

After Dictatorship

Instruments of Transitional Justice in Post-Authoritarian
Systems

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Argentina: Nunca Más – The Long Road to Truth, Justice and Remembrance

1 The Experience of Dictatorship

There are good grounds for regarding Argentina as a country both used to crisis and with experience of dictatorship. Of the 35 Presidents who governed the country in the twentieth century, only ten came to power through free and fair elections. The transfer of power from an *elected* government to another *elected* government in the twentieth century was the exception rather than the rule. From 1930 to the end of the last military dictatorship in 1983, 16 of 24 Presidents were military Generals. Argentina has a tradition of coup d'état and *de facto* regimes. The political culture of the country has been marked by political violence (and partly still is). For many decades, the country's political parties, characterized by clientelism, have had limited success in channelling and redirecting political conflicts into parliamentary channels.

1.1 Relevant Period

The most recent military dictatorship in Argentina began with the army's coup d'état on 24 March 1976 and ended with the political and economic crisis that followed Argentina's defeat by the UK in the conflict over the Falkland/Malvinas islands. Democratic elections took place in October 1983 and on 10 December 1983 the responsibility for governing the country eventually passed into the hands of a civilian, Raúl Alfonsín, who had won the Presidential election.

1.2 Political Background

In order to understand the military dictatorship (1976–1983), the structure of conflict and the pattern of repression, it is essential to consider the country's earlier history.¹ In 1943 Juan Domingo Perón (1895–1974) took over the office of President and was one of the most charismatic and controversial personalities to hold that position. With his anti-communist and paternalistic social attitude, the *Caudillo* (leader)

Note: Translated by Kirsten Kearney.

¹ Sandra Carreras and Barbara Potthast, *Eine kleine Geschichte Argentinien* (Frankfurt am Main: Suhrkamp, 2013), 179–218.

was initially able to engage the support of indispensable social powers: the army, the Catholic Church and the workers. Perón's wife Eva ('Evita') was charismatic and deeply loved by the people until her death in 1952 from cancer. By the middle of the 1950s, tensions had escalated with the Church and the army and, after the 1955 military putsch, Perón had to flee into exile to Spain. His supporters were brutally persecuted by the military regime and the Peronist party was banned. Perón tried to continue leading the movement from within Spain. 1968 saw the emergence of the left-wing Peronist guerrilla organization, the *Montoneros*, which, from 1969 onwards, carried out acts of terror, abductions, and attention-grabbing political campaigns aiming to force the return of Perón. Partly due to their broad support in the general populace, the *Montoneros* were able to create wide-ranging clandestine structures and place demands on the government.

Within the context of this political violence, further guerrilla groups came into existence across the country, like the Trotskyist *Ejército Revolucionario del Pueblo* (Revolutionary People's Army; ERP), founded in 1970 in the mountainous northwest of the country. While the ERP was defeated by the army, the *Montoneros* only ceased their terrorist activities in 1973, when elections took place in which the Peronist party was also allowed to stand. Juan Perón was able to return to Argentina, and, after some political manoeuvring, retook the reins of power. However, in the meantime, Perón's political worldview had diverged some way from a considerable proportion of his left-wing Peronist supporters (in particular from the *Montoneros*). Disappointed, the left-wing of the *Montoneros* recommenced its armed struggle. The situation was further exacerbated in July 1974 when Perón died and his unfortunate third wife Isabel, who had been Vice-President up to this point, took on the Presidency. Political violence continued to increase. Around 200 of the *Montoneros* were killed by the *Alianza Anticomunista Argentina* (Argentine Anti-Communist Alliance; AAA), a right-wing extremist terrorist group partly supported by sources close to the government. People on the left were persecuted and students were forced to leave universities as the military gained influence over the academic sector across the country. The years of dictatorship were marked overall by massive political violence carried out on various sides. The President declared a state of emergency in November 1974 (which lasted until 1983) and appealed more and more to the military in order to control the political violence. It became obvious that she was not capable of leading the country by political means. Demands for her resignation became stronger. In his Christmas speech of 1975, General Jorge Videla, the commander-in-chief of the army, gave the President a three-month deadline.² When the putsch came on the 24 March, exactly three months after Christmas, it was not unexpected.

² Gerardo L. Munck, *Authoritarianism and Democratization: Soldiers and Workers in Argentina, 1976–1983* (University Park: Penn State University Press, 1998), 50.

1.3 Ideological Justification

The armed forces described their programme as *Proceso de Reorganización Nacional*, i. e. a process of reorganizing the nation. As they spelled out in the *Acta de Objetivos*, they wanted to put the nation back on a moral footing, to re-establish national security and to reform the economy. Therefore, they would create the conditions for a return to an ‘authentic, representative democracy’.³ The armed forces justified their behaviour by the fact that they saw their country as being in the grip of a civil war. According to the logic of the Cold War, the danger for the nation was from the presumed or actual ‘threat of communism’. To justify themselves, the armed forces drew upon the ‘Doctrine of National Security’ which was widespread in Latin America. This way of thinking regarded the internal and external security of a nation as being of the foremost importance in all matters of state. The military had applied the concept of a ‘state of war’ to the domestic sphere. Viewed through their eyes, every citizen could be a potential threat to national security. Therefore, it was the duty of the state to take (preventative) measures to put down any potential uprisings or revolutions. The logic of war, which originally was conceived of between nation-states, was carried over into domestic policy. To combat subversion, the units entrusted with these tasks were largely given a free hand. Therefore, massive limitations on civil rights could be justified (e.g. censorship, restrictions on the right of assembly and on freedom of expression). Even civil and human rights and the rule of law were subordinated to the higher goal of ‘national security’.⁴

1.4 Structures of Persecution

The military *Junta* consisted of the combined commanders-in-chief of the armed forces. They represented the visible centre of political power. Key positions were filled by members of the military and increasingly also by civilian sympathizers, so that in Argentina people often refer to a *dictadura cívico-militar*.

On an operational level, the persecution was organized decentrally. Argentina as a whole was divided into five zones, then further into subzones and *áreas*, each one under the command of specific armed forces or units.⁵ The repression can essentially

³ David Pion-Berlin, ‘The Fall of Military Rule in Argentina: 1976–1983’, *Journal of Interamerican Studies and World Affairs* 27/2 (1985): 55–76, 57.

⁴ José Comblin, *The Church and the National Security State* (Maryknoll: Orbis Books, 1979).

⁵ Accessed 11 April 2022, <https://www.mpf.gob.ar/plan-condor/estructura-represiva-argentina> for a breakdown of the territorial jurisdictions. These divisions were based on the political decisions of 1975 when the jurisdiction for the armed forces were established for the ‘fight against subversion’. See ‘Directiva del Comandante General del Ejército, No. 404/75’ in *Documentos del Estado terrorista*, ed. Rosa Elsa Portugheis (Buenos Aires: Ministerio de Justicia y Derechos Humanos de la Nación. Secretaría de Derechos Humanos, 2012), 15–107.

be traced back to the armed forces, the military police and the secret services. The ordinary police units were only partly involved. Often local police forces were instructed to pull out of certain areas and parts of cities, in the face of military operations. Actual repression was only occasionally carried out by uniformed forces. More often it was through the operations of task forces in civilian clothing using unmarked cars.⁶ The authorities did not even try to give their practices an appearance of legality through court-martials. Rather, the armed forces denied any connection with the arrests etc.

There were 762 secret detention centres and centres of torture across the country, where prisoners were held and generally experienced physical and psychological violence.⁷ Many of those abducted simply ‘disappeared’. There were no official executions based on any judicial (or court-martialled) sentences. Many corpses or sedated prisoners were thrown into the sea or into the Río de la Plata; numerous corpses were buried in mass graves or burned. Extrajudicial executions, arbitrary abductions and torture were part of day-to-day life. It is estimated that around 30,000 people were imprisoned for political reasons. For around 7,000 people, this imprisonment lasted longer than a month. Many people were placed under house arrest or only released from imprisonment under extremely limited conditions (*libertad vigilada*). As a direct or indirect result of this repression, around half a million Argentinians had to flee into exile.⁸

Within a short period of time the military had brought the country under their control and had instituted extreme censorship of the media. Individuals or groups who were politically opposed to the establishment were observed by the secret services.⁹ The very essence of civil society became more and more limited. The military regime intended to remove all possible breeding grounds for ‘subversion’. These measures were embedded in neoliberal economic reforms, which were only possible because the working class and the trade unions were no longer able to provide any resistance.

6 CONADEP – Comisión Nacional sobre la Desaparición de Personas, *Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas* ³(Buenos Aires: Editorial de la Universidad de Buenos Aires, 1984), 17–22.

7 Secret detention centres and centres of torture are listed here under https://www.argentina.gob.ar/sites/default/files/6_anexo_v_listado_de_ccd-investigacion_ruvte-ilid.pdf, accessed 11 April 2022, the report of CONADEP describes a further 340 of such centres. (CONADEP, *Nunca Más*, 54–78).

8 Peter John King, ‘Comparative Analysis of Human Rights Violations under Military Rule in Argentina, Brazil, Chile, and Uruguay,’ *Statistical Abstract of Latin America* 27 (1989): 1043–1065, 1062; exact data about the extent of political imprisonment and exile are not available. (cf. Silvina Jensen and María Lorena Montero, ‘Prisión política y destierro en la Argentina dictatorial: Materiales y preguntas para la construcción de nuevos objetos de estudio,’ *Izquierdas* 26 (2016): 99–122.

9 Veit Strassner, ‘“Falsos cristianos” – Die progressive Kirche Lateinamerikas in der Sichtweise ihrer politischen Gegner’, in *Religion als Ressource befreiender Entwicklung. 50 Jahre nach der 2. Konferenz des lateinamerikanischen Episkopats in Medellín: Kontinuitäten und Brüche*, ed. Margit Eckholt (Ostfildern: Grünewald, 2019), 99–120, 113–118.

The expression ‘State Terror’ was used early on to characterize the Argentinian military dictatorship. The concluding report of 1983 published by the National Commission on the Disappearance of Persons (*Comisión Nacional sobre la Desaparición de Personas*; CONADEP) – the truth commission put in place at the end of the period of dictatorship – uses the phrase *terrorismo de estado* multiple times throughout.¹⁰ This expression is still used officially to describe the years between 1976 and 1983.

The political scientist and philosopher of law, Ernesto Garzón Valdés, himself from Argentina, outlines the following characteristics of ‘State Terror’:

(i) The assumption that there is a ‘vertical war’ in which the enemy has infiltrated every level of society, often across national boundaries, with the aim of destroying the current values and systems. (ii) The abolition of the rule of law. (iii) The secret use of measures like torture and murder by state organizations and (iv) the indiscriminate usage of methods of violence to deprive people of freedom, property or even life. Often it has been unclear to the victims or to society who the perpetrators of these violent methods were. Using violence against innocent people strengthens the effects of the tactics of terror and repression.¹¹ Each of these aspects was present in the state terrorism of the Argentinian military dictatorship.

1.5 Victim Groups

The Argentinian military dictatorship’s most prevalent group of victims was, without a doubt, the *Detenidos Desaparecidos*, in terms of patterns of repression, public perception and human rights violations.

This refers to people who were arrested or abducted and whose traces subsequently vanished. The arrests were officially challenged, and the detainees frequently moved between detention centres so that their relatives found it nearly impossible to reconstruct their whereabouts. The human rights movement spoke of (and today still speaks of) 30,000 ‘Disappeared’. In Argentina ‘*Los 30.000*’ has become a set phrase, even if this number cannot be definitively proven. The Truth Commission CONADEP was created by the first democratic government after the period of military

¹⁰ The CONADEP (Truth Commission) was created immediately after Argentina’s return to democracy with President Raúl Alfonsín. It was tasked with clarifying the fate of the Disappeared. Its final report laid the foundation for all further reparation work. Even though in the overwhelming majority of cases the Commission was not able to provide clarity about the whereabouts of the Disappeared, it was able to shed light on the systematic persecution that took place. Further details are found in Section 2.10.1.

¹¹ Ernesto Garzón Valdés, ‘El Terrorismo de Estado (El problema de su legitimación e ilegitimidad)’, *Revista de Estudios Políticos (Nueva Época)* 65 (1989): 35–55, 38f. (‘El terrorismo de Estado es un sistema político cuya regla de reconocimiento permite y/o impone la aplicación clandestina, impredecible y difusa, también a personas manifiestamente inocentes, de medidas coactivas prohibidas por el ordenamiento jurídico proclamado, obstaculiza o anula la actividad judicial y convierte al gobierno en agente activo de la lucha por el poder.’).

dictatorship and documented 8,961 instances of the Disappeared. Despite this, Raúl Alfonsín, the first President after the dictatorship, admitted himself that it was very likely that these results actually represented more of an ‘open list’ than a definitive number.¹²

Workers and employees made up 48.1 percent of the Disappeared. 10.7 percent were academics, 21 percent students, 81.39 percent were aged between 16 and 35 years old. The CONADEP report does not refer to the potential political affiliations of any of the Disappeared. Many of them, however, belonged to the *Montoneros* or to left-wing Peronist groups or were active in Marxist groups. Other progressive forces were also represented: socially-engaged church groups and individuals also became the focus of repression. Even though there were women among the political activists of the 1970s, the proportion of women in the numbers of the Disappeared was especially high, at 30 percent. Around 10 percent of these women were pregnant at the time of their abduction.¹³ Some of these pregnant detainees were kept alive until the birth of their children: the children were subsequently adopted by members of the military or their collaborators or were registered under false identity as their own children. The situation was similar for small children who had been abducted with their parents. CONADEP registered 172 such cases, but the *Abuelas de Plaza de Mayo*, an association of grandmothers who have been seeking their lost grandchildren, put the figure of such illegal adoptions at closer to 500.¹⁴ The *Abuelas*’ search still continues today. In 2019 the identity and whereabouts of the ‘*nieto 130*’, i.e. the 130th. grandchild, was discovered. Although there existed a broad range of human rights violations in Argentina, the other victim groups (like people who had to flee into exile, former political detainees, people who had lost their jobs for political reasons etc.) played a much smaller role in the public discourse. The reasons for this are varied. In view of the fate of the Disappeared, many of the survivors deemed it inappropriate to demand their own status as victims and their own rights. At the same time, for many, their experiences of repression filled them with shame. Even society itself often did not extend them understanding and sympathy to the same extent.¹⁵

12 CONADEP, *Nunca Más*, 293.

13 CONADEP, *Nunca Más*, 294 ff.

14 CONADEP, *Nunca Más*, 299 ff.; Ruth Fuchs, *Staatliche Aufarbeitung von Diktatur und Menschenrechtsverbrechen in Argentinien: Die Vergangenheitspolitik der Regierungen Alfonsín (1983–1989) und Menem (1989–1999) im Vergleich* (Hamburg: Institut für Iberoamerika-Kunde, 2003), 115.

15 Veit Strassner, ‘From Victimhood to Political Protagonism. Victim Groups and Associations in the Process of Dealing with a Violent Past’, in *Victims of International Crimes: An Interdisciplinary Discourse*, ed. Thorsten Bonacker and Thomas Safferling (The Hague: Springer, 2013), 331–344.

1.6 Those Responsible

To a large extent, Argentinian State Terror was distinguished by concealment. The country was divided into zones that were under the control of different armed units. Alongside the individuals responsible at a political level, there were thousands of officers and lower ranks of all departments of the armed and security forces. In addition, police units, various police and military secret services and other state bodies were all part of the apparatus of repression.¹⁶

Political responsibility lay in the hands of the governing *Junta* and their generals and officers who led each of the individual zones and subzones. On an operational level, it is much more difficult to allocate responsibility due to the decentralized subsidiary structure of the repression apparatus. In this context, the figures provided by the human rights organization, the Centre for Legal and Social Studies (*Centro de Estudios Legales y Sociales*; CELS), at the end of 2017 about the criminal prosecutions of crimes committed against humanity are particularly illuminating.¹⁷

Of the 3,123 people who had been accused of crimes up until 2017, most of them (85 percent) were active or former members of the armed forces. 11 percent of those accused in the human rights process were civilians. Of these, the largest group were prison officers (21 percent) and civilians working for the secret services (22 percent). A further 10 percent of civilians accused of crimes were health system employees; 12 percent of those accused were people who passed off the children of the Disappeared as their own.

The trials against civilians reflected a general tendency to focus on those responsible for Argentinian state terrorism: after the end of the dictatorship the question of guilt was primarily directed to the armed forces. As years passed, the question was then raised as to what social and political circumstances enabled the coup d'état. The focus also moved onto other bodies which also bore responsibility for the crimes of the dictatorship. Within this context, those responsible within the Church, the business community and other civil agencies were also called into question.

1.7 Places of Persecution

The Argentinian repression was decentralized in its organization. The country was divided up into different geographical areas of responsibility under the armed forces and then further divided into subzones and *áreas*. This subsidiary structure of repression made it possible for the armed forces to effectively control the whole country.

¹⁶ María Soledad Catoggio, 'La última dictadura militar argentina (1976–1983): la ingeniería del terrorismo de Estado', in *Online Encyclopedia of Mass Violence* (2010), accessed 11 April 2022, http://www.massviolence.org/PdfVersion?id_article=485.

¹⁷ The statistics of the perpetrators, accessed 11 April 2022, <https://www.cels.org.ar/web/estadisticas-delitos-de-lesa-humanidad>.

The main targets of repression were the major cities and the universities. A significant number of human rights violations took place in Buenos Aires and its surrounding areas. Other cities like Córdoba were also impacted by the repression in distinctive ways. Rural areas such as the north-west of Argentina and especially the province of Tucumán were sites of numerous crimes due to the growth of guerrilla activities in the 1970s.

The system of repression extended to the whole of the country. Widely distributed across the land, even in the outlying Tierra del Fuego archipelago, were 762 *Centros Clandestinos de Detención* (secret detention centres; CCD), most of which were on sites owned by the provincial police, the army or the federal police.¹⁸ Some of these centres were notorious because an extraordinary number of people were imprisoned, tortured and murdered there. The most significant CCDs are *Escuela Mecánica de la Armada* (ESMA) or *El Vesubio* in Buenos Aires or *La Perla* in Córdoba.

