

OEA/Ser.L/V/II.  
Doc. 121  
9 June 2020  
Original: Spanish

**REPORT No. 111/20**

**CASE 12.674**

REPORT ON FRIENDLY SETTLEMENT  
MARCIO LAPOENTE DA SILVEIRA  
BRAZIL

Approved electronically by the Commission on June 9, 2020.

**Cite as:** IACHR, Report No. 111/20, Case 12.674. Friendly Settlement. Márcio Lapoente Da Silveira. Brazil. .

**REPORT No. 111/20**  
**CASE 12.674**  
**FRIENDLY SETTLEMENT**  
**MARCIO LAPOENTE DA SILVEIRA**  
**BRAZIL**  
**JUNE 9 2020<sup>1</sup>**

**I. SUMMARY AND RELEVANT PROCEDURAL ASPECTS OF THE FRIENDLY SETTLEMENT PROCESS**

1. On December 8, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition presented by Joss Brian Opie on behalf of Sebastiao Alves da Silveira and Carmen Lapoente da Silveira (hereinafter “The petitioners”), in which the international responsibility of the Federative Republic of Brazil (hereinafter “State” or “Brazilian State” or “Brazil”) was alleged, for the violation of the human rights contemplated in articles I (right to life, liberty, security and personal integrity) and XVIII (right to justice) of the American Declaration of the Rights and Duties of Man, as well as articles 8 (judicial guarantees) and 25 (judicial protection) in relation with articles 1 (obligation to respect) and 2 (obligation to adopt provisions of domestic law) of the American Convention on Human Rights, (hereinafter “Convention” or “American Convention”), and articles 1 (obligation to prevent and punish torture), 6 (effective measures to prevent and punish torture, cruel and inhuman treatment), 8 (guarantee of access to justice) and 9 (guarantee of compensation for victims of the crime of torture) of the Inter-American Convention against Torture, in the detriment of Márcio Lapoente da Silveira, cadet of the First Company of the Training Course of the Military Academy of Agulhas Negras of the Brazilian Army (hereinafter “alleged victim”), derived from his death as a consequence of having been subjected to excessive physical abuse by military officials.

2. On October 16, 2008, the Commission issued the Admissibility Report No. 27/08, in which it declared the petition admissible and the Commission’s competence to consider the petitioners’ claim of alleged violation of the rights contained in the articles. I and XVIII of the American Declaration, 8 and 25 of the American Convention, as well as articles 1, 6, 8 and 9 of the Inter-American Convention against Torture.

3. In December 2011 and January 2012<sup>2</sup>, the parties signed a friendly settlement agreement.

4. On May 5 of 2020, the petitioner requested the Commission, within the framework of the implementation of Resolution 3/20 on differentiated actions to address the procedural backlog in friendly settlement procedures, the approval and publication of the friendly settlement agreement reached in this case, reiterating its position on the lack of compliance with the measure of justice established in clause 14, in attention to the advanced age of the mother of the victim and at her request. Said information was forwarded to inform the State.

5. In this friendly settlement report, as established in Article 49 of the Convention and Article 40.5 of the Commission’s Regulations, a review of the facts alleged by the petitioner is made and the friendly settlement agreement signed in December 2011 and January 2012 by the petitioner and representatives of the Brazilian State is transcribed. Likewise, the agreement signed between the parties is approved and the publication of this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States is agreed.

**II. THE FACTS ALLEGED**

6. According to the petitioners’ allegations, young Márcio Lapoente da Silveira died on October 9, 1990, because of the torture to which he was subjected by state military officials. At the time of the events,

---

<sup>1</sup> Commissioner Flavia Piovesan, Brazilian national, did not participate in the discussion and decision in this case, pursuant to Article 17.2.a) of the IACHR Rules of Procedure.

<sup>2</sup> Date established by the parties when signing the Friendly Settlement Agreement.

the 18-year-old victim was a cadet in the First Company of the Officer Training Course of the "Academia Militar das Agulhas Negras" (AMAN) of the Brazilian Army.

