

ACCOUNTABILITY IN ARGENTINA
20 Years Later, Transitional Justice Maintains Momentum
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I. INTRODUCTION

Argentina is undergoing significant changes regarding the investigation and prosecution of human rights violations that occurred from 1976 to 1983, when the country was ruled by a military dictatorship and an estimated 10,000 to 30,000 people “disappeared.”² This paper outlines transitional justice developments in Argentina and explores the history behind these advances.

Various governments have implemented a range of initiatives pertaining to truth-seeking, prosecutions, and reparations since Argentina’s return to democracy in 1983. Raul Alfonsín, the first democratically elected president after the end of military rule, inherited a weakened democratic infrastructure and a strong military that actively resisted accountability for past crimes, frustrating initial justice efforts. However, some key military leaders were successfully prosecuted in two major landmark trials. In 1989 and 1990, President Carlos Menem issued two pardons, one for a handful of officers who were still facing trials, and another for those who had already been convicted. This was a blow for victims and their families, and foreclosed many options to continue pursuing justice for past crimes. Several cases were opened in the courts in the latter half of the 1990s, and have continued since. An economic crisis that started in the late 1990s and reached its peak in December 2001 drew focus away from, but did not halt, transitional justice initiatives. Since Nestor Kirchner was elected president in May 2003, he has been addressing issues of justice for the violations committed more than 25 years ago.

There is a movement to end impunity for human rights abusers in Argentina. This is partly because of the support of recent governments, but also a result of years of hard work by Argentine human rights organizations, initiatives of the Argentine judicial system, and the contribution of activists who established a strong base of information and continued to work for justice for victims.

II. FIRST STEPS: TRUTH-SEEKING, PROSECUTIONS, AND REPARATIONS

In 1976, when Argentina was wracked by economic strife, a military junta under General Jorge Videla seized power. The parliament was dissolved. This dictatorship continued under four different generals—Jorge Videla, Roberto Eduardo Viola, Leopoldo Galtieri, and Reynaldo Bignone—until it fell in 1983, after suffering significant losses in the Malvinas

¹ This paper was written by Rebecca Lichtenfeld, Program Assistant at the ICTJ. She would like to acknowledge the assistance of Leonardo Filippini in the writing of this report.

² “Disappeared” refers to forceful kidnapping and detention in a clandestine location. Many of those who disappeared were never seen again, and their whereabouts and fate, for the most part, remain unknown.

(Falklands) War with Great Britain. Civilian rule was then restored. Raul Alfonsín was elected president and set up La Comisión Nacional Sobre la Desaparición de Personas (National Commission on Disappeared Persons, CONADEP) and charged it with investigating the fate of the disappeared. In 1984, CONADEP released a report, *Nunca Más* (“Never Again”), that listed numbers of victims and detention centers where individuals were murdered and tortured under the authority of the army, navy, and police forces. CONADEP obtained none of the evidence through the cooperation of the military, either officially or unofficially.³

As the democratic government was reinstated, there was an immediate need to investigate past human rights violations. In early 1984, judges began ordering exhumations. However, medical doctors in charge of the work had little experience analyzing skeletal remains, whereas many local forensic experts were part of the police force and complicit with the previous judicial system.⁴

In the course of its work, CONADEP joined forces with Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo), a group of women with disappeared children and grandchildren. Since its inception in 1977, the group has been searching for disappeared children, some born in clandestine detention centers or disappeared with their parents. CONADEP and the Abuelas de Plaza de Mayo requested assistance from the Science and Human Rights Program at the American Association for the Advancement of Science. A group of experts traveled to Argentina, calling for exhumations to be halted until they could be done properly. Dr. Clyde Snow, an expert in forensic anthropology, worked with archaeologists, anthropologists, and physicians to form the Argentine Forensic Anthropology Team. The team was trained using traditional archaeological and forensic anthropology techniques to identify and uncover the remains of the disappeared in a manner that helped in the investigation and documentation of human rights violations, as well as identification of the bodies for the victims’ families.⁵

President Alfonsín sent a law to Congress proposing that military courts try the top leaders responsible for committing human rights abuses during the regime. The law noted that all those who planned, controlled, and organized the repressive operation were to be punished. The trials were eventually held in a civilian appeals court. CONADEP handed case files directly to the judicial system, which then had access to a large number of witnesses and was able to build cases rapidly.⁶ The trials began just 18 months after the military government left power. In the significant case of the trial of the junta members, more than 800 witnesses were presented, covering some 700 individual cases taken from CONADEP’s case files, as well as others.⁷

³ Juan Méndez, Afterword, in Horacio Verbitsky, *The Flight: Confessions of an Argentine Dirty Warrior*, New York: The New Press, 1996, p.171.

