UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:20-cv-24294-KMM

RAQUEL CAMPS, in her capacity as the personal representative of the ESTATE OF ALBERTO CAMPS,

EDUARDO CAPPELLO, in his individual capacity, and in his capacity as the personal representative of the ESTATE OF EDUARDO CAPPELLO,

ALICIA KRUEGER, in her individual capacity, and in her capacity as the personal representative of the ESTATE OF RUBÉN BONET,

and, MARCELA SANTUCHO, in her individual capacity, and in her capacity as the personal representative of the ESTATE OF ANA MARÍA VILLARREAL DE SANTUCHO,
Plaintiffs,
v.
ROBERTO GUILLERMO BRAVO,
Defendant.

EXPERT REPORT OF PROFESSOR MÁXIMO LANGER

TABLE OF CONTENTS

I. INTRODUCTION 1

II. QUALIFICATIONS 1

III. COMPENSATION 3

IV. EVIDENTIARY BASIS OF OPINION 3

V. SUMMARY OF CONCLUSIONS 4

VI. SCOPE OF THE REPORT 7

VII. BACKGROUND 8

VIII. REMEDIES AVAILABLE IN ARGENTINA SINCE 1972 10

- A. From 1972 to 1983 victims of human rights violations by government agents and their families had some legal avenues for redress that, in practice, were unlikely to be effective. 11
- B. 1983: Return to democracy and new legal obstacles to accountability 19
- C. 2003-2005: the lifting of several obstacles to criminal accountability 23
- D. 2006-present: No civil remedy is possible in Argentina regarding Mr. Bravo given the current state of the law in Argentina and Mr. Bravo's absence from Argentina 29
  1. Civil claims are subject to statutes of limitations, even if they arise from acts that were crimes against humanity. 29
  2. Argentine law does not permit criminal trials in absentia 31
  3. Civil verdicts arising out of the same facts that give rise to a criminal prosecution cannot proceed until the criminal proceedings have concluded. 35
- E. The Plaintiffs are entitled to administrative monetary benefits for victims of crimes committed by Argentine security forces 36

IX. DECLARATIONS AND PUBLIC STATEMENTS PRESENTED BY THE SURVIVORS 38

1. The legal protections afforded to Bravo when the Bautista Investigation Declarations were taken 40
2. The procedure followed to obtain the sworn declarations at Devoto prison. 42

3. The survivors' Press Conference Statements likely exposed Berger, Camps, and Haidar to criminal liability under Argentine law at the time they were made 46

X. CONCLUSIONS 48

I. INTRODUCTION

1. I have been engaged by Raquel Camps, Eduardo Cappello, Alicia Kruger, and Marcela Santucho ("Plaintiffs") in Camps et al. v. Bravo, Case No. 1:20-cv-24294-KMM (S.D. Fl.), to present my expert opinion on issues related to Argentine law.

2. I offer the following expert report containing a statement of expected testimony, the reasons for this testimony, and any data and other information and materials considered in forming my expert opinion and testimony. I also provide information regarding my qualifications as an expert on Argentine and comparative law, describe my prior expert testimony, and confirm I am not receiving compensation for my participation in this matter.

II. QUALIFICATIONS

3. I am the David G. Price and Dallas P. Price Professor of Law at the University of California, Los Angeles, where I have taught "Criminal Law," "Global Perspectives on Criminal Procedure," "International and Transnational Criminal Law," "Criminal Adjudication," and "Latin American Legal Institutions" for over seventeen years. At UCLA School of Law, since 2014, I have also been the Director of the Transnational Program on Criminal Justice and I was also the Founding Faculty Director of the Criminal Justice Program between 2016 and 2021. My areas of research include comparative criminal justice, Latin American criminal procedure, and international and transnational criminal law. I have published more than thirty articles, chapters and reports, and co-edited three books in these and related areas. My work has been published in, among other journals, the American Journal of Comparative Law, the American Journal of International Law, the Harvard International Law Journal, the Yale Journal of International Law, the European Journal of International Law, the Annual Review of Criminology, and the Journal

of International Criminal Justice. It has also been translated to five languages and received awards from various professional associations, including the American Society of Comparative Law, the American Society of International Law, and the Latin American Studies Association.

4. I obtained a law degree from the University of Buenos Aires School of Law in 1995. I worked in 1993-1994 as a law clerk at *Juzgado Nacional en lo Criminal y Correccional Federal No 2* (Federal Criminal and Misdemeanor Court No 2) of the city of Buenos Aires. I also worked in criminal law defense and victim representation in criminal proceedings in white collar crimes (including representation of one of the two largest private banks in Argentina at the time, the Argentine branch of one of the three world-leading credit card companies, and the largest music record store chain in Argentina at the time) (1994-1998). I am a member of the City of Buenos Aires Bar (inactive). I also worked at Argentina's House of Representatives as a legal adviser to a congressman working on, among other assignments, the Criminal Law Legislation Committee (1998). I also taught criminal law and criminal procedure at the University of Buenos Aires School of Law, while I was a student there (1991-1995) and after graduation (1996-1998).

5. I am also a law professor at the "Criminal law Specialization" of Di Tella University School of Law, Buenos Aires, Argentina, since 2007, where I teach yearly comparative criminal procedure to Argentine criminal law practitioners, law clerks, judges, and prosecutors, and where I have been awarded multiple times the best teacher award. I also host a criminal procedure, criminology, and criminal law workshop at the University of Buenos Aires School of Law (2018-2020). I have published multiple studies, including in recent years, on Argentine criminal procedure and criminal justice. I have also taught at the School of Law of Aix-Marseille University in France, the University of Göttingen in Germany, and the Pontifical Catholic University of Rio Grande do Sul (PUCRS) in Brazil.

6. In the United States, I fulfilled the requirements of the *Master in Law* (LL.M.) program and obtained a *Doctoral of Juridical Science* (S.J.D.) degree at Harvard Law School. I have also been the *Louis D. Brandeis Visiting Professor of Law* at Harvard Law School where I taught first-year "Criminal Law" and "Global Perspectives on Criminal Procedure" (2010) and a Visiting Professor of Law at NYU School of Law where I taught these two subjects and "International Criminal Law" (2010-2011).

7. I am also the *President* of the American Society of Comparative Law, the leading organization in the United States promoting the comparative study of law. I am also a *Titular Member* of the International Academy of Comparative Law, a member of the Executive Committee of the International Association of Legal Science, and a *Member* of the American Law Institute. I attach my *curriculum vitae* as **Exhibit 1**.

8. I served as an expert in *Petersen Energía Inversora, S.A.U. and Petersen Energía, S.A.U. against Argentine Republic and YPF S.A., Eton Park Capital Management, L.P., Eton Park Master Fund, LTD. and Eton Park Fund, L.P. against Argentine Republic and YPF S.A.*, United States District Court Southern District of New York, 2020.

III. COMPENSATION

9. I am not being compensated for this expert report, except to reimburse me for reasonable expenses incurred while fulfilling my role as an expert. My opinion is not conditioned upon any payment.

IV. EVIDENTIARY BASIS OF OPINION

10. In preparing this report, I relied on my personal knowledge, and professional expertise and research into Argentine law, comparative criminal law and procedure, and transnational and

international criminal law. I submit this report in my capacity as an academic and expert in these fields. This report is based on my legal knowledge and professional experience, and what I believe to be true given the facts of the case and state of the law in Argentina during the time periods relevant to this case.

11. A list of materials I relied on in preparing this report is attached hereto as **Exhibit 2**.

V. SUMMARY OF CONCLUSIONS

12. In summary, my conclusions are as follows:

13. Plaintiffs did not and do not have access to civil remedies in Argentina.

   a. During the period of 1972 to 1983, the legal remedies available to the Plaintiffs in Argentina, were theoretically available but, in practice, were ineffective. The dangers that these families and their legal representatives faced made their active and diligent participation in the prosecution of their civil complaints extremely risky, if not impossible. These circumstances made any remedies unavailable and, indeed, resulted in the dismissal, for lack of prosecution, of several civil cases filed by one of the survivors of the shootings and by families of those killed at Almirante Zar Naval base on August 22, 1972.

   b. There was also no criminal accountability in this period. Immediately after the events of August 22, 1972, there was a military investigation of the members the military who participated in the case, but it did not hold anyone accountable for the shootings and the killings. Also, an amnesty issued in May 1973, for all crimes committed for political motives that could include the politically-motivated actions by members of the military, barred criminal accountability at this time.

c. After the return to democracy in 1983, initial investigations into the crimes of the military began. But these were soon halted, when the newly established democratic government passed the Full Stop law (Punto Final) (Law No. 23.492 of 1986) and Due Obedience law (Law No. 23.521 of 1987) for crimes committed under the auspices of fighting terrorism by military and security forces between March 24, 1976, and September 26, 1983. These laws set a 60-day time limit for defendants to be arraigned for human rights violations after which the possibility of any criminal action against them was extinguished (Full Stop law), and established the irrebuttable legal presumption that acts committed by military and security personnel below senior command rank, were not prosecutable by virtue of the soldiers' "due obedience" to orders. In addition to the legal impediments for new and ongoing cases, the convictions in cases that had already been prosecuted were undermined. In 1989 and 1990, President Carlos Menem issued pardon decrees that benefitted the commanders who were members of the military junta, other convicted members of the military and police forces, and those who were being processed in various judicial investigations.

d. Between 2004 and 2005, the Supreme Court of Justice of the Nation (Argentina's Supreme Court, referred to as "CSJN", for its name in Spanish) held that no statute of limitations or amnesties were applicable to criminal prosecutions for crimes against humanity.

e. Today, Plaintiffs cannot file a civil claim against Mr. Bravo in Argentina for multiple reasons: First, the CSJN has held that statutes of limitations do apply for crimes against humanity committed before August 1, 2015 **in civil cases**, unlike

in criminal prosecutions. Second, no verdict in a civil case can be issued against Mr. Bravo in Argentina until his pending criminal proceedings have concluded—which cannot happen under Argentine law unless Mr. Bravo is extradited to Argentina and tried in Argentina, because Argentina does not permit trials in absentia. Prosecutors and investigating judges in Argentina appear to not have known Mr. Bravo's whereabouts until 2007 and the State of Argentina first requested Mr. Bravo's extradition in 2008.

14. Declarations and public statements of the survivors.

   a. The sworn statements provided by Berger, Camps, and Haidar were part of civil litigation initiated by family members of some of the prisoners who were killed at Almirante Zar Naval Base on August 22, 1972, during which the defendant State of Argentina was permitted to cross examine the witnesses and develop the evidence.

   b. Finally, the public statements made by Berger, Camps, and Haidar on September 8, 1972, regarding the events at Almirante Zar Naval Base likely exposed them to criminal liability under Article 212 of the Criminal Code, which was enacted on August 22, 1972 and derogated on May 27, 1973. The same conclusion applies to the interview they gave on and May 24, 1973, assuming that it was published within the temporal reach of Article 212. Article 212 of the criminal code made it a crime to disseminate communications or images that originated from or could be attributed to "illicit associations or to persons or groups notoriously dedicated to subversive or terrorist activities" by any means.

VI. SCOPE OF THE REPORT

15. I have been asked to address the following questions:

   a. Can the family members of individuals killed or injured by members of the military in the shooting of prisoners at Almirante Zar Naval Base on August 22, 1972, seek legal accountability or redress in Argentina? Are legal remedies available and adequate, if not why? Please explain how or whether the situation changed over time beginning immediately after the shooting until the present day.

   b. The survivors of the shootings, María Antonia Berger, Alberto Miguel Camps, and Ricardo René Haidar offered sworn statements regarding the shootings at Almirante Zar Naval Base on August 22, 1972: (i) during a military investigation and (ii) in the context of civil complaints filed in 1972 and 1973 against the State of Argentina. I was asked to explain the procedure by which these statements were obtained and explain how rights of all parties involved were protected according to Argentine law.

   c. María Antonia Berger, Alberto Miguel Camps, and Ricardo René Haidar made at least three public statements regarding the events at Almirante Zar Naval Base in August 1972: (i) written statements shared by their lawyers during a press conference September 8, 1972; (ii) an interview with journalist Francisco Urondo for a book called La Patria Fusilada, which they gave on May 24, 1973; (iii) an interview with filmmaker Pino Solanas in June of 1973. Did these statements, or any part thereof, expose Berger, Camps, or Haidar to criminal liability? If so, explain why.

VII. BACKGROUND

16. Although the scope of the question presented to me seeks to cover the period beginning in 1972, the developments in the preceding years provide a necessary backdrop to understand the situation of access to justice in 1972 and after. First, Argentina was under a military dictatorship, called the "Argentine Revolution," which came into power on June 28, 1966, in the wake of growing economic frustrations, the proscription of the Peronist party, and dissatisfaction with the instability and alleged slowness and ineffectiveness of the prior civilian governments.[1] This military dictatorship dissolved Congress and political parties, among other authoritarian measures.[2]

17. A complex situation of violence and deteriorating security took hold after the military's 1966 overthrow of the democratically-elected civilian government. In 1969, a massive protest led by union activists and student leaders turned deadly when the military killed between twenty and thirty people, injured five hundred, and arrested three hundred.[3] In response to unpopular economic policies, unmet social needs and demands, and continuing political oppression and the repression of free speech by the government, Argentinians embarked on a wave of protests throughout the early 1970s.[4] These social uprisings coincided with the formation of armed political groups, which carried out violent attacks to attain money, arms, and medical supplies, and to demonstrate political power.[5] In the meantime, the military government fell into a political

---

[1] GUILLERMO O'DONNELL, BUREAUCRATIC AUTHORITARIANISM: ARGENTINA, 1966-1973, IN COMPARATIVE PERSPECTIVE 39-71 (Univ. of California (Berkeley) ed., James McGuire & Rae Flory trans., 1988).
[2] LUIS ALBERTO ROMERO, A HISTORY OF ARGENTINA IN THE TWENTIETH CENTURY 174 (James P. Brennan trans., rev. ed., 2013).
[3] LUIS ALBERTO ROMERO, A HISTORY OF ARGENTINA IN THE TWENTIETH CENTURY 180-81 (James P. Brennan trans., rev. ed., 2013).
[4] LUIS ALBERTO ROMERO, A HISTORY OF ARGENTINA IN THE TWENTIETH CENTURY 181-84 (James P. Brennan trans., rev. ed., 2013).
[5] LUIS ALBERTO ROMERO, A HISTORY OF ARGENTINA IN THE TWENTIETH CENTURY 189-90 (James P. Brennan trans., rev. ed., 2013).

legitimacy crisis and the military could no longer guarantee public security during this period, and some sectors of the government and the armed forces initiated an illegal repression that included kidnapping, torture, killing, and disappearance practices.[6]

18. Against this backdrop, the military dictatorship of the Argentine Revolution enacted several legal changes that significantly reoriented the armed forces. The first dictator of the new regime, Juan Carlos Onganía, passed the now derogated National Defense Law of 1966 (Law 16.970), which set forth the ". . . fundamental legal, organic and functional bases for the preparation and execution of national defense . . . ."[7] The law permitted the use of the military for the control of the civilian population under some circumstances. Its Article 43, for example, allowed the use of armed forces in established Emergency Zones in times of "interior commotion."[8]

19. Several other laws expanded the powers of the military over civilian matters that were deemed connected to "subversive" and terrorist activities. In 1971, a Federal Criminal Chambers was created and given jurisdiction over individuals facing criminal charges for a range of crimes—that included not only sedition and treason but also ordinary crimes like battery—when committed to block the action of national authorities or their orders, among other jurisdictional grounds.[9] On June 16, 1971, the Executive gave to itself, through another de facto law, the power to use the Armed Forces to investigate crimes under the jurisdiction of the newly minted Federal

---

[6] LUIS ALBERTO ROMERO, A HISTORY OF ARGENTINA IN THE TWENTIETH CENTURY 191-94 (James P. Brennan trans., rev. ed., 2013). For further details on the sociopolitical situation in Argentina in this period, please see the expert report by historian James Brennan. Expert Report of Prof. J. Brennan at 6-9.
[7] Law No. 16.970, Oct. 6, 1966, [21.043] B.O. 1 (Arg.), art. 1 (Law of National Defense [Ley de Defensa Nacional], derogated).
[8] The original text of the Law of National Defense, as it appeared in the Official Bulletin on October 10, 1966, can be found at https://www.mpf.gob.ar/plan-condor/files/2018/12/5-2.pdf. Article 43 of this law was derogated by Law No. 23.049, Feb. 13, 1984, [25.365] B.O. 1 (Arg.), art. 3 (Law of Military Justice Procedure in Times of Peace [Procedimiento en Tiempo de Paz de la Justicia Militar], in force, of general application).
[9] Law No. 19.053, May 28, 1971, [22.186] B.O. 2 (Arg.), art. 1 (Creating a Federal Chamber for Criminal Matters of the Nation [Cámara Federal en lo Penal de la Nación, Créase]).

