

**TO THE HONORABLE MEMBERS OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANIZATION OF AMERICAN STATES**

**PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF
ENVIRONMENTAL DEFENDER ROMINA PICOLOTTI
BY THE REPUBLIC OF ARGENTINA**

By the undersigned, appearing as counsel for the petitioner

UNDER THE PROVISIONS OF ARTICLE 23 OF THE RULES OF PROCEDURE OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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I. Introduction

In 2007, the Republic of Argentina launched a politically motivated criminal prosecution against Romina Picolotti, an internationally recognized human rights and environmental defender who served as Argentina's Secretary of the Environment and Sustainable Development ("Environment Secretary") from 2006 to 2008. Almost eleven years later, after more than a decade of vexatious proceedings marked by irregularities and, in some cases, outright judicial and prosecutorial misconduct, the persecution remains ongoing, with no end in sight. With Ms. Picolotti's political adversaries intent on intimidating and harassing her for as long as possible in retaliation for her ongoing environmental advocacy, no date has been set for trial. And Ms. Picolotti's numerous appeals in the Argentine court system have been arbitrarily rejected without addressing the merits of her claims, leaving her powerless to achieve justice in that country.

Ms. Picolotti brings this petition to end the retaliatory criminal proceedings against her and to vindicate her fundamental rights under the American Convention for Human Rights (the "American Convention" or "Convention"), which Argentina has violated in numerous ways. First, Argentina has violated Article 8(1)'s guarantee of a trial within a reasonable time by delaying the criminal proceeding against Ms. Picolotti for more than a decade. Second, Argentina has violated Ms. Picolotti's right to a fair trial under Article 8(2) by repeatedly denying Ms. Picolotti's due process rights, for example, by arbitrarily changing the charges against her, banning Ms. Picolotti's lawyer from representing her, failing to protect her from obvious evidence tampering, ignoring procedural deadlines and requirements designed to guarantee a fair and impartial proceeding, and relying on inadmissible evidence. Third, Argentina has violated its obligation under Article 25 to provide Ms. Picolotti effective judicial recourse to remedy the violation of her rights. Fourth, Argentina has caused Ms. Picolotti mental

and emotional anguish in violation of Article 5. Argentina committed these violations in blatant disregard of its foundational obligation to respect Ms. Picolotti's rights, as set forth in Article 1.1 of the Convention.

Ms. Picolotti has suffered immeasurably from Argentina's violations of the Convention. For more than a decade, she has been intimidated, harassed, and tormented—and had her career and reputation severely damaged—by the unlawful proceedings and malicious prosecution that Argentina has inflicted on her for political and retaliatory reasons, unsupported by law and divorced from any legitimate public purpose. She maintains her absolute innocence of the charges of corruption, which Argentina fabricated to punish and silence her as a defender of the environment. Ms. Picolotti continues to participate in the proceedings because she is a law-abiding former public servant who is desperate to defend herself and clear her name, but that has proved impossible in the absence of an independent and impartial tribunal. Instead, Ms. Picolotti has suffered repeated and ongoing harm from these sham proceedings. The extreme burden and constant strain of facing baseless criminal accusations and interminable, politically-motivated court proceedings have caused Ms. Picolotti severe mental anguish, financial hardship, and other irreparable harm. Argentina's arbitrary and unlawful actions have caused grievous harm to her career, her personal life, her family, and her reputation, and have nearly destroyed the environmental non-governmental organization ("NGO") that she founded. As a result of this political and judicial persecution—which has been accompanied by death threats and other acts of intimidation—Ms. Picolotti had no choice but to leave her native Argentina and move with her family to the United States of America, where she now lives, effectively in exile. Ms. Picolotti's promising career and capacity to advocate against environmental abuses in Argentina has been shattered.

The human rights violations in Ms. Picolotti's case exemplify the broader situation facing human rights defenders not only in Argentina, but throughout Latin America and other regions where NGOs and their leaders face increasing threats, retaliation, and other challenges. Indeed, this Commission has recently and repeatedly recognized the widespread criminalization of human rights defenders in the region. This is precisely such a case, which requires another strong and decisive response from this Commission. Ms. Picolotti's case is emblematic of the challenges facing human rights defenders dedicated to environmental protection, as described by the Commission, including "threats, and harassment . . . smear campaigns and baseless judicial actions . . . raids and other arbitrary interference . . . intelligence activities directed against human rights defenders . . . restrictions on access to information . . . [and] abusive administrative and financial controls of human rights organizations"¹ This case presents another important opportunity for the Commission to protect a human rights defender against abuses designed to stop her important work and intimidate others who might follow in her footsteps.

Ms. Picolotti petitions this Commission to bring an end to these unlawful proceedings and to seek redress for the human rights violations she continues to suffer in Argentina. The evidence shows that the criminal case against Ms. Picolotti has been misused—and continues to be misused—by her political opponents in Argentina as a means of retaliating against her for her environmental advocacy. After almost eleven years of criminal prosecution, there still is no date set for trial. Ms. Picolotti faces an ongoing denial of justice for which there is no prospect of a domestic remedy. She has been prevented from exhausting the remedies under Argentine law, and there has been unwarranted delay in rendering a final judgment. Pursuant to Article 31(2) of

¹ Exhibit 35, INTER-AM. COMM'N H.R., SECOND REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDER IN THE AMERICAS § I.A.2 n.2 [hereinafter IACHR Second Report on Human Rights Defenders] (Dec. 31, 2011).

the Commission's Rules of Procedure and Article 46(2) of the Convention, Ms. Picolotti is thus excused from continuing to try to exhaust non-existent domestic remedies. This petition meets all other requirements for admissibility: It is timely, there are no parallel international proceedings, and the Commission is competent to hear Ms. Picolotti's claims.

Ms. Picolotti respectfully asks that the Commission expedite the initial processing of this Petition in accordance with Article 29(2) of the Commission's Rules of Procedure. This petition addresses structural and legal factors that have legitimated the use of intimidation and harassment by Argentina against environmental and human rights defenders. Furthermore, Ms. Picolotti asks the Commission to declare this petition admissible; investigate this matter; hold a hearing on the merits; and find that Argentina has violated her fundamental rights under the American Convention.

II. Factual Background

A. Ms. Picolotti's Continuing Environmental Advocacy

Ms. Picolotti is an Argentine citizen who has dedicated her professional life to protecting human rights and promoting environmental protection and conservation. Even in the face of Argentina's politically motivated and highly irregular criminal proceeding, Ms. Picolotti has continued her human rights and environmental activism. Ms. Picolotti resigned as Environment Secretary in December 2008. She immediately returned to the Center for Human Rights and Environment ("CEDHA"), the non-profit environmental advocacy group that she founded in 1999 focused on environmental justice and protection.² In 2015, after the fear and uncertainty caused by Argentina's criminal prosecution forced Ms. Picolotti to move to the United States, Ms. Picolotti launched a U.S.-based incarnation of CEDHA, named the Center for Human Rights

² Much of the information in the Factual Background is drawn from Ms. Picolotti's affidavit, submitted with this petition as Exhibit 1.

and the Environment (“CHRE”). Through these groups, Ms. Picolotti has pursued human rights protection and environmental justice, focusing on combating climate change; containing industrial pollution; addressing the impacts of mining and oil and gas operations on communities; protecting glaciers and permafrost; and promoting corporate accountability.

As an example of her globally recognized advocacy and strong commitment to protecting human rights and the environment, Ms. Picolotti was deeply involved in crafting the Kigali Agreement, an amendment to the Montreal Protocol, signed by 197 countries in 2016 to phase out harmful chemicals that cause global warming.³ The Kigali Agreement enters into force in January 2019. As another example, Ms. Picolotti has been a leader in collective advocacy and was chosen by 45 NGOs to represent them at the Steering Committee of the United Nations Climate and Clean Air Coalition.

Under Ms. Picolotti’s leadership, CHRE has also published numerous reports on the environmental devastation that mining causes to glaciers. A CHRE report titled “Barrick’s Glaciers” revealed that mining company Barrick Gold Corporation began to build an environmentally harmful mine on several glaciers in the Central Andes of Argentina, contrary to federal and provincial law.⁴ Thanks to national and international advocacy orchestrated by Ms. Picolotti, which led to the blocking of global financing to Barrick Gold and ensured rigorous permitting procedures in Chile and Argentina by highlighting social and environmental impacts

³ See Exhibit 106, Ezra Clark and Sonja Wagner, *The Kigali Amendment to the Montreal Protocol: HFC Phase-down*, UNEP (last visited Mar. 1, 2018), <http://multimedia.3m.com/mws/media/1365924O/unep-fact-sheet-kigali-amendment-to-mp.pdf>.

⁴ Exhibit 39, Jorge Daniel Taillant, *Barrick’s Glaciers: Technical Report on the Impacts by Barrick Gold on Glaciers and Periglacial Environments at Pascua Lama and Veladero*, CENTER FOR HUMAN RIGHTS AND ENVIRONMENT (May 20, 2013), <http://center-hre.org/wp-content/uploads/2013/05/Los-Glaciares-de-Barrick-Gold-version-20-mayo-2013-ENGLISH-small.pdf>.

of the project,⁵ Barrick Gold abandoned development of the mine. There are many such examples in which Ms. Picolotti has played a critical role in defense of the environment.

B. Ms. Picolotti's Lifelong Dedication To Environmental Conservation

Ms. Picolotti's more recent environmental work builds on her long legal career as a human rights defender. She studied law in Córdoba and received a scholarship from the United States government to study in the United States. Ms. Picolotti began her career as a young lawyer working for this Commission. In that role, she reviewed individual petitions, analyzed alleged violations of the American Convention, drafted proposed findings and recommendations to member states, and helped prepare the Commission's 1995 Report before the Committee on Juridical and Political Affairs of the Organization of American States' Permanent Council. (She could not have known then that she would one day need the Commission to protect and vindicate her own human rights as an environmental defender facing criminal and political retaliation.)

Ms. Picolotti gained experience with several additional human rights organizations before returning to Argentina to focus on environmental rights. She served as Director of the Latin America Office of the International Human Rights Law Group in Washington D.C., where she wrote the group's precedent-setting amicus curiae brief⁶ for the Inter-American Court of Human Rights (the "Court" or the "Inter-American Court") in the *Case of Awas Tingni Mayagna (Sumo) Indigenous Community v. Republic of Nicaragua*, a landmark case concerning indigenous peoples' collective rights to their land, their resources, and the environment.⁷ In

⁵ See, e.g., Exhibit 33, Letter from Jorge Daniel Taillant of the Center for Human Rights and Environment to Fred P. Hochberg, Chairman and President of the United States Export Import Bank (Nov. 9, 2011), <http://center-hre.org/wp-content/uploads/2011/12/letter-CEDHA-to-Exim-Bank-Nov-9-2011.pdf>.

⁶ Exhibit 2, I/A Court H.R., *Case of Awas Tingni Mayagna (Sumo) Indigenous Community v. Republic of Nicaragua*, Amici Curiae (May 31, 1999).

⁷ I/A Court H.R., *Case of Mayagna (Sumo) Awas Tingni Community v. Republic of Nicaragua*, Merits, Reparations, and Costs, Judgment of August 31, 2001, Series C No. 79.

1997, Ms. Picolotti moved to Cambodia to work with an organization funded by the U.S. government, focusing on human rights violations in Cambodian prisons.

Ms. Picolotti returned home to Argentina and founded CEDHA in 1999 to promote environmental protection and greater access to justice for victims of environmental degradation. Under Ms. Picolotti's leadership, CEDHA represented individuals and communities in proceedings before a variety of international and domestic bodies, as well as worked to create more robust and effective environmental and social policy, compliance, and enforcement in Argentina. CEDHA became one of the most important NGOs in Argentina on environmental issues. For example, CEDHA spearheaded a multi-jurisdictional effort to stop the construction of two large pulp mills near the border between Uruguay and Argentina, where toxic pollution from the mills would flow into the Uruguay River and potentially harm more than 300,000 people. Ms. Picolotti ultimately served as one of the lead Argentine counsel challenging Uruguay's decision to build the pulp mills in a case before the International Court of Justice ("ICJ"). The ICJ's decision in that case is a landmark ruling in international environmental law.⁸ Following the decision, one of the pulp mills halted construction and Uruguay and Argentina developed a joint task force to monitor the environmental compliance of the other.

These activities demonstrate Ms. Picolotti's role as both a protector of the environment and a human rights defender.⁹ As the Inter-American Court has recognized, "there is an

⁸ Exhibit 25, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 2010 I.C.J. Reports 14 (Apr. 20, 2010).

⁹ I/A Court H.R., Case of Human Rights Defender et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 28, 2014, Series C No. 283, para 129 (noting that "the status of human rights defender is defined by the work carried out, regardless of whether the person is a private citizen or a public servant" and "the defense of rights not only applies to civil and political rights, but also necessarily covers economic, social and cultural rights"); I/A Court H.R., Case of Luna López v. Honduras, Merits, Reparations and Costs, Judgment of October 10, 2013, Series C No. 269 (holding that Carlos Luna López was a human rights defender based on his work in defense of the environment). See also UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution approved by the UN General Assembly on December 9, 1998, UN Doc. A/RES/53/144, March 8, 1999.

undeniable link between the protection of the environment and the enjoyment of other human rights.”¹⁰ The work of human rights defenders like Ms. Picolotti is “fundamental for the strengthening of democracy and the Rule of Law.”¹¹

Ms. Picolotti has received international accolades and acclaim for her dedication to environmental protection. In 2002, American University in Washington, D.C. awarded Ms. Picolotti the Peter Cicchino Award for outstanding international public service.¹² In 2006, Ms. Picolotti won the prestigious Sophie Prize—an internationally-recognized award for global leaders working in the field of international development and the environment—for her work linking human rights and the environment.¹³ She was the first citizen of a Latin American country to win this award and she was listed as a possible recipient of the Nobel Peace Prize.¹⁴

Ms. Picolotti’s continuing environmental protection efforts and leadership also earned Argentina the United Nations’ Montreal Protocol Award in 2007 for exceptional efforts to comply with the Montreal Protocol to eliminate ozone layer depleting substances. Ms. Picolotti won the U.S. Environmental Protection Agency’s Climate Protection Award in 2008, which is awarded annually to environmental leaders from around the globe for outstanding efforts to reduce greenhouse gas emissions.¹⁵ The National University of Mexico and Mexican Bar Association awarded her the Highest Environmental Protection Award that same year.

¹⁰ I/A Court H.R., Case of *Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, para 148.

¹¹ I/A Court H.R., Case of *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 28, 2014, Series C No. 283, para 128.

¹² Exhibit 107, *Previous Peter M. Cicchino Public Service Award Recipients*, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW (last visited March 2, 2018),

https://www.wcl.american.edu/publicinterest/previous_cicchinoawards.cfm.

¹³ Exhibit 4, *Argentinean Lawyer and Human Rights Activist Wins Sophie Prize*, AARHUS CLEARINGHOUSE FOR ENVIRONMENTAL DEMOCRACY, U.N. ECONOMIC COMMISSION FOR EUROPE (June 16, 2006),

<https://aarhusclearinghouse.unece.org/news/argentinean-lawyer-and-human-rights-activist-wins-sophie-prize>.

¹⁴ Exhibit 5, *Picolotti está nominada para el ‘Nobel de la Paz’*, EL ARGENTINO (Oct. 12, 2006),

<http://www.diarioelargentino.com.ar/noticias/9951/picolotti-esta-nominada-para-el-nobel-de-la-paz>.

¹⁵ Exhibit 15, Dave Ryan, *EPA Honors Climate Change, Ozone Layer Protection Award Winners*, U.S.

ENVIRONMENTAL PROTECTION AGENCY (May 19, 2008),

https://archive.epa.gov/epapages/newsroom_archive/newsreleases/b71bc2554cadbe058525744b00692125.html.

C. Ms. Picolotti's Tenure As Argentina's Environment Secretary

Ms. Picolotti served as Environment Secretary of Argentina from 2006 to 2008 under Argentine President Néstor Kirchner and his successor, President Cristina Fernández de Kirchner. President N. Kirchner asked Ms. Picolotti to serve as Environment Secretary soon after she won the Sophie Prize in 2006. Ms. Picolotti agreed, on two conditions: First, that she be empowered to enforce the law against environmental contaminators; and, second, that the environmental protection agency (then a division of the Health Ministry) be promoted to ministerial status. President N. Kirchner consented and created the Secretary of the Environment and Sustainable Development (the "Environmental Secretariat"), which was organized directly under the Chief of Cabinet of the President. He also quadrupled the Environmental Secretariat's budget. Ms. Picolotti promised to serve the interests of the Argentine people by working to improve environmental compliance, building the investigative and enforcement capacity of the new Secretariat, and enforcing the law against environmental offenders.

Ms. Picolotti delivered on the promises she made to President N. Kirchner and the Argentine people. She created, trained, and deployed an environmental compliance team to conduct Argentina's first-ever environmental compliance audits. Ms. Picolotti and her staff trained more than 250 inspectors with the assistance of the U.S. Environmental Protection Agency. The inspectors launched environmental compliance actions for the first time—and carried out more than 9,000 official acts of environmental compliance and enforcement during the following two years. She aggressively pursued enforcement actions to reduce environmental contamination from Argentina's dirtiest industries, including large-scale mining operations, oil-and-gas companies, tanneries, metal works, dairy producers, and others. Prior to Ms. Picolotti's groundbreaking tenure as Environment Secretary, the federal environmental authority had never

had jurisdiction or political support to intervene in mining activity. As part of these efforts, Ms. Picolotti ordered the temporary or permanent closure of more than 120 companies, including some of the most prominent and powerful companies in Argentina, such as the multinational oil corporation Shell.

In addition, Ms. Picolotti invigorated a major clean-up program for one of Latin America's most contaminated river systems, the Matanza Riachuelo in the heart of Buenos Aires.¹⁶ More than 10,000 contaminating business in the Matanza-Riachuelo river basin were affected, some critically, by the emerging compliance actions of Ms. Picolotti.