⁴ Mimi Doretti, *Equipo Argentino de Antropología Forense (EAAF)*, Annual Report, 2002, available at www.eaaf.org.ar.

⁵ The work of the Argentine Forensic Anthropology Team continues in Argentina and has expanded to nearly 30 countries throughout the world.

⁶ Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*, New York: Routledge, 2002, p. 93.

⁷ In 1985, nine members of successive juntas, including president and army commander Lt. Gen. Jorge Videla, navy commander Adm. Emilio Massera, and air force commander Brig. Orlando Agosti; president and army commander Lt. Gen. Roberto Viola, navy commander Adm. Armando Lambruschini, and air force commander Brig. Omar Graffigna; president and army commander Lt. Gen. Leopoldo Galtieri; navy commander Adm. Jorge Anaya, and air force commander Brig. Basilio Lami Dozo were tried by an Argentine court and found guilty of a range of human rights violations. Videla and Massera were sentenced to life imprisonment. Agosti received a prison sentence of four-and-a-half years, Roberto Viola received seventeen years and Armando Lambruschini received eight years. Their crimes included aggravated homicide, torture, unlawful arrest, robbery, violence, and threats. Graffigna was acquitted, as were all three

The issue of economic assistance for victims (in the form of partial pensions) emerged under Alfonsín and laws on reparation were approved starting in the early '90s under the Menem administration. Beginning in 1991, Menem issued Decree 70, ordering reparations for some former prisoners who had sued Argentina before the Inter-American Commission on Human Rights. The decree was, in effect, a settlement of that lawsuit. In 1994, similar benefits were extended, this time by law, to all persons who had been detained administratively without charges under the state of siege, and to those prosecuted or tried by military courts. Later, a similar statute was passed to benefit the families of the disappeared. CONADEP had reported that 8,960 people had disappeared under the military regime, and the files on those individuals comprised the core records for the reparations program. Family members of anyone listed could make a claim for reparations, and all were entitled to receive a lump sum paid in government bonds. New cases of disappeared persons not listed in the CONADEP report had to be corroborated through evidence, such as a mention in the press, a report issued to a national or international human rights organization, or evidence that a *habeas corpus* petition was submitted to the courts when the person disappeared. The laws on reparations established a very simple, straightforward administrative process to apply for benefits, and state agencies assumed most of the evidentiary burden. In August 2004, a law was adopted providing monetary compensation to children born in captivity. And in 2005, a legislative initiative is making its way through Congress to provide reparations for those forced into exile. This initiative has not yet been adopted.

III. A STEP BACK: PARDONS AND QUASI-AMNESTIES

In 1986 and 1987, Argentina faced the threat of a military rebellion. In an attempt to appease the military, Alfonsín sent to Congress a pair of laws that severely limited the possibility of prosecutions for abuses that took place during military rule (the legislative branch eventually passed these). First, he put forward a “full stop” law, which set a 60-day deadline for the initiation of new prosecutions. But further pressure from the military led to restrictions, and in April 1987, military officers revolted and demanded a full amnesty. Alfonsín responded by endorsing a draft law, which Congress passed, called “due obedience,” which granted immunity to all army personnel ranked colonel or below on the grounds that they were following orders. The Supreme Court backed it in June 1987.

After being elected in 1989, President Carlos Menem issued two general pardons to most military personnel who had been brought up on charges; some were awaiting trial, and some had already been convicted. As a result, by 1990, only 10 people had been convicted, and all were pardoned and released.

