

Past and Future

Central Issues of the Present in Argentina

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I. After the Transition

After almost three decades of democratic regime in Argentina, there are undisputed achievements in the dynamics of the recognition of the past. This chapter summarizes the main characteristics of the conflict that led to the military dictatorship, and it focuses on the analysis of the most outstanding results in terms of truth and justice. The social and political solution of the devastating effects of the dictatorship in the Argentine society, which continues to develop day by day, is derived from the combination of efforts and demands by the victims and human rights organizations and the answers by State institutions in successive governments.

A retrospective look at the path traveled presents the regulatory and political obstacles that since the end of the 1980's established the main characteristics of the struggle for the validity of human rights. Impunity laws and the subsequent pardons limited, for more than a decade, the knowledge about truth and court actions when they put a stop to the effects of the first and basic actions –CONADEP and the Trial of the Military Juntas- adopted by President Raúl Alfonsín at the beginning of his term. After taking a look at this, it is also possible to see how the confluence of a variety of local and international factors, particularly since the second half of 1990's, made it possible to gradually remove the existing obstacles to filing a high number of legal proceedings of today¹. Merit is not built only on figures, but it has also been possible to thoroughly study emblematic topics related to some of them: appropriation of minors; repressive coordination between countries or the Condor Plan, and the incorporation of other topics which are addressed less thoroughly, such as sexual violence² and appropriation of assets of kidnapped and disappeared citizens.

Six years ago, the Supreme Court of Justice, in a historical decision³ declared laws 23 492 and 23 521 (called *Full Stop* and *Due Obedience*) unconstitutional. Such decision radically modified the scenario of the fight for human rights. Trials went from being the main element of the claim to becoming the main concern and the reason for reconsidering the agendas of different organizations and groups. The idea was to think of strategies, reallocate resources, and make an effort so that trials went forward and had an impact on and support from the public opinion. Since then, proposals were made by the organizations of human rights to introduce improvements in the strategies of the Judiciary that would have a positive impact on the acceleration of the processes. The good news of the reopening of cases should become tangible for the witnesses, the victims, or their families, preventing the former to repeatedly testify about their experiences, and so that their rulings were issued in the shortest time possible in order to affirm the reparation nature of the proceedings.

a) The Different Challenges of Trials

The outlook, in every case, became both interesting and complex. On the one hand, unlocking the door that prevented national justice from following again the natural jurisdiction was not only great news, but

1 As of August 2011, a total of 1,763 persons, including civilians, armed forces members, and security staff, are or were involved in proceedings related to State terrorism. Out of this number, 198 have been found guilty, and sixteen have been acquitted. To review more information, see the blog on trials of the Center for Legal and Social Studies (CELS) at www.cels.org.ar/wpblogs/.

2 It is only during the last years that there have been explanations about gender violence, sexual abuse, and rape as common practices included or associated with the crime of torture of kidnapped detainees, especially women. The latest rulings have made progress by typifying sexual rape as a crime against humanity, and they have even ordered to file special judicial proceedings for separate investigations and trials (resolution by Judge Sergio Torres in the emblematic ESMA 2011 case). The foregoing becomes substantive progress in relation to the previous situation, which only distributed testimonial literature and there were isolated references in some judicial investigations. The international presence of the topic, after the war in the former Yugoslavia, the academic essay and report by the Truth Commissions in Guatemala and Peru, among others that were explicitly included, are factors that contributed to call the attention to the topic and make it visible as a systematic practice of the repressive plan during the military dictatorship.

3 Simón, Julio Héctor et al, on unlawful deprivation of liberty, etc., case No. 17768. 06/14/2005.

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in its foundations it also came back to the core principles of the Rule of Law, which the previous situation was making vulnerable: the supremacy of the international standards that have a constitutional rank in Argentina, the imprescriptibility of the crimes against humanity, and the impossibility of being the object of amnesties. It pointed out, specifically, that enforced disappearances represent a multiple and continued violation of numerous rights already enshrined in Inter-American standards, which the State must respect and protect. The ruling ratified and crowned a variety of precedents of judges and Chambers, as well as nullity of the laws that Congress had enacted in 2003. On the other hand, this new scenario revealed the shortages and fragilities of a democratic institution that needed to be renewed in different aspects, in order to address the challenges posed by political and legal decisions.

In this sense, it is now important to pay attention to an essential, but postponed, reorganization process in the different aspects of the judicial administration. The armed forces, the security forces, and the Judiciary were always the most elusive. In the case of the armed forces, the reorganization would only take place if objections were filed when the promotions of senior officials had to be approved by the Senate. It also took place as a result of police scandals in a province, which forced the authorities to discharge the officers that had actually participated in actions of repression during the dictatorship. The resuming of trials started disclosing this omission or delay because in the different offices that process the cases, there were some individuals who had collaborated with the dictatorship, or who, in compliance with their duties, had not protected citizens or guaranteed their basic rights⁴. Another relevant aspect to address was an updating of management procedures and the provision of infrastructure and technology to facilitate communication, investigations, and the normal work of courts and offices of public prosecutors. A change or re-orientation of their tasks and methodology in terms of a new paradigm was mandatory, and gave victims and witnesses the major role they played when the dictatorship was overthrown and which they should have never stopped playing. Nonetheless, this is an aspect which still has a road ahead.

A clear step ahead was the creation of the Prosecution Unit of Coordination and Follow-Up on Human Rights Violations perpetrated during the State terrorism⁵, in order to make a constant follow-up on the proceedings and coordinate the investigation and prosecution strategies with public prosecutors of all jurisdictions. The idea was to expedite the stages of trials and also to ensure the integrity of the parties and witnesses involved in the proceedings.

Two years later, the Supreme Court of Justice created the Commission to Coordinate and Expedite the Proceedings of Crimes against Humanity (Resolution PGN 26/09)⁶, also called “inter-power commission”, which joined the existing Unit for the Superintendence for Crimes against Humanity at the Supreme Court of Justice of the Nation, whose main responsibility is to support development of proceedings.

We must say that such institutional decisions were not concomitant to the reopening of cases. The existing delay and lack of coordination problems, or the infrastructure deficit or staff shortage, remained as evidence. It was necessary for the human rights organizations that are on the top of the list regarding complaints demanded changes and improvements, anticipated and warned about possible gloomy scenarios and put pressure on concerned officials. The awareness about the need to act was characterized by drama and tragedy when verifying that witnesses and the different parties involved in the trials were unprotected. This was made clear when Jorge Julio López, who had been kidnapped during the dictatorship, disappeared

⁴ There are numerous documented cases of members of the Judiciary who had been reported and removed due to their proven complicity during the last military dictatorship.

⁵ Through resolution of the Office of the Attorney General (Office of the Public Prosecutor) in March 2007.

⁶ In March 2009, the President of the Supreme Court of Justice of the Nation summoned representatives of different institutions of the State involved in the development of the proceedings on crimes against humanity committed during the State terrorism, with the purpose of creating a commission dedicated to the coordinated search of solutions for the problems that hinder the normal development of these proceedings.

again without any trace in September 2006. López disappeared before giving his final deposition against the one-time powerful Police Investigation Director of the Province of Buenos Aires during the dictatorship, Miguel Etchecolatz. After this event, the corresponding bodies made decisions that improved the situation.

A few months later, in 2007, the first defendant to be prosecuted in the case of the emblematic clandestine detention center that operated in the ESMA died after being poisoned⁷. Both events showed again that the legislative decisions or those agreed by the highest court of the country –even supported by advertisements and speeches about human rights topics- are more expeditious than institutional policies and the specific measures that facilitate the reopening of cases and make sure things happen in the best way possible.

The fact that trials have been reopened has inspired admiration in the country and other regions. Trials mean a giant leap in terms of compliance with the state obligation of being accountable for the illegality and deaths in the past, but they have, together with their nature of a true epic, aspects not yet accomplished.

In this case, and as it will occur in other important human rights topics, the tenacity of civil society organizations, the commitment by some key collaborators, and the political decisions that make these leaps possible, are not sufficient to guarantee the success of the projects. The observation of a progress process, as valuable as the one that took place in the last decade, has shown that the measures promoted to achieve truth and guarantee justice and memory in Argentina do not have the corresponding strategic and long-term plan. At the same time, they hardly have micro-management mechanisms these issues deserve, due to their nature.

b) Archives and Historical Sites

The historic deed of the trials also focused on other topics that seemed to pertain to specific areas: the historical or journalistic investigation –in the case of archives-, or the matters that usually seem related to the tributes and cultural and educational presence, such as monuments and museums. The development of court proceedings required information from these fields; therefore, even when archives and historical sites have an entity of their own, their contributions seem clearer and more strategic. This means an advantage in terms of the independent agenda that both topic topics need to promote, but which require the attention of state institutions that are accountable in these areas.

Since the end of the dictatorship, the basic data to clarify the fate and whereabouts of thousands of disappeared people were provided by the survivors, the victims' families, and human rights organizations, who always demanded democratic institutions to rebuild and provide this information. In this context, official and valuable archives gradually started to "appear," such as the material of a "task force" that acted clandestinely at the Navy Mechanics School (ESMA)⁸ or the archives of the intelligence divisions of some provincial police stations⁹. Also, the Argentine Forensic Anthropology Team, along with a group of court employees from different jurisdictions, thoroughly investigated and answered the questions of the victims' families by identifying and naming the remains that had been identified as "NN."

Due to the small number of official documents developed in the country, the declassification of documents from the United States Department of State became very important because it contributed

7 The case of Prefecto Héctor Febres revealed not only the scandalous and irritating privileges of the members of the armed forces who were detained, but also the gaps in terms of essential protection and security. See the modification to this situation in note 88 herein.

8 The archive included information on the disappeared and the methodology used, and it was delivered by the Center for the Documentation and Investigation of the Left Culture in Argentina (CEDINCI), the CELS and the Argentine Forensic Anthropology Team to the National Criminal and Correctional Court of Appeals of the Federal Capital, a court that investigates the crimes committed at the ESMA.

9 The most important is the police from the province of Buenos Aires. See Provincial Commission for Memory.

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new perspectives of the events and evidence for some legal proceedings. However, accessing documents that complement previous information which had to be prepared, among other aspects, by armed forced members and employees of the Argentine Foreign Service is still a pending task when rendering account to those responsible for their institutions of the same events described in the US declassified documents. The answers to the requests of access to the information made by human rights organization that allege the inadmissibility of the “secret of State,” when dealing with documentation about human rights violations, are not very encouraging because they are related to “unsuccessful searches,” or in the case of military archives, to “destroyed documentation.”

As the proceedings advanced, the defense of the military defendants argued their innocence based on the contents of the instruction manuals and regulations that governed the actions of the armed forces since the sixties. This type of documents, which had not been recognized before, started to be distributed.

For many years and until today, the armed forces have banned all the information about the final destination of the disappeared, insisting even in denying the existence of files containing the details of such an operation. Even so, in the last three years, there have been initiatives to review and investigate files in the Ministry of Defense, recently at the Foreign Affairs, and at the new Ministry of Health. These are important steps –along with other measures¹⁰– to break the rebellious secret: planned interventions, in a professional way, under the format of “units of search” in order to thoroughly study the knowledge about the period, adding information on facts, methodologies, and responsibilities in view of the judicial proceedings taking place in the courts around the country. These and another initiative, in the same sense that is developed in government agencies, are making up for the scarce actions of the different governments in previous decades –besides keeping and managing such important files as the result of the investigations by CONADEP– to make progress, based on these data, in the extension of the investigation about topics from the recent past.

A systematized summary of the existing files with useful information for the legal proceedings was prepared by Open Memory upon request of the corresponding Prosecution Unit¹¹, in order to facilitate the investigation of the judicial operators themselves. Its contents show that there are multiple lines to develop in this area, which would require a task coordinated by the State, with the purpose of generating standards to preserve and arrange the files and to establish clear criteria to access sensitive information.

The possibility of entering the buildings in which the kidnapped and disappeared people had been hidden or murdered during the dictatorship became a complaint by the survivors and human right organizations. This complaint goes back to the second half of the 1990's. Some of them –due to their emblematic nature– represent their desires and vindications. Later on, we will refer to such process, but before that, we must say that in the last years, different paradigmatic sites have been recovered for public use. For example, the premises of the former Navy Mechanics School of Buenos Aires, or the buildings of the complex denominated “La Perla,” close to the city of Córdoba. Others are less conspicuous, but they were part of the many premises used by the State terrorism to deploy their strategy. While groups and authorities advanced slowly in the determination of their uses and management methods, the judges have inspected the places accompanied by witnesses so that they can recognize the spaces, determine the changes in the infrastructure, and obtain evidence for the proceedings.¹²

10 See in this chapter the section on “Confessions, self-criticism, and the opening of files.”

11 See http://www.mpf.gov.ar/Accesos/DDHH/Docs/Archivos_utiles_para_investigacion_judicial.pdf.

12 It is important to highlight the expert contribution that Open Memory (“Memoria Abierta”) has made for several years, generating a innovative possibility of reconstructing the environments and the operation dynamics of the former detention clandestine centers and from other provisional detention places, and this has provided very important elements to understand the operation of the systematic plan, as well as particularly suitable and protected opportunity for the testimony of those who were kidnapped there. See www.cij.gov.ar/causa-primer-cuerpo-del-ejercito.html, and “El lugar de la Justicia” in the website of Open Memory www.memoriaabierta.org.ar/rja.php.

