

REPORT No. 22/11
PETITION 71-06 and Others
FRIENDLY SETTLEMENT
GLORIA JOSÉ YAQUETTO PAREDES ET AL.
PERU
March 23, 2011

I. SUMMARY

1. This report refers to 21 petitions submitted between the years 2006 and 2007 on behalf of judges and prosecutors (hereinafter also called “the alleged victims”) who were terminated when they were not confirmed by Peru’s National Judicial Council (hereinafter “the CNM”). In recent years, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) has received a series of petitions on the same issue, most of which have been the subject of friendly settlement agreements between unconfirmed judges and the Republic of Peru (hereinafter “the State,” “the Peruvian State,” or “Peru”).¹

2. In general terms, the complaints covered in this report indicated that the confirmation of judges in Peru is not a punitive-disciplinary proceeding and, according to the petitioners, would be inconsistent with the guarantees of tenure and independence for judges and prosecutors. They maintained that the decisions of the CNM that resulted in denying the alleged victims tenure in their positions lacked any justification. The complaints indicate that the decisions were challenged in the courts, but the judges did not obtain favorable decisions and ultimately were not reinstated. Finally, the petitions alleged that the State is generally responsible for violating the rights established in Articles 8, 11, 23, 24, and 25 of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”).

3. On September 24, 2010 the Peruvian State and the 21 alleged victims signed a friendly settlement agreement. In this report, approved in accordance with Article 49 of the American Convention, the IACHR summarizes the facts alleged by the petitioners, describes the agreement reached by the parties, and decides to publish the report.

II. PROCESSING BY THE COMMISSION

4. In recent years the IACHR has received more than 200 petitions from judges and prosecutors removed from their positions after submitting to a confirmation process before the National Judicial Council, in accordance with Article 154 of the Political Constitution of Peru. In most of these cases, the alleged victims and the Peruvian State have signed friendly settlement agreements. These agreements were approved by the IACHR between October 2006 and March 2008, pursuant to Article 49 of the American Convention.

5. In January 30, 2009 the IACHR sent a communication to the State informing that it had received more than 30 new petitions on the same subject since the last friendly settlement report adopted on March 13, 2008. On that occasion and based on the faculties established in Article 41 of the Convention, the IACHR asked for information on the possibility of adopting a comprehensive solution to the situation of unconfirmed judges and made itself available to the parties so that such a solution could be reached.

¹ Such agreements were approved in the following friendly settlement reports adopted by the IACHR: Report No. 109/06, Petition 33-03 and others, Alejandro Espino et al., Peru, October 21, 2006; Report No. 50/06, Petition 711-01 and others, Miguel Grimaldo Castañeda Sánchez et al., Peru, December 15, 2006; Report No. 20/07, Petition 732-01 and others, Eulogio Paz Melgarejo et al., Peru, March 9, 2007; Report No. 71/07, Petition 758-01 and others, Hernán Atilio Aguirre Moreno et al., Peru, July 27, 2007, and Report No. 20/08, Petition 494-04, Romeo Edgardo Vargas Romero, Peru, March 13, 2008.

6. In a communication received on March 6, 2009, the State indicated its willingness to continue signing friendly settlement agreements regarding the new petitions involving unconfirmed judges. However, it indicated that "this is impossible in the case of petitions not yet reported to the Peruvian State because we do not have the personal information and thus the legal situation cannot be analyzed."

7. On March 16, 2009 the IACHR sent the State a list of petitions being studied with respect to unconfirmed judges and personal information on the alleged victims. It also repeated its request that a comprehensive solution be found in this matter. In a communication received on March 21, 2009, the State reported its willingness to resolve the situation of a group of unconfirmed judges, independently of their petition before the IACHR. Those observations were forwarded to each of the representatives of the alleged victims, some of whom reported that the National Human Rights Council of the Ministry of Justice had objected to signing friendly settlement agreements with judges whose complaints before the IACHR were pending notification to the State.

