

Prologue*

I

This report on the human rights situation in Argentina for the 2013-2014 period comes at a pivotal moment. On one hand, it is the final year of the second Cristina Fernández administration and the third of the Kirchnerite era. On the other, 2014 marks 35 years since CELS' founding at the height of the dictatorship. These temporal coordinates are an invitation to reflect on the transformations achieved on the human rights front during this cycle of governments, and the relationship between human rights organizations – CELS in particular – and the state over the course of three decades of democracy in Argentina.

From 2003 to the present, historic human rights struggles have been at the forefront of the political agenda, especially the reopening of judicial proceedings for crimes against humanity and their expansion to include civilian accomplices. Some of the actions arising in the context of the 2001 financial crisis, such as the reform of the procedure for appointing judges to the Supreme Court and the regulation of police conduct during social protests, led to the most noteworthy measures of the early years of the Néstor Kirchner administration. Advances like the universalization of social policies, the transformation of the benefits systems and the paradigm shift propelled by new laws on immigration, mental health, gay marriage, comprehensive protection for women and on audiovisual communications services, set an agenda for the expansion of rights. A good number of these transformations came about due to the confluence of work by activists from a broad range of organized social sectors, the battles waged by human rights organizations over decades and the political decision to spur legislative or institutional reforms. In some cases, however, the government's initiative to make transformative decisions was not later accompanied by the necessary measures to guarantee implementation. In other cases, corporate resistance has delayed, and continues to delay, the process to put legislative reforms into full effect, or stands in the way of attempts to change the logic of institutions that continue to replicate human rights violations. In other spheres, the changes brought about were partial, their scope valuable, albeit limited.

Once the dictatorship ended, CELS set the goal of seeking truth and justice for the crimes of state terrorism, with the conviction expressed by founder Emilio Mignone that "the first guarantee of full observance of human rights is founded on the consolidation of a constitutional system." This did not imply ignoring violations of civil, political, social and economic rights under democracy, even though they were no longer being committed in a massive, systematic and deliberate fashion.

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With certain nuances and differences, human rights organizations supported many of the actions taken in the early years of Raúl Alfonsín's presidency. In the case of the Full Stop (Punto Final) and Due Obedience (Obediencia Debida) laws and some acts of repression, we confronted that government. Not long after that, Carlos Menem's pardon of those people sentenced for crimes committed under the dictatorship ushered in a period of antagonism between these organizations and the state, a period marked by impunity and inequality. Nevertheless, even in that context, there was progress in terms of economic reparation for the victims of state terrorism as a result of claims filed by CELS before the Inter-American System for the Protection of Human Rights, which responded by issuing resolution 28/92.

Although the Alianza coalition that came to power in 1999 offered an improved alternative to Menem's neoliberal policies, its brief administration brought to a head the economic and social conflicts that began in the previous decade, and ended in the worst crisis of our democracy. The rise in poverty and the intense repression of social protests were the greatest sources of discrepancy between social organizations and the government.

The deep crisis of the turn of the century demanded that the political system reestablish its legitimacy. In 2003, Kirchner's proposal to open dialogue with the human rights movement during his first speeches and policies kicked off a new era: their agendas overlapped on crucial points. The Kirchner administration and social organizations alike celebrated and were allies on the policy of memory, truth and justice with regard to the dictatorship and its crimes. When Kirchner took the presidency, nearly 50 senior officials of the Armed Forces had been tried for crimes against humanity – an achievement by organizations in opposition to the previous governments. The initiative taken by the executive branch on this process contributed to the Supreme Court and the Congress supporting the annulment of the laws of impunity, submitted to the courts at CELS' petition in 2001. When it comes to other government positions and decisions, each organization agreed or dissented to varying degrees.

Since 1983, the political, economic and social transformations with the greatest human rights impact have come about as a result of coordination between social activists and state agencies. Since 2003, human rights have had an unprecedented place at the center of a public agenda that has increased the quantity and quality of opportunities to discuss policy and concrete measures. This has diversified the playing field for human rights organizations and other social activists to participate in key debates.

With a positive assessment of the recovery and expansion of rights, we at CELS have acknowledged the successes, contributed to the implementation of valuable policies, demanded the expansion of appropriate measures and used the achievements as support to push for new reforms. We have also denounced non-compliance and pointed out serious failings in the agenda, and highlighted – as we do again in this Report – the lack of political will to intervene in structural problems that generate rights violations. Just as human rights violations emanate from the state, the state is also the principal arena for protecting them. This conviction has been the basis of our relationship with all the governments under democracy, both during times of cooperation and confrontation.