The advances allow addressing new topics that were delayed to pay attention to the most urgent ones. Thus, the participation of civilians in the government structures during the dictatorship and the complicity of members of the Judiciary¹³ are now addressed and disseminated more frequently. This occurs as a result of different judicial actions before control organizations, filed by human rights organizations, and in some cases, by the official entities created to support the development of trials.

In Argentina, the decade has ended with notable advances in matters which for many years remained, if not stagnant, with a significant delay. Also, with the strong emergence of matters that were only mentioned in restricted circles of activists or scholars of the period. This is the case of gender violence, civil participation in dictatorship or theft of assets from kidnapped and disappeared victims. These facts were considered urgent, but it required a better timing to address them.

In 2010, due to the celebration of the Bicentennial of the May Revolution, the House of Deputies unanimously passed a declaration promoted by the Center for Legal and Social Studies, (CELS)¹⁴ which reaffirms the need to “ensure the process of truth and justice as a State policy of an inalienable nature, which should be completed within reasonable terms and with the highest respect for the guarantees of due process.” The text also states that “this justice and memory policy, which distinguishes us in the international community as a country that represents a core ethical hinge of the Rule of Law that benefits the Argentine society as a whole.” The recitals of the declaration present the unbreakable link between democracy and justice that was established during the political transition in 1983, which highlighted the value of equality before the law and the respect for human dignity. The declaration stated that CONADEP’s work, and the Juntas Lawsuits were the political cornerstones of the reestablishment of the Rule of Law and the ethical foundation of the social fabric.

II. The Years of Violence in Argentina

a) Background of the Conflict

Between 1930 and 1980, the Argentine armed forces seized power a dozen of times. During this period, only two democratically-elected presidents were able to finish their mandate; and both were military officers.

The violence was a constant factor in this long period of political instability due to the coup d'états, persecution, torture, and imprisonment of opponents. However, as of the 1960's with the emergence of insurgent armed groups in the public sphere, there is an intensification of the repressive activity of the State. One decade later, abuses of human rights became more systematic and massive.

In 1966, a coup d'état led by General Juan Carlos Onganía defeated the democratic government of Arturo Illia, from the Radical Civic Union Party (Unión Cívica Radical del Pueblo). The organization of industrial and rural entrepreneurs, sectors of the Peronist labor union movement, all the political parties,

¹³ As in the case of the judge who was a member of the Federal House of Mendoza, Otilo Romano, recently suspended by the Judiciary Council that filed the proceeding for his removal. The justice has been accused of a poor performance of his duties and of crimes against humanity in 103 cases during his term as district attorney and acting judge between 1975 and 1983. In order to avoid the action of justice, former judge Romano has requested asylum in Chile. It is important to mention that there are many other cases of proven complicity of justices and of complaints by victims and human rights organizations, which ended up in dismissals which were processed in different cities in the country in previous years, and which had not received a lot of attention from the media or generated the interest of activists and common citizens.

¹⁴ See the news and full document in:
<http://www.cels.org.ar/documentos/?info=detalleDoc&ids=3&lang=es&ss=&idc=1260>.

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and the Catholic Church supported the coup after considering that the democratic alternative was no longer a possibility. The regime implemented a neo-liberal economic plan whose objective was to expand the great industrial plan. The logic of the accumulation implemented resulted in high levels of economic concentration and reorganization in the distribution of income, favorable to the multinational companies and the owners of capital. This meant the beginning of the end of an equalitarian Argentina with high welfare levels.

The implementation of this model had as contrast and important blocking level by the citizen participation. The answer was a social protest which progressively became more intensive. The context became more critical when the emergence of urban guerilla organizations joined the people's, student's and worker's movements. However, it was the Government who contributed more to the impairment of the social and political conditions. Events of protest and massive street violence, as the Cordobazo (1969) and other upheavals in some cities were harshly reprimanded by the armed forces.

Besieged and affected by a more and more severe crisis, the armed forces were forced to hold general elections, this time without any proscription. The country was run by Alejandro Agustín Lanusse. In 1973, the *Partido Justicialista* and Héctor Cámpora seized power. Soon, after the massacre of Ezeiza, he resigned to let the path free for Juan Domingo Perón, who succeeded him after winning the new elections held in October of the same year.¹⁵ A little time after, his Social Welfare Minister, José López Rega organized paramilitary ultra-rightist groups. The Argentine Anti-Communist Alliance or "Triple A" murdered hundreds of people with the most absolute impunity, among them, lawyers, workers, priests, intellectuals and politicians, who were considered leftists.

When Juan Perón died, his widow and Vice-President, María Estela Jiménez, took office. The use of parapolice groups to clandestinely repress the armed political organizations and the political opponents was exacerbated: Through two different executive decrees, the participation of the Army was allowed in order to fight against the guerrilla in Tucumán (February 1975) and after, in order to face the subversion in the entire country (October 1975). The outcome was foreseeable: in a climate of economic deterioration, social and political movements, and attempts by the urban guerilla, the Army that was instructed by the President to "neutralize" and/or annihilate the actions of subversive elements in the province of Tucumán", was encouraged by many sectors –as it had historically occurred—to fulfill its obligation to "save" the threatened nation. There was a new coup d'état, led this time by General Jorge Rafael Videla, leading to the beginning of a special dramatic period in the contemporary history.

a) The Military Dictatorship

On March 24, 1976, the armed forces overthrew the constitutional Government of María Estela Martínez de Perón, and they created a Military Junta, which exercised the supreme power of the Nation based on a clear program: imposition of a new social and economic order, in response to the social and political movement that was seeking a structural change. The dictatorship dissolved Congress, removed judges from the Supreme Court of Justice, confiscated some mass media, closed down others, and censored the rest. Between 1976 and 1983, the Junta established State terrorism as a general and systematic mechanism of social repression, which was justified on behalf of the national security.

The repression was carried out through a clandestine system. The cruellest method was enforced disappearance, which had a triple objective: prevent the supervision and control of the exercise of power, establish a state of terror in the population, which would paralyze their answers and avoid international

¹⁵ Perón finally returned to the country in June 1973. Millions of people were waiting for him, and there were confrontations promoted by Peronist ultra-rightist groups. The events are known as the "Massacre of Ezeiza" (1973).

pressure. More than 500 clandestine centers were established,¹⁶ most of them in military premises or police facilities. Many thousands of persons were kidnapped and tortured in such centers after having been arrested in their houses, workplaces, education centers, or on the street. Many times, they were kidnapped with their children. The clandestine nature of these detentions led to denying the existence of prisoners and avoiding judicial investigations. More than 600 sons and daughters of disappeared people, detained along with their parents or were born under captivity, were abducted and illegally given to the families of the military officers, who registered them as their own. A little over a hundred have been recovered by their families of origin.¹⁷

Families were threatened so that they would not look for the disappeared, and the doors of government and legal institutions were not open to their complaints. The immediate consequence was the never-ending uncertainty for the families of the victims, as well as the total suspension of social, political, and cultural activities through the use and presence of terror. There were censorship mechanisms and a restricted distribution of any type of information, which led even to burning books and to threats to journalists as a means to destroy the political literature and limit the means for future criticism. These acts also caused symbolic and cultural incommensurate damages.

In view of this scenario, the great majority of the Argentine society responded with absolute indifference or confusion. The families of the victims started a solitary complaint process, which proved to be unsuccessful. At that time, more than 80,000 petitions for habeas corpus were filed, but a majority of them were rejected or filed without a previous investigation. But they found in the existing human rights organizations,¹⁸ and in the organizations founded during the dictatorship¹⁹ a place to receive the complaints that were not received in court or in the agencies of the State. The work of these local organizations was essential, especially because of their courage and clarity in the preparation of strategies to resist the dictatorship. The public actions and the national and international pressure for missing people to appear was a key ingredient for a democratic opening. This modality would eventually prove to be essential throughout the transition to achieve an advance in the claims for truth and justice.

The fall of the military dictatorship was the result of the economic policy failure and the ensuing crisis within the armed forces, a situation which was worsened by the participation in the Falkland Islands war.²⁰ The defeat marked an inflection point, and the military had to hold elections without being able to restrict the process of transition to democracy. Nevertheless, this failure to establish conditions did not stop them. Before leaving power, the amnesty for all crimes committed was approved by executive decree.²¹ In one of the first actions of the recovered democracy, self-amnesty was nullified.

16 The Never Again (Nunca Más) Report informed about more than 340 places used as clandestine detention centers, but after, new premises emerged; therefore, such number increased to 500. For accurate information, see the clandestine detention centers at www.memoriaabierta.org.ar/ccd/.

17 As of August 2011, 105 cases of appropriation of children and identity substitution had been solved, through the work of the Grandmothers of Plaza de Mayo and the state organizations devoted to this task. For further information, see www.abuelas.org.ar.

18 Before 1976, there were the Argentine League for Human Rights (LADH), the Permanent Assembly for Human Rights (PDH), and the Peace and Justice Service (SERPAJ)

19 The latter were established with an identity based on the biological link with the victims, and it was also a source of its great legitimacy.

20 Argentina has historically vindicated its sovereignty over the Falkland Islands, located in the South Atlantic, historically exercised by Great Britain. In 1982, Lieutenant General of the Army Leopoldo F. Galtieri, de facto president decided to invade islands and fight a war against such power. That was the beginning of the end. The defeat was overwhelming.

21 Law Decree 22 924, of 09/23/83.

III. The Wounds of the Dictatorship

The dictatorship introduced in society structural changes that increased exclusion and inequality. The defeat of the social movement and the verification that the political participation and opinion could have such dramatic consequences as the loss of life itself explains the apathy towards the participation in citizenship topics that lasted many years and which, even today, establish a dangerous relationship between political participation and the possibility to be subject of justified repression or suffer the consequences of this commitment.²² This unwillingness to fulfill social or political obligations, which has been reversed in the last few years, always had an exception: the broad and crackless support of society to the demands of human right movements led by the mothers and grandmothers of Plaza de Mayo²³.

The economic model installed increased the dependence on the international economic power centers; the external debt became a central variable that conditioned social and economic development, becoming a straightjacket for the subsequent governments. The suspension of the institutional functioning, and the use of arbitrary procedures derived from the same central authority allowed consolidating an inefficient and corrupt justice, and from security forces and a penitentiary system that commonly violated human rights. An ineffective legal system maintained for years, the extended climate of intolerance towards differences, and the terror as daily experience increased authoritarianism in the Argentine society.

The extended social perception that the main parties to the conflict had been the armed groups and the State –the guerilla and the military– prevented a timely understanding of the period. There was a neglect of the existence of a broad and diverse social, student, labor union, and political movement, which did not have or had different degrees of relationships with the guerilla organizations, and which was swept by the persecution and terror used by successive military juntas. Such perception had different origins, and it was reinforced by the different speeches and the rationale of the measures taken by the Government of President Raúl Alfonsín at the beginning of his administration. Unlike the commissions²⁴ later created in other countries one of them, CONADEP did not include the violence of the period it analyzed in a historical journey nor did it establish its causes,²⁵ but it rather contributed to reinforce the idea of the ideological extremes in a sudden and unexpected manner that caused serious damage to the nation. Later on, this approach “... prevented the questions on the political conditions that made the coup d'état and the dictatorship possible, and what Germany has called the responsibility of the civil society for the cultural climate in which crimes were possible.”²⁶ The preeminence of this social representation, attributed to the so called “theory of the two demons”- expressed in the prologue of the Never Again Report²⁷- was strongly questioned immediately after the recovery of democracy. Such vision, bipolar and simplistic, does not allow recognizing the behavior

22 This attitude was portrayed in the common phrase “they were into something” when referring to the reasons why citizens had been detained or disappeared. To remain undamaged, the recommendation was “it's none of your business.”

23 It is hard to make assumptions about the way in which that support could have been modified by the close relationship between the Néstor Kirchner Administration first, and then President Cristina Fernández with some human rights organizations. Specifically, the link with the Association of Mothers of Plaza de Mayo, led by Hebe de Bonafini, and with the Grandmothers of Plaza de Mayo, especially with its leader Estela de Carlotto. Both leaders expressed their explicit support to the Government beyond human right policies, and their presence is common at official events.

