

THE AMIA SPECIAL INVESTIGATION UNIT: AN OVERVIEW OF ITS HISTORY AND A PROPOSAL FOR THE FUTURE

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I.	INTRODUCTION	40
II.	SOME BASIC FACTS ABOUT THE ARGENTINE LEGAL SYSTEM AND THE AMIA CASE	42
	A. <i>The Public Prosecutors Office and the Executive Branch</i>	43
	B. <i>Victims and Government Agencies' Participation in Criminal Proceedings</i>	45
	C. <i>An Outline of the AMIA Case and its Offspring</i>	47
	D. <i>Victim Participation in the AMIA and AMIA II Cases</i>	51
III.	A BRIEF HISTORY OF THE AMIA UNIT'S WORK (2000-2018)	53
	A. <i>A Tough Start and Ambiguous Relationships (2000- 2006)</i>	54
	B. <i>New Partners and a Change in Direction (2006-2015)</i>	58
	C. <i>A Failed Relaunch Followed by an Abrupt Ending (2016-2018)</i>	61
IV.	THE QUESTION ABOUT THE AMIA UNIT'S LEGACY	65
	A. <i>A Rough Start: Political and Institutional Obstacles</i>	65
	B. <i>Lack of Stability and Support in Key Moments</i>	67
	C. <i>Problems to Determine the Impact of the AMIA Unit as a Victim Complainant</i>	69

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D. <i>The Insularity of the AMIA Unit and its Overly Limited Approach to the Case</i>	71
V. AN OPPORTUNITY TO DO BETTER: A PROPOSAL FOR THE FUTURE OF THE CASE	72
A. <i>Why the Involvement of the Program for Truth and Justice Could Mean Good News</i>	73
B. <i>What is Missing and How Could the Government Help? ...</i>	75
C. <i>What Could be Achieved by This?</i>	78
VI. CONCLUSION	81

I. INTRODUCTION

By June 2000, the Israeli-Argentine Mutual Association (AMIA) attack investigation had been open for almost six years and was being led by Federal Judge Juan José Galeano and two Federal Prosecutors, Jose Barbaccia and Eamon Mullen. Some months prior, Judge Galeano concluded the so-called “local connection” who helped the foreign attackers, including, Carlos Telleldín, the last known owner of the truck used as the car bomb, and a group of Argentine policemen, who had knowledge of the plan and allegedly delivered the vehicle to the foreign attackers, should stand trial.¹ Although the “international connection” investigation stalled because all the suspects had fled the country, there were ongoing efforts to gather additional leads and information about what had happened.

The investigators, however, faced allegations of serious misconduct and the investigation’s integrity had already been questioned. During 1995, Telleldín reported that a former military officer, who claimed to be a friend of his father, visited him in prison and offered him money in exchange for testifying that a Lebanese national, who at the time was being held in Paraguay, was involved in the attack.² In March 1997, Juan José Ribelli, another defendant in the case, requested to see Judge Galeano and gave him a copy of a video which contained a recorded meeting between Judge Galeano and Carlos Telleldín in which the two discussed a monetary payment

1. *AMIA: pocas evidencias*, LA NACION (July 18, 1996), <https://www.lanacion.com.ar/sociedad/amia-pocas-evidencias-nid167940>.

2. Report Observation by Dean Claudio Grossman International Observer of the IACHR during the Trial about the Israeli-Argentine Mutual Association (AMIA), Captain Héctor Pedro Vergez visits, p. 2993/3020, <https://www2.jus.gov.ar/amia/grossman/Las%20visitas%20del%20Capitan%20Hector%20Pedro%20Vergez.pdf>.

in exchange for Telleldín's testimony.³ Shortly after, a television program aired the material which prompted an investigation against Judge Galeano, but the case was closed in a matter of months.⁴

Thereafter, President Fernando de la Rúa created the Special Investigation Unit for the AMIA attack (hereinafter, "AMIA Unit" or "the Unit") to assist in the investigation. According to the Minister of Justice, Ricardo Gil Lavedra, this initiative was a sign that the government was committed to the investigation and intended to give "a strong push" to the trial that was about to commence.⁵ The AMIA Unit began as a coordination body in which both intelligence and law enforcement agencies worked together to assist the judge and the prosecutors and carry out investigations.⁶ A few months later, the AMIA Unit incorporated the Anti-Corruption Office and was in charge of a governmental official, who would represent the Executive Branch and have unrestricted access to all information related to the case.⁷

From this moment on, the AMIA Unit began to operate as an investigative body which withstood many changes throughout the case. The AMIA Unit was not the only way in which the Executive Branch participated in the AMIA case, but it was the only institution specifically created to take part in the case and did so for the longest amount of time. Under the management of seven lawyers, six men and one woman with experience in public office, the body carried out a broad spectrum of tasks while it represented the government for eighteen years until its dissolution in March 2018.⁸ Therefore, a review of the AMIA Unit's history is useful in furthering our understanding of the Executive Branch's participation in the case and its attitude towards it.

3. *No hay cosa juzgada*, INFOJUS NOTICIAS, <http://juicioamia.infojusnoticias.gov.ar/audiencias/no-hay-cosa-juzgada/> (last visited Oct. 14, 2019).

4. *Id.*

5. *Becerra coordinará la Unidad Especial de Investigaciones de la AMIA*, DIARIO JUDICIAL (Sept. 14, 2000), <https://www.diariojudicial.com/nota/38649> [hereinafter *Becerra coordinará la Unidad Especial de Investigaciones*].

6. Law No. 846/2000, arts. 1-4, Sept. 29, 2000, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/64485/norma.htm>.

7. Law No. 107/2001, art. 1, Jan. 30, 2001, B.O. 1 (Arg.), <https://www.boletinoficial.gob.ar/#!DetalleNorma/7211797/20010130>; see Law No. 846/2000, *supra* note 6.

8. See Law No. 846/2000, *supra* note 6.

This paper's purpose is to examine the AMIA Unit's institutional trajectory and relationships with judges, prosecutors, victims, and government agencies involved throughout the case. First, this article argues the AMIA Unit failed to achieve its goals not only because of flaws and relative weaknesses in its design, but also due to the government's refusal to treat the AMIA case as more than a criminal investigation and the unwillingness to recognize the need to utilize non-judicial truth-seeking mechanism to move the process forward. Second, this article claims that, post-AMIA Unit dissolution, the government could have reversed damages caused by such omissions through two seemingly uncontroversial decisions: playing an active role in the on-going survey of the Intelligence Agency archives and releasing declassified documents.

This article's second section provides a brief description of distinctive traits in the Argentine legal system and a recap of relevant events of the AMIA case necessary to understand the AMIA Unit's role. The third section is devoted to the AMIA Unit's history and its main lines of work. In the fourth section, the AMIA Unit's legacy is examined to identify problems which affected its ability to make meaningful contributions to the investigation and prevented the Unit from becoming an important actor. Lastly, the fifth section proposes a work agenda that should be adopted and examines contributions it could make to the case. This paper concludes with brief thoughts regarding the case's the future.

II. SOME BASIC FACTS ABOUT THE ARGENTINE LEGAL SYSTEM AND THE AMIA CASE

This section provides a brief description of Argentina's criminal justice system and partly explains why the government chose to participate in the investigation through the AMIA Unit. The Argentine Constitution states the prosecutors answer only to the Public Prosecutor's Office, an office independent from all other government branches, and bars the President from giving instructions to the Attorney General and federal prosecutors.⁹ However, Argentina's federal law allows many actors, including the federal government, to take part in criminal proceedings as "victim complainants," granting them powers similar to the prosecutors.¹⁰

9. Law No. 24.946, art. 1, Mar. 11, 1998, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>.

10. *Id.*

Initially, the AMIA Unit was created to assist the leading judge and the prosecutors in the AMIA investigation. However, in 2006, the government took advantage of their ability to become a “victim complainant” in the criminal proceedings.¹¹

This section’s last two segments recap the AMIA bombing’s main investigation and summarizes the events which prompted the criminal proceedings that spurred the AMIA II case. The AMIA II case investigated the attack’s alleged cover up and the initial investigation tampering. The second case sparked a division among victims which prompted the creation of several victim organizations, each attributing their different beliefs on effectiveness of the contributions made toward the AMIA bombing investigation by Judge Galeano and Federal Prosecutors Barbaccia and Mullen and the several Presidents who held office during these twenty-five years.¹² With each organization and community institution who participated in the criminal proceedings as victim complainants came extra layers of complexity.

A. The Public Prosecutors Office and the Executive Branch

The Republic of Argentina has a predominantly European-inspired civil law system and a criminal procedure code which distributes authority between the judges and prosecutors. The criminal procedure code also contains rules which dictate how criminal investigations and trials should be conducted. For example, all relevant activity and information must be documented in a file which is the main, and almost exclusive, source of information for the parties. The case file remains under the judge’s or the prosecutor’s custody, depending on who controls the investigation. Almost all criminal investigations are led by investigative judges who are responsible for gathering evidence and ultimately defining the case’s outcome by deciding whether or not the proceedings go to trial.¹³

The prosecutor’s role is to advise judges, propose investigative measures, and challenging judicial opinions with which they

11. *Id.*

12. *AMIA: El Estado desistió de la acusación contra los ex fiscales Mullen y Barbaccia por encubrimiento*, PERFIL (Feb. 1, 2018), <https://www.perfil.com/noticias/politica/amia-el-estado-no-pidio-penas-para-los-ex-fiscales-mullen-y-barbaccia-por-encubrimiento.phtml>.

13. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 196 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#4>.

disagree. In certain circumstances, judges may delegate their investigative power to prosecutors.¹⁴ Under federal law, judges are responsible for investigating particular crimes, such as kidnappings.¹⁵ AMIA bombing investigation judges delegated their power to prosecutors as follows, Federal Judge Juan Jose Galeano led the investigation until 2005 when his successor, Federal Judge Rodolfo Canicoba Corral, handed the investigation over to prosecutors, Alberto Nisman and Marcelo Martínez Burgos, who were in charge of the recently created AMIA Prosecution Unit.¹⁶

Since the 1994 constitutional reform,¹⁷ the independent Public Prosecutor's Office has been responsible for promoting justice, advocating for society's general interests, and defining its own criminal prosecution policy.¹⁸ The Public Prosecutor's Office is not subject to the President's authority, nor does it represent the President before the courts. Although the President selects an Attorney General to lead the Public Prosecutor's Office, such selection is subject to two-thirds of Senate's approval.¹⁹ Once appointed, the Attorney General has autonomy to exercise their duties and can only be removed for grave ethical or criminal misconduct through the same procedure established for removing Supreme Court justices.²⁰ Federal prosecutors are appointed through a similar procedure.²¹

Prosecutors are almost autonomous and do not receive specific instructions for how to handle cases from the Attorney General.²² However, prosecutors are required to investigate all crimes of which they have knowledge and have limited discretion to engage in

14. *Id.*

15. *Id.*

16. AMIA CASE: REPORT ON THE JUDICIAL ACTIVITY 1994-2015 (EXCERPTS), AMIA COMUNIDAD JUDIA, 33 (2016), <http://www.albertonisman.org/wp-content/uploads/2019/07/AMIA-Case-Report-on-the-Judicial-activity.pdf> [hereinafter AMIA CASE: REPORT ON THE JUDICIAL ACTIVITY].

17. Art. 120, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>.

18. Law No. 24946, art. 3, Mar. 23, 1998, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/45000-49999/49874/texact.htm>

19. Law No. 24946, art. 5, Mar. 23, 1998, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/45000-49999/49874/texact.htm>.

20. *Id.* at art. 18.

21. *Id.* at art. 5.

22. *Id.* at art. 31.

making deals or negotiating pleas with defendants.²³ With no authority over prosecutors or judges, the Executive Branch may cooperate with investigations through law enforcement agencies and provide additional support from the outside. If the Executive Branch wishes to participate directly in a case, it must do so as a “victim complainant.”²⁴

B. Victims and Government Agencies’ Participation in Criminal Proceedings

Argentina’s federal criminal procedure code allows for many actors to take part in criminal proceedings as “victim complainants.” Both victims of crimes or a victim’s parents, children, or surviving spouse can act as a “victim complainants.”²⁵ Legally registered associations may also act as a “victim complainant,” but only during cases in which the association’s statutory purpose is directly related to a trial for crimes against humanity or serious violations of human rights.²⁶ Since 1967, the Executive Branch has been able to participate in cases involving crimes against national security, public authorities, constitutional order, the public administration, and governmental assets.²⁷ Government agencies can intervene as “victim complainants” in cases related to their responsibility.²⁸

Typically, government agencies which monitor highly regulated activities or combat complex crimes, such as money laundering and white-collar crimes, intervene as “victim complainants.” In other situations, the Executive Branch’s participation represents its commitment towards certain values or causes, including the public administration’s transparency or the fight against impunity. For

23. *Id.*

24. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 82 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#4>.

