Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Antigua Universidad s/n - Apdo. 28
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / http://opo.iisj.net

The metamorphosis of the discourse on infancy and crime in Argentina: A review of the field of production of the legal discourse of the Criminal Regime for Minors

OÑATI SOCIO-LEGAL SERIES, VOLUME 11, ISSUE 3 (2021), 722–752: INVESTIGATIONS – INVESTIGACIONES – IKERLANAK
DOI LINK: HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1191
RECEIVED 04 MARCH 2020, ACCEPTED 18 FEBRUARY 2021

PAOLA VICTORIA COLOMBERO*

Abstract

This research reviews the manufacture process of legal discourse concerning under-age alleged offenders in Argentina. After describing the legislative framework of the Infant-Juvenile Criminal System the article explores that courts have dealt with much more than just the normative texts. It aims to explain the role taken by a variety of discourses and arguments which emerge from the political, scientific, and journalist fields, and converge in the process of creating the legal discourse. This is exposed in landmark judicial decisions: the Maldonado case, the Fundación Sur case – Argentine Supreme Court – and the Mendoza case – IACHR –. Furthermore, the study analyses a series of political discourses that contributed to establish the hegemonic stance calling to lower the age of criminal responsibility. Finally, the article develops the concept of governing through crime as a type of power intended for harshening punishment and, about BG&A, allows cruel and inhuman punishments.

Key words

Infant-juvenile criminal system; ward-punitive mechanism; discourse; governing through crime

Resumen

Esta investigación da cuenta del proceso de producción del discurso jurídico sobre personas menores de edad, presuntos infractores de la ley penal, en Argentina. Después de describir el marco legislativo del Sistema Penal Infanto-Juvenil, el artículo

This paper was conducted as part of a larger research work in order to pursue a Master in Philosophy of Law. I would like to thank Liliana Ronconi, Leire Kortabarria, and anonymous reviewers for their extremely valuable comments.

* National Scientific and Technical Research Council of Argentina (CONICET) Scholarship holder, University of Buenos Aires (UBA) Ph.D. Student, Legal and Social Research Institute Ambrosio L. Gioja (Instituto de Investigaciones Jurídicas y Sociales Ambrosio L. Gioja) Researcher. Email address: pcolombero@derecho.uba.ar

explora que los tribunales han lidiado con mucho más que solo textos normativos. Persigue explicar el papel que juegan diversos discursos y argumentos que surgen del campo político, científico y periodístico, y convergen en el proceso de creación del discurso jurídico. Esto se expone en decisiones judiciales significativas: el caso Maldonado, el caso Fundación Sur – Corte Suprema de Argentina – y el caso Mendoza – CIDH. Además, el estudio analiza una serie de discursos políticos que contribuyeron a consolidar la postura hegemónica que propone bajar la edad de responsabilidad penal. Finalmente, el artículo desarrolla el concepto de gobernar a través del delito como un tipo de poder que busca endurecer el castigo y, sobre NNyA, habilita penas crueles e inhumanas.

Palabras clave

Sistema penal infanto-juvenil; dispositivo tutelar-represivo; discurso; gobierno a través del delito

Table of contents

1. Introduction 725
2. Theoretical framework: Some clarifications on the ward-punitive mechanism 726
3. The metamorphosis of the Criminal Regime for Minors 728
    3.1. Fundación Sur: The judgment that could have been, and was not 735
4. The centre of the current debate: Feed the Leviathan 738
    4.1. A review of the dominant political arguments: The Aguinaco case 738
    4.2. Approaching a definition of governing through crime 742
5. Preliminary conclusions 745
References 746
    Newspaper articles and other media reports 748
    Statistics and reports 749
    Legislation and cases 750

–¿Qué hubieras necesitado para

no abandonar la escuela?

–Que me ayuden.

(Agustín, 17, joven privado de su libertad. Tucumán)

1. Introduction

The semantic field that produces a legal discourse about under-aged persons has never been an even, smooth or straight surface. Many discourses of diverse origin, form or function have contributed to the production process (Marí 1982) and have come together to shape two significant forms of intervention throughout Argentina's judicial history: the ward intervention, and the punitive intervention. However, the boundaries between one and the other are unclear, obscure: protection has taken the form of punishment, and suffering continues to be disguised as care; operating through a ward-punitive mechanism that governs the life of stray boys, girls, and adolescents (BG&A) who are neglected and excluded from society. García Méndez (2004, p. 127) has defined this phenomenon as the socio-judicial culture of "compassion-repression".

The hypothesis that guides this research is that, in Argentina, governing through crime as neo-punitive legislative proposals towards the increase in punishments, the aggravation of the conditions of execution of the punishment, and restriction of rights, especially with respect of the BG&A suspected of having violated criminal laws, is considered as a type of power which seeks to widen the margins of crime and punishment, that is to say, punish more and punish better. I propose to argue that the intention to lower the age of criminal responsibility is not due to an increase in crime, but to a legal-political discourse that is installed against how violence breaks out in the social context.

To that effect, I will analyse the legislative framework that structures the Infant-Juvenile Criminal System, working with Marí's proposal of focusing on the metamorphosis of the legal discourse that deals with stray infancy, to be able to identify the problems in its constitution, to shine a light on the procedures of creation, destruction, and recreation of this legal discourse, and, in them, identify the place taken by the different discourses that come together in their formation and are later are labelled as "ancillary" or, simply, discarded.

I will start by placing in time the legal discourses that have revolved around infancy, and which have contributed to shaping a ward-punitive mechanism of intervention. I will focus on the normative text standing since 1983, and the transformation of the legal discourse that has set the legal senses concerning BG&A and crime. To that end, I intend to describe and analyse the legal array which gives structure to the Criminal Regime of Minors, starting by outlining Decree-Law Nº 22,278 and national legislation of comprehensive protection, as well as the body of international law that is part of the constitutional bulk. I will work with landmark judicial decisions, such as the Maldonado case – Supreme Court – whereby the sentence is reduced to the degree attempt; the Mendoza case – Inter-American Commission on Human Rights (IACHR) – whereby the Court prohibits life-term convictions; and the Fundación Sur case (*García Méndez y Musa*, 2008), also heard by the Supreme Court, which revealed the underlying political and

judicial discourse with significant emphasis. Judicial decisions have collaborated in defining the field of production of this legal discourse. However, the Fundación Sur case, in conflict with other judicial cases and legal discourses, evidences the presence of a multitude of elements and arguments that, despite having endorsed the final judicial product, are now gone.

Further, I will analyse political arguments, which, based upon the severity of the offences committed by BG&A, call for the need to amend the juvenile criminal justice; I will look into the recent historical development of these arguments, and the debates and standpoints on the idea of lowering the age of criminal responsibility. To that end, I will analyse a series of arguments presented by high hierarchy government officials, which, all in the same line, contributed to settling the hegemonic discourse towards the harshening of criminal penalties for (alleged) BG&A offenders.

I will develop the concept of "governing through crime", aiming to unveil how it works in the local background in connection with legal and political discourses that focus on crime control and amplify government authority in the area of crime and punishment.

I will finally draw some conclusions which, however incidental, make a strong stand against the management of uncared for infants through the criminal law system, in particular against the legislative proposal of lowering the age of criminal responsibility. These ideas should be seen as open possibilities and not closing arguments, to continue to think about how the lives of underprivileged children are handled through criminal law, by making criticism an ethical, as well as a political attitude, which constitutes an exercise guided by the art of not being governed or, even, the art of not being governed in a certain way and at a certain price (Foucault 1995, p. 7).

2. Theoretical framework: Some clarifications on the ward-punitive mechanism

Following previous studies from the legal field, García Méndez (García Méndez and Beloff 1999, García Méndez 2004) refers to two normative stages concerning infancy rights in Argentina. The first stage began in 1919 with the Ley de Patronato de Menores (Children Welfare Act), a law that introduces a branch of law for BG&A and creates an exclusive jurisdiction for them. Later, a second stage began in 1990 with the ratification of the Convention on the Rights of the Child (hereinafter CRC), and it is still developing. From the terrain of the sociology of the juvenile criminal system, it has been argued that there is a correspondence between these two stages of legislative reforms, with three socio-historical changes that took place in national and international contexts and provide the background to the different amendments to the legislation for children.

With Daroqui and Guemureman (1999, p. 40), the following social context can be identified; these factors led to distinctive legal discourses on BG&A:

1. During the last decades of the 19th century and the beginning of the 20th century. The problem of immigration: government and population. At legislative level: Ley de Defensa Social (Social Protection Act), Ley de Patronato N° 10,903 (Children Welfare Act). The process of creation of the civil and penal codes must also be considered.[1]

[1] To elaborate on this moment in history, see Zapiola 2010 and Freidenraij 2013.

2. As of 1940, the development of the Welfare State, a period of strong implementation of distributionist policies. Social welfare as a social control mechanism. A stage of robust institutionalization: the creation of numerous Courts and Councils for Minors. During this period, juvenile jurisdiction grew and was consolidated in its most strictly criminal phase (García Méndez 2004) without any significant legislative reform.

3. Neoliberal government administrations: Tension between the Criminal Regime for Minors in force since 1980 and the human rights discourse which entitles BG&A as subjects of the law rather than the objects of a protection-oppression system, ideally represented by the Convention on the Rights of the Child (1989), ratified by Argentina in 1990 and included in the National Constitution in 1994. It was only in 2005 that the National Congress enacted Law 26,061 on the Comprehensive Protection of the Rights of Children and Adolescents, and, due to the federal system of government, the provinces legislated for the protection of children[2] and reformed the Criminal Procedure Codes[3] incorporating – to a greater or lesser extent and with different scopes – ways to adapt the juvenile penal system in accordance with international standards.

