



# INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

REPORT N° 21/00\*

CASE 12.059

CARMEN AGUIAR DE LAPACÓ

ARGENTINA

February 29, 2000

## I. SUMMARY

1. On October 7, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Carmen Aguiar de Lapacó, and sponsored by "*Abuelas de Plaza de Mayo*" ["Grandmothers of Plaza de Mayo"], the Permanent Assembly of Human Rights (APDH), the Center for Legal and Social Studies (CELS), the Center for International Law and Justice (CEJIL), "*Familiares de Detenidos Desaparecidos por Razones Políticas*" ["Relatives of Disappeared Persons Detained for Political Reasons"], the Argentine League for Human Rights, "*Madres de la Plaza de Mayo-Línea Fundadora*" ["Mothers of Plaza de Mayo—Founding Line"], Ecumenical Movement for Human Rights (MEDH), and the Peace and Justice Service (Serpaj) (hereinafter "the petitioners"), against the Argentine Republic (hereinafter the "State", the "Argentine State," or "Argentina").
2. The petitioners alleged that the Argentine judicial authorities had denied the petition by Mrs. Carmen Aguiar de Lapacó to determine what had happened to her daughter, Alejandra Lapacó, who was detained and disappeared on March 17, 1977, based on the right to truth and the right to bereavement. The petitioners contend that the denial of the petition by the judicial authorities is a violation of the right to judicial guarantees (Article 8(1)), the right to effective judicial protection (Article 25), and the obligation to respect the rights (Article 1(1)) protected by the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention").
3. The Commission declared the case admissible at its 103rd regular session and placed itself at the disposal of the parties with a view to seeking a friendly settlement based on respect for the rights enshrined in the Convention. It also invited the parties to make a decision on that eventuality. The friendly settlement was agreed by the State and the petitioner at a hearing held on September 30, 1999, at the Commission's 104<sup>th</sup> session. On November 15, 1999, an agreement for a friendly settlement was signed by the parties, in the presence of the President of the Inter-American Commission, Prof. Robert Kogod Goldman, and its Executive Secretary, Ambassador Jorge Taiana. In that agreement, the State acknowledged its respect for and guarantee of the right to truth, and it pledged to adopt various measures to remedy the violations alleged by the petitioners.
4. In this report on the friendly settlement, in accordance with the provisions of Article 49 of the Convention and Article 45(6) of the Commission's regulations, the Commission summarizes the petitioners' allegations and the friendly settlement reached, and agrees to monitor compliance with the obligations of the State and publication of this report.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. On October 21, 1998, the Commission forwarded the petition to the State and requested information to be sent within 90 days. On January 19, 1999, the Argentine State asked for an extension of the deadline for submitting its observations, which was granted on January 27, 1999, for 30 days. On February 25, 1999, the State asked for another extension, which was granted by the Commission on March 3, 1999. On March 16, 1999, the Commission received a reply from the State, which was forwarded to the petitioners on the same day, and gave them 60 days to send in

their observations.

6. The Commission approved Report N° 70/99 on May 4, 1999, during its 103<sup>rd</sup> regular session. In that report, it stated that it was competent to hear this case and that the petition was admissible, pursuant to Articles 46 and 47 of the American Convention. At that time, in accordance with the provisions of Article 48 (1)(f) of the Convention, the Commission, acting *motu proprio* [on its own initiative], also placed itself at the disposal of the parties for the purpose of arriving at a friendly settlement of the case based on respect for the human rights established in the Convention. On August 19, 1999, the State requested additional time to submit its response, and on September 7, 1999, the Commission granted an extension to the State, up to September 29, 1999.

7. The friendly settlement was reached by the State and the petitioner at a hearing held on September 30, 1999, during the Commission's 104<sup>th</sup> session. On that occasion, the State declared that it had arrived at an agreement with the parties, which would be signed in Argentina at the upcoming celebration of the twentieth anniversary of the on-site visit of the Commission to Argentina in 1979. The petitioners agreed to the terms and conditions indicated by the State. On that same day, the State sent the text of the agreement and asked for a *sine die* suspension of the term for the referenced response. On October 7, 1999, the Commission sent the State's request to the petitioners.

8. On November 15, 1999, the agreement for a friendly settlement was signed, and the State sent the text of that agreement to the Commission on December 13, 1999.

### III. THE FACTS

9. In support of their petition, the petitioners recount that on March 16, 1977, twelve armed men burst into the residence of Mrs. Lapacó in the Federal Capital and took Alejandra Lapacó, Marcelo Butti Arana, Alejandro Aguiar, and Mrs. Lapacó to a detention center called "Club Atlético" ["Athletic Club"]. It was in this place that Mrs. Lapacó saw and heard her daughter Alejandra for the last time. On March 19, 1977, Mrs. Lapacó and her nephew, Alejandro Aguiar Arévalo, were released. In the years since that time, Mrs. Lapacó has made a number of attempts to find her daughter, all to no avail.

