

# MEMORY OF NATIONS

## Democratic Transition Guide



[ Experience of Selected Countries ]

## CEVRO

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### Memory of Nations: Democratic Transition Guide Experience of Selected Countries

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# INTRODUCTION

In September 2016, CEVRO launched a project aimed at making the democratic transition experience of selected countries available in an organized and systematic manner. During the first year of the project, CEVRO has collected experience from seven countries (the Czech Republic, Estonia, Egypt, Germany, Poland, Romania and Russia) that underwent a political transition in the recent past. During the second year of the project, the transition experience of Argentina, Cambodia and Georgia were added into the database. The aim of the project is clear: the more the reformers of the emerging democracies prepared for the changes, the easier the transition; better governance is formed and a more sustainable democratic system will exist.

The recent experience of the states of the former Soviet bloc shows that a lack of knowledge and successful examples of democratic transition at the early stages of their own change are the main causes of the backsliding of public support toward traditional institutions, government and even the democratic system. During the first ten to fifteen years of political changes, people understood the need for structural changes and demonstrated a greater tolerance to transitional mistakes.

But now, over twenty-five years after the changes, citizens rightfully expect best practices of good governance, corruption mitigation and a high level of freedom. There is zero tolerance for malpractice in governance or cases of corruption. A combination of this along with other challenges for society and also the recent memory of the crimes of the previous regimes, lead to a rise of extremist forces, as well as the revival to prominence of the previous communist regimes. This is the case of many countries in Central and Eastern Europe.

Events of recent years have shown that the demand for democratization of authoritarian or otherwise non-democratic regimes is strong and growing worldwide, spreading even to societies without democratic tradition. Concurrently, with the rise of modern communication technologies, and information being accessible like never before, it can be argued that non-democratic regimes will, in the near future, find it increasingly difficult to resist the pressure of their own people as well as to maintain their own ability to stay in power.

In this environment, what is often overlooked are the issues of long-term reconciliation within their society, resolving the questions of past wrongdoings, and dealing with its own history in a way that is just and honest. The focus of any new governing body stepping in immediately after a political transition is indeed critical to maintaining national stability, developing a working governing and political structure, and preserving the well-being of its people. Speaking from the European experience, often, once a certain level of social content is met, a sense of job well done takes over before the work is finished.

The experience of countries that underwent transition in recent decades shows that facing the questions of the past, in particular addressing the legitimacy and legality of the former regime and remembering its crimes and their perpetrators, is as crucial to the democratization of any society as is a working legal system or a developed economy. To avoid the proverbial “repeating of its own past”, marginalization of the history and past

wrongs, taking a clear stance concerning both the victims and the culprits, and embedding this stance into the legal system, education and society’s memory is a necessary, but often underestimated, task for every transitioning nation.

A prime example of the consequences of such an underestimation might be the Czech Republic, where more than 25 years after the fall of communism, the unreformed Communist Party still presents a major political force with an increasing portion of its electorate being young voters. Former members and informants of the brutally oppressive secret service remain in high positions in both private and public sector, and members of the anti-communist resistance movement still have not been fully recognized for their activities.

It is therefore important for any reformers and democratic leaders to pay attention to reconciliation with the past. Otherwise their attempts to democratize their countries and set up good governance to stabilize society for the long term can be undermined by shadows of the past. Unfortunately, the issues of reconciliation, punishment of the totalitarian crimes, and preservation of memory are not priorities for the first phases of any transition. Partly, it is because the democratic leaders have other priorities (such as economic transformation or free elections), but it is also because the issues of memory preservation and reconciliation are not priorities for democratic assistance, and therefore the leaders are not equipped with the sufficient skills.

Memory of Nations: Democratic Transition Guide aims to provide guidance. Its goal is not to give step-by-step instructions to the transitioning nation, as this would not be a realistic goal given the uniqueness of each such situation. The aim is to provide a comprehensive set of issue-specific advice, coming from real-life experience, case studies dealing with the most frequent problems, and a “witness account” of past errors. More than a “what you should do now”, the Guide would answer questions of “what would we have done differently”, striving, not to avoid mistakes but, to avoid repeating them.

The Guide offers a unified overview of the best practices, as well as the learnt mistakes, from countries that have undergone transition in recent years. This comparative study can serve you, the current and future reformers, as a reference point for your own activities. You will be able to study different practices and access what might have positive impact in your own country, while developing your political system and improving governance.

The unified structure of the studies will help you compare experience of different countries and choose the best model for your own country. The Lessons Learnt part will help you avoid mistakes made during the previous transitions.

This Guide of the transitional experience will be regularly updated and new countries will be added. Organizers of this project will further focus on adding the experience of non-European countries in the future to make the Guide more universal. The aim of the Guide is to become an open encyclopedia available online to democratic reformers from all around the world.

The organizer would like to thank the National Endowment for Democracy for support of this project, and democracy and freedom worldwide in general.

[www.cevro.cz/guide](http://www.cevro.cz/guide)

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## Democratic Transition Guide

[ The Argentine Experience ]



National Endowment  
for Democracy  
*Supporting freedom around the world*



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# REGIME ARCHIVES

PAULA CANELO AND GABRIELA IPPOLITO-O'DONNELL

## CONTENT OF THE SECRET SERVICE ARCHIVES

The main characteristic of the *archives of repression*<sup>1</sup> related to the last military dictatorship that ruled Argentina between 1976 and 1983 is fragmentation. Thirty-five years after the transition to democracy, the archives remain a disperse collection of heterogeneous and incomplete documents. Several reasons account for this fragmentation. Among these reasons, the nature of the repression carried out by the dictatorship (the so-called Process of National Reorganization, hereafter PRN), stands out. In contrast to the experience of other military dictatorships of Latin America, contemporaneous or previous to the PRN, in Argentina repression was extremely harsh, criminal, and clandestine.

The PRN privileged “illegal” over legal repression. Under legal repression the responsibility is entirely assumed by the corresponding repressive bodies of the state within a framework of previously established norms. Illegal repression by the PRN was based on clandestine actions by state agencies and on the organization and predominance of special “Tasks Groups” belonging to each of the three branches of the Armed Forces as well as to other security forces. State agencies and Tasks Groups worked in coordination, but without a centralized command. Illegal repression was complemented with the creation of a network of about 700 Centers of Clandestine Detention (hereafter CCD) distributed throughout the country and located, often, in military and police quarters. In the CCD, the victims of state terror were tortured and sexually abused, and in most cases killed and disappeared. It is estimated that between 15,000 to 20,000 persons were sent to these CCD, and about 90 percent of them were assassinated.<sup>2</sup>

The Armed Forces adopted an illegal and clandestine repression methodology for various reasons, but primarily because of the influence, in their training, of the USA Doctrine of National Security and of the French Doctrine of Revolutionary War. With the construction of the “subversive” internal enemy subject as the main hypothesis of military conflict, clandestine and criminal repression was considered an efficient method to defeat the enemy. This clandestine and criminal methodology also allowed the Armed Forces to avoid probable international sanctions, as well as to resolve intra-military conflicts.

The clandestine and criminal nature of repression had a deep impact on the types of records the perpetrators of repression elaborated, the urge to destroy them, as much as possible, once the transition to democracy began in 1982, and on the current availability of such records. In 1995, the former Interior Minister of the PRN dictatorship, General Albano Harguindeguy, cynically stated that “If people (the military) were acting illegally, they were not going to be stupid enough as to leave behind proof of that.”<sup>3</sup>

Another reason that explains the fragmentation of the archives of repression is linked to the collaboration that existed between the Armed and Security Forces: a “pact of silence” was

established among them, and is still very much in effect, about the crimes committed, the organization of repression, and the final destiny of the victims.

Repression was carried out by dividing the national territory in zones, subzones and areas. The Army had the operational responsibility while the Navy and the Air Force provided supporting resources; they all forged an alliance with a common goal. The security forces Gendarmerie (Border Force), Prefecture (Water Force), the Federal Police, and the Provincial Police, were under the operational command of the former.<sup>4</sup>

This organization with the participation of all forces in clandestine and criminal repression led inevitably to a pact of silence on the actions perpetrated and the absolute incompatibility to initiate any revision of them.<sup>5</sup>

The organizational profile of repression explains not only the convenience, but also the crucial need to destroy all available records on the acts of repression before handing power to the democratically elected government in 1983. The Armed Forces had the capability to order the destruction of most documents, since they had concentrated power in the Junta of Commanders (integrated by one member of each of the three forces) since the coup in 1976.

*As a consequence, the primary source of information on the crimes committed by the Armed and Security forces during the dictatorship is not the archives of records produced by them.*

The archives of repression are fragmented and of diverse origin. The information they contained has been gathered, produced and systematically organized throughout years of hard work by civil society and human rights organizations as well as by the implementation of various public policies after the inauguration of democracy in 1983.

1 Ludmila Da Silva Catela, El mundo de los archivos, in Ludmila Da Silva Catela and Elizabeth Jelin, eds., *Los archivos de la represión: Documentos, memoria y verdad*, España: Siglo XXI Editores, 2002.

2 Carlos Acuña, Catalina Smulovitz, Militares en la transición argentina: del gobierno a la subordinación constitucional, in VVAA: *Juicio, castigos y memorias. Derechos humanos y justicia en la política argentina*, Buenos Aires: Nueva Visión, 1995. Paula Canelo, “La politique sous la dictature argentine. Le Processus de réorganisation nationale ou la tentative inachevée de fonte de la société (1976–1983)”, in *Vingtième Siècle. Revue d’Histoire*, No. 105, janvier–mars 2010. Hugo Quiroga, *El tiempo del Proceso. Conflictos y coincidencias entre políticos y militares. 1976–1983*, Rosario: Homo Sapiens Ediciones, 2004. CELS, *Derechos Humanos en la Argentina. Informe 2017*, Buenos Aires: Siglo XXI, 2017.

3 Revista Gente, March 30, 1995.

4 Federico Mittelbach, Jorge Mittelbach, *Sobre Áreas y Tumbas. Informe sobre desaparecidos*, Buenos Aires, Sudamericana, 2000, 17; Paula Canelo, “Construyendo elites dirigentes. Los gobernadores provinciales durante la última dictadura militar (Argentina, 1976–1983)”, in *Anuario del Centro de Estudios Históricos “Prof. Carlos S. A. Segreti”*, Year 11, No. 11.

5 Paula Canelo, *El Proceso en su laberinto. La interna militar de Videla a Bignone*, Buenos Aires: Prometeo, 2008; Paula Canelo, *La política secreta de la última dictadura argentina (1976–1983): A 40 años del golpe de Estado*, Buenos Aires: Edhasa, 2016.

## ATTEMPTS TO DESTROY THE OPERATION DOCUMENTS OF THE POLITICAL POLICE

The need to destroy all evidence on aberrant crimes and the capabilities to do so due to the concentration of power in the PRN Junta of Commanders fed the assumption that the Armed Forces had destroyed all, or mostly all, available records on the repression carried out between 1976 and 1983. The need to destroy all records became evident to the Armed Forces when an agreement with democratic opposition parties to avoid sanctions for the crimes committed failed. The transition to democracy in Argentina happened due to the collapse after the defeat in the Malvinas-Falkland war, which deepened the already mounting legitimacy crisis of the military government.<sup>6</sup> About a month after the defeat in the War, in July 1982, General Bignone of the Army became President with the goal to negotiate an exit from power with opposition forces which would include, first and foremost, an agreement to stop any revisions to the actions carried out in the “fight against subversive groups.”<sup>7</sup>

The following year, the military Junta issued three important norms that reflect the end of negotiations with opposition forces on the matter. In April of 1983, the military Junta issued the report “Documento final sobre la Guerra contra la subversión y el terrorismo.”<sup>8</sup> The report stated that the disappearances were due to the way “terrorists acted” and denied the existence of clandestine places of detention. Furthermore, the report affirmed that the information and explanations included in the text were the only ones available through the Armed Forces. In September, a few months before democratically elected President Raúl Alfonsín took office, the military Junta sanctioned Law 22.924 known as the Self-amnesty law that considered extinguished all penal actions related to crimes committed in the fight against terrorism from May 25, 1973 till June 17, 1983.<sup>9</sup>

In October of 1983, the military government sanctioned Decree 2726/83 that ordered the destruction of all documents referred to as “those documents about the fight against subversion.”<sup>10</sup> The decree referred to the dispositions of Law 22.924 stating that “nobody could be interrogated, searched or call upon in any way in relation to crimes in the fight against subversion.” Furthermore, the decree stated that the spirit of pacification that should be primordial in the next phase of institutionalization in the country requires that the persons that come back to the community should not feel a negative conditioning about themselves. In sum, the decree stipulated the elimination of all information related to persons detained, or be readily available to the executive power by the exclusive authority granted in Article 23 of the National Constitution when the state of siege is in effect.<sup>11</sup>

The Armed Forces have systematically denied the existence of archives on the “war against guerrilla groups”. Even though Decree 2726/83 denies the existence of any kind of clandestine record, later statements by the Armed Forces High Commanders confirm that during the last months of the dictatorship, most records on crimes committed were destroyed. For example, in 1991, former PRN Minister of Interior Albano Harguindeguy, stated that in his ministry “there was an archive with files of all (the disappeared) that were burnt during the times of General Bignone (the last President of the Junta).”<sup>12</sup> Later on, General Bignone confirmed that information.<sup>13</sup>

In 1995, while the democratically elected government of President Carlos Menem made available to the public the content of

PRN Decree 2726/83 on destruction of information,<sup>14</sup> all military commanders unanimously expressed the inexistence of any records.<sup>15</sup> By 1999, the Commander in chief of the Army Martín Balza denounced General Cristino Nicolaidis, a member of the last military Junta, for having ordered in 1983 the destruction, integrally, of the archives of repression, an order Balza considered illegal and immoral.<sup>16</sup>

The official position expressed by the Armed Forces regarding the total destruction of any information related to the crimes committed, the repression, and the identity of the victims is in sharp contrast with the fact, that since 1983, there have been unexpected and very important discoveries of collections of documents in military and government agencies. The most important discovery is the *Actas Secretas de la Dictadura* (Secret Proceedings of the Dictatorship) found in the main building of the Air Force, the Cónдор Building, in 2013.

This finding questions the official version of the Armed Forces about the inexistence of records. Even though most records have not yet been found, the uncertainty of how many of them still exist, and if they can indeed be recovered continue to feed the expectations and hopes of great part of Argentina's society.

The controversy on the existence, or not, of more official documents related to repression continues to be a central theme in the never-ending agenda in search of Memory, Truth and Justice.<sup>17</sup>

## PUBLIC CONTROL OVER ARCHIVES

As already mentioned, the archives of repression in Argentina come from several sources, and the Armed and Security Forces are not the main one. To the contrary, active civil society organizations are in charge of fighting against secrecy and silence over the repression.

Among these civil society organizations, human rights organizations stand out. These organizations can be differentiated between those linked to persons directly affected by the repression (such as Mothers of May Square, Family Members of Detained and Disappeared Persons for Political Reasons,

6 Guillermo O'Donnell, Philippe Schmitter, *Transitions from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies*, Baltimore: Johns Hopkins Press, 1986.

7 Canelo, 2016.

8 La Nación Newspaper, April 29, 1983.

9 La Nación Newspaper, September 24, 1983.

10 Memoria Abierta, *Guía de archivos útiles para la investigación judicial de delitos de lesa humanidad*, Buenos Aires: Memoria Abierta and Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas durante el Terrorismo de Estado, 2011.

11 Annex 1 Decree No. 377/95, Boletín Oficial de la República Argentina, March 28, 1995.

12 Revista Noticias, December 8, 1991.

13 La Prensa Newspaper, February 24, 1992.

14 Decree No. 377/95, Boletín Oficial de la República Argentina, March 21, 1995.

15 Revista Microsemanario, Year 5, No. 189, March 25 to April 2, 1995.

16 La Nación Newspaper, April 24, 1999.

17 Paula Canelo, “La H es muda, pero habla. La palabra pública del represor Albano Harguindeguy entre 1976 y 2012”, paper presented at II Seminario de Discusión “Investigaciones y debates sobre la palabra pública de los represores”, Instituto de Desarrollo Económico y Social (IDES), September 7, 2018.



and Grandmothers of May Square), those confessional and pro-victim assistance (such as Service Peace and Justice and the Ecumenical Movement for Human Rights), or those providing legal support or systematization of information (such as The Permanent Assembly for Human Rights, the Center for Legal and Social Studies, or the Argentina League for the Rights of Men). More recently, these organizations have experienced a generational renewal, giving birth to new organizations linked to the descendants of the disappeared such as the organization Sons and Daughters for Identity and Justice against Forgetting and Silence (H.I.J.O.S).<sup>18</sup>

It was during the first months of the PRN dictatorship in 1976 that human rights organizations began to unfold an intense campaign on various fronts. They began the communication and public denunciation of repression and violation of human rights, at the domestic and international level, with the goal of obtaining solidarity and support in their fight against the military regime and to organize solidarity networks to assist, protect and help survive victims and their families.

Furthermore, human rights organizations undertook a fundamental role in the systematization of information on acts of repression. The accuracy of the information they gathered was later on confirmed by international organizations. This way, the first archive on disappeared persons was put together by APDH (The Permanent Assembly for Human Rights), an organization that in 1979 had documented 5,818 cases of abuses based on the information provided by family members of the victims and some survivors. In addition, in 1979, the Inter-American Commission for Human Rights of the Organization of American States received 5,580 claims.<sup>19</sup> Claims on abuses were also submitted abroad to CLAMOR, United Nations, Organization of American States, the USA Congress, the French National Assembly, Amnesty International and others civil and religious organizations, especially in Europe and the USA.<sup>20</sup>

It was also by way of these human rights organizations, many of them linked to intellectuals and academics who were organized in international and domestic research centers<sup>21</sup> and who had survived repression that many of the new debates on the nature and consequences of the PRN dictatorship began.<sup>22</sup>

Since their formation during the dictatorship, until the emergence of democracy in 1983, human rights organizations led the difficult task of document registration that included collecting testimonies, making lists and records, creating archives and centers of documentation, etc. This work created and consolidated an important collection of evidence that allowed for court claims. Once the transition began in 1982, these collections of information were used to put on trial those responsible for the dictatorship's crimes.<sup>23</sup>

## USE OF THE ARCHIVES DURING TRANSFORMATION

The process of transitional justice in Argentina entailed the implementation of a myriad of mechanisms to foster memory, justice, reparation and lustration.

This process was the result of both strategic innovations proposed by human rights organizations and by the implementation of state public policies.<sup>24</sup> In many ways, it was the constant struggles put forward by human rights organizations

and activists that set the pace of the transformation process in the country.

This became evident during the first phases of the transformation process initiated by the democratic government of President Raúl Alfonsín in 1983. The archives compiled by human rights organizations during the dictatorship provided crucial information to start the judicialization of human rights abuses by PRN.

In August of 1983, the Technical Commission for Gathering Data was created to consolidate all information compiled by human rights organizations on victims and perpetrators so as to make it available to the newly elected democratic authorities.<sup>25</sup> Beginning in 1984, this big data set was submitted to the *Comisión de Acuerdos del Senado* (Senate Commission for Promotions) in charge of approving military personnel promotions. This way, for the first time civilian control over military promotions became a tool to challenge those accused of severe human rights violations under the dictatorship.<sup>26</sup>

As a first public policy to know the truth about crimes against humanity, the newly elected democratic government of President Raúl Alfonsín created the National Commission for Disappeared Persons (CONADEP – Comisión Nacional de Desaparición de Personas), a special commission established by a presidential decree on December 15, 1983.<sup>27</sup>

CONADEP worked with human rights organizations, political parties and other political and social groups that were already involved in investigating state terrorism during the dictatorship to elaborate a special report. The report produced by the commission was titled NUNCA MAS (Never Again) and compiles in 50,000 pages a significant number of cases of human rights violations, torture, disappearances and murder and served as the basis for the trial of the military Juntas.<sup>28</sup> The report registered 8,961 disappeared persons and about 380 clandestine centers of detention and torture.

CONADEP functioned between December 15 of 1983 until September 20 of 1984 and it can be considered the first archive that centralized all claims on disappearances dispersed until then in the country and abroad.<sup>29</sup> The CONADEP archive has 4 types of

18 Carlos Acuña, Catalina Smulovitz, 1995.

19 Emilio F. Mignone, *Derechos Humanos y Sociedad. El caso argentino*, Buenos Aires: Ediciones Colihue, 1991.

20 Emilio Crenzel, "El archivo de la CONADEP. Una perspectiva desde una experiencia de investigación en Ciencias Sociales", in Memoria Abierta, *III Encuentro Regional de Archivos y Derechos Humanos, "El Archivo y el testimonio"*, Buenos Aires, 21 and 22 of September, 2009.

21 Research centers played a very important political and intellectual role under the dictatorships in Latin America. Among them are CEDES and CISEA in Argentina, CIEPLAN in Chile, CLAEH in Uruguay, IUPERJ and CEBRAP in Brazil, CLACSO and FLACSO at the regional level. See Paula Canelo, 2016.

22 Eduardo Luis Duhalde, *El Estado Terrorista Argentino. Quince años después, una mirada crítica*, Buenos Aires: El Caballito, 1983; Daniel Frontalini, María Cristina Caiati, *El mito de la guerra sucia*, Buenos Aires: CELS, 1984.

23 CELS, *Acceso a la información sobre violaciones a derechos humanos durante la dictadura cívico-militar (1976-1983) en la Argentina*, Buenos Aires, CELS, August 2014.

24 Ibid.

25 Ibid.

26 Ibid.

27 Boletín Oficial de la República Argentina, December 13, 1983.

28 Code of Military Justice, Law 23.049, 9.2.1984, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28157/norma.htm>

29 Crenzel, 2009.

evidence: oral testimonies, photographic collection, blueprints provided by survivors of clandestine centers of detention, and evidence collected in prisons, police stations, hospitals, cemeteries and morgues that could confirm the connection between the illegal and legal system of repression. The archives created by the information gathered by human rights organizations and by CONADEP were crucial to make advances in the judicialization of human rights violations in Argentina and, first and foremost, to judge all members of the military Juntas that ruled the country between 1976 and 1983.<sup>30</sup>

Since the inauguration of democracy in 1983, there have also been some important advances in “genetic archives.” In 1987 by National Law Number 23.511 the *Banco Nacional de Datos Genéticos* (National Bank of Genetic Data) was created. An autonomous and autarchic institution, the Bank is a systematic archive of genetic material and biologic samples of family members of kidnapped and disappeared persons during the dictatorship that allows for the identification of any remains and of babies born in captivity and later appropriated by acquaintances of the armed and security forces. This “genetic archive” provides crucial information to bring to justice crimes against humanity.<sup>31</sup> Until today (November of 2018), 128 babies born in captivity in CCD have been identified.

## RIGHT TO ACCESS THE ARCHIVES

Access to information is a right recognized in several Articles of the National Constitution of Argentina (Art. 14, 38, 41 and 42). However, there is no National Law regulating access to public information: there is no unified set of norms that clearly establishes the subjects bound to provide information, under which provisions, through which procedures, terms, etc.

The only norm available similar to a National Law is presidential Decree No. 1172/03 (Annex VII) issued in 2003. The decree establishes that any physical or legal person, public or private, has the right to request, access and receive information in equal terms of timing, gratuity and informality. The decree also establishes that all information provided by the subjects bound to do so are presumed of being of public character, except in the cases foreseen by law or when it refers to personal data of sensitive content and whose publicity violates the right to intimacy or honor, among other motives.<sup>32</sup>

All norms that somehow are related to access of information in Argentina have a limitation when the request refers to personal data. Data protection is regulated by Law No 25.326 sanctioned in 2000. This Law differentiates between personal and sensitive data. Data that disclose racial or ethnic origin, political opinions, religious, philosophical or moral beliefs, union affiliation, or information related to health or sexual preferences could not be provided without the agreement of the person in question.

In addition, another fact that precludes access to information and, concomitantly, to the archives is the inexistence of a National System of Archives throughout the country to systematize how to deal with documents and how to preserve or destroy them.<sup>33</sup>

In this way, there is so far no public policy in Argentina, clear and comprehensive, aimed at the protection of the documental heritage of the State, neither are there agencies of accountability

regarding the obligations public institutions have about their archives. Even though the *General Archive of the Nation*<sup>34</sup> (Archivo General de la Nación, hereafter AGN) is the institution with the authority over archives, it is just an agency under the Minister of Interior, Public Works and Housing. The AGN has no independent budget and its bureaucratic structure is minimal.<sup>35</sup> This has negatively impacted academic work as well as the use of scientific knowledge in judicial cases.<sup>36</sup> In sum, the lack of an integral public policy of archives and access to them has been a major obstacle for the diffusion of the contents of the archives and for academic work.<sup>37</sup>

As a consequence, all public decisions aimed at searching, recording, and opening the archives of repression have not necessarily implied a better access to them.<sup>38</sup> Just in the year 2010, the President sanctioned Decree No 4/2010 that ordered the declassification of information linked to the activities of the Armed Forces during the PRN dictatorship and all information or documents that, even though generated in another period, would be related to the actions of the Armed Forces during that time.<sup>39</sup>

## DECLASSIFICATION AND OPENING UP THE ARCHIVES

The advances, although still limited, in archive declassification established by Decree No 4/2010 have been related to the process of judicialization of human rights violations. In 2001, a renewed phase of judicialization of crimes against humanity began to emerge by the sequential removal of the legal obstacles to bring to justice the perpetrators of the PRN. A first step in this process was the sentence on the “Simon case” that established the unconstitutional status of the “pardon laws.”<sup>40</sup> On August 12, 2003, under the Presidency of Dr. Néstor Kirchner a new law (25.779) superseded the *Punto Final* and *Obediencia Debida* laws as well as any pardons issued.<sup>41</sup> Starting in 2005, by a Supreme Court decision, any action framed under the figure of “state terror” became a crime against humanity and

30 See the chapter on *Investigation and Prosecution of the Crimes of the Regime* in this Guide.

31 CELS, 2014.

32 Ibid.

33 Ibid.; Memoria Abierta, 2011.

34 In Argentina the legal framework for public archives is Law 15.930 of 1961. The law gives AGN the task of gathering, ordering and preserving all documentation established by the law to communicate knowledge of sources of Argentina’s history; Memoria Abierta, 2011, <http://www.agnargentina.gob.ar/>

35 CELS, 2014; Memoria Abierta, 2011.

36 Canelo, 2016.

37 Gabriela Aguila, “La dictadura militar argentina: interpretaciones, problemas, debates,” in *Páginas. Revista digital de la Escuela de Historia UNR*, Year 1, No. 1, 2008; Mariana Nazar, “Dictadura, archivos y accesibilidad documental. A modo de agenda,” in CELS: *Derechos humanos en Argentina. Informe 2007*, Buenos Aires: Siglo XXI, 2007.

38 Memoria Abierta, 2011.

39 CELS, 2014.

40 The case makes reference to the torture and disappearance of the couple Poblete/Hlaczik and the kidnapping of their daughter.

41 See the chapter on *Investigation and Persecution of the crimes of the Regime* in this Guide. Also <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88140/norma.htm>

imprescriptible. These decisions allowed many cases of human rights violations by the PRN to be reopened. President Néstor Kirchner also changed the extradition policy, allowing extradition for perpetrators prosecuted abroad but not facing charges in Argentina. In 2003, Argentina became a signatory of the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. A creative interpretation of the convention by the courts allowed them to circumvent the statutory limitations to crimes committed decades in the past, and also the *ex post facto* applicability of laws that were not in force at the time of the crimes.

Under the Kirchner's presidency this renewed judicialization was concomitant to the implementation of a series of politics of memory including a revalorization of the archives of repression not only as a primary source to bring perpetrators to justice, but also for research and teaching purposes.<sup>42</sup>

The renewed phase of judicialization made evident the legal and political obstacles the courts faced, as well as the institutional weakness for the production, systematization and access to information. With the beginning of a new cycle of trials, finding new information and documentation on the Armed and Security Forces actions under the dictatorship became crucial. However, according to the Law of National Intelligence No 25.520 of 2001 a great part of all documents were classified, and to gain access to them, a decree for each claim presented by the courts had to be issued.<sup>43</sup> For this reason, in April 2010, President Cristina Fernández de Kirchner decided by Decree No 4/2010 a general declassification of all information related to the actions of the Armed Forces during the PRN dictatorship and of all other documentation linked to that.<sup>44</sup>

An important measure also taken was the resolution No. 308/10 issued by the Ministry of National Defense that created "Teams" for the organization and analysis of all documentation with historical and/or judicial value. These Teams were part of the Human Rights and International Humanitarian Law agency of the Ministry of Defense, and worked extensively on the different archives and places gathering information about the Armed Forces to provide documentation to courts and other public agencies.

At the same time, since 2001 there has been a process of declassification of the dictatorship actions initiated by other countries. Human rights organizations asked the Argentine government to request declassification of documents to France and the USA. The declassification of diplomatic documents is underway with France, while the USA has already agreed to provide documents (of 14 state agencies) in three phases, between 2016 and 2017, and guaranteed public access online.<sup>45</sup>

Furthermore, in 2017, the Archbishops Conference of Argentina announced the opening of a set of documents of their institutional archives, as well as of the Secretary of State of the Vatican that include claims received by the Catholic Church from family members of the disappeared. Access to this information is limited to victims, their families and higher rank members of the church in cases they are somehow linked to.<sup>46</sup>

In spite of these advances in declassification of the archives of repression, obstacles remain due to lack of high quality archival management skills of state officers, overlapping of higher and lower ranking norms regulating the matter, absence of clear categories of types of information, and of mechanisms of declassification.<sup>47</sup>

## CURRENT STATUS

Nowadays Argentina has an institutionalized set of significant archives of repression<sup>48</sup> that contains diverse information from different sources.

In spite of the fragmentation that characterizes the archives, we can classify them as provincial archives, human rights organization archives, bureaucratic-governmental archives produced by the last dictatorship and general archives of the Armed Forces.<sup>49</sup>

The recovery of the archives of repression in Argentina began in 1999, with the archive of the Intelligence Agency of the Police of the Province of Buenos Aires (*Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires*, hereafter DIPPBA). Buenos Aires is the most important Province of Argentina. DIPPBA was created in 1956 with the name of Central Intelligence and was dissolved in 1998 in the context of a police reform. During the dictatorship it was a very important actor of state terrorism in control of the province. In December of 2000, the provincial government transferred the DIPPBA archive to the Provincial Commission for Memory (*Comisión Provincial de la Memoria*, hereafter CPM). The CPM is an autonomous agency whose members represent organizations of human rights, unions, the judiciary, the legislature, universities and different regions of the province of Buenos Aires. The goal of the CPM is to be an archive and a Center of Information with public access not only for those directly affected by human rights violations, but also for anyone interested in research and dissemination.<sup>50</sup> The program of Management and Preservation of the CPM has been incorporating data, such as the Section of Intelligence of the Naval Prefecture of the North Atlantic, or files of political prisoners in the province, among other information. The program provides information to those directly affected, their families, scholars, and institutions that make claims regarding compensation laws. Since 2006 it also records court cases of crimes against humanity in the province.<sup>51</sup> The DIPPBA archive has been recognized by UNESCO as World Heritage in 2008.<sup>52</sup>

After the pioneering experience of DIPPBA, other provincial archives of repression were established. Worth mentioning are:

**a/ Archive of Memory of the Córdoba Province:** created in 2006 by the provincial legislature Law No. 9.286. It is located in the building known as D-2, where the intelligence unit of the provincial police department functioned during the dictatorship.

**b/ Archive of the Intelligence Department of the Province of Mendoza:** The intelligence department was the most important

42 Memoria Abierta, 2009.

43 CELS, 2014.

44 Ibid.

45 CELS, 2017.

46 Ibid.

47 CELS, 2014.

48 Federico Lorenz, Archivos de la represión y memoria en la República Argentina, in Pérotin-Dumon, Anne, *Historizar el pasado vivo en América Latina*, 2007, <http://www.historizarelpasadovivo.cl/>

49 The list is not exhaustive and follows the criteria Memoria Abierta, 2011.

50 Law No. 12.642, March 2001.

51 CPM, El Archivo, "Gestión y Preservación de Archivos", <http://www.comisionporlamemoria.org/archivo/gestion-y-preservacion/>, September 25, 2018.

52 Ibid.

clandestine center of detention of the province. Comprised of more than 2,300 personal files, it is located in the National University of Cuyo. The archive is digitalized.

c/ *Archive of Memory of the Province of Santa Fe*: created by decree No 2775/2006. The main source of the collection is the provincial Direction of Information, which received information from various other state agencies between the years 1966 to 1984. Since 2011 the information is permanently available and its collections have been declared World Heritage by the Memory of the World program of UNESCO.

d/ *Museum of Memory of the City of Rosario in the Province of Santa Fe*: located in the former building of the Command of the II Division of the Army, it houses the Documentation Center “Rubén Naranjo” (an artist and militant). It has an extensive collection of magazines, newspaper clips, and archives of important court cases of human rights violations.

Among the archives created by human rights organizations the most important one is that of *Memoria Abierta* (Open Memory) created in 1999 by a coalition of several organizations. Its main goal is to coordinate the organization, and to catalogue and preserve the archives of the organizations members of the coalition.<sup>53</sup> The catalogue contains 28.000 entries. The oral archive of *Memoria Abierta* contains interviews with victims of state terror. All archives under *Memoria Abierta*'s custody are considered World Heritage and part of the Memory of the World program of UNESCO. Another important archive is the *Archivo Institucional del Centro de Estudios Legales y Sociales (CELS)*.<sup>54</sup> The Archive has 913 boxes, which covers from 1974 to today. The Archive has seven types of documents and for its relevance is registered in the program Memory of the World of UNESCO.<sup>55</sup>

The National Archive of Memory (hereafter ANM) was created in 2003 by the President of the Republic. Today it is under the authority of the Secretary of Human Rights and Cultural Pluralism of the Ministry of Justice and Human Rights of the nation.

The main collection of ANM is the Archive of CONADEP. The archive also contains the archive of CONADI (the commission in charge of cases of kidnapping of minors), the full video of the trials of the military dictatorship Junta members and an Oral Archive. Access to the collections is restricted.<sup>56</sup>

Besides these archives, significant information has been found in piecemeal fashion out of some of the “legal” agencies of the PRN dictatorship. The most important documents found are the before mentioned *Secret Acts of the Dictatorship*. In 2013, in the basement of the Cóndor Building belonging to the Air Force, 1,500 files were found. These include black lists, actions plans by the dictatorship, receipts of financial contributions, meeting agendas, front desk records, etc. The Secret Acts are in digital form and have public access in the Open Archives site of the Ministry of Defense.

After this finding in 2013, the Ministry of Defense ordered all military units to search for more documents. This led to the finding of 7,000 files of political prisoners at the ex-prison of the Armed Forces in Magdalena, province of Buenos Aires.

Other archives produced by the legal agencies of the dictatorship such as the Fund CAL (Advising Legislative Commission of the Dictatorship) and Fund Consufa (Supreme Tribunal of the Armed Forces) are publicly available through the Department of Intermediate Archive of the General Audit of the Republic (AGN).

In addition to these archives, the Army, the Navy and the Air Force each have their own archives about their personnel that could be eventually consulted.

This fragmentary panorama of the archives of repression improved by the politics of memory implemented since the year 2006 by the administrations of President Néstor Kirchner and President Cristina Fernández de Kirchner.

However, since 2015 the administration of President Mauricio Macri has reversed some of these advances by dismantling state agencies, programs, web sites, and team of experts working on recovering the archives of repression.

## LESSONS LEARNT AND RECOMMENDATIONS

In 2011, the NGO *Memoria Abierta* (Open Memory) jointly with the *Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas bajo terrorismo de Estado de la Procuración General de la Nación* (Fiscal Unit of Coordination and Tracing of Court cases for Human Rights Violations of State Terror under the Office of the Attorney General of the Nation) carried out an investigation into the archives of repression that are used as source for court cases on crimes against humanity in the country.

The investigation warned that “the institutions (and the persons in charge of them) do not have the adequate expertise and skills to deal with the documents because of lack of public policies for training and professional development. As a consequence, there is a ‘diversity of archival realities’ in which voluntarism, common sense, and sometimes ignorance set the principles for documentation, instead of professionalism and norms.”<sup>57</sup>

The investigation concluded that, according to several deficits surrounding the issue of the archives of repression in Argentina, political will to search for and disseminate these crucial documents in order to understand the recent past of the country, does not necessary entail effective public access to them.<sup>58</sup>

Since the transition in 1982, many pending issues remain with the organization of the archives of repression; these issues have worsened lately by the public policies implemented by the current government of President Mauricio Macri (2015–2019).

After four decades of experience with archives of repression in Argentina we can draw several lessons and recommendations.

First, it is imperative to raise the status of all “archives of repression”, not only as a resource to promote justice against criminals who committed violations of human rights under the dictatorship, but also as a valuable primary source for historical, comparative, and journalistic research aimed at dissemination and teaching.

Second, the organization, description and systematization of the existing collections should be improved to effectively

53 *Memoria Abierta*, <http://memoriaabierta.org.ar/wp/organismos-integrantes/>, September 25, 2018.

54 CELS Archivo, <https://www.cels.org.ar/web/wp-content/uploads/2017/10/AR-CELS-Descripci%C3%B3n-Fondo-Archivo-CELS.pdf>, page 5, October 16, 2018.

55 Ibid.

56 CELS, 2014; Federico Lorenz, 2015.

57 *Memoria Abierta*, 2011.

58 Ibid.

democratize declassification and allow free access to all so as to deepen the process of Memory, Truth and Justice. Public policy should aim at establishing general and clear norms for access to the information provided by the archives and to instruct public authorities regarding those norms.<sup>59</sup>

Third, we need to advance in norms to regulate the archives of repression especially regarding state obligations on their access and preservation, as well as on the authority of the state on preservation and destruction of data.<sup>60</sup>

Fourth, we recommend the celebration of agreements with countries that are in the process of transitional memory and justice to speed exchange of information, to promote basic standards of preservation and access to archives, and to secure that

international organizations jurisprudence is respected to allow for greater impact in terms of access of information.<sup>61</sup>

Finally, we recommend decisively promoting the work of civil society organizations to demand accountability to authorities regarding all aspects of human rights, especially the conservation of archives of repression and access to them.

Argentina is an exceptional model in relation to the politics of Memory, Truth and Justice. However, we must be very aware that any achievements can be at anytime reversed.

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59 CELS, 2014 and 2017; Memoria Abierta, 2011.

60 CELS, 2014; Memoria Abierta, 2011.

61 CELS, 2014.

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