

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
“Promoting human rights by protecting those who defend them”

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Alejandra Magdalena Gils Carbó, Attorney General of Argentina

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Dr. Julio Alak, Minister of Justice and Human Rights

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Dear Attorney General Alejandra Magdalena Gils Carbó, and Minister of Justice and Human Rights Dr. Julio Alak:

Re: Responsibilities of the Government of Argentina in the death of Prosecutor Alberto Nisman

I write on behalf of Lawyers' Rights Watch Canada (“LRWC”), a committee of lawyers who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

LRWC is gravely concerned with the absence of any appropriate response by the Government of Argentina following the death of prosecutor Alberto Nisman on Sunday, 18 January 2015. Alberto Nisman died the day before he was scheduled to give evidence to the Argentinean Congress about his allegations of a federal government cover-up in respect of the 1994 AMIA bombing.

LRWC urges the Government of Argentina to comply with its international human rights obligations by appointing an Independent Commission of Inquiry empowered to conduct a full and independent investigation into the circumstances surrounding death of Alberto Nisman, including the adequacy of security precautions taken at the time and the executive and police response that followed. LRWC also urges a clear declaration of intent, followed by legal action, to fully investigate the AMIA bombing.

Background

In 2004, Alberto Nisman was assigned the role of Special Prosecutor in the 1994 bombing of the AMIA Jewish Community Centre in Argentina that killed 85 people and injured hundreds more.¹ On 15 January 2015, after 10 years of investigations, Alberto Nisman formally accused the President of Argentina Cristina Fernández de Kirchner and Foreign Minister Héctor Marcos Timerman of attempting to shift the blame for the bombing. Alberto Nisman was scheduled to provide evidence for his allegations to the Argentinean Congress on Monday, 19 January 2015.² He had been receiving death threats for years, including in the days preceding his death, apparently been associated with his investigation.³

The day before his scheduled testimony, Alberto Nisman died in his home from a gunshot wound to the head. According to CNN,⁴ Nisman's federally appointed ten-man security detail contacted his secretary on the afternoon of Sunday, 18 January 2014, to say that he was not answering his phone. When he did not answer the door and his Sunday newspaper was found on his doorstep, the bodyguards arranged for Alberto Nisman's mother to open the door. The door was locked from the inside, with a key in the lock. Alberto Nisman's family then arranged for a locksmith to attend. It was not until midnight that his mother and a guard found Mr. Nisman's body in his apartment with a 22-caliber gun nearby.

The day his body was discovered and in the days immediately following the event, the President of Argentina and senior officials made statements describing Mr. Nisman's death as a suicide. Notably, these statements were made despite the facts that there was no suicide note, no gunpowder found on Nisman's hands, and the locksmith found a service door left open when he was first called to the apartment.⁵ The government's official position is now that a former intelligence official was responsible both for providing Mr. Nisman with misleading information and for his death.⁶

On 18 February, one month after his death, hundreds of thousands of Argentines marched to demand justice in the case. However, on 26 March 2015 the allegations Nisman raised were dismissed, while investigations into his death have been at best unprofessional. LRWC renews its calls for these matters to receive the diligent and independent investigation that is required by international law as well as the principles of fundamental justice.

¹ "AMIA Bombing Commemorated", *Dateline World Jewry*, World Jewish Congress, September 2007.

² Benedict Mander and John Paul Rathbone, "Argentina: The strange death of Alberto Nisman" *The Atlantic*, 22 January 2015, online:

<http://www.ft.com/intl/cms/s/0/5b43beae-a22a-11e4-bbb8-00144feab7de.html#slide1> (last viewed 10 Sep 2015).

³ Sarah Marsh and Maximiliano Rizzi, "Prosecutor who accused Argentina's president of Iran cover-up found dead" Reuters, January 19, 2015, online at: <http://cnews.canoe.ca/CNEWS/World/2015/01/19/22188801.html> (last viewed 10 Sep 2015).

⁴ Eliot C. McLaughlin, "Prosecutor in 1994 Buenos Aires Jewish center bombing found dead", CNN U.S. edition, January 21, 2015, online: <http://www.cnn.com/2015/01/19/americas/argentina-alberto-nisman-dead/> (last viewed 10 Sep 2015).

