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COMMISSION ON HUMAN RIGHTS  
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Agenda item 13

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Note verbale dated 9 December 1988 from the Permanent Mission  
of Argentina to the United Nations Office at Geneva addressed  
to the Centre for Human Rights

The Permanent Mission of the Argentine Republic to the International Organizations at Geneva presents its compliments to the United Nations Centre for Human Rights and, with reference to the forty-fifth session of the Commission on Human Rights, to be held in Geneva from 30 January 1989, has pleasure in transmitting herewith the relevant section of the Annual Report of the Inter-American Commission on Human Rights for 1987-1988. This section of the Report refers to a study about the situation of minor children of disappeared persons who were separated from their parents and who are claimed by members of their legitimate families.

The Permanent Mission of Argentina requests the Centre for Human Rights to circulate the annexed texts as official documents of the Commission under agenda item 13, "Question of a convention on the rights of the child".

Annex

[Original: English/Spanish]

EXCERPT FROM THE ANNUAL REPORT  
OF THE INTER-AMERICAN COMMISSION  
ON HUMAN RIGHTS 1987-1988

AREAS IN WHICH STEPS NEED TO BE TAKEN TOWARDS FULL  
OBSERVANCE OF THE HUMAN RIGHTS SET FORTH IN THE  
AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN  
AND THE AMERICAN DECLARATION ON HUMAN RIGHTS

In this part of the Annual Report, in which suggestions are generally made to the supreme organ of the Organization concerning specific steps towards full observance of human rights, the Commission will confine itself to carrying out two mandates that it received from the most recent session of the General Assembly.

In its resolution AG/RES. 890 (XVII-0/87) on the Annual Report of the Inter-American Commission on Human Rights, the General Assembly resolved:

10. To request the Commission to include on its next program of activities a study on the situation of minors who are the children of disappeared persons and who have been separated from their parents and are being claimed by members of their legitimate families.

11. To invite the member countries to submit to the Inter-American Commission on Human Rights, by June 30, 1988, observations and comments on its positive initiative aimed at producing a draft inter-American convention to prevent and punish forced disappearances, so that the Commission might submit a draft convention on this subject to the General Assembly at its next regular session.

Accordingly, the Commission hereby presents the study requested of it on the situation of minors who are the children of disappeared persons and who have been separated from their parents and are being claimed by members of their legitimate families.

It is also submitting a draft Inter-American Convention to Prevent and Punish Forced Disappearances, with its corresponding statement of reasons for consideration by the General Assembly at the present session.

I. A STUDY ABOUT THE SITUATION OF MINOR CHILDREN OF  
DISAPPEARED PERSONS WHO WERE SEPARATED FROM THEIR PARENTS  
AND WHO ARE CLAIMED BY MEMBERS OF THEIR LEGITIMATE FAMILIES

1. Background

The seventeenth regular meeting of the General Assembly of the OAS, held in Washington in November 1987, resolved unanimously to ask the

Commission for a study about the "situation of minor children of disappeared persons who were separated from their parents and are claimed by members of their legitimate families."

The IACHR welcomes this decision of the General Assembly to give special attention to the phenomenon, because it is convinced that an effective way to counter serious violations of human rights is to publicize them and to make them generally known, even in their most sordid and heart-rending details. In so doing, a contribution is made to solving pending situations and to avoid their repetition in the future.

This present study is the result of the Commission's experience, accumulated over several years, predominantly as a result of receiving communications from relatives of disappeared children and of attempting to find solutions through inquiries with the respective governments. It benefits as well from the extraordinary task performed by human rights organizations in their own countries. Among the latter, a special reference is made to the association Abuelas de Plaza de Mayo (Grandmothers of Plaza de Mayo) of Argentina, and to those who assist it in the scientific and legal fields. Besides following those endeavours from their inception, the Commission has had numerous opportunities to hold conversations with leaders and members of the Abuelas de Plaza de Mayo, and wishes to express its appreciation to that group for having submitted valuable documentation for the preparation of this report.

The present work attempts to summarize the problem as it has come up in the tragic reality of Latin America, particularly in Argentina which is the country in which the greatest amount of documentation exists regarding the facts which have motivated this study, as well as to describe the efforts of groups in civil society, and of governments in bringing about a remedy. At the same time, it points out that there is still a lot to be done and tries to outline ways in which hemispheric solidarity can contribute to these humanitarian objectives.

