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Petition 1376-19

FRIENDLY SETTLEMENT REPORT

SILVIA ANGÉLICA FLORES MOSQUERA
URUGUAY

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PETITION 1376-19
FRIENDLY SETTLEMENT
SILVIA ANGÉLICA FLORES MOSQUERA
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I. SUMMARY AND RELEVANT PROCEDURAL ASPECTS OF THE FRIENDLY SETTLEMENT PROCESS

1. On June 4, 2019, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Mrs. Silvia Angélica Flores Mosquera, (hereinafter "petitioner", "the petitioner party" or the "alleged victim"), claiming the international responsibility of the Republic of Uruguay (hereinafter "State" or "Uruguayan State" or "Uruguay"), for the violation of rights contemplated in several international instruments, for allegedly not having had access to a social benefit established in Law 18.596 of September 18, 2009, despite having been recognized as a victim of the dictatorship between February 9, 1973 and February 28, 1985.

2. On July 8, 2020, during the initial study stage, the Commission requested additional information from the petitioner, which was provided on the same date. Therefore, based on the information available, the Commission considered that, in light of the provisions of Articles 26 to 29 of the Rules of Procedure of the IACHR, the petition met the requirements in order for it to be opened for processing for the study of its admissibility and competence.

3. On December 6, 2021, the Petitioner expressed her interest in initiating a friendly settlement process and on February 25, 2022, the State indicated its willingness to move forward with the negotiation process. Subsequently, on March 17, 2022, the Petitioner presented her claims to reach an eventual friendly settlement agreement.

4. On April 5, 2022, the Commission formally notified the parties of the initiation of the procedure, which materialized with the signing of a friendly settlement agreement (FSA) on August 10, 2022 in the city of Montevideo.

5. On August 10, 2022, the parties submitted a joint report on the progress made regarding compliance with the friendly settlement agreement and requested the IACHR to homologate it.

6. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, contains a summary of the facts alleged by the petitioner and transcribes the friendly settlement agreement signed on August 10, 2022 by the petitioner and representatives of the Uruguayan State. Likewise, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. FACTS ALLEGED

7. According to the allegations in the petition, the petitioner has been declared a victim of State Terrorism pursuant to the provisions of Law 18.596.

8. In her statement, the petitioner held that she was forced to give up her disability pension in order to receive the Special Reparatory Pension (PER), to which she claims she should have had access after the death of her husband Carlos Robles, who was also declared a victim of State Terrorism and entitled to the PER in accordance with the provisions of Article 11 of Law 18.033 and Article 6 of Regulatory Decree 106/007.

9. According to the documentation provided by the petitioner, on January 17, 2019, the petitioner filed a petition with the Executive Branch requesting it to modify Law 18.033. In this regard, the petitioner held that she did not receive a response.

10. Likewise, the petitioner argued that, on August 7, 2019, she filed before the Supreme Court of Justice an action for a declaration of unconstitutionality of subsection 2 of Article 11 of Law 18.033. Subsequently, on December 2, 2019, the Constitutional Court reportedly dismissed the action filed.

III. FRIENDLY SETTLEMENT

11. On August 10, 2022, the parties signed a friendly settlement agreement, which provides as follows:

Friendly Settlement Agreement

P-1376-19 Silvia Angélica Flores Mosquera, Uruguay

In the city of Montevideo, Oriental Republic of Uruguay, on August 10, 2022, in the Videoconference Room of the Ministry of Foreign Affairs, located at 1206 Colonia Street, 7th floor, there appear **ON ONE PART:** the Coordinator of the Directorate of Legal Affairs and Directorate of International Law Affairs Diplomatic Legal Consultant, Dr. Ambassador Carlos Mata, acting on behalf of the Uruguayan State, establishing electronic address at [...] and **ON THE OTHER PART: Mrs. Silvia Angelica Flores Mosquera**, oriental, of legal age, holder of identity card [...] electronic address: [...], who AGREE to enter into the present **AGREEMENT:**

FIRST. Background:

I) Mrs. Silvia Angelica Flores Mosquera was declared a Victim of State Terrorism by Resolution N° 64/2011 of the Ministry of Education and Culture, dated June 15, 2011, in accordance with Law N° 18,596 of September 18, 2009.

II) On June 8, 2015, Ms. Flores Mosquera waived her disability retirement in order to receive the Special Reparatory Pension (PER), since, in accordance with national regulations, both remunerations are incompatible for simultaneous receipt.

