

## Prologue\*

I

During its first 100 days in office, the Cambiemos (“Let’s Change”) governing coalition made decisions that had an impact on human rights in Argentina. The measures of greatest consequence include the declaration of a national security emergency, the confusing unveiling of a protocol that seeks to limit social protest, the dismantling of areas of the state that participated in investigating business complicity with crimes against humanity, and the arbitrary and illegitimate detention of a social leader.

The 40th anniversary of Argentina’s last military coup on March 24 coincided with a visit by US President Barack Obama to our country. As a result, this commemoration and the fight for justice and truth took center stage on the national and international political agenda. After homage was paid to the victims with a floral offering tossed from the Parque de la Memoria memorial site into the River Plate – the body of water into which the “disappeared” were thrown from planes during the dictatorship – Argentine President Mauricio Macri referred to the era of state terrorism using elliptical formulas that equated state violence to that of armed political organizations. Even so, the relevance of this act at the memorial site, along with other public statements about the 40th anniversary of the coup and comments made by various national government officials on the continuity of the process of memory, truth and justice, expressed the new administration’s reaffirmation of public policies regarding crimes against humanity. That said, it is still too early to assess the effective implementation of this commitment.

Upon taking power, the government set in motion a reconfiguration of the Argentina’s economic and social model. Its first decisions – which included defunding the state through tax reductions for higher income sectors, economic and trade liberalization and international indebtedness, limits on access to pension coverage, and increased rates for public utilities and transportation – show a political economy orientation that has already had effects in terms of reduced purchasing power and the loss of tens of thousands of public and private jobs. As a consequence, in just a few months a transfer of income took place, pushing more than one million people toward poverty, according to private research on the first quarter of 2016, and increasing social inequality.

Four days after taking office, President Macri named two new acting justices to the Argentine Supreme Court in an attempt to get around the parliamentary and participatory mechanisms in place. However, when this move prompted an outcry by politicians of all stripes (including from his own governing coalition), he backtracked and took up the institutional process stipulated by Decree 222/03, sending the judges’ nominations to the Senate for approval.

Between December 11 and December 23, via three presidential decrees, the executive branch drastically reduced the role of the state in the regulation of the audiovisual media system. This reform of the Audiovisual Communication Services Law (LSCA in Spanish) endorsed the concentration of media ownership and transformed a regulatory scheme that had included mechanisms for social participation into one in which the executive branch and the market are the only actors with decision-making power. The way in which these decrees affect communication rights was laid bare by a wide range of organizations, including CELS, at an April 8th hearing before the Inter-American Commission on Human Rights (IACHR), where the government's representatives could not justify the reasons for this reform that affects pluralism and diversity and, therefore, democracy. On the pretext that the law had been poorly enforced – a problem we had flagged on numerous opportunities – and based on the promise of a future technological convergence, the executive branch produced legal and financial impacts in favor of the biggest media conglomerates that will last, even if the courts end up ruling that the reform is unconstitutional.

Meanwhile, other measures taken during the first months of the new administration undermine the implementation of the National Mental Health Law (LNSM in Spanish) – a piece of legislation that embodied the social struggle to put an end to grave human rights violations – given that both government actions and omissions reveal an agenda that is contrary to the law's inclusive paradigm. The Health Ministry froze its participation in the forums created under the law, and work by the interdisciplinary team that evaluates the situation of people with judicial cases under way to determine their legal capacity was also halted.

From 2003 to 2015, human rights were central to the public agenda, thanks to official support for reopening the process of justice for the crimes committed by the state terror regime, which organizations of human rights defenders had already helped achieve with numerous court rulings between 1998 and 2003 – which included the legal invalidity of the Final Stop and Due Obedience amnesty laws – and to public policies that expanded access to basic rights for broad segments of the population, namely those who had been the most harmed by Argentina's economic, political and social crisis in 2001-02. The 12-year period of Kirchnerist governments also ended with important pending matters in terms of the human rights agenda, related to the functioning of the security and penitentiary structures, for example, and access to land and housing.

