

Inter-American Court of Human Rights

Case of Garrido and Baigorria v. Argentina

Judgment of August 27, 1998 *(Reparations and Costs)*

In the case of Garrido and Baigorria,

The Inter-American Court of Human Rights, composed of the following judges:

Hernán Salgado-Pesantes, President
Antônio A. Cançado Trindade, Vice President
Máximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu-Burelli, Judge
Sergio García-Ramírez, Judge
Carlos Vicente de Roux-Rengifo, Judge
Julio A. Barberis, *ad hoc* Judge;

Also present:

Manuel E. Ventura-Robles, Secretary, and
Víctor M. Rodríguez-Rescia, Deputy Secretary *a.i.*

in application of Article 56(1) of its Rules of Procedure (hereinafter "the Rules of Procedure") in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and in furtherance of its February 2, 1996 judgment and January 31, 1997 order, delivers the following judgment in the instant case, brought by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Argentine Republic (hereinafter "the State" or "Argentina").

I **BACKGROUND OF THE CASE**

1. The Commission submitted the instant case to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") through an application dated May 29, 1995, attached to which was Report No. 26/94 of September 20, 1994. The case itself had originated with a petition (No. 11.009) against Argentina, which the Commission had received on April 29, 1992.

2. In Section II of its application, the Commission set out the facts that gave rise to this case, which the Court summarizes in this chapter.

3. According to eyewitness accounts, at approximately 4:00 p.m. on April 29, 1990, uniformed members of the Mendoza police detained Adolfo Argentino Garrido-Calderón and Raúl Baigorria-Balmaceda as they were riding in a vehicle. The event transpired at General San Martín Park in the city of Mendoza. According to the witnesses, the two individuals in question were questioned or detained by at least four police wearing the uniform of the Mendoza motorized police unit and driving two unit patrol cars.

4. Relatives of Mr. Garrido were informed of what had transpired by Ms. Ramona Fernández, who had learned about the incident from an eyewitness, about an hour after the fact had occurred.

5. Relatives of Mr. Garrido immediately launched a search to find him and were concerned because there was a warrant out for his arrest. The family asked attorney Mabel Osorio to make inquiries as to his whereabouts. From the inquiries it was established that Mr. Adolfo Garrido was not in custody at any police station. However, at Mendoza's fifth precinct, family members did find the vehicle in which Mr. Garrido and Mr. Baigorria had been traveling at the time of their detention. The police informed them that the vehicle had been located in General San Martín Park, based on an anonymous phone tip reporting an abandoned car.

6. On April 30, 1990, attorney Osorio filed a writ of *habeas corpus* on Mr. Garrido's behalf, and on May 3 attorney Oscar A. Mellado did likewise on Mr. Baigorria's behalf. Both writs were heard by the Fourth Court of Inquiry of the First District of Mendoza Province and were dismissed on the grounds that deprivation of liberty had not been shown.

7. On May 2, 1990, the family of Mr. Garrido filed a formal complaint with the office of the sitting district attorney concerning the two men's forced disappearance. The case was heard in the Fourth Court of Inquiry of the First District of the Province of Mendoza, and was case No. 60.099.

8. When Mr. Esteban Garrido, brother of one of the victims, answered the summons to appear in Court, he encountered there a police officer Geminiani, who acknowledged that a police officer had shown Mr. Adolfo Garrido's photograph to the owners of a business that had been robbed, and that the police "were looking for him." These statements were entered into the record of the court proceedings.

9. The application listed the names of the eyewitnesses who saw Mr. Garrido and Mr. Baigorria being detained by police officers.

10. The families of the disappeared reported the events to the Committee on Rights and Guarantees of the House of Representatives and to the Senate of the Mendozaan Legislature on May 2 and 11, 1990, respectively, but received no response.

11. On September 19, 1991, Mr. Esteban Garrido filed another writ of *habeas corpus* on behalf of the two disappeared, this time with the First Court of Inquiry of Mendoza. It, too, was dismissed. The appeal filed with the Third Criminal Court of Mendoza was denied on November 25, 1991.

12. On November 20, 1991, Mr. Esteban Garrido became a civil plaintiff in case No. 60.099, being heard in the Fourth Court of Inquiry of the First District of Mendoza.

13. In the five years following the disappearance of Mr. Garrido and Mr. Baigorria, their families denounced the events at the local, national and international levels, filed multiple complaints with government authorities, and conducted an intensive search in judicial, police and health departments, all to no avail. The proceedings into this case have not moved beyond the initial phase.

14. The application argued that the events described therein constituted the forced disappearance of Mr. Raúl Baigorria and Mr. Adolfo Garrido on April 28, 1990 and the subsequent denial of justice, in violation of a number of articles of the American Convention. The Commission invoked Articles 1(1) (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 7(5), 7(6), 8 and 9 (Right to a Fair Trial), 8(1) (Judicial Guarantees) and 25 (Right to Judicial Protection) of the Convention.

15. In its application the Commission requested the following:

1. In accordance with the reasoning set forth in the present application, the Commission requests that the Honourable Court, having received ten copies of this application with its respective attachments, and based on the requirements set forth in Article 61 of the Convention and Articles 26 and 28 of the Rules of Procedure of the Court, admit the present application, transmit it to the Illustrious Government of Argentina and in due time render a judgment declaring:

i. That the Argentine Government is responsible for the disappearance of Raúl Baigorria and Adolfo Garrido and that, as a consequence, violations of Articles 4 (right to life), 5 (right to respect for physical, mental, and moral integrity), and 7 (right to personal liberty), all in relation to Article 1(1) of the Convention, are imputed to the Government.

ii. That the Argentine State has violated the right of the victims and of their families to a fair trial. In particular, it has violated the right to a judicial hearing within a reasonable time as recognized by Article 8(1) of the Convention, as well as the right to simple and prompt judicial recourse for protection against acts that violate fundamental rights as provided for in Article 25 of the Convention, both read in relation to Article 1(1) of the Convention.

iii. That the Argentine State as a consequence of the violation of the rights protected by Articles 4, 5, 7, 8, and 25, has also violated Article 1(1) of the Convention, in relation to the obligation to respect the rights and freedoms recognized in the Convention, and the duty to ensure and guarantee the free and full exercise of those rights to all persons subject to the jurisdiction of the Argentine State.

