

**The Long Struggle for Accountability in Argentina.
The role of civil society's activism and State actors.**

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I Introduction

An undisputed regional protagonist in transitional justice (TJ), Argentina has explored the full menu of TJ mechanisms (TJMs) intended to address gross human rights violations committed during military rule (1976-83): truth commission, restitution, economical and symbolic reparations, limited trials, large scale trials, truth trials and lustration procedures.¹

This paper addresses some of the findings of the Argentina chapter written within the analytical framework of the project which has inspired the panel in which it is presented.² It explores the specific contribution of four of the TJ mechanisms implemented in Argentina (trials, truth, reparations and amnesty laws) to accountability. This is done by describing the role of different actors in pushing for or obstructing their implementation. Actors include State agents from different government branches or agencies; national human rights and victims' organizations; international actors such as the Inter-American Commission of Human Rights and European courts; and members of the Armed Forces. By presenting the debates, confrontations and alliances between these actors regarding the different TJMs and taking into account the international and national context, this paper argues that there has not been a linear path towards accountability. Human rights policies between the 1980s and 1990s were characterized by two steps forward and one step back, until the TJ process reached a point where State will and civil society claims coincided in 2003, making the accountability process more robust.

The accountability process undergone by Argentina over the last 30 years is a response to the crimes committed by the last and cruellest dictatorship experienced by Argentina throughout its history.³ The military took power on March 24, 1976, initiating a dictatorship with distinct characteristics from previous periods of military rule: for the first time power was taken by all three branches of the armed forces, jointly constituting a government *Junta* that enacted a series of laws and statutes which gave it constitutional powers. This exceptional legislation coexisted with parallel secret norms that regulated repressive operations. This was described by CELS' founder Emilio Mignone as the "global paralelism doctrine". The first level of norms was composed by the public *de facto* ones sanctioned by the military. The second "was secret, but could be reconstructed from data, testimonies and publications. It is composed by orders and forms of organization and action undoubtedly written, proposed by the intelligence organs and the chiefs of the three Armed Forces".⁴

Repression was massive; more brutal and much more widespread than in the other Southern Cone countries. Kidnapping, detained disappearance, and torture were central features of the repression. Detainees were taken to Clandestine Detention Centres (CDCs), which were inserted into neighbourhoods with "visible" but secret forms of operation. CONADEP identified 365 of them.⁵ Abductions were organized by Task Groups operating at each CDC. Once captured information was extracted from the detainees through physical and psychological torture. After being held captive at CDCs, detainees

¹ Smulovitz, Catalina. "The Past Is Never Dead": Accountability and Justice for Past Human Rights Violations in Argentina." United Nations University, 2012.

² This paper is based on a chapter on Argentina to be included in *Reconceptualising Transitional Justice: The Latin American Experience* (co-edited by Elin Skaar, Cath Collins, and Jemima García-Godos).

³ Argentina had a sequence of coups d'états between 1930 and 1976. They strengthened the political power of the Armed Forces as well as subsequent alliances between the armed forces and several dominating economic sectors that gave the armed forces sufficient autonomy for action. See Calveiro, Pilar *Poder y desaparición Los campos de concentración en la Argentina*. Colihue, Buenos Aires, 2006.

⁴ See CELS, *El caso argentino: desapariciones forzadas como instrumento básico y generalizado de una política. La doctrina del paralelismo global. Su concepción y aplicación. Necesidad de su denuncia y condena*. Presented at: "La política de desapariciones forzadas de personas". Paris, 1981.

⁵ See CONADEP, *Nunca Mas* report and indictment in case no. 2637/04 "Vaello, Orestes Estanislao y otros s/ privación ilegal de la libertad agravada".

were either freed, disappeared, or became political prisoners, without the right to defence or trial. It later became known that “disappearance” was a conscious state-driven policy that consisted of killing the victims and hiding or destroying the bodies. Among the disappeared were a large number of women – roughly one third of the total number of officially recorded disappeared. Many of them were young and pregnant. A particular feature of the Argentine repression strategy was that pregnant women were often kept alive at CDCs for the purpose of giving birth, upon which their newborn babies were adopted by military families. A well-known human rights organisation, the Grandmothers of Plaza de Mayo, has up to the present continued their search for these appropriated children. As of May 2013, 107 of approximately 500 disappeared children have been found.

Repression was targeted mainly at left-wing movements and people perceived as enemies of, or a threat to the State. However, there was also repression of a random character which affected people without any political affiliation. Although definitions and numbers of victims of the repression that took place between 1976 and 1983 vary from source to source, officially recognized numbers of disappeared is 8961⁶.

Transition to democracy in Argentina was a result of a virtually collapsed state. Economic crisis and the military defeat in the Malvinas war with the United Kingdom were two of the main reasons that drove to the dictatorship to call for open elections. During the presidential campaign the question about what to do with the gross human violations was on the spot.⁷

First president after dictatorship was Raul Alfonsín. He took office in December, 1983. From then Argentina has experienced a sustained democratic regime. The 30-years anniversary of uninterrupted democracy is coming up in December, 2013, in spite of the country having suffered several severe political, economic, and social crises.

II State and Civil Society Responses to Repression

The push for addressing human rights violations committed by the military has come principally from a strong network of human rights organizations (HROs), several of which have a legal profile. Some of them emerged during the dictatorship period, such as Mothers (*Madres*) and Grandmothers (*Abuelas*) of Plaza de Mayo, Relatives of Political Detainees-Disappeared Persons (*Familiares*), Ecumenical Movement for Human Rights (MEDH) and Center for Legal and Social Studies (CELS), in addition to organizations that had existed before the onset of military rule: The Argentine League for the Rights of Mankind (LADH) and the Permanent Assembly for Human Rights (APDH). Their first goal was to demand the release of disappeared persons before several national bodies, without success. Upon this failure, its work focused strongly on international reporting. Later, year after the dictatorship was over, HROs have pushed strongly for criminal accountability for past violations.

As mentioned, Argentina has experienced most of the TJMs. While mechanisms cannot be conceived in isolation -as feedback processes occur between them⁸, we use a mechanisms-by-mechanism approach here, rather than present the TJ process in chronological order, to capture the contribution of each TJM to accountability. Though

⁶ This is the CONADEP figure. It is supposed to be updated by the Unified Registry of Victims but there are not public updated absolute figures on victims (only percentages). According to this source, 63,23%, are disappeared, 12,44% are murdered and 24,32% survivors. See the Truth section for further detail.

⁷ Nino, Carlos S., “The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina”, published in *The Yale Law Journal*, Vol.100, (1991), pp. 2619 – 2640.

⁸ Smulovitz, Catalina. Op. cit.

TJMs are presented one by one, please note that there are strong interactions between the different mechanisms – particularly between the trajectories of amnesties and trials.

TRUTH

Truth finding in Argentina has taken place in several stages, and has been state-driven as well as pushed by HROs. One of the first concerns of HROs when attempting to account for the truth was the seeking of information on victims.

The first experience in systematization of this material occurred within the context of the Inter American Commission on Human Rights (IACHR) visit to Argentina in 1979.⁹ At that time, a number of organizations which had received reports of arrests/disappearances within Argentina submitted this information to the Commission, which resulted in an initial creation of figures and lists of victims.¹⁰

Before the end of the dictatorship, the armed forces had released the “Final Document of the Military *Junta* on the War against Subversion and Terrorism” [*Documento Final de la Junta Militar sobre la guerra contra la subversión y el terrorismo*], in an attempt to justify their actions under the pretext of “war” in which “mistakes and opprobrium” occurred for the good of the Nation. The document was publicly rejected by HROs and then presidential candidate Raúl Alfonsín. As an answer, HROs designed strategies on systematization of information based on the knowledge-building process for the crimes committed by the dictatorship, by filling reports at home and abroad before the international community, as a key aspect of human rights activism during the conflict.¹¹

In parallel HROs demanded the constitution of a parliamentary commission consisting of representatives from both chambers of National Congress (*Bicameral Commission*) in order to investigate the different dimensions of State Terrorism once the civil elected government took office.

To strengthen this idea of exposing the truth of past atrocities and to pave the way for this parliamentary commission, in August 1983 the main HROs formed a Technical Commission for Data Production (*Comisión técnica de recopilación de datos*), whose main objective was to gather and systematize the information they all had in their archives on the victims of State repressive actions.¹²

These actions constituted the main background of CONADEP's methodology and have also contributed to the consolidation of research and documentation practices that later proved to be very useful.

⁹ In September 1979 the Inter American Commission on Human Rights made an *in loco* visit to Argentina. It received the testimonies of thousands of people, including relatives of the disappeared. In 1980 it published a report with some of the gross and systematic violations to human rights that were denounced during the visit.

