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CRISTINA

***Lawfare* against democracy in Argentina**

This book includes speeches by:

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Rafael Correa

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Blindfolded mistress

Who are at the court

Without seeing the lawyers

Get down of your pedestals

Remove your blindfold and look

How many lies!

Prayer to Lady Justice

Maria Elena Walsh

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The publishers

TABLE OF CONTENTS

As a Foreword

Eduardo Valdés

This book was written after the night of March 21st, 2023´s meeting at the Kirchner Cultural Center assembling five presidents of Latin America namely Evo Morales, Pepe Mujica, Rafael Correa and Ernesto Samper, the president of Spain, José Luis Rodríguez Zapatero, as well as the most outstanding jurists Baltasar Garzón, Giselle Ricobom, Silvina Romano, Carol Proner and Raúl Zaffaroni who, on behalf of Puebla Group and the Latin American Council for Justice and Democracy (CLAJUD) submitted a categorical investigation on *Lawfare* against democracy in Argentina, which came to be known as 'Target Cristina'.

This is why this book has been divided into two parts: the first one includes a compiling of the speeches delivered at the conference room, and the second one focuses on CLAJUD and PUEBLA´s investigation 'on some of the most outrageous judicial and media persecution processes in Latin America', according to the report.

On behalf of Pablo Gentili, I would like to express my gratitude to ELAG (Latin American and Global Studies School), to CELAG on behalf of Alfredo Serrano, and to Editorial Octubre on behalf of Victor Santa María, who has printed the work submitted at the CCK. I would also like to express my acknowledgement to Congressman Carlos Heller, and to Ricardo Pignanelli from SMATA, as well as to Luis Mainelli for all his support to the first edition, which as of this date will be in charge of Juan Carlos Manoukian on behalf of CICCUS PUBLIHERS.

When I talked to Marco Enriquez-Ominami (founder of Puebla Group) about holding a discussion on Cristina´s case and having it disclosed at a worldwide level, it was because I wanted to point out I had escorted Cristina Fernández de Kirchner to eight pre-trial investigations led by the same Judge, Claudio Bonadío, and the same prosecutor, Carlos Stornelli on February 25, 2019. That day I felt my blood boil as the Argentine mass media had accepted a fact that had never been heard of before in the Argentine judicial history. So I began to investigate and, to my surprise, I found no Argentine citizen had ever been called to testify in two pre-trial proceedings in the same court, on the same day. Such was the judge and prosecutor´s cruelty they made the pre-trial proceedings date overlap with that of Néstor Carlos Kirchner´s birthday.

Since then, I have asked myself: How many complaints have been filed against Cristina? And when I came across the number, not even Cristina herself was aware of that number. Moreover, she did not believe me. 654 COMPLAINTS, which turned into the cover sheet of countless newspapers, and hours of television-viewing time, had been filed. And they were all intended to tarnish Cristina Fernández de Kirchner´s image. Do you know how many actions were brought against Cristina´s forerunner in the Argentine judicial history? 123 actions were filed against former Argentine president Juan Domingo Perón.

Nine people filed 253 complaints against Cristina. Isn´t it a telltale signal? These legal cases were definitely arranged by individuals with close ties with the intelligence services agency.

To crown it all, Julián Ercolini, the judge "prosecuting" Cristina in the '*Vialidad'* case in which she was banned from holding a public office, appeared to be travelling to an idyllic town in Argentina known as Lago Escondido, along with Carlos Mahiques, the Federal Criminal Court of Appeals Judge, his son Juan Bautista Mahiques, serving as Chief Prosecutor of the City of Buenos Aires, Judge Pablo Cayssials, Judge Pablo Yadarola with jurisdiction over economic criminal matters, and the City of Buenos Aires Minister of Justice and Security, Marcelo D'Alessandro, who shortly after the foregoing accusation, was asked to tender his resignation. A legal investigation on all of them is currently under way as they had been bribed by the Telecom company that had paid for that trip and is owned by Grupo Clarin.

It then transpired that the Oral Criminal Court judges having convicted Cristina as well as Prosecutor Diego Luciani, used to meet at former President Mauricio Macri´s weekend house to play soccer tournaments. In an attempt to make that incident seem to be more embarrassing for all citizens, since such a shameful act was obviously being accepted, the president of that court, José Gimenez Uriburu, appeared on his bench with a mate also featuring the name and shield of the soccer team for which he played.

It should be noted in no case did Cristina Kirchner miss a hearing, she always abided by the law and was not a justice fugitive, just as was the case involving Fabián "Pepín'' Rodríguez Simón, the political operator engaged in her persecution

The lack of independence and impartiality of the Argentine justice system in the proceedings against CFK

While President Mauricio Macri was in office during 2015-2019, CFK was prosecuted on a recurrent basis, and even thirteen complaints were filed against her in all cases by the same lower court Judges Bonadio and Ercolini. 1) '*Dólar Futuro'* case. Judge Claudio Bonadio. 2) '*Obra Pública Vial'* case, known as '*Vialidad'* case. Judge Julián Ercolini. 3) '*Los Sauces'* case presided by Judge Julián Ercolini and before National Criminal and Correctional Court Nº 11 by Judge Claudio Bonadio. 4) '*Hotesur*' case presided by Judge Julián Ercolini and before the National Federal Criminal and Correctional Court Nº 11 by Judge Claudio Bonadio. 5) '*Cuadernos-Causa Principal'* case. Judge Claudio Bonadio. 6) '*Cuadernos–Concesiones Viales*' case. Judge Claudio Bonadio. 7) '*Cuadernos–Concesiones Ferroviarias–Hidrovía*' case. Judge Claudio Bonadio. 8) '*Cuadernos–Subsidios Colectivos*' case. Judge Claudio Bonadio. 9) '*Cuadernos–Corredores Viales*' case. Judge Claudio Bonadio. 10) '*Gas Licuado'* case. Judge Claudio Bonadio. 11) '*Prontuario de Hipólito Yrigoyen y Carta del Gral. San Martín' case*. Judge Claudio Bonadio. 12) '*Vuelos presidenciales'* case. Judge Claudio Bonadio. 13) '*Memorandum*' case. Judge Claudio Bonadio.

All the foregoing cases have been dealt with in higher courts and in almost all of them judgements have been rendered by two Judges: Hornos and Borinsky intervening at the Criminal Court of Appeals (deemed as the highest federal criminal court).

All these judges committed blatant crimes of abuse of authority and prevarication and the last two above and some members of the Public Prosecutor´s Office have been found to have maintained close friendship ties with the then President Mauricio Macri. Yet, the challenges raised by the counsels for the defense were promptly dismissed.

The countless criminal proceedings filed against Mrs. Kirchner in the above mentioned institutional setting of a downgraded Judiciary resulted in her regularly being summoned to make statements in the above mentioned pre-trial proceedings at the beginning of 2016, and as unbelievable as it may seem she even had to face eight pre-trial proceedings on the same day, always summoned by Judge Bonadio. The judicial persecution against Mrs. Kirchner was tailor-made and arranged *ad hoc* against her, to such an extent this legal senselessness whereby a citizen is compelled to appear in eight pre-trial proceedings on the same day leads to the breach of the most basic legal constitutional due process of law principles, thus, leaving her absolutely defenseless. It should be noted these pre-trial proceedings were conducted on a date regarded as very special for her: February 25 (of the year 2019) which was overlapping with the birthday date of her deceased husband and former president of Argentina: Mr. Néstor Kirchner.

As can be seen, alarming shamelessness was observed in this politically grounded bloody and unprecedented judicial persecution: Judge Claudio Bonadio made recurrent use of the above mentioned tactic when deciding to conduct judicial proceedings on specific days deemed of utmost significance for the Kirchner family. This judge was known for engaging in these sorts of twisted ploys. Back in 2015, he ordered a search proceeding at the offices belonging to Máximo Kirchner, current National Representative and Mrs. Kirchner´s son, and the date of the foregoing proceeding was again coincidental with that of her son´s birthday. Also, in 2018, this judge ordered a search to be conducted at Mrs. Kirchner´s residence on a specific date, which resulted in an enormous amount of damage and destruction, and the date of the search proceeding overlapped with that of her granddaughter´s birthday.

Judges Claudio Bonadio and Julián Ercolini were in charge of all the cases in which Mrs. Kirchner was prosecuted. With the use of irregular or at least quite suspicious drawing-of-lot procedures or other tactics for judges to be appointed in all cases, both judges turned into true "attraction judges" of those processes such as successions and bankruptcies also giving rise to other proceedings.

In this particular case, criminal courts and appeals and cassation courts deal with or get engaged in any proceeding whose case name bears the Kirchner surname. In addition to the more than objectionable ploys adopted to tamper with jurisdiction, it is hard, though not mathematically unfeasible, to think the drawing-of-lot procedures may turn out such coincidental results. In that sense, a journalist carried out an assessment with a renowned mathematician to discuss in probabilistic terms the odds for nine out of ten cases to be allocated to the same court with the use of a drawing-of-lots procedure. The results of this assessment were absolutely surprising, and once again confirm the spurious mechanisms used to ensure the feasibility of the political persecution at the court venue in which it was being orchestrated: the odds that nine out of ten cases, among twelve potential courts get allocated to the same court are 0.00000000177%, that is, 2 odds per

billion. So it is absolutely clear specific tactics were used to ensure the judicial prosecution was pursued by some judges, as was the case in all of the facts summarized in this complaint. It should also be noted that just as a sole exception, judges Hornos and Borinsky are the ones who had an intervening role in the Federal Court of Criminal Appeals in all those proceedings. This would be another 'coincidence' to bear in mind since this is a thirteen-judge court divided into four rooms.

The damage to the judicial independence principle is confirmed with the narrative of facts if we take into account the unique frequency of visits to former president Macri´s weekend house and how those visits overlapped with judges Homos and Borinsky´s judicial decisions. The former explained the frequency of those visits in terms of a long-standing relationship, while the latter accounted for those visits based upon sports reasons, that is, he used to play tennis or 'paddle' with the head of the Executive Branch. As to Judge Hornos, an evident fact is worth highlighting: 'friendship' stands as a ground for disqualification. As regards Judge Borinsky, beyond the unexpected nature of the explanation provided, the truth is that should that explanation be true, it would also have easily accounted for the judge's dismissal from his office since this kind of relationships would disqualify him to continue hearing in Mrs. Kirchner´s cases every time inadmissible closeness ties with one of the interested parties in the lawsuit are unveiled.

Therefore, with the publication of this book we confirm the perverse sense of this unfair act. As pointed out by Charlotth Back in this book, Cristina Fernández de Kirchner was not judged pursuant to the Subjunctive Criminal Law, with which any citizen must be judged but the Criminal Law of the Enemy doctrine was applied in her case. That is why in this book we say here we are to point out and recognize all these injustices.

Speeches of the Meeting

POPULAR WILL AND DEMOCRACY

From the military to the judicial party

Threats to Democracy

RAFAEL CORREA

President of Ecuador (2007-2017)

Speech by Rafael Correa

To me, Cristina is a wonderful alchemy between General San Martin and Evita Peron´s way to act and to think. The protector of Peru used to say: the love for my hometown holds me accountable if it might ever contribute to saving it, even if I may be hanged later on. Evita, the armed Cinderella, just like Carlos Fuentes called her, left innumerable legacy statements, among them, the one that today comes to life again. "The homeland is not the heritage of any forces, the homeland is the people, and nothing can stand before the latter without freedom and justice becoming jeopardized".

Along with our unforgettable Nestor, and since the dawn of her political struggles, Cristina has endeavored hard to build a homeland for all Argentine men and women while clamping down on the crimes of looting and larceny of public property by the oligarchy, whose homeland is money only. I recall her call to add up meaning to the notion of sovereignty, since it had to be grasped not only in terms of its territorial scope but also regarding the ideas and the decision to foster a genuine initiative for the building of an independent nation. We are well aware this love for our homeland can be a very high price to pay. A true miracle occurred on September 1st, 2022, which prevented the killing bullets from being fired and putting an end to Cristina´s life. I have just come to realize this event happened on September 1st, on the day of my mother´s birthday.

It is not just an isolated fact, and we should bear in mind it must have been part of a still undisclosed act of conspiracy, as the attempt to kill her is definitely the aftermath of an ongoing incitement to hatred of the usual ones towards anyone impinging on the interests of an insensitive, depredatory, classicist and greedy domineering class. This ongoing venom has been inoculated through justice by the hegemonic press and its collusive acts. Why cannot these acts of conspiracy of a group in which criminal law is enforced for the persecution of leaders because of their ideology be called justice? The ignominious persecution of a specific press sector against the advocates of popular interests are not novel strategies. The ideologist of the radical Peronism party, John William Cook, used to think: "We believe in the freedom of an independent press, though not in the right of these business, capitalist enterprises to strive hard so that the power of the State is at their own service. We charge the press with having encouraged the submission and softening of the national will and attempted to erode Patriotism. We charge the press with having denied the great values of the culture of the people, as well as with having desired to deceive us with downright lies so that our economic conquests would fail".

Lies, fallacies, defamation and unfounded charges rise from this spearhead of political backlash, which has even been able to seize symbols. The bugle was the musical instrument Bolivar and San

Martin´s independent troops used to herald their battles. At present, that name epitomizes the most old-fashioned, stubborn oligarchy role. In the meantime, headlines take over Courts and with the connivance of fifth columnists and appalling columnists, their goal is achieved and unscrupulous criminal law judges fulfill the task. Lula Da Silva, Cristina, Evo and the undersigned have been convicted, and as no evidence for their dishonorable accusations has been or will ever be found, their treacherous acts are explained with legal fallacies typically described in Kafka´s style.

In Lula´s case, an apartment unregistered under his name stood as authentic corruption evidence. In Cristina´s, evidence involved the *"cuadernos" (notebooks)* and the alleged fraudulent administration charges filed by that inquisitive system to which she, with her already renowned bravery, depicted as a media-judicial firing squad. The cruelty of the accusations against Evo ranged from legal to novel-like crimes such as military uprising, statutory rape, and human trafficking. As in my case no single evidence of acts conflicting with public morals has been found, I was convicted for psychic influence. The truth is that Latin American elites´ sleazy desires stand as adequate evidence.

It is a pity this book gets published in parallel with the events having resulted in the breakdown of Argentina-Ecuador ties. The former minister in my administration, architect María Duarte, one of the two dozen people engaged in the so-called "Bribery cases" production- a *lawfare* paradigm-was ushered in at the Argentine Embassy in the city of Quito under the umbrella of humanitarian protection. Once the Argentine president, Alberto Fernández, gave her political asylum and she was denied a safe conduct by Ecuador´s government in breach of all legal tenets. Against this backdrop, with no consent either from the Argentine Ambassador, Gabriel Fucks, or from her officers, María willingly decided to leave the Argentine embassy and to move abroad. In this case there has been no escape though a release, since her legal status was legitimate, she had asylum and was protected by the international and Ecuadorian constitutional laws. Lazzo´s administration outrageously violated the 1954´s Caracas Convention, which compels the State to offer the asylee a safe conduct. As unprecedented as it may seem, the response to María´s exit was that the Argentine ambassador was declared persona non grata, as if been the asylee´s guard rather than her host only.

With this new preposterous act, Lasso´s administration, which was repudiated by an entire people, only confirms this last six-year appalling persecution, referred to as "Correism" and ratifies its uselessness. As an Ecuadorian citizen I would like to apologize for the foolishness of a government turned into the laughing stock of the American continent.

We will soon recover Ecuador for the great homeland, we are almost there.

Nothing and no one will ever forget the Horse grenadier regiment, which led by General Lavalle, and under the orders of Marshal Sucre, fought the Riobamba and Pichincha battles. Neither will the romance of the "Dame of the Sun", the girl from Guayaquil, Rosita Campusano, with General San Martín ever be forgotten.

We will not either forget Eloy Alfaro and Bartolomé Mitre´s friendship or Chepo´s journeys in Guayaquil and the latter´s friendship ties with artists and writers from my country or the fertility of

the philosophical thought of the Argentine masters who went into exile to Ecuador to run away from Videla´s military junta. An unworthy act is unable to erase those brotherhood stories.

To you, Dear Cristina, you know you can count on your Puebla Group partners´ entire support, acknowledgement and admiration. One of this group´s founders is coincidentally President Alberto Fernandez, a key officer in this meeting who has always urged us to support you before so much ignominy.

Stay strong dear Cristina, as I always say: giant men and women in history are passionately loved by a majority and bigotedly hated by a minority, but they cannot simply be indifferent to anyone. We also see how hard that is for you, so I guess it is only worthwhile recalling Maria Elena Walsh´s beautiful verses: “Thank you to disgrace, and to the hand with a dagger as it did not kill me well and I kept singing”. I count on your example, on the Mothers and Grandmothers of the Plaza de Mayo´s endless love, on Adolfo Pérez Esquivel´s fully tender boldness, on the integrity of one of the *lawfare* greatest casualties, a well-meant and honest man like Héctor Timerman, and also on the bravery of our endearing Hebe de Bonafini. Thus, as Silvio´ s song goes: “We will keep playing the forbidden with the foolishness of what currently seems foolish, the foolishness of accepting the enemy, the foolishness of living a life without a price”.

And for our thirty thousand missing citizens, for our senselessly sacrificed young boys at the *Malvinas War*, for our dear Argentina, for our great homeland, for so much pain but also for so much heroism and hope, until victory, forever, dear Cristina.

Marco Enriquez Ominami

He served as a Republic of Chile representative, filmmaker and Member of the Puebla Group.

Cristina´s Resilience

Lawfare comes into play again in Argentina at the expense of our democracies. This time the scenario is Argentina and the target: banning former president Cristina Fernandez de Kirchner from holding a public office.

She gives a proper explanation about the grounds for this political, media, judicial persecution: “They are not after us because we are populists, they are after us because we equate societies for the sake of social justice, and for the workers´ right to share in the gross product of their work. She will never be forgiven for rebuilding the economy during the *virtuous decade*, neither for the development of human rights.

The persecution and harassment of progressive political leaders through the filing of judicial proceedings, in addition to the enormous coverage by hegemonic mass media, have turned into a region´s daily practice known as *lawfare* or legal war.

Cristina is the target of a political persecution system and her case is probably one of the most outrageous ever as its impacts go beyond the ban from holding a public office. Violence against the current vice president even amounted to an attempted murder, quite a distinctive sign of democratic undermining. It was CFK herself who, after her conviction in the *Vialidad* Case became public, stated she was victim of a “judicial firing squad”. Yet, Cristina is resilient.

Legal wars devastate democracies when they turn into victims of the dirty acts of conspiracy led by factual powers which use justice to pursue political ends, to inflict severe reputational damage on the defendant, and to undermine the freedom, social justice and sovereignty-inspired political initiatives of our countries. These legal wars get hold of democracy. Jair Bolsonaro would not have become Brazil´s president if corrupt Judge Sergio Moro had not filed accusations against the former president, and former president Rafael Correa would have won Ecuador´s elections had it not been for the outrageous, untruthful charges filed against him which blamed him for the abduction of an opponent in 2012.

It is the same old story. Elections are won by a popular government and a prosecutor´s complaint is filed against some of its officers during that administration. Then, that complaint is used by the media as a core headline, thus, resulting in the term “complaint” being mistaken for that of conviction, and in that Government becoming a victim of a smear campaign.

This has been the case in Argentina, Brazil, Chile, Ecuador and Bolivia. Corrupt prosecutors and mass media officers´ meetings have been held to destabilize democracies and to ban politicians. In some cases, the principles of legal reasonableness are no longer applicable to clamp down on political

progressive processes. Why does this case only apply to progressive leaderships? Because it harms them where it hurts the most: their values.

That is why we met in Puebla Group four years ago. We realized that only if united would we be able to report destabilizing, influential acts in our sovereign democracies. Thus, we set up the Latin American Council for Justice and Democracy (CLAJUD) as we were both witnesses and victims of the impacts our leaders´ communication and judicial persecution had exerted upon our democracies for political reasons. And that is also why, on behalf of Puebla Group, today we repudiate the political persecution against the Argentine Vice president Cristina Fernandez de Kirchner amidst a process fraught with contradictions and boosted by powerful economic groups´ shady political interests.

And just like when united we achieved our independence in Latin America and in the Caribbean area over 200 years ago, if acting together today, we will be able to get through this judicial escalation of conservative forces, which stand up for their own interests and do not forgive us for fighting for social justice. This is because we stand as followers of San Martin, Bolivar, Miranda and O´Higgings´ trails. We are fully aware we will not be free while there is still someone living in the middle of a muddy area, with lack of water, food, and a sewage system. We place peoples at the core of political endeavors.

Baltasar Garzón (Esq)

Spanish Parliament Representative in Madrid (1992-1994)

Spanish lawyer leading the persecution abroad of perpetrators of crimes against humanity during the Chilean and Argentinian military dictatorships

Judge in the National Hearing Central Court of Investigation N°5 (1988-2012)

Speech by Baltasar Garzón

I wanted to recall the day I met Cristina Fernandez de Kirchner. It was the same day I met President Néstor Kirchner, who was introduced to me by Héctor Timerman. She ushered us into the meeting room on July 30th, 2005, and Héctor had warned me earlier the meeting with the president could not last over twenty minutes; that is why he suggested that during the interview I should take a look at one of the president´s legs because if he swiftly moved one of them, it would be a clear sign to indicate we had to stand up. I never knew whether Hector was actually joking. The thing is that I kept glancing at Néstor´s leg during the whole interview just to check whether he would move it or not. I must confess he did not move it at all, and after two hours it was me who said: President, we have to leave, as your wife, Senator Cristina Fernández de Kirchner, is waiting for us at the Navy Mechanics School (ESMA) for a guided tour with her. There I met Cristina, thanks to the Mothers and Grandmothers of the Plaza de Mayo.

We paid a visit to ESMA premises, which until that time, I had only seen in papers and in documents. Seeing these premises in person let me confirm they still remain the same. It is absolutely moving and painful to see how the progression of ancient images get recreated there, but just as I said at the ESMA International Forum of Human Rights, we can now also see this country´s achievements: something nobody can deprive us of.

Nobody can erase the memory of those gloomy days when they wanted to root it out from the start, and that is the remaining legacy of all men and women, primarily, of victims.

Talking about the Vice President Cristina Fernández de Kirchner implies talking about someone who embodies devotion to Argentine people and gets confronted with power groups.

She has not yielded in times of trouble or before the worst case scenarios, no matter how mighty the enemy was. In no case has she surrendered or given up before any hurdles that might have hindered advocacy of legitimacy and of the most vulnerable ones and has always shown an enthusiastic, all-embracing and unceasing dedication to the Argentine people.

As a jurist, I just wanted to refer to the 1600-page hellspawn called judgment and also to the fact that court proceedings are to be believable, understandable, and convincing. Explanatory statements are not even applicable in these cases. When a court ruling calls for a long, detailed explanation, something has definitely gone wrong. That is why a judgment must be grounded on

actual evidence rather than on strongly unfounded assumptions or hypotheses or clues since what tells a clue apart from an assumption is the ground the subsequent inference is then based upon.

In the *Vialidad Case* judgment, which has promoted the *lawfare* discussion in this book written by several jurists and comprises a collection of news items and decisions from CLAJUD (the Latin American Council for Justice and Democracy), it can be concluded the judgment is groundless. There is no evidence in advocacy of that judgment, and under no circumstances can the arguments submitted stand as adequate, sound, believable grounds for a judgment like the one delivered against us all, who believe the law equals a peace, mutual understanding and human synchronism instrument.

The ones do not like us argue: that is where the wound hurts, and it hurts because it hurts one of us. The truth is that we no longer remain speechless before judicial outrage acts and we are not going to do so from now onwards. We have learnt something, in my case from far away, while in close contact with Argentina as I am well acquainted with the vice president´s decisions, statements and speeches. One may argue she is acting in self-defense. Yet, something else would, in fact, be missing, and that is, that she is also convincing. And that is what that judgement, that court ruling has actually disregarded. In other words, what sentencing judges lack is an unwavering power of conviction.

It is also vital and I have myself requested so, for the credibility of the judicial and democratic system, that the investigation of the attempted murder against Vice President Cristina Fernández de Kirchner is pursued until the bitter end. There is no worse injustice than mishandled justice. I am absolutely convinced they are trying to conceal something. And I am not saying we should first point a finger at someone, but getting to the heart of the matter is mandatory, so that the judicial system grows stronger.

Is this judgement aimed at the attainment of a political goal? Yes, it is. And even if a pretty clumsy legal system is involved? Yes, because the goal in this case implies the banning of someone having devoted their entire political life to public service, and that is crystal-clear. When speaking about money laundering of millions and millions of Argentine pesos, and the like, I wonder... how can this argument be raised in a court ruling in the absence of undisputed evidence to confirm that crime? No, no value judgements can be made, and neither can trial balloons be sent to mistrust someone because many years, and many decades will go by until people in Argentina and abroad can restore their trust in justice. As a jurist, I find all this absolutely painful. If someone is unworthy in this case, they are the judges and prosecutors engaged in this outrageous crime.

Juan Evo Morales Ayma

President of Bolivia´s Plurinational State (2006-2019)

Speech by Evo Morales, former president of Bolivia´s Plurinational State

The situation of politicians like that of Cristina or mine at present is tough because defending humble people seems to constitute an offense. That is why we have been victims of political persecutions and, when undefeated at a political, electoral, social or cultural level, they attempt to defeat us in court, and this is Sister Cristina´s case. Therefore, on behalf of Bolivia, women, "bartolinas", "juanas" and all social sectors in advocacy of Sister Cristina´s hard struggle would like to express our solidarity with her.

When you cannot be ousted from power by a *coup d´etat* just like in the times of the Condor Plan, the judiciary and congressmen currently overthrow political leaders who advocate their people.

When I am invited to visit to an Argentine province, I can see all support and love for Sister Cristina. Neither will the Bolivian people ever forget Brother Alberto Fernández, and Sister Cristina, for having saved my life.

Once I heard Brother Nestor Kirchner publicly saying: "Take care of Cristina". That is why it is our duty to take care of and to defend Sister Cristina. Unfortunately, some foes at home and abroad would not like to see the Great Homeland free. Thus, it falls upon us to stand for it not only as former authorities, but also as social leaders. I have been involved in trade union and community social struggles and it was then when I learnt how hard it is to advocate our homeland sovereignty and independence. I understood and learnt how difficult it is to be a political leader at the service of the humblest people, but that is our ideology.

If united, we are likely to prevail. I have never been able to study due to family and economic reasons. I became president when I had no academic background, and I can ascribe this achievement to the truth, to my partners´ honesty, to the ongoing debate, and to many of my country´s scholars, who have been my mentors like former Vice President Alvaro García Linera. Acting together, we have won innumerable battles.

We have been involved in those battles, that is why our brief social struggle experience is paramount because we are still targets of the empire- we are now fighting over lithium, but based on our own experience we will be able to defend ourselves. We have never surrendered and we will never do so, and that is how we are going to stand up for Sister Cristina.

Oscar Parrilli (Esq) (Argentina)

National Senator for Frente de Todos Party

Secretary General in Nestor Kirchner´s Administration (2003-2007) and Cristina Fernández de Kirchner´s (2007-2014)

Speech by Oscar Parrilli

I have simply prepared a very brief overview:

We are not here before a divine justice judging a former government officer, neither are we standing before natural or democratic judges conducting a judicial investigation.

Just as Cristina Kirchner once argued, we are standing before a firing squad made up of judicial mafia members risen to the hierarchy of a judicial party; and I am going to introduce you to those judges as I deem it vital to do so, primarily, so that current visitors to this UNESCO´s Human Rights Congress get to know them. It is key we can at least get to know them through a brief, quick overview.

Firstly, there is Julian Ercolini´s case. As Cristina used to say, this is a changing judge as the ruling he gave before December 2015 was fully reversed after December 2015. It is the judge who had been invited by Rendo, the owner of Clarin, to attend a party given in the district of Lago Escondido, Bariloche, for an unknown reason, and he travelled there on a private jet. Major cases on public works like Hotesur or Los Sauces cases, have been heard by this judge.

Judge Martin Irurzún. I remember this judge who- among other things- got my telephone wiretapped. He was accountable for the phone wiretapping offense and he then seemingly let messages leak through the press. He is the one who has developed the "Theory of Side and Subsequent Effects", whereby all of us, who were or had been Kirchnerism´s officers still had some power left and could exert influence on justice. Therefore, and by way of example, he sent my partner Carlos Zannini, who is here today, as well as many other partners of mine to prison. Irurzún was the judge who invented the *"route of the K money" (la ruta del dinero K)* to refer to one of the cases.

Here is the case of another judge whose name is Leopoldo Bruglia, who along with Pablo Bertuzzi, refer to themselves as "special judges", handpicked by Mauricio Macri through the "transfer of judges" procedure. Law students (and Ernesto Samper has already stated so in this case) are aware that all citizens have the right to be judged by natural judges, that is, we are entitled to have intervening judges become final judges, who hold a permanent office resulting from a judges´ competitive appointment system. In case of Macri´s handpicked judges, their appointment was useful for the dismissal of other judges regarded as disturbing for those in power. After our 2019´s victory, the Supreme Court referred to the mishandling of judges´ transfers but they had to remain in office and get ultimately dismissed by the Judicial Council. When we initially embarked on this

journey, the Judicial Council served an intervening role, and Cristina Fernández de Kirchner keeps on being tried by these two bodies.

And now it is time to talk about Gustavo Hornos, the Head of the Court of Criminal Appeals. He visited Macri at the *Casa Rosada* on a six-fold basis and is currently investigating Rodriguez Simón´s case. Have you learnt the Uruguayan Supreme Court has agreed to get him extradited? Well, let us hope he will not travel to Miami and we can eventually have him back in Argentina. Yet, this judge, Gustavo Hornos presiding the Court of Criminal Appeals, which is the major one with criminal jurisdiction, is a friend of Macri´s, and has visited him at the *Casa Rosada* also on a six-fold basis.

And here is Attorney General Eduardo Casal. He was engaged in Gils Carbó´s persecution case and with Clarin newspaper as an aider and abettor in this case, he published her daughter´s phone number so that she would get threatened, and so he got her to tender her resignation for fear her daughter might be hurt. This is the attorney general who has been serving as an acting prosecutor for seven years and has also been hand-picked, thus, getting hold of an office is not his.

And here is Judge Carlos Stornelli. Well, what can we say about Carlos Stornelli? He was an 8-month fugitive and got involved in D´Alessio Case. Do you remember that case? Dalessio is still in prison under charges of illegal espionage. This man, Stornelli, is involved in the above-mentioned case and as he failed to appear in court, he managed to go unpunished in this case. He is also the judge who offered businessmen a verbal reward while arguing that if Cristina Kirchner got appointed, they would be able to get back home; otherwise, they would remain in prison. These facts were coincidentally confirmed by the businessmen being victims of this extorsion case. Stornelli spied his former wife´s husband with an espionage device kept at the Federal Intelligence Agency (AFI). Great people both: the judge and the officer!

And now let us talk about Judge Mariano Borinski. He broke a record since he visited Macri at the Olivos Presidential Residence and at the *Casa Rosada* on a sixteen-fold basis. The Court of Criminal Appeals federal judge closed the investigation involving the cases of the visits to Olivos presidential residence, the forward exchange rate and the Memorandum of Iran.

And now it is time to refer to Judge Jorge Gorini, one of the sentencing judges intervening in Cristina Kirchner´s case. He used to meet Patricia Bullrich when she was serving as Minister of Security and had also been assigned a special security role.

And this is Diego Luciani. Everybody is familiar with this prosecutor who used to play soccer with Macri at Los Abrojos´ weekend house and is the one having requested Cristina Kirchner´s conviction.

And now there is the Mahíques family. Honestly speaking, out of the three family members, I do not know who I prefer, do I? One of them, the chief of prosecutors, travelled to Lago Escondido, the other one brought charges against Cristina and the third one was entrusted with judges´ appointment procedure. What a great judicial family! Their names are Carlos Mahiques and Juan Bautista Mahíques. We can see them over there, their faces matter. Among other things, the former travelled to Lago Escondido, used to play paddle with Macri at Olivos presidential residence and was

also the one who argued no espionage crime had been committed against the Ara San Juan victim´s relatives. Furthermore, he had masterminded the espionage crime Macri perpetrated against his own family.

And now it is time to talk about Carlos Rívolo. This is another prosecutor who used to visit Patricia Bullrich at the time she was serving as Minister of Security and is currently pursuing the investigation on the attempted murder against Cristina Kirchner, and the latter along with Judge Capuchetti, refuse to investigate either the economic ties, or the masterminds behind the assassination attempt against Cristina.

And finally, let us talk about two Supreme Court members: Rosencrantz and Rosatti, the judges who voted themselves for Supreme Court justices and for president of the Judicial Council. Since Rosatti took office, the Judicial Council has been inactive. It should be noted the latter repealed a law which had been effective for 16 years and also passed a new one.

As we all know, Rosenkrantz served as lawyer for Clarin, for Macri and for other 200 companies.

All of them are under the scope of protection provided by “Pepin Rodriguez Simón”, an Argentine justice fugitive and member of a judicial board that had advised Macri to appoint Rosenkrantz and Rosatti as Supreme Court members, without the Senate´s approval to that effect.

This is the firing squad; it is neither divine justice nor independent or democratic justice.

Many thanks to all of you!

Gerardo Pisarello Prados (Esq)

Congress of Representatives First Secretary on behalf of "En Comu Podem" (2019-up to this date)

General Courts Representative for Barcelona on behalf of "En Comu Podem" (2019-up to this date)

Barcelona´s Major First Lieutenant (2015-2019)

Argentine lawyer-Spanish

Speech by Gerardo Pisarello Prados

First and foremost, I would like to share a personal thought.

Even though when expressing these thoughts I am serving as Madrid Congress Representative, as an Argentine man originally born in the province of Tucumán, I would like to reflect upon this status I have had throughout my life, and even if I have been serving as a lawyer in Spain for long, I am going to speak as the son of a humble lawyer: Angel Pisarello, who was abducted and assassinated in July 1976 in the city of Santiago del Estero, for being a political prisoners´ defender.

My father had been born in 1916 and was a Radical Civic Union activist during his whole life. In 1949 he became the only radical senator in the province of Tucumán, at a Senate where his other colleagues were all members of the Justicialist Party. Despite the disagreements he may have had with his partners, when the outrageous *coup d´etat* broke out in 1955 and let him witness the Plaza de Mayo bombing amidst the fierce repressive act against so many Peronist activists, he understood the reasons that had given rise to that coup were unrelated to the ones why he could disagree with Peronism, and that that repression had taken place so that a social justice initiative in Argentina would never be at the service of popular majorities once again. As a result, when the *coup d´etat* began, my father focused on three tasks namely: leading an ongoing struggle against the banning of Peronism in Argentina, turning into an attorney for the defense of many of those having been his political opponents before 1955, and becoming the lawyer of many young, Peronist, socialist, communist and Christian male and female workers with different ideologies, who at the end of the 60´s and 70´s stood as victims of that appalling experiment of what would be known as the *lawfare* of that time, and the State terrorism in Argentina. He did not obviously agree with that generation´s ideas, but one thing was absolutely clear: if the State hatred, if that fierce claw was hovering against that generation, it was because it entailed a generation struggling for Argentina and for Latin America, for a social justice, for a political and economic democracy-based independence initiative throughout the continent. That is why we keep saying our thirty-thousand men and women who have been sent to jail and gone missing are present here today and forever.

When the military dictatorship came to power in 1976, my father, who was a political prisoners´ attorney, was abducted and murdered during Antonio Domingo Bussi´s genocide administration in the province of Tucumán. If my family, like many other Argentine Northern region´s families were

able to restore our dignity, it was due to the mobilization of hundreds of thousands of female and male workers and of human rights associations as well as to the exemplary rally of our Mothers and Grandmothers of the Plaza de Mayo, who we keep on embracing as the entire mankind shared legacy.

If my family and so many other Argentine families were able to recover their dignity, that was ascribable to the different governments´ determination to fight against non-liability. That is why when I was only a little child, I had the chance to express my gratitude to Raúl Alfonsín for having prosecuted the military juntas in 1985. So, when I first visited Argentina as vice mayor of Barcelona city, I did not hesitate to go and meet President Cristina Fernández de Kirchner to express my gratitude towards her, and also to tell her that as a result of her Human Rights policy, the assassins of the best Argentine leaders ended up in prison after trials which enforced those guarantees denied to their victims, and were thus sentenced for crimes against human rights.

Therefore, I would like to leave my testimony in this book to express my support as I am aware and it is quite clear to me the ones who shamefully and arbitrarily oppress Cristina Fernández de Kirchner may do so for different reasons, though a major one stands out: they do not ever forgive Cristina for being a president who struggled to prevent the Argentine military dictatorship crimes from remaining unpunished and she has also struggled to develop a social justice model for Argentine popular majorities. I also know the ones who arbitrarily victimize Cristina Fernández de Kirchner are the same people getting delighted at the fact that Antonio Bussi´s son is currently in good terms with an obnoxious politician like Milei, which results in our going back to times that should never be back in Argentina. I am sure Cristina´s victimizers are the same people who argued they were happy at an unscrupulous businessman like Pedro Blaquier´s unpunished death, after they had been held liable for more three hundred abductions and dozens of murders of sugar cane industry female and male workers in Jujuy province and in the Argentine Northern region.

I would like to share that while we could see justice in Argentina being partially done, I had to face tough years of an-exception-from-punishment policy in Spain, a country with over a 40-year dictatorship where very noble people have struggled for the same causes as the ones we have struggled for but in Argentina. I remember when no judges would listen to my mother, the first one to listen to her in Spain was Judge Baltasar Garzón, who had struggled against Franquism crimes and was a *lawfare* victim, as he had been brave enough to face up impunity. And if my mother was ever listened by a judge in Spain, it was because she had a lawyer from Madrid called Enrique Santiago who would offer support to hundreds of Argentine victims at a time they were in Spain searching for justice they would not find in Argentina. Thus, if there is a lesson we have learnt, it is the struggle against *lawfare* hits in times we are victims of this ruthless financial capitalism and merciless neoliberalism. We are living a global fight with an unequal impact on the Southern and Northern regions. Yet, it is a global fight, a fight against a global threat and there is a single way to fight it, and a single way to dismantle *lawfare* from a financial, military, police and judicial standpoint. The foregoing goal is, in fact, achieved with international solidarity. We have to be aware of our Great Homeland and count on the Latin American Unit to face up the *lawfare* threat at a continent-wide level, and we-the ones who come from the other shore- come here to suggest that we ought to do

something from Spain. We come here to ask for millions of Spanish, Catalan, Basque and Galician men and women´s support so that they stand up for all political leaders like Cristina Fernández de Kirchner and for all social leaders and activists victimized for the advocacy of social justice initiatives at the service of popular majorities.

Engaging in a simply sensible analysis does not suffice to carry out the foregoing task. We have to have the feelings and convictions like the ones advocated by another world known Argentine man that I would like to remember today: Ernesto Guevara, El Che, when he used to say: “Be capable of feeling the injustice against anyone as your own, anywhere in the world”. So be it.

Gisele Ricobom (Esq)

Brazilian lawyer and researcher at the Latin American Justice and Democracy Council (CLAJUD)

Speech by Gisele Ricobom

I would like to say this book entitled "Target: Cristina, the *lawfare* against democracy in Argentina" is the outcome of a cooperative endeavor and that is why I am writing here on behalf of a group of people that when called upon to fight, they turned up.

Lawfare is the criminalization of politics, though not of any type of politics, but rather of social justice enforcement policies, only if those policies are criminalized. *Lawfare* involves four or five quite specific strategies namely: an anti-corruption speech hypocritical strategy, the widespread use of the mass media, the Criminal Law of the Enemy, and the justice system cooptation procedure. It should be noted that with respect to Brazil and Argentina, *lawfare* is contingent on a context, on society and on a patriarchal society. Still, we women are not going to go back home as we are already holding power offices. This book is a historical record of a very unfortunate chapter in the Argentine history, which should never again victimize any other Latin American women. Yet, this book is intended as an instrument for global complaints, which is of utmost importance. As jurists engaged in Human Rights, we are not going to keep silence before the countless violations of rights against Vice President Cristina. We are not going to remain silent.

Those violations entail a genuine Argentine State of exception as they are absolutely deleterious to Justice and to the international system for the protection of Human Rights. As jurists, we are going to bring that partisan Justice to court, since, on the one hand, it fails to pursue an investigation on the masterminds of the attempt against Cristina, and, on the other, it shows a true victimizing cruelty against the vice president.

As jurists, we are also going to report that unrelated-to-law legal category, that is, the special lifetime ban, which implies an attempt to perpetrate a civil assassination, as no other outcome will be achieved. We will not allow that to happen. We are fighting and we are going to file complaints, and just like many Latin American jurists and women, we will keep filing proceedings until Brazil´s case gets replicated. I had an enormous privilege to work with other Brazilian lawyers to write a book also based on Sergio Moro´s judgement. I supervised a similar work in advocacy of President Lula, and I was entrusted with handing in the book to him prior to his imprisonment. At present, we are all aware of the facts, Brazilian people already know that criminal law judge and we already know Lula has been reelected president. I think is a great signal to hand in this book to Cristina.

José Luis Rodriguez Zapatero (Esq)

President of the Spanish Government on behalf of PSOE (2004-2011)

PSOE Secretary General (2000-2012)

Speech by former Spain President, José Luis Rodriguez Zapatero

Those of you who know me and have listened from me before, know that if there is a country I am fascinated by and even feel mesmerized by, that country is Argentina. I am an enthusiastic follower of Argentina´s latest political issues, which is primarily for one reason: I was in Argentina by mid-August 2022, twelve or fourteen days prior to the attempted murder against Vice President Cristina. I was absolutely dumbstruck at learning they might want to kill her and it hurt me both for Argentina and for her that political violence could go back again to that beloved country, which had gone through so much hardship and struggled so hard to develop a non-violent politics-based democracy and society. A violent-free politics society is ultimately the great ambition of any civilization, of all our struggles for democracy behind that eagerness to guarantee non-violent politics. Non-violence with reference to the use of force, or of a rifle and to shooting, but hatred and insults entail violence, and the unfair act of disqualification and resentment implies violence, as well.

Never has anything advantageous for countries and people been achieved upon the basis of hatred, resentment, lies and insults. I was indeed shocked at that act of violence for a couple of days because I love the Kirchner´s family. We work together and they are part of my political sentiment. I belong to that generation that lived life to the fullest when we were young and lived in a country like Spain where democracy was surging. It was a time when we wanted to see Chilean and Argentine´s military dictatorships ousted from power, and we used to welcome Argentine and Chilean people to Spain. We would welcome them home, but I do not know whether we treated them like they deserved to. In line with their statements, we were able to confirm the military dictatorships appalling acts as well as the disappearance of 30,000 people.

When I was at the former ESMA premises, I felt deeply moved at the pictures of so many missing people displayed on the windowpanes.

A country without memory is a country with no dignity and a country with memory is a country with dignity. Those forty years of democracy have also left a legacy of Argentina to the world, the legacy involving the struggle for Human Rights like no other country has ever endeavored to undertake in order to address the issues of memory, restoration and justice. And do you know when these issues were fully addressed and under what government? I was serving as president of the Spanish government and I can assert this incident dates back to Nestor and Cristina Fernández de Kirchner´s administration. I still remember when I officially visited them in 2007 and we were by the De la Plata River, and along with the Mothers and Grandmothers of the Plaza de Mayo laid a wreath by that

river as a tribute for missing people. The Mothers and Grandmothers of the Plaza de Mayo stand as a permanent legacy of mankind and dignity and they are from Argentina.

Therefore, there is no need to grieve. We are only asked to stand up for the convictions of democracy, rights, liberties, and human rights defenders, who have been advocates of these rights during the Argentine democracy all over these years. There is no need to feel grieve, there is a need to fight and trust: I have abiding faith in democracy. And how aren´t we going to have that faith if we have built a democracy and it is what we stand up for, what we embrace regardless of its flaws and challenges? Democracy is a struggle for democracy, just like the Rule of Law is an ongoing struggle for the Rule of Law. That is why I say it and foretell it: the Rule of Law sooner or later will prevail in Argentina. In Cristina´s case as well as in all cases, my theory is that justice has to take over, otherwise the judiciary will prevail. That is why there are some systems calling for progress, development and building in the Latin American region, just like in Europe´s case in which a Strasbourg court is ruthless about demeanors since the principle of equity lies at the core of a judicial fair process. I am going to give away a secret: never in my life either as a politician, opposing leader, or government president, did I bring any charges against my opponents. And I did not do so because I knew I would defeat them at the polls, in the Congress and in the public debate, which is what we are supposed to do in a democracy. We, political leaders, who have held institutional offices, are responsible for the non-judicialization of politics as justice ends up being politicized, and an enormous harm is inflicted on the Rule of Law, on democracy and on trust in institutions. I have always thought that holding power and being a politician primarily involves a great deal of support, and we must be conservative and submissive. I can assure that just like in Brazil´s case, and as earlier or later will happen in the cases under review such as the so well-known *lawfare* case, which stands as a novel, legal, political category, truth shall prevail. It is true I am known to be an optimist. Yes, I am, but you should not be doubtful that only if convinced that something is achievable and will happen, can that goal be achieved. In other words, there is no need to grieve, let us pursue a courageous, peaceful, democratic attitude. And I definitely embrace democracy, the Rule of Law, and respect for institutions. Anyone who knows me, and my country is aware of that, knows that as a president I have been a truly law-abiding advocate of the separation of powers. Never did I file a legal complaint, and neither did I think about taking an action or waiting for a prosecutor or judge to get me out of trouble. No way. Politics is something different and, even more, in democracy. We feel confident when we know we have not used any odd tactics to defeat our opponents. And do you know what happens in that case? Democracy prevails, just like it has in Argentina´s case that we have been able to recover the Mothers and Grandmothers of the Plaza de Mayo´s dignity. On behalf of these people and of those ones missing from so many countries, we have to set the best examples to advocate Democracy, a peaceful fight, the struggle for ideas, arguments, convictions, values, and testimony. The testimony of so many men and women has always focused on the future, and, in this case, on the future of Argentina, which is not only a world soccer cup title winner. That laudable Argentina features the best Spanish writer, Jorge Luis Borges, and bears the title of what I care the most: it is the country that has struggled best and the longest for the advocacy of human rights worldwide over the latest forty years. And that country has been the Argentine people, along with Cristina.

Ernesto Samper

Colombia´s president (1994-1998)

UNASUR´ Secretary General (2014-2017)

Speech by Colombia´s former president: Ernesto Samper

What I would like to do is almost simply a personal confession. I did not have the privilege to be a close friend of Nestor Kirchner´s and unfortunately, he passed away too soon. I met him on a very unlucky time for Colombia, like many unfortunate times we have had to go through as a result of the armed conflict with Venezuela. At that time, he was trying to serve as a mediator to rescue a child held prisoner by the FARC. It was on that occasion that I had the opportunity to appreciate his human nature. But in fact, it is an honor for me to be Cristina´s personal friend rather than her politician friend, in addition to being a politician.

I learnt three very important things from her, which have been decisive factors for me to shape my thoughts about this region. First of all, there are two words that should never fall into oblivion, and that is the *Malvinas Islands*. There are two Latin American enclaves that cannot ever be forgotten: the Cuba´s Guantánamo Bay base and the Malvinas Islands. The second thing I learnt from Cristina is that the holdouts not only eat carrions, but also erode countries. I am aware of all the damage the International Monetary Fund has inflicted upon Argentina, and of our need to create a new regional independent financial structure. And the third thing I learnt is the grievance missing people feel during military dictatorship times. In Colombia´s case the number of missing people has amounted to one hundred and ten thousand over the last thirty-year term of armed conflict. No crime is worse than forced disappearances. Families and victims do not know what happened to their beloved ones, where they are buried, or how they died, what they might be up to, whether they have survived, and at what cemetery their remains lie forgotten. I learnt about the missing people´s tragedy when Cristina introduced me to Estela and to the Grandmothers of the Plaza de Mayo. Thus, it is this kind of people she has advocated, that is, those wanting the promoters of impeachments against her to fail, as I have found no undisputed clue or evidence to confirm any of the crimes Cristina is being charged with. Therefore, Cristina, I do not need to read the judgment to know you are innocent.

Eduardo Valdés (Esq) (compiler)

Frente de Todos National Representative

President of the House of Representatives´ Ministry of Foreign Affairs Commission

Speech by National Representative Eduardo Valdés

When I talked to Marco Enriquez-Ominami (Chilean filmmaker and politician founder of the Puebla Group) about holding a discussion on Cristina´s case with the Puebla Group and having it disclosed at a worldwide level, it was because I wanted to point out I had escorted Cristina Fernández de Kirchner to eight pre-trial proceedings led by the same judge and the same prosecutor on February 25, 2019. That day I felt my blood boil as the Argentine mass media had accepted a fact that had never been heard of before in the Argentine judicial history. So, I began to investigate and found no Argentine citizen had ever been summoned to appear in two pre-trial proceedings in the same court, on the same day.