2. That in accordance with the statements of Point 1 of this petition, the Court order the Argentine State to make full reparations to the family of the victims for the grave material and moral injury caused, and, as a consequence, rule that the Argentine State:

i. Undertake a rapid, impartial, and exhaustive investigation into the facts complained of for the purpose of determining the whereabouts of Baigorria and Garrido and establishing the responsibility of the persons who are directly or indirectly involved, so that they receive the legal sanctions due them.

ii. Provide information on the circumstances of the detention of Baigorria and Garrido and the fate of the victims, and locate and turn over their remains to their families.

iii. Grant reparations for the purpose of compensating the families of the victims for the material and moral injury suffered.

iv. Order any other measures which the Court considers appropriate to remedy the injury caused by the disappearance of Baigorria and Garrido.

3. Order the Argentine State to pay the costs of these proceedings, including the honoraria of the professionals who have served as representatives of the victims both in their efforts before the Commission and in the proceedings before the Court.

II

RECOGNITION OF RESPONSIBILITY BY ARGENTINA

16. On September 11, 1995, Argentina admitted the facts that the Commission had set forth in section II of its application, summarized in paragraphs 2 through 13 of this judgment. It also accepted the legal consequences resulting from the facts in question. Moreover, at a February 1, 1996 hearing, the State fully acknowledged its international responsibility in the instant case.

17. In view of Argentina's acquiescence and the statements made by the parties at that February 1, 1996 hearing, the following day the Court handed down a judgment whose operative part was as follows:

1. To take note of the acceptance made by Argentina of the acts stated in the application.

2. To take note as well of Argentina's acceptance of international responsibility for those acts.

3. To grant the parties a period of six months from the date of the present judgment to reach an agreement on reparations and compensation.

4. To reserve the authority to examine and approve that agreement and, in the event that the parties do not agree, to continue the proceedings on reparations and compensation.

III

NEGOTIATIONS FOR AN AGREEMENT TO SETTLE THE CASE

18. After some months of negotiations, the Province of Mendoza and the representatives of the victims arrived at a "reparations" agreement, embodied in a document signed on May 13, 1996. Under the terms of the agreement, an arbitral tribunal was to be formed to determine the "amount of the indemnity" to be paid to the victims' families, and an *ad hoc* commission was to be created to conduct an inquiry into the events surrounding the victims' forced disappearance. It is important to note that the police officers who took part in the forced disappearance of Mr. Garrido and Mr. Baigorria were members of the Mendoza Provincial Police Force.

19. The members of the arbitral tribunal were to be appointed according to the procedures in force in the Province of Mendoza. Once the tribunal was constituted, the representative of the victims and the Government of Mendoza could present memorials containing their pleadings and arguments. The agreement further stipulated that if no procedural rules were agreed upon, the provisions of the

Mendoza Code of Civil and Commercial Procedure concerning arbitral proceedings would apply.

The decision was to be delivered by midnight on June 28, 1996. The agreement added that "the parties may appeal the decision in the event of arbitrariness."

20. As for the *ad hoc* commission, the agreement stipulated that it was to commence its proceedings before June 21, 1996, with the following terms of reference:

...its purpose shall be to ascertain the real truth. It shall issue a decision on the events surrounding the disappearance of persons being investigated in case 11.009 ... on the Register of the Inter-American Commission on Human Rights, those responsible for the events, and developments in the investigation from the outset in the domestic courts, and shall suggest measures to be taken in that regard.

21. The arbitral tribunal created by the agreement issued its decision on June 25, 1996. On July 2 of that year, the representatives of the victims' families challenged the decision on the grounds that it was arbitrary. The *ad hoc* commission, for its part, issued its report on August 16, 1996.

22. In a note received at the Secretariat of the Court on September 6, 1996, the delegate of the Commission informed the Court of "the outcome of the friendly-settlement procedure in the instant case" and attached copies of the pertinent documents. The Court requested an opinion on the Commission's brief from the Argentine State and from the representatives of the victims' families.

23. The Court then had to determine whether the agreement of May 31, 1996, and the documents that resulted therefrom, i.e. the arbitral decision of June 25, 1996, and the report of the *ad hoc* commission of August 16 of that year, constituted the agreement on reparations and compensation called for under operative paragraph 3 of its judgment of February 2, 1996.

24. On January 31, 1997, the Court delivered an order wherein it found that the agreement of May 31, 1996 and the documents that resulted therefrom did not constitute the agreement between parties provided for in the judgment handed down on the merits. The Court pointed out two significant facts, either one of which was sufficiently persuasive to show that an agreement between the parties was lacking.

The first of these facts is that the agreement on reparations was to be concluded between the parties to the dispute. One of those parties was the Republic of Argentina, not the Province of Mendoza, as the State had unequivocally acknowledged at the February 1, 1996 hearing. Contrary to what the Court had ordered, one of the two parties to the May 31, 1996 agreement was the Province of Mendoza; the same was true of the arbitration decision of June 25, 1996.

The second fact concerned the arbitration decision. Under the agreement of May 31, 1996, a party could "appeal the decision in the event of arbitrariness." This means that the decision would be binding upon the parties unless one of them considers it arbitrary. This is, in fact, what happened, since on July 2, 1996, the victims' families challenged the tribunal's decision on those very grounds. The Commission had left it to the "prudent jurisdiction of the Court to establish the presence of the invoked ground of arbitrariness." The Court, however, held that it was not an arbitration

appeals court and therefore confined itself to ruling that the decision had not been agreed to unanimously.

IV PROCEEDINGS IN THE REPARATIONS PHASE

25. Because the parties had not reached agreement, and in compliance with operative paragraph 4 of its judgment of February 2, 1996, the Court decided to open the proceedings on reparations and compensation and empowered its President to take the necessary procedural measures. By that authority, the President of the Court, in a February 5, 1997 order, gave the Commission and the victims' families until April 7, 1997, to submit their briefs and any evidence that might be relevant in determining reparations and compensation. It also gave Argentina until June 7, 1997, to formulate its observations on the submissions of the Commission and of the victims' families.

26. On March 11, 1997, the Commission informed the Court that it was confirming "its agreement with the June 25, 1996 decision of the arbitral tribunal, which assessed the indemnification for the families of Mr. Garrido and Mr. Baigorria on the basis of the circumstances of the instant case and the points in the agreement concluded to settle it."

