

# THE INTERNATIONAL TACTICS OF THE AMIA CASE: THE RELEVANCE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE PURSUIT OF JUSTICE

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## ABSTRACT

*The AMIA bombing of 1994 is the most scarring terrorist attack in the history of Argentina. As of today, the attack remains a divisive and highly sensitive topic in Argentinian politics. However, the current political relevance of the case does not derive as much from the attack itself than from the initial manipulation of the criminal investigations. The case today exists as a symbol of impunity fabricated by deliberate collusion between intelligence authorities, the judiciary and a part of the political system. The manipulation in the AMIA investigations was so pervasive that the Argentinian government recognized it before the Inter-American Commission on Human Rights in 2005. However, the case remains unresolved and the victims still await justice.*

*This article traces how the struggle of the victims evolved to pursue different claims of justice. For this purpose, the article uses the concept of “boomerang” mechanisms, a well-known conceptualization of human rights politics, to offer a more complex perspective of the fluid interaction between domestic and international activity. The victims relied on the Inter-American Commission on Human Rights (IACHR) to boost the investigations and the implementation of a decree meant to provide reparations. Memoria Activa and their allies activated these interactions at contingent moments of the struggle to overcome impasses and*

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*transform their claims for justice. By the iterative action of these fields, the case has developed a set of normative meanings that slowly incorporated forms of reparatory, restorative and transformative justice.*

*A central aspect of this argument is that these dynamics would not have been possible without the tactical opportunities provided by the IACHR and the tenacious efforts of the victims to create and sustain the existence of a public space to voice their claims for justice. After making a review of this twenty-year-long struggle, the article concludes with a brief description of the prospective role that the IACHR will play in the subsequent stages of this case.*

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#### I. A TRAGIC MORNING: THE TERRORIST ATTACK AND ITS IMMEDIATE AFTERMATH

On July 18, 1994, Buenos Aires experienced the most traumatic terrorist attack in Argentine history. One-hundred and fifty-one citizens were injured and eighty-five more were killed when an explosion consumed the Asociación Mutual Israelita Argentina (AMIA) and Delegación de Asociaciones Israelíes Argentinas (DAIA) buildings at 9:53 that Monday morning. At the time, we could not imagine that the flames of the explosion would spread beyond the AMIA and DAIA buildings, nor the extent to which the event would engulf our country. The fire ignited by the

*AMIA Case* burned in the hearts of the Argentine society until extinguished by the manipulation of several political groups that buried its social significance in a series of scandals. However, for the victims, their injuries remain open—unable to heal because the failure to obtain justice burns still. Even today, twenty-five years later, Argentinians do not know precisely what happened on July 18th. Several civil society groups struggle to attain closure to one of the most stirring and long-lasting injustices in Argentina’s democratic history. This article seeks to uncover the multiplicity of this struggle.

We write this article as members of the *Centro de Estudios Legales y Sociales* (CELS), the human rights organization that represents the victims. As such, we do not intend to advocate for a particular version of the facts here. Rather, we are interested in describing the claims that the victims have made in order to demand accountability of the authorities in charge of discovering the truth. This does not mean that we pretend to have some standard of neutrality; this would be impossible. However, we believe this article presents a more complex account of the case, its evolution and, most importantly, an accurate description of the struggle for justice from the perspective of the survivors and the victims’ families.

In this sense, we envision this essay as a contribution to the debate of the *AMIA Case* and as the foundation of a future research agenda that would aim to analyze, systematize and conceptualize the significance and implications of this process in its vast complexity. This future exploration would be a relevant contribution to the democratic life of our nation and to the advocacy work that CELS has undertaken since its creation. Nevertheless, this research would require that CELS devote adequate time and resources to work through our files and undertake a collective reflection with the relatives of the victims, other organizations and the officials involved in this struggle. Meanwhile, this paper is an effort to establish a first basis that could launch these reflections.

First, let us take a look at that tragic morning. Soon after the attack, an emergency team of the Israeli Army that was assisting in the search for survivors found the engine of what they claimed was the car-bomb used by the attackers.<sup>1</sup> Inadvertently, this would be a prelude to what would become one of the most divisive aspects of the case. The clue pointing towards a car-bomb, inaugurated what would be later known as the *Local Connection Theory* (or “*conexión local*” in Spanish).

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1. InfojusNoticias, *Zeev Livne: General del Ejército Israelí en el atentado a la AMIA* (Statement by General Zeev Livine from the Israeli Army), YOUTUBE (Oct. 6, 2015), <https://www.youtube.com/watch?v=kgOPiS6qaJA>.

Pursuant to Argentinian criminal procedures, the case fell under the jurisdiction of the Federal Court No. 9. In this way, the Investigating Judge, Juan José Galeano, was appointed to conduct the pretrial stages of the criminal investigation. At the time, it seemed obvious that the investigation would be guided by the findings of the car engine. It was only after several years, that crucial flaw came to light and large parts of the investigations were annulled.<sup>2</sup> Since then, what actually happened during the first years of the investigation has been surrounded by a mist of immense controversy.

*A. Judge Galeano: The Flaws in the Original Investigation.*

Strictly speaking, the flaws of the investigation were already voiced during the very time in which Galeano was still investigating. *Memoria Activa*, the organization founded by victims of the attack, questioned several aspects of the investigation as Judge Galeano advanced it. The proceedings were later annulled in large part because of this early intervention by *Memoria Activa*. In brief, the criticism against the investigation conducted by Judge Galeano denounced tactics used to forge evidence that strengthened the *Local Connection Theory* and to conceal evidence that pointed towards alternative theories.

According to Judge Galeano's investigation of the Local Connection, Carlos Telleldín, a trafficker of stolen cars, had sold a Renault Traffic Van to a suicide bomber, a member of the terrorist group Hezbollah, using funds from the Iranian government. This implied that, in order to be able to perform the car-bomb attack, this suicide bomber would have had to operate with the support of a local Buenos Aires law enforcement agency.<sup>3</sup> Therefore, Judge Galeano focused solely on prosecuting members of the Buenos Aires Police Department. The main problem of pursuing this *Local Connection Theory* was that the investigation ignored evidence that suggested other possible causes – like the *Syrian Clue Theory* – which could have pointed towards the possible responsibility of a Syrian merchant named Kanoore Edul.

As Judge Galeano pursued the *Local Connection Theory*, he captured and interrogated Carlos Telleldín to extract information about the person that had purchased the van used in the attack. Eventually, Judge Galeano

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2. Tribunal Oral Criminal No. 3, Files No. 487/00, 496/00, 501/01 and 502/03, Oct. 29, 2004 (Arg.), <https://www2.jus.gov.ar/amia/sentencia.htm>.

