PROCURACIÓN PENITENCIARIA DE LA NACIÓN (National Prisoner's Ombudsman Office)

ANNUAL REPORT 2015. THE SITUATION OF HUMAN RIGHTS IN FEDERAL PRISONS IN ARGENTINA

I. INTRODUCTION

The National Prisoner's Ombudsman Office of Argentina is an independent state agency responsible for promoting and protecting the human rights of persons deprived of their liberty in Argentina.

Through this Annual Report 2015, the agency fulfills its obligation to report to the National Congress of its work during that period, and of major violations of human rights detected in confinement. This report provided to the National Legislative Power, but also the Executive and Judicial powers, the rest of the public spheres and civil society, is supplemented by the periodic publication of substantial information, statistics, recommendations and court filings.[1]

The National Prisoner's Ombudsman Office is convinced that the promotion and protection of human rights implies a strong commitment to rigorous production of information which will enable active participation in the gradual process of influencing public opinion[2]. We also consider it of great importance to deepen exchanges with the international community in that area reporting on the national situation and incorporating experiences from other contexts into ours, which will surely be highly beneficial to the local reality[3].

This Annual Report reflects the activities that the agency has performed, through the exercise of their full independence and autonomy, in order to maintain its unwavering

[1] All of them are available on the corporate website (www.ppn.gov.ar), where we refer to for further clarification.

[2] The production, recollection and systematization of rigorous information explains to have devoted the first two chapters of the report to a general diagnosis of national imprisonment situation, including a statistical section and another dedicated to providing a general mapping of deprivation of liberty for national or federal jurisdiction in the country. Conf. Chapters II *Incarceration figures* and III *Mapping of federal confinement*.

[3] During 2015 the Prisoner's Ombudsman Office has started his radio program "Voices in freedom" as one of the strategies for disseminating information about prison problems at the local level. The project had its origin in the cooperation agreement with the National Ombudsman's Office, and began to develop itself in weekly programs, which are then retransmitted by almost thirty-five stations scattered throughout the country.

Meanwhile, the National Prisoner's Ombudsman Office is committed to consolidate its role on the international stage, bringing a local perspective on punishment, respectful of human rights, and based on the production of rigorous and comprehensive information. On the way to consolidate institutional presence in the national and international context, the agency has taken an active role in forums of debate and cooperation of ombudsmen in both areas. This leading role in the international arena has been strengthened during 2015 through oral interventions in the III-FIO-Profio PRADPI Congress held in the city of Alcala de Henares, speaking about the situation of women and LGBTI group in prison. Similarly, it presented a position in the twentieth Annual Conference and Annual General Meeting of the Iberoamerican Federation of Ombudsman (FIO). At American level, the agency had an active participation in the hearings on "Human Rights Situation of LGBT persons deprived of liberty in Latin America" and "Human Rights and body inspections of visitors of persons deprived of liberty in America", developed in the 156th Session of the Inter-American Commission on Human Rights (OAS).The third remarkable intervention in the international arena has been the permanent production and interchange of documents with different and relevant institutions in the field. Apart from the reports sent to the Commission on the Status of Women of the UN and the Inter-American Commission of Women of the OAS each year, PPN has sent to the Rapporteurs of Defenders of Human Rights and Children of the IACHR a document on the prohibition of this agency to access to juvenile detention centers, and another on the emblematic conviction sentence for torture in federal prison for young adults. The latter, drawn up following the conclusions reached at the hearing on citizen security and allegations of torture in Argentina, -during the 154th session of the IACHR- reflected a worrying scenario at the institutional level. Finally, under the periodic calls made by that commission, PPN responded to the questionnaire on "Use of force"; similarly, a document was sent to respond tothe Strategic Plan for 2016- 2020. It has also responded to the questionnaire " Prison Mapping at Mercosur level" conducted by the Public Policy Institute of Human Rights (IPPDH) in the region, to work towards a better survey of prison reality.

commitment to fulfilling its fundamental objective. That is, the protection and promotion of human rights of all persons deprived of their liberty for any reason in federal jurisdiction, comprising police stations, jails and any premises where persons deprived of their liberty are held, and from those processed and convicted by the national courts, who are held in provincial establishments (Law 25.875, art. 1). These functions have been expanded and strengthened since the appointment of the National Prisoner's Ombudsman Office as part of the National Committee for Prevention of Torture and local mechanism for the prevention of torture in the federal prison system (Law 26.827, arts. 11, 32 and 36 "a").

II. IMPRISONMENT AT THE FEDERAL LEVEL. MAJOR VIOLATIONS AND INSTITUTIONAL INTERVENTIONS

As the annual reports of previous periods have tried to reflect, the priority lines of action of the National Prisoner's Ombudsman Office are closely related to the most serious violations of human rights in confinement. Framed in a context of prison collapse and structural deficiencies, deaths and physical assaults, the widespread use of solitary confinement, overcrowding, and restrictions on the exercise of economic, social and cultural rights (work, food and health, among others), are the main shortcomings in the national prisons system. At the same time, they justify its consolidation as core matters of intervention of the agency. The report has sought to offer a tour through these serious violations of human rights in the national prisons system -also in police stations, local security forces facilities and juvenile detention centers dependent from the Nacional Government- and major interventions deployed accordingly by the National Prisoner's Ombudsman Office.

a. Torture, cruel treatments and other forms of violence

The inquiry, finding, documenting and denouncing of the use of violence by prison staff as a way to ensure internal order, has become a priority line of work of the agency.

The commission of torture by state agents entails the imposition of physical pain as a specific form within a wider kaleidoscope which includes, for instance, absolute isolation regimes, profound body searches, denial of access to health services and degrading material conditions of detention. This institutional position is based on the agency's accumulated experience of inspection of prisons, and is supported on the internationally accepted definition of torture as *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person"*[4].

For that reason, among the intervention strategies in the field, for the last five years this organization has been a member of the National Register of Cases of Torture (RNCT), jointly with the Committee Against Torture of the Provincial Commission for Memory (CPM) and the Study Group on the Criminal Justice System and Human Rights (GESPYDH) of the University of Buenos Aires[5]. It includes the cases *alleged* in court and the *statements* on which there has not been made criminal complaints, because of the

[4] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments* adopted by the General Assembly in its resolution 39/46 of 10 December 1984, art. 1.

