



United Nations  
Educational, Scientific and  
Cultural Organization



UNESCO Chair in Genocide Prevention  
Rutgers, the State University of New Jersey  
United States of America

**RUTGERS**

Center for the Study of Genocide,  
Conflict Resolution, and Human Rights

Hill Hall, Room 703  
Rutgers, The State University of New Jersey  
360 Martin Luther King Jr. Blvd.  
Newark, NJ 07102-1801  
<http://cghr.newark.rutgers.edu>  
[cghr@newark.rutgers.edu](mailto:cghr@newark.rutgers.edu)  
Tel: 973-353-1260 or 5255  
Fax: 973-353-1259  
**New Brunswick Office**  
18 Bishop Place, Room 303  
New Brunswick, NJ 08901



*ESMA-photo courtesy of UNTREF Staff*

## **Background 2- The Re-opening of the Trials:**

**2003 – 2012**

On September of 2003 the National Congress declared “absolutely void” impunity laws 23.492 and 23.521 through the 25.779 law and, in the same session of Congress, elevated to the rank of constitutional guarantee the Convention on Imprescriptibility of Crimes of War and Crimes Against Humanity, through the 25.778 law.

At the stage of discovery of a juridical process before the impunity laws, large files (*Megacausas*) were put together and presented to court. Generally there was one for each body of the army. Each of these files comprised of smaller cases divided by centers of detention. Since the files for these cases were so voluminous and the investigations so complex, partial cases were brought in front of a judge, that is, the case of only one detention center was brought before an oral court and, in some cases, only by a limited number of victims and perpetrators. Other cases were left pending, so that the investigations could continue. A consequence of this procedure is that partial progress was made and the amount of cases and sentences rose progressively from 2006 (Julio Héctor Simón y Miguel Osvaldo Etchecolatz received sentences) to July of 2012, when more cases are being brought before a judge and the total amount of defendants convicted has risen to 299.

It is necessary to emphasize that the trials are taking place throughout the whole Argentine territory; there are several Federal Oral Tribunals (TOF in Spanish) in different provinces hearing these cases. These cases have not been centralized.

Since 2006 sentences have been issued in 65 cases (16 in the Autonomous City of Buenos Aires, 18 in the Province of Buenos Aires. Only 4 Argentine provinces have not issued a sentence. Since 2006 the presentation of cases rose progressively. In 2007 there were 41 persons sentenced, in 2008, 29 more persons received sentences. In 2009 there were 30 persons sentenced, in 2010, 99, in 2011, 68 and by July 2012, the total rose to 299 persons sentenced.

If we concentrate on the total of persons who received sentences, we should note that 875 persons have been indicted, 480 of these have one or more cases brought to trial and 125 have some kind of case that will possibly be brought in front of a judge. Therefore, we can say that more than half of those indicted have been prosecuted.

This process has involved all the different clandestine detention centers. Among them we can mention the *Escuela Superior de Mecánica de la Armada* (Superior School of Navy Mechanics), ESMA in English) *Club Atlético, El Banco, El Olimpo* (Circuito ABO); *Automotores Orletti; El Vesubio, Mansión Seré* of the Autonomous City of Buenos Aires. Among the cases brought up in the Province of Buenos Aires we can find those related to the clandestine centers of the *Campo de Mayo; C.O.T. I Martínez, Puesto Vasco*, Investigations Brigade of La Plata, *Destacamento de Arana* (Circuito Camps); the VII Aerial Brigade of Morón, the Air Force Base and *la Cueva of Mar del Plata; the Escuelita of Bahía Blanca*, the farm that belonged to the Méndez brothers of Tandil, among others. Other persons indicted worked for the Department of Information of the Police, Province of Córdoba. In the city of Rosario of the Province of Santa Fé there were indictments brought against people who worked in the following clandestine centers: *La Quinta de Funes*, the service information of the Police, the Weapons Factory of Rosario, *la Calamita*, the school of Magnasco in Rosario and *la Intermedia*. Indictments were also brought against people working in: *the escuelita* (Neuquén); *the Escuela de Educación Física of Tucumán*, the *Jefatura of Policía*, the Investigations Brigade (Tucumán); the jail in Villa Las Rosas (Salta), *La Casita de los Mártires, La Candelaria, la Casita del Rowing*, the Department of Information (Misiones) the *Quinta de Funes* (Entre Ríos), the Brigade for Investigations of Resistance (Chaco), *the Escuelita*, the *Alcaldía Policial of Varones* and the *Unidad Penitenciaria N° 10* (Formosa), the Infantry Regiment N° 9 (Corrientes), the Court Building, the former *Pico de Oro* warehouse, the 7° Cavalry Regiment in *Cuadro Nacional*, the Infantry section of the Mendoza Police Department, the Second Regional Unit of Police (Mendoza), the First Sectional, and the former Investigations Brigade (La Pampa). [There were also indictments brought against people who worked in police precincts of this zone. [1]