24 Those other commissions were named -with some variations- Truth Commissions or Truth and Reconciliation Commissions, after the commission created in Chile in 1990 by President Patricio Aylwin, the first democratically elected president, after the coup d'état on September 11, 1973, in which Salvador Allende was overthrown, and the dictatorship of Augusto Pinochet was established.

25 Although the comparative analysis of the truth commissions is not object of this chapter –there are multiple studies in this sense— suggests that many times that the great impact and dissemination, as well as the convincing nature of the Never Again Report, is due to its simple account and the accurate methodological approach. This report does not include references to the social structure or history of the country.

26 Sábato, Hilda. “Segunda Jornada. El Museo que queremos.” Buenos Aires, 2004.
http://www.memoriaabierta.org.ar/pdf/jornadas_museo_oct.pdf.

27 “Nunca Más,” a quoted work.

of different social and political actors of the past; a behavior which still prevails in a political culture that incorporates republican and democratic values, such as the plurality of opinion, the respect for differences, and autonomous leadership, among others.

These representations, assumed and disseminated with more or less intensity in the last few decades, according to the political needs and the listening conditions of society itself, hindered a reflection and debate that, avoiding the depolitization of the confrontation, would allow to improve the understanding of projects of the different actors, the context at that time, and the terrible consequences for the country as a whole.

Until the half of this decade, the comprehensive visions of this period that analyzed what happened through a critical balance of state and social behaviors and attitudes were scarce. The most outstanding analyses, which became the predominant explanations, were self-justified. They presented a weaponless society that had remained indifferent to the conflict. These visions were related to ideological and political professions and behaviors of the past. Today, the scenario has been partially modified, but it has also become more complex. The discussions contained in books and periodicals,²⁸ as well as seminars and debates aimed at a larger audience about topics which were difficult or forbidden have become frequent, and the expression of controversial points of view emerges with a greater dose of respect and liberty.²⁹ But if this greater openness is produced and advances in the analytical view of the academic world, with a dissemination that reaches a larger audience, the same does not happen in the Government and some government. There, the predominant visions that are disseminated are generally aimed at the tributes of the victims. They emphasize first the heroic nature of the young political participation in the 1960's and 1970's, and they present epic unilinear visions that do not strongly favor the knowledge about what happened then.

During this stage, the dimension and cruelty of the repression, the resulting high number of victims and the pressing need to prevent it first and punish it afterwards contributed to simplified explanations. Efforts were made to report what was happening, using simple and depolitized messages, almost desperately to have an international repercussion as a protection action. It was not the best timing for an analysis and nuances. However, even in the middle of a dictatorship, the detailed analysis that Augusto Conte and Emilio Mignone³⁰ disclosed in 1981 already offered clear conclusions of another complexity. For example, soon after the coup d'état, due to a strategy of terror, armed groups were no longer a threat. In 1977, the estimated number of disappearances and murders amounted to 22,000.³¹

A hypothesis that might contribute to explaining the above was that human rights organizations were practically in charge of this issue since the return of democracy. They, stubbornly and almost always in an

28 The emergence, in December 2004, of the magazine "Lucha Armada en la Argentina" showed, with its publication, a tendency to think and analyze the experience from the point of view of its protagonists and scholars of that historical time, and it became an essential bibliographical reference. In the previous years, many other books and academic papers had been published. At least ten of them were the result of the work of the Regional Action of Latin America (RAP) of the *Social Science Research Council*, whose purpose was to promote research and the training of young researchers about the memories of the political repression of the Southern Cone. The program supported around 60 scholarship grantees from Argentina, Brazil, Chile, Paraguay, Peru, Uruguay, and the United States, and between 2002 and 2005 it published a collection of then books titled "Memorias de la Represión" (Siglo XXI Editores – Spain and Argentina).

29 As in the case of the exchange among several authors who after a letter from Oscar del Barco regarding the use of violence. This issue was analyzed in a book titled "Sobre la responsabilidad: No Matar." Several authors. El Círculo Ediciones/La Intemperie/Editorial de la Universidad Nacional de Córdoba. Córdoba, 2007.

30 See, among others, "El caso argentino: desapariciones forzadas como instrumento básico y generalizado de una política," from the Center for Legal and Social Studies (CELS), a document known as "Doctrine of Global Parallelism" and submitted during the symposium "The policy of enforced disappearances," held in Paris in January 1981.

31 Enrique Arancibia Clavel, a former secret agent of the Chilean police–DINA– in 1977 informed in Santiago de Chile that, according to a document of Battalion 601 of the Army Intelligence, the number of deaths and disappearances since 1975 until today amounts to 22,000 people. Document V/232-238, July 1977. Quoted by John Dinges in "The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents" (The New Press, 2004).

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isolated manner, claim for truth and justice with regard to the perpetrators, who almost wearily were prosecuted, freed, once again prosecuted and sentenced. This was due to the ambivalent movement of the political power, which opened and closed paths to the performance of justice. This protagonist presence of human rights groups stated, to some extent, that the past and the actions that were taken do not apply to society as a whole. They should mainly refer to, in our absolute opinion, to the surviving victims and the relatives of those who died directly as a consequence of repression or their involvement in armed activities by guerrilla groups. All of this has almost determinedly characterized the speeches and has set limits for advances not only in the discussions but also in the methods used to remember and commemorate.

There is no doubt that the organizations of relatives were the main actors who shaped that social and political period of fight against impunity. This “overrepresentation” placed not only the symbolic burden but also the material burden of justice and truth about the past on the shoulders of human rights organizations. It is possible to think that it was one of the reasons why their explanations and discourses became predominant.

They defined, with their permanent presence, the symbols that go beyond borders and which became an emblem of similar fights around the world. That's why maybe the narrations of the past disseminated to the rest of society are analyzed today from a point of view of the political power. These narrations portray the most attractive aspects of the tragic history of disappearances and assassinations of the next-of-kin relatives by the dictatorship.³²

In contrast, since the end of the dictatorship and with different intensities according to the political situation, the voices of the most conservative sectors are different and mainly opposing. These groups, which gave their support to the dictatorship and continued to vindicating their objectives and acts, are now defending the victims of the guerrilla groups. They try to recover that balance between facts and responsibilities which would reduce the history of confrontation between two equivalent sectors which produced symmetrical damages. This claiming intervention that is seeking a “complete memory” has appealed throughout the years to different aspects of the past to achieve its objective, which is always the same, that is, to match the crimes perpetrated by guerrilla groups to the illegal actions by the State. Therefore, they want to overlook that the State implemented a repression plan that was the framework for the perpetration of a large number of crimes against humanity, and which was intended to fight against guerrilla groups and eliminate all kinds of opposition.

Justice was the only possible road for those who were perpetrators of very serious crimes. But this was always a winding road and the main hindering factor to the future. The present -the trials- seems static, frozen in time, as if it would never end because it continues having a mandate and an inescapable but unfinished task: prosecute and punish past behaviors. Upon punishing and disclosing the judicial truth, we could think of starting another stage. This stage would provide more space to include other reflections about the period under analysis by social activists, political scientists, academicians, political leaders, and direct actors who now believe that they have to close ranks with the prevailing version. It would also be valuable to open to the representatives of younger generations who are part of the contemporary scenario. In the present, they would include a different perspective of the past, in terms of its impact on their present social and political experiences.

The vestiges of State terrorism are profound and lasting, even at a subjective level. There are different studies about the presence of trauma and the consequences of the widespread policy of terror, particularly enforced disappearances and its ominous variations in the Argentine case, on the psychic organization of individuals, their consequences on family groups and society at large. The analysis of the traces of these

³² They are the “direct victims,” as they are usually called. The phrase is a concept of the victims of the dictatorship.

facts is beyond the framework of this chapter, but it is essential to mention some of the main characteristics of the traumatic situation:

In the face of a traumatic situation, the path to reorganization drastically demands –more in these cases than in any other– an explanation of the events, an identification of the causes, an identification of the protagonists, an identification of the perpetrators, and the corresponding punishment. We are not talking exclusively about social trauma. But if we are talking about the latter, then appealing to the law as the organizer of a devastated psychic field and as the organizer of the social field is, in every case, the only way to give the psyche the possibility of healing.³³

For a long time, the Argentine State neglected the recognition of its institutional accountability and the designation of the perpetrators who deserved to be punished, besides their refusal to providing genuine information to recognize the events. All this went in the opposite direction of what people needed to develop the traumatic facts. Only based on truth can victims face them and overcome them. The State, by hiding the truth, hindered this development. By facilitating the possibility of prosecution, it is reversing that situation of delay and paralysis in the unfinished grieving in which most victims were trapped.³⁴

We should mention the disappearance of boys and girls kidnapped together with their parents and the appropriation of newborns during the captivity of their mothers who were pregnant at the time of the abduction and who were later assassinated because this gives a sinister and distinctive seal to the dictatorship. As it is known, children born in clandestine detention centers or hospitals were largely given to couples who were members of the armed forces and the security forces. The identity of those kids was later changed.³⁵

This type of terror designed by the military dictatorship for their pregnant opponents and their offspring is the emblem of the lies and silences that dictators, in their omnipotence, intended to extend to infinity.

IV. The Search for Truth and Justice: Events and Debates

In December 1983, with the return of the democratic regime, the families started searching for the truth about the whereabouts of the disappeared. So, the first new levers of justice started to be applied.

Since then, the Argentine policy has been characterized by progress and setbacks of the State to respond to the claims about the human rights violations perpetrated in the past. The demands for justice for the victims, voiced by the human rights groups and the vindication, through solidarity or corporate voices, of the actions of the armed forces as a necessary step to “eliminate subversion,” were the pattern for the alignment of citizens, officials, leaders, and political, religious, professional, and social groups.

The positions adopted about past events or the revelation of behaviors at that time have a relevant impact on the political definitions of the present. But the explanation of the validity of memories and the activation of the social memory about the events during the State terrorism can be found in the public political debate and the dynamics of the conflicts between civil society organizations and groups and democratic institutions in the last few decades.

33 Center for Legal and Social Studies. (2000). *La verdad, la justicia y el duelo en el espacio público y en la subjetividad. Informe de la situación de Derechos Humanos en Argentina*. (Chapter XII). Buenos Aires.

34 I think the status of victim cannot be reduced to disappeared and assassinated person, nor can this be done to mothers, grandmothers, or relatives. A case of armed forces declaring war to their nation and society is unusual.

35 See page 9 of this chapter.

a) Investigation of Disappearances and the Trial of the Military Juntas

When the Radical Civic Union Party published its election platform for 1983, which later won the elections, it proposed a structure to judge the unlawful acts perpetrated by the military dictatorship. It stated that civil justice should differentiate among three groups: those who gave the orders, those who obeyed the orders, and those who abused the implementation.

President Raúl Alfonsín had planned to prosecute the main perpetrators of illegal repression within six months. One of his first actions was the creation of a National Commission on the Disappearance of Persons (CONADEP)³⁶. This presidential commission was composed of independent and prestigious citizens who were granted powers and autonomy to investigate the disappearances. After a year, it published *Never Again: A Report*,³⁷ which provided the first essential elements for the subsequent judicial proceedings of the perpetrators of the crimes committed during the *de facto* regime.

Soon, there was a trial of the Military Juntas. Pursuant to Law 23 049³⁸, the jurisdiction of the military courts was established for the proceedings. Therefore, the Government sought to implement a strategy to prosecute the main perpetrators and guarantee the stability of the system. Due to the pressures exerted by the civil society, the possibility of appeals of the decisions before the civil justice system was included. This would take care of the proceedings at any stage, in case the military officers unjustifiably delayed the trial formalities. In September 1984, the Supreme Council of the Armed Forces decided that the orders issued in the alleged “exercises of the fight against subversion” were “unquestionably legitimate.” The investigations did not continue and so the Government strategy of “self-depuration of the armed forces” failed. In the face of complicity and the delay of the military courts in April 1985, the Federal Chamber of the Criminal and Correctional Court of the Federal Capital was in charge of the proceedings and started the Trial of the Military Juntas³⁹. The result was to serve time in prison for five of its members: Jorge Rafael Videla and Roberto Eduardo Viola (the Army), Emilio Eduardo Massera and Armando Lambruschini (the Navy), and Orlando Ramón Agosti (the Air Force). With this background, there were new and countless trials in the courts across the country.

These two first and essential actions were not welcomed enthusiastically, nor did they get the unanimous support of the human rights organizations. As it would happen throughout the decades, their coincidence was related to the need to break with impunity, make progress regarding the knowledge of truth and promote the exercise of memory. But the roads to achieve it always generated controversy.

