

## UNIVERSAL PERIODIC REVIEW – 4TH CYCLE

### CONTRIBUTION TO ARGENTINA'S REVIEW

#### Situation of persons deprived of liberty in Argentina

**Report by civil society produced jointly by AIRE<sup>1</sup>, ACiFaD<sup>2</sup>, ANDHES<sup>3</sup>, CATAMARCA CONTRA LA TORTURA<sup>4</sup>, CELS<sup>5</sup> and XUMEK<sup>6</sup>**

#### **1. Critical overcrowding due to exponential growth in incarceration rate and overpopulation.**

1. Since 2008, Argentina has showed accelerated growth in the population of people deprived of liberty. According to the Argentine Judiciary's National System of Statistics on Execution of Sentences (SNEEP in Spanish), **from 2007 to 2020 the overall rate of incarceration grew by 55% and the penitentiary population increased by 42,487 people, an increase of 81%**. This growth has had a strong impact on the levels of overpopulation in many penitentiary systems.

2. In March 2020, the Federal Penitentiary System (SPF) held 13,971 persons and had an overpopulation of 10%. During the pandemic in 2020, the SPF population declined, bringing the current overpopulation down to 2%. However, while this decline was due to prisoners being released, it was also due to closings and reduction in quotas for new inmates, which, as we will see in the next point, generated an unprecedented situation: growth in the population being

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<sup>2</sup> Civil society organization that generates actions aimed at persons deprived of liberty being able develop with greater autonomy and security within the network of institutions of the justice systems, the penitentiary service and the community.

<sup>3</sup> Non-governmental organization whose mission is to contribute to social change based on the observance of human rights and the democratization of social relations through education and the defense of these rights and advocacy in public policy. It has offices in San Miguel de Tucumán and San Salvador de Jujuy, Argentina.

<sup>4</sup> Space for activists, family members and victims against police violence and other forms of institutional violence that seeks to shed light on the problem of torture, arbitrary detentions, repression of protest and other forms of state violence in democracy.

<sup>5</sup> Organization working to promote and protect human rights since 1979 through strategic litigation, investigation and advocacy in public policy in Argentina and in international and regional human rights organizations.

<sup>6</sup> Non-governmental organization with headquarters in the province of Mendoza that promotes and protects human rights through strategic use of different tools.

held in non-penitentiary sites in the Autonomous City of Buenos Aires (CABA). Despite the overpopulation in jails and the lack of capacity to hold prisoners in police cells, **the incarceration of people in police facilities has been a constant since the beginning of the pandemic**, because the closing of quotas for the SPF was not offset by the creation of new spaces for holding persons deprived of liberty in CABA, nor by any modification of criminal policy that could have alleviated the situation, such as the use of pretrial detention or shorter sentences even for minor crimes.

3. Many provinces present much more severe scenarios than the federal system. The province of Buenos Aires is one of the most alarming. The population deprived of liberty there in January 2022 surpassed 54,000 people. Since 2021, the population deprived of liberty increased by 25,270 or 86%. The overpopulation recognized by the provincial executive power is 100%. In 2012, it was estimated at just 7%. Thus, in ten years overpopulation has grown drastically worse and today the penitentiary system in the province is completely overwhelmed by an unprecedented humanitarian crisis. This situation goes against the recommendations set forth in Argentina's Universal Periodic Review in 2017<sup>7</sup> and recommendations to the adopt measures to reduce overcrowding and improve conditions in detention facilities. The recommendation was to prohibit by law the internment of persons beyond the capacity of detention facilities and to establish mechanisms to put an immediate end to overcrowding.

4. The growth in the penitentiary population was accompanied by **an increase in the number of persons in detention in police stations and deterioration of the conditions of detention** observed, including lack of food, furniture, hygiene, infrastructure problems (lack of air and light) and crowded cells. In addition, access to education, work and recreation spaces is very limited. Above all, lack of access to health is an even more serious problem. The critical level of crowding in the province of Buenos Aires has led to a structural deprivation of rights of such proportions that just being held in any jail in this system is tantamount to inhuman, cruel and degrading treatment by international standards.<sup>8</sup> This situation is a clear contradiction of international recommendations<sup>9</sup> that have urged improving the conditions of overcrowding, lack of health care and the unhealthy conditions in jails. At the same time, they also go against the recommendations to Argentina that suggest the immediate and concrete adoption of measures