27. On April 7, 1997, the Court received the brief from the victims' families setting forth their case and ending with the following summation:

... the Government of the Argentine Republic must formally undertake to make the following non-pecuniary reparations and to pay, in full, the indemnification stated below:

1. A bill must be introduced in the National Congress that typifies the forced disappearance of persons as a crime, following the criteria established in the Inter-American Convention on Forced Disappearance of Persons, approved by Law No. 24.556. It should be a federal offense.
2. The National State must acknowledge the content of the report of the *ad hoc* Commission as the historic truth of the events that transpired in Mendoza on April 28, 1990, which led to these proceedings.
3. The State must issue the full text of the report of the *ad hoc* Commission in an official publication and have a summary thereof published in four major newspapers with international circulations (The New York Times, Le Monde, El País and Corriere della Sera), four newspapers with domestic circulations (Clarín, La Nación, Página/12 and either *Ámbito Financiero* o *La Razón*) and in two provincial newspapers (Los Andes and Uno). It must be accompanied by the appropriate apologies to the victims' families and to all citizens, and by a pledge from the State that events like these will [sic] recur.
4. With funds from the national budget, a plaque must be made and placed in the entrance hall of the Mendoza Federal Courthouse, containing a brief explanation of the events, the State's acknowledgment of its responsibility and the results of the international proceedings, apologies to family and citizenry and a pledge that such events will never recur.
5. Steps must be taken for immediate payment of compensatory material and moral damages, which is SEVEN HUNDRED THOUSAND TWO HUNDRED FIFTY UNITED STATES DOLLARS (US\$700,250.00) for the next of kin of ADOLFO GARRIDO, and SEVEN HUNDRED NINETEEN THOUSAND SEVEN HUNDRED FIFTY UNITED STATES DOLLARS (US\$719,750.00) [for the next of kin of RAÚL BAIGORRIA]. This brings the sum total to ONE MILLION FOUR HUNDRED TWENTY THOUSAND UNITED STATES DOLLARS (US\$1,420,000.00).

6. The State is to pay attorneys' fees to Drs. CARLOS VARELA-ALVAREZ and DIEGO JORGE LAVADO, which combined are to be equal to 15% of the total compensation.

The compensation is to be paid in cash, in dollars or the equivalent in pesos at the time of payment, and may not be paid in public debt bonds or any other instrument of that nature.

28. Argentina made no observations on these claims.

29. On September 25, 1997, the President of the Court addressed the Commission and the State to request that they send summaries of the victims' police records and any information concerning the two children one of the victims was alleged to have.

30. On January 20, 1998, a public hearing was held at the seat of the Court to hear the arguments of the parties and of their victims' families concerning reparations.

There appeared before the Court:

For the Inter-American Commission on Human Rights:

David J. Padilla, Deputy Executive Secretary,
Ariel Dulitzky, Assistant,
Marcela Matamoros, Assistant,
Mario López-Garelli, Attorney;

For the State:

Zelmira Mireya Emilse Regazzoli, Agent,
Marcela Berutti, staff member of the General Human Rights Office;

For the victims' relatives

Carlos Varela-Alvarez, Representative and Attorney.

31. In the course of the hearing, the parties and the representative of the victims' relatives agreed that the Court could use the evidence brought before the arbitral tribunal that met in Mendoza in June of 1996 (*supra*, 17-21).

32. At the January 20, 1998 hearing, the petition of the Inter-American Commission was as follows:

Mr. President, the position of the Inter-American Commission on Human Rights in the instant case is that the decision of the arbitral tribunal was not manifestly arbitrary. Mr. President, the position of the Commission on this point concurs with that of the honorable Argentine Government.

...

The decision of the arbitral tribunal constituted for that purpose is in conformity with the pertinent rules and should be observed by the parties ... the report of the *ad hoc* Commission should be widely circulated both by the Argentine State and by the Province of Mendoza. Finally, the recommendations contained in that report should be monitored until the authorities of the Province of Mendoza have fully executed them.

33. The Commission then requested that the Court "*rule on the federal clause and the scope of the obligations of the Argentine State in the reparations phase under that federal clause.*" The Commission also noted that those responsible for the disappearance of Mr. Garrido and Mr. Baigorria had not been punished. It argued that the obligations of the State in matters of reparation require more than a mere inquiry into the facts; an essential element is the punishment of those responsible. The Commission noted that the report prepared by the *ad hoc* Commission (*supra*, 20 and 21) was very important, and concluded by stating the following:

... we believe that an essential part of the moral damages that the Honorable Court should order is that the Argentine State publicize the report of the *ad hoc* Commission and the findings as widely as possible and, basically, should call upon the Argentine government to carry out all the recommendations contained in the report of the *ad hoc* Commission.

34. Argentina stated that it had no objection to the compensatory damages that the Mendoza arbitral tribunal had ordered for the victims' relatives, but that "*it will comply with the amounts that the Honorable Court sets.*" It also stated that it had undertaken an obligation to publish the report prepared by the *ad hoc* commission, which it would do as soon as the Court had delivered its judgment. Argentina argued, however, that it had "difficulties" with the measures to be adopted *vis-a-vis* the judges who had presided over the inquiry into the whereabouts of the disappeared persons, because it was a federal state and the judges were members of the judicial branch of government, which was independent.

35. At the hearing, the representative of the victims' relatives made a statement, which was accompanied by a written memorial which he then submitted to the Court. In the matter of compensatory damages, for the family of Adolfo Garrido he requested the sum of 20,000 pesos or its equivalent in United States dollars for the expenses incurred since 1992 in their efforts to find the victim, 380,250 pesos in lost income, and 500,000 pesos in moral damages. For the family of Raúl Baigorria, he sought 20,000 pesos for expenses, 399,000 pesos in lost earnings, and 500,000 pesos in moral damages. The representative of the victims' families noted that the individuals claiming damages in Mr. Garrido's case were his mother and his siblings; in Mr. Baigorria's case, only his siblings. The attorney also requested that the Court order payment of fees for himself and for his colleague Diego Lavado, but did not specify an amount. He stated that both had worked on the case since 1991, first in proceedings before the Mendoza courts, then before the Commission, and now before this Court. Speaking for himself and his colleague, he stated the following:

... we hereby swear that we have not received any payment of expenses or fees from anyone: not from the Argentine State, not from our clients, and not from any international or nongovernmental organization. We have defrayed all our expenses using our own funds. I am also seeking reimbursement of the expenses I incurred to travel to this country for this hearing, and am leaving all necessary vouchers and receipts with the Secretariat.

Mr. Varela also requested that the Court put an end to the impunity thus far enjoyed by the police officers who had been instrumental in the disappearance of Mr. Garrido and Mr. Baigorria.

