

A RETURN TO LIFE: THE RIGHT TO IDENTITY AND THE RIGHT TO IDENTIFY ARGENTINA'S "LIVING DISAPPEARED"

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I. INTRODUCTION

There are billboards throughout the streets of Argentina bearing a message hard to ignore: "If you have doubts about your identity call the *Abuelas*."¹ The telephone number connects callers to the *Abuelas de Plaza de Mayo* (Grandmothers of the Plaza de Mayo) ("*Abuelas*"), who for the past twenty-eight years have searched for their children and grandchildren² who disappeared during Argentina's bloodiest reign of state terrorism. While Argentina has been plagued with governmental corruption and political instability for much of the past century, the March 24, 1976, military coup on the Perón government marked their culmination. The subsequent seven-year period, termed the "Dirty War,"³ involved acts of abduction, torture, mass murder, and the disappearance of tens of thousands of people,⁴ all disguised as "National Security."⁵ After the coup, the

* J.D. Candidate, 2004, Whittier Law School. I am grateful to S. Kathleen Isbell for her encouragement, insightful edits, and friendship. I remain awed and inspired by the *Abuelas*' relentless labor of love. This Article is dedicated with love and honor to my grandmothers, Gladys Hardy and Helen Mages, and to my daughter, Laurielle.

¹ See, e.g., *Número Especial en Conmemoración del 25 Aniversario de las Abuelas de Plaza de Mayo*, ABUELAS DE PLAZA DE MAYO, Oct. 22, 2002, at 8 (author's translation), available at <http://www.abuelas.org.ar/images/Mensu/print.pdf> (last visited Jan. 15, 2004).

² RITA ARDITTI, SEARCHING FOR LIFE: THE GRANDMOTHERS OF THE PLAZA DE MAYO AND THE DISAPPEARED CHILDREN OF ARGENTINA 1 (1999).

³ *In re* Extradition of Suarez-Mason, 694 F. Supp. 676, 679 n.2 (N.D. Cal. 1988) (defining "Dirty War," or *guerra sucia*, as the military junta's own description of its war against subversion).

⁴ U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, ARGENTINA 2001 5 (2002) [hereinafter COUNTRY REPORTS, ARGENTINA 2001], available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8278pf.htm> (last visited Jan. 15, 2004). United States estimates suggest that between 10,000 and 15,000 disappearances occurred; some human rights groups believe the number is more than double that figure based on the number of people still missing. *Id.*

⁵ See ARDITTI, *supra* note 2, at 11–21. The doctrine of National Security was used to teach the military that Argentina was facing a threat from its own citizens—"subversives" who intended to undermine the traditional values of Argentine society. *Id.* at 11. Consequently, the Argentine government justified fighting an undeclared war on these internal foes because they posed more of a threat to the country than any foreign enemies. *Id.* at 12. The government used the doctrine of National Security to justify the kidnapping, torture, and murder of thousands of people. *Id.* at 13–14.

military junta dissolved the Argentine Constitution and in its place enacted the Statute for the Process of National Reorganization. Through this statute, the junta usurped the full range of executive, legislative, and judicial powers.⁶ Claiming to be the defenders of "tradition, family, and property," the military categorized all opposition to its rule as subversive activity that had to be eliminated to protect and preserve Argentina.⁷ The leaders of the junta directed every branch of the military and police force to wage war against such subversion, launching the most brutal campaign of terror and repression in Argentine history.

The military regime practiced a method of repression likened to Hitler's *Nacht und Nebel Erlass* (Night and Fog Decree), in which subversive citizens were made to disappear without a trace.⁸ Men, women, and children from all social classes were abducted, as were the elderly, the infirm, and the disabled.⁹ Thousands of people went missing, "never to be seen again."¹⁰ A large number were taken to one of the regime's hundreds of clandestine detention centers to be tortured.¹¹ In fact, during its war on subversion, the military junta employed methods of torture "so brutal, so inhuman, that were they not so well-documented they would challenge belief."¹² Despite the widespread atrocities, the judiciary acquiesced in the disappearances by denying approximately 80,000 writs of habeas corpus, and many of the lawyers seeking writs were disappeared themselves.¹³

Perhaps the most disturbing institution of terror created by the junta was an unprecedented and systematic plan to steal and sell the babies of its victims.¹⁴ Approximately 500 babies were born in captivity to mothers who would never hold or even see them, mothers who were kept alive only long enough to give birth.¹⁵ Military officers waited outside make-

⁶ *Id.* at 8.

⁷ *Id.*

⁸ MARGUERITE FEITLOWITZ, A LEXICON OF TERROR: ARGENTINA AND THE LEGACIES OF TORTURE 51 (1998). The Night and Fog Decree was issued by Hitler in 1941, and its purpose was to seize persons "endangering German security." ARDITTI, *supra* note 2, at 14 (citing WILLIAM L. SHIRER, THE RISE AND FALL OF THE THIRD REICH: A HISTORY OF NAZI GERMANY, 957-58) (1960)). Those abducted were not publicly executed but instead made to vanish without any information given to their families regarding their fates. *Id.* The Decree was premised on the conclusion that these intimidation measures would have the greatest deterrent effect upon potential dissidents. *Id.*

⁹ See NUNCA MÁS: THE REPORT OF THE ARGENTINE NATIONAL COMMISSION OF THE DISAPPEARED 284-385 (Writers & Scholars Int'l Ltd. trans., 1986) [hereinafter NUNCA MÁS].

¹⁰ *In re Extradition of Suarez-Mason*, 694 F. Supp. 676, 680 (N.D. Cal. 1988).

¹¹ See NUNCA MÁS, *supra* note 9, at 51-52.

¹² *Suarez-Mason*, 694 F. Supp. at 680.

¹³ ARDITTI, *supra* note 2, at 15.

¹⁴ See, e.g., James F. Smith, *Sought by Argentina: Children of "Dirty War": Sad Legacy*, L.A. TIMES, Apr. 20, 1988, at A1 [hereinafter Smith, *Sought by Argentina*], available at 1988 WL 2269952.

¹⁵ Simone Lauenstein, *Argentina Probes Fate of Missing Babies*, DEUTSCHE PRESSE-AGENTUR, Feb. 20, 2000, available at LEXIS, News Library, Deutsche Presse-Agentur

shift maternity wards like "macabre expectant fathers," ready to steal the infants at the first opportunity.¹⁶

Forced to accept the near-certain deaths of their children, the *Abuelas de Plaza de Mayo* focused on the possibility that their grandchildren were still alive and could be found.¹⁷ Using old-fashioned detective work as well as cutting-edge scientific techniques, the *Abuelas* campaigned to restore their grandchildren to their biological families and provide them with their true identities. In so doing, the *Abuelas* worked toward preserving the future and identity of Argentina. President and founding *Abuelas* member Estela Barnes de Carlotto explains: "Even though the crime of child stealing affects this child, . . . the real family of the child is also a victim with rights It is also a crime which affects the whole of society."¹⁸ Indeed, a sister organization depicts the war on subversion as endangering the very identity of Argentine society.¹⁹

Although the Dirty War junta regime committed numerous abhorrent crimes during its rule, this Article addresses the crime most despised and repudiated by Argentine society—the theft of its citizens' children. Specifically, the Article recounts and analyzes the actions the *Abuelas* took to restore their families, demonstrating that advocacy at a grassroots level can precipitate national reform and effectively shape domestic and international law. The *Abuelas* were so successful in their efforts in part because they rejected the government's notion that silence and impunity best served Argentina. They instead pursued a crusade for what they believed was necessary for Argentina's future—the restoration of families—leading ultimately to a more truthful and open society.

Part II of this Article presents a brief political history of Argentina and examines the perverse logic that enabled the military regime to commit such a range of human rights atrocities. This Part also introduces the concept and plight of the "disappeared" and their children. Part III discusses the fall of the military regime and explores Argentina's half-hearted attempt to restore democracy and its near-immediate frustration by presidential pardons and the passage of the Full Stop and Due Obedience amnesty laws. Part IV introduces the organizations formed by the family members of those who disappeared, specifically profiling the *Abuelas de Plaza de Mayo*. The Part examines the *Abuelas*' crusade to identify and reunify their families by chronicling the processes they used to re-

File.

¹⁶ Linda Diebel, "They Died for Their Beliefs": *Orphans of Terror*, TORONTO STAR, Feb. 20, 2000, available at LEXIS, News Library, Toronto Star File.

¹⁷ See Lauenstein, *supra* note 15, available at LEXIS, News Library, Deutsche Presse-Agentur File.

¹⁸ Wayne Adams, *Loved in Cold Blood*, HERALD SUN (Melbourne), Oct. 21, 2001, at Z16.

¹⁹ See MARGUERITE GUZMAN BOUVARD, *REVOLUTIONIZING MOTHERHOOD: THE MOTHERS OF THE PLAZA DE MAYO* 43 (1994) (quoting Madres de Plaza de Mayo, 12 *Boletín informativo* (Buenos Aires), Dec. 1983).

store the identities of their grandchildren, such as harnessing new developments in scientific and forensic technologies and fostering changes in the Argentine adoption laws.

Part V explores the *Abuelas'* broader political and social impact on Argentina and the international community as a result of challenging their children's and grandchildren's lack of legal redress for the crimes committed against them. The *Abuelas'* quest culminated in both official recognition that the military regime had instituted a systematic method of abduction and illegal adoption of their grandchildren and in the international community's appreciation of the grave human rights violations of the Dirty War. Part VI argues that, due to the continuing instability of Argentine governance, the *Abuelas'* work remains essential to preserve the future of Argentina. The *Abuelas'* mission must be carried into the future by emerging groups such as the *HIJOS*, an organization formed by the *Abuelas'* recovered grandchildren. The Article concludes with the *Abuelas'* successful campaign to have the right to identity recognized by the 1989 United Nations Convention on the Rights of the Child and underscores the need for continued efforts to prevent the reoccurrence of the atrocities that years of silence and impunity caused Argentina.

II. THE DIRTY WAR'S IMPOSITION OF SILENCE AND IMPUNITY

Decades of corruption and poor governance, culminating in the Perón regime, left the Argentine economy in disarray and its characteristically proud and nationalistic citizens impoverished. The Argentines of the late 1970s, wanting to believe that their leaders had their best interests in mind, placed their faith in the military junta that replaced the Perón government. As is true of the rise to power of most fascist regimes, the people of Argentina did not know the true nature of their new government until after it began its plan to "restore" Argentina by eliminating those it deemed dangerous.²⁰

A. *President Videla and the Process of National Reorganization*

Two days after the 1976 coup on the Perón government, the military pronounced General Jorge Rafael Videla the de facto president.²¹ The leadership, including one senior officer each from the army, navy, and air force—General Videla, Admiral Emilio Eduardo Massera, and Brigadier General Orlando R. Agosti, respectively²²—assumed the presidency with a plan called the Process for National Reorganization.²³ Under this plan,

²⁰ See ARDITTI, *supra* note 2, at 8.

²¹ See FEITLOWITZ, *supra* note 8, at 23.

²² *Id.* at 23. This initial group was the most repressive of the succession of four such juntas. *Id.* at 8.

²³ *Id.* at 7.

the Congress, provincial legislatures, municipal councils, political parties, trade unions, and professional and student associations were dissolved immediately.²⁴ All Supreme Court judges were removed and replaced with new judges appointed by the junta.²⁵

Amidst this upheaval, the junta stressed that the country was not entering a period of revolution but was instead being rescued by a plan that would eradicate subversion and promote the economy.²⁶ Ostensibly to combat left-wing terrorism, the regime escalated the state-sanctioned eradication of subversion that had been officially decreed under Isabel Perón's presidency.²⁷ The military adopted a war on subversion that expanded to include even the most minor protests.²⁸ Those opposed to the Process for National Reorganization were warned to "make themselves invisible, or they would be made to vanish."²⁹

B. *The Disappeared*

The people of Argentina initially did not protest the conduct of the new regime. Tired of inflation, appalled by the unstable Perón administration, and fearful of terrorism, they most wanted order.³⁰ However, during "the first sixteen days of the new de facto government, 152 individuals died in political violence,"³¹ and the Argentine people quickly realized the true nature of what was happening. According to a source from the underground press, by September 1976 the regime was responsible for the commission of an average of thirty abductions each day—"the whereabouts of only 1 percent of the victims [were] verified—'[t]he other 99 percent . . . had to be given up for dead.'"³² From these abductions, a new word came into common usage: *desaparecidos*, the "disappeareds."³³ *Desaparecido* was the word used by the junta to deny the kidnapping, torture, and slaying of thousands of Argentines.³⁴ Described as someone who was "absent forever," a *desaparecido*'s "destiny" was to "vanish."³⁵ Black Ford Falcons, the car of the Argentine Anti-Communist

²⁴ *Id.* at 22.

²⁵ NUNCA MÁS, *supra* note 9, at 386.

²⁶ FEITLOWITZ, *supra* note 8, at 22.

²⁷ *Id.* at 6–7. Isabel Perón issued Decree Number 261 authorizing the eradication of "subversive elements" during the chaos that followed her assumption of her late husband's office. *Id.* at 6.

²⁸ DAVID ROCK, ARGENTINA 1516–1987: FROM SPANISH COLONIZATION TO ALFONSÍN 363 (1987).

²⁹ FEITLOWITZ, *supra* note 8, at 32.

³⁰ *Id.* at 6.

³¹ *Id.* at 25.

³² *Id.* (quoting LA PRENSA CLANDESTINA 50 (Horacio Verbitsky ed., 1985)).

³³ *Id.* at 49.

³⁴ *Id.* The Nazis were the original developers of the concept of making individuals disappear. Nazi policy stated: "The prisoners will *disappear* without a trace. It will be impossible to glean any information as to where they are or what will be their fate." *Id.* at 51.

³⁵ *Id.* at 49 (quoting General Roberto Viola, Army Day Speech (May 29, 1979)). Gen-

Alliance ("Triple A") death squads, became the symbol of the disappearances. Conspicuously lacking license plates, they cruised the streets for victims.³⁶ Those seized were transported to clandestine detention centers³⁷ and ultimately killed.

