ACTION LINES TO STRENGTHEN THE PROCESS OF SEEKING TRUTH AND JUSTICE
CELS PROPOSALS

I. FROM IMPUNITY TO JUSTICE

Twenty-three years after the return of democracy, at the end of a long road that has alternated between justice, impunity and the right to truth, a process that seeks to overcome the effects of state terrorism and to strengthen democracy has been restarted.

Following the sanction of the so-called 'impunity laws', a series of significant events rekindled the process of justice and memory: various international human rights bodies issued recommendations urging the Argentine government to guarantee truth and justice; several human rights instruments were written into the constitution; Captain Adolfo Scilingo confessed to his role in the army's 'death flights'; the Federal Chamber of Buenos Aires initiated the 'truth trials'; Italy agreed to extradite Erich Priebke, after the Supreme Court of Justice ruled that crimes against humanity are not subject to the Statute of Limitations; there was a massive demonstration at the Plaza de Mayo on 24th March 1996 to condemn the military coup, and there has been one every year since; Spain, France, Italy, Germany and the United States began to take actions against Argentine Army officers; former Chilean dictator Augusto Pinochet was arrested, and so were Videla and Massera in Argentina over baby theft; and the 'Full Stop' and 'Due Obedience' laws were derogated in 1998.

From 2001, state institutions began to adopt the necessary measures to remove the last remaining obstacles to prosecuting crimes against humanity, thus taking steps towards meeting international human rights obligations that required that such crimes be investigated and punished. In March 2001, at CELS' request, federal judge Gabriel Cavallo declared the 'impunity laws' null and unconstitutional for the first time. That same year, higher courts confirmed his decision, and the Attorney General's Office also did so twice. In September 2003, the Argentine Congress passed a law, promoted by President Nestor Kirchner, that declared the 'impunity laws' null, thus making clear the government's political will on the subject. In June 2005, in the course of the "Simon" case, the Supreme Court annulled the 'Due Obedience' and 'Full Stop' laws, which allowed the trials against the perpetrators to resume. In 2006 a court ordered the first two convictions for forced disappearance since the trial of the Juntas. The accused were two policemen: former Sub officer of the Federal Police, Julio Héctor Simón and former Buenos Aires Police Commissioner, Miguel Etchecolatz.

This trajectory has made Argentina a key precedent in the prosecution of crimes against humanity in local courts; it has regional impact and it is watched closely by the rest of the world.

II. MEASURES TO STRENGTHEN THE PROCESS OF TRUTH AND JUSTICE

In the context described in section I, the disappearance of Jorge Julio López and the kidnapping of Luis Gerez[1] have a special significance. Both events shocked the government, as they evidenced how difficult it is, on one hand, to protect victims and witnesses from attacks, and on the other, to investigate them. Together with other threats and violent acts against individuals connected to the trials, these cases have had a negative impact on the process of justice.

The state institutions are committed to seeking truth, memory and justice for the crimes of the dictatorship. The President defined this obligation as a government policy and expressed the need to respond firmly to these threats:

> "It is about safeguarding the rule of law, which encompasses the beliefs, ideas and way of life of every law-abiding citizen […]. What the rule of law means today – in Argentina and anywhere in the world – is upholding human rights and enforcing the law without restrictions" [2].

Realizing this commitment rests on the effective coordination of all the relevant political and social actors. Each government agency (Executive Power, Judicial Power, Public Ministry, the National Judicial Council, Congress) has specific responsibilities.

The present circumstances call for the urgent development of state capacities that are currently deficient or inexistent. It is vital to create a state authority responsible for monitoring the memory, truth and justice process as a whole, in order to assess progress, setbacks, obstacles and needs, and take efficient measures accordingly. The Executive Power must initiate and coordinate these actions. In turn, the Public Ministry must have a comprehensive understanding of the state of the trials to avoid making only individual commitments, and also judicial inertia.

In this paper, CELS suggests two lines of action to develop a body responsible for coordinating this process diligently and effectively:

The first line of action is to create a Special Program for Truth and Justice within the Executive Power, responsible for putting in place the necessary measures to guarantee the continuity of the justice process. This program will coordinate the work of federal and provincial agencies involved in the trials and the protection of victims, witnesses, human rights defenders, judges and government officials. It will also draw up a clear picture of the legal processes and, on this basis, identify actual and potential risks and obstacles to their sound development.

The second line of action is to develop and strengthen an official body in charge of coordinating the legal strategy to deal with the trials, and involves mainly the Attorney General's Office, and to a lesser extent the Supreme Court and the National Judicial Council. The Attorney General's Office, as head of the Public Ministry, must take a leading role in designing a comprehensive strategy to achieve justice swiftly and effectively. Likewise, the Supreme Court, the National Judicial Council, and the Public Ministry must speed up the process of appointing judges, prosecutors and public defenders, and they will also be responsible for allocating and managing the resources necessary to carry out the trials. In turn, judges, prosecutors and public defenders must guarantee their commitment to the successful resolution of the trials.