Ms. Picolotti also strengthened environmental protection and compliance efforts in Argentina by drafting and promoting new environmental regulations and laws against contamination. She worked to implement new limits on deforestation and contamination from Argentina's pulp and paper industry, including through the Reconversion Plan for the Pulp and Paper Sector,¹⁷ as well as to mandate environmental insurance for corporations. In one of the highlights of her term as Secretary of Environment, in 2008 Ms. Picolotti was instrumental in drafting and achieving the congressional passage of the world's first Glacier and Periglacial Environment Protection Law, which prohibited mining in glacier areas.¹⁸

¹⁶ Exhibit 16, Lindsey Howshaw, *Troubled Waters: the Matanza-Riachuelo river basin*, PURE EARTH (May 23, 2008), <https://www.pureearth.org/BIFILES/articles/c918216d161f2578956c08451a2c300e.pdf> (highlighting Ms. Picolotti's closure of two factories for illegal dumping); Exhibit 18, *The Matanza-Riachuelo River Basin Case Summary*, FARN (July 8, 2008), <https://farn.org.ar/archives/10827> (noting Ms. Picolotti's presentation at a public hearing about the progress made in the Matanza-Riachuelo river basin clean up).

¹⁷ Exhibit 7, *La Nación reconoce que la tecnología EFC es la más efectiva para el país*, EL ARGENTINO (May 25, 2007), <https://www.diarioelargentino.com.ar/noticias/22238/la-nacion-reconoce-que-la-tecnologia-efc-es-la-mas-efectiva-para-el-pais>.

¹⁸ See Exhibit 30, Danielle Sugarman, *Argentina's Law of the Glaciers: A Tortured Path to Environmental Protection*, CLIMATE LAW BLOG FOR COLUMBIA LAW SCHOOL (May 19, 2011), <http://blogs.law.columbia.edu/climatechange/2011/05/19/argentina%E2%80%99s-law-of-the-glaciers-a-tortured-path-to-environmental-protection/>; Exhibit 37, Jorge Daniel Taillant, *The Periglacial Environment and the Mining Sector in Argentina: The National Glacier Law and Frozen Grounds*, CENTER FOR HUMAN RIGHTS AND ENVIRONMENT (CEDHA) (Nov. 9, 2012), <http://center-hre.org/wp-content/uploads/2012/11/El-Ambiente-Periglacial-y-la-Mineria-en-la-Argentina-English.pdf>.

Ms. Picolotti prioritized engaging other state ministries in environmental justice. For example, she worked with the Public Works Ministry on water provision and quality. She also partnered with the Education Ministry on environmental education; collaborated with the Attorney General's Office to help pursue cases against environmental offenders and to build environmental guarantees into the law; and engaged the Defense Ministry to convert lands under their jurisdiction from soy farms to nationally protected reserves.

Ms. Picolotti's environmental reform and compliance efforts as Secretary were highly effective, unprecedented, and controversial. Many Argentines welcomed her fight for environmental and human rights protection, but certain political and industrial actors despised and opposed her actions. Her strongest opponents were those who stood to lose profit, or, in the case of the worst offenders, their licenses to operate. In each area protected or community spared from environmental harm, a commercial actor had to stop polluting, invest in clean up, change technology, or cease certain business practices altogether. This generated significant resistance and a fearsome backlash by some of the most powerful industrial actors.

Ms. Picolotti and her family began receiving death threats soon after she and her team began investigating and enforcing laws against Argentina's biggest polluters.¹⁹ She periodically found threats and other notes of intimidation on her desk in the Secretariat. Her phones were monitored. Her official vehicle was stolen and the driver intimidated and threatened. Her staff similarly received anonymous telephone threats, in frightening and explicit language, promising physical retaliation if they did not stop their environmental enforcement actions. Anonymous individuals were spotted following and monitoring Ms. Picolotti and her senior staff, including

¹⁹ See, e.g., Exhibit 23, *Barrick: Picolotti denunció amenazas de muerte*, CAMPAÑAS AMBIENTALES (Nov. 26, 2009), <http://campanasambientales.blogspot.com/2009/11/barrick-picolotti-denuncio-amenazas-de.html>; Exhibit 24, *Picolotti denunció que recibió amenazas de muerte cuando era funcionara*, MDZ (Nov. 28, 2009), <http://www.mdzol.com/nota/174297-picolotti-denuncio-que-recibio-amenazas-de-muerte-cuando-era-funcionaria/>.

Juan Pablo Ordonez, who was responsible for oversight of the mining industry. Florencia Roinstein, sub-Secretary for Sustainable Development, also received personal death threats due to her compliance efforts in the pulp and paper sector. Ms. Picolotti's husband, Jorge Daniel Taillant, and their two children also received death threats and anonymous harassing phone calls. In one case, an anonymous individual called Ms. Picolotti in her office and threatened the lives of her children, then three and six years old, and provided very detailed information about the children's route to school.

The police and the government security services were not able to determine precisely who was threatening and harassing Ms. Picolotti, her family, and her staff. They did, however, trace one of the threatening calls made to Ms. Picolotti from a telephone line within the Secretariat. Ms. Picolotti subsequently discovered that one of her government colleagues at the Secretariat was working covertly for a mining company and secretly serving the interests of the mining sector.

Even prominent colleagues who were fellow members of President N. Kirchner's government opposed Ms. Picolotti's environmental investigations and enforcement work. For example, she faced intense opposition and pressure from Minister Julio De Vido of the Ministry of Planning, who tried to redirect funding from international organizations away from environmental projects in Argentina. Local public officials supported Barrick Gold, a mining company, when it unlawfully barred Ms. Picolotti's environmental compliance team from entering a mine in 2007. Ms. Picolotti's corporate and political opponents retaliated against her in a variety of other ways, including by orchestrating the unlawful criminal prosecution that is the subject of this petition.

III. Facts Of The Case

A. Argentina Launches A Criminal Prosecution Against Ms. Picolotti In Retaliation For Her Environmental Work

The retaliatory campaign against Ms. Picolotti for her official actions as Secretary escalated into a criminal prosecution during the peak of Ms. Picolotti's crackdown against contaminating industries. Around January 2007, Ms. Picolotti and the Environmental Secretariat brought a compliance action against Papel Prensa, one of the largest pulp companies in the country, for its newsprint paper production that generated pollution that was contaminating local waterways in Buenos Aires Province. Around March 2007, Ms. Picolotti visited Papel Prensa as part of a program requiring all pulp manufacturers to implement additional environmental protection measures.²⁰ Around June 2007, inspectors collected samples of effluents that Papel Prensa was putting into a river. The samples showed that the Papel Prensa was dumping toxins far in excess of the limits allowed by law. Ms. Picolotti fined Papel Prensa and recommended the company make certain environmental upgrades to its pulp mill and production technology. The estimated cost to the company of the upgrades was roughly U.S. \$10 million. Papel Prensa refused, leading to a protracted legal battle.²¹

Papel Prensa also retaliated against Ms. Picolotti for her official actions. The company is owned by the Clarín Group, Argentina's most powerful media conglomerate, which was a strong and vocal critic of both Kirchner administrations. Notably, Papel Prensa produces most of the paper for print media in Argentina and the *Clarín* newspaper is Argentina's largest daily newspaper. In the midst of Ms. Picolotti's compliance action against Papel Prensa, on July 8,

²⁰ Exhibit 7, *La Nación reconoce que la tecnología EFC es la más efectiva para el país*, EL ARGENTINO (May 25, 2007), <https://www.diarioelargentino.com.ar/noticias/22238/la-nacion-reconoce-que-la-tecnologia-efc-es-la-mas-efectiva-para-el-pais>.

²¹ The Supreme Court of Justice of the Nation ultimately decided that Papel Prensa should be regulated by the provincial (and not federal) government. See Corte Supreme de Justicia de la Nación [CSJN] [Supreme Court of Justice of the Nation], 03/11/2015, "Papel Prensa S.A. c/ Estado Nacional (Buenos Aires, Provincia de, citada 3°) s/ Acción meramente declarativa," Fallos (2016-1-74).

2007, the *Clarín* newspaper published a front-page story that falsely accused her of mismanaging government resources by allegedly hiring unqualified family members as government employees and commissioning private jets for personal trips.²² The allegations were completely false, fabricated by the *Clarín* newspaper, which offered no evidence to support its claims.

Shortly after *Clarín* published the retaliatory article, an individual named Juan Ricardo Mussa filed a criminal complaint against Ms. Picolotti based solely on the false *Clarín* article.²³ In Argentina, private individuals are empowered to file criminal complaints that can give rise to criminal investigations and prosecutions by the state.²⁴ Mr. Mussa, the complainant against Ms. Picolotti, owns a petrochemical company.²⁵ He has also repeatedly run for political office for a variety of political parties opposed to the Kirchners,²⁶ and even filed a criminal complaint against former President C. Kirchner accusing her of murdering President N. Kirchner.²⁷ Mr. Mussa's complaint against Ms. Picolotti stated that he had learned of irregularities in her management of funds "from the *Clarín* newspaper."²⁸ The complaint cited no other source of information regarding the alleged misconduct by Ms. Picolotti. A substantially similar complaint was filed against Ms. Picolotti by Enrique Adalberto Piragini,²⁹ a man previously convicted of fraud, and followed by complaints by additional political opponents of the Kirchner

²² Exhibit 8, Claudio Savoia, *Los extraños manejos en la Secretaría de Medio Ambiente*, CLARÍN (July 8, 2007), <http://edant.clarin.com/suplementos/zona/2007/07/08/z-01453283.htm>.

²³ Exhibit 12, Criminal Complaint filed by Juan Ricardo Mussa (July 12, 2007).

²⁴ CÓDIGO PROCESAL PENAL DE LA NACIÓN [CÓD. PROC. PEN.] [Criminal Procedure Code of the Nation, or "Criminal Procedure Code"] art. 174. Unless otherwise stated, citations are to the Criminal Procedure Code in existence at the time of the proceedings.

²⁵ Exhibit 99, Cristian Riccomagno, *Mussa: el candidato serial que se postuló en 20 elecciones*, PERFIL (Aug. 10, 2017), <http://www.perfil.com/politica/el-candidato-serial-juan-ricardo-mussa-se-presenta-por-vez-numero-20.phtml>.

²⁶ Exhibit 99, Cristian Riccomagno, *Mussa: el candidato serial que se postuló en 20 elecciones*, PERFIL (Aug. 10, 2017), <http://www.perfil.com/politica/el-candidato-serial-juan-ricardo-mussa-se-presenta-por-vez-numero-20.phtml>.

²⁷ Exhibit 74, *Los motivos de la denuncia que acusa a Cristina Fernández de la muerte de Néstor Kirchner*, NOTIMÉRICA (Dec. 5, 2015) <http://www.notimerica.com/politica/noticia-abogado-argentino-acusa-cristina-fernandez-muerte-nestor-kirchner-20151205182807.html>.

²⁸ Exhibit 12, Criminal Complaint filed by Juan Ricardo Mussa (July 12, 2007).

²⁹ Exhibit 9, Criminal Complaint filed by Enrique Piragini (July 8, 2007) (noting that he learned of the allegations from a July 8, 2007 article in *Clarín*).

administration and of Ms. Picolotti's environmental work, most of which rely explicitly on the false *Clarín* article to support their allegations of wrongdoing.³⁰

Citing these complaints—which were based on *Clarín*'s false newspaper article—federal prosecutor Guillermo Marijuán (the “prosecutor” or “Mr. Marijuán”) opened a criminal investigation of Ms. Picolotti on August 7, 2007.³¹ This same prosecutor is known for criminal actions brought against other Kirchner officials. For example, Mr. Marijuán later led a highly politicized criminal investigation into former President C. Kirchner for corruption, money laundering, and abuse of authority.³² He also participated in the prosecution of at least one other former Kirchner official.³³

B. Procedural Irregularities Plagued The Investigation Of Ms. Picolotti

From its inception, the investigation against Ms. Picolotti was plagued by numerous substantive and procedural irregularities. For example, dozens of boxes of purported documentary evidence inexplicably disappeared from police and court custody for several days, during which time someone apparently engaged in evidence tampering. The evidence in those boxes had been obtained by investigators on May 30, 2008, when the federal police executed a search warrant against a government agency that had provided technical and administrative support to the Environmental Secretariat even before Ms. Picolotti's tenure as Secretary. That

³⁰ Exhibit 10, Criminal Complaint filed by Ricardo Monner Sans (July 9, 2007); Exhibit 11, Criminal Complaint filed by Adrian Perez, Susana Garcia, and Elsa Quiroz (July 10, 2007); Exhibit 13, Criminal Complaint filed by Romulo Dario Rolando (July 31, 2007).

³¹ Exhibit 14, Decision of Guillermo F. Marijuán to open investigation (Ministerio Público de la Nación Aug. 7, 2007).

³² Exhibit 79, Gaston Cavanagh, *Argentina's Ex-President Wants Everyone to Know She's Not Scared of Corruption Probes*, VICE NEWS (Apr. 14, 2016), <https://news.vice.com/article/cristina-kirchner-court-corruption-dollar-futures>; Exhibit 89, *Denunciaron a Cristina por abuso de autoridad*, LA NACIÓN (Jan. 21, 2017), <http://www.lanacion.com.ar/1977783-denunciaron-a-cristina-por-abuso-de-autoridad>; Exhibit 94, *El fiscal Marijuan pidió indagar a Cristina Kirchner en la causa por "la ruta de dinero K,"* LA NACIÓN (June 15, 2017), <http://www.lanacion.com.ar/2033816-el-fiscal-marijuan-pidio-indagar-a-cristina-kirchner-en-la-causa-por-la-ruta-de-dinero-k>.

³³ See, e.g., Exhibit 90, *El fiscal Guillermo Marijuan pidió la detención de Oscar Parrilli*, LA NACIÓN (Feb. 7, 2017), <http://www.lanacion.com.ar/1982554-el-fiscal-guillermo-marijuan-pidio-la-detencion-de-oscar-parrilli>.

agency also provided technical and administrative support to the Federal Judiciary Power of Argentina as well as other ministries. Ms. Picolotti was not notified of the warrant, although the prosecutor was.³⁴ Nor was she notified when confusion arose about the meaning of certain language the warrant and the police called the court secretary to alter the warrant's terms. In the execution of that warrant, the federal police ultimately procured sixty-three boxes of documents purportedly related to the investigation of Ms. Picolotti.

Surprisingly, the boxes were not immediately delivered to the court in accordance with chain-of-custody-procedures; instead, they disappeared for two days, until June 2, 2008.³⁵ Neither the police nor the court have accounted for the location of the boxes during that time, stated who the custodian was, or why the two-day delay occurred. By the time the boxes were found and delivered to Judge María Servini de Cubría of Juzgado Criminal y Correccional Federal No. 1 (Federal Criminal and Correctional Court No. 1) (the "Investigation Court"), the judge overseeing Mr. Marijuán's investigation, the seal on at least one of them (Box 31) had been broken.³⁶ The Court did not order an accounting audit to determine and verify the origin and contents of the boxes in question—a normal procedure that should have been followed under the circumstances.³⁷

Ms. Pícolotti and her lawyer were not given access to the evidence in these boxes. In fact, they were not told the boxes had been admitted, and thus could not ask for an accounting of the evidence at that time. Years later, when they finally gained access to the evidence, all the

³⁴ See Exhibit 85, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *incidente de nulidad* regarding violations of the chain of custody (Oct. 16, 2016) (Ms. Picolotti's lawyer arguing for the nullification on the search warrant, in part based on lack of notice to the defense).

³⁵ Exhibit 17, Acknowledgement of receipt of evidence (Juzgado Criminal y Correccional Federal No. 1 June 2, 2008).

³⁶ Exhibit 17, Acknowledgement of receipt of evidence (Juzgado Criminal y Correccional Federal No. 1 June 2, 2008).

³⁷ CÓD. PROC. PEN. art. 233 (providing that seized objects will be inventoried and placed in secure custody).

boxes were unsealed and they were being “stored” in a hallway in the courthouse.³⁸ (Further details regarding these disturbing irregularities are described below, at Section III.F.)

When the prosecutor eventually outlined allegations against Ms. Picolotti, roughly one year after the boxes had disappeared for two days, he simply ignored the rules in the Argentine Criminal Procedure Code stating that evidence is inadmissible when there is an unexplained gap in the chain of custody.³⁹ Instead, Mr. Marijuán relied on evidence taken from the once-missing boxes—including receipts with forged signatures that bear no resemblance to Ms. Picolotti’s—and alleged Ms. Picolotti misappropriated public funds, based upon this inadmissible evidence.⁴⁰ Specifically, Mr. Marijuán falsely alleged without admissible support that Ms. Picolotti had hired unqualified friends and relatives for public positions; took personal trips by airplane using public money; signed a contract for a vague and improper corporate environmental liability insurance policy with Sancor Cooperativa de Seguros Limitada; and oversaw the mismanagement of funds by both the local government in Cordoba and Fundación ArgenINTA.⁴¹ Although the prosecutor relied on evidence that is inadmissible,⁴² the investigation continued. In this document, known as the *requisitoria fiscal*, Mr. Marijuán called for the judge to hold a hearing to receive a statement from Ms. Picolotti on the grounds that he believed there was sufficient suspicion to believe that she committed a crime.⁴³

³⁸ Exhibit 84, Order regarding evidence related to Romina Picolotti (Tribunal Oral en lo Criminal Federal 6 Oct. 6, 2016).

³⁹ For example, article 233 of the Criminal Procedure Code provides that seized documents must be inventoried and placed under secure custody of the court, and secured with the court seal and the judge’s and clerk’s signatures. CÓD. PROC. PEN. art. 233. Ms. Picolotti’s lawyers have raised this chain of custody issue extensively, as discussed below at Section III.F. *See, e.g.*, Exhibit 85, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *incidente de nulidad* regarding violations of the chain of custody (Oct. 16, 2016).

⁴⁰ Exhibit 20, Solicita declaraciones indagatorias filed by Ministerio Público de la Nación (Oct. 20, 2009).

⁴¹ Exhibit 20, Solicita declaraciones indagatorias filed by Ministerio Público de la Nación (Oct. 20, 2009).

⁴² *See* Exhibit 85, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *incidente de nulidad* regarding violations of the chain of custody (Oct. 16, 2016).

⁴³ Exhibit 20, Solicita declaraciones indagatorias filed by Ministerio Público de la Nación (Oct. 20, 2009) (asking for the judge to receive a statement from Ms. Picolotti in accordance with CÓD. PROC. PEN. art. 294, which provides that the judge will question an accused when there is reason to suspect that a person has participated in the commission of an offense).

C. The Case Has Been Plagued By Repeated, Unwarranted Delays

In addition to evidentiary irregularities, this case has been marked by repeated delays without explanation, other than the unlawful purpose of harassing and harming Ms. Picolotti and keeping her from fully resuming her personal life and her environmental advocacy. At each stage—the investigation, the call for a hearing for Ms. Picolotti to answer the allegations, the elevation of the case to trial—the court and prosecutor have caused long, unexplained delays in plain violation of Argentine and international law, which require criminal matters to proceed in a timely manner, without prejudicial delay.