The government was not able to keep the disappearances hidden from the public, because almost everyone knew of someone who had a friend or loved one abducted.³⁸ Prominent among the disappeared were journalists, trade unionists, and lawyers.³⁹ Very few of those kidnapped had any direct involvement in the leftist terrorist groups whose existence was the initial aim of the government's extermination campaign.⁴⁰ Others had only a tenuous connection to these groups—as friends, acquaintances, or sometimes just names found in the address books of victims.⁴¹

The typical sequence for those abducted during the Dirty War was disappearance, torture, and then death.⁴² Under the regime, detainees suffered at the hands of captors who had no need to answer to the public or the judicial system nor incentive to return their prisoners alive.⁴³

eral Viola succeeded General Videla in 1981. *Id.* at 8. General Viola's involvement in the theft of children was evidenced by documents he signed detailing military instructions to separate out children abducted with their families. Marcela Valente, *Argentina: Loophole May Allow Prosecution of "Dirty War" Generals*, INTER PRESS SERV., June 10, 1998 [hereinafter Valente, *Loophole*], available at 1998 WL 5987685.

³⁶ ROBERT D. CRASSWELLER, PERÓN AND THE ENIGMAS OF ARGENTINA 370–71 (1987); *In re* Extradition of Suarez-Mason, 694 F. Supp. 676, 681 (N.D. Cal. 1988) (citing ORGANIZATION OF AMERICAN STATES, REPORT ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA 55 (1980) [hereinafter OAS REPORT]); see also FEITLOWITZ, *supra* note 8, at 172.

³⁷ See *In re* Extradition of Suarez-Mason, 694 F. Supp. 676, 681 (N.D. Cal. 1988) (citing OAS REPORT, *supra* note 36, at 55).

³⁸ NUNCA MÁS, *supra* note 9, at xiv.

³⁹ *Id.*

⁴⁰ *Id.*; see *Suarez-Mason*, 694 F. Supp. at 680–81 (citing U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, ARGENTINA 1979 230 (1980)); CRASSWELLER, *supra* note 36, at 371.

⁴¹ NUNCA MÁS, *supra* note 9, at xiv. During the 1996 murder trial of a Swedish-Argentine girl, Dagmar Hagelin, a friend of Captain Adolfo Astiz confessed that Hagelin had been kidnapped accidentally because her name was in a "guerilla's" address book. Marcela Valente, *Argentina: Pressure Builds for Action on the Disappeared*, INTER PRESS SERV., May 14, 1996, available at 1996 WL 10242722.

⁴² FEITLOWITZ, *supra* note 8, at 51.

Most of them lived the rest of their lives in the detention centers, hooded or blindfolded, forbidden to talk to one another, hungry, living in filth. The center of their lives—dominating the memories of those who survived—was torture. They were tortured, almost without exception, methodically, sadistically, sexually, with electric shocks and near-drownings and constant beatings, in the most humiliating possible way, not to discover information—very few had any information to give—but just to break them spiritually as well as physically, and to give pleasure to their torturers. Most of those who survived the torture were killed.

NUNCA MÁS, *supra* note 9, at xvi.

⁴³ CRASSWELLER, *supra* note 36, at 372 (citing RICHARD GILLESPIE, SOLDIERS OF PERÓN: ARGENTINA'S MONTONEROS 245 (1982)).

C. Babies Born in Captivity

At the Navy Mechanics School, Admiral Massera “created the regime’s largest and perhaps most brutal concentration camp.”⁴⁴ Called the ESMA (Escuela Mecánica de la Armada), it was considered the “Argentine Auschwitz.”⁴⁵ Among those detained and tortured were young pregnant women.⁴⁶ At both the ESMA and Campo de Mayo Hospital, the junta set up makeshift maternity wards where these women were either given serums or forced to undergo Caesarean sections to accelerate birth.⁴⁷ During delivery, the women were blindfolded and tied to beds by their hands and feet.⁴⁸ Pregnant detainees rarely survived,⁴⁹ and their babies were given to “politically acceptable” parents—families with some connection to the regime.⁵⁰ The regime was able to reap considerable profits during the Dirty War from illegal adoption because of the high number of pregnant detainees.⁵¹ This illicit business was so well-organized that some couples were able to choose their baby based on a captive mother’s looks and education.⁵² Descriptions of imprisoned pregnant women were provided to military couples seeking babies; those with fair skin and blue eyes were at a premium.⁵³ Prospective adoptive mothers visited the detained pregnant women, ensuring that they received special treatment to promote healthy deliveries.⁵⁴ Once born, the babies were given to their adoptive parents, and their real mothers were systematically killed, ensuring permanent severance of all biological ties.⁵⁵ The junta’s goal was erasure of family identities.⁵⁶

⁴⁴ FEITLOWITZ, *supra* note 8, at 25; *see also* NUNCA MÁs, *supra* note 9, at 121–34.

⁴⁵ FEITLOWITZ, *supra* note 8, at 25.

⁴⁶ NUNCA MÁs, *supra* note 9, at 288.

⁴⁷ *Id.* at 295.

⁴⁸ *Id.*

⁴⁹ *See* ARDITTI, *supra* note 2, at 24.

⁵⁰ Howard LaFranchi, *Relentless Grandmothers: Argentina Seeks Justice for Kidnapped Children*, CHRISTIAN SCI. MONITOR, Nov. 3, 1999, at 1 [hereinafter LaFranchi, *Relentless Grandmothers*], available at 1999 WL 5383480.

⁵¹ Jan McGirk, *Argentine Officers are Accused of Baby Thefts*, INDEPENDENT (London), Jan. 10, 2000, at 11, available at 2000 WL 6449618.

⁵² FEITLOWITZ, *supra* note 8, at 67.

⁵³ Diebel, *supra* note 16, available at LEXIS, News Library, Toronto Star File; *see also* Jan McGirk, *Stolen Children; The Babies Adopted by Their Parents’ Killers*, MIRROR, May 2, 2000 at 14–15 (detailing that “[t]he only ones who mattered were the newborns—if they were white.’ Less ‘desirable’ children, who were too old to retrain or too dark to be brought up as conservative right-wing citizens, were slaughtered like their parents”); Marcela Valente, *Rights—Argentina: Six Officers Arrested in Adoption Scandal*, INTER PRESS SERV., Jan. 10, 2000 [hereinafter Valente, *Six Officers Arrested*] (describing how adoptive parents did not want the “little dark babies,” only the “little white ones”), available at 2000 WL 4089352.

⁵⁴ Interview by BBC News with Elena Galinares, “one of the ‘disappeared’ children” (Aug. 19, 1998) (on file with author).

⁵⁵ FEITLOWITZ, *supra* note 8, at 67.

⁵⁶ *Id.*

III. NUNCA MÁS

Although not wishing to relinquish its power, the junta increasingly found itself the target of human rights organizations as word of the *desaparecidos* made its way to the international community.⁵⁷ The junta's position was further weakened by its own avarice, corruption, and internal fracturing of military alliances.⁵⁸ As a means to deflect the attention of the Argentine people from the worsening economy and the ongoing activity of the Triple A, the government made an ill-advised attempt to wrest control of the Falkland Islands from the British in April 1982.⁵⁹ Rather than create a smokescreen for the junta's activities or rally domestic support, this effort resulted in the withdrawal of all economic and diplomatic relations with Argentina by two powerhouses of the Western world, the United States and Great Britain, and proved to be the death knell for the junta government.⁶⁰

The junta regime attempted to hide its atrocities with a policy of denial and willful ignorance. Despite the staggering numbers of Argentines who disappeared and survivors' reports of torture, the regime steadfastly denied the existence of concentration camps and political prisoners when questioned by foreign governments and reporters,⁶¹ imposing a type of official silence around the disappearances. Those disappearances the regime did acknowledge were attributed to *desaparecidos*' own choices to "have disappeared in order to live clandestinely to dedicate themselves to subversion," or to the subversive organizations themselves, by claiming that they had killed the missing people as traitors to the cause.⁶² The regime further attempted to secure its safety through amnesty laws, very nearly achieving complete impunity.⁶³

A. *The Final Report and the Attempt to Restore Democracy*

In April 1983, as it prepared to leave power, the regime released the *Documento Final* (Final Report), which proclaimed victory in its fight against subversion.⁶⁴ There was no explanation or apology, only justification for the actions of the nine military leaders, who took full responsibility for the planning and execution of the Dirty War.⁶⁵ General Viola

⁵⁷ See ARDITTI, *supra* note 2, at 37–40.

⁵⁸ *Id.* at 41.

⁵⁹ *Id.* at 42.

⁶⁰ *Id.*

⁶¹ FEITLOWITZ, *supra* note 8, at 28.

⁶² *Id.* (citing 2 OSCAR TRONCOSO, *EL PROCESO DE REORGANIZACIÓN NACIONAL*, 63–64 (1985)).

⁶³ See *infra* Part III.C.

⁶⁴ FEITLOWITZ, *supra* note 8, at 12. The *Documento Final* was published by the press on April 28, 1983, and the entire report was read over national television. *Id.* at 12–13.

⁶⁵ See *In re* Extradition of Suarez-Mason, 694 F. Supp. 676, 683 (N.D. Cal. 1988).

told Argentines that certain people would be "absent forever," that no secret detention centers existed, and no further information or explanations would be forthcoming.⁶⁶ The Final Report underscored the regime's determination to keep all dialogue on its crimes in the past, fostering a culture of silence and impunity.

In an attempt to restore democracy to Argentina, national elections were held in late 1983.⁶⁷ Dr. Raúl Alfonsín was elected president and pledged to investigate and address the abuses of the prior regime.⁶⁸ He immediately appointed the *Comisión Nacional sobre la Desaparición de Personas* ("CONADEP") to investigate and report on Dirty War atrocities.⁶⁹ CONADEP took thousands of sworn statements from victims who survived abduction and torture, the families and friends of the *desaparecidos*, and any witnesses willing to come forward.⁷⁰ Nine months later, CONADEP published its work as a detailed and explicit account of Argentina's Dirty War entitled *Nunca Más* (Never Again).⁷¹

Nunca Más, a "report from Hell,"⁷² described in painful detail the systematic, brutal torture and murder of those disappeared under the junta's rule.⁷³ Compiled from more than 50,000 pages of documented testimonies, it confirmed the deaths of many of the *desaparecidos* and graphically described their torture.⁷⁴ The report revealed over 340 secret detention camps in which 1300 people were held captive before their final disappearances.⁷⁵ It identified a staggering 8960 missing⁷⁶ and illustrated that the overwhelming majority of victims were clearly innocent of any substantive links with organizations opposed to the regime.⁷⁷ *Nunca Más* also established that those whom the junta alleged were killed in

⁶⁶ FEITLOWITZ, *supra* note 8, at 13.

⁶⁷ CRASSWELLER, *supra* note 36, at 373.

⁶⁸ NUNCA MÁS, *supra* note 9, at xvi.

⁶⁹ *Id.* The first clause of the decree establishing CONADEP asserts that the "question of human rights transcends governments, it is the concern of civil society and the international community." *Id.* at 428. CONADEP aimed to investigate and understand the events surrounding the disappeared. To ensure objectivity, it was comprised of a diverse group of human rights activists. *Id.* Five departments directed the various aspects of CONADEP's duties: depositions, documentation and data processing, procedures, legal affairs, and administrative issues. *Id.* at 429. CONADEP received assistance from various international human rights groups, the United Nations, and the Organization of American States. *Id.* at 429-30. Portions of its report, including complete testimonies, are available at <http://www.nuncamas.org>.

⁷⁰ NUNCA MÁS, *supra* note 9, at 449; *see also* U.S. DEP'T OF STATE, ARGENTINA HUMAN RIGHTS PRACTICES 1995 (1996), available at http://dosfan.lib.uic.edu/ERC/democracy/1995_hrp_report/95hrp_report_ara/Argentina.html (last visited Jan. 15, 2004).

⁷¹ ROCK, *supra* note 28, at 394.

⁷² NUNCA MÁS, *supra* note 9, at xi.

⁷³ *Id.*

⁷⁴ *Id.* at 1.

⁷⁵ *Id.* at 447.

⁷⁶ *Id.* at 284. Commission Chair Ernesto Sabato stated that it was likely that this figure was an underestimate because fear of reprisals continued to prevent many families from reporting disappearances. *Id.* at 5.

⁷⁷ *Id.* at 448.

combat were in fact killed in simulated military confrontations or in contrived attempts to escape from detention centers.⁷⁸ Through these findings, *Nunca Más* first broke the silence surrounding the disappeared and began the process of revealing the truth.

B. *The Military Trial*

Armed with CONADEP's extensive findings, Alfonsín had the nine ex-commanders of the first three juntas charged and tried for their crimes.⁷⁹ Known in Argentina as "the trial of the century," the military trial held the nation's full attention for five months.⁸⁰ The six judges were drawn from diverse backgrounds and political parties to ensure their independence from the Alfonsín administration.⁸¹ Aided by evidence gathered by the *Abuelas*, public prosecutor Dr. Julio César Strassera brought 711 charges for murder, torture, rape, robbery, and illegal detention against the junta leaders.⁸²

The spell of silence and impunity could not be fully broken, however. As a result of the trial, while five generals received sentences ranging from four-and-a-half years to life, the remaining four were found innocent.⁸³ Furthermore, all nine were acquitted of the charge of the theft of children and the substitution of their identities, thereby absolving them from any responsibility for the hundreds of children that disappeared.⁸⁴ The result of the tribunals outraged human rights groups, "which considered the punishment insufficient and indeed dangerous, for it could help lay the foundation for a culture of impunity."⁸⁵ In spite of the leniency of the

⁷⁸ *Id.* at 215.

⁷⁹ *In re* Extradition of Suarez-Mason, 694 F. Supp. 676, 683 (N.D. Cal. 1988).

⁸⁰ ARDITTI, *supra* note 2, at 45.

⁸¹ NUNCA MÁS, *supra* note 9, at xx.