7. The petitioners alleged that on October 9, 1990, at 5:15 a.m., approximately 283 cadets from the First and Third Companies met with 12 instructors, all senior officers of AMAN, to conduct training exercises in special techniques that consisted of participating in jungle operations. Despite the fact that the victim was found to be in poor physical condition, the lieutenant in charge would have ordered him to continue with the march and hit him on the face, abdomen, legs and buttocks. Faced with this situation, the petitioners alleged that the alleged victim had managed to get up and finish the exercise at approximately 6:00 in the morning. During the second part of the exercise, the alleged victim would have been extremely exhausted and disoriented, and passed out several times, before which he may have received the assistance of his companions. Despite this situation, he may have finished the instruction. The petitioners indicated that, in addition, the victim was kicked and insulted by a Lieutenant when he lost consciousness during the push-ups. Seeing that the young man was still inert, the same officer became upset and would have kicked him and thrown water and dirt at him. Eventually the victim's condition worsened and he started to convulse. Faced with this situation, the doctors accompanying the brigade injected him glucose and once again left him on the ground.

8. According to what the petitioners reported, between 8:30 and 9:00 that morning, the young Lapoente was transferred to the Unit's main health service, given pain relievers; he had a high fever and lack of response to stimuli. According to the petitioners, around 11:00 am that same morning, a doctor would have diagnosed him with symptoms of meningitis, which is why, an hour later; it had been decided to transfer him to the Army Central Military Hospital, which was approximately 150 kilometers away from the unit he was at, in the city of Rio de Janeiro. During the journey, the victim started to present cyanotic symptoms and, eventually, died around 2:00 in the afternoon.

9. According to the petitioners, the autopsy was carried out hours later and the doctor in charge pointed out to the victim's father that he had ruled out the hypothesis of the meningitis diagnosis as the reason for the death, but without specifying what the causes would have been. When the next of kin had access to see the victim's body, they noticed that he had presented serious injuries allegedly caused by blows.

10. The autopsy report carried out was not released to the victim's family until November 23, 1990. According to experts, the alleged victim had died as a result of the thermal shock caused by physical exercise, followed by a heart attack. The petitioners argued that, according to the autopsy report, only some of the injuries suffered by the victim would have been reported, without indication as to the cause of the injuries.

11. The petitioners indicated that, on October 10, 1990, an administrative proceeding had been instituted, which without clarifying the circumstances that led to the death of Cadet Lapoente, resulted in a disciplinary infraction by the Lieutenant in charge of the Brigade at the time of the facts, for which he only received a warning from his hierarchical superior.

12. According to the petitioners, on December 5, 1990, the military investigation was concluded and transferred to the Military Public Ministry, where the Lieutenant involved in the acts was formally accused of exercising violence against a subordinate (criminal act established in Article 175 of the Military Criminal Code). In addition, two doctors were accused of negligent conduct (article 212 of the Military Criminal Code). On April 22, 1992, the accused were acquitted, a decision that was appealed by the Military Public Ministry in relation to the Lieutenant, before which the Superior Military Court decided to revoke the acquittal and convict him and sentenced him to three months in prison, which was finally suspended for two years and on June 15, 1994 the case was ordered to be archived.

13. The petitioners alleged that on June 25, 1993, the next of kin of the alleged victim had initiated civil action No. 9300.137.840 against the Federal Government of Brazil and the Lieutenant involved in the events. On November 13, 2000, the Federal District Court of Rio de Janeiro ruled that the charges were dismissed. The State was found responsible, but only sentenced to pay funeral expenses and court costs. On December 18, 2000, the relatives of the alleged victim allegedly appealed the aforementioned decision and on March 30, 2006, the Federal Regional Court of the Second Region (TRF), ordered the Federal Government to

pay the victim's family the equivalent to the amount of wages that a Second Army Lieutenant would receive until turning 71 years of age, in addition to all the assets that the deceased would have received until the first month of retirement, with interests and adjustments in accordance to any monetary devaluation that may occur from the time of the events. On the other hand, the petitioners have indicated that the Court ordered that the State cover all the judicial costs and expenses incurred by the defendants and decided to include the Lieutenant as accused in the civil action for damages.

