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# THE RELEVANCE OF VICTIMS' ORGANIZATIONS IN THE TRANSITIONAL JUSTICE PROCESS:

## THE CASE OF THE GRANDMOTHERS OF PLAZA DE MAYO IN ARGENTINA

DR. VALERIA VEGH WEIS\*<sup>1</sup>

*Y adquirió sentido el sobrehueso  
en la cadera que tanto supo avergonzarme.*

*Pude encontrar ahí la tibieza de  
la huella desaparecida.*<sup>2</sup>

The case of the Grandmothers of Plaza de Mayo has been extensively discussed, but most commentators focus on two aspects: its “uniqueness,” and its “meaningful participation” in the transitional justice process. This paper challenges the traditional commentary by concentrating on the complexity of the Grandmother’s experience and its potential to be replicated by other victims’ organizations in other parts of the globe. The paper also proposes replacing the traditional goal of “meaningful participation” – focused on a victim-centered or victim-oriented perspective – by means of a *victim-driven approach*. To do this, the article analyzes the success of the Grandmothers by showing their independent work during a variety of political circumstances at the national level.

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<sup>2</sup> “And the bone deformation that ashamed me so much suddenly made sense. I could find there the warmth of the missing mark.” ABUELAS DE PLAZA DE MAYO, <https://www.abuelas.org.ar/item-difusion/twitterrelatos-por-la-identidad-9> (last visited Feb. 20, 2017) (translated by the author).

### I. Introduction

The Grandmothers of Plaza de Mayo (*Las Abuelas de Plaza de Mayo*) is a non-governmental organization (NGO), created in 1977 in Argentina. Its organization works to locate children who were kidnapped during the last dictatorship and restore them to their proper families. The Grandmothers' actions have reinforced and advanced the achievements of truth, justice, reparations, and guarantees of non-recurrence during their forty years of work, strengthening the Argentinean transitional justice process.

While the case of the Grandmothers has been extensively reviewed, most observers focus on two aspects: its "uniqueness,"<sup>3</sup> and the "meaningful participation" of the organization in the transnational justice process.<sup>4</sup> Characterizing the case as "unique" reinforces an idealization that fails to acknowledge the struggles and challenges that the group members of the Grandmothers have endured. Thus, it obstructs the possibility of replicating their experience in other contexts. On the other hand, the description of

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<sup>3</sup> See RITA ARDITTI, *Introduction*, in *SEARCHING FOR LIFE: THE GRANDMOTHERS OF THE PLAZA DE MAYO AND THE DISAPPEARED CHILDREN OF ARGENTINA* 1, 6 (1999); Sara Lazar, *Between M-Otherness and Identity: The Narratives of "Four Mothers" and "Abuelas de Plaza de Mayo"*, HARRY S. TRUMAN RES. INST. FOR THE ADVANCEMENT OF PEACE, HEBREW U. JERUSALEM (2006); Tina R. Niedzwiecki, *The Reconciliation in Argentina: Is it Complete?* [Paper 8], THE CHANGING FACE OF ARG. (1995), <http://preserve.lehigh.edu/cgi/viewcontent.cgi?article=1007&context=perspectives-v13>.

<sup>4</sup> See ALISON BRYSK, *THE POLITICAL IMPACT OF ARGENTINA'S HUMAN RIGHTS MOVEMENT: SOCIAL MOVEMENTS, TRANSITION, AND DEMOCRATIZATION* (1990); *TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE* (Kieran McEvoy & Lorna McGregor eds., 2008); Verónica Michel & Kathryn Sikkink, *Human Rights Prosecutions and the Participation Rights of Victims in Latin America*, 47 LAW & SOC. REV. 873-907 (2013); see Christopher J. Le Mon, *Rwanda's Troubled Gacaca Courts*, 14 HUM. RTS. BR. 16, 16 (2007) (discussing the goal of 'meaningful participation' of victims in transitional justice process); Daniel Aguirre & Irene Pietrepaoli, *Gender Equality, Development and Transitional Justice: The Case of Nepal*, 2 INTL. J. TRANSIT JUST. 356 - 377 (2008); Anna Triponel & Stephen Pearson, *What Do You Think Should Happen? Public Participation in Transitional Justice*, 22 PACE INT'L L. REV. 103, 107 (2010).

the case as an ideal example of “meaningful participation” allows to contrast the Grandmothers’ experience with the great majority of the cases in which victims were used as a tool for governmental legitimization, without an actual role in the decision-making process.<sup>5</sup> However, this ideal characterization of the organization

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<sup>5</sup> Some relevant cases of superficial victims’ participation in the transitional justice process include Colombia, East Timor, Nepal, and Uruguay. The participation of Colombian victims’ organization was enforced mainly through a manipulation of transitional justice language, in the definitions of truth, justice, and reparations. The required balance between truth and justice was preserved to ensure impunity, while the transitional justice framework provided legitimization, Maria Paula Saffon & Rodrigo Uprimny. *Uses and abuses of transitional justice in Colombia*, in LAW IN PEACE NEGOTIATIONS 1, 354 (Morten Bergsmo & Pablo Kalmanovitz eds., 2nd ed. 2010). Women express that they do not have an opportunity to voice their positions and that they feel the process as futile. Centro Internacional para la Justicia Transicional (“ICTJ”), *Queremos ser oídas. Obstáculos para la participación de las mujeres en los mecanismos de participación para la atención a víctimas del conflicto armado interno* [We want to Be Heard. Obstacles for the Participation of Women in the Participatory Mechanisms for the Assistance to Victims of Internal Armed Conflict] 20 (Jun. 11, 2014), <https://www.ictj.org/es/publication/queremos-ser-oidas-mujeres-reparaciones-colombia> [hereinafter *Queremos Ser Oídas*]. The experience in East Timor shows victims were not heard when they wanted to prioritize raising monuments as an expression of ‘unfinished business’ and the desire to keep the memory of the past alive. In contrast, the “official” UN-sponsored transitional justice institutions were settled as an attempt to mark a clear break with the past. Lia Kent, *Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives*, 5 INT’L J. TRANSNAT’L JUST. 434 (2011). Nepal evidences a superficial transitional justice process conducted for the elites, neglecting the most affected parts of the population – the people from the rural areas that ended up marginalized from the process. Impoverished people have been excluded from this process as effectively as they have always been excluded from social and political life. Those advocating for transitional justice acted *on behalf of* victims, rather than seeking to empower them to serve themselves. Simon Robins & Ram Kumar Bhandari, *From victims to actors: Mobilising victims to drive transitional justice process*, NEFAD (2012), [http://www.simonrobins.com/NEFAD\\_From%20victims%20to%20actors%20-%20Research%20report.pdf](http://www.simonrobins.com/NEFAD_From%20victims%20to%20actors%20-%20Research%20report.pdf). In Uruguay, the lack of meaningful victims’ participation affected particularly the success of truth-telling: e.g. only now women have begun to narrate the sexual abuses they suffered, even though it is known that it was a more extensive practice; and torture is still understood as an inherent consequence of victims’ political activism. The lack of victims’ voice in the public domain has implications not only at the level of non-prosecution of the responsible of the human right violations, but also in the perpetuation of victims’ suffering.

based on its “meaningful participation” tends to re-affirm the conventional wisdom that the success of victims’ experience should be measured by their intervention in public policies run by the government or by international organizations.<sup>6</sup>

This article challenges both the “uniqueness” characterization and the “meaningful participation” thesis. Instead of focusing on a homogenous and idealized narrative of the Grandmothers’ participation, it concentrates on the complexity of the Grandmothers’ experience, digging into those aspects that have the potential to be replicated by other victims’ rights organizations in other parts of the globe.<sup>7</sup> The study analyzes nearly forty years of the Grandmothers’ struggle, and how their organization, strategies, and input varied depending on the political circumstances at the national level. At the same time, the article suggests that achieving “meaningful participation” by the victims may not be an achievable ideal in the first place. The countries and regions that are traversing transitional

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The country is still in trauma, and this cannot be sorted out even by the fact that José Mujica, a victim himself, had become President of the country.

<sup>6</sup> To exemplify, the U.N. Secretary-General expresses that “the most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victims’ *consultation* carried out.” (emphasis added). U.N. Secretary-General, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 16, U.N. Doc. S/2004/616 (Aug. 23, 2004). In the same line, Orentlicher highlights the central importance of promoting the broad *participation* of victims and other citizens to design and implement programs of transitional justice for combating impunity. Diane F. Orentlicher, *Settling Accounts’ Revisited: Reconciling Global Norms with Local Agency*, 1 INT’L J. TRANSNAT’L JUST. 10 (2007). Nickson and Braithwaite state that “when survivors are given *participation rights* alongside other survivors, they can be helped to transcend their loss by seeing the greater suffering of others.” (emphasis added) Ray Nickson & John Braithwaite, *Deeper, Broader, Longer Transitional Justice*, 11 EUR. J. CRIMINOLOGY 445 (2014).

<sup>7</sup> By this logic, this article tries to respond to the call of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff, when he asks “for systematic studies of victim participation measures, particularly in domestic processes, and, given their promise, of ways of turning potential into reality more effectively.” Pablo de Greiff (Special Rapporteur), *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, on its 27th session of the Human Rights Council*, U.N. Doc. A/HRC/27/56 (Aug. 27, 2014).

justice processes are particularly vulnerable to political change and socio-economic instability. As a result, even if a certain regime is willing to give the victims a clear voice in the process, this participation is constrained by the success and continuity of that regime. Victims' actions end up being uncertain, and vulnerable to changes in public policy or fluctuating political alignments. The ideal of *participation* implies a problematic auxiliary role in a public policy that is run by *others* (e.g. the government, local judiciary, international organizations or international courts).

The goal of "meaningful participation," even if temporarily feasible, therefore perpetuates the victims' submissive role in relation to the political leadership of the moment.<sup>8</sup> In short, this article proposes that the empowerment of the victims as an end in itself and as a path to reinforce the transitional justice process should not rest on a victim-centered approach, but on what can be called a *victim-driven approach*.

Following this logic, the article proposes that the cause of the Grandmothers' success may be their *lack* of "meaningful participation" in the transitional justice process and their development of an independent agenda that sustain them throughout different political circumstances. It is not a case of *participation*, but rather of the *leadership* of public policy. The Grandmothers were not just a group of relevant individuals who were heard and considered in an official process; they provoked national and international recognition of these crimes, even under the dictatorship.

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<sup>8</sup> Saffon and Uprimny sustain that the use of the transitional justice rhetoric in Colombia could be considered somewhat beneficial to ensure that victims' rights were at the center of discussions regarding peace negotiations. Saffon & Uprimny, *supra* note 5, at 279. However, even if the process brought that outcome, victims would still be *passive recipients*; they would be still a target of a process that is being conducted *somewhere else by some other people*. Only indirectly, they may *benefit* from that process and get a degree of participation. Even the word "*benefit*" is tricky as it is commonly used to describe policies oriented at the meaningful participation of the victims. It does not refer to an active actor claiming a right that the state must guarantee, but to mere "beneficiaries," i.e. passive individuals that are given a "benefit," a "favor," a "grace," a "plus," an excess about regular considerations, that – unlike rights – can be discretionally removed.

Despite this challenging context, the Grandmothers denounced impunity, conducted fact-finding that was the core of later investigations to restore the abducted children and prosecute members of the dictatorship, and they led a cultural shift to avoid recurrence. As Sikkink highlights: “other countries experienced repression as great as or greater than that in Argentina and did not put forth the same vibrant response from both civil society and governmental actors [...] In Argentina, social movements not only took advantage of existing opportunity structures but also *helped create them at both the domestic and the international levels*.<sup>9</sup> Méndez reinforces: “[...] in Argentina, the inherent force of the idea of accountability has resulted in *magnificent efforts* by civil society to document past violations and *to rescue the memory of the victims from oblivion*.”<sup>10</sup>

In short, the article focuses on deconstructing the characterization of the Grandmothers as “unique”, and on the development of a *victim-driven approach* to help reinforce the experience of this organization as a guide for many others. To achieve this, the research is structured in five sections that develop a historical analysis to show how the Grandmothers drove the transitional justice process along the different political regimes.

Part II explores the experience of the Grandmothers during the civil-military dictatorship (1976-1983). The article explores which were the characteristics of the group in its initial configuration and queries if they were unique or susceptible of being replicated. The proposed thesis is that the independent and victim-driven agenda of the Grandmothers during this period was centered on their claims for truth by means of international denunciation, regardless the governmental harassment against them.

Part III focuses on the Grandmothers’ struggle during the ‘fragmented transitional process’ into a democratic regime (1983-

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<sup>9</sup> Kathryn Sikkink, *From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights*, 50 LAT. AM. POLIT. SOC. 2-3 (2008) (emphasis added).

<sup>10</sup> Juan E. Méndez, *In Defense of Transitional Justice*, in TRANSITIONAL JUSTICE AND THE RULE OF LAW IN NEW DEMOCRACIES 1, 3 (James A. McAdams ed., 1997) (emphasis added).

1989). This period was led by Raul Ricardo Alfonsín, in which democracy was unstable and vulnerable to the still-powerful military forces.<sup>11</sup> Then, the Grandmothers supported official decisions such as the creation of the truth commission and the trial against the dictatorship's leaders. However, they preserved their own work in the search of their Grandchildren. They also joined forces with other victims' organizations to vigorously reject official measures that limited the criminal responsibility of those who perpetrated human rights violations during the dictatorship.

Part IV centers on the Grandmothers' battles during the years of "impunity" (1989-2003), when the democratic regime was more stable, but President Carlos Menem promoted impunity policies and only concentrated on reparations for the victims.<sup>12</sup> At this time, the Grandmothers kept on working with other victims' organizations and with the civil society intensifying their complaints against the government. However, the Grandmothers also preserved their independent efforts in the transitional justice process that were now concentrated on a judicial strategy.

Part V explores the Grandmothers' work during the years that may be described as "human rights' recognition" (2003-2015). These years correspond to the Kirchner government, which acknowledged the past human right violations and encouraged the four transitional justice measures: truth, justice, reparations, and guarantees of non-recurrence. For the first time, the Grandmothers decided to openly support a government, even though they preserved their agenda with a focus on the trials as well as political and cultural activities to ensure the non-recurrence.

Part VI analyzes the Grandmothers' activity in the framework

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<sup>11</sup> Luis Rosas, *Crisis De Liderazgo Político Y Gobernabilidad En Raúl Alfonsín (1983-1989): Crisis Institucional Y Caída* [Crisis of Political Leadership and Governance in Raúl Alfonsín (1983-1989): Institutional Crisis and Fall], 18 INSTITUCIONES Y PROCESOS GUBERNAMENTALES 1 (2013), <http://www.revinciapolitica.com.ar/num18art2.php> (last viewed Feb. 24, 2017).

<sup>12</sup> Although Menem was the most relevant figure because he was the one that took the decision to grant impunity, the subsequent democratic governments from 1999 to 2003 preserved the same political agenda with respect to the crimes committed during the dictatorship.



of a government that is undermining the transitional justice process, in what might be called “a step back in human rights policies.” This moment is particularly interesting because the Grandmothers’ opposition to the present government differs from the opposition held in earlier periods. The current Grandmothers’ opposition to the government rests on more solid political statements and on the defense of a broader agenda in terms of human rights violations. It is possible that this change comes as a result of the Grandmothers’ forty years of experience and their politicization during the former government. Besides their claims against the present government, the Grandmothers preserve their self-determining agenda, which now is concentrated in the continuation of the organization through their restituted grandchildren.

In each of the mentioned parts, the article distinguishes the actions, struggles, and contributions of the Grandmothers to enforce the four components of the transitional justice process (the pursuit of truth, justice, reparations and guarantees of non-recurrence), following the analysis and methodology of the U.N. Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence (U.N. Special Rapporteur).<sup>13</sup>

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<sup>13</sup> This paper conceives “Transitional Justice” as a holistic and on-going proposal that includes “the full range of processes and mechanisms associated with society’s attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation.” Pablo de Greiff, *Theorizing Transitional Justice*, in *TRANSITIONAL JUSTICE: NOMOS LI 31*, 31-77 (Melissa S. Williams et al., 2012). In each of the components of this holistic and on-going process, the role of victims has been recognized as crucial by the U.N. Special Rapporteur:

Victim participation implies the recognition of victims as rights holders [...] strengthens the right to truth [...], represents an acknowledgement that victims have played a crucial role not only in initiating procedures, but in collecting, sharing and preserving evidence [...], increases the likelihood that the needs of victims will be taken seriously [and that] criminal procedures, including truth-seeking and reparations [...] can be integrated better into other transitional justice processes, [and] the sense of empowerment that victims derive from participating in criminal procedures can catalyze demands for justice which, in turn, may have beneficial non-recurrence effects.

Particularly in relation to guarantees of non-recurrence, the article addresses the different forms that were established in the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (The Basic Principles) as doing so demonstrates a perspective that avoids centering this aspect of transitional justice only on the vetting process, and enriches the discussion with the contributions of the Grandmothers to legislative changes and cultural transformation.<sup>14</sup>

The final part of the paper offers reflections and suggests that the historical analysis of the Grandmothers’ experience might serve as an enriching reference for other victims’ organizations, always taking care to respect local particularities.<sup>15</sup>

## *II. The Birth of the Grandmothers During the Dictatorship (1976-1983)*

The last Argentinean dictatorship (1976-1983) developed a plan of unlawful imprisonment and torture in detention camps, and later “disappearance,” of people that were accused of “being part of” a “subversive group.”<sup>16</sup> The “disappearance” was a euphemism that

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De Greiff, *supra* note 7, ¶ 94.