1.8 The End of the Authoritarian Regime and Transition to Democracy

March 1981 represented a change of power at the top of the military *Junta*: Army General Videla handed over the presidency to General Roberto Viola (also of the army). This indicated a slight relaxation in political tensions. Informal work by political parties was tolerated, and there were the first attempts at dialogue with the reconstituted opposition. Elections were planned for 1984. The opposition made good use of the available room to manoeuvre. By mid-1981 the *Multipartidaria Nacional* was established, a multi-party opposition alliance that demanded a return to democracy. As a result of conflicts over direction within the *Junta*, General Viola, who had been open to dialogue, was replaced in December 1981 by General Leopoldo Galtieri, a hardliner. However, efforts to undo the developments were rendered useless. Protests could no longer be put down; the country was crippled by strikes. In an attempt to divert attention from their domestic political crises and to show their capacity to take action both internally and externally, the military decided to ‘re-conquer’ the Falkland/Malvinas islands. The islands had belonged to Great Britain since they were colonized in 1833, and Argentina had now laid claim to them once again. Initially their strategy appeared to be working. With an external enemy, i.e. Great Britain, in their sights, the internal conflicts faded into the background. Feelings of patriotism distracted from the crises in domestic policy. The regime had not reckoned, however, with the decisive action of the Thatcher government, which immediately sent naval forces to the South Pacific. Surprised by Britain’s defensive action, it quickly became clear that the Argentinian military operation had not been thoroughly

¹⁸ A list of detention centres ordered by regions, accessed 11 April 2022, https://www.argentina.gob.ar/sites/default/files/6_anexo_v_listado_de_ccd-investigacion_ruvte-ilid.pdf.

planned out and that neither the leadership nor the soldiers were actually ready for a real campaign of war.

The war ended after 72 days. It cost around 2,000 human lives and around 2 billion US dollars. However, for the armed forces it was more than a military defeat. In their most crucial area of expertise, that of leading wars and defending their country, they had failed. The lack of planning and very visible corruption put increased pressure on the political and moral legitimacy of the military government. The humiliating capitulation of the troops did not fit with the image of the heroic defenders of the Fatherland, as the armed forces liked to portray themselves. General Galtieri stepped down, the airforce and the marines removed their representatives from the *Junta* and the presidency passed to Army General Reynaldo Bignone, Argentina's fourth president within 16 months.

His attempts to control the transition process and steer it in the interests of the armed forces were unsuccessful.¹⁹ One of these botched attempts was the passing of the *Ley de Pacificación Nacional* (*National Pacification Law / Self Amnesty Law*, *Ley* No. 22.924) shortly before the elections.²⁰ This legal amnesty was intended to protect members of the military from possible criminal proceedings. On 30 October 1983, the human rights activist and lawyer Raúl Alfonsín won the presidential election with a narrow majority of 51.75 percent against the Peronist candidate Italo Luder. Power was transferred on 10 December 1983 – International Human Rights Day.

2 Transitional Justice

2.1 Political and Institutional Changes

The process of democratic consolidation began with the transfer of power to Raúl Alfonsín. In contrast to the other regime changes, the military had relatively little influence on the Argentinian transition process. Since they had been in a weakened position when they lost power, it was not possible for them to create enclaves where their power bases remained intact. For example, the government immediately expelled all the judges who had been installed during the military dictatorship from

¹⁹ Marcos Novaro and Vicente Palermo, *La Dictadura Militar 1976/1983: Del Golpe de Estado a la Restauración Democrática* (Buenos Aires/Barcelona/Mexico: Paidós, 2003), 461–484.

²⁰ Notes on the texts of the relevant laws: All the laws, decrees and orders outlined in this article are now available online. The texts are mainly found on the websites of the various government departments or agencies or on official webpages which deal with the most recent history of Argentina. The site maps change frequently so that the URLs are not definitive. It does not make sense therefore to use the URLs in the footnotes to direct to the text of the legal documents. It is more straightforward to look up the laws using the official number of the law or decree (if necessary, with the additional search criteria, 'Argentina').

the highest court in the land. Similarly, Alfonsín retired 50 generals.²¹ Further measures to reform the armed forces aimed to ensure civil supremacy over the military. For example, the role of the (civilian-led) Ministry of Defence was strengthened so that the influence of the (military) commanders-in-chief was more limited. In the same way, the role of the armed forces in security was limited and the defence budget was noticeably reduced.²²

Most significant was the reform of the *Código Militar*, the Code of Military Justice. Although human rights proceedings against members of the military should first be heard before the military courts, the ordinary civil courts had jurisdiction for appeals and in cases of procedural irregularities.

In the meantime, however, it was decreed that all proceedings had to take place publicly (Ley No. 23.049, Art. 7). The armed forces had to adopt these measures with immediate effect. The resulting build-up of frustration was expressed in the coming years in various military uprisings and in an increasing tension between civil society and the military.

Because of this, the normalization of relations between civic and military society played an important role in the politics of Carlos Menem, the Peronist successor to Alfonsín. It was clear that the troops' *esprit de corps* was particularly pronounced whenever they felt that the institutional interests of the armed forces were being threatened. At the start of Menem's period in power, the military were not yet subservient to civilian command. Nor did the Ministry of Defence appear to be the interface between the civilian government and the military. It was more dominated by clientelistic structures within the armed forces as well as personal connections with members of the civilian elite.²³

In the course of his time in power, Menem was nevertheless able to reform the armed forces, reducing the budget so that the number of troops was actually halved. He stressed the serious budget deficit, and therefore he was able to achieve through economic means the military reform that Alfonsín had not been able to push through using political means.²⁴ As Argentinian troops also took part in UN operations, the Ministry for Foreign Affairs also took on more importance for the armed forces.²⁵

Menem was therefore able to subordinate the armed forces to civilian control. He reacted strongly to infringements of rules and to insubordination. At the same time,

21 Elin Skaar, 'Argentina: Truth, Justice, and Reconciliation', in *Roads to Reconciliation*, ed. Elin Skaar, Siri Gloppen and Astri Suhrke (Lanham/Maryland: Lexington Books, 2005), 157–175, 161; Wolfgang S. Heinz, 'Militär und Demokratie', in *Argentinien. Politik, Wirtschaft, Kultur und Außenbeziehungen*, ed. Detlef Nolte and Nikolaus Werz (Frankfurt am Main: Vervuert, 1996), 225–240, 227.

22 Carlos Santiago Nino, *Radical Evil on Trial* (New Haven/London: Yale University Press, 1996), 81 f.; Rut Diamint, 'Streitkräfte und Demokratie', in *Argentinien nach Menem. Wandel und Kontinuität*, ed. Peter Birle and Sandra Carreras (Frankfurt am Main: Vervuert, 2002), 313–339, 336 f.

23 Diamint, 'Streitkräfte und Demokratie', 323–328.

24 Heinz, 'Militär und Demokratie', 233–234.

25 Diamint, 'Streitkräfte und Demokratie', 333 ff.

he met the armed forces halfway by extending wide-ranging pardons to those who had been sentenced for human rights violations. After the end of dictatorship, the military leadership abstained more from political life and showed no real ambitions for a renewed takeover of power, as had previously been the case throughout Argentina's history. It was therefore a learning process to accept their place under the civilian government and to acknowledge that the military did not make the political decisions, but instead was a means of carrying out the decisions made by a democratic government.²⁶

A clear symbol of this change came on the 28th anniversary of the putsch. For years human rights organizations had called for the removal of the portraits of the *Junta*-Generals Jorge Rafael Videla and Reynaldo Bignone from the *Colegio Militar*, the army's training college. The paintings hung there in a gallery of former directors. For years there was no discernible political will to fulfil this demand. However, in March 2004 President Néstor Kirchner told the Ministry of Defence that he intended to remove these portraits as an official act of government on the anniversary of the putsch. On 24 March, then, in the presence of Kirchner and the entire cabinet, General Bendini, the commander-in-chief of the army, officially removed these portraits. The fact that one of the most high-ranking officers in the military took down the paintings of the former holders of military power at the request of the President was widely regarded as a sign of the military's subordination to the civilian government. In the immediate aftermath it led to many controversies and tensions; e. g., five generals resigned their posts.

2.2 Prosecution

In terms of criminal prosecution for human rights violations, Argentina was a pioneer, at least within the Latin American context, as it brought those responsible for state terrorism before public courts in the so-called *Junta*-trials and sentenced the generals to long periods in prison.

This was made possible by the following varying factors: since the military had handed over power from a position of weakness, they hadn't just failed politically and economically. They were also discredited from a moral point of view and had even completely failed in the military field. As opposed to other countries like Chile or Brazil, there were no significant groups within the populace who still gave the armed forces meaningful backing. Rather, there was (and still is today) a wide-reaching societal consensus condemning the dictatorship. Even across the (party) political spectrum there were no influential supporters. There were no amnesty laws protecting the military from criminal prosecution. The legal amnesty that they

²⁶ Rut Diamint, *La historia sin fin: el control civil de los militares en Argentina*, *Nueva Sociedad* 213 (2008): 95–111, 104–107.

had put in place themselves (Self-Amnesty Law, Ley No. 22.924) had no political or moral legitimacy and therefore could easily be repealed. Parliament declared this law unconstitutional and therefore invalid. The law which repealed the Self-Amnesty Law (Ley No. 23.040) was the first law that President Alfonsín signed. In connection with this, he issued a decree that reopened the legal proceedings against the members of the first three military *Juntas*. This first step promised much, but the criminal prosecutions led to considerable problems, as the armed forces emerged in the coming years as having powerful vetoes, despite political will and favourable conditions for the prosecutions being in place.

2.2.1 Release of Political Prisoners

Politically-motivated arrests were not central to the Argentinian repression strategy, unlike in Chile and Uruguay. Therefore, after the dictatorship was over, the release of political prisoners did not play such a significant role. Most people who were still in prison on political grounds in 1983 were not legally convicted but rather had been held in custody during the state of emergency. In these cases, their imprisonment ended with the lifting of the state of emergency in the run up to the elections. When Alfonsín came to power there were only 117 people in prison on political grounds. Instead of issuing amnesties or pardons, Alfonsín referred these cases to the courts for review. These proceedings sometimes took months, so that the last political prisoners were not released until 1986.²⁷

2.2.2 The ‘Trial of the Juntas’ (1983 to 1985)

In his pre-election campaigning, President Alfonsín had promised to hold responsible those guilty of human rights violations. The work of CONADEP raised the already high expectations of the populace even higher (cf. Ch. 1.10.1). This was a moment in history that the Alfonsín government had to grasp. To avoid widespread trouble in the ranks of the armed forces, Alfonsín planned on limiting the range of accused persons and the timespan of the overall process. People should only be held responsible if they: (i) had either given the orders for the human rights violations or (ii) had carried these orders out ‘excessively’.²⁸ All others who were accused could say that they were acting under orders. Three days after he came to power, Alfonsín ordered the

²⁷ Veit Strassner, *Die offenen Wunden Lateinamerikas: Vergangenheitspolitik im postautoritären Argentinien, Uruguay und Chile* (Wiesbaden: Verlag für Sozialwissenschaften, 2007), 95–96.

²⁸ Raúl Alfonsín, *Memoria Política: Transición a la democracia y derechos humanos* (Buenos Aires: Fondo de Cultura Económica de Argentina, 2004), 35.

imprisonment of members of the first three military *Juntas*²⁹ as well as four guerrilla commanders.³⁰ In an attempt to avoid the appearance of victors' justice, Alfonsín opted to leave the proceedings to the military courts, in direct contradiction to his pre-election position. The armed forces were therefore given this opportunity to clean up their ranks. Previously, Alfonsín had had the *Código Militar* (Code of Military Justice) reworked; this proved to be a shrewd move. The military courts hesitated and delayed proceedings, so the civil courts, the *Cámara Federal de Apelaciones* (National Criminal Court of Appeals) in Buenos Aires, took over the cases in October 1984, as planned for in the reformed Code of Military Justice.³¹

After the failure of the strategy of self-purification, which was meant to avoid tensions, the process of legal prosecutions entered a new stage, which proved to have higher political costs for the government.

The proceedings took place in the public sphere; something which was unique in Argentinian legal history. As the CONADEP report had attested, the judiciary, which had been dormant during the dictatorship, now had the chance to prove their autonomy and their credibility. This new transparency gave the judgements a greater legitimacy. Around 50,000 demonstrators gathered on the streets of Buenos Aires during the first days of the hearings to lend their support. The *Juicios* lasted until December 1985; in total, 800 witnesses were heard during almost 500 hours of hearings. By way of 709 cases the prosecutors were able to prove that the *Junta* generals were responsible for systematic state terrorism. The members of the *Junta* – Videla and Massera – were convicted of murder, torture, false imprisonment, theft and coercion and were sentenced to life imprisonment; General Viola to 17 years in prison; Admiral Lambruschini to eight years and Brigadier Agosti to three years and nine months. The other four accused were released because of a lack of evidence.³² The population followed the whole process avidly. A weekly newspaper was established for the sole purpose of reporting on the proceedings. The newspapers printed witness state-

29 These were Generals Jorge Videla, Roberto Viola and Leopoldo Galtieri, Admirals Emilio Massera, Armando Lambruschini, Jorge Anaya and Brigadiers Orlando Agosti, Omar Graffigna and Basilio Lami Dozo.

30 Carlos H. Acuña and Catalina Smulovitz, 'Catalina, Militares en la transición argentina: del gobierno a la subordinación constitucional', in *Juicio, castigos y memorias. Derechos humanos y justicia en la política argentina*, ed. Carlos H. Acuña et al. (Buenos Aires: Ediciones Nueva Visión, 1995), 19–99, 51.

31 Nino, *Radical Evil on Trial*, 75–78.

32 Julio B.J. Maier, 'Die strafrechtliche Aufarbeitung von staatlich gesteuertem Unrecht in Argentinien', *Zeitschrift für die Gesamte Strafrechtswissenschaft* 107 (1995): 143–156, 146–147; Carlos H. Acuña and Catalina Smulovitz, 'Catalina, Guarding the Guardians in Argentina: Some Lessons about the Risks and Benefits of Empowering the Courts', in *Transitional Justice and the Rule of Law in New Democracies*, ed. A. James McAdams (Notre Dame/London: University of Notre Dame Press, 1997), 93–122.

ments, while proceedings were reported on television, even though there was no audio.³³

2.2.3 The Legal Proceedings against the ‘Excessive Perpetrators’

While it was relatively easy to identify those who had given the orders for violence and who bore political responsibility for state terrorism, it was a real challenge to define the groups of people who had carried out their orders ‘excessively’ and therefore, as Alfonsín intended, should also be punished. A first attempt as part of the self-purification process demanded by Alfonsín was that the armed forces were to submit a list of approximately 30 people from within their ranks that they saw as having carried out their orders with excessive violence and therefore whom they would accept as deserving sentencing. This was an attempt, on the one hand, to carry out the commitment that the government had made publicly, and, on the other, to avoid unnecessary trouble with the troops. They wanted to limit the number of trials and only punish the most extreme and well-known of the perpetrators.³⁴ This attempt failed, however, due to lack of cooperation from the military leadership. Alfonsín and his advisors nevertheless wanted to limit the number and length of the proceedings. They therefore planned that around 100 members of the military should be sentenced as an example.³⁵

This plan became questionable due to the results that came to light through the CONADEP and the public pressure that subsequently mounted. Among other things, the CONADEP concluded that no ‘excesses’ had taken place but rather that what normally would be regarded as extremely depraved and gruesome practices had become normalized during the dictatorship.³⁶

Even in the *Junta* trials it was stressed how essential it was to hold all the lower levels of the hierarchy to account.³⁷

The government, therefore, had a problem; its strategy was not working to bring swift justice to those responsible for state terrorism and to those excessively implementing orders so as to satisfy the population while not putting too much pressure on the civil-military relations. In the period leading up to August 1984, human rights organizations had already gathered 2,000 charges of human rights violations; CON-

33 Claudia Feld, *Del estrado a la pantalla: Las imágenes del juicio e los ex comandantes en Argentina* (Madrid: Siglo XXI Editores, 2002); Claudia Feld, ‘Memoria colectiva y espacio audiovisual: Historia de las imágenes del juicio a las ex Juntas Militares (1985–1998)’, in *La imposibilidad del olvido: Recordos de la memoria en Argentina, Chile y Uruguay*, comp. Bruno Groppo and Patricia Flier (La Plata: Al Margen/Bibliothèque de Documentation Internationale Contemporaine, 2001), 103–114.

34 Acuña and Smulovitz, ‘Catalina, Guarding the Guardians in Argentina’, 103–104.

35 Alfonsín, *Memoria Política*, 50.

36 CONADEP, *Nunca Más*, 481.

37 Fuchs, *Staatliche Aufarbeitung*, 81.

ADEP provided a further 1,087 cases to the judiciary. By the end of 1984 there were around 6,000 cases before the Argentinian courts, in which approximately 600 members of the armed and security forces were accused.³⁸

Initially, the military courts were responsible for hearing these cases; however, due to grounds for appeal or legal irregularities, these cases passed more and more to the civil courts. These courts properly investigated the cases and imposed life sentences. The unrest in the ranks of the armed forces increased, and with it the pressure on the government to hold to their original promises about the length and extent of the proceedings. The government was forced to find ways to limit the extent of the trials in order to avoid further unrest among the troops.

2.2.4 The Amnesty Laws (1986 to 1987) ending Criminal Prosecutions

Initially, the government tried to find an informal solution to reduce the number of cases against members of the military. Alfonsín gave instructions to the responsible military judges to draw on ‘acting under orders’ as a first line of defence in order to reduce the number of prosecutions.

After massive public protests, resistance within Alfonsín’s own party and threats from some judges to resign their positions, the government had to abandon this direction and try to find other solutions.³⁹

The *Full Stop Law* (*Ley de Punto Final*, Ley No. 23.492) passed on 23 December 1986 was meant to limit the time period in which cases for human rights violations could be registered. It limited suits to those filed within 60 days of the law’s enactment. Cases that had not been registered by the courts before the end of February 1987 could therefore not be submitted.

