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REPORT No. 393/21
CASE 14.059

ADMISSIBILITY AND MERITS REPORT

"MARÍA" AND HER SON "MARIANO"
ARGENTINA

Approved by the Commission at its period of sessions No. XX, held on Month day, 20xx
XX period of sessions

Cite as: IACHR. Report No. xx/xx. Case XX.XXX. Merits. Name. State. Month day, 20xx.

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I. INTRODUCTION AND PROCESSING OF THE CASE

1. On January 11, 2018, the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission," "the Commission," or "the IACHR") received a petition signed by Ms. Araceli Margarita Díaz, Ms. Marta Nora Haubenreich, Ms. María Claudia Torrens, and Ms. Carmen María Maidágan, in their capacities as attorneys representing the child "María."[1] In that submission, the petitioners denounced the Argentine State (hereinafter "Argentina," "the Argentine Republic," or "the Argentine State") for the violation of a number of rights set forth in the American Convention on Human Rights perpetrated in the context of the judicial proceedings for the declaration of the adoptability of "Mariano," biological son of the party they represent.

2. On May 14, 2020, the Commission decided to admit the petition for processing and, pursuant to Article 30.3 of its Rule of Procedure, forwarded to the State a copy of the relevant parts for its observations, for the period of three months. By Note of August 19, 2020, the Argentine State indicated that it did not have "objections to the formal admissibility of the petition in the terms of Article 36" of the Commission's Rules of Procedure, and requested that "the processing of the petition continue in accordance with Article 37 of that instrument." On September 2, 2020, the Commission informed the parties of its decision to invoke Article 36.3 of its Rules of Procedure and, therefore, deferred treatment of the admissibility of petition until the merits had been debated and a decision taken thereon.

3. On September 22, 2020, the petitioners forwarded their document containing additional observations on the merits. The State did the same by Note of June 15, 2021. On September 17, 2021, the Commission reported to the parties that, considering the relationship of the instant case to precautionary measure application file MC 540-15, it would take into account the actions and documents included in that file for the analysis of the merits of the case.

4. On October 21, 2021, in the context of its 181st period of sessions, the Commission held a hearing to hear "María's" testimony and the petitioners' allegations on the merits and those of the representatives of the Argentine State. All information received was duly forwarded to the parties.

II. POSITIONS OF THE PARTIES

a. The petitioners

5. The petitioners first related that about late May 2014, the child "María," 12 years of age, went with her mother to the Martín Maternity Clinic of the Secretariat of Public Health, Rosario Municipality, Santa Fe Province, where she was diagnosed as pregnant. According to the petitioners, when questioned by the clinic's medical professionals, the child "María" told of "sex games" with her half brother and a friend of his, both "minors." They also related that the family situation of "María" and her mother was extremely vulnerable owing to the family violence they were suffering at the hands of the child's father, who had been excluded from the home for that reason.

6. The petitioners then indicated that the medical and social professionals of Martín Maternity Clinic had made efforts with a view to putting up the unborn child for adoption and that, one month before the birth, these professionals had prepared a document addressed to the Provincial Department for the Promotion of the Rights of Children, Adolescents, and the Family, Santa Fe Province, setting out the consent of "María" and her mother to put "Maria's" son "Mariano" up for adoption. The petitioners stated that the document had been signed by "María's" mother, without legal assistance and without account taken of the intent of other family members of

[1] The Commission decided that, given the nature of the case and as provided in Article 28.2 of the IACHR Rules of Procedure, the identity of the alleged victims, their family members, and third parties involved would be kept confidential throughout this report. The aim of this course of action is to guarantee the privacy of the petitioners and prevent the publicity of the IACHR's decision from leading to the revictimization of the children and adolescents who are the subjects of the instant case. The persons in question are fully identified in the documents forwarded to the Argentine State.

the child, such as her grandmother and great aunt, who indicated their willingness to take responsibility for the child "Mariano."

7. Continuing their account, the petitioners indicated that the Provincial Department for the Promotion of the Rights of Children, Adolescents, and the Family did not intervene in the case in any way, but that the Provincial Defender of Children and Adolescents, based on actions begun by who knows who, brought an action in the courts and, on August 1, 2014, requested the duty family court to institute guardianship proceedings with the aim of putting up "Maria's" unborn child up for adoption. They maintained that the Office of the Defender attached to that request a Martín Maternity Clinic report and the document signed by "María" and her mother. The petitioners contended that the Provincial Defender of Children and Adolescents did not have the authority to institute the adoption proceedings. That same August 1, they added, the Court sent a note to the Single Provincial Registry of Applicants for Guardianship with the Aim of Adoption (*Registro Único Provincial de Aspirantes a Guarda con Fines Adoptivos* - RUAGA), requesting "implementation of the corresponding procedures for the designation of the applicant families."

8. The petitioners also related that Mr. and Mrs. "López," who were designated as applicants for "Mariano's" guardianship with the aim of adoption, met with "María" some days before the girl gave birth, at the Office of the Defender, without the knowledge of the court. The petitioners indicate that at the meeting, "María" was accompanied only by a psychologist and that her mother had not been allowed in, a circumstance that was highly traumatic for the child.

9. The petitioners also indicated that when the time came for "María" to give birth to her son, Mr. and Mrs. "López" requested the court that they be allowed to remove the child from the clinic when he had been released by the doctors. The petitioners emphasized that, in response to this request, the judge in charge of the case, without justifying her decision or giving reasons why Mr. and Mrs. "López" had been selected, decided to give them the boy, merely indicating "notify as requested."

10. The petitioners contend that Mr. and Mrs. "Lopez" asked the judge for preadoption guardianship of "Mariano," despite the fact that provisional guardianship of the child had never been ordered by a court. In the context of these proceedings, they indicated, the judge met personally with "María" at a meeting held two months after it had been convened, without the participation of the Defender of Children who should have assisted "María" and despite the existence of a forensic physician's opinion that concluded that "María" was not "in a position to understand" what had happened at that interview. The petitioners indicate that "María" indicated to the judge her wish to see her son again, but this was not recorded in the minutes of the meeting.

11. The petitioners then indicated that in August 2015, "María" requested the court, through her attorneys, to restore ties with her son, who was under the custodianship of Mr. and Mrs. "Lopez," and that a DNA analysis be ordered to ascertain the identity of "Mariano's" biological father. The petitioners reported that in October 2015, without having yet replied to "María's" request, the family court decided to order that the proceedings would address the declaration of "Mariano's" adoptability status. This decision, they contend, prevented "María" from restoring ties with her son, and denied "Mariano" his right to develop his biography with his mother.

12. The petitioners contend that Articles 17 and 19 of the American Convention, the Convention on the Rights of the Child, and the relevant provisions of the Argentine Civil Code discourage separating parents from their biological children against the will of the parents. They also contend that the State failed to fulfill its responsibility to create the mechanisms necessary ensure that the child was kept with his biological family before deciding other types of family placement, such as adoption, and condemned the fact that the judges in the case were seeking to cement a situation of fact, i.e., "María's" separation from her son, ignoring the serious irregularities of due process and the judicial protection set forth in Articles 8 and 25.1 of the American Convention. In that regard, the petitioners contended that "María" was at no time in a position to give her free and voluntary consent to give her child up for adoption.

13. In subsequent communications, the petitioners provided updated information on the judicial proceedings in which they had taken part in representation of "María" and her mother, and made additional

allegations. In that regard, the petitioners condemned the fact that "María" had not received legal assistance prior to the decision to give up her son for preadoption guardianship, this constituting a violation of her right to a fair trial. More broadly, the petitioners contended that the different state authorities who had heard the case did not take any action to provide "María" with the tools required to take responsibility for her son, nor did they listen to the extended biological family. Instead, at all times they gave priority to putting the child up for adoption.

14. The petitioners also condemned the fact that the judge had met with "María" in a hearing only six months after the birth of her son and that the court did not order any measure for the restoration of ties until nearly one year after the birth. They also indicated that the judge had conferred on "Mariano's" custodians the status of party to the proceedings, in contravention to the provisions of Argentine civil law, and that the [provisional] guardians had submitted for the case file a document addressed to "María" using aggressive language, without this having warranted intervention on the part of the judge or the judge bringing this document to her attention.

15. Moreover, the petitioners contended that the judges in the case took an unwarranted amount of time to decide the appeals and rule on issues raised, primarily those seeking to challenge the decision to order that the proceedings would address the declaration of adoptability status, although "María" had not given her consent to give her child up for adoption. In that regard, the petitioners contended that the decision for the proceedings to address the declaration of "Mariano's" adoptability is an attempt to conceal the irregularities committed primarily during the first months of the process.

16. Regarding "María's" ties with her son, the petitioners contended that some of the initiatives taken by the court hearing the case, such as meetings held in the framework of the "point of family encounter" program of Rosario National University, had not had positive outcomes and condemned the fact that the State institutions had not given "María" facilities to enable her to attend the meetings, given her vulnerability, nor to enable the boy to go to "María's" house or to receive frequent visits from his grandmother or other biological family members. The petitioners added that since March 2020, as a result of the social distancing measures ordered to address the COVID-19 pandemic, "María's" meetings with her son had become more sporadic and had had to take place through video calls.

17. The petitioner alleges that for all these reasons, the Argentine State has incurred international responsibility for the violation of the rights to a fair trial, judicial protection, protection of the family, and the rights of the child, set forth in Articles 8.1, 25, 17, and 19, respectively, [of the American Convention], to the detriment of "María" and her son "Mariano."

b. The Argentine State

18. In responding to the IACHR's request for information in the context of the processing of precautionary measure MC 540-15, the State indicated that the restoration of ties between "María" and her son and the establishment of a visiting schedule had been coordinated through the regular channels of a judicial action under way, which thus far had not been exhausted.

19. Subsequently, in its document of additional observations on the merits, the State considered it appropriate not to make specific observations, awaiting the Commission's analysis. It took a similar position on the occasion of the hearing held during the IACHR's 181st period of sessions. On that occasion, the representatives of the Argentine State also indicated the importance that the State attached to the right to identity. They agreed with the petitioners regarding the irregularities in which "Mariano" had been given up and in the judicial proceedings. They discussed the support actions they had been carrying out for "María," and urged the Commission to issue a merits report as soon as possible.

III. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

a. Competence, duplication of proceedings, and international *res judicata*

Competence *ratione personae:*	Yes
Competence *ratione loci*:	Yes
Competence *ratione temporis*:	Yes
Competence *ratione materiae*:	Yes. American Convention on Human Rights (instrument of ratification deposited on September 5, 1984)
Duplication of proceedings and international *res judicata:*	No

b. Exhaustion of domestic remedies and period for filing

20. Firstly, the Commission emphasized that the Argentine State, by communication of August 19, 2020, and on the occasion of forwarding its reply to the opening of the petition for processing, indicated that "it has no objections to make regarding the petition's formal admissibility in the terms contained in the American Convention on Human Rights, it therefore corresponding to that distinguished Commission to move forward with its analysis of the legal merits of the substance of the matter."

21. On various occasions, the Commission has held that, as may be inferred from the principles of international law, States may expressly or tacitly renounce the invocation of the lack of exhaustion of domestic remedies.[2] Based on the language used in its document of additional observations on the merits and from the statements of the representatives at the public hearing held during the 181st period of sessions, the Commission understands that the Argentine State has renounced its right to challenge the admissibility of the case, including the requirement of prior exhaustion of domestic remedies provided for in Article 46.1.a of the American Convention and the period for filing the petition established in Article 46.1.b.

22. Nonetheless, the Commission considers that in the instant case, domestic remedies have been exhausted since, given the decision to declare that the judicial proceedings would address the status of adoptability of the child "Mariano," taken by Collegiate Family Court No. 5 of Rosario on October 1,[3] the petitioners had availed themselves of all available remedies to challenge that decision. In fact, the representatives of "María" and her mother filed a motion for revocation,[4] which was denied by resolution of October 24, 2016,[5] and a motion for revocation before the plenary of the Court, with the same outcome.[6] Lastly, the information in the file shows that the special appeal lodged by the petitioners was denied by the Single Instance Collegiate Family Court on April 23, 2020.[7]

23. Therefore, the Commission understands that the domestic remedies available to the petitioners have been exhausted to challenge the decision for the proceedings to address the status of adoptability of the child "Mariano," and that therefore the requirements set forth in Articles 46.1.a and b of the American Convention have been met.

[2] IACHR, Report No. 171/10, Petition 578-03. Admissibility. Miguel Ángel Millar Silva et al. Chile. November 2, 2010, par. 28. IACHR, Report No. 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, par. 42; IA Court HR, Ximenes López v. Brazil. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, par. 5

[3] **ANNEX XX.** Resolution of October 1, 2015, signed by Sabina M. Sansarricq, Judge of Collegiate Family Court No. 5. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[4] **ANNEX XX.** Motion signed by Dr. Verónica Jotinsky and by "María" titled "Revocation request. Alternative motion. Revocation request to the plenary of the court" received by the Collegiate Family Court No. 5 on December 11, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[5] **ANNEX XX.** Resolution of October 24, 2016, signed by Sabina Sansarricq, Judge of Collegiate Family Court No. 5. ANNEX to the petitioners' communication of July 7, 2016, in the framework of precautionary measure file MC 540-15.

[6] **ANNEX XX.** Motion signed by "María" with legal assistance from Drs. Marta N. Haubenreich, María Claudia Torrens, and Araceli M. Díaz titled "Request to the plenary of the Court for revocation of Resolution No. 2968, of 24/10/16 and of Resolution No. 2609, of 01/10/15. ANNEX to the petitioners' communication of July 7, 2016, in the framework of precautionary measure file MC 540-15.

[7] **ANNEX XX**. Resolution of April 23, 2020, issued by the Collegiate Family Court of Sole Instance. ANNEX to the Argentine State's communication of August 19, 2020.

c. Colorable claim

24. Despite the lack of dispute among the parties regarding the fulfillment of the formal admissibility requirements, the Commission considers it necessary to clarify the scope of its intervention in the instant case.