The Criminal Regime for Minors was, and still is, the subject of multiple criticism and objections,[4] thus experts agree to declare that a new legal system is needed to adequate existing legislation to national and international standards and to the system of safeguards of rights adopted by the State.[5]

A relevant critical stance in sociology is the work of the Study Group on Criminal Justice System and Human Rights (Sistema Penal y Derechos Humanos, GESPyDH), mainly their collective work, on the book called *Sujeto de castigos: Hacia una sociología de la penalidad juvenil* (Daroqui *et al.* 2012), which compiles the complex fabric of institutions, players, mechanisms, strategies, and tactics that come into action when it is presumed that a child has broken the law, starting by the fact that young underprivileged teenagers have been the main target of social control policies, repression, and institutional segregation. In the legal field, the contributions of Eduardo García Méndez and Mary

[2] Among others: Chubut: Law III 21 (1998); Autonomous City of Buenos Aires: Law 114 (1999); Tierra del Fuego: Law 521 (2001); Neuquén: Law 2,302 (2000); San Juan: Law 727-C (7338) (2003); Province of Buenos Aires: Law 13,298 (2005) and Law 13,634 (2007); Río Negro: Law 4,109 (2006); Santa Cruz: Law 3,062 (2009); Santa Fe: Law 12,967 (2009); Tucumán: Law 8,293 (2010); La Rioja: Law 8,848 (2010); Misiones: Law II 16; Córdoba: Law 9,944 (2011); Chaco: Law 2,086 (2012) and Law 2,950-M (2019); Catamarca: Law 5,357 (2013); and Mendoza: Law 9,139 (2019).

[3] Among others: Córdoba: Law 8,123 (1992); Santa Cruz: Law 2,424 (1995); Chaco: Law 4,538 (1999); San Juan: Law 7,398 (2003); Catamarca: Law 5,097 (2003); Chubut: Law XV 9 (2006); Autonomous City of Buenos Aires: Law 2,303 (2007) and Law 2,451 (2007); and Misiones: Law XIV - Nº 13 (2013).

[4] Although it exceeds the objectives of this research, it is important to mention that a large number of social agents, ranging from UNICEF to social movements such as Red Argentina No Baja and Ningún Pibe Nace Chorro, have taken action to confront the discourses leading to more severe criminal laws applicable to BG&A, punitive discourses that have been settling for the last 15 years, mainly concerning lowering the legal age for criminal responsibility.

[5] The Convention on the Rights of the Child (1989), the American Convention on Human Rights (1969), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966). Especially devoted to the subject, the rules and procedures of the United Nations called UN Rules for the Protection of Juveniles Deprived of their Liberty (1991), the Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules", 1985), Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines", 1990), and Standard Minimum Rules for Non-Custodial Measures ("Tokyo Rules", 1991), which are all part of Law Nº 26,061.

Beloff are fundamental, being pioneers in the approach to the rights of children, with their compilation *Infancia, ley y democracia en América Latina* (1999); the latest work of Mary Beloff (2016, 2017, 2019) should also be taken in consideration. From the standpoint of the criticisms to criminal law, we must mention Cesaroni (2010), who is a member of the Centro de Estudios en Política Criminal y Derechos Humanos (Centre for Criminal Policies and Human Rights Studies, CEPOC).

It is important to recapture the mentioned stage-like analysis to show the different concepts on childhood and adolescence that can be found in judicial and political policies. The issue of governing the lives of BG&A, handling their behaviour, and the strategies, and technics that are implemented to shape the character of the infant or the young, resurfaces in every analysis.

The last stage should be completed with a tendency to govern through criminal law (Simon 2007) or "punitive populism" (Garland 2005, Larrauri 2006) and the discourses on the harshening of sentences of under-aged persons.

So, by making use of the toolbox of governmentality (Foucault 1991), it is necessary to think how the lives of certain groups of children and teenagers are governed who are destined to become what we have come to call "clients" of the criminal system. López (2017) illustrates on the sense given, during state interventions, to the governmental rationality, and particularly to the deployment of police forces in the city during state interventions, oriented towards the overload of law enforcement agents in certain areas, reinstating the question of "hazard" in terms, not of individuals, but rather, of a population. It is important to consider that these groups of people are immersed in a poverty manufacture process and are vulnerable to punitive practices that tend to be the way to govern within neoliberal social relations, where the state yields its protective actions to make way for punitive practices for controlling poverty: arbitrary body searches, degrading seizures, constant humiliations and "sobering" beatings that become the rule, and all these experiences become a developing and standardized part of the life story of the young persons who live in these areas overloaded with law enforcing agents.[6]

In what follows I will identify the last of these stages, still being developed, and I will analyse a number of the discourses that tailor the universe which assigns social and legal senses. Discourses that are created, circulate, and nourish the power mechanism from within, and that define the semantic field of production of the legal discourse resulting in subsequent regulations that deal with infancy matters and, especially, in matters of the BG&A suspected of having violated criminal law.

3. The metamorphosis of the Criminal Regime for Minors

The civic-military-ecclesiastical-corporate dictatorship in Argentina enforced, between 1976 and 1983, a systematic plan of oppression, disappearance, and death, imposed through brutal violence (Comisión Nacional sobre la Desaparición de Personas –

[6] In September 2003 and, by agreement between the nation and the provincial government, a spectacular deployment of urban occupation, array of federal law enforcement agents (Gendarmería [gendarmerie] and Prefectura Naval [coast guards], took place in the boundaries of three landmark marginal areas: the Complejo Habitacional Ejercito de los Andes in Ciudadela (the media called it: "Fuerte Apache"), the Villa La Cava (in San Isidro) and the Barrio Carlos Gardel located in the city of Morón (López 2017).

CONADEP – 1984, Calveiro 1998). However, it made use of a legal structure that legislated over all the areas of social, financial, cultural, and scientific life, among others. One of the first measures, on June 25th 1976, was lowering the age of criminal responsibility from 16 years old to 14 years old by virtue of the *facto* law Nº 21,338, passed by the dictator Videla, first *de facto* president of the dictatorship. Through this law the Penal Code was significantly reformed, new offences were created, penalties became more severe, and the death penalty was included, among other punitive measures.

During the last *coup d'état*, the self-named Proceso de Reorganización Nacional (National Reorganization Process) did not fail to create a veil of legality, but the practices and techniques of execution were not included in the legislative or judicial procedures. Neither was there an age limit amongst the government orders of extermination. Casaroni (CEPOC 2015) recalls the case of Floreal Avellaneda, a 14-year-old teenage activist of the Federación Juvenil Comunista (Argentina's Communist Youth Federation). The boy was abducted on April 15th 1976 together with his mother, Iris E. Avellaneda, tortured and made to disappear. His body was found in the Uruguay River Plate coast, a month later.[7] This case evidences that the adolescent was considered dangerous from the standpoint of a social or political hazard, set forth by the Doctrina de la Seguridad Nacional (National Security Doctrine).

In 1980, the Criminal Regime for Minors entered into force by the *facto* Decree-Law N° 22,278, a legislation passed with the endorsement of a commission of jurists who presented the proposal, the Comisión de Asesoramiento Legislativo (Legal Advisory Commission). In May 1983, it was amended by the *facto* law N° 22,803 which rose the age for criminal responsibility to 16 years old. This is the current infant-juvenile law, still being enforced.

I will analyse the normative text, together with multiple discourses and doctrines that have collaborated with the metamorphosis of its substance.

The Criminal Regime for Minors set forth by decree-law 22,278/22,803 establishes in section 1 that:

> no person under the age of 16 years old shall be held criminally responsible. Also, no person under the age of 18 years old shall be convicted for offences of private prosecution, or for crimes which carry: a prison term sentence of less than two years, or fines, or disqualifications.[8]

The legal age for criminal responsibility is sixteen years old, such is the limit established by the politics of criminal law. Thus, it is not criminally relevant whether a person under 16 is suspected of having infringed the law, whatever the alleged crime may be. Paradoxically, this does not mean that the conducts for which adults can be convicted are not regulated in the case of BG&A, because the law authorizes a mechanism for criminal prosecution:

> In the case of an accusation against someone who is under 16 years old, the judicial authority shall make provisional arrangements, verify that the crime was committed,

[7] Judicial Chamber II for Criminal Cases of the Supreme Court, upheld in 2010 the conviction for life imprisonment of Santiago Omar Riveros – former Commander of Military Institutes in Campo de Mayo – and other implicated former officers, for the death of the teenager.

[8] All translations from Spanish are published under the full responsibility of the author.

> make direct contact with the person suspected of having infringed the law and his parents, tutors or guardians, shall order the reports and forensic analysis that are needed for profiling the person, his or her family and the environment he or she is in.

This is to be read together with section 3, below, in accordance with the Ley de Patronato (Children Welfare Act), the doctrine of Situación Irregular (irregular situation) and the rule for BG&A "abandoned minor=criminal offender" in the case of considering that there are circumstances of moral or material neglect.[9]

The section continues:

> Should it be necessary, the minor shall be placed in an adequate facility for further examination for the time necessary. If from those examinations it is determined that the minor has been neglected, lacking assistance, is found to be in material or moral danger, or presents behaviour problems; the judge shall make arrangements for the minor through a court order, after having heard his or her parents or tutors. (Criminal Regime for Minors, Section 1)

The law gives the judicial authority the power to make provisional arrangements concerning the life of a teenager, which means that he or she will be placed where the judge deems appropriate, and, of course, this may include "confinement"[10] in different facilities for that purpose, traditionally known as "reformatory institutions". Even in the case of an absolution, the judge can make arrangements when any of the extent number of circumstances given are met. This violates several legal dispositions, set forth by articles 16, 18 and 19 of Argentina's Constitution; and sections 12, 37 and 40 of the Convention on the Rights of the Child; sections 8 and 25 of the American Convention on Human Rights; and sections 9, 14 and 16 of the International Covenant on Civil and Political Rights. This is also in conflict with local law 26,061 on Comprehensive Protection of the Rights of Children and Adolescents enacted in 2005, sections 32 and 41, which provides the means of protection that can be applied to BG&A, expressly forbidding in section 36 deprivation of freedom as a means of protection.

---

[9] Law Nº 10,903 (Agote Law) was enforced from 1919 to 2005. This law gave judges the authority to decide over the lives of underage individuals, for an indefinite period of time and until their coming of age (at that time, full legal age was acquired at 22 years old), in cases were the judge considered that the person was in moral danger or suffered material abandonment. This law evidences how BG&A were thought of as objects of the law that could be disposed of by competent judicial authority.