10. In 1983, when democracy was restored, the Executive Branch set up the National Commission on Disappearance of Persons (hereinafter "CONADEP"). CONADEP disclosed in a report entitled "NUNCA MÁS" that there were many clandestine detention centers, including the so-called "Club Atlético," where Alejandra Lapacó was held. The report went on to say that "although CONADEP conducted an extensive investigation, it did not reconstruct the individual histories of every detainee who disappeared," and that it was unable to find out what had happened to Alejandra Lapacó. Thus, to this date, Mrs. Lapacó has no knowledge of the fate of her daughter or her remains.

11. Decree 158/83 ordered that criminal proceedings be filed against persons responsible for State terrorism. The complaint filed in a timely manner on the kidnapping, illegitimate deprivation of freedom, and torture of Alejandra Lapacó was one of a large number of other complaints filed as part of Case N° 450, in which the events that occurred at the "Club Atlético" were investigated. Once the initial signed declarations of the defendants had been taken and strict orders issued for temporary detention pending trial, the process of taking testimony and evidence was begun. On June 4, 1987, Law 23.521, known as the "Law of Due Obedience," was approved. Under this law, the majority of the defendants were exonerated from criminal liability. The Federal Chamber of Appeals for Criminal and Correctional Matters of the Federal Capital ordered that signed declarations be received from the defendants still awaiting trial. Finally, on October 7, 1989, by Decree 1.002/89, the Executive Branch granted a pardon, which benefited the defendants in Case N° 450.<sup>1</sup>

12. On May 12, 1995, Mrs. Lapacó petitioned the Federal Court of Appeals to issue a written communication to the Headquarters of the Army Chief of Staff of the Ministry of Defense, asking it

to submit all the existing information on the fate of the persons who disappeared while in detention kept by the Army and the security and intelligence branches which were under the operating orders of the First Army Corps from 1976 to 1983. As grounds for this petition, she alleged the right of family members to know the fate of their loved ones and the right of society to a detailed account of the methods used by the military dictatorship to exterminate tens of thousands of Argentines, or, in short, the "right to the truth."

13. On May 18, 1995, the National Court of Appeals in Criminal and Correctional Matters of the Federal Capital decided to allow the petition, asserting that "it was appropriate for it to exercise its jurisdictional power," and that although Laws 23.492 and 23,521, and Decree 1002/89, which benefited the members of the Armed Forces, curtailed the possibilities for prosecution, they did not imply the culmination of proceedings. The Secretary-General of the Army responded to the court's petition by stating that "the Armed Forces had no information with regard to the specific matter addressed in the petition." As a result of that reply, on July 14, 1995, Mrs. Lapacó suggested that official communications be sent to the various organizations that may have data that could be useful to the investigation. In response to this new petition, on August 16, 1995 the Court replied that this went beyond its jurisdictional powers, which had been exhausted when the laws on "Due Obedience," "Final Point," and the pardons were issued. It further decided to take into account the information received from the Army Chief of Staff, that the court cases would proceed according to their status, and ordered that a copy of the decision be sent to the Secretariat for Human Rights in the Ministry of the Interior, since the complaint could be adequately satisfied by the Executive Branch of government.

14. Upon receiving this decision, on September 8, 1995, the petitioners filed an extraordinary appeal with the Supreme Court. Subsequently, on July 8, 1997, the Attorney General, the highest official in the *Ministerio Público*, issued an opinion in which he upheld the importance of protecting the right to the truth and the conviction that a continuation of the investigations would in no way violate the principle of *non bis in idem* [double jeopardy].

15. On August 13, 1998, the Supreme Court declared that the extraordinary appeal was without merit, on the grounds that the purpose of investigative proceedings is to determine the existence of a punishable act and to identify its perpetrators, and that, given the current status of the case, and the fact that its procedural purpose had been exhausted, it was inadmissible. The decision established that "to take the steps being requested would entail a reopening of the proceedings and the consequent introduction of legal action against persons who were acquitted in final judgment for the conduct that is the subject of this case. There would be no point in gathering evidence for the prosecution without a subject against whom it could be brought [meaning unclear]."

16. The petitioners allege that, as a result of the Supreme Court ruling, the Argentine State has denied the right to truth and the right to a fair trial. The petitioners maintain that the obstacles existing on the domestic front, i.e., the two laws and the presidential pardon, cannot be invoked as grounds to further prevent a determination of what happened to Alejandra Lapacó and of the fate of her body, since the crime of forced disappearance continues to be perpetrated as long as the victim does not appear. Therefore, the decision by the Supreme Court is part of the perpetration of the illicit act in that it is an obstacle to the appearance of the victim.