36. The written memorial presented at the end of the hearing confirmed the amounts of the compensatory damages sought for the family of Mr. Garrido and specified the names of his six siblings. The compensatory damages requested for the family of Mr. Baigorria during the hearing were the same as those indicated in the written memorial, except in the case of the earnings, which were 750 pesos higher in the memorial. The memorial also mentioned the names of his four siblings. It requested that the Court order payment of the honoraria of Mr. Varela-Alvarez and Mr. Lavado, although the amounts were not specified. The victims' relatives also sought other forms of reparations as well, primarily "satisfaction" and "sanctions", as follows:

7. SATISFACTION MEASURES.

- 7.1. Amendment of the Argentine Criminal Code and the Argentine Code of Criminal Procedure. As we indicated earlier, we are requesting that forced disappearance be typified in the Code as a federal offense.
- 7.2. Apologies to the families of the victims by the highest authorities of the Argentine Government and the Government of Mendoza, in a private meeting with them, and publication of those apologies in newspapers with large circulations.
- 7.3. Restoration of good name. A commemorative plaque in memory of the disappeared, placed in the Mendoza federal courthouse.
- 7.4. Investigation and sanctioning of the judges and prosecutors involved in the examining phase of the inquiry into the victims' disappearance.
- 7.5. A final deadline by which time the NATIONAL GOVERNMENT is to have punished those directly and indirectly criminally responsible for the victims' disappearance and their immediate demotion of police rank.

8. SANCTIONS.

It is our position that the ARGENTINE GOVERNMENT should be sanctioned. Although it admitted responsibility, it has done nothing to take into custody and/or punish the material and intellectual authors of the crime, accessories after the fact, and the judges and prosecutors who mishandled the inquiry into the disappearance of citizens BAIGORRIA and GARRIDO.

V

COMPETENCE OF THE COURT

37. The Court is competent to rule on the payment of reparations and compensation in the instant case. Argentina has been a State Party to the American Convention since September 5, 1984, the date on which it accepted the contentious jurisdiction of the Court. This case was submitted to the Court by the Commission in accordance with Articles 51 and 61 of the American Convention. The Court delivered the judgment on the merits of the instant case on February 2, 1996.

VI

OBLIGATION TO MAKE REPARATIONS (ARTICLE 63(1))

38. In the instant case, Argentina admitted its responsibility for the facts set forth in the Commission's application and it was so recorded in the judgment of February 2, 1996 (*supra*, 17). Hence, the facts recounted in section II of the Commission's application of May 29, 1995, have been established. On the other hand, the parties

have differences on other facts having to do with reparations and their scope; it is those differences that the Court is deciding in this judgment.

39. The provision applicable to reparations is Article 63(1) of the American Convention, which states the following:

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measures or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

40. As the Court has stated (*Aloeboetoe et al. Case, Reparations (Art. 63(1), American Convention on Human Rights)*, Judgment of September 10, 1993. Series C No. 15, para. 43), this Article codifies a rule of customary law which is one of the fundamental principles of modern international law, that being the responsibility of States (*Cf. Factory at Chorzow Case, Jurisdiction*, Judgment No. 8, 1927, P.C.I.J., Ser. A, No. 9, p. 21 and *Factory at Chorzow Case, Merits*, Judgment No. 13, 1928, P.C.I.J., Ser. A, No. 17, p. 29; *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, page 184). This is the case law of this Court (*Velásquez Rodríguez Case, Compensatory Damages (Art. 63(1), American Convention on Human Rights)*, Judgment of July 21, 1989. Series C No. 7, para. 25; *Godínez Cruz Case, Compensatory Damages (Art. 63(1), American Convention on Human Rights)*, Judgment of July 21, 1989. Series C No. 8, para. 23; *El Amparo Case, Reparations (Art. 63(1), American Convention on Human Rights)*, Judgment of September 14, 1996. Series C No. 28, para. 14; *Neira Alegría et al. Case, Reparations (Art. 63(1), American Convention on Human Rights)*, Judgment of September 19, 1996. Series C No. 29, para. 36; and *Caballero Delgado and Santana Case, Reparations (Art. 63(1), American Convention on Human Rights)*, Judgment of January 29, 1997. Series C No. 31, para. 15]. The case law also holds that the obligation embodied in this article is a necessary corollary of the right (decision of rapporteur Max Huber, dated 23.X.1924, in the case of *British Property in the Spanish Zone of Morocco, Compromis*, U.N., Recueil des sentences arbitrales, vol. II, p. 641; *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Second Phase)*, Judgment, I.C.J. Recueil 1970, p. 33). When an unlawful act imputable to a State occurs, said State becomes internationally responsible for a violation of international law. It is out of this responsibility that a new juridical relationship for the State emerges, which is the obligation to make reparation.

While in both jurisprudence and doctrine there is a certain degree of consensus regarding how the rule enunciated in Article 63(1) of the American Convention is to be interpreted and applied, the Court believes that some clarification is in order.

41. First, some explanation of the terminology employed is useful. Reparation is a generic term that covers the various ways a state may make amends for the international responsibility it has incurred. The specific method of reparation varies according to the damage caused; it may be *restitutio in integrum* of the violated rights, medical treatment to restore the injured person to physical health, an obligation on the part of the State to nullify certain administrative measures, restoration of the good name or honor that were stolen, payment of an indemnity, and so on. When the right to life is violated, as it was in the instant case, given the nature of the right violated, the reparation is primarily in the form of some pecuniary compensation, as has been the practice of this Court (*Velásquez Rodríguez Case*, Judgment on July 29, 1988. Series C. No. 4, para. 189; *Godínez Cruz Case*,

Judgment of January 20, 1989. Series C. No. 5, para. 199; *Aloeboetoe et al. Case, Reparations, supra* 40, para. 46; *El Amparo Case, Reparations, supra* 40, para. 16 and *Caballero Delgado and Santana Case, Reparations, supra* 40, para. 17). The reparation may also be in the form of measures intended to prevent a recurrence of the offending acts.

42. Given the submissions filed by the victims' families, it is important to point out that the obligation contained in Article 63(1) of the Convention is governed by international law in all of its aspects, such as, for example, its scope, characteristics, beneficiaries, etc. Such was the Court's finding in the *Aloeboetoe et al. Case, Reparations, supra* 40, para. 44), and repeated in subsequent decisions (*El Amparo Case, Reparations, supra* 40, para. 15; *Neira Alegría et al. Case, Reparations, supra* 40, para. 37; and *Caballero Delgado and Santana Case, Reparations, supra* 40, para. 16).