3. Centro de Estudios Legales y Sociales, *El Sistema de Inteligencia en Democracia: Una Agenda de Derechos Humanos*, in INFORME ANUAL 2016: LA SITUACIÓN DE DERECHOS HUMANOS EN LA ARGENTINA 127, 132 (2016), <https://www.cels.org.ar/web/wp-content/uploads/2016/12/IA2016-04-sistema-inteligencia-en-democracia.pdf>.

established that the “local connection” of the terrorist had been the Vehicle Subtraction Division of the Buenos Aires Police Department, then commanded by Commissioner Juan José Ribelli. On July 5, 1996 Judge Galeano finally issued an indictment against Commissioner Ribelli and other members of the Buenos Aires Police.<sup>4</sup> The case was solved—or so we thought.

One year after the indictment was issued, in 1997, Commissioner Ribelli made a public video in which Judge Galeano was seen negotiating with Telleldín to fabricate the testimony that inculpated him.<sup>5</sup> After that, it came to light that Telleldín’s wife received a payment of \$400,000 U.S. dollars (divided into two separate payments) from the Counter-Intelligence Direction within the Secretary of State Intelligence (SIDE). This payment served as compensation for Telleldín to change his testimony. This revelation splintered the main evidence holding the investigation together. Following this fracture, the proceedings revealed other flaws.

One of the most notorious discoveries were the practices that Judge Galeano utilized throughout his investigation to conceal other evidence that would contradict the forged testimony. For a time, Galeano had opened secret “legajos” (independent files) to archive evidence pointing towards different case theories. The decision to open or close these files was made arbitrarily by Judge Galeano himself. Using this method, Galeano was able to strategically isolate evidence from the main file and prevent the victims’ access to it.

The leak of two videos and the subsequent finding of other irregularities would initiate the path towards annulling the first investigation. However, this did not happen immediately. The Trial Oral Court had to wait until 2004 to finally resolve this issue,<sup>6</sup> attesting the existence of several irregularities. These same irregularities were also analyzed in great detail in a report issued by Dean Claudio Grossman, who, as we will describe shortly, was appointed by the Inter-American Commission on Human Rights (IACHR) as an international observer. Naturally, this chain of events was neither what Judge Galeano nor the interests that were pulling the strings behind him (whatever they may be) had envisioned. To a large extent, the discovery of the flaws in the investigation and the subsequent annulment of the proceedings were the result of the active participation of *Memoria Activa*.

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4. *Id.* at 134.

5. Ailín Bullentini, *Los videos, el pago y la pista falsa*, PÁGINA12 (Sept. 23, 2015), <https://www.pagina12.com.ar/diario/elpais/1-282453-2015-09-25.html>.

6. Tribunal Oral Criminal No. 3, *supra* note 3.

Under Argentinian Law, *Memoria Activa* was allowed to act as a private prosecutor in the case, which enabled them to identify and question the flaws in the investigations by the multiple judges and prosecutors in charge. If it was not for the vitality of this intervention, the clamor for justice could have been quashed by those with political interests at stake.

### 1. The Rise of a Social Movement: Active Memory and Collective Memory

*Memoria Activa* is the organization created by the survivors and families of the victims of the terrorist attack. Its origins, however, can be traced to 1992, when the Israeli Embassy at Buenos Aires suffered a similar attack. What seemed to be a trend of anti-Semitic violence, developing in an atmosphere of impunity, invigorated the victims of the 1994 assault to organize and to take part in finding justice.

To a large extent, the rise of *Memoria Activa* was grounded in the foundations established by the broader human rights movement in Argentina. Through the 1970s and 1980s, an important array of organizations struggled against the last dictatorial regime. These include the now-well-known activities of Madres de Plaza De Mayo, Abuelas de Plaza de Mayo, and CELS itself.<sup>7</sup> The processes that created democracy in Argentina had also built a series of committed networks and inserted the human rights discourse deep into civil society. The movement launched by *Memoria Activa* profited from these pre-existent networks and mobilized the resources supporting human rights activism.

Obviously, the rise of this mobilization happened much more organically. After the attack, the families would gather at the site of the explosion to remember their deceased loved ones and simultaneously ratified their commitment to find justice together. They would also demonstrate in front of the courts and appeal to the public's sense of injustice.<sup>8</sup> Eventually, from this incipient mobilization crystallized an organized body that still spearheads the struggle to find justice today despite the drawbacks and negative effects that the political manipulation of the *AMIA Case* would provoke in the broader social imaginary.

The relevance of *Memoria Activa*, family members, survivors and other activists in the pursuit of justice cannot be overemphasized: If it was not for their perseverance, the case would have likely been concluded under

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7. MADRES DE PLAZA DE MAYO, <http://madres.org>; ABUELAS DE PLAZA DE MAYO, <https://www.abuelas.org.ar>; CENTRO DE ESTUDIOS LEGALES Y SOCIALES, <https://www.cels.org.ar/web/>.

8. See MEMORIA ACTIVA, [memoriaactiva.com](http://memoriaactiva.com) (last visited Feb. 14, 2019).

false evidence. These groups have become, in a very literal sense, guardians of the collective memory. They keep alive the affects and emotions that engulfed Argentinians on the day of the attack—their intervention has made sure that the collective memory does not forget the feelings of social indignation, mourning and hope for justice. An iconic symbol of how *Memoria Activa* works to ensure the continuity of this struggle, is the annual gathering that takes place on the date of the attack. Year after year, the members of *Memoria Activa* gather at the site of the explosion and read aloud the names of victims as the public responds “*Presente*” (He/She is here).

In terms of social movement theory, *Memoria Activa* can be thought as a Social Movement Organization (SMO) that was very successful in mobilizing structures to ground and grow their struggle.<sup>9</sup> However, it has also been a savvy handler of the political opportunities that appeared throughout their struggle. As we will describe, the change of government in the early 2000s was a crucial moment for the movement. Additionally, *Memoria Activa* has skillfully managed the framing processes of the mobilization, particularly after the case became more complex and political ideologies swamped the judicial proceedings. In this sense, *Memoria Activa* would make for an excellent case study about the origins, transformation and impact of social movements. However, this theoretical question remains beyond the scope of this article. I mention this here hoping that a social movement scholar reading this article might become interested in making such academic contribution. What is of relevance here, however, is the fact that *Memoria Activa* exists at the center of the struggle. Therefore, to a large extent, the evolution of the claims for justice can be appreciated as a result of their intervention.

## 2. The Claims for Restorative Justice

Why do we talk about the evolution of the claim for justice? We believe an important part of understanding the history of the *AMIA Case* has to do with understanding how the ideal of justice is conceived. In other words, the evolution of the claim for justice refers to the way in which the victims and the society have transformed their own understandings of the struggle as the events developed. Let us explain this a bit further by exemplifying this process with the first of such transformations.

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9. M. Zald, D. McAdam & J. McCarthy, *Introduction: Opportunities, Mobilizing Structures, and Framing Processes Toward a Synthetic, Comparative Perspective on Social Movements*, in *COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS: POLITICAL OPPORTUNITIES, MOBILIZING STRUCTURES, AND CULTURAL FRAMINGS* 1, 1-23 (1996).

