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PETITION 687-11

FRIENDLY SETTLEMENT REPORT

GABRIELA BLAS BLAS AND HER DAUGHTER C.B.B.
CHILE

Electronically approved by the Commission on November 21, 2018.

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REPORT No. 138/18
PETITION 687-11
FRIENDLY SETTLEMENT
GABRIELA BLAS BLAS AND C.B.B.¹
CHILE
NOVEMBER 21, 2018²

I. SUMMARY AND PROCEDURAL CONSIDERATIONS RELATED TO THE FRIENDLY SETTLEMENT PROCEEDINGS BEFORE THE IACHR

1. On May 15, 2011, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by the Humanas Corporation Regional Human Rights and Gender Justice Center and the Observatory on the Rights of Indigenous Peoples, alleging the international responsibility of the Chilean State (hereinafter “the State” or “the Chilean State”) for the alleged violation of Article 1.1 (obligation to respect rights), Article 2 (domestic legal effects), Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8.1 (right to a fair trial), Article 17 (rights of the family), Article 19 (rights of the child), Article 24 (right to equal protection), Article 25 (right to judicial protection), and Article 26 (progressive development) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), and for violating Articles 7 (a) and (b), 8, 9, and 26 of the Convention of Belem do Para, with respect to Gabriela Blas and her daughter C.B.B.

2. The petitioners alleged that between July 18 and 23, 2007, Gabriela Blas Blas, along with her son D.E.B.,³ aged 3 years and 11 months at the time, both members of the Aymara indigenous community, were tending their flocks in the commune of General Lagos. After they had finished work and were returning home, the boy got lost. Gabriela Blas Blas looked for him until nightfall but was unable to locate him. The following day, the victim reported her son’s disappearance to the police [*Carabineros de Chile*]; the state authorities, however, focused on holding Gabriela Blas Blas criminally responsible for the alleged facts. They subjected her to torture and cruel, inhuman, and degrading treatment to extract a confession, as a result of which she was convicted and sentenced to 10 years in prison for abandoning her son and causing his death.

3. The petitioners allege that while Gabriela Blas Blas was being arbitrarily held in detention, she was prevented from seeing her other two children, C.B.B. and R.B.B.,⁴ as a result of which her minor daughter C.B.B. was given up for international adoption, by means of an allegedly irregular procedure.

4. On November 25, 2014, the parties held a working meeting with the Commission in Santiago, at which they made a preliminary exploration of the possibility of reaching a friendly settlement agreement. On January 5, 2015, the Commission was sent the “Minute of Proposed Friendly Settlement Agreement.” Finally, the parties signed a friendly settlement agreement on June 11, 2016, within the framework of a working meeting organized by the Commission. The parties signed an addendum to the friendly settlement agreement at a working meeting that was facilitated by the Commission on March 20, 2017. Additionally, the parties held working meetings with the facilitation of the Inter-American Commission on Human Rights on October 21, 2015, December 5, 2016 and March 20 and October 26, 2017.

5. On December 19, 2017, the petitioners presented a report indicating that substantial progress had been made with implementing the agreement. On January 23, 2018, the State submitted a report that

¹ The IACHR will hereinafter refer to the child as C.B.B. The IACHR is keeping her identity confidential given that she is of minor age.

² Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in the discussion and decision on this case, according to Article 17.2 a) of the Rules of Procedure of the IACHR. Commissioner Esmeralda Arosemena de Troitiño abstained from voting in this case.

³ The IACHR will hereinafter refer to the child as D.E.B. The IACHR is keeping his identity confidential given that he was of minor age.

⁴ The IACHR will hereinafter refer to this son as R.B.B. The IACHR is keeping his identity confidential given that he is of minor age.

agreed with the report on progress made by the petitioners regarding the implementation of the friendly settlement and requested that the homologation of the agreement. On October 16, 2018, the petitioners expressed their wishes to proceed with the homologation report in this matter.

6. This friendly settlement report, pursuant to the terms of Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, provides an overview of the facts alleged by the petitioners and a transcription of the friendly settlement agreement signed by the petitioners and the Chilean State on June 11, 2016. It also approves the agreement signed by the parties and agrees on the publication of this report in the IACHR's Annual Report to the General Assembly of the Organization of American States.