25. *Id.*

26. *Id.*

27. Law No. 17516, art. 4, Oct. 31, 1967, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28644/norma.htm>.

28. Law No. 24946, art. 37, Oct. 31, 1967, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/45000-49999/49874/texact.htm>.; Law No. 20091, art. 67, Feb. 7, 1973, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/20965/texact.htm>.; Law No. 17811, art. 7, Jul. 22, 1968, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16539/texact.htm>.

example, in December 1999, President de la Rúa created an Anti-Corruption Office to act as a victim complainant in criminal cases against corrupt government officials.²⁹ More recently, President Kirchner and Christina Fernández de Kirchner, ordered the Ministry of Justice to intervene, as a victim complainant, in cases against former members of the Armed Forces for crimes against humanity.³⁰ The AMIA Unit became a part of this trend in March 2006 when they entered the AMIA II case as a victim complainant.³¹

To take part in a criminal proceeding as a victim complainant, the interested party must submit an application to the case's judge.³² The judge determines whether the proposed victim complainant satisfied the legal requirements to join the criminal proceeding.³³ If application is not granted, the proposed victim complainant can appeal a rejected application.³⁴ However, if the application is granted, a victim complainant is admitted to the criminal proceedings and allowed to propose evidence gathering measures, file charges against the defendant, appeal adverse rulings, and participate in the trial.³⁵ Although victim complainants and prosecutors enjoy similar powers, there are three relevant differences: (1) judges cannot delegate investigative obligations onto a victim complainant, (2) victim complainants cannot challenge bail decisions; and (3) victim complainant's cannot make deals with defendants.

Without significant oversight, the Executive Branch directly appoints the attorneys who represent them in criminal proceeding. These lawyers usually answer to high-ranking government officials in the agency they represent during such proceedings. Unlike prosecutors, Executive Branch's lawyers are told what to do by their superiors. It is important to mention that while this arrangement

29. Law No. 102/99, art. 2, B.O. Dec. 29, 1999 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/61724/texact.htm>.

30. Natalie Alcoba, *Argentina's Ex-President Kirchner Faces First Corruption Trial*, AL JAZEERA (May 21, 2019), <https://www.aljazeera.com/news/2019/05/argentina-president-christina-kirchner-faces-corruption-trial-190521131408914.html>.

31. Law No. 229/2006, art. 1-4, Mar. 1, 2006, B.O. 1 (Arg.) servicios.infoleg.gob.ar/infolegInternet/anexos/11000-114392/norma.htm.

32. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 84 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=16546>.

33. *Id.*

34. *Id.*

35. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 80 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=16546>.

might seem obvious, the fact that a lawyer representing a government agency in a criminal case can be subjected to anyone's authority other than the law and the evidence of the case is somewhat controversial in Argentine legal culture.

While there is no legal impediment, it is uncommon for actual victims and the federal government to participate as victim complainants in the same proceeding, except in connection with crimes against humanity. Additionally, victims do not regularly hold entirely different views about event which lead to criminal trials or the defendant's responsibility. As an exception to all such principles, the AMIA case presents a series of distinctive features.

C. *An Outline of the AMIA Case and its Offspring*

The AMIA case pursues two connected, independent theories respectively referred to as the attack's "local connection" and the "international connection." The former, which was particularly active between 1994 and 2004, investigated the alleged participation of Argentine citizens in the bombing.³⁶ Judge Galeano and Federal Prosecutors Mullen and Barbaccia pursued the hypothesis that, Carlos Telleldín, a used car salesman with a criminal record, and his associates used stolen vehicle parts to modify a Renault traffic van³⁷ allowing for a bomb to be placed inside the van before handing it over to a group of police officers. According to their theory, police officers Juan José Ribelli, Anastasio Leal, Raul Ibarra, and Mario Barreiro allegedly had knowledge of the final plan when delivered the van to those responsible for the attack.³⁸

These defendants and several others stood trial before the Third Federal Trial Court of the City of Buenos Aires between September 2001 and September 2004, but each defendant was acquitted and the entire investigation was nullified. As such, Judge Galeano, Federal

36. Alexei Barrionuevo, *Inquiry on 1994 Blast at Argentina Jewish Center Gets New Life*, N.Y. TIMES (July 17, 2019), <https://www.nytimes.com/2009/07/18/world/americas/18argentina.html>. Judge Galeano initiated the "local connections" investigation in 1994, but was impeached in 2005.

37. *Chronology of the AMIA Case 20 Years After the Attack*, BBC (July 18, 2014), https://www.bbc.com/mundo/noticias/2014/07/140716_argentina_amia_cronologia_nc.

38. *Carapintadas y terroristas en la mira*, LA NACION (July 27, 1997), <https://www.lanacion.com.ar/sociedad/carapintadas-y-terroristas-en-la-mira-nid73626>.

Prosecutors Mullen and Barbaccia, and several other high ranking investigators were accused of bribing witnesses, destroying evidence, and unlawfully depriving defendants of their freedom.³⁹ This ruling was appealed several times, but was ultimately, in May 2009, the Supreme Court affirmed the initial ruling which found only the investigation's first fifteen months were not tainted and there was enough evidence against Telleldín to conclude that he should face a retrial.⁴⁰

Following the Third Federal Trial Court decision, the Council of Magistrates removed Judge Galeano from the bench and Federal Prosecutors Mullen and Barbaccia resigned. In September 2004, the Attorney General created the AMIA Prosecution Unit and appointed Alberto Nisman, who at that time already collaborated with Federal Prosecutors Mullen and Barbaccia, and Marcelo Martínez Burgos as lead prosecutors when.⁴¹ Shortly thereafter, Federal Judge Rodolfo Canicoba Corral, who replaced Judge Galeano, handed investigation back to them. Caught in the midst of another scandal, Burgos resigned in April 2007, but Nisman led the AMIA Prosecution Unit until his death in February 2015.⁴² After, the Attorney General decided at least three prosecutors were needed to lead the AMIA Prosecution Unit.⁴³

The “international connection” investigation was carried out in two stages. Judge Galeano, Mullen, and Barbaccia led the first stage and the AMIA Prosecution Unit led the second.⁴⁴ The accusations arising from the two investigations are substantially similar, alleging

39. Tribunal Oral en lo Criminal Federal N°3 de la Capital Federal [Oral Criminal Federal Court 3], “Telleldín, Carlos Alberto y otros s/ homicidio calificado atentado a la AMIA”, Tribunal Oral Federal 3, (2004) (Arg.), <https://www2.jus.gov.ar/amia/sentencia/fallo.pdf>.

40. La Corte reabre investigación por el atentado a la AMIA, CENTRO DE INFORMACIÓN JUDICIAL (May 27, 2009), <https://www.cij.gov.ar/nota-1391-La-Corte-reabre-investigaci-n-por-el-atentado-a-la-AMIA.html>.

41. *Id.*; Ricardo Kirschbaum, *AMIA: destituyeron a Galeano*, CLARIN (Aug. 2, 2005), https://www.clarin.com/ediciones-antiores/amia-destituyeron-galeano_0_SJsedfuk0Ke.html; *Cronología del caso AMIA a 20 años del atentado*, BBC NEWS (July 18, 2014), https://www.bbc.com/mundo/noticias/2014/07/140716_argentina_amia_cronologia_nc.

42. Raúl Kollmann, *El extraño giro de la causa AMIA*, PÁGINA 12 (Apr. 23, 2007), <https://www.pagina12.com.ar/diario/elpais/1-83936-2007-04-23.html>.

43. Aurelio Tomás, *Siete fiscales, novedades y varias polémicas en la unidad AMIA*, PERFIL (Jan. 17, 2019), <https://www.perfil.com/noticias/politica/nisman-siete-fiscales-novedades-y-varias-polemicas-en-la-unidad-amia.phtml>.

44. See Kirschbaum *supra* note 41.

that in Mashad, Iran on August 14, 1993, senior officials in the Islamic Republic of Iran met with Mohsen Rabbani and Ahmad Reza Asgahri, Iranian diplomats from the delegation to Argentina, and the Iranian Special Affairs Committee.⁴⁵ At the Iranian Intelligence and Security Office's request, the committee allegedly ordered an attack against the AMIA headquarters in Buenos Aires which members of Hezbollah, the terrorist organization, subsequently planned and carried out.⁴⁶

Judge Galeano ordered their international arrests and persuaded Interpol to issue red notices for twelve Iranian citizens, including several Iranian diplomats.⁴⁷ However, following the Third Federal Trial Court's ruling and complaints from the Islamic Republic of Iran, Interpol suspended and ultimately canceled these initial red notices after Argentina failed to prove it conducted a faultless investigation.⁴⁸ In 2007, the AMIA Prosecution Unit, led by Judge Rodolfo Canicoba Corral, issued international arrest warrant against ten individuals for the aforementioned crimes and later convinced Interpol to reinstate red notices against six of the individuals.⁴⁹ Since then, the Argentine authorities have confirmed the death of two suspects, Imad Fayez Moughnieh and Ali Akbar Hashemi Bahramiaie Rafsanjani, as well as detected international movements of several others, but constantly fail to secure international cooperation to carry out the remaining arrests.⁵⁰

45. *See generally id.*

46. *Iran Charged Over Argentina Bomb*, BBC NEWS (Oct. 25, 2006), <http://news.bbc.co.uk/2/hi/americas/6085768.stm>.

47. Ralph Joseph, *Iran Seeks Documents Supporting Charges*, U. PRESS INT'L (Aug. 11, 1994), <https://www.upi.com/Archives/1994/08/11/Iran-seeks-documents-supporting-charges/9615776577600/>.

48. *Argentinean Red Notices for Iranian Officials Cancelled*, INTERPOL (Sept. 27, 2005), [https://www.interpol.int/en/News-and-media/News/2005/PR041/\[hereinafter Argentinean Red Notices\]](https://www.interpol.int/en/News-and-media/News/2005/PR041/[hereinafter Argentinean Red Notices]).

49. *Executive Committee Takes Decision on AMIA Red Notice Dispute*, INTERPOL (Mar. 15, 2007), <https://www.interpol.int/en/News-and-Events/News/2007/INTERPOL-Executive-Committee-takes-decision-on-AMIA-Red-Notice-dispute>, Wendy Carillo, *A Who's Who in Argentina's Alleged Cover-up of the Death of Alberto Nisman and the 1994 Bombing of the AMIA Jewish Center*, MEDIUM (Feb. 26, 2015), <https://medium.com/reportedly/a-who-s-who-in-argentina-s-alleged-coverup-of-the-death-of-alberto-nisman-and-the-1994-amia-bombing-e03aa38cc932>.

50. *AMIA: Se acreditó judicialmente la muerte de uno de los imputados por el atentado*, MINISTERIO PÚBLICO FISCAL (May 18, 2017), <https://www.fiscales.gob.ar/amia-se-acredito-judicialmente-la-muerte-de-uno-de-los-imputados-por-el-atentado/>.

Concurrent criminal investigations against Judge Galeano, the prosecutors, and several other government officials began in 1997, as a result of the leaked video recording of a conversation between Judge Galeano and Telleldín.⁵¹ While initially dismissed, Claudio Lifschitz, Judge Galeano's former judicial clerk, gave a television interview in August 2000 where he claimed Judge Galeano's paid Telleldín to change his statement and revealed other irregularities allegedly committed during the investigation.⁵² As such, the Minister of Justice, Ricardo Gil Lavedra, requested the Attorney General open new investigations into these events.⁵³ The investigation only gained momentum after the Third Federal Trial Court's ruling, later becoming what is known today as the AMIA II case.