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[1] The 18th of September, 2006, and day of the sentence convicting Miguel Angel Etchecolatz, one of the witnesses in the case disappeared. The whereabouts of the witness, Jorge Julio López, is still unknown. At the end of December of the same year, Luis Gerez – who gave testimony in the National Congress against the ex-police inspector Luis Abelardo Patti – was kidnapped for more than 48 hours.

[2] Message broadcast on National TV on December 29th, 2006.

The following section details concrete proposals to implement both lines of action.

A. REGARDING THE NEED TO GUARANTEE COORDINATION BETWEEN ALL THE FEDERAL AND PROVINCIAL AGENCIES INVOLVED IN THE PROCESS OF TRUTH AND JUSTICE AND THE PROTECTION OF VICTIMS AND WITNESSES:

1. Creation of a Special Program (Truth and Justice), within the Executive Power.

Re-opening the process of truth and justice rests mainly on the work of legal authorities pursuing investigations. However, the effective management of the trials also depends on whether certain conditions are guaranteed, for which the Executive Power[3] is mainly responsible.

The disappearance of Jorge Julio López, the kidnapping of Luis Gerez, and the threats and violent acts suffered by other witnesses, defense attorneys, prosecutors and judges connected to the trials are not just a threat to the safety of the people involved but, without a proper response from government institutions, they might become a threat to democratic governance.

This situation underscores the need to develop a government body responsible for monitoring the newly reopened process of truth and justice, to promote and centralize measures to overcome obstacles, avoid new attacks or threats and guarantee the adequate progress of the legal and institutional response to the crimes of state terrorism.

In order to build a clear picture of the process that will aid planning and help foresee potential obstacles, it is vital to have accurate information on the status of the trials across the country.

On this basis, the government should issue reliable information on the risks this process may involve for victims, witnesses, human rights defenders and government officials, as well as for democratic governance. Protecting those involved in trials requires access to this kind of information as a means to evaluate each case individually and to find efficient solutions.

The Executive Power Program should then coordinate the different agencies that have – or ought to have – such information, while it should also be able to conduct its own investigations. These agencies should be obliged to submit such information to the program whenever it is requested.

Investigating reprisals and punishing those responsible is also a means to prevent risks. Thus, situations like those involving López and Gerez – together with threats to witnesses, victims and human rights defenders - must be seriously and thoroughly

[3] Within the Executive Power there have been special units and programs created to improve the response of the Argentine government in cases that involved coordination between several agencies. The Special Investigation Unit deployed in response to the terrorist attack against the Argentine Israeli Mutual Association (AMIA by its Spanish acronym) was created in order to support the Public Ministry's investigation of the attack and the complaints subsequently lodged over irregularities in the way the main investigation was handled. Its main duties are to maximize support to the prosecutors Unit; coordinate the actions of the different security forces and government bodies; conduct its own investigations; coordinate with the Supreme Court and the National Judicial Council on matters regarding technical, human or material resources; and to take the necessary measures to protect witnesses testifying in the Unit investigation and/or legal cases (Cf. Decree Executive Power 452/00, amended by Decrees Executive Power 846/00, 430/01, 1198/01 and 229/06). Furthermore, the Executive Power represents the government before international courts, and must have mechanisms in place to enable it to intervene effectively to ensure the fulfillment of its human rights commitments.

investigated. This kind of investigation requires specialized personnel that are committed to this process. The Executive Power Program's mission will be to centralize information on these cases and actively cooperate with the investigations. Counteracting the fear that that threats and attacks generate is as important to the successful pursuit of justice as carrying out trials[4].

Security forces, intelligence agencies, and all other national administration bodies must grant the Program unrestricted access to all their documentation, reports and files relating to the crimes of the dictatorship, groups or activities that may jeopardize the legal process, and the repressive structures that still exist within the Armed Forces.

Finally, this Program should diagnose structural problems that require long-term institutional reforms. Thus, it should have the authority to suggest or formulate measures and lines of action to the different government agencies and bodies.

This proposal will only be effective if the Executive Power fully realizes the commitment it expressed in the presidential address on December 29th showed by National TV . This is why it should be created by presidential decree and be functionally dependent on the Office of the Cabinet Office.

Among its specific duties and powers, a special program of this kind should:

- Draw up a clear picture of the obstacles and risks the legal and memory process generates or might generate, to help prevent and investigate threats and dangers.

- Carry out a diagnosis of the intimidation and/or violent acts that have taken place. This should include a detailed analysis of the events and the investigations and trials related to them, which would serve as a basis to identify actual risks for victims, witnesses, human rights defenders and government officials.

- Based on this diagnosis, coordinate with the relevant bodies to offer effective protective measures to those who request them.

- Access all of the various government agencies' documentation, reports and files on the crimes of the dictatorship or groups that may endanger the legal process.

- Request cooperation, documentation and reports from national and provincial institutions and agencies, as well as foreign and private security and intelligence bureaus, through the relevant means.

- Coordinate with security agencies to carry out the relevant intelligence work to investigate these sorts of events.

- Work jointly with police forces on the search for fugitives.

