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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Argentina under article 29, paragraph 1, of the Convention

Addendum

Information received from Argentina on follow-up to the concluding observations*

[Date received: 2 February 2015]

Response to the concluding observations on the report submitted by Argentina under article 29, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance

I. General information

Paragraph 9. The Committee invites the State party to accelerate the legislative process with a view to giving the Convention constitutional status, as recommended by the Working Group on Enforced or Involuntary Disappearances (A/HRC/10/9/Add.1). The Committee also calls upon the State party to take all the requisite measures to ensure express recognition of the direct applicability of the Convention's provisions.

Paragraph 11. The Committee encourages the State to strengthen coordination measures in the national territory and to ensure the full application of the Convention throughout the territory, with no limitations or exceptions.

1. International instruments ratified by Argentina form part of the current law. They may be invoked by individuals and legal entities for the defence of their rights and should be applied directly by the courts and the administration, without limitation of jurisdiction. This is reflected in the judgements cited in the replies to the list of issues of October 2013.

* The present document is being issued without editing.

2. The bill to give the Convention constitutional status has the firm backing of the national executive branch. The bill was submitted to the National Congress for consideration in 2012 and has been discussed in the respective Constitutional Affairs Committees. In the notice of enactment, the executive branch highlighted the commitment of the Republic of Argentina and the Republic of France and the indefatigable fight for memory and dignity of the human condition on the part of the Government, the relatives of disappeared persons and civil society organizations.

3. The notice of enactment also emphasized the obligations of a preventive nature arising from the Convention, including the obligations to prohibit secret detention, to hold persons deprived of their liberty in officially recognized and monitored places of detention only, to keep detainee registers, and to uphold the non-derogable rights of habeas corpus and access to information on detainees.

4. The notice also highlighted the Government's firm commitment to respecting the provisions of the Convention, as a binding legal instrument, and the Convention's important contribution to the construction of a country with memory, truth and justice.

5. The forthcoming 105th session of the Working Group on Enforced or Involuntary Disappearances will take place in Argentina, in the Institute for Memory and Human Rights (formerly the School of Naval Mechanics, ESMA).

II. Definition and criminalization of enforced disappearance

Paragraph 13. The Committee encourages the State party to ensure that the reform of the Criminal Code is fully aligned with the obligations contained in the Convention, by incorporating all those changes that are needed to ensure that its application is in line with the mandate given in article 2 of the Convention.

6. The State has already provided the Committee with detailed information on the adoption of Act No. 26,679, which amended both the Criminal Code and the Code of Criminal Procedure and incorporated provisions related to the offence of enforced disappearance of persons in Argentine legislation.

7. The right not to be subjected to enforced disappearance continues to apply even during a public emergency or situation of political instability. There are special constitutional mechanisms in place which provide protection in cases of enforced disappearance in all situations, without exception.

8. Article 1 of Act No. 26,679 provided for the incorporation of the offence of enforced disappearance in the Criminal Code (art. 142 ter). Articles 2, 3 and 4 amended provisions of the Code of Criminal Procedure, establishing that the judge must "exclude the security forces from the investigation if it emerges from the circumstances of the case that members of the security forces have committed or contributed to the acts under investigation, even if their involvement is only suspected."

9. By Ministerial Resolution No. 567 of 21 April 2014, the Minister of Justice and Human Rights, Dr. Julio Alak, ruled that the preliminary draft of the new Criminal Code, which was prepared by the commission tasked with drafting the bill to reform, update and consolidate the Criminal Code, should be made available to all public and private universities. Section 1 of Book Two of the draft, relating to crimes against humanity, criminalizes "genocide, the disappearance of persons and other crimes against humanity". The offence of disappearance of persons is specifically defined in article 65, paragraph 1.

10. The new Code of Criminal Procedure was promulgated by Act No. 27,063 of 9 December 2014.

III. Criminal responsibility and judicial cooperation in matters of enforced disappearance

Paragraph 15. The Committee encourages the State party to adopt all the necessary measures and to intensify its efforts to root out these contemporary forms of enforced disappearance. In addition, the Committee recommends that the State party should promote institutional reform of the police forces so as to eradicate violence and ensure that police officers who commit such offences are duly investigated, prosecuted and punished.

