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ARGENTINA

MISSING CHILDREN UPDATE

SEPTEMBER 1990

SUMMARY

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Forty nine children, out of reportedly 200 who "disappeared" with their parents or who were born to "disappeared" women in secret detention centres in Argentina during the period of military governments (1976-1983), have been traced. Many of these children have been found through the efforts of the Abuelas de Plaza de Mayo, Grandmothers of Plaza de Mayo, a group founded in 1977 by grandmothers of "disappeared" children.

Under the civilian government of President Raúl Alfonsín a national commission to determine the fate of the "disappeared" was created in 1983. This commission, Comisión Nacional sobre la Desaparición de Personas (CONADEP), recorded over 8,900 "disappearances", including the cases of pregnant women who gave birth in secret detention centres. A National Genetic Data Bank, Banco Nacional de Datos Genéticos (BNDG), was established under the same government in 1987 to facilitate the identification of "disappeared" children. However, lack of government funding to the BNDG is seriously impeding the investigation of past human rights violations and blocking the judicial process dealing with the identification of those children.

Some of the children located have been returned to their natural families, while others who were adopted in good faith remain with their adoptive parents. Other cases are still pending before the courts.

A provision in the Custody Law (Ley de Patronato) excludes grandparents as the legitimate custodians of minors in the absence of parents. As a result, grandparents of relocated children have not been allowed to appoint a family lawyer and children in disputed custody cases are represented by court-appointed lawyers. Amnesty International recognizes that competing custody claims of relocated children can only be determined by the competent Argentine courts. While Amnesty International takes no position on the issue, the organization is particularly concerned about delays in judicial proceedings which have been initiated to clarify cases where it appears that documents have been forged so that surrogate parents can claim the children as their own.

There have been cases where children have been taken out of the country to avoid identification. The adoptive parents of two children whose genetic tests had been ordered, fled to Paraguay where they currently remain. Amnesty International is concerned at the administrative delays by Paraguayan authorities to expedite the resolution of the case in spite of the Supreme Court of Justice's decision ordering the extradition of the couple to Argentina.

Amnesty International is concerned to establish the whereabouts of the missing children and their parents and to determine whether they have been the victims of human rights violations within the organization's mandate. AI's interest stems from its continuing concern to establish the facts about the fate of thousands of prisoners who "disappeared" in Argentina during the latter half of the 1970s.

This summarizes a nine-page document, Argentina: Missing Children Update (AI Index: AMR 13/05/90) issued by Amnesty International in September 1990. It updates five documents issued by Amnesty International in July and September 1985, November 1987, January and October 1988 respectively : The missing children of Argentina: a report of current investigations (AMR 13/02/85), Further information on the missing children of Argentina: new developments in the cases of Carla Rutilo Artes, Amara Garcia Hernández and Maria Eugenia Gatica Caracoche (AMR 13/06/85), Argentina: Missing children - latests developments (AMR 13/07/87), Argentina: Child born in secret camp identified - Maria Victoria Moyano (AMR 13/02/88, and Argentina: Missing children - further information (AMR 13/07/88). Consultation of these documents is recommended to anyone wanting further details or to take action on behalf of the missing children.

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INTRODUCTION

Forty-nine children, out of reportedly over 200 who "disappeared" with their parents or who were born to "disappeared" people in secret detention centres in Argentina during the period of military government (1976-1983), have been traced. Many of these children have been found through the efforts of a group of relatives known as the Abuelas de Plaza de Mayo, Grandmothers of Plaza de Mayo. Since its foundation in 1977, the Grandmothers have been trying to locate the children who were either born in clandestine detention centres or who "disappeared" with their parents after being taken into custody by members of the police or security forces.

During the period of military rule in Argentina (1976 - 1983) thousands of people were abducted by the security forces and have "disappeared". In December 1983, the new civilian government of President Raúl Alfonsín, established a national commission to determine the fate of the "disappeared", the Comisión Nacional sobre la Desaparición de Personas (CONADEP). This commission recorded over 8,900 "disappearances", including the cases of pregnant women who gave birth in secret detention centres. Their babies were taken away and are believed to have been given to childless couples connected with the armed forces or police to raise as their own. Some of these children have been traced and returned to their natural families; others who were adopted in good faith remain with their adoptive parents. A number of cases of children whose identity is disputed are at present before Argentine Courts.