IV. CONFESSIONS, “TRUTH TRIALS,” AND HOUSE ARRESTS

Under Menem, the Human Rights Office of the Ministry of the Interior continued its efforts to establish the truth about the past. Most of its information was based on testimony from

members of the third military junta. Sebastian Brett, “Human Rights Watch: Report on Argentina” 2001, available at www.hrw.org/reports/2001/argentina.

victims and their families; relatively little data was gathered from the military itself. Pardons and the amnesty laws that had stifled many court actions against the perpetrators pushed human rights organizations to look for possible loopholes in the legal system. Some middle-level officers felt scapegoated for following orders and began confessing their responsibility for atrocities committed during the regime. These dramatic confessions brought about intense public pressure for the reopening of human rights trials.⁸

As confessions continued, the Madres de Plaza de Mayo (Mothers of the Plaza de Mayo) and the Centro de Estudios Legales y Sociales (Center for Legal and Social Studies, CELS), along with other groups, called for “truth trials” in court, stating that citizens had the right to know what happened to their loved ones. As the country began focusing on the human rights abuses committed during the dictatorship, CELS pressed the courts to investigate certain cases. Relatives of victims and human rights attorneys once again presented judicial investigations to search for the truth about the fate of the disappeared to the Federal Appeals Court in Buenos Aires. The Courts had the power to subpoena people suspected of crimes to appear and testify, yet could not charge or convict them. These trials established the principle that even though laws may be passed to prevent the prosecutions of those responsible for crimes, judicial investigations may continue. Judicial action was limited to investigation and documentation, and there was no possibility of prosecution or punishment. The Inter-American Commission on Human Rights signed a settlement in 1999 whereby Argentina agreed to guarantee the right to truth by obtaining clarification of what happened to disappeared persons. The information that the federal courts gathered in the trials provided a strong basis for future investigations with potential for prosecutions or punishment.

Another advance in court investigations involved the discovery that many babies born to mothers in military detention were stolen and put into an illegal adoption ring to be given to couples under false identities. Cases of baby theft were not covered by the full stop and due obedience laws. Driven by civil society’s popular support to find these children and bring to justice those responsible, in 1992 Menem created a Comisión Nacional por el Derecho a la Identidad (National Commission for the Right to Identity, CONADI), which included representatives from the Abuelas de Plaza de Mayo, lawyers, prosecutors, and the undersecretary for human rights. This centralized the search for the missing children.

Thus, former officers could be prosecuted for crimes committed as a result of abducting children and altering their identities in order to enter them into an adoption ring, yet were protected from prosecution for the murder of their parents or the killing of other children. Information regarding the kidnappings led to the arrest and second prosecution of former members of the government, whom Menem had previously pardoned for other crimes.

V. INCREASING PRESSURE FROM OVERSEAS

Prosecutions conducted by non-Argentine courts for abuses that state agents committed in Argentina increased during the 1990s. Countries such as Spain, Italy, Sweden, France, and Germany began demanding the extradition of various military personnel to be tried for the disappearances of their citizens, and also held trials *in absentia* (in Italy and France). Argentina’s Supreme Court has denied the legitimacy of these *in absentia* trials, stating that

⁸ Navy Captain Antonio Pernias, Juan Carlos Rolon, and Army Sergeant Victor Ibanez discussed their activities at ESMA, the Navy School of Mechanics. ESMA Naval Officer Captain Adolfo Scilingo detailed, in an interview with journalist Horacio Verbitsky, his work at ESMA. He discussed how prisoners were drugged, stripped, placed on airplanes, and thrown into the Atlantic Ocean.

they violate due process guarantees in the Argentine Constitution, particularly the right to a defense.⁹

In 1998, Menem issued a decree denying judicial assistance to the countries calling for extraditions on the grounds that these prosecutions violated Argentina's sovereignty. In November 1999, Judge Baltazar Garzón of the Fifth Central Court of Instruction in Madrid filed charges against 98 members of the Argentine armed forces for the crimes of genocide and terrorism. President Fernando de la Rúa rejected the international arrest warrant and stated that these warrants had no effect in Argentina.