The Commission, in different reports, both special and annual, has referred to the serious problem of the forced disappearance of adults. One of the repercussions of this practice, at the stage of the abduction that precedes the disappearance as such, has been the aggression against the families of the principal victims, to force them into silence or into collaboration and to intimidate them so that they will pressure the principal victim into self-incrimination or into providing information about others. In most cases of disappearances, therefore, children have become the indirect victims.

The focus of this study, however, is a narrower situation, in which children are direct victims and specific "targets" of the repressive action, even though their kidnapping and theft is meant primarily to

punish their parents or grandparents. This is the case when minors and infants are kidnapped with their parents, or they are born during the captivity of their mothers. Even if the phenomenon sounds cruel and heartless, the Commission must note that hundreds of such cases have been brought to its attention.

Cases known to the Commission have taken place mostly in Argentina, during the counter-insurgency campaign called the "dirty war," under the military dictatorship that ruled that country between 1976 and 1983. Some of the cases affected Uruguayan children during their parents' exile in Argentina. In those cases, responsibility lies not only with the Argentine authorities of the time, but also with their Uruguayan counterparts, since there is evidence of the participation of Uruguayan security agents in the pattern of forced disappearance of their countrymen in Argentina. In some cases, the kidnapping of the minors was done with the complicity of security forces of more than one country, either in the clandestine transportation of the minor across borders, or in the irregular and unlawful protection afforded in other countries to those who took the children away in order to evade justice.

In some of the cases reviewed by the Commission, the final fate of the disappeared children has been the same as in the overwhelming majority of disappeared adults: their extrajudicial execution and the attempt to hide their remains. Fortunately, the number is relatively low.<sup>1</sup>

In other cases, the minor has been returned to the natural family, often after being held for several days in clandestine detention centers or in orphanages or hospitals for abandoned infants. Many of these families have had to endure offensive treatment, long waits and uncertainty before they were reunited with the disappeared minors.

In a very high number of cases, the children were taken away from their parents to be given in irregular adoption to other families. The

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1. The cases of extrajudicial execution of minors (almost always teenagers) are more numerous. A related issue is the forced recruitment of teenagers in the context of non-international wars, either by the armed forces or by the irregular armed groups, and their eventual death in combat, or else the participation of these minors in atrocities. These and other abuses of the rights of children, not only in Latin America but in the whole world, are mentioned in a publication by Amnesty International, Focus on Children, London, 1987. Several organizations are presently working to strengthen the international protection of the rights of the child in different situations, including their detention by judicial order and their forced disappearance. In this report, the Commission refers only to those cases in which children are the victims of a permanent or temporary disappearance.

Abuelas de Plaza de Mayo have been able to document in Argentina 208 cases of this kind, though they believe there may be many more that have not come to their attention for a variety of reasons. Besides, the National Commission on Disappearance of Persons (CONADEP) of Argentina has received documentation about 43 other similar cases, none of them included in the Abuelas de Plaza de Mayo list.

The cases of irregular adoption following disappearance must be classified in two categories: those in which the family receiving the child does not know the circumstances that preceded their encounter with him, and those in which the adopting family is the family of one of the captors of the natural parents, or of a member of the police or armed forces who is cognizant of the origin of the child.

In the first case, the family may not necessarily be innocent of the irregular adoption, made in violation of adoption laws and regulations, but they believe the child to have been abandoned by the parents after an unwanted pregnancy. Unfortunately, this illegal trade in newborns is very common in our countries, even in transnational irregular adoptions, and societies have developed a certain indifference to its illegality. The fact that that indifference, or rather deliberate ignorance has provided a favorable setting for the theft of children whose parents never abandoned them, must cause us to reflect on the need to promote greater respect for regular adoption procedures, and to their adjustment, if necessary, to the needs of life in our time.

The cases in which the new parents are themselves the captors, torturers and executioners of the natural parents, or their immediate accomplices, constitute on the other hand, one of the most unusual manifestations of a repressive pathology.

