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## **REPORT No. 207/21**

### **CASE 13.595**

#### **REPORT ON FRIENDLY SETTLEMENT**

**AMANDA GRACIELA ENCAJE AND FAMILY  
ARGENTINA**

Approved electronically by the Commission on September 17, 2021.

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FRIENDLY SETTLEMENT  
AMANDA GRACIELA ENCAJE AND FAMILY  
ARGENTINA  
SEPTEMBER 17, 2021

**I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS**

1. On March 29, 2008, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition filed by Silvia Elena Encaje and Andrea Valeria Martínez on behalf of Amanda Graciela Encaje and family (hereinafter “the petitioners”), in which they alleged the international responsibility of the Argentine State (hereinafter “the State” or “Argentina”) for the violations of human rights in detriment of Amanda Graciela Encaje’s (hereinafter “the victim”), who was presumably murdered on April 8, 1992, in the surroundings of the company where she worked, and its subsequent lack of investigation and punishment of the individuals criminally responsible for the facts.

2. On May 4, 2018, the Commission adopted the Admissibility report N° 33/18, in which it concluded that it was competent to examine the petition in relation to the alleged violation of the rights contained in Articles I and XVIII of the American Declaration, Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 24 (equal protection of the law), and 25 (judicial protection) of the American Convention, in conjunction to article 1.1 of the same treaty, and the alleged violation of the rights contained in article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará).

3. On July 12, 2021, the parties signed a friendly settlement agreement in which they jointly requested the Commission its approval and publication.

4. In this friendly settlement report, as established by article 49 of the Convention and article 40.5 of the Commission’s Rules of Procedure, a summary of the alleged facts presented by the petitioners is made and the friendly settlement agreement, signed on 12 July 2021, by the petitioners and representatives of the State is transcribed. Likewise, the agreement signed by the parties is approved and the publication of this report in the IACHR’s Annual Report to the General Assembly of the Organization of the American States is agreed.

**II. THE FACTS ALLEGED**

5. Pursuant to the allegations presented by the petitioners, Amanda Graciela Encaje would have been murdered on April 8, 1992, in the facilities of the company “Supercemento S.A.” located in the city of Resistencia, Chaco province, Argentina, where she worked as a secretary. Her body would have been found next to the one of the company’s director, Néstor Blas Vivo. The petitioners alleged that both bodies were presumably beaten and tortured and that one of the autopsies done to Amanda Graciela Encaje would have indicated that she was sexually abused. They highlighted that a large amount of money would have been found near the bodies, allegedly part of the victim’s salary, which would have indicated that the facts would not have been related to a robbery and they highlighted that there would have been a delay in criminal complaint, which was filed hours after the bodies were found, presumably after head officers of the company were informed by workers.

6. The petitioners alleged that, the murdered of the alleged victim would have been used as a mean to “send a threat or *ultimatum* to other head officers of the company” supposedly due to a non-compliance with bribery payments; and taking into consideration that the company would have obtained an important concession for the construction of a road project in the city of Resistencia, as part of a consortium called “VICOVSA” presumably related with corruption claims in the past. Furthermore, the petitioners alleged that the facts would have been framed in the context of irregular acts and corruption for the purpose of obtaining bids, and that the above-mentioned company would have disappeared five months after the events occurred. The petitioners highlighted that, unexplainably, a wide number of lawyers invited to be plaintiffs would have expressed their denial on taking the case.

7. According to the petitioners, the facts would have been reported to the Superior Justice Tribunal of the province and other authorities, including the former president, the Minister of Interior, the Minister of Justice, the Governor of the “Chaco Province,” the Human Rights Commission of the Deputies’ Chamber of the “Chaco Province,” and the Executive Provincial Branch, among others. The petitioners alleged that, during the investigation, the Eight-Sectional Police Station of the city of Resistencia would have intervened, and that it would have initiated *motu proprio* a criminal process before the Fifth Instruction Court of the Chaco Province.

8. In relation to such process, the petitioners indicated that the investigation would have suffered a number of irregularities, among them, the alleged unjustified inhibition of the presiding judge for the criminal case; the deficient custody at the crime scene, which would have allowed not only the transit of people over the place of the events, but also to retain evidence with the alleged acquiescence of present police and judicial authorities; the alleged maintenance and paint works of the place, 15 days after the crime was committed; alleged delays in the lawful search of the company; contradictory autopsies, with no order to clarify the differences of the diagnostics, specifically the alleged sexual abuse; the alleged loss of vaginal samples of the victim; the supposed leak of core information relevant for the criminal investigation, allegedly by state officers to the press media, i.e. police declarations before the opening of the judicial process, which would have impacted witnesses and prevent them from testifying in court; and the alleged homicide of one police officer assigned to the investigation.