Exceptions to these restrictions came with indictment for punishable acts like falsifying documents, abductions and the concealment of children – offences linked to the theft of the children of the Disappeared. These exceptions later played an important role in the resumption of criminal prosecutions. Raúl Alfonsín later wrote in his memoirs that this law actually had a boomerang effect. They hoped that it would limit the number of prosecutions, at least in the two-month period of Christmas and the summer recess. However, the human rights movement worked flat out to register cases and prepare charges, and the courts suspended their summer recess so that before the deadline ran out in February 1987 more than 300 criminal charges had been

³⁸ Alexandra Barahona de Brito, ‘Truth, Justice, Memory, and Democratization in the Southern Cone’, in *The Politics of Memory. Transitional Justice in Democratizing Societies*, ed. Alexandra Barahona de Brito, Carmen González-Enríquez and Paloma Aguilar (Oxford: Oxford University Press, 2001), 119–160, 122.

³⁹ Kai Ambos, ‘Zur “rechtlichen” Struktur der Repression und strafrechtlichen Vergangenheitsbewältigung in Argentinien: Ein Kommentar aus juristischer Sicht’, in *Vergangenheitsbewältigung in Lateinamerika*, ed. Detlef Nolte (Frankfurt am Main: Vervuert, 1996), 86–95, 91–92.

filed against high-ranking military officers.⁴⁰ The judiciary therefore expressed their independence and their desire to bring forward criminal trials for human rights violations. The goal of the *Ley de Punto Final* completely backfired.

Unrest amongst the troops increased even more and culminated in quite a few rebellions among officers. The most significant were the Easter Uprisings of the *Carapintadas* (Painted Faces), a group of young officers who occupied a barracks near Buenos Aires. Many members of the military expressed their sympathy and support. The situation across the country became incredibly tense. Thousands of those who feared for the fledgling democracy assembled in front of the *Casa Rosada*, the seat of government in Buenos Aires. Alfonsín himself undertook personal negotiations with the *Carapintadas* and was eventually able to bring the uprising to an end.⁴¹

Even though he did not accept that he had made concessions to the armed forces, the military uprisings and threats of a further putsch could be seen as reasons why the Alfonsín government was trying to limit criminal proceedings again through an additional law. One month after the uprisings, Alfonsín brought a plan for the *Law of Due Obedience* (*Ley de Obediencia Debida*, Ley No. 23.521) to the parliament.

This was hotly disputed in parliament before it came into law on 4 June 1987. This law spelled out a legally binding, broad interpretation of the concept of ‘acting under orders’. Anyone who was not in charge of at least one of the military subzones was able to claim that they were acting out of due obedience, i.e. obeying orders from their superiors.

This justification made it impossible to pursue convictions. The law defined that all live cases whose defendants fulfilled the relevant criteria would immediately be concluded without due legal process. Exceptions to this ruling included cases involving rape, child abduction, falsifying children’s identity documents and offences that led to appropriation of wealth. This law eventually brought the desired limitation on the number of prosecutions. The use of the Full Stop Law had already reduced the number to 450. After the Law of Due Obedience only 100 cases remained, a number further reduced during the course of the hearings so that eventually only 18 charges were pursued.⁴²

Nevertheless, further tensions resulted within the armed forces, who felt that they had been publicly slandered without reason.

2.2.5 Amnesties for the Convicted Military (1989 to 1991)

In 1989 the Peronist Carlos Menem took over the presidency. This was the first time in the history of Argentina that there was a constitutional handover of power from one

⁴⁰ Alfonsín, *Memoria Política*, 53; Acuña and Smulovitz, ‘Catalina, Guarding the Guardians in Argentina’, 107.

⁴¹ Nino, *Radical Evil on Trial*, 95–100.

⁴² Diamint, ‘Streitkräfte und Demokratie’, 319.

elected president to another elected president who was a member of a different party than his predecessor. The greatest political challenges of his first years in power were the struggles with economic crises, which accompanied a period of hyperinflation. A further burden was the constant sabre-rattling of the discontented military, which had also plagued the last few months of his predecessor's term. While Alfonsín was prepared to hold an intensive debate about the past, Menem underlined the necessity for 'national reconciliation', or rather for 'pacification.' According to Menem, the nation should now look forward and let the past be the past. To shore up this rhetoric of reconciliation with action, Menem made widespread use of his presidential power of pardon. The vast majority of those he pardoned were members of the armed forces and civilians who had faced disciplinary action in terms of the 'war against subversion.' He also pardoned people who had been involved in the military uprisings and attempted coups of 1987 and 1988.⁴³ The pardons were the subject of harsh criticism: according to questionnaires, approximately 80 percent of the population disagreed with the pardons. There was no societal support for these decisions and the majority of Argentinians could not understand why they were taking place.

Despite numerous mass gatherings, Menem continued his policy of pardons.⁴⁴ At the beginning of 1991 he even pardoned the four generals who had been sentenced to long-term imprisonment during the *Junta* trials. Thus, the final members of the military sentenced under Alfonsín regained their freedom. This period of amnesty also ended the few remaining live legal proceedings. Menem's amnesty strategy not only brought the criminal proceedings to an end, it actually thwarted the efforts of the previous government to allow criminal prosecutions for human rights violations. Menem created circumstances under which the armed forces became more and more subordinate to the civilian government and even tolerated budget cuts under the auspices of 'structural reforms'.⁴⁵

2.2.6 The Resumption of Criminal Prosecutions (mid-1990s onwards)

With the amnesty laws of Alfonsín's government and the pardons of Menem's period in power, every possibility of criminal prosecution seemed to be cut off. In the first half of the 1990s, dealing with the crimes of the dictatorship played a minor role in Argentinian public life. Free market liberalization and privatization were proving

⁴³ Ambos, 'Zur "rechtlichen" Struktur der Repression', 93; Acuña and Smulovitz, 'Catalina, Guarding the Guardians in Argentina', 109–110.

⁴⁴ Nino, *Radical Evil on Trial*, 104; Elisabeth Jelin, 'The Politics of Memory: The Human Rights Movement and the Construction of Democracy in Argentina,' *Latin American Perspectives* 21/2 (1994): 38–58, 49.

⁴⁵ Michael Radseck, 'Das argentinische Militär: Vom Machtfaktor zum Sozialfall?', in *Argentinien heute. Politik – Wirtschaft – Kultur*, ed. Klaus Bodemer, Andrea Pagni and Peter Waldmann (Frankfurt am Main: Vervuert, 2002), 83–103, 98.

successful. These were years of economic upturn. The Argentinian Peso was pegged to the Dollar and gained a respectable purchasing power. Argentinians fully exploited the opportunity to consume and travel. Menem's strategy of leaving the past behind and instead focusing on the future seemed to be working. Nevertheless, relatives of the victims along with human rights organizations continued to explore ways to resume criminal prosecutions. The first fruits of these efforts became apparent from the middle of the 1990s as the topic gained renewed attention due to the uncovering of horrific revelations in the context of the 20th anniversary of the putsch. (cf. Chapter 2.13).

(i) *Juicios por la Verdad*: Truth Enquiry Processes (1995 onwards)

The *Centro de Estudios Legales y Sociales* (CELS) is a renowned human rights organization with headquarters in Buenos Aires. It has a powerful legal department with ingenious lawyers. In the middle of the 1990s, the CELS demanded that the judiciary undertake further investigations into the cases of two women who had been forcibly disappeared (both daughters of leading members of the CELS). They called on the *Derecho a la Verdad*, the right of relatives (and society) to clarity and knowledge of the truth. They argued that while the amnesty laws might exclude the punishment of those responsible, it did not remove the duty of the courts to fully clarify what had taken place, even if such legal investigations would not result in the punishment of the perpetrators. It was the job of the judiciary to give relatives the right to find out about the circumstances surrounding the Disappearance of their loved ones and where their remains lay. In this way, relatives could begin a proper process of grieving.⁴⁶

This was not an appeal against the legitimacy of the amnesty laws. It called into question how far the duty of the court extended to conduct investigations, regardless of any possible conviction of those guilty. The CELS drew on the arguments of the Inter-American Court of Human Rights in Costa Rica, which had already forced other countries to provide full details of the fate of their so-called 'Disappeared.' In the case of the proceedings that were hard fought by the CELS, the court recognized in the first instance the principle of the 'Right to Truth,' which was not impacted by the provisions of the amnesty laws. The same court, however, ceased proceedings when the armed forces refused to provide any information about the whereabouts of Disappeared people. An appeal against this outcome was rejected by the highest court. The CELS then filed a complaint with the Inter-American Court of Human Rights that the State of Argentina was breaching the *Convención Americana sobre Derechos Humanos* (The American Convention on Human Rights). As this complaint was accepted and a conviction looked likely, Menem's government tried to come to an out of court settlement with the plaintiffs. An agreement was

⁴⁶ Fuchs, *Staatliche Aufarbeitung*, 124 ff.

reached in November 1999 that the complaint would be withdrawn and the State of Argentina would in turn guarantee the right of the relatives to information and that all efforts would be made to clarify the fate of the Disappeared. In this arrangement, an explicit right to truth that did not fall under this statute of limitations was recognized. Regulations for due process and for judicial responsibility were also clarified. At least two specialized prosecutors should also be appointed to advise and support the investigative courts.⁴⁷

Even though the process of truth discovery did not make actual criminal prosecutions possible, it did contribute towards opening up space for legal investigations to begin again and to fulfilling the need for relatives to have clarity. It also created political and societal pressure. The human rights organizations had to fight hard to win this development against the embittered resistance of the government. As a result, many federal courts initiated processes of truth discovery; however, the armed forces refused to cooperate – in some cases, members of the military were even accused of perjury.⁴⁸

(ii) International Criminal Prosecutions

The human rights movement also raised political pressure to act in accordance with prosecutions that took place in other countries. Among the ranks of the Disappeared were some foreigners and some Argentinians of joint nationality, which introduced the possibility of taking judicial steps in other countries as well. For example, by 1983 Italy had already initiated proceedings into the cases of several of the Disappeared who were Italian nationals, while in France prosecutions over the whereabouts of two French nuns who had been forcibly Disappeared in Argentina took place. The Spanish investigating magistrate Baltasar Garzón, responsible for the arrest of the Chilean dictator Augusto Pinochet in 1999 in London, investigated the disappearance of 320 Spanish citizens. President Menem criticized these proceedings as interfering in the internal workings of a sovereign state, refused extradition orders and issued a decree forbidding Argentinian authorities from cooperating with the Spanish judiciary (Decreto 111/98). Internationally, Menem was coming under more and more pressure to account for his human rights and legacy policies. This became

⁴⁷ CELS, *Derechos Humanos en la Argentina. Informe anual enero – diciembre 1998* (Buenos Aires: Centro de Estudios Legales y Sociales, 1999), 70–88 and CELS, *Derechos Humanos en Argentina. Informe anual 2000* (Buenos Aires: Centro de Estudios Legales y Sociales, 2000), 39–51; re. the case of Carmen Aguiar de Lapacó see: Comisión Interamericana de Derechos Humanos, Informe No. 21/00. Caso 12.059 Carmen Aguiar de Lapacó, 29 February 2000, accessed 11 April 2022, <https://www.cidh.oas.org/annualrep/99span/Soluci%C3%B3n%20Amistosa/Argentina12059.htm>.

⁴⁸ Estela Schindel, 'Verschwunden, aber nicht vergessen: Die Konstruktion der Erinnerung an die *Desaparecidos*', in *Argentinien heute. Politik – Wirtschaft – Kultur*, ed. Klaus Bodemer, Andrea Pagan and Peter Waldmann (Frankfurt am Main: Vervuert, 2002), 105–134, 115–116.

especially apparent during state visits, e. g. in 1998 to France and Sweden.⁴⁹ In the domestic policy sphere, pressure was also increasing as the prosecutions abroad cast light on the practices of impunity and the refusal to pursue legal reparations at home. Despite international pressure, the subsequent governments also held to this position. In 2001 President Fernando de la Rúa declared by decree (Decreto 1581/2001) that requests for legal assistance, including extradition orders that related to the time of the dictatorship, were to be denied. However, this decree (Decreto 420/2003) was overturned in 2003 during the presidency of Néstor Kirchner. His government therefore showed willingness to support judicial proceedings both at home and abroad.⁵⁰

(iii) Prosecutions for Child Abduction (1996 onwards)

The barristers representing the *Abuelas de Plaza de Mayo*, the association of grandmothers who were seeking their lost grandchildren, instituted criminal proceedings for child abduction at the end of 1996 against the *Junta* generals Jorge Videla and other members of the army. These offences were explicitly excluded from the amnesty laws passed during the Alfonsín government. The prosecution was able to prove that there was a systematic plan behind the practice of abducting children and newborns as well as the falsification of their identity documents and their subsequent adoption by foreign families. They were also able to prove that the highest ranks of the military bore responsibility for this plan. On this basis, General Jorge Videla was convicted in July 1998 as being indirectly responsible on five counts and was sentenced to ten years' imprisonment. The punishment was, however, swiftly transmuted to house arrest, since Videla was already 70 years old. This judgement was also very significant from another perspective: the presiding federal judge classed these proceedings for the first time as 'crimes against humanity,' meaning, therefore, that they were offences that could not be granted amnesties or come under a statute of limitations.⁵¹

As a result of this judgement, in following months and years around a dozen high-ranking military were sentenced to jail terms. After the amnesty laws and the pardons, these were the first judgements in almost a decade in Argentina that dealt with the crimes of the dictatorship. They showed that criminal prosecutions were still possible. It was only the persistent and untiring work of the victims and their legal teams that made this development possible – in the face of resistance from the State.

⁴⁹ CELS, *Derechos Humanos en la Argentina 1998*, 21.

⁵⁰ Verónica Torras, Luz Palmás Zaldúa and Marcela Perelman, *Memoria, verdad y justicia como política de Estado: Análisis de políticas públicas implementadas durante los gobiernos kirchneristas (2003–2015) respecto de los delitos de lesa humanidad ocurridos en la última dictadura argentina* (Friedrich Ebert-Stiftung Argentina, Análisis No. 11–2016/Septiembre 2016), 10.

⁵¹ CELS, *Derechos Humanos en la Argentina 1998*, 88–103.

(iv) The Lifting of the Amnesty Laws (1998, 2003 and 2005)

The Inter-American Court of Human Rights in Costa Rica had already declared in 1992 that the amnesty laws were irreconcilable with the human rights conventions by which Argentina was bound.⁵² Despite this, in view of the widespread silence in society about their most recent past, the government was able to ignore this. However, once legacy issues began to appear more on the societal, judicial and political agenda from the middle of the 1990s, this could no longer be ignored. In 1998, the opposition brought forward a bill that would abolish the amnesty laws. This would enable the criminal proceedings against 1,180 people who had profited from the amnesties being reopened. This initiative created widespread political and judicial debate about the morality and admissibility, as well as the dangers, of such a step. The first parliamentary initiative failed. Further attempts followed. There was also discussion around whether an annulment or a derogation of the laws made more sense. An annulment had a retroactive function – this would mean that the law and all its legal consequences would be declared null and void. A derogation, on the other hand, would leave all the legal consequences of the repealed law up to the point of the derogation unaffected and would simply affect future cases.

On 24 March 1998, the 22nd anniversary of the putsch, after a long debate in parliament, a decision was eventually made in favour of a *derogación* of both amnesty laws (Ley No. 24.952). The human rights movement was disappointed by this purely symbolic decision, as the concluded proceedings could not be reopened anyway.⁵³ The changed attitudes towards the past shown by the government of Néstor Kirchner led to the annulling of both amnesty laws by parliament in 2003. This law (Ley No. 25.779) made it possible to reopen the proceedings that had been halted at the end of the 1980s. At the same time, there was much judicial and legal political controversy around this decision. Clarity was eventually reached in June 2005 when the Supreme Court declared that both amnesty laws had been invalid and unconstitutional. At the same time, law Ley No. 25.779, passed in 2003 and annulling the amnesties, was declared constitutional.⁵⁴

(v) Institutional Support of Legal Proceedings

With the resumption of the judicial investigations, numerous practical and organizational problems became apparent, which made the proceedings more difficult. For this reason, during the Presidency of Néstor Kirchner, and later of his wife Cristina

52 Comisión Interamericana de Derechos Humanos, Informe No. 28/92, VI, 1: ‘las Leyes No. 23.492 y No. 23.521 y el Decreto No. 1002/89 son incompatibles con el artículo XVIII (Derecho de Justicia) de la Declaración Americana de los Derechos y Deberes del Hombre y los artículos 1,8 y 25 de la Convención Americana sobre Derechos Humanos.’

53 Straßner, *Die offenen Wunden Lateinamerikas*, 116–117.

54 María José Guembe, ‘Reopening of Trials for Crimes Committed by the Argentine Military Dictatorship’, *Sur – International Journal on Human Rights* 3 (2005): 115–131.

Kirchner, a number of measures were taken to accelerate judicial investigations and to respond to practical problems. For example, a support facility was set up at the public prosecution service to assist the individual courts in order to speed up the process. Witness protection programmes were established, guidelines for conducting judicial investigations were drawn up, additional personnel resources made available, etc.⁵⁵ Overall, these measures were aimed at supporting judicial investigations, responding to practical problems and, overall, advancing the process of the legal proceedings.

2.2.7 Further Legal Policy Measures

In 2003, the Kirchner government decided to ratify the international ‘Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity’ and thus – also retrospectively – to suspend any statutory limitations for crimes that had already been committed. This legal treaty, signed by Argentina in 1995 but not ratified by its parliament, received constitutional status with the approval of the Chamber of Deputies in December 2003.⁵⁶

As a consequence of the experiences with the amnesty laws of the Alfonsín government and the pardons of the Menem government, the parliament passed Ley No. 27.156 in 2015, which stipulated that crimes against humanity, genocide and war crimes cannot be the subject of amnesties or pardons under any circumstances. The derogation of the *Código Militar* in 2008 can be seen as a further legal and political milestone. Ley No. 26.394 dissolved military jurisdiction and the members of the armed forces were placed under ordinary jurisdiction.

2.2.8 Criminal Legal Proceedings – an Interim Review

Following the resumption of prosecutions, once the amnesty laws had been annulled and declared unconstitutional, the first judgement in a human rights trial was handed down in 2006. According to the state prosecutor’s office, by the end of September 2020 the number of trials for crimes against humanity had risen to 597. A total of 3,329 people were charged with serious human rights violations. Judgments had been pronounced in almost 997 cases by September 2020. Because of their old age, however, the majority of jail sentences were transmuted to house arrest. 162 people were acquitted.⁵⁷ The average length of proceedings up to the pronouncement of

⁵⁵ Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 11–14.