8. In view of this situation, on March 5, 2010 the IACHR opened up the process for 26 petitions filed by judges not confirmed by the National Judicial Council. Of these petitions, 21 are included in the friendly settlement agreement signed on September 24, 2010. A list of the alleged victims who signed that agreement, indicating the number under which their petitions were recorded and the date they were received by the IACHR appears below:

1. Gloria José Yaquetto Paredes (P 71-06), received on January 24, 2006.
2. Pedro Alberto Córdova Rojas (P 109-06), received on February 2, 2006.
3. Pedro Lucio Ramos Miranda (P 120-06), received on February 7, 2006.
4. Heriberto Hugo Lévano Torres (P 513-06), received on May 25, 2006.
5. Víctor Ladrón de Guevara De la Cruz (P 572-06), received on June 5, 2006.
6. Carlos Felipe Linares Vera Portocarrero (P 594-06), received on June 9, 2006.
7. Juan Nicanor Zuñiga Bocanegra (P 634-06), received on June 16, 2006.
8. Javier Rolando Peralta Andía (P 834-06), received on August 7, 2006.
9. Edwin Elías Vásquez Puris (P 1066-06), received on October 4, 2006.
10. Genaro Nelson Lozano Alvarado (P 1160-06), received on October 27, 2006.
11. José Francisco Jurado Nájera (P 1285-06), received on November 20, 2006.
12. Luías Rafael Callapiña Hurtado (P 184-07), received on February 21, 2007.
13. Ricardo Quispe Pérez (P 364-07), received on March 26, 2007.
14. Fidel Gregorio Quevedo Cajo (P 451-07), received on April 13, 2007.
15. Aquiles Niño de Guzmán Feijoo (P 492-07), received on April 19, 2007.
16. José Domingo Choquehuanca Calcina (P 627-07), received on May 14, 2007.
17. José Miguel La Rosa Gómez de la Torre (P 986-07), received on July 29, 2007.
18. Rodolfo Kádagand Lovatón (P 1179-07), received on September 13, 2007.
19. Simón Damacén Mori (P 1562-07), received on December 11, 2007.
20. Carmen Encarnación Lajo Lazo (P 638-07), received on May 17, 2007.
21. Manuel Vicente Trujillo Meza (P 714-07), received on June 5, 2007.

9. On March 5, 2010, these petitions were forwarded to the State, which was given a period of two months to submit its response in accordance with the IACHR Rules of Procedure. During the processing of the complaints, the petitioners submitted additional communications, which were also forwarded to the State.

10. On September 30, 2010, the Peruvian State sent Official Letter No. 1820-2010-JUS/PPES, attaching the friendly settlement agreement signed on September 24, 2010, and asked that the agreement be approved by the IACHR in accordance with Article 49 of the Convention. The State also sent copy of Supreme Resolution No. 173-2010-JUS of September 10, 2010, authorizing Supranational Specialized Attorney, Delia Muñoz Muñoz, to sign friendly settlement agreements with unconfirmed judges.

11. In the first week of October 2010, the aforementioned Official Letter No. 1820-2010-JUS/PPES was forwarded to the representatives of each of the alleged victims, indicating that the IACHR had learned of the friendly settlement agreement signed on September 24, 2010. Of the 21 alleged victims, 12 have sent additional briefs asking the IACHR to approve the friendly settlement agreement.² Representatives of the remaining victims have not submitted any response or objection to the IACHR's approval of the friendly settlement agreement they signed.

III. THE FACTS

12. According to Article 154 of the Political Constitution of Peru, the National Judiciary Council is entitled to the following measures:

1. To appoint judges and prosecutors at all levels based on prior merit-based competition and personal evaluation. Such appointments require the affirmative vote of two-thirds of the total number of council members.
2. To confirm judges and prosecutors at all levels every seven years. Those not confirmed may not reenter the Judicial Branch or the Office of the Attorney General. The confirmation process is independent of disciplinary measures.³

13. The confirmation process consists of an evaluation performed periodically by the CNM regarding the professional conduct of every acting judge and prosecutor. A decision not to confirm renders the appointment of the judge without effect and the judge is definitively disqualified from practice in the judiciary. Vacancies that arise in this process are filled through a public merit-based competition and evaluation.

