

Human Rights Trials in ARGENTINA

by Patricio Rice

Now in Argentina, almost 30 years after atrocious human rights crimes were committed, we have human rights trials going on which the practice of enforced disappearances is concretely investigated and perpetrators are brought before the courts. While other Latin American countries which went through similar experiences in the seventies and eighties, have preferred the road of national reconciliation, Argentina is at the forefront in prosecuting perpetrators and provides an interesting case study and a cause for hope among human rights activists around the world.

Background

Argentina is known as the world's granary because of its immense natural resources but really is on the margin of world affairs in the Southern Hemisphere despite its strongly European population, unlike Australia and New Zealand in Asia Pacific. However, it really is not different from other Latin American countries where a small oligarchic group came to own most of its wealth that was forcefully taken from the native peoples in Spanish colonial times. Even after the final extermination campaigns of native Argentines were ended in the Patagonia and the Tropical north, towards the end of the XIX century, that land was handed over to the traditional elite, and the immigrant population had no option but to stay in the cities. The country was destined to produce and export raw materials but not to industrialize or manufacture any goods. There were several attempts to break this deadlock through industrialization, the most famous being the government

of Juan Domingo Peron and his charismatic wife Eva in the late 1940s, but all ended with military coups and repression. Then in the sixties, Argentine youth, inspired by Che Guevara and other revolutionaries, many within the Peronist movement, organized to produce the social change that was needed to overcome longstanding structural violence. This way of revolutionary struggle was met by the violence of the State now known as 'State terrorism' which reached its pinnacle with the Junta Dictatorship (1976 – 83). The cornerstone of State terrorism was the practice of enforced disappearance, but it took many years before the full dimension of what was clandestinely going on was finally brought to the public light. The key players were the families of the disappeared, especially the *Madres of Plaza de Mayo*.

Why such a strong sentiment for justice in Argentina?

Certain events in recent Argentine history may explain the strong national sentiment towards justice.



Alfonsín receives the CONADEP report on the Dirty War from the president of the commission, Ernesto Sábat (center). (©www.wikipedia.com)



Trial of the military junta, from left to right, Videla, Lambruschini, Garffigna, Anaya, Agosti y Galtieri in 1985. (© <http://www.artnet.com>)

The first and most important element is the nature of the crime involved, i.e., enforced disappearance. Here, official cynicism was the order of the day as the demand to know the whereabouts of a loved one was routinely dismissed by the authorities, or relatives of the victim were blackmailed into giving money and property for information which effectively always proved to be without substance. Then relatives themselves became victims. This situation went on for many years and created such a deeply-rooted sentiment of resentment towards impunity that exasperates itself with the passage of time.

The second reason is that when the dictatorship was nearing its end, it decided in 1982 to initiate a patriotic war against the UK in order to recover sovereignty over the Falkland (Malvinas) Islands and to recover prestige. However, there were many losses. Argentina lost the war and people felt totally betrayed by the military. Since then, the Armed Forces lost their status in society. There is therefore, little sympathy when former senior officers are brought into courts.

From Human Rights Crimes to Impunity to Justice

1984: The CONADEP Commission - After the late President Raul Alfonsín became democratic president at the end of 1983, this presidential commission was appointed to investigate the case of the *desaparecidos*. The result was the "**Never Again**" report presented by writer Ernesto Sabato, which fully documented the enforced disappearances with

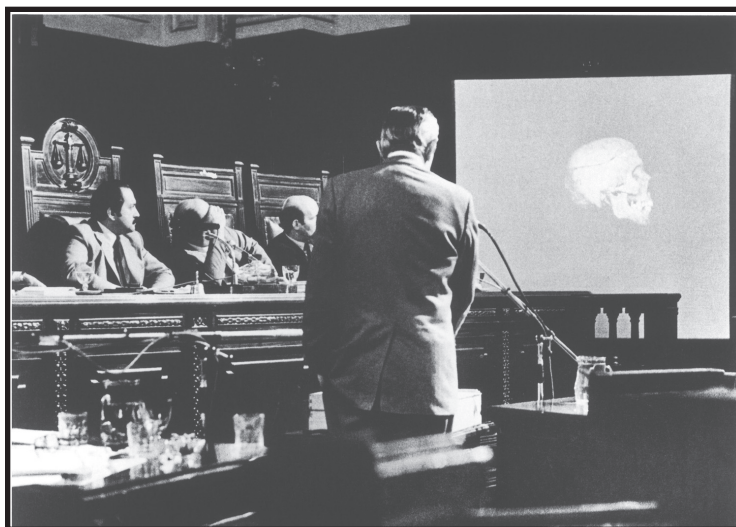
the different circuits of secret detention centers, clandestine cemeteries and military task forces.

