

**Report on the Implementation of the Convention on the Rights of the Child
Prepared by Argentine Non-governmental Organizations**

***The implementation of the rights of children and adolescents in Argentina.
Current scenario, challenges and recommendations***

Colectivo de ONG's de Infancia y Adolescencia

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Unión vecinal OMBÚ;

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Colectivo de ONGs de Infancia y Adolescencia.¹

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¹ Colectivo de ONG's de Infancia y Adolescencia is composed by a group of non-governmental organizations working on questions related to children and adolescents. The organizations started meeting by mid 2001 to prepare a report on the situation of childhood in Argentina. In this context, the following objectives were defined:

Short term objective

- Prepare and submit a report to the Committee on the Rights of the Child in Geneva.

Medium term objectives

- Carry out a permanent examination of the situation of children in Argentina.
- Facilitate access to information on the situation of children and adolescents to NGOs and to develop recommendations for future interventions based on common criteria.
- Generate an ambit to monitor and make proposals to public areas engaged in children's policies.

1. Introduction

Reports submitted by non-governmental organizations to the United Nations Committee on the Rights of the Child

For the purpose of monitoring the progress made by State Parties in achieving the realization of the rights enshrined in the Convention on the Rights of the Child, each country has to submit reports to the United Nations Committee on the Rights of the Child based in Geneva, Switzerland. The Committee is composed of ten independent experts elected by State Parties for a four years term, and is in charge of examining the situation of children and adolescents as well as the compliance of the obligations undertaken by State Parties. To that end, the Committee requests the submission of reports to each State Party and also gathers relevant information produced by non-governmental sources. Reports prepared by non-governmental organizations aim at revising the measures adopted to give effect to the rights recognized by the Convention, and also to make comments and policy proposals through active citizen participation.

On the non-governmental report²

Argentina ratified the Convention on the Rights of the Child twelve years ago, and four years later incorporated it into the National Constitution. From that moment, our country, as State Party, undertook a series of obligations including, among others, the adjustment of its legislation to the rights recognized by the Convention, and the reform of the agencies involved in their implementation. In spite of this, the social situation of children and adolescents is extremely delicate in Argentina. In the light of this, the present report has the purpose to reveal the current plight of children in our country.

To achieve this aim, this paper is organized around thematic lines (poverty, legislation, education, health and institutional violence) with the aim to introduce the situation of children and adolescents, and the obligations and responsibilities Argentina, as State Party, has undertaken and but has not accomplished. Likewise, this paper will not only criticize government's actions, but will also put forth proposals and recommendations oriented to the reform and improvement of policies in this field.

This report does not pretend to be an exhaustive analysis of the question it addresses, given that existing information on this thematic is not readily available and, also, necessary information on is not always produced by official sources. Thus, in some of the sections of this report, as it is the case of the chapter on institutional violence, the information presented corresponds only to the Province of Buenos Aires.

Finally, this report was prepared with the idea that the report submitted by the government in 1999 is merely descriptive, refers to certain governmental programs implemented, but does not fully consider the current situation of children. In that respect, this report will address questions that the governmental report does not analyze, and will identify and observe the information it considers incorrect. As previously mentioned, we are aware that this presentation will not be complete, but we hope to start a process of examination and control of the implementation of the Convention in our country after almost ten years from the submission of the first non-governmental report, and from the domestic ratification of the Convention.

The situation of children and adolescents in Argentina

This report intends to shed light on the social situation of children in Argentina, and, in turn, to reveal the problems that affect this age group in the current political, economic and social scenario of our country.

In this regard, it is necessary to highlight the initiation of a new structural model (modelo) in the mid 70s, when the military coup-d'etat (1976) inaugurated a novel accumulation pattern based on the valorization of financial capital and the rolling back of the welfare state. Since that moment, we witness a deterioration of citizen participation and the emergence of two factors: the deterioration of social conditions and the

² The first report was submitted in 1993.

intensification of this trend with the implementation of neo-liberal adjustment policies and the *flexibilization* of labor conditions.

It is necessary to underscore that the decade we are analyzing, the 90s, was featured by the intensification of the neoliberal strategies implemented since 1976 to the present. This strategy initiated two mutually related processes: the reduction of national policies –a necessary condition for the implementation of the economic liberalization that had a negative impact on the domestic market- and, besides, the elimination of welfare policies, a *sine qua non* condition to reduce fiscal pressure on large corporations, which, in turn, was coupled with the flexibilization of labor conditions.

Given the approach adopted by this paper, that is, the analysis of the articulation of the situation of children and adolescents in Argentina with the country's broader political, economic and social context, it is necessary to stress a direct consequence of the configuration of a new social structure: the rolling back of the State, the concentration of wealth and the implementation of repressive policies. The reform of the state in the last decade implied the reduction of the government's role in the economy and the social sphere. In the face of the intensification of social conflicts brought about by the effects of these reforms, the state responded with the strengthening of its penal sphere. Thus, we witness a "criminalization" of poverty, oriented to preserve and protect the newly established order. Likewise, these developments are complemented with a conservative approach to the child as "incompetent"; a characterization strengthened since the last decade by a neoliberal strategy that considers children as "a social threat" to be controlled through penal intervention, instead of fostering the implementation of social policies oriented to achieve the full and comprehensive development of children and adolescents.

To conclude, this report will try to reach a broader understanding of the situation of children and adolescents in the current Argentine conflictive context. Therefore, it will analyze the relationship between the increase of children poverty, the reduction of the role of the state through the study of its basic social policies – health and education- and their impact and articulation with the strengthening of ongoing surveillance policies, institutional violence and the violation of children's rights, all of which form part of the present neoliberal approach to public issues.

II The implementation of the Rights of the Child in Argentina

Economic growth and social polarization: the increase of children poverty.

The 90s, a lost decade, a generation at stake.

"With regards to economic, social and cultural rights, State Parties shall undertake such measures to the maximum state of their available resources....." (art. 4)

The situation

The nineties represented a period of strong structural imbalance, which triggered fundamental economic and social transformations. This process brought about the intensification and eventually, the consolidation of a neoliberal economic model, and reinforced already existent social inequity. Policies implemented since then have generated a strong deterioration of the standard of living of the population in general, also resulting in a marked increase in children poverty currently reaching **58,6% of the population under 18 years**.

On the Argentine Governmental Report

The second report submitted by the Argentine government to the International Committee on August 1999 states the following: *"...Argentina is undergoing a period featured by relevant macroeconomic achievements within the neoliberal economic adjustment implemented by the government. Economic stability has been achieved, inflation has been curbed and economic dynamism has been reached as a consequence of the Convertibility Plan (Plan de Convertibilidad); it is still necessary to improve social investment. Important elements of this strategy are the reform of the State³, the privatization of state-run corporations and the decentralization of competences, responsibility and services to provincial and local levels"(...). "Advances have been made in the control of inflation and macroeconomic variables, but this did not have substantial impacts on the improvement of living conditions, given that relevant sectors of the population remain below the poverty line, underemployment and submerged and tertiary employment (empleo sumergido and empleo terciario) continue to grow while real salary drops and housing deficit problems intensify. "(article 4).*

In the first place, this paper sustains that it is necessary to address economic policies in terms of their imbrications and effects on the other public policies. Thus, economic policies have to be analyzed together with policies of economic stabilization and with those oriented to the poor. In this effect, a series of effects resulting from the policies of economic adjustment, such as the inadequacy of public spending, wage reductions, the increase of the informal economy, the growth in the number of children who develop survival strategies at an early age, as well as the crucial cause of these factors, the widening of the social gap, have to be considered.

The Argentine governmental report indicates that one of the most relevant achievements of macroeconomic policies has been the stability of prices and wages. However, in this context, there was a notorious deterioration of the job market⁴, which entailed both job instability as well as a strong reduction of income. Both consequences, price stability and job instability operated with diverse intensity in different types

³ The reform of the State was carried out in Argentina from a criterion of permanent adjustment through the reduction of social spending and lay-offs, and not attempting at increasing state capacity to implement more and better social policies.

⁴ It is important to stress that decentralization per se is not good or bad, it is only a means whose effectiveness is determined by the decentralization process and the tools employed. In this effect, the decentralization of health and education in Argentina responded more to fiscal criteria than to attempts to improve the quality of policies. In Carciofi, R., Cetrángolo, O. and Larrañaga, O., Argentina: Descentralización y Financiamiento de la Educación, en Desafíos de la Descentralización: Educación y Salud en Argentina y Chile. 1996.

⁵ Long term unemployment, underemployment and salary reduction.

of households: those of lower income were less favored by price stability and more negatively affected by job instability⁶.

One of the main outcomes of this economic policy was its negative impact on income distribution, which placed Argentina among the fifteen countries who exhibit the most unfair distribution of income in the world. When considering only the countries that show relatively high standards of living, Argentina appears among those that exhibit higher social inequity.⁷

Until the mid '70s, Argentina registered a more equal distribution of income. That moment marks the initiation of a process of economic transformation, whose peak takes place in the 90s with the implementation of neoliberal economic policies whose effects include higher unemployment indices and greater inequity in the distribution of resources.

Nowadays, 20% of the richest population earns 14,6 times more than the poorest 20%. In 1974, the former earned 7.8 times more than the poorest 20%.⁸

All these data indicate that the economic growth of a limited sector of the population has been achieved at the expense of the deterioration of the conditions of the majorities. In this effect, the UN Development Program (UNDP) Human Development Report (1996) identified different models of growth that are not compatible with sustainable growth. There is no doubt that these models correspond to the Argentine situation:

- *"growth without employment, in which the economy, in general grows, but without registering a parallel growth of job opportunities", thus consolidating the crisis of the "salary society" that is, the core of Argentine economic and social life.*
- *"growth without equity, in which the benefits of economic growth are enjoyed by the rich, leaving the majority of the population struggling and immersed in a profound and eternal poverty."*
- *"growth without roots", which provoked the elimination of regional economies, and with this, brought about a crisis of identity to populations immersed in extreme poverty who begun to move to urban centers, thus deepening the loss of social links.*
- *"growth without future, in which the current generation plunders resources to be invested in future generations" thus linking national income to the payment of a foreign debt without responding to urgent domestic needs.*⁹

Poverty figures

It is important to highlight the constant increase of the underemployment rate over the recent years. In May 2001, it reached 16,4 %¹⁰ of the active economic population, while demanding and non-demanding underemployment (subocupación demandante y no demandante)¹¹ respectively reached 9,6% and 5,3%¹². These data are relevant to our main concern, the situation of children, given that the increase of poverty among children is mainly rooted in the soaring unemployment rate and resource insufficiency affecting adults, among which those living in households with a larger number of children have been more heavily affected. Although there is no data for the whole country, in the Great Buenos Aires in 1999, the employment rate for

⁶ Luis Beccaria y Roxana Mauricio, *"Movilidad laboral e inestabilidad de ingresos en la Argentina"*, Universidad Nacional de Gral. Sarmiento, Mimeograph, 2001, Argentina.

⁷ Data from a study carried out by Equis, consulting firm.

⁸ Data from a study carried out by Equis, consulting firm, using data collected by the INDEC (National Bureau of Statistics and Censuses).

⁹ De Vylder, S. In *"Políticas Macroeconómicas y los Derechos de la Niñez"*. Save the Children Sweden. 2001.

¹⁰ According to INDEC in October 2001 this figure reached 18,3%.

