



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1997/NGO/36
25 August 1997

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Agenda item 9

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Written statement submitted by Service, Peace and Justice in
Latin America, a non-governmental organization in special
consultative status

The Secretary-General has received the following written statement
which is circulated in accordance with Economic and Social Council
resolution 1296 (XLIV).

[15 August 1997]

Impunity in Argentina

I. THE JUDICIARY

A. Proceedings instituted in the initial phase

1. On the basis of statements by participants in State terrorism (1995) new submissions were presented before the judicature in an endeavour to obtain information on victims of forced disappearances.

2. The Federal Criminal and Correctional Court, invoking resolution 28/92 of the Inter-American Commission on Human Rights, has ordered that the investigation should continue in the case against the Armed Forces School of Engineering, but this investigation depends on what evidence can be produced by the human rights bodies. The judicature takes no positive action to obtain from the armed forces and security services the information required to

establish the truth about the fate of those who disappeared or were executed during the period of State terrorism. The Naval High Command has refused to give information to the Federal Criminal and Correctional Court, which means that it refuses to recognize the court's jurisdiction for determining what has become of the victims of crime.

3. The continuation of criminal investigations in the innumerable cases still undecided has a problematical future. It should be borne in mind that the impunity laws did not bring judicial proceedings to a close and that there is therefore no res judicata as regards the criminal acts and charges. Nevertheless, the political decision taken by the majority of the judicial bodies was in effect to create a peculiar kind of res judicata by dropping the investigations, as if the sole reason for the proceedings was criminal prosecution of the wrongdoers. By taking this decision the judiciary made the criminal investigation subject to the effects of the impunity laws, resulting in a double victimization: not only has the application of penal sanctions to those guilty of genocide been refused, but we have been denied the chance to discover the truth.

B. Proceedings instituted under the administrative challenge system

4. The human rights bodies are conducting against the Argentine State an action demanding that the State divulge all the information it possesses on the victims of State terrorism. The State persistently pleads destruction of the information by the members of the military dictatorship in order to evade any responsibility; the proceedings went through a phase during which information was brought to light and a writ of non innovare has therefore been issued but has been repeatedly violated.

C. Proceedings instituted in the present phase

5. The impunity laws and the pardons decreed did not extend to the offence of abduction of minors. On this basis Dr. Alberto Pedroncini drew up a criminal complaint demanding that the grandmothers of children who had disappeared should be able to appear in criminal court and present claims on behalf of their missing grandchildren under two heads: (a) inquiry into what took place; and (b) determination of the mediate and immediate criminal liabilities.

6. This complaint breaks new ground by introducing a form of mediate criminal charge which allows criminal liability to be apportioned by zone, sub-zone and area of repression and those in charge of secret detention centres. The discovery of military orders (with detailed instructions concerning pregnant women and children) provided proof that the kidnapping of children was part of a criminal plan - from which the mediate authority can be deduced. This criminal plan to take possession of the children was not recognized by the Buenos Aires criminal court when it tried the commanders-in-chief of the armed forces, so there is no res judicata in respect of these acts. Both the federal judge in charge, Dr. Bagnasco, and the Attorney-General have recognized their competence and given the initial impulse to the criminal complaint, paving the way for all the measures proposed by the complainants except for requiring the national State to

produce the records and documentation concerning the abduction of minors (which deprives the complainant of the essential evidence contained in the public archives).

7. It is the responsibility of the judiciary to investigate the facts in regard to the victims of State terrorism and the impunity resulting from the cover-up and the complicity of State officials after the end of the dictatorship.

International reach of defence measures

8. Since the start of the trial in Spain in which inquiries are being conducted into the victimization of persons of Spanish origin under the last Argentine dictatorship, we have been providing facts about the victims and their oppressors, systematizing the information proving the existence of the case, the charge and the identity of those responsible.

9. With the Spanish Attorney-General's office seeking to call in question the competence of Baltasar Garzón, we have been conducting a campaign of support for the trial, pointing out that crimes against humanity are imprescriptible and that genocide brings into play the principle of universal jurisdiction. Stress has been laid on the responsibility of the Spanish State vis-à-vis the victims originating from that country, who must be granted the right to justice refused them by the Argentine State.

10. Dr. Garzón has criminally charged those responsible for the kidnapping and murder of members of the Labrador Pérez family, citing General Leopoldo F. Galtieri, José Lofiego, Antonio Avila and Alberto Vitantonio. Actions have been brought against the complainants, Esperanza and Manuela Labrador - Spanish citizens - by Alberto Vitantonio and the Argentine judicature has declared receivable the complaint brought by this agent of repression, putting at risk all the living victims who are continuing to denounce their victimizers while the latter, sheltering behind the impunity legislation, plead non-participation and non-responsibility.