- Coordinate with the Supreme Court, the Attorney General's Office and the Public Defender's Office to provide legal authorities, prosecutors and defenders with technical, human or material resources to deal with the trials, and monitor the rational use of these resources.

[4] Cf. Report on the situation of human rights defenders in the Americas, Inter-Americas Human Rights Commission (OAS /Ser.L/V/II.124, Doc. 5 rev., 1 7 March, 2006. Original: Spanish).

- Provide operational support to prosecutors and judges in their investigations. In particular, collaborate with the coordinating body of the Attorney General's Office, and directly respond to requests from judges or the group of prosecutors leading these cases.

- Conduct investigations on its own initiative, and report the results to legal authorities and the Public Ministry.

- Have the authority to file complaints.

- Draft institutional proposals on the structure of criminal investigations; on risks and witness protection; on the purging of security and intelligence forces; and to improve the functioning of the National Directorate of Criminal Intelligence, among others.

- Suggest actions or lines of work to government bodies and authorities regarding the process of truth and justice and the protection of those involved.

- Build a team, employ new staff and manage budgets and resources.

2. Design and implementation of an effective policy to protect people linked to the trials

The only way to guarantee the safety of victims, witnesses, human rights defenders and officials involved in the trials is to view the fight against impunity as a form of public policy. Accordingly, the mechanisms of justice must be strengthened, both to encourage trials for human rights violations and to enable the effective and thorough investigation of violent acts against people involved in them.

Therefore, it is imperative to design and implement a comprehensive policy to protect people connected to the trials, in order to provide the appropriate basis from which to carry out the relevant legal investigations. While this outcome will require considerable medium- and long-term planning, a centralized and responsible program to begin implementing this policy must be made available immediately.

The Executive Power Program will coordinate the existing efforts of the various national and provincial agencies to guarantee the protection of victims and witnesses.

As long as risks are accurately assessed, it will be possible to implement a concrete protection policy and to make the necessary resources available. The risk assessment will help to anticipate situations and encourage a rational response to complaints. Not every situation calls for the same measures, but there should be a body responsible for making these decisions and coordinating with the relevant actors.

Consequently, the Program should have a comprehensive view of the situation; one consistent with the risk assessment described above and in coordination with the Public Ministry, the security agencies and the bodies responsible for witness protection.

In this context, the first condition to convey a sense of security would be to investigate and solve the disappearance of Jorge Julio López and the kidnapping of Luis Gerez, as

well as the threats and assaults that have taken place over the last few months, and to punish those responsible.[5]

The second condition requires a comprehensive view of the mental and physical safety of the people at risk, bearing in mind that they are victims of state terrorism. Thus, it is essential to find ways to minimize witnesses' public exposure, and guarantee that the victims will testify in oral proceedings in order to avoid having to testify more than once.

The creation of a global protection policy must take into account the following:

- The need for a strong commitment from the three state powers to the promotion of human rights, justice and a policy of zero tolerance towards impunity.

- The specific nature of the process of truth and justice, the national, social and political context, and the particular traits of the victims and witnesses of state terrorism that require protection.

- The need for officials in charge of victim and witness protection to have a profound understanding of the nature of the risks and the government's responsibilities.

- The need to provide human, budgetary and logistic resources that guarantee the implementation of the relevant protective measures.

Moreover, some basic requirements to guarantee the effective implementation of the global protection policy should be considered, for example:

- To have a sound knowledge of the international regulatory, constitutional and legal frameworks regarding the protection of people connected to the trials for state terrorism. This information is essential to: establish who has the right to protection; determine the appropriate way to work with the victims (defined in the events) [6], witnesses (defined in terms of their potential contribution to the legal process), defenders and government officials; establish what measures can be adopted, etc.

- To conduct analyses of acts of intimidation and violence against those involved in the trials. This would include gathering information on: the attacks, the investigations, and the outcome of the legal causes related to the attacks. This should serve as a basis from which to identify the strategies and patterns of violence of those groups that present a security risk[7].

- To design the structure of the body that will coordinate witness and victim protection policies, clearly defining its different modes of intervention. This design should take into account the need to coordinate with the Public Ministry and also its relationship with judges, since risks to people emerge from their

[5] The Inter-American Commission on Human Rights has noted that "the most effective way to protect human rights defenders in the hemisphere is by investigating acts of violence against them, and punishing those responsible. One of the great problems affecting human rights defenders in the Americas is the failure to investigate attacks against them, which has accentuated their vulnerability. This is especially relevant when it comes to protecting the right to life and personal integrity." Cf. IACHR, report on the human rights defenders' situation in the Americas, above quoted, paragraph 202.

[6] For definitions in this area, see ruling C-370/ 06 "Complaint for Unconstitutionality against Sections […] Law 975/2005" Constitutional Court of Colombia.

[7] The IACHR has identified patterns of behaviour and key moments when violent acts against human rights defenders in several American countries are most likely to take place (cf. Report on the situation of human rights defenders in the Americas, above quoted).

involvement in the trials. It would also be essential to set up mechanisms to communicate with the people who need protection, because these measures must be consensual to be effective.

