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**REPORT No. 204/21**  
**CASE 11.545**  
FRIENDLY SETTLEMENT REPORT

MARTHA MARÍA SAIRE  
HONDURAS

Approved electronically by the Commission on September 4, 2021.

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Honduras. September 4, 2021.



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**MARTHA MARIA SAIRE**  
**HONDURAS**  
**SEPTEMBER 4, 2021**

**I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS**

1. On November 15, 1995, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or the “IACHR”) received a petition filed by the Center for Justice and International Law (CEJIL) and *Casa Alianza* (hereinafter, “petitioners” or the “petitioning party”), which alleged the international responsibility of the Honduran state, for the violation of the human rights recognized under articles 5 (personal integrity), 8 (judicial guarantees), 19 (rights of the child) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter, “Convention” or “American Convention”), in relation to Article 1.1 thereof, to the detriment of the girl Martha María Saire, then 11 years old, who on April 9<sup>th</sup>, 1994, was allegedly the victim of rape by two custodians of the *Centro Femenino de Adaptación Social* (CEFAS), who belonged to the Special Tactical Group of the Honduran Army and had been assigned as guards in two children's homes and the local women's prison.

2. As indicated in the original petition, the alleged victim, who lives with a mental disability due to a brain injury, was initially living in the streets of San Pedro Sula and was eventually taken into the Támara Youth Orientation Home. Additionally, it should be noted that the matter is related to the request for precautionary measure No. 169-17, presented to the Commission with the objective of guaranteeing a surgical intervention for Martha Saire, and which is no longer in effect.

3. Throughout the process of negotiating the agreement, the parties held multiple working meetings facilitated by the Commission. On June 30, 2003, the parties signed a friendly settlement agreement (hereinafter “FSA” or “agreement”), that is, before the ratification by the Honduran State of the Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities<sup>1</sup> (hereinafter “ICEDPD”) and before the entry into force of the Convention on the Rights of Persons with Disabilities<sup>2</sup> (hereinafter “CRPD”). Therefore, in the framework of the 179th Regular Period of Sessions of the IACHR, the parties signed a memorandum of understanding to adjust the content of the friendly settlement agreement to the updated standards on the protection of the rights of people living with disability and asked the Commission to approve the friendly settlement agreement.

4. In this friendly settlement report, in accordance with the provisions of Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, a review is made regarding the facts alleged by the petitioning party, as well as the parts of the story that arise from the information provided by the parties, within the framework of the friendly settlement process, the update on the situation of Martha Saire during the implementation period of the FSA, prior to its approval by the Commission, and the agreement of friendly settlement, signed on June 30, 2003 and its memorandum of understanding, signed on March 26, 2021, between the petitioning party and representatives of the Honduran State, and the publication of this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States is decided.

**II. THE FACTS ALLEGED**

5. According to the information available in the file, Martha María Saire was born on May 30, 1981 and lives with a mental disability resulting from a brain injury. According to the petitioners' allegations, when she was an 11-year-old girl, Martha Saire was initially in a homelessness situation in the city of San Pedro Sula, since there was no information about her parents or other relatives who could take care of her, she was

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<sup>1</sup> The Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities entered into force on September 14, 2001. The Honduran State ratified said instrument on September 14, 2011 and deposited it on November 10, 2011.

<sup>2</sup> The Convention on the Rights of Persons with Disabilities entered into force on May 3, 2008.

eventually welcomed at the Támara Youth Orientation Center,<sup>3</sup> located in the Francisco Morazán Department. It should be noted that Martha Saire is currently 40 years old.

6. According to the petitioners' allegations, on April 9, 1994, the girl Martha Saire was the victim of rape by two guards of the Center, who allegedly belonged to the Special Tactical Group of the Honduran Army and who allegedly had been assigned to guard two homes for minors and the local women's prison. According to the documents provided by the petitioning party, a guard of the Orientation Center gave testimony during the investigation indicating that he had seen the girl in the morning on the day of the events with a wheelbarrow throwing garbage. Then she would have left the wheelbarrow near the gate where she was and she asked to speak to another guard known by the alias of "Chaparro", about which she was told that it was forbidden to cross from that area and that she should return to the Center, in that moment the guard Santos Abelino Pérez López came and offered to accompany her back, despite the fact that all interaction with the patients was prohibited. The witness would have seen Martha Saire for the last time that morning returning to the Center holding the hands of the guard Pérez López.

7. According to what was related in the petition, Martha Saire would have asked for help, but no one listened to her or came to help her, and the girl indicated that two men, both dressed in the same way, presumably in uniform, sexually abused her, and that they offered her two *lempiras* and told her not to talk about what had happened, threatening to beat her if she did. After the acts of sexual violence, the two custodians Santos Abelino Pérez López (who already had a criminal record) and Antonio Ávila Zelaya had left and Martha returned to the Orientation Center, where Sister Basilia intercepted her, who indicated that "she found her half-dressed, with her body externally lacerated and downcast". Upon suspiciously observing that the girl was carrying two lempiras in her hand, she began to talk to her and little by little managed to collect information from the girl about what had happened to her. That same day, Martha Saire was treated by the doctor from the Guidance Center, María Dolores Miranda, who performed a gynecological examination that found that the girl had been sexually abused, as evidenced by the "multiple lacerations in the vagina and ecchymoses in both breasts". Next, Dr. María Dolores Miranda reported what happened to the National Board of Social Welfare, and from said institution informed the Juvenile Judge who, together with the Juvenile Ombudsman, took the testimony of the girl and, likewise, the Legal Medicine Department performed several medical examinations, all of which confirmed the occurrence of the acts of sexual violence to the detriment of Martha Saire.

8. The petitioning party specified that, on April 14, 1994, the authorities responsible for the Támara Orientation Center reported the facts to the National Board of Social Welfare and *Casa Alianza*, at which point the corresponding investigation began. It also alleged that, during that period, those responsible for the violation left their workplace and their residences. Therefore, on April 22, 1994, the petitioning party presented the accusation before the First Instance Criminal Court for the crime of rape to the detriment of Martha María Saire, against Santos Abelino Pérez López and Antonio Ávila Zelaya and an arrest warrant was issued against the two defendants for their detention. As indicated by the petitioners, on September 5, 1995, the First Instance Criminal Court requested the addresses of the accused to process the arrest warrants and subsequently, on February 20, 1997, the subjects were sentenced to six years in prison, although it was not until October 1, 1999, when their capture was confirmed.

9. As of the signing of the friendly settlement agreement, as decided between the parties, the State of Honduras assumed custody and guardianship of Martha Saire in 2003, and took charge of her care as a measure of medical and social rehabilitation through the Santa Rosita Psychiatric Hospital. In that place, as reported by the petitioners in the framework of the friendly settlement process, Martha Saire was the victim of a second rape on December 31, 2012, by a visitor. For the facts previously described, on July 19, 2013, a prosecutor's request was made to Mr. Juan Ángel Canales Motiño, and subsequently, on October 23, 2013, the initial hearing was held, followed by new proceedings on May 14, 2014, and July 31, 2014. On that date, the court sentenced the defendant to twelve years of imprisonment, disqualification of rights and to civil liability in the case. On June 19, 2019, the State confirmed that the subject had been prosecuted and convicted, and that

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<sup>3</sup> The original petition states that the events occurred at the *Centro Femenino de Adaptación Social* (CEFAS), but according to the documents that recorded the events, it is the Youth Orientation Center located in Támara today called the Sagrado Corazón Pedagógico Complex.

he would continue to serve the corresponding custodial sentence in the National Penitentiary for Male Social Adaptation.

10. Finally, the State reported, within the framework of the friendly settlement negotiation process, that a disciplinary proceeding was carried out against the officials who oversaw the care of Martha Saire at the Santa Rosita National Psychiatric Hospital when the events of the second rape occurred and, on June 21, 2019, the State confirmed, without giving details, the imposition of disciplinary sanctions on those in charge of surveillance and the hospital's nursing staff.

### III. THE FRIENDLY SETTLEMENT

11. On June 30, 2003, the parties signed a friendly settlement agreement, the text of which establishes the following:

**FRIENDLY SETTLEMENT AGREEMENT BETWEEN THE GOVERNMENT OF HONDURAS  
AND THE CASA ALIANZA ASSOCIATION ON CASE No. 11,545 (MARTHA SAIRE) OF  
THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

The State of Honduras (hereinafter "The State") on one party and, on the other, the Casa Alianza Association (hereinafter "The Petitioners") sign this Friendly Settlement Agreement before the Honorable Inter-American Commission on Human Rights (hereinafter "The Commission") related to the case 11.545 (Martha María Zaire) in accordance with the provisions of Articles 48, 49, 50 of the American Convention on Human Rights (hereinafter "The Convention"), by virtue of the complaint filed by the petitioners for violation of Articles 5 (Violation of Physical integrity), 19 (Rights of the Child), agree as follows (sic):

**FIRST:** Considering that the State represented by the Honduran Institute for Children and the Family (IHNFA) through Resolution CD-IHNFA No 048-99, assumed the lifelong guardianship of MARTHA MARÍA ZAIRE, whom is currently in the Infant Unit Juvenile of the Santa Rosita Psychiatric Hospital, receiving medical-special care in charge of a Special Education Teacher, dependent on the Office of intervention and Social Protection of the IHNFA.

