty-ninth regular session of the General Assembly.

Entry into force: 14 September 2001.

Signature: 8 June 1999.

Approbation: law n°25,280, sanctioned on 6 July 2000, passed on 31 same month and published in the Official Gazette on 4 August 2001.

Ratification Deposit: 10 January 2001.

Report presentation

- o Fourteenth periodic reports of States Parties due in 1996: Argentina, 28 February 1997
- o Fifteenth periodic reports of States Parties due in 1998: Argentina, 11 November 1999.

- Inter-American Convention on the International Return of Children

Adopted at Montevideo, Oriental Republic of Uruguay, on 15 July 1989, at the Fourth Inter-American Specialized Conference on Private International Law.

Entry into force: 11 April 1994.

Approbation: law n°25,358, sanctioned on 1 November 2000, passed on 29 same month and published in the Official Gazette on 12 December 2000.

Ratification: 15 February 2001.

- Inter-American Convention on International Traffic in Minors

Adopted at Mexico D.F., Mexico, on 18 March 1994, at the Fifth Inter-American Specialized Conference on Private International Law.

Entry into force: 15 August 1997, according to Section 33 of the Convention.

Approbation: Law N°25,179, sanctioned on 22 September 1999, passed on 20 October 1999 and published in the Official Gazette on 26 same month.

Adhesion: 13 December 1999.

Interpretative declaration (made at the time of adhesion):

"The ARGENTINE REPUBLIC declares that, pursuant to Article 23, it will recognize and execute criminal judgments handed down in other State Parties in respect of awards of damages resulting from the international traffic in minors."

"The ARGENTINE REPUBLIC further declares that, pursuant to Article 26, it will not entertain in any civil suit within its jurisdiction a challenge to the existence of the facts of the crime or the guilt of the person convicted when a conviction has been handed down for this crime in another State Party."

3.2 Universal System

- International Covenant on Economic, Social and Cultural Rights

Adopted and opened to signature, ratification and adhesion by the General Assembly of the United Nations in Resolution 2200 A (XXI), on 16 December 1966.

Entry into force: 3 January 1976, according to Section 27.

Approbation: law n°23,313, sanctioned on 17 April 1986, published in the Official Gazette on 15 May same year.

Ratification: 8 August 1986.

Reporting status:

- o Second periodic report: 15 October 1997.

- International Covenant on Civil and Political Rights

Adopted and opened to signature, ratification and adhesion by the General Assembly of the United Nations in Resolution 2200A (XXI), on 16 December 1966.

Entry into force: 23 March 1976, according to Section 49.

Approbation: law n°23,313, sanctioned on 17 April 1986, published in the Official Gazette on 15 May same year.

Ratification: 8 August 1986.

Reporting status:

- o Second periodic reports of States Parties due in 1992: Argentina, 23 February 1994.
- o Third periodic reports of States Parties due in 1997: Argentina, 7 May 1999.

Understanding:

"The Argentine Government states that the application of the second part of section 15 of the International Covenant on Civil and Political Rights shall be subject to the principle laid down in Section 18 of the Argentine National Constitution".

- Optional Protocol to the International Covenant on Civil and Political Rights

Adopted and opened to signature, ratification and adhesion by the General Assembly of the United Nations in Resolution 2200 A (XXI), on 16 December 1966.

Entry into force: 23 March 1976, according to section 9.

Approbation: law n°23,313, sanctioned on 17 April 1986, published in the Official Gazette on 15 May same year.

Accession: 8 August 1986.

- International Convention on the Elimination of all forms of Racial Discrimination

Adopted and opened to signature, ratification and adhesion by the General Assembly of the United Nations in Resolution 2106 A (XX), on 21 December 1965.

Entry into force: 4 January 1969, according to Section 19.

Approbation: law n°17,722, 13 July 1967.

Ratification: 2 October 1968.

Reporting status:

- o Fourteenth periodic reports of States Parties due in 1996: Argentina, 28 February 1997.
- o Fifteenth periodic reports of States Parties due in 1998: Argentina, 13 September 1999.

- Convention on the Elimination of All Forms of Discrimination against Women

Adopted and opened to signature, ratification and adhesion by the General Assembly of the United Nations in Resolution 34/180, on 18 December 1979.

Entry into force: 3 September 1981, according to Section 27 (1).

Approbation: law n°23,179, sanctioned on 8 May 1985, passed on 27 same month and published in the Official Gazette on 3 June 1985.

Ratification: 15 July 1985.

Reporting status:

- o Fourth periodic reports of States Parties: Argentina, 8 February 2000.
- o Fifth periodic report of States Parties: Argentina, 11 February 2002.

Reservation:

"The Government of Argentina declares that it does not consider itself bound by Section 29, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women."

- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Adopted by the General Assembly of the General Nations in Resolution A/54/4 on 6 October 1999.

Signature: 28 February 2000.

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened to signature, ratification and adhesion by the General Assembly of the United Nations in Resolution 39/46 on 10 December 1984.

Entry into force: 26 June 1987, according to Section 27 (1).

Approbation: law n°23,338, sanctioned on 30 July 1986, published in the Official Gazette on 26 February 1987.

Ratification: 24 September 1986.

Reporting status:

- o Third periodic reports of States Parties due in 1996: Argentina, 18 June 1997.
- o Fourth periodic reports of States Parties due in 2000: Argentina, 2 August 2002.

- Covenant on the Prohibition of the Worst Forms of Child Work and the Immediate Action for its Elimination (Covenant 182)

Adopted in the 87^o meeting of the International Labour Conference, on 17 June 1999.

Approbation: law n°25,255, sanctioned on 7 June 2000, passed on 20 July and published in the Official Gazette on 26 same month.

Ratification: 2 June 2001.

- Covenant on the Minimum Age of Admissions to Job (Covenant 138)

Adopted in the 58^o meeting of the International Labour Conference, on 26 June 1973.

Entry into force: 19 June 1976

Approbation: law n°24,650, sanctioned on 29 May 1996, passed on 24 June and published in the Official Gazette on 1 July 1996.

Ratification: 11 November 1996.

- Convention on the Rights of the Child

Adopted and opened to signature, ratification and adhesion by the General Assembly of the United Nations in Resolution 44/25, on 20 November 1989.

Entry into force: 2 September 1990, according to Section 49.

Approbation: law n°23,849, sanctioned on 27 September 1990, passed on 16 October 1990 and published in the Official Gazette on 22 same month.

Ratification: 5 December 1990.

Reporting status:

- o Initial reports of States Parties due in 1993: Argentina, 23 August 1993.
- o Periodic reports of States Parties due in 1998: Argentina, 26 February 2002.

I. Reservations and declarations made at the moment of the signature

Reservations:

"The Argentine Republic enters a reservation to subparagraphs (b), (c), (d) and (e) of Section 21 of the Convention on the Right of the Child and declares that those subparagraphs shall not apply in areas within its jurisdiction because, in its view, before they can be applied a strict mechanism must exist for the legal protection of children in matters of inter. Country adoption, in order to prevent trafficking in the sale of children".

Declarations

"Concerning Section 1 of the Convention, the Argentine Republic, declares that the Section must be interpreted to the effect that a child means every human being from the moment of conception up to the age of eighteen".

“Concerning Section 38 of the Convention, the Argentine Republic declares that it would have liked the Convention categorically to prohibit the use of children in armed conflicts. Such a prohibition exists in its domestic law, which, by virtue of Section 41 of the Convention, it shall continue to apply in this regard”.

II. Reservations and declarations made at the time of ratification.

Declaration:

“Concerning subparagraph (f) of Section 24 of the Convention, the Argentine Republic considers that questions relating to family planning are the exclusive concern of parents in accordance with ethical and moral principles and understands it to be a State obligation, under this article, to adopt measures providing guidance for parents and education for responsible parenthood.”

- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

Adopted and opened to signature and ratification, or adhesion, by the General Assembly of the United Nations in Resolution A/RES/54/263 on 25 May 2000.

Entry into force: 12 February 2002.

Ratification: 10 September 2002.

- Optional Protocol to the Covenant on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography

Adopted by the General Assembly of the United Nations through Resolution A/RES/54/263 on 25 May 2000.

Entry into force: 18 January 2002

Signature: 1 April 2002

Ratification: 25 September 2003

- International Convention on the Suppression and Punishment of the Crime of Apartheid

Adopted and opened to signature and ratification by the General Assembly of the United Nations in Resolution 3068 (XXVIII), on 30 November 1973.

Entry into force: 18 July 1976, according to Section XV.

Signature: 6 June 1975.

Approbation: law n°23,221, sanctioned on 21 August 1985, published in the Official Gazette on 3 October same year.

Ratification: 7 November 1985.

Declaration:

“It is the understanding of the Argentine Republic that Section XII of the Convention should be interpreted to mean that its express consent shall be required in order for any dispute to which it is a party and which has not been settled by negotiation to be brought before the International Court of Justice”.

- Convention on the Prevention and Punishment of the Crime of Genocide

Adopted and opened to signature and ratification, or adhesion, by the General Assembly of the United Nations in Resolution 260 A (III), on 9 December 1948.

Entry into force: 12 January 1951, according to Section XIII.

Approbation: decree-law nº6286/1956, 9 January 1957.

Accession: 5 June 1956.

Declarations and Reservations:

"Ad Section IX: The Argentine Government reserves the right not to submit to the procedure laid down in this article any dispute relating directly or indirectly to the territories referred to in its reservation to Section XII.

"Ad Section XII: If any other Contracting Party extends the application of the Convention to territories under the sovereignty of the Argentine Republic, this extension shall in no way affect the rights of the Republic."

- Convention on the Status of Stateless Persons

Adopted on 28 September 1954 by a Plenipotentiary Conference convoked by the Economic and Social Council of the United Nations in Resolution 526 A (XVII), 26 April 1954.

Entry into force: 6 June 1960, according to Section 39.

Accession: 1 June 1972.

Declarations and Reservations:

"The application of this Convention in territories whose sovereignty is the subject of discussion between two or more States, irrespective of whether they are parties to the Convention, cannot be construed as an alteration, renunciation or relinquishment of the position previously maintained by each of them."

- Convention relating to the Status of Refugees

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950

Entry into force: 22 April 1954, according to Section 43.

Accession: 15 November 1961

Declarations under Article B of Section 1 of the Convention

"Events occurring in Europe or elsewhere before 1 January 1951"

- Protocol Relating to the Status of Refugees

The Economic and Social Council in Resolution 1186 (XLI), on 18 November 1966 and the General Assembly of the United Nations in Resolution 2198 (XXI) on 16 December 1966 ratified the Protocol. In the same Resolution, the General Assembly requested the Secretary General to transmit the text of the Protocol to the States mentioned in its Section V so that they could adhere to the Protocol

Entry into force: 4 October 1967, according to Section VIII.
Accession: 6 December 1967

PART II – STATE VIOLENCE

1. Methodology

The objective of this part of the report is to describe and preliminarily analyze five of the different ways in which state violence is exercised in Argentina. They were identified based on CELS experience and antecedents on the subject, reports made by other non governmental organizations and state agencies, considering the operational definition of the term “violence” used in this project. The five forms of state violence identified were: forced evictions; psychological abuse and threats; home and person searching; ill-treatment, torture and rapes; and, lastly, armed confrontations and extra-judicial executions.

Each of these five forms of violence is, in turn, exercised through different practices. These vary according to the circumstances under which violence is exercised, the characteristics of victims and victimizers and the relation between them. The identification of the different practices was made following an inductive procedure. That is, based on the analysis of several cases made popular by the mass media of communication (specially the press), personal denounces received by the CELS, other non governmental organizations and/or public offices and denounces made by state agencies and civil society institutions. Thus, patterns were identified –through the spotting of similarities in the different cases-, practices were described and some cases presented as examples. Whenever available, statistic information was added to description of the practices so as to show the dimensions of violence.

Even the idea was to describe and analyze cases that represent the situation of the entire country, a great part of the information available for the elaboration of this report corresponds to events which took place within the metropolitan area of Buenos Aires –that is, Buenos Aires city and its suburbs, also known as the “Conurbano Bonaerense”. The reason for this is that the best-selling newspapers and the most relevant civil society organization are located in that geographical area.

It is also necessary to bear in mind that the amount and frequency of violence and violations to economic, social and cultural rights in Argentina are not reflected on the amount of information available. Only some events become popularly known due to matters such as their geographical location or the amount, particular characteristics or level of organization of the persons involved. The most important consequence of the lack of information is perhaps the difficulty it brings in the identification of patterns with which violence is deployed and the limitations it sets on the characterization of the actors –both victims and victimizers- who take part in the conflict.

Even though in this part of the report we outline some of the factors which promote or are favorable for the victimization of groups particularly vulnerable in socioeconomic terms, a deep analysis of these factors is the objective of Part IV of the report.

2. Forms in which state violence is evidenced and practices through which it is exercised

2.1 Forced evictions

2.1.1 Legal acknowledgement to the right to housing

In Argentina the right to housing is acknowledged in the Constitution, both through Section 14 bis of the National Constitution –which reads: “[...] *In particular, the law shall establish: [...] the access to legal housing*”- as well as through the international human rights treaties which were granted constitutional standing⁷⁴.

Among them, the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR), which in Section 11, first paragraph, establishes that: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improving of living conditions.”

Also the Universal Declaration of Human Rights determines in Section 25 that: “*Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing [...]*”.

In the regional sphere, the right to housing is protected under the American Declaration of the Rights and Duties of Man⁷⁵ and under the American Convention on Human Rights which through Section 26 refers to the rules of the Charter of the Organization of American States, where in Section 33 the States “[...] agree [...] to devote their utmost efforts to accomplishing the following basic goals: [...] k) *Adequate housing for all sectors of the population*”.

The regulations quoted evidence the clear compromise of Argentina to adopt the measures necessary to guarantee the right to adequate housing⁷⁶. Besides the quoted rules, it is necessary to keep in mind the jurisprudence which arises from the competent bodies in order to interpret and apply those same treaties.

In this sense, the ICESCR, provides a control mechanism to the actions of the States Parties through a periodic report system. These reports are evaluated by the Economic, Social and Cultural Rights Committee (hereinafter ESCR Committee or the Committee), which expresses its opinions and gives general recommendations to the States through the Final Observations.

Apart from this duty of controlling, the mission of this body is to outline the contents of the rights provided in the ICESCR, as well as the duties that as a counterpart have contracted the States Parties. With that aim, it issues General Observations about the rules of the Covenant. This General Observations are of great importance since they clarify the meaning of the provisions in the Covenant⁷⁷. The ESCR Committee has elaborated two General Observations which are

⁷⁴ See Part I, Section 3, above.

⁷⁵ In this declaration, the right to housing is protected through the right to health. Thus, Section XI points out that “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources”.

⁷⁶ Besides the quoted treaties, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child, also protect the right to adequate housing.

⁷⁷ Pursuant to Scheinin, Martin; “Economic and Social Rights as Legal Rights”; in Eide, A.; Drause, C. and Rosas, A. (eds): Economic, Social and Cultural Rights, Nijhoff Publishers, The Netherlands, 1995, p. 55.

closely related to the right to housing, they are: General Observation N°4: *The right to adequate housing*; and General Observation N°7: *The right to adequate housing: forced evictions*⁷⁸.

In General Observation N°4, the ESCR Committee acknowledged the existing interrelation between the access to adequate housing and the other aspects human life, expressing that “[...] *the human right to adequate housing is of fundamental importance to the enjoyment of all economic, social and cultural rights*”⁷⁹. It also stated that “housing” should not be considered the mere fact of having a roof over the head, but rather as the right to live in peace, safety and dignity somewhere. Lastly, the fact that housing has to be adequate means that the persons can make use of a place where to be on their own if they wish, adequate space, adequate safety, adequate lightning and ventilation, an adequate basic infrastructure and an adequate situation in relation to job and basic services, all that at a reasonable cost⁸⁰.

2.1.2 Forced Evictions. Concept and consequences

“Forced Evictions” were defined by the ESCR Committee as “[...] *the fact of forcing people, families and/or communities out of their homes and/or the lands they occupy, permanent or temporarily, without offering them appropriate forms of legal or other kind of protection or their access to them*”⁸¹. They may originate in violent situations as well as in conflicts on land rights, development or infrastructure projects⁸².

In turn, the Human Rights Committee of the United Nations defined the phenomenon of forced evictions as “[...] *the involuntary moving of people, families and groups out of their homes and communities, which means an increase in the number of homeless people and the worsening of their life conditions*”⁸³.

Forced evictions are not only a violation of the right to adequate housing, but also “[...] *they can cause violations of civil and political rights, such as the right to life, the right to personal safety, the right of not interfering in private life, the family and the home, and the right to peacefully enjoy some personal goods*”⁸⁴.

The ESCR Committee has established that the State has to abstain from carrying out forced evictions, which shall only be justified in exceptional situations⁸⁵, and provided they contemplate

⁷⁸ Besides, the ESCR Committee has adopted several initiatives in relation with the right to housing, among which are the following: a) it has held a “general debate” on this right; b) it has carried out a full revision of the general lines of the reports the States are due to present pursuant to Sections 16 and 17 of the PIESCR; and c) in its final observations about the reports of some of the States Parties it has pointed out that the States violated the right to adequate housing because they resorted to the practice of forced eviction. Pursuant to the United Nations Organizations, “El derecho humano a una vivienda adecuada”, Informative brochure N°21.

⁷⁹ The ESCR Committee GO n°4 paragraph 1. This interrelation was also dealt with by the Committee in its GO n°7 item 5, expressing that forced evictions frequently violated other human rights, besides housing. In this sense, the right to housing is a compound right, and its violation also violates other fundamental rights, such as health, employment, education and privacy. (Pursuant to, Pisarello, Gerardo; Vivienda para todos: un derecho en (de)construcción. El derecho a una vivienda digna y adecuada como derecho exigible; Barcelona, 2003; p. 25-30).

⁸⁰ Pursuant to ESCR Committee, GO n°4, paragraph 7.

⁸¹ Pursuant to ESCR Committee, GO n°7, paragraph 4. However, the prohibition of forced evictions does not apply to those carried out legally and according the dispositions of the international covenants on human rights.

⁸² Pursuant to ESCR Committee, GO n°7, paragraphs 7 and 8.

⁸³ Resolution 1993/77 “Forced Evictions” of the Human Rights Committee of the United Nations, adopted on 10 March, 1993.

⁸⁴ ESCR Committee, GO n°7, paragraph 5.

⁸⁵ ESCR Committee, GO n°7, paragraph 9. Among the reasons which can justify evictions, the following are quoted as examples: lack of rent payment or damage caused to the rented property without a justified cause.

alternative measures for the resettlement of the people⁸⁶. Furthermore it expressed that “[...] evictions should not leave people without a house or exposed to violations of other human rights. When those harmed by evictions have no resources, the State Party shall adopt all the necessary measures, to their greatest possible extent, to grant them another house, resettlement or access to productive lands, as it may be convenient.”⁸⁷

The jurisprudence of the European Court of Human Rights (hereinafter European Court or ECHR) has characterized situations of forced evictions and demolitions as forms of cruel, inhuman and degrading treatment.⁸⁸

Following this kind of thinking, the ECHR has emphasized a series of elements that determine such categorization. Those elements are related with: a) the way in which houses are destroyed and evictions are carried out; b) the personal circumstances of the victims; and c) the situation of the victims after the demolitions / evictions take place.⁸⁹

With respect to the first point, the ECHR has emphasized as fundamental elements: the fact that the victims are not duly notified, the premeditation of the state agents, the presence of police forces in the place of the eviction, the destruction of houses and of the goods in front of the victims, the lack of consideration for the feelings of the victims and the inadequate precautions taken in order to guarantee their safety⁹⁰. Forced evictions are frequently executed by personnel of the security forces armed with sticks, firearms and, in some cases, tear gases, thus risking human dignity and safety. Eviction can cause to their victims violations that go from verbal abuse with insults and degradation, to hitting, arrests, property destruction, refusing to offer medical assistance or any kind of social support to wounded people.

Relating to the personal circumstances of the victims, the ECHR has considered factors such as old age and the length of time spent in a certain place, as elements that make the situation generated by the demolition or forced eviction more serious, to the verge of considering them forms of cruel, inhuman and degrading treatment.

Following this line of reasoning, poverty is also susceptible of being considered an aggravating circumstance. In fact, poverty makes the victims more vulnerable to evictions or demolition, simply because they do not have the possibility of getting access to alternative housing.

⁸⁷ ESCR Committee, GO n°4, paragraph 8 a. Many have been the occasions in which the committee has pointed out the acting of a State, both for allowing and for carrying out forced evictions. In the case of Mexico, the Committee recommended the setting of a register of all evictions and their consequences, and the adoptions of immediate measures against forced evictions (Final observations of the ESCR Committee, Mexico, 08/12/99, included in the document E/C.12/1/Add.41, par.41). When examining the report brought forward by Honduras, the Committee showed its concern for the cases of forced evictions –specially among peasants and indigenous populations and in the areas where there is mine working- without there being enough compensation or taking appropriate measures for their resettlement (Final observations of the ESCR Committee, Honduras 21/05/01, included in the document E/C.12/1/Add.57, par.23). Finally in the case of Bolivia, the Committee showed its concern for the severe shortage of adequate housing and the consequences of the forced evictions on peasants and indigenous populations to benefit mining and wood concessions, and the lack of effective measures in order to provide social interest housing units to low income, vulnerable or deprived groups. (Final Observations of the ESCR Committee, Bolivia 21/05/01, included in the document E (C.12/1/Add.60 par21).

⁸⁷ ESCR Committee, GO n°7, paragraph 17.

⁸⁸ Based on The Egyptian Centre For Housing Rights and World Organization Against Torture; “The Policy of Forced Evictions and House Demolitions in Egypt. A form of Cruel, Inhuman or Degrading Treatment or Punishment”; in Sakan Non Periodical Newsletter, The Egyptian Centre For Housing Rights, Talher, 2003.

⁸⁹ Pursuant to SELÇUK and ASKER v. TURKEY case, Judgment of the ECtHR, 24 April 1998.

⁹⁰ Pursuant to SELÇUK and ASKER v. TURKEY case, op.cit.

Furthermore, in general, victims lose all their goods in the demolition or eviction. Thus, forced evictions worsen the crisis in life conditions of the sectors with fewer resources, especially if the government fails to provide alternative solutions that take into account the social dimensions of the problem of housing and its causes.

Finally, regarding the situation the victims have to go through after the demolition or eviction, the Court enumerates the lack of shelter, the obligation to leave the community and the lack of assistance from the authorities, as factors which cause such suffering that categorize the eviction as cruel, inhuman and degrading treatment. Forced evictions take place, in most cases, without providing adequate alternatives or compensation, even if they are legally provided. Even in cases in which the State agrees to compensate or to give alternative housing, that generally happens a long time after the eviction, depriving the victims of every support and protection.

Since it results in situations of extreme suffering, both physical and psychological, forced evictions carried out by the State are a violation to what is established by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which in Section 16 establishes: *“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in section 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”* It is clear that the human cost of forced evictions entails a great series of additional negative consequences to the life and support of the victims, even when their life and housing conditions were already precarious.

In its Resolution 1997/6 “Forced Evictions” of 22 August 1997, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations urged the governments to adopt a series of measures in order to eliminate the practice of forced evictions, among which should be mentioned the guarantee to the right of the safe possession of a property, the granting to all those in danger of forced eviction of a legal guarantee, and finally the adoption of all the measures necessary, on the basis of the participation of the people or groups affected, and of effective discussion and negotiations with them.

Furthermore, even in those cases in which the eviction might be justified, the State must guarantee that everybody affected has all the appropriate legal resources⁹¹. The Committee grants great importance to the judicial protection of the victims of eviction, pointing out a series of procedural guarantees applicable in the context of forced evictions, such as: a) an authentic opportunity to consult all the affected people; b) enough and reasonable time of notification to all those affected prior to the date of eviction; c) giving to all the interested parties, within a reasonable time, information related to the evictions and, if it is the case, what the lands or homes will be destined to; d) the presence of government officials or their representatives in the eviction, in particular when it affects a group of people; e) clear identification of all the people who carry out the eviction; f) evictions shall not be carried out in bad weather conditions or at night, except if the affected persons give their consent; g) offering legal resources; and h) offering legal assistance whenever possible to those in need of requesting compensation to the courts⁹².

⁹¹ ESCR Committee, GO n°7, paragraphs 12 and 15.

⁹² ESCR Committee, GO n°7, paragraph 16.

2.1.3 Characteristics of forced evictions in Argentina

2.1.3.1 House evictions in urban areas

Forced evictions carried out or tolerated by the State have a variety of characteristics and are due to different reasons.

Practically every forced eviction is supported by some public justification which tries to legitimize the measure, even taking into account the social and economic consequences on people and communities threatened with the loss of their home and land. Those who support this practice often use a number of arguments to justify public and legally such decision. Some of the most frequently used public justifications are:⁹³ building of new houses, reduction or discontinuity of public subsidies for the building of houses for the most deprived sectors; health protection; protection of public hygiene and security; building of infrastructure, roads or public works; protection of historic buildings or sites; building of facilities destined to international events; eradication of shelters for delinquents; execution of urbanization projects; stopping of future illegal occupations; renting shops to new tenants; protection against possible floods; recovering of public lands; and separation of ethnic or racial groups.

The impulse of forced evictions using these excuses as public protection means turning the victims into scapegoats locked in social and legal structures which deny, among others, the right to a dignified, safe and healthy place to live. Forced evictions in urban areas frequently involve the transfer of very valuable lands from the poorest sectors to groups of middle or high income. The eviction operations usually take place in cities with the worst life conditions. The higher classes hardly know forced evictions and are always safe from mass transfers.

Forced evictions are associated with a housing deficit that reaches wide sectors of the population. The Life Conditions Survey 2001, conducted by the System of Information, Monitoring and Evaluation of Social Programs (SIEMPRO)⁹⁴ shows that in the urban sector there are 919,699 homes of people who are not proprietors, tenants or occupants due to cession or lending of the house or land, which shows a precarious condition regarding the possession of houses⁹⁵.

The absence, or to say the least, weakness of public policies destined to provide economically accessible housing for the popular sectors⁹⁶, led many families to peacefully occupy buildings located in urban areas and lands –fiscal and private- in the suburbs. Many of these “homeless” families, excluded to the access to a house, have undergone evictions, most of them violent, in which there were confrontations with the security forces, in particular with the police⁹⁷.

- Characterization of the victims

⁹³ United Nations, Informative brochure n°25, “Los desalojos forzosos y los derechos humanos”, Geneva, 1996.

⁹⁴ Available at www.siempro.gov.ar

⁹⁵ For a qualitative analysis of the problem of housing in urban areas see CELS, “La ausencia de una política social de vivienda”, at: *Derechos Humanos en Argentina. Informe 2002-2003*, Chapter XII, Siglo Veintiuno Editores, Argentina, Buenos Aires, 2003. There it is emphasized “[...] Even though the right to access to housing does not necessarily include the ‘access to the property’, instead, it means to reach a certain level of legal security over the possession of the real state where the residence is located [...]” and that is achieved “[...] when the people or family groups reside in a home which is not under threat of being evicted and has permanence guarantees, whatever the legal form chosen [...]”.

⁹⁶ In relation to the incidence of these policies on the victimization of some vulnerable groups see below Part IV, section 6.

⁹⁷ See “La ausencia de una política social de vivienda”, op. cit. p. 476.

The housing deficit affects in a different way the different sectors of the population: 84% of the deficit situations are concentrated in the low and middle income strata⁹⁸.

One of the elements that characterizes the situation prior to the forced eviction is the presence of some kind of informal occupation –through the de facto occupation of a vacant lot, abandoned or unoccupied houses or buildings, or through the acquisition of small houses in urban settlements. In this sense, the Living Conditions Survey 2001, emphasizes that 35% of the population in the first quintile and 28.2% in the second one, is not a proprietor of the house it occupies.

In the City of Buenos Aires, the housing deficit affects 400,000 people⁹⁹, 150,000 of which occupy buildings that belong to the State or individuals and are not tenants or cessionaries¹⁰⁰. 44% of the total number is unemployed and 11% only has a temporary job. In the same jurisdiction, only 8,090 obtained the plans of housing emergency in 2001¹⁰¹.

In urban areas, this kind of informal occupation takes place in precarious properties and, in general, spontaneously. Usually, a big group of families without any kind of previous organization and which has found out about the existence of an “available” place, decides to occupy the land or building and to move there all their belongings. The result, in habitational terms, is that most of the people live stacked (over two people per room) and in extremely precarious sanitary conditions, because the places they occupy had been abandoned for a long time. This situation is characteristic of the big cities, particularly the Autonomous City of Buenos Aires.

Another group of victims of forced evictions are those who have been “benefited” by some kind of state program or policy which was supposed to give a definitive habitational solution, but which due to failures in their implementation, have not meant the effective granting of the land or property certificate. Also famous are the cases of shantytowns which have been eradicated moving their inhabitants to habitational complexes built for that purpose and that, however, can still be evicted due to the lack of papers that prove they are the proprietors. That is the case with the Barrio Ejército de los Andes and the ex Patronato de la Infancia (hereinafter PADELAI).

The first of these cases meant the eviction and subsequent demolition of approximately 10% of all the 4,500 houses which made up the habitational complex Barrio Ejército de los Andes, better known as “Fuerte Apache”, located in the Tres de Febrero district in the suburbs of the province of Buenos Aires¹⁰².

The ex PADELAI building was occupied since 1984 by around 150 families, who even created a credit and consumption society, to which the government of the city of Buenos Aires (back then,

⁹⁸ Rodríguez, Carla and others; “La tierra es nuestra. Hacia una política de Tierra, Vivienda y Hábitat. Análisis y propuestas de los trabajadores y organizaciones territoriales”, Federación Tierra, Vivienda y Hábitat and Instituto de Estudios y Formación de la Central de Trabajadores Argentinos (CTA); no date, p. 14. Even if the available information belongs to the 1991 census, the lack of a housing policy for this sector together with a growing precarization of the social situation allows presuming that the deficit has not been overcome.

⁹⁹ According to information supplied by official sources to Página/12 newspaper, 1 September 2001.

¹⁰⁰ Statements of Jorge Srur, president of the Housing Commission of the Legislature of the City of Buenos Aires.

¹⁰¹ Information supplied by the Research Institute of the Office of the Ombudsman of the City of Buenos Aires.

¹⁰² For more details on the eviction and subsequent demolition carried out in the Barrio Ejército de los Andes see “Demoliciones forzadas, imágenes de la guerra contra el delito” at CELS; Derechos Humanos en Argentina. Informe Anual 2001; Chapter III, op. cit.

City Hall of the CBA) granted the 70% of the ownership of the building. However, in late 2002 the government of the city carried out the eviction and demolition of the building¹⁰³.

Also, a process of particular characteristics has taken place in the Buenos Aires suburbs¹⁰⁴, mainly after the return of democracy in 1983. In this case, the habitational deficit and the lack of state action gave place to organized experiences of land taking –both fiscal and private- which in many cases had the support of trade unions, political and pastoral preexisting organizations. In this way, real neighborhoods arose which were later slowly included by policies of ownership regularization¹⁰⁵.

- Characterization of victimizers

Forced evictions carried out by state agents are a consequence, in most cases, of a warrant from the Judicial Power. However, in the cases in which the agents resort to the legal definition of administrative evictions, the warrant can have been emitted by the local Executive Power. Such was the case in the eviction of the ex PADELAI building, while the remaining forced evictions studied in the urban area were brought about by judicial actions.

Regarding police forces who enforce the eviction order, they vary according to the place where the action takes place. In the City of Buenos Aires the Argentine Federal Police acts by virtue of the Covenant¹⁰⁶ celebrated between the Ministry of Justice, Security and Human Rights of the Nation and the Government of the Autonomous City of Buenos Aires¹⁰⁷. In the rest of the jurisdictions the local police is the one to act¹⁰⁸.

- Circumstances which led the victims to come into contact with the victimizers

In general, it can be stated that the situations of habitational deficit are, in a way, tolerated by the State and by particulars with rights over the properties, only until the moment in which new interests appear. In this sense, it is relevant to keep in mind that, in many of the analyzed cases, the victims of forced evictions lived in lands or houses that, at the moment of occupation, had a low utility or profit but that, after some time and due to the change of objective situations (new urban or commercial projects), increased their market value.

¹⁰³ For more details on the eviction and subsequent demolition carried out in the ex PADELAI see “El Estado frente a las manifestaciones de la crisis social” at CELS; Derechos Humanos en Argentina. Informe Anual 2002-2003; Chapter III, op. cit.

¹⁰⁴ Part of the province of Buenos Aires which surrounds the City of Buenos Aires and where most part of its population and economic activity is concentrated.

¹⁰⁵ Even though these measures have not been completely satisfactory and have brought about new problems to the families (impossibility of dealing with the payments for the regularization, lack of coordination between national, provincial or municipal agencies, lack of public services, among other), unlike what happened in the big cities, the existence of strong organization and State acknowledgement, posed a big obstacle for forced evictions which did not take into consideration the habitational situation of the community. “La tierra es nuestra. Hacia una política de Tierra, Vivienda y Hábitat. Análisis y propuestas de los trabajadores y organizaciones territoriales”, op. cit. p. 15.

¹⁰⁶ Specifically, in the fifth clause of such agreement it was agreed that: “*The Argentine Federal Police shall give the help of the public force to the authorities of the Government of the City of Buenos Aires for the fulfilment of its functions [...] when that is requested by the competent authorities of the GCBA [...] The forces which shall be used for that matter will be subordinated to the commands given by police officers*”.

¹⁰⁷ For instance in the case of PADELAI, where the operation was in charge of the Superintendence of Metropolitan Security, through the Chief of Circumscription I of the General Direction of Police Stations. Other evictions were carried out directly by the staff of the local police station, such as n°24 and n°26.

¹⁰⁸ Such is the case of the eviction in the Barrio Ejército de los Andes.

In this sense, “[...] as a counter part of the political housing paralysis, both the National State and the local governments were easily influenced by the business sector which speculates with real state activity. The need for lands and the lobby capacity of the speculative real state sector upon the State are permanent eradication threats to shantytowns; this is evidenced when watching the continuous media campaigns against those who inhabit them, invoking danger of collapse or matters connected to the public safety of the “other neighbors”¹⁰⁹. Two examples of this kind of speech are the forced eviction and demolition of the habitational complex Barrio Ejército de los Andes in the Province of Buenos Aires and the ex PADELAI building in the Autonomous City of Buenos Aires.

The situation is the same in the neighborhood of San Telmo, also in the City of Buenos Aires. Here leaseholds, family hotels and “usurped houses” proliferate. However, in the last five years there has been a new process, both with public and private participation, to restore the historic value of this area, the oldest in the city. This has the direct consequence of displacing the poor people to other areas of city or the Conurbano Bonaerense, since, when occupying their houses without any kind of security in the possession, they have to accept any kind of offer they are made to leave them¹¹⁰.

2.1.3.2. Eviction of houses and lands in the rural areas

- Context in which the events take place.

Even though there is no official research which allows measuring the precariousness in the possession of lands and houses in the rural area, the high level of conflicts in the area indicates how serious the situation is.

In the rural area, unlike what happens in the urban area, lands are not occupied in order to solve growing habitational needs¹¹¹. On the contrary, those evicted are families and communities who have traditionally inhabited the properties where the conflicts take place. In general they are indigenous communities and peasant groups who have carried out their activities in those places for decades or, even, hundreds of years.

¹⁰⁹ “La ausencia de una política social de vivienda”, op. cit. p.473.

¹¹⁰ Most of the evictions which have taken place during the last years in the city of Buenos Aires happened in the southern neighbourhoods, mainly in San Telmo. To the paradigmatic case of the ex PADELAI, can be added others less famous: the eviction of dozens of families who lived in San Juan 339 (on request of the Modern Art Museum), carried out on 21 March 2003; the eviction of 15 families who lived in Suárez 1600, on 19 March 2003 and that of a house in Pavón 1399, on 12 November 2002. Not all occupied buildings receive the same treatment. According to what was reported by La Nación Newspaper on 4 March 2002, a building belonging to the House of Senators of the Nation, located in Entre Ríos Avenue 181, has been occupied by 109 people for many years and the authorities of the House have not started legal actions in order to recover the property. Most of these people are former employees of the Senate and others of the Spanish Society of Mutual Help of Buenos Aires.

¹¹¹ In order to get a complete list of land conflicts and cases of forced evictions carried out in the rural area see “Los Campesinos” in CELS; Derechos Humanos en Argentina. Informe Anual 2000; Chapter VII; Eudeba; Buenos Aires, 2000. “Los campesinos y el derecho a la tierra” and “Una perspectiva sobre los pueblos indígenas en Argentina” in CELS; Derechos Humanos en Argentina. Informe 2002; Chapters X and XI; Siglo XXI – Catálogos; Buenos Aires 2002. “La tierra en el reclamo de los pueblos indígenas y sectores campesinos” in CELS; Derechos Humanos en Argentina. Informe 2002-2003; Chapter XIII; op. cit. “Informe Alternativo sobre el estado de cumplimiento del Convenio 169 de la OIT en Argentina”; ENDEPA – MEDH, July 2003, available at www.endepa.org.ar and “Informe Alternativo ante el Comité para la Eliminación de la Discriminación Racial”; Centro de Estudios Legales y Sociales/CELS and Comité de Acción Jurídica (CAJ); February 2001, available at: www.cels.org.ar

These groups share the characteristic of having precarious living conditions. According to information of the National Agricultural Census 1988¹¹², the poor farming exploitations of the country were 163,245 and represented 39% of all the farming exploitations¹¹³. In these cases there also is a growing legal insecurity in the possession, as well as inconsistent public policies which have not contributed to resolve this situation. These two factors facilitate forced evictions¹¹⁴.

The occupied lands are both fiscal and private¹¹⁵. The first kind of occupation takes place principally in the northwest and northeast of the country and in the Patagonia, representing around 36,000 exploitations in all the country¹¹⁶. It has not been possible to gather information on recovery of State goods, that is, evictions driven by the national or provincial government. However, it has been noted that, notwithstanding they may be occupied, State goods are sold: it is then the buyer who has to evict the families that occupy the land he has purchased.

On the other hand, evictions are frequent in private lands. There are almost 23,000 exploitations in private lands, which are mostly located in the northwest region of the country¹¹⁷. In this case, they are small producers who, for decades, and even generations, have carried out activities in that place, even if the ownership deed belongs to a natural or legal person¹¹⁸.

The weakness of the public policies destined to enforce the State obligation to regularize the possession of lands occupied by indigenous communities¹¹⁹, and also, the difficulties of peasants to get the possession of properties they have inhabited for a long time, make them vulnerable to suffer forced evictions¹²⁰.

- Characterization of victims

The first obstacle encountered when trying to characterize the main groups affected by forced evictions in the rural area, is the poor official information available on matters such as

¹¹² See www.indec.gov.ar

¹¹³ Poor Farming Exploitations are those who are run directly by its administrator, who does not own a tractor, does not hire machinery service or workers or permanently waged families. It is necessary to point out, however, that many peasant families are not even registered by censuses since they occupy poor places or sites, which do not qualify to be registered as farming exploitations. See "Los campesinos y el derecho a la tierra", op. cit. p.358.

¹¹⁴ On this matter see Part IV, Section 6, below.

¹¹⁵ For a detailed analysis of this matter, see González, M. del Carmen; "Argentina. Situaciones problemáticas de tenencia de la Tierra"; Economy Ministry; Agriculture, Farming, Fishing and Food Secretary, Office of Agricultural Development, Buenos Aires, April 2000, quoted in: "Los campesinos y el derecho a la tierra", op. cit. p. 358.

¹¹⁶ The provinces where the phenomenon is more extended are Neuquén (44% of exploitations), Jujuy (37%), Formosa (29%), Misiones (27%), Santiago del Estero (25%), Chubut (21%) and Chaco (20%).

¹¹⁷ Most of the cases happen in the provinces of Salta (40%), Santiago del Estero (23%) and Jujuy (18%).

¹¹⁸ It is important to emphasize that for the local ruling, the right to ownership is complete with the inscription in a special registry. In this way, Section 2505 of the Civil Code establishes that: "*The acquisition or transmission of rights upon real state property, shall only be considered complete after the inscription of the titles in the real state registries of the corresponding jurisdiction. These acquisitions or transmissions shall not be opposing to third parties while they are not registered*". Due to this, the conflict between nominal owners and the occupiers of the land is so frequent, since it is very common to sell the lands and/or houses with the occupiers still inside them.

¹¹⁹ Section 75, paragraph 17 of the National Constitution, establishes that the following corresponds to the Congress: "*To guarantee respect for their identity and their right to bilingual and intercultural education; to recognize the legal standing of their communities, and the possession and community property over lands they have traditionally occupied, and to regulate the transfer of other lands fit and sufficient for human development—none of which may be alienable, conveyable or susceptible to encumbrances or attachments. To assure their participation in the related administration of their natural resources and of other interests affecting them. The Provinces may exercise these powers concurrently*".

¹²⁰ On the impact of these factors see Part IV, section 5 below.

employment, underemployment and unemployment levels, poverty and indigence levels of rural communities and, in particular, on housing problems¹²¹.

Argentina has a rural population of 3,872,038, which represents 10.9% of the total population of the country¹²². The geographical distribution of the rural population is very heterogeneous and its importance, variable: while in the city of Buenos Aires and in the provinces of Buenos Aires, Santa Cruz and Tierra del Fuego represents less than 4% of the population, in Santiago del Estero and Misiones represents over 30%.

Information on indigenous population is even scarcer. Due to the lack of official censuses¹²³, some non governmental and indigenous organizations estimated that the number of natives is somewhere between 800 thousands and 2 million, representing between 3% and 5% of the total population of the country. The geographical distribution of indigenous people is also highly heterogeneous and, in some provinces, it represents between 17% and 25% of the population. According to these same sources, there are over 800 communities in all the country, most of them living in rural communitarian settlements¹²⁴.

Each with its own particular characteristics, indigenous people and peasants share the same kind of problems in reference to land and basic infrastructure access (water, energy, roads, public services, etc)¹²⁵.

In the case of small peasants, their budget is made of an important part of their own production, of the income from the farming production, of the income the members of the family who from time to time do some jobs receive and, at times, of the money orders or clothes or food packages which members of the families who are established in other areas send them¹²⁶.

The problems of the indigenous communities are also complex. Apart from environmental destruction, with a loss of soil productivity and water shortage, there is also deficient or non existent health care, lack of transport and communication, minimum educative assistance, lack of plague and parasite control in animals and human beings. In the places where indigenous communities live, we find the highest level of acute infections such as tuberculosis, or the Chagas

¹²¹ The PHS (Permanent Home Survey) carried out by the INDEC, is the main instrument used to get this kind of information in a national level. However, it is only conducted in 31 urban areas, so even if it comprises 70% of the country's population, it does not give any kind of information on the rural area. In this sense, the National Survey on Life Matters conducted by the SIEMPRO in 2001 also refers exclusively to the urban area. According to information from the National census on Population, Homes and Houses carried out in 1991, the percentage of rural poor people –that is, people with unsatisfied basic needs- was twice the percentage of urban poor people: 34.2% and 16.7%. To get more recent information, exclusively referred to the provinces of Mendoza, Rio Negro and Santa Fe, see "Los Campesinos y el derecho a la tierra", op. cit. p. 356-7.

¹²² Pursuant to National Census on Population, Homes and Houses 2001. Provisional results, all the country. National Institute of Statistics and Censuses, Buenos Aires, 2002.

¹²³ In the National Census on Population, Homes and Houses 2001, there was a variable of indigenous self identification added to the questionnaire. This caused an important rejection from many communities. To see a detailed analysis on that topic, see "Una perspectiva sobre los pueblos indígenas en Argentina", op. cit. pg 406/408.

¹²⁴ See "Una perspectiva sobre los pueblos indígenas en Argentina", op. cit. Pg 393.

¹²⁵ See "Los Campesinos", op. cit. p. 345. Even if in rural area communities of indigenous and peasants have a lot of characteristics in common, the rules applicable to the matter of land in both cases, among other elements, requires to keep the differences of both groups. In this sense it is important to emphasize the importance of Conference 169 of the International Labour Organization (ILO) and of the abovementioned Section 74 paragraph 17 of the National Constitution, See footnote 120, above.

¹²⁶ Pursuant to Benencia, Roberto y Forni, Floreal; "Condiciones de trabajo y condiciones de vida de familias campesinas y asalariados" in: Empleo, Estrategias de Vida y Reproducción; Centro Editor de America Latina, Buenos Aires, 1991: p. 145-6, quoted in "Los Campesinos" op. cit. p. 346-7.

disease, cholera and others, as well as a high percentage of school desertion, mainly due to the discrimination they suffer from teachers and non indigenous school mates, and to the shortage of economic resources of the families¹²⁷.

– Characterization of victimizers

Forced evictions carried out in the rural area by state agents, as well as those in the urban area, are frequently consequence of legal proceedings. The measures are ordered by judges and carried out by police staff of police stations or local offices. However, there have been evictions of indigenous communities carried out by the Argentine Army, independently from any kind of legal proceeding.

In the case of the Mapuche –Tehuelche Prane community, located 15km. from Esquel, province of Chubut, the conflict goes back many decades and the community had to undergo evictions from their lands, murders and robberies of their animals, without any answer to their reports made to the police¹²⁸.

The families Gualmes y Ranquehue who inhabit the Otto Hill, a few kilometers from the city of Bariloche, in the province of Neuquén, undergo a similar situation. In this case the conflict goes back to the 60s, when eviction attempts started. Even though there was a legal action which ordered to clear the side of the Cerro Otto in conflict, the families refused to evict the land they had inhabited since the time of their ancestors. As a consequence, the Army continuously harassed them, without any legal action, burning their houses, taking their animals as well as using the side of the hill they inhabited as a target for their shooting practices¹²⁹.

- Circumstances which led the victims to come into contact with the victimizers

In rural areas, all forced evictions carried out by public officers are the consequence of two kinds of legal actions: on the one hand, the presentation of recovery demands from the registry owners of the properties –who in all the cases studied are natural or legal people other than the State-; and on the other, legal actions against the occupants¹³⁰.

It should not be forgotten, however, that behind the use of these legal instruments there is an economic background reason which, specifically, leads the victims to come into contact with the victimizers.

As it was mentioned beforehand, the occupation of the lands by small peasants and indigenous communities started decades ago, without it causing great conflict. None the less, this situation has changed in the last two years. With the advance of the farming frontier, lands which were not used before, and were usually destined to family and local consumption, started to be considered as good possibilities to expand the production destined to exportation. In the southern provinces of the country this process was mainly related to the extension of the surface destined to ovine cattle used for textile production and with the petroleum industry, while in the central and northern

¹²⁷ "Informe Alternativo ante el Comité para la eliminación de la discriminación Racial", Centro de Estudios Legales y Sociales (CELS) y Legal Action Committee (CAJ), op.cit.

¹²⁸ "Informe Alternativo ante el Comité para la eliminación de la discriminación Racial", Centro de Estudios Legales y Sociales (CELS) y Comité de Accion Jridica (CAJ), op.cit.

¹²⁹ "Una perspectiva sobre los pueblos indígenas en Argentina", op. cit p. 417, and oral testimony of the Ranquehue family.

¹³⁰ On the factors that make this situation possible, see Part IV below

areas it is associated with the agriculture - exporting activity, mainly soy plantation and wood industry¹³¹.

The direct causes of great part of the conflicts in rural areas linked to the ownership of the land, are the existence of legal obstacles which make it impossible for small peasants and indigenous communities to regularize the ownership of their lands, and also the complete inaction of the State. In some cases, they even sold the lands for their agriculture and cattle exploitation with "families inside". Finding it impossible to prove they have occupied the lands for generations, these families are evicted with legal avail, since they are not the formal owners. This situation has appeared mainly in the province of Santiago del Estero in the Juries and Pinto districts¹³².

There is a similar situation in the north of the province of Cordoba, where traditionally unproductive lands, extensively destined to goat and cow breeding, have radically been transformed with the incorporation of new technology and genetically modified seeds. The consequence of this process was the restriction of complete families to small lots, without the acknowledgement of any kind of ownership over the lands they had cultivated as a community for over 20 years.

In the northwest of the province, over 60% of the rural inhabitants do not have a public deed for the lands they have cultivated for years, reason why many of them face the real possibility of being evicted. An example of that is the eviction of the field Alto Bordo in El Duraznal. Here the eviction came from a judicial warrant and was carried out on 17 August 2001 by the prosecutor of Cruz del Eje, ten policemen and a bulldozer¹³³.

In exactly the same way, on 30 December 2003, a peasant family was "left in the street" after a violent eviction which culminated in the total destruction of a brick house and two huts, houses they had inhabited for many years. The event took place in a rural property located six kilometers from the Puesto de Castro locality in the Rio Seco department, 180 kilometers from the city of Cordoba, and was ordered by the Justice of Peace of Puesto de Casto and seven police officers of the Sebastian Elcano and Puesto de Castro police headquarters, headed by sub sheriff Moyano. During the operation they used a tractor to destroy the house of Ramona Bustamante, of 76 years old¹³⁴.

Another place with the same land conflicts in the rural area is the province of Misiones, which is characterized by a very high land ownership concentrated in just a few people: over 30% of the

¹³¹ In the case of the province of Santiago del Estero, the pressure for the land started causing conflicts during the 80s, due to an increase in the price of cotton and to the development of varieties of soy fit for the harsh environmental conditions of the santiaguense Chaco. As a result of the conflicts between peasants and big investors and landowners, in 1990 the Peasants of Santiago del Estero Movement (MOCASE), which at present gathers around 8,500 families, was created. The members of this movement have repeatedly reported being victims of systematic and continuous harassment from landowners and real state companies, in complicity with legal and provincial police authorities, with the objective of making them abandon their lands. In order to get a more detailed description of the situation in Santiago del Estero, see "El derecho a la alimentación en Argentina. Informe y recomendaciones de la Misión Investigadora Internacional a Argentina"; For the Right to Feed Oneself (FIAN) and Servicio de las Iglesias Evangelicas en Alemania Para el Desarrollo (EED); April 2003.

¹³² "La tierra es nuestra. Hacia una política de Tierra, Vivienda y Habitat. Análisis y propuestas de los trabajadores y organizaciones territoriales", op. cit., p. 21.

¹³³ "Los Campesinos y el derecho a la tierra", op. cit., p. 378-80 and information provided by the Asociación de Productores del Noroeste de Cordoba (APENOC).

¹³⁴ ANRed, press release of 5 January 2004, available at: www.anred.org.

total surface of the province belongs to only 140 people or enterprises. Here most territorial conflicts link indigenous communities with wood, tobacco or tourist industry companies¹³⁵.

In the province of Chubut, due to the criminal proceedings started by the registry owner¹³⁶ of the land inhabited since ancestral times by the Mapuche – Tehuelche Community in Vuelta del Río, the judge ordered the preventive eviction of the Fermin family. On 15 March 2003, and following that warrant, the police tied the clay brick hut to their horses and pulled it down, leaving the family homeless in a time of the year when the temperature at night is around 8 degrees below zero. Furthermore, they destroyed the orchard the family survived with, affecting the situation of all the family which includes children and a person over 70 years old.

The province of Chubut was also where the mapuche family Curiñaco – Rua Nahuelquir was evicted, at the request of the Company Tierras del Sud, which belongs to the Italian group Benetton¹³⁷. On that occasion the eviction was carried out by 12 police officers of El Maiten headquarters, on 2 October 2002 early in the morning. During the proceeding, all the belongings, tools and animals of the occupants were confiscated and their house was torn apart, also confiscating all the materials. Those affected, who had not been notified with enough anticipation of the eviction ordered by the judge, were only able to see the judicial files the next day¹³⁸.

In the province of Salta, on 16 September 2002, the eviction of the Ava Guaraní people¹³⁹ who inhabited a 5000 hectare-lot known as La Loma, near the City of Hipólito Yrigoyen, took place. The proceeding left injured people and 22 imprisoned including, children, women and old people.^{140 141}

2.1.3.3. Evictions of salespeople in the street

The evictions analyzed so far show the suffering of the people caused by the State when forcing people, families and/or communities out of their houses and/or lands they occupy, in a forced and violent way.

All the international rules on the matter of forced evictions take into consideration the bond which exists between people and their houses and places of dwelling. In this sense, it is understood that

¹³⁵ "La tierra es el reclamo de los pueblos indígenas y sectores campesinos" op. cit. In this province there are at least three communities (Virgen María, Guaraní and Jeji) which are in conflict with the Company Maderera Papel Misionera. Another conflict of similar characteristics is found between the Tekoa Yma Community from Pepirí Guazu and the forestal Company El Mocona S.A.

¹³⁶ It is Mr. José El Khazen.

¹³⁷ Company Tierras Sud Argentina over damaged party (Instructor Court nº2740 – page 166 – year 2002).

¹³⁸ On 26 May 2004, the oral and public trial about the right to the land, took place in Esquel Courts. Atilio Curiñaco and Rosa Nahuelquir were acquitted of the crime of usurpation but the lands in conflict between the Mapuche family and the Company finally remained in the hands of the latter, according to the decision of the judge Jorge Eyo, known on 31 May 2004. On that date the judge who heard in the Company Tierras Sud Argentina claim, José Colabelli, had been removed from office by a Judging Court. Source: El Día, "En juicio con mapuches, la tierra quedó para Benetton", 1 June 2002; Hoy, "Puede sentar un precedente histórico" and El Día, "Los mapuches acusados por Benetton fueron sobreséidos", 28 May 2004; Hoy, "El fiscal pidió la absolución", 27 May 2003. (<http://www.eldia.com.ar>) (<http://www.diariohoy.net/v5>).

¹³⁹ Alter the San Martín de Tabacal Plantation reported the usurpation. About this criminal description see Part IV, section 3.1.2. below.

¹⁴⁰ Source: www.lafogata.org/003arg/arg12/arg5.htm

¹⁴¹ To the conflict between the Ava Guaraní and the San Martín del Tabacal Plantation, we must add the situation of the Wichi Hoktek T'oi Community, which was virtually cornered by the irrational deforestation of the hill made by a private person who bought the lands with the community inside. See "Informe Alternativo ante el Comité para la Eliminación de la Discriminación Racial", op. cit.

the physical violence caused by the eviction is aggravated by the breaking of those bonds, which in many cases are the main connection of these people with their history and communitarian ties. As we have seen, in many cases the evictions mean that complete families have to go away from the places they have inhabited by generations.

There are, however, other eviction practices that without being strictly forced evictions¹⁴², usually carry the use of violence. This is, in time, conditioned by the presence of certain socio – economic factors. One of the practices in which that is clearly seen, is the eviction of salespeople who offer their products in the street¹⁴³.

– Context in which the events take place

The evolution of the main occupational variables throughout the 90s shows a continuous increase in the number of unemployed and underemployed people. In fact, by the end of the 80s the unemployment rate was around 7% of the economically active population¹⁴⁴. Since then, the amount of unemployed or underemployed people has continuously and uninterruptedly gone up¹⁴⁵. The historic record in the unemployment rate was in May 2002, when it topped 21.5 of the economically active population. And the underemployed percentage topped 18.6%¹⁴⁶.

In the greater Buenos Aires area¹⁴⁷, unemployment topped 22% of the economically active population, while underemployment was 19.3%.

In the last years, with the worsening of the socio-economic crisis in Argentina, the need to find survival means caused the proliferation of new activities, which in the past had a marginal importance. This context explains the increase in the amount of people who found selling in the street as an alternative solution to the impossibility of getting a job in the formal market¹⁴⁸.

A distinction has to be made between “survival” street sale and the one called “clandestine” sale. According to officers of the government of the city of Buenos Aires¹⁴⁹, the first form which has substantially increased recently, consequence of the crisis and the expulsion of the middle sectors from the labor market, is developed, in general, in an ambulant manner, with small blankets on the sidewalk or in parks, offering all imaginable products for sale. The second form is organized through illegal commercialization points, brand falsification, smuggling, tax evasion and the exploitation of salespeople in charge of the stalls

¹⁴² At least not according to General Observation nº7 of the ESCR Committee.

¹⁴³ The cases studied and presented in this section of the report are limited to those which, due to their massivity, had a big impact on the mass media of communication. However, particular cases of evictions of street sales people happen every day, which, for this same reason, are in a higher state of defencelessness. The CELS has received many reports from disabled people who, facing the lack or inefficiency of public policies to generate job positions for them, have decided to put up moving selling stalls as a way to earn their living. These people suffer countless detriment from the State: they are not allowed to exercise a legal activity, they are reported for infractions to the Cohabitation Code of the city of Buenos Aires and they even get the goods they are trying to sell seized or confiscated

¹⁴⁴ INDEC, Permanent Homes Survey (EPH), October 1989.

¹⁴⁵ See Part I, section 2 above.

¹⁴⁶ INDEC, EPH, May 2002.

¹⁴⁷ Made up by the Autonomous City of Buenos Aires and the districts of the Buenos Aires suburbs.

¹⁴⁸ In this sense spoke Silvana Giudici, who was by then Government and Communal control of the Government Secretary in the Autonomous City of Buenos Aires. In an opinion article, she stated that the proliferation of informal survival activities is caused by the present socio economic crisis. Clarín newspaper, 9 June 2001, “Liberar las calles de la venta clandestina”.

¹⁴⁹ Source: Clarín, “Liberar las calles de la venta clandestina”, 9 June 2003.

According to a study conducted by the Coordinadora de Actividades Mercantiles y Empresariales (CAME), in the Autonomous City of Buenos Aires, there are around 11,000 stalls of illegal sale – both fixed and ambulant-, although the study does not differentiate between the two categories described¹⁵⁰.

This distinction will be of importance when analyzing the evictions of ambulant salespeople in the street, the proceedings of the public officers and the violence applied in each case.

– Characterization of the victimizers

Evictions of sales people from public places are started both by local governments and by the contravention justice.

In the studied cases, the proceedings include the presence of municipal inspectors and staff from the local police stations, who, in some cases, use dogs and guns with rubber bullets. In the Autonomous City of Buenos Aires, besides, evictions of stalls in the street are often accompanied by members of the contravention prosecutions.

Police forces have an active role in the development of evictions of ambulant sales people in the street. However, cases have also been detected in which the staff of this force demanded the payment of a bribe in exchange for protection and as a guarantee to continue with their activity¹⁵¹.

- Circumstances which led the victims to come into contact with the victimizers

Evictions of ambulant sales people –which at times end up with wounded and imprisoned people– happen in operations allegedly destined to, on the one hand, the liberation of the public space¹⁵² and, on the other, the persecution of illegal activities (such as illegal systems of commercialization, brand falsification, smuggling, tax evasion, etc.)¹⁵³

The province of Mendoza, for instance, witnessed a violent confrontation between ambulant sales people and the police force on the first days of the year 2004¹⁵⁴. The origin of this episode was the decision of the Mendoza City Hall to eradicate all the ambulant sales stalls set up in the central area. For that, on 5 January 2004 municipal staff, guarded by strongly armed policemen, started taking the goods without any previous notice.

¹⁵⁰ Source: Clarín, 20 July 2003.

¹⁵¹ This practice was credited in the judicial office in a case started in June 2003, due to a report to the General Prosecution Office of the City of Buenos Aires. The original report involved policemen from two police stations – number 10 and number 12- whose chiefs were dismissed because of these cases. As an immediate response to this, the Secretary of the Communal Control of the Government of Buenos Aires received seven faxes from police stations warning that there were sales people in their jurisdiction, a reality with which they had passively cohabited for a long time. Source: Clarín, 13 November 2003, and 18 January 2004.

¹⁵² Silvana Giudici, in the mentioned article published in Clarín newspaper on 9 June 2003, expresses that “Parks, public walks, commercial centres, and transference stations have been voluntarily “invaded” by thousands of people who put up precarious stalls and various facilities in the street which appropriate everybody’s space for the profit of a few” (the underlined is ours).

¹⁵³ In many cases evictions are followed by the beginning of judicial proceedings for the violation of Section 41 of the Infraction Code of the City of Buenos Aires, which represses the fact of “obstructing and hindering the circulation of people or vehicles in the public spaces or street”. As it happens in house and land evictions in urban and rural areas, they resort to the use of a protecting legal description (in this case of public spaces) in order to restrict the rights of the people. On this see Part IV below.

¹⁵⁴ Source: Los Andes and Uno newspapers, 6 January 2004

This situation unleashed the reactions of the sales people, who were repressed by police forces, who used rubber bullets and tear gases¹⁵⁵.

Journalists defined this confrontation as a pitched battle, which left five seriously wounded people¹⁵⁶, seven injured, seven imprisoned off age and three under age. There were also people intoxicated with tear gases and many children with dog bites.

Another case in which police violence was applied during an eviction of ambulant sales people happened in the city of Corrientes on 10 September 2003¹⁵⁷. On that occasion, ambulant street sellers were expelled by force, which originated a number of confrontations with the provincial police who used rubber bullets and tear gases in order to achieve the eviction of the place, against the resistance offered by around 80 people: sellers and their relations. The event left two people wounded with rubber bullets and a police officer with slight injuries in one of his arms because he received the blow of a stone.

In the Autonomous City of Buenos Aires, the most recent conflictive situations took place in the ambulant sales stalls located around Once Station of the Sarmiento Railway and those located in the pedestrian street Florida, in the centre of the city. In that case, the conflict continued for several days of the month of January 2003 and included the daily presence of municipal inspectors and police officers armed with sticks and dogs.

In the surroundings of Once Station there were several violent incidents on 6 March 2003 when the police cleared a blockade in Pueyrredón Avenue, carried out by ambulant sales people who demanded their right to put the stalls up again in the street. The operation was conducted by an Police Inspector, Chief of the second circumscription, and ended up with twelve people under arrest for resisting the measure¹⁵⁸.

On 1 November 2003, there was an attempted eviction of sellers who were settled in Saavedra Park. However, the eviction could not be carried out due to the resistance of 500 stallholders who worked in the area. As a result of the operation, in charge of a Police Chief, 2 stallholders suffered injuries.¹⁵⁹

In some cases, evictions are the result of a consensus, without any physical violence. The government of the Autonomous City of Buenos Aires, for example, adopted as a policy, the relocation of ambulant sellers in special lots for that purpose¹⁶⁰. In the city of Corrientes, 2 months after the confrontation previously referred to, the local council reached an agreement with the ambulant sellers according to which they accepted to clear up Mendoza, Salta and San Jerónimo Streets and go to Alberdi Park or move along Hipólito Yrigoyen Street without stopping in a fixed spot.¹⁶¹

¹⁵⁵ The sales people also accused the Police of using lead bullets, later denied by police officers.

¹⁵⁶ Ambulant seller Blanca Rosa Daloise suffered the most serious wound, since she had to be operated because of an exposed fracture in her left ankle.

¹⁵⁷ Source: www.corrientesnoticias.com.ar&110903.html

¹⁵⁸ Source: www.infobae.com, 7 March 2003.

¹⁵⁹ Source: Clarín, 2 November 2003.

¹⁶⁰ Those lots are located in Paseo del Retiro, in the Retiro neighbourhood; the rent of a property in Avenida de Mayo 600, in the centre, where the sellers evicted from Florida street can settle down (Clarín, 29 March 2003) and in the market located in the intersection of Rojas and Yermal streets in Caballito neighbourhood.

¹⁶¹ Source: El Litoral, afternoon edition, 17 December 2003.

However, not all irregular occupations of public spaces are penalized or cause the same kind of proceeding from the State. In fact, the starting of administrative and/or judicial actions and the use of violence on the occupants varies according to the official protection the latter have and their economic possibilities of making extra official arrangements with the public officers in charge.

In the case of sale of the so called “ripped CD”¹⁶², the Argentine Chamber of Phonograms and Video grams Producers (CAPIF), which groups together the main discography companies, organized a system to spot illegal sale stands and to report them to the police stations. However, on one occasion they detected that one of this places had been warned by a member of the Police, as a way of avoiding the eviction and the confiscation of the goods¹⁶³.

Furthermore, in the area of the Autonomous City of Buenos Aires it is easy to find public spaces occupied by private entities, and they have received a treatment substantially different to that given to ambulant sellers in the street.

The Friends of the Palermo Lake Association has repeatedly reported the usurpation of public lands belonging to the town council by various clubs and franchises of the Tres de Febrero Park¹⁶⁴. The study conducted by the abovementioned association, detected around 70 hectares belonging to the town council, which were being illegally used by private individuals (or other state institutions) to the detriment of all the community. Among the most representative cases, the following can be quoted: the illegal occupation of lands by the Club Gimnasia y Esgrima de Buenos Aires (GEBA), the Buenos Aires Lawn Tennis Club, the Argentine Air Force, the Tiro Federal Argentino, the Argentine Rural Society, and the Superior Mechanic School of the Army (ESMA), among others. In this case, it is one of the areas with the highest acquisitive power in the city and the institutions are all very profitable. In spite of all the demands made by this and other organizations of the civil society, the reaction of the State in order to stop the occupation of these public spaces has been almost inexistent.

¹⁶² They are illegal copies made from the originals, for which they do not pay copyright.

¹⁶³ Source: Clarín, 18 January 2004.

¹⁶⁴ The documents can be seen in www.amigos-del-lago.org.ar The Friends of Palermo Lake Association built up a list of illegal occupations, buildings and occupancies and annulled franchises. They are all clubs, social institutions and high acquisitive power stores.

2.2. Psychological Abuse and threats

2.2.1. Threats as offences

Threats and intimidations, besides the main specific objective pursued by the author, always cause on the threatened party a mutilation of his psychic freedom, the latter meaning the freedom of self-determination. In this sense, threat is the announcement of a future damage which produces in the threatened party a situation of insecurity which restricts his possibilities of acting according to his will¹⁶⁵.

The doctrine says that, in order to be considered a threat, the announcement of the damage has to be future, serious, unfair and possible. The threat is serious when it has entity, unfair when the announced damage should not be endured by the victim and possible when the announced damage can really take place.

Threats can present various forms and show different levels of seriousness. Thus, there are anonymous threats which consist of simple phone calls and others of a bigger entity where the one who threatens even uses physical violence. What can never be done is to underestimate them and to leave them un-investigated, which is the case most of the times, as experience shows.

In the Argentine Criminal Code, the offence of threats¹⁶⁶ is rightfully included under the heading offences against freedom, since in the crime of threats the juridical good protected is freedom in the process of deliberation¹⁶⁷. Regarding the punishment established for the offence of threats, the Criminal Code makes a distinction between simple and aggravated threats. For the first one, the punishment ranges between six months and two years imprisonment, while for aggravated threats –that is, those carried out anonymously or those in which the author uses weapons- the imprisonment punishment is between one and three years.

The Criminal Code also defines the offence of coercion¹⁶⁸. In this case, threats are the means used in order to get a goal which consists of the illegal obligation of doing or not doing something. Thus, the one who threatens seeks through his action to generate fear in the other person so that he/she acts in a certain way, knowing that, should he not do so, he will suffer damage in the near or far future.

The punishment for this kind of offence of coercion is more serious than for the offence of threats, since it is between two and four years of prison. The difference between both crimes is that, while through the threats the author attempts against the freedom or spiritual tranquility of the passive subject¹⁶⁹, when there is coercion the freedom of the victim is annulled, since he has to act as the active subject demands.

Between 29 July and 6 August 2002 a delegation of the Inter-American Commission of Human Rights (CIDH) visited Argentina and expressed their concern about the information obtained “[...] *about threats to human rights defenders, even against lawyers, social leaders, activists and*

¹⁶⁵ Pursuant to Fontan Balestra, Carlos y Milan, Alberto, Reformas al Código Penal; Abeledo-Perrot; Buenos Aires, 1968, p.150.

¹⁶⁶ Section 149 bis of the Criminal Code.

¹⁶⁷ Pursuant to Donna, Edgardo A., Derecho Penal. Parte Especial; Volume II-A; Rubiznal - Culzuni Editores, Buenos Aires, 2001, p. 243.

¹⁶⁸ Section 149 bis of the Criminal Code.

¹⁶⁹ Pursuant to Donna, Edgardo A., op. cit., p. 254.

witnesses". The CIDH delegation stated that "[...] the situation of human rights defenders is one of the main concerns" because as they explained in a press release "[...] the acting of the defenders, through the defense of individuals and groups of people who are victims of human rights violations, the public report of the injustices affecting important sectors of the society, and of the necessary control they exercise upon public officers and democratic institutions, among other activities, turns them into an irreplaceable subject for the construction of a solid and lasting democratic society".¹⁷⁰

2.2.2 Characteristics of threats in Argentina

2.2.2.1 Threats to victims, relatives of victims and witnesses of events of institutional repression

The high number of people who died in events in which the police took part in Argentina gives an account of the different illegal practices in the security forces. These victims are a consequence of an abusive use of lethal force, more than of the negligence of police officers¹⁷¹. Thus, frequently, the police version presents as armed confrontations what in fact were executions or episodes in which they made use of lethal force without respecting any of the principles established by law¹⁷². In this context, threats to relatives of the victims are intended to avoid changing the police report, thus consolidating their impunity. To the fatal victims we have to add victims of other forms of violence, such as unlawful imprisonment, unlawful coercion when in prison, ill-treatment and other offences frequently committed by the security forces in Argentina.

In many cases the victims or their family, do not report the event or do not appear as parties to the legal proceedings in which the police action is investigated, may be because of lack of economic means, distrust in justice, lack of knowledge or fear of the consequences it could bring. In other cases, the minority, the victims or their family report the event and try to collaborate with the judicial investigation. However, their intention usually encounters the indifference of the officers of the judicial power, who on many occasions are reluctant to investigate cases in which officers of the security forces are involved. In this context, the harassment of witnesses, victims and relatives of victims of institutional violence are very frequent.

Threats are concentrated on deprived and vulnerable groups, even though not always due to their socioeconomic situation. However, the methodology used to carry out the threats in general varies according to the social sector to which those threatened belong.

Thus, in the most deprived neighborhoods, police officers often intimidate victims openly and during the day, many times even in their own houses. Precisely these threats are the ones which have the biggest effects since, due to the state of complete defenselessness of the people who live there it practically means they will not report this kind of events to the justice. The more marginal and poorer the geographical area where these events happen is, the greater the possibility of investigations being shelved without finding the responsible officers will be. The reasons for this are the lack of interest of judges and prosecutors to investigate actions of police violence in marginal neighborhood; and the silence, caused by fear of the consequences, of

¹⁷⁰ Press release N°33/02, "Comisión Interamericana de Derechos Humanos culmina visita a la República Argentina", 6 August 2002

¹⁷¹ See "Inseguridad policial y otras formas de la violencia institucional" en: CELS; Derechos Humanos en Argentina. Informe 2002-2003; Chapter IV; Siglo Veintiuno Editores Argentina; Buenos Aires, 2003.

¹⁷² See "Violencia en las prácticas policiales" en: CELS; Derechos Humanos en Argentina. Informe 2002; Chapter IV; Siglo XXI de Argentina; Buenos Aires, 2002.

witnesses of judicial causes, in which the responsibility of the agent of the security forces is investigated.

On 20 December 2001, young man Ruben Aredes was murdered in Ciudad Oculta, a poor and marginal area of the city of Buenos Aires. Andres was murdered by members of the Federal Police, in broad daylight, before dozens of witnesses. In the days following Aredes's death, his family reported that police agents went to the neighborhood and warned the neighbors to keep silent. The threats were effective: very few witnesses agreed to make a statement and those who showed up almost did not give any relevant data for the investigation, what meant the shelving of the files¹⁷³. Raul Aredes's brother unsuccessfully tried to convince his neighbors to collaborate in identifying those responsible, but they told him they feared what might happen to them.

The same happened in Maciel Island, a very poor neighborhood in the District of Avellaneda, Buenos Aires Province, where on 12 December 2001 two 17 year-old boys (Oscar Maidana and Walter del Puerto) were killed by the Buenos Aires Police. Even though many people were present, no inhabitants of the area gave testimony in the case, out of fear of future reprisals. Only the uncle of one of the boys did, and was taken to prison and threatened by the police during a police raid which took place in the neighborhood two days later. ¹⁷⁴

The case of Juan David Enriquez also shows the level of impunity enjoyed by the police officers who threat people of a low socioeconomic level. After being arrested and tortured by Buenos Aires policemen of the 3rd Police Office, province of Buenos Aires¹⁷⁵, Enriquez was released and since then –end of Augurs 2002- police staff of different police Stations of Ezeiza still harass, not only Enriquez, but also his family and friends. On many occasions, officers of the Buenos Aires police who were patrolling around the house inhabited by Enriquez and his family, insulted, threatened out loud, and laughed at the ill-treatment the boy had to endure while in prison. Juan David Enriquez is very afraid and fears his life is in danger. His elder sister, Lilia Victoria Enriquez, denounced that while Juan David was held prisoner in Olmos Penitentiary¹⁷⁶, a police officer from the 3rd Police Station of Ezeiza, whose surname was Vilches, directly told her that he “[...] *had been ordered to liquidate*¹⁷⁷ him”. Alejandra, Juan David Enriquez's girlfriend, is also a victim of police intimidation. Officer Inspector Fernando Daniel Capdevila, officer assistant Julio Cesar Mansilla and officer assistant Jose Carlos Quiroz of the 3rd Police Station in Ezeiza, constantly summon the young girl in order to ask her about Juan David's whereabouts and to mortify and intimidate her telling her that he “[...] *has AIDS and wants to pass it to her*”, that she should not get together with him and all kinds of offences. Furthermore, Sebastian Ojeda, a friend of Juan David Enriquez was also victim of police abuse when they violently broke into his house in order to search it. While the police officers of the 3rd Police Station in Ezeiza were carrying out the proceeding, they shouted to young Ojeda that “[...] *he shouldn't get together with Enriquez again or they'd do to him what they did to Enriquez*”. None of these cases was investigated or solved by the Buenos Aires justice. On the other hand, political authorities know all about these cases, without having adopted any measure destined to protect Enriquez and his family.

¹⁷³ The judicial case is before Instruction Court in Criminal matters, under number 108.572/01. The CELS represents Ruben Aredes's mother and appealed to the Judge's resolution. In January 2003 the cause was in the 1st Chamber of the Appeal Court.

¹⁷⁴ Testimony collected by CELS attorneys.

¹⁷⁵ About the tortures committed upon Enriquez, see Part II, section 2.4.2.4. below.

¹⁷⁶ This depends from the Buenos Aires Penitentiary Service.

¹⁷⁷ Kill him.

On 20 December 2001, during the brutal police repression around Plaza de Mayo in the city of Buenos Aires, Ivan Clemenco took pictures of officers of the Federal Police when Gaston Riva and Diego Lamagna were being deadly wounded by police bullets¹⁷⁸. Clemenco gave testimony in the case¹⁷⁹ started in order to solve these murders and gave important information for the progress of the investigation¹⁸⁰. Before the statement, Ivan, who was a bus driver, received intimidations from two unknown people who got on the bus he was driving. Clemenco requested custody and had to give up his job. Some time later he reported that a police car was watching him outside his house and that when noticing the custody, he quickly went away¹⁸¹.

It is worth mentioning the threats and intimidations suffered by people deprived of freedom in police stations and jails. In these cases, threats are very frequent and violent. As it happens in marginal areas, threats are not anonymous but the opposite: they are made face to face, the police officer taking advantage of the complete lack of protection of the detainees or prisoners. Frequently, the threats also extend to their relatives, in general people of scarce resources, who do not report it judicially.

One of the most serious cases, because of its tragic end, was that of Daniel Chocobar Guaimas, who was under arrest. In June 2001, Chocobar reported physic and psychological abuse to prisoners in General Alvear Penitentiary¹⁸², Buenos Aires Province, which depends on the Buenos Aires Penitentiary Service¹⁸³. From that moment, he started receiving mistreatment and life threats from the guards. Other prisoners told Chocobar that the staff of the penitentiary service had even told them to kill him in exchange for outings and drugs¹⁸⁴.

The threats became true on 17 June 2002 when another prisoner stabbed him in his stomach while he was in Penitentiary Unit n°9 in La Plata, Buenos Aires Province, 24 hours later he died. Previously, the victim had declared before the Criminal Chamber of San Isidro that he feared for his life¹⁸⁵.

On other occasions, reprisals have the intention of aggravating the procedural situation of the prisoners in order to increase their punishment or to send them to a maximum security penitentiary.

In August 2001, Oscar Alfredo Salas, prisoner of Unit n°16 in Junín, Buenos Aires Province, reported that physical torments committed by staff of the Buenos Aires Penitentiary Service were frequent in the penitentiary. He also denounced that the negative reports on his behavior were false and destined to cut all his benefits. Salas told the staff in charge of the penitentiary that he would report the situation to the justice. The officers threatened him: "if you tell the judge a word

¹⁷⁸ About these events see Part II, Section 2.5.3.4., below.

¹⁷⁹ The judicial case is A-5624/01 before the Federal Prosecutor in Criminal and Correctional Matters N°5, in charge of the federal prosecutors Luis Comparatore and Patricio Evers.

¹⁸⁰ See "El Estado frente las manifestaciones de la crisis social. La investigación judicial de los hechos del 20 de diciembre"; in CELS, *Derechos Humanos en Argentina. Informe 2002-2003*; Chapter III; op.cit.

¹⁸¹ About the murders committed during the demonstrations on 19 and 20 December 2001 see: CELS, *El Estado frente a la protesta social. 1996-2002*, op.cit.

¹⁸² Unit n°30 of the Buenos Aires Penitentiary Service.

¹⁸³ About the events reported see Part II, Section 2.4.2.3. below.

¹⁸⁴ Source: La Nación; "Denuncian tormentos en una cárcel", 13 July 2001; Página/12; "Un camarista denunció que los guardias mandan a matar presos"; 11 July 2002.

¹⁸⁵ About this case and others related see: CELS, "Informe al Relator Especial contra la Tortura"; 24 October 2001; CELS "Informe al Relator Especial contra la Tortura", 26 July 2002, and CELS, Report presented before the Inter.-American Commission on Human Rights on the occasion of the General Audience on the situation of torture in Argentina, 28 February 2003. Available at: www.cels.org.ar.

about the reports and about what goes on here, we will *paper*¹⁸⁶ and throw you to a maximum security penitentiary¹⁸⁷.

Methods vary when the threatened people belong to the middle class or who, even if they do not have great economic resources, have other capacities which make them less vulnerable, such as the degree of organization, knowledge of their rights or access to the mass media of communication. In these cases, threats are made anonymously, usually by phone.

One example of these practices are the threats received by attorney Claudio Pandolfi of the Coordinator Against Police and Institutional Violence (CORREPI), an institution dedicated to the defense and protection of fundamental rights and freedom of victims of the unlawful acting of state officers. From the beginning the CORREPI has suffered many threats and intimidations due to their job¹⁸⁸. Claudio Pandolfi is one of the attorneys who represent the victims and relatives of the repression which took place on 26 July 2002 in Avellaneda, Buenos Aires province. Two young demonstrators (Dario Santillán and Maximiliano Kosteki) died on that occasion and several were injured or taken to prison¹⁸⁹. While working on this case, on 1 July 2002, Pandolfi and his family were threatened through a message left in the answering machine in his legal office. The voice said the following phrase: *"We already know in which cave you're hiding, we'll kill you like a dog"*.

Apart from Pandolfi, they also threatened Sergio Kowalewski, independent photographer who took the photographs of the repression in Avellaneda train station which helped identify some of the officers of the Buenos Aires Police responsible for the death of the two demonstrators.

2.2.2.2. Threats to police officers

The regulation which controls police action and the use made of it discourage police officers from denouncing. The verticality that characterizes the police structure and the corporative spirit of most of its members, lead to the indiscriminate application of disciplinary sanctions against the policeman who reports crimes committed by other colleagues.¹⁹⁰ Administrative sanctions, in most of the cases "exemplary", imposed on those who report are meant to discourage possible future reports. In view of the described situation, police officers do not have any alternatives other than to keep silent and be accomplices to illegal acts committed by their superiors.

Hugo Airali, a former agent of the Federal Police who in 1996 reported before the justice the crimes committed by his hierarchical superior officers, described the arbitrary application of disciplinary sanctions such as "administrative terrorism", mechanism consisting in: *"[...] abusively and indiscriminately producing administrative sanctions with the objective of causing enough fear to avoid any kind of opposition to the delinquent idea"*.¹⁹¹

¹⁸⁶ The word "paper" refers to the practice of producing false evidence with the objective of aggravating the procedural situation of the prisoner.

¹⁸⁷ See CELS, "Informe al Relator Especial contra la Tortura", 24 October 2001, op.cit.

¹⁸⁸ Amnesty International issued five urgent actions in order to warn about the fear for the physical integrity of the members of this organization. Those actions urged the Home and the Foreign Affairs Ministries to exhaustively investigate the events, and demanded guarantees for human rights defenders. The last one (AU 201/02) refers to Pandolfi's intimidation.

¹⁸⁹ About the murders of Santillán and Kosteki see Part II, Section 2.5.3.4. below.

¹⁹⁰ About the characteristics of the police organizations in Argentina see Part II, Section 3.2, below.

¹⁹¹ Chillier, Gaston; "La denuncia de un ex policía. Análisis de las causas y consecuencias de las prácticas de la Policía Federal", Centro de Estudios Legales y Sociales/CELS, unpublished, 1997. Available at: www.cels.org.ar.

Apart from this “legal” internal grudge, those who report usually suffer all kinds of threats, which in some cases become true in attempts against their lives or those of their relatives. Thus, police officers who do not respect the corporative logic of the institution suffer this double persecution, and after the report they are in a vulnerability situation that affects all aspects of their lives and which does not even end when they leave the force.

Frequently, policemen who report offences are threatened by their own colleagues, even if they only reported their superiors. In this way, those who break the spirit of the body and betray the “police family” become the enemies of the institution and, therefore, “deserve” all kinds of intimidations.

In most of the cases, they do not receive any kind of protection from the judicial power, which favors threats against them and their family.

A good example of this is what happened to the agent of the Buenos Aires Police, Adrian Montenegro. In April 2001, Montenegro reported that a violent shooting, known as the “Polvorines Massacre” –which took place in the Buenos Aires Province, in August 2000, in the namesake neighborhood - had been forged by the top Buenos Aires Police with the objective of improving the image of the institution. In the alleged confrontation a policeman and three civilians lost their lives¹⁹². Through continuous phone threats, unknown people warned Montenegro about a plot to murder him and his family. The access of the agent to the Program of Witness Protection of the General Prosecutor of the Supreme Court of Justice, was not enough to stop the threats or the aggressions. The situation forced Montenegro and his family to request the status of refugees, which was granted by the neighboring country Uruguay¹⁹³. Strangely, one of his custodies turned out to be the brother of one of the officers reported by Montenegro. According to Montenegro, the reason why he left the country was that nobody guaranteed his or his family's safety. From the United States, where he lives and works at the moment, Montenegro stated: *“I left the country because the prosecutor told me that he could not take care of me any longer, that my situation was not guaranteed and that he would not be responsible for anything that could happen to me”*¹⁹⁴. Due to the report, the prosecutor Chichizola, journalist Rolando Graña –who interviewed the “repentant” officer- and the family of the Sargeant killed in the incident were also threatened¹⁹⁵.

In 1998 the agent of the Federal Police Marcelo Hawrylcw gave evidence against his superior officers in a judicial cause in which incidents of police corruption were being investigated. After that many chiefs were dismissed. Since then, Hawrylcw started receiving all kind of phone threats and, even though he had permanent police custody arranged by the court, unknown

¹⁹² They are Sergeant Julio Sanchez and Sergio Torres –who received 75 bullet impacts-, Daniel Brizuela –who received 55 impacts- and a third person surnamed Leguizamón –who received 60 bullet impacts. Apparently, the policemen had agreed with the suspects to leave a “freed” area where they could act with impunity. However, after the 6 people robbed a bank –taking US\$ 25,000 with them- they were surrounded by 200 officers on patrols and 4 helicopters. The operation was in charge of the Chief of the Buenos Aires Police, Commissar Martinez. The security minister of the Buenos Aires province, Ramon O. Verón, was also present. Apart from the fatal victims already mentioned, 10 policemen were injured and 3 of the suspected people managed to escape. Even though it was determined that the bullet found in Sergeant Sanchez's body was not fit for investigation, both the action reconstruction and the contradictions which arouse about in the way in which they got to the suspects, contributed to the idea that Sanchez was killed by his own colleagues of the Buenos Aires police. Only US\$15,000 was recovered.

¹⁹³ It is worth mentioning that this is one of the first cases of political exile of an Argentine citizen granted while in democracy. See “Violencia en las prácticas policiales”, op. cit. p. 183-4.

¹⁹⁴ Source: La Capital; “Exiliado en Estados Unidos un cabo denunció a policías, fiscales y políticos”; 12 November 2003.

¹⁹⁵ Source: Clarín, 2 June 2001.

people shot his house three times. In two of these attacks the custodies of the agent were wounded.¹⁹⁶ In the beginning of 2001 Hawrylcw received a grenade in the office where he was working with a note that read: "*Beware, it works*". By mid 2001, Hawrylcw custodies had a fight with a hire car driver who accused the agent and the custody of having attacked him. The three police officers were taken to prison. Hawrylcw denied his responsibility in these incidents and reported that it had all been planned by the police itself in order to harm him, but he could not avoid being dismissed by the Chief of the Federal Police. At the moment, Hawrylcw is unemployed; he is still accused in this case and still receives threats due to his reports of corruption.

On 28 January 2000, the governor of the province of Buenos Aires, Carlos Ruckauf exhorted, in a public act, to the auto depuration of the police force, that is, he suggested that the police itself should get rid of undesirable members. Seeing this as a political gesture, over thirty sub officers who worked for the patrol command in Vicente Lopez and the Florida Police Station, in the north of suburban Buenos Aires, met the request of the governor, reporting a long series of crimes in which the top staff of the Buenos Aires Police was involved.¹⁹⁷ On 13 December 2000, 19 police officers –two commissars and three sub commissars among them- were taken under arrest for many crimes, some very serious¹⁹⁸. Only a month later, 13 January 2001, another judge dismissed the case for lack of merit and ordered the release of the accused officers for technical reasons¹⁹⁹. Being police officers, they had given evidence hiding their true identity, but after the judge's decision, that information reached the accused officers. Since then, the denouncers started suffering threats, attacks and persecutions.

In May 2001, Carlos Marquez resigned to the police, handed his weapon to a prosecutor and abandoned the country after he reported having been threatened a month before and knowing the existence of a plan to kill policemen who were witnesses with reserved identity in the case²⁰⁰. Apart from Marquez, also Carlos Salomon and Luis Flores, among others, also suffered threats. Reprisals taken against police witnesses were a lot and they ranged from administrative persecutions to life threatening attacks. One of the witnesses reported he had received arbitrary sanctions on many occasions, another one stated the tyre in his car had been slashed and even a married couple of police officers reported that two hooded men aimed at their heads and told them they would kill them if they did not resign to their post²⁰¹. Agent Salomon was threatened to death by a colleague, while another one almost ran him over with a patrol car. Two men tried to rape agent Miguel Anaya's wife. They suffocated her with a plastic bag, took her clothes off, cut her and told her they would kill her and her children if her husband went ahead with the case. The Police Medical Expert who acted in the case stated that her injuries were self-inflicted²⁰².

¹⁹⁶ Source: Clarín; 13 June 2001.

¹⁹⁷ Source: Clarín; Página12; 4 March 2001.

¹⁹⁸ They were accused of forming an unlawful association involved, among other crimes, in the "liberation" of areas for crimes to be committed, in extorting other police officers in order not to apply sanctions upon the criminals and in committing irregularities in the arrangement of extra job hours.

¹⁹⁹ Guarantee judge Diego Barroetaveña declared the nullity of the inquiries the prosecutor had taken, mentioning that the witnesses gave "imprecise descriptions" and dismissed the "evidence value" of the testimonies. The decision was appealed by prosecutor Collantes, but was later confirmed by Room II of the Appeal and Guarantee Chamber in Criminal Matters in San Isidro. Source: Clarín, "Testigos en el ojo de la tormenta", 16 November 2001.

²⁰⁰ The threats were hurled by Buenos Aires Police Sergeant Sergio Brindo, while Marquez was driving him in a police car to run some legal errands. The case was taken to court by Guarantee Judge Diego Barroetaveña, in October 2001, hearing prosecutor Hernan Collante's request. Source: Clarín, "Juicio a un policía por amenazar a otro", 24 October 2001.

²⁰¹ Source: Clarín, "Testigos en el ojo de la tormenta", 16 November 2001.

²⁰² Source: Página12; 4 March 2001.

Policemen Diego Alarcón²⁰³ and Osvaldo Delgado²⁰⁴, both members of the Argentine Federal Police, suffered threats, job pressure, and disciplinary persecutions, after legally denouncing their chiefs due to irregularities committed in their Police Stations.

Delgado received a number of administrative sanctions which finally meant his expulsion from the force. Since he reported wrongful events, he suffers all kinds of persecutions from his former colleagues. After being exonerated from the force he started working as a taxi driver, but shortly afterwards he had to give up that job due to the amount of threats he suffered and because the policemen threatened his boss, who ended up firing him. Delgado reported that the police will not let him go to Buenos Aires City –he lives in Buenos Aires Province. On one occasion, an officer whom Delgado had never seen before, put a gun on his head threatening to kill him if he ever tried to enter the Federal Capital.

Sub-Inspector Diego Alarcón was sanctioned and moved from the 15th Police Station, where he performed his duties, after reporting his top officers before the justice²⁰⁵. His own colleagues threatened him on many occasions, warning him not to go ahead with the denunciations. The justice did not follow report made by Alarcón and his superiors still hold their offices.

2.2.2.3. Threats to judicial officers

The threats received by officers of the Judicial Power or of the Public Ministry are mainly linked to their human rights support. Intimidations have the objective of frightening a small group of officers, in general isolated from the rest of the “judicial family”, so that they do not carry on with the investigations of institutional violence incidents and of big nets of corruption in which security forces, mainly police and penitentiary services take part.

Unlike what happens with threats to witnesses, relatives of victims or police officers, these cases usually have an important mass media repercussion as a consequence of the general perception about the seriousness of the threats to justice officers, meaning as they do, attacks to the democratic system. Even in these cases, the official response is far from satisfactory.

María Dolores Gómez performs her duties as official defendant in the judicial department of San Isidro, Buenos Aires province. She suffered many threats and intimidations against her and her family in revenge for her reports on human rights violations –tortures and ill-treatment among them- to people deprived of their freedom in units depending from the Buenos Aires Penitentiary Service. On 30 March 2001, for example, two unknown people hit the defender in a parking lot and ran away without stealing anything from her. Two months later, an inmate of Rawson penitentiary told her by phone that the authorities of the Sierra Chica Jail were planning to kill her. On 2 June same year, an inmate of Melchor Romero Jail reported that the Chief of the Buenos Aires Penitentiary Service, suggested he should kill her in exchange for his freedom.

The State has not shown its desire to protect the life and integrity of Dr Gómez. Aggressions against the defender are closely related to the policy of the provincial Executive Power of interfering in many ways in the task of the Judicial Power: before the threats started, the director

²⁰³ Sub-Inspector Alarcón consulted the CELS on 14 July 2004.

²⁰⁴ Former agent Osvaldo Delgado consulted the CELS in the month of June 2003.

²⁰⁵ The report was presented in March 2003 before the National Prosecution in Criminal Matters of Instruction n°12 under the responsibility of Dr. Martín López Perrando.

of Penitentiary Policy, Miguel Angel Pio, had pressed the defendant so that she would not go ahead with the reports²⁰⁶.

On 5 June 2001, the Center for Justice and International Law (CEJIL) and the Centro de Estudios Legales y Sociales (CELS) presented a request of precautionary measures before the Inter-American Commission of Human Rights, due to the serious situation in which María Dolores Gonzales lived, after the violations of her rights to life and physical integrity. The organisms held the Buenos Aires Penitentiary Service responsible for these acts against the defender²⁰⁷. On 27 August, the CIDH requested to the Argentine government the adoption of precautionary measures, as well as the supplying of custody to the defendant and her family, the protection of witnesses and the investigation and punishment of those responsible.

On 23 October 2003, Dr. Fernando Maroto, judge of the Appeal and Guarantee Chamber in Criminal Matters in San Isidro, was also threatened, together with María Dolores Gómez, through an anonymous phone call. The message, received at midday by the telephone operator of the San Isidro Courts, said: *"Listen, you stupid, all of you are going to blow up in the air, especially Maroto and Doctor Gómez"*. The threat forced the building to be evacuated for over two hours while explosive experts searched it looking for some kind of explosive device. Later it was proved that the phone call was made from a public pay phone in the Florencio Varela Penitentiary, unit that depends from the Buenos Aires Penitentiary Service²⁰⁸.

After what happened, the first interpretation of Maroto was that the threat would be linked to his and Gómez's supports for human rights and the reports they both have been making about tortures to prisoners. Maroto stated that *"Two years ago, Dr. Gomez and I reported tortures in Florencio Varela against prisoners. We even reported there were killings"* and added: *"Even though it is true that since then the situation has improved, we cannot dismiss the possibility of further aggressions"*. Another suspicion of Maroto about the origin of the threats also leads to the Buenos Aires Penitentiary Service and is linked to his request for the top officers to present their asset affidavits. In this sense, he indicated that *"If the Chiefs of the Police are being investigated, also the penitentiary officers should be investigated: the corruption symptoms are very similar. Although some people do not want to be investigated"*.²⁰⁹

On 20 November 2003, an inmate serving his sentence for theft and murder reported before the justice that officers of the Buenos Aires Penitentiary Service performing their duties in penitentiary unit N°28, offered to let him escape if he killed Appeal Judge Maroto and another officer who works in the Justice Minister of the Buenos Aires Province. According to the inmate²¹⁰, -probably surnamed Castronuovo Céspedes- the chief of the penitentiary, Ruben Puente took him to an office and there he proposed: *"If you want to leave now, I can give you a chance, we'll supply you with anything you want for you to kill Maroto and doctor [Juan Manuel] Casolati"*²¹¹, you have

²⁰⁶ Source: Página/12; "Nadie protege a la defensora amenazada"; 1 June 2001.

²⁰⁷ Source: Clarín; "El caso de las amenazas a una fiscal llegó a la CIDH"; 26 October 2003.

²⁰⁸ At night on that same day the news spread that the Buenos Aires Penitentiary Service had identified the author of the threats and that it was an inmate surnamed Velásquez Rodríguez, sentenced to three years and three months for robbery by Maroto's Court in a trial in which Gomez defended him. The information also indicated that Velazquez Rodriguez had "confessed" before the penitentiaries and that they had apparently found papers with alleged "data" on Gomez. Maroto reacted with indignation and stated that: *"This is a lie of the Penitentiary Service; everything is built by them in order to conceal the truth. They are spreading this false information"*. Source: Clarín, "Amenazan a un camarista y a una defensora oficial desde la cárcel", 24 October 2003.

²⁰⁹ Source: Clarín, "Amenazan a un camarista y a una defensora oficial desde la cárcel", 24 October 2003.

²¹⁰ Whose statement was made before prosecution n°11 in San Isidro.

²¹¹ Attorney Juan Manuel Casolati is the director of Justice Minister Investigations, from where he supervises how inmates are treated by the Buenos Aires Penitentiary Service.

*weapons, a car and freedom*²¹². Only days later, 3 December 2003, another inmate of the Magdalena Penitentiary belonging to the Buenos Aires Penitentiary service denounced that people of the Service offered him his freedom if he “threatened or injured” San Isidro Appeal Judge, Fernando Maroto, and defender María Gómez²¹³.

In May 2000, Julio Quiñones, secretary of Instruction Court n°25, in charge of a case which investigates a possible plot of members of the Federal Penitentiary Service to kill Judge Alberto Baños, received a small wooden coffin. Later, a homemade bomb was strategically left feet from his office. Since then, he has custody 24 hours a day and constantly uses a bullet proof jacket, but even then he does not feel completely out of danger. On 17 November 2000, while returning home, one of the tires of the police car in which he was traveling was expelled and the occupants saved their life miraculously. The driver had checked the car that morning and it was in perfect conditions. Before this incident, the family of the secretary had received phone calls, so they also received permanent police custody²¹⁴.

At least four times a week, Dr. Baños –who investigates the Federal Penitentiary Service for outings of prisoners to commit crimes, drugs sales and “arranged” escapes-, received phone calls in which they played funeral songs or the music of a movie that suggests death. Baños was also sent a coffin to his private address in May 2000²¹⁵, the same as his secretary and the judge Wilma Lopez, by then temporarily in charge of the court where Quiñones works and which is vacant. The judge also found out that the code he used to listen to messages on his cell phone had been deciphered; they had listened to the messages and erased them²¹⁶.

On 14 August 2002, Maximiliano Benítez –who performed his duties as defense attorney in the Defense Court of the Poor and Underage n°4 in the city of Concordia, province of Entre Ríos- was victim of a serious attack with a fire bomb thrown inside his private car, parked in front of his house. The bomb, which caused the fire of the vehicle, was thrown by two individuals who, their face covered with a stocking, rode a motorbike. Also Maria Veronica Merro, employee of the Defense Court, was threatened; she received a phone call at home asking her if she did not fear for her family's safety that Dr. Benítez drove her home²¹⁷. That day, in effect, Maximiliano Benítez had taken her home with his car. These threats could have some relation with the investigations carried out by Benítez: in 1999 he took part in the prosecution of 20 police officers for offences of blackmail, theft and dereliction of the duties of a public officer and, at the beginning of 2002, he started investigating the responsibility of two high officers of the provincial police for their participation in the blackmail of car owners with irregularities²¹⁸.

²¹² Source: Clarín; “Un preso denunció que fue contratado para matar a un juez”, 21 November 2003.

²¹³ Source: Clarín; “Otro preso habla de un complot contra un juez”; 4 December 2003.

²¹⁴ Source: Clarín; “Una investigación llena de amenazas e intimidaciones”; 7 December 2000.

²¹⁵ The coffin had his picture and a red dot on the forehead suggesting a future gunshot.

²¹⁶ Source: Clarín; “Una investigación llena de amenazas e intimidaciones”; 7 December 2000.

²¹⁷ As a result of these violent incidents, prosecutor Fernando Di Pasquo made several reports before the Instruction Court on duty, presenting as evidence the recordings of conversation between police officers, one of which mentioned the attack against Benítez's car and the action of the police in order to get rid of responsibilities. The police officers summoned by the court, even though they accepted the conversations were theirs, argued that they had been taken out of context.

²¹⁸ They are high officers Carlos Schmunk and Sergio Ruffiner, who could have been aware of all the manoeuvres made by Gustavo Villagra, head of Toxicology in Concordia and agent Mario Segovia, who performed his duties in the same office. The blackmail consisted in the kidnapping of the cars without the Justice's consent and the subsequent demand of money so that they would not go ahead with the corresponding police proceeding. Source: National Coordinator against Police and Institutional Repression (CORREPI), Informative Bulletin n°201, 12 to 18 January 2003.

The prosecutor of the City of La Plata, Buenos Aires Province, Victor Violini, who at the moment investigates the alleged unlawful enrichment of 15 high chiefs of the Buenos Aires Police²¹⁹, received threats for his investigations. On 13 October 2003, clearly showing impunity, someone left a letter on his desk in which they threatened him to death²²⁰. In one of the paragraphs it read: *“By now, you’re probably wondering how this letter got to your desk and you’ll always wonder, because you’ll find no answer, because no matter how much custody they assign you, we’ll always get where we want”*²²¹. On 29 October, Violini was threatened once again through a letter, this time hidden in a bunch of flowers left in his office²²². Judicial sources informed that all suspicions revolve around members of the Buenos Aires Police and that they are due to the investigations that prosecutor Violini is conducting. On 10 December 2003, inmate Gustavo Acosta Rios denounced that penitentiary authorities promised to release him if he took part in kidnapping a relative of the prosecutor of La Plata Victor Violini. For that reason, he said, they asked him if he could shoot a FAL machine gun and they explained that he was to attack Violini *“because he was investigating some police friends”*. Besides, he was asked to shoot the houses of San Isidro Appeal Court Judge Fernando Maroto and official defender Maria Dolores Gomez²²³.

2.2.2.4 Threats to press workers

Freedom of expression and access to information are fundamental values for a democratic society, and they are protected both by the National Constitution,²²⁴ as well as by different international instruments of human rights.

Thus, the American Convention on Human Rights establishes that *“Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”*²²⁵ Also, the International Covenant on Civil and Political Rights states that *“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”*²²⁶ In this respect, The International Declaration on Human Rights establishes in Section 19 that *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

Through free expression and access to information the members of the society can keep an eye on the behaviour of their governors. This controlling function of the mass media of communication is fundamental to prevent impunity in the abuses against human rights, and to open to the public

²¹⁹ See Part II, Section 3.2 below.

²²⁰ Source: Clarín, “Investigan amenazas a un fiscal por un caso contra 15 comisarios”, 16 October 2003.

²²¹ Prosecutor Alejandro Villordo, in charge of the investigations of the threats to Violini, had all computers of the office of the Public Ministry analyzed, which enabled to detect the machine from where the threat had been written and the paper used, which is of an official kind. It was determined that the letter might have been left there by a student who worked for the Prosecution.

²²² Source: Clarín, “Otra vez intimidan a un fiscal”, 30 October 2003.

²²³ Source: Clarín, “Otro preso reveló un complot penitenciario contra el juez Maroto y el fiscal Violín”, 11 December 2003.

²²⁴ In Section 14 it establishes that: *“All inhabitants of the Nation enjoy the following rights, in accordance with the laws that regulate their exercise, namely: [...] of publishing their ideas through the press without prior censorship [...]”*.

²²⁵ Section 13, Paragraph 1.

²²⁶ Section 19, Paragraph 2.

corruption nets in which public officers actively take part. That is what turns journalists into a frequent objective for attacks, threats and intimidations.

Lack of serious, impartial and effective investigation and of sanctions to the material and intellectual authors of offences committed against press workers, constitutes, according to the Inter-American Commission of Human Rights, a violation to the right to inform and to express public and freely, thus generating international responsibility of the State.

The Rapporteur for Freedom of Expression of American States informed that, during 2002, it received approximately 30 warnings on threats and aggressions to journalists in Argentina. Most of the cases took place in cities inside the country and many of them during the coverage of protests and demonstrations of citizens in the street.²²⁷

One of the most serious cases highlighted in the report, is the one about Maria Mercedes Vazquez, in Corrientes. In October 2000, unknown individuals threw an explosive to her house in the city of Corrientes, causing material damages to the building. The journalist reported the incident to the authorities and was assigned police custody. Vazquez is co-host of the radio programme *En el Aire*, broadcast on LT7 Radio Corrientes where, days before the attack, she transmitted telephone recordings which involved national legislators, the president of the Corrientes Supreme Court of Justice and many local officers, in an alleged conspiracy against the governor of the province, Ricardo Colombi, from the Radical Civic Union Party (UCR).

Previously, the reporter had suffered other intimidations because of her journalistic labour. Among February and March 2002, a provincial senator ordered her arrest and also of her colleague Silvio Valenzuela due to contempt, legal description still in force in the province's constitution. Both journalists had transmitted information about a bribe some provincial legislators had allegedly received. Vazquez presented a *habeas corpus* before the justice, which determined that Section 81 of the provincial constitution²²⁸ invoked by the senator was unconstitutional²²⁹. Two days later, the journalist received phone threats at her house and in the radio station. One of the calls was answered by her daughter, who was explained how they would kill her mother. In another phone call they told her: "*You're going to end up just like Cabezas*²³⁰, *with six shots in your head and inside a car boot*". On 1 April, Maria Mercedes Vazquez was attacked in the street by two individuals who threatened her and hit her face²³¹.

Journalist Eduardo Delbono²³² has been, since 1987, owner of Radio Ciudad Station, in the city of Merlo, Buenos Aires province. Delbono, besides, is the host of the radio programme, Buenos Dias Ciudad, daily broadcast in the station. Problems for the journalist started in 2000 when he was told by the Press and Media Direction of the City Council that the party superintendent, Raul Othacehé, did not like the general critical line of the station. They also told him not to let

²²⁷ Pursuant to the Special Rapporteur for Freedom of Expression; *Informe Anual 2002*; Chapter 2-C, Available at: <http://www.cidh.oas.org/Relatoria/Spanish/InformeAnual/InfAn Re102>.

²²⁸ Section 81 of the Constitution of the Province of Corrientes establishes that: "*Each Chamber shall have power to punish with arrest, not longer than a month, anyone who violates his privileges, according to the parliamentary principles, and he shall be able, should the situation be serious, to request a trial in ordinary Courts*".

²²⁹ The precautionary measure was presented by Vazquez's attorney before Instruction Court N°3, in charge of Judge Cochia Breard, who on that same day determined that the power of *gendarme* which Section 81 invoked by the senator grants to the provincial legislature is unconstitutional.

²³⁰ Graphic Argentine Reporter murdered in January 1987.

²³¹ In order to get more information about the case see:

www.asociacionperiodistas.org/cronologia/argentina202/febre02.html and www.corrientesnoticias.com.ar

²³² Eduardo Delbono consulted the CELS on 27 January 2004.

neighbours speak while on air, since they took advantage of the situation and criticised the local political power. Delbono refused to do that and continued with the radio programme.

At first the city council of Merlo tried to take the transmission antenna out of the air adducing inexistent habilitation problems²³³. On 20 November 2000, Delbono reported before the General Prosecution of Moron that two subjects had threatened him to death while travelling by van in Ituzaingó locality, Buenos Aires province. In his report, the journalist stated that a green Volkswagen vehicle came close and, after insulting him, the driver said: *“Cut it out with the city council or you’ll appear in the Reconquista River. You won’t be the first or the last one in Merlo”*²³⁴. Before going away they showed him a fire gun and warned they would use it the next time.

On 30 January 2001, Delbono announced that two unknown individuals had smashed the front doors of the windows of the radio station not taking anything from the inside. On 23 July 2003, Delbono went to the 1st Police Station of Merlo to denounce that from a car parked opposite his house, four individuals took pictures of the inside of the building. When Delbono was walking towards the car to question them, they hastily drove away. On 18 September 2003, two individuals went to the recording studio in the morning, made Delbono kneel down and aimed at his head with a 45 gun and told him to stop criticising the superintendent²³⁵. On 27 December 2003, the city of Merlo started the day with posters on the street walls denouncing Delbono as a repressor of the last military dictatorship. Weeks before other posters had pointed out that Delbono was a troskist activist who tried to cause violence in the city. Both notices were signed by organizations which do not really exist, reason why Delbono held the local political power responsible²³⁶.