The day after the terrorist attack, the whole public demanded to know the truth. The people were outraged, and the families gathered and demanded “justice.” In that moment, their claims were rather concise: They wanted those responsible to be punished. Back then, the original idealization of proper justice consisted in discovering who the terrorists were, who their accomplices were and to have all each jailed or, at the least, held accountable. For some, this would also have included some type of reparation damages to the families and the injured.

This is precisely why the indictment of Ribelli and other police officers meant so much to the general public. For a brief moment, justice was served. However, after it became known that Judge Galeano had forged the evidence, the things were never the same. The claim for justice transformed. The procedural irregularities had fractured the original notion of justice. The trust between citizens and their institutions was broken. For human rights lawyers, this process is well-known: The forging of evidence and obstruction of justice in itself constitutes another form of rights violations. Under the standards developed by the Inter-American Human Rights system, forging evidence and investigative irregularities are analyzed as an independent violation of the right to judicial protection,<sup>10</sup> and, in notorious cases, as a violation of the right to truth.<sup>11</sup>

In this sense, the leak of the videos was a breaking point. Justice could no longer be idealized as simply finding the person responsible for the attack and delivering some reparation. Reparatory justice was not going to be enough. Naturally, *Memoria Activa* and other social actors now demanded to discover and prosecute all the public officials responsible for forging and concealing evidence. They also wanted to understand how this had been possible, and, rightfully, they expected a degree reassurance that this would not happen again as the investigation reopened.

Then, the claim for justice became more complex. Beside reparation, it now demanded the restoration of the bond of trust between society and the State. This is how, we conceive, the birth of the claim for restorative justice, which remained latent throughout several years before the flaws of the original proceedings, were prosecuted. This delay in opening an

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10. The Inter-American Court on Human rights has established that “remedies that because of the country’s general conditions or even because of specific conditions related to the case in question are illusory cannot be considered effective. This can be the case, for example, when their uselessness has been demonstrated in practice, due to a lack of means for executing rulings, or due to any other situation giving rise to a context of denial of justice.” See *Abrill Alosilla et al., v. Peru, Mertis, Reparations, & Costs*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 223 ¶ 75 (Mar. 4, 2011).

11. *The Right to Truth in the Americas*, INTER-AM. COMM’N H.R., OEA/Ser.L./V/II.152, doc. 2 rev. ¶ 73 (Aug. 13, 2014), <http://www.oas.org/en/iachr/reports/pdfs/Right-to-Truth-en.pdf>.



investigation demonstrated the shortcoming of the judiciary to have its own officials held accountable. Ultimately, this new claim of justice from the victims prospered in opening another criminal prosecution: The investigations of the concealment of evidence, commonly referred to in Spanish as the “causa de encubrimiento” or *AMIA 2*. This new case investigated the criminal responsibility of Judge Galeano and other officials that participated in the tactics employed to hide and conceal evidence. Due to space constraints, it is not possible to describe all the irregularities discovered in this essay. However, it is important to highlight those that the trial against the concealment of evidence (causa de encubrimiento) is currently investigating, namely: the existence of secret films that Judge Galeano recorded and later destroyed; the arbitrary use of the legal figure of “witnesses with reserved identity;” the deficiencies in the process to collect evidence and clues; and, of course the payment to Telleldin in exchange for his testimony that blamed Buenos Aires police officers.

As these procedures progressed, the investigation included other officials working alongside Galeano. Currently, the defendants of the case reunite two other prosecutors, Eamon Mullen and Jose Barbaccia; the President of DAIA, Ruben Beraja; the Secretary of Intelligence, Hugo Anzorreguy; and even the former President of the Nation, Carlos Menem, among many others.

The case would only get more complex thereon; that bond of trust will be further reaped apart by the subsequent manipulations of the *AMIA Case*. As we will describe later in this piece, this claim for justice remains largely unanswered even today.

## II. THE “BOOMERANG” THROW: REACHING OUT TO THE IACHR

After the disappointment of the initial investigation, *Memoria Activa* had valid reasons to mistrust any further investigation by the Argentinian authorities. The evolution of the claim for justice also carried a shift in the strategic thinking of *Memoria Activa*. These events made evident that the security agencies had been involved in concealing the truth behind the attack. This would finally confirm the longstanding suspicion of the victims that the State held an important degree of responsibility in the lack of results. Moved by this new realization, on July 16, 1999 – almost five years after the attack – *Memoria Activa*, CELS, CEJIL and Alberto Zuppi, an attorney that acted as a private legal representative of the victims, filed a

petition before the IACHR.<sup>12</sup> The Commission became the new platform through which the movement would voice their demands.

The petition filed before the Commission condensed the new claim for restorative justice. There were two core allegations: First, that the Argentinian State was responsible of violating Articles 4 and 5 of the American Convention of Human Rights<sup>13</sup> because of their responsibility in failing to protect the victims of the attack. Second, it claimed that the State had violated Articles 8 and 25 of the American Convention because it had deliberately failed to provide access to justice by covering evidence and forging false testimonies that led to a false resolution.<sup>14</sup>

Another important feature of the petition is that it included a detailed list of all the flaws of the investigation conducted by Galeano. In this sense, the petition to the IACHR would also initiate a debate that would gradually grow into a very politicized discussion. Back then, the claim was still rather simple. After it was revealed that Galeano kept secret “legajos” of evidence, *Memoria Activa* discovered a particular set of clues that pointed to theories that diverged from the official version that involved Telleldín and the police officers.

But let us not get too far ahead. For the moment, it is just relevant to recognize how the petition to the IACHR was an important prelude to the complex developments that were to come. By providing a scenario to voice both claims of reparatory and restorative justice, it would also trigger political turmoil, exacerbated as well by the deposition of SIDE officers confirming that they had paid Telleldín’s wife with secret funds from SIDE.<sup>15</sup>

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12. Writ of Complaint, Case 12.204, Inter-Am. Comm’n H.R., <https://www.cidh.oas.org/Comunicados/English/2001/Press19-01.htm>.

13. American Convention on Human Rights, 1144 U.N.T.S. 123, arts. 4, 5. Article 4, in relevant part, states: “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.” Article 5 states:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

*Id.*

14. *Id.* arts. 8, 25.

15. See *La SIDE le pagó a Telleldín y lo filmó*, LA NACION (Sept. 24, 2003), <https://www.lanacion.com.ar/530023-la-side-le-pago-a-telleldin-y-lo-filmo>; Centro de Estudios Legales y Sociales, *El Sistema de Inteligencia en Democracia*, *supra* note 4, at 160.