⁸² ARDITTI, *supra* note 2, at 45; see also The Vanished Gallery, Argentina Military Junta Members, Top Officers, and Ministers (detailing the crimes and sentences of various junta members), at <http://www.yendor.com/vanished/junta.html> (last visited Jan. 15, 2004). The court heard the testimony of over 800 survivors, relatives of the *desaparecidos*, former government members, military officers, human rights activists, and scientific experts. ARDITTI, *supra* note 2, at 45. "Many of the witnesses had much the same story to tell the court: the story of abduction and torture made familiar by *Nunca Más*." NUNCA MÁS, *supra* note 9, at xxi. The prosecutors attacked the regime's actions as "ferocious, clandestine, and cowardly" and emphasized the contradictions inherent in its defenses. ARDITTI, *supra* note 2, at 45, 46. Those on trial denied the charges while at the same time arguing that their actions were justified because the country had been in a state of war. *Id.* at 46. Strassera aptly contended that "either there was no war, in which case the generals were common criminals, or there had been a war, in which case they were war criminals." *Id.* (quoting JORGE CAMARASA ET AL., *EL JUICIO: PROCESO AL HORROR 193-95* (1985)). Strassera concluded the junta trial with a phrase he made famous in Argentina: "Your Honours, I shall renounce any pretensions to originality, by using an expression which is not mine, but which belongs to the Argentine people. Your Honours: Never Again." *Id.*

⁸³ ARDITTI, *supra* note 2, at 46.

⁸⁴ *Id.*

⁸⁵ *Id.*

courts, however, the military demanded complete exoneration, arguing that their actions had been necessary to protect the nation's security.⁸⁶ The trials nonetheless signaled a change in the judicial climate—for the first time the juntas were held at least partially responsible for their massive violations of human rights.⁸⁷

C. Roadblocks to Justice: The Amnesty Laws and Presidential Pardons

After the trials, hundreds of new cases of human rights violations were brought before Argentine courts.⁸⁸ The military, fearing the prosecution of several hundred of its middle-ranking officers, staged revolts against the Alfonsín government, forcing the President to declare yet another state of siege.⁸⁹ To appease the military, Alfonsín passed the first of two amnesty laws, the Full Stop, or Final Point, law, which severely limited the number of cases that could be brought to trial. The Full Stop law set a sixty-day statute of limitations for all trials related to the Dirty War, which expired on February 23, 1987.⁹⁰ Human rights groups worked around the clock to file their claims, but ultimately hundreds of cases were dropped, and hundreds of repressors benefited from the passage of the law.⁹¹

Still unsatisfied, the military staged yet another violent revolt, prompting Alfonsín to push through a second amnesty law, the Law of Due Obedience.⁹² This law limited the scope of prosecutions that could be brought against the military.⁹³ It was premised on the position that military members were culpable to varying degrees—those who gave orders, those who followed orders, and those who simply committed excesses.⁹⁴ The law established a conclusive presumption that all subordinate officers who were following superior orders were the least criminally culpable and therefore presumed innocent.⁹⁵

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See *Alfonsín Demands Rebels Surrender*, DALLAS MORNING NEWS, Apr. 17, 1987, at 11A, available at 1987 WL 4605185.

⁹⁰ Ley de Punto Final [Full Stop Law], Law No. 23,492, Dec. 24, 1986, available at <http://infoleg.mecon.gov.ar/txtnorma/21864.htm> (last visited Jan. 15, 2004).

⁹¹ FEITLOWITZ, *supra* note 8, at 14 (citing CENTRO DE ESTUDIOS LEGALES Y SOCIALES, CULPABLES PARA LA SOCIEDAD IMPUNES POR LA LEY (1998)).

⁹² See ARDITI, *supra* note 2, at 47–48.

⁹³ Ley de Obediencia Debida [Due Obedience Law], Law No. 23521, June 4, 1987, available at <http://www.abogarte.com.ar/obedienciaypuntofinalfiscalia.html> (last visited Jan. 15, 2004).

⁹⁴ See HUMAN RIGHTS WATCH, ARGENTINA: RELUCTANT PARTNER—THE ARGENTINE GOVERNMENT'S FAILURE TO BACK TRIALS OF HUMAN RIGHTS VIOLATORS § II (2001), available at http://www.hrw.org/reports/2001/argentina/argen1201-02.htm#P130_28947 (last visited Jan. 15, 2004).

⁹⁵ *Id.*

Beset by a myriad of political and economic problems, Alfonsín resigned several months before his presidency was over.⁹⁶ In May 1989, Peronist Carlos Saúl Menem captured a clear majority of voters by issuing an ultimatum: "Me or chaos."⁹⁷ Justice for the disappeared suffered a further setback when Menem immediately pardoned all high-ranking military officials who were not protected by the amnesty laws. A year later, he pardoned all members of the junta who had been convicted in the trials of 1985.⁹⁸ The Menem pardons thus allowed the masterminds of the Dirty War atrocities to serve only small parts of their sentences.⁹⁹ Any advances that had been made through the original trials lost all force as the new government officially sanctioned the unofficial impunity that the Dirty War regime had cultivated for itself through silence and fear.

IV. REUNIFICATION AND ITS CONSEQUENCES

In order for the *Abuelas* to reunify their families and vindicate their lost children, they were forced to tear down the walls of silence built by the junta regime. Even though most Argentine people did not accept the military's attempts to minimize its crimes, the *Abuelas'* task of public motivation was formidable in scope and glacial in progress. Moreover, never far in the background was the very real issue of the disappeared children themselves: just how does one tell hundreds of children and young adults that their entire lives have been based on lies and governmental deception?

A. *The Mothers and Grandmothers of the Plaza de Mayo*

Despite the atmosphere of fear that pervaded Argentina during the junta regime, two groups of women—representing the mothers and grandmothers of the disappeared—began protesting the disappearances of their relatives and striving for the reunification of their families. In this way, an initially small group of women spearheaded what became a catalyzing campaign to defy the repression of the junta.¹⁰⁰ The first group to form, the *Madres de Plaza de Mayo* ("Madres")—the mothers of the

⁹⁶ James F. Smith, *Argentina's Alfonsin Hands Over the Reins to Menem*, L.A. TIMES, July 9, 1989, at 1, available at 1989 WL 2276793.

⁹⁷ Jack Epstein, *In Vote for Menem, Argentina Chooses to Stay a Rough Course: Voters Prefer Economic Stability Over Righting Past Abuses*, CHRISTIAN SCI. MONITOR, May 17, 1995, at 6, available at 1995 WL 6393770.

⁹⁸ See *id.*

⁹⁹ See Gary Mead, *Military Leaders Included in Argentine General Pardon*, FIN. TIMES (London), Oct. 9, 1989, § 1, at 2. In September 1989, approximately 30,000 people protested in the streets when Menem's plans for pardons were announced. *30,000 Argentines in Protest March*, CHI. TRIB., Sept. 10, 1989, at C22.

¹⁰⁰ Marcela Valente, *Argentina—Human Rights: 20th Anniversary of Plaza de Mayo Mothers*, INTER PRESS SERV., Apr. 30, 1997 [hereinafter Valente, *20th Anniversary*], available at 1997 WL 7075110.

disappeared—embarked on a crusade to obtain information about their missing children, refusing to believe the government's professed ignorance of their whereabouts.¹⁰¹ Fourteen women assembled in the main square of Buenos Aires on April 30, 1977, for the first of many silent demonstrations.¹⁰² Their ritual circling of the Pyramid of Mayo monument grew out of pressure from the police to circulate because the regime prohibited public assembly; the *Madres* walked counterclockwise to show their defiance.¹⁰³ No meeting was without risk: the *Madres'* movements were followed by military machine guns aimed from the rooftops of every building in the Plaza, they were harassed by mounted police, and they were threatened with dogs.¹⁰⁴ The military labeled the *Madres* "the mothers of terrorists"¹⁰⁵ and ridiculed them as "*las locas de la Plaza de Mayo*."¹⁰⁶ The tactics used by the police to discourage the *Madres*—including abducting members of their group¹⁰⁷—strengthened their resolve to stand up to the dictatorship and fight to find their missing children.

Six months later, in October 1977, the *Abuelas* joined the *Madres* in the search for missing children.¹⁰⁸ While the *Madres* demanded both the return of their children and punishment for their captors, the *Abuelas* had a sharper focus—to find the living.¹⁰⁹ They called them *los desaparecidos con vida* (the living disappeared), referring to the babies who were taken from the *Abuelas'* murdered daughters and sons.¹¹⁰ The *Abuelas* were not motivated by revenge but by a desire simply to know that their grandchildren were alive and well.¹¹¹ The *Abuelas* determined that more than 500 babies born in detention centers were adopted illegally,¹¹² and they scoured hospitals and orphanages looking for them.¹¹³ They examined birth

¹⁰¹ *See id.*

¹⁰² FEITLOWITZ, *supra* note 8, at 3. The *Madres'* national base of operations is the centrally located *Casa de las Madres*. BOUVARD, *supra* note 19, at 223. There are sixteen branches of the *Madres* worldwide. Asociación Madres de Plaza de Mayo, Grupos de Apoyo, at <http://www.madres.org>. Azucena Villaflor de Devinenti, the *Madres'* founding president, had the idea of demonstrating in the Plaza, symbolically "knocking on [President] Videla's door." FEITLOWITZ, *supra* note 8, at 191.

¹⁰³ BOUVARD, *supra* note 19, at 70.

¹⁰⁴ FEITLOWITZ, *supra* note 8, at 162.

¹⁰⁵ ROCK, *supra* note 28, at 385.

¹⁰⁶ FEITLOWITZ, *supra* note 8, at 33–34.

¹⁰⁷ NUNCA MÁS, *supra* note 9, at 422; *see also* FEITLOWITZ, *supra* note 8, at 191 (noting that *Madres* founder Azucena Villaflor de Devinenti was kidnapped from her home on December 10, 1977, and is believed to have died in the ESMA).

¹⁰⁸ FEITLOWITZ, *supra* note 8, at 67–68.

¹⁰⁹ VALENTE, *20th Anniversary*, *supra* note 100, available at 1997 WL 7075110.

¹¹⁰ ARDITTI, *supra* note 2, at 51. While the *Abuelas* maintain that their work is for two generations, their primary success in reunifying families has been with their grandchildren. *Id.*

¹¹¹ Valente, *Six Officers Arrested*, *supra* note 53, available at 2000 WL 4089352.

¹¹² ARDITTI, *supra* note 2, at 50.

¹¹³ Marta Gurvich, *The Dirty War's Family Secrets*, IN THESE TIMES, Apr. 28, 1997, at 27 [hereinafter Gurvich, *Dirty War's Family Secrets*], available at LEXIS, News Library, In These Times File.

certificates and adoption records and attempted to gather information from doctors and nurses who attended the births. Their efforts, however, were often thwarted when those who gave information subsequently disappeared as well.¹¹⁴

The *Abuelas* worked as part human rights advocates and part detectives in search of their grandchildren and vowed “not [to] rest until as much of the truth as possible [was] known.”¹¹⁵ They insisted that they “owe[d] that to [their] children, to find *their* children and tell them who their parents were, . . . that they were good, life-loving young people like them who died for a principle.”¹¹⁶ The *Abuelas* described their formation as “[getting] together and organiz[ing] a group to look for the disappeared children, at first thinking that there were just a few of us, and then realizing to our horror that there were hundreds of us.”¹¹⁷ They came together much as the *Madres* did—meeting in secret, passing notes in public,¹¹⁸ and communicating in code.¹¹⁹ They shared information and helped each other fill in the missing pieces in the stories of their children's disappearances.¹²⁰ They reached out to each other and to the international community.¹²¹ They wrote to international human rights groups and organizations, foreign embassies, newspapers, politicians, the Vatican, and the United Nations.¹²² By working tirelessly and following thousands of clues supplied in response to press coverage of their search, they began to find their grandchildren.¹²³

B. Identifying the Children

Matilde Artés's daughter Graciela and granddaughter Carlita were abducted in 1976.¹²⁴ Matilde discovered that her grandchild was still alive through a prisoner who survived the ESMA.¹²⁵ The survivor told Matilde

¹¹⁴ *Id.*; see also *Annual Report of the Inter-American Commission on Human Rights 1987–1988*, Inter-Am. C.H.R. ch. 5, § 1, OEA/Ser.L/V/II.74, doc.10 (1988) [hereinafter IACHR, *Annual Report, 1987–1988*], available at <http://www.cidh.oas.org/annualrep/87.88eng/TOC.chap5.htm#I> (last visited Jan. 15, 2004).

¹¹⁵ LaFranchi, *Relentless Grandmothers*, *supra* note 50, at 1, available at 1999 WL 5383480.

¹¹⁶ *Id.*

¹¹⁷ NUNCA MÁS, *supra* note 9, at 302.

¹¹⁸ ARDITTI, *supra* note 2, at 54.

¹¹⁹ *Id.* at 55.

¹²⁰ *Id.* at 59.

¹²¹ *Id.* at 64.

¹²² *Id.*

¹²³ *Id.* at 103. In their “campaign designed to recruit the support of the Argentine people, [t]he Grandmothers plastered the city with posters and distributed thousands of leaflets with children's pictures By 1997 the Grandmothers' Association had received over 8,000 anonymous tips and pieces of information” *Id.*

¹²⁴ *Id.* at 107.