As of July 2012 there are 12 oral trials open: case No. 2278 with 17 indicted and 86 cases, case No. 2333 with 11 indicted and 69 cases, both in Mar del Plata; case 982/09 of Bahía Blanca

with 18 indicted and 98 cases; case 2955/09 of La Plata with 26 indicted and 280 victims; case 7481 of San Juan with 7 indicted and 58 cases; case 1960/10 of Paraná with 9 indicted and 30 cases; case 3-3159/05 of Posadas with 5 indicted and 43 cases; case 731/10 of General Roca with 24 indicted and 39 cases; case 960/11 of Tucumán with 11 indicted and 43 cases; case 12-122/06 of Comodoro Rivadavia with 6 indicted and 19 cases; case 3135/09 with 20 indicted and 34 victims; case 28.130 of San Nicolás, Rosario, with 3 indicted and 21 cases.

There are also 3 cases which will start this year: case 2047 “Riveros and others on unlawful imprisonment, torments and others, etc.”, of San Martín, Province of Buenos Aires with 7 indicted and around 20 victims; case 19/11 “Alvarez García on his/her disappearance” in Jujuy with 4 indicted and 80 cases, and a mega case for ESMA, with more than 70 indicted and 800 victims.

We should point out that sentences have had two main juridical bases:

- 1) Crimes Against Humanity
- 2) Crimes Against Humanity committed as part of genocide

In more than 50 sentences, tribunals have opted for the application of the figure of crimes against humanity, denying the inclusion of genocide because they consider that they are dealing with a process of destruction of “political groups”, a category that is not included in the Convention on Genocide. In some cases these tribunals recognized the invalidity of the exclusion of political groups and requested that the Argentine State presented a suggestion to the United Nations to modify the Convention on Genocide.

It is useful to note, on this issue, the sentence issued by the Federal Oral Criminal Court No. 5 on the case No. 1270 “Donda, Adolfo Miguel on infraction of art. 144 third paragraph 1 of the Penal Code –law 14.616”, on the clandestine detention center at ESMA, that states that actions investigated in the trial were brought against a political group, and that the case does not fall under the 1948 Convention and, “... precisely because of that, having profound knowledge of the meaning of this type of massacre, and knowing that this type of case does not conform to the concept of genocide, we will present a memorandum to the Supreme Court of Justice of the Nation, attaching a certified copy of the basis of this sentence, so that the other powers of the State are asked to present to all the appropriate international organizations the petition to include political persecution under the concept of genocide in the appropriate Convention.”

It must be noted that in another set of cases (around ten, in 6 different tribunals), judges used in their sentences the expression “crimes against humanity committed as part of a genocide”, because they considered that genocide was committed in Argentina, directed towards the “partial destruction of the Argentine national group”.

For example, the Federal Oral Tribunal of La Plata considered that<sup>2</sup> *‘there is no impediment to the use of the term genocide’* in describing what happened in Argentina, namely, the *‘partial annihilation of a national group’*, since Argentina’s Supreme Court ruled in 1984 that *‘we consider as proven the practices of mass destruction implemented by those calling themselves the Process of National Reorganization (...), a process that was practically identical throughout the country and prolonged in time’*. The Court also deemed that *‘the plural and pluripersonal acts alleged were acts against a group of Argentineans or residents of Argentina that could be differentiated, and which no doubt were differentiated by those who organized the persecution and harassment’* and these actions *‘consisted of deaths, prolonged illegal detentions (...), tortures, confinements in clandestine detention centers (...), removing detained children and giving them to other families - forcibly transferring children of the group to another group -, so that the idea is clearly present of the extermination of a group of the Argentinean population. This was not done in a random or indiscriminate fashion, but with the intention of destroying a section of the population (...) composed of those citizens who did not fit the type pre-established by the promoters of the repression as necessary for the new order to be installed in the country’*.

The Court considered that *‘the term “national group” is absolutely valid for analyzing what happened in Argentina since the perpetrators set out to destroy part of the social fabric in order to produce a sufficiently substantial change so as to affect the State in its entirety. Given the inclusion of the term “total or partial” in the definition of the 1948 Convention, it is evident that the Argentinean national group has been annihilated “partially” and to a sufficiently substantial extent as to alter the social relations within the nation... the annihilation in Argentina was not spontaneous, was not fortuitous, was not irrational: this was the systematic destruction of a “substantial part” of the Argentine national group, with the intention of transforming it as such, redefining its way of life, its social relations, its destiny, its future’*

The sentence concludes that *‘from all that has gone before it is indisputable that we are not dealing as we previously expected with a mere succession of crimes, but rather with something significantly greater than deserves the name of genocide’*.<sup>1</sup>

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<sup>1</sup>.- These quotes are from the sentence against Echecolatz by the Federal Oral Criminal Court N° 1 of La Plata, September 2006, available in Spanish at [www.ladhlaplata.org.ar/juicios.htm](http://www.ladhlaplata.org.ar/juicios.htm)