Since then, I have asked myself: How many cases have been filed against Cristina? And when I came across the number, not even Cristina herself was aware of that number. Moreover, she did not believe me. 654 complaints, which turned into the cover sheet of myriad of newspapers, and hours of television-viewing time, had been filed. And what were they all intended for? They were intended to tarnish Cristina Fernández de Kirchner´s image. Do you know how many actions were brought against Cristina´s forerunner in the Argentine judicial history, if we discuss cases at a civil, political or business level? 123 actions were filed against former Argentine president Juan Domingo Perón, and 654 have been filed against Cristina.

Within this framework, we learnt Julián Ercolini, the judge who prosecuted Cristina, had accepted bribes from the media group having disclosed each of those 654 complaints on the radio, on television and in the newspapers. And we also learnt the judges who had brought Cristina to court used to play soccer with former president Mauricio Macri in his residence. And so did prosecutor Diego Luciani. Yes, that is certainly true. And to give further examples of those embarrassing outrageous acts, the day after the persecution of the judges trying Cristina became known, the president of the tribunal who finally convicted her, made fun of us appearing on his bench with a “mate” displaying the name and shield of the Liverpool soccer club for which he used to play at Macri´s residence.

So, the judge who has filed charges against Cristina as well as the other judges, the intelligence agents and opposition leaders, who also convicted Cristina, seem to have accepted bribes. And what is more: those judges and the prosecutor who had tried and sentenced her, had been seen playing soccer in former president´s weekend house not only on one occasion, but on many.

So, I would like to point out Cristina has never missed a hearing, she has always abided by the law and has not been a justice fugitive just like Pepín Rodriguez Simón, who was political operator engaged in Cristina´s persecution. It seems that after he was found in Uruguay by the Argentine television journalists, an extradition order was issued so that he could be brought to court in Argentina.

Cristina Kirchner, I insist, has never missed a hearing and she has always been law-abiding. Thus, in light of this book publication, this unfairness act seems to be pervert.

As Charlotth Back points out in these pages, Cristina Fernandez de Kirchner has not been tried according to the Substantive Criminal Law, with which any citizen is. Instead, the “Criminal Law of the Enemy” doctrine has been applied. That is why in this book we argue: we are here to highlight and give testimony of all these unfair acts.

TARGET

CRISTINA

Lawfare against democracy in Argentina

FOREWORD

*Baltasar Gazón**

*Spanish lawyer and judge. Honorary doctor in thirty universities. President of the World Jurist Association (Europe) since 2019. President of the Administration Board for UNESCO´s International Center for the Promotion of Human Rights in Argentina (2012-2016). Advisor of the Human Rights Committee of the Argentine Honorable House of Representatives from 2010 to December 2012. Member of the Council of Europe Committee for the Prevention of Torture (2011 and 2012). Advisor of the International Criminal Court Prosecutor´s Office. (2010 and 2011). Advisor for the Mission of Support to OAS Peace Process in Colombia (2011 and 2012). President of Pro Human Rights and Universal Jurisdiction International Foundation (FIBGAR) and member of a group of lawyers in advocacy of Julian Assange.

The use of legal procedures for political ends dates back to so long ago that its origins get lost in the mist of time. As examples known to you all, we can refer to *Santo Oficio* Court trials, including the one against Galileo Galilei, or even to prior cases like the lawsuit against Sócrates or, in case of Christian believers, to the trial against Jesus de Nazareth, and even more recently, to the War Councils of the diverse military dictatorships such as that of Spain or Latin America. We can also allude to autocracies, which through the adoption of court resolutions, strive hard to legitimize repression, submission and even death. What is more, they even legitimize the non-liability of perpetrators, who are much harder to persecute and prosecute if being members of the judiciary.

Lawfare, however, is not quite an old term resulting from the grammar contraction of the English words "law" ("*ley*", in Spanish) and "warfare" ("*guerra*", in Spanish). What is new about this notion is that even if justice manipulation has always served as a tool for autocracies and military dictatorships, this phenomenon has currently become enrooted in democracies, thus, resulting in their becoming downgraded. This would be the case of a judge or a prosecutor who while pretending to act with absolute legitimacy, no longer holds unbiased views and takes on a role which inwardly undermines the separation of powers principle, the Rule of Law and democracy, this fact, thus, resulting in the application of the State own mechanisms intended to that effect.

Whether it being out of fear, rapport or convenience grounds, judges submit themselves to power authorities up to such an extent that they may end up being shattered or contrived and the Law and statutory regulations may be deemed invalid. It goes without saying international standards (treaties) may fail to be observed, as appropriate; all of the foregoing with the ultimate goal being to benefit the parties concerned, who would generally be a political, economic or corporate power to which loyalty is owed, as well as to the political or economic interests they account for.

These are perfectly orchestrated campaigns linking a political issue with a media and a judicial one, and which will invariably appear to be legal and righteous, but the truth is it suffices to attentively look at those campaigns to begin to notice their irregularities and wrongdoings, which constitute a breach of evidence, an infringement of the law or of the due process of law.

This book assembles a series of opinions, documents and news items about the *Vialidad* Case, and, generally about *lawfare*, in which diverse viewpoints are freely expressed against the backdrop of the Judicial Independence Rapporter´s work on the justice system in Argentina, which was submitted before the United Nations (UN) in 2019.

There is no denial Cristina Fernández de Kirchner, Argentina´s two-term president and the current vice president of the South American country, has been and still is the target of a blatant judicial persecution. It is unfeasible to think that anyone may have committed so many reputedly wrongful acts like the crimes Cristina is charged with, which in all cases have been found ungrounded. In the framework of those legal actions filed against her, it is hard to find a higher number of flaws or errors (in the best-case scenario) when not involving criminal offenses (perpetrated by the diverse legal practitioners involved in that process). Indeed, we have gone beyond the notion of negligence to actually refer to blatantly fraudulent acts.

Political leaders must definitely be held accountable for and be subject to independent audits. This is a healthy, advisable, democratic transparency principle I could not agree more.

In view of the relevance of the legal proceedings, I also believe extra care must be taken when referring to guarantees, transparency, fairness and independence tenets, thus justice being safeguarded from any interfering acts. The *Vialidad* Case tenets have been ignored and we can therefore reach the unsettling conclusion that everything has been deliberately arranged to kill Argentina´s vice president for political and personal reasons. Guarantees have been infringed, evidence is tainted and has been seized and tampered with, witnesses have been corrupted and experts´ reports have been mishandled, and so on and so forth.

In the absence of arguments to account for the judgement rendered, it all looks like a sinister game which will not serve an exemplary role, but will further undermine the by this time severely damaged disbelief in justice. Society will be victim of adverse and particularly harmful effects such as: lack of trust in a reviled justice and in legal operators and judges rendering and upholding judgements; the decline of the Rule of Law, which is once again incapable of preventing its use for the sake of spurious interests, and to the detriment of basic rights held by those ones representing popular interests before the opponents; and last but not least, the downgrading of the justice public service which remains defenseless on the ground like a tissue paper.

The fact that political leaders get cunningly confronted with one another and use little uplifting tricks within their own sphere are unfortunately the expected drawbacks in Politics even when these ploys will always be something to repudiate. But something quite different is the use of justice as a projectile weapon to politically defeat rivals, thus resorting to conspiring judges and prosecutors who are either unfair or do not want to observe fairness. *Lawfare* is a perverse, destructive weapon which undermines the justice system from within. Thus, the judges´ objection to that use of justice and their strict approach in advocacy of justice independence and fairness is the only feasible system to protect democracy and to safeguard citizens who do not deserve to be victims of such dirty game. There are and there will always be external influencing factors, though judges and prosecutors are ultimately the only ones to be held accountable for Justice becoming tarnished and corrupted when they come to terms with such subterfuges. A vicarious justice is not justice as it will always be biased and, therefore, arbitrary.

The essence of Law

Lawfare corrupts the ultimate goal of law, which is, above all, serving as a facilitating tool for human beings to live peacefully together. It intends to settle disputes with predetermined rules, principles and regulations, which are to be enforced by an independent, fair third party, that is, by a judge assessing the evidence and enforcing the law while also taking into account the arguments for and against conflicting viewpoints. When the law, particularly, criminal law is not enforced for its intended purpose, it gets corrupted and turns into a prosecutors and judges´ weapon employed to do away with the political opponent, who has turned into a true foe to defeat. *Lawfare* also involves an act of betrayal in law as perpetrators downgrade their promise or oath to enforce the Constitution and the laws and render them unenforceable. It is an extremely serious issue because

the law guardians themselves corrupt the law, such as when a policeman turns into a thief, a prosecutor infringes the law, and a judge is deliberately unfair.

The unbiasedness and independence notions can generally be conceived as values, principles and even as institutional systems regarded as paramount for the righteous administration of justice. They are and have always been of utmost importance, but today they are even more significant. Since 1948 these notions have been explicitly enshrined under section 10 of the Universal Declaration of Human Rights where it is argued that anyone is entitled to be brought to trial before an independent, unbiased court. A similar provision is set forth under section 14 of the International Covenant of Civil and Political Rights, under section 6 of the European Agreement of Human Rights, and under section 8 of the American Convention of Human Rights.

As a result, a judge´s unbiased and independent stance at present is definitely part of the right to a due process of law, which is, in turn, a human right anyone facing prosecution charges is entitled to. On the other hand, a judge must take an independent, unbiased stand, and if failing to do so he will be infringing a human right.

Although independence and unbiasedness are terms which usually go hand in hand, the truth is they entail an essential, though not adequate cause-and-effect bond, in which one of these terms seems to be reliant upon the other.

Unbiasedness refers to a relationship devoid of any preferences for any of the parties to a lawsuit, which involves the absence of commitments, friendship or enmity ties and prejudice and even prior knowledge of the facts. Unbiasedness is thus the essence, the core component. Therefore, if a judge fails to take an unbiased stance or is unwilling to do so, he will not be a righteous judge. He could pronounce a verdict, but it may be rendered invalid if found to have been biased. Refusing to comply with the duty of unbiasedness is the end-of-justice principle and the decline of a civilization which has been laboriously developed by human beings´ generations since time immemorial.

Independence is an unbiasedness protective barrier. Independence is a relational notion as it is always exercised before someone or something. Independence intends to protect a judge from any attempt to unduly exert an influence over his decision, that is, from any prospective attempt against his unbiasedness. These attempts may arise from another State power, but also from factual powers like economic interests, religious, political or ideological groups, etc. A judge must be independent of all of them, so that he unbiasedly caters for the only thing he is liaised to: the facts submitted to his consideration and before the Law, which must be his single concern when it comes to becoming acquainted with and judging the cases subject to his decision.

An upshot of judicial independence is that the Judiciary, even if involving a State power, is above all a counter-power, as it has the duty to watch the other State powers´ compliance with the Law. The Judiciary is the Rule of Law true guarantor.

As independence involves a relation-based notion, it is generally classified depending on the type of institution or people it interacts with, therefore, leading to the existence of an internal and an

external independence. External independence is asserted before the Judiciary´s unrelated influence and attacks such as the ones perpetrated by the other State branches, by economic, social and political forces, even against the parties to a lawsuit. Internal independence is exercised before the other jurisdictional bodies and Judiciary department agencies. Senior judges may solely become interested in the case under discussion by filing legally established procedural appeals and cannot offer general or specific guidelines to junior judges concerning the application or construal of the legal system. That is why we usually assert that when construing the law, the humblest of the judges is as sovereign as the State´s highest court judge.

Nonetheless, all legal mechanisms that may be established for the sake of independence are useless if the Judge is unwilling to act unbiasedly, if he voluntarily subdues before any of the stakeholders or third-parties´ interests, as is the case with *lawfare*. The independence protective barrier has failed, and the judge has been a victim of a threat, assault, offer or suggestion that he should not be unbiased, and has agreed. All the judicial, democratic system is thus corrupted.

Lawfare leans towards a deadly decline of trust, security and austerity that must govern the ties among judiciary officers and their legitimate owners involving all the citizens.

It was the German jurist and philosopher Otto Kirchheimer from Frankfurt School who wrote the major work ever about this issue: Political Justice. In that book he describes how Nazism and the authoritarian governments resort to judges to impose their reign of terror. It is about an in-depth assessment of the diverse political and legal systems structures aimed at deciding on the use of legal proceedings for political ends.

E. Raúl Zaffaroni´s work, the Nazi criminal doctrine deemed as a must-read book, refers to all German criminal law lawyers who developed theories and doctrines to account for the appropriation of the current legitimacy and the undermining of the Republic of Weimar´s liberal law. Outstanding jurists and judges served as Rearguard Theorists in the rise of Nazism. The same criminal lawyers used their resolutions for political ends and eventually developed the theory of the criminal law of the enemy: A State chastening power legitimized solely to defeat enemies in a battle system. They first developed a suitable environment to disclose the enemies´ slanderous lies, and then legitimized a legal repressive system. The same case has been applicable to all Coups emerging systems throughout history, notwithstanding what political parties were involved.

Lawfare

When referring to the univocal impact of *lawfare*, legal war and neoliberalism in Latin America, Silvina M. Romano recalls that “In a work entitled *Unrestricted Lawfare* (Limitless war) in 1999 the American military man Charles Dunlap suggests the use of the *lawfare* term to define an unconventional warlike method whereby law is utilized to achieve a military goal”. He also adds the term “gained prominence a couple of years later amidst a war against global terrorism when the war notion got reaffirmed and expanded to also include legal operations”.

Romano recalls Dunlap initially argued the “enemies of democracy” were the ones who used or manipulated the law against the United States and set the example of diverse Palestine agencies when reporting Israel´s abuses. Later on, Dunlap himself accepted *lawfare* can serve magnanimous purposes like when enemies are confronted in asymmetrical wars. Silvina M. Romano concludes “he, thus, enables a system in advocacy of the need to include *lawfare* as a key tool to guarantee US national security”.

What is *lawfare* currently used for? To kill rivals, to “wipe out” opponents and to punish those progressive officers hindering the application of neoliberal tenets. The impact of *lawfare* ends up giving rise to society´s disappointment, which turns into another goal to address, and thus political involvement declines before widespread mistrust. It should be born in mind those involved in *lawfare* operations regard themselves as “saviors” of democracy.

Spiritual Retreat

The ones that occasionally get involved in *lawfare* issues act so indelicately such as in Cristina Fernández de Kirchner´s case, with no major efforts being made to conceal that offense. At the end of 2022, a mass media group uncovered the so-called “spiritual retreat” held at the mansion owned by British multimillionaire Joe Lewis, friend of Mauricio Macri´s, and privately attended by key personalities in the complaints targeted at former president and in the subsequent ones involving the Argentine vice president. Politicians, legal operators, former agents of the Intelligence Federal Agency (AFI), among others, had a meeting in Lago Escondido and the names that came to light do not leave much room for imagination. We are referring to Macrism Judges who pursued the assault against Cristina Kirchner, against a chief prosecutor, a couple of ministers of Justice, and even against some digital campaigns expert businessmen. Some of them denied their involvement, but a media source known as *Proceso* disclosed the list of passengers of the private flight where all of them had travelled and their names were on that list. I am not going to bore you with names, but this example stands as evidence of what I am saying. I am talking about Judge Ercolini, the very same examining judge presiding the *Vialidad* Case, among other cases, such as the purported homicide of Prosecutor Alberto Nisman, without delving into further details.

The alleged spiritual retreat was aimed at discussing how to achieve several goals, among others: Mauricio Macri´s non-punishment in the cases he had been charged with and the way to pursue ongoing judicial harassment against Cristina Fernández to preclude her from running for elections in October 2023, for which the appropriate logistics had to be initially arranged. It was not ruled out that media businessmen, who were always wanted for harassment and coup procedures had been present in that privileged corner of the planet. The leaders in that meeting argued they had met to enjoy a fishing day. Definitely. Yet, the fish to be caught weighed far more than what the fishing rods can withstand.

The basements

When addressing the classification of facts, President Alberto Fernández put it in plain terms: “I have warned you against the basements Argentina has been advocating for many years since the

beginning of my administration. I committed myself to doing away with those basements to guarantee a fuller, more profound and more authentic democracy", argued in his message. "We abolished the role of judicial operators and judicial boards. The intelligence services no longer wandered through the court corridors. The use of opposition parties´ wiretapping against the State incumbent authorities was done away with. The state revenue collection and monitoring agencies no longer intended to exert a detrimental effect on potential government critics". He also added that when the leaders of that private meeting learnt that data about that meeting had leaked, they "were concerned about the actual risk of becoming involved in a series of crimes like the acceptance of bribery and failure to comply with a civil servant´s duties". In this speech, Fernandez pointed out a vital requirement for such a caliber operation to succeed: "the certainty that Argentina´s major mass media group would ensure non-disclosure of the facts". It seemed they were also the conveners of that meeting". The president made some closing remarks that suitably sum up the *lawfare* underpinnings. "It is the first time the way some corporations deal with officers, judges and prosecutors has strongly been asserted before us; corporations seek favors from the latter in many cases in exchange for undue benefits, while in others the goal is simply to foster the persecution of those they are confronted with. It all seems to suggest the downgrading of judges, prosecutors, former officers and businessmen´s institutional attributes has come to light again".

The president went even further and ordered the Public Prosecutor´s Office to pursue a criminal investigation of the facts, to open a summary proceeding against the above-mentioned federal judges before the Committee of Discipline, and, among other things, he also urged the Argentine Congress to move forward with the Judiciary outstanding amendments, as well as with the Attorney General´s appointment.

Disciplining Politicians

At last, and against any applicable procedural rationale, on December 6th, 2022, Cristina Fernández de Kirchner was sentenced to six-year imprisonment for corruption charges and imposed a lifelong ban on holding public offices. This last punishment applied because she had been found to defraud the Argentine State. Nevertheless, she was acquitted of the unlawful association crime filed by the Prosecutor´s office under charges of being the head of a division that accepted bribes in exchange for the undersigning of public agreements. The so-called *Vialidad* case, which involves a roads construction project awarded by the Government to a businessman, has been the first one of several charges and complaints reaching the oral trial stage and eventually leading to a conviction.

The judgment is not final as some appeal stages are still pending and it will arguably be the Supreme Court the one that will issue the final ruling. Against this backdrop, things have always been crystal clear to her: "I am not standing before a Constitutional Court, but before a media-judicial firing squad". She always knew the sentence had already been issued. She argued that at the Congress, in August 2022, a couple of months before, and asserted that the trial started like a fiction with quite a second-rate and, above all, fake script. "The justice system allows the infringement of all rules", she remarked, and then bitterly added that none of the prosecutor´s office arguments had been proven.

Trials like these ones help “discipline” politicians, asserted Cristina Fernández. You are right. The goal is simply to prevent the acceptance of attitudes alien to the interests of those actually exercising power” over politicians, judges, and even over us all. They are the autocracies´ economic powers accustomed to managing Politics and a country´s government at their own will, therefore, deciding on the presidents´ appointment and removal so that they will protect the former´s interests and strive to enhance their benefits. In this regard, those who are not submissive and not generally malleable, and care about the general welfare of people under their power, and about what seems to be the best for their Nation, are dangerous and must be removed from their offices, just like a pawn from the chess board.

The vice president grasped this theory so clearly that she enshrined it in that same speech which goes as follows: “This is not a trial against Cristina Kirchner, this is a trial against Peronism, this is a trial against national and popular governments (…) it is a trial against the ones struggling for memory, truth, and justice, for wages, retirements, and public work” and emphasized that issue. “Public work was definitely an outstanding government management undertaking.”

The warning she gave us could not be truer: “They are not after me, they are after you. They are after wages, they are after the workers and pensioners´ rights, after indebtedness, they are after that.”

I can´t help but remember the remarks by progressive Chilean leader Marco Enríquez Ominami, who had been personally harassed as a result of inadequate politics going hand in hand with an appalling justice system. He appeared on a TV interview and expressed himself in this fashion. “I have been defending my reputation for decades”. The only thing I did wrong was to try to change Chile without myself getting engaged in corruption, after having challenged the richest, the most powerful and traditional people. I am paying the price of such discourteousness.”

The political war

What might be different in this story if compared to other countries´ cases where *lawfare* corrupts political actions with the tool of justice, is that the Argentine House of Representatives set up an Impeachment Committee, which became operational at the end of January 2023, to decide on the opening of a process for the dismissal of Supreme Court members from their offices under charges of judicial misconduct. It was at the beginning of this year when President Alberto Fernández and eleven governors requested an investigation on the chief Court Judge, Horacio Rosatti and Judges Carlos Rosenkrantz, Juan Carlos Maqueda and Ricardo Lorenzetti, who were summoned to make statements. The core accusation issue was “an unacceptable institutional downgrading which endangers republic system separation of powers principle”. Out of the great deal of judges´ data deemed as being relevant, I will be illustrating the facts above with reference to Rosatti´s case: He devised an illegal gambit allowing him to unlawfully take office as Supreme Court justice, to besiege the Judicial Council, and to manipulate the staff members of that entity. And I wish to refer to these charges because for *lawfare* to succeed, seizing the judicial bodies´ powers, appointing like-minded members and keeping control over their decisions stand as mandatory requirements.

As it is well-known this impeachment proceeding does not feature any criminal effects. Yet, convicted parties must be imposed the maximum penalty so that they can be banned from holding a public office. Anyway, the outcomes of this proceeding are good enough if we could confirm some society public servants in the judicial sphere take a spurious decision to step away from their sacred goals.

History will not acquit them

The goal of the State and of all its departments and officers is to serve their citizens. In case of totalitarian governments, the intended goal is just the opposite. In other words, citizens are to be treated like subjects of the authority they are supposed to obey and cannot challenge governments´ decisions taken for their own benefit or for the sake of the economic interests of quite a few. It is vital to recall the sovereign power is the people, it is neither the king, nor a country´s president or the president of either the Republic or of the Congress and it is not either embodied in major multinational companies. It is us, the citizens, who hold sovereignty over them all.

A checks and balances system aimed at preserving that sovereignty has been adopted and there are also institutions intended to stand up for citizens in case of government attacks. Yet, there should be public servants willing to make use of and stand up for that system so that these institutions and all these support agencies may be operational.

It is the judge who, acting as a key officer, must remain strong and always remember he is basically a public servant, and this is not because he is a State officer but rather because a judge has the duty to behave as such in that office. And a judge is, thus, compelled to stand up for his legal viewpoint, even before the State, because sooner or later he will be confronted with the legal system rulings.

When justice does not surrender and is capable of confronting the political and economic power interests, it stands great chances of strengthening democracy. Having a fair viewpoint is key but hard as judges´ opponents, that is, the ones finding a judge´s viewpoint disturbing, will lay charges to slander and to discredit that judge. Additionally, he might even be murdered just as the case of Italian Judge Giovanni Falcone and many others.

These outrageous cases witnessed at a worldwide level, but particularly in Latin America (Evo Morales, Rafael Correa, Lula da Silva, Dilma Rouseff, Lugo, Zelaya…) stand as a vital lesson to always bear in mind. With regards to all challenges, the view and construal of the law must benefit mankind progress, as opposed to privileges seeking to make inequality gap wider, and above all, the ones leading to a human beings´ regression, which is the standpoint advocated by the extreme right-wing party.

The legal practitioners must abide by this progressive notion because it will be the one that may save us from the existing aggressions, which over time, will go on the rise.

Cristina Fernández de Kirchner´s case, therefore, teaches us that Law and Justice must be at the service of society since they are social peacemaking tools and human sociability facilitators. The reverse approach involves the acceptance of the inequality of those who end up believing in empty

promises which lead to the humiliation and downgrading of democracy. Do not hesitate these judges and prosecutors will not be acquitted in the end.

INTRODUCTION

*José Luis Rodriguez Zapatero**

*Spanish. President of the Spanish State (2004-2011) from PSOE (Spanish Socialist Workers´ Party). His administration featured a broad agenda with social welfare policies. At present, he is one of the most respected worldwide and Spanish politicians engaged in negotiation and peacemaking issues and has an outstanding and cherished role as disputes mediator in the Latin America and Caribbean region.

This book is intended to shed light on, and to disclose facts and arguments to a currently vital though alarming debate for democracy, which is held in Argentina and features diverse indomitable viewpoints, which goes by the name of the “divide”.

With a feeling of respect for the institutions of a country I love, I introduce this research about a judicial process against Vice President Cristina Fernández de Kirchner, who served as two-term president and was elected by the Argentine people. A live democracy calls for an open, direct debate with no boundaries other than that of respect, democratic respect.

As a politician, both when serving as an opposition leader and as the president of the incumbent government, I renounced to the use of justice, and to the judicialization of political life. Anyone regarding themselves as a good democrat must intend to defeat their opponent at the Congress as well as in public debates through the introduction of ideas, lines of action and alternatives.

The number of complaints and legal actions filed against Cristina Fernández de Kirchner, several of which ending up archived or going unpunished, is strikingly surprising and unprecedented in almost any democratic country.

In the so-called *Vialidad* Case, which is the one this book has focused on and resulted in a non-final judgement entered against Cristina Fernández de Kirchner, there follows an in-depth assessment of the facts of the process and of the weaknesses for the judgement to be validated by leaders with an unquestionable political track record and accredited advocacy of human rights.

In this regard, the unbiasedness tenets held as a Rule of Law core principle of justice are worthy of being highlighted. As matter of fact, unbiasedness and the apparent unbiasedness turn into an undeniably compelling requirement within a legal-political system deserving that rating. Therefore, it seems more than reasonable that the relationship of legal actors with politicians standing as rivals of the prosecuted party can ease debate and dispel doubts about the process unbiasedness.

Furthermore, it is vital to bear in mind this book built-in arguments and data about the prospective infringement of the right to the presumption of innocence, which is also regarded as a cornerstone to determine the Rule of Law criminal liability.

Additionally, this specific case study also includes significant contributions to an overall *lawfare* debate, which following President Lula´s experience in Brazil, stands as an inevitable issue to address with respect to the posing of genuine threat impending risks for some of our democracies. The *lawfare* is actually a relatively new category of distortion of the adequate separation of powers distribution approach. It is a conspiracy act which may result in political democratic process breakdowns.

We are facing times when a democratic recession process breaks out more often than before. And *lawfare* is absolutely one of the most disturbing terms in the deviations of demo-liberal principles political systems.

Nevertheless, we are to reassert our faith in democracy, in both local and foreign tools, which are useful to face up the institutional system operation drifting procedures. That democratic system faith must grow stronger, and the best way to do so is to recall that democracy is always a struggle for democracy, that the Rule of Law is a struggle for the Rule of Law, and that justice is ultimately a struggle for justice.

That struggle, that battle, is to be fought in a public setting with the means and resources justice itself embodies into the Rule of Law.

That is the aim of this book. Reporting a potential case of *lawfare* implies advocating for democracy. Reporting it verbally and before the institutions and public opinion, is worthy of being seriously and, hopefully, unbiasedly addressed by all political and institutional actors.

When tackling the major issue of *lawfare*, we find the unwritten boundaries political actions must feature within a democratic competition. Radicalism, bigotry, the systematic denial of the others, and the illegitimate judicialization of politics, with its almost inevitable justice politicizing effect, may result in the undermining and disruption of democratic processes.

Our democracies call for dialogue and peace. And they also need the search for some shared unbiasedness to dispel any temptation arguing the end justifies the means.

In addition to this work standing as Cristina Fernández de Kirchner´s defence, I hope it may also contribute to the development of democratic reasonableness.

At the end of these brief introductory remarks, I am fully convinced the Argentine democracy, which has remained strong for the last forty years after times of tyranny and terror, will know how to surmount this difficult cycle, and will cause human rights respect and justice principles, for which a great part of the Argentine society has exemplarily struggled for, to prevail.

I was in Argentina a couple of days before the attempt to murder the Argentine vice-president. I found the attempted murder absolutely shocking, not only at a personal level and because I wish to express my solidarity with her, but also and, particularly, because of the abyss that a new political stage of violence in such cherished nation like Argentina may imply.

And for the sake of that unbiasedness I insist on, I cannot forget to mention that while I was serving as a government officer, my relationship with Nestor and Cristina Kirchner was based upon respect and affection.

1.

Use of the judicial apparatus for political ends:

from *Lawfare* to the *Vialidad* Case

Baltasar Garzón, Gisele Ricobom **and Silvina Romano****

**See page 47.*

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Over the last 15 years, we have witnessed political persecution processes through the filing of complaints against certain political sectors, leaders and activists to secure their political disqualification and loss of legitimacy. The mass media play a key role in this persecution practices and foster demoralization and criminalization in the scope of public opinion. The "guilty" judgment reaches the mass and social media much earlier than when court judgements are pronounced. This phenomenon has been referred to as *"lawfare",* based on a -not uncritical- Anglicism loan.

At an international level, "*lawfare"* most frequently conveys the idea of a legal or judicial war, particularly related to the new "soft power"- based forms of war aimed at the enemy subjugation or intimidation through the avoidance of direct force, for instance, the deployment of troops. The exercise of "legal actions" entails a wide scope of components from legal pressure through the filing of charges and complaints to economic penalties and diplomatic pressure. This *lawfare* notion has gained momentum primarily since the "war against global terror".[1]

Lawfare is also tied with the Latin American judicial war and is usually used to account for the prior "soft" *coup d´etat* destabilization process. At the onset of the twenty-first century, with the advent of national-popular governments which involved the State intervention in Economy policies, the recovery of the public sector, and the vindication of sovereignty and regional integration, once again there was a conflict with the US security, economy and "democracy" guidelines which were then ratified in documents like the Washington Consensus. In 2005, this disagreement resulted in the progressive governments´ joint rejection of the Free Trade Area of the Americas (ALCA) "continental" integration project promoted at that time during George W. Bush´s administration.

The conflicts or disagreements with the American Government eventually resulted in US statements and influential actions, as well as in engagement in those progressive governments´ domestic affairs, which either overtly or covertly advocated the destabilization, chaos and *coup d´etat* (successful or unsuccessful) attempts hitting Venezuela (2002), Haiti (2004), Honduras (2009), Ecuador (2010), Paraguay (2012), Brazil (2016) and Bolivia (2019).

In some of these foregoing processes, *lawfare* grew stronger and took on a prominent role, which aimed at securing either judicial and/or legal destabilization through the Supreme Court or Parliament´s actions, and at delegitimizing and ousting the incumbent Executive Branch (such as the one of Dilma Rouseff in Brazil, or that of Lugo in Paraguay; Cristina Fernández de Kirchner´s persecution and that of Kirchnerism officers in Argentina). *Lawfare* has also been established to preclude those very sectors from reaching the government if elected at the polls by having them prosecuted and banned during election time (such as Lula da Silva´s prosecution and imprisonment in Brazil in 2018, Rafael Correa´s prosecution as of 2017 and the ongoing judicial persecution against *Alianza Pais´* officers). In line with the foregoing examples, *lawfare* could be argued to be a process

to secure the political struggle being confined within the judicial disputes, thus, electoral competition being avoided and the popular vote losing its major role.

Lawfare actions include, among others: fast track, specific, selective court proceedings (the cases of officers or activists with vast leadership skills and likely to win electoral contests are promptly dealt with); myriad of diachronic cases focused on the same target; criminal type of "unlawful association" and "criminal organization"; and protected whistleblowing (the cooperating witness law) which is used as evidence, and thus, substitutes the relevant investigation; lack of evidence for corruption acts with respect to which charges against officers are filed; search of political premises; search of private dwellings; relatives´ prosecution; judicial harassment through the filing of ongoing regular complaints; filing of complaints in journalistic articles or social media gossip messages; social media and media hype actions about the cases filed.

This wide range of actions is not only advocated by the political use of the judicial apparatus and may neither appear to be limited to the court ties with the media. This is a battle waged on several fronts (or dimensions) acting in parallel and occasionally converging, thus, leading to the aggravation of instability, chaos and disbelief in the Government, in the institutions, and even in democracy.

The four *Lawfare* dimensions

Lawfare involves at least four settings namely legal, media-based, political-economic and geopolitical spheres.

The judicial setting and juristocracy

Lawfare could be argued to operate "from above" through a judicial system standing on behalf of an economic, political elite and rising above the Legislative and Executive Branches, which thus, leads to an increase in judges´ degree of power and leeway, and paves the way for a growing juristocracy (that is, a judges and prosecutors´ government). *Lawfare,* from above, enables the creation of a power void and the invalidation of Politics as regards the possibility to make changes, and repeals the Rule of Law under the guise of legitimacy (while in practice what it does is actually to enable a true State of Exception). The highest level in the Judiciary involves a privileged minority unelected by popular vote, which may hardly feel compelled to represent national-popular majorities.

The Mass Media and Story Fabrication

In addition to the aggrandizement of the judicial apparatus, there are also the mass and social media, which get involved in the manufacturing of consensus for or against specific political groups, leaders or sectors, while sometimes resorting to universities´ experts or *think tanks*, which in turn contribute to sensationalism in corruption cases. These cases permeate public opinion in dozens of

magazines covers, hundreds of TV and radio hours´ broadcast in social media "debates", which address potential cases of corruption primarily involving national-popular project officers whether they being engaged in the ruling party or in that of the opposition.

The aim is not, actually, to reduce or root out corruption, though to ensure the criminalization and stigmatization of those sectors. Violence in the statements of "opinion leaders" and in newspaper headlines is striking; particularly the ones concerning women, defamation and public derision certainly have no limits. (There are no clear limit-setting standards available). When Politics and politicians are thought to be all corrupt (activism also being included) there would be an apparent "vacuum" left where all politicians would be on an equal footing (that is, they are corrupt, they steal, etc).

Still, the narrative about corruption in the business world or even a corruption case related to right-wing parties does not receive the same major coverage or equal media hype. Cases of corruption may crop up though not on a regular basis, and the disclosure of disturbing news in key political times, which may be deemed as embarrassing for these sectors, is avoided. During Mauricio Macri´s administration, all magazines front covers and most prosecution processes were against opposition leaders and former Kirchnerism officers, while Macri´s family offshore accounts remained on the sidelines or seemed to have become blurred (like the scandal of Pandora Papers or the "*Correo Argentino"* case involving the same family).

The political-economic field: Precluding the State from acting as a market decision maker

As stated in the above selected cases, there is an enormous amount of persecution against former and current government officers, leaders and sectors promoting a State-intervention-in-the-economy policy and an autonomous, sovereign claim on resources to secure a more adequate, greater distribution of resources in largely unequal social, economic settings. Corruption trials address public investments issues in all environments, in particular, that of infrastructure, which is one of the Latin American region´s most severely delayed sectors (with a lack of local and national communication as well as interregional connection systems).

Another key issue, which has been either directly or indirectly subject to prosecution and millionaire claims is that of strategic resources like hydrocarbons. By way of example, reference can be made to the Mega-Legal Lava Jato Case in Brazil, which dates back to the *coup d´etat* against Dilma Rousseff, and resulted in the Congress and Judiciary´s intervention to criminalize the Workers´ Party (PT) and to preempt Lula da Silva from running for 2018´s presidential elections; all of the foregoing inconspicuously implying the dismantling of power of the Brazilian State.

We should recall the case of Presal Brazilian submarine water hydrocarbon reserves standing as one of the major ones in the South Atlantic Ocean, and which after their discovery in 2005 were monopolized by Petrobras (the Brazilian state-owned oil company), which turned out to be upsetting both for cross-border and, primarily, for US companies (as described in *Wikileaks* leaked

documents). Two months following the *coup d´etat* against Dilma Rousseff and during Michell Temer´s interregnum, those reserves were subject to an international bidding process and, concomitantly and in compliance with the *Foreign Corrupt Practices Act* (FCPA - US Anticorruption Act), Petrobras was fined by the Ministry of Justice (within the framework of the Lava Jato case) and ordered to pay 1.8 billion dollars. It should be remembered FCPA penalties have applied primarily to Latin American state-owned hydrocarbon companies, thus being more than evident the idea was to undermine them and to cause them to go bankrupt.

The geopolitical environment: Lawfare concealed interests

The geopolitical strategic resources competition environment is the one public opinion knows the least, with several geopolitics-related economic interests being reflected in the impactful judicial cases filed against leaders like Cristina Fernández de Kirchner, Lula da Silva or Dilma Rousseff. What is argued about strategic resources exemplifies how *lawfare* (standing as a non-conventional warlike strategy) operates to "do away with" companies current or future competition, particularly those engaged in the US military-industrial hub. The importance of these cases for the US, is, in fact, noticed in the allocation of resources for the coverage of international cases. The US Ministries of Justice and Treasury were actively involved in the case against *Odebrecht S.A*., which, as directed by the US judicial authorities, was compelled to pay one of the heaviest fines in the FCPA history, which amounted to 3.6 billion dollars. *Odebrecht* was a strong offshore competitor in infrastructure development initiatives, with projects under way in the US, Africa and Latin America.

In the case of Argentina, actions were brought by Cristina Fernández´ administration against speculative Holdouts, which certainly involved a dangerous scenario for peripheral economies. By mid-2014, at the 69th UN Assembly, Cristina´s administration argued the holdouts were operational due to the US judicial system conspiracy acts. In fact, by end 2014, the Argentine government urged a UN resolution be adopted to agree on a "multilateral legal framework for the restructuring of the sovereign debt, aimed, among other things, at enhancing the international financial system efficiency, stability and predictability and at securing sustained, equitable, inclusive economic growth and sustainable development, in accordance with the applicable national scenarios and priorities agenda".

Still, at that time "the Holdouts (Argentine creditors) aided in launching an international press campaign to discredit the Argentine Government and focused on CFK´ s reputed ties with Iranian president, Mahmud Ajmadineyad (regularly lashed out by Western mass media), thus, suspicions being raised on the Memorandum of Understanding with Iran. Deliberate efforts were made to uproot criticism from the financial speculation debate and to put CFK´s prosecution at the forefront of that debate. The Memorandum of Understanding put forward that both governments should set up a Truth Committee to pursue an investigation on the bomb blast at the Argentine Israeli Mutual Association (AMIA), though it never came into office. Yet, that Memorandum served the purpose to prosecute and discredit CFK because (ungrounded) statements asserted the Memorandum had been undersigned to cover up the Iranians involved in the AMIA bomb blast in 1994.

Upon failure to prove the foregoing, just two key pieces of information are available: 1) Pressure was exerted on Argentina by the US embassy so that it would assert the bomb blast perpetrators were from Iranian origin prior to the pursuit of an investigation consistent with the US hemispheric security guidelines and its international anti-Iranian views; 2) According to the 2020 INTERPOL´s report, no Argentine Government attempts to set aside arrest warrants against the suspects in AMIA bombing were made even after the undersigning of the Memorandum of Understanding with Iran. What has failed to be disclosed is that the UN did not move forward against the 2014´s proposal which endangered peripheral economies.

The US permanent involvement in political, economic and geopolitical issues through the filing of judicial proceedings includes judges and police officers´ training courses on anti-terrorism or money-laundering or the harmonization of the US region´s judicial systems to make sure they are aligned with American security guidelines. This policy is consistent with the standardization of security forces promoted by the Inter American Reciprocal Assistance Treaty (TIAR, 1947) and the Mutual Security Agreements, which have been effective since 1950 and in full force until today. By way of illustration, and as instructed by the US, the "Cooperating Witness Law" has been included into several of the US region criminal codes. Testimonials of presumably "repentant" parties were used as evidence "*per se*" (that is, something going beyond their scope of action as an investigation report rendering evidence valid must be attached thereto) and they must have also been assessed without complying with the standard- even if blackmailing strategies were used- as in the case of "fake lawyer D'Alessio" from Argentina, who used to blackmail businessmen by urging them to make misrepresentations against CFK in exchange for their acquittal. D´Alessio was found to be an Argentine intelligence system whistleblower, along with other Kirchnerism opposing parties´ politicians.

Geopolitical interests also become evident in "covered up" operations led by US embassies or pursued through (illegal actions) of the FBI (US Federal Investigation Bureau). Officers serving at the Department of Justice were involved in the Lava Jato operation in Curitiba during the whole lawsuit against Lula da Silva, while FBI officers were in charge of filing decryption operations. On the other hand, the US embassy in Brazil served a key role in Dilma Roussef´s destabilization, discredit and prosecution led by Michel Temer, one of her major whistleblowers, who was then serving as Dilma´s vice president and later became her successor once she had been overthrown.

The darkness of the embassies in Argentina reminds us of Nisman´s case (Prosecutor Alberto Nisman´s death dates back to January 2015) which is liaised to AMIA bombing. The Argentine major mass media sources either blamed the then President CFK or inferred she had masterminded Nisman´s murder in January 2015, while experts´ reports suggested it had been a clear suicide case. Still, this data was found to be irrelevant and the foregoing assumption was disclosed by the worldwide press. The media demoralization impact the president was exposed to involved public opinion manipulation strategies, increasingly applied throughout the election year and consolidated during Mauricio Macri´s administration. In recently leaked documents, Nisman was found to have had close ties with the US embassy, within a context of pressure resulting from a change of administration (prior to the 2015 election year) at a time there were issues of pressing concern

involving Brazil-Argentina Alliance and the potential narrowing of ties with Iran. Regardless of the administration in office, this scenario is unacceptable for the US Security Doctrine, as a continuum of Monroe Doctrine (1823) and its "América for the Americans" tenet, which has been effective for 200 years.

The Lava Jato case shifted Brazil´s geopolitical outlook and undermined a US indisputable regional and global competitor, since Jair Bolsonaro´s administration encouraged regular disinvestments in Brazil´s State strategic sectors, and an overall neglect of the public sector. Mauricio Macri´s administration in Argentina also entailed the neo liberalization of economics, outrageous indebtedness with the IMF, disinvestment in state-owned companies as well as the prosecution of CFK´s administration officers. *Lawfare* serves to discipline disinvestment, delegitimization and void policies in the public sector.

Banning and violence as "a witch-hunt practice"

Even if seemingly involving a discussion about issues of foreign concern (which, thus, refers to our own elites´ circle) *lawfare*, is not a foreign work. The right-wing local parties, which are politically conservative, but always regarded as defenders of market freedom, use the judicial apparatus to engage in "Political kidnapping" (Politics viewed as a social justice opportunity) and to discipline activism. It is a sort of lesson and example for apolitical citizens: Do not mess around with Politics as it implies corruption. Men and women politicians are and will be brought to court as they "must have done something", even if no evidence has been found. This repressive kidnapping practice is closely tied to the Judiciary´s connivance and support of the civilian-military governments during the Cold War, which involved the annihilation of the "other" politician through abduction, torture, murder, and ongoing disappearance offenses. The same officers, who once denied the writ of habeas corpus to men and women illegally arrested by security officers in those years, are the ones currently pursuing trials against CFK´s administration male and female officers.[2]

Why do these right-wing parties currently avoid forging a direct alliance with security forces so that they can forcefully seize or retrieve the State? Because progressive governments, which reached power in compliance with a popular will-based legitimate election, have endeavored themselves hard to strengthen democracy and have shown political inclusion makes sense only if matched to economic and cultural inclusion. In line with inclusive public policies and a public sector recovery approach, they have imbued democracy with sense and substance as a social justice. Nowadays, the right-wing parties should pretend to "respect democratic legitimacy" (even if they, actually, infringe it and despise it, in line with the non-punishment policy applicable to their status of "privileged minorities") because people have taken ownership of democracy.

So, the only thing the right-wing party can do is confining the political battle to the judicial setting and betting on a banning order. The intrinsic violence of the judiciary´s actions and accounts are analogous to a "witch-hunt" practice, which paves the way for adversely serious, impactful events, such as the attempt to kill senior female officers. The CFK´s case is the most disturbing and outrageous ever, but the attempted murder against Colombia´s current Vice president Francia Márquez should not fall into oblivion.

The disempowerment and criminalization of women politicians with vast leadership skills is not an exception, though the rule. We simply need to recall the conviction and the ordinary prison confinement of Pichincha´s (Ecuadorian) prefect Paola Pabón, under charges of the (unproven) alleged revolt inciting in 2019´s anti-neoliberal adjustment demonstrations, or Dilma Roussef´s criminalization and political harassment ending up in a coup. *Lawfare* provides a privileged setting for the expansion of these misogynous ruthless practices, which, in Cristina Fernandez´ case have gone as far as to an attempt to take her life.

The female assassination attempt and the investigation ungrounded statements

The members of the OAS Convention on Prevention, Punishment and Eradication of Violence against women (MESECVI) Follow-Up System Committee visited Argentina in March 2023 to discuss violence against women politicians. During that meeting, the vice president´s assistants submitted a report of the innumerable political and gender violence acts CFK was subject to for almost twenty years, which went as far as to constitute an attempted murder. In fact, the MESECVI Committee rated that crime as a female assassination attempt.

The female assassination attempt could be succinctly summarized as follows: Argentine Vice president CFK was the target of an attempted murder at the entrance of her residence in the City of Buenos Aires, in the neighborhood of Recoleta, on September 1, 2022 at 8.52 pm, when Fernando Sabag Montiel, member of the self-called “Federal Revolution” group, shot her in the face at least once with a Bersa Caliber-32 pistol. As the pistol chamber was unloaded, the bullet failed to fire, which fortunately saved CFK´s life. The female attempted murder took place in the middle of a crowd of activists and followers who, night after night, gathered to demonstrate across the vice president´s residence and to express their repudiation against the media-judicial persecution against her.

Sabag Montiel and Brenda Uriarte are currently in jail. (March 2023). Brenda was arrested three days after the failed attempted murder and her appearance on TV under a fake name. Both co-offenders of an aggravated attempted murder are prosecuted and charged with the use of firearms and malice and of two or more individuals´ premeditated plan. Gabriel Carrizo, who is charged with being an accessory to this crime, is also in prison. No investigation on the masterminds is underway in addition to the imprisonment of perpetrators.

The leading officers hearing this case are the Judge of the National Court for Criminal, Federal Correctional Matters N°5, Maria Eugenia Capuchetti, and Prosecutor Carlos Rívolo. The former has been serving at the Buenos Aires City Government Security Political officers´ advisory body in Comodoro Py court since 2019, where not only CFK´s lifetime prosecution, but also that of the other Kirchnerism´s former officers have been enforced.

It seems the investigation has not been expeditious and thorough enough and blatant cases of neglect like tampering of evidence, deemed as the most grievous one, have been reported. A couple of hours after the unsuccessful attempted murder, Sabag Montiel´s mobile phone was blocked and restarted while police officers and judges made attempts to retrieve that mobile phone data. As a

result, key pieces of evidence might have got lost due to errors, remote tampering or aiding and abetting crimes being committed while the mobile phone was being handled.

Within this framework, the vice president moved that a motion be filed to disqualify Judge Capuchetti from that case due to biased investigation arguments and deviations. Nevertheless, the motion was dismissed by the judge herself and by the Buenos Aires City Federal Court. (It will fall upon the Federal Supreme Court of Criminal Appeals to decide on that issue). Despite Judge Capuchetti´s dismissal of the foregoing motion, the Buenos Aires Federal Court directed the pursuit of a more in-depth investigation on the Republican Proposal (PRO) opposing party´s representative, Gerardo Milman, who, according to some testimonies appears to be involved in the attempted murder. The complainant has also requested data about Milman who, among other things, appears in a photograph with members of the Federal Revolution Group. (The foregoing group is made up of the perpetrators of the attempted murder as well as four members charged with public intimidation and threats and prosecuted in a lawsuit unfolding in parallel with that of the attempted murder).

Despite the complainant´s application for Judge Capuchetti´s disqualification from the case, it still remains under the scope of her business, except during January´s leave time when judge Julian Ercolini takes over. The latter is involved in several cases against CFK, and together with some of Buenos Aires Government officers, other judicial officials and Clarin[4] media group´s senior executives was part of the entourage that visited Lago Escondido in October 2022.

Use of the Judicial Apparatus for political ends: the *Vialidad* Case (or the contents of this book)

It is of utmost significance to understand the failed female attempted murder thrived due to a context of political persecution, media hype and political segregation resulting from years of *lawfare*. Over six hundred and fifty complaints have been filed against CFK by “serial complainants” and more than twelve legal complaints, including several actions for acquittal and the reopening of cases, have been brought against her. No evidence has been found in any of the foregoing cases to account for the crimes she has been charged with.

The most outrageous and recent case evincing clear failure to comply with the due process of law is the *Vialidad Case*, which exemplifies mass media hype and the use of the judicial apparatus for political purposes and goes so far as to promote the adoption of a resolution to ban the president from public office. Indeed, CFK has been sentenced to 6-year imprisonment and a lifetime ban from public office. This grievous judgment added to the attempted murder on her life are deemed as the reasons to write this book, which is aimed at providing an in-depth overview of the deliberate politically grounded failure to abide by a due process of law, which is liaised to economic, geopolitical interests conflicting with the notion of a national-popular State.

This book comprises writings from lawyers and jurists with vast experience and acknowledgement at a local, regional and worldwide level and its chapters offer a description of the several features

accounting for a political persecution, which is held as a regional, global practice known as *lawfare* and is pursued through the filing of judicial-media proceedings. In most of this book writings, this practice is described with reference to the *Vialidad Case* as an example of failure to observe the due process of law, absence of unbiasedness and autonomy in the judges and prosecutors hearing most cases against CFK, and also refers to the latter´s ties with factual powers.

At the end of the book there are some views by Ernesto Samper Pizano, fomer Colombian president, lawyer and one of the Puebla Group developers.

