Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 26/08; Petition 270-02
Session:	Hundred Thirty-First Regular Session (3 – 14 March 2008)
Title/Style of Cause:	Cesar Alberto Mendoza, Guillermo Antonio Alvarez, Claudio David Nunez, Lucas Matias Mendoza, Saul Cristian Roldan Cajal and Ricardo David Videla Fernandez v. Argentina
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Florentin Melendez. Commission member Victor E. Abramovich, an Argentine national, participated in neither the deliberations nor the decision in this case, pursuant to Article 17(2) of the Rules of Procedure of the Commission.
Dated:	14 March 2008
Citation:	Alberto Mendoza v. Argentina, Petition 270-02, Inter-Am. C.H.R., Report No. 26/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by:	APPLICANTS: Fernando Penaloza and Stella Maris Martinez
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I. SUMMARY

1. This report addresses the admissibility of petition 270-02. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") opened this petition after receiving a series of complaints lodged between April 9, 2002 and December 30, 2003, on behalf of six individuals: Guillermo Antonio Álvarez[FN2], César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristián Roldán Cajal, and Ricardo David Videla Fernández. Given the great similarity in the allegations of facts and law submitted, it was decided to join the cases into a single file assigned the number 270-02 (hereinafter "the petition"). Mr. Fernando Peñaloza has served as petitioner in the case of Ricardo David Videla Fernández, and Ms. Stella Maris Martínez, currently head of the Office of the National Public Defender of Argentina, has served as petitioner for the rest of the complaints lodged.

[FN2] The petition of Guillermo Antonio Álvarez was subsequently separated from the petition, as detailed in paragraph 11 infra.

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2. The petitioners allege that the Republic of Argentina (hereinafter "the State," the Argentine State," or "Argentina") has incurred in liability under the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") by allegedly violating Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 19 (rights of the child), pursuant to Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal measures) for having imposed life sentences on the alleged victims for crimes committed before they had reached 18 years of age;[FN3] for not allowing a complete review of the convictions by higher courts; and for confining them to maximum security prisons which, according to the petitioners, has violated their right to humane treatment and limited their personal development.

[FN3]The American Convention on Human Rights does not define who is a child. Therefore, according to the terms of Article 31 of the Vienna Convention on the Law of Treaties, the inter-American system of human rights applies the concept established in international law by the United Nations Convention on the Rights of the Child, which states: "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

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3. The petition indicates that the alleged victims were between 16 and 17 years of age when they committed the crimes for which they were given life sentences.[FN4] It also indicates that in the domestic jurisdiction, the defense attorneys of the now young men filed the respective motions for cassation against the convictions, which were denied for procedural reasons. Therefore, the petitioners argue that the alleged victims did not benefit from a higher court's review of the judgments that condemned them to life in prison. The petition also indicates that the defense attorneys of the youths also filed various appeals questioning the Constitutionality of the sentences imposed, since they were under age 18 at the time the crimes were committed. These remedies were rejected by the judicial authorities because they found that the sentences in each case were imposed according to the Constitution of Argentina and applicable legislation.

[FN4] At the time that this report is being drafted, the alleged victims are between 27 and 29 years of age.

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4. In communications received on June 23, 2005, both the petitioners and the State informed the Commission of the death of Mr. Ricardo David Videla Fernández, who was found dead in his cell at the Mendoza Penitentiary after a possible suicide.

5. On several occasions the State has expressed a willingness to reach a friendly settlement in this case. However, no progress has been made in this regard and the State has not responded to the allegations of fact presented by the petitioners regarding the convictions of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristián Roldán Cajal, and Ricardo David Videla Fernández, nor has it disputed the admissibility of the petition.

6. After analyzing the positions of the parties, the Commission determined that the petition was admissible according to Articles 46 and 47 of the American Convention, as well as Articles 30 and 37 of its Rules of Procedure. Therefore, the IACHR has decided to notify the parties of its decision and to proceed to study the merits of the case regarding the alleged violations of Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 19 (rights of the child), in connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal measures) of the American Convention. The Commission has likewise determined to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of Organization of American States.

II. PROCESSING BY THE COMISSION

7. The petitions on behalf of the alleged victims were received in the Executive Secretariat of the Commission on the following dates: César Alberto Mendoza, June 17, 2002; Claudio David Núñez and Lucas Matías Mendoza, July 1, 2002; Saúl Cristian Roldán Cajal, July 7, 2003; and Ricardo David Videla Fernández, December 30, 2003.

8. The Commission began processing the matter on April 2, 2004 when it transmitted the relevant parts of the petition to the State and requested that the State submit a reply within two months. In that same message, the IACHR informed the State that the referenced matter constituted the joinder of the petitions of Guillermo Antonio Álvarez, César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, and Ricardo David Videla Fernández, which the Commission had joined pursuant to Article 29(1)(d) of its Rules of Procedure. On that same date, the Commission sent a message to the petitioners informing them of same.

9. In note SG/36 of May 26, 2004, the State requested a one-month extension to submit the report requested by the Commission. This was granted in a communication dated June 8, 2004.

10. On June 28, 2004, the Commission submitted the relevant parts of the petition of Saúl Cristián Roldán Cajal to the State, indicating that it had also been joined to petition 270/02. Pursuant to its Rules of Procedure, the Commission gave the State two months to reply to that submission.