9. The petitioners indicated that, the investigation would have been focused on the personal lives of the victims, which provided no outcome, and that other research paths were not adequately explored. They expressed that a recognized engineer publicly declared that the then Minister of Public Works and Services, the Secretary of such entity, and directives of the company were the presumed intellectual authors and/or concealers of the crime and that it would have been a matter of retaliation due to non-payment of bribes. They pointed that such declarations would have been changed at court, presumably because of fear and lack of guarantees.

10. The petitioners alleged in the petition before the Commission that, 15 years after the facts, the process was still on pre-trial stage, which implied an imminent risk of prescription and impunity. They added that, at the date of filing the petition, they had not been formally notified of the closure of the case, but had been informed of it through the media, due to alleged statements by the intervening judge. In that sense, they indicated that the lack of investigation and the alleged irregularities, would have occurred due to the close relationship among the economic and political power of the province, which would have prevented the clarification of the facts. They pointed out that the facts would be due to a “crime with purely mafia connotation” in the frame of an investigation that allegedly was “plagued by omissions, irregularities, cover up, and treacherous corruption on the part of the judicial and police agents.” According to the petitioners, the case would have been closed by prescription due to the lack of indicted and evidence.

### **III. FRIENDLY SETTLEMENT**

11. On 12 July 2021, the parties signed a friendly settlement agreement. The following includes the text of the friendly settlement agreement sent to the IACHR:

## FRIENDLY SETTLEMENT AGREEMENT

The parties in the case N° 13.595 registered before the Inter-American Commission on Human Rights (IACHR) –“Amanda Graciela Encaje and family”–: the petitioning party Andrea Martínez y Silvia Encaje, joined by the FROM JUSTICE Civil Association of Victims of the USINA Homicide [*Asociación Civil de Víctimas de Homicidio USINA de JUSTICIA* in Spanish] and the legal representation of the lawyers Marco Molero and Carlos Bermejo; and the government of the Republic of Argentina, state party to the American Convention on Human Rights, acting under article 99 paragraph 11 of the Constitution of the Argentinian Nation, represented by the Subsecretary of Protection and International Relations on Human Rights from the Secretary of Human Rights of the Nation, Dr. Andrea Pochak, and by the Director of International Human Rights Litigation Department of the Ministry of Foreign Affairs, International Trade and Worship, Dr. Javier Salgado, have the honor to inform the distinguished Inter-American Commission on Human Rights that a friendly settlement agreement has been achieved on the case, the content of which is as follows, requesting that in view of the consensus reached, the proposal be accepted and the respective report adopted, as provided by article 49 of the Convention.

### I. Case history before the IACHR – The friendly settlement process.

1. On 29 March 2008, the Inter American Commission on Human Rights received a petition against the Republic of Argentina filed by Andrea Valeria Martínez and Silvia Elena Encaje, that alleged the violation of the rights recognized in the American Convention on Human Rights that would have been produced in the framework of a judicial investigation that was carried out as a result of the homicide of Amanda Graciela Encaje and Nestor Blas Vivo, event occurred on April 8, 1992, in the city of Resistencia, el Chaco Province. Among the judicial actions carried out in response to the crime, on March 11, 2014, judgment was rendered, and two persons were dismissed completely and definitively due to death, and the criminal action was terminated for another six persons due to statute of limitations.

2. On 4 May 2018, the Inter-American Commission on Human Rights adopted the Admissibility Report N° 33/18, declaring admissible the petition in relation to the alleged violations to the rights recognized in the articles, 4, 5, 8, 11, 25, and 25 of the American Convention on Human Rights, in conjunction with the obligations established in article 1.1 of the same instrument and article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará).

3. By notice dated October 16, 2018, the Inter-American Commission on Human Rights requested the State to manifest its willingness to initiate the friendly settlement process, according to article 48(1)(f) of the American Convention on Human Rights, making itself available to the parties and with a view to achieving a possible agreement.

4. Accordingly, the Government of the Chaco Province expressed its willingness to establish a process of dialogue with the petitioning party by note dated November 22, 2018, later confirmed by the provincial Government by note on June 25, 2020.

5. In the framework of the process of dialogue, the representatives of the Chaco Government and the relatives of Amanda Encaje defined a work agenda, and several meetings were held at the provincial headquarters, in which the provincial and national authorities and the petitioners participated.

6. After several exchanges and observations, the parties reached a reasonable understanding, the content of which is developed in the Minute of Compromise of Friendly Settlement subscribed on April 7, 2021, subsequently ratified on May 3, 2021, by the Chaco Province Governor's Decree N° 940/2021, a copy of which is attached as Annex 1.