By the time that Mr. Marijuán filed the *requisitoria fiscal* on October 20, 2009 stating that he believed Ms. Picolotti had committed a crime, he had already been investigating the case for more than two years, dating back to July 2007, when the criminal complaints were filed. The timing of the filing appeared driven by political considerations. The filing of the *requisitoria fiscal* occurred just one month before Ms. Picolotti was scheduled to testify publicly before the Canadian Parliament regarding irresponsible mining activities, including those of the powerful mining company, Barrick Gold.⁴⁴ This was one of many instances in which significant developments in Ms. Picolotti's criminal case were timed to immediately precede or coincide with significant developments in Ms. Picolotti's environmental advocacy.

Judge Servini de Cubría of the Investigation Court set a hearing date in response to the *requisitoria fiscal* for December 16, 2009.⁴⁵ Under Articles 294–304 of the Argentine Criminal Procedure Code, the hearing, or *indagatoria*, is when the judge informs the accused of the facts against her and the existing evidence. The accused may also offer a statement and appropriate

⁴⁴ Exhibit 22, Testimony before the Foreign Affairs and International Development Committee, Canadian Parliament (Nov. 24, 2009), <https://openparliament.ca/committees/foreign-affairs/40-2/41/romina-picolotti-1/only/>.

⁴⁵ Exhibit 21, Order setting *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Nov. 24, 2009).

evidence.⁴⁶ When Ms. Picolotti asked for an alternate hearing date because she was traveling to attend the World Conference on Climate Change, Judge Servini de Cubría cancelled the *indagatoria* without explanation. The case then languished for more than a year, without any explanation or proposed schedule. On February 10, 2011—over two years after the original hearing was scheduled—the judge suddenly re-scheduled the *indagatoria*.⁴⁷ The second call for the *indagatoria* was issued amid intense public attention on a recently passed glacier protection law supported by Ms. Picolotti and challenged by the mining industry in court.⁴⁸

Thus, on March 22, 2011, roughly four years after she first came under criminal investigation, Ms. Picolotti finally was permitted to answer the charges against her at the *indagatoria* (the first hearing she received during all these years).⁴⁹ Ms. Picolotti had intended to use the *indagatoria* to deny the factual allegations against her, and enter a plea of innocence. Upon her arrival at the court, however, Ms. Picolotti learned from the court secretary that Judge Servini de Cubría altered the allegations against her, without any explanation or warning.⁵⁰ The judge added allegations completely unrelated to the prosecutor's *requisitoria fiscal*, including more false allegations about Ms. Picolotti's purported use of public funds for numerous personal expenses and trips unrelated to her work as Secretary.⁵¹ This is contrary to Article 195 of the Argentine Criminal Procedure Code, which expressly limits a criminal investigation to the facts

⁴⁶ CÓD. PROC. PEN. art. 299.

⁴⁷ Exhibit 27, Second order setting *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Feb. 10, 2011).

⁴⁸ See, e.g., Exhibit 30, Danielle Sugarman, *Argentina's Law of the Glaciers: A Tortured Path to Environmental Protection*, COLUMBIA LAW SCHOOL CLIMATE LAW BLOG (May 19, 2011), <http://blogs.law.columbia.edu/climatechange/2011/05/19/argentina%E2%80%99s-law-of-the-glaciers-a-tortured-path-to-environmental-protection/>; Exhibit 36, Kelsey Jost-Creegan, *Supreme Court Upholds Glacier Act*, ARGENTINA INDEPENDENT (July 3, 2012), <http://www.argentinaindependent.com/currentaffairs/supreme-court-upholds-glacier-ac/>.

⁴⁹ Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

⁵⁰ Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

⁵¹ Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

in the prosecutor's *requisitoria fiscal*.⁵² There was no explanation as to why the judge departed from the prosecutor's allegations. Further, just as the prosecutor had done in the *requisitoria fiscal*, Judge Servini de Cubría relied on purported evidence that was inadmissible under Argentine law.⁵³ She specifically pointed to receipts from Box 31, which had arrived in court custody inexplicably unsealed and contained receipts that Ms. Picolotti states are forged, to contend that Ms. Picolotti used public funds for numerous meals personal expenses.⁵⁴ And, once again, the court did not show Ms. Picolotti any of the purported evidence against her.

In light of the new allegations, Ms. Picolotti asked for the *indagatoria* to be suspended.⁵⁵ Her lawyer argued that the defense needed time to review the new allegations and prepare a defense. The court secretary did not delay the hearing, and proceeded to detail the allegations.⁵⁶ Ms. Picolotti declined to make a statement because she had no opportunity to prepare or present a defense to factual allegations she was hearing for the first time in the courtroom.⁵⁷ The court did not seek to explain or justify the unilateral last-minute changes by the judge, the lack of notice, or the failure to delay the hearing.

The court then committed another violation of the Argentine Criminal Procedure Code by failing to issue the *procesamiento* (indictment) within ten days of the *indagatoria*, as required by Article 306 of the Argentine Criminal Procedure Code.⁵⁸ Instead, the judge waited almost four

⁵² Cód. Proc. Pen. art. 195 provides: "La instrucción será iniciada en virtud de un requerimiento fiscal, o de una prevención o información policial, según lo dispuesto en los artículos 188 y 186, respectivamente, y se limitará a los hechos referidos en tales actos." (The instruction will begin by virtue of a *requerimiento fiscal* . . . and will be limited to the facts referred to in such documents).

⁵³ Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

⁵⁴ Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

⁵⁵ Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

⁵⁶ Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

⁵⁷ See Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

⁵⁸ This provision says "En el término de diez (10) días, a contar de la *indagatoria*, el juez ordenará el *procesamiento* del imputado siempre que hubiere elementos de convicción suficientes para estimar que existe un hecho delictuoso y que aquél es culpable como partícipe de éste" ("In the term of ten (10) days, counting from the *indagatoria*, the judge will order the prosecution of the accused provided that there are elements of conviction sufficient to estimate that a criminal act exists and that he is guilty as a participant.").

months and then announced that the investigation would continue for an indefinite period.⁵⁹ Importantly, the court's order explicitly recognized that the investigation had been launched on the basis of the *Clarín* article that contained the embezzlement allegations.⁶⁰ The order also recognized that Ms. Picolotti's defense at her initial hearing had been limited to responding to the prosecutor's *requisitoria fiscal*.⁶¹ Finally, the order found a "lack of merit" in the allegations.⁶² Yet, the Investigation Court decided to keep investigating. The investigation then "continued" for several years—Ms. Picolotti was not informed of any court hearings or investigative steps, and the case did not appear to move forward, but it remained ongoing and continued to be a source of intimidation and distress to Ms. Picolotti and her family.

This lengthy investigation violated yet another provision of Argentine law. Article 207 of the Argentine Criminal Procedure Code required Mr. Marijuán's investigation to be completed within four months, unless the judge sought an extension from the appellate court.⁶³ The time of investigation is counted from the *indagatoria* until the elevation of the case to trial. In this case, years—not months—passed between the *indagatoria* and any progress in the case at all. The judge never requested an extension of the time for investigation. Nor did the judge explain her blatant disregard of the four-month investigation limit.

From December 2014 to September 2015, Ms. Picolotti filed five motions and appeals seeking to nullify the subpoena calling her for an *indagatoria*, as well as the *indagatoria* itself.⁶⁴

⁵⁹ Exhibit 32, Order regarding lack of merit (Juzgado Criminal y Correccional Federal No. 1 July 7, 2011)

⁶⁰ Exhibit 32, Order regarding lack of merit (Juzgado Criminal y Correccional Federal No. 1 July 7, 2011)

⁶¹ Exhibit 32, Order regarding lack of merit (Juzgado Criminal y Correccional Federal No. 1 July 7, 2011)

⁶² Exhibit 32, Order regarding lack of merit (Juzgado Criminal y Correccional Federal No. 1 July 7, 2011)

⁶³ Cód. Proc. Pen. art. 207.

⁶⁴ Exhibit 55, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *incidente de nulidad* regarding the *indagatoria* (Dec. 28, 2014); Exhibit 57, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *second incidente de nulidad* regarding the *indagatoria* (Feb. 10, 2015); Exhibit 60, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *recurso de apelación* regarding the *indagatoria* (March 3, 2015); Exhibit 62, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *recurso de casación* regarding the *indagatoria* (Mar. 27, 2015); Exhibit 64, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *recurso de queja* regarding the *indagatoria* (Apr. 15, 2015).

Ms. Picolotti argued that new and unfounded factual allegations were unfairly raised for the first time during the 2011 *indagatoria*, without any prior notice. Ms. Picolotti also argued that there had been procedural defects and that, by ignoring the prosecutor's *requisitoria fiscal* and adding new factual allegations, the judge had impermissibly assumed the role of prosecutor in violation of multiple provisions of the Argentine Criminal Procedure Code. Defense counsel also argued that the judge denied Ms. Picolotti due process and an opportunity to effectively defend herself.

Ms. Picolotti's challenges were denied on procedural grounds or without any sound justification at all. At the investigative level, for example, Judge Servini de Cubría denied one motion to nullify the *indagatoria* on the ground that it overlapped with a motion to nullify the summons to the hearing, such that it was subsumed within the first motion.⁶⁵ The judge cited no precedent for such a decision. Still, the judge refused to nullify the summons or *indagatoria*. The Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal (National Court of Criminal and Correctional Appeals) affirmed in a two-and-a-half page order that failed to address Ms. Picolotti's arguments that the proceedings violated her constitutional rights and her rights under the American Convention.⁶⁶ Nor did the court engage with the merits of Ms. Picolotti's paragraph-by-paragraph critique of the decision below.⁶⁷ Ms. Picolotti's further attempts to appeal were denied on procedural grounds.⁶⁸

⁶⁵ Exhibit 58, Order denying second *incidente de nulidad* regarding the *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Feb. 11, 2015). See also Exhibit 56, Order denying *incidente de nulidad* regarding the *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Feb. 3, 2015)

⁶⁶ Exhibit 61, Order denying *recurso de apelación* regarding the *indagatoria* (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Mar. 11, 2015) (stating the judge was not limited to the prosecutor's *requisitoria fiscal* and call for the *indagatoria*, and the defendant was informed of her rights and the allegations against her, such that she can prepare an adequate defense).

⁶⁷ Exhibit 61, Order denying *recurso de apelación* regarding the *indagatoria* (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Mar. 11, 2015).

⁶⁸ See Exhibit 63, Order denying *recurso de casación* regarding the *indagatoria* (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Apr. 8, 2015) (finding the appeal inadmissible because the challenged decision is not final).

D. In The Process Of Trying To Dismiss The Indictment, Ms. Picolotti's Lawyer Was Improperly Suspended

Ms. Picolotti was formally indicted on July 18, 2014, more than three years after the *indagatoria* and roughly seven years after the initiation of the investigation.⁶⁹ In the indictment, the judgment must describe the facts attributed to the accused and the legal classification of the office.⁷⁰ Ms. Picolotti was charged with the crime of “defraudación en perjuicio de la administración pública,” or fraud harming public administration.⁷¹ The indictment explicitly recognized that the criminal prosecution was based on the complaints of Juan Ricardo Mussa and others, who in turn had based their allegations on the July 8, 2007 article in *Clarín*.⁷² The indictment relied on the fabricated story in that article and the inadmissible evidence presented by the prosecutor in 2009 (and the judge in 2011), including receipts with forged signatures from Box 31—the box of evidence that arrived in court custody already opened—purportedly showing that Ms. Picolotti had used public funds to make personal purchases. Not only does Ms. Picolotti swear that these receipts were forged, they came from the boxes of evidence that had been improperly inventoried, disappeared from custody for several days, and were subsequently discovered with at least one broken seal.⁷³

Moreover, the indictment recognized that the factual allegations against Ms. Picolotti differ from those presented by the prosecutor’s *requisitoria fiscal*, the document which originally outlined allegations against Ms. Picolotti and set forth the prosecutor’s view that there was reason to believe she committed a crime. The order notes that Ms. Picolotti’s defense, which

⁶⁹ Exhibit 40, *Procesamiento* of Romina Picolotti (Juzgado Criminal y Correccional Federal No. 1 July 18, 2014).

⁷⁰ COD. PROC. PEN. art. 308.

⁷¹ Exhibit 40, *Procesamiento* of Romina Picolotti (Juzgado Criminal y Correccional Federal No. 1 July 18, 2014) (citing articles 173 and 174 of the Argentine Criminal Code).

⁷² Exhibit 40, *Procesamiento* of Romina Picolotti (Juzgado Criminal y Correccional Federal No. 1 July 18, 2014).

⁷³ Exhibit 40, *Procesamiento* of Romina Picolotti (Juzgado Criminal y Correccional Federal No. 1 July 18, 2014).

focused on the facts in the *requisitoria fiscal*, thus deserved little analysis.⁷⁴ In addition to officially charging her, the indictment ordered a lean on Ms. Picolotti's home in Córdoba, Argentina in the amount of ARS 450,000.⁷⁵

At this time, Ms. Picolotti still faced great difficulty in examining the evidence against her. Rather, the only place she could see even parts of it was in the media, including the *Clarín* newspaper, which had been the source of the retaliatory (and false) story that gave rise to the prosecution in the first place and which had subsequently published images of the false evidence that apparently had been "leaked" to the newspaper.

Ms. Picolotti moved to dismiss the indictment on July 22, 2014 denying that she had charged any improper personal expenses or flights to the government and noting that her government expenses had all been approved by another government agency.⁷⁶

On appeal, Argentina violated Ms. Picolotti's right to counsel of her own choosing. Days before the appeal, the appellate court suspended her lawyer, without any cause or warning. On September 5, 2014, the appellate court notified Ms. Picolotti that her lawyer of the last three years, Felipe Trucco, would not be permitted to litigate the appeal based on local regulations of the city bar association in Buenos Aires.⁷⁷ The court gave Mr. Trucco just five days to complete the registration process, which typically takes more than a month. Mr. Trucco had not been required to register with the city bar association during the prior three years as Ms. Picolotti's attorney. Indeed, in 2011, the court had reviewed and approved Mr. Trucco's credentials when she swore him in and admitted him to serve as Ms. Picolotti's defense counsel in this case; he

⁷⁴ Exhibit 40, *Procesamiento* of Romina Picolotti (Juzgado Criminal y Correccional Federal No. 1 July 18, 2014).

⁷⁵ Exhibit 40, *Procesamiento* of Romina Picolotti (Juzgado Criminal y Correccional Federal No. 1 July 18, 2014).

⁷⁶ See Exhibit 54, Order denying Romina Picolotti's challenge to the *procesamiento* (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Dec. 22, 2014) (describing Ms. Picolotti's arguments).

⁷⁷ See Exhibit 41, Brief on behalf of Romina Picolotti filed by Felipe Trucco regarding September 5, 2014 order on Felipe Trucco's credentials (Sept. 14, 2014) (describing the September 5, 2014 order).

was also registered to practice in the federal courts by the Undersecretary of Registration for the Supreme Court of Justice of the Nation.⁷⁸

Ms. Picolotti promptly challenged Mr. Trucco's potential suspension on statutory and constitutional grounds.⁷⁹ She argued federal law requires only that a lawyer be registered to practice in the federal courts, which Mr. Trucco was, and any contrary interpretation would violate Mr. Trucco's constitutional rights and ability to prepare a defense, as well as Ms. Picolotti's constitutional right to a lawyer of her choice. The Investigation Court denied the petition on October 1, 2014, and suspended Mr. Trucco from representing Ms. Picolotti.⁸⁰ Mr. Trucco requested an appeal, arguing that his suspension violated a statute and both his constitutional right to work and Ms. Picolotti's right to a lawyer of her choice.⁸¹ The appeal was denied. The court gave Ms. Picolotti just five days to find a new lawyer and then set a hearing date shortly thereafter, on November 13, 2014, for the appeal of her indictment.

Ms. Picolotti rushed to find a new lawyer. Ruben Bianchi presented himself to the court for appointment as her lawyer on October 14, 2014, just a few weeks before the hearing,⁸² and he was confirmed as Ms. Picolotti's lawyer on October 20, 2014.⁸³ He requested that the hearing be delayed so that he could review the case history and voluminous record, and prepare an appropriate defense.⁸⁴ When the court denied Mr. Bianchi's request, he resigned on the ground that it would have been unreasonable and impossible to prepare and present a proper defense

⁷⁸ Exhibit 29, Order accepting Felipe Trucco as Romina Picolotti's lawyer (Juzgado Criminal y Correccional Federal No. 1).

⁷⁹ Exhibit 41, Brief on behalf of Romina Picolotti filed by Felipe Trucco regarding September 5, 2014 order on Felipe Trucco's credentials (Sept. 14, 2014).

⁸⁰ Exhibit 42, Order regarding suspension of Felipe Trucco (Juzgado Criminal y Correccional Federal No. 1 Oct. 1, 2014).

⁸¹ Exhibit 43, Brief on behalf of Romina Picolotti filed by Felipe Trucco: *recurso de apelación* regarding suspension of Felipe Trucco (October 6, 2014).

⁸² Exhibit 44, Order regarding the presentation of Rubén Bianchi as Romina Picolotti's lawyer (Juzgado Criminal y Correccional Federal No. 1 Oct. 14, 2014)

⁸³ Exhibit 45, Order regarding the acceptance of Rubén Bianchi as Romina Picolotti's lawyer (Juzgado Criminal y Correccional Federal No. 1 Oct. 20, 2014).

⁸⁴ See Exhibit 46, Resignation of Rubén Bianchi as Romina Picolotti's lawyer (Oct. 28, 2014).

with so little time before the hearing.⁸⁵ The Investigation Court then notified Ms. Picolotti that she had only three days to find a new lawyer, or the court would designate a court-appointed lawyer.⁸⁶ Ms. Picolotti filed a request for more time,⁸⁷ which the Investigation Court rejected on November 4, 2014, without explanation.⁸⁸ The court appointed a public defender for Ms. Picolotti,⁸⁹ but did not notify her immediately.⁹⁰

Around November 6, 2014, Ms. Picolotti received a telephone call from the assistant to Ms. Picolotti's court-appointed defense counsel.⁹¹ This came as a surprise to Ms. Picolotti, who had not been notified of any appointment of counsel by the court.⁹² The public defender's assistant told Ms. Picolotti that the public defender had a large workload and would not be able to study the case, but said that the defender's office would try to be ready for the hearing scheduled seven days later, on November 13, 2014.⁹³

Ms. Picolotti did not hear from her purported court-appointed counsel again until the day before the scheduled hearing in the appellate court.⁹⁴ The public defender told Ms. Picolotti that the appellate court had granted her request to delay the hearing.⁹⁵ The appellate court did not explain the reasons for granting an extension of time to the court-appointed defense counsel,

⁸⁵ Exhibit 46, Resignation of Rubén Bianchi as Romina Picolotti's lawyer (Oct. 28, 2014).

