

OEA/Ser.L/V/II.  
Doc. 4  
24 February 2020  
Original: Spanish

**REPORT No. 3/20**  
**CASE 12.095**  
FRIENDLY SETTLEMENT

MARIELA BARRETO RIOFANO  
PERU

Approved electronically by the Commission on February 24, 2020.

**Cite as:** IACHR, Report No. 3/20, Case 12.095. Friendly Settlement. Mariela Barreto Riofano.  
Peru. February 24, 2020.

**REPORT No. 3/20**  
**CASE 12.095**  
FRIENDLY SETTLEMENT  
MARIELA BARRETO RIOFANO  
PERU  
FEBRUARY 24 2020<sup>1</sup>

**I. SUMMARY AND PROCEDURAL ASPECTS RELATED TO THE FRIENDLY SETTLEMENT PROCESS**

1. On November 12, 1998, during its on-site visit to Peru, the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the IACHR") received a petition presented by Mr. Orlando Barreto Peña (hereinafter, "Mr. Barreto" or "the petitioner"), against the Republic of Peru (hereinafter, "Peru", "the State" or "the Peruvian State"), in which he alleged the violation of the rights of his daughter, Mariela Barreto Riofano, who at the time of the events served as an agent of the Army Intelligence Service (SIE), when state security agents illegally detained her, tortured her, executed her and finally dismembered her. Subsequently, the Center for Defense and International Law (CEJIL) and the Association for Human Rights (APRODEH), assumed the representation of the victim's relatives.

2. The petition claimed responsibility for the Peruvian State for the violation of Articles 4 (right to life), 5 (right to humane treatment), 7 (rights to personal liberty) and 8 (right to a fair trial) of the American Convention on Human Rights (hereinafter "the American Convention").

3. On March 23, 2000, the IACHR issued the Admissibility Report No. 30/00. In its report, the IACHR concluded that it was competent to examine the alleged violation of articles, 4 (right to life), 5 (right to humane treatment), 7 (rights to personal liberty) and 8 (right to a fair trial) of the American Convention.

4. On December 22, 2001, the friendly settlement agreement was signed, whereby the Peruvian State recognized its international responsibility for the human rights violations committed to the detriment of Mariela Barreto Riofano.

5. This friendly settlement report, pursuant to Article 49 of the Convention and Article 40(5) of the Commission's Rules of Procedure, outlines the facts alleged by the petitioners and transcribes the friendly settlement agreement, which was signed on December 22, 2001, by the petitioners and representatives of the Peruvian State. In addition, the agreement signed by the parties is approved, and it is agreed to publish this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

**II. TRAMITE ANTE LA COMISION**

6. On November 12, 1998, the Commission received the petition regarding the events allegedly occurred in March 1997.

7. In Admissibility Report No. 30/00, published on March 23, 2000, the IACHR declared the case admissible, with regard to the alleged violations of the rights to life, personal integrity, personal liberty and the judicial guarantees, enshrined in Articles 4, 5, 7 and 8 respectively, of the American Convention on Human Rights to the detriment of Mariela Barreto Riofano.

8. This case is part of the Joint Press Release of February 22, 2001, whereby the Peruvian State undertook to recognize its international responsibility for multiple cases of human rights violations and to take the necessary measures to restore the rights affected and / or repair the damage caused.

---

<sup>1</sup> Commissioner Julissa Mantilla, a national of Peru, did not participate in the consideration of the vote on this case of compliance with article 17 (2) (a) of the IACHR.

9. On March 2, 2001, the parties signed a Framework Agreement called “Prior Agreement for Friendly Settlement” in which the parties submitted their proposals to subsequently sign an agreement. On December 22, 2001, a friendly settlement agreement was signed, whereby the Peruvian State recognized its international responsibility for human rights violations committed to the detriment of Mariela Barreto Riofano.

10. Since the signing of the agreement, the IACHR has closely monitored compliance with the FSA by requesting information from the parties on the case, convening working meetings and monitoring the different measures that the State has taken to comply with it.

11. At the working meeting facilitated by the Commissioner Joel Hernandez, Country Rapporteur of the IACHR for Peru, on September 26, 2019, during the 173 period of session, the Peruvian State indicated that it considered that the agreement was approved by reason of a letter sent by the Commission to both parties on January 10, 2002, in which the FSA's receipt was acknowledged and the parties were informed that “*the Inter-American Commission approves and ratifies said agreement, considering it based on respect for the human rights enshrined in the Convention American on Human Rights...*”. In that sense, the State interpreted that *de facto*, said communication from the Commission would constitute a kind of approval of the friendly settlement agreement.

12. In the framework of the aforementioned working meeting, the petitioners was asked to indicate its considerations on whether the petitioners consider that the FSA was approved in 2002 by the IACHR, and its position on whether they would agree with the publication of the FSA or if, in the case of the eventual closing of the friendly settlement procedure, if they would be willing to continue the litigation of the case at the merits stage.

13. On November 1, 2019, the petitioner sent its observations to the IACHR's request, which were forwarded to the State. The State, for its part, submitted observations on November 20, 2019. Lastly, the petitioners presented observations on December 19th, 2019, which were transmitted to the State, and it presented its final observations on January 31st, 2020.

a) *Allegations of the petitioner:*

14. The petitioner considered that the FSA had not been homologated, is not fully complied with and requested the Commission not to approve it until full compliance has been reached. To that respect, the petitioners raised three central arguments. First, that as read in the provisions of the American Convention on Human Rights and the Rules of Procedure of the IACHR, in order to approve a friendly settlement agreement, the Commission must issue a report describing the facts and the solution achieved, previously verifying the consent of the victims or their beneficiaries in the friendly settlement agreement. The petitioner affirmed that in practice the IACHR carefully assesses the observance of compliance with these requirements and that in the great majority of the agreements it considers them fulfilled through the submission of a joint note from both parties requesting homologation.

15. Likewise, the petitioner indicated that, to their understanding, the IACHR has acted by facilitating the space for dialogue and negotiation between the parties and since there is no friendly settlement report issued by the Commission to date, the requirements of Article 49 of the ACHR would have not been met.

16. The petitioner further alleged that the State violated the principle of its own acts (*estoppel*) as a figure of international law, since it has assumed a clear and consistent practice that demonstrates that the FSA would have not been considered by the IACHR as an agreement published in the terms of article 49 of the ACHR. According to the petitioners, the State's practice, unequivocally and without objection, produced legal consequences due to the application of the doctrine of own acts and the principle of good faith and of *pact sunt servanda*. The petitioners considered that if a State adopts a position or fails to object in a timely manner, this generates legal consequences, so that the same State cannot contradict itself and change the state of things in which the counterpart was entrusted.