25. According to the preamble of the American Convention, the protection that the organs of the inter-American system are called upon to provide for the essential rights of man reinforces or complements "the protection provided by the domestic law of the American states." Specifically regarding the system of individual petitions containing denunciations or complaints of violations of the rights set forth in the American Convention, the IACHR, in application of the principle of complementarity, on numerous occasions has emphasized that its scope of action is confined to analyzing the observance of the obligations assumed by the States Parties to the Convention and, if it concludes that a State has incurred international responsibility, to issue relevant recommendations to guarantee reparation to those whose rights were impacted, as well as non-repetition of the events in the future.[8]

26. In that regard, both the IACHR and the Inter-American Court have consistently held that the inter-American human rights system cannot review "decisions handed down by national courts acting within their authority and applying the appropriate legal guarantees, unless it is found that there has been a violation of some right protected by the Convention."[9]

27. Coincidentally, the IACHR has indicated that it "is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. … The Commission's task is to ensure the observance of the obligations undertaken by the States parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction."[10]

28. The Commission points out that its intervention in the instant case is limited to analyzing the alleged international responsibility of the Argentine State for the violation of rights recognized by the American Convention, to the detriment of "María" and her son. The Commission is persuaded that the nature of the facts of this case make it indispensable in fulfilling its functions to undertake an analysis of the administrative-judicial process by which the child "Mariano" was ordered to be given to Mr. and Mrs. "López," and in which, according to the most recent information available to the Commission, his possible guardianship and adoption is being discussed.

29. That said, the Commission emphasizes that in a case such as this, it is not within its jurisdiction to adjudicate rights or legal relationships being litigated in national courts nor to resolve disputes at the domestic level regarding the status of adoptability of the child "Mariano," which, as of the date of approval of this report, remain unresolved. This opinion reflects that adopted in Merits Report No. 83/10, in the case of Milagros Fornerón and Leonardo Aníbal Javier Fornerón v. Argentina. On that occasion, the Commission also clarified that the purpose of its opinion was not to determine whether the guardianship and subsequent simple adoption of the child belonged to the alleged victim in the case or the married couple with whom his biological daughter lived, but rather to elucidate whether in the proceedings, the courts respected the rights set forth in the American Convention.[11]

30. Additionally, from a practical standpoint, the Commission understands that not it but the judicial authorities involved in the case who have assistance and advice from the professionals required—

[8] IACHR, Report No. 86/06, Petition 499-04. Admissibility. Marino López et al. (Operation Genesis). Colombia. October 2, 2006, par. 57.
[9] IACHR. Report No. 8/98. Case 11.671. Carlos García Saccone. Argentina. March 2, 1998, par. 53. See also IA Court HR. Case of González Medina and Family v. Dominican Republic. Preliminary objections, merits, reparations and costs. Judgment of February 27, 2012. Series C No. 240.
[10] IACHR. Report No. 39/96. Case 11.673. Santiago Marzioni. Argentina. October 15, 1996, par. 51.
[11] IACHR. Report No. 83/10. Case 12.584. Merits. Milagros Fornerón and Leonardo Aníbal Javier Fornerón. Argentina. July 13, 2010, par. 65.

psychologists and social workers, among others—to take informed and substantiated decisions regarding the disposition of the child aimed at ensuring, above any other consideration, his or her best interests, ultimate aim of any type of intervention by any national or supranational public authority.

31. Therefore, the IACHR considers that it is not in a practical condition nor does it have jurisdiction to rule on the child's filial ties in the terms of Article 558 of the Argentine Civil Code, and, therefore, in this report, it will not opine as to how "Mariano's" guardianship and adoption proceedings should be resolved nor regarding the legal ties that the child has or will have in the future with Mr. and Mrs. "López."

32. For all these reasons and in the terms of the scope of its intervention set out in the paragraphs *supra,* the Commission considers that, if proven, the facts set out by the petitioners may constitute a violation of the rights set forth in Articles 8.1, 25, 11.2, 17, and 19 of the American Convention, read in conjunction with the obligations set forth in Articles 1.1 and 2 thereof, to the detriment of "María" and her son.

IV. FINDINGS OF FACT

a. Events from "María's" diagnosis of pregnancy to "Mariano's" birth

33. According to information on the file, on May 30, 2014, "María," accompanied by her mother, arrived at the guard desk of the obstetrics department of Martin Maternity Clinic, located in the city of Rosario, Santa Fe Province. After the relevant tests had been performed, the doctors confirmed that "María" was 28 weeks pregnant. As of the date of the child's diagnosis, she was 13 years old. The girl's mother indicated that before going to Martin Maternity Clinic, they had gone to Health Center No. 5, in Rosario, since she noted that her daughter "had a big belly." There, the pediatrician to whom she was referred had indicated that interruption of menstrual periods was common in girls of her daughter's age.[12]

34. On July 2, 2014, the Head of the Mental Health Service of Martin Maternity Clinic and a social worker of that hospital's team signed a report addressed to the Department for the Protection of the Rights of Children, Adolescents, and the Family, requesting its intervention. The report indicates that, in view of the medical diagnosis, work had begun in conjunction with the Mental Health and Social Work Services "directing efforts towards possibly knowing who the baby's father might be." The professionals also related that, following successive therapeutic encounters, they had concluded that María had become pregnant through sexual encounters with a family member in which a power relationship had been imposed.[13]

35. Lastly, the professionals involved asserted that "regarding the unborn child, the Maternity Clinic's treating team continues to work with ["María"], seeking to apply the understanding that may be gleaned regarding the matter and its subjective implications, with a view to respecting their decisions, since it appears that different positions are held among both the child, her mother, and her maternal aunt regarding the care, responsibilities and/or possible guardianship of that baby."[14]

36. On July 11, 2014, the Martin Maternity Clinic professionals responsible for working with "María" sent a note to the Admissions Team of the Department for the Protection of the Rights of Children, Adolescents, and the Family in which they reported that "based on the assistance being given by Martin Maternity Clinic, the child indicated her intent to give up the unborn child for preadoption guardianship with the aim of adoption. It should be noted that the [girl's] mother agrees with her daughter's statements. Therefore, we request that a day and time for their interview be scheduled as soon as possible, so that their intent may be formally established."

[12] **ANNEX XX.** Report signed by the Head of the Mental Health Service of Martin Maternity Clinic and a social worker, dated July 2, 2014. ANNEX to the State's communication of February 22, 2016, in the framework of precautionary measure file MC 540-15.
[13] **ANNEX XX.** Report signed by the Head of the Mental Health Service of Martin Maternity Clinic and a social worker, dated July 2, 2014. ANNEX to the State's communication of February 22, 2016, in the framework of precautionary measure file MC 540-15.
[14] **ANNEX XX.** Report signed by the Head of the Mental Health Service of Martin Maternity Clinic and social worker, dated July 2, 2014. ANNEX to the State's communication of February 22, 2016, in the framework of precautionary measure file MC 540-15.

37. On July 23, 2014, "María," and her mother, signed a document addressed to the Provincial Department for the Promotion of the Rights of Children, Adolescents, and the Family of Rosario. That document, which was copied to the Office of the Provincial Defender of Children and Adolescents, Rosario branch, and to the Provincial Single Registry of Applicants for Guardianship with the Aim of Adoption (RUAGA) of Rosario, sets forth that María agreed "freely and voluntarily, with my mother's full agreement, to give up for preadoption guardianship and subsequent adoption my unborn child, to suitable persons previously accredited for that purpose according to the Provincial Single Registry of Applicants for Guardianship with the Aim of Adoption (RUAGA)." The document signed by "María" also sets forth "that I decide freely and voluntarily and in accordance with my rights; and I firmly wish the duty judge to order the guardianship and adoption of this baby, with authorization from RUAGA's Director, and without intervention and/or obstruction by any other family member and/or interested party."[15]

38. On August 1, 2014, the judge of Collegiate Family Court No. 7 received a document signed by the Provincial Defender of Children and Adolescents of the city of Rosario. In that communication, the Defender explained that actions had begun in that court based on the report submitted by Martin Maternity Clinic setting forth the intent of "María" and her mother to give the unborn child up for adoption, and, "since the birth is imminent," requested "the start of the proceedings of the system for guardianship with the aim of adoption."[16] That same August 1, and based on that intervention, the judge decided to "deem the action instituted" and ordered that RUAGA be notified for it to forward a copy of three records from the list of possible adoptive parents.[17] RUAGA complied with this order on August 4, 2014. The first of the three records sent was that of Mr. and Mrs. "López."

39. On August 8, 2014, the social worker of the Office of the Provincial Defender of Children and Adolescents, together with a social worker of Martin Maternity Clinic, went to "María's" home to interview her and her mother. In the minutes of that meeting, the professionals involved record, among other matters, that some members of "María's" family, specifically, her aunt and grandmother, "have indicated that they wish to meet the baby and take photos, not agreeing to the adoption."[18]

40. On August 19, 2014, the judge in the case interviewed Mr. and Mrs. "López," who affirmed that they "wanted the child and had the means to provide him with adequate education and support." The judge reported at the hearing on the "provisional nature of the mother's intent to give her child up for adoption."[19] The next day, Mr. and Mrs. "López" and "María" met at the Office of the Provincial Defender of Children and Adolescents, at "María's" request, with the support of psychologists of the comprehensive care area of that Office.[20]

41. On August 22, the attorney for Mr. and Mrs. "López" requested the judge, "since the birth was imminent," to authorize the parties she represented to "make immediate contact with the baby, assume his care and attention," and to remove him from Martin Maternity Clinic once the child could be released by the doctors "in the capacity of custodians until the guardianship with the aim of adoption has been processed."[21] That same

[15] **ANNEX XX.** Document signed by "María" and her mother, dated July 23, 2014, addressed to the Director of the Provincial Department for the Promotion of the Rights of Children, Adolescents, and the Family, with a copy to the Office of the Provincial Defender of Children and Adolescents, Rosario branch, and to the Provincial Single Registry of Applicants for Guardianship with the Aim of Adoption (RUAGA) of Rosario. ANNEX to the State's communication of February 22, 2016, in the framework of precautionary measure file MC 540-15.

[16] **ANNEX XX.** Document titled "Notify. Urgent request," signed by Analia Colombo, Provincial Defender of Children and Adolescents of Santa Fe, addressed to the duty Judge of Collegiate Family Court No. 7, Dr. Gabriela Topino. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[17] **ANNEX XX.** Resolution issued by the duty Judge of Collegiate Family Court No. 7, Dr. Gabriela Topino on August 1, 2014. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[18] **ANNEX XX**. Report of August 8, 2014, signed by Ms. Fernanda Facchiano, Social Worker of Office of the Provincial Defender of Children and Adolescents of Santa Fe. ANNEX to the petitioners' communication of October 21, 2019, in the framework of precautionary measure file MC 540-15.

[19] **ANNEX XX**. Minutes of the interview, signed by the judge of Collegiate Family Court No. 5, Sabina M. Sansarricq, dated August 19, 2014. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[20] **ANNEX XX**. Minutes of the interview between "María" and Mr. and Mrs. "López," which took place on August 20, 2014, at the premises of the Office of the Provincial Defender of Children and Adolescents of Santa Fe. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[21] **ANNEX XX**. Document titled "Appears. Establishes identity. Notify," signed by the attorney of Mr. and Mrs. "López," received by Collegiate Family Court No. 5, on August 22, 2014. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

August 22, the Judge signed a document that reads: "Deemed lodged, transferred, in the capacity invoked by virtue of the attached special power of attorney. The participation corresponding to them by law is hereby granted. Take account of the statements. Notify as requested."[22]

b. Events occurring after "Mariano's" birth until the issuing of precautionary measure 540-15

42. On August 23, 2014, "Mariano" was born. In a document received on August 27 by Collegiate Family Court No. 5 of Rosario, the attorney for Mr. and Mrs. "Lopez" requested that the parties she represented be granted provisional guardianship of the child "until guardianship with the aim of adoption is granted" and that in due course "guardianship with the aim of adoption of the minor child is granted."[23] That same day, the judge ordered the Social Worker of the Court to prepare a wide-ranging environmental report at the home of the applicants for adoption, and ordered "María" and her mother to come to the Forensic Physician's Office "for one of its professionals to issue an opinion as to whether the mother was in a psychological and physical condition to understand the scope and significance of the act of giving up a child for adoption."[24] On October 3, 2014, the Court's Social Worker forwarded her report.[25]

43. On December 15, 2014, the Forensic Psychiatrist examined "María" and her mother. Regarding "María," the doctor indicated that she "manifests a selective emotional block regarding the act in question. Given that and her young age, she is unable to understand the scope of this act." As to "María's" mother, the professional held that "she does not manifest sufficient mental pathology as to prevent her from understanding the scopes of giving up her grandson for adoption."[26]

44. On December 23, 2014, the judge in the case convened a hearing for March 2, 2015, so that the judge "could meet personally with the biological mother." On that date, "María" and her mother went to the court's premises and participated in a meeting with judicial officials, an attorney of the General Defender's Office, and social work and psychiatric professionals of the Office of the Defender of Children and Adolescents. According to the petitioners, on that occasion, "María" indicated her wish to get her son back. The minutes of the hearing indicate that "given the confusion that has arisen with regard to "María's" wishes regarding her motherhood (…), in view of the urgency of the situation and the risk to the girl's psyche […] that it implies, all possible strategies should be coordinated for her due psychological care, with the consequent report of the professional involved."[27] In subsequent briefs attached to the file, "María's" attorneys indicated that on that occasion, the child had had a nervous breakdown given the attitude of the professionals involved to try insistently to convince her to give her child up for adoption.[28]

45. On March 6, 2015, the judge in the case convened a hearing with Mr. and Mrs. "López" for March 16, so that the judge could meet personally with the child's applicant adoptive parents. In that interview, Mr. and Mrs. "López" reported to the judge on the child's health status and his health insurance, on the decision to baptize him in a Catholic ceremony, of his attendance at day care center, and of the child's adjustment to the extended "López" family.[29]

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[22] **ANNEX XX.** Resolution of August 22, 2014, signed by Sabina M. Sansarricq, judge of Collegiate Family Court No. 5, and by Ma. Adelaida Etchevers, secretary. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[23] **ANNEX XX.** Document titled "Requests preadoption guardianship," signed by the attorney for Mr. and Mrs. "López," received by Collegiate Family Court No. 5, on August 27, 2014. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[24] **ANNEX XX.** Resolution of August 27, 2014 signed by Sabina M. Sansarricq, judge of Collegiate Family Court No. 5, and by Ma. Adelaida Etchevers, secretary. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15