Some months before the beginning of the new democratic government, such organizations proposed the creation of a Bicameral Investigation Commission in Congress. The commission would include representatives of the victims’ families as a mechanism to ensure a political condemnation of the events and

36 Decree 187 of September 15, 1983.

37 A text that has been permanently reedited thus proving its current nature and the high level of demand by the audience.

38 The law stated that due to the facts linked to State terrorism (since March 24, 1976 until September 1983), the first three military juntas should be prosecuted by the Supreme Council of the Armed Forces. However, it foresaw the control of the Federal Chamber of the Criminal and Correctional Court that could hear and rule on the cases (that is, being in charge of them) in the event that there was no prosecution. This was what eventually happened: in September 1984, the Supreme Council of the Armed Forces decided not to prosecute the former commanders in chief because it understood that “there was no crime” because “the decrees, directives, operational orders, etc. that implemented the military actions against terrorist subversion are, regarding content and form, unquestionable.”

39 The members of the three military juntas were prosecuted pursuant to a Decree of the Executive Branch. The historical sentence was issued on December 9, 1985. The Federal Chamber of Criminal and Correctional Court ruled the existence of a systematic, deliberate, and concerted plan for a covert repression policy and sentenced five commanders for the crimes of homicide, unlawful deprivation of liberty, and torture, among others. In the case of four of the commanders who were prosecuted, they were acquitted because the available evidence was insufficient (Omar Graffigna, Leopoldo Galtieri, Jorge Isaac Anaya, and Basilio Lami Dozo).

prevent the horror from repeating. In preparation, a few teams were created to systematize the information gathered during the dictatorship to search for the disappeared and document and investigate the complaints for the violation of human rights. But this “Technical Data Collection Commission” which did not include all the organizations was a key source of information so that CONADEP could guide the investigation and make progress. The differences of opinion regarding the decision to give support and information upon the creation of the Commission were disclosed during the meetings with members of CONADEP through the media. The Mothers from Plaza de Mayo and the Argentine Human Rights League continued to disagree. The watershed was between those who defeated the initial skepticism and chose to participate in those organizations while others continued to distrust and stay at an arm’s length. The former put all the information and experience of the most difficult times on the line and were able to extend the limits set forth by the law. This was the behavior that would be repeated with a few variations until the present.

b) Measures of Impunity

Three years later, in 1987, the permanent military resistance to the judicial proceedings became a rebellion. Those who were summoned did not appear in court. Simultaneously, the country was affected by successive military uprisings. The most important uprising took place during the Holy Week of 1987. After an obvious negotiation, the Government, with the euphemism that society could not live in a “general state of suspicion and uncertainty” and the presumed purpose of “speeding up the trials” took the first steps in the process of impunity. The Full Stop⁴⁰ and Due Obedience⁴¹ Laws were issued by the Congress of the Nation during the Administration of the Radical Civic Union Party. Later, the decrees of the pardons granted during the Peronist Government of Carlos Menem⁴² acted as a lock for justice.

The national Constitution considers the presidential power to pardon citizens who have been individually held liable as perpetrators of crimes with a final decision. But in this case, the Executive Branch granted itself the power to hear and decide about pending actions in the Judiciary. Moreover, due to the generality

40 In 1986, the Raúl Alfonsín Administration decided to extinguish the criminal actions for crimes perpetrated during the so-called “dirty war” within sixty days. This law -the so-called “Final Stop”- stirred a legal debate that was trying to determine if there was a retroactive reduction of the term for the prescription of the action, or if it was indeed an amnesty law that some did not want to call it this way. In any event, for practical purposes, the law had all the elements of a law of oblivion, pardon, or waive to a criminal action that was in force at the time it was signed. But since the nature of the law was essentially political, why couldn’t its effect have also this nature? ... Therefore, against all odds, there were several prosecutions within the brief terms stipulated by the law. Also annoyed by the “instructions that the Attorney General of the Republic gave to the federal prosecutors to file the fewest actions possible, the judges ruled more actions that were originally foreseen.

41 Law 23 521 of the Determination of the Scope of the Duty of Obedience, known as the Due Obedience Law, was enacted to find the most definite solution. Legally speaking, the law imposed the mandate to the judges to accept certain cases as proven and give them a specific interpretation that would lead to an acquittal or dismissal of the defendant regarding the perpetration of the crimes. In practice, all the military officers who acted upon following orders were freed. Once again, there was a heated debate in the legal community and some actions were taken that were trying to prove its unconstitutionality. Some authors even believed that it was not exactly a law but a judicial ruling issued by Congress, which issued an opinion regarding hundreds of facts without previously analyzing the files or the proceedings.

42 In October 1989 –just three months after his inauguration- President Carlos Menem, based on four decrees, interrupted the trials and freed 267 people who had not benefited from the two aforementioned laws. They were 39 military officers prosecuted for illegal deprivation of liberty, serious injuries, torture, and homicide; 64 former guerrilleros or political militants; three former commanders in chief of the armed forces who were deemed negligent when leading the Falkland Islands War of 1982, causing the death of hundreds of soldiers and 164 military officers known as “carapintadas” of the Albatross Corps of the Prefecture, officers, and civilian agents of the Air Force who participated in the rebellions against the democratic government during the Holy Week of 1987, Monte Caseros, Villa Martelli, and Jorge Newbery Airport in 1988, led by Lt. Colonel Aldo Rico, Colonel Mohamed Alí Seineldín, and commodore Luis F. Estrella. Finally in 1990 President Menem, using an amnesty decree, freed the former commanders of the Military Junta, the main people responsible for the State terrorism and proven perpetrators of the disappearance of thousands of Argentineans; Mario Firmenich, head of the guerrilla organization called Montoneros and several leaders of such group who had led thousands of young people who were later annihilated to a confrontation with the military officers.

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and the extensiveness of the recitals to which the decrees of 1898 referred: “the confrontation among Argentineans,” “prevent union,” “overcome disagreements,” “the events of the past,” “open rounds,” “overcome the resentment for the magnanimity,” “reconciliation,” “forget the hatred,” “share the public property,” etc. because they indiscriminately involved 30 cases and their regulations, they were treated as amnesty⁴³.

Both President Menem and his Minister of Defense, Dr. Italo Luder -the same person who while acting as chairman of the Senate, signed in 1974 a decree that authorized “the annihilation” of the guerrilla in Tucumán- and other officials, insisted in the fact that the signing of such decree was not the result of any kind of pressures. Nevertheless, even though the issue of pardons and peace process has been discussed over and over again since the early days of the Peronist Government, the rush of the measures adopted was due to several factors: the undeniable pressures of the military high command, the decision to prevent the disclosure of some of the causes to be submitted during the trial and the conviction of some members of the Government about the kindness of the road they chose.

The families of the victims of illegal repression said that the measure “had the virtue of making the wounds that were no longer so painful bleed again.”⁴⁴ In view of a *fait accompli*, citizens also voiced their rejection of the pardons through massive demonstrations on the streets and in the squares of the most important cities in the country.⁴⁵

In 1990, justice had practically stopped the formalities of the cases of the return of the children of the disappeared people or those born in captivity, which were promoted by the Grandmothers of Plaza de Mayo⁴⁶. In the cases where actions were taken, the decision was made in favor of those who had supported repression. In April, the number of justices of Supreme Court of Justice was increased from five to nine as an action articulated by the Government that proposed justices linked not only to the Executive Branch, but also to the President of the country for those positions. This maneuver guaranteed the judicial viability of the State privatization and reform projects. But it also guaranteed the certainty that the second amnesty decree would not be hindered by unconstitutional claims.

In that year, there were other measures in which the advancement of a justifying and vindictory discourse of the performance of the armed forces during the military dictatorship was clear.⁴⁷ Therefore, there was no knowledge of the previous decisions by the justice system that, right after the reestablishment of democracy, had shown the possibility of a different operation of the juridical institutionalism. The presidential pardon measures, overstated by an arrogant and omnipotent discourse,⁴⁸ underestimated the resulting

43 Later, several judicial decisions, including the decision of an appeal court, declared the amnesty decrees unconstitutional for various reasons, among them, the inclusion in the constitutional level of the UN Convention on Imprescriptibility of Crimes of War and Against Humanity, which represented the materialization of the principles already in force for the national State as part of the International community.

44 In “Nuestra respuesta frente a los fundamentos de los decretos del indulto” (1989), a document by the human rights organizations from Argentina.

45 According to the press at that time, the rejection of amnesty increased to 75% for the military commanders and to 81% in the case of Mario Firmenich, former head of the Montoneros organization.

46 Only the cases of appropriation of children were excluded from the enforcement of impunity laws. It is assumed that the number of children who were kidnapped from their parents or were born under captivity amounts to 600.

47 In October, Congress passed a law that exempted the children of disappeared citizens from military service on the basis of a principle of physical and psychological protection of the most vulnerable victims of illegal repression. With an attitude that surprised the Peronist members of Parliament, Vice-President Eduardo Duhalde, in his capacity as acting president during a trip of President Menem, vetoed the law. The military claims argued that the law attributed enforced disappearances to the “actions of the military officers, but without having proven this fact,” and unaware of the ruling of the justice system in the trial of the former commanders. There were several arguments, with a vindictory tone of the illegal actions of the armed forces, which even expanded their arguments about the need for illegal pressure (torture) by the police in the fighting against crime.

48 President Menem invoked his moral authority as a victim of the military dictatorship to adopt such a measure and was reiterative when stating that he would only bear the political cost of amnesty.

international discredit. In the country, they were experienced by the population as a provocation for the democratic society and a failure to fulfill the promises made by the President in his electoral campaign.

c) Human Rights Organizations Face to Face with Impunity

The defense of human rights started to be part of the national policy since the moment the groups of mothers gathered to find out about the whereabouts of their kidnapped children and to claim for their return. The method devised almost by chance to identify each other was a white handkerchief,⁴⁹ and it became an emblematic symbol, and they, the Mothers of Plaza de Mayo, became an inescapable icon of the decisive fight against arbitrariness and the absolute power of the military dictatorship.

The Mothers were the most visible figures of a comprehensive human rights movement. Other human rights organizations, some of which were created in the periods previous to the military dictatorship and others immediately after, sought to defend the life of those persecuted, jailed, disappeared, and exiled. In the country and abroad,⁵⁰ several groups actively worked on solidarity tasks and used the most varied testimonial strategies: public denunciation, legal action, material assistance, and legal defense of political prisoners, management and protest before the public powers. Those who were members of these organizations and groups shared a fundamental ethical stance in favor of human rights and which recognized different origins: the religious commitment and perspective, militancy for an active non violence, or the republican convictions. To those who were members of political-military organizations, the denunciation and solidarity tasks meant, in some cases, a shift in the conceptions of the forms of political action and the use of the law as a defense and solidarity tool based on an essentially humanitarian approach and language.

Human rights organizations emphasized different aspects of the task in their actions: the judicial actions, the search for grandchildren, and the defense of political prisoners. Such dynamics shaped the current institutional profile. Some people, whose human rights advocacy background was put on the line years before the collapse of the constitutional order, became well-known leaders and frequent voices of this comprehensive movement of opposition to the dictatorship. This is the case of Adolfo Pérez Esquivel, a leader of the Peace and Justice Service in Latin America, who was later awarded the Peace Nobel Prize in 1980; or the Catholic bishops Jaime De Nevares, Jorge Novak, and Miguel Hessayne, just to mention some examples. Also, there were the new leaders of the associations of the victims' families, generally mothers and grandmothers of the disappeared, but also jurists such as Augusto Conte and Emilio Mignone, educators such as Alfredo Bravo, followers of political parties, who became an ethical and social benchmark for a very large sector of the Argentine society.

In 1990, the flag of the defense of human rights, which was lifted by the opposition to the dictatorship, was no longer the hub around which the protests of the Argentineans revolved. The human rights organizations, which achieved experience during the military Government, were not able to find a significant space to relate to the new problems. During the eve of a profound national crisis, there was an emergence of new social and political situations derived from the economic situation first and, then, from the rapid transformation of the structures of the State that worsened the violation of economic and social rights.

The laws of impunity and the amnesty decrees swept the spontaneous consensus resulting from demands for truth and justice promoted by human rights organizations since the transition to democracy. Even though the organizations did not interrupt their actions to achieve these goals, they were not able to produce

49 In fact, at the beginning it was a piece of white gauze, which since the beginning was called "handkerchief," an expression that is now recognized by everybody.

50 The exiled people (militants, intellectuals, relatives, former prisoners who had been granted the "right of choice," or survivors of clandestine detention centers) actively participated in the groups that worked abroad.