Threats and attacks perpetrated on press workers covering social demonstrations have dramatically increased in the last years. In these causes, the intimidations have the objective of preventing illegal repression in social demonstrations from getting mass coverage, thus limiting the possibilities of spotting those responsible. These warning became direct aggressions and even arbitrary imprisonment in cases in which press workers would not give up their jobs.

In this way as is the case with threats to witnesses of police violence, the objective of the threats and attacks is to cover up unlawful acts perpetrated by the security forces, or to prevent them from being known, thus consolidating impunity.

Alberto Recantini and Tomas Eliashev –workers of the journalistic web site Indymedia Argentina- were assaulted by officers of the Federal Police on 26 October 2002, while registering the incidents that took place outside the 6th Police Station of Buenos Aires city, between police staff and demonstrators protesting against the unlawful arrest of activists of the Greenpeace organization after a demonstration outside the National Congress²³⁷. After watching the journalists working there, police staff threatened to hit them if they went on filming the incidents. The journalists continued with their job and, after a second intimidation were attacked with rubber

²³³ Judge Angel Palumbo ordered the City Council of Merlo to cancel and file the acts through which they had tried to take the transmission antenna from the station.

²³⁴ See Journalist’s Assosiation; “Informe Anual año 2000”. Available at: www.asociacionperiodistas.org/cronologia/argentina/2000.

²³⁵ Because of these incidents a judicial cause was started under number 195,669 and processed under Prosecution Unit of Investigations N°1, of the Judicial Department of Moron.

²³⁶ Source: La Capital, digital edition; 27 December 2003.

²³⁷ See “Hostigamientos a militantes sociales y defensores de derechos humanos” at: CELS; Derechos Humanos en Argentina. Informe 2002-2003; Chapter VI; op.cit.

ammunition. Recantini Menendez received three shots –one in his head, another one in his elbow and a third one in his crotch - while Eliashev received six impacts in his two legs.

On 25 February 2002, there were serious incidents between the former occupants of the ex Patronato de la Infancia (PADELA) in Buenos Aires city and the Federal Police. The Police acted in a disproportionately violent way against the occupants throwing tear gases and rubber bullets at them. All the press workers who were there at the moment of the incidents were harshly intimidated so that they would refrain from taking pictures of the police repression.²³⁸

Two press workers belonging to the journalistic team of the TV programme “Punto.doc” – journalist Maximiliano Garcia Solla and cameraman Julian Sequeira- who did not obey the police commands and filmed the incidents, where beaten by the officers. Sequeira had his nose broken while filming the violent police action and had to be taken to hospital, while Garcia Solla was beaten and taken to prison accused of “resisting authority”.

2.2.2.5 Threats to social activists

– Organizations of Unemployed People

After the second half of the 90s, together with the constant growth of unemployment and poverty, organizations of unemployed people increased in number and adopted different ways of demands and mobilizations. In this way *piqueteros* appeared, and grouped in different organizations, adopted a new way of demanding their rights: road blockades. To the continuous growth in number and operative capacity of the organizations, the government opposed judicial persecutions and in many cases repression. In this respect, judicial processes and the latent possibility of applying a criminal sanction are threats frequently used by the State to control the political action of these groups. Thus there is an unacceptable criminal control on political action.²³⁹

The relevance that the *piquetero* movement slowly gained, due to the massivity and frequency of their road, bridge and street blockades as a way of protesting, transformed the “*piquetero* problem” in the cause of many debates. In this context, many officers stated that they would apply “all the force of the law” to prevent road blockades and some also suggested the participation of the armed forces in order to “control” this groups of unemployed people. They even proposed the application of a siege²⁴⁰ in those areas of the Buenos Aires suburbs where these organizations have more consensus.

The activity of the judicial power has been core in the criminalization of social protests; this means judicial persecution of demonstrators in lawful protest for the opening of job sources, the assignation of social plans, or simply, food distribution²⁴¹. Besides judicial persecutions, *piqueteros* organizations have repeatedly denounced threats and attacks against activists, vandalism in their political units and provocations of agents of the security forces, who were originally destined to the control of public demonstrations.

²³⁸ See “El Estado frente a las manifestaciones de la crisis social” at: CELS; Derechos Humanos en Argentina. Informe 2002-2003; Chapter III; op.cit.

²³⁹ See CELS, El Estado frente a la protesta social 1996-2002; op.cit.

²⁴⁰ The state of siege, the application of which is provided in Section 23 of the National Constitution, implies the suspension of the constitutional guarantees in the event of internal disorder or foreign attack that endangers the exercise of the Constitution and of the authorities created therein.

²⁴¹ About the criminalization of the social protest see, CELS, El Estado frente a la protesta social 1996-2002; op.cit.

A clear example of this way of intimidation took place in the province of Tucuman, on 9 September 2003. The National government armed a battalion of 400 gendarmes, to whom 4000 provincial policemen added because of a demonstration which was to take place outside the government house, in the capital of this northern province. The city was completely militarized and the protest took place in order but was less crowded than expected due to the fear caused by the security operation.

In their disputes with *piqueteros* organizations, representatives of the political power –both national and provincial- have reached very serious levels. The so-called “political referents” mainly act in areas of low resources in the province of Buenos Aires, but they also work in the most deprived neighbourhoods of the Federal Capital and of the most important urban centres in the country. Most of them belong to the *Justicialista* Party, and with the support of the superintendents of each area, they are the ones who distribute social plans, thus becoming intermediaries between the political party and those who benefit from plans. Ever since the *piqueteros* started gaining legitimacy, they were considered by the “referents” as a threat to their hegemony.

An incident which can prove this, took place on 13 January in the Lanus District, Buenos Aires province. Representatives of the communitarian centre Pueblo Unido Unico Camino (People Together Only Way) were received by the superintendent Manuel Quindimil in order to talk about funds for the communitarian canteens of the area. During the meeting, and before the superintendent, Omar Lopez, secretary of Social Action of the town council, threatened Antonio Gutierrez, one of the members of the centre, saying “*we’ll go look for you*”. Only 24 hours later that threat became real. The following day, two people went to the building of the communitarian centre and after hitting and threatening everyone, they got the private address of Gutierrez. Not finding him in his house, they threatened his wife to death. The neighbours of the area identified one of the attackers as Ramon Luque, member of the “*barra brava*”²⁴² of the Club Atletico Lanus and “political referent” of the area. After denouncing the incident to the police and due to the public state of the incidents, Omar Lopez had to give up his position as head of the Office²⁴³. Months before, superintendent Quindimil had stated in a plenary meeting of the *Justicialista* Party that the *peronist faction* had to dispute the street with the *piqueteros* and leftists.

– Neighbourhood assemblies

After the violent incidents of December 2001²⁴⁴, neighbourhood assemblies spontaneously appeared with great force –in many areas of the city of Buenos Aires and its suburbs- as a natural manifestation of the need of the neighbours to organize themselves and as a way of developing group actions. The assemblies started different activities, which varied according to the profile of their members and the needs of the neighbourhoods. Some of them were the organization of canteens, school support lessons and the formation of job cooperatives.

Neighbourhood assemblies were not outside the situation of social tension. Many of their members were, also, intimidated with the objective of stopping neighbours and disarticulating their initiatives.

In the middle of 2002, neighbours who make up the assembly of Sarandí, in the province of Buenos Aires, denounced that every time they met, unknown people watched them from a red Ford Falcon vehicle, license number VYE 523. Through a report of the National Registry of

²⁴² The expression “*barra brava*” is frequently used to refer to groups of people who go to football matches and cause disturbances.

²⁴³ See “Hostigamientos a militantes sociales y defensores de derechos humanos” at: CELS, *Derechos Humanos en Argentina. Informe 2002-2003*; Chapter IV; op.cit.

²⁴⁴ See Part I, Section 2, above.

Automobiles, it was confirmed that the car belonged to the Argentine Federal Police. On 6 July, during another meeting, two people were spying on the members of the assembly, this time from a yellow Ford Falcon, license number VTZ 230. After the neighbours asked for explanations the occupants of the vehicle identified themselves as members of the Federal Police and said they were patrolling on custody²⁴⁵. This shows that members of the security forces perform intelligence jobs on neighbourhood assemblies, causing an intimidating effect on the members.

Through a press report, members of the Temperley assembly, Buenos Aires province, reported that on 28 July 2002, two unknown individuals attacked and hit a young member²⁴⁶ of the Youth Commission, few blocks away from his private house, when he was going to the assembly. The aggressors threw him to the floor and warned him *"stop messing with the ticket issue", "we don't want to see you in demonstrations anymore", "tell your friends to stop fucking with us"*. During that month of July, the Youth Commission of the assembly had organized many activities destined to get scholarships for high school students of the area and a special school bus ticket²⁴⁷.

Early in the morning on Thursday 13 February, 2003, unknown people shot the building where the canteen of the Avellaneda Park assembly is, in the city of Buenos Aires²⁴⁸. Two members of the group who were watching the place, managed to save their lives miraculously. Before this incident, members of the assembly suffered all kinds of threats and intimidations, and the previous week three neighbours of the Avellaneda Park who were going to have lunch in the canteen were hit by unknown individuals. According to assembly members, those responsible for the threats and aggressions are police men acting without the uniform and young people who belong to neo-Nazi groups, protected by agents of the police station of the area and who have been intimidating Bolivian immigrants of the neighbourhood and homeless people living in the park. The morning after the attack to the canteen, many members of the assembly tried to make the corresponding criminal report to the police station in the district (Police Station 40°) but the officers on duty refused to receive it and recommended them reporting it before the United Nations (UN). They only received the denounce when all the members of the assembly and members of neighbouring assemblies marched towards the Police Station and requested to have an interview with the Police Chief. Days later, one of the assembly members was beaten up by a uniformed officer of the 40th police station without any reason, so the members of the assembly went back to the Station in order to hold an interview with the one in charge, but he refused to identify the officer that had beaten the assembly member and recommended them to *"follow the path of justice"*.²⁴⁹

On 7 April 2003, Raul Salinas, an unemployed person who participates in the Floresta Assembly, Buenos Aires city, was kidnapped for 36 hours. Salinas was in the Velez Sarfield Park, where the assembly takes place, waiting for the food for the popular cooking the assembly offers every Saturday, when unknown individuals hit him, covered his eyes, threw him inside a car and took

²⁴⁵ The neighbours took photographs and filmed them and phoned the 4th Police Station of Avellaneda –which sent a police car with two officers- so that there was evidence of the situation. Source: Noticiero de Asambleas Populares; PO 763, 18 July 2002. Available at: <http://www.po.arog.ar/po/po763/noticier.htm>. In first line, <http://www.edai.org/primerav6n3/art04.htm>.

²⁴⁶ Being under age, his name cannot be published.

²⁴⁷ According to the Social Observatory of Latin America –OSAL/CLACSO/number 8, September 2002, p. 57.

²⁴⁸ During the last months, many neighbourhood assemblies started occupying premises or buildings, public or private, which were abandoned, in order to develop activities such as canteens, school support lessons, health service rooms, etc. for the neighbours.

²⁴⁹ Pursuant to Red Eco. In order to see the press communicate of the Avellaneda park assembly, consult: www.anred.org.

him to a house where he was held prisoner for 36 hours. During this time, Salinas was tied to a bed, did not receive any water or food and was not even allowed to go to the toilet. The three unknown kidnappers savagely beat Salinas and repeatedly questioned him about other people supposed to be assembly members, who he did not know. Suddenly a fourth person came into the room and reprimanded the kidnappers: “*you stupid, can’t you see it wasn’t this one*”. They put Salinas back in the car and left him near Moreno cemetery, in the province of Buenos Aires.²⁵⁰

– High School Students

In 2002, many students of the high school level who formed the student centres of their educational institutions were anonymously attacked, threatened and intimidated for demanding their rights, for example, a high school bus ticket with a price according to the critical economic situation of thousands of families. In all the cases studied, threats were destined to students of traditional schools in the city of Buenos Aires where middle class students go. In some of them, besides, the threats include suspicious references to the last military dictatorship, during which many activist students were disappeared.

In this way, on 12 June 2002, a 17-year-old student of Mariano Moreno school²⁵¹, in the city of Buenos Aires, was intercepted in the street two blocks from his house by two men who got off a car, their face covered, and called him by his name. After beating him, they threw him to the floor, took off his T-shirt and engraved the initials of the *Alianza Anticomunista Argentina* (Argentine Anti-Communist Alliance – Triple A)²⁵² on his chest; they left him on the floor and told him “*you are the first domino piece to fall, stop bothering with the high school bus ticket*”. Apart from the wounds on his chest, forensic doctors found that the boy also had cuts in his head and beats in the ribs area.

Some weeks later, on 5 July, three students of the Maria Claudia Falcone School, also in the city of Buenos Aires, were threatened through an anonymous message because they demanded the high school bus ticket. The name of the school is that of a young girl disappeared on 16 September 1976, in the night known as “*Pencils Nights*” in which seven students were kidnapped by police officers of the Buenos Aires police, commanded by General Ramon Camps, precisely for demanding the high school ticket. The anonymous text expressed “*don’t start mobilising or what happened to the piqueteros will happen to you*”, making clear reference to Darío Santillán and Maximiliano Kosteki, the young *piqueteros* murdered by the police on 26 June 2002 in the locality of Avellaneda, Buenos Aires province²⁵³. The Monday after the threat, the plaque of Maria Claudia Falcone was missing from the school.

Only three days later, on 8 July, the members of the Students Centre of the National School of Buenos Aires, in the city of Buenos Aires, received an envelope that contained cuttings from news articles with phrases such as “don’t forget the pencils nights” and the heading “Strange aggression to a *porteño* student. He was demanding a high school ticket”.

²⁵⁰ Source: Página/12, 8 April 2003. Sponsored by attorneys of the Office of the Ombudsman of the City of Buenos Aires, Salinas made the corresponding police criminal report, without there being any advance in the investigation. Due to the methodology used by the kidnappers, neighbours of the assembly state that they are officers of the Federal Police.

²⁵¹ Being under age, his name cannot be published.

²⁵² The Triple A was created in the 70s as a para-police group of extreme right faction which, with the protection and funds of the State, threatened, kidnapped, attacked and murdered people who were against the government ideas of the time, among them: priest Carlos Mujica and national representative Rodolfo Ortega Peña.

²⁵³ About these murders see Part II, section 2.5.3.4. below,

Around those days, also students from the Carlos Pellegrini School, in the city of Buenos Aires, were intimidated. In a press conference held on 16 July, they stated that six or eight students had been intimidated in their houses, through phone calls or letters²⁵⁴.

– Threats to human rights defenders

In their daily task searching for truth and justice, the Association Grandmothers of the Plaza de Mayo started many judicial actions against different agents of the security forces involved in children abduction, which facilitated the imprisonment of many people who had some kind of participation in this systematic practice of the last military dictatorship, and also the recovery of these children for their biological families. For over 20 years, this organization has acted in many fields for the respect and presence of the fundamental rights and freedom of the people.

Early in the morning on Friday 20 September 2002, in the city of La Plata, province of Buenos Aires, a group of unknown people shot against the house of Estela Barnes de Carlotto, president of Grandmothers, causing damages in the outside and inside of the building. Carlotto described the incident as a *"horrible death message"*²⁵⁵.

The number and calibre of the shots show that the intention of the attackers was not simply to produce material damages, but also to reach people who were inside the building, particularly Estela Carlotto. The investigators of the case revealed that the bullets used were of the same kind as those used by the security forces in special operations, and, according to the victim -who has some knowledge on the details of her daughter's murder- of the same kind as those used to kill her daughter Laura in 1977, during the military dictatorship.

This attack took place a day after the Provincial Commission for Memory²⁵⁶ –presided by Carlotto- presented before the Supreme Court of Justice of the Province of Buenos Aires a document in which they analyze the job of the provincial court in the last years. In the conclusion of that document, they denounce the abuses and horror practices still used by the security forces and point out that they are not at all different from those used during the State terrorism. That hypothesis was also held by the Security minister of the province of Buenos Aires, Juan Pablo Cafiero, who defined the incident as a "political attempt" and stated *"it was not a robbery attempt, it was a rather serious attack which may have happened due to the document presented in the past days before the Supreme Court of the province of Buenos Aires"*.²⁵⁷

Three months later, on 25 December 2002, unknown individuals attempted against a photographic exposition organized by the Grandmothers of Plaza de Mayo in the Children's Republic, park located in the Locality of Gonet, 10km from the city of La Plata. The exposition - which explained what happened during the last military dictatorship and showed the history of the organization through images- was completely destroyed by the aggressors, who broke glasses, signs and paperwork.

Adriana Calvo and Carlos Lordkipanidse are members of the Association of former Prisoners and Disappeared, made up by those who survived different concentration camps during the last

²⁵⁴ Source: Clarín, "Amenazas reiteradas a estudiantes"; 25 July 2002.

²⁵⁵ Source: La Nación; 24 September 2002.

²⁵⁶ The Provincial Commission for Memory is a public body with extra powers created on 13 July 2000, whose objective is to keep the recent history of the country alive, to analyze its causes, development and consequences and to transmit the lessons and legacy left by repression and state terrorism. It is made up by representatives of Human Rights organizations, trade unions, justice, the legislature, the university and different religious cults. See: www.comisionporlamemoria.org.

²⁵⁷ Source: El Día; 21 September 2002.

military dictatorship. Their main objectives are to achieve justice for the massive violations to human rights and the rebuilding of memory, so that the horror of State terrorism is never forgotten by society.

In June 2002, Calvo and Lordkipanidse gave testimony as witnesses to the case in which they investigate the torture and disappearance of 22 members of the *Montoneros* organization in 1980. In that case, former dictator Leopoldo Fortunato Galtieri, who recently died, was deprived of his freedom as a punishment, together with 40 former repressors, army men and policemen. After giving testimony, Calvo and Lordkipanidse received death threats through anonymous phone calls. The threats were repeated after they denounced in two articles, published in *Página/12* newspaper²⁵⁸ repressors of State terrorism, and after they involved officers of the police forces who are active in the force and who could have had an important participation in the police repression of 26 June 2002 in Avellaneda, during which Darío Santillán and Maximiliano Kosteki, activists of the Aníbal Verón Coordinator, member of the Unemployed Workers Organization, were killed.²⁵⁹

²⁵⁸ Days 12 and 22 July 2002.

²⁵⁹ To get more information, go to: www.exdesaparcidos.org.ar/comunicadosdeprensa/amenazas.

2.3. House and person searching

2.3.1. Legal aspects

People have the right to privacy, and it has been recognized since the liberal revolution as a pillar of human dignity²⁶⁰. It is the power of each individual to decide which aspects of his life he will keep in a private sphere and will not expose to public perception.

Examining a person, the things he carries, his clothes, his house or his vehicle mean intruding in his privacy²⁶¹. However, the criminal procedure, in order to determine the truth, sometimes requires the suspension of the power of each person to reserve his privacy. In this sense, personal and house searching are measures of procedural coercion that the law rules in order to allow state bodies to interfere in aspects of the individuals, otherwise protected by the right to privacy²⁶². The seriousness of the rights at stake and the risks taken in such proceedings, give place to guaranties²⁶³ with the intention of impeding that, while searching for the truth, superior rights of individuals are harmed.

In this project, a personal searching shall be the inspection of the body of a person or the scope in his custody, with the objective of finding objects related to a crime, which are suspected to be hidden therein²⁶⁴ and, a house searching shall be, the compulsive breaking of private places, with a search warrant of the corresponding authority.

According to all the regulation on the subject, house and person searching require, in general, the warrant of a judge. In the case of personal searching this condition is no so strict if a delay in its fulfillment could be dangerous. This exceptional urgency leaves the criteria to decide whether it is necessary to intrude in the privacy of people, in the hands of the security forces. The officers who decide to act, are to, in a short time, give an account of their acting, being subject to a posterior judicial warrant. If this requirement is not fulfilled or if the judge doesn't consider there were enough reasons for the action, the restraining measure is rendered without effect, and the objects found cannot be used as evidence. In the case of house searching, recent amendments in the procedural codes in criminal matter of some provinces²⁶⁵ have extended the power to start them, to prosecutors and peace judges²⁶⁶.

²⁶⁰ Pursuant to Maier, Julio B. J.; Derecho Procesal Penal. Tomo I: Fundamentos, Editores del Puerto, Buenos Aires, 1996.

²⁶¹ The National Constitution establishes in Section 18: "*The residence is inviolable, as are letters and private papers; and a law shall determine in what cases and for what reasons their search and seizure shall be allowed*"

²⁶² Langer, Máximo: "La requisa personal en la jurisprudencia de la Cámara Nacional de Casación Penal" in Nueva Doctrina Penal 1996/A, Editores del Puerto, Buenos Aires, 1996.

²⁶³ The guarantee of home inviolability is contained –federally and also in the city of Buenos Aires– in the dispositions of the Criminal Procedural Code of the Nation, Law 23,984, sections 224 and 225, and the guarantees in personal searchings in section 230.

²⁶⁴ Pursuant to Lanter, Máximo, op.cit.

²⁶⁵ For example, in the province of Buenos Aires, governor Felipe Sola decided on a procedural reform (law 13,078), which gave prosecutors the power to carry out home searching without a judge warrant, which is against the provincial Constitution, section 24: "*The house of a person shall not be searched unless there is a warrant given by the judge or by the municipal authorities responsible for controlling the executions of the rules of public health and for this reason only*".

²⁶⁶ Section 172 of the Constitution of the province of Buenos Aires establishes that "[...] Peace Judges shall be competent in the matters established by law and also in provincial offences, in cases of smaller importance". Constitutional guarantees such as the inviolability of the residence –of which home searching is an exception– shall not be understood as being of 'smaller importance'".

Even in cases in which the legal requirements to carry out the proceedings are respected, both home and person searching are restraining measures. The strictness while carrying out the proceeding and the decision itself to proceed, seem to vary according to the social condition of the person searched, his level of political activism and the location of the house searched, among other aspects. These discriminative variations justify the inclusion of searching as a type of violence to be studied, even if they are not necessarily criminal actions of the State bodies.

2.3.2. Characteristics of house and person searchings in Argentina

2.3.2.1. House and person searching as ways of intimidating social activists

Home searching to activists after demonstrations or public demands are frequent. These searchings are carried out in the particular houses of activists of organizations which have publicly demonstrated claiming jobs or social plans. At times, victims are people who actively participate in the organization they have demonstrated with, but that, for different reasons, had not participated in the demonstration of the previous day or days. Taking into account the massivity and frequency of some restraining actions carried out by the State, it is at least outstanding that people who practice some kind of activism are also those sought by the criminal power²⁶⁷.

A repeated denounce says that during house searching, objects are “set” – such as flags or recordings- which link the dweller of the house searched with the organization in which he participates and with a public demonstration in particular. These elements are later used as “evidence” which relates the dweller of the house with a crime allegedly committed during the demonstration²⁶⁸. In other cases, violent home breaking by the police is enough to intimidate activists, without any object being confiscated.

The regions, in which these practices of intimidating house searching to demonstrators have most frequently been denounced, are those where the *piquetero* movement started, such as Neuquén and Salta, specifically in the areas where the movement is stronger, for instance General Mosconi (Salta) or Cutral-Co and Plaza Huincul (Neuquén)²⁶⁹. These places have been the scenery of strong repressions and of the violent death of demonstrators throughout the last years²⁷⁰.

Through their frightening effect, house and personal searching to social activists have the intention of intimidating demonstrators and of stopping their mobilizations. Below are some examples.

²⁶⁷ Pursuant to CELS; *El Estado frente a la protesta social 1996-2002*, op.cit.

²⁶⁸ At times, a crime had been committed during the demonstration, such as shop looting or property damage, but at other times, the intention is simple to link the activist to the social protest.

²⁶⁹ General Mosconi is part of the biggest in population conglomerate Salta (after the capital city). It has around 20,000 inhabitants and the most important multinational hydrocarbon companies are there. Most of the low-qualification employees of these companies live in General Mosconi. In 1991, the basic needs of 27% of the population were not satisfied and in that context the state hydrocarbon company YPF was sold to private hands, which meant a 90% staff reduction (between 2,400 and 3,500 employees made redundant) and the reduction of the salaries of those who kept their jobs. The beginning of the *piquetero* movement in Neuquén was also related to YPF's privatization and dismissals. At the moment, it is estimated that unemployment in Cutral-Co reaches 37% of the population. Source: SIEMPRO 1991, cit. at: Barbeta, Pablo and Lapegna, Pablo; *Cuando la protesta toma forma: los cortes de ruta en el norte salteño. La protesta social en la Argentina. Transformaciones económicas y crisis social en el interior del país*, Buenos Aires, Alianza Madrid, 2001.

²⁷⁰ Among the victims: Aníbal Verón (2000), Carlos Santillán and Oscar Barrios (2001), murdered in the province of Salta and Teresa Rodríguez (1997) in Cutral-Co, Neuquén.

On 3 August, 2001, ten young people were eating a barbeque in the northern area of the city of General Pico, La Pampa province, when a group of policemen provokingly walked by the area until they broke into the house. The young people were taken to the 2nd Police Station in order to find out about their criminal records, where they were beaten. *"The behavior of the police forces in this house searching is worrying. Not just because of the weapons showed, but also because they aimed at a baby girl with a gun and also hit everybody both inside the house and in the cell of the police station"*, denounced the Pampeano Movement for Human Rights. In the same report, it is stated that the detentions were because they had led a social protest a month before.²⁷¹

Alejandra Torqui is the press responsible for the Unemployed Workers Organization (MTD). On 25 November 2003, the repression against members of the MTD who were demonstrating in the city of Neuquén, province of the same name, had ended up with at least 35 injured people²⁷². The following day, in the morning, two vans parked in front of Torqui's house, who had just left for her job. According to the neighbors, civil policemen wearing vests with the initials of the Neuquén Police, got off the car and without a warrant, broke into the house. Torqui presented the denounce and stated that they caused all kinds of damages in her property, and that *"with the intention of intimidating they left MTD flags confiscated during demonstrations months ago in which some people were arrested"*. Torqui had just had a baby who was in hospital at the moment of the demonstration, reason why she had not been present²⁷³.

The Instruction Judge in Criminal Matter n°1 of Tartagal, Salta province, Dr. Nelson Aramayo ordered the arrest of the leader of the Union of Unemployed Workers (UTD), Pepino Fernandez. The warrant brought about a big protest of the piquetero movement in General Mosconi²⁷⁴. During the violent day, among other damages, offices of the hydrocarbon company Tec Petrol were set on fire. Early in the morning on 21 November 2003, the Salta police searched houses, looking for elements taken during the looting and fire to the petrol company Tec Petrol, and 10

²⁷¹ Source: La Reforma, General Pico, "Movimiento de Derechos Humanos denunció represión policial en un allanamiento", 5 August 2001.

²⁷² Demonstrators complained against a new registration imposed on those who benefit from social plans in Neuquén. Due to the intervention of the provincial police, the neighbours joined the protest, which extended to suburban areas and went on until late at night. The Chief Julio Trepát, in charge of the operation, stated that the repression was because the unemployed people stopped the registration proceedings. As a result of the repression, at least 30 people were injured with rubber bullets and 5 received lead bullets. Pedro Alveal received 63 rubber bullets impacts: 20 of them in his legs and 43 in his trunk, arms and head. A photographic sequence and a video presented as evidence in the case, prove that Alveal was alone while he was being followed. The policemen, as appears in the judicial investigation, shot at a distance between 3 and 4 meters. Once wounded, instead of receiving help, he was taken to two police stations and tortured by the police. He was not operated on until three in the morning after being released. The doctors were not able to save his left eye. Four policemen are under preventive arrest accused of committing serious injuries twice aggravated. Two of them stayed until late in the demonstration and the other two were in charge of the police station where Alveal was taken. In spite of the bullet shells found on the streets and the bullets taken from the bodies of the wounded demonstrators, the local government denied the use of lead bullets during the repression. See Part II, section 2.4.2.4., below.

²⁷³ Source: Página/12, "Neuquén", 1 December 2003, pg.10, See Part II, section 2.4.2.4, below.

²⁷⁴ The background subject to the conflict is the debt the State has with former YPF workers, who have still not received the shares of the Programme of Shared Property which belongs to them because of the privatization of the sector. As a way of complaining, in the end of 2003, the *piqueteros* blocked many distilleries in Salta and also in Ensenada, near La Plata. Source: Página/12, "El conflicto en Salta con Tec Petrol. Piqueteros libres", 22 January 2004.

members of the UTD²⁷⁵ were arrested, and later accused of robbery, arson and crime instigation.^{276 277}

In the morning of 21 June 2001 in General Mosconi, the national military police evicted –by means of shouting, fire guns shootings – a group of *piqueteros* who were occupying two blocks in the town. As the day went by, a big demonstration had managed to “recover”²⁷⁸ national road 34. At 16:15 on that same day, the policemen attacked the *piqueteros* and carried out some arrests. However, the *piquetero* leaders accused of the crime of sedition, managed to escape. The policemen started patrolling the streets looking for them, demanding everybody on the street their identification and entering houses without any explanation searching for the *piqueteros*. At dawn, the search was intensified. A “Special Group of Tasks” –name associated with the repressive operations carried out during the last dictatorship in Argentina- entered the houses, weapons in hands, looking for “criminals”.

With the news of the violent home searchings and arrests, the people of General Mosconi slowly started heading for the main square. The concentration of over a thousand people changed their way and headed for the place where the *piquetero* barricades were. The policemen, who had previously sprayed the area with a gas that produces itching in the throat, eyes and skin, positioned themselves a hundred meters away. Slowly and thanks to the protection of the demonstration, the leaders started appearing²⁷⁹. The federal judge of Salta, Abel Cornejo, stated he never ordered a searching in General Mosconi but “street operations”. However, the neighbors reported massive and violent home searching inside the houses.

2.3.2.2. House searching as a way of individual persecution / Recurring searching

Several denounces of civilians who state that their residences have been searched without apparent reason, have been analyzed. In repeated opportunities, police officers have argued that those searchings were consequence of a name or address mistake. All these cases have a common characteristic: the fear and confusion the dwellers of the houses searched feel, and the precariousness of the neighborhoods where these incidents take place.

Even if the practice of searching the houses of civilians who are not involved in any judicial case always has the direct consequence of intimidating the victims, these interpret in several ways the reasons which caused the searching.

In some cases they understand it was a violent and negligent action of the police officers, who violated their rights. They do not identify the searching as part of a previous personal persecution, even though they fear denouncing the incident will bring future reprisals. Other denounces mention recurrent unjustified home searchings. In these cases the victims understand the continuous actions as a police persecution destined to intimidate them and make them feel

²⁷⁵ They are: Oscar Ruiz, Rubén Sedan, Carlos Cabral, Hugo Carabajal, Ramón Maldonado, Antonio Vargas, Víctor Chananpa, Rubén Gordiola, Omar Salinas and Daniel Valencia.

²⁷⁶ Source: Colectivo Periodístico del Norte Argentino (COPENOA), “Denuncian allanamientos y detenciones indiscriminadas” and “Como armar una causa penal y poner a la justicia al servicio de las petroleras multinacionales”. www.copenoa.com.ar

²⁷⁷ After 48 hours, the *piqueteros* who were imprisoned were released, according to what judge Ana Maria de Feudis ordered, after taking office and replacing her colleague Nelson Aramayo. Out of the 10 people arrested, 7 were prosecuted. They are accused of damages in the company Tec Petrol. Source: Página/12, “El conflicto en Salta con Tec Petrol. Piqueteros libres”, 22 January 2004.

²⁷⁸ By “recover” we mean they occupied the area again.

²⁷⁹ Source: Página/12, “Cuando la gendarmería perdió su trinchera”, 21 June 2001.

defenseless. At times, the searching is the “scenery” in which a judicial case is forged. In these cases, the officers go into the house and “find” objects related with a crime. In this way the victim, apart from suffering the searching, is involved in a criminal case. It has even been reported that the victim is later extorted so that he can be released from the case in which he has suddenly been involved.

The practice is not exclusive of one particular jurisdiction. On the contrary, it is repeated in inland areas of the country, although always in poor areas or neighborhoods with popular residences – such as National Fund of Residences- or in places even more precarious with soil roads and lack of hygiene. In many cases, they are areas that have already suffered police violence.

A flat in the 400 Houses²⁸⁰ neighborhood, in the province of Rio Negro, where an elderly couple live, together with their children and grandchildren, suffered three searchings “by mistake”. The provincial Police Chief, Juan Carlos Cauquoz, stated he had a warrant in the three cases, thus trying to dismiss the possibility of a police persecution. The victims did not report the incident because they thought they would be isolated cases. After the third searching that theory was dismissed, but then they were afraid of reporting the searching in case the situation might get worse. Below is the anonymous statement they gave to a local press media: *“The last searching was on 13 October [2003], they came in without showing the warrant. When the police appeared, my family asked for the warrant and they said: “We’ll show it later”. However, they turned everything upside down, left it lying around and left without showing the warrant. Every time they carried out searchings, they took neighbors as witnesses. Those neighbors saw how they turn everything upside down; leave everything on the floor and in a mess. Is that the warrant given by the judge? Is it logic that they came in and leave a mess? What right do they have to do this, especially when they don’t find anything wrong? Shouldn’t they say sorry for the disturbance? Apparently not. Instead, they act in an arrogant way.”*²⁸¹

Maria Gabriela de Asís, denounced that on 10 January 2004, the Buenos Aires Police unexpectedly turned up at her house in Villa Muñiz, in the Buenos Aires city of Bahía Blanca, breaking into the main door and handcuffing for a long time her husband, Pablo Roberto Maldonado. The 27 year-old victim, who was pregnant when the searching took place, described the incident in the following way: *“It was 5:30; we woke up because of a loud banging on the door. When my husband got up to see what was going on, they aimed at him and yelled at him to lie on the floor. I got up myself and saw about ten people inside my house, they were police agents. I asked them what was happening but they never gave any explanations. My husband was thrown down facing the floor, handcuffed and taken to the street in his underwear. They went into the bedroom where my 8 year-old son was sleeping, banged on the door and aimed at me and at my boy, while illuminating us with a torch. When I managed to get out of the room, they were already leaving, I went to the street and saw my husband handcuffed and inside a police car. Then one of the agents informed they had a search warrant for Hector Moyano. I told them they had made a mistake, that it was the house next door and that we had nothing to do. It was only then they realized they had broken into the wrong residence. By then, another officer had verified that my husband had no police record, but even then, aware that they had made a mistake, they did not remove the handcuffs and they did not allow him to get dressed. They didn’t take the time to verify. Even though I admit there is no number outside my house, anyone can tell*

²⁸⁰ Rio Negro Online: “The people who live in the 400 Houses neighbourhood say the streets are not watered as frequently as they should and that in some places they should use the machine, as well as others in which works are needed, in order to let the water run, apart from consolidating the soil, so that in rainy seasons the mud does not prevent cars from circulating”, 1 December 2003. www.rionegro.com.ar.

²⁸¹ Source: Rio Negro Online, 27 October 2003. www.rionegro.com.ar.

that my column is in front of my house and the other one belongs to the contiguous house". The second chief Néstor Daniel García, of police station 2º, pointed out that "[...] the proceeding is justified, there is a [light] column which divides both houses and where you can see the address, but I do not know whether it belongs to [the house of] Moyano or not. The houses are similar and we entered both of them; these kinds of proceedings are usually carried out in the same way, I think in this case it was not carried out in the wrong way, because the neighbors might be changing it on purpose. I ignore –he stated- what kind of people they are, but if it [the house] had had the corresponding identification, this would not have happened.²⁸²" Thus, they tried to attribute the responsibility for an abuse committed by the police to the victims themselves.

On 17 December 2003 at 9pm, Miguel Angel Aubert was in his house in Fernández Oro neighborhood in the province of Rio Negro with her wife and his children. He said that at that moment *"uniformed and civilian policemen knock on the door and say they want to search the house"*. The woman answered that it was the wrong house and that the person they were looking for did not live there. The police answer was: *"If it is necessary we will tear down the door"*. In view of the threat, Aubert let them in. A neighbor asked the police men if they were sure that was the house and *"they did not give him any answer and went on with the search which turned out to be negative. They found nothing and went away"*. *"They left a depressive family and with fear of uniformed men. It was hard to answer, among others, many questions: "dad, if you're not a thief why did they look into my little bed?; why did the police shout at mum?"*. Albert pointed out that the search warrant said: *"Miguel Albert. Mobile phones. Activation, purchase and sale"*. And he explained: *"That's not my surname and that's never been my job. I have no problems with law. I only do my job and look after my family"*. In an open letter published in local media, Aubert stated: *"Do not even expect formal apologies from those who negligently gave such an unfair order. Protect your family as you can and remember that in our country, in our province and in our city the safety of the citizens is only present in the dead letters of the law."*²⁸³

Noemí Baldon, of the city of Rosario, province of Santa Fe, considers the searching carried out in her house, in which, she assures, they "set" her a purse that had been stolen a week before, to be part of a personal intimidation she and her son have been suffering, caused by the "hooligans" of the football club Newell's Old Boys. Ten days before, she and her son had been victims in the street of an attack in which both of them were injured. Noemí thinks that the searching is part of the same intimidation process and that the police could be acting in connivance with the "hooligans". When she reported the irregular searching, she assures they told her: *"Are you telling me you cannot get 300 pesos in order to get your papers arranged?"*²⁸⁴.

2.3.2.3. Searching to piqueteros during demonstrations

The mass entry of the working class to the City of Buenos Aires was, since the start of the Argentine industrialization, sensed as a threat by some *porteño* sectors which classified it as "primitive sector" or a feared "other" in the space reserved for those who deserve the city. An extreme manifestation of this discriminative attitude shown by the political and economic authorities, took place in the middle of the 20th century, when political leader Ernesto Sanmartino created the expression "zoological flood", to refer to the mass entry in Buenos Aires of Argentine

²⁸² Source: La Nueva Provincia Bahía Blanca, "Quejas por un procedimiento de la policía" y "La policía admite un error involuntario", 12 and 13 January 2004, respectively.

²⁸³ Source: Rio Negro Online, 18 December 2003. www.rionegro.com.ar

²⁸⁴ The denunciation for the alleged ill performance of the police is under Instruction Court n°2. Source: La Capital, "La acusación contra la comisaría 32º", 10 January 2004.

people coming from the provinces, who became industrial workers in the 40s and who were to be the base of the *peronist* party.²⁸⁵

A further condemn to the provincial worker in the present, happened in the past years, when those who lost their jobs, came to demonstrate in the capital.

The Unemployed People Organization and the formation of the *piquetero* movement was, at the beginning –towards the middle of the 90s- seen as a characteristic problem of the provinces, a social and political phenomenon with clear action focus and, thus, relatively marginal. These focuses were those productive centers where the generalized adjustment and the privatizations, unemployed people who were left marginal, but who kept previous experiences of organization and trade union affiliation. The arrival of the *piqueteros* to the City of Buenos Aires, however, marked a turning point and transformed the “*piquetero* problem” into a subject of special sensibility for the public opinion and the national mass media of communication²⁸⁶. And in order to keep them at bay, an active intervention of the security institutions and the judicial power was required.

As the practice of road blockade became generalized in all the country, a violent and threatening collective imaginary idea of the *piquetero*²⁸⁷ started shaping in the society. According to that idea, the right to demonstrate was opposed to the right to circulate in the roads and streets of the country. This opposition, in turn, increased the criminalizing speech²⁸⁸. In this context, person searching has been used as a measure to criminalize the right to demonstrate of the *piquetero* movement.

The repression carried out on 26 June 2002, when four *piquetero* groups had organized to block the main five accesses to the city of Buenos Aires²⁸⁹ ended up with the deaths of Maximiliano Kosteki y Darío Santillán²⁹⁰. On 26 November, exactly five months later, the organizations marched demanding the clearing up of the murders and the punishment to those responsible. The Pueyrredón Bridge –which joins the city of Buenos Aires with the district of Avellaneda in the province of Buenos Aires- once again became a “hot border”.

Thousands of *piqueteros* of different organizations went to the bridge and were confronted with a police cordon. The officers wanted to search all the demonstrators in order to let them go into the

²⁸⁵ Pursuant to Ramos, Víctor; *Racismo y Discriminación en Argentina*, Editorial Catálogos, Buenos Aires, 2000.

²⁸⁶ In May 2001 60% of the population stated they did not agree at all with the blockades of roads and streets as a way of social protest (Nueva Superintendencia, 16/05/01). In January 2004, the rejection was even deeper. According to the opinion of consultant Hugo Haime, “[...] when asked about *piqueteros*, less than 2% of the people are in favor of them”. Source: Página/12, “Uno de cada tres encuestados participó de un cacerolazo o asamblea”, 27 January 2004.

²⁸⁷ Argenpress, “Argentina: Odio de clase, prejuicio y burgueses asustados. Disparen sobre los *piqueteros*”, 29 December 2003.

²⁸⁸ “The time has come to ask ourselves if the authorities are willing to continue tolerating that the right of a few citizens to publicly expose their ideas or needs, continues being exercised against the rights of the other citizens to freely circulate in the streets of the Republic. If the State bodies do not manage to stop the overflows of these groups, we will reach a crack of the public order which shall make the normal development of the social life, of work and of the productive activity impossible”. La Nación, “Editorial I. *Piqueteros*: que impere la ley”, 8 November 2003. A month later, former president Eduardo Duhalde stated that “before certain type of crimes, the State has to get the repressive attitude going”, while his wife, national representative Hilda Chiche Duhalde complained that “the street is won by *piqueteros* and by criminals”. Página/12, “Todo sin reprimir”, 1 December 2003.

²⁸⁹ They had planned to block Pueyrredón, Alsina and La Noria bridges and the accesses by Liniers, Panamericana and General Paz roads.

²⁹⁰ Both young men members of the MTD, Aníbal Verón group, 24 and 21 years old respectively, had been murdered by gun shots with steel bullets, shot by officers of the Buenos Aires Police, See Part II, section 2.5.3.4. below.

capital. Federal judge Maria Romilda Servini de Cubría had ordered the officers appointed for the security operation that no demonstrator could cross the bridge without having been previously searched. If, according to Section 230 of the Criminal Procedural Code of the Nation, the condition to search a person is that there are enough reasons to suppose a person hides in his body things related to a crime, the warrant to search them one by one was a generic presumption of the involvement of the demonstrators in a crime.

After the intervention of the Executive Power, the demonstrators promised to carry out the march and act peacefully and agreed to show to the security forces their bags and backpacks.²⁹¹

In a press report the MTD explained their resistance to the searching in this way: *"Because we decided to mobilize peacefully in memory of our comrades and in order to demand our rights. Because it is a deliberate violation to our democratic freedom. Because the searchings are a provocation and a discrimination to the humble population of the Greater Buenos Aires."*²⁹²

Even if the mass searching did not take place because of the resistance of thousands of demonstrators, the warrant given by the Judicial Power is a sign of the way in which the institutions tolerate or repress the social protest in the capital, according to the origin of the sector which demonstrates.

2.3.2.4. Mass searchings in shanty towns

In the history of the urbanization of Buenos Aires the argument that the crime comes from the most precarious and deprived areas has frequently been used in order to repress. The spaces where this prejudice was concentrated, after industrialization, were the shantytowns. The urban phenomenon of the shantytowns, slums, *favelas* or *cantegriles* has happened, to a bigger or smaller extent, in almost all Latin American big cities. It was originally associated to the residence deficit, which came together with the big internal migrations from the countryside to the city at the beginning of the industrialization, as well as to the precariousness of the labor situation of the inhabitants.

Back then, the shantytown could be considered as temporal places due to the expectation of an ascending social mobility. At present, on the contrary, shantytowns are inhabited by Argentine migrants, by immigrants of neighboring countries and by other people who have suffered a descending social mobility and are living the most precarious residential solution²⁹³. The ways which lead to the shantytown are diverse. Demographer Victoria Mazzeo, of the area Demography and Population of Statistics of the City of Buenos Aires, states that *"Many people lost their incomes or suffered an income reduction and had to abandon their previous residence – in general, rooms in hotel-pensions- to go to settings. Other people migrated to the City looking for a job. This can easily be proved, looking at all the foreigners who have joined the shanty towns in the last years"*.²⁹⁴

²⁹¹ Sources: La Nación, "Luego de una tensa jornada culmino la protesta piquetero", Página/12, "El día en que la jueza metió la cola"; Clarín, "Piqueteros: acuerdo con el Gobierno y marcha en paz" and "Siete horas de tensión, cara a cara, en el Puente Pueyrredón"; 27 November 2002.

²⁹² Press release of the Unemployed Workers Movement Aníbal Verón, "Mas de 20,000 piqueteros cruzaron el puente Pueyrredón", 29 November 2002.

²⁹³ Oscar Oszlak compares these two comments opposing the images of the "trampoline town" and the "slide town". The latter one indicates that the shanty town is the last habitational situation of a person who loses more and more resources and ends up in a situation which is statistically difficult to change. See Oszlak, Oscar; Merecer la ciudad. Los pobres y el derecho al espacio urbano, Colección CEDES, Buenos Aires, 1982.

²⁹⁴ Source: Clarín, "En diez años se duplico la población de las villas porteñas", 8 December 2003.

According to information of the National Institute of Statistics and Censuses (INDEC), in 1991 66.8% of the population living in shanty towns had been born in Argentina. At present, this figure only reaches 59%. Many foreigners, who had come to the country seduced by convertibility, lost in these years the position they had achieved. *"At first I stopped sending money to my parents. Then I lost my little jobs, stopped paying the rent and ended up in the shantytown, with my cousins. I can't go back to Paraguay because my children are Argentine and I can't get the money to take them all"*, says Felix Acuña, from Bajo Flores²⁹⁵. In many cases, the vulnerability suffered by these shantytown inhabitants is worsened by the irregular immigration situation in which they are.

Even though housing precariousness, stacking, lack of services, unhealthiness and food and sanitary deficit are problems of shanty towns, they are not exclusive of these places. Another typical characteristic of shantytowns is the situation of illegality with respect to the lands where it is located and the characteristic of enclave. In the same way as closed urbanizations, such as private neighborhoods and country clubs, shanty towns are spaces of the city that break with the planning of the rest of the urban space²⁹⁶. Only as a way of example of the urbanization structure of the districts of the Greater Buenos Aires, the district of San Isidro concentrates biggest number of closed urbanizations of the province and the most inhabited shantytown, La Cava, which is right next to a private neighborhood, and they are divided by a 6-meter-high electrified wall. Seen from an aerial point of view, this area is more like a bunch of islands of poor people alternated with islands of rich people, than like an integrated urban plan.

The official facts²⁹⁷ about shantytowns in the Federal Capital show that 95% of their inhabitants are settled on unstable, polluted or unsanitary grounds. Also, that 85% of the population is under 40 years old, that 93% of the children between 5 and 14 years old go to school, that 61% of the adults are unemployed (an alarming fact compared to the rate of unemployment in the Capital: 18%), that 39% of the working population earns less than \$300 a month (if he/she is head of a typical family he/she is considered within the category of indigence) and that the average of inhabitants per residence in shanty towns is 4 or more people, while in the houses of the rest of the country it's less than 2,5%.

The population living in Shantytowns and Transitory Residence Groups (NHT)²⁹⁸ grows every year in the City of Buenos Aires, having multiplied eight times in almost twenty years: 12,953 people lived in shantytowns when democracy returned in 1983 and 108,056 in 2001. The INDEC calculates that these figures changed quickly and that by late 2003 there were 10,000 new inhabitants. Officially they say 116,000, though in most shantytowns they state they are many more.²⁹⁹

In turn, the City counted in 2001 eight new settings: there were 16 and now there are 22, since two -shantytown 12 and Barrio Calaza- do not exist any more³⁰⁰. The sudden increase of some

²⁹⁵ Source: Clarín, "En diez años se duplicó la población de las villas porteñas", 8 December 2003

²⁹⁶ This definition is based on the one given by Alicia Ziccardi, in Políticas de vivienda y movimientos urbanos. El caso de Buenos Aires (1963-1973), CEUR, Buenos Aires, 1977

²⁹⁷ General Direction of Statistics and Censuses (DEGyC) of the Government of the City of Buenos Aires. <http://www.buenosaires2010.org.ar>

²⁹⁸ Shantytowns and transitory residence groups (NHT) show a high degree of stacking, building precariousness and a general lack of those conditions which identify a proper house (drainage, drinking water, etc.) General Direction of Statistics and Censuses (DGEyC) of the Government of the City of Buenos Aires, <http://www.buenosaires2010.org.ar>

²⁹⁹ www.indec.mecon.ar

³⁰⁰ The following added up in this decade: Villa Dulce, Piletones, Carrillo 2, Calacita, Reserva Ecológica, Ciudad Universitaria (Villa Gay), Ex AU7, and Ex Fábrica Morixe, where today over 5,000 people live.

historical shantytowns is also outstanding: shantytown 1-11-14, in Bajo Flores neighborhood, went from almost 5,000 people to over 21,000; shantytown 31 and 31 bis, in Retiro, from 5,600 to over 12,000; shantytown 21-24, in Barracas, from over 10,000 to over 16,000; and shantytown 3 in Soldati, from 3,500 to 7,100.³⁰¹

The reasons for these huge population increases are associated to the general situation of the country. According to Victoria Mazzeo, *“Basically, due to the proportion of people who are below the poverty and indigence line, which grew 50% in the last three years”*³⁰². *“Unemployment, income decrease and prices increase left a lot of homeless people. The crises created a great pressure on the City, because that used to be the place where people felt they could survive somehow. This deepened residence problems and doubled the demand of State assistance. Today in the Capital there are 700 thousand people below poverty line and 300 indigent people”*, says the sub-secretary of Social Development, Mónica Despervasquez.³⁰³

Even though the attitude of governments towards shantytowns, since they were formed around 1940, has varied in tolerance levels, during the last dictatorship the “shantytown issue” was defined as a State problem. Within a plan designed to eradicate shanty towns, the former superintendent of Buenos Aires, appointed by the last military dictatorship, Osvaldo Cacciatore, elaborated a campaign destined to the public opinion in which the image of the “shantytown dweller” was stigmatized. This symbolic construction of the “shantytown dweller” found continuity in the arguments used by officers in the last years, when suggesting security policies that use sectors with a smaller capacity of defense, as targets. Shantytowns, which until then had represented mainly a residence problem, turned into a moral conflict, using as they did a speech and a practice that stigmatize those who live there. According to Oscar Oszlak, they tried to *“[...] redefine the shanty town issue in such a way that it would extirpate from the public opinion all feeling of pity, condolence or empathy towards the unlucky situation of its inhabitants”*. The success of that stigmatization campaign of the shanty towns and their inhabitants is clearly seen today in the tolerance to repressive policies exercised on those who live in shantytowns.³⁰⁴

As it was previously mentioned, the law³⁰⁵ says that searchings should be carried out in places where it is supposed, with reasonable evidence, that there are elements related to the investigation of a crime. In general terms, *place* is a residence, which should be defined precisely and which cannot imply a general authorization to search all the residences in a lot. The protection of the residence of people is not a right that can be minimized when the building is precarious or when there are difficulties relating to property registration in a setting, not even when there are doubts about how the residence was occupied (this can not bring about a house searching). None of these reasons is valid to extend the suspicion of a residence to all those in a setting, since it is possible to spot the place in a clearly determined way. Judicial precedents clearly designate these limits when pointing out that individual guarantees are not being respected if a block of flats is indicated, without identifying exactly which is to be searched, just because an accused person was seen come and go out of the building³⁰⁶. Despite being illegal, the association, installed in public opinion, between shantytowns and crime helps legitimize and justify mass searchings.

³⁰¹ Source: Clarín, “En diez años se duplicó la población de las villas porteñas”, 8 December 2003.

³⁰² See Part I, section 2, above.

³⁰³ Source: Clarín, “En diez años se duplicó la población de las villas porteñas”, 8 December 2003.

³⁰⁴ About discrimination as a factor of incidence on the vulnerability of shantytown inhabitants see Part IV, section 2, below.

³⁰⁵ See Part II, section 2.3.1. above

³⁰⁶ CNCP, Room III, J.A., 2000.IV, quoted in D’Albora, Francisco; Código Procesal Penal de la Nación. Anotado. Comentado. Concordado; Lexis-Nexis/Abeledo-Perrot, Buenos Aires, 2002, p. 697.

These operations imply big displays of police and security officers. In the last years they even formed special bodies with this objective such as the one called Blue Tide in 2001, made up by Infantry, Cavalry, Narcotics, Investigation men and by the Dog Division of the Police of the Province of Buenos Aires. By hundreds, officers of the security institutions break into a shanty town searching the different houses looking for weapons, drugs, fugitives and objects in general related to a particular crime. The “efficiency” of these operations is measured in relation to their repercussion in the mass media of communication, to the amount of drug confiscated and to the number of people taken to the police stations.

Other operations are much more of a routine, without the presence of the press or witnesses. They are searchings carried out by a group of policemen of the local police station who break into the houses of the shantytown without a warrant. These abuses are seldom denounced since the victims think their situation would only get worse if they decided to press charges. These operations may also include forging judicial cases, robberies and threats.

In both kinds of searching to shantytowns, the situation, after the operation has finished, is desolate: frequently the houses searched are completely or partially destroyed. When searching the most precarious houses in the town, those made with cardboard, tins and other discard materials, police searching generally implies the removal of beams, leaving the house almost disassembled.

Opposite to what the Code of Criminal Procedure of the Province of Buenos Aires suggests, searchings are generally carried out at night, and this is how they have been doing it since the last dictatorship.

During 2000 and 2001, former Security ministers of Buenos Aires, Leon Arslanián and Ramón Verón, perform “saturation operations” in the most populated shantytowns in the province. Sources of the Security ministry stated that the idea was “[...] to prevent crimes, look for suspects, confiscate weapons and find stolen cars. There are 100 men at a time in the proceedings and they can last several days”³⁰⁷. They used a crime map in which shantytowns were included among the “red areas” of the Greater Buenos Aires.

Under Arslanian’s management, several “megaoperations” were carried out in settings and shantytowns, which started early in the morning with Infantry agents and officers of the Patrol Command. After the officers had carried out the searching, they started looking for fugitives or evidences for a judicial file³⁰⁸. Mass searching ordered by Verón were carried out by the special body Blue Tide and had the objective of “controlling every neighbor of the town, so that suspects could not enter nor leave the place”.³⁰⁹

On 2 August 2003, without a judge warrant³¹⁰, they carried out a massive searching, authorized by a prosecutor, in Las Catonas neighborhood³¹¹, a residence complex of the Buenos Aires district of Moreno, where 35,000 people live. In the operation 600 officers took part and it included police cars, helicopters and the participation of staff of police stations from the entire province,

³⁰⁷ Source: Clarín, “Harán operativos policiales de prevención en villas del Conurbano”, 17 May 2001.

³⁰⁸ Source: Clarín, “Harán operativos policiales de prevención en villas del Conurbano”, 17 May 2001.

³⁰⁹ Source: Clarín, “Harán operativos policiales de prevención en villas del Conurbano”, 17 May 2001.

³¹⁰ Only a day after the amendment of the Code of Criminal Procedure of the Province of Buenos Aires which enabled prosecutors to impart searching warrants.

³¹¹ Las Catonas is the same neighborhood in which, in November 2002, the neighbors had denounced 34 policemen for protecting a gang of criminals which had a car dismant.

from the Falcon Group and the Cavalry Police. There were several arrests and weapons and other goods were confiscated.³¹²

The “Gay” shantytown recently settled inside the University City lot, where there are some colleges of the Buenos Aires University, in the city of Buenos Aires. The first inhabitants were homosexuals and transvestites, thus the name of the place. Located in front of the Rio de la Plata, in a high real state value, it is characterized by a greater precariousness than those shantytowns, which after self-building and years of resistance, have managed to get connected to some basic services such as running water and electricity. On the other hand, this shantytown – maybe due to those structural deficiencies- is not overpopulated.

Irregular searchings are common and come together with arrests, threats, destruction of the precarious houses and even, rapes³¹³. After a robbery was committed in the University canteen, officers of the Federal Police went into every house in the shantytown looking for objects that would link the neighbors with the crime. Presuming every neighbour of the “Villa Gay” were possible crime perpetrators, the violent break-in left several houses disassembled and people injured as a consequence.³¹⁴

2.3.2.5. Person searching in order to regulate and restrict the traffic of vehicles and the circulation of people

In the city of Buenos Aires and the districts of the province of Buenos Aires which surround it, internal limits have been traced –some of them formal, such as the circumvallation avenue General Paz, others informal such as the perimeter of a shantytown- on which military logics are applied as if they were “hot borders”, watched by security forces or, simply, closed cities. Security institutions, whose original mission is to control borders, take part in these practices, which derive in the use of militarized practices on urban security.³¹⁵

People live and work on both sides of the internal limits: a little less than half of the employed people who live in the districts of Buenos Aires, adjoining with the Federal Capital, daily commute to the City of Buenos Aires³¹⁶. However, the history of Buenos Aires is characterized by its contrasts and by marking –in architecture, transport infrastructure, public services- the limits between the capital city and the districts of the Buenos Aires suburbs. In recent years, they have incorporated the practice of searching certain people when they trespass these limits, in a new attempt to isolate and control the populations of different areas and to watch the interchange between one space and the other. Thus, as anthropologist Marcelo Sarlingo said, it is established

³¹² Source: Página/12, “Megaoperativo en un megabarrio ordenado por una megafiscal”, 3 August 2003.

³¹³ See Part V below.

³¹⁴ As it was reported to the CELS by victims of the violent searchings.

³¹⁵ The National Military Police and the Argentine Navy Prefecture are two armed institutions which depend on the federal government, through the Ministry of Justice, Security and Human Rights of the Nation, which have internal security functions: the Military Police is basically in charge of the security of land frontiers, while the Prefecture is in charge of the control of rivers, lakes and river and sea frontiers. Both institutions were created as military organizations with interior control functions, and originally, depended on the Armed Forces: the Army, in the first case and the Navy, in the second.

³¹⁶ Pérez, Pedro and Escolar, Marcelo, “¿La cabeza de Goliat? Region metropolitana y organización federal en Argentina”, document presented in the *XXIII Congress of the Association of Latin-American Studies*, Washington, September 2001.

*"[...] a clear and precise space segregation through internal frontiers guarded by the police and the Army."*³¹⁷

Person searching is used to control the accesses, particularly on two of the mentioned limits: those of the capital city and those of the shantytowns. In both cases the searchings are selective, even though the criteria vary.

During 2001 and 2002 the official speech pointed out that the strategy to prevent crime in the metropolitan area of Buenos Aires was to control people when they were coming out and into the city. The plan was designed by the Security Secretary of the Nation and it destined strategic resources (around 150 members of the National Military Police every day) to the guarding of the people and cars that went from one place to the other³¹⁸. In order to view the scope of the operation, it is useful to bear in mind that every day 850,000 vehicles enter the City of Buenos Aires, and that in the first month they had controlled 106,703 vehicles³¹⁹, 135,356 people who were traveling in the controlled cars, 533 of which were arrested or detained³²⁰. The Crises Committee³²¹ formed in 2003 carried on more deeply with kind of proceeding.

The base of these controls is the official diagnosis according to which, crime uses jurisdictional divisions as interstitial spaces, a control fissure, where to infiltrate. Such would be the case, for instance, of extortion kidnappings, whose victims are usually kidnapped in the city of Buenos Aires and quickly "taken" to the province.

High Commander Jorge Nieto, in charge of the military policemen who took part in these operations, explained that his mission consisted in controlling the accesses to the city of Buenos Aires through fixed positions in the most important crossroads in the General Paz, and also with policemen moving.

The Naval Prefecture was in charge of controlling all the bridges crossing the Riachuelo. It also operated in the Costanera, in Puerto Madero, and in the stations and harbor areas of the north of the Greater Buenos Aires. The control scenes in the capital were customary: three patrols blocking an avenue and leaving just a few narrow lanes which forced the cars to slow down. The policemen, many times showing heavy weapons, stopped cars and asked the occupants for their identification. There was always a police car ready to go, *"in case somebody tried to escape"*.³²²

The Buenos Aires Security minister at the time, Juan Pablo Cafiero, recommended that *"the citizens should go out with their personal identifications and those of their cars, as well as the documentation corresponding to the load they are carrying, in order to avoid inconveniences in the controls we are carrying out in the "security shock" operation"*. These operations were carried

³¹⁷ Sarlingo, Marcelo, "Ciudades Intermedias: producción del espacio y fragmentación"; Social Anthropology Department of the Social Science Collage, Centre University, report presented in the Fourth Journals of Culture Investigators, Cultural Studies Area, Gino Germani Investigations Institute, Buenos Aires, 16 to 18 November, 1998.

³¹⁸ Source: Clarín, "Gendarmería ya controla los accesos a la Capital", 22 May 2002.

³¹⁹ Source: Clarín, "Balance porteño", 31 December 2003.

³²⁰ Source: Clarín, "En un mes, la Policía controló más de cien mil autos en la Capital", 25 June 2002.

³²¹ Law nº24,059, of Interior Security, establishes that those responsible for the security forces and for the ministries of Justice and Interior make up the Interior Security Council, which can establish, when it shall consider it necessary, a Crisis Committee whose mission is to *"[...] exercise the political conduction and operational conduction of the police bodies and provincial and federal securities forces who are working for the recovery of the interior security in any part of the national territory"*. In order to get a wider description of the implementation of the Crisis Committee, see "Inseguridad policial y otras formas de violencia institucional" at CELS, Derechos Humanos en Argentina. Informe 2002-2003; Chapter V, op.cit.

³²² Source: Clarín, "En un mes, la Policía controló más de cien mil autos en la Capital", 25 June 2002.

out together by the Buenos Aires Police, the National Gendarmerie and the Naval Prefecture, according to the agreement signed between the national and the provincial governments. Cafiero added that *“these operations move all the time and change times and places and there are transfers to other roads and access bridges”*.³²³

Clearly continuing with the policies implemented in the last decades, the security plans are completed with the fencing of shantytowns, that is the control of their exits and entries. That means that anyone can be searched in any moment. Based on the false diagnosis that shantytowns are “criminal hideouts” where crime lurks³²⁴ – and similarly to what happened with the control of person and car circulation between the capital and the suburbs- the circulation in the rest of the city of those who live there, is a threat to public security. Thus, the right to privacy adds to the list of rights not exercised by people who live in the shantytowns.

In respect to who are the objects to the searching, the victims are easier to identify in the case of shantytowns than in that of the access to the capital. While controlling the access to the city of Buenos Aires the officers in charge of the operation state that a random selection is made, in certain cases of control of access to shantytowns they have admitted that their target are young men between 15 and 30 years old.³²⁵

In the present, being a young male and living in big urban centers implies belonging to a seriously victimized sector. The possibilities of insertion in the working world have been reduced. Their family situation is highly unstable. The relation with the State is limited, since they stop attending school³²⁶, to the contact with the police³²⁷. The fragmentation of society has meant that when a child lives in a shantytown, his informal contact with people outside the town is reduced almost to disappearance, in a vicious circle of isolation. In many cases, unlike his parents, these children have grown up in a situation of exclusion in which the expectation of ascending social mobility has disappeared. Public spaces, which used to integrate in the past, such as the park, public school or the health system have been abandoned by the middle sectors, who have suffered a long process of privatization in different aspects of their life. As a result, each youngster moves in a circuit growingly homogeneous and stagnant.

³²³ Source: Economic News Agency (NOTEC), 9 July 2003.

³²⁴ Gaston Pezzuchi, sub-inspector of the Police of the Province of Buenos Aires, analyzed the possible existence of a relation between the place of residence of “violent aggressors” and irregular settings and reached the conclusion that even though *“[...] there is a clear tendency in our society to believe that irregular settings concentrate the most dangerous criminals and that, due to some kind of segregation, the levels of urban violence will go down”*, this belief is false. After a complex analysis based on the place of residence of identified “violent aggressors” (approximately 50% of the total amount), Pezzuchi manages to establish that the relation between the place of residence of these aggressors and settings is very weak and states that: *“Only 7% of the settings coincides with areas pointed out for concentrating violent aggressors, defying the common perception that these areas are cradles to crime”*. “Spatial Analysis of Police Confrontations in a Large Argentinean Urban Setting”, presented in the Conference Mapping and Analysis for public security, organized by the National Institute of Justice of the United States.

³²⁵ The testimony of the Secretary of Interior Security of the Nation, Norberto Quantín, collected by members of the CELS on 20 December 2003 in the meeting where they evaluated the security program implemented in La Cava since November.

³²⁶ In the southern part of the city of Buenos Aires –where 93% of the population who live in shantytowns in that jurisdiction is set- school desertion is twice the average of the city (*“La escuela pública dice ausente en el Sur”*, in *Buenos Aires. Crónicas de la Ciudad Abierta*; n°9, Office of the Ombudsman of the City of Buenos Aires, Buenos Aires, www.defensoria.org.ar/revista/09escuela.pdf). The situation is even more serious in the suburban Buenos Aires, where school desertion is bigger: 30% of the children between 13 and 17 years old started and gave up the secondary school, being the district with the biggest school desertion in this age group (www.indec.mecon.ar).

³²⁷ To see how executions and torture affect this same age group see Part II, sections 2.4 and 2.5 below.

In November 2003, the plan to indefinitely situate security forces in three settings of suburban Buenos Aires was agreed upon by national and provincial authorities of the security area. The plan was started with 500 military policemen in the Ejército de los Andes neighborhood, known as Fuerte Apache –in Tres de Febrero district-, 500 officers of the Navy Prefecture in La Cava shantytown –in San Isidro district- and 400 Buenos Aires policemen in Carlos Gardel shantytowns, in Moron district.

The officers carry out the so-called “car and population control” inside and around shantytowns; they identify and search the people, study their records, control car documentation and search the inside of the vehicles. According to one of the officers who took part, the routine of the operation is as follows: *“We search the cars that come in, make them open the boot, perform gun searching on most of the people who come or go and, with these actions, stolen cars do not come in anymore, they do not enter victims of express kidnappings and the number of people circulating with weapons has been completely reduced”*.³²⁸

“There has never been, in democratic times, a locking operation on a poor neighborhood which lasted so long. With the town turned into a ghetto its inhabitants have to show an identification to come or go, and go through a criminal record control if they are considered suspicious”, pointed out Pagina/12 newspaper, two months after the operation was initiated, describing the La Cava operation in the following way: *“The unit which performs the patrol is also formed by a police officer who has a computer with a storing capacity of up to 50 thousand fingerprints of people with an apprehension order. When they meet a young man, they make him face the wall, they search him and finally scan his fingerprints to see if he has a record. The proceeding is repeated with every adolescent they meet in the halls”*.³²⁹

Zulma Ramírez, unemployed and *piquetera* of the Class and Combative Current (CCC) states that *“they specially take it on teenagers, and even with boys who go to school. Young boys have been beaten as if they were guilty of God knows what”*.³³⁰

On 20 December 2003, a month after the La Cava operation was initiated, on request of the neighbors and of the Association of Support to Communities (APAC), a meeting to evaluate the security operation was celebrated in the shantytown³³¹. The generalized complaint was about the criteria used to choose those to be searched. Mothers of young boys pointed out that their children could no longer go “round the corner” without being identified and searched. The situation got worse, they said, if the boy had long hair or tattoos. The answer of the secretary of Interior Security, Norberto Quantín, was definite: *“We are not here to look for old ladies, we are not going to search a car with three children, we have to concentrate our resources and it is statistically proved that those who commit crimes are boys between 15 and 30 years old.”* They also reported abuses committed during an operation. A woman went to the prefect in charge of the operation and told him: *“One of you intimidates my son every morning when he is waiting for the bus to go to school, he makes him open his schoolbag, on one occasion he was told that his nails were too long and was given pliers to cut his nails in front of the officer, then he was told to take off his shoes to see his feet nails, The policemen also told him he had the power to arrest him and kill him if he wanted, and told him to run without looking back”*.³³²

³²⁸ Source: Página/12, “Diez villas mas para ser “ocupadas””, 5 December 2003.

³²⁹ Source: Página/12, “La Cava rigurosamente vigilada”, 5 January 2004.

³³⁰ Source: Página/12, “La Cava rigurosamente vigilada”, 5 January 2004.

³³¹ Officers, authorities, neighbors and members of the CELS took part in it.

³³² Testimonies collected by members of the CELS who took part of the meeting.

2.3.2.6 Personal searching to visitors of penitentiary units

One of the practices used to discourage the contact of people deprived of their freedom with their family and friends, consists in intensifying or abusing of the personal searching which those who visit jail units must undergo. Every time there is a visit, the families of the inmates have to undergo a searching when entering the unit. At times it includes a palpation in the genital area over the clothes and after a partial undressing, which has to be done in front of the penitentiary staff and the minute searching of each item of clothing, a thorough eye inspection of all the suspected body³³³. Women are frequently to wait naked for a long time, exposed to looks and the cold.

Women who visit are 6 times more than men³³⁴. For example in the Unit nº2 of the Federal Penitentiary Service, 200 women daily visit men deprived of their freedom. They are exposed – while visiting their fathers, couples, sons or brothers- to physical mistreatments, touching, vaginal and anal searching. Eugenio Zaffaroni, Minister of the Supreme Court of Justice of the Nation, says: *“It is a subject to be thought from the principle of personality of the punishment: the punishment is personal, and should not transcend the punished person. How can it go, in real life, to other people, especially women and their children? To prove this, it is enough to go to Devoto on any visiting day and stand in the café opposite. There is a whole support³³⁵ and services organization, which is very curious.”*³³⁶

Section 5° of decree 1136/97³³⁷ establishes that *“penitentiary staff shall facilitate and stimulate the relationship of the inmate with his family [...] they shall encourage him to continue or establish useful links, which can be favorable for his possibilities of social reinsertion [...]”* According to a resolution of the Appeal Chamber on Criminal and Correctional Matters of the Federal Capital³³⁸, this is the spirit of Section 18 of the National Constitution³³⁹, as derives from the re-socialization objective assigned to punishment in the Argentine system. In this sense, the visit is, undoubtedly, *“[...] the most important of the means provided to keep the contact between the inmates and the free world”*³⁴⁰. Far from complying with the rules, the staff of the penitentiary services, hinders and discourages the contact of the inmates with their families, reason why *“[...] the visit system has come to be one of the most conflictive aspects of jail reality”*.³⁴¹

³³³ Penitentiary Prosecution of the Nation, *Informe Anual el Procurador Penitenciario 1993/1994*, p.54.

³³⁴ Pursuant to Mansilla, María; “Mujeres de presos. Nunca de negro”, for *Hecho en Buenos Aires. Saliendo de la calle*, February 2004.

³³⁵ Opposite the penitentiaries in the city of Buenos Aires women support each other, some work in the shops where the visitors buy what they will take to the jail and leave their handbags to be taken care of. A code among them establishes that, in order not to be mistaken with jail wards, they do not dress in grey, blue or black. They cannot use pointed high heels, or underwear with steel rings or tight clothes. There are shops surrounding the penitentiary which rent underwear and footwear suitable to enter the penitentiary.

³³⁶ Mansilla, María; “Mujeres de presos. Nunca de negro”, for *Hecho en Buenos Aires. Saliendo de la calle*, February 2004.

³³⁷ Inmates Communication Regulation, regulated in Chapter XI on family and social relationships of the law of Execution of the Freedom Punishment n°24,660. Published in the official Gazette on 5 November 1997.

³³⁸ Arenas Case, Report 38/96 of 15 October 1996, Annual Report 1996, OEA/Ser.L/95, DOC.7 rev.

³³⁹ *“The penalty of death for political offences, all kinds of torture and flogging are forever abolished. The prisons of the Nation shall be healthful and clean, for the custody and not for the punishment of prisoners confined therein; and any measure that under the pretext of precaution leads to mortifying them beyond what their custody demands, shall render liable the judge who authorizes it”*.

³⁴⁰ Rivera Beiras, Iñaki y Salt, Marcos; *Los derechos fundamentales de los reclusos. España y Argentina*, Editores de Puerto, Buenos Aires, 1999, p. 188.

³⁴¹ Rivera Beiras, Iñaki y Salt, Marcos; op. cit. p. 189.

Alejandra is 37 years old and her husband is in Devoto penitentiary, Unit 2 of the Federal Penitentiary Service. He is HIV positive. She visits him every week together with their 5-year-old daughter, even though since she was 18 she visited her brother in many Argentine jails. Alejandra describes: "Yes. You have to take off your clothes. They say: 'Separate your legs, turn round, open', as if you were an animal. You're always afraid. Why? Because inside they rule." Apart from corporal searching there are other situations which affect even more the person visiting a relative deprived of its freedom. "The worse part is that you go very early in order to be more time with him, you go at 6 in the morning and at 4 in the afternoon you're still outside. They say they don't have staff to do things more quickly. The place is dirty, the bathrooms are terrible³⁴² and before coming in you have to sit on the floor because there is nowhere else to sit".
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Alejandra never complained of this abuse, or made any denounce: "The less you talk the better. My brother taught me that: 'Don't mess with anyone'. If you argue, you lose the visit". Most relatives of people deprived of their freedom do not denounce the abuses committed when they were visiting the penitentiaries, aware of the revenge his relative could suffer after such action: the victims have to choose between accepting the violation of their rights and exposing a relative or themselves to even more serious and risky situations. Even though the fear of the revenge after a denounce is generic, in these cases the situation is aggravated due to the exposition of the relative deprived of freedom to the victimizers and to the frequent and routine nature of the contact between victims and victimizers. Besides, the staff never uses identification plate, that is why impunity is even greater.

Section 163 of law n°24,660 of Punishment Execution³⁴⁴ establishes: "The visitor and his belongings, for safety reasons, shall be searched. The search, within the respect to the dignity of the human person, shall be carried out or directed, according to the proceeding provided in the regulations by staff of the same gender as the visitor. The manual searching, whenever possible, shall be substituted by non intensive sensors or other non tactile techniques, suitable and efficient". According to this regulation, manual searching should be exceptional and not, as it happens, the frequent rule to visit penitentiaries.³⁴⁵

Section 163 of law n°24,660 of Punishment Execution also establishes the installation of non intensive sensors necessary so that the visitor can obey what is stipulated in Section 21, paragraph d) of decree n°1136/97 which rules the communications of the inmates: "The visitor shall have the right to request to be excepted from the proceedings of personal searching, without this implying the suppression of the exam of his person and his clothing, nor of the use of non

³⁴² In the Annual Report of the Penitentiary Prosecutor 2000-2001 the building conditions of Unit 2 are described and it is pointed out: "Taking into account the bad living conditions of the Unit, especially the terrible state of most of its bathrooms [...]". (*Informe Anual de la Procuración Penitenciaria 2001-2002*, Ministry of Justice, Security and Human Rights of the Nation).

³⁴³ Mansilla, María; "Mujeres de presos. Nunca de negro", for *Hecho en Buenos Aires. Saliendo de la calle*, February 2004.

³⁴⁴ Sanctioned on 19 June 1996, passed on 8 July and published in the Official Gazette on 16 July, same year.

³⁴⁵ The scope of this disposition, however, is not that clear. Marcos Salt argues that the State is forced to abstain from manually searching whenever the suitable technology to replace this practice exists, even if the State has not implemented it. In this sense, he states that "The State cannot justify the violation of a fundamental right alleging material deficiencies". (Rivera Beiras, Iñaki y Salt, Marcos; op.cit. p. 191). Salt suggests thinking about an airport which, for some reason, did not have the adequate sensors to search passengers when getting on or off a plane, would they just agree to undress in order to be searched by the airport staff? The debates in the international public opinion with respect to the limits to security in airports after the attack of 11 September 2001 to the Twin Towers in New York, show it is not as simple to violate the fundamental rights of air travelers, as it is to violate the rights or visitors to Argentine jails.

intensive sensors or other non tactile techniques, suitable and efficient." In this way, the visitor should choose to hold the visit in a booth (with no physical contact) and avoid the searching. Since these places have not been built in almost any of the jails in Argentina³⁴⁶, the options that the visitor really has are: to refrain from visiting his relative or to accept the manual searching. On the other hand, the Inter-American Commission of Human Rights pointed out that the State cannot suggest or request the people under its jurisdiction to expose to conditions or proceedings which shall constitute a violation to the rights protected by the American Convention on Human Rights. In this case the right to personal integrity could be affected. This establishes, among other things, that "*Nobody should be exposed to tortures or punishments or bad, inhuman or degrading treatment [...]*" (Sec. 5,2) and that "*The punishment shall not transcend the person of the criminal*" (Sec. 5,3).³⁴⁷

In 1996 a woman visited her husband in the former jail for accused people of the city of Buenos Aires, together with her 13 year-old-daughter. The staff of the Federal Penitentiary Service who received them demanded, as a condition, that both of them should get naked and expose themselves to a vaginal searching in order to get permission to go ahead with the visit. The woman, who had previously given in to the demand which violates her right to corporal intimacy, decided to oppose on that occasion. After trying all the national judicial instances, she presented a demand before the Inter-American Commission of Human Rights (CIDH).

After reaching the conclusion that the Argentine State had violated the rights of the woman and her daughter, the CIDH decided the following: "The Commission does not question the need for general person searching before letting someone go into a penitentiary. However, vaginal revisions or inspections are an exceptional and very intrusive kind of searching. The Commission would like to underline that visitors or members of the family who intend to exercise their right to a family life should not automatically become suspicious of an illegal act and cannot be considered, in a first moment, to represent a serious threat to security. Even though the measure being questioned can be exceptionally adopted in order to guarantee the security in certain specific cases, it cannot be held that its systematic application on all visitors is a necessary measure to guarantee public security."³⁴⁹

The Commission estimated that in order to establish the exceptional lawfulness of a vaginal searching or inspection, in a particular case, four conditions must be followed: 1) it has to be

³⁴⁶ Ironically, Annual Report 2000/2001 of the Penitentiary Prosecutor points out that the redesign and building of the facilities of the Federal Penitentiary Complex 1, in the district of Ezeiza, was based on projects for American jails and, because of this, the space destined to indirect visits (the booth way) turns out to be exaggerated compared to the spaces in which inmates receive direct visits. In the Maryland and Florida jails, upon which this project was based, the direct contact between inmates and visitors is highly restricted, unlike what Law 24,660 establishes. (Annual Report of the Penitentiary Prosecution 2000-2001, Ministry of Justice, Security and Human Rights of the Nation).

³⁴⁷ For example, the state authorities cannot suggest a person to choose between an arbitrary and a restrictive detention, even if it is licit, since the actions of the State should follow the basic principles of lawfulness and due process. In the case which reached in 1996 the CIDH (described below) it was not possible to get a real consent since one of the victims was a thirteen-year-old girl, who completely depended on the decision taken by her mother and on the protection granted by the State (Inter-American Opinion Committee in re "Mrs. X v. Argentina" 15 October 1996.)

³⁴⁸ She first resorted to the authorities of the Federal Penitentiary Service (SPF) before the courts, through a statutory protection which was overruled in the first instance and later admitted by the Court in Criminal and Correctional Matter of the Federal Capital, which ordered the SPF to stop this kind of inspections. This last decision was later annulled by the Supreme Court of the Nation.

³⁴⁹ Inter-American Opinion Committee in re "Mrs. X v. Argentina" 15 October 1996.

absolutely necessary in order to achieve the security objective in the specified case ; 2) there has to be no other alternative ; 3) it should, in principle, be authorized by judicial warrant ; and 4) it should only be carried out by health professionals.

By definition, the personal freedoms of an inmate are restricted, and thus, in some cases, corporal inspection, and even invasive physical revision, of inmates and arrested people can be justified, by means of methods which respect their human dignity. *"It would obviously have been simpler and more reasonable to inspect inmates after a personal contact visit, instead of exposing all the women who visit the penitentiaries to such an extreme proceeding"*³⁵³.

It is worth mentioning that the controversy was not about the importance of visits for those deprived of their freedom, or about the fact that the vaginal searching harms the right to intimacy, but about the scope of the power of the State to restrict these rights with the objective of protecting other interests, such as penitentiary security³⁵⁴. *"Security reasons are not enough to justify the restrictions to the personal rights of the visitors. After all, the idea is to find a balance between the lawful interest of relatives and inmates to carry out visits without arbitrary and abusive restrictions, and the public interest to guarantee security in penitentiaries."*³⁵⁵

In the beginning of March 2001, the concubine of an inmate of the Federal Penitentiary Complex II of Marcos Paz, under the jurisdiction of the Federal Penitentiary Service, presented herself before the Penitentiary Prosecution of the Nation, to denounce that when she visited her couple she was exposed to a searching in which she was forced to undress, and once naked, to kneel down and open her vaginal lips. The Prosecutor highlights that it is not an isolated case, but that this kind of searching was still being exercised in the complex, without the searching staff being gynecologic professionals³⁵⁶. Even though apparently they do not perform vaginal tact, in any way *"[...] it is a methodology which is far from respecting human dignity."*³⁵⁷

³⁵⁰ The necessity requisite implies that the inspections and revisions of this nature should only be carried out in specific cases when there are reasons to believe that there is a real danger to security or that the person involved may be transporting unlawful substances.

³⁵¹ Among many existing options to reach that objective, the chosen one should be that which restricts the protected right to a smaller extent.

³⁵² Almost all the legal systems of the continent require that the police officers or the security staff have a judicial warrant in order to carry out certain actions considered particularly intrusive or that imply the possibility of abuses, such as the searching of a residence. Vaginal inspection, because of its nature, is such an intimate intrusion in the body of a person, that it requires a special protection. When there is no control and the decision to expose a person to this kind of intimate inspection depends solely on the decision of the police or of the security staff, it is possible that the practice is used in unnecessary circumstances, as an intimidation and turns into a way of abuse. The decision that this kind of inspection is a necessary requisite for the personal contact visit, should be taken in every case by judicial authority. (Inter-American Opinion Committee in re "Mrs. X v. Argentina" 15 October 1996).

³⁵³ Inter-American Opinion Committee in re "Mrs. X v. Argentina" 15 October 1996.

³⁵⁴ In order to analyze the scope of Section 32,2 of the American Convention on Human Rights, see Rivera Beiras, Iñaki and Salt, Marcos; op. cit., p. 186-7.

³⁵⁵ Inter-American Opinion Committee in re "Mrs. X v. Argentina" 15 October 1996.

³⁵⁶ Remember the opinion of the CIDH saying that should there be these kind of searching, they should only be carried out by apt medical personnel: *"[...] the Commission insists that the performance of these kind of invasive corporal searching, as it was carried out when authorities still performed inspections of this nature, can only take place under the supervision of health professionals, strictly observing hygiene and safety measures, due to the possible risk of corporal and moral harm to a person"* (Inter-American Opinion Committee in re "Mrs. X v. Argentina" 15 October 1996)

³⁵⁷ Penitentiary Prosecution of the Nation; Annual Report of the Penitentiary Prosecution 2000/2001, Buenos Aires, 2001.

2.3.2.7. Violent searching to people deprived of their freedom

Internal security of a jail premises is a delicate subject and requires the constant cooperation between penitentiary staff and those deprived of their freedom. In name of this security inmates are restricted, among others, the right to intimacy. Inmates, their belongings, clothes and sleeping places are constantly searched³⁵⁸, both routine and unexpectedly, by the Searching Body of each unit. If the proceeding rules for personal or belongings inspection and searchings are not fulfilled, there is a middle infraction, according to the Regulation of Discipline for Inmates.³⁵⁹

Searching and the staff appointed for this routine cause many of the situations of greater insecurity in Argentine jails. Violence appears with the resistance of an inmate to be searched, or even, without apparent reason. It can include beatings, burning and even murders. As it happens with searchings to free people and searchings to particular residences, they are appropriate circumstances for the forgery of cases, the “setting” of evidence (in this case the set elements which are not allowed and which cause punishments, such as drugs, “*facas*”³⁶⁰ and degrading fruits³⁶¹), robbery and destruction of personal belongings, with the evident aggravating circumstances that the inmates are in a particularly vulnerable situation and under the custody of the State. The Defense Office of Criminal Execution has received denounces of anal searches using objects.³⁶²

The staff that performs the searching is, in most of the cases, identified as victimizer or aggressor. This staff never uses visible identification, they go into the rooms with helmets and shields, thus their future recognition is very difficult, even more if the victim is being attacked with sticks and boots.³⁶³

Section 77 of law nº24,660 of Punishment Execution establishes that *“It is completely forbidden for the penitentiary staff to use force on the inmates, except in cases of escape, evasion, or their attempts or resistance by active or passive force to an order based on a legal rule. Even in these cases, every excess shall render the responsible officer worthy of the administrative and criminal corresponding sanctions”*³⁶⁴. However, violations to the rights of the inmates are a routine, and a factor for the denounce not to be effective is that the beatings are not strong enough to leave marks (so the sequels are attenuated or disappear soon). Thus, only a few cases become publicly known, such as those in which the victim has to be hospitalized or dies.

³⁵⁸ Section 17 of the General Regulation of Prosecuted People (text ordered by resolution nº13/97 of the Secretariat of Penitentiary Policy and Social Re-adaptation) establishes that: *“The inmate and his belongings shall be subject to searching in order to avoid the income of objects and substances unauthorized in the institution due to security and order reasons”*. Section 51 of the same regulation states that: *“In order to preserve the general security, the searchings of the inmates, their belongings and places they occupy, recounts and searchings of the facilities of the institution, shall be carried out with the guarantees that the superior penitentiary authority shall determine and within the respect to human dignity”*.

³⁵⁹ Decree nº18/97 which regulates Chapter IV, “Discipline”, of the Law of Execution of the Punishment of Freedom Deprivation nº24,660.

³⁶⁰ Sharp, cutting elements homely made by the inmates.

³⁶¹ Used by the inmates to prepare “*pajaritos*”, alcoholic drinks made with fruit fermentation.

³⁶² According to declarations of officers of the Defense made to members of the CELS:

³⁶³ Procurador Penitenciario, *Informe Anual de la Procuración Penitenciaria 2000/2001*; Buenos Aires, 2001.

³⁶⁴ Section 80 of law nº24,660 indicates that *“Order and discipline shall be kept with decision and firmness. There shall be no more restrictions others than those indispensable for the keeping of safety and the correct organization of the life of the inmates [...]”*. See also the Minimum Regulations for the Treatment of the Inmates adopted by the First Congress of the United Nations on Crime Prevention and Criminal Treatment, celebrated in the City of Geneva in 1955 and adopted by the Economic and Social Council through resolutions 663/57 and 2076/77 which in rules contain similar dispositions.

Routine abuses are not denounced for the same reasons for which, in general, they avoid denouncing penitentiary staff: the closeness and frequency of the contacts between victims and victimizers, the exposition of the victims and the real fear of an even greater revenge. *“We should not forget that the inmate is watching his most valued asset, his life, and in some cases not even Justice can guarantee the psycho-physic protection of the inmate, due to the high level of impunity existing within the prison”*, points out Penitentiary Prosecutor Francisco Mugnolo. A factor which especially discourages inmates to carry out denounces is that the judge or prosecutor who takes part in the investigation, after receiving the testimony of the victim or witnesses, sends the inmates back to their units, exposing them to revenges so that they (and all other inmates) desist from accusing the penitentiary staff³⁶⁵. Even then, between April 2000 and March 2002, the Penitentiary Prosecution received 488 claims for *“physical aggression in a searching”*.³⁶⁶

Being searching one of the most frequent practices in penitentiary life and considering it is not required to have any kind of warrant in order to carry it out, it is difficult to categorize abuses suffered by inmates strictly as “aggression in a searching”, since in many cases they are simply aggressions caused by the searching body. In this way, the limits between a searching with unjustified levels of violence and an arbitrary abuse committed by the searching body in a different situation are not clear. The person deprived of his freedom is also deprived of privacy, reason why his situation is one of permanent reclusion and searching.

Many abuses seem to happen in an arbitrary, spontaneous or particular way. They are beatings or constraint carried out by the searching body on inmates, without any specific intention other than to constantly threaten and intimidate the penitentiary population. Some cases belonging to this kind are:³⁶⁷

- The searching body was aware that an inmate suffered a hernia. This information appears as cause of the attack and enraging against the prisoner and his disease. (Federal Penitentiary Complex 1)
- An inmate tried to avoid verbal aggressions from the searching staff to another inmate of his unit. This intervention resulted in very serious beating and several fractures. (Federal Penitentiary Complex 1)
- On 29 August 2001, an inmate tried to put on his trainers at the time the searching body was entering the unit, they understood that by his action he wanted to “delay and hinder the penitentiary acting” and brought him beatings canes with and kicks (Unit nº2 of the Federal Penitentiary Service).

Violent searchings are not limited to the penitentiary ambit, but they also affect the people who are illegally accommodated in police stations.³⁶⁸

On 14 February 2000, Infantry staff entered police station 1st of San Isidro, in the Province of Buenos Aires, in order to carry out a searching, forcing the prisoners to remain naked, with their arms on their nape for an hour and a half. If anyone, out of tiredness, lowered his arms, he would receive cane beatings. Their belongings and food were destroyed. Furthermore, they verified that

³⁶⁵ In order to see examples of these kind of consequences see Part II, section 2.4.2.3. below.

³⁶⁶ Procurator Penitenciario; *Informe Anual de la Procuración Penitenciaria 2001/2002*, Buenos Aires, 2003.

³⁶⁷ All the cases mentioned hereinafter took place in units depending from the Federal Penitentiary Service and involve their officers as victims, they happened between April 2001 and March 2002, even though the exact dates are not available in any of the cases (*Informe Anual de la Procuración Penitenciaria 2001/2002*, op.cit.)

³⁶⁸ About jail overpopulation and accommodation of people in police stations see Part II, section 2.4.2.6 below.

the place was over populated, without ventilation or furniture, and that the inmates had to eat on the floor. They were not supplied with cleaning or eating elements, reason why they eat with their hands and the food they received was on some occasions in bad condition.³⁶⁹

A very frequent practice and one feared by the inmates, is the revenge before the attempt of the people deprived of their freedom to exercise their rights:

- The presentation of a habeas corpus which involved a penitentiary agent resulted in six female inmates seriously beaten. (Women Unit nº3 of the Federal Penitentiary Service)
- An inmate requested bread during dinner, since neither he nor the other inmates had received any food until then. The inmate ended up with a broken nose, equimosis and several excoriations. (Federal Penitentiary Complex I)

The significant number of denounces of constraint committed against HIV positive inmates, leads to suppose that it is a group which, due to their vulnerable health condition, is re-victimized by the penitentiary staff. The following cases were taken from the Annual Report of the Penitentiary Prosecution 2001/2002:

- When transferred from Unit nº1, in Caseros, to the Federal Penitentiary Complex I, both depending from the Federal Penitentiary Service, an inmate was deprived of his medication for the retroviral treatment for approximately fifteen days, because it had been confiscated by the searching body of the Unit. This incident was confirmed by a medical professional of the Penitentiary Prosecution of the Nation when the inmate had a temperature with polyadenomelia which cause his transfer to Unit nº21. The same happened when he was transferred from Unit nº2 of Villa Devoto to Module 2D of the Federal Penitentiary Complex I: he was suspended his medicine while waiting for the results of the DC4 and the viral charge.
- An inmate denounced for beatings the penitentiary staff of the Central Hospital of Unit nº2 of the Federal Penitentiary Service, HIV Unit. The denounce was made before the Instruction Court nº20 on 17 January 2001.
- Three denounces for illegal constraint to HIV positive inmates of the Central Hospital of Unit nº2 of the Federal Penitentiary Service had to be shelved on 11 December 2000 because the victims refused to make a statement.
- An inmate denounced being beaten also in the HIV Unit of the Central Hospital of Unit 2 of the Federal Penitentiary Service. In this case they are investigating the falsification of a certificate in which the inmate stated he had injured himself when he fell down in the shower. The denounce went to Instruction Court nº38, on 4 October 2000.
- An inmate denounced being seriously beaten in the HIV sector of the Central Hospital. During his interview with the Penitentiary Prosecutor he stuttered, did not have balance and found it very difficult to communicate. The denounce went to Instruction Court nº36 in September 2000.

Apart from physical abuses, searchings are not adapted to the particular condition of the inmates infected by the HIV and the prolonged lapses in which the inmates are forced to remain in line has, on many occasions, prevented them from following their medical treatment.

³⁶⁹ Injured detainees were Osvaldo Cerviño, Rafael Giménez, Matías Cerviño, Pablo Tolava, Eduardo Galván, Juan Carlos Sánchez, Ramón Leiva, Damián Arroyo and Martín Ramírez. Those accused of victimizers were Sub-constable Horacio Landeras, Héctor Alberto Tula, Sergio Lotto, Miguel Nakasone and Gerardo Acosta. The investigation was the responsibility of the UFI Nº6 of the Judicial Department of San Isidro, Case Nº67,423. The incidents were known by the CELS through official defender of San Isidro María Dolores Gómez. About the conditions of freedom deprivation in police stations see Part II, section 2.4.2.6.3. below.

2.4 Ill-treatment, unlawful coercion, torture and rape

2.4.1 Legal Aspects

The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment³⁷⁰ establishes that the term torture shall mean: “[...]the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.³⁷¹

The Inter-American Convention to Prevent and Punish Torture³⁷² determines that “[...] torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article”.³⁷³

The International Covenant on Civil and Political Rights reads³⁷⁴: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”³⁷⁵, while the American Convention on Human Rights³⁷⁶ states: “Every person has the right to have his physical, mental, and moral integrity respected. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person”.³⁷⁷

In the internal scope is the National Criminal Code the regulating body which punishes unlawful coercion, torture and ill-treatment. In this sense, section 144 bis establishes that: “2) [...] the officer who performing an act of duty commits any abuse against people or applies unlawful coercion; 3) the public officer who imposes on prisoners he is taking care of, severities, abuse, or unlawful coercion [...], shall be liable to 1 to 5 years imprisonment and special disqualification for twice the time.”

³⁷⁰ Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. In force since 26 June 1987, in accordance with section 27. Ratified by the Argentine Republic without reservations on 24 September 1986.

³⁷¹ Pursuant to section 1.1.

³⁷² Adopted by General Assembly of the Organization of American States (OEA) at Cartagena de Indias, Colombia, on 9 December 1985 and in force since 28 February 1987, in accordance with section 22. Signed by the Argentine Republic on 10 February 1986 and ratified on 18 November 1988.

³⁷³ Pursuant to section 2.

³⁷⁴ Adopted by the General Assembly of the United Nations on 16 December 1966.

³⁷⁵ Pursuant to section 7.

³⁷⁶ Adopted at San José, Costa Rica, on 22 November 1969 during the Specialized Inter-American Conference on Human Rights and in force since 18 July 1978, in accordance with section 74.2. Signed by the Argentine Republic on 2 February and ratified on 14 August same year.

³⁷⁷ Pursuant to section 5.1 and 5.2

Section 144 ter establishes that: “1) *the public officer who imposes on people, lawfully or unlawfully under restraint, any kind of torture, shall be punished with 8 to 25 years imprisonment. Whether the victim is legally under the responsibility of the officer, is irrelevant, being enough that the latter has on the first one real power [...] 2) if as a result of the torture the victim died, the restraining punishment shall be life imprisonment [...]. 3) Torture shall be understood to be not only physical torment, but also the imposition of psychic, when these are serious enough*”.

2.4.2. Characteristics of ill-treatment, unlawful coercion, torture and rape

Even though there are a great number of dispositions and regulations intended to avoid and punish the commission of unlawful coercion and torture, these are systematically repeated throughout Argentina.

The absence of a unified record of denounces prevents knowing the dimension of the phenomenon at a national level.³⁷⁸ Despite this fact, the scarce information available are enough to show that unlawful coercion and torture are not isolated incidents: between January 2000 and June 2002, 2271 judicial cases were started before the Ordinary National Justice of the city of Buenos Aires and the federal justice of all the country, for unlawful coercion and 23 for the crime of torture³⁷⁹ (see Annex I, table 9). The *Database of Cases of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*³⁸⁰ recorded 1974 cases between 18 March 2000 and 3 September 2003.³⁸¹

2.4.2.1. Tortures inflicted with the objective of clarifying crimes³⁸²

It is making a person responsible for a criminal act –real or fictitious- in order to state that the case has been resolved and show efficiency in the police task, both before the superiors and before public opinion in general. In this cases, torture is applied with the objective of: a) getting a confession from the alleged perpetrators; b) forcing people not connected to the crime to give information which allow to identify the suspects, find them and arrest them and/or getting significant evidence for the case; or c) forcing people to confer on themselves the responsibility for crimes which really took place but which they did not commit or for forged crimes. In the last case, the rate of crime clarification is enlarged through the inclusion of fake crimes.³⁸³

³⁷⁸ On this subject see Part IV, section 6 below.

³⁷⁹ Source: General Procurator of the Nation.

³⁸⁰ Created by Resolution n°13 of the General Defender before the Court of Criminal Cassation of the Province of Buenos Aires, dated on 17 March 2000.

³⁸¹ Source: Public Defence of the Province of Buenos Aires (<http://www.defensapublica.org.ar>)

³⁸² “Torture is the zeal to try to discover, to get to the core of a crime...[the police] has a lot of work.[But]we do not have the resources to work[...] in all the investigations [...] the fastest way is to torture”. Huggins, Martha y Haritos-Fatouros, Mika; “Conciencia torturada: secretos y moralidad en la violencia policial brasileña” at Justicia en la calle. Ensayos sobre la policía en América Latina, Konrad Adenauer/CIEDLA/ISLA; 1º edición, Colombia, 1996.

³⁸³ About the importance of the statistics it is worth quoting Máximo Sozzo who states: “One of the variables which have historically influenced on the shaping of police statistics is that they have been and still are a central element in the government of the police institution, since statistic information of the different institutional segments (districts, regional units, police stations and sub-police stations) allows the police authorities to evaluate the functioning of each of them, even though, at the same time, as indicators of police performance, they have always been somewhat ambiguous [...] However, despite this evident ambiguity, the substance of police statistics as a governing tool of the police institution has been and is one of the reasons why in our country there commonly arouse doubts in the academic and political field as to their reliability”. National Office of Criminal Policy; “Sistema Nacional de Información Criminal Informe Anual de Estadísticas Policiales. Año 1999”; Ministry of Justice and Human Rights; 2000. p. 11. Available through: <http://www.jus.gov.ar/polcrim/polcrim.htm>.

Tortures inflicted in order to get the confession of alleged perpetrators

Within a criminal investigation, police staff arrests –in the street or in their own residences- people identified by the victims or incriminated by the police itself as authors of a crime and transferred to a police station³⁸⁴ where police staff³⁸⁵ inflicts the torment. The arrests are not always carried out with a judicial warrant. At times they happen as a consequence of denouncing an incident committed instants before. In these cases, police staff identifies the suspects –who are later tortured- basing themselves on the physical description provided by the victims of the crime. In most of the cases, the victims are young males of little resources. The seriousness of the injuries have caused, in some cases, their death.

Javier Villanueva, 24 years old, was arrested on 21 October 2001 in the Lomas de Zamora district, province of Buenos Aires, while he was driving a stolen vehicle. The prosecutor who questioned them noticed suspicious marks on his body, reason why he decided that a doctor should examine the detainee. Furthermore, he ordered the inspection of the police station in which Villanueva had been arrested. There they found the electric wire which, according to Villanueva, had been used to torture him.³⁸⁶

In the province of La Pampa, on 8 January 2001, police staff of the police station 1st of the city of Santa Rosa, together with staff of the Investigation Brigade and of the Radio-electric Unit, entered the residence of Julio Inocencio Aguirre and Nélica Teresa Ontivero, arresting the under age son of the couple and other four children³⁸⁷. Once in the police station, the children were taken to the kitchen where they were brutally beaten. Julio Daniel Aguirre was beaten in his testicles and jumped on. His parents were not allowed to see him when they went to the station. In the afternoon, the youngster was transferred to the police station 5th. The following day, when they were allowed to see him, Julio's parents noticed that all his body was beaten, particularly the abdominal area, the ribs and the back. As he told them on that occasion, he had been kicked, beaten with rubber canes and thrown a white powder in his eyes. As a consequence, he had been crying all night.

On 16 January Julio was transferred to the Main Courthouse and from there to the Family and Juvenile Court, being finally accommodated in an assistance centre. When the parents went to visit to that institution, they were informed that their son was punished and that they could not see him. On January 21, after the time limit of the sanction, the boy told his parents that he was dizzy, had headaches, a temperature and that he had started to vomit blood. When operators of the assistance centre were informed about these symptoms, they paid no attention and only gave him a sedative medicine. On 3 March Julio had to be taken to Lucio Molas Hospital, since his health condition was getting worse. His body was swelled and with a rash. The doctors diagnosed that it was probably an infectious virus. His mother requested his transfer to Buenos Aires. At the beginning the doctors indicated that the transfer was not necessary but, finally, before the extreme seriousness of Julio's health condition, they decided to send him to Eva Peron Hospital in the city of Buenos Aires.

When Julio arrived at the hospital he was in a coma. He was hospital until 23 March when, due to a problem of bed availability, and despite the serious infection he suffered, the doctors decided

³⁸⁴ To see a description of the police stations refer to Part II, section 2.4.2.6.3, below.

³⁸⁵ To see a characterization of the police staff see Part II, section 3.2, below.

³⁸⁶ Six officers of the police station of Lomas de Zamora were arrested and accused of torture and obstruction to justice. Human Rights Watch, *Informe anual 2002*. Available at: www.hrw.org/spanish.

³⁸⁷ The operation was the responsibility of commissar Alcaraz, chief of the police station, who revealed that he was carrying out a searching and arrest warrant issued by instruction judge Dr. Gustavo Jensen.

to transfer him again to Santa Rosa, by ambulance, without his parents consent. Julio Daniel Aguirre died on the journey.

The parents made the denounce, which is pendent before Instruction Court in Criminal and Correctional Matter nº1, under the responsibility of Dr. Gustavo Jensen, that is, before the same judge who ordered the arrest of the victim.³⁸⁸

Youngsters Capdevilla and De Armas, whose names did not become known, denounced having been victims of ill-treatment from police staff. They were arrested by the agents of the Patrol Unit of the city of Pergamino, province of Buenos Aires, on 22 September 2003, under the charges of attempt and resistance to authority. The police officers stated that they confiscated from his clothing a rifle and alleged that their attitude was suspicious with the intention of committing an unlawful act, such as a neighbour's phone call had warned. At the moment of the arrest there was a struggle in which Capdevilla lost a tooth, as a consequence of a blow in his jaw. They were transferred to the Unit where, according to their subsequent testimony, they started receiving blows, one of them being kicked on the floor while he was handcuffed with his arms in his back. Officer Inspector Miguel Angel Paolini took Capdevilla to an office in which he questioned him about his past days as prisoner in San Nicolas jail. In accordance with what is registered in the case, the officer asked about his detention days together with two criminals who had allegedly accused Paolini of participating in the so-called "Villa Ramallo Masacre"³⁸⁹. The young man said he did not know what he was talking about. After three hours of arrest the three youngsters were taken to give statement before prosecutor Juan Andrés Gracia, circumstance in which reported what had happened. Forensic doctor Daniel Jaime made verified various injuries of the detainees.³⁹⁰

Miguel was 17 years old when a relative denounced his unlawful arrest and physic and psychic tortures inflicted upon him in police station 6th, in Pacará, province of Santiago del Estero. The tortures included the immersion of his head in water with detergent and lavandine. Miguel had been accused of robbery and of the murder of an elderly lady. In the afternoon on that same day, the family found out that Miguel had "hung himself". The body had a huge blow in the forehead but, according to his family, he had no signs of the hanging, neither in his neck nor in his face.³⁹¹

With 22 years old, Diego Manuel had been arrested on five occasions in Pacará. The last time, a police by the name of Acuña accused him of breaking glasses of a commercial shop. Diego was beaten and kicked in the street and subsequently transferred to the Radio-electric Unit and to

³⁸⁸ Source: Movimiento Pampeano por los Derechos Humanos, press release of 8 August 2001.

³⁸⁹ On 16 September 1999 three hooded people tried to rob the Banco of the Argentine Nation located in the Buenos Aires county Villa Ramallo. They took the place with six hostages. The police operation, of which the GEO, Falcon and GEOF (especial operation group of the Argentine Federal Police) groups participated, developed full of irregularities and actions not compatible with a hostage rescue operation. At 4:50 on the following day, when the robbers tried to escape in a vehicle, together with the three hostages they had left by then, the shootings of the command groups killed two hostages and one of the robbers. A hostage and one of the thieves were seriously injured. On the following day, in the jail of a police station, the only unhurt accused person was found dead. This together with the expert's examination which indicated that the robber who died in the car had received a killing shot, increased the suspicion that the incident had been organized with the participation of the police of Buenos Aires.

³⁹⁰ Six members of the Patrol Command of Pergamino, included the chief of the station, were arrested because of this incident, charged with torture. Prosecutor Gracia received a death threat in which they recommend he leaves the investigation. He stated: "*It is unbelievable, but I see here they torture detainees as if we were in the military dictatorship*". Source: La Nación, "El jefe de comando de patrullas y cinco policías, presos", 16 October 2003.

³⁹¹ Source: Página/12, "Una radiografía del terror uniformado", 20 September 2003. About the use of torture as a way of social control in the province of Santiago del Estero see Part II, section 2.4.2.4., below

police station 2nd. There the tortures continued, which this time included the “dry submarine”³⁹². Later, a policeman threw a gas grenade inside the cell Diego shared with other three people. Diego’s father was also beaten and tortured by the same police agents, but he was not arrested.

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Andrea Viera, 25 years old, and her couple Gustavo Cardozo lived in a precarious hut of the Ingeniero Alan neighbourhood, in the Buenos Aires county of Florencio Varela³⁹⁴. Both of them earned their living selling spices in the street³⁹⁵. On 10 May 2002, in the district of Florencio Varela, province of Buenos Aires, they decided to get off the bus line 324 in which they were traveling, because she was not feeling well. Sitting in the street, they were taken by surprise by many police cars. Minutes before, a policeman had been in a shooting with three people who attempted to rob from a butcher’s. One of them was murdered and the other two had escaped. Members of the Buenos Aires police, without even asking them to identify themselves, started insulting and hitting them. They were handcuffed and taken to the police car, arresting them to find out their police records³⁹⁶. They were transferred to police station 1st of Florencio Varela, while the beating continued. In the agency Andrea and Gustavo were separated and brutally tortured. In an office, Andrea was thrown on the desk, on her stomach and handcuffed, while being beaten by police woman Marta Oviedo and other officers. She was uninterruptedly tortured for two hours.