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<sup>7</sup> See A/HRC/37/5 recommendations 107.54 y 107.55

<sup>8</sup> "Crowding increases the levels of violence among inmates; it prevents them from having minimum levels of privacy; it hinders access to basic services, some as essential as water; it promotes the spread of diseases; creates an environment of deplorable conditions of health and hygiene; constitutes in and of itself a risk factor in emergency situations; restricts access by inmates to productive activities; encourages corruption; affects inmates' contact with family members; in sum, it generates serious problems for penitentiary establishments to manage. Another grave consequence of crowding is the impossibility of classifying inmates by categories. Inter-American Commission on Human Rights, "Report on the use of pretrial detention in the Americas," December 30, 2013, p. 109

<sup>9</sup> See A/HRC/37/5 recommendation 107.53

to correct the deficiencies in accordance with the Mandela Rules.<sup>10</sup>

5. In the Buenos Aires Provincial Penitentiary Services, the crowding and overpopulation are because those released from the system never exceed the numbers coming in, which have been on the rise since 2021. **Pretrial detention is the coercion measure that deprives the largest number of people of liberty within the system:** in January 2022, 54% of persons held in jails and police facilities were being held prior to sentencing. This is in clear noncompliance with the international recommendation to reduce the use of prolonged pretrial detention, procuring to seek other alternatives to confinement in all possible cases and ensuring that judicial processes be more agile.<sup>11</sup> Prisoner releases in the form of house arrest, sentence modifications and early release have progressively declined, disregarding the situation of persons held without sentencing or those still held at advanced stages of their sentence. House arrest seems to be the only exception that, although it involves release from prison, maintains the deprivation of liberty. Even in this case, the granting of house arrest is not enough to diminish the levels of overpopulation, which is in breach of numerous international recommendations to adopt alternative measures to the deprivation of liberty in order to reduce the overcrowding in prisons.<sup>12</sup>

### *1.1 The extended use of police facilities for prolonged detention*

6. One consequence of the growing rate of incarceration and prison overcrowding was the increased number of people in detention in police cells or jails. The practice of holding persons in custody for long periods of time in police facilities can be observed in many places throughout the country. According to statistics from SNEEP, in 2020 there were 11,615 people being held in police facilities. This practice constitutes **a clear violation of international standards,<sup>13</sup> because these spaces were designed only to hold people in the first hours of their detention and are thus not equipped to hold people for prolonged periods of time.** These overcrowded sites lack furnishings, natural light and ventilation, have bathrooms outside cells or dry toilets, etc. In addition to the overpopulation and crowding that exists in these spaces as a rule, they produce grave rights violations of the persons being held. In addition,

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<sup>10</sup> See A/HRC/37/5 recommendations 107.57 y 107.58

<sup>11</sup> See A/HRC/37/5 recommendation 107.45

<sup>12</sup> The information used for this analysis came from the report on “Proposal for the Production of Diagnostics and Monitoring for the Roundtable on Incoming and Outgoing Inmates” presented to the Buenos Aires Province Supreme Court in the context of CSN1469/2014/RH1 Verbitsky, Horacio s/ hábeas corpus.

<sup>13</sup> See A/HRC/37/5 recommendation 107.52 and CAT/C/ARG/CO/5-6 paragraph 16 a) “Intensify efforts to alleviate overcrowding in detention facilities, mainly through recourse to alternative methods to deprivation of liberty; b) cease use of police facilities as places of permanent detention and guarantee compliance with said prohibition; c) develop an adequate methodology for establishing penitentiary capacity at the federal and provincial levels in accordance with applicable international standards;”

these detainees are in the care of police, who were not trained to fulfill the functions of supervision and care of persons deprived of liberty, and who at the same time often have other assignments that prevent them from properly complying with the responsibilities that come with holding detainees in police facilities. Another problem shown in these settings is that visits are limited or entirely prohibited, leaving people isolated from their families and cut off from the outside world for long periods of time.