17. For these reasons, the petitioner requested the Commission to continue the accompaniment of the FSA and continue monitoring the levels of compliance with the agreement until the State has fully complied with it. In addition, they requested that the Commission does not publish the agreement until there is an express consent of both parties.

b) *Allegations of the Peruvian State:*

18. For its part, the State considered that the FSA was already approved by the Commission and that it has been implemented, and subsidiary requested that the Commission issues its homologation report briefly. The State raised five central arguments. First, the State referred to the fact that the agreement is clear and sufficient in its twelfth clause<sup>2</sup>, such as to consider the willingness of the parties to want to carry out the approval once the agreement is signed and sent to the Commission, as indicated in said clause. For the aforementioned, the State considered that even if there is no published approval report, this cannot mean an obstacle to consider it that way, given that in good faith the parties assumed that the agreement had been approved.

19. The State considered that, from the established norms and the reports issued by the IACHR, including the *Practical Guide on the friendly settlement procedure* and the *Impact Report of the Friendly Settlement Procedure*, it is understood that the FSA has different stages, being that the negotiation stage ends with the signing of the agreement and its approval consists in the process in which the IACHR reviews the terms of the agreement signed between both parties, to enable the IACHR to monitor the implementation of the agreement. In that sense, the State considered that there was a negotiation phase that culminated with the signing of the FSA on December 22, 2001 and its subsequent approval through the letter of January 10, 2002, signals the start of the follow up phase of the friendly settlement.

20. On the other hand, the State placed special emphasis on the procedural conduct of the petitioners and the Commission, under the understanding that the agreement was approved. According to the State, the Commission would have initiated a process of monitoring and follow up with compliance through working meetings to verify the implementation of the measures, and that rolling back such conduct would be contrary to the principle of *estoppel* aforementioned causing damage, since the parties have been guided under the assumption that the agreement was approved. In that sense, the State affirmed that the possibility of following up the compliance with a friendly settlement agreement is only possible when there is a friendly settlement agreement approved by the IACHR. Additionally, the State indicated two briefs of the petitioner, dated 2017 and 2018, in which it is stated verbatim "*the reason for this communication is to refer to compliance with the reparation measures indicated in the FSA signed between the Peruvian State and the representatives of the relatives of Mariela Barreto Riofano and approved by the IACHR on January 10, 2002.*" In that sense, the State applied the principle of *estoppel* also to the behavior of the petitioner, having assumed in its submissions that the FSA had already been approved by the Commission.

21. The State also observed that the fact of ignoring the approval and ratification of the FSA would imply ignoring that it is based on the rights recognized by the ACHR and would ignore the actions taken by the Peruvian State to comply with the commitments assumed under of the agreement, as well as the benefits received by the victim's family.

22. Finally, the State indicated that the principle of legal certainty, which seeks to achieve the stability and reliability of the international protection of human rights by the bodies responsible for their interpretation and application, implies that the decision of the IACHR to approve and to ratify the FSA had legal effects, and that the parties, notified of said decision, acted on the basis of the confidence of the guardianship role that the IACHR has been playing in the present case.

23. The State requested the IACHR to correct the omission with the issuance of the publication of the homologation report in accordance with the letter notified in 2002.

---

<sup>2</sup> The twelfth clause of the agreement refers to the homologation of the agreement, with the following wording: "*The intervening parties are obliged to inform the Inter-American Commission on Human Rights of this Friendly Settlement agreement in order that said organization may homologate and ratify it in all its extremes.*"

### III. FACTS ALLEGED

24. The petitioner alleged that Mrs. Barreto was last seen alive in the early hours of March 22, 1997. On that occasion, she left her home, located in the city of Lima, for the purpose of retrieving a blood group certificate for her daughter, at that time newborn.

25. The petitioner indicated that, on March 25, 1997, an article appeared in the newspaper "La República", entitled "Young woman is tortured and dismembered", providing information about the discovery of the remains of a woman at the kilometer 25 of the road to Canta. According to this article, the body was dismembered, presenting both "arms sectioned at shoulder height"; in turn, the head was detached from the trunk of the body, as well as the hands and feet, which could not be found. Likewise, "the body presented various injuries at the height of the neck, on both sides of the abdomen and on one of the legs, which would indicate that she would have been subjected to physical abuse." According to the investigations arranged by the Fourth Provincial Criminal Prosecutor of the Northern Cone of Lima, and the subsequent recognition made by the same petitioner and by Mr. Elmer Valdivieso Nuñez, who at the time of the events occurred lived with Mrs. Barreto, it was determined that the remains undoubtedly corresponded to Mrs. Barreto.

26. Likewise, the petitioner indicated that, according to journalistic information published in the television programs "Contrapunto", broadcast by Frecuencia Latina, Channel 2 of Lima, and "La Revista Dominical", broadcast by América Televisión, Channel 4 of Lima, both on Sunday, April 6, 1997, the perpetrators of the murder would be "allegedly members of the Army Intelligence Service (SIE)." In turn, the petitioner linked the death of Mariela Barreto with the torture of another SIE agent, Leonor La Rosa Bustamante, who accused members of that institution of being the mediate and immediate perpetrators of the murder of Mrs. Barreto. It was also stressed that the methodology and brutality highlighted in the cases of Mariela Barreto and that of the agent La Rosa Bustamante, presented common characteristics and patterns that would allow them to conclude the presence of the same responsible or victimizing actor, meaning SIE agents.

27. The petitioner submitted the transcript of a statement made by Mrs. Luisa Zanatta, former SIE agent, which would have taken place on March 16, 1998. In that statement, former agent Zanatta would have argued, referring to the Massacre of 9 university students and a teacher from the National University "Enrique Guzmán y Valle" (located in La Cantuta, Lima) on July 18, 1992, that Mrs. Barreto told former agent Zanatta to have informed the weekly 'YES' on the place where the bodies of these people were hidden, which were killed by military agents who are members of the "Colina Group". According to the petitioners, the delivery of information by Mrs. Barreto to journalists about what happened in La Cantuta (and promptly, the information tending to the location of the bodies of the victims) would have been the cause of her execution.

28. Finally, regarding the exhaustion of the domestic remedies available at the domestic level, the petitioner held that as a result of a archive resolution issued by the Fourth Provincial Criminal Prosecutor of the Superior Court of the Northern Cone of Lima on February 25 of 1998, and of a resolution of the First Superior Prosecutor's Office of the Northern Cone dated June 22, 1998, which declared the complaint filed against the resolution of first instance unfounded, the domestic remedies would have been exhausted.

### IV. FRIENDLY SETTLEMENT

29. On December 22, 2001, the parties signed a friendly settlement agreement that establishes the following:

**FRIENDLY SETTLEMENT AGREEMENT  
CASE 12.095  
MARIELA BARRETO RIOFANO**

This document contains the Friendly Settlement Agreement in the IACHR case No. 12.095 - Peru, followed before the Inter-American Commission on Human Rights, signed by a Peruvian State duly represented by the Constitutional President of the Republic, Alejandro Toledo

Manrique, by the Minister of State in the Justice portfolio, Luis Fernando Olivera Vega and by the Minister of State in the Defense portfolio, David Waisman Rjavinsthi, and Messrs. Orlando Barreto Peña, with ID N°[...], Flor de Maria Riofano Pajuelo de Barreto, with D.N.I. N°[...], as parents of Mariela Lucy Barreto Riofano and legal guardians of her youngest granddaughters Nataly Milagros Martin Barreto and Karolina Stefhany Valdiviezo Barreto, and Mr. Francisco Soberón Garrido, with D.N. I. N°[...], on behalf of the Association for Human Rights (APRODEH) and the Center for Justice and International Law (CEJIL), as the attorney for the victim's next of kin.