III) On August 23, 2018, the report of the Special Rapporteurs on the rights of persons with disabilities of the United Nations Human Rights Council, on the promotion of truth, justice, reparation and guarantees of non-repetition, urged the Government of the Oriental Republic of Uruguay *“to adopt all necessary measures to protect the right of Ms. Silvia Flores Mosquera and all human rights victims in Uruguay to receive effective, adequate and prompt reparations in compliance with international human rights standards”*.

IV) By Judgment N° 1422 of December 2, 2019, in the case of “FLORES MOSQUERA, SILVIA VS BANCO DE PREVISIÓN SOCIAL AND ANOTHER – CONSTITUTIONAL COMPLAINT – ART. 11 PARA.2 OF LAW N°18.033 SHEET IUE 1-108/2019, the Supreme Court of Justice, by a unanimous vote of its natural members, dismissed the action for a declaration of unconstitutionality filed by Mrs. Flores Mosquera against Article 11, paragraph 2 of Law 18.033.

V) On June 4, 2019, Ms. Silvia Angélica Flores Mosquera, has filed as a petitioner before the Inter-American Commission on Human Rights (IACHR), Petition 1376-19 requesting that the State-Executive Branch repair the damage caused by the de facto government by way of the modification of the provisions **of the second paragraph of Article 11** of Law 18.033 concerning the Special Reparatory Pension (PER).

VI) The State recognizes the legitimate right of the victims to obtain reparation measures for the serious affectation on their essential rights, thus acknowledging the violation of the Rule of Law and the systematic practice of human rights violations. Within this context, Laws N° 18.033 (13/10/2006) and 18.596 (18/09/2009) and their regulatory decrees Decree 106/2007 (20/03/2007) and Decree 297/2010 (06/10/2010) respectively were enacted, regulations which represented a great advance in the fulfillment of the obligations by the State, although they have (sic) presented insufficiencies at the time of their implementation.

In this regard, and pursuant to the recommendations made by the several special rapporteurs of the (sic) United Nations Human Rights Council, who have considered that the incompatibility of benefits would not be appropriate given that the origin of the benefits is different.

The Uruguayan State, after analyzing the petition, presented to the Inter-American Commission its willingness to opt for a friendly settlement with the petitioner.

SECOND: ACKNOWLEDGEMENT OF RESPONSIBILITY: The Uruguayan State recognizes once again the status of Mrs. Silvia Flores Mosquera as a Victim of State Terrorism and widow of **Mr. Carlos Robles Iturbides**, victim of State terrorism in Uruguay in accordance with the terms of Law 18.596 dated September 18, 2009, admitting **international responsibility for the violation of the rights recognized in articles 5 (humane treatment) and 7 (personal liberty)**, due to the serious situation of certain facts occurred in a particular historical period between February 9, 1973 and February 28, 1985, in which there has not been a full enjoyment of the guarantees of individual rights. This acknowledgement of international responsibility is limited to the rights indicated in relation to Mrs. Silvia Angélica Flores Mosquera.

Without prejudice to the foregoing, it should be noted that in accordance with national legislation this acknowledgement has already been granted by the Uruguayan State and is what has entitled Mrs. Flores Mosquera to receive the Special Reparatory Pension (PER), which implies the State's recognition of the deprivation of liberty suffered by persons detained and prosecuted or who were forced to leave the country or who remained clandestine for more than 180 days for political reasons between February 9, 1973 and February 28, 1985.

THIRD: SATISFACTION MEASURES: The Uruguayan State undertakes to implement the following satisfaction measures:

1. Acts of Acknowledgment of Responsibility: The Uruguayan State shall conduct a Private Act of Signature and Acknowledgement of Responsibility, which shall be carried out in person with the virtual participation and monitoring of the IACHR. The act will be performed in accordance with the acknowledgement of responsibility indicated in this Agreement. This measure shall be in charge of the Ministry of Foreign Affairs.

2. Economic Agreement. The State undertakes to pay Mrs. Silvia Angélica Flores Mosquera: i) The total and settled amount of [...]. Said amount shall be paid through a bank transfer to the savings account **in Uruguayan pesos in account No. [...]** Branch No. 036 of Banco República in the name of Mrs. Silvia Flores Mosquera. ii) It is also agreed to deliver a monthly rent of [...].

In all cases, the proof of transfer issued by the remitting bank will be sufficient to accredit the payment.

These payments are linked to Mrs. Silvia Angélica Flores Mosquera, therefore they will automatically cease on the date of her death.

The successors of Mrs. Silvia Angélica Flores Mosquera at that time shall inform the Services in charge of such payments at the latest during the month following the occurrence of such event.

Any payment unduly received after that date shall be subject to restitution action.