A. The “Boomerang Pattern”: The Claudio Grossman Report

The “boomerang pattern” is a widely known model to understand the political dynamics triggered by the submission of human rights claims to international bodies.<sup>16</sup> It briefly describes a pattern provoked by transnational exchanges of information that combine pressure from above and pressure from below to overcome political blockages at the domestic level. In this sense, the boomerang pattern has been conceptualized as a tool to affect the domestic political scene by empowering human rights actors.<sup>17</sup>

Naturally, these conceptualizations have met limitations and challenges. Not every actor can use a “boomerang” and not every “boomerang throw” is successful. The impact rate varies largely depending on factors such as the openness of a domestic system, its prior commitment to human rights, vulnerability to international sanctions, the vitality of domestic mobilization, etc.<sup>18</sup> We do not intend here to reevaluate the details of this model. We refer to it because we believe it holds a good degree of explanatory power to describe the events that would follow the petition to the IACHR, particularly with regard to the interaction between local and international publics.

One of the first important recursive tactics that followed the “boomerang” throw to the IACHR was the appointment of Dean Claudio Grossman as special observer of the Commission in the AMIA investigations. This mandate was created in 2000; its objective was to observe and evaluate the subsequent development of the trial against Telleldín, the police officers and others that constituted the so-called local connection. Institutionally, it had the double function of informing the IACHR about the status of the investigation and allowing the State to demonstrate their compliance with human rights standards. Socially, it also stabilized a legal structure to bring visibility to crucial aspects of the case. This stabilized legal opportunity immensely facilitated the back-and-forth processes of subsequent “boomerangs.”

In more practical terms, the intervention of Dean Grossman shifted the terrain over which *Memoria Activa* and its allies engaged. First of all, it opened a channel for communication with the responsible authorities that was unavailable domestically. However, it also created a *sui generis*

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16. MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: NETWORKS IN INTERNATIONAL POLITICS* (1998).

17. THOMAS RISSE, S. ROPP & KATHRYN SIKKINK, *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* 85 (2013).

18. *Id.* at 65.

mechanism that deviated from the traditional form in which the “boomerang” revolved. Normally, the IACHR performs intermittently: It receives information and then reacts through one of its mechanisms. This time, however, the IACHR had propped the door open—it fixed a constant flow of intervention to allow a more fluid interaction between *Memoria Activa*, the State and the International scene.<sup>19</sup>

It is important to note that the creation of Dean Grossman’s mandate was both a consequence of prior activity of *Memoria Activa* and its allies, and a trigger of subsequent mobilization. After the report was published, the IACHR initiated a friendly settlement procedure between the parties (meaning the victims and the State). This friendly settlement was launched during the brief government of President De la Rúa, who would later resign in the context of the severe economic, social and political crisis. The gravity of this crisis cannot be underscored in just one week: the Republic would have five different Presidents. It was not until 2003 that the country finally found a renovated stable ground, and, from this critical context, Néstor Kirchner would emerge as the new President. This new government had a strong agenda of justice system reform,<sup>20</sup> and it was precisely within this context that the President Kirchner’s administration would approach the *AMIA Case* and the friendly procedure mechanism.

### *B. The Friendly Settlement: Decree 812/2005 and Recognition of Responsibility*

Dean Grossman, who was then the president of the IACHR, issued his final report on 2005.<sup>21</sup> The contents of his evaluation summarized the multiple irregularities, flaws and complications of the initial investigation. These discoveries came to reaffirm and further elaborate on the findings of a domestic Oral Trial Court that had annulled the first stage of investigations in 2004.<sup>22</sup> Having an independent and external assessment of these defects prepared a legitimate ground from which to seek restoration

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19. This type of intervention had since been replicated in only two other cases: *Digna Ochoa v. Mexico* and the *Ayotzinapa Case*. See Centro de Estudios Legales y Sociales, *Ayotzinapa. La experiencia del Grupo Interdisciplinario de Expertos Independientes*, in INFORME ANUAL 2017: LA SITUACIÓN DE DERECHOS HUMANOS EN LA ARGENTINA 223 (Siglo XII).

20. *La renovación de la Corte, la primera gran reforma encarada por Néstor Kirchner*, TÉLAM POLÍTICA (May 20, 2013), <http://www.telam.com.ar/notas/201305/18285-la-renovacion-de-la-corte-la-primera-gran-reforma-encarada-por-nestor-kirchner.html>.

21. INFORME DEL DECANO CLAUDIO GROSSMAN OBSERVADOR INTERNACIONAL DE LA COMISION INTERAMERICANA DE DERECHOS HUMANOS EN EL JUICIO DE LA AMIA: 22 DE FEBRERO DE 2005 (Feb. 22, 2005), <https://www2.jus.gov.ar/Amia/grossman.htm>.

22. Tribunal Oral Criminal Federal No 3, City of Buenos Aires, Oct. 29, 2004, [www2.jus.gov.ar/amia/sentencia/TI%20CVIII%20E5.pdf](http://www2.jus.gov.ar/amia/sentencia/TI%20CVIII%20E5.pdf).

and reparations for victims. The strategy had moved beyond acknowledging the flaws and towards the construction of a solution.

Based on these conclusions, *Memoria Activa* and its allies recurred again to the scenario provided by the IACHR to pursue a proactive strategy. Profiting from the political opportunity that was offered by the moderate sympathy of the new government, we decided to try a friendly settlement mechanism. Within the procedures of the IACHR, the friendly settlements offer several perks: They hold a relatively high compliance rate, imply less costs for the victims and their representatives, and also keep open the opportunity to restart an adversarial procedure as long as the IACHR does not publish a Friendly Settlement Report.<sup>23</sup> There was a reasonable expectation that a friendly settlement could work to amend the investigation, restore the trust in the state and repair the victims.

In this sense, the victims and the State representatives signed a friendly settlement agreement before the IACHR on March 4, 2005. This agreement included the State recognition of international responsibility. The settlement agreement meant that the new government of Argentina acknowledged that their predecessor had failed to prevent the attack and had concealed evidence. In legal terms, this implied recognition of a violation to the right to life, personal integrity, judicial protection and due process of the victims.

On July 12, 2005, presidential Decree 812/05, through which the Nation-State formally accepted its terms, sanctioned this agreement.<sup>24</sup> This meant that the agreement with the victims had risen to the hierarchy of national law, which is a position of legitimacy rarely attained by a human rights strategy. The expectation to find justice were understandably reinvigorated for a brief period of time, even if we still held a healthy degree of cautiousness.