One of the purposes of this deliberate policy is, without a doubt, trafficking in irregular adoptions by taking advantage of the impunity created by the very method of forced disappearance of persons. From the point of view of those who devised and implemented the policy, however, there was also a more profoundly ideological--as well as a more dangerous--motivation. General Ramón Juan Alberto Camps, Chief of Police of the Province of Buenos Aires between 1976 and 1978, has explained that the leaders of the "dirty war" were afraid that the children of the disappeared would grow up hating the Argentine Army because of the fate of their parents. The anguish generated in the rest of the surviving family because of the absence of the disappeared would develop, after a few years, into a new generation of subversive or potentially subversive elements, thereby not permitting an effective end to the "dirty war."<sup>2</sup>

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2. "Personally, I did not eliminate any child; what I did was to deliver some of them to public welfare organizations so that new parents could be found for them. Subversive parents educate their children for subversion. That has to be prevented." (General Ramón J.A. Camps, interview with Pueblo newspaper of Madrid, February 1984).

2. Situations presented

For purposes of illustration, in the following pages the Commission will describe some of the cases that have come to its attention.

a. Cases resulting in the murder of the minor

Floreal Avellaneda, 14 years old, son of a Communist trade union leader of Greater Buenos Aires, was kidnapped from his house with his mother, on April 15, 1976, by an Army contingent looking for his father. His mother was held in a clandestine center and later in an official prison. On May 14, 1976, Floreal's corpse was found on the coast of Montevideo, Uruguay, hands and feet bound and with signs of torture.<sup>3</sup>

The Lanuscou family, consisting of the couple and three young children, were arrested in their house in San Isidro, a suburb of Buenos Aires, in September 1976. Their whereabouts were never ascertained. In January of 1984, a judicial inquiry led to the exhumation of corpses buried in graves marked "N.N." (no name) in the cemetery of Boulogne, Province of Buenos Aires. The proceedings resulted in the identification of the remains of the couple and of the infants Roberto, 6, and Bárbara, 4. All of them had been killed by gunfire. Although the death certificates mentioned five corpses, it was also established that the remains of the youngest child, Matilde, 6 months old, were not there. Up to now, it has not been possible to find out the fate of Matilde, though the CONADEP received information to the effect that she had been illegally adopted by a Navy officer.<sup>4</sup>

In Argentina there were many cases of teen-agers of Floreal Avellaneda's age, who disappeared after their arrest by security forces. In particular, high school students who were politically organized or who got together to promote school-related demands were targeted for repression. The best known case is the one known as "The Night of the Pencils," referred to in a motion picture of the same name which has been shown with great success. The lone survivor of the episode, Pablo Diaz, told CONADEP and later the Court of Appeals in the trial of the Juntas, of his detention in several concentration camps run by the First Army Corps, together with several other high school students from La Plata. In these camps, he saw his friends Víctor Treviño, Claudio de Acha and María Claudia Falcone, as well as ten other students, all of them arrested for

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3. Nunca Más, Report of the National Commission on Disappearance of Persons, Eudeba, Buenos Aires, 1984, p. 325. The facts in this case were judicially established by the Federal Court of Appeals (Criminal Panel) of Buenos Aires, in the decision sentencing General Jorge Rafael Videla and other members of the Juntas of Commanders for their responsibility in the crimes of the "Process." That sentence was later confirmed by the Argentine Supreme Court.

4. CONADEP, op. cit., pp. 322-23.

demanding reduced public transportation fares for students. His friends were all later executed. Pablo Díaz, who was then 17, witnessed the rape of María Claudia Falcone, who was then his same age.<sup>5</sup>

b. Children returned to their natural families

The Commission is aware of some cases in which the relatives of the disappeared were able to find the children and are presently bringing them up. In some of these cases, the authorities who arrested the parents took measures to notify the relatives, even while refusing to provide information about the fate or whereabouts of the principal victims. In others, the relatives can only thank the good will displayed by neighbors of the victims, who took care of the children and set out to find the relatives. In yet other cases, the families had to suffer through an anguishing pilgrimage through hospitals, orphanages, police precincts and military barracks, until they found the children. The Commission prefers not to mention specific cases in order to protect the privacy of these families and of the children themselves, bearing in mind that the Commission believes the situation of these children has been favorably resolved.