II

On October 17, 2014, the family of Luciano Arruga, the Permanent Assembly for Human Rights (APDH in Spanish) of La Matanza and CELS announced that, six years after his disappearance, Luciano's body had been found. In the following days, we were able to reconstruct that the same night his family began searching for him, Luciano had been struck while attempting to cross the General Paz highway at a risky spot; he was hospitalized for a day in the Santojanni hospital in the city of Buenos Aires. While his family continued the search, he died and his body was sent to the morgue and later buried in Chacarita Cemetery as a John Doe. Over a period of five years and eight months, no state agency, either provincial or national, had committed to searching for him. The discrimination by different institutions toward Luciano and his family, and the apathy shown by many officials (particularly in the justice system) led to years of mistreatment and uncertainty. The search only came to an end when, after an initial rejection, federal judge Pablo Salas accepted the habeas corpus submitted by the family and human rights organizations. The case then went on to a federal appeals court, which granted the appeal in an important ruling.

The circumstances surrounding Luciano Arruga's disappearance and death are now under investigation by the federal courts. By the time this report comes out, we hope the trial of a Buenos Aires police officer will already be underway for the prior arrest and torture of Luciano in September 2008, a few months before his death. Just as the case of Walter Bulacio was emblematic of police abuse during his time, the Luciano Arruga case sheds light on the extortive relationship between the police and poor youth today. In light of violent events, murders or cases of disappearances in which law enforcement agents are presumably involved, judicial officials often do not investigate sufficiently, as we analyze in our report on the functioning of the Public Prosecutor's Office in the province of Buenos Aires. This feeble response by judicial or political institutions to police abuse is replicated in different parts of the country.

Every so often, through videos or photos that make it to the media, there is news of serious cases of torture in prisons and police stations. These are not isolated cases: the prevalence of torture is a critical situation that, after thirty years of democracy, has not been resolved.

In recent years, there have been areas particularly averse and resistant to democratization. This is the case of the law enforcement and penitentiary systems, which continue to commit the most severe human rights violations in our country. There have been attempts at reform that vary in depth, context and results. For example, the decision by Kirchner in 2004 to prohibit police officers from carrying firearms during social protests had enormous political impact. Beyond the disparities in terms of compliance, this measure to regulate the use of force had profound effects on the well-being of protesters, but it did not have an impact on other spheres where police force is used and very little on national security forces. These are some of the critical issues that cause concern among

human rights and social organizations. Furthermore, since 2010 several episodes have shown backstepping on the anti-repression policy and that the lack of structural transformation limits the sustainability of partial changes. The absence of a deep reform of the law enforcement system has allowed self-government, extortion and anti-democratic practices to continue at alarming levels, such as those that occurred in different areas of the country in December 2013.

Throughout 2013 and 2014, in the heat of a sort of permanent electoral campaign, crime prevention and security policies were kept at the top of the political agenda. Candidates from different parties and public officials from various levels of government intensified their discourse, proposing tougher penal action as a way to reduce crime. In the province of Buenos Aires, the so-called “security emergency” was set in motion with severe effects on the observance of human rights, which we have been denouncing over the past year and further address in subsequent pages here.

The “tough on crime” discourse puts out discriminatory messages aimed at communities of different nationalities. It is surprising that this rhetoric is used by the same government officials who have endorsed significant public policies to expand migrant rights since 2004. CELS has called attention to discriminatory statements that irresponsibly link crime and immigration, on no statistical grounds whatsoever. The severity of this kind of rhetoric is heightened because it forms the backdrop for regressive proposals, like what happened in 2014 during debates on the reform of the National Criminal Code and Criminal Procedural Code. In other cases, such as the media debate surrounding so-called mob justice, a discourse emerged that explicitly favored property rights over the right to life.

During the course of these public debates, political figures – some with presidential aspirations – have tried to reopen the discussion of involving the Armed Forces in domestic security matters, prohibited since 1988 when the Law of National Defense was passed. Respect for the strict division between national defense and domestic security, which excludes the Armed Forces from internal affairs, must be backed by the broad consensus that has defended it throughout these years of democracy.

In cyclical fashion, a new “wave of insecurity” is gaining ground on the agenda as an emergency situation. However, neither government officials nor politicians are dealing with the fundamental issue of how security forces operate. Tougher penal responses also increase prison overcrowding, which in turn raises the levels of violence spreading throughout society. Putting off an agenda of democratic reform of security structures has negative consequences on crime prevention and control, and weakens the state’s capacity to promote social inclusion in different territories. The way that some areas of the state work in opposition to the advancement of inclusive policies is dealt with in depth and in light of multiple aspects in several chapters of this report.

