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REPORT Nº 71/03^[1]

PETITION 12.191

FRIENDLY SETTLEMENT

MARÍA MAMÉRITA MESTANZA CHÁVEZ

PERU

October 22, 2003

I. SUMMARY

1. In a petition lodged with the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") on June 15, 1999, the nongovernmental organizations Office for the Defense of Women's Rights (DEMUS), the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), and the *Asociación Pro Derechos Humanos* [Association for Human Rights] (APRODEH), which subsequently accredited as co-petitioners the Center for Reproductive Law and Policy (CRLP) and the Center for Justice and International Law (CEJIL), (hereinafter "the petitioners"), alleged that the Republic of Peru (hereinafter "Peru") violated the human rights of Ms. María Mamérita Mestanza Chávez, by forced sterilization that ultimately caused her death.

2. The original petitioners alleged that the facts denounced constitute violation by the Peruvian State of the rights to life, personal integrity, and equality before the law, contained in Articles 4, 5, 1, and 24 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), and violation of Articles 3, 4, 7, 8, and 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (hereinafter "the Convention of Belém do Pará"), Articles 3 and 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (hereinafter "the Protocol of San Salvador.") and Articles 12 and 14(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

3. On February 22, 2001, the Peruvian State signed a joint press release with the Inter-American Commission on Human Rights, in which it was agreed to pursue friendly settlement of some cases before the Commission, including this one, in accordance with Articles 48(1)(f) and 49 of the American Convention on Human Rights.

4. On March 2, 2001, during the 110th session of the Inter-American Commission on Human Rights, the Peruvian State and the victims' representatives signed the Preliminary Agreement for Friendly Settlement with intervention and approval by the IACHR. The final

friendly settlement was agreed upon on August 26, 2003, when the act setting out the friendly settlement reached by the parties was signed in Lima.

5. This friendly settlement report, pursuant to Article 49 of the Convention and Article 41.5 of the Commission's Regulations, presents a brief summary of the facts alleged by the petitioners, the friendly solution reached, and agreement for its publication.

II. PROCESSING WITH THE COMMISSION

6. The Commission received the claim on June 15, 1999. On July 14, 1999 the IACHR opened the case, transmitted pertinent parts of the petition to the Peruvian State, and requested information within 90 days. Peru asked for additional time to prepare its reply, which was approved by the IACHR. Peru replied on January 14, 2000. The petitioners made comments on the State's reply on April 12, 2000. On October 3, 2000 the Inter-American Commission on Human Rights approved the Report on Admissibility N° 66/00.

7. On March 2, 2001, with intervention and approval by the Inter-American Commission on Human Rights, the parties signed the Preliminary Agreement for Friendly Settlement, in which the Peruvian State admitted its international responsibility for the acts alleged by the petitioners and promised to take the necessary measures to compensate the victims.

8. On August 26, 2003, in the city of Lima, the representatives of the victims and the State signed the Agreement for Friendly Settlement, requesting that the Commission ratify the entire contents.

III. FACTS

9. They alleged that the case of Ms. María Mamérita Mestanza is one more among a large number of cases of women affected by a massive, compulsory, and systematic government policy to stress sterilization as a means for rapidly altering the reproductive behavior of the population, especially poor, Indian, and rural women. They noted that the Ombudsman had received several complaints on this matter, and that between November 1996 and November 1998 CLADEM had documented 243 cases of human rights violations through the performance of birth control surgery in Peru.

10. They stated that Ms. María Mamérita Mestanza, a rural woman about 33 years old and mother of seven children, was pressured to accept sterilization starting in 1996 by the Health Center of Encañada District. She and her husband Jacinto Salazar Suárez were subjected to various forms of harassment, including several visits in which health personnel threatened to report her and Mr. Salazar Suárez to the police, and told them that the government had approved a law requiring anyone who had more than five children to pay a fine and go to jail.

11. They state that finally, under coercion, Ms. Mestanza agreed to have tubal ligation surgery. The procedure was performed on March 27, 1988 at the Cajamarca Regional Hospital, without any pre-surgery medical examination. Ms. Mestanza was released the next day, March 28, 1988, although she had serious symptoms including nausea and sharp headaches. In the following days Mr. Jacinto Salazar reported to personnel of La Encañada Health Center on Ms. Mestanza's condition, which worsened daily, and was told by them that this was due to post-operative effects of the anesthesia.

12. They state that Ms. Mestanza Chavez died at home on April 5, 1998, and that the death certificate specified a "sepsis" as the direct cause of death and bilateral tubal

blockage as a precedent cause. They report that a few days later a doctor from the Health Center offered a sum of money to Mr. Jacinto Salazar in an effort to put an end to the matter.