<sup>14</sup> While truth, justice, and reparations are themselves *measures*, “guarantees of non-recurrence” refers to a *function* that can be satisfied by a broad variety of measures. Pablo de Greiff (Special Rapporteur), *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, on its 30th session of the Human Rights Council* [Advanced Edited Version], ¶ 16, U.N. Doc. A/HRC/30/42 (Sept. 7, 2015) [hereinafter *de Greiff, Report 2015*].

<sup>15</sup> See also FEDERICA GUGLIELMO, *LOCALIZING TRANSITIONAL JUSTICE. INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE* (Rosalind Shaw et al. eds., 2010).

<sup>16</sup> Among his most well-known declarations, Videla affirmed: “Let us say that seven or eight thousand people had to die to win the war against subversion”; “We want to guarantee peace throughout the republic, for this we will end subversion”; “We needed a measure of strength and the people shared that vision. If we did not do it, the vacuum of power would have been exploited by the subversion to achieve power and occupy the space left by others.”; “I fully assume my military

the dictatorship used to characterize the situation of these people that were kidnapped and murdered.<sup>17</sup> Human rights organizations state that these actions were part of a systematic plan of 'state terrorism' that killed 30,000 victims.<sup>18</sup> Some victims were captured with their

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responsibility in everything done by the Military in the internal war against the terrorist subversion." *Las Frases que Definieron a Jorge Videla* [The Phrases that Defined Jorge Videla], EL SOL (May, 17, 2013), <http://www.elsol.com.ar/nota/172356> (translated by the author). See also Irina Hauser, *Eliminar a Los Subversivos de La Fábrica* [Eliminating the Subversives from the Fabric], PÁGINA 12 (Sept. 19, 2002), <https://www.pagina12.com.ar/diario/elpais/1-10392-2002-09-19.html>; Irina Hauser, *Abuelas y Nietos, Delincuentes Subversivos* [Grandmothers and Grandchildren, Subversive Offenders], PÁGINA 12 (May, 12, 2005), <https://www.pagina12.com.ar/diario/elpais/1-168034-2011-05-12.html>.

<sup>17</sup> In further declarations, Videla insisted that the victims were neither alive nor dead, just "disappeared." *Videla y su histórica explicación sobre los desaparecidos*, INFOBAE (May, 17, 2013), <http://www.infobae.com/2013/05/17/711088-videla-y-su-historica-explicacion-los-desaparecidos> [hereinafter *Videla Tenebrosa*]. María Belén Capitán clarifies that the main difference between "extrajudicial killings" and "homicides," in contrast with "forced disappearances" is that the last ones break the logic that unites death and body. They implicate an inconclusive death as a rupture of the traditional interpretative frameworks, but it also allowed the creation of new ones that encouraged collective actions. María Belén Capitán, *Entre rezos y habeas corpus. Los orígenes de la Comisión Madres, Abuelas y Familiares de Detenidos Desaparecidos Mar del Plata* [Between prayers and habeas corpus. The origins of the Commission Mothers, Grandmothers and Relatives of Detained Missing Persons Mar del Plata], 2 SUDAMERICANA: REVISTA DE CIENCIAS SOCIALES 174 (2013).

<sup>18</sup> There is no official consensus on the final number of victims. Fernández Meijide, who was part of the National Commission on the Disappearance of Persons (CONADEP), states that the Commission received 7,380 complaints, which became 8,960 with cases referred by other agencies. GRACIELA FERNÁNDEZ MEIJIDE, *LA HISTORIA ÍNTIMA DE LOS DERECHOS HUMANOS EN LA ARGENTINA* [THE INTIMATE HISTORY OF HUMAN RIGHTS IN ARGENTINA] (2009). Brysk refers to "tens of thousands of Argentine citizens disappeared." Brysk, *supra* note 4, at xii, 1. However, the human rights organisms insist the number is 30,000 because, though in their list they have gathered information of 10,000 disappeared and 2,400 murdered people, they are just a fraction of the total number of disappeared. In many cases, the disappearance has not been denounced because of fear, disconnection with the family, lack of information on where to make the exposition, among other factors. The organisms insist that the only ones that know the real number are the responsible of these human rights violations, but that the number of 30,000 it is a close representation of the actual amount of people that

children, including babies. Moreover, some women were abducted while they were pregnant, and their babies were taken away from them as soon as they were born. In a considerable number of cases, those children were given to families that were either part of or in some way related to the dictatorship. The kidnapped children were then registered as the biological sons and daughters of these pseudo parents' using falsified documents. The Grandmothers estimate that there are 500 of these cases, although the number could be even higher because, in some cases, relatives of the abducted women did not know that the abducted women were pregnant and therefore did not search for their children.<sup>19</sup> In 1977, at the beginning of the dictatorship, members of the Grandmothers started to meet to concentrate their efforts on demanding the return of their children and grandchildren.

#### *A. The Unique Features of the Grandmothers*

What was the founding moment of the Grandmothers of Plaza de Mayo? Who were these women? Were they "unique"? The following addresses those queries focusing on the characteristics of these women in the first moments of their organization. The aim is overcoming the well-known anecdote of their first gathering in the square, and analyzing the characteristics that made their emergence possible. This section challenges those general characterizations of the Grandmothers as "particular," "extraordinary," "difficult to be replicated" that omit digging into the particular elements that made their emergence possible. The following shows how the Grandmothers built their organization with an autonomous agenda to search for their grandchildren. Being women without a political background was not an obstacle for this aim. Group-life was the

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were disappeared. See *Preguntas Frecuentes* [Frequently Asked Questions], PROYECTO DESAPARECIDOS: POR LA MEMORIA, LA VERDAD Y LA JUSTICIA, <http://www.desaparecidos.org/faq/> (last visited Jul. 22, 2016).

<sup>19</sup> Norma Dominguez, *Hemos Encontrado a 119 Nietos, Pero Faltan 400* [We Have Found 119 Grandchildren But 400 Are Still Missing], SWISSINFO (Mar., 24, 2016), [http://www.swissinfo.ch/spa/40-a%C3%B1os-del-golpe-militar-en-argentina\\_-hemos-encontrado-a-119-pero-faltan-400-/42042562](http://www.swissinfo.ch/spa/40-a%C3%B1os-del-golpe-militar-en-argentina_-hemos-encontrado-a-119-pero-faltan-400-/42042562).

central feature that allowed the Grandmothers to pursue their work, which functioned as a path to know the truth and as a way to overcome their grief.

### 1. *The Grandmothers' Lack of Political Background*

The Grandmothers' lack of political background becomes clear when considering the goal of their first action. They gathered to demand the 'Military Junta' to explain where their children and grandchildren were, which shows a lack of understanding of the political purpose of the dictatorship: performing a systematic plan of *disappearances*, which implied an explicit decision of not releasing *any* information about the victims' whereabouts. Of course, these facts were not clear for almost anyone in the first years of the dictatorship, when the government and the media reinforced the idea that the 'disappeared' persons were in other countries, or died in "*enfrentamientos*," violent confrontations with security forces. Even so, it was not likely that other people with more political experience would expose themselves in the way that the members of the Grandmothers and the Mothers did, challenging the "Military Junta" to provide information about their relatives.<sup>20</sup> Indeed, during this first

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<sup>20</sup> At first, it was not possible to distinguish Mothers of Plaza de Mayo and the Grandmothers as they were all together. Only in October 1977, did a group of "grandmothers" form their own group to concentrate their efforts on the specific goal of looking for their abducted biological grandchildren through a strong judicial strategy. Meanwhile, the group of the Mothers – which gathered the mothers of the disappeared – focused on political strategies to follow up the political demands of their disappeared sons and daughters. A key difference between the Grandmothers and the Mothers is that the latter has maintained a critic position about traditional justice, characterizing it as classist and patriarchal. Indeed, this position later inspired them to conduct their own "trials." They performed trials against the judges that were accomplices of the dictatorship. See *Juicio Etico y Político a los Jueces Cómplices con la Dictadura Argentina* [Ethical and Political Trials to the Accomplice Judges with the Argentine Dictatorship], TERCERA INFORMACION (Oct. 13, 2010), <http://www.tercerainformacion.es/spip.php?article19173>. They also conducted trials against the monopolistic mass media group Clarin. *Hebe de Bonafini anunció un "juicio ético y político" contra el Grupo Clarín* [Hebe de Bonafini Announces "Ethical and Political Trial" Against Clarin Group], MDZ ONLINE (Dec. 5, 2011), <http://www.mdzol>.

activity, a member of the Communist Party looking for one of the ‘disappeared’ joined the Mothers and Grandmothers. The girl, the only one with political experience, was the most scared and the only one who did not come back to the following meetings.<sup>21</sup>

In relation to the chosen place for this first joint action, it seems that the best strategy for victims trying to gather during a repressive dictatorship should be finding a hidden place to organize the struggle. The experience of the Grandmothers was, again, counter-intuitive: they organized this first meeting to demand information from the “Military Junta” in the main square of the city, the so-called “Plaza de Mayo,” which is situated directly in front of the government’s executive palace.

The lack of Grandmothers’ political background was also evident in the chosen date: April 30, 1977, a Saturday. The

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com/nota/346546-hebe-de-bonafini-anuncio-un-juicio-etico-y-politico-contra-el-grupo-clarin. They have conducted trials against the journalists that covered the atrocities committed during the dictatorship. See *Juicio etico y Político a los Periodistas* [Ethical and Political Trial to Journalists], <http://periodismoydictadura.blogspot.com> (last visited Jul. 22, 2016). The Mothers’ rejection to the judicial strategy relates to the fact that they are not looking for abducted grandchildren or the bodies of their children, but their goal is to keep their children alive by making their political program come true. These goals demand a more confrontational political positioning and opening the scope of their struggle to any injustice in any part of the world, paraphrasing Ché Guevara. In the words of Hebe de Bonafini: “For me it is more important that the poor children eat than that we put militaries in jail, considering that they are already condemned by society.” Graciela Di Marco & Alejandra Brener, *HABLAN LAS MADRES Y ABUELAS DE LA PLAZA DE MAYO* 129 (2006). Among the Mothers there would be a later division in 1986 between Madres de Plaza de Mayo - Línea Fundadora, led by Marta Vázquez, and Asociación de Madres de Plaza de Mayo, led by Hebe de Bonafini. The division responded to differences about the acceptance of reparations, the search for the body of their children, and the identification of each mother of their children or the defense of the 30,000 disappeared without detailing names. The Grandmothers preserved a good relationship with Madres de Plaza de Mayo - Línea Fundadora. For more information about the Mothers and the three groups in which they ended up divided. See *ASOCIACIÓN MADRES DE PLAZA DE MAYO*, <http://madres.org>; *MADRES DE PLAZA DE MAYO LÍNEA FUNDADORA*, <http://madresfundadoras.blogspot.co.ke>; *ASOCIACIÓN ANAHÍ: POR LOS DERECHOS HUMANOS – LA PLATA, BUENOS AIRES, ARGENTINA*, <https://asociacionanahi.org/clara-anahi-mariani-historia-y-busqueda>.

<sup>21</sup> Di Marco & Brener, *supra* note 20, at 127.

government palace was closed, and no one was on the street (the square is in the financial district, which is an area that convoked an extraordinary number of people but only during office hours). The Grandmothers then returned on the next Friday, and the fact that they were stay-at-home mothers and grandmothers, came out again when one of them shouted: "Oh, it is Friday (*"viernes"* in Spanish), a day with 'r' is bad luck!" and they moved it to Thursdays (*"jueves"* in Spanish), which is the only weekday without "r," besides Monday (*"lunes"* in Spanish), but Mondays were laundry days.<sup>22</sup>

In this context, the Grandmothers developed their first rudimentary but symbolic strategy to avoid being persecuted by law enforcement. Since it was forbidden to have meetings in the public space because of the state of siege, the Grandmothers started to walk in circles in Plaza de Mayo to avoid being imprisoned. The Grandmothers kept on repeating this modality of protesting in the same square every single Thursday since April 30, 1977.<sup>23</sup> Thanks to these actions, they went through a slow process of politicization that they traversed while preserving their roles as mothers. Nora Cortiñas, a member of Madres de Plaza de Mayo - Linea Fundadora, stated:

We went out to look for our children, but we also accomplished our role as mothers inside the house, even when our husbands helped us out we had that double-role. More than once we found ourselves thinking "Oh, I have been at the square since morning, and I did not buy the bread."

She then expresses that years of struggle, though, helped her to build political consciousness: "We learned later that our children were 'disappeared' because of their political activism and as a means of implementing a neoliberal political-economic program."<sup>24</sup>

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<sup>22</sup> Di Marco & Brener, *supra* note 20, at 129.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Alicia “Licha” De la Cuadra, from the Grandmothers, struggles to understand the deep political and economic reasons behind the disappearances: “... why did this happen? Why? Was it only to impose a system of government based on exploitation, on expropriation? So, what they want is money? I do not know...”<sup>25</sup> As Hebe de Bonafini states: “From the kitchen to the square ... we became politicized little by little.”<sup>26</sup> Most Grandmothers were housewives without a formal education, and Estela de Carlotto was the first Grandmother with an academic background.<sup>27</sup>

Moreover, this modality of protesting became a privileged source of information in the fact-finding work of the Grandmothers: people knew that the members could be found there, in a public space with plenty of witnesses available which seemed to provide better security conditions. All sorts of civilians went there and gave them information about women they knew. Most of the stories were about women that appeared with babies from one day to the other, claiming they were their “biological” child, even though they had not been seen pregnant before.<sup>28</sup>

Far from being a critique, the Grandmothers’ and Mothers’ initial lack of political or legal background is a relevant element in showing that their experience can be replicated in other contexts, and does not require any particular political or legal background among the victims.<sup>29</sup> Brysk reinforces that the human rights movement in

<sup>25</sup> Alihuen315, Botin de Guerra (Desaparecidos dictadura argentina), YOUTUBE (Sep. 12, 2014), <https://www.youtube.com/watch?v=zVfOiNPZnk4>.

<sup>26</sup> Interview by Graciela Di Marco with Hebe de Bonafini (Asociación Madres de Plaza de Mayo) in U. NAT’L SAN MARTIN 4 (Alexandra Brener, ed.), [http://www.unsam.edu.ar/escuelas/humanidades/centros/cedehu/material/\(36\)%20Entrevista%20Bonafini.pdf](http://www.unsam.edu.ar/escuelas/humanidades/centros/cedehu/material/(36)%20Entrevista%20Bonafini.pdf) [hereinafter *de Bonafini Interview*].

<sup>27</sup> Estela de Carlotto was a teacher and her role in the organization helped improve the letters that the Grandmothers wrote and delivered to key actors, as one of the strategies to find their grandchildren. CLARISA E. VEIGA, *Capítulo 1 (1977-1980): Dictadura, represión y apropiación* [Chapter 1 (1977-1980): Dictatorship, repression, and appropriation], LA HISTORIA DE ABUELAS: 30 AÑOS DE BÚSQUEDA [THE STORY OF GRANDMOTHERS: 30 YEARS OF SEARCHING], 19, 31, (2007).

<sup>28</sup> *Id.*

<sup>29</sup> See DELIA CECILIA GIVANOLA, LA LUCHA QUE LA PARIÓ [THE STRUGGLE THAT BIRTHED HER] (2016).



Argentina was not destroyed because it was composed of ordinary citizens that were politically marginal, but economically secure and socially legitimate.<sup>30</sup> This is reinforced in the voice of Estela de Carlotto: “I would like to be remembered as a woman that was in the struggle, that was not a heroine, or different, or special, but a woman with a lot of love and a lot of pain.”<sup>31</sup> Also, Hebe de Bonafini (leader of Asociación Madres de Plaza de Mayo) states:

I would like to be remembered as a mother. What I care most about and what sometimes hurts me is that the people need to know that I am not Wonder Woman, that anybody can do what I do, that they do not need to study to make things work. I did not have the opportunity to study; I only attended elementary school. Everyone can do what I do.<sup>32</sup>

Indeed, the participation of these women in the organization was their very first contact with legal and governmental institutions, and with the public sphere. In other words, the Grandmothers were forced by their grief to transform themselves into political activists.

## *2. Being Women*

Some literature suggests that being a woman could be an obstacle when taking part in the transitional justice process as a victim. Ni Aolain states that women are more vulnerable to insecurity and violence and that these facts operate as a detriment to

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<sup>30</sup> Brysk, *supra* note 4, at 2.

<sup>31</sup> Interview by Graciela Di Marco, *Hablan las Madres y Abuelas de la Plaza de Mayo: Testimonio de Estela Carlotto, Presidenta Abuelas Plaza de Mayo* [The Mothers and Grandmothers of Plaza de Mayo Speak: Testimony of Estela Carlotto, President of Grandmothers of Plaza de Mayo], U. NAT’L SAN MARTIN, (Alejandra Brener, ed.), [http://www.unsam.edu.ar/escuelas/humanidades/centros/cedehu/material/\(35\)%20entrevista%20Carlotto.pdf](http://www.unsam.edu.ar/escuelas/humanidades/centros/cedehu/material/(35)%20entrevista%20Carlotto.pdf) (last visited Jul. 21, 2016) [hereinafter *Carlotto Interview*].