**SECOND:** That the State, through Resolution No. 0501-2001-0066 dated February 23, 2001, of the National Registry of Persons (RNP) granted MARTHA MARIA ZAIRE a birth certificate that identifies her as a person subject of rights and obligations.

**THIRD:** That in the processes of administration of Justice in this case the First Court of Appeals dated February 20, 1997, revokes the acquittal issued by the First Criminal Court of First Instance of Francisco Morazán on October 30, 1996, and sentenced AVELINO PEREZ LOPEZ and ANTONIO AVILA ZELAYA to six years in prison for being responsible for the crime of rape to the detriment of MARTHA MARIA ZAIRE.

**FOURTH:** That according to the social and psychological reports made by the State and the petitioners on the current situation of MARTHA MARIA ZAIRE, the State agrees to the following:

a) Maintain the necessary Personnel assigned to the Child and Adolescent Unit of the Santa Rosita Psychiatric Hospital where MARTHA MARIA ZAIRE and other similar cases are located, following an occupational, pharmacological, psychological, and progressive social reintegration treatment.

b) Maintain a periodicity in the monitoring of the case and that the reports thereof are sent annually to the Petitioners and the Commission.

**FIFTH:** That, according to the memorandum signed by the State and the petitioners, on June 19, two thousand and one, the State will inform the Commission about the present friendly settlement agreement in this case, so that the Commission can issue the report friendly settlement as provided in Article 49 of the Convention.

Given in the City of Tegucigalpa, Municipality of the Central District, on the thirtieth day of June, two thousand and three.

12. As indicated in the summary of the case *supra*, on March 26, 2021, at the end of the Commission's 179th regular session, the parties signed a memorandum of understanding to adjust the content of the friendly settlement agreement to the standards updated on the protection of the rights of persons living with disabilities, in light of the obligations of the Honduran State derived from the entry into force of the Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities and of the Convention on the Rights of Persons with Disabilities, the text of which establishes the following:

**Memorandum of Understanding of the Friendly Settlement Agreement signed on June 30, 2003, in relation to the Case “Martha Saire 11.545- Honduras” before the IACHR**

In the city of Tegucigalpa, Municipality of the Central District, Honduras, on March twenty-six (26), 2021, within the framework of the working meeting facilitated by the Inter-American Commission on Human Rights in its 179 Regular Period of Sessions, the State of Honduras 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, for the other party: by the Casa Alianza Association Mr. José Guadalupe Ruelas, Director of said organization, together with the lawyer Denia Cruz and on behalf of the Center for Justice and International Law (CEJIL), Mrs. Claudia Paz y Paz, Director of the CEJIL Program for Central America and Mexico; Vanessa Coria, Legal Coordinator of the CEJIL Program for Central America and Mexico and María Luisa Gomez Comi, lawyer for the CEJIL Program for Central America and Mexico, in their capacity as representatives of Mrs. Martha María Saire, in the framework of the case: “Martha María Saire-11.545-Honduras”, sign the following memorandum of understanding of the friendly settlement agreement (FSA) signed on June 30, 2003, before the IACHR:

**First:** The parties acknowledge that the FSA signed on June 30, 2003, through which the Ministry of Foreign Relations and the Honduran Institute for Children and the Family (IHNFA) appeared before the IACHR for the State of Honduras and as representatives of Mrs. Martha María Saire, the Casa Alianza Association, due to the time that has elapsed and by virtue of the advances in recent years regarding the standards for the protection of the rights of women and people living with disabilities, presents references that must be updated.

**Second:** Due to the above, the first point of the friendly settlement agreement signed on June 30, 2003 has become abstract. Instead, the parties agree that the State of Honduras will continue to provide care for Martha Saire and guard her with a comprehensive approach, in relation to the standards of the rights of women living with disabilities, self-determination and social integration in the place of care “Fundación Hogar Los Ángeles”, where she has resided since August 16, 2017. Likewise, the State undertakes to maintain the necessary personnel assigned to the care of Martha María Saire at the Fundación Hogar Los Ángeles.

**Third:** In accordance with the working meeting of May 31, 2019, held before the IACHR, the parties agreed to implement a Comprehensive Care Plan, thus, they had the consultancy of Dr. Hilda Beatriz Miranda Galarza, for which the parties have agreed to create an Accompaniment Committee to follow up on the guidelines and recommendations of the specialist's Results Report, in accordance with the agreement between the parties. Said Committee should focus on the central axles of conducting the updated mental health evaluation; the generation of Martha Saire's capacity development plan according to said evaluation and with a cross-

cutting focus on gender and disability; the periodic training of the personnel in charge of the care of Martha Saire and the establishment of a support device, with her participation, to guarantee her autonomy in decision-making in light of the principles of respect for dignity, autonomy, independence, self-determination and social inclusion, the same central axes for monitoring the implementation of the FSA by the IACHR.

**Fourth:** The parties acknowledge that by virtue of the governmental changes it must be made clear that her care and guard of Martha Saire is preserved by the State of Honduras, likewise, the legal representation of the State is held by the Attorney General's Office (PGR) and the legal representatives of Mrs. Martha María Saire are the Casa Alianza Foundation and CEJIL.

**Fifth:** The parties agree to form an accompaniment committee, with the objective of evaluating the progress in the implementation of the Comprehensive Care Plan. The composition of the committee, as well as the number of members and operation will be agreed between the parties.

**Sixth:** Due to the above, the parties sign this memorandum of understanding to prove the effects of the friendly settlement agreement signed on June 30, 2003, and as an update of the FSA as appropriate, what is agreed in the current one. Likewise, regarding the consensus reached, the parties jointly request the assessment of the content of the FSA and its amendment through this act and the approval, by the IACHR and that it finally adopts the report contemplated in Article 49 of the Convention American on Human Rights, at which time the FSA will acquire full legal status.

**Seventh:** The parties request that the IACHR take the necessary measures so that the "Fundación Hogar Los Ángeles" is established as the place of residence, and also undertakes to maintain the personnel necessary for the care of Martha María Saire within it, [and] that her care and guard is preserved by the State of Honduras. The State undertakes to implement a Comprehensive Care Plan as indicated in this memorandum, taking into consideration the pertinent recommendations of the results report of Dr. Hilda Beatriz Miranda Galarza, in accordance with what was agreed between the parties and with the exception of the point regarding the reforms or creation of laws, by virtue of the fact that this FSA is directed directly in favor of the beneficiary.

#### IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

13. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, the purpose of this procedure is "to reach a friendly settlement of the matter based on the respect for the human rights recognized in the Convention." The acceptance of carrying out this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the *pacta sunt servanda* principle, by which the States must comply in good faith with the obligations assumed in the treaties.<sup>4</sup> It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows the termination of individual cases in a non-contentious manner, and has shown, in cases involving various countries, to offer an important vehicle for settlement, which can be used by both parties.

14. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and highly values the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement. Additionally, the Commission observes that the parties signed a memorandum of understanding after the signing of the friendly settlement agreement, for which it considers that it is an integral part of the agreement signed between the parties and so it declares it so.

<sup>4</sup> Vienna Convention on the Law of Treaties, U.N. Doc. A / CONF.39 / 27 (1969), Article 26: "*Pacta sunt servanda*". Any treaty in force is binding on the parties and must be performed by them in good faith.

15. The Commission observes that as derived from clause 6 of the memorandum of understanding, signed between the parties at the working meeting facilitated by the Commission on March 26, 2021, they asked the IACHR to assess the content of the FSA and its amendment via this memorandum and the adoption of the report contemplated in Article 49 of the American Convention. Therefore, it is the responsibility of the Commission at this time, in light of Article 49 of the ACHR and 40 of the Commission's Rules of Procedure, to verify that the agreement is 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> In this sense, it must analyze whether the friendly settlement agreement updated by means of the memorandum of understanding conforms to the standards regarding the protection of the rights of persons with disabilities, in addition to assessing compliance with the commitments established in both instruments. This will be done below, with a cross-sectional approach to the content of the originally agreed obligations, compared to the content of the updates made and the central axles of the case regarding the figures of guardianship and institutionalization of people living with mental disabilities, *vis a vis* the standards regarding non-discrimination, consent, and self-determination of people with disabilities, as well as support systems and their social integration.