[5] In depth, Section IV.5 "*Registering cases of torture and / or cruel treatment. Summary of results and reflections on the first five years of its implementation.* "

multiple reasons that inhibit the development of such complaints and produce a significant underreporting of events. Another guiding principle of the RNCT is to prioritize the direct account of the victims of the practices of torture and/or cruel treatment by state officials, either in its capacity as direct perpetrators or as institutional managers. The types of torture and cruel treatment which are structured in the instrument are: 1. Physical Assaults; 2. Isolation; 3. Threats; 4. Burdensome transfers; 5. Constant Unit Transfers; 6. Poor Material Conditions od Detention; 7. Lack of food or poor nutrition; 8. Lack or Poor Health Assistance; 9. Theft and / or breakage of Belongings; 10. Impairments of Family and Social Bonding; 11. Denigrating Body Searches

The cases of torture found by the RNCT in the period 2011- 2015, broken down by type of disease, are expressed in the following table in percentage terms:

Chart No. 1: Registered cases by type of torture

Kind of torture and / or cruel treatment	**Quantity**	**Percentage**
physical assaults	3425	76.3
Isolation	2027	45.2
threats	1481	33.0
Poor material conditions of detention	1465	32.6
Lack or poor health care	1370	30.5
Lack or poor nutrition	838	18.7
Denigrating body searches	646	14.7
Theft and / or damage of belongings	382	8.5
Impediments of family and social bondage	324	7.2
Burdensome transfers	107	2.4
Constant transfers	6	0.1
Total	12071	269.0

Multiple Source Answer: RCT 4,488 cases, GESPyDH-PPN 2011-2015

A broaden perspective on the treatment of torture cannot, however, detract from the momentous and disturbing role that the use of physical assault of detainees by prison staff plays in imprisonment managing. Slaps, punches, kicks, stick blows. Shootings with firearms, using lethal and nonlethal ammunition. Pepper spray, hiking boots, cold showers and the passage of electric current persist as regular and systematic practices that cannot remain invisible.

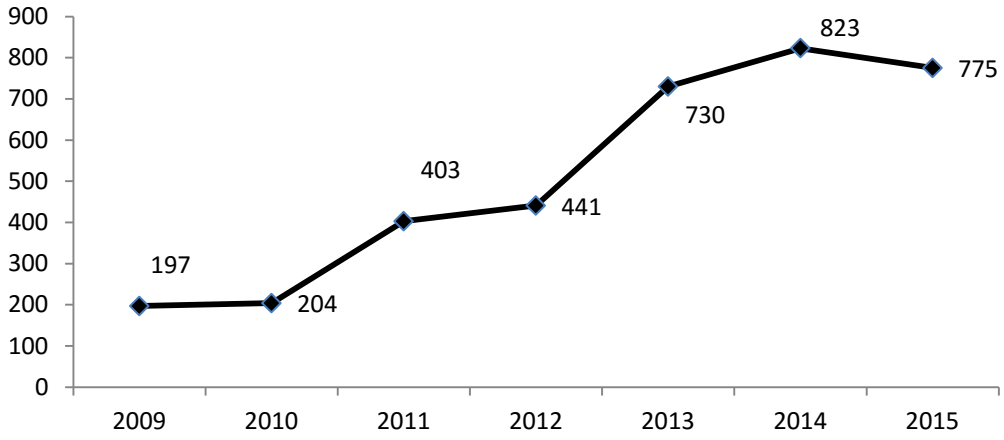
The report is comprised of two sections designed to publicize the most outstanding results of the application of the *Procedure for Research and Documentation of Torture and other Cruel, Inhuman or Degrading Treatments* - standardized performance Protocol of this agency used when we receive notice of a case of physical aggression- and of the prosecution of cases initiated by this serious human rights violations[6]. Two other sections

[6] Conf. Sections IV.1 "*The investigation and documentation of torture*" and IV.2 "*The judicial response to torture allegations.*"

are intended for other types of violence present in prisons: those related to searches procedures with a high content of humiliation and indignity[7], and those resulting from the onset of extreme force measures (protests) by the prison population, when institutional channels of dialogue and complaint are cancelled[8].

The 775 cases of physical assaults committed by state officials on persons deprived of their liberty, registered and noted by the agency during 2015, confirm a trend that reports on the continuing use of violence as a privileged strategy of management and control of the internal order in federal prisons: 730 cases had been recorded for 2013 and 823 for 2014.

Graph Nro. 1: Historical development of cases of torture and cruel treatment recorded by the PPN



Source: Database Cases of cases of torture investigated and documented by the PPN

The existing underreporting between the acts of torture that occur in prisons and those that this agency manages to certify, prevents us from regarding these cases as the

[7] Regarding intrusive, violent and humiliating searches faced by detainees and their relatives, the first relevant participation during 2015 was the submission of a report on the use of force in prisons, to be included in the Annual Report of the Inter-American Commission on Human Rights. The PPN conducted a detailed analysis of the legal and regulatory rules related to the use of force and the use of weapons by officers of law enforcement in Argentina, with particular emphasis on prison officials. The main practices surveyed by the agency involving the use of force in prisons, included events that could be considered as torture and / or cruel treatment, but also other forms of violence within the context of searches, while proposals were made to prevent abuses of the prison agency and to punish conducts that could well qualified as torture.

On the other hand, PPN, together with other national and regional organizations petitioned a public hearing to address the issue of humiliating searches at the Inter-American Commission on Human Rights. The report on the state of affairs in the Argentine federal prisons prepared by this organization was presented in writing and discussed by representatives of the institution, to the Commissioners at the hearing held on October 23 on *"Human Rights and body inspections visitors persons deprived of liberty in America"*

In depth, see Section IV.3 "*Searches in prisons: deficits and challenges*".

[8] Also force measures force performed by detainees are addressed in this report as part of the violent character of the prison. Problems associated to imprisonment experienced by the prison population are multiple and have different levels of complexity. To channel the claims against them, detainees use various mechanisms, both formal and informal, to which the Prisoner's Ombudsman Office grants preferential attention because of its mission to ensure that the authorities, both judicial and administrative, not omit their duties of ensuring humane conditions of confinement and respect for human rights.

Within the force measures or protests recorded during 2015, whether collective or individual scope, it remains the most common tobe the solid hunger strike, setting up more than half of cases (52.8%), followed by the refusal or rejection of food provided by the prison administration (28.9%), which experienced an increase of 5% in the volume of cases over the previous year. It should be noted that collective force measures are generally carried out by the latter mode, which can simultaneously involve the adoption of hunger strikes. The more radical forms, such as dry hunger strike (the person does not drink liquids) or self-injury (lips- suture, limb-cuts, hangings), are usually taken as a way of making a manifestation already initiated to be taken more seriously , along with the intake of non-consumable items, have remained similar to the 2014 percentages.

In depth, see Section IV.4 "*Force measures in federal prisons*."

universe of physical assaults occurred, but can be taken as a minimum base line that confirms the structural and systematic quality of the phenomenon. It also allows tracing the main regularities in terms of modalities, places, circumstances, most frequent victims and victimizers.

Management of diverse populations, groups or collectives within prison is ultimately differential. One of the main differences is represented by differing intensities and frequencies with which physical violence is resorted to. Thus, inmate's prison classification is the label that turns them into more or less liable to be victimized.

Nevertheless, the work done by this organization in this field, has allowed to note that violence is rooted in the *modus operandi* of the security forces throughout the country: in addition to colonies, prisons and maximum security Federal Penitentiary Complexes, the National Prisoner's Ombudsman Office has also registered cases of torture and / or violent deaths in juvenile detention centers, police stations, premises of the National Gendarmerie and Naval Prefecture, and provincial correctional facilities that host national and federal prisoners.