FOURTH. COMPENSATION MEASURES: The State undertakes to initiate the administrative process to make the agreed financial compensation effective within a maximum period of two months as of the date on which the friendly settlement agreement is approved through the issuance of the report under Article 49 of the American Convention on Human Rights.

FIFTH. CONFIDENTIALITY and NON-DISCLOSURE: The parties accept the confidentiality of the amounts agreed upon and request the IACHR to maintain the confidentiality of the items and amounts concerning the financial compensation and the monthly rent.

SIXTH. CLARIFICATION: The receipt of the sums provided for in the economic compensation of this agreement will not affect the Pension PER currently received by Mrs. Silvia Flores Mosquera.

SEVENTH. MODIFICATION OF REGULATIONS: In the event that the national regulations are modified and the possibility of jointly and simultaneously receiving the pension and PER items is admitted, the obligation of the State referred to in the third clause, paragraph two (Monthly payment of [...]) will automatically cease, and Mrs. Flores will have to carry out the respective procedures to jointly and simultaneously receive said sums of money.

EIGHTH. ACKNOWLEDGEMENT OF THE PETITIONER: Mrs. Silvia Angélica Flores Mosquera acknowledges that the foregoing measures of satisfaction constitute an adequate remedy for her claim, implying a definitive waiver of all claims of any nature related to the facts detailed in the preceding clause.

NINTH. DECLARATIONS: The parties declare that they agree to the provisions of this agreement, and to comply in good faith with the terms hereof.

TENTH. ADDRESSES ESTABLISHED: The parties constitute for all purposes the electronic addresses referred to in the appearance, which shall be (sic) valid and sufficient means for the purposes of the notifications to which this agreement gives rise.

ELEVENTH. CONFORMITY AND HOMOLOGATION BEFORE THE IACHR: The parties request the IACHR to homologate this friendly settlement agreement pursuant to Article 49 of the American Convention on Human Rights and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights, once the act of acknowledgment of responsibility set forth in the third clause has been fulfilled.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

12. 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 respect for the human rights recognized in the Convention. The acceptance to undertake this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the principle *pacta sunt servanda*, by which the States must comply in good faith with the obligations assumed in the treaties¹. It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows for the termination of

¹ 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.*

individual cases in a non-contentious manner, and has proven, in cases involving several countries, to offer an important vehicle for settlement, which can be used by both parties.

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

14. The Commission observes that, in accordance with the provisions of the eleventh clause of the friendly settlement agreement, the parties requested its homologation, in light of the provisions of Article 49 of the American Convention. This request was reiterated in the joint report submitted by the parties on August 10, 2022.

15. In view of the foregoing, the Commission observes that, given the information provided by the parties up to that time and the request for approval of the FSA submitted by the parties to the Commission, it is appropriate to assess compliance with the undertakings established in the friendly settlement agreement.

16. The Inter-American Commission values the second declaratory clause, which recognizes, once again, the condition of victim of State terrorism of Mrs. Silvia Flores Mosquera, widow of Mr. Carlos Robles Iturbides, in turn victim of State terrorism in Uruguay in accordance with the terms of Law 18.596, as well as the acknowledgement of the international responsibility of the State for the violation of the rights recognized in Articles 5 (humane treatment) and 7 (personal liberty) of the American Convention to the detriment of Silvia Angélica Flores Mosquera.

17. Regarding the first paragraph of the third clause of the agreement, concerning the act of acknowledgment of responsibility, the parties reported the existence of permanent and fluid communication between the State and the petitioner, with whom each of the details for the execution of the measure were agreed upon, such as the date, time, agenda, and logistics required for its implementation.

18. In accordance with the agreement between the parties, the signing of the friendly settlement agreement and the acknowledgment of responsibility and request for pardon took place in person with the parties gathered at the premises of the Ministry of Foreign Affairs and with the virtual connection to the Inter-American Commission on August 10, 2022, in the city of Montevideo. The State facilitated the presence of the flag and the national coat of arms in the room and the projection of the national anthem at the beginning of the ceremony, as agreed by the parties.

19. The event was presided over by the Director General of the Secretariat of the Presidency of the Republic, and by the Coordinator of the Directorate of Legal Affairs and the Directorate of International Law Affairs; in addition, the advisor to the Secretary of the Presidency and a representative of the Directorate of Legal Affairs of the Ministry of Foreign Affairs attended on behalf of the State. In addition, the petitioner and beneficiary of the agreement had the opportunity to say a few words, and the IACHR Presiding Commissioner and Rapporteur for Uruguay, Julissa Mantilla, accompanied the event, along with the Deputy Executive Secretary for the area of Petitions and Cases of the IACHR, Jorge Meza and the technical team of the Executive Secretariat of the Friendly Settlement and Follow-up Section.