II. THE EXECUTIVE

A. Guarantee of non-repetition

11. To ensure that crimes against humanity are not repeated, members of the armed forces, security forces or police against whom sufficient evidence exists of their having committed human rights violations must be removed from their posts (recommendations of the Human Rights Committee (CCPR/C/79/Add.46, April 1995)). The refusal of the Executive to take such action is a matter of public knowledge worldwide.

B. Information from the Executive

12. The Executive bears the main responsibility for the denial of the right to the truth, because it controls the entire administrative apparatus within which are recorded the actions carried out during the period of State

terrorism. The Government's approach to the determination of the truth is particularly perverse because it puts all the burden of the inquiry on the victims and their families.

13. It is the task of the Executive to transmit to the other organs of State power the information in its possession and, if that information is destroyed, to reconstruct it. Through the units entrusted with the application of the indemnification laws the Executive collects information from the victims or their families and publicizes it with its own findings.

C. Persistence of the doctrine of national security

14. This year the human rights bodies and social welfare organizations have undergone systematic ideological persecution; the State intelligence services have spent their time and resources in reporting on marginalized sectors and organizations that oppose the neo-liberal model or denounce its social consequences. As a result of the social situation the State has subjected the deprived communities of the interior of the country to brutal repression. In the south this culminated in the death of Teresa Rodriguez; in the north hundreds of unemployed women, children and men demanding work were persecuted, assaulted and imprisoned, which gave rise to the petition for intervention by the Working Group on Arbitrary Detention.

15. Two very serious acts against the Argentine Jewish community, namely the bomb attacks on the Israel-Argentina Mutual Association and the Israeli Embassy, remain unsolved though there exists sufficient evidence of police and military complicity.

16. Another matter of public knowledge is the part played by the police of the province of Buenos Aires in the murder of the press photographer José Luis Cabezas. Proof also exists of the link between police personnel and the purveyor of private security services Alfredo Yabran, who employs agents of repression.

D. Indemnification of victims

17. The decree instituting regulations to implement Act 24.411 on Indemnification of Disappeared Persons is a further source of distress for the relatives, through the provisions on the application to the Argentine Federal Police for particulars of the disappeared person and the insistence on the declaration of heirs for the establishment of the connection with the disappeared person, thus forcing the relative to decide on a highly personal matter, the opening of the succession. The result has been that in hundreds of judgements the disappeared persons have been declared dead, for the courts, applying the Civil Code, allowed the succession only on grounds of death or of absence with presumption of death. The petitioners had to ask for the ruling of absence with presumption of death to be converted into absence due to enforced disappearance, in which case the date of death can obviously not be determined.

Relatives having no contacts with human rights bodies have had, for lack of advisory assistance, to accept adverse judgements whereby disappeared persons have been declared dead.

This decree by the Executive has produced disastrous consequences in its practical application. On the pretext of "paying well", the relatives of disappeared persons have been required, through the Sub-Department of Human Rights, to carry out cumbersome measures and formalities that have turned an "accelerated" procedure into one that will take at least three years. To date nobody has been paid anything.

18. For the above reasons we are opposed:

(a) To succession as a requirement for granting of the benefit, insofar as the legislative lacuna has not been filled since the Civil Code contains no provision for opening of the succession on grounds of enforced disappearance;

(b) To the demand for personal information on the victims, for it is deplorable that the State should call in question the certainty of the disappearance;

(c) To the State's allowing itself 365 official working days - from when all the formalities are completed - to indemnify the victims;

(d) To the replacement (taking the place ...) of the State's liability by that of the relatives who would collect the benefit granted to the disappeared person because the only relative who can appear subsequently to the collection of the benefit is the disappeared person's child who is at present unaware of his identity because the State refuses him that information. Any child wanting to claim from the State would have to institute legal action for retrieval against his relative, which is a perverse situation.

Internationalization of violations

19. The National Executive has refused to cooperate with the Spanish judicature, which had urged the Argentine judicature to cooperate with it in obtaining statements. The arguments advanced constitute a breach of the bilateral treaty on judicial cooperation which forbids the State so urged (Argentina) to raise questions of substance when its cooperation is requested by the State so urging (Spain). The Argentine State called in question what Spain was urging and invoked its own violation as grounds for refusing to comply with the request.

