

OEA/Ser.L/V/II
Doc. 105
23 August 2018
Original: Spanish

REPORT No. 92/18
CASE 12.941
REPORT ON FRIENDLY SETTLEMENT

NICOLASA AND FAMILY
COLOMBIA

Approved electronically by the Commission on August 23, 2018.

Cite as: IACHR, Report No. 92/18, Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.

REPORT No. 92/18
CASE 12.941
REPORT ON
FRIENDLY SETTLEMENT
NICOLASA AND FAMILY
COLOMBIA
AUGUST 23, 2018¹

I. SUMMARY AND PROCEEDINGS BEFORE THE COMMISSION

1. On December 19, 2007, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition filed by *Corporación Sisma Mujer*, the National Network of Women, the Colombian Commission of Jurists and the Center for Justice and International Law, CEJIL, (hereinafter "the petitioner"), on behalf of Nicolasa (hereinafter "the alleged victim")² against the State of Colombia ("Colombia" or the "State").

2. The petitioner filed three types of claim with the IACHR. In the first place, it argued that the State had failed in its duty to act with due diligence in order to investigate, prosecute and convict the perpetrator of the rape of Nicolasa during her forced displacement. Secondly, it argued that the State failed to adopt reasonable measures to prevent the forced displacement of Nicolasa and her family. Finally, it argued that the support granted by the State to Nicolasa to remedy the economic and social consequences of her displacement has been insufficient, and it has failed to duly take into account her gender status, her role as mother and head of family, child, Afro-descendant, and her lack of resources.

3. On April 3, 2014, the IACHR approved Admissibility Report No. 18/14 declaring the claim admissible for the alleged violation of the rights enshrined in Articles 8, 19, 22, and 25 in relation to Articles 1.1 and 2 of the American Convention on Human Rights ("American Convention"), and for the alleged violation of Article 7 of the Convention of Belém do Pará, to the detriment of the alleged victim. The Commission also concluded that the facts could characterize violations of Articles 5 and 24 of the American Convention, to the detriment of Nicolasa; and of its Articles 5, 8 and 25 in relation to the obligation contained in Article 1.1, to the detriment of her next of kin. In addition, the IACHR decided to declare the petition inadmissible with respect to the alleged violation of Article 4 of the American Convention and to notify the parties of the report and order its publication in its Annual Report.

4. On April 14, 2014, the Commission sent the admissibility report to the parties and made itself available to reach an amicable settlement of the case. The parties expressed their wish to do so and on September 5, 2017, signed a friendly settlement agreement. At a working meeting held on May 7, 2018, within the framework of the IACHR's 168th Special Period of Sessions, the parties requested the Commission to formalize the friendly settlement agreement, and formally reiterated their request in a communication dated June 18, 2018. Moreover, on May 28, 2018, the parties, by mutual agreement, signed an "addendum" to the friendly settlement agreement, modifying paragraph four of the agreement regarding compensation measures.

5. As established in Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, this friendly settlement report summarizes the facts alleged by the petitioner, reproduces the friendly settlement agreement signed on September 5, 2017, between the petitioner and the State of Colombia, and includes an assessment on the degree of compliance. In addition, it also makes a finding on the

¹ Commissioner Luis Ernesto Vargas, of Colombian nationality, did not participate either in the discussion or decision of the present case, in accordance with Article 17.2.a of the IACHR's Rules of Procedure.

² The IACHR will not disclose the identity of the alleged victim and her next of kin on the express request of the petitioners in their communications of November 13, 2009, and October 3, 2011. In the working meeting held on May 7, 2018, and in the communication dated June 18, 2018, both parties requested the Commission that the victim's initials be changed to a pseudonym, on account that disclosing the initials failed to protect her identity. In this regard, the Commission will use the pseudonym Nicolasa and will make the appropriated changes in the Admissibility Report.

compatibility between the friendly settlement agreement signed by the parties and the object and purpose of the American Convention; and adopts a decision on its publication in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. FACTS ALLEGED

6. The petitioner argued that Nicolasa and her family members were forcibly displaced in February 2000, as a result of the internal armed conflict in the Montes de María region of the municipality of San Onofre, Department of Sucre. It alleged that the State failed to implement measures in order to protect the community and prevent their displacement, so that Nicolasa and her family had to settle in Cartagena, in extremely precarious conditions. It reported that from their registration as a displaced population with the Agency for International Cooperation in November 2000, they were provided with some subsistence aid that, however, was not sustained or sufficient, preventing an improvement in the family's living conditions.

7. The petitioner indicated that between February and April 2002, a neighbor aged approximately 60 raped the 12-year-old Nicolasa at least three times, using death threats. It added that on July 4, 2002, Nicolasa and her family filed a criminal complaint against her assailant for violent sexual assault with the Public Reception Desk of the National Prosecutor's Office, Cartagena Division.

8. It pointed out that during the proceedings of the criminal complaint and the investigation for rape, serious irregularities occurred with a direct impact on the accountability in the case. Thus, it reported that the Office of the Prosecutor ordered Nicolasa to undergo a legal medical examination, despite the time that had elapsed between the rape and the complaint, which re-victimized Nicolasa. It added that she was also summoned to testify under oath on three occasions; however, it maintained that since the Office of the Prosecutor did not gather the necessary information to locate her, nor the information of her parents, Nicolasa was never aware of the summonses and, consequently, did not appear for the examination or to testify.