⁵ Adam Chandler, "The Extremely Suspicious Death of Victim #86," *The Atlantic*, January 22, 2015, online: <http://www.theatlantic.com/international/archive/2015/01/Argentine-President-Cristina-Fernandez-de-Kirchner-Doubts-AMIA-Prosecutor-Alberto-Nismans-Suicide/384750/> (last viewed 10 Sep 2015).

⁶ Simon Romera and Jonathan Gilbert, "Argentina points to Spy After Lawyer's Eerie Death" *The New York Times*, 23 Jan 2015, online: <http://www.nytimes.com/2015/01/24/world/americas/argentina-points-to-spy-after-lawyers-erie-death.html> (last viewed 10 Sep 2015).

Duty to Protect

It appears that the Government of Argentina did not take adequate steps to protect Alberto Nisman in spite of the threats made against him in his capacity as a Special Prosecutor. As a member of the United Nations and of the Organization of American States, Argentina has obligations to ensure the equal enjoyment of all people to the personal and advocacy rights protected under the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR)⁷, the *American Declaration on the Rights and Duties of Man*, and the *American Convention on Human Rights* (ACHR)⁸. All of these instruments impose a legal obligation on Argentina to take effective measures to protect the life, liberty and security of the person of all people with its territory. A failure by the state to provide adequate protection which results in harm is considered by all monitoring bodies to be an offense in itself.

It is widely accepted that states must adopt and maintain effective measures to ensure the safety and independence of lawyers and the freedom to engage in their professional activities as lawyers and prosecutors without reprisals. The United Nations' *Basic Principles on the Role of Lawyers* ("*Basic Principles*")⁹ describe specific state duties that ensure the right to legal representation by ensuring the independence and safety of lawyers, including from interference by state and other actors. Article 16 of *The Basic Principles* provides that lawyers must be able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Article 17 requires that states shall adequately safeguard the security of lawyers who are threatened as a result of discharging their functions.

The Inter-American Court of Human Rights and other international human rights bodies have established the obligation of States to act with due diligence and prevent, punish and provide effective remedies for threats and acts of violence and attacks on the rights to life and personal integrity of their citizens, whether those acts are committed by state or non-state actors.

While the government of Argentina appointed ten bodyguards to protect Alberto Nisman, this alone does not demonstrate an adequate commitment to safeguard his security. Rather, the fact that the official security detail was not present and failed to reach Mr. Nisman in a timely manner on the day of his death demonstrates a lack of commitment to protect him *in spite of* the appointment of a security detail. It is notable that his detail was not present the day of his death; it was Mr. Nisman's family that made the efforts that day to reach him; and it was a private locksmith that opened the door.

The failure of the Government of Argentina to adequately protect Alberto Nisman represents a breach of Argentina's legal obligations to protect the public interest by ensuring Mr. Nisman's safety in prosecuting the 1994 bombing of the AMIA Jewish Community Centre.

⁷ Argentina signed the ICCPR on 19 February 1968 and ratified on 8 August 1986.

⁸ Argentina Ratified the ACHR on 14 August 1984.

⁹ *The Basic Principles*, adopted by the Eighth United Nations' Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Duty to Ensure an Independent and Effective Investigation

Numerous media sources have reported on the immediate investigation into Nisman's death, leading to the inescapable conclusion that the investigation was at best conducted negligently. An Argentine TV show aired parts of four hours of video taken by police at the scene that exposed some serious failures to properly gather and evidence critical to determining the cause of Mr. Nisman's death. Among other failures, investigating officers allowed Mr. Nisman's mother, Sara Garfunkel, not only to remain present but to wash dishes and clean up while the officers worked, thereby compromising the crime scene and possibly leading to the destruction of evidence.¹⁰ Police investigators appeared to mishandle evidence and gather documents without gloves, possibly destroying fingerprints. Perhaps worst of all, one officer is seen wiping blood from the gun that killed Nisman with some toilet paper, smearing it on adjacent furniture and ruining its evidentiary value, then removing bullets from the weapon.¹¹

Dexter Filkins, in the extensive 20 July 2015 report in *The New Yorker*, wrote "Evidence accumulated that the [official] investigation into Nisman's death had been so sloppy as to be fatally compromised." The investigation has also been denounced by Nisman's former wife, Justice Sandra Arroyo Salgado, who engaged a leading forensics team to analyze the results of the autopsy. Among these findings are the facts that no gunpowder residue was found on Nisman's hands, which would apparently rule him out as the shooter, and no evidence of spasming was detected in the hands, which would have been likely if he had shot himself. Inconsistent blood evidence suggests Nisman's body might have been moved after death, and the position of the weapon relative to the body was inconsistent with suicide. It has also been revealed that Nisman's laptop logged the input of up to three flash drives just after 8pm, apparently hours after his death.

