

UNIVERSAL PERIODIC REVIEW – 4TH CYCLE

CONTRIBUTION TO ARGENTINA'S REVIEW

Process of memory, truth and justice for grave human rights violations committed during the last civil-military dictatorship

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1. In the past four decades since the end of the dictatorship, Argentina has positioned itself as a point of reference by linking the human rights movement with public policies to consolidate a process that seeks to uphold memory, obtain truth and bring to justice those guilty of crimes. This set of policies encompasses economic reparations to victims, justice for crimes against sexual integrity, the restitution of the identity of the children appropriated from political activists, the finding and identification of remains, and the creation of memory sites, among others.
2. However, problems persist in the process of investigation into human rights violations committed during the last dictatorship. In this sense, the Human Rights Committee examined the Argentina's fifth periodic review in 2016 and made recommendations¹ that have yet to be fully met. In this report, we present some of these problems and focus on:

The progress in judicial proceedings

Corporate responsibilities in the repression

The secrecy around military and police intelligence archives

I. Judicial proceedings

3. Following a period of impunity, in the early 2000s Argentina resumed justice proceedings for crimes against humanity. Since 2006, there have been 278 trials, with 1080 convictions and 161 acquittals.² There are judicial investigations in nearly all the

¹ See CCPR/C/ARG/5, paragraph 28. "The Committee reiterates its recommendation to intensify efforts to carry out investigations into all the human rights violations of the past, including crimes committed by corporations and/or corporate employees presumably involved in crimes against humanity. The State must provide the necessary human and economic resources for the investigations to identify those responsible, bring them to trial and impose appropriate sanctions proportionate to the severity of the crimes, and redress to the victims."

² According to the report by the Public Prosecutor for Crimes Against Humanity on the status of cases for crimes against humanity in June 2022. Available at: <https://www.fiscales.gob.ar/lesa-humanidad/desde-2006-se-dictaron-278-sentencias-por-crimenes-de-lesa-humanidad-en-todo-el-pais-por-las-que-fueron-condenadas-1070-personas/>.

provinces of the country. In some cases, civil responsibilities were brought to light.

4. At the same time, organizational problems in the justice system delay procedural times and, given the age of the victims and the accused, cast doubt on whether the process will end in judgment of the greatest possible number of perpetrators. The lack of appointments of judges is a constant issue. In light of the vacancies, the authorities designate substitute judges who cannot meet their fulltime obligations. Thus, a long time passes between elevating cases to trial stage and the actual trial, with sporadic hearings and never-ending red tape. There is no publicity around court agendas or proactive, organized procedures to resolve these problems.³
5. Delays include appeals stages and the National Supreme Court (CSJN) stages. As of December 2021, only 27% of the 269 convictions had been confirmed by the CSJN.⁴ This was denounced by human rights organizations to the United Nations Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence in June 2021.⁵
6. In addition to this situation, there was the complete shutdown of the courts during the first months of the pandemic. The trials resumed remotely, albeit in an uneven and uncoordinated way, and thanks to efforts by the Public Prosecutor for Crimes against Humanity of the Attorney General's Office, human rights organizations, plaintiffs and victims.
7. The “Comision interpoderes”⁶ was created in 2008 to tackle these problems and speed up cases in the Supreme Court arena (approved 42/08). The last meetings were in 2016 and 2020: no measure was adopted.⁷ In December 2020, the Secretariat of Human Rights presented the “Strategic plan to speed up the justice process for crimes against humanity;” the proposed inter-governmental coordination is not happening.⁸
8. Delays are also typical in procedures for economic reparations to victims. Between 2016 and 2019, these procedures were suspended by the government, which argued

³ This issue already raised concern for the Human Rights Committee in its final observations on Argentina’s periodic reviews CCPR/C/ARG/CO/4, paragraph 9 and CCPR/C/ARG/5, paragraph 27.

⁴ According to data by the Public Prosecutor for Crimes against Humanity. Information available at: <https://www.fiscales.gob.ar/lesa-humanidad/desde-2006-se-dictaron-278-sentencias-por-crimenes-de-lesa-humanidad-en-todo-el-pais-por-las-que-fueron-condenadas-1070-personas/>.