9. It added that Nicolasa never became a party to the proceedings because she lacked the legal information to know that this was the mechanism established by law and that she did not receive from the authorities a clear, timely and sufficient explanation of the procedures to be followed either. It indicated that she should have had specialized, immediate and comprehensive assistance to carry out the necessary procedural steps, due to the reinforced duty of protection by the State vis-a-vis a 13-year-old, displaced, Afro-descendent girl, with a low level of education and with scarce resources.

10. It alleged that all these factors contributed to the Prosecutor's Office's dismissal of the investigation on February 23, 2004, on the pretext that Nicolasa's complaint was unreliable³, without taking into account the fact that she was a girl in a hostile situation, with threats and violence, in a context of helplessness. It added that, being unaware of the decisions adopted by the Attorney General's Office, Nicolasa had no opportunity to challenge these decisions.

11. The petitioner also alleged that on March 28, 2005, the Ombudsman's Office – Cartagena Branch - filed a request with Prosecutor No.32 to provide them with a copy of the file in order to take notice of the proceedings and become a civil party in the case; however, the request was never answered.

12. On the other hand, the petitioner indicated that Order 092 of the Constitutional Court of April 14, 2008, (hereinafter "Order 092") acknowledged the forced displacement of Nicolasa, with special emphasis

³ The Prosecutor's resolution dismissing the complaint indicates that:

"There is no documentary evidence, scientific or witness that leads to establishing whether the minor was subject to violent sexual assault ... there is a noteworthy detail that is the number of occurrences and the repeated visits of the victim to the home of the aggressor. It is beyond belief that, having been subjected to violence, she would repeatedly return to further attacks. These events were made public...otherwise the offenses might never have been known by the courts. This shows that the minor had no interest in making a complaint...It is evident that statements of the minor are not credible in light of the foregoing arguments."

Section 8 Public Prosecutor's Office of Cartagena de Indias, Decision to Terminate Investigation, February 23, 2004, p.4.

on her status as a woman, Afro-descendant and head of family and ordered that the criminal proceedings in connection with the rape suffered as a child, be reviewed. It added that Nicolasa filed a number of requests for compliance with Order 092 with the Attorney General's Office; and on July 1, 2009, the Attorney General's Office reported that the General Procurator had decided not to pursue such a review.

13. It alleged that the State had failed in its duty to provide psychological support to Nicolasa to deal with the emotional effects of the sexual violence she suffered as a child and in its duty to adequately investigate the criminal conduct. It argued that the impact and the lack of adoption of preventive measures on the part of the State, ensured the repetition of the events and that Nicolasa became the victim of rape once again in 2014. In that regard, the petitioner alleges that since 2011, Nicolasa was the target of threats that were duly brought to the attention of the authorities; that in September 2013, the Technical Secretariat of the Committee on Risk Assessment and Measurement Recommendations (CERREM) reported that the risk assessment in her case had been deemed 'extraordinary', but a month later the protective measures were lifted and on June 6, 2014, she was seized by a masked armed attacker who raped her and told her that this was a warning. The petitioner reported that the threats and acts of harassment, as well as the rape of Nicolasa, were duly reported to the authorities and that despite this, they remain in impunity.

14. In addition, the petitioner filed a series of complaints regarding the quality and adequacy of the social benefits that Nicolasa and her family members have received to mitigate the effects of their forced displacement and overcome their precarious economic conditions. It indicated that the alleged victim - through her legal representative - filed a *tutela* against the Social Services Agency before the Administrative Contentious Court of Bolívar. This complaint was dismissed on October 26, 2006, by the Administrative Contentious Court of Bolívar, on the ground that Nicolasa and her family had failed to complete the necessary steps to access the programs offered by the State for the displaced population.

15. It added that on March 22, 2007, the Council of State annulled the first instance judgment and instead granted protection to the fundamental rights to life, health, education and adequate housing for Nicolasa and her family. It indicated that the Council of State, however, merely ordered the Agency for Social Services to provide orientation to Nicolasa and her family on the programs for the displaced population and to provide them with humanitarian aid to meet basic needs, subject to budget availability. It argued that the alleged victim challenged this ruling by the Council of State before the Constitutional Court, but the Court decided not to review it and such decisions are final.

III. FRIENDLY SETTLEMENT

16. On September 5, 2017, in the city of Bogotá, the State of Colombia and the petitioner signed a friendly settlement agreement, the text of which is transcribed below. It is important to emphasize that, by means of communications dated November 13, 2009 and October 3, 2011, the petitioner requested that the victim's and family members' names be kept confidential, as indicated in Admissibility Report No. 18/14. At a working meeting held on May 7, 2018, and in a communication of June 18, 2018, both parties requested the Commission that the initials of the victim be changed for a pseudonym, since the initials were not sufficient to safeguard her identity. In view of this, the Commission will substitute the initials contained in the Friendly Settlement Agreement transcribed below, with the pseudonym Nicolasa.