43. In certain passages of the submissions filed by the victims' families, they seek indemnification that would go beyond the realm of compensation for damages caused, and into the punitive realm. At the January 20, 1998 hearing, for example, the representative of the victims' relatives demanded "exemplary damages." Such functions are not in the nature of this Court and are not within its power. The Inter-American Court is not a penal court and, in this particular matter, its competence is to determine the reparations that States that have violated the Convention must make. As the word suggests, reparation is achieved through measures that serve to 'repair' the effects of the violation committed. Their quality and their amount depend on the damage done both at the material and at the moral levels. Reparations are not meant to enrich or impoverish the victim or his heirs (*Cf. del ferrocarril de la bahía de Delagoa Case, LA FONTAINE, Pasicrisie internationale, Berne, 1902, p. 406*).

44. In the cases against Honduras (*Velásquez Rodríguez Case, Compensatory Damages, supra* 40, para. 38, and *Godínez Cruz Case, Compensatory Damages, supra* 40, para. 36), the Court held that the expression "fair compensation" used in Article 63(1) of the Convention is "compensatory and not punitive" and that international law does not, at this time, use the principle of compensation "to deter or to serve as an example." Also, in the *Fairén Garbí and Solís Corrales Case*, this Court found that "the objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages" (*Fairén Garbí and Solís Corrales Case, Judgment of March 15, 1989. Series C No. 6, para 136*). The Court finds no reason to deviate from these precedents in the instant case.

45. The Commission requested that the Court issue a finding regarding the federal clause (Article 28 of the American Convention) and the scope of the obligations of the Argentine State during the reparations phase under that clause (*supra* 33). Argentina invoked the federal clause or made reference to the federal structure of the State on three different occasions in this dispute. First, when the merits of the matter were being examined, the State argued that, by virtue of the federal clause, any responsibility in the instant case was imputable to the Province of Mendoza, not to the State. Argentina then backed away from this argument and expressly acknowledged its international responsibility at the hearing of February 1, 1996 (*supra* 16). The State invoked the federal clause a second time when negotiating the May 31, 1996 reparations agreement. At the time, the Province of Mendoza was party to the agreement, not the Argentine Republic, even though the

latter had already acknowledged its international responsibility. The Court, however, held that the agreement did not constitute an agreement between the parties since it was not signed by the Argentine Republic, which was the party in the case (*supra* 18 and 24). Finally, at the January 20, 1998 hearing, Argentina argued that it would have difficulties adopting certain measures given the federal structure of the State (*supra* 34).

46. When a federal state's constituent units have jurisdiction over human rights matters, Article 28 of the Convention makes provision for said federal state becoming a party to the Convention. However, from the time of its approval and ratification of the Convention, Argentina has conducted itself as if the federal State had jurisdiction over human rights matters. Hence, it can hardly argue the contrary now, as this would imply a breach of the principle of *estoppel*. As for the "difficulties" invoked by the State at the January 20, 1998 hearing, the Court should note that the case law, which has stood unchanged for more than a century, holds that a State cannot plead its federal structure to avoid complying with an international obligation (*Cf.* arbitral award of July 26. VII. 1875 in the Montijo Case, LA PRADELLE-POLITIS, *Recueil des arbitrages internationaux*, Paris, 1954, t. III, p. 675; decision of the France-Mexico Mixed Claims Commission of 7.VI.1929 in the Hyacinthe Pellat case, U.N., *Report of International Arbitral Awards*, vol. V, p. 536).

VII COMPENSATION

47. The Court will now proceed to decide on the reparations sought by the victims' relatives. The first type of reparation requested is compensation. As pointed out earlier in this judgment (*supra* 44), indemnizations are compensatory in nature and hence are to be awarded to the degree and in the measure sufficient to compensate for the material and moral damages suffered. The issue of honoraria and expenses incurred by virtue of these proceedings is examined in this judgment (*infra* 75-85).

48. In the *Aloeboetoe et al. Case, Reparations*, the Court invoked arbitral case law wherein it is a general principle of law that compensation comprise both expenses and loss of earnings (*Aloeboetoe et al. Case, Reparations, supra* 40, para. 50).

49. In the instant case, the victims detained in the city of Mendoza sustained moral damages by being subjected to aggression and abuse that ultimately caused their death. As this Court found previously, it is clear that the victims suffered moral damages, for it is characteristic of human nature that anyone subjected to aggression and abuse will experience moral suffering (*Aloeboetoe et al. Case, Reparations, supra* 40, para. 52; *Neira Alegría et al. Case, Reparations, supra* 40, para. 57). No evidence is required to arrive at this conclusion; Argentina's own acknowledgment of its responsibility is sufficient.

50. The Court has stated, and now reiterates (*Aloeboetoe et al. Case, Reparations, supra* 40, para. 54; *Cf. El Amparo Case, Reparations, supra* 40, paras. 43 and 46; *Neira Alegría et al. Case, Reparations, supra* 40, paras. 63 and 65 and *Caballero Delgado and Santana Case, Reparations, supra* 40, paras. 60 and 61), that the right to compensation for damages suffered by the victims up to the time of their death is transmitted to their heirs by succession. On the other hand, the damages

owed to the victims' next of kin or to injured third parties for causing the victims' death are an inherent right that belongs to the injured parties.

51. In the instant case, the following relatives of Adolfo Garrido have claimed material or moral damages:

His mother:	Rosa Sara Calderón,
His siblings:	Esteban Garrido, Ana Benita Garrido, Samuel Garrido, Moisés Garrido, Sara Rosa Garrido, Rita Garrido.

52. The Court considers that the mother of Adolfo Garrido, Ms. Rosa Sara Calderón, is her son's heir. The victims' siblings are regarded as his family and shall be entitled to indemnities to the extent that they satisfy the requirements established by the jurisprudence of this Court.

53. As for Raúl Baigorria, his four siblings have presented themselves as his heirs. Their names are:

Ricardo Baigorria,
Sara Esther Baigorria,
Roberto Baigorria,
Osvaldo Baigorria.

54. Mr. Baigorria's police record, introduced into evidence before this Court, shows that he had two children born out of wedlock. In effect, a report from the Mendoza prison authorities concerning a request that the victim - an inmate at the time - made in 1987 for a private visit from a Ms. Juana del Carmen Gibbs indicates that Mr. Raúl Baigorria stated that he had a seven-year-old child from a previous union, and a three-year-old child by Ms. Gibbs, and that he intended to acknowledge the second child as his own.