Gustavo Cardozo, in his turn, was taken to the back of the police station, where he was beaten and threatened. They had apparently told him: “*Tell us where the gun is because you’ll be beaten to death*”.³⁹⁷

When they had already decided to release them, the woman suffered a decompensation and from the police station she was taken to Mi Pueblo hospital, in Varela. Viera entered the hospital with strong convulsions and in a pre-coma condition. The doctors determined she had injuries in her neck and bruises in her arms and other parts of her body³⁹⁸.³⁹⁹ Andrea was in a coma in the intensive care unit for 12 days, until she died on 22 May. The autopsy revealed she had been beaten and that those beats could have caused or precipitated her death. The judicial case was given the title of torture “followed by death”.⁴⁰⁰

³⁹² Which consistist in covering the head of the victim with a nylon bag in order to make breathing difficult. When oxygen disappears, there is brain disorder and subsequently, asphyxia and death.

³⁹³ Source: Página/12, “Una radiografía del terror uniformado”, 20 September 2003. About the use of torture as a way of social control in the province of Santiago del Estero see Part II, section 2.4.2.4, below.

³⁹⁴ Source: Indymedia Argentina, “Nosotros somos demasiado pobres”, 23 May 2004. (<http://argentina.indymedia.org>).

³⁹⁵ Source: South Reporters, “Grave denuncia por torturas en la comisaría 1º”, June 2002.

³⁹⁶ According to the judicial file, the police statusd that the victims had been delayed while they were in a “suspicious situation” in order to determine if they were connected to the recent criminal act. Source: Clarín, “Acusan a siete policías por torturas en una comisaría”, 28 May 2002.

³⁹⁷ Source: La Nación, “Reconoció a dos de los policías que golpearon a su mujer”, 5 June 2002.

³⁹⁸ Source: Clarín, “Preventiva para 4 policías por torturar y matar a una detenida”, 4 July 2002.

³⁹⁹ The doctor who examined Cardozo did not find any injury. However, when the young man went to hospital it was verified that he had several bruises on his back.

⁴⁰⁰ In July 2003, the prosecutor of Quilmes, Claudio Pelayo, requested that the case be taken to oral hearing. Four Buenos Aires policemen were charged with torture followed by death, enough to be sentenced to life imprisonment. They are sub-officers principals David Gutiérrez and Carlos Daniel Maidana, and sub-officers 1º Pedro Mensi and Marta Jorgelina Oviedo. A fifth uniformed officer, sub-inspector Diego Herrera, is accused of not carrying out the corresponding denounce. The case is under the responsibility of Quilmes judge Martín Nolfi. Source: Página/12, “En la antesala de la perpetua”, 21 July 2003.

Pablo Pavón, 18 years old, was arrested to find out about his records by officers of the Buenos Aires Police, and he stated having been assaulted with beatings, kicks, hitting against the wall and pressure on his handcuffs. Meanwhile, four policemen demanded him to tell them the location of a weapon which days before had been taken from a son of Sergeant Velázquez. The incident took place in the Police Station 9th of Lomas de Zamora, province of Buenos Aires. ⁴⁰¹

On 8 September 2000, police staff arrested Ariel Esteban Simonini –who lives in Ejercito de los Andes neighbourhood- and took him to Saenz Peña police station, in the Buenos Aires district of Tres de Febrero. An officer of the Buenos Aires Police, Silvia Verónica Moyano, who performed her duties as service staff of such police station, recognized Simonini as a person who some time in the past had stolen a gun and a golden chain from her and informed this to five subjects – former policemen- who were arrested in the same cell⁴⁰². Officer Moyano ordered the staff of cell custody to leave in order to make summons, thus, leaving the watching position of the detainees empty. One of the former policemen forced Simonini to enter the cell, where he was threatened to death so that he told where the stolen gun was. Before the lack of response of Simonini, they put a plastic bag over his head and started beating him with their fists and against the wall. The victimizers used three nylon bags, since Simonini tore them all fighting to breathe. Meanwhile, officer Moyano constantly entered the cell in order to find out if Simonini gave information. Afterwards, he was taken to a nearby bathroom, they tied his hands with a wire and continued putting bags against his head beating him, while they told him that if he wanted to talk he had to stomp his feet. All this session was recorded, because they expected the victim would answer to their questioning about the gun and the chain of officer Moyano. When the beating was over, they told him he was to tell nothing and that if he went to the prosecution they would kill him. ⁴⁰³

Tortures inflicted in order to force people to give information

Besides suspects themselves, another of the sources to which police officers resort in order to obtain information are people who, even if not connected to the incidents, are thought to be able to give information which can help for the clarification of a crime. As in the case of suspects, they try to obtain information through torture and other cruel, inhuman or degrading treatment. According to the cases studied, none of the victims provided the information the police was searching for, which allows suspecting they did not know anything about the incidents. The victimizers are officers of the police forces and the incidents not necessarily take place inside the police station, but they can be started or finished in open spaces. Such as in the previous paragraph, victims are often young men –or even children- of scarce resources.

In the district of Bernardo de Irigoyen, province of Misiones, on 24 January 2000, officers of the provincial police went to look for a 12-year-old boy in the farm where he was working and arrested him. According to what the minor told, the policemen put a knife in his stomach while they demanded he told where his uncle was hiding, who they accused of being involved in a triple homicide. Besides, the young boy stated that the officers grabbed him by his neck and threatened him placing a *“gun in his mouth and nape. Some time went by and they took me to the cell, they took me out again and repeated the [intimidation]”*. The minor held that the policemen also took him near his house where they handcuffed him to a tree and left him there some time while they repeated the questions about his uncle, until they decided to release him in a area with hills

⁴⁰¹ Source: La Nación: “Fueron relevados 15 policías acusados de torturar a presos”, 27 May 2003.

⁴⁰² They were Héctor María Blanco Pinto, Antonio Miguel Mucha, Oscar Daniel Ortega and Carlos Daniel Porto e Ibáñez.

⁴⁰³ About threats to victims of institutional violence see Part II, section 2.2.2.1. above. Source: La Nación, “Un Ex policía admitió que tres colegas golpearon a un detenido”, 15 September 2000.

shooting at the same time to the air with their guns. José Benedito, father of the child, made the corresponding denounce.⁴⁰⁴

On 17 December 2003, police agents of the police station 44 of the district of Tintina, province of Santiago del Estero, went to the residence of the Paez family and demanded Marta Paéz to give them a bicycle that somebody from his family had allegedly robbed and which was in the sidewalk, outside the family's property. The woman denied that act and the officers attacked her. When they tried to beat her, her son Horacio, of 18 years old, intervened to defend her. Agent Julio Salto took him by his back and held his arms so that his colleague Carlos Luna could hit him. Horacio fell to the floor because of the beatings, where he received kicks until he fainted. When the policemen confirmed that the boy was unconscious, they dragged him 20 metres to the street. A van which was passing by stopped and Luna asked the driver to take the boy to a hospital. His mother went to the Central Police Station of Santiago. There she was informed that there was a report from Carlos Luna where he stated that the beatings Horacio had were consequence of a fall from his bicycle when Luna was following him after an escape attempt. The father of the boy, Andrés Paéz, headed for police station 44^o in order to report the policemen involved, but there they rejected the report.⁴⁰⁵

Tortures inflicted in order to force people to claim the responsibility for crimes

In this case, the objective followed with the tortures, unlawful coercion, and ill-treatment are two. On the one hand, they intend to improve the criminal statistics, in an attempt to show that crime repression is more efficient than it really is. Identification and apprehension of the alleged author of a crime makes believe it has been clarified. Thus, in an attempt to compensate for the deficiencies in their investigation abilities and the subsequent difficulties in identifying those who commit crimes, the police try to force the victims to self-incrimination and to accept their participation in a criminal act, which in fact, they may or may not have committed. At times, through brutal methods, they force the victims to claim responsibility for a crime which never took place, however, this is not always carried out with the objective of improving statistics⁴⁰⁶: the possibility of involving a person in a criminal act is used as a threat to extort them and demand money from them in exchange for their release from the charges. In these cases, although they are people of a low socio economic class, the victims are selected bearing in mind whether they will be able to pay. The threat is, besides, reinforced by torture.

In September 2004, the secretaries of Justice and Penitentiary Affairs and Human Rights of the Nation, Pablo Lanusse and Eduardo Luis Duhalde, visited Pacará, a deprived neighbourhood, in the province of Santiago del Estero, only 10 blocks away from the centre of the capital. After the visit Duhalde stated: *"We have verified the marks of unlawful coercion, even in children 9, 10, 11 and 12 years old, who were presented as dangerous street robbers [...] That area is a kind of hell where there is no form of individual guarantee"*.⁴⁰⁷

⁴⁰⁴ Source: Página/12, 28 January 2000.

⁴⁰⁵ Finally, it was reported in the provincial capital, on 22 December 2003, to the Court in Criminal Matters of 1st Instance, under the responsibility of Dr. Ramón Gómez. According to the news report, officer Julio Salto was promoted. Source: Agencia de Noticias Red Acción (ANRed), "Dos policías de Santiago del Estero apalearon a un joven y luego ascendieron a uno de ellos", 2 January 2004.

⁴⁰⁶ About the judicial cases forged by the Federal Police in order to improve statistics and get promotions see Ales, Cecilia; Chiller, Gastón and Palmieri, Gustavo.

⁴⁰⁷ Source: Clarín, "Santiago: denuncian que la policía golpea y tortura a chicos", 12 September 2003. About the use of torture as a way of social control in the province of Santiago del Estero see Part II, section 2.4.2.4. below.

Through previous reports of local organizations⁴⁰⁸ and through interviews made to victims, it was possible to establish common patterns in the torture practices: children and young people are arrested without a judicial warrant and, once at the police station, they are forced to accept the commission of a crime. The detentions are frequently carried out on Fridays and prolonged until the following Monday. In many cases, they happen after a completely illegal searching, carried out by a police in the houses and destroying the furniture⁴⁰⁹. If they refuse to accept the charges, the children are tortured. These are among the most common practices: “dry submarine”, the passing of electricity over the body, fist hitting, kicking, forcing the person to squat down holding a stick below their legs, hitting his ears, immersing the head of the person in water with detergent and lavandina, beatings on the back with plastic bottles full of water and bludgeons. In none of the cases does the police doctor register the bruises and the marks in the body. Some youngsters have denounced that they were not even examined when they were released. Denounces collected by the organization of parents grouped in the Pain Mothers reveal that *“the cases in which torments followed by death are applied are constant”*.⁴¹⁰

Juan José is 13 and lives in Pacará neighbourhood. In his body he carries the traces of his encounter with the Santiago police in September 2003: in the left side of his hip he had a protuberance similar to the size of a tennis ball, including a bruise, while in his left arm he had injuries which two weeks after his detention had not healed.⁴¹¹

After Juan José's case became popular, judge René Achaval went to the child's house, together with a doctor of the local police. There, he verified the injuries which had been ignored by the doctor who examined Juan José when, in due time, the tortures were denounced: the medical report states that *“nothing abnormal”* had been detected. Achával opened a summary entitled *“Castillo, Oscar and others, about alleged unlawful coercion”* and ordered to arrest six police men of the station of Pacará. The principal Oscar Castillo, chief of the police station, denied all the accusations and stated that the injuries that Juan José had, were caused when he fell from a truck he was trying to rob when the police saw him, and added: *“the boy was a “thief” [...] I'm denounced by mothers whose children I imprison because they are thieves”*.⁴¹²

On 8 November 2001, truck driver Daniel Celesia was driving a truck in which he transported air conditioning equipment when a mechanical problem made him stop in the intersection of Road 8 and Márquez, in the Buenos Aires district of San Martín. Another truck driven by Carlos Días and other two workers came to assist him. When they were passing the objects from one vehicle into another, a police car arrived. The police asked them for the documentation of the goods, of the vehicle and of the personnel. Even though the documents were in good condition, the four of them were taken to the police station of Billingham. A group of policemen turned up the volume of the music and started hitting Celesia. The victim reported that while they were hitting him they told him he had to give them \$15,000, if he did not want them to put a weapon or drug in his van. In the prosecution office they received an anonymous call which requested the presence of the prosecutor in the police station. Judicial instructor Daniel Rama presented himself and found

⁴⁰⁸ Among them, the organization called Pain Mothers, whose members march every Tuesday demanding justice for 162 young people murdered or punished by the police. In the last five years 284 cases of unlawful coercion, extrajudicial executions and different violations to human rights were denounced. The testimonies repeat in every juvenile as a horror story sequence, telling about sinister practices which do not have a certain starting date.

⁴⁰⁹ About violent searching see Part II, section 2.3.2. above.

⁴¹⁰ CELS, “Inseguridad policial y otras formas de violencia institucional”; at *Derechos Humanos en Argentina. Informe Anual 2002-2003*, Chapter V; op.cit. p. 257.

⁴¹¹ Sources: Clarín, “Detienen a seis policías acusados de golpear y torturar a un chico de 13 años” and La Nación, “Detuvieron a seis policías por presuntas torturas a un menor”, 18 September 2003.

⁴¹² CELS, “Inseguridad policial y otras formas de violencia institucional”; at *Derechos Humanos en Argentina. Informe anual 2002-2003*, Chapter V; op.cit. p. 258.

Celecia handcuffed and with marks of beatings in his face. The policemen stated that they had found him amidst a self-robbery, but they were not able to explain why they had not given notice to the prosecution office on duty.⁴¹³

2.4.2.2. Tortures inflicted with the objective of forcing the victim to commit a crime

The backgrounds of these violent practices are penitentiary institutions. In these cases, officers⁴¹⁴ beat and ill-treat people under restraint who are at their care and who have been selected in order to commit a criminal action, both outside and inside the jail. The crime, in general, consists in the commission of a murder, of another inmate or of a judicial officer, who knows about and may probably denounce the participation of the penitentiary staff in violent acts or corruption nets.

Rodríguez Preste, who was in Unit 29 of the Buenos Aires Penitentiary Service, denounced in June 2001 that penitentiary staff had proposed to release him if he murdered another prisoner, Marcelo Brandán Juárez. He also said that, due to the same reason, he was tortured by prison wardens. However, the judge responsible for the case stated that he had doubts about the testimony and that the beatings the inmate showed were doubtful.⁴¹⁵

There are other denounces of detainees, of the same level. An inmate –with reserved identity– denounced that the authorities of Penitentiary Unit 29 hit him and proposed to give him the privilege of anticipated release if he killed the son of official defender of San Isidro, María Dolores Gómez who, on several occasions, presented denounces against officers of the Buenos Aires Penitentiary Service because of very serious violations to the human rights of the inmates⁴¹⁶. In the same way, another detainee stated that he had received a similar offer, but in this case to kill directly defender Gómez.⁴¹⁷

On 11 February 2004, general prosecutor of the judicial area of San Martín, in the province of Buenos Aires, Luis María Chichizola, said that “*people of the Penitentiary Service of the province of Buenos Aires*” conceived a complot to kill him and Maroto⁴¹⁸, and that those who denounced that act also gave him the names of the designers of the planned attempt. Chichizola estimated that the complot, revealed to him by two prisoners of the Dolores prison, could be because “*some people evidently do not like the controls*” that both him and Maroto carry out from time to time, in penal units of Buenos Aires. The prosecutor denounced that the two prisoners asked to be transferred to his office –where they arrived badly beaten– and revealed to him that people of the Penitentiary Service had asked them to kill him and Maroto, and even showed him two scalpels they had been provided in order to perpetrate those two crimes.⁴¹⁹

⁴¹³ The Oral Criminal Court nº1 of San Martín sentenced commissar Omar Contreras and officer Luis Díaz, to 4 years imprisonment; sub-inspector Omar Caporale, to 3 years and a half; and principal officer Arturo Calderón, sub-inspector Raúl Reguera and high sub-office Oscar Enriquez, to three years. All of them performed their duties in the Billingham police officer. Source: La Nación, “Condenan por extorsión a seis policías, pero seguirán libres”, 19 November 2003.

⁴¹⁴ For a characterization of the penitentiary staff see Part II, section 3.3, below.

⁴¹⁵ Source: La Nación, “Denuncia contra guardiacárceles”, 19 June 2001.

⁴¹⁶ About the threats received by Dr. María Dolores Gómez see Part II, section 2.2.2.3. above.

⁴¹⁷ Source: La Nación, “Denuncia contra guardiacárceles”, 19 June 2001.

⁴¹⁸ Judge of the Guarantee and Appeal Court in Criminal Matters of San Isidro. About the threats received by Dr. Maroto see Part II, section 2.2.2.3. above.

⁴¹⁹ About threats to victims, relatives and witnesses of institutional violence acts see Part II, section 2.2.2.1. above.

2.4.2.3. Tortures inflicted with the objective of intimidating witnesses and victims of crimes committed by members of the security forces

Threats and intimidation to witnesses, relatives and victims themselves of crimes committed by public officers, are frequently used as mechanisms to hinder the investigation and punishment of the acts⁴²⁰. This practice is not strange to the penitentiary scope. In the cases described hereinafter, threats come together with brutal attacks which endanger the physical integrity of victims. Beatings and torture are applied with the intention of making detainees who have been direct victims of abuses, who have witnessed the use of physical torments upon other inmates or else participated in criminal networks integrated by penitentiary staff or know their functioning, desist from denouncing or testifying against the victimizers.

On some occasions, tortures are committed after making a report. In these cases, beatings constitute a punishment or sanction to the person reporting, intending at the same time to frighten the possible witnesses. Unlawful coercion and torture are inflicted by penitentiary staff⁴²¹ upon detainees under their care⁴²². In this context, however, it is frequent to find cases of people under restraint who are beaten by officers who were not involved in the denounce –that is, not directly affected by it- clearly evidencing the terrible consequences brought by the solidarity of the ruling body among the members of the security institutions.

In the scope of the Federal Penitentiary Service, the outing of inmates from the Caseros jail in order to rob was of the corruption incidents whose investigation motivated, later, a series of denounces of unlawful coercion and tortures.

Daniel Rolón and Guillermo Imaz declared against staff of the Federal Penitentiary Service in the judicial case opened with the intention of investigating the murder of an officer of the Federal police which took place in 1998⁴²³. They confirmed what had been said by another inmate, Alejandro Núñez, who stated that he was allowed to go out from the prison to rob, if he shared the stolen goods with the officers of the Service. Both detainees stated that, since they declared, they suffered torments and torture by the agents of the Service, reason why Oral Court N°5 decided to protect them and transfer them to other detention places. They also denounced that Maximiliano Gastón Noguera, detainee because of the robbery which “uncovered” the outings from Caseros, was murdered by an agent of the Federal Penitentiary Service, prison warden Franco.⁴²⁴

Another of the witnesses who suffered unlawful coercion was Guillermo Alvarez, 23 years old. On 14 April 2000, he had to declare before Instruction Court in Criminal Matters N°5, under the responsibility of Julio Quiñones. Hours before they beat him and tried to stab him while being transferred from cell to one of the bathrooms. A man without an uniform attacked him, allegedly

⁴²⁰ About threats to victims, relatives and witnesses of institutional violence see Part II, section 2.2.2.1. above.

⁴²¹ To see a characterization of victimizers see Part II, section 3.3. below.

⁴²² To see a characterization of penitentiary population see Part II, section 3.1. below.

⁴²³ The death of agent Rubén Heraldo Juárez took place during the robbery to the restaurant “Dolly”, in Palermo neighbourhood in the city of Buenos Aires, on 18 July 1998. A video recording permitted to identify Alejandro Heber Núñez –who on the night of the robbery was supposed to be imprisoned in Caseros for another crime- as one of the robbers. As a result of this incident Judge Alberto Baños decided to open a case against the Federal Penitentiary Service.

⁴²⁴ Noguera, 24 years old, was one of the people who, together with Héber Núñez, participated of the robbery to the restaurant “Dolly”, he was strangled on floor 17 of the Caseros jail. The forensic doctor found marks in the neck of the victim and the case –in Instruction Court in Criminal matter N°1, under the responsibility of María Angélica Crotto- was labelled as “doubtful death”. Sources: La Nación, “Según el tribunal, hubo presos que salían de la cárcel a robar”, 9 de Octubre 2002; Página/12, “El testigo de una muerte muy dudosa”, 8 January 2000. About the murdered which happened within this investigation see Part II, section 2.5.3.5. below.

another inmate. In this case two prison warders were prosecuted, one in charge of internal security and another one of searchings, who were in that area and apparently decided not to intervene or to protect Álvarez⁴²⁵. At first, Álvarez had told that the injuries found by the forensic doctors were caused by his negligence: *"I fell down in the bathroom"*, he stated. But later he changed his version and told that a civilian (who he did not identify) suddenly came out of a cell – which was supposed to be locked- and, shouting "traitor", jumped on him while the warders looked away⁴²⁶. The case in which Álvarez was to declare, had been initiated as a result of an accusation made by another detainee, Alejandro Penczansky.

Penczansky accepted that the prison warders of Caseros allowed him to go out to rob and added that in one of those outings they had told him to kill judge Alberto Baños, responsible for the investigation⁴²⁷. Penczansky alleged, besides, that Guillermo Álvarez and Daniel Rolón could confirm his statement. Summoned to declare, Álvarez spoke little and Rolón stated that he feared to say what he knew. In order to protect them from possible revenges, both detainees were removed from the scope of the Federal Penitentiary Service and transferred to a Military Police Unit. When summoned once again by Quiñones, and feeling safe, both Álvarez and Rolón confirmed the mechanism that judge Alberto Baños investigated in this case: a system of arrangements between prisoners and penitentiary chiefs in Caseros which allowed certain "trusted" inmates to go out to rob. The "targets" of the beatings were chosen by staff of Intelligence of the Service and the prize divided when the prisoners returned to the penitentiary.

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While detained in the penitentiary of General Alvear, Daniel Chocobar Guaimas, denounced that staff of the Buenos Aires Penitentiary Service applied physical and psychological torments to the inmates in their unit. The body tortures consisted in cold water showers early in the morning, violent baths applied with fire hoses and beating sessions. On 19 June 2001, a relative of Chocobar presented a habeas corpus on his behalf. The Appeal and Guarantee Chamber in Criminal Matters in San Isidro accepted the action.

Chocobar stated that in the two days previous to his presentation before justice he was locked and was only allowed to leave his cell to have a shower. He also mentioned a night inventory, made every two hours, which prevented from sleeping: even though prison warders could see him through the peephole in his door to verify his presence, they forced him to place one hand in the plate's hole. Furthermore, he expressed that when the prisoners received sanctions they were beaten by the agents. Other 30 detainees from that unit declared before justice. The testimonies agreed with each other: they denounced the existence of a "reception committee" in the penitentiary, formed by warders, with the objective of beating every prisoner who entered the unit. Besides, two inmates stated that the staff of the penitentiary offered them psychofarmacos and temporary outings if they murdered Chocobar⁴²⁹. Daniel and many of the other inmates of the unit, who declared in the case as witnesses, were object of hard revenges from the penitentiary staff.

⁴²⁵ These incidents caused the start of a judicial case for "unlawful coercion", in which room IV of the Crime Chamber confirmed the prosecution of two warders for tolerating tortures.

⁴²⁶ As responsible for the main case on corruption in the Federal Penitentiary Service, finally judge Baños who was also responsible for the file for beatings against Álvarez. Source: Clarín, "Dos guardias penitenciarios procesados por tolerar torturas", 5 January 2002.

⁴²⁷ About the threats to judge Baños see Part II, section 2.2.2.3. Source: Ámbito Financiero, "Investigan connivencia de presos y guardianes", 19 April 2000.

⁴²⁸ Source: Clarín, "Dos guardias penitenciarios procesados por tolerar torturas", 5 January 2002.

⁴²⁹ Source: La Nación, "Denuncian tormentos en una cárcel", 13 July 2001.

On 18 June 2002, Chocobar was stabbed to death while he was in Penitentiary Unit nº9 of La Plata, a month short of recovering his freedom.

Revenge by the hands of the penitentiary service extended to some of the witnesses of that habeas corpus presented in the month of June 2001. Hernán Larraña Rodríguez, Ricardo Sosa Márquez, Gabriel Santiago Lima suffered attempts against their lives which caused them serious injuries. Darío Alberto Minetto and Juan Ramón González Sosa were murdered.^{430 431}

Hernán Larraña Rodríguez –essential witness of the tortures denounced by Chocobar- was in the same unit as Chocobar, but after his denounces he was transferred to Unit nº9. According to the testimony of an inmate of Unit nº9, called Roberto Oscar del Bueno, *“since [Larraña Rodríguez] was in the isolation section he had been suffering physical ill-treatment by the hands of the one who was then Chief of Vigilance and Treatment of the Penitentiary [...]; Galiasí, Muriondo and Espinillo who performed the duty of High Warders, were those who constantly beat him”. He also added that Larraña Rodríguez [...] stated that he could no longer stand the maltreatment he was suffering, requesting at the same time [...] a jacket [...] since he had no clothes and he was being held naked in his cell”. His brother pointed out that he found him “doped” (on drugs) and that he was subject to inhuman detention conditions being held in “the isolation cell (...) during four days naked, just covered by the mattress”.*⁴³²

On 11 Junly 2001, Larraña Rodríguez was set on fire in his cell. According to the medical report, he suffered B and C type burns in both hands and head, lower limbs and in the abdomen. He suffered burns in 25% of his body surface, as well as carbon monoxide aspiration.

A detainee, who gave his sentence under identity reserve in the judicial open investigation, pointed the staff of the penitentiary service as responsible for the fire, since he saw when *“High Warden Daniel Espinillo and High Warden Moriondo carried (sic) in their hands a transparent drum with a yellow liquid, while entering the Isolation Sector of the Unit, that together with them was also Sergeant Rodríguez (...) [that] he remained in that sector with an empty can without a label, while he laughed and ran away”*. The witness pointed out that after these circumstances *“he observed the light caused by the fire flames and heard cries of pain and many people requesting help and banging on the doors for them to open and put out the fire (...) while the agents of the Service were in the place of the incidents”*⁴³³. Ten or fifteen minutes went by before Larraña was removed from his isolation cell.

Hernán Larraña Rodríguez was in hospital for several months in intensive care in the burn wing of the San Martín Hospital, connected to an artificial respirator. In July 2002, while he was detained, they allegedly threatened him, telling him he would be murdered in any of the prisons of the Buenos Aires Penitentiary Service.

Ricardo Sosa Márquez –who had also corroborated with his testimony Chocobar's denounce- was set on fire in his cell in Unit nº9 of La Plata, on 31 October 2001. After that he had to be taken to hospital, to an intensive care room, after they managed to put out the fire in his body with a fire extinguisher. Ironically, the penitentiary authorities said that his injuries were the result of a

⁴³⁰ Sources: Página/12, 11 July 2002; 1 and 29 December 2003; La Nación, 13 July 2001, 20 June and 24 November 2001; Clarín, 11 July 2002.

⁴³¹ About the murders of Minetto and González Sosa see Part II, section 2.5.3.5. below.

⁴³² Report by Fabiana Ripani, Secretary of Criminal Implementation of the General Defence Office of La Plata, quoted in CELS, “Informe Sr. Relator Especial contra la tortura”, July 2002.

⁴³³ Report by Fabiana Ripani, Secretary of Criminal Implementation of the General Defence Office of La Plata, quoted in CELS, “Informe Sr. Relator Especial contra la tortura”, July 2002

self aggression, he was given a disciplinary punishment and they even tried to make him pay 23 pesos for the burnt mattress.⁴³⁴

While he was in Unit nº24 of Florencio Varela, province of Buenos Aires, Gabriel Santiago Lima was stabbed four times by another inmate. The victim recounted that his aggressor had no reason to attack him since he had never had any problems with the prison population, which could only lead to presume that the aggression was planned by the Penitentiary Service of the province.

Lima received several disciplinary sanctions in an arbitrary way. He remained for in the isolation wing 50 days, and as a result of the mentioned sanctions he was denied –by the competent judge- the parole benefit.⁴³⁵

Another case is that of Pablo García Rodríguez, detained in Penitentiary Unit 29, who denounced having been victim of ill-treatment in the health sector. He attributed those ill-treatments to the fact that he was victim of a case in which they investigated the death of an inmate.

2.4.2.4. Tortures inflicted in order to exercise a social control

This practice consists in the application of torments in order to intimidate the victims, with the objective of limiting their –actual or potential- questioning to the authorities, of keeping peace and order and of breaking their resistance to situations which are evidently authority abuses and even violations to their rights. Torture and abuses constitute one of the means through which victimizers socabar the trust of the victims, harm their dignity, evidencing their marginality, defencelessness and vulnerability. Children and young people constitute a highly susceptible group to these kind of practices, as well as people under restraint.

In general, victimizers belong to the security or police forces, are members of penitentiary services or warders in juvenile institutions. However, in some cases the inmate who shares the cell with the victim, instigated by the officers under whose responsibility they are, is the one to commit tortures. The acts usually take place in closed places –such as those in which people under restraint are accommodated-, although sometimes they also take place in police, penitentiary cars or in public spaces, while arresting or transferring the victims. While in some of the cases studied victims and victimizers get in contact as a result of a denounce or a fortuitous situation, in others it is evident that the victims have been specially selected. In some cases tortures derive in the death of the victims or are followed by their disappearance.

On 3 February 2001, Juan David Enríquez⁴³⁶ was arbitrary apprehended by police uniformed staff of the Buenos Aires Police in Ezeiza, province of Buenos Aires. At police station 3^o he was beaten by the staff and forced to put his head inside a bucket with hot water while they told him, mockingly, “make him wash his face”. A few days later he was released. On 2 July 2001, young Enríquez was again arrested by staff of the same police station, charged on this occasion of the alleged commission of a robbery. Two policemen took Enríquez to a “little room” of the police station, put a bag over his head and started beating him brutally while they questioned him about acts committed by other people unknown by Enríquez. Besides he was attacked hitting his ears and his stomach so that he told what he knew about those alleged robberies. He was beaten up

⁴³⁴ CELS, “Informe al Relator Especial contra la Tortura”, July 2002.

⁴³⁵ CELS, “Informe al Relator Especial contra la Tortura”, July 2002.

⁴³⁶ The information about the abuses suffered by Juan David Enríquez was provided to the CELS by the official defender of Lomas de Zamora, Dra. Marcela Piñero.

for 20 minutes. Afterwards, they let him unconscious in the bathroom of the cell. Later they threw him inside a cell where there were three inmates, who insulted, humiliated, beat him and tried to rape him several times throughout the night. Despite his cries for help and warnings, the custody staff of the police station did not answer his call.

On request of the official defender of the young man, his immediate transfer to Police Station 1º of Ezeiza was ordered. In this institution a police officer told the rest of the inmates that Enríquez was a homosexual, that he had been raped in police station 3º of Ezeiza and that he robbed poor people. Enríquez was once again attacked by his cell companions, who hit and kicked him in all his body while insulting him. Besides, they sexually abused of him, stole his clothes, cut his hair and abandoned him, after dirtying him with excrements and semen.

Some months after being released, on 24 May 2002, Juan David Enríquez was arrested for the third time by police officers of police station 3º of Ezeiza. On this occasion they attributed him the alleged participation in a qualified robbery. On request of his defender justice ordered the transfer to police station 5º of Ezeiza, where he suffered all kinds of aggression from the other inmates. On this occasion, some cell companions burnt his hand with papers.

On 22 July 2002, police staff of police station 3º of Ezeiza arrested Juan David Enríquez for the fourth time, accusing him this time of attempted robbery in the street, in what is believed to be a forged proceeding⁴³⁷. Again he was accommodated in police station 3º. On the following day, the competent judge ruled the immediate release of Enríquez after becoming aware of the situation. At the moment of his release, assistant officer José Carlos Quiroz threatened him to death.

On 22 August 2002, police staff of police station 3º of Ezeiza arrested again young Enríquez, this time accusing him of committing a contravention⁴³⁸. He was specifically accused of causing disturbances in the street and intimidating passers-by to ask them for money with the objective of buying alcoholic beverages. Enríquez was taken to the mentioned police station. On this occasion he was also beaten by police staff, and even though he had external injuries easily visible, the police doctor certified that the young man did not show any visible injuries. Considering the irregularities of the contravention summary⁴³⁹ instituted against Enríquez, the official defender requested the annulment of the proceeding and his immediate release.

Since the day he was released –at the end of August 2002- and up to the moment, staff of police station 3º of Ezeiza still instigates not just young Enríquez but also his family and friends.^{440 441}

On 30 May 2000, at 7pm, Claudio Héctor Navarro was in the intersections of Rivadavia and San Martín Avenues, in the city of Mendoza, performing his usual task –car window cleaner- when a police car arrived and arrested him, together with his brother and a friend, to police station 3º, in order to find out about his police records. At the police station, before the denial of Navarro to register his fingerprints, five policemen started beating him, threw him to the floor and kicked his head until he was unconscious. Claudio regained consciousness in hospital, where they certified serious injuries.⁴⁴²

⁴³⁷ Enríquez stated that he was in his girlfriend house when the alleged crime was committed.

⁴³⁸ Contraventions are misdemeanours.

⁴³⁹ Among them the lack of witnesses and signature of the proceeding police staff.

⁴⁴⁰ About the threats suffered by Enríquez and his family see Part II, section 2.2.2.1, above.

⁴⁴¹ On 17 September 2002, the CELS requested the urgent summon of the Especial Rapporteur against Torture, Mr. Theo Van Boven, in Juan David Enríquez's benefit. The case was denounced by the CELS by Dr. Marcela Piñero, official defender of the judicial department of Lomas de Zamora.

⁴⁴² Source: Diario UNO, 1 June 2000.

José Palma was arrested by police agents on 31 December 2003, in the district of Santa Victoria Este, in the province of Salta, in the border with the Bolivian Republic. The officers argued that Palma, aboriginal who resides in the area, was drunk and due to this he was taken to the police station. He was tortured by police agents, who stepped on his head, immersing him in the mud so that he could not breathe. They also strangled him with his own T-shirt. The Chief of the Police Station inserted the gun in his mouth ordering him to swallow it. Palma narrated that *"That night I was thirsty, I needed to drink water and the officers gave me their urine. When I came out of that place I went to hospital. I was there for three nights"*.⁴⁴³

On Wednesday 3 April 2002, in the district of San Julián, in the province of Santa Cruz, Ricardo Almirón left a bar in the centre of the city, riding his bicycle. Two blocks away he was arrested by the police, who had been warned by a neighbour who had seen him sitting in the sidewalk. In a material sale warehouse he was beaten hard. According to witnesses, the beating took 20 minutes. Afterwards, Almirón was taken to the police station and later to hospital, for a medical examination. According to the nurses, the doctor did not examine him: he only wrote in a certificate that Almirón only had a cut in the lobe of his ear. Also according to his testimonies, the policemen who took him told the doctor: *"Don't even bother to examine this drunkard and give him something so he spends all night without bothering"*.⁴⁴⁴ The professional gave him a sedative. They went back to the police station and Almirón was locked in a cell. The following day, when they were supposed to take his statement, Almirón was already dead. The family was indicated to keep his coffin closed during his wake. However, this rule was not followed and thanks to that, the evidences of the brutal ill-treatment came to light. The relatives took pictures of the bruised body and the images were broadcast on a local channel. Thus, several witnesses of the incidents appeared and the story was reconstructed.⁴⁴⁵

Young people control in the south of the city of Buenos Aires

In the morning on 14 September 2002, Ezequiel Demonty, 19 year-old 'cartonero', was tortured and murdered by officers of the Federal Police. His tragic death evidenced a common practice in southern neighbourhoods of Buenos Aires: the abuses and tortures committed by police officers against young people in the area.

Ezequiel had gone dancing to Constitución area, in the city of Buenos Aires, together with three friends: Claudio Maciel, Julio Paz and a girl⁴⁴⁶. At 4 in the morning they left the dancing place Panambí. An hour later, the four friends left Ezequiel's house in Villa Soldati, to go to taxi agency on La Constancia Alley and Cruz Avenue.

Warned by the denounce of a neighbour –frightened because they were knocking at the agency door- a police car of the police station 34^o of the federal police arrived with four officers. The police officers got off the car, gave the command to halt, forced the children to lie on the floor and searched them for guns. Five minutes later other two police cars arrived. Twelve policemen beat the three boys, stole 30 pesos from them and took each of them to a different car⁴⁴⁷. Ezequiel's female friend said she was his girlfriend and that she was pregnant; she begged them not to take

⁴⁴³ Source: COPENOA, "Uniformados borrachos torturaron a un aborigen en Salta", 7 January 2004. Available at: www.copenoa.com.ar

⁴⁴⁴ Source: Página/12, "Cuatro policías acusados de matar a golpes a un hombre en Santa Cruz", 15 April 2002.

⁴⁴⁵ Source: Página/12, "Cuatro policías acusados de matar a golpes a un hombre en Santa Cruz", 15 April 2002.

⁴⁴⁶ At the moment she is under the witness protection program.

⁴⁴⁷ Source: Clarín, "Dolor en el entierro del chico que hallaron ahogado", 23 September 2002.

him. The policemen decided to let her go. During the journey, the policemen asked the children if they could swim.

The cars headed for 27 de Febrero Street which goes round the edge of the Riachuelo near Alsina Bridge, which communicates the city of Buenos Aires with the Buenos Aires district of Lanús. The policemen made the children descend the cars and forced to lie facing down, one next to the other, but keeping some distance from each other. The policemen surrounded them and continued beating them, while they said *"now you're gonna suffer"*, *"now we're gonna kill you"*. Ezequiel received hits with the butt of a gun in his head.⁴⁴⁸

The policemen forced the children to jump to the Riachuelo. When he was in the water, they told Ezequiel: *"Swim, swim or I'll shoot your head"*, while a policeman was aiming at him with his legal gun. Ezequiel swam towards Uriburu Bridge. His friend, Julio, saw him when he lifted an arm, and he had the sensation Ezequiel was drowning. Then, another boy, Claudio, was pushed into the river and swam towards the Buenos Aires province side. Finally, Julio Paz was thrown into the river; he held on to some branches from the bank and sheltered behind them. Once Julio saw the policemen leave, he started calling Claudio and Ezequiel. Claudio and Julio met when they left the water and starting looking for Ezequiel.

Only seven days after, on the morning of 21 September, was Ezequiel's body found in the Riachuelo's water, near Victorino de la Plaza bridge, 3 kilometers away from where he had been forced to jump⁴⁴⁹. Even before the body was found, his family and friends started receiving intimidations. As a result, three official bodies⁴⁵⁰ coordinated a strategy to protect the survivors - 14 and 18 years old- from a possible revenge caused by what they had the courage to declare to instruction judge María Cristina Bértola.

In the investigation for Ezequiel's death, a policeman stated that Somohano, one of the officers involved, told him when he returned to the station that they had found *"a wet solution for those niggers of the shanty town"*, referring to the three children, who lived in poor neighbourhoods of Villa Soldati.⁴⁵¹

Illia neighbourhood, where Ezequiel lived with his parents and six brothers, is a low resources area which has six blocks of buildings built in 1985 by the National Residence Fund plan. Shanty town 1-11-14 is located only a street away. The neighbours have stated that the police patrols the area and, without a justified reason, takes children who are in the street. They are beaten and they released. But the victims are frequently too afraid to report the incident. This was confirmed by the assistant to the People's Defender of the city of Buenos Aires, Gustavo Lesbegueris: *"Unfortunately, in Bajo Flores, in the south of the city, we know these practices exist but it is very hard to get denounces"*.⁴⁵²

⁴⁴⁸ This was confirmed by the autopsy. There were three perfectly distinguishable marks on Ezequiel's face: one in the forehead, another one in his cheek and one more in his nose. The corpse had traces of beatings produced by a solid and hard object. Ezequiel drowned according to what the forensic doctors determined after extracting a blood sample from his heart. This information confirmed the narration of the incidents told by his two friends. Source: Clarín, "Confirman que Ezequiel fue golpeado antes de ahogarse", 24 September 2002.

⁴⁴⁹ Source: Página/12; "Un cuerpo que condena a la Policía Federal", 22 September 2002.

⁴⁵⁰ They are the Office of Integral Assistance to the Victim of the General Procurator of the Nation, the National Council of the Juvenile and the Office of the Ombudsman of the city of Buenos Aires.

⁴⁵¹ Source: Página/12, "Un pedido de justicia a un año del asesinato de Ezequiel Demonty", 20 September 2003.

⁴⁵² Source: Clarín, "Un barrio de gente muy humilde que tienen miedo a la policía", 22 September 2002.

After the Demonty case, in the southern neighbourhoods of the city of Buenos Aires close to the Riachuelo, stories about other children who were also thrown to the river started circulating. According to stories collected by journalists, a daily custom among the neighbours of the Bajo Flores and of the nearby neighbourhoods Illia and Rivadavia, is to cross the Riachuelo swimming, forced by the Federal Police. Judicial sources with jurisdiction on the area stated to the press *"We have accumulated denounces for all kinds of abuses, but we have never received a concrete denounce"*.⁴⁵³

In all the cases, the victims were arrested without requesting them any kind of documentation or without trying to identify them, then they were beaten up before being taken to one or more police cars of the 34° Station and then thrown to the Riachuelo. A young man of 23 years old, by the name of Esteban, recounted that *"Less than a year ago, at night, I was leaving the kiosk opposite Illia Neighbourhood when a police car of the 34° station arrived. They started making fun of me on the floor, they beat me up and I didn't know why"*. Esteban said that after the beating they took him to a police car. *"They put electricity on my head. One of them was shouting, son of a bitch, don't look at me!"*. They took him to the Riachuelo and pushed him. *"I was able to hold on to some branches and survived. They left quickly and I could get out by the same side"*. Esteban did not made the report because *"if you go to the police station they don't accept the report, and besides, if you show your face they know you and they you're history [dead]"*. According to a teacher of the area, the children say it is a habitual practice and that *"they do not report it because they are very afraid"*. However, a neighbour stated that *"It is not so much out of fear. It is worse [...]. It is habitual. They are used to it"*. Another neighbour held that *"they throw boys in particular, but I've also heard cases of girls too. First they touch them, they get them onto the cars. It's not just a guy, they come in two or three, sometimes even four"*.⁴⁵⁴

This terrible practice is far from being new. A woman who lives 30 metres away from the Demontys denounced that her son experienced a similar situation to that of Ezequiel, in 1987, when he was 15 years old. Petrona Aguilera recounted to the local media that her son Alejandro had gone to a birthday party with a friend and on the way they were arrested by staff of the 34° Station. The young boys were taken to the station and once there beaten up. Apparently, Alejandro was taken to the bank of the Riachuelo and forced to immerse in it, while the policemen shot at the water. Aguilera explained that, subsequently, he had wanted to report the incident to the 34° police station, but they refused to accept it, reason why she made it in the Court. She started receiving threats, so she decided not to continue with the case.⁴⁵⁵

Nine officers of the Federal Police were arrested and charged with the murder of Ezequiel Demonty.⁴⁵⁶ The case was taken to court in April 2003 but a year later, the Oral Court in Criminal Matter n°8, still had not set a date for the start of the debate.⁴⁵⁷

⁴⁵³ Source: Página/12, "Un cuerpo que condena a la Policía Federal", 22 September 2002.

⁴⁵⁴ Source: Página/12, "Si hacés la denuncia después sos boleta", 24 September 2002.

⁴⁵⁵ Source: Clarín, "Denuncian un caso parecido", 24 September 2002.

⁴⁵⁶ They are sub-inspector Javier Somohano; sergeant Luis Funes; inspector Gabriel Barrionuevo; first officer Luis Gutiérrez, Alfredo Fornasari and José Luis Martínez; and agents Sandro Granado, Jorge Solís and Maximiliano Pata. All of them belonged to police station 34, of Pompeya. Source: Clarín, "Caso Demonty: la familia pide que comience el juicio oral", 16 September 2003.

⁴⁵⁷ The qualification of the case will be one of the main point of the central debate. Prosecutor Marcela Roma and Instruction judge, María Cristina Bértola, considered it an illegal deprivation of freedom with tortures followed by death. But in the Crime Chamber it was given the title of illegal deprivation of freedom followed by death. In both descriptions, the same sentence is provided: life imprisonment. However, defense attorneys and relatives of Ezequiel emphasized the importance of keeping the original title held by the prosecutor. *"Police ill-treatment cannot remain unpunished"*, they said. Source: Clarín, "Caso Demonty: la familia pide que comience el juicio oral", 16 September 2003; Diario C, "Nueve policías a juicio oral por la muerte de Demonty", 4 April 2003, www.diarioc.com.ar

Control of children and young people in Pacará, province of Santiago del Estero

In September 2003, and after a month of investigation, the Secretary of Human Rights and the Secretary of Justice of the Nation gave to the public a report in which they denounce the systematic practice of torture upon children and young people by the police of the province of Santiago del Estero.

The report, about 40 pages long, includes a diagnosis of Justice, the legislators and particularly, the local police and compiles 13 reports⁴⁵⁸ of abuse and torture committed against young people and teenagers –and their relatives- of the Pacará neighbourhood. The summary includes the kinds of arrest, the methods of torture and enumerates charges, jurisdictions and names of the police in charge of carrying out one of the most brutal and repressive methodologies of social control in the country.

The following are some of the cases mentioned in the document:⁴⁵⁹

- Víctor Manuel, 26 years old. *“He was arrested on six occasions by civilian and uniformed policemen, belonging to the body of the Investigations Brigade. He received hard beatings with canes and kicks all over his body, they covered his head with three plastic bags –bags of commercial use- in each of the arrests. The “bagging” is normally extended until he begins to faint. Then they repeat it on many occasions, during all night or until the victims are worn out or unconscious as a result of the beating. He has shots in one of his legs caused by policemen. He does not remember or did not see it, because in general the guns are shot from the back. He was never shown a judicial warrant of arrest. He had no medical assistance.”*
- Jorge Ariel, 23 years old. *“He was arrested on six occasions by civilian and uniformed policemen who belonged to the police station 2º of the city. He was beaten with the same methods described in Testimony 1 [Víctor Manuel], fist beating, kicks, canes and bags. They used vests to tie him up and forced him to crouch holding a stick under his legs. As a consequence of the beatings, he suffered rib fractures on the right side. Police doctor: He did not receive suitable assistance.”*
- Silvio Fernando, 23 years old. *“He does not remember how many times he was arrested but “they were many, over 5”, always by the same station, 2º. He was tortured with bags, beatings, tied up with a bullet proof vest and tied to a stick under his legs in the crouching position. This happened on every occasion. Police doctor: He did not examine him, he did not make the corresponding medical report.”*
- Ramón Alfredo, 23 years old. *“He was arrested more than six times by members of police station 2º. They entered his residence on three occasions, armed with Itakas. They destroyed whatever they found in their way. Torture: they used the same method that in the previous cases. In his case, the methodology also included hitting his ears with both hands. He had injuries in his eardrum. Police doctor: There is no registered revision.”*
- José Rodrigo, 24 years old. *“He was arrested in the Borges neighbourhood by civilian policemen who identified themselves as belonging to the Dangerous Drugs Department. He was arrested in the street during the day. He undressed him in the street before*

⁴⁵⁸ Collected through interviews carried out by officers of the Secretary of Human Rights during the investigation. The cases are presented under the following subtitle “Rapporteur of the interviews carried out by the Commission of the Secretary of Human Rights of the Justice, Security and Human Rights Ministry”. Source: Página/12, “Una radiografía del terror uniformado”, 20 September 2003.

⁴⁵⁹ The cases are presented under the following subtitle “Rapporteur of the interviews carried out by the Commission of the Secretary of Human Rights of the Justice, Security and Human Rights Ministry”. Source: Página/12, “Una radiografía del terror uniformado”, 20 September 2003.

everybody. There was judicial intervention. He was accused of drugs possession, but no evidence was found.”

- Marcelo Ricardo, 23 years old. “He was arrested on six occasions, one of the in the centre of Santiago. He stayed at the Radio-electric Command and at police station 12° of La Banda. At the Radio-electric Command he received hard beatings in the back with plastic bottles filled with water, they bagged him with three plastic bags of commercial use. He received the same torture in La Banda. Police doctor: No intervention is registered.”
- Miguel Angel, 19 years old. “He was arrested on five occasions in order to find out his records by policemen of police station 2°. Torture: The methods are similar to the previous denounces. Police doctor: He did not take part.”
- Jose Francisco, 25 years old. “He was arrested three times by civilian staff of the Dangerous Drugs Department or Area. A policeman surnamed Sánchez arrested him on several occasions, with the same methodology: arrest in the street in broad daylight, undressing in front of the passers by, he accuses him of drug possession but in none of these arrests did they find any illegal elements.”
- César Miguel, 21 years old. “He was arrested six times by uniformed staff of police station 2° and 5° of the city of Santiago. He received the same torture methods with “the music in full volume”, the bagging, the stick below his legs in crouching position several times, the canes on his head, fist beating and kicks in all his body. The methodology was repeated at the Radio-electric Command. He had no medical assistance.”

Control of children and young people in the province of Chubut

Iván Eladio Torres, a young Chilean of 24 years old who made his living doing occasional jobs, disappeared in morning on 3 October 2003 after being tortured by officers of the Police of the province of Chubut.

The harassment to Iván had started long before. On 3 December 2000 the family suffered the police in their own flesh and blood. “From the road they shouted “Torres, don’t come to the centre because you will die”. I looked out and saw that the voice came from the loudspeaker of a police car. Iván tried to go but they started shooting. He came in and locked in his room. I stayed to let them in but they hit me with the cane, they almost killed. My daughter came out shouting, with her baby girl in her arms and they almost broke her head. Both of us were arrested and they came back with a searching warrant to look for Iván and an alleged weapon. They said he had robbed 50 pesos from a man. Two weeks later I found the man. He told me that two kids had asked him for a cigarette and a piece of bread, pointing at him with the finger. That was the weapon. He accepted he had not been robbed. I told everything to the judge and he was released.” Since then, he has been continuously threatened.

In August 2003 Iván experienced the simulated execution called by agents “Game of the Trigger”. At six in the morning two policemen took him to police car 479 and drove him to an open space in the outskirts of Comodoro Rivadavia. They pushed him out of the car, removed his sport shoes, the T-shirt, and punched and kicked him and told him “you have a minute to run”. Fear only let him crawl on the bushes. He heard the noise of the bullets so close that he imagined he was dead. Three hours later he walked bare feet to his house. On 1 December 2003 two policemen of police station 1° went into his room, accused him of stealing a Discman, beat a friend and warned him “you’ll have a bad ending”. At midnight on the following day, three agents took him to police

car 469 together with a friend who, once in the station, heard the piercing shouts of Iván from another cell. That was the last news from Iván.⁴⁶⁰

All the incidents are recorded in a habeas corpus presented by his sister, in the lawsuit that his mother –María Leontina Millcura Llaipen- started together with the Association for the Rights of Children and in a denounce received by the governor at the time, José Luis Lizurume, and national authorities. Since that day, however, Chubut policemen and magistrates work together in order to hinder the clarification of the case.⁴⁶¹

Ivan's disappearance and police ill-treatment are not isolated incidents in the province of Chubut. On 3 November, a male voice informed Cristian Castillo's grandmother that her *"grandson was going to be beaten to death in Esquel"*. The young boy of 18 years old had travelled four months before to Trelew to look for a job. By the end of August he called for the last time. Without any news, the family started calling the house of the friend he was living with, who gave contradictory explanations. *"There is something very strange in all this"*, denounced the father. Cristian *"had started a friendship with at least three policemen, one of them, who had official rank and had come from Trelew some months before, had him as a kind of 'informant'"*⁴⁶².

A day later Hugo César Álvarez, 19 years old, disappeared. A week later, his grandfather found him hanging dead in a half built warehouse metres from police station 4°. *"The boy had expressed his intention of tattooing his arm with his identification number. 'In case something happens to me, at least you'll be able to identify me' he had apparently said"*.⁴⁶³

On 22 April 2003 the wife of a sub-officer denounced that in police station 6° they beat his 18 year-old-son. *"They beat him up with canes in the sidewalk and in a cell. We didn't want to have any trouble with my husband's working companions but we can let them beat our son to death either"*, she explained.⁴⁶⁴

Three days later, policemen of police station 5° beat up several young boys. *"I was on my way back from a kiosk when I received a rubber bullet on my head"*, stated Miguel Ayala. His brother tried to help him and was hit with an Itaka in his face. When a third brother of 16 years old looked *"a policeman grabbed my hair and threw me inside a police car"*. In the cell *"they put foam on my chest, so there would be no marks, and starting hitting me."* Policemen *"told us not to go to the press because they were going to kill us"*.⁴⁶⁵

The following morning two young boys were beaten in police station 6°. *"They made us crouch, cut our hair and threw hot water in my ass"*, they told. That week they informed the transfer of 30 officers, including the second chief of police station 6°.⁴⁶⁶

On 4 July 1999, two sub-officers of the provincial police of Chubut patrolled Isidro Labrador neighbourhood, in the city of Comodoro Rivadavia when they started an argument with a group of people. Francisco Asenjo, 19 years old, was walking by with his wife and a 3 month-old baby girl and asked the policemen to behave as *"civilized people"*. According to testimonies, this provoked the rage of the agents Jorge Carrasco and Guillermo Day, beat Asenjo and tried to handcuff him.

⁴⁶⁰ Source: Página/12, "El juego del gatillo", 26 November 2003.

⁴⁶¹ On the mechanisms used for that see Part IV, section 4, below

⁴⁶² Source: Página/12, "Malos hábitos en Comodoro", 26 November 2003.

⁴⁶³ Source: Página/12, "Malos hábitos en Comodoro", 26 November 2003.

⁴⁶⁴ Source: Página/12, "Malos hábitos en Comodoro", 26 November 2003.

⁴⁶⁵ Source: Página/12, "Malos hábitos en Comodoro", 26 November 2003.

⁴⁶⁶ Source: Página/12, "Malos hábitos en Comodoro", 26 November 2003.

Asenjo's wife tried to avoid the arrest of her husband and was beaten in a leg. Then she sprang at them and received a blow in her ribs, while they stepped on her husband's head, according to what is registered in the judicial file. At that moment, more policemen appeared in two police cars, who contributed to Asenjo's aggression and also to Manuel Miranda and Diego Quedimán, who were also in the street. The three men were taken to the police cars and driven to police station 4°. On the way, Miranda was beaten with a cane in his eyebrow and in his head. In the station officer Herrera joined the others and the detainees continued being attacked, dragged by their hair and beaten with sticks and canes, suffering serious injuries and fractures. Francisco Asenjo stated that *"at one time I could stand no more and fell to the floor. My wife had my baby in her arms and she was also beaten. They step on my head and beat me up to the police car. They made me get off pulling my hair. There were two rows of policemen waiting to hit me"*. Mirta Ruiz stated that when she arrived at station 4° her son, Francisco, *"shouted at me not to go, because they were beating him and he was bleeding a lot"*⁴⁶⁷. Four witnesses stated having seen a police car, two hours after the incidents, on the corner where the arrests took place. According to their statements, two agents placed stones all around the car and later broke one of the windows, in order to fake an attack.^{468 469}

Control of people under restraint

Torture is systematically exercised in jails, police stations and juvenile delinquency centers in Argentina.

What happened in Unit nº29 of the Buenos Aires Penitentiary Service –located in the district of Melchor Romero in the county of La Plata-, constitutes a paradigmatic example of the practice of torture as a way of subjecting and controlling the people under restraint.

As of year 2000 there was an endless number of denounces for ill-treatment against the staff of Unit nº29 of the Buenos Aires Penitentiary Service. The Chamber of Appeal and Guarantee of San Isidro received several of those presentations and accumulated them due to the fact that they denounced acts of similar characteristics regarding the proceeding followed, the place where the abuses were committed and the type of injuries suffered by the detainees. Among the methods appear beatings y different parts of the body –particularly serious is the practice of beating the detainee in the sole of the feet with canes-, shots in the legs, paralyzing gas thrown to the face, injuries with fire guns, suspension of medicine as a way of punishment, use of "dry

⁴⁶⁷ Source: Página/12, "Malos hábitos en Comodoro", 26 November 2003

⁴⁶⁸ After Miranda's parents reported the incident, began what the family defined as *"infernal persecution"*: Manuel Miranda had a case started for the rape of a young girl, the family house was searched *"for weapons and ammunitions possession"* and two vehicles of the family were confiscated because they participated in shootings. According to the Miranda family, all these cases are *"arranged"* in order to harm them. Source: Crónica, 18 October 2003.

⁴⁶⁹ Nine policemen –Gustavo Adolfo Sandoval; Guillermo Day; Jorge Carrasco; Héctor Rocha; Roberto Reynoso; Roque Castillo; Juan Aguilar; Hugo Quintana and Luis Herrera- were taken to oral and public trial accused of committing the crimes of unlawful coercion and abuse. The hearings of the trial started on 21 October 2003, when four of the nine agents declared. These stated having been attacked by the boys and added that, once inside the police car, the denouncers *"hit their heads against the bars dividing the seats in order to hurt themselves"*. The also stated that in the cells of police station 4th *"they fought among themselves"*. On 6 November 2003, the First Chamber in Criminal Matters of Comodoro Rivadavia convicted for abuse eight of the officers. Source: Clarín, *"Nueve policías acusados de golpear e inventar pruebas"*, 22 October 2003; Página/12, *"Malos hábitos en Comodoro"*, 26 November 2003.

submarine”, rapes, immersion in cold water showers, death threats and burning with a cigarette.
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Unit nº29 was opened in 1998 as the first “high security” jail institution in Latin America destined to the accommodation of inmates considered “extremely dangerous”, reason why it was provided with modern technologic resources to control it. The inmates are videoed 24 hours by a closed circuit of video cameras and the doors are activated through an electronic system. In the present it accommodates inmates prosecuted and sentenced, most of whom have been authors of violent crimes, mutinies leaders, members of super gangs and who have leaded huge disturbances in conventional jail institutions of the province and country. The security and disciplinary aspects are strict, due to the particular characteristics of the inmates.⁴⁷¹

The problems of behavior and dangerousness of the inmates are those which motivate their locking in a high security jail unit and, at the same time, derive in their victimization. Tortures have a “preventive” nature, since they intend to discourage the mutinies and the demands of conflictive inmates from the very moment they enter the criminal unit. That, however, does not mean tortures will cease during the lapse his punishment lasts or, in particular, that they will not be used as a way of deterring denounces.⁴⁷²

Routines associated to the practice of torture –and described by their victims- evidence that it is systematically exercised.

Raúl Oscar Lobos, one of the inmates who denounced this practice, recounted that *“the beatings are repeated with a determined pattern: at the beginning they take the detainee out of his cell and to the sanitary area, where on the right side there are four cells with room for more than one person. They accommodate a detainee in each cell because they take inmates to the sanitary area in groups. When one arrives one sees there are others in the cells or sometimes one can be the first. Around 20 penitentiary officers gather there, leaded by officers Fracchia, Barrionuevo, Ávila, González and Fraga, they make those who will be beaten undress and then they start taking them out one by one and take him to the bathroom area. On the way, the beat him in all his body handcuffed in his back. Once in the bathroom they lift him and immerse his head in a bath full of water. They immerse him and take him out while they all keep beating him up... These beatings are permanent and daily and every inmate of the unit has to undergo them”*. Lobos also added that he was aware of the existence of detainees to whom they passed electrical current along the body and others who were given drugs. In his statement he also mentioned having been beaten while on the way to the court to prevent him from making a statement.

José Luis Juárez Prado denounced having been beaten by a group of penitentiary officers of Unit nº29. According to his recount the beatings ceased when the doctors appeared, they sewed the injuries he had in his mouth, due to the loss of teeth. The resulting injuries were classified as serious. Besides, the doctor who examined him later indicated as alarming the nutritional condition of the denouncer (during the 6 years of imprisonment he had lost 24 kilograms). The injuries suffered by Juárez Prado were recorded in his file as a result of “self-inflicted” aggressions. In that report they adduced that they had used the minimum and essential force, in order to neutralize the aggression against the officers who tried to control the situation. However, the expert’s report established that the injuries he presented could not have been self-inflicted.

⁴⁷⁰ Pursuant to conversations between members of the CELS with one of the members of the Chamber, Dr. Fernando Maroto.

⁴⁷¹ Pursuant to the Buenos Aires Penitentiary Service. See: www.serpemba.gba.gov.ar.

⁴⁷² About the use of torture as a mechanism to deter denounces see as a complement Part II, section 2.4.2.3., above.

Juárez stated that while he was confined in the Sanitary sector he heard that another inmate, Luis Merlo, was being beaten. Merlo confirmed that denounce for ill-treatment. He declared that he had been undressed and introduced in a cold water shower where he was beaten with canes all over his body for 10 minutes. Later, a nurse gave him an injection and, after to minutes, four of the warders gave him electric shocks in his shoulders and testicles, while intimidating him to withdraw the report against the staff of the penitentiary. When he woke up on the following day they started beating him again. All this took place –Merlo told- before the penitentiary Chief, who had a cane in his hand. He added that during that day he received no food or medication. With respect to this, he denounced that he was not receiving the adequate medical treatment for his illness (he is HIV positive).

Detainee Sergio Martín Almada⁴⁷³ received, in January 2001, a gun shot in his leg which left him pellet marks. According to his testimony, the shot was made by staff of the penitentiary service of Unit nº29. On that same day, he was also supposedly beaten. On 12 March, after a telephone communication with the official defender, in which he declared being subject to ill-treatment and that he would denounce what happens in the unit, he was taken to the Sanitary sector, where staff of the penitentiary service told him: “*so you like denouncing*”, adding that he had heard the conversation he had had with the defender. Then, he was subjected to a beating. They threw paralyzing gas and kicked and punched him, and the penitentiary chief, surnamed Barrios, produced a penknife and cut him on a tattoo he has on his leg. He was also beaten in the sole of his feet with rubber canes.

As it was previously mentioned, the use of torture as a way of controlling people under restraint is not limited to the jail ambit nor does it take place only in units depending from the Buenos Aires Penitentiary Service.

In a Report of the Penitentiary Procurer it is stated that: “As the penitentiary legend retells, in past times, in some of the Units of the Federal Penitentiary Service, once a month, there was a bell which indicated the time to repress all the inmates through beating with canes and other hard elements. Thus, every inmate, even those who permanently collaborated with the penitentiary staff, received a “disciplinary punishment” which made them bear in mind who was in charge. This story has never gone beyond the legend status [...] As corollary to the matter of value of beatings in penitentiary institutions, this repressive mechanism used as “beating culture”, destroys the integrity both of the one who receives it and of the one who gives it”.⁴⁷⁴

On 24 January 2001, at 9 AM approximately, around twenty agents of the Searching Section of the Federal Penitentiary Service II, located in Marcos Paz, entered Area 2 of Module I, armed with sticks and guns and wearing helmets and shields. They beat all the inmates in their way and cornered them in cells 12 and 14. Then they let the inmate go out one by one. The 41 inmates of that area reported these incidents when they were individually interviewed by two legal advisers of the Penitentiary Procurer⁴⁷⁵. Even if in this incident the victimizers were part of the searching body, violence was not exercised within the searching⁴⁷⁶, it only had the objective of intimidating the inmates.

⁴⁷³ Charged in cases nº2170/4 in tramit before Transitional Court nº1 and nº3053 before the Chamber of Appeal and Guarantees of the Judicial Department of La Matanza.

⁴⁷⁴ Penitentiary Procurer ; Informe Anual de la Procuración Penitenciaria, 2000/2001; Buenos Aires, 2001; p. 44. Highlighted in the original document.

⁴⁷⁵ Penitentiary Procurer ; Informe Anual de la Procuración Penitenciaria, 2000/2001; Buenos Aires, 2001; p. 44. The investigation of the report was in charge of Federal Court nº1 of Morón, province of Buenos Aires.

⁴⁷⁶ About violent searchings in dentention places see Part II, section 2.3.2.7, above.

Some time later massive beatings in Federal Penitentiary Complex II were repeated –this time against 38 inmates accommodated in Module IV, Area 5º, incident that was again denounced by the Penitentiary Procurer ⁴⁷⁷. *“In this case, searching staff entered the area when they were finishing breakfast, making noises with their whistles, pushing all the population to a corner of the area and without any reason started to beat them all [...] It is the aberrant practice of the “welcome beatings””*. ⁴⁷⁸

A.A.R., who was arrested in Area K, Module IV, of the Federal Penitentiary Complex I, *“[...] was beaten by agents while the Chief of the Module (textual) said “This one has a hernia, you know where to hit him”. As a consequence he was transferred to Area “F” of punished inmates and a week later he was beaten once again by searching staff while they told him “Here we rule, get used to obeying””*. ⁴⁷⁹

César Abel Gómez death was another tragic consequence of the demonstrations of power and impunity of the penitentiary officers who performed their duties at the Federal Penitentiary Complex I.

On 28 October 2003, 30 warders of the Search Body and of the Ant mutiny Group entered Area E of young adults –men between 18 and 21 years old- of the Complex, shooting rubber bullets. They went cell by cell and grabbed the inmates by their hair. Some were thrown downstairs. Others were kicked, beaten and hit with canes. César Abel Gómez, 18 years old died of brain concussion⁴⁸⁰. The Penitentiary Procurer of the Nation denounced before Justice that his death was a result of the cane blows he received in his head by the warders.

Forty-five inmates lived in Area E, in a two-storey building with individual cells. According to what the inmates told the investigators of the Procurator, the death of Gómez –construction worker, arrested two weeks before- was the result of a long conflict of the inmates with the warders: problems because of the way in which they searched the visits, ill-treatment, and constant threats, changes in the time in which they are locked in their cells every night. Some days before, staff of the Search Body searched the cells and, according to the detainees, threatened them to death. *“They told us that if there was a fight again, they would choose nine and they would break their bones. That we would end like Lucas Carrizo”, they said.*⁴⁸¹

Two days before Gómez’s death, the inmates denounced that a group was handcuffed and hit with sticks until an inmate lost three teeth and had a shoulder dislocated. This young man, according to the report, was made to sign a report in which he said he had suffered an accident, as a condition to have his teeth put back. After they witnessed ill-treatment to their visits once more, the inmates rebelled themselves and blocked the entrance with mattresses. Thirty warders came in shooting rubber bullets at a short distance and beat them up. César Gómez had a concussion.⁴⁸²

⁴⁷⁷ In this case the criminal denounce is before Federal Court Nº2 of Morón, province of Buenos Aires.

⁴⁷⁸ Penitentiary Procurador; *Informe Anual de la Procuración Penitenciaria, 2001/2001*; Buenos Aires, 2003; p. 123. The highlighting is ours.

⁴⁷⁹ Penitentiary Procurador; *Informe Anual de la Procuración Penitenciaria, 2001/2001*; Buenos Aires, 2003; p. 123. The highlighting is ours.

⁴⁸⁰ The death took place on 29 October.

⁴⁸¹ About the circumstances under which Carrizo died see Part II, section 2.5.3.5., below.

⁴⁸² The family of Gómez was told that it had all been the result of a fight between inmates, an “accident”. But the lawyers of the Penitentiary Procurer, under the responsibility of Francisco Mugnolo, verified the violence in the faces of the detainees and reported before Federal Court nº2 in Lomas de Zamora. Source: Clarín, “Denuncian que guardiacárceles asesinaron a un preso a palos”, 24 November 2003.

Apart from the moment of entrance to the unit, the transfers between units are opportunities in which penitentiary officers usually punish people under restraint and show their power. On 26 July 2000, a group of 36 prisoners of Area 7 of the Jail of Accused People, located in Güemes neighbourhood in the city of Córdoba, received a fierce beating by agents of the Penitentiary Service of Córdoba, while being transferred to a new jail built in the county of Bower. According to Ricardo Moreno's denounce, defense attorney of the inmates, "the prisoners were chained and savagely beaten with canes". They were supposedly ill-treated in the Jail of Accused and in Bower, reason why the staff of both jails and of the Transfer Division would be involved. The Sub-director of the provincial Penitentiary Service, Juan María Bouvier, admitted that during a medical control it was determined that 13 of the inmates "had blows". The families of the victims stated that the inmates received death threats by the Service staff so that they would not identify the victimizers⁴⁸³. Prosecutor Manuel Ugarte, head of the Instruction Prosecution Nº2 of Córdoba, charged 27 warders for this incident and ordered their detention to the judge.⁴⁸⁴

Police stations, illegally used as detention places, are also used to this kind of practices. Overpopulation and the terrible accommodation conditions remarkably increase the tensions and the conflict level among people under restraint there, and among them and those in charge of their stay. In this context, tortures are a weapon to which the police frequently resort in order to keep the inmates under control.

On 22 January 2000, 17 detainees⁴⁸⁵ accommodated in police station 29º in Villa Gobernador Gálvez, province of Santa Fé, were victims of unlawful coercion. According to what María de los Ángeles Galopa, wife of one of the inmates, the incidents started around 20:30 hs, after the visit hour. The inmates were beaten by officers of police stations 25º and 26º and of the Radio-electric Unit because they were flattering a female officer who had dressed attractively. Subsequently, Police Constable Francisco Libreri made the detainees pass one by one and as he hit them with a cane he said to them "*I bless you*". The 17 detainees were beaten once again around 22:30 on the same day, when officers of the Infantry Guard Body arrived. They took them out of the jails, made them undress and beat them with the canes. Then they threw tear gases and rubber bullets at them. The relatives of the detainees went to the station and stayed there in order to ensure the physical integrity of the inmates, until the moment Instruction Judge Luis María Caterina intervened in the conflict. After listening to the detainees, the judge ordered to have them searched by a forensic doctor to verify the injuries they suffered. Police Constables José Abraham and Francisco Libreri were charged, besides, of threatening to death, under those circumstances, two women relatives of the victims.⁴⁸⁶

Children and young people are particularly vulnerable to state violence. One of the main signs of state violence exercised on children in Argentina are the frequency and massivity with which they resort to freedom deprivation⁴⁸⁷ as a way of controlling. The province of Buenos Aires constitutes

⁴⁸³ About intimidation to victims of institutional violence see Part II, section 2.2.2.1. above.

⁴⁸⁴ Source: Crónica and La Nación, 15 August 2000.

⁴⁸⁵ Among which 3 were HIV/AIDS positive.

⁴⁸⁶ Source: Página/12, Rosario Supplement 12 and La Capital, from Rosario, 29 January 2000. About threats to relatives of victims of institutional violence see Part II, section 2.2.2.1. above.

⁴⁸⁷ According to what is stipulated by section 11.b) of the Regulations of the United Nations for the protection of juveniles under restraint –adopted by General Assembly at its resolution 45/113, on 14 December 1990-: "*The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority*".

a paradigmatic example of this situation⁴⁸⁸: in 2001 there were over 8,000 children under restraint only in bodies supervised by the Provincial Council of the Juvenile⁴⁸⁹. Over 80% due to assistance matters⁴⁹⁰. That constitutes a violation to –among other regulations section 37 b) of the Convention on the Rights of the Child, in accordance with which “[...] *The arrest, detention or imprisonment of a child [...] shall be used only as a measure of last resort and for the shortest appropriate period of time*”.

Boys, girls and teenagers are not just victimized through the unlawful restriction of their ambulatory freedom, but also subjected to abusive treatment, unlawful coercion and torture. In the province of Buenos Aires, the Sub-secretary of the Board of Minors of the Supreme Court of Justice registered 3466 denounces of this kind of incidents in 39 months⁴⁹¹ (see Annex I, table 10).

The Institute of Minors Manuel Roca, located in Floresta, in the city of Buenos Aires, is an institution of admission and derivation of minors depending from the National Council of the Minor and the Family. On 28 June 2000, the Federal Police confiscated diverse torture elements from there, such as canes and sticks. After the operation also nine warders were dismissed, under suspicion of torturing the juveniles accommodated in the institution, in accordance with the head of the Council of the Juvenile and the Family, María Orsenigo. The searching was ordered upon request of the National Prosecution of Juveniles in the First Instance N°5, under the responsibility of Roberto Durán, and took place after the denounce of the parents of the detainees.⁴⁹²

On 10 February 2001, in the city of La Plata, 43 out of 60 juveniles arrested in the Institution Gregorio Aráoz Alfaro⁴⁹³ escaped after an alleged mutiny⁴⁹⁴. The twelve warders who were on duty on that day and the other nine colleagues who acted as reinforcement brutally beat the 17 children who stayed, according to what they stated before prosecutor Marcelo Martini. The criminal denounce was presented by the director of the Institution, Alejandro Kessel, before Prosecution Office N°3 of La Plata⁴⁹⁵.

On 17 May 2002, 20 children detained in the police station of Villa Lynch, in the Buenos Aires district of San Martín, were taken to the yard of the station and one by one beaten with canes and hoses. Before starting the beating, the policemen had allegedly told them “*Everybody against the wall. Do not look at us, because if you do we’ll kill all of you*”. The tortures were repeated on the nights of 22 and 23 of May. One of the children declared in the case that “*They had taken it on*

⁴⁸⁸ In order to see a description of the situation see: Centro de Estudios Legales y Sociales/CELS and Universidad de Buenos Aires/UBA; Situación de niños y niñas y adolescentes privados de libertad en Provincia de Buenos Aires; UNICEF, Buenos Aires, 2003.

⁴⁸⁹ To accommodate boys, girls and teenagers, the Provincial Council of the Juvenile has place of its own and place in other institutions with which it signs covenants for this reason. These can be both public and private. There are also cases of children who due to a judicial warrant are located in institutions which do not have any kind of connection with the Provincial Council. Also, due to the lack of capacity in the institutions of the juvenile, the children are accommodated in police stations, in many cases next to older people.

⁴⁹⁰ Centro de Estudios Legales y Sociales/CELS and Universidad de Buenos Aires/UBA; Situación de niños, niñas y adolescentes privados de libertad en la Provincia de Buenos Aires; op.cit. p. 10.

⁴⁹¹ The Registry was created by the Supreme Court of Justice of the Province of Buenos Aires, through Agreement N°2964, in September 2000.

⁴⁹² Source: La Nación, “Cachiporras en un instituto de menores”, 29 June 2000.

⁴⁹³ Adolescents with criminal records are accommodated there, derived from the 35 juvenile courts existing in the province of Buenos Aires.

⁴⁹⁴ In their testimonies, the victims state that in fact it was a escape encouraged by the warders themselves.

⁴⁹⁵ Eight of the warders were summoned for a XXX statement in November 2001, within an investigation for the crime of unlawful coercion. Source: La Nación, “Procesarían a celadores del Aráoz”, 28 February 2001 and “La Plata: procesaron a ocho celadores por maltratar a menores”, 2 November 2001.

one of the kids, who was very scared. They beat him until he fainted. Then they made us throw him water and take him to the cell". The beatings that the young boys said they received were verified by judicial experts and of the Buenos Aires Police. The juvenile judge on duty, Gabriel Peñañori, ordered the transfer to other stations. Sub-constable Walter Menercardi, officer Miguel Olivari and sub-officers Rafael Suárez, Jorge Gómez, Alfredo Ballejos and Oscar Osuna were arrested because of these incidents⁴⁹⁶.

Out of the reports of the Juvenile Consultant of San Isidro, Dr. Carlos Bigalli⁴⁹⁷, arise, among many others, accounts of children who state that:

- From the day of his confinement in the institution he has suffered ill-treatment, insults, and beatings from the security staff of the community. He stayed in the "box"⁴⁹⁸ without having committed any offence. In order to go to the bathroom he had to knock several minutes for the officers to open the door, if they ever did, because on many opportunities he had to urinate in the cell because nobody opened the door. Later, he was punished by being taken to an individual cell. Since that day he was not feeling well he requested medical attention, as he was shouting and knocking on the door, they removed his mattress, they injected him and a few minutes later he fell asleep. Every morning, afternoon and night, both he and his fellow inmates were given a white powder that they have to take in order to fall asleep and if they refuse they are given "shots"⁴⁹⁹. The declarer states that he knows that a juvenile who rapes others was entered in a cell of another inmate, and as the latter one did not allow that, the other beat him.
- That in the institute he was victim of ill-treatment, something which took place on a daily basis. They were beaten with rubber sticks. On many occasions, the employees forced the juveniles to lie on the floor completely naked with their hands of the nape and the legs open and started to beat them in the testicles. These same employees had marijuana and cocaine to exchange for the juvenile's clothes. Besides, the employees used them for personal consumption, doing that in the bathroom. The food they were served was always dirty, raw and cold.

Control of demonstrators in social protests

Popular demonstrations constitute other of the ambits in which they resort to torture. The cases studied do not allow inferring, however, that the torture is exclusively used against vulnerable groups due to their socio-economic situation. In this sense, the victim of one of the three cases studied within this investigation was a middle class young man and it took place in a popular demonstration headed by this social sector.

In any case, the objective of repression and the use of torture in demonstrations consist in causing fear in demonstrators in order to discourage the demand for their rights and the social participation in protest movements which question the present situation. Tortures are perpetrated by police and security forces within a repression ordered and/or tolerated by the justice and the local political power.

⁴⁹⁶ San Martín prosecutor, Fabiana Ruiz, formally accused them for the crime of torture. Source: La Nación, "Policías presos por torturar a menores", 7 June 2002.

⁴⁹⁷ Dr. Carlos Bigalli performed several presentations before the justice about unlawful coercion and torture suffered by children, to which the CELS had access within the investigation that gave place to the publication Situación de niños, niñas y adolescentes privados de libertad en la Provincia de Buenos Aires; op.cit.

⁴⁹⁸ Name given to the isolation cells.

⁴⁹⁹ Name given to injections.

Towards the end of May 2001, a group of unemployed workers decided to block road 34, in the town General Mosconi, in the province of Salta, forming a barricade or “piquete” as a way of demanding the keeping and increase of the subsidies they were receiving⁵⁰⁰. The road blockade lasted 19 days, after which, on 17 June, the National Gendarmerie proceeded to clear it violently and unleashed a confrontation which caused 2 deaths, 12 civilians wounded, 27 arrested and several capture warrants against the mail leaders of the protest.

Federal judge Abel Cornejo, responsible for the investigation of these incidents, blamed the piqueteros, indicating that some of them had acted as snipers, increasing in the following weeks the number of detainees to 56. One of the detainees declared the following in his statement: *“Some military policemen came, grabbed saying that I was blocking the road and started hitting my head, while they said “we’ll kill you right here”. They put me on the truck, covered my eyes, they told me I was a sniper but I had nothing to do with it. They took my clothes off, told me to crouch and started applying electric shock on me”*. The lawyer who represents the demonstrators, Mara Puntano –of the Movements on Human Rights in Salta- pointed out that 55 of the 56 detainees were tortured. This *“happened at the moment of the detention, by the hands of the police who were on the road, officers of Santiago del Estero and Rosario. Some of them were beaten by the second chief of Squad 52 of the National Gendarmerie, the commander of La Colina, when they were being taken to a warehouse of the Road Service. There they were tortured. The only one who escaped from being tortured was Felix Mercado, 63 years old. Those coming from the city of Salta, capital of the namesake province, could not even walk and we accompanied them to the prosecution because in the court they told them they had no right to denounce this. Some boys show traces of electric shock torture, it is verified by medical certificates. Iván Dorado, 17 years old, is in danger of being paralytic due to the shot he received”*.⁵⁰¹

The lawyer also expressed that federal judge Abel Cornejo used as main evidence against the demonstrators *“the statement of a mentally disabled person who was savagely tortured. His name is Edgar Cabrera, he is 27 years old and he cannot read nor write. In fact, when he made the statement, a military policeman signed for him. On 18 June he was in the fields working with his cows when the military police appeared. Almost suffocated by a rope, they made him get off the horse and started kicking him. They broke his ribs and cut one ear (...) they made him say that all the leaders are armed”*⁵⁰². When feeling disqualified by the statements made by lawyer Mara Puntano, where she describes the tortures committed by members of the National Gendarmerie, judge Cornejo presented two denounces against her before the Ethics and Discipline Court of the Lawyers Association in Salta.⁵⁰³

At one in the morning on Thursday 20 December 2001, at the same time that the resignation of the Economy Minister, Domingo Cavallo, was being transmitted on TV –and shortly after the declaration of the state of siege was confirmed-, the Federal Police located in Plaza de Mayo started throwing tear gases on demonstrators who peacefully and noisily had gathered there. There were no previous warnings and there had been no disturbances that justified police intervention in order to evict the park.⁵⁰⁴

⁵⁰⁰ About the arising of the piquetes as a way of protesting and the characteristics of those who resort to this method see Part I, section 2, above.

⁵⁰¹ Source: Página/12, “En el camión agarraron la picana”, 1 July 2001.

⁵⁰² Source: Página/12, “En el camión agarraron la picana”, 1 July 2001.

⁵⁰³ CELS, “Informe al Relator Especial contra la Tortura”, October 2001.

⁵⁰⁴ About the massive protests of 19 and 20 December 2001, see Part I, section 2, above.

In the middle of the morning on 20 December 2001 the people started massively gathering again in Plaza de Mayo and around the National Congress. Soon, and although the situation was quiet, the Federal Police took part trying to disperse the demonstrators. It was a violent action against a group of people who were peacefully demonstrating.

Even if federal judge María Romilda Servini de Cubría ordered the responsible police chiefs to stop the repression, her order was not followed.

During these incidents, officers of police station 2º of the Federal Police beat, tortured with electric shock, kidnapped, threatened to death and kept illegally deprived of his liberty Eduardo de Pedro, 25 years old, son of disappeared people during the last military dictatorship⁵⁰⁵. De Pedro was intercepted while he walked on Diagonal Norte Avenue. He was tortured inside the police car which wanted to take him to the station⁵⁰⁶. The victim recounted the incidents in the following way:⁵⁰⁷

"I was on Diagonal Norte heading for Plaza de Mayo when I saw the cavalry police coming, about 15 horses going against anyone, against bicycles (...) I stayed talking to other people to see what was going on in the park (...) At that moment some police motorbikes appeared very quickly. Near the cathedral, where there were a lot of people singing, from one of the motorbikes they grabbed my backpack and took it to their base. I went to where they were concentrated and asked them to give it back to me, at that moment they said "this one". Once on the floor, I felt many beatings (...) they picked me up and put me in a police car. I tried to resist and at that moment I felt an electric shock on my back. I started screaming for them to stop using the electric shock. As they left me for some minutes by myself on the police car, I escaped but 15 metres from there I felt the bump of a horse, they made me fall, I felt a lot of people on me, kicking me a lot. They put me inside the car again and left quickly. The two policemen who were by my side started hitting and punching me, one with his hands and another one with his cane. Then they lifted me by the back and put me in front of the driver (...) who turned round and said "we'll kill you once we arrive". He hit me with his elbow on my forehead, twice or three times until I fainted. I came to because of a crash. Meanwhile they insulted me and told me to wait until we arrived. I begged them to stop hitting me; I told them I had nothing to do. They crashed because he was hitting me while driving so fast. They tied my hands, I could feel a very sharp pain on my shoulder. I thought it was broken, a policeman kept twisting my shoulder even more, until they removed it from its place (...) I was shaking, I needed to see someone, or to be seen, I finish work at one, no one knew I was there. A while later –hours for me-, an ambulance arrived and took me to hospital handcuffed and with two custodies"

The policeman who removed the handcuffs for the medical examination, warned him in a low voice not to denounce what had happened. Eduardo calmed him down by saying: *"I'll say I was hit in the crash"*. However, the doctor on duty could tell what had happened: the patient had multiple traumatisms, frontal flaying, injuries in the nasal cartilage, bruises in his head, in his left lower limb, in the gluteal area and some curious, significant marks on the back, a result of the electric shock. As most of the detainees, De Pedro was not under the disposition of any judge

⁵⁰⁵ His father, Enrique de Pedro, disappeared on 22 April 1977 and his mother, Lucila Rébora, 11 October 1978. She was nine months pregnant, reason why it is supposed that Wado –such is Eduardo's nickname- has a brother or a sister possible given to repressors. He was, during months a captive baby, until some aunts, sisters of his mother, managed to rescue him. When he was tortured he was studying law, worked at the Union of Judicial Workers of the Nation (UEJN) and was an activist member of HIJOS group.

⁵⁰⁶ Página/12, "Hubo torturas en la Plaza de Mayo", December 2001.

⁵⁰⁷ Interview of the victim with CELS attorneys, quoted at CELS; *El Estado frente a la protesta social*, op.cit.

and not even under the disposition of the Executive Power, pursuant to what is established during a state of siege, and in this way he had been illegally deprived of freedom. At 3 PM, almost four hours after the detention, police station 2º of the Federal Police was still denying before the justice that Eduardo De Pedro was arrested there.⁵⁰⁸

On 25 November 2003 there was, in the Province of Neuquén, a social demonstrator which resulted in serious incidents. The disturbances were caused by the uneasiness provoked among some sectors of unemployed people by the government's decision of banking the payment of unemployment subsidies⁵⁰⁹. The confrontations left 30 injured people, nine of them with lead bullets. Besides there were lootings and three detentions⁵¹⁰. Within this situation, Pedro Alveal - 20 years old, worker of recovered company⁵¹¹ Zanon and activist of the youth division of the Movement of Unemployed Workers/MTD- received 64 rubber bullets shots, one of which hit his left eye. He was taken to police offices around 7pm and released early in the morning on the following day, without having received suitable medical attention even though his eye was bleeding. Alveal lost his eye. He described what happened in this way:

*"I was handing flyers together with a mate, where we explained why we did not accept the card. At that moment the police saw me and later, when the repression started, they recognized me and aimed at my head. I stayed in the first line with a lot of people from the neighbourhood who are not even activists. Workers, peasants, mapuches and children. The policemen repressed all of us. When we saw that hours went by and the shots did not stop, we decided to gather in an assembly in order to analyze what to do. We knew that, if the repression went on, they would eventually enter the houses and hit anyone. In the middle of the assembly the police appeared, shooting away. I stood watching how people left. I did not hide behind anything. I do not know what happened then. I didn't run. The police came towards me shooting. Four or five motorbikes followed me, they got off and hit me. Then they took me to the police station where they kept on beating me, accusing me of being left wing and trade unionist. Around three in the morning they released me".*⁵¹²

Four policemen, two who had allegedly met in the place of the incidents and the other two in charge of police stations 18º and 1º, where Alveal⁵¹³ was taken, were dismissed from their duties after this incident. He had been allegedly beaten up in the police stations where he was accommodated⁵¹⁴. Initially the judicial case was entitled as "serious injuries aggravated by perfidy and abuse of weapons", but the judges of the provincial Substitute Chamber decided to change it to "injuries in aggression", crime which provides a smaller punishment than the first one.⁵¹⁵

⁵⁰⁸ In order to see a detailed recount of the incidents see: Página/12, "Hubo torturas en la Plaza de Mayo", 23 December 2001.

⁵⁰⁹ Página/12 newspaper described it as "A plastic proposal with which the national government is also flirting and which arouses massive rejections in the organizations of unemployed people, big criticism of specialists in social politics... but which has the unconditional avail of the banking and right-wing journalist associations or post-modern people, hard fighters against political clienteles". Source: Página/12, "Cuando los hermanos no son unidos", 30 November 2003.

⁵¹⁰ Source: La Nación, "Nueva marcha de trabajadores y desocupados en Neuquén", 26 November 2003.

⁵¹¹ Company that, in view of imminent bankruptcy, is taken by its workers and starts producing again.

⁵¹² Source: Página/12, "La juventud debe salir a la calle aunque sea para molestar", 27 January 2004.

⁵¹³ Source: Clarín, "Neuquén: separan a cuatro policías", 2 December 2003.

⁵¹⁴ Source: La Nación, "Separan a cuatro policías por la represión en Neuquén", 2 December 2003.

⁵¹⁵ Source: Página/12, "La justicia de Neuquén tiene la excarcelación (de policías) fácil", 29 January 2004.

2.4.2.5. Rapes and sexual abuse

Sexual abuse and rape⁵¹⁶ of children and young people is another of the forms of violence exercised by police officers in Argentina. Rape or sexual abuse usually take place in police stations. Thus, it can be stated that, even in cases in which the report does not imply the direct participation of more than one police officer, this does not mean that others are aware of what happened and are harbouring it. Without perjury of what was mentioned, it is necessary to warn that the analysis of the cases studied does not allow deducing a pattern of behaviour. While some of the victims get in contact with the victimizers as a result of their alleged participation in an offence, or due to unknown reasons, others go to the police stations to denounce a crime or to request help, and in this opportunity they are re-victimized.

In the month of May 2000, two officers of the San Luis Police –Marcelo Quevedo and Javier Olguin- were caught by a superior officer raping a 14-year-old girl. The chief of the Police, retired colonel Jorge Arce Villega explained that *“Both the officers and the minor were completely naked when a superior officer found them in a cell of the Juvenile Police Station in this city [San Luis], where the young girl, whose parents refuse to take out because of behaviour problems, was accommodated”*. The accused accepted having had sexual intercourse with the young girl, but they stated that they had been “agreed to”. However, another young girl who was detained in a contiguous cell manifested that it was a forced intercourse and that she heard beatings and screaming. A third officer, who was on duty, was dismissed, though not arrested as the other two. The relatives of the girl expressed that apart from being repeatedly raped, she was savagely beaten.⁵¹⁷

The parents of two 13-year-old adolescents denounced that they were raped on many occasions in police stations 2º and 4º of the city of Concordia, in the province of Entre Ríos. According to the mother of one of the girls, the incidents took place during the last weekend of April 2004, when the girls were detained⁵¹⁸ in one of those stations (2º), where they were raped by the policemen. Afterwards they were taken to another police station (4º), where they were raped once again.⁵¹⁹

On 4 May, after many negatives, the chief of the Entre Ríos Police himself, Constable Ernesto Angel Geuna, admitted that an administrative investigation had been opened in order to investigate what had happened. In this respect he made the following statement: *“Justice has the last word, and meanwhile the innocence principle rules”*.⁵²⁰

⁵¹⁶ Section 119, of the Criminal Code establishes that: *“He who has carnal intercourse with people of any sex shall be punished with six to fifteen years reclusion or imprisonment, in the following cases: 1) When the victim is under twelve (12) years old. 2) When the offended person is deprived of reasoning or unconscious, or when due to disease or any other cause, he or she can not resist. 3) When force or intimidation is used.”* Section 122 establishes that rape is “aggravated”, *“[...] When in the cases of Sec. 119, there is a serious damage in the health of the victim or when the act was committed by a ascendant or descendent, straight kin, by a brother, priest or by somebody responsible for the education or care of the victim or with the aid of two or more people”*. In this case, the reclusion or imprisonment shall be of eight to twenty years. Finally, section 127 of the Criminal Code establishes that: *“There shall be prison of six months to four years, to the person who dishonestly abuses of a person of any sex, under one of the circumstances provided in section 119, without there being carnal intercourse. If the author of the act is one of the people mentioned in section 122, he shall be punished with three to ten years of reclusion or imprisonment”*. According to amendment of section 124 of the Criminal Code introduced by National Congress in the month of April 2004. *“There shall be life imprisonment or reclusion when the cases provided by sections 119 and 120 result in the death of the person offended”*.

⁵¹⁷ Source: Crónica, “Policías Abusaron de una Adolescente”, 29 May 2000, p.16.

⁵¹⁸ The reasons of the detentions were not given.

⁵¹⁹ It was reported to Instruction Judge of Concordia, Marta Amanduzzi. Source: Clarín, “Concordia: denuncian que dos adolescentes fueron violadas en dos comisarías”, 4 May 2004.

⁵²⁰ Source: Página /12, “Una odisea en la comisaría”, 5 May 2004.

A judicial source regarded the recount one of the girls gave in the court as “*shocking*”: “*Here we deflower little girls like you*”, she confessed that one of the rapists told her.⁵²¹

Sandra⁵²², 16 years old, lived in a popular neighbourhood in the city of Rosario, in the province of Santa Fé, with her mother and an older sister. On 21 July 2002 failed to meet her friends she was going dancing with. Later she ran into Juan⁵²³, boyfriend of one of them, who she knew only by sight and he offered to accompany her. When they were about to enter the dancing place “Urban” Juan told her he had no money. Sandra and Juan walk some blocks together and she decides to go back home. Juan tells her to wait, “that he will go find some money”, and walks away. Sandra cannot see him anymore continues walking, trying to find the corner to take the bus back to her neighbourhood. Minutes later he catches up with her, runs past her and stops on a corner anxiously looking for a taxi. Sandra continues walking and when she reaches the place where Juan, who has just stopped a taxi, is, he tells her “*hop on, I’ll take you to your house*”. Then a sergeant⁵²⁴ of the local police who was following Juan because he suspected him of robbery, gets off the car and aiming at Juan with his lawful gun, shouts “*give in, nigger, don’t try to escape*”, the made him get off the car by force, beat him, and threw him to the floor facing down and put his gun on his head while he stepped on it. When Juan could not move, the officer took money from him and the gun the boy was carrying and kept them. Once he had done this, the policemen requested support to a “friendly” and close police station. Three policemen arrived minutes later and detained Juan and Sandra. In police station 1º, Juan was beaten at least on two occasions by a policeman and “punished” for having given his money to the sergeant since with that money he could have bought his freedom. Sandra is used as intermediary by two of the policemen, both officers, so that she calls Juan’s mother and asks her to take \$200.- to the police station to release her son. One of the phone calls is made from a public phone. In order to make that call, the two officers took her out of the police station with the complicity of other five policemen, one of them a woman. In the car one of the officers started harassing her, asking “*what do you have under those clothes?*” Back in the police station and in front of the police woman, once more, they make her phone Juan’s mother, who probably used to the frequent detentions of her son, tells her she does not even have enough money for the bus fare. After the phone call, Sandra is made to stay in the area of attention to the public, the guard area. There, before other policemen, one of the officers orders her: “*throw the chewing gum or else I’ll break your mouth*”. Some time later, continuing with the degrading treatment, he tells her “*jump here –on the counter- and dance for us*”. Later the same officer, before the police woman, made her leave the place and takes her to another room where he asks her “*and what do you have to give?*” the grabs her by her hair and tries to force her to have oral sex with him. Sandra resists, the officer leaves her and she goes back crying to the previous room; neither the police woman nor the other two officers who where there seemed to care about what was going on. After 5 o’clock on that morning and after the policewoman had left, Sandra is raped and beaten by three policemen, who later warned her “*do not forget we are policemen and we know where you live, and if you say something we’ll kill your mother, you and all your family*”. During almost two months Sandra did not speak about what happened.

On 5 September while she was waiting for the bus, Sandra met the two rapists by chance, who recognized her and started to attack her verbally, shouting “*whore, party girl, come with us*”. Very frightened, Sandra went into a kiosk and stayed there until the policemen left. When she arrived

⁵²¹ Source: *Semanario Análisis de la Actualidad*; “Justicia sin culpables”, 6 May 2004. (www.analisisdigital.com.ar)

⁵²² Her real name shall not be disclosed.

⁵²³ His real name shall not be disclosed either.

⁵²⁴ The sergeant was probable watching a building, but left his duty and followed Juan.

home she broke in tears and, apologising, told her mother what had happened on the night of 21 July. Accompanied by her mother, Sandra made a detailed denounce in the Police Station for Victims of Sexual Offences, providing a precise description of her aggressors and of the police station⁵²⁵. Despite the report, the investigation did not have important results until the case was publicly known. On 26 September 2002, all the staff of police station 1º was removed from duty⁵²⁶.

On 25 June 2000, members of the Federal Police followed a couple⁵²⁷ along Perito Moreno Avenue, in the Buenos Aires neighbourhood of Parque Patricios, aimed at them with their weapons and made them get off the car they were driving. The man was beaten and kicked and she was raped. However, this latter crime could not be investigated: although the abuse was confirmed by physical and psychological analysis, the woman was so scared, about what happened and about the subsequent threats, that she did not want to make the denounce: *"If you tell anything about what happened to you, I'll put a kilo of cocaine on you and you'll never see your daughter again"*, they told her. Sargeants Gustavo Chávez and Osvaldo Campos were taken to trial for beating the detainee, first in the street and then in the police station⁵²⁸. Jorge Baldomir, first sergeant, will go to trial accused of perjury, suspected of lying when telling how the couple had been arrested. Officer Jorge Toledo will answer for not denouncing the beating (dereliction of duty of a public officer) and the examiner doctor, Dolores Miranda, for ideological falsification of a document, since she wrote a certificate stating that the man had no injuries⁵²⁹.

On 9 May 2002, a 15-year-old girl went to the church of the rural area of San Vicente -225km to the northeast of the city of Posadas, capital of the province of Misiones- and told the priest a series of problems she had at home and which made it impossible for her to continue living with her parents and grandfather. Before the seriousness of the facts she recounted, the priest sent the girl to the jurisdictional police station. Since the girl had no means of going there, the policemen offered to take her themselves to the next town. While the girl was waiting in the kitchen of the police station to be taken to the neighbouring town, the policeman looking after her raped her. After that, the girl was finally transferred to the other police station and there she denounced what had happened. The Chief of Regional Unit VIII, High Constable Luis Alberto Max confirmed that the officer was arrested for the incident and was taken into custody of the instruction judge of Oberá, Horacio Alarcón. Even though he did not want to give the name of the police officer denounced, Max stated that *"He is a 23-year-old policeman, single, who since the middle of last year [2001] was performing his duties in San Vicente police station. Until now he appears to be the only responsible person for that incident, but we also started an administrative investigation which could mean the punishment of other police officers"*⁵³⁰.

The second chief of police station 4º of the capital of the province of Santiago del Estero, sub-constable Félix Brao, was arrested because of a judicial warrant, on 21 October 2003, accused of

⁵²⁵ The case was recounted to the CELS by Dr. Enrique Font, attorney responsible for the Criminology Section of the Centre of Studies and Investigation on Human Rights (CEIDH) of the Law College of the National University of Rosario and is described in detail in "La sucursal del crimen" (Branch of Crime), article published in *El Eslabón* in its October 2002 issue.

⁵²⁶ Source: Rosario/12, "El infierno tan temido"; 27 September 2002. About the practices which allowed the covering up see Part IV, sections 3 and 4, below

⁵²⁷ In order to protect their integrity, the victims were not identified by name.

⁵²⁸ They were prosecuted for the crime of unlawful coercion.

⁵²⁹ Source: Clarín, "Juicio para 4 policías por un caso de brutalidad en una comisaría", 26 September 2002.

⁵³⁰ Source: Clarín, 18 May 2002, p.49.

sexual abuse against a 12-year-old girl⁵³¹. According to the investigation, the girl had gone together with her uncle to police office 4^o in order to denounce a sexual attack. Judicial sources stated that, once inside the station, the girl was touched and sexually abused of, allegedly by the sub-constable.⁵³²

Finally, among the testimonies raised during an investigation of the province of Buenos Aires carried out by the Centre of Legal and Social Studies and the University of Buenos Aires⁵³³, the following can be found:

-“That one of the policemen makes him stand against a wall [...] That this policemen stand behind the speaker and pretended to be having sexual intercourse with him. That they put his hands behind him and take him to the bathroom while beating him. That they force him to crouch. That the two policemen who help the first one to take him [...] leave, so that he is alone with the first one of them That this takes of his underpants and told the denouncer “I’ll count up to three and you open your mouth” [...] That this two [policemen] put his hands behind him again while the one who had removed his clothes puts his penis next to the speaker’s face. That as the speaker kept resisting, one of the policemen kicks him in his nape making the speaker place his mount on the penis of the policeman. That it was 6 in the morning, that he had been punished since approximately two in the morning, when he was arrested.” (Reported in May 2000).

A mother recounts the sexual harassment her daughter was victim of: *“That her daughter [...] during her stay in the police station suffered an attempted rape from a policeman. That the policeman removed her shoes and started to get undressed, telling her he would rape her. That it finally did not happen because someone knocked on the door, which made the policeman desist from his attempt. That [her daughter] was handcuffed and since that moment she is bare feet.”* (Recount compiled by the assessor of juveniles Carlos Bigalli).

2.4.2.6. Detention conditions as a form of torture

2.4.2.6.1. Legal Aspects

The National Constitution establishes that “[...] *The jails of the Nation, shall be clean and health, for the safety and not the punishment of offenders detained therein [...]*”⁵³⁴ and in the same sense speak all the international treaties with constitutional standing, which forbid any cruel, inhuman or degrading treatment or punishment.⁵³⁵

The responsibility of the State of guaranteeing adequate conditions of detention was highlighted in the following terms by the Especial Rapporteur on Torture: *“The judicial power is to thorough and systematically take care that the detention of imprisonment conditions are compatible with the prohibition of cruel, inhuman or degrading treatment or punishment, or with the right of the detainee of being treated humanly and with due respect to the dignity of the human person, confirmed in the international documents on human rights”*.⁵³⁶

⁵³¹ The detention was ordered by instruction judge in Criminal and Correccional Matter of VI Appointment. René Achával. Brao was taken to the Infantry Body and removed from his duty by the Police Headquarters in Santiago del Estero.

⁵³² Source: La Nación, “Acusan a un policía de violar a una niña”, 22 October 2003.

⁵³³ It is the investigation which caused the publication of the report on Situación de niños, niñas y adolescentes privados de libertad en la Provincia de Buenos Aires; UNICEF, Buenos Aires, December 2003.

⁵³⁴ Pursuant to Section 18.

⁵³⁵ See Part II, section 2.4.1.

⁵³⁶ Report elaborated for the visit to Venezuela, 13 December 1996.

The restraining power of the State which is demonstrated through confinement can only take place in accordance with the due respect to every individual, only for his condition of being subject of rights. Among all the limits that the State has to respect in the exercise of its punitive power, there is a set of prohibitions specifically linked to the material conditions that are to be guaranteed in the imprisonment of a person. This universe of state duties is expressed, in a generic way, under essentially identical formula such as the prohibition of cruel, inhuman or degrading treatment, the explicit acknowledgement of the dignity of the subject deprived of his freedom or the disposition of healthy and clean institutions. The respect of these regulations does not admit any kind of argument in a democratic State of right.

In many cases, the inclusion of a given situation in any of the categories before mentioned is evident. However, regulations which refer to “decent treatment”, “humanity of punishments”, “healthy environment”, and other similar, are not always enough to solve different cases. In the local rules and in the international treaties there is neither a detailed description of the essential indicators which constitute the minimum set of detention conditions acceptable, nor the mechanisms which should be applied if they are not respected.

This makes the setting of certain standards essential, in order to know, in each case, the actual circumstances relevant for its adequate inclusion and to facilitate a jurisdictional statement about the infraction of a juridical duty and the consequent determination of its punishment. The task of interpreting the referred rule is then indispensable, with the objective of determining if the characteristics of the confinement being examined adapt themselves to the minimum standards thus elaborated.

The rules upon which provide the foundations for the set of conditions that a decent accommodation is to keep, are several and of diverse standing. These regulations regarding the situation of the people deprived of their freedom, allow directing the jurisdictional activity towards the definition of the concrete content of the duty of the state.

The Minimum Rules for the Treatment of Prisoners of the United Nations⁵³⁷ offer a relevant contribution. That is, they are useful as a guide for the application of internal law –with interpretative value guide- since they reflect the consensus of the international community about the minimum adequate conditions admitted for the confinement of a person. As a consequence, the dispositions contained therein have a pre-eminent value in the determination of the scope of the applicable rules of law.

In the ruling ambit, there are some rules in the Regulation of detainees of the Police of the Province of Buenos Aires⁵³⁸ which have prescriptive value in respect to the situation of police stations and which are also operative in respect to jail confinement, since, even though directed to regulate the conditions under which police imprisonment should take place, characteristically transitory, they should be understood, in turn, as a minimum impossible to transgress by any other kind of confinement essentially more burdensome, such as jail confinement which, due to its more prolonged duration, intensifies the dissocializing effect characteristic of any deprivation of freedom.

⁵³⁷ Prepared by the International Penal and Penitentiary Commission, passed by the First Congress of the United Nations on Crime Prevention and Treatment of the Criminal, celebrated in Geneva in 1955 and extended in 1977 and 1984.

⁵³⁸ Passed during the last military dictatorship -21 September 1977- by Ramón Camps, Chief of the Police at that time.

The requirements contained in the National Act of Execution of the Punishment of Freedom Deprivation, n°24,660, also have a high guiding value, since it establishes specific regulations about similar aspects to the once examined herein. Finally, also the rules established by different correctionalist associations can be quoted.

All the dispositions referred to point out different aspects of imprisonment, even though there is no absolute uniformity in the selection of the criteria which should be considered relevant for the elaboration of a standard. Despite this, it is possible to group the regulations considering certain requirements which, due to the fact that they are repeatedly mentioned in these documents, can be considered accepted indicators on the base of a broad consensus. These requirements have been at times accepted by the legislation and at many others constitute values, at the moment out of argument within the scientific and technical community in charge of the attention of people deprived of their freedom.

Based on what was previously mentioned, the requirements legally referred to and which provide the decent treatment which is to be given to detainees should be established. Out of this common convergence shall arise the minimum conditions imposed upon the State referring accommodation of detained people. Without this previous determination, as it was mentioned, the right to jurisdiction is compromised.

Disobedience of any of the minimum rules which regulate the accommodation constitute a firm presumption, difficult to refute, about the unlawfulness of confinement, and in this sense the standards in respect to the different relevant aspects about due treatment to detained people should be used.

The exceptions to the fulfilment of the minimum rules of accommodation can only be accepted if they are temporally, spatially and materially restricted, and as long as there is a possibility of comptroller in respect to the presence of the permissive assumption. The mere social interest in the fulfilment of the coercive measures is not one of these assumptions. Penal responsibility or procedural danger can only justify the proceeding of the prison punishment or preventive detention under certain conditions. If these do not exist, it cannot be concluded that the permit operates for the mere existence of the title which lawfully orders the prison.

