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## Argentines Protest High Court's Leniency in State Crimes Against Humanity

by *Andrés Gaudín*

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The Argentine Supreme Court issued a ruling in May that facilitates the early release of military personnel serving terms for crimes against humanity—kidnappings, disappearances, assassinations, and tortures—committed during the 1976-1983 dictatorship. The ruling unleashed a wave of criticism and rejection from local humanitarian organizations as well as human rights agencies at the UN and the Organization of America States (OAS).

The court's ruling is based on a law created in 1994 to address the backlog of trials that had resulted in overcrowding in prisons. The law stated that anyone who had remained in jail for more than two years without having received a final sentence would receive two days' credit for each day spent in custody. That law was repealed by the Argentine legislature in 2001. The action was a mistake; had the legislature annulled the law instead, the Supreme Court would not have been able to take it into consideration in its most recent ruling.

The court's decision was met with massive street protests of the kind seldom seen since the return to democracy in 1983, and the Chamber of Deputies demanded the impeachment of the three justices who issued the ruling. Prosecutors took the unusual step of rejecting the decision as unconstitutional, unethical, and inapplicable, as well as a violation of international treaties and agreements that Argentina has signed. Moreover, the prosecutors joined to rebel against the court's action. Prosecutor Angeles Ramos and six of her peers were the first to receive the request to allow seven men guilty of genocide to benefit from the repealed law. Instead, Ramos and her colleagues called on all members of the public prosecutors' office "to resist and reject" the requests, since they considered the Supreme Court's decision inapplicable. In addition, they asked all federal tribunals to declare the application of the decision "unconstitutional throughout the Argentine Republic."

### *Most benign law should not apply*

The Supreme Court decided to apply the penalty-benefit law, known popularly as the "2x1," to Luis Muiña, who was convicted of crimes against humanity, even though his arrest and trial came after the law was repealed. One of the arguments made in the case was that "in all cases" the most benign law should be applied to convicts, thus equating the crimes of state terrorism with common crimes. But the Centro de Estudios Legales y Sociales (Center for Legal and Social Studies, CELS) reminded the justices that local and international jurisprudence states that the right to the most benign law is not valid in cases of crimes against humanity.

"The ruling is the confirmation of a judicial and political paradigm shift regarding crimes of state terrorism, echoing several previous decisions by President Mauricio Macri's administration, that the magistrates had been signaling [for a time]," CELS said. Muiña was a civilian member of an Army work group that operated at a public hospital on the outskirts of the capital city of Buenos Aires during the dictatorship. He was tried on charges of abducting 22 people, six of whom are still missing or "disappeared," meaning that he is responsible for crimes still in process. He was

sentenced to 13 years in 2011, but in January 2016, two months after Macri took office, Muiña became the first person convicted of crimes against humanity to be granted permission by this government to serve out the sentence under house arrest ([NotiSur, Sept. 16, 2016](#)).

The ruling was handed down by three of the five sitting Supreme Court justices. All three— Carlos Rosenkrantz, Horacio Rosatti, and Elena Highton de Nolasco—owe their positions to Macri. In December 2015, just days after the establishment of his right-wing government, Macri sought to appoint Rosenkrantz and Rosatti by decree, violating constitutional provisions for the appointment of justices. Macri had to make an embarrassing retreat, but in the end managed to get Congress to approve their appointments. Highton de Nolasco, the court's current vice president, who will turn 75 in December, announced last year that she was willing to stay in office "as long as I'm in good health"—a flouting of regulations that the Macri government decided not to challenge.

The first two defended their decision by saying—contrary to all available jurisprudence—that the principle of the most benign law should apply even to those guilty of state-sponsored genocide. Highton's position is notable because it is a radical departure from an opinion she wrote in 2009, which stated, "The most benign criminal law should not be applied to the permanent appropriation of minors [the practice of taking children of prisoners born in captivity], because a person suffers the effects of the crime until he/she recovers his identity."

### *Ruling to be reversed*

The court issued its ruling on May 3. A week later, more than half a million people demonstrated in the city of Buenos Aires in repudiation of the ruling and of the judges who issued it. On May 10, in record time, first deputies and then senators voted unanimously for a law that expressly excludes the possibility that those guilty of genocide or repression benefit from the "2x1" law. Within the Ministry of Justice, as well as within the Supreme Court, it has been made known that the court is preparing a reversal of its ruling, to be published as soon as conditions allow. "The attorney general, people in the streets, both branches of Congress, important international agencies, and lower courts have already expressed themselves against the ruling. Why can't the court turn around?" said one of the members of Rosenkrantz's work team.

### *Plaza de Mayo mothers lead protest*

The Mothers of the Plaza de Mayo, the most emblematic of all Argentine human rights organizations ([NotiSur, Feb. 10, 2006](#)), offered "other reasons for the top justices to come to their senses: the universities of the provinces of La Pampa and Mendoza took away honorary professorships they had granted Highton de Nolasco as an act of repudiation; Rosatti suffered the same humiliation from the University of La Plata, and the government and the court as a whole were repudiated by more than 200 academics from the world's most prestigious universities." Argentine media reported that a manifesto in which the academics refer to the "discriminatory, exclusionary, and antidemocratic course that Argentina's government and Argentine justice have taken," has been circulating since May 22 in many universities, including institutions in Oxford, Zurich, Melbourne, New York, Manchester, Berlin, Florida, Bologna, Liverpool, Ottawa, Stockholm, Bern, London, San Pablo, Montevideo, Santiago de Chile, Geneva, Mexico, Lille, Valencia, and Madrid.

The statement that, according to those close to Macri, hurt the president the most came from the UN's Office of the High Commissioner for Human Rights (OHCHR) and was disclosed on May 8. In a move that the Foreign Relations Ministry called unusual, OHCHR stated that when the justices

speaking about applying the most benign penal code, “they can’t disregard international standards applicable to crimes against humanity.” In a statement published on the website for the OHCHR South America office, the OHCHR representative for South America, Amerigo Incalcaterra, harshly warned that “the state of Argentina, and the Supreme Court as a state institution, must comply not only with its domestic law, but also with applicable international norms and with its international commitments.” The OAS’s Inter-American Commission on Human Rights (IACHR) has expressed this opinion in practically the same terms.

The OHCHR statement quoted Incalcaterra as saying, “Crimes against humanity not only offend victims, but all human beings. Therefore, they cannot be assimilated to common crimes and their seriousness requires a proportional sanction.”

Writing in *Página 12*, Irina Hauser interpreted Incalcaterra’s statement: “The message is that those accused of crimes against humanity should serve their sentences, and this should be in accordance with the seriousness of the crimes committed ... if sentences are reduced with decisions such as that made ... by the Argentine court, we would witness covert amnesty, when in fact crimes against humanity are neither eligible for amnesty or clemency under international law to which the country subscribes.”

In addition to the moral sentences received, the three justices who signed the court decision should face a criminal trial for prevarication, a crime applied to judges who issue sentences contrary to law.

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