



Submission to the UN Committee on the Rights of the Child for the adoption of the List of Issues prior to reporting (LOIPR) in the 94th Pre-Sessional Working Group

— November 2022 —

1. This submission¹ addresses sexual violence against children in Argentina, focusing on the statute of limitations for child sexual abuse crimes as a barrier to accessing justice for victims and survivors in the State party.

Child sexual violence and victims' Right to Time

2. Sexual abuse, violence and exploitation of children in its various forms is the most monstrous type of violence perpetrated against children. The Right to Time acknowledges that a victim of sexual abuse may initially block out the episode, or they may even be unaware that they have been the victim of a sexual attack, due to their age, emotional immaturity and the fact of their defencelessness, and that recognising and coming to terms with the knowledge that they have been a victim of a crime of this kind can take many years. The Australian Royal Commission into Institutional Responses to Child Sexual Abuse found that a victim of child sexual abuse usually takes an average of 24 years to come forward about their abuse.² While in the United States, the organisation Child USA found that the average age at which victims usually reveal the sexual violence that they suffered in childhood is 52 years.³ However, most victims and survivors never actually formally report their abuser. According to the National Victimisation Survey in

¹ This submission is made jointly by ARALMA - Asociación Civil (www.aralma.org); Movimiento Derecho Al Tiempo Argentina (www.instagram.com/derechoal tiempo); Asociación Civil contra el Abuso Sexual de Niños, Niñas y Adolescentes - ASI Basta (www.bastaasi.org); Asociación Argentina de Mujeres víctimas de violencia de género y violencia vicaria - MAMI (www.facebook.com/vvvMami); Asociación Civil Juntas por la Acción (tiny.cc/JuntasPorLaAccion); Yo Si Te Creo - Jujuy (www.facebook.com/YoSiteCreoJujuy); Sacar La Voz - Colectiva contra el Abuso Sexual en la Infancia Salta ([Inkiy.in/SacarLaVozColectivaSalta](https://www.inkiy.in/SacarLaVozColectivaSalta)); Red de Sobrevivientes de Abusos Eclesiásticos de Argentina (www.facebook.com/SobrevivientesdeAbusoEclesiasticoArgentina); CRIN - Child Rights International Network (www.crin.org).

² Royal Commission into Institutional Responses to Child Sexual Abuse, FINAL REPORT: Vol. 4 - Identifying and disclosing child sexual abuse, 2017. Available at:

https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_4_identifying_and_disclosing_child_sexual_abuse.pdf

³ Child USA, 'Statutes of Limitation Factsheet', 2020. Available at:

<https://childusa.org/wp-content/uploads/2020/03/SOLFactSheet2019.pdf>

Argentina, 87% of sexual crimes are never reported.⁴ The reasons for this include trauma, shame, social stigma, fear of threats and reprisals, a fear that they will not be believed, or simply because those abused fail to see themselves as victims of sexual violence.

3. Given the serious nature of these crimes, and the repercussions on victims, they require extra time to be dealt with. The available medical and psychological evidence published in scientific journals, and numerous clinical research projects acknowledge the harm this abuse can cause, such as post-traumatic stress, which is an unavoidable consequence for survivors. These effects inhibit victims' ability to put into words the trauma they experienced, preventing them from narrating their abuse, reporting it and getting the help they need to recover. This whole process is further aggravated when there are social, family or institutional pressures that discourage a victim from reporting the abuse.

4. As a result, such crimes are rarely reported immediately, which can have consequences in procedural terms. It is not unusual when a victim is finally ready to report their abuser, that they find themselves faced with an obstacle in the form of a statute of limitations. In most cases in Argentina, judges either acquit the abuser or dismiss the case in criminal actions on grounds that the statute of limitations in the case has expired, at times without the case even reaching trial.⁵ However, it is unacceptable that a crime as serious as child sexual abuse can be dismissed when there was no real possibility of even hearing the case.⁶ As a result, it is essential to guarantee the possibility of investigating and judging a case when the victim is ready to report their abuser. Countries need to consider sexual abuse in childhood as a serious public health problem, which is why it is appropriate to ensure that it is treated differently in terms of time frames and the type of assistance offered to survivors.

Statutes of limitations as a legal barrier to access to justice

5. For some years this issue has been the subject of legal debate in Argentina, culminating first in the 2011 approval of Law 26.705, which amended art. 67 of the Criminal Code, establishing that the statute of limitations - which is a minimum of 2 years and a maximum of 12 years, depending on the sexual crime in question, except for crimes carrying a sentence of life imprisonment, in which case there is a 15-year limitation period - would start running from midnight on the day that the victim attained their legal majority (18 years). Prior to 2011, the time limit to file a complaint was the same as that of any other common crime, namely the limitation period began at midnight on the day that the crime was committed.

