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Commission internationale de juristes  
Comisión Internacional de Juristas  
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AI Index: AMR 13/002/2004

Public Document

Ref.: ARGENTINA/Memorandum

National Court of Criminal Cassation  
Court I  
President  
Dr. Juan Carlos Rodríguez Basavilbaso  
Comodoro Py 2002, 1° Piso  
1104 Buenos Aires  
Argentina

18 December 2003

Dear Dr. Rodríguez,

Amnesty International and the International Commission of Jurists are submitting to the consideration of the National Court of Criminal Cassation their concern regarding the applicability of Laws 23,492 (Full Stop) and 23,521 (Due Obedience) of 12 December 1986 and 4 June 1987 respectively, and the incompatibility of these laws with international law.

Amnesty International and the International Commission of Jurists are pleased to enclose herewith the document entitled "Argentina: Legal Memorandum – the Full Stop and Due Obedience Laws" (Index: AMR 13/18/2003, December 2003).

The document discusses the international obligations of the Republic of Argentina to prosecute and punish the perpetrators of gross human rights violations committed during the years of military government (1976 to 1983), and the incompatibility of these laws with international law. The said laws are in breach of obligations binding on the Republic of Argentina under international law, in particular under the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons.

It is relevant to mention that Article 75 (22) of the Constitution of the Argentine Nation provides that "treaties [...] are hierarchically superior to laws"; moreover, according to the same article, treaties "have constitutional rank". The jurisprudence of international human rights protection bodies is united in viewing torture, extrajudicial execution and enforced disappearance as grave violations of human rights. The enclosed document sets out past decisions and rulings of these international human rights bodies, which have repeatedly confirmed that the State has an obligation to bring to trial and punish the perpetrators of gross human rights violations and that amnesties for those who violate human rights are incompatible with international law.

In the enclosed document, Amnesty International and the International Commission of Jurists record decisions of Argentine judges and tribunals in the last three years declaring these laws null, void and unconstitutional, since "as well as being contrary to the national constitution, they are also contrary to the law of nations", to quote from the decision of Federal Judge Claudio Bonadio in September 2002; and, as was pointed out more recently in a March 2003 judgment of Federal Judge Carlos Skidelsky,

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“these laws mean that the deaths of thousands of Argentine citizens and foreigners over a specific period of time (1976 to 1983) [...] will go completely unpunished [...] In other words, they allow a perverse inequality to be enshrined in law.” It should be emphasized that, as was highlighted by the Attorney General, Nicolás Becerra, in his report of 29 August 2002 confirming federal judges’ decisions that the Full Stop and Due Obedience Laws were null, void and unconstitutional, “the duty not to impede the investigation and punishment of gross violations of human rights, like all obligations derived from international treaties and other sources of international law, is incumbent not only on the Legislature but on all branches of government and therefore requires that the Public Prosecutor’s Office and the Judiciary do not validate actions taken by other branches of government who are infringing them.”

Amnesty International and the International Commission of Jurists have welcomed the decision of the National Appeals Chamber for Federal Criminal and Correctional Matters for Buenos Aires in November 2001, unanimously upholding the judgment of Federal Judge Gabriel Cavallo in March 2001, in proceedings related to the enforced disappearance of José Liborio Poblete and his wife and daughter. Both organizations would call attention to the important decision of the Court of Appeals which confirmed the international obligations of the Argentine State and declared that “invalidating Laws 23,492 and 23,521 and declaring them to be unconstitutional is not an option. It is an obligation”.

Amnesty International and the International Commission of Jurists consider it to be of vital importance that the Argentine State fulfils its international obligations with respect to the grave violations committed during the period of military rule and that these laws, which have obstructed the way to truth and justice for thousands of Argentine citizens, be made null and void and left without legal effect. The organs of the Judiciary, within the scope of their jurisdiction, have an unquestionable duty to investigate, bring to justice and punish the perpetrators of gross violations of human rights. It follows that a court should not only refrain from enforcing amnesty laws which are incompatible with the State’s international obligations and in breach of internationally-protected human rights, but should also declare them to be absolutely null and void and take steps to investigate, bring to justice and punish those responsible for these violations.

Amnesty International and the International Commission of Jurists thank you for your kind attention to this letter and accompanying document.

Amnesty International and the International Commission of Jurists wish to inform you that they have decided to make the contents of this communication public.

Yours faithfully,

Susan Lee

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Director

Senior Legal Adviser

America Regional Program

International Commission of Jurists

Amnesty International