16. In order to analyze the content of the friendly settlement agreement and its amendment, one must start from an interpretation of the rights of the American Convention and the obligations derived from them, in light of the measures for special protection derived from the international standards for the protection and guarantee of the rights of persons with disabilities, given that said framework provides mechanisms to adequately guarantee and protect the rights of persons with disabilities, under equal conditions and having consider their specific needs.<sup>6</sup>

17. In this sense, the Commission must study whether the amended FSA protects the rights of Martha Saire to the recognition of her legal personality (article 3), personal integrity (article 5), judicial guarantees (article 8), to dignity (article 11), to equality before the law (Article 24), to guarantees of judicial protection (article 25) and to health (article 26), protected by the American Convention. For such purposes, it will take into consideration the standards derived from the same American Convention on Human Rights, as well as from the Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities, the Convention on the Rights of Persons with Disabilities (instruments of which the Honduran State is a party), together with the interpretative comments of the United Nations Committee of Persons with Disabilities, the United Nations Principles for the Protection of the Mentally Ill and the Improvement of Mental Health Care and the relevant jurisprudence of the Inter-American Court of Human Rights, among others, all of which is part of the international *corpus iuris* on the special protection of the rights of persons with disabilities.

18. Regarding these instruments, the Inter-American Court has observed that these take into consideration the social model to address disability, which implies that disability is not defined exclusively by the presence of a physical, mental, intellectual, or sensory impairment, but is interrelated with the barriers or limitations that socially exist so that people can exercise their rights effectively.<sup>7</sup> In this sense, the paradigm of the approach to the rights of persons with disabilities has been in constant evolution, which must be taken into consideration to determine if the adjustments to the FSA are consistent with said evolution.

19. The Commission observes that the content of the friendly settlement agreement originally signed on June 30, 2003, contains mostly declarative indications, related to the award of the guardianship for life of Martha Saire, by the Honduran State, the granting of a certificate of birth, the imposition of sentences on those responsible for the first acts of sexual violence against Martha Saire, as well as other execution provisions related to the maintenance of qualified personnel at the Santa Rosita Psychiatric Hospital, in which Martha Saire was institutionalized for several years, as well as rehabilitation measures that include the State's commitment to provide occupational, pharmacological, psychological and progressive social reintegration treatment and to inform the petitioning party and the Commission about the situation of Martha Saire.

<sup>5</sup> See American Convention on Human Rights. Article 49. See also, Regulations of the Inter-American Commission on Human Rights, Article 40.

<sup>6</sup> See I / A Court HR, Case of Furlán and Family v. Argentina. Judgment of Preliminary Objections, Merits, Reparations and Costs. August 31, 2012. Para. 139.

<sup>7</sup> See I / A Court HR, Case of Furlán and Family v. Argentina. Judgment of Preliminary Objections, Merits, Reparations and Costs. August 31, 2012. Para. 139.

20. In this regard, first, the Commission values the declaratory provisions of the friendly settlement agreement that account for the actions taken to sentence to six years of imprisonment to those responsible for the acts of sexual violence of which Martha Saire was a victim when she was a child, as indicated in the third clause of the friendly settlement agreement. Likewise, the Commission takes note of the actions taken by the State to investigate, and punish to twelve years in prison, to the person responsible for the acts of rape that occurred at the Santa Rosita Hospital in 2012, as well as the administrative sanctions imposed on the officials that were responsible for the care of Martha Saire at the time of the events. The Commission considers that these actions are consistent with the State's obligation to protect Martha Saire's rights to judicial guarantees and judicial protection guarantees established in Articles 8 and 25 of the ACHR, respectively.

21. On the other hand, the Commission observes that the first provisions, on the adjudication of the guardianship for life of Martha Saire and her treatment at the Santa Rosita Psychiatric Hospital, as well as the commitment established in the fourth clause related to the medical, psychological and social rehabilitation measure, to maintain the necessary personnel assigned to the Child and Youth Unit of the Santa Rosita Psychiatric Hospital and to follow an occupational, pharmacological, psychological and progressive social reintegration treatment, were modified through the minute of understanding because of the evolution of the standards of protection of the rights of persons with disabilities, as indicated below.

*a) Considerations on the figure of guardianship of people with disabilities in relation to the recognition of legal personality and the obligation of non-discrimination:*

22. In this regard, the Inter-American Court has already ruled on the consideration of disability as a protected category of discrimination in light of the provisions of Article 1.1 of the American Convention, when said treaty establishes the obligation of the States to respect and guarantee "Without any discrimination" the rights contained in that instrument,<sup>8</sup> reason why it is prohibited by the same Convention, any discriminatory norm, act or practice based on the real or perceived disability of a person.<sup>9</sup> This obligation is reinforced by the provisions of Article 24 of the same Convention, regarding the right of all persons to equal protection by law without discrimination.<sup>10</sup>

23. Concerning the figure of guardianship exercised over a person with a disability, the Convention on the Rights of Persons with Disabilities establishes in its article 12 the right of persons living with disabilities to the enjoyment and exercise of their legal personality, in equality conditions of other people, as well as the duty to adopt measures to establish the support systems that they may need to exercise their legal capacity.<sup>11</sup> In this regard, the United Nations Committee on the Rights of Persons with Disabilities has recognized in its interpretation of the instrument that legal capacity and mental capacity are different concepts, but that they are frequently not differentiated by the States. The first refers, on the one hand, to the ability to be the holder of rights and obligations, as well as to exercise those rights and obligations (legal capacity and legitimacy to act), while mental capacity refers to the aptitude that one has a person to make decisions, which varies in each case due to different factors, and these deficits cannot be used to deny the legal capacity of people with disabilities. As indicated by the Committee, the protection derived from Article 12 prevents legal capacity from being used in a discriminatory manner to deny the legal capacity of a person with a disability and lower their status as a person before the law, on the other hand, there is an obligation to States parties to the Convention to provide support systems for the exercise of legal capacity for persons with disabilities, according to their specific circumstances.<sup>12</sup>

24. The foregoing is consistent with the obligation of non-discrimination derived from Article III of the Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities (of which the State of Honduras has been a party since 2011), as referred to the obligation to adopt

<sup>8</sup> See I / A Court HR, Case of Guachalá Chimbó et al. V. Ecuador. Judgment of March 26, 2021. Merits, Reparations and Costs.

<sup>9</sup> See I / A Court HR, Case of Guachalá Chimbó et al. V. Ecuador. Judgment of March 26, 2021. Merits, Reparations and Costs.

<sup>10</sup> American Convention on Human Rights. Article 24. Equality before the law.

<sup>11</sup> 2008 Convention on the Rights of Persons with Disabilities. Article 12. Equal recognition as a person before the law.

<sup>12</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 1 on Article 12: Equal recognition before the Law, CRPD/C/1/4. 11th Period of Sessions from March 30 to April 11, 2014.

measures to eliminate discrimination against people with disabilities.<sup>13</sup> Such discrimination is defined in the ICEDPD as “any distinction, exclusion or restriction based on a disability [...] that has the effect or purpose of preventing or nullifying the recognition, enjoyment or exercise by persons with disabilities of their human rights and fundamental freedoms”. In the case of the friendly settlement agreement initially agreed between the parties, the figure of guardianship annulled Martha Saire’s legal capacity to make decisions that affected her on the basis of her mental disability. Regarding the foregoing, the Inter-American Court of Human Rights has established that mental disability should not be understood as an inability of the person to self-determine, but rather the presumption that people who suffer from a mental disability are capable of expressing their will should be applied, which must be respected by medical personnel, by authorities and States.<sup>14</sup>

25. The Commission observes that, in the domestic legislation of Honduras, the figure of guardianship is regulated in articles 270 to 281 of the Family Code, and particularly with regard to adults considered legally incompetent, it is established in article 278 that their legal guardians and representatives are the directors or superiors of the social assistance establishments that host them, without the need for judicial discernment or appointment.<sup>15</sup> In this regard, the Committee on the Rights of Persons with Disabilities has expressed its concern about the lack of harmonization of the Honduran Family Code, which maintains the figures of guardian and surrogate guardian, with the provisions of the CRPD, indicating that these discriminate and restrict the legal capacity of people with disabilities. Therefore, said Committee recommended that the Honduran State repeal any legal provision that partially or totally limits the legal capacity of persons with disabilities and adopt specific measures to establish a model of support system for the decision-making process, which respects the autonomy and will of people with disabilities and to replace the forms of substitution in decision-making.<sup>16</sup>

26. In light of the foregoing, it is observed that the parties, having identified the gap between the terms originally agreed in the friendly settlement agreement of June 30, 2003 on this matter, convened to adjust the FSA by eliminating any reference to the figure of guardianship over Martha Saire and replacing the terms of the agreement with the creation of a support device, with her participation, to guarantee her autonomy in making decisions that affect her, in light of the principles of respect for dignity, autonomy, independence, self-determination and social inclusion, which is consistent with the standards in the matter and adequately amends this end of the original friendly settlement agreement. At the same time, the Commission takes note of the common interest of the parties to limit the scope of the friendly settlement agreement to the specific situation of Martha Saire, which is why the parties decided to expressly exclude from the final agreement reached the reforms or creation of laws on the rights of persons with disabilities, so they will not be subject to supervision by the Commission in monitoring the implementation of the commitments assumed in this framework.