The agreed terms included several commitments. First, the state had to publicize the Final Report of Dean Grossman. Also, it had to adopt measures to support and reinforce the investigation of the *AMIA Case*, which meant that they should strengthen the specific Prosecutorial Unit in charge of the AMIA investigation. Additionally, the State had to take actions to investigate and prosecute the concealment of evidence, which required invigorating a process to access and inspect the field in possession of the SIDE. It was in this process to fulfill these latter aspects of the

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23. *Impact of the Friendly Settlement: Updated Edition*, INTER-AM. COMM'N HUMAN RIGHTS OEA/Ser.L/V/II.167, Doc. 31 (Mar. 1, 2018), <http://www.oas.org/en/iachr/reports/pdfs/ImpactFriendlySettlement-2018.pdf>

24. Decree No. 812/05, art. 99, B.O. July 12, 2005 (Arg.), [https://www2.jus.gov.ar/Amia/pdf/decreto\\_812.pdf](https://www2.jus.gov.ar/Amia/pdf/decreto_812.pdf).

agreement, which things started to get trickier. The intervention of intelligence agencies in the workings of the judiciary had always been a problem in Argentina. However, we could hardly imagine how deep this intervention went and how vastly it touched the sensitive nerves of the political system.<sup>25</sup>

The process to comply with the terms of the Friendly Settlement Agreement, now Decree 812/05, stagnated soon after its ratification. In 2009, *Memoria Activa*, CELS and CEJIL decided to break the friendly settlement procedure and restart the adversarial proceedings before the IACHR. However, before we move to what happened after this decision, it is important to briefly sketch a few significant changes that took place during those years in which the agreement was still in place.

First, Judge Galeano was removed from the investigation of the terrorist attack. In 2004, Judge Galeano was subjected to a political trial that culminated in its destitution as a judge in 2010. The investigation was then taken on by Alberto Nisman, who would be the new head of the Prosecutorial Unit created to investigate the *AMIA Case* (also known as UFI-AMIA for its Spanish Acronyms). Nisman remained the prosecutor in charge of the investigation until his death in 2015.

During his time as chief prosecutor of the *AMIA Case*, Nisman would not make any significant contribution to the investigations; his work did not move beyond the case theories elaborated previously, which included the *Local Connection Theory*. *Memoria Activa* would proactively request Nisman's removal from the investigation on two occasions. Nisman's subpar performance has been explained as a by-product of his lack of independence.<sup>26</sup> That is, even while acting within the constraints of his institutional positions, it was known that Nisman had been advised to work closely with Stiuso – then factual operative head of the SIDE).<sup>27</sup> Additionally, it was later revealed that Nisman also discussed matters

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25. For a more detailed description of this enmeshment between intelligence agencies and judiciary bodies, see *La SIDE le pagó a Telldin y lo filmó*, *supra* note 14.

26. Sonia Budassi & Andrés Fianza, *Cuando lo policial y lo político se mezclan, en la batalla mediática por el verosímil, quizás triunfe la operación mejor orquestada. El caso Nisman genera enormes consecuencias sobre la política y la campaña electoral. La muerte del fiscal saca del clóset a un actor cada vez más influyente desde la vuelta de la democracia: los servicios de inteligencia. Su estrecha relación con sectores de la justicia federal queda al desnudo. De esa trama oscura y de un hombre solo habla esta investigación de Revista Anfibia*, ANFIBIA (Sept. 24, 2003), [www.revistaanfibia.com/cronica/el-rompecabezas-nisman](http://www.revistaanfibia.com/cronica/el-rompecabezas-nisman).

27. Centro de Estudios Legales y Sociales, *El Sistema de Inteligencia en Democracia*, *supra* note 4, at 137

related to the investigation with members of the United States Embassy in Argentina.<sup>28</sup>

Second, the criminal investigation against the concealing of evidence (*AMIA 2*) also underwent important changes. Despite the fact that the leaked video evidenced that Galeano had forged evidence, the first Judge in charge of the case, Judge Cavallo, acquitted the defendant after just a few months of investigations. This decision would be challenged and overruled by a Court of Appeals in 2013, and, finally, the Supreme Court would confirm the reversal in 2015.<sup>29</sup> However, while this process was ongoing, another Judge, Bonadío, assumed responsibility over the case in 2000. Under Judge Bonadío, the investigations would experience a deliberate lag that would work in benefit Judge Galeano, the main defendant. It was not until 2005, within the context provided by the Friendly Settlement, that Judge Bonadío was replaced by Judge Ariel Lijo. Judge Lijo would manage to keep the investigation open after an attempt by the defense to close the proceedings. However, it would take more than a decade to move forward in actually addressing the merits of the case and annulling the first acquittal decision.

At large, Decree 812/2005 established several urgent measures of reparations that were of utmost importance for the victims in the friendly settlement agreement. Particularly, the State had committed to take seriously its duty to investigate the facts of the attack as well as the concealment of evidence. *Memoria Activa* pushed this demand for four years and persistently demanded the fulfilment of these commitments. After it became evident that the State had no real intention to comply with this aspect of his internationally agreed responsibilities, we decided to break the friendly settlement process and pursue the adversarial mechanism of the IACHR instead.

After the friendly settlement disappointed our expectations to find a new path to justice, the strategy had to find another way forward. By 2011, the IACHR had confirmed the conclusion of the friendly settlement

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28. SANTIAGO O'DONNELL, ARGENLEAKS: LOS CABLES DE WIKILEAKS SOBRE LA ARGENTINA DE LA A A LA Z (2011).

29. Decree No. 812/2005, art. 1, B.O. July 12, 2005 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=107751>. For a Press Release summarizing the 2013 decision of the Court of Appeals that overruled the decision acquitting Galeano, see, *Causa AMIA: Casación rechazó un planteo del exjuez Galeano contra la anulación de su sobreseimiento*, CENTRO DE INFORMACIÓN JUDICIAL [CIJ] (Aug. 14, 2003), [www.cij.gov.ar/nota-12001-Causa-AMIA-Casacion-rechazo-un-planteo-del-exjuez-Galeano-contra-la-anulacion-de-su-sobreseimiento.html](http://www.cij.gov.ar/nota-12001-Causa-AMIA-Casacion-rechazo-un-planteo-del-exjuez-Galeano-contra-la-anulacion-de-su-sobreseimiento.html). See *Another judge withdrawn from AMIA bombing investigation*, WORLD JEWISH CONG. (Nov. 21, 2005), <http://www.worldjewishcongress.org/en/news/another-judge-withdrawn-from-amia-bombing-investigation>.

procedure and decided to resume its adversarial processes. Up to this date, the IACHR had yet to issue its report on admissibility and merits. What would follow after this attempt to construct a solution, was an increased awareness of the deep structural problems hampering the pursuits of justice. This would gradually reflect in a new claim for transformative justice.

### III. TRANSFORMATIVE JUSTICE: THE STRUCTURAL PROBLEMS IN THE INVESTIGATIVE SYSTEM

Ever since the friendly settlement process broke, the evolution of the *AMIA Case* has had several significant developments. Overall, this stage can be summarized by the gradual revelation of the structural problems underlying the incapacity of the judiciary to conduct proper investigations. While many of these flaws were already included in ruling of the TOF 3 and Dean Grossman's report, these years would intensify their scrutiny. More recently, the case has also been obscured by new scandals and complexities, noticeably following the death of Alberto Nisman.