This Agreement is signed in the following terms and conditions:

#### **FIRST BACKGROUND**

Mrs. Mariela Lucy Barreto Riofano, third sub-officer serving in the Army Intelligence Service (SIE) was kidnapped by military personnel, allegedly a member of a death squad created and protected by the State, on March 22, 1997, in the morning hours, taken to an unknown place where she was subjected to physical and psychological torture for investigation purposes and then summarily executed, dismembered and her incomplete body thrown in an open field at kilometer 23.5 from the road to Canta north of the city of Lima.

The investigation of the facts by the competent authority was characterized by unjustified delays, inefficiency and denial of justice, concluding with the provisional archive of the complaint of the victim's next of kin.

#### **SECOND: RECOGNITION**

The Peruvian State aware that the unrestricted protection and respect for human rights is the basis of a just, dignified and democratic society, in strict compliance with its obligations acquired with the signing and ratification of the American Convention on Human Rights and other instruments international on human rights of which it is a party, and aware that any violation of an intentional obligation that has caused damage entails the duty to properly repair it, constituting compensation to the victim's relatives, investigation of the facts and the administrative sanction, civil and criminal responsibility of those responsible for the fairest way to do so, recognizes its international responsibility for violation of Articles 1.1, 2, 4.1, 5.1, 5.2, 7.1, 7.2 and 8 of the American Convention on Human Rights to the victim Mariela Lucy Barreto Riofano. Such recognition was explained in the Framework Agreement for Friendly Settlement of March 2, 2001.

#### **THIRD: RESEARCH AND SANCTION**

The Peruvian State undertakes to carry out an exhaustive investigation of the facts and apply the legal sanctions against any person that is determined as a participant of the facts, whether as an intellectual, material, mediate or other condition author, even in the case of officials or public servants, whether civil or military.

The investigation already undertaken must be carried out subject to the legal system of the Peruvian State that includes the international treaties of which it is a party, understanding that the Judiciary and the Public Ministry are the only competent bodies for criminal and civil jurisdictional investigation.

The Executive Power undertakes to guarantee access to the resources of the domestic jurisdiction to the next of kin of the victim or her representative and/or lawyers to realize her right to truth, justice and reparation and to act diligently before the authorities competent so that these, autonomously and independently, proceed to the investigation and sanction of all those responsible for the alleged acts provided for in this Agreement.

## **FOUR: COMPENSATION**

### **01. Beneficiaries of this Agreement.**

The Peruvian State recognizes as sole beneficiaries of any compensation to Mr. Orlando Barreto Peña, Flor de Maria Riofano de Barreto, Nataly Milagros Martin Barreto and Karolina Stefhany Valdiviezo Barreto, in accordance with the certificate of intestacy of Mariela Lucy Barreto Riofano and the Executor of the Family Room of the Superior Court of Justice of Lima, documents that are attached as annexes to this agreement, as enabling documents.

### **02. Economic compensation.**

The Peruvian State grants compensation in favor of all the beneficiaries for only one time of US \$156,923.87 (ONE HUNDRED AND FIFTY THOUSAND NINE HUNDRED TWENTY-TWENTY-EIGHTY-EIGHTY 87/100 AMERICAN DOLLARS) in terms of loss of profit, material damage and moral damage, divided as follows:

#### **a. Loss Profit.**

It will be established from the last liquid income received by the victim, it is S/. 586.00 (FIFTY EIGHT HUNDRED AND 00/100 NEW SOLES), which proceeds to estimate in dollars at an average exchange rate between S/. 3,505 and S/. 3,510 per dollar, the calculation will be made on the basis of 12 annual salaries plus an additional bonus corresponding to 2 months of salary per year in accordance with the most favorable Peruvian standards for workers. That is, on a basis of 14 annual salaries.

This will be multiplied by 41 years, a period between the age of the victim at death and at the end of the life expectancy of a woman in Peru, 69 years, deducting from that sum 25% for personal expenses as part of the self-support of the direct victim.

Consequently, the amount brought to value is US\$ 71,923.87 (SEVENTY ONE THOUSAND (sic) NINE HUNDREDS AND 87/100 AMERICAN DOLLARS).

#### **b. Material damage.**

The sum of US \$5,000.00 (FIVE THOUSAND AND 00/100 AMERICAN DOLLARS) will be established, for all expenses incurred by the beneficiaries as a result of the death of Mariela Lucy Barreto Riofano and any procedural or other expenses would have incurred to process any process followed for the investigation of the facts matter of the present case.

#### **c. Moral damage.**

The sum of US \$ 20,000.00 (TWENTY THOUSAND AND 00/100 AMERICAN DOLLARS) is established for each of the beneficiaries established in clause Fourth section 01 of this agreement. This means a total of US \$ 80,000.00 for all beneficiaries for this concept.

### **FIFTH: Compensation in charge of those criminally responsible for the facts**

The Friendly Settlement Agreement does not include the right to claim compensation that beneficiaries have against all those guilty of violation of Mariela Lucy Barreto Riofano's right to life and physical integrity, in accordance with Article 92 of the Peruvian Criminal Code, as determined by the competent judicial authority, and which the Peruvian State recognizes as a right. It is specified that this Agreement leaves without any effect any claim of the beneficiaries

towards the Peruvian State as jointly liable and/or civilly responsible or under any other denomination.

**SIXTH: Right of recourse**

The Peruvian State reserves the right of recourse, in accordance with current national legislation, against those persons determined to be liable in the present case, by means of a final ruling issued by the competent national authority.

**SEVENTH: Tax exemption, compliance and default**

The compensation amount granted by the Peruvian State will not be subject to the payment of any existing tax, contribution or fee or to be created and must be paid no later than six months after the Inter-American Commission on Human Rights notifies the ratification of this agreement, after which will incur in default and must pay the maximum compensatory interest rate and default established and/or permitted by national legislation. For the purposes of the victim's daughters, Nataly Milagros Martin Barreto and Karolina Stephany Valdiviezo Barreto, the Peruvian State will deposit the corresponding amount in an untouchable trust fund until they reach the age of majority.

**EIGHTH: Orphan's pension**

The Peruvian State undertakes to grant an orphan's pension for the victim's daughters, Nataly Milagros Martin Barreto and Karolina Stephany Valdiviezo Barreto, through the Ministry of Defense, in the corresponding body, for an amount not less than the legal minimum monthly income, keeping in force, the amount established in any case if a pension had been granted prior to the signing of this Agreement. Such pension will be granted until the victim's daughters reach the age of majority established by law.

