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**REPORT No. 205/21**  
**CASE 12.961 J**  
FRIENDLY SETTLEMENT REPORT

FAUSTINO GARCIA CARDENAS Y OTRO  
HONDURAS

Approved electronically by the Commission on September 4, 2021.

**Cite as:** IACHR, Report No. 205/21, Case 12.961 J. Friendly Settlement. Faustino Garcia Cárdenas y Otro. Honduras. Honduras. September 4, 2021.

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

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

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

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

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

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

6. On November 2014, the parties began the process of negotiating a friendly settlement and held a working meeting with the facilitation of the Commission on September 5, 2017, within the framework of the 164th session of the IACHR. In addition, on December 5, 2018, the parties held another working meeting with the facilitation of the Commission on December 5, 2018, during the 170th session of the IACHR. Said negotiations materialized in the signing of a friendly settlement agreement (hereinafter “ASA” or “agreement”) on June 29, 2021<sup>1</sup>.

7. On July 30, 2021, the State forwarded to the Commission the means of verifying compliance with the agreement and requested the corresponding homologation of the agreement. Said communication was transmitted to the Petitioner.

8. On August 31, 2021, the Commission informed the parties of the disaggregation of case 12.961 J, Faustino García Cárdenas and Another, in order to move forward with the homologation of the agreement.

9. Pursuant to Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, a brief statement of the facts alleged by the Petitioner and a verbatim transcription of the friendly settlement agreement entered into on June 29, 2021 between the Petitioner and the representatives of the Honduran State are reproduced hereunder in the instant report. The Commission also approves the agreement between the parties and the publication of this report in the IACHR’s Annual Report to the General Assembly of the Organization of American States.

## II. THE ALLEGED FACTS

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

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

12. On the other hand, the petitioners pointed out that by resolutions of March 13, 2003, the Supreme Court of Justice of Honduras declared the unconstitutionality and inapplicability of Decree 58-2001. In this regard, they stated that although Article 316 (2) of the Honduran Constitution stipulates that when declaring the unconstitutionality of the law, it will be of general effect and of immediate application, the Supreme Court established that its ruling had no retroactive effect and that therefore, the declaration of unconstitutionality in favor of the alleged victims would not be applied. According to the petitioners, since the

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<sup>1</sup> It is to indicate that this FSA is 1 of 8 agreements signed between December 1, 2018, and June 29, 2021 on a total universe of 357 presumed victims of case 12,961 Juan Gonzalez and Others. This agreement and the effects of this Report are limited only to the beneficiaries referred to in it.

aforementioned decree was declared unconstitutional, it should also have been applied to the benefit of all the persons affected by it.

### III. FRIENDLY SETTLEMENT

13. On June 29, 2021, a friendly settlement agreement reached between the State, represented by the Attorney General of the Republic, Lidia Estela Cardona Padilla, and the petitioners, represented by attorneys Hugo Ramón Maldonado and Gladys Ondina Matamoros. The friendly settlement agreement initially signed for the benefit of 2 people. The referred friendly settlement agreement establishes the following:

#### FRIENDLY SETTLEMENT AGREEMENT CASE IACHR 12.961 Juan González and others vs Honduras<sup>2</sup>

FRIENDLY SETTLEMENT AGREEMENT OF IACHR CASE 12.961 concerning Juan González and others, entered into, on the one hand, the State of Honduras, duly represented by Dr. LIDIA ESTELA CARDONA PADILLA, in her capacity as Attorney General of the Republic, appointed by Legislative Decree No. 70- 2018, published on July 27, 2018, duly authorized for this act by Executive Agreement No. 014-2018 dated December 19, 2018, in which it is recorded that she is empowered to enter into this act, with the express power to transact; and on the other hand: Hugo Ramón Maldonado (CODEH), and Gladys Ondina Matamoros; who act on behalf of the petitioners and beneficiaries of the present agreement; which is entered into with the knowledge and consent of the INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), in accordance with the provisions of Articles 48, numeral 1(f) and 49 of the American Convention on Human Rights regarding the friendly settlement of the case in reference.

#### FIRST: BACKGROUND

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

By communication of May 24, 2018, the IACHR notifies the State of Honduras of the rectified version of Admissibility Report 57/14 based on the amendment approved by the IACHR to paragraph 40 of the admissibility report, as well as the list contained in the annexes, declaring the petition admissible with respect to the 42 persons who were parties to the unconstitutionality action filed by José Marcelino Vargas before the Supreme Court of Justice.