In that sense we must highlight the institutional concern about the limited progress in implementing the *National System for Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.*[9]

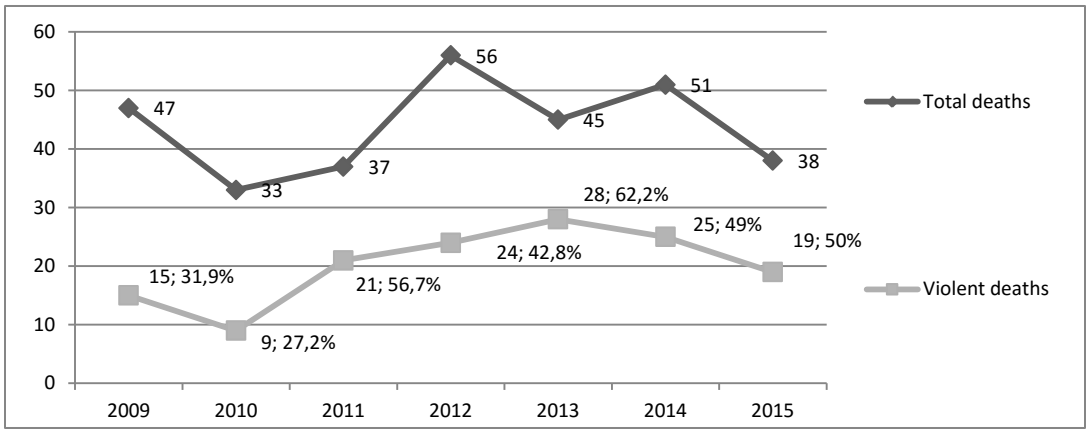
The Argentine Republic adhered to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* forcing itself to legally constitute a National Mechanism for the Prevention of Torture by mid 2007. However, only at the beginning of 2013 was enacted Law No. 26.827, which established the legal framework of such a mechanism, called the *National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

It must be warned that, of the set of institutions provided for that system, only those that already existed before this law was enacted are in operation. On the one hand, the National Prisoner's Ombudsman Office, which was incorporated into the system in the capacity of mechanism for the prevention of torture in *"all places of detention* under *national and federal authority"* (art. 32); and a small group of provincial mechanisms for the prevention and combat of torture, whose performance has been limited because of lack of independence and budget. The vast majority of the rrgentinean provinces, however, have not designated their mechanisms: this means that about three out of every four persons deprived of their liberty in our country lack the protection of the mentioned preventive system. Nor have the two second level bodies -with management, coordination and regulative function of the national system- established by Law No. 26.827: the National Committee for the Prevention of Torture (Article 11 inc b.) and the Federal Council of Local Mechanisms for the Prevention of Torture (art. 21).

[9] [9] In depth, see Section 1.3 "*Current status of the implementation of the National System for Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishments*".

b) Deaths in custody[10]

Graph 2: Evolution and trend of prisoner's deaths held under custody by the SPF. 2009-2015



Source: Database of Deaths in Prison-PPN

During 2015, the National Prisoner's Ombudsman Office has recorded a total of thirty-eight deaths of prisoner's in custody of the Federal Penitentiary Service, nineteen of them violent.[11]

The absence of strategies aimed at modifying or banishing prison and judicial practices that facilitate the production of deaths, requires a cautious evaluation of the reduction in the number of deaths over the previous period, which does not enable to anticipate its consolidation as a steady downward trend. The reduction of all deaths in 2015 compared with the previous three years should be observed with extreme caution. The absence of demonstrable changes in state practices that cause production of deaths in custody, of which this report and those of previous years have intended to reflect, requires analyzing data with restraint. As indisputable historical precedent, 2010 also saw a marked decline in the absolute number of deaths. The steady increase occurred since then, and for the next four years, confirms the reasonableness of a cautious institutional position.

Administrative investigations conducted by the agency whenever a death in custody occurred, allow us to classify them using a system of categories similar to that proposed by international organizations in the field, and that is reflected in the next table:

[10] The issue is addressed in depth in Chapter V *Deaths in custody* .

[11] The definition of *death in custody* includes death of any person under state vigilance, regardless of where death occurrs (prison, public hospital, or during a transfer). As it was noted in previous reports as well, and following the guidelines proposed by the World Health Organization, PPN's internal procedure classifies as violent deaths those that are due to homicide, suicide, accident, or the cause that has provoked is dubious, but which is always external and traumatic. Non - violent deaths are deaths due to illness, sudden or whose nontraumatic cause is still uncertain.

Chart No. 2: SPF Deaths in custody, by cause of death 2009-2015

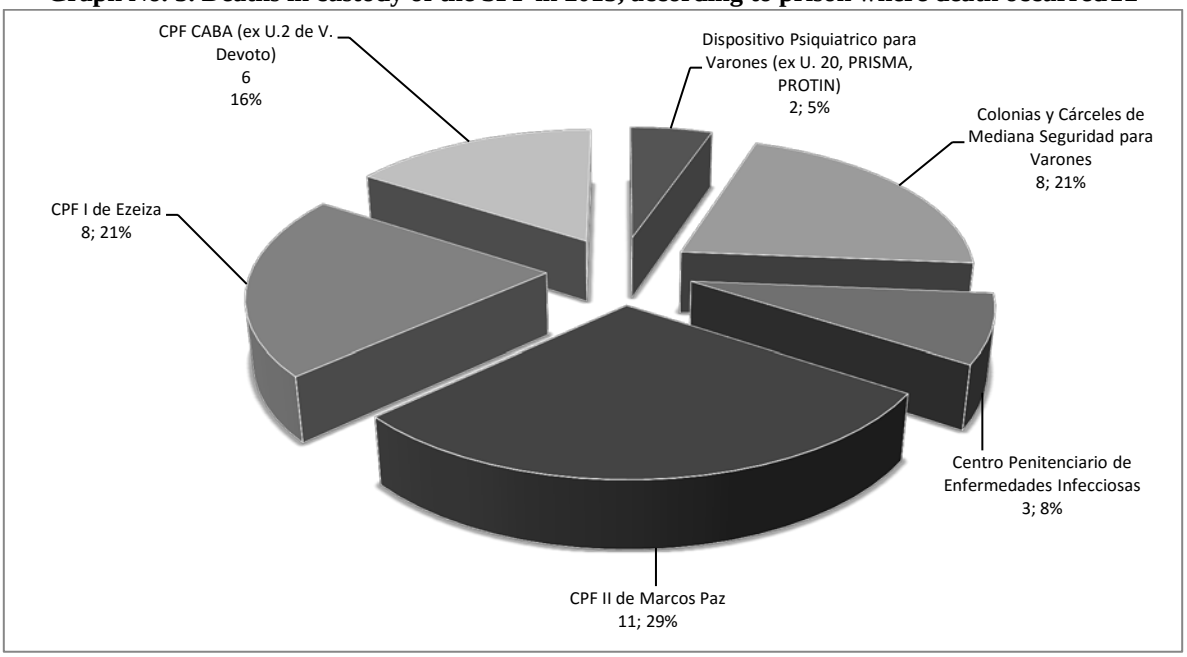
Death cause	2009-2015	2015
Disease	156 (50.8%)	18 (47.7%)
Suicide	60 (19.5%)	8 (21.1%)
Homicide	47 (15.3%)	6 (15.8%)
Accident (for force measures/protest)	16 (5.2%)	2 (5.3%)
Accident	12 (3.9%)	1 (2.6%)
Sudden death	11 (3.6%)	1 (2.6%)
Dubious cause (Violent)	5 (1.6%)	2 (5.3%)
Total	307 (100%)	38 (100%)

Source: Database of Deaths in Prison-PPN

The production of deaths in custody is closely related to the regularity and consistency of a variety state practices of human rights infringement that often occur complementarily. This agency was able to identify the intimate relationship between these deaths and the frequent resort to violence in order to manage the prison, the exaggerated use of solitary confinement, the lack of access to social and cultural rights (in particular health care and adequate food), and the sealing of legitimate means of channeling complaints and requests, which forces detainees to use extreme measures of force or protest. These prison practices are regularly observed by this body, together with weak judicial control, thoughtless use of preventive detention (and restrictive alternatives to custodial sentences), and lack of effectiveness and comprehensiveness in the investigation in those court cases initiated precisely to investigate these deaths, when they are actually started.