¹¹ According to the INDEC, the *unemployment rate* is calculated as the percentage of the unemployed population out of the active economic population. The *unemployed population* strictly refers to people who, being unemployed are looking for a job. IT does not include other forms of precarious work, such as those referring to individuals on temporary jobs while they look for a formal position, those who work less hours than they expect, unemployed individuals who have quit their search for a job in the light of absence of opportunities, to employees who earn minimum salaries and are working on under qualified positions, etc. The *demanding under employed population (población subocupada demandante)* are those working less than 35 hours a week and expect to work more, but are not looking for other jobs.

¹² Data for the main urban centers in Argentina obtained from the Household Permanent Survey, EPH, carried out on May 2001 by the INDEC. The data corresponding to October 2001 will reveal that these figures are currently even more dramatic.

heads of households without children under 18 grew from 43,8% to 51% while it dropped from 87,1% al 82,3% among those with children for the same period. Likewise, the unemployment rate increased in both cases, but it registered a higher increase among households with children than among those without them.¹³

The *poverty line*¹⁴ and the *indigence line*¹⁵ are both in an upturn trend. Data produced by the Households Permanent Survey (EPH) in May 1998, indicate that 17,7% of households and 24,3% of the population were below the poverty line and 4,0% of households and 5,3% of the population below the indigence line.¹⁶ In May 2000 the EPH shows an increase both in the proportion of households and in the population below the poverty line. The former reached 21% and the latter 29,7. For the same period, 5,3% of households and 7,5% of the population were below the indigence line.¹⁷ In May 2001, the proportion of households below the poverty line reached 23,5% and the 32,7% of the population were in this situation. Besides, 7,4% of households and 10,3% of the total population were below the indigence line.¹⁸

In October 2001, the population below the poverty line reached 41,5%, that is, 14.961.914 people. The incidence of poverty among individuals under 18 years is 58,6%, that is, 6.939.527 children and adolescents (almost 530.000 more than in May of that same year). For the age group encompassing children from 6 to 12 years the incidence of poverty is even greater, totaling 60,8 %.¹⁹ The proportion of indigent children was, for the same period, 16,6%, while for the total population the incidence of indigence reached 6,6%²⁰. Thus, we can affirm that the incidence of poverty among individuals under 18 years is higher than in the rest of the population.

When comparing poverty levels of May 1991 and May 1999, children stand out as the most negatively affected age group. In the Great Buenos Aires, between both dates, the total poverty level slightly diminished from 28,8% to 27,2%. But we have to stress that for the same period the incidence of poverty increased from 40.9% to 43.2%. On its part, indigence increased for the total population going from 5% to 7,8%, that is, it jumped 54%. Among children, it raised from 8,2% to 13,8%, registering an increase of 67%.²¹

In sum, the last decade has witnessed a deterioration of basic living conditions which affected the total population, but which had a more dramatic impact on the population under 18 years.

Some effects of poverty

The increase of poverty reveals diverse family survival strategies in which children are often relevant agents in the obtainment of resources. To this, they develop different activities such as:

- 1- Work on the street, where they sell merchandise, clean windscreens, beg or look after their younger brothers and sisters while their parents also beg. On this problematic, see ANNEX 1, part II. ²²
- 2- Take care of the home, looking after smaller children while adults make a living.
- 3- Work with their parents or in marginal activities. The "cirujeo" is one of these activities. (See ANNEX 1, part I)

¹³ Elaborated by the Sistema de Información, Evaluación y Monitoreo de Programas Sociales, SIEMPRO, with data from the EPH, INDEC.

¹⁴ The measurement of poverty with the method "*line of poverty*" carried out by the INDEC consists in defining the capacity of households to satisfy a set of basic food and non food needs through the acquisition of goods and services with the income they obtain.

¹⁵ The concept "*line of indigence*" aims to establish if households have adequate income to purchase a basic basket of food to satisfy a minimum threshold of proteins. Households that do not reach this threshold are considered indigent.

¹⁶ EPH, Main Urban Centers, May 1998.

¹⁷ EPH, Main Urban Centers, May 2000.

¹⁸ EPH, Main Urban Centers, May 2001.

¹⁹ "Informe sobre la situación social de la infancia y la adolescencia". SIEMPRO, January 2002. Elaborated with data from the EPH, INDEC. October, 2001.

²⁰ Total Main Urban Areas. SIEMPRO, "La situación de la infancia". July, 2000. Elaborated with data from the EPH, INDEC. May, 1999.

²¹ SIEMPRO, "*La situación social de la infancia*", 2000.

²² Survey of labor and living conditions of children and adolescents under 18 years living in the streets of the City of Buenos Aires. Gobierno de la Ciudad de Buenos Aires. 2001.

4- Get involved in situations considered offenses.

All these situations put schooling at risk, thus entailing the loss of future opportunities, and might also provoke emotional damage. In some cases, these situations can even lead to children's submission to abuses exerted by adults, physical damage, and higher risks, i.e. death, violence, etc.

Brief final comments

According to what has been presented, we can indicate that the precarious situation in which 15 out of 36 million people live in Argentina impacts heavily on children.²³ In effect, 58,6% of children and adolescents live in poverty because of the profound gap between the richest and the poorest segments of the population. However, this question, which runs parallel to what neoliberal economists denominate "macro economic achievements" becomes even more dramatic if we add the nearly absolute roll back of the State from the resolution of social problems. At the same time, there are no governmental studies accounting for the current social situation of childhood and the paths the State should follow in order to improve this situation. Most social programs in this area only cover basic and immediate needs in a quasi paternalist –and even repressive– fashion, without investing in the promotion and comprehensive development of children and adolescents.

Universal policies, such as health and education, which are crucial to every nation willing to achieve equitable development, are subjected to permanent budgetary cuts and inefficient administration.

The absence of a clear definition of national, provincial and local policies for children and adolescents hinders the effectiveness of resources, as well as the development of policies adopting a comprehensive approach to this population. Thus, children and adolescents' poverty is coupled with the deterioration in the access to education, the impossibility to have access to a preventive health care system, the absence of a judicial granting due process to this population and, in the same line, it runs parallel to the risk of being victims to police repression.

Public policies in general, and economic in particular, directly affect socially vulnerable children and adolescents given the lack of resources oriented to the implementation of social promotion and assistance programs framed by the principles enshrined in the Convention. At the same time, the national state prioritizes commitments made with domestic and foreign creditors, failing to embark, in spite of the heavy fiscal deficit, on a more progressive tax policy promoting an equitable distribution of income.

▪ **Challenges and recommendations**

Based on the challenges lying ahead, which were outlined in the previous arguments, and in order to improve the social situation of children and to implement the rights guaranteed in the Convention on the Rights of the Child, we make the following proposals:

- To create a Training and Employment Insurance oriented at heads of households permitting to cover for basic needs. In order to acknowledge the situation of children and adolescents it is recommended to create a Children's Insurance Program, so as to ensure the coverage of children's basic needs and the continuity of their years of schooling.²⁴

²³ The figure was mentioned by Finance Minister, Dr. Remes Lenicov at the time of announcing new economic measures on February, 3 2002.

²⁴ In December 2001 the Frente Nacional contra la Pobreza (FRENAPO) organized a popular consultation to raise support for its proposal for a Training and Employment Insurance following the mentioned lines. The insurance then proposed, contemplates the provision of a sum of 380 pesos to every household whose head is unemployed plus 60 pesos corresponding to each child. The proposal was supported by more than 3 million people.

- To increase access to day care, children care centers and early childhood facilities to children under 5 years. There is a current deficit of this type of services, which are considered to be the most effective to ensure equal opportunities.²⁵

²⁵ Only 22% of the poorest fifth of the children between 3 and 4 years attends a day care or children care center. Existing programs focus in the provision of food supplements, covering approximately half of the children between 0 and 2 years of age in poverty, and 20% of the children between 3 and 4 years in the same segment of income. See SIEMPRO (2000) "La situación social de la infancia en Argentina".

1990-2001

Twelve years of contradictory legislation and unconstitutional practices

... "It is in due process where the rights and safeguards of the minor and the limits on the judicial authority are respected; both parties-the minor and the Judge-gain in terms of social power. The judge loses power, but gains in terms of dignity. The minor obtains safeguards and the chances of his/her being rescued increase; the minor is a subject of rights and not an object of protection, compassion and repression."
Presentation by Alessandro Baratta in Bs. As. Argentina, 1998.-

The Situation

In spite of the fact that this analysis may include issues already discussed on the first non governmental report submitted to the United Nations Experts Committee on the Rights of the Child in 1993, it is our purpose to show that the legislation has not varied substantially since then. We will delve into this issue bearing in mind that, to the moment, no national law consistent with the guidelines of the Convention on the Rights of the Child has been passed, thus remaining in force the institutional and judicial practices inspired in the "*modelo del patronato*", resulting in the violation of basic rights consecrated by the treaty.

Law and the Rule of Law

In a country, its legislation reflects the mode in which it adopts, or not, democratic and republican contents and the enforcement of the Rule of Law. Although the law cannot modify reality and practices by itself, it becomes a crucial tool at the time of claiming for and demanding the effective respect of human rights. The legislation is a crucial indicator on each nation's commitment to respect Human Rights.

With respect to the legislation framing children and adolescents, Argentina, as State Party, has not respected the commitments undertaken at the international level referring to the adjustment of its legislative and administrative structure to the guidelines of the Convention on the Rights of the Child. Failure to comply with its commitments has generated a institutional scenario in which the main agents involved operate in a legal framework permitting the reproduction of practices contradictory to the rights enshrined in the Convention. Thus, we find norms and practices that are illegal if we consider a regime respectful of Human Rights, but which are rooted in the national and provincial legislation still in force.

The "patronato" or the model of the "irregular situation"

It is necessary to differentiate the existence of a law from its actual implementation, and referring to the legislation in the field of children and adolescents, this basic differentiation is crucial. In 1919, Law 10.903 -"Ley de patronato"- was sanctioned. This law turned out to be a landmark in the history of childhood in our country; since its passing the model of "Patronato" began to take shape and still prevails in diverse civil society and governmental institutional practices.

We will not describe in detail the violations to the contents of the Convention of the Rights of the Child embodied in this law -as well as to other Human Rights Treaties-, given that they have been clearly enumerated in the First Non-governmental report. In spite of this, it is necessary to mention that the model of the "patronato" is nourished by other laws that complement it. These are: Law 22.278 stating minor's penal regime (Régimen penal de minoridad), articles 234 and subsequent from the Code of Civil Procedure ("protection of persons" -figura de la "protección de persona"-²⁶) and Law 24.946 (Public Ministry Law -Ley de Ministerio Público²⁷).

²⁶ Preventive measure utilized by the courts, which results in the arbitrary treatment of children for the sake of his/her protection

²⁷ Translator's observation: Official body in charge of protecting and defending the rights of the society and the state through its officers, that is, the prosecutors.

Clearly inspired in the positivist-etiological paradigm²⁸, Law 10.903 was initially, and continues to be, oriented to a distinctive subject: poor children²⁹. That population, traditionally excluded from social policies is liable to be treated by judicial policies and, thus, its inclusion in the system results in the “judicialization”, institutionalization, penalization and re-victimization of children. (See Annex 3, part 2, table 1 “Situation of Juvenile Courts in the Province of Buenos Aires: Assistance and Criminal Causes. 1991-2000-). The conception of childhood present in the “culture and model of patronato” is unconstitutional given that it implies that the child is considered an object of “judicial protection”, entailing the annulment of all the legal safeguards enjoyed by adults, the judicialization of poverty and the invention of the “social risk” category as a justification for coercive state intervention.

