

Public

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The Governor
Mendoza Province
Mr. Roberto Raúl Iglesias
Casa de Gobierno
Barrio Cívico, 4º. Piso, Cuerpo Central
Mendoza
Argentina

29 January 2003

Dear Governor,

We acknowledge with thanks receipt of your letter of 23 January 2003 signed by Mr. Gabriel Conte, the Undersecretary of Community Relations from the Ministry of Justice and Security of the Government of Mendoza Province. The aforementioned letter was sent in reply to Amnesty International's correspondence to the Governor, Ref: AMR13/01/2003 of 20 January, detailing concerns of the organization regarding the arbitrary detentions of children begging in the streets of Mendoza city.

We are grateful for the information provided by the Undersecretary and we would like to elaborate on the details provided in our initial letter, something which we consider of great importance for the clarification of the great concern the organization still has regarding the actions of the provincial police towards the mendicant children and to learn of the measures that the provincial authority is taking to avoid the repetition of such practices.

The sources of information for Amnesty International's concern for the situation of the mendicant children includes information of a legal nature from human rights lawyers in Mendoza, information that the organization considers reliable and trustworthy, statements from non-governmental organizations, judicial documentation and widely published articles from the Argentine media. In his reply, the Undersecretary indicated that the information that motivated Amnesty International's concern is inaccurate, stating that "in no instance were the minors taken to common police units". However, according to a report from the Judicial Authority of Mendoza, a copy of which has been received by Amnesty International, on 10 January 2003 the names of 30 children were registered who had been taken to the Third Precinct of the Mendoza Police and most of whom were handed over to their families hours after. Amnesty International would like to request information on the number of children that have not yet been returned to their families, as well as their current location and conditions.

Amnesty International notes with interest the information provided by the Undersecretary on provincial legislation under which the police acted towards the mendicant children, citing *Ley de Policías* (Police Law) No. 6722 and the *Ley de Familia y Minoridad* (Family and Minority Law). In this regard, the judicial information received by Amnesty International indicates that Judge Adriana Rodríguez, in her resolution of 20 January 2003, established her intervention as a result of the transfer of a group of children to the Third Precinct of the Mendoza police force by police personnel and ordered their transfer to the Minor Detention Centre. In her resolution Judge Rodríguez cited Article

122 of the *Ley de Familia y Minoridad* which provides: “Family justice and criminal justice for minors, the Mendoza Police, the Provincial Office of Childhood and Adolescence and whichever public official or non-governmental organization involved in the matter, would be aware that a minor or incompetent may suffer harm from physical or mental abuse, lack of care, negligent treatment, ill treatment or exploitation; or, had they committed a misdemeanour or crime, or were victim of misdemeanours or crimes, are obliged to make this fact known accordingly to the Department of the Public Prosecutor within the maximum period of twenty-four (24) hours”.

Amnesty International is concerned that the provision of the above article does not appear to have been observed since the children were deprived of their liberty and were imprisoned in the Third Precinct of the Mendoza Police, and only after the police had acted was the judicial authority informed, which then ordered their transfer to the Minor Detention Centre. Amnesty International considers it of vital importance that, before proceeding to the deprivation of liberty of the children in a police station, the provision must be observed of making known to the Ministry of the Public Prosecutor any situation that affects the rights of children.

In the same resolution Judge Rodríguez makes an explanation that is important in relation to the consideration of the Undersecretary that “there has not been detention of minors”. Judge Rodríguez establishes: “Beyond euphemisms that can be used, it is certain that the “apprehension” exists even though it does not technically constitute a detention, the apprehension exists in the following way: children and adolescents are removed from the public highway and are transferred to police premises where a summary record is initiated, a judicial registration is started and consequently the children’s admittance is recorded as background information for the police and the telephone communication with the judge is made subsequently. In the case referred to in this judicial action, the children were begging and were apprehended by police under the application of Art.16 inc.6) and Art.122 Law 6354, later communicated to the undersigned.”