Some fundamental decisions relating to the protection of human rights were not sustained with the same dedication over time or countrywide, and in certain cases they were eroded by subsequent measures. This was true, for instance, regarding the state response to social protest. In other cases, the weak institutional character of valuable public policies hindered their consolidation and continuity, as seen in the partial implementation of the audiovisual communications law and the precarious working conditions at some state agencies. At the same time, decisions that had great impetus at the start did not translate later into concrete actions, such as with the delayed National Action Plan for Prevention, Assistance and Eradication of Violence against Women and with implementation of the National Mechanism to Prevent Torture.

This Report on Human Rights in Argentina addresses events that occurred during 2015 and the first three months of 2016. In its ten chapters, we share our assessment and propose an agenda of reforms and decisions, some of which are urgently needed, to undo structural patterns that give rise to human rights violations.

## II

On January 16, 2016, Milagro Sala, a leader of the Tupac Amaru social movement in Jujuy province, was arrested. As a reprisal for the sit-in demonstration that Tupac was holding by setting up camp in the provincial capital's main square, the state prosecutor Mariano Miranda – appointed by the new governor, Gerardo Morales, upon taking office – initiated a criminal case that led to Sala's detention. He accused her and other Tupac leaders of instigating others to commit crimes and of sedition. Judge Raúl Eduardo Gutiérrez ordered that Sala be detained because through “exhortations” and “gestures” she had instigated a protest that obstructed transit to demonstrate against decisions made by the governor. According to this criteria, any person who participates in a social protest or convokes one could be deprived of his or her liberty.

Despite the clear arbitrary nature and illegitimacy of her detention, Sala was jailed for 13 days for having convened the encampment. On January 29 her release was ordered, but she still did not leave jail: Gastón Mercau, the same judge who had ordered her release, had already issued another arrest warrant three days before in a case initiated on January 15, in which Milagro Sala was accused of defrauding the state, extortion and criminal conspiracy, without proving any circumstance that justified her pretrial detention. The series of legal complaints and judicial decisions made during that time is riddled with irregularities – all of which served to harm Sala.

What happened in Jujuy is serious in itself and, as a precedent, is negative for the realization of fundamental rights: criminalizing protest is an illegitimate application of penal law that restricts democratic liberties. Governor Morales himself revealed that 60 complaints had been prepared for filing and would be staggered over time. Judge Mercau is father to the grandchildren of the president of Jujuy's Superior Tribunal of Justice (the provincial supreme court), Clara Aurora De Langhe de Falcone. As soon as Morales became governor, he increased the number of members of that tribunal from five to nine, just as former President Carlos Menem had done in 1990 with the federal Supreme Court. But on this occasion the move was made without even attempting to respect the basic rules. Two of the ruling party legislators who voted for this expansion were sworn in as judges of the Superior Tribunal the very next day. In addition, the province's chief prosecutor, Sergio Lello Sánchez (who was appointed by Morales after Jujuy's legislature modified the public prosecutor's office), appointed one specific person to serve as ad hoc prosecutor for all the cases that could be opened in the future against Milagro Sala – in clear violation of the procedures for assigning different prosecutors to cases as they arise. At the time of this Report's finalization, Sala had been incarcerated for more than 100 days.

The objective of these measures seems to be to destroy the social movement that Sala leads, which was excluded from all social benefits and subsidies – both at a provincial and national level – which the organization had used to respond to Jujuy’s major social problems that had gone unaddressed by the political system. In that context, the Cambiemos coalition, the Frente Renovador and the Justicialista (Peronist) Party all viewed Tupac Amaru as a grave threat to a political system that was consolidated without taking into account people’s needs. The harshness of the executive and judicial branches can only be understood as an attempt to rid themselves of the leadership that Sala built, based on the work done by the community-based organization that she heads. On a daily basis complaints are filed against the leader from Jujuy, for a variety of crimes, and they must be investigated. However, there are no procedural reasons that justify her pretrial detention during this process and, unfortunately, the political manipulation of the provincial judiciary means there is no guarantee that independent investigations will be carried out. The possibility that Sala could be convicted in one of these judicial cases does not make her detention any less arbitrary.

In these early days of the new national administration, the intention to discipline dissidence was also seen in the Security Ministry’s response to protests that affect vehicular transit. On February 16 that ministry released the text of a “Protocol for state security force action during public demonstrations.”