¹⁰ Ver Basualdo, Guadalupe. *Las estrategias políticas y jurídicas del Centro de Estudios Legales y Sociales (CELS) en la movilización legal internacional durante la última dictadura militar (1976-1983)*. Tesis de Licenciatura, Facultad de Filosofía y Letras, UBA, 2011.

¹¹ As national mechanisms of claims were cancelled, HROs pursued a fine international strategy during the conflict. In 1979, Amnesty International promoted a visit of Madres de Plaza de Mayo to Europe and the United States to denounce Argentina's real situation on human rights. This was one of many visits that different HROs made to contest the denial of the crimes committed by the armed forces.

¹² The Technical Commission was formed by members of APDH, MEDH, CELS, *Familiares* and *Abuelas*. The LADH and *Madres* decided not to be part of it. This Technical Commission's work consisted of classifying existing data on detainees-disappeared based on demographic and occupational variables, identifying the names and ranks of those responsible, and finding out where CDCs had operated. Its purpose was to develop data and submit it to elected Congress. See CELS Archive – documents on the Technical Commission's work. It includes memos, registry forms, press releases, reports and lists of perpetrators, victims and CDCs (extreme dated 1983-1986).

Argentina's Truth Commission: CONADEP

During the presidential campaign, Raúl Alfonsín promised to investigate human rights violations. His opponent, the peronist candidate Ítalo Luder, argued that the self amnesty the armed forces had enacted before leaving de government should be respected for constitutional reasons. Shortly after taking office, and as a concretion of the promises he had made, Alfonsín enacted a decree to establish a commission for investigating the fate of disappeared persons.¹³ Its mandate was principally to “shed light on the disappearance of people in the country.” The foundational decree of CONADEP specified a number of functions, including:

- i) Receive claims and proof of the events, and forward this data to the judiciary;
- ii) Reveal the fate of disappeared persons;
- iii) Find children who had been abducted from their parents or guardians and, when successful, handing jurisdiction over to child service organizations and courts;
- iv) Report to the judiciary any attempt to conceal, remove or destroy evidence related to the investigation;
- v) Submit a final report with a detailed account of the events in question within a timeframe of 180 days.

CONADEP took its first steps within a context of political tension. The initiative challenged perpetrators of State crimes who remained within the highest military ranks, who defended the “anti-subversive struggle” and questioned the legitimacy of the Commission.¹⁴ Also, there were different reactions among HROs, some of whom were initially mistrustful of this government policy. However, HROs generally cooperated with CONADEP: they promoted testifying before it, and as some of them had been part of the Technical Commission or had archives of their own, shared their findings and methodology.

The Commission had a notion of victim limited only to the figure of the “disappeared”; the survivors and those victims who were killed weren’t included in their research. However, the CONADEP concealed some of the experiences endured by survivors of CDCs and detailed definitions of the elements of the crimes committed. In nine months, the truth commission received 7,000 testimonies and documented 8,961 cases of disappeared persons.¹⁵ Witnesses included 1,500 survivors who provided detailed accounts of the conditions and torture to which they were subjected. It obtained proof of the existence of 365 CDCs and inspected 50 of them.¹⁶

The main outcome of this Commission was the 5,000 page report submitted to the President. The public had access to an edited version called *Nunca Mas* (Never again) published by the University of Buenos Aires. In the report CONADEP recommended that enforced disappearances should be considered crimes against humanity, that financial, social and educational aid for the victims should be given and insisted on the need of a “deep judicial investigation” of reported events.¹⁷

CONADEP played an important role in the possibility of achieving accountability. *Nunca Mas* described the systematic and varied ways in which physical and psychological torture

¹³ Presidential Decree No. 187/83, enacted on December 15, 1983.

¹⁴ Hayner, Priscilla. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. (New York: Routledge, 2011), pp. 64-65.

¹⁵ Crenzel, Emilio. *La historia política del Nunca Más. La memoria de las desapariciones en la Argentina*. SigloXXI editores, (Buenos Aires, 2008) pp. 115.

¹⁶ CONADEP had to decide what actually constitutes a CDC. Therefore, it included any site, military or not, where any disappeared person was held, regardless of the duration of the detention.

¹⁷ Only second recommendation was implemented, as described in the chapter about Reparations.

was imparted. It also gave an account of child abductions and appropriation of these children by military families or other alleged individuals.¹⁸ The information gathered was submitted to the Judiciary for criminal investigation.¹⁹ All this information served as valuable evidence for charging nine *Juntas* members with the perpetration of these crimes, as described later in this chapter.

Truth trials and testimonies in current phase of trials

The ways in which victim's testimonies are "reconstructed" in each stage of trials – which we will further discuss in the correspondent section – are different and have also a distinctive impact on truth and accountability.

The focus of testimonies in the nineteen eighties was aimed at proving the existence of a systematic plan of repression and at legally conceptualizing the notion of disappearance. They crystallized in CONADEP's report and the *Juntas* Trial's ruling. An analysis of this experience has shown that the overall goal of proving illegal repression overshadowed the personal experiences that, while undeniably mentioned clearly remained in second place compared to the broad dimension of the systematic disappearance and extermination.

Truth trials which emerged after several claims before the IACHR²⁰ contributed to reconstruct the fate of the detainees-disappeared. As the military were summoned as witnesses and were not afraid of being prosecuted, many of them revealed important information on the nature of the crimes and the actions they carried on to perpetrate them.

In the current prosecution process, survivor statements for the first time focus on personal experience. Particularly in the case of women, they include the gender-related abuses and harassment suffered. This change also appears in relation to the political history of the seventies. While in the *Juntas* Trial the prosecutor warned the witnesses against mentioning their political affiliation fearing possible accusations against them, and the CONADEP presented a notion of "innocent" and neutral victim, in the framework of new trials, victims refer to their political activism.

Unified Registry for Victims of State Terrorism

In December 2003, during Nestor Kirchner's administration and in the framework of the Human Rights Secretariat was created the National Archive of Memory (ANM). Its mission was to preserve documents belonging to CONADEP and update them as a follow-up of this important truth policy.²¹

By incorporating new documentation and information, ANM corrected original CONADEP data, and established the Unified Registry of Victims of State Terrorism (*Registro Unificado de Víctimas del Terrorismo de Estado*, URV) in 2012. URV is an important tool for systematizing information related to victims. However, there is still a long way to go regarding cross-reference between CONADEP files and other sources, such as testimonies in the trials and reparation files. The fact that the figures on victims are still contested, not public and not linked to the access to justice in current trials is a problem with regard to reach full accountability in terms of truth.

¹⁸ (Crenzel, op cit, pp. 114)

¹⁹ Even though an estimated 1,000 perpetrators were mentioned in the testimonies, the names could not be published (Hayner, op. cit, pp. 155-158).

²⁰ These will be addressed in more detail at the Trials section.

²¹ Source: official site of ANM (http://www.derhuman.jus.gov.ar/anm/inf_gestion11.html)

REPARATIONS

Argentina has over the years employed a wide range of State initiated TJ measures that involve the symbolic and economic reparation for the damage caused to victims and their families during the dictatorship period. First recommendations on reparations were made by CONADEP and followed by Alfonsín's government. Reparations is probably the most stable TJM implemented in Argentina. Each government made a contribution in this matter. However, it has also been the most contested one within the human rights movement.

Restitution of rights

During Alfonsín's government Congress approved the first reparation laws.²² They followed partly CONADEP recommendations as sought the restitution of the rights lost by direct victims and repealed any suspension in nationality or citizenship,²³ as well as any norm, administrative action, judicial process, and ruling of the dictatorship.²⁴ They mainly focused on work rights, by establishing the reinstatement of workers who had been suspended from public office and private positions (i.e. officials from Argentina's department of foreign affairs,²⁵ representatives of State-owned companies,²⁶ teachers²⁷ and bankers²⁸) and reconstitute the retirement funds of those "who for political or union-related matters was suspended, dismissed or forced to resign or to go into exile."²⁹

In addition, Law No. 23,466, issued also during Alfonsín's presidency, stipulated that the spouse and children (below legal age) of disappeared persons were entitled to a pension and medical coverage equivalent to that to which the disappeared person would have been entitled upon retirement. Even though this law related to a social right – the Right to Health – it is linked to its provision through the pensions system, therefore, to the Labour Market. In Argentina, reparations were never associated to social rights as positive obligations.

Economic reparations

Other reparation laws were enacted during Carlos Menem's government, between 1991 and 1995. They focused strictly on financial reparations for individuals who had been held captive by the State and the heirs of anyone who had been murdered by the military, security forces or paramilitary groups.³⁰ Some HROs were against receiving economical reparations arguing that it implied exchanging justice for money.³¹ Some of them understood that economical compensation was an obligation of the state when recognizing their responsibility in human rights violations. However, debates around reparations showed the internal divisions of the human rights movement. Probably the most relevant

²²Guembe, Maria Jose Economic Reparations for Grave Human Rights Violations: The Argentinean Experience In Pablo De Greiff, ed., *The Handbook of Reparations*. Oxford, New York, USA: Oxford University Press. Pp. 21-54.