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an echo beyond their always limited “circumscriptions.” The difficulty to link the demands for truth and justice due to past events, to the problem of the democratic present, was evident. The different groups were trying to find a new role in the face a new a situation. However, many years went by before the agendas of human rights organizations included specific actions aimed at the defense of social and economic rights and proposals for a democratic and transparent operation of institutionalism. The Grandmothers of Plaza de Mayo was the only group that somehow escaped from the general situation. Its main and basic objective, i.e., the search for the boys and girls who were born under captivity to restore their identity, drastically kept its current nature. The regular appearance of a person who was appropriated since his/her childhood and the restoration of a true identity legitimized the task of the grandmothers and gave their organization a greater capacity to reach the population.

d) Appeal to International Organizations and the “Right to Truth”

In 1989, human rights organization, under the leadership of CELS⁵¹, intensified their task before the international judicial organizations due to the refusal and impossibility of justice at a national level. Since the military dictatorship, the Inter-American Commission on Human Rights (IACHR) has received many complaints for disappearances and other related cases. Its visit to the country and the publication of a report⁵² in 1980, was a key event that allowed improving the level of international recognition about the events in Argentina and contributed to a growing isolation of the military government that was leading the dictatorship.

The human rights organizations insisted to the Commission about the need to assess the approach of the Argentine government that when it passed the Final Stop and Due Obedience Laws, it violated constitutional mandates and ignored the imprescriptibility of the crimes against humanity. In 1992 -in its ruling 28- the IACHR stated that the government had violated the American Convention on Human Rights. Over those years, and more specifically as of 1997, the Inter-American Commission placed the most important role to invigorate the judicial proceedings internally by stating specific demands to the government that was making efforts to cancel the search for truth⁵³.

On the other hand, the legal work of human rights organizations was activated in the search for creative and innovative channels for the action of justice. The resulting concept of the “right to truth and grieving” achieved international recognition and became the driving force of what we know today as Trials of Truth. The judicial proceedings were based on the right of the disappeared people’s families to knowing what happened to their beloved ones and on the right of society as a whole to know about its past, among other things, as a way to protect itself for the future. The Trials of Truth have been conducted since 1999 in the different federal chambers in the country because it is in these places where the criminal proceedings for the events occurred during the military dictatorship. The most relevant proceedings were conducted by the federal appeal courts of La Plata, Buenos Aires, Bahía Blanca, Mar del Plata, Córdoba, and Rosario⁵⁴.

The human rights movement continued “representing” the memory, acting as a stubborn opposition to each step taken by authoritarianism even though it was not able to explicitly articulate itself to the majority percentage of Argentineans who opposed impunity. This sector of the population, though hasty in its

51 Center for Legal and Social Studies (CELS), a human rights organization that set out to document crimes and report them internationally; therefore, it improved its defense of human rights, specifically from a judicial perspective. Since 1990, its agenda included the impact on public policies.

52 IACHR. (1980). Report on the Situation of Human Rights in Argentina (*Informe sobre la situación de los Derechos Humanos en Argentina*). Session 667 of the 49th period of sessions. Washington: OAS-IACHR.

53 It is important to point out the friendly solution for the “Lapacó case,” which establishes specific obligations for the Argentine State in the search for truth.

54 Their purpose was not to establish the criminal liability of the people involved and, therefore, they do not take into account the possibility of a sentence. Every person is summoned to declare as a witness and, in that capacity, they have the obligation of appearing and can be prosecuted for false testimony.

opinions, kept to itself the prerogative of becoming a living prison for the pardoned prisoners. This was evident in the frequent confrontations and protests in public places and on the streets where common citizens recognized characters who were involved and were accountable during the period of State terrorism and requested to expel them or loudly insulted them.⁵⁵ This scenario of social condemnation was a frequent behavior that made a positive contribution to the recognition of events and the awareness about the horror of the dictatorship.

The complaints filed in other countries by the leaders of the human rights movement and the victims in Chile and Argentina, were successful when Augusto Pinochet was detained in England in 1998. The complaints filed by judge Baltasar Garzón in Spain became relevant and expedited the presentation of victims who previously expressed certain skepticism towards the complaints filed abroad. Therefore, in just two years, important results were achieved in Italy, where the former generals Guillermo Suárez Mason and Omar Santiago Riveros⁵⁶ were sentenced to reclusion and life in prison, respectively. As the judicial proceedings proceeded in Spain, new proceedings were filed in Germany and Israel. These trials ended with a sentence of life in prison for the officer from the Navy Alfredo Astiz in France, found guilty for the disappearance and assassination of the French nuns Alice Domon and Leonie Duquet.

e) Confessions, Self-Criticism and Opening of Files

In 1995, the harsh testimony of Captain Adolfo Scilingo, who worked in the widely known concentration camp in Argentina, the ESMA, was crucial⁵⁷. He revealed the details of a methodology related to the bureaucratic structure created in the Nazi Germany for the implementation of a systematic plan of extermination of Jews: the victims of State terrorism, who were mostly captured alive and “disappeared,” were sent to clandestine concentration camps, and then thrown into Río de la Plata to erase all the evidence of their existence and of the crimes. The statements by Scilingo shocked the Argentine society⁵⁸ and were the starting point for some other –scarce– testimonies about the final whereabouts of other disappeared detainees made by the military officers who participated in the events.

Consequently, the Chief of Staff of the Army, Lt. General Martín Balza⁵⁹, addressed a message to the country in April 1995 in which he ratified the fact that during the military dictatorship there was an obvious violation of military standards and behaviors of the Army. He criticized the overall performance of his institution, asked the families of the victims of repression for forgiveness, and stated that no one is required to obey an immoral order that is unlawful or does not comply with military regulations.

Nine years later, coinciding with the presidential decision of build a museum in the premises of the ESMA, Almirant Jorge Godoy, Chief of Staff of the Navy, gave a speech in which he admitted that its premises were used “... to perpetrate acts that were deemed deviant and insulting for human dignity, ethics, and law;” therefore, the ESMA ended up “... becoming a symbol of barbarism and irrationality.” He

55 These manifestations, which at the beginning were isolated and spontaneous when citizens recognized those who were involved in the repression, had a planned and organized nature that led to the so-called “escraches.” The “escraches” are methods used to denounce repressors and are used by the group called HIJOS (Sons and Daughters for Identity and Justice against Oblivion and Silence). They mainly consist of identifying a repressor, collect data on the crimes of the repressor, march, and gather at the door of his/her residence or workplace, and denounce his/her crimes to his/her neighbors and bystanders. The word “escrache” comes from *lunfardo* (a popular language) and means “make known to the public through a demonstration.”

56 They were respectively the commander of the I Army Corps and the commander of the Military Institutes (zone IV).

57 Verbitsky, H. (1995). *El Vuelo*. Buenos Aires: Editorial Planeta.

58 Moreover, they led to the first tribute for the disappeared in front of Río de la Plata, where there was an emotional religious ecumenical event that ended up with the throwing of flowers into the river, which is the final destination of a large number of disappeared people and it is recognized as a “historical site.”

59 He was appointed as the Ambassador to Colombia during the Administration of President Néstor Kirchner in 2003 and ratified in the same position by President Cristina Fernández in 2007.

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expressed the Navy's categorical rejection of such acts and said that "... only through justice and truth can a full and long-awaited reunion of the Argentine society be achieved."⁶⁰

Both reviews of the military behavior in the past were significant from an institutional point of view. But, they also stirred rejection among certain groups of the armed forces under retirement and were not accompanied by specific actions such as opening files about repression. The advances in this sense started to take place when, in order to support the investigations about gross violations of human rights, a decree from 2007 recognized that "...based on the current democratic and republican State, we should review the need for the secrecy and confidentiality of information that might encourage a better awareness of the terrible situations experienced by our country."⁶¹ Therefore, considering that most of the people accused and prosecuted for the violations of human rights in the past are members or were members of the armed forces, security forces, the police, or intelligence corps who, when performing their duties, they did it under the obligation of preserving secrecy; then they are relieved from that duty so that they could contribute to the search for truth based on the information they had access to. Two years later, in 2009, and at the request of different courts, a ruling was issued to declassify the lists and documents about the civilian personnel who rendered services in different outposts during the dictatorship. Finally in 2010, and considering that 25 years after the recovery of democracy, it is not possible to keep the secrecy of information that prevents the knowledge about the recent past and weakens the right of society to know its past, all "the information and documentation linked to the activities of the armed forces from 1976 to 1983, as well as any other information or documentation produced in another period and related to those activities" were not classified.⁶² An exception was made with the information regarding the South Atlantic conflict or all the documentation related to inter-state conflicts.

In line with the advances set forth in previous decrees, in 2010 the Minister of Defense issued two resolutions aimed at reviewing the documentation existing in the Historical Archives of the Armed Forces⁶³. The main idea is to identify information useful for judicial investigations or society at large to be kept as part of the policies related to the preservation of memories. Therefore, task forces were created to identify, based on an analysis, information that the Ministry would send, on a regular basis, to the judicial authorities, the Office of the Public Prosecutor, and governmental organizations with regard to the investigation of cases of violations of human rights during the State Terrorism.

V. State Measures to Recognize the Past

The recognition of facts related to the violations of human rights in the past shows a dynamics that, as previously analyzed, has not been linear. In the search for truth, we can see actions that are considered milestones, such as the investigation conducted by the CONADEP and the beginning of the truth trials. But also, the ambiguous and intermittent action of justice, as influenced by the changes in the political power, used different legal subterfuges to guarantee the impunity on several occasions, in complicity with conservative groups and the military corporation.

Democratic institutions advanced unequally regarding two key issues: truth and justice. While this was happening, another dynamics gained force. The academy developed an analysis of the different aspects of the past and included them in their analysis. Social organizations continued with their demonstrations and tributes. Therefore, the artistic manifestations of these topics and their experiences in the present proliferated,

60 Speech given on March 3, 2004.

61 Decree 44/2007, 01/29/2007.

62 Decree 4/2010, 01/5/2010.

63 Resolutions by the Ministry of Defense 308/10 and 1220/10.

particularly in theater, documentaries and science fiction movies,⁶⁴ music, plastic arts, and literature. These creative works contributed, as a whole, to creating a vision about the facts based on art and also contributed with key efforts not only to preserving the memories about past events, but also to improving the critical knowledge about such a period and its inclusion in the interpretation of current events.

Upon reviewing the actions taken by the State during successive administrations, there is also a differentiated process. On the one hand, there is progress regarding the measures taken to fulfill their duties related to the investigation and punishment of the crimes committed by the preceding governments and the reparations for victims. On the other hand, there is a marked reluctance to formulating a convincing official and public recognition of the concerted and unlawful actions by the State and the essential vindication of the dignity of victims.⁶⁵

The advances took place along the lines of the complaints of human rights organizations to successive governments. This led to actions that, though partial and in some cases remarkably insufficient, agreed with the international recommendations to make a difference between the authoritarian past and the democratic regime. This happened with the identification, proper preservation, and public access to the archives that provided new information about past events.

However, 28 years after the end of the dictatorship, the main progress can be seen in the return of the jurisdiction of courts that will be in charge of the crimes of State terrorism. The determinants of this fundamental change are varied, including the serious and creative work in terms of the legal matters of human rights organizations; the commitment of judicial officials, and, specially, a change of context as a result of the modifications in the mechanisms to appoint the members of the Supreme Court of Justice. The immediate consequence of this resolution was the crucial renewal of the Court, whose composition today is a matter of pride for large sectors of society and allows anticipating the future of institutionalism from a different perspective. This was one of the first and most suitable actions taken by the Néstor Kirchner Administration who took over the proposal made by a coalition of non governmental organizations just a year before.⁶⁶

This does not mean that there is a prevailing spirit of acceptance of the rules of the democratic game. The changes in the logic of the political action are neither prevailing nor visible, and there are persistent corporate and patronage behaviors that are betting for ephemeral and short-term solutions. The electoral dynamics and the alliances that are forged to win elections usually lead to setbacks at different levels. They can lead to eliminating the most serious human rights problems from the agenda and can endanger the cumbersome agreements to control the actions of provincial and public authorities that have a poor performance regarding the protection of those rights.⁶⁷

64 In June 2011, Open Memory published a movie catalogue about the dictatorship that included 440 feature films. See www.memoriaabierta.org.ar/ladictaduraenelcine/.

65 An exception to this could be the speech given by President Néstor Kirchner regarding the decision to establish a Space for Memory in the premises of the former clandestine detention center -the ESMA- on March 24, 2004. However, his speech denied very important advances produced since the recovery of democracy (actions taken by the CONADEP, the Trial of the Military Juntas, the reparation policy) thus causing a counterproductive effect both on political leaders or officials who had promoted such measures and on extensive protagonist sectors of these rights or scholars, who go beyond unambiguous evaluations; this is a long path full of visible and inescapable achievements. Then, President Kirchner added nuances to his statements. We should also consider the aforementioned “self-criticism” –though partial and insufficient - of senior military officials about the members of the armed forces who did not have any criminal records.