#### SECOND: GENERAL

As a consequence of the willingness expressed by the parties to reach a friendly settlement in the case at hand, the State undertakes to comply with the present agreement in accordance with the following parameters:

- a. Scope: This refers specifically to the legal consequences for the petitioners of the issuance of Decree 58-2001 published in the Official Gazette No. 29,504 of July 15, 2001, which was subsequently declared unconstitutional by the Supreme Court of Justice of the Honduran State, by judgment dated March 13, 2003, and published in the Official Gazette

<sup>2</sup> The parties included in the text of the FSA of Case 12,961 E the name of the original case disaggregated by the IACHR on July 2, 2019.

No. 30,166 of August 19, 2003.

b. The nature: To settle by friendly means insofar as it corresponds to the Petitioner under the present agreement (1 ex-policeman), by means of compensation and without this implying any recognition by the State of either the facts or the right invoked within the framework of the process underway before the Inter-American Commission on Human Rights.

c. The modality: Friendly settlement regulated by Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 40 of its Rules of Procedure.

d. Determination of beneficiaries: By express agreement between the parties, the beneficiaries of this agreement are:

No.	Name	Identity No.
01	Faustino García Cárdenas	[...]
02	Federico Ponce Sorto	[...]

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

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

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

**FOURTH: AGREEMENT BETWEEN THE PARTIES**

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

To cover economic reparations, the State of Honduras undertakes to verify payment in the manner proposed by the Petitioner during the negotiation stage through the Secretariat of State in the Office of Security, which shall initiate the relevant procedures as soon as it is presented with this duly signed document and shall complete the corresponding payment procedures no later than August 30, 2021, in accordance with the terms agreed in this friendly settlement agreement.

This agreement will be managed under the responsibility of the corresponding entities or State Secretariats; the Office of the Attorney General of the Republic will coordinate and follow up on the actions necessary for compliance with this agreement.

For their part, the petitioners' representatives undertake to accompany the stages of execution of this agreement and cooperate with it so that it can become effective.

**FIFTH: THE VALIDITY OF THE PRESENT FRIENDLY SETTLEMENT AGREEMENT**

Throughout the process, the parties maintained a space for dialogue to explore the possibility of reaching an eventual friendly settlement agreement. The working meeting held during the 164th Special Period of Sessions of the IACHR in Mexico City and the working meeting held during the 170th regular period of sessions of the IACHR in Washington, D.C., are examples of this.

**SIXTH: SATISFACTION OF THE PETITIONERS**

The Petitioner considers that compliance with the economic commitments undertaken through this friendly settlement agreement implies satisfaction of its claims in the case of Juan González et al (IACHR Case No. 12.961).

The State of Honduras and the petitioners, through their legal representatives, taking as a reference the scale to which the dismissed personnel belonged at the time Decree 58- 2001 was issued, recognize and accept as the amount to be compensated the individual sum detailed below, in favor of the petitioners:

Police and Administrative: L. 320,000.00  
Classes: L. 400,000.00  
Officers: L. 700.000.00

The amount set forth above shall be made in a single payment to the petitioners who have elected to avail themselves of this agreement.

As for the percentage of professional fees, these shall be borne by the petitioners based on the agreement they have reached with their attorney.

**SEVENTH: METHOD OF PAYMENT OF FINANCIAL REPARATION**

Following the petitioner's request that the amount offered to be paid in a single payment, the State undertakes to pay the aforementioned amount through the Secretariat of State in the Office of Security in a single payment no later than August 30, 2021, which includes the amount of the financial compensation agreed upon and, therefore, with the payment thereof, the State of Honduras is completely released from any compensation for the alleged facts and any subsequent claim.

For such purposes, the beneficiaries must prove their identity to the Secretariat of State in the Office of Security using the respective document.

In the case of relatives of the petitioners who are deceased on the date of signing this agreement, they must present the legally required documentation, accrediting the corresponding Declaration of Heirs, so that the Secretariat of Security may subsequently proceed to make the corresponding payment.