²³ 1984 - March 22 - Law No. 23,059

²⁴ 1984 - May 23 - Law No. 23,062

²⁵ 1984 - February 22 - Law No. 23,053

²⁶ 1984 - September 30 - Law No. 23,117

²⁷ 1985 - September 10 - Law No. 23,238

²⁸ 1988 - October 28 - Law No. 23,523

²⁹ 1985 - September 28 - Law No. 23,278

³⁰ 1991 - November 27 - Law No. 24,043 and 1995 - January 3 - Law No. 24,411

³¹ See Guembe, María José op cit.

consequence was the split of *Madres* into two different factions. The group represented by Hebe de Bonafini remained against the reparations.³²

HROs which were in favour of economical reparations considered to advocate before Congress. It was the only permeable actor considering the reconciliation speech promoted by President Menem. Congress was therefore the key institutional actor regarding this kind of reparation during the nineties.

During Néstor Kirchner government the human rights policy included reparation aspects as well. In 2004 Law No. 25,914 stipulated benefits for persons born in captivity or abducted together with their parents. This established a broader notion of victim which contributed to understand the way in which the crimes affected the social fabric until today.

Symbolic reparations

When discussing reparations, it is inevitable to address discussions about the construction of a historical memory of past events. Human rights policies of Alfonsín's administration had "a certain level of oblivion regarding the recent past, which allotted responsibility without furthering divisions which could represent deep political risks."³³ It is in this framework that the *Nunca Más* report and *Juntas* trials become the scenario of the first collective testimony on the past, leaving out the fact that the coup d'état had been accepted by society and had civil support. In the nineties, under both administrations of Menem, the goal was to bring this phase to an end. Thus, memory policies proposed by the state actually promoted oblivion. This led to "memory, truth, and justice" becoming the motto of HROs, as reflected in protests, demonstrations, and commemorations, "public exposures"³⁴ but also advocacy work in order to show the State that criminal impunity did not prevented the Executive and the Legislative branches to develop normative frameworks and/or policies on memory about the recent past.

The first law on symbolic reparations was enacted during Menem's administration, on June 8 1994. Law No. 24,321 created the legal category of "missing as a result of enforced disappearance". This law was the product of the struggle of HROs to pass a law that legally defined without euphemisms the civil condition of detainee-disappeared persons. Also as a result of constant demands of HROs, in 1998 the Legislature of the City of Buenos Aires approved the building of a "Monument to the victims of State Terrorism" in a "Park of Memory."

Meanwhile, another milestone in the process of Memory is the recovery of sites that once functioned as CDCs, for the purpose of transforming them into Memory Sites. Claims from neighbours, neighbourhood organizations and HROs for recovering those places began to intensify in the mid-nineties.

In the framework of 2001 social crisis , archives, museums, monuments, Human Rights Offices and Memory Commissions began to proliferate all over the country. During this phase, the assessment of past political violence went further back in time to understand state violence in the context of Argentine history.³⁵

³² Gorini, Ulises "La otra lucha: historia de las Madres de Plaza de Mayo (1983-1986)" volumen II, Grupo Editorial Norma, Buenos Aires, 2008

³³ Rabotnikof, Nora. "Memoria y política a 30 años del golpe" en: Argentina, 1976, estudios en torno al Golpe de Estado, comp. C. Lida, H. Crespo y P. Yankelevich, (El Colegio de México, 2007), pp. 266-267.

³⁴ H.I.J.O.S. has always performed innovative and creative actions to visibilize the accountability process. These include exposures in times of impunity and concerts, broadcasting of trials, and the use of social networks for publicity and discussion.

³⁵ Some examples of this are the commemorations and plates honoring the 1955 bombing of Plaza de Mayo and the 1972 "Trelew Massacre" [*Masacre de Trelew*], among others.

In line with the human rights policy during Nestor Kirchner's government, Congress approved in 2006 Law No. 26,085, which declared March 24th national holiday.

Finally, in 2004 the National Government and the City of Buenos Aires signed an agreement to create a Site for Memory and the Promotion and Defence of Human Rights where former School of Naval Mechanics (ESMA) once stood. As part of its recovery and establishment as a Place of Remembrance, an on-site museum is being built in the building where the Officer's Casino used to be within the former ESMA. The museum is expected to open in March 2014 and the project includes the preservation of the structure of the building, as it is a National Historic Landmark, and evidence in trials that are underway.

These measures, most of them implemented during times of impunity helped building a social discourse on past atrocities, and preventing forgiveness as well as seeking non-recurrence and giving public recognition to victims of State terrorism.

AMNESTIES

The first amnesty measure of the period of concern in this article was a blanket self-amnesty enacted by the military two weeks before presidential elections in 1983,³⁶ which established immunity for crimes committed by members of the Armed Forces between 1973 and 1982. Self-amnesty law was challenged by Congress and the Supreme Court, thus paving the way for justice for serious human rights violations in 1984. .

The justice obtained after the Juntas trial and the spread of the investigations all over the country, as will be documented in more detail in the next section, caused the military's fear of wide-spread trials and led to several military revolts. In brief, these episodes led the government to steer a clear shift in the course of events and design contention measures for the trials.

First, the *Full Stop Law* enacted on December 23, 1986, established a 60 day period for resuming all claims against military before civil courts. Contrary to what was expected (i.e. a reduction in claims), the amnesty law initiated what has been called a "frenetic activity"³⁷ of the federal courts: within a short period of time hundreds of claims were presented throughout the entire country. Within two months, the number of cases in court had tripled.

Tensions between the government and the military increased. After several military revolts, Alfonsín submitted to Congress the *Due Obedience Law*, which was approved in 1987.³⁸ As will be demonstrated later in this chapter, the due obedience principle (i.e. placing the responsibility for a criminal action with higher command) played a major role in Alfonsin's policy of prosecuting the military, as only top officials who gave order to human rights violations could be punished (as was crystallized in the *Juntas Trial*). This time the principle of due obedience was not a mere strategy for an exemplary trial, but rather a conscious move to limit the scope of future trials. The direct effect of these two impunity/amnesty laws was the "un-prosecution" of 431 defendants and the definitive stop to most on-going investigations.³⁹

Shortly after taking office, President Carlos Menem issued presidential pardons that benefited all military or members of political organizations who had been convicted of human right violations. This meant that the ten convicted military in the *Juntas* and *Camps*

³⁶ Law nº 22,924, also known as National Pacification Law (*Ley de Pacificación Nacional*), 24/09/1983..

³⁷ Nino, Carlos Santiago. *Juicio al mal absoluto*, Ed. Ariel, (Buenos Aires, 2006), pp. 150.

³⁸ Nino 2006, op cit. Law nº 23.521, enacted on June 4th, 1987..

³⁹ CELS et. al., "Culpables para la Sociedad, impunes para la ley" [Guilty before society, immune before the law], 1988.

trials⁴⁰ went free. Menem also pardoned 43 high-ranking officers who were undergoing investigation at the time and who did not qualify for amnesty under the law.⁴¹

Menem's administration is considered emblematic in Argentina, as it implemented the neoliberal policies that together with the dictatorship economical measures set the foundations for the country's most relevant political, social and economic crisis in 2001. As far as his role in transitional justice, Menem has been labeled as "pragmatic".⁴² However, he is generally viewed by HROs as being extremely in favour of reconciliation, which is considered a prerogative of impunity in Argentina.⁴³

The presidential pardons are remembered as the "final blow" against truth and justice in Argentina. There was an important reaction from HROs and other social movements all over the country, who once again took to the streets in protest. However, this blow did not prevent HROs from seeking out other strategies for fulfilling their goals in the struggle for accountability.

Judicial and political challenges to the amnesty laws

The national context at the turn of the millennium was not completely in favour of re-starting a criminal process against former perpetrators. Between the late 1990s and early 2000s, Argentina had experienced its strongest political and economic crisis of all times, which had shifted the focus to other serious social problems such as the repression against protesters, poverty and unemployment. Despite this unfavourable political context, as the wave of accountability began to grow in Latin America, the idea that there were no national, international, ethical, legal or political grounds for sustaining impunity laws in Argentina gradually took root in different sectors of society.

The ability of the military to veto accountability actions had been weakened by various reforms that were carried out within the armed forces during Menem and Kirchner's administrations.