[25] **ANNEX XX.** Report signed by Ms. Gabriela Pastorutti, Social Worker of Collegiate Family Court No. 5, dated October 2, 2014. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[26] **ANNEX XX.** Psychiatric Examination Report, signed by Dr. Carlos Alberto Elías, dated December 15, 2014. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[27] **ANNEX XX.** Minutes of the hearing of March 2, 2015, signed by, among others, Sabina M. Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[28] **ANNEX XX.** Document titled "Declares. Requests. Attaches," signed by "María" and her attorney Dr. Verónica Jotinsky, received by Collegiate Family Court No. 5 on April 26, 2016. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[29] **ANNEX XX.** Minutes of the hearing of March 16, 2015, signed by, among others, Sabina M. Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

46. On March 16, 2015, "María's" mother submitted to Collegiate Family Court No. 5 of Rosario a psychological report signed by Ms. Gloria Liñan. In that report, the professional indicated that María's mother had told her that the girl "cries constantly because she wants to recover her child and that this situation worsened when the girl was summonsed by the court to sign an "adoption" of the boy (…), and that, in view of her refusal, the judge had ordered her to undergo psychological treatment so that she would take responsibility for her decisions." The report also related the difficulties that María and her mother had had in accessing a mental health professional at the health center they were able to attend because it was near their house.[30]

47. Next in the file is report No. 391/15, of March 19, 2015, signed by Civil Defender No. 1, Alejandra Verdondoni, and addressed to the judge, which reads as follows: "I hereby clarify that my participation in the proceedings is in representation of [María], who I summon for personal interview any hearing day at 11 [a.m.]."[31] Thereto attached in the file is a decision of the judge dated March 20, 2015, which reads: "In view of the status of the proceedings, the following order is issued: a proceeding ordering a response [*vista*] from the child's authorized representative […]."[32] This order was answered by General Defender No. 5, who, in a note received by the court on April 1, 2015, affirmed that "I will hold the proceeding for which I am responsible once ["María's"] representative with jurisdiction, Dr. Alejandra Verdondoni, has interviewed the minor."[33] Therefore, that same April 1, the judge ordered "send the records to ["María's"] representative, Dr. Verdondoni, for said purposes."[34]

48. On April 6, 2015, "María's" mother, in exercise of her parental authority over her daughter and with assistance from Dr. Maidágan, submitted a brief for the file. That document reads: "As duly indicated by my daughter at the hearing held on March 2, I hereby rescind the request we duly signed for my daughter's son […], to be given up for adoption, and, therefore, I request that the child be returned to his mother and to the undersigned."[35]

49. "María's" mother also indicated in that document that "from the moment we realized that [María] was pregnant, all the health personnel and the Office of the Defender of Children, although I wish to make clear that I do not doubt their good intent, suggested that the best thing would be for the child to be given up for adoption owing to his alleged origin and the young age of [María], who also is a child. The undersigned, allowing herself to be led by those opinions, did not make room for listening to [María], who, for example, stopped seeing the Martin Maternity Clinic psychologist because she insisted solely that the best thing would be to give the child up for adoption, and did not listen to [María's] opinion. Moreover, no one tried to maintain ties or provide assistance or support to ensure that [María], as was always her wish, could take responsibility for her son."[36] Lastly, the document requests that a pro bono attorney be assigned to "Maria" to give her proper counseling and guarantee her right to appear before the court.[37]

50. On April 13, 2015, the court social worker prepared a report on the visit to "María's" house. That report included a description of the living conditions of "María" and her mother and the medical and psychological

[30] **ANNEX XX.** Psychological report, signed by Ms. Gloria Liñan, dated March 10, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[31] **ANNEX XX** Document signed by Civil Defender No. 1, Alejandra Verdondoni, received by Collegiate Family Court No. 5 on March 19, 2015.
[32] **ANNEX XX** Decree of March 20, 2015, signed by Sabina M. Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[33] **ANNEX XX** Document signed by Civil Defender No. 5, María Silvia Beduino, received by Collegiate Family Court No. 5 on April 1, 2015.
[34] **ANNEX XX** Decree of April 1, 2015, signed by Sabina M. Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[35] **ANNEX XX.** Document titled "Declares. Rescinds. Requests designation of attorney," signed by Dr. Carmen María Maidágan and "María's" mother, received by Collegiate Family Court No. 5 on April 6, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[36] **ANNEX XX.** Document titled "Declares. Rescinds. Requests designation of attorney," signed by Dr. Carmen María Maidágan and "María's" mother, received by Collegiate Family Court No. 5 on April 6, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[37] **ANNEX XX.** Document titled "Declares. Rescinds. Requests designation of attorney," signed by Dr. Carmen María Maidágan and "María's" mother, received by Collegiate Family Court No. 5 on April 6, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

treatments they were receiving. The social worker concluded that the child "is subjectively debilitated, which puts her in a situation of possible vulnerability. Therefore, it is suggested that consideration be given to the importance of continuing her therapeutic treatment, thereby achieving a subjective strengthening that would enable her to develop analytical capacity and handle herself independently."[38]

51. On April 20, 2015, the interview between "María" and the Official Defender took place. On that occasion, "María" affirmed that "she never wanted to give up the baby and wants to get him back, and that now that her mother understands her, she supports her in asking that they return him to her." Next, the Defender requested the judge in the case to ensure "intervention by the Special Mental Health Board prior to any proceeding," and added that "regarding the conduct of Mr. and Ms. [López], they are to continue their role as the child's guardians […], any decision regarding that role and their presentation of themselves as "mommy and daddy" being inadmissible."[39]

52. On August 4, 2015, "María's" attorney submitted a brief to the court advising of "María's" wish to contact her son and requested that "María" be heard by the judge and that a test of "Mariano's" DNA be performed to determine the identity of his biological father.[40] Subsequently, on September 11, Dr. Maidágan, representing "María's" mother, reiterated her request "for an order, as an urgent and precautionary measure, for a visit between [María] and ["Mariano"], in an appropriate environment, without intervention by the state actors who acted previously, and with appropriate participation."[41]

53. On October 1, 2015, the Judge of Collegiate Family Court No. 5 issued a resolution ordering: "that this resolution be aligned with the Civil and Commercial Code and, therefore, that it be established that this action will address the child's status of adoptability […]". She also informed "María" and her mother that they were participating in the process as parties, and Mr. and Mrs. López that they were participating in the action as interested third parties, and that they had to "retain the child's name and surnames as they appeared in the registry …".[42]

54. In that resolution, the judge indicated that "the copies added to the file […] show without any doubt that prior to [Mariano's] birth, both his mother [María] and his grandmother […] had indicated their firm decision to give the child up for adoption […] That is, in the days before the birth […] urgent steps had to be taken for the child to receive due support from the time of his birth. This was required given the context outlined by the family of [María] and by the girl herself." Then the judge added that "according to the above-described items of record, it must be pointed out that neither [María] nor her mother participated in the proceedings in this case until December 2014, when they appeared at the Forensic Physician's Office, although they had previously been notified to do so in October 2014."[43]

55. On October 23, 2015, the attorney representing "María's" mother submitted a brief challenging the judge in the case because she considered that she had carried out acts demonstrating prejudice because she had "disregarded [María's] requests for contact with ["Mariano"] and prolonged these proceedings with unwarranted procedures, when she herself had contended that as time went on with another family, it made it difficult for ["Mariano"] to restore ties with the biological family." The aim of the decision of October 1, she added was to "prolong a procedure, formally, for a declaration of adoptability status, intended to decide that he is adoptable, to validate a plainly illegal de facto situation, since it is evident that the Adjudicant has decided

[38] **ANNEX XX.** Report signed by Ms. Marcela Colmegna, Social Worker of Collegiate Family Court No. 5, dated April 13, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[39] **ANNEX XX.** Document signed by Dr. Alejandra Verdondoni, Defender in this case, of Office of the Civil Defender No. 1, of April 20, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[40] **ANNEX XX.** Document signed by Dr. Verónica Jotinsky and "María," titled "Declare. Request. Attach," received by Collegiate Family Court No. 5 on August 4, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[41] **ANNEX XX.** Document signed by Dr. Carmen Maidágan and by "María's" mother, titled "So provided. Reserve right," received by Collegiate Family Court No. 5 on September 11, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[42] **ANNEX XX.** Resolution of October 1, 2015, signed by Sabina M. Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[43] **ANNEX XX.** Resolution of October 1, 2015, signed by Sabina M. Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

to give [Mariano] up for adoption to his current guardians."[44] The challenge was rejected by the judge in the case by a resolution of November 2, 2015.[45] On February 10, 2016, the plenary of Collegiate Family Court No. 5 decided to uphold the rejection of the challenge,[46] and, on May 2, 2016, Chamber II of the Civil and Commercial Appeals Court of Rosario declared the challenge lodged "well denied" because it "was not based on a [sic] grounds established in Article 10 of the [Code of Civil and Commercial Procedure] CPCC."[47]

56. On December 11, 2015, "María's" attorney filed a request for revocation of the October 1 decision of the judge, and requested that, instead, "Mariano" be ordered to be returned to his biological mother and his family of origin. In that document, the attorney alleged that all proceedings were null since "María" had never given her free and informed consent to give her son up for adoption.[48]

57. The file also shows that on December 16, 2015, the Special Mental Health Boards authority of the Ministry of Health of Santa Fe Province submitted a preliminary report and, on February 1, 2016, its final report. In both documents, Special Boards gave account of the interviews it had held with "María," her mother, and their therapist, and issued an opinion in favor of a meeting between "María" and her son.[49]

58. In addition, on February 5, 2016, the attorneys for "María" and her mother filed an application for an innovative precautionary measure with the Collegiate Family Court No. 5 for the "establishment of a visitation schedule as a matter of urgency" so that "María" could get to know her son.[50] To those ends, they proposed that the meetings be held at the Secretariat for Human Rights of Santa Fe Province, with support from an interdisciplinary group. Having heard the official defenders and the attorney for Mr. and Mrs. "López," the parties, in a hearing before the judge held on April 1, 2016, agreed that "María's" meetings with her son would take place in the presence of a psychologist, an educational psychologist, and a social worker designated by the court, one day a week, for two hours, in the court's social work room.[51]

c. Events subsequent to the IACHR's issuing of precautionary measure 540-15

59. On April 12, 2016, the Commission issued a precautionary measures resolution in favor of "María" and her son "Mariano." In that resolution, the IACHR requested the Argentine State to: (a) take the necessary, appropriate, and effective steps to protect the rights to personal integrity, and to protection of the family and to identity of the child Mariano and his biological mother. In particular, to enable the child to maintain ties with his mother, with support from appropriate professional personnel, who are to monitor the special circumstances of the situation, in accordance with the applicable international standards in this area; and (b) ensure that the rights of María are duly represented and guaranteed in all decisions of the judicial proceedings

[44] **ANNEX XX.** Brief signed by Dr. Carmen Maidágan and "María's" mother, titled "Revocation request. Challenges," received by Collegiate Family Court No. 5 on October 23. 2015.
[45] **ANNEX XX.** Resolution of November 2, 2015, signed by Sabina M. Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[46] **ANNEX XX.** Resolution of the plenary of the Collegiate Family Court No. 5, of February 10, 2016. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[47] **ANNEX XX.** Resolution of Chamber II of the Civil and Appeals Court of Rosario, of May 2, 2016. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[48] **ANNEX XX.** Brief signed by Dr. Verónica Jotinsky and "María," titled "Alternative motion. Revocation request to the plenary of the court," received by Collegiate Family Court No. 5 on December 11, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[49] **ANNEX XX.** Preliminary report, signed by psychologist Pablo Cambiasso, Ms. Yanina Morón, Dr. Juan Pablo Folino, and Dr. Adriana Covili, members of Special Mental Health Boards of the Ministry of Public Health, undated, received by Collegiate Family Court No. 5 on December 15, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15; **ANNEX XX.** Report, signed by psychologist Pablo Cambiasso, Ms. Yanina Morón, Dr. Juan Pablo Folino, and Dr. Adriana Covili, members of the Special Mental Health Boards of the Ministry of Public Health, undated, received by Collegiate Family Court No. 5 on February 1, 2015. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[50] **ANNEX XX.** Document signed by Drs. Verónica Jotinsky and Carmen Maidágan and by "María" and her mother titled "Innovative precautionary measure," received by Collegiate Family Court No. 5 on February 5, 2016. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.
[51] **ANNEX XX.** Minutes of hearing held at the premises of Collegiate Family Court No. 5, on April 1, 2016. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

now under way, including her right to be informed and to participate in all decisions that may affect her rights as a mother, given her age and maturity, through the support of specialized technical personnel.[52]

60. Based on the consensus reached among the parties at the hearing of April 1, 2016, and as provided by the IACHR in precautionary measure 540-15, "María" and her son participated in three meetings. "María's" attorney contended in a brief received by the court on April 26, 2016, that the third meeting was negative for "María" owing to the hostile environment in which it took place and the presence at the venue of "Mariano's" [female] custodian and of a psychiatrist who had participated in the hearing of March 2, 2015, at which "María" had had a nervous breakdown.[53]

61. The information on the file shows that "María's" meetings with her son proceeded at irregular intervals and that they were not without difficulties. For example, in a document dated November 14, 2016, Civil Defender No. 1 informed the court that "María" had appeared on an impromptu basis at her office and told her that "I want you to ask her to let me see my son this week because I haven't seen him for two weeks. They don't bring him on Wednesdays, and they don't let me know, the girls do not know why they don't come. I miss schooldays but I always am there. I would also like my mother to be at these meetings, sometimes."[54]

62. According to the existing information, on July 4, 2016, the court-appointed legal advisor of the child "Mariano," in her first intervention in the file when answering the hearing request [*vista*] ordered by the court, argued that the judge's decision of October 1, 2015, to bring the resolution into line with the provisions of the new Civil and Commercial Code did not violate the right of the parties to defense at trial and gave her opinion that the revocation remedy lodged by "María's" defenders should be rejected.[55]

63. On October 24, 2016, the judge in the case decided to reject the motion for revocation filed on December 11, 2015, by "María's" mother. In that resolution, in referring to fulfillment of the requirement of Article 607.b of the Civil and Commercial Code for a judicial declaration of adoptability status,[56] the judge asserted that "although a record of express consent with legal assistance signed by the adolescent [María] was not added to the file subsequent to the birth of her son, various attitudes certainly exists that at least do not make evident an intent to do otherwise."[57] "María's" attorneys filed a motion for revocation of this resolution with the plenary of the court on November 2, 2016.[58]

64. Before deciding the motion filed, the plenary of the court convened all those involved and their attorneys to a hearing, which was held on July 28, 2017. According to the minutes of the hearing, the parties agreed to

[52] IACHR. Resolution No. 22/16. MC 540-15 María and her son. Argentina. Accessible at: https://www.oas.org/es/IACHR/decisiones/pdf/2016/mc540-15-es.pdf [available only in Spanish]

[53] **ANNEX XX.** Brief signed by Dr. Verónica Jotinsky and by "María" titled "Declares. Requests. Attaches," received by Collegiate Family Court No. 5 on April 11, 2016. ANNEX to the State's communication of June 9, 2016, in the framework of precautionary measure file MC 540-15.