<sup>32</sup> Hebe de Bonafini, *supra* note 26.

their participation.<sup>33</sup> Such obstacles include: the lack of a secure physical environment, making it dangerous for women to function in any meaningful sense in the public sphere for fear of harm; particular vulnerability to sex-based violence unchecked by the formal end of hostilities or the change-over in regime; allied with a lack of political acknowledgement giving credence to a wider and more all-encompassing notion of security beyond a narrow militaristic and state-oriented approach.<sup>34</sup>

However, the Grandmothers' experience suggests otherwise. It is possible to propose that, in fact, being women aided their struggle, particularly regarding appeasing the risks of political activism in the context of the dictatorship. Supporting this statement, Saffon and Uprimny suggest that many victims in Colombia do not get involved in transitional justice demands because oppressive forces are still in power and victims may fear punishment for these requests.<sup>35</sup> So, Saffon and Uprimny wonder how transitional justice can maintain all its components and be achieved if victims do not feel safe or hopeful enough to demand the truth.<sup>36</sup> While this is sensible, the Grandmothers proved that a lack of security is not always an obstacle in demanding transitional justice measures and, it is possible to suggest, this may be intrinsically related to the gender – in conjunction with the lack of political/legal background – component.

By this logic, it is possible to formulate the question: is it easier for women to confront a repressive government? Could it be read as an unintentional effect of patriarchy regarding characterizing women as naïve, weak, vulnerable, not politically active, and therefore harmless actors? Would the Minister for Internal Affairs, Harguindeguy, have called them 'a bunch of nuts' and dismissed their relevance, as he did with the Grandmothers when they persisted in their presence at the square if they had been men?<sup>37</sup> The answer

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<sup>33</sup> Fionnuala Ní Aoláin, *Women, Security and the Patriarchy of Internationalized Transitional Justice*, 31 HUM. RTS. Q. 1055, 1063 (2009).

<sup>34</sup> Aoláin, *supra* note 33.

<sup>35</sup> Saffon & Uprimny, *supra* note 5.

<sup>36</sup> *Id.*

<sup>37</sup> When, in the presence of a journalist, a low-rank officer asked

seems to be no. In the eyes of the military, it was clear that the actions performed by women were not perceived as being quite as risky as they would have been perceived had they been committed by men. Nora Cortiñas ratifies this:

We said everything to them. We insulted them. We got into the Army Command and told them: ‘you took our children, but you are a cuckold.’ That is something that fathers could not have done. Shouting, screaming and stomping, making a scene, also crying, crying, and crying [...] Fathers could not have done that; they would have killed them, they would have put them in prison.<sup>38</sup>

Estela de Carlotto affirms: “[t]hey would have disappeared a lot of people more if they would have had the intelligence to know that women are strong.”<sup>39</sup> The increasingly intense repression against fathers (as males) was not just an effect of the military perceiving women as harmless, but also of the fact that father’s reactions when facing authorities tended to be more violent or to include controversial political views. It is suggested that the fathers’ ego as patriarchs was also hurt with the abduction of their family. Fathers were not able to accept their role as victims as easily because that was an acknowledgment of their failure as “*pater familiae*,” that would succumb to the family attacker. Clearly, the political and economic situation was far beyond a father’s individual possibilities, but rather, it was a national failure to protect an entire generation.

In relation to expressing their political views, fathers were more inclined to mix political considerations about the decisions of

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Harguindeguy, who were those women that concentrated each Thursday in the square, he answered back: “just a bunch of crazy old women.” TV Pública Arg., *Madres De Plaza De Mayo. La Historia. Capítulo 1: Los Caminos de la Plaza (1975-1977)* [Mothers of Plaza de Mayo. The history. Chapter 1: The Roads of the Plaza (1975-1977)], YOUTUBE (Mar. 24, 2015) <https://www.youtube.com/watch?v=NDJP9vRUX2o> (last viewed Feb. 24, 2017).

<sup>38</sup> Di Marco & Brener, *supra* note 20, at 126.

<sup>39</sup> Hebe de Bonafini, *supra* note 26, at 4.

their children, whereas the Grandmothers and the Mothers were clear in defending the lives of their children and grandchildren without discussing their political activities.<sup>40</sup> Even if armed, their grandchildren and children were civilians persecuted by a state. Delving into political considerations was opening the door to legitimizing the actions of the dictatorship. Cortiñas expresses:

We have never given direct participation to the fathers, no, never. We let them give their opinion, but just a little [...] when we went to give presentations in governmental offices, and a father came with us, he always ended saying something out of place as “I told my son not to get into that.” That, an innocent phrase. And we have to say to them “Go. If you think that, you do not have to be here.”<sup>41</sup>

Grandmothers’ valorization of their gender did not assume the form of a feminist approach to transitional justice because they do not consider themselves as feminists.<sup>42</sup> The focus of their struggle is not about their rights as grandmothers, mothers or women, but about the rights of the identity of their grandchildren, where the gender aspect is not a concern.<sup>43</sup> Therefore, the Grandmothers do not

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<sup>40</sup> Graciela Di Marco, *Hablan las Madres y Abuelas de la Plaza de Mayo: Testimonio de Nora Cortiñas*, *Madres de Plaza de Mayo: Línea Fundadora* [The Mothers and Grandmothers of Plaza de Mayo Speak: Testimony of Nora Cortiñas, Mothers of Plaza de Mayo: Founder Line], U. NAT’L SAN MARTIN (Alejandra Brener, ed.), [http://www.unsam.edu.ar/escuelas/humanidades/centros/cedehu/material/\(34\)%20Entrevista%20Corti%C3%B1as.pdf](http://www.unsam.edu.ar/escuelas/humanidades/centros/cedehu/material/(34)%20Entrevista%20Corti%C3%B1as.pdf) (last visited Feb. 24, 2017) [hereinafter *Cortiñas Interview*].

<sup>41</sup> *Id.*

<sup>42</sup> For feminism and transitional justice see Christine Bell & Catherine O’Rourke, *Does Feminism Need a Theory of Transitional Justice? An Exploratory Essay*, 1 INT’L J. TRASNAT’L JUST. 23, 35-7 (2007).

<sup>43</sup> Conversely, Nora Cortiñas, from *Madres Línea Fundadora*, explains that she later acknowledges that their activity had to do with “put[ting] the gender in the struggle and fight[ing] like women, confronting the dictatorship.” Cortiñas Interview, *supra* note 40. Also, Hebe de Bonafini expresses that *Asociación Madres de Plaza de Mayo* is a non-partisan political organization that politicizes maternity from the best place: without leaving their role as mothers or reject

understand their struggle for transitional justice as a gender-based one, but rather as “ordinary justice” and, under that logic, they have pursued criminal accountability through the traditional criminal process (except for the demand of recognition of the Non-Applicability of Statutory Limitations of the committed crimes).

The final question about gender in transitional justice processes is if we accept that “being women” protected the Grandmothers because gender has them the appearance of being ‘vulnerable and un-risky’, is this statement also valid today as it was in the 1970s?

### 3. *Group-Life: Organization and Support*

In line with the mentioned aspect, it is likely that being women was a crucial factor that allowed the Grandmothers and Mothers to make stronger relations easier and to facilitate the configuration of a solid group. “Being a mother” and “being a grandmother” were strong identities, which allowed them to overcome political, economic, and religious differences, at least in those first moments. Rosso and Varela find, “Women can build new realities as the ways in which we link our affections. So what we do with our lives has a political value and how we decide to bond builds a language that exceeds intimacy and begins to question the status quo.”<sup>44</sup> Conversely, though the Mothers and Grandmothers’ husbands/partners also tried to gather, they were not able to manage their political differences. It was difficult for them to express their grief in public, and they chose a more individual and introspective way to deal with their loss. The fact that most of the fathers had full-time jobs that they could not tend to emerged as an important element that undermined their ability to gather and organize.<sup>45</sup>

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cleaning the dishes. De Bonafini Interview, *supra* note 26.

<sup>44</sup> Laura Rosso & Alejandra Varela, *Al infinito y más allá*. PÁGINA 12 (Apr. 8, 2016), <http://www.pagina12.com.ar/diario/suplementos/las12/13-10486-2016-04-10.html>.

<sup>45</sup> Di Marco & Brener, *supra* note 20; see also Vladimir Hernandez, *Por que Madres y no Padres de Plaza de Mayo?* [Why Mothers and not Fathers of Plaza de

Therefore, it seems that the strength of the Mothers and the Grandmothers to develop and sustain their own agenda, regardless of the changes of the political regimes, found its core in their “group-life.” Group-life describes a dynamic allowing individuals of the group to embrace the struggles of each of the other members and of the group itself as theirs, as well as to celebrate the achievements of each of the other members or of the group itself as theirs. Under this logic, group-life is a core dynamic with a double potential. On the one hand, group-life might help transform the personal grief of each member of the group into political empowerment, helping to create a bridge from “passive victimhood” to empowerment.<sup>46</sup> Rosso and Varela confirm this:

Friendship between women has a structuring effect and that power radiates to other layers of life, it goes straight to the potion that heals wounds. It is a space that stands on its own. It acts not necessarily as a replacement for other links or other absences, but as a suture of them.<sup>47</sup>

Particularly relevant is the value of the “word” as a vital component of group-life: sharing their experiences, their success, and their pains were crucial to dealing with their loss and to empowering them for the struggle. In an example that may be extrapolated to the situation of the Grandmothers and Mothers, Sonia Gold adds regarding life in the slums: “Do you know why girls are saved? Because they speak about their problems, about things that happened to them when they were little.”<sup>48</sup>

On the other hand, group-life has the potential to strengthen

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Mayo?], BBC MUNDO (Jun. 10, 211), [http://www.bbc.com/mundo/noticias/2011/06/110609\\_argentina\\_padres\\_plaza\\_de\\_mayo\\_vh.shtml](http://www.bbc.com/mundo/noticias/2011/06/110609_argentina_padres_plaza_de_mayo_vh.shtml); Padres de la Plaza/La búsqueda del hijo [Father of the Plaza/The Search for the Son], ENCUESTRO (2011), [http://www.encuentro.gov.ar/sitios/encuentro/programas/ver?rec\\_id=50462](http://www.encuentro.gov.ar/sitios/encuentro/programas/ver?rec_id=50462).

<sup>46</sup> Robins & Bhandari, *supra* note 5; Saffon & Uprimny. *supra* note 5, at 354.

<sup>47</sup> Rosso & Varela, *supra* note 44.

<sup>48</sup> *Id.*

the collective struggle of the organization. As Rosso and Varela explain, “when friendship between women mutates into militancy, or links act as transformative forces of the social, these experiences occur that destroy individualism and view the other as an indispensable member.”<sup>49</sup> It follows the broad definition of Charles Tilly, who understands “social movements” as series of contentious performances, displays, and campaigns by which ordinary people make collective claims on others, as well as the perspective of social movement theory, which highlights the importance of group actions.<sup>50</sup>

When analyzing the experience of the Grandmothers, group life was an essential element that helped them to tolerate their individual pain through a collective and transformative work.<sup>51</sup> As Rosa Roisinblit affirms: “The strength comes from the love for your children ... If I had stayed home crying for the disappearance of my daughter, I would have died long ago.”<sup>52</sup>

Group-life also helps the Grandmothers to strengthen their collective struggle, particularly through the group’s decision to work

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<sup>49</sup> Rosso & Varela, *supra* note 44.

<sup>50</sup> CHARLES TILLY & LESLEY J. WOOD, *SOCIAL MOVEMENTS: 1768 – 2012* (3rd ed., 2015).

<sup>51</sup> It is possible to suggest that in the group-life is where we can find the dissimilar success of women’s experience in Colombia and Argentina. While the report of the ICTJ suggests that their lack of involvement in the transitional justice process has to do with the naturalized domestic role that is culturally reserved to them, the anecdotes include in the report suggest that gender was not an isolated factor. Conversely, the economic factor that was considered secondarily by the report seems crucial because it describes situations of great impoverishment in which victims have to choose between bringing food to the house, or take part of the activism. Perhaps even more crucial, the stories refer to lonely women confronting the officers that go to their homes and rape or murder them; without any reference to a group strategy to deal with that persecution. Even on the anecdote in which the woman prepares herself, overcomes her fears and limitations, and confronts an officer, the resolution is unsuccessful because she is alone. *Queremos Ser Oidas*, *supra* note 5.

<sup>52</sup> Uki Goñi, *How an Argentinian man learned his ‘father’ may have killed his real parents*, THE GUARDIAN (Jul. 22, 2016, 6:00 PM), <https://www.theguardian.com/world/2016/jul/22/argentinian-stolen-baby-guillermo-perez-roisinblit> (last viewed Mar. 25, 2017).

on all the cases together. To offer an example, Estela De Carlotto, President of the Grandmothers, has not found her grandson until 2014, but this was not an obstacle to keeping on working on the cases of the other grandmothers and to consider that each new identified grandchild was part of “*our* grandchildren.”<sup>53</sup>

Group-life even helped Grandmothers to overcome conflicts between their private role as wives and their political activity. The grandmother of Paula Logares expressed that the group helped her to be firm with her husband: “Go with your brother, I will try to help you as much as I can, but I am going with the Grandmothers, and I will not come back without her.”<sup>54</sup> Once in the public sphere, the group became crucial to overcoming fears: when one was afraid, they would hold hands and give strength to one another.<sup>55</sup> Also, when the police asked them to move away, they would hold hands and walk together. The possibility of expressing affection in a physical way is another aspect where gender made things easier because hugging, kissing, holding hands, showing love amongst males is more socially constrained by heterosexual cultural impositions.

Following this analysis, the experience of the Grandmothers, this article argues, becomes more susceptible of emulation by understanding the relevance of group-life from the very first moments of the organization. Since the beginning, the Grandmothers evolved always as a group, from a few women that informally gathered, to an increasing number of women with a more complex organization. They later went into an institutionalized process, and, afterward, they ended by consolidating an international network. Currently, we see a new transformation: their slow re-configuration towards an increasingly institutional role for the returned grandchildren who, by working in the N.G.O., are facing the challenge of empowering themselves to be able to continue the

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<sup>53</sup> The institutional website of the Grandmothers of Plaza de Mayo has a core section entitled “Our grandchildren” (translated by author), systematizing all the grandchildren who have been already identified. See *Niños Nacidos En Cautiverio* [Children Born in Captivity], ABUELAS DE PLAZA DE MAYO, <https://abuelas.org.ar/caso> (last visited Feb. 20, 2017).

<sup>54</sup> Alihuen315, *supra* note 25.

<sup>55</sup> *Id.*



struggle when the Grandmothers will not be here anymore.

### *B. The Initial Strategies*

Which were their first goals and strategies? Were they waiting for a governmental change or did they start their own work from the very beginning? This section analyzes how these features help explain their first activities, their first humble claim for truth, their difference to other human rights organizations, and their initial political and legal strategies. The proposed thesis is that the Grandmothers played leading roles in political decision making even during the civil-military dictatorship. Looking for the support from the international community to overcome the limitations of the national context was the first step of the Grandmothers as drivers of the transitional justice process, opening a path that can guide the struggle of other victims' organizations.

The focus of their struggle during the dictatorship was finding the *truth*: the whereabouts of their children and grandchildren, and the judicial strategy oriented to re-enforce that search and avoid the adoption and registration of their grandchildren with an unknown origin. First, the Grandmothers pursued this goal through direct demands to the dictatorship leaders. When this proved to be unsuccessful, they developed more complex political and judicial strategies. The political ones consisted of orientating the fact finding to the international level, appealing to relevant actors from other countries or from international organizations. The judicial strategy consisted on presenting *habeas corpus* claims. However, it also proved to be unsuccessful, and this strategy was re-directed to focusing on fact-finding work conducted by the Grandmothers themselves.

#### *1. Demanding Information from the Dictatorship Authorities*

The decision about the meeting location was intrinsically related to the primary purpose that gathered them in the very first place: discovering the truth. Indeed, their first few meetings occurred

in a church, but Azucena Villaflor, the spontaneous leader of the group, encouraged them to go to Plaza de Mayo square: “we have to go to Plaza de Mayo square and make them see us, get into the government palace.”<sup>56</sup> In order to determine the truth regarding their missing loved ones, the Grandmothers needed to meet the central official authority, the President of the Junta, Jorge Rafael Videla. Individual claims in police stations, courts, and administrative offices had proved to be futile as a result of the evasive response of the lower-ranked officers that received them.<sup>57</sup> Their first pragmatic aim was to give a letter to Videla, with the information of their children and grandchildren.

This primary goal expressed two main features of the initial configuration of the Grandmothers and the Mothers. First, they had a simple political program: they just wanted information, the truth: “why will they not tell us what happened? We only want to know the truth,” claimed a mother crying in one of the few recorded videos of their public demonstrations in the square.<sup>58</sup> The Grandmothers did not even ask for the freedom of the children in the cases involving incarceration, or their bodies in the cases of death (the disappearances had not been confirmed until 1979 with Videla’s declaration),<sup>59</sup> or the effective return of their grandchildren if they were not with their parents. The simplicity of their goal is relevant because, at least in the first steps, it seemed achievable and powerful enough to call for the agreement of all the women. In other words, the first goal of the Grandmothers seemed simple, feasible, and not susceptible of causing discussions or confrontations. However, when even this humble aim proved to be unrealistic, they re-oriented their activities to more complex political and judicial strategies.

## 2. *Judicial Strategy*

Since the Grandmothers organized themselves separately

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<sup>56</sup> Di Marco & Brener, *supra* note 20.

<sup>57</sup> *TV Pública Arg.*, *supra* note 37.

