FOREWORD BY IAN MARTIN

FORMER SECRETARY GENERAL OF AMNESTY INTERNATIONAL

TAKING A STAND

THE EVOLUTION OF HUMAN RIGHTS

JUAN E. MÉNDEZ

WITH MARJORY WENTWORTH

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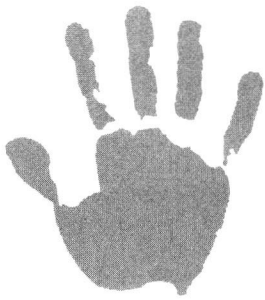

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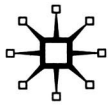

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PRAISE FOR *TAKING A STAND*

"*Taking a Stand* is essential and fascinating reading for anyone interested in the most effective strategies used by human rights defenders. Juan Méndez draws on his personal experiences as both a victim of torture and a pioneer of human rights advocacy to examine some of the most pressing issues of our day."

—José Miguel Vivanco, Executive Director, Americas Division, Human Rights Watch

"Juan Méndez, a towering figure in human rights advocacy, has written an impressively lucid and honest account of his remarkable life. For nearly four decades Méndez has been at the forefront of the human rights movement, not only in Latin America but worldwide. His unswerving commitment to the rule of law comes alive on these pages. Méndez has not only been a witness to history, but has also played a fundamental role in shaping it towards greater decency and justice. *Taking a Stand* is an invaluable contribution, told with characteristic modesty by a giant in the field who continues to inspire others through his wise reflections and outstanding example."

—Michael Shifter, President, Inter-American Dialogue

"In the field of human rights, there is no greater advocate than Juan Méndez. This thought provoking and moving book offers remarkable insight into the principles of justice and accountability. It is also a testimony to the uncompromising spirit of a man who, at great personal sacrifice, refused to remain silent."

—Mark S. Ellis, Executive Director, International Bar Association

"We can all sleep more soundly at night knowing that men like Juan Méndez take a stand to defend the rights of us all. This is a magnificent book that tells a noble story of passionate but impartial dedication to the cause of human rights. And it comes from someone who learned of human wrongs on the torture table and in jail in his native Argentina and who went on to fight for human rights across the globe. *Taking a Stand* will inspire others to follow in the footsteps of Juan Méndez and will also serve as a blueprint on how to stand up to dictators and advance true democracy."

—Robert Cox, former Editor-in-Chief of the *Buenos Aires Herald* and former President of the Inter American Press Association

For my parents, Julio and Aurelia.
For Chichela, Juanfra, Camilo and Sole.
And for Joaquín, Anahí, Camila and Javier.

JEM

For my teachers Vincent Ferraro and Carolyn Forché.

MHW

FOREWORD

"*La solidaridad no se agradece, se retribuye*"—"Don't say thank you for the solidarity you received; return it." On my first-ever visit to Latin America, as Secretary General of Amnesty International in 1986, I encountered this splendid slogan on a poster for Amnesty's Uruguayan Section, many of whose members were former political prisoners. It sums up the life and career of Juan Méndez. As a political prisoner and victim of arbitrary detention and torture, he experienced the solidarity of family, friends and campaigners. As a lawyer and human rights activist, he has paid back that solidarity to others many thousand-fold.

Juan's life has taken him from being a torture victim more than 35 years ago, to being the United Nations Special Rapporteur on Torture today. His career has taken him from the grassroots to the summit of the defense of human rights. As a young lawyer, he was a local defender of political and social activists in his own country, Argentina; he made a fresh start at the grassroots in his country of exile, the United States. He went on to play major roles in leading nongovernmental organizations working for human rights and transitional justice, including an outstanding fifteen-year contribution to the development of Human Rights Watch from its early stages. Although never a staff member of Amnesty International, he consistently supported the organization that had adopted him as a prisoner of conscience and had campaigned for and assisted his release. He became a regional human rights leader,

as executive director of the Inter-American Institute of Human Rights and president of the Inter-American Commission on Human Rights. At the fully worldwide level, in addition to his current United Nations torture mandate, he was the first United Nations Special Advisor on the Prevention of Genocide. All along the way, he has been a teacher, conveying his own knowledge and experience to other generations of human rights lawyers and activists. His unceasing contribution to the struggle against impunity has been both conceptual and practical.