Our security structures are responsible for the worst human rights violations in this country. This is one of the main pending issues that, despite the creation of the Ministry of Security, have not been addressed during the cycle of Kirchnerite governments.

III

Just before this report was sent to be published, the death of special federal prosecutor Alberto Nisman occurred. Nisman was in charge of the investigation into the bombing of the DAIA (Delegation of Argentine-Israeli Associations) and AMIA Jewish Community Center in 1994. His death took place just days after he formally accused the country's president and foreign minister of having covered up Iran's alleged role in that terrorist act. The speculations and uncertainty surrounding his death have prolonged the murkiness that continues to shroud the bombing.

The impunity and denial of access to truth and justice after 21 years are attributable to the spurious associations between sectors of the federal justice system, national and foreign intelligence agencies, security forces and the political system. In 1999, CELS and Memoria Activa, one of the bombing victims' groups, filed a petition before the Inter-American Commission on Human Rights denouncing the lack of state response. A decade ago, in March 2005, the Argentine state acknowledged its international responsibility for not having prevented the bombing, for having denied justice as a consequence of a judicial cover-up, and for having failed to comply with its duty to investigate. At that time, then-President Kirchner made a commitment to inform the population, to investigate, to prevent the recurrence of such incidents, to compensate for damages and to reform the Intelligence Law. It was only in December of 2014 that President Cristina Fernández took a first step toward replacing the leadership of the Intelligence Secretariat. A few weeks later, after Nisman's death, she announced the dissolution of the Secretariat, which, changes to its name aside, had always been the historic and untouchable Secretariat of State Intelligence (SIDE) that had weathered democracy without any type of reform or accountability. In a context that exposed the national intelligence agency's intolerable degree of autonomy and its shady connections with the political and judicial systems, the new reform should be aimed at professionalizing its activities and subordinating it to the democratic government. Whether there will be an effective prosecution of those accused of covering up the bombing continues to be very uncertain, despite the persistent struggle for justice by victims and their families.

The reform of the intelligence system, a long-delayed measure necessary for democracy, opens the way for a process of transformation that will be impossible for the current government to consolidate given the timelines required. This is about institutional practices that are deeply rooted in the country's history, and reforming them demands the commitment of all political forces to dismantle the structures that generated the impunity behind the most severe attack ever suffered by Argentines. CELS actively participated in the debates on this reform and made public its disagreement with the hasty treatment the government has given it, and the desertion of the political opposition, whose only proposal was to revoke the new law sometime in the future.

During litigation on the Audiovisual Communications Services Law – in which the judiciary favored private over public interests on several occasions – there was major tension in the relationship between the government and the most conservative sectors of the judicial branch. The dispute exposed decades of obscure ways of operating, calling

into question the supposed neutrality or impartiality of the judiciary. Prosecutor Nisman's death only intensified the confrontation between sectors of that branch and the national government, culminating in an unprecedented protest march convened by a group of prosecutors.

On matters of judicial reform since 2003, one that stands out is Kirchner's decree that changed the procedure for appointing judges and paved the way for the Supreme Court to regain its legitimacy. Other significant changes implemented – and some unsuccessful attempts at reform – underscored ongoing disputes between the government and sectors of the federal judiciary. Some measures, such as changes to the composition of judicial powers and public ministries, and the criminal procedure reform that went through so many delays, involved important changes for the justice system. However, a truly transformative judicial policy is still pending with regard to how the judicial system responds to claims for the protection of rights and resolve conflicts that affect majorities. The judicial branch's delays and inefficiency in guaranteeing access channels and effective protection for the most vulnerable should be central to any reform agenda. Nevertheless, this issue has remained on the fringes of the debate.

Various chapters of this report reveal how, in many cases, the justice system serves more as an obstacle than as a guarantee toward reconstructing the truth, providing reparation and protecting rights for broad sectors of society – those hit hardest by the punitive actions of the state.

IV

In 1986, CELS' founder Mignone published *Iglesia y dictadura. El papel de la Iglesia a la luz de sus relaciones con el régimen militar* (*Church and Dictatorship: The Church's Role in Light of its Relations with the Military Regime*), with the objective of “revealing, through documents and testimonies, the attitude of the majority of bishops toward the military government's criminal plan.”¹ By 1989, the book had sold 20,000 copies in Argentina and been translated into four other languages.