As the Supreme Court of Justice of the Nation has stated “[...] *the lack of budget, even if they should be taken into account, cannot justify transgressions of this kind. To grant them privilege would be similar to subverting the State of Right and to cease to fulfil the principles of the Constitution and the international covenants which commit the Nation before the international legal community [...]*”.⁵³⁹

In coincidence, the Inter-American Court of Human Rights has established that “*in terms of section 5.2 of the [American] Convention [on Human Rights] every person deprived of their freedom has the right to live in detention conditions inherent to his personal dignity and the State is to guarantee the right to life and personal integrity. In consequence, the State, as responsible for the detention institutions is the guarantor of these rights of the detainees.*”⁵⁴⁰

⁵³⁹ Pursuant to CSJN, in re “Badín, Rubén and others C/Buenos Aires Province”, 19 Octubre 1995; Revista Jurídica La Ley, Buenos Aires, 16 July 1996.

⁵⁴⁰ Inter-American Court of Human Rights, case Neira Alegría and others, sentence of 19 January 1995, paragraph 60.

Only the efficient compensation of the negative effects of stacking allows stating that the violations to the maximum capacity rules are not verified. When such compensation does not take place, only independent good reasons can give place to the exceptional tolerance to the inobservance of the minimum values set for the capacity of accommodation.

Stacking and inhuman conditions in which people deprived of their freedom live is the characteristic of the detention centres -jails, *alcaldías* and police stations- in Argentina⁵⁴¹. That derives in serious right violations: the unlawful aggravation of the detention conditions; the transmission of diseases due to deficiencies in the hygiene of the place and of the detainees themselves; the impossibility for the inmates to develop leisure, educational activities, to work in ware houses, to receive visits and even to rest adequately; the lack of food; the increase of conflicts among inmates and their custodies; all this adds to the deterioration of the infrastructure and working conditions of the penitentiary and police officers.

The Committee on Human Rights has specifically spoken about Argentina, warning about the inhumane and degrading characteristic of the conditions in which people deprived of their freedom in the country are accommodated and how they are treated: *"It deeply concerns the Committee that the prevailing conditions in jails do not adjust to those provided for in section 7 and 10 of the [International] Covenant [on Civil and Political Rights] and it considers that the great overpopulation and the bad quality in the rendering of services and the satisfaction of fundamental needs, such as feeding, clothing and medical assistance, are not compatible with the right of every person to a human treatment and with the respect for the inherent dignity of the human person"*.⁵⁴²

2.4.2.6.2. Deprivation of freedom in jails

Overpopulation in Argentine jails is estimated in 17.7%⁵⁴³. In the case of the units of the Federal Penitentiary Service, the occupation of most of the jails is over 90%, which means a critic situation for its management. The occupation rate –in December 2002- was 105.4% (see Annex I, table 11).

Even if it is a reference, this rate does not provide an exact measure of the problem of overpopulation, since it includes in the calculation of the spaces, those destined to inmates with differentiated characteristics (minors, ill people, men and women) thus limiting the possibility of transferring inmates from over-populated units to others whose capacity has not been exceeded. Also, the lack of application of objective parameters to determine the capacity of the units permits the setting or extension in the number of spaces in an arbitrary way, through proceedings such as accommodating two people in cells originally designed to accommodate one.

⁵⁴¹ This serious situation was denounced by the CELS in repeated opportunities before national and international authorities. Among the latter are the reports sent –in October 2001 and July 2002- to the Special Rapporteur against Torture of the United Nations and –in February 2003- before the Inter-American Commission of Human Rights, when celebrating the general Assembly about the situation of torture in Argentina. Reports available at: www.cels.org.ar. Illegal detention and stacking of people in police stations in the province of Buenos Aires caused, besides, the presentation of a corrective and collective habeas corpus before the provincial Court of Criminal Cassation on 12 November 2001.

⁵⁴² Human Rights Committee, Final Observations, Argentina, CCPR/CO/70/ARG, November 2000.

⁵⁴³ This estimation was only made on the base of data collected in respect of institutions of penal execution which depend from the penitentiary service or police in the case of those provinces which do not have penitentiary services; that is, detainees in places not destined exclusively to the execution of the punishment, such as police stations or their spaces, were not taken into account. Source: National Office of Criminal Policy; "Estadísticas penitenciarias en la Argentina. Informe preliminar del Sistema Nacional de Estadísticas sobre Ejecución de la Pena", dateless. The data used for the report was collected during the month of December 2002.

In this particularly worrying context, overpopulation of alcaidias located in the north of the country (90% and 135.7%), result of an insufficient answer to the demand of spaces given by the federal justice of the region⁵⁴⁴. This has caused the accommodation of people in institutions of the National Military Police or provincial polices and even containers. In the province of Salta 23 federal prisoners had to be accommodated in the semi trailer of a truck in a lot of the National Military Police, due to the stacking that the inmates suffer because of the lack of jail units⁵⁴⁵. The chief of the VII Salta Group of the National Military Police, Aníbal Maiztegui, pointed out: *"It simply is the trailer of a truck which has been suitably adapted, it has been fit a metallic rail for security, it has been lighted inside and it has been built a small bathroom"*⁵⁴⁶. It is important to indicate that the Military Police has place to accommodate 40 detainees, but has 140 under its custody. Maiztegui also stated: *"Undoubtedly this situation is dramatic, because the people spend the 24 hours of the day without a leisure space, without being able to walk or bask a little. Unfortunately, they are fulfilling their detention, their prosecution or their sentence in real conditions of stacking"*⁵⁴⁷. In the province of Jujuy they also had to adopt measures to lessen the overpopulation situation: 11 former federal policemen had to be transferred to fulfil their sentence in facilities of the Military Police in the province of Santiago del Estero. Federal prisoners who are doing their sentence or prosecution in Squat 53 of the National Military Police are stacked. 45 are accommodated there, even if there is space for only 13 people⁵⁴⁸.

In the case of the jails of the province of Buenos Aires, the occupation rate is 115.7% (see Annex I, table 12)⁵⁴⁹. In this worrisome context, units nº1 –Lisandro Olmos- and nº3 –San Nicolás- stand out because of their seriousness.⁵⁵⁰

Judge Juan Carlos Sorondo (junior) qualified Olmos penal as a *"deposit of human flesh"* because there were 3439 prisoners where the maximum capacity was 2186⁵⁵¹. In Olmos there were *"problems about the feeding of the inmates, both because of the quality and because of the small quantity of the food they receive"*; the presence of dampness *"everywhere"*; stacking conditions; lack of hot water and areas of the unit which are not suitable for life altogether". According to provincial prosecutors, this confluence of factors favours the health problems of the jail population, a big part of it affected by a escabiosis (scabies) epidemic. The prisoners *"show spots all over their body, situation aggravated by the infection"*⁵⁵². Juan Manuel Casolati, secretary of Penal Execution of the General Defence Office explained to a local media, that in many of the units the inmates *"sleep on mattresses below the beds of others"*, the ones who are below, on the floor, have extra difficulties because *"the toilets are close and they sometimes overflow"*⁵⁵³. A local media described this same penal unit in the following way: *"The concrete walls and floors offer a dirty, hard, humid and cold aspect. The windows without glasses let the winter come in. The prisoners themselves break them in order to pass, from floor to floor, cigarettes, drugs,*

⁵⁴⁴ They are specifically, alcaidias in the province of Jujuy and Salta.

⁵⁴⁵ In the province of Buenos Aires they tried to take the same measures. Governor Felipe Solá announced that the containers would be installed in penal lots, that they would accommodate around 4 and 6 detainees and that they would be designed by the Military Police. The opposition generated by this announcement meant it was never carried out. Source: La Nación, "Alojarán en contenedores a detenidos", 10 October 2002.

⁵⁴⁶ Source: La Nación, "Alojan a 23 presos en un camión por la crisis carcelaria en Salta", 8 May 2003.

⁵⁴⁷ Source: La Nación, "Alojan a 23 presos en un camión por la crisis carcelaria en Salta", 8 May 2003.

⁵⁴⁸ Source: La Nación, "Presos hacinados en la cárcel de Jujuy", 1 December 2003.

⁵⁴⁹ Pursuant to the General Registry of Inmates, Buenos Aires Penitentiary Service. Information up to December 2002.

⁵⁵⁰ In the first of the units the occupation rate is 156.5%, while in the second one it reaches 162.5%.

⁵⁵¹ Source: Página/12, "Es un depósito de carne humana", 3 December 2002.

⁵⁵² Source: Página/12, "Es un depósito de carne humana", 3 December 2002.

⁵⁵³ Source: Página/12, "Es un depósito de carne humana", 3 December 2002.

*anything tied with a rope. Despite this forced ventilation, the smell of urine, acid food and disinfectant is sensed in the air. The same happens with boredom”.*⁵⁵⁴

The provincial Executive Power declared, through decree n°1,132 on 16 May 2001, the physico-functional emergency of the Penitentiary Service of the province of Buenos Aires, acknowledging in its considerations that the modifications introduced to the Code of Criminal Procedure of the province in prison release matters, had produced a significant increase in the penitentiary population. The Executive Power also stated that *“The ordinary courses of action on the subject have turned out to be insufficient, due to the present state of the building and service structure of the Units and institutions which accommodate inmates, as well as the degree of jail overpopulation which exceeds their accommodation capacity, circumstance that significantly deteriorates the reasonable levels of security”.*⁵⁵⁵

On the occasion of their visit to Argentina, in September 2003, the Group of Work on Arbitrary Detention of People of the Commission on Human Rights of the Organization of the United Nations denounced that “The bad condition of the prisoners concerning stacking, lack of sanitary services and the violation in many cases of the right to defence exceeds even countries which are not in democracy, such as Iran”⁵⁵⁶. The delegation visited 11 jails, police stations and juvenile institutions and interviewed over 200 detainees in the provinces of Buenos Aires, Salta and Mendoza⁵⁵⁷. On the other hand, after indicating that *“the high poverty rate, which exceeds 50% [...] is a source of criminality”*. The report also states that, as a response, there is a “reaction of the government of poverty criminalization”⁵⁵⁸. In relation to the province of Mendoza, its minister of Justice and Security, Leopoldo Orquín, had admitted some time before that *“It is necessary to give oxygen to the provincial penal in order to respect of the human rights of the inmates in Mendoza”*.⁵⁵⁹

One of the main causes of penitentiary overpopulation is the high percentage of people deprived of their freedom in a preventive way, that is, without final sentence. Despite being exceptional, preventive prison is abusively used in Argentina.

Freedom deprivation in a State of Right is only accepted as punitive sanction after a trial and a convicting sentence. On the other hand, the use of preventive prison, that is the deprivation of freedom during the criminal proceeding, is based upon its character of exceptional provisional measure, and limited since it affects elemental rights of innocent people. Every detention previous to a trial is against the principles of protection of the accused person and openly violates the principle of innocence.

The Argentine Constitution clearly acknowledges the principles of innocence and the right of an accused person to keep his freedom during the proceedings⁵⁶⁰. However, the laws acknowledge preventive prison as an exceptional resource meant to neutralize, only when they exist, the elements that could threat the development of the judicial proceeding. Considering the condition of exceptionality, preventive confinement is to be supported on an explicit temporary limitation: in

⁵⁵⁴ Source: La Nación, “En Olmos, el hacinamiento es la regla”, 1 July 2002.

⁵⁵⁵ Considerations, 4th paragraph, decree n°1,132.

⁵⁵⁶ Source: La Nación, “Denuncian crueldad con los detenidos”, 2 October 2003.

⁵⁵⁷ Source: La Nación, “Denuncian crueldad con los detenidos”, 2 October 2003.

⁵⁵⁸ Source: Página/12, “Para la ONU, algunas cárceles del país son peores que las de Irán”, 2 October 2003.

⁵⁵⁹ Source: La Nación, “En Mendoza dicen que les sobran presos”, 5 December 2001.

⁵⁶⁰ The National Constitution establishes in section 18 that *“No inhabitant of the Nation shall be punished without a previous trial based in law prior to the incident of the proceeding [...]”*.

this way it is expressed in section 7 of the American Convention on Human Rights⁵⁶¹, section 9 of the International Covenant on Civil and Political Rights⁵⁶² and the Set of Principles for the Protection of People Subjected to any kind of Detention or Prison.⁵⁶³

Even if when talking about people deprived of their freedom the attention and the accusations usually fall on the penitentiary administration, and therefore, on the executive power, when talking about prisoners without a conviction it is impossible to deny the responsibility of the judicial power. The extension and generalization of the application of preventive prison is a direct consequence of the jurisdictional application of such measure. When using preventive prison in a generalized way, the criminal justice neglects one of its central functions: to guarantee the rights of the accused before the abuses of the punitive power of the State. The irrational and disproportionate use of a legal tool whose existence is based on exceptionality place the penal system in the land of illegality.

The application of preventive prison mainly falls on the sectors of the population which are in the worst socio-economic condition; affecting particularly the most unprotected and vulnerable groups.⁵⁶⁴

In Argentina the use of preventive prison has extended, ceasing to be an exceptional measure to become the rule: out of 44,969 people deprived of their freedom in December 2002, 59% were prosecuted while 39% already had a sentence⁵⁶⁵. In the ambit of the Federal Penitentiary Service, those prosecuted represent over 50% of the detained population (see Annex I, table 13), while in the province of Buenos Aires –taking into account jails and police stations- the percentage of the prosecuted tops 85% (see Annex I, table 14).

The consequences of the massive use of preventive prison are aggravated by the unreasonable duration of the judicial proceedings, which reveals the deficient functioning of the system of penal justice (see Annex I, table 15).⁵⁶⁶

⁵⁶¹ Paragraph 5º, section 7 establishes that “Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial”.

⁵⁶² Paragraph 3º, section 9 establishes that “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”

⁵⁶³ Adopted by the General Assembly in Resolution nº43/173, 9 December 1988.

⁵⁶⁴ About the profile of the people deprived of their freedom see Part II, section 3.1, below. Judicial sources are very limited about information on the use of preventive prison. The dependencies in charge of generating statistic information about the functioning of criminal justice, take as a preferential analysis unit the causes which enter the system and their path. They do not take as analysis unit the people affected by the intervention of the judicial agencies. The interest for the flow of cases prevail and not for the flow of people subject to criminal control. This leads to thinking that in the generation of information about the functioning of justice, the valuation on the efficiency of the “system” is more important than the people affected by institutional actions, their impact, their consequences, their extension, etc.

⁵⁶⁵ They are people arrested in units of detention depending from the penitentiary or police services, only in the case of provinces which do not have penitentiary services and have delegated in policemen the administration of their units of detention. Only prosecuted people accommodated in police stations of the province of Buenos Aires and not included in the study were about 7,000. Source: National Direction of Criminal Policy; “Estadísticas penitenciarias en la Argentina: Informe Preliminar del Sistema Nacional de Estadísticas sobre Ejecución de la Pena (SNEEP)”; Ministry of Justice, Security and Human Rights of the Nation, dateless.

⁵⁶⁶ According to information of the Buenos Aires Penitentiary Service, by June 2002, 438 people deprived of their freedom in jail institutions had been prosecuted for 6 years or more. It is important to clarify that the terms computed

2.4.2.6.3. Deprivation of freedom in police stations

The conditions of freedom deprivation in police stations are not only concerning in themselves but, besides, because they do not impede that 24.3% of the detained people subject to the justice of the province of Buenos Aires, are unlawfully detained in police dependencies (see Annex I, table 16)⁵⁶⁷. In the cells of the police station not only contraventors and people whose proceeding situation is not solved are accommodated, but also others with preventive prison judicially imposed and even some convicted people. All of them live together stacked in a common place and lack the minimum conditions of habitation, health and hygiene. By August 2003, Buenos Aires police stations accommodated 6,702 people in spaces with capacity for 3,197 people⁵⁶⁸.

Of all the detainees, 155 were minors who, in words of the Supreme Court of Justice of the province, “[...] suffer in such ambits the restriction to their freedom without receiving due treatment, limitation which at times takes months waiting for the transfer to the corresponding specialized institution”⁵⁶⁹. The cells are in a terrible state of conservation and hygiene; they generally lack ventilation and natural light. Dampness, and in summer heat are stifling. They do not have any kind of furniture, reason why every activity (eating, sleeping) which the inmates perform, takes place on the floor. The bathrooms are not enough for everybody and the adequate food of the inmates is not guaranteed. The risk of infectious and contagious diseases spreading is, doubtlessly, very high, and the increase of cases of physical and sexual violence among the inmates themselves is more than significant.

The Ministry of Security of the province of Buenos Aires, Juan Pablo Cafiero, expressed: “*I think that the way in which they live in the police stations of the outskirts is a torture, they are almost concentration camps, they take turns of 2 or 3 hours to share a mattress, people are on their feet all day; this is inhumane and has to be stopped*”⁵⁷⁰. The defender before the Court of Criminal Cassation of the province of Buenos Aires, Mario Coriolano, stated that “*Police stations are like bombs about to explode and the government has to adopt urgent measures to revert the inhumane conditions under which over 6,000 people are detained*”.⁵⁷¹

The unlawful aggravation of the detention conditions of the people deprived of their freedom derived in the closing of the police station 1° of La Plata⁵⁷², where 28 prisoners lived in a space

by the Service do not include the time spent in police dependencies. In order to deeply study the situation, it was requested to the penitentiary authorities detailed information about each of the detainees in jail dependencies who had been prosecuted for over 5 years. The Buenos Aires Penitentiary Service then identified 366 people whose procedural situation is not solved, even though years have passed since the moment of their detention. The lack of agreement between the information initially added given and the subsequent precisions could be attributed to the modification of the procedural situation of the prosecuted during the time that went by. However, the comparison of the data supplied by every penitentiary unit with the database in which all the information of the people deprived of their freedom in dependencies of the Buenos Aires Penitentiary Service is accounted, shows serious inconsistencies in the available information. The impossibility of exactly specifying the number of people prosecuted who have been deprived of their freedom for over 5 years does not make the situation described less serious, but, no the contrary, clearly shows the negligence of provincial justice.

⁵⁶⁷ By August 2003, according to data from the Buenos Aires Penitentiary Service and of the Super Intendancy of Coordination of the Ministry of Security of the Province of Buenos Aires.

⁵⁶⁸ Source: General super-intendancy of the Police, Ministry of Security of the Province of Buenos Aires; “Síntesis de hechos relevantes. Lunes 11 al martes 12 de Agosto de 2003”. The capacity corresponds to the “ideal limit” declared by this same source.

⁵⁶⁹ Agreement N°3012, 24 October 2001.

⁵⁷⁰ Source: La Nación, “Las comisarías son casi campos de concentración”, 25 August 2002.

⁵⁷¹ Source: La Nación, “Superpoblación en comisarías”, 1 October 2001.

⁵⁷² The measure was ordered by judge in correctional matter N°4, Claudia Grecco.

provided for a maximum of 5 people. Several experts verified the state of the building. Among other things, it was discovered that the electrical system did not follow the regulations, that the ventilation was insufficient and that there were big probabilities of a fire taking place. It was then indicated that *"detainees have to sleep in mattresses that they place on the floor and which cover the whole space, without any possibility of physical mobility"*⁵⁷³. This, however, was not the only case: according to what was informed by the Defence Office before Court of Criminal Cassation, in 2001 they closed 18 police offices in the Buenos Aires outskirts, in which Justice had verified an aggravation in the detention conditions, apart from several physical risks for detainees and policemen in charge of their custody.⁵⁷⁴

Among the denounces of official defenders collected by the defender before the Criminal Cassation Court of the province of Buenos Aires in Resolution N°153⁵⁷⁵, the following is found: *"The conditions in which the detainees live are worse than those of animals in a cage. It is impossible to find the precise words to describe the horror. If this Defence Office had seen animals in such condition we would have had to make the criminal denounce. To observe those inhuman conditions that offend human dignity is moving. There are no words which imply to normalize horror, that is, describing a concentration camp, a battlefield, intensive care unit. During the visit we observed that the prisoners, the cells with the size of a cage were flooded with sewage rubbish, continually stepped on by my defendants..."*⁵⁷⁶

The situation is particularly serious though not exclusive of the province of Buenos Aires. In the police stations of the province of Santa Fe, for instance, 2,100 people live in similar conditions.⁵⁷⁷

In the year 2002, the Coordinator of Jail Work (CTC) made a report on the situation for the minors detained in police stations in the city of Rosario⁵⁷⁸. There she denounces that in police station 2° -with an approximate capacity for 12 people- 30 children were accommodated without even enough mattresses. In relation with the accommodation conditions, it is stated in the report that *"The place is damp and the minors do not have the appropriate hygiene elements to disinfect it, this being cause for the presence of fungus, scabies and various infections. The minors cook their food in an electrical heater which they plug directly to the wires of the socket, a potential danger of accidents. Outings to the yard last a daily hour. The minors do not have any other leisure activity during the rest of the day"*.

A similar situation was observed in police station 4°, some of the minors accommodated there showed infections in cuts in their arms and legs, one of them had received beatings in a police station of off age people, showing bruises in many parts of his body. Six children shared a mattress and three blankets. Besides *"[...] they had elements to clean the place, which is damp and closed without any kind of ventilation. The minors are allowed to remain in the yard most of the day. The yard is closed, they are never outdoors. They do not perform any leisure activities."*

⁵⁷³ Source: La Nación, "Cárceles sanas y limpias", 13 January 2000.

⁵⁷⁴ Between January and September 2001 the following police stations were closed down: General Conessa, General Guido, General Guido and General Lavalle, 5° Lomas de Zamora, 2° Morón, 1° Merlo, 1° de Mar del Plata, 1° Azul, 1° and 7° La Plata, 1° and 7° Zarate-Campana and other seven in San Isidro district. Source: La Nación Line, 4 October 2001.

⁵⁷⁵ La Plata, 10 July 2001.

⁵⁷⁶ Account which describes the accommodation conditions in police station 4° of Florencio Varela, in the Judicial Department of Quilmas.

⁵⁷⁷ Information as to 31 December 2002. Source: National Direction of Criminal Policy; "Estadísticas penitenciarias en la Argentina. Informe Preliminar del Sistema Nacional de Estadísticas sobre Ejecución de la Pena (SNEEP)"; Ministry of Justice, Security and Human Rights of the Nation; dateless.

⁵⁷⁸ Coordinadora de Trabajo Carcelario (CTC); "Informe sobre las condiciones de detención de 72 menores alojados en comisarías de Rosario"; mimeo; Rosario, 2002.

The food already cooked is distributed in the penitentiary in a common bag. The portion is scarce and many minors stated that they ate only once a day”.

In relation to police station 21º, “In all the accounts given by the detainees, the lack of hygiene of the place was highlighted, due to the lack of products and elements to carry it out (buckets, chlorine, detergent, etc.). They also highlighted the scarcity of the food, which is not distributed rationalized but in a common bag for all the inmates. The amount of food in relation to the number of inmates is insufficient. Medical attention is irregular, since they are not visited by any professional, and they limit the transfer of the minors to cases of serious affections, without any kind of attention in less urgent cases (toothaches, abdominal pain, infections, etc.). Another concerning situation is the presence of fungus, scabies and LADILLA, which tends to get worse due to the lack of hygiene and adequate medical treatment. Most of the minors demanded interviews with social assistants and/or judges, who in some cases they have not seen for months and who have never visited the place [...]. They do not perform any physical or leisure activity. Blankets and mattresses are supplied by relatives of the detainees, reason why many children do not have them”.

Stacking considerably increases violent situations, such as riots, escape attempts and hostage taking, out of which not only detainees but also their custody⁵⁷⁹ and neighbours of the place are victims. The following are some examples:

- a Police station 9º, Lomas de Zamora, province of Buenos Aires: 12 October 2003, 12 prisoners took refuge in a cell during 11 hours after an escape attempt during which four policemen were taken as hostages. One of the policemen was released few minutes after the brawl had started, seriously injured. The prisoners agreed to be taken each to a different police station, all in the area.⁵⁸⁰
- b Police station 24º, Rosario, province of Santa Fe: 13 October 2003, 18 out of 29 detainees managed to escape, one of them being recaptured after a shooting. On 26 June same year, 22 people had escaped of the same police station.⁵⁸¹
- c Alcaldia of the Headquarters of the Police, province of Santa Fe: around a hundred detainees rioted demanding better accommodation conditions, taken a policeman as hostage. Instruction judge of Third Nomination, Julio César Costa, ordered the transfer of 53 prisoners to other detention places, in order to give more room to the place, where 179 detainees were accommodated when, in fact, the capacity was for 90 people. Among the demands, there were: better medical assistance, cooking elements (half of them eat with their hands because they have no cutlery), reading material and a TV set or a radio.⁵⁸²
- d Police station 2º, General Rodríguez, province of Buenos Aires: 16 October 2002, 22 prisoners rioted crossing the rail which divides the cells from the rest of the dependency and taking hold of the reglamentary weapons of the police office, after a group of men shot the front of the station. One of the prisoners told a newspaper: *“We are asking to be immediately transferred to a penitentiary because here we are 22 prisoners in 2 cells of 4 by 4 metres. We have to take turns to eat, to sleep, to go to the toilet, to do everything”*⁵⁸³. Three detainees managed to escape.
- e Police station 1º, Luján, province of Buenos Aires: on 25 October 2002 the 46 detainees who lived in the overcrowded cells of this dependency (which only has capacity to accommodate

⁵⁷⁹ Their rights to personal security and to keep decent and equal working conditions are violated. Apart from being possible injury victims, they are forced to work in a risky ambit for health, since they are exposed to diseases suffered by the detainees.

⁵⁸⁰ Source: La Nación, “Motín en Lomas de Zamora y masiva evasión en Rosario”, 14 October 2003.

⁵⁸¹ Source: La Nación, “Motín en Lomas de Zamora y masiva evasión en Rosario”, 14 October 2003.

⁵⁸² Source: La Nación, “Incruento final para un motín”, 15 March 2003.

⁵⁸³ Source: La Nación, “Tiroteo, fuga y motín en una comisaría”, 17 December 2002.

17 people) caused a riot that ended when they were transferred to other jail dependencies. They started the disturbances due to the dreadful confinement conditions.⁵⁸⁴

- f Police station 2º, Vicente Lopez, province of Buenos Aires: 19 March 2002, 5 policemen and 9 prisoners were injured during a riot. The police station has capacity to accommodate 12 prisoners but when the riot took place there were 47. The detainees were accommodated in different police stations of the North Outskirt Headquarters, since the seriousness of the disturbances almost caused the total destruction of the cells.⁵⁸⁵
- g Police station of Hudson, province of Buenos Aires: on 1 September 2001, 3 detainees died suffocated with carbon monoxide, other 21 were injured, 6 policemen suffered asphyxia and another one burns when the detainees set the mattresses on fire. The dependency has 3 cells with capacity to accommodate 8 people and on that day 24 people were being derived from other stations who would add to the 2 already detained there. The prisoners said they would not enter the cells because there was no room. ⁵⁸⁶

2.4.2.6.4. VIP detention centres

Even though the described scenery reflects the inhuman conditions in which most of the people deprived of their freedom live, the detention conditions of others are completely different. Thus, people closely related with the political and economical local power –in general involved in judicial cases in which they investigate serious corruption incidents- are accommodated in dependencies especially furnished to ensure the comfort and comfortableness of those accommodated there. This tendency –together with the selective granting of house prison to people over 70 years old⁵⁸⁷- appeared during the 90s and benefited many of the officials of the *menemista* government –such as María Julia Alsogaray and Emir Yoma- and characters related to them –such as bankers Rubén Beraja and Carlos Rohm-⁵⁸⁸. *“In general, they are jails with less than twenty prisoners, cells which look much like rooms and which are individual, a less harsh visit system and the possibility of setting up the computer, the telephone and a small office. It would be a good thing that all the inmates could enjoy this situation, but the true thing is that only a very selective group does”.* ⁵⁸⁹

In some cases they are especial sectors within regular penal units and in others they are dependencies which were originally created to accommodate a certain kind of people. Among the

⁵⁸⁴ Source: La Nación, “Se amotinaron 46 detenidos en una comisaría de Luján”, 26 October 2002.

⁵⁸⁵ Source: La Nación, “Hubo 14 heridos durante un motín en la comisaría de Florida”, 21 March 2002.

⁵⁸⁶ The deceased were Fabián Luján (27 years old), Mario Acuña (37) and Raúl Córdoba (24). Source: La Nación, “Motín e incendio en una comisaría: tres muertos”, 3 September 2001.

⁵⁸⁷ The creation of the home prison is an exception which originally existed for women. It was supposed that the husband should have social control over his wife and therefore, due to age or disease, they were allowed to fulfill their punishment at home, under the responsibility of the husband. Subsequently, the exception was extended to people with terminal diseases. It was considered that the serious disease was enough punishment and they granted a benefit which meant that the detainee was allowed to die in his house. A slight modification to the general criteria took place later: home imprisonment was granted to those who were over certain age –approximately 70- and also suffered medical complications –for example, they could not walk- and serious diseases. In this context, on 3 October 1997, the president of the nation Carlos Menem, together with the Cabinet chief Jorge Rodríguez and the Ministry of Justice Raúl Granillo Ocampo, signed decree Nº1058 which at the beginning seemed to be destined to enumerate the parameters a HIV/AIDS positive should have to get the benefits of home imprisonment. However, within the decree about the HIV/AIDS diseased there was a rule which stated that it was enough to be 70 years old in order to get the benefit of home imprisonment. Judges, however, responsible of granting it, usually deny the benefit to those who committed common crimes –homicide, armed robbery, kidnapping- and have scarce resources, but they agree to grant it people with a fortune or relations with the power.

⁵⁸⁸ Source: Página /12, “Menem, preocupado por dónde iba a ir preso”, 8 February 2004.

⁵⁸⁹ Source: Página /12, “Menem, preocupado por dónde iba a ir preso”, 8 February 2004.

latter are the Antiterrorist Unit of the Argentine Federal Police⁵⁹⁰ and the Buenos Aires Squat of the National Military Police, of which they say that *“it is a comfortable, nice place”*. In that unit, *“there is a garden, a dining-room, a cable TV lounge, a study-room where the detainees put their personal computers with Internet access 24 hours a day... they have a good time, considering the serious ness of being under restraint”*⁵⁹¹. Among the people who were detained there are the former federal judge of Dolores Hernán Bernasconi, former secretary of Interior Security Enrique Mathov⁵⁹² and former Ministry of Economy Domingo Cavallo⁵⁹³ –accommodated in an individual cell of 3mts by 3mts.- who *“the first thing he did [...] from his 3-metre cell was to call his children and ask them to take him his personal computer”*⁵⁹⁴. According to a high judicial official, *“originally in the Military Police and the Federal Police there were places for the detention member of the forces. Then, they were temporary places for detainees who were to go on the following day to Court and there was no place in the Court Jail. In Menem times this changed completely: officers, politicians and other prisoners were accommodated there for a long time, even years. What should happen, like with any other inmates, they go under the scope of the Penitentiary Service and in regular jails”*.⁵⁹⁵

The Caseros jail, at the moment out of use –Unit nº16 of the Federal Penitentiary Service- is one of those which had a VIP sector, where former detained policemen, former militaries, former officers or simple “refugees”, as they call prisoners who have enemies, used to live. That part of the jail was the oldest of all the institution and at the same time the most comfortable. There lived 177 off age people and 190 juveniles –in individual cells or for small groups-, who could use public phones without having to queue, they had a study centre, among other facilities. The daily leisure hour usually is extended. Among the people who stayed there are former Constable Juan José Ribelly (accused of the AMIA attack), former judge Juan Carlos Bowe (detained for bribery), Carlos Green (former secretary of the Fight against Narco-traffic), former major of the Army Norberto Bianco and former general Jorge Rafael Videla (both detained for abduction of children of disappeared-detained people during the last military dictatorship).⁵⁹⁶

“Many people think that around the system of preferential detention places revolves a business in which judges, lawyers and accused take part. In other words, many times the privilege is paid and is the result of received favours or in exchange for promises of favours”. In this context, *“The VIP jails are a way of convincing the corrupt person not to talk: “You don’t talk and we ensure you quite a decent place to be prisoner while we try to get you out”*.⁵⁹⁷

In other cases, however, the possibility of getting some benefits forbidden for most of the people under restraint, does not arise from the need to “keep prisoners quiet” nor does it require that these have fluent contacts with the power: it is just necessary to have the money to pay for them.

⁵⁹⁰ Created with the objective of having a safe place for people accused of crimes connected with organized crime, especially terrorism and narcotics traffic.

⁵⁹¹ This description was made by Guillermo Guevara Lynch, attorney of judge Hernán Bernasconi. Source: Roxanova, the news that matter, “Cybermingo”, 4 March 2002 [Http://www.roxanova.blogspot.com/](http://www.roxanova.blogspot.com/)

⁵⁹² Involved in the murder of demonstrators in the Plaza de Mayo during the popular protests on 20 December 2001.

⁵⁹³ Accused of the crime of “aggravated smuggling” for his participation in the weapon smuggling to Ecuador and Croatia.

⁵⁹⁴ Source: Roxanova, the news that matter, “Cybermingo”, 4 March 2002. [Http://www.roxanova.blogspot.com/](http://www.roxanova.blogspot.com/)

⁵⁹⁵ Statement quoted in the newspaper Página/12 “Menem, preocupado por donde va a ir preso”, 8 February 2004.

⁵⁹⁶ Source: Clarín, “Videla se negó a declarar y quedará preso en el sector VIP de Caseros”, 12 June 1998.

⁵⁹⁷ Source: Página/12, “Menem, preocupado por donde va a ir preso”, 8 February 2004. The other are statements made by a member of an oral court who is not identified.

This was evidenced by an anonymous denounce made public in September 2003 in the city of Rosario, province of Santa Fe.⁵⁹⁸

According to the denounce, one of the benefits which can be illegally obtained with money is the transfer and stay in the VIP sector of a jail: *"The price of entering the VIP sector from any other sector of this jail is 300 pesos, but if the prisoner is in a police officer he has to pay 500 pesos for the transfer and 150 every subsequent month"*. Besides the system contemplates possibility of organizing "a special happening, such as a birthday, party or some kind of celebration: if many people come they pay the special price of 10 per person". The service includes the possibility of *"consuming wine for 5 pesos, whisky for 30, cocaine, marijuana and pills"*. According to the denounce, the rates also include conflict settlement among detainees: *"If one has problems with another prisoner from an area and wants to hit him, he has to pay between 50 or 70 pesos and a custody takes him to your area and you can hit him"*. The system of preference of visits is another of the benefits which those who are accommodated in the VIP sector can enjoy: *"VIP prisoners are free all day and have visits from Monday to Monday, from 7 to 19, even though all of them are in preventive prison. The regular prisoners have visits of women on Tuesday and Thursday from 14 to 17 and of men on Saturdays from 9 to 12. When the men leave, at 13 on Saturday, is when the special VIP visit starts"*.

⁵⁹⁸ The denunciation reached the press media through a fax which even told about a schedule of money collection with name and surname of those who collect it. The denounces about privileged treatment to a group of detainees of the jail located in the former Headquarters of Santa Fe and Moreno, who was paying for them, caused that the minister of Government, Carlos Carranza, decided to dismiss the police from the custody of prisoners and place in the Provincial Penitentiary Service instead. Here the following article is followed "Relevaron a policías del cuidado de presos por privilegios pagos", published by the newspaper Rosario/12 on 12 September 2003.

2.5 Armed confrontations and extrajudicial executions

2.5.1 Legal justification of the use of lethal force

Several international treaties of human rights recognise the right to life and protect it against arbitrary deprivation. To name some, the International Agreement on Human Rights states in section 4, paragraph 1 that: *“Every person is entitled to have his life respected [...] No person can be deprived of life arbitrarily.”* Section 6, paragraph 1 of the International Covenant on Civil and Political Rights states that: *“The right to life is inherent to the human being. This right is protected by law. No person shall be deprived of life arbitrarily.”* In addition, the International Declaration of Human Rights stipulates that *“Every individual has the right to life, freedom and security of his person.”* The American Declaration of the Rights and Duties of Man makes use of almost the same words when stating in section 1 that: *“Every human being has the right to life, freedom and security of his person.”*

Every State delegates the use of “legitimate” force in the Police, even though this use is defined by its exceptional features. It is precisely the exceptional and limited status of the force what characterises a State as a democratic state of right. In this kind of States, any abuse of the state coercion is deemed illegitimate. Therefore, the use of force is understood as the last resource which, being limited as regards both quality and quantity, intends to prevent a more serious event than the one caused by the reaction of the state. Police forces, then, should comply with the duties granted to them always within the limits imposed by law, guaranteeing that the opportunity, congruity and proportionality principles are met. Those people in charge of enforcing the law cannot, under any circumstances, make use of illegal practices to reach the objectives set to them.

There are 23 provinces in Argentina, each of which has one force at least. Almost all of them are ruled by the provincial Executive Power through its Government and/or Security Minister or Secretary. The Argentine Federal Police, which is controlled by the federal government, is added to these police forces which only enjoy provincial competence. As a whole, police forces have 170,000 officers approximately. Out of them, about 29,500 belong to the Argentine Federal Police whereas other 45,000 perform their duties in the Police of the Province of Buenos Aires.⁵⁹⁹

According to this institutional structure, Argentine police forces perform the duties of security and judicial police. The security and judicial police duties within the jurisdiction of the Autonomous City of Buenos Aires are under the responsibility of the Argentine Federal Police. Those duties are mainly regulated by the National Code of Criminal Procedure, the Federal Police Organic Law⁶⁰⁰, the Law for the Federal Police Personnel⁶⁰¹, the Internal Security Law⁶⁰² and its respective regulatory decrees. The actions of the police forces of the Province of Buenos Aires

⁵⁹⁹ Source: Pelacchi, Adrián J., *Tratado sobre la Seguridad Pública*; Editorial Policial, Buenos Aires, 2000. For a characterization of Argentine police forces see Part II, section 3.2., below.

⁶⁰⁰ The decree-law 333/58 was issued on January 14th 1958 and published in the Official Gazette on January 30th on the same year. It was later ratified by law n° 14.467 and its annexes 14, 15, 16, 17 and 18, published in the Official Gazette on September 29th 1958.

⁶⁰¹ Pursuant to the Parliamentary Information Department of the Honorable House of Representatives of the Nation, the law n° 21.965 was enacted by the National Executive Power on March 27th 1979. Nevertheless, Rodríguez and Zappietro state that the enactment took place on February 27th 1979 and that the law was published by Agenda on April 4th in that same year. See: Rodríguez, Adolfo and Zappietro, Eugenio; *Historia de la Policía Federal Argentina a las puertas del tercer milenio. Génesis y desarrollo desde 1580 hasta la actualidad.*; Editorial Policial; Bogotá, 1999, p. 436.

⁶⁰² Law n° 24.059 enacted on December 18th 1991, passed on January 6th 1992 and published in the Official Gazette on January 17th 1992.

are governed by the Code of Criminal Procedure of the said province, the provincial Public Security Law⁶⁰³, the Organizational Law of the Police Forces of the province⁶⁰⁴ and the decree-law n°9.550/80 of the Statute of the Provincial Police Personnel⁶⁰⁵.

Apart from the general rules above mentioned, there are a large number of provisions specially intended to regulate the use of the force by Police and security institutions with the objective of protecting human beings' lives. Among them, law n°12.155 states in section 7 the basic principles to which the Police of the Province of Buenos Aires must stick as regards the use of force. This section specifically states in paragraph i) that: "Firearms shall only be used in the case of lawful self defence or defence to third parties and/or under extenuating circumstances which cause serious, imminent and actual danger to the life of people, or to prevent the commission of a crime which may imply that danger, having to act in such a way that damages to third parties are reduced to the minimum extent. Should there be any risk of negatively affecting human life or its integrity, the police officer shall place the preservation of the said judicial good before the success of his actions or the preservation of the property judicial good.

Likewise, the Internal Agenda Supplement n°117 of the Federal Police statuss that the actions of this force shall be guided by the Basic Principles on the Use of the Force and Firearms by the Officers in Charge of Enforcing the Law⁶⁰⁶. Some of its most relevant provisions state that:

General Provision 4: *"Officers in charge of enforcing the law, while performing their duties, shall use non-violent means as long as this is possible before making use of force and fire arms. They shall use force and fire arms only when all other means result inefficient or do not guarantee the achievement of the result sought after."*

General Provision 5: *"Should the use of firearms be unavoidable, officers in charge of enforcing the law shall:*

- a) Act moderately and in proportion to the seriousness of the crime and the legitimate objective sought after;*
- b) Reduce damages to the minimum possible extent and respect and protect human life;*
- c) Make sure that assistance and medical services are provided to the injured or affected people as soon as possible;*
- d) Notify the close relatives or friends of the injured or affected people about the events as soon as possible."*

Special Provision 9: *"Officers in charge of enforcing the law shall not make use of firearms against people except for the cases of self-defence or defence to third parties, danger of imminent death or serious damages, or with the purpose of preventing the commission of a serious crime which puts life under threat, or so as to arrest a person who may represent the said danger and offer resistance to his authority, or to frustrate his escape, and only when less extreme measures have proved to be insufficient to reach those objectives. Whichever be the case, the intentional use of lethal weapons shall only be allowed when it is strictly unavoidable to protect a life."*

⁶⁰³ Law n° 12,154, enacted on July 15th 1998 and partially passed on August 5th in the same year.

⁶⁰⁴ Law n° 12,155, enacted on July 15th 1998 and partially passed on August 5th in the same year.

⁶⁰⁵ Enacted and passed on June 3rd 1980. Published in the Official Gazette on June 16th 1980. Text Ordered by Decree 1068/95.

⁶⁰⁶ Adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in La Habana (Cuba), August 27th – September 7th 1990.

The regulatory framework sets the limits within which Police may legitimately act. Every abuse or transgression is placed in the illegality domains.

2.5.2 Armed confrontations

In the last years, violent practices by security institutions, characterised by an operation which has energetically resisted the democratization process, have not only failed to solve the increasing security problems in cities but also worsened the social violence situation by turning any criminal act into a potential life-death battle. These circumstances are particularly evident in armed confrontations between police and civilians⁶⁰⁷, which often result in a high number of dead and injured people –one of the first remarkable characteristics of this kind of practices (see Annex I, table 17.)

The local figures for dead or injured police officers and civilians acquire their true dimension when they are compared to the figures from other contexts. According to a study carried out by the CELS on this topic: *“The number of deaths in confrontations in the City of Buenos Aires is very far from those verified in countries where public security agencies have developed clear policies on the control of the force, such as Great Britain and Australia. Between 1995 and 1997, Australia suffered the death of only 12 civilians as result of police officers’ shots, whereas the figure for police officers dead on duty increased to 9 during the same period. In the Australian state of New South Wales - whose population doubles the City of Buenos Aires- and where Sydney lies (the most populated city of the country), there were 4 civilians and 3 police officers who died within the same period.”*⁶⁰⁸

As for Argentina, 293 civilians and 88 police officers died only in 1996 and 1997 –a total of 381 people- in confrontations where officers from both the Federal Police and the Police of the Province of Buenos Aires took part and which occurred within the City of Buenos Aires and its outskirts. These figures account for a police operation within the legality margins, where a warlike logic is applied on the basis of the physical disposal of “enemies”. At the same time, it shows a disregard for the lives of both the alleged offenders and third parties present at the spot that may be injured or killed. In police logic terms, the latter are considered ‘side effects’.

Most of armed confrontations occur on the streets of the City of Buenos Aires and mainly in the city outskirts. Often, confrontations take place in very crowded areas of the city and at rush hours. Consequently, there has lately been a large number of injured and dead people who happened to be in the spot and who had nothing to do with the facts they are eventually victims of. (See Annex I, table 18).

However, violence is neither used indiscriminately nor reaches all social strata in the same way: the analysis of the cases shows that the use of lethal force is focused on certain sectors the social imaginary identifies with crime.

One of the important characteristics of confrontations between police officers and civilians is the type of crime which originates the confrontation: it is mainly the case of crimes against property and which are frequently committed on an individual basis. In other words, most of the armed confrontations between police officers and civilians recorded by the press –and which result in the

⁶⁰⁷ By confrontations it is understood those police interventions where the police officer and/or civilian uses a firearm.

⁶⁰⁸ Ales, Cecilia; Donza, Eduardo and Palmieri, Gustavo; “Violencia y enfrentamientos policiales. Civiles y policías muertos en enfrentamientos en los que participaron miembros de la Policía Federal Argentina 1996-2001”; Centro de Estudios Legales y Sociales/CELS; work document; Buenos Aires, April 2002. Available at: www.cels.org.ar.

death of any of the suspects, police officers or third parties- originate because of the alleged commission of a misdemeanour. In many occasions, the shoot-out occurs on the streets, at the entrance of the shop where the suspects were presumably “in fraganti” found stealing, or at close quarters, after police forces go searching them using the physical description given by the theft victim – situation which has led to many identification mistakes.

Confrontations also arise before a ‘suspicious’ attitude noticed by police officers and detected thanks to the so called “police sniff”: it is discretionally used for example when a person marauds a bank; when a car intends to escape from a traffic control and is chased or in the event of running after unarmed people who simply refuse to stop at a control and escape full of panic. These circumstances, which do not necessarily imply the perpetration of a crime or even the intention to commit it, are possible starting points for an armed confrontation on the streets, which frequently results in people’s injury or even death⁶⁰⁹.

On the other hand, there are far fewer cases of confrontations originated by more complex crimes, which are frequently committed by gangs. This circumstance evidences that excessive police action most frequently occurs in those cases where the relation between the forces would allow the use of less extreme dissuading methods than lethal force.

Characterising the civilian victims of these confrontations is not an easy task since official registries are almost inexistent –piece of information which stands as an indicator of the little importance given by the State to these deaths. From the analysis of the recorded cases in the CELS statistical database –on the grounds of the news published in the four largest circulation newspapers of the country⁶¹⁰- it may be noted that the profile of those people dead in confrontations with the police belongs to young men, even adolescents: almost half of the fatal victims – whose ages are known- were younger than 21 years old between the years 2001-2003 (see Annex I, Table 19). Although the socio-economic level of these young people is not generally mentioned in the articles or police communications, it is possible to use some indicators which suggest a concentration of the cases on socially and economically margined youngsters. A

⁶⁰⁹ Rubén Quenchal’s death, at 21 years of age, constitutes a clear example of the tragic results the use of ‘police sniff’ may have. On March 16th 2002, Rubén came out of the tanning-beds shop where he was working to look for a tool in the shop owner’s car in Ramos Mejía, La Matanza District (province of Buenos Aires). He found it difficult to get the car open since it was not his. A police officer from the province of Buenos Aires, Sergeant Jorge Noguera, who was not on duty and not wearing his uniform, thought that the young man was trying to steal the car. He got into the car by the rear door. When seeing the armed man, Rubén believed he was a thief and both ended up struggling inside the car. A woman who saw what was going on called the sergeant major Clemente Cabral who happened to be nearby. The police officer approached and after hearing two gunshots, aimed his gun at Rubén and fired, killing him. The neighbors gathered spontaneously and started protesting, claiming to know the murderers’ names and surnames. Also, they reported that the police officers of the area were trying to cover up the case so as to benefit the involved parties. As for Cabral, chief of the Buenos Aires Police at the time, Amadeo D’Angelo, said that that “*what he did was aberrant, it was a risky and irresponsible action*”. However, nothing was said about the irresponsible actions of Sergeant Nogueira, whose attempt to boast about the ‘police sniff’ originated an incident with a tragic outcome. On April 24th 2002, the guarantee judge from La Matanza, Raúl Ricardo Alí, ordered the processing and preventive detention of the police officers Clemente Cabral and Jorgue Nogueira in connection with Rubén Quenchal’s murder. Sources: Clarín and Crónica, March 17th and 18th 2002; Página/12, March 18th 2002.

⁶¹⁰ News from the police chronicle are analyzed and classified on a daily basis and the numbered copies are kept in folders. Every fact is included in a data base. It is always public knowledge information. The collected chronicles refer to all violence cases which result in civilians’ deaths and/or injuries caused by security institutions officers –or under circumstances where they took part- as well as deaths and/or injuries suffered by the latter. These events are classified according to a typology that comprises different categories: extrajudicial executions and aberrant use of force; deaths or injuries originated in control operations or cases of repression in social demonstrations, in confrontations, in custody, as well as deaths and injuries of civilians and police officers due to operative negligence, or use of the force for particular reasons. The newspapers analyzed are Clarín, Crónica, La Nación and Página/12.

study carried out by the National Department of Criminal Policy⁶¹¹ on the youngsters in conflict with the law reveals that a substantial part of them has not finished primary school⁶¹²; many live in precarious dwellings like shanties, usurped houses, hotels and even on the streets, and only 1 out of 4 lives with both his parents⁶¹³.

The low complexity of the crimes –and even the goods that they presumably intended to steal: bicycles, cars, daily income of small stores from the neighbourhood, etc., - together with the analysed victims' characteristics, clearly show that the use of lethal force by security institutions is centred on the most poverty-stricken sectors of society, and specially on adolescents and young people. The use of firearms –and the resulting people's death or injury- generally occurs during the pursuit of the suspects who, many times, do not represent any imminent danger to the life or physical integrity of the police officer or third parties. Therefore, victims are the result of an abusive use of lethal force rather than officers' negligence, and the deaths are believed to be a natural consequence of police action. It is precisely the victims' social characteristics –i.e., the fact of being a young man and live in a poor neighbourhood- what, according to the perpetrators' criteria, authorize police to carry out this kind of practices. In the light of this reality, there arises a simple and evident conclusion: the abundance of these kinds of cases –as well as their systematic occurrence in different parts of the country- would not be possible without the tolerance and approval of a large part of the judicial branch, executive authorities, people directly responsible for security and, to a large extent, public opinion.

Even though there are recorded cases where the perpetrators are private watchman at houses or shops –many of them former police officers-, several confrontations have police officers as leading characters, mainly officers from the major sergeant bodies, since they are those who perform more duties on the streets.

Little formal education and professional training, low salaries, long working hours, a police culture which conceives the use of firearms as practically the only viable alternative to solve conflicts⁶¹⁴, the war-like operation and the identification of socially and economically margined sectors with crimes are all factors which derive in the abuse of lethal force and jointly discourage the application of the necessity and proportionality principles. There are many examples to account for this situation.

On January 17th 2002 at 2 a.m., two young men of 21 years of age came into the bar "El Balcón" situated in the city of La Plata, province of Buenos Aires, with the purpose of stealing the night incomes. There at the bar was the fire-fighter sergeant major of the Police of the Province of Buenos Aires, named Rubén Jara, and his girlfriend. The small shop was packed with more than 30 customers. According to the testimonies, when the youngsters tried to escape with \$300 and two bottles of cider, there was a struggling with one of the bar owners and one of the robbers fired a shot in the air. It was then when Jara decided to meddle causing a shoot-out inside the bar: the two young robbers were killed and so was Daniel Grassano, one of the bar owners, who got a shot in the chest fired from a distance shorter than two metres. His partner, Daniel Ramos, was wounded in a lung by a 9 mm bullet – the gun Jara was carrying-. One of the customers tried to escape and was shot in his back by the fireman. The situation at the bar became so violent that Francisco Graciano, a regular customer who had taken shelter in the balcony decided to throw

⁶¹¹ Office which is ruled by the National Ministry of Justice, Security and Human Rights.

⁶¹² None of the 321 cases analyzed presents any hint of having started secondary school.

⁶¹³ National Department of Criminal Policy: "Estudio sobre menores en conflicto con la ley penal, año 2000", Buenos Aires, no date. Available at: <http://www.policrim.jus.gov.ar/OtrasInvestig.htm>

⁶¹⁴ For a description of the characteristics of Argentine police and its impact on the practices described, see Part II, section 3.2., below.

himself off, consequently being seriously injured. In his statement, Daniel Ramos said that *“That policeman went nuts, and the disaster could have been even worse if the customers at the bar hadn’t stood still, because at that time the “crazy man” fired his gun at everything that was moving... He didn’t say: ‘Halt, police’. Nothing. He started firing and firing, that’s all there is to it.”* The case reconstruction offered enough evidence so as to preventively arrest the fireman from the province of Buenos Aires for being the alleged murderer of three men: Daniel Grassano and the two youngsters who robbed the place –Julio Ascona and Leonardo Díaz-, and also for the attempt to murder Mario Caballero, the customer who was reached by a shot, and Daniel Ramos, the survivor.⁶¹⁵

On June 13th 2002, Sergio Barbarelli, aged 35, was coming out of his house in Lavallol, district of Lomas de Zamora. When he was about to get into his car, two armed people forced him to take the rear seat of the vehicle while they occupied the front seats, to eventually head for a cash dispenser. Soon afterwards, noticing a suspicious attitude, two police officers from the Buenos Aires Police –Eduardo Córdoba, inspector officer, and Roberto Macua, first officer - tried to identify the occupants of the vehicle who sped up with the intention of getting away from them. Immediately, they started a chase which would end up in the crash of the car they were running after. By that moment, Barbarelli had already been killed in the rear seat of the car; he had received several gunshots. Police argued that they had been fired by the suspects and they had had no other choice but defend themselves. However, witnesses are sure to have seen Barbarelli in the rear seat of the car making desperate gestures to police so that they did not open fire.⁶¹⁶

On November 7th 2003, Daniel Mareco, officer from the Argentinean Federal Police, was coming back to his house in the Buenos Aires outskirts when he was approached by two men who intended to rob him. The officer was not wearing his uniform since he was not on duty at the time. Pursuant to the journalistic description of the event, he revealed his police status once he felt intimidated, took out his gun and fired. None of the aggressors had time to fire and in fact, only one of them was carrying guns. The police officer stated that he had not been able to avoid the violent act and that he had tried to safeguard his integrity before the imminent death threat by the aggressors. However, the officer fired at the armed individual first, killing him with a shot in the chest; and after he had fallen dead on the floor, Mareco executed the other man, who was unarmed, with several gunshots.⁶¹⁷

2.5.3. Extrajudicial executions

2.5.3.1. Extrajudicial executions forged as confrontations

As previously mentioned, while in several cases confrontations evidence the abusive or disproportionate use of lethal force, in many other cases the presentation of facts as ‘confrontations’ is a mechanism used to cover up what really constitutes an extrajudicial execution by the hands of police officers. In most of these cases, the first version of the facts -the one from the police- often states that the confrontation took place while a crime was being committed or suppressed -in many cases it is about a robbery attempt to a police officer who was not on duty-, that the victim was armed and shot or tried to do so in the first place, and that the police acted in lawful defence or with an excess of lawful defence. This is the version exposed to the public opinion even before carrying out any judicial investigation.

⁶¹⁵ Sources: Crónica, Página/12, Clarín and La Nación, January 18th 2002.

⁶¹⁶ Source: Crónica, Página/12, Clarín and La Nación, June 14th and 15th 2002 and Crónica, June 20th 2002.

⁶¹⁷ The policeman was preventively arrested at the local police station while court proceedings for “attempts of theft, armed robbery and homicide were issued”. Source: Crónica, November 8th 2003.

One of the characteristics of this practice is the attempt (many times successful) of producing, modifying or making the evidence disappear, “setting” the scene of the crime in such a way that it will help hold the police version of the events. It is very common, for instance, to ‘plant’ fire arms on the victims and spread bullet shells on the floor. Then they report it to the Police: whenever possible, to the police station where the perpetrator performs his duties. Another constant practice in these cases is the statement of witnesses who are exclusively members of the Police. This ensures that the version of the facts presented by the officer will not be questioned. Doubtlessly, this behaviour seriously hinders the judicial investigation of the crimes. However, and although serious and repeated irregularities arise from the legal proceeding (in many cases expressly), these are not always duly investigated and penalized by the legal officers. On the contrary, it is possible to verify an indulgent attitude from those who are in charge of enforcing the law⁶¹⁸.

Also, threats and intimidations to witnesses, relatives and friends are ways frequently used by the police as a mechanism to hinder the investigation of cases of police brutality⁶¹⁹.

The victims of this kind of practice are teenagers, identified by the Police and neighbours as juvenile offenders or “pibes chorros”^{N.T.}. The mass media of communication describes this diffuse group, for instance, in this way: “It is a prototype of the offender who commits the terrible acts we get to know day by day: recent statistic research projects of the Government show that in most of the violent robberies in the city and in the Greater Buenos Aires it is people between 16 and 21 years old who take part. Specialists consulted by this newspaper state that the profile of the average offender has changed. The age has gone down and they are becoming more and more cruel due to the use of drugs and the possibility of getting fire arms for little money⁶²⁰.

At times, there is a pre-existing relationship between the victim and the perpetrator, whether because the first one acts as a police informer at a local level, or because he commits crimes with the complicity of police officers, or under their pressure. The execution is often preceded by a threat report made by the victim against staff of the police station under whose jurisdiction the killings were later committed⁶²¹.

Even though the profile of the victims is similar to that described in the case of confrontations, the circumstances under which victims and perpetrators come into touch are not identical. Executions are not the consequence of a disproportionate police reaction in the suppression of a crime; the circumstances which precede them are not the same, though in many cases they are not clear either. Many times the perpetrators head for the spot this young people frequent –a park or a particular corner- with the intention of killing them, on other occasions the encounter happens by chance when the officers go searching for suspects after an alert and run into the victim. In these cases, the execution may be the result of a “mistake” or not, the mistake of taking a young person from the neighbourhood for the robber they were after. In any case the event means the murder

⁶¹⁸ On judicial proceedings as regards police violence see Part IV, sections 2, 3 and 4, below.

⁶¹⁹ On this topic, see Part II, section 2.2.2.1, above.

^{N.T.} The phrase “pibes chorros”, very commonly used in Argentina, means almost the same as juvenile delinquents but with a strong connotation of poverty.

⁶²⁰ Source: La Nación, April 14th, 1999.

⁶²¹ The regulation N°3012 issued by the Supreme Court of Justice of the Province of Buenos Aires on October 24th, 2001, and unanimously subscribed, states that during 1999 and 2000, 60 young men under some form of ward of the province’s childhood system, died in “alleged police confrontations”. It also stated that “[...] some [of the victims killed in such police confrontations] had previously reported [in the Report Registry] threats and/or detrimental treatment to their being, imputing them to the staff of the police stations under whose jurisdictions the confrontation later took place.”

of an unarmed person. Executions, unlike confrontations, usually take place in empty ground areas –or in places where there ought to be no witnesses- and early in the morning.

The state negligence in the investigation of this kind of events brings about further discrimination against the victims and their relatives. Facing this discrimination, the relatives and friends of the victims are the ones who try to impel the operation of the state machinery –in fact, the few cases of executions which are being cleared up are in general driven by the work and pressure of friends over justice and the mass media of communication. However, as previously mentioned, the fact that the victims usually live in deprived neighbourhoods and that the perpetrators perform their duties in the same jurisdiction, allows the intimidation and threatening of relatives, friends and witnesses. The cases in which the police station where the perpetrator performs his duties is, precisely, the one in charge of carrying out the homicide investigation, are not few. The difficulties these families encounter when trying to gain access to the mass media of communication –at least to some extent, due to the real or alleged association of the young murdered ones with delinquency- also add to the impunity of this kind of acts⁶²².

Darío Riquelme and Mariano Witis' murders by the hands of the Police of the Province of Buenos Aires took place on September 21st 2000 in the town of Beccar, San Isidro district, province of Buenos Aires. The shots were fired in the framework of a police operation triggered by a bank robbery which was committed by Darío Riquelme and another person, who entered the institution and took Mariano Witis and Julieta Schapiro as hostages. Once the police was alerted, Riquelme and his accomplice got away in a car driven by Schapiro. A police car from the San Fernando Patrol Squad of the Buenos Aires Police headed the pursuit, driven by Sergeant Insaurrealde, who was accompanied by Sergeant Rubén Emir Champonois. As soon as the car where Riquelme and Witis were travelling stopped in an empty ground area –having flat tyres and not being apt to keep on running-, without any noise or movement whatsoever coming from the car, Champonois started to fire at the inside of the car, aiming his gun directly at the rear right window. The car occupants were unable to escape and did not offer any resistance whatsoever. One of the robbers, Riquelme, and one of the hostages, Witis, were killed. Pursuant to the forensic evidence that followed, Champonois had shot the car from a distance between 75 cm and 1.2 m away. Schapiro saved his life miraculously and was taken out of the car and arrested as the alleged “leader of the gang”. Police sustained these charges for many hours until she was finally set free.

Like other cases of police violence, the fact was tried to be presented as a confrontation between police officers and offenders, and the case was entitled as aggravated theft. The version of the Buenos Aires Police states that the robbers had fired in the first place. However, the forensic evidence determined that there had not been any shots from inside the car and that the gun carried by Darío Riquelme had not been used since it was not apt to fire.⁶²³

⁶²² In order to analyze the importance of economic, associative resources and the access to the mass media of communication as incidence elements on the victimization of certain groups, see Part IV, section 5, below.

⁶²³ Sergeant Champonois was held under preventive arrested only 8 months after Darío and Mariano's deaths (during that interval, Champonois killed another minor, Emanuel Monn, aged 16, under very similar circumstances: “planted weapon”; he fired at a 60cm distance without any aggression he needed to defend from). On September 4th 2003, The Criminal Oral Court n°3 of San Isidro, sentenced Champonois to an 8 and a half years imprisonment for the homicide of Mariano Witis, i.e., practically the minimum sentence for crimes of this type. However, Champonois was acquitted by a majority decision on the grounds that it had occurred as a consequence of lawful self-defense. Most of the judges decided that the gunshot which killed Riquelme was justified only by the fact that Riquelme was, apparently, carrying a gun and was suspected of having committed a crime. See Part IV, sections 2.5.2, 3.1.2 and 4.1.2., below.

Although there are some cases, as the ones appearing below, in which the forensic evidence and/or statements from witnesses reveal the irregularities of police actions, the lack of questioning to the police version and the indolence shown by most of the judicial officers lead to the belief that forged confrontations are in fact more than we know of.⁶²⁴

On May 3rd 2002, in an alleged confrontation, Emanuel Salafia, aged 17, was killed by the hands of two police officers from the Buenos Aires Police.⁶²⁵ The autopsy confirmed that Salafia had 10 bullet holes in his back, whereas the van he was driving showed hints of other 50 gunshots. According to the police version, the police officers started the pursuit of a white van –driven by Salafia- and a Fiat car after having received a theft report in the area of Luis Guillón, Lomas de Zamora district, province of Buenos Aires. According to the police officers, gunshots were fired from the two vehicles, so they argued that their behaviour was a consequence of lawful defence. In fact, Emanuel Salafia was shot in his back after having stopped his vehicle on the roadside, at the entrance of a restaurant.⁶²⁶

In the province of Córdoba, at approximately 20.30 on September 23rd 2002, Maximiliano Romero, aged 20, died of a police gunshot in his back. The case was triggered when Raúl Nieto, owner of a grocery in La Falda city, reported to the police that a group of people had taken a packet of biscuits from his store. After the report, police went after the young people on foot. According to the officers, Romero's death, who was unarmed, resulted from a struggling where the young man had resisted to be arrested. This was how the officer charged with murder tried to justify Maximiliano's death, stating that it was a consequence of the victim's aggression. However, witnesses say that there was no struggle whatsoever. Later, the police officer abuse was to be continued with a series of irregularities destined to support the cover-up.⁶²⁷

According to the journalistic account of the events, on February 11th 2002, Miguel Solanés, retired police agent from the Argentinean Federal Police, was driving his car in Villa Lugano neighbourhood, when he stopped at a corner and three armed youngsters approached his car with theft intentions. The retired agent identified himself as a police officer and there was a shoot-out, which ended up in the death of one of the boys, another one injured –who died at hospital some hours later- and the third one who managed to get away.⁶²⁸ However, an investigation carried out by the Office of Coordination Against Police and Institutional Repression

⁶²⁴ On justice reaction to police confrontations see: CELS, "Violencia en las prácticas policiales"; en Derechos Humanos en Argentina Informe 2002. Hechos enero-diciembre 2001; Chapter IV, Catálogos/Siglo Veintiuno, Buenos Aires, 2002, among others.

⁶²⁵ They were sergeant superintendent Roberto Daniel Macua and Sergeant Isabel Ciarlo.

⁶²⁶ Forty one days after Salafia's death, in a police operation in Lomas de Zamora, Sergeant Superintendent Macua killed a hostage by mistake. It was then when the police officers responsible for the death of young man named Salafia were separated from the force. These facts were reported to the CELS by Emanuel's parents, who believe that the murder took place as revenge: two years before, the young man had been kidnapped by police officers who demanded a sum of money to the family to bring him back alive. The two involved police officers were arrested and sentenced to a little more than two years in prison.

⁶²⁷ The murder is investigated by María Alejandra Hillman, who is in charge of the Instruction Prosecution in Cosquín. The investigated officer is the assistant officer Carlos Marcelo Romera from the Police of the Province of Córdoba, who was at first charged with homicide. However, after the witnesses' statements became known, the case was changed into murder. On October 30th 2003, Romero was found guilty of "murder with an excess of the legitimate fulfillment of law and authority" and sentenced to an 8 year and a half imprisonment and the payment of a \$123 thousand fine. The prosecutor had requested 11 years in prison for the crime of "murder aggravated by the use of fire arms" and the family defense, life imprisonment because the young man was "defenseless and treacherously killed". However, the Criminal Court of Cruz del Eje, Córdoba, understood that Romero did not act with fraud, so the case was considered manslaughter since there was negligence or lack of expertise, not the intention to kill. Sources: La Voz del Interior, September 25th and October 25th 2002 and February 10th 2003; Clarín, November 1st 2003.

⁶²⁸ Source: Crónica, "Comisario abatió a un delincuente", 12/02/02.

(Coordinadora Contra la Represión Policial e Institucional, CORREPI) revealed that in fact there had been no shoot-out at all: four witnesses declared that it was a cold-blooded crime, perpetrated by Solanés.⁶²⁹ This man, known in Villa Lugano under the nickname of “Percha”, is full of stories of dry submarine, bribes, executions on streets, etc. Witnesses state that a polarized-windowed car from the police brigade –car which Solanés was used to driving- had gone past the place several times before the shots were heard. The two 17 year old victims, Daniel Barbosa and Marcelo Acosta, were at a square located in the centre of a one-block building complex and were forcefully expelled from there. The witnesses recalled Marcelo’s call for help before being shot in the eye: “*Call my mother, call my mother!*”. Daniel, on the other hand, had come back to the neighbourhood 15 days before, after having spent a time with his father in Lomas del Mirador: he had been absent for a while due to the threats he and one of his brothers had received from “Percha”.⁶³⁰

On September 14th 2002 early in the morning, Roque Sebastián ‘Vita’ Villagra, aged 21, was killed by Federal Police officers in Bajo Flores neighbourhood, city of Buenos Aires. Pursuant to the police version, everything started when police officers from the N°12 police station tried to identify Villagra while he was walking along Cobo Av. According to this version, the young man resisted and ran away, firing his gun at the police officers. The title of the police summary was ‘resistance to authority, firing of a weapon and homicide’. Always taking into account the police version, Villagra had a 9mm calibre weapon which was seized and which had been stolen two months before. Besides, he was accused of having an “*abounding record of arrests*”, a fact which turns out to be really strange if we bear in mind that Villagra was not identified in the police summary, where he had been recorded as a “*masculine NN aged between 23 and 25*”. Contradicting this narration, a witness said that Roque Villagra tried to run away when police intended to arrest him and that the officers scuffed him, put him down on the floor and beat him. Owing to the suspicions arisen by the case, Luis Rodríguez, judge, ordered an autopsy on Roque’s body as well as a ballistic expert report. The results were concluding as regards the irregularities of the police version and proved that, in the alleged confrontation, there had been only one shot –received by Roque, who had the weapon placed on this nape-. Before these evidences, on November 15th, the judge ordered the prosecution and preventive detention of three Federal Police officers.⁶³¹

2.5.3.2 Extrajudicial executions without concealment: death squads

In other cases, perpetrators do not even take the precaution of hiding the execution, becoming real ‘death squads’⁶³² self-chosen for the task of ‘social cleaning’, which consists of the

⁶²⁹ Source: Coordinadora Contra la Represión Policial e Institucional (CORREPI), “Archivo de casos 1983-2002: recopilación de muertes de personas a manos de las fuerzas de seguridad en Argentina”, document which is available at <http://groups.yahoo.com/group/correpi-informacion/>

⁶³⁰ Source: Página/12, April 2nd 2002.

⁶³¹ The police officers are Jorge Villoldo, officer, Valeriano Saucedo, sergeant, and Jorge Smaldón, sergeant superintendent. During the oral trial directed by the Criminal Oral Court n°27, the counselor to one of the officers stated –in spite of the forensic evidence- that the bullet, fired in the air as Villagra was escaping, bounced in a street light to eventually reach the boy, killing him. The three police officers were acquitted. Pursuant to the decision groundings, the Court sustained there were not enough evidences to rebate the confrontation version submitted by the defendants. Sources: Crónica, October 6th 2002; Clarín, October 7th and November 16th 2002; Página/12, October 4th and 8th 2002 and November 16th 2002.

⁶³² The term “death squad” is applied to the groups made up of state and non state agents who execute people, mainly children, in some Latin American cities. These groups report to an organization and have a before planned way of action, characteristics that distinguishes them from the isolated cases of state violence (for example, ‘quick

elimination of those people who disturb the neighbourhood. Not only does this reveal the impunity the perpetrators act with, but it also represents a threat to other potential victims. Gastón Galván and Miguel Burgos's executions stand as the prototype of this kind of practice.

On April 25th 2001, in the boundaries between the districts of San Isidro and San Martín, province of Buenos Aires, the corpses of Gastón 'Monito' Galván, aged 14, and Miguel 'Piti' Burgos, aged 16, were found. These youngsters had received 11 and 6 gunshots each, and had their arms and feet tied up. Both of them showed signs of having been tortured and of a 'coup de grace' in their napes. In addition, Galván had a nylon bag on his head and Burgos was gagged. The corpses were thrown to the roadside.

Pursuant to the forensic evidence, and contrary to what could be expected, the nylon bag in Galván's head⁶³³ had not been used to asphyxiate him but placed on him once he was already dead. This element of the scene was interpreted as a 'message' towards future potential victims.

Short before, the children had filed an accusation of illegal pressure by police officers from Don Torcuato n°1 police station, district of Tigre, before a juvenile court. On that same April 24th, the two victims had been arrested by police staff at a petrol station. Since then, the youngsters were taken to Don Torcuato police station. Their entrance was not recorded in the duty log. Pursuant to the court file,⁶³⁴ at 1.30 on day 25th, two police officers took them out from the place they were arrested in. Their corpses were found at six in the morning. Several officers from the Buenos Aires Police were charged with Galván and Burgos's deaths.⁶³⁵

This case led to the formation in November 2001 of a special prosecutor's team to investigate the deaths of children and adolescents in the San Isidro Department, in the north of the Province of Buenos Aires. A report by this commission⁶³⁶ details the existing relationships between Galván and Burgos' executions and the executions of the other 4 adolescents from the same neighbourhood in forged confrontations: Jorge Guillermo Ríos (aged 16), Angel Blanco (aged 16), David Elías Vera Pinto (aged 16) and Juan Teodoro Salto (aged 18). All of them, who were considered juvenile offenders, had been previously threatened by members of Don Torcuato n°3 police station.⁶³⁷

In spite of the initiated proceedings, only one out of the 15 police officers suspected with the crime was placed under preventive arrest. Eight were suspended and six remained in their offices when a seventh victim was executed in the same district, Claudio Leandro García, who died on

trigger' cases). Far from reporting these groups to the police, the State often protects them, or at least, tolerates them.

⁶³³ Element used for 'dry submarine' practices.

⁶³⁴ This is the account of the journalists. Sources: *Página/12*, October 31st, November 4th and 11th and December 28th 2001, March 3rd 2002; *Crónica*, November 1st and December 27th 2001.

⁶³⁵ The case is conducted by Héctor Scebba, prosecutor of San Martín district and Osvaldo Fernández Gannon, guarantee judge of the same district. The police officers involved belong to Don Torcuato police station, known as "The Critical". In connection with Galván and Burgos's homicide, the defendants are Marcos Bresán, inspector officer, and Carlos Icardo, sergeant; Martín Ferreira, inspector officer, is a fugitive. There were also other people imputed for other connected crimes, such as the illegal deprivation of freedom: Juan Domingo Barrientos, inspector officer, Ramón Acosta, sergeant superintendent, and Eduardo Escobedo, sergeant assistant. Although they are still charged with the crimes, some of them have recovered their freedom. Sources: *La Nación*, February 12th and March 29th 2002, March 12th and April 7th 2002.

⁶³⁶ "Primer Informe en la investigación sobre menores en los departamentos judiciales de San Isidro y San Martín", of the General Attorney's Office of the Supreme Court of Justice of the Province of Buenos Aires, March 2002.

⁶³⁷ See: CELS, "Represión ilegal contra niños y adolescentes", in *Derechos Humanos, Argentina 2001*; Chapter IV; Catálogos/Siglo XXI; Buenos Aires, 2001.

January 30th 2002 by the hands of the same perpetrators than Angel Blanco. Some of the police officers had performed duties of private security in a parallel and illegitimate way⁶³⁸. Within that context, the murderers of the 'pibes chorros' contributed to guarantee security to those who hired the service and, at the same time, increase the efficiency prestige and image of police before the neighbours.

2.5.3.3 Execution of young women related to sexual abuse and tortures

The exchange of favours, protection and impunity among political, judicial and security forces officers turns out to be evident in the cases of women's executions. Here, the feminine status of the victims is linked to the sexual abuse performed by their offenders: the submission to beating, tortures and rape commonly precede the executions. These cases are femicides since they are women's murderers committed by men due to reasons associated to genre and imply violent extreme cruelty practices against the body which are generally inflicted on very young or adolescent women.⁶³⁹

Unlike men's executions, these generally take place outside the public space. They sometimes occur in private domiciles where parties are held and where the victim is maliciously drunk and/or drugged beforehand. The cases of this type which were recorded in the last years happened in small urban areas like provincial capital cities or towns. The chosen victims are usually taken, deceived or by force, to the place where they are raped and murdered after being intercepted at night in an almost empty place like roads, routes. It is very common the presence of an 'accessory before the facts': he is generally a man, an acquaintance of the victim's and any of the murderers', who acts as link between them and who may be present when the young lady is approached, or may simply have informed the perpetrator about the time and place where to meet her. Generally, the corpses of these women are found some days afterwards –in a place other than where the murder took place: woods, roads or parks-, showing evidence of the consumption of toxic substances, physical violence and multiple rapes. The death is frequently caused by overdose or beating.

The victims of these types of executions share some characteristics with those described in the previous practice: they are generally adolescents or young women with a low socio-economic level. In some of the cases, victims do not have any background as regards conflicts with the law or previous relationships with the perpetrators of their crimes; in other cases, like in the murder of prostitutes, this element may also be present.

⁶³⁸ Law n° 12.297, on the activities of legal persons who render private security services in the province of Buenos Aires, states in section 8 that they shall not perform their duties in the private security field. "[...] Those who are presently performing duties at any of the following forces: armed, security, police, penitentiary service or intelligence agencies".

⁶³⁹ On July 7th 2001, in Cancún, México, women organizations from all Latin American and the Caribbean countries gathered and reached the conclusion that it is necessary to include the figure of femicide in the public space and mans of communication. At present, two examples can account for the concept: The Montreal Massacre in Canada and the Femicides of Juárez City in Mexico. In the case of femicide, we are faced with an intention that surpasses the fraud of homicide due to the connotations associated to the different types of violence of the genre that establish a constant of violence against women, ranging from sexual rape, domestic and couple violence, sexual harassment, incest, the use of women in pornography, to name some, as oppression means towards women and taking into account that these modalities are a unilateral proposal from men to women, which becomes a femicide as soon as they end up killing them. See: Latin American and Caribbean Feminist Network against Domestic and Sexual Violence (www.redfem.cl.) Monarraz Frago, a sociologist from Juárez, defined femicide as "the misogynistic killing of women committed by men from their genre superiority. It has to do with the reasons, the injuries inflicted upon women's bodies and social circumstances prevailing at present. For it to occur, it is necessary a complacency of authorities, people and institutions which enjoy power, be it political, economic and social." See: Mujeres en Red (www.mujeresenred.net)

The group of perpetrators is usually made up of police officers and people who outside the institution but linked to the local political power and/or justice. The most important cases of adolescents' executions investigated by justice revealed complicity networks which involve relevant characters in the political arena -or their relatives-, judicial officers and local police's members. The participation of civil servants in the rape and murder of young women may be either direct or restrict itself to cover-up the crime. The operation of these networks and their participation in the so-called "power parties" –where the victim is taken- have resulted in very slow and complicated investigations of the crimes. It is remarkable that, in the cases of women's executions related to torture and sexual abuse, there is a cover-up mechanism which is more lubricated and complex than in other execution cases.

As for these cases, the search for the truth, which is generally driven by relatives and friends at least at a first stage, has sometimes resulted in social movement groups who questioned the operation of those local powers rooted up for decades and their practices of human rights abuses and violations. The first and most remarkable one –at least in public repercussion terms- was María Soledad Morales case, a young student from the province of Catamarca who was drugged, raped and murdered by a group of men who belonged to the provincial power elite in September 1990. The popular demonstrations aimed at clearing up María Soledad's murder for years revealed the complicity existing between the political, police and judicial powers of the northern province of Catamarca.⁶⁴⁰

In spite of the massive social punishment originated by the vents in Catamarca, the operative characteristics of María Soledad's case would repeat themselves during the following years with a worrisome frequency.

On February 6th 2003, a woman who was collecting firewood in a spot called La Dársena, 12 kilometres away from the capital city of Santiago del Estero province, came into some bones, black hair and a girl's body in the woods. The bones belonged to Leyla Bshier Nazar, aged 22, and the body was Patricia Villalba's, aged 26. After months of investigations, it was known that Leyla has allegedly died of overdose at a party where there had been people connected with the

⁶⁴⁰ Early in the morning on Sunday September 8th 1990, María Soledad Morales, who was 17 years old, came out of the Le Feu Rouge disco –in the centre of the city of Catamarca- where her class had held a party. A friend saw her chatting in the street with Luis Tula (her boyfriend, even though he was a married man) who was driving his car at the time. Then she disappeared. Her body was found on Monday 10th in the morning: it lay in a gully at the side of the 38 route half way between the centre and her house in Valle Vielo neighborhood. María Soledad's body was half-naked and had the face deformed by beating. This murder enraged the people from the province, who inaugurated a new type of protest: silence marches. These demonstrations headed by Ada and Elías Morales (María Soledad's parents) and Marta Pelloni, nun, resulted in the destitution of the government led by Ramon Saadi. However, the judicial investigation was always very slow. Before the trial, the case had 7 judges and four titles: 'murder, murder aggravated by the use of drugs, rape followed by death, involuntary manslaughter'. The confusion about what had really happened to María Soledad was shown in the first oral trial of the case, held in 1996: it was suspended on the grounds of partiality suspicions by the court. The second trial took place between August 1997 and February 1998. A fourth of the witnesses confessed they were afraid of rendering testimony. Finally, on the decision day, the court declared that María Soledad had been drugged so that she didn't offer any resistance to participate in a sexual party where Guillermo Luque was present, a son to a national Representative from the Province of Catamarca. There, she was raped and eventually murdered. Tula was an accessory to the rape. Besides, the judges established a compensation for the Morales family, which consisted of \$250 thousand. Luis Luque was sentenced to 25 years-imprisonment on the grounds of "rape followed by death because of drugs consumption" and Luis Tula received a 9 years sentence as 'accessory to the rape'. The decision went even further, making two Luque's friends responsible for the death as accessories and demanding for 33 judicial proceedings to be filed, on the grounds of 'perjury' -a brother and a cousin to Ramon Saadi, former governor, among them- and others because of 'covering it up'. At present, none of these investigations is under study. Luque's friends were dismissed as well a group of police officers suspected of covering-up the guilty parties. The 33 witnesses charged with lying were not even called for testimony.

provincial power of Santiago del Estero. A reserved identity witness declared before judge María del Carmen Bravo that both the son and a nephew to the Intelligence Chief of the province, former police agent Antonio Musa Azar, were present at the party apart from the youngest child of the deputy governor of the province of Santiago del Estero, Representative Carlos “Polo” Anauate and Gilberto Perduca, the province Ombudsman. The judicial investigation stated that Patricia was kidnapped, tortured and killed by a group of police officers who reported to Musa Azar, police agent. The motive of the crime was clear: the woman knew how Leyla had died. Due to traces of exotic animals bites found in Leyla’s bones, it was also known that her corpse had remained at Musa Azar’s private zoo for 20 days. Patricia was tortured in a shed within the same zoo, tortures which aimed at knowing the information Patricia Villalba had about Leyla’s death. From there, together with Leyla’s ripped remains, the already dead body was taken to La Dársena.⁶⁴¹ As what happened in Catamarca years before, the national scandal brought about by Leyla and Patricia’s murders derived in the questioning of the abusive exercise of power during years by the Juárez couple: Carlos and de, Mercedes ‘Nina’ Aragonés, current governess of the province.

On February 4th 2001, in the coastal city of Miramar, province of Buenos Aires, Buenos Aires police officers kidnapped, raped and killed Natalia Melmann, aged 15. Natalia had been last seen alive as she was coming out of a disco, accompanied by Gustavo ‘Gallo’ Fernández. Her body was to be found four days later, with no signs of life, in the woods known as Vivero de Miramar. According to the reconstruction of the judicial investigation, the adolescent had been forcefully put into a Miramar police car in the morning of the crime. There were two agents in the car, who were on duty that night: Oscar Echenique and Ricardo Suárez.⁶⁴² There was also another car driven by a police officer in ordinary clothes, Ricardo Anselmini. Natalia might have been taken to a small shanty in the countryside used as ‘aguantadero’^{NT} by police, where she was wildly beaten, raped and strangled.⁶⁴³ After the murder, the police performed several duties to cover up the crime. However, the witnesses’ statements and the DNA tests on the semen found in the victim provided the necessary evidence to convict the authors.⁶⁴⁴

⁶⁴¹ The principal detainee for these double crime is the former Santiago del Estero Chief of Intelligence, Antonio Musa Azar, charged with ‘four times aggravated murder by malice aforethought, price or promise of payment – for the perpetrators – with two or more accessory before the facts and *criminis causa*’. The *criminis causa* status is given by the fact that there a crime was instigated –Patricia Villalba’s one- to hide another – Leyla Nazar’s. Also, there are other people temporarily arrested: the former provincial Representative Anauate, around 20 provincial police officers –agents and officers - and the first judge of the case. On February 14th 2004, the detention of Antonio Musa Azar Jr, known as ‘Musita’, an university student aged 22 and who had already been arrested in this cause due to ‘perjury’ was ordered. The serious irregularities occurred during the process and the illegality and corruption networks undisclosed by this case, originated the demand of the province judicial intervention by Human Right Organizations and relatives of the victims. The case is currently at La Banda court, in charge of Judge María del Carmen Bravo. Sources: Página/12, February 6th; November 12th and 20th; December 4th 2003; January 5th 2004; Crónica, February 8th, November 10th, 12th, 18th and 27th 2003; January 17th 2004; Clarín November 10th, 11th, 16th and 19th 2003; January 3rd and 7th, February 16th 2004; Nación, November 6th, 19th and 25th; December 11th 2003.

⁶⁴² Both of them had a criminal background: Echenique was charged with a judicial case on illegal pressures investigated by Mar del Plata n°4 Prosecutor’s Office. This case had led him to be under preventive availability. Suárez had an administrative inquest because of beating a woman. Source: Página/12, June 30th 2001.

^{NT} Place used by police to perform illegal practices such as beating, torturing, etc.

⁶⁴³ Five months before there had been two murders under the same circumstances some kilometers away from where Natalia died: the victims were Débora San Martín and Marlene Michiensi, who were both 16, fair-haired, brown- eyed and taller than 1,70m: all particulars which are similar to Natalia’s. They were beaten almost in the same way and also sexually abused. The three of them died of strangling with a lace. Like in the Melmann case, Débora and Marlene’s bodies were found in a place other than where the crimes were committed.

⁶⁴⁴ Magistrates from the n°2 Criminal Oral Court found the Buenos Aires Police officers –Suárez, Echenique and Anselmi- guilty of the crime of ‘illegitimate deprivation of freedom aggravated by aggravated sexual abuse and three times aggravated murder by malice aforethought, committed by two or more people in order to cover up another crime’ The three of them were sentenced to life imprisonment. Gustavo Fernández –first suspect of the crime- might

Between mid 1996 and the early 1997, in the coastal city of Mar del Plata, province of Buenos Aires, thirteen women disappeared. The series started with the murder of the Uruguayan artisan called Adriana Fernández, whose naked dead body was found on July 1st 1996. Some months later, María Esther Amaro was found dead at the side of route 55: the word “bitch”, carved with a knife, could be read on her back. In January 1997, the legs and left arm belonging to Viviana Espíndola were found, and by the beginning of May, Mariela Giménez and María del Carmen Leguizamón’s mutilated bodies. Since then, crimes continued systematically: Ana Nores, Patricia Prieto, Silvana Caraballo, Claudia Romero, Mirta Bordón, Sandra Villanueva, Mercedes Almaraz, Verónica Chávez: all women who worked as prostitutes in an area known as La Perla and who disappeared within less than a year. Only five of them could be identified from the remains of their sectioned bodies, found at the side of provincial routes and roads. The rest of the bodies have not been found yet. The means of communication quickly became interested in the case, which enjoyed high repercussion for a long time, and spread out the police version under which the perpetrator was a serial killer. However, “*the crazy man from the route*” –term applied to this man by the Mar del Plata police first and later by the mass media and public opinion- was never to be caught.

Four years after the first disappearances, Judge Pedro Hooft, due to some hints which arose from the investigation, ordered a series of search warrants and phone tapping practices which would clarify the case: the diary of Verónica Chavez –who disappeared in January 1998- contained personal information of politicians and officers from the Judicial Power. The investigation on the judicial connections of the case was focused on Mar del Plata federal prosecutor García Berro, whose telephone numbers recorded hundreds of calls to the prostitutes’ cell phones and to the brothels they worked in, as well as to the police station 1^o of Mar del Plata Police. This and other elements would quickly prove that, in fact, there had not been any “crazy man of the route” but that the crimes were under the responsibility of an organization integrated by civilians and Buenos Aires police officers in service who managed a prostitution network.⁶⁴⁵

In the first place, the judge ordered the arrest of a group of police officers on the grounds that “*at least there were eight officers commissioned to street services of the IV Regional Unit of Mar del*

have acted as accessory before the facts. The Justice considered him principal accomplice and sentenced him to 25 years in prison. While the sentence was read, the police officers’ relatives threatened the Melmann’s to death and sang intimidating songs. Without detriment to the above mentioned, the victim’s relatives and friends claimed the immediate arrest of another police officer, currently in office, who was involved in the crime, and a new trial intended to clarify who the secondary accomplices were and the political and police cover up. Natalia Melmann’s relatives and friends performed an honor rendering and justice claim march, where they asked for the confirmation of the judicial decision, appealed by the Buenos Aires police officers and currently under the consideration of the Buenos Aires Cassation Court. Sources: La Nación, February 9th and 10th, June 5th and 27th 200; March 19th, September 28th and October 2nd 2002, April 4th 2003; Página/12, February 9th and 10th, June 30th and July 27th 2001; April 22nd and September 28th 2002; February 2nd 2004; Clarín, February 9th, June 30th and August 15th 2001; March 21st 2002.

⁶⁴⁵ This phenomenon has also been recorded in other places in Argentina: on January 26th 2004, Sandra Cabrera, head of the union of sexual workers, was found murdered in the city of Rosario, province of Santa Fe. Four days before, the union leader had filed a very serious blackmailing report to the justice against Rosario police officers. She was killed by a shot in the nape on the street, two blocks away from her home. The N°9 instruction judge from Rosario, Carlos Carbono, issued a warrant of arrest against Sergio Bermejo, officer, a sergeant who was removed from the Public Morality department of the police of the Santa Fe province in September 2003 due to a report made by Cabrera, and who is now rendering services in the Staff Department. This is the police officer charged with being forcefully ruffian against a 29 year-old woman who, being accompanied by Cabrera, reported him before court on the Friday previous to the crime. A friend of Cabrera’s, who also works as a prostitute in the area, said that both she and Sandra were under death threat by a senior Public Morality officer. According to this woman, that policeman had said that “we would end up being shot in the head”. Nación; January 29th and February 2nd 2004; Clarín, January 30th and February 2nd 2004; Página/12, January 28th, 29th and 30th and February 3rd 2004.

Plata, the Investigations Brigade and the N°1 police station who co-ordinately participated in the commission of several crimes, particularly connected with prostitution, its promotion and protection".⁶⁴⁶ All the people arrested were also suspected of having participated in the disappearance of three out of the thirteen women: Ana María Nores, Silvana Caraballo and Verónica Chávez. Since the turn in the investigation of the case which stated the absence of a serial killer and focused on a group of police and judicial officers from Buenos Aires, the treatment received by the investigators also changed: the former chief of police of the Mar del Plata Department declared before the judge that *"we were followed by patrols when we went searching for information, and, in order to hinder our job, they made our travel expenditures difficult to be collected"*.⁶⁴⁷ Due to the obstacles to the investigations placed by members of the provincial police, the judge worked jointly with instructors from the General Attorney's Office of the province and officers from the National Gendarmerie, without any Buenos Aires police officers. In August 2002, the federal prosecutor of Mar del Plata, Marcelo García Berro, was charged with concealment and perjury.⁶⁴⁸

2.5.3.4. Executions of demonstrators

People killed in the context of public demonstrations associated with social protest is another of the shapes assumed by extrajudicial executions in Argentina in the last years. In these cases, the deaths occur as a consequence of the use of lead bullets fired by security forces against the demonstrators –who often include children and old people-. The execution of demonstrators may happen at random, when police shoot indiscriminately at a crowd, or may occur after a deliberate pursuit of the victims with the intention of killing them. Should this be the case, security forces take profit of the violent situations triggered within social demonstrations to 'eliminate' social militants who were previously identified and located or to 'settle things down' with some people present at the demonstration.

Of course, these kinds of executions occur in the public space, where social demands are jointly and collectively expressed.

The legitimacy of the use of lethal force to control a public demonstration is subjected to a series of regulations. In the city of Buenos Aires, the Federal Police is the one in charge of keeping public order. Section 142 of decree 333/58 states that in *"[...] the public meetings authorised by the Federal Police, this force shall bind itself to keep order, guaranteeing the tranquillity and security without any intervention except for the cases when specially stated crimes or minor*

⁶⁴⁶ Source: Crónica, "Un efectivo procesado por crímenes de prostitutas", December 3rd 2003.

⁶⁴⁷ Source: Clarín, "Una carpeta perdida aportaría datos sobre corrupción policial", September 5th 2002.

⁶⁴⁸ By early December 2003 –in the case initiated in November 2001, where Ana María Nores, Silvana Caraballo and Verónica Chávez's disappearances and deaths are investigated- Hooft, the judge, summoned one of the eight arrested policemen who had directly participated in two of the crimes to declare: he was Alberto Iturburu, officer, so far accused –like the rest of the arrested policemen- of the crimes of "conspiracy" as the organizers of a prostitution network and "blackmailing", since they asked for bribes to those girls they exploited in exchange of "protection". However, by late December 2003, the Criminal Court of Mar del Plata ordered the freedom of four policemen: Juan Luis Vulcano, Fernando Santandreu, Miguel Valledor and Armando Arandaque, charged with the crime of "disappearance of people with the resulting presumptive homicide" –on the grounds of not making progress in the investigation "as regards their probable participation in the events they are charged with". Daniel Iglesias and Horacio Pastor, commissioners; Linés Avala, Oscar Lizarrada, Roberto Shiarkey and the already mentioned Alberto Iturburu, officers, are still under arrest. Judicial officers do not discard the fact that, behind the crimes and disappearances of Mar del Plata, which were at first tried to be attributed to a presumptive serial killer, there is a gang devoted to the white slave trade, drug smuggling, with ramifications in different parts of the country. Sources: Página/12, December 3rd 2003; Clarín, October 6th 2001, August 10th, 16th and 18th; November 22nd; December 12th and 20th 2002; April 10th and December 3rd 2003; Crónica, December 3rd and 18th 2003; La Nación, December 18th 2003.

*offences were committed [...]". In 1999, the President of the Country, by means of decree 150, established that "[...] the Argentine Federal Police [shall] take to the corresponding police station [...] those who perform any of the following actions, among others: [...] c) Those who perform crowded meetings in detriment to the tranquillity of the population or to the offence of a certain person".*⁶⁴⁹

In the international sphere, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials acknowledges, in Principle 12° the right of all people to take part in lawful and peaceful meetings and states that governments and officers in charge of enforcing the law shall reckon that force and firearms can only be used in conformity with the 13° and 14° principles. The first of them states the proportionality, exceptionality and necessity principles as regards the use of the force, in either lawful or unlawful demonstrations. As for violent demonstrations, the rule is to refrain from using firearms although it states the capacity to use them to the minimum possible extent when less aggressive means are not viable and only in the following cases: self defence or other people's defence, risk of death or serious injuries, to avoid the commission of crime which implies a threat to life, to arrest the person representing that risk or to frustrate his escape.

A recent study from CELS intended to assess the State actions against social demonstrations states that the violation of the proportionality, exceptionality and necessity principles in the use of the force in the last years *"[...] is linked to most of the cases where obligations to respect human rights are violated [...] and in almost all cases security forces have appeared making an informal use of the force within the context of social conflicts. The level of the intensity of the intervention has not been respected, there have not been any previous warnings and the exceptionality in the use of lethal weapons has not been respected either. The orders and commands structure [...] has many times improvised his actions without any clear action guidelines [...]"*.⁶⁵⁰

The victims' characterization is unavoidably related to the context where executions are carried out, that is to say, the road blockages and the mobilizations of groups of unemployed people. The broadness of the unemployment phenomenon in our country makes it difficult to describe this group: it is made up of both young and adult people, men and women, inhabitants from urban areas and small towns of the inner part of the country. However, their members share a series of basic features: they have been left aside the labour market and have slim chances of getting into it again; they are undergoing extreme poverty situations and are forced to make their situation public for their claims to be heard.

The repression of social demonstrations was in charge of the police forces –both the Federal Police and the rest of the provincial forces- and sometimes the National Gendarmerie.⁶⁵¹

Generally speaking, the repressive actions by security forces –even when they do not meet the proportionality, exceptionality and necessity principles as regards the use of the force and when they have used firearms causing death and injuries- are endorsed at both a political and judicial level. The political power has emphasized the responsibility of the demonstrators' groups as

⁶⁴⁹ Pursuant to section 1. Regulation dated March 3rd 1999 and published in the Official Gazette on March 8th.

⁶⁵⁰ CELS; El Estado frente a la protesta social 1996-2002, Chapter IV: "La represión de la protesta social", p. 105-155. op. cit.

⁶⁵¹ The National Gendarmerie is a militarized security force with internal security duties which depends from the National Executive Power through the Ministry of Justice, Interior Security and Human Rights. It is basically responsible for the land borders security. On the National Gendarmerie participation in domestic security duties and its militarization see CELS, "Inseguridad policial y otras formas de violencia institucional" in Derechos Humanos en Argentina. Informe 2002-2003, Chapter V, op.cit.

triggering factors of the repressive response, a priori clearing the security institutions up from any responsibility, or even denying the existence of abuses.⁶⁵² As for the reactions of the judicial sphere, the lack of diligence in the proceedings has been frequently noticed or certain guarantees such as the independence and impartiality of the decision making body have been unfulfilled – for example, when the same judge that ordered the repression is in charge of conducting the investigation to determine whether the repression was lawful or not, or in those cases where the security force repressing the demonstration eventually assists the magistrate in the instruction period.

On the other hand, there have not been such violence levels in the numerous social demonstrations carried out by the mid-class. Savers marches started in December 2001 claiming for the devolution of bank deposits locked up in the 'corralito'^{NT} and they continued for months. The people who participated in them were bank deposit holders, mainly from the middle class. These demonstrations took place every Monday, Wednesday and Friday for more than a year. Practically, no injured people⁶⁵³ were recorded; neither did any violent repression by the security forces.

The repeated violations to the proportionality, exceptionality and necessity principles as regards the use of force and firearms within the context of social demonstrations generated hundreds of dead and injured people in the last years. Below we will explain some of these cases:

On June 26th 2002, four organizations of unemployed people promoted a 'picket' to block the five main accesses to the city of Buenos Aires. The objective was to express their rejection to the economic policy and get an official answer to their claims: social schemes, the handing out of food to the neighbourhoods and Raul Castell's freedom, leader of the Independent Movement of Retired People (*Movimiento Independiente de Jubilados y Pensionados*). Due to this, there was a huge spread of national and provincial security forces.⁶⁵⁴

At noon, more than two thousand demonstrators tried to take over Pueyrredón bridge, which joins the Federal Capital with Avellaneda District, province of Buenos Aires. The security forces at this spot -50 Infantry officers, 60 officers from Grupo Marea of the Buenos Aires Police, 50 members of the Navy Albatross Special Group and 40 Federal Police officers- immediately repressed the demonstrators with teargases. At the same time, according to witnesses, gunshots were heard, which were supposed to be rubber bullets. In panic, most of the picketers searched for shelter at Avellaneda railway train station. There, the violence of the clash originated confrontations between activists and police officers.

At the lounge of the train station it was found the corpse of Maximiliano Kosteki, who had been shot down 100 metres away from the station. Later, another "piquetero", Darío Santillán, was killed at the very same lounge. Eventually, it would be found out that the two men –members of the Aníbal Verón Unemployed Workers' Movement (*Movimiento de Tabajadores Desocupados*,

⁶⁵² Sometimes, there have been different responses by political officers within the same government, or even within the same area, as regards the responsibility of the security forces for the violent repression of a social demonstration.

^{NT} Restriction imposed by the government to bank deposit holders on the withdrawal of money

⁶⁵³ An exception to this was a woman who was hit by a glass that had been thrown from a building. She only needed some stitches. Source: La Nación, April 29th, 2002. From the study carried out by the national press from December 2001 up to the present, there was no other news which accounted for police repressions to savers or people injured during the hundreds of demonstrations that were performed. The only recorded case was the one mentioned in this note.

⁶⁵⁴ According to the people in charge of the operation, two thousand officers were involved from the Federal Police, Police of the Province of Buenos Aires, Gendarmerie and Infantry. Source: Agencia DyN, June 27th 2002.

Corriente Aníbal Verón), aged 24 and 21 respectively- had been killed with rifle steel pellets, unloaded by officers from the Buenos Aires Police.

The first official reaction to these killings was to subscribe the police version of facts which was made public by Alfredo Franchiotti, the Buenos Aires Police Agent in charge of the operation. They asserted that police and security forces had only used rubber bullets and that the two demonstrators had died as a result of the confrontations between the groups of picketers.⁶⁵⁵ In addition, Juan José Álvarez, Interior Security Secretary, stated that aggression had been started by picketers. He added that the demonstrators “*acted in a violent and irresponsible way*”⁶⁵⁶

On June 27th the autopsy revealed that the demonstrators were killed with rifle shots –weapons carried by Franchiotti and seven of the officers under his orders-, with steel pellets, point-blank, at a distance shorter than 10m. The agent, who had asserted he had only fired rubber bullets at a 100 m distance, was arrested on that same day. Two days later, Alejandro Acosta, sergeant, and Lorenzo Colman, sergeant major, both from the Avellaneda Commando, were also arrested.

Then the Government adopted a different position. The governor of the province of Buenos Aires, Felipe Solá, stated that Franchiotti “*had lied to him*”.⁶⁵⁷ Also, some journalistic documents, including films and photographs, which placed Franchiotti in a compromising position as regards Santillán’s murder were published.⁶⁵⁸ By the beginning of June 2002, it was proved that the shots that put an end to Maximiliano Kosteki’s life had also been fired by police officers from the Buenos Aires Police.⁶⁵⁹

As a consequence, Ricardo Desgastaldi and Edgardo Beltracchi, chief and deputy chief of the Buenos Aires Police respectively, were removed from their offices. A few days later, the chiefs of the Lomas de Zamora Police Department, with competence over the involved police officers, were also removed from office and Luis Genoud, the Security Minister of the province of Buenos Aires, was substituted on June 30th by Juan Pablo Cafiero, who promised to clear the Buenos Aires Police up.

⁶⁵⁵ Source: Clarín digital, June 27th 2002. Available at: <http://www.clarin.com.ar/>

⁶⁵⁶ Source: La Nación On Line, June 27th 2002. Available at: <http://www.lanacion.com.ar/>

⁶⁵⁷ Source: Clarín Digital, June 28th 2002. Available at: <http://www.clarin.com.ar/>

⁶⁵⁸ Sergio Kowalewski, photographer, assistant to Madres de Plaza de Mayo and other human right organizations, told *Página/12*: “*the constable who then appears at Fiorito [hospital] without his cap on, entered the lounge of the station firing his gun together with another officer [...] and shot him in the back at a 5 m distance; later I learnt he was Darío Santillán*”. (*Página/12*, June 28th 2002). It was then revealed that Santillán had been shot by police officers (Franchiotti himself among them) while he was trying to help Kosteki –who was already dead- and dragged to the streets where he eventually died.

⁶⁵⁹ Franchiotti, constable, and Alejandro Acosta, officer, are charged with Maximiliano Kosteki and Darío Santillán’s ‘murder aggravated with malice aforethought’ and with ‘attempt of aggravated murder’ to seven demonstrators. The date when the n°7 Criminal Court of Lomas de Zamora will hold the oral public trial has not been fixed yet, even though it is not expected to be before 2006. At the time of the charges, the prosecution concluded that Franchiotti and Acosta murdered Kosteki and Santillán according to a joint plan which was even larger. There were 33 people injured by lead bullets and the chase took more than 20 blocks from the place where the repression had started. The Buenos Aires police officers Lorenzo Colman, Carlos Quevedo, Héctor de la Fuente, Gastón Sierra and Félix Vega were charged with ‘cover-up aggravated by his civil servant status’. Celestino Robledo, an officer who participated in the repression holding an Itaka even though he had retired from the Buenos Aires Police many years ago, will also be brought to trial. In May 2004, the Appeals and Guarantees Court of Lomas de Zamora revoked the acquittal of the former chief of the Lomas de Zamora Police Department, Constable Osvaldo Félix Vega, on the grounds that he was also responsible, either by action or omission, for the repression to the picketers in the Pueyrredón bridge. Source: *Página/12*, “El asesinato de Kosteki y Santillán avanza sobre un ex jefe policial”, May 11th 2004; *El Día*, “Masacre del Puente Avellaneda: Los implicados, a juicio oral y público”, June 3rd 2004.

Most of the supermarkets at the city of Paraná, province of Entre Ríos, were looted between December 19th-20th 2001, in the framework of the social demonstrations previous to president Fernando de la Rúa's fall.⁶⁶⁰ In general, the police did not know how to act in an organized way: they tried to come to an agreement at first and soon after they were firing rubber bullets. Violence left hundreds of injured people and Eloisa Paniagua's death as a consequence.⁶⁶¹

Eloisa Paniagua (aged 13) died on December 20th while she was trying, together with her family, to take some products from a supermarket near the Maccarone neighbourhood, located on Moreno and Salta streets in the city of Paraná.⁶⁶² None entered the store and were chased by police cars and armed men on foot, all of whom were firing rubber bullets. According to *El Diario*, children ran back to their neighbourhood being chased by police firing at them. When they were further than 3 blocks away, approaching the Maccarone neighbourhood, a group of approximately 50 people, with the intention of taking a short cut, crossed the Berduc park which belongs to the Education General Council. After them, in an absolutely illegal way, which was disproportioned against civilians who ran away unarmed with the intention of getting back home, a police car from the n°8 police station, driven by sergeant major Silvio Martínez, entered the estate. This man took his service firearm –a 9mm gauge already identified and seized in the case - and fired at those who were escaping. One of the bullets reached Eloisa's head, bursting her cranium out. Due to the demands of those who were escaping together with the young girl, the police officer himself put her into the car and took her to San Roque Children's Hospital. She died there a few minutes after.

The police version of the facts states that the bullet which killed Eloisa bounced or that the police officer did not mean to fire. This is absolutely contradictory to the statement of various witnesses given in the case, who made sure to have seen the police officer firing at those who escaped.⁶⁶³

On October 9th 2003, in the town of Libertador General San Martín, province of Jujuy, there was a mobilization to claim for the clearing up of Cristian Ibáñez's death.⁶⁶⁴ As they were going past the N°39 police station –place of Ibáñez's presumed suicide- incidents between demonstrators and provincial police officers started to occur. From the inside of the police station, a projectile had been thrown at the demonstrators, who reacted aggressively against the police station: the police repressed the crowd by attacking them with sticks, rubber and lead bullets. Three bullets reached Luis Cuellar, aged 19, who was an activist of the *Corriente Combativa y Clasista* –like Ibáñez- causing his death.

⁶⁶⁰ Source: *El Diario de la ciudad de Paraná*; December 20th, 21st, 22nd and 23rd 2001.

⁶⁶¹ See CELS: *El Estado frente a la protesta social, 1996-2002*. Chapter IV "La represión de la protesta social"; op. cit.

⁶⁶² Source: *el Diario de la ciudad de Paraná*, December 21st 2001.

⁶⁶³ The "dermotest" evidence had a positive result in Martínez and the one carried out on the regulation issue firearm revealed details regarding its use. Information provided by Rosario Romero, counsel to The Paniaguas.

⁶⁶⁴ Cristian Ibáñez, 20 years of age, was an activist of the *Corriente Clasista y Combativa* (CCC). He was arrested on October 3rd 2003 for being presumably drunk, but he had eventually to be seen at Oscar Orias Hospital due to a cut on his head. Police said that he had wounded himself with a bottle. Later, Ibáñez was taken to a cell where –always according to the police version- he hung with the lace of his trousers. Some witnesses provided a different account of the facts. Ibáñez would have been arrested when coming out of a disco called *Tranzas*. Police officers would have beaten him and taken him to the police station unconscious. There are many hints which allow suspecting of the police version: the bottle Ibáñez would have used to hit himself on the head was never found; there are witnesses who saw or heard the violent beating given to the young man by police officers once he was arrested; the photographer was called 15 minutes before the stated time of death to photograph the cell, but everything had been washed out by the moment he arrived. Sources: *Página/12*; October 4th, 13th and 20th; November 20th and December 19th 2003; February 5th 2004; *Clarín*, October 10th and 12th and December 8th 2003.