14. The petitioners alleged that, in 2007, the allegedly responsible Lieutenant and the Federal Union had filed appeals against the decision of the second instance court. On June 29 of that year, the victim's relatives also filed an extraordinary appeal before the Federal Superior Court, challenging the judgment of March 30, 2006. As of the date of the petition's presentation, the Brazilian justice system has not decided on the matter.

### **III. FRIENDLY SETTLEMENT**

15. In December 2011 and January 2012, the parties signed a friendly settlement agreement. The text of the friendly settlement agreement provided to the IACHR is included below:

#### **FRIENDLY SETTLEMENT AGREEMENT Case 12.674 – Márcio Lapoente da Silveira**

1. The Federative Republic of Brazil, hereinafter called "State", represented by the Union, through the Secretariat for Human Rights of the Presidency of the Republic (SDH/PR), the General Advocacy of the Union (AGU), the Ministry of Defense (MD), the Brazilian Army (EB) and the Ministry of Foreign Affairs (MRE), and the relatives of Márcio Lapoente da Silveira, represented by the lawyer Joss Opie - hereinafter called "petitioner", with the intervention of the attorney João Tanerredo, celebrate this Friendly Settlement Agreement, in order to conclude the case no. 12,674, pending before the Inter-American Commission on Human Rights of the Organization of American States (IACHR/OAS).

2. The case No. 12.674 refers to the death of Márcio Lapoente da Silveira, cadet of the Military Academy of Agulhas Negras of the Brazilian Army (AMAN), which occurred on October 9, 1990, during an Officer Training Course. The description of the case No. 12,674 is found in Report No. 72/08 of October 16, 2008.

3. The relatives initiated judicial action No. 93.0013784-0 on June 25, 1993, in order to seek reparation for moral and material damages derived from the death of Márcio Lapoente da Silveira. This legal action continues to be processed before the Brazilian justice.

4. The purpose of this Friendly Settlement Agreement is to establish measures to guarantee the reparation for the damages suffered by the relatives of Márcio Lapoente da Silveira, in response to their demands, as well as to prevent possible new violations and to close the case No. 12,674 after a comprehensive compliance of the provisions contained in this Agreement.

#### **I. ACKNOWLEDGEMENT OF RESPONSIBILITY**

5. The State acknowledges its responsibility in the present case for the violation of the rights to life and security of the person, in relation to Márcio Lapoente da Silveira.

6. The State acknowledges its responsibility for the violation of the obligation to guarantee and respect the rights enshrined in the American Convention on Human

Rights, in relation to the excessive delay in processing judicial action no. 93.0013784-0, filed by Márcio Lapoente da Silveira's next of kin.

7. The State recognizes its responsibility for the breach of its duty, stipulated in Article 2 of the American Convention on Human Rights, to adopt provisions of domestic law that guarantee and give effect to the rights and freedoms provided for in the Convention in relation to violations that are object of recognition in the present Agreement.

8. The acknowledgment of the State's responsibility in relation to the violation of the aforementioned human rights will take place at a public ceremony at the Agulhas Negras Military Academy, on a date to be set in due course, and will be attended by federal authorities and, if they so wished, the relatives of Márcio Lapoente da Silveira, their lawyers and guests. On that occasion, in addition to the recognition by the Brazilian State of its responsibility, the Brazilian Army will reiterate its condolences to the relatives of Márcio Lapoente da Silveira and will install the plaque mentioned in clause 10 of this agreement. The ceremony will be widely publicized by the Secretariat for Human Rights of the Presidency of the Republic.

9. The State, through the Secretariat for Human Rights of the Presidency of the Republic, will promote the publication of an announcement about the Agreement in ¼ page of a newspaper with wide national circulation. The Advocacy General of the Union and the Ministry of Defense will publish this Agreement on their Internet sites.

## **II. REPARATION MEASURES**

### **II.1. SYMBOLIC REPARATION**

10. On the occasion of the ceremony referred to in clause 8 of this Agreement, a plaque will be installed in tribute to the cadets who died in instructional activities during an Officer Training Course and a tribute to Márcio Lapoente da Silveira, as part of this Agreement. The plaque will be permanently installed in the facilities of the Academia Militar das Agulhas Negras. The event may have the presence of the relatives of the aforementioned cadets, if they so wish.