FRIENDLY SETTLEMENT AGREEMENT Case 12,491 NICOLASA AND FAMILY MEMBERS

ON SEPTEMBER 5, 2017, IN THE CITY OF BOGOTÁ D.C., ON THE ONE PART ANA MARIA ORDOÑEZ PUENTES ACTING WITH DUE AUTHORIZATION ON BEHALF OF THE STATE OF COLOMBIA, HEREINAFTER "THE STATE" OR "COLOMBIA" AND FOR THE OTHER PART, THE *CORPORACIÓN SISMA MUJER* (SISMA), REPRESENTED BY CLAUDIA MARÍA MEJÍA DUQUE AND LINDA MARÍA CABRERA CIFUENTES; THE COLOMBIAN COMMISSION OF JURISTS (CCJ), REPRESENTED BY GUSTAVO GALLÓN GIRALDO AND FREDY ALEJANDRO MALAMBO OSPINA; AND THE CENTER FOR JUSTICE AND INTERNATIONAL LAW (CEJIL IN ITS ACRONYM IN ENGLISH) REPRESENTED BY VIVIANA KRSTICEVIC AND FRANCISCO QUINTANA, AS

REPRESENTATIVES OF NICOLASA AND HER FAMILY, HEREINAFTER "THE REPRESENTATIVES OF THE VICTIMS" CONCLUDE THIS FRIENDLY SETTLEMENT AGREEMENT, ACCORDING TO THE FOLLOWING CONCEPTS, BACKGROUND, DECLARATIONS AND CLAUSES:

FIRST PART: DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

IACHR or Inter-American Commission: Inter-American Commission on Human Rights.

I/A Court H.R., or Court: Inter-American Court of Human Rights.

Early termination of the process: Early termination of the individual case in a non-contentious way due to the will of the parties.

Material damage: refers to the detriment or violation of the victims' and their relatives' rights to compensation due to the damage sustained by them, including loss of income and expenses incurred and proved on occasion of the events causing the damage.

Moral damage: the damaging impact of the facts of the case lacking an economic or proprietary nature, expressed through the victims' pain, affliction, sadness, anguish and distress.

State: In accordance with Public International Law, it is understood that the contracting party of the American Convention on Human Rights is the State of Colombia.

End of the controversy: cessation of contradictory claims in the present case.

Guarantees of non-repetition: They aim at ensuring that the human rights violations perpetrated in the present case are not repeated, and they may include the measures established in Article 23 of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations International Human Rights Law and Serious Violations of International Humanitarian Law.

Litigation on the merits: Procedure by which the IACHR determines whether or not a State is responsible for the alleged violations based on the allegations and evidence presented by the parties.

Measures of satisfaction: Non-pecuniary measures aimed at ensuring the victims' recovery vis-a-vis the damage caused. Some examples of the measures may include: verification of the facts, public acknowledgement of the truth and apologies, sanctions against perpetrators, commemorations and tributes to the victims, among others.

Parties: State of Colombia, the victim and her family, as well as representatives of the victims.

Acknowledgement of responsibility: Acceptance of the facts and human rights violations in this case acknowledged by the State.

Comprehensive reparation: All those measures that objectively and symbolically restore the victim to the status prior to suffering the damage.

Representatives of the victims: Corporación Sisma Mujer, Colombian Commission of Jurists (CCJ) and the Center for Justice and International Law (CEJIL).

Friendly Settlement: Alternative dispute resolution mechanism, used for the peaceful and consensual settlement before the IACHR.

Victims: Nicolasa and her Family.

SECOND PART: BACKGROUND

1. On December 19, 2007, the IACHR received a petition against the State of Colombia, filed by the *Corporación Sisma Mujer*, the *Red Nacional de Mujeres*, the Colombian Commission of Jurists and the Center for Justice and International Law "CEJIL", on behalf of Nicolasa and her family.

2. The representatives of the victims filed three types of claim with the IACHR: i) that the State had failed in its duty to act with due diligence in order to investigate, prosecute and convict the perpetrator of the rape of Nicolasa during her forced displacement, both when she was a minor and when she was of age; ii) the lack of effective and reasonable measures to prevent the forced displacement of Nicolasa and her family; iii) the insufficient support granted to Nicolasa to remedy the economic and social consequences of her displacement in light of her gender, her role as mother and head of family, child, Afro-descendant, and her lack of resources, as well as her family, including minors.

3. On April 3, 2014, the IACHR, through Report No. 18/14, declared the petition admissible in the case of Nicolasa and next of kin v. Colombia regarding the alleged violation of the rights in Articles 5, 8, 19, 22, 24 and 25, in connection with Articles 1.1. and 2 of the American Convention, and with Article 7 of the Convention of Belém do Pará.

4. On August 25, 2016, a meeting was held between members of the State, Nicolasa and her representatives, in which the parties expressed their willingness to initiate friendly settlement proceedings in this case. It was decided that the point of departure for these proceedings would be the determination of the scope of acknowledgment of responsibility undertaken by the State.

5. In a meeting held on November 11, 2016, the parties discussed the scope of the acknowledgment of responsibility undertaken in connection with the facts of the case, in the context of the friendly settlement process.

6. On January 2, 2017, the parties signed a memorandum of understanding to seek a friendly settlement.

THIRD PART: DECLARATIONS

"THE PARTIES", declare that:

7. They acknowledge the binding effect of the Friendly Settlement Agreement and the ACHR Article 49 report through which the IACHR formalizes this Agreement.

8. They reciprocally acknowledge their standing to act and participate in the signing of this Agreement.

9. They acknowledge that the signing of a friendly settlement agreement is aimed at the early termination of proceedings, establishing the human rights violations, and agreeing on the actions and measures for comprehensive reparation in favor of Nicolasa and her family.