Some texts as exhibits to this book are listed below a) A public summary report on judges and lawyers´ autonomy in the Argentine Judiciary as of November 1, 2019 (ARG 11/2019) by the UN Special Rapporteur Diego García Sayán (Esq) b) a chapter aimed at the retrieval of some journalists and lawyers´ texts, which disclose the shortcomings of the *Vialidad Case* while also focusing on the deliberate use of the judicial apparatus for political purposes and on diverse actors and dimensions going beyond the judicial setting, which thus results in the rising of the *lawfare* scope. Here is the list of all national, regional and global entities engaged in political, human rights, arts, sciences and university settings, which have expressed their repudiation for the *Vialidad case* judgement against CFK.

2.

(Political) judicial scenario and background of the *Vialidad case*

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Although the verdict against Cristina Kirchner stands as one of the most shocking persecution events in recent times, it is definitely not an isolated event, and neither is the unenthusiastic investigation of an attempted murder which could have proved fatal.

No matter how hard our media endeavored to shift public opinion away through the use of dirty gambits, one cannot simply ignore the ongoing criminalization, verbal violence, anti-popular hatred campaign, whose anti-Peronist strength brings us back to the 1955 dictatorship deemed by far as even more powerful. Although there are countless *lawfare* examples in Latin America, the case in Argentina showcases particularly popular attributes, above all, regarding the recurrent intractability of complaints, cases and proceedings.

Let us recall Cristina was prosecuted in thirteen criminal proceedings in 2015-2019 as well as in other cases resolved in the upcoming years. Judges Bonadío and Ercolini as Lower Court judges and Hornos and Borinsky as judges of the Criminal Court of Appeal intervened in almost all cases.

Let us go over those cases: 1) Case Nº 12.152/2015 *(Dólar Futuro)* filed before the National Federal Criminal and Correctional Court N°11, led by Judge Claudio Bonadío; 2) Case Nº5.048/2.018 (*Obra Pública Vial*) filed before the National Federal Criminal and Correctional Court N°10, presided by Judge Julian Ercolini; 3) Case Nº3.732/2.016 (*Los Sauces*) filed before the National Federal Criminal and Correctional Court N°10, led by Judge Julian Ercolini and before the National Federal Criminal and Correctional Court N°11, presided by Judge Bonadio; 4) Case Nº 11.352/2.014 (*Hotesur*) filed before the National Federal Criminal and Correctional Court N°10, led by Judge Julián Ercolini and before the National Federal Criminal and Correctional Court N°11, presided by Judge Bonadío; 5) Case Nº 9.608/2.018 (*Cuadernos- Causa Principal)* filed before the National Federal Criminal and Correctional Court N°11, led by Judge Bonadio; 6) Case Nº 13.816/2.018 (*Cuadernos-Concesiones Viales*) filed before the National Federal Criminal and Correctional Court N°11, presided by Judge Bonadío; 7) Case Nº13.820/2.018 (*Cuadernos-Concesiones ferroviarias-Hidrovía*) filed before the National Federal Criminal and Correctional Court N°11, led by Judge Bonadío; 8) Case Nº3.710/2.014 (*Cuadernos-Subsidios Colectivos*) filed before the National Federal Criminal and Correctional Court N°11, presided by Judge Bonadío; 9) Case Nº 18.590/2.018 (*Cuadernos-Corredores Viales*) filed before the National Criminal Federal and Correctional Court N°11, presided by Judge Bonadío; 10) Case Nº10.456/2.014 (Gas Licuado) filed before the National Federal Criminal and Correctional Court N°11, led by Judge Bonadío; 11) Case Nº15.386/2018 (*Prontuario de Hipólito Irigoyen and Carta del Gral. San Martín*) filed before the National Federal Criminal and Correctional Court N°11, presided by Judge Bonadío; 12) Case Nº 18.704/2.018 (*Vuelos Presidenciales*) filed before the National Criminal Federal and Correctional Court N°11, led by Judge Bonadío; and 13) Case Nº 14.305/2.015 (*Memorándum*) filed before the National Criminal Federal and Correctional Court N°11, presided by Judge Bonadío.

Judge Bonadío even dared to summon Cristina Kirchner to testify under nine same day investigations and committed flagrant malfeasance in office when ordering her prosecution under charges of High Treason. According to the Argentine Constitution, which has intentionally replicated the American Constitution model since 1853, high treason stands as a crime to be committed only in wartime. (Section 119 of Argentine Constitution). Timmerman was also prosecuted in this case, which thwarted his US travel to undergo an oncological treatment, which resulted in his death shortly afterwards. The president of the Supreme Court inaugurated a judicial year by taking a smiling photograph of himself standing between Judge Bonadio and Sergio Moro, the infamous star judge and Bolsonaro´s future Minister of Justice.

Although the Supreme Court abrogated the absolutely bizarre classification of the crime as high treason committed in warless time to impose pre-trial detention judgements, which are unauthorized due to the fine amount imposed, the Court decided -by devising something not provided by the law- that former officers´ wouldn't be entitled to be released from prison in any cases against them, just because they seemed to still hold residual power (the media conglomerates called that new prevarication "Irurzun doctrine").

As a result of malfeasance in office being committed, some of Macri´s law-abiding opponents were randomly arrested such as Amado Boudou in his own residence at the small hours with the media depicting him barefooted in his pajamas. Analogous harassment crimes were perpetrated during transfers of detainees, who appeared disguised with bullet-proof vests and protective helmets at the eyes of filming and photographing media conglomerates, which thus implied the reinstatement of the former pillory punishment system, which was absolutely forbidden for all prisoners.

A Federal Administration of Public Income (AFIP) taskforce led by Alberto Abad and Leandro Cuccioli took up the filing of complaints and administrative proceedings against Cristina.

Some *brainstorms* (or in plain terms, mafia meetings) at the Central Bank presided by Federico Sturzenegger, were held to contribute some ideas to initiate legal actions against Cristina and her children. All these facts were reported to the federal justice even if no reply was given either in this case or in the one about Arribas and Silvia Majdalani´s forgery of documents. The Macrist Intelligence Agency even went as far as to get the attorneys´ conversations with their imprisoned clients recorded, which constituted a breach of the defense confidentiality, though that did not matter: judges ordered the dismissal of the case.

The foregoing is unrelated to the judicial panel weekly assembling Macri, the Chief of Staff, Arribas, the Minister of Justice, fugitive Rodriguez Simón and other officers to decide on the applicable gambits in the cases filed against Cristina and her officers, and, coincidentally in the *Correo case*, deemed as an issue of special concern for Macri´s family.

The four Supreme Court Justices sought the Chair of the Judicial Council´s assistance to halt competitive appointments of judges who had to take over the ones illegally transferred though accepted by the Judicial Council like Judges Leopoldo Bruglia and Pablo Bertuzzi transferred to the Federal Court, which is aware of the appeals filed in the cases against former officers.

Prior to this, the Supreme Court´s Chief Justice had prevented a senator from taking office in time, and, thus, avoid Judge Freiler´s unseating from office. A journalist hilariously refers to this fact as a senator´s first case of judicial abduction.

The Judicial Council got engaged in uncompliant judges´ persecution in order to pursue Cristina´s prosecution under any charges, while no action by its Discipline Committee was enforced against compliant judges, notwithstanding the contrived tactics they might have used such as warless wars, residual ties and any other legal nonsense.

Four years ago, Diego García-Sayán, serving as a UN Special Rapporter on the independence of Judges and Lawyers, gave an unbiased, thorough review of the political power intervention in Argentine judges´ acts in 2015 and 2019, and considered it to be a National Executive Branch structural plan to frighten the Argentine Judiciary with the use of judges´ intimidation and illegal transfers and appointment practices.

Let us recall this is the context of the verdict against Cristina outlined by a UN rapporter who points out coercive acts against Gils Carbó, Esq. to trigger her resignation, the transfer of judges to assemble Executive Branch compliant courts, the persecution of labor judges, the manipulation of prosecutors in a one million-dollar case held as an issue of concern for Macri´s family, as well as the assaults on Judge Ramos Padilla and other similarly grievous cases. (See Exhibit in this book).

We must also remember the photographs of Liverpool members such as the president of the sentencing court and the prosecutor while playing soccer with other PRO party officers and members at Macri´s weekend house. Yet, they neither excuse themselves nor do they admit being disqualified from office since they believe that simple act of comradeship does not taint their alleged unbiasedness. These were the views of the sentencing Court President Giménez Uriburu and Prosecutor Luciani.

But who is going to go over the judgement once its arguments are disclosed and duly informed? Undoubtedly, the Criminal Court of Appeals is! And which judge? Judge Hornos, who almost two years ago was known to have visited Macri at the Pink House on six occasions namely: (1) on December 22, 2015; (2) on May 5, 2016, (3) on August 8, 2016, (4) on October 31, 2017; (5) on November 16, 2017 and (6) on August 13, 2018. These six meetings were approved by Macri himself, as stated in the *Poder Ciudadano* non-governmental organization published records. And also Judge Borinsky, visiting Olivos Presidential Residence fifteen times namely: (1) on August 11, 2016; (2) on August 24, 2016; (3) on September 7, 2016; (4) on September 15, 2016; (5) on October 6, 2016; (6) on December 23, 2016; (7) on March 16, 2017; (8) on December 21, 2017; (9) on August 2, 2018; (10) on September 12, 2018; (11) on February 14, 2019; (12) on June 20, 2019; (13) on August 15, 2019; (14) on September 4, 2019; and (15) on September 23, 2019.

Coincidentally, several of those judges´ meetings with former president are chronologically tied to far-reaching decisions made by the same judges in the Memorandum Case. Darío Nieto, serving as Macri´s private secretary, concealed and deleted data from former president´s mobile phone and created fake visitors´ lists, while visitor judges´ names were left out. All these facts were being investigated in Lomas de Zamora court until visitor judges supported by Prosecutor Stornelli, got hold of, or took over the case record, which remained under his charge, with no implications at all.

In this last regard, it is vital to remark it was Judge Borinsky himself who served as an appeal judge in this case N°14.149/2020, and ordered the proceedings had to be pursued before the City of Buenos Aires Criminal Federal Courts, that is, the visitor judge concerned had the case withdrawn from Lomas de Zamora´s federal judge jurisdiction. The Federal Criminal Court of Appeals had learnt about the jurisdiction issue as a result of a motion for dismissal raised by Nieto´s attorney and pursued by Prosecutor Stornelli.

It was just as futile to file complaints about all crimes against Cristina and her family since they were all always dismissed, dropped or brought to a halt. By way of example this was confirmed in case N°3107/2017 against Sturzenegger; case N°3631/2017 against Mariano Federici, former president of Argentina´s Financial Information Unit (UIF), under charges of fake complaints; case N°9287/2016 against Margarita Stolbizer and Bonadío charged with engaging in forum shopping practices, in case N°14.065/2018 against Bonadío under the accusation of having expelled Attorney Beraldi from his client´s residence during the search proceeding; case N°9895/2016 against Patricia Bullrich *et al* for the disclosure of photographs of Florencia Kirchner´s assets; case N°1517/2017 with reference to the unlawful dissemination of private conversations with current National Senator Oscar Parrilli; cases N°4211/2016 and 7057/2016 against Bonadío and Macri´s administration officers under

charges of illegal management of future dollar contracts operations; cases N°5056/2020 and 14149/2020 against secret service officers charged with illegal espionage in Cristina´s residence and at the *Patria Institute* .

The city of Buenos Aires federal justice system, better known as Comodoro Py, serves as a type of ancillary jurisdiction as if involving bankruptcy or succession proceedings, which gets hold of all cases affecting its own judges and officers akin to them, such as that one against former intelligence and prison service officers whose charges were dropped by Judges Bertuzzi and Llorens, the former being illegally transferred from a different court by Macri´s administration and the latter also referred to as Macri´s visitor.

On top of the foregoing and to make matters worse, a news article also disclosed that one of the always intervening judges had stayed in contact with the authorities of the Delegation of Argentine Jewish Associations (DAIA) (as complainant in the Memorandum Case) to provide the latter with guidance about the steps to take to succeed in the reopening of the case.

In addition to the above-mentioned facts, there followed the scandal of the judges, prosecutors, journalists and businessmen´s trip to the district of Lago Escondido, and the exchange of hilarious hidden-content messages about which it was only argued disclosing them was unlawful but none of the parties involved could deny those messages and their contents. Beyond their admissibility, those messages did exist, and are painful enough for the main actors, as they are fully described as incontestable evidence of a plot of interests deemed as unspeakable outside the confessional setting.

There still remain myriad of other just as equally significant details, which seem to have shaped the setting where the verdict against Argentine vice president was delivered. The main actors are hopeful and are convinced they can exercise power without though realizing power manipulates them and they are made to believe so, but when no longer useful they will be made powerless, as is usually the case. They forget they can reach the cemetery gate but just in case it is always safe not to get in.

It is good to remember prevarication always involves the infringement of a standard, according to the Indo-European root *wer* - and in this regard Carmignani is right: the term *vari* in Spanish refers to men with varicose veins who walk with their legs twisted (*Elementi di Diritto Criminale*, Milano, 1863, p.506, note 1). This etymology had already been adopted by that time practitioner in the XVII century: *Vari autem homines sunt obtortis plantis* (Antonii Mattthaei, De Criminibus. ad Lib. LXVII et LXVIII *Dig. Commentarium*, Amsterdam, 1661, p. 215). This context shows the twisted principles of part of our justice system. Irrespective of this overall setting of skewed proceedings, the enormous institutional magnitude of this regrettable judgement does not make any sense.

3.

The avoidable resurgence of an infamous practice

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The coordinated action of major power groups in the private and public arena to persecute, ban or suppress political opponents is not a new phenomenon; nor is the fact that, to succeed, they may distort lawfulness to the point of unrecognizability. In fact, the so-called *lawfare* derives from very long-standing anti-democratic and anti-republican practices that have become inherent to the expansion of contemporary capitalism, both in the so-called Global South and in the Northern countries.

These lines are intended to contribute some reflections related to the debate triggered by the infamous judicial and media persecution against Argentina's Vice President Cristina Fernández de Kirchner, starting with some brief biographical considerations which account for my standing in connection with this type of practices. Later, an elaboration will be provided on how this unique mass communication media and law-mediated war which makes up *lawfare* harbors, at heart, something equally simple and terrible: an intractable and even enraged opposition on the side of a privileged minority to any movement or government that may pursue a better quality of living for the most disadvantaged groups, in ways that may expand the scope of democracy in a non-formal and substantial sense.

Lawfare in the Global South: a brief biographical note

Many of the biographies of those of us born in the Global South are touched by political violence phenomena known today as *lawfare*. I am myself the son of a political prisoners' legal counselor who paid with his own life, during one of the most ferocious and anticipatory events in this warfare against opponents being experienced in Argentina in the past century. My father, Angel Pisarello, had been born in 1916, into a modest family from the province of Corrientes. In the 40s, after an experience in the students' association, he became a Senator for the Radical Civic Union Party (UCR) in the province of Tucumán and stood as the only Radical Senator in a Chamber with all the other members belonging to the Justicialist Party (PJ). Despite his discrepancies with Peronism, he was shocked by an event whose full-scale dimension he had not foreseen. He stood witness, while he was still in his teens, to the 1955 *coup d'etat* that overthrew Juan Domingo Perón, just like the one that had overthrown Hipólito Yrigoyen a few decades before. The 1955 coup presented by its instigators as a "Liberating Revolution" turned out to be exactly the opposite: an oppression movement against social majorities, swelled with illegalities and exclusively plotted to ban the Justicialist Party and to persecute and even suppress many of its leaders and activists.

My father and many others like him would soon come to understand that there were different reasons fueling this real -consistent, persistent, judicial and extrajudicial- "war", but there was one that was unquestionable: to prevent a political movement that had contributed to the expansion of democracy and to new conquests in the field of social justice from thriving or re-emerging in future. Such belief was the basis for Angel Pisarello and other radical lawyers, like Sergio Karakachoff and Mario Abel Amaya who, though not giving up their political affiliation, would erect into counselors to both Peronist and non-Peronist activists and leaders then under persecution. Their activity in the legal defense of basic political rights intensified in the 60s and 70s during the Juan Carlos Onganía

dictatorial government, and particularly with the emergence of the heinous Tripe A terrorist, parapolice and anti-communist organization charged with some of the most grievous human rights violations in Argentina.

Today's so-called *lawfare* would already display manifold modalities in those times: totally illegal police arrests, judicial proceedings in the borderline of non-compliance with minimum procedural law requirements; the introduction of ominous practices, such as forced disappearances; consistent use of torture or even the blatant annihilation of union, student, religious or political leaders. In his character of activist and legal counselor of those early *lawfare* or, simply, State terrorism victims, my father was himself kidnapped and murdered after the 1976 coup led by Jorge Rafael Videla.

That civilian-military coup did not arise merely from human malice. Rather, it pursued clear goals: to curb, without any ethical or legal considerations, the democratization processes struggling to bloom, while also enforcing an economic project which fostered an indecent concentration of wealth and proved incompatible with the preservation of basic civil, political and social rights. As widely known, such was not a scheme exclusively deployed in Argentina. Yet, it is helpful to pinpoint the common and novel aspects of a recurring phenomenon looming amidst the current financial capitalism crisis, which is again threatening not just a specific party project but the very survival of democracy.

Latin America: from the Operation Condor to the new variations of l*awfare* and *mediafare*

These anticipatory *lawfare* experiences in the times of Perón in Argentina, back in 1955, as well as in the times of Jacobo Arbenz in Guatemala one year earlier are the key to understanding the events taking place later, in particular the so-called Operation Condor, a political repression and State terrorism operation deployed throughout the continent as of 1975, which was endorsed by the local oligarchies, under the umbrella of the United States.

This Operation paved the way for various countries across the continent to undergo a new wave of coups against democratically elected governments. All the dictatorial regimes arising from these coups resorted to one same formula: using the statal and parastatal apparatus to persecute, ban and suppress their opponents, as well as to pull out any democratic expansion process in the continent by the roots, however reformist and moderate they might be. By way of illustration are the coups against João Goulart in Brazil, Salvador Allende in Chile, Juan José Torres in Bolivia or Jean-Bertrand Aristid in Haiti.

All of them were supported by prosecutors and fake judges who fueled vernacular variations of criminal law enforced on their enemies. And they were all endorsed by major army groups and even para-military forces entrusted with repressing and annihilating opponents and with wiping political pluralism out. All of them were instigated by the local oligarchies in coordination with the relevant US embassy. And again: their repressive actions were virtually always legitimized through stigmatization, slandering and discrediting media campaigns, typically known today as *fake news.*

The restoration of democracy along the continent only thrived when these dictatorial schemes turned unfeasible because of the growing domestic opposition, the social and economic atrocities they engendered or of other external factors. This may be the case of Argentina itself, where the erosion of the civilian-military regime might not be explained except for Argentina's defeat in the Malvinas Islands war combined with the outbreak of a strong union contestation and the emergence of a vigorous human rights movement led by the Mothers and Grandmothers of the Plaza de Mayo.

None of these democratizing changes in the region prevented, anyway, the comeback of reactionary processes which attempted to neutralize the preceding conquests. These proposals were fostered by the Fall of the Berlin Wall, the increasing US hegemony in the international arena and the strengthening of a growing financial capitalism reluctant to any type of rules or checks, in the late XX century.

The lobbying exerted by this type of financial totalitarianism in an increasingly unipolar world is key for understanding the new *lawfare* processes taking place along the continent in the dawn of the XXI century. The pattern once again resembled the preceding one. Violent and authoritarian reaction fueled by extractivist elite groups against the social movements and governments which prioritized the advocacy for public assets and for expanding the rights of social majorities over the private business of the economy's concentrated groups.

This war brought against these groups and their most re-known leaders, at judicial and extra-judicial, as well as statal and parastatal level, acquired new facets. In some cases, that of somewhat classic civilian-military coups, such as the quickly reversed one against Hugo Chávez in Venezuela in 2002. In others, that of parliamentary coups, such as those overthrowing President Manuel Zelaya in Honduras, back in 2009; President Fernando Lugo in Paraguay in 2012 and President Dilma Rousseff in Brazil in 2016. And eventually, that of coups preceded by police and military uprisings, like the one which savagely overthrew President Evo Morales in Bolivia, back in 2019.

With or without coups involved*, lawfare* shaped into a specific, distinct and selective judicial persecution. Moreover, contrary to the preceding decades, these judicial offensives would go hand in hand with smearing campaigns not just on the traditional media, such as TV or written press, but also in social media and digital platforms. In fact, the *fake news* concept -a key component of what would later be known as *mediafare*, or war on the media- started growing popular as of 2017. The timing matches that of the Donald Trump administration in the United States and of Jair Bolsonaro in Brazil, who made an abusive use of intoxicating media campaigns on TV and social media both to fight their opponents and to be elected.

The combination of *lawfare* and *mediafare* acquired a paradigmatic dimension in the case filed against the then former Brazilian President Ignacio Lula da Silva in 2018. Accused of and condemned for passive corruption and money laundering in a trial characterized by the recurrent infringement of procedural rights, Lula's imprisonment was paramount for Bolsonaro, a self-confessed admirer of the 1964 coup against Goulart and a representative of the most reactionary agrobusiness sectors, Evangelic churches and the Army itself, to take over as president.

Among the victims of this new judicial and media war would be other popular or progressive government leaders, such as Ecuador's Rafael Correa and Argentina's Cristina Fernández de Kirchner. Persecuted by the government of his disciple Lenin Moreno, who converted to a US and local oligarchies' accomplice, by 2021 Correa ended up accumulating twenty-five criminal cases based on laughable legal grounds. Similarly, Cristina Fernández was the victim of a judicial persecution orchestrated by Mauricio Macri's neoliberal government and carried on, as of 2019, by prosecutors and judges ascribed to him, with the apparent goal of banning her from Argentina's political life.

Most of these endeavors were intended to intimidate and discipline other social leaders and activists. Seen from a perspective, this *lawfare* wave revealed a strong sexist, classist and racist ingredient. In these political and media persecution cases, misogyny was noted in the contemptuous adjectives and smearing comments used to refer to the region's female leaders, as well as in other radical, political violence events. Sexism led to murder in many cases, like that of Berta Cáceres in 2016, a Honduran, indigenous, feminist leader from the Lenca tribe and an advocate for the environment. Or the Brazilian feminist council member Marielle Franco in 2018. It also resulted in the arrest and the arbitrary condemnation of Argentina's indigenous leader Milagro Sala in 2016. And blatantly, in the yet unresolved magnicide attempt against Vice President Cristina Fernández de Kirchner in September 2022 or the bombing attack against Colombia's Vice President Francia Márquez in January 2023.

Lawfare and _mediafare_ in the North (or the Northern South): the Spanish case

This scenario of political, judicial and media persecutions might be complemented with others taking place continent-wide. Yet, similarities may be detected in the Global North, in particular, in some of its Southern European areas, of which the Spanish case is a paradigm. With the rise of Nazism and Fascism, the Francoism endowed Spain with a specific means for a blatant military, political and, subsequently, judicial war against the Second Republic proclaimed in 1931 and its political, economic and territorial democratization projects.

This armed and ruthless counter-reform erected into a forty-year dictatorial regime during which hundreds of thousands of people were victims of forced disappearances or murder, sometimes in the framework of spurious Courts Martial proceedings or rulings devoid of any legality. The point made about Andalucía and its 54000 corpses found in mass graves becomes then sensible, given that the number of disappeared persons there outdoes that resulting from the Argentine, Peruvian and Guatemalan dictatorial governments altogether.

Following the transition from the dictatorial regime to the parliamentary monarchy, the crimes committed under Francoism faded into a cloud of impunity. And the attempts of inquiry into them sometimes ended up in the ban against those who intended to cast a light onto them, like Judge Baltasar Garzón who, having declared his jurisdiction to investigate these crimes in 2008, would be exposed to ignominious persecutions and would be eventually expelled from the judiciary in 2012.

Because of Spain's peculiar pluri-national composition, it would not be exaggerated to argue that the early manifestations of *lawfare* in democracy were the ones against independentist activists and politicians in the Basque Country and Catalonia. As regards the Basque case, different executives, top judicial authorities and the State intelligence apparatus itself colluded to arrest and torture people and to take down newspapers, such as Egunkaria, and to engage in para-legal actions that ended up in the murder of José Antonio Lasa and José Ignacio Zabala, among others. Many of these practices, which fell out of all basic Rule of Law principles, were later challenged by the Strasbourg Court of Human Rights as well as by various United Nations authorities.

In the Catalonian case*, lawfare* featured a privileged laboratory of judicial proceedings and other state organizations' actions against independentist leaders and activists arising particularly from the independence-related public consultations convened by the Catalonian Government in November 2014 and October 2017. Merely because of their involvement, top Catalonian authorities were blatantly and abusively persecuted by markedly conservative-biased courts mobilized by radical right organizations which vindicated Francoism, and which played the prosecution role.

Considering this context of missing judicial neutrality, some independentist leaders were forced into exile, while others were judged and condemned to abusive fines and to totally disproportionate imprisonment and disqualification sentences. Hundreds of activists, moreover, were condemned for speaking out against these decisions, which were in blatant breach of fundamental rights.

These *lawfare* cases, again fueled by smearing media campaigns swelled with misrepresentations, also affected thousands of social activists who had taken to the streets throughout Spain to advocate for social rights, such as the right to decent housing, quality public healthcare, and decent labor conditions and wages.

As of 2015, consistent attacks against outstanding members of Podemos and other progressive groups were orchestrated through fake news disseminated by the certain press groups and TV broadcasters in collusion with the so-called "State sewers" to stigmatize and file unfounded legal cases against them to eventually take them down from the political frontline. The Pablo Iglesias case, who was the government vice president but ended up resigning, or the Monica Oltra one, the Valencian leader whose fate was similar, or Irene Montero, current Minister of Equality, are among the most re-known ones.

Many of these *fake news* and unfounded accusations' campaigns frequently instigated by radical and extreme right groups, managed to get congresswomen Isabel Serra and Victoria Rosell to quit their parliamentary seats, similarly to the case of Canarian congressman Aberto Rodríguez who, because of the Supreme Court lobbying endorsed by the House of Representatives, was unconstitutionally deprived of this parliamentary seat.

Yet, this phenomenon was not just restricted to the statal arena. At municipal level, ignominious cases of the so-called *urban lawfare* have occurred. This distinct political, judicial and media war modality has been targeted to various local, progressive or left-wing governments, many of which were engendered during the citizens' demonstrations on March 15th, 2011. In particular, the Madrid

government led by Manuela Carmena was exposed to various attacks from the media and other real power groups since its takeover. However, the most exemplary one is Ada Colau, a long-standing activist for the right to housing and mayor of Barcelona since 2015. During her eight-year term in office, her government has been the victim of complaints and criminal proceedings boosted by major speculation lobbies, investment funds and extractivist elites. Even though these complaints and proceedings have been dismissed, they keep being refueled and revived through continuous *fake news* campaigns staged by certain media, especially digital ones.

This *urban lawfare* exercised against the municipal governments willing to guard common good from private business, resume the public management of fraudulently privatized resources such as water supply, enforce the right to decent housing in a speculative context, or protect collective groups in vulnerable situations, is widespread. Only in Southern Europe, in addition to the Ada Colau case, the one involving Italian Mayor Riace Domenico Lucano is worth mentioning. Famous for his activism in human rights and his advocacy for migrants and refugees, in 2021 Lucano was sentenced to imprisonment for thirteen years and two months because of his management of the migration policy in his city.

Resorting to *urban lawfare* as the initial choice to browbeat and intimidate activists, campaigners and leaders committed to prioritizing common good over private business is a usual practice in the Global South too. The case of the current president of Mexico, Andrés Manuel López Obrador, who was impeached in 2004 when he was Head of the Mexico City government for attempting to build a new street to access a hospital, is an example worth mentioning. Or the one involving the current president of Colombia, Gustavo Petro, who was overthrown from his position and banned for a 15-month term for his claim to modify a waste collection system that had been strongly challenged.

Conclusion: the avoidable resurgence of an infamous practice

As may be noted, the so-called *lawfare* and *mediafare* are descriptive of secular judicial, political and media practices employed in different parts of the Global South and North to take popular, progressive and left-wing leaders and activists down from the frontline. As has been argued in these lines, such practices are not capricious. They typically derive from the attempts to stop or wipe out any policy intended to expand democratic rights and to make progress in social, environmental, gender and antiracial justice. Since last century, particularly as of the 70s, these practices have been oriented to the establishment of neoliberal economic projects, intended to dismantle public utilities companies, deregulate labor relations and, overall, foster new capital accumulation processes to the detriment of the key democratic principles.

The judicial and media offensive suffered by Argentine Vice President Cristina Fernández de Kirchner is an integral part of these *lawfare* and *mediafare* processes stretching out to different corners of the world. The purpose is to take her down from the political frontline and to intimidate her followers, thus generating a disciplining effect. There were similar attempts involving other regional leaders as well as many Peronist and non-Peronist social justice activists and advocates throughout

the past century. Those who boost such fraudulent judicial and media practices are undoubtedly aware of what Vice President Cristina Fernández embodies. Yet, in attacking her, not only is her own and her family's integrity being endangered. So are millions of people from different political affiliations whose rights would be extinguished if this type of practice should prevail.

This type of practices prevailing is not a prophetic statement. Contrarily, the defeat of the coup in Bolivia as well as the victories of Gustavo Petro and Francia Márquez in Colombia and of Lula in Brazil evidence that the neofascism emerging under the umbrella of the fierce neoliberalism of our times is failing to thrive as expected. It is precisely because of this that the collective struggle to dismantle *lawfare* and *mediafare* judicially and financially, to stop their corrosive infiltration into contemporary democratic regimes is a pressing need. Such was the understanding of those preceding us in reporting of these ignominious practices, regardless of their political affiliation. Let their enlightenment and commitment inspire us. And when bells ring, let us not waste time asking who they are ringing for. Because they will be ringing for us and for most mankind, who cannot allow any reactionary movement to strip us of our hard-down rights and liberties.

4.

To the enemy, not even justice

Eli Gomez Alcorta *

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This article and the book it is embedded into, which focus on shedding light on the outrageous violations of constitutional criminal law guarantees and on the actions taken by diverse legal, political and media actors willing to ensure the removal of Argentina´s leading authority from the political arena, stand as a benchmark of a specific era and of a de-democratization phenomenon unfolded in our entire region.

This is why we are not only compelled to write, to retell and to disclose the legal aberrations in a particular case, but it is also vital to name and shame the planners and perpetrators of these astonishingly perfect crimes. Similarly, this is an opportunity to discuss the judiciary´s current role and the ways justice itself applies to the democratic organization of the States.

We will be briefly discussing some specific questions about how the judiciary is primarily related to democracy as well as about the innumerable breaches of Cristina Fernández´ constitutional guarantees in the so-called *Vialidad* case and its surrounding circumstances.

The use of the state apparatus for the persecution and imprisonment of political opposition leaders is no wonder in our region. During the 70´s, most Southern hemisphere countries were victims of terrorist States which orchestrated plans aimed at the annihilation, extermination and imprisonment of part of the population.

Acting surreptitiously and illegally as a unit, the Armed Forces forcefully seized the power of the State and enforced a widely repressive policy to wipe out any socio-political, cultural, popular resistance against unfair socio-economic structures prevailing at the time. The national constitutions were abolished and parliaments were closed down with the survival of judicial branches almost unharmed, except for the dismissal of judges presiding the provincial courts of highest resort and the National Supreme Court of Justice. [5]

On the other hand, the intervention of the judiciary in political affairs and its anti-democratic acts in Argentina are held to be long-standing issues dating back to the issuance of the 1930 Judicial Order by the National Supreme Court of Justice, which acknowledged the presence of a national caretaker government, whereas the "*de facto"* one could not be challenged in court "as it serves a strength-based political administrative role aimed at enforcing order and social security". Therefore, the power of court orders in institutional life and in the building of citizenship is undeniable".[6]

"*Lawfare,* neither war nor law" [7]

We are now faced with a new judicial intervention system in life and in democratic political order. After four decades of economic stability in our region[8], the breach of guarantees of some individuals-primarily those of popular leaders- has been permitted. Therefore, and in line with this intervention policy, arrest warrants are issued against those leaders, who also get threatened with imprisonment by judicial operators´ unlawfully using legal instruments to ban them in election times, to subdue a government or to disrupt its financial affairs and to tarnish its public image, among other purposes.

These actions in breach of the most basic rights stand as lawful and legitimate and the judiciary acts are even advocated when justice administration is faced with an image crisis. Similarly, citizens´ access to the most basic criminal law declining guarantees is denied by major mass media sources serving a vital role in developing subjectivity and in emulating ongoing, sustained speeches whereby it is asserted the investigation facts did exist, all of this resulting in a stigmatizing effect with a blatant impact over constituency.

This political intervention system known as *lawfare* was particularly enforced against political progressive leaders and forces living in our region in the XXI century.

The intervention of the judiciary against Cristina Fernández de Kirchner, Rafael Correa or Lula da Silva, to name just a few, in countries like Argentina, Ecuador or Brazil, even if unique regarding the approach to declining guarantees or as to the violation of rights, usually involve some shared features; i) arrests or arrest warrants of political male or female leaders without a final judgement declaring them guilty; ii) intervention of judges with a high degree of public exposure, serving in legal proceedings, though not as ordinary court judges; iii) intervention of prosecutors qualified to act as such in specific cases, who, therefore, take over judges who were supposed to have an intervening role at the preliminary stage of investigations; iv) cooperation from repentant parties who furnish data to justify the grounds for charges; v) wiretapping in breach of the right of privacy-such as wiretapping of the mobile phones belonging to the lawyers of clients under an investigation and the use of such interventions outcomes in cases alien to the ones ordering those interventions, etc.-; vi) use of open criminal law offenses such as unlawful association not requiring a behavior description but rather the mere involvement in or the affiliation with a group of individuals with the intention to perpetrate crimes; vii) limited evidence to sustain the grounds for the charges, which are primarily clues-based; viii) the use of strict liability criteria to impose criminal liability in line with the following arguments: “he couldn´t have known”, “the psychic influence on the individuals involved”; “sexual assault”, among others.

By way of illustration, this is an outline of some of the above patterns´ unique features in the case of judicial persecution against Cristina Fernández, which are namely described as follows: a) 654 charges were brought against her during 2004-2022[9] and others were filed roughly 20-74 times by not less than six politicians serving at Cristina´s opposition party. The filing of most complaints dates back to 2014-2016 and to 2021-2022- in this latest period overlapping with the years leading up to presidential elections-; b) despite the use of a drawing-of-lots mechanism for the appointment of intervening judge/s, the same judge out of twelve federal jurisdiction courts was drawn by lot in ten successive complaints. The odds for lots outcomes to stand as the ones in this case are 0.00000000177%, that is, two in every thousand million; c) statements of repentant defendants were used to shape charges in several cases- as duly required by the law, interviews with prosecutors were not recorded to ensure the validity of those statements; criminal law offenses like High treason- which require “the action to take up the arms against the Nation”- were brought against Cristina Fernández for the undersigning of a Memorandum of Understanding with another Nation, which was later upheld by the Congress”. Cristina Fernández was charged with being the leader of an unlawful association in both presidential terms, as she is thought to have set up a

criminal organization which perpetrated crimes where her own administration was involved, to mention just a few; e) the "I couldn´t have known" argument, which entails the allocation of strict liability, applies as no evidence to prove the liability for the crimes she is charged with has been found; f) her right to produce evidence for acquittal was regularly denied; etc.

A too Schmittian and misogynous judiciary

Jurist Carl Schmitt argued "the political distinction itself is a friend-enemy distinction"[10]. According to the author, this definition will primarily involve an all action-criterion, that is, one even defining the utmost strength of a union or separation. The enemy is an existentially different *other*, so that our own existence is at risk or at stake. This is why an enemy is addressed separately. Rules for criminals, even less for opponents, are not enemy applicable since an enemy dispute eventually entails the denial of a way to exist and that, in turn, enables an enemy to fight that dispute and to defend himself as the self itself is at stake. And if compelling, the enemy could ultimately be annihilated.

Cristina Fernández is not regarded as an opponent or as a rival by economic, media and judicial corporations, and neither does she stand as a criminal. The assaults against her date back to long ago, even to the time she was serving as president. As a result of the judiciary´s higher level of rapport with Mauricio Macri´s administration officers, only when applicable, were further actions enforced against those assaults ultimately resulting in her devastation. It did not matter whether a trial judge asserted there had been a war to charge Cristina with High Treason for the undersigning of a memorandum, neither did it matter to promote the idea that Prosecutor Alberto Nisman´s murder had been perpetrated by a Venezuelan-Iranian command and that she had been the mastermind of that death; it did not either matter to pursue her prosecution for the adoption of an economic measure to control the dollar value. As will be discussed later, it does not either matter to be furnished with evidence to confirm the existence of road works, or to conduct thorough investigations to ascertain the payment of overprices for those works simply because Cristina Fernández does not stand as an enemy. The liberal criminal law constitutional guarantees for men and women charged with a crime do not apply to enemies.

Similarly, male chauvinist and misogynous violence in judicial, political and media assaults against Cristina Fernández cannot be disregarded as those practices and speeches also intend to undermine her legitimacy. Gender-based political violence towards the major Argentine leader, which also erodes the attributes of democracy, is also impactful as a tool to discipline other women, thus, hindering their full decision-making engagement and strengthening the traditional gender roles.

Argentina has witnessed the perpetration of wild, offensive crimes like the fierce, outrageous persecution, harassment and prosecution of another woman called Milagro Sala since January 2016. Additionally, the Latin American region has been faced with other crimes such as Lula´s 580-day imprisonment and Rafael Correa´s years of home exile, against whom an international arrest

warrant has been issued. Yet, the absence of limits and the absolute, appalling non-compliance with criminal procedural rules are still surprising, as a *no-justice-for-them-policy* is applicable.

Vialidad Case: Banning Mission

Out of all complaints filed against Cristina Fernández de Kirchner since Mauricio Macri became Argentina´s president in 2016, some of them are said to have been expeditiously addressed and served as part of the public condemnation and national political dispute. One of those complaints is the so-called *Vialidad* case, the only one with a current guilty verdict. [11]

After pronouncement of judgment in the above-mentioned criminal procedure, the aim of the investigation was to disclose the unlawful award of the road works executed in the province of Santa Cruz and funded by the national administration during 2003-2015 to some companies in which the owner would have connections with Néstor Kirchner and Cristina Fernández. Similarly, the investigation focused on whether part of those works had failed to have been executed, and whether surcharges for those works had been paid.

1. The investigation will begin as many times as necessary

This case initial stage dates back to the end of 2008 with the filling of a complaint by an opposition female political leader to pursue an investigation to confirm whether the road works executed in the provinces of Chaco and Santa Cruz had been unlawfully awarded to some businessmen. Subsequently, actions were brought against those businessmen, against a group of officers and against Néstor Kirchner. At that time, Judge Julián Ercolini, who after a two-year investigation declared himself incompetent in July 2021, was drawn by lot to intervene in that case. Citing Supreme Court of Justice case law examples, he argued the investigation had to be pursued in the judiciary of Santa Cruz and Chaco provinces, since at the Court´s own discretion, the intervention of the federal court was not applicable. A criminal complaint was filed before Rio Gallegos Federal Court, in the Province of Santa Cruz, in 2013 by another opposition leader who requested an investigation on the prospective perpetration of a long series of public work offenses, the 2003-2013 road work crimes included among them. At the end of 2014, Rio Gallegos´ federal judge ordered the investigation of those crimes should proceed before an ordinary jurisdiction, since no federal jurisdiction was competent.

Both complaints above were dealt with before the judiciary in the same criminal procedure, and following years of investigation the order of acquittal for anyone formally charged with those crimes was issued and became final in June 2015.

Shortly after President Mauricio Macri´s newly elected government came to power in February 2016–the National Roads Controller, appointed by the latter, filed a new complaint before the federal jurisdiction for equal charges: the unlawful allocation of 51 bidding road works funded by the national government and executed in the province of Santa Cruz in 2003-2015. Once again, it fell upon Judge Julián Ercolini to intervene in that case. Still and unaccountably, five years after his

declaration of incompetency to intervene in similar cases, and less than one year after the issuance of the order of acquittal, the latter ordered the reopening of a new investigation on the grounds that the federal jurisdiction was then competent to hear that case. At that time, the complaint involved Cristina Fernández de Kirchner.

2. If no crime evidence is available, bringing charges for unlawful association stands as the best option

Over the latest three years, there have been severe evidentiary hurdles to prove the investigation facts and any connections or acts of intervention to hold CFK accountable in an illegally reopened criminal procedure before an unlawful special jurisdiction.

The procedure illegalities- from breach of natural justice, *res judicata*, breach of the right of defense in a lawsuit arising from the denial to pursue an in-depth investigation to confirm the existence of road works and bidding prices, among others- as well as the breach of guarantees all led to the filing of several appeals until they eventually reached the Highest Court of Justice, while awaiting for resolution.

This legal complaint was indeed intended to serve a purpose. A criminal law figure with severe constitutional objections was enforced, which not only eased the disregard of apparent issues in the case, but also resulted in public opinion raising further objections against the defendant, even if hard to confirm the investigation facts, and to hold Cristina Fernández accountable. Cristina would be charged with being the leader of an unlawful association.

In short, this criminal offense figure implies a "crime of preparation since it suppresses acts usually remaining unpunished as they do not even constitute the onset of perpetration of a specific crime (section 42 of the Criminal Code)"[12] as accusations are filed against "…anyone who would become involved in an association or in a group of two or three individuals intending to perpetrate a crime simply on grounds of being a member of that association."[13]

Evidently, no externalization act is required to constitute this crime and neither is it to confirm any damage to a legal right as an abstract danger crime also entailing public peace is at stake. A voluntary agreement and a crime purpose are argued to be enough to perpetrate the foregoing crime. In addition to the blatant violation of the principle of externalization, harmfulness, legality and lawfulness, three governments democratically elected during 2003-2015, and engaged in the above-described crime minds´ meeting, were charged with being involved in an unlawful association offense in this particular case.

Bizarre as it may sound, this case is, no doubt, unprecedented. The investigation came to an end in March 2018, and the case records were submitted before the court to proceed with the oral trial

stage. Cristina Fernández was, thus, tried after being prosecuted as the mastermind of fraud against public administration and leader of an unlawful association.

3. The oral trial as a political setting

The oral trial began on May 21st, 2019 and ended on December 6th, 2022. Events like the COVID-19 pandemic, the presidential and legislative elections, and a change of administration were witnesses of that trial, which appeared in the covers of major newspapers and news magazines for three years and seven months. If *lawfare* implies the use of law and of the judiciary for political purposes, it is hard to think of a more adequate setting than the current one for the application of this system. Getting Cristina Fernández to sit down at the dock to defend herself against corruption charges is the scenario dreamt by those unable to confront her in the electoral political setting.

Eight days prior to becoming Argentina´s vice president, Cristina Fernández was summoned to testify in that trial as a defendant and she spoke whenever allowed to or enabled to do so. Cristina made use of no understatements to refer to the court prosecuting her. When she initially took the floor, she defined the court as "the *lawfare* Court", and then in her defense statement that court was labeled as a "firing squad".

No trial evidence has been found to confirm the failure to execute the road works or the payment of overprices. No single statements suggesting the receipt of instructions for *Austral Construcciones* to turn into the successful bidder were made. No email, phone call, text message or other communication records liaising Cristina Fernández with the bidding process stakeholders were found.

Conversely, countless witnesses during the oral trial debate argued as soon as Macri became Argentina´s president, they were harassed into making misstatements about absent illegalities.

The prosecutors´ statements were due to begin on July 11. Still, a couple of weeks earlier, the defense appeals were resolved and dismissed by the National Supreme Court of Justice. The firing squad had been entitled to act.

The stage to submit prosecutors´ arguments, which seemed to be emulating an American TV law series and entailed the use of innumerable adjectives, tone changes and bizarre figures to be magically inferred, ended nine days later, on August 22nd. The court ordered that Cristina Fernández de Kirchner would be sentenced to 12-year imprisonment and banned for life from holding public office under charges of being the leader of an unlawful association and the mastermind of fraudulent administration against the National State.

The prosecutors- who journalists compared to genocidal accusers in the so-called 1985´s trial against the Military Juntas- argued the "pyramidal unlawful association" had started to operate in May 2003 at the time Néstor Kirchner became president and remained effective until December 2015 in both of Cristina´s presidential terms. They argued a criminal organization had been set up

under the protection of the national government, and as Cristina was charged with being its leader, they deemed it useless to prove her involvement or her willingness to become involved in some of those acts, or her awareness of those acts. It sufficed to assert she "could not have known" the facts inherent to the government´s acts.

The prosecutor´s arguments were one by one contested in all motions and Cristina Fernández herself did so when exercising her right to defend herself. The foregoing arguments were found to have been misrepresentations, and the final evidence to have been disregarded, which, thus, resulted in prosecutors´ being embarrassed as the arguments submitted evidently bordered ignorance of, or disdain for the State basic rules to operate. When asked to contest the arguments and motions for the defense, the prosecutors abstained from making any statements. "The argument is standalone. The Court is well aware of the facts and of the evidence legally presented in this procedure", those were the prosecutor´s single remarks.

"Friends are friends"

A few days before the end of the prosecutors´ arguments stage, a set of profligate connections and ties involving prosecutors and court members, in addition to the long-standing set of well-known illegalities perpetrated by judges and prosecutors in the same trial stages, came to light.

It would be quite an all-embracing work to spell out these immoral ties in this article. By way of illustration, we can refer to cases involving some judges and prosecutors who play soccer at Macri´s weekend house like: Rodrigo Giménez Uriburu, the trial intervening Court judge; Diego Luciani, the trial Prosecutor; Mariano Llorens, Federal Court of Appeals´ judge, who intervened during the motion process inquiry stage. Other officers would play tennis and paddle at Olivos´ presidential residence while Macri served as president. These are the cases involving Mariano Borinsky and Gustavo Hornos, both serving as Federal Criminal Court of Appeals judges.

Other judges and prosecutors also met with Macri, such as his Minister of Security with whom they were both full members of the Federal Intelligence Agency during the trial pending stage: Jorge Gorini, the trial intervening court Judge; Sergio Mola, trial Prosecutor; Mariano Llorens, Federal Court of Appeals´ Judge; Raúl Pleé, Prosecutor before the National Criminal Court of Appeals; Gustavo Hornos, National Criminal Court of Appeals´ Judge. And last but not least, we can refer to Leopoldo Bruglia and Pablo Bertuzzi (Court of Criminal Appeals Judges) and Horacio Rosatti and Carlos Rosenkrantz (National Supreme Court of Justice Judges) who were illegally appointed by Macri.

One day before the rendering of judgment, the contents of some conversation exchanges involving four federal judges, one of them Judge Julián Ercolini conducting the *Vialidad* Case investigation, the City of Buenos Aires Chief Prosecutor, the City of Buenos Aires Minister of Security, two former intelligence agents, and two of *Grupo Clarín* officers also came to light. The (not so widely known)

news of their trip to Lago Escondido district[15] to stay at a ranch owned by Joe Lewis, Mauricio Macri´s friend and holiday host, had become public one month and a half earlier.

Still, the dissemination of the chat group they had created for the exchange of actions to put in place before the disclosure of that news item stood as evidence of a longstanding set of crimes ranging namely from the trip acceptance, the *Grupo Clarin´*s payment of accommodation, the subsequent procurement of the service invoices to account for payments they had never made, including threats to some officers who could provide additional data about that trip, and the filing of an application before Bariloche´s federal prosecutor and the federal judge leading the investigation of that trip, so that actions would be enforced in that legal proceeding, and the witness who had to testify in that case would receive guidance to make misrepresentations about facts he had to give a reply, including a great number of other (probably crime-related) acts.

The attempt

Schmidt argued war did not stand as a goal, or as an end in itself, but as a particularly political behavior assumption. In that regard, he asserted "those wars are naturally and uniquely cruel and inhumane since when going beyond the political setting, they need to counter the enemy morally and also from other viewpoints, and to turn him into an inhumane monster not only needing to be fought, but also to be ultimately devastated, which therefore, does not stand as an enemy that we can just keep at bay." [16]

At war, it is not a soldier but rather a politician the one who decides who the enemy is. And who the female enemy was, had been defined much earlier. The attempted murder against Cristina Fernández de Kirchner dates back to September 1st, 2022, one week after the announcement of the prosecutor´s high-flown final statement, which was boastfully disclosed and appeared on all national newspapers cover pages. That very night prosecutors had applied for the condemnation of the crime perpetrator, a small group of people dropped by the vice president´s residence for a public protest, which resulted in people´s expression of approval and daily examples of support. And it was within that framework the attempted murder was perpetrated. Unfortunately, and after the right amount of time has elapsed, the attempted murder investigation has not disclosed any other outcomes rather than the perpetrator´s name and of some other individuals; all of the foregoing despite the fact Cristina Fernández ordered an investigation on diverse violent political groups and on their ties with potential funders.

CONVICTION AND BAN

Cristina Fernández de Kirchner, among others, was sentenced to 6-year imprisonment and to a public office lifetime ban on December 6th, when found to be the mastermind of fraudulent acts against the State. Despite the filing of appeals during this trial is allowed and no specific term for appeals filing must be observed, one can assert, without a shadow of doubt, this condemnation entails a broader judiciary´s intervention role in life and in democratic political order.