Juan embodies the best values of the human rights movement. Himself a person of firm political conviction, he has upheld the highest standards of impartiality in exposing the human rights violations of the left and right. He has maintained a scrupulous regard for the truth. While never refraining from proper public criticism and insisting on accountability and justice, he believes in the value of being open to and seeking dialogue. He has always stayed above any kind of sectarianism within the human rights world, throughout which he commands universal liking and respect. Having been a victim and worked directly with victims, he has never overlooked the importance of campaigning for and assisting individuals.

Argentina's passage from dictatorship and repression to democracy and accountability provides one of the key stories of progress in respect for human rights, and Juan has played a role through every stage in this story, from which there is much to learn. The United States has aspired to be a human rights leader, yet its claim to moral authority has been repeatedly undermined by its inability to rise above its political alliances, and increasingly by its own direct violations of human rights. Juan is uncompromising in his insistence on holding his second country to universal standards.

This book is published at a time when shifts in the balance of global economic and political strength are rendering obsolete an approach to human rights promotion reliant on the foreign policies of Western governments and when events in the Arab world are showing that the yearning for respect for human dignity is indeed universal and

will be realized from within societies, not from outside. But the solidarity among those committed to human rights in the South and the North remains a powerful foundation for advancement. Juan Méndez has worked on both sides of this alliance, and his experience is an inspiration for sustaining and deepening it.

Ian Martin
London, April 2011

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CHAPTER ONE

DETENTION

Throughout history, despotic governments have imprisoned dissidents and denied them the opportunity to challenge their arrest. Criticism of prolonged arbitrary detention became one of the first rallying cries that allowed the emergence of a truly international human rights movement. The designation of a victim of arbitrary arrest as a "prisoner of conscience" allowed Amnesty International, an organization that works to protect the human rights of people all over the world, to put a human face to the injustice and to recruit common men and women to fight it. I was an early beneficiary of this emerging movement; my case illustrates the arbitrariness and unfairness of prolonged detention without trial.

The first time I was detained was in 1974 in my hometown of Mar del Plata, Argentina, in front of the Catholic University Law School where I was teaching. At the time, I was known for my involvement with highly visible political cases, but I was also known for activism from my student days during the tumultuous 1960s. I tried to use my legal skills to help the poor and defend the rights of others. I was newly married to another law student, and we had two young children.

One evening I had just finished meeting with some students who had peacefully taken over the law school building. The school was across a passage from the cathedral, and both overlooked San Martin Street, the city's main commercial artery. The street was bustling

with late shoppers and people going home from work. Because of the demonstration, there were even more people out than usual. Classes had been canceled due to the peaceful occupation, but the students appreciated that I, a faculty member, had gone in to talk to them about their grievances.