11. On June 30, 2004, through note SG 178, the State submitted its report and told the Commission of its willingness to open a dialogue with the petitioners geared to exploring the possibility of reaching a friendly settlement in the case. The State also requested that the case of young Guilllermo Antonio Álvarez be separated from the joined petition, because he was in fact not a minor at the time he committed the crimes for which he was sentenced to life in prison. That information was communicated to the petitioners. In a message dated July 22, 2004, petitioner Stella Maris Martínez reported that she had opened a dialogue between the State and the petitioners. She also ratified the State's request to separate the case of Guillermo Antonio Álvarez from petition 270-02 "insofar as it is not related to imposition of a life sentence on a minor, but rather refers to an alleged violation of the right to put on a defense at trial, to due process of law, and the right to have his honor respected and his dignity recognized." In this regard, the Commission clarifies that this report does not encompass the case of young

Guillermo Antonio Álvarez. That matter will continue to be analyzed in a separate petition regarding the violations set forth therein.

12. In note SG 209 dated August 3, 2004, the State transmitted a copy of the minutes from a meeting held on July 21, 2004 at the Ministry of Foreign Affairs, International Trade, and Worship between the representatives of the State and Ms. Stella Maris Martínez.

13. On April 11, 2005, the Commission received a friend of the court brief regarding that petition, entitled "Imprisonment and life sentences for youth who were under the age of 18 at the time of committing the alleged crime," submitted by various individuals and some representatives of civil society in Argentina.

14. In a communication dated June 23, 2005 the State reported that young Ricardo David Videlia Fernández had committed suicide on the 21st of that month in his cell in Mendoza Penitentiary. Ms. Stella Maris Martínez sent a message to the Commission on the same date expressing her concern over the death of the alleged victim.

15. In a letter dated July 12, 2005, petitioner Martínez asked the Commission to continue to process the petition, "in light of the death of young Videla and the virtual freezing of the dialogue with the Argentine State," and requested that a hearing be granted during the period of sessions of the Commission to be held in October of 2005. That message was transmitted to the State on July 19, 2005, with a request that the State submit to the Commission within one month any information regarding efforts to reach a friendly settlement of the complaint. On July 12, 2005, petitioner Fernando Gastón Peñaloza also communicated with the Commission regarding the death of young Videla, stating that the circumstances surrounding his death had not been clarified, and requesting a hearing before the Commission.

16. In note SG 283 of September 9, 2005, the State informed the IACHR that pursuant to the friendly settlement discussions, the competent authorities were processing a draft bill which would establish a ceiling on prison sentences for minors under the age of 18.

17. On September 29, 2005, the Commission transmitted to both the petitioners and the State, for their information, the friend of the court brief submitted by civil society entitled "Imprisonment and life sentences for youth who were under the age of 18 at the time of committing the alleged crime."

18. On October 17, 2005, during its 123rd regular period of sessions, the Commission held a hearing on the petition in which both the State and the petitioners participated.

19. On November 16, 2005, additional information was received from the Office of the National Public Defender of Argentina. It transmitted a presentation made before the Minister of Justice and Human Rights of the Nation requesting the commutation of the sentence of young Lucas Matías Mendoza due to the severe ophthalmological problems he was experiencing. That information was transmitted to the State on February 15, 2006 with a request for its observations within one month. Likewise, on February 21, 2006, the relevant parts of the additional information provided by the petitioners during the hearing held in the 123rd regular period of

sessions of the IACHR were transmitted to the State. Through note OEA 68 of March 7, 2006, the State requested an extension of the deadline to submit its observations.

20. In note OEA 146 of May 2, 2006, the State reported that among other things, on December 15, 2005 the Secretariat of Human Rights had submitted a note to the Ministry of Justice and Human Rights of the Nation, with a "recommendation for the commutation of sentence" in favor of Lucas Matías Mendoza.

21. In a letter dated August 30, 2006, the Commission transmitted to the State information that had been submitted by the petitioners on August 21 and 22, 2006. It also asked the Argentine State for an update on the friendly settlement discussions and on the situation of Lucas Matías Mendoza.

22. In a message dated December 1, 2006, the Commission summoned the parties to a working meeting, which was held on the 6th of that month, during a working visit by the IACHR to Argentina.

23. In a letter dated April 18, 2007, petitioner Stella Maris Martínez informed the Commission that she had attended a meeting that day with representatives of the State at which the petitioners determined that the friendly settlement negotiations were closed due to a lack of concrete proposals. This message was transmitted to the State on June 4, 2007, granting it a one-month deadline to submit the corresponding observations or updated information regarding the case.

24. On June 19, 2007, the petitioner submitted additional information to the Commission regarding the case. She indicated that she considered the friendly settlement process to be over, "without prejudice to resuming that negotiating process should any concrete proposal be presented that would reverse the effects of the violations of the Convention." This information was transmitted to the State on October 2, 2007, with a request to present its observations within one month.

25. On October 29, 2007, note OEA 232 sent by the State on August 23, 2007 was transmitted to the petitioners. It reiterated the State's willingness to continue to explore the possibility of arriving at a friendly settlement.

