

OEA/Ser.L/V/II.150
Doc. 113
13 July 2019
Original: Spanish

REPORT No. 104/19

CASE 12.961 D

FRIENDLY SETTLEMENT REPORT

**JORGE ENRIQUE VALLADARES ARGUEÑAL Y OTROS
HONDURAS**

Approved electronically by the Commission on July 13, 2019.

Cite as: IACHR, Report No. 104/19, Case 12.961 D. Friendly Settlement. . Jorge Enrique Valladares Argueñal and Others, Honduras, July 13, 2019.



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

1. Between 2003 and 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received five (5) petitions: P 775-03: Juan González and others, submitted by José Marcelino Vargas, on September 23, 2003; P 1004-03: Julio César Villalobos and others, submitted by Julio César Villalobos Velásquez on November, 2003; P 22-04: Juan Bautista Vargas Díaz and others, submitted by Juan Bautista Vargas Díaz on January, 2004; P 217-05: César Augusto Somoza and others, submitted by Gladys Ondina Matamoros Arias on January 8, 2005; P 1092-05: Rosa Dilia Salinas Barahona and others, submitted by Rosa Dilia Salinas Barahona on December 15, 2005 (hereinafter the “presumed victims”). In this petitions, it was alleged the international responsibility of the Honduras State (hereinafter “Honduras”, “State” or “Honduran State”) for the presumed violations of the rights established on the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”), derived from the massive dismissal of the National Police crew classified in different scales, within the framework of the depuration of the referred institution. On October 20, 2006 the Commission decided to accumulate the petitions 22-04; 217-05 and 1092- 05 to the initial 775-03.

2. It was alleged in all the petitions that the State committed the presumed violation of the articles 8 (judicial guaranties) and 25 (judicial protection) of the American Convention, because the presumed victims would have been dismissed in an unjustified way, in accordance with the decree 58-2001, published on the Official Diary Gazette No. 29,504 of June 15, 2001 (hereinafter “decree 58 – 2001”), and without following the legal procedure established by it. The petitioners also alleged that the Honduran State was responsible for the violation of the rights acclaimed in articles 5 (right to personal integrity), 10 (right to compensation), 11 (protection of the honor and the dignity), 17 (protection of the family), and 24 (equality in the face of law), of the American Convention, in accordance with the general obligation established in the articles 1.1 and 2 of that instrument.

3. On July 21, 2014, the IACHR issued the Admissibility Report No. 57/14 on Case 12.961 Juan Gonzalez and others, related to the aforementioned petitions that were accumulated in said case. In its report, the IACHR concluded that it was competent to examine the alleged violation of articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights in connection with articles 1.1 and 2 of said instrument. It also decided to declare inadmissible the allegations regarding the alleged violation of articles 5 (right to personal integrity), 10 (right to compensation), 11 (protection of honor and dignity), 17 (protection of the family), and 24 (equal protection of the law) of the American Convention, in accordance with the general obligation established in articles 1.1 and 2 of said instrument. Additionally, the IACHR declared the petition inadmissible in respect of 42 persons who filed an unconstitutionality action against Decree 85-2001 given that, according to the IACHR's calculation, the sentence was notified more than six months before the presentation of the petition at the IACHR, thus failing to comply with the requirement set forth in article 46.1b) of the ACHR.

4. In the Admissibility Report No. 57/14, it was noted that on December 11, 2006, the petitioners informed the Commission that the Committee for the Defense of Human Rights in Honduras (hereinafter “CODEH”) would be appointed as co-petitioner and that on May 21, 2007, Gladis Matamoros, original petitioner of petition P-217-05, indicated to the Commission that it would withdraw as petitioner and leave in its place CODEH. Subsequently, Mrs. Gladis Matamoros decided to resume her participation as petitioner in case 12,961 Juan Gonzalez and Others.

5. On April 29, 2018, the IACHR approved an amendment to paragraph 40 of Admissibility Report No. 57/14 and declared the petition admissible with respect to the 42 persons who had been declared inadmissible initially in report 57/14.

6. In November 2014, the parties began the process of negotiating a friendly settlement and held a working meeting with the facilitation of Commissioner James Cavallaro on September 5, 2017, within the framework of the 164th session of the IACHR. Also, on December 5, 2018, the parties held another working meeting with the facilitation of Commissioner Joel Hernández on December 5, 2018, during the 170th session of the IACHR. These negotiations materialized in the signing of a friendly settlement agreement (hereinafter "ASA" or "agreement") on January 21, 2019¹.