- To train special police forces and government officials in witness protection. These should be familiar with the experience of other countries that have been implementing similar measures for many years.

B. REGARDING THE TRIALS:

1. Consolidation of an agency within the Public Ministry to coordinate the trials strategically, promptly and effectively

There are currently hundreds of lawsuits pending for crimes against humanity perpetrated during the last military dictatorship[8]. These are lodged at different locations throughout the country, and the prosecutors and federal judges involved in them are deploying different strategies in their investigations and facing different kinds of obstacles. For these reasons, the degree of progress varies in each case.

The Public Prosecutor's Office is responsible for leading investigations into the crimes of state terrorism[9]. At the same time, the Public Prosecutor's Office is strategically placed to provide a comprehensive view of all the trials across the country, and to become a key player in the process of truth and justice.

It is therefore suggested that the Attorney General's Office, as head of the Public Ministry, should be organized in such a way to enable it to obtain an accurate diagnosis of the country's legal situation, to understand the peculiarities of each trial, the problems of each jurisdiction, the situation of witnesses, to foresee obstacles and to estimate the time required for each case. Finally, this organization will have to outline a general strategy for investigating and carrying out trials together with the prosecutors of the cases.

Just as some prosecutors were pioneers in terms of driving forward the trials, the Attorney General's Office has made fundamental contributions to their effective management, as documented in the general rulings and investigations that backed the trials for truth, the declaration of unconstitutionality of the 'Due Obedience' and 'Full Stop' laws, and the creation of committees of prosecutors and special units that will

[8] Given that the judiciary lacks a centralized system to produce statistics, records on the number of criminal cases have been compiled by the Attorney General Office's Unit of Assistance on Lawsuits for Human Rights Violations Related to State Terrorism. This agency has disclosed the existence of 1,000 cases throughout the country. According to CELS' records — at the time of writing, January 2007— there are 111 criminal lawsuits underway throughout the country. The defendants have been identified in most of these cases. The discrepancy between these sets of figures rests on the different method used to build each database: CELS' records display a smaller number of cases because it does not count lawsuits for baby theft or those in which there have been no developments beyond filing the complaint. Besides, lawsuits with the same subject matter are not counted separately, whereas the Assistance Unit counts each case reported by the prosecutors individually.

[9] In Argentina's legal system the examining judge is usually responsible for driving criminal investigations. However, the Public Prosecutor's office still retains some responsibility for promoting investigations, and can summon the relevant agencies if the judge fails to do so. The Public Prosecutor's office is a hierarchical organization that can act as a unit and thus is capable of coordinating efforts to drive those cases it considers a priority. In any case, the Public Prosecutor's office should remove the political and cultural obstacles that account for many of the present difficulties.

offer institutional support to the prosecutors who lead the cases and will help to improve pending investigations[10].

However, the large number of lawsuits that followed the declaration of unconstitutionality of the 'impunity laws' signifies a new turning point in this process. If the goal so far had been to reopen the trials, the new challenge is to carry them out in a serious and coherent way.

Implementing this criminal prosecution policy involves many serious problems. Some of these are linked to the content of the lawsuits, others to the limitations of existing legal structures.

The enormity of the challenge requires planning, follow-up, political will and quick reflexes to be able to act decisively in response to each obstacle that might arise. It is undoubtedly a collective undertaking subject to the institutional hierarchy. In order to effectively respond to the requirements of this process, each individual prosecutor's work must be integrated into a broader general policy.

In this regard the Attorney General's Office must strengthen the structures created to deal with the process of justice. While these structures are already in place, the new circumstances require that the Attorney General's Office improve its capacity to coordinate and implement its human rights policy. This is particularly important with regards to its ability to generate systematic and reliable legal information, to encourage the discussion and exchange of strategies among prosecutors, to adopt the necessary measures to spur those jurisdictions that are resisting the trials, and to coordinate between the Public Ministry and the Executive Power.

To that end we **propose to create a coordinating body with a high public profile, resources and a specific mandate, to channel the commitment made by the Attorney General.** Its main functions would be: to foster and facilitate communication among the prosecutors in charge of the investigations; to implement the Attorney General's directives; to manage the resources allocated by the Public Ministry to this process of justice; and to outline an institutional strategy for criminal prosecution to be applied in the various jurisdictions across the country; to coordinate the handling of new claims with the Executive Power and the Supreme Court; and to take part in the development of a sustainable plan for the protection of people involved in the trials.

This coordinating body must design a strategy to centralize the management of the trials, despite local differences. This would make it easier to monitor the progress of the trials, and evaluate risks, positive developments and setbacks. Such a strategy would have **to be based on a clear picture of the status of all the trials across the country** This information is instrumental to the design of the overall strategy and the implementation of concrete actions to avoid further delays to the trials.

