

OEA/Ser.L/V/II.
Doc. 214
17 September 2021
Original: Spanish

REPORT No. 206/21

CASE 12.330

FRIENDLY SETTLEMENT REPORT

**MARCELINO GÓMEZ AND ANOTHER
REPUBLIC OF PARAGUAY**

Approved electronically by the Commission on September 17, 2021.

Cite as: IACHR, Report No. 206/21. Case 12.330. Friendly Settlement. Marcelino Gómez and another. Republic of Paraguay. September 17, 2021.

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CASE 12.330
FRIENDLY SETTLEMENT
MARCELINO GÓMEZ AND ANOTHER
REPUBLIC OF PARAGUAY
SEPTEMBER 17, 2021

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On October 17, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition presented by Ms. Deogracia Lugo de Núñez and Ms. Zulma Paredes de Gómez, together with the organizations Center for Justice and International Law [*Centro por la Justicia y el Derecho Internacional*] (CEJIL), in Spanish and Service of Justice and Peace [*Servicio de Paz y Justicia – Paraguay*] (SERPAJ-PY), in Spanish, (hereinafter, “the petitioners”), alleging the international responsibility of the Republic of Paraguay (hereinafter “the State,” “Paraguayan State,” or “Paraguay”) in relation to the alleged disappearance of the children Marcelino Gómez Paredes and Cristian Ariel Núñez, both 14 years of age, while they were performing compulsory military service in the Paraguayan Armed Forces.

2. On October 22, 2003, the Commission issued the Admissibility Report No. 82/03 in relation to the alleged violations of the rights enshrined in Articles 4 (right to life), 5 (right to personal integrity), 7 (right to personal liberty), 8 (right to judicial guarantees), 19 (rights of the child) and 25 (right to guarantees of judicial protection) of the American Convention, in relation to the obligations derived from Article 1.1 (duty to respect) of the same instrument, as well as to Articles I, III, IV and concordant articles of the Inter-American Convention on Forced Disappearance of Persons.

3. On November 4, 2009, the parties signed a friendly settlement agreement. On June 21, 2021, the petitioners requested the Commission, in the framework of IACHR Resolution 3/2020 on differentiated actions to address procedural backlog in friendly settlement proceedings, to homologate the friendly settlement agreement signed by the parties.

4. In this friendly settlement report, as established in Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, a review of the facts alleged by the petitioners is made and the friendly settlement agreement signed on November 14, 2009, by the petitioners and representatives of the Paraguayan State is transcribed. Likewise, the agreement signed by the parties is approved and the publication of this report in the Annual Report to the General Assembly of the Organization of American States is agreed.

II. THE FACTS ALLEGED

5. The petitioners alleged that on August 1997, Marcelino Gómez Paredes and Cristian Ariel Núñez, both aged 14, voluntarily presented themselves at the Recruitment Center in the city of Caaguazú to perform compulsory military service in the Armed Forces of Paraguay (hereinafter “FFAA.”) They added that, according to Paraguayan law, their parents’ judicial authorization was required due to their age; however, they were both signed into the Armed Forces as conscripts without the proper authorization of their parents. They indicated that they were both assigned to military service in Military Post No. 1 “General Patricio Colmán,” attached to the Fifth Infantry Division, based in Lagerenza, Department of Alto Paraguay. They added that in February 1998, the families were notified that Marcelino Gómez Paredes and Cristian Ariel Núñez were missing. The petitioners alleged that the Armed Forces had given different versions of the whereabouts of the two children to their next of kin.

6. The petitioners indicated that on June 14, 2000, they filed a *habeas corpus* under the Supreme Court of Justice through which they requested the Commander in Chief of the Paraguayan Armed Forces be ordered to bring Marcelino Gómez Paredes and Cristian Ariel Núñez to the court. In response, on June 19,

2000, the Armed Forces allegedly indicated the children had disappeared from a military detachment and had been searched for without success, so it was presumed that they had deserted.

7. The petitioners also indicated that on July 12, 2000, the Criminal Chamber of the Supreme Court of Justice declared the *habeas corpus* inadmissible. The Criminal Chamber argued that in the domestic jurisdiction, there was an investigation opened *ex officio* by the Public Prosecution Service before the Criminal Trial Judge of Filadelfia, Department of Boquerón, to determine responsibilities, which was at a standstill. They also added that they had unofficial knowledge that the Armed Forces had discharged Marcelino Gómez Paredes and Cristian Ariel Núñez for desertion, with which “they disassociated themselves from the case.”

III. FRIENDLY SETTLEMENT

8. On November 4, 2009, the parties signed a friendly settlement agreement. The text of the friendly settlement agreement sent to the IACHR is included below:

Friendly Settlement Agreement Case No. 12,330 "Marcelino Gómez Paredes and Cristian Ariel Núñez".

I. FIRST: Acknowledgement of Responsibility

The Republic of Paraguay acknowledges its international responsibility in case No. 12.330, “Marcelino Gómez Paredes and Cristian Ariel Núñez,” which refers to the forced disappearance of two child soldiers, illegally recruited for military service and disappeared while in the custody of the Army, for the violation of their rights to personal liberty, personal integrity, life, special measures for the protection of children, judicial protection, and judicial guarantees, enshrined in Articles 4, 5, 7, 8, 19, and 25 of the American Convention on Human Rights (“ACHR” or “the Convention”), all in connection with the violation of the State’s duty to respect and guarantee the rights as established in Art. 1.1 of the American Convention and the obligations derived from the Inter-American Convention on Forced Disappearance of Persons.