Cristina Fernández currently stands as the politician with the highest popular ancestry and representativeness levels, and it has been this state of affairs which turned her into the enemy of corporations.

Besides the unfolding of judicial events so that Cristina´s condemnation would become final, and her lifetime ban from public office would be binding, a *political* issue rather than a question of law is definitely at stake.

As we all know, what the future holds is uncertain, since History is not eventually written by judges- even if they may want to- but, in fact, it is written by the peoples.

5.

Lawfare in Brazil and Argentina, a red flag for all Latin America

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1. What aspects of the *Vialidad* case could be identified as usual *lawfare* practices in Latin America?

The prosecutions against former President Cristina Fernández de Kirchner are very similar to those brought against President Luiz Inácio Lula da Silva. Having been reviewed by research academicians as the so-called Brazilian *lawfare*, the use of law for political persecution purposes stands as an insidious illustration of criminal persecution against leaders and parties, a formula recurrently resorted to in other countries with distinctive aspects in each one, though also with shared elements.

This is, in fact, one of the features of the judicial system being used as a tool to fuel a subtle war against political and economic targets: its adaptability to the different legislation systems, stakeholders, hegemonic media and other components which turn *lawfare* into an effective means for institutional and sovereign destabilization.

In the Brazilian case, state prosecuting officers, lured by the US-imported «*task force*» mechanism as a general technique, were the means employed. Both prosecutors and judges became involved in technical cooperation programs intended to fight transnational crime, particularly drugs and firearms trafficking and related crimes, and gradually assimilated the idea of transnational systemic corruption as tantamount to other serious crimes, to justify extra-territorial and flexible cooperation measures. Over time, this close alliance with counterpart organizations in other countries, combined with an eventually synergic and helpful relationship, turned into vulnerability in certain countries. It stretched out to homeland security and national defense aspects, as arises from the spin-offs of Brazil's so-called Lava Jato Operation, a grievous example of economic and political destabilization and of the encroachment on a country's jurisdictional sovereignty.

In addition to the technical cooperation process and the specific transnational crime-fighting legislation, US legislation has, over time, become growingly specific in terms of their classification of "systemic transnational corruption crimes", due to reasons out of the scope of this brief account and in their advantageous interpretation of this classification when linked to economic competition criteria. Extra-territoriality applied to drugs, firearms or human trafficking fighting also gradually assimilated the concept of transnational corruption for manifold purposes, such as money laundering, bribery and international terrorism activities and funding.

We are aware that these prove attractive enough social reasons to mobilize an immediate and massive approval: ultimately, everyone will stand up against corruption and its harmful and antidemocratic uses. However, not always is the ultimate goal a noble or republican one. The Brazilian case not only revealed schemes for the use of public monies for bribery operations among public and private officers (which was indeed a serious democratic issue), but also provided a "legitimate excuse" to fuel successive infringements of the judicial system procedures themselves, with severe consequences for the society: the disqualification of the then former President Lula (current president in office who was disqualified from running in the 2018 elections) and his 580-

day political imprisonment for cases later dismissed or revoked by the Federal Supreme Court, along with an erosion of the sense of politics (resulting from widespread legal cases brought against progressive parties), and the election of a radical-right president. On top of this, there has been a dissemination of the *lawfare* technique against state or public officers, thus fueling a persecution culture in neglect of the legal due process, along with growingly weakened legal safeguards (judicial activism and persecution culture) and the ensuing serious consequences for the social structure's reliance on public and private companies' workforce and for the groups involved in the legal cases' filing and in *lawfare*'s extra-territorial scheme (the gas, petroleum, energy and civil construction industries – strategic areas for national development), among other major consequences.

The Argentine case is like others in Latin America and in Brazil in particular, including the judicial offensive period. Between 2015 and 2019 Cristina Fernández was recurrently prosecuted, totaling thirteen proceedings, all of them falling in the hands of lower court Judges Claudio Bonadío and Julián Ercolini, and later, of (Court of Appeals) Judges Hornos and Borinsky.

It should be noted that in Brazil, the prosecutions against the then former President Lula and against members of the Workers Party (PT) started out in 2016 even though, as widely known, the l*awfare* offensive architecture had been devised long before, probably in 2010. Yet, it became conspicuous in 2014, with many well-known judges and prosecutors having taken part, such as former Judge Sérgio Moro and former Prosecutor Deltan Dallagnol, the most iconic judicial personalities who, bolstered by strong media support, quit their positions to be elected to Congress.

The reference to the judges and to Argentina's Prosecution Office members is justified by evidence of their close collaboration with former President Macri -in office between 2015 and 2019-, who made discretionary appointments, in violation of the procedure enshrined in the National Constitution, whereby appointments should be approved by the National Senate.

No wonder then that former President Macri hurried to reshape the most relevant corruption-fighting technical agencies: the Anticorruption Bureau (AO) and the Financial Information Unit (UIF) by appointing his political friends to lead them, despite their controverted (and, in due course, challenged) technical qualification. The appointments of his family members, former aides and former legal counsel and acquaintances make up the control and monitoring agencies plotting to operate irregularly against former President Cristina Fernández. It is clear today that the complainants acted as a "task force" to prosecute Cristina, this being internationally reported even by the former president herself.

There is also increasing evidence that Vice President Cristina Fernández and her family were victims of illegal espionage and monitoring, illegal surveillance and intelligence operations by the state services. Among the agencies known to have been part of the plotting, there is the National Security Agency, which collusively coordinated undercover secret and intelligence operations for political persecution purposes with prosecution and judicial branch members.

In Brazil, the scope of the intelligence agencies and the military involvement in *lawfare* and in the Lava Jato Operation remains unclear, though there are indications that the Institutional Security

Office (GSI) collaborated with the Presidency of the Republic to monitor social and political movements during the Jair Bolsonaro administration. It is also known that, upon his appointment as Minister of Justice by Jair Bolsonaro, the former judge cooperated with these organizations and with other countries' intelligence departments, especially the US one. What has been already sustained and confirmed by the Federal Supreme Court (STF) was the use of illegal wiretapping of the then former President Lula's lawyers during the defense strategy preparation, a fact that contributed to suspicions being brought on former Judge Sérgio Moro.

Another similarity lies in the concentrated mass media being massively used to publicize complaints brought by inspectors, which would get wide coverage, thus harming the image of the prosecuted and therefore fueling disqualification and image discrediting processes. This is common ground in the trials against Cristina: in the case of the trials against current President Lula in Brazil, these were broadcast nationally in the prime time by *Rede Globo de Televisão,* Brazil´s most popular and massive TV station, which illustrated the Lava Jato Operation through images of money flowing into sewers and of the Workers' Party members, particularly President Lula, as the ones responsible for the systemic and rampant corruption. This leads to an inevitable association with the dollar "containers" buried in Patagonian ground, even under Dr. Kirchner's tomb, used as a resource to arouse citizens' sensitivity.

The media processes accompanying the legal complaints are intended to compromise the image of the prosecuted long before any crime may be inquired into, and to forge an alliance with the public opinion for them to approvingly and duly lobby for the flexibilization of procedural criteria. The media and public opinion pressure fosters accelerated proceedings and stages, as well as anticipated grounds for condemnation, and preventive arrests, and additionally legitimates political and public condemnation even before any sentence is issued. This is a typical feature of *lawfare* cases in Brazil and Argentina: the use of the media to secure an anticipated condemnation.

2. What irregularities and omissions could be pointed out in the *Vialidad* case due legal process?

The *Vialidad* case against Cristina Fernández de Kirchner stands amongst the most publicized, comparable to Brazil's judicial activism processes. The case was brought in 2016 with the goal of investigating 15-year-old events which had never been documented. Yet, the prosecution office brought a case against CFK for illegal business association aggravated for the damage against public revenue, which prescribes a 12-year imprisonment sentence and lifelong disqualification for public office.

In December 2022, the Federal Oral Court convicted the former president to 6 years of imprisonment and to lifelong disqualification for public office. This decision may be appealed (that is, it is not yet final) and shall not be immediately enforceable in any of its terms until all the appealing stages have been resorted to and if she remains in office as vice president (ending December 10th, 2023).

In addition to the most interesting aspects from the political standpoint – it should be noted here that Lula, deemed suppressed from political life after the Lava Jato, is the currently incumbent president – an outstanding issue from the legal standpoint and an undeniable similarity to the

Brazilian case is the failure to observe the most elementary legal due process principles in an iconic case of political persecution against a major Argentine political leader.

In the *Vialidad* case, there is also an abusive use of the liability principle, that has been used in Brazil since the so-called «*mensalão*» against PT members, virtually a strict liability concept, which has been strictly prohibited under criminal law since the times of the Enlightenment.

In one of the abusive stages of the process, given the recurring refusal of the justice system to accept an expanded defense, CFK represented that she would have liked to "speak before the hearing court judges" and described Prosecutors Diego Luciani and Sergio Mola's arguments as a "fake and poor script": "no single part of what argued by the inspectors has been documented" and went on to say it was just a "really fake and poor script", and additionally challenged judicial officers Diego Luciani and Sergio Mola for their failure to investigate former Public Works' Secretary José López and former President Mauricio Macri´s friend, entrepreneur Nicolás Caputo's telephone communications, which, in her view, "would be a monumental scandal, and yet, surprisingly, were never paid attention to".

On her social media Cristina Kirchner expanded her arguments about the road construction projects, which she started by displaying different news articles and by highlighting that "in 2011 Judge (Julián) Ercolini declared his lack of jurisdiction and his being harassed by the incoming Government", and she insisted that the "sentence was already prepared". Then, she added that: "they interrupt me when I say that the sentence is already prepared because when we took office, we learnt about the preceding government's operations with the judicial board and the spying scheme organized by the Federal Intelligence Agency (AFI) and the Gestapo against La Plata city's union leaders".

Such an outburst by a defendant, unusual under democratic rules, is not a surprise precisely because in this and in other cases, a total lack of impartiality prevails on the side of the prosecution and judicial officers involved in deciding over the individual and collective fates -given the defendant´s political relevance- of an entire society. The case deserves thorough reviewing, as there are many judicial rulings which have been dismissed in terms of the legal due process.

3. What Human Rights principles are being violated in the *Vialidad* case?

Following are some of the principles infringed in the *Vialidad* case and in the number of prosecutions against CKF:

- Violation of the waiver-of-prosecution principle: evidence of the prosecutorial will and in particular, interest in the inspection and the prosecutorial task and thus the desire to provide for distinctive prosecution. It is to be noted that the "theory of suspicion of or concern about partiality", enshrined on national and international case law and by the constitutional text and the procedural regulation itself, sets out that there should be no suspicion of partiality on the side of court investigators or judges at all.

- Violation of the presumption-of-innocence principle: the allegations against CKF are vague and unspecific, with no causation link between the evidence submitted to the court and the presumed liability. The "head of an unlawful association" accusation has been strongly challenged in criminal law doctrine.
- Violation of the full-defense principle: defendants should not be deprived of the right to testify in their defense subsequently to an allegation incorporating new elements not included in the original statement (the *Vialidad* case). It is to be pointed out that section 380 of the Federal Procedural Criminal Code provides that "during the debate, defendants shall be entitled to make as many statements as they may deem appropriate, as long as these may be related to their defense". Likewise, both the National Constitution and the American Convention on Human Rights enshrine this aspect of the right to defense.
- Natural judge principle: even though the lot-drawing system was employed to select the hearing judge in the cases against the former president given that there were several possible competent judges, ten cases against Fernández de Kirchner were allocated to Judge Claudio Bonadío through the above system, something surprising even for mathematicians who deem such an event highly unlikely.
- The principle of legitimate prosecution as a condition for a valid due process: the illegal disclosure of private phone conversations between CFK and her employees, which had been wiretapped by state intelligence service members and by a technical group reporting to the National Supreme Court of Justice (upon the request of the Executive Branch) reached as far as illegally wiretapping lawyer-client conversations in detention facilities (like in some of the Lava Jato Operation cases in Brazil). Evidence of illegal spying was also detected at the Patria Institute as well as at CFK's private house.
- Illegal use of whistleblowing rewards: during Mauricio Macri's administration, the "privileged witness" or "cooperating witness" (also known as rewarded whistleblower and widely used in Brazil's Lava Jato prosecution cases) whereby some defendants were put pressure on to incriminate CKF, in exchange for being bailed from preventive detention. In that regard, it is worth mentioning the scandal upon the revelations that Marcelo D'Alessio, a fake lawyer, had presumably blackmailed businessmen for monetary payments in exchange for their not being incriminated in the so-called "*Cuadernos*" case.

OTHER PRINCIPLES: In addition, other principles are infringed in the sentences against CFK: the expeditious trial one (cases delaying over time) and the one involving the right not to testify against oneself, except in trial cases involving the same crime (*ne bis in idem)*, among others.

A summary of this arises from the alarming statements contained in the UN Special Rapporteur´s report on the Judicial Independence of Judges and Lawyers drafted by García Sayán in 2019, which elaborates on the Argentine Judicial Branch's disquieting loss of independence and impartiality resulting from irregularities in the Judicial Council, the coercion exerted on Gils Carbó, Esq., into resignation, the relocation of judges to establish courts which are submissive to the Executive Branch, the attacks to judge Ramos Padilla, etc. (See the Exhibit hereto)[17].

Conclusion

It should be noted that *lawfare* in the case of Brazil involves an interference strategy which, based on anti-corruption fighting arguments, an international cooperation framework and a mega-operation involving federal police groups, inspectors, judges and mass media, has led to the set-up of a legal-appearing theater of operations for political and economic persecution purposes, with a view to the country's geo-strategic destabilization.

The abovementioned international cooperation is an issue to be investigated by all sovereign states, considering the apparent vulnerability related to the hegemonic financial system and its supporting institutions. For transnational systemic corruption fighting, this regulatory system has the power to enable a series of US state-run, partially state-run, private and even secret agencies to deploy highly aggressive mechanisms against businesses and citizens around the globe.

The US Foreign Corrupt Practices Act (FCPA) prohibiting the bribery of governmental officers by citizens and business to the advantage of their commercial interests, stands as the entrance gate. Passed in 1977 to fight corruption at domestic level, over time the FCPA has become applicable to listed companies and their staff members, including employees, directors, shareholders and officers.

It stands as an outstanding mechanism to boost business competition, particularly as of the 1998 amendments which allow enforcing the FCPA on foreign companies and citizens who may, directly or indirectly, facilitate or make bribery payments within the US territory. This is meant just as a summary, though much more may be commented on the prospective overlaps between this piece of legislation and other drug-trafficking and terrorism fighting statutes.

This has been the backdrop for the US Department of Justice, Stock Exchange and FBI officers' involvement in the investigations of Petrobras, Odebrecht and other state-run and national Brazilian companies. The international interference with the Prosecution Office by FBI officers has been identified in this process and has paved the way for a strategic plot to resort to technical cooperation to the benefit of international interests.

It is clear today that there is a methodology deployed throughout the countries in the region, though distinctively in Brazil, given the differences among countries and their specific political systems, just like in the case of Germany and France which, following major defeats, made decisions about foreign exchange legislation to protect their own economies. An iconic illustration has been the French company Alstom, where right-wing policymaking is clearly deemed as a new economic and strategic war tool.

The events taking place in Brazil are a lesson to learn about vulnerability, when judicial system groups are observed to cooperate in competition practices. Judicial autonomy, along with empowered inspectors and prosecutors with no sovereign control, but with a stake in mass media and their interests, have set up a relentless ploy.

The prosecution system intertwined with the concentrated mass media and their corruption-fighting warfare narrative have fueled the legitimization of media condemnation in any proceeding, with no observance of the legal due process. The presumption-of-innocence principle is compromised when the mass media lead into a condemnation even before the issuance of a judicial ruling, and it becomes much easier for a judge to act arbitrarily when the public opinion expects them to resolve the question of corruption. Such was the case in Brazil with Lula and dozens of people linked to Lula's and Dilma Rousseff's progressive administrations.

In my opinion, the Brazilian case should stand as a red flag for the entire region. In the first place, because of the above-explained asymmetries in the international competition system on corruption-fighting grounds. And, in addition, it should be understood that the judiciary autonomy should have limits, given that prosecutors have not been elected by the people and their prosecutorial tasks are not always observant of the ethical standards or the people's constitutional guarantees or the reputation of state-run companies which, in addition to being a source of employment and income, erect into a state project and into a specific country's standing in geopolitical terms.

It should be noted that access to what happened in Brazil was achieved thanks to a hacker who revealed material including conversations among prosecutors, the principal judge of the case, journalists and other stakeholders intended to come up with prosecutions and convictions even before the prosecution of the case against Lula even started. The Federal Supreme Court revoked the convictions against the then former president it had earlier willingly rushed to secure, including the authorization of illegal simultaneous hearings in his legal counsel's office, induced testimonies' practices and others in blatant violation of fair trial standards.

The role played by Brazilian justice, which largely facilitated the advancement of the Lava Jato Operation without any overseeing of famous Judge Sérgio Moro, in turn appointed Minister of Justice under Jair Bolsonaro's administration, is disgraceful. It is to be noted that Moro was eventually declared a biased and suspicious judge by the Federal Supreme Court and all the proceedings he had judged were reversed (though the damage had already been done). Yet, despite all the above, Lula da Silva has been elected president by popular vote.

However, not all vulnerabilities are overcome. One thing that can also be perceived in other countries is the advancement of judicial autonomy against progressive and state-based projects region-wide. Congressmen and political leaders have been victims of a-priori media condemnation or calling-out, thus hindering an impartial delivery of justice and the enforcement of full defense guaranties.

As has been pointed out, alarming procedural similarities between the current case against Cristina Fernández de Kirchner and the Brazilian cases are observed, while their short and long-term political and geopolitical impact remain unknown.

Even more surprising, considering the Lula case, is the procedural injunctions in the cases against CFK for a disqualification order to prevent her from running in the 2023 elections. Against her desire, the request for lifelong disqualification for public office is the main goal.

The *Vialidad* case is deemed outrageous because of the elements listed here, with the most shocking being the refusal of the Court judges to allow CFK the opportunity to expand her defendant statement, even though some terms in the initial accusation had been modified, and the seeming "hurry" (expeditiousness) to proceed with the appealing procedures. It should be noted that the Guarujá Triplex case against Lula, revoked in full by Brazil's Supreme Court of Justice, moved on at an unprecedented speed since Sérgio Moro's conviction (July 2017) at the Porto Alegre Federal Regional Court (2018) and ended up in an anticipated sentence to 580 days of imprisonment without a trial (March/April 2018).

What has been the cost of this inglorious political imprisonment for Brazil? How can the damage for the country's future brought by Lula's disqualification to run in the 2018 elections and by Jair Bolsonaro's taking office be estimated? How can the political, and particularly, the economic and strategic losses caused by the Lava Jato Operation in the decay of Brazil´s petroleum, energy and civil construction chain be calculated?

In a context of growing judicialization of politics resulting from the Judicial Branch's lost independence and impartiality, the events in Brazil are a lesson not only for Argentina but also for other parts of Latin America. What is at stake goes beyond political persecution and involves societies' status of autonomy and popular sovereignty and democracy. It involves dysfunctional justice system officers uncommitted to society and the State. They are pieces of a malicious legal game ultimately intended to destabilize Argentina to bring about a scenario of chaos where plundering interests may prevail.

6.

Eight *lawfare* theses: Senselessness of the *Vialidad Case*

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1. *Lawfare* distorts the political nature

According to E. Raúl Zaffaroni the "judicialization of politics is the phenomenon in which distinct political segments fail to settle internal disputes and disagreements, thus being increasingly more often submitted before justice, with politics and justice at a risk of being undermined".[18] Hence, the judicialization of politics intends to be impactful on and to shift its interaction with political forces by means of diverse prosecution or justice systems.

Making use of a 2016´s initial investigation about the alleged profits from the award of locally funded road works to businessman Lázaro Báez, as disclosed in the *Vialidad Case*, implies shifting the election scenario for the benefit of "Macrism" or other current administration opposing forces. "None of the fifty-one works executed in Santa Cruz province in 2003-2015 and investigated in the *Vialidad case* proved worthless or senseless, which could not even be denied by the opposing party representatives". What is more, the execution of these works was entirely grounded on the road deficit existing even before 2003".

The *Vialidad case* intends to ban former president and current vice president as a politician for life, which entails a political aberration to annihilate one of the most intimidating leaders over the latest decades. Despite Cristina Fernández de Kirchner´s unwillingness to run for 2023 year-end presidential elections, this lifetime ban puts the progressive sector at a disadvantage as it will have to face a key judicial event resulting from a political speech and turn to the *Vialidad Case* to discredit Peronism proposals and nominations, with that moralizing halo searched by neoliberalism forces and always found in media scoundrel as a distinctive feature.

2. *Lawfare* turns adversaries into enemies to be annihilated, when distorting the natural contradiction in Politics**.** There is no "national consensus" notion from a democratic viewpoint. The enemy annihilation practice is initially applicable to politicians. Nevertheless, the wiping out of left-wing party leaders in Colombia a couple of decades ago cannot fall into oblivion. Neither can the recurrent illegal 20-month denial for the release of Ecuador´s former Vice President Jorge Glas be disregarded after his pre-release term, despite the Inter-American Commission of Human Rights´ award of injunctions, or judges´ grant of a habeas corpus writ for his release after almost five years in prison, and for the treatment of his impaired health condition.

According to Pedro Nuñez[20], serving as researcher at FLACSO-CONICET (Latin America School of Social Sciences - National Scientific and Technical Research Council), the September 1st, 2022 assault and attempted murder against Cristina Fernández de Kirchner (CFK) suggests a substantially broken democratic harmony as the aftermath of an aggravated civil segmentation which has enabled the use of some trends and speeches going beyond the scope of the "friend or enemy" terms. What is more, they involve the "adversary" annihilation, as arising from some of the demonstrators´ banners in support of CFK´s conviction. The democratic game includes the acceptance of rules, the major ones being the recognition of the others and the requirements as applicable, for these different beings to act democratically, which implies an absolute rejection of political bans, and even more of any physical annihilation practice. Yet, that minimalist understanding was overlooked by the entire

opposition group or by the pool of media actors having an increasingly more influential role in our societies.

Confrontation and debate are the bedrock of politics and political issues and imply the recognition of the others, and of opposing parties, etymologically referred to as opponents. Instead, war intends to render adversaries useless or illegal, and to ban them. In other words, they are not regarded as part of the democratic political game, but as a target to be wiped out, which thus leads to the destruction of the republic and society foundations.

As pointed out by Constanza Jáuregui, *lawfare* is not only a device to fight against social, progressive leaders, but, as likelihood of dissent being ruled out, it also involves the shattering of a community and the adoption of a single authoritarian [21] truth.

In this regard, and with a judgement already issued, the use of CFK´s metaphor to refer to the Court "as the firing squad" stands as paradigmatic. In reply to the foregoing, the Supreme Court of Justice former judge and the Inter-American Court of Human Rights former Justice Zaffaroni remarked: "the firing squad is better" because all of its members have firearms and nobody knows who the killing bullet has been shot by. Everybody agrees in this sense. We are referring to that ancient metaphor referring to the executioner´s axe hidden under the judge´s toga.[22]

3. The utilization of justice for political ends leads to a downgrade in justice administration institutions, which, on the one hand, accounts for citizens´ rising mistrust in justice, and on the other, entails the certainty that judicial bodies are not autonomous and independent and are forgiven by the ruling party, or arguably as simply pointed out by the Federalists, the judges´ role is institutionally intended to preserve privileges of powerful individuals before crowds´ claims. As stated above, erosion of justice leads to the undermining of not only trust in justice administration but also in democracy, and also paves the way for authoritarian proposals like the ones regrettably gaining momentum in the Latin American region to emerge.

According to the 2021´s Latin American Barometer Report, support to democracy ratio has been confirmed to have climbed down from 63% to 48% in only one decade, with Ecuador standing as the Latin American country with the most declining support ratio dwindling from 69% in 2017 to 50% in 2018 to nearly 33% in 2020, followed by Colombia with 54%-43% declining ratios. On the other hand, Argentina, with memories of authoritarian drift times, also features 58%-55% declining democracy support ratios, and even if Brazil´s support is on the rise, it scarcely reaches 40% of the population. One of the grounds for this downward support is a population´s major segment socio-economic critical situation in pandemic times. Yet, the weakness of institutions, among them, those serving justice, contributes to the above declining figures. Only 16% of the Argentine people trust justice with Brazil and Colombia´s trust ratios being 36% and 23% respectively, and barely reaching 18% in Ecuador.

4. L*awfare* disregards the Constitution and human rights international instruments

The visit paid by Judge Gustavo Hornos, serving as member of Court Room Nº4 of the Criminal Appellate Division, to former President Mauricio Macri at the *Casa Rosada* almost two days before the announcement of CFK´ prosecution is held as anecdotal evidence in the so-called *Vialidad Case* against the latter. Attempts for society to recognize other Court of Appeal judges may frequently visit the presidential residence or former President Macri´s private dwelling are made without such visits turning influential over their decisions. Attempts are also made for society to accept Prosecutors Diego Luciani or Sergio Mola maintained conversation exchanges with former President Macri[23] during soccer or the most aristocratic tennis "games" before or after his work schedule. Yet, they held no biases against the prosecution of former president and the entire anti-progressive group´s major political adversary in Argentina. There is no doubt these acts "overwhelmingly defeated" the Argentine Confederation Constitution, in which international constitutional human rights instruments are embedded, among others, the Universal Declaration of Human Rights, whose section N°10 emphasizes the right of anyone under equal conditions to be publicly and fairly heard by an independent, unbiased court.

Furthermore, these judges and prosecutors are unaware of the American Declaration of Rights and Duties of Man section XVIII, which is reliant on the court ability to protect citizens´ rights or of the American Convention of Human Rights section N°8 advocating judicial guarantees to ensure an individual´s right to access a competent, independent, unbiased tribunal with the defendant´s presumption of innocence until its guilt is legally proven.

As earlier pointed out by Argentina´s former president and current vice president´s counsel for the defense, there was a breach of the fair trial guarantee in 2017 and 2018 when Judges Jorge Gorini and Rodriguez Giménez also held a meeting with Patricia Bullrich, serving as former security minister and later standing as CFK´s opponent. Alberto Berladi remarked: "None of the parties, whether serving as prosecutors, complainants or defense representatives, may become friends with the judges who are compelled to play an absolutely unbiased, equally distant role when interacting with parties" and then added: "There have been an unacceptable breach of the impartial judge guarantee and an infringement of the fairness and respect for lawfulness principle that should apply to all prosecutors´ acts, which thus stands as reasonable grounds to justify the disqualification of judges under the applicable sections".[24]

As stated by professor Raúl Gustavo Ferreyra "the triumph of reason must be the triumph of those who reason. The Constitution is deemed as a ground to account for facts: In the absence of reason, there is a mere judicial will dismally doomed to judicial arbitrariness: in other words, there is an ungrounded conviction". [25] After judges establish the grounds for their rulings, we will be able to discuss the hidden trails of those grounds and will come up against political guidelines, which gradually results in the Argentine Supreme Charter falling into oblivion.

5. *Lawfare* times are perfect and play a major role primarily during election times

Why do political actors turn to legal institutions to settle political disagreements? The answer is crystal clear. Some society sectors or political power authorities are convinced they will be able to reach a court settlement of what may at least be contested in a political or electoral setting. As former President Lula da Silva was leading in the polls, preventing his involvement in 2018´s Brazilian electoral campaign proved vital. What is more, the legal charges resolution against former President Rafael Correa prior to September 2020´s initial nominations enrollment was crucial to deter him from running as vice president of Ecuador. That is why a Lower Court judgement was pronounced in April 2020, during full pandemic times, though the appeal motion got denied in September, 10 days before the onset of Ecuador´s president and vice president´s nominations enrollment.

Cristina Fernández de Kirchner was sentenced during an election year when there is a need to ban historic leaders, and above all, to morally defeat progressive forces so that other political chess actors may return, and even far right-wing parties in advocacy of a "moralizing" progressive governments reactive neoliberalism may come into play. As a result, we are not surprised at the ungrounded judgement announced by the Oral Criminal Federal Court in case Nº2833 on December 6, 2022. CFK was sentenced to 6-year imprisonment, to a lifetime ban from public office and to the payment of litigation costs since she was declared to be the mastermind of fraudulent administration against public institutions[26] .The core issue was to get her removal from the political scene and, with a court ruling, to subject people´s decision at the polls.

6. The role of prosecutors´ offices in the political system resembles the one of central banks in the neoliberal economy

Over the last four decades the political forces in advocacy of the Washington Consensus have endeavored to establish an economy "technical control" approach and made each and every pressure and blackmail attempt to control Central Banks and secure their independence. The idea behind this approach is to ensure the survival of institutions´ policies regardless of peoples´ democratic decisions. A similar phenomenon has been witnessed over the latest twenty years, above all since September 2001 attacks against the Twin Towers in New York city, and since the adoption of a *securitist* approach in the fight against narcoterrorism, with prosecutors engaged in Politics and their ties with agencies and departments enforcing the American Security policy.

Prosecutors´ interventions in line with the *lawfare* anti-progressive government latest year scheme are not merely coincidental since all of them have forgotten their role is to secure an unbiased investigation for the sake of protection of victims´ rights and respect of prosecuted parties´ guarantees. Testimonials of individuals hardly aware of Lava Jato investigation facts, who based their assumptions on major mass media arguments, were used by Rodrigo Janot to shape that case. Janot himself publicly expressed his support for demonstrations "in advocacy of the Rule of Law" and for Lula´s conviction.

Ecuador´s State Attorney General, Lady Diana Salazar, gives press conferences, establishes prosecuted parties´ liability before the hearings or the end of legal proceedings, and admits pieces of evidence as if they were "real findings" when clearly submitted for a specific intention. The agenda (copybook), belonging to President Rafael Correa´s former assistant and kept as if it were a diary, where she wrote about cases of alleged bribery and stated accurate figures with cents included, is exemplary. Pamela Martinez herself acknowledged the agenda had been drawn up during a 35-minute flight from Guayaquil to Quito in 2018, and the simple present tense was used even if referring to events allegedly taking place in 2022. This document was found "unexpectedly" during a second search proceeding twenty days after her arrest and at the time it was rumored she was likely to become a Prosecutor´s office efficient collaborator. This type of evidence devoid of a handwriting expert report proved useful to sentence former President Rafael Correa Delgado.

The *Vialidad case* Prosecutors Diego Luciani and Sergio Mola are conducting an investigation on some purported illegalities found over fifteen years ago but failing to have been confirmed. No evidence of overpayment has been found, and neither has failure to execute the alleged works been confirmed. Nevertheless, the prosecutors requested 12-year imprisonment and a lifetime ban from public office for CFK for the crimes of unlawful association (dismissed even by the judges) and aggravated fraudulent administration deemed as an offense against public administration. Just like in other Latin American region cases, former President Mauricio Macri´s "protected witness" law was enforced to exert pressure on some defendants to lay charges against CFK in return for exemption from pre-trial detention. [27.]

Rodrigo Janot, Diana Salazar, Diego Luciani or Prosecutor Sergio Mola´s interventions are offered outstanding media coverage, thus being rated as convincing, unassailable and undeniable whereas conspicuous due process of law breaches are ignored. By way of example, when Prosecutors Luciani and Mola entered their plea on August 1, 2022, some terms of the lawsuit accusation were changed. Yet, when CFK was asked whether she could expand on her pretrial statement, the Court failed to admit her petition without this denial resulting in a disruptive media event.

The role of general prosecutors has been key to fighting against progressive governments not only because they have encouraged the pursuit of nonsensical cases with far-fetched arguments but also because their speeches serve as a moral discredit and reputation annihilation tool, which turns out to be the major ground for citizens to mistrust politics and to challenge progressive leaders´ principles. These are not mere coincidences, though an integral part of a regional strategy intended to undermine trust in changes undertakings.

7. *Lawfare* "as an inner battle and enemy building instrument" or as remarked by José Luis Martí, as a weapon some political actors use to frequently and unlawfully achieve those goals they have failed to politically attain at the polls. This use of *lawfare,* particularly vigorous in the Latin American region (Martí, 2020) [28], comprises forged claims, ungrounded pre-trial or police actions, *fake news* with judicial contents or effects, the banning of political parties, or the dismissal of political lists, etc.

As argued by Alves and Geraldini (2019) priority media issues and the public agenda are closely related as they can highlight specific facts leading to the shaping of citizens´ perceptions and

preferences, even more in countries with a large number of major media owners and media platforms. In this regard, not only do the media disclose relevant news but also develop a facts interpretation framework. The authors have discussed how news and editorials were addressed in the Folha de S. Paulo newspaper during Lava Jato operation and found most editorials called for severe punishment, a second group supported the institutions´ maturity to punish corrupt authorities and only a small number of editorials referred to the abuse of authorities.

Likewise, the Latin American Strategic Center of Geopolitics (CELAG) analyzed the ratio of media coverage, the level of unenthusiasm and tag clouds from May 1st to November 30th, 2022 of three of the major media sources: *Clarín, La Nación* and *Infobae* and, thus, the newspapers cover pages and the major *Infobae* headlines were subject to investigation. According to that survey, there was a sustained May to September rise in CFK headlines, September being the month of the attempted murder, followed by a sharp decline in October and an additional rise in November. Five CFK headlines appeared in the same newspaper cover page only on November 19th, prior to the reading of Cristina Fernández de Kirchner´s judgment on December 6th, 2022. As regards the level of unenthusiasm, news items were argued to be gloomy in 64% of Clarin´s headlines, in 62% of the ones in *La Nación* as well as in 41% of those in *Infobae*. This explains why the words cloud focuses on Cristina, *Vialidad* and *Corte*, among the major ones.[29]

Lawfare combines the political sectors´ actions with those of, primarily but not only judicial institutions, and the ones of major mass media companies to develop narratives to sustain leaders´ political banning and persecution. The key role of both large media companies and platforms is increasingly more contentious, which thus "warms up" the media environment and engenders hatred and stigmatization, therefore resulting in the acceptance of fierce behaviors and in the undermining of judicial institutions due to the presence of retaliating "avengers", whether they being gunmen, "media *influencers*" or street rousers.

8. *Lawfare* or judicialization of politics is an all-embracing process which shatters the democratic ground rules and infringes the most basic rights and guarantees like the presumption of innocence, the disrespect of the due process of law and the use of even more intricate structures for the violation of basic civil and political rights such as attempts on personal freedom or a ban from political involvement.

As argued by Bovero [30], the democratic ground rules are indirectly embedded into political equality and freedom principles, which, in turn, are to be mirrored not only in the constitutional rules but also in their enforcement. "Should these ground rules be tampered with or wrongly or inconsistently used with democratic principles, another game thus starts being played" just as the case in the Citizens Revolution Movement (RC), whose political blocking jeopardized the existence of democracy *per se* in Ecuador, or the *Vialidad case* intending to politically "bury" Argentina´s former president and current vice president.

The aftermath of the *Vialidad case*, seemingly alien to election processes, exerts an impact on the electoral fair competition requirements that should be part of any electoral process, which even challenges the democratic nature itself and strengthens the oligarchic conditions of some elite sectors seemingly unwilling to lose their privileges. This is so because "democracy is the regime of equality and isonomy, and equality before the law for all, whereas oligarchy stands as the regime of privilege, and of a different law for any member of a power group.[31]

A banning order breaks with the pluralism that should prevail in democratic societies and endorses authoritarian regimes which, as agued by Ferrajoli, intend to establish "unanimity" systems, which, in turn, involves a devastation of the public spirit, the ideological approval, the end of pluralism and with it, that of freedom. All of the foregoing applies if we consider what distinguishes democracy is "not so much the free consensus but rather the free dissent" [32].

It could be argued that neither in the Argentine nor in the *Vialidad case* did they reach the point of rendering Kirchnerism political expressions illegal, and even the second president, CFK, could still run for elections, as the resolution of the Oral Tribunal may be appealed before the Federal Criminal Court of Appeals. Ultimately, an appeal may be filed before the Supreme Court of Justice, as these appeal stages do not set forth specific resolution terms, and to ban anyone from public office, an enforceable, that is, a final judgment is required.

Nevertheless, as warned by Cristina Fernández herself, the sentence is "a model of economic development and the acknowledgement of rights … the actual condemnation is a lifetime ban and I am going to do exactly what I did in 2015… I am not going to subdue political forces that honored me with being two-term president, and vice president once to mistreat me in election times as a candidate convicted with a lifetime ban from public office… I am not going to run for any office at all. My name will not appear in any ballot, either the one for president or for senator. I will be concluding my term on December 10, and just as I did in December 2011, I will go back home. I will go back to the same house from where I left in December 2003 to escort my partner…" [33]

The vice president's remarks briefly summarize all legal and political issues *lawfare* involves namely the breach of the presumption of innocence principle, the violation of the right to an investigation by an independent public ministry and an impartial judge, the absence of a justice autonomy system, the seizure of economic elites having developed a judicial mafia and the absence of a regime ensuring citizens´ rights and justice. To conclude, *lawfare* is used as a strategy undermining democracy and directing the political system through elitist oligarchic authoritarianism paths and results in the society fascitization which progressive forces have to confront to retrieve the actual sense of politics: general welfare and human dignity.

7.

Lawfare as a tool of judicial harassment against Cristina Fernández de Kirchner

Silvina Romano and Marcelo Maisonnave***

*See page 65.

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Lawfare is interpreted in Latin America as a judiciary-based war targeted against specific political groups that have been or remain active in claiming for State and regional sovereignty and self-determination, in opposition to neoliberalism-reviving and market-centric projects and guidelines[34]. This war is waged through a judicial system that seemingly prevails over all other State branches and acts interweavingly with mass media holding companies aiming to criminalizing political enemies in public opinion[35] through the dissemination of *fake news* intended to mold the public agenda and to gerrymander public opinion.[36]

Judiciary-based political persecution has erected into a consistently deployed strategy in key political times, such as pre-election periods or times deemed decisive for any government's legitimacy. There is enough data and background to claim that such strategy is turned to by privileged and wealthy minorities, who now operate politically through right-wing parties in collaboration with representatives or allies in judicial elites[37], instead of through the civilian-military coups they organized or endorsed in the Cold War times, as they find themselves in need of displaying a democracy and Rule of Law advocacy attitude (even though in practice they actually operate to delegitimize and undermine the Rule of Law) in a context of a re-appreciation of democracy derived from the action of national and popular governments.[38]

Considering this state-of-affairs, one of the most resounding *lawfare* cases in the region is the judiciary-based political persecution against Argentine Vice-president Cristina Fernández de Kirchner's (CFK), who, in September 2022, was also the victim of an attempted murder that remains unresolved, due to unwillingness to investigate the case all the way up to the masterminds. The bulk of the cases against CFK were brought at the latest stage of her second term in office (2011-2015), with the level of persecution having risen during Mauricio Macri's (PRO) administration (2015-2019) and having remained high over the latest three years.

Lawfare may only come about when there are liaisons and shared interests among Judicial Branch officers, political stakeholders and leading businessmen and financial operators. This was evidenced by the scandalous trip to Lago Escondido (located in the Argentine Patagonian region) in October 2022 taken by Judge Julián Ercolini, Buenos Aires' Attorney General Juan Bautista Mahiques, Buenos Aires city's Minister of Security Marcelo D'Alessandro, Federal Criminal Court of Appeals Judge Carlos Mahiques, Judges Pablo Yadarola and Pablo Cayssials, former Federal Intelligence Agency officer Leonardo Bergroth and Clarín group's top management members Tomás Reinke, Pablo Casey and Jorge Rendo.

Over the latest months of 2022, in addition, several private chat messages amongst judges, officers and businessmen leaked to the press, evidencing the existence of a lubricated relations network that hampers the "impartiality" nature that should characterize judicial expertise; like what had previously been the "Macri judicial board" that executed a consistent and structured plan to co-opt the country's Judicial Branch[39]. It is also remarkable to see how, in the latest years, the Supreme Court has operated in coordination with the concentrated economic powerhouses, by co-opting the Judicial Council, freezing its operation and acting arbitrarily, like in the case of the ruling over federal

revenue sharing favorable to Buenos Aires city, as well as by additionally endorsing all *lawfare* mechanisms.

These lines are intended to list the main judicial cases brought against CFK, with a focus on the infringements to the judicial due process in the *Vialidad* Case that led to her first-instance conviction to six years' imprisonment plus life-long disqualification from running for public office. Finally, both the number of complaints brought against CFK since 2004 and the "serial complainants" are listed, along with their profiles and connections and the political groups and interests involved in this harassing scenario. This list leads to conclusions about collusive positions and strategies intended to kick CFK out of the formal political arena (that is, politically banning her) through deliberate judicial harassment as the key tool, and the endorsing media harassment.

Main cases pending against CFK

Since CFK became a relevant personality in Argentine politics, at least ten cases have been filed against her, which progressed into different judicial stages despite the absence of conclusive evidence, a procedural and substance law requirement for an indictment to be formalized into a judicial prosecution. This persecution was remarkably speeded up under Mauricio Macri's administration (2015-2019) and remains so until today, given that the judicial officers who collaborate with this situation are irremovable, the Judicial Council remains inoperative in its constitutional role and the National Congress is politically unable to make any changes to this, whether the Supreme or other Courts' composition, or to pass other types of judicial reforms.
The following is a list of the ten most relevant media cases which have progressed through different procedural stages over the latest years:

1. ***Vialidad***: This case investigates alleged allocations of public work projects carried out in the province of Santa Cruz during Cristina's presidential term in favor of Lázaro Báez, namely of 51 road construction projects performed in that province between 2003 and 2015. CFK has been accused of fraud against the State despite all the evidence submitted during the trial or the legal-constitutional rationale itself, and the basic criminal due process principles, which knock Diego Luciano and Sergio Mola's arguments down.

   Following the prosecutor's indictment on the case, Judges Jorge Gorini, Rodrigo Giménez Uriburu and Andrés Basso from Federal Criminal Court No. 2 (TOF 2) convicted CFK to 6 years of imprisonment plus lifelong disqualification for public office in a sentence issued on December 6th, 2022, with its legal grounds to be read out on March 9th, 2023, following which the parties may file for an appeal with the Federal Criminal Court of Appeals, and eventually resort to the Supreme Court. It should be noted that in June 2022 the Supreme Court dismissed all the defense arguments and ratified the proceedings that had been till then carried out by the TOF 2.

2. **Hotesur + Los Sauces**: In late 2021, prior to the oral trial, Cristina was acquitted by the TOF 5, with Judges Daniel Obligado and Adrián Grunberg's votes in favor (and Judge Adriana Palliotti vote against), a ruling which was appealed by Prosecutor Diego Velasco. Chamber

First of the Federal Criminal Court of Appeals, made up of Daniel Petrone, Diego Barroetaveña and Ana María Figueroa, is to now ratify or reverse CFK's acquittal and that of Máximo and Florencia -her children- and of other defendants.

In this case, CFK is investigated for unlawful association and money laundering resulting from alleged mismanagement of Hotesur, the Kirchner family company in charge of the Alto Calafate hotel administration. This case was brought together with the "Los Sauces" one where CFK is accused of receiving bribery for the granting of public works projects and of laundering money through the hotel rooms' rental, with businessmen Lázaro Báez and Cristóbal López having been accused as well.

3. **Liquified Natural Gas**: CFK was acquitted in this case brought in 2014 where she had been accused of fixing surcharges in liquified natural gas imports between 2008 and 2015. Up to 2019 CFK had not been mentioned in the judicial proceeding, but was still indicted in March that year, with Judge Claudio Bonadío's requesting preventive detention for her. CFK was prosecuted for embezzlement, passive bribery and government fraud. Subsequently, in 2019, CFK was exonerated from the case based on absence of evidence against her. In April 2022, Judge Julián Ercolini acquitted CFK on this case.

4. ***Cuadernos*' photocopies:** She was acquitted in October 2022 by Judge Julián Ercolini in a certain part of the investigation and then prosecuted on the main case managed by Prosecutor Carlos Stornelli, where CKF is accused of accepting bribery from public works companies' owners and of being the leader of an unlawful association, with the investigating judge having been now deceased Claudio Bonadío and the trial commencement date to be defined by the TOF 7. The investigation was purely based on cooperating witnesses' testimonies and notes taken by Centeno, the driver having presumably noted down all public works-related illegal operations in detail during the Kirchner administration. Despite the countless irregularities, erasures, alterations and different handwriting types detected in the copybooks' photocopies, the Federal Court under Leopoldo Bruglia and Pablo Bertuzzi dismissed all motions to vacate.

5. **Future US dollar exchange rate**: CFK has been acquitted in this case. In March 2017, Judge Claudio Bonadío indicted and issued a preventive detention order against the former president for being the leader of a presumed unlawful association along with other officers. The absurd crime allegedly committed by CFK -according to Bonadío- involves the sale of US dollars at a rate lower than the market one, to the detriment of the state when, in fact, this economic measure was intended to prevent a currency crisis.

   In April 2021 Chamber First of the Federal Criminal Court of Appeals made up of Diego Barroetaveña, Daniel Petrone and Ana María Figueroa unanimously acquitted CFK. Yet, in 2022, acting Prosecutor Eduardo Casal requested that the Supreme Court re-open the case after Court of Appeals' Prosecutor Raúl Pleé filed a petition with the highest court.

6. **Memorandum undersigned with Iran**: This case arose from a complaint filed by deceased Prosecutor Alberto Nisman for a cover-up crime, where CFK was prosecuted by Judge Bonadío, even though the Memorandum has never become operative and was boiled down merely to a letter of intention, given Iran's failure to ratify it and its unconstitutionality declared by the Argentine Judicial Branch. Moreover, Interpol has recurrently denied that the Argentine government may have vowed to remove the red notice over the Iranian citizens accused of the AMIA (Argentine Israelite Mutual Aid Association) terrorist attack.

   In October 2021 CFK was unanimously acquitted by the TOF 8 and, a few days later, the DAIA (Delegation of Argentine Jewish Association) appealed the ruling. Chamber First of the Federal Criminal Court of Appeals made up of Diego Barroetaveña, Daniel Petrone and Ana María Figueroa is now to decide whether to ratify the acquittal or to proceed to the oral trial of the case.

7. **Road construction projects' allocation and subsidies for railway lines' management (A spin-off of the *Cuadernos* case):** CFK was acquitted on grounds of absence of evidence against her.

   In March 2019 Judge Bonadío indicted CFK on two allegations and requested her preventive detention on a case for illegal payments to bus and railway companies in the context of fuel and transportation tickets subsidies, where she was accused of leading an unlawful association, of passive and active bribery and of government fraud. CFK and several officers were prosecuted, and their preventive detention along with an ensuing petition for a multimillionaire assets' freezing was requested.

   In the case of the former president, she was not taken to prison because her disbarment by the National Senate is required to that effect, which was not passed. This case was a spin-off of the *Cuadernos* case.

   In late 2019, the Buenos Aires city Federal Court of Appeals revoked the prosecution and exonerated her on grounds of absence of evidence in the bribery accusation, while Judge Martínez de Giorgi acquitted her on the bus company subsidies' case in November 2019.

8. **Transportation of newspapers/furniture items to the province of Santa Cruz**: In March 2019, Judge Claudio Bonadío prosecuted CFK for alleged crimes of embezzlement (irregular diversion of funds) in a "*Cuadernos*" spin-off case investigating the use of presidential fleet aircrafts for transporting newspaper copies and furniture items to Santa Cruz, upon the request of Néstor and Cristina Kirchner.

   In May 2022 Chamber Second of the Federal Criminal Court of Appeals made up of Alejandro Slokar, Carlos Mahiques and Guillermo Yacobucci revoked the indictment and requested that the Court of Appeals issue a new judgement on grounds of lack of impartiality on the side of Judge Bonadío and of infringement of the right to a natural judge. Later, in September 2022, Court of Appeals' Judges Mariano Llorens, Leopoldo Bruglia and

Pablo Bertuzzi confirmed Cristina Fernández' prosecution, though only for the transportation of furniture items and clothing items, while ruling out the accusation over the transportation of newspapers. Following the appeal filed by the defense, the case is now being heard by the Federal Criminal Court of Appeals.

9. "**The *Route of the K money*** *(La ruta del dinero K)*": The case was rolled out in 2013, but it was only in 2018 that CFK testified in this case even though she was never indicted. In March 2019, the Federal Court ratified the absence of evidence against CFK that had been adjudged by Judge Sebastián Casanello in late 2018.

   In February 2021, businessman Lázaro Báez was convicted by Federal Court No. 4 for money laundering. The mass media attempted to link this case to CFK by maintaining the *"Route of the K money"* (la ruta del dinero K) name, even though there were no Kirchner administration officers amongst the convicted. In February 2023, the Federal Criminal Court of Appeals made up of Mariano Borinsky, Angela Ledesma and Javier Carbajo (who voted in opposition) reduced Báez's conviction on grounds that the funds alleged by the judges to have been laundered by Báez had not come from illegal operations related to public works in Santa Cruz, additionally dismissing the findings in the *Vialidad* case as a preceding crime. Báez' position as the figurehead of the Kirchner family was also dismissed.

