

TECHNICAL INFORMATION SHEET
CASE 11.783 MARCIA IRENE CLAVIJO
REPORT ON FRIENDLY SETTLEMENT AGREEMENT Nº 98/00
ARCHIVE
(ECUADOR)

I. SUMMARY OF THE CASE

Victim(s): Marcia Irene Clavijo Tapia
Petitioner(s): Ecumenical Commission for Human Rights of Ecuador
State: Ecuador
Beginning of the negotiation date: February 15, 1999
FSA signature date: June 11, 1999
Report on Friendly Settlement Agreement No. 98/00, published on October 5, 2000
Estimated length of the negotiation phase: 1 year
Rapporteurship involved: Persons Deprived of Liberty/[Rights of] Women
Topics: Persons deprived of liberty/detention centers/detention conditions/police precincts/care and custody/investigation/prison system/torture/cruel, inhuman, and/or degrading treatment or punishment.

Facts: On May 17, 1993, the petitioner was detained in Guayaquil without a warrant, in connection with “Operation Silver” [*Operativo Plata*], a counter-drug operation. She was taken to the Interpol offices in Guayas, where she was held incommunicado for 15 days. During this time, she was tortured in an effort to get her to state that she was guilty of having participated in the act under investigation. Thereafter, the petitioner was taken to the city of Quito and brought before the Second, Seventh, and Tenth Criminal Judges of Pichincha, who initiated criminal proceedings without indicating the motive or reason for her detention; and all the individuals whose names appeared in the police report were accused in general terms, without an analysis of the indicia of responsibility in each case. In the proceedings before the Tenth Court, the petitioner filed an *amparo* motion seeking her release with the Office of the Presiding Judge of the Superior Court, which ruled in favor of the motion on September 10, 1996, and ordered her release. The petitioner also brought an *amparo* action in the context of the proceedings before the Seventh Court, but it was rejected on the grounds that the petitioner was not a defendant in those proceedings. On May 31, 1996, charges against the petitioner were dismissed provisionally in the proceedings before the Second Court. The Fourth Chamber of the Superior Court, on ruling in consultation, as provided for by Ecuadorian law in drug cases, upheld the dismissal on May 27, 1997. On June 4, 1997, the Second Court ordered the petitioner released, and she regained her freedom on June 6, 1997. The petition was submitted on the basis of the time of deprivation of liberty without a conviction, in addition to the violation of the rights to humane treatment, a fair trial, and judicial protection. The victim was subjected to torture and cruel and inhuman treatment when she was arrested, held in pretrial detention for four years, and later released.

Rights alleged: The petitioner alleged violation of the rights to humane treatment (Article 5), personal liberty (Article 7), a fair trial (Article 8), and judicial protection (Article 25) of the American Convention on Human Rights (ACHR), to the detriment of Marcia Irene Clavijo Tapia.

II. PROCEDURAL ACTIVITY

1. On June 11, 1999, the parties signed the friendly settlement agreement.
2. On October 5, 2000, the Commission approved the friendly settlement agreement by report No. 98/00.

III. ANALYSIS OF COMPLIANCE WITH THE CLAUSES OF THE FRIENDLY SETTLEMENT AGREEMENT

Agreement clause	State of compliance
<p>III. STATE RESPONSIBILITY AND ACCEPTANCE</p> <p>The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mrs. Marcia Irene Clavijo Tapia enshrined in Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (fair trial), and Article 25 (judicial protection), and at the same time the general obligation contained in Article 1(1) of the American Convention on Human Rights and other international instruments, and that the violations were committed by State agents, which could not be disproved by the State, giving rise to State responsibility.</p> <p>Given the above, the Ecuadorian State accepts the facts in case No. 11.783 before the Inter-American Commission on Human Rights and undertakes the necessary reparative steps to compensate the victims, or their successors, for the damages caused by those violations.</p>	<p>Declarative clause</p>
<p>IV. COMPENSATION</p> <p>In view of the foregoing, the Ecuadorian State, through the Attorney General, as the sole judicial representative of the Ecuadorian State, pursuant to Article 215 of the Constitution of Ecuador, enacted in Official Register No. 1 and in force since August 11, 1998, is awarding Mrs. Marcia Irene Clavijo Tapia a one-time compensatory payment in the amount of sixty-three thousand US dollars (US\$ 63,000) or the equivalent in local currency, calculated at the exchange rate in effect at the time the payment is made, to be paid from the National Budget.</p> <p>This compensation covers the consequential damages, loss of income, and moral damages suffered by Mrs. Marcia Irene Clavijo Tapia, as well as any other claims that Mrs. Marcia Irene Clavijo Tapia may have, regarding the subject of this agreement, under domestic and international law, and is chargeable to the National Budget. To this end, the Office of the Attorney General will notify the Ministry of Finance, for it to carry out this obligation within 90 days of the signing of this document.</p>	<p>Total¹</p>
<p>V. PUNISHMENT OF THE PERSONS RESPONSIBLE</p> <p>The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State</p>	<p>Noncompliance²</p>

¹ IACHR, Report No. 98/00, Case 11.783, Friendly Settlement, Marcia Irene Clavijo Tapia, Ecuador, October 5, 2000.

²See IACHR, Annual Report 2019, Chapter II, Section G. Friendly Settlements. Available at: <http://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap2-en.pdf>

<p>functions or under the color of public authority.</p> <p>The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.</p>	
<p>VII. TAX EXEMPTION AND DELAY IN COMPLIANCE [...] In the event that the State is delinquent for over three months from the date the agreement is signed, it must pay interest on the amount owed, corresponding to the current bank rate of the three largest banks in Ecuador for the duration of its delinquency.</p>	<p>Total³</p>

IV. LEVEL OF COMPLIANCE OF THE CASE

3. The Commission assessed the petitioner's request of December 5, 2016, in which they requested the termination of the supervision of the agreement and the archive of the case given the prescription of the criminal action and the loss of contact with the victims of the case. In this regard, the Commission reconsidered the request of the petitioner to archive and decided on this occasion to note that the justice measure was breached by the Ecuadorian State and that the level of compliance with the agreement is partial.

V. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE

A. Individual results in the case

- The State paid financial compensation, with interest, as set forth under the agreement.

³ IACHR, Report No. 98/00, Case 11.783, Friendly Settlement, Marcia Irene Clavijo Tapia, Ecuador, October 5, 2000.