The judge also established that the deprivation of the children’s liberty was arbitrary, indicating that “the undersigned recognizes that precisely, bearing in mind that until now the police take action without prior order in the enforcement of functions attributed to provincial laws, the arbitrariness which can occur when apprehensions or removal from the public highway of children and adolescents take place, understands that given the circumstances referred to above, rights guaranteed by law 6354 and Art. 75 inc. 22 of the National Constitution may be violated by means of the police action ...”

The judge establishes that at the beginning of the police action the child is judicialized and wonders whether this behaviour is justified in all cases, in the same way that she considers the effect of the children’s stay in police stations: “the transfer and stay of children in various police stations can in many cases be harmful and can affect their psychological wellbeing. With this it is only a case of drawing attention to a practise that runs the risk of becoming an indiscriminate judicialization instead of being a preventive measure and/or effective protection regarding children and adolescents, therefore it is essential to review the same and to establish practises that guarantee rights.”

On this last point mentioned in the resolution of Judge Rodríguez, Amnesty International would like to emphasize the organization’s concern before the Undersecretary’s assertion indicating that “although the methods used are not to our liking...” as if the solution for the situation of the mendicant children in Mendoza province were their deprivation of liberty which would constitute an act of discrimination against these children who find themselves vulnerable because of their social condition. Amnesty International is concerned that the possibility of reinserting the child mendicants into the community is not made easy by their confinement in police stations by police personnel, including in the Minor Detention Centre, an establishment which, according to several sources of information, is a place of detention for minors on the margins of the law and not for deprived minors which is the circumstance of the child mendicants.

On this point we would like to remind the Governor that in September 2002 the Committee on the Rights of the Child in its examination of the periodic report presented by Argentina expressed its concern that “the principle of non-discrimination (art. 2 of the Convention) is not fully implemented for children living in poverty, indigenous children, children of migrant workers, primarily those from neighbouring countries, street children, children with disabilities and marginalised adolescents who are neither studying nor working...”

Amnesty International requests information on the measures that are being taken in the short and long term to protect children begging in Mendoza, including those of a legislative nature that respond to the effective protection of childhood and guarantees the fulfilment of their rights. Amnesty International would like to remind the Governor once again that the United Nations’ convention on the Rights of the Child provides that detention be the last resort and must be of the shortest period possible.

Amnesty International would like to insist before the provincial and national authorities upon the recommendations of the Committee on the Rights of the Child, point 63.a) to review “laws and practices regarding the juvenile justice system in order to bring it as soon as possible into full compliance with the Convention” and e) to use “alternative measures to the deprivation of liberty [...]”.

The organization is grateful for all the information received on this important and urgent matter both from authorities and from organizations and human rights defenders. The organization considers that the work of human rights defenders constitutes a basic element in the construction of a State in which laws are observed and human rights are respected. The Undersecretary indicates in his letter that following “several initiatives from public sectors and civil society” meetings have been held to discuss the subject of children who beg. In this regard Amnesty International considers that in all societies the independent vigilance that civil society exercises is an important contribution to guarantee that governments protect human rights. This right to defend human rights is also protected by international standards and principles among them the Declaration on Human Rights Defenders, adopted by all States including the Republic of Argentina.

As the Governor is aware, Amnesty International bases its work on international standards of human rights proclaimed by the international community through the United Nations and other intergovernmental systems, standards that States are committed to respect. We write to governments due to the specific obligation that they have contracted to ensure that agents of the State act within the framework of the law and respect basic human rights.

Amnesty International realizes that the Republic of Argentina is a federal republic where different provinces have authority over its legislative and judicial system. However, the Argentine government is responsible for the implementation of international agreements and treaties ratified by the Argentine State. This letter is therefore being sent to the Minister of Justice and Human Rights, the Minister of Foreign Affairs, the Undersecretary of Human Rights of the national Ministry of Justice and Human Rights and to the President of the National Council of Childhood, Adolescence and Family. We would also like to inform you that Amnesty International has decided to make this letter public.

Yours sincerely,

Susan Lee

Director, America Regional Program