In section 21, of this law, is stated that "for the purpose of the sections above, material or moral neglect, or moral danger, shall be construed as: the parents, tutors or guardians encouraging the minor to commit acts that are prejudicial to his or her physical or moral health; beggary or vagrancy on the part of the minor, the attendance of the minor to immoral places or gambling houses, or places frequented by thieves or undesirable individuals, or those who still under the age of 18, sell newspapers, publications or any object of any nature, in the streets or public places, or when being in this places they work far from the supervision of their parents or guardians, or when they are employed in occupations considered hazardous to their moral or health".

With the doctrine of the irregular situation the law decided the fate of those underprivileged and excluded BG&A, including whether the charges should be dropped, be absolved or considered victim of a crime. The concept of the ward-punitive device can be useful to characterize the technologies and techniques of intervention on childhood while the law was enforced. Then, under the concept of ward, criminal law and judges for minors were not only to be concerned with those BG&A charged with a crime but also, and mainly, with those BG&A who "at the judge's discretion" were found to be materially or morally neglected.

[10] I make use of quotation marks to refer to the colloquial ways to name detention centres which, ironically, are destined to BG&A as a means of ward as well as a means of punishment.

Section 2 deals with teenagers older than 16 who are criminally responsible:

> It is deemed criminally responsible the person between sixteen and eighteen years of age who commits a crime other than those expressly excluded in section 1. In this case, the judicial authority shall submit the minor to due process and make provisional arrangements during the term of the process in order to allow the enforcement of the faculties granted by section 4.

Thus, teenagers between the ages of 16 and 18 who are suspected of having committed a crime shall be submitted to criminal procedure.

Section 3 defines the arrangements for under-aged persons:

> a. the judge has mandatory custody over the minor, in order to secure adequate education of the minor by providing comprehensive protection. To that end, the magistrate may order the measures he or she deems convenient with respect of the minor, which can only be changed if it is in the minor's best interest;
>
> b. the restriction on parental authority or guardship, within the limits of the law and complying with the requirements of the court notwithstanding the validity of the intrinsic obligations of parents or tutors;
>
> c. pass judgement on ward, when suitable.

It follows the criteria that judicial arrangements depend on the personal circumstances of the BG&A and not on the act committed ("If from those examinations it were to be determined that the minor has been neglected, lacking support, found to be in material or moral danger, or presents behaviour problems, the judge shall make arrangements for the minor"), the law does not point to considering the severity of the crime he or she is being charged with or the result of the proceedings. Having in mind the general principles of liberal Criminal Law, this is more appropriate to criminal law based on the perpetrator, rather than criminal law based on the wrongful act.

The severity of the criminal law response depends on the evaluation the judge makes of the child's family and environment. Even in the case of being absolved, the court may order the detention based on the state of hazard the boy, girl or adolescent is considered to be found in, therefore confinement becomes the strategy for protection, the ward measure. How does this protection operate? It is administered by criminal courts, by means of institutes for minors which follow actual detention policies; the protection functions as punishment, as necropractices, defined as radical actions that aim to create bodily harm (Valencia 2010/2018, p. 218), a punishment written on the body of the penalized BG&A.

I especially refer to two different moments: first, the body search, which is an examination of the body of the newcomer which is mainly invasive and deprives the person of all of his or her belongings, including the underwear; and, second, the absolute and uninterrupted confinement for several days, known as "adaptation" or "softening", which consists of remaining locked up in a cell, for at least 24 hours and to a maximum of 5 to 7 days. This practice of confinement within confinement is considered an inhuman and degrading treatment and is usually committed against those children detained in these facilities. This degrading practice not only constitutes a severe violation of the rights of BG&A but also brands the entrance to the institute as a common regular institutional practice that is legitimized in and out of the detention centre and begins to

be naturalized by the persons subjected to it (to elaborate on this, see Suárez *et al*. 2012). Furthermore, the body search is not just a staging for the humiliation of individuals, where the main attraction is complete nudity and the actions they must perform, but also constitutes a situation of vulnerability of a sexual nature, which feminizes the body of young boys when entering the facility, with the aggravation to the punishment produced by the awareness of such feminization, since it implies the expropriation of one's own body and its placement in the hands of security agents (Segato 2018).[11]

In the irregular situation doctrine, a classification, ancillary to the law, is neglect or material or moral hazard, which works as a mechanism to capture selectively certain segment of children, to whom the law almost exclusively applies: the BG&A who are disregarded and excluded. Given that the institutional device[12] for social control is confinement, it seems evident that, while the Criminal Regime for Minors has the purpose to protect minors, it encourages a silent project of social preservation. It is subsidiary to the patronage law and completes the ward-punitive mechanism.

Courts may only determine that an adolescent is a criminal offender through criminal procedure. However, most teenagers placed in juvenile detention centres are presumed offenders, that is to say, they have not yet been subjected to criminal procedure. So it follows that the court's sentence of confinement in these closed regime facilities operates similarly to the placement in custody during trial, in the case of adults.

The articles of the law throughout its subsections open a wide range of powers to the courts: first, it determines the aim of the court's power to make arrangements, to provide the appropriate support, and the comprehensive protection for teenagers. This does agree with the protective system and the principle of expertise in the subject of juvenile criminality, which means that the courts will have the capacity to take the measures that are more convenient for the adolescent when ultimately deciding the device that is more appropriate for the young (alleged) offender. It also enables the possibility to implement restorative measures, whose principles and practices should be the first choice in matters of juvenile criminal law, as well as leaving criminal remedies as the last resort.

Then, it characterizes the court's power to make arrangements as a restriction to parental authority over their children, which does not release them from the bulk of parental obligations, and completes the court's powers by authorizing judges to decide over the ward of underage child if it was necessary.[13]

Section 4 sets forth the conditions that must be met for a conviction (as anticipated in section 2):

> a. That the criminal, and civil if applicable, responsibility of the minor be declared according to due process;
>
> b. That he or she had acquired 18 years of age;

[11] The intersection between age and gender perspectives will be further illustrated in the thesis that is the framework of this paper.

[12] Device, apparatus or mechanism is the translation used to refer to "le dispositif", key conception in Foucault's work.

[13] This proviso refers to parental responsibility, under the light of the Civil and Commercial Code sanctioned in 2015, instead of the term "parental authority".

> c. That he or she had been submitted to a period of at least one year of ward treatment, extendable if necessary until his or her coming of age.[14]

So, for a teenager to be convicted, he or she must be first declared criminally responsible by means of a criminal procedure, must have reached the age of 18 years old, and must have received at least one year of ward treatment.

The section continues:

> Once these conditions are met, if, given the aspects of the case, the criminal records of the minor, the result of the ward treatment and the personal appreciation of the judge, it is deemed necessary to impose a punishment, the judge will do so, having the power to reduce the sentence to the penalty provided for attempted crimes. If there were no need to impose a sentence the judge will absolve the minor, and to do so the judge is authorized to disregard the condition of having turned 18 years old.

It is, therefore, the court's prerogative to condemn or absolve, and, in the case of deciding to implement a punishment that deprives an adolescent of his or her freedom, the courts should choose the sentence that corresponds to the attempted offences. At a normative level, the text of the Convention on the Rights of the Child, in article 37 subsection b, states that:

> No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child (...) shall be used only as a measure of last resort and for the shortest appropriate period of time.

To Cesaroni (2010) it is clear that this article must be interpreted in mandatory terms, since the shortest period of time will be the one provided for attempted offences. In case-law terms, two paramount decisions address the issue: the Maldonado judgement (2005) and the Mendoza judgement (2013), both to be analysed further on.

Finally, section 5 of the Criminal Regime for Minors stipulates the disregard of the regulations related to recidivism for acts committed before the age of 18. In fact, adolescents cannot be considered persistent offenders from a legal standpoint. This follows a limit set forth by the Penal Code in 1921. Section 6 of the Criminal Regime for Minors indicates that confinement measures shall be executed in specialized institutes.

Multiple paths have been taken from the standing laws to judicial rulings, towards sealing the fate of BG&A suspected of infringing criminal law. This metamorphosis of the legal discourse is not the result of a diversity of interpretations of a law, neither is it the result of a process of subsumption, nor the result of single decisions, but rather a discourse that arises, transforms and strengthens through battles (Marí 1982, p. 74) that are fought to capture meaning.

The Supreme Court of Justice (CSJN), through the Maldonado case,[15] had a direct influence in the enforcement of the Criminal Regime for Minors. The Supreme Court

[14] When this law was drafted full age was reached at the age of 21 years old. The Civil and Commercial Code effective since 2015 established the full legal age at 18 years old.

[15] The Tribunal Oral de Menores N°2 (Juvenile Court N° 2) of the city of Buenos Aires sentenced Daniel Enrique Maldonado to a fourteen-year imprisonment for the commission of theft aggravated for the use of weapons, concurrent with first degree murder with aggravating circumstances (sections 166 subsection 2, Section 80 subsection 7 of the Penal Code, and Law N° 22,278) The attorney general filed an appeal before the Criminal Court of Appeals (Casación Penal) against this sentence, on the grounds that the Court had

points out that the need for penalty established by the Regime cannot be equivalent to the severity of the crime or the danger of the offender. The reason why the legislator granted the judge such ample powers when it comes to sentencing somebody who committed an offence while being under 18 years old is related to the premise of ensuring that these sentences are mainly directed to social reinstatement.

In argument number 40 of the judgment, the Court states that:

> within the frame of criminal legislation compatible with the Constitution and its concept of individuals, it is not possible to avoid the limitation to the penalty imposed by the criminal responsibility, and in the special case of minors' responsibility, the reduction that derives from considering the emotional or affective immaturity, universally known as a necessary product of its vital stage of evolution, as well as the impossibility to appeal the criminal responsibility since it is incompatible with our Constitutional Law. Under these conditions, there can be no other solution but to recognize that the state´s punitive action must be lower than the one that could be applicable, in the same circumstances, to an adult.