26. On October 31, 2007 additional information was received from the petitioners, which was transmitted to the State in a message dated November 5, 2007.

27. In note OEA 317 of November 14, 2007, the State requested a one-month extension to submit its observations. This was granted in a communication dated November 26, 2007.

28. On December 17, 2007 the Commission received a message from the Colectivo de Derechos de Infancia y Adolescencia (Collective on the Rights of Children and Adolescents) reporting that Claudio David Núñez and Lucas Matías Mendoza had been severely beaten by staff of the Federal Penitentiary Service at the complex where they were serving their sentences.

That same day the Commission requested information from the State regarding the facts of the situation and the status of the young men.

29. On January 2, 2008, the Office of the National Public Defender of Argentina informed the Commission that on December 11, 2007, Courtroom II of the National Criminal Cassation Court had declared Article 1 of Law 22,278 on the Criminal Justice System for Minors to be unconstitutional. It found that in one hand the article declares that children under the age of 16 cannot be punished, and secondly, that the judicial authority is empowered to rule on their detention.

30. That same day, January 2, the Commission received a request for precautionary measures from the Office of the National Public Defender of Argentina on behalf of Claudio David Núñez, Lucas Matías Mendoza, and César Alberto Mendoza, based on the mistreatment to which Claudio David Núñez and Lucas Matías Mendoza had been subjected. It also expressed the need for the three young men to be transferred to another penitentiary complex for their own safety. On January 8, 2008 the Commission requested information from the State, and gave it seven days to reply. The reply from the State was received in note OEA 31 dated January 22, 2008.

III. POSITIONS OF THE PARTIES

1. The petitioners

31. According to the petitioners, the alleged victims were sentenced to life in prison for crimes committed while they enjoyed the juridical condition of "children." The juvenile criminal justice system was applied with restrictive criteria such that they were treated the same as if they had been adults. The importance of assessing whether or not they could even be imprisoned was overlooked, as was the standard of minimal intervention if imprisonment is indicated, according to the conventional framework on juveniles. The petitioners add that a sentence of deprivation of liberty should be viewed as a last resort, meaning that it should be imposed on the alleged victims only if absolutely necessary, and its length should be strictly linked to potential for rehabilitation.

32. The petitioners also state that the alleged victims filed motions for cassation against their convictions, which resulted in an affirmation of the life sentences imposed by the trial courts. They add that Claudio Núñez and Lucas Mendoza also received unfavorable judgments from the Supreme Court of the Nation, which denied their appeals for procedural reasons. The petitioners thus allege that added to the violations of Articles 7 and 19 of the American Convention was a violation of Article 8(2)(h), since they were denied the opportunity to have the judgment against them fully reviewed by a higher court

33. The petitioners state that the Criminal Procedures Code of Mendoza stipulates cassation within the special remedies, thus prohibiting the possibility for a final decision to be reviewed broadly by a higher court. They allege that there is nothing in either local or national legislation to allow a regular appeal encompassing a broad review of the facts, criminal liability, and sentence related to a final judicial decision.

34. The petitioners stress that there is no difference between the sentences being served by the alleged victims—in terms of length of time and means of serving it—and a sentence imposed on someone who had committed the crimes as an adult.

35. The petitioners add that Argentina has not adjusted its domestic legislation, despite the fact that it signed the American Convention on Human Rights and the United Nations Convention on the Rights of the Child. They add that this failure to adjust internal legislation allows judges to continue to hand down sentences of life imprisonment, and for prosecutors to continue to seek such sentences, making Argentina the only country in Latin America to sentence persons who commit crimes while under the age of 18 to life in prison.

36. They indicate that the legal system for children and adolescents is regulated by national law 22,278 (Criminal Juvenile Justice System), passed on August 20, 1980 during the last military dictatorship, and modified by law 22,803. This legislation allows persons between the ages of 16 and 18 years of age to receive the same sentences as adults. It establishes no limit on the length of sentence.

37. The petitioners add that the judges imposed the most restrictive sentence possible under Argentine criminal legislation on the alleged victims. It is argued that Article 4 of law 22,278 says that this sentence can only be imposed on people who are between the ages of 16 and 18 years when committing the crime if:

1) Their criminal liability--and civil if any—had been previously established, according to procedural rules,
2) They have reached 18 years of age,
3) They have been subject to a period of guardianship treatment for at least one year, which could be extended if necessary until reaching the age of majority.

38. The petitioners clarify that the legal provision itself states that if these requirements are met, the sanction will be applied only in cases where it is necessary, and that even in those cases, the sentence may be reduced to that of an attempt to commit a crime. They allege that despite the foregoing, the judges determined to impose life imprisonment on the youth without taking into account the principles of “best interests of the child” and “minimal intervention,” and without interpreting the legislation in force in light of the principles emanating from international instruments for the protection of human rights.

39. Furthermore, the petitioners argue that while Argentine legislation contemplates the possibility of parole, it can only be considered—pending satisfaction of several requirements—after serving 20 years of a life sentence.[FN5] Therefore, the alleged victims are condemned to spending at least part of their adolescence, young adulthood, and adulthood in maximum security prisons. This places at risk their physical and moral integrity, and limits their personal growth.