According to the Protocol, “public order,” “social harmony” and “unhindered transit” are superior values to those of physical integrity, the right to assemble and freedom of speech. Furthermore, the text does not prohibit the police who intervene in demonstrations from carrying or using firearms or lethal munitions, or from using rubber bullets to disperse crowds. In this way, it seeks to undo the “Minimum Criteria for Action by Police and Security Force Corps in Public Demonstrations,” established in 2011 by ministerial Resolution 210. These Criteria represented the best regulation of what the state must do and what it cannot do; the participatory process that gave rise to it began in 2002 after repressive episodes in which the security forces killed dozens of people. In 2015 (as had occurred starting in 2012), these principles were violated on several opportunities, for example, in October 2015 during the Gendarmerie’s repression of protesting workers from the Lear company near the Pan-American highway, and in August 2015 in the capital of Tucumán province – which adhered to the Criteria in 2011 – in a brutal crackdown on demonstrators just outside the government seat.

Soon after the new national government took office, on December 22 the Gendarmerie repressed a protest by workers from the Cresta Roja company who demanded to be paid their pending wages and that jobs not be cut. On January 8, 2016, in the city of La Plata (the capital of Buenos Aires province), the Buenos Aires provincial police repressed a protest by municipal workers who had been laid off. In both cases rubber bullets were deployed from a short distance – which can be lethal. This uncontrolled police performance during protests and the relative ease with which the government seeks to impose a new protocol can partially be explained by the fact that the Criteria from 2011 were never enshrined in law.

The legitimization of the violent resolution of social conflicts came a month later with the announcement of the new Protocol, which orders the breaking up of any protest that obstructs transit. In the days following the unveiling of the Protocol and its release to the media, while some important public demonstrations were taking place, Patricia Bullrich and Eugenio Burzaco – Argentina’s security minister and secretary, respectively – defended the new regulation in multiple interviews with journalists. Bullrich said that demonstrators would be given five minutes to retreat and, if they failed to do so, the police would remove them. However, by the time of this Report’s finalization, the Protocol did not have any legal standing: on February 24 and again on April 11, CELS asked whether it was in force and the ministry responded that it had not been signed but was rather “open to consultations.” Nevertheless, the official communication about the formal status of the Protocol continued to be confusing, which created uncertainty about the conditions for exercising the right to protest and about what faculties and prohibitions the security forces have during demonstrations. In this context, the deputy prosecutor general in the city of Buenos Aires, Luis Cevasco, ordered Resolution 25/FG/16, which interprets the Protocol as being in force and reaffirms its guidelines. The prosecutor general only recognizes the rights of “assembly” and of “petitioning the authorities” and sustains that this does not justify blocking roadways.

In Argentina’s history, streets, bridges and plazas are not only transit thoroughways but are also the scenario for popular manifestations. In our country and many others, as we have seen in recent years, occupying public spaces is one of the most widespread forms of protest among different sectors and social classes. This is part of democratic life and acts as a megaphone to expand the reach of people’s demands. Faced with such demands, governments can prioritize the political resolution of conflicts through non-repressive mechanisms or privilege “public order” with repression. For the government of the Cambiemos coalition, protests should be considered above all as a security problem and, therefore, the state’s first response to demands made on the street will be to send the police or other forces to disperse crowds.

### III

“Putting an end to drug trafficking” was one of the government’s three priorities announced during the electoral campaign, along with “Zero poverty” and “Uniting Argentines.”

To instill a climate of fear about the “advance of drug trafficking,” problems of great complexity have been simplified. This includes degraded police and security forces, networks that are dedicated to illegal businesses with state connivance or participation, the circulation of weapons, the deaths of poor youth that go uninvestigated, corrupt judicial officials who protect traffickers and criminalize drug users, and increased consumption of certain substances that have been declared illegal. For years, instead of carrying out an accurate assessment of these problems, politicians sustain that prohibitionism and criminalization will eradicate drug production, trafficking and consumption. Because drug use continues and the market expands,

more repressive policies are announced that don't achieve their stated results – and so then even more drastic measures are unveiled.

International experience shows that tougher approaches, militarization, the persecution of small-scale traffickers and users, and mass incarceration cannot fulfill the promise of “putting an end to drug trafficking,” but they do increase levels of violence, producing more damaging effects than what they seek to combat. In truth, the use of the term “scourge” is more appropriate for this obsession with repression than for any substance. Governments seem to be willing to weaken the rule of law and the enforcement of human rights, but not to review whether prohibitionism is an effective path for reducing the harm caused by the trafficking, sale and use of certain drugs.