⁵ In this regard, see: <https://www.pagina12.com.ar/349966-las-demoras-de-la-corte-para-fallar-en-causas-de-lesa-humanidad/>

⁶ It is a body promoted by the Court and made up of representatives of the Executive, Legislative and Judicial Branches and the General Attorney's Office.

⁷ On the last meetings of the Inter-governmental Commission, see: <http://www.cij.gov.ar/nota-17526-Lesa-humanidad--se-reuni--la-Comisi-n-Interpoderes--convocada-por-la-Corte-Suprema-de-Justicia.html> and <https://www.cels.org.ar/web/2020/10/sobre-la-interpoderes/>

⁸ On the Strategic Plan presented by the Secretariat of Human Rights, see: <https://www.argentina.gob.ar/noticias/se-presento-el-plan-estrategico-para-el-avance-del-proceso-de-justicia-por-los-crimenes-de>

that the legitimacy of the requests⁹ needed to audited. The current administration has acknowledged the delays dragging on these procedures.^{10 11}

9. In relation to the policy to protect victims and witnesses, our country has yet to determine what happened to Jorge Julio López, a former detainee who testified in a judicial case and then disappeared. On his disappearance and the lack of clarification, the Human Rights Committee recommended that the State “thoroughly investigate the cases of disappearance, murder and presumed intimidation of witnesses, in particular the disappearance of Jorge Julio López, and sanction those responsible.”¹²

II. Corporate responsibility

10. The delays and obstacles we have mentioned become even more acute when investigating the role of business owners, directors and/or hierarchical corporate personnel.
11. We provide two examples of the differential obstacles in cases of this type.
12. Carlos Blaquier is the president of the Ledesma Sugar Mill. He is accused of having contributed to armed and security forces illegal detention of workers and union members at the mill. In 2012, he was prosecuted in two cases. In 2015, the Federal Appeals Chamber dismissed the proceedings on grounds of lack of merit. Without considering the evidence, the court held that there was insufficient evidence to prosecute, calling for a standard of evidence at the level of oral trial. The case was taken to the Supreme Court by the Attorney General, where it took six years to decide to revoke the lack of merit ruling. The cases were taken to trial. But Blaquier is now 94 years old and based on arguments presented by his lawyer, his capacity to stand trial is now being debated.
13. Another case with serious delays is the workers at Mercedes Benz Argentina, who were abducted and disappeared. The case was opened in 2002. In 2019 the oral trial began in which the role of the security forces is being tried. In April 2022, the presiding judge in the investigation into the responsibility attributable to managers at Mercedes Benz dismissed the case against the only one charged, Juan Tasselkraut.¹³ The decision was based on a biased view of the evidence and disregards the testimony of the only survivor, Héctor Ratto, who witnessed when the manager gave a co-worker’s address to the military; that co-worker was abducted a few hours later. The plaintiffs and

⁹ On the delays in granting reparations to victims of human rights violations during the period of state terrorism, see: <https://www.pagina12.com.ar/224332-macri-fue-denunciado-por-demorar-las-indemnizaciones-a-las-v> y <https://www.elcohetelaluna.com/sembrar-la-duda/>

¹⁰ The new administration of the Secretariat of Human Rights acknowledged the problem and took some measures to speed up red tape around administrative files, considering the limits imposed by the pandemic in 2020: <https://www.argentina.gob.ar/noticias/leyes-reparatorias-en-tiempo-record-se-digitalizaron-casi-12000-documentos>

¹¹ The victims who have still not received reparations have filed multiple claims over delays: <https://www.resumenlatinoamericano.org/2022/06/07/argentina-ex-presas-y-presos-politicxs-denuncian-al-gobierno-ante-la-cidh/>

¹² On the lack of progress in the investigation into the disappearance of Jorge Julio López, see CCPR/C/ARG/5. paragraph 26.

¹³ Another manager, Rubén Cueva, was also implicated in the events, but by the time the judge decided to subpoena him to give testimony in 2021, he had died.

Attorney General have appealed.