**NINTH: Health benefit**

The Peruvian State undertakes to grant the daughters of the victim Nataly Milagros Martin Barreto and Karolina Stephany Valdiviezo Barreto, medical care through the health system for Peruvian Army personnel, until they reach the age of majority, established by law.

**TENTH: Legal Base**

This agreement is signed in accordance with the provisions of articles 2 subsections I and 24, section h), in fine, 44°, 55°, 205° and Fourth Final Provision of the Political Constitution of Peru, as provided in Articles 1205°, 1306°, 1969° and 1981° of the Civil Code of Peru and in the provisions of Articles 1 and 2 of the American Convention on Human Rights.

**ELEVENTH: Interpretation**

The meaning and scope of this Agreement are interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, as relevant and in the principle of good faith. In case of doubt or disagreement between the parties about the content of this Agreement, it will be the Inter-American Commission on Human Rights that will decide on its interpretation. It also corresponds to verify its compliance, being the parties obliged to report every three months on their status and compliance.

**TWELFTH: Homologation**

The intervening parties are obliged to inform the Inter-American Commission on Human Rights of this Friendly Settlement Agreement in order for said body to approve it and ratify it in all its extremes.

**THIRTEENTH: Acceptance**

The parties involved in the signing of this Agreement express their free and voluntary conformity and acceptance with the content of each and every one of its clauses, leaving express evidence that it ends the dispute and any claim on the international responsibility of the Peruvian State for the violation of human rights that affected Mrs. Mariela Lucy Barreto Riofano.

**V. DETERMINACIÓN DE COMPATIBILIDAD Y CUMPLIMIENTO.**

30. The IACHR reiterates that, pursuant to Articles 48(1)(f) and 49 of the American Convention, this procedure has the aim of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s willingness to participate in this process indicates a good faith effort to carry out the purposes and objectives of the Convention by virtue of the principle of *pacta sunt servanda*, under which States must, in good faith, meet the obligations they assume under treaties.<sup>3</sup> The Commission also wishes to reiterate that the friendly settlement procedure established in the Convention allows individual cases to be settled in a non-contentious manner, and in cases involving several countries it has proved to be an important and effective solution for the reparation of victims of human rights violations which can be used by either party.

31. The Inter-American Commission has been closely following the friendly settlement reached in this case and greatly appreciates the efforts made by both parties during the negotiation of the agreement to arrive at this friendly settlement, which is compatible with the object and purpose of the Convention.

32. In accordance with the request of the Peruvian State and in view of the observations of the parties, in this moment the Commission most rule on three issues: a) on the requirements and practices of the IACHR to assess an homologation; b) on the procedural stages of the friendly settlement mechanism and the procedural status of this case; and c) on the course of action of this friendly settlement procedure.

a) *On the requirements and practices of the IACHR for the assessment of homologation:*

33. With respect to the homologation, it is to be indicated that the American Convention in its article 49 establishes that:

If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached<sup>4</sup>.

34. On the other hand, Article 40 of the Rules of Procedure establishes that:

If a friendly settlement is reached, the Commission shall adopt a report with a brief statement of the facts and of the solution reached, shall transmit it to the parties concerned and shall publish it. Prior to adopting that report, the Commission shall verify whether the victim of the alleged violation or, as the case may be, his or her successors, have consented to the friendly

<sup>3</sup> Vienna Convention on the Law of Treaties, UN 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.*

<sup>4</sup> Article 49. American Convention on Human Rights.

settlement agreement. In all cases, the friendly settlement must be based on respect for the human rights recognized in the American Convention on Human Rights, the American Declaration and other applicable instruments<sup>5</sup>.

35. In this regard, it is observed that the regulations governing the issuance of the homologation reports are clear in indicating that the homologation is a decision of the IACHR of that nature that requires the preparation of a report that accounts for the facts that are the subject of the petition, as well as the inclusion of the text of the friendly settlement agreement signed, and the Commission's assessment that said agreement conforms to human rights standards. Additionally, in the constant practice of the Commission, the approval reports traditionally contain a valuation analysis of the progress in the execution of the friendly settlement agreement, if any at the time of issuance of the decision, and the declaration of compliance with the ends of the friendly settlement agreement that have been implemented, if such is the case.

36. It is noteworthy that between 1985 and 2002, date of the letter that confirmed the receipt of the agreement by the Commission to the parties, the Commission had already published 35 homologation reports, approved by the plenary of the IACHR, based on Article 49 of the ACHR<sup>6</sup>, for which it can be noted that to that moment a consistent practice of the Commission to elaborate and publish detailed reports for the approval of friendly settlement agreements already existed in place. In relation to the above, the approval reports published between 1985 and 2001 had a summary description of the facts, a brief description of the procedure before the Commission, the text of the Friendly Settlement agreement, the determination of compatibility and compliance and lastly, the conclusions of the plenary of the IACHR. That is to say, the practice of issuing approval reports, as well as their structure, has been maintained over time, and by the time of the notification of the letter of acknowledgment of receipt of the FSA, it was already a repeated and agreed practice in accordance with what is established in the American Convention.

37. Because to this date, the Commission had not issued an approval report on the friendly settlement agreement signed in this case, the conclusion on this issue is that the agreement had not been yet

<sup>5</sup> Article 40. Rules of Procedure of the Inter-American Commission on Human Rights.