HROs sustained that since the return to democratic order, the military must be subordinate to civil power.⁴⁴ This subordination and dismantling of the armed forces as a political actor of historically strong relevance and influence in politics involved a substantial revision of education, regulations and military discipline, in an effort to eradicate totalitarian ideologies and provide the military with adequate democratic training.⁴⁵

A favourable international context to prosecute these grave offences (see foreign trials and the Inter-American System influence in the trials section), a weakened military, high protagonist of State actors and the unbearable strength of HROs facilitated the onset of a new era of trials.

⁴⁰ See section on Trials for further detail on these convictions.

⁴¹ Decree No. 1002/89, enacted on October 10, 1989.

⁴² Scholars usually deem Menem's military policy as pragmatic, as he granted pardons while reducing the military budget. Thus, analysts believe he "made a concession," in order to gain stability after the rebellions suffered by the previous government. Even though we agree that his policies were not openly pro-military, we feel that underneath these actions is a strong belief that progress requires leaving Argentina's terrible past behind, and the only way to do that is through reconciliation and forgiveness.

⁴³ Interviews by author with Gastón Chillier and Carolina Varsky, executive and litigation directors of CELS, and Valeria Barbuto, executive director of Memoria Abierta, Buenos Aires, January and March, 2012.

⁴⁴ CELS. Derechos humanos y control civil sobre las Fuerzas Armadas. Buenos Aires, 2006.

⁴⁵ Defence Ministry reformed the educational plans of the Armed Forces in 2011. Since then candidates can attend National Universities (with civilians) and share practices among forces. Plans include subjects on International Human Rights and Humanitarian Law, among others. See: http://www.mindef.gov.ar/mindef_educacion_formacion/index.html#ed03

“Simón” case marks the onset of this last phase of criminal justice in Argentina. A paradigmatic case from a juridical point of view, it started with a complaint filed by CELS and *Abuelas* in 2000. The judiciary was already investigating the 1978 abduction of 8-month-old Claudia Poblete, since this kind of crime was outside the scope of amnesty laws. CELS thought it was an opportunity to show the paradoxical effect of the amnesty laws: the crime of children abduction could be investigated while the disappearance of the parents, which enabled the kidnapping of the child, could not. This way of reasoning on the repression chain was the HROs main argument to seek for the annulment of the laws..

In its first instance ruling in this case in 2001, then Federal Judge Gabriel Cavallo used international human rights statements to sustain that States must prosecute serious human rights violations and subsequently charged two former police officers with the crimes. The Federal Chamber of Appeals while confirming the ruling sustained that “in the current context of constitutional development of human rights, repealing and declaring these laws [Full Stop and Due Obedience] unconstitutional is not an alternative, it's a duty”.⁴⁶ This was the first time the Judiciary used International Human Rights arguments to declare the nullity of amnesty laws. There are two main explanations for this: first, in a macro analysis level, the 1994 Constitutional reform which gave hierarchy to international human rights treaties led to their inclusion in the Law Schools' traditional curricula. Even though a considerable part of the scholars are against this inclusion, from that time lawyers, jurists and future judicial operators studied and discuss international human rights law as well as domestic law. In a micro-level analysis, the juridical teams from the HROs which were working on a way to end amnesty and filed “Simon” case had discussed the arguments and state the importance of the international human rights law with the judicial operators which understood in the case.⁴⁷ The National Congress played also a key role on the annulment of the amnesty laws. The initial impulse came from left-wing representatives, who presented the project and called for the session. The radical party had an ambiguous behaviour: only a few members voted in favour, although former president Alfonsín gave support to the potential nullity.⁴⁸ The peronist party was mostly in favour of the project. President Kirchner stated he would support the Congress decision and contemporarily to the debate he signed decree 579/2003, which ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

The House of Representatives approved the law that gave Constitutional hierarchy of the Convention in August, 2003. Then it also approved the law which nullified the amnesty laws.⁴⁹ This showed that Congress was also leaning in favour of accountability and particularly in favour of re-activating criminal justice.

The Supreme Court also showed signs in favour of challenging the amnesty laws after that, and while appeal on “Simon” case was still pending. In 2004 it ruled in the “Arancibia Clavel” extradition case, that crimes against humanity were not subject to statutes of limitation.⁵⁰

⁴⁶ CELS. Derechos Humanos en Argentina: informe 2012. Siglo XXI editores. (Buenos Aires, 2012) pp. 32.

⁴⁷ Interview with Carolina Varsky, Buenos Aires, March 2012.

⁴⁸ Alfonsín had sent a letter to the radical representatives where he assured that the annulment of the amnesty law did not mean an offence for him. He stated it would mean that “the weaknesses that made me drive them are over”.Página 12, “Hasta Alfonsín acepta la nulidad”, June 7th 2013.

⁴⁹ Law No. 25,779, enacted on September 2, 2003

⁵⁰ In 2000, Federal Oral Court N° 6 convicted former DINA agent Enrique Arancibia Clavel for the homicide of the Chilean general Carlos Prats, who was killed in Argentina with his wife. He also was found guilty for being part of a criminal organization integrated by the military. Casación declared the statutes of limitation for the crimes but that decision was reversed by the Supreme Court. With that ruling, the discussion about the nature of the crimes committed during the dictatorship as crimes against humanity ended.

In 2005, in the framework of “Simon” case, the Supreme Court found that the impunity laws were contrary to international human rights law, in light of the precedent of the Inter-American Court in the “Barrios Altos” case.⁵¹

Another contribution of the Inter-American System was the Report 28/92, in which the Commission resolved the complaints made by the victims who argued the violation of the right to judicial protection by the action of the amnesty laws. In that report, the Commission concluded that their application was incompatible with the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, and recommended the Argentinean government to adopt measures to clarify and find the responsible for the crimes committed during the dictatorship.

The Supreme Court used these arguments in “Simon” ruling.⁵²

Thus, the combination of national and international political and legal strategizing pursued by HROs and clear will from some relevant State actors led eventually to the reopening of trials against perpetrators.

TRIALS

The quest for criminal accountability has been a central element of the HROs fight for justice. The large-scale trials currently unfolding in Argentinean courts should therefore be seen against the backdrop of a prolonged struggle for justice, taking place in leaps and bounds. The criminal justice process in Argentina may be divided into three different periods, each closely linked to the status of the amnesty laws outlined in the foregoing section.

The first phase was characterized by the transitional government’s limited criminal prosecution strategy aimed at allotting responsibility to high ranking officers, while facing harsh criticism from HROs that sought to extend accountability criteria to all military members identified as perpetrators by witnesses. When this phase came to an abrupt end after the enactment of the amnesty laws, trials of Argentine military personnel continued residually, due to the possibility of prosecuting children abduction. In the nineties other options were explored: such as the so-called truth trials and trials at foreign courts. When the two amnesty laws were finally annulled by Congress in 2003, a third phase characterized by large-scale trials started. This phase is still ongoing. Since the earlier quests for justice have been covered by a large number of scholars, we shall focus mainly on the latter year’s development in the criminal justice field.

First wave of criminal justice: Going for the Juntas in national courts (1985-1987)

Criminal prosecution at the initial phase of the transition resulted from the complex struggle between the State, the HROs, and the military. Unlike all other Latin American countries examined in this volume, the first transitional government under the leadership of Alfonsín had as an official policy to prosecute the military chiefs. This makes Argentina the only country in Latin America, and one of the few countries in the world, that successfully prosecuted its head military in domestic courts just after the transition to democracy. Alfonsín’s retributive justice plan contained three main principles⁵³: i) In line with the so-

⁵¹ Case “Chumbipuma y otros vs. Perú”, ICHR, 14/03/2001. Argentina’s Supreme Court took Barrios Altos arguments on the State’s obligation to investigate and sanction grave human rights violations and the impossibility of granting amnesty in favour of the perpetrators of crimes against humanity.

⁵² CELS, Derechos Humanos en Argentina: informe 2005. Siglo XXI editores, (Buenos Aires, 2005) pp.51.