<sup>58</sup> *Id.*

<sup>59</sup> *Videla Tenebrosa*, *supra* note 17.

from the Mothers in October 1977, the judicial strategy became a central part of their work. The first contact between the Grandmothers and the criminal justice system consisted of the writing and presenting of "habeas corpus" petitions. In order to prepare and sign legal documentation, the Grandmothers gathered in public places such as parks and churches. Also, the Grandmothers met in a coffee shop called *Las Violetas*, where they pretended to be dressmakers, and they exchanged information using code words: "bib" for unborn; "pink" for girls, "sky-blue" for boys, "that beautiful square" for Plaza de Mayo, etc.<sup>60</sup> They distributed the tasks according to the preference of each of them in a spontaneous and non-rigid manner. At the end of the day, the Grandmothers exchanged the results of the performed activities.<sup>61</sup>

Habeas corpus was the most suitable legal instrument to get information about unknown whereabouts. The judge must resolve habeas corpus immediately; it was possible to present it even during a state of siege, and it did not require the signature of a lawyer.<sup>62</sup> The last feature was especially relevant because it allowed them to make the presentations by themselves without putting lawyers at risk. However, the judicial response to the habeas corpus was negative. After receiving the habeas corpus, judges used to send requests to the Ministry of Internal Affairs, the Police Department, and the Commander in Chief to ask if the disappeared person was detained. Those agencies always denied that the person in question was under their control and, therefore, the judge proceeded to close the case. Victims did not use to appeal these decisions because it was almost impossible to contest them without involving (and putting at risk) witnesses.<sup>63</sup>

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<sup>60</sup> Alihuen315, *supra* note 25.

<sup>61</sup> Veiga, *supra* note 27, at 20.

<sup>62</sup> Art. 18, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.); Emilio Fermin Mignone, Cynthia L. Estlund & Samuel Issacharoff, *Dictatorship on Trial: Prosecution of Human Rights Violations in Argentina*, 10 YALE J. INT'L L. 118, 121 & n.10 (1984).

<sup>63</sup> See Jaime Nuger, *Un habeas Corpus en Dictadura: Las acciones judiciales por Inés Ollero que culminaron con el encarcelamiento del jefe de la ESMA* [A Habeas Corpus in Dictatorship: The legal actions by Inés Ollero that culminated in

### 3. *Fact Finding*

Facing the unsuccessful results of their legal strategy in the domestic courts, and far from being passive actors waiting for a state decision to sort out the situation, the Grandmothers began to investigate the abduction and appropriation of the children of the “disappeared,” by themselves, through a spontaneous and collaborative organization. The first group of Grandmothers was in charge of the detective work: one of them admitted herself to an asylum to follow a lead, another one dressed up as a nurse to get into a hospital; another worked as a maid to get in touch with a girl that seemed to be the granddaughter of one of them. Grandmother Elena Opezso (known as “Muñeca”) recalled:

I assumed the role of an investigator. I received a camera, and I went out with my “Fitito” (a small car). In the suggested place, I raised the hoot of the car, as if it were broken down, and took a picture of the children. I also talked to the teachers, the directors, some of them welcomed me, others did not. Sometimes I was kicked out of a school, or I was interrogated for being with the car in the door, and I told them that I was waiting for my granddaughter.<sup>64</sup>

As Veiga recalls, the second group was in charge of making separate folders for each of the children and pregnant women with all the information that they had about each of them. At the same time, they formulated lists with potential actors to present the cases to: from the Pope Paul VI, United Nations and embassies to each Juvenile Court – courts with jurisdiction over people under 21 years old that committed a crime or were in a state of “moral abandonment,” mixing social and criminal problems. A third group was in charge of the small financial accounts of the organization. With all that information, one or more grandmothers went to those

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the imprisonment of the head of the ESMA] (2014).

<sup>64</sup> Veiga, *supra* note 27, at 25.

houses and simulated that they were selling products for babies and were able to get more information about the family.<sup>65</sup>

This fact-finding activity convinced the Grandmothers about the systematic enrollment of children registered as unidentified that were later given up for adoption. To stop that practice, in 1978, they presented a petition to the Supreme Court demanding the prohibition of adoption of children registered as unidentified and an investigation about their origin. The Court rejected the petition.<sup>66</sup> As publicly recognized, the Grandmothers were not able to do the fact-finding in that improvised manner anymore, and they decided to register as a non-profit human rights civil association during the dictatorship.<sup>67</sup>

#### 4. *Political Strategy*

In light of the uselessness of these legal attempts and the high risk of organizing demonstrations in the country, the Grandmothers discovered that orienting the fact finding to the international level would be a useful strategy. Considered their first political act as the Grandmothers, they gave a document with information about their missing grandchildren to Cyrus Vance, Secretary of State of the United States while he was visiting Buenos Aires. This attempt was successful and attracted the attention of the international media. On that occasion, some of the grandmothers wore cloth diapers on their heads to represent the search for their babies, a symbol which characterizes them today.

Turner addresses the national and international community as homogenous and confronting spheres in the dispute between a

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<sup>65</sup> Veiga, *supra* note 27, at 25.

<sup>66</sup> *Id.* at 25-28.

<sup>67</sup> First, they adopted the name *Abuelas Argentinas con Nietitos Desaparecidos* (Argentinean Grandmothers with Disappeared Grandchildren) [translated by author] with Alicia de De la Cuadra as President, under the goal of "searching for the grandchildren, without forgetting our children." In 1980, they would end up accepting the name "Grandmothers of Plaza de Mayo" to which they are mostly referred. *Carlotta Interview*, *supra* note 31.

sovereign process of justice and international intervention.<sup>68</sup> While this can be accurate to describe a broad number of transitional justice processes, for Argentina, a course of action was found at the international level, particularly at the Organization of American States (OAS). Ní Aoláin confirms that “[a] key element in the perceived success of many transitional accountability mechanisms, and the willingness to establish new legal and political institutions, lies in engaging the support of international organizations and other states in their establishment.”<sup>69</sup>

The Grandmothers followed the international path. In August of 1978, they published a letter directed to grandparents in general under the title “Call to conscience and hearts” in the newspaper *La Prensa*. Imposing their claims on the public domain and getting the article replicated in the foreign press was a success. The Grandmothers also sent folders with the information of the missing children to the OAS, taking care of sending them from abroad as they started to suspect that the letters that they were sending from Argentina were intercepted. In December, they received the response from the Inter-American Commission on Human Rights. The Commission was going to intervene.<sup>70</sup> The Commission made its first major country report based on a visit to Argentina in 1979, with the collaboration of the testimonies of the Grandmothers and human right organizations.<sup>71</sup>

The international strategy of the Grandmothers was not limited to the connection with the Inter-American Commission. Also, the Grandmothers travelled to Brazil to get in touch with the Committee for the Defense of Human Rights in the South Region (CLAMOR, in Spanish) and meet political exiles. With the help of CLAMOR, the Grandmothers achieved their first victory: they found

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<sup>68</sup> Catherine Turner, *Delivering Lasting Peace, Democracy and Human Rights in Times of Transition: The Role of International Law*, 2 INT’L J. TRANSNAT’L JUST. 126 (2008).

<sup>69</sup> Ní Aoláin, *supra* note 33, at 108.

<sup>70</sup> Veiga, *supra* note 27, at 31.

<sup>71</sup> Inter-Am. Comm’n H.R., Report on the Situation of Human Rights in Argentina, OEA/Ser.L/V/II.49, Doc. 19 corr.1, (Apr. 11, 1980), <http://www.cidh.org/countryrep/Argentina80eng/toc.htm>.

the first two grandchildren in Chile, siblings, Anatole Boris and Victoria Eva Julien Grisonas.<sup>72</sup> This breakthrough was announced at a press conference organized by Amnesty International, which gained international media coverage.<sup>73</sup> This was a success and the beginning of an international network of victims' and human rights organizations that have been a pillar in the work of the Grandmothers.<sup>74</sup> As Keck and Sikkink conceptualize this process as "transnational advocacy network," describing "actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services."<sup>75</sup> They add that this network shows the ability of non-traditional international actors to mobilize information strategically, in a way that it is robust enough to gain leverage from formal organizations and governments. The case of the Grandmothers using information internationally in the context of Latin-American dictatorships and being able to find grandchildren overseas constitute a privileged example of "transnational advocacy network."

The Grandmothers' international alliances, mainly from Europe and the United States, were also crucial to putting into practice different international treaties that got ratified in this historical moment.<sup>76</sup> The Grandmothers also collaborated in the

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<sup>72</sup> The location in another country had to do with the organization of the "Plan Condor", an intelligence and coordination operation among the security services of the dictatorships of Argentina, Chile, Brazil, Paraguay, Uruguay and Bolivia, and the CIA.

<sup>73</sup> Amnesty International was the organization that, later on, presented a petition concerning the abduction of the children to the Argentinean dictatorship, that was signed by more than 14,000 people. Veiga, *supra* note 27, at 35.

<sup>74</sup> Working on the Pinochet case, Roht-Arriaza reaffirms the crucial role of the links between organizations all over the globe in facilitating information, mobilized public support by disseminating stories in the media and protesting publicly, and serving as a bridge between local victims and lawyers. NOAMI ROHT-ARRIAZA, *THE PINOCHET EFFECT. TRANSNATIONAL JUSTICE IN THE AGE OF HUMAN RIGHTS* (University of Pennsylvania Press, 2005).

<sup>75</sup> Margaret Keck & Kathryn Sikkink, *Transnational Advocacy Networks in International and Regional Politics*, UNESCO (1999), [http://isites.harvard.edu/fs/docs/icb.topic446176.files/Week\\_7/Keck\\_and\\_Sikkink\\_Transnational\\_Advocacy.pdf](http://isites.harvard.edu/fs/docs/icb.topic446176.files/Week_7/Keck_and_Sikkink_Transnational_Advocacy.pdf).

<sup>76</sup> In 1976, the Covenants on Civil and Political Rights (ICCPR) and the

creation of the UN Working Group on Enforced and Involuntary Disappearances in 1980; that was the first procedural mechanism on this theme.<sup>77</sup> The strategy of driving the fact-finding process into the international scene, and building secure networks, was bearing fruits.

In sum, the Grandmothers' experience during the dictatorship suggests that a successful path for a victims' organization should include assuming a defined way to enforce resistance; setting simple and broad goals to include the demands of a larger number of people, allowing the increase of victims' political influence and the reducing of the risk of group fragmentation; serving as an emotional support system for individual victims through group-life; cooperating in each of the members' claims and acknowledging each success as a common one in order to strengthen group-life; performing fact-finding activities in the most secure possible manner; tracing nets with the international media, globally renowned actors, and the international community to bring awareness to the human rights violations that are taking place in the country; connecting with other victims' organizations, human right organizations, and human rights-related institutions in other parts of the globe, as well as with different organizations throughout the country in order to gather efforts, achieve visibility, and increase victims' protection.

### *III. The Role of the Grandmothers in the Initial Moments of the Transitional Justice Process: Democracy and a Fragmented Process of Truth and Justice (1983-1989)*

The defeat of Argentina in the war against Britain for the sovereignty of the Islas Malvinas accelerated the already undermined power of the dictatorship. On December 10 of 1983, Raul Ricardo Alfonsín assumed the Presidency and gave birth to the official transitional justice process in Argentina.<sup>78</sup> This section explores how

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Covenant on Economic, Social, and Cultural Rights (ICESCR) entered into force, and the UN Human Rights Committee was set up, while the American Convention of Human Rights came into force in 1978. Sikkink, *supra* note 9, at 3.

<sup>77</sup> *Id.* at 5.

<sup>78</sup> Cesar Arrondo, *Raúl Alfonsín: su Política de Derechos Humanos*, UNION



the Grandmothers enforced truth, justice, reparations and guarantees of non-recurrence during the initial process of meaningful, though constrained and fragmented, measures of transitional justice. Here, the struggle of the Grandmothers concentrated on supporting those policies that were consistent with the transitional justice process, mainly the truth commission and the trial against the leaders of the dictatorship, while repudiating the steps back centered in the impunity laws.

Indeed, the Grandmothers understood the democratic process as a hopeful breaking point. In the words of Maria Ocampo de Vázquez: “we thought that with democracy everything would be sorted out and that my kids would come back... I was convinced that they were in a re-education center...”<sup>79</sup> This was unfortunately not the case: “We transmitted to the government that we were at their disposal, asking them to call us, but they did not call. We asked for audiences, but they did not receive us.”<sup>80</sup> However, with the broader possibilities of the organization that democracy allowed, the activity of the Grandmothers expanded in four measures of transitional justice in a collaborative but also critical relation to the government.

### *A. Truth*

The democratic Government of Raul Alfonsín immediately sought truth-telling measures through the establishment of a truth commission. Through executive order 187, the President created the National Commission on the Enforced Disappearance of Persons (CONADEP). It was composed of thirteen members and five secretaries, who interviewed victims and relatives “to help determine the whereabouts of the disappeared – a victim-tracing function.”<sup>81</sup> It

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CÍVICA RADICAL, <http://www.ucr.org.ar/historiadores-radicales/noticias/raul-alfonsin-su-politica-de-derechos-humanos>.

<sup>79</sup> Alihuen315, *supra* note 25.

<sup>80</sup> Di Marco & Brener, *supra* note 20.

<sup>81</sup> Pablo de Greiff, (Special Rapporteur), *Report of the Special Rapporteur on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, on its 24th session of the Human Rights Council*, ¶ 35, U.N. Doc A/HRC/24/42 (Aug. 28, 2013).

also worked on potential functions of victim-redress and prevention, through recommendations published in a final report called *Nunca Más* (Never Again) (1984).<sup>82</sup> Moreover, CONADEP contributed to the prosecutorial strategy in the compilation of evidence.<sup>83</sup>

CONADEP made contact with the Grandmothers,<sup>84</sup> which politically supported the work of the Commission.<sup>85</sup> One of the main actions that the Commission and the Grandmothers did together was requesting assistance from the Science and Human Rights Program at the American Association for the Advancement of Science (AAAS). The petition was aimed at training Argentinean professionals to perform exhumations and develop new methods to determine biological ties.

Regarding exhumations, Clay Snow from AAAS helped constitute and train an adequate team of forensics experts, trained in skills such as opening tombs, removing skeletons, finding out the cause of death, and determining if the person was pregnant and if she gave birth. That was called the Argentinean Team of Forensic Anthropology.<sup>86</sup> Responding to the specific request of the

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<sup>82</sup> De Greiff, *supra* note 81, at 37.

<sup>83</sup> *Id.* at 45; see also EMILIO CRENZEL, *MEMORY OF THE ARGENTINA DISAPPEARANCES: THE POLITICAL HISTORY OF NUNCA MÁS* (2012).

<sup>84</sup> As established in the CONADEP report, chapter four: "This delegation called Mothers and Grandmothers of Plaza de Mayo and made a disinterested offer to collaborate." (translated by author). Capítulo IV: Creación y organización de la Comisión Nacional sobre la Desaparición de Personas, NUNCA MÁS - INFORME CONADEP (Sept. 1984), [http://www.desaparecidos.org/nuncamas/web/investig/articulo/nuncamas/nmas4\\_01.htm](http://www.desaparecidos.org/nuncamas/web/investig/articulo/nuncamas/nmas4_01.htm) (last visited Jul. 22, 2016).

<sup>85</sup> Millar understands that truth-telling has a different impact in relation to the class extraction of the victims: while it can work as a catharsis for the local educated elites, it does not have that impact in the impoverished sectors that have not incorporated "the global discourses of healing by which the performance of truth-telling is thought to function." Gearoid Millar, *Assessing Local Evaluations of Truth Telling: Getting to "Why" through a Qualitative Case Study Analysis*, 4 INT'L J. TRANSNAT'L JUST. 477 (2010). The Grandmothers show a mixed background of upper middle class, middle class, and working class that receives the truth commission enthusiastically, although it has never been the core of their struggle which relied on prosecutions, finding the children, and non-recurrence.

<sup>86</sup> See ABEL MADARIAGA & CLARISA VEIGA, *Causa No 2947, Cámara De Casación Penal, "Landa, Ceferino Y Otros/Recurso De Casación": Capítulo I*

Grandmothers, Mary-Claire King from AAAS was the one in charge of the team that developed a technique to determine filiation of a child with the blood of his/her grandparents, the “grandparent rate” which ensures a 99.99% rate of efficacy. The geneticist Penchaszadeh, a member of the team that created the rate, affirms that the science of genetics is indebted to the Grandmothers for having encouraged this technique that interlaces genetics and human rights.<sup>87</sup> With this incentive, the Grandmothers created their filiation team.

However, the Grandmothers also expressed strong critiques of CONADEP. On the one hand, they pointed out that the Government selected its members without a process of formal consultation. The Grandmothers expressed that, as a result, there was no opportunity for vetting the commission’s members, although some of them were accused of being involved with the dictatorship. On the other hand, the Grandmothers – along with all the human rights organizations – sharply criticized that CONADEP supported “the two demon theory,” which claims that there were two belligerents’ sides in contention with one another (the armed organizations, and the dictatorship) that were equally responsible. On the contrary, the Grandmothers supported the position that the dictatorship committed human rights violations through the infrastructure of the State and against the civil society, and that there was no equal balance of power among these sides.<sup>88</sup>

### *B. Justice*

The other initial measure pursued by the newly democratic

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*Sala IV Confirma Aplicación De La Ley 24.410 En Los Delitos Permanentes o Continuados* [Cause No 2947, Criminal Chamber of Cassation, “Landa, Ceferino and Others / Appeal of Cassation”: Chapter I Room IV Confirms Application of Law 24,410 in Permanent or Continuing Offenses], 3 *LOS NIÑOS DESAPARECIDOS Y LA JUSTICIA: ALGUNOS FALLOS Y RESOLUCIONES* 101, 101-118 (2004).