[FN5] The Commission notes that as amended, Article 13 of the National Criminal Procedure Code indicates that the time period is currently 35 years.

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40. The petitioners indicate that while serving their sentences, the alleged victims have been transferred repeatedly from one detention center to another. They have received minimal formal education and virtually no vocational training that might enhance their chances of entering the labor market or their general rehabilitation.

41. The petitioners allege that during the negotiations seeking to settle this complaint, the State presented several draft bills which would place limits on prison sentences for persons under 18 years of age. However, no progress has been made in this regard because none of the bills has been voted on in the legislature.

42. In the petitioners' last message, received in the IACHR on January 2, 2008, they refer to a decision in Courtroom III of the National Criminal Cassation Court which declared Article 1 of law 22,278 to be unconstitutional.[FN6] The petitioners stress that in the view of that Court, "[…] in practice there is a very wide margin of discretion regarding measures to be adopted, and the criteria of criminal law are applied to the accused when the decision is based on aspects related to the personality of the minor child." The petitioners note that in operative paragraph V the Cassation Court exhorted the Legislative Branch to "bring the juvenile criminal justice legislation in line with international standards."[FN7]

[FN6] Article 1 of law 22,278 "Juvenile Criminal Justice System" establishes:
A minor under the age of 16 years is not punishable. Nor is a minor under the age of 18 years punishable with regard to private crimes or crimes that carry a sentence of deprivation of liberty not to exceed two years, with a fine, or with removal of civil rights.
If there are charges against any such person, the judicial authorities shall dispose the case provisionally, proceed to verify the crime, directly take cognizance of the minor, his or her parents, or guardian and order any necessary reports and expert testimony to determine the status of the individual's personality, family, and environmental conditions.
If necessary, the minor may be placed in an appropriate location during the time required for the study. If the studies conducted show the minor to be abandoned, lacking assistance, and in material or moral danger, or presenting behavioral problems, the judge may dispose of the matter permanently through a well-founded court order, after a hearing the with parents or guardian.
[FN7] A copy of the Cassation Court's decision is in the Commission's file. The relevant segment reads: "Resolves ... V) To exhort the Legislative Branch to bring the juvenile criminal justice legislation in line with the new constitutional standards and establish a comprehensive system that is coordinated with law 26,061 "Comprehensive Protection of the Rights of Children and Adolescents" within a time period not to exceed one (1) year.

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43. The petitioners provided the Commission with the following information with regard to each of the young men involved:

César Alberto Mendoza

44. This alleged victim was tried for the following crimes committed July 27 and 28, 1996: theft of 3 vehicles; 4 armed robberies; 2 aggravated homicides and injury to several individuals. At the time he was 17 years and 10 months of age.

45. On October 28, 1999, according to the provisions of law 22,278, he was sentenced to life in prison by Oral Juvenile Court No. 1 of the autonomous city of Buenos Aires. The petitioners state that Mendoza's court-appointed defense attorney filed a motion for cassation of the verdict and an appeal on the grounds that the sentence was unconstitutional. Added to this was another appeal on the grounds that the sentence was unconstitutional filed by the Office of the Public Defender for Minors and Legally Disqualified Persons. The motion for cassation was denied by the Oral Juvenile Court. Therefore, the defense attorney for young Mendoza then filed a recurso de queja, or motion based on improper denial of the cassation motion, which was rejected by Courtroom II of the National Criminal Cassation Court. The appeals on the grounds that the sentence was unconstitutional were granted by the Oral Juvenile Court and were then referred to the National Criminal Cassation Court, which ruled on them together with the motion based on improper denial of cassation. Ultimately this Court declared that the sentence given to Mendoza was in keeping with the laws and the Constitution. In light of the rulings of the Criminal Cassation Court, Mendoza's defense attorney filed a special federal appeal, which was denied on August 24, 2000, based on the argument that it did not contain the proper reasoning as required by law, nor did it contain concrete or reasoned criticism of the arguments which had served as the basis for the judgment being appealed.

46. The petitioners clarify that César Alberto Mendoza was prevented from filing a motion based on improper denial of an appeal with the National Supreme Court, because the denial of the special federal appeal was not reported to him personally. His court-appointed defense counsel failed to inform him of it and unilaterally decided to halt the appeals process.

47. The petitioners add that several months later, the alleged victim communicated with the Office of the National Public Defender of the National Supreme Court by letter, expressing his desire to be apprised of the status of his proceedings. It was then that he was informed that the judgment against him was final.

Claudio David Núñez

48. The petitioners assert that this alleged victim was put on trial for committing the following crimes between October 3, 1996 and January 9, 1997: armed robberies; 5 aggravated homicides and injuries to several persons. He was 17 years old at the time.

49. As a result, on April 12, 1999, according to the provisions of law 22,278, he was sentenced to life in prison. His court-appointed defense attorney then filed a motion for cassation against the verdict and an appeal on the grounds that the sentence applied was unconstitutional. Added to this was a motion for cassation and another appeal on the grounds that the sentence was unconstitutional filed by the Office of the Public Defender for Minors and Legally Disqualified Persons. The motions for cassation were denied by the Oral Juvenile Court on May 6, 1999 based on the argument that they sought a review of the facts and the evidence. The court-appointed attorney for young Núñez then filed a recurso de queja, or motion based on improper denial of the cassation motion, which was partially denied by Courtroom II of the National

Criminal Cassation Court on October 28, 1999, which determined to review the lower court error with regard to application of Article 4 of law 22,278, and later ruled that it was groundless.