6. This new law was an important step forward and it enabled many adults over the age of 18 years to report the sexual violence that they had suffered during their childhood. However, many cases were still excluded from access to justice, as the law in question only applied from the date of its entry into force, that is, abuse crimes committed prior to its promulgation would continue to be subject to the same statute of limitations as a common crime.

⁴ Instituto Nacional de Estadística y Censos (INDEC), Encuesta Nacional de Victimización 2017, p.43. (*National Institute of Statistics and Censuses – National Victimization Survey*). Available at: https://www.indec.gob.ar/uploads/informesdeprensa/env_2017_02_18.pdf

⁵ Piqué M. L. (15 April 2021), *El dolor no prescribe. La deuda de la Argentina con las víctimas de abuso sexual en la infancia* (*Pain cannot be dismissed. Argentina's debt to victims of childhood sexual abuse*). Available at: <https://agendaestadodederecho.com/>

⁶ Almada S. (2022) *Derecho al tiempo. Agresión sexual contra niños, niñas y adolescentes. Te lo cuento cómo, cuándo puedo* (*Right to Time. Sexual violence against children and adolescents I'll tell you how, when I can*), Editorial Raíces.

7. Subsequently, in November 2015 Art. 67 of the Criminal Code was redrafted with enactment of the new Law 27.205. This amendment of the statute of limitations now postpones the moment it would begin to run until the adult abuse survivor files a complaint or ratifies one made on their behalf by their legal representatives when they were a child. This same law also states that if the child dies as a result of any of the crimes indicated, the limitation period will begin running from midnight of the day on which they would have attained their majority.

8. Unquestionably, Laws nos. 26.705 and later 27.206 were a huge improvement to access to justice for victims of sexual violence. Notwithstanding, the statute of limitations for older cases of childhood sexual abuse continue to expire in practice. Argentina's only achievement with these laws was to *extend* the statute of limitations for new cases. As such, Argentina lags behind the growing number of Latin American countries that have abolished outright the statute of limitations for child sexual abuse:⁷ Nicaragua, El Salvador, México, Ecuador, Peru, Chile and Colombia.⁸

9. Furthermore, Law 27.206 does not operate retroactively, which means that for crimes committed prior to its entry into force, the maximum limitation period of 12 years following the child's attainment of their legal majority will continue to apply if the abuse was committed after 2011, or it is even less if the abuse was committed prior to 2011. Consequently most adults today who were abused as children will continue to have less time within which to file a complaint against their abuser than more recent victims.

10. The principle of non-discrimination should be valid for all victims of sexual violence rather than its enjoyment being subject to laws enacted after 2011. For example, a person who was abused in their childhood prior to the enactment of Law 26.705 is treated differently to a victim of abuse perpetrated after the aforementioned law came into force. It is a similar case with Law 27.206 which was passed in 2015. As a result, we consider that the various crimes of "sexual abuse" as they are classified in the Criminal Code should be aligned with the Universal Declaration of Human Rights, rather than rendering defenceless anyone who has had the courage to denounce crimes that occurred prior to Law 27.206. Consequently, Art. 67 of the Criminal Code should be further amended to extend the right of victims to file a complaint, in observance of Art. 16 of the National Constitution: "[...] all inhabitants are equal under the law".

11. It is for these reasons that on 21 June 2022, the Movimiento Derecho al Tiempo Argentina (Right to Time Movement of Argentina) submitted to the Chamber of Deputies of the Argentine Nation the draft bill "Right to Time" (Case number 0051-P-2022) proposing the elimination of a statute of limitations for the various crimes of child sexual violence.⁹

Retroactively applying a law abolishing limitation periods

12. Although the repeal of statutes of limitations would be a very positive development, the legal reforms carried out to date in Latin America have one significant drawback, namely that

⁷ See CRIN, *La tercera oleada: Justicia para los sobrevivientes de abuso sexual infantil en la Iglesia católica de América Latina*, (*the third wave: justice for survivors of sexual abuse in the Latin American Catholic church*) 2019, page. 32-33. Available at: <https://bit.ly/3dWd75c>

⁸ Infobae, 'Corte Constitucional deja en firme ley que evita la prescripción en delitos sexuales contra niños', (*The Constitutional Court makes final the law avoiding a time bar for crimes of child sexual abuse*), 2 December 2021. Available at:

<https://www.infobae.com/america/colombia/2021/12/03/corte-constitucional-deja-en-firme-ley-que-evita-la-prescripcion-en-delitos-sexuales-contra-ninos/>

⁹ Available at: <https://aralma.org/wp-content/uploads/2022/07/DERECHO-AL-TIEMPO-PROYECTO-DE-LEY-.pdf>

the removal of limitation periods for child sexual abuse crimes is not applied retroactively. As a result, for any child sexual abuse crimes committed before limitation periods were abolished, the previous statute of limitations continues to apply because the law reform is only deemed valid from the date on which it entered into force. This feature of national reforms may be a result of an over cautious reading of international human rights standards and their parallels enshrined in national constitutions. It is a common feature across international human rights law that no one shall be held guilty of an act or omission that was not a criminal offence under applicable law at the time it was committed.¹⁰ The legal principle considered in Art. 18 of the National Constitution of Argentina read in a similar vein. This protection is a basic requirement of the rule of law to ensure that no one is punished for an act that was not illegal at the time it was committed and cannot be punished more severely than it would have been at the time an illegal act was committed. It is far from clear that the extension of limitation periods retroactively, however, would violate this standard.

13. The issue of the retroactive extension of statutes of limitations has not yet been heard by the Inter-American Court of Human Rights (IACHR), but the case law of the European Court of Human Rights (ECHR) on this issue provides useful parallels for how the standards of the American Convention on Human Rights might be applied in Latin America should a challenge to a retroactive extension of a limitation period be heard by the inter-American human rights system. In case law to date, the ECHR has interpreted limitation periods as procedural as opposed to substantive features of the justice system, which can therefore be applied retroactively without violating the right against retroactive criminalisation.¹¹ In essence, this distinction is a recognition that extending a limitation period does not criminalise an act that was legal at the time it was committed or make the penalty more severe, it merely extends the time available to the court to consider cases. The ECHR has not, however, considered a case where a limitation period had elapsed but then extended allowing for the prosecution of a case that had been barred by the time limit.¹²

Truth trials

14. When a court in Argentina dismisses a criminal action filed by a child sexual abuse victim on the basis that the limitation period has expired, there arises the option of a so-called “truth trial”.¹³ These procedures enable evidence and testimonies to be gathered so that a court can determine the truth of a case and accordingly assign accountability. However, this type of trial has no penal consequences and therefore does not result in a criminal sentence for the abuser. The victim is moreover not offered reparations. As a result, the crimes remain unpunished. Unfortunately, today the only option open to survivors of childhood sexual violence, in whose cases the limitation period has expired, is to have their story legitimised by means of a “truth trial”. But even then, there are judges who still deny this option by arguing that this type of

¹⁰ The American Convention on Human Rights - article 9, the International Covenant on Civil and Political Rights article 15(1), European Convention on Human Rights article 7, Charter of Fundamental Rights of the European Union article 49.

¹¹ See *Coëme and others v. Belgium* [2000] sections. n. 32492/96, 32547/96, 32548/96, 33209/96, 33210/96, párrs. 149-151; *Previti v. Italy* [2013] sections. n. 1845/08, paras. 80-85.

¹² See *Coëme and others v. Bélgica* [2000] sections n. 32492/96, 32547/96, 32548/96, 33209/96, 33210/96, paragraphs 149; *Borcea v. Rumanía* [2015] section n. 55959/14, para. 65.

¹³ *Todo Noticias*, ‘Los delitos prescriben, el dolor no: dos “juicios por la verdad” avanzan en casos de abuso sexual contra niñas,’ (“Crimes are shelved, but not the pain: two “truth trials” make progress in cases of sexual abuse of girls”) 20 September 2022. Available at:

<https://tn.com.ar/sociedad/2022/09/20/los-delitos-prescriben-el-dolor-no-dos-juicios-por-la-verdad-avanzan-en-casos-de-abuso-sexual-contra-ninas/>

procedure is not regulated under Argentina's law, and as such the victim is left completely unprotected, and at the mercy of public state institutions.

15. A criticism of truth trials is that they are a poor replacement for legitimate access to justice and reparations. The fact that they simply exist is symptomatic of a society that has failed to recognise the reality of what it means to be a victim of childhood sexual abuse. Conversely, making the elimination of statutes of limitations apply retroactively in the case of sexual abuse crimes against children is one way of recognising and making some reparation for victims' rights and in respect of the principle of non-discrimination.