14. On the matter of seeking corporate accountability in non-criminal venues for crimes against humanity, we will refer to the *Ingenieros* case that had an outcome that is not in keeping with international human rights law. María Gimena Ingengnieros filed a lawsuit for the disappearance of her father, Enrique Ingegnieros, abducted in the metalworks factory where he worked. The criminal case was unsuccessful. In 2008, María filed charges in labor court against the steel producer, Techint S.A., suing for reparations. After 11 years of litigation, the Supreme Court rejected her case on grounds that, as a civil claim, the statute of limitations had expired. The decision disregards the fact that the lawsuit is for a crime against humanity and therefore has no statute of limitations. The case was brought before the Inter-American Commission on Human Rights.
15. In December 2015, Congress created the Bicameral Commission on Truth, Justice, Reparations and Strengthening of Democratic Institutions (Law 27,217) that must produce a report identifying the economic actors who contributed and/or benefited from the policies of the dictatorship. The Commission has not yet been put into operation.¹⁴

III. Declassification of police and military intelligence archives

16. In 2015 the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Pablo de Greiff, affirmed that “the archives are relevant and can significantly contribute to each one of the pillars of transitional justice, not only to truth and justice.” He indicated that archives “containing records of massive violations can contribute to prevention,” because access to “well-conserved, protected archives is an educational tool against denial and revisionism that guarantees that future generations have access to primary sources.”¹⁵ In the annex to that report, he reiterated “the call to States to lend their support to mechanisms that seek the truth throughout its life cycle, including access to information records on grave human rights violations and the right to humanitarian (...).”¹⁶
17. In 2020, Special Rapporteur Fabián Salvioli drew a direct connection between access to archives and memorialization. He underlined that “archives must be accessible in accordance with established norms and governments must remove obstacles to that access.”¹⁷
18. Other precedents figure in the document proclaimed by the General Assembly, “A set of principles for the protection and promotion of human rights through action to combat

¹⁴ The Human Rights Committee, in its 117th session, also pointed to the failure to implement the Bicameral Commission. It stated, “The Committee take satisfaction in the creation of the report on corporate responsibility for crimes against workers during the dictatorship and creation of a Bicameral Commission on the Identification of Economic Complicities during the military dictatorship, but regrets the obstacles hindering the investigation of these crimes and the fact that said Commission has not been implemented so far,” CCPR/C/ARG/5, paragraph 27.

¹⁵ See [A/HRC/30/42, parr. 96.](#)

¹⁶ Ídem (annex Set of general recommendations for truth commissions and archives, point 6) the translation is ours)

¹⁷ See [A/HRC/45/45, parr. 113.](#)

impunity.”

19. According to these principles and considerations, in addition to the jurisprudence of the Inter-American Court of Human Rights in *Myrna Mack* and *Gómez Lund*, States have the obligation to remove obstacles in the way of access to archives related to crimes against humanity and serious human rights violates. This access must include intelligence and security archives that cannot be opposed by state secrecy or require a court order. This obligation to make the archives public is based on the fact that they may contain information that could bring the responsible parties to trial and are necessary to guarantee the right to truth and collective memory.
20. The process of memory, truth and justice in our country advanced with the declassification and public disclosure of the archives linked to State terrorism, although the intelligence archives of the former Secretariat of State Intelligence (SIDE, now the Federal Intelligence Agency, AFI) and those of the police and security forces have yet to be made public.
21. Access to these archives of material has been limited; in general, it has been authorized in response to court orders. The State has yet to undertake an exhaustive disclosure, making the entire inventory public and allowing access to the majority of intelligence archives produced by the security forces, the armed forces, and the former SIDE in particular.
22. Decree 4/2010 by President Cristina Fernández de Kirchner ordered the declassification of all documentation and information related to actions taken by the armed forces between 1976 and 1983.¹⁸ By way of that decree, the Ministries of Defense and Security formed teams to collect the documentation held by the armed forces and federal security forces (Resolutions 308/2010 and 544/2011). The Ministry of Security deemed that, according to international standards and jurisprudence of the Inter-American Court, the forces under its purview should be analogous to the Armed Forces. These teams contributed documents relevant to judicial investigations, produced reports on the structure and operations of the forces during the dictatorship and provided experts who testified in the trials.
23. In 2016, the next government dissolved the National Office of Human Rights within the Ministry of Security, which was reviewing the documentation to analyze its structure and operation in order to provide reports to the Judicial Branch.¹⁹ After the change of authorities again in 2019, this office was not formed again and information is not being actively sought today. In 2016, the review teams in the Ministry of Defense were reduced to the point of making their work impossible. For five years they functioned below capacity and did not work actively aside from the occasional court or administrative order. As of 2022, the capacity of the archival research teams working on the armed forces archives was reinforced. However, the intelligence information on the armed forces has remained classified and is at risk of being destroyed.
24. A 2019 decree by President Alberto Fernández revealed that the authorities had found three physical archives containing 250,000 files with information on people and social