<sup>6</sup> See, IACHR, Report No. 5/85, Case 7.956. Friendly Settlement. Luis Alonzo Monge. Honduras. March 5, 1985; IACHR, Report No. 1/93, Case 10.288, 10.310, 10.436, 10.496, 10.631 and 10.771. Friendly Settlement. Miguel Vaca Narvaja and others. Argentina. March 3, 1993; IACHR, Report No. 22/94, Case 11.012. Friendly Settlement. Horacio Verbitsky. Argentina. September 20, 1994; IACHR, Report No. 31/97, Case 11.217. Friendly Settlement. Paulo C. Guardatti. Argentina. October 14, 1997; IACHR, Report No. 19/97, Case 11.212. Friendly Settlement. Member of the community Colotenango and Huehuetenango. Guatemala. March 13, 1997; IACHR, Report No. 46/99, Case 11.531. Friendly Settlement. Faride Herrera Jaime and others. Colombia. March 9, 1999; IACHR, Report No. 45/99, Case 11.525. Friendly Settlement. Roison Mora Rubiano. Colombia. March 9, 1999; IACHR, Report No. 90/99, Case 11.713. Friendly Settlement. Indigenous communities Enxet-Lamenxay and Kayleyphapopyet-Riachito. Paraguay. September 29, 1999; IACHR, Report No. 33/00, Case 11.308. Friendly Settlement. Ragnar Erland Hagelin. Argentina. April 13, 2000; IACHR, Report No. 21/00, Case 12.059. Friendly Settlement. Carmen Aguiar de Lapaco. Argentina. February 29, 2000; IACHR, Report No. 96/00, Case 11.466. Friendly Settlement. Manuel Inocencio Lalvay Gauman. Ecuador. October 5, 2000; IACHR, Report No. 95/00, Case 11.445. Friendly Settlement. Angelo Javier Ruales Paredes. Ecuador. October 5, 2000; IACHR, Report No. 93/00, Case 11.421. Friendly Settlement. Edison Patricio Quishpe Alcivar. Ecuador. October 5, 2000; IACHR, Report No. 94/00, Case 11.439. Friendly Settlement. Byron Roberto Cañaverl. Ecuador. October 5, 2000; IACHR, Report No. 99/00, Case 11.868. Friendly Settlement. Carlos Santiago and Pedro Andres Restrepo Arismendy. Ecuador. October 5, 2000; IACHR, Report No. 100/00, Case 11.991. Friendly Settlement. Kelvin Vicente Torres Cueva. Ecuador. October 5, 2000; IACHR, Report No. 97/00, Case 11.584. Friendly Settlement. Carlos Juela Molina. Ecuador. October 5, 2000; IACHR, Report No. 98/00, Case 11.783. Friendly Settlement. Marcia Irene Clavijo Tapia. Ecuador. October 5, 2000; IACHR, Report No. 19/00, Case 11.435. Friendly Settlement. Jose Sucunu Panjoj. Guatemala. February 24, 2000; IACHR, Report No. 107/00, Case 11.808. Friendly Settlement. Valentin Carrillo Saldaña. Mexico. December 4, 2000; IACHR, Report No. 103/01, Case 11.307. Friendly Settlement. Maria Merciadri de Morini. Argentina. October 11, 2001; IACHR, Report No. 21/01, Case 11.605. Friendly Settlement. Rene Gonzalo Cruz Pazmiño. Ecuador. February 20, 2001; IACHR, Report No. 109/01, Case 11.632. Friendly Settlement. Vidal Segura Hurtado. Ecuador. October 11, 2001; IACHR, Report No. 107/01, Case 11.632. Friendly Settlement. Angel Reiniero Vega Jimenez. Ecuador. October 11, 2001; IACHR, Report No. 106/01, Case 11.450. Friendly Settlement. Marco Vinicio Almeida Calispa. Ecuador. October 11, 2001; IACHR, Report No. 105/01, Case 11.443. Friendly Settlement. Washington Ayora Rodriguez. Ecuador. October 11, 2001; IACHR, Report No. 20/01, Case 11.512. Friendly Settlement. Lida Angela Riera Rodriguez. Ecuador. February 20, 2001; IACHR, Report No. 19/01, Case 11.478. Friendly Settlement. Juan Climaco Cuellar and others. Ecuador. February 20, 2001; IACHR, Report No. 104/01, Case 11.441. Friendly Settlement. Rodrigo Elicio Muñoz Arcos and others. Ecuador. October 11, 2001; IACHR, Report No. 108/01, Case 11.574. Friendly Settlement. Wilberto Samuel Manzano. Ecuador. October 11, 2001; IACHR, Report No. 22/01, Case 11.779. Friendly Settlement. Jose Patricio Reascos. Ecuador. February 20, 2001; IACHR, Report No. 110/01, Case 12.007. Friendly Settlement. Pompeyo Carlos Andrade Benitez. Ecuador. October 11, 2001; IACHR, Report No. 33/02, Case 12.046. Friendly Settlement. Monica Carabantes Galleguillos. Chile. March 12, 2002; IACHR, Report No. 32/02, Case 11.715. Friendly Settlement. Juan Manuel Contreras San Martin and others. Chile. March 12, 2002; and IACHR, Report No. 75/02 (bis), Case 12.035. Friendly Settlement. Pablo Ignacio Livia Robles. Peru. December 13, 2002.

homologated and that the letter notified to the parties on January 10 of 2002, did not produce the juridical effects of an homologation report.

b) *On the procedural stages of the friendly settlement mechanism and the procedural status of the case:*

38. As indicated by the Commission in its Practical Guide on Friendly Solutions, “[t]he friendly settlement procedure is initiated and continued based on the consent of the parties. From the moment the parties decide to enter into a friendly solution, a negotiation stage between them begins. The Commission will play a role in providing its good offices to exercise its role as facilitator [and] once the parties decide to sign a friendly settlement agreement they are expected to provide information to the IACHR on the actions aimed at complying with it, so that it can assess the compatibility of the commitments reached with respect for human rights and verify their compliance”<sup>7</sup>. In that sense, it should be noted that there are no regulatory deadlines in the friendly settlement procedure and the provisions regarding this process in the Rules of Procedure of the IACHR and at the conventional level are of a general nature.

39. The Commission has also indicated that “when a friendly settlement procedure is successful, after reviewing it to ensure that it is founded in respect of the human rights recognized in the American Convention on Human Rights, the IACHR approves the friendly settlement agreement and publishes a report in the terms established in Article 49 of the American Convention on Human Rights (CADH)”<sup>8</sup>.

40. Once the homologation report has been approved by the Commission, this report is notified to the petitioner and the State, and is also included in the Annual Report to the General Assembly of the Organization of American States, thus communicating it to the Secretary General,<sup>9</sup> and subsequently it is published on the IACHR website<sup>10</sup>. The main legal effect of the approval report approved by the Commission is that it has legal effects of *res judicata*, and it is impossible from that moment to roll back the process or get out of the friendly settlement and continue the litigation of the case on the contentious way<sup>11</sup>. Therefore, the issuance of the approval report of the Commission begins a new procedural stage called “Friendly Settlement Follow-up”, and the Commission continues to monitor compliance with the commitments established in the agreement until its full implementation<sup>12</sup>.

41. On the other hand, it should be noted that the Commission's practice of following up its decisions, including friendly settlements, began as of the Reform of the IACHR Rules of Procedure of the year 2000 when it was included in Article 46 (currently Article 48) the following:

1. Once the Commission has published a report on a friendly settlement or on the merits in which it has made recommendations, it may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements and its recommendations.
2. The Commission will inform in the way it sees fit the advances on the compliance with said agreements and recommendations<sup>13</sup>.

42. Since the reform of the Rules of Procedure of the IACHR of the year 2000, the mechanism *par excellence* to follow up on the homologation reports is the Annual Report of the IACHR to the General Assembly

<sup>7</sup> CIDH, Practical guide on the use of the friendly settlement mechanism in the petition and case system before the IACHR, 2017. Pag. 8.

<sup>8</sup> CIDH, Practical guide on the use of the friendly settlement mechanism in the petition and case system before the IACHR, 2017. Pag. 15.

<sup>9</sup> Article 49. American Convention on Human Rights

<sup>10</sup> CIDH, Practical guide on the use of the friendly settlement mechanism in the petition and case system before the IACHR, 2017, 2017. Pag. 15. In this regard see web page on approved reports: <http://www.oas.org/en/iachr/decisions/friendly.asp>

<sup>11</sup> CIDH, Practical guide on the use of the friendly settlement mechanism in the petition and case system before the IACHR, 2017. Pag. 16.