⁸⁶ Exhibit 47, Order regarding time to retain a new lawyer (Juzgado Criminal y Correccional Federal No. 1 Oct. 30, 2014).

⁸⁷ Exhibit 48, Request from Romina Picolotti for more time to retain a new lawyer (November 2, 2014).

⁸⁸ Exhibit 49, Order denying Romina Picolotti's request for more time to retain a new lawyer (Juzgado Criminal y Correccional Federal No. 1 Nov. 4, 2014).

⁸⁹ Exhibit 49, Order denying Romina Picolotti's request for more time to retain a new lawyer (Juzgado Criminal y Correccional Federal No. 1 Nov. 4, 2014).

⁹⁰ Exhibit 53, Certificate of service regarding the appointment of a public defender for Romina Picolotti (Policia Federal Argentina Nov. 26, 2014).

⁹¹ Exhibit 1, Affidavit of Romina Picolotti ¶ 67.

⁹² Exhibit 1, Affidavit of Romina Picolotti ¶ 69.

⁹³ Exhibit 1, Affidavit of Romina Picolotti ¶ 68.

⁹⁴ Exhibit 1, Affidavit of Romina Picolotti ¶ 70.

⁹⁵ The public defender asked the court to delay the hearing on the grounds that there was not sufficient time between the notice of appointment on November 5 to prepare for a hearing on November 13. Exhibit 50, Request for additional time (Ministeria Público de la Defensa Nov. 2014). The Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal then delayed the hearing for two weeks, until November 27, 2014. Exhibit 51, Order delaying hearing on appeal of the indictment (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Nov. 7, 2014).

even though it had refused to grant an extension for Mr. Bianchi, or the requested extensions of time for Ms. Picolotti to find and engage the counsel of her choosing.⁹⁶

Ms. Picolotti attempted to confer with her new court-appointed counsel, but counsel refused to return her repeated calls and emails.⁹⁷ Then, shortly before the rescheduled hearing, the court-appointed counsel called to say that he was planning to present a brief to the court. Ms. Picolotti asked for a copy of the proposed brief, but the court-appointed counsel refused to let Ms. Picolotti see it.⁹⁸ The court-appointed counsel said the office had already decided the legal strategy and saw no need to reveal it to Ms. Picolotti before presenting it to the court.⁹⁹

Having been denied adequate representation and denied the right to prepare her defense, Ms. Picolotti again sought to appoint a lawyer of her own choosing. A new lawyer, Daniela Santa Cruz, agreed to represent Ms. Picolotti. She had difficulty being sworn in, however, as she had to make multiple trips to the courthouse before being admitted as counsel of record.¹⁰⁰ Finally, shortly before the hearing, Judge Servini de Cubría accepted Ms. Santa Cruz as Ms. Picolotti's counsel.¹⁰¹ On the day of the hearing, the appellate court notified Ms. Picolotti that it would delay the hearing, but suggested falsely that Ms. Picolotti had intentionally delayed the hearing by changing her lawyer multiple times.¹⁰²

⁹⁶ See Exhibit 51, Order delaying hearing on appeal of the indictment (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal).

⁹⁷ Exhibit 1, Affidavit of Romina Picolotti ¶ 73.

⁹⁸ Exhibit 1, Affidavit of Romina Picolotti ¶ 75.

⁹⁹ Exhibit 1, Affidavit of Romina Picolotti ¶ 75.

¹⁰⁰ Exhibit 1, Affidavit of Romina Picolotti ¶ 77.

¹⁰¹ Exhibit 52, Order accepting Daniela Santa Cruz as Romina Picolotti's lawyer (Juzgado Criminal y Correccional Federal No. 1 Nov. 26, 2014).

¹⁰² See Exhibit 54, Order denying Romina Picolotti's challenge to the indictment (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Dec. 22, 1014) (describing a November 27, 2014 order delaying the hearing, in which the court said that Ms. Picolotti had used four lawyers in her appeal, which in turn had led to the setting of three hearings).

The appellate court ultimately rejected Ms. Picolotti's challenges to her indictment on December 22, 2014.¹⁰³ The appellate court assumed the veracity of the evidence (noting that the receipts showing improper personal expenditures appeared to be signed by Ms. Picolotti)—without regard for the inadmissibility and unreliability of the purported evidence, including the forged signatures—and found that it was sufficient to proceed with prosecuting Ms. Picolotti for aggravated fraudulent administration. Ms. Picolotti had no route by which to appeal this order.

E. Ms. Picolotti's Case Was Elevated To Trial Without Her Knowledge

Following the decision on the indictment, the case was dormant for almost six months. However, documents allegedly in court custody were leaked to the press purporting to show that Ms. Picolotti had signed receipts of allegedly unlawful expenditures, including luxury gifts, expensive wine, and chocolate.¹⁰⁴ When Ms. Picolotti saw these alleged receipts in the press, she could clearly see that the signatures on the receipts were not hers; rather, they had been forged. Although Ms. Picolotti has since sworn that these and other documents have been fabricated and forged—including, for example, receipts of expenses allegedly made by Ms. Picolotti at times when the public record demonstrates that she was in geographical locations different from those indicated on the receipts—the court refused to permit a handwriting analysis of the signatures to demonstrate that they had been forged.¹⁰⁵

On June 30, 2015, the court decided to elevate to Tribunal Oral en lo Criminal Federal 6 (the "Trial Court") unspecified allegations against Ms. Picolotti.¹⁰⁶ Incredibly, the court did not notify Ms. Picolotti or her counsel of this crucial ruling. The court's order stated that it would

¹⁰³ Exhibit 54, Order denying Romina Picolotti's challenge to the indictment (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Dec. 22, 1014).

¹⁰⁴ See, e.g., Exhibit 68, *Picolotti cenaba en Puerto Madero con fondos del Estado*, INFOBAE (July 1, 2015), <https://www.infobae.com/2015/07/01/1738884-picolotti-cenaba-puerto-madero-fondos-del-estado/>.

¹⁰⁵ Exhibit 67, Order regarding elevation of Romina Picolotti's case to trial (Juzgado Criminal y Correccional Federal 1 June 30, 2015).

¹⁰⁶ Exhibit 67, Order regarding elevation of Romina Picolotti's case to trial (Juzgado Criminal y Correccional Federal 1 June 30, 2015).

provide electronic notice of the decision.¹⁰⁷ The court has said the decision was posted to the judiciary website, but it was never provided Ms. Picolotti or her counsel. Ms. Picolotti and her lawyers never received any notice.¹⁰⁸ As a result, she and her counsel were unaware of the start of the six-day period to oppose the elevation of the case to trial, and filed no objections.¹⁰⁹ Because the Criminal Procedure Code does not permit appeals of the elevation to trial,¹¹⁰ the failure to notify Ms. Picolotti of the decision prevented her from challenging the decision.

On August 5, 2015, the Investigation Court found that Ms. Picolotti was innocent of certain misconduct, including most of the allegations that had been based on the original accusations made in the *Clarín* article, which led to the prosecution against her in the first place.¹¹¹ After eight years of investigations and criminal proceedings, the court concluded that the prosecutor had failed to proffer evidence sufficient to sustain the allegations that Ms. Picolotti improperly hired friends and family, or engaged in any misconduct with respect to the environmental insurance policy or the grant of public funds to the city of Córdoba. The Investigation Court certified that it notified Ms. Picolotti of its ruling electronically.¹¹² Ms. Picolotti's lawyer received notice via email, and Ms. Picolotti also received this by regular mail. Because Ms. Picolotti received notice of this ruling, she did not have reason to suspect that she had not been notified of the court's previous order regarding the elevation to trial.

¹⁰⁷ Exhibit 67, Order regarding elevation of Romina Picolotti's case to trial (Juzgado Criminal y Correccional Federal 1 June 30, 2015).

¹⁰⁸ See Exhibit 71, Brief on behalf of Romina Picolotti filed by Felipe Trucco and Daniela Santa Cruz: *incidente de nulidad* regarding electronic notification (Sept. 4, 2015) (arguing for nullification of the electronic notification, in part because Ms. Picolotti's counsel did not receive the notification).

¹⁰⁹ See CÓD. PROC. PEN. art. 349 (providing six days for the defendant to oppose elevation to trial).

¹¹⁰ CÓD. PROC. PEN. art. 352.

¹¹¹ Exhibit 69, Order regarding partial dismissal (Juzgado Criminal y Correccional Federal 1 Aug. 5, 2015).

¹¹² The notification took place five days later, on August 10, 2015. Exhibit 69, Order regarding partial dismissal (Juzgado Criminal y Correccional Federal 1 Aug. 5, 2015).

The court confirmed the elevation to trial on August 20, 2015.¹¹³ Ms. Picolotti ultimately learned of the elevation to trial from an article in *Clarín*.¹¹⁴ Ms. Picolotti appealed the court's failure to notify her of the case's elevation,¹¹⁵ which had caused her to miss the deadline to oppose the underlying decision. She argued that she had never been actually notified of the elevation, and raised several challenges to the judiciary's new electronic notification system.¹¹⁶ On October 30, 2015, the Trial Court rejected Ms. Picolotti's claims.¹¹⁷

Ms. Picolotti sought to challenge the decision in the Cámara Federal de Casación Penal (Federal Court of Criminal Cassation) (the "Cassation Court"). In a few short paragraphs, the Cassation Court ruled that the complaint was inadmissible because it did not challenge a final judgment.¹¹⁸ It imposed costs on Ms. Picolotti for bringing the challenge.¹¹⁹

F. Ms. Picolotti's Numerous Appeals Were Unfairly Rejected, Often On Purely Procedural Grounds

As the proceedings continued, the court repeatedly demonstrated its partiality in what quickly came to feel like a sham proceeding. To increase the leverage against Ms. Picolotti, the court even put restrictions on her liberty and ability to travel. Ms. Picolotti traveled from the United States to Argentina in September 2015, to attend to several administrative issues triggered by the elevation of the case to trial, including collecting paperwork to bring to the police. (By this time, she and her family had sought refuge in the United States, primarily in response to

¹¹³ Exhibit 70, Order regarding elevation of Romina Picolotti's case to trial (Juzgado Criminal y Correccional Federal No. 1 Aug. 20, 2015).

¹¹⁴ Exhibit 1, Affidavit of Romina Picolotti, ¶ 65.

¹¹⁵ Exhibit 71, Brief on behalf of Romina Picolotti filed by Felipe Trucco and Daniela Santa Cruz: *incidente de nulidad* regarding electronic notification (Sept. 4, 2015).

¹¹⁶ Exhibit 71, Brief on behalf of Romina Picolotti filed by Felipe Trucco and Daniela Santa Cruz: *incidente de nulidad* regarding electronic notification (Sept. 4, 2015).

¹¹⁷ Exhibit 72, Order denying *incidente de nulidad* regarding electronic notification (Tribunal Oral en lo Criminal Federal 6 Oct. 30, 2015).

¹¹⁸ Exhibit 92, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Cámara Federal de Casación Penal Apr. 26, 2017).

¹¹⁹ Exhibit 92, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Cámara Federal de Casación Penal Apr. 26, 2017).

death threats and serious fears that they were no longer safe in Argentina.¹²⁰) Although Ms. Picolotti had flown from the United States to Argentina for the court hearing, appeared in court voluntarily, agreed to return to Argentina for future hearings, and was subject to a lien on her home the Trial Court nonetheless ordered her—without legal cause or justification—not to leave the country.¹²¹ As a result, Ms. Picolotti could not return to her home in the United States, was separated from her husband and young children, and was unable to perform her work for nearly three months. She asked for reconsideration of the court’s order and eventually received authorization on November 30, 2015, to travel back to the United States, but only temporarily.¹²²

In the face of these irregularities and threats to her liberty, Ms. Picolotti raised several challenges in Argentine court based on violations of her fundamental rights. First, on October 16, 2016, she challenged the violations of the chain of custody with respect to the purported evidence against her.¹²³ The Trial Court had finally granted Ms. Picolotti access to the purported evidence against her on October 6, 2016. On that day, when Ms. Picolotti’s lawyer arrived at the court to examine the purported evidence, he found it in unsealed boxes, in a hallway accessible to any court staff and others.¹²⁴ This constituted yet another failure under Argentine law to maintain proper custody of the purported evidence.¹²⁵ At Ms. Picolotti’s lawyer’s request, the court issued a statement for the record, acknowledging that the boxes were being kept in a hallway, which was accessible to court staff and the parties, and that the boxes were not

¹²⁰ Exhibit 1, Affidavit of Romina Picolotti ¶ 93.

¹²¹ See Exhibit 73, Order regarding authorization to live abroad (Tribunal Oral en lo Criminal Federal 6 Nov. 30, 2015) (describing order denying authorization to live abroad).

¹²² Exhibit 73, Order regarding authorization to live abroad (Tribunal Oral en lo Criminal Federal 6 Nov. 30, 2015) (describing order denying authorization to live abroad).

¹²³ Exhibit 85, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *incidente de nulidad* regarding violations of the chain of custody (Oct. 16, 2016).

¹²⁴ Exhibit 83, Statement of Felipe Trucco regarding evidence related to Romina Picolotti (Oct. 6, 2016).

¹²⁵ See Exhibit 85, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *incidente de nulidad* regarding violations of the chain of custody (Oct. 16, 2016).

sealed.¹²⁶ The statement noted that the storage of case files in this way impedes the proper administration of justice.¹²⁷ Ms. Picolotti's lawyer also learned that months earlier, when the evidence arrived at the Trial Court, the clerk had drafted notes detailing irregularities with the evidence, including how it arrived unsealed.¹²⁸ Neither the clerk nor the court had notified Ms. Picolotti or her counsel of those irregularities.

Ms. Picolotti accordingly moved to dismiss the indictment based on the violations of the chain of custody, challenging the initial introduction of inadmissible evidence as well as its maintenance in public places at the courthouse.¹²⁹ She argued that evidence had been illegally introduced into the case because the 63 boxes allegedly seized from Fundación ArgenINTA disappeared from police and court custody for two days and had clearly been tampered with. Ms. Picolotti also argued, among other issues, that the chain of custody had not been properly maintained; the contents of the boxes had not been properly documented; and Ms. Picolotti had not been notified of the boxes' seizure, opening, or examination, rendering it impossible to verify the evidence or effectively challenge it. These acts violated Ms. Picolotti's constitutional rights to due process, and an opportunity to prepare and present her legal defense. She sought to exclude the evidence on those grounds, but her motion was rejected by the Trial Court on June

¹²⁶ Exhibit 84, Order regarding evidence related to Romina Picolotti (Tribunal Oral en lo Criminal Federal 6 Oct. 6, 2016).

Infobae published a news story about the poor evidence-preservation at the Oral Tribunal. The article noted that Ms. Picolotti sought to dismiss her case because her lawyer found evidence in the hallway and objected to the chain of custody. Exhibit 91, Martín Angulo, *Colapso judicial: los jueces federales advierten que peligran las causas de corrupción*, POLÍTICA (Mar. 22, 2017), <http://www.infobae.com/politica/2017/03/22/colapso-judicial-los-jueces-federales-advierten-que-peligran-las-causas-de-corrupcion/>.

¹²⁷ Exhibit 84, Order regarding evidence related to Romina Picolotti (Tribunal Oral en lo Criminal Federal 6 Oct. 6, 2016); see also Exhibit 83, Statement of Felipe Trucco regarding evidence related to Romina Picolotti (Oct. 6, 2016) (describing irregularities in the evidence purportedly related to Ms. Picolotti)

¹²⁸ Exhibit 76, Statement of Clerk regarding evidence related to Romina Picolotti (Tribunal Oral en lo Criminal Federal 6, February 17, 2016).

¹²⁹ Exhibit 85, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *incidente de nulidad* regarding violations of the chain of custody (Oct. 16, 2016).

26, 2017.¹³⁰ The Trial Court accused her of “excessive formalism” and ruled that any irregularities and the “technical imprecision” of the seizure order had not harmed Ms. Picolotti.¹³¹ The Trial Court also stated that Ms. Picolotti had not shown that there were any alterations to the evidence and again concluded that she was not harmed by any formal violations.¹³²

Ms. Picolotti appealed, arguing that the Trial Court had committed legal and factual errors, but the Trial Court ruled the appeal inadmissible on procedural grounds on August 10, 2017.¹³³ Ms. Picolotti then filed a complaint with respect to the appeal before the Cassation Court in accordance with Articles 476 to 478 of the Argentine Criminal Procedure Code.¹³⁴ The court denied her complaint in a 1.5-page order on September 22, 2017, again on procedural grounds.¹³⁵ Ms. Picolotti, still diligently attempting to assert her rights, filed an extraordinary appeal before the Cassation Court on October 6, 2017, asking for the court to reconsider. The appeal was denied in one sentence on November 24, 2017, based on the “reasons and conclusions” of the prosecutor.¹³⁶ Ms. Picolotti again sought to appeal, and that appeal remains pending.

¹³⁰ Exhibit 96, Order denying *incidente de nulidad* regarding violations of the chain of custody (Tribunal Oral en lo Criminal Federal 6 June 26, 2017).

¹³¹ Exhibit 96, Order denying *incidente de nulidad* regarding violations of the chain of custody (Tribunal Oral en lo Criminal Federal 6 June 26, 2017).

¹³² Exhibit 96, Order denying *incidente de nulidad* regarding violations of the chain of custody (Tribunal Oral en lo Criminal Federal 6 June 26, 2017).

¹³³ Exhibit 98, Order denying *recurso de casación* regarding violations of the chain of custody (Tribunal Oral en lo Criminal Federal 6 Aug. 10, 2017). The court specifically held that the challenged decision was not a final judgment.

¹³⁴ These articles provide for the “recurso de queja,” or complaint appeal, which allows a defendant to challenge the dismissal of an appeal in another court. CÓD. PROC. PEN. 476–478.

¹³⁵ Exhibit 101, Order denying *recurso de queja* regarding violations of the chain of custody (Cámara Federal de Casación Penal)

¹³⁶ Exhibit 104, Order denying *recurso extraordinario federal* regarding statute of limitations and reasonable time (Cámara Federal de Casación Penal Nov. 24, 2017).