A sergeant and a sergeant major from the provincial police were arrested for Cuellar's death. The six police who were on duty at the police station the night when Ibáñez was found hang were also arrested. These two deaths resulted in the resignation of the Chief of the Jujuy Police, the retired colonel Carlos Carrizo Salvadore. Justice has not managed to determine whether Cristian Ibáñez committed suicide or was murdered by police yet.

Graciela Acosta, a human rights activist, was killed on December 19th 2001 near La Gallega supermarket, in Villa Gobernador Gálvez, province of Santa Fe. At approximately 5 p.m., she and a friend arrived there looking for their children. Two blocks before the supermarket they stopped their way because they saw a crowd of people asking for food and some disturbances. They soon found Graciela's son, who refused to go back home. Suddenly, a group of police officers started advancing firing their weapons. One of the journalists present at the spot, Eduardo Nocetti, stated that, due to the way the police officers were shooting, he approached the officers to ask them if they were using rubber bullets. The police officers replied "[...] *There's no way to stop these niggers unless we use lead*".

According to the story told by Graciela's friend to the Non Governmental Investigating Commission (*Comisión Investigadora No Gubernamental*)⁶⁶⁵ "[...] *she told me 'they are firing towards here' and I saw her fall, kneel down and with stiff arms. They were approximately 35 m away. One was shooting with his arm stretched out, using his regulation issue firearm.*" The victim died in the Sanitary Centre (HECA) after being in agony for more than three hours. The Instruction Court ordered forensic evidence on the bullet which was taken out of Acosta's body and asked for the testimony of witnesses, but the author's identity has not been established yet. The witnesses were repeatedly intimidated.⁶⁶⁶ The proceedings destined to clear the crime up were in charge of the Chief of Operation until late February 2002.⁶⁶⁷

Juan Alberto Delgado, aged 28, was killed on December 19th 2001 as he was waiting for food to be handed out on Necochea and Cochabamba Streets in the city of Rosario, province of Santa Fe, together with other 200 people. Witnesses state that the repression started when the people surrounded the supermarket owner's car, in the belief he had the food sacks. Police cars from the Radio electrical Commando entered at high speed. They had the doors open so that the police officers could fire in the air as they were moving on. The demonstrators were trapped between the police cars and the previously arranged cordon of officers, who started hitting them. Delgado died under confusing circumstances. The several testimonies contributed to the case and the Non Governmental Investigating Commission identified a police officer under the nickname of 'Bull' as the author of the shots which killed him. Delgado had been trying to escape from the repression when he was thrown down to the floor by 'Bull' who put his bludgeon between his calves. As Delgado tried to stand up, the police officer attempted a shot with his Itaka, which had run out of bullets. As soon as he noticed it, he took a gun from under his clothes and fired at him. Delgado's brother said that the police officer fired at him because 'he had sworn to do so' since they had already had an incident some years before. Another witness said that, before shooting, 'Bull' said: "*Here I have you, dog*". The autopsy showed that Delgado had firearm shots –eight in total- and

⁶⁶⁵ Specially established to reach an impartial clear up of the deaths that occurred on December 19th and 20th in the province. Made up of several social representatives, including the National University of Rosario and the *Coordinadora de Trabajo Carcelario* (CTC).

⁶⁶⁶ Graciela's friend, Mónica Cabrera, is a well known activist. For many days, an officer from Special Operations Troops (*Tropa de Operaciones Especiales*, TOE) stayed at the door of her house. Also, some shots were fired there in the morning. And in many occasions, "*she was followed by a police car who stopped by her and frightened people away*". On threats to witnesses of police violence events see Part II, section 2.2.2.1., above.

⁶⁶⁷ See CELS: *El Estado frente a la protesta social 1996-2001*, Chapter IV, "La represión de la protesta social", op. cit., p. 218-9.

serious beatings and wounds from rubber bullets. The judicial case is entitled as murder, but no police officer has been charged with it.⁶⁶⁸

Alberto Márquez, 57 years of age, was killed on December 20th 2001 in the downtown area of the city of Buenos Aires.⁶⁶⁹ His death occurred as the result of lead bullets. The forensic evidence in the judicial investigation showed that the projectiles found in his body are similar to the pellets of general use cartridges (made of lead) for rifles 12/60 gauge, which were those used by the Federal Police on that occasion to fire anti-crowd munitions against the demonstrators. Pursuant to the Federal Criminal and Correctional Court of the city of Buenos Aires,⁶⁷⁰ Alberto Márquez was unarmed (like the other 4 people who died in that place) and was sitting down, having a rest in the shadow of a tree, when he received two gunshots on his back. The shots were fired from an unidentified van. These deaths did not even occur within the context of confrontations between police and demonstrators. The absence of a justified reason to repress, the use of firearms within the context of a public demonstration, as well as the vulnerability of the grading and proportionality principles in the intervention made the illegality of the proceeding evident.⁶⁷¹

⁶⁶⁸ See CELS; El Estado frente a la protesta social 1996-2002, Chapter IV "La represión de la protesta social", p. 219-20, op. cit.

⁶⁶⁹ On December 19th and 20th 2001 demonstrations see Part I, section 2, above.

⁶⁷⁰ At the time of deciding on the situation of the police officers involved

⁶⁷¹ On February 5th 2002, the federal instruction judge María Servini de Cubría ordered the arrest of six Federal Police Officers charged with firing at the demonstrators in the corner of Carlos Pellegrini and Sarmiento streets where, Alberto Márquez lost his life and Martín Galli was injured. The arrested police officers were Orlando Juan Oliverio, responsible for the Control of Professional Integrity of the Domestic Affairs Department, Roberto Liendo Rodríguez, who was in the Dangerous Drugs Division, principal José Luis González, Guillermo Galdame, José María Bercovich and Horacio Barrios. As regards the last three, some days later the lack of merit was issued and they were released. On the other hand, on February 7th 2002 Rubén Santos –who was the Chief of the Argentine Federal Police at the time of the repression-, was arrested as alleged perpetrator of the crimes committed by his subordinates. On the 15th day of the same month, it was ordered the arrest of Norberto Gaudiero, former chief of Operations of the federal Police and identified as one of the officers with greater responsibility for the operation. On February 28th, the judge ordered the detention of Enrique Mathov, former Domestic Security Secretariat of the Nation. It was questioned that Rubén Andreozzi, former superintendent of Metropolitan Security and Norberto Gaudiero were not charged although the evidence showed that they commanded and had the control power on the intervening forces. The decision of the federal judge was revised by the Criminal and Correction Court of the city of Buenos Aires. Among the most relevant items in that decision we find the confirmation of the charges of Orlando J. Oliverio, Ariel G. Firpo Castro, Carlos J. López and Eugenio Figueroa, all police officers, regarding Alberto Márquez's death and Martín Galli's injuries. However, Ariel G. Firpo's judicial status had an unexpected turn: on February 26th 2003, the judge acquitted him on the grounds that it was not him who had fired the shots. As for the charges against the former Domestic Security secretariat, contradicting the decision of Judge María Servini de Cubría, the Court stated that Mathov violated the duty to protect the physical integrity of the demonstrators and was made responsible for the five deaths and 277 injured people, despite his release. The same was applied by the Court to the behavior of Rubén Santos, chief of police: it revoked the decision of the instruction judge which identified him as the fraudulent author of the five murders, due to omission. The Court ordered to take witness statements. By virtue of the same considerations, the court order the statements of the former president de la Rúa and the former Domestic Affairs Minister, Ramón Mestre, who died by the beginning of 2003. Both filed several extraordinary remedies before the Supreme Court of Justice of the Nation. The importance of this decision is specially reasserted in the acknowledgement of the subordination of the security forces to civil authorities and the political responsibility of the latter for the coordination, supervision and control of their functions. Finally, the former chief of Operations of the federal Police, Norberto E. Gaudiero, and Raúl R. Andreozzi, former Metropolitan security superintendent, were convicted due to having acted abusively when imparting illegitimate orders to arrest the people who were peacefully demonstrating in Plaza de Mayo square. The judge Servini de Cubría, complying with the orders of the Court, took their statements.

2.5.3.5 Executions of people deprived of freedom

Cases of violence which directly affect the life and physical integrity of the people deprived of freedom occur with a worrisome frequency at prisons and police stations in Argentina (see Annex I, tables 20 and 21). In spite of this, preventive policies have not been instrumented yet.⁶⁷²

Not only is the State responsible for the violent actions committed by civil servants but also for those which can be attributed to it as guarantor of the basic rights of people deprived from freedom. Said estate responsibility arises from the obligation to guarantee the security of the people detained in the different prisons, by not only omitting any cruel inhuman or degrading treatment by police and penitentiary staff but also, avoiding the occurrence of events in detriment to the physical integrity and life of the people deprived from freedom, either resulting from other detainees' activities or self-injuring. It cannot be disregarded that, sometimes, violence between inmates occurs with the consent of the penitentiary personnel –or is even promoted by them- and that many presumptive suicides and accidents try to conceal, by means of extremely vulgar mechanisms, an external intentional activity which the State should account for. In coincidence with this position, the Inter-American Court of Human Rights (*Corte Interamericana de Derechos Humanos*) has set forth that “[...] according to the terms of section 5.2 of the Convention [American Convention on Human Rights] every person deprived of freedom is entitled to live under detention conditions which are compatible to his personal dignity and the State shall guarantee his right to life and personal integrity. Consequently, the State, as the one responsible for the detention centres, is the guarantor of these rights to the detainees”.⁶⁷³ On the other hand, the basically repressing culture of the institution favours the recurrence of authoritarian behaviours which are expressed, for instance, in the internal system of penalties and punishments to the inmates.⁶⁷⁴ These factors contribute to a conflict environment which is almost permanent in prisons.

The shapes most frequently assumed by these deaths are burns, sharp wounds and asphyxia. Deaths occur within the victim's cell, punishment cells or common spaces in the context of a presumed fight between inmates, escape attempts and/or insurrection. The presence of white weapons or ‘facas’ in the hands of the detainees is quite common, which is rather surprising if we take into account the frequent rounds of inspection carried out by prison guards⁶⁷⁵, and at times the inmates have remarked that those weapons were provided for by the same penitentiary officers.⁶⁷⁶

In some cases, the extrajudicial execution of detainees is directly committed by penitentiary officers. In others, penitentiary officers bind themselves to generating the necessary conditions so that the murder can be committed by a detainee to whom this task is previously assigned. Among the necessary conditions we find, for example, transfers from one building to another or the intentional placing of certain inmates in some areas that specially represent a danger to them.⁶⁷⁷

⁶⁷² Except for the Penitentiary System of the Province of Buenos Aires. On this topic see Part IV, section 6, below.

⁶⁷³ Inter-American Court of Human Rights, case *Neira Alegría and others*, decision from January 19th 1995, paragraph 60.

⁶⁷⁴ At the Correctional Model Institute of Coronda, for example, the detainees do not even know the punishments applicable to them –which prevents them from appealing or bearing them in mind: the accumulation of three observations leads to some punishment. This situation was reported by the *Coordinadora de Trabajo Carcelario*, of Santa Fe, and organization that together with the Rights and Guarantees Commission of the local Legislature paid a surprise visit to the institution in May 2002.

⁶⁷⁵ On violent inspections see Part II, section 2.3.2.7., above

⁶⁷⁶ Statements of the judge of the Criminal Court of Appeal and Guarantees of San Isidro, Fernando Maroto.

⁶⁷⁷ An extreme case is given by Aníbal Saibaa's, who confessed the murder of a man before judge Ricardo Warley. He asked for only one thing in exchange: to be sent to Marcos Paz Prison. He had an argument: in other federal

These practices constitute an internal control system which exceeds the legality borders. Indeed, the few judicial investigations which have searched for the origin of violent events in prisons have frequently come across networks of complicities between penitentiary staff and prisoners, related to the smuggling of goods within the institutions –food, drugs, weapons, etc.

The collapse of prison institutions has resulted in the illegal housing of a lot of detainees in police stations.⁶⁷⁸ There, living conditions are even worse than in prisons, since they are not furnished for that purpose and the staff has not been trained to be in custody of detainees. Piling up, the scarcity of vital resources like food, the lack of a proper sanitary infrastructure, etc, all contribute to conflicts among the inmates and between them and the officers in charge of their custody.⁶⁷⁹

However, most of the deaths occurred within prisons are related to the concealment of penitentiary corruption. This seems to be indicated by the analysis of the concentration of deaths depending on the detention unit (see Annex I, tables 22 and 23). At the two biggest penitentiary systems of the country, the Federal Penitentiary System (FPS) and the Buenos Aires Penitentiary system (BAPS), the high mortality rates are not necessarily recorded in the most overpopulated units (see Annex I, tables 11 and 12). In the case of BAPS, for instance, Unit nº29 is a 'high security unit' and is equipped with modern technological resources that include filming the inmates round the clock by means of a closed cameras circuit and electronically locking and unlocking of doors. Given the existing security measures, the deaths occurred therein are difficult to account for. The participation or, at least, acquiescence of the Buenos Aires Penitentiary System officers in these events becomes more likely when taking into account that Unit nº29 has the highest violence rate every 1,000 detainees (see Annex I, table 21).⁶⁸⁰

As it will be explained below, many times these situations –which are largely present in the life of prisons- are recreated to conceal extra judicial executions of detainees.

According to a study carried out by forensic psychiatrists of the General Attorney's Office of the Province of Buenos Aires,⁶⁸¹ the suicide rate in Buenos Aires prisons is nine times higher than the one recorded for the general population. In a 100 thousand prisoners projection it would record 62 suicides, whereas, outside prisons, only six or seven out of 100 thousand inhabitants take the same decision. These figures lead to the belief that it is possible that part of the suicides presumably committed by the prisons population are not such, and that we are faced with settings that in fact conceal extra judicial executions. However, the lack of official questioning to these figures indicates the little willingness of the penitentiary authorities to investigate and

prisons he would meet the relatives of the victim [the son to one of the most important cocaine dealers of the Fátima neighborhood of Villa Soldati]. The judge accepted his request and ordered the Federal Penitentiary System to act accordingly. But the order was not stick to and Salibaa was sent to Villa Devoto nº2 Unit. According to the prison records, Salibaa entered at 1.50 a.m. on October 2nd. Only 15 minutes later he was stabbed to death in the chest. He was placed in the same building than the victim's cousin.

The current Justice and Penitentiary Affairs secretariat showed this crime as a paradigmatic case of practices which "cannot be tolerated" in Argentinean prisons. Newspaper: Página/12, 06/08/03

⁶⁷⁸ According to data taken from the National System of Conviction Execution Statistics (*Sistema Nacional de Estadísticas de Ejecución de la Pena, SNEEP*) –Ministry of Justice, Security and Human Rights of the Nation- by December 2002, 7,031 people were housed in police stations of the province of Buenos Aires; 2,100 in Santa Fe; 1,134 in Chaco; 639 in Córdoba; 190 in Salta and 190 in Entre Ríos. There is no information available on the rest of the provinces.

⁶⁷⁹ For a comprehensive description of detention conditions see Part II, section 2.4.2.6, above.

⁶⁸⁰ On the tortures committed in Unit nº29 of the Buenos Aires Penitentiary System see Part II, sections 2.4.2.3 and 2.4.2.4., above.

⁶⁸¹ Published in Clarín newspaper on December 18th 2003.

formulate public policies.⁶⁸² The cases cleared up by justice are not a lot, but have been useful to identify common practices that are part of the reality of Argentinean prisons.

The information revealed by the first penitentiary population survey, carried out by the end of 2002, indicate that the people deprived from freedom at prisons in Argentina are male (95%), aged between 19 and 34 (70%), Argentine (95%), single (70%), with primary or lower studies (80%) and live in urban areas (95%). Besides, it points out that a large number of prisoners were unemployed (46%) or just had a part time job (38%) at the time of detention.⁶⁸³ Even though when the selection of those who would be victims of the practice already described did not respond to socioeconomic criteria but it is related to their knowledge of the facts needed to be concealed, the general profile of the prisons population coincides –in terms of genre, age and poor socioeconomic situation- with the profile of the victims of the already described practices.⁶⁸⁴

Below there are some paradigmatic cases that indicate the most habitual shapes assumed by extrajudicial executions within the Argentinean prisons.

Four murdered prisoners is the outcome of the biggest corruption scandal generated by the prison institutions of the country: prisoners at Caseros federal prison⁶⁸⁵ having the prison guards as accomplices⁶⁸⁶

In the framework of the judicial case intended to clarify these events Carlos Sandez Tejada told the instruction judge Alberto Baños *“I’d like to report that on January 4th 2000 I killed Gastón Noguera on behalf of very powerful people within the Federal Penitentiary System. Noguera had become very dangerous to them, he was going to give them away.”*⁶⁸⁷ Noguera was one of the inmates who went out of prison to rob under the consent and complicity of the Federal Penitentiary System. He was killed before he was able to declare before judge Baños. He was found hang in his cell on the 17th B floor of Caseros federal prison. Miguel Angel Arribas, a mate of Noguera’s to whom Noguera had told everything he knew was also killed. Arribas died in a presumptive escape attempt during a transfer.⁶⁸⁸

⁶⁸² On judicial concealment see Part IV, sections 3 and 4 below.

⁶⁸³ Source: Preliminary Report of the National System of Conviction Execution Statistics (SNEEP), National Department of Criminal Politics of the Ministry of Justice, Security and Human Rights of the Nation; 2002

⁶⁸⁴ At present, the National Department of Criminal Policy is conducting a survey of people deprived from freedom in police stations in the whole country. However, there is no information currently available that allows a characterization of this population.

⁶⁸⁵ The Cárcel de Encausados of the Federal Capital (U.1). known as Caseros prison, was close on August 8th 2000 as part of the building renovation process carried out by the Federal Penitentiary System.

⁶⁸⁶ On these facts see Part II, section 2.4.2.3. above.

⁶⁸⁷ Source: La Nación, “Historias carcelarias de barbarie y terror”, November 24th 2002.

⁶⁸⁸ On April 20th 1999, Arribas arrived at the court where he was going to undergo a trial for robbery on a transfer truck As his handcuffs were loose, as soon as the doors of the truck opened he started running away to be eventually shot down in his back some meters away. In May 2004, in a polemic decision, the Criminal Oral Court nº13 of the Federal capital sentenced Jesús Pablo Giménez, the prison guard who killed him, to three years suspended prison – with no effective compliance-. The prosecutor and the complainant had asked for the case to be entitled “simple homicide”, due to the little danger represented by the fugitive and the presence of several security officers, armed, who followed him some meters behind. The judges considered it was a ‘involuntary manslaughter’ without the intention to kill. The prosecutor and the claimant had also asked for Giménez’s inhabilitation to his position at the Transfer Department of the Federal Penitentiary System. The court, made up of Oscar Rawson Paz, Hugo Cataldi and Cecilio Pagano rejected this request and Giménez will continue in office. In fact, since Arribas’s death, the prison guard career continued running smoothly. From being a fourth assistant he was promoted to first assistant. Source: Página/12, “El testigo de una muerte dudosa”, January 8th 2000; CORREPI, Informative Bulletin nº258, February 14th 2004.

It was the very Carlos Sandez Tejada who was killed of 36 stabs some days before he could hear the Court decision as regards his responsibility for Noguera's death, on July 10th 2002, while he was detained at Federal Penitentiary Complex I, of Ezeiza.

A month later, a witness to Sandez Tejada's death was found hang in his cell: Luis Carrizo. He was 21 years old and was living his last week in prison before he could enjoy parole.⁶⁸⁹

Noguera, Arribas, Sandez Tejada and Carrizo were all key witnesses o 'repented people' of different events related to the corruption within Caseros prison and this is why they were killed.

This was explicitly recorded by the judge Alberto Baños in the decision where he ordered the conviction of twelve penitentiary officers –four of them chiefs- due to being alleged accomplices in the prisoners' outings from detention centres. The relationship between the murders and the outings to rob was also reported by the Criminal Oral Court n°8 of the city of Buenos Aires.⁶⁹⁰ Only one of the officers, Cristian Franco, was convicted for Rubén Juárez's crime. The administrative investigations initiated by the Federal Penitentiary System never advanced in these cases.⁶⁹¹

José Menna was accused of stealing some meat from a butcher's and kept at the Wardenship of the Regional Unit X in the province of Santa Fe, situated in Cañada de Gómez region.⁶⁹² A few days later, the police authorities who were in charge of the custody at the place notified Menna's family about the fact that he had tried to kill himself by setting on fire the mattress of his prison cell. The young man aged 27 was taken to Clemente Álvarez Hospital in the near town of Rosario having 60% of his body burnt. During his agony, José confessed to his family that the police officers in charge of the Wardenship, Sacco and Jiménez, had beaten him and set him on fire inside his prison cell. José died on August 9th 2001 as a result of the multiple burns he had. His relative's report to justice triggered a judicial investigation.

One of the contradicting points in the police version was given by the existence of bruises in Menna's body: whereas the Wardenship doctor made sure he had not been beaten, his colleague at Hospital asserted that he had bruises all over his body. Besides, although a large part of his body was burnt when he came into hospital, his clothes were untouched, which would mean that the young man had been dressed by the police officers. Menna's family and Cañada de Gómez neighbours held several public demonstrations to ask the authorities for this death to be cleared up, since they never believed the suicide hypothesis. Indeed, during the investigation, nobody was able to provide any hint which accounted for the young man's suicide, since he was charged

⁶⁸⁹ Carrizo was a non violent prisoner who behaved really well. And, in spite of this, he had been taken to Module 3, Building A of the Ezeiza Complex, where the most dangerous prisoners are kept. .

⁶⁹⁰ The judges at the Criminal Oral Court n°8 were in charge of judging Sandez Tejada for Maximiliano Noguera's crime. In the decision, the judges took for granted that members of the Federal Penitentiary system had some interest in Noguera's murder since his statement before Baños about what he knew of the outings from Caseros would have been dangerous to them. In the same decision, the Court underlined that six prisoners reported that they had been threatened and intimidated by penitentiary officers to influence the case and tell lies.

⁶⁹¹ Sources: La Nación; May 24th; August 6th, 9th and 30th 2003; Página/12, February 10th and December 1st 2003; January 22nd 2004.

⁶⁹² On September 27th 2002, the prison emergency was decreed in the area of the province of Santa Fe and the Prison Emergency Program was approved, which is intended to considerably increase the number of available places in the province and solve the piling up problem at the police stations in Rosario and Santa Fe. According to information from SNEEP by December 2002 there were 2,289 people detained in the prisons of the province, whereas there were 2,100 housed at police stations.

with a misdemeanour and expected to be free soon. The judicial case was filed with a noticeable speed, in September 2001, only having passed a month from Menna's death.⁶⁹³

Daniel Chocobar Guaimas was detained at General Álvarez prison⁶⁹⁴ when, in October 2001, together with other 30 prisoners, reported the prison guards of tortures.⁶⁹⁵ The justice understood that there actually had been tortures and ordered for the prisoners to be transferred to other penitentiary units of the province of Buenos Aires as a way to avoid possible reprisals: because of that report before justice, two prisoners –Chocobar and Darío Minetto- stated before the judge that they had been threatened to death. One of Chocobar's relatives filed a habeas corpus petition before the provincial judiciary. Room II of the Criminal Court of Appeals and Guarantees of San Isidro accepted the request and ordered the transfer of the 31 prisoners involved. Chocobar declared before that same court that he feared for his life. Before the magistrates he said that his own prison mates told him: *"I was sent to kill you in exchange of pills, outings and good treatment"*.⁶⁹⁶ On June 18th 2002, just before a moth he could recover his freedom; Chocobar was killed at La Plata Unit n°9. He was found in his prison cell, wounded by a 'faca'.⁶⁹⁷

The reprisals from the Buenos Aires Penitentiary System extended to those who acted as witnesses in the habeas corpus case. Darío Alberto Minetto and Juan González Sosa, two of the witnesses, were killed whereas other three –Hernán Larrañaga, Gabriel Lima and Ricardo Sosa Márquez- survived the attacks.^{698 699}

Minetto was stabbed by another prisoner on November 21st 2001, while he was detained at Unit n°9 in La Plata. The deadly wound was caused by a rudimentary knife made by the prisoners, known as 'faca'⁷⁰⁰ in the prison jargon.

Juan Ramón González Sosa died of burns on November 22nd 2001 inside his prison cell at Magdalena Unit n°28. The day before his death, as he was on the phone to his wife telling her that he was fiercely beaten at that penitentiary unit and that he had not eaten anything for the last two days, he started shouting: *"they will cut me off, they are a lot, they will kill me."* Then, the communication was cut off. Other prisoners told González Sosa's family that penitentiary officers forced him to interrupt the communication and beating him. González Sosa's mother was told at the prison that his son had set himself on fire since he was suffering from depression because off receiving no visitors.⁷⁰¹

⁶⁹³ Source: El Ciudadano de Rosario, August 10th and 16th 2001; La Capital de Rosario, July 2003.

⁶⁹⁴ Unit n°30 of the Buenos Aires Penitentiary System

⁶⁹⁵ For a description of the reported events, see Part II, section 2.4.2.3., above.

⁶⁹⁶ Two prisoners declared to have received this offer by BAPS Unit n°30 staff before Fernando Maroto, magistrate, member of San Isidro Room III. Source: La Nación, July 13th 2001; Página 12, "Un camarista denunció que los guardias Mandan a matar presos", July 11th 2002.

⁶⁹⁷ Source: Clarín, "¿Guardiacárceles ordenaron matar a dos presos por venganza?", July 11th 2002.

⁶⁹⁸ Sources: Página/12, July 11th 2002; December 1st and 29th 2003; La Nación, July 13th 2001, June 20th and November 24th 2002; Clarín, July 11th 2002.

⁶⁹⁹ On the attacks suffered by survivors see Part II, section 2.4.2.3., above.

⁷⁰⁰ His death cause a report request made by judge Maroto, member of Room III of the Criminal Court of Appeals and Guarantees of San Isidro, before the Human Rights Secretary of the Province of Buenos Aires, to investigate whether police authorities ordered his death or not. Source: Clarín, "¿Guardiacárceles ordenaron matar a 2 presos por venganza?", July 11th 2002; La Nación, "Historias carcelarias de barbarie y terror", November 24th 2002.

⁷⁰¹ Source: Clarín, "¿Guardiacárceles ordenaron matar a 2 presos por venganza?", July 11th 2002.

3. Characterization of victims and victimizers

Despite the variety of practices through which institutional violence is shown in its different ways, it is easy to observe the repetition of some actors in the groups identified as victims and victimizers. The penitentiary population is among the first ones, while the penitentiary and police forces are predominant in the latter ones.

3.1 Characterization of the penitentiary population⁷⁰²

Only 39% of the people deprived of their freedom in jail institutes of Argentina were convicted for the commission of a crime, while 59% are subject to a judicial proceeding. This figures evidence serious deficiency in justice administration, as it is provided in the international and local legislation.⁷⁰³

Concerning the age of the detainees, the biggest group is formed by people between 25 and 34 years old (37%), followed by those who are between 18 and 24 (33%) and, in the third place, the prisoners between 35 and 44 years old (18%). This means that the age group which goes between 18 and 34 years represents 70% of the jail population

Only 5% of the prisoners are women and 95% of the jail population in all the country has Argentine nationality.

If the parameter is the marital status, the following is the data: 71% are single and 26% were in cohabitation when they were deprived of their freedom.

With respect to the maximum level of education, it is observed that 46% finished the primary school, 23% had the primary school incomplete, and only 4% finished the secondary school, but 14% had done it incomplete. Those with university and third level education only made up 1% of the penal population. It can be concluded that 69% has a level of instruction equivalent to the primary school complete or less.

⁷⁰² The information included hereinafter was put together in December 2002 by the National Office of Criminal Policy of the Ministry of Justice, Security and Human Rights of the Nation through the National System of Statistics on the Execution of the Punishment (SNEEP). The first stage of the system had the objective of compiling information about the people detained in detention units which depend from the penitentiary services of the entire country or police station –only in the case of provinces which do not have their own penitentiary services and have delegated in police stations the administration of their detention units. In this context 44,969 people took part in the census. It has been verified that there is a lack of punctual information of some detention institutions (for example, partial information of some jails in the province of Buenos Aires and Chaco). This, however, only has a small incidence on the profile of the people deprived of their freedom, since over 90% of them are considered to be included in the study.

⁷⁰³ The use of preventive prison, that is the deprivation of freedom during the criminal proceeding, is based on its character of exceptional and limited precautionary measure since it affects the elemental rights of innocent people. Every detention prior to a trial is against the principles of protection of the accused person and openly violates the principle of innocence. The Argentine Constitution openly acknowledges the principle of innocence and, therefore, the impossibility of restricting rights without a convicting sentence (section 18). Furthermore it acknowledges the right of an accused person to be free during the trial (section 14). However the regulations acknowledge preventive prison as a recourse to neutralize, only when they exist, the elements which could threat the development of the trial. Considering the condition of exceptionality, preventive confinement has to be based on an explicit temporal limitation: in this way it is evidenced in section 7 of the American Convention on Human Rights, section 9 of the International Covenant of Civil and Political Rights and the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment. On this particular item see: CELS, “Indicadores de uso generalizado de la prisión preventiva”, at <http://www.cels.org.ar/estadisticas/index.html>.

The work situation of the people at the moment of their freedom deprivation should also be analyzed. The biggest group is formed by unemployed people (46%); while the part-time workers represent 38%.

The previous occupation of the detainees, together with their educative level, gender and age, are indicators which reinforce the idea of the selectivity of the penal system. In this sense, the figures show that young men, with little or no education, unemployed or with part-time jobs are those who result more vulnerable to the action of the penal system, and not necessarily those who commit more crimes or are the biggest risks for life in society.

If the place of residence is analyzed, it turns out that 95% live in urban areas, while the remaining 5% corresponds to inhabitants of rural regions.

It is important to highlight the conditions in which the prisoners are accommodated⁷⁰⁴, since it has an influence on the behavior inside the units. The overpopulation of the jail units of Argentina is estimated in 17.7%⁷⁰⁵. This without taking into consideration those who are unlawfully deprived of their freedom in police stations.

As far as the crimes for which these people are imprisoned in jails are concerned, the most frequent ones are: robbery, intentional homicide, theft, violation to the law of drugs and rapes. If these crimes are compared with those that have most registries in the annual statistic of criminality in the country, there are certain coincidences with respect to robbery and theft, but also some peculiarities. In this sense, the cases of intentional homicide and rapes stand out; these do not show high peaks in the criminality rate, but they do reach significant numbers among crimes for which those detained are deprived of their freedom.

The available information indicates that 72% of the jail population is formed by first time delinquents, while 22% are persistent offenders.

Considering the activities carried out in the detention centers, it is outstanding that 86% do not take part in any work training program; while 71% do not take part in any educative program. Only 17% receives instruction within the General Basic Education (EGB)⁷⁰⁶.

While 85% of the detainees did not take part in any kind of order alteration, the rest 15% did, with a negative damage result, injured people, hostages and dead people. This evidences the high rate of violence registered in jails⁷⁰⁷. 4% was injured in violent incidents with other inmates.

3.2 Characterization of police forces

The Argentine Republic has a federal organization, according to which the provincial States keep for themselves the powers not delegated in the federal government⁷⁰⁸. One of them is the power to organize their police institutions. There are in Argentina 23 provinces, each of which has at least one police force, which, almost all of them, depend from the Executive Power, through its Minister or Secretary of Government and/or Security⁷⁰⁹. Apart from the provincial polices, the

⁷⁰⁴ See Part II, section 2.4.2.6, above.

⁷⁰⁵ The declared capacity of jails in the country is 31,897 places, while 37,543 people are accommodated in them.

⁷⁰⁶ It includes the 9 first years of education.

⁷⁰⁷ See Part II, section 2.4.2.6, above, where some reflections about riots are included.

⁷⁰⁸ See Part I, section 1, above.

⁷⁰⁹ Some provinces like Córdoba or Buenos Aires, have a separation between security police and judicial police. Section 191 of the Constitution of the province of Santiago del Estero, for instance, establishes that: "[...] *The judicial*

Argentine Federal Police, which depends from the federal government, should also be considered.

The law defines the Argentine Federal Police (PFA) as a civil armed institution, which depends from the National Executive Power through the Ministry of Justice, Security and Human Rights.⁷¹⁰

It constitutes the police force with federal jurisdiction, reason why it has duties of police in all the national territory in relation to federal matters. Also, the Federal Police carries out the function of security and investigation police in the ambit of the Autonomous City of Buenos Aires, seat of the national government.

The main rules which establish and regulate the functions and organization of the Argentine Federal Police⁷¹¹ and of many provincial forces were passed during the de facto governments and imbued by the military spirit⁷¹². Despite this, the governments which held office after the return of democracy, in 1983, did not modify the rules passed during the dictatorship and practically kept the authoritarian routines and practices which characterized the police forces unchanged⁷¹³.

One of the reasons historically used to avoid external control upon police forces, was the exceptionality of their job. In this sense, it is held that the peculiarities which characterize the functions they carry out, turn police forces into institutions which can not be compared to the rest of those that constitute the public administration, and therefore, the controls to which it is subject. In such a way, it is evidenced by the words of the former chief of the Argentine Federal Police, Adrian Pelacchi, who argues that *"Notwithstanding the systems or models, with or without a uniform, the truth is that the police has at present statutes and regulations which, in general,*

police, depending from the Superior Court of Justice and at the service of Judges or of the Justice Department, according to what the law determines, shall be in charge of the functions of crime investigation and revelation and securing criminals as established by law".

⁷¹⁰ Pursuant to decree 1418/02, dated on 8 August 2002.

⁷¹¹ On 1 May 1958, during the de facto government of the so-called "Liberating Revolution", two rules which still regulate the police action became valid: the organic Law of the Argentine Federal Police –decree-law n°333/58- and its regulation –decree n°6580/58. Decree n°6580/58 was issued on 30 April 1985, while decree-law n°333/58 was subsequently ratified by law 14,467 and its annexes 14, 15, 16, 17 and 18, published in the Official Gazette on 29 September 1958. The last important modification made to this regulation was the result of the passing, in 1979, of law n°21,956 for the Staff of the Argentina Federal Police –which derogated section 31 to 101 of decree-law n°333/58 and its regulation decree n°1866/83 –which derogated books II, III and IV of decree n°6580/58 and some subsequent decrees. Both rules were passed during the so-called "Process of National Reorganization", that is, while the government of the country was exercised by the Armed Forces.

⁷¹² Such is the case, among others of the Police of La Pampa, whose action is regulated by Legal De Facto Rule (N.J.F.) 1064/81 –modified by N.J.F. 1,279 and laws n° 915; 1,287, 1,301 and 1,521 –the text of which was ordered by decree n°1,244/95, on 30 May 1995. This rule establishes in its section 1° that *"The Police of the Province of La Pampa depends from the Executive Power through the Ministry of Government and Justice. It has the responsibility of keeping public order, is permanent assistant of the Judicial Power and representative and receiver of the public force in order to protect the personal and patrimonial security of the population.- It shall exercise its functions in all the territory of the Province, except in those places exclusively subject to federal or military jurisdiction".* The Regime for the Police Staff of the province was also established during the last military dictatorship (through N.J.F. 1034/80, modified by N.J.F. 1,078 and laws N°778, 1,272; 1,306 and 1,521. Text ordered by decree 1052/95, 15 May 1995).

⁷¹³ The Police of Chaco is one of the exceptions since the rules that regulate its organization and proceedings were modified after the return to democracy. In this case the Police Organic Law n°2,993 (passed on 21 August 1984; enacted on 29 same month and published in the Official Gazette on 12 September) derogated laws n°1010 and its modifications 1,911; 2,328; 2,396, all de facto, as well as decrees and regulations opposing them. This rule, was also derogated by law 4,987; passed on 5 December 2001, enacted on 2 January 2002 and published in the Official Gazette on the 11 same month.

show its different nature to that of public administration [...]”⁷¹⁴ and he adds “[...] hierarchy and discipline, elements which doubtlessly combine to guarantee the exact functioning of [the] mechanisms of the [Police], seem strange to those who insist in comparing it with another sector of the public administration. The uniform and the gun show the belonging of its members to a world of its own, which –to those who think in this way- exclude in advance any idea of argument or negotiation and are the external symbol of the power that the organized society confers them on some of the most important rights of the individuals”.⁷¹⁵

One of the mechanisms upon which this idea of exceptionality of the police function was built – and is still kept-, is that of “police status”: “The Statute of the Federal Police established for the first time a differentiate status to the rest of the public administration and with assistant police services called “civilian staff”. Also for the first time the uniformed officers were granted an exceptional “police status”, legal entity which conferred on the armed officers of the institution a status similar to that of the armed forces, always remaining, even when retired, related to the department as “retired in the situation of adequate condition”.⁷¹⁶

According to what is established by section 3° of law n°21,965: “The police status is the legal situation resulting from the set of duties, obligations and rights that the laws, decrees and regulations establish for the staff in activity or retired”. Among those duties-obligations are the authorization and obligation to carry guns and intervene in order to repress crimes, even when the officer is not on duty and dressed as a civilian. In this sense, section 8° of the same law establishes that: “The police status includes the following common duties for the staff in activity or retired: d) to defend life, freedom and the property of the people through action even when their life or personal integrity are at risk”.⁷¹⁷

Taking into account the abovementioned, it is significant to acknowledge that, apart from the 29,556 officers in activity, the Argentine Federal Police has a further 23,863 retired officers (see Annex I, tables 24 and 25).

The police status is more than a set of duties and obligations, it is part of an organizational culture which considers that being a policeman is more of a status than a profession, and the person who belongs or has belonged at any point to the force has to be available at all times and circumstances in order to fulfill the activities typical of his condition⁷¹⁸. Nobody better than the Federal Police itself to explain the meaning of the “police status”: “*The police status is sociologically not only what the police dispositions express, conceived as the body of duties or*

⁷¹⁴ Pelacchi, Adrián Juan; Tratado sobre la Seguridad Pública; Editorial Policial, Buenos Aires, 2000. p. 35

⁷¹⁵ Pelacchi, A.; op.cit. p 32.

⁷¹⁶ Andersen, M.; op.cit. p. 136.

⁷¹⁷ In 1999 the Federal Police modified section 69 of the General Weapon and Shooting Regulations (R.P.F.A. N°8) and established that it is an obligation to carry firearms only while on ordinary or additional duty (Internal Agenda N°115 of 17 June 1999). Even though this modification should not be rejected, its divulgation has not been broad enough as to alter the traditional proceeding routines. The kind of reaction of the police off duty is still the same as in past years. This is shown by studies carried out by the Centro de Estudios Legales y Sociales /CELS on the service situation in which the officers of the Argentine Federal Police die and kill. See: www.cels.org.ar. When general constable Ricardo Degastaldi held office as chief of the Buenos Aires Police, the governor of the province announced his intention of modifying decree-law 9550/80 so that firearm carrying stopped being an obligation for those policemen off duty. The rule, passed without any parliamentary discussion, established that it is only an obligation to carry the official firearm when the police officer is on duty, even though the officers have the attribution to carry it when they are off duty. However, should they carry their firearm, the policemen are still forced to use it. On this particular issue see: CELS; Derechos Humanos en Argentina, Informe 2002-2003, Chapter V; op.cit.

⁷¹⁸ According to sections 6 and 19 of law 21,965, the police status –and as a consequence, the duties, obligations and rights it implies- are lost when they are “discharged”. This happens upon the request of the interested party, redundancy, exoneration or by the loss or suspension of the rights inherent to the Argentine citizenship.

*rights enjoyed by the members of the institution. It's more than that; it's a way of feeling, a way of living. The policeman is so during the 24 hours of the day, not only during the hours in which they are on duty".*⁷¹⁹

Without doubts, one of the landmarks in the construction of the idea of exceptionality and the subsequent separation of the rest of the society was the creation, in 1952, of a Jurisdiction of Police Justice, in charge of trying crimes committed by police officers and abolished three years later.⁷²⁰

The disciplinary system is another key tool to reinforce the "exceptionality" conferred by the police status and to achieve the unity of the "police family". With its help, the police punish the offences and dereliction of those who do not respect the institutional codes and the values which differentiate police officers from the rest of the society. Thus, within the disciplinary system, it is evident the predominance of the offences which represent a formal violation which, could only have indirect repercussions on the services rendered, over those officers related to the police service and the commission of which directly affects the service that should be given. The relevance of the disciplinary system has been analyzed in the following terms: *"[...] there are a series of offences that are not directly related with the service and that help in forming the existence of a police identity and morality different to the rest of the professional identities. These offences contribute to the definition of the police being and serving. The fact that this behavior belongs in this category does not mean it cannot affect the service, but in many cases they are behaviors commonly qualified as private over those dealt with by police regulations, or behaviors defined as offences since they are linked to moral connotations and from there to a certain institutional image, which could be affected by such violations".*⁷²¹

The divulgation of information referred to the police service to people and institutions outside the Federal Police is one of the behaviors punished through the disciplinary system. In this way, the communication between police officers and the community is discouraged, and a kind of "barrier" is established to reinforce the isolation of the police institution with respect to the society in which it is inserted and to clearly outline who are in which side: *"The lack of transparency of the system turns it into a producer of silence and secret. The secret separates those who know from those who don't know, becoming an excellent individualization tool within the social body. It becomes the constitutive element of the identity of those who keep it. Its revelation harms solidarity with peers, with those who acknowledge themselves as part of us –the police officers- with whom 'spirit du corps' is shared".*⁷²²

Beyond the symbolism –in which the existence of an exclusive vault for the staff of the Federal Police in the Chacarita cemetery can be included- the feeling of institutional belonging is reinforced through the material incentive received by those who make up the Argentine police

⁷¹⁹ Paragraph quoted in Oliveira, Alicia and Tiscornia, Sofia; "Estructura y prácticas de las policías en la Argentina. Las redes de la ilegalidad"; document prepared for the Seminario Control Democrático de los Organismos de Seguridad Interior en la República Argentina; Centro de Estudios Legales y Sociales/CELS; Buenos Aires, 7 and 8 April 1997. Taken from a document of the Argentine Federal Police directed to the former Deliberating Council of the City of Buenos Aires and quoted in the Bill of Modifications to law n°21,965 – Law for the Staff of the Argentine Federal Police, taken to the Senate and the House of Representatives of the Nation.

⁷²⁰ On 15 October 1952, law 14,165 was published in the Official Gazette. Such law created the Code of Police Justice, formed by a Police Penal Code –Treaty I- and a Procedural Code for the Police Penal Justice – Treaty II. Police Justice not only reached members of the Argentine Federal Police. Section 67 of the Procedural Code established that the members of the police institutions of the Nation were subject to their jurisdiction, whichever their situation might be –although with limitations regarding retired officers- and students of police schools of the Nation.

⁷²¹ Palmieri, G.; Martínez, J.; Sozzo, M. and Thomas, H.; op.cit. p. 192.

⁷²² Palmieri, G.; Martínez, J.; Sozzo, M. and Thomas, H.; op.cit. p. 192.

forces. Following the same line as the corporative and class culture which has characterized the Argentine welfare state, the belonging to the force also reinforces a certain identity founded in services and benefit such as personal loans, the possibility of buying goods on credit with low interest rates⁷²³, or the fact of receiving assistance in exclusive health centers for the police staff and their families, such as the case of the Churruca Visca Hospital for staff of the Federal Police.

In general lines, the systems of internal control regulate and orientate the daily activities of the institution, they deal with particular cases of abuse and are potentially able to collaborate in the analysis and transformation of proceedings and administrative and regulating systems in order to perfect the police capacity, improve their development and efficiency⁷²⁴. At the same time, the disciplinary system is eloquent about the perception that the police have of themselves, the way in which they relate to the community where they perform their duties, the degree in which their objectives adjust to the republican way of government and how the principle of recounting is respected. It is clear from the provisions which rule the actions of the Argentine Federal Police, and in particular, from the disciplinary system regulated by decree nº1866/83, that the keeping of the hierarchy and command are values superior to principles such as lawfulness.

The disciplinary system of the Argentine Federal Police, and of most of the provincial police, is full of provisions that have the objective of strongly controlling the management of the institutional information⁷²⁵. The final objective of these provisions is to limit the public knowledge of the information referred to the activities of the institution, and even its circulation within the institution itself. In this sense, the disciplinary system is not used to control that the action of the officers of the Federal Police is in agreement with the Rule of Law and the norms which regulate democratic life. On the contrary, it is an instrument used for the service of the objectives –legal and illegal– fixed by the organization, and which, at the same time, makes external interference difficult and contributes to overcome internal resistances. Through different provisions the possibility officer has to make the irregularities or illegalities committed by their chiefs public is almost annulled, since they are forced to expose their disconformities before the person they want to denounce. The regulating rules are instruments which allow punishing the officers who try to break the corporative framework and apply what officer of the Federal Police, Hugo Airali, defined as “administrative terrorism”.⁷²⁶

⁷²³ Pursuant to a report carried out by the Sindicatura General de la Nación, the Federal Police makes deductions in the salaries of the police officers in activity and retired for reasons such as personal loans, instalment purchases and mortgage credits. Also, the Welfare City Council raises funds for the levy, which corresponds to the retribution received by virtue of the administrative management given to shops and financial agencies with which the officers of the institution operate. Such levy is constituted by a variable amount, represented by a percentage over the total of the amount deducted. To the month of August 2001 –when the report was approved– around sixty (60) shops sold in instalments to the police staff while two (2) financing agencies granted them loans. Source: Sindicatura General de la Nación, “Informe complementario sobre Movimiento de Fondos 1º semestre de 2000 de la Policía Federal Argentina”, available at www.sigen.gov.ar.

⁷²⁴ Nield, Rachel; “Controles Internos y Órganos Disciplinarios Policiales” at: Temas y Debates en la Reforma de la Seguridad Pública. Una guía para la sociedad civil, Nº3; WOLA, Washington D.C., January 1998.

⁷²⁵ In order to see a detailed analysis of the rules which hinder the flow of information among officers of the Argentine Federal Police, the civil society and the control institutions see: Ales, Cecilia; “Acceso a la Información Pública y Control de las Fuerzas de Seguridad: Su Importancia para el Fortalecimiento de la Democracia. El Caso de la Policía Federal Argentina”, master’s thesis, Nacional University of General San Martín (UNSAM)/ Georgetown University; July 2003.

⁷²⁶ See Part IV, section 4, below.

The system of offences of the police is one of the tools which contribute to the perdurability of police corruption and the articulation of illegality nets.⁷²⁷

During 2003, the chiefs of the Buenos Aires and Federal polices were dismissed from their offices due to very serious accusations. In July, Constable General Alberto Sobrado –Superintendent of the General Coordination of the Buenos Aires Police- was forced to retire since he was not able to justify a bank draft of 333,549.62 dollars to a bank account he had not declared in the Bahamas⁷²⁸. Some months later, Constable General Roberto Giacomino –until then chief of the Argentine Federal Police- was dismissed from his office and accused by the Anticorruption Office of being the alleged boss of an unlawful association which was supposed to have carried out irregular business for 16 million pesos⁷²⁹.

Since the end of 1997, 1373 officers of the Buenos Aires Police have been separated from their offices –around four a week- as a consequence of the struggles of from the political power⁷³⁰. Out of 45,000 officers of the Buenos Aires Police, 27,000 -60% of the force- have open summary proceedings for crimes of administrative offences⁷³¹. The Division of Internal Affairs barely has 161 officers. There, over 2000 files are being attended to, for crimes involving around 4,000 policemen. Of them, 1,188 are under preventive prison. Other 23,000 policemen are being investigated by the Direction of Administrative Proceedings⁷³². Of all the officers prosecuted, 1216 were dismissed *“because they were involved in cases of torture, bribery, blackmail, discretionary use of resources –such as extra hours- and the use of extra official custodies, that is, without the approval of the Ministry authorities”*⁷³³. On the other hand, about 600 officers of the Federal Police -1.6% of its members- face internal administrative investigations. *“Unlike what happens in the Buenos Aires Police the Federal Police still has the tradition of “hiding the dirty pieces of cloth inside” the force. Therefore, seldom are these investigations publicly known. Unless the case is serious and scandalous”*.⁷³⁴

Corruption and ill-performing of duties are not phenomenon exclusive of the Federal and Buenos Aires police. In the province of Cordoba, for instance, 274 police officers –who represent 1.5% of the provincial police-, are accused of a crime or under judicial investigation⁷³⁵. In the last six

⁷²⁷ See Oliveira, Alicia and Tiscornia Sofía; “Estructura y práctica de las policías en Argentina. Las redes de la ilegalidad”; en Hugo Frühling (Ed.): Control Democrático en el Mantenimiento de la Seguridad Interior; Centro de Estudios del Desarrollo, Santiago de Chile, 1998. p. 157-174.

⁷²⁸ Finally the drafts were the, a total amount of 542,000 dollars. Source: La Nación, “El 60% de la bonaerense, sumariado”, 17 November 2003, pg.13. Some time before Amadeo D’Angelo –former General Director of Investigations- had also been separated from his office suspected of receiving bribes in order to permit the functioning of brothels. By August 2003 135 were the chiefs of the Buenos Aires Police whose asset was being investigated by Internal Affairs. Source: Clarín, “Son 135 los jefes policiales en la mira por su patrimonio”, 5 August 2003.

⁷²⁹ Source: La Nación, “En crisis por ineficiencia y corrupción”, 30 November 2003, p. 28.

⁷³⁰ Of them 65% were officers and the rest sub-officers. 125 were exonerated, 301 were dismissed, 418 declared expendable and 529 passed to obligatory active retirement. Source: La Nación, “Echaron a cuatro policie por semana”; 2 November 2003, p. 22.

⁷³¹ Source: La Nación, “El 60% de la bonaerense, sumariado”, 17 November 2003, p. 13.

⁷³² At the beginning of the month of June 2004 the Minister of Security of the Province, Leon Arslanián, announced an “amnesty” for the officers with summary proceedings for minor offences before the impossibility of resolving such an amount of investigations in a reasonable time. Source: La Nación, “Rivara tiene a prueba a todos los policías de la bonaerense”, 7 December 2003, p. 26; El Día; “Arslanián echó a otros 201 efectivos de la Bonaerense”; 4 June 2004 (www.eldia.com.ar).

⁷³³ Source: La Nación, “El 69% de la bonaerense, sumariado”, 17 November 2003, p. 13.

⁷³⁴ Pursuant to: La Nación, “El 69% de la bonaerense, sumariado”, 17 November 2003, p. 13.

⁷³⁵ According to information provided by the chief of Administrative Summary Proceedings, High Constable Raúl Ramírez.

months over 200 policemen in the province of Santa Fe were separated from their offices for ill performing of duties and, until November 2003 other 400 were prosecuted for diverse crimes⁷³⁶. The Mendoza police do not show an encouraging panorama either: 200 officers have open cases in justice and at least 380 were separated from the force since 1999.⁷³⁷

The division of the police staff in officers and sub-officers, as many other institutional dimensions, has a strong military meaning: *"This double rank is inherited from the military institutions and is a basic element to configure the rules of police organization in our country. Through it, a military way of exercising the government of the police institutions in Argentina is reproduced"*.⁷³⁸

In these two groups there are relations of hierarchy and subordination, and their prerogatives and career expectations are very different. This distinction is marked from the moment of entering the force and is unchangeable throughout the police career⁷³⁹: when the ranks are equivalent⁷⁴⁰, the officers have precedence over the sub-officers, or subordinate staff. These latter ones cannot reach the top ranks in the institution; they do not have disciplinary powers and receive lower salaries than the officers.

In order to be a member of the body of officers of the Argentine Federal Police, candidates must attend the Federal School of Police "Coronel Ramón L. Falcón". The requirements to enter are, having finished the three areas of the Basic General Education and the Polimodal, being between 17 and 25 years old, being single and without children, fulfilling a series of medical and odontological requirements and passing exams of general knowledge and physical aptitude. The training period is of three (3) years, in an internship regime. If the candidates are university graduates, the training takes only one (1) year and the admission requirements slightly vary, being the most significant differences the increase in the age limit to 30 years and the elimination of the restrictions regarding the marital status. The passing of the courses implies the entering with the rank of "assistant". On the other hand, sub-officers of the police force start their career as "agents". Such office is achieved after graduating from the Federal School of Sub-officers and Agents "Comisario General Alberto Villar". The requirements to enter this school are different: being between 19 and 35 years of age and having finished the area of the Basic General School (EGB). In this case, the training period only lasts six (6) months.⁷⁴¹

⁷³⁶ On that same date, the police force was made up by 15,100 policemen.

⁷³⁷ Source: La Nación, "En crisis por ineficiencia y corrupción", 30 November 2003, p. 28.

⁷³⁸ Palmieri, G.; Martínez, J.; Sozzo, M. and Thomas, H.; "Mecanismos de Control Interno e Iniciativas de Reforma en las Instituciones Policiales Argentinas. Los casos de la Policía de la Provincia de Santa Fé y la Policía de la Provincia de Buenos Aires"; en Frühling, H. and Candina, A. Eds.: Policía, Sociedad y Estado: Modernización y Reforma Policial en América del Sur, Centre of Studies for Development, Santiago de Chile 2001. p. 179.

⁷³⁹ In the case of the Argentine Federal Police, section 31 of law 21,965 expressly establishes that *"the change of category of subordinate to superior staff is not permitted"*.

⁷⁴⁰ According to section 12 of law 21,965, the "rank" is the denomination of each of the levels of the hierarchy, which determines the relations of superiority and dependency.

⁷⁴¹ In the case of the Police of Santa Fe, the institute who is responsible for the formation, training and instruction of the future officers, is the School of Police Cadets "Comisario Inspector Antonio Rodríguez Soto". The police career lasts three years, graduating with the rank of officers sub-assistant. One requirement in order to enter, is to have the secondary studies complete. Annually, pursuant to the institutional needs, they open the enrollment to those citizens who wish to become a member of the subordinate (sub-officers) staff of the Police of the Province of Santa Fe. Once they have passed the exams, they become members as aspirants to the School of Sub-officers and Agents "Agente Estanislao Lopez", in order to graduate, after a formation period of four months, with agent hierarchy, belonging to the Security Body, General Rank. The requirements to enter (pursuant to section 12 of decree nº4090/91) having passed the cycle of complete secondary studies, except when the personal conditions of the candidate, his capacity, expertise in the art or profession or emergency situation, based on reasons of service duly justified in the opinion of the Chief of Police. Those who enter the Cadets School "Coronel Lorenzo Lugones" in the province of Santiago del

The scarce training received by the groups of sub-officers⁷⁴² has serious subsequent repercussions in their job, and, in particular on their investigation capacity. In relation to the police of Santa Cruz, for example, it is stated that *"the lack of trained men is openly evidenced in agents and sub-officers. It is common to open summons to the general citizenship and those interested, after receiving brief courses, go to the streets in uniforms and carrying a weapon. Searchings related to drugs are ordered by federal judges who generally convoke the National Aeronautic Police, since, according to what a judicial source retold, 'they do not trust the provincial police'"*⁷⁴³. This is complemented by the fact that most of the cases of police brutality are perpetrated by sub-officers of scarce training, who are destined to street jobs.

According to a report of the Home Ministry, in all the country, 64.28% of the members of the security forces have finished their primary studies⁷⁴⁴, but they do not have secondary studies⁷⁴⁵. 31.73% has finished the cycle of middle studies and only 3.60% has third level studies.⁷⁴⁶

In the framework of the serious socio economic crisis which Argentina undergoes since the middle of the 90s, thousands of young women and men turned to the police forces –among them the Federal and Buenos Aires Police- searching for a stable job⁷⁴⁷. The press chief of the Federal Police, Constable Daniel Rodríguez, analyzed the phenomenon in the following terms: *"From my point of view, this is connected with the lack of job opportunities in all the ambits. Here the people have social security, a career, job stability, but they also have life risk. Even so, the people decide to enter"*⁷⁴⁸. If this tendency continues, there could be a gradual change in the composition of the police forces.

Candidates –both men and women- arrive to the training schools in better educative condition than in previous years. Almost 70% of the applications presented in the year 2002 in order to become members of the lower groups (sub-officers) have finished their secondary school and around 20% knows English and computing studies. The statistics also show an increase of young people from middle classes harassed by the crisis.⁷⁴⁹

Estero, graduate as assistant officers after three years of study. The subordinate staff receives the instruction of the School of Sub-officers and Agents "Sargento 1ro Segundo Gregorio Pesce".

⁷⁴² 24,701 out of 29,556 agents in activity in the Argentine Federal Police are sub-officers and only 4,855 are officers. Source: Superintendencia de Asesoría Institucional de la Policía Federal Argentina, information to the month of April 2003. Out of 45,139 agents in activity of the Buenos Aires Police, 73.3% are sub-officers and only the rest 26.7% are officers. Source: Police of the Province of Buenos Aires, information to the month of March 2003.

⁷⁴³ Source: La Nación, "En crisis por ineficiencia y corrupción", 30 November 2003, pg. 28. The law of the staff of the Buenos Aires Police (decree-law nº9,550/1980) establishes that the members of the technical bodies can only be promoted until the rank of Inspector Constable. This evidences the scarce importance granted to the tasks of criminality, fundamental for the police investigation.

⁷⁴⁴ Equivalent to seven years of studies.

⁷⁴⁵ That is, they did not complete 12 years of study.

⁷⁴⁶ Report quoted at: CELS; Informe sobre la situación de los derechos humanos en la Argentina, Año 1994; Centre of Legal and Social Studies / University of Buenos Aires, Collage of Philosophy and Literatura; Series of University Extension Nº5; 1995.

⁷⁴⁷ This phenomenon was not exclusive of the police forces but it also affected the Air Force, the Navy, the Argentine Naval Prefecture and the National Military Police. The only exception was the Army, whose number of candidates decreased during the 2002 summon (from 5,922 in 2001 to 4,022 that year). Source: Clarín, "Cada vez hay más aspirantes para entrar a las Fuerzas Armadas y de seguridad", 28 May 2002.

⁷⁴⁸ Source: Clarín, "Cada vez hay más aspirantes para entrar a las Fuerzas Armadas y de seguridad", 28 May 2002.

⁷⁴⁹ Source: Clarín, "Cada vez hay más aspirantes para entrar a las Fuerzas Armadas y de seguridad", 28 May 2002.

61% of the candidates to enter the school of agents Rosendo Matías of the Buenos Aires Police in 2003 were over the educative level required to enter the career⁷⁵⁰. 20% had even started –or in some cases even graduated from - in a university or third level institute⁷⁵¹. The professional abilities of the aspirants, however, are not necessarily taken advantage of in the police institution. In April 2000, the chief of the Buenos Aires Police at the moment, High Constable Eduardo Martínez, admitted he did not know where his men were or what they were doing and the stated *“There will be a census because we want to know where each of the policemen is. We cannot accept that after investing in their training they end up pouring mate or typing”*⁷⁵². In the same sense, the headmaster of the academy, Abel Castagno, argues: *“We train the men and women to carry out public security jobs”*, which means that the previous degrees increase the entering possibilities, but then the graduates go to the police stations or to patrol the streets. Castagno also states that *“85% of the candidates come here to get a job. Then, they find the vocation”*. The passing of a formation course of just four months guarantees a job position in police stations or dependencies of the force, a salary, medical assistance and social security contributions⁷⁵³. In the Buenos Aires Police, the average income of a beginner agent is \$370 and of a general constable \$4,000⁷⁵⁴. In the case of the Federal Police, an agent receives around \$650 and a general constable \$2,900.⁷⁵⁵

Since August 2003, with the objective of increasing the level of training in the prevention and repression of crimes and before the low educative level of the officers of the Buenos Aires Police⁷⁵⁶, the Ministry of Security of the province of Buenos Aires, demands the sub-officers to finish their secondary studies. The legislation establishes that these officers can not get promoted to the rank of sergeant first without this studies complete. By the year 2008, there will be no policeman without the degree.⁷⁵⁷

The active involvement of the Argentine police forces in the massive violations to human rights committed during the last military dictatorship⁷⁵⁸, deeply marked their actions during the

⁷⁵⁰ The general requirements are: to be Argentine (born in the country or naturalized), being between 18 and 28 years for men and 25 for women and having finished the basic cycle (EGB) or the first year of the Polimodal. In the first summon of 2003, 1,980 out of the 3,020 young aspirants (65%) had even finished the middle school. Source: Clarín, “Los aspirantes de este año están más capacitados”, 13 May 2003.

⁷⁵¹ 1,870 men and 1,150 women presented to cover 580 vacancies.

⁷⁵² Source: Clarín, “El Nuevo jefe de la fuerza hará un censo”, 7 April 2000.

⁷⁵³ Source: Clarín, “Los aspirantes de este año están más capacitados”, 13 May 2003.

⁷⁵⁴ Source: La Nación, “Rivara tiene a prueba a todos los policías de la bonaerense”; 7 December 2003, pg. 26. By mid December 2003, the Ministry of Security of the Province of Buenos Aires announced a salary increase for the Buenos Aires police with salaries lower than \$1,200. Source: Noticias de Economía y Sociedad (NOTEC), 12 December 2003

⁷⁵⁵ Pursuant to Marteau, Juan F.; “Azul casi negro. La gestión policial en Buenos Aires”; en Briceño León R. Ed.; *Violencia, justicia y sociedad*; CLACSO, Buenos Aires, 2002. p. 77-113. The salaries were calculated in 2000.

⁷⁵⁶ To the month of May 2003, around 23,000 police officers had not finished the middle educative level. Source: Clarín, “Obligan a 20.000 policías a cursar el secundario”, 13 May 2003.

⁷⁵⁷ The members of the group Comando, which includes street and General Service staff, that is administrative employees, are forced to fulfill the requirements. Since 1998, when the police was intervened, there were attempts to bring the policemen closer to the institution, but it did not work due to the urgencies and the ministries instabilities.

⁷⁵⁸ Even though it depended from the Armed Forces, the Federal Police –the same as other police and security forces- managed clandestine centers of detention, where terrible crimes were committed. One of these clandestine centers of detention was the “Athletic Club” –which had the official name of “Anti subversive Centre”, which worked in an old supply warehouse of the Federal Police which during 1976 and 1977 belonged to the Office of Federal Security. Around 1,500 detainees were accommodated there, who were tortured, among others by intelligence assistant Juan Antonio del Cerro –alias “Colours”- and sergeant Héctor Julio Simón –alias “Turkish Julián”. Del Cerro and Simón are prosecuted in case N°8686/00 “Simón Julio and others about unlawful deprivation of freedom”. Which is in proceeding before National Federal Court in Criminal and Correctional Matters of the Federal Capital n°4, Secretary N°7- in which they investigate the disappearance of José Poblete and Gertrudis Hlaczik, kidnapped on 28

subsequent years. The lack of depuration of their men and of adaptation of their regulations and practices hindered, after the return to democracy, the closing of the deep gap opened between the police and the society. That, among other things, derives in the identification of the criminal with an “enemy” who has to be eliminated in the framework of a “war” against crime and in the massive recourse to illegal practices.

3.3 Characterization of the penitentiary services

Due to the adoption of a federal State, the Argentine penitentiary system is organized in two kinds of institutions: federal and provincial. In this scheme, the national government administers the Federal Penitentiary System, while each provincial government has the power to organize and administrate its own penitentiary system. At the moment, not all the provinces have a penitentiary body, reason why they delegate the custody of people deprived of their freedom in the police officers –in police dependencies or in *alcaldías*- or else they request their transfer to units depending of the Federal Penitentiary System.

The penal institutions in all the country make a total of 176 units, including jails and closed, semi open and open prisons, penitentiary hospitals and *alcaldías*, in which almost 47,000 people⁷⁵⁹ are detained. The freedom deprivation of those people is always ordered by a judge, in a preventive way or as a result of the application of a sentence. As a consequence, the Argentine jail population includes people prosecuted and convicted by provincial or federal courts.

The dependencies which make up the Federal Penitentiary System should accommodate, in principle, people prosecuted or convicted for federal competence crimes and for crimes of ordinary justice competence which took place in the City of Buenos Aires⁷⁶⁰. Provincial Penitentiary Services, on the other hand, should accommodate detainees for common crimes committed in the provincial ambit.

According to decree-law 20,416⁷⁶¹, the Federal Penitentiary Service is a security force of the Nation destined to the custody and keeping of those prosecuted, and to the execution of the penal punishments of freedom deprivation, pursuant to the legal and regulation provisions in force.

November 1978, together with their daughter of 8 months old. José Poblete and Gertrudis Hlaczik are still missing. Frequently, police stations and other police dependencies were used as places of temporal accommodation before sending the detainees to the detention fields. The Internal Commotion Plan of the State (CONINTES), applied in March 1960, constituted an antecedent of what happened later since it formalized the participation of the police forces in the ant subversive fight. This plan ordered the suspension of certain constitutional guarantees and combined elements of the Buenos Aires Police and the Armed Forces in an anti terrorist Group, unified under the commands of the Army and authorized trials by military courts. It was suspended in 1961, due to the growing criticism about its arbitrary implementation and a decrease of the terrorist activity. See: Andersen, Martín E.; *La Policía. Pasado, presente y propuestas para el futuro*; Editorial Sudamericana; Buenos Aires, 2002.

⁷⁵⁹ According to information from the Nacional Office of Criminal Policy of the Ministry of Justice and Human Rights. National System of Statistics about the execution of the Punishment (SNEEP), information updated to October 2002. This figure does not include people accommodated in dependencies of other security institutions due to the overpopulation of the penitentiary units, as happens in the provinces of Buenos Aires and Santa Fe, among others, or due to security reasons.

⁷⁶⁰ Section 18 of the Criminal Code establishes that: “Those sentenced by provincial courts to reclusion or imprisonment for over five years shall be admitted in the respective national institutions. The provinces will be allowed to send them if they do not have adequate facilities” Also, section 53 of the Criminal Code states that: “[...] those sentenced to accessory reclusion for an uncertain period will have to serve it in federal institutions”.

⁷⁶¹ Organic Law of the Federal Penitentiary Service of 18 May 1973.

It depends hierarchically from the Ministry of Justice, Security and Human Rights of the Nation through the Secretary of Justice and Penitentiary Affairs. The Federal Penitentiary Service is responsible for the administration of 28 penal institutions distributed in all the territory of the country⁷⁶², which accommodate a penal population of approximately 8,800 people. The budget during 2002 was of \$226,785,141 (see Annex I, table 26).

The Service has its own institutes of formation to carry out the training and instruction of its staff that, as it happens with police forces, is divided in a body of officers and another of sub-officers. In 2002, 1247 (15.7%) officers and 6707 (84.3%) sub officers performed active services in the institution. Of all them, 1,593 were women and 6,360 men⁷⁶³ (see Annex I, table 27).

The Buenos Aires Penitentiary Service is under the orbit of the Ministry of Justice of the province of Buenos Aires through the Secretary of Penitentiary Policy and Social Re-adaptation. This Penitentiary Service is the biggest in the country, since it accommodates around 18,800 detainees⁷⁶⁴. It has 33 units, penitentiary hospitals and institutes, of which 11 are located in the so-called "Capital Radius"⁷⁶⁵, while the rest 22 are distributed inside the province. The administration of the system consumed \$235,126,061 during 2002 (see Annex I, table 28). As it happens in the case of the Federal Penitentiary Service, the Buenos Aires Penitentiary Service has its own institutes for the formation and training of its staff, made up by officers and sub-officers. In 2002, officers in activity were 2,723 (28.5%) and sub-officers 6,834 (71.5%)⁷⁶⁶. Of them, 77% were men and the rest 23% were women (see Annex I, table 29).

The only requirement of sub-officers, who represent the bit majority of the penitentiary staff, is to have finished the cycle of primary studies in order to enter the service.⁷⁶⁷

Those who want to enter the body of officers of the Federal Penitentiary Service, attend the Penitentiary School of the Nation "Dr. Juan José O'Connor". Finishing the cycle of middle studies constitutes an unavoidable requirement.⁷⁶⁸

A report made by the Sindicatura General de la Nación (SIGEN) about the Federal Penitentiary Service calls the attention to the deficient formation of its human resources, its lack of adaptation to the functions they are to carry out⁷⁶⁹ and the small relevance given to the training of the

⁷⁶² Of them, 6 are in the city of Buenos Aires, 6 in the districts of the Buenos Aires Suburbs and 16 more units in the rest of the country (located in the provinces of Jujuy, Salta, Formosa, Chaco, Misiones, La Pampa, Mendoza, Neuquén, Río Negro, Chubut and Santa Cruz).

⁷⁶³ Source: Federal Penitentiary Service, Department of Studies and Projects, Statistic and Penitentiary Census Division.

⁷⁶⁴ The number of inmates varies according to the source of information: pursuant to information of the Sub-secretary of Penitentiary Policy and Social Re-adaptation of the province, by December 2002 the inmates were 20,822.

⁷⁶⁵ It refers to the institutions located in the area of the city of La Plata, capital of the Province of Buenos Aires.

⁷⁶⁶ Source: Sub-secretary of Penitentiary Policy and Social Re-adaptation, Ministry of Justice of the Province of Buenos Aires.

⁷⁶⁷ This is equivalent to 7 years of basic studies. This is how it is indicated in the case of the Buenos Aires Penitentiary Service, in section 4 of decree-law n°9,578/80, Regime of the Staff of the Penitentiary Service. In the case of the Federal Penitentiary Service, the requirement is established by section 64 of decree-law n°20,416, Organic Law of the Federal Penitentiary Service.

⁷⁶⁸ Resides, it is a requirement to be between 17 and 23 years old, to be a native Argentine, "to possess dignified and honorable records" and not to have been separated from the public administration due to exoneration, among others, as well as fulfilling a series of physical and medical examinations. See: <http://www.spf.jus.gov.ar/home1.htm> The requirements to fulfill in order to enter the penitentiary schools in Cordoba, Buenos Aires and Misiones are similar. See: <http://www.misiones.gov.ar/MinisterioGobierno/SPenitenciario/gtramite.htm>

⁷⁶⁹ Out of 8,088 agents who make up the Federal Penitentiary Service, only 92 work in direct contact with the inmates convicted carrying out criminological tasks. Of them, 22 are lawyers, 57 psychologists or psychiatrists, 6 social

officers. Among other things it indicates that: *“The system of organization of the staff in ranks and sub-ranks causes inflexibilities which result in the collocation of the staff in ranks which are not adequate to their formation [...]. The system of qualifications establishes the consideration made by the Board of Qualifications of the courses and studies carried out by the staff, but it does not explicit the proceeding applied to carry it out [...]. The formation of the pedagogic operators [...] results insufficient to achieve the technical tools necessary to work with these groups. [...] The amount of groups offered by the Superior Academy of Penitentiary Studies is insufficient, and besides only two are obligatory during the career to get a rank promotion (Principal Assistant and High Warder)”*.⁷⁷⁰

The scarce formation of the Buenos Aires penitentiary staff derived in the passing of provincial law 12,796⁷⁷¹, according to which *“The agents designated to occupy the chief offices of the Sub-units, Units, Departments, Sub-directors and Directors of bodies of conduction of the Institutions shall have, besides the requirements and precautions established in this Law, university career degree related to the abovementioned functions”*. These provisions, however, will be in effect five years after the validity of the rule.

The rules which control the actions of the two most important penitentiary services of the country, Buenos Aires and Federal were passed during the de facto governments and they are imbued of its authoritarian spirit⁷⁷². Also at least two of the rules which regulate fundamental aspects of the penitentiary system at a federal level had this influence: the Regulation of Qualifications, Promotions and Eliminations of the Staff of the Federal Penitentiary Service⁷⁷³ and the Regulation of the Disciplinary Regime⁷⁷⁴. In this respect, the SIGEN observed that: *“Most part of the rules applicable to the staff, such as the Regulation of Qualifications, Promotions and Eliminations of the Staff and the Disciplinary Regime should be revised and updated, since it is approximately thirty years old [...]”*.⁷⁷⁵

The Regulation of the Disciplinary Regime of the Federal Penitentiary Service establishes that, among others, the behaviours mentioned hereinafter are offences. These are among the most serious offences to the professional ethic: *“Showing moral debility while on duty”*⁷⁷⁶ and *“Originating or repeating gossip and giving them transcendence, when they could affect the honour of an agent”*⁷⁷⁷. Among the offences to disciplinary order, these are found: *“Making statements of a public nature or giving journalistic interviews without the authorisation of a Superior officer”*⁷⁷⁸; *“Addressing a Superior officer, while on duty, without the bow to his immediate Superior officer or addressing other authorities for functions reasons without following*

workers, while 7 have other professions. As an example it is worth mentioning that Federal Penitentiary Complex I has a population of 1250 inmates and only has 2 psychologists for their assistance.

⁷⁷⁰ It is the “Evaluation of the Internal Control System – Year 2002”, report dated in May 2003. Available at: <http://www.sigen.gov.ar>.

⁷⁷¹ Enacted on 7 December 2001. Modifies section 11 of decree-law n°9,578/80.

⁷⁷² The Organic Law of the Buenos Aires Penitentiary Service (decree-law 9,079/78) dates from the year 1978. The Regime of the Staff of the Penitentiary Service (decree-law 9,578/80) was passed in 1980 and its regulation (decree 342) is dated on 11 March 1981. The Organic Law of the Federal Penitentiary Service (decree-law 20,416) was passed by the president of the Nation of the time, General Lanusse, on 18 May 1968.

⁷⁷³ Passed by decree n°54 on 10 January 1976.

⁷⁷⁴ Passed by decree n°1,523 on 14 March 1968.

⁷⁷⁵ Sindicatura General de la Nación; “Evaluación del Sistema de Control Interno – Año 2002”, May 2003. Available at: <http://www.sigen.gov.ar>.

⁷⁷⁶ Decree n°1523/68, section 34.-

⁷⁷⁷ Decree n° 1523/68, section 41.-

⁷⁷⁸ Decree n° 1523/68, section 75, minor offence.

*the hierarchical way*⁷⁷⁹; *"Falsely accusing Superior officers, peers or subordinates"*; *"Presenting three or more agents simultaneously, recourses or petitions"*; and *"Supplying information to the press or to individuals, about incidents which took place among the staff of the Institution, the details or records of which could damage his good name or revealing reports, orders or proofs should there exist a prohibition to do so"*.⁷⁸⁰

The authoritarianism denoted by these provisions influences the daily actions of the penitentiary officers, negatively affecting the relation between these and the people under their responsibility. In this sense, observes the Penitentiary Procurer of the Nation: *"In a body whose aim is to provide those it administrates, in this case the inmates, with socially accepted values, authoritarianism, decisions without any grounds other than authority, and in general every arbitrary measure, deeply divert him from the aim for which it was created, producing exactly the opposite effect, that is, de-socialization, adaptation of the inmate to the subculture proposed, "the jail subculture". Obviously, the re-socialization can not be the formation of individuals obedient to the penitentiary authority. A certain degree of obedience could be necessary to comply with the objective of providing the individual with guidelines of socially accepted behaviour, but the actions of the body can not be based only upon that, achieving obedience"*.⁷⁸¹

Many of the provisions quoted –which leaves the determination on the existence or not of the lack of will of the one who imposes the punishment- are destined to restricting the circulation of information between the officers of the Service and outside it. Thus, the possibility of committing a crime and being punished causes that the officers do not openly denounce irregularities and illegalities committed within the Service. Despite this, the available information evidences that corruption is broadly extended in the penitentiary services of the country.

Outings of prisoners to carry out robberies do not only compromise the Federal Penitentiary Service⁷⁸², but also that of the province of Corrientes. In the cover up of these incidents, the general director of the provincial penitentiary service, general inspector Juan Carlos Salica, was apparently implied. He was removed from his position in February 2004.⁷⁸³

Among the different evidences of corruption –or at least lack of professionalism- in the Federal Penitentiary Service, the findings of the Sindicatura General de la Nación after the budget evaluation of the Service are worth mentioning. In a recent report, the following is highlighted: *"Absence of reasons and professional support before medicine requests. Excess in the requirements of various supplies by the different sectors. Inclusion of products not provided for in the alimentary diets established by the Division of Medical Assistance. Demand of food for children in jail units where adult and young inmates are accommodated. Projects to hire services of cooked food and requirements of additional nutritional products"*.⁷⁸⁴

Eugenio Freixas, head of the Office of Assistance to the Victim of the General Prosecution of the Nation and former Penitentiary Procurer of the Nation, characterized the Federal Penitentiary Service in the following way: *"At the beginning of the 70s, the Penitentiary Service became a security force. And from then is considers itself so... The penitentiaries do not want extreme*

⁷⁷⁹ Decree n°1523/68, section 85, serious offence.

⁷⁸⁰ Decree n°1523/68, sections 103, 104 and 113 very serious offences.

⁷⁸¹ Penitentiary Procurer ; *Informe Anual 2001/2002*; op.cit.

⁷⁸² See Part II, section 2.5.3.5., above.

⁷⁸³ Sources: El Libertador www.planetacorrientes.com.ar/noticias/noticia.php?idinoti=825&tema=1; Crónica, "Corrientes: Purga en Servicio Penitenciario"; 4 February 2004.

⁷⁸⁴ SIGEN; "Evaluación del Sistema de Control Interno – Año 2002", report dated in May 2003. Available at: <http://www.sigen.gov.ar>

*controls. They are a part of an institution which is completely closed on itself and they do not want to open. IT is an institution which has not democratized. A counterpower*⁷⁸⁵. Agreeing with this, the present Penitentiary Procurer of the Nation, Francisco Mugnolo, states: "Since the return to democracy, the penitentiary institution had to restructure itself in order to comply with the task it was ordered to fulfil: re-socialize those sentenced, respecting human rights. However, it has opted for subsisting as a militarized security force. The attempts to professionally improve its staff, among other things, have not stopped practices of physical violence, ill-treatment, victimization of the family of the prisoner, punishing abuses, hanging and deaths inside the jail or accusations of drug abuse".⁷⁸⁶

Between the months of April 2001 and March 2002 the Penitentiary Procurer of the Nation received 8,540 demands, requests and complaints⁷⁸⁷ from a total of 8,096 people accommodated in detention centres depending from the Federal Penitentiary Service: 1,862 were due to problems of internal security, such as physical attacks, violent searching and poor life conditions.⁷⁸⁸

⁷⁸⁵ Source: Clarín, "Un grupo militarizado que no permite que nadie lo controle", 13 October 2002.

⁷⁸⁶ Source: Clarín, "Un grupo militarizado que no permite que nadie lo controle", 13 October 2002.

⁷⁸⁷ The demands received throughout the 12 previous months added 5972.

⁷⁸⁸ Penitentiary Procurer; Informe Anual de la Procuración Penitenciaria 2001/2002; Ministry of Justice, Security and Human Rights of the Nation; Buenos Aires, 2003.

PART III – NON STATE VIOLENCE TOLERATED BY THE STATE

1. House and land evictions in the rural area

The differentiation between evictions carried out by individuals and those carried out by state officials permits to introduce a distinction regarding State action before this kind of violence. In the first case, it avoids taking part before an individual who carries out an arbitrary forced eviction without any kind of judicial and/or administrative means. In the second case, it plays an active part, since through a judicial or administrative warrant, it decides on the forced eviction and authorizes its execution through the public force, if necessary.

The phenomenon of self-help evictions, however, can not be understood without analyzing the action of the Judicial Power and the police forces being as they are tools for the protection of rights (both in their preventive and in their reparatory versions) and the particular circumstances which surround these facts. Notwithstanding any of this, this kind of evictions has the same characteristic as those referred to when analyzing evictions of houses and lands in the rural area carried out by state officers⁷⁸⁹. That is, it is a similar context, with scarcity or lack of public policies destined to giving legal security over the ownership of land to the affected groups, in the framework of an extension of the land working border border, with the subsequent revalorization of lands until then considered unproductive.

The groups affected by these practices are also the same. They are small peasant groups and indigenous communities with the abovementioned socio-demographic characteristics. On the other hand, victimizers are those who –in the case of evictions carried out by state agents– started judicial actions (of recovery or usurpation) with the objective of starting the state machinery.

Self-help evictions are generally fostered by the legal owner or else by a third party who has some interest over the good (mining, petrol exploiting companies, landowners, or real state owners, etc.). This is possible, in part, due to the fact that the precarious ownership of the land does not give the holders enough guarantees. And in the case it does, the people, due to the conditions abovementioned, do not have the possibility of acceding to justice in order to demand their rights.

Thus, even if the text of the law⁷⁹⁰ gives protection to any kind of owner against the arbitrary acts of disturbance of the possession, this does not mean that justice is available for these people to demand their rights. Besides, in these cases an almost complete omission of the protection from the State is verified, both at a local and at a national level, to people deprived or damaged in their rights of possession of their private, communitarian or ancestral property.

Context in which the incidents take place

It is difficult to get information about these incidents since, in most of the cases, not being any public officers involved, any kind of denounce has to be, necessarily, presented by the victims themselves who, as it has been seen, are in an unprotected situation, geographically apart from

⁷⁸⁹ See Part II, section 2.1, above.

⁷⁹⁰ In particular, section 2469 of the Civil Code establishes that: "*Possession, whichever its nature shall be, and tenancy, can not be arbitrarily disturbed. If this happens, the affected party shall have legal action in order to remain in them, which he shall be summarily started in the way determined by the procedural laws*".

the urban centres and from the mass media of communication and they lack the economical resources to file judicial actions.

In this sense, it is possible that the presence of strong organizations in the region is a factor which contributes to explain the geographical concentration of the cases studied over peasant groups in the province of Santiago del Estero and of indigenous communities in the south of the country. In the case of Santiago del Estero, the presence of the Movement of Peasants of Santiago del Estero (MOCASE)⁷⁹¹ has had a fundamental role granting visibility to the conflicts developed regarding land problematic. In the case of the provinces of the south of the country (mainly Chubut, Río Negro y Neuquén), the presence of indigenous organizations –such as the Mapuche Confederation- has had a similar role. In this way, it can be supposed that the verification of these cases only in these provinces is due to the capacity of organization of the victims rather than to absence of similar conflicts in other regions of the country.

The second aspect that should be considered is that in none of the cases the victims of this kind of evictions have the property deeds of the lands they occupy, even though the necessary period to demand the right of property has passed (twenty years possession) or despite having such right in their nature of original people.⁷⁹²

Circumstances which made the victims to come into contact with the victimizers

The economical importance of the lands in conflict is a constant in the case of forced self-help evictions.

Another repeated element is the violence exercised during the evictions, generally greater than that applied in evictions carried out by public officers fulfilling their functions. This clarification is relevant, since in some very particular situations the private actors who carry out the evictions are accompanied by police staff, which in none of the cases is able to justify neither its action nor its presence.

A representative example is the punctual incident produced in the town La Simona, in the area of Los Juríes, province of Santiago del Estero. There, representatives of the company Los Mimbres S.A. tried to evict, in October 1998, the peasants from the lands they had inhabited and worked for at least 20 years. The representatives of this company, who did not have a judicial warrant, entered the lot with two bulldozers, demolishing trees and destroying the possessions and wiring of the peasants. Before the resistance met, the bulldozers stopped, but days later the representatives of the company returned accompanied by armed policemen and civilians and started the bulldozers again, resuming the eviction.⁷⁹³

Another representative case of the ruling situation in the province of Santiago del Estero is that of the Central Peasant Commission Tortuga, in the district of Pinto. This central is formed by around

⁷⁹¹ The MOCASE is an organization “[...] which bets on the growth through a base, democratic and participative construction, outside the traditional party or union structure, which has been fighting for the rights of the small family producers for over a decade. [...] At the moment, the peasant families who live in the lands of Santiago del Estero are over 16,000. For most of them, the central problem is the precarious tenancy of the lands in which they have lived and worked for decades”. Pursuant to “Movimiento Campesino de Santiago del Estero. En el camino de las grandes victorias”. Available at: <http://ar.geocities.com/copa-nacional/mocase1.html>

⁷⁹² The considerations which referred to the public policies destined to the ownership regularization of the lands of the indigenous communities and to the institute of usurpation are also applicable, with particular relevance in the cases of Santiago del Estero. See Part IV, sections 5 and 6, below.

⁷⁹³ See CELS, “Los Campesinos y el derecho a la tierra”, op.cit. p. 350.

200 families, who do not have property deeds over their lands, but who have held the lots for generations. The harassment to these families in order to abandon the lands they occupy started in 1998 and has consisted in the destruction of woods with bulldozers, destruction of neighbouring lands, robbery of wiring and posts, robbery and killing of animals, intimidations, eviction attempts, the presentation of false denounces against male and female peasants and arbitrary evictions. The last aggression to a member of this central happened on 14 November 2002, when Miguel Rodríguez was wounded by a shot his foot. The peasants indicate as responsible of these actions, landowners Claudio Trono and Rudesindo Bertero.⁷⁹⁴

More recently, in June 2003, the MOCASE denounced two attempts of land usurpation by Cordoba landowners who wired 3,600 hectares of the peasant communities of La Pampa and Pampa Charquita in the north east of the Moreno Department in the province of Santiago del Estero. The peasants denounced that Anibal Boyero and Juan Gasparuti, accompanied by officers of the provincial police who performed their duties in police station 44 of Tintina *"harassed the inhabitants of the community so that they would evict the lands and threatened them with long weapons so that they would abandon their houses"*. From 16 to 23 June, the police forces intimidated the peasants in three opportunities, while men hired by Boyero continued wiring the land which originally belongs to the peasants and these were denounced for the offences of usurpation and damages.⁷⁹⁵

Lastly, in September 2003 the intimidation was directed to over twenty peasant families who inhabit the towns of Escudero, Añango, Nueva Fortuna, Libertad and Santo Domingo de Los Cisneros in the north east of the abovementioned department of Moreno: a bulldozer sent by two private people started delimiting the west limit of a lot of 1683 hectares that the families had been working as a community for decades.⁷⁹⁶

A similar incident happened in the province of Mendoza on 13 November 2003, in the district of Jocolí, Lavalle Department. There, the Union of Rural Workers Without Land denounced that the businessmen Roberto Manrique, Vicente Manrique and Oscar Manrique were trying to usurp the land where over 20 peasant families had been carrying out their activities for many years. For that they used a bulldozer and had the support of the local police. These agents detained a member of the Union referring to a judicial warrant they never showed and, before the lack of charge they had to release him a few hours later.⁷⁹⁷

In the southern region, the towns Mapuche, Rankulche and Tehuelche daily confront the experience of seeing that the *"wires move at night"*. The invasion and robbery of indigenous lands is a frequent practice among landowners and businessmen. In the last years, some multinational corporations interested in Patagonic lands have pressed little local producers –mostly indigenous– who, compelled by a decreasing wool market, sell them their lands and farms reducing even more their possibility of recovering their ancestral lands.⁷⁹⁸

In this sense, a denounce was presented by the Mapuche Agrupation Felipin before the General Direction of Lands *"due to wiring which moves advancing through ancestral lands trying to get*

⁷⁹⁴ See "El derecho a la alimentación en Argentina. Informe y Recomendaciones de la Misión Investigadora Internacional a Argentina", op.cit.

⁷⁹⁵ Source: ANRed, press release, 6 July 2003.

⁷⁹⁶ Source: ANRed, press release, 29 September 2003.

⁷⁹⁷ Source: ANRed, press release, 17 November 2003.

⁷⁹⁸ See "Una perspectiva sobre los pueblos indígenas en Argentina", op.cit. p. 395.

*possession over communitarian lands, who have immemorial possession of their traditional lands occupied since the beginning of the century".*⁷⁹⁹

Another case which illustrates this reality is that of the Mapuche Tehuelche Futa Huau Community, in the province of Chubut. The community occupied a public school which had been usurped by a private person who, in time, was responsible for the robbery of 100 hectares of the land of community. As a consequence of these actions, many members of the community had to face a procedure for usurpation, damage to property and group assault.⁸⁰⁰

This kind of practices is favoured, among other factors, by the lack of access to justice of the victims. In effect, the most frequent victims are peasants and indigenous communities from inside the country, who, due to economic, cultural or geographical reasons, are far from the legal means of protection of their rights.⁸⁰¹

⁷⁹⁹ See "Informe Alternativo sobre el estado de cumplimiento del Convenio 169 de la OIT en Argentina", op.cit.

⁸⁰⁰ Pursuant to. "La dignidad y el viento: Comunidad Mapuche Tehuelche Futa Huau por (lvpress) 5 July 2003". Source: Indymedia, <http://argentina.indymedia.org/news/2002/07/119298.php>

⁸⁰¹ On the factors which favour the victimization of these sectors see Part IV, below.

PART IV – FACTORS WHICH PERMIT OR FAVOUR VICTIMIZATION

1. Preliminary considerations

In this section we analyze the institutional and non institutional factors which permit and/or favour the victimization of vulnerable people and groups in relation to their socioeconomic situation, among them young people, immigrants from bordering countries and those living in emergency neighbourhoods. The objective of this section, in other words, is to investigate some of the circumstances which turn people, whose economic, social and cultural rights are systematically violated, into privileged receivers of institutional violence and non institutional violence tolerated by the State.

To the vulnerability involved in the poverty situation, a series of factors must be added, which contribute in directing state violence towards those same social groups, thus re-victimizing them. In this way, to the restrictions suffered by the most unprotected sectors of the society regarding access to health, education, housing and other basic services, physical violence is also added. The incidence of this factor upon middle and high social sectors is substantially lower.

The factors systematized and analyzed hereinafter were briefly identified and presented in the description of the practices through which the different forms of institutional violence and non institutional violence tolerated by the State are exercised. They are: discrimination, tolerance of violence; protection given to victimizers; insufficient resources of the victims; weakness of preventive policies and, finally, the socio-economic situation.

The factors which permit or favour victimization of the least privileged groups of the society are evidenced in diverse ways. Basically, through legislation, administrative or judicial practices and public speech.

It is necessary to take into consideration that even though the factors have been differentiated and systematized for a better understanding, the vulnerability of some sectors of society to the diverse forms of institutional violence, is the result of the complex interaction of these factors, rather than of one of them independently.

2. Discrimination

It is possible to distinguish analytically⁸⁰² three groups of people who are preferential receivers of a strongly discriminative speech used to justify the different types of violent private actions and public policies. Migrants –both those native of bordering countries and those coming from inside the country-; who inhabit marginal neighbourhoods –commonly called “*villeros*”- and young people, usually associated with excesses and delinquency. This, necessarily, turns them into “second class citizens” and as a consequence, “enables” the violation of their rights and the practice on them, of different forms of violence.

⁸⁰² We say that the distinction is analytical because the groups are not excluding. For example, since in the emergency shanty towns there are populations of recent bordering immigrants, the practices of massively searching these lots, as well as controlling the accesses, are legitimized by the public opinion due to factors related to the anti-immigration discrimination, which adds to the stigmatization caused by the place where they live.

For those who give such speeches, the bad life led by migrants, *villeros* and young people is not a result of their misfortune. Even less the result of structural conditions, such as the high levels of unemployment or the difficulties involved in the participation of a more competitive and demanding labor market. On the contrary, their marginality is generally seen as the necessary consequence of having voluntarily and deliberately opted for an “easy” life, with no efforts or sacrifices.

2.1 Immigrants of bordering countries

Corina Courtis and Fernanda Long Elía⁸⁰³ analyzed the debate on immigration which took place in the Argentine media during 1999 and reached to the conclusion that: “once ‘illegal’ immigration becomes a debate, the subject of insecurity, which led the agenda until then, passes to a second position, in such a way that the migratory reform is considered a consequence of insecurity, and the immigrants from bordering countries, the cause. The biggest part of the journalistic production of the attempt of migratory reform is the covering of verbal facts: official statements and reactions to those statements. These are accompanied by information about police operations in immigrants’ detention and nationalization formalities, which are subordinated to the broader framework of the political debate. Thus, police acts of small relevance are ‘politized’, while the debate on the migratory subject is ‘policialized’.

For Courtis and Longo Elía the media scenery is not homogeneous, and there are some differences in the speech treatment of the migratory subject, both among the different media and among sections of one same media: “*In the newspapers directed to both ends of the social scale –Crónica and Diario Popular, who address popular sections; and Ambito Financiero and La Prensa, orientated to power sectors- the operations of stigmatization analyzed are more explicit. The best selling newspapers –Clarín and La Nación- show, in time, differential shades according to where the article is placed, Police, General Information, Politics or Opinion sections. Thus, for example, the same piece of news on the presentation of the bill of the Executive Power [for the reform of the migratory regime] and the presidential statements which accompanied it, appear in Crónica with the headline ‘Argentine only closes the door to delinquency’⁸⁰⁴ and in La Nación, ‘Menem wants to expel illegal people’⁸⁰⁵. In the first case, the newspaper accepts as its own the voice of former president Menem, without specifying that it is a textual quotation. In the second case, the newspaper wants to take some distance from the official voice, although without arguing the denomination of ‘illegal’ to refer to Latin American immigrants’⁸⁰⁶*

Not only have the communication media expressed anti-immigration opinions. Also public officers of a very high level do so. Even, as it was seen, the President of the Nation himself.

⁸⁰³ Courtis, C. and Fernanda Longo: “La prensa como escenario del debate inmigratorio”. Report presented in the V Congress of the Latin American Association of Communication Investigators (ALAI), Santiago de Chile, 26-29 April 2000.

⁸⁰⁴ Crónica, 21 January 1999, p. 12-13.

⁸⁰⁵ La Nación, 21 January 1999, p. 10.

⁸⁰⁶ The same information appears, double page, in the General Information section of Clarín under the headline “Menem said illegal immigrants are to leave the country”, with the comment “Operations in the metro: 30 foreigners detained” (21 January 1999, p. 34-35). In both cases, official voices and information are privileged and the migratory subject is identified with delinquency. However, three days later, the same newspaper publishes, in its Sunday supplement *Zona*, a long article with the headline “Goodbye to the promised land”, in which they present the opinions of investigators and of sectors opposing the government, while arguing the main assumption installed by the authorities (24 January 1999, p. 4-7) Pursuant to Courtis, C. and Longo Elía, F.: “La prensa como escenario del debate inmigratorio”, op.cit.

Arguing for a harder immigration policy, Carlos Corach –Home Minister during the office of Carlos Menem- held that *“most of the detainees in police stations of the Federal Capital in the last days have been foreigners. In December 1998, there were 7,925 detainees for different crimes. Of them 4,625 were foreigners. That is 58%. We do not associate the illegal citizen with a delinquent. [The statistics] were given to me this morning; they are made with files of the police stations of the city. They also indicate that 77% of the detainees for minor offences (mugging and theft) are foreigners”*⁸⁰⁷. The figures on detentions were presented as a reflex of the criminal reality and never associated with selective police practices. On the other hand, the data, unlikely at first sight, was later discredited.

Corach tried to explain the over presentation of foreigners among detainees arguing that *“there’s one important thing: many illegal people deliberately commit offences because while they are subject to a proceeding they cannot be deported”*.⁸⁰⁸

Among public officers, the divulgation of discriminatory speeches is not restricted to the ambit of the Executive Power. In this sense, it is illustrative to transcribe what national representatives at that moment, Miguel Angel Pichetto and Daniel Scioli expressed while the modification of law 24,390, known as “two for one”⁸⁰⁹ was being debated, on 14 March 2001.

In his intervention, representative Pichetto pointed out: *“It is necessary to strongly debate an immigration law in Argentina and to move forward in this subject [...]. We need a serious and responsible immigration law like any other modern State. There cannot be illegal people in the country who commit unlawful acts, and if there are, we must deport them immediately. We don’t have to be responsible for this”*. Scioli added: *“[...] I want to emphasize this point described by that representative Pichetto, because the characteristics of the immigrants that are arriving these days in our country, especially in our big cities, are not comparable to those of the Italian and Spanish immigrants who made our country big, when they came to work and to settle our industries. This is clearly reflected in the concrete case of many crimes that are harassing the city of Buenos Aires with “tours” of criminals who come from other countries, with “sanitary tours” that come to occupy our hospitals⁸¹⁰, with criminals who come to usurp homes and practice prostitution. Today Argentina lives upside down: we are exporting engineers and scientists and we are importing criminals. This does not mean we are against immigration [...]”*.

The kind and degree of discrimination contained in Scioli’s speech show a complete lack of modesty and sense of politic correction, which clearly evidences that there is a certain consensus in the public opinion regarding this matter. This degrading characterization of immigrants – especially those coming from bordering countries- did not have any political cost for any of the two legislators involved: Scioli took office as Vice-president of the Nation on 25 May 2003, while Pichetto was elected national senator for the province of Río Negro for the period 2001-2007.

⁸⁰⁷ Source: Clarín, “Corach vincula a los extranjeros con el aumento del delito”, 25 January 1999.

⁸⁰⁸ Source: Clarín, “Corach vincula a los extranjeros con el aumento del delito”, 25 January 1999.

⁸⁰⁹ Facing the serious problems of long judicial proceedings and of jails full of prisoners without trial or sentence, on 2 November 1994, law 24,390 was passed which established preventive prison should not be longer than two years and that, exceptionally –only in the more complex cases- it could be extended to three (pursuant to section 1). It was obviously a very long time, but it was considered adequate for the slow Argentine justice. The same law established a reparation criteria: *“After the lapse of two years provided in section 1, one day of preventive prison shall be computed as two days imprisonment and one reclusion”* (pursuant to section 7).

⁸¹⁰ It is worth mentioning at this point that on 27 September 2001, the Legislature of the Autonomous City of Buenos Aires passed law N°664, which in its section 1° provides: *“The access to the public services of health, education, justice, social promotion and action granted by the City has no restrictions. No limitation to its exercise could be based on reasons of origin, nationality, race, language, religion, migratory or social condition”*.

A similar speech to that of Scioli was the argumentative axis of the editorial line of the newspaper *La Nación*⁸¹¹ when the migratory legislation was reformed: *"The National Congress has passed a new permissive migratory legislation with the residents of the Mercosur. The migratory policy is critical to define the profile of the country we want to be. While the opening to European immigration defined a country with an important participation of the middle class, this new migratory policy will assimilate us to the profile of income distribution of our neighbouring countries. Those who benefit from the new policy will be the bordering countries, who will 'export' unemployment. Those affected will be the sectors with lower incomes, who will find it harder to find a job with the competence of immigrants from bordering countries"*. In agreement with what Scioli timely expressed about 'sanitary tours' and contradicting, among other rules, law N°664 of the City of Buenos Aires⁸¹², *La Nación* expressed: *"Neither does it make any sense to permit the access to health and education of illegal residents, with detriment to the services which can be given to our population in need"*.

2.2 Migrants from the provinces

The discrimination of the middle and high classes of the Federal Capital regarding popular classes of the provinces deserves a separate mention. There is a tradition of biologist racism which is manifested in the prejudice against the so-called 'black heads', descendent from indigenous and *mestizos*, who emigrated from the countryside to the cities because of the process of industrialization since the decade of the 40. These migrants formed the first emergency shanty towns. The city of Buenos Aires, inhabited by the children of European immigrants, experienced this internal immigration as a true invasion, and the rejection and discrimination against them is still felt today⁸¹³. The terrible acts of police violence exercised against *piquetero* demonstrators who tried to enter the City of Buenos Aires through the Pueyrredon Bridge in June 2002, confirmed that the limit between the capital and the province is still a 'hot border' in the local imaginary.

2.3 Shanty town inhabitants

The acting of the security forces can be understood in a spatial key. The security polices are applied in a differential way in different geographical areas evidencing the socio-spatial fragmentation and segregation. The speeches and polices destined to isolate and control the population of different areas and to watch the interchange between one space and the other, as if they were 'hot borders', answers to this logic. In the words of anthropologist Marcelo Sarlingo, there is *"[...] a clear and precise spatial segregation through internal frontiers guarded by the police and the Army"*.⁸¹⁴

This actions harm people who suffer a bigger lack of protection. As Luciano Andrenacci indicates, *"The inequality of income is thus mechanically transferred to the status of citizenship, as inequality in the physical infrastructure of the city [...] in the access to security and to justice"*.⁸¹⁵

⁸¹¹ *La Nación*, "La nueva política migratoria", 5 February 2004.

⁸¹² See footnote 810, above.

⁸¹³ "Racismo y Xenofobia en la Argentina. Capítulo III", at *Cuadernillo de Divulgación N°1*, INADI, Buenos Aires, 2001.

⁸¹⁴ Sarlingo, Marcelo; "Ciudades Intermedias: producción del espacio y fragmentación", Social Anthropology Department, Social Science College, Centre University, project presented in the *Fourth Congress of Cultural Researchers*, Cultural Studies Area, Investigations Institute Gino Germani, Buenos Aires, 16 to 18 November, 1998.

⁸¹⁵ Andrenacci, Luciano; "Desigualdad social, fragmentación espacial: la cuestión social contemporánea en Buenos Aires", Buenos Aires, 2001. The same ideas are developed in Andrenacci, Luciano: *Cuestión social y política social en el Gran Buenos Aires*, Ediciones al Margen, Universidad de General Sarmiento, Argentina, 2002.

One of the voices which most strongly suggested the closing of shanty towns and settings was that of retired constable of the Police of the Province of Buenos Aires, Mario Naldi⁸¹⁶, who held: *"In this moment, in 80% of the acts, especially in the northern area and in San Martín, the thieves go out of shanty towns and back to shanty towns"*⁸¹⁷. For Naldi, eight out of ten crimes in the northern area start or finish in a shanty town.

The same line was followed by the speech of former president Carlos Menem during the campaign for the presidential elections of May 2003. His security plan was elaborated by former constable Ramón Orestes Verón⁸¹⁸ and by former brigadier Andrés Antonietti⁸¹⁹ and was centered in three proposals: to use the Army in home security tasks, to close shantytowns and to reduce the imputability age to 14 years, everything under siege.⁸²⁰

Investigations carried out by police institutions deny the alleged correlation between shantytowns and delinquency. Gastón Pezzuchi, officer of the Police of the Province of Buenos Aires⁸²¹, analyzed the possible existence of a relation between the place of residence of the 'violent aggressors' and the irregular settings. The project «Space analysis of police confrontations in a large Argentinean urban Setting»⁸²² states that, even though "[...] there is a marked tendency in our society to believe that irregular settings concentrate delinquents in bigger levels and that, due to a kind of segregation, the levels of urban violence would decrease [...]", this belief is false. After a complex analysis based on the place of residence of the identified 'violent aggressors' (approximately 50% of the total number), Pezzuchi reaches the conclusion that the correlation

⁸¹⁶ Former chief of the Regional Unit of Tigre. He was considered one of the most powerful chiefs of the province when he formed the so-called "trench line" of the chief of the provincial police at the time Pedro Klodczyk. In 1996 he was forced to retire. At the moment he is assessor of the security and intelligence forces. He associated with Ramón Verón –former policeman, former Security Minister of the Province of Buenos Aires and, since 2003, national representative- with whom he opened a private security agency specialized in extortive kidnappings (in the decade of the 70s, together with his present partner Verón and Oscar Rossi, called "Crocodile", he had formed the anti-kidnapping brigade of Constable Polaris. He was investigated for unlawful enrichment by the prosecutor at the time before the Supreme Court of Justice of the province of Buenos Aires, Eduardo de Lázzari, and accused of covering policemen involved in the attack to the AMIA.

⁸¹⁷ Source: El Día, "Polémica propuesta de un comisario", 29 May 2002.

⁸¹⁸ He had worked during the dictatorship in the detention centre C.O.T. I Martínez (14237 Libertador, Martínez, San Isidro district, province of Buenos Aires, dependences of the former destacamento 16 of Road Policemen of the Police of Buenos Aires, more information at CELS, Terrorismo de Estado, 692 responsables, Buenos Aires, 1984). He was general constable of the Buenos Aires Police, former head of the regional units of Tigre and Quilmes. In 1996 he retired and together with Mario Naldi, they opened a private security agency specialized in matters related with extortive kidnappings. He was the Buenos Aires Minister of Security and when he took office he took pride in the number of people he had killed (some sources indicate that they would be over 50). He collaborated with Judge Eduardo Galeano in the investigation of the attack to the Association of Israeli Argentine Mutual (AMIA), but he was separated when the next of kin of the victims accused him of hindering the investigation.

⁸¹⁹ Retired brigadier. He acted during the military dictatorship as officer in the province of Santa Cruz. He was head of the Secretary of Security of the government of Carlos Menem created by decree N°1193/94 (19 July 1994, published in the Official Gazette on 21 same month), the day after the attack to the Association of Israeli Argentine Mutual (AMIA). On 28 August 2003 the AMIA denounced him before Justice for the crime of breach of the duties of public officers, after rendering statement in the case and not being able to explain why he did not do from his position everything he had been ordered to do on the week of the attack.

⁸²⁰ Pursuant to "Verdades Menemistas", in Tres Puntos, Year 4°, n°283.

⁸²¹ Pezzuchi is MSc in Geographical Information System (GIS) and Certified Criminal Analyst (CCA) and performs duties as criminal analyst in the Ministry of Security of the Province of Buenos Aires.

⁸²² Original in English: "A 3+ year-worth data Spatial Analysis of Police Confrontations in a Large Argentinean Urban Setting". Presented at the *6th Annual International Crime Mapping Conference, 8-11 December 2002*, Denver, Colorado. An improved version of the document – "Geographically Weighted Regression Methods / Local vs Global spatial models of crime" – was presented in the Third Annual Conference of the European Society of Criminology, Helsinki, Finland 2003.

between the residence of these aggressors and the settings is very weak. *"Only 7% of the settings coincide with areas identified for concentrating violent aggressors, defying the common perception that these areas are cradles to crime"*, states Pezzuchi in his conclusion.⁸²³

A reference to the criminalization of poverty and to the stigmatization of the *'villero'* built during the last dictatorship constitutes an indicator of the tolerance of the Argentine society to the violation of the rights of people who live in certain areas and points out the limits and risks that this conception imposes on democratic life. These violations, needless to say, would never be tolerated by middle and high class neighbourhoods.

"The one who inhabits the shanty town does it because he wants, because he finds in the shanty town the ideal place to operate in organized mafias", with these words Oscar Oszlak retold in 1982 the ideas imposed by the military dictatorship in a campaign regarding the inhabitants of the shanty towns⁸²⁴. In this context, the image installed is that of a shanty town as a *'Pandora box'* which has to be closed so that evil does not spread in the rest of the city.