7. In the Autonomous City of Buenos Aires, in April there were 867 people deprived of their liberty in police detention facilities: 523 people held in police jails and 344 people in neighborhood police stations. The maximum capacity declared by the City Police for jails is 299, indicating an occupation of 175% capacity. In the case of the city's police stations, it is the first time people are being held for prolonged periods of time and they do not have declared quotas or capacity specifically because they are not equipped to house prisoners. This situation has reached an extreme state, so much so that in March 2022, a trans woman was sexually abused by several men in CABA during a protest over the conditions of detention and crowding, where twice the number of people for cell capacity were being held at a police facility. The victim was detained in the same holding cell with cis men.<sup>14</sup>

8. In the province of Buenos Aires, as of April 30, 2022 there were 4,700 persons in detention at police facilities. This is in clear noncompliance with the two Argentine Supreme Court rulings and Cautionary Measures set forth by the Inter-American Commission on Human Rights ordering an end to this type of facilities.<sup>15</sup>

9. At the federal level, there are detainees being held in federal security forces facilities (the Argentine Federal Police, National Gendarmes and Naval Prefecture); as of March 2022, there were 715 people being held in these facilities.

10. In the province of Tucumán, current estimates point to more than 1,100 detainees in that province's 125 police stations. These buildings, nearly without exception, are in a deplorable state of disrepair and with an evident overpopulation – acknowledged by the provincial government – making these establishments inadequate for housing detainees, much less achieving the much touted objective of resocializing them.

11. The conditions in these police facilities are so extreme that there have been numerous deaths of prisoners held there. In 2017, seven people died in the Pergamino Station No. 1, Buenos Aires Province, as the result of a fire inside one of the cells. In 2018, ten people being

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<sup>14</sup> For more information, see:

<https://www.cels.org.ar/web/2022/03/hacinamiento-en-comisarias-abusan-de-una-mujer-trans-durante-una-protesta/>

<sup>15</sup> “*Verbitsky, Horacio s/ habeas corpus*” CSJN Decision, May 3, 2005; “Appeal motion brought by the Province of Buenos Aires Defence Council in “*Verbitsky, Horacio s/ hábeas corpus*” CSJN Decision, May 13, 2021. MC-496-14 and MC-37-15, Cautionary Measures by the Inter-American Commission on Human Rights regarding police stations located in the departments of Lomas de Zamora and La Matanza.

held in a station in the outskirts of Buenos Aires (E. Echeverría) died in another fire.<sup>16</sup> In June 2015, two people died in the Northern Investigations Brigade (Yerba Buena, Tucumán) in a fire when mattresses were burned in protest of a violent search. In early September 2021, four women in custody at the Women's Brigade in Concepción, Tucumán died of smoke-inhalation from a burning mattress inside their cell.

12. In the Tucumán case, the fire in Yerba Buena in 2015 raised the alarm on housing detainees in police facilities and led to the presentation of a collective habeas corpus and subsequent judicial process in which the Tucumán Supreme Court played a central role. The Court instructed the Executive Branch to take measures to improve the conditions of detention, including expanding the capacity of the penitentiary system to initiate the gradual transfer of detainees in police facilities to the penitentiary service. However, seven years after the event in Yerba Buena, the Tucumán government's inaction and failure to improve said conditions in police facilities or in the provincial penitentiary system is evident.

13. The practice of holding people over prolonged periods or even permanently in police facilities has become normalized at the national level to the point of becoming a critical situation in humanitarian terms, in noncompliance with international recommendations to the Argentine State on the necessity of prohibiting the use of police facilities as long-term detention sites.<sup>17</sup>

### *1.2 House arrest*

14. The growth in the incarceration rate in Argentina has been accompanied, in some places, by an increase in the use of house arrest, particularly in cases of women with small children, pregnant women, trans persons and people over the age of 60. The lack of data on the number of people under house arrest throughout the country hinders us from rigorously measuring this increase. Nevertheless, we can observe that in the province of Buenos Aires the number of people under electronic monitoring from 2016 to 2021 increased by 1,877, i.e. a 140% increase over the last five years. This data does not include people under house arrest without electronic monitoring. As of today, there is no state agency that knows the exact number of people under this modality in the province of Buenos Aires.

15. Given this situation, it is important to highlight that the judicial powers continue to implement confinement as a rule and oftentimes house arrest is used instead of opting for liberty. Above all, in cases where pretrial detention is chosen without procedural grounds but the judge rules for deprivation of liberty anyway, as if it were an intermediate measure between prison and liberty. This practice is in noncompliance with prior recommendations that

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<sup>16</sup>See <https://www.cels.org.ar/web/capitulos/encerrar-y-dejar-morir-el-uso-de-las-comisarias-como-prisiones-ilegales/>