13. They indicate that on April 15, 1998 Mr. Jacinto Salazar filed charges with the Provisional Combined Prosecutor of Baños del Inca against Martín Ormeño Gutiérrez, Chief of La Encañada Health Center, in connection with the death of Ms. Mestanza, for crimes against life, body, and health, in premeditated homicide (first degree murder). They add that on May 15, 1998 this Provincial Prosecutor indicted Mr. Ormeño Gutiérrez and others before the local Provincial Judge, who on June 4, 1998 ruled that there were insufficient grounds to prosecute. This decision was confirmed on July 1, 1998 by the Circuit Criminal Court, so on December 16, 1998 the Provincial Prosecutor ordered the case dismissed.

IV. FRIENDLY SETTLEMENT

14. The State and the petitioner signed the friendly settlement agreement, the text of which follows:

FIRST: BACKGROUND

Ms. María Mamérita Mestanza Chávez was forced to undergo sterilization surgery, which ultimately resulted in her death. The petitioner organizations allege that her rights to life, personal integrity, and equality before the law were violated, in contravention of Articles 4, 5, 1, and 24 of the American Convention on Human Rights, Articles 3, 4, 7, 8, and 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), Articles 3 and 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, and Articles 12 and 14.2 of the Convention on the Elimination of All Forms of Discrimination Against Women.

On July 14, 1999 the Inter-American Commission on Human Rights transmitted the pertinent parts of the complaint to the Peruvian State and requested information. On October 3, 2000 the IACHR approved Report No. 66/00 on admissibility, and continued reviewing the substance of the case, concerning alleged violations of the American Convention and the Convention of Belém do Pará.

On March 2, 2001 during the 110th regular session of the IACHR a Preliminary Agreement for Friendly Settlement was reached.

SECOND: RECOGNITION

The Peruvian State, aware that protection and total respect for human rights is the cornerstone for a just, honorable, and democratic society, in strict compliance with its obligations assumed with the signing and ratification of the American Convention on Human Rights and other international human rights instruments to which it is a party, and aware that any violation of an international obligation that results in injury brings with it the duty for adequate reparation, which can most justly be done through compensation of the victim, investigation of the facts, and administrative, civil, and criminal penalties for the responsible parties, recognizes its international responsibility for the violation of Articles 1.1, 4, 5, and 24 of the American Convention on Human Rights, as well as Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against women in the harm done to

victim María Mamérita Merstanza Chávez.

This recognition was reflected in the Preliminary Agreement for Friendly Settlement signed between the Peruvian State and the victim's legal representatives, with intervention and approval by the Inter-American Commission on Human Rights, on March 2, 2001 during the 110th session of the Inter-American Commission on Human Rights. In that agreement the Peruvian State admitted international responsibility for the facts described and pledged to take steps for material and moral reparation of the harm done and to initiate a thorough investigation and trial of the perpetrators and take steps to prevent the recurrence of similar incidents in the future.

THIRD: INVESTIGATION AND PUNISHMENT

The Peruvian State promises to make a thorough investigation of the facts and apply legal punishments to any person determined to have participated in them, as either planner, perpetrator, accessory, or in other capacity, even if they be civilian or military officials or employees of the government. In this regard, the Peruvian State pledges to carry out administrative and criminal investigations into the attacks on the personal liberty, life, body, and health of the victim, and to punish:

- a. Those responsible for the acts of pressuring the consent of Ms. María Mamérita Mestanza Chávez to submit to tubal ligation.
- b. The health personnel who ignored the need for urgent care for Ms. Mestanza after her surgery.
- c. Those responsible for the death of Ms. María Mamérita Mestanza Chávez.
- d. The doctors who gave money to the spouse of the deceased woman in an attempt to cover up the circumstances of her demise.
- e. The Investigative Commission, named by Cajamarca Sub-Region IV of the Health Ministry, which questionably exonerated the health personnel from responsibility for Ms. Mestanza's death.

Apart from the administrative and criminal penalties, the Peruvian state pledges to report any ethical violations to the appropriate professional association so that it can apply sanctions to the medical personnel involved in these acts, as provided in its statutes.

In addition, the State pledges to conduct administrative and criminal investigations into the conduct of agents of the Office of Public Prosecution and the judicial branch who failed to take action to clarify the facts alleged by Ms. Mamérita Mestanza's widower.