On 20 November 1989, the United Nations General Assembly unanimously adopted the Convention on the Rights of the Child. In Article 8, the Convention states the right of the child "to preserve his or her identity, including nationality, name and family relations". The article also establishes the obligation of the government/state to provide for any child who has been deprived of his or her identity, "assistance and protection with a view to speedily re-establishing his or her identity".

Amnesty International is concerned to establish the whereabouts of the remaining missing children and their parents and to determine whether they have been the victims of human rights violations within the organization's mandate. Amnesty International's interest stems from its continuing concern to establish the facts about the fate of thousands of prisoners who "disappeared" in Argentina during the latter half of the 1970s. Amnesty International recognizes that competing custody claims of relocated

children can only be determined by the competent Argentine courts. While Amnesty International takes no position on this issue the organization is particularly concerned about delays in judicial proceedings which have been initiated to clarify cases where it appears that documents have been forged so that surrogate parents can claim the children as their own.

BANCO NACIONAL DE DATOS GENETICOS

The Genetic Data Bank, Banco Nacional de Datos Genéticos was created by Law 23.511 which was approved by the Argentine Congress in May 1987. The function of the Bank is to facilitate the identification of missing children who "disappeared" with their parents or who were born in clandestine detention centres during the period of military rule in Argentina between 1976 and 1983.

The Bank, which operates from the Immunology Department of the Carlos A. Durand Hospital in Buenos Aires, utilizes genetic tests to determine whether a child suspected of being the offspring of "disappeared" parents is related biologically to other members of a particular family. The Bank was established to compile and store such genetic information from relatives of missing children for use in both current and future investigations, and relatives may obtain from the Bank, free of charge, blood tests necessary to support consanguinity claims before the courts in cases where a child's origins are in dispute.

It was understood that the funds to finance the Bank's services would be provided by the government. However the necessary funds have not been forthcoming. Since the second half of 1988 the Argentine government has failed to give priority to financing the acquisition of the reagents necessary to undertake genetic tests, and for some time there has been a shortage of the chemical supplies necessary for continuing the tests. Private donors and organizations do not have the funds to support the program. Consequently judicial proceedings concerned with the identification and restitution of missing children, which is to a large extent dependent by law on the results of these genetic tests, are in danger of becoming stalled. The Bank's other function of storing blood samples from relatives for use in future cases is also said to be in jeopardy.

DELAYS IN THE ADJUDICATION OF CHILDREN'S CASES

Reggiardo-Tolosa Twins

Twin boys, previously referred to as Martin and Gustavo, have recently been identified as being the offspring of María Rosa Ana Tolosa and Juan Enrique Reggiardo, who "disappeared" in February 1977 in Greater Buenos Aires. The twins were located in 1984 living in the house of former federal police sergeant Samuel Miara and his wife, Alicia Beatriz Castillo, who had registered them as their own children. In 1985, when the family were summoned after a judge had ordered genetic tests to establish the boys' real identity, they could not be located. It was believed at the time that the twins might be the sons of a "disappeared" woman Liliana Ross and her husband Adalberto Rosetti. Liliana Ross remains "disappeared"; Adalberto Rosetti returned to Argentina in 1984 after several years of exile. In 1987 the Miara couple were found to be living in Paraguay where they had fled with the twins.

The request for extradition of the Miara couple made by the judge in charge of the case, Dr. Miguel Guillermo Pons, was finally granted by the Paraguayan Government in May 1989. Samuel Miara has apparently admitted to the judge that in January 1977 his wife had a miscarriage and that in April or May of the same year they registered as their own the two boys given to him by another police officer. Judge Pons ordered Samuel Miara's preventive detention on grounds of theft of minors and forgery of documents. The children were placed with temporary foster parents by the court.