[10] In 1999 the Attorneys General ´s office organized a committee of prosecutors to help in the investigation of baby theft during the last military dictatorship (Res. PGN 40/99). In 2000 it organized another committee to promote trials to "establish the truth" (Res. PGN 15/00). In 2001 both committees merged to create the Public Ministry Human Rights Commission, which was made up of several prosecutors in charge of cases for human rights violations, and was coordinated by the Attorney ´s General Office. The aims of this committee were to support the prosecutors throughout the investigations, to facilitate the exchange of information, and to coordinate their activities and intervene in problematic jurisdictions (Res. PGN 56/01). The Unit of Assistance on Lawsuits for Human Rights Violations Related to State Terrorism is now operative. This unit was created through Resolution PGN 163/04, to help magistrates in every federal department with their investigations, whether upon their request or if the Attorney General deems it appropriate. It works as the Court Prosecutor's Office in the city of Buenos Aires, it provides investigation support to those prosecutors that request it, and will take over the oral debates to be carried out during 2007 in the city of Buenos Aires (Res. PGN 139/06, among others).

Among other things, the design of this overall strategy must take into account the following:

a. The best way to compile and organize data on the trial, for example, according to clandestine detention centers;

b. The need to be as expeditious as possible for the sake of the accused and the victims;

c. The need to avoid making victims and witnesses testify more than once [11];

d. The best way to access, organize and present the evidence;

e. The need to safeguard the criminal and procedural guarantees of the accused[12].

This body in charge of coordinating and implementing the Public Ministry's human rights policy must comprise (or reinforce) the following capacities and functions:

- To design an overall strategy to investigate and carry out the trials.

- To design, together with the prosecutors, strategies to carry out the trials that ensure efficiency, celerity, the proper distribution of resources, and the protection of victims and witnesses. This includes the discussion and creation of a strategy to gather information on the cases, in coordination with the examining judges.

- To systematize and update information on open cases (including the procedural status of each defendant), with indicators that allow it to cross check information, coordinate work and assess and avoid potential risks.

- To publicize this information so that the public can stay abreast of the process of truth and justice[13].

[11] It is important to avoid making witnesses testify more than once, and to ensure that they testify during the oral proceedings. Alternatives to testifying during the investigation stage could be considered. Testimonies could be searched for in other causes, or in archives such as the former CONADEP (National Comission on the Disappearance of Persons), but they should not be repeated.

[12] As noted above, the process of justice has progressed unevenly. It is thus difficult to define a rational, efficient and expeditious common strategy to deal with the cases. Several trials have been reopened only to remain as they were at the moment of enacting the impunity laws. Back then, in line with the Federal Court that tried the military Juntas, the objective was to investigate those with the most responsibility in the hierarchical structure (regional or departmental chiefs). This time around, however, most of the trials aim at finding the material authors of the crimes, thus the importance of reordering the events according to the clandestine centre in which they took place. However, some cases with few facts and few accused went to trial over a year ago. For these cases to be dealt with in a single trial, the accused would have to wait for other similar cases to be filed, and would be tried only after three years of preventive imprisonment (as in the Berthier case). At the same time, in the ESMA case, for example, most survivors have been held in captivity for several years and have been tortured by different oppressors. If this trial were to be divided into victims according to the years they were tortured, each trial might last longer than two years and the testimonies would be repeated, which could also potentially violate the rights of the accused. The ESMA case must be dealt with in a single trial, however long, since it is one of the clandestine centers that most clearly demonstrates the plan of extermination and perversity shown by those responsible. In order to achieve this, what is needed is celerity at the court of original jurisdiction to research and solve the procedural situation of the accused; and later at the court of appeal, to confirm these resolutions in due time. These peculiarities highlight the difficulty of finding a single solution, but they also reveal the need for a centralized body to provide a clear picture of the situation and define some lines of action to rationalize this process and support the work of the investigators that are directly involved.

[13] This is, on the whole, currently the most important process of criminal prosecution for the Public Ministry. However, this is not reflected in, for example, the accessibility of the information available on its web site or in those of other state agencies. For instance, the Public Ministry's web site does not provide any

▪ Based on this information, to research and design a plan to improve the organization of the prosecutors and their collaborators, to maximize the use of specialized resources and to face the criminal trials in an efficient way. In this regard, the coordinating body should also anticipate which cases will be taken to trial and appoint the prosecutors that will lead themes[14].

▪ To coordinate the actions of prosecutors, arrange regular meetings between them, clarify their doubts and process their requirements.

▪ To promote measures to guarantee publicity for the trials, especially during the oral proceedings.

▪ To intervene, in any possible way, in jurisdictions that require more resources or that are facing obstacles in filing criminal cases[15].

▪ To create a register of witnesses to identify the persons linked related to the trials and to avoid making witnesses testify more than once.

▪ To enter into agreements with other state agencies and the private sector in order to improve the quality of the investigations.

▪ To coordinate, together with the Executive Power Program, any joint actions necessary to carry out the trials, to undertake a risk assessment of the process of justice, to offer victims and witnesses effective protection, to allocate resources, etc.

▪ To arrange with the Executive Power Program whatever joint actions are necessary, and to allocate resources to fund them, as is already done with issues such as tax crime investigations (UFITCO), those related to organized crime and drugs (UFIDRO) or social security (UFISES) [16].

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information whatsoever on the trials, the status of proceedings, who is promoting the trials, how its work relates to memory policies beyond the criminal response, etc. This information is not available on the Human Rights Office of the National Ministry of Justice and Human Rights either. What little information is available comes from the web sites of human rights organizations such as APDH-La Platas, CELS (www.cels.org.ar, through which the blog developed regarding Julio Simon case can be accessed), or at www.nuncamas.org.

[14] Besides the above-mentioned Human Rights Commission (created by Res. 56/01), there are Public Ministry Units with research capabilities and the ability to organize their resources so as to increase their research capabilities. For example, the Prosecution Support Unit was created for the investigation of Complex Drug-related and Organized Crime (UFIDRO by its Spanish acronym), and the country was divided into different jurisdictions, with a prosecutor in charge of each to guarantee a certain level of coordination (Res. AGO 19 and 84/05). Another example is the Unit of prosecutors for the investigation on the AMIA attack and other cases related to it (Res. PGN 84/04).

[15] For example, through the Unit of Assistance for Cases of Human Rights Violations, the Attorney General's Office interceded in the federal jurisdiction of Resistencia. Firstly, it appointed a contributing prosecutor to assist the federal prosecutor, Jorge Auat (since the prosecutors of the court of original jurisdiction and the court of appeals did not qualify, as they were accused of being responsible for the Margarita Belen massacre). Secondly, after a two-year investigation the Attorney General, Esteban Righi, decided to exonerate attorney Ana María Torres, accused of acting in complicity with the defense to release 10 defendants. Moreover, when CELS filed a claim against prosecutors Flores Leyes and Mazzoni for their alleged links to the Margarita Belén massacre and requested a trial by jury, the aforementioned assistance unit played an important role in ascertaining the responsibility of the accused. While the jury is already constituted, the hearing has not yet been held.

[16] For example, the Attorney General's Office has signed an agreement with the Executive Power to create special investigation units to strengthen these areas and coordinate agencies which optimize their power through joint work, either by the allocation of resources, or access to information produced by the Executive Power, or the improvement of investigation techniques. This has been the case of the Investigation Unit on Tax Crimes (UFITCO by its Spanish acronym), which is the product of agreements

▪ To foster coordination with the police forces to outline criteria for action and investigation.

2. Development of more expeditious processes to appoint judges, prosecutors and federal defense attorneys to cover existing vacancies, and improvement of the existing system of designation of subrogees or alternates

Delays in appointing judges, prosecutors and defenders in different jurisdictions have proved a major obstacle to the development of the trials. The failure to appoint these officials delays decisions on the legal situation of the defendants and stalls investigations.

The Executive Power's delays in covering vacancies and the difficulties it has had to appoint subrogees or alternates stress the need to expedite such proceedings[17]. The Executive Power program in charge of monitoring the proceedings as a whole must note the weakest jurisdictions in this regard and coordinate procedures with the relevant state agencies[18].

The **Judicial Council** and the Executive Power are the main bodies responsible for carrying out the above duties, while courts of appeals should deal with jurisdictions that cannot fill certain positions in their courts and tribunals.

3. Efficient allocation and management of the resources necessary to carry out trials in the different jurisdictions across the country.

The magnitude of the judicial process that has been reopened requires the State to improve coordination among the different bodies taking part in the proceedings, and to guarantee the necessary resources for optimal performance.

Even though the resources that the State has allocated to this process have not been scarce, there is still no accurate diagnosis of the needs throughout the country that would enable the State to distribute such resources and meet those needs consistently, therefore there are still jurisdictions facing major difficulties.

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with the Ministry of Economy, Department of Justice and the Federal Administration of Public Revenues; the Fiscal Unit for the Investigation of Social Security related crimes (UFISES by its Spanish acronym), created in conjunction with the National Administration of Social Security (ANSESS by its Spanish acronym); the Environment Unit, the product of agreements with the Environment Department; and the Fiscal Support Unit for the Investigation of Complex Drug-related and Organized Crime (UFIDRO), developed following agreements with the Department of the Interior. In most cases the Executive Power provides buildings, personnel or information resources to promote the investigation.

[17] In the province of Formosa, Argentina, 14 people have gone through the process of appointment to the Federal Court unsuccessfully. In the Chaco province, the Federal Court of Appeals has been waiting for its members to be appointed for months. After the Impeachment Tribunal confirmed the appointment of Tomàs Inda and María Fernández in April 2006, the former resigned and the latter disqualified herself from these cases. Thus, the Court has not yet analyzed the prosecution of several defendants in the massacre of Margarita Belén. In the case of the Court of Cassation, several of its members have been challenged and others have disqualified themselves from cases investigating crimes against humanity, thus forcing the choice of alternates, some of whom have also been challenged (Roberto Durrieu and Raúl Noailles) and others disqualified themselves (such as David Baigún or Eduardo Héctor Munilla Lacasa). In Bahia Blanca, the relationship between the defendants from the Navy, local judges and attorneys who are either challenged or disqualify themselves, has left the trial for crimes against humanity committed in the naval bases of Baterías and Puerto Belgrano stalled and without a judge.