¹²⁵ *CBS News 60 Minutes: Argentina's Dirty War* (CBS television broadcast, Apr. 23, 2000), available at 2000 WL 4212887.

that her daughter had been tortured but that before she disappeared she wrote her baby's name in blood on the prison wall.¹²⁶ With only that information and the determination to bring her daughter's child home, Matilde marched on the *Plaza de Mayo* for almost a decade carrying a photo she had of Carlita as a baby.¹²⁷ Matilde sought the help of the *Abuelas*, who in turn appealed to the citizens of Argentina with hundreds of pictures posted in the streets of Buenos Aires. Remarkably, Carlita recognized herself while watching television and seeing a woman carrying a poster with her picture and the words: "Carlita, nine months of age, disappeared."¹²⁸ Fearful of having Carlita's true identity revealed, her adoptive family went into hiding with her and prepared to flee the country to continue to raise her under a false identity.¹²⁹ Ultimately, Carlita was found and reunited with her grandmother.¹³⁰

This reunification illustrates the potential success of identification by traditional investigative method. However, both tenacity and technology were required to catalyze the large-scale reunifications the *Abuelas* sought. In order to "restore . . . their [grandchildren's] proper identit[ies], allowing them to grow up without secrets or lies,"¹³¹ the *Abuelas* sought assistance from the international scientific community to establish proof of biological affiliation.¹³² Spurred by the *Abuelas'* determination, Dr. Mary-Claire King of Berkeley, California, performed research which determined that, because a child's DNA genetic sequence is so specific, it "is shared only with the mother or certain other maternal relatives."¹³³ Therefore, genetic matching could be performed with a child's maternal grandparents to prove a child's identity beyond doubt.¹³⁴

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* When Carlita mentioned the poster to her father, Eduardo Alfredo Ruffo, a known ESMA torturer, he beat her. *Id.*

¹²⁹ ARDITTI, *supra* note 2, at 107–08. The *Abuelas* and human rights groups termed such flights *segundas desapariciones* (second disappearances). *Id.* at 128. To avoid pursuit by the police and Carlita's grandmother, the Ruffos kept Carlita on the run for almost a decade. *Quando vi a fotografia me Reconheci* [When I Saw the Photograph I Saw Myself], Interview by Latino Americana with Carla Artés (author's translation), available at <http://geocities.yahoo.com.br/patriamada/repor4.html> (last visited Jan. 15, 2004). They moved from place to place and disguised Carlita, cutting and dying her hair, exchanging her glasses for contact lenses, and keeping her away from her friends and from school. Jaime Bedoya, *La Peruanita Recuperada*, CARETAS, June 10, 1999 (author's translation), available at <http://www.caretas.com.pe/1999/1571/peruanita/peruanita.htm> (last visited Jan. 15, 2004).

¹³⁰ ARDITTI, *supra* note 2, at 108.

¹³¹ *Id.* at 103.

¹³² *Abuelas de Plaza de Mayo, English Report: Missing Children Who Disappeared in Argentina between 1976 y 1983* (May 18, 2002) [hereinafter *Abuelas, English Report*], available at <http://www.abuelas.org.ar/Libro/report.htm> (last visited Jan. 15, 2004).

¹³³ *DNA Key to Tracing Kidnap Victims*, GUARDIAN, Jan. 17, 1989, at 1 [hereinafter *DNA Key*]. Dr. King stated that mitochondrial DNA-matching can prove a child's identity if it matches any one of many possible maternal relatives. *Id.*

¹³⁴ Michael Specter, *Microbiology Reunites Families; Long-Lost Children's Genes Match Parents*, WASH. POST, Jan. 17, 1989, at A11.

This breakthrough technique ultimately enabled scientists and the judiciary to prove many disappeared persons' identities conclusively and to disprove false claims of parentage of some children who had disappeared.¹³⁵ The *Abuelas* celebrated their first success in 1984, when DNA testing proved with 99.98% certainty the identity of one of their missing grandchildren.¹³⁶ Paula Eva Logares was seized with her biological parents in Uruguay in 1977.¹³⁷ Her parents never returned,¹³⁸ but Paula was found living with an ex-police chief who took her from the detention center where Paula's parents were last seen.¹³⁹ Court-ordered genetic testing proved Paula's identity conclusively, and she was returned to her grandmother.¹⁴⁰ Scientific methodology has reshaped adopted children's abilities to know their true identities, as illustrated by numerous cases of reunification of the *Abuelas* with their grandchildren.¹⁴¹ The use of genetic science which had been traditionally used to identify the dead could now enable the identification and reunification of the living.¹⁴²

C. *The Abuelas' Fight Leads to a Governmental Reckoning*

Through the expansion of traditional forensic science, the *Abuelas* brought the human rights abuses committed against their children to the attention of the international community. Although forensic anthropology had been used for decades in criminal investigations, it was not until 1984, at the urging of the *Abuelas*, that it was used as a human rights tool.¹⁴³ The *Abuelas* faced almost insurmountable difficulties obtaining justice for their children and grandchildren. Accusations of human rights violations are typically hard to substantiate, often supported only by witness testimony.¹⁴⁴ In the cases of those who disappeared, their relatives

¹³⁵ See *DNA Key*, *supra* note 133, at 1.

¹³⁶ Smith, *Sought by Argentina*, *supra* note 14, available at 1998 WL 2269952.

¹³⁷ Gabriella Gamini, *Babies of the "Disappeared" Take Revenge*, *TIMES* (London), Nov. 2, 1999 [hereinafter Gamini, *Babies of the "Disappeared"*].

¹³⁸ NUNCA MÁS, *supra* note 9, at 257.

¹³⁹ See Gamini, *Babies of the "Disappeared," supra* note 137; see also NUNCA MÁS, *supra* note 9, at 257.

¹⁴⁰ Smith, *Sought by Argentina*, *supra* note 14, available at 1998 WL 2269952. The tests compare "blood type, proteins, enzymes, and histocompatibility (compatibility between tissues) . . . Paula's was the first case to use the new method." *Id.* However, Paula was not returned to her grandmother until long after DNA tests proved her identity. "For years Paula lived with her illegal captors knowing they had lied to her." Gamini, *Babies of the "Disappeared," supra* note 137.

¹⁴¹ *Argentine Rights Commission Marks 10th Anniversary*, EFE NEWS SERV., Dec. 9, 2002, available at WL ALLNEWSPLUS File.

¹⁴² ARDITTI, *supra* note 2, at 78 (citing Victor B. Penchaszadeh, *Implicaciones Sociales y Científicas de Nuestra Lucha*, in *FILIACIÓN, IDENTIDAD, RESTITUCIÓN: 15 AÑOS DE LUCHA DE ABUELAS DE PLAZA DE MAYO* 32, 32 (Estela Barnes de Carlotto et al. eds., 1995)).

¹⁴³ See Tina Rosenberg, Editorial, *The Search for Truth in Old Burial Grounds*, *N.Y. TIMES*, Apr. 10, 2000, at A18.

¹⁴⁴ *All Things Considered: Forensics Help Prove Human Rights Cases* (National Public Radio broadcast, Aug. 23, 1992).

could not produce bodies or other essential forms of evidence, and the military's destruction of all documentation that recorded its abuses rendered futile attempts to bring charges against the junta officers.¹⁴⁵

While the *Abuelas* originally relied on forensic science to provide factual accounts of their loved ones' fates, it became apparent that the data they gathered could help prevent the military and Argentine citizens from ignoring the mass human rights abuses committed in their country and could build legal cases against the killers of those who disappeared.¹⁴⁶ For example, Laura, daughter of Estela Barnes de Carlotto, was kidnapped in 1977 when she was pregnant.¹⁴⁷ When Estela learned from ESMA prisoners' testimony that her daughter had given birth to a baby boy while in captivity, she quit her job as a school principal to search full time for her grandson.¹⁴⁸ When the military denied knowledge of the existence her grandchild,¹⁴⁹ Estela enlisted the help of renowned American forensic anthropologist Dr. Clyde Snow. Although the stomach of Laura's corpse had been "destroyed,"¹⁵⁰ Dr. Snow's examination of Laura's pelvic bones established that she was pregnant and had in fact delivered her child before she died.¹⁵¹

Estela's perseverance in finding her grandchild had a larger impact as well. When explaining Laura's death, the government told Estela that her daughter was shot when she refused to obey a police-ordered stop in her car.¹⁵² However, Dr. Snow's techniques proved the manner in which she was killed, which was inconsistent with the military's story. The post-exhumation report determined that Laura's skull was found with three bullets still inside of it. During the extradition proceeding against former General Carlos Suarez-Mason, U.S. District Judge D. Lowell Jensen thus concluded that probable cause existed to support a claim that Laura had been executed.¹⁵³ Dr. Snow's investigations would later suggest that eighty to ninety percent of the corpses he inspected were shot "execution style."¹⁵⁴ This indisputable evidence rallied Argentine communities and proved invaluable at trial to refute the junta's denial of these murders.¹⁵⁵ Dr. Snow noted that a victim's or witness's testimony may be discounted by those not wanting to believe such atrocities had occurred,

¹⁴⁵ *Id.*; see also NUNCA MÁS, *supra* note 9, at 420.

¹⁴⁶ Stephen G. Michaud, *Identifying Argentina's Disappeared*, N.Y. TIMES, Dec. 27, 1987, § 6, at 18.

¹⁴⁷ ARDITI, *supra* note 2, at 58.

¹⁴⁸ *Id.* at 175-76.

¹⁴⁹ NUNCA MÁS, *supra* note 9, at 302.

¹⁵⁰ *Id.* at 301.

¹⁵¹ See David Beard, *U.S. Experts Help Argentina Unravel Deaths of Dirty War*, CHI. TRIB., May 5, 1985, at C5.

¹⁵² NUNCA MÁS, *supra* note 9, at 301.

¹⁵³ *In re Extradition of Suarez-Mason*, 694 F. Supp. 676, 701 (N.D. Cal. 1988).

¹⁵⁴ Beard, *supra* note 151, at 5. For example, one corpse contained fourteen bullets, all fired in the back. *Id.*

¹⁵⁵ See Rosenberg, *supra* note 143, at A18.

“[b]ut it's hard to [dismiss] a skull that has a gunshot wound to the back of the head”¹⁵⁶

The investigations that provided the *Abuelas* with information about their children and grandchildren also allowed culpable government officials to be held accountable. Thus, the *Abuelas*, who originally embarked on a narrowly focused crusade to reunify their families, found themselves at the center of broader political and social change in Argentina.

D. *The Abuelas' Impact on the Science of Identity*

After years of being forced to tolerate the lies of the Argentine government regarding their children and grandchildren, the *Abuelas*, assisted by scientists and advocates in the international community, catalyzed a means for all citizens to learn the truth about their identities and, inadvertently, for the truth of the Dirty War to be exposed. Encouraged by the accuracy of forensic and DNA-aided identifications, the *Abuelas* successfully lobbied President Alfonsín and Argentina's Congress to create the National Bank of Genetic Data.¹⁵⁷ The first such genetic data bank in the world,¹⁵⁸ it offered state-of-the-art services without charge to the relatives of disappeared children and to anyone whose identity was in question.¹⁵⁹

After two years of unyielding pressure from the *Abuelas*, President Alfonsín met with *Abuelas* representatives and acquiesced to certain demands: the government would work to restore all of the *desaparecidos'* children to their rightful families, he would rally the support of the Argentine people in this effort, he would create a liaison for communication between the government and the *Abuelas* about the *desaparecidos*, and he would push the proposal to create the data bank through Congress.¹⁶⁰ To help ensure that the data bank was accessible to everyone, it was housed at Durand Hospital in Buenos Aires.¹⁶¹ The data bank, which has received genetic information from hundreds of families, will operate at least until 2050, enabling identity verification long after the *desaparecidos'* last maternal relatives have died.¹⁶² The same law that created the data bank also compels submission to genetic testing where identity is in dispute

¹⁵⁶ *Id.*

¹⁵⁷ ARDITTI, *supra* note 2, at 72.

¹⁵⁸ *Id.* at 158 (quoting Estela Barnes de Carlotto, *Prólogo*, in *EL DERECHO A LA IDENTIDAD: LOS AVANCES CIENTÍFICOS, LA REGULACIÓN JURÍDICA Y LOS PRINCIPIOS DE LA CONVENCION SOBRE LOS DERECHOS DEL NIÑO (LEY 23.849)* 13, 14 (Alicia Pierini ed., 1993)).

¹⁵⁹ Law No. 23511, June 1, 1987, [XLIV-D] A.D.L.A. 3373, available at <http://infoleg.mecon.gov.ar/scripts1/busquedas/cnsnorma.asp?tipo=Ley&nro=23511> (last visited Jan. 15, 2004); ARDITTI, *supra* note 2, at 72–73.

¹⁶⁰ ARDITTI, *supra* note 2, at 72.

¹⁶¹ IACHR, *Annual Report, 1987–1988*, *supra* note 114, ch. 5, § 1, available at <http://www.cidh.oas.org/annualrep/87.88eng/chap5.htm#I>.

¹⁶² ARDITTI, *supra* note 2, at 73.

and further provides that refusal to comply will be construed as evidence of involvement in kidnapping.¹⁶³ Not surprisingly, the *Abuelas* supported this position, reasoning that, if parties refused testing, it was "because they ha[d] something to hide."¹⁶⁴

The *Abuelas* also pressured the government for an official commitment to search for their missing grandchildren. In response, the government formed the National Commission on the Right to Identity ("CONADI") in the Interior Ministry in 1992.¹⁶⁵ CONADI was granted broad investigatory and prosecutorial powers to work with the *Abuelas*, their attorneys, state prosecutors, and the Interior Ministry's Secretariat for Human Rights in a centralized and coordinated effort to find the missing children and return them to their biological families.¹⁶⁶ As the evidentiary value of genetic testing became better recognized, the government also created a reparations fund to assist the *Abuelas* in continuing their search.¹⁶⁷ The fund, created in 1998, was the first of its kind and provided \$25,000 per month for two years, allowing the *Abuelas* enough working capital to complete the genetic data bank's archives.¹⁶⁸

DNA identification continues to be an invaluable tool for aiding those who question their identity and finding those who have disappeared. The *Abuelas* continue to work with CONADI and the National Bank of Genetic Data, warehousing genetic information so that, in the event that the *Abuelas* are unable to find their grandchildren, their grandchildren will be able to find them. The establishment of the National Bank of Genetic Data has been instrumental in restoring Argentinean families and is an important component of Argentina's commitment to preventing future human rights abuses. As trials for these violations continue, the use of stored DNA and genetic information will become even more valuable in exposing, and thus deterring, mass murders.¹⁶⁹

E. The Abuelas' Transformation of Argentine Adoption Law

Satisfied with strides made in the scientific arena, the *Abuelas* looked to ensure the permanent restoration of identity for their grandchildren through

¹⁶³ *Id.* at 72–73.