<sup>12</sup> CIDH, Practical guide on the use of the friendly settlement mechanism in the petition and case system before the IACHR, 2017. Pag. 16.

<sup>13</sup> CIDH, Practical guide on the use of the friendly settlement mechanism in the petition and case system before the IACHR, 2017. Pag. 15.

of the OAS. In other words, this practice was already in effect at the time of notification of the letter under analysis. In this case, the friendly settlement agreement had not been published nor was it monitored in the Annual Report of the IACHR to the OAS General Assembly.

43. The conclusion on the procedural stages of the friendly settlement is that the friendly settlement procedure has two phases, a first phase of negotiation that begins with the formal will of both parties to negotiate a friendly settlement and ends with the approval of the friendly settlement agreement and a second phase that begins from the issuance of the homologation report and extends until the termination of the agreement's supervision by full compliance or at the request of the parties. The main feature that differentiates both stages of the friendly settlement process is that in the first phase, the parties can exit the friendly settlement procedure even if there is a signed FSA, provided that the approval report has not been issued. Once an approval report has been issued, a second phase begins, in which is not possible for the parties to exit the friendly settlement procedure to continue litigation. The actions to promote compliance with a friendly settlement agreement can be done before or after the issuance of the homologation report, which depends on the content of the agreement and the particularities of each case.

44. In relation to the principle of *estoppel* alleged by both parties, the Commission understands that the parties have participated in activities related to the implementation of the friendly settlement agreement, with the facilitation of the Commission. This, in the light of the above, is consistent with the negotiation phase of a non-approved friendly settlement agreement, until Commission decides to approve and publish the agreement.

45. It is clear then that the friendly settlement agreement in this case, because the agreement had not been approved, and had not been subjected to the follow up mechanisms, the matter was not yet in follow up phase. Therefore, it is for the Commission to determine the course of action of the case.

46. In that regard, it is to be noted that within the framework of the friendly settlement, the Commission acts as an arbiter of the negotiation process, and under that role the Inter-American Commission on Human Rights has the competence to determine the course of action to be followed when a controversy between the parties arises in the framework of the friendly settlement process taking into consideration different elements. In that sense, the Commission is the master and guardian of the friendly settlement process and has the competence to decide, to resolve and supervise, in an impartial manner, the friendly settlement agreement to which the parties have voluntarily decided to adhere themselves.

47. Regarding homologation reports, the Commission has observed that the issuance of these reports depends on several factors such as a) the content of the text of the agreement; b) the nature of the measures; c) the degree of compliance with the agreement; d) the express disposition of the parties in the agreement or in subsequent written communication;<sup>14</sup> e) that the agreement meets the international human rights standards and lastly, f) the observance of the willingness of the State to comply with the commitments assumed in the FSA, among others elements. In particular, the Commission has identified three frequent scenarios<sup>15</sup>:

- When the agreement itself indicates the wish of the parties for it to be approved, the IACHR will consider it once the parties have signed it.
- If the parties demand that the items of the agreement must be complied with in order for it to be approved, the IACHR will consider it, once it is advised of full compliance.
- If the agreement does not establish the timing to issue the approval, in practice, the IACHR will consider it approved once it observes substantial compliance by the State, after verifying such compliance with the petitioners.

<sup>14</sup> CIDH, Practical guide on the use of the friendly settlement mechanism in the petition and case system before the IACHR, 2017, Pág. 15.

<sup>15</sup> CIDH, Practical guide on the use of the friendly settlement mechanism in the petition and case system before the IACHR, 2017, Pág. 16.

48. In this particular case, the friendly settlement agreement does not have a clause that determines that the approval could only occur when there is full compliance with all measures. Likewise, the twelfth clause literally states that *“The intervening parties are obliged to inform the Inter-American Commission on Human Rights of this Friendly Settlement Agreement in order that the said body approves it and ratifies it in all its extremes.”* It follows that the established clause allows the IACHR to infer that the will of the parties at the time of signing the agreement was to proceed with the approval.

49. In this regard, it should be noted that the Commission has observed similar formulas frequently used by the Colombian State in the FSAs that require immediate approval prior to their execution, according to which *“The parties request the Inter-American Commission on Human Rights the approval of this Agreement and its follow-up.”*<sup>16</sup> Another example is present in some cases of Mexico, in which the pre-compliance approval clause usually states *mutatis mutandis “In accordance with Article 48 of the Rules of Procedure of the Inter-American Commission on Human Rights, “THE PARTIES” request the IACHR the supervision of this Agreement. In turn, in accordance with Article 40.5 of the Rules of Procedure of the Inter-American Commission on Human Rights, “THE PARTIES” request the IACHR to issue an approval report within its Session following the signing of this Agreement. ”*<sup>17</sup>

50. Based on the foregoing, it is concluded that the text of the friendly settlement agreement is clear enough to determine that the course of action of the case because, from its literal text, it is understood that the parties wanted the IACHR to issue the homologation of the agreement.

51. Regarding the nature of the measures, the Commission observes that in this friendly settlement agreement the parties agreed to measures of a different nature, including instantaneous enforcement measures, such as economic compensation, and successive tract measures, such as the measure of justice, which tend to extend over time, and require sustained verification over time until fully implemented. In this sense, the supervision of this type of measures, within the framework of a friendly settlement, should be in some cases made publicly and after the issuance of the approval report. The Commission will have to evaluate the pertinence of supervising the implementation of a measure prior to or after the approval of the agreement, taking into consideration the particular elements of each case mentioned previously on this report.<sup>18</sup>

52. In relation to the consent of the parties for approval of the agreement, article 40 of the IACHR Rules of Procedure establishes that *“prior to adopting that report, the Commission shall verify whether the victim of the alleged violation or, as the case may be, his or her successors, have consented to the friendly settlement agreement.”* In this regard, it is estimated that the rule is clear in indicating that the verification of consent that the Commission must perform is with respect to the friendly settlement agreement, not with respect to the IACHR to issue approve it.

53. On the other hand, although it is identified as a good practice that the parties send joint notes requesting approval of friendly settlement agreements as the petitioner stated, these are not a conventional nor reglementary requirement for the issuance of a homologation report by the Commission.

54. In this case it is observed that the parties do not achieved a consensus regarding the course of action of the procedure. In that regard, the petitioner requested that the Commission does not issue its approval report in this case until there is full compliance with the agreement. The State, for its part, asked the Commission to issue an approval report as soon as possible.

55. In addition, it is to be pointed out that the friendly agreement establishes in its eleventh clause that *“in the event of any disagreement between the parties on the content of this agreement, it shall be the*

<sup>16</sup> See, IACHR, Report No. [34/19], Case 11.990 A. Friendly Settlement. Oscar Orlando Bueno Bonnet et al. Colombia. March 29, 2019; IACHR, Report No. 93/18, Petition 799/06. Friendly Settlement. Isidoro León Ramírez Ciro, Pompilio de Jesús Cardona Escobar, Luis Fernando Velásquez Londoño and others. Colombia. August 23, 2018

<sup>17</sup> See IACHR, Report No. 106/19, Case 12.986. Friendly Settlement. José Antonio Bolaños Juárez, México, July 28, 2019.