General Juan D. Perón was once again the president, after spending eighteen years in exile in Spain. After ten years as a democratically elected president (1946–1955), he had been deposed by a military coup d'etat in September 1955. After some skirmishes between loyalist and rebellious forces, the coup plotters gained control of the situation and Perón resigned. He took refuge on a Paraguayan gunboat and was allowed to go into exile, first to Paraguay and then to several other Latin American destinations. Eventually he settled in a tony neighborhood of Madrid, where he spent most of his years in exile. His followers, the Peronistas, remained active at home, even though their political party was banned from participating in elections. In 1973, the country held its first free and fair elections since 1955, and the Peronist candidate, Dr. Héctor Cámpora, won overwhelmingly. Later the same year, pressures from the party's right wing forced Cámpora's resignation and, in September 1973, after having returned permanently in June, Perón was elected president with his wife, María Estela ("Isabel") Martínez de Perón as vice president. By then, however, the struggle between the left and right wings within the Peronist movement was becoming violent. The left wing of the party included large numbers of young people from all walks of life, highly organized and mobilized by the Peronist Youth (Juventud Peronista). The Peronist Youth street demonstrations were peaceful, although their rhetoric was extreme. They sympathized openly with Montoneros, an urban guerrilla group that between 1970 and 1973 had isolated the military dictatorship and forced its rulers to grant the first truly democratic election in decades and allow Perón's return. Perón, however, after favoring different factions depending on the circumstances, was now clearly siding with the right, including thugs employed by the larger trade unions and small fascist student groups. By 1974, there were early signs that these right-wing groups were beginning to enjoy support from the police and the military, as they had during the military dictatorship.

Because of the atmosphere of threatened violence, some of the students occupying the law school had concealed weapons and organized regular lookout shifts. As I walked outside that evening with three friends who were political activists in the youth movement of the Peronist Party, some of the lookouts were discreetly posted at the perimeter of the block and some yards into the main square, where we were going. Fortunately, their instructions were to respond only to firearms attacks from provocateurs, so when the four of us were stopped by plainclothesmen shouting "Federal Police, hit the ground!" they did not react and simply left the area; if they had tried to defend us, there could have been many casualties.

The plainclothesmen pointed their machine guns at us as we lay on the sidewalk and then handcuffed us. They searched us, took our handguns, and asked for identification. Many of us, including me, carried guns at the time for protection. The police had no warrant and no probable cause to arrest us, as we were not breaking the law. But by 1974 the police were already aggressively and threateningly displaying weapons and flaunting the laws. Dozens of people were passing by. It all happened out in the open, as if it were something ordinary. Eventually, they piled us into the floor of their cars, then sat on us. Although they were verbally abusive and threatening with their weapons, they did not use physical violence. Since my handgun was registered and legal, I thought that I would quickly clarify the situation and we would be released. Within minutes, they took us away to the local federal police headquarters in their unmarked cars.

Upon arrival, they put us in individual cells. Each of us was taken separately to see the head of the police for interrogation. We were threatened, and my three friends were roughed up a bit. Back in our cells, I tried to give my friends legal advice through the windows, telling them to refuse to make statements and insist on seeing a lawyer. Unbeknownst to me, a uniformed cop was listening in; my words only reinforced the police's notion that I was a ringleader. We spent three nights in jail. The second night we could hear a raucous demonstration in the street; our friends in the Peronist Youth had decided to make our arrest a mobilizing event, and hundreds of young people were marching and chanting to demand our release. It was heartening

to hear them, and it lifted our spirits considerably. Inside the station, the police went into high alert.

Because my arrest happened in plain sight of so many people, my wife, Silvia, also a lawyer, was notified. She went to the bar association and was lucky enough to find a meeting of its ruling board in progress. Its chairman, Reiniero Bernal, knew me because we had worked together on a sensational case involving an armed right-wing attack on students at the School of Architecture. Reiniero offered to leave the meeting and go directly to the Federal Police to inquire about my detention. He and Silvia were not allowed to enter the building where I was being held or to see the chief of the Federal Police for Mar del Plata; when they insisted, machine guns were pointed at them. Reiniero then went back to the bar association to draft a formal protest against the Federal Police, which he submitted the next day, together with the petition for a writ of habeas corpus to secure my release.

My three companions were released without charges after the third night. I was taken from my cell in the middle of the night and placed, handcuffed, in an unmarked car that made its way out of the city through deserted streets. I was driven to a penitentiary in Azul, about two hundred miles away in the interior of the province of Buenos Aires. (In 1974, there were neither federal courts nor prisons in Mar del Plata.) After I was given prison clothes and my hair was cut very short, I was taken to the courthouse to be interrogated by the federal judge.