On the plate, the following text will be inscribed:

"Tribute from the Brazilian Army and the Academia Militar das Agulhas Negras to the cadets who died in instructional activities during the Officer Training Course".

"Tribute from the Brazilian Army and the Academia Militar das Agulhas Negras derived from the Friendly Settlement Agreement before the Inter-American Commission on Human Rights, in relation to Cadet Márcio Lapoente da Silveira."

### **II.2. PECUNIARY REPARATION**

11. The parties agree not to establish any pecuniary reparation in this Friendly Settlement Agreement and indicate in this regard that it will be decided in judicial action No. 93.0013784-0, which is pending before the 16th Federal Court of Rio de Janeiro. Therefore, the parties agree that there is no pecuniary provision in the present Agreement for the relatives of Márcio Lapoente da Silveira and this matter will be decided in the Brazilian domestic judicial instances and that this Agreement does not affect in any way the rights and obligations of the parties from the judicial action No. 93.0013784-0.

## **III. PREVENTIVE MEASURES**

12. The State will carry out studies and procedures with the aim of improving the legislation and the actions of the common and military courts.

13. The State undertakes to expand human rights education in the military training curriculum, in accordance with the National Defense Strategy approved on December 18, 2008 through Decree No. 6,703.

14. The State, through the Secretariat for Human Rights, undertakes to request the Council for the Defense of the Rights of the Human Person (CDDPH) to analyze 23 cases of alleged human rights violations that occurred in the context of the Armed Forces, of according to the study prepared by the Never Again [*Nunca Mais*] Torture Group (GTNM/RJ). The case of Márcio Lapoente da Silveira is one of those cases and will be included in the request to the CDDPH. The petitioner will provide the aforementioned study to the Secretariat of Human Rights, which will send it to the CDDPH within a maximum period of 90 (ninety) days after receiving it. The petitioner and the GTNM/RJ may supply the CDDPH with any other information that they consider pertinent.

15. The Brazilian State undertakes to carry out a study on the possibility of signing a cooperation agreement with the Inter-American Institute of Human Rights, the objective of which is to ensure, through a training course, that the training of assistants and officers of the Armed Forces of Brazil abide by international standards for the protection of human rights.

#### **IV. MONITORING MECHANISM**

16. The parties agree to send to the IACHR, as of the date of execution of this Agreement, semiannual reports on compliance with its terms, as well as to hold meetings to monitor compliance with its terms, mediated by the IACHR, with the same frequency.

17. The parties request the IACHR to approve this Friendly Settlement Agreement, with the adoption of the respective report in the terms established in Article 49 of the American Convention, once all the obligations set forth in the agreement have been met.

#### **IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

16. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this procedure aims to "reach a friendly solution to the matter based on respect for the human rights recognized in the Convention." The acceptance of carrying out this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by the *pacta sunt servanda* principle, by which the States must fulfill in good faith the obligations assumed in the treaties<sup>3</sup>. The Commission also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows the termination of individual cases in a non-contentious manner, and has demonstrated, in cases related to different countries, offering an important vehicle for settlement, which can be used by both parties.

17. The Inter-American Commission has followed the development of the friendly settlement reached in this case and highly values the efforts made by both parties during the negotiations to reach this friendly settlement that is compatible with the object and purpose of the Convention.

18. According to the Resolution 3/20 of the IACHR on differentiated actions to address the procedural delay in friendly settlement procedures, since the signing of the agreement, the parties will have two years to move forward towards the approval by the Inter-American Commission on Human Rights, except for duly qualified exceptions established by the Commission. In relation to those matters with a signed

<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.*

agreement and without homologation in which the foreseen term has expired, the Commission will determine its course of action taking into particular consideration the duration of the compliance phase, the antiquity of the petition and the existence of fluid dialogues between the parties and/or substantial progress in the compliance phase. In said Resolution, the Commission established that when evaluating the viability of the approval of the agreement, or the closure or maintenance of the negotiation process, the IACHR will consider the following elements: a) the content of the text of the agreement and whether it has a clause of full compliance prior to approval; b) the nature of the agreed measures; c) the degree of compliance thereof, and in particular the substantial execution of the commitments assumed; d) the will of the parties in the agreement or in a subsequent written communication; e) its suitability with human rights standards and f) the observance of the State's will to fulfill the commitments assumed in the friendly settlement agreement, among other elements.<sup>4</sup>