The unconstitutional nature of the “patronato” predates the sanctioning of the Convention

Given the supremacy of the Constitution, we can argue that Law 10.903 (and all the norms complementing the Patronato) was unconstitutional even before the ratification of the Convention in 1990 and the incorporation in 1994 of the international treaties on Human Rights to the National Constitution. In effect, Law 10.903 is contradictory to articles 18³⁰ and 19³¹ of the Constitution (principles of legality and due process, basic to the Rule of Law).

The respect or violation of a right can respond to the application of a law violating human rights or due to the omission to applying the existing law. In this particular case, the latter refers to the failure to apply the Convention, which was passed as Law 23.849 in September 1990, and was then incorporated to the National Constitution in art. 75 inc. 22, when the Magna Carta was reformed in 1994. The Convention thus enjoys, together with other international instruments (two declarations – The Universal Declaration of Human Rights and the American Declaration of Rights and Duties- and eight treaties³²) a new constitutional

²⁸ Positivist criminology, concerned with crime argued that scientific inquiry, that is, the experimental observation of the offender – his/her moral, social, psychological, anthropomorphic, biologic and hereditary features- and not the offense committed, allowed for the identification of a category of human beings inclined to criminal action, and also facilitated the identification of the causes that put them in those criminal situations. Thus, if the offender was bent to crime, he/she could be adapted to a conformist behavior through the performance of a socio-medical intervention composed by a series of measures oriented to his/her transformation. In those situations in which this intervention failed, the need to defend society would end up legitimizing every reaction, even the physical elimination of the offender who was considered to be inadaptable.

²⁹ “The law intended to protect abandoned children or those exposed to their parents, and to that end it was necessary to adopt an effective system” (words pronounced in the congressional debate of law 10.903). The effectiveness of this system implies inventing an ambit in which the state can make use of its coercion mechanisms without limits. As previously mentioned, not only procedure safeguards are violated, but also the causes of this violation also affect the principle of reserve (principio de reserva) (art. 19 of the National Constitution). Euphemisms and empty words in the legislation feature this intervention, which is supposed to be “educational, tutelary, assistential” or just “when the Judge decides so”. It is clear that the conception the Judge adopts, in which it does not matter the action, the typified action, but personal conditions, and even the moral traits of a person. Minors are incompetent, without discernment (or without criminal capacity) and through the tutelary power of the state, the judge, as a father, can decide upon the child with discretion. Thus, all safeguards and rights enjoyed by every citizen in the Rule of Law fall apart, given that the child is considered to be not a subject of rights, but an object of segregation and treatment. It is precisely at this point that we see the perversity of the model. The treatment entails, apart from the annulment of the child as a person, and his/her stigmatization, uncertainty upon the measures to be adopted. Every intervention has to be based on the idea that the individual has something “abnormal”, something that “has to be prevented for his/her good and for the sake of society”

³⁰ “No inhabitant of the Nation may be condemned without a prior trial based upon norms predating the facts at trial, nor tried by special commissions, nor removed from the judges designated by the law existing before the fact of the case. No individual can be obliged to testify against himself/herself, nor arrested without a valid written order issued by a competent authority. Defense of the person accused and his/her rights in trial is inviolable. The home, mail, and private papers of the individual cannot be violated, and a law will determine the cases in which and under what circumstances those can be occupied. Death penalty for political reasons, all kinds of torture and lashing are barred for ever. The Nation’s prisons will be clean and healthy and will be for the security and not punishment of the prisoners, and every preventive measure leading to their mortification will make the judge authorizing so, responsible” Article 18 National Constitution – Legality safeguard and due process.

³¹ “The private actions of men that do not affect public order and morality, and do not damage a third party are only reserved to God, and are excepted from the authority of the magistrate. No inhabitant of the Nation will be forced to do what the law does not order, nor forbidden from what it does not forbid” – Article 19 National Constitution -principle of reserve.

³² American Convention on Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Optional Protocol to the International Covenant on Civil and Political Rights, Convention on the Prevention

hierarchy.³³ Therefore, *'this privileged status thus entails the material equality of constitutional norms with those of the instruments and compels decision-makers not to omit the mentioned instruments as sources of their decisions.'*³⁴ The obligation that affects our country is thus clear: given the prohibition to apply those norms contradicting ratified treaties, laws 10.903, 22.278, the Civil Procedure and the Commercial Code as well as all the norms contradicting mentioned Human Rights treaties cannot be constitutionally applied. At the same time, judges – as all administrative instances- are obliged to apply the contents of the Convention on the Rights of the Child, the United Nation's standard Minimum Rules for the Administration of Juvenile Justice – The Beijing Rules (1985), The United Nations Guidelines for the Prevention of Juvenile Delinquency -The Riyadh Guidelines- (1990) and The Havana Rules (1991). Although these are specific treaties, we have seen that our country is obliged to apply all the international instruments referring to the protection of Human Rights it has ratified.

Legislative changes in Argentina

Twelve years have passed since the ratification of the Convention and, in spite of this, it turns out to be extremely serious that the previous laws, which should have been derogated by the mere existence of the new legislation, are still in force. The only changes registered have been at the sub-national level: in Mendoza, Chubut, Ciudad de Buenos Aires, Neuquén, Tierra del Fuego, and recently in Misiones. It bears to mention the case of the Province of Buenos Aires, which having sanctioned its law consistent with the principles of the Convention, the new legislation was suspended (in its most substantial issues) by the Supreme Court of the Province through a preventive measure whose constitutional character is debatable.³⁵

However, where a new law is most needed, is at the national level. In November 2001, the Lower Chamber passed ³⁶ a draft bill on the comprehensive protection of the rights of the child. This is a propitious but still highly delayed measure. Besides, the protection of children and adolescents is of provincial jurisdiction and thus, the new legislation, if finally sanctioned, will derogate the national legislation in force, but not the provincial laws that still contradict the Convention³⁷.

Towards a transformation: recommendations and future challenges

Drawing on the previous discussion, we will present a series of recommendations oriented to a legislative and institutional transformation.

1. To adapt the national and provincial legislation to the principles of the Convention on the Rights of the Child. To this, decision makers should take account of a series of questions at the time of embarking on such a relevant and sine qua non transformation.

The elements to be included in the norms consistent with the Convention are the following:

- The derogation of the current norms that contradict the Convention.
- The restriction of the judicial intervention to the legal field thus avoiding its intervention in social assistance affairs, which should remain the matter of the

and Punishment of the Crime against Genocide, Convention on the Elimination of all Forms of Discrimination against Women, Convention against torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

³³ The supremacy of these treaties does not only respond to the constitutional pyramid of our normative regime but this superiority is also recognized by the Supreme Court of Justice which pronounced regarding the case *"Ekmekdjian - Sofovitch"* in 1992 in which it stated that "When the Nation ratifies and international treaty signed with another State it compels itself at the international level to apply it through its administrative and jurisdictional agencies as long as it contains descriptions that are concrete enough to facilitate its immediate application" (Law 1992-C:547). At the same time, article 27 of the Convention of Vienna on the Right of Treaties (1969) expresses that one part will not be able to invoke norms of their domestic law to justify lack of compliance with a conventional norm.

³⁴ Pinto, M. *"Temas de Derechos Humanos"*, Edited by Del Puerto, 1992.

³⁵ Autos: "Procurador General de la Suprema Corte de Justicia de la Provincia de Buenos Aires contra Provincia de Buenos Aires s/ Inconstitucionalidad artículos de la ley 12.607." March, 21 2001

³⁶ to become a law, it still has to be passed by the Upper Chamber.

³⁷ Such as the regimes in the following provinces: Jujuy, Salta, Formosa, Entre Ríos, Corrientes, Córdoba, Tucumán, Santiago del Estero, San Luis, San Juan, Santa Fe, Chaco, La Rioja, La Pampa, Río Negro, Catamarca and Santa Cruz.

Executive. The Judge should participate in cases in which a child in the appropriate age, is alleged to have committed an offense, and to guarantee a due process.

- The articulation of the activity of different governmental agencies and programs whose activities are oriented to children and/or adolescents. These interventions should also promote the strengthening of family and community linkages.
- The conformation of different institutional ambits for the design of public actions at the national, sub-national and local levels, including the participation of NGOs.
- The participation of children in issues affecting them.

2. To ensure the actual and practical implementation of the principles and rights. A transformation oriented at the comprehensive protection of children and adolescents cannot fail to contemplate the relevance of the necessary administrative structure to make feasible its implementation. When referring to the administrative structure we include: the children and adolescent agencies (at the national, provincial and local levels) other agencies of the Executive Power with responsibility in different fields: health, education, assistance, etc. and the Judicial Power.

It is also necessary to consider the budget to implement this institutional and organizational redesign, to train the agents involved as well as the controller agencies. If this is not taken into account, the legislative transformation would imply a rhetorical change, or the acknowledgement of rights without the actual instrumentation permitting the effective enforcement of Human Rights. Legislative measures per se do not guarantee access³⁸ to rights. As Barcesat argues "*Human rights are not only a normative verbal formulation capable by its pronouncement to guarantee the enforcement of a right*".

3. Promote popular participation in the process of legislative transformation and in the development and continuity of a model of comprehensive protection. To consider every person, and in this case children, as subjects of rights recognizing all their rights and duties. This implies the strengthening of democracy. In this effect, it is necessary to contemplate the voice of children and adolescents in the process of legislative adjustment. It is necessary that the State considers the participation of social organizations and movements in the elaboration and application of the law on children and adolescents.⁴⁰

This *building of consent* would imply that the new law is widely embedded, so as to initiate a solid change with respect to the practices and actors involved in children's issues. To ensure the enforcement of Human Rights means doing away with modes and practices that are deeply embedded and legitimated in our country. The only way to guarantee a real change consistent with the respect of human rights implies to persuade and commit the support of the whole community⁴¹. This is not an arbitrary claim, but an obligation we have undertaken as a nation with the international community and with our national community as well, given that this will also mean to advance towards the Rule of Law in our country. In this respect, it is necessary to count with the political will to prioritize this issue in the public agenda and initiate an urgent process of reform.

³⁸ Access understood as the "the social articulation that connects the distribution of resources and natural wealth, and the goods and services obtained from them, with the subject in need" Barcesat in *Fundamento filosóficos y teóricos de los derechos humanos en la democracia*.

³⁹ Barcesat. en "*Fundamento filosóficos y teóricos de los derechos humanos en la democracia*"

⁴⁰ An illustrative case is that of Brazil where the passing of the *Estatuto da Criança e do Adolescente* not only meant an adjustment of domestic legislation (an obligation for all the countries that ratified the Convention), but this process was also legitimated by popular participation. In this respect, it is interesting to emphasize the relevance of social movements in that countries: social movements had the initiative in the preparation and application of the legislation in this question.

⁴¹ As can be observed in the jurisprudence of the National Minors Justice, Judges base their decisions, many times committing palmary violations, in diverse articles of the Convention. It is because we understand that the spirit of the Convention, as that of all international instruments of Human Rights, should not be restricted to a rhetorical change but to the modification of all the practices implying the violation of rights.