¹⁶⁴ Marcela Valente, *Rights—Argentina: Media Mogul Accused of Illegal Adoptions*, INTER PRESS SERV., Dec. 18, 2002 [hereinafter Valente, *Media Mogul*], available at 2002 WL 103557717.

¹⁶⁵ U.S. DEP'T OF STATE, ARGENTINA HUMAN RIGHTS PRACTICES 1993 (1994), available at http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_ara/Argentina.html (last visited Jan. 15, 2004).

¹⁶⁶ See U.S. DEP'T OF STATE, ARGENTINA HUMAN RIGHTS PRACTICES 1994 (1995), available at http://dosfan.lib.uic.edu/ERC/democracy/1994_hrp_report/94hrp_report_ara/Argentina.html (last visited Jan. 15, 2004).

¹⁶⁷ Viviana Alonso, *Rights—Argentina: Abduction Trials Revive Prospects for Justice*, INTER PRESS SERV., Dec. 17, 1998, available at 1998 WL 19902049.

¹⁶⁸ *Id.*

¹⁶⁹ See Rosenberg, *supra* note 143, at A18.

legislative process. They focused their efforts on developing rules of law that would give children the legal right to know their biological identities.¹⁷⁰ In 1986, they attacked Argentina's adoption law as another culprit responsible for the protection of kidnappers and the concealment of the stolen children's true identities.¹⁷¹ The *Abuelas* challenged the secrecy of Argentina's closed adoption system¹⁷² as fostering an environment amenable to illegal adoptions and child trafficking, both of which are serious problems in Argentina.¹⁷³ The closed adoption system enabled the Dirty War regime not only to conceal children's true identities but also to create completely new and false identities for them, rendering the *Abuelas'* search for their abducted grandchildren nearly impossible.¹⁷⁴

The *Abuelas* are not opposed to adoption per se; rather, they maintain that their grandchildren were never abandoned¹⁷⁵ and thus could not be legally adopted. They emphasize that in the case of true adoption, parents voluntarily relinquish their parental rights.¹⁷⁶ Thus, the *Abuelas* considered those with physical custody of their grandchildren guilty of illegal appropriation with no entitlement to custody.¹⁷⁷ The *Abuelas* rejected the idea that it is in the child's best interest to stay with those who illegally appropriated him or her.¹⁷⁸ Instead, they believe that *biological* families provide the best homes for the *desaparecidos'* children.¹⁷⁹ In some situations, elderly grandparents recognized that the home of younger relatives or of family members with other children could be the most appropriate environment for the child.¹⁸⁰

¹⁷⁰ ARDITTI, *supra* note 2, at 145.

¹⁷¹ *Id.* at 144.

¹⁷² Closed adoption systems involve sealed records, so that adopted children do not know their genetic forebears. Open adoption systems allow for contact and information to be shared between the biological and adoptive families. See Annette Ruth Appell, *Blending Families through Adoption: Implications for Collaborative Adoption Law and Practice*, 75 B.U.L. REV. 997 (1995).

¹⁷³ ARDITTI, *supra* note 2, at 155 (citing DEFENSA DE LOS NIÑOS INTERNACIONAL, VENTA Y TRÁFICO DE NIÑOS EN ARGENTINA—INVESTIGACIÓN ii (1989)); see also James F. Smith, *Arrests Spur Debate on Old Practice; Latin America Agonizing Over Trafficking in Babies*, L.A. TIMES, Oct. 30, 1988, at A1, available at 1988 WL 2193373; Daniel Gatti, *Children—LatAm: Adoption Laws at a Crossroads*, INTER PRESS SERV., Mar. 31, 1999, available at LEXIS, News Library, Inter Press Serv. File.

¹⁷⁴ ARDITTI, *supra* note 2, at 144.

¹⁷⁵ See Daniel Drosdoff, *Children of Disappeared Persons Suffer Double Trauma*, UNITED PRESS INT'L, Sept. 1, 1985, available at LEXIS, News Library, UPI File.

¹⁷⁶ ARDITTI, *supra* note 2, at 139.

¹⁷⁷ See *id.*

¹⁷⁸ *Id.* at 140.

¹⁷⁹ See *Abuelas, English Report, supra* note 132 (stating that the *Abuelas'* "demand is concrete: that the children who were kidnapped as a method of political repression be restored to their legitimate families"), available at http://www.abuelas.org.ar/Libro/f_report.htm (last visited Jan. 15, 2004).

¹⁸⁰ In the case of returned child Elena Galinari, psychologists determined that she would benefit from living in a home with other children, and thus her aunt and uncle became her parents. Caroline Graham, *Was My Papa Really the Secret Policeman Who Killed My Mother?*, MAIL ON SUNDAY, Sept. 10, 2000, available at 2000 WL 24064430.

In the few instances in which their grandchildren had been adopted in good faith, the *Abuelas* allowed the children to remain with their adoptive families, with the condition that the biological families be permitted to remain integral parts of the children's lives.¹⁸¹ Indeed, the *Abuelas* maintain that they are not "child-snatchers" but are concerned with the restoration of their grandchildren's identities and the nullification of *illegal* adoptions.¹⁸²

They insist that adoption in general must be "official and free. Otherwise the child becomes an article for export."¹⁸³ The *Abuelas* contend that open adoption benefits all: due to the high-profile nature of the Dirty War disappearances, every child adopted during those years may be reasonably suspicious of his or her origin.¹⁸⁴ Largely due to the *Abuelas'* relentless campaign for the constitutional right to identity, in 1991 a genetically proven illegal adoption of a *desaparecido's* child was declared null and void for the first time in Argentina's history.¹⁸⁵

In 1994, Argentina's legislature began drafting new adoption laws incorporating the right to identity.¹⁸⁶ This legislation was provisionally approved by the House of Representatives later that year and received full Senate approval in 1997.¹⁸⁷ The law created a significant change, requiring as a condition to adoption that a child be informed at an appropriate time of his or her adoption.¹⁸⁸ Further, the law provided that "[a]dopted children will have the right to know their true biological identity and will have access to their adoption file once they have reached the age of eighteen."¹⁸⁹ The reformed system thus allows all adopted people at the age of majority to know their places of origin, the conditions surrounding their births, and the identities of their birth mothers.¹⁹⁰ Additionally, the rule facilitates the exchange of valuable information to those in

¹⁸¹ IACHR, *Annual Report, 1987–1988*, *supra* note 114, ch. 5, § 1 (describing that in good faith adoptions the Grandmothers have "accept[ed] 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; and (3) the child is informed, at an appropriate time, of his or her real identity"), *available at* <http://www.cidh.oas.org/annualrep/87.88eng/TOC.chap5.htm#I>.

¹⁸² Valente, *Media Mogul*, *supra* note 164, *available at* 2002 WL 103557717.

¹⁸³ Marcela Valente, *Argentina—Children: The Adoption Debate*, INTER PRESS SERV., July 13, 1995, *available at* LEXIS, News Library, Inter Press Serv. File.

¹⁸⁴ See Marcela Valente, *Rights—Argentina: Two Daughters of Disappeared Recover Identity*, INTER PRESS SERV., Mar. 3, 2000, *available at* 2000 WL 4090115.

¹⁸⁵ ARDITI, *supra* note 2, at 109. Although it took eight years from when the *Abuelas* first located the child in question, her adoption was ultimately annulled, and she was able to regain "her history, her identity, and her real name." *Id.*

¹⁸⁶ *Id.* at 153.

¹⁸⁷ On September 14, 1994, the new adoption bill was introduced by the Argentine House of Representatives. The law, no. 24.779, was passed on February 28, 1997. U.S. Dep't of State, *International Adoption—Argentina*, at <http://library.adoption.com/Argentina/International-Adoption-Argentina/article/1324/1.html> (last visited Jan. 15, 2004).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Gatti, *supra* note 173, *available at* LEXIS, News Library, Inter Press Serv. File.

need of their medical histories, aiding the detection of potential hereditary anomalies.¹⁹¹

V. THE ABUELAS' FIGHT AGAINST SILENCE AND IMPUNITY

In addition to the previously discussed unintended outcomes—the creation of new humanitarian uses for forensic investigation, the expansion of these uses to establish a National Bank of Genetic Data, and the effectuation of a more open Argentine adoption system—the *Abuelas'* initially narrow fight to reunify their families created broad ripples in the Argentine political and social climate. Their efforts have come to symbolize the need for truth and openness in a country plagued by fear and silence. In their continuing crusade to find their grandchildren and ensure no others would be “lost,” the *Abuelas* exposed the junta's systematic plan to abduct and then illegally adopt out the children of the disappeared. This unveiling eventually led to the *successful* criminal prosecution of many of the government officials involved, a declaration that the two amnesty laws that shielded the junta officials were unconstitutional, and the promulgation of several international human rights laws regarding forced disappearances.

A. *Exposing the Systematic Plan*

As a natural extension of their search for their grandchildren, the *Abuelas* began to fight to change the government's silence and denial surrounding the Dirty War. They sought to expose the government's abduction and theft of hundreds of children's identities. In December 1996, the *Abuelas* commenced legal action to determine the fates of the hundreds of babies born in captivity.¹⁹² Working with U.S. State Department officials and American human rights groups, the *Abuelas* gathered information allowing them to prove the identities of a large number of their missing grandchildren.¹⁹³ They presented evidence of illegal appropriation of 240 children born in captivity and not returned to their biological families.¹⁹⁴ They also filed criminal charges against military officers, accusing them of implementing a systematic and premeditated plan to abduct, change the identities of, and illegally adopt their grandchildren.¹⁹⁵

¹⁹¹ *See id.*

¹⁹² Alonso, *supra* note 167, available at 1998 WL 19902049.

¹⁹³ LaFranchi, *Relentless Grandmothers*, *supra* note 50, at 1, available at 1999 WL 5383480.

¹⁹⁴ Abuelas de Plaza de Mayo, *English Report: Local Activities* (May 18, 2002), available at http://www.abuelas.org.ar/Libro/f_report.htm (last visited Jan. 15, 2004).

¹⁹⁵ Marcela Valente, *Rights—Argentina: Court Orders Ex-Dictator's Return to Prison*, INTER PRESS SERV., Dec. 1, 2000 [hereinafter Valente, *Court Orders*], available at 2000 WL 28919964.

The *Abuelas* were innovative in their strategies and looked for loopholes in the existing legislation that could redefine or reinterpret Argentina's detrimental amnesty laws.¹⁹⁶ When the military officers were tried for human rights abuses in 1985, they did not face charges for child abduction.¹⁹⁷ For example, although General Videla was sentenced to life in prison during the 1985 trials for a multitude of crimes,¹⁹⁸ the tribunal did not find sufficient evidence to convict him of the appropriation of children, reasoning that there was no proof that the crime was "systematically practiced" by the regime.¹⁹⁹ The absurd result was that he would not be charged for any isolated incidents of kidnapping either. However, the *Abuelas* then discovered that the amnesty laws promulgated by Alfonsín did not absolve the crime of kidnapping and that the kidnapping charges were not included in the Menem pardons.²⁰⁰ Thus, if the *Abuelas* could prove a systematic plan of abduction and adoption, the junta officers could be convicted and sentenced through new trials for kidnapping.

Investigations into the *Abuelas*' allegations of child abduction did in fact reveal an organized plan by the junta regime to kidnap the *desaparecidos*' babies and to falsify the babies' identities through forged documents.²⁰¹ Records obtained during a raid upon the navy headquarters and other navy offices produced suspect birth certificates and records of either infertile women giving birth or women giving birth in unknown locations—all dating back to the period of the regime.²⁰² According to the testimonies of ESMA survivors, the junta had an administrative infrastructure for the creation of false documents to identify both detainees and their captors,²⁰³ to carry out new unlawful activities,²⁰⁴ and to provide new identities for the stolen babies born in captivity.²⁰⁵ Decades after the disappearance of their children and grandchildren, the *Abuelas* were formally vindicated when Argentine federal judge Maria Servini de Cubria ordered the arrest of six retired naval officers for running illicit adoption

¹⁹⁶ See Valente, *Loophole*, *supra* note 35, available at 1998 WL 5987685.

¹⁹⁷ Valente, *Court Orders*, *supra* note 195, available at 2000 WL 28919964.

¹⁹⁸ He was convicted of "66 homicides, 306 abductions, 96 cases of torture, four cases of torture ending in death and 26 robberies." Valente, *Loophole*, *supra* note 35, available at 1998 WL 5987685.

¹⁹⁹ *Id.*

²⁰⁰ See Valente, *Court Orders*, *supra* note 195, available at 2000 WL 28919964 (stating that "[n]one of the officers tried in the 1980s for human rights abuses was charged with the crime of kidnapping children because there was not enough evidence of a systematic plan. For that reason, the pardon and amnesty laws did not cover those charges.").

²⁰¹ See Valente, *Six Officers Arrested*, *supra* note 53, available at 2000 WL 4089352.

²⁰² *Id.*

²⁰³ See FEITLOWITZ, *supra* note 8, at 216.

²⁰⁴ See NUNCA MÁS, *supra* note 9, at 272–73 (documenting illegal activities such as the sale of stolen property, the use of stolen vehicles, the use of houses belonging to the disappeared, and the manufacture of passports and identity cards for entry and exit from the country).

²⁰⁵ See Alonso, *supra* note 167, available at 1998 WL 19902049.

rings from the secret detention centers.²⁰⁶ The arrests served as a commitment that the theft and illegal adoption of the *Abuelas'* grandchildren would finally be thoroughly investigated.