⁵⁶ Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 10.

⁵⁷ Accessed 11 April 2022, <https://www.fiscales.gob.ar/lesa-humanidad/argentina-llega-a-las-casi-mil-personas-condenadas-por-haber-cometido-delitos-de-lesa-humanidad-durante-el-terrorismo-de-estado>.

the verdict, including possible appeals and revisions, was around 5.3 years, which underlines the complexity of the investigations.⁵⁸

The judicial investigations were also extended to crimes that had taken place before the actual coup but that were directly related to it (such as murders committed by the *Alianza Anticomunista Argentina*). The transnational dimension of human rights violations by the military dictatorships in southern Latin America was also examined in connection with the investigations into *Plan Cóndor* (Operation Condor).⁵⁹

Moreover, the perspective of judicial investigations has broadened in recent years. While at the beginning it was primarily about the guilt of the military, the question came more to the fore of the responsibility of non-military agents (such as priests, doctors, etc.) and also of economic agents.⁶⁰

2.3 The Replacement of the Elites

2.3.1 Elite Exchange under the First Democratic Government

There was an automatic change of the political elite as the military stood down from power. The political parties that had been operating in secret for years used the period of the political relaxation of the authoritarian regime to reorganize themselves. After the presidential elections, the most important offices were filled from among their ranks. Immediately after taking office, President Alfonsín dismissed all the judges of the *Corte Suprema de Justicia*, the Supreme Court, as they were judges who had been appointed by the military. Alfonsín also retired 50 generals. The fundamental exchange of elites was thus initially carried out in the judiciary and within the armed forces.⁶¹

2.3.2 Controversies over the Promotion of Officers

Even though a number of generals had been retired as part of the transition to democracy, there were numerous people in the ranks of the armed forces and security services who had been involved in human rights violations. Many continued to serve there and built careers within the military hierarchy. From the very beginning of democratization, the human rights movement was concerned that such members of the

⁵⁸ Accessed 11 April 2022, <https://www.infobae.com/politica/2020/03/24/a-44-anos-del-golpe-de-estado-suman-968-condenados-por-delitos-de-lesa-humanidad>.

⁵⁹ Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 15.

⁶⁰ Luz Palmás Zaldúa et al., 'Las políticas de memoria, verdad y justicia a cuarenta años del golpe', in *Derechos humanos en la Argentina: Informe 2016*, Centro de Estudios Legales y Sociales (CELS) (Buenos Aires: Siglo veintiuno editores/CELS, 2016), 25–56, 33–49.

⁶¹ Skaar, 'Argentina', 161; Heinz, 'Militär und Demokratie', 227.

military were being promoted. Calls for bodies to be created to prevent such promotions continued to be ignored by the ruling government.

As soon as it became known through the press that officers were to be promoted or entrusted with special tasks, the human rights organizations searched their archives for information on the people concerned and presented this to the government and Congress – unsolicited, as they were the agencies involved in such promotions. The human rights movement tried to underline the contradictions involved in appointing these officers and the reservations that they had.

Since 1993, the parliamentary commission responsible for matters of promotion regularly asked CONADEP and the two human rights organizations, the Permanent Assembly for Human Rights (*Asamblea Permanente por los Derechos Humanos*; APDH) and CELS, to search their archives to find out about the history of the officers to be promoted. This was the first formalized, i.e. institutionalized, involvement of civil society bodies in the promotion process. The responsible agencies within the Ministry of Defence have also followed this practice since 2003.⁶² Thus, almost two decades after the end of the dictatorship, an important contribution was made to the democratization of institutions – in particular of the armed forces.

2.4 Reparations

As early as 1984, CONADEP suggested in its final report that victims of state terrorism should be compensated. In addition to financial compensation, the commission proposed the establishment of scholarship and work programmes as well as psycho-social support for relatives.⁶³ The compensation policy of subsequent Argentinian governments, however, focused primarily on financial measures.⁶⁴

2.4.1 Immediate Measures for Victims of Work Bans etc.

Shortly after the end of the dictatorship, several laws were passed concerning employment law for people who had been dismissed for political reasons or who had been subjected to other sanctions.⁶⁵ In 1984, for example, Ley No. 23.053 regulated the return of persons from diplomatic service overseas who had been refused

⁶² Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 19f.

⁶³ CONADEP, *Nunca Más*, 477f.

⁶⁴ Ana Guglielmucci, 'Transición política y reparación a las víctimas del terrorismo de estado en la Argentina: algunos debates pendientes', *Taller: Revista de Sociedad, Cultura y Política en América Latina* 4/5 (2015): 24–42; María José Guembe, 'Economic Reparations for Grave Human Rights Violations', in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 21–47.

⁶⁵ Guembe, 'Economic Reparations', 23f.

entry for political reasons. In the same year, Ley No. 23.117 regulated the reintegration of workers into public companies who had been dismissed for political or trade union activities. In the following years, similar regulations were made for teachers (Ley No. 23.238) and for bank employees (Ley No. 23.523). In September 1985, Ley No. 23.278 regulated the crediting of periods of forced unemployment due to political reasons towards pension entitlements.

2.4.2 First Compensation for the Victims of the Disappeared (1986)

Following the recommendations of CONADEP, parliament passed its first compensation law at the end of 1986 (Ley No. 23.466), which granted the spouse or long-term partner of the Disappeared a pension amounting to 75 percent of the minimum wage. Children of the Disappeared were to receive the same amount up to the age of 21.⁶⁶ This compensation measure, which was very modest from the point of view of those affected, only took into account the immediate relatives of the Disappeared. Other groups of victims did not receive any compensation.

2.4.3 Exemption from Military Service for Relatives of the Disappeared (1990)

Because of their traumatic experiences, the relatives of the Disappeared had long demanded that they be exempted from military service. They referred to psychological tension, mental cruelty and discrimination. In September 1990, a law (Ley No. 23.852) was passed that exempted the children of the Disappeared from military service. President Menem initially blocked this law because it represented a special privilege for a specific group of people. The armed forces were also critical, claiming that the law expressed an anti-military stance and was based on unproven claims (namely that the armed forces were responsible for the Disappearances).⁶⁷ The president's veto, however, could be overruled. With the abolition of compulsory military service in 1995, this law lost its meaning.

2.4.4 Compensation for Former Political Prisoners (1991)

Shortly after the end of the dictatorship, numerous former political prisoners filed civil suits against the Argentinian state to assert their claims for damages. Although

⁶⁶ Diana Conti, 'La democracia y su respuesta a las violaciones a los Derechos Humanos el pasado', *Hechos y Derechos*, 8 (2001): 57–70, 62.

⁶⁷ Patricia Valdéz, "'Tiempo Óptimo' para la Memoria", in *La imposibilidad del olvido. Recorridos de la memoria en Argentina, Chile y Uruguay*, comp. Bruno Groppo and Patricia Flier (La Plata: Al Margen/Bibliothèque de Documentation Internationale Contemporaine, 2001), 63–82, 67.

many of these complaints received positive decisions in the first instance, they failed before higher appeals bodies. Finally, the Supreme Court ruled that the deadline for asserting such claims had expired and that further civil claims were no longer permissible. After the legal process in the country itself was exhausted, around 270 former political prisoners turned to the Inter-American Human Rights Commission (*Comisión Interamericana de Derechos Humanos*; CIDH) in Costa Rica. When it became apparent that Argentina would be obliged to pay compensation, the government initially reached an out-of-court settlement with the plaintiffs. However, when Argentina faced the threat of a renewed summons to the CIDH because the passage of the relevant compensation laws was delayed, President Carlos Menem regulated the compensation of former political prisoners in a decree in January 1991 (Decree 70/91).

This decree provided for compensation of around 75 US dollars per day of imprisonment; special payments in the event of particularly serious injuries and ill-treatment were also provided. However, this compensation decree did not apply to all former political prisoners, but only to those who had filed a civil complaint within two years of the end of the dictatorship. Only 277 people fulfilled the conditions set out in the decree. The vast majority of former prisoners were therefore excluded from compensation. The *Subsecretaría de Derechos Humanos* was commissioned to implement this regulation. In total, nearly 20 million US dollars in compensation was paid out on the basis of this decree.⁶⁸

Menem was also criticized from within the ranks of his own party for this unauthorized solution, which excluded the majority of those who had been affected. A cross-party legislative initiative to regulate compensation was passed in the same year (1991). Ley No. 24.043 stipulated that all those persons who had been detained by the executive branch or by military courts during the state of emergency were entitled to the compensation of Decree 70/91 – regardless of whether they had already brought a civil action against the state. Applications could be submitted until 1998. Of around 14,000 applications submitted, approx. 8,000 were approved. The compensation payments totalling in the region of 690 million US dollars were paid out in the form of government bonds.⁶⁹

2.4.5 Clarification of the Legal Status of the ‘Disappeared’ (1994)

Alongside the serious psychological and social consequences for the relatives of the Disappeared, they also faced legal problems in terms of financial and property issues and civil status; for example, they could not access the property deeds of the Disappeared person or remarry. In order to solve this impasse, the relatives in such situa-

⁶⁸ Conti, ‘La democracia’, 62.

⁶⁹ Fuchs, *Staatliche Aufarbeitung*, 108 ff.

tions often had to have the Disappeared person declared ‘presumed dead’ (*fallecimiento presunto*), which caused deep distress. This was of course particularly painful and problematic, since the relatives, who had been denied any information about the fate of the Disappeared by state authorities, now had to apply to the authorities of the same state for the death of the Disappeared person to be recognized.

The Ley No. 24.321, adopted in mid-1994, fulfilled what the relatives had demanded for a long time – that they could apply to the civil courts for a *declaración de ausencia por desaparición forzada* (declaration of absence due to forced Disappearance). In terms of civil and property law, the status was equated with the *fallecimiento presunto*, but without assuming the death of the person concerned.

2.4.6 Law on Compensation for the Relatives of the Disappeared (1994)

With the Ley No. 23.466 of 1986, the relatives of the Disappeared had been granted modest compensation, i. e. a pension equivalent to 75 percent of the minimum wage. Aside from this, some families had also filed civil lawsuits against the Argentinian state and had sought damages and compensation payments in court, which ranged from 250,000 to 3 million US dollars.⁷⁰

With Ley No. 24.411, which was passed in 1994 unanimously and without debate, one single solution was achieved for all relatives of the Disappeared and murdered. They were entitled to a one-off compensation payment of around 220,000 US dollars. In accepting this sum, relatives also had to commit not to pursue any further legal action.

The application process was associated with a great deal of bureaucratic effort. A lawyer was required for certain steps in the application process, which in turn resulted in significant costs. For the compensation payments, the Menem government estimated a total of around three billion US dollars. Payment in the form of government bonds relieved the state budget somewhat, but was associated with the risk of losses for the recipients if they wanted to sell these bonds on the stock exchange before the end of the ten-year term.⁷¹ This compensation solution was the cause of great tension between the relatives of the Disappeared. Many perceived this one-off payment as hush money – especially since it brought with it the obligation to refrain from further legal action.

⁷⁰ Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York/London: Routledge Chapman & Hall, 2002), 176f.

⁷¹ Fuchs, *Staatliche Aufarbeitung*, 112f. The application deadlines were extended several times; most recently at beginning of 2007 (Ley No. 25,985).

2.4.7 Compensation for Children Imprisoned or Born in Custody (2004)

After the former political prisoners and the relatives of those who had been Disappeared or murdered had been compensated through the compensation laws of the Alfonsín and Menem governments, during the Presidency of Néstor Kirchner, Ley No. 25.914 provided compensation for people who were either born while their mothers were in prison or who were abducted and imprisoned with their parents. This law provided for a one-off payment the equivalent of a 20-month salary of a senior public servant. In the event of serious injuries, special payments were also provided. A condition for compensation via this act was also refraining from further claims for damages.

2.4.8 Other Compensation Laws

(i) Extension of the existing compensation laws (2009 and 2015)

At the end of 2009, another Compensation Act (Ley No. 26.564) was passed, which broadened the right to compensation from those covered by Ley No. 24.043 (about the compensation for former political prisoners) and Ley No. 24.411 (about the compensation for the relatives of the Disappeared and murdered) to include people who suffered human rights violations from 16 June 1955, (i.e. from the military coup against Juan Perón) to the end of the dictatorship on 9 December 1983.

This included people who were victims of the ‘rebels’, but also those whose origins were in the armed forces, security forces or paramilitary groups. Soldiers who had been imprisoned because they refused to obey those planning the coup were also included. In 2015 it was decided (Ley No. 27.143) that there should be no statute of limitation on the application periods for the relevant compensation laws (Leyes Nos. 24.043, 24.411, 26.564).

(ii) Pension payments for former political prisoners (2013)

Ley No. 26.913, adopted at the end of 2013, granted former political prisoners (those entitled to receive benefits under Ley No. 24.043 and other groups of people) a *pensión graciable* (non-compulsory allowance on retirement) independent of any other pension benefits or compensation payments. It provided for a monthly payment, of an amount based on one of the lowest grades in the public service, roughly corresponding to the minimum wage (approx. 375 euros per month, as of October 2020).⁷²

⁷² Ley No. 26.913, Art. 5: ‘El beneficio que establece la presente ley será igual a la remuneración mensual asignada a la Categoría D Nivel 0 (cero), Planta Permanente Sin Tramo – Agrupamiento General – del Escalafón para el personal del Sistema Nacional de Empleo Público – SINEP – en los términos que establezca la autoridad de aplicación.’

(iii) Extension of compensation to former exiles (2016)

As early as 2004, the Supreme Court had ruled that for Susana Yofre de Vaca Narvaja, who had to flee into exile after her husband had been murdered and her son had been kidnapped, her years of exile should be compensated in the same way as in the case of time spent in prison. The court confirmed that the suffering that the plaintiff had to experience in exile should be equated with that of the political prisoners. After this individual decision, and in view of the considerable number of Argentinians who had to go into exile for political reasons, work was carried out to create a legal regulation for the compensation claims. The legislative process was delayed again and again. Subsequently, this issue was resolved in 2016, not by a law, but by a resolution passed by the Minister for Justice and Human Rights (Resolución MJYDH 670/16). This resolution, which explicitly mentions the case of Susana Yofre de Vaca Narvaja, ruled that Argentinians who can demonstrate that they had to leave the country for political reasons were entitled to a quarter of the benefits that the Ley No. 24.043 provided for former political prisoners.

2.4.9 Psycho-Social Support for Victims of Repression

When former ESMA prisoners visited a detention and torture centre along with President Néstor Kirchner in 2005, the serious consequences that the victims suffered even years later became clear to the public. After long conceptual debates about an appropriate *asistencia integral*, the *Centro de Asistencia a Víctimas de Violaciones de Derechos Humanos, Dr Fernando Ulloa* (The ‘Dr. Fernando Ulloa’ Centre for the Assistance of Victims of Human Rights Violations) was created in 2011 as an institution of the *Secretaría de Derechos Humanos* (Secretariat for Human Rights), established by the Ministry of Justice. In the following year, its area of responsibility was extended to include victims of current human rights abuses.⁷³ The centre came to be of particular importance as criminal investigations into the past resumed, since these proceedings triggered retraumatization in witnesses as well as in victims and relatives.⁷⁴ In addition to holistic therapy, support and counselling for victims, the *Centro Ulloa* also has the task of promoting the networking and qualification of therapists at a national level, promoting the content-related debate on the connection between human rights violations and mental illnesses, and providing political advice.

⁷³ Vera Vital Brasil, Fabiana Rousseaux and Bárbara Conte, ‘Reparación simbólica en América Latina como Política de Estado: La experiencia de asistencia a víctimas en Brasil y la Argentina’, *Territorios Clínicos de la Memoria* (2019), accessed 11 April 2022, <https://tecmered.com/reparacion-simbolica-en-america-latina-como-politica-de-estado>.

⁷⁴ Mariana Wikinski, ‘Testimonio y experiencia traumática: la declaración ante la justicia’, in *Experiencias en salud mental y derechos humanos. Aportes desde la política pública*, ed. Ministerio de Justicia y Derechos Humanos de la Nación. Secretaría de Derechos Humanos (Buenos Aires: Ministerio de Justicia y Derechos Humanos de la Nación. Secretaría de Derechos Humanos, 2015), 134–141.

2.5 Reconciliation

The term ‘reconciliation’ is not frequently used in the Argentinian context and – especially from the point of view of the victims and the human rights movement – has a negative connotation. The background for this is likely to lie in the fact that the concept of reconciliation often has a religious element and has been brought into play again and again by the Catholic Church. In Argentina – unlike in neighbouring Chile, for example – the Catholic Church played a largely ambivalent to dishonourable role in the era of dictatorship: there were no public charges of injustice, but doors were often locked to those seeking help and a number of bishops were closely connected to the military regime, etc. In addition, some military clergy played a dubious role in the detention and torture centres.⁷⁵ Even in public discourse, the Bishops’ Conference repeatedly demonstrated its nearness to the regime.⁷⁶ For example, around 1984, at the time when CONADEP was trying to record and investigate the crimes of the dictatorship and when the trials of those chiefly responsible for state terrorism were being prepared, the Bishops’ Conference declared that ‘true reconciliation is not based solely on truth and justice but also on love and forgiveness.’⁷⁷ The public perceived this mostly as partisanship with their old allies. This concept of ‘reconciliation’ was therefore understood by the victims as an attempt to leave the past behind without those responsible being held accountable and without even investigating the long-denied and contested facts.

In the same way, President Carlos Menem repeatedly used this topos and thus justified the pardon of the convicted military personnel and some members of the guerrilla forces. His politics of dealing with the past followed the ideal of *Reconciliación* or *Pacificación Nacional*, which was largely shaped by the idea that the past should be the past and people should look forwards. For the victims and their relatives, impunity and forgetting represented the other side of the coin with which this so-called national reconciliation was to be paid.⁷⁸ Against this background, it is understandable that reconciliation initiatives in Argentina were not very successful and could not play a significant role in the politics of dealing with the past.

75 Loris Zanatta, *La larga agonía de la Nación Católica: Iglesia y dictadura en la Argentina* (Buenos Aires: Sudamericana, 2015), 211–302; Stephan Ruderer, ‘Between Religion and Politics: The Military Clergy during the Dictatorships of the Late Twentieth Century in Argentina and Chile’, *Journal of Latin American Studies* 47/3 (2015): 463–489.