Following the twins' arrival in Buenos Aires, genetic tests to establish the real identity were carried out at the Genetic Data Bank (Banco Nacional de Datos Genéticos). The result of the tests ruled out the link with the Rossetti-Ross family but firmly established that they were the children of María Rosa Ana Tolosa and Juan Enrique Reggiardo. The couple had been kidnapped from their home in Florencio Varela together with Sra. Antonia Oldani de Reggiardo, the mother of Juan Enrique. The three are still "disappeared".

María Rosa was pregnant at the time of her "disappearance" and she was due to give birth in May. The Tolosa family was informed by an anonymous caller that the couple were being held in a secret camp in Arana, near La Plata city. Further inquiries made by the family through church sources confirmed their place of captivity and that María Rosa's was in an advanced state of pregnancy. In May the family was told that María Rosa had given birth to a son.

Years later the Abuelas de Plaza de Mayo received information from prisoners released from a secret camp, confirming that María Rosa had given birth to twins. The Tolosa family continued their search for the children.

When the genetic tests carried out on the twin brothers ruled out any biological relationship with the Ross-Rossetti families, Judge Pons ordered the return of the twins to Samuel Miara and his wife. In May 1989 Samuel Miara was released from preventive detention but a court order was issued making it illegal for the couple to leave Buenos Aires. In August 1990, the Argentinian Minister of Education and Justice informed Amnesty International that the courts were not in possession of the children's false citizenship papers and that this raised the possibility that the children might still be using them. Given the situation Amnesty International believes that the possibility cannot be excluded that the Miara couple might once again illegally leave the country with the children.

Since October 1989 the maternal grandfather Dr. Hipólito Marcos Aurelio Tolosa, has made four petitions to the judge asking, inter alia, to be accepted as plaintiff in the case and for the dismissal of the court-appointed lawyer in the case. The court-appointed lawyer is Dr. Carlos Alberto Tavares, who was the lawyer of the head of the first military junta, General Jorge Videla. Dr. Carlos Tavares has allegedly refused the grandfather access to the documentation related to the case and has challenged the results of the genetic test on "procedural grounds" (defecto de forma). Dr. Tavares alleges that the tests took place without a specific order to do so (although a general order exists to have all families of missing children tested). The grandfather has also requested protection for his grandchildren to prevent their illegal removal from Argentina. Finally Dr. Tolosa is petitioning for the return of the children to their natural family. To date according to Amnesty International's information none of the petitions have received a reply from the court.

In November 1989 the federal Judge Miguel Pons withdrew from the the case which then passed to the federal Judge Dr. Ricardo Wechsler of the Juzgado Nacional en lo Criminal y Correccional Federal No 2, (the Federal Criminal and Correctional Court).

Ximena Vicario

On 26 January 1990 it was reported that the Abuelas de Plaza de Mayo had met with a group of representatives of the Chamber of Deputies (Diputados-legisladores) to coordinate clarification of the case of Ximena Vicario, one of the relocated "disappeared" children of Argentina.

On 5 February 1977 Stella Maris Gallichio de Vicario "disappeared" with her 9-month-old daughter Ximena, when claiming a passport at the Central Police Department in Buenos Aires. Ximena's father, Juan Carlos Vicario was kidnapped a few hours later in the city of Rosario.

Ximena was located by the Abuelas de Plaza de Mayo in 1983 living in the house of Susana Siciliano, a former nurse at the children's home where Ximena was left abandoned after her parents' "disappearance". There is no news of the parents' whereabouts and they remain "disappeared". Susana Siciliano falsified the girl's background, hiding her real identity and altering the date when the little girl was found in order to legally adopt her. The little girl was registered under the name of Romina Paola Siciliano.

Genetic tests requested by her natural maternal grandmother, Darwina Monaco de Gallichio, were performed to establish the girl's real identity. The tests indicated with a certainty of 99.82 percent that she was Darwina Monaco's granddaughter. Susana Siciliano was charged under Articles 5, 12, 293, and 146 of the Penal Code with ocultamiento de menores and falsificación documental (concealing a minor and falsification of documents) and a prison term of four years was recommended. Eight witnesses presented by Susana Siciliano were also tried for perjury. The judge ordered Susana Siciliano to be placed under preventive detention. Despite this order Susana Sicilino was allowed to keep custody of Ximena for the next four and a half years.