c. Delivery to Third Parties

In those cases where the adoptive family is innocent of the disappearance of the natural parents, the policy of the natural relatives such as that of the Abuelas de Plaza de Mayo has been to accept the new family's custody of the child, provided: 1) that the family environment is appropriate for the child's welfare; 2) visiting rights are established for the natural grandparents and other relatives; 3) the child is informed, at an appropriate time, of his or her real identity. After establishing the whereabouts and identity of several children, both families have arrived at mutually satisfactory agreements. Among these cases it is noteworthy to single out the case of the Uruguayan Julien Guisonas children, whose parents disappeared in Argentina, and the children were abandoned in a public square in Valparaíso, Chile. They were adopted by a Chilean family with the subsequent consent of their natural grandmother.

In some other cases, the adoptive families themselves have taken the initiative of contacting the natural relatives, in order to facilitate the identification of the minor. However, it has also been the case that the natural grandparents have had to seek judicial action in suits to establish the familial relationship.

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5. CONADEP, op. cit., p. 330; El Diario del Juicio, May 9, 1985, p. 62. The CONADEP report includes several similar cases that took place in other parts of Argentina. The disappearance of adolescents is a frequent occurrence in other countries where disappearances were a general pattern, like in El Salvador, Guatemala and Perú.

In October 1987, the Supreme Court of Argentina ruled on the first of these cases to come before it, and granted custody of Laura Ernestina Scaccheri to the natural family. Laura has been living with them since March 1986. Her parents disappeared after their arrest in 1977 and their whereabouts are still unknown today. In 1985, the Abuelas de Plaza de Mayo found Laura living with a family that had received her in July 1977. In March 1986, a federal court ordered her returned to the blood relatives. The appropriating family appealed and the Federal Court of Appeals for La Plata reversed; the blood relatives then filed a constitutional appeal to the Supreme Court, and the final decision in their favor was issued on October 29, 1987.

Similar cases are now pending before Argentine courts. Ximena Vicario, kidnapped with her parents on February 5, 1977, when she was eight months old, was found by the Abuelas only in 1983. The fate of the parents is still unknown, but it has been established that Ximena was adopted by a laboratory technician employed by the Casa Cuna (Foundling Hospital) of Buenos Aires. Her grandmother has initiated legal action to declare the adoption null and void and to obtain Ximena's custody. The case is pending, but in the interim, the court has granted the grandmother visiting rights.

d. Delivery to Agents of Repression

The most recent case solved by the Abuelas de Plaza de Mayo is that of María Victoria Moyano Artigas, who is now 9 years old, born in the concentration camp known as "Pozo de Banfield" in August 1978. Police physician, Dr. Jorge Vidal, signed a forged birth certificate, which allowed the sister-in-law of a police officer to register the girl as her daughter. After using genetic tests to establish the identity of the girl beyond doubt, federal judge Juan Ramos Padilla returned the child to her natural family on December 31, 1987. Dr. Vidal is under prosecution for forgery of public documents.

In July 1977, Mónica Lemos de Lavalle, who was then eight months pregnant, was kidnapped by a contingent of the Argentine First Army Corps with her husband and a daughter, María, who was 14 months old. Five days later, María was abandoned by her captors near her grandparents' house. Years later, the grandparents learned that Mónica had been held in "Pozo de Banfield." In 1985 an investigation was launched against a policewoman who had worked there in those years and who had a daughter whose age was very close to that of the child presumably born during Monica's captivity. Genetic tests demonstrated with 99.9% certainty that the child was the daughter of Mónica Lemos de Lavalle and the sister of María Lavalle Lemos. The policewoman admitted having served in the San Justo Investigations Brigade, in the suburbs of Buenos Aires, between January 1976 and March 1978. CONADEP has a list of 68 disappeared persons who were seen alive in that clandestine center, five of whom were pregnant women. The policewoman and her accomplice were convicted in January 1988 and given a three-year suspended sentence.