FOURTH: INDEMNIFICATION

1. Beneficiaries of this Agreement

The only persons recognized by the Peruvian State as beneficiaries of any indemnification are Jacinto Salazar Suárez, husband of María Mamérita Mestanza

Chávez, and her children: Pascuala Salazar Mestanza, Maribel Salazar Mestanza, Alindor Salazar Mestanza, Napoleón Salazar Mestanza, Amancio Salazar Mestanza, Delia Salazar Mestanza, and Almanzor Salazar Mestanza.

2. Monetary compensation

a. Moral damages

The Peruvian State awards one-time compensation to each of the beneficiaries of ten thousand U.S. dollars (\$10,000.00) for reparation of moral injury, which totals eighty thousand U.S. dollars (\$80,000.00).

The State will deposit the amount due the minors in a trust account in accordance with the best terms available under sound banking practice. Arrangements will be made jointly with the Salazar Mestanza family's legal representatives.

b. Corollary damages

Injury caused as a direct consequence of the event giving rise to the claim consists of expenses incurred by the family as a direct result of the acts. These expenses were incurred to file and follow-up criminal charges with the Office of Public Prosecutions for aggravated homicide of María Mamérita Mestanza, as well as the costs of Ms. Mestanza's funeral and burial. The amount expended for these purposes is two thousand U.S. dollars (\$2,000.00), which the Peruvian State shall pay to the beneficiaries.

FIFTH: INDEMNIFICATION FROM THOSE CRIMINALLY RESPONSIBLE FOR THE ACTS

The Agreement for Peaceful Settlement does not include the beneficiaries' right to damages from all those responsible for violation of Ms. María Mamérita Mestanza's human rights, as determined by a competent court in accordance with Article 92 of the Peruvian Penal Code, a right which is recognized by the Peruvian State. This agreement expressly waives any other claim by the beneficiaries against the Peruvian State as responsible party, a co-defendant, or in any other capacity.

SIXTH: RIGHT OF RECOVERY

The Peruvian State reserves the right of recovery against all persons found to be responsible in this case through the definitive sentence of a competent national tribunal, in accordance with current domestic law.

SEVENTH: TAX EXEMPTION, COMPLIANCE, AND LATE PENALTY

The damages awarded by the Peruvian State shall not be subject to payment of any present or future tax, assessment, or fee, and shall be paid no later than six months after the Inter-American Commission on Human Rights has sent notification of this agreement's ratification, after which the State shall pay the maximum late fee and interest required or permitted by domestic legislation.

EIGHTH: MEDICAL PAYMENTS

The Peruvian State promises to make a one-time payment to the beneficiaries

of seven thousand U.S. dollars (\$7,000.00) for psychological rehabilitation treatment they require as a result of the death of María Mamérita Mestanza Chávez. That sum shall be paid in trust to a public or private institution, designated as the trustee, which will administer the resources spent on providing psychological care needed by the beneficiaries. The institution will be chosen jointly by the State and representatives of the Salazar Mestanza family, with support from the National Human Rights Coordination, DEMUS, APRODEH, and the Archbishop of Cajamarca. Expenses for legal establishment of the trust shall be paid by the Peruvian State.

In addition, the Peruvian State promises to give the husband and children of María Mamérita Mestanza Chávez permanent health insurance with the Ministry of Health or other competent entity. The surviving spouse's health insurance will be permanent, as will that of the children until they have their own public and/or private coverage.

NINTH: EDUCATION PAYMENTS

The Peruvian State promises to give the victim's children free primary and secondary education in public schools. The victim's children will receive tuition-free university education for a single degree at state schools, provided they qualify for admission.

TENTH: OTHER PAYMENTS

The Peruvian State agrees to make an additional payment of twenty thousand U.S. dollars (\$20,000.00) to Mr. Jacinto Salazar Suárez to buy land or a house in the name of the children he had with Ms. María Mamérita Mestanza. Within one year of the date of this agreement Mr. Salazar Suárez must register the purchase by delivering the deed to the Executive Secretariat of the National Human Rights Council of the Ministry of Justice. Furthermore, Mr. Salazar Suárez agrees not to sell or lease the property purchased until the youngest of his children is of legal age, unless authorized by the court.

Peru's National Coordinator of Human Rights will be responsible for the necessary follow-up to ensure compliance with the provisions of this clause.

ELEVENTH: CHANGES IN LAWS AND PUBLIC POLICIES ON REPRODUCTIVE HEALTH AND FAMILY PLANNING

The Peruvian State pledges to change laws and public policies on reproductive health and family planning, eliminating any discriminatory approach and respecting women's autonomy.