II. SECOND: Public Act of Apology and Acknowledgment¹

a) The State of Paraguay, within three months of the signing of this agreement, shall make an act of public apology and recognition of international responsibility concerning the human rights violations recognized above.

b) The text of the apology and acknowledgment shall be drawn up by mutual agreement between the State and the victims’ representatives. The acknowledgment mentioned above shall be made in a public act in the Minister of Defence’s presence as well as the Commander of the Army and a representative of the Commander of the Military Forces and other high-level authorities. The State shall guarantee the presence of the victims’ families at the ceremony and shall inform their representatives, human rights organizations, and the media at least 15 days in advance.

c) The act of apology and recognition will be widely broadcast on *Radio Nacional* (in Spanish and Guaraní), as well as in other mass media.

d) At the same time, the State undertakes to publish the full text of the Friendly Settlement Agreement in a newspaper of national circulation and the Official Gazette. In addition, it will be posted on the websites of the Presidency of the Republic and the Ministry of Foreign Affairs and will remain online for at least six months.

¹ Commission’s own numbering.

III. THIRD: GUARANTEES OF JUSTICE

The Republic of Paraguay undertakes to:

a. To take all measures within its power to investigate the facts and punish all those responsible for the violations committed to the detriment of the children Marcelino Gómez Paredes and Cristian Ariel Núñez.

b. Without prejudice to the foregoing, and without this implying that it replaces the functions of the Judiciary and the Public Prosecutor's Office, in accordance with Article 3 of the National Constitution, the State undertakes to establish within 30 days a Commission whose purpose is to determine the circumstances in which the child soldiers disappeared and their fate. The Commission must satisfy the following minimum conditions:

b.1 Membership: It shall be composed of (1) a representative of the following institutions: Ministry of Foreign Affairs, Ministry of the Interior, Secretariat for Children and Adolescents, Ministry of National Defense, Vice-Ministry of Justice and Human Rights, and (2) two representatives of civil society with recognized experience in human rights appointed by the petitioners.

b.2 Summons: To fulfill its objective, the Commission shall interview and gather from any person, authority, official, or public servant who may be related to the facts of the case all the information it deems pertinent. To this end, it shall summon military and civilian officials and authorities and those who may contribute to the clarification of the facts. In the case of the military and public officials summoned, the respective hierarchical authority shall ensure their appearance. In any case, the statements made before the Commission and the information gathered shall be confidential.

b.3 Participation: Mothers of the missing children, or their representatives, may participate in any steps, hearings, or proceedings taken to clarify the circumstances in which their children disappeared.

b.4 Institutional Support: The State, through the Ministry of Defense and the Armed Forces, should make available all necessary means and funding for the proper functioning of the Commission. If the mothers of the disappeared children deem it appropriate, the necessary means should be provided to carry out at least one exploratory visit to where the child soldiers disappeared, with the assistance of forensic experts and those who can contribute to the search for the bodies, if any. If the mothers express an interest in participating in such a visit, their transportation, accommodation, and food should be ensured during the visit.

b.5 Term and Report: At the end of its mission, which should be concluded within six months, extendable for another six months if deemed necessary by the parties to this agreement, the Commission shall issue a report giving an account of the steps taken and the conclusions of the investigation. This report shall be given to the families of the missing children.

IV. FOURTH: MEASURES OF SATISFACTION

The State shall install a commemorative plaque in the military detachment where the children disappeared, with a text agreed between the parties alluding to the disappearance of the child soldiers. In addition, a street will be named after the children in the city of Caaguazú.

V. FIFTH: PRIMARY AND INTEGRATED HEALTHCARE MEASURES

The Republic of Paraguay undertakes to provide free medical and psychological assistance to the victims' parents and siblings and the provision of medicines to treat the conditions from which they suffer. Such care shall be provided at the hospital or health center closest to the victims' homes and which offers the services and medication appropriate to the precise treatment required in each case.

VI. SIXTH: SECURITY MEASURES

The Republic of Paraguay undertakes to provide security to the victims' families utilizing patrols by the National Police in the city of Caaguazú, or wherever the victims establish their domicile, during the day and at night, on at least two rounds per day. The State shall identify and inform the victims of the nearest police station in charge of the patrols and provide immediate assistance at their request. In addition, an authority of the Ministry of the Interior shall be specially designated to ensure that this obligation is faithfully fulfilled. The respective police station shall report periodically to that authority on implementing the protection measure.

VII. SEVENTH: GUARANTEES OF NON-REPETITION

As for guarantees of non-repetition, the Republic of Paraguay assumes the commitment to:

a. Present a Bill through the Executive, adapting domestic legislation to the commitments assumed by the State of Paraguay as a Party to the ACHR and the Inter-American Convention on Forced Disappearance of Persons with the modification of Art. 236 (forced disappearance) of the Criminal Code, based on the following wording: *"any person or group of persons acting with the authorization, support or acquiescence of the State, who deprives one or more persons of their liberty, in any form whatsoever, followed by the omission to provide information or acknowledge such deprivation of liberty or by not providing information on the whereabouts of the person, thus preventing the exercise of the relevant legal remedies and procedural guarantees, shall be punished by deprivation of liberty (...)".*

To define the specific penalty to be applied to the respective criminal offense, the Paraguayan State shall establish, within one month of the signing of the agreement, the years of the penalty, which shall, in any case, be proportional to the seriousness of the offense. After that date, within six months, the Executive shall submit the respective bill.

b. To exhibit within three months of signing this agreement, the documentary video "Body to Earth. The Child Soldiers of Paraguay" [*Cuerpo a Tierra. Los Niños Soldados del Paraguay* in Spanish] filmed by the petitioners at the Mariscal Francisco Solano López Military Academy of the Armed Forces in the presence of high-ranking military authorities. The relatives of the victims and the petitioners may attend the screening, and they must be notified of the date of the screening at least 15 days in advance.

VIII. EIGHTH: PECUNIARY REPARATIONS

To guarantee pecuniary reparation, the State undertakes to:

a. To pay 25,000 U.S.\$ (twenty-five thousand U.S. dollars) as compensation, which shall be paid to the victim's mothers within five months of signing this agreement.

b. Grant a pension for the victims' families within one year of the signing of this agreement. To this end, the relevant bill must be submitted within one month of signing this instrument.

c. Because of the friendly settlement nature of the agreement, the petitioning organizations waive costs in this case.