14. The petitions covered in this report generally alleged that the confirmation process violates the guarantees of tenure and independence that judges and prosecutors need to function. It was alleged that as of the date the alleged victims were terminated, the CNM was empowered to issue decisions not to confirm without any grounds and without any effective and suitable judicial remedy for challenging those decisions. In addition, it was asserted that although recent case law of the Constitutional Court of Peru establishes that the CNM must provide the grounds for its decisions, the confirmation procedure does not include a venue for review and continues to be inconsistent with the guarantees established in Article 8 of the American Convention.

15. Finally, the petitioners asked that the CNM resolutions terminating their appointments be rendered without effect. In addition, they ask that the Peruvian State be declared responsible for violating the rights established in Articles 8, 11, 23, 24, and 25 of the American Convention.

² Those persons are Gloria José Yaquetto Paredes (P 71-06), Pedro Alberto Córdova Rojas (P 109-06), Pedro Lucio Ramos Miranda (P 120-06), Víctor Ladrón de Guevara De la Cruz (P 572-06), Carlos Felipe Linares Vera Portocarrero (P 594-06), Juan Nicanor Zuñiga Bocanegra (P 634-06), Javier Rolando Peralta Andía (P 834-06), Luis Rafael Callapiña Hurtado (P 184-07), Fidel Gregorio Quevedo Cajo (P 451-07), Rodolfo Kádagand Lovatón (P 1179-07), Carmen Encarnación Lajo Lazo (P 638-07), and Manuel Vicente Trujillo Meza (P 714-07).

³ Constitution of the Republic of Peru, available on the website of the Congress of the Republic: www.congreso.gob.pe/ntley/ConstitucionP.htm.

IV. FRIENDLY SETTLEMENT

16. On September 24, 2010 the alleged victims and the Peruvian State, represented by the Supranational Specialized Attorney, Delia Muñoz Muñoz, signed the following agreement:

Friendly Settlement Agreement dated September 24, 2010 (R.S 173-2010-JUS)

FRIENDLY SETTLEMENT AGREEMENT
(SUPREME RESOLUTION NO. 173-2001-JUS)

This documents sets forth the Friendly Settlement Agreement regarding the petitions indicated below and processed by the Inter-American Commission on Human Rights (hereinafter the IACHR), which was signed for the first part by

The Peruvian State:

Duly represented, in accordance with Supreme Resolution No. 173-2001-JUS, dated September 10, 2010, by Supranational Specialized Attorney, Dr. Delia Muñoz Muñoz, whose legal domicile is Scipión Llona No. 350, Miraflores, Lima, hereinafter the representative of the Peruvian State, and for the second part by,

The following petitioners, who personally signed in their own right or through their duly accredited representative(s):

1. Gloria José Yaquetto Paredes (Petition No. 71-06),
2. Pedro Alberto Córdova Rojas (Petition No. 109-06),
3. Pedro Lucio Ramos Miranda (Petition No. 120-06)
4. Heriberto Hugo Levano Torres (Petition No. 513-06),
5. Víctor Ladrón de Guevara De la Cruz (Petition No. 572-06),
6. Carlos Felipe Linares Vera Portocarrero (Petition No. 594-06)
7. Juan Nicanor Zuñiga Bocanegra (Petition No. 634-06),
8. Javier Rolando Peralta Andía (Petition No. 834-06),
9. Edwin Elías Vásquez Puris (Petition No. 1066-06),
10. Genaro Nelson Lozano Alvarado (Petition No. 1160-06),
11. José Francisco Jurado Nájera (Petition No. 1285-06),
12. Luis Rafael Callapina Hurtado (Petición No 184-07),
13. Ricardo Quispe Pérez (Petition No. 364-07),
14. Fidel Gregorio Quevedo Cajo (Petition No. 451-07),
15. Aquiles Niño de Guzmán Feijoo (Petition No. 492-07),
16. José Domingo Choquehuanca Calcina (Petition No. 627-07),
17. José Miguel La Rosa Gómez de la Torre (Petition No. 986-07),
18. Rodolfo Kádagand Lovatón (Petition No. 1179-07),
19. Simon Damacen Mori (Petition No. 1562-07),
20. Carmen Encarnación Lajo Lazo (Petition No. 638-07),
21. Manuel Vicente Trujillo Meza (Petition No. 714-07)

