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REPORT No. 66/22
CASE 13.964
FRIENDLY SETTLEMENT REPORT

DARÍO GÓMEZ CARTAGENA AND FAMILY
COLOMBIA

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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On March 3, 2009, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Roberto Fernando Paz Salas, (hereinafter "the petitioners" or "the petitioner party"), alleging the international responsibility of the Republic of Colombia (hereinafter, "Colombia" or "the State") for the violation of the rights enshrined in articles 4 (right to life), 8 (fair trial) and 25 (guarantees of judicial protection) of the American Convention on Human Rights, (hereinafter "Convention" or "American Convention" or "ACHR"), for the events that occurred on May 16, 1999 in the village of Nutibara, municipality of Frontino, Antioquia, and which led to the alleged murder of Darío Gómez Cartagena allegedly by a presumed paramilitary group, as well as the subsequent lack of effective investigation of the facts and punishment of those responsible.

2. On April 4, 2020, the Commission issued Admissibility Report No. 91/20, in which it declared the petition admissible and declared its competence to hear the claim filed by the petitioner in relation to Articles 4 (right to life), 5 (right to humane treatment), 8 (fair trial) and 25 (guarantees of judicial protection) in accordance with articles 1.1 (obligation to respect) and 2 (obligation to adopt provisions of domestic law) of the American Convention.

3. On April 13, 2021, the parties entered a memorandum of understanding to pursue a friendly settlement agreement (hereinafter "FSA" or "agreement"). Therefore, on June 10, 2021, the Commission formally notified the parties of the start of the negotiation process, which was materialized with the signing of the FSA, on December 23, 2021, in the city of Bogotá D.C. Subsequently, on December 28, 2021, the State requested approval of the agreement, which was confirmed by the petitioner on February 14, 2022.

4. This friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Commission's Rules of Procedure, contains a summary of the facts claimed by the petitioners and transcribes the FSA, signed on December 23, 2021, by the petitioner party and the Colombian State. Likewise, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. THE ALLEGED FACTS

5. The petitioner alleged that, on May 16, 1999, a group of paramilitaries presumably entered the district of Nutibara, belonging to the Municipality of Frontino, in the Department of Antioquia, and violently abducted Mr. Darío Gómez Cartagena from his business and allegedly shot him directly in the head, causing his death.

6. The petitioner stated that an investigation had been conducted by the Antioquia Regional Prosecutor's Office, which had been temporarily suspended and archived on November 29, 1999, without the authors having been individualized and identified. Likewise, the Prosecutor's Office indicated that there were no new elements of judgment that would allow the proceeding to continue or to issue an inhibitory resolution.

¹ In accordance with article 17.2.a) of the IACHR Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not take part in the discussion and decision of the present case.

7. Additionally, the petitioner reported that, on May 6, 2001, the next of kin of Mr. Darío Gómez Cartagena had filed a claim for direct reparation before the administrative litigation jurisdiction, which had been rejected, on December 5, 2007, by the Seventh Decision Chamber of the Administrative Litigation Court of Antioquia. This resolution was allegedly appealed and dismissed on May 30, 2008, by the Third Section of the Administrative Litigation Chamber of the Council of State.

8. Finally, the petitioner alleged the negligence of the Colombian State in the investigation of these facts, which led to the perpetuation of a situation of impunity as no one was convicted for the death of Mr. Darío Gómez Cartagena.

III. FRIENDLY SETTLEMENT

9. On December 23, 2021, in the city of Bogotá D.C., the parties signed a friendly settlement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT CASE 13.964 DARÍO GÓMEZ CARTAGENA AND FAMILY

On December twenty-third (23), 2021, met in the city of Bogotá D.C., on the one hand, Ana María Ordoñez Puentes, Director of the Directorate of International Legal Defense of the National Agency for Legal Defense of the State, who acts with due authorization in name of and on behalf of the Colombian State, hereinafter the “State” or the “Colombian State,” and on the other hand the Peace Compensation Organization, represented by Dr. Roberto Fernando Paz Salas, who acts in his capacity as representative of the victims, hereinafter the “petitioners”, who have decided to sign this Friendly Settlement Agreement in the framework of Case No. 13,964 Darío Gómez Cartagena and Family, currently before the Inter-American Commission on Human Rights.