<sup>17</sup> See A/HRC/37/5 recommendation 107.44

discourage the use of pretrial detention as the norm.<sup>18</sup>

16. House arrest is a less serious problem than prison, since serving prison time has a major impact on people's lives, particularly women and children. However, despite a significant increase in its use, policies have not been put in place to guarantee decent living conditions for people under house arrest, in utter disregard for international recommendations to adopt new, concrete measures to apply the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, ensuring that all incarcerated women have equal access to services and that the special needs of women in prison, including those of their children, are met accordingly.<sup>19</sup>

17. The majority of people under this type of detention are women with children, who are confined in their houses without any type of assistance or support from the State. They cannot work and therefore cannot guarantee income to live on or support their families, nor can they fulfill caregiving tasks like taking their kids to school or to the doctor. This puts women who do not have a support network to sustain them during the period of house arrest in a position of extreme isolation and vulnerability.<sup>20</sup>

## **2. Impact of imprisoned adults on children and adolescents**

18. When someone is deprived of their liberty, this has an impact not only on the person in trouble with the law but also has direct consequences on their family and fundamentally on the children. Incarceration brings with it a loss of rights and reduced opportunities, deepening a situation of preexisting social inequity. The children of incarcerated parents also suffer the psychological effects of the separation, the risk of losing their relationship with their parent, the risk of being placed in an institution themselves or put up for adoption.

19. The State and judicial system's response to unprotected children is to cast doubt on the ability of incarcerated women to exercise their maternal duties, discouraging or directly impeding ties and communication with their children. In other words, far from considering a legal system or mechanisms to enable parental responsibility in the context of deprivation of liberty, they **default to institutionalization mechanically and ineffectively, without any alternatives other than the adoption process**, thus invisibilizing the presence of preexisting significant adults and disregarding the wishes of their children. This constitutes a clear violation of the rights of these children and adolescents.

20. They are also victims of the stigma of crime produced by the incarceration of a relative. In Argentina there are practically no measures to ensure that children and adolescents are protected from stigmatization: the reality and specific needs of these young people continue to be invisible and unattended. Aside from a few care programs for the children of imprisoned women run by childhood and adolescence organizations (at the local and national levels), these

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<sup>18</sup> See A/HRC/37/5 recommendation 107.50

<sup>19</sup> See A/HRC/37/5 recommendation 107.61

<sup>20</sup> See <https://www.cels.org.ar/web/wp-content/uploads/2021/03/Castigo-a-domicilio-Web.pdf>

regrettably address just a tiny number of the total population of children of imprisoned parents.

21. There continues to be a lack of official data on the situation and number of children of imprisoned parents. And there are nearly no care programs for these kids that record this information as yet another vulnerability variable for these families and their children. Thanks to information gathered by organizations that work on this issue, we estimate that there are currently around 217,000 children of imprisoned parents in the country. The Catholic University Observatory of Argentina's Social Debt indicates that "of the children of imprisoned parents currently in this situation, 70.1% are under the poverty line. This socioeconomic vulnerability is confirmed by the fact that 85.5% reside in homes where the heads of household are marginalized workers and/or integrated laborers, i.e. very low-income sectors."<sup>21</sup> The majority of children of imprisoned parents live in a home where the head of household is a woman (their mother) and reside with other family members, such as grandparents.

22. In the province of Tucumán, the suspension of visits due the COVID-19 pandemic by the children and adolescents of persons deprived of liberty in the provincial penitentiaries was in place from the beginning of the restrictions in March 2020 until March 2022, despite the fact that the more flexible restrictions had been in operation in the province many months earlier. This means that, while other activities were allowed, people incarcerated in the Penitentiary Service spent two years without seeing their children, jeopardizing the right of those children and detainees to sustain their family ties, even in the context of confinement and based on a specific normative framework. Worse still, children under the age of three are currently prohibited from entering the prisons to visit their parents for public health reasons.

23. These situations reveal the lack of alternatives to incarceration for pregnant women and mothers of small children, reaffirming the recommendations made to Argentina during the 2017 UPR.<sup>22</sup>

### **3. Problems in access to health for detainees in police stations and jails**

24. **Access to health for persons deprived of their liberty is repeatedly hindered** due to scarce healthcare infrastructure in relation to the number of detainees. At the same time, because access to health is administered by the penitentiary services and not by an independent agency or the Ministries of Health, there are deficiencies in care and resistance to the use of health services outside prison walls. The conditions of crowding and overpopulation registered in numerous penitentiaries in Argentina aggravate access to this right.