19. In attention to the eight years that have elapsed since the signing of the friendly settlement agreement, which is a petition filed 15 years ago, on December 8, 2004, and the petitioner asked for its approval, it is up to determine the course of action of this matter and assess the viability of the approval of the agreement in light of the objective criteria established by the Commission in Resolution 3/20.

20. Regarding the content of the text of the agreement, the Commission observes that according to what is established in point IV of the agreement on follow-up mechanism of the friendly settlement agreement, the parties request the IACHR to ratify the agreement and its homologation when all the obligations provided therein.

21. Regarding the nature of the measures agreed upon, the Commission observes that the agreement establishes instant enforcement measures such as the performance of an act of acknowledgment of responsibility, the installation of a plaque in memory of the victim, the publication of a press release on the agreement in a newspaper of wide national circulation and the request for investigation of the Human Rights Council on the facts of the case. Likewise, the inclusion of successive execution clauses regarding human rights training for military forces and the carrying out of studies to improve legislation are observed.

22. Regarding the degree of compliance with the agreement, the Commission assesses the progress made in relation to each of the clauses of the agreement.

23. The Inter-American Commission values declarative clauses 5, 6 and 7 in which the Brazilian State recognizes international responsibility regarding violations of human rights to life, personal integrity, judicial guarantees and judicial protection in relation to the obligation of the State to adopt provisions that guarantee full access to Human Rights enshrined in Article 2 of the American Convention on Human Rights.

24. Regarding point 8 of clause I, on the performance of an act of acknowledgment of responsibility and publication of a press release, as indicated by the State, on October 8, 2012, said ceremony of recognition of international responsibility was held and reiteration of condolences to the relatives of Cadet Márcio Lapoente da Silveira, which took place in the "*Pavilhão do Parque de Instrução do Básico da Academia Militar das Agulhas Negras*", located in the Resende Municipality of the State of Rio de Janeiro. The parents of the victim, as well as senior officials of the Brazilian Army and members of civil society organizations participated in the ceremony. The State also reported that on October 4, 2012, the Secretariat for Human Rights of the Presidency of the Republic, published a note on its website with the aim of broadcasting the date, place and reason for the public ceremony, as well as provided a link to access the text of the friendly settlement agreement. On March 21, 2013, the petitioner confirmed the execution of the act, considering that this part of the agreement had been fulfilled. Taking into consideration the information provided by the parties, the Commission considers that point 8 of clause I of the agreement is fully complied with and so it declares it.

25. In relation to point 9 of clause I, on the publication of the agreement, the State reported that on October 22, 2012, through the Secretariat for Human Rights of the Presidency of the Republic, the friendly settlement agreement was published in the Official Gazette of the Union. Furthermore, on October 24, 2012,

---

<sup>4</sup> In this regard see, IACHR, Resolution 3/20 on differentiated actions to address the procedural delay in friendly settlement procedures, approved on April 21, 2020

the State published a summarized version of the agreement, which was agreed upon with the petitioner on ¼ page of the O Globo newspaper, with wide national circulation. On March 21, 2013, the petitioner confirmed the publication of the agreement, considering that this part of the agreement had been fulfilled. Taking into consideration the information provided by the parties, the Commission considers that point 8 of clause I of the agreement is fully complied with and so it declares it.

26. In relation to point 10 of clause II, related to the elaboration and installation of a plaque in honor of Márcio Lapoente da Silveira and the other cadets who died during military training, it was unveiled during the ceremony of recognition of international responsibility, on October 8, 2012. In this regard, the state provided an extensive photographic and press record. The petitioner confirmed, on March 21, 2013, compliance with this part of the agreement. Taking into consideration the information elements provided by the parties, the Commission considers that this end of the agreement is fully complied with and so it declares it.