10. They intend to promote and execute jointly the actions aimed at complying with the reparations contained in this agreement.

For its part, "**THE STATE**" declares that:

11. In this act it is represented by ANA MARIA ORDOÑEZ PUENTES, duly authorized to that effect, pursuant to Decrees 4085 of November 1, 2011, and 915 of May 30, 2017.

12. In its capacity as a party to the American Convention, it hereby expresses its broadest and absolute commitment for the compliance, respect and promotion of the human rights set forth in said international instrument.

13. In accordance with the provisions of Article 40 of the IACHR's Rules of Procedure, it ratifies its full disposition to resolve the present case by amicable means.

14. By this agreement, it expresses its full willingness and interest to make comprehensive reparations, in accordance with applicable international standards, of the human rights violations committed to the detriment of the victims of this case.

15. In order to comply herewith, the State has expressed its commitment that the authorities will, within the scope of their functions and competence, perform the specific actions stipulated in the provisions of this instrument.

16. It has available the budgetary resources necessary to finance the expenditures of this instrument and it has the commitment of all the agencies involved in the implementation of the measures set out in this agreement.

17. It undertakes to submit simultaneously any communications sent to the IACHR in electronic format, as well as any other communication in digital format, to the following email addresses:

[...]

"**THE REPRESENTATIVES OF THE VICTIMS**" declare that:

18. They act in the name and on behalf of Nicolasa and her family.

19. The sole registered address for receipt of any hard copy notice is [...]

20. In view of the above, "**THE PARTIES**" commit to the terms and conditions established in the following clauses:

FOURTH PART: ACKNOWLEDGEMENT OF RESPONSIBILITY

21. On November 11, 2016, the State acknowledged its international responsibility for the facts and violations of human rights in this case.

22. The representatives of the victims consider that the recognition of international responsibility of the State is an important gesture, that contributes positively to the clarification of this case and to a satisfactory solution thereof; it also contributes to the adequate protection of human rights in Colombia, especially those enshrined in the American Convention on Human Rights.

23. The parties to this agreement submit the present text on the acknowledgment of responsibilities to the Inter-American Commission for its formalization and subsequent publication in the corresponding friendly settlement report in accordance with the American Convention and the IACHR's Rules of Procedure:

"The State acknowledges its responsibility for the violation of the rights to personal integrity, judicial guarantees, judicial protection, honor and dignity, equality and rights of the child recognized in the American Convention on Human Rights in relation to the general obligations to respect and ensure as established in that instrument; and for the non-compliance with the obligations established in Article 7 of the Convention of Belém do Pará, to the detriment of Nicolasa, in conjunction with the interpretation of Articles 2, 3 and 4:

for not investigating with due diligence the acts of sexual violence perpetrated against her when she was a minor, taking into account her special state of vulnerability as a girl, Afro-descendent and displaced person in the context of the armed conflict, and therefore causing a state of impunity that affected her and her family with feelings of impotence, fear and insecurity, due to existing stereotypes of discrimination and violence against women during the judicial process;

for not preventing the sexual violence perpetrated against her when she was an adult, taking into account the heightened risk due to her role as a female leader and women's rights defender and due to the lack of timely investigation of previous threats.

for the lack of an adequate institutional framework for the comprehensive protection of Nicolasa's rights when she was a victim of sexual violence as a child; and because, despite the institutional and normative development achieved by the State in recent years in connection with the investigation of sexual violence against women, such as the issuance of Constitutional Court Decisions 092 of 2008 and 09 of 2015 - whose reserved annexes include the present case -; and the implementation of affirmative action in light of special characteristics, such as being Afro-descendants, victims of displacement, leaders and human rights defenders, in this particular case, failed to ensure the effective protection of Nicolasa's rights. The State also acknowledges the violation of the right to integrity of family members due to the suffering caused by the violations of Nicolasa's rights and the impunity of the situation.

The State acknowledges its responsibility for the violation of the rights to personal integrity, judicial guarantees, judicial protection, free movement and residence recognized in the American Convention on Human Rights to the detriment of Nicolasa and her family in relation to the general obligation to respect and ensure these rights, as established in the same instrument, for failure to investigate with due diligence the events causing their forced displacement by the armed conflict's illegal armed groups in the year 2000, at the Labarcé district in the municipality of San Onofre, department of Sucre, and thus generated feelings of helplessness, fear and insecurity with a differentiated impact for the family group, according to age, gender, peasant and ethnic origin. Likewise, the State considers that despite the legal decisions and other domestic remedies recognizing and protecting the rights of Nicolasa and her family in their displacement situation, the measures ultimately adopted were not implemented in a satisfactory manner so as to achieve the comprehensive protection required in this case."

24. As a consequence of the acknowledgment of responsibility made by the State, the controversy on the facts and human rights violations argued in this case is finished, with the signing of the friendly settlement agreement and the formalization thereof.