The connection between civilian complicities and the crimes committed during the dictatorship is a historical fact that has been reconstructed through the work of human rights organizations, historians and researchers of various origins since the return of democracy. The reopening of criminal proceedings for those crimes after a long period of impunity allows us today to broaden those analyses and advance toward attributing responsibilities. It has also facilitated the inclusion of these proceedings in public policy aimed at memory and reparation. As pointed out by Horacio Verbitsky, CELS' president of the board, and Juan Pablo Bohoslavsky in their book *Cuentas pendientes* (*Pending Accounts*), progress in the justice process for the most serious and cruel conduct allows us to “expand the horizon and analyze the context in which those crimes were committed,

¹ Quoted by Chela Mignone in Emilio F. Mignone, *Iglesia y dictadura. El papel de la iglesia a la luz de sus relaciones con el régimen militar*, Universidad Nacional de Quilmes, 1999.

focusing on civilian, economic and financial accomplices, whose contributions *made it possible, made it easier or improved the efficiency* of those crimes.”²

In the judicial arena, although there has been significant progress, investigations into where responsibilities lie are slow and fraught with obstacles. In the following pages, we will reconstruct and analyze the trajectory of the civilian role in the process of memory, truth and justice, along with the progress, limitations and the particular difficulties that have come up in litigation.

The process of justice for crimes of state terror fuels intense controversy. In recent years, criticisms have been leveled that distort the data from judicial proceedings and intensify as progress is made on investigations into the role of business executives and judicial and ecclesiastical officials, many of whom continue to hold positions of power.

In this sense in 2014, trials for crimes against humanity were criticized by different media and academic sources for supposedly departing from the principles of due process, which, from their standpoint, affects the right to defense. Compounding this line of argument, there is criticism of the penal system’s alleged discriminatory treatment of those accused and sentenced for crimes against humanity. As always, this report includes statistics on trial proceedings for these crimes. The censure contrasts with data from the justice process. The percentage of defendants acquitted and those whose cases never make it to trial shows that the criticism is not based on concrete facts. These efforts to cast doubt are part of a new discourse that aims to review facts and crimes that occurred in the 1970s and early 1980s. We cover this controversy in the report and give our interpretation of the relationship between the Argentine human rights movement, the different governments and political and intellectual schools of thought.

In 2013 and 2014, the promotion of General César Milani to Army Chief drew attention from broad sectors of public opinion. On some occasions, analysis of this event was limited due to a political polarization that leaves little room for reflection. As it is publicly known, CELS contested his promotion based on our belief that Milani is not the proper choice to lead the country’s Armed Forces, above and beyond the legal investigations into his involvement in crimes committed by the repressive machinery of the military dictatorship.

The executive branch transferred its control over deciding eligibility to the courts, based on the argument that investigations were in course. In CELS’ opinion, that political control cannot be delegated. At the same time, the government’s arguments lose force to the extent that progress on said investigations is neither swift nor efficient, as we assess in this report. On this matter, CELS filed a complaint with the Prosecutor-General’s Office against prosecutor Horacio Salman for poor performance of his duties in the case involving the abduction and disappearance of Ramón Alfredo Olivera in La Rioja province.

Some of the most significant progress made in the justice process in recent years relates to the investigation into the role played by civilians and the possibility of trying people for sexual crimes as a specific violation of human rights. These steps forward coexist alongside the government’s decision to keep Milani in his position and with the

² Horacio Verbitsky and Juan Pablo Bohoslavsky (eds.), *Cuentas pendientes. Los cómplices económicos de la dictadura*, Buenos Aires, Siglo XXI, 2013. (Emphasis in original).

courts' slowness and inefficiency to confirm its rulings in trials underway all over the country and to close each case.

These oscillations and attempts at delegitimization highlight the need to safeguard and strengthen the process of memory, truth and justice, given the upcoming change of government and in the face of political forces that insist on putting the matter in the past.

V

Thousand of families' lack of access to land and housing, both in rural areas as well as cities, continues to be one of the most serious problems in our country. It is a core of inequality that has not been transformed by national, provincial or municipal public policy. Such a transformation hinges on the decision to implement measures that benefit the common good over the speculative interests of the real estate market. The lack of access to housing, land tenure insecurity, and the scarcity of basic services necessary for a dignified life generate further threats to other rights. The situation is compounded when the conflicts arising from these problems lead to violent reactions from the state or from third parties.

The problems related to access to housing and real estate market conditions arise from the tension between development models and human rights. In this report, we present an assessment of the connections between development, income and rights, intended to contribute to the design of policies that promote fair access to housing. Such policies would be aimed at reversing the inequality, segregation and environmental degradation that prevail in both urban and rural settings.