A recurrent problematic evidence by the case was the role of the SIDE in the investigation and the concealment of evidence. From day one, it was evident that SIDE was an important factor in the capacity of the judiciary to investigate; however, it was also evident that SIDE had a wide array of unchecked powers that enabled them to act opaquely and undemocratically. The SIDE, being an intelligence agency, was legally authorized to classify information and could gather various type of evidence without the proper involvement of judicial authorities. In turn, it was common to see judicial investigations having trouble accessing, evaluating and incorporating the evidence obtained by the SIDE. The *AMIA Case* not only faced these general limitations to appropriate judicial functioning, it would also reveal a darker side of this structural problem: The capacity of officials within the SIDE to deliberately manipulate and influence the progress of judicial investigations.

The social and political pressure emanating from the activities of *Memoria Activa* would inadvertently shuffle a hidden balance of interests. On the one hand, there existed a large and unchecked power of Intelligence Agencies that had persisted as an inherited feature of dictatorship; on the other hand, the political elites were also able to exploit this enclave of undemocratic power to manipulate it and conceal quasi-authoritarian practices; finally, some members of the judiciary were willing to assume a comfortable position, by accepting the convenience of being technically unable to access information that would complicate their work. It was a win for all, except for the victims and the pursuit of justice.



This balance of interest has proved to be very resilient. However, it eventually showed some fracture – the most significant of which was revealed by the signing of the Iranian Memorandum.

*A. The Memorandum of Understanding between Argentina and Iran*

In 2013, President Cristina Fernandez announced that her government had reached an Memorandum of Understanding (MOU) with the Iranian State in order to further the investigations of the *AMIA Case* and to follow the tracks of those responsible for the terrorist attack. This MOU came about as a result of several developments that followed from the investigations that were initiated after 2000. During the years in which Judge Galeano pursued the *Local Connection Clue*, some evidence suggested that several Iranian officials had participated in the planning of the AMIA bombing. When this hypothesis emerged, Argentinian authorities decided to request red notices to INTERPOL against six Iranian citizens. These requests were granted in 2007 by an official decision of the INTERPOL.<sup>30</sup> However, the orders of detention could not be executed.

Thus, the MOU was officially advertised as an attempt of the Argentinian government to side-step the execution problem, by collaborating with Iranian authorities. Its specific purpose was to allow Argentinian investigative authorities to interrogate Iranian officials in Iran, and to create a Truth Commission with a bi-national composition. However, the MOU was received with skeptic and negative reactions. For some the problem was that the MOU demonstrated a willingness to negotiate with the enemy; for others, the MOU was problematic because it did not establish the appropriate rules to ensure that whatever evidence was obtained would further the investigation. For others, the MOU signaled a problem because it had been negotiated without the adequate participation of all stakeholders. For the skeptics, the MOU was only the result of an attempt to foster economic negotiations over oil and gas, by using the possibility to lift the INTERPOL notices as an exchange token that would cover-up any responsibility of Iran in the attack.

However, even if the MOU was questioned from all these fronts, the National Congress ratified it on February 27, 2013 as Law No. 26.843. After its ratification, *Memoria Activa* and its allies abstained from either

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30. See *INTERPOL Executive Committee Takes Decision on AMIA Case*, INTERPOL (Jan. 1, 2007), <https://www.interpol.int/ar/1/1/2007/INTERPOL-Executive-Committee-takes-decision-on-AMIA-Red-Notice-dispute>; Helen Popper, *Argentina's Congress Approves Pact with Iran to Probe Bombing*, REUTERS (Feb. 28, 2013, 2:57 AM), <https://www.reuters.com/article/us-iran-argentina-bombing/argentinas-congress-approves-pact-with-iran-to-probe-bombing-idUSBRE91R0DR20130228>.

supporting or criticizing the MOU, even if they had doubts regarding its efficiency, they thought that it would not damage the investigations.<sup>31</sup> After the Israeli government denounced the MOU, DAIA and AMIA filed a judicial action challenging the constitutionality of the memorandum. *Memoria Activa* decided not to join this litigation.

Subsequently, this judicial action would lead to the annulment of the MOU in 2015 through a decision of the Federal Chamber of Criminal Appeals. By this time, it had also become evident that the Iranian Legislative Power would not ratify the MOU, which meant that the agreement was not able to be executed.

Despite the eventual failure of the MOU, it had important impact in the case and the structural problems underlying its investigation. The fact that President Cristina Kirchner was willing to pursue an investigation that might involve other high-level officials of the Argentinian government was felt directly within the intelligence agencies. The balance of interests shook, and one of its biggest reactions came from Antonio Stiuso, an influential SIDE official, who interpreted the MOU as a betrayal of the President. Allow me to further elaborate on this betrayal.

Stiuso had been involved in the AMIA investigations since day one. From his position in the intelligence agency, he could influence the way in which the judiciary investigated the case.<sup>32</sup> In practical terms, Stiuso had much more control of the progress of the investigation than Nisman. In fact, Stiuso used his privileged position in the SIDE to orient Nisman towards the *International Connection Theory*, involving the Iranian intervention.<sup>33</sup>

In this sense, the fact that President Cristina Fernandez had arrived at an agreement with a foreign government that might endanger his power over the investigation was problematic. This meant, that Stiuso might lose grip of the control of the investigation.

### *B. The Death of Alberto Nisman*

The dispute within the SIDE, and between Stiuso's fraction of the SIDE and external political actors, would get worse. In 2014, President Cristina Fernandez removed Antonio Stiuso from his position as head of the SIDE, along with other high-level officials that were close to Stiuso.<sup>34</sup>

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31. Centro de Estudios Legales y Sociales, *El Sistema de Inteligencia en Democracia*, *supra* note 4, at 138

32. *Id.* 136.

33. *Id.* at 137-38.

34. *Id.* at 139.

Prior to this removal, Alberto Nisman had initiated an investigation against President Cristina Fernandez for her alleged responsibility in abetting the impunity of the Iranian citizens involved in the AMIA attack. According to the accusation, President Cristina had deliberately attempted to ensure the impunity of the Iranian citizens by signing the MOU.<sup>35</sup> Before Alberto Nisman could formalize his accusation, however, he was found dead in his apartment on January 18, 2015. The cause of his death is still uncertain. One version explains that he committed suicide. Another version believes that Nisman was murdered. Both explanations reflect the cleavage in the larger political scenario: On the one hand, there are those who believe that Stiuso was utilizing Nisman to exact revenge against President Fernandez. On the other hand, there are those that believe that President Fernandez ordered the killing to stop any prosecution against her.

The fact that the judicial system has been unable to resolve this issue, has also been a symptom of the underlying structural problem. The judges that were put in charge of investigating Nisman's death also had political leanings. Furthermore, the criminal investigation authorities that would theoretically be in charge of establishing the truth, were also compromised. The undemocratic balances of interests behind political, judicial and intelligence authorities reappeared as a barrier to solve this case.