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<sup>21</sup> See Observatorio de la Deuda Social Argentina. Barómetro de la Deuda Social de la Infancia. Universidad Católica Argentina. "Las múltiples vulnerabilidades que afectan especialmente a NNAPES". Available at <https://wadmin.uca.edu.ar/public/ckeditor/Observatorio%20Deuda%20Social/Documentos/2021/2021-OBSERVATORIO-Informe%20Especial-Vulnerabilidades-afectan-NNAPES-VE.pdf>

<sup>22</sup> See A/HRC/37/5 recommendation 107.60

25. In recent years, deficiencies of care have been revealed<sup>23</sup> to occur repeatedly in different services, despite numerous international standards and recommendations on this issue.<sup>24</sup> Problems have been documented in the delivery of medicines, lack of continuity of care in chronic treatments due to limitations on outside-prison visits, deficiencies in diagnostics and care inside prison walls of the symptoms described by detainees. In some cases, the **lack of access to quality healthcare has led to death of detainees in need of care.**

26. In the province of Buenos Aires, Patricia, a 40-year-old woman in custody of the provincial Penitentiary Service, died in an outside hospital due to a bladder condition that had not been addressed in time. She spent several months in need of treatment, but the transfer to a hospital was delayed while her infection continued to worsen, ending in her death. Another example of lack of care in the same provincial penitentiary system was a trans woman with tuberculosis who was in custody at the Florencia Varela Unit 32; after not receiving care, her situation led to paralysis.

27. In Catamarca, the partner of a detainee reported that *"being held in there, the bad food gave him a bladder infection and since he wasn't given care in time, and even though they operated, his condition turned into chronic pancreatitis. This was on October 5, 2018. When they took him to the hospital, he was already in a delicate condition. He was hospitalized for six months and had six operations."* To deal with his illness, his diet had to be specific and in addition to taking medicines and dietary supplements. Nevertheless, this person said, *"He is in the infirmary ward, where they give everyone the same foods: instead of chicken, they get pumpkin and squash that smells bad, so no one eats it. They don't give the medications to everyone. Even the diabetics who need insulin don't get it. They tell us that we have to provide the supplements, special diets or meds every day, but there are people from the interior or others like me, who just can't."* She says this is why her partner now weighs 40 kilos and is malnourished.<sup>25</sup>

#### **4. Abusive use of force in police facilities and jails**

29. For the past few years, **the excessive use of force has been exacerbated in the context of measures taken in response to the COVID-19 pandemic as part of the repression of protests and conflicts in settings of confinement.** During 2020 and 2021 there were 104 incidents of protests or measures of force in penitentiary establishments. The province of

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<sup>23</sup> See Procuración Penitenciaria de la Nación, "La atención a la salud en las cárceles federales". Available at:

[https://www.ppn.gov.ar/pdf/publicaciones/ediciones-especiales/PPN\\_La\\_atencion\\_a\\_la\\_salud\\_en\\_las\\_carceles\\_federales.pdf](https://www.ppn.gov.ar/pdf/publicaciones/ediciones-especiales/PPN_La_atencion_a_la_salud_en_las_carceles_federales.pdf) y Comisión Provincial por la Memoria, Informe Anual 2021, Sección 4, Políticas Penitenciarias. Disponible en [https://www.comisionporlamemoria.org/archivos/cct/informesanuales/informe2021/4\\_seccion\\_politicas\\_penitenciarias.pdf](https://www.comisionporlamemoria.org/archivos/cct/informesanuales/informe2021/4_seccion_politicas_penitenciarias.pdf)

<sup>24</sup> See A/HRC/37/5 recommendation 107.57 Y CAT/C/ARG/CO/5-6 párr. 22 b) "Improve health care in detention centers, access to medication and transfer to outside hospitals when necessary;"

<sup>25</sup> Source: <https://www.pagina12.com.ar/412992-denuncio-tratos-crueles-e-inhumanos-en-el-servicio-penitenciario>



Buenos Aires was the site of 35 of the 104 incidents, three of them in federal penitentiary units. There were 11 in Mendoza, eight in Río Negro, at least one in Catamarca and seven prison riots in Córdoba. The main causes include complaints about access to judicial information regarding cases and access to early release, problems related to health care, scarcity of hygiene items, compliance with care protocols and health measures and restrictions on visits in the context of the pandemic. There were also complaints related to contagion caused by sick prison guards entering the premises.