16. In a few isolated cases, Argentina's justice system has begun to recognise this. A precedent-setting judgement was handed down in 2015 by the High Court of Criminal Justice of the province of Entre Rios, in which the Court ruled that, due to the seriousness of the case, the statute of limitations did not apply in a case concerning the sexual abuse of seven boys, young seminarians, committed between 1984 to 1993 by the priest Justo José Illarraz.¹⁴ In 2018, the priest was eventually sentenced to 25 years in prison,¹⁵ a judgement that was confirmed that same year by Argentina's Supreme Court of Justice, as it dismissed an appeal filed by Illarraz's defence team which continued to claim that the statute of limitations in the case had expired.¹⁶

There is no expiration date for pain, suffering and trauma

17. The different types of sexual abuse inflicted on children has both short and long term consequences for their mental health, such as post-traumatic stress, which manifests itself in the form of anxiety, depression, eating disorders, problems with interpersonal relations and sleep disorders, as well self-harming, which in some cases can lead to suicide.¹⁷ Child sexual abuse is a crime where the harm is ongoing because the damage endures, and is not confined to the time of the event, but is ever-present in survivors' lives for as long as they live. The victim is required to shoulder the consequences, enduring chronic psychological suffering that is extremely difficult, if not impossible, to overcome¹⁸

18. Despite this, and notwithstanding the precedent set by the Illarraz case, judges in Argentina continue to acquit abusers or to dismiss cases against them on the basis that the statute of limitations has expired, and at times with complaints never even reaching trial. The following cases are illustrative of how far the Argentine courts of justice are removed from the reality of the lives of survivors of childhood sexual abuse.

19. On 29 January 2021, victim M.T. filed a complaint at the age of 35 years old in Mar de Plata against her father, her uncle and her grandfather (despite the last two individuals having already died) for the the sexual abuse she had suffered multiple times between the ages of 3 to

¹⁴ Page 12, 'Los abusos no prescriben', (*"Abuse has no expiry date"*) 24 April 2015. Available at:

<https://www.pagina12.com.ar/diario/sociedad/3-271533-2015-04-28.html>

¹⁵ *La Nación*, 'Condenan al cura Justo José Illarraz por abusar de siete seminaristas', (*the priest, Justo José Illarraz found guilty of abusing seven seminarians*) 22 de mayo de 2018. Available at:

<https://www.lanacion.com.ar/sociedad/condenan-al-cura-justo-jose-illarraz-por-abusar-de-siete-seminaristas-nid2136673/>

¹⁶ Centro de Información Judicial, 'La Corte Suprema convalidó el juzgamiento penal del cura Illarraz' (*The Supreme Court validated the criminal judgement in the case of the priest Illarraz*), 7 June 2018. Available at:

<https://www.cij.gov.ar/nota-30557-La-Corte-Suprema-convalid-el-juzgamiento-penal-del-cura-illarraz.html>

¹⁷ UNICEF (2017) Preventing and Responding to Violence against Children and Adolescents. Available at:

<https://www.unicef.org/ecuador/informes/abuso-sexual-contra-ni%C3%B1os-ni%C3%B1as-y-adolescentes>

¹⁸ Almada S. (2022) *Derecho al tiempo. Agresión sexual contra niños, niñas y adolescentes lo cuento cómo, cuándo puedo*, (*Right to Time. Sexual violence against children and adolescents I'll tell you how, when I can*), Editorial Raíces.

12 years, which occurred between 1988 to 1997. Three weeks later, the Public Prosecutor dismissed the case, considering that the statute of limitations for criminal action had expired. A presiding judge approved this decision. In May 2022, the Chamber of Appeals and Guarantees in Criminal Matters decided to revoke that judgement and ordered a truth trial which, since it has no consequences in criminal proceedings, allows her abuser to avoid sentencing.¹⁹

20. In April 2022, a presiding judge in Neuquen dismissed a criminal action in which two defendants were accused of sexual violence perpetrated from 1990 to 1991 when the victim was aged between 13 and 14 years old. This case is unusual in that the judge rejected all possibilities for holding a truth trial, contending that a procedure of this kind was not established in Argentina's legal system.²⁰