FIRST SECTION: CONCEPTS

For the purposes of this Agreement, the following terms shall be interpreted as:

IACHR or Inter-American Commission: Inter-American Commission on Human Rights.

Moral damage: Injurious effects of the facts of the case that do not have economic or patrimonial character, which are manifested through the pain, affliction, sadness, grief and anxiety of the victims.

Non-economic damage: Includes both the suffering and afflictions caused to the victims, the undermining of very significant values for people, as well as the alterations, of a non-economic nature, in the conditions of existence of the victim or her family².

State or Colombian State: In accordance with Public International Law, it will be understood that it is the signatory subject of the American Convention on Human Rights, hereinafter “American Convention” or “ACHR”.

² I/A Court H.R., Case of Caesar v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of March 11, 2005. Series C No. 123, para. 125.

Satisfaction measures: Non-economic measures that are intended to seek the recovery of the victims of the damage that has been caused to them. Some examples of this modality of measures are: public knowledge of the truth and acts of apology.

Parties: State of Colombia, next of kin of the victim, as well as their representatives.

Acknowledgment of responsibility: Acceptance of the facts and human rights violations attributed to the State.

Integral reparation: All those measures that objectively and symbolically restore the victim to the state prior to the commission of the damage.

Representatives of the victims: Peace Compensation Organization.

Friendly Settlement: Alternative conflict resolution mechanism, used for a peaceful and consensual settlement before the Inter-American Commission.

Victims: Family members of Darío Gomez Cartagena.

SECOND SECTION: BACKGROUND BEFORE THE INTER-AMERICAN HUMAN RIGHTS

1. On March 3, 2009, the IACHR received a petition filed by Dr. Roberto Fernando Paz Salas, in which he indicated that on May 16, 1999, a group of paramilitaries who raided the village of Nutibara, in the municipality of Frontino-Antioquia, abducted Mr. Darío Gómez Cartagena, from his business in a violent way and shot him directly in the head causing his death in front of bystanders.
2. Likewise, the petitioners stated that the investigation of the Antioquia Delegate Sectional Prosecutor's Office was suspended and temporarily archived on November 29, 1999, indicating that the individualization and identification of the perpetrators had not been achieved and that there were no new elements of judgment that would allow the process to continue or to issue an inhibitory resolution.
3. The victim's relatives filed a petition for direct reparation on May 6, 2001, which was rejected on December 5, 2007, by the Seventh Decision Chamber of the Administrative Litigation Court of Antioquia.
4. Through Admissibility Report No 91/20 of April 4, 2020, the Inter-American Commission on Human Rights, declared the petition admissible, in relation to the rights recognized in articles 4 (right to life), 5 (right to humane treatment), 8 (fair trial) and 25 (guarantees of judicial protection) in accordance with Articles 1.1 and 2 of the American Convention.
5. The representatives of the victims informed to the State their intention to initiate a process to seek a friendly settlement, for which, after a meeting, the parties decided to sign a Memorandum of Understanding in order to begin the process of seeking a friendly settlement in this case.
6. The Memorandum of Understanding for the pursuit of a friendly settlement was signed on April 13, 2021.

7. In the following months joint meetings were held between the parties in order to analyze the reparation measures to be included in the Friendly Settlement Agreement that is signed today.

THIRD SECTION: BENEFICIARIES

The Colombian State recognizes the following individuals as victims for the present agreement:

Name	Citizenship Document	Relationship
Dora Cecilia Urrego Urrego	[...]	Wife
Juan David Gómez Urrego	[...]	Son
Gustavo Alonso Gómez Cartagena	[...]	Brother
Sandra Cecilia Gómez Cartagena	[...]	Sister
Elizabeth Gómez Cartagena	[...]	Sister
Claudia Patricia Gómez Cartagena	[...]	Sister
Henry Alberto Gómez Cartagena	[...]	Brother
Edith María Gómez Cartagena	[...]	Sister
Gloria Emperatriz Gómez Cartagena	[...]	Sister
José Alejandro Gómez Cartagena	[...]	Brother
Fabio Enrique Gómez Cartagena	[...]	Brother
Jhon Fredy Gómez Cartagena	[...]	Brother

The victims recognized in this Friendly Settlement Agreement will benefit as long as they prove their relationship by blood and affinity with respect to Mr. Darío Gomez Cartagena.