76 Veit Straßner, “La lucha continúa!” – Der Kampf um die Erinnerungen an die Verschwundenen der argentinischen Militärdiktatur’, *Totalitarismus und Demokratie. Zeitschrift für internationale Diktatur- und Freiheitsforschung* 3 (2006): 345–386, 300–302.

77 Conferencia Episcopal Argentina, ‘Asamblea Plenaria: *Democracia, responsabilidad y esperanza* (13.04.1984)’, in *Iglesia y Democracia en la Argentina: Selección de documentos del Episcopado Argentino*, ed. Conferencia Episcopal Argentina (Buenos Aires: Conferencia Episcopal Argentina, 2006), 95–102, 101.

78 Straßner, *Die offenen Wunden Lateinamerikas*, 132.

2.6 Laws Relating to Transitional Justice

The issue of dealing with the past and, in particular, issues around compensation have always been dealt with in Argentina in a legal manner. Since the origins, the content and the context of the development of the reparation laws have already been presented in more detail at relevant points in this study, a tabular overview of the relevant legal norms should suffice here in order to avoid duplication and repetition (Tab. 1).

Tab. 1: Overview of laws relating to Transitional Justice in Argentina

Legal Norm	Year	Content
Ley No. 22.924	1983	<i>Ley de Pacificación Nacional</i> : Amnesty for possible crimes that were committed in the context of the anti-subversion fight, but also for possible terrorist crimes
Ley No. 23.040	1983	Repeal of the military government's self-amnesty law (<i>Ley de Pacificación Nacional</i> , Ley No. 22.924)
Decreto 187/83	1983	Creation of the Truth Commission <i>Comisión Nacional sobre la Desaparición de Personas</i>
Ley No. 23.049	1984	Reform of the Code of Military Justice (<i>Código Militar</i>)
Ley No. 23.053	1984	Return of people from overseas diplomatic service who had been refused entry for political reasons
Ley No. 23.117	1984	Reintegration of employees in public service who had been dismissed for political or union activities
Ley No. 23.238	1985	Reintegration of teachers who had been dismissed for political reasons
Ley No. 23.278	1985	Awarding pensions credits for periods of time spent unemployed for political reasons
Ley No. 23.466*	1986	First law on financial compensation for relatives of the Disappeared providing a minimum pension
Ley No. 23.511	1987	Establishment of the national gene database
Ley No. 23.523	1988	Reintegration of bank employees who had lost their jobs for political reasons
Ley No. 23.852	1990	Removal of compulsory military service for the children of the Disappeared
Decreto 70/91*	1991	Decree governing financial compensation of former political prisoners
Ley No. 24.043*	1991	Compensation law for former political prisoners
Ley No. 25.457	1992	Establishment of the CONADI

Tab. 1: Overview of laws relating to Transitional Justice in Argentina (*Continued*)

Legal Norm	Year	Content
Ley No. 24.321*	1994	Clarification of the legal status of the Disappeared through the <i>declaración de ausencia por desaparición forzada</i>
Ley No. 24.411*	1994	Compensation for the relatives of the Disappeared and the murdered via a one-off payment of around 220,000 US dollars
Ley No. 25.633	2002	Declaration of the 24th March as <i>Día Nacional de la Memoria por la Verdad y la Justicia</i> (Day of Remembrance for Truth and Justice)
Ley No. 26.085	2004	Declaration of the Day of Remembrance for Truth and Justice on the 24th March as a national holiday
Ley No. 26.564	2009	Extension of the Leyes Nos. 24.043 and 24.411 to include the time period between 16th June 1955 to 9 December 1983
Decreto 4/2010	2010	Regulation of access to files and archives
Ley No. 26.691	2011	Declaration of the secret detention centres from the time of the dictatorship as places of remembrance
Ley No. 26.913	2013	Granting of a <i>pensión graciable</i> (non-compulsory allowance on retirement) for the beneficiaries of the Ley No. 24.043 and other groups of people
Ley No. 27.143	2015	Abolition of the application deadlines for compensation payments in accordance with the Leyes Nos. 24.043, 24.411 and 26.564
Resolución 670/16 (Ministry of Justice and Human Rights)	2016	Financial compensation for people who had to go into exile on political grounds

Note: All the laws, decrees and ordinances listed here are available online, but the URLs change frequently. The laws can be easily found by a simple online search with the number of the law or decree (if necessary with the additional search criterion 'Argentina'). The laws marked with * (as well as other provisions for implementation, if applicable) can be found in English translation in Pablo de Greiff (ed.), *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), chapter 22.

Three aspects in particular stand out if one considers the process of development and the body of Argentinian reparations and compensation laws:

- (i) Usually, the main content-related issues of reparations or compensation were regulated by the legislature in the form of laws. Legal norms below the level of actual laws such as presidential decrees or ministerial decrees present the exception (of course, this does not affect the decrees and resolutions that relate to the relevant laws). In the case of Compensation Decree 70/91, the President's independent decree was soon followed by a united legal regulation/ratification by the legislature.
- (ii) It is also striking that many reparations laws (both in the area of actual reparations and criminal prosecutions) were hard-won. As a rule, the initiative for the laws did not come from government agencies. Rather, it was the pressure that

human rights and victims' organizations built up through test cases that put the issues on the public and political agenda.

A change came about during the Peronist governments of Néstor Kirchner, and later, Cristina Kirchner. Dealing with the past was made an explicit policy goal under these presidencies. Among the previous presidents (with some exceptions for the presidency of Raúl Alfonsín), however, it could almost be said that progress in the area of reparations was achieved despite government policy rather than because of it.

- (iii) In connection with the cases proving legal precedent and the test cases mentioned, as in comparable cases, international legal norms are of particular importance in Argentina. Again and again it was the Inter-American Human Rights Court in San José, Costa Rica that the victims called upon. An impending defeat in San José then caused the government to offer out-of-court settlements and uniform regulation of the issues at stake in the form of laws.

2.7 Access to Files

2.7.1 The Alleged 'Non-Existence' of Government Information and Files

As in many countries with comparable histories, access to reliable information about the type and extent of repression as well as about the fate of individual victims or who should be held responsible was a sensitive issue.⁷⁹ In Argentina in particular, repression was characterized by a high degree of camouflage, which is also shown in the widespread practice of Disappearance. The armed forces and security forces continually denied that they were (or are) involved in these repressive actions. They pretended not to know anything about the 'Disappearance' of people and consequently did not have any relevant files or archives. According to the narrative that has been cultivated for decades, there are simply no archives about the 'anti-subversion struggle'.

2.7.2 The Importance of Archives of Human Rights and Victims' Organizations

As a result, the archives that the human rights and victims' organizations compiled over the years comprised the only source of information. CONADEP also relied heavily on the documentation held by these organizations to support its work. It was similar with the inquiries in the context of the *Junta* trials and later in the 'Judicial Proc-

⁷⁹ Elizabeth Jelin, 'Introducción: Gestión política, gestión administrativa y gestión histórica: Ocultamientos y descubrimientos de los archivos de la represión', in *Los archivos de la represión: Documentos, memoria y verdad*, ed. Ludmila da Silva Catela and Elizabeth Jelin (Madrid: Siglo XXI editores, 2002), 1–13.

esses of Truth Recovery’ as well as the legal investigations that took place in other countries. At the same time, these processes unearthed further material and further knowledge that often lay scattered in the court archives.

2.7.3 The Creation of the National Archive of Remembrance (2003)

In December 2003, President Néstor Kirchner created the decentralized *Archivo Nacional de la Memoria* (National Archive of Remembrance; ANM) (Decreto 1259/2003), which was affiliated with the *Secretaría de Derechos Humanos*, to manage and conserve the documents that had accumulated over time. The founding decree names the following tasks of the archive: ‘Gathering, analysing, classifying, copying, digitizing and archiving information, witness statements and documents about the violations of human rights and civil liberties by the Argentinian state and about the social and institutional responses to these crimes.’ The ANM was also actively to seek relevant information and documents from other authorities. In previous years, secret archives of various units of the armed forces and security forces had been discovered in various provinces.⁸⁰ The ANM would develop these and all subsequent collections and make them accessible.

In the course of investigations following the repeal of the amnesty laws, the courts repeatedly wanted to fall back on evidence from the ANM. In practice, this was a problem, as many of these documents were subject to confidentiality. It was therefore necessary in each individual case to release these files for judicial investigations. In 2010, Decreto 4/2010 granted access to the relevant files (with the exception of files relating to the Falklands/Malvinas conflict or other inter-state conflicts). The duty of confidentiality, as spelled out in the decree, would run counter to the political strategy of dealing with the past that the Argentinian state had been pursuing since 2003, i.e. since the beginning of Néstor Kirchner’s presidency.

2.7.4 The Discovery and Opening Up of Military Archives

Subsequently, working groups were set up in the various authorities and ministries to search for relevant files and archives in their facilities. In 2013, for example, the Ministry of Defence reported that 1,500 files with ‘blacklists’ from the time of the dictatorship had been found in the basement of an Air Force building. Minutes of *Junta* meetings were also discovered. After this discovery, the Defence Minister ordered that the heads of all general staff in the armed forces should ensure that any archival material be located and reported in all armed forces facilities. In 2015, an archive

⁸⁰ Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 6f.

structure was created within the Ministry of Defence to develop and make these archives accessible.⁸¹

2.7.5 Developing and Conserving the Archives of Human Rights and Victims' Organizations

For decades, the archives of human rights and victims' organizations contained the only documents and files on the human rights violations of the military dictatorship. The condition of the 'archives' largely depended on the financial resources of NGOs and the commitment of the people who took care of the development and conservation of the archival materials. In 2000, the most important NGOs came together to form an alliance on the politics of remembrance.⁸² *Memoria Abierta*, as the association was called, set itself the goal of completely registering, indexing and digitizing the archives of participating organizations in order to give interested journalists and researchers better access to the sources. Around 25,000 archival items have already been registered in this way. Based on their experiences with the state, the human rights' and victims' organizations wanted to retain ownership of their archival holdings and were not willing to place them in the hands of the state. At the same time, *Memoria Abierta* created an audio-visual archive and over the years has recorded and tagged hundreds of eyewitness reports.⁸³

2.7.6 Summary

Considerable progress has been made in recent decades given that initially there appeared to be no archives apart from the archives and collections within the human rights and victims' organizations and, later, that access to archives was strictly controlled. In 2011, the NGO *Memoria Abierta* presented a guide to archives in which the inventories best known and developed at that time were listed. The aim was to support the work of the public prosecution services in investigating crimes against humanity. In 2011 there were already 26 archives referenced in the publication.⁸⁴

⁸¹ Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 7f.

⁸² At that time the following NGOs were involved: Asamblea Permanente por los Derechos Humanos (APDH), Buena Memoria, Centro de Estudios Legales y Sociales (CELS), Comisión de Homenaje a las Víctimas de Vesubio y Protobanco, Comisión por la Memoria, la Verdad y la Justicia de Zona Norte, Familiares de Desaparecidos y Detenidos por Razones Políticas, Fundación Memoria Histórica y Social Argentina, Madres de Plaza de Mayo – Línea Fundadora, Servicio de Paz y Justicia (SERPAJ).

⁸³ Straßner, *Die offenen Wunden Lateinamerikas*, 132f.; Frederico Guillermo Lorenz, 'Archivos de la represión y memoria en la República Argentina' (2007), accessed 11 April 2022, <http://www.historizarelpasado.vivo.cl/downloads/archivoargentina.pdf>, 5f.

⁸⁴ Memoria Abierta, *Guía de archivos útiles para la investigación judicial de delitos de lesa humanidad* (Buenos Aires: Memoria Abierta, 2011).

In more recent years, further archives have been added. A marked difference in quality came with the opening of the first military archives.⁸⁵

Although access to the individual archives was usually regulated at a provincial level and according to the rules of the specific archive, the specific working conditions and means of access varied from archive to archive and depended to a large extent on the willingness of the institutions to cooperate.⁸⁶

2.8 Memorial Sites

Immediately after the end of the dictatorship, the themes of remembrance and commemoration initially played a lesser role. The activities of human rights and victims' organizations focused on the search for truth and justice. In the context of the 20th anniversary of the coup in 1996, the wishes and demands of the human rights movement for a memorial began to firm up. After numerous debates and controversies, the city parliament of Buenos Aires decided to create a *Parque de la Memoria*, a memorial park, on the banks of the Río de la Plata. Many bodies had been washed up on the banks of the river; many more bodies were gone forever. It took several years for the park to be completed. As well as remembrance, cultural events and educational human rights events are also held there today.⁸⁷

Around the same time, Carlos Menem, the then President, sent an opposing signal. In January 1998 he ordered the demolition of the *Escuela Mecánica de la Armada* (Higher School of Mechanics of the Navy; ESMA) (Decreto 8/98). ESMA, located in Buenos Aires, was one of the most notorious detention and torture centres during the dictatorship. Thousands of people were held and tortured there. Many of their dead or sedated bodies were then dropped into the Río de la Plata.

In Decreto 8/98 it was explicitly stated that the demolition was of 'undeniable symbolic worth' and was testimony to the will to leave behind the 'contradictions of the past' and to 'accept the lessons of recent history'. This would be how the 'will for reconciliation between the Argentinian people would be expressed'. A representative symbol of national unity should be created on the same site.⁸⁸

85 Cinthia Balé, *Usos del archivo y políticas de la memoria: un análisis del proceso de "apertura" de los archivos militares en Argentina (2003–2015)*, *Nuevo Mundo Mundos Nuevos* (2018), accessed 11 April 2022, <https://doi.org/10.4000/nuevomundo.73860>.

86 Juan Luis Besoky, 'Como dos extraños: dilemas del joven historiador frente al archivo,' *Hilos Documentales* 1/1 (2018), accessed 11 April 2022, <https://revistas.unlp.edu.ar/HilosDocumentales/article/view/5956/5332>.

87 Accessed 11 April 2022, <https://parquedelamemoria.org.ar/en/empty> for a striking visual impression.

88 Estela Schindel, 'Die Präsenz der Vergangenheit im urbanen Raum. Erinnerungsorte in Argentinien, Brasilien, Chile und Uruguay,' *Lateinamerika Analysen* 9 (2004): 155–180, 169 f.

This pre-emptive move by Menem created widespread public debate and sparked violent protests from the human rights movement. Relatives of the Disappeared filed a lawsuit against these plans and received a ruling in October 1998; as a site of massive human rights violations, ESMA had an important role to play in ongoing or future court proceedings, for example when it came to reconstructing what happened there. In addition, ESMA was part of the nation's cultural heritage and therefore was deserving of protection.⁸⁹ Five years later, under President Kirchner, ESMA was handed over to human rights organizations so that a *Museo de la Memoria* could be established there. The *Museo de la Memoria* is directly dependent on the Human Rights Secretariat of the Ministry of Justice and Human Rights and is publicly funded. It is well equipped with a staff of around 50 people (plus supervisory and service staff).

The main buildings of the ESMA host a permanent exhibition. Ranged across several floors and in many exhibition halls, different aspects of state terrorism are explained, specifically relevant to the ESMA. The historical context, the history of ESMA and the history of the *Juicios* are explored with films, information stands and video installations. Individually-themed rooms deal with the fate of pregnant prisoners, torture, forced labour, the staff (torturers, commanders) or particular topics, like how the property of the abducted was used to enrich others. The permanent exhibition was developed during a long process of consultation, in which not only specialists and museum experts but also ESMA survivors, contemporary witnesses and representatives of human rights and victims' organizations were involved.⁹⁰ In addition to the permanent exhibition, changing specially-themed exhibitions are constantly on offer. There are also cultural and academic events based around the topic of the culture of remembrance and dictatorship. In addition to pedagogical materials, the museum also offers teacher training courses and guided visits. Tens of thousands of people visit the museum every year.

Based on the individual decision to make ESMA a place of remembrance, a law was passed in 2011 that declared that all secret detention centres from the time of the dictatorship should be places of remembrance (Ley No. 26.691). This law obliged the government to preserve those places and to allow for judicial investigations. In addition, the places should be preserved as memorial sites where the memory of what happened 'during the state terrorism in our country' should be kept alive (Art. 2). Since then, almost 50 memorials at emblematic sites of the dictatorship have been created in Argentina under the administration of the *Archivo Nacional de la Memoria*.⁹¹ Information panels were installed at a further 160 places. Responsibility for this lay partly at the level of federal government, partly at the level of the

⁸⁹ CELS, *Derechos Humanos en la Argentina 1998*, 68 ff.

⁹⁰ Marisa González de Oleaga, '¿La memoria en su sitio? El museo de la Escuela de Mecánica de la Armada', *Kamchatka. Revista de análisis cultural* 13 (2019): 117–162.

⁹¹ An overview of memorials and sites of remembrance: accessed 11 April 2022, https://www.argentina.gob.ar/sites/default/files/mapa_espacios_memoria.pdf.

provincial governments.⁹² Civil society actors such as victims' and human rights' organizations or survivors with first-hand knowledge of these places were always involved in the design of the sites of remembrance and the information panels.⁹³

2.9 Commemorative Events

2.9.1 The Thursday Protests of the *Madres de Plaza de Mayo*

For decades, Thursdays have been the regular weekly memorial day on which the *Madres de Plaza de Mayo*, the Mothers of the Disappeared with their white headscarves, gather in front of the presidential palace with their accusations of human rights violations, demanding clarity about fate of the Disappeared. Since April 1977 the *Madres* have met weekly in the Plaza de Mayo to march around the May Pyramid at the central hub of the plaza. Standing protests were forbidden during the dictatorship. In November 2020, the *Marcha* took place for the 2,222nd time in the Plaza de Mayo. On normal Thursdays, around two to three dozen people still take part in the *Marcha*. Due to advancing age, however, fewer and fewer *Madres* take part in the rallies.