27. In relation to point 11 of clause II, on financial compensation, the parties agreed not to establish any pecuniary reparation in the friendly settlement agreement signed and that such reparation be established in the framework of judicial case no 93.0013784-0 that is in course. In this regard, on March 22, 2013 and April 19, 2020, the petitioner reiterated that he considers that this end of the FSA is in breach since it considers that the State, instead of taking measures to end the litigation and that the family of the victim can collect the compensation that would derive from said process, has filed appeals that have delayed the judicial action. In this regard, on September 28, 2018, the State indicated that the judicial case is still pending within the ordinary courts, and that what the petitioner alleges is not part of the friendly settlement agreement. In the light of the information provided by the parties, and taking into account that at the time of the signing of the friendly settlement agreement, the parties decided that the economic compensation would be defined internally and that, eight years have elapsed without said jurisdiction establishing a fair compensation, the Commission as a guarantor of human rights in the framework of friendly settlement processes, considers that it must continue with the follow up of this part of the agreement, until a decision is made on the economic compensation, within that framework, according to the friendly agreement.

28. In relation to point 12 of clause III, on preventive measures, particularly regarding the commitment to improve legislation and the performance of civil and military justice on human rights issues, in a report presented by the State on September 28, 2018, it is detailed that the pertinent consultations were made and received six recommendations on how to carry out military training and prevent risky situations, from the Military Public Ministry. Among the recommendations mentioned, the need for a doctor to accompany the cadets during all the exercises was highlighted. On the other hand, in the same report, the State indicated a series of measures that were taken at the legislative level, including a list of 17 legislative projects that would be pending in Congress on issues of human rights and humanitarian law both, in the field of the armed forces and in the civil system, and some of which reform the military justice system. Said information was forwarded to the petitioner on January 28, 2019. The State also provided the Brazilian Army Bulletin No. 6/2016, which approved the integration of international humanitarian law into the actions of the Brazilian Army as a guideline.

29. In this regard, the petitioner reiterated on April 19, 2020 the position expressed on April 22, 2015, indicating that, in his opinion, the clause is not fulfilled, however, the petitioner did not explain what said non-compliance consists of, and reiterated that it constitutes a measure of continued compliance. Given the plurality of measures reported by the State, the Commission considers that this part of the agreement is fully complied with and so it declares it.

30. In relation to point 13 of clause III, on preventive measures, specifically regarding the commitment to expand the curricular content in military training courses, in its report of September 28, 2018, the State indicated that, in 2012, the Professional Ethics with a Focus on Human Rights Program was created and was initially implemented in a specific group of military personnel and later, in 2013, it was expanded to military training schools. According to the State, this program was updated in 2015 and the updated programs and bibliographies were informed. The State reported year by year the number of trained personnel between 2013 and 2017, being 112,981 (one hundred twelve thousand nine hundred and eighty-one) in 2013, 174,205 (one hundred seventy-four thousand two hundred and five) in 2014, 30,125 (thirty thousand one hundred and

twenty-five) in 2015, 19,532 (nineteen thousand five hundred and thirty-two) in 2016 and 13,670 (thirteen thousand six hundred and seventy) in 2017, adding a total of 350,513 (three hundred fifty thousand five hundred and thirteen) military personnel from different branches of the Brazilian Army who were trained by this means. The State also provided the syllabi for the corresponding courses in the subjects of history and general theory of human rights; international principles of human rights; the instruments and systems for the protection of human rights, including the universal system and the inter-American system; foreign policy on human rights and the international obligations of the State; the jurisprudence of the Inter-American Court of Human Rights with emphasis on the cases of Brazil; the national system for the protection of human rights and the mechanisms for promoting and protecting citizens and the dignity of the human person at the domestic level; crimes related to human rights violations, including torture and genocide; the regulations applicable to operations within the framework of the preservation of public order; international humanitarian law and the international obligations of the Brazilian State in said framework; and the Rome Statute and the International Criminal Court. The State also provided a photographic record of human rights training to the military forces.