*b) On the institutionalization of people with disabilities in relation to their rights to personal integrity, recognition of legal personality, informed consent, and independent life:*

27. Regarding the obligations assumed by the State in literal a) of the fourth clause of the agreement, related to the obligation to maintain the necessary personnel assigned to the Child and Youth Unit of the Santa Rosita Psychiatric Hospital and to follow an occupational, pharmacological treatment, psychological and progressive social reintegration, an evolution of the standards for the protection of the rights of people with disabilities is also observed after the signature of the friendly settlement agreement, in relation to the standards for the institutionalization of people with disabilities, the respect for their legal personality and informed consent and independent life.

<sup>13</sup> OAS, Inter-American Convention for the Elimination of all forms of discrimination against persons with disabilities of September 14, 2001. Article III.

<sup>14</sup> See I/A Court HR. *Case of Ximenes Lopes v. Brazil* Judgment of July 4, 2006. Para. 130. See also, I / A Court HR, *Case of Guachalá Chimbó et al. V. Ecuador*. Judgment of March 26, 2021. Merits, Reparations and Costs.

<sup>15</sup> In this regard, see Decree No. 76-84, Family Code of Honduras. Published in the Official Gazette La Gaceta No. 24, 394 of August 16, 1984. Articles 270 to 281.

<sup>16</sup> UN, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Honduras*. CR P D/C/HND/CO/ 1. May 4, 2017. Original: Spanish.

28. In this regard, the Inter-American Court has established that there are special duties that States have, derived from the protection established in Article 5 of the ACHR to personal integrity, and that they are related to the special position of guarantor assumed by States with respect to people who are in their custody or care, against which there is an obligation to provide the necessary conditions to develop a dignified life (duty of care).<sup>17</sup> The foregoing, as the Court has considered, applies in a special way to people who are receiving medical care, and the latter reaches a maximum level of requirement when it comes to people who have a mental disability, by virtue of their situation of particular vulnerability when they are in psychiatric institutions.<sup>18</sup>

29. Article IV of the Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities establishes the obligation of the State to develop means and resources to facilitate and promote independent life, self-sufficiency and total integration into society, in conditions of equality, of people with disabilities.<sup>19</sup> In the same sense, Article 19 of the CRPD establishes the obligation of the States parties to take the pertinent measures to facilitate the full enjoyment of the right of persons with disabilities to an independent life, with a focus on inclusion and participation in the community, and specifically the duty to ensure that people with disabilities have the opportunity to choose their place of residence, and are not forced to live according to a specific system of life imposed, as well as the obligation to ensure access to a variety of home and residential assistance services, as well as other community support services, including personal assistance, to ease their existence and with a focus on inclusion in the community, avoiding their social isolation.<sup>20</sup>

30. In the same vein, Article 18 of the Additional Protocol to the American Convention on Economic, Social and Cultural Rights ("Protocol of San Salvador"), establishes the right of persons with disabilities (physical and / or mental) to receive special attention in order to achieve "the maximum development of their personality". Regarding this obligation, the Inter-American Court has established the existence of a duty of special attention to persons living with mental disabilities due to their particular vulnerability, since it is imperative to adopt positive measures by the legal subject, due to their personal condition or the specific situation in which they find themselves, such as disability,<sup>21</sup> and that in this assessment the direct and significant link between disability and other forms of vulnerability such as poverty and social exclusion must be taken into account.<sup>22</sup> Particularly, with regard to the medical treatment of people with mental disabilities, the Inter-American Court has established that all treatment must be aimed at the well-being and best interest of the patient, and should have as an objective their dignity and autonomy, to reduce the impact of the disease and to improve their quality of life.<sup>23</sup>

31. In this regard, experts on the subject have realized that people with mental disabilities are arbitrarily and unnecessarily segregated from society in psychiatric institutions, despite the fact that it has been shown that the vast majority of people with mental disabilities can receive treatment in a safe and dignified way within their community and that protectionist regulations can often cause great harm by denying them the ability to make important decisions for their lives.<sup>24</sup> Therefore, coercive treatments in psychiatric institutions, in the absence of an emergency situation, are justified only under the review of an independent medical authority.<sup>25</sup> In the same sense, the Inter-American Court has agreed when indicating that:

Due to their mental and emotional condition, people with mental disabilities are particularly vulnerable to any health treatment, and this vulnerability is increased when people with

<sup>17</sup> See I / A Court HR. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Para. 138-140.

<sup>18</sup> See I / A Court HR. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Para. 138-140.

<sup>19</sup> OAS, Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities of September 14, 2001. Articles IV.

<sup>20</sup> 2008 Convention on the Rights of Persons with Disabilities. Article 19. Equal recognition as a person before the law.

<sup>21</sup> See I/A Court HR. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Paras. 101-111.

<sup>22</sup> See I/A Court HR. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Paras. 101-111.

<sup>23</sup> See I/A Court HR. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Paras. 101-111.

<sup>24</sup> See I/A Court HR. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Expert opinion of Eric Rosenthal, international expert on the human rights of people with mental illness.

<sup>25</sup> See I/A Court HR. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Expert opinion of Eric Rosenthal, international expert on the human rights of people with mental illness.

mental disabilities enter psychiatric treatment institutions. This increased vulnerability occurs due to the existing imbalance of power between patients and the medical personnel responsible for their treatment, and due to the high degree of intimacy that characterizes the treatment of psychiatric illnesses.<sup>26</sup>

32. In that regard, the United Nations Committee on the Rights of Persons with Disabilities has expressed concern about the non-existence in Honduras of concrete initiatives for the deinstitutionalization of people with disabilities with support systems in the community for an independent life, encouraging the State to promote the deinstitutionalization of people with mental, intellectual or psychosocial disabilities, guaranteeing access to the necessary services and support, including personal assistance, with the aim of accessing an independent life in the community.<sup>27</sup> Additionally, said Committee also expressed its concern about the validity in the Honduran legal system of norms on mental health that stipulate the deprivation of liberty of persons with disabilities based on the real or perceived presence of a psychosocial disability, as in the *Santa Rosita* and *Mario Mendoza*, and expressly recommended that the State review the cases of internment in the Santa Rosita Psychiatric Hospital, where Martha Saire was institutionalized for several years, as originally agreed between the parties in the friendly settlement agreement signed on June 30, 2003. For this reason, as recorded in the registry, since 2007, the petitioning party repeatedly insisted on the need to move forward with the part of the FSA related to the social integration of Martha Saire, as well as on the need to have a diagnosis and a plan for this purpose, reason why the petitioners opposed the approval of the agreement by of the Commission in the first years of its execution.

33. On the other hand, the social model derived from the evolution of standards regarding the rights of persons with disabilities should promote independent living and inclusion in the community of persons with disabilities. In this regard, the United Nations Committee on the Rights of Persons with Disabilities has defined independent life as the situation in which the person with a disability has “all necessary means to enable them to exercise choice and control over their lives and make all decisions concerning their lives, [and in that sense] [p]ersonal autonomy and self-determination are fundamental to independent living, including access to transport, information, communication and personal assistance, place of residence, daily routine, habits, decent employment, personal relationships, clothing, nutrition, hygiene and health care, religious activities, cultural activities and sexual and reproductive rights”.<sup>28</sup> Likewise, the Committee has clarified that institutionalization environments can vary in size and name, but have common elements, such as the compulsory sharing of housing with other people, the lack of control over daily decisions, the rigidity of routine, regardless of the will and preferences of a person, the paternalistic approach to the provision of services, and the supervision of the life system, among others.<sup>29</sup> In this sense, some people with disabilities need support systems, which must be built with their full and free consent, since the ability to choose is one of the fundamental elements of the right to live independently in the community.<sup>30</sup>

34. In the same sense, the Inter-American Court of Human Rights has considered it when establishing that the recognition of the legal personality of persons with disabilities, a right established in Article 3 of the ACHR, implies the obligation not to deny their legal capacity and to provide access to the support that the person may need to make decisions with legal effects, highlighting the Court that a social model of disability, based on human rights implies moving from the paradigm of the substitution in the decision-making to one based on support to make these decisions.<sup>31</sup> Legal capacity is especially important for people with disabilities when they have to make fundamental decisions regarding their health. In this sense, subjecting a

<sup>26</sup> See I/A Court HR, *Case of Ximenes Lopes v. Brazil*, Judgment of July 4, 2006. Para.129. Also see, I / A Court HR, Case of Guachalá Chimbó et al. V. Ecuador. Judgment of March 26, 2021. Merits, Reparations and Costs.