FIFTH PART: REPARATION MEASURES AGREED BETWEEN THE PARTIES

25. The State, through its representatives in this agreement, undertakes to carry out the following reparation measures consisting of: Satisfaction and rehabilitation measures, justice measures, compensation measures and guarantees of non-repetition in the terms set forth below:

1) Satisfaction and Rehabilitation Measures

- **Acknowledgement of international responsibility and public apology**

The State undertakes to hold a public event for the acknowledgment of international responsibility and for a public apology underlining the violations in the same terms as the acknowledgment of responsibility made by the State in this case. The Event will be conducted by the Presidential Counselor for Human Rights, with the participation of the victims in this case, their representatives and State officials. The features of the Event will be agreed upon with victims or their representatives, including: place, date, conditions and guests. Compliance with this measure will be the responsibility of the Presidential Council for Human Rights.

- **Education measures for Nicolasa**

Grant economic assistance in the sum of \$50,000,000 (FIFTY MILLION PESOS legal tender) to Nicolasa, with the aim of financing her studies at any professional, technical, technological or university level, in the academic program and in the higher education institution authorized within the national territory, chosen by the beneficiary. This assistance will be used to pay her tuition and support or maintenance fees.

The beneficiary of the measure must complete the registration and admission procedures in the higher educational institution of her choice, and fulfill her duties as a student, while reaching an adequate academic performance for her to obtain the respective degree.

In any case, the victim must start using the assistance within a term of no more than five (5) years from the signing of this agreement. Otherwise the obligation of the State in this regard will be considered as fulfilled.

The performance of this measure will be the responsibility of the Ministry of Education and the Colombian Institute of Credit and Technical Studies Abroad (ICETEX). The National Agency of Legal Defense of the State will arrange with the Ministry of Finance and Public Credit the availability of the resources to grant the assistance, as well as an additional amount for administrative expenses for the overheads incurred by ICETEX for the management of the budget agreed with the Ministry of National Education to ensure compliance with this commitment.

- **Physical and mental health care for the whole family**

The agencies participating in the Health System will cooperate under the coordination of the Ministry of Health and Social Protection to implement the rehabilitation measures in physical and mental health, and for psychosocial care through the General System of Social Security in Health and in the Program for Psychosocial Care and Integral Health for Victims (PAPSIVI), for the benefit of Nicolasa and her family.

After the initial diagnosis of the attending physician and through the links to that effect established by the respective EPS, Nicolasa and her family's needs in terms of physical and mental rehabilitation shall be addressed and ensured with adequate, timely, specialized,⁴ permanent, continuous, and differentiated treatment, with their prior consent, and for as long as necessary; all the above in light of the general impact caused by the armed conflict, as well as the autonomy of the health professionals. In any case, Nicolasa and her family will be able

⁴ Specialized treatment will mean the provision of services and health technology that must focus on the beneficiaries of the agreement; they will be appropriate from the medical and technical point of view, and will satisfy quality standards accepted by the scientific community. Comprehensive health services will be provided, including all specialties necessary according to medical criteria.

to choose the gender of the professional they prefer to provide them with care, taking into account the human resources available in the EPS and its provider network.

Comprehensive health care with a psychosocial approach provided in the framework of PAPSIVI, will be covered by the Benefits Plan of the General System of Health Insurance - SGSSS, financed with the resources corresponding to the Payment Unit for Training set by the Ministry of Health and Social Protection. The services not included in this plan, but required by Nicolasa or her family, will be acknowledged and defrayed out of the resources of the ECAT Sub-Account of FOSYGA or of the Agency for the Administrative of the Resources of the General System of Health Insurance once it enters into force, in accordance with the provisions of articles 66 and 67 of Law 1753 of 2015.

In the case of psychosocial rehabilitation within the framework of PAPSIVI, the measure will be provided within the framework of the planning and implementation of the psychosocial component of the Program or of the available institutional offer, under the guidelines developed by the Ministry of Health and Social Protection; in any case, the continuity of care will depend on the individual will of each victim protected by this agreement.

Psychosocial care will be provided within the framework of the modalities foreseen in the PAPSIVI guidelines; in the case of family care, it will be ensured that Nicolasa and the rest of the beneficiaries will have the autonomy to identify the members of the family whose relationship is essential for their emotional rehabilitation. In the case of care for children and adolescents, differentiated guidelines as established for this purpose by the Ministry will be implemented. Both the EPS and the psychosocial teams of the Program must agree common and complementary objectives between the two components of the Program that is mental health and psychosocial care. Finally, a connection with the Programs for the Promotion and Prevention focused on Sexual and Reproductive Health will be offered on the basis of the interest and willingness of the beneficiaries.

The inspection, monitoring and control of the measures provided for in this agreement shall be the responsibility of the competent Territorial Agency, together with the National Health Superintendence within the framework of its legal and regulatory competences and responsibilities. These measures will be implemented as from the signing of the agreement, notwithstanding the duty to ensure access to medical care with emphasis on sexual and reproductive health, as well as mental and psychosocial health currently available due to their condition as victims.

2) Justice Measures

- Criminal and disciplinary investigations for forced displacement

The State must adopt decisive measures to advance substantively and within a reasonable time the investigation of the forced displacement suffered by Nicolasa and her family; clarify the facts, identify the perpetrators as far as possible; and make available information on the proceedings of the case, within the requirements of the law. In order to comply with this duty, the State must remove all legal and factual obstacles impeding the effective progress of the investigation, including its reallocation in order to ensure not only its impetus and adequate access to justice for the family.

In addition, the State must take decisive measures to advance substantially and within a reasonable time the investigation into the sexual violence suffered by Nicolasa in June 2014, and into the various threats duly brought to the attention of the authorities. This duty includes the investigation of the actions and omissions perpetrated against the victim. In compliance with this obligation, the State undertakes to consolidate in the same prosecutor's office the investigations into the sexual violence and threats.