IX. NINTH: MONITORING

To monitor the observance of this agreement until its effective fulfillment, the parties shall make reports every six months on the progress achieved, which shall be submitted to the Inter-American Commission on Human Rights. Its compliance and follow-up shall be framed within the functions and objectives of the Inter-Institutional Executive Commission created by Decree No. 1595 of February 26, 2009.

X. TENTH: INTERPRETATION

The meaning and scope of this agreement shall be interpreted under Articles 29 and 30 of the American Convention on Human Rights, insofar as pertinent and with the principle of good faith. In case of doubt or disagreement between the parties on this agreement's content, the Inter-American Commission on Human Rights shall decide its interpretation. It is also responsible for verifying its compliance, and the parties are obliged to report its status and compliance every six months.

XI. ELEVENTH: HOMOLOGATION

The parties understand that failure to comply with one or more points of this agreement entitles the petitioners to continue processing the case in the inter-American system to protect human rights until its full conclusion.

The foregoing does not prevent the petitioners from considering favorably any request for an extension to fulfill one or more committed obligations.

In the event of full compliance with the friendly settlement agreement, the parties shall request the Inter-American Commission on Human Rights to homologate and publish the report following the provisions of Article 49 of the American Convention on Human Rights and 41.5 of the Rules of Procedure of the Inter-American Commission on Human Rights.

Subscribed in the city of Washington on November 4 of the year two thousand and nine.

ANNEX [TO THE] FRIENDLY SETTLEMENT AGREEMENT BETWEEN THE STATE OF PARAGUAY AND THE PETITIONERS IN THE CASE N° 12.330, MARCELINO GOMEZ PARADES AND CRISTIAN ARIEL NÚÑEZ

The State of Paraguay in Case No. 12.330, "Marcelino Gómez Paredes and Cristian Ariel Núñez" and the petitioners agree that the Friendly Settlement Agreement recently signed by the parties will be countersigned in the city of Asunción, Paraguay by the mothers of the disappeared child soldiers, Ms. Zulma Paredes and Ms. Deogracia Lugo. This act will take place next week at the Paraguayan State Chancellery. Its purpose will be to give the victims direct participation in the present agreement without prejudice that they have already given their express consent to the terms of the document signed today.

In the city of Washington D.C. Inter-American Commission on Human Rights, November 4, 2009.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. The IACHR reiterates that, under 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 carry out this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by the principle *pacta sunt servanda*, by which the States must comply in good faith with the obligations assumed in the treaties.² The IACHR also reiterates that the friendly settlement procedure in the Convention allows for the non-contentious termination of individual cases and has proved, in cases involving several countries, to offer an important vehicle for settlement, which both parties could use.

10. 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.

11. In light of IACHR Resolution 3/20, on differentiated actions to address procedural delays in friendly settlement proceedings, from the signing of the agreement, the parties shall have two years to move toward its homologation by the Inter-American Commission on Human Rights, except for exceptions duly qualified by the Commission. Concerning those cases without homologation in which the time limit has expired, the Commission will determine its course of action, taking into special consideration the duration of the compliance phase, the age of the petition, and the existence of fluid dialogue between the parties and/or substantial progress in the compliance phase. In turn, the Commission resolved that in assessing the appropriateness of the homologation of the agreement, or the closure or maintenance of the negotiation process, the IACHR will consider the following elements: (a) the content of the agreement’s text and whether it has a full compliance clause before homologation; (b) the nature of the measures agreed upon; (c) the degree of compliance therewith, and in particular the substantial execution of the commitments undertaken; (d) the will of the parties in the agreement or subsequent written communication; (e) its suitability with human rights standards; and (f) the observance of the will of the State to comply with the commitments undertaken in the friendly settlement agreement, among other elements.

12. In view of the fact that 12 years have elapsed since the signing of the friendly settlement agreement on November 4, 2009, that the petition was filed 20 years ago, on October 17, 2000, and that the petitioning party, through its observations on the State report, has expressed its agreement with the approval and publication of the agreement, it is appropriate to determine the course of action in the instant case and to assess the merits of the homologation based on the objective criteria established above.

13. Concerning the content of the friendly settlement agreement signed by the parties, the Commission notes that the eleventh clause contains the requirement of full compliance before approval. Notwithstanding the foregoing, in its letter of June 21, 2021, the petitioning party expressed its agreement with the approval of the agreement and the initiation of the follow-up phase of the friendly settlement once it had been approved.

14. With respect to the nature of the measures agreed upon, the Commission notes that the agreement establishes instantaneous execution measures such as an act of acknowledgment of responsibility and its dissemination, the publication of the text of the agreement, the installation of a plaque in memory of the victim, the denomination of streets with the name of the victims, the screening of a documentary video, and the payment of financial compensation. It is also noted the inclusion of successive execution clauses in terms of investigation and justice, the provision of health services and security measures for the victims’ families, as well as a legislative measure for the non-repetition of the facts.

² 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 and must be performed by them in good faith.

15. With regard to the degree of compliance with the agreement, the Commission assesses below the progress made with respect to each of the clauses of the agreement.

16. The Commission values the first declaratory clause, in which the Paraguayan State recognizes its international responsibility for the violations of the human rights to life, personal integrity, personal liberty, judicial guarantees, the rights of the child, and judicial protection in relation to the State's obligation to respect the rights and freedoms recognized in the American Convention on Human Rights and to guarantee their free and full exercise, as well as the other obligations derived from the Inter-American Convention on Forced Disappearance.