CLAUSE ONE

ACKNOWLEDGMENT OF RESPONSIBILITY BY THE PERUVIAN STATE

The State acknowledges that the process for confirming judges and prosecutors, as carried out before the Code of Constitutional Procedure (Law No. 28237) took effect on December 1, 2005, although consistent with the interpretation of applicable rules by the appropriate courts, did not include certain guarantees for Effective Procedural Protection, particularly the requirement, which should be observed in any proceeding, that the grounds for the decision be set forth. This is based on provisions of the Constitution of Peru, human rights treaties binding on the Peruvian State, and binding case law on the subject from the Inter-American Court of Human Rights as well as the Constitutional Court.

CLAUSE TWO

EFFECTS OF THE ACKNOWLEDGEMENT OF RESPONSIBILITY

It is the opinion of both parties, in accordance with Clause One of this Agreement that, pursuant to international human rights provisions binding on the Peruvian State and the provisions of the Constitution of Peru, the National Judicial Council's reversal of its decisions not to confirm the judges and prosecutors included in this friendly settlement agreement is legal. Consequently, the judges are reinstated for the following purposes.

2.1. Reinstatement in the Judiciary or the Office of the Attorney General

The National Judicial Council shall restore their titles immediately upon the approval of this Friendly Settlement Agreement by the Inter-American Commission on Human Rights.

The Judiciary or the Office of the Attorney General, as applicable, shall order reinstatement to their original positions for those judges who sign this agreement within fifteen (15) days of the restoration of their titles. Should the original position not be available, at the judges' request, they shall be reinstated to a vacancy at the same level in the same Judicial District or another district.

In such case, said judges shall have the first option to return to their original post as soon as the respective vacancy occurs.

Reinstatement shall be effected provided there is no legal impediment, and the Judiciary or the Office of the Attorney General, as applicable, shall be responsible for verifying the absence of such impediment.

2.2. Other rights of reinstated judges

2.2.1 Recognition of time in service

For purposes of calculating the judges' time served, retirement, and other employment benefits due under Peruvian law, the Peruvian State commits to recognizing as time in service the days not worked since the date of the decision not to confirm them. If the judges covered under this Friendly Settlement Agreement must be relocated to another Judicial District in order to comply with the agreement, time already served shall be recognized for all purposes in the new posting.

2.3. Total compensation

The Peruvian State agrees to pay the petitioners under this Friendly Settlement the amount of US\$5,000.00 (Five thousand U.S. and 00/100 dollars) for reparations, expenses, and any other item and the petitioners agree not to claim any additional amount.

2.4. New evaluation and confirmation process

The Peruvian State shall carry out a new evaluation and confirmation procedure for the judges covered in this agreement, to be handled by the National Judicial Council. This new procedure shall be carried out in accordance with constitutional provisions and principles (Articles 139 and 154 of the Constitution of Peru), the American Convention on Human Rights, and binding case law guaranteeing due process handed down by the Inter-American Court of Human Rights and the Constitutional Court.

For such purposes, the National Judicial Council has adapted its Rules of Procedure to the corresponding regulatory provisions guaranteeing due process, in accordance with domestic and international provisions and constitutional principles.

CLAUSE THREE
CEREMONY OF PUBLIC APOLOGY

The representative of the Peruvian State commits to holding a Ceremony of Public Apology in favor of the reinstated judges.

CLAUSE FOUR
LEGAL BASIS

This Agreement is signed in accordance with the provisions of Articles 2 (fundamental rights of the person), 44 (primary duties of the State), 55 (validity of treaties), 205 (supranational jurisdiction), and the Fourth Final and Transitory Provision (interpretation of fundamental rights) of the Constitution of Peru; Articles 1 (obligation to respect rights), 2 (domestic legal effects), 8 (right to a fair trial), and 48(1)(f) (friendly settlement) of the American Convention on Human Rights; and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

CLAUSE FIVE
INTERPRETATION

The meaning and scope of this agreement are interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, as applicable, as well as the principle of good faith. In the event of doubt or disagreement among the parties regarding the content of this agreement, the Inter-American Commission on Human Rights shall decide on its interpretation. The Commission is also responsible for verifying compliance and the parties are required to report every four months on the agreement's status and compliance therewith.

