

## Universal Periodic Review – Argentina March 2017

### Summary

This submission highlights concerns about Argentina’s compliance with its international human rights obligations since its previous Universal Periodic Reviews (UPR) in 2012 and 2008. The submission focuses on problems related to the prosecution of past human rights abuses, freedom of expression, judicial independence, prison conditions, and women rights.

### **Confronting Past Abuses**

In its 2012 UPR, Argentina accepted recommendations regarding the ongoing trials for crimes against humanity committed during the country’s “Dirty War,” stating that one of its policy objectives since 2003 had been to bring those responsible for these abuses to justice. It also accepted a recommendation to further strengthen its efforts to protect witnesses and victims.

Argentina has made significant progress in prosecuting those responsible for human rights abuses committed by Argentina’s military junta during the “Dirty War.” As of September 2016, 2,541 people had been charged with offenses tied to serious rights abuses, 723 convicted, and 76 acquitted for these crimes, according to the Attorney General’s Office. Prosecutions were made possible by several actions taken in the early 2000s by Congress, the Supreme Court, and federal judges annulling amnesty laws and striking down pardons of former officials implicated in the crimes. As of March 2017, 121 people who had been taken illegally from their parents as children had been identified and located.

In May 2016, for example, a federal court convicted 14 former military and intelligence chiefs from Argentina and one from Uruguay of crimes against humanity committed as part of the Condor Plan, a joint initiative targeting political opponents by the dictatorships in Argentina, Bolivia, Brazil, Chile, Paraguay, and Uruguay.

The fate of Jorge Julio López, a torture victim who disappeared in 2006—a day before he was due to attend the trial of one of his torturers— remains unknown. Another concern is that, due to the large number of victims, suspects, and cases, prosecutors and judges face challenges bringing those responsible to justice while respecting their due process rights. In September, the Attorney General’s Office reported that 489 pretrial detainees and convicted prisoners were under house arrest, an alternative to incarceration Argentine law generally allows for people over 70 years old. In August 2016, the government said it would not appeal judicial rulings granting house arrest to these detainees and convicted prisoners.

### Recommendations:

- The Attorney General’s Office and criminal courts should avoid undue delays and ensure trials of perpetrators of human rights abuses committed during the military dictatorship are resolved promptly to ensure justice for victims and due process for the accused.

## **Freedom of Expression**

In 2012, Argentina rejected recommendations aimed at guaranteeing the right of freedom of expression, arguing that “freedom of expression is exercised without restriction in Argentina.” It also took note of recommendations urging Argentina to adopt regulations to ensure access to official information, and to ensure that a 2009 media law was implemented in accordance with a Supreme Court ruling.

Upon taking office in December 2015, President Mauricio Macri adopted a temporary set of decrees to regulate media, which effectively replaced the 2009 law. He created a new agency that reports to the Communications Ministry to implement the new rules. In July, the government said it was drafting a communications law that it claimed would respect free speech. As of March 2017, the law was still being drafted but the new, supposedly temporary agency that lacks structural independence from the executive had already issued rulings regulating media.

In September 2016, Congress passed a national law ensuring public access to information held by government bodies. Some provinces and municipalities still lack such laws, however, undermining free speech.

In January 2016, Milagro Sala, a social leader, was detained and charged with “sedition” after participating in a protest in the center of San Salvador de Jujuy, the provincial capital. She was later also accused of “extortion,” “association to commit crimes,” and “fraud.” The Argentine criminal code defines “sedition” as “publicly mobilizing to prevent implementation of national or provincial laws or resolutions of national or public officials.” This broad definition could be used in ways that severely limit the exercise of free speech.

In October 2016, the UN Working Group on Arbitrary Detention (UNWAD) found that Sala’s detention was arbitrary and urged the Argentine government to immediately release her, but she remains in pre-trial detention.

Recommendations:

- The legislature should reform the definition of the crime of “sedition” included in the criminal code to ensure that it is compatible with international standards on the right to freedom of expression.

## **Prison Conditions**

In its 2012 UPR, Argentina accepted recommendations to address inadequate prison conditions, stating that these were “being implemented through the multiple strategies that are being orchestrated by the pertinent agencies.”