The National Agency for Legal Counsel of the State shall request the Procurator General and the Attorney General of the Nation to establish in accordance with their legal competence, whether it is feasible to initiate disciplinary or criminal proceedings to ascertain individual liability for the commission of irregularities in the judicial investigation of the sexual violence perpetrated against Nicolasa as a child, and that allegedly contributed to the impunity of the case.

3) Non-Repetition Measures

- The State undertakes to disseminate through television in the slots provided by the National Television Authority (ANTV), a 45 second audiovisual piece with an institutional message on the duty to prevent, investigate and prosecute cases of sexual violence. The coordination of this measure will be the responsibility of the Presidential Council for Human Rights.
- The General Attorney of the Nation will continue to follow-up and issue recommendations in connection with progress of the investigation of the cases included in the reserved annexes of Constitutional Court Decisions 092 of 2008 and 009 of 2015, on compliance with Judgment T-025 of 2004, through the Subcommittee of Coordination for the judicial investigation and prosecution of sexual violence within the framework of the armed conflict, created by Resolution 003 of November 2015.

Within the framework of this follow-up, the Subcommittee will make specific proposals in connection with the Sucre and Bolívar cases with the respective Regional Bureaus. Additionally, in September, as a guarantee of non-repetition vis-a-vis sexual violence offenses, the National Attorney General's Office will carry out workshops for the review and procedural impetus of the cases investigated in Bolívar and Sucre, with the purpose of identifying connections between them and overcoming any procedural obstacles hindering criminal justice for the victims of these offenses. As an outcome of the workshops, two reports will be delivered in October on the basis of the findings on sexual violence reported in these two regions.

The National Attorney General's Office will issue a legal instrument addressed to the Prosecutors and judicial police agents highlighting the basic guidelines to be followed in the investigation of cases involving sexual violence against children and adolescents, in light of the challenges faced in the Nicolasa case.

4) Compensation Measures

The State of Colombia undertakes to indemnify the moral and material damages proved in connection with the violations acknowledged in this agreement, in favor of Nicolasa and her family through the mechanism established by Law 288/96. The beneficiaries of this measure are: Nicolasa, [...] (Mother of Nicolasa), [...] (Father of Nicolasa), [...] (Sister of Nicolasa), [...] (Brother of Nicolasa), [...] (Sister de Nicolasa), [...] (Daughter of Nicolasa), [...] (Son of Nicolasa), [...] (Son of Nicolasa).⁵

The entity responsible for carrying out this reparation measure will be the National Agency for Legal Counsel of the State.

⁵ The names of the victims are withheld due to a request submitted to the IACHR on October 3, 2011, as indicated in para.1 of the IACHR's Admissibility Report.

Prior to the conciliation hearing, the National Agency for the Legal Counsel of the State will hold working meetings with the representatives of the victims, for a preliminary discussion on the amounts of compensation in light of the evidence produced and the current national jurisprudential standards.

SIXTH PART: GENERAL ACCEPTANCE AND MODALITIES OF COMPLIANCE

26. The representatives of the victims expressly accept and agree with the commitments undertaken by the State in this instrument, and they acknowledge the institutional efforts of the authorities to provide an adequate response in terms of compliance with the present agreement.

27. The parties agree that the compliance mechanism of this agreement be implemented by the Inter-American Commission. The State shall provide any information requested by the IACHR, and the latter will supervise the progress in compliance with this agreement. The victims, their representatives and the State, may submit information to this international body if and when they deem it necessary.

28. The parties agree that the implementation of the friendly settlement agreement will be evaluated by the parties every six (6) months. After this evaluation, they will prepare reports to be sent to the IACHR to assess compliance with the measures included in the agreement.

29. The parties agree that, in case of non-compliance with the provisions of this agreement, the IACHR will be notified of the termination of the Friendly Settlement process, so that the case may continue in accordance with the Rules of Procedure.

30. The parties request the IACHR to abstain from issuing the report in Article 49 of the ACHR until the parties, by mutual agreement, so request.

31. The parties expressly state that this agreement is governed by the principle of good faith and that its signature provides the basis for a consensual solution to Case 12.941 Nicolasa and family. On the basis of these considerations, "**THE PARTIES**" hereby express their willingness to move forward towards compliance with the reparation measures established in this agreement.

32. The parties undertake to keep strict confidentiality, on issues mutually agreed upon, in particular regarding the amounts of monetary compensation.

33. The parties agree that this agreement will enter into force as from the day of its signature and will cease to have effect once the undertakings therein are fully achieved. Within one month following the signing of the agreement, the parties will draw up a schedule on the deadlines for compliance with each of the agreed measures, to be discussed with each of the agencies involved in compliance. The schedule will be brought to the attention of the IACHR.

34. The parties agree that all notices, communications and notifications made in connection with this instrument, will be in writing, with acknowledgment of receipt, in the addresses established in the section on declarations, with delivery of the respective copies to each of "**THE PARTIES**".

35. In case of doubt or controversy over the interpretation of this agreement, "**THE PARTIES**" subject themselves to the decision of the Inter-American Commission.

36. The parties agree that this agreement may be modified, amended or revoked by mutual agreement, in writing and will take effect upon signature.