The AMIA II trial hearing took place between 2015 and 2019.⁵⁴ The defendants were former President Menem, Judge Galeano, former Federal Prosecutors Mullen and Barbaccia, Telleldín, Telleldín's ex-wife, and Telleldín's former lawyer. Additional defendants included former leaders of the Intelligence Agency, Hugo Anzorreguy, Patricio Finnen, and Juan Carlos Anchezar, former police division leaders previously involved in the investigation, Carlos Castaneda and Jorge Alberto Palacios, and the Delegation of Israeli Argentine Association's (DAIA) former president, Ruben Ezra Beraja.⁵⁵ Each faced different charges, but the trial focused on Judge Galeano's payment to Telleldín and investigation tampering by Alberto Kanoore Edul, who allegedly used his family's friendship with President Menem to prevent the police from executing search warrants on several of his properties in attempts to destroy or suppress incriminating evidence.⁵⁶

On February 28, 2019, the Second Federal Trial Court of Buenos Aires announced its verdict in which it convicted Judge Galeano, Federal Prosecutors Mullen and Barbaccia, Anzorreguy, Anchezar,

51. *See No hay cosa juzgada, supra* note 3.

52. *Acusan a Claudio Lifschitz de recibir coimas*, LA POLÍTICA ONLINE (July 19, 2019), <https://www.lapoliticaonline.com/nota/nota-59441/>.

53. Raúl Kollmann, *Gil Lavedra le pidió a Becerra que investigue los dichos de Lifchitz*, PÁGINA 12, <https://www.pagina12.com.ar/2000/00-08/00-08-16/pag10.htm> (last visited Sept. 23, 2019).

54. *Judge Who Led AMIA Bombing Probe Given 6 Years in Jail; Menem Cleared*, BUENOS AIRES TIMES (Feb. 28, 2019), <https://www.batimes.com.ar/news/argentina/judge-who-led-amia-bombing-probe-given-6-years-in-jail-menem-cleared.phtml>.

55. *Id.*

56. *Id.*

Telleldín and Castaneda⁵⁷ and acquitted President Menem, Palacios, Finnen and Beraja were acquitted.⁵⁸ These decisions were appealed by several parties and, at the time of writing, is currently under review.

D. Victim Participation in the AMIA and AMIA II Cases

Shortly after the attack many victims and relatives separated into two separate organizations, “Family Members and Friends of Victims of the AMIA Attack”⁵⁹ and “Memoria Activa.”⁶⁰ Those who formed Memoria Activa would meet at the AMIA bombing site near the Supreme Court of Justice building.⁶¹ Initially acting as a single victim complainant, the same lawyers represented such organizations and community institutions. However, in 1997, differences arose between Memoria Activa, whose members strongly criticized Judge Galeano’s work, and the community institutions who supported and believed in Judge Galeano’s work.⁶²

As a result, Memoria Activa hired their own representation to pursue a divergent strategy and began acting as an independent victim complainant. Memoria Activa members were marginalized from relevant developments in the case due to differences with Judge Galeano and Federal Prosecutors Mullen and Barbaccia, while AMIA/DAIA lawyers had privileged access. For example, only one of DAIA’s attorneys was present during all three of Abolghasem Mesbahi’s statements.⁶³ Other victim complainants were denied access and Judge Galeano ignored the AMIA Unit’s repeated offers

57. *Difunden los fundamentos de la sentencia del juicio oral por encubrimiento en la investigación del atentado a la AMIA*, CENTRO DE INFORMACIÓN JUDICIAL (May 3, 2019), <https://www.cij.gov.ar/nota-34335-Difunden-los-fundamentos-de-la-sentencia-del-juicio-oral-por-encubrimiento-en-la-investigaci-n-del-atentado-a-la-AMIA.html>.

58. *Id.*

59. Ignacio Rullansky et.al., *Estrategias Políticas De La Memoria: Las Agrupaciones De Familiares En Torno Al Caso AMIA Y Su Demanda De Justicia*, in 11 *HISTORIA, ESTADO, POLÍTICA Y MEMORIA: MIRADAS SOBRE LA SEGUNDA MITAD DEL SIGLO XX EN EL CONO SUR 3* (Esteban Pontoriero et al eds., 2005), <https://xdoc.mx/preview/actas-correspondientes-a-este-grupo-de-trabajo-5c140e1d963bd>.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

to provide technological means which would have allowed them to remotely follow the interrogation.⁶⁴

In 2002, Laura Ginsberg, one of the original members of Memoria Activa, formed a new organization called, “Group for the Clarification of the Unpunished AMIA Massacre” (abbreviated in Spanish to APEMIA).⁶⁵ According to Alberto Zuppi, Memoria Activa’s lead attorney, the problem originated when he accepted President Alberto Rodríguez Saá’s offer to become Secretary of Justice.⁶⁶ Zuppi and other Memoria Activa members believed that this appointment would help propel the investigation forward, but Ginsberg disagreed. Ginsberg’s public criticism of Zuppi’s decision created a rift within Memoria Activa which ultimately led to APEMIA’s formation.⁶⁷ Since then, APEMIA hired its own representation and pursued a different strategy.

Further deepening the differences between the complainants was the Third Federal Trial Court’s 2004 finding that Ruben Ezra Beraja, the DAIA president at the time of the attack, might have been aware of Telleldín’s payment having instructed judicial authorities to investigate him.⁶⁸ Memoria Activa and APEMIA were very critical of Beraja’s participation in the first investigation and requested his conviction during the AMIA II trial.⁶⁹ In contrast, AMIA and DAIA repeatedly defended Beraja’s work in the case and denounced the charges against him as being politically motivated or unsubstantial. In fact, AMIA’s president harshly criticized the AMIA Unit for requesting his conviction during its closing argument.⁷⁰

During a commemoration ceremony in July 2011, seventeen years after the attack, Sergio Burstein, a Family and Friends of Victims of the AMIA Attack member gave a controversial speech in which he heavily criticized the then Buenos Aires mayor, Mauricio Macri, for appointing Jorge Alberto Palacios, a defendant in the

64. *Id.*

65. SANDRA BRUNNEGGER & KAREN ANN FAULK, A SENSE OF JUSTICE: LEGAL KNOWLEDGE AND LIVED EXPERIENCE IN LATIN AMERICA 57 (Sandra Brunnegger & Karen Ann Faulk eds., 2016).

66. KAREN ANN FAULK, IN THE WAKE OF NEOLIBERALISM: CITIZENSHIP AND HUMAN RIGHTS IN ARGENTINA 134, 187 (2013).

67. BRUNNEGGER & FAULK, *supra* note 65, at 53, 58.

68. *Id.* at 71. *See also* FAULK, *supra* note 66, at 74.

69. BRUNNEGGER & FAULK, *supra* note 65, at 54.

70. *Fuertes críticas de AMIA contra Cimadevilla por la acusación a Beraja*, LA POLÍTICA ONLINE (Feb. 28, 2018), <https://www.lapoliticaonline.com/nota/111042-fuertes-criticas-de-amia-contr-cimadevilla-por-la-acusacion-a-beraja/>.

AMIA II trial, as his chief of police, and called attention to journalist José Eliashev, who exposed that the Argentine government was negotiating a deal with Iran several months earlier.⁷¹ As a result, Burstein was banned from future commemorations⁷² and formed a new organization called, “Association 18-J-Family Members and Friends of the victims of the AMIA attack.”⁷³

In late 2005, the Executive Branch began participating as a victim complainant in the AMIA II case through the Anti-Corruption Office, which was replaced by the AMIA Unit in March 2006.⁷⁴ Finally, the police officers who Judge Galeano charged and imprisoned, but were ultimately acquitted by the Third Federal Trial Court of the City of Buenos Aires, participated as victim complainants.⁷⁵

III. A BRIEF HISTORY OF THE AMIA UNIT’S WORK (2000-2018)

This section provides a brief overview of the AMIA Unit’s history which is divided into three separate eras based on its focus and its relationship with other governmental agencies and the parties to the proceedings. The first era began in 2000 when, after a few minor tweaks in its structure, the AMIA Unit began to operate under Nilda Garré’s direction. This first era lasted for about six years⁷⁶ and its distinctive feature was the tension between both Garré and her successor Alejandro Rúa and Judge Galeano and Federal Prosecutors Mullen and Barbaccia, who were already facing serious accusations

71. *AMIA: al acto de homenaje a las víctimas terminó con polémica*, EL CRONISTA (July 19, 2011) <https://www.cronista.com/economiapolitica/AMIA-el-acto-de-homenaje-a-las-victimas-termino-con-polemica-20110719-0069.html>.

72. *Id.*

73. Natasha Zaretsky, *Struggles of Coherence: Listening as Political Agency in the Plazas and Streets of Memory*, in LANDSCAPES OF MEMORY AND IMPUNITY: THE AFTERMATH OF THE AMIA BOMBING IN JEWISH ARGENTINA 130 (Annette Levine et al eds., 2015).

74. See generally *Denuncia penal de un exfuncionario contra el ministro Garavano*, LA NACION (Mar. 23, 2018), <https://www.lanacion.com.ar/politica/denuncia-penal-de-un-exfuncionario-contra-el-ministro-garavano-nid2119479>; see also Luciana Bertoia, *Argentina Reacts to AMIA Cover-Up Trial Rulings – With Appeals Set to Follow*, BUENOS AIRES TIMES (Feb. 3, 2019), <https://www.batimes.com.ar/news/argentina/argentina-reacts-to-amia-cover-up-trial-rulings-with-appeals-set-to-follow.phtml> [hereinafter Bertoia, *Argentina Reacts to AMIA Cover-Up Trial Rulings*].

75. Bertoia, *Argentina Reacts to AMIA Cover-Up Trial Rulings*, *supra* note 74.

76. AMIA CASE: REPORT ON THE JUDICIAL ACTIVITY, *supra* note 16.

for their work on the case.⁷⁷ During this era, the AMIA Unit contributed to the investigation while publicly denouncing the judicial authorities and filing criminal charges against them.

The second era began in March 2006 when the Unit stopped supporting to the bombing's investigation to become a victim complainant in the AMIA II case led by AMIA Prosecution Unit and Federal Judge Canicoba Corral.⁷⁸ Until December 2015, the main parties' interests remained relatively synchronized and the AMIA Unit did not have any major conflicts with such parties. This era ended after the 2015 Argentine presidential elections, which provoked a renewal in the Minister of Justice's authority thereby signaling the beginning of the third and final era in which confrontations between the AMIA Unit's leadership and its superiors in their respective attempts to regain importance in the main AMIA investigation.

In March 2018, the AMIA Unit dissolved in the midst of a national restructuring process and new tampering accusations.⁷⁹ Shortly thereafter, then AMIA Unit's director, Mario Cimadevilla, filed a criminal complaint against then Minister of Justice, Germán Garavano, and several cabinet.⁸⁰ According to Cimadevilla, the Minister of Justice interfered with the AMIA Unit's strategy in the AMIA II case to prevent former Federal Prosecutors Mullen and Barbaccia from being convicted despite there been sufficient evidence against them.⁸¹ The Truth and Justice Program, which has operated under the Ministry of Justice since 2007, absorbed the AMIA Unit's remaining responsibilities.⁸²

A. *A Tough Start and Ambiguous Relationships (2000-2006)*

After three months, the government decided the AMIA Unit's leader should be a high-ranking government official who could serve as a liaison between the government, judicial authorities, and the victims and their families. The President's first pick was the

77. *Id.*

78. *Id.* at 33-37.

79. *AMIA: Mario Cimadevilla acusó a Macri y Garavano de "encubrir amigos,"* PERFIL (Jan. 29, 2019), <https://www.perfil.com/noticias/politica/causa-amia-mario-cimadevilla-acuso-mauricio-macri-german-garavano-de-encubrir-amigos.phtml>.

80. *Id.*

81. *Id.*

82. *Id.*

Secretary of Political Affairs, Carlos Becerra, who only lasted a month in the position⁸³ and was later appointed Secretary General of the Presidency and then to the Secretary of Intelligence.⁸⁴ His replacement was Congresswoman Nilda Garré, who served as the Unit's coordinator until April 2001 and following a minor reform in its structure, became its Executive Secretary under the Secretary of Justice, Melchor Cruchaga.⁸⁵

Nilda Garré's short lived cycle was largely focused on solving organizational problems which threatened to delay the trial. Nevertheless, Garré set the tone with those in charge of the attack's investigation. Throughout Garré's term, the AMIA Unit carried out several tasks Judge Galeano and the prosecutors ordered, but Garré remained very critical of their work and helped to expose the cover-up plot denounced by some victim's organizations.⁸⁶ Garré's administration ended in October 2001, after Federal Prosecutors Barbaccia and Mullen accused her of revealing Abolghasem Mesbahi's identity and leaking his testimony to the press, and José Hercman, DAIA's president, publicly asked for her resignation.⁸⁷ Garré received some support from Memoria Activa, whose lawyers claimed that the same information had already been made public, but it was not enough.⁸⁸

Thereafter, Minister of Justice, Jorge De la Rúa, stated that Garré's declarations had been "very unfortunate" and that "her eagerness to let society know what was going on, caused her to cross

83. FLORENCIA FONTAN BALESTRA, TOWARDS A DEMOCRATIC CONTROL OF ARGENTINA'S INTELLIGENCE COMMUNITY 23 (Int'l Ctr. for Crim. Jus. ed., 2007), <http://www.law.harvard.edu/programs/criminal-justice/argentina.pdf>.