50. The petitioners also assert that the appeals on the grounds of an unconstitutional sentence were denied by the Oral Juvenile Court because it found that life imprisonment did not constitute cruel, inhumane, or degrading treatment and that it did not violate the Convention on the Rights of the Child, in light of the legal possibility of attaining parole. This ruling was the subject of a motion based on improper denial of an appeal before the National Criminal Cassation Court. That Court ruled on the Constitutional appeals on April 19, 2000, declaring that the sentence given to young Núñez was consistent with the Constitution and the laws. In response to the rulings of the Criminal Cassation Court, the court-appointed defense attorney of Claudio David Núñez filed a special federal appeal, which was denied on August 3, 2000. Finally, the alleged victim filed two motions based on improper denial of an appeal before the National Supreme Court, which were denied in decisions handed down on August 23 and September 4, 2001; the first because it was submitted after the statutory time limit, and the second because it did not refute each and every one of the arguments of the order denying the special appeal.

51. The petitioners clarify Claudio David Núñez did not receive notification of the final decision until April of 2002. The judicial decision was only reported to his defense attorney, who failed to inform the alleged victim.

Lucas Matías Mendoza

52. This alleged victim was put on trial for the following crimes committed between October 3, 1996 and January 9, 1997: armed robberies in private homes; 2 aggravated homicides and injury to several persons. He was 16 years of age at the time. As a result, on April 12, 1999, pursuant to law 22,278, he was sentenced to life in prison.

53. His private defense attorney filed a motion for cassation against the verdict. Added to this was a motion for cassation and a Constitutional appeal filed by the Office of the Public Defender for Minors and Legally Disqualified Persons. The motions for cassation were denied by the Oral Juvenile Court based on the argument that they sought a review of the facts and the evidence. The Public Defender for Minors and Legally Disqualified Persons and the private attorney of Lucas Matías Mendoza then filed recursos de queja, or motions based on improper denial of the cassation motion, which were heard in Courtroom II of the National Criminal Cassation Court along with the Constitutional appeal. This Court ruled that the sentence of life imprisonment bestowed on young Mendoza was legitimate, in view of precedents that exist in the jurisprudence regarding the legality and Constitutionality of said punishment.

54. In response to these decisions by the Criminal Cassation Court, young Mendoza's private defense attorney filed a special federal appeal with the National Supreme Court, which was denied on April 3, 2001 for lack of separate grounds.

55. The petitioners clarify that Lucas Matías Mendoza was not notified of the final decision in the domestic system until April of 2002. Notice of the judicial decision was only given to his attorney, who failed to inform the alleged victim.

56. In addition, at the hearing held on October 17, 2005 during the 123rd regular period of sessions of the IACHR, petitioner Stella Maris Martínez reported that young Lucas Matías Mendoza suffered a blow to his left eye while he was incarcerated at the juvenile institute, which caused his retina to be detached. Because of inadequate medical treatment, he has now had a permanent loss of vision. Additionally, due to congenital toxoplasmosis, he has suffered a progressive loss of vision in the right eye and is now 100% visually impaired. During the hearing and later in a written message dated November 14, 2005, the petitioner asked the State to commute the sentence of Lucas Matías Mendoza. The petitioners stress that although the State made a commitment to work towards the commutation of the sentence, nothing has been accomplished.

Saúl Cristián Roldán Cajal

57. The petition on behalf of Saúl Cristian Roldán Cajal was filed with the IACHR on July 7, 2003. The petition argues that the alleged victim was tried for the crimes of aggravated robbery in conjunction with aggravated homicide, committed before he was 18 years of age. On November 6, 2000, the Juvenile Criminal Court of Mendoza found Saúl Cristian Roldán Cajal to be criminally liable and brought the matter before the Juvenile Prosecutor of the Public Ministry, which requested a sentence of 20 years in prison. On March 8, 2002, the court made a decision on the sentence to be imposed on young Roldán, and condemned him to life imprisonment, based on law 22,278.

58. The court-appointed defense attorney of young Roldán filed a motion for cassation based on the arbitrary nature of the sentence and its violation of the Convention on the Rights of the Child. The petitioners report that on August 5, 2002, Courtroom II of the Supreme Court of Mendoza Province ruled that the motion for cassation was inadmissible because the defense was using it to seek a review of matters of fact and evidence, and that the trial court had stated the reasons for its decision in the whereas clauses of its decision. The petitioners assert that young Roldán Cajal was not informed of this ruling until June 18, 2003, and thus lost the opportunity to file any further appeals within the domestic jurisdiction.

Ricardo David Videla Fernández

59. The petitioners state that the alleged victim was tried for the following crimes, committed between June 5, 2001 and July 12, 2002: armed robbery at sites in the city of Mendoza, and 2 aggravated homicides. He was additionally accused of illegal possession of weapons of war, aggravated coercion, and illegally carrying a weapon for civilian use. On November 28, 2002, pursuant to law 22,278, he was sentenced by the Oral Juvenile Criminal Court of the First Judicial Circuit of Mendoza to life in prison.