By then, my friends and family had learned what was going on: The Federal Police claimed that the three students had small-caliber weapons, legal at the time, but that I was carrying a "war weapon"—a larger-caliber handgun, possession of which was a criminal offense that carried a mandatory prison sentence without the benefit of parole during pretrial detention. It was clear that the police switched the gun soon after my arrest. The fact that they would manipulate the evidence in this fashion made my situation seem even more precarious. At my hearing with the judge, I was assisted both by counsel and my friend Ricardo Sepe. Both were able to identify my gun and refute the charge

that I was carrying a war weapon. My brother Julio had also come to help me and was stunned to see me in handcuffs and prison garb like a common criminal.

At the end of the hearing, the judge dismissed the charges and released me unconditionally. The Federal Police could not hold me after the federal courts had declared me innocent. The state of siege was not yet in effect—it was established later in 1974, after Perón had died and his widow, Isabel Perón, was president. If it had been in effect, the police would have asked the ministry of interior to place me in administrative detention, as would happen to me the following year.

I returned to Mar del Plata and expressed my gratitude to friends, family and colleagues for their support and assistance. It was clear to me, however, that the precarious balance of power that was keeping me safe in the city was irretrievably altered. Until then, all the threats against my life and liberty had come from small gangs of thugs who were not interested in upsetting that balance. But now the Federal Police had entered the growing dispute on the side of the right-wing forces. The fact that they arrested me without a warrant and deliberately distorted the evidence to keep me in prison was a clear signal that life in Mar del Plata was no longer safe for me or for my family. Silvia, who never participated in politics, was frightened most of the time. For the previous three years, the police had used tactics to intimidate and frighten me and my family, as they had on December 11, 1971, my twenty-seventh birthday, when they raided our apartment because of my participation in the case of the murdered architecture student. Other threats—in person, by phone, or through graffiti—had come from right-wing gangs. Silvia pleaded with me to be careful, but those years when Perón first returned to power were nothing resembling normal.

In retrospect, I should not have been surprised by my arrest. There had been signs, of course. In December 1971, Reiniero and I had worked on a case involving an attack allegedly by the right-wing student group CNU (Concentracion Nacional Universitaria), a national movement that was relatively strong in Mar del Plata, against a student assembly at the School of Architecture that had left an eighteen-year-old student named Silvia Filler dead and three male

students wounded. Silvia Filler's family and ours were all friends, and I had always found her independent and intellectually curious. She was sitting in the middle of a classroom where a student assembly was being held when the thugs attacked. A stray bullet hit her in the forehead. The thugs were shooting wildly against the group of about 150 students, not singling her out. Nevertheless, months later, there were boasts of having killed a Marxist and Jewish student.

With two other lawyers, I represented the wounded students in the criminal investigation and eventual prosecution of their assailants, starting that same night. Reiniero and another prominent lawyer represented the Filler family. We set about to demonstrate state police complicity with the group that had stormed into the assembly while the building was under police surveillance. We gathered witnesses and brought them to court. On the basis of allegations by many eyewitnesses, twenty members of the CNU and its allies were arrested within hours of the crime. They were charged with murder and other offenses and held in pre-trial detention for almost two years. Several had been my school mates at the Catholic University Law School and often had argued with me on a variety of political issues; they were part of a tiny but vocal fringe group that the majority of students repudiated.

At dawn on Saturday, December 11, 1971, five days after the murder of Silvia Filler, the police raided my apartment. My wife and I were pulled out of bed at gunpoint. The police stayed for about an hour, going over everything in our home and taking away books, magazines, and other documents. With their guns still drawn, they played with our six-month-old son, Juan Francisco. After I insisted, they showed me a search warrant signed by a judge—the same judge who was investigating the Filler murder. He also had been a professor of mine. Silvia and I went to see him that same afternoon. He was profusely apologetic; he had signed the search warrant without knowing that it was for my home, acting in response to an anonymous letter the police showed him stating that there were weapons at my apartment. It also stated that people from other parts of the country who came to wreak havoc in Mar del Plata were staying in my home. The ease with which the police manipulated the courts to do the CNU bidding was a clear

demonstration that our assumption—that the thugs had acted with police protection—was not far from the truth.