II. ALLEGED FACTS

7. According to the petitioners' narrative, on July 18 to 23, 2007, Gabriela Blas Blas and her son D.E.B., then aged 3 years and 11 months, were tending their flocks in the commune of General Lagos, within the city of Arica, in an area of the plateau [*Altiplano*] where Chile borders on Peru. According to Gabriela Blas Blas's version of events, her son got lost when she went back to look for two llamas that had lagged behind. Gabriela then sought, fruitlessly, to find her son. The following day, Gabriela went to the Carabineros to report her son's disappearance; however, the officials tortured her to extract a confession that she had murdered him.

8. According to the petitioners' contentions, the torture to which the agents of the State subjected Gabriela Blas included countless late-night interrogation sessions, during which lamps were shone directly in her face, long periods without food or water, having a bootlace tied around her neck, threatening her with submersion in a water tank, threatening her with electric shocks, and brandishing firearms in front of her in an attempt at intimidation. Similarly, according to the petitioners, Gabriela Blas Blas was held in solitary confinement for five months out of the total time she was held in detention. The petitioners contend that Gabriela Blas Blas was not informed of her rights, nor was she allowed access to appropriate defense counsel.

9. The petitioners state that on July 28 of that year, during a visit by an officer of the Special Investigations Section (S.I.P.), Gabriela Blas Blas reported the torture she had suffered during her incarceration; her statement, however, was sent to the archive with no action taken.

10. Later, on July 29, 2007, summary proceedings were brought against Gabriela Blas Blas, who had no contact with her defense counsel until after the trial had begun. During that process, she was interviewed by the police on at least one occasion without her attorney being present. According to the petitioners' contentions, Gabriela Blas Blas was held in preventive custody for three years until April 15, 2010, when the Arica Criminal Oral Court handed down a first-instance conviction.

11. The petitioners indicate that on October 13, 2008, Gabriela Blas Blas was charged with the crimes of abandoning a child in a remote location, obstructing an investigation, and incest.⁵ In December 2008, the lifeless body of the child D.E.B. was found. According to the petitioners, no forensic examinations were conducted to determine the cause of the child's death. Because of the discovery of the body, new charges were laid against Gabriela on March 27, 2009, in which she was accused of perpetrating the crime. On April 15, 2010, the First Chamber of the Criminal Oral Court in Arica sentenced Gabriela Blas Blas to 10 years in prison for the crime of abandoning a child under the age of ten in a remote location.

12. The public criminal defender assigned to Gabriela Blas Blas filed for the annulment of the first-instance judgment. The remedy was decided by the Court of Appeals, which admitted the appeal and determined that it could not be concluded that Gabriela Blas Blas intentionally abandoned her son, and proceeded to vacate both the judgment and the trial.

13. The petition then indicates that a second trial was held between October 4 and 6, 2010, during which new evidence from police officers and *carabineros* was heard. That trial concluded with a judgment

⁵ According to the petition, one of the children was the result of a rape that Gabriela Blas Blas suffered at the hands of a relative.

issued on October 11, 2010, that convicted Gabriela Blas Blas to a twelve-year prison term for the crime of abandoning a minor aged under ten years in an isolated location, resulting in his death.

14. The petitioners maintain that Gabriela Blas Blas was denied all contact with her children during her incarceration in Arica. Irrespective of the foregoing, during her time in prison, her minor-aged daughter, C.B.B., was given up in an international adoption, in spite of the express opposition of both her parents. The petitioners claim that the judicial proceedings that allowed the adoption did not take into account the fact that the girl belonged to an Aymara indigenous people.

15. Finally, the petitioners state that on May 25, 2012, the Ministry of Justice of the Government of Chile, through the Judicial Division's Pardons Section, granted Gabriela Blas Blas partial pardon, whereby the main sentence of twelve years' maximum-level imprisonment was reduced to six years. Later, on June 1, 2012, Gabriela Blas Blas received a general pardon decreed by law, as a result of which she was released from prison. Because of the accusations made against her, however, Gabriela Blas Blas was roundly rejected by her community, which reportedly considered her guilty of parricide. As a result, she lost her support network within the indigenous community and was forced to relocate to another city, where she faced conditions of extreme poverty alongside her minor-aged son, the only one of her three children to remain with her.