#### **IV. THE FRIENDLY SETTLEMENT**

17. The State and the petitioners signed an agreement for a friendly settlement containing the following admissions and obligations:

With regard to Case 12,059, before the Inter-American Commission on Human Rights, the Argentine Government and Mrs. Carmen Aguiar de Lapacó, with the mediation of Deputy Alicia Pierini, hereby agree to the following:

1. **RIGHT TO THE TRUTH:** The Argentine Government accepts and guarantees the right to the truth, which involves the exhaustion of all means to obtain information on the whereabouts of the

disappeared persons. It is an obligation of means, not of results, which is valid as long as the results are not achieved, not subject to prescription. This right is specifically recognized in relation to the disappearance of Alejandra Lapacó.

2. **EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS:** The Argentine Government shall adopt the necessary laws to ensure that the national federal criminal and correctional courts throughout the country have exclusive jurisdiction in all cases to determine the truth regarding the fate of persons who disappeared prior to December 10, 1983, with the sole exception of cases involving kidnapping of minors and theft of identity, which shall continue on the basis of their status.

3. **SPECIAL ASSISTING PROSECUTORS:** The Argentine Government shall arrange for the Office of the Attorney General to assign an ad hoc group of prosecutors, consisting of at least two, to act as third parties, without displacing the regular functionaries, in all cases involving inquiries into the truth and the fate of disappeared persons. In this way, there will be a specialized search and interpretation of data and better centralization and circulation of information among the various cases.

4. **SUSPENSION OF LEGAL PROCEEDINGS:** The plaintiff shall refrain from pursuing its international proceeding until this agreement is fulfilled.

18. The agreement on a friendly settlement transcribed above was signed in the City of Buenos Aires on the fifteenth of November, nineteen hundred ninety-nine by the petitioner, Mrs. Carmen Aguiar de Lapacó, and the Secretary of Consular and General Affairs of the Argentine Foreign Ministry, Ambassador Alicia Martínez Ríos, during the visit to the country of the President of the Inter-American Commission, Prof. Robert Kogod Goldman, and its Executive Secretary, Ambassador Jorge Taiana, and in the presence of the legislator of Buenos Aires and mediator of the agreement, Dr. Alicia Pierini, and the President of the Center for Legal and Social Studies, Mrs. Laura de Conte.

19. The Commission expresses its satisfaction with the terms of this agreement and conveys its sincere gratitude to the parties for their efforts to cooperate with the Commission in arriving at a settlement based on the purposes and objectives of the American Convention.

20. In the opinion of the Commission, it is appropriate to reiterate that pursuant to Articles 48(1)(f) and 49 of the Convention, the purpose of this procedure is "to arrive at a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The fact that the State has agreed to this process is a sign of its good faith to comply with the purposes and objectives of the Convention, on the basis of the principle of *pacta sunt servanda*, under which States should comply in good faith with obligations assumed in treaties.<sup>2</sup> The Commission also wishes to reiterate that the procedure for a friendly settlement established in the American Convention allows for the termination of individual cases in a noncontentious manner and, in cases involving various countries, it has proven to provide an important vehicle for a settlement, one that can be used by both parties (petitioners and the State).<sup>3</sup>

## **V. CONCLUSIONS**

21. Based on the foregoing considerations and by virtue of the procedure stipulated in Articles 48(1)(f) and 49 of the American Convention, the Commission reiterates its deep appreciation for the efforts made by the parties and its satisfaction at the agreement for a friendly settlement in the present case, based on the objectives and purposes of the American Convention.

22. On the basis of the considerations and conclusions set forth in this report,

## **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:**

1. To approve the terms of the agreement for a friendly settlement signed on November 15, 1999, which includes provision for the suspension of proceedings before the Commission until the

agreement is fulfilled.

2. To urge the State to take the necessary steps to comply with the commitments and cooperate in the relevant follow-up process.

3. To supervise compliance with the commitments assumed by the State.

4. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 29th day of February, 2000. Signed by Hélio Bicudo, President; Claudio Grossman, First Vice-President; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie y Julio Prado Vallejo.

[ [Table of Contents](#) | [Previous](#) | [Next](#) ]

---

\* The Second Vice-Chairman of the Commission, Juan Méndez, an Argentine national, did not participate in the debate or in the vote on this case, in accordance with Article 19(2)(a) of the Regulations of the Commission.

1 The Commission had already indicated that the now repealed Laws N° 23.492, called the "final point," and N° 23.521, called "due obedience," and Decree N° 1002/89 on pardons, which is still in force, were in conflict with Article XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man, and with Articles 1, 8, and 25 of the American Convention on Human Rights, and with the duty of the Argentine State to take the necessary steps to bring to light the events and identify the persons responsible for the human rights violations which occurred during the past military dictatorship. IACHR, Report N° 28/92. Cases 10147, 10181, 10240, 10262, 10309, and 10311, Argentina. Decision of October 2, 1992.

2 IACHR, Report N° 68/99, *Case 11.709, Luis María Gotelli (h)*. Argentina. Decision of May 14, 1999.

3 IACHR, Report N° 90/99 on the Friendly Settlement, *Case 11.713, Enxet-Lamenxay and Kayleyphapopyet –Riachito indigenous communities*, Paraguay. Decision of September 29, 1999.