[54] **ANNEX XX.** Document signed by Dr. Alejandra Verdondoni, Defender in the case, of the Office of Civil Defender No 1, dated November 14, 2016. ANNEX to the petitioners' communication of July 7, 2017, in the framework of precautionary measure file MC 540-15.

[55] **ANNEX XX.** Document signed by Dr. Claudia Francavilla, court-appointed legal advisor for the child "Mariano," titled "Answers motion for revocation," received by Collegiate Family Court No. 5 on April 11, 2016. ANNEX to the petitioners' communication of July 7, 2017, in the framework of precautionary measure file MC 540-15.

[56] ARTICLE 607.- Grounds. The judicial declaration of the status of adoptability is issued if: […]

b) the parents took a free and informed decision that the child is to be adopted. This expression is valid only if it occurs at least forty-five days after the birth.

c) the exceptional measures to ensure that the child or adolescent remains with his family of origin or extended family have not been successful within a maximum of eighty days. After that maximum period, without reverting to the grounds for the measure, the administrative entity for protection of rights of children and adolescents that took the decision must immediately issue its position on the adoptability status. That position must be communicated to the judge in the case within twenty-four hours. The judicial declaration of adoptability status may not be issued if a family member or individual with emotional ties to the child or adolescent offers to assume his or her guardianship or wardship, and that request is considered appropriate to the child's best interests. The judge must decide the status of adoptability within a maximum of ninety days.

[57] **ANNEX XX.** Resolution of October 24, 2016, signed by Sabina Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the petitioners' communication of July 7, 2016, in the framework of precautionary measure file MC 540-15.

[58] **ANNEX XX.** Motion signed by "María, with legal assistance from Drs. Marta N. Haubenreich, María Claudia Torrens and Araceli M. Díaz titled "Motion to the plenary of the Court for revocation of Resolution No. 2968, of 24/10/16, and of Resolution No. 2609, of 01/10/15. ANNEX to the petitioners' communication of July 7, 2016, in the framework of precautionary measure file MC 540-15.

suspend the time periods that were running in the case, request intervention by the "Point of Family Encounter" program of the Mental Health area of the Secretariat for Social and Community Integration and Development of Rosario National University, maintain until then the existing system for communication, including participation by "María's" mother, and authorize the court's social worker to allow flexibility in contacts "with regard to meeting duration and site."[59]

65. On August 15, 2017, "María" submitted a brief, with assistance from her attorney, requesting authorization from the judge for her son to come to her house on August 23 to celebrate his third birthday, or, failing that, that she authorize her to participate in the birthday party that would be organized at the child's day care center. "María" also informed the judge that, despite what had been agreed at the hearing of July 28, no progress had been made in allowing flexibility in the agreed visitation schedule nor had the social worker begun to withdraw so that the meetings with her son would be more private.[60] The judge gave notification of "María's" request to the attorneys for "Mariano's" custodians,[61] who did not agree that the child could go to his mother's house on his birthday and proposed an alternate site,[62] also notifying "Mariano's" court-appointed legal advisor and Civil Defender No. 5, who did not raise objections.[63] On August 24, 2017, the judge decided to admit the request.[64]

66. On September 13, 2017, the meetings began between "María" and her son as part of the "Encounter Point" program. According to the work plan presented by the program's authorities, the goal at the first, two-month, stage would be to "enable, mediate, and sustain" contact between "María" and her son. However, on February 1, 2018, the attorneys for "María" and her mother submitted at court a document contending that in January, the meetings between "María" and her son did not take place because the Encounter Point professionals were on vacation and because the child left the jurisdiction with Mr. and Mrs. "López," also on vacation, without authorization. They also requested renewal of the procedural time periods suspended since the hearing of July 28, 2017, and that the meetings be held at "María's" house, between her, her family, and the child "Mariano," without participation or supervision by third parties.[65]

67. On February 28, 2018, the "Encounter Point" program sent a report on what the taken place up to that time and recommended that professionals continue to attend the meetings between "María" and her son.[66] On June 26, 2018, "María" and her attorneys submitted a motion requesting that "Encounter Point's" intervention cease because the adolescent was uncomfortable with this work modality, and requested that a contact schedule be established without interference by third parties.[67] On July 25, 2018, the coordinator of the

[59] **ANNEX XX.** Minutes of the hearing held by Collegiate Family Court No. 5, on July 28, 2017. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.
[60] **ANNEX XX.** Document signed by "María," with legal assistance from Drs. Marta N. Haubenreich and Araceli M. Díaz, titled "Notifies. Requests," received by Collegiate Family Court No. 5 on August 15, 2017. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.
[61] **ANNEX XX.** Document prepared by Ma. Adelaida Etchevers, Secretary of Collegiate Family Court No. 5, of August 18, 2017. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.
[62] **ANNEX XX.** Motion signed by the attorneys for the guardians of "Mariano," titled "Motion for transfer by two submissions. Request reports," received by Collegiate Family Court No. 5 on August 22, 2017. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.
[63] **ANNEX XX.** Document signed by Dr. Claudia Francavilla, court-appointed legal advisor of the child "Mariano," titled "Appears. Answers transfer," received by Collegiate Family Court No. 5 on August 22, 2017. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15; **ANNEX XX.** Report No. 2724, signed by María del Rosario Damonte, deputy defender of the Office of Civil Defender No. 5, received by Collegiate Family Court No. 5 on August 23, 2017. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.
[64] **ANNEX XX.** Resolution of August 24, 2017, signed by Sabina Sansarricq, judge of Collegiate Family Court No. 5. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.
[65] **ANNEX XX.** Motion signed by "María" and her mother, with assistance from Drs. Marta N. Haubenreich, Araceli M. Díaz, María Claudia Torrens, and Carmen María Maidágan, titled "Motion for renewal of procedural periods. Motion for resolution and establishment of a new contact schedule. Notification. Measures to be taken," received by Collegiate Family Court No. 5 on February 1, 2018. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.
[66] **ANNEX XX.** Document signed by Dr. Silvia Lampugnani, Coordinator of Family Encounter Point, titled "Reports," received by Collegiate Family Court No. 5 on February 28, 2018. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.
[67] **ANNEX XX.** Motion signed by "María," with legal assistance from Drs. Marta N. Haubenreich, María Claudia Torrens, and Araceli M. Díaz, titled "Makes known," received by Collegiate Family Court No. 5 on June 26, 2018. ANNEX to the petitioners' communication of August 27, 2018, in the framework of precautionary measure file MC 540-15.

"Encounter Point" submitted a report relating the steps taken and the difficulties encountered in the process of restoring ties.[68]

68. On June 4, 2018, the defender in charge of the Office of Civil Defender No. 1 submitted a document for the file reporting that "María" had come to her office and told her that the actions by the Encounter Point professionals were not having the results anticipated and that the relationship with "Mariano's" custodians had not improved, "they continuing to have an attitude that did not facilitate inclusivity." Therefore, the defender maintained that the suspended procedural periods should be renewed and "a decision taken as to whether to return to boy to his biological mother or his adoption. Prolonging the process *sine die* is detrimental to all parties, essentially the boy without family and emotional identity." She also contended that "since the biological mother did not express her intent to give him up for adoption, the child [Mariano] should be returned to his mother [María]."[69]

69. On September 12, 2018, "María" and her attorneys requested the judge in the case to resume the process of restoring ties with her son because, they maintained, since the end of "Encounter Point" program's intervention, i.e., July 13 of that year, "María" had not had any contact with "Mariano."[70] According to information on file, on October 25, 2018, the judge ordered a new provisional schedule for contact at the court's premises, for two hours per week, with supervision by two social workers. The meetings began again as of November 7, 2018. This provisional visitation schedule was extended on three occasions in 2019.[71] According to the reports of the court's social workers, the meetings continued with some regularity until February 2020.[72]

70. On December 7, 2018, "María's" attorneys submitted a motion to the plenary of the court requesting resolution of the motion for revocation filed on November 2, 2016. On April 23, 2019, the plenary of Collegiate Family Court No. 5 of Rosario rejected that request. Against this decision, Dr. Maidágan filed a special appeal, which was rejected on April 23, 2020.[73] In that decision, the court argued that there had been no deviation from the formal procedural requirements in processing and resolving the dispute.

71. On February 17, 2020, Collegiate Family Court No. 5 held a hearing with "María," Mr. and Mrs. "López," their respective attorneys, "Mariano's" court-appointed legal advisor, and the team of social workers and educational psychologists who had been participating until then in the supervised meetings between "María" and her son at the court's premises. At the court's proposal, a new schedule for restoration of ties between "María" and "Mariano" was agreed by which "María" would go to the "López'" home twice a week to have lunch with her son and then take him to school. Those involved also agreed that "María" would participate in "Mariano's" first day of school and in other scholastic acts. "María" and Mr. and Mrs. "López" also agreed to use a professional to help them harmonize the account and how they would tell "Mariano" of his biological reality and origins.[74] According to the petitioners at the hearing held in the context of the 181st period of sessions, the new schedule for contact was discontinued owing to the social isolation ordered in response to the COVID-19 pandemic and has only been resumed in part in recent months.

V. LEGAL ANALYSIS

[68] **ANNEX XX.** Document signed by Dr. Silvia Lampugnani, Coordinator of Family Encounter Point, titled "Reports," received by Collegiate Family Court No. 5 on July 30, 2018. ANNEX to the petitioners' communication of October 26, 2018, in the framework of precautionary measure file MC 540-15.

[69] **ANNEX XX.** Document signed by Civil Defender No. 1, dated June 4, 2018. ANNEX to the petitioners' communication of October 26, 2018, in the framework of precautionary measure file MC 540-15.

[70] **ANNEX XX**. Document titled "Immediate restoration of ties hereby ordered," received by Collegiate Family Court No. 5 of Rosario on September 12, 2018. ANNEX to the petitioners' communication of October 26, 2018, in the framework of precautionary measure file MC 540-15.

[71] **ANNEX XX**. Undated resolution of July 2019, signed by Dr. Sabina M. Sansarricq, judge of Collegiate Family Court No. 5, and by Dr. María Laura Ruani, Secretary. ANNEX to the petitioners' communication of October 21, 2019, in the framework of precautionary measure file MC 540-15.

[72] **ANNEX XX**. Report signed by Ms. Gabriela Pastorutti and Ms. Ana Inés Verón Elguezaba, dated February 17, 2020. ANNEX to the petitioners' communication of September 22, 2019.

[73] **ANNEX XX**. Resolution of April 23, 2020, issued by the Sole Instance Collegiate Family Court. ANNEX to the petitioners' communication of August 19, 2020.

[74] **ANNEX XX**. Minutes of the hearing held on February 17, 2020, at the premises of Collegiate Family Court No. 5. ANNEX to the petitioners' communication of September 22, 2019.

a. Rights to a fair trial, judicial protection, special protection for children and adolescents, protection of the family in relation to the obligation to respect rights, and to equal protection, and the obligation to adopt domestic legal provisions (Articles 8.1, 25, 19, 24 and 17 of the American Convention, read in conjunction with Articles 1.1 and 2 of that instrument), the right of women to a life free from violence (Article 7 of the Convention of Belem do Pará).

1. General standards on the obligation to provide special protection to children and adolescents, the rights of children to family, and prevention of renunciation of parental guardianship

72. The IACHR and the Inter-American Court of Human Rights (hereinafter the "Inter-American Court," "the Court," or the "IA Court HR") have consistently referred in their decisions to the *corpus juris* regarding the human rights of children and adolescents, understanding it to be the body of fundamental norms related to guaranteeing the human rights of children and adolescents.

73. Derived from that international *corpus juris*, and, in particular, Article 19 of the American Convention, is the State's obligation to provide special protection to children and adolescents. In fact, the IA Court HR has held that Article 19 of the Convention should be understood as an additional and complementary right that the treaty establishes for children, who, owing to their level of development, require special protection.[75] This special protection that is to be given to children under international human rights law is based on their condition as developing persons and is justified in regards to their differences from adult persons, in terms of possibilities for, and challenges in, realizing the effective exercise … of their rights.[76]

74. The Commission has noted that it is because of this special situation in which children find themselves with regard to the exercise of their rights, that international human rights law places the States in a position of reinforced guarantors. It is also important to note that in examining the scope and content of the duty of special protection, it must be taken into consideration that the condition of dependency of children evolves naturally over time in accordance with their growth, maturity level, and gradually increasing personal autonomy. Consequently, those duties and responsibilities must be consistent with the children's level of development and their gradually evolving autonomy. [77]

75. The IA Court HR has held that among the domestic legislative measures that the member states must adopt to meet the obligations under Article 19 of the Convention are, on the one hand, obligations of a general nature that are directed at children as a whole and are designed to promote and ensure the effective enjoyment of all their human rights; and, on the other, those of a specific nature directed at specific groups of children, established according to the particular vulnerable circumstances in which they find themselves …[78].