B. Holding the Government Accountable

In 1998, Judge Roberto José Marquevich became the second Argentine federal judge to investigate the systematic abduction of the *desaparecidos'* babies and was appalled by the regime's "attempt to kill a child's identity [and] to force the formation of a new identity in [its] image."²⁰⁷ He criticized the military pardons, stating that "[t]hese were crimes against nature [that] transcended any pardon."²⁰⁸ The military's policy served as instruction in the methods by which the children would be handled and the means by which their identities would be buried under falsified documents and subterfuge.²⁰⁹ Judge Marquevich opined that "[t]here is no precedent . . . for this type of case," in which "the secret police systematically [stole] the fruit of the womb of the people they tortured and killed."²¹⁰ He delivered a well-reasoned opinion that the junta's crimes were of such gravity that they should be considered crimes against humanity, that the amnesty laws could not shield them, and that under international law they would not escape charges because of arbitrary statutes of limitations.²¹¹ Judge Marquevich also supported the *Abuelas'* position that the judiciary owed it to the children "to tell them the truth."²¹²

In a parallel case, Judge Adolfo Bagnasco began what would become the largest investigation of the kidnappings.²¹³ Although the junta took pains to destroy all documentation of the illegal adoptions,²¹⁴ Judge Bagnasco was able to piece together evidence provided by the *Abuelas* and other witnesses that proved the existence of a well-organized plan to abduct babies from the imprisoned *desaparecidos* to give to members of the regime.²¹⁵ Judge Bagnasco heard testimonies from doctors, nurses,

²⁰⁶ See Valente, *Six Officers Arrested*, *supra* note 53, available at 2000 WL 4089352.

²⁰⁷ LaFranchi, *Relentless Grandmothers*, *supra* note 50, at 1, available at 1999 WL 5383480.

²⁰⁸ *Id.*

²⁰⁹ Valente, *Loophole*, *supra* note 35, available at 1998 WL 5987685.

²¹⁰ Gurvich, *Dirty War's Family Secrets*, *supra* note 113, available at LEXIS, News Library, In These Times File.

²¹¹ *Id.*

²¹² Nathaniel Nash, *Dirty War's Stolen Children Face Truth*, *GUARDIAN*, May 12, 1993, at 10, available at 1993 WL 9911089.

²¹³ Ken Warn, *Net Starts to Close on Ageing Generals as Argentina Probes Baby Kidnappings*, *FIN. TIMES* (London), Apr. 10, 1999, at 5.

²¹⁴ See Marcela Valente, *Rights—Argentina: Army Chief Condemns "Baby Stealing,"* *INTER PRESS SERV.*, Mar. 13, 2000, available at LEXIS, News Library, Inter Press Serv. File.

²¹⁵ See Valente, *Loophole*, *supra* note 35, available at 1998 WL 5987685.

and midwives who stated that blindfolded, pregnant detainees were brought to the ESMA and Campo de Mayo's makeshift "maternity wards" to give birth, with strict orders that their identities be concealed.²¹⁶ They testified that the prisoners' labor was induced in the middle of the night so there would be fewer witnesses to the births.²¹⁷ According to the participating military officers, after giving birth, these mothers were driven to the Campo de Mayo hangar, flown out in military planes, and thrown alive into the sea.²¹⁸ From these testimonies and the altered medical records seized from the military hospitals dating back to the junta regime, Judge Bagnasco found enough evidence to investigate 194 cases of baby theft.²¹⁹

Judge Bagnasco determined that there were two stages in the regime's organized baby-theft plan.²²⁰ He defined the first stage as covering the initial three years of the junta regime, and he found it unlikely that during this time the military leaders who frequented the detention centers would not have known of the abductions.²²¹ He characterized the second stage as a "cover-up" period in which military leaders attempted to hide their predecessors' abductions.²²² This second stage often included "second disappearances,"²²³ in which parents who illegally adopted children fled the country when their children's identities became known.²²⁴ The *Abuelas'* identification of this phenomenon was significant in influencing the Organization of American States ("OAS") to expand the PanAmerican Convention of Human Rights to increase protection for the rights of the children who disappeared and to invoke the Montevideo Treaty requiring the extradition of alleged kidnappers.²²⁵

Judge Bagnasco found eight charged military leaders culpable for the abductions and ordered their arrest.²²⁶ He acknowledged that the in-

²¹⁶ *See id.*

²¹⁷ *See* Graham, *supra* note 180, available at 2000 WL 24064430.

²¹⁸ *See* Valente, *Loophole*, *supra* note 35, available at 1998 WL 5987685.

²¹⁹ *See* *Argentina—Disappeared, Argentine Judge Investigates Birth Registry in "Disappeared" Case*, EFE NEWS SERV., Feb. 11, 2000, available at WL ALLNEWSPLUS File.

²²⁰ LaFranchi, *Relentless Grandmothers*, *supra* note 50, at 1, available at 1999 WL 5383480.

²²¹ *See id.*

²²² *Id.*

²²³ *See, e.g.*, *supra* note 129 and accompanying text.

²²⁴ ARDITTI, *supra* note 2, at 128.

²²⁵ *Id.* at 129. The OAS has been a powerful ally to the *Abuelas* in their search for the disappeared. In 1978, the OAS requested the opportunity to investigate the many reports of disappearances that flooded their office. *Id.* at 37–38. In exchange for U.S. Vice President Mondale's approval of loans to Argentina that the United States had blocked because of the human rights violations in Argentina, General Videla allowed the OAS, through its Inter-American Commission on Human Rights ("IACHR"), to investigate and ultimately document a devastating 5580 human rights violations. *Id.* at 38. The IACHR report was banned in Argentina but copies were smuggled in, weakening the claims of the dictatorship and raising the spirits of the families of the disappeared. *Id.*

²²⁶ LaFranchi, *Relentless Grandmothers*, *supra* note 50, at 1, available at 1999 WL 5383480.

vestigations would inevitably reveal painful details, but he felt that “[t]he search for truth [was] very important.”²²⁷ He further asserted that “[p]eople must know what happened; think about why it happened—and ensure that such things never happen again.”²²⁸

C. Recognition of the Human Rights Abuses Committed by the Regime

The international community responded to the Argentine situation by recognizing the crimes of the junta regime as human rights violations. The 1983 U.N. Declaration on the Protection of All Persons from Enforced Disappearance²²⁹ and the 1983 and 1984 Resolutions of the General Assembly of the OAS all declared the systematic practice of forced disappearance of persons to be a crime against humanity.²³⁰ Article 18 of the U.N. Declaration provides that known or suspected perpetrators of enforced disappearance “shall not benefit from any special amnesty law or similar measure that might have the effect of exempting them from any criminal proceedings or sanction.”²³¹ The U.N. Declaration further facilitates prosecution of those who commit crimes against humanity by stipulating that no statute of limitations applies to such complaints.²³²

On a national level, in a landmark decision on March 6, 2001, federal Judge Gabriel Cavallo declared unconstitutional and void Argentina's Full Stop and Due Obedience laws, which had shielded hundreds of lower-level officers accused of human rights violations during the regime.²³³ Judge Cavallo agreed with the *Abuelas'* challenge to the validity of the amnesty laws, arguing that the accused could not retain immunity for the kidnapping, torture, and murder of the *desaparecidos* while standing

²²⁷ Lucy Ash, *The Living Disappeared*, BBC NEWS: CROSSING CONTINENTS, http://news.bbc.co.uk/1/hi/events/crossing_continents/top_features/150425.stm (Aug. 19, 1998) (last visited Jan. 15, 2004).

²²⁸ *Id.*

²²⁹ Declaration on the Protection of All Persons from Enforced Disappearance, GA Res. 47/133, UN GAOR, 47th Sess., Supp. No. 49, at 207, UN Doc. A/47/49 (1992), available at <http://www1.umn.edu/humanrts/instatee/h4dpaped.htm> (last visited Jan. 15, 2004).

²³⁰ AG/RES. 666 (XIII-0/83); AG/RES. 742 (XIV-0/84).

²³¹ Declaration on the Protection of All Persons from Enforced Disappearance, *supra* note 229, art. 18, available at <http://www1.umn.edu/humanrts/instatee/h4dpaped.htm>.

²³² Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, *opened for signature* Dec. 16, 1968, 754 U.N.T.S. 73, art. 1(b), available at http://www.unhcr.ch/html/menu3/b/p_limit.htm (last visited Jan. 15, 2004).

²³³ Causa Nro. 8686/2000, caratulada “Simon, Julio, Del Cerro, Juan Antonio s/sustracción de menores de 10 años,” Juzg. Crim. y Correc. Fed. Nro. 4 (Mar. 6, 2001) [hereinafter Cavallo Opinion], available at http://www.abogarte.com.ar/pagina_anterior/turcojulian2.html (last visited Jan. 15, 2004); COUNTRY REPORTS, ARGENTINA 2001, *supra* note 4, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8278pf.htm>; see also Marcela Valente, *Rights—Argentina: Judge Revokes Military's Amnesty Laws*, INTER PRESS SERV., Mar. 6, 2001 [hereinafter Valente, *Judge Revokes*], available at 2001 WL 4802984.

trial for the kidnapping of their children.²³⁴ Cavallo emphasized the inconsistency in punishing the guilty for only part of their crime.²³⁵

In a 188-page decision based on international human rights laws and Argentina's duty to comply with those laws, Judge Cavallo found the amnesty laws in violation of Sections 29 and 118 of the Argentine Constitution,²³⁶ and in conflict with Argentina's obligation to bring to justice those responsible for crimes against humanity.²³⁷ He further stated that the Argentine Constitution and current international law prohibited amnesty in such cases.²³⁸ In his opinion, Judge Cavallo relied upon the Convention Against Torture ("CAT"),²³⁹ the American Convention on Human Rights,²⁴⁰ and the International Covenant on Civil and Political Rights ("ICCPR")²⁴¹ to conclude that the crimes committed by two military officers amounted to crimes against humanity.²⁴²

²³⁴ Valente, *Judge Revokes*, *supra* note 233, available at 2001 WL 4802984.

²³⁵ *Id.*

²³⁶ Section 29 provides:

Congress may not vest on the National Executive Power—nor may the provincial legislatures vest on the provincial governors—extraordinary powers or the total public authority; it may not grant acts of submission or supremacy whereby the life, honor, or wealth of the Argentine people will be at the mercy of governments or any person whatsoever. Acts of this nature shall be utterly void, and shall render those who formulate them, consent to them or sign them, liable to be condemned as infamous traitors to their fatherland.

CONST. ARG. ch. I, § 29, available at <http://www.senado.gov.ar/web/constitucion/english.html> (last visited Jan. 15, 2004). Section 118 provides:

The trial of all ordinary criminal cases not arising from the right to impeach granted to the House of Deputies, shall be decided by jury once this institution is established in the Nation. The trial shall be held in the province where the crime has been committed; but when committed outside the territory of the Nation against public international law, the trial shall be held at such place as Congress may determine by a special law.

Id. § 118.

²³⁷ See Cavallo Opinion, *supra* note 233, § II.C, available at http://www.abogarte.com.ar/pagina_anterior/turcojulian2.html.

²³⁸ *Judge Disagrees with Defence Minister Regarding Impunity Laws*, LA NACIÓN (Buenos Aires), Mar. 8, 2001, at 12, translated in BBC SUMMARY OF WORLD BROADCASTS, Mar. 10, 2001, AL/D4091/L, available at LEXIS, News Library, BBC Worldwide Monitoring File.

²³⁹ Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc.A/39/51 (1984) [hereinafter CAT], available at http://www.unhchr.ch/html/menu3/b/h_cat39.htm (last visited Jan. 15, 2004).

²⁴⁰ American Convention on Human Rights, opened for signature Nov. 22, 1969, art. 46, O.A.S. Treaty Ser. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978), available at <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm> (last visited Jan. 15, 2004).

²⁴¹ International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR], available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (last visited Jan. 15, 2004).

²⁴² Valente, *Judge Revokes*, *supra* note 233, available at 2001 WL 4802984. Judge Cavallo also applied the Inter-American Convention on the Forced Disappearance of

Judge Cavallo found that there existed an obligation to punish perpetrators of human rights violations, affirmed by the United Nations Human Rights Committee ("UNHRC"): a "State party is under a duty . . . to prosecute criminally, try and punish those held responsible for" forced disappearances and extrajudicial executions.²⁴³ The UNHRC stated that the Full Stop and Due Obedience laws "deny effective remed[ies] to victims of human rights violations"²⁴⁴ As such, the amnesty laws further contributed to "an atmosphere of impunity"²⁴⁵ The U.N. Committee against Torture also concluded in its 1989 report that, although "a democratically elected post-military authority . . . enacted the Punto Final and the Due Obedience Acts[,] . . . the Committee deem[ed these laws] to be incompatible with the spirit and purpose of [CAT]."²⁴⁶

In October 2001, Judge Claudio Bonadío became the second federal judge to nullify the amnesty laws.²⁴⁷ The federal appeals court of Argentina followed this lead one month later, affirming Judge Cavallo's decision.²⁴⁸ In addition, on August 30, 2002, Argentine Attorney General

Persons to the abduction of the disappeared parents. Cavallo Opinion, *supra* note 233, § III.G, available at http://www.abogarte.com.ar/pagina_anterior/turcojulian2.html; Inter-American Convention on the Forced Disappearance of Persons, *opened for signature* June 9, 1994, 33 I.L.M. 1529 (1994), available at <http://www.oas.org/juridico/Treaties/a-60.html> (last visited Jan. 15, 2004). Signatory countries approved the Convention in 1994. Inter-American Convention on the Forced Disappearance of Persons, *supra*, Signatories and Ratifications, available at <http://www.oas.org/juridico/english/Sigs/a-60.html> (last visited Jan. 15, 2004). It became part of Argentine law in 1997. Congressional Human Rights Caucus, *Argentina: Repeal of the Amnesty Laws*, Oct. 8, 2003, available at <http://www.house.gov/lantos/caucus/TestimonyBordon100803.htm> (last visited Jan. 15, 2004). Pursuant to the convention, concealing information of a person's fate or negating the occurrence of a kidnapping so as to prevent the person from seeking legal redress constitutes part of an act of forced disappearance. See Inter-American Convention on the Forced Disappearance of Persons, *supra*, art. 2, available at <http://www.oas.org/juridico/Treaties/a-60.html>.