55. Irregardless of whether the statements made by Mr. Raúl Baigorria and recorded by an administrative official are valid under domestic law (*supra* 40, para. 42), the obligation contained in Article 63(1) of the Convention is an obligation under international law. The Court believes that the statement made by Mr. Raúl Baigorria implied an acknowledgment of his two natural children. One characteristic of international law is that no particular formalities are required to make an act valid; even oral statements are valid under the law of nations (*Legal Status of the South-eastern Territory of Greenland*, Judgment, 1933, P.C.I.J., Series A/B, No. 53, p. 71).

56. Consequently, the Court considers that Mr. Raúl Baigorria's two natural children are his heirs. The victims' siblings are family and will have the right to receive compensation to the extent that they meet the requirements already established by this Court's case law.

57. The Court had requested the cooperation of the two parties to this dispute and that of the victim's family to find Mr. Raúl Baigorria's natural children. However, the request produced no results and the responses received confined themselves to pleading bureaucratic inconveniences. The Court now decides that Argentina has a

legal obligation to undertake this search, an obligation it cannot evade by pleading its federal structure or any other administrative argument.

58. To determine the material damages suffered, in the instant case it seems reasonable to identify the expenses incurred and lost earnings that the claimants sustained. In the instant case, the Court must first ascertain what family, labor, business, farm, industrial or any other type of activity suffered a loss by virtue of the victims' deaths and who the injured parties are. Secondly, it must ascertain who has sustained a loss of income owing to the victim's disappearance.

59. The relatives of Adolfo Garrido state that he worked as a carpenter. This appears in various places in his police record, while elsewhere he is shown as a day laborer, someone with no profession, or as a tradesman. The claimants submitted no credible evidence to show what businesses Mr. Garrido worked for, when he worked there, what salary or wage he received and what capital he had. Nor did they present any evidence to show that he lived in the home of one of the claimants or assisted them economically. One piece of evidence that speaks to his lifestyle is his police record and his prison records. It has not been shown that either the mother or any other family of Adolfo Garrido received any type of economic support from him and hence did not suffer any material damages owing to his death.

60. The situation of Raúl Baigorria is similar to that of the other victim. While his relatives state that he worked as a bricklayer, his police dossier, where he also appears by the name of Jorge Alberto Díaz González, shows him as a peddler, a day laborer, an individual with no profession, a tradesman and a stonemason. There is no evidence that his siblings received any form of economic assistance from him or that he lived with any of them. Nor is there any evidence to show that he provided support for his natural children. Furthermore, according to his police and court records, he did not engage in any regular productive activity with any degree of continuity. Given these circumstances, one can conclude that the disappearance of Raúl Baigorria did not cause his family any economic damage or deprive any member of his family of economic support, since no evidence was shown that he had ever provided such support.

61. For the reasons set forth in the preceding paragraph, the Court denies the request for payment of material damages, because no such damages were proven.

62. As for the moral damages caused by the disappearance of Adolfo Garrido, the principal person affected is his mother, Ms. Rosa Sara Calderón. As the Court pointed out earlier (*supra* 49), these damages do not require evidence as it is clear that the disappearance of her son caused his mother very grave suffering, particularly given the circumstances under which it occurred by reason of the reprehensible conduct of certain public servants in the Province of Mendoza involved in the instant case. One must also consider that as her son's heir, Ms. Rosa Sara Calderón succeeded him in the right to be compensated for the suffering he sustained in life. The Court believes that a fair figure for the total compensation for moral damages owed to Ms. Calderón is US\$75,000 (seventy five thousand United States of America dollars).

63. The siblings of Adolfo Garrido also claim they are entitled to compensation for moral damages. However, they offered no proof of an affective relationship such that the disappearance of their brother would have caused them grievous suffering. Some live more than 1,000 kilometers from where Mr. Garrido lived and there is no

evidence to show that they visited each other frequently or that they took much interest in the life that their brother was leading when they might have. All that has been claimed are sporadic visits made when he was in prison. Quite the contrary, the siblings of Adolfo Garrido only showed serious concern when he disappeared. The Court considers US\$6,000 (six thousand United States of America dollars) to be fair compensation for moral damages to each of Adolfo Garrido's siblings.

64. The siblings of Raúl Baigorria are also seeking compensation for moral damages caused by the disappearance of their brother. Their situation is analogous to that of the siblings of the other victim. They are not their brothers' heirs. They have not supplied any credible or convincing evidence demonstrating an affective relationship with the disappeared person that goes beyond simple consanguinity. There is no evidence that they visited him in prison or took any interest in him. They only showed an interest in his fate when he disappeared, whereupon they took several measures to ascertain his whereabouts. The Court considers fair compensation to be US\$6,000 (six thousand United States of America dollars) for each of Raúl Baigorria's siblings.

65. Thus far Mr. Raúl Baigorria's natural children have not been located. They could not claim a right to be compensated for moral damages suffered with their father's disappearance, because it was not shown that they ever knew him or knew of him. But it is undoubtedly the case that as their father's heirs, they succeed him in the right to compensation for the suffering he sustained in life. And as already stated, these moral damages are obvious and do not need to be proven (*supra* 49). The Court sets the amount of compensation for moral damages sustained by the victim at US\$40,000 (fourty thousand United States of America dollars) with each son receiving half.

VIII OTHER FORMS OF REPARATION

66. In addition to compensation, the victims' families are seeking other forms of reparation. First, they ask that forced disappearance of persons be typified under the penal code as a federal offense. Given the particular circumstances of the instant case, the Court does not consider it necessary to address this matter. Through its agent at the Court's January 20, 1998 public hearing, the State declared that the Government had already introduced in the National Congress a preliminary bill that typified forced disappearance of persons as a crime, in accordance with the Inter-American Convention on Forced Disappearance of Persons.

67. The Commission is requesting as reparations that the Court require that "the Argentine State publicize the report of the *ad hoc* Commission and the findings as widely as possible." At the January 20, 1998 hearing, the agent for Argentina stated that "the commitment to publish [that report] is not only approved, it is done." Under the particular circumstances of the instant case, and inasmuch as this judgment requires that Argentina investigate the facts leading to the disappearance of Mr. Garrido and Mr. Baigorria and punish those responsible (*infra* 73 and 74), no decision on the Commission's request is required.

IX DUTY TO ACT AT THE DOMESTIC LEVEL

68. Under the law of nations, a customary law prescribes that a State that has concluded an international agreement must introduce into its domestic laws whatever changes are needed to ensure execution of the obligations it has undertaken. This principle is universally valid and has been characterized in case law as an evident principle ("*principe allant de soi*"; *Exchange of Greek and Turkish populations, Advisory Opinion*, 1925, PCIJ, Series B No. 10, p. 20). Accordingly, the American Convention stipulates that every State Party is to adapt its domestic laws to the provisions of that Convention, so as to guarantee the rights embodied therein.