76. With regard to the right of the child to family life, whose primary normative source is Article 17.1 of the American Convention, the Commission has repeatedly underscored the preeminence that international human rights law confers on the family as an interpersonal bond and natural environment for the personal integral development of the human person.[79] Therefore, there is a close relationship between the right to protection of the family and the rights of the child, especially their right to self-realization and to the exercise of all inherent rights of the human person.

[75] IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, pars. 54, 55, and 60; Case of Ituango Massacres v. Colombia. Judgment of July 1, 2006. Series C No. 148, par. 244. IA Court HR. Case "Juvenile Re-Education Institute" v. Paraguay. Judgment of September 2, 2004. Series C No. 112, par. 147.
[76] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 41.
[77] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 44.
[78] IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, par. 61.
[79] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 50.

77. In that regard, in accordance with international human rights law, the family is the central sphere for the protection of children and adolescents, and, for children, it is an essential right to live with their families. This interrelationship between the right to family and the right of children to special protection is explicitly recognized in Articles 15[80] and 16[81] of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," and in the Convention on the Rights of the Child, whose preamble establishes that "the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community …", among other instruments.

78. With regard to the concept of "family" itself, the IA Court HR has held that "it should not be confined exclusively to marriage or to a univocal and immutable concept of family," but rather "must be understood in a broad sense that encompasses all persons linked by close kinship"[82] and rejected a limited, stereotyped concept of family which has no basis in the Convention since there is not specific model of family (the "traditional family").[83]

79. The organs of the inter-American human rights system have identified as a duty of the State to offer and execute measures for, in the broadest sense, the development and strengthening of the familial nucleus. [84] Although the primarily responsibility for the well-being of children and the enjoyment of their rights lies with their biological parents and with members of their families of origin, the State has the obligation to render appropriate support and assistance to parents and families in the performance of their child-rearing responsibilities. [85]

80. The norms and standards of international human rights law, and, in particular, Articles 17 and 19.1 of the American Convention recognize the right to children to live with their families, primarily their biological families and to be cared for and brought up by their biological parents in the family setting.[86] This is reinforced

[80] Article 15
Right to the Formation and the Protection of Families
1. The family is the natural and fundamental element of society and ought to be protected by the State, which should see to the improvement of its spiritual and material conditions.
2. Everyone has the right to form a family, which shall be exercised in accordance with the provisions of the pertinent domestic legislation.
3. The States Parties hereby undertake to accord adequate protection to the family unit and in particular:
a. To provide special care and assistance to mothers during a reasonable period before and after childbirth;
b. To guarantee adequate nutrition for children at the nursing stage and during school attendance years;
c. To adopt special measures for the protection of adolescents in order to ensure the full development of their physical, intellectual and moral capacities;
d. To undertake special programs of family training so as to help create a stable and positive environment in which children will receive and develop the values of understanding, solidarity, respect and responsibility.

[81] Article 16
Rights of Children
Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

[82] IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, pars. 69 and 70.

[83] IA Court HR. Case of Atala Riffo and Daughters v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239, pars. 142 and 145

[84] IA Court HR. Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, par. 157. IA Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, par. 125.

[85] See Article 18.2 of the Convention on the Rights of the Child: "For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children."

[86] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 54. IA Court HR. Case of Forneron and daughter v. Argentina. Merits, Reparations, and Costs. Judgment of April 27, 2012. Series C No. 242, par. 119.

by the considerations to be made in light of the right to identity and the right to a name, set forth in Article 18 of the American Convention.

81. In that regard, the IA Court HR has held that the right to identity "can be conceptualized, in general, as a series of attribute and characteristics that allow the individualization of the person in society [...] Personal identity is closely related to the person in his or her specific individuality and private life, both supported by a historical and biological experience, and also by the way in which the said individual relates to others, by developing social and family ties. This is why, although identity is not a right that is exclusive to children, it has special importance during childhood." Specifically, the IA Court HR held, in the case of *Fornerón and Daughter v. Argentina*, that "[t]he family relationships and the biological aspects of the history of an individual, particularly a child, constitute a fundamental element of his or her identity, so that any act or omission of the State that has an effect on the said components can constitute a violation of the right to identity." [87]

82. Therefore, both the Commission and the IA Court HR have held that, based on the State's obligations derived from Articles 17.1 and 19 of the American Convention, children have the right to develop their identity together with their biological family, and have emphasized that the protection measures that the State should offer them are aimed at strengthening the family as the primary element for their protection and care.[88] In that regard, the IA Court HR has held that "the child must remain in his or her household, unless there are determining reasons, based on the child's best interests, to decide to separate him or her from the family. In any case, separation must be exceptional and, preferably, temporary."[89]

83. Among the family support and protection measures identified by the IACHR, warranting warrant special attention in the light of the instant case are those based on the fundamental principle of the guardianship of a child by his biological parents. As provided in Articles 17.1 and 19 of the Convention, the State has the duty to take any appropriate and necessary steps to guarantee that parents or, as the case may be, the extended family, are provided with appropriate counseling and professional support and, especially, access to relevant information on family support services and programs, in addition to legal assistance regarding the legal effects of the relinquishment custody and care of their child. [90]

84. Regarding specific steps to be taken, these will depend on the particular circumstances facing the family and the child, and could consist of, among others: i) support, guidance and follow up of the family by experts in family support; ii) direct material assistance or other type of assistance, allocations or benefits for the family to strengthen their standard of living and the enjoyment of the rights of the child; and iii) access to programs, social services or other type of suitable assistance to strengthen the capacity of the family to provide for the protection, care and upbringing of the child without separating her or him from the family.[91]

85. Special measures for the protection and care of biological ties are still more important when the parents are, as in the instant case, also children or adolescents. In that regard, the IACHR has held that "[w]hen the parents are adolescents under 18 years of age and have expressed their willingness to temporary or permanent relinquish their parental responsibilities, the State's obligation of special protection also applies to them, given that, as individuals under the age of 18, they are themselves beneficiaries of this protection under the provisions of Article 19 of the Convention"[92] and VII of the American Declaration on the Rights and Duties of Man. Therefore, the aim of programs and interventions implemented by the State in such cases must be to provide advice and support future parents, especially adolescent parents, to build their capacities to carry out

[87] IA Court HR. Case of Forneron and Daughter v. Argentina. Merits, Reparations, and Costs. Judgment of April 27, 2012, par. 113.
[88] IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, pars. 71, 72, 73, and 76.
[89] IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, par. 77.
[90] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 130.
[91] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 281.
[92] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 134.

parental functions in conditions of dignity and prevent them from relinquishing custody of their children or consent to adoption due to the conditions or vulnerability or discrimination that they face. [93]

86. In the case of mono-parent families, the IA Court HR and the Commission have held that the State has a duty to take every reasonable step, taking into consideration the specific context, to try to locate the other parent or the extended family in order to determine whether there is a willingness on their part to maintain the parent-child tie, before proceeding with temporary or permanent decisions regarding the care of the child by a family other than his/her biological family. [94]

87. Likewise, the Guidelines for the Alternative Care of Children, adopted by UN General Assembly resolution 64/142, indicate that "When a public or private agency or facility is approached by a parent or legal guardian wishing to relinquish a child permanently, the State should ensure that the family receives counselling and social support to encourage and enable them to continue to care for the child. If this fails, a social worker or other appropriate professional assessment should be undertaken to determine whether there are other family members who wish to take permanent responsibility for the child, and whether such arrangements would be in the best interests of the child." [95]

88. In the same vein, the Commission has emphasized that the care and custody of the child within his extended family is consistent with the right to family and the identity of that child, and facilitates her/his future return to family life with her/his biological parents, which is the objective of the temporary special protective measures.[96]

89. Lastly, regarding the requirements that are to be met when relinquishing the guardianship of a child, the Commission emphasizes that special protection measures that entail the separation of a child from his or her biological family are only admissible when they are necessary, exceptional, lawful, and temporary or provisional.[97]

90. Regarding the principles of exceptionality and temporal determination, the Commission has held that international human rights law establishes exceptionality and temporal determination in the adoption and implementation of protection measures that involve separating a child from his or her parents, taking into account the right to a family and the right to privacy free of arbitrary interference.[98] Therefore, prior to separating a child from his parents, the State should ensure that all possible effort have been made to support and assist the family in providing adequate care and protection, and in raising the child. This means adopting positive and service-based measures aimed at ensuring effective protection of the family and the rights of the child.[99] Additionally, considering the temporary nature of protection measures, they should be reviewed periodically to determine whether they continue to be necessary and appropriate.

91. In the same vein, the Guidelines for the Alternative Care of Children, adopted by UN General Assembly resolution 64/142, indicate that "[r]emoval of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal

[93] IDH. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 135.
[94] IA Court HR. Case of Forneron and Daughter v. Argentina. Merits, Reparations, and Costs. Judgment of April 27, 2012, par. 119. IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 131.
[95] UN General Assembly. Sixty-fourth session. Resolution 64/142. Guidelines for the Alternative Care of Children. 24 February 2010. Accessible at: https://undocs.org/en/A/RES/64/142
[96] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 282.
[97] IACHR. Report No. 83/10, Case 12.584, Merits, Milagros Fornerón and Leonardo Aníbal Fornerón, Argentina, November 29, 2010, pars. 103, 108, and 110, and IA Court HR. Case of Forneron and Daughter v. Argentina. Merits, Reparations, and Costs. Judgment of April 27, 2012, pars. 47 and 48.
[98] IACHR. Report No. 83/10, Case 12.584, Merits, Milagros Fornerón and Leonardo Aníbal Fornerón, Argentina, November 29, 2010, par. 108; and IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, par. 73.
[99] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 174.

decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child."[100]

92. Moreover, in keeping with the principle of necessity, any protection measure adopted should be essential to protect the child and guarantee his or her well-being when this has not been possible within his family environment. The IACHR has held that "The elements of necessity and appropriateness of the protection measure must be timely justified and documented in the decision made. Such a decision should be based on the respective technical assessments conducted by teams of professional experts."[101]

93. Lastly, with regard to the principle of legality and legitimacy, for satisfactory fulfillment of Article 11.2 of the Convention and V of the American Declaration regarding the prohibition of arbitrary or abusive interference in private life, the confluence of circumstances justifying the adoption of alternative care measures that imply the separation of a child from his or her biological family should be analyzed by the competent authority in accordance with the law and the applicable procedures, strictly respecting the guarantees of due process. This decision must also be subject to periodic judicial review, and must be directed at restoring family ties, taking into account the child's best interest.[102]

94. In conclusion, States have the following obligations that derive from a joint analysis of Articles 11.2, 17.1, and 19 of the American Convention: (i) the positive obligation to adopt measures to protect the family that enable the effective exercise of parental rights and responsibilities, thus preventing situations in which children are unprotected and ties are broken with their biological families; (ii) the obligation to design and implement special measures of protection of a temporary nature to adequately meet the child's needs for protection when the biological family, despite having received appropriate support, cannot effectively meet its obligations to provide care or when remaining in the family setting may be contrary to the child's best interests; and (iii) the duty to guarantee alternative care measures that are duly justified by law, temporary in nature, and directed at restoring rights, reestablishing family ties, and reintegrating into a family environment as soon as possible, based on the best interests of the child, and must be subject to judicial review.[103]

2. General standards on the rights to a fair trial and to judicial protection of children and adolescents in the context of the issuing of special protection measures and during guardianship and adoption processes

95. The Commission has held that decisions taken regarding temporary separation of children from their parents must be the result of a proceeding in which, as prescribed by the American Convention, all guarantees applicable to infringement of rights are respected. Additionally, those proceedings in which children and adolescents participate, or that discuss one of their rights, must be governed by the guarantees established in Articles 8 and 25 of the Convention and must be related to the *corpus iuris* on the rights of the child and to Article 19 of the Convention.[104]

96. The IACHR has also emphasized decisions taken regarding the protection, guardianship, and care of children must be justified and that such justification must be objective, suitable, sufficient, and based on the child's best interests. In the same vein, the IA Court HR has also held that "[a]any action that affects [the child] must be perfectly justified according to the law, it must be reasonable and relevant in substantive and formal

[100] UN General Assembly. Sixty-fourth session. Resolution 64/142. Guidelines for the Alternative Care of Children. 24 February 2010. Accessible at: https://undocs.org/en/A/RES/64/142
[101] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 195.
[102] IA Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, par. 125. IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, par. 75.
[103] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 75.
[104] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 223.

terms, it must address the best interests of the child and abide by procedures and guarantees that at all times enable verification of its suitability and legitimacy." [105]

97. Regarding the reasonableness of the time taken, integral aspect of the right to a fair trial under Article 8 of the Convention, the IA Court HR has held that proceedings concerning the adoption, guardianship and custody of boys and girls must be handled by the judicial authorities with celerity, taking into account the duty of the special protection they must be afforded. The IA Court HR has also "paid special attention to the effects that time has on the rights of the child and his or her parents, to establish that authorities have a reinforced duty to deal with the proceedings with exceptional diligence, which translates into the promotion of the proceeding by State initiative, as well as the obligation to accelerate the proceeding."[106]

98. It should be noted in this connection that both the case of "Fornerón" and in the Matter of L.M., Provisional measures M with Regard to Paraguay, the IA Court HR emphasized that "owing to the importance of the interests in question," such as, in this case, the right to personal integrity, the right to identity, and the right to protection of the family, "the administrative and judicial proceedings that concern the protection of the human rights of children, particularly those judicial proceedings concerning the adoption, guardianship and custody of children in early infancy, must be dealt with by the authorities with exceptional diligence and speed" and added that "the simple passage of time may constitute a factor that encourages the creation of ties with the foster family or the family that has the child. Consequently, the greater the delay in the proceedings, irrespective of any decision on the determination of the child's rights, could determine the irreversible or irreparable nature of the de facto situation and make any decision in this regard null and prejudicial for the interests of the child and, if applicable, of the biological parents, whatever the corresponding decision taken."[107]

99. Moreover, with regard to the right of the child to be heard, the IACHR and the IA Court HR have noted that Article 8.1 of the Convention sets forth the right of every person, including children, to be heard in proceedings affecting their rights, and have also held that "[t]this right must be interpreted in light of Article 12 of the Convention on the Rights of the Child, which contains appropriate stipulations on the child's right to be heard, for the purpose of facilitating the child's intervention according to his age and maturity and ensuring that it does not harm his genuine interest."[108] The right of the child to be heard, therefore, implies that all due measures are to be taken in the context of the proceedings to facilitate their appropriate participation, that is, to have the effective possibility of presenting their views so that they have influence in the context of decisions taken. [109]

100. Similarly, the Committee on the Rights of the Child has emphasized that, in light of Article 12 of the Convention on the Rights of the Child,[110] States Parties have an obligation to take all necessary steps to ensure

[105] IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, par. 113.