Having read the present agreement and "THE PARTIES" being aware of the scope and legal content thereof, it is signed on September 5, 2017

[Signatures]

11. On May 28, 2018, the parties submitted to the Commission an addendum to the friendly settlement agreement:

**ADDENDUM TO THE FRIENDLY SETTLEMENT AGREEMENT SIGNED ON
SEPTEMBER 5, 2017
IN CASE 12,941 NICOLASA AND FAMILY MEMBERS**

BACKGROUND

First. On September 5, 2017, the Friendly Settlement Agreement in case No. 12,941 Nicolasa and family was signed.

Second. In the fourth section of the Friendly Settlement Agreement, the following compensation measure was agreed:

"The State of Colombia undertakes to indemnify the moral and material damages proved in connection with the violations acknowledged in this agreement, in favor of Nicolasa and her family through the mechanism established by Law 288/96. The beneficiaries of this measure are: Nicolasa, [...] (Mother of Nicolasa), [...] (Father of Nicolasa), [...] (Sister of Nicolasa), [...] (Brother of Nicolasa), [...] (Sister de Nicolasa), [...] (Daughter of Nicolasa), [...] (Son of Nicolasa), [...] (Son of Nicolasa).⁶

The entity responsible for carrying out this reparation measure will be the National Agency for Legal Counsel of the State.

Prior to the conciliation hearing, the National Agency for the Legal Counsel of the State will hold working meetings with the representatives of the victims, for a preliminary discussion on the amounts of compensation in light of the evidence produced and the current national jurisprudential standards."

Third. The jurisprudential evolution of the Third Section of the Colombian Council of State recognizes three types of immaterial damage: i) moral damage, ii) damage to constitutional and conventional rights and iii) damage to health.

Fourth. In light of the fact that in the present case there could be damage to health due to the violations acknowledged in the Friendly Settlement Agreement to the detriment of Nicolasa, [...] (Mother of Nicolasa), [...] (Father of Nicolasa), the parties have decided to amend Section 4 of the Agreement in order to acknowledge this damage by application of Law 288 of 1996, in favor of the aforementioned victims, in case their occurrence be proved.

In view of the foregoing, the parties agree that:

Section 4) Compensation measures- be amended in the following terms:

4) Compensation measures

⁶ It is requested that the names of the victims are withheld as indicated in a request submitted to the IACHR on October 3, 2011, as indicated in para.1 of the IACHR's Admissibility Report.

“The State of Colombia undertakes to indemnify the moral and material damages proved in connection with the violations acknowledged in this agreement, in favor of Nicolasa and her family through the mechanism established by Law 288/96. The beneficiaries of this measure are: Nicolasa, [...] (Mother of Nicolasa), [...] (Father of Nicolasa), [...] (Sister of Nicolasa), [...] (Brother of Nicolasa), [...] (Sister de Nicolasa), [...] (Daughter of Nicolasa), [...] (Son of Nicolasa), [...] (Son of Nicolasa).”

The remaining clauses not modified by the present addendum will remain the same in the Friendly Settlement Agreement. In witness whereof, signed in Bogotá on the 28th day of the month of May, 2018.

[Signatures]

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

12. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this proceeding is aimed at "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The agreement to carry out this process is testimony of the State's good faith to comply with the object and purpose of the Convention under the principle *pacta sunt servanda*, by which States must comply in good faith with the obligations undertaken in the treaties. It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows for the termination of individual cases in a non-adversarial manner and it has proved to be an important vehicle to reach a solution at the initiative of both parties, and has been used in cases involving many countries.

13. The Commission has followed closely the negotiations in this case and highly appreciates the efforts made by both parties to reach this solution, which is compatible with the object and purpose of the American Convention. The IACHR has repeatedly pointed out the importance of promoting women's rights, in order to ensure the full and effective enjoyment of their fundamental rights, especially equality, non-discrimination and freedom from violence.

14. In addition, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará") sets out that the obligation of States to act with due diligence vis-a-vis human rights violations acquires a special dimension in cases involving violence against women. The Convention of Belém do Pará recognizes the critical link existing between women's access to adequate judicial protection when subject to acts of violence, and the eradication of the problem of violence and discrimination this perpetuates.⁷ The IACHR observes the importance that States adopt measures of a criminal, civil and administrative nature, with the purpose of ensuring that acts of sexual violence such as those that occurred in this case are duly punished and do not remain in impunity.

15. On May 7, 2018, during the 168th Period of Sessions of the Commission, a working meeting was held in which the petitioner reported on its decision to move forward with the formalization of the agreement, so that the State can proceed with compensation in favor of the victims, as required by Law 288. Thus, both parties requested the formalization of the agreement.

16. The Commission appreciates the acknowledgement of international responsibility by the State of Colombia, set out in the fourth part of the friendly settlement agreement, as well as the event of acknowledgement of responsibility and public apologies held on August 6, of this year. The petitioners informed that two events were held: the first acknowledging responsibility for the internal displacement and the second for the threats and lack of due diligence in the sexual violence investigations.