17. Regarding literals "a" and "b" of the agreement's second clause concerning the public act of apology and public recognition, on January 26 and March 25, 2011, the State reported that the act of public apology and recognition of international responsibility was held on February 19, 2010, at the headquarters of the Ministry of National Defense. It was attended by national authorities, including the Minister of National Defense, the Vice Minister of National Defense, commanders of the various Armed Forces, the Director of Legal Affairs, Human Rights, and International Humanitarian Law of the Ministry of National Defense, and the Minister-Secretary for Children and Adolescents. In addition, as reported by the State, representatives of various State institutions, relatives of the victims and their legal representatives, diplomats, and human rights organizations were present. The State also indicated that, in accordance with the Program of Activities, the Ministry of Defense gave opening remarks and continued with the reading of the agreement of public apology and recognition of international responsibility, prepared jointly by the parties, followed by the reading of the service record of soldiers Marcelino Gómez Paredes and Cristian Ariel Núñez, by the Head of the Office of the Secretary-General. Subsequently, the Minister of Defence said a few words, and Mrs. Deogracia Núñez, Cristian Ariel Núñez's mother, spoke on behalf of the victims' families. On April 12, 2011, the petitioning party confirmed compliance with literals "a" and "b" of the second clause and indicated its agreement with the implementation of those measures. The parties jointly reiterated the foregoing through the memorandum of understanding of October 17, 2016, in which they considered these points of the agreement to be fulfilled. Therefore, considering the information provided by the parties, the Commission esteems that literals "a" and "b" of the friendly settlement agreement's second clause are fully complied with and so it declares it so.

18. Concerning literals "c" and "d" of the agreement's second clause concerning publicity and dissemination of the public act of apology and public acknowledgment of responsibility, on March 25, 2011, the State reported that the act of public apology and acknowledgment was widely broadcasted on *Radio Nacional* and other mass media. Also, it indicated that it had been translated into the Guaraní language. In this regard, on June 10, 2011, the petitioners confirmed compliance with literals "c" and "d" of the second clause of the agreement. On June 27, 2011, the State sent the Commission a copy of the act of apology in Guaraní. The parties jointly reiterated the foregoing through the memorandum of understanding of October 17, 2016, in which they considered these points of the agreement to be fulfilled. Therefore, considering the information provided by the parties, the Commission esteems that literals "c" and "d" of the second clause of the friendly settlement agreement have been fully complied with and so it declares it so.

19. In relation to the third clause of the agreement, concerning the guarantees of justice, the State assumed a plurality of commitments, whose content must be analyzed harmoniously. In this regard, according to the text of the agreement, the State undertook the commitment to "take all measures within its power to investigate the facts and punish all those responsible for the violations committed to the detriment of the children," and on the other hand, a series of commitments related to the establishment of a Truth Commission "to know the circumstances in which the child soldiers disappeared and what their fate was."

20. First, with regard to literal "a" of the third clause of the agreement, referring to measures to investigate and punish all those responsible, on January 26, 2011, the State indicated that by Final Judgment No. 9 dated August 24, 2007, the Criminal Court for Settlement and Sentencing No. 3 sentenced the conduct of Blas Ramón Vera Aguilera to a fine of 500 minimum daily wages for unspecified adverse activities in the capital, equivalent to the sum of 23.457,500 Guaraníes, for the Commission of the punishable offense of abandonment and failure to provide assistance. In this regard, on August 16, 2011, July 10, 2012, and February 24, 2013, the petitioners indicated the need to initiate a new judicial investigation, in which they considered the opening of

a prosecutor's file to be insufficient without the necessary steps to identify and punish those responsible, as well as their disagreement with the State's position regarding the absence of new facts to be able to open a new case. On November 15, 2012, and August 9, 2013, the State indicated the "impossibility" of advancing in compliance with this clause due to the difficulty of establishing a new case without violating the principles of "*res judicata*" and "*non bis in idem*," and reiterated the absence of new facts or evidence, to enable a new trial and ratified its position with respect to the final judgment of Mr. Blas Ramón Vera Aguilar, which is why, despite the information provided by the Truth Commission, constituted in the framework of compliance with this part of the agreement and as will be detailed below, it was unable to determine the whereabouts of Marcelino Gómez Paredes and Cristian Ariel Núñez. On December 16, 2013, the petitioners insisted on the results in compliance with the agreement's clause 3(a). They argued the imposition of obstacles at the domestic level, *de jure* and *de facto*, to evade the obligation to investigate and punish. On June 3, 2015, the petitioners indicated that the fine imposed on Blas Ramón Vera Aguilar had not been enforced, as the only sanction imposed on any official for the disappearance and/or death of the two victims, and insisted on the enforcement of the sentence before the judicial authorities of the Republic of Paraguay. In this regard, on September 22, 2016, the State reported the full payment of the penalty in the form of a fine imposed on Blas Ramón Vera Aguilera.

21. With regards to literal "b" of the third clause of the agreement, referring to the creation of a Commission to investigate the disappearance of the children, the IACHR notes that on February 7, 2011, the State reported on the creation of the Truth Commission in Case No. 12.330 "Marcelino Gómez Paredes and Cristian Ariel Núñez" (hereinafter "the Truth Commission"). In this regard, with respect to literal "b.1" concerning the composition of the Truth Commission, the State reported that the composition of the Truth Commission included a representative of the Ministry of National Defense, a representative of the Ministry of Foreign Affairs, a representative of the Ministry of the Interior, a representative of the Ministry of Justice and Labor, a representative of the National Secretariat for Children and Adolescents, and two representatives of the Peace and Justice Service-Paraguay, the petitioners organization and representative of the victim's next of kin. In this regard, on June 10, 2011, the petitioning party confirmed that the composition of the Truth Commission would have been in accordance with what was stipulated in literal "b.1" of the third clause of the agreement.

