

The Latin American Human Rights System and the Prevention of Atrocities: a legal background

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After a recent past of massive and systematic violations of human rights and dictatorships in most countries of Latin America, for the last three decades the region has been experiencing a framework of peace, democracy, human rights, increasing autonomy, and governments facing with political will the challenges of social inclusion. The way that many countries of the region are dealing with their past, and the positive impact of the regional institutions and norms for the promotion and protection of human rights, have transformed Latin America into a region that today is making concrete contributions to international human rights law and to the prevention of atrocities. In a world which is still debating many of these issues without yet reaching consensus.

One of the paradigmatic examples of this change from legalized atrocities to legalized prevention is perhaps Argentina. A country whose people has decided a decade ago -with wide consensus- that the only way to build a future agenda of human rights and prevent history from repeating itself is eradicating impunity in relation to the crimes against humanity perpetrated during State terrorism in the 70's and 80's. The legality for prevention relies on the fact that for the first time the three branches of the State—Executive, Legislative and Judiciary—responded to a new social contract, removing all legal obstacles in order to identify and punish those responsible for massive and systematic violations of human rights. Over two decades after the recovery of democracy, in 2005 trials were re-opened all over the country. Today there are 1200 prosecutions, of which 700 are already at the oral stage or have received a request for indictment by the public prosecutor. These trials have a unique characteristic: ordinary tribunals, the use of the same criminal law at the time of the atrocities, all crimes and all participants are being investigated, public and oral criminal proceedings supported by the State and due process. 520 persons have been convicted for crimes and crimes against humanity in different levels of participation, including several sentences that clearly stated that the mass atrocities in Argentina were committed within a framework of social genocidal practices, where ideology was the cause of annihilation extending the concept of “national group” included in Article II of the 1948 Genocide Convention. At the same time 72 persons were acquitted for lack of proof. Many witnesses living overseas (as a result of exile) gave their testimony before the courts through video conferences held at Argentine consulates around the world. And 110 persons have recovered so far their identity after being abducted as babies, thanks to the work of a leading organization, the Mothers and Grandmothers of Plaza de Mayo. Each of those stories represent a hope that mass atrocities can be replaced by a new commitment of the society in support of “never again”.

This dramatic change in Argentina -after long years of tolerating impunity- was due to the maturity reached by its people and its institutions, the tireless work carried out by the national human rights movement in their legitimate search for justice, and the political will of the Government since 2003. This rich experience has been significant for the advancement of human rights at the international level, in fields like the teaching of the Holocaust as a platform for understanding human rights, the institutional and capacity building for prevention of mass atrocities, several legal developments on the fight against enforced disappearance, the right to the truth, the recovery of identity of abducted children or the use of forensic genetics in the field of human rights.

At the regional level, countries of the region support the Inter-American System of Human Rights, a key institution for the victims and its families during State terrorism and a partner in developing human rights institutions since restoring democracy. In South America integration mechanisms are including human rights in their daily work. UNASUR has reacted timely, at the highest political level, in several situations in the region that could have evolved into political violence, fostering dialogue and helping democratic governments that were facing challenges by actors that were willing to change democratic projects that support social inclusion. In 2011 a new Institute for the Development of Public Policies on Human Rights in MERCOSUR started its work based in Argentina, setting for the first time an institutional framework for exchanging best practices on the field at a sub-regional level (Argentina, Brazil, Paraguay, Uruguay and Venezuela). In March 2012, with the presence of African observers, the Latin-American Network for Genocide Prevention was established in Buenos Aires, in association with the Auschwitz Institute for Peace and Reconciliation (AIPR). This Network, the first of its type in the world, includes the participation of representatives of almost every Latin American country through the development of a common curricula and training workshops on genocide prevention for public officials (Defence, Armed Forces, Security Forces, Foreign Service).

Legal framework behind the ATROCITIES:

1. The UN and the scope of “genocide”, the political factor (1946). The start of the Cold War: its impact in Latin America (1947). Intolerance to a different political organization.
2. The legality behind the illegality for the involvement of the military and security forces as a prelude of the dictatorship: In 1975 Decree 2772, signed by a constitutional president called the Armed Forces to “annihilate the operation of subversive groups”. Three other decrees followed by which annihilation was ratified. In 1976 the military took over the government in a coup and replaced the Constitution by a “Statute of National Reorganization”, new judges, no Parliament and direct appointment of President and Governors. The massive use of enforced disappearances was called by the military operation “Final Disposition”.
3. Enforced Disappearance of Persons and abduction of children as a social genocidal practice: a legal and social loop for widespread fear. Perpetrators, collaborators, victims, bystanders, and the just.
4. Condor Operation (1975) dictatorships in South America helping each other for massive atrocities.
5. Breathing air (1979) the international community takes action on Latin America’s atrocities. The visit to Argentina of the Inter-American Commission of Human Rights.

Legal framework behind the PREVENTION of atrocities:

6. Lights: recovery of Democracy: dealing with the past under the Rule of Law. Truth and Justice. Victims, families and society as a whole.
7. Shadows: impunity laws, military pressure and pardons. Frustration of the human rights movement while universal jurisdiction evolves. Reparations as a way to pay silence: a legal loop.
8. Juridical creativity in a context of lack of justice: a smart use of international human rights law in order to challenge national impunity laws. Right to the Truth, prosecution for abduction of children, accepting reparations but not de declaration of death of the disappeared.

9. A new social contract: dealing with the past in order to build a future. Memory, Truth, Justice, Reparations and institutional building as a guarantee of non-repetition.
10. Latin American countries and the way to prevent atrocities: autonomy within any international balance of power. Democracy and human rights as the framework of integration and solidarity.

A history of mass atrocities finally encounter memory, truth, justice and reparations applying the rule of law, without revenge or persecution, and sets a State policy for prevention of atrocities and for the development of a new agenda on human rights, as a clear path between the future and the past. The social fabric has healed and the best prevention is not to have again the majority of a society indifferent or scared to act upon the massive and systematic violation of human rights of their friends, relatives, neighbors, teachers, lawyers, workers. That is the best way to honor the fight of the brave women that in the middle of the dictatorship searched for the disappeared and started –without even realizing it- an extraordinary human rights movement that is clearly one of the best features of the Argentine social fabric.