<sup>87</sup> Nadia Luna, *El de Guido es un Caso Iconico por la Lucha que Ha Emprendido Estela*, *TECNOLOGIASUR* (Aug. 14, 2014), <http://www.unsam.edu.ar/tss/el-de-guido-es-un-caso-iconico-por-la-lucha-que-ha-emprendido-estela>.

<sup>88</sup> Veiga, *supra* note 27, at 54-55.

government was the search for justice through criminal prosecutions, through the nullification of the Amnesty Act 22.924 passed by the Military Junta before relinquishing power.<sup>89</sup> This proposal was not inspired by revenge, but by the strict relation between justice and guarantees of non-recurrence. In this sense, Mignone, Estlund, and Issacharoff state that:

[...] the punishment of the guilty is essential to any governmental policy that seeks to demonstrate to the military that Argentina will never again tolerate such contempt for humanity. In both Argentina and the rest of the world, those concerned with human rights await with hope and some anxiety the outcome of the bold project launched by the government and the people of Argentina.<sup>90</sup>

The original idea of Alfonsín was to enforce a military commission to judge those who planned, controlled, and organized the repressive operation. However, as the military expressed that there was nothing to be judged, the President passed two executive orders to initiate the criminal prosecution in a civilian court. The prosecution became a historical event that took place in 1985, only eighteen months after the end of the dictatorship, and was known worldwide as the Trial of the Juntas (Spanish, *Juicio a las Juntas*).<sup>91</sup> CONADEP handed all the files directly to the court, which allowed it to build cases rapidly. From more than 800 witnesses, 700 had previously testified in the CONADEP. The court convicted the most prominent figures of the dictatorship.<sup>92</sup>

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<sup>89</sup> *Justicia de Transición en Argentina* [Transitional Justice in Argentina], UNIVERSITY OF MINNESOTA HUMAN RIGHTS LIBRARY, <http://hrlibrary.umn.edu/research/argentina/justicia.html> (last visited Feb. 3, 2017).

<sup>90</sup> Emilio Fermin Mignone et al., *Dictatorship on trial: prosecution of human rights violations in Argentina*, 10 YALE J. INT'L L. 118, 150 (1984).

<sup>91</sup> *Justicia de Transición en Argentina*, *supra* note 89.

<sup>92</sup> Rebecca Lichtenfeld, *Accountability in Argentina 20 Years Later, Cases Studies Series*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (Aug. 2005), <https://www.ictj.org/sites/default/files/ICTJ-Argentina-Accountability-Case-2005->

The first reaction of the Grandmothers to the trials was great enthusiasm. As they only received two or three tickets to be in the courtroom, most of the Grandmothers waited outside the building, waiting for the sentencing. When the judges announced the convictions, the Grandmothers reacted with high emotion, claiming “long live justice!” However, they also criticized the trials for re-victimizing the victims. As Estela de Carlotto affirmed: “they were treated as if they were the aggressors.”<sup>93</sup> Moreover, as the trials did not incorporate the crime of child abduction, the judicial battle for restitution of the children continued to be driven exclusively by the Grandmothers. Indeed, the very first day of the democratic government, they made a judicial presentation demanding the restitution of an abducted girl. On December 13 of 1983, they achieved the first child restitution in Argentinean legal history, applying article 146 of the Criminal Code that condemns the abduction, retention or hiding of a child of less than ten years from their parents, guardian or person in charge.<sup>94</sup>

Later on and despite the governmental promise of bringing to justice all the people that had committed human rights violations, threats of a coup d’état forced the Government to curtail the prosecutions to pass impunity laws. The Grandmothers organized vigils at the entrance of the Congress to beg the congressmen unsuccessfully not to enact the laws.<sup>95</sup> In December of 1986, the Congress passed Act 23,492 (known as “Full Stop Act,” *Ley de Punto Final* in Spanish) that imposed a deadline to present new cases for crimes committed during the dictatorship – although the escalation of the cases following the possibility of civil parties to bring cases<sup>96</sup> irritated lower ranking officers that staged several

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English.pdf.

<sup>93</sup> *Las Frases que Definieron a Jorge Videla*, *supra* note 17; see also, Hauser *Eliminar*, *supra* note 17; Hauser *Abuelas*, *supra* note 17.

<sup>94</sup> MATILDE HERRERA & ERNESTO TENEMBAUM, *La Identidad De La Justicia* [The Identity of Justice], in IDENTIDAD, DESPOJO Y RESTITUCIÓN [Identity, Dispossession and Restitution], 121-3 (2007), [https://www.abuelas.org.ar/archivos/publicacion/identidad\\_restitucion.pdf](https://www.abuelas.org.ar/archivos/publicacion/identidad_restitucion.pdf).

<sup>95</sup> Di Marco & Brener, *supra* note 20.

<sup>96</sup> The Argentinean Criminal Procedure Code provides the victims and their relatives with the legal possibility of taking on an active role in criminal

rebellions. As a result, Alfonsín passed the Act 23,521 (known as “Due Obedience Act,” *Ley de Obediencia Debida* in Spanish). This law got everybody below the rank of Colonel off the hook.<sup>97</sup>

The Grandmothers condemned these decisions and actively emphasized the need to prosecute the authors of human right violations, and rejected the notions of reconciliation and forgiveness. In their multitudinous demonstrations, people shouted: “Neither forget nor forgive.” Gandsman states that this victims’ demand for “absolute and non-negotiable retributive justice” and their rejection of reconciliation – which is understood as “generally associated with apologists and defenders of the dictatorship” – could be an obstacle to transitional justice.<sup>98</sup> Conversely, Saffon and Uprimny defend this posture theoretically, stating that “forgiveness is not necessary, and it is sufficient to assure the recognition of all members of the polity – including former enemies – as co-citizens.”<sup>99</sup>

The impunity laws had an exception: they did not apply to crimes related to the identity suppression of the children of the “disappeared” because those offenses were still being committed. Until the children were identified, their identity would still be suppressed. Thus, the role of the Grandmothers became indispensable: several professionals from different disciplines joined the organization. Those included psychologists who helped the restored children during the restitution process, as well as lawyers who prepared the legal strategies.<sup>100</sup> The Grandmothers did not limit their actions to collaboration with the public prosecutors, but they

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prosecutions, through the institution of the “civil party” (*querellante* in Spanish).

<sup>97</sup> While Mignone et al., *supra* note 21, encouraged the prosecution of the military under civil courts, Carlos Santiago Nino replied that Alfonsín “full stop” acts were necessary to avoid a military reaction and the violation of the prohibition against ex post facto laws and bills of attainder, while the Trial of the Juntas was a relevant step to reinforce the rule of law in the country. Carlos Santiago Nino, *The Human Rights Policy of the Argentine Constitutional Government: A Reply*, 11 YALE J. INT. L. 217 (1985).

<sup>98</sup> Ari Edward Gandsman, *Retributive Justice, Public Intimacies and the Micropolitics of the Restitution of Kidnapped Children of the Disappeared in Argentina*, 6 INT’L J. TRANSNAT’L JUST. 424 (2012).

<sup>99</sup> Saffon & Uprimny. *supra* note 5, at 381.

<sup>100</sup> Veiga, *supra* note 27, at 59.

constituted themselves as a civil party.<sup>101</sup> This legal figure allowed them to propel the process, provide evidence, argue, and appeal. From that position, they demanded that as long as the identity of their grandchildren continues to be suppressed, the crimes of appropriation were still being committed.<sup>102</sup> In other words, prosecution of the appropriation of the children of the disappeared constituted a way to bypass impunity.

In the development of those prosecutions, Gandsman<sup>103</sup> describes three main fact-finding challenges that the Grandmothers had to overcome: to find the children, to prove that they were who they claimed to be and to convince the judges to restore the custody. While the first two challenges were successfully achieved through their investigations and the rate developed by AAAS, the third one remained the most problematic.

The Grandmothers have a strong position about a non-negotiable "right to identity," which causes conflicts in those cases in which the person at issue does not want to do the blood test, or – once the results are there – does not want to live with their biological family. In most of the cases, the reticence of the person to do the test has to do with the fact that it will become evidence against their appropriators.

This could be a problem in cases in which the person is still attached to them ("incomplete" restitutions).<sup>104</sup> The Grandmothers understand that the person who is suspected of being appropriated must be compelled to do the test.<sup>105</sup> The Grandmothers are also

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<sup>101</sup> The Criminal Procedure Code of Argentina allows the intervention of the victims with a legal assistance as a plaintiff that has similar attributions than the ones that the official Prosecutor has. Its name is "*parte querellante*." Cód. PROC. CIV. Y COM. [COD. CIV. Y COM.] [CIVIL & COMMERCIAL CODE] art. 40-114 (1991) (Arg.).

<sup>102</sup> Madariaga & Veiga, *supra* note 86.

<sup>103</sup> Gandsman, *supra* note 98.

<sup>104</sup> Grandmothers use the term 'restitution' to describe the process by which their grandchildren's biological identities are recovered, because they are not only restored to their biological families, but also they are being 'restored to themselves.' *Id.*

<sup>105</sup> Compelling tests have been judicially disputed and decided for the Grandmothers. See Vazquez Sarmiento, *Juan Carlos y otros/sustracción de un*

committed to the non-negotiating prosecution of the appropriators. Even if the abducted children plead to the Grandmothers not to present charges against their appropriators, they have always done so. They have presented charges even in cases in which doing it became an obstacle to reassume the grandmother-grandchild's relationship. The Grandmothers are firm in the position that no measure of impunity should be tolerated in cases of human rights violations. Therefore, they accept the sorrowful consequences that, after years of searching, the person does not accept these conditions and resists building a relationship with the grandmother.

However, it is relevant to point out that the cases in which this is the final chapter of the story are very exceptional. Indeed, Gandsman based his reasoning on the story of Guillermo, who was very angry with the Grandmothers when he received the news that he was an abducted child. He was still attached to his appropriators and furious with the Grandmothers because, on the same day he learnt the truth, his appropriators were denounced by them and apprehended.

Years later, the situation has become completely different, and he entirely supports the posture of the Grandmothers. In the third hearing of the trial against his appropriators, he was able to recall that, during his childhood, his appropriator used to bring him to the detention camp where his mother had been tortured. He also expressed that the breaking point for him was when he was visiting his appropriator in prison and, while he was having lunch with other former members of the army, one of them laughed about how strong his biological father had been while being tortured. He then realized that he was in the wrong place, and he restored his bonds with his biological family. After that, his appropriator threatened him and assured him that, as soon as he got out of jail, he would shoot Guillermo as well as his two grandmothers and his sister. In the end, the truth appeared to win even in this case.<sup>106</sup>

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*menor* (2000) in Madariaga & Veiga, *supra* note 86, at 221; see also Luciano A. Hazan, *Los análisis genéticos después del fallo "Vázquez Ferrá" de la Corte Suprema de Justicia de la Nación*, in *DERECHO A LA IDENTIDAD Y PERSECUCIÓN DE CRÍMENES DE LESA HUMANIDAD*, 283, 283-307 (2004).

<sup>106</sup> *Para Empezar a Hacer el Duelo* [To Start Dueling], Abuelas de Plaza de



*C. Reparations*

The Grandmothers also exercised a relevant role in the demand for reparations. The Basic Principles establish that reparations “include the following forms: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.”<sup>107</sup>

*D. Restitution*

This form of reparation was the first goal of the Grandmothers. The 120 restored grandchildren had access to their actual identity, both by reconnecting with their biological families and by receiving a new national document of identity with the corresponding name, surname, and date of birth.

*E. Compensation*

In 1984, CONADEP was the first organization that proposed economic aid for the relatives of the victims, but the first reparation program was not created during Alfonsín’s government.

*F. Satisfaction*

This type of reparation includes different forms: the cessation of continuing violations, restitution, search for the whereabouts of the disappeared and search for the bodies of those killed. In the Argentinean case, restitution, cessation of the violation, and search for the children abducted can be considered a unique goal for which the Grandmothers have fought and a pillar of their independent

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Mayo - Sitio oficial [Grandmothers of Plaza de Mayo – Official Site], FACEBOOK (May 16, 2016), <https://www.facebook.com/178051892255167/photos/a.252390764821279.61353.178051892255167/1093286207398393/?type=3&theater> (“I need to find the remains of my parents and do all the ritual, to stop dueling them.”)

<sup>107</sup> G.A. Res. 60/147, U.N. Doc. A/Res/60/147, at ¶ 18 (Mar. 21, 2006).

working pattern.

### *G. Guarantees of Non-Recurrence*

#### *1. Legislation*

The Grandmothers achieved exclusion of children of the disappeared from mandatory military service. The Argentinean Foreign Ministry invited them to collaborate in the drafting of the Convention of the Rights of the Child (November 1989). The Grandmothers proposed and got articles seven, eight and eleven incorporated – known as “Argentine clauses” – related to the right to identity.<sup>108</sup> In other words, through the work of the Grandmothers, all countries of the world, with the few exceptions of the United States and Somalia, are committed to respecting the right to identity for children.

#### *2. Dissemination, Consciousness, and Empowerment of Civil Society Regarding the Relevance of Human Rights Respect*

The cultural struggle of the Grandmothers to ensure the non-repetition of human rights violations committed during the dictatorship was present from the very beginning of the organization. Particularly important was the epistemological fight in the media to replace the expression “historical parents” that several journalists linked with the dictatorship to refer to the couples that took the sons and daughters of the “disappeared.” The Grandmothers insisted on the need to call them by the name that they deserved: “abductors” or “appropriators.”

In sum, already in democracy, the independent agenda of the Grandmothers focused on finding their grandchildren, prosecuting

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<sup>108</sup> *History of Abuelas de Plaza de Mayo* [History of the Grandmothers of Plaza de Mayo], ABUELAS DE PLAZA DE MAYO, <https://abuelas.org.ar/idiomas/english/history.htm>.

the people involved in the human rights violations, achieving reparations in a broad sense, and creating acknowledgment of the historical fact to ensure non-recurrence. This position can be characterized as transitional justice as part of traditional justice.<sup>109</sup> They had a tough but materially possible objective which was to find their children, which also operated as a way of bringing those responsible for the disappearances and the abduction of children to justice, and as a way of promoting national acknowledgment of the dictatorship. This is an enormous and transformative political and legal aim but susceptible of being framed in acceptable terms for a capitalist democracy through the traditional justice criminal procedures.

Therefore, the Grandmothers' experience during the "fragmented transitional process," suggests that a successful strategy for other victims might rest on the preservation of an independent work pattern that can be followed regardless of the support of the government; denouncement and dissemination of the transitional justice fragmentation; call for international support to overturn the retrogression of the process or to enforce what has not been done; promotion of an international and local network formed by victims' organizations, human rights organizations, human rights-related institutions, and local social movements; and civil society's engaging in the struggle.

#### *IV. The Role of the Grandmothers During Impunity: When Democracy Means Injustice, and Reparations Create Divisions Among Victims' Organizations (1989-2003)*

This section explores how the Grandmothers enforced Truth, Justice, Reparations, Non-Recurrence during the two presidencies following Democratic President Carlos Menem, that can be characterized as a period of impunity. The Grandmothers carried on a substantial involvement in confrontational accusations of the politics of impunity, particularly through the coordination of demonstrations with other civic organizations and the civil society.

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<sup>109</sup> Bell & O'Rourke, *supra* note 42, at 35-37.

They also continued their independent pattern of work, through fact-finding to search for their grandchildren and dissemination of their struggle and the facts of the dictatorship. However, they particularly concentrated their efforts on the judicial strategy oriented toward prosecuting the military who participated in the children's abduction. Going to the courts was the way of overcoming impunity in the political sphere and kept on driving the transitional justice process. The study of the Grandmothers' activity during this period may show that it is also possible that times of impunity help victims to strengthen their organizations.

### *A. Truth*

Because the truth commission took place in the first moments of the democratic process, during the following periods the search of truth was related to the trials that were still taking place, as well as to the work of academics and victims' organizations.

### *B. Justice*

Menem pardoned the civilians and military agents who had been convicted in the 1983-1989 trials, including the leaders sentenced in the 1985 Junta Trial, through Executive Orders 1002, 1004 and 1005. When announcing the pardons on the balcony of the government palace, he stated that they were good news because they would allow the reconstruction of the nation in peace, freedom, and justice. The Grandmothers organized major demonstrations with other human rights organizations where the people screamed all together "noooooo" (to the pardons), and "traitor, traitor, traitor! (for the president). Maria Ocampo de Vázquez remembers the Grandmothers' expectations about those mobilizations: "We thought that Mr. Menem would have a bit of heart... but it was not useful at all."<sup>110</sup>

An aspect that was probably crucial to morally sustaining the

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<sup>110</sup> Alihuen315, *supra* note 25.

Grandmothers in this historical moment and to continue working tirelessly regardless of the impact of the impunity measures was the support of civil society. In the public demonstrations, the traditional singing was “Mothers/Grandmothers of the square, the people hug you” (*Madres/Abuelas de la Plaza, el pueblo las abraza*, in Spanish). Indeed, the demonstrations were called “Marches of Resistance,” under the motto “resistance is a form of combating,” showing how the struggle against impunity was the piece of the puzzle that unified civic society and the human rights movements all together.