Most importantly, all this cacophony of political scandals and interests had rendered the victims' claims for justice inaudible. An increasingly polarized society had made it harder for *Memoria Activa* to keep the collective memory and the hopes of justice alive. Once again, their struggle for justice had been utilized as a token in the large political game of encroached power elites and left them expecting resolution.

### C. A Claim for Transformative Justice

At this point, the reader might have noticed that *Memoria Activa* and its coalition stopped being the protagonist within these last few pages. Going through the effect of the MOU, the death of Nisman and all the internal divisions within investigative institutions moved our attention away from the victims. This is precisely the same effect that prevailed over the Argentinian society and the public discussions around the *AMIA Case*. More than two decades after the attack, all the institutional attention was diverted to subsequent scandals, while the investigations of the attack itself remained vastly unattended. So, how did *Memoria Activa* face this

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35. Francisco Peregil, *Muere el Fiscal que acusó a Cristina Fernández de encubrir a Irán*, EL PAIS (Jan. 19, 2015), [https://elpais.com/internacional/2015/01/19/actualidad/1421650071\\_491119.html](https://elpais.com/internacional/2015/01/19/actualidad/1421650071_491119.html).

situation? How have they kept pushing for justice in the midst of such a dense haze of political interests, geopolitical calculations, and personal betrayals? The answer, we believe, lies in the transformation of its claim for justice.

After Nisman's death, a first team of three prosecutors was put in charge of the investigation. *Memoria Activa's* work also helped reveal the deficiencies found in Nisman's investigations. For instance, in just a few months after *Memoria Activa* began their activities, they were able to establish the identity of one of the bodies in the attack.<sup>36</sup> However, despite these results, they soon thereafter resigned or were removed.<sup>37</sup> A few years later, the case was put in charge of yet another prosecutor, Sebastián Basso.<sup>38</sup>

It became evident for everyone in Argentina that the rupture of balance between elites had imperiled the stability of the justice system and its governability. A change was needed; the balance needed to be restored. This conjuncture would offer *Memoria Activa* another scenario to renovate its struggle for justice. This time, *Memoria Activa* was not only demanding reparation or restoration. It was no longer possible to idealize justice simply by restoring the trust between citizens and institutions and repairing the victims of the attack. After living through the scandals and realizing the evident corruption that poisoned the investigative system, the expectations of achieving justice would fade even more. The victims faced the conundrum of either resigning their struggle or pushing towards a goal that was looking more utopian than possible. In this way, the ideal conception of justice had to adapt and include the need to radically transform the very institutions that had again violated their democratic duty.

The first political opportunity to continue pursuing the claim for transformative justice appeared in 2015. Facing multiple criticisms regarding the *AMIA Case* and surrounded by the conflict with the intelligence system after the MOU, President Fernandez felt compelled to take strong action to reform the intelligence system. She introduced a bill to the Congress to replace the SIDE and create a new agency, called

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36. *Identifican a la víctima 85 del atentado a la AMIA*, LA NACIÓN (Aug. 11, 2016), <https://www.lanacion.com.ar/1926916-identifican-a-la-victima-85-del-atentado-a-la-amia>.

37. For a brief account of the changes in the prosecutors, see Aurelio Tomás, *Siete Fiscales, novedades y varias polémicas en la Unidad AMIA*, PERFIL (Jan. 17, 2019), <https://www.perfil.com/noticias/politica/nisman-siete-fiscales-novedades-y-varias-polemicas-en-la-unidad-amia.phtml>.

38. It is important to note that Sebastian Basso is nephew of Riva Amayo, one of the appellate judges that was involved in the tactics that Judge Galeano used to conceal evidence and in the payment to Telleldín. If it was not for the fact that she passed away, she might also be indicted in the trial for concealment of evidence.

Agencia Federal de Inteligencia (AFI).<sup>39</sup> This bill also included other elements seeking to establish some democratic checks on the activity of intelligence bodies. However, the specific amendments that were proposed did nothing to change the underlying structure that had enabled the SIDE to create an authoritarian enclave for it. Profiting from this political opportunity, *Memoria Activa* and its allies took the initiative to contribute to some aspects of this deeper structural reform. *Memoria Activa* and CELS seized this scenario to demand for structural reforms of the intelligence system, which had already been included as part of the friendly settlement agreement signed ten years earlier.<sup>40</sup>

This new bill was an attempt to improve the democratic-ness of the judicial and intelligence bodies. However, it is not easy to transform an institution that has developed decades of undemocratic practices. Changing the name and the legal rules are only the first step of that process. During the following years, the coalition that had advocated for a more democratic intelligence system would begin seeing evidence of the un-democratic resilience.<sup>41</sup> Just like the Decree 812/05, the implementation of this new law would prove to be completely disappointing.

After President Mauricio Macri took office, he appointed one of his acquaintances, Gustavo Arribas, to lead the AFI. Gustavo Arribas was a former manager of soccer players that met Macri during the time Macri served as the President of the Football club “Boca Juniors.” From that moment on, the reform of the Intelligence System would suffer important retrocessions. In 2016, President Macri issued Decree 656/16,<sup>42</sup> which changed several aspects of the original reform. For instance, this decree established that all the staff of the AFI (including administrative and janitorial personnel) had to be considered “intelligence staff.” It also re-established the “discipline of secrets” in several aspects of the intelligence work; it abrogated important improvements regarding transparency in the budget expenditures; and it overall deteriorated the opacity of the system.<sup>43</sup>

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39. The definitive text of the Bill is recorded as Law No. 25.520. See Decree No. 25.520/2015, art. 27126, B.O., Mar. 3, 2015 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/240000-244999/243821/norma.htm>.

40. Centro de Estudios Legales y Sociales, *El Sistema de Inteligencia en Democracia*, *supra* note 4, at 130.

41. Larry Siems et al., *Surveillance and Democracy: Chilling Tales from Around the World*, INT’L NETWORK CIVIL LIBERTIES ORG. 56, 57 (2013).

42. Decree No. 656/2016, art. 1, B.O. Jun. 5, 2016 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/261157/norma.htm>.

43. For further details about the retrocessions of the reform of the intelligence system, see *Agencia Federal de Inteligencia: Vuelta al Oscurantismo?*, ICCSI (June 1, 2016), <http://www.iccsi.com.ar/agencia-federal-de-inteligencia-vuelta-al-oscurantismo/>.

Ever since, it has been difficult for *Memoria Activa* and CELS to access information regarding the mechanisms that AFI uses to exercise its surveillance power. Additionally, the AFI has been much more opaque regarding the way it spends public budgets. Confronted with this specific question before the U.N. Human Rights Committee, the government of Argentina was pushed into acknowledging that it had experienced “a setback regarding transparency.”<sup>44</sup>

After all these processes, the *AMIA Case* is entering yet another stage. Recently, on August 6, 2015, a court in Buenos Aires heard the opening arguments in the trial that investigates the original concealment of evidence.