31. Said information was forwarded to the petitioner on January 28, 2019. In this regard, the petitioner reiterated on April 19, 2020, the position expressed on April 22, 2015, indicating that, in his opinion, the clause was not fulfilled, however, did not explain what this breach consists of. In light of the information presented by the parties, the Commission considers that this part of the agreement has been fully complied with and so it declares it.

32. In relation to point 14 of clause III, on the State's commitment to request the Council for the Defense of the Rights of the Human Person (CDDPH) to analyze 23 cases of alleged human rights violations that occurred within the scope of the Armed Forces, from a study prepared by the Never Again Torture Group (GTNM/RJ), the State reported that on April 5, 2013, the Council for the Defense of Human Rights approved the Resolution No. 3 that instituted the working group with the aim of analyzing 23 cases of complaints of human rights violations that occurred in the field of the Armed Forces, according to the study prepared by the Torture Never Again do Rio de Janeiro Group and making recommendations to the various competent bodies in the matter. In this regard, it should be noted that the State provided a simple copy of the work plan for said group. On August 13, 2013, the meeting to form the Working Group was held, in which representatives from various areas of the government participated. On October 4, 2014, the working group made visits to the institutions of the three armed forces of the Brazilian State to present the 23 cases and establish a space for dialogue with the Army, Air Force, and Navy. The State reported that, in June 2014, the Council for the Defense of the Rights of the Human Person was transformed into the National Council for Human Rights, therefore, transferring legislative powers to elaborate legislative proposals to the newly created body. As reported by the State, on February 6, 2015, the second Regular Meeting of the HRC was held in which the continuity of the Lapoente Soldier Working Group was decided. The State provided a copy of the minutes of said meeting, which accounts for the information provided.

33. In this regard, the petitioner indicated in communications of April 19 and May 5, 2020 that he understood that said clause is in breach since he does not have information regarding the operation of the Working Group after its dissolution in 2014. In the same communication proposes that the National Human Rights Council reactivates the Lapoente Working Group, with the same structure, powers and members that it originally had, and that said state body support the Group to complete the work it was carrying out. In this sense, the petitioner affirms that the objective of the clause was to achieve an impartial and independent investigation of the 23 cases, including the Lapoente case, and that the objective was being achieved until its dissolution in 2014. Although the petitioner stated the position of the victim's mother to move forward with the approval of the agreement, reiterated the request to the Commission that the measure established in clause 14 be kept under monitoring.

34. In this regard, the Commission the Commission recalls that there is a reiterated standard in the jurisprudence of the Inter-American system according to which the military criminal jurisdiction is not the competent jurisdiction to investigate and judge and sanction the authors of human rights violations, so the Commission will take into account said standard when time of checking the fulfillment of the measure. Additionally, the Commission considers that the State has not provided sufficient information on the investigations carried out in relation to the case outside the military criminal jurisdiction, nor has it informed

about the continuation of the activities of the Lapoente Working Group after 2015. Based on the information provided by the parties, the Commission considers that this part of the agreement is partially fulfilled and it declares it, and takes the opportunity to urge the State of Brazil to continue with the investigations carried out at the domestic level by the Lapoente Working Group and to report on said activities as soon as possible in order to assess compliance with the measure.

35. In relation to point 15 of clause III, regarding the commitment to study the possibility of signing a cooperation agreement with the Inter-American Institute of Human Rights with the aim of training the members of the Armed Forces in order to comply with the International human rights standards, the State reported that although it was not possible to sign the agreement, the Armed Forces have sent military personnel from different areas to carry out training abroad with various recognized institutions. In the report of September 28, 2018, the Brazilian State reported on seven international training courses in which officers of the Armed Forces participated in and attached a list where it appears that 25 high-ranking officers participated in these trainings in various countries. On the other hand, it also reported that 7 soldiers participated in courses at the Inter-American Institute of Human Rights. Said information was forwarded to the petitioner on January 28, 2019. In this regard, the petitioner reiterated April 19, 2020, the position expressed on April 22, 2015, indicating that, in his opinion, the clause was not complied with. However, did not explain what said non-compliance consists of. In light of the information provided by the parties, the Commission considers that with the actions deployed by the State regarding training, the spirit and purpose of the agreed measure were preserved, even when the commitment was exhausted by exploring the viability of sign the agreement with the Inter-American Institute of Human Rights. Therefore, the Commission considers that this part of the agreement is fully complied with and so it declares it.