²⁴³ U.N. Human Rights Comm., *Decision on the Case of Nydia E. Bautista*, Communication 563/1993, ¶ 8.6, U.N. Doc. CCPR/C/55/D/563/1993 (1995); see also U.N. Human Rights Comm., *Decision on the Case of Jose Vicente Villafañe and Others*, Communication 612/1995, ¶ 8.8, U.N. Doc. CCPR/C/60/D/612/1995 (1997).

²⁴⁴ U.N. Human Rights Comm., *Concluding Observations: Argentina*, ¶ 153, U.N. Doc. CCPR/C/79/Add.46; A/50/40 (1995) [hereinafter *Concluding Observations*].

²⁴⁵ *Id.*

²⁴⁶ Amnesty International, *Argentina and Chile: The International Community's Responsibility Regarding Crimes Against Humanity: Trials in Spain for Crimes Against Humanity Under Military Regimes in Argentina and Chile* (citing Report of the Committee Against Torture, U.N. GAOR, 45th Sess., Supp. No. 44, annex VI, U.N. Doc. A/45/44 (1990)), available at <http://web.amnesty.org/library/Index/ENGAMR030011998?open&of=ENG-ESP> (last visited Jan. 15, 2004).

²⁴⁷ Causa Nro. 7694/99, caratulada "Astiz Alfredo y otros S/ delito de accion Publica," Juzg. Crim. Y Correc. Nro. 12 (Oct. 1, 2001), available at <http://www.abogarte.com.ar/bonadionulidad1.htm> (last visited Jan. 15, 2004); COUNTRY REPORTS, ARGENTINA 2001, *supra* note 4, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8278pf.htm>.

²⁴⁸ COUNTRY REPORTS, ARGENTINA 2001, *supra* note 4, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8278pf.htm>; see also *Argentine Court Upholds Scrapping of Amnesty Law for Military*, AGENCE FRANCE PRESSE, Nov. 9, 2001, available at LEXIS, News Library, Agence France Presse File. The court's three-judge panel unanimously upheld Cavallo's ruling and revoked the blanket amnesty laws that long shielded officers

Nicolas Becerra recommended to the Argentine Supreme Court the abolition of the blanket amnesty laws.²⁴⁹ Becerra focused on the link between Argentina's present-day violence and its legacy of human rights violations, arguing that the Supreme Court was constitutionally mandated to protect the dignity of Argentine society.²⁵⁰ While Becerra's brief is not binding, it exerts political pressure as a barometer of the feelings of the Argentine people.²⁵¹ A public opinion poll revealed that seventy-eight percent of the population supported Judge Cavallo's decision and desired the resumption of the military trials.²⁵²

While the citizens of Argentina await the Supreme Court decision, they may take solace in the lower courts' actions against the impunity of state terrorism. Along with the continued activism of the *Abuelas*, those decisions bring them closer to attaining justice for the victims of the human rights abuses committed by the junta regime. The *Abuelas* continue to advocate for the punishment of those guilty of the disappearances of their children and grandchildren because if "there is no justice, no one can ensure that this will not happen again."²⁵³

VI. THE WILL FOR THE FUTURE

Although in the last decade the *Abuelas* have made great strides in ending the culture of silence and impunity surrounding their government, many conditions that allowed the juntas to assume and abuse power during the Dirty War still exist in Argentina today. To prevent a return to the terror of the 1970s and 1980s, the Argentine people must never forget the Dirty War and its legacy. What the *Abuelas* began must be carried forward by future generations so that no victim will ever be forgotten and no person need ever fear political violence. As the *Abuelas*' mission to find their grandchildren comes to a close, the need for new watchdogs of truth and openness becomes increasingly apparent.

from prosecution. *Id.* The court emphasized that in adherence to constitutional guarantees of human rights protection, "eliminating the laws 'was not an option but an obligation.'" *Id.*

²⁴⁹ *Argentine Attorney-General Confirms Unconstitutionality of Amnesty Laws*, BBC WORLDWIDE MONITORING, Sept. 1, 2002 [hereinafter *Argentine Attorney-General*], available at LEXIS, News Library, BBC Worldwide Monitoring File; see also U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, ARGENTINA 2002 (2003) [hereinafter COUNTRY REPORTS, ARGENTINA 2002], available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18317pf.htm> (last visited Jan. 15, 2004).

²⁵⁰ See *Argentine Attorney-General*, *supra* note 249, available at LEXIS, News Library, BBC Worldwide Monitoring File.

²⁵¹ See *id.*

²⁵² *Id.*

²⁵³ Adams, *supra* note 18, at Z16.

A. *The Continuing Danger of Silence and Impunity*

Argentina's fragile state must avoid becoming vulnerable to a regime employing violence and terror to maintain control. Argentina's worsening recession continues to take its toll on citizens: in 2002 the country's currency suffered a devaluation of seventy percent, unemployment rose to over twenty-one percent, and more than half of Argentina's population now lives below the poverty line.²⁵⁴ The rising poverty has been linked to increased incidents of crime,²⁵⁵ lending support to the *Abuelas'* fears of terrorist resurgence. Argentine human rights group CELS (Center for Legal and Social Studies) reports that although torture cases and police brutality are increasing, victims are afforded little redress.²⁵⁶ In over three thousand of such reports between 1998 and 2002, only four went to trial, and three resulted in conviction.²⁵⁷ Torture of incarcerated minors doubled in one year and remains largely unchecked due to a lack of judicial interest as well as victims' fears of reprisals.²⁵⁸ In September 2002, gunmen fired at the home of an *Abuelas'* founder, who had filed complaints of police torture with the Supreme Court.²⁵⁹ As Attorney General Becerra noted, the Argentine state "has deteriorated—institutional functions, the quality of life, the value of our currency, public trust, public faith, the poverty level, the desire to renew public confidence. A state which can scarcely provide law, security and guarantees"²⁶⁰ has little to offer its citizens. Now more than ever it is clear that Argentina must continue to fight to sustain the *Abuelas'* advances in establishing an open and free society and to ensure that the Dirty War's atrocities do not recur.

B. *Will Justice Prevail?*

Argentina has an obligation under both national and international law to prosecute those responsible for the Dirty War atrocities. As a party to CAT, Argentina agreed that "competent authorities [will] proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."²⁶¹ In accordance with CAT, "[n]o exceptional circum-

²⁵⁴ COUNTRY REPORTS, ARGENTINA 2002, *supra* note 249, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18317pf.htm>.

²⁵⁵ See Marcela Valente, *Rights—Argentina: As Poverty-Linked Arrests Grow, Torture Spreads*, INTER PRESS SERV., Apr. 14, 2003, available at LEXIS, News Library, Inter Press Serv. File.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.* The reported number of complaints of torture rose from 738 in 2001 to 1516 in 2002. *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Argentine Attorney-General*, *supra* note 249, available at LEXIS, News Library, BBC Worldwide Monitoring File.

²⁶¹ CAT, *supra* note 239, art. 12, available at http://www.unhcr.ch/html/menu3/b/h_

stances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."²⁶² The regime's systematic practice of abduction, torture, and murder clearly fall within the scope of CAT, and as a signatory, Argentina has a duty to prosecute those who act in violation of its guarantees. Pursuant to CAT, "[a]n order from a superior officer or a public authority may not be invoked as a justification of torture."²⁶³ Consequently, claims by lower-level officials seeking immunity by reason of compliance with Due Obedience laws are unsupported, rendering their actions unexcused.

Moreover, failure by Argentina to prosecute Dirty War criminals would constitute a violation of Article 5 of the Universal Declaration of Human Rights and Article 7 of the ICCPR, which both provide that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."²⁶⁴ While Argentine courts cannot undo the torture committed by the regime, they must make diligent efforts to punish those charged with such crimes. As early as 1995, the UNHRC found the Full Stop and Due Obedience laws in violation of the ICCPR.²⁶⁵ To comply with the ICCPR, Argentina must ensure that anyone whose freedoms are violated has "an effective remedy . . . determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State . . ."²⁶⁶ Consequently, Argentina would be in violation of its duties pursuant to party requirements of the ICCPR if it failed to seek prosecutions for the Dirty War criminals.²⁶⁷

If the Supreme Court of Argentina were to uphold the amnesty laws and refuse to try the crimes, those accused of human rights abuses would still be subject to the application of international law in any other member nation to which they might travel.²⁶⁸ Indeed, even if Argentina is unwilling to hold these criminals accountable for their atrocities, other countries are willing to do it for them. A June 2003 ruling by the Mexican Supreme Court, which granted extradition of accused murderer and torturer Ricardo Miguel Cavallo, signaled a major victory for human rights

cat39.htm. Argentina became a party to CAT on February 4, 1985. *Id.*

²⁶² *Id.* art. 2, pt. 2.

²⁶³ *Id.* art. 2, pt. 3.

²⁶⁴ Universal Declaration of Human Rights art. 5, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948); ICCPR, *supra* note 241, art. 7, available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

²⁶⁵ *Concluding Observations*, *supra* note 244, ¶ 153; see *supra* text accompanying note 244.

²⁶⁶ ICCPR, *supra* note 241, art. 2, pt. 3(a)–(b), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

²⁶⁷ In accordance with Argentina's Constitution, international treaties supersede national law. CONST. ARG. ch. IV, § 75, no. 22, available at <http://www.senado.gov.ar/web/constitucion/english.html> (last visited Jan. 15, 2004).

²⁶⁸ Valente, *Judge Revokes*, *supra* note 233, available at 2001 WL 4802984.

groups and for advocates of “universal jurisdiction” over the prosecution of Dirty War criminals.²⁶⁹ Universal jurisdiction is based on the concept that “some human rights violations are so gross that all countries have a legitimate interest in prosecuting them”²⁷⁰ no matter where the crimes were committed and without regard to the nationality of the victims or the abusers.²⁷¹ The principle, as applied in Cavallo’s case, allows for one country’s extradition of a human rights violator to a second country to be tried for crimes committed in a third country.²⁷²

Cavallo’s extradition was also sought by Judge Baltasar Garzon of Spain on behalf of Spanish-born Argentine victims.²⁷³ Aided by the testimony and evidence provided by the *Abuelas*, Judge Garzon originally investigated several Dirty War criminals in 1998, in spite of the amnesty laws, and opined that these were crimes of genocide that could not be granted amnesty.²⁷⁴ Judge Garzon, famous for his attempt to extradite Chilean dictator Augusto Pinochet for his commission of human rights crimes, presented Cavallo with a 196-page indictment for his involvement in the disappearance of 227 people and the kidnapping and torture of 110 others during the Dirty War.²⁷⁵ Judge Garzon ordered Cavallo, known to his captives as “Serpico,” a “specialist in psychological terror,”²⁷⁶ to await his 2004 trial in prison, finding that his crimes of genocide and terrorism “assault[ed] the very essence of humanity.”²⁷⁷ Cavallo’s extradition may finally bring some measure of justice to victims of the Dirty War, or at a minimum, ensure that there will be no “safe haven” for perpetrators of the most serious human rights violations.²⁷⁸

In July 2003, just two months after Argentina’s most recent national elections, Argentine President Nestor Kirchner made good on his platform pledge to end the “culture of impunity” and signed a decree allowing the extradition of forty-six alleged Dirty War criminals sought by

²⁶⁹ See Richard Boudreaux, “Dirty War” Suspect is Flown to Spain; Mexico Hands Over the Alleged Argentine Executioner for Hearing in Madrid Today, L.A. TIMES, June 29, 2003, at A4, available at 2003 WL 2417011.

²⁷⁰ Susan Ferriss, *Extradition of Genocide Suspect Makes History*, MILWAUKEE JOURNAL SENTINEL, June 15, 2003 (quoting Joanne Mariner, Deputy Director of the Americas Division of Human Rights Watch), available at 2003 WL 3333339.

²⁷¹ Reed Brody, *Historic Moment in the Fight to Ensure There are No Safe Havens for Mass Killers*, INDEPENDENT (London), June 30, 2003, at 3, available at LEXIS, News Library, The Independent and Independent on Sunday File.

²⁷² *Argentine Ex-Officer Arrives in Spain to Face Genocide Charges*, AGENCE FRANCE PRESSE, June 29, 2003, available at LEXIS, News Library, Agence France Presse File.

²⁷³ See Ferriss, *supra* note 270, available at 2003 WL 3333339.

²⁷⁴ Marcela Valente, *Rights—Argentina: Tracking the “Booty” of the Dirty War*, INTER PRESS SERV., Mar. 18, 1998, available at 1998 WL 5986266.

²⁷⁵ Alan Zarembo, *The Search for ‘Serpico,’* NEWSWEEK, Sept. 18, 2000, at 29, available at LEXIS, News Library, Newsweek File.

²⁷⁶ *Id.*

²⁷⁷ Emma Daly, *Spanish Judge Sends Argentine to Prison on Genocide Charge*, N.Y. TIMES, June 30, 2003, at A3.

²⁷⁸ See Brody, *supra* note 271, at 3, available at LEXIS, News Library, The Independent and Independent on Sunday File.

Spain on charges of genocide.²⁷⁹ However, in a perceived step backward for international justice, the Spanish government decided not to seek extradition, basing its decision on the principle of territoriality that "[w]hen certain crimes are committed in a country and it is possible to try them, it must be done in that country."²⁸⁰ In fact, President Kirchner wished to see the alleged criminals tried on Argentine soil,²⁸¹ as did the *Abuelas* and other human rights groups, who appealed to Congress for the ability to punish the guilty in their own courts with the aid of their own institutions.²⁸² Thus, while the *Abuelas*' efforts have led to significant strides in creating a culture of awareness and accountability in Argentina, there is still much to be done to bring justice to the victims of the Dirty War and to ensure that nothing similar will ever happen again.