The Convention on the Rights of the Child (1989) sets forth "the desirability of promoting the child's reintegration and the child's assuming a constructive role in society" (Article 40, subsection 1°). Since the constitutional mandate orders that all imprisonment punishments be directed to promote social reintegration of the convicted felon, it requires that the court does not disregard the direct consequences of the sentence. In the case of under-aged persons, the obligation becomes even more demanding and translates into the charge of substantiating the need to deprive a person of their freedom, from the standpoint of the possibilities of social reintegration. This implies carefully taking into consideration, in that judgment of necessity, the elevated amounts of necropractices, such as cruel, inhuman and degrading punishments, mistreatments and tortures that form part of a long list of retributions (Grupo de Estudios sobre Sistema Penal y Derechos Humanos (GESPyDH) *et al.* 2018) suffered during confinement. The Supreme Court quotes the Inter-American Court of Human Rights when pleading "hazard" as grounds for imposing a severe sentence:

> [I]t clearly constitutes an expression of the enforcement of the state's *jus puniendi* based on the personal qualities of the agent rather than the qualities of the act, that is to say, it substitutes the Criminal Law of the act of fact, proper of the criminal system of a democratic society, for the Criminal Law of the author, which opens the door to authorities precisely in a matter where the assets at risk are the ones of higher hierarchy. (*Fermín Ramírez v Guatemala*, 2005, argument 94 and 95)

If the state's punitive reaction must be lower than the one that should be imposed, in the same circumstances, to an adult, this means a limitation to subsection c) of section 4 of

made a wrong interpretation of the law when deciding to administer the punitive scale set forth for attempted offences as per section 4 of Law N° 22,278. Chamber I of the Criminal Appeals Court (Sala I Cámara Nacional de Casación Penal) revoked the sentence and convicted Maldonado to life imprisonment. This decision was appealed by the defense based on the unconstitutionality of Maldonado´s life imprisonment, since it would violate the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 75, subsection 22° of the Constitution). The defense held that imposing the maximum penalty implies setting aside the best interest of the child and the principle of subsidiary application of imprisonment with respect of (3° and 37 subsection "b", Convention on the Rights of the Child, 1989).

the Criminal Regime for Minors. The judge must absolve or administer a punishment to the degree provided for the attempted offences.[16]

A thoughtful analysis remains to be made in order to determine the reasons why the Supreme Court did not declare the unconstitutionality of the life imprisonment sentences imposed on BG&A.[17] For now, I will just reassume the Mendoza judgement, where the IACHR ruled categorically that no life imprisonment should be admitted in any form, within the jurisdiction of the country, for those who have committed crimes while being under the age of eighteen. And it states:

> The state shall ensure that no life-term imprisonment is inflicted upon C.A.M., C.D.N. or L.M.M., nor any other person for criminal offences committed while being underaged. Likewise, Argentina is to guarantee that those individuals currently serving this kind of sentences for crimes committed while they were underaged, have access to a revision of their sentence, in order to adequate to the standards set forth by this Decision, as per paragraphs 326 and 327 therein. (*Mendoza et al. v Argentina*, 2013)

The international order is strict, therefore, there seems to be no explanation for the judicial decisions that establish lengthy sentences to children[18]. For now, I will not attempt to approach this form of extreme punishment and will instead proceed to a thoughtful analysis of a case that reached the Supreme Court and was destined to make history.

3.1. Fundación Sur: The judgment that could have been, and was not

According to Marí (1982, p. 74), legal discourses are constructed through a process of creation that is not balanced, but rather the elements and arguments that intervene do so through a struggle, in a relation of controversy and disagreement. When in judicial trial, many arguments emerge from the political, medical, scientific, religious, and journalistic fields, among others, and converge in the process of creating the legal discourse. Later, these arguments are either made invisible with the final outcome through mechanisms that turn these arguments into legal discourses, or they are discarded. Hence, the philosopher and jurist shows the misalignment registered between the formation process and the final legal outcome. He explains the disruption, the distance, the wedge; evidences that this is a discontinuous process, so there is no consistency or uniformity in the legal discourse (Marí 1982, p. 81).

Following Foucault's thesis reassumed by Marí (1982), which states that law is, in general, a clandestine discourse, I will analyse a judicial decision which is the resulting judicial product of the metamorphosis of the legal discourse. This case begins with the filing of a Class Action for Habeas Corpus in September 2006, by Fundación Sur (*García Méndez y Musa*, 2008), on behalf of 60 children, under 16, who were deprived of their freedom and confined in the San Martín Institute in the city of Buenos Aires. On December 11th 2007, by issuing a remarkable judgement, the Criminal Court of Appeals

[16] The sentence to be applied to a person, who has committed a crime, shall be reduced from one third to a half, Penal Code Section 44.

[17] Cesaroni (2010) deals with these judicial cases of young adults forced to serve life term imprisonment for offences committed when they were underage.

[18] See the decision of the Court of Criminal Appeals for the city of Buenos Aires, July 14th 2019, which dismissed the appeal of a young person to serve a 34-year sentence, for a crime he had committed while underage (Cámara Nacional de Casación Penal de la Capital Federal, 2019, 906/2019).

declared the unconstitutionality of section 1 of law N° 22,278, which regulates the Criminal Regime for Minors. Moreover, it demanded the legislative power to adequate, within the term of a year, the criminal legislation applicable to BG&A, according to the new constitutional standards, and to set forth a new comprehensive system consistent with law N° 26,061.

When the judgement was appealed on December 2nd 2008, the members of the Supreme Court at the time – Ricardo Lorenzetti, Elena Highton de Nolasco, Carlos Fayt, Enrique Petracchi, Juan Carlos Maqueda, Eugenio Zaffaroni and Carmen Argibay – decided to reverse the decision of the Criminal Court of Appeals.

What were the arguments in dispute in the field of production of this judicial resolution? What line of discourse prevails and seals the reversal?

The Supreme Court decided to revoke the release of the children who, contradicting the law, were held detained in an institute for minors, places which are often presented as social rehabilitation facilities but operate as actual confinement centres (Daroqui *et al.* 2012). The resolution has a hidden subtext, surrendering to governing through criminal law, and to the social claim for harsher punishment, which found an echo in the position of the governor of the Province of Buenos Aires, at the time Daniel Scioli (Cronista 2008, Guemureman 2014), who suggested a more severe criminal law applicable to underaged persons who commit crimes, as a solution to criminal offences. This punitive discourse conflicts with other discourses towards the enhancement of rights, according to which the standing criminal system severely violates the rights of BG&A as granted by the constitution.

How can the metamorphosis of the legal discourse be evidenced which leads to a judicial decision which buries, not only the discourse towards the enhancement of rights for BG&A, but also the State's obligation to cease the severe violations to them and to create the conditions for a dignified existence (Beloff and Clérico 2016)?

Guemureman (2014) selects several cases[19] that had special resonance in the media and have contributed to building the demand for a more severe criminal intervention when it comes to BG&A. One of them was the case of the engineer Barrenechea, in 2008. In this case, when it comes to underaged individuals, a crisscross can be found between the different arguments that operated in the field of the metamorphosis of the legal discourse: the situation of jails and detention centres, the police authorities, the use of children to commit crimes,[20] the position of journalists, the political speech of the executive of the Province of Buenos Aires, and the patronage, detention and confinement measures, among others. In this case, an engineer and his son were shot in the

[19] The Millorini case (2002) where a young man of 17 years old, was charged for murdering a police officer member of the bodyguard of politician Ruckauf; the Blumberg case (2004); the case of the engineer Barrenechea (2008); the Capristo case (2009); closer to these days, the Aguinaco case (2016). All these episodes have their corresponding claim for an amendment of the criminal regime for minors and juvenile offenders, and demands for the lowering of the age for criminal responsibility. Draft amendments: 2004, 2009 and 2019 (cases cited in Guemureman 2014).

[20] A key case is the disappearance and death of Luciano Arruga. The investigation, driven by the family and human rights organizations, revealed that four months before his disappearance Luciano had refused to steal for the police, after which he was systematically harassed by members of the Lomas del Mirador police station (Clérico and Aldao 2019).

neighbourhood of San Isidro, Buenos Aires. Among the assailants, there was a 15-year-old adolescent. The attack resulted in the death of the father and severe injuries to the son. The sociologist explains that the incident kept the attention of the media since it occurred (October 2008) until two months after (December 2008). “The crime of Engineer Barrenechea is the most striking of a series of episodes of violence carried out by young persons unable to ‘twist the arm’ of the political-media agenda” (Guemureman 2014).

Returning to the case of Fundación Sur, the decision was unanimous. It revoked, in December 2008, the decision of the Criminal Court of Appeals that had ordered the progressive release, within a 90-day period, of the individuals under 16 detained in the San Martín Institute. It is relevant to stress that the members of the Third Chamber of the Criminal Court of Appeal had declared in 2007 the unconstitutionality of section 1 of the criminal law that allows the imprisonment of individuals whose acts are not prosecuted by criminal law.

The immediate consequence of this decision was that the Supreme Court kept the BG&A who cannot be criminally charged in detainment. Another *legal* side-effect was that it left the constitutionality of the current legislation standing, despite having demanded the Congress for an amendment and a redesign of alternative procedures to the existing judicial procedures. The executive power and the provincial governments were compelled to develop “public policies” for children, and the judges were invited to make a close control of the conditions of detention and to revise each case in order to decide if the confinement must continue or not.

Justice Argibay (quoted in Hauser 2008) said during an interview that:

> At the time, we decided against the release of the minors detained there, because they were moving targets. Those children, that have had some kind of conflict with criminal law but are not charged because they are under 16 years old, they have been already tagged by the police. Sometimes they don’t have anywhere to go, or are mistreated by their own families, or their own families do not want to care for them. They cannot be left loose in the street just like that, because they will get killed. I do not want those deaths on my conscience. (Argibay, quoted in Hauser 2008)

There is a recognition of an unattainable situation, there is a continuance of a punitive-ward mechanism because there is nothing else, no strategies, facilities, or possible alternatives, and there is another silent discourse, the one that intends to avoid disturbing the minds of the judicial authority. What it does not avoid, however, is the endless punishment on those who, despite not being subjects of criminal law, are still under its grasp.

The judgement suggests that “the legal discourse, as a final product, disregards the political arguments, however, it can only be understood through those discarded arguments” (Marí 1982, p. 81), because when analysing the comings and goings of the different arguments, the one that sealed the fate of the BG&A not charged but confined was the discourse of the executive power of the province of Buenos Aires, which did not want to yield before the social unrest unleashed by the Barrenechea case. This decision mirrors the relation of powers in the discursive struggle; little were the voices of the BG&A heard, or the paradigm of protection stand, when faced with the discourse of fear and insecurity.