<sup>27</sup> UN, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Honduras*. CR P D/C/HND/CO/ 1. May 4, 2017. Original: Spanish.

<sup>28</sup> See, Committee on the Rights of Persons with Disabilities, *General Comment No. 5 on the right to live independently and to be included in the community*, CRPD/C/GC/5. October 27, 2017. Original: English. Para. 16.

<sup>29</sup> See, Committee on the Rights of Persons with Disabilities, *General Comment No. 5 on the right to live independently and to be included in the community*, CRPD/C/GC/5. October 27, 2017. Original: English.

<sup>30</sup> See, Committee on the Rights of Persons with Disabilities, *General Comment No. 5 on the right to live independently and to be included in the community*, CRPD/C/GC/5. October 27, 2017. Original: English.

<sup>31</sup> See I / A Court HR, Case of Guachalá Chimbó et al. V. Ecuador. Judgment of March 26, 2021. Merits, Reparations and Costs. Para. 117.

person with a disability to health treatment without their informed consent may constitute a denial of their legal personality.<sup>32</sup>

35. Likewise, in light of the United Nations Principles for the Protection of the Mentally Ill and the Improvement of Mental Health Care of 1991, persons with disabilities have the right to be treated in an environment that is the least restrictive as possible, and in the same way to receive the least disruptive treatment, according to their health needs, and the need to protect the physical safety of third parties, according to an individually prescribed plan, which has been examined with the patient and is subject to periodic review to perform the modifications that are necessary and oriented in preserving and stimulating their personal independence.<sup>33</sup> Said instrument also safeguards the right to informed consent of persons with disabilities,<sup>34</sup> which has also been the subject of a ruling by the Inter-American Court, stating the following:

The informed consent of the patient is a *sine qua non* condition for medical practice, which is based on respect for their autonomy and their freedom to make their own decisions according to their plan of existence. In other words, informed consent ensures the useful effect of the norm that recognizes autonomy as an indissoluble element of the dignity of the person.

States have the international obligation to ensure that informed consent is obtained before any medical act is carried out, since it is based mainly on the autonomy and self-determination of the individual, as part of the respect and guarantee of the dignity of every human being, as well as their right to liberty. The informed consent consists "of a prior decision to accept or submit to a medical act in the broad sense, obtained freely, that is, without threats or coercion, induction or improper inducements, manifested after obtaining adequate, complete information, trustworthy, understandable and accessible, provided that this information has been really understood, which will allow the full consent of the individual". This rule is not only an act of acceptance, but also the result of a process in which the following elements must be met for it to be considered valid, namely, that it be prior, free, full and informed. In this sense, health providers must inform the patient, at least, about: i) the evaluation of the diagnosis; ii) the objective, method, probable duration, benefits and expected risks of the proposed treatment; iii) the possible adverse effects of the proposed treatment; iv) treatment alternatives, including those that are less intrusive, and the possible pain or discomfort, risks, benefits and side effects of the proposed alternative treatment; v) the consequences of the treatments, and vi) what is expected to occur before, during and after the treatment.

[...]

When treating people with disabilities, medical staff should examine the patient's current condition, and provide the necessary support for the patient to make an informed and proper decision.<sup>35</sup>

36. In particular, the Committee on the Rights of Persons with Disabilities has indicated that the CRPD recognizes that women living with disabilities can be objects of multiple and intersectoral forms of discrimination, based on gender and disability and that, in this sense, women with disabilities are subjected to forced sterilization, as they are often deprived of control and decision-making over their sexual and

<sup>32</sup> See I / A Court HR, Case of Guachalá Chimbó et al. V. Ecuador. Judgment of March 26, 2021. Merits, Reparations and Costs. Para. 117. See also, Committee on the Rights of Persons with Disabilities, General Comment No. 1 on Article 12: Equal recognition before the Law, CRPD / C / 1/4. 11th Period of Sessions from March 30 to April 11, 2014.

<sup>33</sup> UN, General Principles for the protection of the mentally ill and the improvement of mental health care. Adopted by the General Assembly in its Resolution 46/119, of December 17, 1991. Principle 9. Treatment.

<sup>34</sup> UN, General Principles for the protection of the mentally ill and the improvement of mental health care. Adopted by the General Assembly in its Resolution 46/119, of December 17, 1991. Principle 9. Treatment.

<sup>35</sup> See I / A Court HR, Case of Guachalá Chimbó et al. V. Ecuador. Judgment of March 26, 2021. Merits, Reparations and Costs. Para. 117-121. See also, Case I.V. Vs. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, paras. 159, 165, 166 and 189; and Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs. Judgment of March 8, 2018. Paras. 161 and 162.

reproductive health.<sup>36</sup> In the same vein, there is a principle according to which, although treatment can be applied to a patient without their informed consent, if a qualified mental health professional authorized by law determines that the treatment is urgent and necessary to prevent immediate or imminent harm to the patient or other people, sterilization can never be applied as a treatment for mental illness, and the protection of the right to give informed consent is maintained, unless it is not in a position to give said consent, in which case only the procedure would be authorized, after independent examination.<sup>37</sup>

37. In this regard, the Inter-American Court has considered that sexual and reproductive health has important implications for women, which is related to their autonomy and reproductive freedom, in terms of the right to make autonomous decisions about their life plan, their body and their sexual and reproductive health, and refers to access both to reproductive health services and to information, education and the means that allow them to exercise their right to freely and responsibly decide the exercise of this right.<sup>38</sup> Therefore, "the lack of legal safeguards to take reproductive health into consideration may result in a serious impairment [of] autonomy and reproductive freedom".<sup>39</sup> Specifically, regarding cases of non-consensual sterilizations, the Court has indicated that consent to a surgical intervention with permanent impact on the reproductive system is part of the autonomous sphere and private life of women, who have the right to choose whether or not she maintains her reproductive capacity.<sup>40</sup>

38. Next, the Commission will proceed to assess the evolution of Martha Saire's situation during the 18 years of negotiation and implementation process of the friendly settlement agreement, since this is closely related to the evolution of the negotiations and actions within the framework of the friendly settlement that resulted in the amendment of the agreement, the actions taken to address the situation of Martha Saire and in such a way that the Commission can determine, in light of the standards described above, if the amendment of the provisions of paragraph a) of the agreement is consistent with them. The foregoing, taking into consideration that, in this particular case, Martha Saire's situation is not linear, but has been, and will continue to be in the near future, subject to evaluations and adjustments, until the barriers that prevent her from fully participating in the community, and having the highest level of quality of life and dignity are removed.

*c) Evolution of the negotiation process and compliance with the friendly settlement agreement and of Martha Saire's situation:*

39. Regarding the analysis of compliance with the obligations derived from the friendly settlement agreement and its amendment, according to the information provided by the parties, at first the State complied with the obligation to provide the measure for Martha Saire's medical, psychological, and social rehabilitation, and to cover her subsistence expenses and provided health care at the Santa Rosita Psychiatric Hospital.

40. In this regard, the Commission was able to corroborate, with the information available in the file, that the State reported concrete actions in the area of vocational training, individualized psychosocial care, occupational therapy, gross and fine motor development activities, eye care, allocation of psychology and social work professionals, hiring of special education teachers and a caregiver to care for Martha Saire at the Santa Rosita Psychiatric Hospital. In particular, according to the petitioners' brief of February 22, 2011, a verification visit by the technical team of *Casa Alianza* to the Santa Rosita Hospital is reported, in which "it was verified that she was well cared for and that her basic needs (food, room and clothing) were adequately satisfied and that an occupational therapist has even been assigned to carry out activities that allow the young woman to develop some psychomotor skills [and] as a result the young woman has learned to do all kinds of crafts". In the

<sup>36</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 1 on Article 12: Equal recognition before the Law, CRPD/C/1/4. 11th Period of Sessions from March 30 to April 11, 2014. Page 10.