¹⁸ Decree available at:

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/160000-164999/162573/norma.htm>

¹⁹ In this regard, see: <http://www.pagina12.com.ar/diario/elpais/1-295579-2016-03-28.html>

and political organizations associated with the AFI.²⁰

25. After this discovery, nearly 40 years after the military dictatorship, a process began in 2020 to decide what to do with the findings and all the other information from that period. AFI Controller Cristina Caamaño implemented the “Records and archives protection program” (AFI Res. 76/20) and formed a working group with human rights organizations and other state agencies.²¹ A selection of these documents was handed over in December 2020 to the organizations mentioned in the documents.²² In April 2022, they announced a massive process of digitalization of the information found, as well as the bureaucratic documentation on SIDE from that period.²³
26. This all shows the delay in the opening of these archives and the need for the State to implement comprehensive policies of declassification and public access to the documentation related to crimes against humanity. Every so often, the State informs the courts, hands over suspects or filters to the press intelligence information that should have been declassified, systematized and made available to the justice system. Meanwhile, much of the documentation remains under secrecy.
27. Access to these documents is a historical demand by human rights organizations in light of the role played by the intelligence services in the repressive State apparatus. Those archives may contain information on the fate of victims of forced disappearance, on the appropriated children of the disappeared and the perpetrators. However, still today there has been no declassification of the information produced 40 years ago nor any resolution on how access will be guaranteed to society at large.

Questions to the State:

1. What measures have been or will be adopted to speed up the trials? What results are expected from these measures? How will the State solve the issue of judge vacancies in the federal courts?
2. What progress has been made in the formation and implementation of the Bicameral Commission on Identification of Economic and Financial Complicities during the last military dictatorship?
3. Can you provide concrete data on the solution to delays in granting reparations to victims of human rights violations?
4. What archive policies are being designed in the ministries of defense and security and in the Federal Intelligence Agency to give institutional continuity to the work initiated by the joint working groups and the review teams?

²⁰ The finding was made public in December 2020. See <https://www.pagina12.com.ar/311221-cristina-kirchner-estuvo-junto-a-alberto-fernandez-en-la-ex-> y <https://www.pagina12.com.ar/311329-el-archivo-de-la-side-250-mil-fichas-de-antecedentes-y-700-c>

²¹ On the formation of this working group, see: <https://www.pagina12.com.ar/353041-se-conformo-una-mesa-conjunta-para-analizar-la-informacion-d>

²² More information available at: <https://www.pagina12.com.ar/311329-el-archivo-de-la-side-250-mil-fichas-de-antecedentes-y-700-c>

²³ Official announcement available at: <https://www.argentina.gob.ar/noticias/convenio-con-la-casa-de-moneda-para-la-digitalizacion-de-los-archivos-de-la-dictadura>

5. What regulatory instruments will be developed to guarantee access to intelligence and security information that could shed light on the repressive State apparatus and human rights violations perpetrated before 1985?
6. What policies of active declassification and public disclosure will be developed for all intelligence produced by the State, particularly the AFI, security forces and armed forces?

Recommendations to the State:

1. Promote processes to appoint judges and reassign resources in the courts. In particular, for the Supreme Court and Judicial Council to guarantee the effective administration of justice and design of strategies to expedite trials. In particular, for them to shorten the appeals stage.
 2. Move forward with the trials of business owners, directors and/or company personnel involved in human rights violations. Contribute to these investigations and proceed to put into operation the Bicameral Commission on the Identification of Economic and Financial Complicities during the last military dictatorship.
 3. Resolve delays in the granting of reparations to victims.
 4. Continue the policies of memory relating to State terrorism through the preservation of archives and memory sites.
 5. Form again the department in charge of reviewing documentation in the Ministry of Security, and reinforce the one in the Ministry of Defense, both with an active declassification policy.
1. Reform Law 25,520 on national intelligence to meet international standards on declassification and access to intelligence documentation, or otherwise, regulate the law in its current form to actively carry out the declassification stipulated in its Art. 16 due to the passage of time.