In December 1988 the judge in charge granted custody to Ximena's maternal grandmother. Since then however, Judge Dr Juan Fegoli authorized visiting rights to Susana Siciliano and in December 1989 ordered Ximena to spend a holiday period of 31 days with her former 'adoptive mother' despite the girl's opposition and distress. Since then the prosecutor has recommended a revision of these visiting rights, on the grounds of the enormous possible repercussions which such visits could have on the child.

The Chamber of Deputies has reportedly agreed to initiate procedures to express its concern about the situation and to prepare a draft bill to be presented for consideration to Congress to amend the Custody Law (Ley de Patronato). This law, in its Article 19, does not include grandparents as the legitimate custodians of minors in the absence of parents. It is because of the regulations of the Custody Law that Ximena Vicario is represented by a court-appointed lawyer (defensor de menores) instead of a lawyer appointed by her family.

Pablo Hernan and Carolina Susana

Major Norberto Bianco, an army doctor, and his wife Nidia Susana Wehrli were found in Paraguay after they fled Argentina following an April 1986 judicial order to carry out genetic tests to establish the identity of Pablo Hernán and Carolina Susana. Although both were registered as the natural children of the Bianco couple, evidence presented to the court indicated that they were almost certainly born in the Campo de Mayo secret detention centre in 1976 and 1977. Mayor Bianco was based at Campo de Mayo and it is alleged that he stole the children at birth. Pablo Hernan is believed to be the son of Silvia Quintela Dallasta, who "disappeared" in Buenos Aires in January 1977 and reportedly gave birth to a baby boy on 17 July 1977 in the Campo de Mayo base. The identity of Carolina Susana has not been established, but she is also believed to be the daughter of "disappeared" prisoners. In May 1987 an Argentine judge presented a request for extradition of the Bianco couple, who have been charged in Argentina with kidnapping of minors and falsification of public documents.

In 1987 a Paraguayan lower court granted the request for extradition of Mayor Norberto Bianco and Nidia Susana Wehrli. This decision was upheld by the Court of Appeals in March 1988. The decision was then appealed to the Supreme Court. This appeal was based on the contention that it would be unconstitutional to grant extradition, as it was claimed that the Biancos were the victims of political persecution in Argentina, and political cases are specifically excluded from extradition agreements between Paraguay and Argentina.

In March 1989 the Paraguayan Supreme Court upheld the decision for the Biancos' extradition. However they have not yet been returned to Argentina. Unconfirmed reports allege that a request by the Biancos' lawyer resulted in the irregular suspension of the extradition by a Lower Court. This has caused further delays in carrying out the Supreme Court's decision.

The case of Simón Antonio Riquelo

Simón Antonio Riquelo "disappeared" on 13 July 1976 when his mother, Sara Rita Méndez Lompodio, a Uruguayan refugee, was abducted in Buenos Aires by Uruguayan military agents during a clandestine operation carried out in coordination with Argentinian security forces. Simón, then a three-week-old infant, was taken from his mother hours after her abduction and his whereabouts had been unknown ever since.

Sara Méndez was held for about two weeks in a secret detention centre in Buenos Aires known as Automotores Orletti, before being taken in secret by military plane to Uruguay. Her detention was acknowledged in October 1976, she was convicted by a military court on charges of "subversive association" and held in the Punta de Rieles women's prison until her release in March 1981.

Following the return of civilian rule in Argentina and Uruguay abundant evidence came to light of the collaboration of the Argentinian and Uruguayan security forces in the assassination, "disappearance", torture and illegal deportation of Uruguayan political exiles in Argentina in the mid-1970s. Much of this evidence, including testimonies of detainees held in Automotores Orletti was published in Nunca Mas (Never Again), the report of the CONADEP.