20. Other instances of such export of impunity can be seen in the lack of cooperation with the Italian judicature and the refusal to carry out the sentence pronounced by the French courts on Alfredo Astiz.

III. THE LEGISLATURE

A. The impunity legislation

21. The laws of Due Obedience and Punto Final and the Pardon Decrees remain in force despite the recommendations made by the Committee on Human Rights and the Inter-American Commission on Human Rights. The perpetrators of the

violations invoke this legislation in order to evade inquiries. It has also been used by the Argentine State as a pretext for blocking the pursuit of the national and international legal actions.

22. As regards the impunity accorded to crimes committed during the democracy-building process, the Chamber of Deputies of the Nation has half approved the so-called "repentance law" which provides for impunity to be accorded to a person repenting of a crime prompted by racial, religious, political or professional motives.

B. Social control

23. We have recently been threatened with penalties under an "anti-terrorist" law designed to repress the leading participants in social protests. On the pretext of seeking appropriate instruments for investigating the appalling acts of terrorism against the Argentine Jewish community, the governing party, with the agreement of some of the members of the opposition parties, has introduced legislation that creates a new category of offence intended for social and political opponents.

C. The compensation owed to civil society

24. Definition of "disappeared person". The law instituting the category of person defined as "absent due to enforced disappearance" is one of the main historic contributions of Mothers, Relatives and Grandmothers to Argentine society. Regrettably, Argentine legislators have not accepted the historic challenge of amending the legislation (civil, labour and penal) in force to enable it to deal with the consequences of the appalling State crime of "enforced disappearance of persons".

25. The indemnification laws. Our organizations have called for the repeal of the decree establishing regulations to implement law 24.411. While we have not obtained that, the law has been amended in response to our proposals and observations.

26. Bicameral Committee of Inquiry. We representatives of the human rights bodies have urged the setting up of a bicameral committee of inquiry to investigate, assemble and systematize all the information on the fate of disappeared persons. A member of the Senate submitted a draft which became invalid because it was not taken up within the regulation period (two years). Currently a new draft has been submitted but unfortunately there seems to be no support for or agreement on it owing to the opposition of the Executive (Ministry of the Interior).

27. This inquiry should include: names and particulars of persons who were taken to or seen at secret detention centres; names of the authorities who directly ordered the detention and of those who carried it out; acts that may have caused physical or mental injury to persons illegally detained and names of those who directly ordered such acts or carried them out; names of the authorities in charge of the secret detention centre; fate of persons illegally detained, and names of those who gave the relevant orders; in case of death or disappearance, names of the persons who carried out the execution,

fate of the remains and name of the person who gave the relevant order. Special attention should be paid to inquiring into the fate of kidnapped children and into illegal adoptions.

IV. CONCLUSION

28. Impunity is a structural and instrumental feature of political systems that violate human rights. It persists during processes of democracy-building, conditioning their very existence. It allows the State to make selective use of repressive force against political and/or social opponents. The obverse face of that persecution is the absolute freedom accorded to those responsible for genocide and the depenalization of offences that entail the mass destruction of opposition elements (political and social).

29. Despite the innumerable covenants and treaties on human rights signed and ratified by the Argentine State, the "facts" denature the law by creating distrust of the institutions designed to safeguard truth and justice. To combat impunity we need an independent judiciary which can prevent the Executive from resorting to repression and ensure the continuity of legal proceedings to investigate the disappearance of thousands of victims of State terrorism. The measures must embrace all the three State Powers to give material reality to the principle of State responsibility. And they must be designed to indemnify the victims and civil society by restoring to them the rights of which they were deprived.

30. From the United Nations bodies there must be effective follow-up of the recommendations made with a view to the application of the covenants and treaties through which the Argentine State has recognized their jurisdiction. To this end:

(a) The Argentine State must adapt its legislation to the International Covenant on Civil and Political Rights; the impunity laws and decrees of pardon are incompatible with that Covenant;

(b) The Argentine State must provide information on measures taken to prevent repetition of monstrous crimes. Those responsible for serious violations occupy high-ranking public posts giving them power of decision and of interference in the processes of democratization;

(c) The Argentine State must be called upon to cease its persecution and social penalization of the sectors marginalized as a result of economic policies;

(d) The community of States is adversely affected by the Argentine State's invoking the domestic legislation according impunity in order to refuse its judicial cooperation in the cases concerning Spain, Italy and France. To redress this injury a specific recommendation is required urging the Argentine Government to comply with the judicial cooperation treaties, both bilateral and multilateral.