<sup>37</sup> UN, General Principles for the protection of the mentally ill and the improvement of mental health care. Adopted by the General Assembly in its Resolution 46/119, of December 17, 1991. Principle 11. Consent for treatment.

<sup>38</sup> UN, General Principles for the protection of the mentally ill and the improvement of mental health care. Adopted by the General Assembly in its Resolution 46/119, of December 17, 1991. Principle 11. Consent for treatment.

<sup>39</sup> Case I.V. Vs. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, paras. 157.

<sup>40</sup> Case I.V. Vs. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, paras. 157.

framework of said visit, it was verified, as indicated by the petitioners, that the young woman had received specialized medical (psychiatric) treatment required for her mental health problem and it was confirmed that she had not been subjected to any physical, psychological, physical or sexual abuse by the staff of the institution, or other patients who live with her. They also verified the supply of basic elements such as kitchen utensils, microwave, tape recorder, television, fan and stove, among others.

41. Starting in 2011, the parties discussed the importance of transferring Martha Saire from the Children's Unit of the Santa Rosita Psychiatric Hospital to an adult unit given that she had already reached the majority of age and it was not appropriate for her to live with underage patients. Within the framework of said dialogues, and because of the petitioners' repeated indication to advance with the social reintegration of Martha Saire, during the working meeting of October 30, 2013, the Honduran State presented the bases of the Social Integration Plan, in order for Martha Saire to acquire autonomy over her person, but as indicated by the State initially in the framework of said meeting, Martha Saire would always require supervision and control of psychiatrists and special teachers, who have been specifically assigned to her, due to her aggressive behavior.

42. In her Final Report, the Expert gave an account of Martha Saire's clinical diagnosis, according to which, although an evolution is observed, it is important for her safety and that of the people around her, that she continues with her treatment in a place with the characteristics of the Center in which he currently resides<sup>41</sup>.

43. In its report presented at the October 2013 working meeting, the State indicated that the young woman had shown physical, emotional, and attitudinal changes, as a result of the work of the team of specialists who cared for her, including the staff of the psychiatric ward, nursing, occupational therapists and special teachers. In its report, the State revealed the photographic record of the facilities in which Martha Saire was located, including the bathrooms with showers and modern sanitary services, a fully equipped dining room, an on-site clinic, a first aid nurse station, rest rooms and observation rooms, patient rooms with security measures, therapeutic intervention areas and agricultural therapy and the equipment and furniture provided for the personal use of Martha Saire. The State described that the areas of intervention at that time were focused on social reintegration, motivation, self-control, activities of daily living, basic cooking, hygiene and food safety, attention and concentration, and management of inappropriate habits such as kleptomania and mythomania.

44. The State provided the chart of activities of the social reintegration process of Martha Saire with concrete actions in the motor, communicational, social affective, independence and self-care areas, her schedules and details of the self-care activities and to obtain skills that eventually allow Martha Saire to have greater independence. Likewise, the State reported the recreational activities in which Martha Saire participated, which included walks to the river, agriculture in a garden, country walks, weeding flowers, and cleaning tasks, all of which were conducted in group sessions.

45. As a follow-up to the working meeting, the State sent an evolutive clinical report on Martha Saire, in which it was concluded that she was not a candidate to be perpetually institutionalized in a psychiatric hospital and particularly that there was no psychiatric medical criterion that implied the need to maintain her institutionalization. Therefore, as of 2014, the parties discussed the need to constitute a multidisciplinary team, made up of psychiatric doctors and social workers, that could assess and issue indications about the treatment that Martha required with a deinstitutionalization approach. In particular, at the working meeting facilitated by the Commission on October 29, 2014, the petitioners expressed their concern about the process of dissolution of the INFA and the need to seek alternatives to continue providing health care and social rehabilitation to Martha Saire in a suitable place.

46. Subsequently, on June 11, 2014, an agreement was signed between DINAF and the *Fundación Hogar Los Angeles*, with the aim of "joining forces in order to carry out actions that lead to guarantee the interest of the young Mrs. Martha Maria Saire, attending in a timely and effective manner the need for protection that the Honduran State is obliged to", and which included "the provision of food services, accommodation, medical, psychiatric, neurological care, providing the medication that she needs, and in general the care that she

<sup>41</sup> The Commission will keep Martha Saire's diagnosis confidential to protect her privacy.

requires". The foregoing provided a legal contractual framework that finally allowed Martha Saire to be transferred, on August 16, 2017, from the Santa Rosita Psychiatric Hospital to the Los Angeles Home Foundation, where she resides to date. In this regard, it should be noted that between 2015 and 2017, this is before the transfer to *Hogar Los Angeles*,<sup>42</sup> Martha Saire had a critical physical health situation, related to a severe anemia, product of very heavy monthly bleeding that caused her defense levels to decrease to a level of risk, which is why she underwent a hysterectomy and was hospitalized for 13 months at the *San Juan Hospital and Clinic* and at the *Hospital Escuela Universitario*. The foregoing was the subject of the request for precautionary measures before the Commission mentioned above, and requests for information and working meetings facilitated by the Commission within the framework of this friendly settlement procedure during that period.

47. Once Martha Saire was transferred from the Santa Rosita Psychiatric Hospital to *Hogar Los Angeles*, the parties continued to move forward with the formal procedures to amend the original agreement to guarantee the deinstitutionalization of Martha Saire with a progressive social reintegration approach. Therefore, in a working meeting facilitated by the Commission on September 5, 2017, the parties expressed the need to prepare an interpretation document of the FSA to determine how to comply with literal a) of point four in relation to the progressive social deinstitutionalization of Martha Saire and, for this purpose, the parties agreed to hire an international psychologist specialized in gender and disability, as an independent expert, to prepare a medical opinion and design the care program for Martha Saire, with an assessment of the viability or route of an eventual deinstitutionalization in the form of a Comprehensive Care Plan.

48. Subsequently, between 2017 and 2019, the parties made progress in the selection of an independent expert in the framework of a consultancy for "international technical advice to people with intellectual disabilities, for the construction of a comprehensive plan aimed at achieving the progressive social reintegration process [of Martha Saire]", (hereinafter "Comprehensive Plan"), the cost of which was assumed by the State and the selection of the independent expert was carried out by the petitioning party. In this regard, it should be noted that there were several delays for the start of the consultancy, for reasons beyond the control of the parties, related to administrative issues related to the Independent Expert proposed by the petitioners, which were overcome and finally in September 2019, the Dr. Hilda Beatriz Miranda Galarza, issued the report "*Construction of a Person-Centered Support and Accompaniment System for People with Disabilities. Concept Note and application to the Martha Maria Saire case*". In this sense, the parties understood at this point that it would be necessary to build a route based on the needs, interests and strengths of Martha Saire, which determined the change of focus of the process from a psychiatric medical perspective to an approach based on a social model, centered on Martha Saire and based on a support system that would allow her to improve her quality of life and ensure her independent social participation.<sup>43</sup>

49. Once the hiring of the expert was materialized, the activities for the diagnosis of the situation were carried out, which included an interview with Martha Saire to record her version of the story that she has lived, find out her opinion regarding her current situation and identify her needs and interests. In this framework, from September 8 to 14, 2019, different activities were carried out with representatives of the DINAFA, *Casa Alianza*, staff of the *Fundación Hogar Los Angeles* and with Martha Saire for the design of a support and accompaniment system with her knowledge and participation and for the generation of the Comprehensive Care Plan for Martha Saire. This consultancy culminated in the preparation of a report called "Construction of a Person-Centered Support and Accompaniment System for People with Disabilities" dated September 14, 2019.<sup>44</sup>

<sup>42</sup> According to the information provided by the parties, the main objective of Hogar Los Angeles is to promote the integration into society of people with disabilities, through training programs aimed at acquiring skills to perform trades and achieve their social integration, as well as in the provision of mental health care services, recreational activities, and self-help.

<sup>43</sup> In this regard, it should be noted that in her report the Independent Expert defines the support systems as "those that are required for the celebration of certain formal acts; and those that are required to carry out activities of daily life, which may also be called 'supports for independent living'". In this sense, the supports "are resources and strategies that improve the functioning, participation and quality of life of people in general and of those with disabilities in particular." Miranda Galarza, Hilda Beatriz. Report "Construction of a Person-Centered Support and Accompaniment System for People with Disabilities". Concept Note and application to the Martha Maria Saire case. 17, Consulting- Mexico. Tegucigalpa, September 8-14, 2019.

<sup>44</sup> Miranda Galarza, Hilda Beatriz. Report "Construction of a Person-Centered Support and Accompaniment System for People with Disabilities". Concept Note and application to the Martha Maria Saire case. 17, Consulting- Mexico. Tegucigalpa, September 8-14, 2019.