4. The centre of the current debate: Feed the Leviathan

4.1. A review of the dominant political arguments: The Aguinaco case

As previously mentioned, the cases selected by Guemureman (2014) had a special resonance to the public and contributed to build the demand for a more severe criminal intervention when it came to BG&A.

I will analyse the case that, sequentially, has branded the latest debates[21] concerning underage persons subject to punishment, and the criminal law that can be enforced on them. I will refer strictly to the use of political arguments[22] placed inside information and communication channels, and how they work as devices of hardship distribution. First, I will analyse some interventions of the Minister of Justice and Human Rights, Germán Garavano, facing the media commotion for a crime and a death that occurred in 2016. The episode functions as a pivot through which the different arguments of different background crisscross (Marí 1982, p. 58) in order to create the field of production of the legal discourse. Finally, I will offer a critical reading of an interview to the Minister of Security, Patricia Bullrich,[23] which provides the framework to install the debate for lowering the age of criminal responsibility and to present the draft project for amending the Criminal Regime for Minors.

In December 2016, a 14-year-old boy, Brian Aguinaco, dies as a result of a severe gunshot injury. A 15-year-old teenager is held responsible for the homicide. The media had an immediate reaction: on the one side, arguments erupting from written press, radio, and social media; on the other, prominent public officials were rapidly questioned and they contributed to aligning a dominant political discourse oriented to the repression of this child-juvenile crime. Thus, the Minister of Justice and Human Rights, when interviewed by newspaper *Clarín* (Ortelli 2017) pointed out that: "Reality shows that, in the criminal system, both the victims and the perpetrators are mostly young persons". Here, it is interesting to address the problem that the Minister refers to victims and perpetrators under the same category of "young", while the United Nations Programme on Youth states that someone young is any person between the ages of 15 and 24 years old. However, when it comes to the persons charged with a crime, the assertion seems to be referring not to the *underage but punishable individuals* – under 16 years old – but to adolescents who cannot be punished. Moreover, according to the data from the Supreme Court of Justice Data-Base on Institutionalized Children, by 2015 the number of

---

[21] For an overview, see Guemureman and Bianchi 2019.

[22] The statements of the Minister of Justice and Human Rights in 2017, when a criminal episode mentioned trigged a "new" debate on the Juvenile Criminal Regime, and the sayings of the Minister of Security in 2019, when the draft project of the bill on Juvenile Criminal Responsibility was introduced, were selected following Marshall (1984, in Garrison 2009) recommendations that researchers "should study the settings where key people make decisions". Within the four groups that Marshall divides the various actors within policy making: elites, those who control information; bureaucrats, those who protect the goals of the agency; ostriches, those who are in the system and obfuscate or avoid the rules of the agency; and pussycats, those who delight in providing information to researchers (Garrison 2009). It is possible to consider the selected actors, members of the Cabinet, as elites because as politicians they have the authority to prevent or implement a policy under their own authority and discretion (Garrison 2009).

[23] The sayings of the Minister of Security are significant as she was the appointed politician to introduce the draft project of the bill on Juvenile Criminal Responsibility in March 2019 (Honorable Cámara de Diputados de la Nación Argentina 2019).

detentions ordered in judicial cases had dropped. In 2013, 500 children and adolescents were detained, and the number dropped to 352 in 2015, therefore the Minister's statement is, at the least, ill-advised, if not leading to retro feed the discourse of fear.

There is updated information on convictions, although at a national level the statistics on crimes committed by under-age persons are limited. According to the Registro Nacional de Reincidencia RNR (National Registry of Repeated Offenders), an agency of the Ministry of Justice and Human Rights, in 2016, more than 37,000 convictions were declared. If figures are broken down by age, 46.2 % of the convictions belong to adults, 0.42 % to children between the ages of 16 and 17 years old, and, for the rest, the age is unknown.

Later, the Minister spoke in *A dos voces* (Bonelli 2017), a television programme of news and opinion, broadcast by *Todo Noticias*. Some segments of the interview are transcribed here, word by word:

> Minister of Justice: 'We intend to discuss the entire criminal regime for minors (...)'. [Then calls for the 'importance of an early intervention when a crime is committed' in order to avoid the 'vicious circle of crime'].
>
> Journalist: 'There are many minors that commit crimes and many minors that are victims of a crime'.
>
> Minister of Justice: 'In the group of the 15 year olds, we have serious issues (...). Horrible crimes, violations, homicides'.

Contrary to this, a report of the Magistrate's Council of the City of Buenos Aires (Codino 2016) states that, out of 175 homicides registered in 2015, only one case was committed by a BG&A under 16 years old, while 10 cases were attributed to teenagers between the ages of 16 and 18 (3.8% of all). Meanwhile, according to the statistics of the Office of the Attorney General of the Supreme Court of Justice of the Province of Buenos Aires (Procuración General de la Suprema Corte de Justicia de la Provincia de Buenos Aires 2016), during 2015, 26,798 cases against individuals under 18 years old were filed, of which 126 correspond to charges for first degree murder, less than 0.5% of the total.

After several appearances in different mass media programmes, on January 6th 2017, Minister Garavano spoke with the journalists Llorente and Villaruel on the radio show *Detrás de lo que vemos*, broadcast by Radio AM 750, where, among other, things she said: "The important thing, then, as I see it, is to reform the regime to provide the judges with tools that enables them to determine in each specific case if a 14-year-old individual is conscious or not of the implications of, for instance, having killed a person" (Garavano, in Llorente and Villaruel 2017). Would the argument have something to say especially regarding psychoanalysis, concerning the possibility to access conscience? On what does the public official base the arguments of her speech: on the formation of discernment, on the degree of guilt? The criminal policy regarding the age of criminal responsibility is to set a minimum age for criminal responsibility.[24] Under such age, the criminal court must make no intervention and has no saying in the case, it has no job to do, much the least a conscience to rummage.

[24] Within 2016 and 2017 the age of criminal responsibility wanted to be set at 14 years old, in 2019, the draft project placed it at the age of 15. Nothing is said about the reasons behind this change.

Now I will refer to the statements of the Minister of Security, Patricia Bullrich, in January 2019, when she was interviewed in the radio show *Cada Mañana* led by journalist Marcelo Longobardi, introducing the presentation of the draft project of the bill on Juvenile Criminal Responsibility.

The Minister says: “We are establishing criminal responsibility at the age of 15, but administrative charges may be brought at any age. It is irrelevant at what age the minor commits the crime, immediately he or she enters a socio-punitive-therapeutic regime, to receive treatment, in order to deter the harmful conducts that led him or her to kill or be killed” (Bullrich, in Longobardi 2019). The draft project states, in section 86, that Criminal Courts are to judge alleged offenders under 15 years old. The public official speaks of an administrative responsibility, but contained within the criminal regime and implemented by criminal courts which have criminal means at its disposal (whether those are being called mediations, restorative agreements, or remedies, among others) to be imposed upon those who should not be charged.

“We came to an agreement; everybody had to put their most inflexible ideas aside. We will send it to Parliament for its debate during extraordinary sessions and it must be debated before (the amendments to) the Penal Code, this project has been completed”. The Minister refers to having reached a consensus on the amendments to the law, nonetheless, the workshop held in 2018, *Work committee for the new system on juvenile criminal responsibility*, summoned by a resolution of the Ministry of Justice, indicates the contrary. These committees were joined by representatives of the executive, judiciary and legislative, and included civil society experts, among them the National Bureau for the Children, Adolescents and Family, UNICEF, professional associations, and scholars, especially devoted to the amendment of the law, applicable to the adolescents suspected of having violated the criminal law. There was an absolute agreement as to the fact that the law must comply with the Constitution and Treaties on Human Rights. However, of the 40 experts, 32 voted against the lowering of the age for criminal responsibility.[25] This means that the consensus is against the proposal and the inflexibility lies in a multitude of arguments based on criminal statistics and arguments of a social, political, legal and even economic nature, against this regressive reform.

The public official continues to say: “This means working when the first misconduct takes place. It is important because when a minor commits a theft, and nobody says anything, it generates further conducts more violent and advances towards a career in crime”.

UNICEF and CENEP (2018) explain that the BG&A held in custody “have a high level of disruptiveness of their formal education: eight out of ten adolescents surveyed had abandoned school for a period of time before entering the detention facility” (UNICEF and CENEP 2018, p. 40). In addition, that “police force” is the main institution they said to have mistreated them at some point during confinement.

I could continue to refer to the severe violations to human rights this sector of the infant-juvenile population endures with respect to life conditions, nutrition, mistreatment, and abuse, the use of highly dangerous substances such as cocaine, psychotropic drugs, and

[25] Access to data through the Workshop on Adolescents and the Criminal System, lectured by Claudia Cesaroni, 2019, CEPOC. There is also a brief report by Chayer and Garsco (2018, p. 96).

base paste. All of this evidences a conjunction of violations of rights, the absence of institutional protection of rights, and the presence of the state by means of law enforcement agencies that are in a position of disposing of the life and the body of vulnerable BG&A. If we must address the issue of children through a regime that provides a comprehensive protection of rights, acting at the first offence, this implies, at least, taking deterrent measures, and this is not the role of detention facilities, but the role of social, community, learning and health entities, among others. As Beloff and Clérico (2016, 38) have pointed out, what justifies the State's obligation to undertake affirmative, appropriate, sufficient, and conducive measures to repair the situation vulnerable children, street children, detained children, is "the underlying argument (…) of material inequality. In these situations, there exists an inequality that creates extreme violations of rights, especially the right to a dignified existence, by reason of which the State must intervene".

Lastly, I would like to underline that the Minister assured that, according to official records, 7% of crimes are committed by persons under 16 years old. It is a problem not knowing to what records she is referring to, since the Ministry of Security develops the Criminal Statistics of the Argentine Republic, which are not classified by age, neither are the data process reports of the Sistema Nacional de Información Criminal SNIC (National System of Criminal Records), and nothing is said about the draft project of amendment in its intentions. From the data retrieved from the RNR the statistics report of 2016 shows that more than 37,000 convictions were issued, of which 0.42% are convictions on BG&A between the ages of 16 and 17, and 46.2% are convictions granted to adults; as for the rest, the age is unknown (Registro Nacional de Reincidencia 2017).