11. The Ministry of Security has initiated a process of curriculum modernization that will improve the operational efficiency of the police and security forces. To this end, the Ministry has instructed the most senior law enforcement authorities to focus basic professional training for junior staff on specific police practices instead of providing general training unrelated to operational police practice. Specific practices covered include those involving the use of force by the police, which are addressed in a module entitled "Reasonable Use of Force". In this module, aspiring officers and new recruits acquire the professional skills necessary for self-defence, firearms use and arrest and detention procedures, while learning how to treat persons in police care or custody in a respectful manner. The teaching and learning process is structured according to the normative framework provided by international human rights standards and instruments.

12. The programme on the use of force and deployment of firearms is designed to ensure that officers are trained to use force in a gradual and progressive manner. Based on the model established in the programme, distinct initiatives, which are closely linked to the needs of the different operational units and the challenges they face, are conceived, developed, implemented and overseen. Ongoing cooperation with the operational units, for example, by inviting key staff members from each unit to deliver modules, ensures that the training system as a whole reflects the typical situations in which officers might have recourse to the use of force.

13. The Ministry of Security has instructed the academic units of police training institutes, the educational management teams and the teachers and trainers who form part of them to develop a training framework where human rights feature in the institutional life of students, in the theoretical and doctrinal syllabus and in procedural training programmes.

14. At the normative level, human rights content became a compulsory component of training by Ministry of Security Resolution No. 199/2011, approving the basic training documents for senior and beat officers. Modules on the reasonable use of force have been added to the basic training programme and encompass training in how to exercise authority and police powers (specifically the powers of arrest, detention, custody and transfer of detained persons, searches and other measures which involve the legitimate use of coercion) and use firearms in a manner respectful of international human rights principles and standards, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms. This theoretical and procedural knowledge is incorporated into simulation exercises replicating everyday situations in which trainees must apply the knowledge and principles.

15. Retraining centres have been established for the Federal Police Force, the Argentine Naval Prefecture and the National Gendarmerie with a view to retraining serving officers in basic policing skills of a physical, procedural or theoretical nature, within the reasonable use of force policy framework. The establishment of these centres within the federal police and security forces has made it possible to identify and monitor police practices, evaluate them and optimize them in compliance with the law.

16. Another of the initiatives launched by the Ministry of Security with a view to ensuring continuous training for police officers is the training programme for the Neighbourhood Crime Prevention Corps of the Federal Police Force and the Neighbourhood Unit of the Gendarmerie. Officers joining either of these two units receive training that encompasses domestic and gender-based violence, sexual diversity, policing in an inclusive policy framework, police intervention with persons with problematic consumption of substances, police tactics for guaranteeing harmonious coexistence in public spaces and the manner in which to exercise authority.

17. Officers of the two units also attend monthly training sessions which update and supplement the content of the initial training, besides addressing problems that arise in their everyday work. The monthly sessions also provide an opportunity for officers to share their often difficult experiences and offer practical tools for resolving the kind of incidents that are typical of the work in which the units are engaged. In the second half of 2013, some 400 officers of the National Gendarmerie and 600 officers of the Naval Prefecture attended training sessions on subjects, including: "The security forces and their relationship with children, teenagers and young people"; "Domestic and gender-based violence: Perceptions, connections, causes and guidelines for action"; "New approaches for police intervention in situations of problematic consumption: Perceptions, connections and guidelines for action".

18. In application of Ministry of Security Resolution No. 69/2013 on the annual plan for overseas service and Ministerial Resolution No. 971/2012 on the annual training plan, the Ministry of Security monitors the training provided to the police and security forces closely, to verify, in particular, that it is respectful of democracy, the rule of law and human rights. The content and delivery of more than 477 thematic modules is monitored.