The Situation

The institutional origins of the education policy in Argentina date back to 1884 with the passing of Law 1420, which established the creation of a public, lay, compulsory and free education system. Since its initiation, the education policy has been one of the main public strategies aiming at social integration. In effect, by the turn of the century, primary school attendance was almost universal.

In spite of its achievements regarding coverage and the expansion of the years of schooling reached by subsequent generations, the education system exhibits some problematic features concerning the effective respect of the right to education consecrated in the UN-Convention. These factors, as previously mentioned, result from the ongoing process of social exclusion, whose intensification in the recent decades has increased the poverty level, affecting in particular the situation of the age groups below 18 years of age. In effect, the social situation of children and adolescents in Argentina has exhibited, since the beginning of the 90s an unprecedented deterioration, thus revealing the intense social vulnerability of this population.

To organize this presentation, in the first section we will present the basic institutional and organizational characteristics of the Argentine education system. In the second section, this paper will refer to the main problems exhibited by this system: repetition and drop-out, above all among children from the lower income levels. Finally, we will analyze the access to formal education on the part of children with special needs.

I Brief introduction to the Argentine education system

According to the Ley Federal de Educación⁴², the Argentine education system is structured as follows:

- INITIAL EDUCATION : consisting of kindergartens for children between 3 and 5 years of age, and being obligatory for the latter.
- GENERAL BASIC EDUCATION (EGB): nine grades of obligatory education. It is understood as a comprehensive pedagogic unit organized in different cycles.
- SECONDARY SCHOOL / "POLIMODAL" EDUCATION (EDUCACIÓN POLIMODAL): After finishing the EGB. It has a minimum duration of 3 years.
- HIGHER EDUCATION: Professional and academic education. Its duration is set by universities or corresponding agencies.
- SPECIAL EDUCATION: includes initial education, EGB, job pre-training workshop, Job training workshop.

It is necessary to bear in mind that given Argentina is a Federal State, each provincial jurisdiction has to pass its corresponding education law in line with the national norm – The Ley Federal de Educación. At the present moment, there are different institutional designs accounting for the progress made by different provincial governments in the transformation of their education policy.

⁴² Among other elements, the Education Federal Law sanctioned in 1992 states that the education system is obligatory from pre-school to ninth grade (EGB); establishes the application of a basic common curricula for the whole country as a means to ensure its quality, equity and singularity; introduces the question of the evaluation of the quality of education and concerning budgetary issues, establishes a general increase of the education budget to reach at least 6% of the GDP. Concerning this see Lopez, Roitter (2000) Diagnóstico Social, Mimeo, Buenos Aires.

A general overview of the education system in Argentina indicates that 9.4 million pupils and students attend initial, primary, high school and superior non-university studies. This represents almost a fourth of the total population. As a whole, public offer is made up of 46.155 establishments, and employs 598.806 teachers.⁴³

II. Coverage of the education system

The coverage of the education system is almost universal with respect to primary school and is well expanded in relation to secondary school. In the 90s, school enrollment has grown following the previously registered tendency towards the expansion of years of schooling registered in previous decades.

As indicated in a report prepared by the Sistema de Monitoreo y Evaluación de Programas Sociales⁴⁴ the difference in years of schooling are currently smaller among younger age groups from different income levels. In effect, as mentioned by the cited report, when considering the years of schooling of individuals between 20 and 29 years of age and compare it with those of their parents, we note that the total years of schooling of the latter reaches an average of 8.3 years, while the average years of schooling of their children reaches 11.8 years.

When opening the data by level of income, we note a marked difference among the members of the groups located at the extremes of the income distribution spectrum. In the case of the poorest fifth (20%) of the population –measured by income-, the average years of schooling of the parents is 6.1, while it is almost 12.2 among their children. The difference reduces in the case of the children because for the population studied, the average years of schooling of the poorest fifth of the population reaches 9.9 years and 14.2 for the riches fifth.

Besides, the mentioned report showed that 82% of youth between 20 and 29 years in the poorest fifth of the population has overcome their parents with regards to years of schooling. However, only 44% has reached a basic educational threshold established in 12 years of schooling. 70% of youth between 20 and 29 years of age has surpassed their parents with respect to years of schooling and most of them, in concrete 95%, has reached the basic educational threshold. This establishes a difference among social sectors with regards to the continuity of studies, what results vital given that it hinges on the conditions to enter the labor market. In this regard, over the recent years, youth have faced a growing demand for credentials to enter the labor market. This has, in turn, affected the employability of youth from the most vulnerable sectors of the population.

• Coverage by levels

The coverage of the education system regarding primary education and EGB equivalent reaches, for the whole country, 99.4% of the population in the corresponding age cohort. (See Table 1 Annex 2). This is the level that exhibits greater equity in the access to the education system as regards to the socio-economic level of the population, though this is not verified when considering other criteria such as disability and mental disability (On this point see section III below).

Concerning the initial level, the recently established obligatory character of the pre-school system, has resulted in an expansion of the coverage (SIEMPRO, 2001). However, pre-school attendance of children between 3 and 4 years is lower (See table 1 Annex 2). In this respect, a report from the World Bank (2001) shows the scarcity of strategies of Early Childhood Development (ECD) carried out in Argentina, as compared to what happens in other countries in the region. Specifically, day care centers, child care and early childhood centers and services provided by nutrition programs, all of these internationally acknowledged as the most appropriate to improve the quality of life of the population, are limited. As it has become widely accepted,

⁴³ See López, Roitter (2000).

⁴⁴ SIEMPRO, "No es un ranking de calidad sino de desigualdad", Ministerio de Desarrollo Social y Medio Ambiente, Buenos Aires. 2001.

access to this type of services on the first years of life is crucial to reach better social integration and school performance in the subsequent years, given that these services foster cognitive development, and have a positive impact on living conditions of small children facilitating their interaction and the access to a better quality of life.

Concerning secondary education (EGB equivalent, polimodal) coverage reaches 82% of the corresponding cohort (SIEMPRO, 2001). However, there are substantial differences in the access by level of income. While 70% of the corresponding age cohort in the poorest fifth of the population attends secondary school, 97% of the population in the richest fifth attends secondary school (See table 1 in the corresponding Annex).

In this level, school drop-out in the poorest fifth of the population shows the differential conditions of access to the education system. In effect, while four out of every ten youth in the poorest fifth of the population stay outside of the education system without completing secondary school. This proportion reduces to one every twenty students in the case of the richest fifth of the population. (See Table 2 Annex 2). In general, school abandonment takes place around 15 years of age, especially in the passage from the second to the third year of the secondary school, or in the cases in which the new system is in force, at the beginning of the polimodal (SIEMPRO, 2001).

The report prepared by the SIEMPRO (2001) argues: *“chronic inadequacy of income and educational failure are factors that exert pressures on poor households and motivate their decision to send their young members early into the job market, thus interrupting their studies. And access to the job market with low qualifications is a heavy factor in the reproduction of poverty, given that it places individuals in the most precarious and unprotected areas”*.

Finally, concerning university or non-university education, coverage reaches 39% of the population. In this level, the difference by level of income is overwhelming. Only 16% of youth in the poorest fifth of the population has access to this education level, while 73% of youth in the richest fifth of the population attends post-secondary school education (See table 1 Annex 2).

- ***Repetition and “rezago”⁴⁵***

Repetition rates and “rezago” show the problems of performance in the education system and constitute a strong predictor to future drop-outs. Both repetition, “rezago” and drop-out rates are strongly associated to household’s income level. In the cases of repetition rates and “rezago” its concentration in the secondary school level is notorious. In effect, data show greater difficulty in advancing at this level than in primary school or EGB.

In the case of primary school, repetition and “rezago” are more pervasive among the lower income sectors, while at secondary school, although differences are relevant among socio-economic sectors, difficulties are common to students belonging to different income level (See Table 2, Annex 2).

Concerning repetition and “rezago” rates in lower income sectors, there are some special characteristics that demand consideration. In the case of indigenous communities, these rates are high, given that there is no adequate planning and investment to achieve an education policy supporting and respecting their cultures.

In marginalized rural and urban areas there repetition and absenteeism rates are high given that children can not make school compatible to the work they usually do. Girls are specially tied to household chores and to looking after their smaller brothers and sisters, and it is also common that girls abandon their studies owing to early maternity, though there are no norms that forbid school attendance in case of pregnancy. The system exerts a negative selection given that pregnant girls abandon school for the absence of specific support to cope with their situation.

Though the system shows an expansion in terms of coverage, its results or effectiveness can be deemed as inadequate in terms of the quality of education. National quality evaluation strategies show existing problems in the incorporation of knowledge on the part of children and a strong socio –educational

⁴⁵ “Rezago” is understood as the years lost by children due to interruption in their studies –repetition, drop-out-, and is indicated by the presence of over-aged children.

fragmentation. This deficit deepens in the most affected areas where schools are prompted to respond to basic demands, which are the responsibility of other state agencies – i.e health and food services- thus affecting its specific functions.

In the current context, 60% of children between 6-13 years of age live below the poverty line. In spite of this, some of the measures adopted by the government are based on reductions in education spending⁴⁶, which this year has resulted in the closing down of school lunch services, in inadequate infrastructure conditions, and in the lifting of a program granting subsidies to children attending polimodal. As a consequence of this measures, it is estimated that 150.000⁴⁷ students have dropped out form school in the Province of Buenos Aires.

Another aspect is the absence of incentives to children and adolescent's participation and organization within the education system. Secondary school students' organizations were pervasive in the '60 and '70, when, amidst the popularity of the students movement, secondary schools in the large cities had their organizations. Later, the military dictatorship banned them, detaining, killing and disappearing many of their leaders.

With the return to democracy, a new period of student participation opened up, and the schools with stronger traditions in student organization set up their centers. But this phenomena did not expand to a wider range of schools, given that both education officials as many school directors and professors did not facilitate the opening of spaces for students participation at schools, thus denying the respect of political rights put forth by the Convention and the National Constitution. These rights are found in a number of novel principles stipulated by the Convention, basically in Article 12 that states the right of all children of expressing their own views in all matters affecting them and of being heard and taken into account, thus facilitating their progressive autonomy through their participation in decision making processes affecting them.

In the cases of children attending primary school, there is no tradition nor rules promoting or legitimating the creation of pupils' centers as channels for the expression of their views and decisions. With respect to this, some schools are adopting participatory projects fostered by NGOs. When asked, children demand their right to express their views and be heard. ⁴⁸ (Annex 2 Part III gathers the opinions of children and adolescents).

III. The education of children with special need, with reference to the Province of Buenos Aires

As previously mentioned, since the turn of the XIX century primary education has been compulsory and free in Argentina. However, when considering the situation of children with special needs, access to formal education has been restricted. To analyze this in more detail, this paper will focus in the case of the Province of Buenos Aires, which is illustrative given that it is the largest educational district in Latin America: it has 4.200.000 students, 250.000 teachers and professors, and 17 000 schools. A total number of 49.000 children attend both public and private schools within the Special Education regime (Regimen de Educación Especial).

In the Province of Buenos Aires schools regulated by Law 5650 introduced the question of children with disabilities in 1949, ruling access through regulations set by the technical agency. Schools were then classified according to the population they were oriented to, and following medical criteria, which do not imply a comprehensive approach to children's needs. Nowadays, special education, which was considered to be progressive in its inception, violates the right to education in two modes:

- Through the exclusion from formal education.
- Through education that segregates disable children.

⁴⁶ Most of the provinces are overwhelmed by the crisis. The province of Buenos Aires has made a 600 million pesos reduction of the education budget.