30. The absence or weakness of mechanisms of conflict mediation or resolution with participation by all parties involved contributed to the rapid extension of these types of measures in all jurisdictions throughout the country. Many cases of protest ended in serious injuries or even death. In total, there were 16 deaths in the context of protests over the pandemic in provincial penitentiaries, the largest proportion of them in Santa Fe (Coronda and Las Flores units) and Salta (Prison Unit 1).

31. In penitentiaries in Mendoza (Boulogne Sur Mer, Almafuerte and San Felipe), a group of inmates went on a hunger strike demanding that the judicial system resolve on suggestions of house arrest due to the overcrowded conditions posing a certain risk of contagion. In the women's penitentiary in Borbollón, the women went on hunger strike because the warden refused to authorize the use of cell phones, something that was allowed by the courts in all prisons. That strike was met with firearms and rubber bullets.

32. In the province of Tucumán in April 2021, during the second wave of COVID-19 in the country, the family members of incarcerated persons in the Villa Urquiza prison reported that in Unit No. 5, in light of the likelihood of contagion, the decision was made to isolate all inmates and restrict family visits. This situation led the inmates to mount a protest that was harshly repressed by the police infantry, who subjected inmates to physical and psychological torture.

**33. The excessive use of force to repress protests has become a form of extended torture by penitentiary services** in clear contradiction of numerous international recommendations.<sup>26</sup> These practices include the use of lethal firearms with lead bullets, even when in some jurisdictions this is expressly prohibited inside prisons and limited only to guards on prison perimeters. This has resulted in detainees being severely injured, as well as several deaths and in violation of international standards.<sup>27</sup>

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<sup>26</sup> See A/HRC/37/5 recommendations 107.47 "Ensure investigation into all reports of excessive use of force or arbitrary behavior by State officials, including incidents that may constitute acts of torture or mistreatment." and 107.48. "Adopt appropriate measures to prevent and eliminate the excessive use of force by security forces and ensure that perpetrators are brought to justice."

<sup>27</sup> See CAT/C/ARG/CO/5-6 paragraph 12 a) "Unequivocally reaffirm the absolute prohibition of torture and publicly warn that any person committing acts of torture, or being complicit in or tolerant of torture, shall be personally liable before the law and shall be subject to criminal proceedings and applicable sanctions."

34. The violent situations described reaffirm the ongoing relevance of the recommendations made to Argentina in 2017 in terms of protection of inmates, including in police custody, against the excessive use of force, and the adoption of appropriate measure to prevent and eliminate this practice, in addition to ensuring that perpetrators are brought to justice.<sup>28</sup>

### **5. Problems in the implementation and participation by civil society in local mechanisms to prevent torture.**

35. The strengthening of independent, external monitoring mechanisms is a fundamental step to reverse the current situation at the country's detention sites. At the national level, Congress passed Law 26,827 creating the National Torture Prevention Mechanism (MNPT in Spanish). Due to the federal organization of Argentina, each province must have its own local torture prevention mechanism in addition to the National Committee established under said law.

36. Currently **there are nine provinces that have not put forward legislation or implemented their local mechanism, in disregard for international recommendations on the matter.**<sup>29</sup> This is the case in the provinces of Catamarca, San Juan, Santa Fe, Córdoba, Formosa, La Pampa, Santiago del Estero, San Luis and Santa Cruz. At the same time, in Tucumán, Tierra del Fuego, Entre Ríos, Chubut, La Rioja, Río Negro and the Autonomous City of Buenos Aires, despite having passed a law to create a local prevention mechanism, these have not effectively implemented the law. On the other hand, nine local mechanisms have been implemented (Chaco, Buenos Aires Province, federal level<sup>30</sup>, Corrientes, CABA, Jujuy, Mendoza and Misiones) although some of these present limitations in their functioning.

37. Law 26,827, Art. 34, establishes the minimum requirements for the design and functioning of local mechanisms to be compatible with the Optional Protocol to the UN Convention Against Torture (OPCAT). One of its main requirements in this sense is the need for the mechanism's design to ensure the participation of civil society organizations in its functioning. However, since the law was implemented, different problems have been noted when it comes to guaranteeing the integration of civil society organizations in local mechanisms.