From this analysis, it is suggested that the amendments to the Criminal Regime for Minors seem a discourse for governments with upcoming election periods, or facing the public's opinion claim for "security" within a media vortex, due to an incident of violence that transcends having caused great impact. This form of governing through law and through the criminal system can be called "punitive populism",[26] a notion that implies the resort to punitive devices to face a problem of a social origin. These political demonstrations, in the beginning, follow electoral motives and later become public policies, a way to tackle social and structural problems.

In this scenario, I consider that there is certain intensity in the relation between violence and crime, the State ambushing and administering the social suffering created by crime. Thus, the "unrest caused by the crime committed projects exponentially and becomes an urgent and imperative claim to change the state of things, to the sole purpose of hardening the punitive consequences to those who are identified as dangerous subjects, the cause of insecurity: the young" (López *et al.* 2012).

Having these phenomena as background, the proposal of establishing more severe punishments to BG&A comes in the scene, particularly by means of lowering the age of criminal responsibility. What is the reason behind this argument apparently based upon the increase of juvenile delinquency? How does this legal-political discourse, concerning the manner in which violence bursts in our society, get settled? It is necessary to think,

[26] Term designed in 1995 by the British criminologist Anthony Bottoms in *The Philosophy and Politics of Punishment and Sentencing*, cited by Garland (2005), Larrauri (2006) and Simon (2007), among others.

mainly, of the patronage of infants in the hands of the criminal system, focusing on the discourses that lead to more punishment and worse penalties, as performed by the institutions that operate as devices for administering the suffering of boys, girls and teenagers, the penitentiary for minors.

4.2. Approaching a definition of governing through crime

During the past decades, the debates on criminology and criminal law have included the perspective of "populist punishment" as a concept that describes the use of criminal measures, fed by the radical discourse of insecurity and fear. This phenomenon, known as "demagogy of punishment" or "penal populism", is characterized by an immediate and permanent call for criminal law to face certain social issues, all of which, in general, have great media impact.

According to Bottoms (cited in Larrauri 2006), punitive populism refers to a government's use of criminal law, guided by the following assumptions: more severe punishments may reduce crime rates, punishments help reinforce the moral consensus of society, and electoral profit may be obtained from resorting to criminal law.

A few years later, it was Simon (cited in Larrauri 2006) who, in another type of analysis, tried to describe a similar idea: "governing through crime", which refers to the actions of the government that, seeking to confront social problems, resorts primarily to the criminal system. This is the input that best evidences the notion of government as a leader of behaviour.

The Spanish author Larrauri takes from Garland (2005) certain indicators that evidence these phenomena. Based upon the American experience, this author states that a turn has taken place, from a punitive model oriented to social rehabilitation, to a model based on social incapacitation.[27]

The different works and multiple approaches have allowed us to ask and ponder if it is possible to find and replicate the indicators mentioned in a context like ours. By analysing other European, Latin-American, and Argentine scholars,[28] I suggest, without a doubt, that the culture of control is a widespread phenomenon. Among the general terms of change, indicated by Garland (2005), we can enumerate the permanent sensation of crisis, the revival of prison and the birth of new doctrines of criminology, the decay of the idea of rehabilitation, the emergence of the "expressive" justice, the emotional tone of the criminal policy and the radical polarization of the measures of control. This tendency is anchored in the reaction when facing an offence committed by a teenager, which derives into proposals of hardening the applicable law, especially by means of lowering the age of criminal responsibility.

In Argentina's current situation, I have been able to spot the following elements as evidence of a tendency to govern through criminal law:

[27] Incapacitation implies the attempt to make a person incapable of committing a crime. It involves turning criminal policy to reducing the opportunities to commit crimes.

[28] In addition to the mentioned authors, I consider relevant to at least name Alessandro Baratta, Roberto Bergalli, Loïc Wacquant, Pat O'Malley, Massimo Pavarini, Sofía Tiscornia, Alicia Oliveira, Emilio García Mendez, Roberto Gargarella, and Eugenio Zaffaroni.

1) The rehabilitation ideal as the main principle of the criminal system, seeking to guide all its decisions and practices, is in crisis. Beyond the actual enforcement of the rehabilitation procedures, this aim is not being upheld by politicians.

2) The rise of a punitive mood amongst the population. People seem to have lost the possibility to identify themselves with the (alleged) offender, which means that they are unable to develop any kind of empathy. This may respond to the fact that the felon is presented as "other", more or less distinctive from "us", meaning, as a different species. This is how something that separates these individuals from the rest – in biological or cultural terms – becomes vital. In agreement this is called the "criminology of the other" (Garland 2005, p. 231). Particularly with respect to young persons, these are the children who are "ugly, dirty and evil", recipients of stigmatizing concepts, infants who are demonized and governed by the criminal system, who receive punishment and suffering (Guemureman 2014).

3) The rebirth of punitive and degrading penalties. Penalties must now be "expressive": on the one hand, the public appears more prone to punitive measures; plus, on the other hand, lawmakers are more willing to raise the level of reproach through penalty, irrespective of the actual enforcement of the punishment.

4) The admission of the victim into criminal procedure. The victim has made its entrance in the entire criminal system, demanding to have more relevance and rights, and this, with no counterpart, has been construed as a claim for the restriction of rights and resources of the criminal defendant.

5) Politicians, and the electoral use of crime and the criminal-system agenda. In the context of Argentina, taking the work of Máximo Sozzo (2007), since the 90's, and mainly after the passing of Law N° 24,660 on the Execution of Criminal Law, we may analyse how the "growth of insecurity in the cities, is presented as an "emergency", in the speeches of the political players, and the mass media" (Sozzo 2007, p. 96). When we refer to insecurity in the cities, "street crime" takes special consideration, as well as the feeling created around it. It has been stated that this consolidating factor has been clearly linked to a "substantial" element, that is to say, the growth of this type or crime (Sozzo 2007). However, it is not the substantial information on its own that determines the almost exclusive importance, but the way in which crime is endowed with significance, by political opinion, party statements, electoral speeches, and the mass media interventions. This creates a special relation among the ways of making politics, electoral campaigns and the procedures destined to confront insecurity in the cities. In the end, the feeling of insecurity and the citizenship's demand for more security becomes an essential element of politics. This is why the construction of meaning around these feelings and these demands must be seen as a complex procedure.

Several legislative measures evidence these phenomena: amongst them, the exemplary case of the amendments enforced by the legislative between April and August 2004, after the kidnapping and murdering of Axel Blumberg. As result of the crime, the Congress passed a series of laws that reformed the Penal Code, rose the penalties for a number of crimes, and amended the institute of parole, making it harder to meet the requirements to earn it. Among those reforms, it was decided to restrict the rights and benefits of the offenders convicted for first degree murder, offences against sexual integrity followed by death, kidnap followed by murder, and robbery followed by murder.

From this analysis, it is suggested that the amendments to the Criminal Regime for Minors seem the result of a political discourse, on the table, when election periods come close or when the public opinion, amid a media vortex, raises its claim for security due to an incident of violence that transcends because of its repercussion. This way of governing through criminal law and through the criminal system is a politician's narrative that mainly pursues election goals, and later becomes public policies, that is to say, a manner in which to tackle social and structural problems.

6) The privatization of crime control duties and its marketing, together with the inception and expansion of private police and devices of private security. In Argentina, there is still no legislation passed on projects that propose the developing of private detention facilities. In the USA these were approved over two decades ago. However, during the 90s, companies that offered private security emerged, and had a fast market consolidation. Some of the products they offer are urban monitoring, alarm systems, security personnel, satellite tracking, and panic buttons, and these are offered separately or in joint service packages. It is fundamental to think about the order that Sayak Valencia indicates in *Gore Capitalism* when saying: "The body's care, its preservation, its freedom, and its integrity are all offered to us as products" (Valencia 2010/2018, p. 208). Since we live in hyper-consumerist societies, where life and bodies constitute merchandise, and therefore have an exchange value, the same happens with care, protection, preservation, freedom and integrity, which become products related to life that can be traded in legal as well as illegal markets.

7) A constant feeling of crisis, which is captured by a multitude of legislative, criminal, procedural and penitentiary reforms, expresses a generalized mistrust on the proficiency of the expert criminologist, or, from a different angle, the construction of a new expert knowledge where the feelings and emotions or the "people" take a primary stand; ironically, a legitimation "from below" (Pavarini 1996, in Sozzo 2007).

8) The incapacitation or neutralization of the offender, who is deprived of his or her freedom during a period of time, more or less long – in extreme cases, for life – as a guarantee that he or she will not be able to commit a crime again.

Having referred to the elements that I consider to express the phenomenon of governing through crime, I shall deal with the measures that result from its implementation. These may consist of the creation of new offences; making punishments for the existing offences to be more severe; the softening of certain safeguards or benefits the offender had or its straight elimination. I consider that a primary tool of *penal populism* is imprisonment.[29]

Concerning the approach to teenage delinquency, within the frame of the characterization of governing through crime, and its use of criminal law, the discursive

[29] As per the statistics report of the Procuración Penitenciaria de la Nación (National Penitentiary Office) presented before the UN's Committee Against Torture, published in March 2017, based on data provided by the National Office for Criminal Policies depending on the Ministry of Justice and Human Rights and the National System of Statistics on Sentence Execution, the number of individuals imprisoned in 1999 was 34,040, and according to the latest statistics available, there was a total of 72,693 individuals imprisoned in December 2015 within all the detention centers of the country. Of them, 33,482 were detained in facilities run by the Penitentiary System of the Province of Buenos Aires, and 10,274 were detained in federal prisons, being this the second largest jurisdiction in the number of individuals detained.

construction that presents the offender as the "other" is especially revealing. This elaboration plays with archetypes, images, fears, and anxieties where the privileged voices in the stage are the ones of the politician, the people, and the victim. The result is not unique or direct, since is the result of a sort of complex transactional mechanism, that is to say, these are not feelings imposed by the media or the electoral speech about insecurity, but neither are they separated from them.

Resorting to criminal law introduces procedures destined to make punishment for BG&A more severe, and its fundamental tool seems to be the discourse on lowering the age of criminal responsibility.