Such harmful state practices cross the entire federal prison system, even when they are concentrated in the so- called maximum security prisons for adult males. This phenomenon of concentration is also reflected in the uneven spatial distribution of deaths in custody, also observed in the physical assaults of prison officers and the use of isolation.

Graph No. 3. Deaths in custody of the SPF in 2015, according to prison where death occurred[12]



Source: Database Deaths in Prison-PPN

c) Isolation[13]

The use of solitary confinement as a form of imprisonment management has been around since the emergence of the modern prison itself. In the federal prison system, solitary confinement records at least four different ways: a protective measure applied irregularly, contradicting the guiding principles of the *Protocol for the Implementation of Safeguard of people in a situation of particular vulnerability;* as disciplinary sanction; as a way of *segregation* of the entire collective justified by the occurrence of events classified as conflicting by the prison authorities; and as a group's permanent living regime, segregated from the common system and forced to live together, spending the entire day inside the cellblock and excluded from working, educational or recreational activities performed outside from it.

The *Protocol for the implementation of safeguard of people in a situation of especial vulnerability* was judicially approved on March 8, 2013 and formalized its entry into force upon publication in the Public Regulatory Bulletin (BPN) No. 500/13, is the result of an interagency work to regulate the prison regime of persons subjected to physical safeguard, limiting and eradicating the historical human rights violations that the imposition of the measure has involved: mainly long hours of solitary confinement and denial of access to educational, working and recreational activities.

[12] Within the category *Male Medium Security Colonies and Jails* three deaths are included in the No. 4 Unit of Santa Rosa, two in the No. 8 Unit of Jujuy, and more in Units No. 12 of Viedma, N o.35 of Santiago del Estero and No. 3 at Ezeiza 1, section intended for housing adult males. The P*sychiatric Device for Men* include the Male Psychiatric Service located in the HPC CPF I Ezeiza with one death; and its complementary unit in Wing VI CPF I Ezeiza with another death, recorded in the last quarter of 2015.

[13] Extensively, see Chapter VI *Isolation in federal prisons*.

Records indicate that by December 31, 2014[14] there were 773 people affected by this measure in the different establishments managed by the SPF. That figure represented 7% of the incarcerated population under federal penitentiary administration at that time. The vast majority (75%) had a safeguard of legal origin that is, initiated by a court order responsible for controlling the conditions of detention, requesting the application of the measure.

As for the progress observed since the adoption of that *Protocol,* it should be emphasized the reduction of solitary confinement in cellblocks intended for housing exclusively people with that measure of safeguard. This achievement, obtained through the application of the regulation, is an issue of central importance since solitary confinement of 22 and 23 hours in individual cells had historically been presented as the prevailing regime of confinement.

However, it should be noted that the problem of isolation has been reconfigured, hindering the proper development of the measure, on another scale. At present there is a sort of *"confinement inside the cellblock"* since those affected with this measure perform the few activities they have access to within their accommodation. Those who exceptionally leave the cellblock to go to work or study, usually are unable to share these tasks with the rest of the "common" people, being forced to interact exclusively with persons who have the same measure. For the same reason they are not allowed to share the visits'day, which derives in they being assigned different days than the rest of the prisoners, and they are not allowed to use the formally designated facilities to receive visitors. As a result, detainees with a safeguard measure have to receive their relatives in areas such as gyms, courtyards and administrative offices that do not have the minimum accommodation for performing these relational activities.

This form of spatial segregation is a feature that continues to impede the adequate functioning of the measure. The persistence of practices of segregation and differentiation raises serious consequences for the exercise of their fundamental rights. In turn, and contrary to what the *Protocol* establishes, reinforces the stigmatizing character of the safeguard causing negative effects on the progressive re-linking of those affected to the usual prison life and circuits.

It was also identified that in the absence of room (quota) within the cellblocks for people with safeguard measure, those who request the measure are temporarily placed in punishment cellblocks until a vacancy appears in the sectors intended for such purposes. In prison jargon these detainees are known as "*safeguards* without quota" situation that can last for weeks or even months. This practice means that those who are waiting for a place in the wings allocated for people affected by the measure, are put in solitary confinement by the administration of up to 23 hours daily. In these cases, they are not allowed access to any activity or to have contact with other people.

The exponential increase of this practice has highlighted the absence of intervention strategies by the SPF in order to decrease the population "protected", thus failing to fulfill the intention promoted by the *Protocol* of recognizing the safeguard as *an exceptional measure, subsidiary and limited in time.* Without a serious and strong institutional policy of

[14] Because of the delay the prison administration in providing the information, figures on sanctions and isolation an safeguard correspond to the 2014 period.

re-linking of the protected person with the rest of the prison population, housing quotas will be continually inadequate in a context of population growth.

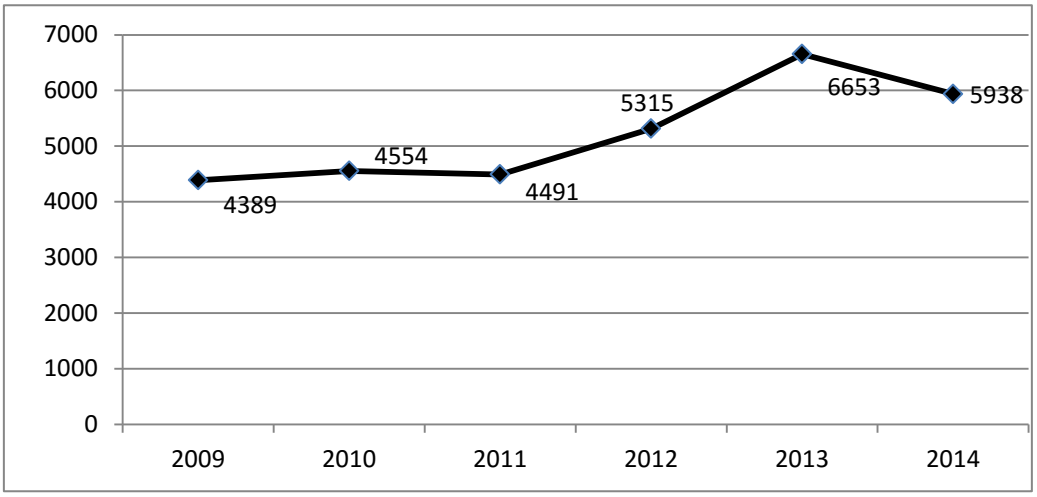
As a third point, we observed the persistence of 23 hours of confinement regimes in individual cells when the status of "safeguarded" it is added a quality of the person which includes her/him in a specific group. Examples of this situation are the LGBTI collective and people confined in psychiatric devices. In the wings where both are held, there are no specific cellblocks for persons with a safeguard measure, which provokes them to be moved to other areas and until that change of accommodation takes place -which can imply forcing a medical discharge or compel the person to "revoke" its perceived gender status-, they are subjected to intensive confinement.