Paragraph 17. In this connection, the Committee urges the State party to take all measures necessary to ensure that all cases of enforced disappearance are investigated in a complete, impartial, diligent and effective manner, even in the absence of a formal complaint, and that those investigations be pursued until the fate or the whereabouts of the disappeared person have been established.

19. With regard to investigations without formal complaint, article 213 of section 4 of the new Code of Criminal Procedure, entitled "Ex officio initiation", expressly establishes that: "The Attorney General's Office may conduct generic investigations, should it be necessary to clarify a particular criminal incident, without the perpetrator having been identified, as established in the Organic Act on the Public Legal Service."

20. Likewise, article 214, concerning the ex officio preliminary investigation, establishes that: "If the officer of the Public Prosecution Service has grounds to believe that a publicly prosecutable offence may have been committed, the officer shall initiate a preliminary investigation to determine the circumstances of the offence and the persons responsible."

21. The opening sections of the Code focus on the handling of complaints (Section 1) and article 210 of Section 3, dealing with prevention, establishes that: "Officials and officers of the police or other security force who become aware of a publicly prosecutable offence shall inform the Public Prosecution Service immediately after their first intervention and shall continue the investigation under the latter's oversight and guidance."

Paragraph 19. On this matter, the Committee recommends that, in view of the complexity of the exercise, the investigation of the crime of enforced disappearance should be handled by specially trained staff, and in particular, that prosecutors should have the requisite experience and specialization in the investigation of such crimes.

Paragraph 23. The Committee recommends that, in conformity with article 12, paragraph 4, of the Convention, the State party should take the necessary measures to

ensure that persons suspected of having committed the offence of enforced disappearance are not in a position to influence or hinder the course of an investigation, directly or indirectly. It likewise recommends that the State party should adopt a legal provision specifically establishing a mechanism that will act as a guarantee that law enforcement officials suspected of having committed enforced disappearances do not participate in the investigation of those disappearances and that it should take all the necessary measures to ensure that the guarantee is respected in all investigations.

22. In fulfilment of international undertakings, and demonstrating its commitment to preventing and penalizing human rights violations, in March 2013, the Government of Argentina established the Office of the Ombudsman for Institutional Violence (PROCUVIN). PROCUVIN is the institutional body responsible for instituting criminal proceedings and overseeing the investigation and prosecution of offences involving the use of institutional violence, the principal victims of which are persons in situations of vulnerability.

23. The principal responsibilities of PROCUVIN include: acting as chief or assistant prosecutor in cases involving offences under its purview, in all courts; taking receipt of complaints and, where deemed justified, referring them to the relevant public prosecutor; arranging preliminary investigations into events that involve human rights violations with a view to applying for examination proceedings; assisting prosecutors' offices and providing the support necessary for the proper investigation of acts that constitute offences of institutional violence; arranging for inspections to be carried out at all facilities in which persons are deprived of their liberty, with a view to monitoring conditions of detention and taking action to protect and preserve the integrity of detainees; and arranging the inter-institutional activities necessary for the prevention, investigation and prosecution of cases that involve human rights violations and/or offences related with institutional violence, in conjunction with government agencies and civil society organizations active in the area.

24. The four key areas in which PROCUVIN works are: corruption in law enforcement, police violence, violence in places of detention, and record-keeping and database management.

25. Resolution No. 455/13 of the Attorney General's Office provided for the creation of a record-keeping, information and data management unit within PROCUVIN. The unit's remit is to systematize available information on issues under the purview of PROCUVIN and to compile its own information on the basis of ad hoc surveys and analysis. The unit is staffed by a multidisciplinary team of sociologists and lawyers which provides methodological support for surveys and record-keeping as well as managing its own surveys and records. The unit produces databanks which serve as inputs for work and consultation in various areas, provides a nexus for cooperation in access to the information of other State agencies, cross-checks data and generates procedures and analyses using these data. It has developed instruments that allow for precise records to be kept of the cases, preliminary interventions (counselling, assistance, victim support, etc.) and court cases in which PROCUVIN has been involved. Variables concerning the facts, the circumstances, the State agencies involved, the characteristics of the victims and alleged perpetrators and the progress of the trial, inter alia, can be identified thanks to the development of specific software tools tailored to the needs of PROCUVIN.