In spite of the incomplete, inconsistent, and incompetent police investigations, the President and officials in her government almost immediately compromised the independence of the investigation further by making public statements that Nisman's death had been a suicide. The separation of the executive branch of government from the judicial branch (which includes prosecutors and investigators) is fundamental to the rule of law, a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.¹²

For the President of Argentina and her officials to comment about a police investigation before the outcome of that investigation brings the administration of justice into disrepute, and is more indicative of the persistent problems Mr. Nisman faced in carrying out his investigations than of the cause of Mr. Nisman's death. As a result of his death, his allegations and evidence against senior government officials are not being properly addressed. The unsubstantiated statements of officials as to the cause of death undermine the integrity and the independence of the investigation, and give rise to the perception that the Government of Argentina is not merely commenting prematurely on but interfering with the investigation.

¹⁰ Daniel Hernandez, "The Search for Truth in Argentina", Vice News, June 15, 2015
<https://news.vice.com/video/who-killed-alberto-nisman-in-search-of-truth-in-argentina> Accessed on: Sept 1, 2015.

¹¹ Kejal Vyas, "New Twist in Death of Argentine Prosecutor Alberto Nisman", Wall Street Journal, June 2, 2015,
<http://www.wsj.com/articles/new-twist-in-death-of-argentine-official-1433298094> Accessed on: Sept 1, 2015.

¹² Online at: <http://www.un.org/en/ruleoflaw/> (last viewed 10 Sep2015).

Taken together, Argentina's responses to death threats against Alberto Nisman and to his death itself suggest an alarming lack of political will to ensure a full and independent investigation into the 1994 bombing of the AMIA Jewish Community Centre. The failure to protect the life and security of Alberto Nisman and the public comments of government representatives in response to his death have created a chilling effect on the independent prosecution of those responsible for the attack.

In order to fulfill the legal obligation to investigate both the AMIA bombing and the death of Alberto Nisman, the Government of Argentina must appoint an independent commission of inquiry to pursue the investigation with due diligence and make all possible efforts to bring to justice the material and intellectual authors of these crimes.

To fulfill the requirements of the ACHR Articles 1, 2, and 4.1, the ICCPR Articles 1, 2 and 7, and the *UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, an independent commission of inquiry must:

1. be conducted by investigators independent from state agents with alleged criminal involvement;
2. be capable of determining whether death occurred as a result of the illegal use of force
3. lead to the identification and prosecution of suspects;
4. ensure that investigators take reasonable steps to secure evidence including eyewitness testimony, forensic evidence, objective analyses of clinical findings and conduct an autopsy that provides an accurate record of the injuries;
5. be prompt and reasonably expeditious;
6. afford sufficient public scrutiny of the investigation and the results to secure accountability; and
7. afford to Alberto Nisman's next-of-kin whatever involvement in the process is necessary to safeguard their interests and ensure the remedies to which they are entitled.

LRWC Calls on the Government of Argentina:

1. to appoint an Independent Commission of Inquiry empowered to conduct a full and independent investigation into the death of Alberto Nisman;
2. to conduct a full and independent investigation into the nature and extent of protective measures put in place by the Government of Argentina to protect its prosecutors, and the insufficiency of those measures in Alberto Nisman's case, that will make recommendations for implementing and enforcing effective protective measures for prosecutors in the future; and
3. to make a public statement of commitment to ensure the independent continuation of the work of Alberto Nisman in investigating and prosecuting perpetrators of the AMIA bombing, including allegations of attempts by governments authorities to suppress evidence or otherwise improperly influence the investigation or prosecution.

Yours truly,



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