The persistence of isolation regimes –because of the lack of space and in the case of particular vulnerable groups- is a direct and exclusive result of the lack of implementation of the various forms of safeguards provided for in the *Protocol*. This is the fourth of the especially widespread irregularities. The accommodation in an area specially designed for this group is one of the measures available; but only one within a set of options ranging from the possibility that the safeguard turns itself into -alternatively, complementarily or exclusively- in regular medical examinations, allocation of special custodies, permanent record of the agents who keep contact with the affected person, or the use of electronic devices. The argument that the penitentiary agents informally use in order to justify the scarce application of these modalities focuses on the lack of availability of material and human resources which its deployment requires. However, it is relevant to mention that the main characteristics of this particularly vulnerable people –usual victims of prison violence, SPF whistleblowers, people experiencing their first experience of institutional confinement, etc.- makes it urgent for prison authorities to take the necessary measures for the implementation of all these options.

Finally, the report has found a great misinformation regarding the formalities regulated by the Protocol, including not recognizing the figure of the Safeguard Responsible Officer (FRR) and the Office of Coordination and Supervision dependent from the SPF Director. The lack of functioning of this office reinforces the impossibility of having updated information about all the people with safeguard measures in the different units from the federal prison system in Argentina, as well as other basic information about each individual case (sector where the prisoner is held, source of the measure, date of application, consideration of the inmate’s will, etc.). The dismantling of this office has also canceled the possibility for the personnel of the different establishments to receive clear indications about the guidelines and strategies agreed by the authorities on the implementation of the Protocol. This explains the absence of a consistent institutional position at prison management level and, therefore, at lower- level operators.

Disciplinary sanctions in the federal prison system, meanwhile, represent the only version of compulsive and intensive confinement legally authorized. It is regulated by the Internal Discipline Regulations (Decree PEN No. 18/97). Despite the systematic nature of its application, solitary confinement appears as one of the most severe penalties in the regulation, and therefore exceptional within a range of disciplinary measures ranging from warnings to transfers to other establishments. Indeed, solitary confinement of up to fifteen consecutive days could only be applied to the commission of serious offenses, while for medium offenses it can only be up to seven days. In spite of this, it emerges as the almost exclusive punitive method used by the prison federal agency.

Graph No. 4: Historical Evolution of sanctions isolation in SPF



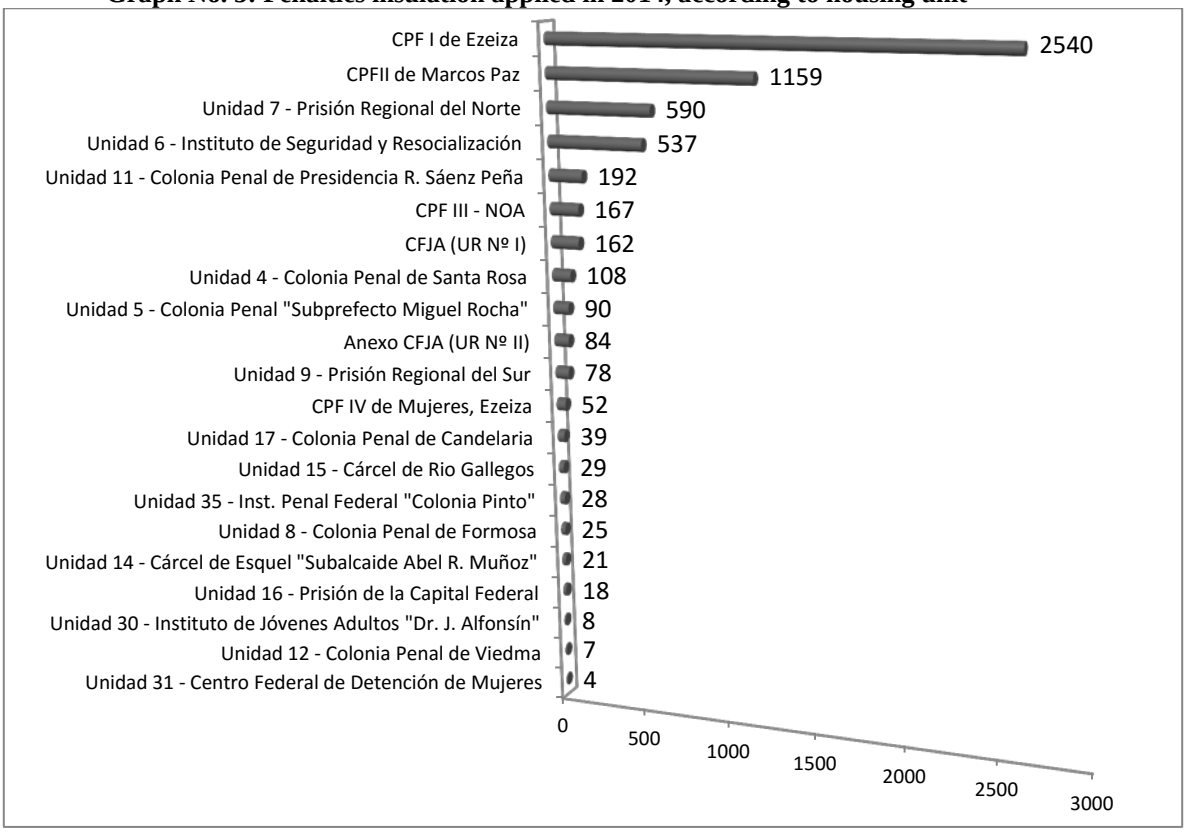
Source: Sanctions Database -PPN

During 2014 the federal penitentiary administration imposed 5,938 isolation sanctions to 2,848 persons, *i.e.* an average of three disciplinary proceedings by sanctioned person. While the bulk of the disciplinary sanctions did not exceed five days in isolation, almost a quarter of them involved suffering confinement between eleven to fifteen days. The historical average of days in solitary confinement for the period 2009-2014 is nine days; by 2014 the average fell very slightly to eight.

Thirty-five people were identified who suffered solitary confinement as a sanction for more than ten times a year, and one person who suffered it eighteen times. By performing a simple estimate between the amount of sanctions and the average days of isolation, we may see that this person may have spent approximately 144 days under this type of regime, *ie*, more than one third of the year lived in isolation for 23 hours a day.