2.9.2 24 March Declared a Day of National Remembrance

The emblematic day of remembrance in terms of the Argentinian military dictatorship is 24 March; the day of the coup. During the military dictatorship, the armed forces used this day to look back on the reasons why they had 'taken responsibility for saving the nation from the threat of subversion'. From the beginning of the 1980s, however, in the context of the anniversary of the coup, critical and dissenting opinions were repeatedly heard during protests.⁹⁴

With the return to democracy, the human rights movement used this day to give weight to its demands for *Verdad y Justicia*, for truth, or clarity, and justice. It was initially an unofficial day of remembrance that the extra-parliamentary opposition and civic society used to protest against inadequate responses to the past. Thousands of people regularly took to the streets on that day. For years the heads of government tried to ignore the date as much as possible. It was not until the 20th anniversary of the coup in 1996 that, for the first time, a democratically-elected president, Carlos

⁹² Lists of memorial plaques, information signs etc are available: accessed 11 April 2022, https://www.argentina.gob.ar/sites/default/files/mapa_senalizaciones_sitios_memoria.pdf.

⁹³ Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 9f.

⁹⁴ Federico Guillermo Lorenz, '¿De quién es el 24 de Marzo? Las luchas por la memoria del golpe de 1976,' in *Las conmemoraciones: Las disputas en las fechas "in-felices"*, ed. Elisabeth Jelin (Madrid: Siglo XXI Editores, 2002), 53–100.

Menem, spoke out about the coup on that date. However, he did this in an abstract way, did not allocate any responsibility and referred to a ‘dirty war’ in which a lot of blood had been shed.⁹⁵

In doing so, he used the imagery of two demons (one subversion, the other the military) who were waging a bloody war against one another, an image which has been used again and again in Argentina. This well-established narrative, known as the ‘theory of the two demons’, sees the violence on both sides as equal whilst ignoring the responsibility and involvement of other actors and of society as a whole.⁹⁶ On the occasion of the 20th anniversary of the coup, numerous events initiated by the human rights movement took place, in which between 50,000 and 100,000 people took part in Buenos Aires alone.⁹⁷

After 24 March had been a day of remembrance for many years, with the human rights movement hosting many events on that date, President Menem ordered in a decree in 1998 (Decreto No. 314/98) that the date should be used for a day of ‘critical analysis’ of the coup and that the day should be used to remember the victims – ‘the victims of irrational violence caused by people from the armed groups, as well as the victims of the illegal repression.’

Four years later, in 2002, parliament passed Ley No. 25.633, which established 24 March as *Día Nacional de la Memoria por la Verdad y la Justicia* (National Day of Remembrance for Truth and Justice). It was intended to commemorate those who ‘fell victim to the process that began that day in 1976’ (Art. 1). Thereafter, 24 March became an official day of remembrance, but was not yet a ‘public holiday’ in the sense that people would be granted a day off work. This was achieved in 2006 when parliament approved a bill by President Néstor Kirchner making 24 March a national holiday (Ley No. 26.085).

There was real controversy when the Conservative President Mauricio Macri wanted to convert the *Día Nacional de la Memoria, por la Verdad y la Justicia* in 2017 into a movable holiday so that it could be postponed to a Monday or a Friday if necessary, in order to give the population a long weekend. This decision drew such massive protests that Macri had to backtrack. His critics saw this as a further sign of Macri’s strategy of trying to suppress the importance of the dictatorship in public perception and of trivializing state terrorism. In line with this strategy, for example, in the new edition of the CONADEP report Macri only included the prologue of the first edition, which had caused controversial discussions, and deleted the second foreword, which had been extended in other new editions of the report (see Chapter 2.10.1).

⁹⁵ Lorenz, ‘¿De quién es el 24 de Marzo?’, 85f.

⁹⁶ Straßner, “‘La lucha continúa!’”.

⁹⁷ Lorenz, ‘¿De quién es el 24 de Marzo?’, 87f.

2.9.3 The Human Rights Movement's 'Resistance Marches'

Since 1981, the *Madres de Plaza de Mayo* had organized a *Marcha de Resistencia* every December. They always took the current political situation into consideration as well as their ongoing concerns (clarifying the fate of the Disappeared, punishing those responsible, etc.). The motto of the first *Marchas* was '*con vida los llevaron, con vida los queremos*' ('they took them alive, we want them back alive'). In the context of the Falklands/Malvinas conflict, for example, the *Marchas*' motto was '*Las Malvinas son argentinas, los desaparecidos también*' ('The Malvinas Islands are Argentinian, and so are the Disappeared'). Over the course of time, the profile of the *Marchas* changed, although their basic demands for *Verdad y Justicia* always remained the same. The *Marchas*, in which thousands of people regularly took part, had the function of denouncing the policy of impunity.⁹⁸

In 2006, during Néstor Kirchner's presidency, the *Madres* discontinued their annual *Marchas de Resistencia*. With Kirchner in the presidential palace, they reasoned, they would have a friend and no longer an enemy in the *Casa Rosada*, the seat of government. On 10 December 2015, the International Day of Human Rights and the day that the conservative Mauricio Macri was inaugurated, the *Madres*, who were now very elderly, resumed their *Marchas de Resistencia*.

2.10 Transitional Justice Institutions

2.10.1 The Comisión Nacional sobre la Desaparición de Personas (CONADEP)

Expectations for the first post-dictatorship government were high. Raúl Alfonsín started his election campaign promising to investigate the human rights violations of the dictatorship and to bring those responsible to justice. In 1975 Alfonsín had founded the human rights organization *Asamblea Permanente por los Derechos Humanos* (APDH), so he had a long history of being close to victims' concerns.

In his first week after taking office, Alfonsín set up the *Comisión Nacional sobre la Desaparición de Personas* (CONADEP).⁹⁹ He gave them six months to investigate the fate of all those who were Disappeared between 1976 and 1983 (Decreto 187/83). All state institutions as well as the armed forces and security forces were obliged to cooperate. CONADEP had the task of preparing and supporting the work of the courts. However, they were not able to make any legal assessment themselves.

Contrary to the demands of the human rights movement, CONADEP was not a parliamentary investigating committee, but rather one set up by the president,

⁹⁸ Inés Vázquez et al., *Luchar Siempre. Las Marchas de la Resistencia 1981–2003* (Buenos Aires: Editorial de Las Madres, 2004).

⁹⁹ Emilio Crenzel, 'Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice,' *The International Journal of Transitional Justice* 2 (2008): 173–191.

whose members were appointed by him. The 13-member committee consisted of representatives from parliament, religious communities and well-known personalities from culture and society. The role of Chair was filled by the writer Ernesto Sábato. The majority of the approximately 100 employees of CONADEP came from the ranks of the human rights organizations, whose archives were the main source of information for the commission's work.

CONADEP's mandate originally ran for six months, but was extended for a further three months. The testimonies of around 7,000 people were heard during this time. The statements of the survivors were particularly valuable in reconstructing the fate of the Disappeared. It was thus possible to identify around 340 secret detention centres across the country and inspect some of them. Searches took place for the remains of the Disappeared in cemeteries and in potential mass graves.

After nine months of work, Alfonsín presented the commission's results in a moving ceremony on 20 September 1984. Around 70,000 people took part, as the report was delivered in public on the streets of the city. The Disappearances of 8,960 people were documented on around 50,000 file pages. At the same time, the Commission admitted that the actual number was higher.¹⁰⁰ In its report, CONADEP stated that the crimes were not isolated cases, but that they showed systematic state terrorism, in which 'excesses' had been normalized.¹⁰¹ The report did not name those responsible. Those names were given to the President separately.

The importance of CONADEP cannot be overstated. In July 1984 a two-hour documentary film was created about the work of the commission, in which relatives and victims had their say.¹⁰²

The *Subsecretaría de Derechos Humanos* was created to continue the work and the archives of CONADEP. This institution was tasked with clarifying the fate of the missing children and with receiving further reports. They compiled a summary of the CONADEP results, which was published in book form under the title *Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas* in November 1984. Two further editions were required within two months. In the following years the work appeared in numerous editions and re-editions.¹⁰³ It is still available in

100 CONADEP, *Nunca Más*, 479.

101 CONADEP, *Nunca Más*, 8.

102 Crenzel, Argentina's National Commission, 181–184.

103 The prologue of the first edition caused polemical discussions, as it followed a narrative that is known in Argentina under the term *Teoría de los dos demonios*: In short, this means that two 'demons' (the subversive forces on the one hand and the armed forces on the other hand) waged a bloody war against each other. This creates a symmetry between the violence of the two actors. Society itself does not play a role in this context; rather it is the 'place' where the two demons meet. On the 30th anniversary of the coup, under the presidency of Peronist Nestor Kirchner, a re-edition of the book was published, to which a further prologue was added, which distanced itself from this point of view. Ten years later, while the conservative and economic neo-liberal Mauricio Macri was president, another new edition appeared – but only with the original prologue. This example shows the historical-political significance of narratives and frames. See Emilio Crenzel, *The Crimes of the Last Dicta-*

bookshops today. In line with its mandate, CONADEP handed over 1,000 cases to the judiciary. The newly established *Subsecretaría* supported the courts and referred further cases of human rights violations to the judiciary.¹⁰⁴

2.10.2 The Creation of a Central Human Rights Institution

In the context of the work of CONADEP, the *Subsecretaría de Derechos Humanos* was created in September 1984 (Decreto 3090/84). This institution was initially affiliated with the Ministry of the Interior and had, among other things, the task of providing a contact point for reporting human rights violations, of promoting human rights protection, of promoting clarity in the fate of the Disappeared, etc. Top priority, however, was to keep and conserve the documents of CONADEP.

This organization still exists today. However, its designation, the institutional connections, its field of activity and its importance have changed over the course of time. As part of a structural reform of the Ministry of the Interior, the institution initially received the rank of *Dirección Nacional de Derechos Humanos*. Responsibility was expanded to include compliance with international human rights norms. The institution was also responsible for processing the compensation payments. In a further structural reform of the Ministry of the Interior, the institution was renamed *Subsecretaría de Derechos Humanos y Sociales* in 1996. In 1999 the *Subsecretaría* was affiliated to the Ministry of Justice and in 2002 was raised to the rank of *Secretaría* (Decreto No. 357/2002).

The institution grew step by step. At the beginning, around 50 people were employed in the *Subsecretaría*. During Néstor Kirchner's time in power, the number rose as high as 1.000 at times. The institution's fields of activity were also expanded. The *Secretaría de Derechos Humanos* is currently part of the Ministry of Justice and Human Rights and is itself divided into two *Subsecretarías* – one *Subsecretaría* for the promotion of human rights and one *Subsecretaría* for the protection of human rights. Among others, its areas of responsibility included the following sub-departments: the National Institute for Issues of Indigenous People, the Federal Human Rights Council, the *Archivo Nacional de la Memoria* (National Archive of Remembrance) (see Chapter 2.7.3), CONADI (see Chapter 2.10.3), the *Centro Cultural de la Memoria Haroldo Conti* (a centre for human rights education and training), the central coordination point for places of remembrance and memorials, the Memorial Museum of the *Escuela Mecánica de la Armada* (ESMA), and the central registration office for victims of state terrorism (RUVTE).¹⁰⁵

torship in Argentina and its Qualification as Genocide: A Historicization, *Global Society* (2019), accessed 14 July 2022, <https://doi.org/10.1080/13600826.2019.1598944>.

¹⁰⁴ Nino, *Radical Evil on Trial*, 80.

¹⁰⁵ Accessed 11 April 2022, <https://www.argentina.gob.ar/derechoshumanos>.

Therefore, the institution established as a result of CONADEPs work did not just continue to exist, but was actually further strengthened over time as its area of responsibility expanded. This reflects the growing human rights awareness in Argentina. While the topic of ‘human rights’ was initially only associated with the dictatorship, today there is a more comprehensive understanding. In the course of time, prominent personalities from the ranks of the human rights movement repeatedly filled the leadership positions of the *(Sub)secretaría*.

2.10.3 The Comisión Nacional por el Derecho a la Identidad (CONADI)

CONADEP focused on the fate of the Disappeared. CONADI, the National Commission for the Right to Identity, on the other hand, dealt with the fate of the *desaparecidos vivos*, the ‘living disappeared’, i.e. the Disappeared children.

The *Banco Nacional de Datos Genéticos*, the National Genetic Data Bank, was created as early as 1987 (Ley No. 23.511). The *Abuelas de Plaza de Mayo*, the association of grandmothers looking for their grandchildren who were disappeared or who were born in custody, have repeatedly advocated improving the equipment of the Genetic Data Bank. After many years of insistence, they succeeded in establishing CONADI in 1992 (Ley No. 25.457). This was initially dependent on the *Subsecretaría de Derechos Humanos* but later became independent. Government representatives in CONADI work closely with the *Abuelas*. In order to strengthen the victims’ trust in this institution, Claudia Carloto, daughter of the well-respected Estela Carloto, the president of the *Abuelas*, took over management of CONADI. In addition to searching for the missing children, CONADI offers relatives and those affected legal assistance and provides psycho-social support for the parents as well as for those children or young adults whose identity has been confirmed.

In its search for the missing children, CONADI also used wide-ranging public information campaigns to raise awareness of the problem. By means of information from the population and subsequent genetic testing, the actual identity of numerous children has been clarified. In 2019, the whereabouts and identity of Javier Matías Darroux Mijalchuk, the 130th disappeared grandchild, was confirmed.¹⁰⁶

106 The 130th grandchild was Javier Matías Darroux Mijalchuk, who ‘Disappeared’ with his mother in 1977 at the age of four months. His father had been kidnapped a few days earlier, as confirmed by eyewitnesses. Since then, he was counted as one of the ‘Disappeared’. His mother had received a tip off on where to find her partner. When she went to the place with her baby, she too was kidnapped and Disappeared. The baby was then put up for adoption. The official version was that he was a foundling abandoned on the street, whose identity was unclear. Over the years, Javier Matías Darroux Mijalchuk began to have doubts about his identity. Through the public relations work of the *Abuelas*, he became aware of how to reach them and subsequently made contact. Genetic analyses were finally able to confirm that he had grown up with a false identity which he held for over four decades and that his parents were two of the “Disappeared”. It is possible that he has a brother or sister who has

2.11 Victims' Associations

There were many victims of the Argentinian dictatorship. However, within public perception, in political debate and in legal methods of dealing with the past, the 'Disappeared' or their relatives dominate. Deeply symbolic of these are the *Madres de Plaza de Mayo*, the mothers who came together during the dictatorship who went round to various police stations seeking their children who had been arrested and disappeared.¹⁰⁷ The *Abuelas de Plaza de Mayo*, the grandmothers who are seeking their grandchildren who disappeared or were born during the imprisonment of their mothers, are of comparable importance. Other groups of victims play a clearly less significant role in Argentina.

Although the *Madres* and the *Abuelas* are the central protagonists, the human rights organizations are of outstanding importance. They support and accompany the victims and victims' organizations and make significant contributions to the political and legal processes of dealing with the past, along with their legal departments and lawyers, who show solidarity by supporting them in their work. As a rule, the human rights advocacy organizations and the victims' groups act together.

2.11.1 Argentinian Human Rights Organisations

Most of the human rights organizations in Argentina emerged in the context of the political violence of the 1970s:¹⁰⁸ In 1975, the *Asamblea Permanente por los Derechos Humanos* (APDH) was founded, in whose ranks were activists from different ideologies and parties. Around the same time, the *Movimiento Ecuaménico por los Derechos Humanos* (Ecumenical Movement for Human Rights; MEDH) was established. This initiative arose as members of the clergy from various denominations tried to find ways to support people who had been persecuted from outside of the frequently narrow institutional frameworks of their churches. It was largely traditional Protestant churches that engaged in MEDH, but there was also involvement from individual

also disappeared, as his mother was already pregnant again when she was abducted (Victoria Ginzberg, 'Quién es el nieto 130,' *La historia de Javier Matías Darroux Mijalchuk*, 12, 14 June 2019).

107 Kuno Hauck and Rainer Huhle, '20 Jahre *Madres de Plaza de Mayo*. Geschichte, Selbstverständnis und aktuelle Arbeit der *Madres de Plaza de Mayo* in Argentinien', in *Vergangenheitsbewältigung in Lateinamerika*, ed. Detlef Nolte (Frankfurt am Main: Vervuert, 1996), 108–127; Asociación Madres de Plaza de Mayo, *Historia de las Madres de Plaza de Mayo* 2 (Buenos Aires: Editorial de las Madres, 2003); Marguerite Guzman Bouvard, *Revolutionizing Motherhood: The Mothers of the Plaza de Mayo* (Wilmington: S. R. Books, 1994).

108 Elisabeth Jelin, 'La política de la memoria: El movimiento de Derechos Humanos y la construcción democrática en argentina', in *Juicio, castigos y memorias: Derechos humanos y justicia en la política argentina*, ed. Carlos H. Acuña et al. (Buenos Aires: Ediciones Nueva Visión, 1995), 103–146, 105–111; Louis Bickford, 'Human Rights Archives and Research on Historical Memory: Argentina, Chile, and Uruguay', *Latin American Research Review* 35/2 (2000): 160–182, 170–176.

Catholic dioceses. Attempts to engage the Catholic Church as a whole or to get the Bishops' Conference involved were unsuccessful.¹⁰⁹ A particular strength of the MEDH was its connection to the World Council of Churches (WCC) in Geneva and the support it received from them, which also opened up the world of international communication for the organization.

The 1970s also saw the emergence of a continental movement; the *Servicio Paz y Justicia* (Service Peace and Justice; SERPAJ), inspired by Liberation Theology. In 1974 the Argentinian Adolfo Pérez Esquivel became secretary of SERPAJ-Latin America. He was arrested in April 1977 and remained in prison for 14 months despite international campaigns for his release. The Argentinian branch of SERPAJ was finally established once he was freed. When Pérez Esquivel was awarded the Nobel Peace Prize in 1980, this increased his moral standing and thus the importance of his organization. To this day, Pérez Esquivel has an almost iconic status within the Argentinian human rights movement. SERPAJ accompanied the relatives of those arrested and disappeared, cooperated closely with other NGOs and victims' organizations, publicly denounced human rights violations, but also tried to influence the churches and demanded committed advocacy for human rights.

In 1980, the *Centro de Estudios Legales y Sociales* (CELS) was founded by members of the APDH. The CELS, in whose ranks there were a number of relatives of the Disappeared, always had brilliant lawyers. As well as providing legal advice, the CELS documented human rights violations, accompanied relatives and those affected and, after the end of the dictatorship, became the central human rights organization in the field of transitional justice.