De la Rúa's presidency was wrought with economic crisis. By December 2001, much of the country was brought to a standstill by an economic meltdown as the country went into default of its foreign debt. There were continual protests and general unrest, and a demand for the cleansing of Argentine politics permeated the country. Three days before his resignation in December 2001, De la Rúa signed Presidential Decree 1581, formalizing his government's refusal for Argentines to stand trial abroad for human rights crimes, on grounds of territoriality. The Argentine government under Menem, De la Rúa, and interim president Eduardo Duhalde repeatedly refused to extradite its citizens. Most of the indictees were at large in Argentina (except for alleged torturer Ricardo Miguel Cavallo, who was detained in Mexico and later extradited to Spain, and Adolfo Scilingo, who voluntarily went to Spain in 1997 to testify about atrocities that took place during the regime and was jailed there).

Local human rights activists worked within Argentina, but also went outside of their domestic political system to find international allies who could put pressure on their local governments. International institutions like the United Nations and the Inter-American Human Rights Commission helped increase domestic political space and encouraged ongoing human rights activities.

Argentina had tried the leaders of the military government and initiated dozens of investigations before it was cut short by the promulgation of the full stop and due obedience laws, along with Menem's pardons. The lower courts were open to strategies based on domestic and international law, and activists knew how to promote domestic change through international work and pressure.¹⁰

VI. A MOVE TO NULLIFY THE AMNESTY LAWS

A court investigation that had begun with the theft of a child who was abducted with her parents in 1978 led to Federal Judge Gabriel Cavallo ruling in March 2001 that the amnesty laws put in place under Alfonsín were unconstitutional and that international law and treaty obligations take precedence over domestic laws in Argentina. The ruling argued that the full stop and due obedience laws violated articles of the Argentine constitution and conflicted with Argentina's obligation to bring to justice those responsible for crimes against humanity. Judge Cavallo's ruling was upheld in 2001 by the Federal Court of Appeals for Buenos Aires. The possibility of progress in the trials depended upon the Supreme Court ruling on the laws' constitutionality. On June 14, 2005, Argentina's Supreme Court declared by a majority of 7–1 that the full stop and due obedience laws were unconstitutional. These developments will

⁹ See Brett, *supra* note 7, at pt. VII, 6. This report also lists the names of those charged and tried *in absentia*, as well as those wanted for extradition requests.

¹⁰ See Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights*, Philadelphia: University of Pennsylvania Press, 2005, at 210.

permit human rights trials to advance in Argentina. This may also set a precedent for other countries debating the constitutionality of amnesty laws.

Nestor Kirchner came to power in May 2003 after a string of emergency interim presidents.¹¹ De la Rúa's presidential decree prohibiting the extradition of military officials for human rights crimes committed in Argentina was overturned by a short-lived interim president following De la Rúa's resignation.¹² Since taking office, Nestor Kirchner actively ordered cooperation with extradition requests for those who were not facing charges in Argentina.

Kirchner formally ratified the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which prohibits statutes of limitations for crimes against humanity, and asked Congress to give the treaty provisions precedence over national law.¹³

VII. THE MOTIVATING FORCE: CIVIL SOCIETY

The fight for human rights and the demand for justice were not immediate in 1983, even as the military regime fell. The magnitude of the human rights abuses had to be understood before civil society groups and human rights organizations could determine the best way to address it.

Many civil society organizations worked together using various strategies.¹⁴ Some groups based their actions on the accumulation of information regarding individual cases, with a strong presence and participation of family members of victims. Their space of action was often public (such as Plaza de Mayo). Others reacted in their neighborhoods, with local organizations, by participating in marches.

The diversity of methods and strategies among the various organizations have permitted the human rights agenda to move forward simultaneously on various fronts. Groups like the Madres de Plaza de Mayo have maintained a critical eye on the government, and opted to focus on public protest. Groups like CELS and the Asamblea Permanente por los Derechos Humanos (Permanent Assembly for Human Rights, APDH) participated by using public mobilization as a resource while they confronted the government on legal grounds with testimonies and judicial presentations.¹⁵

¹¹ In December 2001, Adolfo Rodríguez Saá was named new interim president. He resigned on December 30, citing a lack of support within his party. In January 2002, Congress elected Peronist Senator Eduardo Duhalde as caretaker president, and in July 2002, Duhalde called early elections for April 2003.

¹² This decree was repealed by interim president Adolfo Rodríguez Saá.