Paragraph 21. The Committee urges the State party to take all the necessary steps, legislative or otherwise, to ensure the effective implementation of existing protective measures and to make them applicable to all persons referred to in article 12, paragraph 1, of the Convention. In particular, it urges it to carry out the measures necessary to protect witnesses who are deprived of their liberty.

26. After the tragic disappearance of Jorge Julio López, various initiatives were launched to prevent a recurrence of this aberrant act. These included the establishment of the Truth and Justice Programme, a body with the powers necessary to bridge the lacunae in a judicial system not designed for the mega trials in which those responsible for genocide through State terrorism have been brought to justice.

27. Another of the initiatives was the establishment of the Dr. Fernando Ulloa Assistance Centre for Victims of Human Rights Violations, by Decree No. 141/11. The Ulloa Centre embodies the State's overdue response, in terms of comprehensive assistance as part of public policy on reparation, to the needs of victims of human rights violations. Since the outset, the Ulloa Centre has worked closely with the Public Prosecution Service, the judiciary and human rights bodies to assist and support victims and witnesses.

28. The Ulloa Centre has two main areas of work: (1) support for victims of State terrorism; and (2) assistance for victims of serious trauma attributable to violations of their human rights. Interdisciplinary teams composed of health-care professionals such as psychiatrists, psychologists and social workers work in each area.

29. The Ulloa Centre's activities have been extended and expanded to include the provision of assistance to victims of present-day serious human rights violations committed by State officials. The comprehensive assistance provided by the Centre encompasses psychological support, guidance and the referral of the victims and/or their relatives, depending on the needs identified.

30. In addition, under the authority of the Ministry of Justice and Human Rights the National Directorate of the National Protection Programme for Witnesses and State's Witnesses has been established, within the Ministry's Justice Secretariat. The Directorate's primary responsibility is to run the Protection Programme, established under article 1 of Act No. 25,764, implementing measures to guarantee the safety of witnesses and State's witnesses whose life or bodily integrity is at risk.

31. Although, when first established, the Protection Programme for Witnesses and State's Witnesses consisted of an office with little substantive capacity, it has subsequently been restructured and elevated to the status of National Directorate within the Ministry of Justice.

32. The activities of the National Directorate of the Protection Programme for Witnesses and State's Witnesses include: (1) designing, compiling and continually updating a status chart of incidents or acts of intimidation suffered by persons linked to complaints or legal proceedings being handled under the Programme; (2) compiling a status chart of legal proceedings under way; (3) obtaining reliable information and providing practical support for the investigation of crimes against humanity; (4) compiling a central register of information containing all data held in national and provincial archives or by national and international human rights organizations and any other information useful to the effective implementation of the institutional truth and justice process; and (5) cooperating directly with the judicial authorities and the Public Prosecution Service in trial proceedings involving offences linked to State terrorism, by providing any information that might be required.

33. The Directorate has also been working to encourage provincial governments to enter into agreements to form witness protection units. Fifteen such agreements have been signed to date. Training is being provided to enhance the specialist and professional skills of the provincial security forces that will be operating these units.

34. The different federal security forces are all involved in the Programme. Thus, when a witness is required to testify against a particular force, protection is provided to the witness concerned by a force not involved in the testimony.

IV. Measures to prevent enforced disappearances

Paragraph 25. The Committee recommends that the State party should adopt all the necessary measures, including legislative, to ensure that all persons detained in the national territory are immediately placed under judicial supervision.

Paragraph 27. The Committee recommends that the State party should take all the necessary steps, including legislative, to ensure that all transfers are subject to judicial control and that they are only carried out with the knowledge of the detainee's counsel and family or other relatives. The Committee likewise calls on the State party to put in place all the inspections and oversight necessary to prevent unlawful transfers and to ensure that such practices are appropriately punished.