16. In consideration of which, the petitioners expressed that their interest in pursuing negotiations for a friendly settlement agreement was primarily intended to provide Gabriela Blas Blas and her son with the possibility of enjoying a dignified living conditions and to rescue the historical memory of the case so that in the future, C.B.B. will be able to learn about her origins when she reaches adult age.

III. FRIENDLY SETTLEMENT

17. On June 11, 2016, in Santiago, the State, represented by Hernán Quezada Cabrera, Director of Human Rights at the Ministry of Foreign Affairs, and the petitioners, with Camila Maturana representing Humanas Corporation and Felipe Guerra representing the Observatory on the Rights of Indigenous Peoples, signed a friendly settlement agreement that provided as follows:

Friendly Settlement Agreement
P-687-2011
Case of Gabriela Blas Blas and C.B.B.

Background

On May 15, 2011, the Humanas Corporation Regional Human Rights and Gender Justice Center and the Observatory on the Rights of Indigenous Peoples lodged a complaint with the Inter-American Commission on Human Rights (hereinafter, "the Commission") against the State of Chile for violating the rights and guarantees enshrined in Article 1.1 (obligation to respect rights), Article 2 (domestic legal effects), Article 5 (right to physical, mental, and moral integrity), Article 7 (right to personal liberty), Article 8.1 (right to a fair trial), Article 17 (rights of the family), Article 19 (rights of the child), Article 24 (right to equal protection), Article 25 (right to judicial protection), and Article 26 (progressive development) of the American Convention on Human Rights (hereinafter, "the Convention"), and Articles 7 (a) and (b) and 9 of the Convention of Belem do Para, Article 26 (progressive development), with respect to Gabriela Blas Blas and her daughter, the child C.B.B.; Article 7 (a) and (b), Article 8, and Article 9 of the Convention of Belem do Para with respect to Gabriela Blas Blas; and for violating the rights and guarantees enshrined in Article 1.1 (obligation to respect rights), Article 2 (domestic legal effects), Article 5 (right to physical, mental, and moral integrity), Article 17 (rights of the family), Article 19 (rights of the child), Article 24 (right to equal protection), and Article 26 (progressive development) of the American Convention on Human Rights with respect to the child C.B.B.

On March 18, 2013, the State of Chile presented the Commission with its response to the admissibility of the petition in question, in which it gave different positions regarding the two victims. The State of Chile asked the Commission to rule the alleged violation of the rights of the child C.B.B. inadmissible because, it held the claim was untimely and there was no violation of those rights either in the proceedings that ruled on the admissibility of the adoption or in the international adoption process itself. The State of Chile made no claims regarding the admissibility of the alleged human rights violations suffered by Gabriela Blas Blas. The State's reply was forwarded to the petitioners, who returned their comments on it on August 9, 2013. The State of Chile later presented a new submission reiterating its earlier position, which was conveyed to the petitioners on May 9, 2014.

In March 2012, a request for precautionary measures on behalf of Gabriela Blas Blas and C.B.B. was lodged with the Commission (MC-88-2012)⁶. On April 3, 2012, the Commission asked the petitioners to submit additional information, which they did on April 20, 2012. The Commission requested further information on several other occasions, which the petitioners submitted on June 5, July 26, and October 9, 2012, respectively. To date, however, it has not been resolved.

On November 25, 2014, the petitioner, Mrs. Gabriela Blas Blas, the Humanas Corporation Regional Human Rights and Gender Justice Center, the Observatory on the Rights of Indigenous Peoples, and representatives of the State of Chile held a working meeting with the Commission in Santiago. They discussed the possibility of reaching a friendly settlement agreement and exchanged views regarding the acknowledgment of state responsibility for the violated human rights of Gabriela Blas Blas and her daughter, the child C.B.B., and the reparation measures to be considered, and it was agreed that the petitioners would submit a written proposal on the matter.

Accordingly, on January 5, 2015, the Commission was sent the document "Minute of Proposed Friendly Settlement Agreement," which contained the points that such an agreement should address in order to make amends for the violations of the human rights of Mrs. Gabriela Blas Blas and her daughter, the child C.B.B., committed by the State of Chile.