Second, Ms. Picolotti sought to dismiss the prosecution due to Argentina's failure to prosecute the case within a reasonable time.¹³⁷ She argued the statute of limitations had expired and that the delays violated her constitutional and American Convention right to be tried in a reasonable time. Ms. Picolotti also pointed out that the maximum penalty for the crimes of which she had been accused was six years—but the prosecution had already lasted for almost ten years.¹³⁸ On August 30, 2016, the Trial Court rejected Ms. Picolotti's claims, saying that the length of the proceedings was acceptable in part because Ms. Picolotti's motions to defend her rights lengthened the proceedings.¹³⁹

Ms. Picolotti attempted to appeal on September 6, 2016,¹⁴⁰ and the Trial Court ruled the appeal inadmissible on December 26, 2016. On April 26, 2017, the Cassation Court denied the complaint that Ms. Picolotti filed against the decision of Trial Court, ruling in two pages that the decision was not a final judgment and thus not appealable.¹⁴¹ Ms. Picolotti disagreed with that conclusion. She filed a *recurso extraordinario*,¹⁴² which was denied, and then sought review of that decision by the Supreme Court.¹⁴³ The Supreme Court denied the appeal on technical grounds, in one paragraph.¹⁴⁴ Apparently, the brief was the wrong page length or font size and did not attach the right decisions below.¹⁴⁵ The Supreme Court did not explain why it chose not

¹³⁷ Exhibit 77, Brief on behalf Romina Picolotti filed by Felipe Trucco: *incidente de nulidad* regarding statute of limitations and reasonable time (Mar. 9, 2016).

¹³⁸ Exhibit 77, Brief on behalf Romina Picolotti filed by Felipe Trucco: *incidente de nulidad* regarding statute of limitations and reasonable time (Mar. 9, 2016).

¹³⁹ Exhibit 81, Order denying *incidente de nulidad* regarding statute of limitations and reasonable time (Tribunal Oral en lo Criminal Federal 6 Aug. 30, 2016).

¹⁴⁰ Exhibit 82, Brief on behalf of Romina Picolotti filed by Felipe Trucco: *recurso de casación* regarding statute of limitations and reasonable time (Sept. 6, 2016).

¹⁴¹ Exhibit 92, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Cámara Federal de Casación Penal) Apr. 26, 2017).

¹⁴² Exhibit 93, Brief on behalf of Romina Picolotti filed by Felipe Trucco: *recurso extraordinario federal* regarding statute of limitations and reasonable time (May 12, 2017).

¹⁴³ Exhibit 95, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *recurso de queja* regarding statute of limitations and reasonable time (June 23, 2017).

¹⁴⁴ Exhibit 100, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Corte Suprema de Justicia de la Nación Sept. 5, 2017).

¹⁴⁵ Exhibit 100, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Corte Suprema de Justicia de la Nación Sept. 5, 2017) (citing Acordada 4/2007).

to hear the appeal despite these technical requirements, as it is empowered to do by the same regulation setting those requirements and as it has done several times in other cases.¹⁴⁶ Nor did the Supreme Court address the merits of Ms. Picolotti's claims regarding the statute of limitations, reasonable time, and elevation to trial.¹⁴⁷

Third, Ms. Picolotti moved to recuse the members of the Trial Court on the grounds that the judges demonstrated partiality in the August 30, 2016 denial of the claims related to reasonable time and the statute of limitations. On October 20, 2016, the Tribunal Oral en lo Criminal Federal No. 4 (a different division of the trial court) denied the request for recusal.¹⁴⁸ The decision held that the judges who issued the August 30, 2016 decision were resolving the issues presented by various motions and thus its opinions were unimpeachable. Ms. Picolotti appealed six days later.¹⁴⁹ When this was denied, Ms. Picolotti filed a complaint in the Cámara Federal de Casación Penal on November 24, 2016.¹⁵⁰ This motion was also denied. She has sought to file another appeal, and is still waiting on a court decision with respect to that appeal.

In all, Ms. Picolotti has filed more than twenty motions and appeals for redress of the violations committed by the Argentine courts. The courts have denied or disregarded every one of these appeals, almost always on procedural grounds. Two appeals—related to the chain of

¹⁴⁶ See Exhibit 6, Acordada 4/2007 (Corte Supreme de Justicia de la Nación Mar. 21, 2007). For example, in *Pavón* (Fallos P. 973. XLIII, December 16, 2008), the Supreme Court held that improper font size does not represent an unavoidable procedural bar so long as the document is capable of being read. Exhibit 31, Leandro M. Castelli, *Marval O'Farrell Mairal, Extraordinary Appeals (Certiorari): Flexibilization of Supreme Court Rule 4/2007*, MARVAL O'FARRELL MAIRAL (May 31, 2011), <https://www.marval.com/publicacion/recurso-extraordinario-flexibilizacion-de-la-acordada-csjn-4-2007-5787/>. Similarly, the Supreme Court ruled that appeals may be heard even though an appellant exceeds the limit on the number of lines or fails to include a cover page as required. *Id.*

¹⁴⁷ Exhibit 100, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Corte Supreme de Justicia de la Nación Sept. 5, 2017).

¹⁴⁸ Exhibit 86, Order denying *incidente de recusación* (Tribunal Oral en lo Criminal Federal 4 Oct. 20, 2016).

¹⁴⁹ Exhibit 87, Brief on behalf of Romina Picolotti filed by Felipe Truco: *recurso de casación* regarding recusal (Oct. 26, 2016).

¹⁵⁰ Exhibit 88, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *recurso de queja* regarding recusal (Nov. 26, 2016).

custody and the recusal of the Trial Court judges—remain pending. And Ms. Picolotti is still waiting for the Trial Court to set a date for trial, as she has been for over two years.

G. Ms. Picolotti's And Her Family's Injuries And Damages

Years of threats, retaliation, criminal investigations and prosecution have severely damaged Ms. Picolotti's personal and professional life in Argentina and the United States. She suffered retaliation for her official acts as Environment Secretary, has been falsely accused of crimes she did not commit, received countless death threats, lost her home, feared for her life and the lives of her husband and children, and had to move away from her native Argentina and resettle in the United States for safety and security reasons. Opponents of her environmental agenda fabricated a story falsely accusing her of official misconduct, published that story in Argentina's largest daily newspaper (which they own),¹⁵¹ and then used their own false reporting to initiate and pursue criminal complaints with the help of the Argentine judicial system.¹⁵² Based on this fabricated criminal complaint, Argentine public officials orchestrated a criminal investigation and prosecution of Ms. Picolotti, placed a lien on her home, temporarily prohibited her from leaving the country, violated countless provisions of Argentine law and procedure, and engaged in repeated denials of justice. These official actions have damaged Ms. Picolotti's reputation, harmed her professional career in Argentina, severely hindered the ability of her non-governmental organization to conduct any advocacy, and inflicted severe emotional pain and suffering on Ms. Picolotti and her family for more than a decade.

¹⁵¹ See Exhibit 8, Claudio Savoia, *Los extraños manejos en la Secretaría de Medio Ambiente*, CLARÍN (July 8, 2007), <http://edant.clarin.com/suplementos/zona/2007/07/08/z-01453283.htm> (alleging that Ms. Picolotti mismanaged public funds).

¹⁵² See Exhibit 9, Criminal Complaint filed by Enrique Piragini (July 8, 2007) (citing *Clarín* article); Exhibit 11, Criminal Complaint filed by Adrian Perez, Susana Garcia, and Elsa Quiroz (July 10, 2007) (same); Exhibit 12, Criminal Complaint filed by Juan Ricardo Mussa (July 12, 2007) (same).

During this time, the litany of false allegations, procedural irregularities, violations of Argentine law, and denials of justice have caused Ms. Picolotti, her husband, and her two children to suffer extreme fear, anxiety, anger, frustration, emotional pain, and distress.¹⁵³ These feelings are magnified each time the courts have declined to follow established Argentine law, failed to notify Ms. Picolotti of decisions, violated Ms. Picolotti's fundamental rights, and otherwise allowed the criminal process to be misused as a means of personal and political retaliation.¹⁵⁴ Ms. Picolotti recognizes, after eleven years, that the court has no intention of resolving her case anytime soon.¹⁵⁵ Indeed, Ms. Picolotti's fourteen-year old child does not recall a time when Ms. Picolotti was not defending herself from these accusations. And there is no end in sight. Instead, it appears that her political adversaries will continue to misuse the criminal justice system against her for as long as they are able to do so without any serious consequences. The result is that Ms. Picolotti and her family will continue to experience pain and suffering for the foreseeable future unless this Commission directs Argentina to uphold and enforce her fundamental rights by ending these proceedings and paying damages to Ms. Picolotti and her family.

The financial burden imposed by the criminal proceedings has added to Ms. Picolotti's stress and anxiety.¹⁵⁶ Frequently, the courts' rejections of Ms. Picolotti's appeals have included an order to pay for court costs.¹⁵⁷ Argentina placed a lien on her home at the time of the

¹⁵³ Exhibit 1, Affidavit of Romina Picolotti ¶ 90; *see also id.* ¶ 88 ("The criminal proceeding has made me feel insecure, frustrated, tense, and impotent.").

¹⁵⁴ Exhibit 1, Affidavit of Romina Picolotti ¶ 91.

¹⁵⁵ Exhibit 1, Affidavit of Romina Picolotti ¶ 96.

¹⁵⁶ Exhibit 1, Affidavit of Romina Picolotti ¶ 100.

¹⁵⁷ *See, e.g.*, Exhibit 61, Order denying *recurso de apelación* regarding the *indagatoria* (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Mar. 11, 2015) (requiring Ms. Picolotti to pay costs); Exhibit 65, Order denying *recurso de queja* regarding the *procesamiento* (Cámara Federal de Casación Penal May 12, 2015) (same); Exhibit 81, Order denying *incidente de nulidad* regarding statute of limitations and reasonable time (Tribunal Oral en lo Criminal Federal 6 Aug. 30, 2016) (same).

indictment,¹⁵⁸ and the court has since ordered significant additional monetary security, even though Ms. Picolotti has diligently complied with every court order and appeared at every required court proceeding.¹⁵⁹ Multiple banks also closed Ms. Picolotti's accounts.¹⁶⁰ As a result of the criminal proceedings, Ms. Picolotti had to give up her career in Argentina and relocate her family to the United States,¹⁶¹ which was difficult for her, her husband, and their children.¹⁶² The cost of hiring counsel to defend her has added to her financial burden, which in turn has exacerbated her pain and suffering.¹⁶³

The not-for-profit environmental organization that Ms. Picolotti founded in Argentina, CEDHA, has also suffered severe harm and financial damages.¹⁶⁴ Over the course of the criminal investigation and prosecution of Ms. Picolotti, CEDHA's principal donors and benefactors have cancelled their grants and other support.¹⁶⁵ The loss of these funds sent CEDHA's finances into a downward spiral.¹⁶⁶ The banks in Argentina at which CEDHA held accounts suddenly and without explanation suspended their banking services.¹⁶⁷ Three banks in the U.S. also closed CEDHA's accounts without warning, explaining that Ms. Picolotti, one of the signatories on the institutional accounts, was now on a black-list of customers with whom they did not want to do business.¹⁶⁸ CEDHA was audited and searched numerous times by Argentine officials, including the national tax authority, always at times of heightened

¹⁵⁸ Exhibit 40, *Procesamiento* of Romina Picolotti (Juzgado Criminal y Correccional Federal No. 1 July 18, 2014) (ordering a lien of ARS 450,000 against Ms. Picolotti).

¹⁵⁹ Exhibit 105, Order regarding authorization to live abroad (Tribunal Oral en lo Criminal Federal 6 Dec. 4, 2017) (ordering a lien placed against Ms. Picolotti's property in the amount of ARS 100,000).

¹⁶⁰ Exhibit 1, Affidavit of Romina Picolotti ¶ 99.

¹⁶¹ Exhibit 1, Affidavit of Romina Picolotti ¶ 93.

¹⁶² Exhibit 1, Affidavit of Romina Picolotti ¶¶ 94–95.

¹⁶³ Exhibit 1, Affidavit of Romina Picolotti ¶ 97–98, 100.

¹⁶⁴ Exhibit 1, Affidavit of Romina Picolotti ¶ 101–107.

¹⁶⁵ Exhibit 1, Affidavit of Romina Picolotti ¶ 102.

¹⁶⁶ Exhibit 1, Affidavit of Romina Picolotti ¶ 102.

¹⁶⁷ Exhibit 1, Affidavit of Romina Picolotti ¶ 103.

¹⁶⁸ Exhibit 1, Affidavit of Romina Picolotti ¶ 104.

environmental advocacy.¹⁶⁹ In 2012, CEDHA was forced to close its office, lay off its staff of approximately twenty-five, and reduce its operations to a “virtual” platform.¹⁷⁰ Today, without staff, steady funding, or in-country advocacy and operations, CEDHA is a shell of its former self. It has been essentially destroyed.

In an effort to replace what was lost in Argentina, Ms. Picolotti and her husband have created a new organization in the United States called Center for Human Rights and the Environment (“CHRE”).¹⁷¹ It has been expensive and time-consuming to create and build this new organization from scratch, but this was the only way for Ms. Picolotti to continue her environmental advocacy, which is what her political adversaries in Argentina have been trying to stop.

IV. Argentina’s Longstanding Pattern Of Misusing The Criminal Justice System For Political Retribution And Retaliation

Ms. Picolotti’s case, while extreme, is emblematic of the challenges that human rights defenders face in Argentina and throughout Latin America. Argentina’s use of the criminal justice system for political retaliation is well known. Chief Justice Ricardo Lorenzetti of Argentina’s Supreme Court¹⁷² and Argentine President Mauricio Macri¹⁷³ have acknowledged that the judiciary is subject to political pressure and requires reforms to create greater impartiality and independence. An association of judges, lawyers, and attorneys publicly stated in 2016 that they were pressured on a regular basis to alter judicial decisions that did not serve

¹⁶⁹ See, e.g., Exhibit 26, Search warrant for CEDHA (Juzgado Criminal y Correccional Federal No. 1 Aug. 11, 2010).

¹⁷⁰ Exhibit 1, Affidavit of Romina Picolotti ¶ 106–107.

¹⁷¹ Exhibit 1, Affidavit of Romina Picolotti ¶ 81.

¹⁷² See Exhibit 19, *La Corte reclamó “más independencia” para los jueces*, EL DÍA (Sept. 19, 2008), <http://www.eldia.com/nota/2008-9-19-la-corte-reclamo-mas-independencia-para-los-jueces> (explaining that the Chief Justice was concerned about the political influence of the organizations that select and remove judges and the lack of budgetary autonomy with respect to the executive, both of which limit the independence of judges).

¹⁷³ Exhibit 75, Andrés del Río Roldán, *Macri and the judges*, DEMOCRACIA ABIERTA (Jan. 21, 2016), <https://www.opendemocracy.net/democraciaabierta/andr-s-del-r-o-rold-n/macri-and-judges> (noting that President Macri publicly advocated against the erosion of judicial independence, but, since taking office, has acted in a way that “violates the separation of powers and undermines judicial independence”).

certain government interests.¹⁷⁴ The U.S. State Department has also reported that, “[w]hile the constitution and law provide for an independent judiciary, the government did not always respect judicial independence.”¹⁷⁵ The U.S. State Department’s report on the status of human rights in Argentina specifically highlighted political pressure on the courts, noting that “judges in some federal criminal and ordinary courts were subject at times to political manipulation” and that “[t]he government sought to influence the judicial process systemically.”¹⁷⁶

This Commission has previously recognized the widespread misuse of criminal justice systems in Latin America to silence human rights defenders.¹⁷⁷ In 2006, the Commission emphasized that a “particularly worrisome aspect” of the status of human rights in Latin America is that “in some cases defenders are harassed by the state through criminal proceedings aimed solely at impeding the free defense of legitimate interest.”¹⁷⁸ The Commission further emphasized that “[i]n other cases, criminal proceedings are instituted without any evidence, for the purpose of harassing the members of the organizations, who must assume the psychological and economic burden of facing a criminal indictment.”¹⁷⁹ In 2011, the Commission “noted a growing sophistication of the mechanisms designed to hamper, block, or discourage the work of defending and promoting human rights, which is reflected in baseless criminal charges being filed.”¹⁸⁰ The Commission emphasized the “increasingly systematic and recurring way in which baseless criminal actions are brought against human rights defenders” and noted that such

¹⁷⁴ Exhibit 80, *Argentine Judges Say They’re Being Pressured by Macri*, TELESUR (July 26, 2016), <http://www.telesurtv.net/english/news/Argentine-Judges-Say-Theyre-Being-Pressured-by-Macri-20160725-0027.html>.

¹⁷⁵ Exhibit 78, U.S. DEPARTMENT OF STATE, ARGENTINA 2015 HUMAN RIGHTS REPORT 5 (Apr. 13, 2016).

¹⁷⁶ Exhibit 78, U.S. DEPARTMENT OF STATE, ARGENTINA 2015 HUMAN RIGHTS REPORT 5–6 (Apr. 13, 2016).

¹⁷⁷ Exhibit 3, INTER-AM. COMM’N H.R., REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS [hereinafter IACHR First Report on Human Rights Defenders] (Mar. 7, 2006); Exhibit 35, IACHR Second Report on Human Rights Defenders

¹⁷⁸ Exhibit 3, IACHR First Report on Human Rights Defenders ¶¶ 174, 178–81.

¹⁷⁹ Exhibit 3, IACHR First Report on Human Rights Defenders ¶¶ 179.

¹⁸⁰ Exhibit 35, IACHR Second Report on Human Rights Defenders ¶ 172.

proceedings typically suffer from “unreasonable prolongation.”¹⁸¹ The Commission explained that such “baseless criminal actions” may subject a state to international responsibility for violating fundamental human rights.¹⁸²

Human rights defenders like Ms. Picolotti, who are focused on protecting the environment, are a very high-risk group for politically-motivated criminal investigations and prosecutions. This is because, as Amnesty International reports, environmental defenders are viewed by powerful political and economic entities as obstacles to large-scale business and development.¹⁸³ Approximately half of the cases taken on by Amnesty International between 2010 and 2012 involved activists working with environmental issues and natural resources extraction.¹⁸⁴ Moreover, the United Nations Special Rapporteur on the situation of human rights defenders concluded that the Americas is the region of the world in which environmental defenders are most at risk of retaliation.¹⁸⁵ The Court has also recognized that “an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work.”¹⁸⁶ The Commission similarly found in 2011 that “attacks, aggression and harassment targeted at defenders of the environment” has increased in certain states in Latin America.¹⁸⁷

Indeed, the need for states to protect human rights defenders working on environmental issues is now widely known and gaining increased international attention. The U.N. Special Rapporteur on Human Rights and the Environment recently released Draft Guidelines on Human

¹⁸¹ Exhibit 35, IACHR Second Report on Human Rights Defenders ¶¶ 78, 109.