35. The fundamental rights of all persons, including the right not to be detained in secret or unofficial facilities, are guaranteed under the Constitution (art. 18). On the basis of these constitutional guarantees, the codes of procedure set out regulations to ensure they are duly respected. In addition, article 43 of the Constitution provides that any person may file a petition for prompt, expeditious *amparo* proceedings against any act or omission of the public authorities that impairs the guarantees recognized by the Constitution in a manifestly arbitrary or unlawful manner. In particular, the last paragraph of article 43 establishes that: "When the right violated, restricted, impaired or threatened is the right to physical freedom, or in the event of unlawful aggravation of the form or conditions of detention, or of enforced disappearance of persons, habeas corpus proceedings may be brought by the person concerned or by any other person on their behalf and the judge shall hand down an immediate decision, even during a state of siege."

36. Facilities run by the Federal Prison Service keep up-to-date records of persons deprived of their liberty that include: (a) the identity of the person deprived of liberty; (b) the date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of their liberty; (c) the authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty; (d) the authority responsible for supervising the deprivation of liberty; (e) the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty; (f) information relating to the state of health of the person deprived of liberty; (g) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; and (h) the date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

37. There is also a body of case law dealing with this issue. For example, in August 2013, Chamber IV of the Federal Chamber of Criminal Appeals, made reference to the express order required under articles 71, 72 and 73 of Act No. 24,660, regulating the transfer of prisoners: "It is hereby ordered that this transfer from one facility to another" … for the reasons described … "should be communicated immediately to the enforcement judge or competent court judge". (See: https://www.fiscales.gob.ar/violencia-institucional /casacion-puso-limites-al-spf-y-ordeno-el-control-judicial-de-los-traslados-de-detenidos/.)

38. During its second universal periodic review, when addressing the issue of detainee registers, the State of Argentina indicated that "a computerized register of persons who are being held in custody is being readied by the Ministry of Justice and Human Rights. All the country's criminal courts are required to enter all orders for pretrial detention or for other equivalent arrangements as provided for in the Codes of Criminal Procedure (the National and provincial codes) and all convictions and the corresponding sentences into the National Register of Repeat Offenders within five days of the definitive issuance of such rulings or

convictions (art. 2 (b) and (i)). The country's prisons are also required to enter all prisoner releases in the Register."

The roll-out of the software platform that will contain computerized data on all persons deprived of their liberty within the Federal Prison Service is nearing completion. All persons are registered upon their admission to a prison, ensuring the availability of consistent data and the confidentiality of this data and facilitating oversight by the different Government authorities.

Paragraph 29. The Committee recommends that the State party should: (a) Develop a set of standard operating procedures and an identical supervisory system for all centres holding persons deprived of their liberty throughout the national territory that are fully in line with article 17, paragraph 3, of the Convention; (b) Take all the necessary measures to ensure that the computerized register of detainees is set up as rapidly as possible and that it is fully in line with article 17, paragraph 3, of the Convention; (c) Ensure that registers and individual records of persons deprived of their liberty are duly completed with the information required under article 17, paragraph 3, of the Convention and promptly updated as required; and (d) Put in place an effective system of checks to ensure that the records are being established and kept up to date in accordance with the provisions of the Convention and, with appropriate sanctions for the failure to do so, where necessary.

Paragraph 31. The Committee recommends that the national preventive mechanism should be launched and made fully operational rapidly. It also urges the State party to protect the independence of the mechanism and to ensure that the monitors have effective and immediate access to all places of deprivation of liberty throughout the national territory.

39. In this respect, the major legislative advances described in this section should be highlighted. Act No. 26,827 of November 2012, establishing the national system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, entered into force on 15 January 2013.

40. The regulations implementing Act No. 26,827, on the national system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, were adopted on 1 April 2014 by Decree No. 465/14.

41. In July 2014, the Human Rights Secretariat established a dedicated unit responsible for implementing the Optional Protocol to the Convention against Torture which works with all branches of the State and civil society, spearheading the process at the national and provincial levels. The unit has three lines of work: (1) supporting the start-up of the national torture prevention mechanism; (2) strengthening existing local torture prevention mechanisms; and (3) providing technical assistance and political support to the provinces in the establishment and start-up of local torture prevention mechanisms.