1985: The Argentine Junta Trial - For the first time ever in Latin America, top military leaders, the Junta were charged before a civilian court and condemned to long sentences of imprisonment for multiple human rights violations, above all, the enforced disappearances. Due to the nature of the crimes involved, the Court recommended the prosecution of all perpetrators down the line of command.

1986 First Impunity Law - Final Point Law The military mobilized against those prosecutions and President Alfonsín gave in. A law was approved at the end of 1986 which gave a deadline for presenting new human rights cases. The immediate result was that hundreds of new cases were rushed into the courts to meet that deadline and many more military people were implicated.

1987 Second Impunity Law - Due Obedience Law The military began to openly rebel against the prosecutions, and to occupy military establishments in defiance of the democratic government. Finally, President Alfonsín negotiated and the Due Obedience Law was passed by Congress. That meant that only the top command structure could be charged for human rights violations and all the other cases had to be dropped. There was an exception – the case of disappeared children.

1990 Third Impunity Measures - Presidential Pardons. The new President Carlos Menem (1989 -1990)



Clyde Snow, an American forensic anthropologist at the trial of the Argentinean junta, 1985. (©Daniel Muzio)



Nestor Kirchner and wife Cristina during the Presidential Elections in Argentina in 2003. (© www.findtarget.com)

decided on a pacification process where reparation would be given to victims but penal prosecutions would be discontinued. There were a series of presidential pardons granted so that by the end of 1991, even those sentenced in the Junta Trials, were released.

1992 Argentine Trials in Europe and Universal Jurisdiction.

With impunity reigning in the country, families and the human rights organizations began to promote trials in European countries whose citizens had been victims of the Argentine dictatorship. As there was no possibility of prosecution in Argentina, those penal processes had become perfectly legal. So cases were opened in Sweden, France, Italy, Germany and above all Spain where Judge Baltasar Garzon began to also use the argument of universal jurisdiction whenever crimes against humanity were involved. According to universal jurisdiction, when impunity exists for a crime against humanity in a specific country, any other country can claim jurisdiction to prosecute perpetrators. Enforced disappearance is a crime against humanity. This led to Judge Garzon issuing an arrest warrant in 1994 against former Chilean dictator Augusto Pinochet who was visiting London. Pinochet was arrested and returned to Chile on humanitarian grounds. However, the UK House of Lords had recognized the Garzon petition as valid. Many new arrest warrants were issued against Argentine perpetrators so much that towards the end of the nineties, none could safely leave the country. However the Menem government absolutely refused to extradite

any military officer to Spain. Simultaneously both the Inter American Human Rights Commission and Court intervened and ruled that the Argentine impunity laws went against the principles of international law.

Prosecutions for the Disappeared Children Continue

In Argentina, the cases for the disappeared children could however, continue and it was successfully argued in court that such a practice had in fact been endorsed at the top command structure of the Armed Forces. In that way the Junta leaders found themselves back in prison under new charges.

Triumph of the Anti-Impunity Movement

Between 2000 and 2003, Argentina went through a period of total economic collapse. Finally in 2003, Mr. Nestor Kirchner was elected President. He surprised many by taking a very strong pro human rights position and among other measures began to argue for the absolute nullity of the impunity laws and for the continuation of the human rights trials which had been halted in 1987. Finally, the military accepted that policy as they preferred to be prosecuted in Argentina rather than extradited to Spain. Meanwhile President Kirchner achieved an important reform of the Supreme Court. A law was approved by Congress nullifying all the impunity laws, and in a historic decision in 2005, the Supreme Court certified their absolute nullity. The human rights trials were reinitiated.

How do the human rights trials work?

To begin with in these trials, those who have been personally affected by the crimes involved can participate as part of the prosecution. That means that victims are directly involved. Many human rights organizations have recruited young lawyers to work in the courtrooms to represent the victims.

According to the Argentine judicial system, there are two stages in the penal process. The **Instruction** stage is when a specific crime is investigated, perpetrators are identified and written testimonies taken from witnesses. All parts intervene and defendants may be imprisoned. A special prison was opened in Marcos Paz, Buenos Aires Province where perpetrators of human rights violations are held. Those who are older than seventy can be allowed the benefit of home arrest. This is also granted to those with serious health problems and some argue senility to avoid prosecution.

The Instruction finishes with the formal accusation which is handed over to a Federal Court where the **Public and Oral trial** takes place. This is the second and final stage which usually goes for several months. This process opens with the formal indictment of the defendants who must appear in court. It is then when families can see them for the first time. Then witnesses are called in to give their testimony and answer questions both of the prosecution (including representatives of the victims) and the defense. Forensic or other experts address the court and the defense may also call other witnesses. Finally there is the summing up of the parts. On the last day of the public hearings, the defendants are allowed to make their final statement and then the judges (usually three) give their verdict. About two weeks afterwards, the court is convened again when the full sentence is out. Finally the entire proceedings automatically go for review to the higher Cassation Court which makes a final legal ruling on the proceedings. That may take a year or more. The case can then be appealed to the Supreme Court but that has rarely, if at all, happened.