Clara Anahí Mariani, granddaughter of the President of the Abuelas de Plaza de Mayo, was six months old when her parents and several other adults died while resisting the search of their house in La Plata in 1976. Witnesses to the event state that the troops took a baby out of the almost destroyed house. In one of his many appearances before the press, General Ramón Camps, who was in charge of the operation, claimed that Mrs. Maria Chorobik de Mariani "knew her granddaughter was dead."<sup>6</sup> At a later date, however, during the trial against him for his role in the crimes committed by the Police of the Province of Buenos Aires and which resulted in his conviction and a sentence of 25 years in prison, later upheld by the Supreme Court, Camps instructed his lawyer to tell the Court that the girl had been found dead and that Camps had asked for instructions from his commanding officer, then General Suárez Mason, who ordered information about the case to be withheld from the legitimate family. In 1982, in statements before Judge Adamo, of the Federal District Court for La Plata, Camps had stated under oath that he knew nothing about Clara Anahí Mariani.

Many witnesses heard by CONADEP and by Argentine courts have reported that many pregnant women were kept alive in several clandestine detention centers, until they gave birth and then they were separated from their babies. A few days after delivery, the babies were given over to families close to the military, and the prisoners, were "transferred," a euphemism that--as has been demonstrated--actually meant their extrajudicial execution. Such is the case of Laura Estela Carlotto, daughter of the Vice President of the Abuelas de Plaza de Mayo, Estela Barnes de Carlotto. At one point, General Reynaldo Bignone, who later became President of Argentina toward the end of the military governments, acknowledged to Laura's parents that the woman was alive and promised to give them the baby, which never happened. During Dr. Alfonsín's presidency, the Carlotto family was able to exhume a corpse, and the forensic examination established without a doubt that the remains belonged to Laura Estela Carlotto, and that she had given birth shortly before being killed by fire arms shot at point blank range. Until now, it has been impossible to determine the whereabouts of the child.

In some cases, the security forces caused the disappearance and presumably the murder of nurses and midwives who tried to give information to the relatives after having assisted in deliveries by women who had been brought to hospitals by their captors. Such is the case of María Luisa Martínez de González and Genoveva Fratassi, kidnapped in April 1977, who had told the family of Silvia Isabella Valenzi that the girl had had a premature delivery at Iriarte Hospital in Quilmes. Neither the nurses nor Ms. Valenzi have ever been found.

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6. Statements to Pueblo newspaper, Madrid, February 1984. The General did not answer Mrs. Mariani's request for an explanation.

e. Transnational Escape

The cases that have received the most attention in the Argentine and international press have to do with the participation of security forces from neighboring countries, either in the original apprehension or their surreptitious transportation into Argentina, or in guaranteeing impunity for the abductors of minors who have fled Argentina in order to escape judicial action in the last few years.

The first case ever identified was that of the Julien Grisonas children, whose parents were Uruguayan refugees living in Argentina, to which the Commission has already made reference. Several years after the arrest and disappearance of their parents, the children were found in Chile, living with a family that took them when they were abandoned in a public square in Valparaiso.

After the advent of democracy in Argentina, other similar cases have also been solved. Carla Rutilo Artés was captured with her mother in Oruro, Bolivia, on April 2, 1976; both of them were illegally deported to Argentina. The mother is still disappeared, but the girl was later found in the hands of Eduardo Alfredo Ruffo, an Argentine civilian intelligence agent who represented her as his daughter. After it was established that Ruffo and his wife previously had attempted to adopt other children, genetic tests determined that the girl was the granddaughter of Matilde Artés Company. Ruffo went into hiding with the girl, but he was later arrested in connection with his role in acts of terrorism and destabilization against the democratic government. The girl is living now with her grandmother.

Two members of the repressive forces fled with their families to Paraguay to escape legal action. Federal Police Chief (comisario) Samuel Miara is in possession of the twins Gustavo and Martín Rossetti Ross, born in 1977 during the clandestine captivity of their mother, who is still listed as disappeared. The midwife who assisted in the birth was herself targeted for forced disappearance when she tried to report the birth to the relatives. The father of the twins, who returned from exile in 1984, initiated legal action to have them returned. Miara and his family fled to Paraguay. Officials of the Paraguayan government prevented his extradition, which had already been ordered.

Army doctor Norberto Bianco and his wife fled to Paraguay with two children, one of them apparently a boy born during the captivity of Silvia Quintela Dallasta at the military garrison of Campo de Mayo. Ms. Quintela is still disappeared. In this case there is also a request for extradition pending before Paraguayan courts. In both cases, the federal prosecutor (fiscal de estado) has issued opinions advising against extradition, alleging that Miara and Bianco are politically persecuted. In December 1987, judge Eladio Duarte Carvallo granted the extradition of Bianco and his wife; the couple has appealed and the case is still pending. In regards to the return of the minors, also requested by the Argentine courts, the case has been transferred to juvenile courts.