Lastly, we must add that the bulk of the punitive phenomenon takes place in four establishments: CPFI Ezeiza, CPF II Marcos Paz, Unit No. 7 Resistance and No. 6 Rawson. All them together, they add up to the 81% of the sanctions imposed in 2014.

Graph No. 5: Penalties insulation applied in 2014, according to housing unit



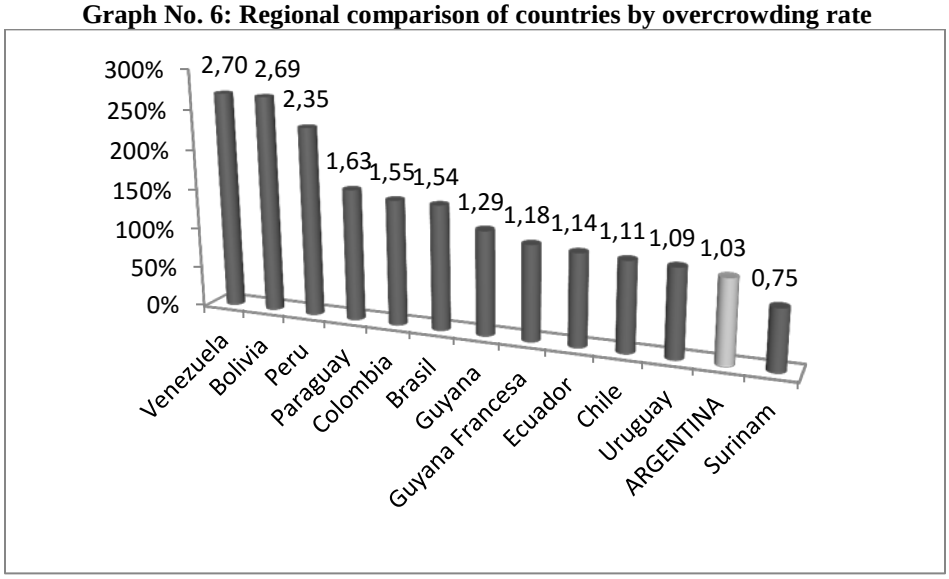
Source: Sanctions Database-PPN

d) Overcrowding[15]

Prison overcrowding is a phenomenon which can be seen in various penal systems around the world. It is closely associated with the sharp increase in incarceration rates in the United States that began in the 1980s, and replicated globally ten or twenty years later. This could not be absorbed, nor is it expected so, by the accelerated pace of construction of new detention facilities.

[15] The issue is addressed in Chapter VII *Overcrowding* .

Graph No. 6: Regional comparison of countries by overcrowding rate



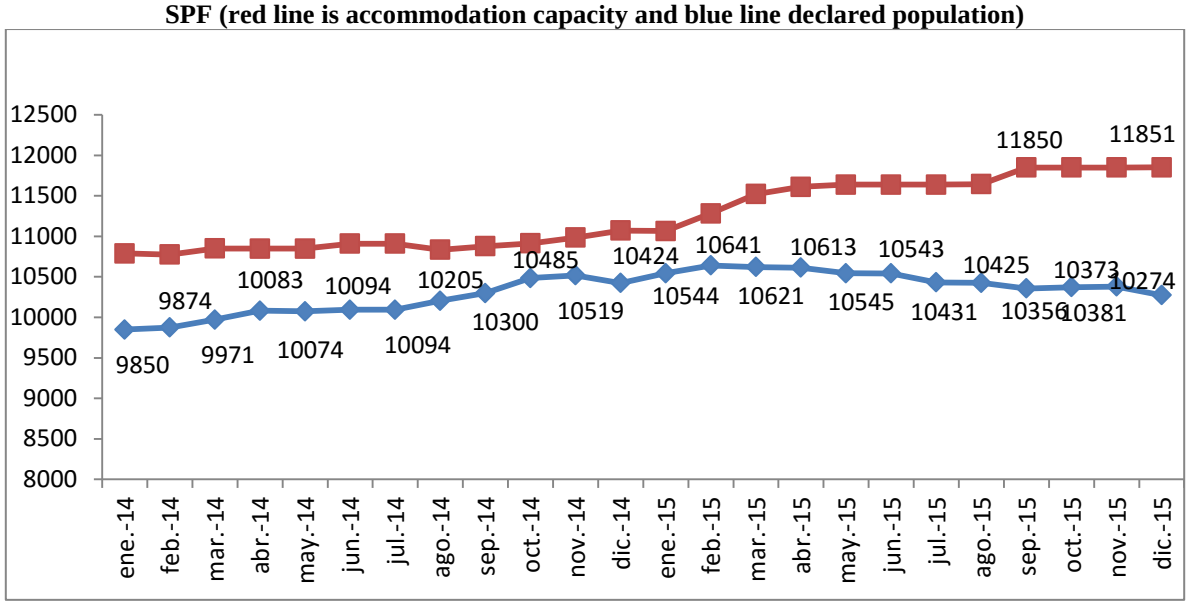
Source: International Center for Prison Studies

It consists in housing people above the functional capacity -declared or verified- of an establishment or an entire prison system. Among its most problematic aspects we must highlight the serious rights violations involved, producing overcrowding and deepening the appalling material conditions in which imprisonment develops itself. It also has direct impact on the deployment of institutional and prison violence and hinders access to work, education, recreation, health care and minimum sanitary and hygienic conditions.

In the past two years, the National Prisoner's Ombudsman Office has identified focalized points of overcrowding in federal prison complexes in the metropolitan area of Buenos Aires. The phenomenon has not only concentrated in specific areas, but since 2011 the SPF has been operating with an average of more than 90% of its capacity occupied. These figures that could be exacerbated if taken into account federal detainees held in other prisons services, police or other security forces premises.

According to the information available, the number of detainees held under the custody of the SPF has not stopped growing since 2007. Between 2007 and 2015 there was an increase of 14% of prisoners in the system. Regarding the accommodation capacity, since 2011 the Federal Prison Service works at its full with less than 10% of its accommodation capacity available. In 2014 that historical mark was surpassed, reaching for the first time a 96% of occupancy.

Graph No. 7: Monthly evolution of the accommodation capacity and total declared people held in the SPF (red line is accommodation capacity and blue line declared population)



Source: Database of Accommodation in the SPF- PPN

Instead of being the subject of careful discussion, the phenomenon of overcrowding was channeled by the prison administration through short-term tactics which included from concealment of the true dimensions of the problem to the fictitious increase in vacancies by adding new mattresses inside the already existing cells or dormitories, claiming that this should be considered an increase in the accommodation capacity. To understand the seriousness of this manouevre, it should be noted that the SPF does not take into account criteria of minimum habitability when establishing the capacity of accommodation of the prions under their administration, such as cubic meters available per detainee, quantity of sanitary and medical services, food budget or job vacancies. The definition of the quota is arbitrarily determined, without any consideration of qualified or technical opinions.

