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REPORT No. 101/14
PETITION 21-05
REPORT ON FRIENDLY SETTLEMENT

IGNACIO CARDOZO ET AL.
ARGENTINA

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I. SUMMARY

1. On January 6, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition presented by Daro Esquivel, Daniel Esquivel, and Manuel Cuevas, with the co-representation of the Coordinadora Contra la Represión Policial e Institucional (CORREPI) and the Provincial Human Rights Commission of Corrientes (hereinafter “the petitioners”). The petition invokes the international responsibility of the Argentine Republic (hereinafter “Argentina,” “the Argentine State,” or “the State”) for the alleged violations of the obligation to respect rights and the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection, enshrined respectively at Articles 1(1), 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), to the detriment of Mauro Ojeda and Francisco Escobar, who are said to have died on the date of the facts, and Ignacio Cardozo, Horacio Adolfo Ayala, Daniel Antonio Cerdán, Oscar Pablino Pavón, Cornelio Martínez, Jorge Ariel Casco, Juan Alberto Cáceres and Yolanda Monzón in representation of Juan Alberto Cáceres, Ana Maria Delgado and her daughter María de los Ángeles Escobar, Lucio Mauriño, Norma Gladis Saucedo in representation of Mauro Ojeda, Antonio Catalino Alegre, José Luis Talavera, Oscar Díaz, Francisco Niella, and Juan Carlos Moreyra.

2. The petitioners state that on December 17, 1999, the Argentine Federal Border Police (Gendarmería Nacional Argentina) attacked hundreds of protesters who had peacefully occupied the inter-provincial bridge that connects the cities of Corrientes and Resistencia to protest over the failure to pay their salaries, and that the armed forces had attacked them using excessive force, as a result of which two persons were said to have died, with many others wounded. According to the petitioners, five years after the investigation was initiated, the truth had not been established nor had the persons involved been prosecuted due to systematic manipulation of the judicial case.

3. The State proposed, through a communication of December 7, 2007, to initiate a dialogue with the petitioner to reach a friendly settlement. After several years of negotiations facilitated by the good offices of the IACHR, the parties signed a friendly settlement agreement on October 18, 2012.

4. This friendly settlement report, according to Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, presents an overview of the facts alleged by the petitioners and transcribes the friendly settlement agreement, signed October 18, 2012, by the petitioners and representatives of the Argentine State. In addition, it approves the agreement signed by the parties and agrees to publish this report in the Annual Report to the General Assembly of the OAS.

II. PROCESSING BEFORE THE COMMISSION

5. The petition was forwarded to the State on December 8, 2006. The State communicated its willingness to reach a friendly settlement by a communication of December 10, 2007, which was forwarded to the petitioners on December 27, 2007. The petitioners agreed to begin a friendly settlement process on January 31, 2008.

6. The State presented information on the actions taken domestically to approach the petitioners on October 17, 2008, which was forwarded to them. The petitioners submitted observations on March 13, 2009, which were forwarded to the State. The State submitted additional information on August 11, 2009, which was forwarded to the petitioners. The IACHR requested updated information from the parties on July 12, 2012.

7. The State sent additional information on July 10, 2014, which was duly forwarded to the petitioners.

III. THE FACTS ALLEGED

8. The petitioners alleged that on December 17, 1999, heavily armed members of the Federal Border Police under the orders of Commander Major Ricardo Alberto Chiappe, violently removed “hundreds of demonstrators” who had been occupying the General Manuel Belgrano Bridge for one week to protest the delay in payment of salaries by the provincial administration and the precarious economic situation of the Province of Corrientes. According to the petitioners, as of 4:30 a.m., and for a period of approximately 12 hours, more than 400 members of the military had attacked unarmed citizens with tanks, toxic gases, and rubber and lead bullets. The petitioners indicated that more than 50 persons were wounded in the operation, which they described as a bombardment in which the members of the military forcibly entered dwellings in the peripheral area and situated themselves on the roofs of the houses and other buildings so that the snipers could have a better position from which to attack.

9. The petitioners indicated that due to the time of day many persons who were on their way to work were wounded by lead bullets. During the facts denounced by the petitioners, two persons died, Francisco Escobar and Mauro Ojeda, both by gunshot wound to the thoracic aorta, as explained in the complaint brief.