21. On 12 July 2021 the highest court of the province of Salta acquitted a priest known as J.C.A., accused of two counts of sexual abuse perpetrated between the years 1995 to 1998 against two boys, on the basis that the limitation period had expired.²¹ That same year (2021) the same court allowed another priest E.L. to walk free despite accusations of aggravated sexual assault and corruption of the minors J.C.G. and C.F.M.R., which occurred between 1989 and 1995.²² It is worth mentioning that at the time of the abuse (1991) the State was aware of the situation, as one of the victims had requested assistance from a youth court judge who took no action because the parent had not filed the appropriate complaint.²³

22. On 6 May 2021, the High Court of Justice of the province of la Pampa dismissed the criminal proceeding initiated by a woman who alleged she was sexually abused as a child between 1993 and 1995, beginning when the victim was 3 years old. Her complaint highlights a paragraph from a psychologist's report: "the psychological damage inflicted on the victim has not been repaired with the passage of time". Despite this, the Court decided to let this crime go unpunished, leaving the victim with no recourse to justice.²⁴

23. P.H. filed a complaint against their abuser, the priest Marcelino Moya, in 2015 who was sentenced to 17 years in prison in 2019 for the abuse committed between 1993 and 1994. P.H. was 14 years old at the time of the events. Eleven years after the abuse took place, the victim felt able to file a complaint at the age of 25 years old. The priest appealed the court's decision, and the appeals court ratified the judgement of the court *a quo* in 2020. The priest appealed

¹⁹ Braillard M. (23 May 2022), 'Revocan la prescripción de la causa contra un policía acusado de haber violado a su hija' (*The time bar is revoked in the case of a policeman accused of raping his own daughter*). Available at: <https://www.lanacion.com.ar/seguridad/revocan-la-prescripcion-de-la-causa-contra-un-policia-acusado-de-haber-violado-a-su-hija-nid23052022/>

²⁰ Berto G. (13 April 2022) 'No habrá juicio de la verdad por el abuso de Andacollo ocurrido hace 30 años' (*There will be no truth trial for Andacollo's abuse which happened 30 years ago*). Available at: <https://www.rionegro.com.ar/justicia/sociedad/no-habra-juicio-de-la-verdad-por-el-abuso-de-andacollo-ocurrido-hace-30-anos-2245762/>

²¹ *Nuevo Diario de Salta*, 'Por "supuesta" prescripción, la Corte de Salta sobreseyó al cura Aguilera', (*Due to "alleged" statutory limitation, the Salta Court acquitted the priest Aguilera*) 13 July 2021. Available at: <https://www.nuevodiariodesalta.com.ar/>

²² *Página 12*, 'Confirman la prescripción de las causas por abuso sexual contra el excura Lamas', (*The claims for sexual abuse by the former priest Lamas are confirmed as out of time*), 24 September 2021. Available at: <https://www.pagina12.com.ar/369968-confirman-la-prescripcion-de-las-causas-por-abuso-sexual-con>

²³ *Idem*.

²⁴ *El Diario de la Pampa*, 'El STJ anuló un fallo del TIP que declaró "imprescriptible" un caso de abuso infantil', (*the High court cancelled a decision of the TIP which declared a case of child abuse to be "time barred"*), 10 May 2022. Available at: <https://www.eldiariodelapampa.com.ar/la-pampa/-31569/el-stj-anulo-un-fallo-del-tip-que-declaro-ldquoimprescriptibleldquo-un-caso-de-abuso-infantil>

again, and in 2023 the High Court of Justice of the province of Entre Ríos dismissed the case by 2 votes to 1, holding that the statute of limitations had expired. In explaining their argument, one of the judges stated that "too much time" had passed since the victim had been a legal minor and there had been "innumerable opportunities" for the victim to file a complaint against their abuser, referring to this delay as "indecision".²⁵

24. We urge the Committee to submit the following questions to the State party:

- What measures has Argentina taken to ensure access to truth, justice and reparations for survivors of childhood sexual violence?
- What consideration has Argentina given to the draft bill "Right to Time" (case no. 0051-P-2022) which proposes abolishing the statute of limitations for the various forms of child sexual abuse?
- Why does Argentina favour the preservation of a statute of limitations for child sexual abuse complaints instead of ensuring holistic reparations to victims?
- What consideration has Argentina given to retroactively applying the elimination of the statute of limitations for child sexual abuse cases?

²⁵ *La Nación*, 'La Justicia sobreseyó por prescripción a un cura condenado por corrupción de menores', 10 September 2021 (*The Court acquits a priest found guilty of corruption of minors on grounds that the case was out of time*). Available at: <https://www.lanacion.com.ar/sociedad/la-justicia-sobreseyo-por-prescripcion-a-un-cura-condenado-por-corrupcion-de-menores-nid10092021/>