84. Law No. 430/2001, art. 2-3, Apr. 23, 2001, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/65000-69999/66741/norma.htm>.

85. *Id.*

86. *Juicio Por La AMIA: La DAIA Pide Que La Echen De La Comisión AMIA: Crece la presión para desplazar a Nilda Garré*, CLARIN (Oct. 4, 2011), https://www.clarin.com/politica/crece-presion-desplazar-nilda-garre_0_BJUgJPg0Ke.html.

87. BEATRIZ GUREVICH, PASSION, POLITICS AND IDENTITY: JEWISH WOMEN IN THE WAKE OF THE AMIA BOMBING IN ARGENTINA 31 (Hadassah-Brandeis Inst. Ed., 2005).

88. *AMIA: interrogarán a Mestre y Garré se fue del Gobierno*, EL DIA (Oct. 6, 2001), <https://www.eldia.com/nota/2001-10-6-amia-interrogaran-a-mestre-y-garre-se-fue-del-gobierno> [hereinafter: *AMIA: interrogarán a Mestre y Garré*]; *A Jorge de la Rúa no le gusta el "afán de informar" de Nilda Garré*, PÁGINA 12 (Oct. 1, 2001), <https://www.pagina12.com.ar/2001/01-10/01-10-04/PAG12.HTM> [hereinafter *A Jorge de la Rúa*].

the line,” and, thus, announced her resignation.⁸⁹ However, the criminal charges against her were quickly dismissed.⁹⁰ Months later in a television interview, Garré described Judge Galeano’s work as “abominable” and “shameful,” suggesting that AMIA, DAIA, and Judge Galeano were working together.⁹¹ Garré was later elected to Congress, where she kept working to expose their crimes, the investigation’s flaws, and pushed for the impeachment of Judge Galeano’s and Federal Prosecutors Mullen and Barbaccia.

Garré’s replacement was Alejandro Rúa, a lawyer who had worked for the Ministry of Justice.⁹² Rúa’s administration spanned throughout Judge Galeano’s investigation until the Nisman’s era began. Like his predecessor, Rúa worked with both Judge Galeano and the prosecutors, while attempting to expose the flaws in the investigation and the unequal treatments of the victim organizations. The AMIA Unit also drafted several decrees which allowed intelligence officers involved in the investigation to appear as witnesses during the trial while granting Judge Galeano and the prosecutors access to classified documents from intelligence and law enforcement agencies’ archives.⁹³

Between 2001 and 2003, the AMIA Unit submitted work plans that contemplated carrying out investigative measures required by the judge, the prosecutors, and the victim organizations while also including more ambitious tasks.⁹⁴ First, the AMIA Unit was tasked with digitizing Argentina’s immigration records from 1992 through 1994 and the diplomatic cables the Ministry of Foreign Affairs received prior to the attack.⁹⁵ Later, Judge Galeano requested the Unit survey intelligence and law enforcement agency archives, which

89. *AMIA: interrogarán a Mestre y Garré*, *supra* note 88.

90. See Daniel Schnitman, *La Voz y la Opinión*, YOUTUBE (July 20, 2002), www.youtube.com/watch?v=o1Kg3KeHxAM.

91. *A Jorge de la Rúa*, *supra* note 88.

92. *Alejandro Rúa: “Cayó el impulso en la causa AMIA,”* LA NACION (Feb. 26, 2006), <https://www.lanacion.com.ar/opinion/alejandro-rua-cayo-el-impulso-en-la-causa-amia-nid783730> [hereinafter *Cayó el impulso*].

93. See Judge Galeano, Orders, https://www2.jus.gov.ar/amia/Informe00/Informe_02.htm.

94. See Law No. 846/2000, *supra* note 6.

95. Law No. 398/2003, art. 1, July 22, 2003, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/86928/norma.htm>; Law No. 786/2003, art. 1, Sept. 18, 2003, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88547/norma.htm>.

the President had put at the disposal of the judicial authorities.⁹⁶ The AMIA Unit also announced its intention to create a repository for the materials' categorization and storage.⁹⁷

Rúa's relationship with Judge Claudio Bonadio, who at the time led the AMIA II case, was strained and he ultimately asked to be separated from the case.⁹⁸ In one of the Unit's public reports, Rúa stated that Bonadio consistently denied requests to access case files and to be present during testimonies relevant to Rúa's work, in violation of Federal Court of Appeals' orders and, thus, suggested the need to relay this situation to the Council of Magistrates.⁹⁹ In the Unit's last report, Rúa described the ongoing conflict, during which the Federal Court of Appeals issued additional orders which Bonadio ignored.¹⁰⁰

In December 2003, Judge Galeano was removed from the case, while Federal Prosecutors Mullen and Barbaccia were removed in April 2004 when they both resigned.¹⁰¹ In September 2004, the Attorney General created the AMIA Prosecution Unit to take part in all AMIA related proceedings.¹⁰² In October 2004, the Third Federal Trial Court of Buenos Aires acquitted every defendant from the "local connection" and ordered the investigation of Judge Galeano, Mullen, Barbaccia, President Menem, former Minister of Political Affairs, Carlos Corach, and various Federal Police and the Intelligence Agency members.¹⁰³ In August 2005, the Council of Magistrates removed Judge Galeano from the bench.¹⁰⁴ Both Rúa and Garré appeared as witnesses in the proceedings.¹⁰⁵ Thereafter,

96. *Id.*

97. *Id.*

98. AMIA CASE: REPORT ON THE JUDICIAL ACTIVITY, *supra* note 16.

99. *See* Law No. 398/2003, *supra* note 96.

100. AMIA CASE: REPORT ON THE JUDICIAL ACTIVITY, *supra* note 16.

101. *See id.*; Marcela Valente, *ARGENTINA: Expulsions in AMIA Blast Case Revive Plaintiff Discord*, INTER PRESS SERV. (Apr. 14, 2004), <http://www.ipsnews.net/2004/04/argentina-expulsions-in-amia-blast-case-revive-plaintiff-discord/>.

102. *See* AMIA CASE: REPORT ON THE JUDICIAL ACTIVITY, *supra* note 16, at 132.

103. *Doctor Juan José Galeano's Pedido de Enjuiciamiento*, COUNCIL OF MAGISTRATES (Aug. 3, 2005), <https://www.pjn.gov.ar/Publicaciones/00006/00006904.Pdf>.

104. *Id.*

105. Raúl Kollman, *Un oscuro porvenir para usía*, PÁGINA 12 (May 14, 2004), <https://www.pagina12.com.ar/diario/elpais/1-35320-2004-05-14.html>.

Interpol's Executive Committee cancelled the twelve red notices in connection with the case.¹⁰⁶

Rúa took part in the Inter-American Commission on Human Rights (IACHR) sessions in which Argentina took responsibility for its breaching several obligations of state. Argentina then committed to initiating a friendly settlement process to strengthen the AMIA Unit.¹⁰⁷ Rúa also assisted in drafting a new presidential decree which ordered all government agencies to refrain from destroying documentation possibly related or relevant to the AMIA case.¹⁰⁸ However, almost simultaneously, the Secretary of Intelligence ordered a transfer all of the classified documents which the Unit gathered from its archive to the AMIA Prosecution Unit.¹⁰⁹ These significant changes in the attack's criminal proceedings shifted the Unit into a new role.

B. New Partners and a Change in Direction (2006-2015)

A second era began in March 2006, when President Kirchner ordered the AMIA Unit to help move the AMIA II case forward, in compliance with Argentina's IACHR commitment, and to actively participate as a victim complainant.¹¹⁰ Although the Executive Branch was already acting as a victim complainant through the Anti-Corruption Office, the AMIA Unit took over this responsibility.¹¹¹ Rúa claimed responsibility for this initiative and for convincing the Minister of Justice, Horacio Rosatti, to set this strategy.¹¹² A few weeks after, however, Rosatti resigned and was replaced with Alberto Iribarne, who, according to Rúa, did not support this decision and ultimately removed him from his position.¹¹³

Rosatti's departure and criticism of how Bonadio proceedings were handled diminished the case's momentum which then allowed

106. *Argentinean Red Notices*, *supra* note 48.

107. Law No. 812/2005, July 13, 2005, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/105000-109999/107751/norma.htm>.

108. Law No. 384/2005, art. 1, Apr. 29, 2005, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/105000-109999/105875/norma.htm>.

109. *See id.*

110. Law No. 24.946, *supra* note 11.

111. *Id.*

112. *Cayó el impulso*, *supra* note 92.

113. *Id.*

for the Council of Magistrates to dismiss the case against Bonadio.¹¹⁴ Minister Iribarne sued Rúa for slander, but that case too was quickly dismissed.¹¹⁵ Alejandro Slokar, an experienced lawyer and criminal law professor, replaced Rúa as Secretary of Criminal Policy and Prison Affairs.¹¹⁶ Since then, the AMIA II case evolved into the AMIA Unit's main focus. Prosecutors Nisman and Martinez Burgos were primarily responsible for investigating the attack.

Slokar gave various interviews which revealed the AMIA Unit's shift in focus. Slokar established the government's commitment to prosecuting the cover-up of the AMIA II case, while presenting the bombing's investigation as Nisman's responsibility. For example, when confirming the Federal Chamber of Appeals confirmed the indictment against Judge Galeano and the Federal Prosecutors Mullen and Barbaccia,, Slokar stated the federal government took "a significant step forward in the case, against impunity and in favor of establishing the role played by each one of the public officials that were responsible for covering up the attack," noting his office was analyzing the performance of the rest of the alleged participants "strictly and rigorously."¹¹⁷

The AMIA II case included Minister Gil Lavedra's complaint filed after the Lifschitz interview which mentioned Telleldín's payment and the investigation into the tampering of the Kanoore Edul's lead, both of which were already under the direction of Federal Judge Ariel Lijo.¹¹⁸ Almost six years after the AMIA Unit's became a victim complainant, Federal Judge Lijo concluded both investigations and decided Menem, Judge Galeano, Federal Prosecutors Mullen and Barbaccia, Telleldín, and a group of police

114. *Id.*

115. Raúl Kollmann, *Un delito que nunca existió*, PÁGINA 12 (Sept. 7, 2006), <https://www.pagina12.com.ar/diario/elpais/1-72637-2006-09-07.html>.

116. Law No. 229/2006, art. 2, Mar. 6, 2006, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/110000-114999/114392/norma.htm>. See Sebastián Abrevaya, "Nisman Tiene Luz Verde de Interpol," PÁGINA 12 (July 15, 2007), <https://www.pagina12.com.ar/diario/elpais/1-88165-2007-07-15.html>; Slokar, *El Angel Abolicionista*, LA POLÍTICA ONLINE (Feb. 7, 2009), <https://www.lapoliticaonline.com/nota/nota-33594>.

117. *¿Ya de campaña? Ordenan pesquisar a Menem por AMIA*, ÁMBITO (July 3, 2007), <https://www.ambito.com/ya-campana-ordenan-pesquisar-menem-amia-n3438806> [hereinafter *¿Ya de campaña?*].

118. See *supra* Section II(c).

and intelligence officers should stand trial.¹¹⁹ Judge Lijo, however, later acquitted four senior officials of Judge Galeano's court.¹²⁰

The Federal Court of Appeals revoked Judge Lijo's decision to drop charges against Judge Galeano's former law clerks and ordered Judge Lijo to continue his investigation against them.¹²¹ Judge Lijo resisted complying with such orders until he was finally removed from the case in May 2016. In a particularly harsh ruling, the First Chamber of the Federal Court of Appeals questioned Judge Lijo's "notorious inactivity" during the two-year period, accusing him of disobeying their rulings, and concluded he lost his impartiality.¹²² Judge Sebastian Ramos, who replaced Judge Lijo, was tasked with the investigation against Corach.¹²³ To this day, however, none of these proceedings have significantly progressed.