[106] c. Judgment of August 31, 2012. Series C No. 246, par. 127. European Court on Human Rights. Case of V.A.M. v. Serbia, Judgment 13 March 2007, pars. 99 and 101. The European Court of Human Rights has ruled that cases that could affect the enjoyment of rights related to respect for family life, should be handled with exceptional diligence and relevant consideration, so that States should organize their judicial systems so that they can comply with the requirements of due process, including the obligation to hear cases in a reasonable time.

[107] IA Court HR. Case of Fornerón and daughter v. Argentina. Merits, Reparations, and Costs. Judgment of April 27, 2012 Series C No. 242, pars. 52. Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures with Regard to Paraguay, Matter of L.M.. Considering that par. 18.

[108] IA Court HR. Case of Atala Riffo and Daughters v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239, par. 196; Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, par. 228,

[109] IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, pars. 96 and 98. IACHR. Report No. 83/10, Case 12.584, Merits. Milagros Fornerón and Leonardo Aníbal Fornerón. Argentina, November 29, 2010, par 75.

[110] Convention on the Rights of the Child. Article 12:

> 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

that mechanisms are in place, in the context of any judicial and administrative proceedings, to hear in a timely and appropriate manner, the views of the child on matters affecting the child that are the subject of analysis and decision in the context of said proceedings.[111]

101. The IACHR has also emphasized that the State must ensure that the child receives all information and counseling necessary to take a decision that promotes his or her best interest. Therefore, the State must encourage the child to form a view freely, without undue influence or pressure, and to provide an environment in which the child feels respected and secure, creating conditions for the child to exercise his or her right to be heard. This means that the child must be informed of the terms of the matters under consideration, the options and possible decisions that may be taken, and their consequences.[112]

102. Lastly, the Commission notes that the Committee on the Rights of the Child has held that that Article 12 of the Convention on the Rights of the Child establishes not only the right of the child to express his or her views freely in all matters affecting the child, but also the consequent right for those views to be given due weight in accordance with the age and maturity of the child. If the child is capable of forming his or her own view in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue.[113]

103. Lastly, regarding the right of children and adolescents to legal representation and legal assistance, the Commission underscores their need for access to specialized legal advice of quality. The Commission understands that whether legal assistance is ordered often determines whether an individual has access to and real participation in procedural actions. The limitations faced by some individuals in accessing legal advice and legal defense of quality owing to their socioeconomic or personal conditions constitutes, in practice, an obstacle to access to justice and to the right to judicial protection on equal terms and, therefore, to defense.

104. In the same vein, the Commission has noted that many of the families involved in proceedings regarding custody and care of the child for protection reasons are composed of especially vulnerable people who have difficulties in the exercise of their full rights.[114] In these cases, both the IACHR and the IA Court HR have recognized the consequent obligation for the State to take all those measures necessary to guarantee everyone effective access to justice and the right to judicial protection on equal terms, and has indicated that there are vulnerable persons who require special measures to guarantee the possibility of an effective defense of their rights before administrative and judicial authorities. [115]

3. General standards on the prevention of violence and discrimination against pregnant girls and adolescents and child and adolescent mothers

105. Article 24 of the American Convention prohibits legislative and de facto discrimination, not only with regard to the rights embodied therein, but also with regard to all laws the State adopts and to their application. In other words, this Article does not merely reiterate the provisions of Article 1.1 of the Convention concerning the obligation of States to respect and guarantee, without discrimination, the rights recognized therein, but, in

[111] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 253. Committee on the Right of the Child, General Comment No. 12. The right of the child to be heard, CRC/C/GC/12, 20 July 2009, par. 19.
[112] Committee on the Right of the Child, General Comment No. 12. The right of the child to be heard, CRC/C/GC/12, 20 July 2009, pars. 11, 22, and 23.
[113] Committee on the Right of the Child, General Comment No. 12. The right of the child to be heard, CRC/C/GC/12, 20 July 2009, par. 44. IA Court HR. Case of Atala Riffo and Daughters v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239, par. 200. IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 260.
[114] IACHR. The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 17 October 2013 Original: Spanish, par. 277.
[115] IA Court HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of August 28, 2002. Series A No. 17, pars. 95, 96, and 98. IACHR. Report No. 83/10, Case 12.584, Merits, Milagros Fornerón and Leonardo Aníbal Fornerón, Argentina, November 29, 2010, par. 75. IA Court HR. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, pars. 196, 241, and 242. See also: Brasilia Regulations on Access to Justice for Vulnerable People, approved by the XIV Ibero-American Judicial Summit, held in Brasilia, from March 4 to 6, 2008.

addition, establishes a right that also entails obligations for the State to respect and ensure the principle of equality and non-discrimination in the safeguard other rights and in all domestic laws that it adopts.[116]

106. The Commission and the Court have affirmed that the principle of equality and non-discrimination constitutes a central and fundamental pillar of the inter-American human rights system. The concept of equality derives directly from the natural unity of humankind and is inseparable from the essential dignity of the human person, against which are incompatible all situations which, in considering superior a specific group, lead to giving it preference, or, the inverse, in considering it inferior, lead to treating it with hostility or discriminating against it in any way, in the enjoyment of rights that are in fact recognized for those not viewed as in that situation. The Court in its case law has held that, at the current stage of development of international law, the fundamental principle of equality and non-discrimination has entered into the domain of *jus cogens*. This principle, on which rests the national and international public legal framework, permeates the entire legal system.[117]

107. At the inter-American level, in its preamble, the Convention of Belém do Pará indicates that violence against women is a "manifestation of the historically unequal power relations between women and men" and also recognizes that the right of every woman to a life free from violence includes the right to be free from all forms of discrimination."[118] From a general standpoint, the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, "CEDAW") defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[119] In that regard, the Committee on the Elimination of All Forms of Discrimination against Women (hereinafter, "the CEDAW Committee") has indicated that the definition of discrimination against women "includes gender-based violence, that is, violence that is directed against a woman [i] because she is a woman or [ii] that affects women disproportionately." It has also indicated that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."[120]

108. At the inter-American level, the Convention of Belém do Pará establishes the right of women to a life free from violence. Article 7 of that Convention indicates that it is a duty of the States to take steps to prevent, punish and eradicate violence against women through the adoption of a number of measures and public policies that include preventing that violence. These obligations strengthen and complement the obligations of the States under the American Convention.

109. The Convention of Belém do Pará establishes parameters for the identification of when an act constitutes violence and, in it Article 1, establishes that "violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." Derived from the aforesaid obligation is an obligation of the States to "refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation."[121] To ensure this protection, it is not sufficient for States to refrain from violating rights; rather, it is imperative that they adopt positive measures, determined in function of the specific needs for protection of the subjects of law.[122]

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[116] *Cf. Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127, par. 186, and *Case of Espinoza Gonzáles v. Peru*, *supra,* par. 217.

[117] IA Court HR. *Case of Flor Freire v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2016. Series C No. 315, par. 109. [Available only in Spanish]

[118] *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 16, 2009. Series C No.205, par. 396, citing the Convention of Belém do Pará, preamble and Article 6.

[119] *Case of González et al. ("Cotton Field") v. Mexico, supra,* par. 394, citing the Convention on the Elimination of All Forms of Discrimination against Women, of December 18, 1979, Article 1.

[120] *Case of González et al. ("Cotton Field") v. Mexico, supra,* par. 395, citing the Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation 19: Violence against Women, 11th session, 1992, UN Doc. HRI\GEN\1\Rev.1 at 84 (1994), pars. 1 and 6.

[121] Convention of Belém do Pará, Article 7.a.

[122] IA Court HR. Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs. Judgment of November 30, 2016. Series C No. 329, par. 250.

110. The Commission has also asserted that women continue to face serious challenges when it comes to having their fundamental rights fully respected and protected, in a context of violence and structural, endemic discrimination against them. Specifically, it has pointed out that high rates reports of gender-based killings, disappearances, harassment and sexual violence, among other forms of violence, and the persistence of serious obstacles, still keep women from gaining timely access, without discrimination, to justice. The IACHR also notes that the overlapping of various layers of discrimination - intersectionality – leads to a form of deepened discrimination which manifests itself in substantively different experiences from one women to another.[123]

111. In the specific case of the situation of girls and adolescents, the Commission has indicated that they are women in a special situation of vulnerability because of their age and their stage of life. In terms of legal protection, adolescents are entitled to the same rights and protection recognized for all persons under 18 years of age. This age group warrants special protection in order to identify its potential needs of protection; the specific risk factors faced at this stage in life, in addition to adequately taking into account the principle of progressive autonomy of adolescents in exercising their rights.[124]

112. Regarding the scope of this duty of special protection of girls [this term including female adolescents], the Commission notes that it must be taken into consideration that the condition of dependence of this group evolves over times in accordance with their growth, maturity level and increasing personal autonomy. This results in a corresponding change in the content of the duties and responsibilities of the family, community, and State toward children. Consequently, those duties and responsibilities must be consistent with the children's level of development and their gradually evolving ability to take decisions independently about themselves and the exercise of their rights.

113. Additionally, the IA Court HR has understood that pregnancy may constitute a condition of special vulnerability and that the confluence and intersection of factors of discrimination, such as because they are women, because they are girls, and because they are pregnant increases the comparative disadvantages of women and girls in the exercise of their rights and, in particular, in accessing justice.[125]

114. Specifically regarding girls who have "early pregnancies and pregnancies resulting from sexual violence," the Commission has received information on situations of discrimination and stigma in the region against pregnant girls and adolescents by their communities and even their families. The IACHR has noted that such girls and adolescents suffer different forms of violence as a result of unwanted pregnancies or simply because of being pregnant.[126] In that regard, the IACHR has called on States to take steps to reduce the high rates of such pregnancies, including educational measures, particularly sex and reproductive education, and "[i]n cases where sexual violence has resulted in a forced pregnancy in girls and adolescents, the IACHR [has] emphasize[d] the importance of adopting appropriate protocols to guarantee legal, timely and free access to emergency contraceptive measures and truthful, sufficient and impartial information to access the legal termination of pregnancy, especially when it comes to young girls."[127] Moreover, in the case of pregnant girls and adolescents, the IACHR has emphasized the importance, when adopting special protection measures for a pregnant girl or adolescent, of States acting "at the very least, under the presumption that any pregnancy in a girl under the legal age of consent is the result of sexual assault."[128] This implies the need for a comprehensive

[123] IACHR. Violence and Discrimination against Women and Girls. Best Practices and Challenges in Latin America and the Caribbean. OEA/Ser.L/V/II. Doc. 233/19, par. 8.
[124] IACHR. Violence and Discrimination against Women and Girls. Best Practices and Challenges in Latin America and the Caribbean. OEA/Ser.L/V/II. Doc. 233/19, par. 10.
[125] IA Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221. IA Court HR. Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and Their Families v. Brazil. Preliminary objections, merits, reparations, and costs. Judgment of July 15, 2020.
[126] IACHR. Violence and Discrimination against Women and Girls. Best Practices and Challenges in Latin America and the Caribbean. OEA/Ser.L/V/II. Doc. 233/19, par. 254.
[127] IACHR. Violence and Discrimination against Women and Girls. Best Practices and Challenges in Latin America and the Caribbean. OEA/Ser.L/V/II. Doc. 233/19, par. 260.
[128] IACHR. Violence and Discrimination against Women and Girls. Best Practices and Challenges in Latin America and the Caribbean. OEA/Ser.L/V/II. Doc. 233/19, par. 262.

approach that, in addition to the justice and physical and mental health processes, reduces obstacles that may entail discrimination in the exercise of other rights, such as education.[129]

4. Analysis of the case

115. The Commission emphasizes that, as indicated *supra*, the rights to protection of the family, family life, personal integrity, and to identity give rise to a number of state obligations that translate as the right of children to remain with their biological parents. Where the State interferes with this relationship, it would have to provide compelling reasons relating to best interest for separating a child from his or her biological family, such measures being of a temporary and exceptional nature.

116. The aforesaid obligation implies first that the State must take steps to ensure that the child remains not only with his/her biological parents, but also his/her extended biological family. Even in cases of participation in proceedings where expressions of consent to adoption have been given, protection of the family and the child's best interest require the State to exhaust all possibilities of keeping the child with his or her biological family and, where consent to the adoption has been given, to ensure that that decision is taken freely and in the child's best interest.

117. The Commission notes that, in general terms, these obligations are reflected in Article 595 of the Civil and Commercial Code of the Argentine Nation, in force since August 1, 2015, which establishes that adoption processes are governed by the principles of respect for the child's best interest and his or her right to identity, through the exhaustion of all possibilities of remaining in the family of origin or extended family, and the right of the child or adolescent to be heard. Additionally, under Article 607 of that text, the judicial declaration of the status of adoptability may not be issued if a family member or the individual with the closest emotional bond with the child or adolescent offers to assume his or her guardianship or support and that request is considered appropriate to his or her interest.

118. Below, the Commission will issue its view as to whether the State has fulfilled its duties to protect the above-mentioned rights. To that end, the Commission will analyze the State's action at the following times: (i) "María's decision to give her child up for adoption"; (ii) the start of the proceedings to give "Mariano" up for adoption; (iii) the report issued by the Forensic Physician's office; (iv) interview of March 2, 2015; (iv) regaining contact and restoring emotional bonds; and (v) lack of resolution of the question of the status of adoptability of the child "Mariano." Lastly, the Commission will offer its conclusions.