Subsequently, on March 21, 2015, during the Commission's 154th period of sessions, a working meeting was held between the petitioners, representatives of the State of Chile, and the Commission, at which the parties reiterated their willingness to reach a friendly settlement agreement that would redress the human rights violations suffered by Mrs. Gabriela Blas Blas; the participants also reviewed the content of the "Minute of Proposed Friendly Settlement Agreement" and identified options and time frames for its implementation. The participants also agreed to hold a meeting with the Commission to review the progress made with the previously defined reparation measures with a view to the future signing of the text of the Agreement.

As a result, on October 21, 2015, during the 156th period of sessions, a further working meeting was held by the petitioners, representatives of the State of Chile, and the Commission in order to review the level of compliance with the proposed reparation measures. On that occasion the State of Chile presented the progress made with the reparations as indicated in the letter submitted to the Executive Secretary on October 20, 2015, which was in turn conveyed to the petitioners by the Commission on December 7 by means of an email dated December 9, 2015.

⁶ On January 11, 2013, the IACHR requested additional information to the parties and did not obtain a response from the petitioners, reason why the precautionary measure 88-2012 its currently deactivated, for the lack of procedural activity from the petitioners.

In accordance with the progress described, the parties believe that conditions exist for the signature of this Friendly Settlement Agreement:

1. Acknowledgment of responsibility by the Chilean State

Organization of a public ceremony to acknowledge the State's responsibility for the serious human rights violations suffered by Mrs. Gabriela Blas Blas, to be defined in conjunction with the petitioner.

Said event shall be attended by high rank officials of the State, by Mrs. Gabriela Blas Blas's guests, and by organizations that work for women's human rights and the human rights of indigenous peoples.

The responsibility acknowledgment ceremony shall be held during 2016, subject to the prior agreement of the authorities and the petitioner.

2. Elimination of Gabriela Blas Blas's criminal record

The State of Chile agrees to expunge all records of the conviction handed down against Mrs. Gabriela Blas Blas in the General Register of Convictions of the Civil Registry and Identification Service. To that end, the State agrees to amend Supreme Decree 64 of 1960, expanding the discretionary powers of the Director of the Civil Registry and Identification Service to allow the elimination of judicial records related to international human rights judgments or homologated friendly settlement agreements to which the State of Chile is a party.

Once obtained the homologation of this Friendly Settlement Agreement by the Commission, the Civil Registry and Identification Service shall proceed to expunge Mrs. Gabriela Blas Blas's criminal record within no more than six months.⁷

The signing and processing of the supreme decree amending Supreme Decree 64 of 1960 shall take place before the conclusion of the homologation report.

3. Provision of means of subsistence for Gabriela Blas Blas

Granting of a life-time ex gratia pension to Gabriela Blas Blas, equal to two times the minimum monthly wage, and specifically providing that the award shall not constitute disqualification from applying for and/or receiving any other benefit or grant financed by public funds or from pursuing any paid activity.

This ex gratia pension was granted by Supreme Decree No. 1,046 on August 11, 2015, with payments starting in October 2015.

4. Adequate housing for Gabriela Blas Blas

Granting of ownership of a dwelling to Gabriela Blas Blas in the city of Arica, the location and characteristics of which shall be suited to her needs, for which purpose Gabriela Blas Blas shall be consulted regarding her preferences.

The State agrees to materially present Mrs. Gabriela Blas Blas with the dwelling assigned by means of Resolution No. 891 of the Housing and Urban Development Service of September 1, 2014.

⁷ Clause amended by the Addendum of March 20, 2017.

Regardless of the foregoing, the State agrees to provide Mrs. Gabriela Blas Blas with a temporary housing solution, as soon as possible, in the city of Arica, for the time necessary until the material presentation of the definitive dwelling referred to in the previous paragraph.

5. Include in the adoption proceedings of the child C.B.B. background information on the processing of the petition before the Commission, together with post-adoption information about the child, and take steps to reestablish ties with Mrs. Gabriela Blas Blas and her family

The State undertakes to carry out the following actions:

a) Convey to the Receiving State full information on Mrs. Gabriela Blas Blas's case and the circumstances surrounding the adoption of the child C.B.B., in order to place in context the request for information and other special measures that will be presented to the Receiving State as detailed below. The information sent to the Receiving State shall include, at least, the complaint before the Inter-American Commission on Human Rights, the request for precautionary measures, and full background information on this Friendly Settlement Agreement.