¹⁸² Exhibit 35, IACHR Second Report on Human Rights Defenders ¶ 81.

¹⁸³ Exhibit 38, Amnesty International, *Transforming Pain into Hope: Human Rights Defenders in America* (Dec. 7, 2012), <https://www.amnesty.org/en/documents/AMR01/006/2012/en/>.

¹⁸⁴ Exhibit 38, Amnesty International, *Transforming Pain into Hope: Human Rights Defenders in America* 28 (Dec. 7, 2012), <https://www.amnesty.org/en/documents/AMR01/006/2012/en/>.

¹⁸⁵ Exhibit 35, IACHR Second Report on Human Rights Defenders.

¹⁸⁶ I/A Court H.R., Case of *Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, para 149 (citing IACHR reports).

¹⁸⁷ Exhibit 35, IACHR Second Report on Human Rights Defenders ¶ 312.

Rights and the Environment, which, according to the Special Rapporteur, “summarize the basic human rights obligations of States on environmental matters, as they have been clarified by human rights bodies.”¹⁸⁸ The Guidelines confirm that “[e]very State has an obligation to provide for a safe and enabling environment in which individuals, groups and organs of society that work on human rights and environmental issues can operate free from threats, hindrance and insecurity.”¹⁸⁹ They also emphasize that “[e]very State has an obligation to provide for effective remedies for violations and abuses of human rights relating to the enjoyment of a safe, clean, healthy and sustainable environment.” In addition, the Inter-American Court recently issued an advisory opinion recognizing the right to a healthy environment as “a fundamental right for the existence of humanity,” and establishing the States’ obligation to guarantee the rights to public participation, access to information related to potential environmental harms, and access to justice in regard to environmental obligations.¹⁹⁰

This petition presents the opportunity for the Commission to correct a particular case as well as establish a precedent to help address the structural problems in Argentina that legitimize and condone the use of the criminal justice system to retaliate against (and intimidate) environmental and human rights defenders.

V. Argentina’s Conduct Violates Fundamental Rights Enshrined In The Convention

A. Argentina’s Criminal Prosecution Violates Ms. Picolotti’s Right To A Fair Trial Brought Within A Reasonable Time Under Article 8(1) Of The Convention, In Connection With Article 1.1

All articles of the American Convention must be read in connection with Article 1.1, which obligates parties to the Convention, like Argentina, to “respect the rights and freedoms

¹⁸⁸ Exhibit 102, John H. Knox, U.N. Special Rapporteur on Human Rights and the Environment, Mandate of the Special Rapporteur on Human Rights and the Environment (Oct. 11, 2017).

¹⁸⁹ Exhibit 103, John H. Knox, Draft Guidelines on Human Rights and the Environment ¶ 7 (Oct. 11, 2017).

¹⁹⁰ I/A Court H.R., Environment and Human Rights, Advisory Opinion OC-23/17 of November 15, 2017.

recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

Article 8(1) of the American Convention specifically guarantees each person a fair trial, which includes “the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him.” The Commission and the Court have explained that the guarantee of a trial “within a reasonable time” covers “the total duration of the proceedings until such time as a final decision is handed down.”¹⁹¹ A decision is not final until the end of the appeals process.¹⁹² Whether a delay in the total duration of the proceedings is reasonable must be adjudicated on a case-by-case basis, taking into consideration the following four factors: “(a) the complexity of the matter, (b) the procedural activity of the interested party, (c) the actions of the judicial authorities, and (d) the effects on the legal situation of the person involved in the proceedings.”¹⁹³ When a petitioner alleges facts demonstrating a delay, the burden is on the state to provide valid legal reasons for the delay.¹⁹⁴

¹⁹¹ Gallo v. Argentina, Case 12.632, Inter-Am. Comm’n H.R., Report No. 43/15, Merits, ¶ 171 (July 28, 2015) (citing I/A Court H.R., Case of López Álvarez v. Honduras, Merits, Reparations and Costs, Judgment of February 1, 2006, Series C No. 141, para 129).

¹⁹² Gallo v. Argentina, Case 12.632, Inter-Am. Comm’n H.R., Report No. 43/15, Merits, ¶ 172 (July 28, 2015); see also I/A Court H.R., Case of Baldeón García v. Peru, Merits, Reparations and Costs, Judgment of April 6, 2006, Series C No. 147, para. 150 (holding that time is calculated from the first procedural act against a particular person and ends when a final and nonappealable judgment is rendered).

¹⁹³ I/A Court H.R., Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 14, 2014, Series C No. 287, para 506. See also Gallo v. Argentina, Case 12.632, Inter-Am. Comm’n H.R., Report No. 43/15, Merits, ¶ 171 (July 28, 2015) (quoting I/A Court H.R., Case of Genie Lacayo v. Nicaragua, Merits, Reparations and Costs, Judgment of January 29, 1997, Series C No. 43, para 77).

¹⁹⁴ McKenzie v. Jamaica, Cases 12.023, 12.044, 12.107, 12.126, 12.146, Inter-Am. Comm’n H.R., Report No. 41/00, ¶ 259 (1999).

Here, after almost 11 years of prosecution, there can be no serious argument that Ms. Picolotti received a trial “within a reasonable time” as Article 8(1), in connection with Article 1.1, requires. She still has not received any trial at all. The prosecution against Ms. Picolotti commenced more than a decade ago, and, notwithstanding her repeated and continuous efforts to move the case along and diligently assert her rights, she has not yet even received a trial date. In *Adriana Gallo*, the Commission held that similarly long delays of 8, 12, and 13 years between judicial impeachment charges and final judgments following appeal were unreasonable and a violation of Article 8(1).¹⁹⁵ Indeed, the Commission and the Court routinely find criminal proceedings far shorter in duration—including four¹⁹⁶, five¹⁹⁷, six¹⁹⁸, eight,¹⁹⁹ and nine years²⁰⁰—to violate Article 8’s “reasonable time” requirement. In each of those cases, the Commission and Court found delays to be unreasonable where, like here, the defendant actively sought to assert her rights and pursued appeals in the court system, but still could not obtain a dismissal, final judgment, or other final disposition of the case.

The Argentine courts’ silence in the face of the unreasonable delays in Ms. Picolotti’s case is inexplicable, especially given that the delays have been caused by Argentina, and many have violated Argentine law. For example, Article 207 of the Criminal Procedure Code provides

¹⁹⁵ *Gallo v. Argentina*, Case 12.632, Inter-Am. Comm’n H.R., Report No. 43/15, Merits, ¶¶ 172–73 (July 28, 2015).

¹⁹⁶ I/A Court H.R., Case of Suárez Rosero v. Ecuador, Merits, Judgment of November 12, 1997, Series C No. 35, paras 71–75; I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment of June 21, 2002, Series C No. 94, para 152.

¹⁹⁷ I/A Court H.R., Case of Acosta-Calderón v. Ecuador, Merits, Reparations and Costs, Judgment of June 24, 2005, Series C No. 129, paras 106–07; I/A Court H.R., Case of Genie-Lacayo v. Nicaragua, Merits, Reparations and Costs, Judgment of January 29, 1997, Series C No. 30, para 81; IACHR, *Jorge Alberto Giménez v. Argentina*, Case 11.245, Inter-Am. Comm’n H.R., Report No. 12/96, Merits, ¶ 112 (March 1, 1996).

¹⁹⁸ I/A Court H.R., Case of López-Álvarez v. Honduras, Merits Reparations and Costs, Judgment of February 1, 2006, Series C No. 141, paras 133–35.

¹⁹⁹ I/A Court H.R., Case of García-Asto and Ramírez-Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 25, 2005, Series C No. 137, para 162; *Gallo v. Argentina*, Case 12.632, Inter-Am. Comm’n H.R., Report No. 43/15, Merits, ¶ 173 (July 28, 2015) (citing I/A Court H. R., Case of López Álvarez v. Honduras, Merits, Reparations and Costs, Judgment of February 1, 2006, Series C No. 141, para 129).

²⁰⁰ I/A Court H.R., Case of Tibi v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 7, 2004, Series C No. 114, paras 176–77.

that criminal investigations must conclude within four months.²⁰¹ Here, in violation of that rule, the court waited over four *years* between the *indagatoria* and the elevation of the case to trial. As another example, the judge cancelled the December 16, 2009 *indagatoria* in which Ms. Picolotti was scheduled to initially answer the charges against her and then failed to reschedule the hearing until March 22, 2011, roughly fifteen months later. Neither the prosecutor nor the judge ever sought to explain or justify such an unconscionably long investigation. In yet another instance, the court waited roughly three years from the *indagatoria* to indict Ms. Picolotti although the Criminal Procedure Code requires the court to issue an indictment within ten days. In *Case of Wong Ho Wing v. Peru*, the Inter-American Court relied in part on the state's failure to comply with domestic legal deadlines when finding that a six-year extradition proceeding violated Article 8(1)'s reasonable time requirement.²⁰² Similarly, the conduct of Argentina here, in violation of its own rules, supports finding that the decades-long proceeding against Ms. Picolotti is unreasonable under Article 8(1).

When deciding whether the length of a criminal proceeding is reasonable, the Commission must also consider the "effects caused by the duration of the proceedings on the legal situation of the person concerned."²⁰³ In particular, the "situation of uncertainty in which the presumed victim has been kept" is important to emphasize.²⁰⁴ For Ms. Picolotti, the length of this criminal proceeding has led to significant emotional and financial hardship. She must pay to

²⁰¹ Cód. Proc. Pen. art. 207.

²⁰² I/A Court H.R., Case of Wong Ho Wing v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2015, Series C No. 297, para 218.

²⁰³ I/A Court H.R., Case of Wong Ho Wing v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2015, Series C No. 297, para 221.

²⁰⁴ I/A Court H.R., Case of Wong Ho Wing v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2015, Series C No. 297, para 221.

defend herself in Argentina, and the courts repeatedly force her to pay the costs of her appeals.²⁰⁵

The long periods of unexplained inaction by the court and prosecutor keep Ms. Picolotti in a perpetual state of anxiety and uncertainty about how long she will be subject to the emotional and financial burdens of defending against this wrongful criminal prosecution.²⁰⁶

Finally, although Ms. Picolotti's prosecution has been ongoing for more than a decade, there is still no end in sight. No trial has been scheduled, much less completed. No final judgment has been reached, much less resolved on appeal. Therefore, Argentina's violation of Article 8(1) is ongoing. If the proceedings were allowed to continue, it could be many more years before the trial and any appeals are finally resolved in this case. This time must also be considered by the Commission in deciding whether the proceedings can be considered reasonable.²⁰⁷ A ten-year criminal proceeding, marked by unexplained delays and with no foreseeable end, is unreasonable and plainly violates Ms. Picolotti's right to a fair trial "within a reasonable time" under Article 8(1), in conjunction with Article 1.1. In the meantime, the proceeding causes further harm to at Ms. Picolotti's personal life, professional life, reputation, and family.

²⁰⁵ See, e.g., Exhibit 81, Order denying *incidente de nulidad* regarding statute of limitations and reasonable time (Tribunal Oral en lo Criminal Federal 6 Aug. 30, 2016); Exhibit 61, Order denying *recurso de apelación* regarding the *indagatoria* (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Mar. 11, 2015); Exhibit 65, Order denying *recurso de queja* regarding the *procesamiento* (Cámara Federal de Casación Penal May 12, 2015).

²⁰⁶ IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva. Brazil, April 13, 2016, para 221–23.

²⁰⁷ I/A Court H.R., Case of Wong Ho Wing v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2015, Series No. C No. 297, paras 209, 223; see also I/A Court H.R., Case of Rodríguez Vera et al (The Disappeared from the Palace of Justice) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 14, 2014, Series C No. 287, para 506 (holding "it is not necessary to make a detailed analysis of the previously mentioned criteria concerning reasonable time" given the long delay and preliminary nature of the proceedings).

B. Argentina's Criminal Prosecution Violates Ms. Picolotti's Rights To A Fair Trial and Other Procedural Guarantees Under Article 8(2) Of The Convention, In Connection With Article 1.1

Ms. Picolotti's right to a fair trial under Article 8(2) of the Convention encompasses procedural guarantees designed to ensure a fair proceeding. These guarantees include the rights to be notified in detail of the charges against her; to be given adequate time and means for the preparation of her defense; to be assisted by legal counsel of her own choosing; and to appeal to a higher court. In essence, each party "must have a reasonable opportunity to present his or her case under conditions that do not place him or her at a disadvantage compared to an opponent."²⁰⁸ Time and again, Argentina has violated these rights, including the guarantees enshrined in Article 8(2)(b), 8(2)(c), 8(2)(d), and 8(2)(h).

First, Argentina failed to notify Ms. Picolotti of the charges against her, in violation of Article 8(2)(b). This provision requires that a defendant receive "prior notification in detail . . . of the charges against [her]." According to the Inter-American Court, this means that a defendant must be informed of the charges "before the accused renders his first statement before any public authority."²⁰⁹ The State "must inform the interested party not only of the acts or omissions that he or she is accused of, but also the reasons that led the State to bring the charges, the evidence for this, and the legal definition of the facts. All this information must be described explicitly, clearly, fully and in sufficient detail to allow the accused to exercise her right to defend herself fully and to explain her version of the facts to the judge."²¹⁰ Further, the accused

²⁰⁸ Godoy v. Argentina, Case 12.324, Inter-Am. Comm'n H.R., Report No. 66/12, Merits, ¶ 105 (Mar. 29, 2012).

²⁰⁹ I/A Court H.R., Case of Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, para 30 (footnote omitted); *see also* I/A Court H.R., Case of Acosta-Calderón v. Ecuador, Merits, Reparations and Costs, Judgment of June 24, 2005, Series C No. 129, para 118; I/A Court H.R., Case of Tibi v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 7, 2004, Series C No. 114, para 187; *cf.* I/A Court H.R., Case of Palamara-Iribarne v. Chile, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para 225.

²¹⁰ I/A Court H.R., Case of J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 27, 2013, Series C No. 275, para. 199.

has the right “to officially learn about the facts he is charged with, not just infer them from public information or the questions that are made to him.”²¹¹ Thus, in *Case of Palamara-Iribarne v. Chile*, the Inter-American Court found a violation of Article 8(2)(b) when the prosecutor took the accused’s statement without provided detailed advance notice of the charges against him.²¹²

Here, when Ms. Picolotti appeared to render her first statement in court to answer the charges against her in 2011, she discovered that Judge Servini de Cubría had decided to base charges on allegations different from those advanced by the prosecutor. This was a complete surprise, as the notice calling Ms. Picolotti for a hearing referenced only the prosecutor’s statements as the basis for the *indagatoria*,²¹³ and Argentine law and the principle of consistency limit a criminal investigation to the facts in the prosecutor’s *requisitoria fiscal*.²¹⁴ Moreover, Argentina had years to inform Ms. Picolotti of any changes in the charges against her. The *indagatoria* occurred two years after the prosecutor filed allegations against Ms. Picolotti and four years after the initial criminal complaints.²¹⁵ However, Ms. Picolotti saw many factual allegations for the first time at the *indagatoria*. The Investigation Court refused to postpone the *indagatoria* to provide Ms. Picolotti time to review the new factual allegations and prepare a corresponding defense.²¹⁶ Ms. Picolotti was thus forced to decline to give a statement at that time.²¹⁷ This prejudiced Ms. Picolotti and constitutes a violation of Article 8(2)(b). Moreover,

²¹¹ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, para 47.

²¹² I/A Court H.R., *Case of Palamara-Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para 227.

²¹³ Exhibit 21, Order setting *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Nov. 24, 2009).

²¹⁴ Cód. PROC. PEN, art. 195.

²¹⁵ Compare Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011), with Exhibit 20, *Solicita declaraciones indagatorias* (Ministerio Público de la Nación Oct. 20, 2009), Exhibit 12, Criminal complaint filed by Juan Ricardo Mussa (July 12, 2007).

²¹⁶ See Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

²¹⁷ See Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

the criminal prosecution continues to be based on the new allegations, meaning the harm is ongoing to Ms. Picolotti from Argentina's failure to provide notice of the charges.

Second, Argentina repeatedly refused Ms. Picolotti adequate time and opportunity to prepare her defense in violation of Article 8(2)(c).²¹⁸ The Inter-American Court explained in *Case of Cabrera García and Montiel-Flores v. Mexico* that “one of the guarantees inherent in the right to defense is to have sufficient time and adequate means to prepare the defense, which requires the State to allow the accused to have access to the case file and to the evidence gathered against him.”²¹⁹ The State must also “guarantee the intervention of the accused in the analysis of the evidence.”²²⁰

In this case, the courts repeatedly denied Ms. Picolotti time and opportunity to prepare her defense with the counsel of her choosing: The Investigation Court refused to postpone the *indagatoria* even though Ms. Picolotti was confronted with brand-new allegations;²²¹ the court refused to provide a newly-hired lawyer for Ms. Picolotti sufficient time to prepare, leading the new lawyer to resign in protest on the ground that it would have been impossible to provide a proper defense in so little time;²²² and the court did not notify Ms. Picolotti of a key ruling, which left her lawyer unable to challenge the elevation of the case to trial.²²³ Such refusals to grant Ms. Picolotti's requests for additional time are particularly offensive and unjustifiable

²¹⁸ “During the proceedings, every person is entitled, with full equality, to the following minimum guarantees . . . adequate time and means for the preparation of his defense.” American Convention on Human Rights Art. 8(2)(c).

²¹⁹ I/A Court H.R., *Case of Cabrera García and Montiel-Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 26, 2010, Series C No. 220, para. 156. *See also* I/A Court H.R., *Case of Palamara-Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para 170 (finding the right to defense violated when the state “prevent[s] access to the record of the case and to the evidence gathered against him, which, in turn, prevents him from defending himself adequately”); I/A Court H.R., *Case of J. v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 27, 2013, Series C No. 275, para 205 (“[T]he effective exercise of this defense must be ensured by providing adequate time and means for its preparation.”).

²²⁰ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, para 54.

²²¹ *See* Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Mar. 22, 2011).

²²² Exhibit 46, Resignation of Rubén Bianchi as Romina Picolotti's lawyer (Oct. 28, 2014).