Criminal Chambers,[10] and on April 24, 1972, the Armed Forces were given operational control of prisons detaining persons suspected or convicted of offenses of "a subversive, terrorist, or related character."[11] A Presidential Decree issued on the same day gave the military control over three prisons for that purpose, including "Unit U6 (Rawson)."[12]

VIII. REMEDIES AVAILABLE IN ARGENTINA SINCE 1972

20. I have been asked to discuss whether the family members of individuals shot by members of the military at Almirante Zar Naval Base on August 22, 1972, could seek redress and accountability in Argentina. I have also been asked to discuss whether the formal avenues for civil or criminal accountability that existed were truly available and effective means of redress for the survivors and families, or whether obstacles to these avenues existed that prevented them from seeking accountability for the August 22, 1972, shootings. Finally, I have been asked to explain how or whether the situation changed over time.

21. Given the significant changes in Argentine law in the past 50 years, I will explain first the avenues for civil or criminal liability that existed immediately following the events of August 22, 1972 and the potential practical obstacles to them. I will then turn to the additional obstacles that families seeking redress faced after the coup d'état of March 24, 1976, which ushered in another dictatorship that lasted until December 10, 1983.

22. With the return to democracy in 1983, some initial possibilities for redress emerged, but those were also quashed. I will discuss the laws that prevented accountability and redress for the

[10] Law No. 19.081, June 16, 1971, [22.199] B.O. 2 (Arg.), art. 2.
[11] Law No. 19.594, April 24, 1972, [22.416] B.O. 2 (Arg.), art. 1 (Operational control over prison units for detainees, defendants or those convicted of subversive acts [Control operacional sobre unidades carcelarias para detenidos, procesados o condenados por actos subversivos]).
[12] Decree No. 2.296, April 24, 1972, [22.416] B.O. 2 (Arg.), art. 1.

families of those shot and killed at the Almirante Zar Naval Base in Trelew after the return to democracy in 1983 until 2005.

23. A significant break from the pattern of relative impunity in Argentina occurred in the period between 2003 and 2005. I will discuss the legal basis for this change and how it affected victims' families' access to remedies.

A. From 1972 to 1983 victims of human rights violations by government agents and their families had some legal avenues for redress that, in practice, were unlikely to be effective.

24. The records of cases presented by the families of several of those shot and killed at the Almirante Zar Naval Base, shared with me by the attorneys representing them in this case, show that they were initially able to file civil complaints against the Argentine Government and seek compensation for the deaths and injuries caused on August 22, 1972. Although the records are incomplete and do not contain the filing date for every case,[13] a May 29, 1973, internal report sent to the Chief Commander of the Navy discusses four cases related to the events that are the subject of this expert report that had been filed by then.[14] These four cases were: *Sabelli Manfredo I. et al. v. National Government*, filed in 1972 by the parents of María Angélica

[13] The trial court in *Paccagnini et al.*—in which several co-defendants of Roberto Bravo were convicted for their participation in the shooting and killing of the prisoners in the Almirante Zar Naval Base—explained that these incomplete records were recovered from the Board of Legal Assistance of the Argentine Navy. *See* Tribunal Penal Oral Federal [Federal Oral Criminal Court], 15/10/2012, "In re: Rubén Norberto Paccagnini, Luis Emilio Sosa, Carlos Amadeo Marandino, et al.," (Arg.) (Judgment, Case No. 979) (certified English translation) at 58 (discussing the fact that only partial files of these cases are available), 58-65 (summarizing key points of these files) [hereinafter *Paccagnini* (2012), attached as Exhibit 5. The documents of the criminal trial of Messrs. Sosa, Del Real, Marandino, Bautista and Paccagnini regarding the events of August 22, 1972, also reveal that a search for the official records of two of the civil cases were fruitless, as the records were destroyed in 1988. *See* Judicial Archives Document of 1988, attached as Exhibit 6 at 3. As far as I know, no information on the fate of the other civil files is available, but it is logical to conclude that the files were not located, as the trial court's verdict discusses only the partial files that survived in the records of the Argentine Navy's Board of Legal Assistance. *Paccagnini* (2012), Exhibit 5, at 58-65.

[14] Tribunal en lo Civil y Comercial Federal No. 4 [Trib. CC] [Federal Civil and Commercial Court No. 4], 1972, "Sabelli, Manfredo I. y otro c. Estado Nacional / indemnización de daños y perjuicios," (Arg.) at 91-93 [hereinafter *Sabelli* (1972)], attached as Exhibit 7.

Sabelli, who died in the events of August 22, 1972;[15] *Lelchuk de Bonet, Alicia Noemí v. National Government*,[16] filed in 1972 by the widow of Rubén Bonet, who died at the Almirante Zar Naval Base on August 22, 1972; *Berger, María Antonia v. National Government*,[17] filed by María Antonia Berger, one of the survivors of the shootings; *Santucho, Ana Cristina, Marcela Eva and Gabriela Inés v. National Government*, filed in 1972 by the paternal grandfather of the three minor daughters of Ana María Villarreal de Santucho—who also died in the events of August 22, 1972—on their behalf.[18] These cases were "jointly heard by the Federal First Instance Court Hearing Civil and Commercial cases No. 4, under the charge of César Marcelo Tarantino, Clerk Office No. 10 of José Luis Javier Tresguerras."[19] All of them sought monetary compensation from the Argentine government.

25. In addition, there are records of one additional civil complaint, filed in June, 1974, by Soledad Davi de Cappello and Jorge Gabino Cappello, seeking monetary compensation for the

---

[15] On July 19, 1976, the case was reported "paralyzed" (*see Sabelli* (1972), Exhibit 7 at 9). The incomplete file, which has several illegible pages, does not reflect the date when the case was dismissed. However, on October 31, 1977, the Army issued an order to retrieve the files it had submitted to the court in this case. *Sabelli* (1972), Exhibit 7 at 5.

[16] This case was reported "paralyzed" on July 19, 1976. *See* Tribunal en lo Civil y Comercial Federal No. 4 [Trib. CC] [Federal Civil and Commercial Court No. 4], Oct. 1972, "Lelchuk de Bonet, Alicia Noemí c. Estado Nacional (Comando de jefe de la armada) / daños y perjuicios," (Arg.) at 4 [hereinafter *Lelchuk de Bonet* (1972)], attached as Exhibit 8. A motion for a finding of "caducity" (dismissal without prejudice for failure to prosecute) under Article 316 of the Argentine Civil and Commercial Procedure Code was filed in 1977 and filed again on March 19, 1977. Exhibit 8 at 4, 6-10. By April 14, 1977, the case was dismissed without prejudice for failure to prosecute ("caducidad"). Exhibit 8 at 3. *See* Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] arts. 310-318 (Arg.), *available at* http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16547/texact.htm#6.

[17] A request for a finding of caducity of the case was granted on April 4, 1977, under Article 310 of the Civil and Commercial Procedural Code of Argentina. Tribunal en lo Civil y Comercial Federal No. 4 [Trib. CC] [Federal Civil and Commercial Court No. 4], 1973, "Berger, María Antonia c. Gobierno Nacional (Comando en jefe de la armada) y/o quienes sean responsables / daños y perjuicios," (Arg.) at 25-26, 47, 49, attached as Exhibit 9 [hereinafter *Berger* (1972), Exhibit 9.

[18] *See* Tribunal en lo Civil y Comercial Federal No. 4 [Trib. CC] [Federal Civil and Commercial Court No. 4], Oct. 1972, "Santucho, Ana Cristina, Marcela Eva y Gabriela Inés c. Estado Nacional y/o quién resulte responsable / daños y perjuicios," (Arg.) at 1, 7, 47, attached as Exhibit 10 [hereinafter *Santucho* (1972), Exhibit 10. Francisco Rosario Santucho, the paternal grandfather of Ana Maria Santucho's three minor daughters, had custody over them. Exhibit 10 at 47, 83, 131. A request for a finding of caducity of the case was granted on April 4, 1977. *Id*. at 5, 7, 13-18.

[19] *Paccagnini* (2012), Exhibit 5 at 58.

death of their son Eduardo Cappello.[20] On April 4, 1977, the court granted the Defendant State of Argentina's motion to dismiss this case for failure to prosecute.[21]

26. The incomplete records of these cases show that they were prosecuted with diligence at first, and that by between 1974 and 1976 the plaintiffs in these cases were no longer prosecuting the cases.

27. According to the evidence gathered in different court proceedings and other documentation—including U.S. State Department documents, all the families involved in these civil cases were persecuted after filing the cases, several of them immediately after the funerals of those who died as a consequence of the shootings at the Almirante Zar Naval Base. These sources indicate that the dangers that these families faced made their active and diligent participation in the prosecution of their civil complaints extremely dangerous, if not impossible.

a. Mrs. Bonet and attorneys, who worked with the survivors' and victims' families, were targeted by an Argentine death squad affiliated with the military, the Argentine Anti-Communist Alliance (known as "AAA"). The AAA was responsible for the disappearances and extrajudicial killings of family members of those shot and killed in the events that are the subject of this report, and their attorneys starting in 1974.[22] Mrs. Bonet went into hiding after a lawyer representing some of those shot at the Almirante Zar Naval Base was murdered by the AAA.[23] She remained in hiding with her two young children and second

[20] Tribunal en lo Civil y Comercial Federal No. 4 [Trib. CC] [Federal Civil and Commercial Court No. 4], June 1974, "Capello, Jorge Gabino y Davi de Cappello, S. c. Estado Nacional y/o quién resulte responsable / Beneficio de Litigar sin gastos," (Arg.) at 1, 43-53 [hereinafter, *Cappello* (1974)], attached as Exhibit 11.
[21] *Cappello* (1974), attached as Exhibit 11 at 5, 7, 9, 11-12.
[22] *Paccagnini* (2012), Exhibit 5 at 118 (court's summary of the testimony by Alicia Lelchuk, widow of Bonet).
[23] *Paccagnini* (2012), Exhibit 5.

husband from 1974 until 1977, when she fled Argentina to Brazil, and finally France in 1978, where she was granted political refugee status.[24]

b. The Argentine government similarly persecuted the Sabelli family, forcing the entire family to exile in Italy, after years of heavy surveillance and harassment by state security agents.[25] Maria Angelica Sabelli's mother committed suicide.[26]

c. Armed Argentine security forces persecuted Eduardo Cappello's family, including by detaining Jorge Cappello (Eduardo Cappello's brother) soon after Eduardo's funeral, and, years after his release, in August 1976, by holding his mother hostage in her home as they attempted to use her to lure Jorge Cappello.[27] While being held hostage, the military agents told Mrs. Davi de Cappello to mention "August 22" when her son Jorge called, the date of the shootings at the Almirante Zar Naval Base.[28] Finally, in 1977, Jorge Cappello was kidnapped and disappeared by military agents along with his wife and thirteen-year-old stepson.[29]

d. The Santucho family was persecuted by the Argentine security forces, including lawyers Manuela Santucho and Amilcar Santucho, who represented the Santucho sisters and Soledad Davi de Cappello in their civil cases against the State of

[24] *Paccagnini* (2012), Exhibit 5.
[25] *Paccagnini* (2012), Exhibit 5 at 162 (court's summary of the testimony by Mariana Arruti).
[26] *Paccagnini* (2012), Exhibit 5 at 162 (court's summary of the testimony by Mariana Arruti).
[27] *Paccagnini* (2012), Exhibit 5 at 162 (court's summary of the testimony by Mariana Arruti).
[28] *Paccagnini* (2012), Exhibit 5 at 162 (court's summary of the testimony by Mariana Arruti).
[29] *Paccagnini* (2012), Exhibit 5 at 162-163 (court's summary of the testimony by Mariana Arruti).

Argentina,[30] through kidnappings and disappearances.[31] On December 8, 1975, Marcela Santucho and her two sisters, who were children, were abducted by military forces along with other children of the same family. After international outrage they were ultimately released and the family managed to remove them from the country a year later.[32]

28. Other families of those shot and killed on August 22, 1972, that did not present civil complaints were also persecuted. Julio Ulla, Alejandro Jorge Ulla's brother, was detained, threatened, and beaten by security forces on at least two separate occasions, including two after attending events that honored the victims of the killings at Almirante Zar Naval Base in August of 1972, and was forced to resign from his only job as a physician.[33] Similarly, the family of Mariano Pujadas, one of the prisoners killed on August 22, 1972, was targeted and persecuted ever since the events that are the subject of this report took place.[34] On August 14, 1975, the

---

[30] *See Santucho* (1972), Exhibit 10 at 193 (mentioning Amílcar Santucho as legal representative); *Berger* (1972), Exhibit 9 at 523 (Berger Devoto Prison Statement) (Manuela Elmina Santucho present as representative of the plaintiffs in the Santucho litigation); *Capello* (1974), Exhibit 11 at 55 (mentioning Amílcar Santucho and Manuela Elmina Santucho as representatives of Soledad de Cappello).