60. The defense attorney of young Videla filed a motion of cassation against the conviction from the trial court, arguing erroneous application of the law in determining the sentence. The Supreme Court of Mendoza denied the motion, arguing that the defense was seeking a review of matters of fact and evidence, which are the exclusive rights of the court which tried the case. In response to that decision, the defense attorney filed a special federal appeal, which was also

denied by the Supreme Court of Mendoza under the argument that the challenge was merely a dissent with the court's opinion in terms of compliance with the formal requirements of the motion for cassation. Finally, a motion based on improper denial of an appeal was filed with the National Supreme Court, which was denied in a decision dated October 13, 2003 for procedural reasons. That decision was notified on the 16th of that month.

61. In the additional information received on June 23, 2005 from both the petitioners and the State, the Commission learned of the death of young Ricardo David Videla Fernández in a possible suicide in his cell at the Mendoza Penitentiary. The petitioners state that the circumstances of the death have not yet been clarified.

62. Based on all of the foregoing, the petitioners assert that the State perpetrated violations of Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 19 (rights of the child), pursuant to Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal measures) of the American Convention, in relation to Articles 37(a)(b) of the UN Convention on the Rights of the Child (hereinafter "CRC"), and 10(3) of the International Covenant on Civil and Political Rights, against the following youths: César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristián Roldán Cajal, and Ricardo David Videla Fernández.

2. The State

63. The State has not responded directly to the allegations of fact presented by the petitioners, nor has it disputed the admissibility of the petition reviewed herein.

64. In a message dated June 30, 2004, the State told the Commission of its willingness to enter into a dialogue with the petitioners aimed at exploring the possibility of reaching a friendly settlement to this matter. Furthermore, in its communication dated September 9, 2005, the State informed the IACHR that it was working on a draft bill which would set a limit for sentences depriving minors of their liberty. This was reiterated in its message dated May 2, 2006 in which the State also reported that it was taking steps before the Ministry of Justice and Human Rights recommending the commutation of the sentence of Lucas Matías Mendoza, in light of his visual disability. In a note dated August 23, 2007, the State reiterated its willingness to continue to explore the possibility of reaching a friendly settlement in this case.

65. The State remitted note OEA 31 of January 22, 2008 in response to the Commission's requests for information regarding the alleged mistreatment of Claudio David Núñez and Lucas Matías Mendoza in December of 2007 by penitentiary personnel. In response, the State submitted its account of the events according to staff at Federal Penitentiary Complex I of Ezeiza, asserting that the lesions Lucas Matías Mendoza and Claudio David Núñez suffered were the results of a squabble among the inmates. The State also told the Commission that the alleged victims had not sought any judicial remedy for the events that occurred in December of 2007.

IV. ADMISSIBILITY

A. Competence of the Commission ratione personae, ratione materiae, ratione temporis y ratione loci

66. The petitioners are entitled under Article 44 of the American Convention to lodge complaints with the IACHR. The alleged victims named in the petition are individuals whose rights in the American Convention the State of Argentina has undertaken to respect and ensure. As for the State, the Commission notes that Argentina has been a party to the Convention since September 5, 1984, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence ratione personae to review the petition.

67. The Commission has competence ratione loci to review the petition since it alleges violations of rights protected by the American Convention to have occurred within the territory of a State Party to it. The Commission has competence ratione temporis since the obligation to respect and ensure the rights protected by the American Convention was in force for the State when the violations alleged in the petition took place. Finally, the Commission has competence ratione materiae because the petition alleges violations of human rights that are protected by the American Convention.

68. Lastly, pursuant to the standards of interpretation established in the American Convention on Human Rights,[FN8] the terms of the Vienna Convention on the Law of Treaties, and the criteria established by the Inter-American Court of Human Rights regarding the trend to integrate the regional and universal systems of human rights[FN9] in terms of the notion of corpus juris as regards children,[FN10] the Commission has decided that it will interpret the scope and content of the rights of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristián Roldán Cajal, and Ricardo David Videla Fernández alleged to have been violated, in light of the provisions of the United Nations Convention on the Rights of the Child.[FN11]

[FN8] Article 29, Restrictions Regarding Interpretation: No provision of this Convention shall be interpreted as: (...) b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; (…)

[FN9] I/A Court H.R., Advisory Opinion OC 1/82 of September 24, 1982 on “Other Treaties,” regarding the advisory function of the Court (Art. 64 of the American Convention on Human Rights) paragraph 41.

[FN10] I/A Court H.R., The “Street Children” Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 194. I/A Court H.R., Case of the “Juvenile Reeducation Institute”. Judgment of September 2, 2004. Series C No. 112, para. 148, I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 166. I/A Court H.R., Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002, Series A, No. 17, paras. 24, 37, and 53.

[FN11] This Convention was adopted on November 20, 1989 and entered into force on September 2, 1990. Argentina ratified the Convention on the Rights of the Child on December 5, 1990.

B. Other admissibility requirements

1. Exhaustion of domestic remedies1

69. Article 46(1)(a) of the American Convention provides that in order for a petition lodged before the Commission under Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.[FN12] The purpose of this requirement is to ensure that the State in question has the opportunity to resolve controversies within its own legal framework.