## II. The responsibility of the Chaco Province in the case

1. In the Minute of Compromise of the Friendly Settlement, approved by the Decree N° 940/2021 –which is annexed hereto as an integral part of this Agreement–, the Government of the Chaco Province understood that there were enough elements to establish the province’s objective responsibility in the case, reason why it decided to recognize responsibility for the facts, in the light of evidence and documents submitted to substantiate the petition before de IACHR; considering the admissibility report N°33/18 adopted by the Inter-American Commission of Human Rights in its 168<sup>th</sup> extraordinary period of sessions, and other elements of conviction that were incorporated in the friendly settlement process, such as the Resolution N°935/20 from the Chaco Superior Justice Tribunal –that admitted the denial of justice–. Therefore, the Government of the Chaco Province understood that in the present case there was a violation of the rights to life, humane treatment, fair trial, privacy, equal protection, and effective judicial protection (articles 4, 5, 8, 11, 24 and 25 of the American Convention on Human Rights), in conjunction to article 1.1 of the same treaty, and article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará).

2. In view of this, and pursuant to the international nature of the violations of the recognized rights abovementioned, that took place in the framework of the jurisdiction of the Chaco Province, the Government of the Republic of Argentina manifests that it has no objections whatsoever in joining such acknowledgment in the international sphere as a state party to the Convention, and to ask the distinguished Inter-American Commission of Human Rights to consider it.

## III. Non-monetary reparation measures

The Government of the Republic of Argentina and the petitioners ask the distinguished Inter-American Commission to accept the compromises agreed by the Government of the Chaco Province through the minute quoted in the point II.1, related with non-monetary reparation measures to repair comprehensively the families of the victims which are transcribed below:

### A. *Sculpture in tribute to the victims and their families*

The commitment is to carry out an emotive sculpture, in tribute to the victims and their families in their long struggle for justice, joined by a marble plaque with an allegoric inscription to the recognition of responsibility for the denial of justice and the friendly settlement agreement of the case. The sculpture will be realized within a period not exceeding three months from the date of the homologation of the present agreement by the IACHR.

### B. *Examine the feasibility of reopening the criminal case of the homicides of Amanda Encaje y Nestor Vivo*

The Provincial Government undertakes to request the Public Prosecutor’s Office of the Chaco Province to analyze and justify the reopening of the criminal case entitled “COMISARIA SECCIONAL OCTAVA S/ ELEVA ACTUACIONES” (File N° 893, year 1991, registry of the former instruction Court N°5 transferred to the Transition and Guarantees Court N°4, both at the city of Resistencia, Chaco Province).

### C. *Creation of the Official Defense Counsel for Victims position, with exclusive dedication to persons victims of crimes*

For the fulfillment of this point, the Executive Branch of the Chaco Province undertakes to raise, within a period of six months from the date of the homologation of the present

agreement by the IACHR, a bill before the Provincial Chamber of Deputies that promotes the creation of two placements for Official Defense Counsel for Victims, one based at the city of Resistencia and the other at “Presidencia Roque Sáenz Peña.” The Government of the Chaco Province undertakes to elaborate and draft the bill with the petitioners.

**D. *Creation of the Observatory for Crime Victims***

For the fulfillment of this point, the provincial Executive Branch undertakes to present, within a period of six months from the date of the homologation of the present agreement by the IACHR, a draft bill before the Provincial Chamber of Deputies that promotes the creation of an entity and to name it Observatory of the Victims of Crimes/ Amanda Encaje [*Observatorio de Víctimas de Delitos/Amanda Encaje* in Spanish]. The Government of the Chaco Province undertakes to elaborate and draft the bill with the petitioners.

**E. *Sanction of protocols for the preservation of the crime scene and to guarantee the chain of custody of evidence and effects seized, to optimize and streamline the investigation of complex crimes***

The Government of the Province undertakes to promote the ratification by law of a series of protocols that are implemented in the criminal investigations advanced in the provincial jurisdiction, but without legal force. The provincial Executive Branch undertakes to promote the bill within a period of six months from the date of the homologation of the present agreement by the IACHR, and to elaborate and draft the bill with the petitioners.

**F. *Implementation of the Genetic Provincial Bank***

The Government of the Chaco Province undertakes to promote the legal adjustments necessary to progressively implement the Provincial Bank of Digitalized Genetic Fingerprints, created by Provincial Law 1726-N (before Law 6333), and analyze the feasibility to assign the budget allocations for this purpose. The provincial Executive Branch undertakes to promote the bill within a period of six months from the date of the homologation of the present agreement by the IACHR, and to elaborate and draft the bill with the petitioners.

**G. *Ratification and diffusion***

Finally, in the Minute of Compromise of Friendly Settlement, the Government of the Chaco Province, assumed to undertake that it would be approved by Provincial Decree, as it happened on May 3, 2021, (Decree N° 949/2021), and to publish it in a newspaper of national and another one of provincial circulation, after the homologation report by the IACHR. Likewise, it was agreed that the provincial Government will request the National State to publish the content of the agreement on the websites Ministry of Foreign Affairs and Worship and the Ministry of Justice and Human Rights.