¹³ The Convention, passed by the UN in 1968 and approved by the Argentine Congress in 1995, states that there can be no statute of limitations for crimes against humanity, regardless of when they were committed. It also obliges ratifying states to bring their own laws into keeping with the provisions of the treaty and urges signatories to take steps towards extraditing those who commit such crimes according to international law. See also Institute for Policy Studies, *Pinochet Watch* 52, Aug. 13, 2003.

¹⁴ The Centro de Estudios Legales y Sociales (CELS), the Asociación Madres de Plaza de Mayo, and the Madres de Plaza de Mayo—Línea Fundadora, Abuelas de Plaza de Mayo, the Asamblea Permanente por los Derechos Humanos (APDH), Familiares de Desaparecidos y Detenidos por Razones Políticas, Liga Argentina por los Derechos del Hombre, Movimiento Ecuaménico por los Derechos Humanos (MEDH), Servicio Paz y Justicia (SERPAJ), as well as other organizations.

¹⁵ Elizabeth Jelin, "Los derechos humanos entre el estado y la sociedad," en Juan Suriano, ed., *Nueva Historia Argentina*, Vol. 10. Buenos Aires: Editorial Sudamericana, 2005, at 19.

These and other organizations have played an enormous role in promoting justice in Argentina. In addition to investigations, human rights workers consistently promoted other types of initiatives, such as the territorial marks of commemoration (monuments, parks, etc.), the preservation of documents, and the creation of historical archives. They have fought against “forgetting” and for promoting the memory of what happened, and have kept the information alive in historical archives and documents.¹⁶

The efforts of these groups have not ceased since the fall of the military dictatorship; the government and judicial system were never acting alone when pursuing judicial initiatives. Rather, the state is working from a base set up by victims and their families, human rights advocates, and local and international journalists. The information gathered in the truth trials, along with many military confessions, will continue to be used in the potential prosecutions of the human rights offenders within Argentina and abroad.

While the current government seems to have the appetite, power, and political will to pursue justice for past abuses, these initiatives are the result of work by victim groups, civil society organizations, and individuals who set up a strong base of information and never stopped their fight for justice for the victims of Argentina’s military dictatorship.

¹⁶ Id. at 26.

TIMELINE OF KEY EVENTS

1976

- Military regime takes power; estimated 10,000–30,000 disappeared between 1976 and 1983

1983

- Military regime ends; President Raul Alfonsín creates the National Commission on the Disappeared (CONADEP)

1984

- CONADEP report, *Nunca Más*, released

1985

- Trials of first three military juntas (Videla and Massera receive life sentences)

1986 and 1987

- Full stop and due obedience laws implemented

1989 and 1990

- President Carlos Menem issues pardons

1991

- Legislation provides for reparations for political prisoners

1992

- National Commission for Right to Identity is created, centralizing the search for missing children

1994

- Legislation provides for reparations for families of the disappeared

1995

- Menem reelected; confessions of military personnel (Scilingo and others); calls for “truth trials” begin

1997

- Court cases linked to illegal appropriation of children and kidnapping are initiated; Spanish Judge Baltazar Garzón requests the arrest of former Argentine military officers

1998

- Congress repeals the full stop and due obedience laws, although with no legal effect; a proposal to annul the laws, which could have allowed prosecutions to be reopened, was defeated. Argentine judges order arrests in connection with the abduction of babies from women detained during the military regime

1999

- Fernando de la Rúa is elected president

2001

- In March the full stop and due obedience laws are declared unconstitutional by Federal Judge Gabriel Cavallo; the Court of Appeals confirms that ruling in November

2003

- Nestor Kirchner inaugurated; 31 former military officers are detained pending possible extradition to Spain requested by Judge Garzón; Congress annuls full stop and due obedience laws with the intent of having retroactive effect (although the legality of such an annulment was challenged in court); prosecutions are resumed; Ricardo Miguel Cavallo, former Argentine coup officer, is extradited from Mexico to Spain for trial

2004

- Jorge Godoy, Argentina Head of the Navy, admits that Navy School of Mechanics (ESMA) was used as a torture center; Kirchner announces the building will be turned into a museum; more than 110 military officers taken into custody and more are under prosecution

2005

- The Argentine Supreme Court resolves that the due obedience and full stop laws are unconstitutional, agreeing with Judge Cavallo's 2001 decision, thus paving the way for the courts to end impunity in the country