22. With regard to literals "b.2", "b.3", "b.4" and "b.5" of the third clause of the agreement, referring to the summons made by the Truth Commission; the participation of the children's mothers in the work of the Truth Commission; the commitments to provide the means and institutional support for the operation of the mentioned body and the issuance of a Final Report, on February 7, 2011, the State forwarded a copy of Act No. 1 of the Truth Commission, through which the economic and material resources were made available for its operation, the assistance of experts, the confidentiality in the handling of information, the notification to all the country's Units for the review of documentation and interviews with active-duty military personnel linked to the case, or who could provide information. Likewise, the Ministry of Defense was asked for copies of the case file, a sequence of the case, a list of the persons involved, as well as the scheduling of interviews and field interventions.

23. In this regard, on June 10, 2011, the petitioners reported having knowledge of the steps, hearings, or proceedings carried out by the Truth Commission, independently and with confidential work, confirming the participation of the mothers of the victims and the conduct of an on-site visit. The petitioners also reported knowing of several trips made to the interior of the country and interviews with persons considered "key" to understanding the circumstances of the forced disappearance of the two children.

24. Subsequently, on February 24, 2013, the petitioners told the Commission that they had taken cognizance of the Truth Commission's report, prepared on September 17, 2012. In this regard, on March 26, 2014, the State submitted a copy of the report prepared by the Truth Commission, and on June 18, 2014, the State submitted the certificate of delivery of the Truth Commission's report, which bears the signatures of Ms. Deogracia Lugo and Ms. Zulma Paredes de Núñez. By virtue of the foregoing, on June 3, 2015, the petitioners informed its approval with this aspect of the agreement.

25. According to the Final Report issued by the Truth Commission, it began its activities on February 25, 2010, with the presentation of the Marcelino Gómez Paredes and Cristian Ariel Núñez case, the presentation of its members, as well as the analysis of the working mechanism and requirements for the

development of its activities. It should be noted that the Truth Commission considered that the State had effectively complied with the commitments assumed for its formation and operation. Once formed, the members of the Truth Commission met periodically at the headquarters of the Ministry of Defense, starting on February 25, 2010, and later at the Museum of Memory. In its work, the Truth Commission established the minimum rules for its organization and operation. The first activity was a dialogue with the victims' relatives, in which the support of the Ministry of the Interior was requested to ensure the security and permanent surveillance of the relatives' homes, which were subject to threats and harassment. The methodology for gathering information included in-depth interviews with different actors and visits to the places where the events took place and a review of official documents, court files, and administrative records. Visits were made to the petitioners and relatives of the victims in their places of residence and Saltos del Guairá and the Military Unit where the children were doing their compulsory military service. At least 13 persons were interviewed to receive their testimonies, and according to the Truth Commission, although some persons did not attend despite the summons, most of them were interviewed. Likewise, the Truth Commission confirmed that the documents accessed and analyzed were obtained from public offices or provided by the persons interviewed.³ Although the Truth Commission's Report is in the file, its factual findings and conclusions are confidential as established in literal 2.b of the friendly settlement agreement and reiterated as such in its Final Report, so the Commission will not disclose them in this report.

26. On the grounds that despite the time elapsed, and the actions deployed by the State to comply with the various literals of the third clause without achieving the location of the children, in the memorandum of understanding signed between the parties on October 17, 2016, the parties agreed that for the satisfaction of the victims' interest on the third clause the State should manage the exploration of the possibility of the intervention of the 'National Team for the Search and Location of Detained and/or Disappeared Persons in the period between 1954 and 1989' [*ENABI in Spanish*] with the aim of clarifying the circumstances of the disappearance of the victims and in the event that the response of said entity was positive, a commitment would be made to "work on a work schedule to move forward with said entity toward activities that would allow progress in the search for the victims in the case" and, if not, to "work jointly on a formula for approaching the victims' next of kin to determine whether their interests would be satisfied in the execution of the amicable agreement."⁴

27. In reports from July 10, 2017, to February 25, 2019,⁵ the State maintained its position regarding the absence of new facts, for the opening of a new case, and the impossibility of framing the facts under the figure of enforced disappearance, and also indicated that it would consult with the National Search and Locate Team, as agreed in the memorandum of understanding, to explore whether ENABI could provide support in the search for the children. Notably, on April 25 2019, the State confirmed having forwarded the case background and consultation to ENABI to move forward with such consultation. Subsequently, in the framework of a working meeting facilitated by the Commission on June 6, 2019, a representative of ENABI informed that, as had already had been explained to the petitioners and the mothers, the ENABI search timeframe is specific and for political reasons, that is, persons detained and/or disappeared in the period of dictatorship from 1954 to 1989. The representative also indicated that they did not have the resources and that the lack of information on the possible whereabouts of the children prevented the possibility of carrying out excavations at this time. At the same time, the representative made the excavators available to be used in the event that information about possible search sites should emerge.

28. In view of the foregoing, as agreed by the parties in the minute of understanding of October 17, 2016, at a working meeting facilitated by the Commission on June 6, 2019, the parties agreed to reach a consensus on a route towards the homologation of the agreement. Subsequently, at the working meeting of September 27, 2019, the Commission requested the petitioning party to transmit the elements of information to the mothers to consult them on the course of action of the process, a request that was reiterated at the working meeting of October 15, 2019.

³ Report of the Truth Commission in Case 12.330, Marcelino Gomez Paredes and Another of Paraguay.

⁴ Minute of Understanding in the Case 12.330. October 17, 2016.

⁵ Specifically the submissions provided by the State on July 10, 2017, August 23, 2018, January 7, 2019, and February 25, 2019

29. In the framework of the dialogues to explore other formulas for progress in compliance with this part of the agreement, on October 16, 2019, the State suggested opening a new case for the criminal offense of forced disappearance by means of Resolution F.G.E. No. 1148 dated March 12, 2019, and in response to Human Rights Note No. 98/19 of the Human Rights Directorate of the Public Prosecution Service, to investigate the disappearance of Marcelino Gómez Paredes and Cristian Ariel Núñez. In this regard, on July 22, 2020, and September 23, 2020, the petitioner expressed its support for opening the case and requested information on the progress made in the investigation and in the search for and location of the mortal remains of the victims.