36. Finally, on this aspect of the analysis of the case, it should be noted that the IACHR considers that the rest of the content of the friendly settlement agreement is declaratory in nature.

37. Regarding the will of the parties in the agreement or in a subsequent written communication, on May 5, 2020, the petitioner indicated that after consulting with the victim's mother, considering that she is an adult over the age of 75 and her delicate health situation, the 27 years since the events and the 8 years that have passed after the signing of the agreement, the forecast of an eventual contentious process to decide to close the friendly settlement, and the unwillingness of the authorities to continue the investigation, the position of the petitioner is in favor of the approval of the agreement, and asked the Commission to keep the measure established in clause 14 under supervision. In this regard, the petitioner indicated that "after so much suffering and so many years without resolution, she feels that she can no longer do it and cannot bear it any longer. She believes that she has to take care of her health, [and] although she feels a very strong sense of injustice and sadness, without limits, Doña Carmen's position in all these circumstances is that the friendly settlement agreement must be ratified. Even with this hopelessness, Mrs. Carmen acknowledges that it was only through the processes of the IACHR that she obtained the recognition of the Brazilian State responsible for the death of Márcio and the other commitments assumed in the friendly settlement agreement (including those of clause 14). Without the IACHR, none of this would have happened. [...]. If the IACHR's decision is to ratify the friendly settlement agreement, the petitioners request the IACHR to take very active supervisory measures to encourage full compliance with the agreement, including working meetings on it. It is hoped that the IACHR will again be able to assist in the realization of justice in this case." For its part, the State has remained silent regarding the approval of the agreement.

38. Regarding the adequacy of the agreement with the standards on human rights, it is observed that the content of the FSA is consistent with the standards on human rights, since elements were integrated as measures of satisfaction and non-repetition, 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 regarding the reparation of victims of human rights violations.

39. Finally, in relation to the State's will to comply with the ASA, it should be noted that, according to the analysis of the case, it is observed that there has been a commitment on the part of the State in complying with one of the clauses 6 clauses of the agreement of friendly settlement.

40. Therefore, the Commission considers that points 8 (act of acknowledgment of international responsibility) and 9 (publication of the friendly settlement agreement) of clause I; as well as point 10 clause II (plaque honoring the deceased cadets); and points 12 (improvement of legislation and Common and Military Justice), 13 (expansion of human rights study programs in the field of military training) and 15 (cooperation for training courses in the armed forces on human rights protection mechanisms) of clause III, are fully fulfilled and it so it declares it. Declare that point 14 of clause III of the agreement (creation of a working group to investigate violations of human rights within the armed forces) has been partially complied with. Lastly, the Commission considers that clause 11 on economic compensation should continue to be monitored, according to the analysis contained in this report. In this sense, the implementation of the friendly settlement agreement has reached a partial substantial level.

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To approve the terms of the agreement signed by the parties in December 2011 and January 2012<sup>5</sup>.

2. To declare full compliance of points 8 (act of acknowledgment of international responsibility) and 9 (publication of the friendly settlement agreement) of clause I; as well as point 10 clause II (plaque honoring the deceased cadets); and points 12 (improvement of legislation and Common and Military Justice), 13 (expansion of human rights study programs in the field of military training) and 15 (cooperation for training courses in the armed forces on human rights protection mechanisms) of clause III of the friendly settlement agreement, according to the analysis contained in this report.

3. To declare that point 14 of clause III of the agreement (creation of a working group to investigate violations to human rights within the armed forces) has been partially complied with, and continue with its follow up, according to the analysis contained in this report.

4. To continue with the follow-up to point 11 of clause II, on economic compensation, according to the analysis contained in this report.

5. To declare that the friendly settlement agreement has reached a partial substantial level of execution, according to the analysis contained in this report.

6. 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 the 9th day of the month of June of 2020. (Signed): Joel Hernández García, President; Antonia Urrejola, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón, Members of the Commission.

<sup>5</sup> Date established by the parties when signing the Friendly Settlement Agreement.