10. The petitioners recounted in general terms that the citizens went to lodge complaints with the office of the federal prosecutor (Procurador Fiscal Federal) the same day of the attack. As of the filing of the petition, almost five years had elapsed, and the persons responsible had yet to be prosecuted. According to the petitioners, the investigation was plagued by numerous errors, which are said to have caused an unwarranted delay in the workings of the judicial apparatus. First, the petitioners indicated that the prosecutor had ordered the very same military force to conduct a search for the projectiles at the scene of the facts, and that in addition they were assigned to keep custody over the scene of the facts, affording an opportunity to those against whom the allegations were made to alter the evidence. In addition, the prosecutor had ordered these persons to draw up the report with respect to the persons wounded, such that the same persons who had fired the shots were in charge, up to a point, of collecting the evidence.

11. According to the petitioners, the sequestration of the arms used was not requested, nor were exhaustive ballistics tests conducted, or other expert examinations that could have helped identify the perpetrators, or identify at least some of the weapons that caused the injuries and homicides. The petitioners also said that only the alleged wounds suffered by the members of the military were investigated, but not the wounds inflicted on the civilians, resulting in an investigation that discarded the possibility that the military agents had participated as the probable direct perpetrators of the incidents. As described in the petition, the authorities embraced a version according to which the military had shot because they had spotted armed persons who were infiltrated in the multitude, nonetheless they did not identify or arrest any of the supposed infiltrators.

12. The petitioners indicated in general terms that “in February of the year 2000 the first complainants came forward, who were not included in the case by omission of the subrogating judge who heard the matter”; and that in March of the same year, Investigative Court No. 6 was designated by “federal intervention” to take cognizance of the matter, but that it had raised a jurisdictional conflict, submitting the proceedings to the federal courts. As outlined in the petition, the federal judge also found himself to lack jurisdiction in April 2000, accordingly the record was forwarded to the Supreme Court of Justice of the Nation, which in October 2000 assigned the case to the Federal Court of First Instance of Corrientes.

13. The petitioners indicated in general terms that in October 2001, Daro Esquivel and Manuel Cuevas were incorporated to the case in representation of “eight wounded persons and the Escobar and Ojeda families.” As indicated in the petition, they recused the federal judge of first instance of Corrientes, based on the consideration that he was biased, but the Federal Chamber had rejected their motion, and supposedly it was not until June 2002 that they were considered a party, as a result of which they did not

have an opportunity to participate in the taking of witness statements from October 2001 to June 2002. The petitioners also stated that in August 2002 other witness statements were taken in which the attorneys of the complainants were not allowed to be present.

14. The petitioners indicated in general and without specifying dates that due to the procedural delay they had filed a complaint appeal (*recurso de queja*) that was rejected. The petitioners alleged that until the moment the petition was filed, in January 2005, no further investigative actions were taken, accordingly the judicial delay by the State had kept the perpetrators of the events from facing justice.

IV. FRIENDLY SETTLEMENT

15. On October 18, 2012, the petitioners, represented by Daro Alejandro Esquivel and Daniel Gustavo Esquivel, signed a friendly settlement agreement with the Argentine State, represented by Oscar Parrilli, Secretary General of the Presidency; Juan Martin Fresneda, Secretary for Human Rights; and Susana Myrta Ruiz Cerutti, General Director of the Office of Legal Counsel of the Ministry of Foreign Affairs, in the following terms:

FRIENDLY SETTLEMENT AGREEMENT

The parties in Petition No. 21-05 of the registry of the Inter-American Commission on Human Rights, *Ignacio Cardozo et al.*, namely Ignacio Cardozo; Ana Maria Delgado on behalf and in representation of her minor daughter María de los Ángeles Escobar; Norma Gladis Saucedo in representation of Mauro Ojeda; Antonio Catalino Alegre; Lucio Ernesto Mauriño; José Luis Talavera; Oscar Díaz; Oscar Pablino Pavón; Yolanda Leonor Monzón and Juan Alberto Cáceres, both in representation of Juan Alberto Cáceres; Daniel Antonio Cerdán; Juan Carlos Moreyra; Jorge Ariel Casco; Horacio Adolfo Ayala; Cornelio Martinez; and Francisco Niella, represented by Daro A. Esquivel and Daniel G. Esquivel, and the Government of the Argentine Republic, in its capacity as a state party to the American Convention on Human Rights, hereinafter “the Convention,” acting by express mandate of Articles 99(11) of the Constitution of the Argentine Nation, represented by the Secretary General of the Presidency, Mr. Oscar Parrilli, the Secretary for Human Rights, Mr. Juan Martin Fresneda, and the Director General of the Office of Legal Counsel of the Ministry of Foreign Affairs, Ambassador Susana Myrta Ruiz Cerutti, are honored to inform the Illustrious Inter-American Commission on Human Rights that they have reached a friendly settlement agreement in respect of the petition, whose content is set forth in what follows, requesting that it be accepted, in view of the consensus reached, and that the consequent report provided for by Article 49 of the Convention be adopted.