Mariana Zaffaroni Islas was one and a half years old when she disappeared with her parents, Uruguayan exiles, in Florida, Province of Buenos Aires, on September 27, 1976. In 1983, the Abuelas found Mariana in the hands of an agent of the State Intelligence Service (SIDE), Miguel Angel Furci, who at the time was posted to the Presidential Palace. Furci and his wife had registered the girl as their own, under the name of Daniela Romina Furci. Judge Daniel Piotti, of the federal district court for San Isidro, has asked INTERPOL for the arrest of Furci (also known as Marcelo Arturo Fillol) and of his wife, Adriana González de Furci. The Furci couple is also thought to be in Paraguay with the girl. Mariana's mother, María Emilia Islas, was pregnant at the time of her arrest, leading her relatives to believe that there may be another child of the family in the hands of agents of repression, although efforts to locate the child have been fruitless.<sup>7</sup>

3. Violation of fundamental norms of the international law of human rights

In the opinion of the Commission, the policy of removing children of disappeared persons is a violation of fundamental norms of international law.

The practice described above violates the right of direct victims--in this case the children--to their identity and to their name (Article 18, American Convention on Human Rights, henceforth "Convention") and to be recognized legally as persons (Art. 3, Convention; Art. XVII American Declaration on the Rights and Duties of Man (henceforth "Declaration")). Likewise, it violates the right of children and pregnant women to enjoy special measures of protection, attention and assistance (Art. 19 Convention and Art. VII Declaration). Furthermore, these actions constitute an abuse of the international law standards protecting the family (Arts. 11 and 17 Convention and Arts. V and VI Declaration).

Neither these rights nor those specifically devoted to the child in other international instruments are subject to suspension in situations of emergency threatening the independence or security of the State. (Art. 27(2), Convention).

Even assuming hypothetically that a state of internal war existed (which was not the case in Argentina), such actions would still violate explicit norms set forth in the so-called "laws of war" or International Humanitarian Law, as specified in the Geneva Conventions of 1949 and the Additional Protocols to these Conventions of 1977.

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7. Several other cases can be found in an Amnesty International Publication (Argentina. Missing Children - Latest Developments, November 1987, AMR 13/07/87), in the "Dossier" of the Abuelas de Plaza de Mayo, which includes descriptions and photographs of all the cases documented until now, and in several periodical or occasional publications of that association.

These rules establish the right of families to learn the fate of their relatives (Protocol I of 1977) and the obligation to identify children separated from their families as a result of war and the prohibition against altering the personal status of these children (Fourth Convention of 1949 about Protection of Civilians, Arts. 24, 50 and 136; Protocol I, Art. 78 paragraph 3).

International Humanitarian Law also includes numerous and detailed rules regarding family reunification and the right of children not to be separated from their families, even in internment camps (Fourth Convention, Arts. 26 and 82; Protocol I, Arts. 74 and 75). Additional Protocol II of 1977, designed to govern situations of armed conflict not of an international nature, also sets forth these principles (Art. 4).

In addition to violations of international law, the acts described also constitute criminal offenses in the domestic law of all the member states of the Organization of American States. Through the forced disappearance of children and, in some cases, their irregular delivery to other families, the authors and accomplices commit the crime of illegal deprivation of freedom, almost always in the aggravated form because of the public office held by the author, and the suppression or misrepresentation of civil status.<sup>8</sup>

4. Efforts undertaken to solve cases of disappeared children and obstacles encountered

The Abuelas de Plaza de Mayo have gained a high degree of support in Argentine society, not only because of the instant solidarity which their cause aroused in the majority of the population, but also because this association has demonstrated great ability in using legal mechanisms creatively and in recruiting the active support of different organizations and social sectors.

The government of Dr. Raúl Alfonsín, for its part, has shown from the start a disposition to contribute to the investigatory work of the Abuelas. It has made available to this association investigatory resources of the federal government and services provided by the Office of Minors and Families, an agency of the federal government.