30. In the reports submitted to the Commission on February 5 and April 27 and 28, 2021, the State reported the opening of Case No. 35/19, "*Investigación Fiscal s/ hechos punibles contra la convivencia de las personas y la vida,*" in charge of Criminal Unit No. 2 of the Public Prosecution Service's Specialized Unit on Punishable Acts against Human Right, and reported progress in the taking of testimony from Marcelino Gómez Paredes' and Cristian Ariel Núñez's former shipmates, and a copy of the Prosecution File containing the identification of the case and the facts under investigation. At the same time, it was indicated by Resolution F.G.E. N 1411 dated April 14, 2021, that two agents were appointed to assist in the search for the remains, the participation of the Department of Archaeology and Paleontology of the National Secretariat of Culture, the participation of forensic anthropologists, the Directorate of Legal Medicine and Forensic Sciences of the Public Ministry and the request for the participation of the Director of ENABI, also indicated delays due to the State of health emergency as a result of the COVID-19 pandemic. On June 21, 2021, the petitioning party acknowledged the progress made in the investigation and the search for the remains and asked the IACHR to urge the State to keep the petitioning party informed of the progress made in judicial matters and with respect to the search for and location of the remains until full compliance with this aspect of the agreement. The petitioners also indicated that the terms were in place to move toward the approval of the friendly settlement agreement.

31. Considering the information provided by the parties, the Commission observes that, in the framework of the commitments assumed by the State in relation to the third clause of the agreement, the State has taken steps to comply with the agreed measures. In this regard, it notes that, in relation to the criminal investigation, an initial investigation was conducted in which Blas Ramón Vera Aguilera was punished for the punishable act of abandonment and failure to provide assistance. In relation to the points of the agreement related to the formation and functioning of the Truth Commission, it is also observed from the information submitted by the parties that its formation was arranged and the means were provided for its functioning according to the terms agreed upon and that it functioned and submitted its Final Report, as stipulated in the friendly settlement agreement. In addition to these commitments, the parties agreed that the satisfaction of this end of the agreement would be materialized with an additional measure of consultation with ENABI to assist in the search for the children. That consultation was unsuccessful due to the impossibility of the material and chronological order of ENABI's mandate to attend to this process and the lack of funds and specific information on the possible search locations. Given this scenario, as agreed by the parties, an approach would be made to the mothers to ascertain their satisfaction with the agreement and the course of action of the process, in response to which the petitioners indicated that the conditions would be in place to move forward with the homologation of the agreement, requesting the Commission to keep this aspect of the agreement under supervision. The State, for its part, assumed the subsidiary commitment to open a criminal investigation for the crime of disappearance, in view of the impossibility of ENABI's cooperation, which was also complied with and is currently underway. Therefore, taking into consideration the information provided by the parties, the Commission considers that the commitments established in literal "b" with its numerals b.1, b.2, b.3, b.4 and b.5 of the third clause have been fully complied with and so it declares it so. On the other hand, with respect to the commitments established in literal "a" of the third clause, they have reached a level of partial compliance, and it so it declares it so. In view of the foregoing, the Commission urges the State to continue to take action in the framework of investigation No. 35/19 "*Investigación Fiscal s/ hechos punibles contra la convivencia de las personas y la vida,*" conducted by Criminal Unit No. 2 of the Public Prosecution Service's Specialized Unit on Punishable Acts against Human Rights, which will continue to be monitored by the Commission to measure progress in the identification of new lines of investigation and the search for the whereabouts of the children.

32. With regards to the fourth clause of the agreement, concerning the installation of a plaque in memory of the children and the naming of a street with their names in Caaguazú, the Commission notes that,

between January and March 2011⁶, the State reported on the making of the commemorative plaque that was installed at Military Post No. 1 “General Patricio Colman” under the 5th DI/III CE (Fifth Division of the Third Army Corps) based in the town of Lagerenza, Department of Alto Paraguay. It also reported that, by Ordinance No. 109/2010 dated February 3, 2010, the Municipal Board of Caaguazú ordered to designate the first street after Claretian Sisters Avenue, towards the West sector with the name “Disappeared Soldier Marcelino Gómez Paredes” and the second street after Claretian Sisters Avenue towards the West sector with the name “Disappeared Soldier Cristian Ariel Núñez” and that both were inaugurated on January 7, 2011. In this regard, on June 10, 2011, the petitioner confirmed compliance with that obligation. The Commission also notes that the parties indicated in the memorandum of understanding signed on October 17, 2016, their common understanding regarding full compliance with the satisfaction measures. Therefore, considering the information provided by the parties, the Commission esteems that the fourth clause of the agreement has been fully complied with and so it declares it so.