In relation to the judicial cases for the abduction of children, the fact-finding process was facilitated by the creation of the National Committee for the Right to Identity (CONADI in Spanish) in 1992, only possible because of the impulse of the Grandmothers.<sup>111</sup> CONADI assisted young adults that had doubts about their identities by investigating all existing documents and referring them for blood analysis. Blood analysis was conducted by the National Bank of Genetic Data (BNDG in Spanish).<sup>112</sup> All these legal innovations at the local level served not only to multiply the possibilities to finding those children abducted during the dictatorship but also to help in cases of kidnapped children and trafficking.

### *C. Reparations*

The only transitional justice measure enforced by Menem’s government was compensation as part of the reparations measures that, as it was accompanied by impunity, was controversial among the human rights movement.<sup>113</sup>

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<sup>111</sup> Lichtenfeld, *supra* note 92.

<sup>112</sup> History of Abuelas de Plaza de Mayo, *supra* note 108.

<sup>113</sup> Law No. 24.043, Nov. 27, 1991, B.O. (Arg.). <http://www.desaparecidos.org/nuncamas/web/document/nacional/ley24043.htm>; see also, J.J.A., *El pago de indemnizaciones en Buenos Aires divide a las familias de los desaparecidos*, EL PAIS DIGITAL (Aug. 22, 1997), <http://www1.udel.edu/leipzig/texts3/elc22087.htm>.

*D. Compensation*<sup>114</sup>

This first reparation program was created in 1991 and was destined for those who had suffered illegal detentions. In 1994, the Government offered reparations also for the relatives of the “disappeared” and of those murdered during the dictatorship. The 1994 reparation program caused a rift between the Grandmothers and Madres de Plaza de Mayo–Linea Fundadora on one side, and Asociación de Madres de Plaza de Mayo on the other. The latter rejected the economic reparations and insisted in their claim “alive they have been taken, alive we want them” (in reference to their “disappeared” sons and daughters).<sup>115</sup>

The Grandmothers and Madres de Plaza de Mayo –Linea Fundadora accepted the economic reparations, considering them a

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<sup>114</sup> The Basic Principles establish:

*Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

G.A. Res. 60/147, *supra* note 107, at 20.

<sup>115</sup> In this line, Claire Moon states, “reparation can also function to placate victim demands for criminal justice and to regulate the range of political and historical meanings with which the crimes of the past are endowed.” Claire Moon, *Who’ll Pay Reparations on My Soul? Compensation, Social Control and Social Suffering*, 21 SOC. LEGAL STUD. 187 (2012). This appears to be accurate when reparations are the one, isolated measure of the transitional justice process, as it happened in Argentina during Menem’s government. The Argentinean experience, however, demonstrates reparations can be valuable when they are part of the complete process based also in truth, justice, and guarantees of non-recurrence. Moreover, reparations can be broader than material compensation for individual victims, as the economic support of the Grandmothers’ organization to pursue the search of their grandchildren demonstrates.

right of the victims.<sup>116</sup> Moreover, in 1999, the Grandmothers promoted the creation of a program of compensation for the children that were born in detention camps (Act 25,914) in 2004.<sup>117</sup> Indeed, as the UN Special Rapporteur pointed out, reparations should be considered as a remedy and indeed as a measure to ensure guarantees of non-recurrence “by strengthening the hand of victims to claim redress for the past and future violations and to enforce their rights more assertively”.<sup>118</sup> However, De Greiff also highlights that an isolated program of reparations without connection with the other transitional justice measures goes against the spirit of the action.<sup>119</sup>

### *E. Satisfaction*

Restitution, cessation of the violation and search for the abducted children continued to be encouraged by the Grandmothers also in this period, regardless of the impunity pursued by the government, as part of their independent working pattern.

### *F. Guarantees of Non-Recurrence*

These were expanded during the impunity period and were conducted directly by the Grandmothers, regardless of official support.

#### *1. Legislation*

At the local level, the Grandmothers promoted not only the

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<sup>116</sup> Veiga, *supra* note 27, at 87.

<sup>117</sup> These initiatives have also been criticized by the Mothers of Plaza de Mayo. See Juan Mario Solís Delgadillo, *Dos Visiones, Dos Historias De La Plaza De Mayo. Estrategias de Abuelas y Madres para la Articulation de Politicas Publicas De La Memoria en la Argentina*, INSTITUTO DE IBEROAMERICA 400, 400-450 (2009-2010).

<sup>118</sup> De Greiff, *supra* note 14, ¶ 8.

<sup>119</sup> *Id.*

creation of CONADI but also the promulgation of a new Adoption Act (1997) that incorporated the right to information about the biological origins of the child.

*2. Dissemination, Consciousness, and Empowerment of Civil Society Regarding the Relevance of Human Rights*

The cultural struggle of the Grandmothers to ensure the non-repetition of the human rights violations committed during the dictatorship and the impunity that followed led to a breaking point that inaugurated a new perspective of concentrated efforts to promote consciousness in civil society in 1995. Then, the Supreme Court limited the case of one of the grandchildren and did not express any opinion on the obligatory nature of the genetic analysis; the Grandmothers became aware of the need for a national campaign on the right to identity and respect for human rights generally and, in particular, among young people.<sup>120</sup>

In 1996, they prepared the first art exhibition called “The Labyrinth” (*El Laberinto* in Spanish) created by the restored grandchildren.<sup>121</sup> From then on they incorporated video, modern art, radio, TV programs, books, theater and music. The Grandmothers travelled through schools all over the country and they prepared in conjunction with the Ministry of Education a video called “Port of Departure” (*Puerto de Partida* in Spanish) to develop dissemination tools on the right to identity.<sup>122</sup>

In sum, the Grandmothers’ experience during Impunity shows that other victims’ organizations in a similar political framework should concentrate their efforts on the international and local denouncement and dissemination of the impunity policies, the

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<sup>120</sup> Veiga, *supra* note 27, at 106-107.

<sup>121</sup> *Id.* at 120. The exhibition consisted in a black curtain with the numbers “1976” (the starting point of the dictatorship) and from there the visitors had to walk through a path with toys (representation of the forceful entries in their houses), planes (representation of the “flights of death,” the World Cup (representation of impunity) among other scenes that came from the memories of the grandchildren.

<sup>122</sup> Veiga, *supra* note 27, at 172.



call for international support to overturn the impunity policies; and the engagement of civil society in the struggle, with the double objective of enhancing their organization by gathering support from the population, and reducing the impact of impunity over the guarantees of non-recurrence by spreading acknowledgment of the committed crimes.

*V. The Role of the Grandmothers During Official Encouragement of Transitional Justice Measures:  
When Victims Take Part in Partisan Politics (2003-2015)*

In 2003, after a deep political and economic crisis in 2001, the national policy approach to human rights took a significant twist. President Nestor Kirchner assumed the Presidency with only 27% of the votes, in the context of lack of legitimacy of politicians, and unprecedented social unrest. Kirchner took an unusual symbolic decision: in a framework that demanded to address urgent decisions on a vast number of topics, he decided to meet the Grandmothers and the Mothers five days after his election. Since then and until the end of Cristina Fernandez de Kirchner's second term, the Grandmothers faced a transformation from challengers of the past governments to supporters. This period awoke the discussion about victims' inclusion in partisan politics, and if this affects the work of the organization making it arguably officially dependent (from 2003 to today).

This section shows that, if preserving an independent agenda, the recognition and support of human rights policies can be considered a success for the victims. During the Kirchner governments, the Grandmothers enforced Truth, Justice, Reparations, Non-Recurrence from a role of co-leaders of official policies on human rights, which allowed them to multiply their work. Moreover, it seems that the prior experience of the Grandmothers as drivers of the transitional justice process has served as a platform and a basis for state policy. The collaboration between the Grandmothers and other victims' organizations with the Kirchner government seems to have facilitated the state's embracing of human rights as the core of

the national political agenda.

By this logic, Estela de Carlotto affirmed: “I think that there are good moments, and they have to be capitalized upon, we have a government that has the political decision in this sense, that it has done a lot of things that we have unsuccessfully demanded for a long time.”<sup>123</sup> And then she added: “if a government policy is right; we have to support it, which does not mean supporting the political party behind it. We support a government that does things, that opens the door for us, that asks us, and that helps us economically, always with accountability mechanisms that make it clear how we use the money.”<sup>124</sup>

The Grandmothers continued their independent pattern of work and were able to reinforce it by capitalizing on political decisions that favored the process of transitional justice. As the International Center for Transitional Justice recognizes, the government initiatives did not co-opt the human rights movements, but encouraged efforts that had been raised by them for long decades: “these initiatives are the result of work by victim groups, civil society organizations, and individuals who set up a strong base of information and never stopped their fight for justice for the victims of Argentina’s military dictatorship.”<sup>125</sup>

### *A. Truth*

The search of truth was related to the trials –that had a new uprising during this period –, as well as with the work of academics and victims’ organizations.<sup>126</sup>

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<sup>123</sup> Di Marco & Brener, *supra* note 20.

<sup>124</sup> *Carlotto revela sus diferencias “ideológicas” con Bonafini* [Carlotto reveals “ideological” differences with Bonafini], MDZ (Aug. 18, 2014), <http://www.mdzol.com/nota/552217-carlotto-revela-sus-diferencias-ideologicas-con-bonafini>.

<sup>125</sup> Lichtenfeld, *supra* note 92.

<sup>126</sup> Several universities focused their research on human rights issues. See Universidad Popular de Madres de Plaza de Mayo [Popular University of Mothers of Plaza de Mayo], ASOCIACION MADRES DE PLAZA DE MAYO, <http://www.madres.org/navegar/nav.php?idsitio=2&idindex=29&idcat> (last visited

*B. Justice*

During Nestor Kirchner's government, the Congress passed a bill that nullified the Full Stop and Due Obedience Acts and reopened the trials against the military agents involved in the last dictatorship. On June 14 of 2005, the Supreme Court stated that the Full Stop and Due Obedience Acts were unconstitutional in a case initiated by the Grandmothers in 1998. This allowed the prosecution of all the human rights violations committed during the dictatorship.<sup>127</sup> The Grandmothers supported the expansion of the prosecutions, constituting itself as a claimant party in several trials, and providing information. With a scientific innovation that allowed using saliva instead of blood to compare DNA of the grandchildren in the trials, the legal strategy of the Grandmothers was reoriented toward obtaining a judicial order to enter the houses to seize any element that contained saliva, such as a toothbrush, avoiding compulsory extraction of blood.<sup>128</sup>

In accordance with the claim by the UN Special Rapporteur that "the promotion of the rights of victims should call for allowing them to participate in the very formulation of prosecutorial strategies,"<sup>129</sup> the Grandmothers worked with the government on the

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Apr. 2, 2017); NATIONAL UNIVERSITY OF SAN MARTIN [National University of San Martin], <http://www.unsam.edu.ar/ciep> (last visited Apr. 2, 2017).

<sup>127</sup> In 1998, the Grandmothers presented a claim against Julio Hector Simón and Juan Antonio Del Cerro for the abduction, retention, and suppression of identity of Claudia Victoria Poblete and obtained their indictment. In 2000, the Center of Legal and Social Studies (CELS) presented an exception of unconstitutionality of the Full Stop and Due Obedience Acts with respect to a claim for the abduction of the parents of Claudia. Finally, in 2005, the Supreme Court affirmed the unconstitutionality of the Acts in the case. Corte Suprema de Justicia de la Nación [CSJN][National Supreme Court of Justice], 14/6/2005, "*Simon, Julio Hector y otros s/privación ilegítima de la libertad, etc. – causa No. 17.768 –*" S. 1767. XXXVIII (2005) (Arg.). This case is based on Argentina's international obligations and on the case of *Barrios Altos* of the Inter-American Court of Human Rights.

<sup>128</sup> The first case was the one of Natalia Alonso. See *Argentina: The Right to the Full Truth*, AMNESTY INTERNATIONAL 1, 15 (Jul. 1995), <https://www.amnesty.org/download/Documents/176000/amr130031995en.pdf>.

<sup>129</sup> De Greiff, *supra* note 7, ¶ 96.

creation of a specialized prosecutorial team as part of the General Attorney's Office to be entirely devoted to the prosecution of child appropriation cases, with the aim of devoting specialist treatment to these crimes.<sup>130</sup>

All these steps encouraged and reinforced the goals of the Grandmothers: 660 former military personnel have been convicted, more than 130 ex-clandestine detention centers have been identified, and there are more than 35 facilities destined to preserve memory of the crimes of the dictatorship,<sup>131</sup> and, in the most sensitive aspect of their struggle, the search of the missing grandchildren has obtained favorable results: in June 2016, the Grandmothers found Grandchild number 120, whose parents are still alive.<sup>132</sup>

### *C. Reparations and Restitution*

The Grandmothers themselves promoted the creation of a historical reparation fund for the search and restitution of abducted children (Act 25.974/2004).<sup>133</sup> This example confirms that economic and cultural rights have to do not only with material income but also with capacity in political and civil rights. The Grandmothers used the funds they received not only for their personal support but also as a

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<sup>130</sup> Res. PGN 435/12 (Arg.), Unidad especializada para casos de apropiación de niños durante el terrorismo de Estado [Specialized unit for cases of child appropriation during State terrorism], <https://www.mpf.gob.ar/lesa/unidad-especializada-para-casos-de-apropiacion-de-ninos-durante-el-terrorismo-de-estado> (last visited Jul. 22, 2016) (created by the Attorney General of the Nation within the scope of the Office of the Prosecutor for Crimes against Humanity).

<sup>131</sup> *Discurso a 40 Años del Golpe Genocida* [Speech 40 Years After the Genocidal Strike], ABUELAS DE PLAZA DE MAYO (Mar. 24, 2016), <https://www.abuelas.org.ar/noticia/discurso-a-anos-del-golpe-genocida-368>

<sup>132</sup> *Luis Maulín Pratto, el Nieto 120, Pudo Rearmar la Historia Que Le Robaron* [Luis Maulin Pratto, Grandson 120, Rearmed the History That Was Stolen], ABUELAS DE PLAZA DE MAYO (Jun. 29, 2016), <https://www.abuelas.org.ar/noticia/jose-maulin-pratto-el-nieto-pudo-rearmar-la-historia-que-le-robaron-613>.

<sup>133</sup> See *Localización y Restitución de Niños Secuestrados o Nacidos en Cautiverio*, INFOLEG (Dec. 28, 2004), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/100000-104999/102405/norma.htm>.

tool to consolidate the search for their children within a more robust framework.

#### *D. Rehabilitation*

In 2009, for the very first time in the transitional justice process, the government developed – with the support of the Grandmothers – a rehabilitation program. The Center for the Assistance of Victims of Human Rights Violations within the Ministry of Justice was created to provide psychological support to the victims of the dictatorship.<sup>134</sup> The Center supports the victims during the forensic examinations for the quantification of the harm suffered to determine the amount of the compensation. They also provide assistance to the victims, witnesses, and claimant parties during the trials and, in particular, during testimony to avoid re-victimization.

#### *E. Satisfaction*

Restitution, cessation of the violation and search for the abducted children continue to be encouraged by the Grandmothers as part of their independent working pattern. This includes a great deal of work of the Grandmothers for the disclosure of the truth, by claiming access to the secret files of the Argentinean Military Forces.<sup>135</sup> In 2004, on his first commemoration of the dictatorship as a President, Kirchner gave a public apology, which had been demanded by the Grandmothers for a long time. On that occasion, Kirchner stated: “I apologize in the name of the National

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<sup>134</sup> See SECRETARÍA DE DERECHOS HUMANOS, <http://www.jus.gob.ar/derechos/humanos/atencion-al-ciudadano/centro-de-asistencia-a-victimas-de-violaciones-de-ddhh-dr-fernando-ulloa.aspx> (last visited Jul. 22, 2016).

<sup>135</sup> Abuelas de Plaza de Mayo pedirán apertura de archivos de los militares argentinos [Grandmothers of Plaza de Mayo will request opening of archives of the Argentine military], *EL UNIVERSO*, <http://www.eluniverso.com/2004/04/08/0001/14/1665BC9110BC4A63B23BCD091FD65F23.html> (last visited Mar. 12, 2017).

Government for the shame of having to be silent about all the atrocities during 20 years of democracy.” In the same act, he ordered to remove the pictures of the dictators from the government offices.<sup>136</sup>

In 2014, the Grandmothers achieved the disclosure of the secret files in the Vatican, by order of Pope Francis. These files contained relevant information to find the abducted grandchildren because the Catholic Church had important ties to the Argentinean dictatorship.<sup>137</sup> The Grandmothers also promoted the amendment of human resources data where it was indicated that the *disappeared* stopped working because of “abandonment” of the job.<sup>138</sup> To avoid these falsifications and recover the reputation of those who stopped working because of their *disappearance*, the government with the support of the Grandmothers ordered to amend those files with the provision: “The true cause of cessation was the disappearance or murder as a consequence of the state terrorism.”<sup>139</sup> Although Estela

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<sup>136</sup> *Creación del Museo de la Memoria, Néstor Kirchner en la ESMA en 2004* [Creation of the Museum of Memory, Néstor Kirchner at ESMA in 2004], CRISTINA FERNÁNDEZ DE KIRCHNER (Mar 24, 2004), <http://www.cfkargentina.com/museo-de-la-memoria-nestor-kirchner-en-la-esma> (last visited Jul. 22, 2016). Some voices criticized that the President should have mentioned that the trials and other policies that took place during Alfonsín’s government were also measures against impunity.