The association of situations of residence precariousness with the increase in the amount of crimes was made explicit in an editorial of La Nación newspaper, where it was held that *"[...] the shanty towns have been showing in the last decades, phenomena that do not involve the number of inhabitants but that are much more concerning in other senses. In many of them, together with honest people who suffer the consequences of unemployment and misery, a delinquency which uses them as a safe refugee after committing their offences has installed there. The criminals frequently defy the police authority and turn the towns into redoubts in which it becomes difficult or impossible to enter"*⁸²⁵. Only three months later, the editorial was harder when referring to the shanty towns as *"certain disgraces that are something like brews where criminal actions are cooked"*.⁸²⁶

The tolerance of *porteños* to the possible built of a rail (originally they considered building a wall) of over one kilometer long to separate Shanty town 31 from the central neighbourhood Parque Thays, can only be understood taking into consideration that the public opinion is ready to support any initiative to decrease their insecurity perception. On this subject, La Nación newspaper expressed in its editorial, surprisingly under the headline *"Shantytowns, walls and discrimination"*, that *"[...] in the first place, it is convenient to define the matter of the wall. It is impolite, for sure. Horrifying, also, if considered from a visual angle. But the axis should not be located over the optic or over the panorama, but over security"*.⁸²⁷

The stigmatization suffered by the inhabitants of the towns cases that, when the communication media inform about an operation in the towns –which include massive searching, razzias or body searching- the critical voices are few. In this sense, the general speech is tolerant and praises the fact that the security institutions *"take care of the true problems of the neighbours"*. In this speech, *'neighbours'* is always opposed to *'villeros'*.

⁸²³ Pezzuchi warns that if the figures of crimes denounced in irregular settings were higher, they should be controlled with population concentration data, which in these areas is significantly higher than the average in the city. Notwithstanding this information, a spurious correlation could be concluded.

⁸²⁴ The information used for this description was extracted from Oszlak, Oscar; *Merecer la ciudad. Los pobres y el derecho al espacio urbano*. Colección CEDES, Buenos Aires, 1982.

⁸²⁵ La Nación, "Más población en villas de emergencia", 3 March 2003.

⁸²⁶ La Nación, "El muro tras el parque Thays", 16 June 2003.

⁸²⁷ La Nación, "Villas, muros y discriminación", 17 June 2003.

One of the ways to illustrate common places of the intolerant speech regarding those who inhabit shanty-towns, consists in reading the messages exchanged by Internet users in Argentine forums.

The following exchange⁸²⁸ was extracted from a forum in which they were debating why there are satellite TV antennae. Unlike what happens regarding clandestine cable TV connections – massive in the middle class- this phenomenon is perceived by the society as an intolerable abuse. The messages literally transcribed hereinafter, evidence the image of villeros installed in Argentina over the last 30 years:

- √ *"The thing is that you break your back working to buy your \$200-watch (400, now)⁸²⁹ and one day one of these guys comes and in 30" you don't have it any longer. Although in fact the problem is the result of the daily maltreatment of the society. One feels angry about the aggression of these guys, especially because some times one gives away clothes, food or money and then they come and steal from you, rape, beat the shit out of you or kill... and people supposedly deprived have a satellite TV antennae (and obviously TV, which is not a right but a 'luxury'), those who steal from you are sometimes better dressed than you and the amount of people who go to demonstrations because they are hungry, is quite 'plentiful', they have money to make huge notices and to go by bus".*
- √ *"I live in the centre and have Cable just by chance, these rats have Direct TV, I'd better move to the shanty-towns jajajaj".*
- √ *"Nahhh, I don't pity the people from Shanty town 31⁸³⁰ at all, they are cheeky, I heard them say they had been offered to build buildings I don't know where but the gentlemen did not accept because they didn't want to leave the centre..."*
- √ *"Some people simply live like that because they did nothing all their lives, because even though they could have studied, they didn't and that's the result".*
- √ *"I inform you that less than half the people who live in Shanty town 31 and 31 bis are poor, think that they don't pay light, gas, water or bills but they have water, light, gas, everything, obviously the kind of house can't be compared but they have all the services for free, even direct TV, then with a minimum salary of 200 pesos a month they have all of it to spend, they don't pay for anything, and as the poor families are very big, if they have an income between all the members of the family of 600 they live better than 50% of the Argentine population, and it is obvious that it is not convenient for them to move to normal houses since they would spend those 600 in taxes and etc. which they did not pay before. Do you understand now which the secret of the shanty towns is??"*
- √ *"One thing is to be poor, and another very different thing is to be villero. In general villeros like to be villeros, a honest and poor guy, if he is in the town is because has no other choice but as soon as he can he gets away, because a shantytown is an aguantadero, a place where thieves get together to have a power position with respect to the cops. Many shanty towns are offered programs of relocation, that is, they give them money so that they can legally buy a little piece of land and build their hut, but the guys do not want to leave because they are very comfortable where they are. What else do they want ???, if they have everything, even direct tv, they have!!!"*

⁸²⁸ "Direct TV en las villas", at <http://www.psicofxp.com/forums/historial/topic/41845-1.html>, March 2002. A longer version of the same debate is available at <http://www.psicofxp.com/forums/showthread.php?threadid=41845>

⁸²⁹ Referring to how the recent devaluation of the currency limits the consumption of the middle class.

⁸³⁰ Shanty town 31 is located in fiscal lots of a high real state value in the area of Retiro, City of Buenos Aires. The dispute about the use that should be given to those lots has placed Town 31 in the centre of the public debate. Shanty town 31 is one of the first settings of this kind and, despite having been scenery of the fiercest repressions, it has stayed in its place. On the number and dimensions of the settings in the City of Buenos Aires see Part V, below.

2.4. Young people

Young people are usually associated with delinquency. The recurrent initiatives that have the objective of lowering the imputability age as a formula to reduce the crime, constitute a direct consequence of that perception⁸³¹. It is important to remember that these debates take place in a context in which 8,600,000 children and teenagers –almost 70% of all the people under age in Argentina- are under the poverty line and half of them are indigent⁸³². On the other hand, the information confirms that institutional violence received by children is increasing, evidenced by the number of detentions, the accommodation conditions of those who are deprived of their liberty and the number of people under age killed in alleged confrontations with the police.

According to information from the Centre of Police Operations, the people under age detained in the ambit of the Province of Buenos Aires for being in conflict with the criminal law went from 14,839 in 2001 to 16,355 in 2002. These figures only reflect a small part of the problem, since most of the children confined are not in this situation because they have criminal problems, but because they have assistance problems: in Justice, for every child with criminal problems there are other two with open files for 'assistance' reasons, that is, abandonment, bad behaviour or helplessness.⁸³³

The actions adopted by the State before helplessness and abandonment of children and youngsters, usually are inclined to their revictimization rather than to their protection. In this line is explained the order of carrying out, in a continuous way, *"big operations with the objective of putting at the disposition of the juvenile Justice, children and youngsters who are unprotected in the street and/or begging [...]"*. This measure, adopted at the beginning of the month of August 2001 by the provincial police, is outside any legal regulation⁸³⁴. A similar measure was later implemented in the province of Mendoza. With the excuse of protecting and moving the children from the street, since 7 January 2003 the local police started carrying out massive detentions of people under age who were in a street situation –begging or working-, in the centre of the city of San Rafael without judicial warrant. Everything had allegedly started with the denunciation of shop keepers of the centre of the damages brought to their activity by beggars. Then, the local police detained over 30 children and teenagers, transferred them in police cars of the Third Police Station of the Police of Mendoza in order to, according to the official explanation, *"have them protected"*.⁸³⁵

⁸³¹ The supposed need to modify the imputability age is a subject which regularly enters the public agenda. This happened for the last time after the kidnapping and subsequent murder of Axel Blumberg, in the month of March 2004, since it was part of the modifications demanded and fostered by his father, now social leader Juan Carlos Blumberg.

⁸³² Source: Clarín, "Debaten dos proyectos para juzgar a chicos de 14 años", 4 September 2002.

⁸³³ In 2002, Silvia Guemureman, investigator of the Program of Studies on Social Control of the Institute of Investigations Gino Germani of the University of Buenos Aires, presented a project which analyzes the causes due to which children reached the juvenile courts of the province of Buenos Aires, between 1990 and 2000. In this last year, "minors involved in crimes were 31,517, while the rest (victims of crimes and "assistance") added 59,891", almost twice the number. Source: Clarín, "Por cada chico que delinque hay dos que son víctimas", 9 August 2002.

⁸³⁴ The order was given by the General Director of the Operative Coordination, High Constable Carmelo Impari. Before the demands and denounces presented by, among others, the Centre of Legal and Social Studies/CELS, the Minister of Security of the province of Buenos Aires, decided through Resolution N°4001 on 31 August 2001 *"Render without effect [...] every order, circular or disposition or rule originated in bodies of police conduction which are related to the children and teenagers who are in the street, except from the cases subject to the judicial jurisdiction"*

⁸³⁵ After the denounces of human rights organizations, among them Amnesty International and the Centre of Legal and Social Studies, the government of the province modified its actions and announced that the police would not detain any more children or send them to police stations. Instead, the problems of these children will be dealt with by social workers. On this particular see among others: Los Andes on line, «Una jueza desautorizó un operativo para

As it has been seen, the Argentine mass media of communication divulge –and at the same time form and reproduce– a speech which reveals strong prejudice against the popular sectors and the association in the collective imaginary, between the excluded social sectors and delinquency.

In the communication media they usually reproduce statements of political, police and judicial officers, and opinion surveys, considered “official” representatives of the public opinion. These sayings and the results of the surveys crystallize images which, even if divulged and repeated time and again, they are seldom supported by empirical grounds.

According to national judge María Cecilia Maiza⁸³⁶, *“there is a characterization imposed by many sectors and which answers to the following pattern: young, dangerous, drugged, irrational. This is nothing but using the term trigger happy every time a policeman is confronted with a kid”*⁸³⁷. This characterization is the one developed, among others, in the editorial articles transcribed hereinafter:

- *“Many and various are the causes which lead a person to commit a crime, but maybe the one which has had the biggest incidence lately in the behaviour of young people, has been the consumption of drugs. The link with drugs, then, is a part of the profile of the minor involved in crimes”*.⁸³⁸
- *“The study indicated that 60% considers positive that the moment of imputability is fixed at 14 years, while only 12% expressed that the rules in force, in which the age is 18 years old, should remain unchanged”*.⁸³⁹
- In relation to the reigning public insecurity in the city of Trelew, province of Rio Negro, the justicialista city council member Hugo Youglar stated that: *“there has been an extraordinary increase of juvenile marginality, these are kids who do not study or work and who cannot be supported by their families either, they are the hard core of urban marginality, which provides a social base for violence, expressed in criminality and vandalism”*.⁸⁴⁰

However, there coexist in the public space, voices of officers or experts in the matter who underline the fact that there are no reliable statistics which show that juvenile delinquency has increased:

“The Ministry of Justice only has figures from 1996, published in 1997. The Secretary of Home Security, the Home Minister and the Government of the City admitted not having information about juvenile delinquency. Representative Hilda de Duhalde, president of the Commission of Family, Woman and Minority of the Court, and Gabriela González Gass, president of the group of the Alliance in the legislature of the Federal Capital, stated that there are no studies which certify an increase in the crimes committed by minors. The same thing was stated by criminal court man Carlos Elbert and a judge of the federal jurisdiction who preferred keeping his name a secret. The Minor judge of the Capital María Maiza said that there is no increase of cases evident and that the number of trials is the same as that of the last years”.⁸⁴¹

detener a chicos que mendigan», 22 January 2003; Argenpress.info, «La criminalización de la pobreza y la niñez en la ciudad de Mendoza» 23 January 2003; Los Andes on line, «Desprotección de la infancia», 13 March 2003.

⁸³⁶ Responsible for Juvenile Court nº4, National Justice in Criminal and Correctional Matters.

⁸³⁷ Source: Clarín, Zona Supplement, “Los jóvenes “malditos””, 18 April 1999.

⁸³⁸ Source: La Nación, “Delincuencia juvenil: Sórdida realidad”, 2 May 2001.

⁸³⁹ Source: La Voz del Interior, “El 60% pide menores imputables a los 14 años”, 11 June 2001.

⁸⁴⁰ Source: Jornada, “Crudo panorama de la inseguridad pública”, 17 February 2001 (<http://www.diariojornada.com.ar>)

⁸⁴¹ Source: Clarín, Zona Supplement, “Los jóvenes “malditos””, 18 April 1999.

The demand for harder laws and for the increase of the police powers does not seem coherent with the lack of trust in the police action and in the judicial system, since nobody can determine how they would do to apply those hard laws with such a frail structure of law application.

As examples of the statements to the media requesting changes in the legislation, the following can be quoted:

- *“No step has been taken, either, to create legislation adequate to the terrible situation we live nowadays, neither in the codes nor in the procedural regulations. The imputability regime of minors demands an urgent revision: in the present Argentina, as we have said on many occasions, a young person of 15 years old who murders, steals or rapes knows exactly well what he is doing”.*⁸⁴²
- *“Meanwhile, the society still waits for the National Congress to make the legislative reforms to revert the terrible process started in 1984, which caused the weakening of the criminal repressive system”.*⁸⁴³

In March 2003, CELS entrusted Synovate consulting the carrying out of a qualitative exploratory survey on “The security conditions: The use of public force in Argentina”⁸⁴⁴. Among their conclusions this is outstanding: “[...] a discriminatory feeling against the delinquent prevails, whose prototypic figure is associated to youngsters of a low social condition, drug consumers, marginal (in an explicit or implicit way), shanty town inhabitants, kinds of ‘sub-human’ whose behaviour can be unpredictable and highly violent, unlike the old ‘professional’ delinquent, who was supposed to be respectful of the behaviour codes”. On the other hand, it is stated that: “[Present] delinquents constitute a working force that the economical system nowadays does not require and thus it does not only not take care or support them, but it also makes them in responsible of their own situation. This responsabilization is the one evidenced in the speech of groups, even when the economic crisis is considered ideal places for delinquency to develop, taking into consideration the unemployment index”.

2.5 Mechanisms through which discrimination is exercised

2.5.1 Legislation

Section 107 of the immigration law⁸⁴⁵ establishes that “[...] for the verification of the fulfilment of this law, the National Direction of Immigration (DNM), through the officers or agents it appoints, shall have the power to: [...] b) Carry out state ordered inspections, inspections on request or

⁸⁴² Source: La Nación, “Delincuencia juvenil: Inacción del Estado”, 6 July 1999.

⁸⁴³ Source: La Nación, “La inimputabilidad de los menores”, 29 April 1999. This editorial was published due to the sentence of Oral Juvenile Court n°1 in which three teenagers of 16 and 17 years old were sentenced to life imprisonment. Regarding this punctual incident the newspapers point out “The sentence to life imprisonment of the young boys who were between 16 and 18 years old when they perpetrated murders and robberies in neighbourhoods which limit with the General Paz Avenue shows that the State institutions are in condition of giving a satisfactory social answer before the barbarism facts which delinquency provokes”. In order to see an analysis on the application of life imprisonment to underage people see: CELS, “Reforma legal y sentencias desproporcionadas: dos temas centrales en el debate sobre los derechos humanos de la infancia”, at [Derechos Humanos en Argentina. Informe 2002-2003](#), Chapter VII, op.cit.

⁸⁴⁴ The investigation consisted in the realization of twelve (12) focal groups (with people of different socioeconomic level, age and residence place) and eight (8) interviews with key informants. The report which resulted from the investigation is dated in July 2003.

⁸⁴⁵ Law n°22,439, Legal Regime Immigrations, enacted on 16 March 1981 and published in the Official Gazette on 27, same month. This legislation was reformed on 17 December 2003 through law n°25,871, Migrations New Legal Regime, published in the Official Gazette on 21 January 2004. By August 2004, the law had not been regulated yet.

denounce of third parties; c) Enter freely and without any previous notification the places or commercial, industrial, educational, hospital, aiding premises and every place where there is a presumption of infraction to this law [...]". This means that the rule authorises the DNM to carry out any kind of searching and to any kind of premises without a previous judicial warrant, or using the words of the law "*freely and without any previous notification*".

Even if the law mentions a "presumption of infraction", it does not set guidelines to determine which presumptions are reasonable and which are not. In this way, it leaves the decision to act to the opinion of the officers of the DNM.

The regulation of the law⁸⁴⁶ established that if the responsible of the place they intend to search opposes, it is necessary to get a judicial warrant. Even if this resolution lessens the scope of section 107 abovementioned, the general rule is still the prescindibility of the judicial warrant for any searching. The regulation does not specify what the opposition is either, or who is entitled to determine if there is opposition or not; thus the situation has not significantly varied.

Section 107 of the immigration law unlawfully restricts and violates the guarantee of inviolability of the residence protected by the Code of Criminal Procedure of the Nation⁸⁴⁷, which clearly demands a judicial warrant to carry out any kind of searching⁸⁴⁸. Furthermore, it is against what the National Constitution⁸⁴⁹ and the international treaties of the same hierarchy establish.

2.5.2. Administrative and judicial practices

As it has been mentioned, the consolidation in the collective imaginary of the association between marginality and crime, derives in the acceptance of a differentiated treatment to people, pursuant to their socioeconomic level, age, place of residence, etc. The presence of discriminatory attitudes between judicial officers –even from the Supreme Court of Justice of the Nation- is evidenced, mainly through their judgements and resolutions. The police and security forces resort to a selective use of the powers they have against discriminated groups.

Attribution or exemption of responsibilities according to the social situation of the victim

It is illustrative, in this sense, the distinction raised by the Oral Court in Criminal Matters n°3 of the Judicial Department of San Isidro, in the province of Buenos Aires, in the case followed against sub-officer of the Buenos Aires Police Rubén E. Champonois, for the murders of Mariano Witis and Darío Riquelme⁸⁵⁰. Unanimously, the judges understood that Rubén Champonois was responsible for the simple homicide of Mariano Witis, the young hostage. However, the majority

⁸⁴⁶ Pursuant to section 110, paragraph C of the Regulation, annex to decree 1,023/94.

⁸⁴⁷ Sections 224 and 225 of Law 23,984, sanctioned on 21 August 1991, enacted on 4 September and published in the Official Gazette on 9, same month.

⁸⁴⁸ Section 227 of the Penal Procedural Code of the Nation states that, exceptionally, "[...] *the police shall proceed to house searching without judicial warrant when: 1º) Due to fire, explosion, flooding or any other damage, the life of the inhabitants or the property was in danger. 2º) It was denounced that strange people had been seen entering a house or premise, with evident intentions of committing a crime. 3º) An accused person who is being chased for the commission of a crime entered a house or premise. 4º) Voices coming from a house or premise announced that a crime is being committed therein or asked for help. 5º) There were founded suspicions that in a house or premise the victim of an unlawful freedom deprivation was being hidden and his/her life or physical integrity was in danger (Section 43 paragraph 7 of the Criminal Code of the Nation). The representative of the Public Prosecution Ministry is to authorise the diligence and his presence in the place shall be necessary*". Paragraph 5º of section 227 was incorporated by section 6º of law n°25,760, published in the Official Gazette on 11 August 2003.

⁸⁴⁹ Sections 17, 18 and 33.

⁸⁵⁰ The sentence was given in September 2003. To get more information on the case see Part II, section 2.5.3.1.

acquitted Champonois for the murder of Darío Riquelme, one of the robbers. Even though the death of both young men took place in identical circumstances, most of the judges considered that the shot that killed Riquelme was justified by the fact that Riquelme was probably carrying a weapon –this was not proved– and was suspected of committing a crime. The president of the Court based the difference in Riquelme's records: he stated that the victim, despite his young age, had made of crime his 'modus vivendi' and included in the considerations of his vote a series of alleged criminal records of Darío Riquelme.⁸⁵¹

This kind of presumptions of the judicial officers, not only constitute a discriminatory behaviour, but they also work as mechanisms of protection to the victimizers⁸⁵². Through acquitting judgements such as the one given in Darío Riquelme's murder, they legalize police practices which are clearly outside what the regulations which control the use of force by security forces establish.

Selective use of preventive tools: detentions for identity enquiry

Section 1º of decree-law nº333/58⁸⁵³ establishes that: "*The Federal Police perform duties of security and judicial police in the territory of the provinces and of the Capital of the Nation, within the jurisdiction of the Government of the Nation*".

In security matter, the function of the Argentine Federal Police consists in keeping public order, preserving public security and preventing crime.⁸⁵⁴

Police intervention is preventive when the mission has the intention of avoiding or aborting the decision of committing a penal infraction, hindering its concretion through a series of actuation of diverse nature. In this sense, preventing crimes implies making effective a group of institutional interventions tending to build an effective public security situation and, thus, to neutralize the possibility of criminal behaviours or activities.⁸⁵⁵

Some of the tools the police have in order to safeguard values so vaguely defined such as 'good costumes'⁸⁵⁶ are the possibility of searching people and detaining them to find out their identity; registering and qualifying the people habitually dedicated to activities the police is to repress⁸⁵⁷;

⁸⁵¹ CELS, representative of Darío Riquelme's mother appealed the sentence before the Criminal Cassation Court of the Province of Buenos Aires, since it considered that the judgment was discriminatory, making a difference between the lives of the two victims, convicting its author for one death and not for the other.

⁸⁵² See Part IV, section 4.1.2, below.

⁸⁵³ See note 712, above.

⁸⁵⁴ Pelacchi, Adrián J.; Tratado sobre la Seguridad Pública; op. cit.

⁸⁵⁵ Pursuant to Saín, Marcelo; Seguridad, democracia y reforma del sistema policial en la Argentina; Fondo de Cultura Económica; Buenos Aires, 2002. Public security has to be understood as the trust and tranquility of the population of not becoming victims of any kind of unlawful event or incident through the prevention carried out by the institution.

⁸⁵⁶ Decree-law nº333/58 states in section 4º that. "*In the Federal Capital, the following are functions of the Federal Police without prejudice of those contained in section 3: 1. To take care of the keeping of public order and of the good costumes guaranteeing the tranquility of the population and to repress unlawful games, all that according to the respective laws, regulations and police rules. 2. To collaborate in the protection of the underage and disabled in the way that the laws, regulations and police rules establish. 3. To collect lost things and proceed with them according to the prescriptions of the Civil Code. 4. To ensure the goods left due to disappearance, insanity or death of the proprietor, without known heirs, giving immediate intervention to justice*".

⁸⁵⁷ Section 5º of decree-law nº333/58 establishes that: "*The following are powers of the Federal Police in the performance of their functions: 1º Except for the cases established in the Procedural Code in Criminal Matters, they shall not be able to detain people without the warrant of a competent judge. However, if there were duly founded circumstances which led to presuming that somebody had committed or could commit a criminal or contravention act*

carrying out inspections and control of vehicles and their drivers⁸⁵⁸. The vague figure of the 'habitual delinquent' is with significant frequency associated to immigrants –both in police practice and in political speech-, whether their immigration situation is regularized or not.

The detention of people in order to find out their identity is a practice associated to searching, since it is a tool used by the police with that objective and it frequently has the same receivers. Even though not all the searchings culminate in a detention, nor every detention is the result of a searching, in general the same people are the ones searched and detained. It is relevant to establish this relation since, although the information regarding detentions to find out identity of foreign people is shocking, there is no information regarding personal searchings carried out. The way in which these practices are associated, permits to infer that the number of detentions to find out identity of foreigners can be an indicator of the selectivity with which personal searchings are also carried out.

Police station 9º is located in the intersection of Billingham Street and Corrientes Avenue, in the 'Peruvian Neighbourhood', called like that due to the number of people of Peruvian origin who inhabit that area of the City of Buenos Aires. In response to a request of CELS, the Argentine Federal Police informed that, between February 2000 and July 2001, police station 9º detained 4 thousand Peruvians, in most of the cases in order to find out their identity⁸⁵⁹. According to information from the Office of the People's Defender of the City of Buenos Aires, taking into consideration seven months of 2000, the percentage of Peruvians detained in the ninth reached 50.8% of the total amount. In the same period there was a 37.7% Argentine prisoners and the rest 11.5% were foreigners of other nationalities.⁸⁶⁰

What happens with Peruvians in the Abasto area is repeated with Bolivians in other neighbourhoods of the Capital, such as Liniers or Bajo Flores. In 2001, the amount of Bolivians imprisoned in police station 44º, in Liniers neighbourhood, fluctuated from 5 to 60 people a month.

The immigration policy also permits the expulsion of foreigners without the intervention of justice, situation which results obviously unconstitutional and against the duties contracted by the Argentine State in the international documents of human rights⁸⁶¹. The Argentine Naval Prefecture (PNA) caused 1,505 expulsions in 2000, other 2,098 in 2001 and 1482 between the months of January and October 2002. In the year 2000, the National Military Police expelled 1,611 foreigners; the following year the figure was 3,357 and between January and October 2002 the number of expulsions topped 1,772.⁸⁶²

and did not clearly show his identity, he could be taken to the correspondent police station, giving notice to the judge with correctional competence on duty and delayed for the minimum time necessary to establish his identity, which in no case should exceed ten hours [...]. 3º Register and qualify the people habitually dedicated to an activity which should be repressed by the police [...]"

⁸⁵⁸ About the latest legislative reforms in the matter see Part IV, section 3.1.1, above.

⁸⁵⁹ During December 2000, 662 people of Peruvian nationality were detained and in January 2001 the number of Peruvian detainees increased to 668. In the rest of the months of 2001, this figure was between 60 and 300 people approximately (Pursuant to a report of CELS before the Special Rapporteur on Human Rights of Immigrants of the High Commissioner of the ONU for Human Rights, year 2003, in response to the Questionnaire of the Rapporteur on the situation of "The rights of imprisoned immigrants". In some cases, arbitrary detentions of foreigners are prolonged until the day of their expulsion, without the intervention of a judge, except in the exceptional cases in which the damaged person has the means to file a summary for the protection of constitutional rights before Justice.

⁸⁶⁰ Source: Página/12, "La especialización de detener peruanos", 18 October 2003.

⁸⁶¹ This was modified at the end of 2003 through the sanction of law nº25,871.

⁸⁶² Source: Página/12, "La especialización de detener peruanos", 18 October 2003.

Arbitrary interpretation of the law

The comparison of three judgements of the Supreme Court of Justice⁸⁶³ on cases of detention in order to find out identity, which implied personal searching, permits to appreciate changes in the interpretation of the law as to the origin of the victim or the space in which the incidents took place.

- The Daray judgement

On 18 April 1991, Carlos A. Garbin was driving a Mercedes Benz car in the province of Mendoza when he was detained by the police, without a previous judicial warrant, in order to verify the vehicle. The driver showed the documentation which entitled him to circulate regularly, despite which he was “invited” to accompany the policemen to the police station.

The Supreme Court of Justice of the Nation⁸⁶⁴ considered the proceeding carried out to the driver of the Mercedes Benz vehicle illegal and mentioned that the detention violated the guarantee of section 18 of the National Constitution, according to which “*No one can be [...] arrested except by virtue of a written order from a competent authority*”. When analyzing the rules which grant on the police officers the power to arrest people, the Supreme Court invoked the prescriptions of the Code of Criminal Procedure, since it requires “*vehement evidence of guilt*”⁸⁶⁵, as well as the so-called “detention to find out records”, regulated by decree law 333/58.

According to the law, in the Daray case, the presence of vehement evidence required by the law in order to permit the detention was not proved, neither were the requirements necessary to justify the “detention in order to find out records” mentioned by decree-law 333/58 fulfilled. In this sense, the Court considered that “*[...] this rule does not constitute a blank authorization to detain citizens following the will of the police authorities. It requires the existence of certain circumstances which justify the reasonability of the detention. This demand that the detention is upheld in a reasonable cause permits to fundament why it is lawful for an inhabitant of the Nation to tolerate the detention and at the same time it prevents that any inhabitant is exposed, in any moment of his life, without any explicit reason, to the possibility of being detained by the authority*”.

- The Tumbeiro Judgement

On 15 January 1998, at midday, Carlos A. Tumbeiro was seen by police officers in an area later described by the trial court as “*of humble people, most of them inhabitants of a shanty town in bajo Flores*”, in the City of Buenos Aires.

According to the summery of the facts –included in the report of the General Prosecutor before the Supreme Court- Tumbeiro called the attention of the police since “*his attitude in the street was suspicious, because his clothes were unusual for the area and because he was evasive before the presence of the police car*”. In the reconstruction of the incidents, the court of the trial made reference to the “*nervousness showed by Tumbeiro before the presence of a police car*”.

⁸⁶³ The cases were selected through the job of Alejandro Carrió; “El derecho a la libertad y los ‘trámites de identificación’. De ‘Daray’ a ‘Fernandez Prieto’ a ‘Tumbeiro’ (o de Guatebuena a Guatemala a Guatepeor)”; en Jurisprudencia Argentina, Year 2003, Volume I, p. 729 and subsequent. The analysis lines explored hereinafter follow the mentioned document.

⁸⁶⁴ (Sup Court, 22/12/1994, -Daray, Carlos Angel about presentation). Judgements 317:1985.

⁸⁶⁵ Pursuant to section 284 paragraph 3º, law nº23,984.

According to Carrió, there are no elements which permit to establish if the detention was carried out by the suspicions described in (1) or by any situation derived of the verification of the identity (2).

- 1) Tumbeiro was asked what he was doing in the area and he answered that he was looking for spare electronic material. Apparently, this circumstance had increased the suspicions of the policemen, since they considered that this material was completely different to what could be found in the nearby shops.
- 2) Tumbeiro was requested to identify himself, before which he proceeded to hand in his identity card. Neither the judgement given by the trial court, nor the subsequent ruling of the Cassation Court, nor the ruling of the General Prosecution, nor, finally, the judge of the Supreme Court of Justice of the Nation suggest that the identity card handed by Tumbeiro could have caused any kind of doubt as to its authenticity.

The next step of the acting policemen was described by the trial court as an *“invitation to get into the police car after being searched in his clothes until they proved his identity”*.

The policemen considered they had the power to search the belongings of Tumbeiro and take him inside the police car, although he had proved his identity. According to the ruling given by the General Prosecutor before the Court, that additional proceeding had the objective of *“determining in situ and at mercy of the technical elements available today, the possible existence of a capture request or any other legal impediment”*. The search for a capture warrant had a negative result.

The analysis of these judgements made by jurist Alejandro Carrió⁸⁶⁶, is enlightening regarding the arbitrariness of the measure: *“Tumbeiro was intercepted by the policemen simple due to the fact that he was dressed in an ‘unusual way for the area’. What is this supposed to mean? That he was very ‘well dressed’ in an area of humble people? Or on the contrary, that he was too ‘badly dressed’? Or maybe he was neither ‘well’ nor ‘badly dressed’, and he was only wearing an extravagant outfit? But besides, how can it be a parameter for a person to be subject to a police proceeding the fact that his outfit qualifies as ‘usual’, or matches the one around him? The second fact taken into account was the apparent ‘nervousness’ of Tumbeiro, before the presence of a police car. Once again, we find ourselves before a guideline of a shocking subjectivity. A legal regime in which the ‘nervous’ or the ‘unusually dressed’ are more exposed to the loss of freedom than those who are quiet or who are cautious enough to dress according to the geographic environment they visit, it really seems unserious”*.

Once inside the police car, the officers noticed⁸⁶⁷ that inside a newspaper that Tumbeiro had in his hands there was a nylon bag with a white substance, which was later determined to be cocaine clorhidrate. Because of this, they gathered witnesses, the drug was confiscated and a judicial proceeding against Tumbeiro was started for the crime of drug possession. The trial court convicted him.

Subsequently, the 1st Room of the National Court of Criminal Cassation concluded that the police proceeding had been illegal and that, therefore, the convicting sentence was to be revoked: *“[...] the interception in the street of a person in order to identify him and his later placement in a police car waiting for the reception of the records he could register, constitute a true detention which only resorting to euphemisms could be considered as a mere delay or similar”*.^{868 869}

⁸⁶⁶ Alejandro Carrió; “El derecho a la libertad y los ‘trámites de identificación’. De ‘Daray a ‘Fernández Prieto’ a ‘Tumbeiro’ (o de Guatebuena a Guatemala a Guatepeor)”, op.cit.

⁸⁶⁷ It is not clear if this happened at plain sight or if a searching was necessary.

⁸⁶⁸ Pursuant to the vote of Dr. Rodríguez Basavilbaso.

Against the acquitting judgement of Tumbeiro, the prosecutor against the Cassation Court gave notice of extraordinary appeal before the Supreme Court of the Nation. It rejected the judgement of the Court and, in its sentence, virtually created a new reason to restrict freedom, not contemplated in any legal rule, which it denominated “precautionary measure of prevention”.⁸⁷⁰

In order to support its conclusion that the police proceeding had been valid, the Court made reference to its record in the Fernández Prieto⁸⁷¹ case, through which the Argentine State had been denounced before the Inter-American Court of Human Rights by virtue of the alleged violations of the treaties incorporated to the Constitution.⁸⁷²

In the Fernández Prieto case, the Court considered valid the proceeding through which officers of the Police of the Province of Buenos Aires detained three people who were circulating in the afternoon in a car in the Punta Mogotes area, close to the beach city Mar del Plata, because they considered they had a “suspicious attitude”. In no moment did the policemen explain what they had considered suspicious. Once the course of the vehicle had been intercepted, the policemen registered the inside of the car and the boot, finding a gun, bullets and drug substances. Fernández Prieto was convicted for the possession of these materials with a punishment of freedom deprivation.

With the record of Fernández Prieto, the Court revoked the acquitting judgement ruled by the Cassation Court in the Tumbeiro case, arguing that no irregularity had been committed in the police proceeding of the Tumbeiro case and stating that “[...] *the judgement refuted not only ignores the lawfulness of the acting towards the prevention of crime and within the framework of a prudent and reasonable acting of the police staff in the performance of their specific duties, but, also, it omits together with the nervousness showed by the subject, the other circumstances for which the police staff decided to identify him [...]*”

According to Carrió, since then there appears to be a new category of restrictions, such as the “interception for identification routines”, not ruled by any law. On the other hand, the judgement of the Court reaffirmed the importance of the “suspicious attitude”, not only as grounds for the police action, but also as justification of true freedom deprivations.

2.5.3. Public speech

The articulation of a public speech which legalizes and justifies the carrying out of forced evictions has an essential function in the application of this kind of violence, since it gives indispensable arguments for its reproduction.

⁸⁶⁹ In agreement with the decision of the Court, Carrió points out that neither section 284 of the Procedural Code in Criminal Matter, nor the rules on “the finding out of records” contained in decree-law 333/58, authorized the policemen to do what they did with Tumbeiro, based on a mere suspicion. In this sense he states that: “*For some reason –indicates Carrió– the Procedural Code has demanded ‘clear signs of guiltiness’ and not just a suspicion to consider a detention valid, and also for some reason the rules on ‘finding out of records’ demand that the person who is to suffer that measure had not credited his identity*”. Suspicion does entitle the judge to take signed declaration, pursuant to section 294 of the Criminal Procedural Code of the Nation (Alejandro Carrió; “El derecho a la libertad y los ‘trámites de identificación’. De ‘Daray’ a ‘Fernández Prieto’ a ‘Tumbeiro’ (o de Guatebuena a Guatemala a Guatepeor)”, op.cit.

⁸⁷⁰ (Sup. Court., 3/10/2002, Tumbeiro, Carlos A.). JA 2003-I-723.

⁸⁷¹ (Sup. Court., 12/11/1998, Fernandez Prieto, Carlos A. and others). Judgments 321:2947.

⁸⁷² Case 12315 of the Registry of the Inter-American Commission of Human Rights of the Organization of American States.

Through this speech the occupiers of properties and lots who are to be evicted are stigmatized, thus stripping them of their quality of victims –of violations to the right to housing and/or forced eviction- in order to transform them in victimizers. The arguments used for this can be classified in two big groups: a) those who associate the occupation of real state property with the increase of insecurity and the proliferation of crime: and b) those who, within the framework of the conflict of rights between proprietor and tenant, opt for qualifying the first one and victim and the latter as victimizer.

A clear example of the first type of speech took place in the eviction of the building of the former PADELAI⁸⁷³. By then, La Nación newspaper published an article with the headline “The neighbours of San Telmo live in peace after the eviction of the former Padelai”. Said article came together with four photographs, whose epigraph expressed: “Shop keepers are also relieved”; “In San Telmo they feel that they can once again walk peacefully in the neighbourhood where the building of the former Padelai is”; “The neighbours tell that the former Padelai was a corruption centre” and “Walled up, the former Padelai is no longer a source of concern for the neighbourhood”⁸⁷⁴.

The editorial of La Nación newspaper of 24 May 2004⁸⁷⁵ is a paradigmatic proof of the speech which collaborates to build the image of the occupant as a victimizer, who attacks the lawful rights of the proprietor, who in many cases is the State itself.

In a clear attempt to identify the people who exercise their constitutional rights (such as work and housing) with those who commit crimes, La Nación stated: *“The violation of the right to property has become a frequent practice in the Argentine of the latest years. [...] In almost all these cases, an incorrect interpretation of the general interest or of the common good had been applied and this qualification has been awarded to mobilizations of small groups who protect their own interest [...] The group of workers who forcedly occupy a factory or the family who usurps a house and later achieves the demagogical support of the authorities most likely are not aware of the negative impact that their actions cause on the decisions of building new factories or houses [...] Besides, there are criminal organizations which unlawfully and irregularly transfer the ownership of usurped properties, for which they require the complicity of public notaries, negotiators and alleged good faith acquirers, who accepted at a profitable price the acquisition of a good in a irregular way. The demands carried out to denounce these manoeuvres get to the court rooms, but do not have enough political support and for this reason in general the facts are not clarified or their responsible duly convicted”*.

An example of policies designed pursuant to this speech construction has been the modification of the Code of Criminal Procedure of the Nation, which incorporated section 238bis⁸⁷⁶, permitting the eviction of the occupants without giving them the right of defence⁸⁷⁷. In this respect, they tried to justify this measure in the following terms: *“The key information now is that the denouncer will be able to recover his real state before the ruling of the order bind over, procedural act which on many occasions is not carried out. This happens because the accused for the usurpation, in general with the counselling of attorneys, present the leasing contract as defence –of course*

⁸⁷³ See Part II, section 2.1.3.1. above.

⁸⁷⁴ La Nación, 14 March 2003.

⁸⁷⁵ La Nación, “Usurpaciones protegidas”, 24 May 2004.

⁸⁷⁶ Through law nº25,324, sanctioned on 13 September 2000 and enacted on 6 October.

⁸⁷⁷ On this particular issue see Part IV, section 3.1.1, below.

apocryphal- in an attempt to pass from victimizers to victims of an alleged 'unscrupulous subject who has deceived them saying he was the proprietor of the real state' [...]".⁸⁷⁸

In the same sense, the distinction made by Clarín newspaper between eviction of tenants for lack of payment of their rents and those directed to precarious occupants of a real state, can be explained: *"the issue of evictions, complex and very delicate, is two-fold. From both sides, proprietors/creditors and tenants/debtors have arguments which are hard to refute. And very reasonable reasons parade on both sides [...] Evictions due to lack of payment are ordered by Civil Justice. When somebody stops paying a rent or an instalment he/she does not commit a crime: he breaches a contract and the punishment is civil. The situation is different in the case of which were taken over: the one who usurps a property using force is subject to criminal punishment"*.⁸⁷⁹

The discriminatory speeches which associate immigrants, young people and inhabitants of the shanty towns with delinquency⁸⁸⁰, socially legitimize the exercise of diverse forms of state violence upon these groups.

3. Tolerance to violence

One of the factors which contribute to the re-victimization of vulnerable sectors, is the tolerance evidenced by the political and judicial officers –and at least part of the society- before the violence unfolded by the State.

The tolerance is expressed in diverse ways. One of them consists in the issuing of rules –of different hierarchy- which supply a framework of lawfulness to the exercise of the force or promote the circumstances which can cause their use. Those responsible for this situation vary according to the kind of rule although, pursuant to the republican system of weight and counterweights, the responsibility is generally shared by more than a public power (i.e. the Executive Power participates in the process of formation of the laws through the presentation of bills to the Legislative Power, the enactment and publication of the laws sanction by it and the issuing of urgency and necessity decrees⁸⁸¹).

The tolerance to the exercise of violence is also evidenced in judicial and administrative practices, for example, through the omission of the adoption of preventive policies which restrict the use of force or the resistance to investigate –administrative and judicially- the possible commission of abuses and/or crimes by police officers. It is necessary to warn, however, that opposing what could be supposed, the judicial investigation of acts of institutional violence does not guarantee the punishment of the officers responsible of committing violations to human rights: tolerance to violence is expressed during the trial stage through the application of lenient convictions. In other words, justice qualifies inadequately the behaviour of the accused officer and applies a less serious punishment than the one he deserves.

Another of the practices consists in the abusive use of legal definitions of crimes. In this way, rules originally destined to the protection of people who undergo a risky situation are invoked by administrative or judicial authorities in order to justify their victimization.

⁸⁷⁸ Ambito Financiero, "Acerca de la ocupación ilegal de inmuebles en Buenos Aires", 18 September 2000. Source: <http://www.gersberg.com/notas/articulos/2econyfinan/intrusos.htm>.

⁸⁷⁹ Source: Clarín, "Hay más de 1.000 juicios por desalojo cada mes en Capital", 26 September 2003. The highlighting is ours.

⁸⁸⁰ See Part IV, sections 2.1, 2.2, 2.3 and 2.4.

⁸⁸¹ Pursuant to section 99 paragraph 3º of the National Constitution.

Tolerance is also expressed through the permanence in the police or security institutions of officers involved in serious violations to human rights, both during the last military dictatorship and in the democratic period. The political responsible for these institutions not only avoid dismissing those officers, but they even promote them and assign them to hierarchy charges.

Those who, resisting different pressures, refuse to confirm the unlawful use of violence, are intimidated so that they do not persist with that attitude and, at the same time, discourage a similar proceeding from other officers.

Last, but not least, tolerance to violence is expressed through the speech which, basically, minimizes the seriousness of the report of violations to human rights. On the one hand, it is stated that most of these denounces are false and constitute an attempt to divert the action of justice of denouncers –who in many cases had already been subject to a criminal proceeding for the commission of a crime- to the police or security forces. In a subsidiary way, they try to justify the exercise of violence with moral or instrumental arguments. Thus, some state that the exercise of violence (i.e. tortures) on people who have been subject to a criminal proceeding is ‘fair’ since the victim of this violence, in time, inflicted pain or damage to another (i.e. he committed a crime). In other words, the victim of state violence ‘became a deserver’ of what he/she received and his/her suffering constitutes a way of ‘paying’ for the crime he had committed. Others, on the other hand, acknowledge an instrumental value in violence: they justify and/or encourage its use as a valid tool –and even a necessary one- to reach a superior objective: torture could be necessary to clarify a crime; repression of social protests is unavoidable to guarantee the security of investments and, with it, the economical progress of the country, etc.

No matter in which way it is expressed, tolerance implies accepting violence, instead of convicting and punishing it, and thus, favouring its continuity and reproduction.

3.1. Mechanisms through which tolerance to violence is exercised

3.1.1. Legislation

Use of police firearms

Police officers who are in activity or retired –whether they are officers or sub-officers- have ‘police status’. The ‘police status’ is the administrative situation which results from the set of duties, obligations and rights established by the laws and rules for the police staff.⁸⁸²

The police status is more than a set of duties and obligations, it is part of an organizational culture which supposes that being a policeman is more of a status than a profession and that he who belongs or has belonged at any point to the force, has to be available at all times and circumstances to fulfil the activities inherent to his condition⁸⁸³. Nobody better than the Federal Police itself to interpret the meaning of the ‘police status’: *“The police status is not sociologically only what is expressed by the police provisions, conceived by the set of duties and rights enjoyed by the members of the force. It is more than that; it is a way of feeling and of living. The*

⁸⁸² Pursuant to section 3 of national law n°21,965 and section 3 of law n°13,201 (province of Buenos Aires), among others.

⁸⁸³ According to sections 6 and 19 of law n°21,965, the police status –and, as a consequence, the duties, obligations and rights implied- are lost with the ‘discharge’. It happens upon request of the interested party, due to suspension, exoneration or to the loss or suspension of the rights inherent to the Argentine citizenship.

*policeman is so during 24 hours a day, not only during the hours of service*⁸⁸⁴. The figure of the 'police status' is one of the mechanisms through which this idea of 'exceptionality' of the police function was built -and is still kept.⁸⁸⁵

Among the duties-obligations of the policemen, they used to include the requirement of carrying firearms and intervening to repress crimes, even when the officer was out of his working hours and not wearing the police uniform. Even if recent legislative reforms have transformed that requirement into a power⁸⁸⁶, those changes were not enough to take some naturalness from the use of fire weapons and also the centrality they have in the police acting.⁸⁸⁷

This is not just the result of the scarce divulgation of these changes among police officers, but mainly of the transcendence that the weapon has in the institutional culture and in the making of the police image: the possession of the weapon and the possibility of using it any moment and place, allows the police officers to conceive themselves and act as a corporation different to the rest of the society, strange to their logics and that, therefore, escapes to their controls.

The carrying of weapons by the police staff when they are out of duty enables the violent and armed reaction before daily conflicts of less importance. The former chief of the Police of the Province of Buenos Aires, Constable Pedro Klodczyc, is an example of that. Klodczyc stated that *"When I was Inspector Constable, I unloaded a 45 gun on a guy in the centre of Quilmes, in the afternoon, with the street crowded with people, I shot a 45 load. I still don't know how I did not kill any of the passers-by. And it was a huge guy, chief of the Investigations Brigade. But they mugged me in the street with a 9 mm gun to rob me, they asked me for the car keys and I went crazy. There are moments in which one loses control"*.⁸⁸⁸

⁸⁸⁴ Paragraph quoted in Oliveira, Alicia and Tiscorina, Sofía; "Estructura y prácticas de las policías en Argentina. Las redes de la ilegalidad"; document prepared for the *Seminario Control Democrático de los Organismos de Seguridad Interior en la República Argentina*; Centro de Estudios Legales y Sociales/CELS; Buenos Aires, 7 and 8 April 1997. Extracted from a document of the Argentine Federal Police addressed to the former Deliberating Council of the City of Buenos Aires and quoted in the Bill of the Modifications Law n°21,965 –Law for the staff of the Argentine Federal Police, taken to the Senate and the House of Representatives of the Nation.

⁸⁸⁵ See, Ales, Cecilia; "Acceso a la Información Pública y Control de las Fuerzas de Seguridad: su Importancia para el Fortalecimiento de la Democracia. El Caso de la Policía Federal Argentina", Master's thesis, National University of General San Martín/ Georgetown University; Buenos Aires, 31 July 2003.

⁸⁸⁶ Section 8° of law n°21,965 established that: *"The police status includes the following duties common to the staff in activity or retired: [...] d) To defend against ways of action life, freedom and the property of people even risking their own life or personal integrity"*. In the practice, this rule forced the officers of the Federal Police to carry the regulation weapon permanently and to intervene in risky situations even out of duty, and even during licence periods. However, in 1999 the Federal Police modified section 69 of the General Regulation of Weapons and Shooting (R.P.F.A.N°8) and established that the carrying of weapons is obligatory only during the performance of ordinary or additional services (Internal Agenda N°115 of 17 June 1999). A similar modification recently took place in the ambit of the province of Buenos Aires. In this case, section 14 of decree-law 9550/80 (sanctioned and enacted on 3 June 1980, published in the Official Gazette on 16 June 1980; text ordered by decree 1068/95) established in paragraphs b) and d), the obligations of the police officers *"to carry the regulation weapon"* and *"use in any place and moment, even out of duty, the corresponding police proceeding to prevent crime, interrupt its execution or repress its authors, accomplices or accessories"*; its lack of fulfilment could determine the application of punishments. Towards the end of 2002 this rule was modified and it was established that it is only obligatory to carry the regulation weapon during the service, although the officers have the attribution of carrying it when they are out of duty. However, if they carry their weapon the officers are still forced to use it (Law 12,968, sanctioned on 31 October 2002 and enacted on 22 November through decree 2825/02).

⁸⁸⁷ A first evaluation of the results of the measure can be seen in: "Inseguridad policial y otras formas de violencia institucional" at CELS, *Derechos Humanos en Argentina, Informe 2002-2003*, op.cit. p. 225-31.

⁸⁸⁸ *Revista Noticias*, 27 April 1996, p. 114.

'Express evictions'

In the different rulings existent in Argentina there are some provisions which facilitate the realization of forced evictions and, consequently, the violent situations derived from this kind of practices.⁸⁸⁹

An example of this kind of legislation is the eviction proceeding for the cases of breach of the obligations resulting from urban lease contracts in the national ambit, rule only applicable in the Autonomous City of Buenos Aires. This proceeding has suffered a modification which undermines the constitutional guarantee of the due process, since it arranges a summary proceeding to evict the occupants of properties before the definitive judicial sentence, without any possibility of questioning the judicial warrant. Because of this, it has been called 'express eviction'. Thus, section 684 bis of the Code of Civil and Commercial Procedure of the Nation entitled "*Eviction for lack of payment or expiry of contract. Immediate eviction*"⁸⁹⁰, establishes that "*supposing that the cause invoked for the eviction was the lack of payment or expiry of contract, the actor could also, under security interest in property, get the immediate eviction according to the proceeding provided in section 680bis*".

In some provinces there are similar provisions. In Santiago del Estero, for example, a section was added to the Code of Criminal and Correctional Procedure to favour the evictions within the framework of criminal records. Thus, section 182bis of that code establishes: "*In the cases for infraction of section 181 of the Criminal Code, in any stage of the process and even without the ruling of the writ of processing, the judge upon request of the damaged party, shall have the power to provisionally dispose the immediate devolution of the possession or tenancy of the property when the right invoked of the damaged party was plausible [...]*".

In the national ambit, section 238 of the Code of Criminal and Correctional Procedure of the Nation establishes that "*In the cases for infraction of section 181 of the Criminal Code, in any stage of the process and even without the ruling of the writ of processing, the judge upon request of the damaged party, shall have the power to provisionally dispose the immediate devolution of the possession or tenancy of the property when the right invoked of the damaged party was plausible. The judge shall be able to fix a bail if he considers it necessary*".

Police attributions

One of the answers given by the political power before the generalized increase in the sensation of insecurity has been the extension of the police attributions. This was presented as a logic and necessary measure before the prognosis that insecurity is, at least in part, product of the restrictions imposed on the police officers in their daily acting.

In the ambit of the province of Buenos Aires, the extension of the police powers was carried out through the sanction of law n°12,405⁸⁹¹, which modifies Code of Criminal Procedure. In its new version, paragraph 5° of section 294 establishes that: "*[...] When it is a public proceeding of*

⁸⁸⁹ In this respect it is worth noting that these rules are in the procedural codes, the ruling of which is exclusive power of the provinces, as established by the Constitution. (See Part I, section I, above). That, apart from making the study of different situations difficult, derives in the fact that the provinces have a different and even contradictory procedural legislation, between one jurisdiction and another.

⁸⁹⁰ Modified through law n°25,488, sanctioned on 24 October 2001, enacted on 19 November and published in the Official Gazette on 22, same month.

⁸⁹¹ Sanctioned on 22 February 2000, partially enacted on 7 March and published in the Official Gazette on 15, same month.

control arising from policies for the prevention of crimes, [the policemen] could proceed to search the belongings carried by people in their clothes or otherwise or that they may have in the vehicles in which they are moving, proceeding to the confiscation in the very serious or urgent cases or when public order is in danger, of everything that constitutes element of the crime or instrument of the crime or is product of it, pursuant to what is established by title VII, Chapter IV of this Code, being the immediate communication to the Public Prosecution Ministry and the Guarantee judge enough. In any circumstance, he shall be able to search the load transport and/or the public transport of passengers, complying with what is established in paragraph 1 'in fine' of this paragraph".

Similar reforms were introduced to the Code of Criminal Procedure of the Nation, in this case through the sanction of law n°25,343⁸⁹² through which the police and security officers are allowed to make personal searchings without a judicial warrant. Furthermore, the police is authorised to practise searchings on the body of the people, their clothes, or the things they carry without any previous circumstances which justify such a measure. In order to search a person without the warrant of a judge, the police do not have to be in an 'urgency' situation any longer. In this way, the police is compared with a judge, since the searchings decided by the police –which always acts, in the framework of a criminal proceeding, after the delegation of the first one- are no longer an exception to the rule which establishes the need for the judicial warrant.⁸⁹³

Undoubtedly a judge is in better conditions, since he is better prepared and has more serenity and objectivity than the police to evaluate the convenience or not of a measure which harms the mentioned constitutional rights⁸⁹⁴. On the other hand, it should also be considered that with the previous rules the police was already abusing of its powers regarding personal searchings, for example, forging judicial cases.⁸⁹⁵

This reform was carried out from the false dichotomy between constitutional rights and guarantees, on the one hand, and efficiency in the persecution of the crime, on the other. In this context, individual rights are considered obstacles in the 'fight against delinquency', forgetting that the only justification of the acts of coercion exercised by the State is the preservation and promotion of the individual rights of all the members of our community. Besides, such reform will cause, doubtlessly and paradoxically, a higher level of violence than the one they seek to avoid.

Through the abovementioned reform to the Code of Criminal Procedure of the Province of Buenos Aires⁸⁹⁶ modifications were introduced in paragraph 8° of section 294. It states that among the attributions of the police officers the following is found *"arrest the alleged guilty people in the cases and forms authorised by this Code and decide on their solitary confinement when the requirements of section 152 concur for a maximum lapse of twelve (12) hours, which shall not be prolonged unless by judicial warrant. In the place of the fact, or around it, or where he was arrested, they shall require useful indications and information from the alleged accused in order to immediately continue with the investigation. This information shall not be documented"*.

⁸⁹² Sanctioned on 13 June 2001, enacted two days later and published in the Official Gazette on 19 June.

⁸⁹³ See Borda, Rodrigo; "Ampliación de las facultades policiales. Aspectos inconstitucionales de la ley 25.434, modificatoria del Código Procesal Penal de la Nación", *La Ley*, Buenos Aires, 21 September 2001.

⁸⁹⁴ Pursuant to Carrió, Alejandro, *Justicia Criminal*, Ed. Lerner, Buenos Aires, 1986, pg. 27-28.

⁸⁹⁵ About this particular item see among others CELS, "Violencia en las prácticas policiales", in *Derechos Humanos en Argentina. Informe 2002*; Chapter IV, second part, op. cit. and Ales, C.; Chiller, G. and Palmieri, G.; "Illegal Practices of the Police in Argentina: Fabricated Proceedings by the Federal Police" in S. Einstein and M. Amir (Eds.): *Police Corruption: Paradigms, Models and Concepts – Challenges for Developing Countries*, op.cit.

⁸⁹⁶ Law n°12,405. See supra note 890.

Similar provisions were introduced in the Code of Criminal Procedure of the Nation through the sanction of law n°25,434⁸⁹⁷. Through the reform of paragraph 9° of section 184, the police are allowed to question a suspect in the place where he was arrested⁸⁹⁸. Concretely, the rule establishes that: *“In the crimes of public action and only in the suppositions of section 285, [the officers of the police or of the security forces have the attribution of] requiring from the suspect and in the place of the fact, summary news and indications about relevant circumstances to guide the immediate continuation of the investigations. This information shall not be documented or have any value in the process”*.⁸⁹⁹

The police had been expressly forbidden in the Code of Criminal Procedure of the Nation to take a statement to a suspect in order to avoid the so-called ‘spontaneous manifestations’ which covered up real acts of coercion and/or torture. In this sense, the sanction of law n°25,434 favours a terrible return to those practices, with the possibility of making use of them in a daily and systematic way⁹⁰⁰. Furthermore, in this context, the lapse to keep a person in solitude confinement without a judicial warrant is extended from 6 to 10 hours, which without any doubt aggravates the situation.

3.1.2. Administrative and judicial practices

Condescending investigations

On some occasions, the impunity of the police and security officers who commit abusive or unlawful acts is a result of the tolerance shown by some judicial officers before institutional violence. Even though there are cases in which judges or prosecutors apply all the severity of the law upon the officers involved, it is concerning to verify that, in many others, the judicial investigations in cases of police brutality are condescending. Judicial tolerance to institutional violence is evidenced in the following way.

In general, the judicial officers do not investigate the possible commission of a crime by the police officers who take part in the repression of an alleged criminal incident in which a person is injured or killed, for example, a homicide occurred within the framework of a robbery attempt. In these

⁸⁹⁷ See note 891 above.

⁸⁹⁸ The measure had been suggested in May 2001 by the Secretary of Home Security at the time, Enrique Mathov, in the burial of two officers of the Federal Police. Source: Clarín, “Analizan darle más atribuciones a la Policía Federal”, 21 May 2001.

⁸⁹⁹ Even though this power is granted to the police, in paragraph 10 the rule which establishes the judicability of the statement subject to the proceeding is kept, according to which only the judge is entitled to receive his statement, while the police can only question him to verify his identity being forced to follow, under punishment of nullity, the formalities established in section 104, paragraphs 1° and 197, 295, 296 and 298 of the CPPN, also establishing in that paragraph that when there were “urgency reasons” for the subject to render statement, he could be taken to any judge who has the same competence and matter than that to whom it corresponds to intervene in the issue in the first place.

⁹⁰⁰ The Supreme Court of our country had the opportunity of speaking in this respect establishing that the ‘spontaneous manifestation’ given under torment as well as the proof derived from it, lack probative virtuality; like that it spoke in the “Montenegro” judgment (Judgments – CSJN 303:1938) first and in the “Francomano” judgment (L.L. 1989-B-613) more recently, where the highest court of Argentina quoted the famous case of the American Court “Miranda v. Arizona” (384 US 426). It is worth mentioning that the famous North American leading case was not a case of unlawful coercion, but of psychological or moral coercion by the police, reason why that dictum had a higher scope than the records in our country. See Borda, Rodrigo; “Ampliación de las facultades policiales. Aspectos inconstitucionales de la ley 25.434, modificatoria del Código Procesal Penal de la Nación”, op.cit.

cases, the police version of the way in which the incidents took place is usually accepted without any questioning by the judges or prosecutors responsible for their investigation.⁹⁰¹

This situation, serious as it is, is even more concerning if taking into consideration that the investigation of the police acting is usually omitted, even in cases in which there are clear signs of the commission of a crime by the police agents. In these cases, it can be presumed that there is a deliberate attempt to cover up, and in this way, to protect the police officers involved.⁹⁰²

It is also frequent for judicial officers to omit the investigation of the unlawful acts committed by policemen in order to cover up their own crimes which are usually out in the open during the criminal proceeding. The following are among them: intimidation to the victims –and/or their close contacts- and witnesses, alteration of public documents –for example, the files in which detentions are recorded- and the introduction in the scene of the crime of elements –for example weapons or drugs- of illegal precedence.

Naturalization of the use of firearms

The tolerance of institutional violence is not just a judicial practice, but also an administrative one.

By virtue of their potential consequences and taking into account that their use is only authorised in exceptional circumstances, the lawfulness in the use of firearms by police officers is not to be presumed. This however, is what usually happens in the administrative ambit. In other words, the offices of domestic affairs seldom carry out investigations which have the objective of determining the lawfulness or unlawfulness of the police use of firearms. In this way, they naturalize and minimize a phenomenon (armed confrontations) which should be exceptional and shocking, both for the officers involved and for the institution.

The application of punishments to the police officers who committed administrative offences – some of which are even crimes- should be subsequent to the thorough investigation of the facts they are attributed. This, however, does not prevent the adoption of measures to avoid their participation in other acts of similar characteristics or the obstruction of the investigation destined to clarify them. The adoption of these measures is not only convenient but also unavoidable when the incidents investigated involve, in a certain way, the use of fire weapons.⁹⁰³

⁹⁰¹ Between the end of 2003 and the beginning of 2004, CELS and the National Direction of Criminal Policy –Ministry of Justice, Security and Human Rights- carried out a study of the judicial files in which they investigate the intentional homicides occurred in the ambit of the Autonomous City of Buenos Aires during 2002. When consulted about the alleged criminals killed in police confrontations occurred in the commission of a crime, some judicial officers did not identify them as victims of an intentional homicide, but as 'killed, taking for granted that the death of the alleged delinquent was a natural consequence of his criminal acting and therefore, it does not correspond to register the incident as an intentional homicide, even less to investigate it.

⁹⁰² See Part IV, section 4.1.2, below.

⁹⁰³ On the other hand, the justified use of weapons does not make the adoption of preventive measures less necessary. That, due to the fact that the participation in an armed confrontation constitutes a highly tensioning situation for the policeman and that, therefore, can have consequences upon his subsequent performance. In these cases, apart from the measures abovementioned, there has to be a therapeutic following of the officer so that the trauma has no negative consequences upon his job and/or his personal life. Through Internal Agenda N°48 –dated on 14 March 1996- the Federal Police established the realization of a psychological evaluation to “[...] the staff who participated in high risk proceedings and with delinquents killed”. According to this disposition, the staff has to be derived to the Psychological Service of the Churrua Hospital for exams, and if necessary, for the corresponding treatments or the granting of medical licenses. Even if this disposition constitutes an advance in the proposed direction, it should be applied to all the officers who take part in police confrontations, even they did not had fatal results.

The tragic consequences that come together with tolerance to violence in the administrative ambit are evidenced when analyzing the records of sub-officer of the Police of the Province of Buenos Aires, Rubén E. Champonois who was only preventively detained 8 months after murdering Darío Riquelme and Mariano Witis⁹⁰⁴. During that lapse, Champonois killed another minor, Emanuel Monti, 16 years old, in very similar circumstances: 'set' firearm, shot from a distance of 60 cm and no aggression from which he had to defend himself.

Exactly the same was the case of first sub-officer of the Buenos Aires Police Daniel Macua, who continued performing his habitual duties after having murdered from the back Emanuel Salafia, on 3 May 2002⁹⁰⁵. Forty-one days after the death of Salafia, in an operation carried out in Lomas de Zamora, sub-officer Macua accidentally killed a hostage. It was only then that the policemen responsible for the death of young Salafia⁹⁰⁶ were preventively separated from the force.

Abusive use of legal institutes

They usually resort to diverse legal technical means against people who undergo a housing deficit. Paradoxically, some rules originally conceived for the protection of people, favour the exercise of violence by the State. In this way, the State not only violates the rights of those who are victims of forced evictions, but it also does so within the alleged lawfulness granted by the rules. This lawfulness is only apparent since the evictions are not the result of a lawful or licit application of the rule, but of its arbitrary interpretation in judicial or administrative proceedings.

Institutes such as 'administrative eviction' –thought to preserve the patrimony of the State and public security and health- and the 'action of the feared damage' – also thought as an instrument to preserve public security- were the tools which allowed the State to carry out the evictions of the former PADELA⁹⁰⁷ and Ejército de los Andes⁹⁰⁸ neighbourhood, respectively. In both cases, they

⁹⁰⁴ See Part II, section 2.5.3.1., above.

⁹⁰⁵ See Part, II, section 2.5.3.1., above.

⁹⁰⁶ Macua and the Sargeant Isabel Ciarlo.

⁹⁰⁷ The occupation of this building started in 1984, and the first group of inhabitants was made up by 108 families who subsequently formed the San Telmo Credit and Consumption Cooperative, to which the Government of the City of Buenos Aires (back then, the City Hall of the CBA) recognized 70% of the property of the real state. However, at the end of 2002 the government of the City (GCBA) instrumented an operation which had the objective of evicting and demolishing the building. The argument wielded was the risk the building meant, since it was in danger of collapsing. In that way it was established in a report of the GCBA dated on 23 June 2003 (decrees 1525/02 and 49/03). According to such report, the danger of collapse had been warned by the tutelary assessor, who requested a residential solution for the minors who lived in the building. As a consequence of this situation, the GCBA started an operation which ended up with the eviction of all the lot, thus, a governmental action which should have been directed to the protection of the right to housing of the people was finally transformed in the promotion of the violent eviction of the occupant families.

⁹⁰⁸ The eviction and subsequent demolishing of around 10% of the 4,500 houses which made up the residential complex Ejército de los Andes neighbourhood was carried out due to the sentence ruled by civil judge of the province of Buenos Aires Manuel A. Sirven on 29 August 2000 in file "City Hall of Tres de Febrero v Acevedo Miguel Ernesto and others about Action of Feared Damage". Such action, started by the City Hall, was supported by section 2499 of the Civil Code, which establishes: "*The one who fears that a building or something else may cause damage to his goods, can denounce the fact to the judge so that the timely precautionary measures are adopted*". The action was founded in an alleged danger of collapse of the buildings, circumstance which would endanger the life and physical integrity of the inhabitants and neighbours of the place. However, the judicial proceeding was full of arbitrary points, which make the objective of the eviction full of doubts: a) those affected were not a party to the judicial proceeding which determined the eviction and the demolition of their residences; b) as a consequence of the abovementioned, the affected parties were unable to present their answer to the criminal charges and defenses, in other words, they were unable to defend their right to housing; c) they were also unable to control and eventually request the nullification of the experts' reports presented in the case; d) only the City Hall of Tres de Febrero was a party to the case; e) the sentence ruled by the judge who was responsible for the case was not founded in the facts duly proved

tried to officially justify the evictions with the argument that the State was, in that way, defending the rights of those evicted. Even so, the subjects allegedly protected were victims of state violence.

A similar practice happens before denounces for the crime of usurpation. Section 181 of the Criminal Code of the Nation establishes that: *"It shall be repressed with prison from six months to three years: 1. The person who by violence, threats, deceit, trust abuses or in clandestinity stripped another one, fully or partially of the possession or tenancy of a real state or the exercise of a real constituted right upon it, whether the strip took place invading the property, staying in it or expelling the occupants [...]"*⁹⁰⁹.

As it can be seen, this criminal definition is designed to protect the people who are stripped of their property. Thus, the one who through violence, deceit, trust abuse or in clandestinity deprives of the possession or tenancy of a real state to the person who has right, commits dispossession. The tenants or possessors must be displaced or excluded from their occupation.⁹¹⁰

The Argentine jurisprudence has acknowledged that the dispossession is characterized by a double consequence. On the one hand, the tenant must be displaced. On the other hand, the usurper must have committed that exclusion through acts which entitle him to remain in the occupation.⁹¹¹ From the abovementioned is deduced that, if a person who is not a proprietor occupies a property *without dispossessing anyone* (as it happens in most of the cases, since the properties 'usurped' are in general empty) it is not a crime, since the first element would be missing, that is, a dispossessed possessor or tenant. In other words, there is no usurpation if the passive subject (tenant or possessor) is not displaced or prevented from carrying out acts typical of the occupation which he had been exercising at the moment of the dispossession.⁹¹²

The facts studied show that the forced evictions ordered by criminal judges are carried out within judicial processes in which the occupants of the real states are accused of committing the crime of usurpation. In most of these cases, however, it constitutes an abusive use of the criminal system, which transforms the victim of a precarious socio-economic situation in victimizer.⁹¹³

in the case nor in the applicable right, which includes the international rules and the jurisprudence of the control bodies in housing matters; f) finally, by virtue of the proceeding used by the judge, the affected parties were unable to appeal the sentence of first instance. At the same time, the City Hall got a fund of 10 million pesos/dollars for the demolition and to pay a subsidy to the neighbours. Such funds, originally, had the objective of solving the housing deficit. The payment of these subsidies was very untidy. For example, when a policeman verified that the house to be evicted had been emptied, the occupant received a check for 22 thousand pesos in the police station of the area. On this occasion, they signed a document of which nobody received a copy. The irrationality of this kind of proceeding is evident when considering that, with an alleged danger of collapse, the expert investigations ordered by the judge of the case were carried out only a year after requested. This proves that the trial practically did not advance in a year, enough time to notify the demanded parties of the existence of an action against them and to give them time to appeal.

⁹⁰⁹ The highlighting is ours.

⁹¹⁰ Pursuant to Nuñez, Ricardo; Tratado de Derecho Penal. Parte Especial, Volume V Lerner Ediciones, Buenos Aires, 1974.

⁹¹¹ Federal Court of San Martín, Sala I, 5 June 1992, El Derecho, p. 150-566.

⁹¹² Pursuant to Creus, Carlos; Derecho Penal. Parte Especial, Editorial Astrea, Buenos Aires.

⁹¹³ Examples of the use of this definition in the urban ambit are the eviction of a property located in Suarez St.1600 on 19 March 2003, which affected 15 families (News Agency Action Red –ANRed-, communicate of 19 March 2003, at www.anred.org), and the eviction of Villa La Dulce on 16 July 2001, which affected over 150 families. This latter one was carried out because of the warrant of National Court in First Instance in Correctional Matter n°9, Secretary n°65, where the case for the crime of usurpation was started (Clarín, 17 July 2001). Also the eviction attempt –with a great police operation- of a building located in Suárez St. 687, where 70 people lived, mostly children (La Nación, 31 January 2003). In the rural ambit, an example of criminal persecution of peasants is the case of Alto Bordo in El

Appointment/continuity of officers involved in human rights violations

The present practices and police culture are strongly signed by the involvement of the police institution in State terrorism.⁹¹⁴ Thus, violent practices, illegal routines and nets have a direct precedent in routines such as the covering of extra-judicial executions in forged confrontations, the participation in extortive kidnappings, tortures, etc.

The return to democracy, towards the end of 1983, opened a serious debate about the role of the Armed Forces in home security and the need to purge them in order to separate those involved with human right violations. Even though the achievements regarding the democratization of the armed forces differ according to the aspect considered, there was no equivalent debate about the need to democratize the structure, culture and practices of the police and security forces. The illegalities, irregularities and violations to the human rights committed by these officers were never duly punished. Many of them continued being part of the police and security institutions for years and some, still perform their duties at present. The cases included hereinafter testify that:

- Raúl Harsich –Sub-Secretary of Planning during Ramón Verón's management as Minister of Security of the province of Buenos Aires and one of his closest collaborators- took part in the kidnapping, rape and murder of Floreal Avellaneda, 15 years old.⁹¹⁵
- At least two of the twelve Inspector Constables promoted on 1 January 2001 –during Verón's management- intervened in acts of unlawful repression and State terrorism during the last dictatorship, such as kidnappings, tortures, rapes and murder of detainees and cremation of their corpses⁹¹⁶.
- Mario Alberto Jaime, responsible for police station 5th of Florencio Varela –province of Buenos Aires- in April 2001, is listed in the *Nunca Más* (Never Again) report as participant, since 1976, of unlawful detentions in the police station 5th of La Plata.⁹¹⁷
- Daniel Omar Del Arco, Chief of Inter-provincial Transfer of Detainees during Verón's management was accused by the former president of Plaza de Mayo Grandmothers, María Isabel Mariani to whom, in 1976, he asked everything she had to, in exchange, give her back her granddaughter. The young girl never appeared.⁹¹⁸
- In 2004, the governor of the province of Entre Ríos, Jorge Busti, appointed Superintendent Constable Aníbal Ruperto Palacios –who actively took part in the illegal repression during the last military dictatorship- as responsible for the direction of Home Affairs of the local police. Paradoxically, on the day of his appointment, Busti stated “*we want to remove the bad policemen from the force. That is the reason for this*

Duraznal, province of Córdoba. There eight peasants were taken to justice for disturbing the possession of the fields by the businessmen (see Part II, section 2.1.3.2).

⁹¹⁴ However, examples of incidents of institutional violence and unlawful practices of the Argentine police can be found since the beginning of the XX century. About this particular issue see Andersen, Martín; La Policía. Pasado, presente y propuestas para el futuro; Editorial Sudamericana; Buenos Aires, 2002.

⁹¹⁵ Floreal Edgardo Avellaneda, was kidnapped on 15 April 1976 by a mixed patrol of military men and policemen, wearing civil clothes and uniforms. On 16 May 1976 his body appeared together with other mutilated corpses in the coast of Uruguay. His feet and hands were tied, his head broken, with excoriations in genitals and armpits and with bleeding injuries in his anus. Source: Página/12, “Los hombres alegres”, 15 April 2001 and Página/12, “Las denuncias que Casanovas no quiere oír”, 16 April 2001.

⁹¹⁶ Source: Página/12, “Los hombres alegres”, 15 April 2001. About Verón's records see note 816 above.

⁹¹⁷ Source: Página/12, “Los hombres alegres”, 15 April 2001 and Página/12, “Las denuncias que Casanovas no quiere oír”, 16 April 2001. About the *Nunca Más* report see Part I, section I, above

⁹¹⁸ Source: Página/12, “Los hombres alegres”, 15 April 2001 and Página/12, “Las denuncias que Casanovas no quiere oír”, 16 April 2001.

*announcement and the hierarchy we give to this act. I have no doubt that General Constable Palacios will carry out this mission as we expect him to".*⁹¹⁹

- Jorge Peralta, general director of Labour of the Buenos Aires Penitentiary Service during his intervention, in 2004,⁹²⁰ -and previously director of Summaries- is in the files of the CONADEP⁹²¹, in file 6769, as chief of the group of tasks of Unit nº9 of La Plata. Peralta was replaced in the direction of Summaries by Camilo Uzal. Also Uzal –known by the political prisoners as ‘The Snake’- took part in the group of tasks of Unit nº9, as is recorded in file 2397 of the CONADEP. Enrique Odello, intelligence director of the Service, was in Sierra Chica in 1976 and was denounced on repeated occasions by Judge of San Isidro, Fernando Maroto.⁹²²

Transfer annulment because of denounces of tortures

The Supreme Court of Justice of the Province of Buenos Aires rendered without effect⁹²³ the measures stipulated by Room I of the Court of Appeal and Guarantees in Criminal Matters of San Isidro, in November 2001 due to very serious denounces of tortures committed in unit nº29 of the Buenos Aires Penitentiary Service. In its resolution judgement, the Court of Appeal and Guarantees had decided to receive a habeas corpus action regarding all the people accommodated in that penitentiary institution and the strict compliance of their imprisonment to the national and international rules in force.⁹²⁴

⁹¹⁹ Palacio's appointment was judicially rejected through a denunciation presented before the courts of the city of Concordia on 31 May 2004. He is accused of being direct responsible of the offence of identity suppression and torture application during the last military dictatorship. Palacios belonged to a task group which worked in police officer 4th, under the coordination of lieutenant colonel Dasso. The denounce was reinforced with the identity of citizens of Concordia who were detained and tortured by the task group of Palacios, who was also detained and prosecuted for the death of the Taborda brothers, in an alleged confrontation with the police which happened in 1978. Palacios was also detained in 1988 while he performed his duties as chief of investigations of the Concordia police, after proving his responsibility in the kidnapping and torture of 4 people, one of which was under age. Source: CORREPI, Informative Bulletin Nº274, June 5/12, 2004.

⁹²⁰ The Buenos Aires Penitentiary Service was intervened for 180 days through decree 732/04, dated on 21 April 2004. Paradoxically, according to that rule, the decision of intervening the Service was adopted taking into account that: *"There are facts, denounces and serious suspicions about corruption and inefficiency acts in the body; That we are aware that there are no Institutions beyond corruption, and taking into consideration the incontestable reality that the Buenos Aires Penitentiary Service is not the exception, it is necessary to carry out deep reforms; [...] That it is indispensable to strengthen the structure of the criminal units, privileging the treatment to the inmate, the improvement of security and the professionalism of the staff; That the need for the reforms is not only in the thought of those who govern but also in the popular clamour; That society claims a more direct and transparent compromise of all the bodies and institutions to their service, with the first objective of contributing to their security and with the final objective of guaranteeing social peace; That it is a priority for this Government to reconstruct what is to be an unobjectable and transparent chain of control, purging and rationalizing human resources; That we are looking for a criteria of harmonization, and of dynamic equilibrium in what is fair and reasonable for the reconstruction of the Power of the State; That it is indispensable to re-institutionalize the force, with the objective of making a more efficient and aseptic Institution of structural corruption [...]"*

⁹²¹ About the CONADEP see Part I, section 1, above.

⁹²² Source: Página/12; "Un curioso plan de limpieza", 20 July 2004.

⁹²³ Through a resolution subscribed on 21 November 2001.

⁹²⁴ According to the resolution dated on 16 November 2001, the Court of Appeal and Guarantees made that decision taking into account; *"1st: That in Unit nº29 a number of penitentiary agents including superior officers had allegedly practiced acts of violence against imprisoned people, with beatings which could endanger (sic) the life of the affected people, though suffocation immersing by force the head under the water, through the application of beatings in the sole of the feet with blunt elements; by the application of electric shocks; 2nd: that in Unit nº29 they were allegedly beating without a lawful justification the people imprisoned; 3rd: That the repeated tortures and beatings had been applied, pursuant to the knowledge achieved in the substantiation of this resolution, against a significant number of inmates; 4th: That so serious violent acts, had been perpetrated with a daily frequency, in a determined ambit in the jail and with repeated methods; 5th: That they are apparently hindering the Secretaries and other Officers of the*

The decision of the Supreme Court was founded in the “*need to preserve the correct administration of the service of justice, since it is important to attend the criteria according to which the process of habeas corpus in a first moment does not authorise the substitution of the judges of the case in the decisions incumbent to them*”.

As a result of what the Supreme Court decided, the detainees were immediately transferred to unit nº29, where –according to what many official defenders denounced- they were subject to a ruthless punishment.

Judge Raúl Borrino, member of the Court of Appeal and Guarantees, qualified the decision of the Supreme Court as unconstitutional –since it was against the right, the judicial independence, the principle of due legal process and the right to jurisdiction- and denounced the evident “*condescendence, tolerance, complicity or covering of a part of the Judicial Power and of the Public Ministry of the City of La Plata*” because it guaranteed the impunity of those responsible for the events of “*systematic and permanent tortures*” denounced in Unit nº29. Moreover, it also stated that the suppression the habeas corpus as transversal control “*may have inaugurated a new stage of human or unpunished suppression in the provincial territory*”.

Light punishment. Application of inadequate criminal figures

Not all the cases of coercion, torture and ill-treatment are reported to justice⁹²⁵. Reporting, on the other hand, does not guarantee that the acts will be investigated or that the victimizers will be punished for the crimes they committed. On the contrary, in the few cases in which a conviction is judicially ruled, the punishment applied is frequently slight as a consequence of the application of criminal figures which are more benign than the corresponding ones.

Already in 1997 the Committee against Torture warned that Argentina systematically fails to carry out the duty of adequately punishing those responsible for committing torture acts. In its conclusions and recommendations the Committee held that: “*The severity of the punishments which sanction torture, included in section 144 third of the Criminal Code, in particular the one provided for the cases of death as a consequence of torture, which formally satisfies what section 4 of the Convention provides, is weakened in the practical application of these provisions by the judge, who as the Committee has proved in the exam of the records of an important number of cases, frequently prefers to prosecute the victimizers for less serious criminal figures, sanctioned with inferior punishments, with a reduced dissuasive effect. The Committee ascertains that despite the numerous cases of death as a consequence of torture perpetrated since the validity of the reform of the Criminal Code which introduced the punishment referred to, only in six of them have the authors been convicted to life imprisonment, prescribed in the law as the only punishment*”.⁹²⁶

The case of Christian Dominguez Domenichetti is an example of the abovementioned. The intervening judges punished only two of the five accused of committing torture followed by death

Public Defence, the interview of prisoners and the control of the accommodation conditions and even the entry to the facilities of Unit nº29”. About the torture denounces in unit nº29 see Part II, sections 2.4.2.2; 2.4.2.3 and 2.4.2.4.

⁹²⁵ This arises from the records of the Database of cases of torture and other cruel, inhuman or degrading treatment or punishment created in the ambit of the Defence Office before Cassation Court of the province of Buenos Aires by Resolution nº13, 17 March 2000. See: <http://www.defensapublica.org.ar>

⁹²⁶ Committee against Torture, 21 Noviembre 1997 (A/53/44). The highlight is ours.

not for that crime, but they were convicted for torture and functional negligence. For this reason, the case was denounced before the Inter-American Commission on Human Rights.⁹²⁷

Another example is that of Ariel Esteban Simonini, who was brutally tortured, and subsequently threatened to death, in September 2000.⁹²⁸

Simonini denounced the incident before justice, stating that *“when they put the bag [in his head] he felt as if he was dying [...] all in all he was given bag about five or six times”*. The medical expert, Dr. Gmelnizky, informed in the criminal case started because of the denounce of Simonini, that *“when a bag is placed in the head of a person there is brain damage due to the lack of oxygen and, subsequently, asphyxia and death”*.

However, Criminal court nº1 of San Martín, province of Buenos Aires, considered, in its sentence of 30 April 2002, that this injurious actions did not produce a suffering serious enough to constitute the crime of torture and qualified the behaviour of the accused as ‘unlawful coercion’.

Underestimation of denunciations

Since they are considered crimes of little relevance, threats are perhaps those in the investigation and punishment of which the Judicial Power shows less interest.⁹²⁹ Before the ‘excess of work’, judicial officers choose to investigate other crimes, underestimating the importance of threats. In this sense, they acknowledge that –notwithstanding the seriousness they have- if threats are anonymous, the denunciation will, inexorably, be shelved. In general, the evidence measures that the judge or prosecution order to produce are very few. This, together with the difficulties that the investigation of these crimes entails (for example, absence of witnesses, lack of evidence, etc.) has as a consequence that the judicial processes started very improbably will have a conviction. It is important to emphasise, however, that the specific difficulties entailed by the investigation of the threats mark even more a tendency regarding a big part of the crimes: the investigative capacity of judges and prosecutors has the consequence that the crimes which end in a conviction are, in generally, those in which the author is caught ‘red-handed’.

In this context, the interest that justice lays in the investigation of the threats varies according to the repercussion that they have in the mass media of communication, in particular, the press. The public transcendence of threats, however, does not guarantee that there will be advances in the investigation. Frequently, the only thing that differences these judicial cases from the others is that their shelving usually takes a little longer. Even so, it is evidenced that the judicial treatment received by the denunciations varies according to the capacity of the victims to get access to the communication media. The impunity with which those who threaten live, favours the repetition of this crime.

Intimidation of officers who do not accept illegal policies and practices

A security policy debated during 2002 and 2003 were the massive searchings to shanty towns and housing complexes. The governor of the province of Buenos Aires, Felip Solá, suggested *“as a work hypothesis, that we start having possibilities of massive searchings, that is, not to look for a particular person, but to search a whole area”*. Aware of the significance of what he said, Solá

⁹²⁷ CELS represents the family of Domínguez Dominichetti. Case nº 11,819.

⁹²⁸ About the case see Part II, section 2.4.2.1, above.

⁹²⁹ To get to this conclusion there were interviews with judicial officers of Correctional Courts of the City of Buenos Aires.

admitted that they were methods of the latest dictatorship. However, he tried to justify his plans arguing that León Arslalián, former minister of Security of the province during the process of police reform (1997-1998), had carried out massive ransacks and searchings when Eduardo Duhalde was governor.⁹³⁰

The security proposals which violate human rights are also frequently accompanied by concrete actions destined to intimidating officers who refuse to apply them. They try to justify the persecution of these, claiming that those officers –derogatorily called ‘guarantors’- defend the rights of delinquents instead of the rights of victims and hinder the acting of the police.

Also following this line are the actions started by the government of the province of Buenos Aires against guarantee judge César Melazo, who declared null four searchings to unlawful car disassembling units in the city of La Plata, carried out on 14 and 15 April 2003.⁹³¹

Melazo decided to release the owners of the four shops –who had been detained- and to restore the 35 automobiles confiscated during the operation by the Direction of Prevention of Crimes against the Automobile Property of the Police of the Province of Buenos Aires. Melazo justified this decision adducing proceeding mistakes: the policemen had no searching warrant and they had no power to carry out the detentions either.

Melazo’s resolutions led the governor of the province, Felipe Solá, to present elements to promote his impeachment because he ‘hindered the operations’ and to evaluate if there was crime of ‘unfulfillment of the duties of a public officer’. In turn, Melazo denounced the governor before the Supreme Court of Justice of Buenos Aires for *“intrusion in the independence of the Judicial Power by the Executive, insisting in considerations which are against the republican principle of Power division, trying to intrude in the solution and decision of judicial cases beyond their competence”*.⁹³²

Four months later Solá fostered law nº13,078⁹³³, which authorises the prosecutors to carry out searchings without a judicial warrant. The dispositions of the law contradict the provincial Constitution which in section 24 establishes: *“The residence of a person shall not be searched unless there is a written warrant from a judge or the municipal authorities in charge of watching the execution of public health rules and for this objective only”*. The possibility of a subsequent judicial authorisation does not replace this condition.⁹³⁴

⁹³⁰ Source: Crónica, “Se reinstala el debate sobre ‘mano dura’”, 7 April 2002. Solá formulated these declarations during the funeral of two policemen, one of them chief of the custody of Carlos Ruckauf (former governor of the province of Buenos Aires, appointed Minister of Foreign Affairs during the presidency of Eduardo Duhalde and elected national representative for the province of Buenos Aires for the period 2003-2007). The murder of a police officer was, as on other occasions, the stage chosen to foster security proposals which violate rights.

⁹³¹ The decision adopted by Melazo was later confirmed by the Criminal Court in La Plata. Source: Clarín, “Rechazan apelación”, 14 May 2003; DiarioC, “Confirman nulidad de un operativo en desarmadero”, 14 May 2003 (www.diarioc.com.ar).

⁹³² Source: El Día, “El juez de la causa de los comisarios se excusó, con críticas al Gobernador”, 9 November 2003.

⁹³³ Which modifies the Code of Criminal Procedure in the Province of Buenos Aires (law nº11,922). Enacted on 19 July and published in the Official Gazette on 23 July 2003.

⁹³⁴ In its new version, section 59 (relevant part) of law 11,922 establishes that: *“The Prosecutor Agent shall be able with immediate acknowledgement by the Guarantee Judge to directly order the search of the places of sections 219, 220 and 221, the personal searching of section 225, the confiscation warrant of section 226, the presentation warrant of section 227 and the interception of correspondence of section 228. In the cases of sections 219, 220 and 221, the Prosecutor Agent shall request, also immediately, to the Guarantee Judge, the ratification of the measures. If the Judge does not speak against it within 48 hours after the request was received, the measure will be considered ratified”*.

Through this modification of the Code of Criminal Procedure, some controls which are used to verify that certain procedural measures are carried out in a founded way were eliminated. In the case of searchings, it makes invasions to the residence with the objective of finding an evidence easier and, if these invasions cause the finding of evidence, the judges of the province confront a perverse dilemma: whether they accept them as valid even if the proceedings are irregular, or they declare them null at risk of suffering the pressure of the Executive power, as it happened in the Melazo case.

3.1.3 Public speech

Those political responsible of the police and security forces usually minimize the seriousness of the incidents which constitute evident abuses. In this way, apart from showing tolerance before the unjustified and negligent use of violence, they try to avoid the institutional responsibility they may have and, indirectly, protect those who took part in these incidents.

Regarding the murder of hostage Mariano Witis, in September 2000⁹³⁵, the Minister of Security of the province of Buenos Aires at the time, Ramón Verón, stated *"There was no mistake [...] there must have been a terrible situation the police was not aware of"*. And he added: *"[the police forces] were quite restraint, considering inside the car there was an unharmed person"*. Even before the experts examinations had finished Verón stated: *"the bullet which killed the young boy was not that of the police"*.⁹³⁶

When first sub-officer of the Buenos Aires Police Osvaldo Lucero, murdered in the locality of Tres de Febrero, was being buried, the governor of the province of Buenos Aires, Felipe Solá, stated that *"the first thing to say is that if we have dead officers, is because they confront what they have to and because they risk their body"*⁹³⁷ and that *"they have become an easy target for delinquency and these obligations put them down to unfair rules"*.⁹³⁸

A research carried out by the consulting office Synovate about "The security conditions: The use of public force in Argentina"⁹³⁹ emphasises that the Argentine public opinion has a relatively high tolerance to violence. The disrespect for the life of the alleged delinquents is expressed in phrases such as:

"The mentality of the thief does not change"

"When they kill a thief, I say: 'one less'"

"Bad things have to be cut from the root"

"Delinquents have to be killed, that one won't bother again... I want to live in peace..."

It is concluded in this study that *"[...] the death of a delinquent is not considered as a loss. These discriminatory perceptions regarding the delinquent, in time legitimize strongly aggressive attitudes towards the delinquent, who they want to eliminate, since in general they consider his recovery in the present social conditions impossible"*.

The social demand for "hard treatment" is also expressed by financial and business sectors, who suggest the need to guarantee the security of their investments, as well as the physical integrity of their employees. In this sense it is stated that: *"The offensive of hard treatment started by the*

⁹³⁵ About this case see Part II, section 2.5.3.1, above.

⁹³⁶ Source: Página/12, "Los fantasmas de Villa Ramallo", 23 September 2000.

⁹³⁷ Source: Página/12, "Si no, no estarían vivos", 10 January 2002.

⁹³⁸ Source: Clarín, "Los policías de franco no tendrán obligación de llevar sus armas", 22 May 2002.

⁹³⁹ See note 844, above.

Government became relevant during the meeting that many of its main members held three weeks ago with the businessmen Guillerom Stanley, Santiago Soldati, Francisco Marci, Javier Tizado, Eduardo Escasany and Carlos Fedrigotti, in the residence of the latter one, in order to analyze the effects of the financial world crisis upon Argentina. The message then was clear. The businessmen –all of them living in private country houses or closed neighbourhoods- requested the government officers a higher budget and better equipment for the Police. ‘Security is also an elemental variable when evaluating investments’, was the phrase used by Soldati on that occasion.”⁹⁴⁰

During the political party meeting⁹⁴¹ held in the city of Córdoba with delegates from the 24 districts of the country, Ricardo Lopez Murphy, former candidate to president and leader of Recrear⁹⁴², stated “I cannot accept to live in a society where masked people attribute to themselves the right to suppress my freedom, harming my goods and affecting my peaceful living” and he asked a clear answer from the government of Nestor Kirchner. “The obligation of the government is to establish public order and social functioning”, he stated and acknowledged the right to protest, but held that “protest has been used as an excuse to violate the right of the others. It is unacceptable”.⁹⁴³

A public opinion poll carried out by consultant Ricardo Rouvier, and published on 7 November 2003, shows that 66% of the people think that the State has to avoid the occupation of public spaces –in reference to the occupation of lots by *piqueteros*-, only 16.4% thinks that the State should let them, while the rest 17.9% said they did not know how to answer. A research carried out by the Universidad Abierta Interamericana points out that 77.5% of the people think that the *piqueteros* do not have the right to block streets and only 21.4% think they have it.⁹⁴⁴

Former president Eduardo Duhalde stated that “The attitude of the Government, on the one hand, allow that some groups I like to call small and middle *piqueteras* businesses to grow. But, on the other hand, it generates on the population a negative attitude regarding *piqueteros* because they see that the Government is too lenient, in order to avoid excesses and repression”. He added that “the State has to start having a repressive attitude before certain kind of crimes”, and he did not discard the possibility of forming crash groups of the police. Duhalde also warned: “It is necessary to find a protest place where they can prove that they are an important number and do not block streets. A place to talk. The same objective is achieved but no chaos is caused. But at the same time, we have to bear in mind that before certain kind of crimes the State has to start having a repressive attitude. The Government has decided to use a persuasive attitude prior to repression. But you see in the United States or in France that the police push or even grab the demonstrators from their hair. But they do not kill anyone. Here, may be due to lack of police preparation to act as they should, these cases ended up with murdered people”.⁹⁴⁵

Violence tolerance and promotion even reaches very aberrant events, such as unlawful coercion and torture.

⁹⁴⁰ Source: Clarín, “Los asaltos a integrantes del Gobierno apuraron la política de ‘mano dura’”, 14 September 1998.

⁹⁴¹ The objective of the meeting was to make a balance of the electoral process, the state of the force and the proposals to develop during 2004, as well as a conceptual and doctrinaire debate and the strategies to apply.

⁹⁴² López Murphy was, besides, minister of economy of Argentina during the government of Fernando De la Rúa. He received 3,200,000 votes in the presidential election of 2003.

⁹⁴³ Source: La Nación, “Para Lopez Murphy, ‘el PJ recoge tempestades’”, 30 November 2003.

⁹⁴⁴ Source: La Nación, “La calle como campo de batalla”, 30 November 2003.

⁹⁴⁵ Source: La Nación, “Duhalde aconseja cambiar la política con los *piqueteros*”, 29 November 2003.

Inspector Constable Alberto Cánepa⁹⁴⁶, head of the District Headquarters of San Isidro, in the province of Buenos Aires, stated in some radio programs that *"A child has to serve his punishment just as an adult, in a suitable institution. His family has to suffer due to that imprisoned child and the child has to suffer being imprisoned"* and he added that *"Otherwise, it's easy for him to go out to rob and kill. Everything is free and it cannot be that way"*.⁹⁴⁷

In October 2000, the Superintendent of Coordination of the Minister of Security of the Province of Buenos Aires⁹⁴⁸, High Constable Eduardo Martínez, took part in a radio interview⁹⁴⁹. When he was consulted by the journalist about the news which indicated an increase of the tortures in police stations in the province of Buenos Aires and about whether he could assure that the electric shock was not being used in any police dependency, Constable Martínez expressed: *"I'd shoot in the back the policeman who did something like that... we are normal guys, Franco... if people continue talking about this [torture in police stations] we are building a barrier between the police and the society"*.^{950 951}

Public defence of torture is among the serious irregularities committed by High Constable of the Buenos Aires Police José A. Ferrari⁹⁵². During an interview with the newspaper La Capital of the city of Rosario, on 1 April 2001, he stated; *"Mind you! I don't mean torture, but it depends to whom. In Spain they hang (the suspect) from a pipe and pull his balls until he says where he put the knife of the body. Having a guy sitting here, without food for 24 hours and slapping him a few times is not torture"*.⁹⁵³

The manifestations and facts exposed seriously contrast with what the Special Rapporteur Against Torture recommended. He pointed out that *"the authorities of higher rank should publicly condemn torture in all its forms in any situation in which it is committed. These authorities, in*

⁹⁴⁶ Cánepa is one of the police officers questioned due to the systematic murders of children in San Isidro by "death squats". See Part II, section 2.5.3.2, above.

⁹⁴⁷ Source: Clarín, "Menores detenidos: polémica por los dichos de un jefe policial", 30 April 2002.

⁹⁴⁸ Virtual chief of the police of the province of Buenos Aires.

⁹⁴⁹ It was the radio program of Franco Salomone, broadcast by Radio Nacional on 11 October.

⁹⁵⁰ The repercussion of these statements was broad and the words of high constable Eduardo Martínez were highlighted in all the newspapers of national circulation and of the city of La Plata between the days Thursday 12, Friday 13 and Saturday 14 October 2000, among them: Clarín, "Si un policía tortura, lo fusilo", 12 October 2000, pg. 61; Clarín, "Denuncian a un jefe policial que dijo que sería capaz de fusilar", 13 October 2000, pg. 68; La Nación, "Denuncian por apología del delito al jefe de la bonaerense", 13 October 2000, pg. 16; Página/12, "Yo los fusilo por la espalda", 12 October 2000, pg. 17; Página/12, "Tras su exabrupto, denunciaron a Martínez por apología del delito", 13 October 2000, pg. 22; Crónica, "Polémica por afirmación de jefe policial", 13 October 2000, pg. 16; El Día, "El jefe de Policía dijo que fusilará a la gente que torture", 12 October 2000; El Día, "Ruckauf abrió la puerta para voltear al jefe de policía", 14 October 2000; El Día, "Pedidos de renuncia desde la oposición" 14 October 2000; Hoy, "Ruckauf lo desautorizó", 13 October 2000 y El Día, "Ya buscan reemplazante para el jefe de policía", 15 October 2000. The opinions about the words of Constable Martínez were clearly received in a negative and alarming way by the public opinion; and there were no words of approval.

⁹⁵¹ The possibility that the expressions of High Constable Martínez constituted a crime of public action, derived in the presentation of a criminal denounce for crime apology (section 213 of the Criminal Code) by the instruction prosecutor of La Plata, Marcelo Carlos Romero. Also, CELS made a presentation before the Auditor of Internal Affairs of the Office of Corruption and Functional Abuse Control of the Ministry of Security of the Province of Buenos Aires requesting collect all the facts pertaining the proceedings with the objective of investigating and eventually punishing Martínez due to the offences indicated in sections 59 paragraph 7º; 58 paragraphs 21º and 4º; 53 paragraphs 7º and 5º; and 52 paragraphs 15º and 16º of decree-law 9,550/80 (Statute of the Staff of the Buenos Aires Police), and the violations of the basic principles of police acting established in sections 6º and 7º of law 12,155 (Law of Organization of the Police of the Province of Buenos Aires), taking into consideration the aggravations indicated in paragraphs b and d of section 193 of decree 1,675/80 (Regulation of the Law of the Staff of the Buenos Aires Police).

⁹⁵² See note 995, below.

⁹⁵³ Source: Página/12, "Picana y mano dura", 12 August 2001.

*particular those in charge of enforcing the law, should make public that those in charge of detention places when abuses are committed shall be considered personally responsible for such abuses".*⁹⁵⁴

"We have to announce to criminals they should not come to the province of Buenos Aires to commit crimes because they will go to jail and be uncomfortable", said the former Minister of Justice of Buenos Aires, Jorge Casanovas⁹⁵⁵, because of a query about the critical situation caused by the overpopulation in the police stations of the province⁹⁵⁶. It was not the first time that Casanovas spoke in that sense. In May 2001, he sent an opinion note to the newspaper of the biggest national circulation⁹⁵⁷ in which he made the following statements: "Nobody can expect to be better in prison than honest people who enjoy their freedom" and, also, "[governor] Ruckauf, instead, wants the human rights of honest people to be effective –subject to the daily prison of fear and horror of becoming victims of crimes by hands of an unlimited criminality-; and not to think so much in the rights of delinquents who, with torments, freedom deprivation, robberies and trigger happy, should be where they should be: in prison".

The base of the electoral campaign of Carlos Ruckauf, who was elected governor of the province of Buenos Aires in 1999, was security and, particular, the promotion of a policy called "hard treatment" against delinquency. In this context, Ruckauf made statements such as the following: *"We should not have any mercy upon the murderers who kill our people; I want to see them dead. I am going to be absolutely hard against crime"*⁹⁵⁸. Once in office, Ruckauf stated: *"This security policy came through popular vote and it will stay while I am the governor"*⁹⁵⁹. On the other hand, one of the members of the Court of Criminal Cassation of San Isidro, Fernando Maroto, expressed: *"Ill-treatment to prisoners is a direct and systematic consequence of the harsh law and order policy promoted by the provincial government"*⁹⁶⁰.

In May 2001 the information of the files of cases of torture to minors depending from the Sub-secretary of the Patronage of Minors of the Supreme Court of Justice of the Province of Buenos Aires⁹⁶¹, were publicly known. In them, there was a significant increase in the actions of torture to minors perpetrated to police staff. The Ministry of Security of the province, Ramón Verón, tried to make this information seem irrelevant stating that 90% of the reports of ill-treatment in police dependencies are false.⁹⁶²

It was not the first time that Verón tried to render torture to children and teenagers irrelevant or to justify it. On 2 November 2000, during an interpellation to which he was subjected by the House of Senators of the province of Buenos Aires, he had answered many questions related to the treatment received by minors in the province from the security forces under his responsibility. When referring to the existence of 31 denounces for the crime of torture to minors committed by police officers, the Minister publicly gave the name of ten minors, allegedly victims of the crimes of coercion and torture, and expressly mentioned the details of the criminal cases in which they

⁹⁵⁴ Report presented by the Special Rapporteur, Sir Nigel Rodley, in compliance with resolution 2001/62 of the Human Rights Commission of the United Nations, 27 December 2001, E/CN, 4/2002/76.

⁹⁵⁵ Elected representative for the Province of Buenos Aires to the National Congress for the period 2001-2005.

⁹⁵⁶ Source: La Nación, "Las celdas de las comisarías bonaerenses ya no dan abasto", 4 October 2001.

⁹⁵⁷ It was Clarín newspaper and the article, published on 7 May 2001, was entitled "A Ruckauf no le dejan aplicar su política de seguridad".

⁹⁵⁸ Source: La Nación, "A los asesinos los quiero ver muertos", 6 August 1999.

⁹⁵⁹ Source: La Nación, "Un cambio para que todo continúe igual", 1 April 2000.

⁹⁶⁰ Source: La Nación, "Denuncian tormentos en una cárcel", 13 July 2001.

⁹⁶¹ See Part IV, section 6.2, below.

⁹⁶² Source: El Día, "Verón rechaza denuncia por torturas a menores", 31 May 2001.

were being investigated as alleged authors: number of the criminal case, intervening court and crime they were accused of. The divulgation of this information, absolutely unnecessary⁹⁶³, was clearly intended to justify the coercion and tortures allegedly committed by his subordinates.⁹⁶⁴

Exactly the same reaction had the chief of the Buenos Aires Penitentiary Service, Esteban Mazante, when he appeared reluctant to acknowledge the incidents of torture registered in the Database of Cases of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which operates in the ambit of the Defence Office of Criminal Cassation of the province⁹⁶⁵. When the information of the mentioned database became publicly known, Mazante requested the head of the Defence Office before the Cassation Court Mario Coriolano, *“to inform him, punctually and precisely, of the concrete alleged cases of torture occurred in Penitentiary Units of the Province”*⁹⁶⁶. According to Coriolano, Mazante had denied that facts of such characteristics took place in the orbit of his dependency, unaware that a significant number of the cases studied – over 300- through such base had been denounced before justice.⁹⁶⁷

The manifestations of public officers who are condescending before torture –or even foster it- are not restricted to the ambit of the province of Buenos Aires. In July 2000, the chief of police of the province of La Rioja, General Constable Paulino Zenón Cobresí, made a reckless confession during a strong defence of the institution, suspected by the murder of four youths. He pointed out: *“I’m not going to ignore that there are some excesses. Here the delinquent has to be treated as a delinquent, we are not going to kiss and hug him”* and added that *“the questioning in the judicial jurisdiction is not useful. We have beaten and in that way we have clarified cases. Slapping we get information against crime”*⁹⁶⁸. Facing this situation, La Rioja representatives wanted his resignation, but finally the province government decided to give him a three-month licence. Cobresí was angry when he was informed about the decision of the government secretary Juan Manuel Artico, and said: *“When they prove that I made a mistake or something out of the law, I’ll accept it, not today”*.⁹⁶⁹

During a journalist interview in relation to a very serious denounce of violation against staff of the police station 1st of Rosario⁹⁷⁰, the Sub-secretary of Security of the province of Santa Fé and former agent of the Intelligence Secretary, Enriquez Alvarez, minimized every denounce against the police when he stated: *“If we detain a delinquent who has just robbed, the first thing he says*

⁹⁶³ The question directed to the Minister referred to which had been the measures implemented by his ministry before the growing increase of tortures in police stations, question which could have been answered without expressly mentioning the names and details of the judicial case in which the minors were involved.

⁹⁶⁴ As a result of this, the Centre for Legal and Social Studies (CELS) presented a criminal denounce against Verón for the crime of secret violation (provided by section 157 of the Criminal Code) which established imprisonment punishments until two years and disqualification for officers who publicly reveal facts which pursuant to law are to remain secret. The report was presented before prosecutor Virginia Bravo in the Functional Unit of Instruction n°7 of the city of La Plata.

⁹⁶⁵ See Part IV, section 6.2, below.

⁹⁶⁶ The request of Mazante gave place to the start of file N°423 in the ambit of the Defence Office before Cassation Court and to Resolution N°212, of 5 December 2001, pursuant to which it is established to *“Inform the President of the Supreme Court of Justice, its General Procurer, the Governor of the Province of Buenos Aires, and the Presidents of the Senate and the Houses of Representatives, about the existent information in the Database related to the facts of torture in dependencies of the Buenos Aires Penitentiary Service -176 cases-, so that the pertinent measures are adopted”*.

⁹⁶⁷ Source: Hoy Edición on line, “Casación denuncia torturas que no se investigan en cárceles bonaerenses”, 6 December 2001; Nueva Era on line, “La justicia denunció que existen torturas”, 6 December 2001 (www.nuevaera.com.ar); Clarín, “Denuncian más casos de torturas a detenidos”, 6 December 2001.

⁹⁶⁸ Source: Clarín, “Un comisario admitió que los policías les pegan a los presos”, 6 July 2000.

⁹⁶⁹ Source: Clarín, “Licencia para el jefe de la Policía riojana”, 7 July 2000.

⁹⁷⁰ See Part II, section 2.4.2.5, above.

is that the policeman beat him” and added “the first thing delinquents do today is to discredit the proceeding that will take him to jail. This at times is true and at other times is not. That is why we start an investigation process and after a while we get objective results with conclusive judicial resolutions”.⁹⁷¹

4. Protection of the victimizers

The protection of the officers who commit violations to human rights includes a high degree of compromise and involvement by those who give such protection, since it does not only imply the consent of the abusive use of force but, besides, the deliberate defence –through actions and omissions- to those responsible for the abuse. In general –and unlike what happens with the tolerance to violence-, what they want is to preserve a specific person or group, covering or justifying their sayings or actions, rather than showing indulgence before a determined situation state. The protection, however, is unspecific when provided through general rules, such as those which hinder the presentation of denounces before an instance other than the compromised institution.

One of the judicial practices through which protection is granted to the victimizers is giving them a preferential treatment within the judicial process, granting –due to their condition of public officers- benefits denied to other subjects to proceedings (for example, exemption from prison). Another of the practices consists in the filing of judicial proceedings –in the instruction stage- or the absolution of the officers –in the cases which reach the trial stage- despite the existence of strong signs or evidences of their participation in a criminal act. Those whose conviction cannot be avoided –for example, due to the political pressure- are applied slight criminal definitions (for example, unlawful coercion instead of tortures), reducing in that way the punishment applicable.

One of the methods resorted to, in order not to take the case to trial, is the appointment of the police station whose officers were denounced for their participation in a violent act, as responsible of the investigation of the denounced act. Thus, the covering of a crime, and even the incorporation of false evidence which permits to charge a crime to the victim, is made easier. The investigation of the denouncer instead of the act denounced is another of the practices through which the victimizers are protected.

The crimes, in particular, unlawful coercion, rapes and tortures are also covered through the making of certificates in which the professional doctors do not give evidence of the existence of injuries.

The officers accused of making abuse of the force are administratively protected avoiding their expulsion of the institution where they perform their duties. One of the mechanisms used with that objective consists in delaying for years the resolution of the administrative files opened against them. When the public pressure is strong, besides, these offices are usually transferred to other dependencies in order to reduce their public exposure and, at least for a while, their protagonism in the public agenda. As a complement, those officers who refuse to implement policies which violate rights, are dismissed or transferred to positions of a lesser rank.