10. **Historical documents**: she was acquitted in this case. On March 19th, 2019 CFK was prosecuted by Bonadío for "concealing, destroying and illegally exporting historical documents". During a search conducted in her house in El Calafate in August 2018 (a proceeding ordered in the context of the *Cuadernos* case) some presumably historical documents were found and seized by the judge, among which were former President Hipólito Irigoyen's "personal file", along with a letter written by San Martín to O'Higgins and a presidential baton, which were documented to be gifts or donations to the family. Eventually CFK was acquitted, and the documents restored to her.

The *Vialidad* case and defects in due process

The *Vialidad* case is the only one as of present date (March 2023) having thrived into a judgement of conviction. This case features a myriad of apparent infringements to due process, committed through the practices listed below and employed recurrently in the cases brought against her and other Kirchner governmental administration officers.[40]

1. Presumption of innocence: In their arguments, the case prosecutors sustain that, in her role as president, Cristina "should have been aware of" what was going on in connection with the public works projects in the province of Santa Cruz even though she had not been involved in either the management or the allocation of the funds or in the bidding processes having Lázaro Báez' construction company as the successful bidder. As arises from judicial principles, the burden of proof for a judgement of conviction lies with the prosecution and therefore, arguing that it is incumbent upon the defendant to prove her innocence is outrageous. The indictment against CFK is ambiguous and unspecified, with no causal link

between the evidence produced during the trial and her alleged liability having been identified. The 51 road construction projects involved in the case were realized in a timely and standard manner and were documented to be necessary, useful and relevant for the province. Moreover, all 51 projects were included in the relevant National Budget passed in due course by the Congress, with no undue interference or arbitrariness being involved. Neither was there any cost item in the projects that may have been identified as a prospective surcharge.

2. The rule of admissibility of evidence: No evidence is to be added during the closing arguments (as in the *Vialidad* Case), it is only admitted during the discovery stage. During the trial, in addition, the prosecution refused to discover certain evidence that would have helped shed light on the case.
3. Impartiality of judges: As enshrined on the theory of suspected bias or concern endorsed by international and national case law, as well as by the constitutionality commission and the procedural legislation itself, no suspected bias on the side of the prosecutors or the court judges is to be admitted, which was indeed the situation in the *Vialidad* Case (as documented on the photographs of Judges Rodrigo Giménez Uriburu, Jorge Gorini and Prosecutor Diego Luciani playing soccer in Mauricio Macri's «Los Abrojos» country house) and in other cases where CKF is indicted. The timeliness between the visits of these cases' hearing judges to the then head of the Executive Branch (M. Macri) and the dates of cases being filed or rulings against CFK or her government's officers being issued is noteworthy. By way of illustration: some meetings held by Judges Hornos and Borinsky with Macri match the timing of those judges' decisions over the "Memorandum with Iran" case. The month before the *Vialidad* Case judgement was issued (December 6th,2022), a ploy involving judges, officers and journalists who have formally or implicitly cooperated in contriving the cases and in their broadcast in the mass media, was disclosed. An example of this is Judge Julián Ercolini, the investigating judge in the *Vialidad* Case, who was detected to have traveled to the Patagonian region (to Joe Lewis' Lago Escondido ranch) with all costs paid by the Clarín Group.
4. Oral arguments: Arguments are not to be read out as a script, as occurred in the *Vialidad* case but rather, they should be spoken out.
5. Right of defense: Defendants should not be deprived of their right to self-defense by testifying after the prosecution's closing arguments, which included new evidence items not appearing in the initial defendant statement, as occurred in the *Vialidad* case. Additionally, the events under investigation in this case had already been settled by the Santa Cruz province's justice with no crime having been identified, thus violating the *non bis in idem* principle.

Further infringements to the due process in the context of the persecution against Cristina Fernández are listed below:

6. The right to a natural judge is being infringed because of the manifold *fórum shopping* operations (arbitrary or elaborated selection of courts to hear the cases). Despite the raffle system employed in the selection of the jurisdiction over the cases against the former president and considering there are twelve courts in the Comodoro Py courthouse with

jurisdiction to hear the cases, in the bulk of those against Fernández de Kirchner, (deceased) Claudio Bonadío's was the court appointed under this raffle system.

7. Leaked wiretapped conversations: Illegal broadcasting in the mass media of private phone conversations between CKF and officers of her government recorded by state intelligence service members and by a technical agency reporting to the National Supreme Court of Justice. It went as far as wiring correctional facilities to illegally eavesdrop on conversations between legal attorneys and prisoners.
8. Privileged witness: under Mauricio Macri's administration the "privileged witness" or "cooperating witness" (also known as plea and cooperation agreement) act was enacted, pursuant to which some defendants were pressed to incriminate CFK in exchange for a waiver on preventive detention or other benefits. On top of that, there is the fact that several testimonies given in the context of this Cooperating Witness Act failed to observe the procedure stipulated in the act itself.
9. Judicial bias and absence of independence: On the 2019 report drafted by Diego García Sayán for the purpose of its submission with the UN Special Rapporteur on the Independence of Judges and Lawyers (included as an Exhibit to this book), a caveat is made about the absence of independence and impartiality on the side of Argentina's Judicial Branch: irregularities in the Judiciary Council, the coercion on Gils Carbó, Esq., for her resignation, judges being relocated in order to come up with Executive Branch-submissive courts, among other elements.

Judicial harassment

Cristina Fernández de Kirchner (CFK) has been indicted in 653 cases brought between 2004 and October 2022, with 6 complainants having systematically brought cases against her, in a number ranging from 20 to 74. Below is a list of complainants listed along with each one's number of cases brought (more than four):

COMPLAINANT NAME	NUMBER OF COMPLAINTS
Sarwer, Daniel Ignacio	74
Mussa, Juan Ricardo	73
Vera, Ricardo Fabio	64
No Informa	35
Piragini, Enrique, A.	27
Dupuy de Lomé, Santiago N.	22
Identidad Reservada	21
Magioncalda, José Lucas	19
Rucker, Rodolfo J.	14
Juan Saladino, Christian A.	13
Agrupación Restauradora Macrista (NGO)	11
Miguez, Fernando	8
Campana Vizcay, Leopoldo P.	7

García Leone, Bernardo E.	7
Miers Núñez, Adelaida M.	7
Vitale, Jorge L.	7
Tortora, Carlos A.	7

Backgrounds about some of the complainants

Daniel Ignacio Sarwer:

Sarwer presents himself as chairman of the «*Agrupación Restauradora Macrista*» (Macrista Restoration Association) NGO, registered with the CENOC (National Centre for Community Organizations) under N° 18081. In November 2016, the *Agrupación Restauradora Macrista* filed a petition with Chamber First of the Court of Appeals to be held as a complainant and as an *amicus curiae* (friend of the court) in the case brought by Nisman. Sarwer was accused by Prosecutor Federico Delgado of fraud in a complaint filed by Sarwer himself. In 2009, Chamber Judges Edmundo Hendler, Nicanor Repetto and Carlos Bonzón dismissed a case brought by Sarwer against Néstor Kirchner on grounds of Sarwer' s being declared insane, as he was in other litigation cases as well.

Juan Ricardo Mussa:

Mussa appears on social media as president of the Buenos Aires city chapter of *Liberty Advances* party (*Libertad Avanza)*, a name disputed to Javier Milei's right-wing conservative party. He also presents himself as managing director of the *Cadena Uno SRL* (AM1240) radio station. Yet, there is no evidence of him holding such positions. He is related to right-wing Peronist groups, and he was involved in one of the first corruption cases filed against the Menem administration, the one involving the Ministry of Social Action. Since the 1970s he has run for different elective offices, including the presidential one. He obtained his most outstanding electoral results in 1999, running for president with Fernanda Herrera as candidate to the vice presidency on behalf of the Christian Social Alliance (*Alianza Social Cristiana*). The Herrera family has ties with Menem-supporting groups as well as with the Movement for Dignity and Independence party (MODIN) founded by Aldo Rico (who attempted a coup to overthrow Raúl Alfonsín from government in 1989). Moreover, Mussa is a member of the "*Paso por Paso Argentina"* NGO that features no records of any concrete action, other than filing complaints.

This NGO's legal counsel is Enrique Piragini, who has filed 27 complaints against CFK. In 2010, he brought a case against her for persecution against the leading concentrated media groups, Clarín and La Nación. In 2016, in turn, the "*Paso por Paso Argentina*" NGO requested investigating crimes presumably committed by Mothers and Grandmothers of Plaza de Mayo.

Piragini is also part of the A.R.I.E.L (Argentina towards Recovering its Aptitude for Freedom), group which in 2009 sued CFK for abuse of authority in the management of National Treasury Contributions. Carlos Tortora, who has brought at least seven cases against CFK and is aligned to right-wing conservative groups, in addition to being presumably linked to dictator and mass-murderer Emilio Massera, one of the civilian-military governmental regime (1976-1983) leaders, is

also a member of A.R.I.E.L. He was also a member of The Movement (*El Movimiento)*, an ally to the radical right-wing Patriotic Coalition (*Frente Patriota)*.

José Lucas Magioncalda:

President of the Free Citizens for Institutional Quality Civil Association (*Ciudadanos Libres por la Calidad Institucional*) and member of the Consultive Committee for the Follow-up of the 2019-2023 National Anti-Corruption Plan. One of his most resounding claims was the one filed with the Human Rights Office for them to confirm the number of persons disappeared during the civilian-military dictatorship following Mauricio Macri administration officers' statements arguing that they were "just 6000". Magioncalda also serves as Apolo Foundation's (*Fundación Apolo*) legal counsel and as a legislative consultant for the United Republicans (*Republicanos Unidos*) caucus (led by Ricardo López Murphy) at the House of Representatives as well as lecturer at the University of Buenos Aires Law School. Manifold and systematic complaints, available on this NGO website, account for their political activism.

Santiago Dupuy de Lome:

Santiago Dupuy de Lome is a lawyer who is well-known at the Retiro courts because, prior to outbreak of the Covid-19 pandemic, he would spend long hours in different areas of the courthouse building: he would hop from the press area to the prosecution office and to the cafeteria next or maybe to some of the court rooms. Other than for the time he was involved in the containers' smugglers case, there are no records of him serving in any case to justify his long tours around the Comodoro Py courthouse. He has filed over 100 complaints against officers from both Cristina Kichner's administrations and from the present government, amongst which are: the current vice president, President Alberto Fernández, Axel Kicillof, Sergio Massa, Héctor Timerman, union leaders Hugo Moyano, Roberto Baradel and Hugo Yasky, *La Cámpora* movement leaders and Eugenio Zaffaroni, along with many others. One of the most resounding lawsuits he has filed is the one against former Minister of Foreign Affairs Timerman, on grounds of treason for the AMIA (Argentine Israelite Mutual Aid Association) case.

Fernando Miguez:

Identified as a serial lawsuit filer for recurrently suing politicians of all stripes, from Kirchnerism supporters to liberal right-wingers. He runs the Peace and Climate Change Foundation (*Fundación por la Paz y el Cambio Climático*) and has filed at least eight lawsuits against CKF. In September 2021 this NGO sued the Alberto Fernández administration for "crimes against national security", in a lawsuit against Cristina Fernández, Máximo Kirchner, Wado De Pedro and officers from different governmental agencies while, in 2021 it sued the Ministry of Health, as well as journalist Horacio Verbitsky and Minister of Homeland Security Jorge Taiana, among others, for "abuse of power". Moreover, in 2015. he filed cases for fraud and embezzlement against the government, including the then President Cristina Kirchner and Juliana Di Tullio, the *Frente para la Victoria* caucus leader.

These serial lawsuit filers, seemingly unrelated to or unconnected with each other, do yet have a track-record in civil society institutions and/or political parties which prove their mutual relationship and their belonging to liberal and conservative right-wing groups. It is not argued here

that they may have converged on one single or “plotted” “plan” to judicially operate against CFK. Contrarily, the existence of practices at political and institutional level to enable these groups to use and abuse of the justice system to persecute, criminalize, inhibit or wipe out the “political enemy” is perceived, thus managing to appear before the society as “advocates of law, good practices and transparency”. This is confirmed by the fact that these people have systematically sued other CFK administration officers.

Conclusions

Lawfare in Argentina is a reality. This phenomenon causes the most outstanding active political leader, Cristina Fernández de Kirchner, to be amidst endless indictments and court visits as well as exposed to all types of harassment, attacks and unsubstantiated legal cases. In addition to hindering daily administration, it contributes towards the concentrated mass media building an image of corruption around her which distorts public debate.

The Rule of Law is extremely weak and remains unable to restore its own republican status in observance of the Constitution. This is how popular sovereignty is hampered and democracy is eroded, thereby impairing the quality of life and the dignity of Argentinians. Therefore, it is paramount to revisit the cracks which empower concentrated powerhouses so they can penetrate public power systems, thus putting their own interests over constitutional principles. And it is those same interests which guarantee privileged minorities’ well-being and luxurious lifestyles to the detriment of popular will, while also jeopardizing real chances of achieving democracy with social justice.

8.

Lawfare against Cristina Fernández de Kirchner in the context of the hybrid war

*Larissa Ramina**

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> "Who plays the executioner of our plan for our opponent's political and judicial annihilation? There is a branch of the State that is ideal for the task: it takes care of individuals and operates with surgical precision with no need for armies or coups or blood shedding: the stale and infamous Judicial Branch!"
>
> Zaffaroni, Caamaño and Vegh Weis[42]

On February 19th, 2019, the current Argentine Vice President Cristina Fernández de Kirchner, in a compelling speech, reasserted the alert in the light of the so-called *lawfare* strategy against Latin American's progressive governments and parties and referred to the accusations revealed by the D'Alessio scandal, also known as "D'Alessiogate". The case involved Prosecutor Carlos Stornelli, Judge Claudio Bonadío (Argentina's counterpart of Sérgio Moro) of the Comodoro Py Courts and the Argentine judicial system network in the arrangement of the famous "*Cuadernos*" forged case, with the apparent contribution of the United States Embassy.

The outrageous revelations resulting from the publication in journalist Horacio Verbitsky's "*Cohete a la luna*" portal were based on reports and recordings submitted by farming producer Pedro Etchebest about the involvement of Marcelo D'Alessio, an agent at the service of prosecutor Stornelli, in an illegal extortion and pressure system through plea bargaining and fake whistleblowers, which was intended to incriminate businessmen not aligned with Mauricio Macri's neoliberal government interests and preceding government officers, and which is referred to in the "*Cuadernos*" case.

This case acquired an extremely serious institutional and political dimension when Judge Ramos Padilla decided to take the case based on duly recorded and written evidence of the US Embassy's direct participation. That is why, in that speech, CFK refers to the D'Alessiogate as a notebook containing certified evidence, contrary to the evidence in the form of photocopies included in the "*Cuadernos*" case brought by Judge Bonadío on the basis of an unlawful spying ploy devised abroad with the endorsement of political power groups, ruling party lawmakers and hegemonic media journalists. In 2021, in turn, upon an argument presented by the accused Prosecutor Carlos Stornelli, the Chamber of Appeals ruled that the D'Alessio case should be heard in the Buenos Aires city Federal courts and would no longer be in the hands of Judge Padilla.

In his speech, CFK refers to preventive detention operations, such as that of Congressman Julio De Vido (*Frente Para la Victoria*, FPV) who was imprisoned without evidence just as was former Vice President Amado Boudou (FPV), or former Minister of Foreign Affairs Héctor Timerman (FPV) who died of cancer but had been unfairly accused, along with the former president, of treason, as a result of the signing of a Memorandum of Understanding with Iran for the investigation of the AMIA (Argentine Israelite Mutual Aid Association) terrorist attack. She deems them indications of the same *lawfare* pattern as the one experienced in Brazil, with the contrivance of the Lava Jato Operation. The Lava Jato erected into a political party aiming to persecute the Workers' Party - PT leaders, fuel the coup against Dilma Rouseff and encourage hatred against Lula so as to facilitate his

illegal detention and therefore Jair Bolsonaro's election and the ensuing enforcement of a neoliberal Project which had lost four elections in a row.

Marked by the historical years of Peronism, Argentina underwent recurrent threats to its national sovereignty from former American Ambassador Spruille Braden, who had become involved in plots and disputes over power with Perón since 1945. Progressive groups of the Argentine society have warned about the grievous institutional scandal brought up by the "D'Alessiogate", which poses a threat to the Democratic Rule of Law, like in the times of the military dictatorship.

As regards the *Vialidad* case, shortly before the verdict in December 2022, CFK exposed the 20 lies produced by Prosecutors Diego Luciani and Sergio Mola during the hearing of the case. The vice president described the court in charge of the case trial and the prosecution officers as the "firing squad" leading a presumably unlawful association for their "having made up, masked and twisted events or lied". In the same breath, she accused the Judicial Branch´s Comodoro Py courts of looking into those cases holding her as a member of an alleged unlawful association rather into those holding her as the victim of an unlawful association organized to murder her. CFK compared the current operation of the Judicial Branch with the influence of the Armed Forces in the XX century politics: "the Judicial Party is here to replace the former Military Party; they intend to stigmatize and discipline Peronism", she added.

Following the read-out of the *Vialidad* case verdict, CFK argued that the conviction is the result of her being politically persecuted, as was the case of other Latin American popular leaders. Moreover, the vice president highlighted that persecution is detrimental to the advocacy for popular interests these leaders have epitomized in the region over the last two decades and that such attacks are underpinned by de-facto powers articulated among judicial groups, financial corporations, right-wing parties and American political groups.

Between 2015 and 2019, CFK was recurrently prosecuted, with over a dozen of prosecutions against her, most of them being boosted by the same judges, prosecutors and other Judicial Branch members linked to the then President Mauricio Macri. In addition to irregular appointments, there is abundant evidence of the close ties among the prosecutors, judges and former President Macri as well as of the timeliness of those social meetings and the procedural measures along the different stages of the cases against CFK. The close ties among Prosecutors Diego Luciani and Sergio Mola, and Judge Gustavo Hornos, as well as other judges involved in the case, resembles the behavior of prosecutors and judges involved in Brazil´s Lava Jato Operation, which gave rise to an intensive political and judicial persecution of Lula.

Likewise, there is evidence that, under Mauricio Macri's administration (2015-2019), the Executive Branch put up surveillance and intelligence operations against CFK and her kin, along with illegal wiretapping leaked to multiple media. The *Vialidad* case exhibits strong indications of a judicial case manipulated for political purposes.

What has become apparent is that *lawfare* imposes guilt as the starting point. A conviction is defined first, for a fake judicial proceeding to be then staged, by way of justification thereof. The

presumption-of-innocence principle and the right to legal defense are thus shattered, with a judicial aberration being incurred into through a pre-conviction, whereby the defendant needs to prove their innocence rather than the judicial system having to prove their guilt.

Yet, one of the most remarkable features of *lawfare* lies in its multidimensionality. As a multidimensional phenomenon, the public clearly fails to perceive all its dimensions: *lawfare* features national dimensions, with a plural form of the noun being used given that it involves the target or destination country national dimension, along with the U.S. national dimension, as well as an international dimension. On the other hand, it is apparent that the judiciary-based political persecution cases have stretched out to all Latin America, always in pursuit of the same goal: hindering the advancement of any real alternative to neoliberalism. It is an undoubtedly complex process, which indeed contributes to the weakening of Latin American democracies, given its capacity to undermine both the majority principle and the very rule of law. On the whole, judicial-media persecution is orchestrated by defeated opponents against governments legitimately elected to office, and therefore l*awfare* may also been deemed as a soft form of coup.

Lawfare is an integral part of the so-called "hybrid war" strategy, with lawfare being one of its modalities. Understanding XXI century's hybrid wars requires thorough historical research, back into the times of the cold war and of the reformulation of the U.S. geopolitical and geo-economic strategies, when an unprecedented unipolar scenario in favor of the latter became strengthened and, with that, the ensuing idea that western values obtained a landslide victory over Fascism and Communism. Following the dismemberment of the USSR in the early nineties, the U.S. erected into the only economic and political leader in a unipolar system. Optimistic academicians such as Francis Fukuyama foreshadowed a future of liberal democracy supremacy. In this regard, economic liberalism was presented by world powerhouses, including the U.S., international economic and banking institutions, transnational corporations and investors. In a concerted action, the powerhouses recommended that the supply of financial assistance should be tied to the adoption of liberalizing economic policies. This articulated action was known as the "Washington Consensus".

In fact, this scenario was accompanied in Latin America by the deployment of the Washington Consensus' neoliberal guidelines in the nineties, which were facilitated by the wave of neoliberal governments that took over after the military dictatorships in the region. At the same time, Latin America's largest economies – Brazil, Mexico and Argentina- were hit by severe economic crises as well as by aggravated social inequality-, which in turn paved the way towards the rise of progressive governments opposing the neoliberal mandate. The failure of neoliberal policies thus pushed the region into an unprecedented political turn, with around a dozen of countries electing progressive governments, such as Venezuela's Hugo Chávez in 1998, Brazil's Luís Inácio Lula da Silva in 2002, Argentina's Nestor Kirchner in 2003, Uruguay's Tabaré Vázquez and Bolivia's Evo Morales in 2005, Ecuador's Rafael Correa in 2006 and El Salvador's Mauricio Funes in 2009. The frustration over neoliberal policies' results undoubtedly pushed the region into progressivism, thus giving way to an unprecedented political map in Latin America, while also defeating hegemonic power group's ambitions.

Unlike neoliberal governments, progressive administrations focus on social policies and differ in terms of international market entry decision-making, because of their repealing policies fostering free trade with hegemonic countries and of their prioritizing initiatives tending to regional and sub-regional integration. There was a clear trend towards a critical revisionism of the market liberalization programs deployed in the eighties and nineties. Some countries went through a more radical type of revisionism than others, and eventually came up with historical, social claims for indigenous population's democratic participation and social integration, as was the case of Bolivia.

In turn, after Néstor Kirchner's election into office, Argentina made its relations with Brazil a governmental foreign policy priority. In the South Cone region, the liaison with Brazil was taken up to the strategic relation category as a tool to maximize Argentina's leeway in its relations with the U.S and the European Union, particularly regarding trade negotiations at international level and within the World Trade Organization -WTO-. This means the Argentine government strategy was now including regionalization policies such as re-launching the Southern Common Market – MERCOSUR, among its priorities and even as the baseline to an alternative development path to the one proposed by the Washington Consensus. This re-launch featured two dimensions: on the one hand, it ambitioned to intensify the integration agenda beyond the Asuncion Treaty commercial aspects while, on the other, it was envisaged as an expansion of the block into other countries in the region.

Latin America reached the turn of the XXI century with a definite regional and sub-regional integration project, in rejection of free trade policies with hegemonic countries and in support of the South-South cooperation to oppose American interests, as well as with a focus on social policies. This context accounts for the MERCOSUR having become strengthened during that time, as well as for the Union of South American Nations - UNASUR and the Community of Latin American and Caribbean States - CELAC having been established and for the BRICS - Brazil, Russia, India, China and South Africa, a fabulous South-South cooperation project, having been articulated.

Due to its quest for political emancipation and sovereignty strengthening, Latin American progressivism enraged US hegemonic groups and made them defiant, when they identified this progressive democratic emancipation process in a region which, we should not forget, holds over a half of all the globe's natural resources.

From the regional and multilateral standpoint, the U.S. acted initially, as of the nineties, on four different fronts to deploy its neoliberal project, namely: the North American Free Trade Agreement - NAFTA, the World Trade Organization - WTO, the Free Trade Area of the Americas - FTAA and the Organization for Economic Cooperation and Development - OECD.

The NAFTA is a complex and comprehensive treaty covering a broad range of both commercial and non-commercial activities and executed hastily, over a two-year period between 1991 and 1992, among the United States, Canada and Mexico, which became operative on January 1st, 1994. During the negotiation stage, Mexico made all concessions but no demands in return, which is the reason for the expeditious negotiations and the acceptance of the terms, Draconian detrimental to Mexico though highly beneficial for the U.S. The NAFTA then became some sort of laboratory for the U.S. to

test models and matrices that fit their regional and multilateral relations, thus inaugurating a new era of unequal and unfair economic treaties following the outrageous agreements that were the hallmark of direct colonialism. And the NAFTA chapter on investments was not an exception, given it encompasses of all types of a country's investment in another in the most comprehensive possible fashion.

As regards the WTO, during the 1986-1994 GATT - General Agreement on Tariffs and Trade Uruguay Round, the U.S. came up with the proposal of including the regulation of the international financial flows, which was rejected by developing countries, led by Brazil and India. The commitment achieved by the GATT was known as Agreement on Trade-Related Investment Measures (TRIM) and stood as an emerging stage and much below its achievement expectations.

Disappointed by their poor achievements in the GATT and WTO multilateral framework, the U.S. came up with the NAFTA -and its embedded chapter on investments- within the context of the "Enterprise for the Americas Initiative", an idea aimed, in practice, to the removal of the continent's country borders to allow an indiscriminate entry of American companies' products. With this Initiative, the U.S. meant for the numerous, comprehensive and unrestricted unilateral advantages reaped from Mexico to stretch out into the other countries of the Americas, through the Free Trade Agreement of the Americas - FTAA, a proposal announced by George W. Bush at the 1994 Summit of the Americas, one year after the failed attempts at the WTO.

The FTAA was to become operative as of 2005 at the IV Summit of the Americas held in Mar del Plata, Argentina. Even though the meeting featured a regional development-oriented agenda, Bush attempted to impose NAFTA's immediate implementation by expanding the scope of the NAFTA into the other continental states, except Cuba. This imperialist project was intended to encourage inequality among North American developed economies and Latin America and to lead regional economies into deindustrialization. Among the goals of NAFTA were the execution of international agreements to limit national governments agreements to act on their own economy, environment and society, the establishment of supranational trade standards to restrict national governments' scope of action and control over investors' activities, as well as the consideration of feasible agreements to cut transnational companies' labor and tax costs. On the other hand, the project included the deployment of the so-called "structural adjustment" programs by the International Monetary Fund-FMI and the World Bank, that brought about wage and economic cuts on indebted countries to guarantee the payment of interests over totally unpayable debts.

In a nutshell, with the support of Canada, the U.S. attempted to introduce the most far-stretched trade liberalization under the disguise of global free trade agreement for the Americas which, as seen in the practical experiences of Mexico, Colombia, Peru and Chile, it would only strengthen the bonds of dependency, exacerbate external vulnerability, the take-over of economies by foreign hands, social inequality and plundering of the region's common assets. No wonder it was precisely in the countries "benefited" by free trade agreements where the popular protests over NAFTA project were the most agitated.

But, unexpectedly, in the framework of the 2005 Summit of the Americas, progressive leaders Hugo Chávez, Néstor Kirchner and Luís Inácio Lula da Silva undertook a crusade to advocate for the sovereignty of South American peoples. Meanwhile, the III Summit of the Peoples, held simultaneously to that event, called out for South American union in opposition to the NAFTA.

In his speech at the Summit opening session, the then President Néstor Kirchner voiced his opposition to the inclusion of the NAFTA in the agenda of consultations, which in turn led to Canada's insistence and the support of Mexico's conservative President Vicente Fox, Panama's Martín Torrijos and Chile's Ricardo Lagos. However, subsequent speeches by Lula, Tabaré Vázquez and Hugo Chávez buried the project down for good and postponed it indefinitely. On that occasion, Chávez proposed bolstering in the region what is today called the Bolivarian Alliance for the Peoples of our America - ALBA, as an alternative to the NAFTA. The defeat of the NAFTA paved the way for the strengthening of regional organizations such as the ALBA, born in 2004 as a result of Cuba and Venezuela's commitment. It also had an impact on the creation of the Petrocaribe energy cooperation in 2005 and of the UNASUR (Union of South American Nations) in 2008, as a space for integration and union in the cultural, social, economic and political environment. Such decision would give momentum to several progressive movements in Bolivia, Paraguay, Ecuador, Nicaragua and El Salvador, among others. Venezuela then joined the Mercosur and eventually, with the goal of bringing South, Central and North America together, the Community of Latin American and Caribbean States - CELAC- was created in Caracas in early December 2011.

That was how, in November 2005, the U.S. most ambitious project for the Americas was buried down. The Mar del Plata "battle" was remarkably relevant for all of the region's progressive leaders, though complex at the same time, for several reasons: in the case of Kirchner because, he had to oppose Bush even when his country was the Summit host while, in the case of Lula, because some groups in his government were in favor of this project and in opposition to Latin American integration. It should be reminded that the popular mobilization in Mar del Plata, resulting from an effective and long "anti-NAFTA" continental campaign, contributed to this victory, in addition to Bush's unpopularity for the interventions of Iraq and Afghanistan. Shortly afterwards, Evo Morales would take office as president in Bolivia and so would Rafael Correa in Ecuador the following year, thus remarkably modifying Latin America's social and political map and confirming the retreat of imperialism in the region.

In 1995, following the 1994 Summit of the Americas, the U.S. had also urged the OECD (Organization for Economic Cooperation and Development), some sort of wealthy countries club under its command, to come up with a Multilateral Agreement on Investment - MAI, with other seven countries having been invited to participate as observers, including Argentina, Brazil and Chile. Resorting to the WTO rather than to the OECD was preferred at first, because the former multilateral front would enable reaching out to the target countries, that is, developing countries, unlike the OECD, which gathers basically developed ones. Negotiations over the MAI started in 1995 and were definitely given up in 1998, even in the context of protest against this initiative.

In conclusion, the proposal to bring the NAFTA model investment chapter to the WTO fell through and the MAI-related negotiations were given up.

From a geo-strategic perspective, all these developments confirmed a loss of the U.S. control over Latin America, even though the "American backyard" and its natural area of influence needed to be maintained somehow as tool to face the looming hegemonic threats posed by China and Russia, which had already articulated a relationship with Brazil through the BRICS. This scenario clearly triggered resistance on the side of hegemonic groups to recognize this progressive, democratic emancipation process in Latin America, a region which, as above stated, holds over a half of the world's natural resources in the Amazonia.

In the context of international trade, the defeat of the FTAA unleashed the American offensive to negotiate bilateral free trade agreements or FTAs with various of the region countries. At the same time, the WT0's Doha Round failure led by Brazil and India erected into the articulation of developing countries to stand up to the unopposed economic freeze imposed on them at the time of the establishment of the WTO. On the other hand, the UNASUR (Union of South American Nations) began to present itself as an alternative forum to the Organization of American States - OAS to troubleshoot the region's problems. Simultaneously, in 2008, traditional U.S.' allies like Honduras and Mexico endorsed Cuba's return to the OAS while the U.S. still sustained its economic embargo and soon joined the ALBA.

This is why an endeavor on the side of hegemonic groups to curb this progressive trend in Latin America was witnessed, with traditional and novel coups, like the Venezuela one in 2002, Honduras in 2009 and Ecuador in 2010, followed by the one in Paraguay in 2012 and in Brazil in 2016, in addition to the recovery of the U.S. Fourth Fleet and their increased military aid provided to Colombia. In Argentina, the persecution against CFK started out in 2015 and eventually led to a six-year imprisonment sentence and her being deprived of all political rights.

The U.S. concentration on the Middle East after the 9-11 attacks is likely one the factors which set the stage for the rise of several simultaneous progressive governments in Latin America, a region which undeniably lost its strategic relevance, given that it was no longer among its security priorities in the face of the "War against Terror". In addition, it was also after 9-11 that a new international strategy began to shape up to expand the United States' geopolitical and geo-economic interests worldwide based on the fight against transnational crime, including anti-corruption struggle under the form of true lawfare, in the context of the new hybrid war strategy. It has been clear for some time now that the U.S. has started to resort to lawfare as a geopolitical tool, which it justified indeed in the anti-corruption struggle. That is how consensus is built around corruption as the worst scourge and an enemy of democracy by systematically targeting progressive governments.

This newly emerging process of democratization of international relations in the Latin American context undoubtedly bolstered the deployment of the hybrid war, of which *lawfare* is one of its modalities. It is therefore a new U.S. strategy to maintain its global and regional hegemony as it has become growingly complex to undertake military interventions in the same format as they were

deployed during the XX century, meaning, the traditional military coups that supported dictatorships under the banner of anti-Communism struggle.

There were several concurring factors and variables that contributed to military wars sharing the stage with a new type of war. The XXI century ushered in high-impact factors for the decline of American hegemony, including China's economic rise, Russia's geo-strategic resurgence and the Russia-China alliance. This turns Eurasia's regional power balance into a decisive factor when it comes to global power forces' correlation. And this may be the key to understanding the so-called "color revolutions" occurring in that region and the adjacent ones. This international multipolar scenario restrains a forthright clash between the superpowers, and so does on the delicate issue of arms of mass destruction. Despite the U.S. still retaining its military leadership, the equal footing with Russia on the nuclear aspect curtails traditional war.

It is against this backdrop that warfare by non-military means acquires further relevance, in addition to its existing advantages, versatility being one of them. For adjustment purposes, this type of warfare may model itself into new contours at any time and replace traditional armed forces to influence internal affairs, to the extent of substituting political regimes, namely, overthrowing governmental administrations. This is the traditional *regime change*, that is, the substitution of a governmental project for an oppositional, typically unvoted one. As described by Andrew Korybko, deemed as a blend of color revolutions and unconventional warfare, the hybrid war is more economical than military war with its cost, including the political one, being much lower than the cost of getting tanks out into the streets or planes throwing bombs down onto civilians.[43]

The advent of the Lava Jato Operation was not coincidental when, on a beautiful day of March 2014, the Federal Police arrested money exchange operator Alberto Youssef. Moreover, the unfair political, judiciary-led persecution intended to wipe current Vice President Cristina Fernández de Kirchner out was no coincidence either. The *Vialidad* Case led into a six-year imprisonment sentence plus a lifelong loss of one of the main Latin American female leader's political rights. Contrarily, we are witnessing a regional ploy intended to wipe out all the region's political leaders in collaboration with the judiciary and the largest media holding companies. There are even some regarding this as a revamped version of the Operation Condor featuring two main components: the media one intended to gaining consensus and wiping out political parties and leaders, and the judicial one, where biased judges operate in collusion with those groups interested in hindering any real process which may be an alternative to neoliberalism.

9.

CFK´s special lifetime ban as a civil assassination against her

*Gisele Ricobom**

***** See page 65

Androcentrism is the tendency to overrate particularly conservative, moralistic, sexist male thoughts and ideas, which fail to take into account the pursuit of women´s equal rights. The history of Latin American republics has been depicted by absolute male dominance in the distinct power organization systems since the achievement of their independence, and current times fiercely unveil the predominance of Androcentrism along with the emancipatory, inclusive evolution of gender, feminist movements.

According to Nancy Fraser, the second wave of feminists were the ones to disclose unfair practices in other settings, whether they being family and culture, civil society or daily life-based traditions. Even so, the second wave of feminists expanded the number of topics able to harbor injustice and also included justice issues. “Not only did the anti-imperialist, black, socialist feminists focus on gender, but also pioneered in today´s widely adopted “intersectionality” approach, including private affairs such as sexuality, domestic staff, female reproduction and violence against women, economic inequalities, status hierarchies and imbalances in political power.” [44]

As a result, females´ subordination is systemic and based on society profound structures comprising three intertwined subordination orders: misdistribution of sexual division of labor, females´ lack of recognition and absence of representation.

Against this backdrop, women who have been brave enough to hold senior political authorities´ offices are faced with all misogynous types of violence. Dilma Rouseff and Cristina Kirchner are some of the most iconic victims of misogynous violence in South America, but they are not the only ones as there have been cases of threats to Vice President Francia Márquez in Colombia, the imprisonment of (Ecuador) Pichincha´s current prefect, Paola Pabón (standing as one of the most controversial *lawfare* cases in 2019) and the list is arguably endless.

CFK´s case is even more iconic as it ended up in an attempted murder by Fernando Andrés Sabag Montiel at the time the vice president was greeting her followers across from her residence on September 1st, 2022. The attempt to kill her cannot be regarded as somebody´s isolated crime but as the outcome of a hatred campaign pervading her public life and arising from political, media and judicial violence, which are deemed to complement one another.

As a politician, CFK has held several popular election offices. She has served as national, constitutional senator and representative, as two-term president and is currently vice president of Argentina.

While in office she has always faced all types of attacks on her image, which led to aggravated violence that can certainly account for the attempted murder.

The ongoing disclosure of media concentration groups´ speeches of hatred “will result in the emergence of a social breeding ground and a cultural atmosphere where aggression, violence, hostility and ignorance unleash social practices such as violent, aggressive behaviors which in

Argentina unleashed two political demonstrations fostered and incentivized by media monopoly use of symbolic violence messages against Fernandez de Kirchner." [45]

The Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention (*MESECVI*) under the Organization of the American States (OAS) ended an official visit to Argentina - March 1st to March 3rd, 2023 – which sought to address violence against female politicians and to provide political authorities with technical assistance. In the context of that visit, the experts confirmed there is still an atmosphere of harassment, attacks and impunity against women engaged in public and political life.

The report ascertained female politicians still have to put up with violence "involving a widely tolerated practice in all public life settings, and affecting women in public offices, within political parties, in trade unions, in social and human rights´ organizations and in the mass media."[46]

The Committee also confirmed the use of violent speeches in the mass media and social media as "violence acts are eased and aggravated by some social communication and social media sources with the use of sexist messages and remarks, violence threats and symbols, the disclosure of sexist or sexually humiliating images and gestures primarily from congressmen, political leaders, officers or empowered former officers representing political parties as well as from different national, provincial and local government agencies." [47]

The Committee has also shed light on the muzzling and non-punishment of these acts as well as on the absence of their public condemnation, which expand, ease, replicate and aggravate violence against female politicians, not only against the vice president. In that regard, "the delegation was able to evince the speech of hatred against female politicians, particularly against senior officers such as the vice president, the president of the House of Representatives, or the provinces´ social and political female leaders, like Milagro Salas´ case in the province of Jujuy and the Ramonas´ in the province of Catamarca, which gave rise to a turbulent information chaos to downplay their public influence". [48]

Last but not least, the Committee of Experts asserted the current protection mechanisms are institutionally brittle and distrustful as "they are not in use due to a profound mistrust in the independent and autonomous character of judicial and partisan bodies, which should be held accountable and secure female victims of political violence with access to justice". [49] Therefore, the non-institutional response, in particular, access to justice, truth and compensation of victims, legitimates the circle of violence emerging as a profoundly alarming sign of weakening not only of democratic institutions, but also of democracy as a core value for the Rule of Law and justice." [50]

The committee´s report is accurate but fails to refer to other forms of violence and oppression inflicted by the justice system as a strategy of what is referred to as *lawfare,* while it is also argued it is not only mistrust in institutional justice systems what prevents Cristina Fernández de Kirchner from receiving adequate protection and compensation. Conversely, it is precisely the use of justice which allows giving the final stab resulting in CFK´s political murder, once the attempted murder proved unsuccessful.

Lawfare is a hybrid war instrument deemed as part of global geopolitics and used to advocate the interests of major powers. In that regard, use of law and justice is made to ensure the economic elites´ interests, though it is not quite a groundbreaking strategy. What is currently referred to as *lawfare* or legal war is only the recognition that the law is a privilege maintenance instrument designed and embraced by privileged minorities to perpetuate the androcentric, capitalist and racist state inequality system. In fact, the history of Latin America is the history of *lawfare*, of a law invariably colonized by local and worldwide economic elites´ interests.

When assessing CFK´ s case in particular, we must bear in mind there is a structural misogynous process under way in all Argentine society, which exerts an impact upon all women but is aggravated in the Argentine vice president´s case due to her historic role in social equitable redistribution of wealth-based programs. That is why, CFK was also victim of a judicial persecution.

Therefore, two major processes known respectively as patriarchy and neoliberalism are embodied into a single public leader. These murky forces are ravenous and highly prone to desire death and destruction, and if the bodily death fails to occur, silence prevails and assures the true political citizenship death (court banning order) of one of the major female leaders in the Argentine history.

Cristina Fernández de Kirchner was prosecuted in thirteen cases in Argentina, but it was during the *Vialidad Case* that Judges Jorge Luciano Gorini, Rodrigo Giménez Uriburu and Andrés Fabián Basso, in charge of Federal Criminal Oral Tribunal Nº2 passed judgement in case Nº2833 on December 6th, 2022 and the Argentine vice president, among other officers, was sentenced to 6-year imprisonment, to a special lifetime ban from public office, and to payment of court costs and litigation expenses when found criminally liable for fraudulent administration against public administration.[51]

Without delving into some other *lawfare* features already tackled in some chapters of this book, we would like to briefly discuss the special lifetime ban since any everlasting verdict is absolutely relevant.

“A ban involves the deprivation of a right or the discontinuation of the exercise of that right as a result of an unlawful act regarded as a crime by the law. It can be absolute in which case the aftertaste of its ancient times´ infamous meaning is still noticeable, or special in which case the ban serves as punishment for the abuse or the wrong or inadequate exercise of rights inherent to specific jobs, offices or activities requiring special expertise”. [52]

Specifically regarding public offices, “imposing a ban implies rendering an individual unable to be appointed to or to hold public offices, or to exercise civil and political rights, that is, to be prevented from doing something. It is a genuine ineligibility penalty”. [53]

When assessing the link between an impeachment and a ban, R. Zaffaroni and G. Risso evince the Argentine legal system considered the ban to be a penalty which in the United States formerly implied an individual´s declaration of unworthiness. Still, the criminal law has gradually evolved and attempted to establish applicable criteria so that the implication of a ban shifts away from its original

meaning. It is striking to notice the judgement grounds are still unknown (they will be read out on March 9th, 2023), though the ban verdict *per se* entails an attempt for a civil degradation.[54]

Hence, "wisdom should be brought into play when issuing the individual standard because if the banning order extends the scope of its applicability, there is the risk the special ban may turn into a penalty precluding the penalized individual from holding public offices. Conversely, if the latter were allowed to act unrestrictedly, the penalty will be rendered null and void since except for very few special cases, the use of imagination will allow to gainfully take over the activity banned. [55]

Taking into account *lawfare* against CFK and, particularly, the media pressure in the *Vialidad* case, it can be concluded the lifetime ban is a true *capitis diminutio* of the Roman Law with such severe impact the aggrieved party was deemed as a civilly dead. "Examples of a civilly dead status include the civil degradation of senior Athenians, the Romans´ deprivation of citizenship, the deprivation of Germans´ law protection, and the civil death of the French and Spanish people."[56]

Furthermore, a lifetime ban is almost literally like a civil death confession. According to E. Zaffaroni and G. Risso, "since the introduction of the human rights international law to the 1994 Reform, the actual lifetime ban fails to be consistent with the aim of the American Convention of Human Rights allocated to that lifetime ban". On the other hand, anyone with a lifetime ban to exercise a right or to hold a public office, with no other requirement than that of illegibility turns into a second-class citizen, that is, a partially civilly dead." [57]

In fact, in the "Alvarez Ramos against Venezuela" case the Inter-American Court of Human Rights argued that Álvarez Ramos political ban secondary punishment infringes the political rights under Section 23 of the American Convention of Human Rights, compared to Section 1 providing as follows: "1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country."

In addition to the violation of human rights international treaties, the special lifetime ban against Cristina Fernández de Kirchner resulting from case Nº 2833 judgement brings to fruition the failed attempted murder, as it epitomizes the political death of a woman who dared not only to face the androcentric State, but also the neoliberalism power structures.

10.

Presumption of innocence and the Criminal Law of the (Political) Enemy

*Charlotth Back**

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Lawfare, in current expansion in South America, has directly meddled with the States' internal political direction, by means of fraudulent parliamentary coups and impeachments brought in the name of the fight against corruption. To cover up these truly persecutory processes under a seemingly legal mask, "procedural innovations" selectively applicable to presumably "corrupt" officers' cases and therefore "enemies of the society", were brought up.

The trials against Presidents Lula da Silva in Brazil and Rafael Correa in Ecuador are proof of the existence of a judicial persecution *modus operandi* which resorts to the same mechanisms to distort basic human rights and procedural guarantees, that is, the very underpinnings of democratic regimes. This juridical strategy stands as a recurrent judicial formula combining the filing of unspecific and unevidenced cases with Prosecution Offices' prosecuting and punitive endeavors targeted against popular leaders, an indiscriminate use of effective cooperation as the single source of evidence, the unification of indictments under specific trial cases, biased judiciary officers and, eventually, the issuance of "pre-determined judgements", which stand as a mere acceptance of the petitions contained in the original indictments. The scenario of collusion and sham displayed in the Lava Jato Operation and clearly reproduced in this "pre-determined judgements" scheme, have been reported in the past.[58]

The accusations brought against Argentina's Vice President Cristina Fernández de Kirchner in the *Vialidad* Case are no different. In the interest of public assets and society, the basic criminal procedure guarantees enshrined in the Argentine Constitution as well as in Human Rights protection international treaties undersigned by Argentina, including the presumption of innocence, the prohibition of conviction without evidence, the legality principle, judiciary impartiality and the prohibition of submitting illegally obtained evidence, have all been ignored and altered to get all existing means, both legal and illegal, to contribute towards securing the vice president's conviction.

Just like in the case of Brazil, typical "Criminal Law of the Enemy" elements have been used to convict CFK and other officers for not yet evidenced acts of corruption. This doctrine was created back in the 1980s by German jurist Gunther Jakobs,[59] but gained momentum during the George W. Bush administration, after the 2001 attack to the Twin Towers, and, basically, during the American invasions to Afghanistan and Iraq.

Jakobs distinguishes between the "Criminal Law of the Citizen", where punishment is intended to protect the enforcement of legal standards and, therefore, criminal procedure guarantees and the limitations to the State's punishing and investigational power, and the "Criminal Law of the Enemy", fully oriented towards fighting against social "risks" and facilitating the use of any means, whether or not legal, to punish them. There is, therefore, a "Criminal Law of the Citizen" intended to ensure the effectiveness of fundamental guarantees as expressions of a given society, and the "Criminal Law of the Enemy" meant to wipe out the dangers looming over such society.

With this, rather than enforcing punishment, Jakobs means to enforce a security measure on enemies by way of special negative prevention method, thereby neutralizing the enemy. Security measures arise from the perpetrator dangerousness criterion as opposed to punishment, typical of the "Criminal Law of the Citizen", where the perpetrators' guilt[60] is taken into consideration.

This context leads to a true persecution against the perpetrator of a presumed crime. The safeguarding and restraining aspect of the state's punitive powers, guaranteed in Criminal Law as well as in the international human rights standards give in to persecution, thus transforming law into a war flag, in a scenario that is evocative of Fascist regimes. Criminally prosecuted offenders are no longer under the protection of the Constitution or of basic human rights principles. Contrarily, instead of used to be enforced on offenders or presumably dangerous individuals, law is used to battle against them. Now divested from its protective role, law enforcement becomes warmongering and determined to defeat the "enemy of society". An ideological inversion of law, which tarnishes human rights instead of safeguarding them, occurs.

In these cases, defendants are punished for their identity, attributes, personality or even for their role in society, an illustration whereof are South America's leftist leaders. The intention is to punish the defendants rather than the criminal behavior itself and to pursue their dangerousness instead of their guilt. This strategy is specifically targeted at progressive and popular leaders and politicians, given that the new wave of coups against democracy, in their modern disguise of juridical-parliamentary coups and spurious judicial proceedings, stands as a new offensive against social achievements.

Several aspects of the "Criminal Law of the Enemy" are found in the *Vialidad* Case. Yet, this review will be focused on the infringement of the presumed innocence principle in the case of Vice President CFK, which is set forth on Section 8.2 of the American Convention on Human Rights. In this case, it is of little or no importance at all for the Prosecution or the Judiciary whether the vice president has or has not committed a crime. Their only goal is to have her punished and subsequently disqualified for life from running for public office.

Pursuant to the Interamerican Court of Human Rights,[61] presumption of innocence should stand as the guiding principle in all prosecutions and as a core standard in evidence judging, while limitations to judicial activity's subjectivity and discretional nature are additionally provided for. Therefore, under no circumstance should judges become disengaged from the concept that all defendants are deemed innocent if the opposite is evidenced. That is, in any democratic system, evidence assessment should be rational, objective and unbiased, in order to rebut the presumption of innocence, and all prosecution proceedings should contain enough evidence to lead to certainty as to criminal liability.

Guilt is not the rule in Criminal Law, but presumption of innocence is. Irrefutable proof of guilt stands as an essential requirement for criminal punishment and therefore the burden of proof lies with the prosecution rather than with the prosecuted. Given that the *onus probandi* is incumbent upon the prosecution, it is not up to the prosecuted to prove they have not committed the crime they are being prosecuted for.[62] In criminal prosecution, the burden of proof lies with the relevant

State agency, in other words, with Argentina's Prosecution Office, and therefore defendants are not bound to prove their innocence or to produce exculpatory evidence.

Of course, the defense is entitled to submit rebuttal evidence to challenge the prosecution's hypothesis and to therefore refute it, and, in turn the prosecution will have to challenge it back. Eventually, should the judge have any doubt about the proof of guilt, a judgement in favor of the defendant should be issued on account of presumption of innocence.
In the *Vialidad* Case, as is typical in the application of the "Criminal Law of the Enemy", the procedural ground rules have been clearly inverted. The Prosecution has been unable to prove the payment of surcharges or the failure to complete the construction projects, or that the vice president acted in detriment of public revenue. In this case, no criminal conviction may be issued against her if no direct or relevant link between CFK and the legal interest being affected is established, that is, if there is no sound and sufficient proof of this link or of CFK's contact with the individuals involved in the bidding processes or with the relevant construction company owners or, eventually, if there are no witnesses who may confirm her involvement in the case.