69. This obligation of the State Party implies that the domestic legal measures must be *effective*. This means the State must adopt all measures necessary so that provisions contained in the Convention have full force and effect within its domestic legal system. Those measures are effective when the community, in general, adapts its conduct to conform to the principles of the Convention and when, if those principles are breached, the penalties provided for therein are effectively applied.

70. The effectiveness of laws is of fundamental importance in a legal system, as lack of effectiveness may compromise their standing as law. This Court underscored this point in the *Aloeboetoe et al. Case, Reparations*, when Suriname's argument that Surinamese family law applied in the region inhabited by the Saramaca tribe was rejected by the Court because Surinamese family law was not effective in that region; the Court opted instead to apply local customary law (*Aloeboetoe et al. Case, Reparations, supra* 40, paragraphs 58 and 62)..

71. Argentine laws that guarantee the right to life have been violated in the instant case. Therefore, to ensure their effectiveness, Argentina must apply the provisions established for violations of those laws; in other words, it must impose the corresponding sanctions. These are the measures provided for in the American Convention and that the State must take to ensure the effectiveness of the rights and duties guaranteed under the Convention. The American Convention is a multilateral treaty whereby States parties undertake to guarantee and ensure effective exercise of the rights and freedoms guaranteed therein and to comply with the reparations ordered. Hence, the fundamental obligations that the American Convention embodies to protect the rights and freedoms enumerated in its Articles 3 to 25, is to adapt domestic laws to conform to the Convention and to make reparation, and thereby guarantee all the rights and freedoms therein upheld.

72. These obligations are of equal importance. The obligation to guarantee and ensure effective exercise is independent of and different from the obligation to make reparation. The difference lies in the following: the reparation provided for in Article 63(1) is an attempt to erase the consequences that the unlawful act may have had for the affected person, his family or close friends. Since the measure is intended to make reparations for a personal situation, the affected party has the right to waive that right. Thus, the Court could not object if an individual, particularly an adult, who was the victim of a human rights violation waived the compensation to which he or she was entitled. On the other hand, even though the aggrieved party may pardon the author of the violation of his human rights, the State is nonetheless obliged to sanction said author, except when the offense involved is prosecutable by a private party. The State's obligation to investigate the facts and punish those responsible does not erase the consequences of the unlawful act in the affected person. Instead, the purpose of that obligation is that every State party ensure, within its legal system, the rights and freedoms recognized in the Convention.

73. The case law of this Court has consistently been that the State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. If a violation goes unpunished in a State, in such a way that the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its obligation to ensure the free and full exercise of those rights to the persons within its jurisdiction. (*Velásquez Rodríguez Case*, *supra* 41, para. 174; *Godínez Cruz Case*, *supra* 41, para. 184; *El Amparo Case, Reparations*, *supra* 40, para. 61 and operative paragraph 4; *Neira Alegría et al. Case, Reparations*, *supra* 40, para. 69 and operative paragraph 4; *Caballero Delgado and Santana Case*, Judgment of December 8, 1995. Series C No. 22, paras. 58 and 69 and operative paragraph 5; *Castillo Páez Case*, Judgment of November 3, 1997. Series C No. 34, para. 90; *Suárez Rosero Case*, Judgment of November 12, 1997. Series C No. 35, para. 107 and operative paragraph 6; *Blake Case*, Judgment of January 24, 1998. Series C No. 36, para. 121 and operative paragraph 3; *Paniagua Morales et al. Case*, Judgment of March 8, 1998. Series C No. 37, para. 178 and operative paragraph 6).

74. It follows, therefore, that Argentina has a legal obligation to investigate the facts leading to the disappearance of Adolfo Garrido and Raúl Baigorria and to bring to trial and punish the authors, accomplices, accessories after the fact, and all those who may have played some role in the events that transpired.

X COSTS

75. In its application, the Commission requested that "the Court order the Argentine State to pay ... "the honoraria of the professionals who have served as representatives of the victims both in their efforts before the Commission and in the proceedings before the Court" (*supra* 15). On April 7, 1997, by which time the judgment on the merits had been handed down and the reparations phase was already in progress, the victims' families petitioned the Court to order the Argentine State to pay the honoraria of attorneys Carlos Varela Álvarez and Diego J. Lavado, who estimated those fees at 15% of the total amount of the agreed-upon compensation (*supra* 27). At the January 20, 1998 hearing, attorney Carlos Varela Álvarez reiterated the request that the Court order the Argentine State to pay his fees and those of his colleague, and that the Court determine what those fees should be. He pointed out that both had served as attorneys on the case since 1991, in the proceedings before the Mendoza courts, the Inter-American Commission and this Court (*supra* 35).

76. In their brief of April 7, 1995, the attorneys for the victims' families, Varela-Alvarez and Lavado, stated that they had not kept a record of all expenditures incurred, which was understandable given the "social circumstances of these people." They then requested that the Court set the amount of the expenditures by estimating an approximate figure, particularly given the facts that Argentina had acknowledged in its counter-memorial. Among the expenses mentioned were the fees of four attorneys who took part in proceedings before the Argentine courts, trips made to the provinces of San Juan, San Luis, Cordoba and El Chaco in search of the disappeared men, and notary fees for the general powers of attorney for trials and for testimony sworn before a notary public. The victims' families estimated all their

expenses at US\$40,000 (fourty thousand United States of America dollars), to be divided equally between the Garrido and Baigorria relatives.

77. At the January 20, 1998 hearing, attorney Varela-Alvarez repeated the US\$40,000 (fourty thousand United States of America dollars) requested as reimbursement of costs incurred by the victims' relatives in connection with these proceedings. The attorney in question stated, under oath, that neither he nor his colleague had received any restitution of expenses and that they had paid all of their expenses out of their own funds (*supra* 35). He added that he should also be reimbursed for the expenses incurred to attend this hearing, which he estimated at \$1,500 (fifteen hundred United States of America dollars). Attorney Varela-Alvarez provided receipts for some of the expenditures.

78. Neither the Argentine State nor the Inter-American Commission objected to the costs that the victims' families claimed. During the hearing, only one judge on the Court asked about one expense, which attorney Varela-Álvarez explained.