[FN12] See I/A Court H.R., Exceptions to Exhaustion of Domestic Remedies (Article 46(1), 46(2)(a), and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A Nº 11, paragraph 17.

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70. In the instant case, the petitioners allege that they have duly exhausted the domestic remedies by filing motions for cassation and subsequent special appeals. They add that Saúl Cristián Roldán Cajal has only filed the motion for cassation, because he was not informed of the ruling on that motion until 10 months after it was issued, which prevented him from filing further appeals of his sentence within domestic jurisdiction.

71. Furthermore, the petitioners state that Claudio David Núñez, Lucas Matías Mendoza, and Ricardo David Videla Fernández exhausted domestic remedies by filing a recurso de queja, or special motion based on improper denial of the motion for cassation with the National Supreme Court. The petitioners also tell the Commission that César Alberto Mendoza, Claudio David Núñez, and Lucas Matías Mendoza filed appeals challenging the Constitutionality of their sentences. These appeals were also denied because it was found that the sentences were in accord with current law in Argentina.

72. As the Commission has stated previously, in order to fulfill the requirement of prior exhaustion, the petitioners must exhaust all suitable remedies—that is all remedies available and effective to remediate the reported complaint. In this case, the petitioners filed motions for cassation against the judicial decisions that condemned them to life in prison, and when these were denied, they filed special appeals (with the exception of young Roldán Cajal). The Commission does not necessarily require exhaustion of such appeals, because they are deemed to be special and discretionary. In this case, considering that the State was fully aware of the complaints now before the Commission, both regarding the respective convictions and regarding the incompatibility of life imprisonment with the Constitution of Argentina and with the American Convention, the Commission considers the alleged victims to have exhausted the remedies available under domestic law.

73. Since the central claim submitted by the petitioners revolves around disagreement with the sentence of life imprisonment, the remedies of cassation, special appeals, and even Constitutional appeals, are in the instant case, prima facie, the suitable remedies according to the legislation of Argentina. Therefore, the remedies pursued by the alleged victims do sufficiently

fulfill the requirement on exhaustion of domestic remedies set forth in Article 46(1) of the American Convention.

74. In addition, the State has not alleged a lack of exhaustion of domestic remedies, which allows us to assume a tacit relinquishment of the right to raise such an objection. In this regard, the Inter-American Court has declared that "in order for an objection based on non-exhaustion of domestic remedies to be timely, it must be raised in the early stages of the proceedings; failure to do so allows one to assume a tacit relinquishment by the State in question of such an objection."[FN13] According to the background information provided, the Commission concludes that this requirement has been met.

[FN13] See I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987, Para. 8; I/A Court H.R., Fairén Garbi and Solis Corrales Case. Preliminary Objections. Judgment of June 26, 1987. Series C, Nº 2, Para. 87; I/A Court H.R., Gangaram Panday Case. Preliminary Objections. Judgment of December 4, 1991. Series C, Nº 12, Para. 38; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C, Nº 25, Para. 40.

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75. In light of the foregoing analysis, the Commission concludes that César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristián Roldán Cajal, and Ricardo David Videla Fernández have pursued the regular and special remedies available within the legal system of the State, and that therefore, the State was fully aware of the claims that gave rise to this petition.

2. Deadline for lodging a petition

76. According to Article 46(1) of the Convention, in order for a petition to be admitted, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. This six-month rule ensures the juridical certainty and stability of a decision once it is adopted.

77. In the case of young David Videla Fernández, the record reflects that he was notified of the denial of his special appeal to the National Supreme Court, which constituted exhaustion of domestic remedies, on October 16, 2003. He lodged his complaint before the Commission on December 30, 2003. Therefore, the Commission considers him to have fulfilled the requirement of timeliness in lodging the complaint.

78. In the cases of Lucas Matías Mendoza and Claudio David Núñez, while the decisions constituting exhaustion of domestic remedies were handed down in April and September of 2001, respectively, these individuals were not notified of them until April of 2002. According to the petitioners, the court decisions were only reported to the defense attorneys of the youths (a court-appointed one in the case of Claudio, and a privately hired one in the case of Lucas), who failed to notify the alleged victims. Therefore, considering that the judicial decisions were not

reported to the alleged victims personally, and that their petitions were lodged with the Commission on July 1, 2002, it is concluded that these were filed in a timely fashion.

79. As regards César Alberto Mendoza, the petitioners report that in response to the decision of the Criminal Cassation Court, his court-appointed defense attorney filed a special federal appeal, which was denied on August 24, 2000. The petitioners clarify that the alleged victim communicated with the Office of the National Public Defender of the National Supreme Court several months later, requesting to be apprised of the status of his proceedings. At that time he was informed that the judgment against him was final. Since he was not notified personally of the ruling on his special federal appeal, and his court-appointed defense attorney failed to inform him of the outcome of the proceedings, the Commission considers his petition, lodged on June 17, 2002, to have been submitted in timely fashion.