33. With respect to the fifth clause of the agreement, which refers to primary and comprehensive health care measures, the Commission notes that on March 24, 2011, the State reported that in the act of apology and acknowledgment of international responsibility, held on February 19, 2010, as indicated above, representatives of the Ministry of Health gave the next of kin cards covering free comprehensive and psychological medical care. The State also reported that medical care was provided to Ms. Deogracia Lugo and Ms. Zulma Paredes at the Caaguazú Health Center and at the National Institute for the Prevention of Cardiovascular Diseases, indicating that the beneficiaries rejected the offer of psychological care at the time because it was considered unnecessary. In this regard, the petitioner, on June 10, 2011, indicated that, although they had complied with the fifth clause of the agreement, Mrs. Deogracia Lugo was suffering from a health problem and that she was not receiving care at her local public hospital and was assuming the medical expenses at her own expense, without reimbursement. In the same vein, on August 16, 2011, July 10, 2012, and February 24, 2013, the petitioners indicated the lack of knowledge on the part of the staff at the public hospitals about the particular case of the victims, about the carnet received and the right to receive primary and comprehensive health care. In that regard they highlighted the absence of effective access to health services, the lack of continuity in the provision of the service, the absence of a serious and effective measure aimed at providing comprehensive medical and psychological care to all the victims’ next of kin, specialized and free of charge, which meant that the victims’ next of kin had to pay for private and self-financed medical services. The petitioners also indicated the absence of special guidelines and directives for providing comprehensive and necessary health care. In this regard, on August 9, 2013, and June 18, 2014, the State provided information on home care, care through the “Inmaculada Concepción” District Hospital in the city of Caaguazú, the provision of appointments, medical and psychological examinations, and the delivery of medicines. In this regard, on December 18, 2013, and June 3, 2015, the representatives of the victims acknowledged these advances and at the same time expressed their disagreement regarding the continued provision and institutionalization of comprehensive health care for the victims’ next of kin.

34. Subsequently, through the memorandum of understanding signed between the parties on October 17, 2016, the State undertook to promote, with the health authorities in the area, the necessary measures so that the two mothers of the victims could obtain the treatment required for their comprehensive health. In this regard, between the reports of July 10, 2017, and September 23, 2020,⁷ the petitioners reiterated the existing obstacle regarding the lack of continuity in the provision of health services since the signing of the friendly settlement agreement, where they specified the vulnerability of Mrs. Deogracia Lugo, the failure to subsidize medical expenses, transportation, medical personnel, medicines, and basic first aid supplies. The State, for its part, in reports dated August 23, 2018, to April 28, 2021⁸, reported on the issuance of S.G. Resolution No. 135 of March 2018, and subsequently the “Protocol for Medical Care in the Framework of S.G. Resolution No. 134/2018” to guarantee specific mechanisms and procedures for the care the victims’ mothers and siblings, where medical specialists, frequency of home visits, provision of medicines and other basic medical supplies were determined. The State indicated that, through Resolution S.G. No. 80, issued by the

⁶ Specifically, the communications provided by the State on January 26, February 7 and 24, 2011.

⁷ Specifically the submissions provided by the petitioning party on July 10, 2017, September 1, 2017, January 9, 2019, May 30, 2019, January 15, 2020, July 22, 2020, and September 23, 2020.

⁸ Specifically the submissions provided by the State on August 23, 2018, February 25, 2019, February 5, 2021, April 27 and April 28, 2021.

Ministry of Public Health and Social Welfare, it established the obligation to provide medical assistance with specific follow-up to relatives of victims of human rights violations in the framework of the friendly settlement agreement signed in this case. In this regard, on June 21, 2021, the petitioning party acknowledged that a comprehensive and lasting medical assistance scheme has been reached for both families and requested the IACHR that the State maintain communication with the representatives of the victims regarding the respective records and certificates, regular medical visits, and delivery of supplies that the next of kin may require in the future, especially with regard to Mrs. Deogracia Lugo. In the same report, they indicated that the conditions were in place to move forward with the approval of the friendly settlement agreement. Therefore, considering the information provided by the parties, the Commission esteems that the fourth clause of the agreement has been fully complied with and so it declares it so.

35. With regard to the sixth clause, concerning security measures, the Commission notes that on January 26 and February 7, 2011, the State reported that the Ministry of the Interior had appointed two police officers assigned to Police Station No. 2 in the city of Caaguazú to provide permanent police protection (24 hours a day) since March 8, 2010, at the homes of the victims' mothers. In this regard, on June 10, 2011, the petitioning party indicated that it had direct contact with both the Human Rights Directorate of the Ministry of the Interior and the local police station. Subsequently, on October 4, 2011, the State indicated that the Chief Commissioner of Caaguazú carried out patrols and random checks. In this regard, on July 10, 2012, the petitioners stated that sporadic patrols were conducted for Ms. Deogracia Lugo and that there were none for the Paredes family. Similarly, on February 24, 2013, the petitioners indicated the need for more comprehensive and effective measures, given the vulnerability of the victims, indicated serious security problems in the home of Mrs. Deogracia de Lugo, and requested the creation of a monitoring and security system in response to threats and an urgent need. In this regard, on August 9, 2013, and June 18, 2014, the State reported that Sub Police Station No. 52 of Barrio Bernardino Caballero, Department of Caaguazú, was in charge of conducting random day and nighttime checks at the homes of the victims' next of kin and emphasized the disposition of the Police Post of Barrio Bernardino Caballero in the Department of Caaguazú and gave an account of the signing of control forms in relation to the will of the families. On December 16, 2013, and June 3, 2015, the petitioning party indicated inconsistencies in the frequency of the rounds made by Sub Police Station No. 52 in signing the check sheets and the documents provided by the State. Subsequently, through the memorandum of understanding of October 17, 2016, the parties jointly declared full compliance with the security measures. Therefore, considering the information provided by the parties, the Commission finds that the sixth clause of the friendly settlement agreement has been fully complied with and so it declares it so.

36. Concerning literal "a" of the seventh clause of the agreement, referring to the legislative measure to amend Article 236 of the Criminal Code on the crime of forced disappearance, as reported by the State, on May 22, 2012, Law No. 4614 "Amending Articles 236 and 309 of Law No. 1160/97 'Criminal Code'" was enacted, in the terms and as committed to in the agreement. In this regard, on February 24, 2013, the petitioning party confirmed that said reform corresponded to the spirit of the friendly settlement agreement. Subsequently, through the memorandum of understanding of October 17, 2016, the parties jointly declared full compliance with this aspect of the agreement. Therefore, considering the information provided by the parties, the Commission esteems that literal "a" of clause seven of the agreement has been fully complied with and so it declares it so.