⁴⁷ Figure published by SUTEDA (Teachers Union in the Province of Buenos Aires) and based on courses of the polimodal closed because of students' drop outs. A report from UNICEF shows that school drop out has reached 30% in 2001.

⁴⁸ Experiences gathered between 1996 and 1999 by Asociación para los Derechos de la Infancia (ADI) in the following projects: Municipios Escolares y Sondeos de Opinión de Niños, Niñas y Adolescentes.

Exclusion from formal education

In spite of the fact that the regulations of the General Board of Schools (Dirección General de Escuelas) of the Province of Buenos Aires establish the existence of schools for children with severe mental disability and for children with severe disorder of the personality, these children are generally excluded from all form of education. To this population, we have to add the children who suffer from profound intellectual disabilities and multiple disabilities. The idea that there are children who cannot be educated, a conception that has been discarded more than three decades ago in other countries, underlies these policy decisions.

This type of decisions, taken by multi-disciplinary teams working at special schools, are based on the regulations set by the *Rama Especial de la Dirección General de Escuelas*, which establish admission, permanence and dismissal conditions. These are basically requirements children have to fulfill, without considering what is the role of this type of educational service or what is expected from teachers in these schools. Thus, children can be dismissed for not reaching the objectives set by the school. It is the child who has to fit the school, and not the school who has to adjust its environment to meet the needs of children with disabilities.

Evaluation processes carried out to determine children admission to schools can take up to one month or even one year. Throughout this process the child is subjected to weekly tests to define his/her intellectual ability or psycho-evolutive development. These tests and evaluations are carried out in environments which are unknown to children, without the participation of their parents and in contradiction with relevant research findings in this field over the last 30 years.

Children with disabilities do not enjoy their right to formal education, except for those considered to suffer from low mental disability. Available data on the number of children who attend school is not reliable, given that it is considered that a child attends school if he/she attends at least one hour twice a week (this type of educational service is widespread among children with disorders of the personality and those with multiple disability). Apart from violating the right to education, these prolonged situations bring about family deterioration, which is compounded among families with economic difficulties. This, in turn, results, in many cases, in school drop out.

Consequently, some children with complex needs attend day care centers, which are focused in providing social assistance, not education, and others remain at home without enjoying any sort of services. In many cases, due to their economic situation and to lack of support, families are prompted to institutionalize their children. Exceptionally, some families solve the education and stimulation of their children by resorting to private and costly services.

Children with disabilities who are separated from their families because they do not have the adequate resources to assist them, or due to the family's decision are institutionalized in organizations depending from the health authority. These institutions can be either private-nonprofit or for-profit- or state run and are financed through public funds or by the obras sociales-health insurance schemes- particularly in the case of the private ones. In institutions, denominated hospitals or homes, children live their lives separated from the rest of society.

In Argentina, there are no programs allowing adolescents and adults with disabilities to live their lives in the community. Besides, there are no programs based on innovative instruments such as family care, or other forms of family support such as "respite care" or home care. The absence of support oriented at families leaves the ones with economic difficulties, or those with children with disabilities that demand greater care, in poor conditions: they cannot decide freely if they want to keep their children living at home with them.

Pilot tests oriented at educating children with multiple disabilities have been carried out, but, given to the absence of training programs, monitoring and evaluation of the initiatives, they have been considered unsuccessful. It is clear that the absence of teachers and educators training programs, together with the policy of exclusion implemented by the provincial state results in the fact that for those children who enter the system, their treatment produces secondary motives for disabilities.

The policy of marginalized education

There is no policy of inclusive education, and no plans to design one. In an impoverished country like Argentina, with growing ranks of marginalized populations, inclusive education becomes a worthy resource to provide high quality education to children. Even if we consider the economic aspect, the possibility of achieving an education policy for all children is null if we preserve discriminatory education strategies. Disabled children have to be included. There are no national or state level laws aiming to achieve inclusive education (an exception is the Province of Chaco). Only children with low mental disability and with physical disability are included in ordinary schools and this, in spite of the absence of support from competent agencies.

New teachers training programs do not include courses or content related to the education of excluded groups and do not address the question of inclusive education. The situation previously described for the Province of Buenos Aires is extensible to the whole country. (except for the Province of Chaco), and though we can not present a more comprehensive and detailed overview, we are familiar with the demands of parents and social organizations operating in different provinces. Annex 2 Part II analyses the legislation on the education of people with special needs.

Recommendations and future challenges

In spite of the expansion of school enrollment, the historical achievements made by Argentina in the field of education are at stake, given that the right to education, understood as quality and equitable education, is not accessible to all the children and adolescents in our country. The profound socio- educational fragmentation affects children in situation of extreme poverty. To advance in the reversal of this trend, we propose the following recommendations:

- To increase public spending on education so that teachers get fair wages for their work, and adequate training and education programs.
- To expand the coverage of subsidies and scholarships to all the children in situation of poverty.
- To ensure the adequate facilities, electricity, running water and heating in all school buildings.
- To develop specific measures oriented towards less favored areas in order to reverse unequal access to education reinforced by neoliberal policies implemented, basically, since the last decade.
- To expand the coverage of the initial level and ensure total coverage of pre-school education.
- To include within teachers' training programs, courses on the practice and teaching of Human Rights in order to transform educational practices and advance towards the full respect of children's rights at school, with emphasis on non discrimination on the basis of gender, ethnic origin, social class, disability or sexual orientation.
- To ensure the realization of children's rights at school, in particular the novel rights such as: the right to express their views and to participate, promoting, to that end, the development of students' centers and or school governments.
- To implement sexual education programs from a perspective of gender, ensuring the right to information on the part of children and adolescents addressing questions linked to HIV/AIDS and early maternity.
- To design and implement programs to support and include adolescent mothers in order to prevent their exclusion from school.
- To design and implement training programs oriented to education agents and to society in general in order to affirm in theory and practice that disability is a question of human rights.
- To design and implement training programs oriented to education agents, and to society in general, in order to promote equal rights for children with disabilities, stressing the right to education, inclusive education and social integration.

- Support parents' organizations, organizations created by people with disabilities and those devoted to this issue so as to strengthen their capacity to defend the rights of persons with disabilities.

The Right to Health

The Situation

Children and adolescents have to be provided with comprehensive health services and with adequate information on preventive health care and family planning education, all of which should respond to their needs and demands. Besides, these services have to preserve the confidentiality, intimacy and privacy of the individuals, thus facilitating access on the part of children and adolescents.

In particular, adolescents and youth are the most vulnerable age groups to become infected with HIV/AIDS. This phenomenon could be mitigated through access to information on preventive care, as well as with adequate materials for protection, which in the majority of the cases are not available to this population. Preventive care and education should be transmitted at school and other institutional ambits thus ensuring access to reliable, objective and useful information on HIV/AIDS and other sexually transmitted infections. In effect, children and adolescents should be provided with the adequate environment to learn family planning methods and, therefore, to make more informed decisions.

In Argentina, the right to health and to preventive care is not enjoyed by the majority of the population under 18 years. Among others, the environment marked by poverty and extreme poverty in which more than 50% of this age group live, impacts negatively on all their rights, affecting also their access to basic medical care and information.

In this section, this paper introduces an overview to health coverage in general and related to children and adolescents in particular. In this regard, it refers to infant mortality rates, the coverage of medical services, the population infected with AIDS, and early maternity and adolescent's pregnancy rates. Finally this paper presents the challenges to be faced in the respect of the right to health in Argentina, and enumerates a series of recommendations oriented at improving the situation previously described.

Infant and child morbidity- mortality

In the recent years, the number of births has remained more or less stable in Argentina with approximately 670.000 births a year. However, the birth rate has declined in 1988 (21.6%) and 1999 (18.8%), with marked variations among jurisdictions. The average children per women is currently 2,7. 98,2% of births take place in institutions and, within this category, 63% occurs within public sector institutions⁴⁹.

Diseases affecting infants are, also, the main causes of death among this age group: low weight, premature birth, asphyxia, and malformations, among others. Among children between one month and one year of age, prevalent diseases are: respiratory infections, diarrhea, nutrition problems, sepsis and meningitis. These pathologies account for 30% of hospital inpatient assistance provided to this segment of the population. Besides mortality caused by accidents affecting infants, most of which take place in the child's home, are growing.

In 2000, infant mortality rate was 16.6 per 1000 live births. The provinces with higher infant mortality rates are geographically located in the northwest and northeast of the country, while central and southern regions exhibit the lowest infant mortality rates⁵⁰ (See annex 5 for more information). The main five causes for infant mortality are: pre-natal affections, congenital anomalies, accidents, respiratory infections and infant's sudden death syndrome. 7% of infants are born with low weight, and this contributes to infant mortality rates in 49 %. There is a close relationship between infant mortality rates and the number of births per women: the former doubles among women who have 6 or more children. Infants born to adolescent mothers register a

⁴⁹ Salud materno infantil-juvenil en cifras 2001 – SAP (Sociedad Argentina de Pediatría)

⁵⁰ The lowest infant mortality rates are found in the provinces of Tierra del Fuego, the City of Buenos Aires, la Pampa and Neuquén

mortality rate that doubles the national average. The relationship between the education level reached by mothers, and infant mortality rate is also relevant, given that among mothers who have not finished primary school, infant mortality is four times than the figure registered among mothers who have completed secondary school⁵¹.

AIDS

Children and adolescents between 13 and 20 years of age are the most vulnerable age group at risk of or infected with AIDS. 50% of new infections are in children and young people between the ages of 10 and 24. Women are particularly vulnerable; they are not only increasingly becoming infected, but they are also contracting the epidemic at younger ages. In this context, children and adolescents undergo a twofold discrimination: for being young and for living with aids, a situation that is even more acute among young women and adolescents given that the transmission of HIV/AIDS is associated to sexual activities considered "promiscuous" and to prostitution. Since the first cases of HIV/ AIDS were identified in 1982, the incidence of aids constantly grew, going from 720 cases in 1991 to a total 18.824 people infected in the year 2000⁵². The epidemic is registered in all jurisdictions, national and sub-national, and the largest number of cases are concentrated in the City of Buenos Aires and in the Provinces of Buenos Aires, Córdoba and Santa Fe, which exhibit, all together 90% of the total cases.

Total number of people infected with AIDS by age groups and sex (2000).

Ages	Men		Women		Total
		%		%	
< 13 years	651	4,4	646	1,6	1297
13 -24 years	1788	12,2	711	17,4	2499

Since 1991 to the present, the increase in the cases of women infected with the disease has grown rapidly: it jumped from 20 men per women infected in 1988 to 3 men per women in 2000. In 1999 the number of deaths caused by AIDS were: 3 in the age group from 10 to 14 years, 13 in the age groups of 15 to 19 and 100 among people between 20 and 24 years of age. Other diseases of sexual transmission, such as syphilis and blennorrhagia have remained stable throughout the period, though the incidence of the former is much lower. The scope of under-counting hinders the possibility of outlining an actual picture of these problems affecting the whole population and adolescents in particular. Data available for 1996, indicate 1.339 cases of primary and secondary syphilis, and 3.246 cases syphilis without precise specification of its particular brand, and 6.620 cases of blennorrhagia.⁵³

Health Services

The information available of the actual access to health services on the part of children and adolescents is limited by the way in which these data are obtained. Data published by the INDEC are not disaggregated by age groups, thus not permitting the identification of adolescents. The table presented below shows that 62% of the population has private or social security health insurance, while 37,6% of the population has access to the services provided by public hospitals, what means that their full access to health care is not completely ensured.