The judge's or the prosecuting officers' "personal beliefs" or their suspicion that "she could not possibly be unaware" of what was going on do not provide enough evidence to convict her. A direct causal relationship between the defendant and the facts requires to be established, whereas the presumption of innocence should not be loosened depending on the judge's or the prosecution's will.

An attempt to distort procedural ground rules, which is typical of the Criminal Law of the Enemy, is identified in the *Vialidad* Case. One of the cornerstones of Criminal Law and therefore, one of the citizens' guarantees that safeguards them from the abuse of state power, is the principle which prohibits presuming defendants' guilt or requiring defendants to prove their innocence. It is incumbent upon the prosecution to prove the allegations made in the case; otherwise, the defendant will be presumed innocent.

It is indeed apparent that CFK is being investigated for her political personality. That is why she is treated truly as an enemy, rather than as a citizen indicted in a criminal prosecution case and therefore, she is no longer deemed as a holder of State-protected rights, but rather as an object of coercion, deprived of the rights and of the minimum legal protection all individuals, including criminal defendants, are entitled to.

As occurs throughout South America, corruption becomes a "symbolic tool" to justify the adoption of temporary and/or exceptional measures which, as a matter of fact, are at the service of elite and large economic groups' interests. According to this common-sense discourse based on the "society-defending" ideology, undermining fundamental rights and guarantees "for the benefit of society" is certainly plausible.

The apparent collaboration with the mass media to raise popular unrest against CFK confirms that, far from being a legal criminal process, this is rather a political criminal one and, in this regard,

judges and prosecutors are uncommitted to the observance of due criminal prosecution guarantees.

The judgement issued by Federal Oral Criminal Court No. 2 is unambiguously confirming its main goal: resorting to all existing means, whether legal or illegal, to convict the vice president, even by distorting legal standards, or by loosening the enforcement of procedural guarantees and the presumption-of-innocence principle, or by distorting constitutional and international principles or, in other words, by explicitly applying the “Criminal Law of the Enemy”.

11.

State-corporate alliances, judicial (in)dependence and democratic subversion.

Lawfare as a stage of Cristina Fernández de Kirchner´s case

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The state-corporate alliances forged to subvert democratic alternation processes in Latin America have been the subject of hundreds of analyses, allegations and debates in the last decade. The term lawfare has become the theoretical framework required for an adequate interpretation of numerous processes in which the judiciary has become the hypertrophied protagonist of a dispute snatched away from the ballot boxes and the typical procedures applied in the election of the branches of government. With the epicenter in Latin America, the so-called "legal wars" have led, among many other rights' violations, to an accelerated narrowing of the rights to political participation, including both active and passive voting and due process related rights, all of this intended to protect corporate interests and those of their allies in the political power. Thus, as is well known, the ultimate victims of legal wars are basically the rights (and decent lives) of social majorities and those of nature.

Although it would be unattainable to summarize the abundant doctrine produced in recent years on the concept of lawfare, a minimal definition should be addressed here to remember the terms of the debate. As explained by key experts in the review of this issue, such as Proner, Romano, Ramina, or Zaffaroni,[64] warlike concepts have been instated in the justice system with the purpose of persecuting, delegitimizing and overriding political adversaries, as well as of shattering their public image and preventing their involvement in electoral processes, thus blocking change in political representation.

The prosecution or imprisonment of political leaders has been the tip of the *lawfare* iceberg but, as is known, the strategy goes much further. This legal-political offensive combines the use of the administrative punishment apparatus to persecute opposition activists with non-observance of judicial independence and impartiality through changes in judges´ appointment and dismissal systems, the interference in electoral processes to hinder or prevent passive suffrage or the attack on the electoral institutionality to cast doubt on processes´ reliability, all of this with the collaboration of the media to shatter political leaders´ image and endow the entire strategy with a shade of truthfulness. The combination of all these elements is precisely the novel aspect which allows classifying these dynamics under the term *lawfare* to refer to a complex strategy clearly reflected in the political scenario in Argentina, Brazil and, also in Ecuador regarded as an outstanding follower.

Lawfare has both quantitatively and qualitatively aggravated in recent years, to the point of becoming a coordinated and articulated regional strategy. Its systemic and regional character is a fundamental element to account for the proliferation of *lawfare* as a policy aimed at underpinning the expansion of an ideological, political and corporate project orchestrated by the ultra-conservative global neoliberalism doctrines. It is, therefore, a project whose goals are not that far apart from those brought about to the region by military coups, which paved the way for neoliberalism, and which today seeks to strengthen accumulation through neoliberal dispossession by subverting democratic power alternation channels. The strategy has been clearly refined and the instruments are now more subtle (*lawfare* plus *Lex Mercatoria*)[65], but the domination, neoliberalism expansion and capital (now trans nationalized) interests protection remain unchanged.

In this sense, as pointed out by Medici,[66] even though the visible side of the strategy is the opposition delegitimization and proscription, it is essential to emphasize that *lawfare* is a coloniality of power mechanism which, in combination with others, is integral to a post-democratic and authoritarian era of

neoliberalism, whose minimum consensus basis are torn apart to project itself as a pure form of domination, which is reluctant to any robust commitment to democracy and to human or nature rights. The *lawfare* strategy intends to renew or strengthen geopolitical subordination patterns, by making or maintaining coopted governments obsequious to the hegemon and to the international financial capital political interests, while also expanding financial institutions' prevalence in public policymaking (corporate coopting) and the transnational corporations' control over human life and nature, thus giving way to René Ramírez so-called "democratic dictatorships".[67]

One of the key tools of *lawfare* is, obviously, the judiciary. Taking advantage of its fundamental role in the institutional game of the constitutional State, legal wars are structured and driven by the creation of power blocks that undermine the separation of powers in order to launch a judicial offensive and therefore keep or take control of the Executive branch. In the times when this offensive was led by the military power, we were faced with the typical coups; when the core of the offensive operates through the judicial branch under the umbrella of domestic political power groups and the mass media or other State institutionality features, the witnessed scenario is that of *lawfare*.

Thus, certain judiciary groups, now transformed into media stars, have fought legal-media battles against progressive individuals or movements which are likely to win elections in order to block them. To this end, in alliance with corporate/political power groups, various judiciary sectors have made grandiloquent and even epic staging attempts to erect into some sort of "democracy custodians" or "anti-corruption champions" and advocate for basic moral tenets, while at a time directly and potentially infringing liberal democracy's basic rules, such as the presumption of innocence, the right to defense, the separation of powers or the independence and impartiality of judges, as well as a wide range of human rights. This is a very relevant aspect of what has been called by Canfora and Zagrebelsky "the democratic mask of oligarchy".[68]

Unsurprisingly, judges and prosecutors' staging in the media has been undermining public confidence in the judiciary in Latin America for years. In the region, the three classic branches of government (executive, legislative and judicial) rank last in terms of citizens' trust, behind the church, the armed forces and police, and even electoral institutions, according to information from *Latinobarómetro* for 2021. While it is true that, when it comes to the judiciary, the levels of confidence have never exceeded 37% (in 2006), the fact that the current rate stands at 25%, almost equaling the minimum levels reached in 2003, cannot but concern us. Overcoming this distrust, especially linked to the perception of lack of impartiality, is undoubtedly one of the great challenges faced by society when it comes to living together.

The importance of the judiciary in the structure of democracy requires no further elaboration. Suffice it to say that labeling the judiciary as the "custodian of democracy" is a typical assertion that has become particularly powerful in our times, probably due to a progressive devaluation of the legislative and executive branches, which clashes with an alleged perennial legitimacy of the judge, individually deemed as "independent" and which, especially in *lawfare* scenarios, tries to protect itself from any criticism. The approach is thus inverted and shifts away from regarding the judiciary as an effective citizens' rights protection mechanism (including individuals' right to liberty and security or the right to defense and to an independent and impartial court, that is the gateway to the ensuing protection of the other rights) to

deeming the judiciary as a legal structure shaping and sustaining it as a precept paving the way for a presumed absolute unquestionability of judges.

This issue is not new. Back in 1996, on occasion of the II Latin American Seminar on Judicial Independence, which addressed the issue of "constitutional balance, judicial independence and human rights", this was already an apparent concern. In the introduction to the minutes of that Latin American and European judges' meeting, it was pointed out that the judicial independence main *raison d'être* and justification is grounded on human rights protection and stated that: "It is apparent to those gathering here that the kind of independence we propose for the judiciary is not a free pass or a caste privilege. The documents resulting from that congress abound on this issue, indicating that independence entails endeavoring towards a specific institutional balance, where judging without any interference from either the other articulation groups (bodies) of the Rule of Law branches or without disturbing influences from the parties' extra-procedural pressures is possible".[69]

Delving deeper into the issue, Perfecto Andrés Ibáñez argued that independence "aims to prevent judges, because of their position in the state framework resulting from the regulations governing their profession, from being constrained or induced to operate as a political actor, that is, as a political party to the process, to the detriment of the exclusive observance of law". Independence would be indissolubly twined to impartiality (basically in the procedural arena) and both are linked to the principle of legality: "the judges' observance of law which, in turn, aims to render the principle of equality effective". Evidently, all of the foregoing is closely related to the presumption of innocence which, in the above author's words, "being a prosecution rule, it imposes on the judge the adoption of a neutral position and of no pre-conviction at the commencement of a prosecution".[70]

According to the Bangalore Principles of Judicial Conduct,[71] independence is not a privilege but a responsibility linked to jurisdictional functions, while also a guarantee of human rights (and of nature), which is essential to ensure the accountability of those found guilty and access to justice and effective compensation for victims.[72] Judges are therefore linked to this "substantial dimension" of law as well as of democracy.[73] Thus, the judge is not a tool of power but an organ of the citizens' rights.[74]

And again according to the Bangalore Principles of Judicial Conduct, independence, impartiality, integrity, correctness, equity, competence and diligence are essential principles and values for an adequate performance of the jurisdictional duty, which find themselves annihilated in lawfare scenarios, in particular in the cases orchestrated against Argentina's Vice President Cristina Fernández de Kirchner or Ecuador's former President Rafael Correa; Brazil's current President Luiz Inácio Lula da Silva and its former Vice President Dilma Rousseff. Furthermore, political persecution through indictments brought against opposition leaders and activists has gone far beyond the above high-ranking officials, not just in these countries.[75]

As known, the judicialization of politics has been disguised in these cases under a legal and nuanced veil to endow it with legitimacy, thanks to the support of the top mass media that broadcast certain accusations against opposition politicians to justify the judicial offensive. In the so-called "*Vialidad* Case" against Vice President Cristina Fernández de Kirchner, all the aforementioned values have been violated, most particularly the independence and impartiality ones, thus leading to a direct violation of the

fundamental and law-established right to a competent, independent and impartial court, which in practice results in the violation of the right to defense.

Specifically, the infringement of the basic principle of impartiality is particularly serious and apparent, as was pointed out by the vice president's defense throughout the process. The connections among prosecutors, judges and former President Macri are abundant, notorious and public. It is therefore worthwhile to delve briefly into the notion of "impartiality" in order to show the incompatibility between the behavior of those involved in the trial and the values that, according to international consensus, judges and prosecutors should uphold.

The Bangalore Principles state that impartiality is the fundamental attribute required of a judge and the judiciary's central attribute that should prevail in judges as a matter of fact and as a matter of reasonable perception, lack of which would lead to the risk of shattering the confidence in the judicial system.

The obvious question is, how is impartiality measured? According to these principles, it is measured from the standpoint of a reasonable observer. Specifically, by distinguishing two aspects that have been emphasized by the European Court of Human Rights. First, the court must be subjectively impartial, that is, none of its members should be biased or prejudiced on a personal level. To ensure this absence of bias, judges must "avoid any activities which may suggest that their judicial decision is influenced by external factors, such as their personal relationship with a party or their interest in a case outcome". Furthermore, judges "shall ensure that their conduct, both in and out of court, may maintain and enhance people´s trust, and that of legal practitioners and litigants in judges' and the judiciary impartiality". As noted in the previous paragraph, in the *Vialidad* Case, doubts about lack of impartiality were founded, reasonable and also based on substantial evidence, along with reasonable public perception of the connections between judges and the political power group interested in the Vice President's prosecution and conviction. Yet, additionally, the court must also be impartial from an objective point of view and should offer sufficient guarantees to rule out any legitimate doubts in this regard, which was not guaranteed in the *Vialidad* Case.

The absence of impartiality (or its reasonable perception), as the Bangalore Principles continue to point out, has clear implications: "judges shall excuse themselves from involving in any proceeding where they are unable to decide over a matter impartially, or in any case in which, according to the view of a reasonable observer, they are incapable of deciding the matter". None of this occurred in the *Vialidad* Case against Cristina Fernández de Kirchner,[76] where the use of sexist and patriarchal political violence is also clearly witnessed.

The abovementioned cases also stand as proof of how lawfare strategies go beyond the individual behaviors of the judge and take on a strategic and systemic character. It should be thus noted that many times it is the institutional structure itself that allows the reproduction of *lawfare*-harboring elements. For example, the process for the screening of judges is based on planning their actions directly into the conviction of the person to be politically annihilated, thereby dismissing their right to a defense, which is knowingly declared null and void since the commencement of the process. It is therefore necessary to prove and report that these cases are not merely an "objective" manifestation of the judicial apparatus class bias in its composition and interpretation duties, which become instrumental to the domination

structures. In addition, the assumptions evidence that the organization of the Rule-of-Law and of the basic guarantees related to individuals' and right-to-defense inviolability is twisted to the point of turning them into their opposite: arbitrariness and political persecution amplified by the media coverage to secure their effectiveness.

With a clear understanding of the brutal consequences of *lawfare*, a strategy through which leaders of politically essential movements for the advancement of progressivism in Latin America have been and are being pushed aside, with the intention of blocking the path towards social majorities' wellbeing, the question then is how to reverse and avoid judicial wars.

Given the unfeasibility of addressing this key reflection here, let us highlight some elements to underpin the required debate on the subject. First, in analyzing lawfare we should not, at least from the critical science standpoint, be naïve and assume that all the above is the result of a *deviant and novel* use of the Law. This implies ignoring the fact that the legal system usually behaves as an instrument of domination that produces, structures, maintains and promotes inequalities and is generally functional to economic, anthropocentric and patriarchal domination relations in societies.[77] It is, therefore, a phenomenon linked not only to a specific moment or judge attitude, but to a rooted legal culture that is functional to the elites' interests. Secondly, in this regard, *lawfare* reporting should not make us forget that, in fact, the use of law against social majorities and nature rights is a legal disguise for domination relations regulatorily contrived by other means, such as Bilateral Investment Treaties or the *Lex Mercatoria* framework, that ancient legal war that has been successfully expanding over Latin America for decades. Furthermore, as recalled by Franklin Ramírez,[78] it is equally important to see *lawfare* under the light of the neoliberal project merger with the authoritarian matrix.

Taking at least these two premises into account prevents us from falling into a reductionist view of the analysis and allows avoiding the projection of alternatives solely focused on the vindication of the classic principles of law, such as the separation of powers, judicial independence or the right to due process. Demanding all the above without simultaneously claiming for changes in the political and legal-institutional structure and culture will not prevent *lawfare* episodes from occurring in future. This requires a much more profound endeavor and a medium- and long-term strategy beyond the judicial arena, and calls out for the construction of cultural, social and institutional change processes based on strong and extensive social bases and founded on the collaboration between social and political movements. Quoting Ramírez[79] again and as conclusion, the lessons learned from the most recent wave of protests in Latin America, should remind us that, in the face of authoritarian, androcentric and patriarchal neoliberalism, the politics of emancipation that run hand in hand with feminist action and ecological critique has been (and *remains*) in full reinvention.

12.

Liquid Authoritarianism and *lawfare*

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According to the Schmittian theory, there are three major reasons why several offices particularly in the Latin American peripheral capitalist societies are held by sovereign authorities, and the Sovereign stands as the one who decides on the exception and on the suspension of rights. In addition to ongoing existence of State of Exception, which is coincidental with a formal democracy and is solely and fully embodied into the Constitution, it is paramount to discuss the strong analytical influence of positivism, which based on a subjunctive-idealist ("subject-object scheme") paradigm and on the methodological purity notion, expanded the discretion power of decision-making authorities.

Actually, and in accordance with the foregoing analytical-normativist lineage, a judge is granted what may be known as primary authority whereby sovereign power is conferred upon the latter to decide over the exception. In other words, the denial to apply the Law in line with a specific case, which stands as an object likely to be addressed by the juridical science, implied the disregard of the exception decision as a legal enquiry core component. This definition arises particularly from the interpretative powers of a jurist addressed in the theory of Hans Kelsen [80] as well as in that of legal reasoning, which stands as the formalism-skepticism middle-ground outlined in Herbert L.A. Hart´s [81] Theory of Law and serves as a self-reference standards system.

In this scenario, exception measures are primarily used in authoritarian governments´ operations, which are deemed as concurrent with a formal democratic rationale approach. A democratic Rule of Law, which is formally embodied into the Constitution, and to which access is given only to one society sector, the economic one, occurs simultaneously with the State of Exception, which does not stand as such, though as a permanent exception government policy.

1.The achievement of the democratic Rule of Law myth and the permanent liquid exception

In the field of the general theory of the State, it is not surprising to come across statements in advocacy of the achievement of the democratic Rule of Law being witnessed at best in a broad sense. Nevertheless, the foregoing achievement is about a human, political initiative and about an abstract notion failing to be fully-fledged in any historic society we know. Additionally, the State of Exception issue and the exception measures, as may be enforced in contemporary democracies and seemingly result in a fake Rule of Law system, are seldom discussed.

The unwillingness to discuss this issue in the field of Public Law is noticeable even if asserted by Jacques Derrida no theory is deemed as fully-fledged if failing to display its aphasic disturbances, exceptions and noises. [82]

As above stated, the foregoing unwillingness to tackle this issue arguably derives from the strong influence of Kelsenian analytical positivism, at best, in the Latin American legal environments, which as a result of non-acceptance of the law application to a specific case, which is deemed as an object

likely to be reasonably tackled by legal sciences, fails to acknowledge an exception decision that can be used as a relevant legal enquiry.

Even if it is true, on the one hand, that his issue has been long underestimated, the national and international legal community has shown a recent rising interest in the exception and in its forms of legitimization. Several authors have discussed the issue of exception measures, which stand as a government policy used in democratic societies, though specific terms have been used by these authors for the discussion of these measures. Norberto Bobbio regarded this phenomenon as "new despotisms" [83], which turned universal even when his discussion was limited to Berlusconi´s period in Italy only. Luigi Ferrajoli gives an outline of the deconstitutionalization and of the Italian democratic crisis seen as a "deconstitutionalizion of power process" [84] and Ronald Dworkin points out to the loss of society *"common ground".* [85] Boaventura de Souza Santos refers to a "low-intensity democracy"[86] and Giorgio Agambem developed the notion of "State of Exception". [87] Last but not least, and confidentially speaking, Rubens Casara elaborated on the view of a "post-democratic" State.

Although the Rule of Law and the "police" State dialectical tension does not appear to be a recent phenomenon, new forms of speeches intended to legitimatize the state authoritarianism have emerged. The history of mankind fails to develop in closed phases, as its period-based didactic description may seem to be the case to those unaware of it. Conversely, the development of mankind entails intricate processes where the elements of the former period political and social structure still exert an impact on the next period. No guarantees against civilization setbacks and regressions are granted. A sequential order regarding the description of historical facts is observed in an attempt to make sense of those facts. Yet, chaos in the history prevails.

Even though the XVIII bourgeois revolutions appear to be the end of the State absolute power, daily reality does not seem to be the case. The absolute power of the State has been predominant throughout the history of peoples, even following the triumphs of the democratic Rule of Law. By way of illustration, the authoritarian impact of the absolute power of the State is perceived in each case of abuse by state criminal persecution agents.

If the aftermath of the authoritarian state has exerted an impact on the history of mankind as a whole even after democratic revolutions, what changes, though, is the form of the speeches legitimizing the state authoritarianism. In that regard, Eugenio Raúl Zaffaroni argues the "historic Rule of Law" can still be inwardly held as a "police State".[89]

The essence of authoritarianism has changed in the eighteenth century. It no longer refers to the end of the democratic state aimed at the establishment of a State of Exception, but to the exception-based authoritarian systems adopted in democratic settings, which, as a result, are deemed as a genuine government system. That is, the usual compaction of an authoritarian state has paved the way for the development of structures that go hand in hand with democratic legitimate measures; the foregoing, thus, resulting in the shattering of the state structure.

The exception measures in democratic settings vary depending on their form and legitimation and on the extent of development of the State where they are confirmed. There exists an ongoing (*de facto*) State of Exception existing side-by-side with a (formal) permanent Rule of Law in late peripheral capitalism countries.

Should the exception be held as a decision made during democratic practices or even as a haphazard strategy adopted to exercise political power in democracy, two categories of exception in contemporary states, Brazil included, may be ascertained. There is a merely apparent type of exception established and authorized by law, in which the suspension of rights is shaped in a distinctive "special law" form to apply to severe domestic conflicts or war settings. On the other hand, there is the true, or actual exception in which as a result of the establishment of a sovereign, decisive political will, rights get suspended with no cross-sectional reasonableness being observed.

2. Liquid Authoritarianism and *lawfare:* notes about Cristina Fernández de Kirchner´s case.

The term *lawfare* gained prominence in the Brazilian law due to the enlightening contributions by Cristiano Zanin Martins and Valeska Teixeira Zanin Martins, who acted in criminal proceedings as former President Luiz Inácio Lula da Silva´s outstanding lawyers for the defense and who, along with Professor Rafael Valim, have performed Brazil´s most significant scientific work on this issue. [90]

When cross-checking the inadequacy of the classical legal doctrine and of the theory of authority and of abuse of law in order to face those challenges arising from the manipulation of the law in the guidelines applied, particularly by the so-called "Lava Jato Operation", the authors focused, among other issues, on investigations by Orde F. Kittrie, [91], John L.Comaroff, [92], Jean Comaroff, [93,] Siri Gloppen [94] and David Kennedy [95], who eventually carried out a scientific work whose hypothesis was based on the notion of *lawfare* as "the strategic use of law seeking to achieve an enemy´s delegitimization, harm or annihilation". [96]

Since the American General Charles J. Dunlap Jr, rekindled the term *lawfare* in 2001 to refer to the use of Human Rights International Law as a war weapon against the US military actions, [97], the issue has, in fact, been subject to scientific discussion by John Comaroff and Jean Comaroff, who described this term as involving the use of law with political duress purposes, [98]. The term has also been discussed by Orde F. Kittrie, who highlighted similar conventional war effects intended to render adversaries ineffective [99], and even by Siri Gloppen, who, while in observance of a stricter notion, defined it as a legal strategy seeking to attain not only mere procedural success but also the social transformation[100].

The adoption of exception practices, particularly, in the framework of criminal investigations and proceedings, though not limited thereto, has unveiled the inadequacy of the classical approach when it comes to the assessment of the adequacy of its proceedings and the fairness of its products, and also that of the responses to contemporary times´ authoritarianism challenges. This is the enormous challenge pushing us to write the following notes regarding abstract discussions though

with emphasis being placed on the *Vialidad* Case, which resulted in Cristina de Kirchner´s being sentenced to 6-year imprisonment and to the permanent loss of political rights.

The classical doctrine establishes that obedience to legal reasonableness- above all in terms of its submissive role, its ties with the law, its impartiality and duty of motivation- would provide justice with a technical-legal qualification to legitimate each and every decision policy. Nevertheless, the theory of legal decision is not included in the mere understanding of those aspects, as expected by the ancient proceduralism.

The exception adopts particularly striking features when it comes to the impartiality jurisdiction commitment, even with the adoption of attributes unproven in the enemy identification and in the suspension of rights processes as a result of the alleged threat they would pose for the State.

In the fight-against-the-enemy rationale, the exception processes have undermined the most basic attributes of the impartiality principle. Similarly, liquid authoritarianism and exception practices have extended to several state decision-making settings. As a result, liquid authoritarianism is not limited to criminal procedures and investigations, to the penalizing administrative law and to decision-making in the relationship of public administration with entities subject to government administration. It extends all over the settings in which state action is applicable.

The exception measures, even if accounting for the infringement of a specific procedural formalism, have devastated the relationship of the State with individuals in terms of the civilization criterion, and led to the subversion of our own constitutional democracy and of our election procedures, which have become corrupted through the severe influence of state agents endowed with persecution and jurisdiction powers.

Specifically with reference to the Judiciary as in exception agent, it is gradually taking decisions with seemingly constitutional and democratic consistency, though leading to unique Constitutional fraudulent acts, and as a result, to rendering basic rights meaningless. All of the foregoing is attained through law deconstructing decisions, even if entailing a surprisingly extralegal purpose.

In hypothetical terms, the exception annihilates popular sovereignty, democratic and republican instruments and basic rights, and also, to a greater extent, social cohesion and the sense of belonging. As a result of the foregoing reasons, the exception derived from those fraudulent acts is not consistent, at least, exclusively or indistinctively, with the judicial discretion of the applicable law analytical notions, with the “judicial error” (“*error in judicando*” or “*error in procedendo*”), with the figure of a single judge making decisions in line with his awareness, with the mere abuse of law or of authority, or even, with any unequivocal judicial activism case or other forms of decisionism.

As opposed to the historic development of the constitutionalism phenomenon, dehumanizing as the result of the exception enforcement occurs with the selection and appointment of the enemy. It is the language that dehumanizes the enemy through the framing within a specific category which downplays any individual attributes. Within this framework, the distinctive law rationale for “lawful-unlawful acts” is outgrown by that of the power of Politics itself. A judge´s political power in a

courtroom outgrows in practice the power of the law. The law is manipulated by means of the sovereign action with extralegal purposes, in the widest variety of state decision-making stages.

Hypernomy has paved the way for hermeneutical fraudulent acts which, through a legal narrative attack fictitious foes. In other words, the law is seized so that its procedural and discursive rationale serves the purpose of a *sui generis* war. Hence, the Law is manipulated to suit a battle against the enemy to be annihilated.

The mere appraisal of the Language of Law and rites´ consistency does not in itself or at least necessarily allow for the confrontation of mirage tactics behind liquid authoritarianism and *lawfare.* As a non-conventional combat instrument, the law calls for the mere formal discussion of procedures, in addition for the suitability of framing of notions and legal definitions as well as for the disclosure of contrivances concealed in democratic practices.

Final Considerations:

One of the attributes of contemporary authoritarianism is the adoption of a state of exception rather than the breakdown of the democratic state, as well as the establishment of liquid authoritarianism mechanisms, which even if symbiotically tied, exist side by side with legitimate democratic actions. Liquid authoritarianism, just like the classic compaction of the authoritarian State, is deemed as detrimental. Power is conferred upon the state, which if concealed within a democratic routine, ends up undermining the ordinary control mechanisms.

In light of the growing attacks against democracy and of the basic human rights resulting from liquid authoritarianism actions and from the use of law as a non-conventional fighting instrument, in addition to the merely formal discussion of procedures and to the suitable framing of legal notions and definitions, it is a must to uncover ploys, which if concealed in democratic routines, make use of the rationale and the legal speech required for the annihilation of fictitious enemies.

13.

A systematic and permanent persecution:

the CFK´s case

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This text is focused on the validity of the due process constitutional guarantees and their effectiveness when the economic or political power seeks to use the judicial system to persecute political opponents, adversaries or simply anyone who may be against them. In particular, it will be discussed how the Argentine Judiciary was used to persecute Vice President Cristina Fernández de Kirchner, with the aim of securing her lifelong disqualification to hold public office. Do the guarantees really work? Or are judges and prosecutors, in practice, submissive to the factual powers' orders, thereby engaging in political and judicial harassment, rather than in guaranteeing public liberties? Could the case be that political and legal reforms are required to fight this institutional scourge?

Strengthening Latin American democracies has taken really long and it was not easy, especially because of the ever-present ghost of the egregious civil-military dictatorships always hovering over as an ominous, progress-blocking shadow. At the dawn of democratic transitions, societies began to take real care of the Judiciary, which was traditionally submissive to political power, in the quest for a certain degree of autonomy to allow for institutional consolidation.

In the 1992 Paraguayan Constitution, justice administration was strongly boosted; the 1994 Argentine reform incorporated fundamental declarations of human rights into its text and placed them on an equal footing with the fundamental law. In the Paraguayan case, the Constituent Assembly Drafting Commission debate and, especially, the plenary session one, show the concern about establishing an independent judiciary that may ensure balance and mutual control among the governmental branches. Indeed, this concern was shared at regional level, with several countries having experienced the justice administration's lack of action in the face of attacks against democracy and the need to overcome those times of democratic weakness.

Background and notes on justice and democracy

Therefore, priority was given in Latin America to provisions and articles aimed at strengthening justice and at building an independent judiciary with a focus on striking balance and plurality in the appointment of the Supreme Court of Justice members, knowing that the then effective justice system had done little or nothing to protect human rights when dictatorships attacked the civilian population.

The problem was such that Nino even proposed the need that Argentina should undertake a reconstruction of the constitutional practice in relation to guarantees: "this chapter will address the proposal of guidelines for the reconstruction of Argentine constitutional practice in the area of individual rights, in order to adapt it to the social and democratic liberalism demands [...] in particular, it will focus on the reconstruction of the first level of our constitutional practice, consisting in the recognition of individual rights and guarantees. ...".[101] This specific reference is useful to understand the precarious state in which the whole region was in terms of fundamental rights.

This structural problem seems to continue afflicting justice administration and, in order to address it, the strength and resilience of the legal protection established by social perspective of the Rule of

Law should be considered, as pointed out by Mir Puig: "In a social and democratic State, criminal law must ensure the effective protection of all the society members; therefore, it needs to understand crime prevention (social State), with crimes being interpreted as those behaviors deemed by citizens as harmful to their legal rights, where rights are not considered in a naturalistic or ethical-individual sense, but in relation to the extent that such citizens regard such facts as being grievous (democratic State). Such a criminal law must therefore guide the preventive punishment function in accordance with the principles of exclusive protection of legal rights, proportionality and guilt, and it must act similarly when it comes to investigating a case.[102]

In turn, Spanish jurist Peces Barba also reminds us that "...the inclusion of higher values in legal rules entails the positivization of a political system's ethical foundations through its legal system. An illustration of this is the historically crystallized rationality in this sense, which the social and democratic Rule of Law regards as a constitutional theme material guide".[103] This is a consideration every judicial authority should bear in mind when discharging their duty. In a social and democratic State, law should always mirror a society's higher values and ensure their protection.

The current protection system is the outcome of a lengthy process, ranging from *de facto* situations up to its recognition in legal texts, which may stand as victory of the democratic constitutionalism higher values.

Political persecution and *lawfare*

However, in recent years, under the guise of consolidated democracies, a very serious issue, which threatens fundamental rights and the very the Rule of Law structure, has emerged: "the use of the Judiciary and the legal system" to persecute dissidents, opponents and leaders considered disruptive for their inclusive and reformist policies in the political, social, trade union or economic areas, or, what today goes by the name of *lawfare*. It takes on different forms to adjust to what is required: impeachment, without the Judiciary acting in the face of complaints and claims brought directly before the highest judicial authority; the Judiciary's blatant intervention to overthrow, suppress, imprison or annihilate opponents by means of absolutely void, yet consented to, prosecution proceedings sustained by higher judicial authorities. Iconic illustrations of this are impeachments of Fernando Lugo (2012), Dilma Rousseff (2016), or the blatant judicial system manipulation to get venal judicial authorities who cynically break their oath of righteously administering justice to indict, prepare contrived criminal proceedings, persecute and imprison opponents, such as in the cases of Lula Da Silva, Rafael Correa, Dilma Rousseff and others.

It is well known that law and constitutional guarantees can be used to produce the opposite effects to what they were originally intended for, and this is why, on occasions, Law and legislation in a broad sense are powerful dispute instruments in the societal forces' correlation. Thus, as pointed out by the critical theory of human rights, the instrumental use of the law often produces perverse effects, such as segregation and selectivity in the use of the protection rules, privileging some to the

detriment of others, and doing away with the due process guarantees that are enshrined even in international human rights law.[104]

Brazilian jurist Carol Proner points out that "the efficiency of *lawfare* also lies in a contemporary attribute: justice system sectors in alliance with the hegemonic media to boost the ideas' dissemination and public opinion co-optation. And this is where the law-manipulating technique becomes allied with one of neo-fascism elements: masses' mobilization and society politicization. "[105]

The issue turns more grievous and dangerous because, in democracy, the administration of justice is endowed with legitimacy and, therefore, mounting persecutory actions under the guise of legality or in the name of justice is not that cumbersome. This renders resistance to and defense from this type of arbitrariness more complex, since it is no longer the State repressive apparatus acting outside the law, but it is the State itself, through its Judicial Branch authorities, which engages in persecution and relentless harassment. As suggested by Zaffaroni in "Nazi Criminal Doctrine",[106] these practices acquire shades of fascism, as it is remindful of the way Nazism gradually shaped up doctrines, jurisprudence and theories to justify the shattering of the Weimar Republic, actively fueled by renowned jurists such as Carl Schmitt, who went as far as to extol "the Führer" as the custodian of the Constitution.

The use of the law to persecute dissidents has existed for many years and, as argued by Baltasar Garzón, *lawfare* as the practice of politically using judicial institutions does arise, as one might think due to the current widespread use of the term, from Latin American countries, where the economic status quo fights against democratic and popular governments, but actually comes from authoritarian times when justice and legal instruments were used for political and warlike purposes. Nazism was *lawfare's* main soundboard, as evidenced by Goebbels' lies, or the *fake news* manual, or the judiciary being used for the German Third Reich national socialism's ethnic cleansing purposes.[107] This is also true for Stalinist totalitarianism, where a whole opponents' persecution and judicial condemnation mechanism was set up. In his "Political Justice" work, the great German jurist Otto Kircheimer describes how Nazism and authoritarian governments always make use of judges to impose their reign of terror.

The persecution against Cristina Fernández de Kirchner (CFK)

The current Vice President of Argentina has been exposed to a judicial process that meets all the criteria to be considered a systematic and ongoing persecution by top authorities of the Argentine federal justice system or the so-called "Comodoro Py", its street location related nickname, where some judges have become the executing arms of the years of persecution to the detriment of the due process fundamental guarantees and in full neglect of individual guarantees, with a view to securing a pre-decided "punishment" to be applied on those who are in opposition or are not submissive to the instated or *de facto* powers.

Supported by a fierce media and political operation,[108] judges carried out a systematic, accurate and specific use of law to persecute CFK in the pursuit, in her particular case, of politically banning a relevant national leader (serving as congresswoman, senator, twice president and current vice president of the Nation), until eventually reaching a sentence foretold: convicting CFK to six years' imprisonment, plus special lifelong disqualification from holding public office and to the payment of legal counsel and proceedings costs.

CFK has been prosecuted more than twelve times with all her appeals having been rejected, while members of the Oral Court that convicted her have had and still have friendship ties with former President Mauricio Macri: they are members of the same social club, are on the same soccer team, and even publicized (during the trial proceedings) their membership of a friends' club called "Liverpool". All this was recurrently pointed out by the defense and the defendant herself, [109] so much so that the impartiality requirement was objected by CFK's defense, which had already requested the removal of Prosecutor Diego Luciani and of one of Federal Oral Tribunal Nº2 judges (Rodrigo Giménez Uriburu). The Court dismissed the request even at the appealing stage.

Therefore, judges' application of law should also consist in the application of socially defined beliefs and values that the law and the Constitution refer to in their open clauses to which judges are bound. It is the magistrate who, in their capacity of the society's legal conscience, construes and applies legal rules, thus bridging the gaps and even defining the scope of law.

The judges' conduct was so apparent and aggravating that Santa Fe Province's Supreme Court Justice Daniel Erbetta (belonging to the Radical Civic Union, a party opposed to the incumbent government), publicly reported the vice president's judging and convicting Federal Oral Court's violation of the guarantees. He specifically pointed out the serious legal violations incurred by the abovementioned Court during the trial to the detriment of CFK, which started out with a grievous violation of due process that compromises the Rule of Law basic principles. He particularly highlighted the following issues observed during the oral trial hearing: "1) principle of innocence: "we have heard that it is up to the defendant to prove her innocence"; 2) evidence admissibility: the validity and relevance of that evidence must be assessed before its inclusion, no evidence should be allowed to get slipped into the proceeding during the closing arguments, just what the prosecutors did and the Court admitted; 3) mistakes about or ignorance of law in allowing such arbitrariness; 4) judge's impartiality: the theory of suspicion, the fear of partiality and one of the Court judges showing up - in the middle of a public prosecution proceeding- drinking from a *mate* printed with a logotype of the "Liverpool" team, a club where politicians and judges party together. This is, at least, an absolutely unethical act incurred by one of the court members, who had been challenged but remained on his judging role after dismissing the challenge request; 5) principle of orality: the prosecution was allowed to read its indictment, whereas this was an oral trial; 6) defendants' rights: the defendant was denied the right to testify given that the vice president was not allowed to testify again in her defense, which is unprecedented and inadmissible in a guarantee-based system..." [110]

Those who truly deserve to be banned and disqualified for life from holding public office are the judges and prosecutors who twisted and manipulated law to ruthlessly persecute Argentina's most

outstanding political leader and to additionally harass members of her family. They have been morally reckless in manipulating the legal system and using the power vested in them by democracy to persecute dissidents who are disruptive for the *de facto* powers, by distorting legality and voiding fundamental rights.

It is worth noting that this dynamic is not limited to Argentina or even to the region, but *de facto* powers are part of a transnational network made up of various large-scale lobbying and financial interests' groups which move much more swiftly than law. Another question arises here: what should be done when no appeals proceedings, public complaints or claims prove enough to get a Court to try a case in observance of the law and of the fundamental process guarantees?

Faced with this situation, many jurists even refer to the need to develop a "global constitutionalism" as a more effective defense mechanism aiming at a more substantial argumentation of the problem, as pointed out by Ferrajoli, for instance.[111] This is undoubtedly a valid and reasonable contribution, but all this is too time-taking, while opponents' (or "political enemies") persecution through the justice system is a current plight that seriously damages democracy. No fair, practical and reasonable solution may be found as expeditiously as required under these circumstances, and the way ahead is complex when we observe the dominant thinking in the classrooms, and in professional practice itself.

Other sides of the problem and possible solutions

It is no secret that our universities turn out formalist lawyers, who learn the rules and legal concepts by heart, but are not intellectually geared to carry out a critical analysis of the political and economic foundations of law, its impact on social reality and on the socio-cultural context where the system operates, and this often generates a gap between the law major democratizing tendencies and current practice.

It should be also noted that the Inter-American System for the protection of human rights in particular, and international human rights law in general, are in agreement with the rest of international law on the need for state judicial systems to be conducive to and prepared for an effective compliance with its standards and rulings. Indeed, undersigning treaties - and even being under the umbrella of the surveillance agencies created by them - is not enough. The State is required to collaborate with the adoption of internal enforcement mechanisms that provide an adequate legal framework to comply with international rules. It is therefore necessary to promote a culture of compliance with international duties that will in turn boost a homogeneous enforcement network conducive to render the normative and moral value of human rights regulations effective. This is the resounding gap observed in the judicial and political persecution cases, virtually hopeless in terms of their reversal.

Progressivism must make its best endeavor to achieve a genuine and profound judicial reform, a neglected factor largely accountable for the persecutory *lawfare* structure that has remained intact

over the years. Yet, the solution should not be restricted to the legal arena because persecution is largely influenced by politics and therefore, part of the solution involves politics, as sustained by Raúl Zaffaroni. A political, multifaceted solution must be sought: a profound democratic and progressive reform of the Judiciary, along with a parliamentary majority, the removal of malfeasant judges, and, eventually, the uprooting of privileges not admissible in a republican context.

There is no transforming answer to offer in the face to such an atrocity and injustice committed against CFK, but we do believe that the solution should involve legal, political and social aspects, as well as exposing the perverse use of the judicial system by the real power holders and the illegal, arbitrary and immoral conduct of justice administration authorities. All this must be massively and intensively publicized, including the full names of those involved. We must move forward in order to bring to an end the feeling of total defenselessness in the face of judiciary authorities who will most certainly not stop at anything in their way because they are the ones that hold the power, the money and enough contacts to achieve their goal.

14.

The relationship between law and the State of Exception

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The discussion on the relationship between law and State of Exception in Latin America, as a manifestation of the so-called "legal warfare" (*lawfare)*, is based upon the following elements:

(a) the notion of sovereignty;

b) the concept of the State of Exception;

c) the criminalization of politics;

d) the factual and political context of social relations;

e) the relationship between democracy and authoritarianism in the Rule of Law sphere.

1. The notion of sovereignty

When confronted with the notion of sovereignty, two conceptual models are certainly distinguished. A normative one, which stems from the construction of the national state and supports the positivist conception of State and power, and a critical concept where the mere normative relationship between the State and the achievement of public goals is put aside to attempt to demonstrate how real power relations develop in certain contexts.

Since the times of Jean Bodin, the classical notion of sovereignty is anchored in the notion of autonomy, whereby the State is legally and factually granted absolute lawmaking power within a given territory.[112] Even Kelsen has pointed out that the state legal order does not know of or recognize any other sovereign power or a superior order.[113] Along its evolution, this concept of sovereignty would also embody political ideologies, which are centered on individuals' capacity to recognize and become integrated to the State's goals. Therefore, in addition to lawmaking, sovereignty serves other purposes within a certain territory. Heller had already established those sovereignty elements exclusively pursuing the entire territory ordering and the ensuing social unity as key.[114]

Sovereignty imposes itself on individuals, not only as a juridical, but also as a factual power. In order to impose itself as a factual power aiming to social unity under the umbrella of the State, which is only achievable through the observance of certain rules of conduct, an ideal concept of the person as endowed with self-knowledge, self-awareness and self-representation capacity, is essential. It is interesting to note how the concept of sovereignty also influences the conception of responsibility, which, leaving aside the phenomenal reality, is at the service of the State's order enforcement and future conflict prevention inherent goals. In recognizing the subject's self-awareness capacity, it's easy to address criminal responsibility as a person-centered concept, where individuals are alone and isolated from the world, and detached from specific contexts effectively making them up.

The classical notion of sovereignty as the power to enforce legislation that must be embraced by the people and conceived as an integration of free and equal persons, is also anchored in the notion of reason or rationalization. The latter remains unclear, as it involves basic understanding principles, such as Kant's Critique of Pure Reason, as well as moral principles, such as practical reason. Looking

up in the famous philosophy dictionary edited by Felix Meiner, the concept of rationalization is multifaceted, according to the way they may be approached to adjust to certain purposes. It may then be argued that there are four meanings to the concept of "rationalization". First, a limited description of reality boiling down to certain knowledge principles, which matches the positivist ideology. The second derives from industrial production standards linked to Taylor's organizational and technological procedures and refers to the end-oriented workflow manifestation, in terms of production-enhancing and cost-cutting, through technical progress and its intensive use. The third, psychology-based one, seeks the justification or explanation for an activity, feeling or thought in pre-existing coercions or internal needs which, for censorship grounds, fail to be admitted by individuals. The fourth derives from Max Weber's sociology, laid out in his 1922 famous *Wirtschaft und Gesellschaft*, and is related to the strategic action principles in modern capitalist society.[115] On top of the four meanings provided on the abovementioned famous dictionary, a fifth form of rationalization may be added: the discursive one, such as the one developed by Habermas. In his Theory of Communicative Action, Habermas aims to distinguish between a strategic action rationality, used by individuals for their own purposes, and the communication process rationality, which, not being tied to the purposes that would in turn serve as the link between a cost (action) and benefit (result) process, is centered on the recognition of the autonomy of acting in the face of mutual understanding with others. For Habermas, the communicative use of linguistic expressions, not language *per se*, serves as the cornerstone of substantive rationality.[116]

From all the forms of rationalization seeking to account for the classical notion of sovereignty, it may be concluded that, in all conceptions, individuals fail to exist as real ones, with their own defects, feelings, suffering, fair and unfair desires, interest to survive or, even, to prevail over others. These data prove enough to demonstrate the inadequacy of this concept to generate a critical reality and power standing. Therefore, a rationalized concept of sovereignty cannot be detached from the deliberative person one, in contrast to that of the ideal person. This entails the need to establish a critical notion of sovereignty.

However, a critical notion of sovereignty assumes that:

a) the State cannot exist without individuals;

b) individuals are real, rather than fictional or symbolic entities;

c) the State does not exercise sovereign power without the participation of the prevailing economic and political forces;

d) the concept of sovereignty is instrumental to the exercise of power;

e) sovereignty in postmodern times is linked to the power of life and death.

One of contemporary democracy's tenets lies in achieving a concept of recognition which may legitimize not only the sovereign power, but also the one linked to development. This may be observed in the changes in territorial power brought about by international covenants guaranteeing peoples' self-determination, independence and own development, with the aim of preventing expropriation and conquest wars. In addition, international covenants such as the American Convention on Human Rights, among others, mandate the protection of people in all their

diversities. Based on this, the fact that sovereign power may fail to be centered on individuals and their protection is no longer admissible.

On the other hand, while more international covenants are entered into to protect people in their diversity, these people may already be perceived not as symbolic entities or as global system subsystems, but as real people. It is these real people who legitimize the power of the State and exercise their right to vote in elections, who must be the beneficiaries of any development policy.

Although international covenants are intended to protect people, they are not able to prevent the State from always holding another form of sovereign power, which consists in integrating the financial and political interests of the dominant forces in and out of its territory into its goals and activities. If the State´s purposes are intertwined with large corporations' interests, as is the case in Latin America, it is no longer possible to refer to a purely juridical sovereign power, or to a sovereign power on behalf of the people. As explained by Zaffaroni, "Late colonialism seeks to psychologically condition people (and introduce *coloniality*) in order to alienate the colonized society through *values' rationalizations and neutralizations*, in accordance with a *re-subjectivations* program that twists all of a plural democratic society's typical roles. [117]

This becomes increasingly clearer as a result of the labor reforms in various countries, the breach of already acquired rights, the suppression of decent social security and retirement conditions, the sanitization of cities by ousting the poor out of their homes to make way for luxury residences' construction or for the tourism industry or for other activities, the daily police incursions into poor neighborhoods in order to guarantee a symbolic sense of public security, the proposals for the removal of indigenous people reservations and quilombola communities to guarantee agribusiness and the use of their lands for mining. These policies are implemented with international organizations being unable to prevent them given that their scope of action cannot outweigh the exercise of sovereignty, even if that implies shattering international human rights policy.

It may then be argued that the classical concept of sovereignty continues to thrive in postmodernity, as an instrumental reason for the multinational conglomerates' interests to embed in the State. The free, egalitarian and fraternal life ideas of the enlightenment fade completely away and the feudal caste structure, now camouflaged under large transnational corporations, is reinstated.

The domination of the State apparatus by large conglomerates is not simply an argumentative statement, but a real observation. Though not intending to examine all the economic relations in our society, by way of endorsement of our statement, let us provide the following example: the net profit of Brazil's five largest banks recorded an approximate 17% increase per quarter in all four quarters between 2015 and 2017, with the amount being, only in 2018, 20.5 billion reales, or 5.42 billion dollars approximately. This amount outnumbers the GDP of over 83 countries. It should also be noted that, according to the provisions of the Organization for Economic Cooperation and Development (OECD) Convention, which are applicable to all member countries, multinational conglomerates can freely forward their income or profits to their parent companies with no obligation to pay income taxes in the country where they operate. It is relevant to mention here how tax payment can be circumvented through a simple argumentative maneuver. For example, Brazil's Federal Tax Office claims, on the one hand, that even if the profit is taxable, that is not the case of the income. When it is considered income rather than profit, conglomerates are entitled to forward the money to their parent companies as a form of distribution. In line with that, it may then be sustained that, constrained by the State's taxation power, conglomerates incorporate all their

profits, which in 2018 alone amounted to 6.5 billion dollars for service activities, 6.1 billion dollars for industrial activities and 1.1 billion dollars from agribusiness, with the lump sum being 13.7 billion dollars. If the banks and conglomerates profits for 2018 are added up, the resulting net profit amounts to 19.42 billion dollars.

However, these relations between the economic and financial power, and the States' sovereign power fail to report what the real relation between the sovereign power and the population is. When the sovereign State power is related to its real exercise, it no longer may be deemed as a simple representation of autonomy, not even in the construction of the legal system. Reality shows another face of sovereignty, one marked by imposed suffering and death. Hence, sovereignty is said to be characterized by the power to infringe prohibitions.[118] Infringing prohibitions also implies infringing the rationalization criteria, which are no longer power limitation tools. Power is not neutral; but rather, it is committed to interests other than those of the population.