Regarding the court records from the proceedings dealing with the susceptibility of the child C.B.B.'s to adoption, it is noted that pursuant to the terms of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Art. 23), the central authority of the Receiving State already has that information on file and, in addition, has the following: report on the child and deed of placement; child's birth certificate and records; photographs; forensic psychosocial report, health and education records of the child; final and enforceable international adoption judgment; and certificate of validation of adoption.

b) Ask the Receiving State, that in the event that the child C.B.B. chooses to request information on her biological origin upon reaching adulthood, to provide her with full information on Mrs. Gabriela Blas Blas's case and the circumstances surrounding her adoption. To that end, the Receiving State will be asked to include the following information in the corresponding dossier: the complaint lodged with the Commission, the request for precautionary measures, the background information of this Friendly Settlement Agreement, and the homologation report to be issued in due course by the Commission.

c) In consideration of the best interests of the child and of her right to a family and an identity, to ask the Receiving State to send the background of the complaint lodged with the Commission, the request for precautionary measures, the background of this Friendly Settlement Agreement, and the court records of the proceedings dealing with the admissibility of the child C.B.B.'s adoption to the adoptive parents of the child C.B.B., safeguarding their privacy and keeping their identities confidential, so they may at a later date assess the possibility of informing the child of those facts and analyze the feasibility of reestablishing ties with her birth mother, before the child reaches majority. Should the adoptive parents agree to reestablish those ties, the State of Chile shall undertake to provide psychosocial assistance to all parties involved in that process in Chile.

d) Safeguarding the privacy of the child and of her adoptive family and keeping their identities confidential, the Receiving State shall be asked to provide post-adoption information on the child C.B.B., covering her psychosocial condition, adaptation, health, and development, and to convey that information to the birth mother. The State of Chile further commits to hand over all the background information sent by the Receiving State to date, while protecting the privacy of the child and her adoptive family and keeping their identities confidential.

e) The State of Chile also commits to include the complaint lodged with the Commission, the request for precautionary measures, the background of this Friendly Settlement Agreement, the court records of the proceedings dealing with the susceptibility of the child C.B.B.'s to adoption, and the homologation report to be issued in due course by the Commission in C.B.B.'s adoption case file currently held in the general archive of the Civil Registry and Identification Service, should the child choose to request information on her biological origins upon reaching the age of adulthood.

To comply with these steps, the State of Chile shall request the cooperation and technical support of the Commission—in particular, of its Special Rapporteurships on the rights of indigenous peoples, rights of women, and rights of children—and it shall also request that the Commission contact the United Nations Children's Fund (UNICEF) to secure that organization's technical support in dealings with the Receiving State. The actions to be taken by the State of Chile shall be carried out in the second half of 2016.

6. Guarantees of non-repetition

The State commits to:

Develop a nationwide training program for members of the judiciary, the Public Prosecution Service, the Public Criminal Defense Office, the Legal Assistance Corporation, the Carabineros of Chile, the Investigations Police, the Gendarmerie of Chile, and the National Children's Service, covering the topics of indigenous women's human rights and access to justice. This program will focus on compliance with international equality and nondiscrimination obligations, indigenous women's human rights, access to justice, the special protection due to indigenous children, and the enforcement of the relevant legal standards as defined by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights and set out in documents including the Commission's report "Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application. Updates from 2011 to 2014" and the report "The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas" (OEA/Ser.L. /V/II., Doc. 54113, October 17, 2013). The training program is to be designed during the second half of 2016, for implementation to begin in the second half of 2017; subsequently, reports on its deployment will be sent to the Commission.

Establish, in the second half of 2016, in conjunction with the petitioners, a Working Panel, coordinated by the Ministry of Justice and Human Rights, to develop a series of comments and proposals on a bill to amend current Law No. 19.620, which sets provisions governing the adoption of minors, in order to incorporate the principle of inter-culturalism into adoption processes. That panel will assess and consult with the competent public agencies regarding the feasibility of submitting the proposal to an indigenous consultation procedure in compliance with ILO Convention 169.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

18. The IACHR again notes that pursuant to Articles 48.1.f and 49 of the American Convention, the purpose of this procedure is to reach "a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." Accepting this procedure demonstrates the State's good faith in pursuit of the Convention's purposes and goals under the principle of *pacta sunt servanda*, whereby states are required to comply in good faith with the treaty obligations they assume.⁸ It would also like to note that the friendly settlement procedure provided for in the Convention allows individual cases to be concluded in a non-

⁸ Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), Article 26: "Pacta sunt servanda: Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

contentious manner and that in cases from several different countries, it has served as an important vehicle for resolving disputes that is available to either party.

19. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case, and it applauds the efforts made by both parties during the negotiations to reach this friendly settlement, which is compatible with the purposes and goals of the Convention.

20. The Commission notes that the parties signed an addendum following the signature of the friendly settlement agreement, which it rules to be an integral part of the agreement entered into by the parties.

21. Regarding point 1 of the agreement, which provides for a ceremony to acknowledge the responsibility of the Chilean State, as agreed on by the parties, on December 28, 2017, the President of the Republic, Michelle Bachelet, held a private meeting at La Moneda Palace with Gabriela Blas Blas, accompanied by her representatives, and the Director of Human Rights at the Ministry of Foreign Affairs. Additionally, the parties jointly drew up a list of special guests, including human rights organizations and senior authorities of the Chilean State, and they designed the contents and structure of the event that was held on January 29, 2018, with the assistance of the Inter-American Commission on Human Rights.⁹ The event was attended by the Minister of Foreign Affairs, the Minister of Social Development, and the Minister for Women and Gender Equity, the President of the Supreme Court, the Deputy Secretary for Human Rights, the Deputy Director General of the Police [*Carabineros de Chile*], Chile's Ombudsman, and the Director of Human Rights of the Ministry of Foreign Affairs. In addition, the petitioners were represented by Camila Maturana from the Humanas Corporation of Chile and Nancy Yañez, who both represented Gabriela Blas in the processing of the petition before the IACHR.

22. At the ceremony of public recognition of responsibility, the IACHR offered the following remarks:

For the IACHR, a State recognizing its responsibility and requesting forgiveness represents a significant form of redress and a commitment toward satisfaction for the victim in the case and toward the non-repetition of the serious violations perpetrated. Likewise, for the Commission, the declaration made by the State represents an essential step forward in restoring the victim's dignity after the sorrow and violations she suffered. The IACHR similarly acknowledges the commitment assumed by the State to implement the reparation measures agreed on in this case through the friendly settlement procedure. [...]

The Commission places priority on the friendly settlement procedure as an important component in the petitions and individual cases system, one that offers a mechanism that can be used for the peaceful, consensus-based settlement of disputes. It is a process that the IACHR makes available so that the State concerned and the alleged victims and/or petitioners can reach an agreement, through non-contentious channels, to resolve an alleged violation of human rights, within which the willingness of the parties is an essential element. The procedure has been and continues to be very effective as an alternative mechanism for resolving situations and has been very successful in ensuring redress for victims of human rights violations.

Within this context of prioritizing the friendly settlement mechanism, the Chilean Government, in its participation in this case and others under negotiation, has shown great receptiveness and commitment toward the inter-American system in order to ensure comprehensive redress for victims of human rights violations. And that is what brings us together today.

At the same time, it is not always possible to ensure complete redress for the harm inflicted. In the case at hand, the friendly settlement agreement reached will enable the child C.B.B., in

⁹ In this regard, see: IACHR, Press Release No. 024, February 9, 2018, [IACHR Conducts Visit to Chile on Friendly Settlements](#).

the future, to learn about the circumstances that surrounded her adoption and, potentially, if she so decides, to contact her mother.

The Commission would like to highlight and applaud the tireless efforts of Mrs. Gabriela Blas, and of the petitioners, Nancy Yañez and Camila Maturana, in their constant struggle for the restitution of their rights.

The Commission believes that the Chilean State acted with the utmost commitment in negotiating and implementing this agreement, and it congratulates the State for those efforts. At the same time, it urges it to continue to make progress with the measure of non-repetition regarding the establishment of a Working Panel to amend the law to include intercultural considerations in adoption processes, and with the training of its public servants on the topics of indigenous children and human rights, as established in the friendly settlement agreement.

The Commission congratulates the parties on their willingness to progress toward the resolution of this matter through non-contentious channels, and it will continue to monitor the implementation of the remaining measures until they have been fully met.