The cases involved refer to very specific crimes in the penal code such as homicide, illegal arrest, torture etc. (enforced disappearance or genocide is not listed). For a guilty verdict, criminal responsibility has to be proved beyond doubt. If not, the defendant will be acquitted. The sessions are public so anyone can attend the hearings and sometimes the media are allowed in, but in most cases, there are restrictions. It all depends on the court.

To facilitate the process, cases are divided according to the five military divisions of Argentina applied during the dictatorship. Usually cases are identified and grouped with specific secret detentions centers. Some secret detention centers are so big that the category of "mega cases" had to be created. These mega cases are sometimes divided down for trial purposes.



Fr. Christian Von Wernich showed no emotion as he was sentenced. (©AFP)

Completed Cases:

The following list of completed cases shows how the process is working:

2006: Buenos Aires: Former Federal police officer Julio Hector Simon was condemned for several human rights crimes.

2007: La Plata: Miguel Etchcolatz, former head of the secret police in the Province of Buenos Aires was condemned for 5 cases of homicide and torture. It was during his trial that an important witness, Julio Jorge Lopez (73), was disappeared and has never been heard of since. There is evidence that former police were involved. This incident highlights the risks facing witnesses and many other cases of harassment have been reported, although a witness

protection program is now in place.

2008: La Plata: Roman Catholic priest Fr. Christian Von Wernich, police chaplain during the dictatorship, was condemned for his role in the disappearance and assassination of a group of young people during the dictatorship. Despite the scandal involved, the Church has not sanctioned the priest who continues to minister to his fellow prisoners in Marcos Paz prison.

2008: Buenos Aires: The Fatima Massacre. That was the mass killing of thirty prisoners mostly trade union activists taken from a secret detention center in August 1976 and assassinated in Fatima, a small rural community near Buenos Aires. One of the defendants was acquitted on a medical alibi, the others were condemned.

2008: Tucuman: Former generals Domingo Bussi and Benjamin Menendez were condemned to life imprisonment for their role in the disappearance of senator Vargas Aignasse in 1976.

2009: Buenos Aires Province: Gral Olivera Rovere and other ranking officers were condemned for different cases but other defendants were given light sentences or acquitted.



Former Argentine Army Generals, Antonio Domingo Bussi (right) and Luciano Benjamin Menendez (left) listen to the verdict that condemned them to life imprisonment over the disappearance of a provincial senator during the 1976-1983 "Dirty War" dictatorship, in the northern province of Tucuman, 28 August 2008. Bussi, 82, who wept during Thursday's hearing, built a political career after democracy returned to Argentina in 1983 and was elected in 1995 as governor of Tucuman, a sugar- and citrus-growing province that is among the country's poorest. (©2008 Reuters)

There had been many cases in other provinces and cities around Argentina including two cases where military officers, who had adopted children of the disappeared, were indicted and condemned for the crime of suppressing the identity of those children.

Conclusion

Now many cases have completed the Instruction stage and are at the trial process.

One can say then that a characteristic of the human rights trials in Argentina is that many are taking place in different parts of the country and each one has its own characteristic. The trials are certainly historic as it is the first time that families and survivors have the opportunity of seeing perpetrators close up as they are escorted handcuffed into the courtroom. That is a major achievement. However, all seem unrepentant as they listen to the stories of their cruelties and one is left with many unanswered questions as to their motivations and mentality.

We also hear the stories from witnesses and relatives who go through the sufferings endured almost thirty years ago. The fact that most are now older folk with their grandchildren listening to their testimonies in the public gallery gives a special poignancy to the whole

situation. It is not easy to relive those situations but it is significant that witnesses seem to remember every detail of their traumatic experiences. Psychological assistance is offered and survivors have organized support groups.

At the end of the day, however, all seem to be worthwhile. There is a profound sense of achievement for witnesses and families with a definite sense of closure. Impunity has not had the last word. One has been able to tell one's story in a courtroom and in front of the perpetrators. The justice which is later handed down may be meek, indeed considering the crimes involved but it is justice and there is a definite sense that **Never Again** has become possible even with that justice. The Argentine population is certainly privileged to be able to finally break with impunity and live through

this judicial process. Hopefully, other countries will soon follow. That is what the struggle of the families of the disappeared is all about: Truth, Justice, Redress, Memory and Solidarity.



Patricio Rice was the Executive Secretary of FEDEFAM from 1981 -1987. He is also a witness in some of the human rights trials in Argentina.