⁵¹ La salud de las madres, los niños y las niñas: una apuesta por la vida. Ministerio de Salud. Secretaria de Atención Sanitaria. Unidad Coordinadora Ejecutora de Programas Materno Infantiles y Nutricionales. 2001.

⁵² Ministerio de Salud. Informe LUSIDA, Proyecto de Control del SIDA y ETS. *El SIDA en la Argentina. La situación entre 1982 y 2000, la transmisión madre-hijo.*

⁵³ OPS/OMS: *La Salud en las Américas*, Vol. II, pág. 34; Washington DC, 1998.

Type of Health coverage by age. Total Population

Type of health coverage	Total	Age groups				
		0 - 4	5 - 14	15 - 24	25 - 64	65 y más
Total	100,0	100,0	100,0	100,0	100,0	100,0
UIT private and social security	62,4	49,3	56,5	56,8	64,2	90,2
Only with public hospital coverage	37,6	50,7	43,5	43,2	35,8	9,8
Total	100,0	100,0	100,0	100,0	100,0	100,0
Obra Social	50,3	40,2	47,1	45,6	50,0	77,4
Mutual Aid or pre-paid insurance service	7,9	5,6	6,1	8,4	9,7	4,8
Obra Social and pre-paid insurance	4,2	3,6	3,3	2,8	4,5	8,0
Only Emergency	1,3	1,2	1,3	1,2	1,6	0,4 *
Only with Public Hospital Coverage	36,3	49,5	42,2	42,0	34,2	9,5

Source: Encuesta de Desarrollo Social, MDS/INDEC, 2000⁵⁴

28.7% of children in the lowest level of income has coverage of public hospitals. Apart from the quality of the attention received, the costs involved in medical assistance have to be paid by the families who do not have enough resources to face the purchase of medicine and other associated costs, such as travel to hospitals.

Early pregnancy and maternity

Total Adolescents' fertility rate (girls and adolescents between 10 and 18 years of age) dropped from 38.7 per 1000 cases in 1980, to 31.3 per 1000 in 1993. It is important to bear in mind that fertility in women under 20 years is classified in: early fertility (10 to 14 years of age) and late fertility (15 to 19 years). Data published in 1998 indicate that in Argentina, late fertility has dropped, while early fertility has remained stable⁵⁵.

In urban areas, adolescent mothers constitute 10% of the adolescents between 15 and 18 years.⁵⁶ Early pregnancy and maternity mainly affect girls and adolescents with lower levels of income (Díaz Muñoz et al. 1996). And reveal different situations of life: mother-girls, single mothers (around 40 %), mothers who get married or start a family at an early age and have their children. Regarding the fathers of these children, two basic situations are noted: partners of adolescent mothers between 18 and 19 years are usually men between

⁵⁴ It is necessary to take into account that part of the population that enjoys the coverage provided by the obras sociales (workers medical schemes) undergo problems of under provision given the crisis of the system. In effect, many people who have medical services provided through this system end up attending public hospitals and go through serious complications to obtain discounts on medicine. Apart from this, the current economic crisis, in particular its intensification over the last two years has resulted in the increase of unemployment, and in the reduction of the population covered by the system of obras sociales, thus reinforcing demand for services provided by public hospitals, which, in turn, undergo serious budgetary crisis in a context of "sanitary emergency".

⁵⁵ Gogna, M. Et al. "Los retos de la salud reproductiva: derechos humanos y equidad social". La Argentina que viene. Análisis y propuestas para una sociedad en transición. Argentina, 1998.

⁵⁶ SIEMPRO (Sistema de información, Monitoreo y Evaluación de Programas Sociales), Secretaria de Tercera Edad y Acción Social, Ministerio de Desarrollo Social y Medio Ambiente. Serie Encuesta de Desarrollo Social y Condiciones de Vida. N° 2. Condiciones de Vida en dos grupos de riesgo. Documento 1: Madres Adolescentes, April 2001.

20 and 24 (one third of the cases) or between 25 and 29 years (15 % of the cases); girls (9 to 13 years) have born children whose fathers are at least 10 years older than they are (80 % of the cases), or who are at least 20 years older (20 % of the cases)"⁵⁷.

Concerning the use of contraceptive methods, the Household's Permanent Survey (EPH) conducted only on female population in 1994, reports that 50 % of women who are sexually active use those methods. There are relevant differences in the proportion of women who use contraceptives by age group: for women between 15-18 the proportion oscillates around 31 % and 45 %, while in the rest of the above mentioned population this proportion varies around 53 % and 68 %. A unique situation is that of women in the City of Buenos Aires, who report a prevalence in the use of contraceptive methods that reaches 86 % of the population, that is, above the average prevalence levels for adult women in the areas covered by the survey. Concerning the subgroup of adolescent women, the following prevalence with respect to contraceptive methods employed, was reported: pill (52 %), condom (34 %), "ritmo" (20 %), Intrauterine devise (3 %), diaphragm (0,3 %) and other methods (4 %).⁵⁸

15,4 % of births registered in 1997 were among mothers between 15 and 18 years of age, thus implying that 104.000 adolescents bear children every year. Regional differences are relevant. In the province of Chaco, the proportion of adolescent maternity reaches 24,3 % of births, while in the City of Buenos Aires it remains below 6,5 %. A critical issue associated to this is the reiteration of early maternity, what places risks on the health of mothers and children. In effect, more than 10 % of mothers deaths occur among women between 10 and 19 years of age⁵⁹.

Concerning infant mortality rates among mothers under 20 years, it reached almost 20%. Overall, infant mortality rates for are high among mothers under 15 years and between 15 and 18 years of age. Thus, risks brought about by early maternity are associated to the mother's health as well as to the child's health, particularly when compared to the situation of older mothers.

The causes of adolescent mothers mortality has not varied much over the recent years.⁶⁰ Abortion was the first cause up to 1987, and later it accounted for 30% of the deaths, after 1990 it was replaced by "direct obstetric reasons " (among them those causes that can be prevented via adequate pre-natal care). In 1999, the proportion of adolescent mortality for obstetric reasons reached 57,6%, followed by abortion, accounting for 35,3% of the deaths. The provinces that show the most dramatic figures of mother mortality are Tierra del Fuego, Formosa, Chaco, Jujuy, San Juan and Neuquén.

Recommendations and future challenges

From what has been previously stated, we will present a series of recommendations and future challenges aiming at improving the effective respect of the right to have access to health on the part of children and adolescents. These proposals have to be accompanied by greater governmental concern and intervention to ensure access to health on the part of all the population in collaboration with other social policy areas: education, employment, social development. Specifically we recommend to:

- Ensure access to comprehensive health services for children, adolescents focused on primary health care and on preventive strategies including public information campaigns.
- Increase public spending on health provision and make budgets and their implementation more transparent so as to ensure public monitoring and more responsible citizen and governmental participation in the definition of budgetary allocation.

⁵⁷ Gogna, M. y otros. "Los retos de la salud reproductiva: derechos humanos y equidad social". La Argentina que viene. Análisis y propuestas para una sociedad en transición. Argentina, 1998.

⁵⁸ Gogna, M. Op. cit

⁵⁹ Gogna, M. Op. cit

⁶⁰ Díaz Muñoz, A. et al: *Comportamiento reproductivo de las adolescentes*. INDEC. Buenos Aires, en: Infancia y Condiciones de vida, Chapter 9, 1996.

- Increase the circulation of information on health services and on the actions of different service providers, hospitals and obras sociales, in order to promote a more informed citizenship claiming for their rights.
- Facilitate access to information on the part of children and adolescents with respect to health care and prevention of sexual transmission diseases and HIV/AIDS.
- Ensure access to sexual education both at school as through other institutions to ensure children and adolescents' development as well as adequate information on family planning.
- Implement prevention campaigns focused on raising public awareness on the causes of infant and child mortality, as it is the case of domestic accidents, as well as the adequate information to ensure full development.

This chapter introduces three basic modes of institutional violence against children and adolescents. In the first section it delves into the phenomenon of “happy/easy trigger” that refers to the violent operation of Security forces. The second section analyzes the situation of children and adolescents deprived of their liberty in police stations, focusing on the situation of the Province of Buenos Aires. Finally, this chapter refers to the institutionalization of children in assistance and penal institutions.

Part I. “Easy trigger”

The Situation

In Argentina, specially in the major cities, the violent action of police forces has intensified. Specifically, public opinion has come to denominate “easy trigger” the situations, occurring mainly in large cities and their surrounding areas, in which police forces shoot to death when there’s ‘suspicious’ situation. This is considered to be an illegal mechanism of social control employed by police forces and targeted to specific groups of the population. This practice is one of the strategies applied by police forces through the use of illegal violence and is contrary to the regulations framing the operation of security forces. These include: arbitrary detentions, maltreatment and torture, which in some cases provoke the victims death. The target of this practices is predominantly youth and the poor. Deaths, many times street executions, are protected by widespread impunity. Police forces resort to hiding and fabricating evidence, to fabricating the scene of the crime and testimonies, all of which form part of the pattern of behavior of the forces, and violate national laws as well as basic constitutional rights. Besides, police forces not only perpetrate actions defined as “crime elimination policies” (or “law and order strategies”) but, also, in some cases, participate themselves in illegal circuits and criminal operations obtaining material benefits.

According to a report produced by the *Coordinadora de Lucha contra la Represión Policial e Institucional (Correpi)*⁶¹, between 1983 and 1998, the number of victims of easy trigger reached 470 people⁶². That is, an average of **more than 31 victims a year**. Even though the figures are dramatic, they are not exhaustive. In effect, the actual number of victims is considered to be higher given that many cases are not denounced or have not reached public opinion, and thus have not been registered as such.

The graph presented below indicates that half of the cases registered - 47 %- corresponds to the Province of Buenos Aires. This is the largest province in the country with respect to its contribution to the GDP, population, electoral weight, etc.. It is followed by the Province of Santa Fe showing 11 % of the cases, and the City of Buenos Aires, Córdoba and Mendoza, with 9 %, 7 % and 6 % respectively. All these provinces are the largest in the country, and exhibit the largest urban centers. This would indicate the urban character of the phenomena we are analyzing. Besides, it is important to consider that in the recent years urban poverty has intensified in these provinces.

As mentioned above, the Argentine government has responded to the increasing poverty levels with a policy of “oidos sordos” (not listening to claims), disregarding popular demands and the claims of social organizations concerned with this dramatic scenario. While popular demands remained unsatisfied, the government initiated a struggle against urban insecurity resorting to a discourse of “toughness” “*mano dura*” in crime prevention strategies. This is clearly the case of the former governor of the Province of Buenos Aires Dr. Carlos Ruckauf⁶³ who appealed to a discourse putting forward: “bullets against criminals” (“*bala para los*

⁶¹ Organismo Argentino de DDHH, creado con el fin de responder a la creciente violencia policial ejercida principalmente sobre los sectores más vulnerables de la población.