In December 2013 the Prisoner's Ombudsman Office presented a bill proposal for the establishment and put into operation of a reliable mechanism for defining the space available in each penal facility. The objective of the proposal is to provide with a means of giving visibility and of eradicating current overcrowding in institutions of confinement in Argentina, in a context where there is a pressing need for democratic control of these places. In addition, during 2014, PPN made public an institutional spot on *"Prison Overcrowding in Argentina"* with the aim of broadcasting the institutional position on this problem in a simple and easy-approachable way and of providing a clear presentation of the public policy guidelines that the PPN considers should orient the solution to this problem.

Finally, the National Prisoner's Ombudsman Office has taken a strong institutional position in addressing to the phenomenon. Concern was put in properly recording the problem with a especial focus in each establishment, and in making timely interventions when severe infringements human rights were detected. During the two-year period 2014-2015 has sought to increase its influence through strategic litigation in collective actions that show, denounce and propose ways to solve overcrowding in the federal prison

system. These include the habeas corpus presented about the situation in the Federal Prison Complex II of Marcos Paz and Unit No. 31 of Ezeiza.

f) Infringements in access to economic, social and cultural rights[16]

Although the literature and jurisprudence insist on defining prison as mere deprivation of freedom of movement, the pains of imprisonment are many and add complexity to the way in which we think about punishment in our country.

The severity of physical integrity and life violations listed in the preceding paragraphs does not enable, however, to ignore the systematic obstacles put to the exercise of economic, social and cultural rights in confinement. A specific chapter of this report shows the distances between adequate education and that which is available to detainees; the violations of labor and social security rights in prison; access to medical attention in prison, to adequate food and mental health services; the hindrances to contact between persons deprived of liberty and their families, provoked by mistreatment from penitentiary agents in the form of physical and verbal abuse, intimidation and bureaucratic requirements discouraging successive visits; and the difficulties of detainees to have their personal documents updated (which have been analyzed in the same chapter) considered as the gateway to the range of social rights mentioned above. Finally, the report stretches out its gaze to the moment of freedom, in an attempt to make an exploratory diagnose about the persistence of these difficulties once produced the exit of the prison system.

In the past five years, the distinctive note in prison labor has been the considerable and progressive increase of prisoners being paid for their work. However, certain historical problematic aspects, such as respect for the minimum wage and the formative nature of the tasks performed, continue to reflect the major violations of the human right to work in confinement.

That massive increase in the number of prisoners registered in a paid job, however, needs to be punt in context for it reflects certain critical issues. First, the sharp decline in labor registration began in 2014. Second, the distance between the payment received for being formally employed in a job and the actual performance of productive tasks which involves some level of formative work.

As a third issue, we must mention the periods during which prisoners must coercively accept to work without receiving their wages or *peculio* until their registration as workers is effective. This kind of forced labor, which could be understood as a form of servitude, can last for months and is tolerated by detainees as it can be seen by the prison administration as a demonstration of good behavior, as a future commitment to become formally employed, and even as the possibility of leaving the cellblock for some time during the day. In a "Scoping Study on prison labor" developed by this organization, 46% of respondent workers confirmed they had performed tasks without being pay for them for a period equal or greater than two months. Finally, the conditions to access work, the way it is performed and then extinguished severely questions the effective exercise of the human right to work and to social security in confinement. The irregularities observed in access, development and extinction of the working relationship inside the walls, are replicated in flagrant labor and social security policy unfulfillments.

[16] In depth, see Chapter VIII *"Access to Economic, Social and Cultural Rights "*.

Failure by the prison administration to provide adequate food, verified in 2015, brings about other damages to persons deprived of liberty, such as the physical ailments and illnesses which involves affecting their right to health and explains the proposal of a comprehensive approach of both problems. Also, this situation forces them to spend their own resources or their families –when they have relatives- in order to cover their basic needs; while those without work and / or external support are forced to eat the food provided by the prison administration.

In an attempt to size the work done by this organization during 2015, which also contributes to understand the magnitude of structural impairment to physical health of detainees during 2015 2.090 medical evaluations were carried out, 1.834 of them due to complaints in the attention received and 256 for injuries -mainly under the procedure for investigating cases of torture- (88% and 12%, respectively). Adult Males' Federal prison complexes located in the Buenos Aires metropolitan area concentrate the greatest number of interventions by medical advisors of the agency: 89% of medical examinations due to deficiencies in health care and 87% for injuries, with a predominance of the CPF CABA over CPF I and II. These individual interventions were complemented by various strategies for sizing shortcomings in medical care at the structural level.

The report helps to conclude that, in prison, mental health is plotted in the prison system. Repressive and violent systems that do not promote social bonds, goes without saying that produce subjective effects that violate the right to protection of mental health. Excessive medication or confinement of inmates in specific mental health treatment devices because of behaviors that do not fit the prison system, or on behalf of diagnoses of "psychomotor excitements", also goes against the spirit of the *National Mental Health Act No. 26.657*. The latter promotes the right to be assisted in those vulnerable aspects requiring specific support and does not use them as grounds for limiting the full exercise of rights. Conflict and vulnerable prisoners are treated as psychiatric patients as a form of management.

The accumulated experience of the Prisoner's Ombudsman Office in monitoring of detention centers, and particularly during visit days in 2015 has shown that favoring family relationships is not a priority for prison authorities. On the contrary, very often the prison administration puts safety criteria above the right of imprisoned persons to receive visits, or simply neglect its obligation to pave the way for visitors to promote the continuity of those relations. Can be mentioned as an example some of the practices regularly deployed by the prison administration: abusive procedures in the registration or searches of visitors and the packages they bring with them; excessive and tiresome requirements and conditions for authorizing the visits; lack of clear and accurate information on the conditions for entry - about documentation to be submitted, visits schedules, allowed products to enter, etc.; and poor state of facilities for visitors, both waiting and visiting rooms.

g) Vulnerable groups[17]

This agency has identified that the practices affecting human rights mentioned in the preceding paragraphs have a deeper and specific impact on certain imprisoned groups.

This observation has been the basis for the creation of specific groups of intervention, such as the one for youth and children; women and LGBTI; and foreign prisoners. These thematic teams address the various problems of these groups, considering the diversity and multiplicity of identities, seeking to dismantle prejudices, to account for the characteristics of this greater invisibility. With that perspective, they propose focalized intervention strategies.

In the case of young adults–a prison classification which includes people from 18 to 21 years old- the specific problems surveyed in the Annual Report 2015 shows that the aggravations registered elsewhere in the federal prison system, like overcrowding, high rates of physical violence -particularly among detainees, encouraged or permitted by prison staff as management strategy-, very limited access to genuine productive work, and inadequate attention to mental health are deepened in the case of this group.

The issue of children and young people deprived of their liberty in federal jurisdiction, mainly in the socio-educational closed regime centers dependent of the National Ministry of Social Development, is quite invisible. That darkness has been reinforced by the refusal of the administration to allow monitoring of the Prisoner's Ombudsman Office, what took this agency more than six years of administrative and judicial proceedings to obtain recognition of its supervisory powers. On April 5, 2016, after the publication of this Annual Report, the Nation’s Supreme Court of Justice finally decided to revoke the decision issued by the Federal Court of Criminal Appeals, recognizing the powers of control of this agency over child and juvenile detention centers, under national or federal jurisdiction.