50. Methodologically, the process of building said support and accompaniment system centered on Martha Saire, first included the establishment of a common theoretical and methodological line of the people involved in her care. In this sense, on September 10, 2019, a seminar on "Support systems and accompaniment for people with disabilities from a human rights framework" was held at the DINAF facilities, and was attended by staff from *Hogar Los Angeles*, in addition representatives of other organizations that work on the issue of disability, and the Secretariat for Disabilities - SEDI-, DINAF, as well as representatives of schools of social work and psychology of the University of Honduras. The seminar included different approaches to disability, with an emphasis on the social model and human rights instruments on the matter. According to the Expert, this helped lay the foundations for the direct work of *Hogar Los Angeles* in the case of Martha Saire.

51. Between September 8 and 10, 2020, the context in which Martha Saire has developed and is currently developing was evaluated, which included holding interviews with the different lawyers of *Casa Alianza* and the DINAF, as well as with professionals from the Santa Rosita Psychiatric Hospital, San Juan Clinic and *Hogar Los Angeles*, who were and/or are in charge of Martha Saire's care, as described above.

52. According to the Independent Expert's report, the Los Angeles home includes 71 people with various disabilities. It is located in a very spacious and green place, it has 10 houses where between 9 and 10 people live, and that includes different spaces for therapies, workshops, and administrative offices. Although Martha initially lived alone, due to her violent behavior, she currently lives with 9 people with different physical, brain and intellectual disabilities, in one of the foundation's houses, in which she has her own room, unlike the other people who live in the house and who share bedrooms between three residents. In particular, Martha is very close with two young people whom she helps and protects. Each house has two caregivers who also live in these residences for 22 days a month. It was also verified that Martha receives medical and dental treatment and participates in various workshops and psychological care therapies. The Expert highlighted that some people with disabilities who live in *Hogar Los Angeles* work outside it, can move around alone, have opened their bank accounts and manage their money with the support of the staff. However, in the particular case of Martha Saire, one of the findings was that she still needs support to have more independence. She also indicated that Martha usually leaves the center in the company of caregivers, and has managed to establish contact with various people in neighboring business establishments, whom she calls friends.

53. On the other hand, the Independent Expert also noted that Martha Saire has close relationships with different residents of the center and that progress has been observed in the time she has been there as a resident, but she has yet to continue with her treatment and under the care of third parties in a safe environment where she can receive the health services, as well as the care and support that she requires according to her clinical diagnosis.<sup>45</sup>

54. A third step in the work methodology included two interviews with Martha Saire, with the aim of recording her version of the history she has lived, since there are only the versions of the medical records of the different professionals who have treated her and of the institutions in which he has been. The aforementioned was in order to know her opinion about her current situation, her needs and her interests. The interview was conducted by six psychologists (three psychologists from *Hogar Los Angeles*, a DINAF psychologist who has been accompanying the case for several years, a DINAF psychologist in charge of the issue of people with disabilities, and the Independent Expert). For this purpose, a questionnaire based on the quality of life matrix was previously prepared in light of the Schalock model,<sup>46</sup> which includes dimensions and indicators of quality of life at the level of emotional well-being, interpersonal relationships, material well-being, personal development, physical well-being, self-determination, social inclusion and the protection of the rights of persons with disabilities, as well as the matrix of inclusive community-based development (DIBC) of the World Bank.

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<sup>45</sup>The Commission will keep Martha Saire's diagnosis confidential to protect her privacy.

<sup>46</sup> Miranda Galarza, Hilda Beatriz. Report "Construction of a Person-Centered Support and Accompaniment System for People with Disabilities". Concept Note and application to the Martha Maria Saire case. 17, Consulting- Mexico. Tegucigalpa, September 8-14, 2019. Citing Schalock, R.L., & Verdugo Alonso, M.A. (2007). The concept of quality of life in services and supports for people with intellectual disabilities. *Siglo Cero: Spanish magazine on Intellectual Disability*, 38 (224), 21-35.

55. In this regard, in the report the Independent Expert indicated that Martha remembers episodes of sexual abuse by her alcoholic father, this before the re-victimization events at the Támara Youth Orientation Center, which was the subject of the initial petition before the Commission. The Expert added that "the life of Martha Saire is impacted by episodes of violence, institutionalization in psychiatric hospitals and constant transition to different spaces." It stressed that after being homeless, she would have stayed in a religious center, in a penitentiary and later institutionalized in the DINAF "*Casa Alianza*" adolescent rehabilitation center, in the Santa Rosita Psychiatric Hospital, in the San Juan Psychiatric Clinic and lastly, at present, resides in the *Fundación Hogar los Ángeles*. At the same time, Martha repeatedly states that she has a son who lives with her father, who was a driver and with whom she lived in Tegucigalpa. In that sense, it is indicated that Martha, "gives no indication of knowing that she had a hysterectomy." Likewise, she indicated that she recognizes that she becomes violent when she does not use medication, and that it is in those opportunities that she takes sharp objects, either to cut herself or to threaten other people. Regarding the use of contraceptive drugs, the Independent Expert verified during the interviews that their use has been consented to and decided by Martha. On the other hand, what she remembers most is her stay at *Hogares Crea* where he helped with the care of children and young people, and that she liked that a lot, she knew the meal times, helped them to be ready, and gave them advice. In that sense, Martha has been emphatic that she enjoys taking care of others. At this stage, the Independent Expert identified that there are different people in the *Los Angeles* household who could be part of a support system, but indicated at the same time that it should be ensured that there are people in said device who are not linked to the institution.

56. Finally, a fourth stage in the applied methodology included the development of a Comprehensive Support Plan using the information collected. This plan was focused on the strengths, needs and interests of Martha Saire, and the six psychology professionals indicated above participated, including the Independent Expert. In this framework, Martha was informed about the process and indicated that certain changes would be made to improve her quality of life and worked on developing a matrix, taking into consideration again the Shalock's quality of life dimensions and DIBC indicators, selecting urgent objectives, and it was agreed to periodically review them as well as those of long term that are identified in this process.

57. In her Report, the Independent Expert detailed Martha's objectives and needs, her strengths, the activities to be carried out, and the support and follow-up focal points identified with Martha's participation. In this sense, the Independent Expert observed the need to continue with the accompaniment so that the changes in Martha Saire's life can continue to materialize, which will require modifications "so that it does not result in a burden to be carried by her or any of the people who surround her". Therefore, the Independent Expert made concrete recommendations to strengthen the care home's capacities through the continuous training of the *Fundación Hogar los Ángeles* staff, the constitution of an Accompaniment Committee, which should monitor and follow up on the evaluation of Martha Saire, as well as the creation of a support system with a view to its deinstitutionalization and the realization of a comprehensive evaluation that allows the construction of a capacity development plan. As indicated by the Expert, the Accompaniment Committee must follow up on the guidelines and recommendations of the Specialist's Report and must measure the progress and setbacks and its stagnations and achievements, with the perspective of deinstitutionalization and the ultimate objective of independent living and as part of the community.

58. Said Committee must be made up of people with expertise in the subject of disability and gender and will meet twice a year, first after receiving the follow-up report of the first six months of work and a second time after receiving the evaluation of the year. The invitation letters to those who will be a part of it (between 5 and 10 people), must be extended by the three institutions involved (*Casa Alianza*, DINAF and *Hogar Los Ángeles*), and they will explain the reason, the description of their task, that it is unpaid work, and the Expert's Report must be attached once it is approved by the three institutions. Likewise, it was established that the follow-up and monitoring of the implementation of said system will be done by the representatives of DINAF and *Casa Alianza*, with the support of the team of professionals in psychology from DINAF and *Hogar Los Ángeles*. The foregoing will involve periodic evaluations to adjust the Care Plan accordingly.

59. It is noteworthy that, in her report, the Independent Expert indicated the existence of four stages in the construction of the Support System, namely, its design and the preparation of the person-centered plan, its implementation, monitoring and evaluation. In this sense, it is observed in the specific situation of

Martha Saire that the first stage has been exhausted, and the follow-up phase of this friendly settlement agreement should be carried out taking into consideration the implementation of the Comprehensive Plan, its follow-up and evaluation as appropriate, and making the pertinent adjustments according to the advances and setbacks of Martha, ensuring her participation. Although Martha still remains in a sheltered home, according to the expert's findings, this situation is consistent with Martha's current strengths, and would be a transitional situation before an eventual social reintegration, if her evolutionary framework allows it. Likewise, as indicated by the Expert, there are conditions at *Hogar Los Angeles* so that Martha Saire can achieve higher levels of self-determination and independence.