The Rapporteur Against Turture has pointed out: *“Impunity is at the same time cause and consequence of violence and, in particular, of the violations to human rights [...] the absence of*

⁹⁷¹ Source: Rosario/12; “El infierno tan temido”, 27 Septiembre 2002.

*efficient investigations and punishments make state agents and other actors sure that their acts will not be punished [...]*⁹⁷²

4.1 Mechanisms through which protection to victimizers is given

4.1.1. Legislation

Since their origin, the Argentine police have been structured according to the normative and cultural legacy of the armed forces. This had the result of highly militarized police institutions in which the disciplinary regime constitutes the most important form of control of the activity of its members⁹⁷³. Apart from strengthening the relationships of command-obedience –necessarily internal-, the disciplinary regime weakens the relationships which are beyond that logic and consolidates the institutional culture of closure with the outside, causing a corporate behaviour extremely reluctant to external control.

The disciplinary regime is a key tool to reinforce the ‘exceptionality’ conferred by the police status⁹⁷⁴ and to achieve the unit of the ‘police family’. With its help, the police punish the offences and unfulfillment of those who do not respect the institutional codes or the values which differentiate the police officers from the rest of the society. The restrictions to the divulgation of the information referred to the police service to people and institutions other than the police institutions have, precisely, that objective. In that way, the communication between police officers and the community is discouraged, and a sort of ‘barrier’ is established to reinforce the isolation of the police institution from the society in which it is inserted and clearly limits who are in which side:

*“The lack of transparency of the system turns it into producer of silence and secret. The secret separates those who know from those who do not know, constituting an excellent individualization tool within the social body. It becomes a constitutive element of the identity of those who keep it. Its revelation harms solidarity with peers, with those who are a part of us –police agents- with whom a ‘spirit du corps’ is shared”.*⁹⁷⁵

In this context are explained the severe administrative punishments provided in the disciplinary regime for the members of the force who denounce unlawful or irregular acts in the judicial ambit⁹⁷⁶. The officers of the Argentine Federal Police who want to file a complaint, demand or denounce for acts linked to the service have to do so, following the regulations, before the superior officer who gives origin to the demand, so that he takes it to the corresponding instances⁹⁷⁷. Thus, the possibility that the officers make irregularities or unlawful acts committed

⁹⁷² Visit of the Special Rapporteurs to the Republic of Colombia, paragraph 77, E/CN.4/1995/111, 16 January 1995.

⁹⁷³ Palmieri, G.; Martínez, J.; Sozzo, M. and Thomas, H.; “Mecanismos de Control Interno e Iniciativas de Reforma en las Instituciones Policiales Argentinas. Los Casos de la Policía Federal Argentina, la Policía de la Provincia de Santa Fé y la Policía de la Provincia de Buenos Aires”; in Frühling, H and Candina, A. (Eds.): Policía, Sociedad y Estado: Modernización y Reforma Policial en América del Sur; Centro de Estudios para el Desarrollo /CED; Santiago de Chile, 2001. p. 177-220.

⁹⁷⁴ About the police status see Part IV, section 3.1.1, above.

⁹⁷⁵ Palmieri, G.; Martínez, J.; Sozzo, M. and Thomas, H.; op.cit. p. 203.

⁹⁷⁶ For example, in that way it is established for the Argentine Federal Police in section 537º paragraph g’ of decree 1866/83.

⁹⁷⁷ Pursuant to section 343º of decree nº1866/83. In this way is regulated section 127 of law nº21.965 according to which “It is expressly determined that all the recourses and demands formulated by the staff, no matter which their situation is, shall be presented before the Headquarters of the Argentine Federal Police, any other presentation made directly before another authority being thus underestimated.

by their chiefs public, is practically annulled, due to the obligation to expose their disconformities before the people they want to denounce.

Section 643^o of decree 1866/83 acts in the same sense; it forbids the person who during an administrative investigation proves the commission of a criminal act, to directly inform the justice. Instead, it mediatizes the proceeding with the requirement that the authority who ordered the start of the summary has to be informed and that the ruling of the General Direction of Legal Affairs has to be requested, so that, only then, does the Federal Police let the competent judge intervene.⁹⁷⁸

Those police officers, who, despite these provisions, dare to break the corporative frame, are victims of what officer of the Federal Police, Hugo Airali, defined as “administrative terrorism”. This mechanism, according to its description, consists in “[...] *producing administrative punishments on the staff in an abusive and indiscriminate way, with the objective of causing enough fear as to avoid any kind of opposition to the criminal idea*”. According to the same policeman, these indiscriminate punishing measures “[...] *are favoured by the institutional disciplinary system which does not provide enough and efficient means to defend the rights of the punished officer*”.⁹⁷⁹

The application of the ‘administrative terrorism’ is only possible because, in the different Argentine police systems, the direct chiefs have broad and discretionary punishing powers. Even though it is true that the application of punishments which seriously affect the career are only attribution of the superior ranks and are substantiated after an administrative investigation is carried out, the direct chiefs still have the possibility of applying multiple lesser punishments which, if accumulated, hinder the professional career and can even derive in the dismissal of the punished officer. These lesser punishments are directly applied –without the previous substantiation of a summary- and without the possibility of the subject to the proceeding to defend himself.

Among the multiple punishments whose application is privative power of the direct chiefs some of imprecise comprehension can be found, such are: the lack of devotion and punctuality, lack of tidiness in their person or uniform, unjustified delay when presenting themselves before a superior. That is, behaviours vaguely described which the direct chief can punish with warning or

⁹⁷⁸ This provision contradicts the Code of Criminal Procedure of the Nation, which in section 177 establishes that “*The following shall have the obligation to denounce the punishable crimes sua sponte: 1) The public official or public clerks who acknowledge them while performing their duties [...]*”. About this matter, besides, stated Terán Lomas that: “[...] *if they are police officers, they always have the obligation to denounce, even though they have found out about the act while off duty or in a place other than that of their duties*” (Terán Lomas, “La obligación de denunciar a funcionarios policiales”, J.A., vol27 – 1975, p. 552).

⁹⁷⁹ The disciplinary persecution of which those who dare show disconformities before acts of corruption are victims, not only imply the arbitrary and unfair application of punishments formally provided for in the regulation for the staff of the Argentine Federal Police, but also other concealed and informal punishments, such as suffering prolonged unjustified delays; the malicious appointment of services (recharge) in multitudinous events; the assignation to locations particularly conflictive or destining the agents –when promoted- to far or isolated places. These decisions cannot be denounced since they are justified by ‘operative reasons’ and do not imply diminution or reduction in the rank. The functioning of these mechanisms was described in detail by officer Hugo Airali in the denounce he formulated in 1996 against the constable of the Argentine Federal Police Norberto A. Vilela –in charge of police station 50^o in the city of Buenos Aires- for the commission of very serious crimes. On this particular issue see: Chillier, Gastón; “La denuncia de un ex policía. Análisis de las causas y consecuencias de las prácticas de la Policía Federal”; elaborated in the framework of the Program of Institutional Violence and Citizen Security of the Centro de Estudios Legales y Sociales/CELS; 1997 (electronic publication: <http://www.cels.org.ar>).

arrest, without the possibility of the punished officer to defend himself and even frequently they do not even know which behaviour they are accused of.⁹⁸⁰

Apart from the wide variety of minor punishments the direct chiefs can apply, the police regulations establish the 'concept sheet'. It is a report made by the chiefs of each dependency, where the personal and professional qualities and the "suitability for command and behaviour"⁹⁸¹ of the officers under their responsibility are contemplated, and which has special importance in the evaluation of the possible promotions and in the permanence of the policemen evaluated in the Institution.

In the cases analyzed, this regulating power was used by the direct chiefs as a concealed punishment to stop possible promotions and even to compromise the permanence of those subordinates who denounced them. In fact, in all the cases, apart from the administrative punishments, the policemen were qualified as "deficient" for the active service. A clear example of this concealed punishment was that of policeman Hugo Airali to whom the continuous negative reports made by his direct chief -the same he had denounced- were decisive for his dismissal from the force. Finally, the Qualifications Board of the Institution declared him inept for the effective service since they considered he was not to trust, he was negligent in his duties and showed lack of responsibility.

4.1.2. Administrative and judicial practices

Preferential treatment

One of the most commonly used practices in the judicial ambit to protect the public officers who commit violations to the human rights, consists in interpreting the law in the most favourable way possible. The concession of a preferential treatment to this kind of victimizers –which is not restricted to a determined moment of the judicial process- tries to be justified by virtue of its condition of police officer, which can only constitute an aggravation of his criminal behaviour taking into account that it was committed to the detriment of citizens whose lives and physical integrity the police officer was to protect.

Within the judicial case initiated due to the murders of Mariano Witis and Darío Riquelme⁹⁸², on 26 September 2002, the Room II of the Court of Appeal and Guarantees in Criminal Matters of San Isidro decided –unanimously- to reject the preventive imprisonment ruled against the sub-officer of the Buenos Aires Police Rubén Emir Champonois and –by majority- to order the guarantee judge the imposition of an alternative measure.

A study of over 80 judgements ruled during the two years before by the same court evidenced that, when resolving about the preventive prison of Champonois, it abandoned the criteria it had been holding in the matter of preventive prison application: to systematically reject the releasing due to the seriousness of the punishment the subject to the proceeding could receive. Even though the decision of the Court follows the law, the use of contradicting criteria in freedom restriction when the subjects are police officers is outstanding. In this sense, the decision adopted by the court in relation to the situation of Champonois evidently contrasts with the position of the

⁹⁸⁰ Identical rules can be found in all the police regulations Such as: Mendoza; provincial law n°6,722 (section 99 and following); Córdoba; decree n°1,753/2003 (section 12 and following); La Rioja; provincial law n°7,061 (section 44 and following) and Tierra del Fuego; Decree 356/61 (section 70 and following).

⁹⁸¹ Pursuant to section 274° of decree n°1866/83.

⁹⁸² In order to see a description of the case, see Part II, section 2.5.3.1. and Part IV, sections 2.5.2 and 3.1.2, above.

same court when deciding to restrict the freedom of other people accused of committing crimes, most of them less serious than a homicide, and even, in many cases, crimes whose seriousness presuppose that, should the subject to the proceeding be convicted, he would receive a punishment of conditional execution.

Filing of the proceedings or absolution of the accused in trial despite the evidences

A second judicial practice consists in dismissing judicial cases despite the existence of evidences which strongly contradict the police version of the facts. The case of Emanuel Salafia⁹⁸³ is a clear example of the abovementioned. Five months after the death of Salafia, who received ten (10) shots in the back in an alleged confrontation, prosecutor Daniel Gualtieri⁹⁸⁴, in charge of the investigation, resolved the filing of the proceedings. In the file, only the testimonies of the policemen and of the witnesses who are supposed to have witnessed the robbery to the van are included, but there is no witness who has seen the alleged aggression of Salafia to the police officers, cause of the alleged confrontations. Moreover, there were no more examinations than that of the autopsy to the body of the victim.

The fact that a case of institutional violence is taken to trial does not guarantee that the victimizers will be punished either. On the contrary, there is a new opportunity to protect them. The judgement of Oral Court in Criminal Matters n°27 of the city of Buenos Aires in the case started for the death of Roque "Vita" Villagra⁹⁸⁵ constitutes a paradigmatic example of this. Instruction Judge Luis Rodriguez had ordered an autopsy to the body of Villagra and shooting expert examinations. The results were conclusive regarding the irregularities of the police speech since he proved that, in the alleged confrontation, there had been a single shot –the one received by the victim with the gun on his nape-. Despite this, during the trial, the police attorney stated – despite what the examinations indicated- that the bullet, shot to the air by an agent when Villagra was running away, bounced on a traffic light and then reached the young boy, causing his death. The Court acquitted the three policemen. According to the fundamentals of the judgements, in the Court's opinion there were not enough evidences to refute the version of the confrontations wielded by the accused. ⁹⁸⁶

Application of light legal definitions

Another of the practices through which justice protects the victimizers is the application of lighter legal definitions than the corresponding ones. The judgement of the court in charge of judging the death of Maximiliano Romero⁹⁸⁷ is illustrative in this sense. The officer of the Police of Córdoba Marcelo Romera was found guilty of committing "homicide with excess in the lawful exercise of law and authority" and convicted to three and a half year imprisonment and the payment of a fine of 123 thousand pesos. The prosecutor of the case had requested 11 years for the crime of "qualified homicide by the use of weapon" and the defender of the family, life imprisonment because "*the child was defenceless and was murdered with intention*". However the Criminal Court of Cruz del Eje, province of Córdoba, understood that Romera did not act with malicious

⁹⁸³ In order to see a description of the case, see Part II, section 2.5.3.1 and Part IV, section 3.1.2, above.

⁹⁸⁴ In charge of Prosecution Office n°2 of the judicial department of Lomas de Zamora.

⁹⁸⁵ See Part II, section 2.5.3.1., above.

⁹⁸⁶ Sources: Crónica, 6 October 2002; Clarín, 7 October and 16 November 2002; Página/12, 4 and 8 October 2002 and 16 November 2002.

⁹⁸⁷ See Part II, section 2.5.3.1, above.

intention, reason why it punished the case as unintentional homicide⁹⁸⁸, since there was negligence or lack of skill, but no intention of killing.⁹⁸⁹

Investigation in charge of the suspect

Among the judicial practices through which the police officers who commit violations to human rights are habitually protected, we find that of entrusting the investigation of denounces to the institution itself or, even, to the dependency directly involved.

On 5 September 2002, the Police Station for Victims of Sexual Crimes of Rosario notified the instruction judge on duty, Eduardo Suárez Romero, of the rapes committed by police staff of police station 1st against Sandra, 16 years old, in the morning of 21 July⁹⁹⁰. Instead of dedicating immediately and personally to the case and carrying out essential measures (confiscating documents in the police station, searching the policemen, investigations, etc.), Suárez Romero entrusted the investigation of the reported crime to the Judicial Division of the provincial police itself and forgot about the matter.^{991 992}

On the other hand, the Judicial Division omitted to give timely intervention to the Direction of Internal Affairs, obligatory in crimes committed by policemen, and to notify the superior chiefs. Both the chief of the UR II, Jorge Populín and the Chief of the Police, Ricardo Milicic, said they found out about the denounce 20 days after it was presented.⁹⁹³

Permanence in the police institution

Despite the so serious denounce formulated against him⁹⁹⁴, Constable José Aurelio Ferrari is still performing his duties in the Buenos Aires Police. On 21 January 2003, CELS requested the Minister of Security of the province of Buenos Aires, Juan Pablo Cafiero, to decide on the

⁹⁸⁸ Pursuant section 84 of the Criminal Code, to this crime corresponds a prison punishment from 6 months to 5 years and special disqualification from 5 to 10 years.

⁹⁸⁹ Sources: La Voz de Interior, 25 September and 25 October 2002 and 10 February 2003; Clarín 1 November 2003.

⁹⁹⁰ In order to see a detailed description of the case see Part II, section 2.4.2.5, above.

⁹⁹¹ Source: Rosario/12, "El infierno tan temido", 27 September 2002.

⁹⁹² The instruction judge responsible for the case later, Prunotto Laborde, produced in days the measures that the previous judge should have decided and did not in almost two months: by October, the victim had undoubtedly individualized all the seven policemen present in the police station on the night she was raped, detailing exactly what one of them did and the participation they had in the numerous crimes in which she was a victim and which she witnessed. The statements of witnesses and the other discovery measures carried out supported in all its details the narration of the facts given by Sandra. Source: El Eslabón, "Segundo capítulo, La Santafesina S.A.", October 2002, p.14.

⁹⁹³ Source: Rosario/12, "El infierno tan temido", 27 September 2002.

⁹⁹⁴ Ferrari was denounced for unlawful deprivation of freedom, residence violation and unlawful coercion to Pablo Andrés Quintana in an incident of great public notoriety occurred in the city of San Nicolás on 2 December 2002. Ferrari publicly questioned judicial judgments ruled within the framework of the investigation of the murder of the youth Emanuel Ríos, covered a subordinate accused of homicide and publicly defended his innocence even after he had been found guilty by justice in first instance. Before the possible involvement of the sub-officer of the Command of Patrols of San Nicolás Alberto Agustín Castillo, in the robbery attempt to the Branch Villa Ramallo of the Bank of the Argentine Nation occurred in September 1999, Ferrari publicly defended him, when he had been prosecuted for covering. The justice is investigating his possible participation in an unlawful association destined to the illegal sale of cars which at first connected him with the attack to the Israeli-Argentine Mutual Association (AMIA). To these facts we can add the replevy of Dictator Jorge Rafael Videla, referring to him as "hero" and his constant anti-Semitic speech. There was also a judicial case against Ferrari before the possible commission of the crime of violations to the rights of a public officer. The investigation started since Ferrari had questioned two people during almost two hours and secretly registered their testimonies so that later he could give the recordings to different communication media. Finally, Ferrari publicly defended torture and officers who committed it.

exoneration of the officer. However, 19 months having passed since them, Ferrari has still not been expelled from the institution. This situation is not only outstanding because of the records of the constable, but also because of the political context in which his permanence in the force takes place. Since he took office, on 13 April 2004, the Minister of Security of the province, León C. Arslanián, declared 786 officers suspected of committing crimes and even convicted in a trial dispensable. However, Ferrari was not among them.^{995 996}

The acting of the Ministry of Security of the province of Buenos Aires was similar in the case of Constable Rubén Claudio Gatti, convicted to the punishment of two years imprisonment in suspense and special disqualification to perform as a public officer for four years for the aggravated unlawful coercion caused to detainee Juan José Tejada on 29 August 1991. The first instance judgment was confirmed by the First Court of the Court of Appeals in Criminal and Correctional Matters of the Judicial Department of San Martín and later by the Supreme Court of Justice of the Province of Buenos Aires on 15 November 2000. When, on 29 August 2002, the Supreme Court of Justice of the Nation rejected a complaint recourse presented by the defence of Constable Gatti, the convicting judgment was firm. However, Constable Gatti was declared dispensable only two years later⁹⁹⁷. Taking into account the seriousness of the crime for which he was convicted –and the disqualification to perform as a public officer- the political decision of keeping Gatti in the force is evidently regrettable. Even more, if considering that administrative and judicial investigations are independent and, therefore, it was not necessary to wait for the judgment of the Supreme Court of Justice to separate him from the Buenos Aires Police.

Resistance to accept reporting – Judicial investigation of the victim instead of the victimizer

Another administrative practice destined to protecting the officers who committed crimes consists in delaying the register, omitting information or distorting the reports to the police station. In this way, the start of the investigation is delayed and/or evidences which could contribute to the identification of the victimizers and the clarification of the incidents are withheld. This happened, for example, in the case of Iván Eladio Torres, who disappeared in the morning on 3 October 2003 after having been tortured by officers of the Police of the province of Chubut.⁹⁹⁸

After his disappearance, María Leonina Millaucra Llaipen, Iván's mother, went to police station 1st. What the woman received there was a mockery: "*He must have gone to [Pico] Truncado*", they told her. Three times they refused to accept her denounce. When the case became known to the press, the chief of the dependency, Constable Fabián Tillería, went to Iván's house pretending to be concerned. Only on 14 October -11 days after he disappeared- did officer assistant Rosana Soler, in her own manner, accept the report. She wrote down that María suspected of the police and that in August they had subjected Iván to the trigger game. However, she did not register the surname of the agent Bahamonde, involved in the incident, or the attack of 1 October, also recounted by María.

To the police protection of those involved in the tortures and subsequent disappearance of Iván Torres, the judicial protection was later added. The daily registry of police station 1st was confiscated 25 days after the disappearance and 13 days after the report. Unlike what was

⁹⁹⁵ This was decided through resolutions n°802, on 15 May 2004; n°866, 3 June 2004; Resolution n°981, 28 June 2004 and n°1260, 11 August 2004.

⁹⁹⁶ On 29 July 2004 CELS repeated the request of exoneration of Ferrari and requested an audience with Dr. Arslanián to discuss the matter. By 17 August, the audience had not yet been conceded.

⁹⁹⁷ He was declared dispensable on 3 June 2004 through resolution n°866 of the Ministry of Security of the province of Buenos Aires.

⁹⁹⁸ In order to see a recount of the case, go to Part II, section 2.4.2.4, above.

expected, the first proceeding of prosecutor Raúl Alberto Coronel, was not to order the signed statement of the policemen but the intervention of the telephone of the Torres family, which was already intervened. On 30 October, Judge Oscar Herrera personally carried out a sight inspection with the objective of refuting the witnesses who saw when the police car took Iván. Only on 4 November did María find out that Iván had been detained together with a friend. The young boy confessed he had not talked out of fear of being killed and accepted to declare under reserved identity. The substitute prosecutor, María Adriana Ibáñez, went at night to take his statement to his house together with a man who she introduced as a person she trusted, he made the witness shut up: he was an agent from the Brigade. When the policeman took part in the statement, the witness reacted: *"Since when do you look people in the face? You kicked my ribs broken"*. The policeman minimized the accusation saying: *"Let's continue. It's his word against mine. And you shut up because we know too well who you are"*. All this took place before the prosecutor, who did not register the dialogue. The following day, the witness declared before the judge. Pursuant to what is registered in the criminal complaint brought by Iván's mother together with the Association Pro Children's Right, before judge Oscar Herrera *"five testimonies were taken at the same time, two of the witnesses answering the same questions at the same time, listening one another"* while the judge even commented on *"the reserved identity of the witness"*. Officer Martín Betbedé said he knew María *"from a searching in her residence"*, about which he was not interrogated. On the night in which the policemen rendered testimony, a patrol car of the Radio-electric Command followed María. When she wanted to denounce the incident, prosecutor Ibáñez said she needed *"more details, the licence number"*.⁹⁹⁹

False medical reports

According to the "Principles of medical ethics applicable to the function of health staff, specially doctors, in the protection of imprisoned and detained people against torture and other cruel, inhuman or degrading treatment or punishment"¹⁰⁰⁰, *"It is a clear violation of the medical ethics, as well as a crime pursuant to the applicable international documents, the active or passive participation of the health staff, in particular doctors, in acts which constitute participation or complicity in tortures or other cruel, inhuman or degrading treatment, incitation to them or attempt to commit them"*¹⁰⁰¹. Also, *"The participation of health staff, in particular doctors, in the application of any coercive proceeding to people imprisoned or detained is against medical ethics [...]"*¹⁰⁰².

The revision of the detainees by professional doctors is one of the routines established on order to guarantee their health and to verify the existence of injuries that could have been caused by the police staff when detaining or transferring, or even during the deprivation of freedom in police dependencies¹⁰⁰³. Not all doctors, however, contribute to discourage violence against detainees. On the contrary, there are many cases of doctors who do not leave constancy of the injuries presented by the patient. On some occasions the doctors are even present during the torture sessions.

⁹⁹⁹ Source: Página/12, "El juego del gatillo", 26 November 2003.

¹⁰⁰⁰ Adopted by the General Assembly of the United Nations in its Resolution nº37/194, on 18 December 1982.

¹⁰⁰¹ Pursuant principle 2.

¹⁰⁰² Pursuant principle 5.

¹⁰⁰³ Like that it is established by section 184, paragraph 8º of the Code of Criminal Procedure of the Nation, pursuant which the police and security forces officers have, among others, the power to: *"Detain alleged guilty people in the cases and ways authorized by this Code and to decide on their confinement when the requirements of section 205 exist, for a maximum lapse of ten (10) hours, which shall not be prolonged by any reason without a judicial warrant. In such case a medical report must be carried out in order to verify the psycho-physic condition of the person when he was detained"*. The highlighting is ours.

On 13 May 2001, Javier S. and Ramón R. were delayed in order to find out their records. Together with them was Ana G., who was pregnant. The three of them were taken to police station 9º of Quilmes in the province of Buenos Aires. Once in the police dependency, the woman was forced to stay outside, while the two men received beats and kicks for two hours. Later, the men were released, but before they were searched by the police doctor, who did not leave record of the injuries suffered. The victims denounced what happened and the prosecutor of Quilmes, Luis Armella, ordered the examinations to be made, after which another police doctor verified the existence of diverse traumatisms. Sub-officers Adrian Horacio Caño and Juan Eduardo Pérez and sergeant Angel Bernardo Godoy, as well as police doctor Daniel Bomvicni –who had certified there were no injuries– were prosecuted in May 2001.

It has been reported that the police doctor in charge of examining children and young people tortured in Pacará, Santiago del Estero¹⁰⁰⁴, never left any record of the bruises and of the marks they presented on their bodies. One of the victims of this kind of practice was Juan José, 13 years old, who, after being tortured by the police of Santiago del Estero in September 2003, had, in the left part of his hip a protuberance similar to the size of a tennis ball, with a bruise, while on his left arm he had injuries which two weeks after his detention had not yet healed¹⁰⁰⁵. After the public transcendence of the case of Juan José, Judge René Achával went to the house of the child, together with a local police doctor. There he verified the injuries which had been ignored by the doctor who examined Juan José when the tortures were timely denounced: in the medical report it is stated that “*nothing abnormal*” had been detected.

Neither did the police doctor certify the injuries caused by the police staff of police station 3º of Ezeiza to Juan David Enriquez, on 22 August 2002, in one of the many opportunities in which the young boy was unlawfully detained.¹⁰⁰⁶

Legal doctor Dolores Miranda was accused of the crime of ideological falsification of a document, since she wrote a certificate stating that a man beaten on 25 June 2000 by officers of the Federal Police in the Buenos Aires neighbourhood of Parque Patricios was not injured when she saw him.¹⁰⁰⁷

Medical staff also had participation in the covering attempt of the tortures caused to people deprived of their freedom in unit nº29 of the Buenos Aires Penitentiary Service. This becomes evident, among other things, from the recount of José Luis Juárez Prado, who received medical attention by the serious injuries suffered in his mouth, later registered in his file as product of “self-inflicted” aggressions. Despite the degree of participation of the medical staff in the torture sessions committed in that penal unit, it is clear that they cannot ignore they happened since they usually take place in the Sanity sector.¹⁰⁰⁸

Resistance to identify the victimizers

The active protection of those who commit coercion and tortures in unit nº29 is also materialized through a deliberate omission of the use of technology available to prevent violent incidents. This penal unit was opened in 1998 as the first ‘high security’ penitentiary institution in Latin America destined to the accommodation of inmates considered ‘highly dangerous’, for whose control it

¹⁰⁰⁴ In order to see a complete description of the incidents, go to Part II, sections 2.4.2.1 and 2.4.2.4, above.

¹⁰⁰⁵ Sources: Clarín, “Detienen a seis policías acusados de golpear y torturar a un chico de 13 años” and La Nación, “Detuvieron a seis policías por presuntas torturas a un menor”, 18 September 2003.

¹⁰⁰⁶ About this particular issue, see Part II, section 2.4.2.4, above.

¹⁰⁰⁷ About this particular issue, see Part II, section 2.4.2.5, above.

¹⁰⁰⁸ About this particular issue, see Part II, section 2.4.2.4, above.

was provided with modern technological resources. The inmates are filmed 24 hours by a closed system of video cameras and the doors work through an electronic system. These technological resources, however, do not seem to be enough to discourage the commission of abuses by the penitentiary staff.¹⁰⁰⁹

Removal of officers who resist the institutional logics

Against what was announced, the intervention of the Buenos Aires Penitentiary Service has not contributed to the transparency of the mechanics of the system.

On 25 October 2003, the director of unit nº25, Abel Chirillano, was dismissed because two prisoners accommodated in the penitentiary went to the judicial seat armed with knives. In his position they appointed Eduardo Flores. The appointment of Flores was unusual since he was not proposed by the penitentiary corporation but by the Sub-secretary of Penitentiary Policy and Social Re-adaptation, Eduardo Madar. When he took office, Flores dismissed several suspected officers. One of them was the second chief of the unit, Héctor Venche, whose lifestyle contradicted his income. Before leaving, Venche went to Flores to emphasize differences: *"I'm wearing the light blue one"*, he said, making reference to the colour of the penitentiary uniform and in obvious allusion to the fact that he was wearing the T-shirt. During the following days, Flores dismissed 14 other officers who did not fit with his way of managing the penitentiary. From the moment Flores took office and for the following eight (8) months, the prisoners accommodated in unit nº25 of Mercedes were satisfied with the treatment they received: good food and human level treatment¹⁰¹⁰. As a result, the internal tensions within the unit were reduced to a minimum level. The good treatment received by the inmates in Unit nº25 was divulged in other units of the Buenos Aires Penitentiary Service, from which the inmates started requesting transfers.

From the Direction of Penitentiary Regime of the Service, under the responsibility of prefect Carlos Colombo, they started implementing a policy destined to changing the situation in unit nº5: overpopulation¹⁰¹¹. The outbreak of a mutiny, on 13 May 2004, and the three people slightly injured as a result of the repression were used as an excuse to open an administrative file and to dismiss Flores from his position.¹⁰¹²

Javier Ciancio, until then third authority in the penitentiary, was then in charge of Unit nº5. Ciancio took responsibility for the penitentiary with the condition that Venche was appointed as second authority. When he took office, Venche let his subordinates know: *"Now I'll put everything in order"*. According to a judicial source from Mercedes, *"the situation in the penal is terrible. They are on the verge of having another [mutiny like the one in] Sierra Chica. What they did was to divide prisoners. Some were offered minimum concessions so that they would be satisfied. Now, all the tension is transferred to them. In any moment, this will explode and become a disaster"*. This change not only gave place to demands by the inmates: the town councillors asked for explanations and the local population organized a protest march.

¹⁰⁰⁹ About this particular issue, see Part II, section 2.4.2.4, above.

¹⁰¹⁰ Multi disciplinary reports on the prison population; they tried to receive prisoners from other units whose families were from Mercedes and Flores himself walked the halls and took note of the problems..

¹⁰¹¹ The capacity declared by the Service is 700 places. When Flores arrived at Unit nº5 this had 988 inmates. But in the last months of 2003 he started receiving transfers which, in May 2004, had increased the number of inmates to 1,200. Moreover, the problematic prisoners that Flores intended to transfer to other penitentiaries remained accommodated there. The Supreme Court of Justice of the Nation of the province was warned about this serious situation on 2 April 2004, by the president of the Court of Appeal of Mercedes, Francisco Lilo.

¹⁰¹² The dismissal took place on 2 July. A few days later Flores was appointed chief of the unit of Trenque Lauquen.

On 16 July, when commemorating the Day of the Penitentiary Agent the present Sub-secretary of Penitentiary Policy and Social Re-adaptation, Carlos Rotundo, tried to publicly explain the reason for Flores's dismissal stating: *"The staff has to be subordinated to the directions of the intervention. His attitude was incompatible with the penitentiary regulations"*.¹⁰¹³

Disobedience of judicial orders

In March 2003, the chief of unit nº40 of the Buenos Aires Penitentiary Service –in charge of carrying out transfers of prisoners- was detained after he refused to order four of his subordinates to present themselves to a round of recognition¹⁰¹⁴. The officer, Carlos Fonseca, was accused of 'disobedience and denial of assistance to Justice'. The four agents had been denounced for unlawful coercion against a prisoner while he was being transferred to the courts to render statement under reserved identity in a case for homicide.¹⁰¹⁵

5. Insufficiency of the resources of the victims

The victimization of certain groups, and not of others, is associated to the kind, quantity and quality of the resources they have and/or their possibility of gaining access to them. The insufficiency of resources for the victims, does not explain, by itself, the exercise of violence among them. However, it does contribute to its continuity, since it hinders the exercise of the necessary rights to escape from a situation of vulnerability and contributes to guarantee impunity.

In this section we analyze both the institutional and formal resources, the availability or lack of which affects all the victims of a form of violence (for example, the availability of legal tools), as well as those resources whose availability can vary from one person to the other, such as money, organization capacity and the ability to communicate.

5.1 Economic resources

When analyzing the characteristics of the victims of forced evictions¹⁰¹⁶, it is verified that, in all the cases they are people of scarce economic resources, located in the sector with the lower income. This lack of economic resources, by itself, implies a weakness which favours the promotion of evictions, at the same time as it hinders the access to adequate defence mechanisms before situations of threats or rights violations.

The lack of economic resources by the victims of forced evictions operates as a necessary condition for the exercise of this kind of violence, since poverty prevents the people from getting to safe ways of tenancy of the house, whether it is through purchase or lease of the real state. The policies of social housing do not mean a solution to this situation either, since they establish as a requirement a minimum amount of family income which leaves out of the system the sectors most affected by the residential deficit.¹⁰¹⁷

¹⁰¹³ Source: Página/12; "Castigado por cuidar a los presos"; 20 July 2004.

¹⁰¹⁴ The order had been issued by the prosecutor of San Martín José Guozden.

¹⁰¹⁵ Source: Clarín, "Un jefe penitenciario, en la mira de un juez", 15 March 2004; El Día, "Investigan a un jefe del SPB", 15 March 2004; La Nación, "Un jefe penitenciario preso por desobediencia", 15 March 2004; Crónica, "Penitenciario desobedeció a la justicia y fue detenido", 15 March 2004.

¹⁰¹⁶ See Part II, section 2.1.3, above.

¹⁰¹⁷ About the urban policies of social house and the requirements fixed in order to enter such system, see Part IV; section 6.1, above.

Moreover, the lack of economic resources hinders the access to justice. The victims of forced evictions in the rural areas¹⁰¹⁸ are, in all the cases, small peasants who do not have the registry deeds, despite having lived in the lot for many years. This, pursuant what is established by section 4015 of the Civil Code¹⁰¹⁹, would grant them the right to get such a deed¹⁰²⁰. However, in order to carry out this process, those who have possessed the lands for twenty years have to resort to a judicial instance and face the costs and judicial expenses which operate as an insurmountable obstacle to access to the property deeds of the land through the acquisitive prescription¹⁰²¹. Apart from the costs involved in the judicial procedure, the communities victims of forced evictions in rural ambits have to face the expenses implied by the transfer from the far away places they inhabit up to the urban centres where the courts are located. In order to do this it is necessary to have economic resources beyond the possibilities of the sectors victims of forced evictions.

An example of this situation is the one suffered by the family Cayulef Choyqueta, inhabitant of the Colan Conhué Place- Mapuche Reserve Mariano Epulef, in the province of Chubut. In this case, with any judicial action started against them, they have to move approximately 100 kilometres to the courts of the city of Esquel, in an attempt to make their rights respected.¹⁰²²

The presentation of an accuser¹⁰²³ or injured private party¹⁰²⁴ in the judicial cases in which acts of violence with police participation are being investigated, is usually indispensable for their clarification. As it was previously mentioned¹⁰²⁵, among the judicial practices in which tolerance to violence becomes evident, is the unquestioned acceptance of the police version of the incidents. When this happens, the participation of other actors in the judicial process is indispensable to demand the presentation of evidence which permit to prove the police responsibility in a violence

¹⁰¹⁸ See Part II, section 2.1.3.2, above.

¹⁰¹⁹ Law nº340, sanctioned on 25 September 1869.

¹⁰²⁰ To this respect, section 4,015 of the Civil Code establishes: *"The property of real state and other real rights is established by the continuous possession of twenty years, with the intention of having the object for oneself, without the need for a deed and good faith from the possessor [...]"*.

¹⁰²¹ About the scope and weaknesses of the institution of right to ownership by means of prolonged possession as owner (section 4015 Civil Code) as public policy to guarantee the legal safety of the twenty-year possessors, see Part IV, section 6.1, below.

¹⁰²² Pursuant to information sent by the Cayulef Choyqueta family, which gave place to proceeding 15,506/999 of the Ombudsman of the People of the Nation.

¹⁰²³ The Code of Criminal Procedure of the Nation establishes that: *"Every person with civil capacity particularly offended by a crime of public action shall have the right to become the accuser party and as such foster the process, supply conviction elements, argue about them and appeal with the scopes established herein [...]"* When it is a crime the result of which is the death of the offended party, this right shall be exercised by the surviving spouse, his parents, children or last legal representative" (pursuant to section 82) *"The intention of becoming an accuser party shall be formulated in writing, personally or by special agent who shall add to the power, with the assistance of an attorney"* (pursuant to section 83).

¹⁰²⁴ The Code of Criminal Procedure of the province of Buenos Aires (law 11,922) establishes that: *"Every person particularly offended by one of the crimes causing public action shall have the right to become a private injured party. His intention shall be formulated in writing, personally with the representation of an attorney or through special agent, being a requisite to constitute procedural domicile [...]"* (pursuant to section 77) *"The person who has been admitted as private injured party, during the process shall only have the following rights and powers: 1. To request the useful diligence to prove the crime and discover the guilty people [...]; 2. To request precautionary measures to ensure the payment of the civil compensation and expenses [...]; 3. To assist at the statements of the witnesses during the preparatory criminal investigation, with the power to formulate questions and request clarifications; 4. To intervene in the stage of the trial within the limits fixed by this Code; 5. To object to, in the permitted cases, the subject to the proceeding; 6. To activate the procedure and request the fast conclusion of the case; 7. To Resort in the cases, through the means and in the provided way for the representatives of the Prosecution Public Ministry"* (pursuant to section 79).

¹⁰²⁵ See Part IV, section 3.1.2, above.

incident and to credit, for example, that what was presented as an unavoidable death in an armed confrontation was, in fact, an extrajudicial execution.

The participation of the victim or his family in the judicial process requires the hiring of an attorney, expense they cannot always afford. Even though human rights institutions and victims organizations usually supply legal assistance, and some attorneys agree to follow the case in the judicial instance expecting to receive their fees out of the compensation in the civil jurisdiction, most of the victims of institutional violence cannot present in the judicial case due to lack of money to hire an attorney and carry out an independent investigation, parallel to that of the prosecutor or, if that is the case, of the instruction judge.

5.2. Right to defence. Participation in the judicial process

One of the main characteristics of the legal tools analyzed throughout this part of the report (administrative eviction, action of feared damage, express eviction and crime of usurpation) is the virtual absence of control mechanisms of the trial elements which permit the party affected by the state actions to exercise its right to defence.

In some cases, there is not even the possibility of having as parties to the judicial presentation the people who will later be victims of the eviction. Moreover, the victims are seldom given the opportunity to question the judgements upon which the sentences or administrative decisions will be based in order to evict. In these cases, the impossibility of acceding to an effective defence is both owing to economic factors (impossibility to face the expenses required to take part in the judicial process) and to the procedure design itself which does not provide for the participation of the affected parties as a requirement prior to the adoption of decisions.

That happened in the evictions to the Ejército de los Andes neighbourhood –in which the defendant were not considered parties and, therefore, were unable to question the expert's reports which supported the eviction warrant and subsequent demolition- and to the former PADELAI, in which it was not possible to question the judgements either.¹⁰²⁶

5.3. Ignorance of rights

The situation of precariousness in the access to the resources is complemented, in many cases, with ignorance of the existing defence mechanisms (both preventive and reparatory), without any kind of active intervention by the State to modify this issue.

The ignorance that victims show regarding the rights that protect them and the judicial and administrative resources which allow them to demand their fulfilment –both to demand and to exercise an effective defence of their rights-, is another of the factors which favours the promotion of forced evictions with the consequent application of violence.

In fact, the State does not make divulgation campaigns about the rights that protect the possible victims of evictions, thus favouring their happening. They not only fail to inform regarding the possibility to regularize the ownership of a real state property acquired by the passing of time¹⁰²⁷, but also fail to inform about the rights of the possessors, to whom the legal ruling grants tools to confront the possibility of eviction. Among these tools is section 2,470 of the Civil Code pursuant to which: *"The fact of the possession gives the right to protect in the self possession, and to*

¹⁰²⁶ About these cases, see Part II, section 2.1.3.1, above.

¹⁰²⁷ Pursuant to section 4015 of the Civil Code.

oppose to the force with the use of enough force, in the cases in which the assistance of the justice would be too late; and the one dispossessed shall be able to repossess it by his own authority without any time interval, providing it does not exceed the limits of self-defence”.

As a consequence of the abovementioned, only in those ambits in which the communities achieve high levels of organization –for example, through the MOCASE in the province of Santiago del Estero and APENOC in the province of Córdoba- is it possible to see small peasants resorting to notary certificates to prove that they are possessors in good faith, elements which allow them to confront the attempts of eviction.

5.4. Level of organization

The degree of organization reached by the vulnerable communities has an important incidence on the level of violence exercised upon them. It can be stated that the strength of the bonds which connect the members of a community and the violent acts of which they are victims are negatively associated. In other words, the bigger the bonds among those who form a vulnerable socio-economic group are, the greater their capacity to discourage the exercise of violence upon them will be.

This is consequence of the fact that the organization of the victims offers, necessarily, a greater view of their actions and increases the possibilities of their demands to have some political repercussion. In this sense, the organization contributes to compensate, among the people of a low socio-economic level, the lack of other resources which do exist in the middle and high sectors: the economic capacity of hiring a good lawyer, the possibility of contacting political and judicial officers, the receptivity of some communication media before the suffering or injustices to which they were subjected, etc.

The possibility of the victims to organize demonstrations, present petitions before the authorities, denounce their situation to the media of communication and keep a fluent contact with other organizations of the civil society, among others, not only contributes to the clarification and punishment of the abuses already committed, but it also discourages the occurrence of new violent incidents. What happened in the Gay Shanty Town through the formation of a housing cooperative validates what is stated herein.¹⁰²⁸

6. Factor weakness of the preventive policies

The lack of policies destined to prevent violence and the situations in which it is usually exercised –together with the deficiencies of the existing policies- permits that a latent possibility –that those who undergo a vulnerable socio-economic situation are also victims of institutional and non institutional violence tolerated by the State- becomes a certain risk. The policies in housing and ownership regularization matters; and the initiatives in relation to the prevention of torture and the reduction of deaths in confrontations constitute three examples of weak preventive policies.

6.1. Housing and ownership regularization polices

The practice of forced evictions is directly related to the situation of precariousness in which the victims of this kind of violence live.

¹⁰²⁸ See Part V, below.

As it was mentioned before, a shared characteristic in all the cases studied, is the presence of some kind of legal insecurity in the possession (irregular occupants, possessors, tenants who cannot afford the cost of the rents, indigenous communities who do not have ownership deeds, etc.). The lack of economic resources is another element present in these cases, whether because it hinders the regularization of the deeds, the payment of rents or, directly, the possibility of acceding to an effective legal defence.

In this context it is very significant the active presence of the State as instigator of public policies destined to palliate these deficits and, as a consequence, the carrying out of forced evictions. Unfortunately, the role performed by the Argentine State is opposite the desired one, both in relation to social housing policies destined to urban sectors and to those intended to regularize the ownership situation of indigenous communities and small peasants.

Housing policies implemented in the urban ambit suffered substantial changes during the decade of the 90's. In this sense, the sanction of national laws 24,441¹⁰²⁹ and 24,464¹⁰³⁰ implied the 'mercantilization' of the policy of public housing and the loss of its social characteristic, privileging the recovery of the funds invested by the State over the accessibility to housing of the popular sectors and incorporating mechanisms which favour the eviction of the families in case of payment impossibility.¹⁰³¹

Moreover, the growth of the population did not facilitate access to housing. Besides, towards the end of 2001, all the building of 'new social housing'¹⁰³² was paralyzed. In relation to the abovementioned, it is necessary to say that the houses built lately by the National Fund of Housing (FONAVI) can hardly be qualified as 'social' since, due to the amount of the instalments paid, the families with incomes lower than five hundred pesos (\$500) are excluded. This is not irrelevant, considering that according to the available official information, the average of the salaried worker income was, in May 2003, \$528.30 and the medium income was \$400¹⁰³³. This means that most homes have to have two or more incomes in order to accede to the houses of the FONAVI regime.

A case which illustrates the tergiversation of the objectives of the housing policy is the forced eviction and demolition of a building of the residential complex of the Ejército de los Andes Neighbourhood, in the province of Buenos Aires¹⁰³⁴: the funds used to demolish the houses and compensate the occupants came from the FONAVI¹⁰³⁵. This case evidences that while the State disarticulates the rest of a housing policy with social characteristics, it simultaneously uses legal

¹⁰²⁹ Law of housing and building financing. Sanctioned on 22 December 1994 and enacted on 9 January 1995.

¹⁰³⁰ Law of federal system of housing. Sanctioned on 8 March 1995 and partially enacted on 27 March, same year.

¹⁰³¹ See "La tierra es nuestra. Hacia una política de Tierra, Vivienda y Hábitat. Análisis y propuestas de los trabajadores y organizaciones territoriales", op. cit. p. 17. Contrary to this, a policy which respects the right to adequate housing should provide mechanisms to guarantee accessibility, such as instalments related to the family income, the fixing of a grace period and re-financing before unemployment situations, etc. See "La ausencia de una política social de vivienda", op.cit. p. 471.

¹⁰³² On 21 July 2004, the President of the Nation, Néstor C. Kircher, and the Sub-secretary of Urban Development and Housing, Engineer José F. López, presented the lines of the "Federal Program of House Building", which provides the building of 120,000 new houses, with the objective of reducing the residential deficit and of contributing to the decrease of the unemployment rate with the generation of 360,000 job positions. See <http://www.vivenda.gov.ar/>.

¹⁰³³ See "La ausencia de una política social de vivienda", op.cit. and Permanent Home Survey, INDEC, May 2003.

¹⁰³⁴ See Part II, section 2.1.3.1, above.

¹⁰³⁵ Pursuant to "La tierra es nuestra. Hacia una política de Tierra, Vivienda y Hábitat. Análisis y propuestas de los trabajadores y organizaciones territoriales", op. cit. p. 17.

tools of protection against those sectors which –precisely- are in a situation of precariousness due to an initial fault of the State.

A paradigmatic case in the rural ambit was the creation, in 1996, of the National Plan of Regularization of Indigenous Lands, which was to give as property to the indigenous communities of Chubut, Jujuy and Río Negro a total amount of 2,000,000 hectares of fiscal lands. This plan was also deficient preventing forced eviction and violent situations.

The biggest advances of this plan took place in the province of Jujuy, even though this did not mean a substantial modification in the precarious legal protection given to indigenous communities. In that province a program was created, destined to the application of the national policy¹⁰³⁶, but the activities were paralyzed in 1997. The program was re-started towards the end of 2000 after an important mobilization of the indigenous organizations. However, the results have been scarce. An evidence of this is that, even if the boundaries of the departments of Yavi, Cochinoca, Humahuaca, Rinconada and Susques were delimited, by the month of May 2004 only five communities in Susque had been measured and no communitarian deed had been handed as a consequence of the implementation of this program.¹⁰³⁷

The results of the programs intended to regularize the ownership of the lands of the indigenous communities were even worse in the provinces of Río Negro and Chubut, in which a significant worsening could be verified. By the end of 2001, in Río Negro there had only been preparatory workshops about the functions of the Legal Agent, and in Chubut only three *mapuche* communities had been benefited. The property deeds, however, were never handed out since, according to the National Institute of Legal Affairs, they did not fit the prescriptions of section 75 paragraph 17 of the National Constitution¹⁰³⁸. State inaction regarding the policies of regularization was, besides, followed by the use of force to evict the indigenous communities.

Exactly the same insufficiency is verified when analyzing the institute of usucaption, provided for in section 4015 of the Civil Code of the Nation. This section establishes that the property of the real state is acquired by the continuous possession over a period of twenty years¹⁰³⁹. The person who fulfils the requirements demanded by the rule in order to access to the property through this institute, has to prove them through a judicial proceeding.

The design and implementation of this institute makes the carrying out of forced evictions easier. Thus, before the inexistence of a public policy to that effect, the responsibility for the regularization of the ownership of the lands occupied by small peasants and indigenous communities is transferred from the State to the private parties, who confront barriers impossible to overcome individually.

As it was mentioned beforehand, the victims of forced evictions do not have the necessary economic resources to promote judicial proceedings destined to replevy the property of a real state through the twenty-year prescription and to settle the indirect expenses of the process (transfer of the witnesses to the court –in some cases hundreds of kilometres-, expenses related

¹⁰³⁶ The Program of Regularization and Land Awarding to the Aboriginal Population (PRATPA), under the responsibility of the Secretary of Social Development of the province of Jujuy.

¹⁰³⁷ See “La tierra en el reclamo de los pueblos indígenas y sectores campesinos”, op. cit.

¹⁰³⁸ In the case of Chubut, by May 2004 there was no officer or office in the ambit of the Executive provincial Power whose specific function was to provide the defense, counseling, and/or management of rights of the indigenous communities of the province. In that respect see, “Informe Alternativo sobre el estado de cumplimiento del Convenio 169 of the OIT in Argentina”, op. cit.

¹⁰³⁹ See note 220, above.

to the expert's investigations, etc.). If they decide to resort to this tool to guarantee a minimum degree of legal security in the possession, these people are forced to request the Benefit to Litigate without Expenses¹⁰⁴⁰ in order to avoid expenses such as justice rates and fees of the professionals. The granting of this Benefit, however, does not bring a solution to the problem: in the cases in which the judicial process continues, the costs fall upon the incorporated wealth, which, before the lack of resources, becomes a payment guarantee. That is, the costs and expenses of the trial are paid with a part of the acquired property. In many cases, even, the fees of the attorneys are settled with land. In other words, in order to achieve the state recognition of the ownership of the lands they have occupied for decades, the affected parties are forced to run into expenses they cannot afford, reason why, in many cases the only way of facing these expenses is to sell off part of the real state in question.

A clear example of the existent relationship between the insufficiency of the usucaption institute and the violence generated by forced evictions is the situation in the province of Santiago del Estero, where the biggest degree of conflicts related to the right to land can be found. In this province around fifteen thousand families live out of the small agricultural production, which constitutes the higher degree of rural population of all the country (33.9% of the population according to the 2001 Census). Of all them, over ten thousand are affected by the precarious possession of the lands they have occupied and worked, some for generations, and have not been able to accede to the property deeds since they do not have the sufficient resources to start the twenty-year prescription trial. In the case of Santiago del Estero, 73% of the peasant families are twenty-year possessors of the lands they inhabit.¹⁰⁴¹

6.2. Registry and discouragement of the violent incidents

From the year 2000, different state dependencies started developing policies destined to dimensioning and discouraging the commission of unlawful coercion and tortures in the ambit of the province of Buenos Aires. The following are found among those policies: the creation of databases in which the incidents are registered, the formation of investigation commissions and the giving of formation courses for police officers.

The first of the bases was the "Database of cases of torture and other cruel, inhuman or degrading treatment or punishment", created by Resolution n°13, on 17 March 2000, in the ambit of the Defence Office before the Criminal Cassation Court in the Province of Buenos Aires. Ideally, the Database gathers information related to cases of torture, ill-treatment –judicially denounced and not denounced- provided by public defenders and execution¹⁰⁴² secretaries of the 18 judicial departments in which the province is divided¹⁰⁴³.

¹⁰⁴⁰ The Code of Civil and Commercial Procedure establishes in its section 78 that: "*Those who do not have enough resources shall be able to request, before presenting the claim or at any stage of the process, the granting of the benefit to litigate without expenses [...] The granting of the benefit shall not be hindered by the circumstance that the petitioner has what is indispensable to provide his subsistence, whichever it's the origin of his resources might be*".

¹⁰⁴¹ See "Los Campesinos y el derecho a la tierra", op. cit. p. 368.

¹⁰⁴² The secretaries of the execution are officers of the Public Ministry of Defense whose job consists in visiting jails and police stations assisting, in a diverse and coordinated way, the people deprived of their freedom in the province.

¹⁰⁴³ The information gathered in the Database was used by the Office of the Ombudsman before the Cassation Court in order to suggest structural reforms and effective measures destined to Project the physical integrity and life of the people deprived of their freedom. Also, the information of the Base was requested and taken into account by other public bodies of the province such as, the Governor, the Ministry of Justice and Security and the Secretary of Human Rights. The information of the Database was also taken into account by non governmental organizations of Human Rights, as well as by the State Department of the United States. Moreover, it has caused great interest among international experts in human rights who have considered it a model which to be repeated in other countries of the continent and has generated interest in the Inter-American Commission of Human Rights. The information of the

Political differences between those responsible for the Defence before the Criminal Cassation Court and the General Procurer of the province –from which the Defence depends organically– and, subsequently, between the members of the Council of Defenders¹⁰⁴⁴, derived in serious conflicts which led to the virtual disarticulation of the Database¹⁰⁴⁵. Through Resolution n°3173/02, on 16 October 2002, the Supreme Court of Justice of the province warned about the need to protect the Database. Despite this, not all the judicial departments send the information required by the Defence before the Cassation Court in time and manner¹⁰⁴⁶.

Through Agreement n°2964, dated 20 September 2000, the Supreme Court of Justice of the province created a “Registry of reports of cases of coercion and torture committed against minors”, whose formation, maintenance and updating were assigned to the Sub-secretary of Minors Patronage. Such registry processes the information from the courts of minors, consultancies of disabled people and the Provincial Council.¹⁰⁴⁷

At the beginning of 2004, in the ambit of the Provincial Commission for Memory¹⁰⁴⁸, the Committee against Torture created a database from a monthly study of the cases judicially initiated since January 2000 in which agents of the security forces are attributed the commission of some of the actions provided in sections 79, 80, 89, 90, 91, 92, 140 to 149 third, 151, 156 and 157 of the Criminal Code of the Nation. The information obtained in that base constitutes the main source for future statistic researches intended to examine the performance of the security forces, the Public Ministry and the Judicial Power –both federal and local– in the province of Buenos Aires.

Before the reluctance of judicial officers to supply the information required by the Committee –and as response to a presentation of the Provincial Commission for Memory–, the Supreme Court of Justice of the Province of Buenos Aires issued Resolution n°352/04¹⁰⁴⁹ in which it expressed “[...] its concern regarding the need of having updated reports about the procedural state of the cases

Base has also been required by national and international journalists who analyze the problem of torture and ill-treatment in the Province.

¹⁰⁴⁴ The Council of Defenders is a body created by the Law of the Public Ministry of the province of Buenos Aires (law n°12,061, sanctioned on 11 December 1997, enacted on 19 December 1997 and Published in the Official Gazette of 8 and 9 January 1998). It is composed of: the General Procurer of the Supreme Court of Justice; the Defender of the Cassation Court; the Departamental General Defenders and a representative of the Bar Association of the province (pursuant to section 83). It is duty of the Council of Defenders: 1) to suggest the general line-up for the acting of all the members of the service of public defense, so that the effective validity of the right to defense is guaranteed; 2) to counsel the General Procurer in the matters he is subject to and 3) to clarify criteria to elaborate statistic and reform projects (pursuant section 84).

¹⁰⁴⁵ The General Procurer resolved –through Resolution n°255/02, 10 July 2002– to take from the Defender before the Criminal Cassation Court the powers of superintendence of the Public Defense and to abolish all the resolutions issued by it while in the exercise of these powers. Furthermore, the General Procurer established –through Resolution n°259/02, 10 July 2002– that the Defender before the Criminal Court of Cassation shall adequate the functional facilities of the dependency under his responsibility to the ordered restrictions to his functions, which implies significantly reducing its structure.

¹⁰⁴⁶ There is information relating the creation, functioning and impact of the Database available in the official web site of the Public Defense of the Province of Buenos Aires, www.defensapublica.org.ar

¹⁰⁴⁷ These bodies are forced to send the information related to every incident reported within 48 hours. Once the report has been communicated, the Supreme Court of Justice informs the General Procurer so that it can give the corresponding instructions.

¹⁰⁴⁸ The Provincial Commission for Memory is an extra-power public body, with autonomous and autarchic functioning, created by law n°12,483 (13 July 2000, modified by law n°12,611, 20 December 2000). The commission is composed by representatives of the bodies of Human Rights, the trade unions, the justice, the legislature, the university and the different religions. In order to get more information see: <http://www.comisionporlamemoria.org>

¹⁰⁴⁹ Dated on 10 March 2004.

in which violations to human rights started as of year 2000 in judicial seat in which the security agents are attributed any of the actions provided in sections 79, 80, 89, 90, 91, 92, 140 to 149 third, 151, 156 and 157 of the Criminal Code, with the objective of forming an updated database which permits possible statistic researches” and informed “[...] the corresponding jurisdictional bodies of the Province [...] that in the framework of statistic researches and analysis carried out by the Provincial Commission for Memory, the necessary care has to be taken in order to give the written information required in the same way by the Commission [...]”.

Through decree n°1,404 of 14 June 2002, the provincial Executive Power established the creation of the Provincial Programme of Torture Prevention (Pre.Tor.), in the orbit of the Secretary of Human Rights. The objective of the programme is to “Suggest, implement, and execute policies and actions which have the objective of fostering, regarding State responsibility, the validity of the right to personal integrity and to human treatment in all the territory of the Province of Buenos Aires”¹⁰⁵⁰. The general objectives fixed for the fulfilment of such objective were: “to influence in the formation, training and awareness regarding the importance of knowing, respecting and guaranteeing the right to personal integrity, in particular in the acting of the officers in charge of enforcing the law; (b) influencing in the prevention, investigation and punishment of the cases of torture and ill-treatment; (c) strengthening the response of the State in the cases of torture and other cruel, inhuman or degrading treatment or punishment; (d) suggesting the necessary modifications in the regulations and favouring structural changes in the policies of the provincial State, so that the right to personal integrity can be more efficiently protected, and (e) to facilitate the community the access to the information regarding accommodation of people deprived of their freedom, state action in the matter and cases denounced for violation to the right to personal integrity”.¹⁰⁵¹

In response to the demands and denounces on the treatment given by the staff of the Police of the Province of Buenos Aires to the people when being detained and during their accommodation in police dependencies, in the ambit of the Security Ministry the “Monitoring Unit for the fulfilment of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment”¹⁰⁵² was created with the objective of eradicating ill-treatment and torture through the awareness of the police officers. The functions assigned to the Unit were: a) to elaborate situation diagnosis on this problematic, b) to recommend measures to prevent ill-treatment and torture, c) to send the denounces on torture and ill-treatment which involve police staff to the Office of Corruption and Functional Abuse Control, d) to establish links with governmental and non governmental organizations whose concern is akin to the Convention.

The implementation of the initiatives described herein¹⁰⁵³ –as it was seen before- was nowhere near limiting the systematic commission of unlawful coercion and torture in the ambit of the province of Buenos Aires. Many are the factors which contributed in making these policies ineffective. However, the most relevant one is, undoubtedly, the certainty of the police and penitentiary officers that the abuse committed are hardly punished. This conviction has good grounds: the administrative and judicial practices analyzed show in what way impunity is achieved.¹⁰⁵⁴

¹⁰⁵⁰ See <http://www.sdh.gba.gov.ar>. The Program has a Consulting Council presided by the Secretary of Human Rights and composed by representatives of the ministries of Justice, Security, Government and of the Ministry of Human Development and Labour.

¹⁰⁵¹ Pursuant to www.sdh.gba.gov.ar

¹⁰⁵² The Unit was created by the Minister at the time Juan Pablo Cafiero, through Resolution n°3466, 24 September 2003.

¹⁰⁵³ See Part II, section 2.4, above.

¹⁰⁵⁴ See Part IV, sections 3.1.2 and 4.1.2, above.

6.3. Firearms' use policy

Those who are not on duty represent an important proportion of the police officers who die in confrontations (See Annex I, tables 30 and 31). This, as it was previously mentioned, is, at least in part result of the obligations arising from the so-called 'police status'.¹⁰⁵⁵

Before this problematic –and as a response to the constant denounces in this sense of institutions such as CELS- the governor of the province of Buenos Aires, Felipe Solá, fostered towards the end of 2002, the reform of decree-law nº9559/80¹⁰⁵⁶. In this way it was established that it is only compulsory to carry the regulation weapon during the service, even though the officers have the attribution to carry it when they are not on duty. If they are carrying their weapon, the police are still forced to use it.

A similar reform had been carried out some time before in the federal ambit: in 1999 the Federal Police modified section 69 of the General Regulation of Weapons and Shooting¹⁰⁵⁷ and established that the carrying of weapons is compulsory only during ordinary or additional service.¹⁰⁵⁸

These normative changes were not enough to take some naturalness from the use of fire weapons and the centrality they have in the police acting. This is not only product of the scarce divulgation of this changes among the police officers themselves, but mainly of the transcendence of the weapon in the institutional culture and in the building of the image of the policeman: the possession of the weapon and the possibility of using it at any time and place allows police officers to consider themselves and act as a corporation differentiate from the rest of the society, far from its logic and that, therefore, escapes its controls.

7. Socio-economic situation

The changes in a determined socio-economic situation can act as detonator of violent situations which were already latent. In this sense, the situation creates the necessary conditions or environment for what, at least until then, were just risks or possibilities, to take place: the socio-economic crisis which Argentina has undergone since the middle of the 90's and the real state valuation of some urban and rural areas were two of the causes.

Immigrants and shanty town dwellers were made responsible, at least partially, for two of the biggest problems associated to the socio-economic crisis: unemployment and insecurity. This situation did nothing but increase the discrimination of which –for years- these two groups have been object. The turning into demons of immigrants and shanty town dwellers, as abovementioned, was stimulated by high public officers who, through their speeches, exacerbated strong prejudice and forwarding the frustration of the middle class to these two groups, in an attempt to deviate the attention of the people from those really responsible and to cover the inefficiency of the political class¹⁰⁵⁹. Moreover, the valuation of lands and real states fostered their registry owners to resort to justice to try to evict those who had occupied them for

¹⁰⁵⁵ See Part VI, section 3.1.1, above.

¹⁰⁵⁶ Sanctioned and enacted on 3 June 1980, Published in the Official Gazette on 16 June 1980; text ordered by decree 1068/95. The modification of article 14 was carried out through law 12,968, sanctioned on 31 October 2002 and enacted on 22 November through decree 258/02.

¹⁰⁵⁷ R.P.F.A. nº8.

¹⁰⁵⁸ Pursuant Internal Agenda nº115 on 17 June 1999.

¹⁰⁵⁹ See Part IV, sections 2.1, 2.2, 2.3, 2.5.3, above.

years. Although the situation they try to alter –occupation- is not new, the incentives to intervene upon it have changed.

7.1 Immigration and unemployment

The immigration of bordering countries has been pointed out during the last years as one of the variables with significant incidence upon the unemployment and underemployment rates, the job 'under the table' and the level of salaries. This incidence, needless to say, is considered highly negative. On the one hand, they state that immigrants 'take' jobs from the native population, occupying working positions which should naturally correspond to the latter one. On the other hand, they think that as they accept to work in exchange for very low remunerations, immigrants make salaries decrease. Apart from their participation in the job market, they consider that immigrants also compete with the local population for medical care in the public health centres – affected by the lack of basic supplies- and, even, take vacancies from Argentine children and young people when trying to educate their children in public schools. Finally, they are usually identified as delinquents and, as a consequence, are object of repressive policies.¹⁰⁶⁰

Unlike what is believed, however, according to information from the Permanent Home Survey, immigrants from bordering countries to Argentina represent only 4.8% of the economically active population of the country¹⁰⁶¹. Furthermore, immigrants experience more difficulties than Argentine people in order to get a job: 20.9% of the regional immigrants are unemployed, compared to 18.3% of non immigrants. The problematic of unemployment among bordering immigrants, however, does not affect all nationalities in a homogeneous way, being clear that the Paraguayan community, probably due to the kind of jobs in which it fits (in general, activities which were more damaged by the job evolution of the latest years), shows the highest levels of unemployment.¹⁰⁶²

As Lelio Mármora expresses, *"in Argentina, the anti-migratory vision –fed by racial and social prejudice against immigrants coming from their bordering countries- appeals to the 'increase of unemployment', 'the occupation of their beds in hospitals', or else, according to the statements of some officers, to the 'foreignization of crime'"*¹⁰⁶³. According to Mármora, in the latest decades the anti-migratory prejudice has been building through the loss, by big social sectors, of the security about their cultural, working and economical situation. The increase of unemployment, the precarization of employment and the weakening of the State are some of the factors which contribute to the formation of this prejudice.¹⁰⁶⁴

¹⁰⁶⁰ About the discrimination of immigration coming from bordering countries see Part IV, section 2.1.1, above.

¹⁰⁶¹ The information included herein was taken from El Día; "Los inmigrantes y su participación laboral", 2 May 2004. (www.eldia.com.ar). The nationalities which present a higher participation in the economic activity are Uruguayan, Bolivian and Peruvian. The Paraguayans and Chileans, although in lower levels, also contribute with high proportions of its populations to the productive sphere. Brazilians, unlike the previous ones, have a very low economic participation. The employment rate of the Peruvians and Uruguayans is around 56%, while that of Bolivians reaches 50.5%. The Chileans and Paraguayans, even though in lower proportions than the previous ones, also keep high percentages of occupied population. Finally, the sector made up by Brazilians presents an employment rate of only 27%.

¹⁰⁶² The rate of unemployment of the predominant nationality in the country (Paraguayan) is well above the average of bordering foreign and native rates, topping 27%. Uruguayans and Peruvians, on the other hand, register unemployment rates lower to Argentines. According to what specialists estimate, the situation of Peruvians could be due to, because they are more recent, the fact that they are less demanding when looking for a job and more docile regarding the job conditions imposed by the employers.

¹⁰⁶³ Mármora, Lelio; "Migraciones: prejuicio y anteprejuicio", at Índice 20, discriminación de los unos y los otros, DAIA/Centre for Social Studies; April 2000.

¹⁰⁶⁴ Mármora, Lelio; "Migraciones: prejuicio y anteprejuicio", at Índice 20, discriminación de los unos y los otros, op.cit.

Mármora indicates that a common characteristic among the countries which receive migrations is that the public opinion has mostly been transformed into an anti-migratory opinion which presses upon the government for the adoption of more restrictive policies¹⁰⁶⁵. If this pressure takes place in a context in which those who defend the strict compliance to the law are derogatorily called 'guarantors', and the public opinion demands 'hard treatment', the combination is aggravated for those who due to their condition of immigrants, regular or not, are discriminated. Those people discriminated and suspected of not having their regulation papers for the mere fact of being bordering immigrants, can find serious obstacles to exercise their rights and are usually exposed to high degrees of violence.

According to the National Institute Against Discrimination (INADI), in this anti-migratory environment the diffuse speeches which promise 'hard treatment' against delinquents, always linked to the decrease of guarantees for everybody, start having more reception: *"The middle class, trying to survive, becomes intensely reactionary, tries to keep what little it has and visualizes that increase in delinquency as an enemy to be fought, even if it is risking some guarantees, which eventually, are rather diffuse to them"*.¹⁰⁶⁶

7.2. Real state valuation and evictions

The real state valuation is another of the situation factors which favours the exercise of violence, in particular, the forced evictions of the inhabitants of certain urban and rural areas. As it was previously mentioned, in many of the analyzed cases, the victims of forced evictions inhabited lands or houses which, when they were occupied, had a low utility or profitability. These lands or buildings, however, acquired a higher real state value with the passing of time, due to changes in objective situations such as the need to incorporate lands to the agricultural-stockbreeding production or to the development of projects of recovery of certain urban areas (for example the area known as 'Puerto Madero'¹⁰⁶⁷, the coast of the Río de la Plata, close to University City¹⁰⁶⁸, etc.).

The San Telmo neighbourhood, in the south of the city of Buenos Aires, constitutes an example in this sense. During the XVII and XVIII centuries, Buenos Aires started expanding and populating this neighbourhood which would start to be identified with the name of Alto de San Pedro, due to its high position. Throughout the XIX century, the neighbourhood grew, prospered, and turned into the place of residence of traditional families. The neighbourhood suffered a brusque transformation after a yellow fever epidemic in 1871, when the families of higher incomes

¹⁰⁶⁵ Mármora, Lelio; "Migraciones: prejuicio y anteprejuicio", at Índice 20, discriminación de los unos y los otros, op.cit.

¹⁰⁶⁶ "Racismo y Xenofobia en la Argentina. Capítulo III", at Cuadernillo de Divulgación N°1, INADI, Buenos Aires, 2001.

¹⁰⁶⁷ That is how the old harbour of Buenos Aires is called. Its building –following the project designed by Eduardo Madero- started on 1 April 1887 and ended on 31 March 1898. In order to have stores to keep the grains exported, between 1900 and 1905, 16 brick docks were built. The harbour and the docs were abandoned years later, after the building of the new harbour. In 1989, the Puerto Madero Corporation was created –composed by representatives of the Government of the Autonomous City of Buenos Aires and the national government-, with the objective of urbanizing the 170 hectares of the old harbour. The refurbishing of the area of Puerto Madero represents for the city of Buenos Aires, the most important urban development program. Particularly privileged for its extension and strategic central position and harbour sight, this area was incorporated to the urban dynamic as a new neighbourhood, offering investment opportunities. The area suddenly came to life after the building of restaurants, offices, university institutes and cinemas. On 6 December 1996, the Deliberant Council of the City of Buenos Aires, incorporated to Regulation n°26,607(B.M.n°14,255, AD492.8), Puerto Madero as neighbourhood n°47.

¹⁰⁶⁸ About this particular issue, see Part V, below.

abandoned it, in search for better weather and sanitary conditions in the north or west of the city. These abandoned residences were used as houses by many immigrant families and started transforming into what are nowadays known as *conventillos*. In this way, the southern area of the city of Buenos Aires lost its relevance of yesteryear.

Much later, the neighbourhood of San Telmo became a tourist attraction due to its historic buildings and museums and because there are a lot of shops, such as antiquity houses, a flea market and many bars and restaurants. Since the end of the XX century there has been a process –which had public and private participation–, to restore the historical value of that area, the oldest in the city. Thus, the real estate value of the area of San Telmo started to progressively increase as a consequence of the recycling of some buildings and the setting up of new shops and services. This process contributed to fostering the eviction of families of low resources who had inhabited the area for years.

An equivalent phenomenon took place in the rural ambit¹⁰⁶⁹. The eviction of peasant families and indigenous communities in the Argentine North West cannot be understood without analyzing the expansion of the agricultural border for the sowing of transgenic soy and the subsequent revaluation of the lands until then considered unprofitable.

The application of transgenic soy, because it is easy in the control of weeds, soon turned into a 'boom'. The advance of this crop orientated to the international market, fostered the expansion of the soy border, destining to production lands which did not have agricultural use, deforesting woods and rainforests.¹⁰⁷⁰

In the provinces of the south of the country this process was related, mainly, to the extension of the surface destined ovine cattle linked to the textile production and to oil exploitation.

7.3. Insecurity and massive searching

Finally, in a context of a growing insecurity sensation, the discriminatory association of those who inhabit shanty towns with delinquency is a factor which favours the carrying out of massive house and personal searching in these underprivileged areas.¹⁰⁷¹

¹⁰⁶⁹ See Part II, section 2.1.3.2, above.

¹⁰⁷⁰ The advance of the agricultural border, besides, implies the destruction of forests and alters the ecosystem. See: www.greenpeace.org.ar

¹⁰⁷¹ See Part II, section 2.3.2.4 and Part IV, section 2.3, above.

PART V - POLICE ABUSES IN THE LOT KNOWN AS *THE VILLAGE* OR *GAY SHANTY TOWN*

1. Description of the case study

In 1995, a group of homosexual people who did not have anywhere to live, established their precarious houses in lands of the University of Buenos Aires, behind the buildings which make up the University City, in the neighbourhood of the Capital City, Núñez. In the five hectares included in the lot, over 100 people used to live—distributed in 20 huts—, dedicated to the collection of tins and cardboard in the street. In 1996, the University reported land usurpation before federal judge Adolfo Bagnasco, due to which, in June 1998, the inhabitants of the setting now known as “The Village”, were violently evicted by the Argentine Federal Police. Many of the inhabitants were beaten by the police in order to make them leave their homes, the houses were set on fire and their dwellers could only rescue some of their belongings.

Two years after the eviction, the Village started being re-populated. Many of its old inhabitants returned to that part of the coast of the Río de la Plata which had accommodated them in the past. They are still living there, even though they do not have electricity, running water, sewers or gas net.



Photo: Moebius Audiovisual

In this picture appears one of the huts of the Village and, behind, Wing II of University City.

Both during the period previous to the eviction in 1998, and after that, the inhabitants of the Village systematically and repeatedly suffered other forms of institutional violence: massive and violent searching, sexual abuse and rape and arbitrary detentions. Their conditions of socially margined people, living in extreme poverty, favoured the violation to their human rights and the lack of action of justice before this situation.

The exercise of the different forms of institutional violence upon the same population and its systematicity is what justifies the deep analysis of the case. The Village clearly shows the ways in which the different violent practices described in Part II of this report are articulated, and makes it possible to investigate the factors which turn the victims of violations to economic, social and cultural rights into favourite receivers of institutional and non institutional violence tolerated by the State.

Furthermore, the case of the Village enables to know some of the strategies practiced by the victims of institutional violence, in order to defend themselves from the abuses, to raise their demands to the State and to demand the respect for their rights.

1.1. Methodology

The study of the case of the Village was qualitative. The collection of data was made through deep interviews and the study of secondary sources. Five types of actors with different kind of

closeness to the Village and their inhabitants and of contact with the violent facts were selected for the interviews:

- Inhabitants of the setting victims of institutional violence
- Police officers with jurisdiction in the place of interest
- Judicial officers with jurisdiction in the place of interest
- Government officers in the areas of justice, security and social development
- Organizations of the community who actively work in the Village

Considering the multiple interactions that exist between these actors, each of them was considered as a member of a net of relations and social practices. The investigation had then the intention of identifying and understanding the universe of sense which holds each one of the actors in relation with the rest. Thus, the meaning attributed by each of the actors to the others and its impact in the social practices were investigated. With the practices of institutional violence as the centre of the study, the perspective of the actors involved was investigated, tracking the underlying structures of sense.

Semi-structured interviews were carried out with the mentioned actors of the communities, basing on a set of guidelines, differentiated according to the type of actor (see Annex II).

Distribution of the interviews carried out:

Actor	Amount
Inhabitants victims	3
Police officers	2
Judicial officers	1
Government officers	2
Organizations of the community	3
Total	11

As a complement to the interviews, a series of secondary information related with the community was collected, which were analyzed together with the results of the interviews:

- Judicial files
- Social plans
- Socio-demographic data
- Health data
- Situational events with impact on the community
- Statistics on crime and violence

2. Precarious settings in the City of Buenos Aires

During the decade of the 90's, the amount of people living in precarious settings –popularly known as ‘shanty towns’ or ‘emergency shanty towns’ –in the Autonomous City of Buenos Aires was doubled. According to studies carried out by the National Institute of Statistic and Censuses (INDEC) and the Municipal Commission of Housing (CMV) of the government of the Federal

Capital, the population of the settings grew from 52,608 people in 1991, to 108,056 in 2001¹⁰⁷², approximately 4% of the population of the City.

Moreover, there also was an increase in the amount of existing settings in the City: in the last then years at least eight (8) new 'shanty towns' appeared. Among them is the setting in the lot of the University City of the University of Buenos Aires, informally known as the Village or 'Gay Shanty Town'. According to a study of the government of the City¹⁰⁷³, in 2001 there were 22 settings, shanty towns and transitory residential focuses in the City.

Almost all the settings in the City of Buenos Aires are located in degraded, polluted and unhealthy lands, and their population live in extreme poverty and overpopulation conditions: many of them have no access to basic public services such as running water, electricity or gas, and the average of inhabitants per house is of 4 or more people, while in private houses or flats the average does not reach 2.5.

The Village is, comparatively, a small setting in terms of population: in 2001, there were 31 houses, reason why it was considered the smallest setting of the city. By the same year, the population of the oldest settings was much bigger: in 1-11-14 shanty town, located in Bajo Flores, one of the biggest settings, 6,003 homes were studied. It was followed in number of people by 21-24, with 4,267; shanty town nº20 (3,979); nº15 (2,627) and shanty town nº31 of Retiro (2,190).

The progressive increase in the amount of people who live in settings and transitory residential focuses takes place within the framework of the transformations in the productive structure of the country and a prolonged economic recession, in which the progressive decrease of the per capita income led to a loss of the acquisitive power of approximately 20% between 1995 and 2002.¹⁰⁷⁴ According to information of the Sub-secretary of Social Development of the Federal Capital, in the City of Buenos Aires there are 700,000 people under the poverty line¹⁰⁷⁵, which represents 25.2% of the total population. Of these people, 300,000 (10.8% of the total population)¹⁰⁷⁶ is also under the indigence line.^{1077 1078}

The women who inhabit shanty towns or settings have, on average 2.3 children each, the highest in the City, although within a range which could be considered low.¹⁰⁷⁹

¹⁰⁷² Pursuant to the General Direction of Statistic and Censuses of the Government of the Autonomous City of Buenos Aires; "Sistema Estadístico de la Ciudad (SEC), Enero/Febrero 2002."

See: http://www.buenosaires.gov.ar/areas/hacienda/sis_estadistico/sec2002/enefebr2002.pdf

¹⁰⁷³ Pursuant to the General Direction of Statistic and Censuses of the Government of the Autonomous City of Buenos Aires, Anuario Estadístico 2001- 2002.

See: http://www.buenosaires.gov.ar/areas/hacienda/sis_estadistico/nuevoinforme/anuario_2002.zip

¹⁰⁷⁴ Pursuant to "Aportes para el Desarrollo Humano Argentina 2002. Segunda parte: Desigualdad y pobreza", elaborated by the Program of the United Nations for Development (PNUD), ONU, 2002. See: <http://www.desarrollohumano.org.ar/ge.Asp?Idioma=1>

¹⁰⁷⁵ About the calculation of the poverty line see note 54, above.

¹⁰⁷⁶ Source: Clarín, "En diez años se duplicó la población de las villas porteñas", 8 December 2003.

¹⁰⁷⁷ About the calculation of the line of indigence see note 54, above.

¹⁰⁷⁸ In all the Metropolitan Region of Buenos Aires (which includes the city of Buenos Aires and the 19 districts of the outskirts of Buenos Aires), the percentage of the population living below the poverty line passed from 24.8%, in 1995, to 50.4% in 2002. Something similar happens with the evolution of the indigence line, which jumped from 6.3% in 1995, to 23.4% in 2002. (pursuant to "Aportes para el Desarrollo Humano Argentina 2002. Segunda parte: Desigualdad y Pobreza", op. cit.).

¹⁰⁷⁹ Pursuant to the General Direction of Statistics and Censuses of the Government of the Autonomous City of Buenos Aires; Encuesta Anual de Hogares de la Ciudad de Buenos Aires. Aspectos Demográficos 2002, Nº1, Year 2004. See: http://www.buenosaires.gov.ar/areas/hacienda/sis_estadistico/nuevoinforme/EZH-demograficos.pdf. The kind of house in which the mother inhabits was selected as an indicator –though imperfect- of the level of their lives.

The increase of unemployment and job precarization are factors which affect the growth of the population living in settings or shanty towns. Although the percentage of unemployed people of the City is 9%¹⁰⁸⁰, of the almost 120,000 people living in settings 61% is unemployed, while 39% of the people who have some kind of job earns less than 300 pesos per month. As a counterpart, the value of the Basic Alimentary Basket (CBA) and of the Basic Total Basket (CBT)¹⁰⁸¹ is increasing: in June 2002, the CBA reached 90 pesos, while the CBT reached 210. A year later, in June 2003, the CBA was of 103 pesos and the CBT 227 pesos. By June 2004, the CBA was of 106 pesos while the CBT reached 234.¹⁰⁸²

An important part of the inhabitants of the settings of the City survive thanks to the '*cartoneo*', activity which consists in the collection of solid urban wastes (cardboard, paper, glass, plates, metal containers, etc.) in streets, for their subsequent recuperation or recycling, or in order to sell them to entities in charge of recycling. Many '*cartoneros*' are independent, but in the last years some have started to get organized in cooperatives. In 2002, it was estimated that, only in the Metropolitan Region of Buenos Aires, there were between 70,000 and 100,000 informal collectors¹⁰⁸³, even though those figures are already obsolete.

During the decade of the 90's, the amount of people sleeping in the street and/ who survived as '*cartoneros*' started gradually increasing. However, there was no awareness in the society regarding this phenomenon. The figure of the '*cartonero*' did not occupy a legitimized social space, and there was no sensible understanding by the middle sectors of the society about this economic activity. It was only after the 2001 crises, and due to the public divulgation of the many cases of death for child malnutrition, that more solidarity towards these people became evident, acknowledging their activity as a 'job', product of the massive loss of working positions in factories and building.

The train service which connects the City of Buenos Aires with the Buenos Aires outskirts opened the so-called '*white trains*' so that the *cartoneros* could transport their carts with goods¹⁰⁸⁴. By the middle of 2004 there were 15 services with these characteristics. Besides, in September 2002, the government of the City of Buenos Aires launched a campaign for the neighbours to put rubbish and paper in separate bags. This campaign was presented as beneficial for the recycling of residues and the environment but, above all, what was emphasized was the idea of making the job of the *cartonero* easier.¹⁰⁸⁵

¹⁰⁸⁰ Pursuant to the General Direction of Statistics and Censuses of the Government of the Autonomous City of Buenos Aires; Encuesta Anual de Hogares de la Ciudad de Buenos Aires. Aspectos Demográficos 2002, op.cit.

¹⁰⁸¹ The Basic Alimentary Basket contains food which provides the kilo caloric and protein requirements indispensable for an adult man, between 30 and 59 years, of moderate activity. The Basic Total Basket also includes non alimentary goods and services considered essential.

¹⁰⁸² Pursuant to INDEC, Permanent Home Survey (EPH). See:

<http://www.indec.mecon.ar/nuevaweb/cuadros/74/cba1.xls>

¹⁰⁸³ Pursuant to "Aportes para el Desarrollo Humano Argentina 2002. Segunda Parte: Desigualdad y Pobreza", op.cit.

¹⁰⁸⁴ Every year, since 2000, every '*white train*' takes over 4000 '*cartoneros*' –rubbish recoverers-, half women, from their suburban neighbourhood of precarious houses and soil streets to one of the areas in the Argentine capital of biggest wealth. The six wagons are almost moving scrap, with no seats to leave more space for the carts of the *cartoneros*, with wire bars instead of glasses in the windows. The service is not free. The passengers pay in advance to the company Trains of Buenos Aires (TBA) fortnight tickets of 10.5 pesos (3.6 dollars), equivalent to two thirds of the normal ticket. The organization of the '*cartoneros*' includes a neat distribution of the collection areas and also collective negotiations before municipal authorities which had as a result the opening of a night kindergarten and a plan of vaccine against tetanus. (Río Negro, "El tren blanco de los *cartoneros*", 13 June 2004).

¹⁰⁸⁵ The idea of helping *cartoneros* and recycling is present in a survey carried out by the Centre of Study of Public Opinion (CEOP), and which involved 302 interviewed people of both sexes between 18 and 65 years and in all the socio-economic levels. Most of them agreed that *cartoneros* are unemployed people who carry out this job in order to

In the last years, the phenomenon has not stopped growing: the *cartoneros* have established an informal circuit of collection carried out parallel to that of the companies, which due to the increase of this activity have had a reduction of 20% of the collection. Due to the peso devaluation, in January 2002, the price of paper in the internal market increased: the price of the kilo of cardboard –and glass– has increased from 0.015 to 0.05 pesos, while the price of aluminum is 0.70 per kilo. Through the collection of these elements, the *cartonero* makes around 15 pesos a day, between 200 and 300 pesos per month, in cash.

The magnitude of this activity¹⁰⁸⁶ caused interest conflicts, in particular after the initiatives to form recycling cooperatives between *cartoneros* to avoid the payment to mediators. One of the candidates to Chief of Government of the City, Mauricio Macri, publicly stated during his 2002 electoral campaign that “*forming cooperatives does not solve anything*”, and added that “*cartoneros have a criminal attitude because they steal rubbish*”.¹⁰⁸⁷

After the dimensions reached by the phenomenon, in December 2002, the government of the City of Buenos Aires¹⁰⁸⁸ created the Program of Urban Recoverers and Recycling of Solid Residues in the City of Buenos Aires (PRU)¹⁰⁸⁹. This initiative, however, has a limited scope, since it is almost exclusively directed to the decrease of sanitary risks implied in the job of the *cartoneros*. The registered recoverers receive shirts, gloves and vaccines against tetanus and hepatitis. In the practice this program was not so successful and only has, by June 2004, 9 thousand registered *cartoneros*.

2.1. The case of *The Village*

Characteristics of the place

The University City is located in the Neighbourhood of Núñez, on the north bank of the City of Buenos Aires (see Annex III) in the jurisdiction of the Centre of Management and Participation N°13¹⁰⁹⁰. The setting known as ‘The Village’ is located in the lands behind Wing II –belonging to the College of Exact and Natural Science (FCEyN) of the University of Buenos Aires–, between the building and the bank of the river.

The area in which the housing groups of the Village are located, is big and relatively away from the area of the university wings (the closest houses are about 300 meters away from Wing II). It is a coastal land, with brushes and low bushes. There are two accesses to the setting. The main

live. According to the results of the research, people consider them “honest, fighter people and strong in order to continue living” (Clarín, “Los supermercados darán bolsas diferenciadas para la basura”, 3 September 2002).

¹⁰⁸⁶ The secretary of Economic Development of the government of the city of Buenos Aires, Eduardo Hecker, estimated in August 2002 that the business moves around 150 millions of pesos a year (Clarín, “Los cartoneros porteños mueven más de 100 millones de pesos”, 31 August 2002).

¹⁰⁸⁷ Source: Clarín, “Los cartoneros porteños mueven más de 100 millones de pesos”, 31 August 2002.

¹⁰⁸⁸ Law n°992, 12 December 2002.

¹⁰⁸⁹ The Government of the City of Buenos Aires describes the PRU in the following way: “*This proposal is destined to create the basis of a public policy orientated to consolidating the recovery and recycling in the City, improving the conditions and means of work of the urban recoverers and strengthening them as social actors and economic agents. At the same time, they intend to favour the practice of housing separation and to strengthen the recycling circuits without affecting urban cleanliness and hygiene*”.

¹⁰⁹⁰ The Centers of Management and Participation (CGP) are the basis of the Program of Administrative Decentralization of the Government of the City of Buenos Aires, created with the objective of speeding the relation and contact with the neighbours. IN the CPP the neighbours can access to social, cultural and training services, present denounces or demand for deficiencies in the public services. The CGPs appear as a channel for the participation of the neighbourhoods. For more information see: http://www.buenosaires.gov.ar/areas/descentralizacion/cgp?menu_id=1949

one is located exactly behind Wing II: it is a badly marked track, made of earth and grass, and since it is the most direct one, it was the one used by the inhabitants of the Village. However, in some periods this access was obstructed by hills of debris and stones which made the entry of people with the carts they use to '*cartonear*' difficult, so that on some occasions they use the second access, which is a long detour which goes round the bank of the river. The long distance they have to cover to get to the setting implies difficulties not just to move the carts to collect cardboards and paper, but also for the provision of running water and the eventual entry of ambulances or medical services in case of emergencies.

The lot in which the setting is located has no access to basic public services: there are no connections to the net of running water, electricity or gas, there is no public transport and the service of residue collection is irregular. The inhabitants had for some time a source of running water relatively close (a tap in Wing II, 300 meters from the setting), but in 2003 it was also covered with two meters of debris and earth. By the middle of 2004, the inhabitants of the Village had to walk around 1,000 meters (to Wing III) to get to running water (see Annex IV).

Arising of the setting and characteristics of its population

In 1995, a homosexual couple who lived in the street went to the coast of the Río de la Plata to wash their clothes. There they met a transvestite who lived in a precarious hut, hidden behind the brush. She invited them to build there a hut for them and gave them the precautions which, necessarily, they should take: every day they had to go out by different places in order not to be identified as fixed inhabitants of the place, the hut should not be seen from the University City nor from any other inhabited spot of the city, in conclusion they were to be unnoticed at all times. Months later, the existence of this place became popular among homosexuals living in the street. According to one of the inhabitants, the idea of forming there a 'gay village' arose after the controversial and discriminatory statements of the deceased archbishop of Buenos Aires, Cardinal Antonio Quarracino, who in 1994 suggested sending homosexuals to an island so they could do what they wanted without affecting the rest of the society¹⁰⁹¹. Enlightened by this idea, many couples and single men started arriving and joining the small community. The older inhabitants of the village nostalgically remember this period, constantly referring to the shared moments, to the fun and the feeling of having been able to live as "*we wanted*"; leaving the social rejection they experimented in other ambits aside.

At that time, the inhabitants of the Village were frequent victims of social discrimination. Their double condition of homosexuals and homeless made many people treat them with despise when they met in the street. According to the interviewed, the insults calling them "*filthy, disgusting gays*" were very frequent.

Between 1995 and 1998 the population of the Village grew over a hundred people. In this period it was mostly homosexual, even though little by little some heterosexual couples and families had started to join them. The new inhabitants of the setting evaluate their arrival to the village in different ways, basically according to their previous residential situation. To some who were living in the street and sleeping in the subway stations or under bridges and suffered constant police persecution, arriving to this small setting inhabited by members of the homosexual community was very positive. Although the place had no electricity or water, and there were some risks when entering or leaving, the place is strongly associated by the interviewed with protection, safeguard and union. For other people, on the other hand, their arrival to the Village meant an important decrease in their living conditions. The reasons why they came to live there are multiple even

¹⁰⁹¹ Source: Página/12, "El rector que se escandalizó por el beso de una pareja gay por la TV", 26 July 2003.

though, in general, they are related to the sequenced loss of job and house, may be due to eviction or to the expiry of a contract in a hotel. In these cases, the arrival to the Village is perceived as a transitional moment, very traumatic, and the permanence in the Village is considered merely temporal. In many cases, the meager income of the 'cartonero' and the lack of job offer in the market, prolonged the stay in the setting more than planned, until, progressively, the situation became accepted as permanent. This initial expectative of temporality is very common in setting inhabitants.

According to one of the first heterosexual to arrive to the Village, at that moment it *"was a village, a circle, each had his couple, some lived alone, and no women came in"*. His arrival *"broke the plans"*. He was the only heterosexual man in the place. *"I respected their laws for a while, until I broke the codes and families started to enter, with children, making a mixed thing"*. When his girlfriend went to live to the setting, *"the first times were very hard, because they did not accept her: she was a woman"*. Eventually, she accepted the place where she was living and the original inhabitants started, little by little, to accept her presence. And also, *"she also accepted gays (before she used to be 'anti-gay')"*.¹⁰⁹²

Even though at the beginning there were these kinds of internal conflicts, as it was mentioned, the first inhabitants of the Village in general remember those times in an idyllic way, evoking feelings of unity and solidarity among inhabitants. One of the gestures through which this solidarity was expressed was the giving of plates to build the huts: the newly arrived used to receive help from the inhabitants to start putting up their homes. Besides, at times they were accommodated for a few days as guests, until their homes were ready. The fact of sharing this situation of isolation and semi-clandestinity produced strong social and affectionate links among inhabitants.

As a counterpart, the relations with the social environment are described as distant and hostile at the same time. This includes the families of many of the inhabitants, who on few occasions accepted the conditions of homosexual and 'villeros' of their relatives. The focus of the rejection appears to be concentrated in one or other of the attributes, according to the particular characteristics of each family. Even though all the inhabitants were born to poor homes, the social descent from the working class to a marginal situation is usually accompanied by a progressive loss of the family ties. The interviewed clearly mark the difficulty to adapt to the form of life in the village –specifically the search for running water, lighting with candles- of the people who lived their childhood *in houses*. For them, the adaptation was not easy, *"She was very 'snob'. And here she had to go search water, lit candles, everything the primitive way. The first times were very hard"*. One of the interviewees retold that she spent months without telling her family where she was living. In order to avoid questions about her residence, she avoided getting in touch with them, even losing contact with her eldest son, whom she had left under the care of her parents. According to this interviewee *"I spent 9 months without telling them where I was, I did not have the guts to tell my mother where I was living. They would have hit me like they haven't done since I was 11"*. Finally, when they discovered that *"their child was living under a bridge"* her parents told her that until she lives in a proper house like theirs, they would not visit her home, not even if she has problems or is very ill.¹⁰⁹³

Another of the characteristics of the population of this setting is its instability. Even if there is a group of people constantly living there, a considerable proportion of the inhabitants goes to the lot only during the week (from Monday to Friday), in order to be closer to the cardboard collection

¹⁰⁹² Pursuant to the interview carried out on 30 April 2004

¹⁰⁹³ Purusant to the interview carried out in 2 June 2004

sites and to have a place where to classify them before selling them. At weekends they go back to their homes, located in the Buenos Aires outskirts. Furthermore, there are people who go there to spend weekends due to the closeness to the river and the fishing possibilities. This situation acquired relevance in the negotiations with the Government of the City and was used as an excuse to deny the inhabitants the access to public loans for the acquisition of houses: the fact that some had houses in the outskirts appeared as an obstacle which allowed refusing the access to the loan to all of them.

3. Antecedents: the relations between the inhabitants of the setting and state agencies before the eviction

During the second half of the 90's, the inhabitants of the 'gay village' had a limited contact with the government institutions. The setting was not formally acknowledged by the Government of the City or the national agencies, reason why its inhabitants were not considered in the public policies directed to settings and emergency shanty towns. The main answer of the State before the different problems faced by the inhabitants of the Village was the repression carried out by the police.

During this first stage, there were only three kinds of contact with the State: the first, and most frequent, through the local police –with the characteristics described hereinafter-; the second, with the authorities of the University City, who had a hostile attitude due to the usurpation of their land and wanted, through justice, their eviction; and the third and last, with Federal Court n°7, which took part in the judicial case for land usurpation initiated by the University of Buenos Aires. Additionally, some inhabitants received medical treatment in public hospitals, in particular those HIV positive.

The public institutions only reported the existence of this setting¹⁰⁹⁴ –and took some state responsibilities regarding its inhabitants- after the start of a judicial case and the subsequent evictions attempts. This could be one of the reasons why no public policy was implemented in the place. The actions destined to eradicate the setting, did not imply a definite residential solution for its inhabitants so, shortly after their violent eviction, the lot was inhabited again.

Historically, the relations of the inhabitants with the police and security institutions have been very tense, especially with the Argentine Federal Police and, in particular, with police station 51^o, with jurisdiction in the area of the University City¹⁰⁹⁵. The interventions of the federal officers have meant repeated violations to the rights of the inhabitants after which, for a long period, they were defenseless. One of the inhabitants expressed that *"at the time they said that for the mere reason of living there we had no rights to make demands"*.

¹⁰⁹⁴ The setting appears for the first time in the statistic Yearbook of population of the Government of the City of Buenos Aires in 2001.

¹⁰⁹⁵ Even though police station 51^o has jurisdiction over the territory of the University City, the coastal lines of the Río de la Plata are under the jurisdiction of the Argentine Naval Prefecture. Pursuant to law n°18,398 (section 4°) its acting ambits are, among others, *"the coast and maritime beaches, up to a distance of 50 metres counting from the line of the highest tide and the banks of the rivers, lakes, channels and other navigable waters, up to a distance of 35 meters, counting from the line of the highest ordinary flood, if it is related to the exercise of the police of safety of navigation"* and *"Areas of safety of maritime borders and in the banks of the navigable rivers, pursuant to jurisdiction law of the Security Forces, to the only effect of the crimes of federal competence"*. The setting is located exactly in the limits set by the rule, so it is not clear which institution has jurisdiction there. The Federal Police understands that the setting is under its jurisdiction, since it is located at a distance which exceeds the competence of the Prefecture.

Throughout the 9 years of existence of the Village, there were different and repeated practices of institutional violence against its inhabitants: arbitrary and systematic detentions, threats, unlawful coercion and rapes, forced evictions from the lot and recurrent home and person searching. These abuses were never acknowledged by the State nor were the responsible people punished.

The relation between the inhabitants of the Village and the police officers is quite close. Many policemen are known by their names, or more frequently, by their nicknames. Furthermore, the inhabitants of the setting are known by the policemen. Despite that fact, among them predominates hostility and lack of trust. One of the inhabitants considers that the relationship is not clear: *"With the police you never know if they are with you or against you"*. The relationship is signed by a notorious power imbalance: while the inhabitants –mainly during the 90's- had almost no pressure element on the police officers, the police had formal authority, and many times they exercised a discretionary and arbitrary management of their powers.

In addition this relation has widely changed with time, alternating brief periods of tranquility, with more conflictive periods. The dynamic which causes these changes is not difficult to unravel and is influenced by diverse factors. The inhabitants of the setting characterize police actions as arbitrary, emphasizing that the interventions of the police in the place cannot be foreseen, in their frequency or in their magnitude. These interventions can be both detentions and searchings when entering or leaving the shanty town, or searching.

Another of the factors which made the relationship with the police so frequent was the lack of contact with other state institutions. The inhabitants of the setting were forced to make several negotiations with the police. A paradigmatic case, and common to the rest of the shanty towns and settings, is the entry of ambulances to the place. Habitually, ambulances and public transports, such as taxis and remises, refuse to enter this areas due to the danger they sense, both for their goods and for their own lives. Therefore, if there is a medical emergency, the neighbours have to request the police to accompany the entry of the ambulance. In the interviews, it could be observed that the police do not always agree to carry out this and, in many cases, terminal HIV people, women about to give birth and ill elderly people had to be taken by their neighbours to the University City so they can meet the ambulance.

Detentions are, may be, the police practice most suffered by the inhabitants of the Village, in particular by the homosexual and transvestite population. All the inhabitants make reference to the detentions and the arbitrariness with which they were carried out. However, the homosexual inhabitants of the Village mention having been detained more frequently while performing their 'cartonero' tasks in the University City or in the neighbourhoods of Belgrano and Núñez. On these occasions, apart from being delayed for hours in the cell of the police station, they lost all the cardboard and the elements collected that night. But even more serious was the loss of the cart with which they transported their goods.¹⁰⁹⁶

On these occasions, the policemen used to insult them in the police station for the job they were carrying out. One of the *cartoneros* of the village characterized the treatment received by some of the police officers in the following way: *"the police grabbed your carts and threw everything you were carrying; I used to tell them, I feel proud that you take me for being a beggar, but you won't ever take me for thief [...] They called me nigger beggar, disgusting, eating those stuff from the rubbish, aren't you ashamed, many humiliations"*¹⁰⁹⁷. Other times, the detentions were carried out –mainly to transvestites- only because they were dressed as women. Some of the transvestites of

¹⁰⁹⁶ Great part of the *cartoneros* transported papers and cardboard in carts or supermarket trolleys.

¹⁰⁹⁷ Pursuant to the interview carried out in 9 June 2004.

the Village exercised the prostitution in the streets, reason why they were much more harassed by the police. These detentions most frequently took place during the period of validity of the police edicts.

The edicts were repealed with the sanction of the new Constitution of the City of Buenos Aires in October 1996. According to an investigation carried out by Gastón Chillier: *"The function of security of the police has been justified, almost exclusively, by the detention of people which occurred outside the jurisdictional system. These detentions were supported, legally, in the application of the police edicts"*¹⁰⁹⁸. Particularly in this period there were repeated detentions to the same person, practice specially suffered by the homosexual inhabitants of the Village. According to one of the inhabitants, the detentions were constant: *"In 30 days I was taken [to the police station] 22 times. They took me for 2 hours, 3 hours, 12 hours, 24 hours... they took me, gave me all the fingers and to the cell"*¹⁰⁹⁹.

The detentions, according to the interviewed people, considerably decreased after the repeal of the police edicts, but did not completely disappear. In the interviews, the reasons mainly highlighted for detentions are not connected with the victims of the proceedings. Regularly, the detentions were used as demonstration of the police efficiency, both before the neighbours of the neighbourhood who demand more presence and activity of the local police, and before the inside of the police institution¹¹⁰⁰. According to an investigation of Sofía Tiscornia¹¹⁰¹ about the police

¹⁰⁹⁸ Chillier, Gastón; "La sanción del Código de Convivencia Urbana: Causas y efectos de la eliminación de las detenciones arbitrarias por parte de la Policía Federal", at *Las Reformas Policiales en Argentina*, working documents of the seminar of the same name, organized by CELS in the City of Buenos Aires on 1 and 2 December 1998. The author states that among the main characteristics of the edicts, the following are significant: a) most of them were given by chiefs of the Federal Police, legitimized to make them pursuant decree nº32,265, of the de facto government of 1932 and ratified in 1947 by law nº13,030; b) the contravention descriptions mostly used, described personal characteristics –instead of behaviours– which affected certain groups of people depending on their social condition, their sexual orientation or their age; c) all the proceeding of application of these rules was under the responsibility of the police agency: detention, proof collection and trial; d) the person detained could not exercise the right to defence and the minimum guarantees of the due process were not fulfilled either. This did not establish the assistance of a lawyer; it did not demand minimum evidence elements for the conviction, the proof could not be controlled by the subject to the proceeding; etc.; and e) although there was the possibility of exercising the judicial control, it was not practicable due to the scarce time to appeal and to the different mechanisms articulated in order to forbid those rights to the contravener. The characteristics of this system enabled that the application of the edicts caused massive and arbitrary detentions. The vagueness of the forbidden behaviours and the lack of controls of the penal system upon its execution started building, within the police agency, the figure of the 'suspected individual'.

¹⁰⁹⁹ Pursuant to the interview carried out on 9 June 2004.

¹¹⁰⁰ About the value of statistics Gastón Chillier states: *"[...] the amount of detentions produced in a year has a double function: within the institution it is understood as a demonstration of the capacity of work of a police station or division, this circumstance being an important factor of hierarchical promotion; for the outside, in the public opinion, the detentions carried out in a year are exhibited as a clear proof of efficiency in the fulfilment of the police function"*. Chillier also adds: *"We found a clear evidence of this system of measurement in a report elaborated by the Federal Police for the Home Ministry. In it, the number of people detained for crimes and contravention in the period 1992-1996 (first semester) is recorded, and the following is highlighted: '[...] in order to restrain marginality and the pre-criminal state, we resorted to contraventions, with a historical record of detainees (150,830 during 1995)'. The report explains that in the second semester of the year 1996 the values remained in that level. The content of this report, together with the enormous publicity annually given by the Federal Police to the increase of detentions by edicts and in order to find out records, reflect an institutional policy of the force which has the objective of proving to the society its efficiency to control security or, rather, to give a sensation that security is controlled"*. Chillier, Gastón; "La denuncia de un ex policía. Análisis de las causas y consecuencias de las prácticas de la Policía Federal"; elaborated in within the framework of the Institutional Violence and Public Safety Program of the Centro de Estudios Legales y Sociales/CELS; 1997. Available at: www.cels.org.ar

¹¹⁰¹ Tiscornia, S; Eilbaum, L. and Lekerman, V.; "Detenciones por averiguación de identidad. Argumentos para la discusión sobre sus usos y abusos", in CELS; *Las detenciones, facultades y prácticas policiales en la Ciudad de Buenos Aires*, working documents of the Seminar of the same name carried out in the City of Buenos Aires on 5 July 1999.

detentions in the City of Buenos Aires, it has been verified, after the judicial investigations, *“The existence of a series of telephone orders and daily agenda received by the police offices through which they are urged to ‘ostentatiously increase the number of detainees’¹¹⁰². The existence of this kind of orders shows a way of work which, while granting each officer a great deal of arbitrariness in the use of detentions to check for identity, it is supported on a conception of the way of exercising police functions with institutional character and support”*. The neighbours of the Village were a privileged target of those detentions, especially for their relatively scarce capacity of denounce. In an interview carried out within the framework of Tiscornia’s investigation, a constable declared *“Then if I bring a person 14 times in order to establish his identity, to find out who he is, they’ll tell me ‘enough, I’ll allow it once, maybe twice, but the third time is too much’. But what happens. I play with the fact that these people are perhaps ignorant of the law. Then I take advantage of that situation and maybe I’m committing a crime but, anyway”*.¹¹⁰³

All those who were interviewed, mentioned the repetition of this practice, particularly during the first years of the Village: *“Back then, we had a very bad time. The [police station] 51° started to fill books and ... everybody inside, 24hs. It was horrible, they did what they wanted”*. Another interviewed mentioned: *“I knew that once or twice a week, when they had nothing to fill the books of the station with, they went to that place and took everybody; they didn’t even let you get dressed, if you were sleeping they made you go as you were”*. Many of these detentions, in appearance destined to the fulfilling of internal objectives of the police in relation to the amount of detentions they should carry out happened at night and at weekends: *“Before the eviction, the relationship with the police of the [police station] 51 was horrible, you were in the yard of your house, they came, and... On Fridays it was a mathematical thing to wait for them because they came looking for you: ‘Girls girls we need 5 more, get ready, who’s coming?’ The police car was waiting for you. They took you, made a file, wrote anything, they needed people, they came and took you”*.

In addition, Tiscornia states that *“The diverse ways in which the detentions to find out identity and the previous contravention police edicts, have been and are used to ensure the payment for the exercise of illegal activities...have been judicially denounced on repeated occasions”*. The fact that some inhabitants of the Village practiced prostitution ‘entitled’ the police officers to request the payment of a percentage of their earnings, in exchange for not being constantly detained. Alternatively, prostitutes were forced to carry out sexual favours in exchange for their freedom: *“Faggots were always taken, or they had to do whatever they asked... they gave a price to their freedom. There was the faggot who did it and the one who didn’t care and was taken”*. Many testimonies evidence an informal regulation of prostitution by the police. This regulation, according to some interviewees, includes sexual abuses to transvestites by officers, and drug exchange.

The frequency of the detentions seemed to reduce after a change in the legislation of the City, but also as the population of the setting grew and started to gain more visibility.

In the Village there also were searchings to huts and precarious houses. As it was previously described¹¹⁰⁴, the common characteristic of these cases are the fear and confusion of the

¹¹⁰² Extract of the Telephonic Order nº1 “R” of Circumscription VI, quoted in an article published in Clarín newspaper which makes reference to the investigation carried out by prosecutor Pablo Lanusse and judge Vicente Cisneros about alleged cases of police corruption (Clarín, “Polémica entre un juez y un fiscal por documentos policiales”, 3 June 1999).

¹¹⁰³ Tiscornia, S; Eilbaum, L. and Lekerman, V.; “Detenciones por averiguación de identidad. Argumentos para la discusión sobre sus usos y abusos”, op. cit.

¹¹⁰⁴ See Part II, section 2.3, above.

inhabitants of the searched houses and the precarious situation of the neighbourhoods where these incidents take place. In the case of the inhabitants of the Village, the victims understand the connection of actions as a police persecution destined to harass them and before which they find themselves helpless. One of the inhabitants described these events, mainly registered in the period previous to the eviction in the following way. *"They came in, broke everything, everything you had and abused. They came at the time they felt like, kicked your door, came in. I don't know what they were looking for"*.