Researchers from the Fundación FOP (the Fibrodysplasia Ossificans Progressiva Foundation) collaborated on this edition of our report with an analysis of the links between city, disability and poverty. Their work contributes to our understanding of how the unequal urban space of the city of Buenos Aires and its surrounding areas pose particular barriers to the life and movement of people with disabilities in poor neighborhoods. This perspective coincides with CELS' views regarding people with psychosocial disabilities in the sense that public policies aimed at integration should focus on the disabling characteristics of the environment and the proper functioning of institutions rather than the clinical aspects of disabled people.

VI

Recent years have brought fundamental legislative advances in the acknowledgement and exercise of rights. However, the different levels of government do not always commit to implementation that reflects the spirit of these new laws. In many cases, the problems of

implementation require constant work by social groups organized to ensure that the advances established under the regulations are sustained in practice. These problems speak to the weakness of institutional capabilities and the strong pressure from the corporate sector that resists change and has found mechanisms to delay or prevent it. Some of these situations and their differences are analyzed in this report. Of these, it is worth mentioning the implementation of the National Mechanism for the Prevention of Torture and the application of the laws on Audiovisual Communications Services and Mental Health.

This last piece of legislation constituted a change of paradigm on the matter of disability. Its implementation continues to be fraught with disputes in which the rights of persons with psychosocial disabilities are at stake, a situation associated with the legal imperative of closing mental asylums. People with mental disabilities shut up in neuropsychiatric hospitals suffer all types of rights denials, a terribly grave situation that habitually goes unseen and demands urgent action.

The law that created the National System for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment in 2012 is another example of the failure to implement a crucial measure. This law was the result of a long struggle by a significant group of organizations, as well as by officials and other activists against torture. Nevertheless, the process for selecting members of the National Committee, which will coordinate the national prevention system, has still not begun. This has also put serious limits on the debate regarding provincial preventive mechanisms.

One of the recent governments' shortcomings relates to problems with producing and providing access to information, which impact the design, implementation and assessment of public policy regarding the factors that determine the exercise of human rights on issues such as poverty, crime, and housing, among many others.

VII

In mid-2014, the legal battle between Argentina and the so-called "vulture funds" over the restructuring of Argentina's foreign debt exposed the problems of the world financial system. A key decision by US judge Thomas Griesa sparked solidarity with Argentina's situation in the international community, and it also opened a debate – both necessary and delayed – in international forums on the functioning of the global economy and possible mechanisms to protect rights. Respect for these rights is threatened by global economic decisions that are made in an exclusionary fashion according to the predatory logic of international capital.

The offshoots of this conflict have highlighted the role that organizations from countries in the South can play in crucial debates, which is addressed in the chapter of this report that analyzes the processes of acquiring debt and debt reduction from a human rights perspective.

Since its inception, CELS has sought recourse in international forums to denounce human rights violations that have occurred in this country. With the passage of time and in the context of the reconfiguration of the global human rights movement, we decided to take on a different role in the systems of protection and the decision-making processes that have an impact on our countries. Our objective is to help democratize international debates to build a pluralistic agenda, with protagonism by organizations from the countries in the South.

As democracies have grown stronger in Latin America, work in the field of human rights has also evolved, incorporating new players, issues and discussions. The links and working styles across the systems of protection and the different countries are undergoing deep processes of debate, as we analyze in this report in the case of the Inter-American System.

On this path we tread alongside other organizations, issues such as external debt, the so-called “War on Drugs,” the state response to social protests or the situation of rural inhabitants and indigenous groups are being addressed in regional and international proceedings, with active participation by actors who work on these problems in their own countries. This has brought about new networks and changes in the way human rights organizations are represented in these forums.

VIII

The structural problems of rights violations limit the progress made since 2003 toward reducing inequality. For some social sectors and in certain geographic areas, the state's inclusive policies have been eroded by repressive action on the part of security forces. These violations of human rights are concentrated, as we have said, among certain groups and areas. Patterns of institutional violence reveal how rights violations tend to have a cumulative effect on the same groups. The classic segmentation of rights into civil, political and economic, social and cultural categories belies their overlap among people who suffer from problems of access to housing, violent situations and obstacles to justice.

Over the course of 35 years of work at CELS, analysis and denunciations have coexisted alongside dialogue with different areas of the state. During the cycle of governments that is about to conclude, there have been valuable opportunities and moments of permeability to the demands of organized society. In other areas, it was not possible to move forward, a fact which is also documented during the years covered in this report.

CELS has combined criticism and advocacy to contribute to a state that protects rights. In light of the third Kirchnerite government's conclusion and an upcoming electoral debate, this report documents the historic advances achieved. It would be desirable for the political powers to state their positions on the continuity of these advances, and thus acknowledge the pending and, in many cases, urgent and indispensable reforms needed for the full observance of human rights in our country.