



JANUARY 2009

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." Since the Supreme Court struck down the "Full Stop" and "Due Obedience" laws in 2005, several police and military officials have been convicted.

Continuing human rights problems in Argentina include a juvenile justice system that provides judges broad discretion to detain children, deplorable prison conditions, and arbitrary restrictions on women's reproductive rights.

### Confronting Past Abuses

Since 2003 Argentina has made significant progress in prosecuting military and police personnel responsible for "disappearances," killings, and torture during its last military dictatorship (1976-1983). The executive branch actively encouraged these prosecutions, reinforcing what began as a legal challenge to impunity in the courts. At this writing, there are more than 400 people facing charges for these crimes, the vast majority of whom are in pretrial detention.

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.

According to the Center for Legal and Social Studies, 28 people have been convicted for abuses committed during the dictatorship. For example, in June 2008 two retired federal police officers were sentenced to life imprisonment without parole for kidnapping and killing 30 detainees in the 1976 "Fatima massacre." In July 2008 a civilian intelligence agent and seven military officials, including retired General

Luciano Benjamin Menendez, were convicted for kidnapping, torturing, and executing four members of the Workers' Revolutionary Party in 1977: Menendez and three others were sentenced to life imprisonment, while the rest were sentenced to 18 or 22 years in prison. In September 2008 Menendez was also sentenced, together with Antonio Domingo Bussi, to life without parole for kidnapping, torturing, and "disappearing" a legislator in 1976.

Since 2005 several federal judges have struck down pardons decreed by then-president Carlos Menem in 1989 and 1990 of former officials convicted or facing trial for human rights violations. In April 2008, for instance, a federal appeals court upheld the unconstitutionality of pardons in favor of Jorge Rafael Videla, former de facto president, Albano Eduardo Harguindeguy, former de facto interior minister, and José Alfredo Martínez de Hoz, former de facto economy minister, in a case regarding the "disappearance" of two businessmen.

The security of witnesses in human rights trials has become a serious concern since the "disappearance" in September 2006 of a torture victim who had testified in one of the cases that concluded that year. Jorge Julio López, age 77, who vanished from his home in La Plata the day before he was due to attend one of the final days of the trial, remains missing.

### **Criminal Justice System**

Children in conflict with the law who are under age 16 are subject to a procedure that provides judges broad discretion to authorize their detention. In cases in which they are accused of having committed a crime, as well as when they are subjected to a custodial or protective measure because of their "personal or social situation," judges routinely order children to be institutionalized. The process through which "custodial sentences" are handed down lacks basic due process safeguards. At this writing, a case challenging the constitutionality of the juvenile justice system is pending before the Supreme Court.

In August 2008 Congress annulled the Code of Military Justice and created a new disciplinary process for military officials. The Congress established that crimes committed by military officials would be tried by federal civilian courts.

In detention facilities, overcrowding, abuses by guards, and inmate violence continue to be serious problems. 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. Although there have been slight improvements in the province of Buenos Aires, the situation remains critical. For instance, during 2006-07 there was a small reduction in the number of detainees held in police lockups, which for years have absorbed the overflow from the prison system. Yet, according to research by the Center for Legal and Social Studies, the number of detainees held in police installations in July 2008 exceeded the number in 2007. The high proportion of criminal suspects sent to prison to await trial, one of the causes of overcrowding, also increased in 2008, reaching nearly 77 percent of the prison population.

### **Freedom of Expression and Information**

Defamation of public officials remains punishable by criminal penalties. At this writing, several bills to decriminalize defamation remain pending before Congress.

In June 2008 the Supreme Court ruled that public officials should be held to a high level of scrutiny, and overturned a civil judgment against a newspaper that had criticized the Judiciary's Forensic Medical Corps, an agency that carries out medical forensic testing. The court held that an opinion regarding issues of general interest, in particular related to the government, may not in and of itself lead to civil or criminal responsibility. According to the court, public officials' reputation can only be adversely affected by knowingly disseminating false information.

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 September 2007 the Supreme Court ruled against the provincial government of Neuquen, stating it had failed to justify why it had abruptly limited official advertising in a local newspaper that had covered a bribery scandal indirectly implicating the governor. According to the court, although there is no right to receive official advertising, a government that grants it may not apply discriminatory criteria in granting or withdrawing it. Several bills to regulate the matter have been presented since then but remain pending. In February 2008 the

governor of Tierra del Fuego issued a decree establishing objective criteria to grant official advertising.

An executive decree allows Argentine citizens to obtain information held by the federal executive branch. However, bills giving Argentine citizens the right to information held by all federal offices have been pending before Congress for years. (Some provinces have access to information laws that allow individuals to obtain information from provincial governments.)

## **Reproductive Rights**

Women and girls in Argentina face arbitrary and discriminatory restrictions on their reproductive decisions and access to contraceptives, especially emergency contraceptive pills. Therapeutic abortions and abortions for mentally disabled rape victims are legal, but women continue to face obstacles even when their right to an abortion is protected by law. For example, in October 2008 a judge ordered doctors in Bahia Blanca to delay the abortion requested by the legal representative of an 18-year-old mentally disabled woman who was raped by a family member, allegedly after a couple expressed interest in adopting her child after birth. The woman ended up having an abortion after a second judicial decision reversed the judge's initial one.

## **Key International Actors**

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, 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 Iranian former officials. In November 2007 the Interpol General Assembly voted to issue six arrest notices, and in September 2008 President Cristina Fernández de Kirchner reiterated before the UN General Assembly the Argentine government's request that Iran collaborate with the Argentine justice system.

In May 2008 the Inter-American Court of Human Rights ordered the Argentine government to modify its criminal defamation laws. The court ruled Argentina had violated Eduardo Kimel's right to free expression when a court sentenced him in 1995 to one year in prison (the sentence was suspended) and ordered him to pay 20,000 pesos (US\$20,000 at that time) in damages for defamation. (Kimel had criticized the work of a judge investigating a massacre committed during the last military government.)

In September 2008 the Argentine government recognized that denying a woman's right to legal abortion violates women's human rights after a notorious 2006 case—in which a mentally disabled woman who had been raped and impregnated by her uncle had to request a private doctor to perform an abortion despite having obtained a judicial authorization to carry it out—reached the United Nations Human Rights Committee.