37. With regard to literal "b" of clause seven of the agreement, referring to the screening of the documentary "*Cuerpo a Tierra. Los Niños Soldados del Paraguay*" prepared by the petitioners, at the Mariscal Francisco Solano López Military Academy of the Armed Forces, on March 25, 2011, the State reported that by General Order No. 16 of the Command of the Military Forces, the video documentary was shown at the "Mcal. Francisco Solano López" Military Academy in Capiatá, with the participation of high-ranking military authorities, relatives of the disappeared minors, and representatives of NGOs. In this regard, on April 12, 2011, the petitioning party confirmed that the point in paragraph seven "b" had been met. Subsequently, through the memorandum of understanding of October 17, 2016, the parties jointly declared full compliance with this part of the agreement. Therefore, considering the information provided by the parties, the Commission finds that literal "b" of clause seven of the friendly settlement agreement has been fully complied with and so it declares it so. In this sense, the Commission considers that clause seven of the friendly settlement agreement has been fully complied with and so it declares it so.

38. With regard to literal “a” of clause eight, referring to pecuniary reparations, on March 25, 2011, the State reported that the victims’ next of kin received, at the public apology ceremony held on February 19, 2010, as indicated above, the sum of US\$25,000 in compensation for each of the families, as established in the friendly settlement agreement. In this regard, on April 12, 2011, the petitioners indicated that the point established in clause eight “a” had been met. Subsequently, through the memorandum of understanding of October 17, 2016, the parties jointly declared full compliance with this aspect of the agreement. Given the foregoing, the Commission considers that this aspect of the agreement has been fully complied with and so it declares it so.

39. With regard to literal “b” of the eighth clause, related to the granting of a pension to the mothers of the victims, on February 7, 2011, the State reported on the request for an *ex gratia* pension for Mrs. Zulma Paredes de Gómez and Mrs. Deogracia Lugo de Núñez, submitted through the Office of the President of the Republic by Note No. 397 of July 5, 2010. On March 25, 2011, the State reported that the Finance, Budget, and Accounts Committee approved said note, on August 17, 2010. In this regard, on February 24, 2012, and July 10, 2012, the petitioners indicated the failure to comply with and the expiration of the term imposed by paragraph 8(b) and indicated having taken cognizance of the enactment of Law No. 4781 of October 23, 2012, through which the *ex gratia* pension was granted to Mrs. Zulma Paredes de Gómez and Mrs. Deogracia Lugo de Núñez, in the monthly amount of 2.500,000 two million five hundred thousand Guaraníes, however, it indicated the non-effective fulfillment of the same. In this regard, on August 9, 2013, the State submitted a report that noted the payment of the contributions to the pension beneficiaries. Subsequently, through the memorandum of understanding of October 17, 2016, the parties jointly declared full compliance with this aspect of the agreement. Therefore, the Commission considers that literal “b” of clause eight of the agreement has been fully complied with and so it declares it so.

40. Regarding the willingness of the parties in the agreement or in subsequent written communication, on June 21, 2021, the petitioning party indicated its willingness to move towards homologation of the friendly settlement agreement and to continue with the supervision of the Inter-American Commission until full compliance with the agreement is achieved.

41. In relation to the suitability of the agreement with human rights standards, it is observed that the content of the FSA is consistent with human rights standards, since elements such as measures of satisfaction, guarantees of non-repetition, measures of pecuniary reparation, and of medical and social rehabilitation, which are considered appropriate within the factual scenario of the particular case, being in accordance with the various pronouncements of the IACHR and the jurisprudence of the Inter-American Court of Human Rights on reparation for victims of human rights violations and enforced disappearance.

42. Finally, concerning the State’s willingness to comply with the FSA, it should be noted that, by virtue of the fulfillment of 15 of the 16 execution commitments established in the friendly settlement agreement, it can be observed that there has been a commitment on the part of the State to comply with what was agreed.

43. In view of the foregoing, the Commission considers that literals “a,” “b,” “c,” and “d” of the second clause of the agreement (public act of apology and recognition and its dissemination, and publication of the agreement, respectively); literal “b” with its subparagraphs b.1, b.2, b.3, b.4, and b.5 of the third clause of the agreement (Truth Commission); as well as the fourth (plaque and naming of streets); fifth (primary and comprehensive health care); sixth (security measures); seventh (guarantees of non-repetition) and eighth (pecuniary reparations) clauses, have been fully complied with and the Commission so it declares it so. On the other hand, the Commission considers that literal “a” of point three of the agreement (investigation of the facts and punishment of all those responsible for the violations committed to the detriment of the children Marcelino Gómez Paredes and Cristian Ariel Núñez) has been partially complied and so it declares it so.

44. Finally, the Commission considers that the rest of the content of the agreement is declaratory in nature and therefore it is not up to monitoring, and in that sense, the implementation of the agreement has reached a partial substantial level and so it declares it so.

V. CONCLUSIONS

1. Based on the preceding considerations and according to the procedure provided 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 out in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. Approve the terms of the agreement signed by the parties on November 4, 2009.
2. Declare full compliance with literals "a," "b," "c," and "d" of the second clause of the agreement (public act of apology and acknowledgment and its dissemination, and publication of the agreement, respectively); literal "b" with its subparagraphs b.1, b.2, b.3, b.4, and b.5 of the third clause of the agreement (Truth Commission); as well as the fourth clause (plaque and naming of streets); the fifth clause (primary and comprehensive health care); the sixth clause (security measures); the seventh clause (guarantees of non-repetition) and the eighth clause (pecuniary reparations) of the friendly settlement agreement, according to the analysis contained in this report.
3. Declare partial compliance with literal "a" of clause three (guarantees of justice), according to the analysis contained in this report.
4. Declare substantial partial compliance with the friendly settlement agreement, according to the analysis contained in this report.
5. To 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 17, 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; Joel Hernández García and Edgar Stuardo Ralón Orellana, Members of the Commission.