<sup>18</sup> See above, par. 47.

Commission which shall decide on its interpretation". [The Commission] must also verify its compliance [...]". On that regard, the Commission considers that, taking into consideration the elements mentioned in this report, as well as the text of the agreement, the nature of the measures in the agreement, the advances in the implementation of the measures and the willingness of the State to comply with its international obligations derived from this instrument, it is necessary to ratify the friendly settlement agreement and to verify the implementation of each of the measures agreed, reason why it moves to the analysis of compliance.

*c) On the compliance with the agreement:*

56. Regarding compliance with the measures, in relation to the third clause on investigation, it is observed, that to date there have been no sanctions for any of those responsible, and according to the petitioners "the oral trial has been ongoing for three years and there are still missing the testimonies of more than 74 of the 88 witnesses". They also indicated that in the course of the year 2019, 24 hearings were held, of which only 16 were effective, since in eight of them the witnesses were not properly interrogated. That is to say that the case has been reactivated in the internal criminal jurisdiction and in 2019 concrete actions have been taken, but that it is still necessary to continue monitoring the total compliance with this end of the agreement. For this reason, the Commission considers that this clause of the friendly settlement agreement has been partially complied with and so it declares it. Consequently, the Commission must maintain a sustained monitoring of compliance with this measure through the various mechanisms available at the friendly settlement monitoring stage.

57. Regarding clauses fourth on the payment of the economic compensation and seventh on payment default interests, the State indicated that it had disbursed the total amount of \$ 171,898.05 USD (one hundred seventy-one thousand and eight hundred ninety-eight US dollars and five cents), which shows that the amount paid by concept of compensation was higher than the one established in clause fourth of the agreement that indicated the amount of \$ 156,923.87 USD (one hundred fifty-six thousand nine hundred twenty-three dollars and eighty-seven cents). The petitioner, however, is currently claiming default interest on that amount.

58. In this regard, it should be noted that clause seventh on default interests is clear in indicating that:

"[T]he compensation amount granted by the Peruvian State shall not be subject to the payment of any existing tax, contribution or fee or to be created and shall be paid no later than six months after the Inter-American Commission notifies the ratification of this agreement, then of which the default will incur by paying the maximum compensatory interest rate and default established and / or permitted in national legislation."

59. In this regard, it should be noted that neither the Convention nor the Rules of Procedure use the terminology "ratification" of a friendly settlement agreement, but it is understood that the clause refers to the homologation of the agreement. In that sense, according to the logic outlined above, since the friendly settlement agreement was not approved, the delay in the payment of economic compensation did not generate default interest. Therefore, the clause in question must be considered inoperative in this case.

60. For the aforementioned, the Commission considers that clause fourth on economic compensation has been fully complied with and hereby declares it. In relation to clause seventh on default interest, the Commission considers that is inoperative and hereby declares it.

61. In relation to clause eighth on the orphan's pension measure, the friendly settlement agreement clause establishes the obligation of the State to grant the pension to the victim's daughters until they reach the age of majority. In this regard, the petitioner informed that the deposits have not been made with the corresponding regularity, including lapses of up to four years without disbursing the committed payments, seriously affecting the life project of the beneficiaries of the measure. The petitioner has requested that the Commission continues to supervise in the negotiation phase the fulfillment of the payment of the orphan's pension until the daughters of Mariela Barreto finish their university studies, for which 2 years would be missing in relation to one of them and 5 years in relation to each other.

62. The State for its part reported on the payment of 217,359.47 PS (two hundred seventeen thousand three hundred fifty-nine Peruvian soles and forty-seven cents) in the framework of compliance with the eighth clause of the friendly settlement agreement, in favor of Nataly Milagros Martín Barreto and Karolina Stefhany Valdiviezo Barreto in her capacity as minor daughters of the victim.

63. On the other hand, the State informed on October 2, 2017, that pursuant to a request made by Karolina Stefhany Valdiviezo Barreto, the Chief of the Army Personnel Rights, issued Resolution "*COPERE No. 225 / S.4.a. 2.1 Of August 24, 2016*", granting the request for surviving pension - orphan- as an adult daughter, because she was studying at a university. Said right derives from Supreme Decree No. 058-90-PCM referring to unmarried and over 18 years old children of military and police personnel who died in action or commission of the service<sup>19</sup>. Likewise, the request of the other daughter of Mariela Barreto, Nataly Milagros Martín Barreto, was declared inadmissible, since she was not taking these studies. On this issue, the State reported having disbursed the amount of 88,101.59 PS (eighty-eight thousand one hundred and one Peruvian soles and fifty-nine cents) in favor of the two young women outside the framework of the friendly settlement agreement for the payment of the orphan's pension as unmarried and adult daughters of the victim's undertaking studies. This payment was made according to the request filed by the beneficiaries at the domestic level as established in the national legislation.

64. In a brief dated December 19, 2019, the petitioner indicated, "regardless of what was initially agreed in 2001, the parties continued to negotiate the reparation measures of this Agreement throughout the years before the IACHR. In this regard, the Peruvian State, again voluntarily, and within the framework of the ASA, at the working meeting held on October 21, 2015 in Washington DC, pledged to *'advance the necessary steps to continue with the payment of the obligation of orphan's pension to the daughters of Mariela Barreto, to ensure their right to education and health'*. The foregoing, taking into account that the victim's daughters were of legal age". [and that] "To insinuate that the commitments negotiated in the framework of working meetings endorsed by the IACHR and that remain partially unfulfilled are not part of the framework of the Friendly settlement agreement, demonstrates the lack of state willingness to comprehensively redress victims for serious violations of their human rights."

65. The State indicated on January 31, 2020, that the minute of the working meeting held on October 21, 2015, like other minutes of meetings, are documents that contain information related to the follow-up of the IACHR on compliance with the clauses adopted in this friendly settlement agreement as well as any specific information or subject matter that was discussed at the working meeting. [and that] Consequently, said minutes could not have the quality of addenda or modifying agreements to the main friendly settlement agreement [...]. Additionally, the State clarified that the aforementioned act does not generate additional commitments given that it refers only to the specific commitment assumed in said meeting of "officialiating to the Ministry of Defense, and advancing the necessary steps to continue with the payment of the pension obligation of orphanhood [...]." The State added that the representatives intend to ignore the terms of the agreement and add aspects that are not expressly provided and reiterated that it considers that the measure is fully implemented.

66. In this regard, the Commission observes that Nataly Martín was born on June 21, 1993, and Karolina Valdiviezo was born on January 17, 1997. The young women reached the age of majority on June 21, 2011 and January 17 2015 respectively, extinguishing at that time the obligation of the State to cover the orphan's pension as established in the friendly settlement agreement. The Commission considers that since the clause is clear in indicating that the commitment assumed by the State, regarding the orphan's pension that was only until the girls reached the age of majority.