The amount provided includes in its entirety any damage alleged to have been caused to the petitioners and their next of kin, and therefore, with the payment of the reparation contained in this Agreement, the State of Honduras is released from any indemnification for the facts as well as from any present or future claim that may arise from this agreement; It is further agreed that the liability of the State of Honduras for any compensation shall be extinguished judicially or internationally; if any other person should eventually appear claiming compensation for these same facts in relation to the beneficiaries who, at the date of the execution of this agreement, are deceased, such compensation shall be recognized and paid directly by the beneficiaries.

**EIGHTH: COMPLIANCE MONITORING**

With respect to the petitioners not included in the agreed compensation payment, the mechanism for verifying compliance with the friendly settlement agreement shall be the responsibility of the IACHR; the Office of the Republic's Attorney General shall submit the information requested by the honorable Inter-American Commission.

The State of Honduras will also inform the IACHR of its full willingness to continue with the dialogue to explore the possibility of reaching a friendly settlement agreement with the petitioners not included in this document.

**NINTH: CONFIDENTIALITY**

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

**TENTH: CONFORMITY OF THE PARTIES**

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

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

**ELEVENTH: VALIDITY**

This agreement is effective as of the date of signature and shall terminate upon payment of the agreed compensation.

Signed in the city of Tegucigalpa, M.D.C., on the twenty-ninth (29th) day of June of the year two thousand and twenty-one (2021).

**IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

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

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

16. In accordance to what was established in clause 10 of the friendly settlement agreement, the parties agreed to request the Commission to issue the report contemplated in Article 49 of the American Convention, once the friendly settlement agreement was signed. Given that the State provided detailed

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<sup>3</sup> Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: **Pacta sunt servanda**. "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

information on the actions taken to comply with, the obligations derived from this friendly settlement agreement, and extensive documentation that verifies the payment of the obligations derived from it, at this moment it is necessary to assess the fulfillment of the commitments established in this FSA.

17. Regarding clauses 6 (Satisfaction of the petitioners), and 7 (Form of payment of economic reparation) of the agreement, the State reported that all the compensations in favor of the two beneficiaries of the friendly settlement agreement were paid. This information was corroborated with copies of the checks delivered in accordance with the amounts agreed for each beneficiary and proof of delivery signed by them, from which the Commission was able to corroborate the payment of a total amount of 1,020,000L (one million twenty thousand lempiras) or approximately \$42,961.19 (forty-two thousand nine hundred and sixty-one dollars and nineteen cents)<sup>4</sup>. Taking into consideration the elements of information described above, the Commission considers that clauses 6 and 7 of the friendly settlement agreement are fully complied with, and so it declares it so.

18. The Commission notes with satisfaction that through full compliance with the friendly settlement agreements related to this Homologation Report and with Reports No. 105/19 (Case 12.961 A, Bolívar Salgado Welban, et al.); No. 101/19 (Case 12.961 C, Marcial Coello Medina, et al.); No. 104/19 (Case 12.961 D, Jorge Enrique Valladares Argueñal et al.); No. 42/21 (Case 12.961 E, Ecar Fernando Zavala Valladares y Otros); and No. 20/20 (Case 12.961 F, Miguel Ángel Chinchilla Erazo et al.), the State has complied with repairing a total of 229 beneficiaries of the original case 12,961 (Juan González et al.). Consequently, the IACHR highly values the efforts made by both parties during the negotiations related to these matters to reach the friendly settlements that are compatible with the object and purpose of the Convention.

19. Lastly, the Commission considers that the rest of the content of the agreement is declarative in nature, so that the IACHR would not be responsible for monitoring compliance.

20. For the foregoing reasons, the IACHR declares that the friendly settlement agreement has been fully complied with. Consequently, the Commission decides to terminate the follow-up and close this matter.

## **V. CONCLUSIONS**

1. Based on the foregoing considerations, and pursuant to the procedure set out in Articles 48(1) (f) and 49 of the American Convention. The Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction that a friendly settlement was reached in the instant case, based on respect for human rights and compatible with the object and purpose of the American Convention.

2. 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 June 29, 2021.

2. To declare clauses 6 (Satisfaction of the petitioners) and 7 (Form of payment of the economic reparation) fulfilled, according to the analysis contained in this report.

3. To declare the full compliance with the friendly settlement agreement according to this report's analysis.

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<sup>4</sup> Conversions to dollars are derived from the free Google converter search available on the market dated August 16, 2020.



4. To publish this report and include it in its Annual Report to the OAS General Assembly.

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