[31] *See* Mark Dowie, *The General and the Children*, MOTHER JONES, July, 1978, at 48 *availible at* https://books.google.com/books?id=oOYDAAAAMBAJ&lpg=PA1&ots=NtzWR1YT3c&dq=Mark%20Dowie%2C%20The%20General%20and%20the%20Children%2C%20MOTHER%20JONES%2C&pg=PP1#v=onepage&q&f=false; Tribunal Oral en lo Criminal Federal No. 1 [Federal Oral Criminal Court No. 1], 09/08/2016, "Plan Cóndor," (Arg.) at 5213, 5215 (finding military officer Miguel Ángel Furci guilty of unlawful detention of sixty seven individuals, including Carlos Santucho, Manuela Santucho, and Cristina Navajas de Santucho, and the torture of 62 individuals, including Carlos Santucho, Manuela Santucho and Cristina Navajas de Santucho); ASS'N OF THE BAR OF THE CITY OF NEW YORK, REPORT OF THE MISSION OF LAWYERS TO ARGENTINA, APRIL 1-7, 1979, U.S. State Dept. Declassified Document, Argentina Project (S200000044), May 22, 1979, attached as Exhibit 12; Letter from Francisco Santucho and Manuela Juarez de Santucho to President James Carter (Oct. 19, 1977), attached as Exhibit 13; Memorandum from the Am. Embassy in Buenos Aires to the U.S. Sec'y of State 4 (Aug. 16, 1978), attached as Exhibit 14 (noting that Graciela Santucho, the daughter of Amilcar Santucho is detained but has no family members left in the country to advocate for her). *See also* Exhibit 15, HELENO CLAUDIO FRAGOSO, REPORT ON THE SITUATION OF DEFENCE LAWYERS IN ARGENTINA, INT'L COMM'N OF JURISTS, para. 4 (U.S. Dep't of State Argentina Project (S200000044), March 1975) (including Amilcar and Manuela Santucho among lawyers who had been threatened with murder by the AAA).

[32] *See* Mark Dowie, *The General and the Children*, MOTHER JONES, July, 1978, at 42.

[33] *Paccagnini* (2012), Exhibit 5 at 123-25 (court's summary of the testimony by Julio César Ulla). *See also* Ulla Dep. 66:13-70:23, 72:9-76:9, 77:16-78:1, May 14, 2021.

[34] Tribunal Oral en lo Criminal Federal No. 1 [Federal Oral Criminal Court No. 1], 24/10/2016, "Causa La Perla," (Arg.) at 1799 (court's summary of the testimony by Victor Pujadas) [hereinafter *Causa la Perla*]; *Paccagnini* (2012), Exhibit 5 at 121-123 (court's summary of the testimony by Ana María Bigi).

family's farmhouse in Cordoba was raided in the middle of the night by a military-affiliated death squad and the five adults in the house were brutally beaten and kidnapped.[35] Two children, aged around 11 and 2, were left behind. The adults were taken to a nearby ranch, tortured, killed and thrown into a well.[36] One of the family members survived a gunshot to the head. The damage from the attack left her hemiplegic and with other long-term injuries; she died a few years later.[37] The remaining family members lived in fear and hiding until they managed to flee Argentina and seek refuge in Spain.[38] Clarisa Lea Place's family was also targeted. According to a cable by the U.S. State Department, "Right-wing terrorists also machine gunned to death Arturo Lea Place, father of a 1972 'Trelew Massacre' victim (reftel b) in Tucumán (Dec 2). Place's attempt to hide in a car failed and the entire family including a young daughter was killed."[39]

29. The lawyers who represented these families were also in danger, adding to the obstacles to prosecute a civil case against the Navy and the State of Argentina. Many lawyers who represented individuals or families of individuals who were members of armed groups or were deemed subversives, were also attacked, had their law offices bombed, were arrested, tortured, and, often, murdered.[40] For example, Rodolfo Ortega Peña— a congressman who represented

---

[35] Traces of blood on the walls and floors were left in the house, which was left ransacked. *Causa La Perla* at 1800 (court's summary of the testimony by Dionisio Roberto Carballo).
[36] *Causa La Perla* at 1798-1803 (court's analysis of various pieces of evidence).
[37] *Causa La Perla* at 1799.
[38] *Paccagnini* (2012), Exhibit 5 at 121-123 (court's summary of the testimony by Ana María Bigi), 139-40 (court's summary of the testimony by Alicia Sanguinetti).
[39] Telegram BA-7930 from the U.S. Embassy in Buenos Aires to the U.S. Sec'y of State 1 (Dec. 4, 1975) (Subject: Wave of Right-Wing Murders) attached as Exhibit 16.
[40] *Paccagnini* (2012), Exhibit 5 at 118 (summarizing the testimony of Alicia Lelchuk that refers to the killing of Rodolfo Ortega Peña), at 144 (summarizing the testimony of Sergio Armando Maida that refers to the killing of Amaya and the disappearance of Bel, two attorneys who assisted prisoners in Rawson and Trelew), at 152-53 (summarizing the testimony of Rodolfo Aurelio Mattarollo according to which at least 130 lawyers from the Buenos Aires Lawyers' Association disappeared); HELENO CLAUDIO FRAGOSO, REPORT ON THE SITUATION OF DEFENCE LAWYERS IN ARGENTINA, INT'L COMM'N OF JURISTS (U.S. Dep't of State Argentina Project (S200000044), Mar. 1975), Exhibit 15.

several Trelew prisoners and whose wife Helena Inés Villagra represented María Antonia Berger in the civil complaint referred above and was with him when he was killed—was gunned down in July of 1974 by the AAA.[41] Mario Diehl Gainza, who represented Alicia Lelchuk de Bonet, the widow of Ruben Bonet, in the civil complaint already discussed, after being repeatedly threatened, had left the country before March 1975.[42] Other two prominent lawyers who represented Trelew prisoners, Hipólito Solari Yrigoyen and Mario Abel Amaya were kidnapped in 1976, "because they criticized the gunning down of several prisoners in 1972 at a prison in Trelew, Argentina."[43] Amaya, who had underlying asthma and coronary disease, was tortured and died in detention.[44] Solari Yrigoyen was released after an international outcry, including U.S. government pressure.[45] In 1973, Solari Yrigoyen's car was blown up and his resulting injuries required six surgical operations. His home was also bombed in 1975.[46] A U.S. State Department cable observed that the fact that Solari Yrigoyen had offered legal representation to "terrorists" was enough to brand him a terrorist despite the fact that "embassy officers who knew

---

[41] *Asesinato del diputado Rodolfo Ortega Peña* [*Assassination of congressman Rodolfo Ortega Peña*], Noticias ["News" newspaper], Aug. 2, 1974 at 13, reprinted online at https://www.elhistoriador.com.ar/asesinato-del-diputado-rodolfo-ortega-pena/; HELENO CLAUDIO FRAGOSO, REPORT ON THE SITUATION OF DEFENCE LAWYERS IN ARGENTINA, INT'L COMM'N OF JURISTS, para 8(b) (U.S. Dep't of State Argentina Project (S200000044), Mar. 1975), Exhibit 15; *Paccagnini* (2012) Exhibit 5 at 118 (summarizing the testimony of Alicia Lelchuk that refers to the killing of Rodolfo Ortega Peña), at 152-53 (summarizing the testimony of Rodolfo Aurelio Mattarollo); Pablo Waisberg, Las diez fotos inéditas del velatorio de Ortega Peña [Ten unedited photos of Ortega Peña's wake], Archivo Infojus Noticias [Infojus News Archive], July 31, 2014, available at http://www.archivoinfojus.gob.ar/nacionales/las-diez-fotos-ineditas-del-velatorio-de-ortega-pena-5021.html (reporting Ortega Peña's assassination and confirming the marriage between Ortega Peña and Villagra).

[42] *Lelchuk de Bonet* (1972), Exhibit 8 at 55 (showing that Mario Diehl Gainza was an attorney in the case); HELENO CLAUDIO FRAGOSO, REPORT ON THE SITUATION OF DEFENCE LAWYERS IN ARGENTINA, INT'L COMM'N OF JURISTS, para. 7 (U.S. Dep't of State Argentina Project (S200000044), March 1975), Exhibit 15; Isidoro Gilbert, *La huelga estudiantil del 54*, La Nación (Oct. 17, 1999), https://www.lanacion.com.ar/opinion/la-huelga-estudiantil-del-54-nid209770/.

[43] Memorandum from the U.S. Sec'y of State to the Am. Embassy in Buenos Aires 1 (June 30, 1977), attached as Exhibit 18.

[44] Amaya v. Argentina, Case 2088 B, Inter-Am. Comm'n H.R., Report No. 19/78 (1978), *available at* https://www.cidh.oas.org/annualrep/79.80eng/Argentina2088b.htm.

[45] Memorandum from the Am. Embassy in Buenos Aires to the U.S. Sec'y of State 1-2 (Aug. 20, 1976), Exhibit 17; Memorandum from the U.S. Sec'y of State to the Am. Embassy in Buenos Aires 1 (June 30, 1977), Exhibit 18.

[46] Memorandum from the U.S. Sec'y of State to the Am. Embassy in Buenos Aires 1 (June 30, 1977), Exhibit 18.

him regarded him as moderately progressive and convicted constitutionalist, advocate of civil rights and of profoundly democratic convictions."[47]

30. Thus, while the opportunity to seek accountability by filing civil complaints existed under Argentine law, the practical obstacles to continuing to prosecute these cases, both because of the dangers to the plaintiffs and because of the dangers to legal representatives, made these remedies unavailable and resulted in the dismissal of civil cases for lack of prosecution.

31. There was also no criminal accountability in this period. Immediately after the killings of the prisoners in Trelew in August 1972, there was a military investigation of the members of the military who participated in the case. It concluded without holding anyone accountable for the shooting and the killings.[48]

32. Also, in May 1973, after General Lanusse left office as president of Argentina, an amnesty was issued for all crimes committed for political motives by Law 20.508. This amnesty could include politically-motivated criminal actions committed not only by guerrilla members, and student, union, and social leaders, but also by members of the military.[49] In fact, when in the 2000s some of the people who participated in the shootings at the Almirante Zar Naval Base

---

[47] Memorandum from the Am. Embassy in Buenos Aires to the U.S. Sec'y of State 2 (Aug. 20, 1976), Exhibit 17.

[48] *See, e.g., Paccagnini* (2012), Exhibit 5 at 5; Cámara Federal de Casación Penal, Sala III [CFCP] [Federal Court of Appeals in Criminal Matters, Chamber III], 19/03/2014, "Paccagnini, Norberto Rubén y otros / recurso de casación," Case No. 17.004 (certified English translation) [hereinafter *Paccagnini* Appeal (2014)], attached as Exhibit 19 at 4, 6, 8-9, 12, 14, 43-44, 65 ("It is not controversial that Jorge Enrique Bautista was *Ad-Hoc* judge of preliminary investigations in military cases in the proceedings started as a consequence of the events that occurred on 22 August 1972 at the Almirante Zar Base of Trelew"), at 66. Jorge Enrique Bautista, who ran the investigation, recommended minor sanctions against Commander Luis Emilio Sosa and Lieutenant Guillermo Roberto Bravo for reckless behavior for carrying a weapon at moments when the inmates were out of their cells and for the way they handled the inmates and the situation, but not for the killings of the inmates. *See, e.g., Paccagnini* (2012), Exhibit 5 at 23, 200; *Paccagnini* Appeal (2014), Exhibit 19 at 14. Many years later, Mr. Bautista was prosecuted for the crime of concealment (i.e., as accessory after the fact) due to the way he ran this investigation. *See, e.g., Paccagnini* (2012), Exhibit 5 at 4, 199. He was initially acquitted in 2012. The appeals court reversed Bautista's acquittal and remanded to the lower court for further proceedings. *Paccagnini* Appeal (2014), Exhibit 19 at 71, 84-86. (In Argentina, like in most civil law jurisdictions, the prohibition against double jeopardy does not prevent appeals by the prosecution against acquittals.) The lower court has not issued a new judgment as of this writing.

[49] Law No. 20.508, May 27, 1973, [22.674] B.O. 4 (Arg.)., art. 1.

were tried for it in Argentina, they raised this amnesty as one of their main defenses, as I will further discuss below in section VIII.C.

33. Finally, according to the Argentine Criminal Code, the longest period of the statute of limitations for crimes that established life imprisonment, such as aggravated murder, is fifteen years.[50] Had the amnesty established by Law 20.508 not been issued or applied to the killings at Almirante Zar Naval Base on August 22, 1972, the criminal prosecution of any crimes committed then would have been precluded by the statute of limitation at the latest by August 22, 1987.