38. The province of Jujuy, for instance, has made progress in the political appointment of representatives from the executive and legislative branches to the provincial mechanism, but has yet to implement the selection procedure for the third member of said committee to represent civil society (Article 10 of Law 6137/19). As such, this mechanism intends to operate without the participation of civil society as instructed under the law in December 2021. Despite this irregularity, the Jujuy Provincial Committee was incorporated into the Federal Council of Local

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<sup>28</sup> See A/HRC/37/5 recommendations 107.51 y 107.41

<sup>29</sup> See A/HRC/37/5 recommendation 107.49 y CAT/C/ARG/CO/5-6 paragraph 26.

<sup>30</sup>In the province of Buenos Aires and at the federal level, two institutions (CPM and PPN) were named as local mechanisms that have functioned as a local committee for years. These mechanisms function without having been created as such by any legislation.

Mechanisms by resolution of that council. This decision was repudiated by different organizations working on this issue.

39. The Tucumán Executive Branch submitted a request to the Legislative Branch to modify the law on Local Mechanisms, which was implemented in July 2020. The modification reduced the number of members of civil society from five to three and incorporated the Ministry of Public Defense. In December 2021, the provincial legislature activated a new mechanism for selecting members of civil society that ended this past April 13 without any consideration of the suitability of the people selected: one of the three civil society representatives was a former legislator and Minister of Education with no prior experience or knowledge of the subject.

40. Law 8,284 creating the Local Prevention Mechanism for Mendoza was modified in 2019. This modification reduced its composition from 12 members to five, only two of which represent civil society organizations. The new law stipulates the creation of a Board, which has yet to be convened, to select civil society members, leaving the Committee operating with only three of five members. In addition, Mendoza is the only province that did not allow social organizations to monitor its activities as authorized under Law 28,627, Art. 41.

### ***Suggested recommendations to the Argentine State***

1. Ensure that people are not held in overpopulated establishments in conditions of inhuman and degrading detention.

2. Establish effective institutional mechanisms to prevent holding a quantity of people beyond the real capacity of the detention facility. In particular, any occupation of a detention facility beyond the number of places provided should be prohibited by law, establishing legal mechanisms to immediately rectify overcrowding, based on the premise of *ultimate ratio* and not on the construction of more prisons. This mechanism should define the prison capacity taking international standards into account.

4. Prohibit the use of police facilities as places of permanent detention, and generate effective institutional mechanisms to guarantee compliance with this prohibition, since these places are unsuitable for these purposes and the grave conditions of detention put the lives of people held there at risk. Guarantee that they will not be used for such purposes.

5. Develop specific policies for the prevention and sanctioning of torture and mistreatment in the context of confinement so as to reverse the structural practices of abuse and violence in these places. Some examples of good practices: Follow-up and assessment of prison deaths; programs to regulate and control the use of force; devices to facilitate external monitoring and control (identification of agents and signage in prison wards; admission of cameras and/or video cameras during inspections and monitoring by outside agents; mechanisms of access to information).

6. Adopt, as soon as possible, a comprehensive firefighting plan in all detention centers throughout the country and generate effective institutional mechanisms for monitoring and

compliance in keeping with the recommendations of the Subcommittee for the Prevention of Torture (see CAT/OP/ARG/1, paragraphs 58, 59, 62 and 64).

7. Develop an adequate system of public legal information for access to official data around the country on persons deprived of liberty, including people under house arrest.

8. Guarantee decent living conditions for people under house arrest (especially women and trans people) and implement policies that prevent detainees and their families from being isolated without income or any way of ensuring their upkeep.

9. Ensure that procedural norms fully uphold the rule of liberty during criminal proceedings. Design and implement legislative and judicial policies aimed at eliminating the abusive, unrestricted use of pretrial detention beyond a reasonable term.

10. Guarantee access to health for persons deprived of liberty. This includes medications, diet and timely testing. We suggest transferring the health services from penitentiary services and police to Ministries of Health, providers that can develop and guarantee adequate health care in keeping with the recommendation of the Subcommittee for the Prevention of Torture (see CAT/OP/ARG/1, paragraph 54).

11. Provide the National Mechanism for the Prevention of Torture with the necessary resources for it to exercise its duties and carry out as soon as possible the procedures stipulated in the policy for appointing or replacing the members of the different bodies making up the National Prevention System pursuant to Law 26,827.

12. Create and designate provincial mechanisms for the prevention of torture in compliance with the requirements for independence set forth by OPCAT. Prevent the approval of provincial mechanisms composed of members of the provincial executive branch (in general, the Secretariats of Human Rights). Guarantee independent mechanisms with the participation of civil society.