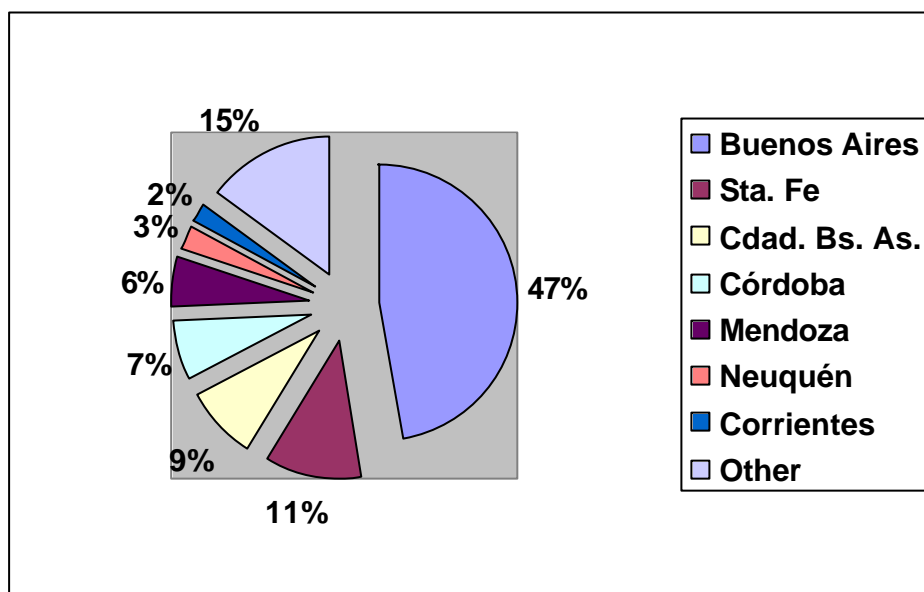
⁶² **Debemos aclarar que datos de último momento confirman que dicha cifra asciende a 1000.** Esa situación será desarrollada en un próximo anexo.

⁶³ Actual Ministro de Relaciones Exteriores de la Argentina.

delincuentes"). Underlying the discourse of the political authority of the largest sub national government, is an ideology which following Loïc Wacquant is oriented at "criminalizing misery".⁶⁴ This criterion associates the symbolic universes of poverty and crime, and identifies poor people, unemployed workers, beggars and poor children as criminals. These are the main victims of easy trigger practices.

Table I. Distribution of "Easy Trigger" cases by provinces (1983-1998)

Sources: produced with information of the CORREPI 1983/1998



Recent years. The case of the Province of Buenos Aires

The effects of the discourse and practices of provincial state authorities become apparent in the events occurred in 2000 and 2001. According to the number of denounces and to the public visibility of certain cases, 61 cases of easy trigger have been registered in those years, out of which 24 occurred in the Province of Buenos Aires. Besides, in 25 cases victims were under 18 years, that is, 41 % of the victims were under 18 years of age; and 96 % of these victims were killed in the Province of Buenos Aires.⁶⁵

To illustrate this situation, we will analyze an area of the so called *zona norte* (*northern area*) of the Province of Buenos Aires. In this location, victims constitute an heterogeneous group. However, we can draw a preliminary classification: those caught "in the middle" of gunfire because they were "in the wrong place at the wrong time", and those "suspected" of being involved in criminal activity and were executed by police forces. The majority of the cases fall into the latter category. Some of the victims were killed for refusing to associate with police forces in criminal activities or for refusing to give a share of benefits obtained through illegal activities and crime to the police forces. This reveals the existence of a system of connivance between the police and the world of crime, and discloses the application of illegal procedure and repression at the time that it shows the incapacity of the state to restructure its repressive institutions and their concurrent effects on crime.

⁶⁴ Wacquant Loïc, "Las cárceles de la miseria", Ed. Manantial, Bs. As. 2000.

⁶⁵ Prepared by the Observatorio Social del Niño, Niña y Adolescente of the APDH from data produced by CORREPI, news paper clippings.

The above mentioned is reinforced by the fact that on October 24, 2001 the *Resolution 3012* of the Supreme Court of Justice of the Province of Buenos Aires acknowledged severe violations of human rights against children and adolescents perpetrated in that territory. The document issued by the Supreme Court stated that sixty children and adolescents who were under the “protection of the Patronato Estatal” (under state tutelage) were killed in “confrontation with the security forces”. In some of these cases complaints had been previously filled against police officers for threats and mistreatment and policemen charged with these denounces belonged to the police stations under whose jurisdiction alleged “confrontations” later took place. The Supreme Court also referred to violence in police stations and to the detention of children and youth in places not apt for that.

The increasing number of children and adolescents alleged to have committed offenses is alarming, although it lags behind the increase in the number of adults who have committed offenses. But, what is more alarming is the number of children victim of crime (See chart 2 “Children victim of crime” in Annex 3).

Recommendations and challenges

From what has been previously mentioned, we will present a series of recommendations to prevent violent use of force on the part of police officers and the violation of children’s rights. Specifically, we recommend the following measures:

- To respond to social demands for security within the parameters established by the rule of law and the respect of human rights.
- To strengthen the role of municipal governments in the design of social integration strategies including the participation of civil society organizations.
- To modify the structure of police forces (federal and provincial forces) through the decentralization of the force and the incorporation of civilian commands.
- To include human rights courses, delivered by higher education institutions, in the training of security agents.
- To increase judicial and administrative control in order to break the impunity chain that underpins the continuity of this situation.

To achieve this, political authorities should exhibit the will to modify the current practices and dismantle the repressive architecture that underpins them.

Part II. Children and Youth deprived of their liberty in police stations.

Background

We’ll explore the situation of children deprived of their liberty and will refer to the case of the Province of Buenos Aires. The decision to choose this jurisdiction is related to its economic and demographic relevance, and also to the lack of information concerning children’s deprivation of their liberty in other provinces. Besides, the Province of Buenos Aires shows alarming figures on this problematic.

It is well known that the conditions of detention at police stations, with respect to their mission, the personnel, material resources, organizational and functional structure are not appropriate for the accommodation of children and youth. Besides, infrastructure conditions, overcrowding and the lodging of children and adults in the same ambits constitute violations of children’s rights.

Depriving children and adolescents of their liberty in police stations stands at the margins of what is considered to be an illegal decision. This illegality results from the violation of national norms and from the failure to respect the Convention on the Rights of the Child ratified by the Argentine government.

Norms regulating children and juvenile deprivation of liberty in police stations.

Both the National Constitution -and the corresponding provincial constitutions- as well as International Treaties incorporated to the National Constitution establish that places of detention have to guarantee the security of the detained and are not to inflict punishments. On the contrary, places of detention are meant to respect human dignity.

In view of this, accommodation conditions of youth have to be urgently adjusted to existing legislation. To this end, the following principles have to be considered: children and adolescents have to be separated from adults, and detention conditions have to be adjusted to the judicial situation of children. Thus, untried children have to be separate from convicted children. Besides, girls cannot be detained at police stations. On the contrary, they have to be placed in appropriate places, assisted by police women.

The case of the Province of Buenos Aires

In the light of the situation of children and adolescents detained in police stations, the Ministry of Security and the Provincial Council for Minors (Consejo Provincial del Menor) decided to create in 1984 and 1985 temporary police stations for minors in some Judicial districts of the province. However, Resolution 102.369/97 of the Police Force, which enjoyed the support of the Provincial Direction of Human Rights, stipulated that persons under 18 years could not be deprived of their liberty in police stations, with the exception of those cases in which judicial authority ordered such a measure.

Thus, the permanence of boys and girls in police stations is only acceptable as an exceptional measure, that is, only in cases in which the competent judicial authority ordered so due to lack of appropriate placement. In spite of this, the number of children held in police stations is high, and the conditions in which they live are inhuman.

The fact that this situation is endorsed by judicial authorities, openly violating existing norms, is not irrelevant. Current projects oriented at modifying the existing law on children assistance in this province reinforce the illegal nature of this practice, and stipulate the responsibility of administrative as well as judicial authorities in the cases in which children and adolescents are deprived of their liberty in inappropriate facilities. However, a legislative reform is not necessary to put an end to children's detentions in police stations. This practice is already forbidden by existing rules.

The Supreme Court of the Province of Buenos Aires has, on several occasions, condemned the violation of children's rights perpetuated by police forces. Among the presentations made by the Supreme Court it is worth mentioning the Resolution 2768/97, motivated by the severe events occurred in 1995/7, which included the killing of adolescents in police stations and mistreatment and abuses denounced by children and adolescents placed in State institutions. In this regard, the first provision of the *Resolution* reads : *"It requests the Executive Power to adopt the necessary measures in order to prevent the inappropriate placement of children alleged to have committed an offense in police stations, and to that end, demand the Consejo Provincial del Menor to request their placement in institutions stipulated by the law, making sure that those institutions meet all the infrastructure and contention requirements needed for rehabilitation and treatment..."*

This Resolution emphasized that placement of children in police stations entailed the violation of constitutional norms and international treaties referring to the doctrine of comprehensive protection.

Detention in police stations.

1. Children deprived of their liberty for allegedly committing an offense

This is generally the case of children under trial, however, there are also children detained for other reasons such as begging, being in the streets, etc. This is reflected in the report issued by the Ministry of

Security of the province of Buenos Aires in August 2001, which was submitted to 18 police departmental agencies in that jurisdiction in order to detain children and adolescents “abandoned in the streets or begging”.

It is interesting to compare this situation with the case of the City of Buenos Aires in which the deprivation of liberty is also related to the so called “contravenciones”, whose infringement does not constitute a crime, and if a person under 18 commits a “contravención” he/she cannot be detained. The law on the protection of children and adolescents in this district (Law 114) establishes the creation of a circuit of protection including the permanent assistance of lawyers and a temporary assistance center ‘*Centro de atención transitoria*’ in which children can stay temporarily so as to avoid their permanence at police stations. However, in that same district, many cases of children poverty and of infringing “contravenciones”, such as begging, end up in police stations activating the subsequent intervention of the judicial authority.

2. Search of Criminal Records

In the recent years, both at the national level as well as in the Province of Buenos Aires, the search of criminal records, a norm that allows police staff to arrest people in order to identify them without the corresponding warrant, was modified. It was modified and not abolished, although in both jurisdictions the use of this power has become a source of discredit to police activity, given that severe and publicly known violations of human rights were originated in the use of this power.

However, arrests based on the search of records or the arrest for search of identify, in spite of the flagrant violation of safeguards they entail, remain in force.⁶⁶ The division of powers and constitutional safeguards are not respected through the application of this norm, and the police becomes the agent in charge of determining the circumstances under which the norm and the power to request identification documents can be applied. In spite of this, it should not be the police force the one in charge of creating the instruments to be used, but the State through its different agencies and powers, the one in charge of designing the tools utilized by the police forces to pursue their task. Today, the police forces are still accumulating functions such as the capacity to arrest a person for refusing to identify, or in the case in which the documentation presented is supposed to be false, or to drive the person into the police station and held him or her for an undetermined period of time.⁶⁷ If there is no crime or “contravención”, nor attempt to commit it, the circumstances that would reasonably justify an arrest are thus reduced to the “state of suspicion”. Police intervention is then open to the discretion of the police agent. The “state of suspicion” violates the principle of innocence consecrated in article 18° of the National Constitution as well as Human Rights treaties incorporated to the magna carta.

In the case of youth, some clarification is necessary. We know that they are one of the sectors of the population most negatively affected by these types of practices. They are a predominant target of police violence and it is common to find legal processes initiated in the civil courts that request detentions. In this line of argument, a child can be arrested or deprived of liberty because of running away from home or from an institution. Although the case initiated in a civil court, it ends up close to the penal or police sphere, given the numerous powers enjoyed by civil courts as well as police forces.