Since the mid-1990s, when the theme of remembrance or legacy work became increasingly important, a range of human rights organizations and local initiatives have emerged that are committed to the theme of *Memoria*. Many of these groups have come together in the *Memoria Abierta* alliance, striving to find the appropriate societal approach to dealing with the human rights violations of the dictatorship.¹¹⁰

The Argentinian human rights organizations therefore emerged in the context of the military dictatorship and of the political violence that preceded it. Once the dictatorship came to an end in 1983, the human rights violations of state terrorism and, later, the fight against impunity came more to the fore. Over time, however, the focus

109 Stephan Ruderer and Veit Strassner, 'Ecumenism in National Security Dictatorships: Ecumenical Experiences in the Southern Cone', in *A History of the Desire for Christian Unity*, Vol. III, ed. Alberto Melloni (Paderborn: Brill Verlag, forthcoming); Daniel Jones, Santiago Luján and Analía Quintáns, 'De la resistencia a la militancia: las Iglesias evangélicas en la defensa de los derechos humanos (1976–1983) y el apoyo al matrimonio igualitario (2010) en Argentina', *Espiral, Estudios sobre Estado y Sociedad* XX/59 (2014): 109–142, 122–126.

110 Damián Ferrarí, *Memoria Abierta. Una experiencia de Coordinación Interinstitucional para facilitar el acceso a la información sobre Derechos Humanos* (Minneapolis: 2005), accessed 11 April 2022, http://www.memoriaabierta.org.ar/materiales/pdf/utilizando_cooperacion.pdf.

expanded, so that these organizations also deal with the rights of indigenous groups, women's and children's rights, police violence and the state of the penal system.

2.11.2 The Madres de Plaza de Mayo

The mothers with their white headscarves, who have met every Thursday since 1977 in the *Plaza de Mayo* to demonstrate for the truth about the Disappeared and for punishment for those responsible, have become a global symbol of the human rights violations of the Argentinian military dictatorship and of the struggle worldwide for *Verdad y Justicia*, truth and justice. They first came together in Buenos Aires and later expanded across the country.

In 1986, during Argentina's first democratic presidency under President Alfonsín, there was a split within the organization: there had been disagreement for a long time over the question of how far cooperation with state agencies should go. Another critical point was the question of whether to accept compensation payments from the state. A further role was played by personal animosities and internal power struggles. A large number of the *Madres* (around 2,500) joined Hebe de Bonafini, who represented the more radical wing, and founded the *Asociación Madres de Plaza de Mayo*.¹¹¹ They largely reject cooperation with state agencies and refuse any form of financial compensation. They reject all attempts to pronounce the Disappeared as dead, as well as the erection of monuments and memorials, until such a point when the guilty are identified and punished. Over the course of time the language of the *Asociación de Madres* has become gradually more radical and politicized. They held a position of absolute opposition until Néstor Kirchner came into power. Hebe de Bonafini, born 1928, led this *Madres* group since the split and has had a very visible media presence. The *Asociación de Madres* has often played a special role within the human rights movement because of its radical, uncompromising stance.

The second group of *Madres*; the *Madres de Plaza de Mayo – Línea Fundadora*, was better integrated into the human rights movement and, after the end of the dictatorship, cooperated more with state agencies. However, the general public perceived the *Madres* more as a *single* group. It was mainly Hebe de Bonafini's group that shaped the public perception of the *Madres* through their media presence.

¹¹¹ Elin Skaar, *Human Rights Violations and the Paradox of Democratic Transition. A Study of Chile and Argentina* (Bergen: Chr. Michelsen Institute, 1994), 157 f.

2.11.3 The Abuelas de Plaza de Mayo

The *Abuelas de Plaza de Mayo*; the mothers of women who were pregnant at the time of their arrest or who had been kidnapped along with their babies and toddlers, was created around the same time as the *Madres*.¹¹² They were not only searching for their own children but also for their grandchildren. The *Abuelas* are particularly dependent on information stemming from the population and on the support of the government. Due to their purpose and their moderate and diplomatic tone, they have a high level of public sympathy and a very visible media presence.

2.11.4 The Familiares de Detenidos y Desaparecidos por Razones Políticas

The criterion for belonging to the groups of *Madres* and *Abuelas* was always an immediate family connection to the Disappeared. On the other hand, the organization *Familiares de Detenidos y Desaparecidos por Razones Políticas*, founded in 1976, is open to all relatives of those who were disappeared or imprisoned. As the name suggests, this organization is made up of the relatives of people who fell victim to the dictatorship for *political* reasons. The *Familiares* showed a political awareness very early on and emphasized the political background of the Disappearances, whereas the *Madres* and *Abuelas* initially focused the narrative on the ‘children’ who were kidnapped because they were socially committed.

2.11.5 The Relatives of the Disappeared from Other Countries

In terms of criminal proceedings dealing with the past, of particular importance were those cases where the Disappeared had a different nationality or dual citizenship (cf. Chapter 2.2.6). The relatives of these Disappeared often formed themselves into smaller groups as well, in order to work together with embassies and civic society partners in their specific countries. This resulted in groups such as the *Familiares de Detenidos Desaparecidos alemanes y de origen alemán* (Families of the German or German-born Disappeared) or the *Familiares, Abuelas y Madres Línea Fundadora residentes en España*.

¹¹² Valeria Vegh Weis, ‘The Relevance of Victims’ Organizations in the Transitional Justice Process: The Case of the Grandmothers of Plaza de Mayo in Argentina’, *Intercultural Human Rights Law Review* 12 (2017): 1–70, accessed 11 April 2022, https://www.academia.edu/34124420/The_Relevance_of_Victims_Organizations_in_the_Transitional_Justice_Process_The_Case_of_the_Grandmothers_of_Plaza_De_Mayo_in_Argentina.

2.11.6 The Hijos por la Identidad y la Justicia contra el Olvido y el Silencio (H.I.J.O.S.)

The organization H.I.J.O.S. (Sons/Daughters for Identity and Justice Against Forgetfulness and Silence)¹¹³ emerged in the mid-1990s as an association of children of the Disappeared.¹¹⁴ The goal of this organization is the fight against impunity and against ‘forgetting’. The H.I.J.O.S. started by creating spectacles which were a ‘mixture of popular justice, political demonstration and street carnival.’¹¹⁵ These events took participants to the homes and workplaces of the military who had been responsible for human rights violations in order to expose them as torturers and murderers in their own environments.

As time went on, the generation of the parents of the Disappeared withdrew more and more from the active fight against impunity and forgetting, so the H.I.J.O.S. stepped up and gradually took their places as ‘legitimate representatives’ of the concerns of victims’ organizations, increasingly taking on public roles in the process of dealing with the past. They currently represent victims’ concerns on commissions and panels.

2.12 Measures in the Educational System

During the dictatorship, the school system was under special observation, as any politicization of the students was to be prevented. They mainly focused on disciplinary matters and aspects of school structure and administration. In terms of content, contemporary topics played a lesser role in the curricula up to the Educational Reform of 1993. The years of the dictatorship, however, were largely presented in a benign manner in school books. From 1993 onwards a more critical view of the years 1976 to 1983 became apparent.¹¹⁶

The requirement to deal with the most recent past was established in 2006 under the presidency of Néstor Kirchner in the *Ley de Educación Nacional* (Ley No. 26.206). Article 92c defines the need to discuss the ‘historical and political processes that led to the breach of the constitutional framework and to state terrorism’. The explicit aim is to ‘create reflective thinking among students, to promote democratic and constitutional attitudes as well as positive attitudes towards human rights.’ This is the guideline established in law at the federal level. The way in which this requirement be-

113 In Spanish the word ‘Hijos’ means sons or descendants, hence the play on words with the abbreviation H.I.J.O.S.

114 Nazareno Bravo, ‘H.I.J.O.S. en Argentina: La emergencia de prácticas y discursos en la lucha por la memoria, la verdad y la justicia’, *Sociológica* 27/76 (2012): 231–248.

115 Schindel, ‘Verschwunden, aber nicht vergessen’, 127.

116 Gonzalo de Amézola, ‘Currículo oficial y memoria: El pasado reciente en la escuela argentina’, *Enseñanza de las ciencias sociales* 7 (2008): 47–55, 47 f.

came reality at the provincial level, however, varied greatly.¹¹⁷ The goal of this historico-political education was to strengthen democratic attitudes and embed an appreciation of human rights by addressing the dictatorship and human rights violations.¹¹⁸

2.13 Coming to Terms with the Past through the Media

The media played an important role in dealing with the past in Argentina. They reported continuously and thus kept this topic in the social consciousness. However, there was a decline in reporting at the beginning of the 1990s, once the legacy of the dictatorship seemed to have disappeared from the public agenda after President Menem issued his pardons. The regularity of reporting aided public and societal engagement with the period of the military dictatorship. The human rights movement also succeeded time and again in generating political pressure to take action, both with and through the media. The strategic function of the media for the human rights movement can also be seen in the fact that the human rights organization APDH, for example, specially developed a manual for journalists, in which the necessary background information for reporting on human rights issues is conveyed.¹¹⁹ In the early phase of dealing with the past, detailed reporting of the work and results of CONADEP played an important role. The commission also used press conferences at national and regional levels to provide information about the truth recovery process and to encourage potential witnesses and relatives to testify.¹²⁰

The trials against the military *Junta* were also closely followed by the media. For the first time on television there were filmed recordings of court hearings (although only the visuals were transmitted, not the audio). In addition to the normal press coverage, *El Diario del Juicio* created its own weekly publication, which reported on the progress of the proceedings and complemented the TV coverage. The *Diario* was published between May 1985 and January 1986. It also published copies of witness reports. A total of around 2.5 million copies were sold, with a weekly circulation of around 71,000 copies on average. 36 editions of the *Diario* were published.¹²¹

117 Joan Pagès and Jesús Marolla, 'La historia reciente en los currículos escolares de Argentina, Chile y Colombia: Desafíos de la educación para la ciudadanía desde la Didáctica de las Ciencias Sociales', *Historia y Memoria* 17 (2018): 153–184, 170–172.

118 Gonzalo de Amézola, 'Una educación por el repudio: La formación ciudadana con el ejemplo de la dictadura militar 1976–1983 en escuelas secundarias de Argentina', *CLIO. History and History teaching* 41 (2015), accessed April 11, 2022, <http://clio.rediris.es/n41/articulos/mono/MonAmezola2015.pdf>, 2f.

119 APDH, *Memoria, Verdad y Justicia. Herramientas para la comunicación desde los derechos humanos* (Buenos Aires: Asamblea Permanente por los Derechos Humanos, 2019).

120 Hayner, *Unspeakable Truths*, 33f.; CONADEP, *Nunca Más*, 443–456.

121 Feld, *Del estrado a la pantalla*; Feld, 'Memoria colectiva'.

Following this example, the *Facultad de Periodismo y Comunicación Social* of the University of La Plata (Province of Buenos Aires) partnered with the human rights organization APDH to create the journal *Verdad y Justicia* in 2010. *El diario del juicio a los penitenciaros*, reported on the trial of 14 former prison staff in La Plata who were accused of crimes against humanity during the dictatorship.

The media – and in particular investigative journalism – played an important role in understanding state terrorism and in dealing with human rights violations through criminal trials. It was investigative journalists such as María Seoane and Horacio Verbitsky whose research repeatedly gave new momentum to societal dealings with the legacy of dictatorship.¹²²

An incredibly important interview was conducted by Horacio Verbitsky, journalist for the left-wing liberal daily paper *Página/12*, in the mid-1990s with Adolfo Scilingo, a former naval officer. In this conversation, Scilingo described the practice of so-called ‘Death Flights’, in which prisoners were sedated under the pretext of being vaccinated, loaded onto an airplane and thrown out over the open sea. Scilingo himself took part in two of these operations. These flights took place in rotation, i.e. they were always carried out by different people in order to consolidate the ‘Pact of Silence.’ Scilingo stated that these death flights took place twice a week for two years. Around 1,500 to 2,000 people were Disappeared this way. The interview was first published in the daily press. Verbitsky later worked on the subject in the book *El vuelo (The Flight)*.¹²³

Even if Scilingo’s confessions did not reveal anything that was not already known, they sparked enormous societal and political debate. A few months before the 20th anniversary of the coup, the question of how society should deal appropriately with the past reappeared on the public and political agenda. The attempts by the Menem government to put an end to this issue through its pardons and its discourse on ‘national reconciliation’ and on looking to the future had failed.

In addition to the general media, the publications and periodicals of the human rights and victims’ organizations also played an important role, even though they were usually not aimed at a larger readership, but rather served to mutually support and connect people within the human rights scene and its sympathizers.

The magazine *Puentes*, which has been published by the *Comisión Provincial por la Memoria* in La Plata since 2000, was of national importance, as it focused primarily on questions of transitional justice and the culture of remembrance in Argentina, but also on overarching issues involved in dealing with the past. By 2016, a total of 31 issues of the magazine had appeared.¹²⁴

¹²² Alicia Miller and Vanina Berghella, ‘Una mirada sobre el periodismo de investigación en la Argentina,’ in *¿Qué periodismo se hace en Argentina? Perspectivas locales y globales*, ed. Konrad-Adenauer-Stiftung (Buenos Aires: Konrad-Adenauer-Stiftung, 2018), 75–108, 81 f.

¹²³ Horacio Verbitsky, *El Vuelo* (Buenos Aires: Planeta, 1995).

¹²⁴ Published editions can be accessed online, accessed 11 April 2022, <https://www.comisionporlamemoria.org/project/puentes>.

2.14 Coming to Terms with the Past through Art

Argentina is a country with a strong literary and artistic tradition in which political and societal issues always play an important role. It is therefore not surprising that the recent past has been the subject of a wide range of forms of cultural debate.

In the Argentinian literary canon there exists a multitude of texts that deal, implicitly or explicitly, with the dictatorship.¹²⁵ The attempt to deal with the past using literature began during the years of military rule and continues to the present day, as reflected in contemporaneous exile literature.¹²⁶ The dictatorship is the subject of both non-fiction essays and of fictional literature. Over the years the range of this struggle with the past broadened out: e. g. the importance of the literature of witnesses has increased.¹²⁷

Recently there have been an increasing number of literary works by the children of the Disappeared. This generational change among the authors casts light upon different aspects of the process of dealing with the past. Often there is a tension between admiration and compassion for the missing parents on the one hand and accusation on the other, due to the far-reaching consequences that the parents' political commitment had for the families.

Using film to deal with the past was as widespread in documentary film-making as in feature films.¹²⁸ In many cases the dictatorship is the explicit subject of the film, but often it also provides the historical background to fictional films, such as the blockbuster and crime film *El secreto de sus ojos* (*The Secret in their Eyes*, directed by Juan José Campanella, 2009).

Using cinematography to explore the impact of the dictatorship, different emphases and shifts in emphasis can be identified. A particularly significant film was *La noche de los lápices* (*The Night of the Pencils*, directed by Héctor Olivera, 1986).

This latter film is based on a real event, i. e. the kidnapping, torture and murder – the 'Disappearance' – of seven young people in the city of La Plata in 1976. This film shaped the social perception of the typical 'disappeared' victim because it paints the picture of the Disappeared as idealistic, socially-committed young people who – as in this case – were only campaigning for student rates on buses and thereby came into the sights of the regime. The 'Disappeared' were portrayed as socially committed

125 Ana Rosa Domenella Amadio, 'Novelas sobre la dictadura cívico-militar en los ochenta y treinta años después', *Revista Huella de la Palabra* 12 (2018): 14–29.

126 José Luis de Diego, *Campo intelectual y campo literario en la Argentina (1970–1986)* (PhD diss., Universidad Nacional de La Plata, 2000), accessed 11 April 2022, <http://www.memoria.fahce.unlp.edu.ar/tesis/te.150/te.150.pdf>.

127 Victoria García, 'Testimonio y ficción en la Argentina de la postdictadura: Los relatos del sobreviviente-testigo', *Revista Chilena de Literatura* 93 (2016): 73–100.

128 José Gabriel Crstancho Altuzarra, 'Memoria, oposición y subjetividad política en el cine argentino', *Imagofagia* 10 (2014): 1–62. An overview with summaries is available here: accessed 11 April 2022, <http://www.memoriaabierto.org.ar/ladictaduraenelcine>.

but basically largely apolitical young people. As society continued to try to deal with the dictatorship, looking more closely at the origins of the political violence and military rule, there continued to exist opposing currents that focused on the *militancia política* and the political and ideological motivation of the ‘Disappeared’. The *Asociación Madres de Plaza de Mayo* takes an extreme position here, tending to regard all those who have disappeared as ‘revolutionaries’.¹²⁹

Argentinian theatre also deals with this theme. Griselda Gambaro is considered one of Argentina’s most outstanding playwrights. Her work deals with torture and repression, but also with general conditions in society.¹³⁰

In the context of dealing with the past, special mention should be made of the *Teatro x la Identidad* (*Theatre for Identity*), which was largely initiated by and with the *Abuelas de Plaza de Mayo*. Since 2000, this project has used political theatre to address different aspects of the fate of children who have ‘disappeared’ and who have been deprived of their identity.¹³¹ The motto of the *Teatro x la Identidad* is: ‘Actuar para no olvidar, actuar para encontrer la verdad’ (‘Acting / taking action so as not to forget, Acting / taking action to discover the truth’).¹³² For over 20 years the *Teatro x la Identidad* initiative has regularly performed (political) plays selected by its own committee in theatres, cultural centres, public spaces and schools. Its aim is to keep the memory of the atrocities of the dictatorship alive and to initiate and promote creative processes of reflection. At the same time, making the *Abuelas*’ demands public is central, i.e. the search for the 400 alleged disappeared children.¹³³

3 Stocktaking: Successes and Failures of Transitional Justice in Argentina

After the years of military dictatorship Argentina returned to democracy in 1983. In the nearly four decades since re-democratization, different phases have emerged in dealing with the crimes of the dictatorship. The most prominent factors in determining the place of this topic on the social and political agenda were the personal convictions and priorities of the respective state presidents and their respective political cost-benefit analyses or external limiting factors, such as the actual power of the armed forces. The ability of the human rights movement to generate political

129 Straßner, “‘La lucha continúa!’”.

130 Gail Bulman, ‘Moving On? Memory and History in Griselda Gambaro’s Recent Theater’, *Studies in 20th & 21st Century Literature* 28/2 (2004): 379–395.