**H. *Final provisions***

The petitioners expressly state in the Minute Compromise that, in spite of the “... *immeasurable pain caused by the lack of justice in Amanda Encaje and Néstor Vivo’s homicide and the revictimization of both families, there is no financial claim or any sort of compensation, since their claims are directly related to the defects that attended the investigation and the whole criminal process; therefore, they aim that the State’s budgetary efforts to be directed at establishing public policies to address non-repetition guarantees.*” Notwithstanding the foregoing, the Government of the Chaco Province “... *assumes the payment of fees to the petitioners’ lawyers. For that, it undertakes to realize the corresponding administrative procedures, provided in the local legislation, to carry out the payment of such fees.*”

#### **IV. Compromise of the National State**

The National State undertakes to make the present agreement available on the websites of the Ministry of Foreign Affairs and Worship and the Secretary of Human Rights of the Nation; for at least a period of six months.

#### **V. Petition**

1. The Government of the Republic of Argentina and the petitioners celebrate the signing of the present agreement and value mutually the good willingness shown in the process of negotiation.

2. In view of this, the parties ask the distinguished Inter-American Commission of Human Rights to approve the compromises assumed by the Chaco Province, in the extent that they are fully compatible with the object and purpose of the American Convention on Human Rights.

3. Therefore, the parties expressly ask the distinguished Commission to adopt the report pursuant to article 49 of the abovementioned Convention, the time at which this agreement will acquire full legal force and effect.

#### **IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

12. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the American Convention, the purpose of this procedure is to "reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention." The acceptance to carry out this procedure expresses the willingness of the State to comply with the purposes and objectives of the Convention by virtue of the principle *pacta sunt servanda*, by which the States must comply in good faith with the obligations assumed in the treaties.<sup>1</sup> It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows the termination of individual cases in a non-contentious manner, and has shown, in cases involving various countries, to offer an important vehicle for settlement, which can be used by both parties.

13. The Inter-American Commission has closely followed the development of the friendly settlement reached in the present 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.

14. The IACHR takes note, in attention to what was established in the first paragraph first, clause VI.3, of the friendly settlement agreement, that the parties agreed to request the Commission the issuance of the report pursuant to article 49 of the American Convention, once the friendly settlement agreement was signed. Thus, it corresponds to determine the content and fulfillment of the friendly settlement agreement.

15. The Inter-American Commission values the declarative clause II in which the State of Argentina recognizes its international responsibility for the violation of the human rights to life, humane treatment, fair trial, privacy, equal protection of the law, and effective judicial protection, in conjunction to the obligation to respect and guarantee human rights, pursuant to article 1.1 of the American Convention on Human Rights, and to the rights contained in article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará).

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



16. In relation to the other clauses of the agreement, the Commission notes that, accordingly to what the parties agreed upon, they shall be fulfilled after the homologation of the agreement; therefore, they are considered pending compliance. In this regard, for the foregoing, the Commission considers that the compromises established in the clause III letters A (Sculpture), B (Reopening of the investigation); C (Creation of the official defense counsel for victims); D (Creation of the observatory for crime victims); E (Sanction of protocols); F (Implementation of the genetic provincial bank); G (Ratification and diffusion) are pending compliance and so it declares it as such. The Commission awaits updated information from the parties and on the implementation of the measures after the publication of this report. The Commission considers that the rest of the agreement is declarative in nature, and therefore it is not up to the Commission to monitor its compliance.

17. Finally, the Commission considers that the friendly settlement agreement is pending compliance and so it declares it so.

## **V. CONCLUSIONS**

1. Based on the foregoing considerations and by virtue of the procedure established in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction with the achievement of a friendly settlement in the present case, based on respect for human rights and compatible with the object and purpose of the American Convention.

2. By virtue 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 July 12, 2021.

2. To declare pending compliance letters A (Sculpture), B (Reopening of the investigation); C (Creation of the official defense counsel for victims); D (Creation of the observatory for crime victims); E (Sanction of protocols); F (Implementation of the genetic provincial bank); G (Ratification and diffusion) of the clause III of the friendly settlement agreement, according to the analysis contained in the present report.

3. Continue with the monitoring of letters A (Sculpture), B (Reopening of the investigation); C (Creation of the official defense counsel for victims); D (Creation of the observatory for crime victims); E (Sanction of protocols); F (Implementation of the genetic provincial bank); G (Ratification and diffusion) the clause III of the friendly settlement agreement, according to the analysis contained in the present report. With such purpose, to remind the parties of their commitment to periodically report the IACHR on their compliance.

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

Approved by the Inter-American Commission on Human Rights on September 17, 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño; Joel Hernández García and Edgar Stuardo Ralón Orellana, Members of the Commission.