⁵³ Presidential Decrees No. 157 and 158, Crenzel, op cit, 57-58 and the prologue of CONADEP report, op. cit.

called “Two Demons Theory”, both State terrorists and subversives would be brought to justice. ii) Responsibility would be limited to those ordering the crimes, not to the foot soldiers who carried out the repression. iii) Trials would be subject to deadlines.⁵⁴

This plan was a soft response to demands for prosecution from the HRO sector. The goal was to defend a global and not “anti-military,” judgment strategy that would ultimately strengthen democratic institutions and preserve an open confrontation with active military groups.⁵⁵

These principles crystalized in a Congress-approved action plan for facing the crimes of the past. Some of the measures were: repealing the Self-Amnesty Law;⁵⁶ changing the Military Justice Code (this gave the Federal Court of Appeals -hereinafter FCA - wide power to review decisions of Military courts, which was not in Alfonsín’s original plans); and promoting the comprehensive reform of the Judiciary, in order to guarantee impartiality.⁵⁷

Congress gave the Supreme Council of the Armed Forces (SCAFFF) 180 days to rule on human rights cases. As SCAFFF was unable (or not willing) to meet the deadline the FCA immediately submitted the case files against the *Juntas* to prosecutor Julio Strassera.⁵⁸ The prosecutor chose 711 out of 1,081 cases investigated by CONADEP’s Justice Commission and of 700 by the Sub-Secretariat of Human Rights.⁵⁹ This means that less than 8% of cases of disappearances recorded by CONADEP were included in the trial.⁶⁰ All nine members of the three military Juntas were prosecuted under charges contained in the Argentine Criminal Code: unlawful deprivation of liberty, torments, theft, and murder. The trial started in April 1985 and lasted for eight months. Massera and Videla were sentenced to life imprisonment, while Viola, Lambruschini and Agosti were sentenced to 17, 8, and 4.5 years respectively. The other four defendants were acquitted.

Another important trial held by the FCA during this first phase was against General Ramon Camps and another four defendants from the Army and the Buenos Aires Police. They were all found guilty of torments against detainees-disappeared who were held captive at CDCs in Buenos Aires and sentenced to 4 to 25 years in prison.

These rulings promoted the filing of judicial claims all over the country. This justice “activation” was one of the facts that led to the enactment of the amnesty laws.

Although at first the military failed to stop investigations, they ultimately succeeded in preventing the actions driven by HROs. By threatening the democracy stability, they managed to impose a criminal accountability criteria consistent with the concept of due obedience.⁶¹ After several military rebellions, amnesty laws were enacted by Alfonsín’s government, as seen in the correspondent section. This stopped most on-going trials.

⁵⁴ (Nino, op. cit, 119).

⁵⁵ See Acuña, Carlos H. and Smulovitz, Catalina. ¡Ni olvido ni perdón? Derechos Humanos y tensiones cívico-militares en la transición argentina. Seminar Derechos Humanos, justicia, política y sociedad. (Centro de Estudios de Estado y Sociedad, September 20 and 21 1991, Buenos Aires, 11-12).

⁵⁶ This law was ultimately repealed by Congress through the enactment of Law No. 23,040 in December, 1983. In December, the Supreme Court rejected the Military’s position sustaining that such repeal was unconstitutional.

⁵⁷ Because judges had taken an oath to uphold the military statute, Jaime Malamud Goti, Alfonsín’s advisor, initiated a process for reforming the federal justice system. He proposed the nomination of new members of the Supreme Court. Judges from Federal Appeals Court of Buenos Aires, i.e. a key political court, were replaced (Nino, op. cit, 122). This author claims that, although the judges designated in key courts were “friends of the political administration,” they maintained a high level of independence.

⁵⁸ Nino, op. cit. pp. 128

⁵⁹ Post-CONADEP, it was established the Sub-Secretariat of Human Rights within the Scope of the National Executive.

⁶⁰ (Crenzel, op. cit, 138).

⁶¹ (Acuña and Smulovitz, op. cit, 15).

Second wave: Children abduction and Truth trials in domestic courts and Criminal trials in foreign courts (1987 -2000)

Due Obedience Law had a loophole that enabled residual criminal investigation: child abduction was regarded as an offense that could not be the result of superior orders and, thus, subject to punishment. This was also true for rape, sexual abuse, and theft. However, even though all those crimes could legally be investigated, HROs focused only on child abduction cases. As a result, judicial activity dropped dramatically. Only a few criminal trials were held between 1987 and 2000.⁶²

However, another interesting legal development started after Scilingo's confession in 1995. That year HROs started bringing the first claims for the "Right to Truth" to domestic courts. Denouncements by Emilio Mignone⁶³ and Carmen Lapacó,⁶⁴ CELS founding members, were the first to appear before domestic courts. The claimers asked the FCA to request information to the Defence Ministry, but it never answered. Three years later the Supreme Court finally denied the claims. It argued that the military had not probable cause due to presidential pardons.⁶⁵ This way the national judiciary closed the doors for any future claims involving the crimes committed during the dictatorship.

HROs were then forced to resort to the Inter-American System. We have mentioned this has been a strategy of the HROs since the dictatorship.⁶⁶ The "Lapacó" case reached a friendly settlement before the IACHR in 1999 at the end of Menem's administration recognizing that the right to truth is not subject to statutes of limitations. Though this somehow reinstated the subject in the public scenes, Menem's desire to maintain a good and clean international image was stronger. With this precedent, "truth trials" started in cities like La Plata⁶⁷ and Mar del Plata.⁶⁸

These trials were premised on the fact that the right to truth is indivisible from the right to justice, both in domestic law and in International Human Rights Law. The social and legal basis of this claim lay in the right of the victim's family and society as a whole to know the fate of the disappeared. This particular form of trial in Argentina certainly constituted an innovative way of using legal tools in order to reveal the truth in times of impunity. This method involved the reconstruction of events through the stories of victims, families and perpetrators; however, it did not include the possibility of convicting those responsible.

In the context of the amnesty laws blocking criminal justice in domestic courts Argentinean military officials were being prosecuted by courts in Europe that enjoyed universal jurisdiction – a principle which allows any State to investigate and punish serious human rights violations committed anywhere in the world. For instance, in March 1990, the Supreme Court of France convicted Alfredo Astiz *in absentia* for the disappearance of nuns Leonie Duquet and Alice Domon. Italy, Germany, and Sweden also opened several

⁶² Twelve, according to the Fiscal Unit of coordination. Data accessed in December, 2012. http://www.mpf.gov.ar/docs/Links/DDHH/informe_de_la_web_diciembre_2012.pdf

⁶³ Case: "Mignone, Emilio F. s/presentación en causa 761 E.S.M.A." filed before the FCA.

⁶⁴ "Lapacó, Carmén Aguiar de s/presentación en causa 450" filed before the FCA

⁶⁵ 29/02/2000 CIDH, Informe Nº 21/00, Caso 12.059: Carmen Aguiar de Lapacó, Argentina

⁶⁶ In October 7, 1998, the IACHR received a petition presented by Carmen Aguiar de Lapacó against Argentina. The petition was accompanied by several HRO's: Grandmothers of Plaza de Mayo, APDH, CELS, CEJIL, Mothers of Plaza de Mayo, Relatives of Detainees-disappeared, LADH, MEDH and Serpaj.

⁶⁷ In the city of La Plata, following a claim filed by APDH in 1998, investigations revolved around exposing the fate of disappeared persons in the general area.

⁶⁸ Instead, in Mar del Plata, trials were conducted for specific cases such as the case known as "the night of the ties" [*la noche de las corbatas*], as well as the abduction of lawyers and their families between July 6 and 13, 1977.

trials for acts committed in Argentina in detriment of victims who had the nationality of those countries.⁶⁹

In November 1999, Spanish Judge Baltasar Garzon ordered the prosecution of 98 Argentine military members and requested the extradition of 48 of them to answer for crimes committed during the last military dictatorship.

In response to these different claims of extradition from foreign courts, on December 5, 2001, then President Fernando De la Rúa issued Decree No. 1581/2001, which ordered the rejection of all extradition requests seeking the prosecution of these crimes. He argued that they were issued against individuals who had already been tried for such crimes. This decree became another part of the legal structure built to ensure impunity for crimes against humanity: while the decision to extradite constitutes a State's sovereign right, when it comes to crimes against humanity extradition becomes an obligation if the State has not complied with the extradite or judge principle.

In sum, trials abroad became an alternative to achieving justice when the possibility of trying domestically was severely limited. Although extraditions were not materialized, prosecutions and investigations by foreign courts became a source of legitimacy of the proposals that victims and HROs had long been developing. They also exerted positive pressure for achieving that those responsible for crimes against humanity be tried in Argentina. This international pressure along with the fact that the two amnesty laws were abolished by Congress in 2003 and declared unconstitutional by the Supreme Court in 2005 opened up for a new legal scenario, which gradually gave way to trials in domestic courts on a scale that is rare in Latin America today.

Third wave: Large scale trials in domestic courts (2001 -today)

Once the legal barriers were down between 2001 and 2005, cases that had been suspended under the amnesty began to re-open and many new claims reached courts all over the country. The first trial of this phase was held in 2006. It was the “Simon” case, the one which challenged impunity. At that moment, there was no clear knowledge on how many cases against how many defendants were active. Also, as the HROs pointed out on several occasions⁷⁰, neither the government nor the Supreme Court had designed a clear and operational prosecutorial strategy for organizing the trials.

Before entering the challenges faced at the beginning of this third phase of trials, it is important to give some idea on the institutional framework in which they are based.