The CONADEP, chaired by writer Ernesto Sabato, dedicated especial efforts to the topic of disappearances of children, which were reflected in a special chapter of the Nunca Más report. It is important to cite certain segments of that report:

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8. In the particular case of Argentina, those offenses are contemplated in articles 139, 141, 142, 144 bis, 146, 147 and 149 of the Penal Code.

When a child is stripped away from his legitimate family to be inserted in another family environment chosen according to an ideological conception of what is "convenient to his salvation," an invidious usurpation of roles is committed.

The repressors who tore the disappeared children away from their homes or from their mothers at the time of birth, decided about the lives of those young beings with the same coldness of one who disposes of war booty.

The democratic government of Argentina has had repeated occasions to state its position in favor of the struggle of the Abuelas to find their missing grandchildren. When the government submitted a bill to Congress to limit sanctions to be imposed on military officers for the crimes committed during the "dirty war," it also excluded the situation of disappeared minors from the benefits and immunities created by that legislation.

On May 13, 1987, at the President's initiative, Congress enacted a law creating the National Genetic Data Bank, to be organized in facilities of the Durand Hospital in Buenos Aires. The Bank offers services free of charge to the relatives of disappeared children or of children born in captivity, for the purpose of creating an archive and eventually providing expert testimony and reports to establish the familiar relationships of a child. The law states that refusal to submit oneself to tests and examinations ordered in a judicial proceeding which is attempting to determine such familiar relations shall constitute evidence to the detriment of the refusing party in such a lawsuit. The creation of this archive is the culmination of a successful joint venture between the most advanced genetic scientists in the world, and the government and judiciary of Argentina. It should also be pointed out that under the sponsorship of the American Association for the Advancement of Science (AAAS) of the United States, American scientists travelled to Argentina and worked for prolonged periods with their Argentine colleagues. Through studies of blood groups, histocompatibility, seric proteins and seric enzymes, using samples taken not only from the grandparents but also from other blood relatives in any degree, the specialists are in a position to determine the "index of grandparenthood" of the claimants in a lawsuit to establish familial relationship with a very high degree of precision.

The Argentine judiciary has used these advanced scientific procedures to great advantage. After some initial hesitation, the Abuelas have now accumulated a string of very significant judicial victories. At the

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9. Eudeba, Buenos Aires, 1984. See particularly pages 299 *et seq.* There are also translations into English, published also under the Spanish name, *Nunca Más*, Farrar, Strauss, Giroux, New York, 1987, and Farber & Farber, London, 1987.

present time, several federal judges and juvenile court magistrates act with great speed to solve these cases, as well as to prevent the flight of those who attempt to escape justice. Civil law judges and juvenile courts have jurisdiction on lawsuits to establish familial relationships (acciones de filiación), while criminal law judges, mostly in the federal system, take these cases under the offenses labeled suppression or misrepresentation of civil status or theft of minors. All of these judicial initiatives have been greatly boosted by the decision of the Argentine Supreme Court of October 29, 1987, in the case of Laura Ernestina Scaccheri, mentioned above.

The Commission considers it important to quote certain passages of the concurrent opinion of Justice Enrique Petracchi:

That, having examined the evidence, it must be pointed out that the case of the child Laura fits into the framework of a practice as extended as it is condemnable: the appropriation of children. Social tolerance toward this practice derives only from the primitive conception of the child as property and from the ignorance about the trauma that can be caused on one who should be adopted, by the fraudulent substitution of his real status and by the hiding of the real situation.

If these attitudes are harmful in the cases of children whose parents have wanted to get rid of them, they are intolerable when, like here, they are about a girl whose parents recognized her, who had her parents taken violently away from her before she was three months old.

In the sad circumstances of 1977, it was undoubtedly praiseworthy that a neighbor would take care of the girl left behind by the captors of her "disappeared" parents, but that fact alone could never authorize the act of appropriation that took place.

That, in this sense, the reconstruction of identity and position in society (which society owes to Laura) does not seem compatible with the postponement of her blood family relationships, of the memory of her parents, of her cultural integration with legitimate relatives. At the same time, we must consider the right of parents and siblings of the disappeared to see the continuation of their family in the only child of those truncated young lives.