I. Background to the case before the IACHR – The friendly settlement process

1. On June 6, 2005 (*sic*), the Inter-American Commission on Human Rights received a petition against the Argentine Republic, related to events that occurred on December 17, 1999, at the General Belgrano Bridge, in the province of Corrientes, to the detriment of Ignacio Cardozo; Francisco Escobar; Mauro Ojeda; Antonio Catalina Alegre; Lucio Ernesto Mauriño; José Luis Talavera; Oscar Díaz; Oscar Pablino Pavón; Juan Alberto Cáceres; Daniel Antonio Cerdán; Juan Carlos Moreyra; Jorge Ariel Casco; Horacio Adolfo Ayala; Cornelio Martinez; and Francisco Niella.

2. The petitioners argued that the State was responsible for violations of the rights to life, humane treatment, personal integrity, freedom of circulation, judicial guarantees, freedom of expression, freedom of assembly, freedom of association, rights of the child, and judicial protection, in relation to the obligation to respect and ensure, enshrined at Articles 4, 5, 7, 8(1), 13, 15, 16, 19, and 25, respectively, of the American Convention on Human Rights.

3. On September 17, 2007, the Argentine State communicated to the Inter-American Commission on Human Rights the offer to begin a dialogue aimed at exploring the

possibilities of reaching a friendly settlement in the instant case. After that, various working meetings were held between the petitioners and representatives of the State, which culminated in the adoption of this instrument for friendly settlement.

II. The international responsibility of the Argentine State

1. By note of August 30, 2010, the petitioners detailed their claims for reparations with a view to adopting a final agreement. The Minister of Justice and Human Rights of the Argentine Republic, by note of November 19, 2010, considered that based on the facts of the case "...one should recognize the international responsibility for the violation of the rights of the American Convention set forth in the complaint."

2. Mindful of the foregoing, and having considered the relevant circumstances of the case, and the decision expressed by the Minister of Justice and Human Rights, and taking into consideration the international nature of the violations of rights recognized above, the Government of the Argentine Republic expresses its decision to assume objective responsibility internationally in its capacity as a State party to the Convention and in accordance to the constitutional provisions invoked above, requesting the Illustrious Commission to consider the alleged violations recognized, in the terms of the petition, and accept the commitments assumed herein by the Argentine State in the specific conditions explained in detail in the following points.

III. Measures to be adopted

a. Pecuniary measures of reparation

1. The parties agree to set up an *ad hoc* Arbitral Tribunal to determine the amount of pecuniary reparations due to the petitioners, in conformity with the rights whose violation has been recognized, and in accordance to the applicable international standards.

2. The Tribunal will consist of three independent experts (*sic*), recognized to be well-versed in human rights law and of upstanding moral character, one designated at the proposal of the petitioners, the second at the proposal of the State, and the third at the proposal of the two experts designated by the parties. The Tribunal should be constituted no later than 30 days after the adoption of the report provided for in Article 49 of the American Convention on Human Rights.

3. The procedure to be applied will be defined by mutual agreement between the parties; a record of the contents of said agreement will be set forth in a document, a copy of which shall be forwarded to the Inter-American Commission on Human Rights. To that end, the parties shall designate a representative to participate in the deliberations on the procedure. For the purposes of representing the State, the designation of one official from the human rights area of the Ministry of Foreign Affairs (*sic*) and from the human rights area of the Ministry of Justice and Human Rights shall be delegated to those Ministries.

4. The award of the arbitral tribunal shall be final and not subject to appeal. It shall contain the amount and the modality of the pecuniary reparations agreed upon, the beneficiaries thereof, the determination of the costs and fees that may be in order, both in the procedure carried out internationally and in the arbitral procedure, which shall be submitted for evaluation to the Inter-American Commission on Human Rights in the context of the process of monitoring compliance with the agreement, with the purpose of verifying that it is adjusted to the applicable international standards. The amounts recognized in the award shall be non-attachable and shall be exempt from the payment of any tax, contribution, or fee, already existing or to be established.