[18] Decree 588/03 sets forth the requirement to evaluate the "commitment to human rights" of candidates for positions as judges, prosecutors and defenders' The officials' future role in cases on violation to human rights must be taken into account upon their appointment.

The Program should be able to assess the situation as a whole and to respond to requests as necessary (even though this body will not have the necessary resources in every case). It is important to bear in mind that, as well as resources for investigations, the Public Ministry's defense must have the appropriate resources to guarantee the defendant's right to legal counsel, since several of them have opted for a public defender.

It is important not only to provide more resources, but also to manage them more flexibly and efficiently[19]. To this end, courts have appointed ad hoc secretaries to process the causes, and the Supreme Court has been allocated a special budget to support courts in charge of investigations, though it is not known how this budget has been managed or what it has been spent on.

4. **Effective supervision of those legal and Public Ministry authorities that cause delays in the trials, and improvements in the processing of cases.**

The Judicial Council and the Supreme Court must exercise their duties to supervise the compliance of judges involved in these cases, and to discipline non-compliance accordingly. The Attorney General's Office must do the same regarding the work of prosecutors. If these three bodies carry out the above duties appropriately, unnecessary delays in the trials will be avoided.

Most members of the National Court of Criminal Cassation have shown reluctance to the process of justice. The Court has become a kind of national bottleneck, causing delays to many cases that have been open for years and in relation to which many people have been arrested.

Many cases have reached the Court of Cassation over self-disqualifications and challenges of judges, or fundamental issues such as the unconstitutionality of law 25.779[20], of the amnesties,[21] or the decision of the Federal Court of the city of Buenos Aires to reopen the proceedings in the ESMA case[22] (and submit it to the court of original jurisdiction). There are unresolved claims going back to2003 at the Court of Cassation, for example those related to the ESMA and First Army Corps cases and several related cases (such as the investigation into the Fátima Massacre –in which the Fifth Federal Oral Court ordered a preliminary investigation prior to the debate).

Also pending at the Court of Cassation are several issues related to cases in several jurisdictions throughout the country. For example, the challenge filed against Santa Fe federal judge, Reinaldo Rodríguez, in charge of the "Brusa" [23] case, has been pending

[19] For example, judge Daniel Rafecas organized his court to progress fast and efficiently in the investigation of crimes committed under the auspices of the 1st Army Corps. Likewise, the Prosecuting Attorney's Office in Córdoba, led by Graciela López de Filoñuk, managed the resources granted by the Attorney General's Office in a way that facilitated the progress of investigations in Córdoba and La Rioja. However, in Santa Fe, for instance, resources are either scarce or wasted. The Prosecuting Attorney's Office only has one ad hoc prosecutor for the whole investigation of the Brusa case and other 40 open cases.

[20] This law declares the unconstitutionality of the 'Full Stop' and 'Due Obedience' laws.

[21] Enacted in favor of defendants in lawsuits for crimes against humanity in the 80s.

[22] After passing law 25.779, the Federal Court of the city of Buenos Aires ordered the reopening of the two major causes known as ESMA and the First Army Corps). In order to do so the cases were submitted to the court of original jurisdiction. Captain (retired) Raúl Scheller's defense raised the nullity of the Federal Court resolution in the ESMA case. Although it dates back to 2003, a decision on the appeal is still pending.

[23] The effect of the strategy of delaying cases with challenge requests is multiplied when courts do not resolve claims in due time, since the defense usually raises the nullity of any decisions that have not been confirmed by a higher court. This brings about a lack of legal definition, which has negative effects on the investigation. While the defense can appeal or design the legal strategy that they find most convenient, it is

for at least six months. There are also delays in cases in Chaco, Entre Ríos and Córdoba.

Most of these have been delayed for over three years, and there is still no accurate information on each case, or a schedule to solve them[24]. This situation delays the process of taking the cases to trial and –in cases that have gone to trial and where an Oral court has been assigned- the beginning of debates. A close examination of the way each of these claims has been processed shows that, beyond the parties' filings, the court has indulged in unnecessary technicalities. This excessive formalism essentially occludes the decision to delay the resolution of the cases.

Representatives of the Public Ministry before the Court of Cassation supported the Chamber's obfuscatory strategies and unjustified shuffling of the files.

The ESMA case is an example of what is happening across the country[25], regarding both the delays in the resolution of self-disqualifications and challenges and the delay in the definition of fundamental issues. For example, from October 2003 to December 2003 there was a debate on which Room should rule on defendant Scheller's appeal. It was three years before a decision was made, during which the judges carried out numerous unjustified transactions. For two months the six judges of Rooms II and IV avoided intervening until they (formally) "failed to resolve on a jurisdiction matter". Thus they forced a plenary that had to be solved by the six judges of the two remaining chambers[26]. At the same time, during that period, there were numerous challenges by the parties and self-disqualifications by the judges themselves, appointments of alternates later challenged or disqualified and bureaucratic proceedings that turned every decision into a load of paperwork and a waste of precious time[27].

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unacceptable for the courts to sustain this situation for months (whether out of connivance or mere bureaucracy) and bear no consequences.