131 María Luisa Diz, ‘Teatro x la Identidad: Un escenario para las Abuelas de Plaza de Mayo’, *Reflexión Académica en Diseño y Comunicación* XXI/42 (2020): 228–234.

132 Accessed 11 April 2022, <https://teatroxlaidentidad.net/contenidos/quienessomos.php>. The motto here plays with the double meaning of the verb *actuar*, which means both to act and to take action.

133 Accessed 11 April 2022, <https://teatroxlaidentidad.net/index.php>.

pressure to take action was also of central importance. On the other hand, external factors, such as the confessions of the former officer Adolfo Scilingo in the mid-1990s, played an important role.

The phases involved in dealing with the past

In the case of Argentina, three main phases a post-dictatorship development can be identified: The first phase encompasses the first few years of the Alfonsín government. This phase was marked by the political will to implement the demands for *Verdad y Justicia*, truth and justice. However, this strategy reached its limits when the increasing growth in resistance of the armed forces became apparent and the fear of another military coup spread across the country. From this point onwards, the politics of the past was largely characterized by attempts to keep discussion on the subject as limited as possible, or even to ignore it completely.

Both amnesty laws, the pardons from President Menem, and financial compensation for former political prisoners as well as for the relatives of the Disappeared fall within the second phase. This phase included the last year of Alfonsín's presidency, the two terms of office of Carlos Menem (1989 to 1999) and the subsequent presidencies of Fernando De la Rúa (1999 to 2001) and Eduardo Duhalde (2002 to 2003).

A paradigm shift in the politics of the past came about when Néstor Kirchner took office (2003 to 2007) and with the two terms of office that his wife Cristina Kirchner held (2007 to 2015). Both made coming to terms with the past one of the most important goals of their presidencies. This phase included the repeal of the amnesty laws, the expansion of compensation payments, numerous commemorative policy decisions as well as further measures to provide institutional support for transitional justice. When the neoliberal conservative Mauricio Macri came to power (2015 to 2019), however, clear obstacles and backward steps became apparent. Macri tried multiple times to play down the issue and the importance that his direct predecessors had attached to it. State support measures for transitional justice were also cut.¹³⁴

Transition to Democracy and Civic-Military Relations

The primary and most significant success in Argentina in terms of dealing with the past is that the regime change was non-violent. The military were not able to permanently secure any enclaves of power. Even though certain situations emerged repeatedly, especially during Alfonsín's time in power, in which the country was destabilized by the activities of the armed forces, no relapse into authoritarianism or

¹³⁴ Luciana Bertoia, 'La agenda de Memoria, Verdad y Justicia en tiempos de cambios: Tensiones, rupturas y continuidades en el discurso del gobierno macrista en torno al terrorismo de Estado', *Aletheia* 7/13 (2016), accessed 11 April 2022, http://www.memoria.fahce.unlp.edu.ar/art_revistas/pr.7622/pr.7622.pdf; Palmás et al., 'Las políticas de memoria, verdad y justicia'.

further coups ever occurred. The functional elites from the military and the judiciary were swiftly replaced. The courts took on human rights issues right from the outset, acting self-confidently and autonomously, as became apparent in 1986, when Alfonsín's plans to reduce the number of legal proceedings against members of the military failed due to the independence of the courts.

It took some time, however, before the armed forces were truly subordinate to civilian rule. The concept of the 'self-purification' of the armed forces pursued by Alfonsín failed; Menem was able to achieve success here, however, through his reforms of the military and his practice of issuing generous pardons. When General Martín Balza, the Army Chief of Staff, made a self-critical assessment in 1995 of the role of the armed forces during the dictatorship, his position was still characterized by contextualizing and relativizing violence.¹³⁵

In 2004, however, Admiral Jorge Godoy, Chief of Staff of the Navy, clearly distanced himself from the human rights violations. He stated that truth recovery and punishing those responsible was the only way to overcome their troubled past. A clear sign of this distancing was the removal of the portraits of the *Junta* generals from the gallery of former directors in the army's training college.¹³⁶ Another step towards the removal of military privileges was the dissolution of military jurisdiction and the subordination of soldiers to the civil justice system.

Truth Recovery

Argentina was a pioneer in the investigation of crimes committed under dictatorship, which had previously been systematically covered up and denied. The CONADEP set up by President Alfonsín was the first truth commission of its kind in Latin America (the commission created two years earlier in Bolivia never presented a final report). Within a short period of time, CONADEP succeeded in establishing a 'global truth' by revealing the system of repression and the way in which state terrorism worked. It also managed to record the names of nearly 10,000 people who disappeared and, for the most part, also the circumstances of their Disappearance.

The population played an intensive role in the work of the commission. Its results are essentially undisputed today. A broad consensus always existed in Argentina in condemnation of the dictatorship, in large part thanks to the work of CONADEP.

Although the Argentinian strategy of dealing with the past has achieved considerable success in establishing a 'global truth', with regards to 'actual truth' these achievements are much more modest. The fate of the vast majority of the Disappeared is still unclear, as is the case with the missing children. In only a few cases has it been possible to find and identify the human remains of the Disappeared. This shows that

135 Martín Antonio Balza, "'Das Ziel rechtfertigt niemals die Mittel': Fernsehansprache des Stabschefs des argentinischen Heeres, General Martín Antonio Balza, vom 25.4.1995', in *Vergangenheitsbewältigung in Lateinamerika*, ed. Detlef Nolte (Frankfurt am Main: Vervuert, 1996), 96–99.

136 Straßner, *Die offenen Wunden Lateinamerikas*, 149.

the military's 'Code of Silence', as well the silence of those responsible and of those involved in specific operations, still has a profound effect.

The victims and their relatives welcomed the investigative work and the establishment of a basic social consensus. This satisfaction, however, is overshadowed by an even greater dissatisfaction that no information about the specific fates of the Disappeared has been provided.

Criminal Proceedings

Argentina has played a special role in prosecuting systemic injustice. The *Junta* trials successfully sentenced the key people responsible for state terrorism to long prison terms in a highly transparent and constitutional process before the ordinary courts (and not, for example, before a special tribunal). This approach was unparalleled at the beginning of the 1980s. After this decisive start, the expectations of the population and the fears of the military were equally great.

Alfonsín pursued a plan of more limited and symbolic criminal investigations. In order not to endanger the fledgling and still unstable democracy, he opted for a manageable number of trials in which the 'excessive offenders' would be tried. After his strategy was not successful, he had to find new ways to limit the number of trials in the face of growing unrest in the armed forces. The amnesty laws finally closed down any form of criminal investigation. Alfonsín was massively criticized for these decisions, mostly on ethical grounds. From a responsible ethical perspective, the decision-makers at the time faced a difficult trade-off between the legitimate demand for justice on the one hand and the fear of the consequences of possible renewed military action on the other. It is evident that these politically motivated decisions did not strengthen the already chronically low level of trust in the institutions and in the rule of law.

If the possibility of prosecution came to an early end with the amnesty laws, the few perpetrators who had been convicted and imprisoned were then set free as a result of Menem's pardons. These decisions were widely criticized not only by the victims but also by large proportions of the population. It created a feeling of powerlessness. *Impunidad*, impunity, became the core issue in the discourse of the human rights movement.

It took years for resourceful lawyers from the human rights movement to restart the hold that had been put on criminal prosecutions. These efforts were aided by Scilingo's confessions, which brought the dictatorship's human rights abuses back into public awareness. The lawyers succeeded in initiating criminal proceedings, initially despite the existing amnesty laws. The Inter-American Court and Commission on Human Rights and the Human Rights Court in Costa Rica played an important role here. The Argentinian human rights movement used these bodies mainly as political levers to put pressure on their own national government.

Most of these trials, however, which were carried out despite the ongoing amnesty laws, did not result in convictions. Despite this, they were of great political importance because they created pressure on the government to act.

Actual progress was achieved in the mid-2000s, after the amnesty laws were repealed: between 1985 and 2005, a total of 38 defendants were found guilty of crimes against humanity.¹³⁷ Between 2005 and 2020, the number of judgments rose to nearly 1,000. This number is quite remarkable. However, it should be remembered that many of the perpetrators from that time period had already died. Many of those convicted served out their sentences under house arrest due to their old age. The fact that the perpetrators had been able to live out their everyday lives largely undisturbed for years put trust in the rule of law to a severe test.

The few successes that were achieved in the area of criminal prosecutions in the pre-Kirchner period were essentially due to the tireless commitment of the human rights movement. In 2002 José María Guembe of the human rights organization CELS described how the progress that they had made in recent years in Argentina in the field of criminal prosecutions had been achieved *despite* the state. The commitment of the citizens, who demanded that the state put in maximum effort to deal with the past, was a decisive factor.¹³⁸

During the presidencies of Néstor and Cristina Kirchner, on the other hand, there was active institutional support for the courts with respect to criminal prosecutions, which – albeit long overdue – did strengthen trust in the rule of law. The fact that the judicial system was strengthened in this way helped it to further evolve. A lasting contribution to safeguarding human rights was also made through (human) rights policy decisions. Despite this, there was still the repeated intimidation of witnesses, homicides and, in 2006, even ‘Disappearances’ in the context of human rights trials. Yet again, this is indicative of serious problems with the Argentinian rule of law.¹³⁹

Compensation and Reparation

Guembe’s thesis that everything that was achieved in Argentina in the field of criminal investigation had to be forcibly taken from the state also applies in part to the issue of compensation payments. Although the first damages claims were recommended by CONADEP and implemented by the government, these benefits remained minimal. Compensation for former political prisoners was initially obtained through legal proceedings against the Argentinian state – in the last instance before the Inter-American Human Rights Court in Costa Rica. Only when threatened with a judgment did President Menem first issue a decree on the question of compensation – but not,

¹³⁷ Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 21.

¹³⁸ María José Guembe, ‘Die Suche nach Wahrheit vor den Gerichten,’ in *Experimente mit der Wahrheit: Rechtssysteme im Wandel und die Prozesse der Wahrheitsfindung und Versöhnung. Documenta11 - Plattform2*, ed. Okwui Enwezor et al. (Ostfildern: Hatje Cantz, 2002), 261–272, 272.

¹³⁹ Torras, Palmás and Perelman, *Memoria, verdad y justicia*, 23.

however, for all those who had been affected. The legislature subsequently regulated the compensation payments through a formal compensation law for all those affected. The benefits were initially one-off payments. It took until the Kirchner government for compensation to be extended to include exiles. In the same way, a *pensión graciable* (non-compulsory allowance on retirement) was later introduced for former political prisoners. Similarly, the compensation for the relatives of the Disappeared, which went further than the initial law on compensation, first had to be fought for in court.

The verdict on these compensation policies is mixed. On the plus side, it is true that many groups of victims received compensation payments over the course of time. Some of the sums paid out were considerable. It is important to consider, however, that many compensation payments were initially paid out in the form of government bonds in order to relieve the burden on the state treasury. If those affected wanted to access their money directly, they had to sell their bonds, which meant that they could not always exploit the full value of their compensation.

However, the following aspect is clearly negative: all of those affected were victims of *state* violence. Therefore, as the legal successor to the military government, democratic Argentina had a definite duty to compensate the victims. As a rule, however, this obligation was not honoured. In fact, the victims had to assert their rights before the courts.

Another critical aspect is the form of the compensation: until well into the 2000s, state compensation largely took the form of financial contributions (usually one-off payments). The hot topic of compensation had the potential to split the victims' organizations in Argentina. For some, the compensation payments were a welcome support to help cope with everyday life financially, while others referred to 'blood money' or 'hush money'.

The Argentinian compensation policy has little to do with *reparación integral*, which is often called for by the victims, i.e. a compensation policy in tune with the problems that victims face in their everyday lives and which specifically addresses these problems. One form of holistic recompense would include the following benefits: a monthly sum to compensate for lack of income, scholarships for the children of the Disappeared, medical and psychological support, and symbolic measures to recognize injustice.

Politics of Commemoration

The topic of memorials and commemoration gained importance as time went on. As early as the beginning of the 2000s, the discourse on appropriate ways by which to commemorate and interpret the recent past began on a societal and cultural level.¹⁴⁰ It was the Kirchner government that made commemoration a political issue and tried

140 Straßner, "La lucha continúa!"

to embed the horrors of the past in the collective memory of the nation through targeted work around memorials. The government deserves credit for, on the one hand, paying for the costs and maintenance of the memorial sites, and, on the other hand, for developing the specific designs at a local level in conversation with those affected and with contemporary witnesses. Although ESMA is *the* central memorial in Buenos Aires, the decentralization of commemorative work and the establishment of memorials in all parts of the country have increased awareness of the issue.

Archives and Access to Documents

Much has happened in recent years as regards access to relevant sources. Although the armed forces and security forces continually repeated the mantra over the years that there were no files and no archives, a number of archive holdings have now been discovered, indexed and made accessible to the judiciary, the press and researchers. When the *Archivo Nacional de la Memoria* was established, it also centralized archival administration and coordination. This is undeniable progress. At the same time, however, it must be stated that there is a lack of systematic recording of the holdings and a lack of (digital) indexing and of digitalization in general. Likewise, clear strategies for preserving the archives of human rights and victims' organizations are still lacking.

Societal Dealings with the Dictatorship

Overall, there is broad social consensus in Argentina with regards to state terrorism. There are hardly any deniers and only a few revisionists and relativists. An important foundation for this consensus has definitely been created by CONADEP. In addition, the tireless calls for *Verdad y Justicia* from the victims and the human rights movement have kept the topic in the public awareness for decades. This is certainly part of the tragedy of the role of the victims; the suffering they have experienced cannot be recompensed and the onus to keep alive the memory of the abuses suffered lands de facto on their backs. Their dissatisfaction is the reason why their concerns keep appearing on the societal and political agenda. As a result, society is forced to repeatedly grapple with the past. While society can learn from it and mature, the process itself places great strain upon the victims.

Societal wrangling with the dictatorship has also found expression in art and culture. The most varied facets of the dictatorship were highlighted. At the same time, however, the dictatorship was used again and again as a backdrop for other fictional stories. This also seems to be an important step; the dictatorship is not only an explicit topic for cultural debate, but is implicitly dealt with in connection with other topics.

Another important development in the societal confrontation with the dictatorship is the broadening of focus. It is no longer just about the cruelty of the military, but rather much more about the conditions in which violence develops, about sup-

porting factors, about non-military actors, about who profits from the regime, etc. This also shows a deepening and more multifaceted confrontation with state terrorism.

The experience of recent military dictatorship also has an impact on the nation's sense of history. The Argentinian national narrative is shaped by armed conflicts, military successes and heroic generals, etc. The confrontation with the dictatorship triggered a process of critical questioning of this construction of national identity. This becomes clear, for example, in the controversies surrounding the figure of General Julio Rocas (1843–1914), who was celebrated in national historiography as the 'Conqueror of Patagonia'. The fact that thousands of indigenous people were killed in this 'conquest' of Patagonia did not feature in the narrative. In the context of the confrontation with the Argentinian dictatorship, state crimes were repeatedly referred to as genocide.¹⁴¹ This paradigm of genocide subsequently facilitated a critical reinterpretation of Argentinian history. In this context, General Roca, who had been seen as a heroic conqueror and bringer of civilization, now became a perpetrator of genocide.¹⁴²

The experiences with state terrorism not only provide an interpretative framework for the history of Argentina, but also for its present. Police violence, for example, is still a problem in Argentina. Corruption, a lack of supervisory authorities and a lack of professionalism mean that there is little trust in the members of the security forces. Even today, people who are taken into custody by the police 'disappear'. Such incidents are particularly important in the context of recent history.¹⁴³

Conclusion

The case of Argentina is revealing and illuminating in many ways. In conclusion, a few things should be briefly mentioned that are emblematic of the example of Argentina.

The *form of political transition* is critical in terms of the possibilities of coming to terms with the past. In the case of Argentina, it was a regime collapse than a consolidated and negotiated transition. At the start of the Alfonsín government, good preconditions existed to enable a positive process of dealing with the past.

An *early and comprehensive investigation of crimes*, such as that carried out by CONADEP, is important in order to achieve the necessary support among the population. This also creates the basis for a clear demarcation from the previous regime.

¹⁴¹ Crenzel, *The Crimes of the Last Dictatorship*, 7–15.

¹⁴² Carlos Masotta, 'Imágenes recientes de la "Conquista del Desierto": Problemas de la memoria en la impugnación de un mito de origen', *Runa: Archivo para las ciencias del hombre* XXVI (2006): 225–245; Diana Lenton et al., 'Huellas de un genocidio silenciado: Los indígenas en Argentina', *Conceptos* 90 (2015): 119–142.

¹⁴³ Michelle D. Bonner, 'Never Again: Transitional Justice and Persistent Police Violence in Argentina,' *International Journal of Transitional Justice* 8 (2014): 235–255, 235 f.

Limitations on action and political restrictions are of great importance in the process of dealing with the past. During Alfonsín's time in power in particular, it became clear that the armed forces, as a domestic political power, were able to exercise vetoes and therefore, for example, prevent criminal proceedings. In a Weberian way, the government was caught on the horns of a dilemma. They either maintained their 'ethics of conviction', pursuing their original goal, or they had to turn to their 'ethics of responsibility' and react to the political pressure surrounding them.

The *role of victims' organizations and the human rights movement* cannot be overestimated. In the case of Argentina, it is mainly thanks to these groups that progress has been made in the area of transitional justice. For much of the past few decades they have been the driving force that has often had to drive the government forwards in front of them.

The *role of the government* in the transitional justice process is also evident. It is precisely the difference between President Menem's political strategy on dealing with the past and that of the two Kirchner presidents that makes it clear just what progress can be achieved if the *agenda setting* when dealing with the past is made by the government and does not have to be forced from 'below'.

Processes involved in dealing with the past have a specific *sequence of phases*: At the beginning, the focus is often on the most pressing questions (such as release from prison, elite exchanges, etc.) as well as the need for investigation and punishment. Questions of compensation and reparation often follow. As time progresses, questions around the politics of commemoration and then the politics of history itself play a role. It is also often the case that certain measures – even if they were necessary right from the start – only become possible later. Generational aspects definitely play an important role here. This was evident in the criminal prosecutions in Argentina.

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