In June 1989, Simón Riquelo's parents believed they had traced Simón, now aged 13, and they lodged a complaint in a criminal court against the adoptive parents stating that they were concealing his true identity. They requested the court to order blood tests to establish the paternity of the child in question. The judge refused to order the tests and ruled in September 1989 that there was no evidence to suggest that the boy was Simón.

In Early 1990, the Executive ordered the case closed, stating that it was covered by the Expiry Law (Ley de Caducidad). This law ended the state's power to prosecute military and police personnel for human rights abuses committed under the military government. Lawyers representing the parents argued that the Expiry Law should not have been applied in this case since it involved a possible criminal offence committed not by the military but by civilians (the covering up of the child's civil status by the adoptive parents). Nevertheless, the case remained closed.

However, in May 1990, Simón Riquelo's parents reopened the case before a civil court. In early September, the judge ordered that blood tests be carried out to establish the child's paternity. The lawyers representing the adoptive parents have appealed this decision and the tests, which would ascertain the child's identity with a 99% accuracy, had not yet been carried out at the time of writing.

CASES OF CHILDREN, OFFSPRING OF "DISAPPEARED" PARENTS, FOUND DEAD AND UNBORN CHILDREN

Forty-three children have been located, some of whom are now reunited with their legitimate relatives. Another six children, Emiliano Ginés, Roberto Lanuscou, Bárbara Lanuscou and the unborn children Baby Gatti Carpintero, Baby Santilli Ollivier and the unborn child of Ana María del Carmen Pérez de Azcona have been confirmed as dead.

Unborn child of Ana María del Carmen Pérez de Azcona

Ana María del Carmen Pérez de Azcona was nine months pregnant at the time of her "disappearance" on 14 September 1976. Her corpse was exhumed together with another seven in December 1989. The subsequent forensic examination of the skeletal remains revealed a near term foetus. The analysis also showed that gun shots had been fired at the pelvic cavity and lumbar area of her body.

On 14 October 1976 the Naval authorities recovered from the waters of the San Fernando canal, eight 12-litre drums, each of which contained a corpse. All the victims had had their hands and feet tied. Two of the dead were women in advanced pregnancy. The finding was registered and finger prints were taken of all eight before they were buried in unmarked graves in the San Fernando Cemetery.

Years later, in September, 1989, Ana María's mother received anonymous information about where her daughter was buried and she presented a formal request for exhumation to the Federal Court of San Martín.

On 21 December 1989, following the exhumation of the eight corpses, the Abuelas de Plaza de Mayo and members of the Argentinian Forensic Anthropological Team (Equipo Argentino de Antropología Forense) publicly identified two of the corpses. Those identified were Ana María del Carmen

Pérez de Azcona and Marcelo Ariel Gelman. Both had "disappeared" in 1976 in separate incidents and were seen, according to witnesses, in the secret detention centre in Buenos Aires, known as "Automotores Orletti". Marcelo's wife, 19-year-old María Claudia García, seven months pregnant, was also kidnapped at the same time as her husband. She is still "disappeared". The other six corpses have not been identified.

The forensic analysis indicated that six of the exhumed corpses had bullet entry wounds to the back of the head resulting from shots that were fired at close range. The direction and location of the wounds indicated that the victims were unable to defend themselves at the time of their execution. Ana María's wounds were in the lower abdomen. One of the corpses did not show obvious wounds.

OBSTRUCTIONS TO THE INVESTIGATIONS

The search for the missing children in Argentina has been beset with difficulties. Even after the transition to a civilian government, obstacles have been placed in the way of effective investigations by the Abuelas de Plaza de Mayo and others who are seeking to establish the truth about these cases.

The case of the Federal Prosecutors, Dr. Anibal Ibarra and Dr. Mariano Ciaffardini

In November 1988 the Abuelas de Plaza de Mayo requested that the Government appoint a Special Defender for "Disappeared" Children (Defensor Unico para los Niños "Desaparecidos") in order to carry out the difficult and complicated legal work involved in tracing, reintegrating and returning formerly "disappeared" children to their real families.