[24] There is no information published on the number of unresolved claims, or their details, date recorded and possible decision dates. Complaints over delays in the decisions on these proceedings led former councillor Beinusz Smuckler to ask the Judicial Council to conduct an audit to clarify these doubts. However, such an audit was never conducted. It is clear from the transcript of the plenary meeting that the councillors supported the position of the then representative of the Executive Power, Joaquín Da Rocha, who objected to the audit as he considered it unsound, and proposed instead to request information from the Attorney General (Smuckler, Beinusz, request for an audit of the Court of Criminal Cassation, note no. 9/06, decided at the plenary meeting of the Judicial Council, item 15 on the agenda, June 8, 2006). In June 2006, the Public Ministry's Unit of Assistance for Cases of Human Rights Violations during state terrorism sent all the information it had (handwritten and based on poor and ambiguous data reported by each of the Courts of Cassation) to the Judicial Council. The Council did not take this information into account to authorize the audit, or even to shed light on existing doubts.

[25] This is also the case with, the case investigating the events that took place under the auspices of the First Army Corps (case No. 14.216/03) , although it is less complex.

[26] The case was first filed in Room II of the Chamber. However, based on a 1995 decision promoted by cassation prosecutor Raúl Pleé, the chamber submitted the file to Room IV (which deals with issues arising from the Military Code). After several decisions, the members of the Court of Cassation decided at a plenary meeting of Rooms I and III (Dec 2003) that Room IV should deal with the ESMA case in virtue of its specialization. CELS, together with the *Abuelas de la Plaza de Mayo* (Grandmothers of the Plaza de Mayo) contested this decision, arguing that the case was not about issues derived from the Military Code, but about crimes against humanity. The Inter-American Convention on Forced Disappearance of Persons bans the imposition of any special jurisdiction on trials for this kind of crimes. The court did not notify the resolution of the plenary meeting, so CELS notified itself in September 2004. The court took a year to dismiss the extraordinary appeal (*recurso extraordinario)* after it was filed. This tendency to avoid notifying resolutions is common practice, which makes proceedings take longer than usual.

[27] In this particular case, the different challenge and disqualification proceedings took place because several human rights organizations acting as plaintiff (Argentine League for the rights of Man -- *Liga Argentina por los Derechos del Hombre --, (*the Association of former imprisoned and disappeared persons – *Asociacion de Ex Detenidos Desaparecidos* --, among others) challenged the members of Room IV of the Court of Cassation who in turn yielded jurisdiction to Room I. At the same time, these judges were also challenged. On the other hand, in the context of these various challenge and disqualification proceedings,

These are not the only obstacles to the trials. Besides the reluctance of some Court of Cassation judges, there are also problems intrinsic to the legal system. Formalities and investigations are used to hide malicious intentions or incompetence in the handling of cases. Issues regarding jurisdiction, under the guise of formalities, end up defeating the subject of the investigation -- crimes against humanity such as forced disappearances, torture, murder and rape.

There are serious delays in the Court of Appeals' decisions on rulings and cases to be taken to trial. These are due to several reasons, which are sometimes merely bureaucratic. These delays, together with the numerous discussions on nullity that have taken place during the proceedings, have contributed to a general state of hindrance and disorganization. Insofar as prosecutors and judges continue to deal with the cases in that way, it will be difficult to avoid the defense's strategies to delay legal actions (as stated by the Inter-American Court of Human Rights in the Bulacio case[28]). Moreover, the Courts of Appeals in many provinces are still made up of judges with links to the cases or to the accused (as stated during the impeachment of Tomás Inda and Ricardo Lorna).

III. CLOSING REMARKS

The issues developed in this document highlight the need for government authorities to materialize their political commitment by implementing effective measures to guarantee the sound development of the trials and the protection of victims, witnesses, human rights defenders, judges and officials related to these cases.

After the 'Due Obedience' and 'Full Stop' laws were declared unconstitutional, the process of memory, truth and justice reached a new turning point that required a readjustment of state capabilities, and to bear in mind the social implications of reopening the trials for the crimes of state terrorism. CELS believes that the State has the duty to bring justice to the victims, their families and to Argentine society, and that truth and justice are the institutional foundations on which to build a democratic country where fair rules are applied and clear ethical limits are set. CELS hopes these proposals will help achieve this aim.

judge Alfredo Bisordi called the arguments supporting some complaints a "legal circus" He also slandered the plaintiffs on the ESMA case when he called them "self-denominated human rights organizations". He was particularly vitriolic towards former detainee-disappeared Graciela Daleo, whom he called a "terrorist criminal". These statements led the organizations to report Bisordi to the Judicial Council, which imposed a disciplinary sanction on him (Res. CM 461/05, on November 27, 2005), and banned him from hearing cases investigating serious human rights violations. While the delays at the Court of Cassation might be partly attributed to delays in the parties' filings, both the plaintiff and the defense are meeting the agreed deadlines. Besides, judges can ultimately urge the parties to avoid using delay tactics.

[28] Inter-American Court of Human Rights. *Bulacio Vs. Argentina* . September 18, 2003. Series C No. 100.