B. 1983: Return to democracy and new legal obstacles to accountability

34. On September 23, 1983, less than three months before giving up control of the government, the last military junta enacted Law 22.924 on National Pacification, known as the "self-amnesty" law.[51] This law declared that criminal actions for crimes committed with a "terrorist or subversive" purpose between May 25, 1973, and June 17, 1982, were extinguished.[52] But truly meant to protect the military from criminal prosecution, the law extended its benefits to those "actions that aimed at preventing, avoiding or ending the referred terrorist or subversive activities."[53] In contrast, the law excluded from its benefits civilians who were members of organizations considered terrorist or subversive "who are not legally and manifestly residing in

[50] Código Penal de la Nación [Cód. Pen.] [Criminal Code] art. 62 (Arg.).
[51] Law No. 22.924, Sept. 22, 1983, [25.266] B.O. 11 (Arg.) (citing date of passage) (abrogated by article 1 of Law No. 23.040, Dec. 27, 1983 [25.331] B.O. 1 (Arg.)).
[52] Law No. 22.924, art. 1. [Law No. 22.924, Sept. 22, 1983, art. 1 [25.266] B.O. 11 (Arg.).]
[53] Law No. 22.924, art. 1. [Law No. 22.924, Sept. 22, 1983, art. 1 [25.266] B.O. 11 (Arg.).] On the goals of this law, see, e.g., Marina Franco, E*l complejo escenario de la disolución del poder militar en la Argentina: la autoamnistía de 1983* [*The complex situation of the dissolution of military power in Argentina: the auto-amnesty of 1983*], CONTENCIOSA, Año I, nor. 2, primer semestre 2014, *available at* https://core.ac.uk/download/pdf/159296211.pdf.

the territory of the Argentine Nation or in the places subject to its jurisdiction."[54] It also excluded individuals who had already been tried and convicted.[55]

35. In October 1983, elections were held and Raúl Alfonsín was elected President. Alfonsín was inaugurated on December 10, 1983 and on December 15 he created the National Commission on the Disappearance of Persons (CONADEP for its name in Spanish).[56] CONADEP's mission was to "clarify the facts related to the disappearance of persons" in Argentina.[57] To that end, CONADEP had several functions, including receiving complaints and evidence and forwarding that information to the Justice System if it was deemed connected to a crime.[58] In September 1984, the Commission released its final report, *Never Again*. The report exposed the characteristics and dimensions of the system of disappearance of persons, and the responsibility of the government in the commission of these violations. Selected cases were documented to illustrate and support the overall conclusions of the report.[59] The facts that are the subject of this lawsuit are not included in the *Never Again* report.[60]

36. Two days before the creation of CONADEP, on December 13, 1983, President Alfonsín ordered by decree 157/83 that the prosecution of certain leaders of urban guerrillas be promoted for crimes committed after May 25, 1973,[61] and, by Decree 158/83, that the Supreme Council of the Armed Forces (the "Military Council") prosecute the members of the military junta who

---

[54] Law No. 22.924, art. 2. [Law No. 22.924, Sept. 22, 1983, art. 2 [25.266] B.O. 11 (Arg.).]
[55] Law No. 22.924, art. 3. [Law No. 22.924, Sept. 22, 1983, art. 3 [25.266] B.O. 11 (Arg.).]
[56] Decree No. 187/83, Dec. 15, 1983, [25.323] B.O. 2 (Arg.).
[57] Decree No. 187/83, art. 1. [Decree No. 187/83, Dec. 15, 1983, [25.323] B.O. 2 (Arg.), art. 2(a).]
[58] Decree No. 187/83, art. 2(a). [Decree No. 187/83, Dec. 15, 1983, [25.323] B.O. 2 (Arg.), art. 2(a).]
[59] CONADEP, REPORT OF NAT'L COMM'N ON THE DISAPPEARANCE OF PERSONS, *NUNCA MÁS [NEVER AGAIN]* (1984) [hereinafter CONADEP, *NUNCA MÁS [NEVER AGAIN]*], *available at* http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_001.htm.
[60] CONADEP, *NUNCA MÁS [NEVER AGAIN]* (Author's Note: "The cases outlined in this report are drawn from the documents and evidence we received. They have been selected solely in order to substantiate and illustrate our main arguments. These in turn were formed on the basis of all the material in our possession - the evidence given by first-hand witnesses of the events described. We can discount neither the possibility of occasional errors, nor the existence of many other cases which might have illustrated our points more adequately.").
[61] Decree No. 157/83, Dec. 13, 1983, [25.321] B.O. 4-5 (Arg.), art. 1.

"usurped the government" starting on March 24, 1976, and the two subsequent juntas, a total of nine high level military officers.[62] Decree 158/83 provided that the Military Council's ruling would be appealable before a civilian Federal Court, according to the expected modifications of the Code of Military Justice that the new administration had forwarded to Congress on the day of the Decree.[63] To this end, the "self-amnesty law" (Law No. 22.924) was repealed and declared "incurably null" by Law 23.040, which was promulgated on December 27, 1983.[64] Through Law 23.049, the Argentine Congress also amended various articles of the Military Justice Code, established an appeal to civilian federal justice against decisions by military tribunals, and gave jurisdiction to the civilian federal court for crimes committed under the auspices of fighting terrorism by military and security forces between March 24, 1976, and September 26, 1983, if the proceedings for these crimes before the Supreme Council of the Armed Forces presented unjustified delays or negligence.[65]

37. Later, in September 1984, the Supreme Council of the Armed Forces reported that it could not conclude its proceedings within the time line set by these regulations and by the National Federal Chamber of Appeals for Criminal and Correctional Matters, and so the cases passed to be tried before this federal chamber.[66] The *Never Again* report formed the basis of the prosecutor's case.[67] On December 9, 1985, five of the military junta members were convicted

---

[62] Decree No. 158/83, Dec. 13, 1983, [25.321] B.O. 5 (Arg.), art. 1.
[63] Decree No. 158/83, Dec. 13, 1983, [25.321] B.O. 4-5 (Arg.), art. 3 ("La sentencia del tribunal militar será apelable ante la Cámara Federal en los términos de las modificaciones al Código de Justicia Militar una vez sancionadas por el Honorable Congreso de la Nación el proyecto remitido en el día de la fecha." ["The judgment of the military court will be subject to appeal before the Federal Chamber under the terms of the amendments to the Code of Military Justice once the bill sent today has been approved by the National Congress."]).
[64] Law No. 23.040, Dec. 27, 1983 [25.331] B.O. 1 (Arg.) (Law of National Pacification), art. 1.
[65] Law No. 23.049, arts. 7 and 10.
[66] *See, e.g.,* Paula Speck, *The Trial of the Argentine Junta: Responsibilities and Realities*, 18 U. MIAMI INTER-AM. L. REV. 491, 501 (1987).
[67] Fabián Raimondo, O*vercoming Domestic Legal Impediments to the Investigation and Prosecution of Human Rights Violations: The Case of Argentina*, 18 HUM. RTS. BRIEF 15, 15 (Winter 2011), *available at* https://digitalcommons.wcl.american.edu/hrbrief/vol18/iss2/3/.

and four were acquitted.[68] The Federal Chamber's ruling established that there was a clandestine state system used to repress "subversion."[69]

38. Additional prosecutions of those responsible for human rights violations in civil courts were halted when the Alfonsín government passed the Full Stop law (Punto Final) (Law No. 23.492 of 1986) and Due Obedience law (Law No. 23.521 of 1987) for crimes committed under the auspices of fighting terrorism by military and security forces between March 24, 1976, and September 26, 1983, in an attempt to calm down internal convulsion and an uprising by the armed forces.[70] These laws set a 60-day time limit for defendants to be arraigned for human rights violations after which the criminal action against them got extinguished (Full Stop law), and established the irrebuttable legal presumption that acts committed by military and security personnel below senior command rank, were not prosecutable by virtue of the officers' "due obedience" to orders.[71]

---

[68] Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal [C.N.A.C.C.] [National Federal Court of Appeals for Criminal and Correctional Matters], 09/12/1985, "Causa originalmente instruida por el Consejo Supremo de las Fuerzas Armadas en cumplimiento del Decreto 158/83 del Poder Ejecutivo Nacional [P.E.N.]," Fallos (1985-309-30) (Arg.), at 1648-1656 ("HOLDS" ("FALLA") section, paras. 10, 12, 14, 16, 18, 20, 21, 23, 22), aff'd, Fallos (1985-309-1689) (C.S.J.N. Dec. 30, 1986) (appeals decision reprinted in the Fallos de la Corte Suprema de Justicia de la Nación) [hereinafter Causa 13]. For a discussion of the procedural details of this trial, see Paula Speck, *The Trial of the Argentine Junta: Responsibilities and Realities*, 18 U. MIAMI INTER-AM. L. REV. 491, 500-503 (1987).

[69] *Causa 13* at 285, 289-294, 296-299, 831, 1524-5, 1586, 1603, among others.

[70] Law No. 23.521, June 8, 1987 [Special Supplement June 9, 1987] B.O. 1 (Arg.) (citing date of passage); Law No. 23.492, Dec. 24, 1986 [26.058] B.O. 1 (Arg.) (citing date of passage). The laws only left room for the advancement of the prosecution of the crimes of appropriation of children, extensive theft of real estate, and rape. *See* Law 23.521, art. 2; and Law 23.492, art. 5 (regarding appropriation of children). On the background for the passing of these laws, see, e.g., Kathryn Lee Crawford, *Due Obedience and the Rights of Victims: Argentina's Transition to Democracy*, 12 HUM. RTS. Q. 17, 25-26 (Feb. 1990); LUIS ALBERTO ROMERO, A HISTORY OF ARGENTINA IN THE TWENTIETH CENTURY 263-5 (James P. Brennan trans., rev. ed., 2013).

[71] Kathryn Lee Crawford, *Due Obedience and the Rights of Victims: Argentina's Transition to Democracy*, 12 HUM. RTS. Q. 17, 17-18, 25 (Feb. 1990). *See* Law No. 23.521, art. 1 ("It is presumed, without admitting evidence to the contrary, that those who at the date of the commission of the act were serving as chief officers, junior officers, non-commissioned officers and troop personnel of the Armed Forces, security, police and penitentiary forces are not punishable for the crimes referred to in Article 10 point 1 of Law No. 23.049 for having acted in due obedience."); Law No. 23.492, art. 1 ("The criminal action shall be dropped with respect to any person for his alleged participation in any degree in the crimes of Section 10 of Law No. 23.049 that has not fled from the proceedings, or declared in contempt to court, or has been ordered to be arraigned (*declaración indagatoria*). . . before sixty days from the date of enactment of this law."). [Law No. 23.521, June 8, 1987, [Special Supplement June 9, 1987] B.O. 1 (Arg.), art. 1; Law No. 23.492, Dec. 24, 1986, [26.058] B.O. 1 (Arg.), art. 1.]

39. As these laws were applied, no prosecution against military, police, or penitentiary personnel in these categories could be successful, effectively preventing survivors and family members of individuals killed by members of the military from pursuing criminal accountability for these events. In addition to the legal impediments for more cases to be investigated and prosecuted, the convictions in cases that had already been prosecuted were undermined. In 1989 and 1990, President Carlos Menem issued pardon decrees that benefitted the commanders who were members of the military junta, other convicted members of the military and police forces, and those who were being processed in various judicial investigations.[72] Among them were 280 members of the security forces, some of whom were senior generals and high-ranking officers, who faced trial for human rights abuses and mismanaging the war over the Falklands/Malvinas Islands.[73]

40. This context of impunity for crimes committed by government agents against civilians extended into the 1990s and the first years of the 21st century.

C. 2003-2005: the lifting of several obstacles to criminal accountability

41. In 2003 some of the largest obstacles to prosecutions for the crimes committed by Argentine government agents against the civilian population began to crack. Law 25.779 was enacted on September 2, 2003. It declared the laws of Full Stop and Due Obedience "incurably null."[74] This opened the door to some new prosecutions, but questions remained about the

---

[72] *200 Military Officers Are Pardoned in Argentina*, N.Y. TIMES, Oct. 8, 1989 at 12; *Menem: Pardon our Dirty War*, L.A. TIMES, Jan. 6, 1991 ("Last weekend, Menem pardoned several top officers who led the military juntas that ruled Argentina from 1976 to 1983. They included the generals who oversaw the so-called "dirty war" against leftist subversion in which 8,960 persons are acknowledged to have died, many after being methodically tortured.").

[73] Kathryn Lee Crawford, *Due Obedience and the Rights of Victims: Argentina's Transition to Democracy*, 12 HUM. RTS. Q. 17, 17 (Feb. 1990) (*see* Editor's Note).

[74] Law No. 25.779, Sept. 2, 2003 [30.226] B.O. 1 (Arg.), art. 1. In addition, Argentina enacted on the same day Law 25.778, which gave constitutional hierarchy to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Law No. 25.778, Sept. 2, 2003 [30.226] B.O. 1 (Arg.), art. 1. Argentina became a State Party to the Treaty on August 26, 2003. United Nations Treaty Collection, *Convention on the non-*

validity of these laws, and in particular their retroactive application to crimes committed before the laws were enacted.[75]

42. The question of whether the criminal prosecution of a crime against humanity could be subject to a statute of limitations ("prescripción") was addressed by the Supreme Court of Justice of the Nation (CSJN for its name in Spanish) in the case of *Arancibia Clavel*. The case related to a former member of the Chilean intelligence directorate (DINA, for its name in Spanish) who, between 1974 and 1978 worked to persecute Chilean dissidents of the Pinochet dictatorship who were in Argentina. The trial court found that DINA members outside of Chile conducted persecutions through murder, forced disappearance, torture, use of false documents, and use of arms and explosives, among others.[76] Arancibia Clavel was charged and convicted of aggravated unlawful association–a crime roughly equivalent to an aggravated form of conspiracy under U.S. law—and for the aggravated murder of two people committed through explosives.[77] The appeals court reversed, finding that the conviction should be for unlawful association, instead of aggravated unlawful association, and that the statute of limitations prevented conviction for the former crime.[78] Though the question of the applicability of statutes of limitations for crimes against humanity was not clearly preserved, the CSJN reached it, as the extinguishing of a

---

applicability of statutory limitations to war crimes and crimes against humanity (signatory list), *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&clang=_en.

[75] Christine A.E. Bakker, *A Full Stop to Amnesty in Argentina: The* Simón *Case*, 3 J. OF INT'L CRIM. JUST. 1106, 1007 (2005).

[76] Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 24/08/2004, "Arancibia Clavel, Enrique Lautaro / homicidio calificado y asociación ilícita y otros," Fallos (2004-327-3294) (Arg.) at 1-2, 9 ("Considerando" paras. 1, 3, 15) [hereinafter *Arancibia Clavel* (2004)].

[77] *Arancibia Clavel* (2004) at 1 ("Considerando" para. 1).

[78] *Arancibia Clavel* (2004) at 1, 3 ("Considerando" para. 5).

criminal action "constituted a question of public order" and omitting its consideration could have exposed the Republic of Argentina to liability before the Inter-American juridical order.[79]

43. The CSJN held, first, that participating in an unlawful association aimed at committing crimes against humanity was itself a crime against humanity.[80] It then held that no statutes of limitations were applicable to criminal prosecutions for crimes against humanity given the magnitude and significance of these crimes, that they are generally committed by state agents, and the duty of Argentina under the Inter-American system of human rights to prosecute these crimes.[81] The court justices added in their opinions that the non-applicability of statutes of limitations for crimes against humanity was established by customary international law at the time the alleged crimes were committed or by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.[82] Consequently, the CSJN reversed the decision by the court of appeals. The case of *Arancibia Clavel* thus established that crimes against humanity could not be subject to statutes of limitations for criminal prosecution.

---

[79] *Arancibia Clavel* (2004) at 5 ("Considerando" para. 9), 24 (para. 10) (concurring opinion by Justice Petracchi), 36 (paras. 5-6) (concurring opinion by Justice Boggiano), 69-70 (paras. 9-10) (concurring opinion by Justice Maqueda).

[80] *Arancibia Clavel* (2004), 5-10 ("Considerando" para.10-para 17) (opinion by Justices Zaffaroni and Highton de Nolasco) (noting that it would be nonsensical to categorize the commission of murder, torture and torments, and enforced disappearances as crimes against humanity, but not the actions taken to further the commission of those crimes through an unlawful association), 24-27 (paras. 11-16) (concurring opinion by Justice Petracchi), 50-57 (paras. 18-25) (concurring opinion by Justice Boggiano), 91-102 (paras. 44-58) (concurring opinion by Justice Maqueda). The reference to the "Inter-American juridical order" is to the Inter-American system of human rights to which Argentina is a party.