#### IV. CONCLUSION

For *Memoria Activa*, the case investigating the concealment of evidence become their only hope to get a tiny fraction of justice. It was the only opportunity to know who was involved in hiding the truth, and their motives. These investigations advanced slowly, and mostly due to the pressure that *Memoria Activa* and the IACHR placed over the case. Generally, the context had forced us to keep moderate expectations about the possible outcomes of said trial. A few days before I submitted the final draft of this article, on February 28, 2019, the tribunal finally delivered his decision.

After more than three years of trial the Oral Criminal Court 2 confirmed that there was a maneuver intended to conceal the responsibilities of the AMIA attack. Furthermore, the tribunal framed these facts as a “grave human rights violation” in line with the petition filed by *Memoria Activa* before the IACHR in 1999. The court found that Juan José Galeano, Hugo Anzorreguy, Carlos Telleldín, Ana María Boragni, Juan Carlos Anchezar and Carlos Castañeda were guilty of the concealment of evidence. Additionally, the two former prosecutors Eamon Mullen and José Barbaccia were also found guilty – despite the fact that Minister of Justice, German Garavano, had attempted to excuse them from responsibility.<sup>45</sup> However, former president Menem, along with Ruben

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44. INFORME CASO AMIA, INTER-AM. COMM’N HUMAN RIGHTS (2016), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAIS%2fARG%2f24441&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAIS%2fARG%2f24441&Lang=en)

45. *Amia: quedó probado que el poder político, el juez y los fiscales encubrieron el atentado*, CELS (Feb. 28, 2019), <https://www.cels.org.ar/web/2019/02/amia-queda-probado-que-el-poder-politico-el-juez-y-los-fiscales-encubrieron-el-atentado/>.

Beraja, Alfredo Palacios and Patricio Finnen were all acquitted. *Memoria Activa* will appeal this part of the ruling.<sup>46</sup>

In spite of the progress that this decision might bring, the long process that leading to this moment has taken an important toll in the trustworthiness of institutions, the cohesion of civil society, and, overall, on the victim's expectations to find justice. After decades of struggle, *Memoria Activa*, the families and survivors have experienced firsthand a variety of injustices and repeated human rights violations. While these last proceedings are allowing a thin layer of hope to exist, every day that passes is eroding the expectations to find the truth about the attack. At the end of the day, the claims of justice of *Memoria Activa* might not receive the answers they so much deserve. However, so long as there exists an opportunity, we cannot but hope that at least they would get to see a tiny fraction of justice been delivered.

Regrettably, even after the recent ruling, the case has lost its traction with the broader Argentinian society. Now, the AMIA investigations are better known for the scandals and political manipulation that surrounded the case, and not by the memory of a tragedy. At this point, however, we realize that those opposed to find the truth are highly resilient and influential. Unfortunately, current government officials deployed several tactics aiming to preclude any possibility of revealing the truth. They exerted pressure on the lawyers that represented the claimants within the Ministry of Justice; they changed their position regarding the accusation of two prior investigators of the case (Mullen and Barbaccia); they removed several members of the Prosecutorial Unit of the *AMIA Case*; they publicly supported officials of the Ministry of Justice that were involved for concealing evidence; they appointed a new prosecutor (Sebastian Basso) who is related to one of the judges that were involved in the concealment of evidence; and they altered the policies regarding file declassification, among many others.

At this point, the victims are forced to maintain only moderate expectations. In fact, even in the best of scenarios, it would be impossible that that investigation, by itself, would be able to provide an answer to the complex claims of *reparatory*, *restorative* and *transformative justice*. The proceedings that would follow the recent judgment, refers only to the responsibility in the concealment of evidence; the victims still deserve much more than what a court can deliver from such a narrowly defined litigation.

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46. *Audiencia N°174-la sentencia*, MEMORIA ACTIVA (Feb. 28, 2019), <http://memoriaactiva.com/?p=3059>.

We should not forget that the case still has an ongoing petition before the IACHR. The international claim that initiated twenty years ago has created a long track-record of the way in which the case has been handled in Argentina. We have denounced all of the abovementioned maneuvers to hide the truth to the IACHR, which now has vast information about persistent denials of justice and human rights violations. This petition is disputing various forms of international responsibility in which the State has incurred through the various stages of the case. It disputes the original violation to the right to life for the failure to prevent the attack. It also controverts the violation of the right to judicial protection and lack access to an effective remedy, for the multiple failures to investigate and prosecute those responsible; it also claims that the State has violated the rights of the survivors and their families by submitting them to subsequent psychological violence. In this sense, the petition before the IACHR introduces all the complex claims for justice to be adjudicated by an international human rights litigation mechanism.

As the *AMIA Case* approaches a new stage of its investigations, the role of the IACHR – and most likely the Inter-American Court – will be decisive. These international bodies will have a great deal of responsibility as they are called again to respond to the trust that the victims have put on them. Unfortunately, the long and exhausting process that followed that first attempt to find justice through the influence of the IACHR, has circled back to the point in which our expectations are focused again in the impact of a “boomerang.” Just as the intervention of Dean Grossman, managed to unravel the impasse in the domestic political system fourteen years ago, the decision on the merits of the case could again, be the catalyzer. Deciding the *AMIA Case* is likely to be one of the most iconic tasks in the near future of the Inter-American System.

After all these years of frustrations, disappointments and betrayals, the victim’s clamor for justice has evolved to encompass much more than their original intent. Their struggle has put a huge burden on their shoulder. It has become part of a crusade against corruption, authoritarianism and opacity. The claims for justice demand that the State undertake a serious and trustworthy investigation on all the possible theories behind the attack. It also requires a thorough investigation of the concealment of evidence and the mechanisms that allowed it. Finally, it demands a complete transformation of the investigative agencies, in order to completely



eradicate the practices of judicial complicity, opacity and manipulation.<sup>47</sup> Lacking any of these, justice would not be served.

This for sure sounds like an impossible objective. Perhaps we would require another decade of struggles before reaching a somewhat acceptable outcome. However, the victims are rightfully frustrated and the little hope that stills ground their struggle could evaporate at any second. After all these years, we would have expected that the victims would have at least experienced at least a little taste of justice. Instead, they have been pushed and pulled across the alley and into sketchy investigations that opaquely investigate the flaws of the actual investigations. The little confidence that might remain is kept by the trust that they put on the IAHCR twenty years ago. Whatever future brings, we can be sure that *Memoria Activa* has struggled for justice as tenaciously as humanly possible. Whatever injustice remains afterwards would bear on all those that have actively participated in hiding the truth.

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47. Centro de Estudios Legales y Sociales, *El Sistema de Inteligencia en Democracia*, *supra* note 4.