In September 2011, Slokar was appointed as judge of the Federal Court of Cassation. At which time Juan Martín Mena, a lawyer who served as the Minister of Justice's Chief of Staff, took over the AMIA Unit for nearly four years. Under Mena, the Unit prepared for the AMIA II case trial and the Executive Power signed a memorandum creating an investigation commission with Iran, which was sent to Congress in the midst of the scandal.¹²⁴ Nisman died the night before the trial, as such, Mena was appointed as Assistant Secretary of Intelligence and tasked with reforming the Argentine intelligence system.¹²⁵ The three prosecutors who replaced Nisman

119. Alvaro Herrero, *El juicio AMIA: después de 21 años y solo por el encubrimiento*, GLOBAL AM. (Aug. 5, 2015), <https://theglobalamericans.org/2015/08/el-juicio-amia-despues-de-21-anos-y-solo-por-el-encubrimiento/>.

120. *Los secretaries de Galeano: parte de la maniobra*, INFOJUS NOTICIAS, <http://juicioamia.infojusnoticias.gov.ar/causas-conexas/secretarios> (last visited Sept. 7, 2019).

121. *Id.*

122. Informe de Gestión Diciembre 2016, UNIDAD FISCAL DE INVESTIGACIONES DEDICADA A LAS CAUSAS VINCULADAS CON EL ATENTADO A LA AMIA 21, 22 (2017) ("informe-de-gestion-anual" under "Documentos").

123. *Id.*

124. Law No. 82/2011, Dec. 12, 2011, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/190000-194999/191178/norma.htm>; Adriana Balaguer, *Juan Martín Mena, el espía nombrado por el Gobierno para alinear a la Justicia*, LA NACION (Jan. 4, 2015), <https://www.lanacion.com.ar/opinion/juan-martin-mena-el-espia-nombrado-por-el-gobierno-para-alinear-a-la-justicia-nid1756655>.

125. Law No. 1312/2015, art. 2, June 7, 2015, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/245000-249999/248915/norma.htm>; Law No. 27126, Mar. 5, 2015, B.O. 1 (Arg.),

urgently requested the President declassify all Intelligence Agency documents on the case.¹²⁶ Although subject to various conditions, the prosecutors' declassification request was granted.¹²⁷

Luciano Hazan, an experienced human rights lawyer who had worked for Memoria Activa between 2007-2009 and served as the Program for Truth and Justice of the Ministry of Justice's coordinator, replaced Mena in March 2015.¹²⁸ Hazan oversaw the initial stage of the AMIA II trial. However, Hazan's term ended in December 2015 when President Mauricio Macri was elected and installed his new cabinet.¹²⁹

C. *A Failed Relaunch Followed by an Abrupt Ending (2016-2018)*

President Macri relaunched the AMIA Unit on the anniversary of Nisman's death.¹³⁰ This last phase began with ambitious announcements, but ultimately ended with failed attempts to regain influence over the attack's investigation and a tense relationship between the Unit's leadership and the Ministry of Justice. President Macri appointed Germán Garavano, a former lawyer who served as Buenos Aires' District Attorney, as his Minister of Justice and chose Mario Cimadevilla, a former senator and member of the Council of Magistrates, as the AMIA Unit's leader. Cimadevilla and Garavano

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/240000-244999/243821/norma.htm>.

126. *Siete fiscales, novedades y varias polémicas en la unidad AMIA*, PERFIL (Jan. 17, 2019), <https://www.perfil.com/noticias/politica/nisman-siete-fiscales-novedades-y-varias-polemicas-en-la-unidad-amia.phtml> (The three prosecutors were Sabrina Namer, Roberto Salum, and Patricio Sabadini, who were later replaced by prosecutor Leonardo Filippini and Aurelio Tomas).

127. Law No. 395/2015, Dec. 3, 2015, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/240000-244999/244799/norma.htm>.

128. Law No. 378/2015, art. 1, Mar. 3, 2015, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/240000-244999/244556/norma.htm>.

129. Jonathan Gilbert, *Mauricio Macri, Argentina's New President, Is Sworn In Amid Feud With Predecessor*, N.Y. TIMES (Dec. 10, 2015), <https://www.nytimes.com/2015/12/11/world/americas/argentina-president-mauricio-macri-sworn-in-snubbed-by-kirchner.html>; *Germán Garavano, ministro de Justicia y Derechos Humanos*, LA NACION (Nov. 25, 2015), <https://www.lanacion.com.ar/politica/german-garavano-nid1848800>.

130. Ana Gerschenson, *Crearán una secretaría de Estado para seguir el caso sobre la muerte de Nisman*, EL CRONISTA (Dec. 11, 2015), <https://www.cronista.com/economia/politica/Crear-an-una-secretaria-de-Estado-para-seguir-el-caso-sobre-la-muerte-de-Nisman-20151211-0049.html>.

were supposed to lead the government's settlement with the victims, but conflicts between the pair besieged the Unit with accusations of wrongdoing and political manipulation.¹³¹

At the beginning of this phase, Minister Garavano declared the Unit should assess all suspicious activities related to the attack, including Alberto Nisman's death.¹³² Cimadevilla championed for greater autonomy within the Unit and announced his intention to bring transparency to every AMIA related case and revealed the government was considering a possible trial in absentia to advance the otherwise paralyzed process.¹³³ The trial in absentia idea received mixed reviews from victim organizations, community institutions, and members of the government, ultimately presaging the challenges awaiting the Unit.

The DAIA expressed its support, describing the proposal as a step forward. AMIA's president stated the idea should be carefully examined and called for input from experts and victims.¹³⁴ Memoria Activa rejected the idea of a special proceeding, instead supporting a solution similar to that of the Lockerbie case.¹³⁵ The 18-J Association and APEMIA decried the idea as a farce whose goal was closing the case and consolidating the impunity of the perpetrators and accessories.¹³⁶ Ultimately, a draft was not sent to Congress, but presumably due to Cimadevilla's legislative allies, a coalition of senators from different political parties introduced the plan to Congress. The proposed amendment received some attention and was discussed in different congressional committees but was never approved by the Senate.¹³⁷ Some months later, it became known that

131. *Carrió Acts on Impeachment Threat Against Justice Minister Garavano*, BUENOS AIRES TIMES (Oct. 17, 2017), <https://www.batimes.com.ar/news/argentina/carrio-lodges-impeachment-request-against-justice-minister-garavano.phtml>.

132. Eamonn MacDonagh, *Can Argentina's New Government Deliver Justice for Its Victims of Iranian Terror?*, TOWER MAG. (Jan. 2016), <http://www.thetower.org/article/can-argentinas-new-government-deliver-justice-for-the-amia-victims/>.

133. *New Argentina AMIA Investigator Eyeing Trial in Absentia*, JEWISH TEL. AGENCY (Jan. 14, 2016), <http://www.jta.org/2016/01/14/global/new-argentina-amia-investigator-eyeing-trial-in-absentia>.

134. Jaime Rosemberg, *AMIA: juzgarán en ausencia los iraníes*, LA NACION (Dec. 12, 2017), <https://lanacion.com.ar/politica/amia-juzgaran-en-ausencia-a-los-iranies-nid2090559>.

135. Raúl Kollmann, *La discusión del juicio en ausencia*, PÁGINA 12 (Dec. 20, 2015), <https://www.pagina12.com.ar/diario/elpais/1-288658-2015-12-20.html>.

136. Rosemberg, *supra* note 134.

137. *Id.*

the Ministry of Foreign Affairs had expressed its reservations to the President.¹³⁸

On the second anniversary of Nisman's death, President Macri ordered the AMIA Unit to collaborate with officials to declassify documents in the case.¹³⁹ Until then, the survey of evidence had been under the direction of the prosecutors with very limited collaboration from the Intelligence Agency. Cimadevilla explained they were going to take over the responsibility, without side-lining the prosecutors, and planned on hiring experts to analyze the documents.¹⁴⁰ Because he failed to secure support from victim organizations, his remarks immediately prompted a heated response. APEMIA and Memoria Activa took on legal actions to prevent this from happening, arguing that the government was trying to meddle with the prosecutor's work and managed to get a ruling that ordered the AMIA Unit to follow the prosecutors lead.¹⁴¹ The AMIA Unit finally settled on taking over some of the tasks that the Intelligence Agency had been performing.

Later, Cimadevilla went public with a dispute he had been waging against Minister Garavano, making several statements to the press about poor funding and limited resources. Specifically, Cimadevilla accused Minister Garavano of erecting "bureaucratic" barriers to his requests for additional funds needed to acquire specialized software that, purportedly, would allow the AMIA Unit to deepen their ongoing case analysis.¹⁴² High ranking officials at the Ministry of Justice responded by questioning the judgment and dedication of Secretary Cimadevilla.¹⁴³ Thereafter, unnamed Ministry of Justice sources released derogatory comments about Cimadevilla's work to the press and claiming the AMIA Unit had fulfilled its

138. Hernán Cappiello, *Reflotan en el Gobierno la Idea del juicio en ausencia por el atentado a la AMIA*, LA NACION (Jan. 6, 2019), <https://www.lanacion.com.ar/politica/reflotan-en-el-gobierno-la-idea-del-juicio-en-ausencia-por-el-atentado-a-la-amia-nid2208332>.

139. Law No. 229/2017, May 4, 2017, B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/273333/norma.htm>.

140. Martín Di Natale, *El Gobierno analiza cerrar la Unidad Especial de AMIA por falta de resultados y escasa transparencia*, INFOBAE (Sept. 4, 2017), <https://www.infobae.com/politica/2017/09/04/el-gobierno-analiza-cerrar-la-unidad-especial-de-amia-por-falta-de-resultados-y-escasa-transparencia/>.

141. *Id.*

142. *Id.*

143. *Id.*

purpose and that the government was assessing whether to close the unit.¹⁴⁴

In March 2017, several weeks before the AMIA II trial's closing arguments, another issue was raised. An AMIA Unit lawyer resigned citing irreconcilable moral and ethical differences with José Console, a Garavano appointee, and claimed Console was trying to get a group of defendants acquitted.¹⁴⁵ In February 2018, the Secretary of Justice ordered Cimadevilla to fire Enrique Ventos, the attorney who was supposed to deliver the unit's closing argument in the AMIA II case, and passed the task to Console, who argued for Mullen's and Barbaccia's acquittal against the judgment of the rest of the AMIA Unit lawyers.¹⁴⁶ A few days later, Console was removed from the case after it was noted that he held a position in the Council of Magistrates that barred him from acting as a lawyer.¹⁴⁷

AMIA's president praised the decision, but the remaining victims' organizations strongly criticized it. Cimadevilla made Garavano responsible for this decision, accusing him of interfering in order to protect Barbaccia due to an alleged friendship between them, and filed a criminal complaint against him and several Ministry of Justice officials.¹⁴⁸ Federal courts rapidly dismissed such decision.¹⁴⁹ Days later, the AMIA Unit dissolved and the Program for Truth and Justice of the Ministry of Justice absorbed its responsibilities.¹⁵⁰ A few months later, Memoria Activa and Congresswoman Elisa Carrió, leader of a political party of the governing coalition, called for

144. *Id.*

145. *See Audiencia No. 120 – 1/2/2018*, MEMORIA ACTIVA (Feb. 1, 2018), <https://memoriaactiva.com/?p=2468>.

146. Hernán Cappiello, *La Justicia apartó al abogado del Gobierno en el juicio por la AMIA*, LA NACION (Feb. 23, 2018), <https://www.lanacion.com.ar/politica/la-justicia-aparto-al-abogado-del-gobierno-en-el-juicio-por-la-amia-nid2111529>; *El Gobierno planea diluir la unidad AMIA y desplazar a Cimadevilla del cargo*, POLÍTICA CHUBUT (Mar. 3, 2018), https://politicachubut.com.ar/noticia/30720/el_gobierno_planea_diluir_la_unidad_a_mia_y_desplazar_a_cimadevilla_del_cargo.

147. *Reves para el gobierno: apartaron al abogado del Estado en el juicio AMIA II*, TIEMPO ARGENTINO BETA (Feb. 22, 2018), <https://www.tiempoar.com.ar/nota/reves-para-el-gobierno-apartaron-al-abogado-del-estado-en-el-juicio-amia-ii>.