In the days that followed Silvia Filler's death, there were many demonstrations, and the police and military virtually occupied the downtown area with heavy weaponry and equipment. Things had been very unstable in Argentina for some time, and this incident brought things to a boiling point. A succession of military dictatorships had held power for almost a decade. No elections were held. Repression was escalating. There was a general crackdown on freedom of expression as well as on students and faculty at the national universities. Well-known teachers who were thought to be communists were fired from their jobs. The police presence in the streets was heavy and threatening. Student protests were met with a violent police response, and protestors were hauled away to police precincts.

At that time, however, dissidents were not yet heavily persecuted. There were only a few disappearances in 1971 and 1972. In 1971, a lawyer named Nestor Martins was the first victim of forced disappearance (*desaparecido*). He was abducted, illegally detained, tortured and ultimately murdered. All of this happened in secret; no trace of his body was found, and the government forces that took him away completely denied taking any action. Martins had a history of defending political prisoners and had charged the police with torture. The military government in power at the time (from 1966 to1973) had placed him in administrative detention under the "state of siege" (known elsewhere as "state of emergency") for several months, without trying him in a court of law; this was how the military handled leftists. Later, after his release, Martins was kidnapped by plainclothesmen as he was meeting a labor client in front of the Palace of Justice. They took the client too. No one ever found either of them.

In 1972, I became involved with the Peronist movement in Mar del Plata. I joined a coalition of left and center-left forces whose leader was Julio Troxler, a legendary Peronist leader from the 1950s. Troxler was kidnapped and murdered in Buenos Aires in 1975, in one of the most brazen and stunning crimes of the right-wing paramilitary group known as Triple A (Alianza Anticomunista Argentina). Our coalition disputed

control of the Peronist party in the city, mostly in order to select candidates for office in the elections that finally took place on March 11, 1973. The infighting within Peronist ranks in Mar del Plata was so bad that once the electoral campaign started in earnest, we could not hold a single event without it ending in violence. Because of my political activism and my earlier confrontations with the CNU, I was known to many right-wing leaders and their bodyguards and thugs.

From time to time, I visited shantytowns and poor neighborhoods to offer legal services to inhabitants on all manner of legal problems: petty criminal matters, social security benefits and, most often, employment-related grievances, such as dismissal without severance pay, unpaid medical leave and workplace accidents. I was well known to the authorities because my pro bono work was part of neighborhood organizing efforts. It was not particularly controversial at first, but the fact that it was connected to political organizing with a leftist bent made it suspicious and attracted the attention of intelligence services and their servants, the right-wing thugs. One morning in the spring of 1973, I left my house to go to work after kissing my two-year-old son, who was riding a tricycle on the sidewalk. I noticed a couple of men lazily working on a house across the street. Most homes in that neighborhood were owned by out-of-towners, so they were generally closed except for the summer months. For some reason I drove back a few minutes later and took another look: I recognized the two workers as armed thugs for the right-wing trade union leaders in Mar del Plata. They were clearly conducting a stakeout of my house, possibly in advance of an attack. I got out of my car and stood on the sidewalk staring at them. They realized that I had recognized them, and that probably aborted whatever plan they had. Nothing happened at the time. My son was safe, but thirty-eight years later, I still feel like I dodged a bullet. What if I had not come back? Would they have taken my young son? My wife?

At around the same time, the head of the trade union confederation in Mar del Plata was murdered in the streets, and a small armed left-wing Peronist group claimed credit. The trade unions (especially the most powerful ones) were the arena where right- and left-wing