If it is assumed that factual power is unlimited, so is that it does not observe the rationalization criteria. In this sense, it may be agreed that, as claimed by Mbembe, the sovereignty project "does not lie in the struggle for autonomy, but in the widespread instrumentalization of human existence and the destruction of human bodies and the population".[119] It may thus be maintained that, from this standpoint, sovereignty stands as the power to decide on individuals' life and death.

It appears as if we are drawing a morbid picture of the State's powers, but that is exactly what reality shows us. Leaving aside wars, which today are directly associated not with territorial conquests, as in the empire times, but with the control over resources, it is apparent how power treats poor citizens, blacks and natives in our cities.

Consistent examples of such treatment may be found across various countries, and particularly one in Brazil, with the 2018 military intervention in Rio de Janeiro, which was in violation of all the poor citizens' fundamental rights and resulted in a frightening number of daily deaths, including children and women, under the excuse of a war against drugs and local traffickers. Sovereignty, therefore, is no longer a political-legal element ensuring the State's ability to exercise the control over its territory, but the real power to decide who should die. Only from a critical viewpoint may it be concluded that sovereignty cannot be boiled down to a mere juridical issue. Confronted with the real exercise of power, it opens the door to show its true meaning. The real face of power is concealed underneath the juridical concept, which appears as a neutral one. That real outside the law concept of sovereignty will play a decisive role in understanding legal wars, which stand as the custodians of the power groups' decisions. The understanding of legal wars *(lawfare*) begins, however, with the concept of the State of Exception, which is formally provided for in our constitutions, and which also stretches out to ordinary legislation supplementing rules, thus making up a system of its own.

2. The State of Exception as a concept

As the power to decide on life and death, sovereignty cannot be detached from other State mechanisms which, legally speaking, also serve its objectives. These are not liberation mechanisms, but instrumental ones seeking to legitimize State activities, whenever these may involve a blatant breach of fundamental rights.

These mechanisms are enshrined on the constitutions as Rule of Law revocation or suspension instruments, in the forms of state of siege, state of emergency, state of defense and State of Exception. Each of them features their own ingredients and attributes, depending on the rule established in the constitutional text. Yet, it is irrelevant here to delve into the distinction of each of these three legal instruments, but they may all be brought under the umbrella of the common concept of State of Exception. Indeed, the State of Exception brings together the essence of all these instruments.

Modern jurists, in general, assign a dual function to the State: protecting citizens and self-limiting its powers. This dual function matches the essential elements of the so-called Rule of Law. Therefore, the State structure is based on the factual condition that there exists a power-dominating political group, that there is a bureaucratic body that exercises it within the limits established by law in a specific territory, and that there is also a political agreement that renders self-limitation and task fulfillment mandatory. For that to occur, not only the coexistence of political and juridical powers is required, but so is the conviction that this organized structure is at the service of all.

In his analysis of power, Max Weber had already stated that it could not exist without the recognition of its legitimacy by the citizens who, as a condition for accepting it, were also in the belief that the State should protect them. This belief does not arise, however, from a simple juridical structure, but more precisely from the bureaucratic exercise of power, as a neutral and impartial element. Neutrality is the most eloquent symbol of a type of power that conceals its real structure.

Neutrality is the key element to achieve obedience. As Weber puts it: "Docility (*Fügsamkeit*) in the face of orders imposed on one or more persons entails, in a sense, believing in the legitimate power of opponents' domination, insofar as mere fear or rationally oriented reasons may not be the decisive ones, but legality representations to be treated by separate[120].

Weber goes on to claim that: "In general, docility in the face of orders is also constrained by all types of interests, as well as by a blend of binding tradition and legal representation, as long as it is not a case of brand-new legislation. In many cases, docile responses are, of course, unconscious, whether by force of custom, convention, or law."[121]

Law, therefore, is not only at the service of the state structuring, but also of people's co-optation. Co-optation is functionally successful, as long as there may not be disturbances or external interferences, such as a civil war or the territory's invasion by enemy forces. For such cases, the State of Exception normally helps transform, either through rights' suspension or limitation, the bureaucratic apparatus into a war apparatus.

The State of Exception is not only an expression of domestic legislation but is also enshrined in International Conventions. Thus, the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes in article 15.1 that: "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law."

The same applies to the American Convention on Human Rights, whose article 27 provides for guarantees' suspension: "In case of war, public danger or other emergency threatening the

independence or security of a Member State, it may adopt measures to repeal its obligations under this Convention to the extent and for such time as are strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on any ground such as race, color, sex, language, religion, or social origin".

The provision for a State of Exception in human rights conventions implies considering the State as an entity, whose maintenance is more important than individuals, thus contradicting the very concept of human rights as those essentially intended to protect individuals and their rights in the face of the State intervention. Moreover, the American Convention on Human Rights has not limited the State of Exception to war scenarios but has also extended it to emergencies threatening the member state's security, thereby, laying the foundations for the development of a theory of national security, as occurred in our countries between the decades of 1960 and 1990.

The State of Exception, on the other hand, is not always established according to these war, public peril or emergency scenarios threatening independence or national security. Facilitated by a dependent judiciary made up of individuals not aligned with the population meaning or essence, or, in short, by a ruling elite, states have been implementing another form of exception, through partial armed forces' interventions in ghettos, favelas and shantytowns. This intervention modality transforms the very concept of State of Exception, which shifts away from a transitory one conceived to confront emergency situations, into a permanent state of siege, without observing even constitutional limitations or international law. With this permanent state of siege as the usual form of a state of emergency, with no legislation instating it, all the limits enshrined in articles 27, 2 and 3 of the American Convention on Human Rights, which mandate the preservation of the rights to life, bodily integrity and recognition as persons, the rights of children and, in addition, the obligation to notify the grounds for and duration of such measures, are suspended.

3. The criminalization of politics

If sovereignty, as the power that decides on the rights to life and death, is no longer a purely juridical concept, but a necro-politics one, in the words of Mbembe, the State structures' relationship is no longer based upon the independence and harmony tenets, but upon dominant interests' dependence. Dependence, in this case, also leads to the criminalization of opponents and, by extension, of politics itself.

The criminalization of politics as a way of annihilating opponents depends on several conditions:

(a) a judicial apparatus that may be reliable for the dominant power;

b) legal standards that facilitate the simple incrimination of behavior;

c) a military apparatus always readily available to the dominant power to control the jurisdiction;

d) mass media that condemn opponents as enemies;

e) other means of expressing feelings, which can be manipulated.

a) The judicial apparatus

A reliable judicial apparatus requires a structure that can arbitrarily define its members, according to the following path: ranging from selected candidates' recruitment up to the courses they must take, along with the ideological conditioning factors involved in promotions, honorary appointments and institutional prestige. Even though selected through a public competition process, being admitted to the judiciary does not characterize judges as individuals committed to the defense of fundamental rights and of the Constitution. The admission process focuses on outlined topics which, in general, reproduce the jurisprudence prevailing in courts, without any criticism or any confrontation with reality, thus leading to a legal reproduction as an act of authority. This commitment to acts of authority renders submission to the incumbent power interests, already facilitated by the judge's own belonging to the dominant classes or the social elite, more enforceable. Based on their own free interpretation, the Brazilian Supreme Court, for example, has been repealing or relaxing the Constitution's stringent provisions, such as the presumption of innocence and the principle of legality. Moreover, in order to comply with the mass media directives, the Supreme Court only rules on unimportant cases in its sessions, leaving aside other relevant, fundamental rights related ones.

The Public Prosecutor's Office, which has been playing a prominent role in political criminalization proceedings, joins the judiciary in its prosecutorial tasks. The Public Prosecutor's Office gradually began to be regarded as an essential element in the administration of justice, because it is responsible not only for criminal prosecution, but also for the protection of other rights, in general, those of minorities. As a result of its tasks, in some countries such as Brazil, the Public Prosecutor's Office has been treated on an equal footing with the judiciary. This treatment was focused on such a way that its goals could be achieved with no interference from political power. Although the purposes involved republican ideas, what has been observed in practice is a distorted purpose, whereby a highly powerful and unaccountable Public Prosecutor's Office substitutes political power in its duties, not only through widespread criminalization, but also by imposing on state bodies activities which are originally under the exclusive jurisdiction of the political power. The overlapping between the Public Prosecutor's Office and the power structure ended up transforming it into a State-controlling organ and a moral guide for people, which does not match its constitutional tasks. When reference is made to the use of law as a legal war tool against political opponents, the abuse of the Public Prosecutor's Office power, or its role in the enemy condemnation process, cannot be ignored. As in the case of the judiciary, the process of admission to the Public Prosecutor's Office, even though based on public competition, does not turn its members into Rule of Law and democracy champions, as a result of their generally belonging to the dominant power elites.

b) Legal rules

Although the content of criminal rules is always prescriptive in nature, intended not only to prohibit or mandate conduct, it serves also as a guiding factor for its target group. In this context, criminal law, as a form of knowledge, aims to outline elements to restrict the State's power to intervene. The significant number of conjectures or theories emerging in relation to the elements that characterize a conduct as being criminal would not make sense were it not for the purpose of containing punitive power. The Rule of Law must be therefore seen, above all, as a means to protect individuals in their relationship with power, rather than as an institution in itself. This allows striking a balance in the relationships among people, or between people and society, and between people and power. The principle of legality, which imposes on every democratic state the obligation to clearly define those

conducts to be prohibited or mandated and the respective legal consequences applicable to their perpetration or omission, matches this power-restraining perspective as the only way to ensure the realization of a free, fair and united society.

Under these circumstances, two basic coexistence principles must be considered: trust and self-responsibility. As concerns the first one, to the extent that the State conforms to the limits set out by law for its intervention, individuals have the certainty to be living in a democratic regime, disciplined by legal standards whose enforcement they have or may have consented and, therefore, feel free to perform any activity within this regulatory framework. As for the second one, individuals are lifted so that they may chart their own fate in life, formulate ideas and put them forward, articulate their agreement or disagreement and freely choose their representatives or delegates to power.

If the State acts in a deregulated or paternalistic manner, it violates the pact of confidence and degrades the human person to the status of a mere object of its interests, which will be the ones of the hegemonic groups dominating it. In the face of such a scenario, we will no longer be living in a democratic state, but in a State of Exception, even if democratic terminology, concepts and statements may remain the relevant Constitutional texts.

The condition for the Rule of Law to ensure individuals' rights is to link its criminalizing program to certain limits capable of establishing a material causality relation between an action and its effects, so that these effects can be empirically assessed.

In addition, it will be necessary to prove that criminalization derives from a real infringement of a citizen's subjective right. The mere definition of the conduct to be criminalized is not sufficient to establish a democratic right but rather, that such conduct may be capable of producing a large enough perceivable disruption of phenomenal reality for social coexistence. Therefore, widespread incrimination, simple behavior related crimes, abstract danger crimes and cases where the infringement of a subjective right may not be demonstrated are all incompatible with the Rule of Law.

The criminalization of politics, therefore, involves making indictments flexible. When an indictment is based only on behavior, without a subjective right or, as some would like, a legal interest being infringed, all political activity can easily be criminalized. Simple behaviors may be thus criminalized, such as voicing one's opinion, voting in Congress, party decisions, friendship relationships between a politician and someone else, drafting legislation that provide for exoneration or acquittal, and even omissions as if they were corruption process elements, when they imply simple negligence or lack of political attention in the supervision of the administration.

Since there is no empirical parameter that may restrict this form of criminalization, this paves the way to define a model crime to justify persecution. This model crime has changed according to evolution and interests. In the Middle Ages this model crime was witchcraft. In the times of military dictatorships, which were under the umbrella of the Cold War, the model crime consisted in any action likely to be linked to national security, as part of the US-influenced Western security concept. After the cold war, the drug trafficking crime emerged. For an action to be characterized as contrary to national security, performing a nonconformism-related action against the government or the dominant ideology proved enough. Thus, all such actions as strikes, street or student demonstrations, joining an opposition political party, wearing buttons or T-shirts with forbidden

motifs or inscriptions, violating curfew restrictions, traveling to countries considered dangerous, could be criminalized without any real effect on the country's security being demonstrated. Drug trafficking as a crime is not intended to infringe a subjective right or a demonstrable legal interest; but it is supposed to affect the much-controverted public health, whose meaning is not clear to anyone.

The basic attribute of a model crime or pretended crime lies in the fact that determining its elements and real effects is totally uncertain, which in turn strengthens the prosecution actions against political enemies, who can be indicted for irrelevant acts, but resulting from formal and abstract criminalization. This is the attribute that is relevant in order to explain the mutation from the national security-threatening hostility model crime into the corruption model crime.

Since the crime of corruption does not produce an immediate effect on reality but depends only on a functional relationship, it is easy to understand how this crime can serve as an excuse for all criminal interventions. In the classical sense, the crime of corruption is a consideration-based crime: public officials receive a benefit and perform a functional action that is beneficial for the corruptor. Therefore, in corruption cases the need for a consideration from the officials as a result of the benefit they receive has always been defined. This classical and righteous vision of the corruption-based crime does not serve, however, the purposes of the so-called society of entertainment, that is, executing an effective prosecution of political enemies without specific grounds. For persecution to be efficient, as in the case of the criminalization of politics, changing the corruption crime structure is required, along with neglecting the functional action. If there is no functional action, the crime of corruption does not serve as the basis for a righteous accusation, but only for an unspecific and unevidenced accusation where there is no proof of a subjective right or a legal interest being damaged or endangered. An unfounded accusation only serves to publicly condemn the accused through the mass media.

Looking at all forms of model crimes, a shared attribute can be found; they are all heresy crimes, which are relevant for persecutory interests exclusively, as power instruments. This can clearly be seen in Innocent III's pontifical letters, where heresy is assimilated to the crime of *lèse majesté*, whose basic feature is the insurgence against power, such as any form of communication with dissidents[122]. Later, a transformation of the heresy concept was witnessed in the trial against Giordano Bruno, in order to be characterized as the actual conduct of life or the defendants' bad reputation[123]. It is true that, according to the current Canon Code (Canon 1321), an action can only be considered a crime when it externally infringes a law, so that the indictment may be based upon a grievous effect, with that notion leaving aside the mere reference to reputation. It may then be witnessed that today's model crime, as an undetermined effect one like in the case of corruption, no longer matches the Canon Code's intrinsic concept of crime, which is linked to a social effect rather than only to a simple activity [124].

Because of its uncertainty and the lack of a perceivable disruption of reality, the crime of corruption is today a model crime for widespread criminal prosecutions and for the criminalization of politics. As corruption's elements and real effects are indetermined, it is treated as a crime of honor. The foundation for the accusation then is no longer the danger or damage to the administration, but the violation of functional fidelity, thereby reproducing the old National Socialist scheme, under which corruption is classified as an infamous crime.

As clearly elaborated by Zaffaroni: "The idea of honor appears recurrently in all Nazi authors. The reservoir of this element was found in the German peasantry".[125] Of course, in our region, the reservoir of honor does no longer lie in the poor peasants, but in the central countries' good bourgeois symbolic model.

In addition to corruption, money laundering prevails as a model crime which, being merely a behavioral offense, leads to unspecified indictments, mainly when someone is charged with self-laundering, an action which, in many countries such as the Nordic or Germany, is not criminalized though still deemed an offense when the principle of legality is softened. Yet, even without proof of a consideration and upon the relaxation of the principle of legality, the judiciary has been defining corruption as the crime preceding that of laundering, thus implying a double symbolic accusation over an imaginary damage or danger to the system.

Since the model crime concept is variable, it is foreseeable that corruption will tend to lose relevance for the punitive power when prosecutorial interests are altered. Sequentially speaking, given there is a specific empirical basis, the next model crime should be, in a process of purely ideological wars' reinstatement, that of apology of communism.

With the criminal system, which is submissive to the dominant interests, in the spotlight, softening constitutional guarantees sets the foundation for the persecution, imprisonment and annihilation of political adversaries, and even of the political parties themselves. Shattered by legal instruments manipulated by a judiciary proving obsequious to the incumbent power group, the parties no longer serve as democratic representation mechanisms and start operating exclusively as authoritarian system ancillary devices.

c) Military power

Legal standards based on abstract elements alone are not capable of a sustained massive criminalization of politics. For the domination project to become robust, in addition to an obsequious judiciary, there is a need for a military power which, though not as effective as in the last century's blatant coups, may still symbolically appear as an intervention threat if certain interests fail to be protected. Brazil is the quintessential example of this symbolic threat: when the Supreme Court was about to rule on the violation of the principle of presumption of innocence, that is, on preventive imprisonment, on April 3rd, 2018, the army commander posted on Twitter that a decision likely to benefit former President Lula on that case would not suit military interests.[126]

The military threat cannot, however, be understood as a revival of the old dictatorships. This threat matches exactly the conglomerates and the dominant power interests, which contribute to the very mutation of the state in the peak of democracy. And this is also facilitated by the constitutional provisions which endow the military with duties not incumbent upon it, which may lead to a misinterpretation in terms of its being qualified to influence the political power. One of the probable causes for this misinterpretation is a missing democratic investigation of dictatorial actions, as was the case in Brazil, where there has been no punishment for the military and torturers.

In her review of the U.S. policy relations with other countries, political scientist Moniz Bandeira has clearly expressed: "the so-called twentieth-century Nazi-fascism political phenomenon might occur in modern states wherever and whenever the oligarchy and the financial capital are no longer able to maintain the balance of society through the regular repressive means. Under the classical

democratic legality disguise, they change attributes and colors depending on the specific time and place conditions. In essence, however, it remains as a peculiar type of regime rising above society and based on force-action systems, atrophied civil liberties as well as on the domestic and international counter-revolution institutionalization, through a perpetual war aiming at implanting and maintaining a world order subordinated to its principles and to national interests that may benefit its security and prosperity".[127]

d) The mass media

As described by Zaffaroni, the swift from the Rule of Law to the police state as a politics criminalization instrument goes hand in hand with political or general adversaries' public condemnation process. Such process, in turn, matches a specific stage of the criminalizing process, that serves the purpose of rendering sentences more stringent, as in the Middle Ages.

The Middle Ages are seen as a dark age for our civilization, but the key issue seems to be that the attack on political enemies in postmodern times is even more grievous and the old infamous punishment policy comes back reinvigorated. In the Middle Ages, however, as pointed out by Frevert, public condemnation was restrained to only two hours on Sundays and holidays.[128] In postmodernity, instead, with a highly evolved and large-scale level of communication, public condemnation is perpetuated in written texts, newspapers and on Internet sites, thus strengthening the enemy dishonorable position. The so-called criminal entertainment law is consolidated not only through imprisonment or its execution, but also through the prior disclosure of the indictment procedure itself, where the account of the facts is substituted by their own manipulated version, thereby meeting the necro-power criteria: it is not the facts what matters, but solely the opponent's moral, body and mind annihilation.

Consequently, beyond the criminalizing process, there is what Casara calls post-truth,[129] which in addition to deprivation of freedom, brings about the opponent's psychological martyrdom as a means to spread the belief that everything is a reality. This form of dishonor is not the media's exclusive task nor is it limited to disclosing prosecution processes, but also involves the persecution bodies themselves, with inadequate statements and interviews on the side of the Public Prosecutor's Office and of magistrates about events under their jurisdiction, scandalous police search procedures, unnecessarily handcuffing non-dangerous prisoners and disclosing humiliating pictures of them. All this leads to completing the dishonor cycle, which comes on top of the criminalization process as its outstanding element. This grows even more grievous when the mass media are in the hands of monopolies owning not just TV and radio stations, but also magazines and daily and weekly newspapers.

e) Internet and other media

As Frevert points out, execration is ongoing in postmodernity, and to that purpose, social media contribute to that, given they operate on the basis of two facilitators: their reports do not require to undergo refutation or falsehood testing and, secondly, anonymity. Since they are not required to submit evidence about the facts, everything posted there is held true. With posting authors being unidentified, except by means of specific judicial procedures not always efficient for facts reconstruction, anonymity facilitates the dissemination of fake news and reports, as a form of massive opinion manipulation. Anonymity, on the other hand, stimulates the voicing of hatred feelings, discrimination and preconceptions concerning opponents.

More recently, what we have been witnessing is fictitious news -fake news- generated just as a form of manipulating the opinion against political adversaries. The combination of all these execrating actions is inestimable because it reaches out to an indefinite number of people, not only newspapers readers or traditional media programs or news programs viewers. It would not be exaggerated to claim that the social media are now in control of the public disgrace process.

4. The factual and political context of social relations

As argued by Weber, in order for power to be maintained, docile citizens are a requirement, which, in addition to the above, may be achieved in other various ways summarized as follows: a repressive apparatus power, a reliable and servile judiciary, legislation in favor of opponents' incrimination, influential mass media and committed social media. But none of this would be able to sustain an authoritarian state without the support of a favorable factual and political context.

Latin America is highly diverse, but we all have one thing in common: having once been imperial colonies. The process of indigenous peoples' submission started out with several well-recognized genocides, such as those of the Aztecs, Mayas, Incas, Patagons and the Brazilian coastal and jungle tribes. And it continued with the enslavement of Africans. As a general idea, Brazil became engaged in slave trading back in 1538 at the outset of sugar cane exploitation and only ended when mandated by executive order shortly before the Republic was founded in 1888. Meanwhile, the genocidal acts were also committed against Africans, as was the case in the Quilombo of Palmares. Slavery demands obedience, which in turn strengthens the corresponding political structure. Slaves were the target of the cruelest punishments and, even after being freed, they are the ones who populate Brazilian largest cities' favelas, ghettos and slums.

Slavery generates other effects in the national state construction, which in turn underpin an absolutely exclusionary political structure born in the days of independence and lasting up to present day. While in the empire times, with slaves not allowed to vote because they were not recognized a legal status, voters were selected on the basis of personal wealth, thereby encouraging the exclusion of small income individuals, later, once under the form of the Republic, the turnover of the poorer, mostly free descendants from former slaves, becomes non-existent, given the complexity of the process and the high campaign costs.

The legal amendments intended to ensure the illiterate and the poor's right to vote are not enough to change the picture of their social and political exclusion. Legislation alone does not prove enough to guarantee an inclusion process. Providing for other conditions, such as free admission to schools and universities, regular technical training courses for professional practice and, above all, an accurate dissemination of the rights they should claim from the State is additionally required. On top of these conditions, these most disadvantaged groups of individuals should be given the chance of concrete access to public service.

The exclusion of slaves from the State political structure is still a fact in Brazil, although they are no longer officially slaves, but poor. When comparing the Judiciary members data to the official statistical data, we may have a clear picture of how expanded and persistent this exclusion is. Brazil black and half-bred population amounts to 54%, whereas the black only account for 1.5%, the half-bred for 12% and the native population for 0.1% of Judiciary members, thus signifying that 84% of the judges are white.[130] Also, according to data from the Brazilian Cândido Mendes University's (RJ)

Center for Security and Citizenship Studies, the Public Prosecution Office composition is made up of 77% whites, 20% half-bred, and just 2% blacks and 1% Asians.[131]

When reviewing urban violent death rates, according to the Brazilian Ministry of Health's data, 49.3 thousand people were executed in 2011, with 71.4% out of them being black, thus leading to 35.2 thousand murders.[132] In addition to murders, the data presented by the Map of Inequality, a study conducted in the city of São Paulo, shows that the life expectancy of people living in wealthy neighborhoods, such as "*Jardim Paulista*", climbs to 79.4 years, while that of individuals living in peripheral areas, such as "Jardim Angela", reaches 55.7 years.[133]

On the distribution of wealth, according to official data from the Brazilian Institute of Statistics, three out of four individuals living in extreme poverty are black. Over 350 years of slavery and the ensuing 100 years of destitution, poverty and exclusion have built up a sound docile foundation, capable of sustaining the power over life and death. Yet, the existence of such docile foundation by no means rules out the presence of resistance and rebellion pockets throughout Brazilian history. What is meant is that, to the extent that powerful groups maintain their power of decision over people's lives, it is capable of staying powerful either through terror or deception. Hence, the relevance of mass media in keeping the system flowing.

When it comes to reviewing the influence of this past slavery on the deployment of an exclusion policy, which will, essentially through lawful means, end up undermining democracy, it should be born in mind that declarations of rights alone are not valid. In order for them to protect the excluded, their historical dimension needs to be understood. As argued by Jameson on literary criticism, "all apparently formal statements about a literary work of art contain a hidden historical dimension the critic is not always aware of and, thus, we should be able to transform such statements about form, aesthetic properties and so on into genuinely historical statements, if only we were able to identify an adequate standpoint to do so.[134] Therefore, an analysis of law itself in formal terms is not sufficient to explain how the democratic project may be shattered with the consent of its own victims. The historical vision of a long-standing submission process can shed light on the efficacy of co-optation into authoritarianism.

5. The relationship between democracy and authoritarianism in the sphere of the Rule of Law

The concept of authoritarianism or totalitarianism, as pointed out by Traverso,[135] has always been reserved for the characterization of last century's nazi-fascist states. After its abandonment or downturn as of the 1960s, when it was used even as a pretext for Western freedom defense, the concept of totalitarianism was once again revived by Marcuse to prove its role in neo-capitalist society, where it is no longer portrayed as a form of state terrorism, but also as form of the individual's mercantile reification that justifies a loss in the content of the rights to freedom.[136]

Though likely to be regarded as romantic, Marcuse's conception may also trigger an alert on another approach to authoritarianism in democratic societies, where sovereign power is observed to remain equipped with other mechanisms to maintain the neo-capitalist interest-conforming political structure. That is an idea that must prevail. As maintained by Traverso, that idea requires to remain steadfast in order to prevent it from being instrumentalized against the individual as well as to rethink history and politics.[137]

When extrapolating these concepts into our region, the presentations of authoritarianism in our democracies is easily perceived: on the one hand, a parliamentary system with free elections is

ensured, while, on the other, elected presidents become disqualified. The so-called legal war (*lawfare*) is perfectly defined by Marcuse, when he refers to the removal of the content of legal standards, by rendering them valid only as formal rules or resolutions, as a sign of authoritarianism.

In reviewing the three *impeachment* procedures in our region, that is, those in Honduras, Paraguay and Brazil, a clearer picture emerges about how democracy, with its legal elements being deprived of material content, may be distorted to the detriment of popular decision. These three procedures successfully carried out by the Parliament and the Supreme Court, generally complied with all the presidential *impeachment* process' formal procedures. Yet, the missing piece did not lie in neglect of formal procedures but, rather, of its material elements.

In Brazil, for example, there was no evidence of the president's involvement in any crime presented by the advocates of her *impeachment*. The *impeachment* process is not relevant *per se*, but its relevance also lies in its consequences. If the *impeachment* process can be self-satisfied as a formal procedure, a legal framework with no material content may be created as the decisive legal element to do away with democracy itself, according to the desires of the incumbent government. Hence the explanation of the new forms of the State of Exception, as partial armed intervention tools.

However, the authoritarian character of Latin America's political regimes does not present itself only through *impeachment* procedures, but mainly through citizen-destroying actions. The right to vote and be voted for, to elect their candidates and to run for political office are inherent to citizens. However, many constitutions and even the American Convention on Human Rights itself admit that this right may be suspended on grounds of criminal convictions (art. 23, 2). However, this Convention rule contradicts its own essence because it simply prevents the exercise of a fundamental human right, which is the right of citizenship. The right of citizenship is an essential condition for a democratic regime structure and cannot be suspended on criminal convictions grounds. Convicted criminals lose only one of their fundamental rights, which is the right to freedom, but they cannot be deprived of their right of citizenship. When this right of citizenship is lost, so is dignity, and therefore they lose their status as human beings. Democratic states cannot do away with someone's status as a human being or treat them as mere objects. There are at least two cases in our region that may be regarded as illustrations of suspension of the right of citizenship. The first was the proceeding against former President Lula, that eventually led to his being imprisoned for 580 days, long enough to prevent him from running for the presidential office; the Supreme Court not only released him at a later stage, but also ruled the nullity of all the trial proceedings on account of being found partial and invalid. Apart from the suspension of the right of citizenship on criminal conviction grounds, there was a grievous event in Chile. The mere effect of an indictment brought by the Public Prosecution Office proved enough for Marco Enriquez Ominami to be prevented from running for president. Even worse, the Chilean Court of Elections has maintained the suspension of his citizenship, even though the accusation has been rejected by the Criminal Court, thus proving the fragility of human rights protection in our region. Only after recurrent appeals, and too late for campaigning, was he been admitted as candidate. The political adversaries' persecution campaign is also focused on securing the unevidenced condemnation of Argentina's current Vice President Cristina Fernandez de Kirchner. In addition to prosecutors and judges' blatant partiality, the grounds for the indictment seem to reproduce the same arguments as those used in President Lula's conviction: they merely holding the position of President of the Republic stretches their accountability over all the actions performed in the country, which implies fully twisting the whole conspiracy dogmatic structure. Contrary to what ruled by prosecutors and judges, a punishable involvement in an action cannot simply derive from a position or a political office, as if it were the extension of a role. Instead, it requires a causal relationship between the

public officers' concrete action and the event they are charged with must be proved, as well as their intention to participate in such common action, that is, the common involvement in such action. In order to substantiate these accusations, the adversaries' prosecution resort to the event control concept which, under German doctrine, has never been useful for unevidenced indictments but only to distinguish between perpetrators and participants. In our region two typical attributes of the legal war (*lawfare)* against political opponent may be found: enacting formal rules to suspend rights and shrewdly using doctrine to bring indictments with real evidence.

One last consideration should be made: if *impeachment* overshadows popular will, the democracy shattering process may also do away with such will. The election of authoritarian leaders by the people themselves is an indication that democracies should not be seen only through the lens of free elections processes, but also through the citizens' ability to freely assess their conduct *vis-à-vis* the others' conduct, and to assess the others' conduct according to a common standard which may take into account their respective contexts. In short, they should be endowed with the real capacity to freely examine candidates, in accordance with the programs for strengthening a democratic Rule of Law.

A democracy, therefore, cannot do without a concept of a deliberative person, who may be fully capable of self-criticism and of their own institutions' criticism, that is, a person who may not be the result of pure abstraction, but who may be integrated into a given context where they may develop. Without this critical capacity, elections only come to support the will of the dominant ideology, which is imposed on the people through a massive docility-based co-optation process. An unequal society co-opted by induced forms of docility cannot be the breeding ground for democracy. It can only become the breeding ground for its own destruction.

Proposed solutions

It is not easy to come up with resources to promote democratic construction. Solutions are always partial and cannot approach all the underlying issues. Yet, there are some measures that may mitigate this full destruction process, namely:

1. The gradual abolition of the criminalization process to do away with the targets' suffering and to prevent its use against adversaries.
2. The limitation of military powers, as an unrelinquishable condition of the democratic process, by leaving them aside from public security enforcement duties and by assigning them to the exclusive national defense against external attacks. Consequently, all militarized police forces should be dismantled.
3. Cutting the judicial apparatus' powers and the restructuring of recruitment modalities through the instatement of temporary career and court tenures.
4. The democratic expansion of the media in order to ensure real freedom of the press, with fewer monopolies and accountability rules involving fake news, which should also apply to the social media.
5. In light of the deliberative person concept as a basic condition of democracy, public, free and uncensored education should be strengthened so as to ensure a quality and broad mastery of knowledge, science, arts and technical issues.

Although these suggestions may be merged into a government program, they are all primary conditions for uprooting the authoritarian state and for democratic construction. They are the unwavering conditions for curbing the deleterious effects of legal wars and for preventing the

advancement of the State of Exception, as well as for moving towards the real protection of individuals.

15.

Cristina Fernández de Kirchner´s case.

Four factors to understand the *lawfare* against her

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Cristina Fernández de Kirchner´s case is an iconic example of *lawfare* in Latin America, just as it is Lula´s in Brazil, Correa´s in Ecuador and Evo Morales´ in Bolivia. The aims of *lawfare* damage added to the new opportunity for it to be impactful through physical annihilation practices get replicated in this case once again.

The use of *Lawfare* emerged as a weapon and as a new form of war in 1975, and it entailed a mechanism initially used in justice and law and by some of its agents, judges and prosecutors to intervene in justice institutions in some countries, and to inflict the most grievous legal, political and moral damaging effects on their progressive leaders.

Legal wars are the outcomes of political issues. For several years now, the Latin America´s democratic representativeness systems have been faced with a crisis, which has undermined the power of political parties and social movements and allowed for the creation of political representation offices which have been led by factual powers currently serving in Politics, with no liability being assumed by the latter.

Reference is made to major economic conglomerates, communication groups, cross-sectional non-governmental organizations, religious sects, digital warehouses and country risk rating agencies which, driven by economic neoliberalism and foreign accusatory justice systems, have turned judicial persecution of progressive leaders into a powerful political combat weapon.

Even though political leaders are questioned and stigmatized by these new power groups, a great deal of them still focus on clientelism and on the petty, corrupting ties forged by political parties with executive branches, which stand as a distinctive feature of the anachronistic and pseudo-monarchic current presidential systems in Latin America.

Cristina Fernández de Kirchner´s case stands as the ideal example of the judicialization of politics, which is deemed as a distinctive *lawfare* attribute and is leading to the politicizing-of-justice phenomenon. Additionally, this also exemplifies what is basically proposed by the neo-fascist approach, which is currently adopted by the right-wing party with an eye to gaining political influence. In short, Cristina´s case could be referred to as a benchmark for the strict application of *lawfare* strategies.

By way of an example, in the current Argentine vice president and former president´s case, twelve court proceedings where she is currently prosecuted have been filed against her and the investigation in seven of those proceedings was in charge of (deceased) Federal Judge Claudio Bonadio. Almost half of the cases files are being dealt with in the oral trial stage. The so-called *'Vialidad'* case stands as the most recent proceeding, in which the *lawfare* effects take shape.

Generally speaking in Cristina´s case, and, particularly, in the '*Vialidad*' one, four significant factors aimed at the invigoration of *lawfare* strategies can be identified, namely: the first one involving judicial harassment, the second one entailing flagrant violations of the due process of law, the third one implying the expansion of those *lawfare* groups leading to the physical annihilation of the

"adversary", and the fourth one embodying the application of a legal system within the context of an asymmetrical war.

As regards the first factor above, proceedings against Cristina Fernández involving the use of *lawfare* strategies, evince the intention to inflict legal damage upon her by breaching her right to the due process of law. The judicial harassment has been outrageous in her case, as more than 654 legal actions were filed against her in 2004-2022, mostly by the same four or six complainants having brought actions against her several years earlier. Coincidentally, the complaints in these cases show some shared characteristics: they were all filed by opposition leaders close to election dates.

In light of the above-mentioned judicial harassment, she has been unable to exercise her right to access each and every constitutional guarantee whereby all citizens are entitled to a due process of law, which involves the presumption of innocence and the natural judge principles, as well as the legitimate right to contest evidence in any trial.

All these guarantees, which are generally distinctive features of the ancient inquisitive justice system, have been denied in Cristina Fernández´case. In the meantime, she has been subject to the accusatory neoliberal model, which deems it valid to resort to false witnesses, to arranged testimonials, to claims and to anonymous evidence. In other words, it all seems to suggest a disastrous staging.

As regards the second factor, apparent deviations from the right to a fair trial in Cristina´s case have been found; the foregoing, added to the confirmation of a new, sophisticated form of procedural violation involving the manipulation of the otherwise randomized assignment of cases among judges with jurisdiction to hear them.

As a result, several *lawfare* tenets are deemed to be applicable to this case. The foregoing lies in the fact that they come to fruition when the judiciary contributes to the unlawful use of criminal law; thus, resulting in the violation of constitutional principles and of the basic requirements embodied into the due process of law. Similarly, political judicialization has entailed the use of witness stands and media settings to settle disputes and to decide on jurisdictions previously involving democratic scenarios. This phenomenon leads, in turn, to the breach of rights and principles such as the right of a due process of law, the principle of non-contradiction, the principle of the presumption of innocence and the one in advocacy of respect for a natural judge, the defense and distribution of the burden of proof.

What is more, there are blatant violations of the due process of law, which are grounded on unproven charges, on a judge´s explicit bias, on the breach of the right to privacy when exercising legitimate defense and on the breach of non-retroactivity of unfavorable criminal regulations. In other words, the principles and rights are now instruments of persecution rather than an individual´s basic guarantees.

As to the third factor above, there is an evidently aggravated form of *lawfare*, which results in the physical annihilation of the “adversary”. Even though the traditional mechanisms used to secure the

removal or disqualification of a progressive leader from an electoral contest focused on media harassment, on fake news, and on the politicization of justice, Cristina Fernández´ case entailed the perpetration of an attempted murder and a femicide, and the absence of judicial guarantees to investigate the case. Just like in other cases and proceedings in which Cristina Fernández is involved, the tampering with evidence and the breach thereof, the absence of hastiness and apparent biases in justice and security forces to abstain from granting basic procedural guarantees have been disclosed, but in this case surpassing those in charge of keeping her safe as well.

In case of the fourth factor, the legal system is used within an asymmetrical war. As arising from this case evidentiary analysis, from the grounds intended to justify Cristina´s case and from the cases filed against former presidents Lula da Silva and Correa, the principles of the Rule of Law guarantee are suspended, and justice is used to serve political purposes.

As pointed out by the United Nations Special Rapporteur on the Independence of Judges and Lawyers, in former Peruvian Judge Diego García Sayán´s report: Cristina Fernández was denied the right to have an unbiased judge hearing her case (see Exhibit in this book). Isn´t it surprising people wonder why after several years since Cristina´s trial and acquittal, the same case where she has been replying is brought to light once again like in the Sisyphus myth, since she is undeniably condemned to continuously prove her innocence against charges filed against her in the *'Vialidad'* case? And the answer to this question is the infliction of political damage by means of blatantly illegal mechanisms, which are deemed to constitute a breach of the basic human rights guarantees.

In the '*Vialidad*' case Cristina Fernández is charged with being involved in an association intended to "unlawfully and deliberately seize funds allocated to public road works in Santa Cruz", a province in the Patagonia region where the Kirchner family is from. The above explained reasons become increasingly more significant as customary *lawfare* practices are still applied in this case.

A couple of years after the alleged perpetration of the foregoing crimes on this same scenario, judges and prosecutors appointed by the opposition or considering themselves 'opposition' allies were in charge of court proceedings first filed or brought to light again. Thus, the judiciary unlawfully contributes to the use of criminal law and this fact, therefore, leads to the infringement of constitutional principles and to non-compliance with the due process of law basic requirements.

As clearly seen in the filing of countless complaints against Cristina Fernández, *lawfare* is not a minor issue when it comes to the survival of democracies and to the maintenance of the Rule of Law, above all at present, in times when voices wishing to go back to authoritarian times are being heard. The political judicialization in this case as well as in others has used witness stands as media settings to settle disputes and to decide on jurisdictions, which, according to the law, were issues involving democratic scenarios.

Beyond the explanation of the four distinctive *lawfare* factors above, it is evident the principles of the Rule of Law guarantee are suspended in Cristina´s case and justice is used to serve political purposes. The inevitable existence of a State of Exception and the judicial persecution under the guise of constitutional legitimacy is regarded as an issue of concern, which entails a criminal process

of exception and a political and economic persecution in which breaches of basic rights, of constitutional principles and the tampering with the justice system turn into benchmarks for the politicizing of justice.

Exhibit I

Summary of the United Nations (UN) Special Rapporteur Diego Garcìa Sayán's, Esq., public report (ARG 11/2019) on the Independence of the Argentine Judicial Branch Judges and Lawyers – November 1st, 2019

1. This summary was reviewed and approved by García Sayán, Esq., in February 2023. Full text available on: *https://www.pensamientopenal.com. ar/miscelaneas/48312-informe-del-relator-naciones-unidas-expresando-su-preocupacion-independencia-del*

In October 2015, the Republican Proposal (PRO) party, led by Mauricio Macri, defeated Kirchnerist candidate Daniel Scioli in the presidential elections. The PRO administration was characterized by the deployment of neoliberal policies and by the promotion of public spending cuts, along with the instrumentalization of the judicial system for political purposes. An increase in the rate of indictments brought against Cristina Fernández de Kirchner's former administration officers was witnessed.

This process grew increasingly conspicuous, to the point of raising the concern of judiciary and Human Rights related international institutions. On November 1st, 2019, Diego García Sayán, United Nations (UN) Special Rapporteur on the Independence of Judges and Lawyers, submitted a report with the Secretary General regarding the situation of Argentine Judiciary gathering all the information collected by the Special Rapporteur.

Based on this information, the Special Rapporteur sent a notification to the government, pending their subsequent response. The notification was sent on November 1st, 2019, and, pursuant to the UN regulations, it was disclosed 60 days following the date of notification to the government. Below, a summary of the main considerations and reflections is provided. The text in bold does not stand as a reproduction of the original report. In turn, the Argentine State reply was submitted on January 6th, 2020, and promptly made public.[138]

The Rapporteur's notification starts with a request for "immediate attention of His Excellency's Government (to) the information I have received regarding **the presumed existence of a systematic and structural intimidation Plan deployed by Argentina's Judicial Branch**, which is reflected in the cases summarized below. As alleged, **such presumed plan is executed by the Executive Branch through a series of concatenated actions closely interrelated to one another.** The allegations involving **intimidation and lobbying actions** exerted on the different agencies making up Argentina's judiciary system, such as the Public Prosecution Service and the Judiciary Council, might have **undermined its independence by hindering impartial judging** in affairs affecting Executive Branch's interests and by **punishing those judges who may have issued judgements not favorable to the Executive Branch's desires"**.

Following a thorough description of the most outstanding cases, it concludes by warning about the complex and grievous situation of Argentina's justice system:

«The alleged events (arising from the investigation conducted by the Rapporteur) would involve presumed threatening, intimidation and lobbying on judges, prosecutors and lawyers, as well as the manipulation of the Judiciary Council; the selection, appointment, relocation and substitution of judges through processes not observant of the guarantees enshrined on the relevant international standards; the coercion exerted on the Attorney General and prosecutors; the punishment imposed on judges and prosecutors who were not instrumental to the Executive Branch's interests; media campaigns staged to discredit judges, prosecutors and lawyers; and judges' substitution, suspension or removal procedures failing to comply with the requirements set forth on the relevant international standards, among other practices».

Some of the examples outlined by García Sayán are reproduced below as an illustration of the Judicial Branch "reorganization" scheme implemented under the PRO administration, which encouraged and intensified the political instrumentalization of the Judicial Branch in ways which have persisted after the end of that administration up to present day.

Judiciary Council manipulation and illegal judiciary officers' appointment

- Having obtained a political majority in the Judiciary Council, the governing coalition (including the PRO and its political allies) appointed Congressman Pablo Gabriel Tonelli as member of the Council in February 2016. The report warns that the Executive Branch might have acted through the Council's Disciplinary and Accusatory Committee to persecute judges whose judgements were unfavorable to their interests. It was also pointed out that the Judges Selection Committee was used to benefit certain candidates in the selection process over others not aligned with the government, who were blocked, and to relocate judges akin to the ruling party, in full breach of the applicable legal requirements, such as subject matter and territorial jurisdiction. These judges were appointed to key positions with none of the required procedures being complied with, thus allegedly giving way to governmental control.
- On a general note, in terms of the Executive Branch's influence on the judicial system, the executive order appointment of two National Supreme Court Justices stands out. On December 14th, 2015, the Executive Branch issued order 83/2015 appointing Justices Carlos Fernando Rosenkrantz and Horacio Daniel Rosatti to Argentina's Supreme Court of Justice. As arises from the report, such appointment failed to observe the Supreme Court Justices' selection and appointment process contained in the relevant legislation (including the provisions on Executive Order no. 222/2003, among others).
- In addition to the "executive order" appointment of Supreme Court Justices, there is the illegal appointment of Judge Mahiques to the Federal Criminal Court of Appeals. Carlos Mahiques, Esq. served as the Province of Buenos Aires' Minister of Justice between December 2015 and May 2016, when he resigned to go back to his position in the National Judiciary. On April 27th, 2017, he submitted a request with the National Judiciary Council to be appointed to the Federal Criminal Court of Appeals -the highest criminal judicial body- to fill the vacancy resulting from one of such Court member's retirement. This was a non-equivalent relocation -either in subject-matter or territorial jurisdiction- and failed to comply with the relevant requirements, among them, the submission of professional profiles, the presentation of oppositions, the interviewing stage, the selection by the Executive Branch and eventually, the National Senate's approval. Yet, and despite the Federal Criminal Court of Appeals' disapproval, the Judiciary Council agreed to Mahiques' relocation, following the Minister of Justice's confirmation by virtue of Executive Order 328/2017 and the Executive Branch's resolution finally confirming Judge Mahiques' relocation. In addition to the infringements to the due selection process, the report outlines prospective ties between Mahiques and Mauricio Macri.
- Another illegal appointment case involves that of Judge Leopoldo Bruglia to the National Federal Criminal and Correctional Court of Appeals. Bruglia served as Court of Appeals Judge at the Buenos Aires city's Federal Criminal Oral Courts between 1993 and 2017. In November that

year, by virtue of Resolution Nº 643/2016, the Judiciary Council approved his taking over as substitute judge at the Federal Criminal and Correctional Court of Appeals. The highlights about this substitution are that all the legal and constitutional proceedings were skipped and that it occurred following the suspension of Court of Appeals' Judge Eduardo Freiler, who had indicted President Mauricio Macri for illegal wiretapping political opponents during his term as Buenos Aires city mayor.

- Besides the appointments made in violation of due process rules, judicial officers from the preceding government were persecuted, with an outstanding example being the coercion against Attorney General Alejandra Magdalena Gils Carbó, Esq., who had been appointed as such by virtue of Executive Order Nº 1481/2012. Both the Executive Branch and other officers of the Mauricio Macri administration insistently demanded her resignation and attempted her removal through different strategies: coercion for her resignation, threats to undermine the Public Prosecution Service stability or to issue urgent executive orders to provide for institutional reforms, attempts to amend the Public Prosecution Service organic law, and litigations brought by NGOs aligned with the national government. Eventually, the Attorney General resigned in November 2017.
- One of the most intense persecutory actions was undoubtedly the one against Dolores Federal Examining Judge Alejo Ramos Padilla, Esq., the hearing judge in the case investigating an alleged illegal espionage and extortion network with prospective ties with public officers - prosecutors, federal and provincial judges, as well as with Executive Branch officers- and journalists (Case Nº FMP 88/2019 entitled «D'Alessio, Marcelo Sebastián on unlawful association and others»). The Executive Branch, along with PRO members, boosted a discrediting and persecution campaign against Ramos Padilla and further accused him of being an "activist" and "Kirchnerist" judge. On March 17th, President Mauricio Macri stated on a TV interview that Ramos Padilla "is not an unbiased judge" and added that "it is not the first time Ramos Padilla acts like this, there have been several cases" and that he hoped "the [Judiciary] Council may review all the proof available and consider his prospective removal". Initiating impeachment proceedings against Judge Ramos Padilla would have entailed an attempt to influence on and hinder a relevant judicial case, as there are no documented grounds of "malfeasance", "gross misconduct", "blatant arbitrariness" or "recurrent violations of the Constitution" to justify his removal, pursuant to Argentine law.
- In addition to this grievous situation involving illegal appointments and the smearing and persecution campaigns against judicial officers not aligned with the national Executive Branch, there is the influence exerted on the Province of Buenos Aires' Judicial Branch. In December 2016, Julio Marcelo Conte Grand, Esq., closely linked to Province of Buenos Aires' governor María Eugenia Vidal as well as to Mauricio Macri, was appointed Province of Buenos Aires' Supreme Court of Justice Attorney General. It is precisely in the Province of Buenos Aires where Luis Federico Arias, judge in charge of La Plata city's Administrative Court Nº 1, under the provincial Supreme Court of Justice, was impeached and eventually removed after an impeachment proceeding conducted by lawmakers aligned with the province's Executive Branch. Similarly, Carlos Rozansky, judge in charge of La Plata city's (Province of Buenos Aires) Federal Oral Criminal Court Nº 1 was victim of a media and political discrediting campaign, including complaints brought before the Judiciary Council, and attacks from human right offenders' legal counselors, which eventually led him into resignation. Such resignation was

accepted in November 2016. It is worth noting here that Judge Rozansky was the one to first legally classify the events occurring in Argentina between 1976 and 1983 as genocide.