[81] *Arancibia Clavel* (2004) at 10-13 ("Considerando" paras. 18-25) (citing the precedent "Priebke," Fallos: 318:2148), 30-32 (paras. 23-24) (concurring opinion by Justice Petracchi), 110-111 (para. 73) (concurring opinion by Justice Maqueda). *See also* United Nations Treaty Collection, *Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity* (signatory list), *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&clang=_en.

[82] *Arancibia Clavel* (2004) at 13-15 ("Considerando" paras. 26-34), 48-50 (para. 17), 58-63 (paras. 29-40) (concurring opinion by Justice Boggiano), 108-113 (paras. 69-77) (concurring opinion by Justice Maqueda). *See also Arancibia Clavel (2004)* at 27-32 (paras. 17-24) (concurring opinion by Justice Petracchi) (holding that the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity prevails over the domestic statute of limitation regulations in Argentina). Argentina became a State Party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity on August 26, 2003.

44. The question of the validity, *vel non*, of the laws of Full Stop and Due Obedience was confronted directly in the *Simón* case. The case arose from a complaint brought by Buscarita Imperi Roa, the grandmother of a child who, in November of 1978, was abducted along with her parents by government agents and taken to a clandestine detention center called "El Olimpo." The child, who was eight months old, was then taken from her parents and handed to a member of the military who, along with his wife, concealed her real identity, registered her as their daughter and raised her.[83] Since the crime of kidnapping of a child had been explicitly excluded from the Full Stop and Due Obedience laws discussed *supra*,[84] the prosecution of those involved in taking the child from her parents could move forward even within the terms of these laws, and the investigating judge arraigned and ordered the arrest of two people for this crime.[85] By indication by the court of appeals, the court also considered additional charges for crimes committed directly against the parents of the child, including aggravated illegal detention and torture. In order to advance with these additional charges, which the court considered amounted to crimes against humanity, the court declared the unconstitutionality and incurable nullity of the Full Stop and Due Obedience laws for violating, among other norms, a range of human rights treaties that have constitutional status under the Argentine Constitution.[86] The appeals court affirmed this decision.[87]

45. The CSJN took up a challenge to the lower court's and appeals court's decisions finding the Due Obedience and Full Stop laws invalid and allowing the prosecutor to expand the charges beyond those related to the kidnapping of a child. Anchored both in domestic and international

[83] Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 14/06/2005, "Simón Julio Héctor y otros / privación ilegítima de la libertad," Fallos (2005-328-2056) (Arg.) at 1-2, 4-5 ("Considerando" paras. 1-2, 4) [hereinafter *Simón* (2005)].
[84] Law No. 23.492, art. 5, and Law No. 23.521, art. 2. *See supra* note 70 and accompanying text.
[85] *Simón* (2005) at 2–3 ("Considerando" para. 2).
[86] *Simón* (2005) at 3-6 ("Considerando" paras. 3-4).
[87] Simón (2005) at 6 ("Considerando" para. 5).

legal obligations,[88] the CSJN found that the Due Obedience and Full Stop laws were unconstitutional, and it affirmed the validity of Law 25.779 (which had declared the Due Obedience and Full Stop laws "incurably null").[89]

46. The *Arancibia Clavel* and *Simón* decisions—together with others such as the *Mazzeo* decision, where the CSJN held that the pardons for crimes against humanity issued by President Menem (see *supra* at paragraph 39) were impermissible and invalid—have set forth that, in the context of the criminal prosecution of crimes against humanity, statutes of limitations and amnesties are not applicable.[90] This case law by Argentine courts opened the door for the possible criminal prosecution for the shooting and killings that took place at the Almirante Zar Naval Base in Trelew on August 22, 1972.

47. In the prosecution of Mr. Bravo's co-defendants (Luis Sosa, Emilio Del Real, and Carlos Marandino) for the shootings and killings at the Almirante Zar Naval Base, the trial court applied the analysis and reasoning of these two cases and the jurisprudence that flows from it. There, the defendants, including Del Real, Sosa, and Marandino, argued that they could not be prosecuted because the statute of limitations had run and because Amnesty Law 20.508 barred their

[88] Argentina's 1994 Constitution, art. 75.22, requires its courts to harmonize their interpretation of the law with international human rights instruments, including the American Convention on Human Rights ("American Convention"). As Neuman explains, "[t]he constitution of Argentina, as amended in 1994, in addition to making treaties in general supreme over statutes, gave constitutional rank (jerarquía constitucional) to eleven named human rights instruments, and authorized the addition of other human rights treaties with constitutional rank by supermajority vote in the legislature. These treaties were incorporated into the constitution alongside other express rights, and the provision specified that the treaties with constitutional rank 'do not repeal [other enumerated rights] and must be understood as complementary of the rights and guarantees recognized therein.' As a result, human rights protected by these instruments are not displaced by other constitutional provisions, but rather they should be construed in harmony with each other." Gerald L. Neuman, *Human Rights and Constitutional Rights: Harmony and Dissonance*, 55 STAN. L. REV. 1863, 1891–92 and n.85 (2003) (internal citations omitted).

[89] *Simón* (2005) at 32, 60-61, 124–25, 146, 158, 178, 189.

[90] In *Mazzeo*, the CSJN held that pardons for crimes against humanity were impermissible. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 13/07/2007, "Mazzeo, Julio Lilo y otros / rec. de casación e inconstitucionalidad," Fallos (2007-330-3248) (Arg.) at 22-23, 30-1 (majority vote paras. 28–29).

prosecution.[91] Following the approach established by the CSJN, the trial court analyzed the evidence to determine whether the alleged crimes were crimes against humanity.[92] Finding that the shooting and killings at the Almirante Zar Naval Base were crimes against humanity, it rejected the defendants' claim that Amnesty Law 20.508 or a statute of limitations applied, relying on *Arancibia Clavel* and *Simón*, among other sources,[93] and convicted Messrs. Del Real, Sosa, and Marandino.[94]

48. On appeal, the defendants repeated their defenses about Amnesty Law No. 20.508 and the statute of limitations.[95] Reviewing the conviction of Del Real, Sosa, and Marandino, the Court of Appeals affirmed the trial court's characterization of the killings at the Almirante Zar Naval Base on August 22, 1972 as crimes against humanity,[96] and restated and adopted the now well established precedents regarding the inapplicability of amnesties and statutes of limitations for the criminal prosecution of crimes against humanity.[97] The Appeals Court noted that numerous other cases have addressed the question of the applicability of an amnesty, and it found that the petitioners in the appeal did not refute the case law doctrine that flows from *Arancibia Clavel*, *Simón*, and *Mazzeo*.[98] It thus held that the lower court had properly analyzed

---

[91] For a discussion of Law No. 20.508, May 27, 1973, [22.674] B.O. 4 (Arg.) and the maximum statute of limitations applicable to the case, see *supra* at paras. 32 and 33.
[92] *Paccagnini* (2012), Exhibit 5 at 204-217, 222-223 (opinion by the majority) and 269 (partially dissenting opinion by Judge Cabrera de Monella) (the question of whether a statute of limitation or Amnesty Law No. 20.508 apply can be resolved "by considering whether the crimes proved are Crimes against Humanity and, in that case, whether as such are not subject to statute of limitations or to amnesty laws."), 269-281 (partially dissenting opinion by Judge Cabrera de Monella (analysis of the evidence related to the question of whether the crimes were crimes against humanity), and 292.
[93] *Paccagnini* (2012), Exhibit 5 at 210-221 (opinion by the majority), 282-287 (partially dissenting opinion by Judge Cabrera de Monella).
[94] *Paccagnini* (2012), Exhibit 5 at 292.
[95] *Paccagnini* appeal (2014), Exhibit 19 at 4, 6.
[96] *Paccagnini* appeal (2014), Exhibit 19 at 26-37, at 72-75 (concurring opinion by Judge Catucci).
[97] *Paccagnini* appeal (2014), Exhibit 19 at 38-42, and 75 (partially concurring and partially dissenting opinion by Judge Catucci).
[98] *Paccagnini* appeal (2014), Exhibit 19 at 38 and 42.

the claims regarding Amnesty Law 20.508 and statute of limitations and that its conclusions were sound.[99]

D. 2006-present: No civil remedy is possible in Argentina regarding Mr. Bravo given the current state of the law in Argentina and Mr. Bravo's absence from Argentina

1. Civil claims are subject to statutes of limitations, even if they arise from acts that were crimes against humanity.

49. In the case of a civil complaint for wrongful death or any other tort, the statute of limitations under the Argentine Civil Code in effect between 1972 and 2015 was two years.[100] This period got interrupted if a party filed a civil complaint before this period expired.[101] However, if a case was dismissed for lack of prosecution, the law presumed that the civil complaint had never been filed for the purposes of the statute of limitations.[102] These rules imply that the statute of limitations thus barred the filing of civil complaints in Argentina after August 22, 1974, for the killings that took place in Almirante Zar Naval Base on August 22, 1972. This statute of limitations applied even when civil complaints had been filed before for these deaths, if the complaints in question were dismissed for lack of prosecution as we discussed in paragraphs 24 and 25, supra.

50. While, as I have discussed *supra*, the CSJN has held that no statute of limitations applies for criminal prosecutions for crimes against humanity,[103] it has held that statutes of limitations do apply to civil claims for the same facts.[104] In 2007, in the *Larrabeiti Yañez* case, the CSJN held

---

[99] *Paccagnini* appeal (2014), Exhibit 19 at 38-42, 75 (partially concurring and partially dissenting opinion by Judge Catucci), and 86 ("Resolves section, No. I).
[100] Código Civil [Cód. Civ.] [Civil Code] art. 4037 (Arg.) (in effect until 2015).
[101] Código Civil [Cód. Civ.] [Civil Code] art. 3986 (Arg.) (in effect until 2015).
[102] Código Civil [Cód. Civ.] [Civil Code] art. 3987 (Arg.) (in effect until 2015).
[103] *See supra* paras. 42 and 43 (discussing *Arancibia Clavel* (2004) by the Argentine Supreme Court).
[104] See, generally, Juan Carlos Hitters, ¿Prescribe la reparación civil en los delitos de lesa humanidad? [Is there a statute of limitations for civil reparations in crimes against humanity?], 155 La Ley 1 (2019-D).

that the interests involved in civil complaints are individual in nature, whereas the interest in criminal prosecution of crimes against humanity responds to a broader interest in preventing impunity, which goes beyond the individual interests of a claimant.[105] As such, the Court rejected the argument that civil complaints in these types of cases were not subject to a statute of limitations and applied the statute of limitations in the Civil Code in place at the time as described above.[106]

51. On August 1, 2015, a new Civil and Commercial Code of Argentina came into effect. Article 2561 of the new Code established that the statute of limitations does not apply to civil actions related to crimes against humanity.[107] However, in 2017, in the *Villamil* case—a case in which the plaintiff presented a claim for the disappearance of her son and her daughter-in-law in 1977 during the 1976-1983 military dictatorship in Argentina—the Court revisited the question and it again distinguished the interests of individuals in civil complaints from those of society at large in criminal prosecutions, reaffirming its 2007 holding in *Larrabeiti Yañez*.[108] The CSJN considered that Article 2561 of the new Civil and Commercial Code of Argentina did not apply to the case because it could not apply to a case whose statute of limitations had already expired when the new Civil and Commercial Code came into effect.[109]

---

[105] Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 30/10/2007, "Larrabeiti Yañez, Anatole Alejandro y otro c. Estado Nacional s/ proceso de conocimiento," Fallos (2007-330-4592) (Arg.), at 6 ("Considerando" section, para. 5, opinion by Judges Lorenzetti and Highton) and at 9 (concurring opinion by Judges Petracchi and Argibay, concurring on para. 5 of the opinion by Judges Lorenzetti and Highton) [hereinafter *Larrabeiti Yañez* (2007)].

[106] *Larrabeiti Yañez* (2007) at 8 ("Por ello, se resuelve").

[107] Código Civil y Comercial de la Nación [Cód. Civ. y Com.] [Civil and Commercial Code] art. 2562 (Arg.).

[108] Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 28/05/2017, "Villamil, Amelia Ana c. Estado Nacional s/ daños y perjuicios," Fallos (2017-203-2012) (Arg.) at 6-7 (in "Considerando" para. 9) [hereinafter *Villamil* (2017)].

[109] *Villamil* (2017) at 7-8 (in "Considerando" para. 11) (invoking, among other arguments, that the Civil and Commercial Code, Art. 2537, establishes that the statute of limitations ongoing at the time of the coming into effect of a new statute are governed by the prior statute).

52. In 2019, in the case *Ingegnieros v. Techint S.A.*, the CSJN applied its precedent in a case related to a labor complaint based on the enforced disappearance of a person at the premises of the private company Techint in 1977. The Court reaffirmed its two prior decisions and applied it to a labor law claim, finding that it was time barred.[110]

2. Argentine law does not permit criminal trials in absentia

53. In absentia criminal trials are not permissible under Argentinean law, as they would violate the right to defense that is enshrined in Article 18 of the National Constitution of Argentina.[111] Under Argentine law, the protections required in a criminal trial cannot be satisfied merely by the fact that "a real possibility to defend oneself" exists. The courts must "verify, in fact, that the defendant can, in reality, exercise that defense."[112] It is necessary that the courts verify "by the physical presence" of the defendant that he or she has the capacity to participate in the criminal proceedings and is in the conditions to do so.[113] Moreover, criminal trials are governed by the "principle of immediacy," which requires the uninterrupted presence of the defendant during the trial as well as while the court's decision is read out loud, so that it can be

[110] Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 09/05/2019, "Ingegnieros, María Gimena c. Techint Sociedad Anónima Compañia Técnica Internacional / accidente," Fallos (2019-342-761) (Arg.) at 4-5 (in "Considerando" paras. 5, 6) (opinion by Judge Rosenkrantz), 7 ("se revoca la sentencia apelada y se rechaza la demanda"), 9 (concurring opinion by Judge Highton de Nolasco), and 17-26 (paras. 8-14) (concurring opinion by Judge Lorenzetti). On November 11, 2020, the Argentine Congress passed Law 27.586, which was promulgated on December 16, 2020. Law No. 27.586, Dec. 16, 2020, [34.542] B.O. 5 (Arg.), art. 1. This law amended Article 2537 of the new Civil and Commercial Code of Argentina by establishing that its regulations about the application of the earlier law over the later law regarding the statute of limitations does not apply to crimes against humanity. This amendment could be used to bring a new case before the Argentine Supreme Court to argue for the non-application of the statute of limitations to civil actions for crimes against humanity. But it is unclear whether this would be enough to persuade the Supreme Court to change the position it has maintained in the three cases analyzed in this section. In any case, for the time being, the Supreme Court of Argentina has repeatedly held that civil actions for crimes against humanity are subject to a statute of limitations, and that the laws in effect at the time crimes against humanity took place regulate the statute of limitations of any civil actions brought in relation to these crimes.