- The State's action regarding "María's" decision to give her child up for adoption

119. The Commission notes, first, that "María' was diagnosed as pregnant at the Martin Maternity Clinic on May 30, 2014, when the child was already in her 28th week of pregnancy. In that regard, "María's" mother has indicated that before going to Martin Maternity Clinic, they had gone to Health Center No. 5, because she noted that the girl "had a big belly," and added that the pediatrician who had seen them only explained that interruption of menstrual periods was common at her daughter's young age, and that no comprehensive analysis had been carried out on that occasion that would have enabled a diagnosis to be reached. When it had been confirmed that "María" was pregnant," a group of Martin Maternity Clinic social work and mental health professionals began to study the case. It was in the context and ambit of Martin Maternity Clinic's intervention that "María" and her mother first expressed, in a document signed on July 23, 2014, their intent to give the unborn child up for adoption.

120. The Commission notes that the State has not demonstrated that the public officials who intervened or were called upon to intervene during "Mariano's" gestation took steps to counsel either María or her mother regarding the decision to give the child up for adoption. Nor does the record show that she was given psychological, legal, or any other type of support with regard to that decision, or even information on assistance programs or additional steps that could be taken in her case, including the possibility that "Mariano" could be

[129] IACHR. Violence and Discrimination against Women and Girls. Best Practices and Challenges in Latin America and the Caribbean. OEA/Ser.L/V/II. Doc. 233/19, pars. 261-264.

cared for by his extended family. Regarding this point, the Commission notes that, in the report of July 2, 2014, signed by the Martin Maternity Clinic professionals and addressed to the Department for the Protection of the Rights of Children, Adolescents, and the Family, the different positions within "María's" family were duly placed on record, specifically those of the mother and the girl's aunt, regarding possibly relinquishing guardianship of the child after his birth.

121. For the Commission, this type of guidance and support was essential if "María" and her mother were to give prior, free, and informed consent to adoption, especially if consideration is given to "María's" condition as a victim of abuse and sexual violence within her own family and her emotional situation as a pregnant child. Additionally, the Commission cannot fail to point out that it is implausible that, given the language used, the note of July 23, which was used as the grounds for instituting the process of giving up the child after birth, was written by the girl or her mother, a circumstance that adds to the doubts regarding the existence of valid and informed consent.

122. The Commission notes that the file does not provide due justification for the reason why the Martin Maternity Clinic and Office of the Defender of Children and Adolescents professionals did not take into account the position of "María's" extended family, specifically of her aunt and grandmother, who expressed their interest in taking responsibility for the yet-to-be-born child. The Commission emphasizes that both institutions were aware of this intent various weeks before the birth. Specifically, Martin Maternity Clinic was aware of the interest of "María's" aunt and grandmother at least as of the note they signed on July 2, and the Office of the Defender as of the visit they made to "María's" house on August 8. However, both institutions continued to promote at the administrative and judicial levels the proceedings for giving the child "Mariano" up for guardianship and adoption, without explaining the reasons why it would have been against the child's best interest to give the guardianship of the child to his great aunt or great grandmother.

123. This lack of assistance is graver still if account is taken of the extreme vulnerability of both "María" and her mother, consisting of a precarious economic situation, a delicate family situation resulting from the exclusion from the home of the child's father as a result of repeated reports of intra-family violence, the circumstances in which the child became pregnant, and the structural obstacles faced by poor women, adolescents, and girls when asserting their rights.

- The State's action regarding the adoption process

124. The Commission notes that judicial authorities did not intervene in the case until August 1, 2014, and only based on the document submitted to the courts by the Defender of Children and Adolescents. In light of the standards set out in the paragraphs above and the applicable national and provincial legislation, especially the provisions of the Civil and Commercial Code, National Law 24.779, and Articles 41 and 45 of Provincial Law 12.967, the Commission agrees with the petitioners' position regarding the lack of standing on the part of the Defender to bring a guardianship and adoption action and adds that, except in extreme cases, giving up the guardianship of a child for his/her subsequent adoption is an extremely personal act in the minds of its biological parents, who must express their intent unequivocally and unconditionally.

125. As indicated above, the State and, in particular, the judicial authorities who adjudicate proceedings for guardianship and custody of a child must take the necessary steps to keep them with their biological families, and may only separate them for reasons of their best interest. This obligation is especially marked, in a case such as this, where the best interest of the mother must also be borne in mind, who was a child at the time of the events.

126. Nonetheless, the Commission has noted that the judge in the case opened the custodianship and adoption file and wrote to RUAGA to select a candidate married couple. The Commission underscores that the judges involved did not guarantee the right of "María" and her mother to obtain assistance and legal representation from the time they were called upon to intervene. They did not give notification of the actions to the duty Official Defender and failed to carry out actions to exhaust the possibilities that the yet-to-be-born child could be cared for, at least in the first months of his life, by his own mother, or even by members of his extended biological family.

127. Continuing chronologically with the analysis of the events, the IACHR notes that the first file that RUAGA sent to the court, by communication of August 4, 2014, was that of Mr. and Mrs. "López." The file also shows that on August 22, that is, one day before "Mariano's" birth, the attorneys for Mr. and Mrs. "López" submitted a document requesting the judge to authorize the couple to be admitted to the maternity ward, make contact with the child, and remove him from the hospital in the capacity of custodians. That same day, the judge admitted the request in the terms requested (see *supra* par. 41).

128. Regarding these events, the Commission notes first, that the decision taken by the judge in the case on August 22, 2014, lacks the most basic justification. In fact, the file shows that such a transcendentally important decision for the rights and life of "María" and her son was taken through the signature of a decree similar in form and drafting to a mere procedural decree of no more than three lines. As is evident, the judge not only did not evaluate "María's" legal capacity to express her intent or the legality of the proceedings until that time, but also did not explain the reasons why it was in the child's best interest to give him to Mr. and Mrs. "López." Neither did the judicial authority order the measure to be temporary or exceptional.

129. Similarly, the Commission notes that the complexity and seriousness of the matter that the judge in the case was being called upon to decide warranted an in-depth analysis and profound development of how the rights at stake were to be balanced. The problem existing as of August 22, 2014, was not simple to resolve. On the one hand, the articles of the Civil Code in force at the time of the events did not expressly define the concept of provisional guardianship invoked by the attorneys for Mr. and Mrs. "López," and Article 317.a thereof provided that consent for preadoption guardianship had to be given by one or both of the child's biological parents at a hearing convened by the judge within 60 days of the birth, not prior to it. Moreover, according to the information then available in the file, "María" was a vulnerable child coping with a pregnancy.

130. The Commission has noted that similar cases were handled by other Argentine courts in a manner consistent with the guarantees of due process and the duty to give reasons for judicial decisions. For example, in the case of "N. M. R. S/ SITUACION DE N.N.A.,"[130] issued by the Family Court of Paso de los Libres, Corrientes, the judge in the case first became personally acquainted with the pregnant adolescent and listened to her position; also guaranteed participation by the Office of the Counselor for Minors, and, lastly, in her judgment provided in-depth the legal reasons why it was appropriate to depart from the legal requirement of a minimum period to deem valid the consent of an adolescent mother to give up for guardianship her yet-to-be-born child. That judgment also clarified, precisely and unambiguously, that the measure for provisional personal care immediately after the birth given to the married couple selected was conditional upon confirmation of the child's mother consent at the time established by the Civil Code for awarding preadoption guardianship.

131. Lastly, the Commission notes the lack of participation by "María" and her mother in the judicial proceedings. According to the records on the file, no judicial official contacted the girl in the more than three weeks between when the Office of the Defender brought the action and "Mariano's" birth. The girl's only participation in the proceedings shown on the file until the time of the birth was the document of July 23, 2014, in which, in a note she clearly had not written, she expressed her intent to give the child up for adoption. Additionally, as indicated above, the decision to give the child to Mr. and Mrs. "López" was taken *inaudita parte* and María's only meeting with the couple before the birth was at the Office of the Defender, at "María's" request.

132. In that regard, the Commission notes that both the judicial decisions to initiate the declaration of adoptability and the separation of "Mariano" from his mother were actions incompatible with the obligations of the State to guarantee their rights as they have been described in the paragraphs above.

- The Forensic Physician's Office report

[130] Judgment of July 12, 2019, issued by the Family Court of Paso de los Libres, Corrientes, in the case of N. M. R. s/ situación de N. N. A. Entire text available at: http://www.saij.gob.ar/juzgado-familia-local-corrientes--situacion-fa19210003-2019-07-12/123456789-300-0129-1ots-eupmocsollaf?

133. After "Mariano's" birth and his care had been assigned given to Mr. and Mrs. "López," the file shows that the judge ordered, on August 27, 2014, "María" and her mother to appear at the office of the Forensic Physician for examination by a doctor to determine whether they were able to understand the legal significance of giving a child up for guardianship with the aim of adoption. This step took place on December 15, 2014, and resulted in a report establishing that "María" manifested a selective emotional block which, in addition to her young age, prevented her from understanding the scope of the act of giving up her child.

134. Regarding these procedural acts, the Commission considers it timely to underscore two aspects. First, until that time, neither "María" nor her mother had had legal assistance or assistance from the official defender assisgned to them. In fact, it was only at the hearing of March 2, 2015 – convened based on the forensic physician's report, to which the Commission will refer in paragraphs below – that for the first time in the case appeared attorney of the General Defender's Office. The IACHR also points out that it was not until April 20, 2015, that "María" was able, for the first time, to attend an interview with her official defender, on which occasion she reaffirmed her statement at the hearing of March 2 that she did not wish to give up her child for adoption.

135. Secondly, the Commission notes the considerable delay in the forensic physician's examination, which took place nearly four months after the judge's order of August 27, 2014. Similarly, another three months went by between the receipt of the forensic physician's report and the next procedural step of importance, that is, the hearing of March 2, 2015, during which not only was "María" not heard by the judicial authorities in charge of the case, but also nothing was done regarding the undeniable circumstance of the lack of mother's consent to continue the adoption proceedings and regarding the fact that the baby "Mariano" was with a family that was not his biological family, which had moved ahead with decisions central to his biography, such as his baptism in a Catholic ceremony and his registration in a day care center.

136. The Commission takes note of some judicial resolutions, primarily that of October 1, 2015, that seek to explain the delay in the examination of "María's" behavior, who only went to Forensic Physician's office on December 15, 2015, when she had been summonsed to appear on November 4 of that year (see above, par. 54). In that regard, the IACHR has noted from the file that the notification to "María" and her mother to attend this highly important procedural step was served by judicial writ, whose text it might reasonably be inferred was not easy to understand for a 12-year-old child and her mother, especially if account is taken of their socioeconomic circumstances, their level of formal education, and their lack of legal assistance. In addition, if one looks closely at the writ, it shows that it does not give full details of the physical address where "María" and her mother were to appear. It just reads "third floor of Courts," and "María" had never been there before. Lastly, the file shows that the notifying official, not finding anyone at home, attached the writ to the door "María's" mother's house, which makes it possible to suppose that neither the child nor her mother had an opportunity to ask what the paper was about that they were being given.

137. All these elements lead the Commission to conclude that the judicial authorities in the case did not take the proactive position that the case required. Additionally, the standard of greatest possible celerity required, among other things, that the earliest possible time be set for "María's" forensic medical analysis, which ultimately took place five months after the birth of the child "Mariano."

138. In any event, the Commission notes with concern that although the report issued based on the procedural step of December 15, 2014, showed that María was unable to understand the scope of the act of giving up her child, this had no influence on the juridical authority's consideration that there had been no free and informed decision regarding the adoption of the child, so that the judge would take the family protection measures required by restoring the child to his immediate family, or, instead, justify in depth the compelling reasons why it was in the child's best interest to keep him with the "Lopez" family. As will be explained below, the judicial actions were not effective in protecting the rights of either of María or her son, and ultimately delayed the judicial process by generating a situation of lack of legal certainty and of greater estrangement of the child "Mariano" from his biological mother.

- **The interview of March 2, 2015**

139. When the conclusions of the expert who interviewed "María" and her mother had been received, the judge in the case decided, on December 23, 2014, to become personally acquainted with the girl, and convened a hearing that was held on March 2, 2015. Participating in that meeting were the judge, "María," her mother, and different judicial officials and court psychology and social work specialists. Until that time, neither "María" nor her mother had had legal assistance and only the attorney of the General Defender's Office appeared for them. This lack of effective legal representation constituted a structural element of the case, and the Commission understands that this lasted until the petitioners in this case assumed the legal representation of the girl and her mother in April 2015.

140. Regarding this meeting, the IACHR must once again poimt to the lengthy time between the decision to convene the hearing until it was held. The Commission finds no reasonable explanation – nor was one provided by the Argentine State throughout the processing of this petition – why such an important meeting for the case, which supposedly was going to be the first time when "María" was going to be able to exercise her right to be heard by the judge in the case in the proceedings for guardianship and adoption of her child, took place more than two months after it was convened.

141. Regarding the proceedings of the meeting itself, the Commission notes, first, that its minutes show that "given the confusion with regard to "María's" wishes regarding her motherhood, Dr. Bianciotti suggests that she could immediately be seen by a professional psychologist to address the psychological trauma she has suffered." First, the IACHR cannot fail to note that the aforesaid minutes not only do not transcribe verbatim "María's" wish or position – which is a best practice so as duly to record the words of children in areas such as this – but also make an ex officio assessment of the confusion allegedly generated among the officials present regarding the expression of this wish.

142. The Commission also notes that on the occasion of listening to "María" at the hearing held during the 181st period of sessions, the now young woman "María" recalled with great pain and anguish what had happened that day and indicated that she, despite her young age, had already at that time expressed her wish not to go ahead with the adoption of her child. For all these reasons, the IACHR finds it incomprehensible in light of the standards outlined that the only decision taken by the judicial authorities was to order the the girl to go for psychological treatment and that the conditions to try to undo "Mariano's" guardianship and adoption process have not yet begun, given the intent that "María" has expressed.

- **Restoring contact and emotional ties between "María" and "Mariano"**

143. The Commission has noted that "María's" first formal request made through her attorneys to institute a system for restoration of ties with her son was presented to the judge in the case on August 4, 2015. The file shows that this request, together with others made by the attorneys for "María" and her mother in the latter half of 2015, was not answered by the family court. The Commission notes that during these months, the judicial process, insofar as it concerned the facilitation of contact between María and her son, was at a virtual standstill, and only in February 2016, did the Special Mental Health Boards authority of the Ministry of Health of Santa Fe Province present a report advising that a system for restoration of ties and contact be established.

