

# Press Release

Inter-American Court of Human Rights

I/A Court H.R.\_PR-70/2023 English

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## I/A Court H.R. Protecting Rights

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### **ARGENTINA IS FOUND RESPONSIBLE FOR THE SEPARATION OF A CHILD FROM HIS MOTHER, WHO WAS ALSO A CHILD AT THE TIME OF THE FACTS**

*San José, Costa Rica, October 6, 2023.* – In the Judgment of the Case *Maria et al. v. Argentina*<sup>1</sup> released today, the Inter-American Court of Human Rights ruled that Argentina is responsible for breaching the rights to family life, protection of the family, a fair trial, and to judicial protection of María, her mother, and Mariano. Likewise, as María and Mariano were children at the time of the facts, it was ruled that article 19 (Rights of the child) was also breached. Furthermore, it was considered that the State also violated María's rights to humane treatment, equality and living free of violence as well as Mariano's right to identity.

Argentina recognized its international responsibility in this case.

The official summary of the Judgement can be consulted [here](#), and the full text of the Judgement can be consulted [here](#).

At the age of 12, María was diagnosed with a pregnancy of 28 weeks gestation. At that time, she lived with her mother in a situation of poverty and domestic violence. María was attended to in a public maternity ward, where the staff pressured her to give her unborn child up for adoption. As such, before childbirth, she and her mother, without legal representation, signed a document in which they expressed their intention to place the unborn child into preadoptive care and, subsequently, for adoption. A Judge of the Family Court issued an unmotivated order for the transfer of the child to the López couple. The child has remained under the de facto custody of the López couple for over eight years, and his legal status has yet to be determined. María and her mother filed various appeals against the decisions of the Family Court throughout this process. As of the date of the Judgment's deliberation, all appeals had been rejected except one, which was pending resolution before the Supreme Court of the Nation.

In the Judgment, the Court held that children and adolescents have the right to live with their family, which is expected to fulfill their material, emotional, and psychological needs. The Court specified that the family to which every child is entitled is primarily their biological family, which should provide protection to the child and, in turn, should be the primary recipient of protective measures by the State. Thus, children and adolescents should remain within their biological family, unless there are compelling reasons, based on their best interests, to choose to separate them from their family.

The Court considered that in this specific case, the actions, both of the maternity ward personnel and of the judicial realm, were steered towards an adoption process, despite that such a process could not be initiated without the clear and informed consent of the parents after the birth of the child.

Additionally, the Court addressed the process of bonding between María and her child and its

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<sup>1</sup> In the present case, the Court chose to maintain the anonymity of the alleged victims, and therefore fictitious names were used.

relation to the right to identity. The circumstances in this case led to Mariano growing up with the López family from his birth, without knowing his origin, and remaining in an undetermined legal status up to the present date.

Moreover, the Court noted that María, being a child herself, was in a situation of particular vulnerability. However, throughout the administrative and judicial proceedings, efforts were focused on determining the best interests of Mariano, without taking into account that his mother was also a child whose interests should also have been taken into account.

Finally, the Court found that the internal proceedings were conducted: a) disregarding various legal requirements; b) obstructing María's right to be heard; c) excessively exceeding the reasonable timeframe; and d) without the filed appeals effectively remedying the established violations.

According to the foregoing, the Court found that María faced various structural disadvantages which impacted the decisions made regarding her motherhood and ultimately led to her victimization. In particular, it was emphasized that María experienced intersectional discrimination, stemming from her converging conditions of being a child, having limited resources, and being pregnant.

Due to the violations declared in the Judgment, the Court ordered that the competent authorities in the domestic judicial realm determine the custody and legal status of Mariano within a maximum period of one year and that the process of bonding between María and Mariano be maintained, along with other reparative measures.

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The composition of the Court for the issuance of this Judgment was as follows: Ricardo C. Pérez Manrique, President (Uruguay); Eduardo Ferrer Mac-Gregor Poisot, Vice President (Mexico); Humberto Antonio Sierra Porto (Colombia); Nancy Hernández López (Costa Rica); Patricia Pérez Goldberg (Chile); and Rodrigo Mudrovitsch (Brazil). Judge Verónica Gómez, of Argentine nationality, did not participate in the handling of this case or in the deliberation and signing of this Judgment, in accordance with the provisions of Articles 19.1 and 19.2 of the Court's Regulations.

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