²²³ Exhibit 71, Brief on behalf of Romina Picolotti filed by Felipe Trucco and Daniela Santa Cruz: *incidente de nulidad* regarding electronic notification, at 3–4 (Sept. 4, 2015).

given the court's willingness to routinely countenance long and unexplained delays caused by the court and prosecution.²²⁴ Ms. Picolotti was placed at a serious disadvantage compared to the prosecutor each time the court refused to allow her counsel time to prepare and present a proper defense.

Further, Argentina hindered Ms. Picolotti's access and ability to analyze the purported evidence in the case.²²⁵ The denial of that right is grounds for a complete dismissal of the indictment under Argentine law; even more so here, where it was particularly prejudicial under the circumstances. The purported documentary evidence had inexplicably disappeared from police custody for two days, the seal on the key box of documents had been broken,²²⁶ and documents leaked to the press showed signatures that clearly had been forged. Yet, rather than allowing Ms. Picolotti to challenge, or even see, this purported evidence, the court repeatedly hindered her access to the documents and deprived her of the opportunity to contest their authenticity or to show that the signatures had been forged.²²⁷

Ms. Picolotti was finally able to assess the evidence years later, after multiple decisions had been made in reliance on the evidence, including the filing of charges against Ms. Picolotti. At that time, her lawyer found the evidence in the hallway of a courthouse, with the boxes

²²⁴ For example, the two-year delay between the original call for the *indagatoria* and when the *indagatoria* occurred. See Exhibit 21, Order setting *indagatoria* (Juzgado Criminal y Correccional Federal No. 1 Nov. 24, 2009); Exhibit 28, Order regarding *indagatoria* (Juzgado Criminal y Correccional Fderal No. 1 Mar. 22, 2011).

²²⁵ See Exhibit 85, Brief on behalf of Romina Picolotti filed by Daniela Santa Cruz: *incidente de nulidad* regarding violations of the chain of custody (Oct. 16, 2016) (arguing that the court improperly failed to notify Ms. Picolotti of the seizure of evidence, and other evidentiary violations); see also Exhibit 67, Order regarding elevation of Romina Picolotti's case to trial (Juzgado Criminal y Correccional Federal No. 1) (denying Ms. Picolotti's request for a handwriting analysis of purported evidence). Cf. Rubén Luis Godoy v. Argentina, Case 12.324, Inter-Am. Comm'n H.R., Report No. 66/12, Merits, ¶¶ 106-07 (March 29, 2012) (explaining that Article 8(2) grants the accused the right to examine witnesses testifying against the accused).

²²⁶ Exhibit 17, Acknowledgement of receipt of evidence (Juzgado Criminal y Correccional Federal No. 1 June 2, 2008).

²²⁷ Exhibit 67, Order regarding elevation of Romina Picolotti's case to trial (Juzgado Criminal y Correccional Federal No. 1 June 30, 2015) (denying Ms. Picolotti's request for a handwriting analysis of the purported receipts).

opened.²²⁸ Her lawyer declined to look at the evidence under circumstances, since there was no way to verify that the evidence had not been manipulated, and instead moved to dismiss the case.²²⁹ It ought to go without saying that a criminal defendant has been denied a “fair trial” under Argentine law and the Convention where, as here, she had no timely opportunity to examine and challenge the purported evidence against her and thus could not prepare her defense against the charges or indictment.

Third, Argentina prohibited Ms. Picolotti from being represented by the lawyer of her choosing in violation of Article 8(2)(d).²³⁰ The court began by suspending the lawyer who had been representing Ms. Picolotti for the preceding three years (with explicit approval from the court).²³¹ The court concluded that the lawyer needed to be registered with the city bar association, in addition to the federal bar, a requirement that Ms. Picolotti has argued is contrary to law and the constitution.²³² The court provided her only five days to find a new lawyer, which hindered Ms. Picolotti’s ability to find qualified counsel. When Ms. Picolotti did acquire new counsel, the court arbitrarily refused any extension of the time for the lawyer to review the materials in the case. This forced his resignation.²³³ The court then inexplicably reduced the time to find a new lawyer from five days to three,²³⁴ and appointed a new attorney without

²²⁸ Exhibit 83, Statement of Felipe Trucco regarding evidence related to Romina Picolotti (Oct. 6, 2016); Exhibit 84, Order regarding evidence related to Romina Picolotti (Tribunal Oral en lo Criminal Federal 6 Oct. 6, 2016).

²²⁹ See Exhibit 84, Order regarding evidence related to Romina Picolotti (Tribunal Oral en lo Criminal Federal 6 Oct. 6, 2016).

²³⁰ “During the proceedings, every person is entitled, with full equality, to the following minimum guarantees . . . the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel.” American Convention on Human Rights Art. 8(2)(d).

²³¹ Exhibit 42, Order regarding suspension of Felipe Trucco (Juzgado Criminal y Correccional Federal No. 1 Oct. 1, 2014).

²³² Exhibit 41, Brief on behalf of Romina Picolotti filed by Felipe Trucco regarding September 5, 2014 order on Felipe Trucco’s credentials (Sept. 14, 2014); Exhibit 43, Brief on behalf of Romina Picolotti filed by Felipe Trucco: *recurso de apelación* regarding suspension of Felipe Trucco (Oct. 6, 2014).

²³³ Exhibit 46, Resignation of Rubén Bianchi as Romina Picolotti’s lawyer (Oct. 28, 2014).

²³⁴ Exhibit 47, Order regarding time to retain a new lawyer (Juzgado Criminal y Correccional Federal No. 1 Oct. 30, 2014).

providing timely notification to Ms. Picolotti.²³⁵ The court-appointed attorney refused to tell Ms. Picolotti the legal arguments or strategy that he planned to present.²³⁶ Although Ms. Picolotti eventually re-hired a lawyer of her choosing, her defense was significantly prejudiced by the limited amount of time provided for her third lawyer to understand the case and prepare a defense.

Fourth, the court prevented Ms. Picolotti from exercising her right of appeal in violation of Article 8(2)(h). That right is an “essential guarantee under due process of law” that aims to prevent flawed rulings.²³⁷ It is especially important in criminal cases and thus must be “especially rigorously applied when it comes to a punishment of imprisonment.”²³⁸ The Inter-American Court explained in *Herrera Ulloa v. Costa Rica* that a party must be able to turn to a *higher* court for revision of an unfavorable judgment, whereby a higher judge or court corrects jurisdictional decisions that are not in keeping with that law.²³⁹ In the same case, the Court emphasized that higher courts have “a special duty to protect the judicial guarantees and due process to which all parties to the criminal proceeding are entitled.”²⁴⁰

Contrary to the requirements of Article 8(2)(h), Ms. Picolotti was never able to receive a ruling from a higher court on the merits of several violations of her rights. The Argentine courts repeatedly applied rigid procedural bars to prevent any appellate court from reviewing the case on the merits. Specifically, the Trial Court and Cassation Court refused to allow Ms. Picolotti to

²³⁵ Exhibit 53, Certificate of service regarding the appointment of a public defender for Romina Picolotti (Policia Federal Argentina Nov. 26, 2014).

²³⁶ Exhibit 1, Affidavit of Romina Picolotti ¶ 75.

²³⁷ Rubén Luis Godoy v. Argentina, Case 12.324, Inter-Am. Comm’n H.R., Report No. 66/12, Merits, ¶ 124 (March 29, 2012).

²³⁸ Rubén Luis Godoy v. Argentina, Case 12.324, Inter-Am. Comm’n H.R., Report No. 66/12, Merits, ¶ 128 (March 29, 2012).

²³⁹ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs; Judgment of July 2, 2004, Series C No. 107, paras 157-58, 161 (emphasis added). *See also* Rubén Luis Godoy v. Argentina, Case 12.324, Inter-Am. Comm’n H.R., Report No. 66/12, Merits, ¶ 124 (March 29, 2012).

²⁴⁰ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107, para 163.

appeal to a higher court on the Trial Court's decisions regarding the chain of custody violations,²⁴¹ or the statute of limitations and Argentina's failure to prosecute the case within a reasonable time.²⁴² The Supreme Court also refused her appeal related to the statute of limitations and the unconscionable length of the proceedings because of her counsel's supposed failure to comply with the technical requirements for page length or font size, even though the Supreme Court has broad discretion to correct such errors or to accept appeals with such technical issues.²⁴³ These decisions have ongoing negative impacts on Ms. Picolotti's case, since they allow the farcical prosecution to continue. And it means that Ms. Picolotti has never able to receive a ruling on the merits of these issues from a higher tribunal.²⁴⁴

In addition, also contrary to Article 8(2)(h), Argentina did not provide Ms. Picolotti any notice of the decision to elevate the case to trial, such that she was deprived of her ability to oppose the elevation. The Commission and the Supreme Court of Argentina have recognized the "close relationship" between personal notification of a court decision and the right of the accused with respect to a decision that could be final.²⁴⁵ Here, the Investigation Court failed to notify Ms. Picolotti of the decision elevating certain charges from investigation to trial. Instead of following the established court procedure of directly notifying Ms. Picolotti and her counsel, the court purportedly posted notice of the decision on the judiciary website, and Ms. Picolotti's

²⁴¹ See Exhibit 98, Order denying *recurso de casación* regarding violations of the chain of custody (Tribunal Oral en lo Criminal Federal 6 Aug. 10, 2017) (denying chain of custody appeal on the grounds that there was no final judgment); Exhibit 101, Order denying *recurso de queja* regarding violations of the chain of custody (Cámara Federal de Casación Penal Sept. 22, 2017) (same).

²⁴² See Exhibit 92, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Cámara Federal de Casación Penal Apr. 26, 2017) (denying appeal related to the statute of limitations and reasonable time because there was no final judgment).

²⁴³ Exhibit 100, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Corte Suprema de Justicia de la Nación Sept. 5, 2017).

²⁴⁴ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107, paras 157–58, 161.

²⁴⁵ Rubén Luis Godoy v. Argentina, Case 12.324, Inter-Am. Comm'n H.R., Report No. 66/12, Merits, ¶ 110 (March 29, 2012).

counsel never received it.²⁴⁶ As a result, Ms. Picolotti did not learn of the ruling until after the six-day deadline to oppose elevation to trial had passed. This rendered the decision final, as the Criminal Procedure Code prohibits appeals of the writ elevating a case to trial.²⁴⁷ When Ms. Picolotti appealed anyway on the grounds that she had not been notified of the Investigation Court's ruling and that the notification system violated her constitutional rights, the Trial Court rejected the appeal.²⁴⁸

In sum, the Argentine court violated Ms. Picolotti's rights to a fair trial and other procedural guarantees when it interfered with Ms. Picolotti's right to be represented by a lawyer of her choosing; limited Ms. Picolotti's ability to examine and challenge the purported evidence against her; ignored procedural deadlines and requirements designed to guarantee a fair and impartial proceeding; and relied on inadmissible evidence that had gone missing and showed signs of tampering. The harm from these violations is ongoing. This misconduct violates Article 8(2), in conjunction with Article 1.1.

C. Argentina's Failure To Provide Ms. Picolotti Effective Recourse To An Impartial And Competent Court Violates Her Rights Under Article 25 Of The Convention, In Connection With Article 1.1

Argentina has failed to provide Ms. Picolotti with access to independent, impartial, and competent courts to resolve the case against her and address the human rights violations described above, all in violation of Article 25, in connection with Articles 8 and 1.1. Article 25 of the Convention guarantees "the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental

²⁴⁶ Ms. Picolotti extensively argued the impropriety of this procedure in her appeals. *See, e.g.*, Exhibit 71, Brief on behalf of Romina Picolotti filed by Felipe Trucco and Daniela Santa Cruz: *incidente de nulidad* regarding electronic notification (Sept. 4, 2015).

²⁴⁷ CÓD. PROC. PEN art. 352 ("El auto de elevación es inapelable.") ("The order of elevation to trial is unappealable.").

²⁴⁸ Exhibit 72, Order denying *incidente de nulidad* regarding electronic notification (Tribunal Oral en lo Criminal Federal 6 Oct. 30, 2015)

rights recognized by the constitution or laws of the state concerned or by this Convention.” The existence of this guarantee “is one of the basic pillars, not only of the American Convention, but of the very rule of law in a democratic society within the meaning of the Convention.”²⁴⁹

Article 25 explicitly requires that the judicial remedy provided to the defendant be “effective.” Both the Commission and the Inter-American Court have accordingly made clear that a State must do more than ensure that a formal court system exists; rather, states must ensure that the available remedies are “effective” in affording redress to those who allege violations of their fundamental rights. For example, in the *Constitutional Court Case*, the Inter-American Court held that:

The inexistence of an effective recourse against the violation . . . constitutes a transgression of the Convention [F]or such a recourse to exist, it is not enough that it is established in the Constitution or in the law or that it should be formally admissible, but it must be truly appropriate to establish whether there has been a violation of human rights and to provide everything necessary to remedy it. Those recourses that are illusory, owing to the general conditions in the country or to the particular circumstances of a specific case, shall not be considered effective.²⁵⁰

Similarly, the Commission emphasized the need for a remedy to be “effective” when it determined that Argentina failed to provide an effective remedy in the *Gustavo Carranza* case.²⁵¹ The petitioner in that case was a judge removed from office in 1976 by the government of Argentina. He sought a remedy in domestic courts, who dismissed the case on the grounds that the removal from office was a nonjusticiable political

²⁴⁹ Gallo v. Argentina, Case 12.632, Inter-Am. Comm’n H.R., Report No. 43/15, Merits, ¶ 174 (July 28, 2015); I/A Court H.R., Case of Claude Reyes et al. v. Paraguay, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, para 131; and I/A Court H.R., Case of Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 6, 2008, Series C No. 184, para 78).

²⁵⁰ I/A Court H.R., Case of the “Five Pensioners,” Merits, Reparations and Costs, Judgment of February 28, 2003, Series C No. 98, para 136. *See also* I/A Court H.R., Case of Cabrera García and Montiel-Flores v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 26, 2010, Series C No. 220, para 142 (“[F]or a State to comply with the provisions of Article 25 of the Convention, it is not sufficient for such remedies to exist formally, but that these must be effective, that is to say, there must provide results or answers to the violations of rights enshrined in the Convention, in the Constitution or in the law.”).

²⁵¹ Argentina v. Carranza, Case 10.087, Inter-Am. Comm’n H.R., Report No. 30/97, Merits (September 1, 1997).

question.²⁵² The Commission found that the Argentine courts' refusal to address the case on the merits violated Article 25:

[T]he logic of every judicial remedy—including that of Article 25—indicates that the deciding body must specifically establish the truth or error of the claimant's allegation. The claimant resorts to the judicial body alleging the truth of a violation of his rights, and the body in question, after a proceeding involving evidence and a discussion of the allegation, must decide whether the claim is valid or unfounded.²⁵³

In light of these points, the Commission has described Article 25's right to an effective judicial remedy as including three related rights: the right to go to a tribunal when any of her rights have been violated; the right to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether the violation has taken place; and the right to have remedies enforced when granted.²⁵⁴ The Court has further explained that a remedy is not "effective" with respect to rights under Article 25 "if it is not decided within a time frame that enables the violation being claimed to be corrected in time."²⁵⁵

To the extent Argentina has provided Ms. Picolotti with judicial protection, it is in name only. Ms. Picolotti has repeatedly asserted that the decisions of the Argentine courts are contrary to law, the constitution, and the Convention. Yet the courts repeatedly decline to rule on the merits of her allegations for procedural reasons, either because the challenged decision is not final, or the page length of the brief is not correct, or some other technical requirement was not met. Many of these decisions are one or two pages, with little analysis.²⁵⁶ Thus, although Ms.

²⁵² Argentina v. Carranza, Case 10.087, Inter-Am. Comm'n H.R., Report No. 30/97, Merits, ¶ 3 (September 1, 1997).

²⁵³ Argentina v. Carranza, Case 10.087, Inter-Am. Comm'n H.R., Report No. 30/97, Merits, ¶ 73 (September 1, 1997).

²⁵⁴ Raquel Martí de Mejía v. Peru, Case 10.970, Inter-Am. Comm'n H.R., Report No. 5/96, Merits (March 1, 1996).

²⁵⁵ I/A Court H.R., Case of the "Juvenile Reeducation Institute" v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 2, 2004, Series C No. 112, para 245.

²⁵⁶ See, e.g., Exhibit 61, Order denying *recurso de apelación* regarding the *indagatoria* (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal Mar. 11, 2015); Exhibit 92, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Cámara Federal de Casación Penal Apr. 26, 2017); Exhibit 100, Order denying *recurso de queja* regarding statute of limitations and reasonable time (Corte Suprema de Justicia de la Nación Sept. 5, 2017); Exhibit 101, Order denying *recurso de queja* regarding violations of the chain of custody (Cámara Federal de Casación Penal Sept. 22, 2017).

Picolotti may formally file complaints and appeals, she has no effective remedy to the many violations of her rights. Instead, she must apparently wait an indefinite amount of time, until after a conviction and sentence that could be another decade away, before getting a ruling on whether the courts' decisions violated her rights. Indeed, Ms. Picolotti is still defending herself almost 11 years after the start of the criminal investigation, and with no trial date set. No appellate court has determined the "truth or error" of allegations that the courts have violated Ms. Picolotti's rights, much less provided her with a remedy. The Inter-American Court found a violation in *Case of Palamara-Iribarne v. Chile* in similar circumstances, where the domestic courts rejected the accused's appeals "without even analyzing whether the alleged violations of said fundamental rights had actually taken place."²⁵⁷

D. Argentina's Criminal Prosecution Violates Ms. Picolotti's Right To Mental And Moral Integrity Under Article 5 Of The Convention, In Connection With Article 1.1

Argentina's politically-motivated prosecution of Ms. Picolotti violates Ms. Picolotti's rights under Article 5 of the American Convention, which guarantees that "[e]very person has the right to have his physical, mental, and moral integrity respected."

Article 5 extends to any act that is "clearly considered to contravene respect for the inherent dignity of the human person" and specifically prohibits acts that cause psychological and emotional damage.²⁵⁸ Acts resulting in "trauma and anxiety," and "intimidation" violate Article V.²⁵⁹ The Commission has also found that acts affecting an individual's "personal self-esteem translate[] into important damage to moral integrity." Further, the Commission specifically recognized in *Gallardo Rodríguez* that having to defend oneself before the criminal

²⁵⁷ I/A Court H.R., *Case of Palamara-Iribarne v. Chile*, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C No. 135, paras 187, 227.

²⁵⁸ I/A Court H.R., *Castillo Páez v. Peru*, Merits, Judgment of November 3, 1997, Series C No. 34, paras 63, 66.