Finally, "governing through crime" calls frequently and structurally for warlike metaphors such as "war against crime/criminal offenders". In this convergence between the "criminology of the other" and the "war against crime", the "governing through crime" articulates proposals and measures that are presented clearly as a reflection of these, and opens the path for infant-juvenile crime control to include cruel or inhuman punishments.

Then, through this exposure of the implications and consequences of governing through crime, it is sought to reaffirm the need for the approach to childhood, infancy and adolescence from the perspective of a comprehensive protection policy, since the adequate political and social response is always integration, and the adequate judicial response should never be regressive but progressive, meaning, towards the enhancement of rights.

5. Preliminary conclusions[30]

To begin, I have detailed the array of norms that structures the Criminal Regime for Minors, the context that originated Law-Decree 22,278, and its reinterpretation under the protective legislation of BG&A. Following Marí's (1982) proposal of focusing on the field of production of the legal discourse, I characterized the metamorphosis of the legal discourse, concerning marginalized children as a process of discursive creation. I have attempted to shine a light on the procedures of creation, destruction and recreation of the legal discourse and, within them, the place that different converging arguments take in the creation of legal discourse, to be later discarded or ignored.

Later, I presented arguments regarding the continuity of the ward-punitive mechanism of the Criminal Regime for Minors, mainly through the acts of disposal as means of punishment, which is hidden behind the discourse of protection. This contradicts the discourse of rights of the BG&A, their system of protections, and them being considered subjects of rights.

It has been held that the severity of the criminal response will depend on the evaluation made by the one who judges the social and family environment of the presumed offender. However, even when absolved, if the court considers that there are conditions of hazard or neglect, detention operates as a strategy of protection. As long as this

[30] As mentioned, this article is part of a Master's thesis research project so these conclusions should be seen rather as openings than closures.

detention falls in the hands of Criminal Courts, and carried out in detention facilities, it operates as punishment.

The normative texts were analysed under the light of three paramount judicial decisions: the Maldonado case, concerning the reduction of the sentence for underage individuals, to the degree of attempt; the Mendoza case, concerning the prohibition to impose life sentences; and the Fundación Sur case. All three cases have come together to brand the field of production of the legal discourse. The case of Fundación Sur, where the Supreme Court ultimately revokes the unconstitutionality of the detention of BG&A not subjected to punishment, puts to test other judicial cases, such as the case of the engineer Barrenechea, and dominant political discourses, to evidence the presence, in the judicial decision, of a multitude of elements and arguments that, despite the fact that they brand the final outcome, are absent. These are: the discourse of institutional lack of capacity (there are imprisonment policies because there is nothing else), the discourse of governing through crime, as a mechanism to administer social unrest, in particular, the power to manage social distress when facing the well-known Barrenechea case.

Also, I have analysed the political discourses which, when facing a "pivot" case, based on the severity of the crimes committed by the BG&A and the increase of crime rates, argue in favour of the need for a reform of juvenile criminal justice. I questioned some arguments presented by high-ranking public officials, which, aligned, contributed to settling a dominant discourse toward the increase in penalties for BG&A (alleged) offenders, leading the way for infant-juvenile crime control procedures to apply cruel or inhuman punishments, defined as necropractices which radically harm the body.

Finally, a conceptualization of "governing through crime" was rehearsed, as the government's practice when trying to face social problems, in this case related to children, by resorting primarily to criminal law. It was held that when it comes to BG&A suspected of having committed a crime, this is a form of power which seeks to widen the margins of punishment and make repression more severe. From this analysis, it is suggested that the amendments to the Criminal Regime for Minors seems a discourse of governments preparing for elections, or a discourse to contain public opinion, amid a media vortex, on its claim for "security" when an incident of violence causes a transcendent impact.

References

Beloff, M., 2016. *¿Qué hacer con la justicia juvenil?* Buenos Aires: Ad Hoc.

Beloff, M., 2017. *Nuevos problemas de la justicia juvenil*. Buenos Aires: Ad Hoc.

Beloff, M., 2019. *Derecho del niño: Su protección especial en el sistema interamericano.* 2nd ed. Buenos Aires: Hammurabi.

Beloff, M., and Clérico, M.L., 2016. Derecho a condiciones de existencia digna y situación de vulnerabilidad en la jurisprudencia de la Corte Interamericana. *Estudios constitucionales* [online], 14(1). Available from: https://doi.org/10.4067/S0718-52002016000100005 [Accessed 2 March 2021].

Calveiro, P., 1998. *Poder y desaparición: Los campos de concentración en Argentina*. Buenos Aires: Colihue.

Cesaroni, C., 2010. *La vida como castigo: Los casos de adolescentes condenados a prisión perpetua en la Argentina.* Buenos Aires: Norma.

Chayer, H., and Garsco, M., eds., 2018. *La reforma penal federal* [online]. Ciudad Autónoma de Buenos Aires: Eudeba. Available from: http://www.bibliotecadigital.gob.ar/files/original/2161/Eje_Penal_-_Justicia_2020.1.pdf [Accessed 2 March 2021].

Clérico, M.L., and Aldao, M., 2019. Autonomía Hora Cero. Artículo 19 (Autonomía) Ramal Artículo 75 Inciso 23 CN (Desigualdades). *In:* S. Álvarez, R. Gargarella and J. Iosa, eds., *Autonomía y Constitución. El artículo 19 de la Constitución Nacional en debate.* Santa Fe: Rubinzal Culzoni.

Comisión Nacional sobre la Desaparición de Personas (CONADEP), 1984. *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas*. Buenos Aires: Eudeba.

Daroqui, A., and Guemureman, S., 1999. Los menores de hoy, de ayer y de siempre. Un recorrido histórico desde una perspectiva crítica. *Delito y sociedad* [online], 1(13). Available from: https://doi.org/10.14409/dys.v1i13.5820 [Accessed 2 March 2021].

Daroqui, A., López, A.L., and Cipriano García, R.F., eds., 2012. *Sujeto de castigos: Hacia una sociología de la penalidad juvenil.* Rosario: Homo Sapiens.

Foucault, M., 1991. Governmentality. *In:* G. Burchell, C. Gordon and P. Miller, eds., *The Foucault Effect: Studies in Governmentality. With Two Lectures by and an Interview With Michel Foucault.* Chicago: University of Chicago Press, 87-104.

Foucault, M., 1995. ¿Qué es la crítica? [Crítica y Aufklärung]. *Daimon, Revista Internacional de Filosofía* [online], n° 11. Available from: https://revistas.um.es/daimon/article/view/7261 [Accessed 2 March 2021].

Freidenraij, C., 2013. Algunas consideraciones sobre el castigo infantil en la Buenos Aires finisecular. A propósito de la Casa de Corrección de Menores Varones. *In:* O. Barreneche and R. Salvatore, eds., *El delito y el orden en perspectiva histórica. Nuevos aportes a la historia de la justicia penal y las instituciones de seguridad en Argentina.* Rosario: Prohistoria, 205-226.

García Méndez, E., 2004. *Infancia: De los derechos y de la justicia*. Buenos Aires: Editores del Puerto.

García Méndez, E., and Beloff, M., eds., 1999. *Infancia, ley y democracia en América Latina, análisis crítico del panorama legislativo en el marco de la Convención Internacional sobre los derechos del niño (1990–1999).* Santa Fe de Bogotá: Temis/Depalma.

Garland, D., 2005. *La cultura del control.* Trans.: M. Sozzo. Barcelona: Gedisa.

Garrison, A., 2009. The Influence of Research on Criminal Justice Policy Making. *Professional Issues in Criminal Justice* [online], 4(1), 9–21. Available from: https://doi.org/10.2139/ssrn.1438306 [Accessed 2 March 2021].

Guemureman, S., 2014. Los "unos" y los "otros". Del tratamiento judicial que reciben los adolescentes y jóvenes que cometen delitos. Revista Ciencias Sociales, nº 85, 40–50.

Guemureman, S., and Bianchi, E. 2019. Riesgos no tan explícitos y peligros no tan solapados. *Derecho y ciencias sociales* [online], (20), 1–22. Available from: https://doi.org/10.24215/18522971e045 [Accessed 2 March 2021].

Larrauri, E., 2006. Populismo punitivo… y cómo resistirlo. *Jueces para la democracia*, nº 55, 15–22.

López, A.L., 2017. Violencia policial y control penal sobre los jóvenes. *Bordes* [online], 1(4), 11–20. Available from: http://revistabordes.com.ar/violencia-policial-y-control-penal-sobre-los-jovenes/ [Accessed 2 March 2021].

López, A.L., Guemureman, S., and Boully, M., 2012. Estado de los datos: La dificultad de conocer. *In:* A. Daroqui, A.L. López and R.F. Cipriano García, eds., *Sujeto de castigos: Hacia una sociología de la penalidad juvenil.* Rosario: Homo Sapiens, 61–84.

Marí, E., 1982. Moi, Pierre Rivière... y el mito de la uniformidad semántica en las ciencias jurídicas y sociales. *In:* Hachette, ed., *El discurso jurídico*. Buenos Aires: Hachette.

Segato, R., 2018. *Contra-pedagogías de la crueldad*. Buenos Aires: Prometeo.

Simon, J., 2007. *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear.* New York: Oxford University Press.

Sozzo, M., 2007. ¿Metamorfosis de la prisión? Proyecto normalizador, populismo punitivo y “prisión-depósito” en Argentina. *Urvio: Revista latinoamericana de seguridad ciudadana* [online], nº 1. Available from: https://doi.org/10.17141/urvio.1.2007.1055 [Accessed 2 March 2021].

Suárez, A., Andersen, M.J., and Pasin, J., 2012. Los jóvenes: el ingreso al encierro, la circulación y la fijación espacial. *In:* A. Daroqui, ed., *Sujetos de castigo: Hacia una sociología de la penalidad juvenil*. Rosario: Homo Sapiens.

Valencia, S., 2018. *Gore Capitalism*. Cambridge, MA: MIT Press. (Originally published in 2010 as *Capitalismo gore*).

Zapiola, M., 2010. La Ley de Patronato de Menores de 1919. ¿Una bisagra histórica? *In:* L. Lionetti and D. Míguez, eds., *Las infancias en la historia argentina: Intersecciones entre prácticas, discursos e instituciones (1890–1960*). Rosario: Prohistoria, 117–132.

Newspaper articles and other media reports

Bonelli, M., 2017. [Interview with the Argentine Minister of Justice and Human Rights Germán Garavano]. TV show *A dos voces*. Todo Noticias, 4 January.

Cronista, 2008. Reaccionó Scioli y pidió bajar la edad de imputabilidad para los menores. *Cronista* [online], 3 October. Available from: https://www.cronista.com/impresa-general/Reacciono-Scioli-y-pidio-bajar-la-edad-de-imputabilidad-para-los-menores-20081023-0082.html [Accessed 2 March 2021].

Hauser, I., 2008. “El drogadicto es un enfermo, no un delincuente” [Interview with Carmen Argibay]. *Página 12* [online], 30 November. Available from: https://www.pagina12.com.ar/diario/elpais/1-115866-2008-11-30.html [Accessed 2 March 2021].

Honorable Cámara de Diputados de la Nación Argentina, 2019. Ingresó en Diputados el proyecto que establece un régimen penal juvenil. *HCDN* [online], 6 March. Press release. Available from: https://www.hcdn.gob.ar/prensa/noticias/2019/noticias_0912.html [Accessed 2 March 2021].

Llorente, B., and Villaruel, C., 2017. [Interview with the Argentine Minister of Justice and Human Rights Germán Garavano]. Radio show *Detrás de lo que vemos*. Radio AM 750, 6 January.

Longobardi, M., 2019. Patricia Bullrich: "Consensuamos que la imputabilidad de delitos graves sea a los 15 años". *Marcelo Longobardi* [online], 7 January. Available from: https://marcelolongobardi.cienradios.com/patricia-bullrich-consensuamos-la-imputabilidad-delitos-graves-sea-los-15-anos/ [Accessed 2 March 2021].

Ortelli, I., 2017. Las penas para los menores. El Gobierno quiere bajar la edad de imputabilidad de 16 a 14 años. *Clarín* [online], 4 January. Available from https://www.clarin.com/politica/gobierno-quiere-bajar-edad-imputabilidad-16-14-anos_0_rkhCZUcSg.html [Accessed 2 March 2021].

Statistics and reports

Centro de Estudios en Política Criminal y Derechos Humanos (CEPOC), 2015. *Ningún pibe nace chorro* [online]. Available from: http://www.pensamientopenal.com.ar/system/files/2017/01/miscelaneas44679.pdf [Accessed 2 March 2021].

Codino, R., 2016. *Informe sobre homicidios 2015* [online]. Ciudad Autónoma de Buenos Aires: Consejo de la Magistratura de la Nación. Available from: http://www.consejomagistratura.gov.ar/instituto/2015/caba/caba2015.pdf [Accessed 2 March 2021].

Grupo de Estudios sobre Sistema Penal y Derechos Humanos (GESPyDH), Procuración Penitenciaria de la Nación (PPN) and Comisión Provincial por la Memoria (CPM), 2018. *Registro nacional de casos de tortura y/o malos tratos. Informe anual 2017* [online]. PPN, August. Available from: https://www.ppn.gov.ar/pdf/publicaciones/2017%20Informe%20anual%20RNCT.pdf [Accessed 2 March 2021].

Procuración General de la Suprema Corte de Justicia de la Provincia de Buenos Aires, 2016. *Fuero de responsabilidad penal juvenil: IPP iniciadas por Departamento Judicial, año 2015* [online]. Sistema Informático del Ministerio Público. Available from: https://www.mpba.gov.ar/files/content/IPP%20FRPJ%20Totales%202015.pdf [Accessed 2 March 2021].

Procuración Penitenciaria de la Nación (PPN), 2017. *Evolución histórica de casos de tortura y malos tratos registrados por la PPN (2007–2016)* [online]. PPN, 30 March. Available from: http://ppn.gov.ar./en/allcategories-en-gb/99-noticias/911-presentacion-de-informe-ante-el-comite-contra-la-tortura-de-onu [Accessed 2 March 2021].

Registro Nacional de Reincidencia, 2017. *Informe estadístico 2016: Sentencias condenatorias de la República Argentina* [online]. Ministry of Justice and Human Rights, statistics report. Buenos Aires. Available from: https://www.argentina.gob.ar/justicia/reincidencia/estadisticas [Accessed 2 March 2021].

UNICEF and CENEP, 2018. *Las voces de las y los adolescentes privados de libertad en Argentina. Report. UNICEF* [online]. November. Available from: https://www.unicef.org/argentina/informes/las-voces-de-los-y-las-adolescentes-privados-de-libertad [Accessed 2 March 2021].

Legislation and cases

American Convention on Human Rights ("Pact of San Jose, Costa Rica") [online], 22 November 1969. Organization of American States. Available from: https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm [Accessed 11 March 2021].

Convention on the Rights of the Child, 20 November 1989. United Nations General Assembly. *United Nations Treaty Series* [online], vol. 1577, p. 3. Available from: https://www.unicef.org/child-rights-convention/convention-text [Accessed 24 February 2021].

Fermín Ramírez v Guatemala, 2005. Inter-American Court of Human Rights Series C Nº 126.

García Méndez, Emilio y Musa, Laura Cristina s/ causa n°7537, 2008. Supreme Court of Justice 331:2691 [online]. Available from: http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-garcia-mendez-emilio-musa-laura-cristina-causa-7537-fa08000262-2008-12-02/123456789-262-0008-0ots-eupmocsollaf [Accessed 2 March 2021].

International Covenant on Civil and Political Rights [online], 16 December 1966. United Nations General Assembly. Available from: https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf [Accessed 11 March 2021].

International Covenant on Economic, Social and Cultural Rights [online], 16 December 1966. United Nations General Assembly. Available from https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx [Accessed 11 March 2021].

Law 114. Comprehensive Protection of the Rights of Girls, Boys and Adolescents 1999 (CABA).

Law 12,967. Promotion and integral protection of the rights of girls, boys and adolescents 2009 (Santa Fe).

Law 13,298. Promotion and Comprehensive Protection of Children's Rights 2005 (Province of Buenos Aires).

Law 13,634. Family Law and Juvenile Criminal Responsibility Law 2007 (Province of Buenos Aires).

Law 2,086. Law for the comprehensive protection of the rights of girls, boys and adolescents 2012 (Chaco).

Law 2,302. Comprehensive Protection of Children and Adolescents 2000 (Neuquén).

Law 2,303. Criminal Procedure Code of the Autonomous City of Buenos Aires 2007.

Law 2,424. Code of Criminal Procedure of the Province of Santa Cruz 1995.

Law 2,451. Juvenile Criminal Procedure Regime of the Autonomous City of Buenos Aires 2007.

Law 2,950-M. Procedural Code for Children, Adolescents and the Family 2019 (Chaco).

Law 22,278. Criminal Regime for Minors 1980. Modify by Law 22.803 1983 (Federal Bill).

Law 24,660 on the Execution of Criminal Sentences 1996 (Federal Bill).

Law 26,061 on the Comprehensive Protection of the Rights of Children and Adolescents 2005 (Federal Bill).

Law 3,062. Comprehensive protection of the rights of girls, boys and adolescents who are in the territory of the province of Santa Cruz 2009 (Santa Cruz).

Law 4,109. Integral Protection of the Rights of Girls, Boys and Adolescents 2006 (Río Negro).

Law 4,538. Code of Criminal Procedure of the Province of Chaco 1999.

Law 5,097. Code of Criminal Procedure of the Province of Catamarca 2003.

Law 5,357. Comprehensive protection of the rights of girls, boys and adolescents 2013 (Catamarca).

Law 521. Law for the Comprehensive Protection of the Rights of Boys, Girls, Adolescents and their Families 2001 (Tierra del Fuego).

Law 7,398. Criminal Procedure Code of the Province of San Juan 2003.

Law 727-C (7338). Comprehensive protection of the rights of all children and adolescents 2003 (San Juan).

Law 8,123. Code of Criminal Procedure of the Province of Córdoba 1992.

Law 8,293. Comprehensive protection of the rights of the family, of girls, boys and adolescents 2010 (Tucumán).

Law 8,848. Comprehensive protection of the rights of the child, the adolescent and the family 2010 (La Rioja).

Law 9,139. Comprehensive system for the protection of the rights of children and adolescents 2019 (Mendoza).

Law 9,944. Integral Promotion and Protection of the Rights of Girls, Boys and Adolescents in the Province of Córdoba 2011 (Córdoba).

Law II 16 (previously Law 3,820). Law for the Comprehensive Protection of the Rights of Children and Adolescents 2010 (Misiones).

Law III 21 (formerly Law 4347). Law for the Comprehensive Protection of Children, Adolescents and the Family 1998 (Chubut).

Law XIV - Nº 13. Code of Criminal Procedure of the Province of Misiones 2013.

Law XV 9. Criminal Procedure Code of the Province of Chubut 2006.

Maldonado, Daniel Enrique y otro s/robo agravado por el uso de armas en concurso real con homicidio calificado, 2005. Supreme Court of Justice 328:4343.

Mendoza et al. v Argentina, 2013. Inter-American Court of Human Rights Series C Nº 260.

Recurso de revisión causa Nº CCC 500000964/2008/1/RH2, 2019. Cámara Nacional de Casación Penal de la Capital Federal 906/2019 [online]. Available from: http://www.pensamientopenal.com.ar/system/files/2019/07/fallos47888.pdf [Accessed 2 March 2021].

United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") (A/RES/45/112) [online], 14 December 1990. United Nations General Assembly. Available from: https://www.ohchr.org/en/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx [Accessed 24 February 2021].

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (A/RES/45/113) [online], 2 April 1991. United Nations General Assembly. Available from: https://www.ohchr.org/EN/ProfessionalInterest/Pages/JuvenilesDeprivedOfLiberty.aspx [Accessed 24 February 2021].

United Nations Standard Minimum Rules for Non-Custodial Measures ("The Tokyo Rules") (A/RES/45/110) [online], 2 April 1991. United Nations General Assembly. Available from: https://www.ohchr.org/EN/ProfessionalInterest/Pages/TokyoRules.aspx [Accessed 24 February 2021].

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (A/RES/40/33) [online], 29 November 1985. United Nations General Assembly. Available from: https://www.ohchr.org/documents/professionalinterest/beijingrules.pdf [Accessed 24 February 2021].