42. The activities of the new unit of the Human Rights Secretariat have included: holding meetings with NGOs involved in implementation of the Optional Protocol; reaching agreement on a proposal for internal regulations and presenting it to the Ombudsman's Office; providing information to the Rapporteur for Argentina of the United Nations Subcommittee on Prevention of Torture on the achievements of the Ombudsman's Office and the obstacles in the bicameral committee; meeting with the Prison System Ombudsman; and taking part in various national and international events organized to promote implementation of the Optional Protocol in Argentina.

43. At present six provinces — Chaco, Mendoza, Río Negro, Salta, Tucumán and Misiones — have a local torture prevention mechanism established by law. In the provinces of Buenos Aires, Córdoba, Santa Fe and San Luis, bills are in place and have the backing of

the Human Rights Secretariat, which is providing political support and technical assistance to expedite their adoption.

44. In the provinces of Catamarca, Chubut, Entre Ríos, Formosa, La Rioja, Santiago del Estero, Santa Cruz, Tierra del Fuego and the Autonomous City of Buenos Aires, preliminary draft bills to establish a local torture prevention mechanism are in varying stages of advancement. In the provinces of Jujuy, la Pampa, Neuquén and San Juan, the Human Rights Secretariat is working to build consensus for the drafting of bills to establish local torture prevention mechanisms.

45. The National Anti-Impunity Programme (ProNalCi) run by the Human Rights Secretariat of the Ministry of Justice and Human Rights was established to assume responsibility for identifying impunity and offering alternative means of combating it, by interacting with the judiciary and facilitating access to justice in order to prevent double revictimization. ProNalCi does not substitute or stand in for the public prosecutors, public defenders and ombudsmen or the judiciary in general, but refers the cases submitted to it to the State agencies created for that purpose.

Paragraph 33. The Committee recommends that the State party should step up its efforts to provide public officials with training on the provisions of the Convention, in conformity with article 23 of the Convention.

46. Officers of the Federal Prison Service receive extensive human rights training which takes account of its role in society and the purpose of its work.

47. This training is a basic precondition for the social reintegration and inclusion of persons deprived of liberty, and respect for their dignity and rights.

48. For this reason, in addition to the course on the Code of Conduct for Law Enforcement Officials, which all officers are required to complete and must repeat every four years, courses on the Code of Conduct designed for prospective officers, sub-officers and officers seeking promotion to the next grade and also refresher courses have been made obligatory in all prisons.

49. The training provided to officers and sub-officers includes subjects given by trainers outside the Federal Prison Service. This helps to improve the quality of specific and technical instruction given to staff while at the same time providing a basic institutional window for staff interaction among themselves and with inmates.

50. Under cooperation agreements concluded with provincial prison services this training is provided to prison officers by specialist professional staff.

51. The authorities are working to forge strategic links with universities and other external training organizations in the provision of training for prison personnel.

52. Initial training for officers is provided in conjunction with the National University of Lomas de Zamora, through the undergraduate prison administration programme. This four-year degree course will constitute the basic training for future officers.

53. In 2013 workshops on human rights and best prison practices in the framework of staff training and skills development were organized for new recruits and prison staff, with input from the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders.

54. With a view to reducing conflict, improving the quality of life in federal prisons and fostering harmonious coexistence between inmates and between staff and inmates, a conflict resolution system has been developed and communication and mediation workshops exploring basic concepts in the understanding and management of interpersonal relationships are run for both inmates and prison staff.

V. Measures for reparation and for the protection of children from enforced disappearance

Paragraph 35. The Committee encourages the State party to continue its efforts to ensure that its legal system guarantees all victims of enforced disappearance the right to obtain reparation, learn the truth and receive prompt, fair and adequate compensation. The Committee urges the State party to remove the time limit in the legislation referred to in the paragraph above.

Paragraph 37. The Committee recommends that the State party should collect statistics on reparations granted to victims of enforced disappearance, as a tool for improving the reparation measures.

