

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Events of 2005

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Prosecutors continue to investigate the systematic violations of human rights committed under military rule (1976-1983). In June 2005, in an historic decision, the Supreme Court declared the Full Stop and Due Obedience laws to be unconstitutional, removing the remaining legal obstacles to these trials.

#### **Prison Conditions**

According to the Provincial Commission of Memory, a governmental body, three prisoners were killed every week in Buenos Aires province through March 2005, triple the level of violence in 2004. Prisoners in other provinces also suffer from overcrowding, deplorable conditions, and inmate violence. Eight people were killed, including five prisoners, two guards, and a police officer, in a prison riot in February 2005 in a prison in Crdoba province. Built to hold fewer than one thousand inmates, the prison was holding over 1,700 at the time. Two months later, thirteen inmates died in an inter-prisoner clash in the *Instituto Correccional Modelo* in the city of Coronda, Santa Fe province. According to official reports, eleven died of gunshot wounds, and two were burned alive.

A third deadly riot claimed thirty-two lives in October after a fire broke out in the Magdalena prison in Buenos Aires province. While the fire was started by clashing prisoners, some reports allege that fire extinguishers in the prison did not function and firefighters never entered the prison to battle the blaze.

The vast majority of inmates in Argentine prisons have not yet been tried. As of February 2005, only 11 percent of inmates in the province of Buenos Aires had been sentenced. Pretrial detention facilities are grossly inadequate. According to the Center for Legal and Social Studies (CELS), a respected human rights organization, 5,951 detainees in Buenos Aires province were being held in crowded police lockups in April 2005 for lack of regular prison accommodation.

In May 2005, the Supreme Court of Justice declared that all prisons in the country must abide by the United Nations Standard Minimum Rules for the Treatment of Prisoners. The court was ruling on a collective *habeas corpus* petition lodged by CELS in 2001 on behalf people held in prisons and police lockups in Buenos Aires province. In August 2004 Human Rights Watch, the International Commission of Jurists, and the World Organization against Torture presented an *amicus curiae* brief in support of the petition. In December 2004 the Supreme Court held a public hearing on the issue, the first ever in a human rights case, in which CELS, Human Rights Watch, and the provincial government of Buenos Aires participated. In addition to declaring the U.N. rules to be national minimum standards, the court required that police lockups be barred from detaining children under age eighteen or sick people.

#### **Torture**

Torture and other forms of brutality are widespread in the prison system of the province of Buenos Aires. In May 2005, prison guards in La Plata beat inmate Cristin Lopez Toledo and shocked him with electric current in reprisal for denouncing earlier beatings to the Committee against Torture of the Provincial Commission of Memory. A forensic doctor confirmed the use of electricity from a skin sample. No effective measures have been taken to implement the committees recommendations since the publication of its October 2004 report on abuses in the prison system.

### ***Accountability for Past Abuses***

Argentina continues to make progress in prosecuting perpetrators of grave human rights violations during the countrys so-called dirty war, in which at least 14,000 people disappeared. In June 2005, the Supreme Court declared the Full Stop and Due Obedience laws to be unconstitutional by a 7-1 majority, with one abstention. The two amnesty laws, passed in the late 1980s, granted immunity to perpetrators of torture, killings, and disappearances during military rule. Although Congress annulled the laws in 2003 and cases had been reopened, progress had been slow as investigators waited for the court to rule definitively on the constitutionality of the two laws.

Three hundred and thirty former military and police personnel are now facing human rights-related charges and about 180 are detained in prisons or military installations, or are under house arrest. Public attention has focused on two mega-cases involving illegal arrest and torture by the First Army Corps, and by the navy at the Navy Mechanics School (Escuela de Mecanica de la Armada, ESMA), a torture center in the capital where an estimated 5,000 people are believed to have been held in secret detention before being killed.