23. Taking into consideration the information given above, the Commission believes that item 1 of the friendly settlement agreement, regarding the responsibility acknowledgment ceremony, has been implemented in full.

24. As regards point 2 of the agreement, regarding the expunging of Gabriela Blas Blas's criminal record, the parties decided by common accord to amend Supreme Decree No. 64 of 1960 to include new grounds for extending the powers granted to the Director of the Civil Registry and Identification Service for eliminating criminal records in accordance with the resolutions of international human rights protection agencies. Thus, on August 17, 2017, the Official Journal of the Nation published Supreme Decree No. 250/17 of the Ministry of Justice and Human Rights, which amended Decree No. 64/1960 with the inclusion of the following provision:

1. Article 8 is amended to read:

(a) In subsection 1, after paragraph (h), the following paragraph is added: "(i) when involving compliance with international human rights judgments or homologated friendly settlement agreements in which the State of Chile is a party;"

(b) The following final paragraph is added: "In cases covered by paragraph (i), the official documentation shall be sent by the Ministry of Justice and Human Rights to the Civil Registry and Identification Service, requesting the elimination of the corresponding judicial record. In consideration of that documentation, the Director of the Service will issue the resolution ordering the elimination of the judicial record."

25. In connection with this, the Commission notes that the expunging of the criminal record required in this friendly settlement agreement is a landmark measure, one that has had a structural impact by allowing the criminal records of other victims of human rights violations to be cleared by reason of decisions adopted by the agencies of the Inter-American human rights system, including friendly settlements. The Commission applauds the State's progress on this matter and understands that once this homologation report has been adopted, the State will proceed to expunge Gabriela Blas Blas's criminal record, according to the terms of the agreement itself and the legislation enacted as a result of it. The Commission understands that the creation of the legal framework needed to implement this measure is a part of the compliance process, and so it declares that item 2 of the agreement signed by the parties has been partially implemented.

26. Regarding point 3 of the agreement, on the Chilean State's provision of a means of subsistence for Gabriela Blas Blas, Supreme Decree No. 1046 of August 11, 2015, established an *ex gratia* pension for Gabriela Blas Blas, equal to two times the minimum wage, not to be considered as earnings. Since both parties have confirmed that the measure has been implemented, the Commission believes that the State has complied

with the commitment established in this item of the agreement and accordingly declares that it has been met in full.

27. Regarding point 4 of the agreement, which establishes that Gabriela Blas Blas is to be given an adequate housing, resolution No. 891 of September 1, 2014, of the Housing and Urban Development Service assigned the beneficiary a dwelling in the city of Arica, which was handed over on a temporary basis on November 5, 2016, and definitively in June 2017. Since both parties have confirmed that the measure has been implemented, the Commission believes that the State has complied with the commitment established in this item of the agreement and accordingly declares that it has been met in full.

28. As regards point 5 of the agreement, which covers the inclusion of background information related to the processing of the petition before the IACHR in the child C.B.B.'s adoption file, together with post-adoption information intended to facilitate the reestablishment of family ties, the Chilean State took steps that concluded with the inclusion of details regarding the petition in the adoption file and the presentation of post-adoption information to both the IACHR and the petitioners. That case file was presented by the State to the Commission at the working meeting between the parties held on October 26, 2017, and it was confirmed that Gabriela was finally able, for the first time since the incident, to receive information about her daughter's fate. The information furnished by the Receiving State included reports following up on her adaptation into the new family, her physical and mental development, her relations with her surroundings, major events, and regular evaluations. The report also contained a photographic record that, for the first time in 10 years, let Gabriela see how her daughter had grown.

29. At the same time, it should also be noted that the Receiving State did not agree to inform the adoptive parents about the petition, since the family was unaware of the situation and it could have created apprehension for them and compromised the child's best interests. However, background information on the international proceedings have been included in the adoption case file held by the Civil Registry and Identification Service so that, should C.B.B. decide to seek information about her origins upon reaching majority, she will be able to learn where she came from and that her adoption arose from a violation of human rights and not from parental abandonment.