17. Regarding the medical and psychological care agreed for the whole family, the State reported that it has been granted within the framework of the Psychosocial Care and Comprehensive Victim Health Program "PAPSIVI". At the working meeting of May 7, 2018, the petitioner stated that more effort is needed on

⁷ IACHR, *Access to Justice for Women Victims of Violence in the Americas*. January 20, 2007, para. 33.

the part of the State because, although family members have received care, specialized care for victims of forced displacement and sexual violence is still required. The Commission appreciates the State's commitment to ensure compliance with this measure for all beneficiaries of the friendly settlement agreement and will follow up accordingly. The Commission emphasizes that that State health laws, policies and programmes should ensure that victims of sexual violence have access to comprehensive and appropriate healthcare services. It also reiterates the importance of ensuring that women and girls who have been subjected to sexual violence have access to coordinated, comprehensive, multidisciplinary, non-re-victimizing and age-appropriate care and support services that are tailored to the particular needs of women and girls before, during and after criminal investigations and prosecutions⁸. These services should be provided on an ongoing basis and, if necessary, should be maintained beyond the judicial process. Policies to prevent discrimination and stigmatization should also be promoted.⁹

18. Regarding the measure of non-repetition, related to the production of an audiovisual piece with an institutional message on the duty to prevent, investigate and prosecute cases of sexual violence, the State undertook to promote compliance with this measure before of August 7, 2018. The Commission requires the parties to promptly inform it of the effective filming of the audiovisual piece and, if possible, submit a copy.

19. Regarding the other component of the measure of non-repetition, at the meeting of May 7 of this year, the petitioner indicated that the investigation of cases of sexual violence against girls and adolescents lacks momentum. In this regard, they noted that the Attorney General's Office has made progress in reviewing some, but not all, procedures. They also indicated that there is a need for guidelines for victims of the conflict. The State, for its part, indicated that the investigations have been reassigned in cases of armed conflict, sexual violence and displacement. Likewise, it reported on its plan to issue a legal document with practical guidelines for prosecutors and officials in order to avoid a repetition of the irregularities that occurred in this case.

20. Regarding compensation measures, the State reported that an estimate of the moral damages for the non-prevention of displacement and the damages for the lack of diligence in the investigations into the acts of sexual violence and threats was assessed during the meetings with the petitioner. With regard to the damage to health, the Commission has already taken note of the addendum to the agreement, modifying the fourth section, indicating that immaterial damages will be compensated, if the occurrence of such damage is proven.

21. Regarding the material damage, the parties reported that they would resort to the current jurisprudential criteria, according to which, given the absence of evidence supporting a loss of earnings, it will be presumed that Nicolasa's father earned monthly at least the minimum salary. Likewise, it will be considered that Nicolasa's father stopped earning an income from the date of displacement. The State clarified that material damage can also be acknowledged in relation to Nicolasa's mother.

22. During the working meeting held on May 7, 2018, the parties reported that in connection with Nicolasa's education, a scholarship had been granted as from January 2018; that the State has made the disbursement of an amount corresponding to the enrollment fee of the study program chosen by Nicolasa and an amount for her maintenance. The parties informed that the State would create a fund to ensure the periodic payment of this subsidy. The Commission will follow-up closely and request that the parties periodically report on the effective payment of the subsidy.

23. Regarding the justice clause, the petitioner informed that there is no perpetrator under formal investigation and indicated that some flexible criteria on evidence must be adopted. The State, for its part, undertook to inform the IACHR in a timely manner on any progress made regarding criminal and disciplinary investigations into forced displacement and regarding the investigation of sexual violence and threats perpetrated against Nicolasa in 2014. Regarding the disciplinary or criminal investigations in connection with the irregularities in the proceedings on the sexual violence suffered by Nicolasa as a child, the State indicated

⁸ I/A Court H.R., *Case of V.R.P., V.P.C. et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350, para. 149.

⁹ IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*. December 28, 2011, para. 174.

that it is awaiting a decision by the National Attorney General's Office. The Commission urges the State to take all necessary measures to promote the various investigations, as undertaken in the friendly settlement agreement and in accordance with its reinforced duty to ensure the rights of victims of displacement¹⁰ and of sexual violence.¹¹ In particular, the investigation should be conducted with a gender perspective and in accordance with protocols specifically aimed at documenting evidence in cases of gender-based violence¹²; and it should be conducted by officials trained in the prosecution of these cases and in the attention of victims of discrimination and gender-based violence¹³.

V. CONCLUSIONS

24. The IACHR has closely followed the development of the friendly settlement achieved in this case. From the information above, it is clear that some of the commitments undertaken in the friendly settlement agreement are pending compliance, so it will continue to monitor the process and urges the State to act as quickly as possible to comply with the reparation measures established in said agreement and submit to the Commission as soon as possible a plan including the schedule of the measures to be adopted.

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

26. In light of the considerations and conclusions set forth in this report

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on September 5, 2017, as well as the addendum signed on May 28, 2018.

2. To continue with the supervision of the commitments established in the friendly settlement agreement until full compliance. To that end, to remind the parties of their commitment to report periodically to the IACHR on compliance with the measures established in the friendly settlement agreement and to present a plan and timetable for the implementation of the agreed measures.

3. 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 the 23rd day of the month of August, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

¹⁰ I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 149.

¹¹ Article 7.b of the Convention of Belém do Pará establishes the obligation to apply due diligence to prevent, investigate and impose penalties for violence against women.

¹² I/A Court H.R. *Case of Espinoza González Vs. Perú*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, para. 252.

¹³ I/A Court H.R. *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, para. 188; *Case of González et al ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No.205, para. 455.