7. Between December 2018 and July 1, 2019, the State submitted multiple pleadings with payment vouchers for the disbursement process of the economic compensation accepted by the beneficiaries and requesting the approval of the agreement by the IACHR. This information was sent to the petitioner at the time.

8. On July 2, 2019, the Commission informed the parties of the disaggregation of Case 12,961 in 7 cases to facilitate the advanced negotiation processes in 6 separate agreements and the option of continuing with the contentious proceeding in one of them.

9. Pursuant to Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, a brief statement of the facts alleged by the petitioner and a verbatim transcription of the friendly settlement agreement entered into on April 3, 2019 between the petitioner and the representatives of the Honduran State are reproduced hereunder in the instant report. The Commission also approves the agreement between the parties and the publication of this report in the IACHR's Annual Report to the General Assembly of the Organization of American States.

II. ALLEGED FACTS

10. The petitioners alleged presumed violation by the State of the right to due process, contained in Articles 8 and 25 of the American Convention, since the presumed victims were unjustifiably dismissed on the basis of Decree 58-2001. According to the petitioners, this decree authorized the Congress of the Republic to "dismiss the police personnel without considerations of any kind". In this regard, the petitioners stated that although the permanent purge of the National Police was necessary for its better functioning, the legal procedure established for it must have been followed. In this regard, they indicated that the dismissal should have been preceded by a regular administrative process, which would have all the guarantees of any criminal process.

11. The petitioners argued that Honduras had violated the right contained in Article 24 (equal protection of the law), on the grounds that they had been subjected to a decree that was exclusive and detrimental to their interests, and different category of public officials was never applied to them. They also indicated that Honduras had violated Article 11 (protection of honor and dignity) of the American Convention, since as a result of the dismissal based on a "decree to purge corrupt people," the alleged victims would have been "targeted of popular derision", which would have affected their prestige inside and outside the institution, and would have prevented the majority from obtaining employment. Additionally, the petitioners alleged violations of articles 1, 2, 5, 10 and 17 of the ACHR.

12. On the other hand, the petitioners pointed out that by resolutions of March 13, 2003, the Supreme Court of Justice of Honduras declared the unconstitutionality and inapplicability of Decree 58-2001. In this regard, they stated that although Article 316 (2) of the Honduran Constitution stipulates that when declaring the unconstitutionality of the law, it will be of general effect and of immediate application, the

¹ It is to indicate that this FSA is 1 of 5 agreements signed between December 1, 2018 and June 30, 2019 on a total universe of 357 presumed victims of case 12,961 Juan Gonzalez and Others. This agreement and the effects of this Report are limited only to the beneficiaries referred to in it.

Supreme Court established that its ruling had no retroactive effect and that therefore, the declaration of unconstitutionality in favor of the alleged victims would not be applied. According to the petitioners, since the aforementioned decree was declared unconstitutional, it should also have been applied to the benefit of all the persons affected by it.

III. FRIENDLY SETTLEMENT

13. On April 3, 2019, the parties, represented by Lidia Estela Cardona Padilla, Attorney General of the Republic; Hugo Ramón Maldonado, representative of CODEH; Leonel Casco, representative of APRODEH; Gladis Ondina Matamoros and Fredy Omar Madrid signed a friendly settlement agreement for the benefit of 20 people. This friendly settlement agreement establishes the following:

FRIENDLY SETTLEMENT AGREEMENT Case IACHR 12.961 Juan González y otros vs Honduras²

AGREEMENT OF FRIENDLY SETTLEMENT OF THE CASE IACHR 12,961 concerning Juan González and others, celebrated on one hand, by the State of Honduras, duly represented by Dr. LIDIA ESTELA CARDONA PADILLA, in her capacity as Attorney General of the Republic, appointed by Legislative Decree No. 70-2018, published on July 27, 2018, duly authorized for this act through Executive Agreement No. 014-2018 of December 19, 2018, which states that it is empowered to hold this act, with the express faculty to compromise; and on the other hand Hugo Ramón Maldonado (CODEH), Leonel Casco Gutiérrez (APRODEH); Fredy Omar Madrid and Gladys Ondina Matamoros, who act on behalf of the petitioners who are beneficiaries of this agreement; which is celebrated with the knowledge and consent of the INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (CIDH), in accordance with the provisions of articles 48, numeral 1 clause f) and 49 of the American Convention on Human Rights with regard to the friendly settlement of the reference case.