30. Taking these elements into consideration, the Commission believes that sections (a), (c), and (d) of item 5 of the agreement have been met in full. At the same time, the Commission finds that sections (b) and (e) have been partially met, and it asks the Chilean State to fully implement item 5 of the agreement, to include this Friendly Settlement Report in the adoption case file held by the Civil Registry and Identification Service, and, in addition, to forward this report on the friendly settlement agreement for inclusion in the Receiving State's adoption file, to be available to C.B.B. upon reaching the age of adulthood. In consideration whereof, the Commission finds that item 5 of the agreement has been partially implemented.

31. Regarding point 6 of the agreement, related to the guarantees of non-repetition, the Commission notes that it entails two commitments. The first commitment is to develop a nationwide training program for public employees covering the standards applicable to the human rights and indigenous children, along with other components. On this point, the parties reported progress along two lines. First, the Department of Human Rights Training and Education of the Undersecretary of Human Rights is to launch an online course in 2018. In addition, two working meetings were held with the judiciary, the Public Criminal Defense Office, the Gendarmes of Chile (GENCHI), and the Public Prosecution Service, for the incorporation into their training activities of the topics addressed in the friendly settlement agreement reached in this case.

32. The Commission takes note of the steps taken by the State to implement the training program described in the friendly settlement agreement and, finds that item 6 of the agreement has been partially met and will continue to monitor this item until it is implemented in full. The Commission therefore urges the parties to continue discussing the ongoing implementation of this measure and to keep the Commission apprised of their progress.

33. The second commitment established in point 6 of the agreement deals with the creation of a Working Panel to develop a series of comments and proposals on a bill to amend current Law No. 19.620, which

sets provisions governing the adoption of minors, in order to incorporate the principle of inter culturalism into adoption processes. In connection with this measure, the parties reported that on December 7, 2017, the Working Panel was set up. It comprised an intercultural facilitator from the Public Criminal Defense Office, two anthropologists, a Mapuche elder, and professionals from the Legal Division of the Undersecretary of Justice and the Protection Division of the Undersecretary of Human Rights.

34. The Commission takes note of the progress made by the State to establish the Working Panel on adoption and indigenous children. At the same time, the Commission notes that it does not have sufficient information on the work of the panel or on the results of the process toward amending the legislation. The Commission therefore urges the parties to recommence their dialogue to construct a working path toward the full implementation of this item, and to regularly return up-to-date information on the progress made with this component of the agreement.

35. For the reasons given above, the IACHR finds that points 1, 3, and 4, and letters (a), (c), and (d) of point 5 of the friendly settlement agreement have been fully implemented and so it duly declares it. On the other hand, as regards to point 2 and letters (b) and (e) of point 5, and point 6 of the agreement, the Commission believes that the State has begun to take steps toward their implementation and therefore it considers that there is partial compliance with these parts of the agreement and so it declares it. The IACHR therefore declares that the friendly settlement is in a level of substantial execution and has been partially complied with, for which reason it will continue to monitor the implementation of point 2, letters (b) and (e) of point 5, and point 6 of the friendly settlement agreement until they have been implemented in full.

V. CONCLUSIONS

1. Based on the above remarks and in light of the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission would like to reiterate its deepest appreciation of the efforts made by the parties and its satisfaction at the reaching of a friendly settlement agreement in this case that is based on the respect for human rights and is compatible with the purpose and goals of the American Convention.

2. The IACHR declares that points 1, 3, 4, and letters (a), (c) and (d) of point 5 have been met in full.

3. The IACHR declares that point 2, letters (b) and (e) of point 5 and point 6 of the agreement have been partially met, for which reason it will continue to monitor their implementation.

4. In consideration of the comments and conclusions set out in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To approve the terms of the agreement signed by the parties on June 11, 2016.

2. To declare that in accordance with the analysis contained in this report, points 1, 3, and 4 of the agreement, together with letters (a), (c), and (d) of point 5, have been met in full.

3. To continue to monitor the commitments that are still pending compliance by the State of Chile. To that end, to remind the parties of their commitment to report periodically to the IACHR on compliance with the measures set out in point 2, letters (b) and (e) of point 5, and point 6 of the friendly settlement agreement.

4. To publish this report and to include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 21st day of November 2018. (Signed) Margarette May Macaulay, President; Luis Ernesto Vargas Silva, Second Vice-President; Francisco José Eguiguren, Joel Hernández, Flávia Piovesan, Members of the Commission.