The Peruvian State also promises to adopt and implement recommendations made by the Ombudsman concerning public policies on reproductive health and family planning, among which are the following:

- a. Penalties for human rights violators and reparation for victims
 - 1) Conduct a judicial review of all criminal cases on violations of human rights committed in the execution of the National Program of Reproductive Health and Family Planning, to break out and duly punish the perpetrators, requiring them to pay the appropriate civil damages, including the State if it is determined to have some responsibility for the acts that gave rise to the criminal cases.

2) Review the administrative proceedings initiated by the victims and/or their family members, linked to the cases in the previous paragraph, which are pending or have concluded concerning denunciations of human rights violations.

b. Methods for monitoring and guaranteeing respect for human rights of health service clients

1) Adopt drastic measures against those responsible for the deficient pre-surgery evaluation of women who undergo sterilization, including health professionals in some of the country's health centers. Although the rules of the Family Planning Program require this evaluation, it is not being done.

2) Continuously conduct training courses for health personnel in reproductive rights, violence against women, domestic violence, human rights, and gender equity, in coordination with civil society organizations that specialize in these topics.

3) Adopt the necessary administrative measures so that that rules established for ensuring respect for the right of informed consent are scrupulously followed by health personnel.

4) Guarantee that the centers that offer sterilization surgery have proper conditions required by standards of the Family Planning Program.

5) Take strict measures to ensure that the compulsory reflection period of 72 hours is faithfully and universally honored.

6) Take drastic action against those responsible for forced sterilization without consent.

7) Implement a mechanism or channels for efficient and expeditious receipt and processing of denunciations of violation of human rights in the health establishments, in order to prevent or redress injury caused.

TWELFTH: LEGAL BASIS

This agreement is signed in accordance with the provisions of Articles 1, 2, and 48.1.f of the American Convention on Human Rights and Article 41 of the Regulations of the Inter-American commission on Human Rights; on Articles 2 (paragraphs 1 and 24, point 8), 44, 55, 205 and fourth final provision of Peru's Constitution; and on the provisions of Articles 1205, 1306, 1969, and 1981 of the Civil Code of Peru.

THIRTEENTH: INTERPRETATION

The meaning and scope of this agreement will be interpreted in accordance with Article 29 and 30 of the American Convention on Human Rights as applicable, and the principle of good faith. In case of doubt or disagreement between the parties on the content of this agreement, the Inter-American Commission on Human Rights shall resolve the interpretation. It shall also be responsible for monitoring the agreement's compliance; the parties shall report to it every three months on the status of compliance.

FOURTEENTH: HOMOLOGATION

The parties hereto agree to refer this Agreement for Friendly Settlement to the Inter-American Commission on Human Rights for confirmation and ratification of all aspects.

FIFTEENTH: ACCEPTANCE

The parties signing this agreement express their free and voluntary acceptance of and concurrence with each and every one of its clauses, stating for the record that it resolves the dispute and any claim regarding the international responsibility of the Peruvian State for violation of the human rights of Ms. María Mamérita Mestanza Chávez.

Signed with three copies in the City of Lima this twenty-sixth day of August of the year two thousand three.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

15. The IACHR reiterates that as provided in Articles 48.1.f and 49 of the Convention, this procedure is intended for "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention." [GDM1] Agreement to follow this procedure reflects the State's good will to comply with the purposes and objectives of the Convention by virtue of the *pacta sunt servanda* principle, according to which states must show good faith in honoring obligations assumed in treaties. It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention permits settlement of individual cases without recourse to litigation, and has demonstrated in the case of several countries that it is an important tool for solution that can be used by both parties.

16. The Inter-American Commission has closely followed development of the friendly settlement reached in this case. The Commission greatly appreciates the effort shown by both parties to reach a solution that is compatible with the objective and purpose of the Convention. As the Commission has said repeatedly, protection and promotion of women's rights is a priority for our hemisphere, in order that women may attain the full and effective enjoyment of their basic rights, especially equality, nondiscrimination, and living free from gender-based violence.

VI. CONCLUSIONS

17. On the basis of the preceding considerations, and by virtue of the proceeding envisioned in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the parties' efforts and its satisfaction with the friendly settlement agreement reached in this case in keeping with the objective and purpose of the American Convention.

18. Taking into account the considerations and conclusions expressed in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the Agreement for Friendly Settlement signed by the parties on August 26, 2003.

2. To continue following up and monitoring each and every point of the friendly settlement, and in this context to remind the parties of their obligation to submit reports to the IACHR every three months on compliance with this agreement.

3. To publish this report and include it in its annual report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.

[1] Pursuant to the provisions of Article 17(2)(a) of the Commission's Regulations, Commissioner Susana Villarán, of Peruvian nationality, did not participate in the consideration or decision of this case.