55. Current criminal law grants certain rights to the material victims, that is, persons who are deprived of their liberty and who also often suffer violations of their physical integrity, right to life and other fundamental human rights. However, the Civil Code establishes the obligation to redress the harm caused by an offence to anyone who has been directly or indirectly injured. Thus, family members of the material victims of enforced disappearance, who suffer deep distress and psychological suffering because they do not know the fate or whereabouts of their loved ones, may file a civil claim before the competent judicial authorities.

56. All victims are entitled to become parties to the proceedings related to the act that harmed them, in accordance with the provisions of the Code of Criminal Procedure, appearing as plaintiffs, instituting proceedings, providing evidence and arguing their case.

57. With regard to the policy framework for reparations for victims of enforced disappearance during the civil-military dictatorship, Argentina has provided timely information about the fight against impunity as a key policy and about the notable advances made by the three branches of the State in the investigation, prosecution and punishment of those responsible for the serious offences committed during the last civil-military dictatorship.

58. The Human Rights Secretariat has been a plaintiff in more than 150 legal cases and is responsible for coordinating plans and programmes to provide reparations for the consequences of human rights violations caused by the State.

59. The Reparations Policy Directorate of the Human Rights Secretariat is responsible for implementing Acts No. 24,043, No. 24,411, No. 25,192 and No. 25,914, which deal with reparations, and any other regulations addressing the area which may be enacted in the future. Brief details of the laws which make up the normative framework are as follows:

- Act No. 24,411: regulates compensation for successors or heirs of persons subjected to enforced disappearance or of persons who have died as a result of actions by the Armed Forces, security forces or any paramilitary group before 10 December 1983;
- Act No. 24,321: establishes the concept of “absent by reason of enforced disappearance”;
- Act No. 24,043: grants benefits to persons who were detained by the national executive during the state of siege from 6 November 1974 to 19 December 1983, or to persons who despite being civilians were detained by order of the military authorities;
- Act No. 25,914: grants benefits to persons who were born during their mother’s deprivation of liberty, or to persons who despite being minors were detained with their parents, if either of the parents was detained and/or disappeared for political reasons, either by the national executive or by military courts and/or military units,

regardless of their legal situation. It also grants benefits to persons who were given a new identity;

- Act No. 26,564: provides for the payment of damages, extending to certain recipients the benefits granted under Acts No. 24,043 and No. 24,411 and their supplementary regulations;
- Act No. 26,913: was promulgated in December 2013 and establishes a system of reparation for former political prisoners of the Republic of Argentina consisting of ex gratia pensions for persons who, before 10 December 1983, met any of the following prerequisites: (a) to have been deprived of their liberty as a civilian and/or member of the military convicted by court martial, held in the custody of the national executive and/or deprived of their liberty as a result of action by the Armed Forces, security forces or any other group, for political, trade union or student reasons. Persons who meet the criteria established in Acts No. 24,043 and No. 25,914 and expansions and addenda shall automatically benefit, by virtue of their proven status; (b) to have been deprived of their liberty as a civilian and/or member of the military as a result of proceedings initiated by special military units or tribunals, or by courts martial, whether or not a conviction was served by this authority, in accordance with national security doctrine; (c) to have been deprived of their liberty by civil courts, in application of Act No. 20,840/74 and/or article 210 bis and/or 213 bis of the Criminal Code and/or any other law, decree or resolution of this nature, having being classified as special detainees while imprisoned, in violation of constitutionally protected rights.

60. The preamble to Decree No. 1058/2014, implementing Act No. 26,913, states that: "In order to repair the injuries inflicted by State terrorism, a comprehensive reparation system has been established under Acts No. 24,043, No. 24,321, No. 24,411, No. 25,192, No. 25,914 and No. 26,564, and addenda and amendments thereto, which recognize the rights of victims and the relatives of victims in respect of past events. Act No. 26,913, which awards an ex gratia pension to all persons able to demonstrate that they were detained for political, trade union or student reasons, inter alia, at any time up to 10 December 1983, is a part of this system."