60. Once the Independent Expert issued her Report, the parties discussed during 2020 and 2021 on the specific adjustments that should be made to the friendly settlement agreement of June 30, 2003, in light of the Expert's findings. In this sense, on March 26, 2021, the parties signed the memorandum of understanding amending the agreement, including the main recommendations of the Expert for the construction of a support system centered on Martha Saire.

*d) Analysis of compliance with the friendly settlement agreement of June 30, 2003, amended by the memorandum of understanding of March 26, 2021, and its consistency with the standards for the protection of the rights of persons with disabilities:*

61. Based on the foregoing, the Commission considers that, according to the information provided by the parties throughout the negotiation process, the State fully complied with point four a) of the friendly settlement agreement of June 30, 2003, under the terms originally agreed, in relation to the obligation to maintain the necessary personnel assigned to the Child and Youth Unit of the Santa Rosita Psychiatric Hospital and providing occupational, pharmacological, psychological and progressive social reintegration treatment, and so it declares it so. Likewise, the Commission considers that the State complied with its obligation to keep the Commission informed, in the terms agreed upon in paragraph b) of this clause, and thus declares it as such.

62. On the other hand, the Commission considers that the first, second, third and fifth clauses of the original FSA are declaratory in nature and that the corresponding references have been adequately updated by the memorandum of understanding and thus it declares it as such. Therefore, it is not up to the Commission to continue monitoring the friendly settlement agreement signed in 2003. On the other hand, monitoring must be carried out on the execution commitments derived from the FSA's remedial memorandum of understanding, as will be detailed later.

63. Taking into consideration the evolution of the situation of Martha Saire reported *supra*, as well as the aforementioned standards regarding the protection of the rights of persons with disabilities, the actions taken for their evaluation by an Independent Expert, the findings of the Independent Expert and the adjustments agreed by the parties in the memorandum of understanding of March 26, 2021, the Commission considers that the amended agreement is consistent with the applicable international standards and thus it declares it as such.

64. It should be noted that, at the working meeting facilitated by the Commission on March 26, 2021, the Commission had the opportunity to listen to Martha Saire, who indicated that "she does not want to leave the center where she is living, she also stated that in the center there are two children whom she loves as her own, they cannot walk, so she does not want to go, she wants to stay looking after them in the center". In this regard, the Commission takes note of the victim's feelings and her consent to remain at *Hogar Los Angeles*.

65. Likewise, the Commission takes into consideration the elimination of the figure of guardianship over Martha Saire, the focus of the process on her social participation, her current stay in a place of transition, on which it has expressed her agreement and the commitment to create a support mechanism with her participation, to guarantee her autonomy in decision-making in light of the principles of respect for dignity, autonomy, independence, self-determination and social inclusion. Likewise, the Commission especially values the existence of a Comprehensive Support Plan and the commitment to create the Accompaniment Committee that will verify its implementation of the Independent Expert's recommendations, with a view to

the full social integration of Martha Saire, in accordance with the evolution of her strengths and needs, which will be subject to periodic evaluation by said Committee.

66. Once the commitments made in the memorandum of understanding of March 26, 2021 have been assessed, the Commission considers that the State has partially fulfilled the commitment to maintain the necessary personnel assigned to care for Martha Saire at *Hogar Los Angeles* and to continue providing care to Martha Saire, as established in the second clause and so it declares it as such.

67. In relation to the third clause of the memorandum of understanding, there are commitments related to a) the creation of the Accompaniment Committee to monitor the implementation of the Comprehensive Care Plan of Martha Saire; b) conducting a mental health assessment; c) the generation of the capacity development plan and d) the creation of the support device with her participation,<sup>47</sup> which the Commission understands are pending compliance and thus it declares it as such. Said commitments, as requested by the parties, will be the central axes of the monitoring by the Commission. In the same sense, the Commission considers that the fifth clause on the formation of the Accompaniment Committee is pending compliance and declares it as such. Finally, the Commission considers that the first, fourth, sixth and seventh clauses<sup>48</sup> of the memorandum of understanding are declarative in nature, and therefore their supervision is not applicable.

68. The Commission observes that in the case of Martha Saire, multiple vulnerability factors converge, as she is a woman, with a mental disability, a victim of (repeated) sexual violence, who lived in extreme poverty and in the streets, in addition to the different violations of her rights to health and informed consent during the evolution of the friendly settlement process, especially when subjected to prolonged institutionalization in a psychiatric hospital. Additionally, there would be indications that the sterilization had not been consented, given that she does not know what happened, and the State has not provided information, within the framework of the friendly settlement process, that accounts for the actions taken to obtain her informed consent. Therefore, the treatment that Martha Saire receives as a result of the friendly settlement must be preferential and especially appropriate for her condition, following the parameters described above and with a focus on the satisfaction of her economic, social and cultural rights, in light of the content of the commitments assumed by the State in the memorandum of understanding of March 26, 2021, and prioritizing the implementation of the Independent Expert's recommendation to work carefully with her on the issue of the hysterectomy, so that she can know what happened and its effects, as well as with an approach based on respecting her dignity, autonomy, independence, self-determination and social inclusion.

69. Finally, the Commission agrees with the final observation of the Independent Expert that "the case of Martha Saire represents millions of people and especially women with disabilities who live in situations of violence, injustice and impunity"<sup>49</sup> [and in that sense, it wishes to highlight] the significance of this case as an opportunity for the Honduran State to establish a new framework focused on the rights of persons with disabilities<sup>50</sup> and particularly to adopt measures to address the consequences of the multiple forms of violation of the rights of Martha Saire and give her a fresh start focused on self-determination, independent living, and respect for her dignity. At the same time, the Commission values the efforts of the parties in this regard to amend the friendly settlement agreement and identify formulas to ensure its progressive deinstitutionalization.

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<sup>47</sup> Numbering outside the framework of the agreement, for the purposes of its monitoring by the Commission.

<sup>48</sup> In this regard, it is noted that Martha Saire's place of residence is *Hogar Los Angeles* and that the parties have decided to exclude from the scope of this agreement the recommendation of the Independent Expert on legislative reforms or creation of laws. At the same time, it is understood that the commitments to maintain the staff in charge of the care of Martha Saire at *Hogar Los Angeles* and implement the comprehensive care plan are included in the commitments assumed in the second and third clauses of the memorandum of understanding of March 26, 2021.

<sup>49</sup> Miranda Galarza, Hilda Beatriz. Report "Construction of a Person-Centered Support and Accompaniment System for People with Disabilities". Concept Note and application to the Martha Maria Saire case. 17, Consulting- Mexico. Tegucigalpa, September 8-14, 2019.

<sup>50</sup> Miranda Galarza, Hilda Beatriz. Report "Construction of a Person-Centered Support and Accompaniment System for People with Disabilities". Concept Note and application to the Martha Maria Saire case. 17, Consulting- Mexico. Tegucigalpa, September 8-14, 2019.

## V. CONCLUSIONS

1. Based on the foregoing considerations and by virtue of the procedure provided for in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction with the achievement of a friendly settlement in the instant case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

2. By virtue of the considerations and conclusions set forth in this report,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. Approve the terms of the friendly settlement agreement signed by the parties on June 30, 2003, as amended by the memorandum of understanding of March 26, 2021, and declare that the latter is an integral part of the agreement and amends it.

2. Declare full compliance of literal a) of point four of the friendly settlement agreement of June 30, 2003 (measure of medical, psychological and social rehabilitation and progressive social reintegration) and b) (keep the Commission informed), in the original terms agreed and according to the analysis of this report.

3. Declare partial compliance of the second clause of the memorandum of understanding of March 26, 2021 (maintain the necessary personnel assigned to care for Martha Saire and provide care), according to the analysis contained in this report.

4. Declare pending of compliance the third clause of the memorandum of understanding of March 26, 2021, related to a) the creation of the Accompaniment Committee to monitor the implementation of the Comprehensive Care Plan of Martha Saire; b) conducting a mental health assessment; c) the generation of the capacity development plan and d) the creation of the support device with their participation, according to the analysis contained in this report.

5. Declare pending of compliance the fifth clause of the memorandum of understanding of March 26, 2021 (creation of the Accompaniment Committee).

6. Continue with the supervision of the commitments assumed in the second, third and fifth clauses of the memorandum of understanding of March 26, 2021, and for this purpose, remind the parties of their commitment to periodically inform the IACHR on compliance with said measures.

7. Make this report public and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on September 4, 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flavia Piovesan, Second Vice President; Margarette May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño; Edgar Stuardo Ralón Orellana, y Joel Hernández García Members of the Commission.