



JANUARY 2007

COUNTRY SUMMARY

Argentina

Argentina has taken important steps to bring to justice former military and police personnel accused of having committed grave human rights violations during the country's "dirty war." In 2006 two police officers were convicted for "disappearances," the first such convictions since the Supreme Court struck down the "Full Stop" and "Due Obedience" laws in 2005.

Inmates are held in deplorable conditions in Argentina's overcrowded prisons. Inmate violence and brutality by guards are a continuing problem.

Confronting Past Abuses

Since President Néstor Kirchner took office in 2003, Argentina has taken historic steps to prosecute military and police personnel responsible for "disappearances," killings, and torture during its last military dictatorship (1976-1983). President Kirchner has forcefully encouraged these prosecutions, reinforcing what began as a legal challenge to impunity in the courts. Several important cases were reopened in 2003 after Congress annulled the 1986 "Full Stop" law, which forced a halt to the prosecution of all such cases, and the 1987 "Due Obedience" law, which granted automatic immunity in such cases to all members of the military except those in positions of command. In June 2005, the Supreme Court declared the laws unconstitutional, and in 2006 the first trials in nearly 20 years were held for "disappearances" and torture.

In August 2006, a federal court in Buenos Aires sentenced former police official Julio Héctor Simón to 25 years in prison for the illegal arrest and torture of José Poblete Roa and Gertrudis Hlaczik de Poblete, a Chilean/Argentine couple who "disappeared" after being detained in November 1978 and held at the "Olympus," a secret detention center run by the federal police. The following month a court in La Plata sentenced another former police official, Miguel Osvaldo Etchecolatz, to life imprisonment for

illegal arrest, torture, and homicide in connection with six “disappearances.” Etchecolatz had been convicted in 1986 on numerous counts of illegal arrest and sentenced to 23 years in prison, but he was released the following year when his sentence was nullified by the “Due Obedience” law.

Since 2005 several federal judges have struck down presidential pardons decreed by President Menem in 1989 and 1990 in favor of former officials convicted or facing trial for human rights violations. In September 2006, the Cassation Court upheld a ruling that the pardon of General Santiago Omar Riveros, a former military commander in Buenos Aires, was unconstitutional. The Supreme Court has not yet ruled on the constitutionality of the pardons.

Witness Protection

The security of witnesses in human rights trials became a serious concern in 2006, with the mysterious disappearance in September 2006 of a torture victim who had testified in the Etchecolatz case. Jorge Julio López, a 77-year-old construction worker, vanished from his home in La Plata the day before he was due to attend one of the final days of the trial. Another torture witness, Nilda Eloy, had previously reported receiving death threats by telephone, accompanied by noises that sounded like a torture session. Judges and prosecutors involved in human rights cases also received threats, adding to fears that López may have been kidnapped by individuals who had served in the police during the dictatorship and aimed to sabotage the trials. The government mounted a major police operation to find López, but by mid-October his whereabouts and the reason for his disappearance were still unknown.

Prison Conditions

Overcrowding, abuses by prison guards, and inmate violence continue to be serious problems in Argentine prisons. In 2006 there was a slight reduction in overcrowding in Buenos Aires province. The number of detainees held in police lockups—which for years have absorbed the overflow from the prison system—also decreased.

Nevertheless, according to a report by the Justice Ministry of Buenos Aires province, cited in the newspaper *Clarín* in August 2006, almost 4,000 prisoners were still being held in police facilities as of then.

In a landmark ruling in May 2005, the Supreme Court declared that all prisons in the country must abide by the United Nations Standard Minimum Rules for the Treatment of Prisoners. One of the causes of overcrowding is the high percentage of criminal suspects sent to prison to await trial (only two out of every 10 prisoners in Buenos Aires prisons have been sentenced). Following the recommendations of the court, in March 2006 the province of Buenos Aires reformed its criminal procedure code, restricting the circumstances under which judges could order suspects remanded to custody, and obliging judges to consider alternatives to preventive detention.

Although there were fewer fatal incidents in 2006 than in 2005, prisoners continue to die as a result of preventable inmate violence. In December 2005 a prison inspector from the Public Defender's office of San Martín, in Buenos Aires province, denounced prison guards for selling home-made knives, known as *facas*, to inmates in Campana prison. The following month, 35-year-old Alejandro Leiva Duarte was stabbed to death with one of these weapons in Magdalena prison.