66 See “Una corte para la democracia,” a document by the Association for Civil Rights (ADC), the Center for Legal and Social Studies(CELS), the Citizen Power Foundation, the Environment and Natural Resources Foundation (FARN), the Institute for Comparative Studies in Criminal and Social Sciences (INECIP), and the Users and Consumers Union. It was submitted in January 2002.

67 As an example, we can mention the setbacks in terms of unsolved prison problems that affect citizens who are serving time

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The long, persistent, and massive impunity is at the core of this fragility. A dependent justice that is sensitive to the influence of power and whose ambiguity was promoted by ideological discourses⁶⁸ that were justifying illegal repression, was outrageously delaying the trial and punishment of perpetrators. With skill, the current justice system might not obtain results in the investigations about paradigmatic cases of the present, such as the attempts against the Embassy of Israel (17/03/92) and the Jewish Argentine Mutual Association -AMIA- (19/07/94). There are provinces where the cases for the crimes against humanity have been facing a significant delay in the entire country. This persistent trend towards the refusal of justice can be only achieved when the efforts of the claimants are so significant that they can make the organization in charge of controlling officials such as the Judiciary Council to take action. The slow progress in the judicial area neutralizes the effect of other positive state measures aimed at dealing with and recognizing the past, and therefore, it conspires against the consolidation of democracy. Injustice establishes a timeless place in which times does not pass and establishes another form of conflictive, painful, and even perverse memory. If injustice is not solved, institutions and the purposes of the present will not be fully developed.

All this makes us deal with other relegated or poorly solved issues with a more determined action, but above all, with group actions toward the long lasting change so needed by the country. Among them, we have the redefinition of the mission of the armed forces in a democratic society, the reconversion of the police forces to guarantee the rights and security of citizens, besides innovation actions to reverse and prevent inequality from worsening.

The Governments of Néstor Kirchner and Cristina Fernández took significant steps in the area of institutionalism, and they had a positive impact on the dynamics of trials and in the operation of the judiciary as a whole.

The operation of the democratic institutionalism is now more fluid. After the destructive and painful crisis in 2001 which increased the skepticism towards politics as a way to solve conflicts, the country has been able to solve some serious problems, such as the economy. This reality is a positive element to foster the functioning of the State and its institutions in general. Nevertheless, we cannot say that these advances produced evident improvements in the area of political culture.⁶⁹

After mentioning all of the above as an undeniable context, we will now describe the most important state measures implemented to deal with the legacy of State terrorism since the return to democracy.

a) Creation of the Secretariat for Human Rights

After the activities of the CONADEP ended, the Argentine Government created the Deputy Secretariat for Human Rights, under the supervision of the Ministry of the Interior which was later given the status of Secretariat and was within the scope of the Ministry of Justice and Human Rights. Its main duties were initially the protection and systematization of the archives composed of the records that were based on the complaints received by the CONADEP, as well as all the information derived from its activities, the updates

there; a systematic use of torture; an abusive use of weapons by security forces; the disrespect for the rights of indigenous peoples, among others. These severe deficiencies are even more difficult to deal with due to the federal character of our country. The autonomy of the provinces, which does not mean avoiding the essential coordination of public policies to achieve results in terms of ensuring the validity of rights, collides with political-electoral confrontations to ensure the support of voters and the provision of funds for the local administrations. Within this framework, the rights of the poorest are always affected, and there is a risk that the difficult advances made by the advocacy actions of the civil society might benefit state institutions.

⁶⁸ Vigorous and still valid speeches (that are still read in the conservative press) which describe the crimes of the dictatorship as “alleged crimes,” the perpetrators of these crimes as “defendants of alleged actions at odds with legality,” or the methodology used to hide the traces of the murders as “imaginative plots of subversion.”

⁶⁹ This relationship is a unique challenge for the Argentine society, which has deep imbalances between the institutional mechanisms and the social behaviors.

based on the new information about the cases under investigation and the reception of new complaints. It also monitors the compliance with human rights international standards, of which Argentina is a signatory, and implements the reparations policy of the State. Since 1992, it has had a National Commission on the Right to Identity (CONADI), in charge of identifying children who were kidnapped together with their parents or who were born under captivity and whose identity was substituted.

Since 2003, the Secretariat for Human Rights has increased exponentially in accordance with the new duties and bodies that had an emphasis on human rights in the last two governments. The Secretariat has made major efforts and has maintained a particularly visible presence in activities related to the memory of the recent past, particularly to the recovery of buildings where clandestine detention centers operated. To choose the members of the work teams, the emphasis was given on the political affiliation or the membership to human rights organizations instead the professional expertise or specific skills, and this did not necessarily contribute to producing results in tune with the hierarchy that the Government itself grants to human rights by considering them as the cornerstone of its policies. With a national favorable context full of opportunities, it is disappointing to know that a state entity that is in charge of these issues has not promoted clearer and more stable policies for aspects as essential as the archives and historical sites, even more taking into account that their management dates back to the Administration of Néstor Kirchner in 2003.

To reverse this trend, we should deprive it from its usual competition spirit to clearly see the difference in roles and duties between the civil society and the State. To distinguish them, it would be easier to achieve its goals faster and more effectively through cooperation relationships that would produce more and better results than before.

b) Victim Reparations Policy

The reparations policy of the Argentine Government has been implemented during successive administrations since the reestablishment of democracy. The Never Again Report (1984) made some recommendations to provide financial assistance to the children and families of the disappeared. Since then and progressively, laws have been enacted to meet the need to repair the prejudices caused by State terrorism and the military dictatorship in specific situations: workers dismissed for political reasons; citizens who were in jail under the custody of the National Executive Power⁷⁰ and the military courts; citizens who have survived illegal abduction; immediate families of missing and assassinated people; and young victims⁷¹.

As pointed out by a study conducted in 2004 by the CELS⁷², as part of a comparative investigation of the international experience, these laws represented a wide coverage of economic reparation by the State to the victims and their families⁷³. At the time of the approval of these standards in Congress, there was not a substantial dissent. The impact of the fight for truth and justice for the families of the disappeared and

70 During the state of siege, a person without a judicial proceeding or who had been dismissed or acquitted by civil justice could be legally detained by the National Executive Power (PEN) until stipulated otherwise. During the last military dictatorship, most political prisoners were detained under these circumstances.

71 In the case of workers who had been expelled or laid off, reinstatement was established, as well as a calculation of the inactivity period for retirement purposes. In the case of disappeared citizens, pensions and social security coverage were provided to the spouses and children. The legal concept of “absence due to enforced disappearance” was created, and economic reparation was granted to the surviving victims of enforced disappearances and to the successors of people killed by military officers and members of security forces or paramilitary groups.

72 Center for Legal and Social Studies. (2004). *La experiencia argentina de reparación económica de graves violaciones a los derechos humanos*. (Mimeographed). Buenos Aires.

73 The same study points out that according to the Secretariat for Human Rights, until mid-2002, there were 6,483 requests of reparation for cases of enforced disappearance; 4,718 reparations were granted. There were 1,648 requests for reparation for cases of murders; 937 were granted. In total, by virtue of Law 24 411, 5,655 benefits were granted. Regarding the benefits set forth in Decree 70/91 and subsequent Law 24 043, aimed at those had been detained under the custody of the Executive Branch due to the state of siege during the de facto regime, and for those who had been detained because of a decision of the military courts, reparations were granted to nearly 8,000 people, out of 13,600 requests received.

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human rights groups has pervaded society. These benefits were never questioned. Rather, an opinion that a State that has never seriously neglected its protection duties, acting against its own citizens, must somehow change the results not only of such vulnerability but also of state aggression.

Human rights organizations composed of those who have experienced the effects of State terrorism more visibly and directly, the Mothers of Plaza de Mayo, the Grandmothers of Plaza de Mayo, and Relatives of the Disappeared and Detained for Political Reasons, initially showed some reluctance to the possibility of an economic reparation: “The resistance was based on the idea that a reparation involved changing the life of the disappeared and give up the claim for justice in exchange for money.”⁷⁴ But, after visiting the offices of international organizations and proposing mechanisms to prevent those crimes,⁷⁵ they included the state obligation to provide reparations for the early claims for truth and justice.

Nevertheless, at the Association of Mothers of Plaza de Mayo, there was a strong dissent. A sector led by Hebe de Bonafini opposed the proposals and the symbolic tributes by the State or the civil society, including monuments⁷⁶ and museums or public forgiveness demonstration, as economic reparations. She described those who collected that benefit as prostitutes who “sold” the blood of their disappeared children. This and other equally radical positions⁷⁷ that judged the actions of people, political parties, and leaders led to the division of said organization, which very early gathered those who had become the emblem of the opposition to the dictatorship, beyond the national frontiers.⁷⁸

c) Armed Forces and Security Forces

At the end of the dictatorship, the new role of the armed forces in the democratic system was defined essentially on the basis of their subordination to the civil power. Under the new political framework, the action of justice and the possibility of prosecuting the perpetrators of State terrorism was related to the threat to governance and democratic stability. At that time, no value was placed on the significant work of courts and which –together with other basic democratization and modernization measures- would result in institutional strengthening and, consequently, an improvement in the quality of the political system as a whole. All this came much later and its implementation revealed the speculative nature of the threat constantly used by the armed forces to explain their resistance –then the explicit rebellion- to be subject to the new rules of the game.

Upon the return of democracy, no special measures were proposed, planned, or developed to purge the armed forces and the security forces; for example, by separating those who had different degrees of responsibility for the illegal repression. In the face of a lack of mechanisms, the challenge in the promotion procedures in the military hierarchy was the tool that demanded an annual identification of those who were still in the ranks of those institutions to prevent their promotion to higher commands positions.⁷⁹ Moreover,

74 CELS. (2004). A text quoted in note 72.

75 Such as the work conducted since 1981 to approve an International Convention for the Protection of All Persons from Enforced Disappearance, which was recently approved in 2006.

76 In 1999, during the ceremony to lay the foundation stone of the Monument –see below in this chapter -, Hebe de Bonafini organized a small but loud demonstration to express her disagreement and made a statement in which she threatened to use a chisel to destroy the names to be engraved in the future.

77 Such as the opposition to the exhumation and identification of skeletal remains buried as “NN” or in collective graves, the tributes, and the economic reparations. For further information about the reasons of the division of the organization and the creation of “Madres de Plaza de Mayo Línea Fundadora,” see a document written in 1986 at www.madresfundadoras.org.ar/pagina/origendelalneafundadorademadresdeplazademayo1986/45.

78 In 1986, the Mothers of Plaza de Mayo were divided into two groups: the Mothers of Plaza de Mayo Línea Fundadora and the Association of Mothers of Plaza de Mayo. The scission was the result of a difference of opinion about the methodology to fight a constitutional government and of the rejection of authoritarian methods to run the movement.

79 A task that since 1983 has been performed by several members of Congress, individuals, and organizations, particularly, the Center for Legal and Social Studies (CELS).

due to the change of government and the appointment of new senior military officers, or when there were new internal problems in the military institutions, there was a gradual purge –though it cannot be said that it was a total purge⁸⁰– of groups that were involved in gross violations of human rights.

The results of the investigations by the CONADEP, the historical trial of the Military Juntas, well as other lawsuits and the countless military insurrections at the end of the eighties, led to a consensus in society regarding the outright unsuitability of the military intervention in the political matters of the country and the need for limiting its intervention and prerogatives in different areas.

The effort to assign a role to the armed forces under a democratic system was materialized through the National Defense Law of 1988 and the Internal Security Law of 1992. Moreover, we should mention its size and its organizational structures and resulting intervention capacity through a growing but significant budgetary cut. The aforementioned laws clearly frame the functioning of the armed forces and the security forces. First, “national defense” is established as the exclusive mission of the armed forces, removing duties and prerogatives that allowed them in the past to get involved with and militarize the internal security. The Internal Security Law, on the other hand, sets forth the legal, organic, and functional foundations of the national efforts of the police to protect “...the freedom, life, and assets of citizens, their rights and guarantees and the full validity of the institutions of the representative, republican, and federal system set forth in the Constitution.”⁸¹ Moreover, it describes the duties of internal security of police institutions.