FIRST: BACKGROUND

The Inter-American Commission on Human Rights (IACHR), in its admissibility report 57/14 of July 21, 2014, in its operative part: "DECIDES: 1.- To declare this case admissible with respect to the alleged violations of the rights established in articles 8 and 25 of the American Convention, in connection with articles 1.1 and 2 of said instrument, to the detriment of the presumed victims listed in Annex A. 2.- To declare the instant petition inadmissible as regards the alleged violations of articles 5, 10, 11, 17 and 24 of the Convention."

In a communication dated May 24, 2018, the IACHR notified the State of Honduras of the rectified version of Admissibility Report 57/14 based on the amendment approved by the IACHR to paragraph 40 of the admissibility report, as well as the list contained in the annexes, declaring the petition admissible with respect to the 42 persons who were part of the unconstitutionality suit filed by José Marcelino Vargas before the Supreme Court of Justice. Also by means of a communication dated October 9, 2018, the IACHR informed the State that: "*... the Commission has proceeded to break down this case, of the case that is currently in the process of friendly settlement, therefore as of the notification of this communication, Case 12.961A will refer to the case in the Friendly settlement process and Case 12.961B will refer to the aforementioned group of 42 alleged victims ...*".

² By material error the original FSA had as its title the name of a person who decided to continue with the contentious way at the moment of finalizing the mapping of actors and beneficiaries of the friendly settlement agreements signed in this case, which was not included in the list of beneficiaries of this agreement. Therefore, the Commission delimited the name of the agreement to the name of the original case.

SECOND: GENERALITIES

As a result of the parties' will expressed to reach a friendly settlement in the case at hand, the State undertakes to comply with this agreement in accordance with the following parameters:

- a. The scope: Specifically refers to the legal consequences for the petitioners caused by the issuance of Decree 58-2001 published in the Official Gazette La Gaceta No. 29,504 of July 15, 2001, which was subsequently declared unconstitutional by the Supreme Court of Justice of the Honduran State, by judgment dated March 13, 2003 and published in the Official Gazette La Gaceta 30,166 dated August 19, 2003.
- b. Nature: Settle in a friendly manner as soon as it corresponds to the petitioners under this agreement (19 former police officers), through compensation; in response to the situation of vulnerability of the petitioners and their family groups, and without this implying any recognition on the part of the State, neither of the facts nor of the right invoked in the framework of the process being processed before the Inter-American Commission on Human Rights
- c. The modality: Friendly settlement regulated by articles 48, numeral 1 clause f) and 49 of the American Convention on Human Rights and article 40 of its Regulations.
- d. The determination of the beneficiaries: By express agreement between the parties, the beneficiaries of this agreement are:

No.	NAME	IDENTITY	OTHER
1	Miguel Ángel Sorto Meza	[...]	CODEH
2	Edman Obed Guandique Rodríguez	[...]	CODEH
3	Juana Rivera Zelaya	[...]	CODEH
4	Donatilo Reyes Reyes	[...]	Fredy Omar Madrid
5	Roger Aguilar Flores	[...]	Fredy Omar Madrid
6	Marco Antonio Rosado Umaña	[...]	Fredy Omar Madrid
7	Serafín Obdulio Villacorta España	[...]	Fredy Omar Madrid
8	Donaldo Esaú Cortez Padilla	[...]	Fredy Omar Madrid
9	Oscar Francisco Andrade Flores	[...]	Fredy Omar Madrid
10	Nelson Julián Acosta Almendarez	[...]	Fredy Omar Madrid
11	Walther Guadalupe Vásquez Guillén	[...]	Fredy Omar Madrid
12	Marvin Antonio Cáliz Rosales	[...]	Fredy Omar Madrid
13	Jorge Enrique Valladares Argueñal	[...]	Fredy Omar Madrid
14	Santos Camilo Padilla	[...]	APRODEH
15	Mario Roberto Paz Santos	[...]	APRODEH
16	Santos Emeterio López Murillo	[...]	CODEH
17	Hugo Nelson Alvarado Bonilla	[...]	Gladys Ondina Matamoros
18	Ana Marina Escalante López	[...]	APRODEH
19	Fredy Arturo Mancía	[...]	APRODEH
20	Oscar Edgardo Vásquez Reyes	[...]	APRODEH

- e. Economic reparation: The parties agreed to establish a compensatory amount, taking as a reference the scale to which the personnel belonged at the time of the issuance of Decree 58-2001.