20. At said act, the Coordinator of the Directorate of Legal Affairs and the Directorate of International Law Affairs, on behalf of the Uruguayan State, apologized to Mrs. Silvia Flores Mosquera and acknowledged international responsibility in the terms established in the friendly settlement agreement signed, stating the following:

[...]

For the team of which I am a member, it is an honor to represent the State, which entails honoring the memory of the events that Mrs. Silvia Flores Mosquera and her late husband, Mr.

Carlos Robles Iturbides, had to endure and suffer during a particular historical period between February 9, 1973 and February 28, 1985 under a de facto government.

[...]

Today the invitation of the State is that together with Mrs. Silvia Flores Mosquera we can find a space of genuine reconciliation consolidating it through an agreement which allows Mrs. Silvia Flores Mosquera by the way of the facts to the collection of the amounts similar to those of the retirement that she stopped receiving in 2015, which will be perpetuated during the time of her existence or until a legislative modification occurs.

The state has a strong commitment not only to build daily the consolidation of democracy but for the protection and effectiveness of the rights of which there are controversies, the state recognizes that for the administration of justice it must ensure the vindication of the rights of victims, addressing the due administration of justice for what they have suffered due to the violation of their rights by analyzing the comprehensive situation through various measures aimed at the redignification of the person in a comprehensive manner and taking into account the specific situation.

[...]

21. For her part, Commissioner Julissa Mantilla, President of the Commission, held that:

[...]

From the Commission, we highlight the transcendence of the signing of this friendly settlement agreement and the acknowledgement of responsibility made today by the Uruguayan State, since it is a central measure, which constitutes the first step towards compensation for the damage caused and is the testimony of the commitment to make effective full reparation for the violations suffered by Mrs. Silvia Flores. We also hope that compliance with the acknowledgment of responsibility will contribute to the building of trust between the parties and that such collaboration will extend until the resolution of the matter pending before the Commission, reaching full compliance with the obligations that the Uruguayan State has assumed in the context of the agreement.

[...]

22. In this regard, the petitioner expressed her satisfaction and gratitude for the event. In the joint report submitted by both parties, a photographic record of the act was sent to the IACHR to be included in the file of the petition.

23. Taking into consideration the information provided by both parties, the Commission regards, with satisfaction, that this aspect of the friendly settlement agreement has been fully complied with and so declares.

24. In relation to the commitments assumed in the second paragraph of the third clause (economic agreement) and the fourth clause (compensation measures) of the agreement, the Commission notes that, according to what was stipulated by the parties in the text of the FSA, these measures must be implemented once the friendly settlement agreement has been approved, and therefore it considers that they are pending compliance and so declares it. By virtue of the foregoing, the Commission shall await updated information from the parties on their implementation subsequent to the approval of this report.

25. The Commission considers that the first (background), second (acknowledgement of responsibility), fifth (confidentiality and reserve), sixth (clarification), seventh (modification of regulations), eighth (acknowledgement of the petitioner), ninth (declarations), tenth (addresses established) and eleventh

(conformity and homologation before the IACHR) clauses of the agreement are of a declarative nature, and therefore it is not applicable to supervise their compliance.

26. Due to the foregoing, the Commission concludes that the first paragraph of the third clause (act of acknowledgment of responsibility) is fully complied with and so declares it. At the same time, the Commission considers that the second paragraph of the third clause (economic agreement) and the fourth clause (compensation measures) are pending compliance and so declares it. Finally, the Commission considers that the rest of the contents of the friendly settlement agreement are of a declarative nature and therefore the IACHR is not responsible for supervising their compliance.

V. CONCLUSIONS

1. Based on the foregoing considerations and pursuant to 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 present 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. To approve the terms of the agreement signed by the parties on August 10, 2022.
2. To declare the first numeral of the third clause (act of acknowledgment of responsibility) to be totally fulfilled.
3. To declare the second numeral of the third clause (economic agreement) and the fourth clause (compensation measures) of the friendly settlement agreement pending compliance, according to the analysis contained in this report.
4. Continue with the supervision of compliance with the second numeral of the third clause (economic agreement) and the fourth clause (compensation measures) of the friendly settlement agreement, according to the analysis contained in this report. To this end, remind the parties of their commitment to report periodically to the IACHR on their compliance.
5. To make this report public and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on August 15, 2022. (Signed): Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice President; Margarete May Macaulay, Second Vice President; Esmeralda E. Arosemena de Troitiño; Joel Hernández García; Carlos Bernal Pulido and Roberta Clarke Members of the Commission.