C. *The HIJOS: Continuing the Abuelas' Crusade*

Members of the *Abuelas*, now in their seventies and eighties, have actively enlisted a new generation to carry on their crusade. The *HIJOS*, the children of the disappeared, are an example of one group prepared to take on the task. *Hijos* means children, and "the acronym stands for *Hijos por la Identidad y la Justicia y contra el Olvido y el Silencio* ('Children for Identity and Justice and Against Forgetting and Silence')."²⁸³ The *HIJOS* originated when seventy young people formed the first national organization of the children of those who disappeared under the military regime.²⁸⁴ Most of these *HIJOS* live with the knowledge that not only were their real parents murdered but they were folded into families of the very people responsible for their parents' deaths.²⁸⁵ While the *HIJOS* seek punishment for those guilty of Dirty War crimes, their most important goals are to locate and connect with other children stolen during the regime²⁸⁶ and to find answers about their own identities.²⁸⁷

²⁷⁹ Carol J. Williams & Andres D'Alessandro, *The World: Cleaning Up After Junta's "Dirty War"; Moves by Argentina's New President, Nestor Kirchner, Give Hope for Victims' Relatives that Two Decades Later, Justice May Be on its Way*, L.A. TIMES, July 27, 2003, at A3, available at 2003 WL 2423565.

²⁸⁰ Daniel Woolls, *Spain Declines to Seek Extradition of "Dirty War" Suspects*, ASSOCIATED PRESS NEWSWIREs, Aug. 29, 2003.

²⁸¹ *Id.*

²⁸² *Human Rights Groups Want Former Military Officers To Be Tried in Argentina*, BBC WORLDWIDE MONITORING, Aug. 2, 2003, available at LEXIS, News Library, BBC Worldwide Monitoring File.

²⁸³ FEITLOWITZ, *supra* note 8, at 181. The *HIJOS* have links to similar groups in Uruguay, Chile, Venezuela, and Mexico and have networks in Spain, France, Sweden, Switzerland, and the Netherlands. Jorge Pina, *Rights—Argentina, Broken Families Made Whole on Celluloid*, INTER PRESS SERV., Aug. 16, 2001, available at 2001 WL 4804983.

²⁸⁴ FEITLOWITZ, *supra* note 8, at 181.

²⁸⁵ Pina, *supra* note 283, available at 2001 WL 4804983.

²⁸⁶ *Id.*

²⁸⁷ *See Argentina—Disappearances (Scheduled): Argentine Woman To Receive Mother's Remains Next Week*, EFE NEWS SERV., June 17, 2000, available at WL ALLNEWSPLUS File.

Carolina Guallane is one such *hija*. In 1995, Carolina initiated proceedings to uncover her true identity after becoming suspicious that she was the daughter of parents killed during the regime.²⁸⁸ Carolina's adoptive parents never concealed her adoption from her and supported her efforts to search for her missing biological parents.²⁸⁹ DNA testing proved that she was the daughter of Enrique Cortassa and Blanca Zapata, who were abducted in 1977, when Carolina, whom they named Paula Cortassa, was less than a year old.²⁹⁰ Carolina also learned that her mother was pregnant at the time of her abduction and may have given birth while she was in prison.²⁹¹ She has since established a relationship with her biological grandparents and still hopes to locate a brother or sister.²⁹² "Little by little," she says, "I am fulfilling my goals: to recover my identity, identify my parents and learn what happened to them, to find my grandparents and, finally, recover my sibling."²⁹³

A recurring sentiment among the *HIJOS* is the desire to be reunited with their biological families. Some state that when they were young, it was easier to imagine that their parents had developed amnesia and had moved to another part of the world; others carried photos of their birth parents and peered into homes they passed hoping to find them inside.²⁹⁴ Many expressed profound relief in knowing that their parents had not abandoned them.²⁹⁵ Now older and mature beyond their years, they view their parents differently—"as activists who wanted to change an unjust system"²⁹⁶—and they see their parents' struggle as their own.

The *desaparecidos*' struggle is carried on in different ways by the *HIJOS*. Twenty-five-year-old Juliana Cassatero is a research biologist and spends more than twelve hours a day in her laboratory studying DNA, working for human rights causes.²⁹⁷ Juliana witnessed her parents' abduction when she was only three years old.²⁹⁸ Raised by grandparents who became human rights activists, she admitted initial anger over the fact that her parents had not left the country to escape the repressive regime.²⁹⁹ Her anger eventually gave way to an understanding of the purpose of her parents' fight, and through the *HIJOS*, she too began working

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ Pina, *supra* note 283, available at 2001 WL 4804983.

²⁹⁵ ARDITTI, *supra* note 2, at 122.

²⁹⁶ Kerry Luft, *Children of Disappeared Find Common Cause*, CHI. TRIB., Mar. 20, 1996, at N13.

²⁹⁷ *Human Rights the Might for a Daughter of the Terror*, AUSTRALIAN, Feb. 19, 2000, at 19, available at LEXIS, News Library, Australian File.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

for social justice.³⁰⁰ While she is discouraged that the problems that her mother and father fought against still exist, she remains resolved in her work, believing "[t]he best revenge—if you want to put it that way—is to carry on our parents' struggle."³⁰¹

Frustrated with the absence of judicial response to the crimes of the regime, other *HIJOS* have begun *escraches*, or "outings."³⁰²

When *HIJOS* discover[] a member of the military who has tortured and killed, [they] go to his neighborhood, put up posters and placards with his image and his past history, and talk to the neighbors, telling them a murderer and torturer lives there. The idea is to provoke social condemnation.³⁰³

The *HIJOS* reason that if the courts will not act "because of lack of courage or will, then the torturers at least suffer the censure of their neighbors"³⁰⁴ Paula Eva Logares, the first grandchild whose identity was genetically proven, is now twenty-eight and participates in *HIJOS* protests as a coping mechanism to deal with the revelation of being raised by the very man accused of killing her parents.³⁰⁵ Rather than dwell on her painful past, she prefers instead to keep fighting for justice to "make sure that people don't forget the horrors of the dictatorship years."³⁰⁶

The now-adult children of the disappeared do not want to live in a society that ignores the state-sponsored terrorism³⁰⁷ that killed their parents, and they "believe the organizations responsible for the repression continue in much the same way today."³⁰⁸ Some *HIJOS* have even been threatened with violence themselves.³⁰⁹ Members of the *Madres*,³¹⁰ *Abuelas*,³¹¹ and

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² Pina, *supra* note 283, available at 2001 WL 4804983. Human rights groups in Argentina and other countries with military pasts, such as Uruguay and Chile, began using the tactic of *escrache* in the 1990s. *Id.*

³⁰³ *Id.* (quoting Lucila Quieto, a young Argentine photographer).

³⁰⁴ *Id.* (quoting Quieto).

³⁰⁵ Gabriella Gamini, *Babies Stolen by the Junta*, *TIMES* (London), July 4, 2001, at 22, available at 2001 WL 4912039.

³⁰⁶ *Id.*

³⁰⁷ Jack Epstein, *Argentina's "Dirty War" Laundry May Get a Public Airing: A Legal Loophole May Give the Victims of Pardoned Officers Their Day in Court*, *CHRISTIAN SCI. MONITOR*, Dec. 4, 1997, at 7, available at 1997 WL 2805615.

³⁰⁸ Luft, *supra* note 296, at N13.

³⁰⁹ *Id.*

³¹⁰ COUNTRY REPORTS, ARGENTINA 2001, *supra* note 4, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8278pf>. The U.S. State Department reports continued threats upon members of the *Madres de Plaza de Mayo* and their families:

On May 25, Maria Alejandra Bonafini, the daughter of political activist Hebe de Bonafini, was attacked by unknown hooded assailants in the home she shares with her mother in La Plata, Buenos Aires Province. The victim reported that the attackers put a plastic bag over her head, beat her and burned her arms and back

the judiciary³¹² also continue to receive threats against their lives and fear the resurgence of the death squads of the old regime. The U.S. State Department reports that the police continue to use excessive force on demonstrators, that they despotically arrest and detain citizens, and that, despite the Argentine Constitution's provision of an independent judiciary, the government's broad prosecutorial discretion contributes to arbitrary decisions, inordinate delays, pervasive incompetence, and corruption.³¹³

VII. CONCLUSION: UNA VUELTA A LA VIDA — A RETURN TO LIFE

From their small office on the west side of Buenos Aires, the *Abuelas* remain committed to finding their grandchildren and to helping all who question their identities. To date, the *Abuelas* have located and identified ninety-seven of the "living disappeared."³¹⁴ "The dictatorship was aimed at breaking the family apart," the members assert, and "[e]very time we find children and restore them to their biological parents, we're mending the breaks."³¹⁵ The *Abuelas* are encouraged by their successes, but they are never complacent:

In spite of the success we already had with the children we have found, . . . we don't fool ourselves. We realize that the cases we have already solved are the easiest ones. The most difficult ones are the ones yet to be solved. But we won't rest until we find all our children.³¹⁶

with cigarettes. According to Amnesty International, which issued a widespread appeal on behalf of both the women, she had received death threats related to her mother's work. The elder Bonafini declined to meet with the Under Secretary for Human Rights about the case, and she and her daughter refused protection offered by the Government because they believed that security forces were responsible for the attack.

Id.

³¹¹ COUNTRY REPORTS, ARGENTINA 2002, *supra* note 249, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18317pf.htm>. On September 20, 2002, unknown assailants opened gunfire at the home of Estela Barnes de Carlotto, in what she and human rights groups considered an attack on her life in retaliation for a complaint about police practices she had filed two days earlier. Marcela Valente, *Attempt on "Grandmothers" Leader Amid Police Impunity*, INTER PRESS SERV., Sept. 20, 2002, available at 2002 WL 4915523.

³¹² COUNTRY REPORTS, ARGENTINA 2002, *supra* note 249, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18317pf.htm>. Judge Maria Romilda Servini de Cubria and her judicial secretary received death threats in relation to the investigation of the children kidnapped during the Dirty War. *Id.*

³¹³ *Id.*

³¹⁴ *Argentine Rights Commission Marks 10th Anniversary*, *supra* note 141, available at WL ALLNEWSPLUS File.

³¹⁵ Isabel Vincent, *Argentina Copes with "Human Spoils of War,"* S.F. EXAMINER, Mar. 6, 1994, at A9 (quoting Estela Barnes de Carlotto).

³¹⁶ Cesar Chelala, *The Grandmothers Are the Righteous*, NEWSDAY, Feb. 2, 2000, at A37, available at LEXIS, News Library, Newsday (New York, NY) File.

Estela Barnes de Carlotto adds, "Each case is a triumph of truth over lies, horror and deceit."³¹⁷

If anything positive has come of the Dirty War, it is that the *Abuelas* have wrought change within Argentina and have increased the international community's awareness of the horrors of armed conflict and domestic strife. Working with the Argentine Ministry of Foreign Affairs, the *Abuelas* helped to draft and present an article to the United Nations Working Group, which was ultimately incorporated into the U.N. Convention on the Rights of the Child ("CRC").³¹⁸ Commonly known as the "Argentine Article,"³¹⁹ Article 8 provides:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection with a view to speedily re-establishing his or her identity.³²⁰

The final adopted article came about through the compromise necessary for unanimous ratification by countries who objected to the mandatory incorporation of "identity" into their own domestic laws and by those who foresaw a potential conflict with reproductive technologies.³²¹ Although it is not as protective as the original proposal drafted in large part by the *Abuelas*,³²² it has provided the much-needed legal muscle to force states to recognize a child's right to the preservation of his or her identity and to require state action to "restore that identity when it has been put in jeopardy."³²³

³¹⁷ Ian Phillips, *Child-Custody Cases a New Battleground from "Dirty War" Argentina*, L.A. TIMES, Aug. 13, 1995, at A18, available at 1995 WL 9816593.

³¹⁸ ARDITI, *supra* note 2, at 146.

³¹⁹ *Id.* at 147.

³²⁰ Convention on the Rights of the Child, GA Res. 44/25, U.N. GAOR, 44th Sess., art. 8, U.N. Doc. A/44/49 (1989).

³²¹ ARDITI, *supra* note 2, at 146 (citing Jaime Sergio Cerda, *The Draft Convention on the Rights of the Child: New Rights*, 12 HUM. RTS. Q. 115, 115-19 (1990)). The originally proposed article stated:

The child has the inalienable right to retain his true and genuine personal, legal, and family identity. In the event that a child has been fraudulently deprived of some or all of the elements of his identity, the State must give him special protection and assistance with a view to re-establishing his true and genuine identity as soon as possible. In particular this obligation of the State includes restoring the child to his blood relations to be brought up.

Id.

³²² *Id.*

³²³ *Id.*

Enforcement of this guarantee is provided for in the U.N. Declaration on the Protection of All Persons from Enforced Disappearance.³²⁴ Article 20.3 of the U.N. Declaration states: "The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offense, which shall be punished as such."³²⁵ Accordingly, the children and families of the disappeared can pursue legal redress to recover their true identities. The *Abuelas* were also responsible for the inclusion of Articles 7 and 11 of the CRC guaranteeing the rights of children to "be themselves, to have their family and identity,"³²⁶ as well as for the implementation of the CRC after its incorporation into Argentine law.³²⁷

The work that the *Abuelas* started toward an open and truthful Argentine society is not yet finished. Those, such as the *HIJOS*, who face the challenges of the political and social climate of Argentina today, should mark well the astounding accomplishments of a small group of women searching for their lost grandchildren, yet they must realize that much still must be done to prevent Argentina from returning to the secretive and terrorized society of the junta regime. The international community should likewise heed the warnings of the dangers found in the silence of Argentina's Dirty War and receive inspiration from a grassroots movement's efforts to combat them.

³²⁴ Declaration on the Protection of All Persons from Enforced Disappearance, G.A. Res. 47/133, U.N. GAOR, 47th Sess., Supp. No. 49, art. 20, U.N. Doc. A/47/49 (1992), available at <http://www1.umn.edu/humanrts/instreet/h4dpaped.htm> (last visited Jan. 15, 2004).

³²⁵ *Id.* art. 20.3.

³²⁶ ARDITTI, *supra* note 2, at 147 (quoting Estela Barnes de Carlotto).

³²⁷ *Id.* at 146–47 (citing generally NORBERTO IGNACIO LIWSKI & HORACIO DAVID PACHECO, ACERCA DE LAS RESERVAS ARGENTINAS A LA CONVENCION INTERNACIONAL DE LOS DERECHOS DEL NIÑO—LEY NACIONAL 23.849 (1991)).