THIRD: JURISDICTION OF THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

Honduras has been a State Party to the American Convention on Human Rights since August 9, 1977 and recognized the contentious jurisdiction of the Inter-American Court of Human Rights on September 9, 1981.

FOURTH: AGREEMENT BETWEEN THE PARTIES

In the framework of the friendly settlement process carried out between the petitioners and the State of Honduras, with the intervention of the IACHR, the parties have managed to reach a satisfactory agreement for the solution of this case.

To cover the economic reparation, the State of Honduras undertakes to verify the payment in the manner proposed by the petitioners during the negotiation stage, through the Secretary of State in the Security Office, which will initiate the pertinent procedures as soon as this duly signed document is presented. The corresponding payment procedures must be completely concluded, no later than April 15, 2019, according to the agreed terms upon this friendly settlement agreement.

This agreement will be managed under the responsibility of the corresponding entities or Secretariats of State. The General Attorney of the Republic will coordinate and follow up on the actions necessary to comply with this agreement.

On the other hand, the representative of the petitioners commits to accompanying the stages of execution of this agreement and to lend their collaboration so that it may become effective.

FIFTH: PROCEDURE OF THIS FRIENDLY SETTLEMENT AGREEMENT

Throughout the process, the parties maintained a space for dialogue aimed at exploring the possibility of reaching an eventual friendly settlement agreement. Background of this is the working meeting held within the framework of the Special Period of Sessions of the IACHR in Mexico City D.F. and the working meeting held within the framework of the 170th regular session of the IACHR in Washington D.C.

SIXTH: SATISFACTION OF THE PETITIONERS

The petitioners consider that the fulfillment of the commitments of an economic nature assumed through this friendly settlement agreement implies the total satisfaction of his claims in the case of Juan González and others (case of IACHR No. 12,961).

The State of Honduras and the petitioners through their legal representative, Hugo Ramón Maldonado, taking as reference the scale to which the dismissed staff belonged at the time of the issuance of Decree 58-2001, recognize and accept as compensation the individual sum that the following is detailed, in favor of each of the petitioners:

Police and Administrative: [...].

Lessons: [...].

Officers: [...].

The amount in the form stated will be made in a single payment to each one of the petitioners who have decided to avail themselves of this agreement.

As for the percentage in concept of professional fees these will be assumed by the petitioners based on the agreement they have agreed with their attorney.

SEVENTH: PAYMENT OF ECONOMIC REPARATION

According to the request made by the petitioners that the amount offered be made in a single payment, due to the difficulties they face in moving to the capital; the State undertakes to make effective the aforementioned values through the Secretary of State in the Security Office in a single payment no later than the fifteenth (15th) of April of the year two thousand nineteen (2019) and includes in its in full, the financial compensation agreed and therefore with the payment thereof, the State of Honduras is completely released from any compensation for the alleged facts and any subsequent claim.

For such purposes, the beneficiaries must prove their identification to the Secretary of State in the Security Office by means of the respective document.

In the case of family members of the petitioners who have died on the date of signing this agreement, they must present the documentation that legally relates, accrediting the corresponding declaration of heirs, so that later the Security Secretariat proceeds to make the corresponding payment.

The amounts provided, fully cover any damage alleged to have been caused to the petitioners and their families and therefore with the payment of the compensation contained in this Agreement, the State of Honduras is released from any compensation for the facts so as of any present or future claim that may arise from this agreement; likewise it is agreed that judicially or internationally the responsibility of the State of Honduras for any restitution is extinguished; if any other person should appear claiming the right to compensation for these same events in relation to the beneficiaries who have died on the date of signing this agreement, it will be recognized and paid directly by the beneficiaries.