79. As for the previous suggestions, the Court believes that in the instant case it should examine the issue of costs under the terms of subparagraph (h) of Article 55(1) of its Rules of Procedure. Costs are one element to be considered under the concept of reparations to which Article 63(1) of the Convention refers since they are a natural consequence of the effort made by the victim, his or her beneficiaries, or representatives to obtain a court settlement recognizing the violation committed and establishing its legal consequences. In other words, the activity they undertake to accede to the courts, a recourse provided for in the Convention, entails or can entail financial outlays or commitments for which the victim must be compensated when a guilty verdict is delivered.

80. In keeping with the relevant provisions and practice, the Court considers that the costs to which Article 55.1 of its Rules of Procedure refers include the various payments a victim makes or pledges to make in order to be able to have recourse to the inter-American system for protection of human rights. This includes the routine honoraria paid to those who provide the victim with legal assistance. Obviously, the only expenses allowed are those that are necessary and reasonable according to the specifics of each case, and that the victim or his or her representative has actually paid out or promised to pay.

81. Under Article 23 of the Court's Rules of Procedure, at the reparations phase the representatives of the victims or of their next of kin may independently submit their own arguments and evidence before this Court. This recognition of the representatives' *locus standi* opens up the possibility of representation-related expenses. In practice, the legal assistance provided to the victim does not begin with the reparations phase; instead, it begins with the proceedings before the domestic courts and continues throughout each phase of the proceedings under the inter-American system for the protection of human rights, in other words, in the proceedings conducted before the Commission and before the Court, except when the legal assistance the victim or his family receives is free. For the purposes now under consideration, costs also include those incurred for recourse to the domestic courts (*cf. Aloeboetoe et al. Case, Reparations, supra* 40, para. 94; *Caballero Delgado and Santana Case, Reparations, supra* 40, para. 47 and operative paragraph 2: *El Amparo Case, Reparations, supra* 40, para. 21 and *Neira Alegría et al. Case, Reparations, supra* 40, para. 42) and the costs of representation before two international bodies: the Commission and the Court.

82. In exercise of its jurisdictional powers, it is up to the Court to make a prudent estimate of the specific extent of the costs that should be ordered, taking into account any receipts and vouchers provided, the particular circumstances of the case, the nature of the jurisdiction for the protection of human rights, and the characteristics of the respective proceedings, which are unique and different from those of other proceedings, both at the domestic and international levels. The Court shall determine the reasonable *quantum* of the costs incurred by the victims' families and their attorneys in the proceedings within the Argentine courts, with the Inter-American Commission and before this Court, on an equitable basis, and consider the "sufficient connection" that must exist between those costs and the results achieved (*cf.*: European Court of Human Rights, *Brincat v. Italy Judgment of November 26, 1992, Series A no. 249-A*).

83. In the Court's view, the method of setting costs as a percentage of the amount of compensation obtained is not adequate. There are other, more important factors to be weighed when assessing the performance of the attorneys in a proceeding before an international tribunal, such as the evidence introduced to demonstrate the facts alleged, full knowledge of international jurisprudence and, in general, everything that would demonstrate the quality and relevance of the work performed.

84. Another factor that needs to be considered to determine the fees of Mr. Varela-Alvarez and Mr. Lavado is that they shared representation of the victims' families with other attorneys at various stages of the process, both in proceedings in the domestic courts and before the Inter-American bodies.

85. Based on the foregoing, the Court sets costs at the sum of US\$45,500 (forty-five thousand five hundred United States of America dollars); of that amount, US\$20,000 (twenty thousand United States of America dollars) is to be the fees for the two attorneys.

XI COMPLIANCE WITH THE JUDGMENT

86. To comply with this judgment, the State is to pay, within six months from the date of notification of the judgment, the compensations agreed upon for the adult next of kin; if any one of them has died, his compensation shall pass to his heirs. If one or both children of Mr. Baigorria (*supra* 55) are minors, the compensation shall be handed over to the person who has *patria potestas* or guardianship. The minor[s] will receive the indemnity in three equal and consecutive monthly installments. To that end, the State is to deposit the sum of US\$40,000 (forty thousand United States of America dollars) ordered by this Court for the minors, (*supra* 65) in a savings account in a solvent and sound safe financial institution on the most favorable terms allowed under banking law and practice. If at the end of ten years the indemnity has not been claimed, the sum shall be returned, with interest, to the Argentine State. However, this shall not be interpreted to mean that the right to claim the indemnity will lapse or is time-barred.

87. The State may discharge its obligations by making the payment in United States dollars or an equivalent cash sum in Argentina's national currency. The exchange rate used to determine the equivalent value shall be the one in effect on the New York market on the day before the date of payment.

88. If within the space of one year from the date of execution of this judgment, any of the adult beneficiaries fail to claim the payment of the compensation to which they are entitled, the State shall deposit the amount due in a trust fund, on the terms set forth in paragraph 86 of this judgment.

89. The compensations indicated in this judgment shall not be subject to any national, provincial or municipal tax or duty that exists now or that may be legislated in the future.

90. Should the State fall in arrears with its payments, it shall pay interest on the total capital owing at the current bank rate in Argentina, for the duration of the period in arrears.

XII

91. **NOW, THEREFORE,**

THE COURT

DECIDES:

Unanimously,

1. To set at US\$111,000.00 or the equivalent in national currency the sum that the Argentine State shall pay as reparations to the next of kin of Mr. Adolfo Garrido, and US\$64,000.00 or its equivalent in national currency as reparations to the next of kin of Raúl Baigorria. These payments are to be made by the State in the form and under the conditions set forth in the body of this judgment.

2. To set at US\$45,500.00 or the equivalent in national currency the sum that the State shall pay to the victims' families to reimburse them for costs incurred as a result of this process; of this amount, US\$20,000.00 or the equivalent in national currency shall be attorneys' fees for attorneys Carlos Varela-Álvarez and Diego J. Lavado.

3. That the Argentine State shall search for and identify the two natural children of Mr. Raúl Baigorria, by every means possible.

4. That the Argentine State shall investigate the facts leading to the disappearance of Adolfo Garrido and Raúl Baigorria and prosecute and punish their authors, accomplices, accessories after the fact and all those who may have had some part in these events.

5. That the payments stipulated in operative paragraphs 1 and 2 shall be made within six months from the date of notification of this judgment.

6. That the compensation and reimbursement of costs ordered in this judgment shall be exempt from any national, provincial or municipal tax or duty.

7. To supervise compliance with this judgment and close the case only after such compliance.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, on this twenty-seventh day of August, 1998.

Hernán Salgado-Pesantes
President

Antônio A. Cançado Trindade

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Julio A. Barberis
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary