

Criminal Prosecutions for Human Rights Violations in Argentina

ICTJ Prosecutions Program
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TABLE OF CONTENTS

| | |
|--------------------|---|
| Initial Efforts | 1 |
| Eroding Impunity | 2 |
| Removing Obstacles | 3 |
| A New Opportunity | 4 |

During the 1970's, political violence in Argentina resulted in massive violations of human rights that included thousands of deaths, prolonged and arbitrary arrests, disappearances, unfair trials, pervasive torture, in addition to cruel, inhuman, and degrading treatment. Since the restoration of democracy in 1983, there have been various obstacles to prosecution of such crimes committed by security forces and paramilitary groups. Such obstacles were eventually overcome, and Argentina currently offers an important example of the positive results of both domestic efforts and international advocacy to achieve justice for past crimes against humanity. Due to its recent and ongoing success in the prosecution of human rights criminals, it is arguable that Argentina has one of the best records of transitional justice in the world. It has fostered transitional justice developments in the region, and offers critical insights for other communities struggling with the past which are following Argentina's efforts with deep interest.

The Military Regime

The repressive campaign that resulted in massive human rights violations peaked in March 1976, as the commanders-in-chief of Argentina's three armed forces ousted democratically elected President Isabel Perón and proclaimed a de facto regime. During the seven years of military rule, the military fought what was referred to as a Marxist subversive threat. The most notorious feature of repression by the military dictatorship was the practice of disappearances: possibly up to 30,000 people were abducted by security forces. They were sent to hundreds of secret detention centers, where they were interrogated under barbaric methods. Ultimately, the vast majority of the desaparecidos were systematically, but secretly, murdered. In 1983, before democracy was restored, the military granted itself immunity from prosecution and issued a decree ordering the destruction of all documents relating to military repression.

Initial Efforts for Truth and Justice, Military Backlash and Impunity

Raul Alfonsín, the first democratically elected president after the end of military rule (1976-1983), inherited a weakened democratic infrastructure and a strong military that actively resisted accountability for its prior conduct. President Alfonsín created a National Commission on Disappeared Persons (CONADEP) and charged it with investigating the fate of the desaparecidos. In 1984, CONADEP released a report, *Nunca Más* ("Never Again"), which listed numbers of victims and detention centers where individuals were murdered and tortured under the authority of the armed and security forces and enabled through the complicity of many civilians. In 1985, nine former members of the military juntas that ruled the country were successfully prosecuted in a major landmark trial. The trial of the junta members began just 18 months after the military government left power and led to the conviction of former presidents Jorge Rafael Videla, and Roberto Eduardo Viola, the Admirals Emilio Eduardo Masera and Armando Lambruschini, and

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ICTJ In Argentina

Argentina always captivated ICTJ's attention. It is a unique global experience linked to the very inception of the transitional justice field. The Center observes and documents the Argentine process and shares it with the international community. Additionally, ICTJ supports local NGOs and human rights activists, who have been and still are the most committed and coherent advocates for truth and justice in the country and abroad, and provides State officers, judges and prosecutors with up to date tools and information on global transitional justice developments. The ultimate goal of ICTJ is to bring to the best of its capacity, comparative expertise and technical knowledge to the service of the local needs.

Brigadier General Orlando Ramón Agosti. More than 800 witnesses were presented, covering some 700 individual cases taken from CONADEP's case files. The conviction of former de facto leaders for gross violations of human rights by the successive democratic government was an unprecedented event and a turning point for global transitional justice efforts.

Nunca Más (Never Again)

The Report of the National Commission on the Disappearance of Persons - CONADEP (1984)

The CONADEP has presided over hearings of thousands of cases of abduction, disappearance, torture, and executions. Every individual case was documented in a numbered file. It compiled over 50,000 pages of documentation. A shocking summary was published as an official report in Spanish in 1984. Faced with the thousands of testimonies and horrific facts the commission concluded with a set of recommendations to pursue legal action against the responsible. The CONADEP prepared 7,380 files, comprising depositions from relatives of the disappeared, testimonies of people released from secret detention centres, and statements by members of the security forces who had taken part in the acts of repression. It carried out numerous investigations in different parts of the country and collected information from the Armed Forces, the Security Forces and other private and public organizations. As a result of its investigations, CONADEP was able to present evidence before the courts, comprising 1,086 dossiers proving the existence of the main secret detention centres, giving a partial list of the disappeared seen alive in these centres, and a list of members of the Armed Forces and Security Forces mentioned by victims as responsible for the serious crimes they denounced. Twenty-five years later, CONADEP's files are still a key piece of evidence in the current trials.

The initial trials and the Nunca Más fostered more prosecutions and undoubtedly consolidated the ground for the rule of law in Argentina. At the same time, they gave credibility to demands of victims and their relatives to investigate crimes committed by other military perpetrators. Despite this, the trials also gave an opportunity for authoritarian groups to crystallize their demands against the course of justice. Factions of the military staged four uprisings against the democratic regime and resisted judicial orders to appear before the investigative judges. Full Stop and Due Obedience laws were enacted in 1986 and 1987 mainly as a compromise between democratic stability and impunity demands. The effects of these laws were that of a blanket amnesty and implied the immediate halt of the great majority of around four hundred investigations. In addition, the military leaders convicted in the 1985 junta trials, as well as the few individuals that continued to be under investigation after the impunity laws, were granted presidential pardons by Alfonsín's successor Carlos Menem, between 1989-1990 under the alleged need of pacification.

Eroding Impunity

In spite of these setbacks, Argentine human rights movement continued to press for accountability, in both domestic and international fora. Victims successfully obtained the condemnatory final report 28/92 from the Inter-American Commission on Human Rights (IACHR), which deemed that the impunity laws and the presidential pardons violated the American Convention on Human Rights. In 1996, victim's relatives filed several cases in Spanish courts under universal jurisdiction legislation, which led to the issuance of arrest warrants and extradition requests, increasing the pressure at home.

Domestically, human rights lawyers succeeded in persuading Argentine federal courts to conduct "truth trials". These trials consisted of a judicially-created procedure to obtain official information about the fate of victims before criminal courts in the absence of the legal possibility to

“... the ‘Barrios Altos’ case set several limits to Congress’ faculty to amnesty, which forbid including facts such as those covered by the full stop and due obedience laws. In the same way, all domestic regulation that, invoking reasons of “pacification” stipulate any kind of amnesty that leaves unpunished serious human rights violations perpetrated by the regime to which the regulation benefits is contrary to clear and mandatory regulations of international law and must be suppressed.”

—Justice Petracchi (Simón ruling, 2005)

impose criminal sanctions. Despite that they were controversial with both victims groups seeking full justice and defendants who considered that impunity laws and pardons forbade all kinds of investigations, truth trials did contribute to the clarification of facts, further establishing responsibilities and opening the way to full prosecution in evolving political and legal contexts. These trials also illustrate the challenges encountered when less than perfect mechanisms are available to address the past, and highlight the creativity necessary to modify such mechanisms to better suit their purpose. In the end, the trials as a whole were endorsed by the IACHR as a positive transitional justice mechanism in a context of impunity.

In addition, human rights groups filed thousands of petitions for obtaining reparations granted by Congress in the early 1990’s, in accordance to the guidelines of the IACHR report 1/93. Although the reparation policy was criticized by many for being used as a political tool to hide the impunity provided by the pardons, in the end it helped to consolidate the idea of State responsibility. Truth seeking efforts were also conducted before civil courts and administrative agencies, in particular, in connection with the identification of children born during their mothers’ captivity. In 1998 some activists found momentum to exploit a key loophole in the impunity laws. The kidnapping of babies was not covered by amnesty provisions and, thus, made it possible to prosecute notorious offenders such as Videla, Bignone and others.

Removing Obstacles

In March 2001, in a case filed by the Center for Legal and Social Studies (CELS), federal judge Gabriel Cavallo found that the Full Stop and Due Obedience laws were unconstitutional for being incompatible with Argentina’s international obligations under the human rights treaties (Simón case). The Simón decision was soon affirmed by the Federal Court of Appeals of Buenos Aires, and many cases were reopened. In August 2003, Congress Law 25,779 declared the laws null and void. Finally, on July 2005, the National Supreme Court affirmed the Federal Court of Appeals’ decision in Simón and validated the Law 25, 799. In September 2006, an appellate court also declared unconstitutional the earlier pardons of the junta members convicted in 1985, and the decision was followed by a 2007 ruling of the Supreme Court, which also declared the invalidity of a presidential pardon.

A New Opportunity for Justice

Argentine authorities express today a strong support for prosecuting past crimes. More than 600 accused face criminal counts before federal courts, and sixty two have already been sentenced. This process of justice seems to have arrived to a period of consolidation. Unlike the 1980s trials, current prosecutions include not only key leaders, but also direct perpetrators, and although their focus still is military personnel they are progressively including civilians who contributed in diverse ways to the crimes, including priests, judges, and former ministers, among others. Moreover, current prosecutions also include atrocities committed prior to the coup d’état of 1976, by State sponsored security agencies. This fact reinforces the idea of State responsibilities beyond the limits of the military rule, and illuminates another face of State terrorism, which was arguably overlooked by justice in the 1980s.

In general, current prosecutorial strategy is rooted in the scheme of the 1980s, and follows the Junta Trial conclusions on the structure of State terror. The majority of cases that had already been investigated but were shut down by amnesty laws were reopened, and some new cases were brought by the evidence collected during the decades after the first set of trials. Facing this new scenario, the General Prosecutor set the aim to achieve the highest number of “significant trials” in the shortest period of time possible. Despite the difficulty of identifying the precise limits of such policy, “significant trials” are understood as those that involve most crimes committed by

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“Argentina shows that human rights issues stay in society, regardless of what the State or politicians decide. The fact that, after the Full Stop and Due Obedience Laws, the issue did not die, that civil society kept it alive, is a lesson that Argentina gives to the world.”

—Juan Méndez (ICTJ, 2004)

one person, and those that involve most defendants or victims. A complimentary criterion for prosecution is to group cases following the repressive circuit to which they belong in order to minimize the number of trials.

| PROSECUTION OF HUMAN RIGHTS VIOLATORS (OCTOBER 2009) | | |
|--|------------|------------|
| | Oct. 2009 | Dec. 2007 |
| Charged | 625 | 349 |
| On Trial | 279 | 81 |
| Convicted | 62 | 17 |
| TOTAL | 678 | 366 |

From a managerial perspective prosecutions and judgments are carried out in thirteen federal districts by federal prosecutors and courts, whose decisions are revised by two nationwide appeals courts: the National Court of Cassation, and the Supreme Court of Justice, the head of the Judiciary and the ultimate interpreter of federal law. Federal prosecutors are assisted by a Coordination Unit created by the General Prosecutor to analyze strategic problems, propose general guidelines for advancing the cases and to ensure that links in connected cases are made. Recently, the Supreme Court also established a Superintendence Unit with similar functions, and launched a commission to coordinate policies with the other branches of government. Finally, private prosecutors such as victims, their relatives and human rights NGOs continue to play a leading role.

Challenges

Despite the fact that a transitional justice framework has now been firmly established, the timely completion of prosecution and judgment of human rights violations still encounter difficulties. The disparate nature of cases, available evidence and work load, have caused some delays. Witnesses and victims’ protection system is lacking: the most dramatic example of this deficit was the disappearance of Jorge Julio López after he testified in a case against Miguel Etchecolatz—the second trial since Simón. In terms of prosecutorial policy, a more unified and coherent approach on how to prioritize cases and resources is still needed since judges and prosecutors share the investigative bulk but not necessarily their views on how to manage complex cases. Some observers argue that the slow pace of the trials will erode the ability of Argentina to finally come to terms with justice.

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The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies. To learn more, visit www.ictj.org

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