The toughening of rhetoric and of policies to combat these drugs is not a novelty. As we analyze in Chapter 3 of this Report, in recent years various government jurisdictions, the judicial branch and sectors of the Catholic Church, among others, have sustained these positions. However, the current national government has taken troubling qualitative leaps forward in this sense. In January it decreed a “security emergency,” which deems drug trafficking to be the source of all problems and enables extreme measures to be taken: shooting down planes that do not identify themselves – which is a covert way of establishing the death penalty without trial – and granting new faculties to the Armed Forces. Some measures by previous governments had already weakened the boundary between defense and security matters in practice. These new steps imply a clear shift, since unconstitutional regulations were decreed that affect the principle of separation between these two spheres (which has been fundamental since the 1976-1983 dictatorship) and enable extremely grave practices that threaten the right to life.

This approach aligned Argentina with the model of “new threats” prescribed by the United States. A meeting between the Argentine security minister and authorities from the US Drug Enforcement Administration (DEA), just a few days after the security emergency was declared, along with the predominance of this subject in the agreements signed by the Argentine and US governments during Barack Obama's recent visit reaffirmed Argentina's adoption of that paradigm. This runs counter to the growing chorus of voices that questions the current drug control regime and is making itself heard in important spaces for international debate, such as the United Nations General Assembly Special Session on the world drug problem (UNGASS), held in April 2016.

The national “security emergency” was decreed on the heels of the poor official performance during a two-week-long prison break by three men who had been convicted of a triple murder related to narcotics trafficking. However, it did not consider that the reform, democratization and professionalization of security and prison structures were indispensable for the stated objectives or that they should be priorities in the government agenda.

The lack of democratization of the security forces and the penitentiary services is the source of the gravest human rights violations that continue to take place in Argentina. The corruption of many areas in these institutions and the violent practices they employ continue to be unresolved problems. In Chapter 5, we analyze the lethality of actions taken by the federal security forces and the Buenos Aires provincial police. The abusive and indiscriminate use of weapons must urgently be put to an end.

When a very troubling episode of institutional violence took place in the city of Buenos Aires early this year, the national government gave an alarming response. On January 29, members of the Gendarmerie charged with resolving a situation related to the sale of illegal drugs shot rubber bullets at a carnival troupe named Los Auténticos Reyes del Ritmo (The Authentic Kings of Rhythm), wounding children and adults in a slum settlement in the Bajo Flores neighborhood. Government officials' first reaction was to justify the violent action taken by the Gendarmerie and release a false version of what had occurred. Even weeks after the incident took place, the minister responsible for leading the security forces had given no clear message of condemnation.

In the country's prisons, the lack of reform and adequate checks on the penitentiary services perpetuates torture and ill-treatment as methods to govern the detainees. In Chapter 6 of this Report, focused on Buenos Aires province, we show how the flawed responses by broad sectors of the judicial branch and of the public prosecutors' office form part of the conditions that enable torture to persist in our prisons.

#### IV

In January 2015, the violent death of prosecutor Alberto Nisman shook the Argentine political landscape. Nisman had acquired a high profile internationally in the days prior to his death for formally denouncing then President Cristina Fernández de Kirchner for a supposed plan to cover up responsibility for the deadly 1994 attack against the Argentine Jewish Mutual Aid Association (AMIA) and the Delegation of Argentine Jewish Associations (DAIA). That combined with the opposition's use of this accusation and a previous political crisis exposed the ties between the intelligence system, the federal judiciary, certain politicians, some media outlets and various companies – which required that action be taken. This crisis also brought to the fore a fact that had become less visible over time but no less serious: the impunity over the 1994 attack. More than 20 years later, the cover-up maneuvers involved and the investigation's shortcomings explain why the victims, their families and the entire society still do not have the answers that the state is obligated to provide.