This does not mean that the balance in the civilian-military relationships has been achieved. The armed forces have repeatedly appealed to the need to plot the “new threats.”⁸² They have been encouraged by the claim by the United States for their participation in the control of conflicts that endanger the internal security in the Latin American countries. In this way, they tried to recover a protagonist role in the decisions and the budget. It is clear that the definition of functions and of institutionalism in accordance with the democratic framework is a pending task for Argentina. In recent years, the curricula, the training system and the internal functioning that were still permeated with the doctrine of national security were thoroughly assessed. It is well known that this idea led the activities of Argentine and Latin American military officers in the past decades, but with disastrous consequences.⁸³

In this advance process, conflicts are still present. Those who were considered guilty of crimes against humanity in the lawsuits about the activities during the dictatorship, or those who were not prosecuted but who were accused of participating in violations of human rights, were and still are subject to a general social repudiation.⁸⁴ The aforementioned *escrache* activities “... show what justice does not show.”⁸⁵ Somehow,

80 Even in recent times and thanks to the investigations conducted by the Ministry of Defense while Minister Nilda Garré was in office, either for complaints filed by society, legal requirements, or the review of files, members of the forces who were involved in unlawful activities are still identified.

81 Law 24 059, article 2. 01/06/1992.

82 First terrorism, but also poverty, social imbalances, drugs trade, a growing indigenous nationalism, corruption, migration, the AIDS virus, religious fundamentalism, and an extensive list of social problems that, according to US strategists, includes the claims by social groups who are seeking a change of system: “Apreciación de la Situación Estratégica del Hemisferio,” a paper by the International Chief of Staff of the Inter-American Defense Board. Quoted by H. Verbitsky in the newspaper “Página 12,” 03/21/05.

83 There is enough evidence (in archives and lawsuits) about the contents of military training at that time, the training methods, and the close relationship with fundamentalist ideological frameworks that encouraged illegal actions.

84 Expressed in different modalities: the aforementioned modality of open rejection through public demonstrations against military officers recognized as violators of human rights and through “escraches” (as explained in footnote 55), particularly promoted by those groups of the children of the disappeared, in front of the residences of repressors. This type of demonstrations also affected other civilian authorities who conspired or were involved in repression, physicians, and judges accused of collaborating with the dictatorship, among others.

85 Center for Legal and Social Studies. (2000). *La verdad, la justicia y el duelo en el espacio público y en la subjetividad. Informe de la situación de Derechos Humanos en Argentina*. (Chapter XII). Buenos Aires.

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they are separated from the category of citizens, calling the attention of the State for its omission and reporting to those living in the neighborhood that one of the neighbors is a torturer and murderer. But at the same time, the accused military officers receive a regular vindication of some of their former retired comrades, journalists, and conservative ideologists, including some member of the hierarchy of the Catholic Church, who still expect to name those who have been nationally and internationally accused for deviant acts as “alleged offenders” or “saviors of the country.”

Even though the armed forces have been incorporated as actors of the system, the efforts to redesign them in a democratic context have been made for many years, even more intensely due to the denial or restriction of old privileges and functions than due to a new look that will finally abandon its authoritarian bad habits and will allow for a different relationship with society. Even though it is difficult to evaluate at the present time if the context and the significance they had for society then allowed for another development, we have to say that as of 2006, during the term of Minister Nilda Garré as Defense Minister, it was possible to make progress in important pending issues: the reform of the military justice system, education and training; human rights policies, and a fundamental change in gender issues.

The repeal of the Code of Military Justice, opposed for so many years, opened possibilities to update the establishment of a modern disciplinarian regime and the extension of duties of the Ombudsman, now existing for all citizens, to include also the military population.⁸⁶ The changes were designed based on the idea of the member of the armed forces as a citizen who enjoys the same rights and freedoms as a civilian and who is, at the same time, a specialized officer who, in that capacity, is supervised to make sure he/she plays that role. This was only possible when the military jurisdiction was removed and all the standards and regulations were reviewed to keep up with international human rights standards. In the area of education and training at the recruitment centers, new courses on history, human rights, and administrative law were included. Regarding the essential adaptation of human rights criteria (which go beyond the incorporation of subjects in military training), there were some significant events, such as the correction of the files of all the soldiers that at the time of their mandatory military service were abducted, disappeared, and considered as defectors. The Ministry, through a resolution⁸⁷ followed by a ceremony attended by the families of those conscripts, changed that epithet for the status of disappeared detainee. Moreover, the Ministry of Defense conducted a thorough follow-up on the responses of the armed forces to the court requirements in the prosecution of the violations of human rights perpetrated during the dictatorship and, as clear support for the advancement of justice measures, it also removed the possibility for military officers who were serving time in jail for crimes against humanity to be imprisoned in military units.⁸⁸ These measures were taken as part of a procedure that was sending clear messages of change by continuing with the reforms of the doctrines and routines pertaining to the exercise of intelligence by the armed forces and that still had reasons or obstacles to manage information or justify the behaviors displayed during the dictatorship. Finally, supporting the initiative of the Secretariat for Human Rights, the Ministry of Defense authorized placing signs on buildings and premises where human violations were perpetrated and that are still used for military activities. Regarding gender policies, particularly important modifications were done, addressing not only the reality of a larger incorporation of women in the armed forces, but also basic equality principles.⁸⁹

86 These changes are contained in Law 26 394 enacted in 2008, or they derived thereof.

87 Resolution MD 420 of May 7, 2009.

88 In 2008, Minister Garré asked the federal judges who kept military officers in military units due to their prosecution in human rights lawsuits, to transfer them to common prisons as set forth by the law. The requested was based on the equality before the law of civilians and military personnel, the military and non-prison nature of the headquarters, and the bad example that such a presence will set for the officers who are not related to the crimes under investigation. Therefore, all the military officers who were distributed in different units were gathered and, at the same time, the military prison that operated in Campo de Mayo was transferred under the supervision of the Federal Penitentiary System.

89 For further information, see <http://www.mindef.gov.ar/genero.html>.

Therefore, there were changes that in some cases timidly started years before and ratified a modern role for the armed forces, with an emphasis on the modification of the internal relationships of the armed forces and breaking its compartmentalized and secrecy relationship with society. A greater collaboration of the armed forces with other countries in the region took place not only within a context of growing Latin American integration, but also within a clear subordination to the civilian power.

d) Reparation Measures with a Strong Symbolic Content

A public policy to recognize and take care of past human rights violations, during a transition, must contribute to building the social memory about what happened.

Since 1983, different places in the country promoted initiatives that emphasize the recognition of what happened or on the tributes of victims. These actions included naming streets and squares after the victims, planting of trees, murals on significant buildings, placement of plaques to indicate the places where relevant resistance actions took place or in the residences of disappeared citizens, among others. This chapter will address only the most recent national projects and some others in the city of Buenos Aires.

Driven by the strong manifestations of memories in 1996, during the celebration of the twentieth anniversary of the coup d'état, human rights organizations promoted the construction of a memorial monument in the city of Buenos Aires. Soon after, they were able to approve a rule that allocated public space to "erect a monument and a group of sculptures in honor of the detainees who went missing or were murdered by State terrorism during the 1970's and the beginning of the 1980's until the recovery of the Rule of Law."⁹⁰ Since that time, a commission was created⁹¹ to follow up on the monument, whose foundation stone was laid on March 24, 1999. The monument and the park, whose total area is fourteen hectares, are included in a larger project that is intended to give back to the city of Buenos Aires its connection to the river through the treatment of the entire river bank. The powerful symbolism of the project lies in the location of the monument on the shores of Río de la Plata, a place where the bodies of thousands of disappeared people were thrown.⁹²

The process has led to interesting debates about the method to represent and remember recent historical events, of which we mention only the most significant: criteria for the definition of the list of victims to engrave on the monument; the relationship between the tribute of victims and the recognition of the ideals of the fight; the capacity of the works of contemporary art to contribute to the reflection and transmission of memories; the tension between the permanent nature of a monument and the exercise of an active memory; the possibility to adopt management methods that guarantee not only a proper maintenance of the facilities and works of art, but also the fulfillment of the original objectives, thus preventing them from being diluted over time.

The completion of the monument took ten years of uninterrupted work.⁹³ Only then it was possible to fulfill the wish of the families to have a place in the city where they could "see and touch" the names of the disappeared and assassinated victims engraved on stone. In the meantime, the square with an access to the

90 Law 46 passed on 07/21/1998.

91 The Pro-Monument Commission –whose duties ceased in 2009 with the passing of a law that coincided with the end of the Multiple-Use Hall, was composed of lawmakers, officials from the Executive Branch, representatives of ten human rights organizations and the University of Buenos Aires. The Park and Monument are managed by a board of directors and an executive directorate, respecting the main characteristic at the time of its creation: mixed management between the civil society and the State.

92 For further information about the Monument for the victims of State terrorism and the Memory Park, see www.parquedelamemoria.org.ar.

93 The Monument was inaugurated in November 2007, and in the following years, different sections of the Park were opened. In 2011, the Park completed the most important stages of its electrical infrastructure which will all its full and final operation.

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park that was opened in 2001 became a space to pay tribute on commemorative dates, until the different stages of the works were completed. Therefore, it was possible to complete the monument in 2007 and inaugurate it in the same year and complete the exhibition and conference room in 2009 and use it in 2011. The monument and park are full of symbolism and beauty and are visited by a large number of students and the public at large, even though it has not been possible to disseminate its existence and location due to a lack of urban signage and an effective dissemination policy. There were emotional ceremonies organized for the death of relatives of the disappeared, who decided while they were alive that their ashes will be thrown into the same river where the bodies of their beloved ones were also thrown into.

At a national level, the Néstor Kirchner Administration created the National Memory Archive,⁹⁴ soon after he took over. The purpose of this archive was to preserve the information, testimonies, and documents to contribute to the study and research of the fight against impunity and give access to documents in order to ensure the prevention of human rights violations in the future. The archive is composed of a set of documents produced by the activities of the CONADEP, particularly, the files of the complaints submitted to the Commission as well as documentation about the subsequent investigations and files about victim reparation. This was an initiative that at the end of 2003 slowly took actions to preserve and organize the documents that will allow the public to review its contents in the future. The National Memory Archive, which is located in one of the buildings of the former ESMA, is intended to recover key documentation produced by the armed forces and the security forces. It also has the mission -as part of the State policy- to preserve the historical heritage which is so essential to conduct a thorough investigation of past events during the last military dictatorship and contribute to the lawsuits and the historical investigations. Even though some reasonable time has elapsed since its creation, the information of its work and services is scarce, and the levels of access to the current documents have not been yet established.

In coordination with human rights organizations from different cities in the country and the joint successful work, the Argentine State⁹⁵ led the presentation of 29 Argentine archive funds which are the documentary heritage about human rights in the country and which are valued at an international level and were included in UNESCO's Program of Memory of the World due to their authenticity, importance, uniqueness, and the impossibility of replacing them. This achievement is significant due to the value of the process to carry it out, and because this process organized information from many documentary collections and related them, due to the results and because of its medium and long-term effects. This was a work methodology that might be used in other human rights and memory efforts.⁹⁶ In any event, since then and as continuity of this early initiative, the Argentine State will be responsible for guaranteeing its preservation and organization of its access.

On March 24, 2004, on the anniversary of the coup d'état, President Néstor Kirchner together with his entire cabinet attended a ceremony at the Military Academy during which the Army Commander at that time, Lieutenant General Roberto Bendini, removed the portraits of the dictators and de facto presidents Jorge Rafael Videla and Reynaldo Benito Bignone. Both have been directors of the Military Academy. The presidential statement to his Ministry of Defense that the portraits would be removed caused an expected gesture by the Navy Commander, Almirant Jorge Godoy, who removed the portrait of former Almirant Emilio Massera from the gallery of former commanders located in Edificio Libertad, the headquarters of the

94 The full text of the decree that created the Archive can be reviewed at www.derhuman.jus.gov.ar.

95 Through the Secretariat for Human Rights, which included the fund of the CONADEP as the pool of the National Memory Archive, which has the state responsibility of guaranteeing the preservation of these archive funds.

96 The experience of applying for the Memory of the World program (2006-2007) should represent not only a precedent but an example to follow by the Secretariat for Human Rights and its different bodies. The achievement involved the work by the civil society and state bodies. The work was organized through a mixed technical team that worked together with the participating institutions. Moreover, there was a planned and coordinated -also collaborative- influence task without the presence of useless protagonists. The Minister of Foreign Affairs played a key role in the achievement of this objective.

Army General Staff. Unlike the ceremony presided by Kirchner, the gesture of the Army was not public and was published in the press two months after.

The removal of the portraits of those who led the illegal repression and ran the country for seven terrible days had been insistently requested to the Ministry of Defense in the last few years⁹⁷ by the CELS. This was an effort to transform the difference in the former behavior of the military institutions, which is at the core of the illegal and sinister action of the dictatorship and the behavior established by the new rules of the democratic regime for them, into visible gestures and attitudes.