Impact of the influence and of the absence of judicial impartiality in the economy

- Persecution also affected other officers, including labor courts judges and lawyers. The Executive Branch, along with members of the governing coalition, undertook systematic attacks on labor courts judges whose judgements were unfavorable to the government interests, as well as on lawyers serving in the labor jurisdiction, with the collaboration of the leading mass media companies who, having their own stake in the economy, also deemed such judges and lawyers as a hindrance. In early 2017, the Ministry of Labor brought articles of impeachment against Judges Enrique Arias Gibert and Graciela Marino, who had adjudged in favor of banking employees' union collective wage bargaining and had instructed the Executive Branch to refrain from interfering in it. The impeachment articles brought by the Ministry claimed that the judges had incurred "malfeasance, lack of competence, gross misconduct, arbitrariness, lack of impartiality and violation of the National Constitution" but were dismissed in late 2017.
- Moreover, in December 2015, by virtue of Executive Order DNU 267/15379, the National Executive Branch mandated the dissolution of the Federal Authority for Audiovisual Communication Services, thus leading to the dismissal of many workers on grounds, in their own words, of their political affiliation. Furthermore, in mid of 2017, President Macri publicly smeared labor courts' judges when arguing that: "the litigiousness mob has been extremely harmful for Argentina" and added that: "the damage brought over the latest months or year and half amounts to ten billion pesos of fees paid out through this litigiousness mechanism. For every favorable judgement secured by these unqualified lawyers and the unqualified judges related to them, such as Arias Gibert and Marino, an SME is thrown out of business".
- In the context of the economic adjustment pushed by the government, a major dispute about public utilities' prices came up. The judges who challenged the constitutionality of the increase in essential utilities prices ordered by the National Executive Branch in 2016 were subject to attacks, public intimidation and impeachment. As an illustration, in the context of a judicial proceeding brought to repeal utilities' price increases in mid of 2016, Forns, Esq., issued an injunction ordering the suspension of electricity price increases all over the country. From that time on, Judge Forns was publicly intimidated by Executive Branch officers, as well as by the press and on social media, such as twitter, and was additionally profiled as an opposing political party affiliate and accused of lack of independence, impartiality and legal knowledge. In late 2016, articles of impeachment were brought before the Judiciary Council against Judge Forns by a political leader on grounds of malfeasance, lack of knowledge and emotional instability. The articles for impeachment remained pending with the Judiciary Council for over a year, even though they were based upon the content of a court judgement (eventually it was closed the following year).

Manipulation of the cases related to the Macri family companies: the *Correo Argentino* case

• Another controversy revolved around the manipulation of the prosecutors serving in the «*Correo Argentino S.A.* on Reorganization Proceedings». As per the allegations, in 1997 the Macri Group was granted the license for the operation of the «*Correo Argentino S.A*.» company through the SOCMA Group, whose CEO was President Macri. In 2001, the company filed for bankruptcy proceedings and, in 2003, the State terminated the operation license. By that time, the company was indebted to the State in an amount of 300 million pesos which, under the then effective convertibility act, was equivalent to 300 million USD.

• In 2016, a payment agreement between the SOCMA Group and the State was reached as a result of a judicial case heard by the Buenos Aires city's National Commercial Court Nº 9, where the Group offered, and the State accepted, a payment of 300 million ARS (rather than USD) in disregard of the devaluation of the Argentine currency and of the relevant delinquency interests, in addition to the fact that payment was to be made in installments extending up to 2033. For the purpose of the agreement approval, the Public Prosecution Service's signature was required, but Prosecutor Gabriela Boquín deemed the holding group's offer "abusive" and eventually objected and voided the agreement, which she regarded harmful for the State's interests. The Court prosecutor's ruling established that the debt amount should be updated into almost 4.7 billion US dollars.

• In April 2018, Prosecutor Zoni —in charge of investigating the Group's accountancy books to establish whether funds from *Correo Argentino S.A.* had been diverted into other of the holding Group's companies during the reorganization proceeding- was removed and substituted by Eduardo Casal. Zoni's removal was due to his independent work and to the indictment he brought against President Macri. Gerardo Pollicita, Esq., who had previously worked for President Macri during this term as president of the Boca Juniors Club, was appointed interim prosecutor to substitute Zoni.

• On a radio program statement, judiciary council member and congressman for the «*Cambiemos*» ruling coalition, Pablo Tonelli, challenged Prosecutor Gabriela Boquín's qualifications, with the endorsement of National Senator and head of the ruling coalition caucus Laura Rodríguez Machado's discrediting arguments against Prosecutor Boquín.

Exhibit II

Expert Voices on the Persecution against CFK and national and international leaders' statements on the *Vialidad* Case

The *Vialidad* Case: analysis of expert voices in the press and the repudiation of the conviction against CFK at regional, international and local levels.

The *Vialidad* Case has transcended the merely local level, given its scandalous evolution and resolution. Jurists and personalities from various ideologies and political affiliation publicly voiced their opinion and have strongly criticized the judges and prosecutors involved in this process, by highlighting the absence of impartiality, and how this fact challenges and undercuts an independent justice system trustworthiness. Multiple voices have pointed out and underlined that in no case can political relevance be the core element to convict an individual; on the contrary, the procedure should be transparent in all its stages, unlike what was observed in the *Vialidad* Case, which was packed with inconsistencies and breaches of the due judicial process.

Expert voices on the *Vialidad* Case at local and international level

One of the clearest statements was made by Daniel Erbetta, a jurist from the Radical Civic Union (UCR), one of the political parties opposed to the incumbent government. Erbetta is one of Santa Fe province's Supreme Court Justices, as well as professor of Criminal Law at the National University of Rosario's Law School and its former dean. He regarded that this disputed process places the Judicial Branch in a highly complex situation and strongly criticized the comparison between this prosecution process and that of the military government members. "At the very least, it is an act of disrespect... an affront to the democratic system itself and to former President Alfonsín himself" and added "it is shameful and cannot be admitted or accepted by any State power member, let alone by any democratic political party member, because it stands as a democracy-undermining tool". After the December 2022 sentence, Erbetta made a new statement and claimed that "I cannot understand so much clumsiness on the side of the prosecuting body".[139]

Among the most resounding public opinion voices regarding *lawfare* is that of jurist E. Raúl Zaffaroni. In reference to the *Vialidad* Case, he brought back CFK's comparison between her conviction and the courts to a "firing squad" since, as pointed out by Zaffaroni, all the firing squad members have firearms, but nobody knows who fired the deadly bullet. He also used the "the executioner's axe is under the judicial robe " metaphor to describe the *Vialidad* Case, and showed his concern because Argentina is "hitting rock bottom" in terms of Justice due to a small group of judges holding strategic positions.[140] In a later article entitled "The people in the absence of Law" ("*El Pueblo ante la ausencia de Derecho* ")[141] -in relation to the *Vialidad* Case-, Zaffaroni claims that, as a result of the National Supreme Court of Justice's decisions, Argentine citizens live in a lawless environment; and what remains when law is gone is power being exercised in a lawless scenario, which is not anti-juridical but blatantly "non-juridical". In this context, the jurist envisions that the political solution essentially derived from the main player, the people, which is the holder of sovereign power.

At international level, the most convincing statements and arguments regarding the inconsistencies and persecution in the *Vialidad* Case were those made by the Spanish jurist and former Judge Baltasar Garzón, who supported Cristina Kirchner and reported that the *Vialidad* Case was a *lawfare*

example[142] and deemed the prosecution against the vice president "legally inadmissible". In his "Open letter to the *Vialidad* Case judges", he maintained that "there is a clear political goal" and regarded it as a "political execution "[143] on the side of the Argentine judges.

Another well-known international personality from the academia is Boaventura de Sousa Santos, who expressed some thoughts about the far-right politics and the attack on Cristina Fernandez de Kirchner, while also voicing his concern about the presence of the far-right political parties and the role of popular movements in upholding democracy.[145]

Support to CFK and repudiation of the *Vialidad* Case sentence at regional, international and local level.

Following are the most prominent Latin American and Caribbean voices:

Evo Morales: He criticized the internal and external right wingers' use of *lawfare* and supported Cristina Fernandez: "As leaders, we are aware of what it means to be legally persecuted by rightists who seek to politically annihilate us. Our defense will always lie in people's awareness, as well as in truth and honesty" (08/20/2022).[146]

***Puebla* Group:** Through the action of prosecutors and judges, right wing groups seek to ban her without allowing her the right of defense. *Lawfare* is back in operation in Latin America, to the detriment of our democracies (08/23/2022).[147]

Marco Enríquez Ominami: "*Lawfare* is back on the attack in Latin America, this time in Argentina. It is always the same script: they seek to prevent Cristina Kirchner from running in the next elections. And they use justice as a means to clear the way for her adversaries without observing due process" (08/23/2022). [148]

Ernesto Samper: "They are mounting a *lawfare* case against Cristina Kirchner, similarly to what we all witnessed in the case against Lula da Silva (...). They made surprisingly expeditious advancement in a judicial process she has no involvement in, while also overlooking due process rules, in order to prevent her from running in the next elections: just a charade" (08/23/2022).[149]

Dilma Rousseff: "Cristina Fernández is a victim of political, judicial and media persecution, an action led by the continent's far-right followers intended to get leaders out of the peoples' hearts" (08/23/2022). [150]

MORENA, Mexico: "From Mexico we express our solidarity with CFK in the face of the attacks against her. It is no longer the time of Macri and his cronies. Today, all Latin America speaks out in the defense of democracy. Cristina is not alone: the entire continent supports her" (08/23/2022).[151]

Petro, Andrés Manuel López Obrador (AMLO) and Arce have signed a letter of support for Cristina Kirchner in the face of the request for her imprisonment. The presidents of Colombia, Mexico and Bolivia voiced their support for the Argentina's vice president, following Prosecutor Diego Luciani´s request for conviction against her (08/24/2022).[152]

AMLO expressed his solidarity with Cristina Kirchner after her being sentenced to a 6-year imprisonment in the following words: "Political revenge". The Mexican president argued that the sentence against Argentina's vice president is an anti-democratic ruling (12/06/2022). [153]

Luis I. Lula da Silva supported Cristina after the *Vialidad* Case ruling: "*lawfare* can damage democracy (...) My solidarity with the Argentine Vice President Cristina Fernández de Kirchner. I have read her statement about being a victim of l*awfare*, and in Brazil we are well familiar with how harmful this practice can be for democracy" (12/07/2022).[154]

Nicolás Maduro, President of Venezuela, supported CFK. "Truth shall prevail. From Venezuela, we express our strong rejection to the ongoing media and political persecution Vice President Cristina Kirchner has been exposed to. Sooner rather than later, truth shall prevail and the voice of the Argentine people shall be respected. *#TodosConCristina*." (12/07/2022).[155]

Xiomara Castro, President of Honduras: "Our solidarity and support to our comrade Cristina Fernández de Kirchner who is now under a *lawfare* attack, after surviving a failed attack to her life. Truth shall prevail and shall the will of the Argentine people who is in your favor" (12/07/2022).[156]

Luis Arce, President of Bolivia: "Cristina is a warrior and as such, she will not give up". Luis Arce supported the Argentine vice president after her conviction in the *Vialidad Case* and referred to her case as "another regrettable attempt to wipe out leftist leaders and governments in Latin America and the Caribbean" (12/15/2022).[157]

Díaz Canel, President of Cuba: "We once again express our rejection of politically motivated judicial processes and reaffirm all our support to and solidarity with CFK in the face of the judicial and media harassment against her" (06/07/2022).[158]

Gabriela Rivadeneira: "The judicial and media parties contrive spurious convictions out of hatred. We respond by being steadfast, loyal and coherent with our peoples. Neither imprisonment nor exile shall be admitted as punishment for defending the rights of the vast majorities!" (06/07/2022).[159]

Support from international leaders

From Progressive International: **Noam Chomsky** (U.S.A.), **Yanis Varoufakis** (Greece), **Cornel West** (U.S.A.), **Aruna Roy** (India), **Baltasar Garzón** (Spain), **Leïla Chaibi** (France), **Ertuğrul Kürkçü** (Turkey), **Vijay Prashad** (India), **Ahdaf Soueif** (Egypt), **Renata Ávila** (Guatemala), **Nikhil Dey** (India), **Yara**

Hawari (Palestine), **Srečko Horvat** (Croatia), **Scott Ludlam** (Australia), **Nick Estes** (U.S.A.), **Niki Ashton MP** (Canada). "We express our solidarity with Cristina Fernández de Kirchner in the face of the judicial and media persecution she is being exposed to with the clear goal of politically disqualifying her - she is the Peronist movement main leader- in view of the 2023 presidential elections (...) The anti-democratic right wing in the region resorts to legal warfare tactics to harass, persecute and disqualify Latin America's national and popular governments main progressive leaders." They warn about "the connivance of the corporate media to attack" those who "do not serve the interests of the ruling class and of the neoliberal model" (12/07/2022).[160]

Jean Luc Melenchon (France) argued against the use of justice "for settling political conflicts, this is a scourge operating around the world." (08/23/2022).[161]

Ione Belarra (Secretary General *Podemos*, Spain) expressed her support to the vice president and pledged to report the ongoing "judicial and media war against progressive governments, because it endangers democracy itself. In Spain, Argentina or in any democratic country." (08/23/2022).[162]

Enrique Santiago: "Legal war coup against progressive governments in Latin America. Argentine Vice President Cristina Fernández sentenced to six years in prison and perpetual disqualification in a prosecution packed with irregularities but devoid of any evidence (12/07/2022). "[163]

Iñigo Errejón: "They go against Cristina because they are against income redistribution, equal opportunities, egalitarian marriage, economic sovereignty and the commitment to the most vulnerable. But they will not be able to go against that" (12/07/2022).[164]

Pablo Iglesias: Judicial Party against democracy. "Stay strong Cristina Fernández"(12/07/2022).[165]

Political support at national level

Alberto Fernández, Argentina's President: "An innocent person has been sentenced (...) when politics gets into the courts, justice goes out through the window" (12/07/2022).[166] "I would lose my faith in justice" (12/06/2022).

The President joined the criticism against Federal Oral Tribunal N° 2 ruling and stated that "when politics gets into the courts, justice goes out through the window".

Axel Kicillof, Governor of Buenos Aires and Juan Manzur, former Cabinet Minister, spoke against Prosecutor Diego Luciani's indictment against Cristina Kirchner for "unlawful association" (08/02/2022).[167]

Argentina's Human Rights Secretariat. The judicial persecution against Vice President Cristina Fernández is a clear indication that *lawfare* is more buoyant than ever before in our country (08/02/2022).[168]

Argentine Mayors. *Vialidad* Case: More than 500 mayors from municipalities all over the country have supported Cristina Kirchner (08/21/2022).[169]

Martín Soria, Minister of Justice and Human Rights: "In order not to use the word "proscription", they resort to the "disqualification to run for public office" expression", he maintained in an interview (08/23/2022) and went on to criticize the ruling against Cristina Kirchner: "It is so outrageous and totally unfounded (...) the judicial mafia has turned their hatred into an illegitimate sentence, which is in turn undersigned by the anti-Peronism" (12/07/2022).[170]

Wado De Pedro: The Minister of the Interior objected the actions of the judges and prosecutors in the case holding the Vice President as the main defendant and warned about a "Judiciary decay" (12/02/2022).[171] After the sentence, he argued: "The whole people is with you, truth is on your side and history is your support. Today's events are scandalous. They are going against Cristina Fernández for what she did well, for improving the lives of millions of Argentinians. Always with Cristina *#TodosConElla*" (12/06/2022).[172]

Andrés Larroque, Buenos Aires Province Cabinet Minister and La Cámpora Secretary General. In a joint press release, they warned about the misuse of the judicial system "as a stigmatization, conditioning and social disciplining mechanism" (12/05/2022).[173]

CGT (General Confederation of Labor) "The General Confederation of Labor rejects the ruling convicting Vice President Cristina Fernández de Kirchner for alleged crimes against the public administration (...) a shameful verdict, with legal inconsistencies and no factual evidence to prove any crime, but just the mere opinions of the case judges and prosecutors" (12/06/2022).[174]

CTA (Argentina Workers' Central Union): Hugo Yasky called this "a shameful sentence". "It is *lawfare's* final blow in Argentina. The judicial party has taken another step towards Cristina's persecution and proscription ", he said, and emphasized that "history will acquit her and the people, as always, will advocate for her out in the streets" (12/06/2022).[175]

Agustín Rossi, head of the Federal Intelligence Agency (AFI) said that "Cristina's innocence cannot be doubted" and added that "she is the victim of a fierce political, judicial and media persecution, just as Perón and Evita suffered in their time". "The sentence is nothing but a clumsy proscription attempt" (12/06/2022).[176]

Justicialist Party (PJ): "The PJ expresses its most powerful repudiation to the judicial persecution and the proscription attempt against Cristina, a new episode of which she is being witness today with the *Vialidad* Case verdict (...) As Peronists, we will never give up on those who are fully committed to the people: all of us are with Cristina" (12/06/2022).[177]

Jorge Taiana, Minister of Defense: "As Cristina Fernández claimed some time ago, the sentence was already drafted. As Peronists, we are already familiar with proscription and we will defeat it once again"(12/06/2022).[178]

League of Governors (of Argentina) "It is a democracy-threatening event". Provincial leaders published a document which claimed about the intention to condemn and to politically disqualify the vice president "in a process featuring countless irregularities and breaches of fundamental constitutional principles and guarantees" (12/07/2022).[179]

Support from Human Rights organizations in Argentina

"We express our solidarity with Cristina, as a victim -once again- of persecution by the Judiciary which, far from balancing the scale, makes inequalities even deeper, when they issue rulings in legitimization of neoliberal policies, thus leaving our people at the mercy of the interests of the powerful." (08/04/2022).[180] Signatories:

- Relatives of missing persons and detainees for political reasons;
- Sons and Daughters for Identity and Justice against Forgetfulness and Silence (H.I.J.O.S. Capital);
- Permanent Assembly for Human Rights La Matanza;
- Ecumenical Movement for Human Rights;
- Argentine League for Human Rights; Memory, Truth and Justice, Northern chapter;
- Argentine Historical and Social Memory Foundation;
- *Buena Memoria* Association.

Mothers and Grandmothers of the Plaza de Mayo: "We will not allow her to be condemned. Our justice system needs to be changed. There are people who are entrenched in evil. It is documented", they sustained, and added that "those who do not want a better country are the ones who have brought this situation on a woman who so meritoriously governed for so many years" (08/29/2022).[181]

Evita Movement: On CFK's sentence on the *Vialidad* Case: "This decision stands as a new attack on democracy and popular political activism, since it is devoid of any legitimacy, foundation and evidence support and is based only on a prosecutor's inconsistent account and on a deliberate media campaign solely intended to impose a political sentence on Argentina's Vice President and popular leadership" (12/06/2022).[182]

CELS (Center for Legal and Social Studies): "This (*Vialidad* Case) was a trial objected for having involved violations to due process and other irregularities. A conviction against the vice president at this point when we are only a few months away from the beginning of the electoral campaign, cannot be interpreted but as the victory of those who seek the restraint of exercise of her political rights. If they succeed, it will only deteriorate the judiciary trustworthiness even further, with its officers also contributing to the degradation of our country's democracy" (12/05/2022).[183]

Support from jurists' organizations

Argentine Association of Jurists: The AAJ repudiated the judicial persecution for political purposes against Vice President Cristina Fernández de Kirchner, in the context of the trial for allegedly mismanaging public works funds in Santa Cruz. They expressed deep concern about the breach of guarantees during this process. They also objected the inclusion of the unlawful association crime in the case and warned about the friendship ties between one of the judges and one of the parties to the process (08/26/2022).[184]

Support from National Scientists and Universities

CONICET workers and national universities issued a press release voicing their unconditional support to the vice president: "The conviction against CFK in the *Vialidad* Case has been repudiated by over 2000 scientists. The statement title warns about a new attack by the judicial corporation against CFK. We, the undersigned scientists and university students, repudiate the judiciary and media persecutory actions against Cristina Fernández de Kirchner" (08/24/2022).[185]

School of Philosophy and Literature, University of Buenos Aires: They claimed persecution against CFK and released a document listing alleged "inconsistencies" in the *Vialidad* Case investigation and made a call to "demonstrate" in defense of the Vice President (08/24/2022).[186]

Law professors from the University of Buenos Aires: They published an Open Letter repudiating the ruling against CFK on the *Vialidad* Case: "As law professors, we are knowledgeable about the rules and laws applicable to a criminal proceeding, and we can therefore readily identify grievous due process violations" (08/24/2022).[187]

Relevant press articles on the *Vialidad* Case

There is an interesting article by journalist Franco Mizrahi, where he describes the *Vialidad* Case as the chronicle of a “flawed sentence foretold against CFK"[188] since, according to him, it was impossible to envision, from a political perspective, an acquittal for the president when the *Vialidad* Case has been clearly a "judicial charade", brought up as the result of a totally inconsistent complaint filed by *Cambiemos* leaders in 2016. In another article by Judge Juan Manuel Soria Acuña, the links between the case judges and prosecutors are objected, arguing that "A judge and a prosecutor who are friends or have a fluent relationship, with one attacking the defendant and the

other one judging her, are the closest imaginable to a "special commission" assembled to persecute defendant. Special commissions are expressly prohibited by the Constitution."[189]

In line with this, journalist Raúl Kollmann showed that the inconsistencies in the *Vialidad* Case and the interests fueling them (which go beyond the judicial aspect), could be synthesized in the fact of prosecutors having to resort to other cases in decisive trial stages, since even the prosecution's own witnesses testified against them. Almost all of the arguments raised in August 2022 came from other cases authorized by the judges to be included on the last trial day, that is, they were never discussed during the hearings. By that time, it was also found out that the execution of the public works under dispute had been in all cases voted by the National Congress under the Budget Law. The bidding process was conducted by the Province of Santa Cruz, which was also in charge of the award and the relevant control over them. The arguments of alleged obscure negotiations and of the usually referred to "unlawful association" between CFK and officers from her government is senseless.[190]

In an article reproduced in the Spanish media, in turn, Sebastián Lacunza also confirmed that, due to the *Vialidad* Case characteristics, it stands as "a perfect script for *lawfare*": "in addition to the arguments, the toxic murkiness of the Comodoro Py courts -the seat of the Federal Justice- comes into play. Julián Ercolini, the *Vialidad* Case examining magistrate, (in charge of leading the process but not of the ruling stage), is one of the two federal judges who centralized the multiple, though sometimes highly controversial indictments against Cristina, such as the former prosecutor Alberto Nisman's, an obscure case lying in his office. There was already evidence of Ercolini's spurious collusion with Macrism, but over the past weekend further evidence emerged following the publication of details about a trip organized by *Grupo Clarín* executives to a Patagonian ranch involving four judges, two former intelligence agents and two officials of the Buenos Aires City Chief of Government and conservative presidential pre-candidate Horacio Rodríguez Larreta.

Notes

1. See: Dunlap, Ch., 2009, Lawfare: A Decisive Element of 21st Century Conflicts? Joint Force Quarterly, (54), 34-39; Dunlap, Ch., 2001, Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts. Working Paper, Boston: Harvard Kennedy School; Kittrie, O., 2016, Lawfare: Law as a Weapon of War, Oxford UP.

2. One of the cases is the one involving Martín Irurzun who, during the military-civilian regime (1976-1983), dismissed *habeas corpus* applications in favor of detainees and, during Mauricio Macri's administration (2015-2020) acted in favor of the arrest and preventive detention of Kirchnerist former officers who could -because of their contacts, ties and relationships "created due to their power"- hinder the progress of a case (the so-called "Irurzun doctrine"). This is certainly grievous in light of the constitutional provision on preventive detention, which defines it as the exception rather than as the rule (see Zaffaroni's chapter in this book).

3. See the full report, available on: https://drive.google.com/file/d/15h3YYAK84gXXYKCqdt2Bgger5LKdVrhc/view

4. All these considerations are laid out on the aforementioned Organization of American States' (OAS) Convention on the Prevention, Punishment, and Eradication of Violence against Women (MESECVI), Follow-up Mechanism Committee.

5. There were isolated cases of judges and officers being removed.

6. See "Judicial Branch and democracy: a compelling debate" by Gómez Alcorta, E. and González Carvajal, L., 2018, in Sosa, N., Cardelli, M. and San Cristóbal, A. *Urging issues: Rethinking the State, subjectivities and political action (Emergentes: Repensar el Estado, las subjetividades y la acción política)*. Bs. As., Ciccus.

7. I challenge the identification of the judicial persecution process under the term "*lawfare*", that is, based upon a war-related word to refer to certain political-judicial practices or intervention methods which, in my opinion, is inadequate. In fact, if there is something absent in this intervention method, it is precisely the attributes of *law*.

8. We are aware of the various *coups*, which under different modalities, have taken place over the latest forty years; yet it may be maintained that the political standard prevailing in the region has been to reinstate democracies first and then endeavor towards their strengthening.

9. Maisonnave, M. and Romano, S., 2022, «Who are those who accuse Cristina Fernández de Kirchner?» *(¿Quiénes son los que denuncian a Cristina Fernández de Kirchner?)* CELAG https://www.celag.org/ quienes-son-los-que-denuncian-a-cristina-fernandez-de-kirchner/

10. Schmitt, C., 2002, "Concept of the political", Bs AS, Editorial Struhart & Cía., p. 31.

11. The grounds for the judgement have not been released yet, as the criminal procedural code provides that the Court can postpone the publication for up to 40 days following debate closing and verdict issuance.

12. Ziffer, P., «Basic guidelines about the crime of Unlawful Association" *(Lineamientos básicos del delito de asociación ilícita)*; LL.24/12/2019

13. Section 210 of the Criminal Code.

14. See: Gómez Alcorta, E., 2022, «Chronicle of a proscription foretold" (*Crónica de una proscripción anunciada*), Jacobin magazine. https://jacobinlat.com/2022/12/07/ cronica-de-una-proscripcion-anunciada/

15. This involves a 12000-hectare ranch acquired by British businessman Joe Lewis, a transaction featuring a long list of irregularities, among which is the breach of provisions prohibiting the transfer of borderline lands to foreigners.

16. Schmitt, C., 2002, *Op. cit.* p. 47

17. Excerpt from Romano, S. and Proner, C., 2022: «Cristina Fernández de Kirchner-*Vialidad* Case-Violation of the Rule of Law-*Lawfare*» (*Cristina Fernández de Kirchner-Caso Vialidad-Violación del Estado de Derecho-Lawfare*). CELAG and CLAJUD-Puebla Group Observatory's Working Paper on *Lawfare*, September.

18. Zaffaroni, R., 2018, "L*awfare*". Discussion Panel at the *Metropolitana* Foundation – July 27th, Quito.

19. Fernández de Kirchner, C., December 6th, 2022, «The twenty lies of the *Vialidad* Case» (*Las veinte mentiras de la causa vialidad*). *Página 12* newspaper, https://www.pagina12.com.ar/502683-una-por-una-las-20-mentiras-sobre-la-causa-vialidad-que-deta

20. DW, September 2nd, 2022, «Attempted magnicide: tension and hate speeches» (*Atentado a Crisitna Kirchner: crispación y discursos de odio*). https://www.dw.com/es/atentado-a-cristina-kirchner-crispación-y-discursos-de-odio/a-63007740, checked on February 27, 2023, 7:28 pm

21. Jáuregui, C., 2022, Presentation of the book «Rebellion; Chronicle of a non-existing crime" (*Rebelión: Crónica de un delito inexistente*), December 7th, Cuenca University.

22. Zaffaroni, R., November 29th, 2022, «Democracy in a coma» (*La democracia está en coma*), *Página 12* newspaper. https:// www.pagina12.com.ar/502694-raul-zaffaroni-la-democracia-esta-en-coma

23. Romano, S. and Proner, C., 2022: «Cristina Fernández de Kirchner-*Vialidad* Case-Violation of the Rule of Law-*Lawfare*» (*Cristina Fernández de Kirchner-Caso Vialidad-Violación del Estado de Derecho-Lawfare*). CELAG and CLAJUD-Puebla Group Observatory's Working Paper on *Lawfare*, September.

24. Ibid.

25. Ferreyra, R., December 11th, 2022, «*Vialidad* Case: an unsubstantiated judgement and the obscure fate of judicial arbitrariness» (*Causa Vialidad: condena sin razón y el destino oscuro de la arbitrariedad judicial*) *Página 12* newspaper,

https://www.telam.com.ar/notas/202212/613779-causa-vialidad-condena-arbitrariedad-judicial-opinion.html

26. Ibid.

27. Romano, S. and Proner, C. 2022, *Op. Cit*.

28. Martí, J. L., 2020, «*Lawfare* and Democracy. Law as a warfare tool» (*Lawfare y Democracia: El derecho como arma de guerra*), IDEES magazine. Issue No. 50. https://revistaidees.cat/es/ lawfare-y-democracia-el-derecho-como-arma-de-guerra/

29. Luna, B.; Oliva, N. and Serrano Mancilla, A., 2022, «Cristina Fernández de Kirchner in Argentine mass media» (*Cristina Fernández de Kirchner en los medios de Argentina*). CELAG https://www.celag.org/ cristina-fernandez-de-kirchner-en-los-medios-de-argentina/

30. Bovero, M., 2014, «Is democracy in a twilight?» (*¿Crepúsculo de la Democracia?*). In Bovero M. and Pazé, V. "Democracy in Nine Lessons*" (La democracia en nueve lecciones)*. Madrid: Trotta Publishing House.

31. Canfora, L. and Zagrebelsky, G., 2020, "The democratic mask of the oligarchies*" (La máscara democrática de la oligarquía).* Madrid: Trotta Publishing House, p. 15

32. Ferrajoli, L. and Ibáñez, P., 2014, "Democracy through rights: protective constitutionalism as a Theoretical Model and as a political project*" (La Democracia a través de los derechos: el constitucionalismo garantista como modelo teórico y como proyecto político).* Madrid: Trotta Publishing House, p. 40.

33. See: https://www.google.com/search?client=safari&rls=en&q=youtube+no+sere+candidata+a+nada&ie=UTF-8&oe=UTF-8#fpstate=ive&vld=cid:2c22e3be,vid:Ee1XLAvmm aM

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75. Even though the number of individuals having been, and still being, politically persecuted through the judicial system is countless, it is worth noting that *lawfare* has had different manifestations and has spread well beyond the cases against top governing officers referred to in this text. The example of Ecuador is particularly noteworthy, where *lawfare* has mutated from an alleged tool to fight corruption into one to persecute opponents, by profiling any political opposition actions into the category of crime of rebellion. Two well-known names should be mentioned here: Paola Pabón and Virgilio Hernández (Governor of the Province of Pichincha and Member of the Andean Parliament, respectively) who were politically persecuted and furthermore imprisoned until eventually being pardoned by the National Assembly. As in the Brazilian case, neither political persecution, imprisonment or litigation without a legal basis prevented the victory of progressive political groups in the subsequent elections. Despite judicial harassment, Paola Pabón succeeded in being reelected as Governor in February 2023, even though her personal suffering and the political erosion experienced in this as well as in other lawfare cases cannot be reverted. Among other cases in Latin America, there is the judicial persecution against Marco Enríquez Ominami in Chile. It is worth noting that this trend is not on the rise only in Latin American countries. Persecution against political leaders fueled by radical right-wingers is also gaining momentum in Spain. The cases against the *Izquierda Unida* council members or the indictment of Valencia's Generalitat former Vice President Mónica Oltra, along with the persecution against *Podemos* leaders, which include over twenty eventually dismissed or acquitted indictments, or the one brought and also dismissed, against Barcelona's Mayor Ada Colau, are proof that the use of the mass media in publicizing indictments is a key component in the strategy to delegitimize progressive political leaders and their reforms' programs.

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Political Impressions on *Lawfare* in troubled times

Shared Insights

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Political Impressions on *Lawfare* in troubled times

Shared Insights

The *Puebla Group* gathering convened in Buenos Aires at the CCK in March was a definitely moving experience, including friendly exchanges among former presidents, legal advisors, and political experts present in that meeting. That is the way it feels after enduring countless setbacks and even threats during fruitless endeavors.

When watching a video made available by Rafael Correa where topics concerning the upcoming gathering would be discussed, one could think about its striking similarities with some of the Netflix-style series. This was particularly noticed in a wide range of ideas in the speeches delivered by legal experts like Gisele Ricobom, who expounded on the 'Criminal Law of the Enemy´ notion about *lawfare* as that system cooptation procedure. That is why media coordination is key and *lawfare* can hardly exist without the media. Judgments are drawn up in the media, and then a judge or a prosecutor enters the judgement or the accusation. That is how *lawfare* operates.

It is vital to initially address this issue from a historical viewpoint and then reflect on the actual purpose of *lawfare*. *Lawfare* involves the criminalization of not the whole but rather of a segment of Politics, particularly, the one regarding income redistribution and upward social mobility so that our societies do not become perpetually entrenched within a rich/poor dichotomy. We have witnessed this phenomenon earlier, albeit not precisely in the form of *lawfare,* because the *Puebla Group* gathering within the framework of the 3rd Human Rights Forum was entitled: 'From the Military party to the Judiciary´. Talking to 20-year-olds about people having disappeared 40 years ago might be challenging, but the truth is that earlier systems had paved the way for today´s wave of *lawfare,* which is currently overwhelming the entire region.

When the national security doctrine was in place and the world was segmented into the Eastern and Western blocs, it was the duty of the Armed Forces to suppress popular movements currently known as populist across the whole region. These movements account for the long-standing, national, popular, democratic processes ingrained in our history and date back to the genesis of our national identities in South America. *Lawfare* has to do with this phenomenon.

What was the Military Party? These are the 1976´s events, which resulted in the disruption of a model of accumulation emerging after the wars hitting Argentina, and primarily epitomizing the Peronist movement, which basically implied an upward social mobility movement. The author of this book hails from that Argentina, an Argentina acknowledged by an upward social mobility movement in which a working-class daughter or a son could go to university and also become president. We are the offspring of that model. In 1976, the labor and production-based Argentina was shattered. While earlier coups like the *Revolución Fusiladora* (Shooting Revolution) in 1955 had ousted Peronism from government, it was definitely the 1976 coup which left an indelible mark in Argentina, obliterating that societal model and its pattern of accumulation extending not only to the economic but also to the cultural sector.

It was that Argentina that adopted a diligent labor-based policy and nurtured the belief our education and employment endeavors would yield success. That was Argentina at that time, and the 1970´s *coups d´etat* were, arguably, the bloodiest events in Chile and Argentina. Within this framework, Marco Ominami, just like our children, is also believed to be the offspring of Pinochet´s coup. Strikingly, it was Chile involving the first neoliberalism experiments, which, thus, resulted in the shaping of Argentina´s course of events.

Much has been heard lately about the Austrian economist Friedrich Von Hayek and about a newly emerging politician who currently discusses his theories in the media. Is he planning to get Argentina aligned with Von Hayek´s ideology? It is worth recalling Hayek was a Chicago school economist, just like Milton Friedman, and based upon this ideology a neoliberal experiment was developed in Chile during Pinochet´s authoritarian regime. Then, there emerged a new neoliberalism movement, a wave of neoliberalism characterized by extensive privatizations which reached out the entire region. But it was primarily the military coup which disrupted that pattern of accumulation, which resulted

in a stronger different culture, and Argentina has, thus, embraced a bimonetary economy policy ever since then.

Much is being argued about economics lately, and doing so is key as current political life events, persecutions, and daily life hardship are tied to the economic landscape and to that Argentina, which on May 25, 2003, set out to rebuild what is known as the Constitutional Democratic State. At that historic moment, a man with solely 22% of the votes took up the building of Argentina, which had gone through countless tragedies namely—the one of the dictatorship, the privatizations meltdown, and the neoliberal model- and it was during this rebuilding era that memory, truth, and justice got reinstated. I am a victim of a relentless persecution, and the target of vicious attacks, whether this being due to what I stand for, or because I have the highest degree of representation within a political sphere.

Still, we are not only referring to Argentina´s economy but also to our achievements in the realm of Human Rights, which stand as the main reason why we are never, ever, going to be forgiven. I still recall a headline from *Página 12* newspaper, kept at Néstor Kirchner´s Mausoleum in the city of Río Gallegos, in which genocidal Jorge Rafael Videla´s statements can be read, and it was in those statements he asserted the onset of his worst times dated back to the arrival of the Kirchner era. I will never forget those times, for it seems his legacy is being embraced by other democratic leaders.

When Néstor took office, the plea for memory, truth, and justice was unknown in Argentina. It was not embedded into public opinion polls and received no coverage in the media. Human Rights organizations, also including Mothers, Grandmothers, Children, and Relatives, who were driven by a feeling of perseverance displayed throughout history, persisted in their unwavering marching and advocating for justice. Furthermore, there had been attempts to render impunity laws constitutional, which was strongly repudiated by Néstor Kirchner. As known to esteemed Presidents José Luis Rodríguez Zapatero and Rafael Correa, I had the privilege of being a legislator who voted for the repeal of those impunity laws. I must confess the endeavor of rebuilding a democratic, constitutional State was profound and all-embracing. The authority of *Casa Rosada* and of the Executive Branch was diligently restored as part of this undertaking. While those who are 20 years old may not probably remember, Argentine citizens took the streets in 2001 and chanted 'they must

all go, not even one should remain´, which was an act of profound repudiation against the political establishment in response to the events unfolding at that time.

Concomitantly, the role of the Legislative Branch was reinstated. For those who may not even remember it, a short while ago, somebody submitting their candidacy for president while a member of the opposition party, seemingly emerged from lately unearthed craters of Mars - and standing as constituent of an administration that found itself adrift- caused many to remember the time in which their own vice president would file a claim stating that opposition party senators (Peronists at that juncture) had been bribed in order to enact the Labor Flexibility Law.

Hence, I strongly believe we must tell them bravely: young Argentinians, whether affiliated with Peronism, Libertarianism, or *Cambiemos* political parties, there was a government—the inaugural coalition government, or the initial alliance—wherein the vice president tendered his resignation while disclosing corruption acts, as legislators had been subject to bribery. Indeed, Argentine legislators were being bribed so that laws would be passed. Other laws were passed under the threat that a specific law, whether involving a zero-deficit issue or others, would be enacted; otherwise, the impact of failure to enact such laws would lead to the intervention of the International Monetary Fund, which would later and forcefully enforce strict compliance of those laws. As might be expected, there was a time in which the Legislative Branch was subject to these dynamics, and Néstor Kirchner´s administration succeeded in having this regressive practice reinstated, ultimately turning it into an artifact of the reconstruction era.

Argentina in 2007

When it was my turn to take office as president of the National Congress in 2007, I had earlier served as national legislator since 1996, with a ruling and an opposition party in power. At that time, laws were voted based upon individual convictions, with no threats to be fearful of, and that state of affairs was also reinstated. It was during that time period it lied with him (Nestor Kirchner) with only 22% of the votes, to rebuild a Judiciary featuring the so-called 'automatic majority,' which had not threatened the government, but rather the Argentine people with the adoption of an economy dollarization policy. That was Argentina in 2007. José Luis Rodríguez Zapatero, former Spanish Prime Minister, who attended the *Puebla Group* gathering, was acquainted with that era and with its key

leaders, and aware of the enormous challenge the rebuilding of the Judiciary actually involved. During Néstor Kirchner´s first visit to Spain in January 2004, José Luis, who was serving as the PSOE (Socialist Workers Party) Secretary General remarked: “Ah I see, you have a Secretary General, and I am a Peronist. You see, we are all... but I don´t quite understand much about it. This approach certainly leans towards left-wing politics, and we are Peronists.” At that moment, as Néstor Kirchner was getting ready to meet Rodriguez Zapatero, he was asked: “Why are you going to meet him?” The right-wing party led by José María Aznar´s administration truly prevailed rather than ruled in Spain at that time and Néstor, with political acumen replied, “I will meet him anyway, even if he doesn´t hold a vote.” And that is how they met.

Later on, amidst a remarkable electoral triumph (in March 2004) —deemed as nearly implausible for the PSOE at that time—José Luis Rodríguez Zapatero, whose steadfast trust in institutions and sentiments turned out to be highly accurate, was elected Prime Minister of Spain. What does this event bring about? It refers to the inception of shaping a new Argentina in 2003, and to the advent of a transformed Argentina, since this statesman, along with Lula in Brazil, simultaneously decided to settle their nations´ debt with the IMF so that it would never regain influence over those countries´ economy.

A plethora of avant-garde measures was adopted within this framework which namely involved the recovery of the Retirement and Pension Fund Administrators (AFJP) and of YPF, our national oil company, the adoption of social policies, and the manufacturing of satellites. At the same time, the whole region could witness the surge of new leaders like Rafael Correa with his Citizens´ Revolution in Ecuador, Lula as the leader of the Workers´ Party (PT) in Brazil, Evo Morales, a Socialist Movement advocate, and Hugo Chávez in Venezuela, dear Hugo! All of them were part of a continent cooperative mobilizing endeavor and at the time I travelled to Europe, people would argue: “But populisms there, Chavism...”, Pepe, the *Frente Amplio* in Uruguay, Fernando Lugo in Paraguay... and that was known as the 'virtuous decade'. In a publication by Thomas Piketty, this period is argued to be the one with the sharpest decline in economic and social inequality in the region, which stood as the cornerstone of the political scenario at that time.

They are not after us because we are populists, left-wingers, right-wingers, or from different social strata. No, they definitely are not. They are after us because we have advocated for societal equality

and social justice, and for workers´ entitlement to actively sharing in their country´s gross domestic product.... As I reflect back upon these events, I recollect the time when the military party orchestrated the 1976´s anti-Peronist government coup under the pretext of *guerrilla* insurgency. I would like to share with those of you who did not have the chance to experience that era that the *guerrilla* had been militarily defeated earlier in our regions. They had experienced prior political setbacks and were then faced with a military defeat. So that was deemed as the excuse for the surge of the upcoming neoliberal wave.

Similarly at that time, workers´ share in Argentina´s GDP accounted for 51%, which was equal to the GDP ratio reported in December 2015. Over a 12-and-a-half-year term, we have been able to laboriously recreate, perhaps not the best years, but history lets us know the event unfolding as of December 2015 onwards: as all of you know, the onset of the blasted "*Vialidad* case" dates back to a complaint filed in January 2016. Naturally, there was a jurisdictional attraction at Comodoro Py, wherein all complaints, around 600, unfailingly fell into the hands of two judges: one no longer in office, and whose name I choose not to mention, and Judge Ercolini, the one presiding over Lago Escondido district.

The days of *Lawfare*

As was the case in Brazil with Lula serving as president, the *lawfare* era began in Argentina by that time. What is *lawfare*? The Military Party´s interventions in the twentieth century´s Latin American popular governments can be compared to *lawfare,* which prevailed during the twenty-first centuries´ national, popular, democratic governments. The same policies always applied, and something began to take shape.... Let us take a look... During these election days, in which we can hear countless statements, because since the onset of the new wave of neoliberalism, back in December 2015 in Argentina, followed by Ecuador, and so impactful in Brazil, with Dilma Roussef´s ousting from the government, they developed the theory of "They have stolen everything, they have taken everything away, and now we are indebted. We have had to run up debts again, we have had to turn to the IMF one more time and have run up a 100-billion-dollar debt to settle their debt!"

Indeed, they then seemed to overlook what they had argued earlier. It is now relevant to recall some statements like the first one by Nicolás Dujovne, the former administration´s Minister of Economy.

Upon the breakdown of ties with the IMF during the former administration, and after Dujovne took off as Minister of Economy on January 10, 2017, he asserted in the media: “Argentina featured remarkably low levels of indebtedness at government, companies, and household levels.”

When one of the candidates of the opposition party currently governing the city was asked about the lifting of currency restrictions a few days ago, he replied that when Macri took office in 2015, his explanation went as follows: 'The currency restriction is a policy preventing anyone from purchasing an unlimited number of dollars´. We adopted this policy as an administrative measure in 2012, and at that time it was set at 2500 dollars monthly. Now, this restriction has gone down to 200 dollars. “The scenario was different at that time”, argued Horacio Rodríguez Larreta in 2015, “There were reserves at the Central Bank.' It should be noted it was the Head of Buenos Aires City government, and pre-presidential candidate who made this statement. We cannot replicate now the same policies adopted in 2015 since when Mauricio Macri took office that year reserves were available at the Central Bank. Yesterday while reading *La Nación* newspaper, the one I always refer to for updates—we must always read and listen to everybody´s opinions- an outstanding radical economist expressed his views about the adoption of prospective measures to deal with lagging real wages, as well as about policies to be put in place if tax and monetary adjustments were applicable. Nevertheless, “unlike 2015, real wages are currently falling behind”. And then? A highly favorable state of affairs is acknowledged again in an administration with a responsive attitude to people´s demands.

There was no debt at corporate, government and household levels in 2015 and let us highlight the International Monetary Fund had no intervening role at that time. Additionally, reserves were available at the Central Bank, which eased the lifting of currency restrictions at a time real wages were not lagging behind. Let me add one further remark: not only were not wages lagging, but if converted into dollars, they stood as the highest in Latin America.

Dispossession and Persecution

So, if there was no debt at that time, the Central Bank boasted significant reserves, and real wages were not trailing, could you elucidate what has been done over four years which ended up in a country being left in shambles in 2019? As Abraham Lincoln eloquently articulated a long time ago:

“You can fool all people for some time and you can fool some people all the time, but you cannot definitely fool all people all the time.” And this is precisely the scenario right now. As a result, after 2015, they promptly put together a story going as follows, 'they had stolen a GDP.' A GDP! Yet, it was them who took the GDP away with the International Monetary Fund, and still today we do not know where it is! Such is the harsh reality.

Media resources are used for stigmatization and persuasion purposes and as argued earlier: “the Argentine people had been successfully convinced by the media”. And as Javier González Fraga -a political leader who later became the president of *Banco Nación*- stated: “You made an average employee believe his salary sufficed to purchase mobile phones, flatscreen televisions, cars, motorcycles, and to travel abroad”. It was basically this belief they were willing to dispute while attempting to convince us that all our accomplishments were the outcome of corrupt leaders´ unlawful practices. Yet, stigmatization and persecution also harbor a further goal: they do not only imply the reinstatement of an economic model but rather the use of the applicable skills to teach discipline. Who do we teach discipline to? To all national and popular sphere leaders.

The idea behind this approach is to enforce discipline and to instill fear because who is going to dare to engage in tasks such as the AFJP or YPF recovery once again, or to stand against the International Monetary Fund? And this task cannot be pursued by a single individual but by society and the popular, national, democratic forces that must get themselves organized based upon a shared conviction, and the same faith. During the *Puebla Group* gathering in Buenos Aires, José Luis Rodríguez Zapatero stated he hoped for the best. I cannot ascertain whether this task will take one, two, or twenty years, but I know the truth always comes to light. Perhaps we all harbor the rightful sensation this situation is absolutely unfair. It is indeed truly unfair, but it is even more unfair because the Judiciary, which is after political leaders and a former president, is ultimately involved. Well, these are the risks of becoming engaged in politics. When deciding to take sides, we are aware of the price to pay. Aligning with the others and the media implies there are no setbacks at all; you are viewed like a blonde, tall, beautiful, blue-eyed woman. The problem crops up when we decide to get aligned with people´s interests and with those of the vast national majority. That is absolutely a different scenario.

Last but not least, this judicial system is not only intended for the foregoing purpose since profound segments of society also stand as victims of the absence of such system. And this is the case of neoliberalism supporting a state displacement policy and that of the acceptance of another current major misfortune known as drug-trafficking and affecting societies and our region.

As the State fades away and drug trafficking takes over, they attempt to convince us they are in fact fighting against drug trafficking when children or women victims of street drug dealing are arrested. Still, that is not the case. That is why if we are to struggle against drug trafficking, we must first dismantle the financial system engaged in drug money laundering; in other words, the drug money laundering system.

Who would think we are to believe gangs bearing grandiloquent names and often being illiterate, are the architects behind the ploys devised to launder billions arising from drug trafficking? Please, wake up to reality right now! Thus, it is also necessary to retrieve a judicial system not only for the impact it may exert on political leaders committed to the advocacy of popular interests but also for the chance we may have to address current challenges ranging from drug trafficking to natural resources´ claims. This is a must!

In a nutshell, it does not matter to know whether we will be condemned or if I will be banned from office or imprisoned. What indeed matters to me is our ability to reinstate a democratic, constitutional state where constitutional guarantees are not merely paper promises. This undertaking implies resuming the building of a nation like the one we had before because it is an achievable task. It was formerly doable, and Peronists once succeeded in doing so in the last century. It is also an attainable undertaking because our heroes also reached their goal by building nations and the Great Latin American homeland in the nineteenth century.

Like a Cicada

So many times, I was killed
So many times, I died
Yet here I am
Resurrecting

I am grateful to misfortune
And the hand holding the knife
Because it killed me so badly
And I carried on singing

Singing to the sun like the cicada
After a year under the ground
Like a survivor
Returning from the war

So many times, they erased me
So many times, I disappeared
I attended my own funeral
Alone and weeping

I tied a knot with the handkerchief
But I forgot later
That it was not the only time
and I carried on singing

Singing to the sun like the cicada
After a year under the ground
Like a survivor
Returning from the war

So many times they killed you

So many times you will resurrect
So many nights you will spend
In desperation

And when you start drowning
And darkness comes
Somebody will rescue you
To carry on singing

Singing to the sun like the cicada
After a year under the ground
Like a survivor
Returning from the war

María Elena Walsh, 1972

WE KEEP OUR WORD

Our word shows us our capacity to build a community, awareness, and a brotherhood culture.

The written word turned into books/seeds that help us navigate the path towards a more fair and equitable society, heading towards the Good Living. Words as bridges, not as walls.

We are living times in which they are manipulated to sow discord, segregation and xenophobia. They are used as excavators to widen and to consolidate divides, and as consumerist lures that quieten the damage to our shared home.

If the truth shall let us free, deliberate deception indeed seeks to enslave and colonize us. An irresponsible padding of cunning imposture, being detrimental to the shared understanding of senses, and hammering fake information. The acceptance of the post-truth is nothing but the celebration of lies. It is us the ones shouting at the naked king.

Dear readers: get a copy of and disseminate books by CICCUS as good news, regardless of the subject matter addressed, as a gift for discernment, peace, and love for life, which is not a minor issue.

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