<sup>137</sup> *Por pedido de Abuelas, el Vaticano abrió sus archivos secretos* [At the request of Grandmothers, the Vatican opened its secret archives], CLARIN (Nov. 13, 2014), [http://www.clarin.com/politica/papa-estela\\_carlotto-secretos-vaticano-enrique\\_angelelli\\_0\\_ry2dbZO9wQl.html](http://www.clarin.com/politica/papa-estela_carlotto-secretos-vaticano-enrique_angelelli_0_ry2dbZO9wQl.html); see also HORACIO VERBITSKY, EL SILENCIO: DE PAULO VI A BERGOGLIO. LAS RELACIONES SECRETAS DE LA IGLESIA CON LA ESMA [The Silence: From Paul VI to Bergoglio. The Secret Relations of the Church with ESMA] (2005) (analyzing the ties between the church and the dictatorship).

<sup>138</sup> *Cristina Impulsa la Reparación de Legajos de Empleados Públicos Desaparecidos en la Dictadura* [Cristina promotes the repair of files of public employees who disappeared in the dictatorship], TELAM (Mar. 22, 2013), <http://www.telam.com.ar/notas/201303/11255-cristina-impulsa-la-reparacion-de-legajos-de-empleados-publicos-desaparecidos-en-la-dictadura.html>.

<sup>139</sup> “This public policy was inspired by the case of the restored grandchild Juan Cabandie, whose father worked in a public company during the dictatorship and, though he was kidnapped and disappeared, his work file pointed out that he abandoned his job. For the letter of the executive order, 1199/2012 that disposes

de Carlotto is reluctant to receive commemorations and tributes for herself, a Maternity Hospital was named as “Maternidad de Moreno Estela de Carlotto” in 2013.<sup>140</sup> In 2015 Cristina Fernandez de Kirchner announced that the 100 peso bill (the most valuable one) would have the image of Abuelas and Madres de Plaza de Mayo.<sup>141</sup>

### *F. Guarantees of Non-Recurrence*

The UN Special Rapporteur insists on the need to diversify the instruments, to encourage the participation of the victims in the creation and implementation of these mechanisms,<sup>142</sup> and to make them serve “a preventive function [to] be described as a positive reinforcement of future performance.”<sup>143</sup> The Grandmothers carried

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of the amendments, *see* Desaparición forzada de personas, Exec. Order No. 1199 (2012).

<sup>140</sup> *Inauguración de maternidad Estela de Carlotto en Moreno: Palabras de la Presidenta de la Nación* [Inauguration of maternity Estela de Carlotto in Moreno: Words of the President of the Nation], CASA ROSADA (Jul. 20, 2013), <http://www.caserosada.gob.ar/informacion/discursos/26597-inauguracion-de-maternidad-estela-de-carlotto-en-moreno-palabras-de-la-presidenta-de-la-nacion>. Others forms of satisfaction addressed in the Basic Principles are the “judicial and administrative sanctions against persons liable for the violations” that are analyzed as part of the seeking of justice in the correspondent section and “inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels” that will be analyzed as part of the guarantees of non-recurrence.

<sup>141</sup> *Desde Abuelas celebraron el nuevo billete de 100 pesos que anunció la Presidenta* [Since Grandmothers celebrated the new 100 peso bill announced by the President], TELAM (Mar. 27, 2015), <http://www.telam.com.ar/notas/201503/99500-abuelas-de-plaza-de-mayo-rosa-roisinblit-apoyo-nuevo-billete-madres-de-plaza-de-mayo-anuncio-gobierno-nacional-cristina-fernandez-de-kirchner.html>.

<sup>142</sup> Among others, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence highlighted the following relevant measures to enforce the guarantees of non-recurrence: “reforming institutions, disbanding unofficial armed groups, repealing emergency legislation incompatible with basic rights, vetting security institutions and the judiciary, protecting human rights defenders and training members of security institutions in human rights.” De Greiff, *supra* note 14, ¶ 7.

<sup>143</sup> *Id.* at ¶ 18.

out a strong role in the implementation of guarantees of non-recurrence through the promotion of different forms of institutional reform during these years.

### *1. Vetting*

As the UN Special Rapporteur indicated, Argentina ended up with an especially interesting form of “indirect vetting” in which “civil society organizations gained authorization to make submissions to debates concerning promotions to the highest ranks in the security sector.”<sup>144</sup> In other words, a system that promotes voluntary retirements of those “candidates to promotion to the highest ranks who had murky pasts could be sure that NGOs would make submissions to the debate that could not be ignored.”<sup>145</sup>

In light of this, though “quite ‘indirect’”, this is nonetheless an effective form of vetting.”<sup>146</sup> The Grandmothers has been a central actor in this “indirect vetting”. When in 2003 the Head of the Army, Ricardo Brinzoni, pronounced a discourse praising the dictator Galtieri in his burial, the Grandmothers along with other human right organizations demanded his expulsion. They stated that this speech expressed the sense of corporative impunity that persisted in the Army, against the enforcement of human rights. When Nestor Kirchner assumed the Presidency of Argentina, he removed Brinzoni and the other heads of the military and police forces.<sup>147</sup>

### *2. Legislation*

In particular, from the creation of the Human Rights Council in the United Nations in 2006, Argentina took part in it and, with the permanent collaboration of the Grandmothers, proposed different

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<sup>144</sup> *Id.* at ¶ 44.

<sup>145</sup> *Id.*

<sup>146</sup> De Greiff, *supra* note 14, ¶ 7.

<sup>147</sup> Veiga, *supra* note 27, at 169.



measures to be implemented in the international framework.<sup>148</sup> As an example, in 2006, the Grandmothers in conjunction with the Argentinean Government, encouraged the international ratification of the International Convention Against Enforced Disappearances.<sup>149</sup> In a panel celebrated at the United Nations with the aim of pushing for the ratification, Carlotto toughly expressed that “the enforced disappearance is a responsibility of a government by action and also by the lack of action. By action is when a government kidnaps, kills, or disappears people. By lack of action is when a government refuses to ratify conventions as the International Convention Against Enforced Disappearances.”<sup>150</sup>

Later on, in 2008, the Grandmothers with the UN Argentinean Ambassador promoted an international campaign to enforce its full implementation.<sup>151</sup> The Grandmothers also worked with the government in the creation of a Special Unit for the Investigation of the Disappearances of Children during the Dictatorship (*Unidad Especial de Investigación de la Desaparición de Niños en la Dictadura* in Spanish) into the sphere of CONADI to enforce the fact-finding mission.<sup>152</sup> This type of participation of victims’ organizations in procedural policies is promoted by the U.N. Security Council. It affirms that “insofar as relevant procedural rules

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<sup>148</sup> See *Sistema Universal de Protección de Derechos Humanos. ONU* [Universal System of Protection of Human Rights. ONU], *Ministerio de Relaciones Exteriores y Culto de la República Argentina* [Ministry of Foreign Affairs and Culture of the Argentine Republic], <https://www.mrecic.gov.ar/es/candidatura-argentina-al-consejo-de-derechos-humanos-2013-2015#06> (last visited Jul. 22, 2016).

<sup>149</sup> See Bojana Djokanovic, *Argentina's rule-of-law approach to addressing a legacy of enforced disappearances*, INT’L COMM’N ON MISSING PERSONS (ICMP) (Apr. 14, 2006), <https://www.icmp.int/news/argentinas-rule-of-law-approach-to-addressing-a-legacy-of-enforced-disappearances>.

<sup>150</sup> *Contra la desaparición forzada de personas* [Against the forced disappearance of people], PAGINA/12 (May 29, 2013), <http://www.pagina12.com.ar/diario/elpais/1-221084-2013-05-29.html>.

<sup>151</sup> *Argentina promueve ratificación de Convención contra Desapariciones Forzadas* [Argentina promotes ratification of Convention against Enforced Disappearances], CENTRO DE NOTICIAS ONU (May 22, 2008), [http://www.un.org/spanish/News/story.asp?NewsID=12512#.Vln\\_at-rTBJ](http://www.un.org/spanish/News/story.asp?NewsID=12512#.Vln_at-rTBJ).

<sup>152</sup> Exec. Order, 715/2014, SAIJ (Jun. 9, 2004).

enable them [the victims] to present their views and concerns at trial, they can also help victims to reclaim their dignity.<sup>153</sup>

### *3. Dissemination, Consciousness, and Empowerment of Civil Society Regarding the Relevance of Human Rights*

The most important acknowledgment of this historical period was the spread of the concept of a “civic-military dictatorship” meaning the diffusion of the recognition of the relevance of the support of civic figures, and particularly the media, as a pillar that made possible the human rights violations. In the words of the Grandmothers:

Economic groups, the US government, the Church and the Judiciary were the civilian part in charge of the dictatorship [...] They did not play a secondary role in the genocide: they planned the coup with Videla. Clarín and La Nación’s offices, and Ford’s facilities were used to commit crimes, including kidnapping, torturing and interrogating. Almost all those civilians, including businessmen such as Blaquieres and Massot, remain unpunished.<sup>154</sup>

In 2003, the Grandmothers also multiplied their educational campaign to reinforce non-recurrence and strengthen the search efforts for their grandchildren. Among several programs, they started the campaign “Sport for Identity” in which they invited athletes from around the country to multiply the message of the right to identity and the work of the Grandmothers. It included lectures in all the sports clubs of Argentina to teach about this particular right. In the same year, they inaugurated the campaign “Art – a Culture for

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<sup>153</sup> De Greiff, *supra* note 14, ¶ 39. (“While truth, justice, and reparations are themselves *measures*, ‘guarantees of non-recurrence’ refers to a *function* that can be satisfied by a broad variety of measures.”).

<sup>154</sup> Gandsman, *supra* note 98.

Identity” to promote the discussion of identity in artistic expression, including the organization of art exhibitions, meetings, concerts, and events<sup>155</sup> In 2004, the Grandmothers took part in the official transformation of the main detention camp, the Mechanical School of the Army (ESMA in Spanish), into a “place for memory,”<sup>156</sup> but also into a place for the promotion of human rights.<sup>157</sup> Moreover, they promoted the designation of October 22 as the National Day for the Right to Identity, in memory of the day of the constitution of the Grandmothers.<sup>158</sup>

They also incorporated new technologies – such as Facebook<sup>159</sup> and Twitter<sup>160</sup> – to bring their message to a larger number of people. After more than thirty years, there are still several people that have doubts about their identity but do not have the courage or the psychological strength to come forward and take the DNA test. The Grandmothers remain the primary driver of this principal source for the search for the missing grandchildren, and the government police have been oriented to support and enrich the organization instead of replacing it or overlapping with it.

In sum, the lessons learned from the Grandmothers’ struggles during the broader process of transitional justice process include preserving and enforcing an independent work pattern that can be followed regardless of the support of the government (in the case of the Grandmothers, the independent work consisted of the expansion of fact-finding, the search for the grandchildren and the prosecution of wrongdoers); building an international and local network of victims’ organizations, human right organizations, and social movements, while showing the relevance of official support for the struggle; as well as engaging civil society in the historic struggle.

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<sup>155</sup> Veiga, *supra* note 27, at 180.

<sup>156</sup> PAUL RICOEUR, *MEMORY, HISTORY, FORGETTING* (2004).

<sup>157</sup> Veiga, *supra* note 27, at 179.

<sup>158</sup> *Id.* at 196.

<sup>159</sup> ABUELAS DE PLAZA DE MAYO, Facebook Profile, <https://www.facebook.com/Abuelas-de-Plaza-de-Mayo-Sitio-oficial-178051892255167/> (last visited Jul. 22, 2016).

<sup>160</sup> ABUELAS DE PLAZA DE MAYO, Twitter Account, <https://twitter.com/abuelasdifusion> (last visited Jul. 22, 2016).

*VI. The Role of the Grandmothers Facing the Undermining of Transitional Justice Achievements: When Democracy Means Going Back (2015-Today)*

In December 2015, Mauricio Macri assumed the presidency, initiating a step backward in human rights policies. The following shows how their almost forty years of experience allowed the Grandmothers to keep on enforcing Truth, Justice, Reparations, Non-Recurrence, despite the undermining efforts of the new government. The article explores how the strategy seems to be similar to the one in the first moments of impunity – judicial strategy and political denunciation – but that now shows stronger political statements and involvement in a broader scope of human rights issues. This change can be associated with their forty years of experience and with their interventions in the political sphere during the Kirchner governments. Moreover, it is suggested that the fact that even during the past ten years of official support, the Grandmothers have preserved their independent agenda as drivers of the transitional justice process. It has been a key element that allows them to maintain their activities, despite the discouraging political context and the steps backward in human rights policies.

The most challenging policy decision of this new period was an executive order that gave autonomy to the military forces,<sup>161</sup> and a bill that authorized them to intervene in domestic security.<sup>162</sup> The Grandmothers emphatically rejected both decisions that returned to the military those tasks and attributions from which they have been separated since the return to democracy.<sup>163</sup> Symbolically, in contrast

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<sup>161</sup> Decree 721/2016, May 30, 2016, B.O. (Arg.).

<sup>162</sup> Adrian Murano, *Avanza Plan Oficial para que las Fuerzas Armadas Realicen Seguridad Interior* [Official Plan Advances for the Armed Forces to Realize Internal Security], TIEMPO ARGENTINO (Jul. 16, 2016), <http://www.tiempoar.com.ar/articulo/view/57756/avanza-plan-oficial-para-que-las-fuerzas-armadas-realicen-seguridad-interior>.

<sup>163</sup> *Repudiamos el Decreto que Devuelve Autonomía a las FFAA* [We repudiate the Decree that gives Autonomy back to the Armed Forces], ABUELAS

to the meeting of Kirchner with the Grandmothers and the Mothers in his first days in power, the meeting between Macri and these organizations was delayed for more than two months because the President did not have time.<sup>164</sup> This had an important impact, particularly in contrast to the significant expansion of official recognition of the transitional justice process of the previous decade.

However, this switch has enforced and even broadened, the role of The Grandmothers in the defense of the preservation of human rights policies. They not only preserved their independent pattern of work, but they also became more involved in the struggle against human rights violations of the present. A clear example has been their claim about the detention of the social activist Milagros Salas and their rejection of restrictions on the freedom of expression, in their first meeting with President Macri.<sup>165</sup>

### *A. Truth*

The search of truth is related to the trials, as well as with the work of academics and victims' organizations.

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DE PLAZA DE MAYO (Jun. 2, 2016), <https://www.abuelas.org.ar/noticia/repudiamos-el-decreto-que-devuelve-autonomia-a-las-ffaa-498>.

<sup>164</sup> *Abuelas Aceptó la Invitación de Macri a la Rosada: 'Finalmente Seremos Recibidos'* [Grandmothers Accepted Macri's Invitation to the Rosary: 'At Last We Will Be Received'], LA NACIÓN (Feb. 19, 2016), <http://www.lanacion.com.ar/1872684-abuelas-acepto-la-invitation-de-macri-a-la-rosada-finalmente-seremos-recibidos>.

<sup>165</sup> *Estela de Carlotto le reclamó a Mauricio Macri por Milagro Sala y el Protocolo Antipiquetes* [Estela de Carlotto complained to Mauricio Macri about Milagro Sala and the Anti-Pile Protocol], LA NACIÓN (Feb. 23, 2016), <http://www.lanacion.com.ar/1873676-mauricio-macri-se-reune-con-estela-de-carlotto-en-olivos>; *Naciones Unidas solicita la liberación inmediata de Milagro Sala* [United Nations calls for immediate release of Milagro Sala], CELES (Oct. 28, 2016), <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=2139>.

*B. Justice*

The Grandmothers have continued their independent agenda in relation to trials. However, they have started to struggle with the fact that the executive power is not actively supporting them as part of a human rights policy framework. In response, and joining efforts with other human right organizations, the Grandmothers presented a document to President Macri, emphasizing that justice is not a task that depends solely on the activity of the judiciary, but that requires a promise of the executive power to continue pushing the trials forward. Conversely, there have been regressive governmental measures in human rights-related areas would probably undermine the success of the trials.<sup>166</sup>

The Grandmothers also denounced the emptying of sensitive areas of the Ministry of National Security dedicated to the support of the trials and warned about the dismantling of the Specialized Group on Mutual Legal Assistance (GEAJ). GEAJ was set up to assist the extraction of DNA samples through judicial channels, which allowed the identification of missing children, and avoidance of fraud. The Grandmothers called on Macri to reverse the dangerous decision under warning to report him to the Inter-American Commission on Human Rights.

The Grandmothers denounced that the Center for Assistance to Victims of Violations of Human Rights experienced budget cuts. They also denounced that the new Human Rights Secretary, Claudio Avruj, in charge of the Center, belongs to an NGO that promotes the theory of the “two demons.”<sup>167</sup> The Center is in charge of accompanying witnesses in the trials and this shift in the ideological

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<sup>166</sup> *Los Organismos de DDHH se Reunieron con el Presidente Macri* [The Human Rights Bodies met with President Macri], ABUELAS DE PLAZA DE MAYO (Feb. 23, 2016), <https://www.abuelas.org.ar/noticia/los-organismos-de-ddhh-se-reunieron-con-el-presidente-macri-338>; *Nos Fuimos Muy Preocupados* [We Left Very Worried], ABUELAS DE PLAZA DE MAYO (Jan. 28, 2016), <https://www.abuelas.org.ar/noticia/nos-fuimos-muy-preocupados-272>.

<sup>167</sup> *Menos Personal para Apoyar a las Víctimas* [Less Personnel to Assist Victims], PÁGINA 12, Jan. 20, 2016, <http://www.pagina12.com.ar/diario/elpais/1-290696-2016-01-20.html>.

position of the Center can lead to the re-victimization of the witnesses and their rejection to participate in the trials.