80. Finally, regarding Saúl Cristián Roldán Cajal, it should be noted that on August 5, 2002, Courtroom II of the Supreme Court of Mendoza Province ruled that his motion for cassation was inadmissible. The petitioners assert that young Roldán Cajal was not informed of that decision until June 18, 2003 because he had lost contact with his court-appointed defense attorney. For this reason he was precluded from filing any further appeals under domestic law. Considering his date of notification to be June 18, 2003, and that the petition was filed with the Commission on July 7, 2003, it is deemed to be within the time limit.

81. The Commission notes that none of the decisions constituting the end of remedies under domestic law were reported personally to the alleged victims. Rather, notification was given to the court-appointed defense attorneys of César Alberto Mendoza, Claudio David Núñez, and Saúl Cristián Roldán Cajal, and the private attorneys of Lucas Matías Mendoza and Ricardo David Videla Fernández. In this regard, it bears mention that the National Supreme Court of Argentina has established that a judgment becomes final only once the defendant is personally notified.[FN14]

[FN14] "Dubra" Decision 327:3802; file C. 605, L.XXXIX, judgment of December 23, 2004, which concludes "that the defendant must be notified personally of a decision making his conviction final, because the possibility of seeking a new judicial ruling is the right of the defendant, and not a technical power of the defense attorney." Also P. 2456.XL. "Peralta, Josefa Elba on recurso de queja"; which indicates "that it is the doctrine of this Supreme Court for notice of all convictions in criminal cases to be served personally on the defendant, such that any criminal verdict cannot remain final at the sole discretion of the defense attorney."

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82. In light of the above considerations, and seeing that the State presented no contrary information regarding the dates of notification, the Commission determines that the deadline set in Article 46(1)(b) of the American Convention has been met.

3. Duplication of proceedings and res judicata

83. Article 46(1)(c) of the Convention establishes that in order to be admissible, the subject of the petition "must not be pending in another international proceeding for settlement," and Article 47(d) stipulates that it must not be "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties do not allege, nor does it appear in the record, that either of these conditions of inadmissibility is present.

4. Characterization of the facts alleged

84. Article 47(b) of the American Convention requires that a petition be declared inadmissible if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

85. At this stage of the proceedings it is not appropriate for the Commission to state whether or not the alleged violations of the American Convention actually occurred. The IACHR has conducted a prima facie evaluation and determined that the petition raises allegations which, if proven, may tend to characterize possible violations of the rights guaranteed by the Convention. In this case the petitioners expressly allege violations of Articles 5, 7, 8, and 19 of the American Convention, in relation to Articles 1(1) and 2 of same, with regard to the State's obligation to respect the rights to humane treatment, personal liberty, a fair trial, and rights of the child. The State has provided no observations on the violations alleged by the petitioners.

86. As the Commission has established in paragraph 67 of this report, alleged violations of the rights of children will be interpreted in light of the United Nations Convention on the Rights of the Child. In this regard, the IACHR believes that the facts presented warrant a more precise and complete examination during the merits stage.

87. The Commission considers itself to have competence to analyze the situation reported in the complaint in light of Article 19 of the American Convention because César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristián Roldán Cajal, and Ricardo David Videla Fernández were younger than 18 years of age when they committed the crimes for which they were sentenced to life in prison. Therefore, they had the right to special protections established for children, in light of consideration of "the best interests of the child."[FN15] The Commission will also analyze the possible application of Articles 1 and 2 of the Convention regarding the obligation of the Argentine State to respect rights and to adopt measures within domestic law to give effect to those rights.

[FN15] In this regard, in Advisory Opinion OC N° 17, the Inter-American Court of Human Rights stated that "the expression "the best interests of the child," enshrined in Article 3 of the Convention on the Rights of the Child, implies that the development of the child and full exercise of his or her rights should be considered to be guiding principles for the preparation of laws and their application in all areas regarding the life of the child."

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88. Based on the information provided by the petitioners, and without prejudging as to the merits of the case, the IACHR concludes that the petition also contains allegations of fact which, if proven, would tend to establish violations of the rights to humane treatment and personal liberty guaranteed by Articles 5 and 7 of the American Convention.

89. As for the facts presented by the petitioners indicating that the alleged victims could not benefit from a full review of their convictions by a higher court, the Commission finds that there are sufficient elements to analyze a possible violation of the rights guaranteed by Article 8(2) of the American Convention during the merits stage.

90. Bearing in mind the complaints lodged regarding the right to protection, guarantees, and judicial review, and the principle of jura novit curia; in its decision on the merits, the Commission will also examine whether Article 25 of the American Convention on the right to judicial protection may have been violated.

91. Consequently, the Commission concludes that in this case the petitioners have lodged complaints which, if they meet other requirements and are proven to be true, may tend to establish violations of rights protected by the American Convention; to wit, those set forth in Articles 5 (right to humane treatment), 7 (right to personal liberty), 8(2) (right to a fair trial), 19 (rights of the child), and 25 (right to judicial protection), in relation to Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal measures).

V. CONCLUSIONS

92. The Commission concludes that it is competent to hear this case and that the petition is admissible according to Articles 46 and 47 of the American Convention.

93. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with respect to the alleged violations of rights protected under Articles 2, 5, 7, 8(2), and 25, in relation to Article 1(1) of the American Convention.
2. To notify the parties of this decision.
3. To proceed to review the merits of the case; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14th day of the month of March 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, and Florentín Meléndez, members of the Commission.