Alarming figures

The Superintendencia de Coordinación General del Ministerio de Seguridad of the Province of Buenos Aires has provided the following data corresponding to the year 2001, which reveals the weight of the population placed in police stations, as well as the number of children placed in institutions for penal and assistance reasons:

⁶⁶ Article 9 of the Organic Law of the Police in the province of Buenos Aires states that: “**police forces** have the power to limit the freedom of individuals... whenever it is necessary to identify them in circumstances that reasonably justify such measures and y individuals deny to do so, or do not hold the appropriate documentation stating their identity.”

⁶⁷ We consider that the first condition is subjective because of its imprecision (reasonable circumstances) which will have to be defined by the police officer at the time of detention. A situation that will not allow for contradictory evidence or judicial disprove. The second requirement demanded by the norm to proceed to detention is of objective nature, it has to be proved as a precise factual situation, consisting in the fact that the person who was singled out by the police officer, cannot give proof of his/her identity or denies to do it.

Number of children institutionalized up to 31/07/01	8.255
Number of children held in police stations	100 a day (average) ⁶⁸

Source: Ministry of Security of the Province of Buenos Aires.

Part III. Children and adolescents deprived of their liberty in Penal and Assistance institutions

Background

In this section we will analyze the cruel consequences that rules in forth can generate, particularly those that allow the Judicial Power to intervene ignoring procedural safeguards, and also the incapacity of the Executive to generate public resources compatible with basic human rights principles.

We will present, in the first place, the circuit of institutionalization of the National Justice, whose jurisdiction is circumscribed to the City of Buenos Aires. Secondly, we will present the data available on the institutionalization of children and adolescents.

The same thing with different names

In the first place it is necessary to differentiate two types of institutions: penal institutions (Institutos Penales) and non-penal institutions (Institutos Asistenciales) where children in the care of the state are placed. The latter are inhabited by children who have suffered from abuse, mistreatment and/or neglect or whose families experience terrible effects of extreme poverty. Placement in non-penal institutions is decided by the judicial authority⁶⁹, though, in some cases, children are placed there by the administrative authority (National or corresponding Provincial Council of Minors) without the consent of the family, or least of all, the child.

Penal institutions constitute the most paradigmatic case of violation of constitutional safeguards. Decree -Law 22.278, passed during the last military dictatorship, allows the judge *"to decide temporarily the situation of the minor, prove the existence of an offense and get in contact with the minor, his/her parents, tutors or guardians, to require reports and evaluations oriented to examine the personality, family and environmental conditions"* (Art. 1 Decree 22.278). The same article establishes that *"in case it was necessary the minor should be placed in the proper environment for the adequate time in order to examine him/her"*. Arbitrary and unconstitutional powers enjoyed by the Judge emerge from this provision. In short, the Judge can order the detention of a child for an undetermined period of time without having to prove the commitment of an offense through due process. The same law permits the Judge to decide on a child or adolescent he/she considers to be suffering from "abandonment, neglect, moral or material risk, or who exhibits problems of behavior". Needless to say all these features are in practice attributed to poor children.

In those cases in which the Judge decides to celebrate a trial and a sentence is pronounced, it is required that the child had already spent a year of "tutelary treatment", that is, the year in which the child remained deprived of his/her liberty is considered "treatment" so as to put into effect the subsequent sentence. The sentence, is once again subjected to the discretion of the Judicial authority. The same norm, in article 4, stipulates that if according to *"the child's records, the result of the treatment and the opinion of the Judge, it was considered necessary to apply a sanction, the judge will then decide so"*.

⁶⁸ This figure is undercounted given that a large portion of the children entering police stations are not registered. It is estimated that this figure could be three times higher.

⁶⁹In the City of Buenos Aires, this can be done by Family Courts, Minors Courts and Federal Courts. In the province of Buenos Aires, Minors Courts have to order that.

Penal and non-penal institutions

At the beginning of the XX century, the “Sociedad de Beneficencia” addressed public problems related to children. This institution concentrated on children in need⁷⁰ utilizing a charity and assistance-oriented paradigm.

Since its creation, the Sociedad de Beneficencia was in charge of administering public institutions for children under state care. Several of the extant large institutions were organized by the Sociedad de Beneficencia in buildings donated or bequeathed to the State by rich families under the condition, still in force, that they would be used to accommodate children.⁷¹ At that time, and even today, the main response to children in “social risk” was their institutionalization.

Penal and non-penal institutions are huge buildings with the capacity to place up to 85 children. This figure tells about living conditions in those institutions, which are far from being warm and appropriate places for children to achieve full development. In that respect, amidst the current financial crisis, these institutions are not provided with the resources to maintain the minimum living conditions or to offer comprehensive assistance to children

Victimizing treatment

The majority of state managed or licensed institutions have a “technical team” in charge of examining the psychological and social profiles of inmates. Reports by these teams many times determine the liberty or detention of children. As previously mentioned, in this type of decisions the “psychological and social profile report” acquires a predominant weight. More particularly, the cases of children detained for allegedly infringing the law reveal the legacy of “derecho penal de autor” (penal law based on the personality of the offender) given that the personality and the characteristics of the child are prioritized at the time of defining his/her institutionalization.

Besides, the “disciplinary regime” set by the institutions’ administrative authorities result in children spending more time with security staff than with professionals or, least of all, with their families, friends or closest relationships. The role of professionals is mainly linked to the idea of “treatment” given that the encounter with children takes place in the form of individual interviews carried out in “professional cabinets”. Even though it is true that it is necessary and even indispensable to have highly qualified professional teams, their activity should not be framed in the concept of “treatment” of institutionalized children. Most of the reports produced by professional teams are based in the child’s behavior in the institution hence overlooking the previous experience, that is, his/her life before being institutionalized. In this respect, contrary to the comprehensive approach put forth by the Convention on the Rights of the Child, current practices reveal the continuity of the so called “irregular situation” model (*modelo de la “situación irregular”*) which considers that it is the child who carries the situation to be corrected.

Concerning access to formal education by children placed in institutions, both penal and even in some non-penal, they attend school within the institutions. It is obvious that the environment required for a comprehensive education cannot be achieved within these institutions.

Finally, it is necessary to underline that children are victimized through this type of approach. Both children and their families suffer constant abuses, being these physical and emotional. For example, relatives

⁷⁰ It is interesting to see how the world of children breaks up and what is semantically known as minors appears. This group is not composed by all under age, but by those children in situation of socio-economic vulnerability. This group, and its family environment is where the State will deploy its intervention mechanisms, through justice or other instances of control.

⁷¹ Though it may sound absurd the conditions under which those buildings were donated become a legal and bureaucratic hindrance for the state have smaller, cozier facilities for children, given that they can not be sold and demand high up keeping costs.

are registered every time they pay visits to their children, and children are registered every time they visit their relatives. Registrations of this kind result in flagrant violation to basic rights. Another example of violation of children's rights is the opening of their mail, which is based on reasons of "security". Apart from this, institutions are generally located far from children's homes, and given that their families are poor, this situation hinders the possibility to keep constant contact between children and their families, relatives or friends. Moreover, the absence of visits is usually considered negatively by judicial authorities, are seen as indicators of "neglect", not considering that this situation is mainly linked to the scarce resources children's families have.

Penal and non-penal institutionalization

Over the recent years the number of children institutionalized for non penal reasons under the National Council for Children, Adolescence and Family (CONAF) has decreased. However the number of children institutionalized for "law and order" has grown. According to data provided by the CONAF, the monthly average of children and adolescents in the penal circuit reached, in 1999, 622 children. In 2001, monthly average of children in this circuit reached 711, registering a marked increase.

Concerning the Province of Buenos Aires, the following figures reveal the relevance of the deprivation of liberty in that province for years 2000 and 2001. Data presented below was obtained from three different sources: 1. Provincial Council on Minors (Consejo Provincial del Menor), 2. Statistics Bureau of the Supreme Court of the Province of Buenos Aires, 3. Ministry of Security and Justice of the Province of Buenos Aires (Ministerio de Seguridad y Justicia de la Provincia de Buenos Aires):

Juvenile Courts. 2000.

Children in the care of the State institutionalized in non-penal institutions (December 31, 2000).

Judicial Department	Boys	Girls	Total
La Plata	183	182	365
Mercedes	237	233	470
San Nicolás	137	131	268
Dolores	179	191	370
Azul	110	190	300
Bahía Blanca	369	483	852
Mar del Plata	263	286	549
Junín	109	108	217
San Isidro	277	299	576
San Martín	124	107	234
Trenque Lauquen	344	414	758
Morón	760	601	1361
Lomas de Zamora	358	209	567
Necochea	22	11	33
Pergamino	103	83	186
Quilmes	344	287	631
Zarate-Campana	94	100	194
La Matanza	294	286	580
Tandil	34	26	60
Tres Arroyos	20	10	30
Total	4364	4237	8601

Source: Statistics Bureau- Supreme Court of the Province of Buenos Aires

Children in penal institutions.- December 31, 2000.

Judicial Department	Juvenile prison		Institutions		Police Stations		Total
	Boys	Girls	Boys	Girls	Boys	Girls	
La Plata	-	1	66	4	-	-	71
Mercedes	2	-	75	1	6	-	84
San Nicolás	-	-	28	-	-	-	28
Dolores	-	-	28	-	-	-	28
Azul	2	-	19	1	-	-	22
Bahía Blanca	-	6	25	-	-	-	31
Mar del Plata	-	-	61	4	1	-	66
Junín	1	-	37	-	1	-	39
San Isidro	8	-	146	2	-	-	156
San Martín	1	-	161	6	1	-	169
Trenque Lauquen	-	-	61	3	-	-	64
Moron	27	-	501	10	20	-	558
Lomas de Zamora	-	-	183	7	17	1	208
Necochea	-	-	8	-	-	-	8
Pergamino	-	-	15	-	-	-	15
Quilmes	3	-	64	1	-	-	68
Zarate-Campana	1	-	18	1	2	-	22
La Matanza	13	-	142	1	8	-	164
Tandil	-	-	15	-	-	-	15
Tres Arroyos	-	-	6	-	-	-	6
Total	58	7	1659	41	56	1	1822

Source: Statistics Bureau- Supreme Court of the Province of Buenos Aires

The Consejo Provincial del Menor presented the following figures corresponding to October 2001 that indicate the institutions where children and adolescents are placed.

NON-PENAL	PENAL
CADCA: 85	Registry: 100
Municipalities: 577	Municipalities: 3
National State (SIM): 15	SIM: 137
Public institutions: 846	Public: 611
Psychiatric clinics: 429 (Both care and penal institutions)	
Community organizations: 1007 (Both care and penal institutions)	
NGOs: 4081	NGOs: 2
Health: 202	
Total: 7242	Total: 853

Source: Consejo Provincial del Menor

Recommendations and future challenges

- To prioritize proposals oriented at allowing the child to remain in an open environment, strengthen its community and family environment. Public policies should promote the proper development of the victims of this system: poor children. It is necessary to strengthen and underpin children's attempts and efforts to initiate new lives through access to education and work, and avoid falling back into violence mechanisms.
- To consider institutionalization as the last resort. The priority should be to address children's needs in their family environment. To initiate this type of changes, the idea of "homes" should replace that of "institutions". To focus the solution to these problems on the concept of "homes" also means to address family problems, not only children's problems, from a comprehensive approach.