[111] Art. 18, Constitución Nacional [Const. Nac.] (Arg.), *available at* https://pdba.georgetown.edu/Constitutions/Argentina/argen94_e.html (English).

[112] JULIO B. J. MAIER, , DERECHO PROCESAL PENAL, TOMO I: FUNDAMENTOS 594-595 (2d ed. 1996), *available at* https://issuu.com/osmarbaez/docs/julio_b._maier-_derecho_procesal_pe/314.

[113] *Id.*

verified that the defendant had sufficient opportunity to speak, to contradict witnesses or experts, to present evidence, to oppose, question or contradict the evidence presented by the prosecution and to evaluate that evidence, and to plead to the court regarding the verdict.[114] In addition, in criminal matters, the right to a defense is a guarantee that must be ensured effectively.[115] That is, the State not only has to provide for the opportunity to exercise the right of defense, it also has the obligation to ensure that this right can be effectively exercised by the defendant, and, under Argentine law, the defendant's presence at trial is a requirement for it.

54. Aligned with these principles, the applicable Criminal Procedural Code specifically requires that a trial be paused if a defendant is declared to have fled ("en rebeldía").[116] The Code establishes that the investigation phase ("instrucción") can take place without the presence of a defendant, but a trial cannot proceed under those conditions.[117] When there are multiple

[114] *Id.* at 541. ("rige el principio de inmediación, por el que se requiere la presencia ininterrumpida del acusado durante todo el debate y hasta en la lectura de la sentencia, manera de verificar que él ha tenido oportunidad suficiente para hablar, contradecir a los testigos y peritos, probar, controlar la prueba del adversario y valorarla, indicando al tribunal la solución que propone para la sentencia." ["the principle of immediacy governs, which requires the uninterrupted presence of the defendant during the entire trial and until the reading of the verdict, in order to ensure that he has had sufficient opportunity to speak, cross-examine witnesses and experts, produce elements of proof, review the adversary's evidence and evaluate it, indicating to the court the solution he proposes for the verdict."]).

[115] JORGE E. VÁZQUEZ ROSSI, DERECHO PROCESAL PENAL, TOMO II: EL PROCESO PENAL 205 (Rubinzal-Culzoni eds. 2004), *avaiable at* https://archive.org/embed/DERECHOPROCESALPENALTOMOIIJORGEVAZQUEZROSSI.

[116] Código Procesal Penal de la Nación [Cód. Proc. Pen.] [Criminal Procedure Code] art. 290 (Arg.). There is a new Federal Criminal Procedure Code in Argentina that was adopted by Law 27.063. But this code has so far been applied only in a few jurisdictions as part of its gradual implementation, and most of the regulations of the new code do not apply to ongoing cases. *See* Law No. 27.150, June 17, 2015, [33.153] B.O. 7 (Arg.) (with a later amendment), art. 23. In any case, the new code also establishes the prohibition against the trial of defendants *in absentia*. *See* Código Procesal Penal de la Nación [Cód. Proc. Pen.] [Criminal Procedure Code] art. 291(g) (T.O. 2019) (Arg.); Law No. 27.063, Dec. 9, 2014, [33.027] B.O. 1 (Arg.), art. 258.

[117] *See* Código Procesal Penal de la Nación [Cód. Proc. Pen.] [Criminal Procedure Code] art. 290 (Arg.). *See also* JULIO B. J. MAIER, DERECHO PROCESAL PENAL, TOMO I: FUNDAMENTOS 542 (2d ed. 1996) ("no puede arribar[se] a una sentencia de mérito en ausencia del imputado." ["it is not possible to arrive at a decision on the merits in the absence of the defendant"]). In fact, not even the investigation phase (*instrucción*) may move towards trial if the defendant is not first interrogated, which necessarily requires his or her presence. *See* Código Procesal Penal de la Nación [Cód. Proc. Pen.] [Criminal Procedure Code] art. 307 (Arg.) (requiring the interrogation or arraignment of the defendant—*indagatoria*—before the issuance of the *procesamiento*—an interlocutory judicial decision that is required to move a case toward trial, that identifies whom the target of an investigation is, and for which offense, and that provides a basis to deny bail and to order the pretrial detention of a defendant).

defendants, the fleeing of one defendant pauses the proceedings as to that defendant, but the trial may continue as to the rest.[118]

55. In the case of the investigation and prosecution related to the events that took place at Almirante Zar Naval Base on August 22, 1972, the prosecution of five other defendants other than Roberto Guillermo Bravo thus moved forward, despite Mr. Bravo's absence. Indeed, documents shared with me by Plaintiffs' counsel indicate that it was not until after the case against the other defendants was already proceeding, that the prosecutors first learned of Bravo's whereabouts in the United States. On October 30, 2007, the Secretary of Human Rights of the Department of Justice and Human Rights of the Republic of Argentina—who was a complainant in the criminal proceedings on the shootings and killings that took place in the Almirante Zar Naval Base—received a letter from the Chiefs of Staff of the Navy informing them that Mr. Bravo continued to receive a pension from the military.[119] On the basis of this document the complainant, on November 15, 2007, requested to the court an order directing the Institute of Financial Assistance for the Payment of Retirement and Military Pensions to inform the

[118] Article 290 of the Criminal Procedural Code states that "if the court declared during trial that the defendant has fled, the trial shall be suspended with respect to the person who has fled and shall continue for the the rest of the defendants present" (translation by the author). Código Procesal Penal de la Nación [Cód. Proc. Pen.] [Criminal Procedure Code] art. 290 (Arg.).

[119] *See Amplia Actuación. Solicita Detención*, Federal Trial Court of Rawson, Province of Chubut, *Sosa Luis Emilio, Bravo Roberto Guillermo et al.*, (2007) Criminal case file, at folio 1522, Submission by Eduardo Luis Duhalde, representative of the Human Rights Secretariat of the Ministry of Justice and Human Rights to the Federal Judge in the case regarding the event known as the Trelew Massacre, August 22, 1972 (November 15, 2007), attached as Exhibit 20; *see also* Federal Trial Court of Rawson, Province of Chubut, *Sosa Luis Emilio, Bravo Roberto Guillermo et al.*, (2007), Letter Rogatory No. 214/2014, *United States v. Bravo*, 1:19-mc-023851-EGT, EX-BRAVO-0628-0657 (S. D. Fla. Sept. 16, 2019), attached as Exhibit 21.

prosecutor of Mr. Bravo's actual domicile.[120] This information appears to have then been used to assist Interpol in locating Mr. Bravo[121] and, later, to seek Mr. Bravo's extradition.[122]

56. Luis Emilio Sosa, Emilio Jorge Del Real, and Carlos Amadeo Marandino were convicted of "homicide committed with malice" of the sixteen individuals who died as a result of the shooting at Almirante Zar Naval Base on August 22, 1972, and attempted "homicide committed with malice" against the three individuals that survived the shooting.[123] Jorge Enrique Bautista was acquitted of the charge of criminal concealment (equivalent to accessory after the fact) and Norberto Paccagnini was acquitted of the charge of indirect perpetration of sixteen murders and three attempted murders committed with malice.[124] As I already discussed, the convictions of Sosa, Del Real, and Marandino were affirmed by an appeals court, and the same court vacated the acquittals of Bautista and Paccagnini.[125]

---

[120] *See Amplia Actuación. Solicita Detención*, Federal Trial Court of Rawson, Province of Chubut, *Sosa Luis Emilio, Bravo Roberto Guillermo et al.*, (2007) Criminal case file, at folio 1522, Submission by Eduardo Luis Duhalde, representative of the Human Rights Secretariat of the Ministry of Justice and Human Rights to the Federal Judge in the case regarding the event known as the Trelew Massacre, August 22, 1972 (November 15, 2007), attached as Exhibit 20; *see also* Federal Trial Court of Rawson, Province of Chubut, *Sosa Luis Emilio, Bravo Roberto Guillermo et al.*, (2007), Letter Rogatory No. 214/2014, *United States v. Bravo*, 1:19-mc-023851-EGT, (EX-BRAVO-0628-0657) (S. D. Fla. Sept. 16, 2019), attached as Exhibit 21.

[121] Federal Trial Court of Rawson, Province of Chubut, *Sosa Luis Emilio, Bravo Roberto Guillermo et al.*, (2007) Criminal case file, at folio 1522, *Communication from Edgar Raimundo Tosetti of Interpol Argentina to investigative judge* on March 3, 2008, attached as Exhibit 22 (referring to information provided by Argentina to Interpol in Washington, D.C. and noting that the D.C. Interpol office cannot release all the information it has, but can confirm Bravo's general location in Florida, and can confirm that there are indications that information provided by Argentine officials earlier "is exact.").

[122] Federal Trial Court of Rawson, Province of Chubut, *Sosa Luis Emilio, Bravo Roberto Guillermo et al.*, (2007), Letter Rogatory No. 214/2014, *United States v. Bravo*, 1:19-mc-023851-EGT, (EX-BRAVO-0628-0657) (S. D. Fla. Sept. 16, 2019), attached as Exhibit 21.

[123] *Paccagnini* (2012), Exhibit 5 at 292. I use here the translation of the Spanish term "homicidio con alevosia" for which these three people were convicted as "homicide with malice" because it is the term in English chosen in the translation of the trial court verdict that I enclose. However, it is worth explaining that "homicidio con alevosia" is a form of aggravated murder under Argentine law that would be equivalent to first degree murder under American law and that is aggravated because the victim of the killing does not have a chance to defend him or herself against the aggressor. In this regard, "homicidio con alevosia" is more serious than "homicidio simple" which would be the equivalent of murder committed with malice aforethought under traditional common law and under some of the traditional American formulations of murder—e.g., second degree murder under California Penal Code, Section 189.

[124] *Paccagnini* (2012), Exhibit 5 at 291. The crime of "encubrimiento" for which Jorge Enrique Bautista was initially acquitted can be also translated as "accessory after the fact" as an independent crime.

[125] *Paccagnini* Appeal (2014), Exhibit 19 at 86.

57. In its verdict, the trial court also ordered that the copies of the case file be forwarded to the appropriate federal court in Rawson, Argentina, to begin extradition proceedings against Mr. Bravo.[126] But for the reasons already stated in this section, Mr. Bravo cannot be prosecuted criminally in Argentina unless he is present there.

3. Civil verdicts arising out of the same facts that give rise to a criminal prosecution cannot proceed until the criminal proceedings have concluded.

58. The impossibility of criminally trying Mr. Bravo in Argentina unless he is present there is relevant to discuss not only his potential criminal liability in that country, but also his potential civil liability. Under Argentine law it is not possible to issue a verdict in a civil case regarding which there is an ongoing criminal prosecution arising from the same facts.[127] Under Argentine law, this is called the doctrine of penal prejudiciality. The rationale for this doctrine is avoiding issuing conflicting criminal and civil verdicts regarding a case on which a criminal conviction may be issued.[128]

59. Thus, it is unlikely that the Plaintiffs in this case would be able to bring a civil case against Mr. Bravo in Argentina for two reasons. First, because according to the CSJN, as discussed above in section VIII.D.1 the statute of limitations applies to civil actions for crimes against humanity committed before the new Civil and Commercial Code of Argentina came into effect, the Plaintiffs' civil claims would likely be time barred. Second, even if the statute of limitation did not apply to these civil complaints, the rule is that no verdict in a civil case can be

---

[126] *Paccagnini* (2012), Exhibit 5 at 292.

[127] Código Civil y Comercial de la Nación [Cód. Civ. y Com.] [Civil and Commercial Code] art. 1775 (Arg.). The prior Civil Code established the same principle in Article 1101. But Argentine case law has held that the new Code immediately applies in this regard to any ongoing trials. *See* Civ. y Com. Mendoza, 29/05/2017, "*Lucero, Alejandra Marcela c. Marveggio, Alejandro Amadeo y otros / acción de nulidad,*" Expte 220.884/52.264 (Arg.) at 9, available at http://www2.jus.mendoza.gov.ar/listas/proveidos/vertexto.php?ide=5476468353.

[128] Código Civil y Comercial de la Nación [Cód. Civ. y Com.] [Civil and Commercial Code] art. 1776 ("A criminal conviction produces res iudicata effects in the civil process regarding the existence of the main fact that constitutes the criminal offense and the guilt of the convicted person.").

issued against Mr. Bravo in Argentina until his pending criminal proceedings have concluded—which cannot happen under Argentine law unless Mr. Bravo is extradited to Argentina and tried.[129]

E. The Plaintiffs are entitled to administrative monetary benefits for victims of crimes committed by Argentine security forces

60. On December 23, 1991, the Argentinean State promulgated Law 24.043, which provided monetary reparations to persons who had been detained prior to December 10, 1983 "at the disposition of the Executive Power of the Nation", or who, as civilians, were detained as a result of actions flowing from military tribunals.[130] Law 26.564, which came into effect on Dec. 15, 2009, expanded the benefits of Law 24.043 to people who, between June 16, 1955, and December 9, 1983, were under detention, forcibly disappeared, or killed under the circumstances described by Law 24.043.[131] The CSJN has also held that Law 24.043 should be interpreted liberally, rather than literally, in order to advance the broad reparatory goal for human rights victims that animated the Argentine legislature in passing this law.[132] Law 24.043 provides for procedures to present a request for the benefit and for the appropriate government authorities to

[129] Article 1775 of the Civil and Commercial Procedure Code of Argentina establishes three exceptions to the general rule that a civil verdict may not be issued while a criminal prosecution is ongoing regarding the same facts. Among these three exceptions, the only one that might be relevant for a civil case against Mr. Bravo in Argentina is that a civil verdict can be issued if the delay in the criminal proceedings causes, in fact, an effective frustration of the right to be compensated. However, Argentine courts have held that such an exception requires a case-by-case analysis and it is thus uncertain that this exception would apply if the plaintiffs filed a civil complaint against Mr. Bravo in Argentina—civil complaint that, in any case, it is precluded by the statute of limitations, as I have already discussed *supra* in section VIII.D.1. On the need for a case-by-case assessment, see, e.g., Civ. y Com. Mendoza, 29/05/2017, "Lucero, Alejandra Marcela c. Marveggio, Alejandro Amadeo y otros / acción de nulidad," Expte 220.884/52.264 (Arg.).
[130] Law No. 24.043, Dec. 23, 1991, [27.296] B.O. 1 (Arg.) arts. 1-2.
[131] Law No. 26.564, Dec. 15, 2009, [31.802] B.O. 6 (Arg.), art. 1.
[132] See Corte Suprema de Justicia Nacional [CJSN] [National Supreme Court of Justice], 14/10/2004, "Yofre de Vaca Narvaja, Susana c/ M° del Interior," Fallos (2004-327-4241) (Arg.) at 9; Corte Suprema de Justicia Nacional [CJSN] [National Supreme Court of Justice], 16/09/2014, "De Maio, Ana de las Mercedes e/ M J Y DDHH art. 3° ley 24.043," Fallos (2014-337-1006) (Arg.) at 3.

verify that the petitioner fulfilled the requirements to receive the benefits, and it allows estate beneficiaries to present a request for benefits where the rightsholder is deceased.[133]

61. Law 24.411, promulgated on December 28, 1994,[134] provided reparations for enforced disappearance[135] or death that resulted "as a consequence of the actions of the armed forces, security forces, or any paramilitary group prior to December 10, 1983."[136] Law 26.564 also expanded the benefits of Law 24.411 to people who, between June 16, 1955, and December 9, 1983, were forcibly disappeared, or were killed under the circumstances described by Law 24.411.[137] The benefits could be claimed by the victims' estate beneficiaries.[138] Law 24.411 also established that those who claimed benefits under law 24.043 can only receive the difference between what is established by Law 24.411 and what was received per Law 24.043. If benefits under law 24.043 are greater than what would be provided under Law 24.411, then the person may not receive additional monetary benefits.[139]

62. While laws 24.411 and 24.403 originally provided for statutes of limitations for claiming these benefits, Law 27.143, passed on June 17, 2015 modified laws 24.411 and 24.403 to eliminate such deadlines.[140] This means that, if the Plaintiffs had not made claims under laws 24.411 or 24.043, they could still present those claims today.[141] These two laws are administrative reparations laws which, in my opinion, could be available to the Plaintiffs.