However, overcrowding, ill-treatment by guards, inadequate facilities, and inmate violence continue to be serious issues in Argentina’s prisons. The National Penitentiary Office, created by Congress in 2003 to supervise federal prisons and protect the rights of detainees, reported 13 violent deaths in federal prisons in 2016. The office also documented 775 cases of torture or ill-treatment in federal prisons in 2015, and 608 in 2016.

A report published in September 2016 by the Provincial Commission for Memory—an autonomous public body created by the legislature of Buenos Aires province—found that in 2015, an average of three detainees died per week in Buenos Aires province prisons, most of them due to preventable illnesses. The report highlights that more than half of detainees in prisons and police stations in the province were being held in pretrial detention.

Recommendations:

- The government of Argentina should immediately adopt concrete measures to eliminate overcrowding and improve prison conditions in detention facilities, as well as take steps to ensure fair treatment of all prisoners.

## **Judicial Independence**

In its 2012 UPR, Argentina accepted a recommendation to “provide the judicial system with solid logistical and administrative foundations in order to avoid delays, procedural impasses and the replacement of judges.”

However, judicial independence in Argentina is potentially threatened by temporary appointments in the judiciary. The delayed appointment of permanent judges by the Council of the Judiciary has led to temporary appointments of judges who lack security of tenure, which, the Supreme Court ruled in 2015, undermines judicial independence. As of November 2016, 254 of 979 lower-court judgeships remained vacant.

Recommendations:

- The Council of the Judiciary should avoid undue delays in appointing judges, given that such delays could pose a threat to judicial independence.

## **Women’s Rights**

In its 2012 UPR, Argentina accepted several recommendations to address gender inequality and violence against women.

However, unpunished killings of women remain a serious concern, despite a 2009 law setting forth comprehensive measures to prevent and punish violence against women. In 2015, the National Registry of Femicides, administered by the Supreme Court, reported 235 “femicides” (defined, in part, as the murder of a woman in a context of gender-based violence), but only seven convictions.

In its 2012 UPR, Argentina accepted recommendations to ensure respect for women’s reproductive freedom and took note of recommendations that it ensure access to legal abortion. However, women’s access to abortion continues to be greatly restricted in Argentina. Abortion is illegal, except in cases of rape or when the life of the woman is at risk. In addition, women and girls are sometimes subject to criminal prosecution for seeking abortions or after suffering miscarriages. Many women also have trouble accessing such reproductive services as contraception and voluntary sterilization. For example, in April 2016, a 27-year-old woman from Tucumán province was sentenced to eight years in prison for aggravated homicide after suffering a miscarriage that the authorities alleged had been induced intentionally. In August 2016, the Supreme Court of Tucumán ordered her release, and in March 2017, repealed her conviction.

Recommendations:

- The government of Argentina should take further steps to prevent gender-based violence;
- The Attorney General’s Office and Argentine courts should take further steps to ensure that cases of gender-based violence are adequately investigated, prosecuted, and sanctioned;
- The Ministry of Health should take steps to remove obstacles that women face when accessing reproductive health products and services, including contraceptives, voluntary sterilization procedures, and abortion after rape;
- The government of Argentina should follow through with pending legislation that would provide women legal access to a full range of reproductive health services, including abortion.

## **AMIA Bombing**

Twenty-two years after the 1994 bombing of the Argentine Israelite Mutual Association (AMIA) in Buenos Aires that killed 85 people and injured more than 300, no one has been convicted of the crime. The Argentina-Iran 2013 memorandum of understanding on the bombing of the Argentine Israelite Mutual Association (AMIA), which could have limited investigations on the terrorist attack, is no longer in force. However, there has been no progress in prosecuting those responsible for the bombing.

Authorities have also failed to achieve meaningful progress in investigating the death of prosecutor Alberto Nisman. In January 2015—days after he filed a criminal complaint accusing then-President Cristina Fernández and her foreign affairs minister of conspiring with Iran to undermine the investigation—Nisman, the prosecutor in charge of investigating the bombing, was found dead in his home. As of March 2017, the courts had not determined whether Nisman has committed suicide or was murdered.

### Recommendations:

- The Attorney General's Office and Argentine courts should take further steps to investigate and prosecute those responsible for the AMIA attack and the officials allegedly responsible for interfering with initial investigations on the attack. They should also carry out an independent and impartial investigation on the death of Prosecutor Nisman, without further undue delays.