EIGHTH: SUPERVISION OF COMPLIANCE

In relation to the not included petitioners in the agreed compensation payment, the mechanism for verifying compliance with the friendly settlement agreement will correspond to the IACHR; The Attorney General of the Republic will send the information that is required by the illustrious Inter-American Commission.

The State of Honduras will also inform the IACHR of its full availability to continue with the dialogue space aimed at exploring the possibility of arriving at an eventual friendly settlement agreement with the petitioners not included in this document.

NINTH: CONFIDENTIALITY

The parties undertake to keep strict confidentiality of the amounts corresponding to the financial compensation and personal data of the petitioners.

TENTH: CONFORMITY OF THE PARTIES

The parties express their full conformity and satisfaction, irrevocably and immediately, with the agreements reached and embodied in this document, consequently the petitioners renounce any action that may arise from the employment relationship that united them with the Security Secretariat as former members of the National Police.

In order to achieve the consensus reached, they are obliged to submit a joint or separate request to the IACHR so that it may proceed to disaggregate the case for the beneficiaries of this friendly settlement agreement for the separate treatment for its approval and closure, by the IACHR and that it finally adopts the report contemplated in Article 49 of the American Convention on Human Rights, at which time it will acquire full legal capacity.

ELEVENTH: ENTRY INTO FORCE

This agreement enters into force from the day of its signature and will conclude at the time of the payment of the agreed compensation.

For legal purposes, it is signed in the city of Tegucigalpa, M.D.C., on April, 3, 2019.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

14. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this procedure has the aim “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Agreeing to pursue this procedure expresses the good faith of the State as regards carrying out the purposes and objectives of the Convention in keeping with the principle of *pacta sunt servanda*, by which states should carry out their treaty obligations in good faith.³ It also reiterates that the friendly settlement procedure provided for in the Convention makes it possible to conclude individual cases in a non-contentious manner, and in cases relating to several countries, has proven to offer an important vehicle for settlement that can be used by both parties.

15. The Inter-American Commission has closely followed the development of the friendly settlement achieved in the instant case and highly values the efforts made by both parties during the negotiation of the agreement to achieve this friendly settlement, which is compatible with the object and purpose of the Convention.

16. In accordance to what was established in clause 10 of the friendly settlement agreement, the parties agreed to request the Commission to issue the report contemplated in Article 49 of the American Convention, once the friendly settlement agreement was signed. Given that the State provided detailed information on the actions taken to comply with the obligations derived from this friendly settlement agreement, and extensive documentation that verifies the payment of the obligations derived from it, at this moment it is necessary to assess the fulfillment of the commitments established in this FSA.

17. Regarding clauses 6 (Satisfaction of the petitioners) and 7 (Form of payment of economic reparation) of the agreement, the State reported that all of the compensations to the 17 beneficiaries of the agreement were canceled. This information was corroborated with payment vouchers provided by the State in a total amount of ten million six hundred and sixty thousand Honduran lempiras (10'660.000L) or approximately four hundred thirty-six thousand seven hundred eighteen dollars ⁴ (\$436,718 USD). Taking into consideration the information previously described, the commission declares that clauses 6 and 7 of the friendly settlement agreement have been complied in full.

18. The Commission considers that the rest of the content of the agreement is declarative in nature, so it is not up to the IACHR to supervise compliance with clauses 4 (Agreement between the parties), 5 (Provenance of this friendly settlement agreement), 8 (Supervision of compliance), 9 (Confidentiality), 10 (Conformity of the parties) and 11 (Entry into force).

19. For the foregoing reasons, the IACHR declares that the friendly settlement agreement has been complied in full.

V. CONCLUSIONS

20. Based on the foregoing considerations, and pursuant to the procedure set out in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for

³ 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.”

⁴ Conversions to dollars are derived from the free search in the Google *converter* available in the market dated June 21, 2019.

the efforts made by the parties and its satisfaction that a friendly settlement was reached in the instant case, based on respect for human rights and compatible with the object and purpose of the American Convention.

21. In light of 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 April 3, 2019.
2. To find that there has been full compliance with points 6 and 7, according to the analysis in this report.
3. To find that the friendly settlement agreement has been complied in full.
4. To make this report public and to include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 13th day of July 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice-President; Antonia Urrejola; Second Vice-President; Francisco José Eguiguren, Margarete May Macaulay, Luis Ernesto Vargas Silva and Flávia Piovesan, Members of the Commission.