On 14 November the Attorney-General appointed as special prosecutors to the Criminal Courts of Buenos Aires, two Court of Appeal Prosecutors, Dr. Anibal Ibarra and Dr. Mariano Ciaffardini, to act on behalf of and promote investigations into the cases of children who "disappeared" during the previous military governments.

In November 1989 the public prosecutors Anibal Ibarra, Mariano Ciaffardini and Juan Carlos Lopez rejected Dr. Carlos Alberto Tavares's objections to the additional genetic tests made on the twins Reggiardo-Tolosa. They accused him of not fulfilling adequately his role as Defender of Minors and of failing to represent the interests of the twins. The Attorney General's office reprimanded them for their intervention on the grounds that it was excessively forceful and a disciplinary action against them was started. At the beginning of December there were rumours from well-placed sources that Mariano Ciaffardini and Anibal Ibarra were about to be removed from the children's cases.

Relatives feared that the threat to remove the two prosecutors from these cases would obstruct further investigations into 48 new cases, which had already been presented to the courts, of children born in the Greater Buenos Aires area and whose births were registered late, which has been taken as an indication that they might have been the children of the "disappeared". Human rights organizations have expressed concern that the transfer of the prosecutors might obstruct judicial investigations into the whereabouts of children, born to pregnant women in secret detention centres during the 1970s, many of whom were then allegedly given to police or

military families with forged birth certificates.

In July 1990 Dr. Aníbal Ibarra resigned his position as prosecutor. Dr. Mariano Ciafardini is the only prosecutor overseeing the cases of "disappeared" children and those still pending before the courts throughout the entire country. The procedures for disciplinary action against him are still open.

The Human Rights Directorate (formerly the Sub-Secretariat of Human Rights)

Amnesty International has been concerned at complaints that the Dirección de Derechos Humanos, Human Rights Directorate (formerly the Sub-Secretariat of Human Rights) in the Ministry of Interior, which has charge of the dossiers of "disappeared" people put together by CONADEP, has placed restrictions on access by relatives and NGOs to this dossier and has failed to follow-up cases and cross-check information which might help clarify the fate of the "disappeared". The Human Rights Directorate replied in February 1990 to a query from an Amnesty International group about the case of Ana María Pérez de Azcona (several months after her body had been exhumed and the cause of death established). Their reply, however, makes no mention of these developments.

The Presidential Pardon (INDULTO)

On 6 October 1989 President Carlos Saúl Menem signed decrees 1002 and 1003 which granted a series of pardons to military and civilians awaiting trial for alleged crimes of human rights violations including torture, murder and "disappearance" committed under former military governments (1976-1983). Two other decrees pardoned participants in four military uprisings during the constitutional government of President Alfonsín (1983-1989), and former Junta members found guilty of misconduct during the South Atlantic conflict in 1982.

In December 1986 and June 1987 Amnesty International expressed its concern to the former government of President Alfonsín about the passing of the so-called Punto Final and Dúe Obedience Laws, which effectively obstructed investigations into the fate of thousands of "disappeared" under military governments. The recent presidential pardons have served to bring to a virtual standstill all criminal proceedings into past human rights violations.

Decree 1002 pardoned by name 39 military officers of the rank of general and admiral awaiting trial for alleged crimes of human rights violations. Among proceedings affected were cases for crimes committed within the geographical jurisdiction of the First Army Corps, responsible for all anti-subversive operations in the capital and in the Greater Buenos Aires area.

Decree 1003 pardoned by name 64 people charges with alleged criminal offences. Four of them were Uruguayan officers who were awaiting trial for numerous cases involving human rights violations committed in Argentina.

These included the abduction and torture of Uruguayan citizens at Automotores Orletti. Also among the those listed were 12 people, alleged guerilla members, who are officially listed as "disappeared" in the CONADEP report. This was particularly distressing for relatives of these "disappeared" persons. In one case, following the publication of the decree, the parents of a "disappeared" person tried to apply to the authorities for the release of their daughter in the belief that she was still alive.