The government of Fernández de Kirchner announced in early 2015 an overhaul of the intelligence system that her late husband and predecessor, Nestor Kirchner, had committed to in 2005 – ten years earlier – before the Inter-American Commission on Human Rights. After a brief period of debate, the reform tended toward

the democratization of the intelligence system, an area of the state that, as we analyze in Chapter 4, has operated in an opaque and harmful way for institutions, with grave consequences for the realization of human rights. After the law was passed, only the first steps to implement it were taken, specifically its regimentation (or detailed regulation). The initial measures taken by the government of Cambiemos were not oriented toward deepening this indispensable reform of the political system's links to the intelligence services and the federal judiciary, but instead tended to perpetuate the worst practices. This can be seen in the appointment of officials without complying with (by the date of this Report's finalization) the mechanisms set forth by law and privileging personal ties over professional capabilities.

## V

Argentina's human rights movement was born out of resistance to the military government's policy of extermination in the late 1970s and early 1980s. Families of victims and survivors of various groups and organizations forged a social movement that first fought against the dictatorial violence and later to ensure that it was investigated and sanctioned, and to keep it from being repeated.

This movement's efforts to expose the system of enforced disappearances and their scope, nationally and internationally, and to hold to account those responsible is the path that we have tread. Along that path, we have expanded our work to include the human rights violations that occur in democracy, although not as part of a systematic plan. However, those crimes are also part of the present. Mónica Mignone – daughter of Emilio, one of CELS' founders and its president until 1998, and Chela, who was a member of our Board of Directors until her death in 2008 – was kidnapped in 1976 when she was 19 years old, and she remains disappeared (meaning her whereabouts were never discovered). In March 2016, as we were finalizing this Report, we presented our legal arguments in the trial that seeks to establish responsibility for her disappearance, and that of 788 others. It is likely that in 2017 there will be a verdict in this trial, more than 40 years after the fact.

As we concluded our legal arguments in the case, we repeated part of the testimony given by Vera Jarach, the mother of Franca Jarach, who was detained and disappeared at the age of 18, and which reflects in a piercing way our position about the justice process: "We know that truth, justice and memory are the best guarantees for *Nunca más* (Never Again). With our insistence upon memory, we try to ensure that these tragedies are not forgotten and that, on the contrary, they allow us to recognize the symptoms of repetition, since history teaches us that, regrettably, what happened once can repeat itself. My own life exemplifies this with the analogies of two personal histories. That of my maternal grandfather, who was deported and died in Auschwitz, and that of my daughter many years later in the ESMA (the School of Naval Mechanics): two emblematic concentration camps, gas chambers and death flights. There are no tombs, there are wounds that don't heal, and no mourning is possible. And many other similarities exist in terms of the ferociousness and

the will not only to kill, but to erase any trace. They did not achieve this last objective and they will not achieve it as long as we live and justice fulfills its mandate, leaving ethically indelible marks.”

The responsibilities of business people, the Catholic Church, judicial officials, media outlets and other civilian sectors are still little known and even less frequently sanctioned. In recent years some academic and journalist investigations, and to a lesser degree judicial ones, have begun to reveal the ways in which these sectors participated in the dictatorship’s crimes and also the extent to which many of them benefited from that complicity. Four decades after the coup, knowledge of these facts and the advanced age of those accused and of victims’ relatives accelerate the need to spur on investigations to be able to complete the judicial process to find out the truth and sanction those responsible. The executive branch’s support is indispensable in these cases, since the processes require a host of tasks that go beyond the judicial branch; among them, the systematization of information held by ministries and support for victims. However, many of these specialized offices have been dismantled or their operations paralyzed by the new government.

On March 24, 2016, tens of thousands of people flooded streets and plazas throughout the country, showing the strength of the commitment to memory, truth and justice on the part of broad sectors of Argentine society, beyond their ideological leanings or party ranks. This in itself is a triumph of social activism and mobilization. Human rights are not an agenda of the past, nor do they “run out” given what we have achieved regarding what happened 40 years ago. Their realization is at stake in the impact of criminal justice and security policies. In the consequences seen when the market prevails over the state and mercantile logic trumps that of rights. In the persistence of institutional violence in places of confinement. In respect for the right to work. In that the state and society prioritize the fight against all forms of violence against women. In the protection of the exercise of the right to protest. In all those areas and many others, the struggle for human rights continues.

\* This prologue was written by Gastón Chillier, the executive director of CELS. The author thanks Marcela Perelman and Ximena Tordini, members of CELS’ staff, for their input.