On that anniversary, just a few hours later, the Space for Memory and the Promotion of Human Rights was created during a multitudinous ceremony conducted in the premises of the former Navy Mechanics School –ESMA- and other military institutions. As a serious deviation of its original mission, there was a concentration camp at the headquarters of such institution where nearly five thousand citizens were imprisoned and murdered. It is useful to remember that in 1998, President Carlos Menem⁹⁸ ordered the transfer of the School to use the premises as “green space” where a “symbol of national unity” would be erected after the demolition of the building. The measure was a hideous attempt to delete the facts and force a reconciliation that deserved the rejection of all the human rights organizations. The families of the disappeared at the ESMA filed a remedy for the protection of constitutional rights to suspend the effects of the decree.

Then, the agreement entered into by the President of the country and the Head of the State in the city of Buenos Aires in 2004 to give the place a completely different use: a museum about the dictatorship and which could be used as a place of reflection and knowledge about the past for future generations. This gesture sent a clear message to those who did not obey the laws and the elementary rules of human coexistence; it has a strong content of reparation for society at large and fulfills an old desire of the human rights organizations, which since the 1980's had taken several steps at a municipal level in favor of the creation of this museum.⁹⁹ In October 2007, the premises were completely vacated by the Navy once the Ministry of Defense authorized moving the institutions working there to another location and the buildings were transferred to a commission composed of the National government and the government of the city of Buenos Aires until the current public entity that is the body responsible for the design and management of the entire space, was created.

The *Casino de Oficiales* (Officers' quarters), one of the 35 buildings in those huge premises, was the place for the disappeared detainees under captivity and the center where guided tours can be arranged. The opening of the center to the public and the arrangement of guided tours was the target of heated discussions, and the institutional and management model faced difficulties because it is discussed between the city and the nation¹⁰⁰ and with the participation of human rights organizations. Even though this initiative had serious implications (in terms of occupation of the territory, budget, and symbolic value), there was no involvement

97 Ministers Ricardo López Murphy, Horacio Jaunarena, and José Pampuro, during the Administrations of De la Rúa, Duhalde, and Kirchner.

98 Presidential decree 8/98.

99 For further information about the background of this initiative, see the website of the Association of Open Memory at www.memoriaabierta.org.ar; and about the advance in the work by the governmental bodies that are part of the Bipartite Commission:

www.buenosaires.gov.ar/espacioparalamemoria and www.derhuman.jus.gov.ar/espacioparalamemoria/, in charge of the eviction of the premises. In September 2011, the website of Space for Memory and the Promotion of Human Rights www.espaciomemoria.ar was created.

100 The city of Buenos Aires owns the land where the buildings are located. Moreover, when there were no possibilities to open a museum at a national level, in the city of Buenos Aires there were progressive public policies for the creation of the Space for Memory Institute. This institute is today the most intolerant and difficult actor in the combination of wills for the management of the former ESMA.

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of government bodies that are competent in urban development, architectonic heritage or culture, which could contribute their essential opinion and management for these ventures, if they are planned for the long run and beyond governmental procedures. This confusing but allegedly inclusive game between actors who have different responsibilities and participation capacities is one of the major challenges of this “project.” Beyond its close link to human rights organizations -because it was part of the vindications and due to its current participation in the management- the intervention of the ESMA should be evaluated soon because of its results and beyond this link, particularly the accountability of the State. This is about assessing the contribution to the objectives of remembering the past by generating awareness about the fatal consequences of dictatorships and the State Terrorism and by improving the value of democratic participation and the involvement in public affairs.

Though initially, the museum would operate next to the casino, in the emblematic building known as the “four columns,” this has not happened yet. However, other governmental and non governmental organizations have already been created to host different activities.¹⁰¹ The most consolidated organization is the Haroldo Conti Cultural Center for Memory, which hosts a variety of cultural activities.

The place was not the first site recovered in the city of Buenos Aires, and it opened to be visited by the public -something that happened very slowly and faced some difficulties- with a single format of guided tours that started a few years ago.

Even though there are a lot of memory sites in the Federal Capital¹⁰², there is no coordination among them, something that would be undoubtedly desirable and necessary due to their potential role as learning vehicles about the past and the awareness about the effects of totalitarian governments.

There are other relevant initiatives in the country. The oldest initiative was the Museum for Memory in the city of Rosario¹⁰³, created by the local legislature in 1998. This museum started operating in 2001 at a provisional location. In December of 2010, the museum was finally located in the building where the II Command of the Army operated between 1976 and 1983. The museum, which was under the supervision of the municipality of Rosario, offers exhibits that do not focus on the chronology of the events but rather proposes topics and experiences to the visitor. The museum has a documentation center and offers interactive spaces, and its educational program is a proposal that has been proven by the team for many years while working with the schools from the city and other places.

In July 2000, the House of Deputies of the Province of Buenos Aires created the Provincial Commission for Memory in order to implement a Place of Honor for Memory, which “will contribute to keep the recent history alive in the memory of the population of Buenos Aires.”¹⁰⁴ This commission develops broad analysis, dissemination, and education activities about past events.¹⁰⁵ It is in charge of the Archive of the Directorate of Intelligence of the Province of Buenos Aires (DIPBA), which keeps detailed information about intelligence reports of events, organizations, and individuals who were under surveillance. The archive has 3,800,000 pages and 300,000 personal file cards, besides sound and audio-visual documents. The previous objective of the archive was changed, and the new purpose is to stop keeping secret information controlled by the police forces and start making this information -in accordance with sensitive information protection standards-

¹⁰¹ For further information about the location of the institutions in the premises, see the institutional section in the website at www.espaciomemoria.ar.

¹⁰² See Memoria Abierta. (2009). *Memorias en la Ciudad. Señales del terrorismo de Estado en Buenos Aires*. Buenos Aires: Eudeba.

¹⁰³ See www.museodelamemoria.gob.ar.

¹⁰⁴ As indicated in Resolution 2172 of the House of Deputies of the Province of Buenos Aires that created the Commission, it was later ratified by Law 12 483.

¹⁰⁵ For further information, see www.comisionporlamemoria.org.ar.

available to the public and use it in lawsuits to disclose the truth. This is essentially a gesture of reparation and ethical, civic, and historical rearrangement. Then a Museum for the Art and Memory was created to display important political art collections. The commission also offers a vast educational experience which is mainly focused on the Program for the Youth and Memory, which today has been reproduced in other cities and provinces.

Some years later, continuing with the policy that promoted the recovery of spaces that were formerly torture centers and where thousands of abducted citizens were killed, it was possible to “conquer”¹⁰⁶ as sites for memory places like formerly clandestine detention centers from the Police Information Department of the Province of Córdoba (D2),¹⁰⁷ La Perla,¹⁰⁸ and La Ribera¹⁰⁹. Similar experiences were developed in other cities in the country such as Mendoza (House for Memory and Popular Culture), Morón (House for Memory and Life, which was the former detention and torture center called Mansión Seré), Resistencia (House for Memory), and Trelew (Cultural Center for Memory).

The work processes aimed at making decisions about the main objectives in each location, the methods to make them available to the public and the tour scripts, the methodologies to build exhibits and develop educational contents, the activities organized in those places are the main reason for the creation of communication channels among those experiences. Since 2006, there has a Latin American Network of the International Coalition of Sites of Conscience,¹¹⁰ that today links 32 institutions, sites and museums in the region (state, mixed-managed, and non governmental), which are working for the memories in twelve Latin American countries. The network has been able to establish itself as a horizontal exchange space about lessons, reflection, and discussion related to topics related to the work done by memory spaces.

Moreover, the Secretariat for Human Rights created the Federal Network of Memory Sites within the scope of the National Archive for Memory in order to exchange experiences and coordinate policies among state institutions in this field.¹¹¹ The Secretariat is also in charge of the signs placed in different locations that were detention centers with the use of three cement pillars with the words: Memory, Truth, and Justice.

VI. Considerations about Future Human Rights Issues

The human rights movement became the ethical benchmark of a stage, but it also influenced, through its presence and actions, the new way of thinking and conducting politics in the country. The most immediate effect was the effectiveness to curb authoritarianism. The acknowledgment of past events and the understanding of such history as part of an identity have built a social memory that clearly contrasts dictatorial and democratic practices. Therefore, it contributes to valuing the differences between the social and political

106 In the province of Córdoba, people choose the use the verb “conquer” to refer to the processes to recover the public use of former clandestine detention centers.

107 Located downtown, the building that today houses the Archive and the Provincial Commission for the Memory of Córdoba was the seat of the Police Information Department of the Province of Córdoba, which operated as a clandestine detention center between 1974 and 1978.

108 On March 24, 2007, the Government of the nation transferred the lands of that former clandestine detention center to the Provincial Commission for Memory of the Province of Córdoba, so that it could be used as memory site. It was open to the public on March 24, 2009.

109 Campo de La Ribera was a military prison and during the dictatorship it was transformed into a clandestine detention center. Since the arrival of democracy and since 2009, it is used as an educational center.

110 See www.sitesofconscience.org; www.memoriaabierta.org.ar/redlatinoamericana/index.php.

111 The Federal Network was created by Resolution SDH 014 of March 22, 2007, and it is intended to become a body to organize activities and exchange experiences, methodologies, and resources among the human rights governmental organizations which, at a provincial and municipal level and at the level of the Autonomous City of Buenos Aires, are in charge of running the “memory sites” about State terrorism all over Argentina.

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organization. This perspective, which is present in different initiatives for memory, tribute, and dissemination of past events fosters, especially when combined with other actions, a preventive culture of the return of authoritarianism.

This unquestionable contribution to the affirmation of democracy which encouraged the fight for human rights in Latin America, particularly in Argentina, was more the result of the incorporation of human rights standards derived from international treaties in the internal jurisprudence, than the result of the extension of those rights to every citizen. With an unprecedented increase of social exclusion, the effective exercise of those rights was limited to a few. Therefore, the human rights movement was not always able to coordinate the capacity to work on legal and political institutionalism with the social movements. The limitations to influence the social dynamics were drastically evident in the terrible political and economic crisis in December 2001.

The effectiveness of human rights organizations to document the crimes of State terrorism and enforce national and international justice showed a clear preference in society for democratic rules of the game over authoritarian mechanisms. The last few years have witnessed significant advances regarding central issues addressed in this chapter. But together with the identification and recognition of those advances, we have to point out the weaknesses that are evident after the dissipation of the impact of the statements and emotions of the gestures and speeches.

The strength of the announcements when a political decision is made, even when this decision gathers the most emotional and dramatic moments of our history, does not automatically produce lines of action or programs to solve new problems in the area of human rights. One of the reasons for this is the design of organizational structures and appointment mechanisms for officials who have to manage and implement those policies. The situation becomes more complex when such a lack is not acknowledged and it is immersed in a crackless loyalty, towards an ideology or a person, and in the allocation of public resources, which is the management core.

The question is how to continue when laws have been amended; other laws have been enacted, and institutions have been created to face the challenges of the transition stage, but the results are incomplete. On many occasions, we can see that the objectives are neutralized by the lack of action or the distortion of the original purpose.

The civil society organizations are not responsible for or do not have the capacity to achieve progress in the area of micromanagement. But it is important to work towards a new political culture that favors citizen commitment and towards the concept of public values and the value of professionalism to perform this task within the framework of renewed and transparent democratic institutions. Something that is still difficult to accept is that it is maybe the only way to guarantee rights for everyone and effectively respond to social demands.

The outstanding debts of the democratic State, that is, health, education, and housing, are increasing in a society that is becoming more and more unequal. In this area, unmet needs are perceived more as rights. Consequently, there is a need to develop policies aimed at achieving specific results and to take tax-related actions aimed at addressing the causes of the factors that are reproducing such inequalities.

This society, which has lived in democracy for almost three decades, is also affected by new problems in the area of citizen security. The increase of the prisoner population and the search for solutions that separate the causes of the crime and its new formats pushes the possibility of successfully solving them even farther. The coverage of basic human rights, the criminalization of the poor population and the difficulty to perceive the legal conceptions and the judicial apparatus as part of the problem overshadow the horizon.

The fight for the respect for human rights in the seventies and eighties does not look like the fight of today. The problems in the past do not look like the problems of today. At present, it is difficult to get the support in favor of the abolition of torture used with detainees at the police stations and prisons of the country. The situation and the treatment of detainees represent a set of negative attitudes present in our culture, including racism, xenophobia, generational conflicts, and social exclusion. Most detainees are young, poor, dark-skinned, and torture is used as a daily subjugation and humiliation tool. In close connection, it is difficult to include the need for a greater strength and democratization of institutional structures, beginning with justice, in the public debate.

Exclusion and inequality as common elements of the problems of the denial of rights and the deficient functioning of the democratic regime are the challenges that we have to address today. The experience gained in other areas and the possibility of having a perspective of the significant advance ahead of us make us think of the complexity of the problems, propose strategies to solve them and, most of all, seek a consistent democracy, capable of guaranteeing the rights of every citizen.