CLAUSE SIX
APPROVAL BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)

This Friendly Settlement Agreement is subject to approval by the Inter-American Commission on Human Rights. The Peruvian State agrees to seek this approval as soon as possible and, once it is obtained, to inform the National Judicial Council (CNM) so that it may proceed in accordance with Clause Two and reserve the positions for the judges participating in the New Evaluation and Confirmation Process.

CLAUSE SEVEN
ACCEPTANCE

The parties signing this Friendly Settlement Agreement indicate their free and voluntary agreement with and acceptance of the content of each and every one of its clauses, expressly stating that it puts an end to the dispute and to any claim against the Peruvian State with respect to the other petitions covered in this Agreement.

CLAUSE EIGHT
APPLICATION OF THE MOST FAVORABLE TERMS OF SETTLEMENT

The parties expressly declare that if, following the signing of this Friendly Settlement Agreement, the State recognizes more favorable conditions for other petitioners who find themselves in the same legal situation, the new conditions shall also apply to those who have signed this Friendly Settlement Agreement.

Lima, September 24, 2010

(SIGNATURES REPRESENTING THE STATE AND THE PETITIONERS⁴)

⁴ The final part of the friendly settlement agreement includes the following note regarding its signing by Mr. Luis Rafael Callapiña Hurtado:

It is hereby indicated that for reasons of *force majeure* Doctor LUIS RAFAEL CALLAPIÑA HURTADA (*sic*), in accordance with the medical certificate from (*sic*) ESSALUD DATED 22 September 2010, authorizes, through personal and express power of attorney, his daughter LUZ AMPARO CALLAPIÑA COSIO, identified with National I.D. 23958232, to sign the Agreement in his name and as his representative.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

17. The IACHR reiterates that according to Articles 48(1)(f) and 49 of the Convention, the purpose of this procedure is to reach “a friendly settlement of the matter on the basis of the human rights recognized in this Convention.” Agreeing to engage in this process expresses the good intentions of the State to comply with the purposes and objectives of the Convention, by virtue of the principal of *pacta sunt servanda*. The IACHR also wishes to reiterate that the friendly settlement procedure provided in the Convention allows for the conclusion of individual cases in a non-adversarial manner and has been shown, in cases relating to various countries, to offer an important and effective solution vehicle that can be used by both parties.

18. The Inter-American Commission has closely monitored the development of the friendly settlement of the petitions covered in this report. The Commission appreciates the efforts made by the parties to achieve this settlement and declares it to be compatible with the object and purpose of the Convention.

19. According to the information provided by the parties, before the friendly settlement agreement was signed the President of the National Judicial Council issued Official Letters No. 450-2010-P-CNM and 1553-2010-P-CNM whereby he expressed a favorable opinion regarding the commitment reflected in that agreement.

20. The State has committed to complying with Clause 2.1 of the friendly settlement agreement immediately upon its approval by the IACHR. According to information submitted by some petitioners, the Ministry of Justice would have a budgetary item allocated to pay a portion of the compensation covered in Clause 2.3 of the agreement.

21. The IACHR appreciates the measures the State has been taking to comply with the friendly settlement agreement and reserves the opportunity to evaluate any information provided by the parties in order to express its view regarding points it deems to have been satisfied.

VII. CONCLUSIONS

22. Based on the foregoing considerations and in accordance with the procedure provided in Articles 48(1)(f) and 49 of the American Convention, the Commission reiterates its profound appreciation for the efforts made by the parties and its satisfaction with the achievement of the friendly settlement agreement regarding the 21 petitions covered in this report, based on the object and purpose of the American Convention.

23. In view of the considerations and conclusions expressed 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 24, 2010.
2. To initiate the monitoring and supervision of each and every point in the friendly settlement agreement, and in that context, to remind the parties of the commitment to periodically inform the IACHR regarding compliance with this friendly settlement.
3. To make this report public and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 23rd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.