Cases are investigated by the National Judicial Branch⁷¹ under the framework of the new criminal code, which establishes a mixed system based on written and oral procedures.⁷²

⁶⁹ There were convictions *in absentia* in Italy in 2000. In 2001, Germany requested the extradition of Guillermo Suarez Mason and Sweden demanded the arrest of Alfredo Astiz for the murder of Dagmar Hagelin. In April 2005, the National Court of Spain sentenced Adolfo Scilingo to 640 years in prison. He was the first member of the Argentine military to be convicted abroad *in presentia*.

⁷⁰ CELS. Derechos Humanos en Argentina: informe 2007. Siglo XXI editores, Buenos Aires, 2007.

⁷¹ Argentina is a federal State. Therefore, there is –on the one hand– a Federal Justice system that oversees all issues pertaining to drug, trafficking, tax evasion, money laundering, and other crimes that affect the revenue and security of the Nation. On the other hand, each Argentine province has its own Provincial Justice system that oversees regular crimes (also known as ordinary justice), with their own judicial bodies and procedural norms. This branch is composed of the Argentine Supreme Court, the National Judicial Council, First Instance Courts, and Federal Courts of Appeals. The Cámara de Casación Penal (hereinafter Casación), a criminal intermediate reviewing body that ensures guaranteeing double instance and has power to decide any appeals proceedings against decisions from federal oral courts is also part of this process.

⁷² According to law 23.984, April 27th, 1991.

By choice of the defendants, a small number of cases are being prosecuted under the old criminal code, where prosecutions were fully written.⁷³

The crimes investigated are the ones under the Argentine criminal code: “unlawful deprivation of liberty” as enforced disappearance, “torments” as torture, homicide, theft, , as well as child abduction. More recently, charges have been brought for rape and sexual abuse, but their investigation has faced many challenges.⁷⁴

Once again, HROs are key actors, but their role is that of private prosecutors, representing victims or victims’ relatives before the courts. In Argentina’s Procedural Code, a private prosecutor or plaintiff has almost the same attributions as the public prosecutor. At the beginning of the process, this role was crucial as the scope of action of the public prosecutor was very limited, as criminal investigations were still conducted by judges. A great reform at the General Attorney’s office changed this, as we will see next.

Even though there was a clear international and national context in favour of the criminal prosecution, there were initial obstacles that challenged the trials.

As there was no follow-up from the Supreme Court, each judge acted discretionally. This had important effects: first, as many judges were opposed to the trials, they performed several delay manoeuvres.⁷⁵ As a result of these delays, the number of trials and convictions was initially very low. According to CELS data, in the first two years, there were only 4 trials, where a total of 17 defendants were convicted. Second, as there were no judicial or political guidelines to coordinate the investigations, they were carried on as common criminal cases, establishing individual investigations that proved not to be efficient and did not show the sistematicity of the crimes as did not involve a significant number of victims or defendants. We have called this phenomenon “Trickle-down prosecutions” (*juzgamiento por goteo*): each claim involving a victim was considered an individual case, without searching for common patterns among the cases; it was a waste of judicial resources and a great cost for the victims, which had to testify in countless occasions.⁷⁶

Another significant problem in this new phase of criminal justice were the threats and acts of violence against those involved in court cases. In 2006, Jorge Julio Lopez, witness and former detainee-disappeared person, disappeared again. Connivance of the Buenos Aires Police Force (against which he had testified) was denounced by HROs. After this episode, other witnesses, lawyers, prosecutors, and judges involved in these trials suffered numerous threats or violent events from unidentified people who claimed to be opponent to the trials. Fortunately, this did not prevent victims from testifying before court and even though Lopez never re-appeared this never happened again.

⁷³ The different procedural stages of a criminal investigation in Argentina are:

- Investigational phase: the first and written phase of the trial. A judge is responsible for conducting the investigation. However, the prosecutor’s office has taken an increasingly protagonist role in this phase.
- Trial phase: starts once the judge in charge of the first phase orders the closing of the investigation and submits his/her findings to the applicable oral court.
- Trial: is the final phase, where oral hearings are conducted by a tribunal. . At this point, defendants are either convicted or acquitted.

Upon sentencing in either kind of criminal proceeding, appealing to the following is possible:

- *Casación* for challenging rulings by oral courts and Courts of Appeals in residual plenary proceedings.
- Argentine Supreme Court . Once confirmed by the Supreme Court, rulings are considered final.

⁷⁴ See Balardini, Lorena, Oberlin Ana and Sobredo Laura. “Violencia sexual y abusos sexuales en centros clandestinos de detención. Un aporte a la comprensión de la experiencia argentina” en Hacer Justicia. Nuevos debates sobre el juzgamiento de crímenes de lesa humanidad en Argentina. Siglo XXI Editores, Buenos Aires, 2011.

⁷⁵ Interview with Carolina Varsky, op. cit and with human rights lawyer, Pablo Llonto, March 2012.

⁷⁶ CELS, Derechos Humanos en Argentina: Informe 2012. Siglo XXI editores, Buenos Aires, 2012.

HROs therefore proposed Nestor Kirchner's administration a series of lines of action in order to strengthen the criminal justice processes showing the State that it should "rise to the occasion."⁷⁷ They demanded the creation of a Special Program for Truth and Justice within the Executive Branch for overseeing the process as a whole, and evaluating advancements, setbacks, obstacles, and needs.⁷⁸ They also demanded that the General Attorney's Office establish a centralized strategy for promoting the trials. They suggested that a coordinating body could enhance existing structures and strengthen the group of prosecutors that were conducting human rights cases.⁷⁹

This last proposal led to the establishment in 2007 of the Fiscal Unit for coordinating and monitoring cases of human rights violations committed under State Terrorism in the framework of the General Attorney's.⁸⁰ It is responsible for coordinating the work of the public prosecutors who act in these cases nationwide. This Unit is not only a key State actor, but also a valuable ally of the HROs. It had political support from the beginning: then General Prosecutor Estaban Righi was Néstor Kirchner's ally. Since 2008 it embarked on a thorough operation to develop legal strategies aimed at organizing and coordinating trials throughout the country. The Truth and Justice Program was also created, in the framework of the Executive Power. It is responsible for a nationwide Witness Protection Program and was supposed to be in charge of carrying out risk assessments of the trial process but this was never done. Contemporarily it was created a special unit of the Supreme Court which publishes news about the trials on a national level. In 2009, during Cristina Kirchner's administration, the Supreme Court created the "Inter-power Commission"⁸¹ in order to strengthen the links between the institutions working on the trials. However, none of these last three institutions had a clear positive impact on the trials.⁸²

An important event that showed the Congress commitment with the trials was its 2010 which characterized this third phase of trials as "state policy", ensuring their continuity through changes in administrations. The statement reaffirms the need "to guarantee the process of truth and justice as an undeniable state policy, which must be completed in reasonable time, respecting due process."⁸³

Finally, Casación's saction in February 2012 a set of "practical rules" to accelerate the trials.⁸⁴ They seek to prevent unnecessary delays and to regulate the production of evidence, specially witnesses treatment. Even though they are constantly challenged by the defenders they have had a positive impact so far.

⁷⁷ CELS, Lines of action for strengthening the truth and justice process, Buenos Aires, 2007.

⁷⁸ See critics to Truth and Justice Program at CELS, Derechos Humanos en Argentina: informe 2009. Siglo XXI Editores, Buenos Aires, 2009.

⁷⁹ The proposal was for the Attorney General's Office, as head of Public Prosecution, to have a structure that enabled an accurate diagnosis of the legal situation of the country, to know the particularities of each case, the problems of each jurisdiction and to be able to anticipate obstacles and calculate the time required by each case. In short, the agency had to design a general strategy for investigating and promoting trials in conjunction with the prosecutors of each case.

⁸⁰ General Attorney's resolution 14/07.

⁸¹ It is formed by ten members, representatives of the Executive Power, the Senate and the General Attorney's Office.

⁸² Interview to Pablo Parenti, former coordinator of the Fiscal Unit from the General Attorney's and current coordinator of the Special Unit for research of children abduction. Buenos Aires, November, 2012.

⁸³ Página 12, "Diputados declaró "política de Estado" a los juicios por los crímenes de lesa humanidad", May 12th, 2010.