5. The petitioners waive, on a final and irrevocable basis, bringing any other pecuniary claim against the Argentine State in relation to the instant case.

b. Non-pecuniary measures of reparation

1. The Government of the Argentine Republic undertakes to publicize this agreement once it has been approved by the Inter-American Commission on Human Rights as provided for by Article 49 of the American Convention on Human Rights, in the "Boletín Oficial de la República Argentina" (Official Gazette of the Argentine Republic) and in a national-circulation daily newspaper by means of an insert. The text will be agreed upon with the petitioners.

2. The Government of the Argentine Republic undertakes to coordinate with the corresponding areas for the purposes of giving impetus to the criminal investigation, allocating the means within its reach to prevent the passage of more time, identifying and punishing the direct perpetrators and masterminds of the deaths and injuries.

3. Without prejudice to the criminal proceeding, the Government of the Argentine Republic undertakes to give impetus to the summary administrative investigations with respect to all those who participated in the operation (*sic*), including those who have already retired.

4. The Government of the Argentine Republic undertakes to coordinate with the competent areas for the purposes of forming a technical working group to the effect of continuing to carry out the studies and steps necessary for evaluating the socio-environmental and health situation of the victims and their immediate families, which, independent of and prior to the pecuniary reparations, should provide concrete solutions to their basic material needs and ensure the victims access to adequate control and attention to their physical and mental health.

IV. Request

The Government of the Argentine Republic and the petitioners sign this agreement, state their full conformity with its content and scope, and mutually value the good will that has characterized the negotiation process. In that regard, it is stated for the record that this agreement should be perfected by its approval by Decree of the National Executive, at which time the Inter-American Commission on Human Rights will be asked to ratify the friendly settlement agreement reached by adopting the report provided for in Article 49 of the American Convention on Human Rights.

Buenos Aires, October 18, 2012

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

16. The IACHR reiterates that according to Articles 48(1)(f) and 49 of the Convention, the purpose of this procedure is to reach "a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The agreement to go forward with this process expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the principle of *pacta sunt servanda*, by which the states should carry out in good faith their obligations assumed in treaties.¹ It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows concluding individual cases in a non-contentious manner, and has proven, in cases regarding several countries, to offer an important vehicle available to both parties for resolving cases.

¹ Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: "**Pacta sunt servanda.**" *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

17. The Inter-American Commission has closely followed the development of the friendly settlement reached in the instant case and highly values the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

18. The IACHR observes that on June 12, 2014, the President of Argentina issued Decree No. 948/2014, by which the Friendly Settlement Agreement entered into on October 18, 2012, by petitioners and the Government of the Argentine Republic was approved; a copy is in the record.

19. In accordance with the terms of the friendly settlement agreement, once the agreement is perfected by the adoption of the decree by the federal Executive, the State would ask the IACHR to ratify it by adopting the friendly settlement report. In this regard, on July 10, 2014, the IACHR received a communication from the Argentine State in which it asks the Commission to adopt the report contemplated in Article 49 of the American Convention, in order to initiate the procedures for granting the victims the measures of reparation established at section III of the Friendly Settlement Agreement.

20. The Inter-American Commission highlights the recognition of international responsibility of the Argentine State, set forth in the friendly settlement agreement, for the violation of the rights enshrined in the American Convention on Human Rights in relation to the facts set forth in the petition in the terms of the complaint filed by the petitioners.

21. In addition, the IACHR highlights the other measures of reparation established in the friendly settlement agreement, including the measures of economic reparation, the commitment assumed by the State to investigate the facts, and the offer of guarantees of justice, as well as the measures related to the provision of the health service and providing for the victims' basic material needs.

22. In view of the foregoing, the IACHR considers that these commitments are in the process of being carried out, accordingly it will continue supervising that process.

VI. CONCLUSIONS

23. Based on the foregoing considerations, and by virtue of the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate that it profoundly values the efforts made by the parties and is satisfied that a friendly settlement has been reached in the instant case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

24. In light 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 signed by the parties on October 18, 2012.
2. To continue supervising the commitments pending of compliance by the State of Argentina. And to that end, to remind the parties of their commitment to periodically inform the IACHR of its implementation.
3. To make this report public and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 7th day of the month of November, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.