Forty-three alleged perpetrators have been detained in the First Army Corps case, and an additional seven are fugitives from justice. Eighteen former ESMA officers are currently under arrest. They include former naval Cap. Alfredo Astz, now in detention in a navy installation and awaiting trial for the disappearance of two French nuns, Alice Domon and Lonie Duquet, among other crimes. Duquets remains, which had been buried for twenty-eight years in an unmarked grave, were finally identified using DNA samples in August 2005. In 1990, after a trial *in absentia*, a French court sentenced Astz to life imprisonment for this crime. Thirteen other former ESMA officers, including Jorge Acosta, alias The Tiger, have been charged with stealing property from detainees who disappeared.

The pace of prosecutions has been slow, mainly due to numerous appeals presented by the defendants. Despite these delays, human rights groups expect some of the cases to be tried in open court in 2006.

In March 2005, the Federal Appeals Court declared pardons issued by former President Menem in 1989 and 1990 on behalf of six former army generals to be unconstitutional. Three of the six who are still living Carlos Surez Mason, Juan Bautista Sasai, and Jorge Olivera Rovere are accused of human rights violations as former officers of the First Army Corps. The appellate court reached the same conclusion in another case in July. It declared unconstitutional the pardons of two vice-admirals, Antonio Vaek and Julio Torti, both charged with human rights violations at ESMA. All five are expected to stand trial in the coming months.

### ***Reproductive Rights***

Women in Argentina continue to face arbitrary and discriminatory restrictions on their reproductive decisions and access to contraceptives and abortion. Access to one of the most effective forms of contraception female sterilization continues to be subject to discriminatory limitations. Women are often told that they need to obtain spousal authorization, that they must have at least three children, and that they must be at least thirty-five years old to be eligible.

Many women must choose between an unwanted or dangerous pregnancy or an illegal and unsafe abortion. Approximately half a million illegal abortions occur every year in Argentina, according to the health ministry, representing 40 percent of all pregnancies.

In 2005, in an important step toward guaranteeing women's right to access to health care services, the Argentine government published national guidelines on humane post-abortion care.

### ***Freedom of Expression***

Draft legislation to extend rights of free expression and access to information made no progress in 2005. A bill approved in the lower house in May 2003, that would give Argentine citizens the right to information held by public bodies, was weakened in the Senate and is now back in the lower house. An earlier bill to make defamation of public officials punishable only by civil damages, as opposed to criminal sanctions, has also not advanced. The need for such legislation is still apparent. In June 2005 the governments media minister, Enrique Albistur, brought a criminal defamation suit against journalists and directors of the magazine *Noticias* and the publishing house Perfl for a January article criticizing his policies on the distribution of government advertising. The minister, who had asked for the maximum three-year sentence, later withdrew the lawsuit.

### ***Key International Actors***

In December 2004, the U.N. Committee against Torture reported on Argentinas implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Among the committees concerns were the high number of reports of torture and ill-treatment, the small number of convictions, the detention of children below the age of criminal responsibility, and overcrowding and poor conditions in prisons.

In April 2005, a Spanish court sentenced Argentine ex-naval officer Adolfo Scilingo to 640 years in prison for crimes against humanity. Scilingo went to Spain in 1997 to voluntarily confess his role in throwing detainees into the sea from airplanes, but subsequently retracted his admissions. Judge Baltasar Garzn is also investigating the case of Ricardo Miguel Cavallo, another ESMA agent, who was extradited from Mexico in 2003 on charges of genocide and terrorism.

In July, in proceedings before the Inter-American Commission on Human Rights, the Argentine government formally accepted partial responsibility for failing to prevent the 1994 bombing of the Jewish Argentine Mutual Association (AMIA), and for subsequently failing to properly investigate the crime. Not a single person has been sentenced for the attack, while five have been acquitted for lack of evidence.

Human Rights Watch defends the rights of people in 90 countries worldwide, spotlighting abuses and bringing perpetrators to justice