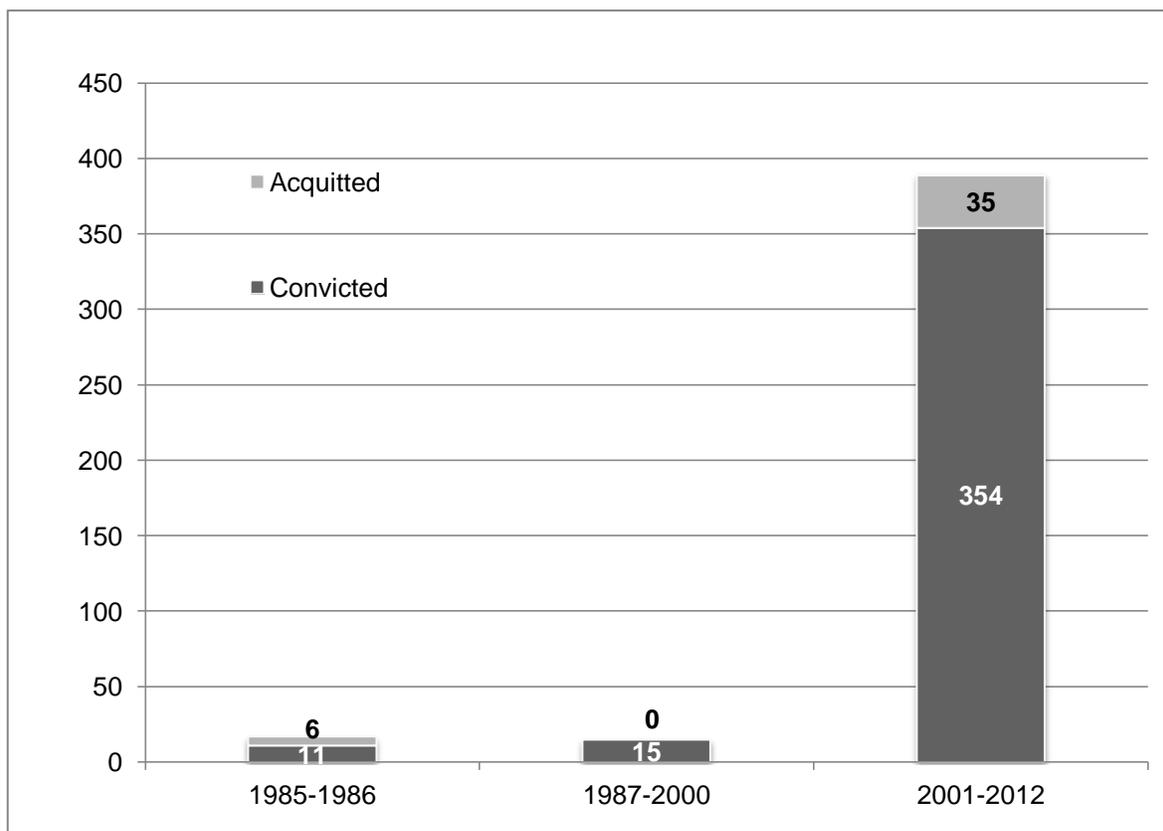
⁸⁴ Casación's resolution 1/12 and *Tiempo Argentino*, "Una guía para agilizar los juicios", March 4th, 2012.

The Advancement of the trials in Argentina⁸⁵

This new stage of criminal accountability for past human rights violations has given some important results. Trials have grown in scope as well as in numbers.

The prosecutions have achieved significant advancements, but at the same time it is hard to tell when we might expect these trials to end. The below figure shows the marked difference between the three phases of criminal justice:

Graph 1. Comparing the outcome of trials in the three phases of criminal justice



Source: CELS own data and Fiscal Unit, December 2012.

The graph shows the amount of rulings (convictions or acquittals) during the three criminal justice stages described in the text. The effect of amnesty in trials is clear: after the sanction of due obedience there were only a few convictions based on the loophole regarding children abduction. The outcomes of the third stage respond to the annulment of amnesty and the sustainability of judgment for more than ten years.

During the third stage of trials, up to December 2012, there have been a total of 89 completed trials, taking place in courts all over the country. There has been a significant increase in number of trials over time, where 354 defendants have been convicted and 35 acquitted. The majority of these trials involve at least 10 victims and/or at least 5 defendants. Importantly, 60% of the trials involve more than a hundred victims. These large and complex cases are referred as “mega-cases” by the actors of the process.

Considering the number of victims and defendants involved in these “mega-cases” and not only counting the number of trials is necessary if we want to analyze the implications of

⁸⁵ The statistics presented here are produced by CELS. Data corresponds to December, 2012. See more detail at <http://www.cels.org.ar/blogs/estadisticas/>

these processes for accountability. Another important factor is how the details of each trial (i.e. who are the defendants, which crimes are being investigated, the length of the sentences, and the role of the convicted in the crimes perpetrated) may affect accountability. The trend regarding the number of defendants convicted is also growing, and this is not only because there are more trials every year, but because of the mass convictions of up to 30 defendants in a single trial, especially from 2010.

According to CELS data, of the 89 court rulings that had taken place by the end of 2012, the crimes that were most investigated were unlawful deprivation of freedom (i.e. kidnapping; 31 %) and torture (28%), and murder (20%). The proportion of defendants convicted of crimes against sexual integrity increased in 2012 in spite of the obstacles that these investigations suffer.⁸⁶

The level of penalties imposed on those convicted is an important factor in people's perception of whether or not justice has been achieved – and hence has implications for accountability. Sentences imposed by Argentinean judges are relatively high compared to sentences for similar serious crimes committed in other Latin American countries.

At the end of 2012, almost half of the defendants had been sentenced to life in prison or seclusion (45%)⁸⁷ whereas 38% had been given prison sentences of between 16 and 25 years.

57% (51 in total) of these judgments have not been confirmed in any part of the process.

Only 12 judgments were confirmed by the Supreme Court: we note a persistent average delay of 2 years and 6 months before reaching last stage of appeal. The fact that judgments are not final has had a direct impact on accountability. Many of the defendants are or intend to be public servants and Argentine law limits the possibility of vetting a candidacy until the conviction is final. This has an important effect on the lustration of State institutions.⁸⁸ Also, the confirmation of sentences affects the execution of the sentences. Many courts delay the decision on where the convict will serve his sentence until there is a final judgment so many of them remain free due to this prerogative.⁸⁹

Finally, almost 60% of the cases are still in a preliminary investigation phase.

At least 972 defendants are currently awaiting trial. Of these defendants, 614 have never been sentenced before. The main actors in the process agree that judging remaining cases involves a paradigm shift in terms of how trials are organized, while avoiding the discretion of each court. In the words of Fiscal Unit coordinator, Pablo Parenti, “the agenda for these trials and pace of the hearings require clear guidelines and control mechanisms.”⁹⁰

III Conclusions

The chapter shows that Argentina's path towards accountability has been far from linear. We have described the actions for and backwards performed by the different governments in the eighties, nineties and early 2000's, until the process reached a point of convergence

⁸⁶ Balardini et al op. Cit.

⁸⁷ Both this Figure as well as the one illustrating crime types are expressed in percentages because CELS statistics resulted from the aggregation of penalties imposed to various defendants, most of whom have been convicted on multiple trials.

⁸⁸ See examples in Morales, Diego. “Limitaciones al acceso a cargos públicos para implicados en crímenes de lesa humanidad. La experiencia Argentina” in CELS and ICTJ (2011) *Hacer Justicia. Nuevos debates sobre el juzgamiento de crímenes de lesa humanidad en Argentina*, Buenos Aires, Siglo XXI Editores.

⁸⁹ Interview with Carolina Varsky, March, 2012.

⁹⁰ *Página/12*, “El año de los megajuicios,” January 2, 2013.