At times, massive searchings started after a robbery to students or facilities of the University City. In many of these cases, without any evidence the university authorities pointed out 'villeros' as natural responsible for these crimes. But at other times, the searchings took place spontaneously, without an explanation by the police of the reasons for their actions. Even though the first type of situation causes in the interviewees feelings of indignation for the social prejudice which automatically associates them with crime¹¹⁰⁵, in the second case what predominates in the victims is frustration and confusion, before an unexplained and unpredictable abuse. However, the consequences for the victims are the same, and go from the material loss caused by the policemen in their houses, to violent abuses such as beatings and sexual abuse. Besides, the people who did not live in the setting regularly, and, therefore, unknown to policemen of police station 51° -were on this occasions maltreated and dismissed from the place, without any further explanation; *"if there was a friend of you who came to visit, they hit him and made him leave"*.

The searchings to the inhabitants who come or go from the setting were also very frequent, and were carried out without any explanation to passers-by. *"They are so many horrible things... they saw you around there and told you 'lie on the ground', they searched you and beat you, if you are a woman or gay they did not respect you, they groped you"*. The rights violations were generalized, even though the situation of women and, above all, homosexual men was especially serious. In these cases, to the habitual practices they added a sexual attack, which on some occasions derived in rapes and serious abuses.

The abuses were not only committed by officers of police station 51°, but also by officers of the Body of Mounted Police, which patrols parks. The appearances of 'the Mounted' in the Village were also more sporadic, and were not related to criminal acts in the University City, since police station 51° is jurisdictionally in charge of them: *"There was a group of the mounted who came very often. When they were clean and sober, they treated you well, and if they were crazy... the only ones who could help us were those from Prefecture, it was their jurisdiction. The mounted came to break your balls, bothered children with the animals, and they had to go with them or otherwise they said they'd put some drugs on you in order to later call the police"*.

The relations of the inhabitants with the Argentine Naval Prefecture is positively evaluated by all the interviewed, who highlight the big differences between their staff and those of the Federal Police. The presence and patrolling of Prefecture are not only not rejected, but even fully accepted by the inhabitants of the setting. The perception of the interviewed of their staff, emphasizes the education and good manners in the treatment. Besides, it is acknowledged as a possible mediator in the conflicts existing between the neighbours and as the most indicated actor to carry out security jobs inside the shanty town. Some even see there a desirable future for their children: *"Nothing to do with the Federal, they are other people, with other education. My son tells me he wants to join the Prefecture, I think it's good, it will take him from the streets"*.

¹¹⁰⁵ About the discrimination suffered by the inhabitants of the emergency shanty towns, see Part IV, section 2.3, above.

4. The eviction of *The Village* in 1998

The first eviction of the 'Gay Village' took place in 1998 due to an order ruled by federal judge Adolfo Bagnasco within the framework of a judicial process initiated by the University of Buenos Aires for the crime of usurpation.

For the people who lived in the Village the eviction was a constant danger although, at the same time, something which never materialized. When it finally took place, it took everybody by surprise, since the inhabitants of the Village were in the middle of a negotiation with Federal Court N°7 and the Government of the City of Buenos Aires, and there was even a meeting agreed for some days later. According to Juan, one of the inhabitants, *"Some months before the incident, officers of the court took notifications, but we didn't think they would evict us"*. After the notifications they had interviews with social assistants who are very negatively remembered: *"'This is how you live?' asked us the social assistant of the Secretary... 'Why don't you mow the lawn... these filthy people? We have to take them all out; we have to take them all'. They told us it was not a suitable place to have children, that they would take our children from us, and put them in homes until finding them a house with all the conditions. They told us we were bad parents because that was not the place for children, that we didn't think about them, that we only thought about living in a place without paying taxes, because we were immoral, that they would always be taking us to jail, and that is no news for us"*.¹¹⁰⁶

The inhabitants of the Village state that during the summary proceeding they had held two meetings with the Direction of Human Rights of the Government of the City, whose representatives had tried to stop the action. However, in the middle of this process of negotiation with the government, the eviction was made effective. The proceeding was carried out on a holiday, very early in the morning. The inhabitants attribute this circumstance to the fact that on a holiday the lot is deserted: the absence of students and university professors was convenient since some groups could have demonstrated their opposition to a forced eviction. The pupils of the centre of Students of Wings I and II, had even camped in the place so that the eviction would not become effective, but they *"carried out the eviction on a long weekend, when there was nobody, a rainy day, at about 6 in the morning"*.

According to the recount of the victims, the action of the policemen in charge for the eviction was violent. The inhabitants lost their material goods, identification documents and even their huts, which were destroyed: *"they burnt everything"*. Another inhabitant recounted *"They did not leave one house standing, they burnt everything, killed the animals"*. Some people were out on the day of the eviction, and recounted what happened to their belongings: *"on Monday afternoon a friend came with all my stuff he could save: some clothes, the oven, the gas container, the TV, hardest to get for me... But the furniture was also there... some of it was in good condition, there were two cots, two little umbrellas for the kids, which a couple had given to me... there I lost the ID of my boy. And they didn't want to give him my stuff; they wanted to take it to a warehouse where they were taking everybody's, some stuff they took, and the people never got it back, because they didn't give us a paper, a receipt, nothing; a lot of stuff was lost there. If there was nobody at home, they took it there"*.¹¹⁰⁷

After this incident, some of the inhabitants (about 10 couples) who were not able to settle down somewhere else, so they settled under a bridge close to the University City demanding the Government of the City to give them a housing solution. In the presence of this situation, the

¹¹⁰⁶ Pursuant to the interview carried out on 28 May 2004

¹¹⁰⁷ Idem previous note.

government gave them a free flat for the period of one year. *"27 of us went under a bridge and hang a notice 'INHABITANTS OF THE GAY SHANTY TOWN', and there we stayed and started negotiating with De La Rúa¹¹⁰⁸. A month and three days later they got us a house in Estados Unidos and Piedras (in the neighbourhood of San Telmo). There they took us with all the honours, because all the press media was present. There were 8 rooms for 20 people".* After the lending period finished, they had to give up the house, and started returning to the previous place to put up new precarious huts.

Another group of people, who had been located in hotels financed by the residential programs of the Government of the City at the moment of the eviction, stated that they suffered ill-treatment and terrible living conditions. In a similar situation to that of the homosexuals who sheltered under the bridge: after some months the Government forgot about the payment of the rooms and these people decided to return to the setting.

5. Re-population of the setting

For a while, after the eviction, the Mounted Police stayed in the place watching over the accesses to the setting. Despite this fact, nobody noticed the presence of a transvestite, who was hiding in the brush. Due to the scarce visibility of her hut she was the only inhabitant of the setting who could stay, hiding all the time. For the rest of the evicted inhabitants, due to the custody, it was very difficult to return to the setting. However, after over a year, and with the hotel rents provided by the Government expired, some of the inhabitants of the Village were, little by little, returning. Also the setting started being re-populated with numerous families, some from the nearby shanty town N°31, located in the area of Retiro. The consequence of this was that after the eviction, the population of the setting changed, becoming more heterogeneous: the place was not only inhabited by homosexuals. Furthermore, this meant a significant increase of the population, estimated in over 200 people.

In September 2003, the Defense Office of the People of the City of Buenos Aires carried out a study of the population of the setting of the University City¹¹⁰⁹ and estimated that there were about 60 families living there, in extreme precarious and poverty conditions, with no electric light, running water, infrastructure or basic drainage. These people lived in very precarious huts, with plate and cardboard buildings. Most of the houses have between one and two rooms, and they verified high rates of overpopulation, since in this kind of huts live families up to 13 members.

At the moment of the study, 52% of the homes of the setting received an income –everything included- lower than \$300, 18% received between \$301 and \$500 and only 4% (2 homes) had an income over \$900. This is equivalent to stating that 71% of the homes of the Village are under the poverty line. This figure is concerning considering that, according to measures carried out in May 2003, in the City of Buenos Aires the percentage of homes under the poverty line is 14.3%, 5 times lower than in the setting of the University City. Also, they observed that 31% of the homes of the Village are under the indigence line. That percentage is equivalent three times to the one registered for all the City of Buenos Aires, according to the measurement of May 2003 (8.9%).

As it happened when the setting was established, most of the inhabitants of the Village (73.3%) earn their living as *'cartoneros'*. Due to this activity they are in constant contact with rubbish, thus

¹¹⁰⁸ At the time Head of the Government of the City of Buenos Aires.

¹¹⁰⁹ Pursuant to the Report: "Censo Asentamiento Ciudad Universitaria", Office of the Ombudsman of the City of Buenos Aires, January 2004.

deepening the risk of catching diseases and infections. In fact, many of the huts are surrounded by rubbish, since the classification of the residues is carried out after collecting them, near the houses.

The heads of 90% of the homes receive their income in an unstable way. There is one (1) stable worker for every eleven (11) unstable. Of the homes of the setting, those who receive lower incomes are the ones who have a highest percentage of school desertion in children under 18 years old.

59.4% of the inhabitants of the setting go to the public hospital if they need medical attention. As it was previously mentioned, the ambulances in general do not enter the Village, therefore, ill people have to be moved by their neighbours to the University City, where the ambulance is waiting. The arrival of complete families caused the presence of many children in the setting. Over half the children under 14 years old (51.1%) do not receive periodic health controls.

The housing conditions, as it can be seen, do not register any progress during the last years. There still are no basic services (light, gas, water or electricity). In fact, one of the biggest problems in the Village is still the provision of running water. Even if for a brief period there was a water pipe coming from the University net (300 meters from the place), it was destroyed¹¹¹⁰ and then covered by debris. *"They broke and stole the taps they had installed so we could have water nearby"*, recounts one of the inhabitants. The breaking of the taps, shortly after being installed, was an important incident since their installation had demanded hard negotiations and the use of common funds. By the middle of 2004, the inhabitants of the Village had to walk almost 1,000 meters up to Wing III of the University City, in order to get running water. The Defense Office of the People of the City of Buenos Aires, in its intervention 4546/03, in June 2003, emphasized that *"[...] the biggest and most urgent problem of the place was of a sanitary kind: before the lack of a close connection of running water, their inhabitants used the water of the river for consumption, cooking, personal hygiene and clothes washing, with the health risk implied, specially for the children"*. The water of the Río de la Plata is highly polluted, reason why there are diseases in the setting, such as diarrhea and fungus, caused by the use of the river as a water source.

The new population presents no significant differences with the previous one in its socio-economic and housing situation: of the total recent population of the setting, 48.8% lived in emergency huts or in the street before getting to the Village. However, the arrival of these new inhabitants meant important changes for the life of the setting, among which the appearance of frequent internal conflicts is outstanding.

The old inhabitants of the Village state that the present situation of the setting is very different to what they lived before the eviction. Even though they accept that there always were disagreements and conflicts among the neighbours, before the eviction there was a feeling of bigger solidarity and quietness within the setting. After the re-population, however, there were many situations of internal violence, not generated by the police, but by the inhabitants themselves, some of them feeling really scared of their neighbours. In the last years, there have been several cases of robbery, looting, violent threats and hut burning, in which they do not suspect the participation of the police.

The identification of some new inhabitants coming from shanty town nº31 as 'problematic' and responsible of the reigning violence predominates among the original inhabitants of the Village. As it was previously mentioned, shanty town nº31 is much bigger than the 'Gay Shanty Town'

¹¹¹⁰ The authors of the damage were never identified.

and the general perception is that the environment there is more violent too. Consequently, many of the interviewed people perceive the new inhabitants negatively and infer that, with the entry of these people, the violent practices common among the neighbours in shanty town n°31 could have been transferred to the Village. Thus, they stigmatize the inhabitants of other shanty towns, identifying them as the cause for the increase of internal violence. An old inhabitant of the Village describes the situation in the following way: *"nowadays each takes care of himself. Before, there didn't use to be robberies, there are now, before you could leave the door open and nothing happened. Today you have to lock everything with a padlock, put a watch dog inside. You come back and they have taken everything anyway. In this aspect, what it used to be and what it is today, the people were more united, took more care of the place. The people have changed. The people are not the same. Before they found out that you stole and I can assure you that on the next day you weren't here any longer. The same people made you leave. Nowadays they don't. That's the reason for what happens nowadays... so many denounces... they kill each other. Before, for example, nobody sold alcohol, it wasn't forbidden, but nobody did. Nowadays, they kill themselves, they are drunk all day"*.

The stigmatization of the new inhabitants is not exclusive of the old inhabitants of the Village. The volunteers of *Cáritas Argentina*¹¹¹¹, who work in the area, have kept a fluid contact with the inhabitants of the setting throughout the years. They state that they *"are very quiet people, they have lived here for 10 years and never brought any problems, until the people from shanty town 31 came, two years ago. There we started having all kinds of problems. Fights, robberies among them. There is a lot of drug and a lot of alcohol. There are many cases of looting. Burning huts of families. Some people go to 'cartonear' and when they return, they find nothing"*. A volunteer of Caritas who works with people of the area of the setting recounts that *"the relationship was always very affective with them, especially with the older ones. The newer are different, may be their personality, or maybe because they come from other setting..."*

6. New relationships with the state agencies

6.1. Authorities of the University of Buenos Aires

The relationships of the setting with the University of Buenos Aires (UBA) were always influenced by the usurpation report made in the middle of the 90s and the negotiation before justice of an eviction. Once this took place, the lot remained empty and watched for over a year. However, the UBA never started any work for the use of this space. The hostile attitude of the University did not change after the re-population of the land. However, its present expression consists in the permanent police presence, in order to protect the academic community from the threat allegedly represented by the setting.

The subject of insecurity acquired a central relevance in the university police of the last years and the authorities centred their management in the solution of this problem. The characterization made by a big part of the academic community and the authorities of the University City of the setting is that of a place where authors of crimes occurred in the lot, that is a threatening 'other', live or hide. As a consequence of this characterization, they try to achieve security through the

¹¹¹¹ This institution, dependent on the Argentine Catholic Church *"carries out the charitable pastoral of the Catholic Church. It coordinates and organizes that pastoral trying to generate and give integral answers to the problematic of poverty from the values of dignity, justice and solidarity"*. In order to get more information see: <http://www.caritas.org.ar/htm/somos01-bis.htm>

isolation of the shanty town, through its fencing and the systematic police control of the people 'strange to the academic community' who circulate in the lot.¹¹¹²

Concretely, towards the end of 2004 they started installing a wiring to separate the University City from the setting, which will be reinforced with the digging of a ditch filled with water. Since neither the students nor the professors carry any kind of identification, the recognition of the 'others' is based on their aspect: the colour of their skin, their clothes and low socio-economic condition. One of the basic functions of the police present in the University is to exercise this kind of control, exclusively upon the poor people who enter the place, both the inhabitants of the setting and those strange to it. On the contrary, the actions of the police are in never directed to the students¹¹¹³.

The stigmatization of the people who live in precarious settings on the basis of their alleged participation in criminal activities is daily expressed in the communication media and the public opinion. As described by sociologist Javier Auyero, *"At the moment the public discussion about insecurity frequently mentions the 'shanty town' and 'villeros' (a nickname applied to all those living in poor areas, shanty towns or not) as a threat. In the fragmented and polarized Argentina, shanty towns are areas to be avoided, 'crime areas' to be feared and averted. The reports of communication media periodically refer to the fear that these 'places for criminals' generate in the people who do not live there"*¹¹¹⁴. Throughout the investigation it has been possible to clearly observe how this perception of common sense has strong roots in a significant part of the academic community.

According to the Superintendent of the University City, Mario Boscoboinik¹¹¹⁵, there are *"important security problems, increased by the indiscriminate opening of the doors, the quick exit to the province, the close presence of a shanty town"*. He establishes a very direct relationship between the crime inside the university lot and the existence of the shanty town (*"the back is very dangerous"*, he says in reference to the Village), through a generalized idea which identifies the setting as a place where delinquents are concentrated: *"There are around 150 people, according to what they told us, living in the place, between families, gays and thieves"*¹¹¹⁶. In an article presented before justice in October 2003 it is stated that: *"in addition to poor life conditions, [the inhabitants of the setting] are frequently threatened by delinquents who use that space as shelter and hiding place [...]. In the lot of the University City one can be victim of a robbery. But entering the path of the Village alone means being robbed"*¹¹¹⁷. This logic leads to the conclusion that the main solution to the security problem in the University City consists in taking the Village from the lot. *"The fundamental issue here is to eradicate the shanty town"*, he holds, and states that the setting *"is a horrible thing [...], I think that having a shanty town is not very nice [...], people living*

¹¹¹² This circulation is unavoidable, since the only access to the Village is through the University City.

¹¹¹³ Both in the interviews with police staff, and with the superintendent of University City, they emphasized that the police actions were not directed to the students, but to the "strangers" who walk around the lot.

¹¹¹⁴ Auyero, Javier, *La política de los pobres*. Sudamericana Buenos Aires, p. 75. About the association between shanty towns and delinquency see Part IV, section 2.3, above.

¹¹¹⁵ Appointed in his office in April 2003. The Office of the Superintendent of common uses was created by file nº32.587/94. His functions include *"To plan, program and execute the jobs of maintenance, cleaning, park creation and safety of the existing and/or new infrastructures of the Exterior and of Common Use areas of University City which depend from the Sub-secretary of Maintenance and Services of the Secretary of Treasury and Administration of the University"*.

¹¹¹⁶ Video interview "Peligro en Frente Aguantadero" made 2003 by students of the lot. It was given as evidence to file nº63.010/2003.

¹¹¹⁷ Pursuant to file nº63.010/2003. Highlighted in the original document.

*in poor hygiene conditions, poor housing conditions, with children in bare feet, I think it is terrible. We are trying to make sure they won't mug us"*¹¹¹⁸.

In June 2003, the University of Buenos Aires, started the building of the offices of the Superintendent, in an old building located opposite Wing I of the lot –belonging to the Exact and Natural Science College (FCEyN) of the UBA. There, the police staff in charge of giving additional¹¹¹⁹ service, hired by the authorities of the UBA for the last twelve years, would be permanently located. Although this service is not new, previously it had less visibility for the community of students and professors.

The dependency works as 'operations base' for the policemen who perform their duties of additional security: some agents stay there –which makes it easy to locate them by phone- while others walk around. The 20 police officers who perform their duties by shifts belong to the Federal Police and, most of them work in police station 51^o.

Many of the policemen walk around the University City without wearing their uniform or carrying any kind of visible identification which permits to establish their condition of policemen¹¹²⁰. On 22 September 2003, the Directive Board of the FCEyN issued a resolution¹¹²¹, repudiating the existence of a police station and denouncing the presence of these policemen uniformed and in civilian clothes –even within the facilities of the colleges¹¹²²- and the circulation of vehicles with polarized glasses and without identifying license, in all the lot of the University City. In other resolution of the same day, it entrusted the dean of the DCEyN to report the police presence in the lot and buildings of the University City to the Savedra-Núñez prosecution office.¹¹²³

The superintendent of the University City also recognized that, when installing the office, there were civilian policemen in the place: *"At one point they suggested that in order not to be spotted by the people they should wear civilian clothes, [...] to see if they could discover a guy who had robbed behind [in the setting] because when they saw them they ran away when a policeman passed by. If you are going to commit a crime and you see a policeman you run away at the moment the policeman run. Then they asked if they could wear civilian clothes to do that, at the beginning I said yes, that I thought it was a good idea, or at least for a while"*¹¹²⁴. The situation had not changed by June 2004.

¹¹¹⁸ Video interview "Peligro en Frente Aguantadero".

¹¹¹⁹ Pursuant to section 87 of the Regulation of the law for the staff of the Argentine Federal Police, *"the subordinate officers and the subordinate staff in activity shall be able to perform the service of additional police, granted, regulated and hired by the headquarters..."*

¹¹²⁰ This was verified by the investigation team of the CELS during the visits carried out in the place and was denounced by the inhabitants of 'The Village', as well as by students and teachers of the FCEyN. One of the policemen interviewed in the video "Peligro en Frente Aguantadero", informed the students that a police station was effectively being built, in which the policemen hired by the authorities of the UBA would perform their duties. The officer held that the office does not depend from any police station, and that the officers who perform their duties there as additional staff, directly respond to the Superintendent. He confirmed in that interview that the office, once finished, would be the 'base' for all the policemen who were already *"walking the streets of the University City"*, and added that *"there are people who will stay here and others who will walk the streets"*. Asked about the presence of civilian officers, he admitted that, apart from the uniformed policemen, there were others without uniform or any kind of identification circulating in the university lot.

¹¹²¹ Resolution n°1,737.

¹¹²² In the video "Peligro en Frente Aguantadero" there are images of policemen dressed in civilian clothes having lunch in the canteen of the FCEyN. Asked about their condition of policemen, some admit it but others deny it and pretend to be students of the university.

¹¹²³ Resolution n°1,738.

¹¹²⁴ Interview to Mario Boscoboinik in the video "Peligro en Frente Aguantadero".

The main activity of the policemen present in the University City consists in supplying security within the lot, task which includes the control of the people strange to the academic community circulating the place. Thus, the University selectively deposits its actions in security matter revealing a very clear conception of the potential threats: these come exclusively from the people external to the academic community, made by students, professors and non teaching staff. Additionally, the identification between inhabitants of the Village and authors of crimes in the University City is direct and generalized. Both among policemen performing their duties there, and among the responsible university authorities, this identification, which strongly influences the concrete actions carried out, is present.

The initiative of the university authorities of installing a permanent police service was very controversial among students and teachers due to the traditional prohibition to the security forces to enter the universities¹¹²⁵. The establishment of the police office generated strong criticism and protests (see Annex III).

The establishment of the police station did not contribute in solving the security problems of the inhabitants of the Village, since the policemen limit their task to guaranteeing security within the University City, but not within the setting. Additionally, according to the inhabitants, the contacts they have with the police officers hired by the Superintendent usually include coercion, persecutions and threats.¹¹²⁶

Another of the conflictive issues regarding the duties of the policemen hired by the UBA is the relation they have with the so called 'car-carers'¹¹²⁷ and the street sellers who work in the lot. For the superintendency, the presence of the 'car-carers' is another factor which increases insecurity, since one of the most frequent crimes was the robbery of cars parked in the free parking lots of the facilities. Car robberies slightly decreased between 2003 and 2004 and this fact is attributed by the authorities to the bigger presence and visibility of the policemen¹¹²⁸. *"The identification of the people acting as car-carers and the control of their permanence in the job"* are also basic functions of the police officers. This police activity was also denounced by the inhabitants of the Village as a source of direct coercion, through the demand of bribery to allow them to work.¹¹²⁹

It is interesting to highlight that even though, in the practice, these offices function almost as a police station, the UBA does not admit its existence, instead it states that it is a seat of the Superintendent Office of the University City. On different occasions they tried to mark this difference to stop the frequent questionings: *"The reality is that in the building close to the bus stops of Wing I there ISN'T a police station but the INTENDENCY OFFICE, as I also said in the Directive Board and in the Superior Board, and the Superintendent Office, with the collaboration of the university community has to see that the police strictly fulfills its functions. Suggesting that the thing to do is to take the police away, without suggesting anything instead, means going to complete defenselessness"*¹¹³⁰. Thus, this unified posture of the authorities seems to be

¹¹²⁵ This results from the Law of Superior Education n°24.521 which in section 29 states that universities have institutional and academic autonomy.

¹¹²⁶ See below.

¹¹²⁷ Many inhabitants of "The Village" perform this activity, which consists in being in the parking lots of the university wings and taking care of the cars parked by students and teachers. In exchange, they receive a voluntary and variable payment by the owners of the cars.

¹¹²⁸ In the note presented to justice on 7 October 2003, Boscoboinik states that, according to the reports received in police station 51°, between July 2002 and February 2003 there were 48 car robberies. The officer points out that, according to the same source, in April 2003 (when he held office as superintendent) there were 13 robberies and, since then, the reports decrease to: none (0) in May, one (1) in June, none (0) in July and one (1) in August 2003.

¹¹²⁹ See below.

¹¹³⁰ Source: "La columna del Decano", at Cable Semanal, publication edited by the Press Office of the FCEyN. Edition of 6 October 2003. Year 14 (<http://www.fcen.uba.ar/prensa/cable/2003/html/e-c507.htm>).

dissociated from the perspective of other sectors of the academic communities (groups of students, teachers and non teaching staff), who reject the presence of the police in the University City and have shown intentions of getting closer to the inhabitants of the Village. An inhabitant of the setting states: *"they don't want us to be in contact with the people of the City. There are students and professors who know us, who are with us; apparently the only one afraid of us is the superintendent"*.

6.2. Security institutions

On 2 July 2003, there was a robbery in which many unknown people entered the canteen of the FCEyN and took various elements. After this incident, the police authorities carried out a searching in the Village with the intention of finding the objects stolen from the canteen. The operation was commanded by the Security Chief of the University City, who led a group of uniformed and civilian policemen. The inhabitants of the setting denounced that the effective entered their houses without a judicial warrant. In many huts they damaged furniture, personal objects and food. Two people were beaten, and when asked by the people to stop the violence *"they answered that they needed to make somebody responsible for the robbery and they decided to take one of those they had attacked to the new offices of the Superintendent. There, the beating continued. The aggression was so brutal that they had to keep him there for a day until he was at least able to move"*¹¹³¹. An inhabitant of the setting remembers the robbery and the violent police operation in the following way: *"When the canteen was robbed they sent the police, the person responsible for the canteen was here, they searched the houses, in the wrong way, because they are cops: they entered without a warrant, broke things, doors locked with padlocks, where there was nobody, they kicked them open"*.

Some inhabitants of the Village signed a letter denouncing the abuses committed by police officers of police station 51^o which –supported by some students of the Exact Sciences College¹¹³²– they sent to human rights institutions and official bodies. In the letter the inhabitants denounced all kinds of ill-treatment, illegal searching to their precarious houses, threats and even sexual abuses committed by officers of police station 51^o. As a consequence, on 7 October 2003, Mario Boscoboinik, Superintendent of University City, denounced –in the same police seat– the incidents recounted by the inhabitants of Gay Shanty Town in the letter. Those denounced were a Sargeant surnamed Gómez –nicknamed ‘the Charro’– hired by the University in order to carry out additional services in the lot and former policemen Hugo Cópola who –as non teaching staff of the UBA– was in charge of the security of the University City. All the inhabitants of the Village who signed the letter were summoned by the intervening judge¹¹³³ so that they could broaden the denounce. Even though some testimonies ratified the incidents denounced in the letter, many others explained that were deceived in order to sign the letter and that they did not know what it said.¹¹³⁴

Some inhabitants of the setting who worked as ‘car-carers’– state that they receive pressure and violent threats by the officers, who demand the payment of a percentage of the money they get. This situation was also denounced in the letter addressed to the Direction of Human Rights of the

¹¹³¹ Pursuant to a letter to the inhabitants of the Village addressed to the Direction of Human Rights of the City of Buenos Aires on 25 September 2003, included in file n°63.010/2003.

¹¹³² Wing I of the University City.

¹¹³³ The investigation of the incidents reported was under the responsibility of Instruction Court n°6

¹¹³⁴ Within the framework of the same case, one of the students who collaborated with the inhabitants of the Village in the redaction of the denounce presented, supported by lawyers of CELS, a video made some months before in which Boscoboinik and the subject to the proceedings –Cópola and Gómez– admit that the existence of the Village is a problem for the security of the University City and recognize that their intention is to eradicate it.

City in September 2003¹¹³⁵, in which they state that, at least until the moment of the denounce “all the people who take care of cars in the parking of Wings II and III have to pay a fix rent to be able to work”. Boscoboinik answered to these denounces in his note dated October 2003 stating that: “Contrasting with the denounce of this group of inhabitants of the Shanty Town, no member of the university community, professor, student, non teaching staff member has reported or denounced being victim of the action of the police staff affected to the Superintendent Office”. He adds that he does not know “whether the denounced incidents are true” and informs that “we presented a copy of the denounces in police station 51^o”, exactly the dependency in which Sargeant Gómez, one of the policemen involved in the abuses committed against inhabitants of the Village, performs his duties.

6.3. Office of the Ombudsman of the City of Buenos Aires

By mid-2003 the neighbours of the setting decided to go to the Office of the Ombudsman of the City of Buenos Aires¹¹³⁶ to express their most urgent problems: the need to access to running water, difficulties regarding health (such as problems with the attention and delivery of medicine in the area hospital, lack of pediatric control of children, lack of vaccination for children and adults, no medical attention to people with AIDS and epilepsy), lack of identification documents, and antecedents of evictions promoted by the Secretary of Social Care of the Government of the City.¹¹³⁷

The answer of the Ombudsman before these denounce was concentrated in the notification to the responsible authorities of the sanitary and social situation¹¹³⁸. In addition, the Ombudsman organized meetings with representatives of the setting and the person responsible for the Direction of Communitarian Health (CESAC) n°12¹¹³⁹, and with members of the program “Tacondes” (AIDS prevention directed to transvestites) of the Muñiz Hospital. They also informed the neighbours about the existence of the Mother-Child and Responsible Procreation Programs (delivery of the CESAC)¹¹⁴⁰

The initiatives taken to reconnect the running water, failed. Even though they had achieved a consensus about the connection both with the company Aguas Argentinas and with the Municipal

¹¹³⁵ Denounce of 25 September 2003. In file n°63.010/2003.

¹¹³⁶ The figure of the Ombudsman was created by section 37 of the Constitution of the Autonomous City of Buenos Aires and ruled by the Legislature through law n°3 of the City in February 1998 (published in the Official Gazette on 27 February 1998). According to this rule, the function of Ombudsman of the City is to defend, protect and promote human rights and other rights and guarantees and individual, collective and diffuse interests protected in the National Constitution, the Constitution of the City and the laws, before acts, incidents or omissions of the administrator and public services companies “[...] and of the forces who exercise police functions of local security. Also included are the acts of administrative nature of the Judicial, Legislative Powers and of the Control Bodies” (Pursuant to section 2 of law 3 of the City of Buenos Aires). The Ombudsman can start and continue, upon request of the interested party or not, any investigation for the clarification of acts, incidents or omissions of the administration of its agents which involve the unlawful, defective, irregular, abusive, arbitrary, discriminatory, negligent, seriously inconvenient or inappropriate exercise of their functions, including those capable of affecting the diffuse or collective interests (Pursuant to section 23 of law 3 of the City of Buenos Aires).

¹¹³⁷ The denounces were settled as file n°4546/03.

¹¹³⁸ The contacts of the Centre of Management and Participation of the area with the setting started shortly afterwards. See part V, section 6.4., below

¹¹³⁹ The Centres of Health and Communitarian Action (CESAC) –depending from the Government of the City of Buenos Aires–, have interdisciplinary teams which give, among other services, medical and nurse attention. In this Centres they apply vaccines and freely give out medicine, powder milk for pregnant women and children.

¹¹⁴⁰ Another of the actions faced by the Ombudsman was the “Setting Census of University City” in January 2004.

Commission of Housing and the Centre of Management and Participation (CGP), the absence of the UBA –whose pipe had to be used for water derivation- made its concretion impossible.

6.4. Centre of Management and Participation nº13

The Centre of Management and Participation nº13¹¹⁴¹ started a more or less regular relationship with the inhabitants of the Village towards the end of 2003 and especially in 2004, when they became part of most of the social plans that the Government of the City carries out. The Village is the only existent setting in the jurisdiction of this CGP, so it constitutes an area of attention regarding the needs of the population relatively important¹¹⁴². In fact, the authorities of this centre have been forced to acknowledge it as “*one of the most vulnerable populations of the City*”, in particular due to the lack of public services in the place, being the lack of running water the problem considered most serious. According to the director of this CGP, Eduardo Venturino, the problem of the setting is present in the agenda of the Government of the City. The Government is apparently decided to find a solution of transfer reached by consensus and not force, as it happened in 1998. According to this officer, the need to evict the lot in which the Village is established is, mainly, due to the high value of these coastal lands and the interest of the Government of the City of exploiting them economically with tourist and leisure objectives. “*We have to see how to recover and set this forgotten area of the city in value*” states the director. ¹¹⁴³

For the Director of CGP nº13, the ideal solution to the housing problem would be to include the inhabitants of the village to one of the housing plans in force, according to the particular situation: those inhabitants who have houses in the Buenos Aires outskirts would be tried to be “*relocated in their original place*”. The others, those who do not have any residence other than the Village should be granted a subsidy to acquire a house. Since the people who need the subsidy would be between 35 and 50, the solution to the problem would not be too costly for the State. However, in order to achieve that, it would be necessary that the population of the setting did not increase, since in that way the final cost of the solution would increase as well. The CGP explicitly requested the inhabitants of the setting not to allow the growth of the setting, because this would make the finding of a solution more difficult. The responsibility of exercising this control – perceived as necessary by the Government of the City to reach a solution to the residential problem- was not assumed by it, nor by any other of the actors who would be benefited by the eradication of the setting: the task of informally regulating the size of the population of the setting was left to the inhabitants themselves.

Another of the items that the Government of the City takes into account when designing and implementing policies on the Village, is the opinion of the neighbours of Belgrano and Núñez. In this sense, it is easy to perceive that one of the factors which allow the permanence of the Village is the relative unawareness of the neighbours. From the point of view of the authorities of the CGP, the passage to public state of the setting would mean to receive pressure from the close neighbourhoods¹¹⁴⁴ for its immediate eradication. As a consequence, there is a tension between the generation of actions and policies destined to the inhabitants of the Village and the need to avoid the growth of the population and the public divulgation of this conflictive situation. Undoubtedly, this dilemma would be solved through the formulation of a definite housing solution. This, however, does not seem possible in the short term, according to the authorities of the CGP.

¹¹⁴¹ In order to see a description of his functions see note 1090, above.

¹¹⁴² It is interesting to highlight that this acknowledgement came late, many years after the setting was formed. The present level of involvement of the CGP was achieved through the demands of the inhabitants before the Ombudsman and the relationship established between them and diverse social organizations.

¹¹⁴³ Interview carried out 26 March 2004

¹¹⁴⁴ These neighbourhoods are mostly inhabited by high-middle class people.

During 2004, the Government of the City carried out in the place diverse assistance actions, destined to the palliation of the poor living conditions. These actions are perceived as emergency solutions by the government and, for this reason, are not expected to continue in the middle term, mainly due to the expectative of finding a housing solution for the inhabitants of the setting. In this sense, the position is very clear: they consider it is an area which should not be urbanized. The plans to extend the use of the coast of the city of Buenos Aires demand the clearing of the area¹¹⁴⁵.

Among the assistance policies started, one of the most important initiatives was the inclusion of the population of the Village as receiver of the plan of food help of the City¹¹⁴⁶. The first step in this direction consisted in the study, in January 2004, of the population of the setting who needed assistance. From that moment 30 groups¹¹⁴⁷ started receiving the food (dry and fresh food). Due to its peculiarities, the population of the Village evidenced the limitations of this public policy: the boxes of food are exclusively destined to family groups, and their assignation to single people is not provided for. Since among the inhabitants of the setting there are many people in this situation (especially among homosexuals), it was necessary to make informal adjustments so they would not be excluded from the benefit. As a consequence, the ones who are alone were asked to make up false family groups, of 2 or 3 members, thus becoming possible receivers of the plan. Subsequently, the members of these ad-hoc groups would share the contents of the box of food.¹¹⁴⁸

When the CGP went to the Village in order to give out the boxes, it carried out together with other state agencies, a vaccination operative 'in situ'¹¹⁴⁹. In general lines, however, the CGP tried to make known among the inhabitants the other available social benefits and, once they knew them, tried to take the inhabitants to the corresponding offices, together with the rest of those who benefit from the plans.

With this logic the CGP gave the inhabitants of the Village information about other social policies from which they could benefit, such as the Program of Urban Recoverers (PRU)¹¹⁵⁰, through which they registered the *cartoneros* of the neighbourhoods of Belgrano and Núñez, included in the jurisdiction of the CGP nº13. They also gave them information to register in the Plan Family Doctors¹¹⁵¹ of the city. They coordinated with the school district of the area the inclusion of the children who were not attending classes. They also made a documentation plan (which takes

¹¹⁴⁵ On 26 August 2004, the Government of the City of Buenos Aires presented the proposal of the Buenos Aires coastal area (which includes all Río de la Plata the river fringe, from the neighbourhood of La Boca up to Núñez and part of the urban space linked to it) so it would be granted the rank of "Cultural Landscape", a new category created by the UNESCO. Source: Página/12, "Costa porteña para el mundo", 27 August 2004.

¹¹⁴⁶ The Program of "Direct Food Support to Families" was created in December 2002, in the ambit of the Secretary of Social Development, and is destined to assisting the population of the City of Buenos Aires which is in a situation of food and vulnerability need. The food support is materialized through the direct distribution of basic food products of the family basket. The Sub-secretary of Coordination of the Social Integral Plan, through the area Social Services, coordinates the actions to be carried out with the objective of decentralizing operational aspects of the Program and of improving the conditions of geographical coverage.

¹¹⁴⁷ In all the CGP nº13 there are around 500 family groups who benefit from the plans.

¹¹⁴⁸ Even though the CGP was requested the opening of a canteen, it preferred not to do it, and instead decided to give out food assignations and to recommend a distribution among the inhabitants of the place.

¹¹⁴⁹ Double viral, Tripe and Hepatitis B vaccines.

¹¹⁵⁰ See note 1089, above.

¹¹⁵¹ The Plan Family Doctors is directed to all the people of the city of Buenos Aires who do not have health coverage. It gives attention of clinic, paediatrics, odontology, gynaecology, and nursing in private medical centres of the doctors of the Hospital of the area. The registration and the service are completely free. Also, this plan gives out free medication to all its affiliates.

place once a month in the CGP). Another of the important initiatives to improve the healthiness of the setting was rubbish collection, carried out by a truck once a week.¹¹⁵²

The only activity which the CGP carries out *in* the setting is the monthly delivery of condoms, due to the large number of IHV positive people, and to avoid that, with the passing of time, the demand decreases and the provision falls.

The neighbours of the setting positively appreciate the initiatives of the CGP, especially when comparing this situation with the previous absence of contact: *"from the moment the INDEC considered us a shanty town, the CGP had to accept us"*. However, the perception is that the Government of the City is conditioned by the existence of constant requests and demands by the inhabitants.

From the perspective of other social actors with local presence the CGP would be taking special care with this population, because of their particular situation. However, this is not positively evaluated, being only a temporary strategy to avoid problems in the short term. Meanwhile, they also perceive there are no deep policies to help this population: *"The CGP is using them. ON the one hand they tell you: 'OK you'll receive help from us and we do everything we can for you' but on the other hand, they evict them. And later, when the eviction comes they'll say: 'Oh, we could not help it!'"*. From this point of view, there is a temporary difference, *"now politics has a more important role due to the fact that [the inhabitants of the village] became protagonists in some issues, the debate for the lands, etc"*.

The setting is not included in the security agenda of the CGP nº13. Its authorities hold monthly meetings with the police stations of the jurisdiction with which they discuss the main problems of the area. In the meetings with police station 51º, however, the setting of the University City was never mentioned as an area which requires the attention of the police authorities. This is very outstanding, taking into account the internal conflicts experienced in the Village, the antecedents of institutional violence occurred there and the identification of the setting as a source of insecurity for the University City. The demand for security, so present in the interviews with the inhabitants of the setting, have no parallel in the concerns of the political or police authorities, nor in the actions conceived to develop a strategy of crime prevention at a local level. The fact that no action in security matters is destined to this place is also outstanding, considering the perception of its closest neighbour –University City– is that all those responsible for the crimes in the lot come from this small setting.

7. The present relations with the civil society

7.1. Academic community of the University City

The inhabitants of the Village have a cordial relationship with some groups of professors and students of the University, from which they receive some collaboration. The Students Centre of the University City, for example, had an active participation in the connection of water from the University to the shanty town. Subsequently, after it was damaged, the Centre requested reports of the situation to the authorities of the University City. By June 2004, group of students of the college of Mathematics¹¹⁵³, started giving support lessons to the children of the Village that go to

¹¹⁵³ It is the RESACA group, which is dedicated to the work of subjects related with gays, transvestites and lesbians. For this reason, they initially went to the Village. After discussing with the inhabitants the existent needs, they

school. They tried to carry out this activity in the facilities of the University City, especially to use the computer study on Saturday, but the University considered that the facilities were not adequate. Consequently, the lessons are given in the yard of one of the huts of the setting, out in the open.

Even though these actions represented an important alliance for the inhabitants of the setting, they did not encounter a massive support within the academic community. Only the most politically and socially active sectors took part of these initiatives. In the imaginary of most of the students and teachers of the University City the setting is, in fact, associated with insecurity. For students and teachers, the existence of the setting does not constitute an issue of interest, and is only discussed if there is a crime. In these cases, the inhabitants are generally suspected of participating in the criminal incidents registered in the university lot. The discussions inside the university in relation to the Village revolve around whether the shanty town constitutes a threat for the students. Most of the academic community of the University City only considers the setting an insecure, dangerous place, without getting involved in the solution of the problems of the people who live there.

7.2. Catholic Church. Caritas Argentina

The Catholic Church and the volunteers of Caritas Argentina¹¹⁵⁴ have been in contact with this population for a long time. In particular, in the periods of less involvement of the State, the church was the place to which the people of the Village resorted to in order to ask for help: medication, food, etc. The relationship kept with the first homosexual and transvestite inhabitants is good, although somewhat distant. However, it can be stated that the church is the organization which has accompanied and helped, within its possibilities, the people of the setting for a longer time.

In the treatment that the homosexuals have with the institution, some discriminatory characteristics can be found, such as for example, the fact that transvestites have to use their 'men' names in that ambit. That, however, does not prevent a fluid relationship between them and the volunteers, who even give the homosexual community a special attention, compared to the rest of the people who go for help. The homosexual inhabitants never mentioned having felt any kind of discrimination in that ambit. The bond of this institution is friendlier and continuous with the original inhabitants of the Village than with the newer ones. As it was mentioned before¹¹⁵⁵, the volunteers who work in the place share with the original inhabitants the perception that the new inhabitants generate violent conflicts, associated to the consumption of drugs and alcohol.

The work of Caritas is centered in the distribution of food and medicine, with the donations they receive. The people in need usually personally attend church looking for the products, so the contact, in general, happens in the ambit of the church. According to one of the volunteers: *"We have visited sometimes [in the Village] in order to analyze their living conditions and more, but when it happened... they tried to mug one of our collaborators... then they told me: 'dont' go there any more because the situation is hard"*.

The inhabitants of the Village positively value the help given by the church, in particular because it continued for along time, almost ten years.

7.3. Commission Pro Monument to the Victims of State Terrorism

decided together with them to start the support lessons. They plan in the future to carry out workshops on the prevention of AIDS with teenagers.

¹¹⁵⁴ See note 1111, above.

¹¹⁵⁵ See Part V, section 5, above.

Since 1998 many human rights organizations have been taking part in the “Commission Pro Monument to the Victims of State Terrorism” together with the Legislature and the Government of the City of Buenos Aires¹¹⁵⁶. The final objective of this Commission is to locate a park and a monument by the Río de la Plata, in an area bordering that occupied by the setting the Village.

In the year 2003 some of the inhabitants of the setting transmitted to the human right organizations their concern for the possibility of a forced eviction¹¹⁵⁷. Thus, they informed that during the first week of January 2003, the Government of the City, through the Buenos Aires Present Program (BAP)¹¹⁵⁸, had gone to the setting to inform that there was a new eviction warrant on the people who lived there which would have to be fulfilled in the lapse of 3 months. Furthermore, they mentioned that the officers of the BAP had offered them a subsidy of \$800¹¹⁵⁹ per family so that they would abandon the area.

Facing this situation, several meetings were held between the inhabitants of the Village and the organizations, and a visit to the setting was also made by the President of the Commission Pro Monument –Gabriela Alegre- and some of the members of the human rights organizations.

Since then, the institutions work in the ambit of the Commission Pro Monument in order to facilitate the concretion of an agreement between the authorities of the Government of the City and the inhabitants of the setting which would give a definitive housing solution and would allow them to access to a decent house, since the offer of the Government is far from guaranteeing a housing solution according to the human rights standards on this subject. Also, in order to find such a solution, the organizations interceded before the authorities of the UBA to palliate the sanitary problems, of water provision and access to the place.

8. Start of the Cooperative

As it was mentioned, when the first eviction took place, the population of the Village was made mostly by homosexual people among whom there were strong bonds. However, after the first eviction, the setting started being re-populated by heterosexual families, together with many of the original inhabitants who started settling down again. Thus, the population of the setting stopped being exclusively homosexual.

Due to the changes undergone by the structure and composition of the population and its resulting heterogeneity, the organization of the people was completely inexistent. For that reason, the CELS advised the inhabitants to contact a non governmental organization dedicated to the housing problematic, which could give them advice and represent their interests adequately in the negotiation of a housing solution. In this way, after contacting many entities dedicated to the matter, they opted for carrying out their demand with the support of the Centre of Social Investigation and Popular Legal Councelling (CISALP). The team of the CISALP recommended

¹¹⁵⁶ The organizations which take part are: Plaza de Mayo Grandmothers, Permanent Assembly for Human Rights (APDH), Good Memory Association, Centro de Estudios Legales y Sociales (CELS), Relatives of Disappeared and Detainees for Political Reasons, Foundation Historical and Social Argentine Memory, Argentine League for the Rights of Man, Plaza de Mayo Mothers –Founders Line, Ecumenical Movement for Human Rights, Peace and Justice Service (SERPAJ).

¹¹⁵⁷ Which would be within administrative file n°79.676/01.

¹¹⁵⁸ This Program of the Government of the City of Buenos Aires gives food and warm clothes, and sanitary and psychological supports to the people who live in the streets or who under go a social risk situation. It also works as a negotiation articulator, since the people helped by BAP is derived to different services. Also, through a free telephone line they inform, advice and receive claims related to social emergencies.

¹¹⁵⁹ Less than US\$ 270.

the inhabitants of the Village to form a housing Cooperative, in order to negotiate loans and subsidies before the Government of the City and in this way to achieve a definitive housing solution. On the other hand, the Cooperative could also assist them in matters related to the access to health, water, documentation and legal matters in general.

The process of formation of the Cooperative was hard and only concreted after many frustrated attempts. The difficulties became evident in the need to achieve consensus among the inhabitants of the setting to negotiate with the State, and other actors, solutions to their common needs. These difficulties were, basically, result of the fragmentation of the population in groups, sometimes coincident: single homosexual vs. families; old vs. new inhabitants.

At first, the process of formation of the Cooperative was fostered by the 'new' inhabitants, that is, some of the heterosexual families who settled after the first eviction and took place of the geographical location in order to get a bigger economical benefit from the '*cartoneo*'.

In this situation, the group of homosexuals went to CELS to inform that they did not agree with the participation of the 'new ones' in the process of searching a residential solution, since many of them were families who had other homes in the Buenos Aires outskirts. In this sense, the homosexuals –original inhabitants- felt their interests were harmed, because they understood that the heterosexuals profited from the conditions in which the inhabitants of the Village live since "*they come from outside taking advantage of the opportunity of getting a house*". Even, at first, the homosexuals demanded that the organizations should be in charge of excluding those people from the Cooperative, to which they were answered that the Government of the City should be in charge of defining the situation of each family and detecting, if it was the case, the possible frauds to the law.

After receiving this approach, the old settlers decided to form a new Cooperative. However, this initiative was not concreted due to the internal differences between the homosexuals. Finally this meant that many of them reached an agreement in order to form a Cooperative in which both homosexuals and heterosexuals took part.

Thus, on Sunday 20 July 2003, the Constituent Assembly of the "Housing Cooperative United Neighbours" was formed with the participation of homosexuals and families. These two groups are equitably represented before the Board of Administration, main body of the cooperative. Anyway, many of the homosexuals did not accept this new conformation and were out of the organization. Despite these advances, the cooperative failed and it was never officially registered, which constitutes an unavoidable requirement for its functioning. This was due to many factors, among which we can mention: the desertion of most of the people who had been chosen as representatives of the Board of Administration of the cooperative, who in a way led this process, and the denounces for bad administration of the funds (for example, they charged installments without cause and without receipts).

In this situation, after successive advances and recessions, they managed to form a new cooperative shortly afterwards. As it was mentioned, many of the members of the previous cooperative abandoned it due to the lack of achievements in the short and in mid terms which were in agreement with the expectations. As a consequence, only about fifteen families kept the decision of making the cooperative (the most united group). This group coincides with that of the oldest inhabitants, to which other homosexuals and some of the new inhabitants have been

added. The new group managed to start the inscription procedure in the National Institute of Associativism and Social Economy (INAES).¹¹⁶⁰

The fact that not all the neighbours are part of the cooperative still generates many conflicts among them. Some of those who do not take part of the cooperative press the members. For example, the treasurer was asked part of the money collected from the social installments under threats of raping their two daughters.

From the beginning of the housing Cooperative there has been a change in the modality of the relationship with the other actors. In this sense it is interesting to notice that from the beginning, the Cooperative has been turning into a social and political actor, with interference in matters which exceed the housing matter. On the one hand, the organization of a group of neighbours and the election of representatives strengthens the negotiation capacity. But, besides, for the other actors it is also easier and safer to treat with the Cooperative –which reaches a consensus about the opinion of its members-, rather than with a series of individual individuals. In many cases the Cooperative has assumed the representation of the neighbours in the traditional conflicts they had with other actors, such as the relationship with the police and the authorities of the University City. According to Diego¹¹⁶¹, member of the Cooperative, the Superintendent of the University City, goes to them whenever he has to take a measure. Even though he does not consult them, at least he informs them, something which did not happen before. Moreover, many of the interviewed people indicate that most of the abuses by the police have stopped since the Cooperative was formed, because now they know that the inhabitants are organized and not isolated or defenseless anymore.

Finally, the beginning of the Cooperative allowed some improvements in the life quality of some of the inhabitants of the Village: the collection of rubbish was organized (for which the CGP took part) and a water pipe was installed in a closer place with funds raised by the members through different activities. Unfortunately, the Cooperative was not able to make these improvements last in time.

9. Final considerations

The global situation of the inhabitants of the Village has suffered some advances in the last years, compared to the time prior to the eviction. The most positive changes were the transformation of the relationship between the inhabitants and the security forces and the establishment of links with the local political authorities.

These changes were the result of the interaction of diverse factors, among which the following are outstanding: the official acknowledgement of the existence of the Village, the capacity of the inhabitants to organize for the attainment of their common objective, and the articulation of alliances with other social actors which helped to strengthen their negotiation capacity.

The fact that the setting acquires an official status –in 2001- forced the local authorities to undertake a series of responsibilities regarding the inhabitants of the Village. Since then –and also thanks to the intervention of other actors, such as the Ombudsman of the City and the human rights organizations-, the CGP of the area has started carrying out some assistance actions in the

¹¹⁶⁰ The National Institute of Associativism and Social Economy (INAES) is a decentralized body in the ambit of the Ministry of Social Development and Environment whose main mission is to contribute to the development of the sector of the social economy, founded in the principles of solidarity, mutual help and social equity, and which has as main pillars the action of the cooperatives and mutuals.

¹¹⁶¹ Interview carried out on 28 May 2004

place. Even if these interventions are limited, specific and not continuous (such as rubbish collection and the provision of running water), they have opened a channel of communication with public authorities and allowed the access of the inhabitants of the Village to social plans of food and health. These actions are, however, palliative and they have not yet implemented measures with the objective of finding a definitive solution to the serious sanitary problems suffered by this population. On the contrary, the reforms which could mean an improvement of the necessary infrastructure to provide the basic public services are deliberately avoided since this would permit the permanence of the setting in the lands of the university. However, they do not design a housing solution so that the Village stops existing in the short term. As a consequence, the intervention of the Government of the City of Buenos Aires in the place has meant improvements in some aspects of the daily life of the inhabitants, but it has not changed their general situation of precariousness or their housing perspectives.

The fact that the inhabitants of the setting have managed to form a housing Cooperative to collectively negotiate a housing solution, has also contributed to the relative improvement of the situation. This new actor can be seen as an advance in itself, from the point of view of the building of an internal consensus for the demand of rights. This shows an increase in their capacities and resources to negotiate and press the responsible authorities and also a strengthening of the subjective perception the citizenship has of them. In addition, since it was formed, the Cooperative has assumed roles which exceed the housing negotiation, becoming a referent of the community both inside, and outside the Village. Although it has not changed essentially, the attitude of the authorities of the University City and of the police officers who work there is, at the moment, more cautious. The alliances that the inhabitants of the Village have built with diverse social organizations also were beneficial. Not only because their support limits the abuses of some actors, but also because the contact with the organizations seems to have increased the level of knowledge of the inhabitants of the Village regarding the rights which protect them and their capacity to formulate demands to the authorities.

In these last years, there appeared new problems for the inhabitants of the setting. Among them, the main one is the increase of internal violence and the violent resolution of the neighbourhood conflicts. These have not received any answer from the responsible authorities. The subject of insecurity *inside* the setting is not heard by *any* of the State actors responsible in the subject: the police station with jurisdiction in the area (51°), the police officers of University City, the CGP nº13 (which holds meetings with the Constable to discuss the security problems of the jurisdiction) or Naval Prefecture (with jurisdiction in the coast of the Río de la Plata). None of them acknowledges the violent situation lived in the Village, or the demands of its inhabitants asking for a control instance which guarantees its integrity. The State power not only ignores the obligation of guaranteeing security to these people and preventing the repetition of acts of institutional violence against them.

In addition, the authorities of the University of Buenos Aires, who accuse the inhabitants of the crimes, literally ignore these people, letting them (for the time being) inhabit a space isolated by wiring and dividing ditches. They also decide that in their outing 'to the world' they are to be subject to a police control not exercised upon other social groups, and which constantly keeps them under suspicion.

The segregation of the inhabitants of precarious settings becomes evident in the speeches of the university authorities and part of the academic community, of the police officers and of the actors of the judicial power¹¹⁶². The practices of the mentioned actors have also been reached by this perception. A clear example is the strategy of approach started by the UBA, conceived to isolate

¹¹⁶² About the discrimination to inhabitants of emergency settings see Part IV, section 2.3. above.

and to control the inhabitants of the setting and to watch over the interchange between a space and the other. Thus, the control functions of the police are focused on the population of the setting, in particular on the moments of *entry* and *exit* through the university area. The control is exercised on them as possible authors of crimes, but *not* as possible victims. On the contrary, the students of the university are not subject to police controls, but protected of possible external aggressors.

Another of the present manifestations of the discriminatory practices is the tolerance that the authorities of the University have shown before the incident of institutional violence committed against these people¹¹⁶³. An example of this is the hiring of a policeman exonerated due to ill-performance of his duties, Hugo Cópola –considered even by his own superior officers as ‘bully’- to perform his duties as the Security Chief of the University City, which involves the control of the police officers hired by the University. The fact that the inhabitants of this setting publicly denounce this man for asking the car-carers for bribes, carrying out searchings without judicial warrant, beating inhabitants and forcing homosexual people of the setting to have sex, is not surprising.

After making the denounce before justice¹¹⁶⁴, the authorities of the University only transferred Coppola to another university building, in this way he did not lose –at least until June 2004- his link with the job. The authorities of the University City did not have any problems either in letting the other subject to the case of threats, Sergeant 1º Ricardo Gómez, remain in his duties as a policeman hired for additional services.

It is also necessary to analyze the relationship of the inhabitants of the Village with justice, and the place that these assign to it in the social and political order. The inhabitants of the setting suffered repeatedly the persecutions and threats of justice. The destiny of many of the interviewed people was decided by the justice of minors. In some cases these people lived part of their childhood in semi-open or closed institutes, due to criminal or assistance reasons. Also, justice is seen as a threat by the immigrants of neighbouring countries, who try at all times to avoid contact, since they do not have legal residence in the country.

On some occasions, such as the period previous to the eviction, justice ordered the police to carry out several operations in order to verify identity in the setting. In them, the police officers had the mission of identifying all the inhabitants. Although through these practice they tried to survey the number of people who were to be evicted, judicial sources recognized that they also did it in order to intimidate. This practice –unthinkable in middle class neighbours- is not exceptional in settings such as the Village. These neighbourhoods, as it was said, are considered places in which criminals live or hide. As a consequence, justice operates on them with mechanisms of massive control, in which once again the population is seen under suspicion, for the mere fact of living there.¹¹⁶⁵

According to what was established through the interviews, the inhabitants of the setting do not denounce before justice the abuses of which they are victims, instead they use other kind of more informal channels (students or professors they know from the UBA) or resort to diverse social organizations with which they are in contact.

The homosexual condition of the inhabitants of the Village seems to have influenced in different ways –even contradictory ways- in their relationship with other social actors. On the one hand, we saw that certain kinds of violence related to sexual abuses, such as groping during the

¹¹⁶³ About tolerance to violence see Part IV, section 3, above.

¹¹⁶⁴ See Part V, section 6.2., above.

¹¹⁶⁵ About the discriminatory judicial practices see Part IV, section 2.5.2, above.

searchings, or the request for sexual services as a way of extortion to avoid being detained, are mainly concentrated on the homosexual population. In other words, to the different forms of violence exercised by the police officers on the inhabitants of the village, in the case of homosexuals, also sexual violence is added.

The establishment of social bonds with the neighbourhood of middle and high sectors which surrounds the land of the University City could have become difficult due to the characteristics of the population of the Village. Even though the inhabitants of the setting perceive an improvement in the treatment they receive from their neighbours in the last years, this has not meant up to the present the overcome of the impossibility to articulate alliances with them. The rejection, in this case, does not seem to be the consequence of the homosexual condition of the inhabitants, but the result of the discrimination of the '*villeros*' and their link with insecurity.

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Table 1

**Gross Domestic Product at market prices
Argentina
Years 1996-2002
- in millions of pesos -**

Period	at 1993 prices		at present prices	
	GDP	% variation with respect to the previous year	GDP	% variation with respect to the previous year
1996	256,626	-	272,150	-
1997	277,441	8.1	292,859	7.6
1998	288,123	3.9	298,948	2.1
1999	278,369	-3.4	283,523	-5.2
2000	276,173	-0.8	284,204	0.2
2001	263,997	-4.4	268,697	-5.5
2002	235,236	-10.9	312,580	16.3

Source: CELS, based on information of the National Direction of National Accounts of the National Institute of Statistics and Censuses (INDEC)

Table 2

**Evolution of the Gross Domestic Product per capita at 1993 values
Argentina
Years 1996-2002
- in 1993 pesos-**

	1996	1997	1998	1999	2000	2001	2002
1993 pesos	7286	7778	7976	7610	7458	7042	6200
Evolution (1996 = 100 base)	100	107	109	104	102	97	85

Source: CELS, based on information of the National Direction of National Accounts of the National Institute of Statistics and Censuses (INDEC) and on projections of the 1991 National Census

Table 3

**Evolution of the unemployment rate as percentage of the
economically active population,
according to jurisdiction
Years 1996-2002**

Jurisdiction	1996	1997	1998	1999	2000	2001	2002
Greater Buenos Aires	18.8	14.3	13.3	14.4	14.7	19.0	18.8
Buenos Aires City	12.8	11.1	8.6	10.3	10.4	14.3	13.5
Conurbano Bonaerense	21.2	15.6	15.1	16.1	16.5	21.0	21.0

Source: CELS, based on information of the Permanent Home Survey (EPH) carried out by the National Institute of Statistics and Censuses (INDEC) (October waves)

Table 4

**Population projection, according to jurisdiction
Years 1996-2002**

- in number of people -

Jurisdiction	1996	1997	1998	1999	2000	2001	2002
City of Buenos Aires	3,032,875	3,036,891	3,040,292	3,043,431	3,046,662	3,049,941	3,053,029
Conurbano Bonaerense	8,638,256	8,752,103	8,867,351	8,983,764	9,101,099	9,212,955	9,325,288
Greater Buenos Aires	11,671,131	11,788,994	11,907,643	12,027,195	12,147,761	12,262,896	12,378,317
Entire country	35,219,612	35,671,894	36,124,933	36,578,358	37,031,802	37,486,938	37,944,012

Note: the definite information of Census 2001 is not available yet.

Source: CELS, based on inter-census calculations of the National Institute of Statistics and Censuses (INDEC) from the 1991 National Census.

**Percentage of population on the whole country
Year 2002**

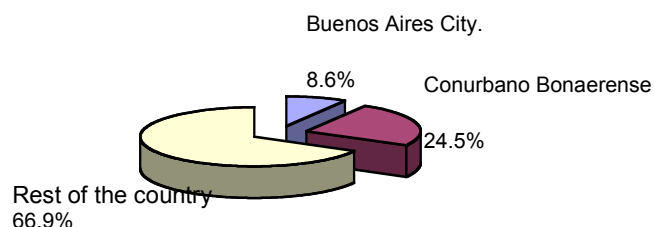


Table 5

**Evolution of indigence and poverty
Greater Buenos Aires
Years 1996-2002**

- in percentage of homes and people under the respective line -

Year	Homes		People	
	below indigence line	below poverty line	below indigence line	below poverty line
1996	5.5	20.1	7.5	27.9
1997	5.0	19.0	6.4	26.0
1998	4.5	18.2	6.9	25.9
1999	4.8	18.9	6.7	26.7
2000	5.6	20.8	7.7	28.9
2001	8.3	25.5	12.2	35.4
2002	16.9	42.3	24.7	54.3

Source: CELS, based on information of the Permanent Home Survey (EPH) carried out by the National Institute of Statistics and Censuses (INDEC) (October waves).

Table 6

**Maximum level of formal education reached
City of Buenos Aires
Population of 25 years old and over
Years 1996-2002**

- distribution with respect to each year's total amount -

Maximum level of formal education reached	1996	1997	1998	1999	2000	2001	2002
Primary incomplete	4.5%	4.2%	6.0%	5.1%	5.0%	3.6%	4.3%
Primary complete	22.3%	23.3%	20.1%	20.0%	19.0%	18.8%	17.7%
Secondary incomplete	14.0%	14.4%	14.8%	13.5%	11.8%	12.1%	12.4%
Secondary complete	24.1%	23.5%	22.2%	23.3%	22.9%	23.5%	21.9%
Superior or university incomplete	10.7%	11.0%	11.7%	12.0%	13.7%	13.4%	13.8%
Superior or university complete	24.4%	23.7%	25.1%	26.2%	27.8%	28.6%	29.9%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: CELS, based on information of the Permanent Home Survey carried out by the
National Institute of Statistics and Censuses (INDEC) (October waves)

Table 7

**Maximum level of formal education reached
Conurbano Bonaerense
Population of 25 years old and over
Years 1996-2002**

- distribution with respect to the total amount every year-

Maximum level of formal education reached	1996	1997	1998	1999	2000	2001	2002
Primary incomplete	16.9%	17.3%	16.0%	14.7%	14.5%	14.1%	14.7%
Primary complete	39.9%	38.0%	37.1%	37.8%	37.5%	38.5%	35.1%
Secondary incomplete	16.4%	17.4%	18.7%	18.0%	18.4%	16.3%	17.9%
Secondary complete	15.0%	14.5%	15.0%	15.7%	16.0%	16.5%	16.9%
Superior or university incomplete	5.2%	6.1%	6.2%	6.4%	5.7%	6.9%	7.0%
Superior or university complete	6.6%	6.7%	6.9%	7.4%	7.8%	7.8%	8.4%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: CELS, based on information of the Permanent Home Survey carried out by the
National Institute of Statistics and Censuses (INDEC) (October waves)

Table 8

Evolution of road and street blockades, by district
Argentina
Years 1997-2003
 - in amount of blockades-

Province	Population	% on entire country	1997	1998	1999	2000	2001	2002	2003*	Total	%
Buenos Aires	14,381,806	38	23	9	82	119	452	587	19	1291	27%
Jujuy	613,983	2	37	13	1	79	136	414	14	694	15%
Capital Federal	3,049,941	8	11	9	58	51	170	299	26	624	13%
Salta	1,090,047	3	4	0	2	41	59	212	13	331	7%
Tucumán	1,308,414	3	7	0	23	48	55	122	3	258	5%
Córdoba	3,122,302	8	22	1	4	11	34	158	4	234	5%
Santa Fe	3,128,696	8	9	4	13	21	39	129	12	227	5%
Neuquén	581,539	2	10	7	10	52	66	42	4	191	4%
Chaco	962,601	3	2	0	4	24	75	60	0	165	3%
Mendoza	1,627,108	4	0	2	2	8	48	69	0	129	3%
Río Negro	630,548	2	1	0	21	2	78	14	1	117	2%
Catamarca	324,086	1	0	0	1	7	40	53	0	101	2%
Misiones	1,018,263	3	1	2	0	3	29	36	2	73	2%
Entre Ríos	1,121,970	3	3	0	4	16	14	30	0	67	1%
San Juan	582,931	2	1	0	0	9	8	41	2	61	1%
Corrientes	934,637	2	1	0	18	4	14	7	0	44	1%
Chubut	457,856	1	5	0	2	6	10	10	0	33	1%
Santa Cruz	212,234	1	2	1	3	3	5	17	0	31	1%
La Rioja	287,045	1	0	3	0	1	20	6	0	30	1%
Formosa	516,017	1	0	0	0	4	13	10	0	27	1%
Santiago	730,977	2	0	0	0	0	6	12	3	21	0%
Tierra del Fuego	121,405	0	1	0	1	3	5	4	1	15	0%
San Luis	371,798	1	0	0	1	1	5	4	0	11	0%
La Pampa	310,725	1	0	0	2	1	2	0	0	5	0%
Total	37,486,929	100	140	51	252	514	1,383	2,336	104	4,780	100%

*Note: includes until 31 January.

Source: Centro de Estudios Nueva Mayoría

Table 9

Cases started for unlawful coercion and torture committed by federal public officials
National Ordinary Justice and Federal Justice
Years 2000-2002
 - in amount of cases-

	2000	2001	2002*
unlawful coercion	797	920	1108
torture	10	8	10

Source: CELS, based on information from the General Prosecution of the Nation, according to information granted by the prosecution offices.

*Note: projection based on information of the first half of the year.

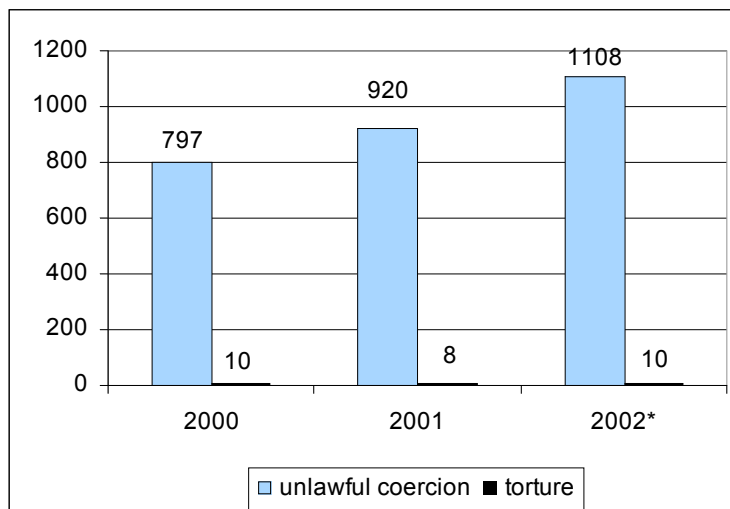


Table 10

**Reports of torture, coercion, physical and psychical ill-treatment to minors under guardianship,
according to Judicial Department
Province of Buenos Aires
Years 2000*- 2003
- in amount of reports-**

Department	Year 2000*	Year 2001	Year 2002	Year 2003	Total	Percentage
Azul	1	3	3	3	10	0.29
Bahía Blanca	6	24	56	46	132	3.81
Dolores	0	1	3	7	11	0.32
Junín	2	28	22	25	77	2.22
La Matanza	12	46	43	31	132	3.81
La Plata	57	168	144	118	487	14.05
Lomas de Zamora	49	138	99	97	383	11.05
Mar del Plata	17	167	287	323	794	22.91
Mercedes	0	10	29	20	59	1.70
Morón	10	25	22	20	77	2.22
Necochea	0	10	7	9	26	0.75
Pergamino	6	16	14	8	44	1.27
Quilmes	8	36	23	8	75	2.16
San Isidro	95	287	268	172	822	23.72
San Martín	6	39	60	39	144	4.15
San Nicolás	1	29	43	26	99	2.86
Trenque Lauquen	6	14	19	32	71	2.05
Zárate	2	7	8	6	23	0.66
Total	278	1048	1150	990	3466	100.00

Source: CELS, based on information of the Sub-secretary of the Trusteeship of Minors of the Supreme Court of Justice of the Province of Buenos Aires

*Note: from 20 September.

Table 11

Relation between people accommodated and places in dependencies of the Federal Penitentiary Service, in each Unit
Year 2002*

- in amount of people and places -

Unit	People	Places	Coefficient of occupation
F.P.C. I	1678	1750	95.9
F.P.C. II	1384	1500	92.3
Unit n°2	2151	1580	136.1
Unit n°3	521	350	148.9
Unit n°4	305	310	98.4
Unit n°5	211	253	83.4
Unit n°6	426	350	121.7
Unit n°7	350	348	100.6
Unit n°9	223	217	102.8
Unit n°10	125	120	104.2
Unit n°11	106	110	96.4
Unit n°12	96	102	94.1
Unit n°13	64	70	91.4
Unit n°14	91	92	98.9
Unit n°15	83	103	80.6
Unit n°17	160	156	102.6
Unit n°18	6	6	100.0
Unit n°19	149	220	67.7
Unit n°20	103	87	118.4
Unit n°21	20	32	62.5
Unit n°24	139	152	91.4
Unit n°25	18	23	78.3
Unit n°26	65	77	84.4
Unit n°27	8	25	32.0
Unit n°30	6	29	20.7
Unit N°31	231	257	89.9
Alcaldía Jujuy	76	40	190.0
Alcaldía Salta	33	14	235.7
total	8,828	8,373	105.4

Source: CELS, based on information of the General Direction of the Correctional Regime of the Federal Penitentiary Service

*Note: information as of 27 December

Table 12

Relation between people accommodated and places in dependencies of the Buenos Aires Penitentiary Service, * in each Unit

Year 2002

- in amount of people and places -

Unit	People	Places	Coefficient of occupation
Unit n°1	3421	2186	156.5
Unit n°2	1409	1326	106.3
Unit n°3	455	280	162.5
Unit n°4	530	450	117.8
Unit n°5	916	717	127.8
Unit n°6	341	326	104.6
Unit n°7	325	278	116.9
Unit n°8	175	142	123.2
Unit n°9	1426	1206	118.2
Unit n°10	193	148	130.4
Unit n°11	47	65	72.3
Unit n°12	99	98	101.0
Unit n°13	513	496	103.4
Unit n°14	44	40	110.0
Unit n°15	1255	1000	125.5
Unit n°16	123	130	94.6
Unit n°17	71	76	93.4
Unit n°20	80	80	100.0
Unit n°21	536	500	107.2
Unit n°22	45	34	132.4
Unit n°23	559	497	112.5
Unit n°24	588	517	113.7
Unit n°25	84	95	88.4
Unit n°26	61	80	76.3
Unit n°27	130	130	100.0
Unit n°28	745	724	102.9
Unit n°29	139	240	57.9
Unit n°30	1704	1728	98.6
Unit n°31	474	482	98.3
Unit n°32	467	468	99.8
Unit n°33	317	268	118.3
Unit n°34	419	362	115.7
Unit n°35	929	924	100.5
Total	18,620	16,093	115.7

Source: CELS, based on information of the General Registry of Inmates of the Buenos Aires Penitentiary Service.

*Note: the 311 people under the care of the Buenos Aires Penitentiary Service, but not accommodated in its dependencies, have not been recorded. Of them 144, are controlled by electronic monitoring, while other 167 have transitory accommodation. The amount of places declared by the Buenos Aires Penitentiary Service is the same for the years 2000 and 2001, except in the following cases; U. n°7: 266; U. n°11:50; U. n°16: 100; U. n°26: 0; U. n°31: 468.

Table 13

People deprived of their freedom in dependencies of the Federal Penitentiary Service, according to their procedural situation
Years 1996-2002

- in amount of people -

	1996	1997	1998	1999	2000	2001	2002
prosecuted	3,364	3,385	3,473	3,691	3,906	4,537	4,700
convicted	2,684	2,697	2,827	2,987	3,103	3,175	3,929
relation	1.25	1.26	1.23	1.24	1.26	1.43	1.20
others*	67	95	85	89	137	160	166
total	6,115	6,177	6,385	6,767	7,146	7,872	8,795

Source: CELS, based on information of the General Direction of Correctional Regime of the Federal Penitentiary Service

*Note: young people, unaccusable people or with supervened incapacity

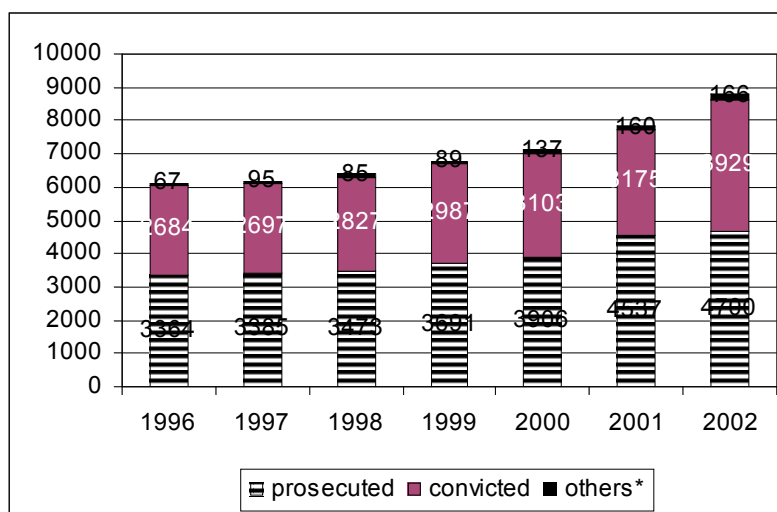


Table 14

People deprived of their freedom in dependencies of the Buenos Aires Penitentiary Service, according to their procedural situation
Years 2000-2003

- in amount of people -

	2000	2001	2002	2003*
prosecuted	17933	20131	23038	24068
convicted	1766	2273	2636	2692
others*	1061	699	764	1057
total	20760	23103	26438	27817

Source: CELS, based on information from the Buenos Aires Penitentiary Service and the Ministry of Security of the Province of Buenos Aires

*Note: information as of 11 August. The category "others" corresponds to unaccusable people with security measures, controlled by electronic monitoring and with transitory accommodation. The calculation of prisoners 'prosecuted' includes those detained in police stations since it is presumed that these, after the preventive prison was issued, are not transferred to penitentiary units due to lack of places. However, the Police of the Province of Buenos Aires has no information about the legal situation of those detained in their dependencies.

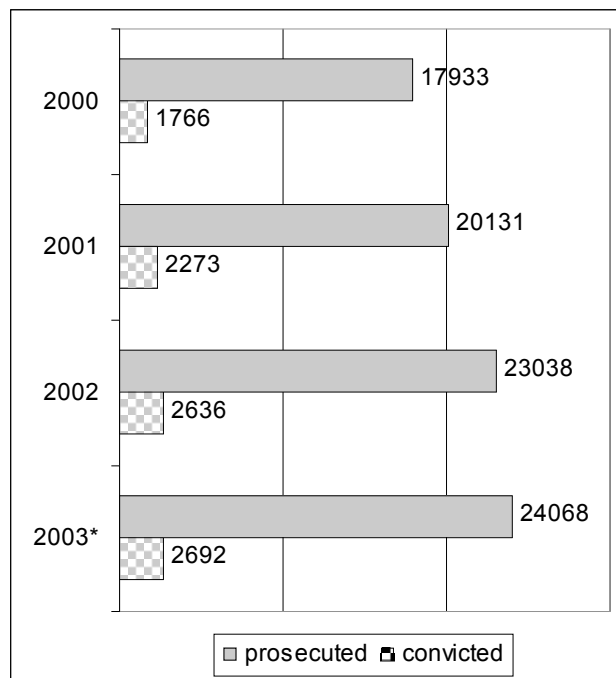


Table 15

**People deprived of their freedom according to their procedural situation and time spent in dependencies of the Buenos Aires Penitentiary Service
Year 2002***

- in amount of people-

years	prosecuted	convicted	others*	Total
up to 5	14,770	1,866	321	16,957
between 6 and 10	384	190	142	716
between 11 and 15	41	164	59	264
between 16 and 20	5	41	13	59
between 21 and 25	1	14	6	21
between 26 and 30	0	9	2	11
over 30	7	1	1	9
Total	15,208	2,285	544	18,037

Source: Buenos Aires Penitentiary Service. Sub-secretary of Penitentiary Policy
And Social Re-adaptation of the Province of Buenos Aires

*Notes: information as of June. The category of "others" corresponds to inmates acquitted with **alta a prueba**, controlled by electronic monitoring and with transitory accommodation

Table 16

People deprived of their freedom in dependencies of the Buenos Aires Police and proportion with respect to the total amount of people deprived of their freedom in the Province of Buenos Aires

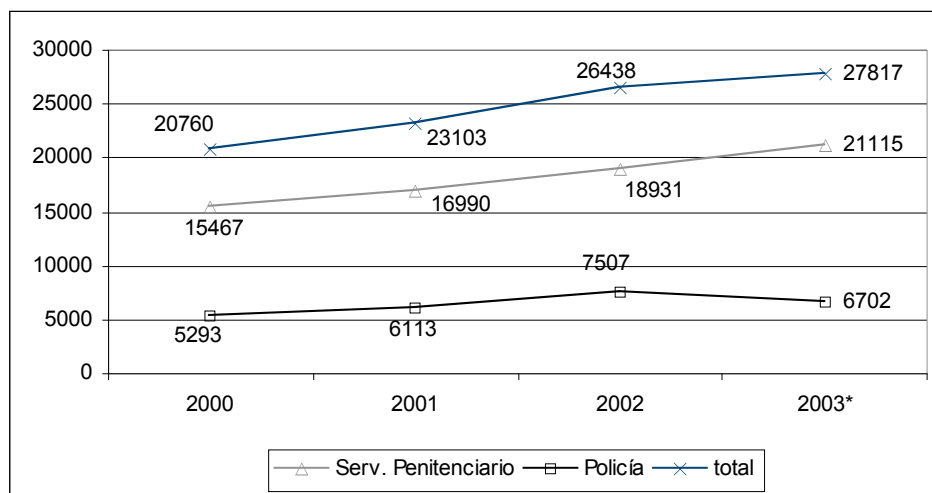
Years 2000 -2003*

- in amount of people -

	2000	2001	2002	2003*
total amount of people deprived of their freedom	20760	23103	26438	27817
accommodated in police stations *	5293	6113	7507	6747
proportion	25.5%	26.5%	28.4%	24.30%

Source: CELS, base don information from the Buenos Aires Penitentiary Service and the Superintendence of General Coordination of the Ministry of Security of the Province of Buenos Aires

*Note: information as of August.



Cuadro 17

**People killed in police confrontations
Buenos Aires City and Conurbano Bonaerense**

1ºsemester 1996– 1ºsemester 2003

-in amount of people -

	1º sem. 1996	2º sem. 1996	1º sem. 1997	2º sem. 1997	1º sem. 1998	2º sem. 1998	1º sem. 1999	2º sem. 1999	1º sem. 2000	2º sem. 2000	1º sem. 2001	2º sem. 2001	1º sem. 2002	2º sem. 2002	1º sem. 2003
Policemen	18	30	19	21	21	28	31	32	25	37	41	37	52	34	42
Civilians	80	64	77	72	76	81	129	126	102	114	119	132	137	107	87
Total	98	94	96	93	97	109	160	158	127	151	160	169	189	141	129

Source: CELS, based on its own press database

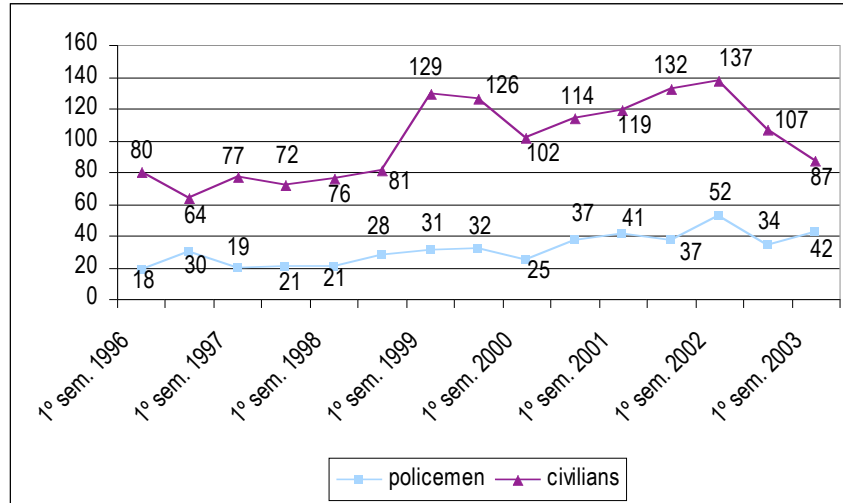


Table 18

Third parties victims in confrontations with Argentine Federal Police's and Buenos Aires Police's officials
Buenos Aires City and Conurbano Bonaerense
1st semester 1996– 1st semester 2003
 -in amount of people -

	1º sem. 1996	2º sem. 1996	1º sem. 1997	2º sem. 1997	1º sem. 1998	2º sem. 1998	1º sem. 1999	2º sem. 1999	1º sem. 2000	2º sem. 2000	1º sem. 2001	2º sem. 2001	1º sem. 2002	2º sem. 2002	1º sem. 2003
injured	16	13	13	9	16	20	15	16	24	30	22	31	40	16	15
killed	6	4	11	3	1	2	3	2	5	10	4	6	6	8	9
total	22	17	24	12	17	22	18	18	29	40	26	37	46	24	24

Source: CELS, based on its own press database

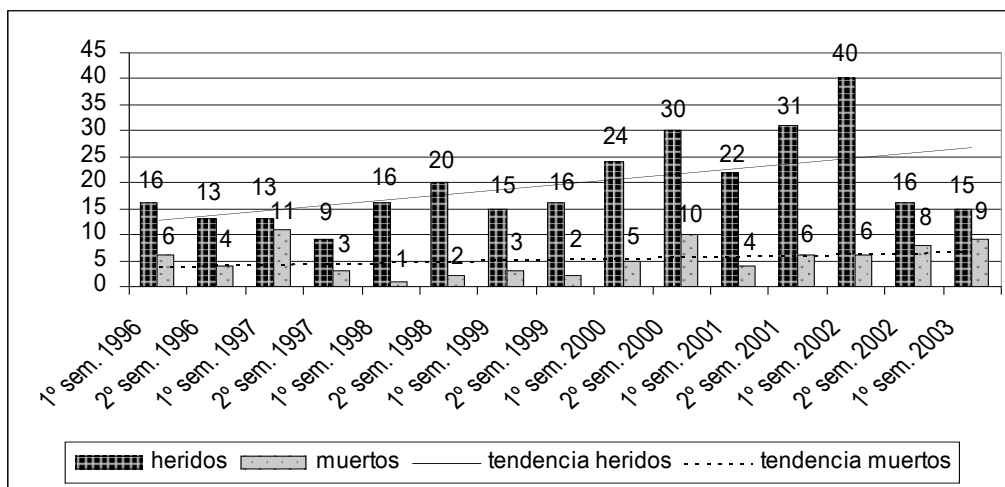


Table 19

**Civilians killed in confrontations with Argentine Federal Police's and
Buenos Aires Police's officials, according to their age
Buenos Aires City and Conurbano Bonaerense
Years 1996-2002**

-in amount of people -

Age	1996	1997	1998	1999	2000	2001	2002
up to 20 years	15	32	31	53	43	46	34
21 years and over	48	65	44	75	58	61	38
without information	81	52	82	127	115	144	172
total	144	149	157	255	216	251	244

Source: CELS, based on its own press database

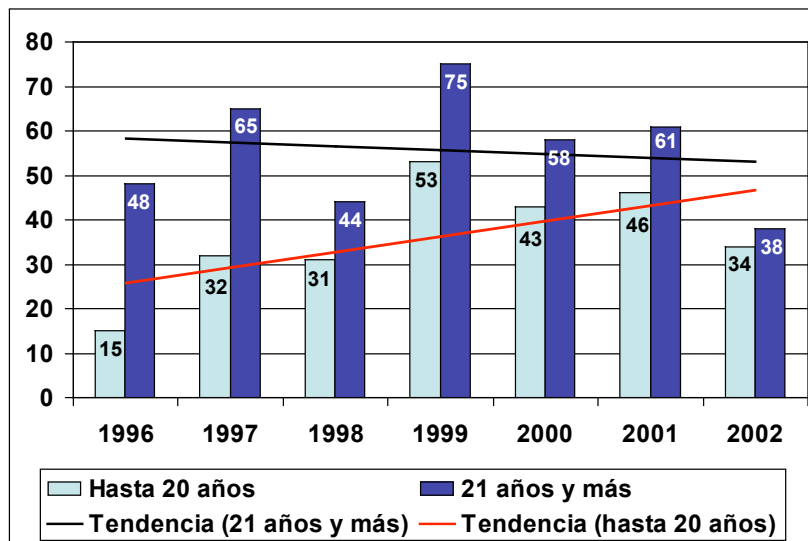


Table 20

**Reports of beatings* in dependencies of
the Federal Penitentiary Service, in each Unit
Year 2001***

- in amount of people-

	Amount	Porcentaje	Rate every/1,000 inmates
F.P.C. I	28	38.9	18.2
F.P.C II	14	19.4	10.3
Unit n°2	10	13.9	6.2
Unit n°3	8	11.1	16.2
Unit n°6	4	5.6	10.3
Unit n°7	6	8.3	17.6
Unit n°10	1	1.4	8.8
No information	1	1.4	0
Other units	0	0.0	0
total	72	100.0	9.1

Source: CELS, based on information of the Penitentiary Procurer of the Nation and of the Federal Penitentiary Service.

*Note: the figures correspond to reports classified as "beatings" and "physical integrity", received by the Penitentiary Procurer between the 1° April 2001 and 31 March 2002.

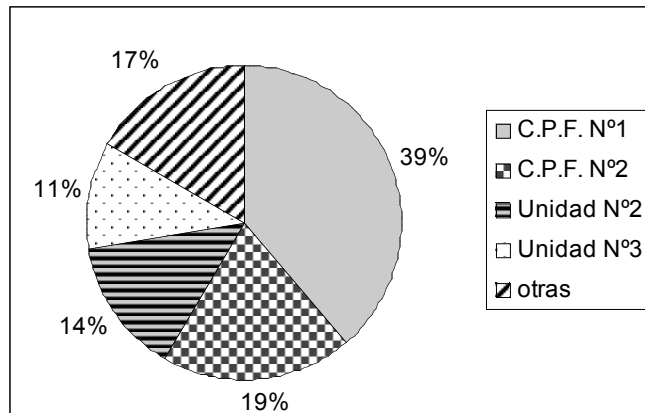


Table 21

**Acts of violence * committed in dependencies of the
Buenos Aires Penitentiary Service, in each Unit
Year 2002**

- in amount of acts-

Unit	Amount	Percentage	Rate e/1.000 inmates
Unit n°1	888	39.0	259.6
Unit n°2	48	2.1	34.1
Unit n°3	55	2.4	120.9
Unit n°4	65	2.9	122.6
Unit n°5	110	4.8	120.1
Unit n°6	43	1.9	126.1
Unit n°7	26	1.1	80.0
Unit n°8	19	0.8	108.6
Unit n°9	281	12.3	197.1
Unit n°10	5	0.2	25.9
Unit n°13	118	5.2	230.1
Unit n°15	43	1.9	34.3
Unit n°21	34	1.5	64.4
Unit n°23	58	2.5	103.8
Unit n°24	43	1.9	73.1
Unit n°27	2	0.1	15.4
Unit n°28	86	3.8	115.4
Unit n°29	120	5.3	863.3
Unit n°30	86	3.8	50.5
Unit n°31	19	0.8	40.1
Unit n°33	29	1.3	91.5
Unit n°34	84	3.7	200.5
Unit n°35	17	0.7	18.3
Other units*	0	0.0	0.0
Total	2,279	100.0	122.4

Source: CELS, based on information of the Buenos Aires Penitentiary Service.

*Note: it includes acts described by the Buenos Aires Penitentiary Service as disturbances and fights, self-aggression, mutual aggression, aggression with no responsible, aggression to their peers, aggression to the staff, attack and resistance to authority, intimidation to their peers and others. No acts of violence were registered in units n°11, n°12, n°14, n°16, n°17, n°20, n°22, n°26 and n°32. Unit n°18 is out of service and n° 19 is about to be opened.

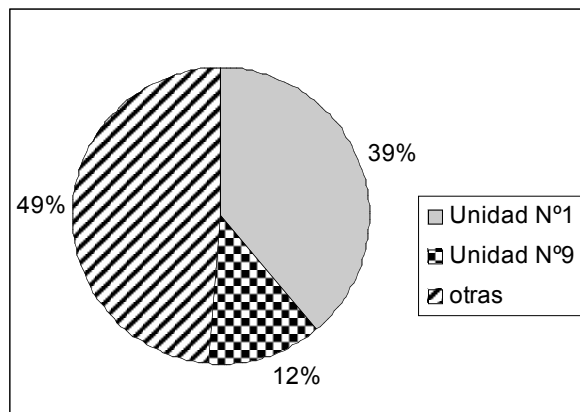


Table 22

People deprived of their freedom violently dead *
in dependencies of the Federal Penitentiary Service, in each Unit
Year 2002
 - in amount of people-

Unit	Amount	Porcentaje	Rate e/1.000 inmates
F.P.C. II	1	4.5%	0.7
Unit n°3	1	4.5%	1.9
F.P.C. I	4	18.2%	2.4
Unit n°7	1	4.5%	2.9
Unit n°2	9	40.9%	4.2
Unit n°4	2	9.2%	6.6
Unit n°9	2	9.2%	9.0
Unit n°20	1	4.5%	9.7
Unit n°30	1	4.5%	166.7
total	22	100%	2.5

Source: CELS, based on information from the General Direction of Correctional Regime of the Federal Penitentiary Service.

Note*: violent deaths include those described as suicide, cutting weapon's injury, cranial traumatism, breathing insufficiency, burnt and homicide. No violent deaths were registered in the rest of the units.

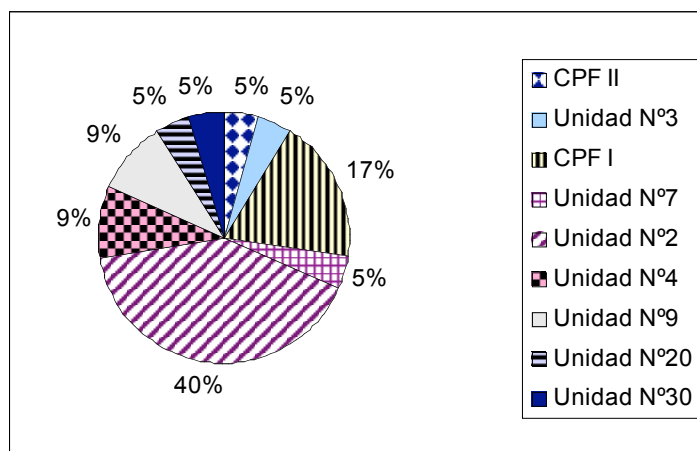


Table 23

**People deprived of their freedom violently dead* in
dependencies of the Buenos Aires Penitentiary Service, in each Unit
Years 2000-2002**

- in amount of people-

Unit	Year 2000			Year 2001			Year 2002		
	Amount	Percentage on total of violent deaths	Rate every 1,000 detainees	Amount	Percentage on total of violent deaths	Rate every 1,000 detainees	Amount	Percentage on total of violent deaths	Rate every 1,000 deaths
Unit n°1	7	27.0%	3.06	8	28.6%	2.63	1	5.6	0.29
Unit n°2	3	11.5%	3.03	0	0.0%	0	2	11.1	1.42
Unit n°3	0	0.0%	0	2	7.1%	6.00	0	0.0	0.00
Unit n°4	1	3.8%	2.33	0	0.0%	0	0	0.0	0.00
Unit n°5	0	0.0%	0	1	3.6%	1.15	0	0.0	0.00
Unit n°6	0	0.0%	0	2	7.1%	6.15	1	5.6	2.93
Unit n°9	0	0.0%	0	1	3.6%	0.80	1	5.6	0.70
Unit n°10	5	19.3%	42.74	0	0.0%	0	0	0.0	0.00
Unit n°13	1	3.8%	2.15	1	3.6%	2.13	0	0.0	0.00
Unit n°15	1	3.8%	1.07	1	3.6%	0.85	0	0.0	0.00
Unit n°21	0	0.0%	0	2	7.1%	4.11	2	11.1	3.73
Unit n°23	2	7.7%	4.88	0	0.0%	0	0	0.0	0.00
Unit n°24	1	3.8%	2.16	2	7.1%	3.93	6	33.3	10.20
Unit n°28	4	15.5%	5.82	3	10.7%	4.23	2	11.1	2.68
Unit n°29	0	0.0%	0	1	3.6%	8.70	2	11.1	14.39
Unit n°30	1	3.8%	0.61	3	10.7%	1.79	0	0.0	0.00
Unit n°34	0	0.0%	0	1	3.6%	2.53	1	5.6	2.39
Other units*	0	0.0%	0	0	0.0%	0	0	0.0	0.00
Total	26	100%	1.68	28	100%	1.65	18	100	0.95

Source: CELS, based on information from the Buenos Aires Penitentiary Service.

* Note: the causes for the deaths are asphyxia, hanging, cutting weapon injuries, burning and suicide. Units n°7, n°8, n°11, n°12, n°14, n°16, n°17, n°20, n°22, n°25, n°27, n°31, n°32, n°33 and n°35, did not register violent deaths during the considered period. Unit n°18 is out of duty and n°19 is due to open. There is no information about Unit n°26. Apart from those mentioned, in 2002 there was one (1) death in Quilmes **alcaldia**.

Table 24

**Active staff in each rank
Argentine Federal Police
Year 2003**

- in amount of people -

Rank	Amount	Percentage
Officers	4,855	16.4%
Sub-officers	24,701	83.6%
Total	29,556	100%

Note: information corresponding to the month of April.

Source: CELS, based on information from the Superintendence of Institutional Counseling of the Argentine Federal Police

Table 25

**Active staff
Argentine Federal Police
Years 1996-2002**

-in amount of people -

Year	Amount
1996	30,982
1997	30,257
1998	31,279
1999	34,445
2000	33,443
2001	33,199
2002	33,587

Note: information corresponding to April

Source: CELS, based on information from the Staff, Training and Human Rights Superintendence of the Argentine Federal Police.

Table 26

**Budget
Federal Penitentiary Service
Years 1996-2002**

- in pesos -

Year	Executed budget	Evolution (1996= base 100)
1996	212,325,469	100
1997	212,409,710	100.0
1998	220,851,684	104.0
1999	227,599,857	107.2
2000	231,793,632	109.2
2001	219,839,183	103.5
2002	226,785,141	106.8

Source: CELS, based on information of the Federal Penitentiary Service - Study and Project Department Statistics and Penitentiary Census Division

Table 27

**Active staff , according to their rank and gender
Federal Penitentiary Service
Year 2002**

-in amount of people -

Rank and gender	Amount
Officers	
Men	942
Women	305
Sub-officers	
Men	5,418
Women	1,288
Cadets	
Men	60
Women	10
Total	8.023

Source: CELS, based on information of the Federal Penitentiary Service –Department of Studies and Projects – Statistics and Penitentiary Census Division

Table 28

**Budget
Buenos Aires Penitentiary Service
Years 1996-2002**

- in pesos -

Year	Executed Budget	Evolution (1996= base 100)
1996	\$128,448,709	100
1997	\$174,575,030	135.9
1998	\$200,020,293	155.7
1999	\$216,843,285	168.8
2000	\$227,222,201	176.9
2001	\$232,248,997	180.8
2002	\$235,126,061	183.1

Source: CELS, based on information of the Buenos Aires Penitentiary Service

Table 29

Active staff, according to their rank and gender
Buenos Aires Penitentiary Service
Year 2003
 -in amount of people -

Rank and gender	Amount
Officers	
Men	1,880
Women	647
Sub-officers	
Men	5,265
Women	1,469
Total	9,261

Note: information corresponding to May

Source: CELS, based on information of the Sub-secretary of Penitentiary Policy and Social Re-adaptation
 Ministry of Justice of the Province of Buenos Aires

Table 30

Federal Police officials killed in confrontations, according to their service condition
Buenos Aires City and Conurbano Bonaerense
Years 1996-2002
 - in amount of people-

Condition of the official	Year						
	1996	1997	1998	1999	2000	2001	2002
on duty	5	2	5	6	7	10	7
percentage	23%	11%	19%	22%	22%	19%	15%
off duty	11	11	12	11	9	17	18
percentage	50%	61%	44%	39%	28%	33%	37%
retired	6	5	10	11	16	24	23
percentage	27%	28%	37%	39%	50%	46%	48%
no information	0	0	0	0	0	1	0
percentage	0%	0%	0%	0%	0%	2%	0%
total	22	18	27	28	32	52	48
percentage	100%	100%	100%	100%	100%	100%	100%

Source: CELS, based on its own press database

Table 31

Buenos Aires Police officials killed in confrontations, according to their condition
Buenos Aires City and Conurbano Bonaerense
Years 1996-2002
 - in amount of people-

Condition of the official	Year						
	1996	1997	1998	1999	2000	2001	2002
on duty	12	6	5	19	12	9	13
percentage	46%	27%	24%	54%	41%	33%	35%
off duty	11	13	13	9	10	13	17
percentage	42%	59%	62%	26%	35%	48%	46%
retired	3	3	2	7	7	4	5
percentage	12%	14%	10%	20%	24%	15%	14%
no information	0	0	1	0	0	1	2
percentage	0%	0%	4%	0%	0%	4%	5%
total	26	22	21	35	29	27	37
percentage	100%	100%	100%	100%	100%	100%	100%

Source: CELS, based on its own press database

ANNEX II – INTERVIEW GUIDELINES

1) Interviewees: victims and relatives

Personal history

- Brief life story (emphasis in places where he/she lived, his/her arrival to the neighbourhood, circumstances)
- Evolution of his/her socio-economic situation
- Family participation in social, food and housing plans: effectiveness, representations associated to the social policies and the political power responsible of them
- Relationship with civil organizations of the community
- Perceptions about the main existent problems

Social representations about violence

- Perspectives about violence: origin, factors which produce/favour it, detonating circumstances
- Actors involved
- Action of the security forces before violence

Institutional violence

- The security forces in the community: type of relationship, presence, effectiveness, collaboration with the community. Meanings associated. Frequent practices, treatment
- Institutional violence: frequency, origin, situation which favours it, factors which makes it possible, detonating circumstances, actors involved. Incidents of institutional violence suffered
- Personal/family history in relation to institutional violence
- Actors to which it resorted. Strategies of visibilization of the conflict
- Attributed responsibilities
- Relation and interactions with officers of the judicial power
- Judicial causes
- Social re-significations introduced by the violent incident

Detailed enquiry on the case of interest (executions, eviction, searching, etc.)

2) Interviewees: police officers

Labour history

- Brief life story (emphasis in his working aspect: places to which he/she was assigned, his/her arrival to the police dependency, circumstances)
- Evolution of his relationship with the community
- Perception about the different social groups of the community (differentiated by age, gender, etc.)
- Relationship with civil organizations of the community
- Perceptions about the main existing problems

Social representations about violence

- Perspectives about violence: origin, factors which produce/favour it, detonating circumstances, actors involved
- Police actions and practices to fight it. Evaluation (possible / desirable alternative practices)
- Difficulties / barriers to reduce violence
- Evaluation of the judicial action

Institutional Violence

- Security forces in the community: kind of relationship, presence, effectiveness, collaboration with the community. Significance associated.
- Institutional violence: frequency, origin, situations which favour it, factors which make it possible, detonating circumstances

- Actors involved
- Possibilities of reduction. Necessary conditions
- Personal relationship with incidents of institutional violence
- Presence / participation in incidents of institutional violence
- Attributed responsibilities
- Social re-significance introduced by the violent incident

Detailed enquiry on the case of interest (executions, eviction, searching, etc.)

3) Interviewees: government officials

Governmental actions in the neighbourhood

- Perceptions about the main problems existent in the outskirts and in the neighbourhood of interest
- Governmental actions before poverty (emphasis in the neighbourhood of interest)
- Perception of its role, contribution, effectiveness
- Problems in the implementation
- Representations associated to those who benefit
- Governmental actions before security (emphasis in the neighbourhood of interest)
- Relationship with the local security forces

Social representations about violence

- Perspectives about violence: origin, factors which produce/favour it, detonating circumstances
- Involved actors
- Actions of the security forces before violence

Institutional violence

- Security forces in the community: kind of relationship, presence, effectiveness, collaboration with the community. Associated significance. Frequent practices, treatment.
- Institutional violence: frequency, origin, situations which favour it, factors which make it easy, detonating circumstances
- Actors involved

Known incidents of institutional violence

- Evolution of institutional violence. Most serious casers (neighbourhood of interest)
- Attributed Responsibilities
- Evaluation of judicial action
- Social re-significances introduced by the violent incident

Detailed enquiry on the case of interest (executions, eviction, searching, etc.)

4) Interviewees: representatives of communitarian organizations

History of the organization

- Brief history of the organization (its beginning in the neighbourhood, circumstances, evolution)
- Perception of its role, contribution, effectiveness
- Representations associated to the social policies and the political power responsible for them
- Perceptions about the main existent problems
- Relationship with the local security forces

Social representations about violence

- Perspectives about violence: origin, factors which produce/favour it, detonating circumstances
- Actors involved
- Action of the security forces before violence

Institutional violence

- The security forces in the community: kind of relationship, presence, effectiveness, collaboration with the community. Associated significances. Frequent practices, treatment.

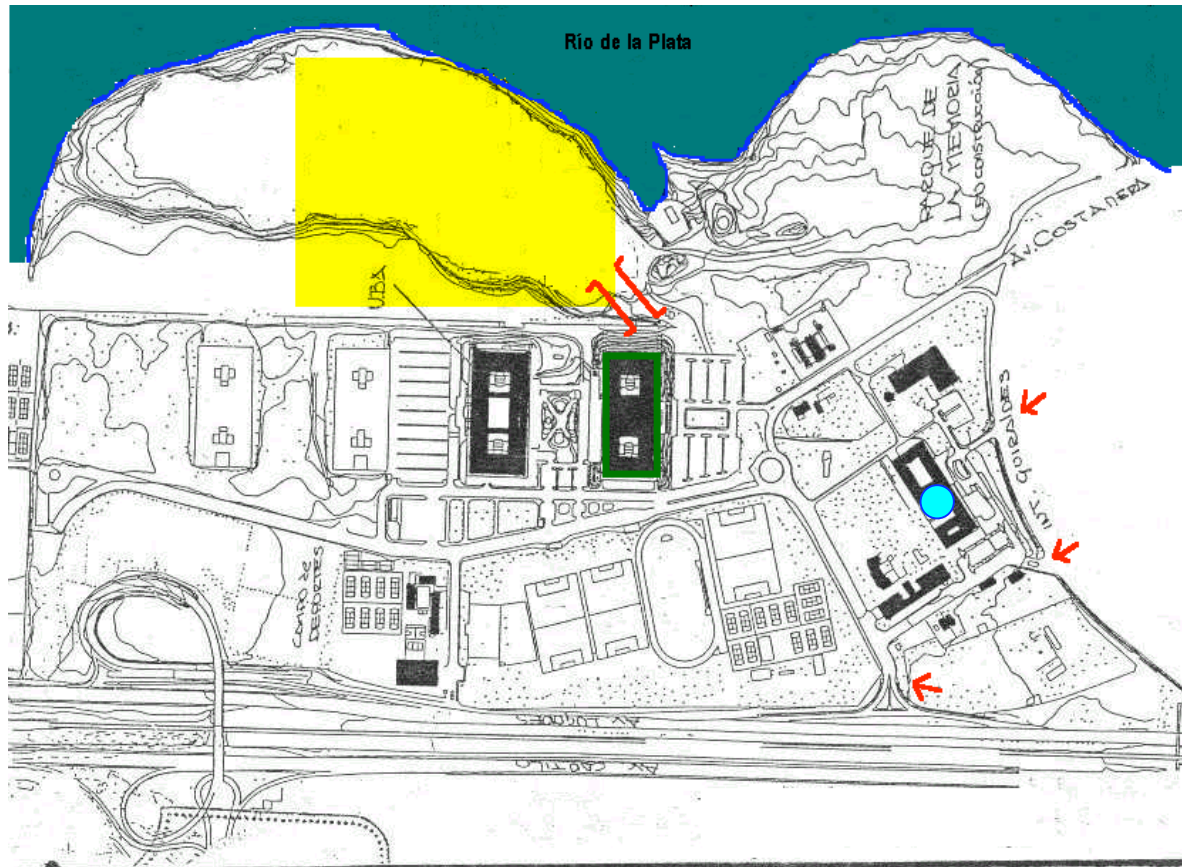
- Institutional violence: frequency, origin, situations which favour it, factors which make it easier, detonating circumstances, involved actors

Known incidents of institutional violence

- Evolution of institutional violence. Most serious cases
- Attributed responsibilities
- Evaluation of the judicial action
- Social re-significances introduced by the violent incident

Detailed enquiry on the case of interest (executions, eviction, searching, etc.)

ANNEX III – LOCATION OF THE VILLAGE



Referencias:

-  Zona asentamiento "La Aldea"
-  Río de la Plata
-  Costa del río
-  Accesos a Ciudad Universitaria
-  Accesos al asentamiento "La Aldea"
-  UBA - Pabellón II (Facultad de Ciencias Exactas y Naturales)
-  Oficinas de la Intendencia

ANNEX IV – PICTURES OF THE VILLAGE



Foto: Moebius Audiovisual



Foto: Moebius Audiovisual



Foto: Moebius Audiovisual



Foto: Moebius Audiovisual



Foto: Moebius Audiovisual