Judicial Independence

After years in which the independence and quality of Argentina's top judges were constantly put in question, President Kirchner has taken important steps to increase the transparency of appointments to the Supreme Court by requiring that executive branch nominations are debated in public hearings, and that civil society groups can have the opportunity to express their views.

At the same time, however, President Kirchner signed legislation in 2006 that threatens the independence of the judiciary by restructuring the Council of the Judiciary, the body responsible for selecting judges for appointment by the executive branch. The new law increases the power of the governing party at the expense of minority parties (which have been eliminated from the council) and of judges, lawyers, and academics (whose numbers have been reduced), thereby decisively altering the balance between political and professional opinion on the council

envisaged by the constitution. In October, lawyers across the nation elected their two representatives to the new council, but thousands abstained. At this writing, the Supreme Court was due to rule on a constitutional challenge to the new law brought by the Buenos Aires Bar Association.

According to the Chief Justice, President Kirchner's long delay in replacing two justices on the Supreme Court made it difficult for the court to reach decisions. At this writing, the court had only seven members, as opposed to the nine stipulated by law, but all decisions still had to be based on a majority of five votes. Several civil society groups also expressed concern that without the new appointments this high voting requirement was holding up rulings on issues of public concern.

Freedom of Expression

After being under debate for several years, bills to strengthen press freedom and access to information have failed to clear Congress. A bill to make defamation of public officials punishable only by civil damages and not criminal penalties, which was presented in compliance with a friendly agreement brokered in 1999 by the Inter-American Commission on Human Rights, has not advanced. Additionally, a bill giving Argentine citizens the right to information held by public bodies made no progress for a second consecutive year. The lower house approved the bill in May 2003, but the Senate voted for a much-weakened version that had been approved by a committee chaired by the president's wife, Cristina Fernández de Kirchner. In November 2005 the bill was dropped altogether from the parliamentary agenda.

Some provincial governments discriminate in the distribution of official advertising by rewarding local media that provide favorable coverage and punishing those with a critical editorial line. In 2003 the newspaper *Río Negro* filed a writ with the Supreme Court alleging that the provincial government of Neuquen had drastically reduced its advertisements in reprisal for the newspaper's coverage of a bribery scandal that indirectly implicated the governor. In September 2006 the attorney general issued an opinion on the appeal. Although he stated that the Neuquen government had not violated the Constitution, he urged the legislature to issue laws at the national and provincial levels to regulate the distribution of official advertising, limiting the wide

discretion currently enjoyed by government authorities. At this writing, the *Rio Negro* case was still awaiting final decision by the Supreme Court.

Access to Legal Abortion

Women in Argentina face arbitrary and discriminatory restrictions on their reproductive decisions and access to contraceptives and abortion, while sexual violence goes unpunished at times. Abortion is legal for mentally disabled rape victims, but women face obstacles even when their rights are protected by law. In one notorious case in 2006, a mentally disabled woman who had been raped and impregnated by her uncle had to go to court and pass a series of legal hurdles before she could obtain a legal abortion that the hospital doctors initially had been willing to perform.

Human Rights Defenders

In a welcome new trend, Argentina's Supreme Court has allowed civil society organizations to present *amicus curiae* briefs on issues of public interest. The case involving restructuring of the Council of the Judiciary and the *Rio Negro* case are among those for which the court has authorized the presentation of *amicus curiae*.

Key International Actors

The Inter-American Court of Human Rights continued to monitor the performance of the government in implementing provisional measures ordered by the court to protect the lives and physical security of prisoners held in the province of Mendoza. In March 2006 the court renewed the measures, noting that the situation in prisons in Mendoza had not tangibly improved.

In proceedings before the Inter-American Commission on Human Rights in 2005, the Argentine government formally accepted partial responsibility for failing to prevent the 1994 bombing of the Jewish Argentine Mutual Association (AMIA), and for subsequently failing to properly investigate the crime, in which 85 people died. In October 2006 an Argentine special prosecutor accused Iran of planning the attack, and Hezbollah of carrying it out. The following month, a federal judge issued an international warrant for the arrest of former Iranian president Ali Akbar Hashemi-Rafsanjani and eight other former Iranian officials.