61. The executive branch has established the necessary legal framework for citizens to assist with the process of justice, offering them a monetary reward and an absolute guarantee of anonymity. This is the purpose of the BUSCAR Programme (the national programme to coordinate efforts to locate persons sought by the judicial authorities) created by Ministerial Resolution No. 376/2013 to obtain information that helps to apprehend persons sought by the judicial authorities for crimes against humanity or to ascertain the whereabouts and consequently secure the liberty of persons who were victims of the offence of abduction of minors during the military-civil dictatorship (1976–1983).

62. To this end, Act No. 26,538 provides for the payment, within Argentine territory, of a monetary reward to all persons who, without having been involved in the criminal offence which may have been committed and without having been the victim, provide useful information for determining the whereabouts and consequently securing the liberty of persons who were victims of the offence of abduction of minors during the military-civil dictatorship, thereby allowing for the restitution of the victims' identity.

63. The identity of the informant will remain strictly confidential. State officials and employees, and current and former members of the security forces and State intelligence agencies, may not benefit from the reparation scheme. Members of the Association of Grandmothers of the Plaza de Mayo and the National Commission for the Right to an Identity and their relatives are also not covered by the scheme.

64. Recent legislation dealing with these issues includes: (a) Act No. 26,375 on the establishment of the Special Search Unit, to locate persons sought by the judicial authorities; (b) Act No. 26,538 on the establishment of the Permanent Fund for Rewards; (c) Resolution No. 1552/2012 of the Ministry of Justice and Human Rights on the establishment of the National Programme to coordinate efforts to locate persons sought by the judicial authorities; and (d) Resolution No. 2318/2012 of the Ministry of Justice and Human Rights on procedures for implementing Acts No. 26,375 and No. 26,538. These laws provide that rewards shall be paid either ex officio or on the instruction of a judge responsible for investigating a crime against humanity.

65. The core policy of the Government, and the policy which guides the Present-day Consequences of State Terrorism Programme and the Witness Support Programme, is to provide assistance to the direct victims of crimes against humanity and their relatives from the outset of proceedings, by providing help to persons called to give evidence, as well as counselling and psychological support. It was the application of this policy which led to the establishment of the Dr. Fernando Ulloa Assistance Centre for Victims of Human Rights Violations to provide assistance to victims of State terrorism and other present-day situations that are a direct result of action by State agents who, in abusive exercise of their duties, commit human rights violations.

Paragraph 39. The Committee recommends that the State party should adopt the necessary measures to recognize the right of families of persons who disappeared since 10 December 1983 to request a declaration of absence by reason of enforced disappearance.

66. Article 1 of Act No. 24,321 specifies the time period during which the disappearance should have occurred in order for the disappeared person to be declared absent by reason of enforced disappearance.

67. This Act was promulgated in response to a very specific historical situation, as defined in article 2, which describes the procedure for filing a complaint and, by means of the complaint, attesting to the unlawful deprivation of liberty before the competent authorities named therein.

68. The foregoing has not precluded the continuing application, for other cases, of Act No. 14,394, a long-standing Act which has been amended several times for the purpose of legislative harmonization and which is generally applicable in situations of sudden or prolonged disappearance. Section III of this law sets out the procedures to be followed in cases where the legal criteria for determining whether a person may be declared absent presumed dead have been met.

69. Article 7 of Act No. 24,321 refers specifically to Act No. 14,394, for the purpose of establishing that declarations of absence by reason of enforced disappearance shall have the same effects for civil law purposes as declarations of absence with presumption of death.

70. Taking these considerations into account, the legal effects of a certificate issued by the Secretariat of Human Rights are limited to those of a public legal instrument which authorizes pursuit of the case in the civil courts. The following can be determined from the content of the certificate: the place in which the complaint was filed; the victim’s personal details; the date and place of the incident reported; the last date and last place where the person was seen; and, if applicable, the secret detention centre concerned. Upon receipt of the request for declaration of absence by reason of enforced disappearance, the judge will ask the official agency with which the report of disappearance was filed or, if no report exists, the judge before whom the writ of habeas corpus was filed, to provide information on the formal veracity of the case.