[133] Law No. 24.043, arts. 3-5. [Law No. 24.043, Dec. 23, 1991, [27.296] B.O. 1 (Arg.) arts. 3-5.]
[134] Law No. 24.411 of Dec. 28, 1994, [28.052] B.O. 2 (Arg.) (citing date of passage).
[135] Law No. 24.411, art. 1.
[136] Law No. 24.411, art. 2.
[137] Law No. 26.564, Dec. 15, 2009, [31.802] B.O. 6 (Arg.), art. 1.
[138] Law No. 24.411, art. 1 and 2.
[139] Law No. 24.411, art. 9.
[140] Law No. 27.143, June 17, 2015, [33.157] B.O. 1 (Arg.), art. 3.
[141] Plaintiffs' counsel has informed me that all the Plaintiffs or their families have presented claims under these laws. Ms. Krueger (Bonet), Ms. Camps and Ms. Santucho did so directly, along with other eligible family members, where applicable. In the case of Mr. Cappello, his grandparents, who were the heirs of Eduardo Cappello before they passed away, presented such claims.

IX. DECLARATIONS AND PUBLIC STATEMENTS PRESENTED BY THE SURVIVORS

63. The three survivors of the shootings in the Almirante Zar Naval Base on August 22, 1972, María Antonia Berger, Alberto Miguel Camps, and Ricardo René Haidar (hereinafter, "the survivors"), provided the following sworn statements and public statements regarding the events that were provided to me by the attorneys of the Plaintiffs in this case:

a. On August 23, 1972, Ricardo René Haidar, and on August 23 and August 24, Alberto Miguel Camps provided statements before the ad hoc investigating military judge of the Argentine Navy, Navy Captain Jorge Enrique Bautista, soon after the shooting on August 22, 1972 (the "Bautista Investigation Declarations").[142] Maria Antonia Berger provided a statement on August 28, 1972 at Naval Hospital Puerto Belgrano.[143]

b. The survivors provided sworn testimony in the context of several civil suits filed by the families of individuals who died in the events that are the subject of this report, as well as by Berger herself. These declarations were presented at Devoto prison in Buenos Aires (the "Devoto Prison Declarations"). Camps and Haidar

---

[142] *See* Actuaciones Armadas, Exhibit 23 at 69-82. The file of Bautista's investigation has been lost, as the trial court in the *Paccagnini et al.* (2012) observed. A small fraction of the file has survived, including portions of the declarations of the survivors. *See Paccagnini* (2012), Exhibit 5 at 31 ("Although the file of his investigative proceedings is not in anybody's custody and no one knows why it went missing, there are [sic.] evidence that it actually existed, such as the depositions of the survivors, evidence he gathered, the opinion issued by the General Auditor. Such are small parts of the whole file which contained the investigative proceedings carried out by him and which are nowhere to be found."). Of these, the statement by Haidar on August 23, 1972, seems to have at least one page missing. *See* Exhibit 23 (the page that seems to be missing should have been between pages 74 and 75). The statement by Camps on August 23, 1972, is not complete as at least the second page and the last page or pages are missing, as the last page does not have the customary statement and signatures. *See* Exhibit 23 at 76-77. The statement by Camps on August 24, 1972, also has several pages missing, including its last page or pages, as its last page does not have the customary statement and signatures, and ends in a question posed by the investigative Judge. See Exhibit 23 at 82.

[143] *See Paccagnini* (2012), Exhibit 5 at 54 (summarizing Berger's statement).

presented their declarations on October 26, 1972.[144] Berger presented her declaration on November 6, 1972.[145]

c. On or around September 5, 1972, they provided a written statement to be read by their legal representatives at a press conference on September 8, 1972 (the "Press Conference Statements").[146]

d. The survivors gave an interview on May 24, 1973, to journalist Francisco Urondo who published transcriptions of the interviews as part of his book La Patria Fusilada, published in 1973 (the "Urondo Interview").[147]

e. The survivors gave an interview to filmmaker Pino Solanas in June of 1973. While the images did not survive, the audio was preserved by Jorge Abelardo Kuschnir, who was in charge of audio at the interview. Kuschnir has digitized copies of the recording in mp3 format in his possession. He testified at the

---

[144] *See* Declaration of Alberto Camps, in *Santucho* (1972) at 197-200, attached as Exhibit 24. This copy appears to be a physical carbon copy and is at times nearly illegible. A clearer certified copy of this statement, which is missing the first page, but includes Camps' signed sketch of the space where the cells were located, was incorporated into the file of the case brought by Maria Antonia Berger. *See* Declaration of Alberto Camps in *Berger* (1972), Exhibit 9 at 511-519 (folios 70-75), attached as Exhibit 25. To facilitate review of this document, I use the version in the Berger (1972) file when the same page is available in both files. The same comments apply to the *Declaration of Ricardo René Haidar*. *See also* Declaration of René Haidar, in *Santucho* (1972) at 201-205, attached as Exhibit 26, that was also incorporated into the file of the case brought by Maria Antonia Berger, *see* Haidar Declaration in *Berger* (1972) 533–545, attached as Exhibit 27.

[145] *See* Declaration by M. Antonia Berger, in *Berger* (1972) 521-531, at Folio 77, attached as Exhibit 28 at 3.

[146] *See* Juzgado Federal de Primera Instancia No. 12, [Federal Court First Instance] "N.N. s/deununcia (contra autores de la llamada Masacre de Trelew, 22 de agosto de 1972, Base Zar, Trelew)," Secretaria No. 24. P.J.N., folio 1174, 2006, Declaracion Testimonial de Eduardo Luis Duhale (Apr. 17, 2007) [Testimonial Declaration of Eduardo Luis Duhale], (Arg.), at Folio 1174, attached as Exhibit 29; Statement of Alberto Camps, United States v. Bravo, 1:19-mc-023851-EGT, EX-BRAVO-0658-0661 (S. D. Fla. Sept. 16, 2019), at EX-BRAVO-0658-0661, attached as Exhibit 31; Statement of René Haidar, United States v. Bravo, 1:19-mc-023851-EGT, EX-BRAVO-0662-0666 (S. D. Fla. Sept. 16, 2019) at EX-BRAVO-0662-0666, attached as Exhibit 31; Statement of Maria Antonia Berger, United States v. Bravo, 1:19-mc-023851-EGT, EX-BRAVO-0667-0671 (S. D. Fla. Sept. 16, 2019) at EX-BRAVO-0667-0671, attached as Exhibit 31.

[147] *See* Francisco Urondo, *La Patria Fusilada,* REVISTA CRISIS, Aug. 21, 2020*, available at* https://revistacrisis.com.ar/notas/la-patria-fusilada.

Argentine criminal trial in 2012 against other military officials involved in the events of August 22, 1972, and authenticated the recordings.[148]

1. The legal protections afforded to Bravo when the Bautista Investigation Declarations were taken

64. While Alberto Miguel Camps, Ricardo René Haidar, and María Antonia Berger were hospitalized at a Naval hospital after the shootings had taken place, they provided testimony to Captain Bautista, who was appointed as an ad hoc investigating military judge to investigate and make a recommendation about the responsibility of the military personnel in the events.[149]As already mentioned, Ricardo René Haidar provided his statement on August 23, 1972, Alberto Miguel Camps provided his statements on August 23 and 24, 1972 and María Antonia Berger provided her statement on August 28, 1972.[150] The taking of these statements or declarations and the military investigation more generally were regulated by then-applicable Code of Military Justice.[151] According to this code, ad-hoc investigating military Judge Bautista had jurisdiction to investigate the actions by the military involved in the shootings, but not the actions by the civilians.[152]

---

[148] *See Paccagnini* (2012) at 57-58.

[149] By Bautista's own testimony at the criminal trial of Messrs. Sosa, Del Real, Marandino, Pacagnini and Bautista himself, his role was to conduct an investigation and prepare a report with recommendations regarding discipline or further actions. *Paccagnini* (2012), Exhibit 5 at 20-21.

[150] *See Actuaciones Armadas*, Exhibit 23 at 69, 76, 78; *Paccagnini* (2012), Exhibit 5 at 54 (referring to Berger's August 28, 1972 declaration, noting that it was incorporated into the files of her 1973 criminal prosecution for attempted escape and summarizing the contents of her statement).

[151] Law 14.029, July 16, 1951, [16.958] B.O. 1 (Arg.), art. 1 (Código de Justicia Militar de la República de Argentina [Code of Military Justice of the Republic of Argentina]) (repealed 2008). The Military Justice Code was derogated on August 26, 2008 by Law 26.394. Law No. 26.394, Aug. 26, 2008, [31.478] B.O. 1 (Arg.), art. 1. For a discussion of the reform of the Military Justice Code, see Annabella Sandri Fuentes, *La reforma integral del sistema de justicia militar argentino motivada por el cumplimiento de las obligaciones que surgen de la Convención Americana sobre Derechos Humanos*, 61 Revista IIDH 319 (2015), available at https://www.corteidh.or.cr/tablas/r34230.pdf.

[152] Code of Military Justice, art. 108.2; *Actuaciones Armadas*, Exhibit 23 at 52 (Supreme Court of Argentina holds that the civilian federal justice has jurisdiction over the civilians regarding the events that transpired on August 22, 1972).

65. The existing records suggest that the survivors were not assisted by lawyers during their declarations.[153] In this context, it is worth also highlighting the then-applicable Code of Military Justice established that if an investigation moved forward regarding the target of a military investigation, the defendant had a right to a court-appointed lawyer.[154] Article 231 of the then-applicable Code of Military Justice indicated that, under penalty of nullity, every statement or declaration had to be signed by all of those who participated in it.[155] The surviving portions of the statement by Ricardo René Haidar are only signed by Mr. Haidar, ad-hoc investigating Military Judge Bautista, and Judge Bautista's secretary. These signatures thus indicate that no one else was present during the production of this statement.

66. On October 4, 1972, the CSJN determined that it was the civilian federal criminal justice that had to investigate the potential criminal responsibility of Berger, Haidar, and Camps for the alleged attempted escape on August 22, 1972.[156] On October 23, 1972, the civilian judge and prosecutor requested authenticated copies of the statements that the survivors had provided in Captain Bautista's investigation.[157] The authenticated copies of the testimonies were subsequently incorporated into the record.[158] These are the portions of the Bautista investigation documents that I reviewed.[159]

---

[153] *See* Juzgado Federal de Primera Instancia No. 12, [Federal Court First Instance] "N.N. s/deununcia (contra autores de la llamada Masacre de Trelew, 17 de abril de 1972, Base Zar, Trelew)," Secretaria No. 24. P.J.N., folio 1174, 2006, Declaracion Testimonial de Eduardo Luis Duhale (Apr. 17, 2007) [Testimonial Declaration of Eduardo Luis Duhale], (Arg.)., attached as Exhibit 30 at 19; Declaration of René Haidar, in *Actuaciones Armada*, at 73-4 (Aug. 23, 1972), Exhibit 23; Declaration of Alberto Camps, in *Actuaciones Armada*, at 81-82 (Aug. 23-24, 1972), Exhibit 23.

[154] Code of Military Justice, art. 96.

[155] Code of Military Justice, art. 231.

[156] *See Actuaciones Armada*, Exhibit 23 at 52.

[157] *See Actuaciones Armada*, Exhibit 23 at 55-56.

[158] *See Actuaciones Armada*, Exhibit 23 at 69-82; *Paccagnini* (2012), Exhibit 5 at 54.

[159] *See Paccagnini* (2012), Exhibit 5 at 31 (noting that only some portions of the file, including the survivors' declarations, survived).

2. The procedure followed to obtain the sworn declarations at Devoto prison.

67. As already mentioned, the Devoto Prison Declarations took place at the end of 1972. These declarations were taken in formal civil proceedings initiated by civil suits by family members of Pedro Bonet and Ana María Villarreal Santucho.[160] As already discussed, María Antonia Berger, and family members of Eduardo Cappello and María Angélica Sabelli also filed civil suits related to the shootings on August 22, 1972. Testimony taken from Alberto Camps and Ricardo René Haidar was added to Berger's own lawsuit.

68. As background to analyze these statements, in the Argentinian government's response in the Santucho, Berger, and Lelchuk de Bonet civil lawsuits, the defense argued that the "event was the result of the legitimate repression of an attempted massive escape," and it requested the dismissal of all three cases.[161] In Sabelli's case, military counsel internally recommended that the State acquiesce to the claim on the grounds that the evidence pointed to the military's knowledge of Sabelli's lack of intent to escape, making her a victim in the shooting,[162] but the government also argued that her death was the result of a legitimate action taken by prison guards to prevent her alleged escape.[163] Despite this internal memorandum, there is no record showing that any action was taken to admit liability for Sabelli's death.

69. As a civil law jurisdiction, Argentine civil procedure presents differences with American civil procedure that include a more active role for the court in gathering elements of proof.[164] But

---

[160] See Declaration of Alberto Camps, in *Santucho* (1972) at 197-200, Exhibit 24, at 197 (mentioning that the testimony by Camps, followed by the testimony by Haidar, was taken as part of the civil proceedings initiated by these two civil lawsuits).
[161] See *Santucho* (1972), Exhibit 10 at 47, 55; *Lelchuk de Bonet* (1972), Exhibit 8 at 34, 43-54 (including at 51 in which it is alleged the victim attempted to escape); *Berger* (1972), Exhibit 9 at 151, 431-443 (including at 433, claiming that the inmates attempted to escape).
[162] *Paccagnini* Appeal (2014), Exhibit 19 at 52.
[163] See *Sabelli* (1972), Exhibit 7 at 31, 53, 91, 169.
[164] *See, e.g.*, OSCAR G. CHASE & VINCENZO VARANO, COMPARATIVE CIVIL JUSTICE, IN THE CAMBRIDGE COMPANION TO COMPARATIVE LAW (Mauro Bussani and Ugo Mattei eds., 2012).

it is important to emphasize that civil procedure in civil law jurisdictions like Argentina still gives a substantial role to the parties in determining which elements of proof should be gathered and in the interrogation of witnesses to ensure that the parties' rights to present and test the evidence and to defense are respected.