148. *AMIA: Mario Cimadevilla acusó a Macri y Garavano de “encubrir amigos,”* PERFIL (Jan. 29, 2019), <https://www.perfil.com/noticias/politica/causa-amia-mario-cimadevilla-acuso-mauricio-macri-german-garavano-de-encubrir-amigos.phtml>.

149. *Id.*

150. *See id.*

Garavano's the impeachment, but their request was not seriously considered.¹⁵¹

IV. THE QUESTION ABOUT THE AMIA UNIT'S LEGACY

This section examines the different strategies the AMIA Unit pursued and argues that while it initially helped to visualize and legitimize and make the victims' demands, the Unit's growing identification and overlap with other agencies heavily diluted its contribution to the case and made it difficult to assess. Particularly, the AMIA Unit's initial design and the attempts to relaunch it were not through independent assessments of the investigation's needs and problems nor through the potential benefits and contributions that might derive from the chosen intervention format. Its legacy and ability to influence the proceedings, therefore, was compromised by a flawed diagnosis of the investigation's weaknesses and by the difficulties it faced to its own agenda and to distinguish itself from other agencies. Despite all these difficulties, the main problem was the government's fixation on criminal justice as the only possible answer to the victim's demands and their unwillingness to look for alternative ways to find more information about what happened when it became clear that it could not deliver what was initially promised.

A. A Rough Start: Political and Institutional Obstacles

During the case's early stages, the AMIA Unit's ability to contribute to the investigation was hindered when the government refused to seriously address the accusations against Judge Galeano and Federal Prosecutors Mullen and Barbaccia, and due to a lack of authority and power to overcome the resistance from the intelligence and law enforcement agencies and precarious government records. All these flaws suggest that the Unit's creation had not been preceded by a proper assessment of the investigation needs and that the government failed to provide the additional support that necessary to move the investigation forward. By June 2000, the judge, prosecutors, and intelligence and law enforcement agencies had no incentives to build or maintain working relationships with the AMIA

151. See *Elisa Carrió Sets Aim on Garavano, Calling for Minister's Impeachment*, BUENOS AIRES TIMES (June 6, 2018), <https://www.batimes.com.ar/news/argentina/elisa-carrio-sets-aim-on-garavano-calling-for-ministers-impeachment.phtml>.

Unit and most were interested in blocking any line of inquiry likely to expose their wrongdoing.

Even so, the government insisted the AMIA Unit should function as an extension of the judge and the prosecutors, acting as a nexus between them and the intelligence and law enforcement agencies. Predictably, this arrangement did not work out and the AMIA Unit was never a focal point, nor did it help improve coordination between agencies. Instead, the AMIA Unit exposed differences and made investigation's flaws more noticeable. The AMIA Unit was not able to assert its own authority and had no choice but to rely on the President or a higher court to step in. However, the government often failed to provide adequate support and occasionally sided with the Unit's rivals. The internal investigations against intelligence officials ordered by the former AMIA Unit director and Secretary of Intelligence, Carlos Becerra, were stalled and did not result in any meaningful action.¹⁵² Garré and Rúa's efforts to influence the investigation and further the criminal charges against Judge Galeano and the prosecutors were either ignored or obstructed. The higher courts, on the other hand, laid down favorable rulings, but their orders were often resisted and the Council of Magistrates failed to respond accordingly.

Despite everything, some judicial requests made to the AMIA Unit were undoubtedly useful. In fact, they exposed deeper causes behind the shortcomings and ultimately showed that any serious attempt to drive the investigation forward would have to include an ambitious institutional reform plan. For example, the Direction of Migrations refused for many years to survey its own archives for patterns or records relating to persons of interest, arguing that the task was extremely time consuming and it lacked the appropriate resources.¹⁵³ The Ministry of Foreign Affairs proved equally incapable of searching and identifying diplomatic cables relevant to the investigation. All of these tasks were passed to the AMIA Unit without proper directions.

152. See *Becerra coordinará la Unidad Especial de Investigaciones*, *supra* note 5; *Dicen que hubo duras internas en la SIDE*, LA NACION (Sept. 25, 2003), <https://www.lanacion.com.ar/sociedad/dicen-que-hubo-duras-internas-en-la-side-nid530533>.

153. See *Terrorism in Latin America/AMIA Bombing in Argentina: Hearing Before the Comm. on Int'l Rel.*, 104th Cong. (1st Sess. 1995), at 22, <https://ia600900.us.archive.org/3/items/terrorisminlatin00unit/terrorisminlatin00unit.pdf>.

The presidential order to preserve all information potentially useful for the case was not backed by a concerted implementation effort. The intelligence and law enforcement agencies never seemed to overcome the initial disruption the attack caused, thus, evidence was lost or remained misplaced for years. The most notorious example was the discovery of unaccounted human remains found in a Federal Police laboratory in September 2016.¹⁵⁴ These shortcomings in many government archives and databases were not comprehensively addressed.¹⁵⁵ In fact, only flaws which judicial authorities labeled as a priority were and, in some cases, are still being surveyed.¹⁵⁶

Overall, the AMIA Unit's creation had the unwanted effect of relieving other government agencies from any duty to contribute to the investigation, even if this meant as little as keeping potentially useful documents and records available and organized. As the government representative in the investigation, the AMIA Unit was in an uncomfortable position as it could not explicitly denounce these failings and difficulties. The AMIA Unit and its leadership had no option but to try to overcome them, despite lacking appropriate resources or proper guidance from investigators who refused to share their hypothesis.

B. Lack of Stability and Support in Key Moments

For the most part, the government relied on the judges and prosecutors to set the priorities and to define what had to be done. The AMIA Unit's mandate was defined loosely and the government made no attempt to identify alternative courses of action or to set objectives of its own. This void was filled by the leadership's initiative, but sometimes their decisions were not anticipated, nor supported by their superiors. On a few occasions, these differences sparked conflicts with the Ministry of Justice and the victim's

154. *UFI-AMIA: encontraron pruebas sin inventariar en el Laboratorio Químico de la Policía Federal Argentina*, MINISTERIO PÚBLICO FISCAL (Sept. 12, 2016), <https://www.fiscales.gob.ar/amia/ufi-amia-encontraron-pruebas-sin-inventariar-en-laboratorio-quimico-de-la-policia-federal-argentina/>, *AMIA: Genetistas encuentran ADN de dos de las víctimas en los restos de la camioneta hallada en el atentado*, MINISTERIO PÚBLICO FISCAL (July 27, 2017), <https://www.fiscales.gob.ar/amia/amia-genetistas-encuentran-adn-de-dos-de-las-victimas-en-los-restos-de-la-camioneta-hallada-en-el-atentado/>.

155. Dexter Filkins, *Death of a Prosecutor*, THE NEW YORKER (July 20, 2015), <https://www.newyorker.com/magazine/2015/07/20/death-of-a-prosecutor>.

156. *Id.*

organizations and led to changes which undermined the Unit's ability to pursue steady and consistent lines of inquiry and work throughout the years.

Without government support and due to the Argentine criminal justice system's distinctive traits, judicial authorities ignored or dismiss the AMIA Unit's requests and proposals, thereby eroding the Unit's authority without facing consequences. The AMIA Unit also failed to take advantage of its own powers and, particularly, to exploit the full potential of its ability to conduct independent investigations and access government archives related to the subject. Perhaps, the emphasis placed on the need to gather evidence and further the criminal investigations discouraged the Unit's leadership from looking for alternatives ways to contribute.

Once Judge Galeano and the prosecutors were removed from the case, the interests of the several agencies involved in the investigation realigned and opening the possibility of collaborative work, but the government did not seize this opportunity.¹⁵⁷ Instead of promoting a task division, the President removed the AMIA Unit from the investigation, ordered the Intelligence Agency to transfer the files that were being surveyed to the newly created AMIA Prosecution Unit, and changed its focus to the AMIA II case and the cover-up plot. Thereby, deepening its overlap with other agencies.¹⁵⁸

Slokar's statements about the AMIA Unit's work clearly show this shift in its focus, as he began referring to the AMIA Prosecution Unit as bearing sole responsibility for investigating the terrorist attack and constantly underlined the government's commitment to bringing those charged with tampering with the initial inquiry to justice, while explaining the difficulties to do the same with those responsible for the actual bombing.¹⁵⁹ Slokar's public discourse seemed to reflect the consensus that during the Unit's second stage his successors faced an increasingly demanding scenario and were further constrained by the AMIA II trial's requirements.

These changes made it more difficult for the Unit to set a clear and coherent outreach strategy, however, the government and the

157. See Filkins, *supra* note 155; Bertoia, *Argentina Reacts to AMIA Cover-Up Trial Rulings*, *supra* note 74; Ben Cohen, *25 Years After the AMIA Bombing, Justice Is Denied Again*, THE ALGEMEINER (Mar. 4, 2019), <https://www.algemeiner.com/2019/03/04/25-years-after-the-amia-bombing-justice-is-again-denied/>.

158. Filkins, *supra* note 155; Bertoia, *Argentina Reacts to AMIA Cover-Up Trial Rulings*, *supra* note 74; Cohen, *supra* note 157.

159. Abrevaya, *supra* note 116; *¿Ya de campaña?*, *supra* note 117.

AMIA Unit took steps to disseminate information about the case launching a website and publishing the first trial verdict online.¹⁶⁰ Its news agency even published a special report on the AMIA II case.¹⁶¹ But these initiatives were few and far between, almost exclusively focused on the cover-up plot. Meanwhile it is hard to recognize a consistent effort to address the victims' concerns and expectations, even when case distinctive traits made it clear that finding some common ground with the organization's and community institutions was important to the success of the Unit's work. Under these circumstances and after eighteen years of work and right before the end of the trial, the AMIA Unit still found itself in a vulnerable position.

C. Problems to Determine the Impact of the AMIA Unit as a Victim Complainant

The decision to focus on the AMIA II case and to act as a victim complainant worsened the AMIA Unit's overlap problem. Again, it seems unlikely this shift in the AMIA Unit's strategy was predicated on an assessment achievable by acting in this capacity and such results were certainly not monitored throughout the years. With this decision, the government may have intended to signal an inflection point in its attitude towards the case by siding with the victims before the courts.¹⁶² But, arguably, as this goal was achieved, the AMIA Unit's influence and importance was diluted.

The AMIA Unit acted as a victim complainant for twelve years and its impact on the AMIA II case remains unclear and difficult to determine. The way in which the Argentine criminal justice system tracks activity, the fact that the AMIA Unit shared responsibilities with the judge, the prosecutors, and the victims, the secrets which usually surround investigations, the extent of both the investigation and the trial, and the limited media coverage, among many other factors, may prevent us from ever appreciating the full magnitude and importance of AMIA Unit's work. But the publicly available information suggests that it has little to show for.

160. *2 Bombas 107 Muertos, Fallo del Tribunal Oral*, <https://www2.jus.gov.ar/amia/sentencia/fallo.pdf> (last visited Sept. 6, 2019).

161. *Hubo una nueva audiencia por el encubrimiento del atentado a la AMIA*, INFORJUS NOTICIAS, <http://juicioamia.infojusnoticias.gov.ar/audiencias/audiencia-xix/> (last visited Aug. 23, 2019).

162. Abrevaya, *supra* note 116.

The indictments against Judge Galeano, Federal Prosecutors Mullen and Barbaccia, and the defendants coupled with the rulings that ordered them to stand trial barely mention the AMIA Unit's work and filings. The government's involvement also failed to speed up the proceedings. The AMIA II case had been open for six years when the AMIA Unit became a victim complainant and, thirteen years later, it is far from over.¹⁶³ While the trial's verdict was handed down in 2019, the Second Federal Trial Court from the City of Buenos Aires, the appeal process will surely take several years.¹⁶⁴ The criminal proceedings against Judge Galeano's judicial clerks and the former Ministry of Interior, Carlos Corach, are still in their preliminary stages.¹⁶⁵ At the time of this writing, Telleldín was being tried for his alleged participation in the attack.¹⁶⁶

While the AMIA II case may be characterized as complex because of its political implications, the volume of information that needed to be processed, or the resistance and obstacles it faced throughout the years. The charges brought against the defendants were straight forward, making it harder to argue the AMIA Unit's intervention was to provide technical assistance or to make up for potential flaws in the prosecution strategy. The victim's organizations, on the other hand, acted as victim complainants exercising their own representation in the investigations and trials.¹⁶⁷

Finally, during the preliminary investigation, the judge, the AMIA Unit, and the prosecutors did not have significant disagreements regarding the facts or proper strategies, merely experiencing relatively minor differences during the trial. In fact, the Garavano-Cimadevilla incident was the only serious disagreement between the parties. Thus, the government did not act as a victim complainant to assert a particular case theory.