67. Regarding the petitioner's allegation, on the extended obligation of the Peruvian State to cover the orphan's pension of the two beneficiaries as elder daughters of the victim, the Commission considers that said obligation derives from an independent request, direct, internal and alien to the FSA. The request was

<sup>19</sup> Supreme Decree No. 058-90-PCM. Article 1: Unmarried children over 18 years of age, of military and police personnel who have died in action or service commission, who continue uninterrupted studies at a higher basic level and / or university, will be entitled to the orphan's pension established in the articles 24 and 25 of Decree Law no. 19846.

made directly from the daughters of the victim to the State within the framework of a domestic law, so it would not be up to the Commission to supervise its implementation. In this regard, it should be noted that the Commission does not observe in the text of the working meeting minutes of October 21, 2015, cited by the petitioner that the purpose of said document was to modify the friendly settlement agreement in some sense. The minute of the working meeting does not constitute an addendum or minute of understanding or interpretation of the FSA. The Commission considers that the text of the minute is consistent with the tools to promote compliance with the friendly settlement agreements, through short-term working routes. These tools allow the friendly settlement process to be conducted, but unless there is an express willingness of both parties to modify the commitments assumed, they do not constitute, by themselves, a new friendly settlement agreement. Therefore, the Commission considers that the obligation to grant an orphan's pension established in the agreement is fully complied with and hereby declares it.

68. Finally, on clause ninth pertaining to the measure of health care, the petitioner indicated that the Comprehensive Health Insurance (SIS in Spanish) presents serious problems because since its creation this insurance has shown to be deficient and does not meet the needs of the victims of human rights violations, as it provides partial medical coverage, the care is inefficient in the different health facilities and there is a lack of adequate medicines required by patients. At the mentioned working meeting facilitated by the Commission, on September 26, 2019, the petitioner asked the Commission to rule on whether the Peruvian health system meets the minimums to guarantee the reparation required so that victims can access their services. Specifically regarding the provision of the measure in favor of the beneficiaries, the petitioner indicated that to date they have not had the opportunity to go to a health center to receive medical care, however in the future, in the event that they use the measure, they will inform the Commission about the quality of care.

69. Additionally, in a communication dated December 19, 2019, the petitioner indicated that, according to the working route agreed between the parties at the work meeting of October 10, 2019, the State had to provide the focal point of the health provider entity that is covering the service for the beneficiaries.

70. The State clarified in the working meeting of December 6, 2018, that in relation to the health measure, Karolina Valdiviezo was insured since August 16, 2016, under the Comprehensive Health Insurance of the Ministry of Health and has a Complementary Plan that is very broad. In relation to Nataly Martín, it informed that she was affiliated with the National Superintendence of Health, and is assigned to a comprehensive health center in Miraflores. In that sense, the State reported that Karolina Valdiviezo is a user with full coverage that includes almost all diseases, through public insurance. As for the situation of Nataly Martín, it mentioned that since she had the Social Security insurance of Peru she could not be a beneficiary of the other type of insurance. On March 18, 2019, the State sent the information with the scope of health coverage in favor of Karolina Valdiviezo. Lastly, on its writ of January 31<sup>st</sup>, 2020, the State provided the focal points from the health institutions for each beneficiary of the agreement.

71. In this regard, the Commission takes note of the general shortcomings raised by the petitioner regarding the Peruvian national health system, and at the same time it considers that these issues are part of the typical challenges of the national public policy systems that must evolve over time, but the general functioning of the Peruvian national health system in this case exceeds the framework of the friendly settlement agreement. Regarding the particular analysis of the measure in relation to the beneficiaries, it must be indicated that both have coverage, and as mentioned by the petitioners, they have not made use of the measure, for reasons beyond the control of the State. Additionally, the Commission observes that the State provided the focal points for medical attention.

72. In addition, the Commission notes that the health clause, as well as the clause on the orphans' pension, establishes the obligation of the State to ensure compliance with the measure until the girls had reached the majority of age. In this respect, as mentioned earlier, Nataly Martín and Karolina Valdiviezo are adults now, with 26 and 22 years respectively, reason why, requiring any additional action by the State, would exceed the content of the friendly settlement agreement. For this reason, the Commission considers that this measure is fully complied with and so it declares it.

73. For the above reasons, the IACHR considers that clauses fourth (on compensation); eight (on orphan's pension) and ninth (on health benefit) are completely fulfilled and thus declares it.

74. In relation to the third clause (on investigation and sanction), the Commission considers that it has been partially complied with and thus declares it.

75. In relation to clause seventh on default interests, the Commission considers that this clause is inoperative and thus declares it.

76. On the other hand, the Commission considers that the rest of the content of the agreement is declarative in its nature and so it declares it.

#### **IV. CONCLUSIONS**

1. Based on the foregoing considerations and in accordance with the procedure set forth in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound gratitude for the efforts made by the parties and its satisfaction that this case produced a friendly settlement agreement grounded in respect for human rights and compatible with the object and purpose of the American Convention.

2. Finally, the Commission considers that the matter is able to be resolved through the friendly settlement and the parties have consented to its application for 18 years. Additionally, the petitioner was consulted if, in the event of the possible closing of the friendly settlement procedure, they would be willing to continue the litigation of the case at the merits stage, before which the petitioner party remained silent and indicated its willingness to remain in the negotiation phase until the measures were fully complied with, which, with the exception of the justice clause, have already been fully implemented. In that sense, the parties have decided to remain in the friendly settlement, since none of them has requested the closure of the procedure. Additionally, the State's willingness to execute the agreed reparation measures has been observed throughout the procedure. Additionally, the Commission, exercising its competence, considers that the justice measure is of progressive nature and its execution should be publicly supervised through the friendly Settlement follow up mechanisms available before the IACHR.

3. Based on the considerations and conclusions set forth in this report,

#### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

##### **DECIDES:**

1. To approve the terms of the agreement signed by the parties on December 22, 2001.
2. To declare full compliance with clauses fourth (on compensation); eighth (on orphan's pension) and ninth (on health benefit) of the agreement, according to the analysis contained in this report.
3. To declare partial compliance with the third clause (on investigation and sanction) of the agreement, according to the analysis contained in this report.
4. To declare that the seventh clause of the friendly settlement agreement on default interests is inoperative.
5. To continue with the supervision of the commitments established in the third clause (on investigation and sanction) of the agreement, according to the analysis contained in this report. To that end, it reminds the parties of their commitment to periodically inform the IACHR about compliance with said measures.

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

Approved by the Inter-American Commission on Human Rights on the 24<sup>th</sup> day of February 2020.  
(Signed) Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernandez. First Vice-President; Antonia Urrejola, Second Vice-President; Flávia Piovesan; Margarete May Macaulay and Edgar Stuardo Ralón Orellana, Members of the Commission.