In spite of these steps backward, the Grandmothers continue to work independently from the government change. One of the recent achievements of the Grandmothers in the context of the trials, which has been promoted by the Grandmothers is the recuperation of the identity of 70 new cases of disappeared whose names were unknown, as part of the ESMA case. This trial also brought about a new consideration for the sexual violence perpetrated while the victims were held captive, by including the fact of leaving them naked for long periods of time.<sup>168</sup>

### *C. Reparations and Compensation*

Governmental cuts in human rights-related areas included the budgets designated to pay reparations to victims of institutional violence.<sup>169</sup>

### *D. Satisfaction*

Recently, the Grandmothers achieved, after almost forty years of requesting it tirelessly, the declassification of military and

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<sup>168</sup> NAHLA VALJI, *A Window of Opportunity? Making Transitional Justice Work for Women*, UN WOMEN 6 (2010). Gender constitutes an essential factor that characterizes harsher human rights violations, particularly through sexual crimes. In the Argentinean case, the situation of the pregnant women was even harder: human rights violations got more outrageous because they involved the profanation of their bodies during delivery, and their motherhood through the later abduction of their babies. It could be empowering to recognize the kidnapping of the babies not only as a human rights violation of their integrity and identity, but also as a gender-based crime. This means focusing on how the abduction also involved the destruction of women's motherhood. Indeed, if the children's identity is suppressed, the identity of the mothers and grandmothers as such become also at risk.

<sup>169</sup> *Menos Personal para Apoyar a las Víctimas*, *supra* note 167.

intelligence records related to the Argentinean dictatorship from the United States Executive Office of the President. The declassified documents assert that the former secretary of state Henry Kissinger jeopardized efforts to crack down on the dictatorship.<sup>170</sup> Carlotto expressed gratitude for the decision of the United States, but also recalled the relevance of the United States in the “state terrorism,” and asked to accelerate the process.<sup>171</sup> A relevant aspect of this announcement has to do with the expression “dirty war” used by the U.S. National Security Adviser, Susan E. Rice, which was firmly rejected by Estela de Carlotto. The leader of the Grandmothers emphasized that the proper way to qualify this historical process is as not as a war – neither dirty nor clean but as “state terrorism.”<sup>172</sup> In the same line, at the 40<sup>th</sup> anniversary of the beginning of the dictatorship, Carlotto made it clear that the concept of war is intrinsically related to the discourse used by the dictatorship about an “internal enemy” to be combatted. In her words: “With the National Security Doctrine, they try to install the idea of an internal enemy, forming the Armed Forces with the School of the Americas to

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<sup>170</sup> *La Desclasificación, Un Triunfo de los Organismos de Derechos Humanos* [Declassification, a Triumph of Human Rights Organizations], ABUELAS DE PLAZA DE MAYO (Mar. 18, 2016), <https://www.abuelas.org.ar/noticia/la-desclasificacion-un-triunfo-de-los-organismos-de-derechos-humanos-363>; Uki Goñi, *Kissinger hindered US effort to end mass killings in Argentina, according to files*, THE GUARDIAN (Aug. 9, 2016), <https://www.theguardian.com/world/2016/aug/09/henry-kissinger-mass-killings-argentina-declassified-files>.

<sup>171</sup> *Id.* The common understanding of human rights activists in relation to the U.S. support of the dictatorship is reaffirmed in the letter of Nobel Prize winner Perez Esquivel to U.S. President Obama. Esquivel notes that the dictatorship had relied on “financing, training and coordination by the United States,” which was settled during a 1976 meeting between US Secretary of State Henry A. Kissinger and the Argentinean Ministry of Foreign Affairs; Cesar Augusto Guzzetti. Uki Goñi, *The Long Shadow of Argentina’s Dictatorship*, N.Y. TIMES (Mar. 21, 2016), <https://www.nytimes.com/2016/03/23/opinion/the-long-shadow-of-argentinas-dictatorship.html>.

<sup>172</sup> *Fue Terrorismo de Estado, No Guerra Sucia* [It was State Terrorism, Not Dirty War], SALTA NOTICIAS (Mar. 19, 2016), <http://www.saltanoticias.com.ar/noticia/argentina/fue-terrorismo-de-estado-no-guerra-sucia-129349.html>.



massacre the people.”<sup>173</sup>

This discussion is relevant because of most English literature, even the critical and reliable publications, refer to the concept of ‘dirty war’ to describe the human right violations committed during the last Argentinean dictatorship. This occurs despite forty years of human right movements denouncing that this concept has the same basis that ‘the two demons’ theory,’ and that what happened between 1976-1983 in Argentina was ‘state terrorism.’ This is not just an epistemological dispute: the use of ‘war’ would mean that there have been two sides with similar personnel, training, and resources. Conversely, Argentina witnessed a confrontation between a state, with its regular army, navy and aircraft, surveillance resources, and national control, which quickly eliminated the armed civilians group that were dispersed in the country, and only limitedly armed. Following the defeat of the armed groups, the government continued the repression against civilians, even though the armed conflict had ended.<sup>174</sup> Because of this, Grandmothers concluded: “the only war that occurred between 1976 and 1983 was the Falklands, which killed hundreds of people on behalf of an unequal battle.”<sup>175</sup>

Indeed, the agreement among the different victims’ organizations in demanding that members of the dictatorship must be convicted of the international crime of “genocide” is intrinsically related to the aim of disciplining the “two demons”/“dirty war” theory. The civil party insisted in the current trial against members of the ESMA that “what happened in the country was a genocide [committed through state terrorism] and the people that are accused here should be tried for that crime. This was a systematic plan [...] designed to annihilate a part of the national group [because] these

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<sup>173</sup> Gandsman, *supra* note 98.

<sup>174</sup> International law states that asymmetry is a characteristic of a civil war. The existence or not of a civil war is determined in relation to the intensity of the armed conflicts. If there has been an armed conflict in Argentina, it was the one that took place in the beginning of the dictatorship between the guerrilla group that was situated in the province of Tucumán and the government. However, the government rapidly eliminated the guerrilla and kept on enforcing terror policies until the end of the dictatorship, in a situation that could not have been described as civil war in any sense. *Id.*

<sup>175</sup> Gandsman, *supra* note 98.

crimes were not against isolated individuals but pursue the aim of exterminating militant fighters to impose a social, economic and political project.”<sup>176</sup> Although the figure of genocide as contemplated by the Rome Statute does not include situations of extermination for political reasons, the Argentinean victims state that this restriction should be challenged and that the acts committed by the dictatorship must be understood to fall under the label of genocide.

### *E. Guarantees of Non-Recurrence*

As a result of the undermining of human rights policies, the great effort of the Grandmothers in this historical period has been the clarification of the facts of the dictatorship, and the struggle to preserve fundamental areas of the government that ensure memory, truth, and justice. Their efforts are sustained by general civil support for the continuation of the transitional justice process: a recent survey by Ibarometro stated that 80% of the people have negative feelings about the dictatorship, even those who are young and did not directly experience that historical period. Only 3.5% of the people said it would be good to stop the trials against the members of the dictatorship.<sup>177</sup> The Grandmothers have criticized that more than 25,000 have been acquitted.<sup>178</sup>

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<sup>176</sup> Alejandra Dandán, *Deben Ser Juzgados por Genocidio* [They should be judged for Genocide], ABUELAS DE PLAZA DE MAYO reprinted from PAGINA/12 (Apr. 11, 2016), <https://www.abuelas.org.ar/noticia/deben-ser-juzgados-por-genocidio-378>.

<sup>177</sup> Raul Kollman, *Ni Olvido Ni Perdon* [Neither I Forget nor Forgive], PAGINA/12 (Mar. 28, 2016), <https://www.pagina12.com.ar/diario/elpais/1-295597-2016-03-28.html>.

<sup>178</sup> Ailin Bullentini, *Unos Despidos con Segundas Intenciones* [Some Laidoff with Ulterior Motives], PAGINA/12 (Feb. 8, 2016), <http://www.pagina12.com.ar/diario/elpais/1-292036-2016-02-08.html>; See also Alejandra Dandan, *Para Preservar Documentos y Pruebas* [To preserve documents and Evidence], PAGINA/12 (Jan. 6, 2016), <http://www.pagina12.com.ar/diario/elpais/1-289652-2016-01-06.html>; Gimena Fuertes, *Abuelas Denuncia el Cierre de un Área Clave para Recuperar Nietos* [Grandmothers denounce closure of key area to recover grandchildren], TIEMPO ARG. (May 7, 2016), <http://www.tiempoar.com.ar/>

The Grandmothers also disapproved the lack of governmental funding of institutions created to reinforce the legacy of memory, truth, and justice. This includes the Cultural Space Our Children (ECUNHI), which is a cultural space run by the Mothers of Plaza de Mayo in what was the most important clandestine center during the dictatorship. The government also dismissed employees from the Museum Malvinas and South Atlantic Islands, and the Ministry of Human Rights, in charge of enforcing programs and activities to ensure the non-repetition of human rights violations. The government affirms that the dismissed workers were lazy and were not effectively working (the expression in Argentina is “*ñoqui*”), although the affected groups claim that it is “an economic plan for dismantling the human rights movement.”

*F. Vetting*

The Grandmothers have demanded the immediate and irrevocable resignation of Darios Lopérfido, an official in charge of the Ministry of Culture in Buenos Aires City who questioned the scale of the dictatorship.

In defense of the continuation of the trials, the Grandmothers rejected the dismissal of Attorney General, Alejandra Gils Carbo, who is in charge of the prosecutions.<sup>179</sup> Joining efforts with other human rights organizations, the Grandmothers issued a statement expressing concern about the future of the National Memory Archive, an emblematic, decentralized entity with the goal of preserving, conserving and disseminating information, testimony and documents on human rights violations carried out by the Argentine government. Although the authorities of the Archive emerged as a result of a consensus among human rights organizations and the nation state, Avruj stated that the new management will install its candidate without consensus, replacing Horacio Pietragalla, who is a restored grandchild. “Forty years after the last coup that our country

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articulo/view/57283/abuelas-denuncia-el-cierre-de-un-area-clave-para-recuperar-nietos.

<sup>179</sup> Gandsman, *supra* note 98.

collectively suffered, we demand that the national government safeguards the role that the National Memory Archive plays as a bastion of the progress made by the society in Argentina regarding the public policies of Memory, Truth, and Justice,” claimed the statement signed by the Grandmothers.<sup>180</sup>

*G. Dissemination, Consciousness, and Empowerment of Civil Society  
Regarding the Relevance of Human Rights*

Besides the support and defense of the human right programs and institutions associated with the transitional justice process, the Grandmothers are playing a broader role than the one that characterized their past struggle. As it was mentioned in the beginning of this section, since Macri assumed the presidency, the Grandmothers have situated themselves in the core of the defense of current human rights. They argue that the enforcement of human rights in the present should be understood as part of the still open transitional justice process that started after the last dictatorship.

On April 28, 2016, the Grandmothers along with other human right organizations expressed their “support for the demonstration called by the five labor unions.” The Grandmothers recalled: “Our country has already gone through periods ruled by economic policies that generated thousands of unemployed and that, with them, the rights of all citizens were violated.”<sup>181</sup> The Grandmothers also denounced the incarceration of Milagros Salas as part of a policy of repression of the freedom of expression, and the new security protocol that restricts pickets and demands a prior permit to conduct

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<sup>180</sup> *Nuestra Preocupación por el Futuro del Archivo Nacional de la Memoria* [Our Concern for the Future of the National Memory Archive], ABUELAS DE PLAZA DE MAYO (Jan. 6, 2016), <https://www.abuelas.org.ar/noticia/nuestra-preocupacion-por-el-futuro-del-archivo-nacional-de-la-memoria-191>.

<sup>181</sup> *En Vísperas del Día del Trabajador/a, Exigimos el Fin de los Despidos y Adherimos a la Movilización* [On the Eve of Labor Day, We Demand the End of the Layoffs and Join the Mobilization], ABUELAS DE PLAZA DE MAYO (Apr. 28, 2016), <https://www.abuelas.org.ar/noticia/en-visperas-del-dia-del-trabajadora-exigimos-el-fin-de-los-despidos-y-adherimos-a-la-movilizacion-390>.

a demonstration.<sup>182</sup>

This protocol was used to forbid the Mothers of Plaza de Mayo to enter the park to do their traditional march every Thursday. Moreover, the Minister of Security, Patricia Bullrich, stated that all the demonstrations must count with an authorization, and if it is not the case “we will give them five or ten minutes. We will ask them to leave in a respectable manner, to do their protest in another place. If they do not leave, we will remove them.”<sup>183</sup> Even when Carlotto expressed gratitude to the United States for the declassification of the files of the dictatorship, she also affirmed that the Grandmothers hope this decision will “be coherent with the rest of his [President Obama’s] efforts in this important visit for “Nevermore” state terrorism in our country. She reinforces that “Nevermore” also refers to “foreign governments dictating recipes that deprive our people of living dignified lives and with its social economic and cultural rights guaranteed.” The Grandmothers also reinforced their political confrontation with the mass-media monopolist groups, Clarín, and La Nación, alleging that those groups sustained and legitimized the “theory of the two demons” during the dictatorship, and today they support and legitimize dismissals and repression.<sup>184</sup>

Finally, the Grandmothers have an intense role in the empowerment of civil society on the relevance of respect for human rights. Estela de Carlotto with other Mothers and Grandmothers also visited the former President Cristina Fernandez de Kirchner in her house to speak about the role of human rights organizations on a ground-based organization that she is encouraging under the name “*Frente Ciudadano*.” Carlotto expressed that they agree on the need for dialogue among all social and political sectors to avoid greater evils: “[w]hat should prevail is not who voted for this or that person, but how to stop layoffs, attacks on freedom of expression, and denial

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<sup>182</sup> Gandsman, *supra* note 98.

<sup>183</sup> *Policía Argentina «Estrena» Nuevo Protocolo de Represión con Madres De Plaza De Mayo* [Argentine police «premiere» new protocol of repression with Mothers of Plaza de Mayo], JUVENTUD REBELDE (Feb. 18, 2016), <http://www.juventudrebelde.cu/internacionales/2016-02-18/policia-argentina-estrena-nuevo-protocolo-de-represion-con-madres-de-plaza-de-mayo>.

<sup>184</sup> Gandsman, *supra* note 98.

of rights.” The different human organizations agreed to continue meeting among each other to pursue those goals. Taty Almeida from Mothers - Linea Fundadora expressed: “The reality of the country led us to return to our historic role denouncing human rights violations of not only the right to work, which is a fundamental element of life, but also political persecution.”<sup>185</sup>

In sum, the Grandmothers’ activities during the step backward process show that a desirable path for other victims’ organizations might include preserving an independent work pattern that can be followed regardless of the support of the government; denouncing and disseminating the step backward process nationally and internationally to gather support to confront the erratic policies; building an international and local network of victims’ organizations, human rights organizations, and social movements; engaging civil society in the relevance of the transitional justice process, in the double objective of reinforcing the victims’ organization by building trust and support in the population, and reducing the impact of impunity over the guarantees of non-recurrence by spreading acknowledgment of the committed crimes; and confronting the government in all the acts that reinforce the steps backward.

### VII. Conclusion

This article illustrated that the experience of the Grandmothers was not just a case of genuine *participation* of the victims. It was a case in which physical actions on the ground were *driven* by the victims through independent work and pushing the transitional justice process forward. The victims did not wait to be called to take part in the process. The victims put themselves at the core of the demand for truth, justice, reparations and non-recurrence,

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<sup>185</sup> Martias Ferrari, *Organismos de DDHH Mantuvieron un Encuentro Informal con Cristina Fernández De Kirchner* [Human Rights Organizations held an Informal Meeting with Cristina Fernández de Kirchner], PÁGINA/12 *reprinted in* ABUELAS DE PLAZA DE MAYO (Apr. 15, 2016), <https://www.abuelas.org.ar/noticia/organismos-de-ddhh-mantuvieron-un-encuentro-informal-con-cristina-fernandez-de-kirchner-380>.

and they *conducted* the process with other social organizations and civic society. Although the analytical distinction requires further development, it is possible to suggest that a key indicator to distinguish a *victims-driven process* and one in which they had mere participation in is if the transitional justice process came to be known by the voice of the victims or by *other* voices (national government, foreign governments, or international organizations).

If the voice of the victims is clearly identified by civil society and by the international community (as it happens in the Grandmothers' case), if their symbols are widely recognized (in this case, the symbol is the white scarf), and if the name of the organization does not require further introductions (as it happens in this case), we may be able to affirm that the process is a victims' leadership example. The case of the Grandmothers of Plaza de Mayo suggests that the success of victims' organizations and of the transitional justice process itself has to do with evolving from a *victim-centered* to a *victim-driven approach*.

This article identified the main contributions, challenges, and difficulties that the Grandmothers traversed within forty years of the struggle facing the dictatorship, the first democratic steps in a fragmented transitional justice process, the period of democracy and impunity, democracy and official acknowledgment, and democracy and setbacks. The Grandmothers' movement suggests that victim organizations can be strengthened and encourages the transitional justice process both by pressuring governments that foster impunity and by supporting governments that push the transitional justice process forward. The Grandmothers' relevance deals with a capacity of adaptation of their independent work to this great variety of political scenarios through different advocacy approaches, without losing their identity (central concept of their struggle that may help explain their consistency). Future challenges stem from the Grandmothers' resistance of the new government and ensuring their restituted grandchildren maintain leadership roles that guarantee the continuation of the organization as a *driver* of the Argentinean transitional justice process.