²⁵⁹ *María Mejía v. Guatemala*, Case 10.553, Inter-Am. Comm'n H.R., Report No. 32/96, Merits, ¶¶ 53, 60 (October 16, 1996).

courts for a long period of time seriously damages a person's mental and moral integrity.²⁶⁰ As the Commission explains, "[u]nwarranted prosecutions of human rights defenders entail psychological and financial burdens, which harass and frighten them and diminish their work. These burdens are aggravated by the unreasonable prolongation of the criminal processes."²⁶¹ The Commission further has determined that harassing criminal proceedings violate the victims' Article 5 right to mental and moral integrity.²⁶²

Here, Ms. Picolotti experienced severe mental distress when Argentina launched a criminal investigation and prosecution of her based on a fabricated story in a newspaper run by a company under investigation by Ms. Picolotti when she was the Environment Secretary.²⁶³ Her mental anguish has been exacerbated each time the Argentine prosecutor or courts have ignored deadlines in the Criminal Procedure Code, failed to notify her of court rulings, relied upon inadmissible and falsified evidence, changed the rules without warning, and otherwise violated Argentine procedural rules and substantive law. She has suffered extreme distress, anxiety, tension, frustration, and anger trying to protect herself and her family against this malicious and harassing criminal prosecution.²⁶⁴ Indeed, Ms. Picolotti felt so threatened, fearful, and endangered in Argentina that she was forced to flee with her family to the United States.²⁶⁵ Ms. Picolotti, and the organizations associated with her, have also suffered harm to their personal and

²⁶⁰ Gallardo Rodríguez v. Mexico, Case 11.430, Inter-Am. Comm'n H.R., Report No. 43/96, Merits, ¶ 79 (October 15, 1996)

²⁶¹ Exhibit 35, IACHR Second Report on Human Rights Defenders. The Commission specifically highlighted psychological effects of unwarranted prosecution, including anguish, fear, insecurity, stigmatization, tension, and frustration. *Id.* See also Exhibit 3, IACHR First Report on Human Rights Defenders ¶¶ 179 (acknowledging that a concerning trend in Argentina is that "criminal proceedings are instituted without any evidence, for the purpose of harassing the members of the organizations, who must assume the psychological and economic burden of facing a criminal indictment").

²⁶² Exhibit 35, IACHR Second Report on Human Rights Defenders.

²⁶³ Exhibit 1, Affidavit of Romina Picolotti ¶¶ 88–92.

²⁶⁴ Exhibit 1, Affidavit of Romina Picolotti ¶¶ 88–92, 100.

²⁶⁵ Exhibit 1, Affidavit of Romina Picolotti 93.

professional reputations as a result of the false allegations advanced by the prosecutor and adopted by the court.²⁶⁶

Moreover, the criminal prosecution threatens any stability and safety that Ms. Picolotti and her family have found in the United States. Each month, as a condition of her authorization to live abroad, Ms. Picolotti must report to the Argentine consulate in Miami, Florida, which she has diligently done.²⁶⁷ She must inform the consulate of any trips abroad, which, again, she has diligently done. She must re-apply to live abroad every few months.²⁶⁸ This is a constant source of stress and a reminder of the unjust proceedings in Argentina. Further, the prosecutor opposes her applications,²⁶⁹ leaving Ms. Picolotti with fear and uncertainty that she will be forced to leave her family, break her employment contract, abandon her environmental advocacy to live in Argentina for the duration of the seemingly interminable criminal proceedings.²⁷⁰ Indeed, the court recently increased the amount of the lien on her home as a condition of living abroad, even though Ms. Picolotti has complied with all court requirements and appearances.²⁷¹ The uncertainty and financial burden causes further stress, fear, and hardship for Ms. Picolotti, and keeps her uncertain and intimidated.²⁷² By causing such severe and adverse psychological effects, Argentina has violated Ms. Picolotti's right to mental and moral integrity in violation of Articles 5 and 1.1.

²⁶⁶ Exhibit 1, Affidavit of Romina Picolotti ¶¶ 87, 88, 101, 108.

²⁶⁷ Exhibit 105, Order regarding authorization to live abroad (Tribunal Oral en lo Criminal Federal 6 Dec. 4, 2017).

²⁶⁸ Exhibit 105, Order regarding authorization to live abroad (Tribunal Oral en lo Criminal Federal 6 Dec. 4, 2017) (granting Ms. Picolotti authorization to live abroad until Apr. 10, 2018).

²⁶⁹ *See, e.g.*, Exhibit 105, Order regarding authorization to live abroad (Tribunal Oral en lo Criminal Federal 6 Dec. 4, 2017) (describing views of the prosecutor).

²⁷⁰ *See* Exhibit 1, Affidavit of Romina Picolotti ¶ 92.

²⁷¹ Exhibit 105, Order regarding authorization to live abroad (Tribunal Oral en lo Criminal Federal 6 Dec. 4, 2017).

²⁷² Exhibit 1, Affidavit of Romina Picolotti ¶¶ 89, 100.

VI. Ms. Picolotti's Petition Is Admissible Under The Commission's Rules Of Procedure

A. The Commission Is Competent To Hear This Case

The Commission has competence *ratione loci* and *ratione temporis* to consider this petition. Argentina committed the violations of Ms. Picolotti's human rights within Argentine territory. Moreover, Argentina's offensive conduct occurred from 2007 to the present, when Argentina was party to the American Convention, which it ratified in 1984. In addition, the Commission has competence *ratione materiae* since the petition covers violations of human rights that are protected by the American Convention. When Argentina signed the Convention, it recognized the competence of the Commission to hear such claims.

B. Ms. Picolotti Is Excused From Exhausting Domestic Remedies

Exhaustion is required only where the domestic system offers "adequate and effective remedies" for an alleged violation.²⁷³ Conversely, both the Article 31 of the Commission's Rules of Procedure and Article 46 of the Convention excuse a petitioner from exhausting domestic remedies when: (1) "the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;" (2) the victim "has been denied access to the remedies under domestic law or has been prevented from exhausting them;" or (3) "there has been unwarranted delay in rendering a final judgment under the aforementioned remedies."²⁷⁴ When a petitioner alleges one of these three exceptions, the

²⁷³ Gallo v. Argentina, Petition 415-03, Inter-Am. Comm'n H.R., Report No. 65/07, Admissibility, ¶ 41 (July 27, 2007).

²⁷⁴ Rules of Procedure of the Inter-Am. Commission on Human Rights, Article 31 (adopted by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013) [hereinafter IACHR Rules of Procedure].

state bears the burden to demonstrate that domestic remedies were not exhausted; identify which domestic remedies should be used; and provide evidence of the remedies' effectiveness.²⁷⁵

Here, Ms. Picolotti alleges all three exceptions. She has diligently attempted to exhaust domestic remedies. She has sought to assert and vindicate her rights in Argentina courts for more than a decade, to no avail. She has filed over twenty motions and appeals in Argentine courts during this period, again to no avail. By pursuing local remedies for more than a decade, Ms. Picolotti has thoroughly exhausted every *available* remedy in Argentina. But she has been unable to fully exhaust local remedies because of Argentina's actions and continued delay in bringing her to trial. Her petition in this Commission is nevertheless admissible because the violations against Ms. Picolotti are ongoing, and she is excused from exhaustion under Article 31 of the Commission's Rules of Procedure and Article 46 of the Convention.

First, there has been unwarranted delay in rendering a final judgment, which qualifies for the exception to the requirement of exhaustion established in Article 46(2)(c). What constitutes unwarranted delay is a fact-specific inquiry dependent on the totality of the circumstances. This Commission previously found in *Adriana Gallo v. Argentina* that delays were unwarranted when three Argentine petitioners had lawsuits pending with no final decision for, respectively, four years and eight months, eight years and eight months, and eight years and nine months.²⁷⁶ The Commission noted that, although the three cases were on appeal in the Argentine court system, there had been no final decision on the merits and the court decisions that had been issued had

²⁷⁵ Gallo v. Argentina, Petition 415-03, Inter-Am. Comm'n H.R., Report No. 65/07, Admissibility, ¶ 41 (July 27, 2007). See also Gamarro v. Argentina, Petition 187-07, Inter-Am. Comm'n H.R., Report No. 6/17, Admissibility, ¶ 16 (January 27, 2017).

²⁷⁶ Gallo v. Argentina, Petition 415-03, Inter-Am. Comm'n H.R., Report No. 65/07, Admissibility, ¶ 41 (July 27, 2007).

taken several years, including decisions on purely procedural or legal issues.²⁷⁷ This is consistent with other decisions on the application of Article 46(2)(c), where the Commission and the Inter-American Court have found years-long criminal proceedings constitute unwarranted delay.²⁷⁸

The delay in Ms. Picolotti's case is even more egregious than that found to be unwarranted and unreasonable in *Gallo*. As discussed in detail above, the criminal investigation and prosecution of Ms. Picolotti has dragged on for nearly eleven years, with no decision on the merits and no trial date in sight. For intermittent periods in this case, the prosecutor and the court have inexplicably taken no action for months or even years at a time. Rather than expedite the proceedings or take other steps to address such delays, however, Argentina has simply allowed the prosecutor and the court to manipulate and accelerate or restart the proceedings as they see fit, in retaliation for Ms. Picolotti's environmental advocacy and related work.

Second, Argentina has denied Ms. Picolotti access to domestic remedies, which excuses domestic exhaustion under Article 46(2)(b) of the Convention. In *Myrna Mack*, the Commission found that this exception applies in situations where a petitioner demonstrates that she was denied access to evidence and to witnesses in a manner that prejudiced her in domestic proceedings.²⁷⁹ As discussed, Ms. Picolotti was limited in her ability to access, examine, or challenge the purported evidence against her for the first nine years of the case. Thus, she was deprived of her fundamental rights with respect to the evidence during the entire criminal

²⁷⁷ *Gallo v. Argentina*, Petition 415-03, Inter-Am. Comm'n H.R., Report No. 65/07, Admissibility, ¶ 41 (July 27, 2007).

²⁷⁸ *Gamerro v. Argentina*, Petition 187-07, Inter-Am. Comm'n H.R., Report No. 6/17, Admissibility, ¶¶ 13–14 (January 27, 2017). *See also* JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 97 (2d ed. 2013) (“The Inter-American Court has repeatedly held that there has been an unwarranted delay in issuing a final judgment when a period of five years has transpired from the initiation of proceedings to the time when the case is brought before the Commission.”).

²⁷⁹ *Myrna Mack v. Guatemala*, Case 10.636, Inter-Am. Comm'n H.R., Report No. 10/96, Merits, ¶¶ 40–45 (March 5, 1996).

investigation, during the hearing in which she first answered the charges against her, and during the appeal process. Although the purported evidence was tampered with and then leaked to the press by the prosecutor or someone else in the court system with access to the record, Ms. Picolotti could not even get a handwriting analysis to prove that the leaked evidence was forged.²⁸⁰ At that time, her counsel found the evidence unattended in a courthouse hallway, with the evidence seals broken and no proper record of the chain of custody, much less an explanation of the gaps in the chain of custody.²⁸¹ As a result, Ms. Picolotti's defense has been unfairly prejudiced and irreparably harmed by the denial of access to the purported evidence, the apparent tampering with the evidence, and the gaps in the chain of custody, such that Ms. Picolotti, like the petition in *Myrna Mack* is excused from exhausting domestic remedies.

Third, Ms. Picolotti is excused from exhausting domestic remedies under Article 46(2)(a) of the Convention because Argentina's domestic legislation does not afford due process of law for the protection of Ms. Picolotti's rights. The Commission interprets this provision to require that available domestic remedies "be both adequate, in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed."²⁸² This corresponds to the obligations that Argentina has under Article 25.²⁸³ Here, for the reasons explained in detail above with respect to Argentina's violation of Article 25, Argentine domestic law clearly does not provide an effective remedy. Ms. Picolotti's repeated attempts to get a ruling on the courts' violations of her fundamental rights have been futile. The appellate courts refuse to permit appeals because of

²⁸⁰ See Exhibit 67, Order regarding elevation of Romina Picolotti's case to trial (Juzgado Criminal y Correccional Federal No. 1 June 30, 2015).

²⁸¹ Exhibit 84, Order regarding evidence related to Romina Picolotti (Tribunal Oral en lo Criminal Federal 6 Oct. 6, 2016).

²⁸² Gallo v. Argentina, Petition 415-03, Inter-Am. Comm'n H.R., Report No. 65/07, Admissibility (July 27, 2007).

²⁸³ KB SKJELTEN, THE PRINCIPLE OF EXHAUSTION OF DOMESTIC REMEDIES IN THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS: A REASONABLE OBSTACLE OR AN IMPOSSIBLE BARRIER? 36 (Nov. 25, 2014).

formal and overly rigid application of technicalities. Thus, Ms. Picolotti has been unable to remedy the chain of custody violations, unreasonable length of time, or other irregularities plaguing this criminal proceeding. She is still being prosecuted based on a false and retaliatory newspaper article. Although the proceeding has already lasted nearly eleven years, Ms. Picolotti faces an indefinite length of time before she would be able to receive any relief.

C. Ms. Picolotti's Petition Is Timely

Generally, a petition is admissible only if it is filed within six months of exhausting domestic remedies. When an exception to the exhaustion requirement applies, Article 32 of the Commission's Rules of Procedure provides that a petition is timely if it is "presented within a reasonable period of time"²⁸⁴ of the conditions that satisfy the exception. However, "neither the six-month rule nor the reasonable time test is a bar to admissibility when the violation is found to be ongoing at the time of the filing of the petition."²⁸⁵ For example, in *Marisa Andrea Romero and R.B.L.*, the Commission noted that the petition was timely filed when the effects of the claim "are said to have continued to the present day."²⁸⁶ The Commission reached the same result in *Onofre Antonio de la Hoz Montero*.²⁸⁷ In the case of *Adriana Gallo* before the Commission, the three petitioners faced unwarranted delay in domestic legal proceedings when trying to vindicate their rights; they had not received a final decision in Argentine courts even after four to eight years of active pursuit of the domestic legal proceedings. There, the Commission concluded the petition was filed within a reasonable time, explaining that "the lack of legal response by the

²⁸⁴ IACHR Rules of Procedure Article 32.

²⁸⁵ JO M. PASQUALUCCI, *THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS* 89 (2d ed. 2013).

²⁸⁶ *Romero and R.B.L. v. Argentina*, Petition 223-01, Inter-Am. Comm'n H.R., Report No. 54/16, Admissibility, ¶¶ 30–31 (December 6, 2016); *see also* *Melinho v. Brazil*, Petition 362-09, Inter-Am. Comm'n H.R., Report No. 11/16, Admissibility, ¶ 44 (April 14, 2016).

²⁸⁷ *Onofre Antonio de la Hoz Montero v. Colombia*, Petition 694-06, Inter-Am. Comm'n H.R., Report No. 72/16, Admissibility, ¶ 36 (December 6, 2016).

State to guarantee the rights allegedly violated . . . apparently continued up to the time their petition was lodged.”²⁸⁸

Here, Ms. Picolotti’s petition is timely because Argentina has continued to violate her rights up the present time. She has diligently sought redress in Argentine courts. Nonetheless, after nearly eleven years, it is clear that the Argentine judicial system offers Ms. Picolotti no prospect of relief. To this day, no trial has been set. When Ms. Picolotti was finally permitted to examine the evidence Argentina purportedly has against her, Ms. Picolotti’s lawyer found the boxes of purported evidence unattended in a hallway at the courthouse, unsealed and with no proper record of the chain of custody.²⁸⁹ The Argentine courts have repeatedly denied Ms. Picolotti’s appeals for arbitrary or unbelievable reasons, notwithstanding laws that plainly require a different result. It is clear that Argentina, the prosecutor, and the court remain committed to pursuing the politically-motivated prosecution of Ms. Picolotti. Argentina’s violation of Ms. Picolotti’s rights under the Convention continue to this day, and Ms. Picolotti’s petition is timely.

D. There Are No Parallel International Proceedings

According to Article 33 of the Commission’s Rules of Procedure and Article 47(d) of the American Convention, a petition is inadmissible when there is a related case pending before another international organization that covers the same subject matter or essentially duplicates a petition already decided by the Commission or another international governmental organization. Here, there is no related case pending in another forum; nor has Ms. Picolotti’s case been decided by any other court or international organization.

²⁸⁸ Gallo v. Argentina, Petition 415-03, Inter-Am. Comm’n H.R., Report No. 65/07, Admissibility (July 27, 2007).
²⁸⁹ Exhibit 84, Order regarding evidence related to Romina Picolotti (Tribunal Oral en lo Criminal Federal 6 Oct. 6, 2016).

VII. Conclusion And Petition

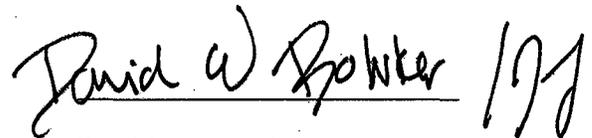
For the foregoing reasons, Ms. Picolotti requests that the Commission grant the following relief:

1. Expedite the initial processing of this Petition in accordance with Article 29(2) of the Rules of Procedure of the Inter-American Commission on Human Rights;
2. Declare this petition admissible;
3. Investigate, with hearings and witnesses as necessary, the facts alleged in this petition;
4. Declare that Argentina violated Ms. Picolotti's fundamental rights under the Convention, including her rights to a fair trial and due process under Article 8, her right to effective recourse to a competent court under Article 25, and her right to mental and moral integrity under Article 5, in connection with Article 1.1;
5. Recommend such remedies as the Commission considers adequate and effective for addressing the violation of Ms. Picolotti's fundamental rights, including directing Argentina to:
 - a) Immediately terminate the criminal prosecution of Ms. Picolotti;
 - b) Publicly acknowledge and apologize for the violation of Ms. Picolotti's fundamental rights, potentially through publication in the Official Gazette and in another newspaper of wide national circulation;
 - c) Ensure that judicial processes are free from political interference and retribution;

- d) Expunge Ms. Picolotti's criminal record;
- e) Pay Ms. Picolotti compensatory damages, punitive damages, and other appropriate reparations arising from the violation of her fundamental rights, including for the emotional, reputational, financial, and other harm Ms. Picolotti (or her organization, CEDHA) has incurred as a result of Argentina's unlawful criminal investigation and prosecution;
- f) Pay Ms. Picolotti's legal fees and costs in defending against the criminal investigation and prosecution, both at the domestic and international level, and in bringing and pursuing this petition.

Dated: March 2, 2018

Respectfully Submitted,

A handwritten signature in black ink that reads "David W. Bowker" followed by a stylized flourish or initials.

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