The Commission shares the expressions of Justice Petracchi because they include a fair appreciation of the rights of the relatives of disappeared persons, but more importantly because they take, as their point of departure, the rights of the child herself. Other portions of this decision are also worth reading because they reflect a modern approach to the need to adjust the letter of the law to the necessities of

life, and because they cite important ideas of experts in child psychology who provided their scientific findings regarding the effect of this kind of situation on children.

The Commission must also mention, as a positive measure, the promulgation in Argentina of Law No. 23.466 of October 30, 1986 which grants a pension to the minor children, below the age of 21 years, whose parents were victims of forced disappearances.

As mentioned above, the bills introduced by the Executive Branch in Argentina and adopted by Congress to limit penal actions for the crimes committed during the military governments excluded the cases of disappeared children. The final texts of the laws called Punto Final and Obediencia Debida, as approved by Congress, specifically excluded the crimes of abduction of minors and suppression of status. However, in spite of the extraordinary efforts by CONADEP, by prosecutors and by courts that intervened in the resounding trials of the last few years, multiple features of what happened during the "dirty war" are still unknown. Among the most important aspects that have yet to be disclosed, are the fate and whereabouts of thousands of disappeared persons and as regards the reunion of family members with their missing grandchildren achieved, and the solidarity and acceptance enjoyed by the Abuelas de Plaza de Mayo continues to grow. The Commission considers it important to call on all governments and peoples in the region to renew efforts to assist them in the achievement of their noble objectives.

Until now, 45 children have been located, of whom 22 have been returned to their families, 12 are being shared between natural and adoptive families, 5 were murdered and 6 are still pending judicial decision. The total of cases registered and documented by the Abuelas is now 208, though there may be more. For instance, another 43 cases are registered in the files of CONADEP, now under the custody of the Under-Secretariat for Human Rights of the Ministry of Interior.

##### 5. Conclusions and Recommendations

The Commission believes the objectives of the Abuelas de Plaza de Mayo and of other groups of relatives in other countries who share their aspirations to be worthy of support. The relatives of children who disappeared or were born in captivity have the right to insist on knowing the whereabouts of those infants and to participate in their education and upbringing, in the manner that is most conducive to the child's development and welfare.

The children victimized by this policy have a fundamental right to their identity as persons and to know that identity. They also have the right to recover the memory of their natural parents, and to know that those parents never abandoned them. They have the right to be in contact with their natural family so that they can nurture and provide continuity to that memory of affection.

The Commission believes that judges must have discretion to determine an appropriate custody arrangement, and where applicable, to regularize adoptions if the best familial environment for the healthy growth of the child is, in fact, the adoptive home. Even in these cases, however, judges must respect the exercise of the natural relatives to visitation rights and contacts with the child. In cases where the abduction was committed by a person who participated in the forced disappearance of the true parents, or in their torture or execution, or who became an accomplice to such atrocities, the Commission believes that the child's mental and physical health demands his immediate separation from that family group.

In light of the preceding observations, the Commission considers it necessary to point out and to support the measures adopted by the democratic government of Argentina as well as the actions taken by the Abuelas de Plaza de Mayo and similar groups which have attempted to solve the problem of minor children of disappeared persons who were separated from their parents and who are claimed by the members of their true families.

At the same time it recommends that other governments of the OAS offer all forms of scientific, judicial or investigatory cooperation available to them, to the Argentine Government and to all private associations interested in the topic.

In addition to the foregoing, and without prejudice to the specific measures which the Commission will propose in its draft Inter-American Convention on Forced Disappearance of Persons that is presently under consideration, the Commission requests that the General Assembly of the OAS, at its eighteenth regular meeting, recommend that all member states of the OAS:

a) An increase in the penalties for the crimes of suppression and misrepresentation of civil status and abduction of minors, as well as the creation of a more serious form of the crime when it is committed under the protection of, or taking advantage of, the forced disappearance of the true parents;

b) The review of procedural standards in each of the member states, in order to facilitate the introduction of scientific evidence to clarify these cases, to speed up processing of actions to establish familial relationships, and to allow magistrates to grant injunctive relief to prevent the flight of persons, the hiding of children or the destruction of evidence; and

c) The review, and where necessary, the amendment, of substantive and procedural norms regarding adoption, in order to conform them to contemporary realities, thereby contributing to their increased observance in all countries.