163. *Audiencia No. 174 – La Sentencia*, MEMORIA ACTIVA (Feb. 28, 2019), <http://memoriaactiva.com/?p=3059>.

164. *See id.*

165. Bertoia, *Argentina Reacts to AMIA Cover-Up Trial Rulings*, *supra* note 74.

166. Comenzó un juicio oral contra Carlos Telleldín en la causa por la conexión local del atentado a la AMIA, CENTRO DE INFORMACIÓN JUDICIAL (May 8, 2019), <https://www.cij.gov.ar/nota-34357-Comenz-un-juicio-oral-contra-Carlos-Telleldin-en-la-causa-por-la-conexi-n-local-del-atentado-a-la-AMIA.html>.

167. Natasha Zaretsky, *An AMIA Verdict is Read in Argentina. But is it Justice?*, GLOBAL AM. (Mar. 1, 2019), <https://theglobalamericans.org/2019/03/an-amia-verdict-is-read-in-argentina-but-is-this-justice/>.

D. The Insularity of the AMIA Unit and its Overly Limited Approach to the Case

Initially, the government's main pursuit in the AMIA case was to bring the perpetrators to justice and, later on, it shifted to prosecuting those who allegedly tampered with the initial investigation. The government's emphasis is always placed in criminal justice and accountability. For the first twelve years, the government described the AMIA headquarters bombing as just a criminal act, instead of as a crime against humanity or as a human rights violation.¹⁶⁸

The government's vision of what it could do to respond to such events foreclosed on other alternative responses, despite the fact that different measures were needed and possible. Around the same time, the human rights movement prevailed when it reopened the criminal investigations against those responsible for crimes against humanity during the last military dictatorship, with such cases being met with a more sophisticated approach.¹⁶⁹ The government used new tools which were utilized in the transitional justice process, but failed to involve the AMIA Unit in a significant way and to truly diversify its aim. As such, punishment was seen as the one and only legitimate answer.

At Judge Galeano's request, the AMIA Unit became responsible for the Intelligence Agency archives survey. In 2005, the Unit was also involved in the proceedings before the Inter-American Commission.¹⁷⁰ When Judge Galeano was removed from the case, the government failed to recognize the importance of the Inter-American Commission proceedings and withdrew. The government disregarded the *Grossman* report recommendation to further its own truth-seeking effort.¹⁷¹ Ten years later, again after judicial authorities made requests, the President ordered the largest declassification in the case's history, but merely transferred the custody of these documents to the prosecutors and provided limited

168. Filkins, *supra* note 155.

169. María José Gumbe, *Reopening of Trials for Crimes Committed by the Argentine Military Dictatorship*, 3 INT'L J. ON HUM. RTS., 115 (2005).

170. Press Release, Inter-Am. Comm'n on Human Rights, IACHR Expresses Satisfaction at the Argentine State's Acknowledgement of Liability in the AMIA Case (Mar. 4, 2005).

171. Brian Byrnes, *Terror Case Lawyer Alleges Agents Tortured Him*, CNN WORLD (Mar. 9, 2009), <http://edition.cnn.com/2009/WORLD/americas/03/09/argentina.probe/>.

assistance.¹⁷² Finally, the AMIA Unit attempts to get involved in the attack's investigation were poorly crafted and raised suspicions and resistance from the victims' organizations.¹⁷³

The government declared the attack's thirteenth anniversary a national mourning day and requested Congress to enact a reparations program for the victims, but the AMIA Unit did not play a significant role in either request.¹⁷⁴ While many programs and institutions that collaborated with the transitional justice reform were either created or had worked under the Ministry of Justice's supervision, none were involved in the attack, the cover-up investigation, nor had any meaningful interaction with the AMIA Unit.

Furthermore, since the case against the alleged local connection unraveled, it became clear that the bombing's investigation was unlikely to end successfully and that criminal prosecutions were fundamentally ill-suited to undo the damage that had been done to the process's credibility. For many years, the government acted as if it could eventually fulfill its promise for justice, then merely relegated to asking victims to settle on punishing those responsible for tampering with the first investigation, thereby accepting that answers were no longer within the government's reach.

The AMIA Unit's inefficiency, inability to assert its will, and lack of purpose were problematic, but those were not the only reasons the Unit failed or, more specifically, why it was destined to fail. It is hard to believe that the results would have turned out differently had the AMIA Unit led the investigation. In this respect, the AMIA cases was handled exceedingly differently from the multi-layered approach used to address the crimes against humanity committed by the Argentine dictatorship and its legacy of violence. The government, however, insisted on this different strategy, doubled down when it became a victim complainant in the AMIA II case.

V. AN OPPORTUNITY TO DO BETTER: A PROPOSAL FOR THE FUTURE OF THE CASE

This paper has analyzed how the government handled the AMIA bombing investigation and the AMIA II case, as well as presented a critique on government's decisions. But what could have been done

172. Law No. 395/2015, Mar. 12, 2015, B.O. 33089 (Arg.).

173. Law No. 229/2017, Apr. 5, 2017, B.O. 33600 (Arg.).

174. Law No. 886/2007, July 10, 2007, B.O. 31194 (Arg.); Law No. 27139, May. 18, 2015, B.O. 33136 (Arg.).

differently and what can be done to help the investigation and the victims today? This section discusses that while the AMIA case was alternatively characterized as a human rights violation and a crime against humanity, the government's approach to the case and the AMIA Unit's strategy, in particular, failed to capitalize the experience obtained during the memory, truth, and justice process. Additionally, the decision to transfer remaining responsibilities to the Truth and Justice Program presents the opportunity to try the more sophisticated and multilayered approach that emerged from that experience.

As such, the government should seek to play a more significant role in the Intelligence agency Archive survey and focus on the victims' family members and the community's right to the truth. These actions should complement ongoing efforts to search for potential evidence, determine the facts, causes, underlying reasons, assess the attack's consequences, and address the failed first investigation.¹⁷⁵ More specifically, there must be a commitment to finish the survey within a reasonable timeframe, publicly release declassified material, publish reports regarding the archive system's progress and contents, and preserve materials for study. Each step of the way must also be met with a sense of commemoration and remembrance.

Finally, a non-judicial truth-seeking effort could (i) create awareness as to the roles the intelligence and law enforcement agencies played in the investigation so as to more precisely identify the investigation's problems and enact reforms as a non-recurrence guarantee, (ii) contribute to creating a centralized account of the events while enabling other non-institutional social mechanisms that help shape our collective memory, and (iii) expose the evidence and underlying reasons behind the indictments and subsequent the abandonment of other potential leads in an attempt to undo damage the investigation's credibility has suffered.

A. Why the Involvement of the Program for Truth and Justice Could Mean Good News

In November 2006, Federal Judge Canicoba Corral declared the attack against the AMIA headquarters was a crime against humanity.

175. EDUARDO GONZALEZ & HOWARD VARNEY, TRUTH SEEKING: ELEMENTS OF CREATING AN EFFECTIVE TRUTH COMMISSION, INT'L CTR. FOR TRANSITIONAL JUST 3 (Eduardo Gonzalez & Howard Varney eds., 2013).

The AMIA investigation faced challenges, such as time passages, precarious government records, archives and databases, the government's acknowledgement of responsibility, declassification and surveys of archives, and reparations. However, the case was not included in the agenda which numerous government agencies created to support the criminal proceedings against those responsible such crimes against humanity during the military dictatorship that ruled Argentina between 1976-1983 and to address their legacy of violence.¹⁷⁶

The Ministry of Justice created the Program for Truth and Justice in 2007. The Program was tasked with monitoring the memory, truth, and justice process by assessing needs and progress while removing potential obstacles which may affect its normal development.¹⁷⁷ As a main function, the Program guarantees protection to victims, witnesses, and judicial authorities. To fulfil these guarantees, the Program tracks criminal investigations throughout different jurisdictions, producing reports on the armed forces, law enforcement agencies, other actors in clandestine operations, and crimes against humanity as a way to detect and prevent potential threats to the advancement of these cases.

The Program's objectives and responsibilities are similar to the AMIA Unit's, but the Program's wider aim recognizes the importance of the tasks that been neglected in the AMIA cases. For example, the Program's investigation team is responsible for "strengthening the state's capacity to gather reliable information," as well as "surveying state, federal or international archives and any other potentially useful source of information that may contribute to further to institutional truth and justice process."¹⁷⁸ Although the Program is taking over remaining AMIA Unit responsibilities, it is not necessarily comprehensive. Thus far, the Program's involvement

176. *Causa AMIA: Informe de lo actuado 1994-2015*, AMIA COMUNIDAD JUDIA, https://www.amia.org.ar/Amia/upload/download/2016/08/16/download_147134680681.pdf.

177. *AMIA Bombing: Argentina Ratifies Commitment to Search for Memory, Truth and Justice*, MINISTRY OF FOREIGN AFF. AND WORSHIP ARGENTINE REPUBLIC (July 18, 2019), <https://www.cancilleria.gob.ar/en/announcements/news/amia-bombing-argentina-ratifies-commitment-search-memory-truth-and-justice>.

178. Admin. Decision No. 312/2018, Annex IV, Mar. 13, 2018, B.O. 33831 (Arg.).

suggests the opportunity to diversify the government's aim and to set complimentary objectives.

Participation in the Program for Truth and Justice might also put an end to AMIA case insularity, which in the past kept the AMIA Unit from adhering to best practices resulting in important measures being implemented in an inferior manner. For example, there are significant differences in declassification measures between the Program and the AMIA Unit. While the Program completed surveys, published reports, released secret documents, and created a National Memory Archive in connection with its work, the survey of the AMIA related archives, despite being authorized in 2003, is far from over with no official end. Further still, the AMIA survey is merely fixated on gathering evidence which contributes to the criminal investigation.¹⁷⁹

In sum, the contrast between the way these two processes were handled suggests that agencies, such as, the Program for Truth and Justice may help achieve small, but relevant improvements in our understanding and public conversation about what happened within the AMIA Unit. It may also contribute to the investigation by placing the attack and the cover-up plot in a larger context.¹⁸⁰ Again, it is not clear whether the Program's involvement will generate any significant changes, and the circumstances surrounding the decision to dissolve the AMIA Unit certainly caution us. But the decision definitely presents an opportunity to move forward with a new and more sophisticated approach.

B. What is Missing and How Could the Government Help?

The Executive Branch never promoted truth-seeking efforts through non-judicial bodies. In September 1996, Congress created an inquiry commission which interviewed many main figures within the case, but its only objective was keep track of the investigation and its three reports about the AMIA bombings were never made public.¹⁸¹ Some Executive Branch members were formally accused of failing to

179. Law No. 1259/2003, Dec.12, 2003 B.O. 30299 (Arg.).

180. Rodrigo Uprinsky Yepes & Maria Paula Saffon, *Verdad judicial y verdades extrajudiciales: la búsqueda de una complementariedad dinámica*, DEJUSTICIA (July 24, 2007), <https://www.dejusticia.org/verdad-judicial-y-verdades-extrajudiciales-la-busqueda-de-una-complementariedad-dinamica/>.

181. La Comisión Bicameral Especial Seguimiento de la Investigación para el Esclarecimiento de los Atentados contra la Embajada de Israel y la A.M.I.A., <https://www2.jus.gov.ar/amia/grossman/La%20Comision%20Bicameral.pdf>.

report the crimes Judge Galeano committed.¹⁸² Many years later, the government signed a Memorandum of Understanding for Judicial Cooperation with the Islamic Republic of Iran, which was widely rejected, declared unconstitutional, and resulted in criminal charges against its proponents.¹⁸³ In recent years, several initiatives to establish a local truth commission were frustrated.¹⁸⁴ As a result, many pressing questions about the attack and its initial investigation remain unanswered without a common account of many sensitive issues.

Based on this experience and considering the subject's sensibility, a more modest approach would be to create an understanding of the connections between the government, prosecutors, and the victim's organizations. Essentially, the government should help the prosecutors search for evidence and complete the Intelligence Agency archive survey within a reasonable timeframe, while also engaging in truth-seeking efforts which publicly releases all declassified information and documents for incorporation into the National Memory Archive. Materials in the National Memory Archive should remain publicly available, except for reasonable conditions.

The need for the government's collaboration with this task is indisputable. In March 2015, the President declassified intelligence reports measuring nearly 2,000 lineal meters when piled up in three deposits which were heavily deteriorated and disorganized.¹⁸⁵ Allegedly, this constituted all the materials in connection with AMIA investigation, but since then, the Intelligence Agency has sent another 306 boxes of materials and without providing reassurance that this will not happen again.¹⁸⁶ Attempts to find relevant information in other archives revealed many government archives had little to no record keeping methods.

182. *Id.*

183. Bertoia, *Argentina Reacts to AMIA Cover-Up Trial Rulings*, *supra* note 74.

184. *AMIA: presentan proyecto para crear comisión investigadora*, *ÁMBITO* (Sept. 27, 2016), <https://www.ambito.com/amia-presentan-proyecto-crear-comision-investigadora-n3956615> [hereinafter *AMIA: presentan proyecto*].

185. AFP, *Argentina Declassifies Files on Jewish Center Bombing*, *TIMES OF ISR.* (Mar. 13, 2015), <https://www.timesofisrael.com/argentina-declassifies-files-on-jewish-center-bombing/>.

186. Michelle Mendeluk, *Fresh Findings in 1994 AMIA Bombing Case*, *JERUSALEM POST* (Dec. 19, 2016), <https://www.jpost.com/Diaspora/Fresh-findings-in-1994-AMIA-bombing-case-475799>.

In June 2015, the Attorney General created a task force to restore and survey these archives in search of potentially useful information.¹⁸⁷ This task force currently employs around fifteen people and prosecutors publish progress reports which suggest the task force will not complete its work for several years.¹⁸⁸ The AMIA Prosecution Unit reports show that the Intelligence Agency has been unable or unwilling to provide basic information about the files and that the government's contribution has been scant. Like the Intelligence Agency before it, the AMIA Unit was charged with safeguarding the archive but did very little to help the process move forward. Without additional resources, this task force will not complete their archive survey until it is too late and will contribute too little improve our understanding of the events. Thus, there is a need to examine other experiences which show the judiciary, Public Prosecutors Office, and Executive Branch can and, in fact, do work together to gather useful information in government archives.

In 2011, the Ministry of Foreign Affairs created a task force which located, declassified, and published hundreds of documents related to the illegal activities during the military dictatorship.¹⁸⁹ In 2012, the President assigned a team to declassify and redact portions of a secret report on the Malvinas war, known as the "Rattenbach Report."¹⁹⁰ Thereafter, the slightly redacted version was published online.¹⁹¹ This team also assisted in declassifying documents related to the South Atlantic conflict, most of which was made publicly available, save sensitive information which could be consulted under specific circumstances.¹⁹² In 2014, the Ministry of Social Development surveyed 82,000 documents and located 196 adoption

187. Daniel Santoro, *Alberto Nisman Lost His Life. But He May Win His Case*, TABLET (July 9, 2017), <https://www.tabletmag.com/jewish-news-and-politics/221705/alberto-nisman-amia-kirchner>.

188. See *AMIA: presentan proyecto*, *supra* note 184.

189. Silvina Segundo, *Archivos: Memoria y acceso a la información*, http://conti.derhuman.jus.gov.ar/2018/01/seminario/mesa_22/segundo_mesa_22.pdf (last visited Sept. 23, 2019); MINISTRY OF FOREIGN AFF., *DECLASIFICACION 2014* (2014), <http://desclasificacion.cancilleria.gob.ar/desclasificacion-2014>; MINISTRY OF FOREIGN AFF., *DECLASIFICACION 2009* (2009), <http://desclasificacion.cancilleria.gob.ar/desclasificacion-2009>; MINISTRY OF FOREIGN AFF., *DECLASIFICACION 2011* (2011), <http://desclasificacion.cancilleria.gob.ar/desclasificacion-2011>.

190. Law No. 200/2012, Arts. 1 and 2, Feb. 8, 2012, B.O. 1 (Arg.).

191. Law No. 431/2012, Mar. 23, 2012, B.O. 1 (Arg.).

192. Law No. 503/2015, Apr. 6, 2015, B.O. 1 (Arg.).

files used to further the investigation on the illegal appropriations of children during the military dictatorship.¹⁹³

Finally, there are reasons to believe that an agreement to emulate such experiences is possible and attainable in the AMIA case. The victim organizations' resistance to the AMIA Unit's involvement was, at least, partly motivated by the lack of a proper explanation about the initiative's content and objectives and the Unit's disinterest in involving them in any meaningful way. The AMIA Unit already had access to hundreds of declassified documents and its willingness to play a larger role. However, there are legitimate concerns which remain unaddressed because the AMIA Unit has not provided details about how they plan to work and what goals they have. We can only assume that a more comprehensive plan may produce a different outcome.

In any case, the government could itself move forward should it chose to focus on the documents which prosecutors have restored and reviewed or focus only on documents particularly relevant to improve public knowledge about the AMIA attack. We do not know much about what the archives contain, but we do know that in 2003, the Intelligence Agency prepared an extensive report on the attack's international connection for the judicial authorities which allegedly was key to the investigation and is profusely mentioned in the indictments.¹⁹⁴ The prosecutors have already asked the Intelligence Agency to authorize its public release in 2017.¹⁹⁵ A gesture like this could help boost the government's credibility and set the stage for a more ambitious actions.

C. What Could be Achieved by This?

Distinctive traits from the AMIA case suggest that a truth-seeking effort through non-judicial means could be particularly beneficial. Since 1997, the investigation's credibility has been at stake and many alternative versions about what happened exist. Even

193. Lesa Humanidad, *Abuelas recibió 196 legajos de adopciones hechas durante la dictadura*, INFOJUS NOTICIAS (Aug. 4, 2014), <http://www.infojusnoticias.gov.ar/nacionales/abuelas-recibio-196-legajos-de-adopciones-hechas-durante-la-dictadura-5097.html>.

194. AMIA DAIA: *El proceso de desclasificación de información reservada o secreta sobre el atentado de 1994 y su encubrimiento*, 16 MINISTERIO PÚBLICO FISCAL (July 2017), https://www.fiscales.gob.ar/wp-content/uploads/2017/07/amia-desclasificacion-archivos_julio.pdf.

195. *Id.* at 17.

today, journalists, victim organizations, and even by the AMIA Unit's last director, Mario Cimadevilla, publicly question fundamental aspects of the attack. Cimadevilla even published a report, after he resigned, in which he argued that the investigation "eluded some of the fundamental analytical steps that should be followed in these types of events" and called for the reexamination of an alternative hypothesis, such as, explosive charges inside the AMIA headquarters, explosive charges in a construction dumpster outside the AMIA headquarters, or the use of multiple explosive devices.¹⁹⁶

The secrecy within both judicial proceedings and the intelligence and law enforcement agencies' archives allowed for the proliferation of different accounts and made it impossible for investigators to officially discredit or even fact-check some theories. In sum, the lack of reliable public information and the asymmetry between those who have access to archives and other primary sources and those who merely rely on secondary sources deeply alters public discourse.

Access to archives is restricted to the investigators and the parties in criminal proceedings. The public release or dissemination of documents is expressly prohibited and only accessible to further criminal investigations.¹⁹⁷ Argentine law lacks automatic declassification provisions and experience suggests that the Intelligence Agency is unlikely to take the initiative to declassify AMIA files. Although the Access to Information Act of 2016 established that information requests made regarding crimes against humanity or gross human rights violations cannot be refused, the courts have not fully implemented or examined the Act.¹⁹⁸ In any case, the volume, disorder, and total lack of information in connection with these archives means an individual's request is not likely to be useful or successful.

This lack of official information and institutional flaws allowed abuses and crimes to flourish, setting a limit on victim's attempts to transform their experience and suffering into generalized demands.

196. Christian Sanz, *Informe de disolución de la Unidad Especial de Investigación AMIA*, 27-8, LINKEDIN (Sept. 12, 2018), https://www.slideshare.net/cesanz1/amia-informe-final?qid=703416ec-2595-4fc2-bcc0-604b96f94eb1&v=&b=&from_search=2.

197. Law No. 206/2017, Mar. 23, 2017, B.O. 1 (Arg.).

198. Daniel Gutman, *Finally, Argentina Has a Law on Access to Public Information*, INTER PRESS SERV. NEWS AGENCY (Sept. 28, 2017), <http://www.ipsnews.net/2017/09/finally-argentina-law-access-public-information/>. See Law No. 206/2017, Mar. 23, 2017, B.O. 1 (Arg.).

Unlike other tragic episodes in Argentine public life, the AMIA bombing and the first investigation's failure were not followed by significant institutional reforms, but resulted almost exclusively in criminal and disciplinary proceedings which, for the most part, failed to produce results. To mention a few examples, the intelligence and law enforcement agencies and the judiciary remained unchanged until 2015 at least and even then, some the reforms were rapidly suspended or reversed.¹⁹⁹

All these circumstances suggest that implementing non-judicial truth-seeking mechanisms which preserve and publish information about the cases would help to further our understanding and to create a common account of these tragic events. Until now, the public conversation about the AMIA case has been monopolized by few agencies and personalities. Only non-judicial truth-seeking initiatives can provide resources needed to engage in a deeper and more meaningful debate about the subject and allow for non-institutional social mechanisms to enrich our narrative of the past events with all the political, social, and cultural aspects with which they are that are entwined.²⁰⁰

Publishing and making these materials accessible to the public is necessary to stimulate public debate about these events and prevent history from repeating itself. As the Inter American Court of Human Rights stated, preventive measures and non-recurrence guarantees begin with the revelation and acknowledgement of past atrocities.²⁰¹ A more intense scrutiny into the intelligence and law enforcement agencies' actions could raise awareness about the system's past and present problems while reinvigorate the victim's demands and the institutional reform surrounding the AMIA matters.

Finally, allowing the public to access declassified evidence which supports both the indictments against the alleged AMIA perpetrators and the decision to abandon other potential leads could help the investigation to regain credibility. Enabling open debate about the strengths and weaknesses of each hypotheses still plausible would allow suspects to be tried in absentia albeit more slowly and costly since the scope is no longer limited by indictment's the content. In some cases, this may lead to disappointing conclusions,

199. Law No. 1311/2015, Jul. 7, 2015, B.O. 1 (Arg.).

200. Yepes & Saffon, *supra* note 180, at 12.

201. *Bamaca Velzquez v. Guatamala*, Inter-Am. Ct. H.R. (ser. C) No. 70, 76-7 (Feb. 22, 2001).

but the current silence around the investigation only feeds mistrust and speculation.

In the end, making such archives public and playing an active role in reconstructing what happened is necessary to allow many other things to fall into place and bring us closer to a scenario which might not meet our expectations, but which is unquestionably superior.

VI. CONCLUSION

This overview of the AMIA Unit's history suggests that while part of the transitional justice toolkit was applied to the case, the different government agencies had been almost exclusively concerned with the criminal justice aspect. In doing so, such agencies failed to commit resources to taskforces which could have broadened their perspective and helped to understand the victims. Nearly twenty-five years after the attack, we can appreciate the chosen strategy's shortcomings and the problems which stem from relying on the criminal justice system to guarantee the victims' right to truth.

The ability to implement truth-seeking mechanisms through non-judicial institutions was only briefly considered during a time when the government had a strenuous relationship with the Intelligence Agency, which still operates with little to no external oversight. Even today, the Intelligence Agency has never been held accountable for its failure to prevent the attacks, nor the crimes it helped commit during the investigation. As such, it is rather difficult to consider the AMIA Unit suspension as good news, but nevertheless the new agencies' involvement is needed to help jumpstart a new investigative era with a wider focus. More than a year after this decision, we must once again stress the importance of the ongoing AMIA survey and the fact that it may offers the government a chance to settle some of its many debts with victims, family members, and society in general.

Of course, there are more ambitious alternatives available, which this paper does not intend to discard, but historically these alternatives were difficult to implement and created additional divisions. So, in the meantime, the preservation of the Intelligence Agency's archive, the publicly disseminating as much content as possible, and ensuring the archive's accessibility are necessary steps to correct some past mistakes and allow us look ahead more clearly. Without renouncing to our aspirations of justice, nor abandoning the quest for alternatives to overcome the obstacles investigations

historically faced, it's time to start thinking about what is within our immediate reach and what can we offer victims here and now. Only the truth can help victims find closure and the fact that we cannot expect the such truths to be evident in criminal proceedings is clearer now than ever.