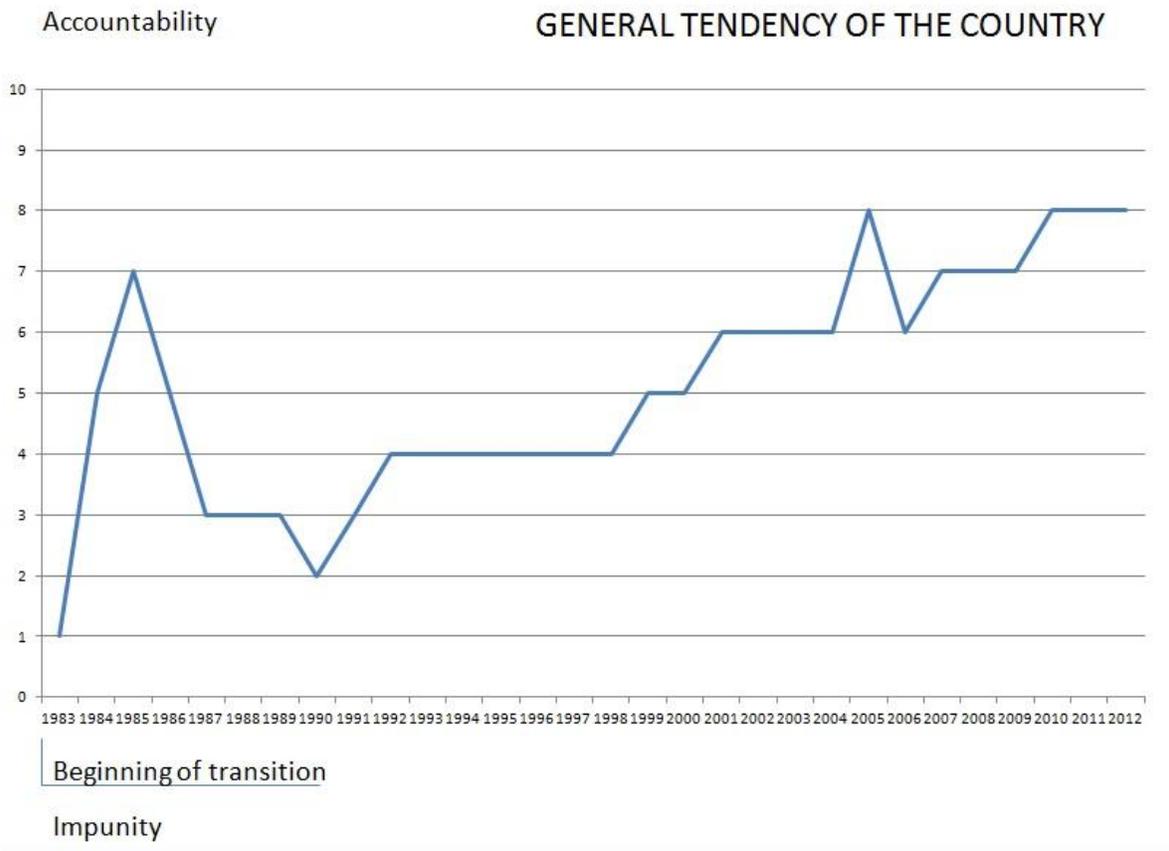
between State will and civil society claims in 2003. This convergence strengthened the accountability process. The constant in this changeable process has undoubtedly been the struggle of the HROs and the rest of the civil society actors.

As was addressed in the chapter, this process still presents challenges and obstacles but it is mostly consolidated. Though there still remain a society sector which is opposite to accountability measures, Argentina’s State has acknowledged the military and their civil allies responsibility in the crimes, has included “State terrorism” as the analytical category of the conflict mostly leaving behind ideas on “Two Demons” and “Dirty war”. There is general society support on TJ mechanisms and rejection to the crimes: former general and dictator Jorge Rafael Videla died in 2013 convicted in a common jail, he was not celebrated but repudiated by society in general.

These accomplishments are the result of the combination of many different elements: strong HROs, executives who support human rights, a significant amount of judges willing to prosecute, sensitivity to the international human rights law and to regional developments and IAHR system and effective memory policies. Together these elements have led to the design of many significant pro-accountability measures.

We stated Argentina has implemented almost “the full package” of TJ mechanisms and strategies, and the ones analyzed in this chapter show a rather high level of accountability today.

Graph 2: From impunity to accountability: An overall picture Argentina (1983-2012)



Source: Balardini 2012

Each mechanism has had important individual results that put together show a favourable tendency to accountability, as shown in the general pattern picture. However, though

individual and overall success, synergies between mechanisms were rarely explored. For instance, symbolic reparation policies do not often take into account the narratives produced on the trials, truth policies such as archives or databases on victims do not cross-reference CONADEP files with economic reparations or juridical ones.

Criminal justice has appeared in the last ten years as the most visible mechanism implemented. Many of the institutional reforms carried on were related to it (i.e. judicial reform, special bodies to support trials).

It is safe to sustain that prosecutions have been consolidated and extended over time, with good results. Trials have rather strong support from the society.⁹¹ Given that the struggle to initiate trials is over, the question now revolves around the quality of the trials being held in Argentina today. What is their scope in terms of access to justice for victims? Is the State now more concerned with quality or with the mere existence of these trials?

The most pressing question now revolves around the scope of the trials. What should be done about the remaining cases and events that are currently under investigation in Argentinean courts?

A profound discussion is still pending on the social significance of these trials. And here synergies with the rest of the mechanisms are crucial. There is more work to be done in terms of diffusion of information and exchange strategies involving the society in general. Neither operators nor agents have a serious strategy for sharing such knowledge. Diffusion strategies have so far been left to organizations involved and the victims.

A central question is what is the actual scope of the knowledge and truth built in the trials and how does this truth relate to other TJ mechanisms, such as truth commissions and reparation. To some extent, the discourse in favour of truth and justice has gained strength over the last decade, however, there is still a deficit in educational policies aimed at constructively recovering experiences. Also there are serious pending reforms, particularly at the level of the Judiciary, which is currently at the heart of the debate. Cristina Kirchner's government passed several law projects that intend to "democratize the Judiciary", in terms of procedures and members election. In particular, the debate is focusing in the efficiency of the courts. The aspect of delays is crucial for human rights trials, we have seen that many cases are "in the pipeline" and most of the rulings are not firm yet. However, relevant actors as the Supreme Court are resisting the reforms and though the impact on the trials and the other TJ mechanisms is until uncertain, this is certainly a debate to consider in future analysis.⁹²

An aspect of this deficit that covers different mechanisms is the possibility of measuring impact on different aspects. Regarding victims, the first obstacle is in delimiting the universe and differentiating their status, measuring their access to justice and financial reparation. This makes it difficult to assess the effectiveness or deficiency of relevant accountability policies. Regarding institutions, there have not been assessments carried on to analyze performance of the different State agencies in charge of the TJMs, and there has not been a deep institutional reform in the Armed and Security Forces. This has had consequences in relation to repressive and violent practices and also illegal espionage on civil society actors and activists.⁹³ Another aspect that has not been previously assessed

⁹¹ There are no national opinion polls regarding the human rights policy. However, the University of Buenos Aires (UBA) included the subject on the electoral poll it performs. After the 2011 presidential elections, 80% of the surveyed were in favor of the trials. See Página 12, "Una agenda que cruza la frontera del voto", October 25th, 2011.

⁹² For current debates on institutional reform of the judiciary see: Página 12, 02/MAR013, "Yo quiero en serio una justicia democrática" [I want real democratic justice] and 01/MAR/2013, "Justicia legítima" [Legitimate Justice].

⁹³ See discussions around the effects of the lack of institutional reform of the security forces in their violent practices in CELS annuals reports from 2006 to 2012 (www.cels.org.ar/documentos). Regarding illegal

and is strongly becoming to be analyzed is the role of economical and financial actors not only in the dictatorship support but also regarding their participation on the crimes. During 2012 and 2013 there have been important actions.⁹⁴

Finally, some words on the victims' role in the process. We have shown how the victims and their relatives have been the main actors of this process as activists against the dictatorship, fighting the repression, making public statements, denouncing the crimes nationally and abroad, conducting innovative measures to produce knowledge on the crimes committed, fighting impunity and guaranteeing reflection on the past atrocities and non-repetition. Another important role they have played is as witnesses of the crimes, becoming crucial in the production of evidence. Testimonies constitute a key aspect in the production of truth, memory and evidence in criminal prosecutions where they are usually the only available piece of evidence as a result of the destruction or concealment of documentary evidence. The double role of victims and witnesses are most of the time also victims of these crimes adds complexity to the work surrounding their testimonies, which requires certain technical expertise. The judicial operators are often not prepared for this task and victims claim that they have suffered all sorts of mistreatments in the process of giving testimony.

Regarding a victim's approach is also important to point out the lack of the gender-sensitive approach in transitional justice mechanisms in Argentina. This has never been a relevant issue until the new process of justice initiated and it emerged a gender speech in the victims' testimonies. Some victims have described the sexual and other gender-related abuse suffered during clandestine detention in the trials. Judicial operators had proved incapable of addressing the victims' necessities and sometimes even posed many legal obstacles to stop sexual crimes from being investigated. As a direct result, many victims that have reported being raped during their captivity still cannot find justice for this crime.

This chapter has revealed how difficult it was to set different TJ mechanisms into motion, but also how the different actors involved efforts have gradually led to the consolidation of pro-accountability strategies in Argentina.

Though undoubtedly there remain some challenges, most of the strategies carried on by different governments have ensured their success in achieving memory, truth, justice and reparations to victims.

espionage, the Navy and the National Gendarmerie are accused of performing this kind of practices over human rights and political activists. See information on "Project X" of Gendarmerie and "Base Almirant Zar case" regarding the Navy espionage actions.

⁹⁴ Regarding civilian liability on crimes against humanity the highlights are: the prosecution of Ledesma's president Carlos Blaquier, of Ford Motors directors and of Juan Alfredo Etchebarne former head of the Securities and Exchange Commission, among others.