The report also analyzes the impact that imprisonment has on other specific groups such as women or the LGBTI groups. It highlights the inadequate living conditions, the persistence of humiliating searches and physical aggressions, and specific problems for the group of mothers who had their children coercively taken away and submission to violent obstetric practices. The LGBTI collective suffers from physical and symbolic violence over-sized by a context of structural discrimination.

Foreigners in prison, finally, are addressed as a group composed of four subgroups that deserve special attention. Not national prisoners under a criminal proceeding in Argentinean federal prisons, those on with refugee status and those who are deprived of liberty merely by irregularities in their immigration status. The analysis is completed by a diagnosis of Argentine citizens who are deprived of their liberty in prisons in other parts of the world.

III. JUDICIAL RESPONSE. MOST IMPORTANT CASES SOLVED IN AN INNEFECTIVE JUDICIAL CONTROL CONTEXT

[17] In depth Chapter IX *Vulnerable groups in confinement* .

The situation found in the Annual Report 2015 should alert us as a society, but especially those who have different levels of responsibility for their participation and leadership in governance structures.

Above all, it should alert those in charge of criminal justice administration, who issue the legal acts that send tens of thousands of people to prison annually in our country. The legality during the entire criminal proceedings, and even during the stage of sentence execution claims for a strong jurisdictional control on how the precautionary arrests and convictions develop. That judicial review is, without doubt, one of the Argentinean debts in ensuring an adequate justice service.

The argument that supports the decisions on how the deprivation of liberty is carried out are "exclusive of the prison administration", is part of the cultural heritage of the judicial practice in our country, and serves as a justification when an officer or magistrate decides not to intervene appropriately when conditions of detention become aggravated. The circle is completed with the limited progress in the judicial investigations in cases of torture, cruel treatments and deaths in custody[18].

Even in this overall unsatisfactory picture, during 2015there have been achieved some notable judgments that contradict without reverse this tendency. In addition to demonstrating that it is possible for responsible and committed to their judicial function operators to assume satisfactory judicial positions on prison, these precedents can be seen as a prerequisite for the construction and consolidation of better judicial practices in the field.

In this process of building an enforced judicial control, we find as a precedent the creation of the *Interagency Control System of Prison Units*[19]. It is mainly intended to ensure the rights of persons deprived of liberty and for that, they organize regular meetings on the issue, and carry out inspections of penal institutions. In its more than two years of existence, the *system* has issued five recommendations seeking to influence the concrete practices of prison and judicial officials: proceedings in cases of death in custody; guarantying the right to defense of imprisoned persons during the disciplinary proceedings; regular prisons monitoring by judges and government officials; access to health and proper handling of the habeas corpus proceedings.

Also worth noting is the existence of significant progress in investigations into cases of physical assaults or deaths in custody, reflected in processes carried out and convictions of prison officials. Upon closure of the Annual Report 2015, there were sixty-seven prison officials on trial in court cases in which this agency assumes the role of complainant and eight others were convicted (this includes investigations into deaths occurred in federal prisons).

In June 2015, the Federal Criminal Court No. 1 of San Martin sentenced three prison officers for the crime of torture, and one for failing to report physical assaults committed against a young adult in the UR II CFJA four years before. That same month,

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[18] In particular, see Sections IV.2 "*The judicial response to allegations of torture*" and V.2 "*Death in custody and the role of the of criminal justice administration*."

[19] Created on June 26, 2013, the system is composed of the Commission on Criminal Enforcement of the Federal Court of Criminal Appeals; its Subcommittee, composed of judges of courts and the Criminal and Correctional Court of Appeals; the representative of the Federal Criminal National Chamber of Appeals; national criminal enforcement judges and the Criminal and Correctional National Court of Appeals; the Attorney General's Office of the Attorney Against Institutional Violence; the Public Defender's Office and the Prisoner's Ombudsman Office. The Center for Legal and Social Studies (CELS) and the Buenos Aires City Bar Association are consulted members.

the Federal Criminal Court of Appeals sentenced a prison officer for the crime of harassment by a violent *welcome* in the CPF CABA (ex Unit No. 2 of Villa Devoto), which occurred eight years ago. In October, three officers were convicted for the crimes of severities and humiliation, and a fourth for concealment for the physical assaults against a detainee in the CPF III Gral. Guemes occurred in March 2012[20].

Despite its remarkable relevance and significance, these jurisdictional landmarks stand out because of its novelty and exceptionality. Novelty, while they have no similar sentences had been verified in previous years. Exceptionality, while this kind of advancement has not been the rule during 2015, but only a rare result, which is evidenced by the inefficient judicial output in the vast majority of cases of torture, cruel treatment and deaths in custody pending during the period.

The third noteworthy development is the a number of legal claims, mainly collective and carried out through habeas corpus which received favorable judgments which derived in execution processes aimed at reversing structural problems such as prison overcrowding; reduction of violence rates; labor protection and social security of prisoners; the eradication of isolation regimes (solitary confinement); the elimination of denigrating searches; the strengthening of family and social bonds; the adequacy of living conditions in prisons; the replacement of unsafe clamping mechanisms during transfers; ensuring quality food and access to clean water; the regularization of the documentation of the prison population; and access to higher education, among others.

In particular, the Federal Court of Criminal Appeals has considered detention conditions aggravated by irregularities in the labor and social security prison regime. In the one hand, they ordered the adequacy of the labor regime to the guiding principles of labor law through the issuance of specific regulations for labor relations in prison. In the other, it has also recognized the right of pregnant women and of women prisoners living with their children in prison to receive various benefits provided by the family allowance scheme, AUH and AUE[21].

In a collective habeas corpus presented jointly by the agency and the Public Defendant's Office in December 2014 the Federal Court of Criminal Appeals considered the conditions of detention of the group of people staying in the CPF II of Marcos Paz worsened because of the effects of growing overcrowding, setting a fixed maximum capacity of the establishment. In October 2015, the Federal Court of Appeals in La Plata also considered the conditions of detention had turned worse in the case of women who lived in the No. 31 Unit, because of the administrative decision to reallocate a significant portion of that establishment to housing the elderly prisoners charged with crimes against humanity. That measure had a negative impact on the conditions of detention of women who continued in that establishment, but also of those who had to be relocated in other prisons[22].

The judgment of the Federal Court of Moron considering the conditions of detention of people staying in the CPF II of Marcos Paz aggravated deserves to be highlighted,

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[20] Following the publication of the Annual Report 2015, June 7, 2016, a prison officer was sentenced to a three years conditional sentence for the crime of serious injury committed against a detainee in the CPF II of Marcos Paz nine years ago.

[21] Conf. Section VIII.2 "*Labor and social security rights in prison*."

[22] Interventions and judicial responses concerning situations of overcrowding and prison quota areavailable in the VII.1 sections "*Overcrowding in the SPF*" and IX.2 "*Women and LGBTI in prison*."

because it made visible the foodservice deficit that this agency had been complaining about. During 2015, we have developed various legal strategies to enforce that decision adapting feeding of prisoners to human rights standards.[23]

[23] See in depth, Section VIII.3 "*Access to health for prisoners"*.