70. In Argentina, the parties in a civil suit may request the taking of testimony by providing a list of witnesses.[165] These witnesses testify under oath and they have to be informed of the criminal consequences of providing false testimony.[166] The rules regarding the taking of sworn declarations in civil complaints in Argentina set forth that the questioner is the judge and that she or he may freely interrogate the witnesses as to "what they may know about the controverted facts, while respecting the substance of the interrogatories proposed" by the parties.[167] The parties submit questions that must follow certain rules as to form, including limiting each question to one fact, being clear and concrete, avoid being formulated in affirmative terms, and avoid suggesting the answer in the question, or being offensive or vexing.[168] Moreover, they may not refer to technical issues unless directed as a specialized witness.[169]

71. The rules for cross-examination, or examination by the party that did not request the witness's testimony, permit that party to submit questions that go beyond the scope of those submitted by the party requesting the witness's testimony.[170]

---

[165] Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] art. 429 (Law No. 17.454, Sept. 20, 1967, [21.308] B.O. 1 (Arg.) (modifying the Code)).
[166] Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] art. 440 (Law No. 17.454, Sept. 20, 1967, [21.308] B.O. 1 (Arg.) (modifying the Code)).
[167] Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] art. 442 (Law No. 17.454, Sept. 20, 1967, [21.308] B.O. 1 (Arg.) (modifying the Code)).
[168] Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] art. 443.
[169] Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] art. 443.
[170] Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] art. 442.

72. The declarations and other documents from the civil suits filed in relation to the shootings in the Almirante Zar Naval Base on August 22, 1972, which I reviewed, followed the rules as described generally above and indicate that the parties, including the Argentine State and the Argentine Navy represented by counsel, exercised the rights established in these rules.

73. The civil complaints filed by family members of Pedro Bonet, Eduardo Capello, María Angélica Sabelli, and Ana María Villarreal Santucho requested that the judge take the testimony of the three survivors: María Antonia Berger, Alberto Camps, and Ricardo René Haidar.[171] María Antonia Berger attached to her complaint and broadening of the complaint the statements already taken in the cases filed by Lelchuk de Bonet (1972) and Santucho (1972).[172]

74. In answering the civil complaints filed by María Antonia Berger and the other family members of people killed on August 22, 1972, legal counsel for the Argentine State and Navy also requested that the testimony of María Antonia Berger, Alberto Camps, and Ricardo René Haidar be taken.[173]

75. Counsel for the plaintiffs and the Argentine Navy were notified when and where these testimonies would be taken in order to give them the opportunity to participate in them.[174]

---

[171] *Lelchuk de Bonet* (1972), Exhibit 8 at 76, 79, 103 (requesting the taking of testimony of Maria Antonia Berger, Ricardo Rene Haidar, and Alberto Camps); *Sabelli* (1972), Exhibit 7 at 31, 207; Cappello (1972) Exhibit 11 at 32 (requesting the taking of testimony of Ricardo Haidar, Camps, and María Antonia Berger); *Santucho* (1972), Exhibit 10 at 117.

[172] *Berger* (1972), Exhibit 9 at 519 (certifying that copies of the statements by Camps and Haidar were taken from the Santucho case file (1972)), 550-551 (stating that as part of the broadening of the complaint the certified declarations provided by the three survivors of the shootings to Judge Arana Tagle were enclosed), 719-720 (stating in the complaint that the statement by María Antonia Berger presented in the Santucho lawsuit was not questioned by the Navy and was enclosed to the complaint).

[173] *Id.* at 442 (requesting the taking of testimony to Ricardo Haidar and Alberto Camps); *Lelchuk de Bonet* (1972), Exhibit 8 at 34-35, 52 (requesting the taking of testimony to Ricardo Haidar, Alberto Camps and Maria Antonia Berger); *Sabelli* (1972), Exhibit 7 at 33, 91, 179 (requesting or explaining that the defendant requested the testimony by Ricardo Haidar, María Antonia Berger, and Alberto Camps); *Santucho* (1972), Exhibit 10 at 49.

[174] *See Lelchuk de Bonet* (1972), Exhibit 8 at 131-133, 137-138 (notification to the Navy about the scheduled taking of testimony to Alberto Camps, Maria Antonia Berger, and Ricardo Rene Haidar); Declaration of Ricardo Haidar in *Berger* (1972), Exhibit 27 at 87 (notifying the parties about the taking of the declaration by Marían Antonia Berger on November 6, 1972, and stating that the parties consented to this date); *Sabelli* (1972), Exhibit 7 at 151.

76. Counsel for both the plaintiffs and the Argentine Navy were present while Camps' and Haidar's declarations were taken.[175]

77. There are clear indications that questions were submitted accordingly with the Civil and Commercial Procedural Rules.[176] All three declarations (Camps, Haidar, and Berger) appear to contain answers to the same first six questions. Berger's declaration ends after she answers the sixth question and adds a detail about her profession (sociologist).[177]

78. In Camps' declaration, some submitted questions are withdrawn by one of the parties and three additional questions are asked and transcribed on the record. These three questions consist of whether Camps was familiar with the terrain and distance between the Base and the cities of Trelew and Rawson, whether Camps had contacted or received visits from his family members or defense counsel while detained at the Base, and whether Camps had told the Naval Judge everything he had just said in his declaration.[178] Haidar's declaration also shows that some of the questions originally submitted were withdrawn and the same three questions posed to Camps were asked instead.[179]

79. All the declarants drew a plan of the cell block and the locations of prisoners and officers, which they signed and which were incorporated into the record by the questioning Judge.[180]

---

[175] See Declaration of Alberto Camps in *Santucho* (1972), Exhibit 24 at 197-200, (mentioning the presence of four attorneys for the plaintiffs in Santucho (1972), one attorney for the plaintiff in Lelchuk de Bonet (1972), and an attorney for the State of Argentina as the declaration of Alberto Camps and the declaration of Ricardo René Haidar were taken); *Berger* (1972), Exhibit 9 at 523 (mentioning the presence of two attorneys for the plaintiffs in Santucho (1972) and an attorney for the plaintiff in Lelchuk de Bonet (1972)).

[176] *See, e.g., Santucho* (1972), Exhibit 10 at 197 (Declaration of Alberto Camps, referring to the questionnaire that is added to the file of the Santucho case); *Berger* (1972), Exhibit 9 at 541 (Declaration of Ricardo Haidar).

[177] *See Berger* (1972), Exhibit 9 at 525 (Declaration of Antonia Berger, Exhibit 28).

[178] *Id.* at 517 (Declaration of Alberto Camps, Exhibit 25).

[179] *Id.* at 541 (Haidar, Devoto Prison Declaration).

[180] See *Berger* (1972), Exhibit 9 at 514 (foja 72), 525, 527 (fojas 78-79), 541, 543 (fojas 87, 89) (stating that a map of the relevant space is drawn by Berger, Camps, and Haidar, respectively).

80. The declarations were given under oath.[181] The declarations end with statements that appear to comply with the requirements set forth in then applicable Article 416 of the Civil and Commercial Procedural Code, pertaining to the formalities to record the sworn declaration.[182] Article 416 required that the record of the declaration be made by the clerk as they are being presented, "conserving, in as much as possible, the language of those who declared." Once the declaration is completed, "the judge will have [the record] read and will ask the parties if they have anything to add or rectify." Anything that is added or rectified is to be recorded, and the parties and the judge will sign the record. Importantly, Article 416 of the Civil and Commercial Procedure Code required that "it must be recorded, when it happens, the circumstance in which any of them [the parties] may not have been willing or able to sign."[183] None of the sworn declarations presented by the survivors in Devoto Prison contain any statements regarding the inability or unwillingness or any of the parties to sign the record.

3. The survivors' Press Conference Statements likely exposed Berger, Camps, and Haidar to criminal liability under Argentine law at the time they were made

81. I have been asked whether the public declarations presented in a press conference (the Press Conference Statements), to a journalist (the Urondo Interview) and to a filmmaker (the Solanas Interview) placed the survivors in any legal jeopardy and, if so, what specific aspects of their declarations did so.

---

[181] *Santucho* (1972), Exhibit 10 at 197 (Declaration of Alberto Camps, attached as Exhibit 25); *Berger* (1972), Exhibit 9 at 535 (Declaration of Ricardo Haidar, attached as Exhibit 27); *id.* at 523 (Declaration of Antonia Berger, attached as Exhibit 28).

[182] Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] art. 416. This article was derogated by article 3 of Law No. 25.488,Nov. 19, 2001, [29.780] B.O. 1 (Arg.). The full text of article 416 is available in the Official Bulletin of November 9, 1967 on page 20. *See Berger* (1972), Exhibit 9 at 517, 529, 543 (closing of the declarations of Camps, Berger, and Haidar, respectively).

[183] Código Procesal Civil y Comercial de la Nación [Cód. Proc. Civ. y Com.] [Civil and Commercial Procedure Code] art. 416.

82. On August 22, 1972, the same day as the events that are the subject of this expert report took place, a law that introduced a new Article 212 to the Criminal Code was enacted. Article 212 of the Criminal Code made it a crime to by any means disseminate communications or images that originated from or could be attributed to "illicit associations or to persons or groups notoriously dedicated to subversive or terrorist activities…."[184] The Federal Criminal Chambers, created in 1971 to have jurisdiction over matters related to "subversives," was given jurisdiction by another law published the same day over violations of this new Article 212.[185] Article 212 entered into force on August 23, 1972. It was derogated on May 27, 1973, during the short democratic rule of Héctor Cámpora, as part of a general overhaul of Argentine criminal law against *de facto* military laws—*i.e.*, "laws" adopted without participation by the Argentine Congress—which invalidated the creation or amendment of any crimes or criminal penalties that were adopted by any means other than legislation by the National Congress of the Republic of Argentina.[186]

83. Article 212 of the Criminal Code seemed to have aimed at criminalizing any media that would disseminate communications or images by any persons or groups dedicated to "subversive or terrorist activities." However, since the text of Article 212 itself referred to "any means", the Article potentially encompassed any way of disseminating these communications or images.

84. In addition, Law 19.797 that adopted Article 212 did not amend the rest of the Criminal Code, including its regulations on the various ways to participate in a criminal offense: Articles 45 to 49 of the Argentine Criminal Code. This means that people who provided the

---

[184] Law No. 19.797, Aug. 22, 1972, [22.489] B.O. 2 (Arg.), art. 1.
[185] Law No. 19.799, Aug. 22, 1972, [22.489] B.O. 2 (Arg.), art. 1.
[186] Law No. 20.509, May 27, 1973, [22.674] B.O. 3 (Arg.), art. 1.

communications or images disseminated could have been potentially charged and convicted as accomplices of the actions by those who disseminated the communications or images.

85. Given the temporal validity of this Article 212 of the Criminal Code between August 23, 1972, and May 27, 1973, the Solanas Interview could not fall under its temporal reach because it took place in June 1973. In contrast, the Press Conference Statements would fall within the temporal validity of Article 212. As for the Urondo Interview, it could fall within the temporal reach of Article 212 if the book by Urondo was published before May 27, 1973.

86. As for the Press Conference Statements, the press conference would likely have been considered "a means to disseminate communications or images that originated from or could be attributed to persons or groups notoriously dedicated to subversive or terrorist activities." As providers of the statements and participants in the press conference, Maria Antonia Berger, Alberto Camps, and Ricardo René Haidar were therefore exposed to a likelihood of criminal prosecution before the Federal Criminal Chambers for a violation of the newly minted Article 212 of the Criminal Code.

87. As for the Urondo Interview published in Francisco Urondo's book "La Patria Fusilada", assuming that it fell within the temporal reach of Article 212 as discussed above in paragraph 85, it could have also fallen under the scope of this Article 212 and under the text of the law similarly exposed Berger, Camps, and Haidar to a likelihood of criminal prosecution under the text of the law.

X. CONCLUSIONS

88. Family members of the victims and survivors of the shooting at Almirante Zar Naval Base on August 22, 1972, did not have access to effective remedies in Argentina. The obstacles to effective remedies were initially practical: they faced extreme dangers and persecution since

the events in Trelew on August 22, 1972, including murder, disappearance, kidnapping and torture. Several family members had to escape into exile, while others went underground or were murdered. Similar dangers were faced by their legal representatives. A military investigation did not hold anyone accountable for these events, and an amnesty law passed in 1973 constituted an obstacle for criminal accountability.

89. After the return to democracy in 1983 and the beginning of investigations for the crimes of the military against the civilian population, legal obstacles that prevented investigations and accountability emerged. Pardons for those military officers who had been prosecuted in the first years of democratic rule were issued in 1989 and 1990, and no accountability or investigation was possible, until 2004/2005, when the CSJN held that amnesty laws were unconstitutional in the context of crimes against humanity and that the statute of limitations did not apply to the prosecution of these crimes.

90. Although Mr. Bravo was indicted by Argentine prosecutors for his participation in the events related to the shooting of the prisoners at Almirante Zar Naval Base, he cannot be tried in absentia. Moreover, no verdict in a civil case against him for the events of August 22, 1972, can issue before the criminal trial related to the same facts concludes. Even if these obstacles did not exist, a statute of limitations still applies to civil proceedings and would bar a civil case against Mr. Bravo in Argentina even if the cause of action arose out of a crime against humanity.

91. The declarations Berger, Camps, and Haidar presented in the context of civil litigation brought by the families of victims of the August 22, 1972 shooting in Almirante Zar Naval Base in Trelew were conducted according to Argentinean civil procedural rules, and afforded the parties the opportunity to submit questions for the judge to ask the deponents, develop the evidence and be present during the taking of testimony.

92. It is likely that Berger, Camps and Haidar were exposed to criminal prosecution under Article 212 of the criminal code for their participation in a press conference on September 5, 1972, where they discussed their memory of the events at Almirante Zar Naval Base on August 22, 1972. Because the press conference would likely have been considered “a means to disseminate communications or images that originated from or could be attributed to persons or groups notoriously dedicated to subversive or terrorist activities,” it likely exposed the three survivors to criminal liability. The interview they gave to Francisco Urondo on May 24, 1973, assuming that it was published during the temporal reach of Article 212, may also have exposed them to criminal prosecution.