144. The Commission has also noted that, despite a positive report from the Special Boards, the family court continued for months without taking a decision in this regard. That is why "María's" attorneys felt a need to file for an innovative precautionary measure and to file an application for precautionary measure with this Commission. Only in April 2016, did the judge in the case, after convening a meeting among all those involved in the case, order the establishment of a visitation schedule of two hours per week at the court's premises, with the presence of court professionals. The Commission notes, therefore, that over eight months went by between "María's" first request to meet and bond with her son and the judge's authorization, period of time in which the child "Mariano" continued his development and continued to build his emotional life, his biography, and his social ties completed distanced from his biological family.

145. Despite the order to begin the aforesaid visitation schedule, the Commission understands that ithe practical implementation of this first stage was not without obstacles. First, the circumstance that in the first meetings between "María" and her son, an order had been issued for participation by some of the psychologists

and social workers who had participated in the by-then questioned hearing of March 2, 2005, at which "María" had had a nervous breakdown did not generate in the girl sufficient confidence that those meetings would have a minimum prospect of success.

146. Secondly, the Commission notes that neither the girl's mother nor the extended family had an opportunity to participate in these meetings. The Commission takes note of the reports signed by the psychologists in the case, attached in the file, that explain the importance of concentrating on strengthening the bond between "María" and her son before including third parties in the visitation schedule. However, the Commission understands that that objective does not necessarily exclude the right of "Mariano's" grandmother to, at least, meet her grandson. Despite the documents signed by the attorney for "Mariano's" grandmother, "María's" mother, requesting that the party she represents be gradually incorporated into the visits, the file does not show that the professionals in the case had at least planned a strategy for intervention that would enable an emotional bond between "Mariano" and his grandmother to be established.

147. The Commission also emphasizes that, according to the petitioners and "María" herself, the State did not take any action or provide any practical assistance to facilitate the adolescent's presence at the meetings. According to the standards indicated in the preceding chapter, it is incumbent upon the State to take any support steps essential to promoting and ensuring family development and filial bonds. The Commission understands that in this case, because "María," was a low-income mother and adolescent, the State should have taken any steps required to provide the adolescent with practical facilities to ensure her presence at the meetings.

148. Moreover, the study of the file makes evident a lack of flexibility to modify the system for contact when "María" indicated her opposition to the modality that was being used. This is clear from an analysis of what happened at the end of the stage when the meetings were under the supervision of the Family Encounter Point Program of Rosario National University, which took place between September 2017 and July 2018. In fact, after "María" personally told the Official Defender in July 2018 her reasons why she no longer wanted to attend the program's offices, the contacts between her and her son only began again in November 2018, after various documents had been submitted by her attorneys.

149. The file also shows the manifest incapacity of the judicial authorities responsible for conducting the proceedings to reply in time and form to "María's" basic requests regarding the development of a close tie with her son. A notable example is "María's" request to meet with "Mariano" at her house to hold a birthday party on the child's third birthday.

150. The Commission notes that this request was only decided favorably by the judge in the case on August 24, 2017, that is, one day after the child's birthday, and after having notified all those involved, whether or not parties to the proceedings. The IACHR noted that some of the officials called upon to give their opinion, such as "Mariano's" court-appointed legal advisor and the Official Defender in charge of the Office of Civil Defender No. 5, took over a week to submit a simple document indicating that they had no objection to the holding of the event. The IACHR emphasizes that the resolution of August 24, 2017, authorizing the meeting between "María" and her son, the judge in the case, given the objective fact of deciding the request one day after "Mariano's" birthday, asserted that "it not mattering the date or day of the week on which the party is ultimately held, to order the [Mariano] go to the home of [María], accompanied by Mr. and Mrs. "López."

151. The Commission emphasizes that an event such as this had relevant symbolic significance for "María" and her son and that, in general, the marking of such birthdays has indispensible relevance for the creation and maintenance of family ties. The Commission understands that if, in extreme circumstances such as those in this case, contact between a mother and her son on his third birthday depends on the consent or authorization of state officials, the minimum that the State must guarantee is that those officials reply to the request in a timely manner.

152. Lastly, the Commission has noted that since November 2018, the meetings between "María" and her son have maintained some regularity and that they have begun to establish a close relationship. However, the Commission has heard from "María" herself the practical obstacles that often arise at the time of participating

in activities with her son, which were exacerbated during the social distancing period ordered as a result of the COVID-19 pandemic, and she was not informed of alternate measures that could have assisted effectively in overcoming such difficulties.

- Lack of resolution of the issue of the status of adoptability of the child "Mariano"

153. Based on the information available, the Commission understands that, as of the date of approval of this report, the family court in this case has not yet taken a substantive decision who the parents of the child "Mariano" are to be, in the terms stipulated by the Civil and Commercial Code of the Argentine Nation.

154. The Commission notes that the status of the proceedings makes evident that the last substantive decision constituting true progress with a view to concluding the proceedings is the resolution of October 1, 2015, by which the judge ordered that the proceedings should address the adoptability status of the child "Mariano." In fact, to be noted from observation of the proceedings as governed by the Civil and Commercial Code, is the fact that, thus far, the court has not declared the child's adoptability status itself, pursuant to Article 609 of the Civil and Commercial Code, and, logically, neither has it ordered the guardianship with the aim of adoption of the child, governed by Article 614 of the Civil and Commercial Code, nor still less has it ordered the start of the court proceedings for adoption governed by Articles 615 to 618 of the same legal text. Therefore, the Commission considers that, thus far, the legal situation of the child "Mariano" under the care of Mr. and Mrs. "López" seems to be a de facto guardianship with judicial acquiescence, given the inactivity of the judicial bodies involved.

155. With this overview in mind, the IACHR understands that a delay of over seven years in completing an adoption process and resolving who a child's parents are to be exceeds any parameter of reasonableness. The Commission is aware that the procedural time limits were suspended in the latter half of 2017, while the parties were exploring the possibility of a schedule for restoration of ties under the "Family Encounter Point" program. However, even discounting this period of time, the Commission does not find reasons to consider that the delay may reasonably be explained, especially if account is taken of the provisions of the IA Court HR in the cases of Fornerón and L.M, which established the duty of the State to act with exceptional diligence and celerity in resolving proceedings for the guardianship, custody, and adoption of children.

156. The Commission cannot fail to point out that this delay in taking a definitive decision in the proceedings has led to a serious lack of legal certainty regarding the child "Mariano," who is in limbo regarding who his parents are to be. On the one hand, the child is under the care of Mr. and Mrs. "López," who have taken highly important decisions for his life and – as the file shows – have given him throughout these years practical and emotional care and are not responsible for the irregularities in the process indicated throughout this report nor for the existing unreasonable delay. However, on the other, from the standpoint of mother-son legal relations, "María" has not renounced her parental responsibility nor given her consent, there being reiterated actions by the State that are incompatible with its international obligations, as has been discussed throughout this report.

- Conclusion

157. Having made a comprehensive analysis of the State's conduct in the instant case, the Commission concludes that the Argentine State is responsible for a number of actions and omissions that translate as negligent action regarding the protection of the rights of "María" and "Mariano." These actions are also incompatible with the dignity of the adolescent, woman, and mother "María," and have caused profound and irreparable harm to the inalienable right of "María" and her son to develop an emotional bond, bond that the State itself was called upon to guarantee.

158. The Commission emphasizes that, since the very start of the process, and during the unreasonably long time it has lasted, different State actors have failed to fulfill their obligation to guarantee the right to a family of the alleged victims and "Mariano's" right to identity. In particular, the file does not show that the State provided any type of counselling or support to ensure that the decision that María and her mother were called upon to make regarding giving the unborn child up for adoption was a free and informed decision. Neither did the State

take account of the existence of other members of "Mariano's" extended biological family, who are said to have indicated their willingness to take responsibility for the child. Subsequently, although "María" clearly expressed her opposition to giving up her son for adoption, the state authorities have not acted with diligence and speed in resolving the judicial proceedings.

159. Moreover, the State has failed to take timely steps to facilitate the relationship between "María" and her son, which, the Commission notes, was seriously impacted precisely because of the delays by the authorities in conducting the judicial proceedings. On the contrary, despite the effort made by "María" and her mother to restore ties with their son and grandson, the State has on occasion mounted obstacles, without giving a valid reason, both disallowing his relationship with his grandmother and frustrating "María's" expectation to participate in her son's birthday.

160. Lastly, a comprehensive analysis of the facts of the instant case leads the Commission to conclude that "María" manifested a number of risk factors that made her especially vulnerable, such as: that she was a girl; she became pregnant at 12 years of age as the result of a sexual relationship involving a situation of power that translated as sexual violence; that her family was poor, and the background of intra-family violence that led to the exclusion of her father from the home. Because of the confluence of these factors, the Argentine State had an obligation to act with strict or heightened diligence to guarantee "María's" rights. The file does not show that the State acted in keeping with these obligations by taking an integral approach to "María's" situation. Fulfillment of these obligations, as described *supra,* meant starting by acting based on the assumption that she was a victim of rape, and, therefore, taking a number of steps for psychological and mental health care and legal assistance while guaranteeing her well-being, facilitating the decision-making processes, and respecting and guaranteeing her decision to have a family with "Mariano."

161. The Commission notes with concern that the numerous omissions and delays on the part of the Argentine State have not guaranteed that account be taken of "María's" wishes nor have they respected her decisions, not even now that she is of legal age. All this reinforces a deep-rooted stereotype that denies the capacity of girls and adolescents, especially those living in poverty, to express and take decisions regarding their own fate, including regarding the possibility of and capacities to have children and form a family, considering that such decisions can be forced upon them or imposed by adults. This, in the absence of the supports and care required to facilitate such decision-making processes, in keeping with their own development and maturity, safeguarding their best interest. This ineffective action on the part of the authorities, which in turn sends a message of mistrust in the justice system, precipitates as a form of discrimination in access to justice for women such as "María."

162. Therefore, the Commission understands that the State has not protected the right to a family of "María," her mother, and "Mariano," nor has it fulfilled its special obligations derived from the rights of child and adolescent victims. This has caused severe suffering and anguish, which has affected their personal well-being and, beyond that, has affected "Mariano's" right to identity, also arbitrarily interfering in the victims' right to family life, given the passage of time, which realistically has impacted the ties between "Mariano" and his biological family, taking account of the fact that he child is no longer in early childhood.

163. The Commission therefore understands that the State actions and omissions outlined in the preceding paragraphs violate the rights to a fair trial, equal protection, judicial protection, protection of the family, and humane treatment, and not to be the object of arbitrary or abusive interference with his or her family life, set forth, respectively, in Articles 8.1, 25, 17, 5, and 11.2 of the American Convention on Human Rights, read in conjunction with its Articles 19 (rights of the child) and 1.1 (obligation to respect rights). The Commission also considers that the State violated Article 24 of the American Convention and Article 7 of the Convention of Belém do Pará.

VI. CONCLUSIONS AND RECOMMENDATIONS

164. By virtue of what has been expressed throughout this report, the Commission concludes that the Argentine State has incurred international responsibility for the violation of the rights to human treatment, a fair trial, family life, protection of the family, equal protection, and judicial protection, respectively set forth in

Articles 5, 8.1, 17, 11, 24, and 25 of the American Convention on Human Rights, read in conjunction with its Articles 19 (rights of the child) and 1.1 (obligation respect rights) to the detriment of "María." The IACHR also concludes that the State violated "María's" right to a life free from violence, established in Article 7 of the Convention of Belem do Pará.

165. The State is responsible for the violation of the rights to a fair trial, judicial protection, protection of the family, and not to suffer arbitrary or abusive interference in family life, set forth in Articles 8.1, 25, 17, and 11.2 of the American Convention on Human Rights, respectively, read in conjunction with Article 1.1 of that text, to the detriment of "María's" mother.

166. Lastly, the Commission concludes that the Argentine State is responsible for the violation of the rights to a fair trial, to judicial protection, and to protection of the family, set forth in Articles 8.1, 25, and 17 of the American Convention on Human Rights, read in conjunction with its Articles 19 (rights of the child) and 1.1 (obligation to respect rights), to the detriment of the child "Mariano."

167. Based on the analysis and conclusions in the instant report:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE ARGENTINE REPUBLIC:

1. Take all steps necessary to provide comprehensive reparation for the human rights violations suffered by "María," her mother, and the child "Mariano," with the appropriate assistance and taking into consideration the child's best interest following an insersectional and gender approach.

2. Take all necessary, appropriate, and effective steps to ensure the establishment and maintenance of a bond between the child "Mariano" and his mother "María," removing all obstacles that may exist, both legal and practical, that are preventing the child and mother from building and strengthening that bond.

3. Adopt in the most expeditious way possible a definitive resolution of the judicial proceedings in which is being debated the adoptability status of the child "Mariano," respecting "María's" right to a fair trial and to judicial protection, securing an inter-sectional and gender approach to the matter, and at all times bearing in mind the best interests of the child "Mariano" and the inter-American standards in this area.

4. Substantiate the corresponding actions with the aim of investigating the possible administrative or disciplinary responsibility of those judicial or administrative officials involved in the proceedings who, by action or omission in failing to fulfill the duties of their posts, perpetrated the violations described in the instant report.

5. Guarantee, through the preparation of action protocols, courses, and other appropriate measures, the right of all girls and adolescents to receive pro bono legal assistance and the multidisciplinary supports required prior to giving their consent to giving their children up for preadoption guardianship, both during the gestation period and after the birth.

6. Adopt public policies with gender prespective to address specifically and comprehensively the problem of pregnant girls and adolescents in order to end the discrimination and violence to which they are subjected. In that regard, actions that the Commission considers that the State should carry out include a diagnostic assessment of the specific reasons for and consequences of their lack of access to justice, especially teenage mothers, in connection with proceedings for guardianship and custody, with a view to designing and implementing appropriate measures for defending and guaranteeing their rights.

7. Design and implement training programs and protocols for justice authorities who participate in proceedings for the guardianship and custody of children of adolescent mothers in the areas of gender awareness and the rights of women and, especially, girls and adolescents, to a life free from violence and discrimination.

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