In addition, the victims that will benefit from this Friendly Settlement Agreement shall be those that were alive at the time of the facts that victimized them³ and that remain alive at the time that this Agreement is signed.

FOURTH SECTION: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility for the violation of the rights recognized in articles 8 (fair trial) and 25 (guarantees of judicial protection) of the American Convention on Human Rights in relation to article 1.1. of the same instrument, to the detriment of the next of kin of Mr. Darío Gomez Cartagena, due to the lack of diligence in the investigation of the events that occurred.

FIFTH SECTION: SATISFACTION MEASURES

The Colombian State commits to carry out the following satisfaction measures:

i. Act of acknowledgment of responsibility:

The Colombian State will hold a Public Act of Acknowledgment of Responsibility, virtually, with the participation of the relatives of Mr. Darío Gomez Cartagena and his representatives. The act will be carried out in accordance with the acknowledgment of responsibility set out in this Agreement.

³ This, in line with the case law of the Inter-American Court of Human Rights. See, I/A Court H.R., Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270., para. 425.

This measure will be in charge of the National Legal Defense Agency of the State.

ii. Publish Report on Article 49.

The Colombian State will publish the relevant sections of the friendly settlement report once it is approved by the Inter-American Commission, on the website of the National Agency for Legal Defense of the State, for a term of six (6) months.

SIXTH SECTION: REPARATION MEASURES

The State undertakes to start the process of Law 288 of 1996 “Through which instruments are established for the compensation of damage to the victims of human rights violations by virtue of the provisions of certain international human rights bodies”, once this friendly settlement agreement is homologated through the Report foreseen in Article 49 of the American Convention on Human Rights, with the purpose of repairing the damages caused to the next of kin of the victims as a consequence of the effects generated by the events of the present case.

The National Legal Defense Agency of the State will be the entity in charge of following the process of Law 288 of 1996.

For purposes of compensation, the criteria and amounts recognized by the current case law of the Council of State.

SEVENTH SECTION: HOMOLOGTION AND SUPERVISION

The parties request the Inter-American Commission that it homologate and supervise this Agreement.

Having read this Agreement and being the parties aware of its legal content, it is signed on December Twenty Third (23), 2021.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

10. The IACHR reiterates that, in accordance with articles 48.1.f and 49 of the American Convention, this procedure has the purpose of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention”. The consent to undertake this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the *pacta sunt servanda principle*, by which the States must perform in good faith the obligations that they assume in treaties⁴. 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 shown, in cases involving several countries, to offer an important solution vehicle, which can be used by both parties.

11. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

12. Pursuant to the provisions of the seventh section of the friendly settlement agreement, and the request of the parties for the Commission to issue the report contemplated in Article 49 of the

⁴ Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), Artículo 26: “**Pacta sunt servanda**”. *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

American Convention, it is at this time required that compliance with the commitments established in this instrument be assessed.

13. In this regard, the Commission considers that the first section (Definitions), second section (Background at the Inter-American Human Rights System), third section (Beneficiaries) and fourth section (Acknowledgment of Responsibility) of the agreement are declaratory in nature and therefore it is not appropriate to supervise their compliance.

14. The Inter-American Commission values the fourth declarative section, corresponding to the Acknowledgement of the International Responsibility of the Colombian State for the violation of the rights enshrined in the articles in Articles 8 (fair trial) and 25 (guarantees of judicial protection) of the American Convention on Human Rights, to the detriment of the next of kin of Mr. Darío Gómez Cartagena, for the events that occurred on May 16, 1999.

15. In view of the fact that the parties have decided to proceed with the approval of the agreement prior to the implementation of the measures, the Commission considers that clauses (i) (act of acknowledgment of responsibility) and (ii) (publication of the article 49 report) of the fifth section, as well as the sixth section (compensation measures) are pending compliance and so declares it as such. In this regard, the Commission urges the parties to present detailed information on the progress made in complying with each of the commitments established in the FSA as soon as possible.

16. Finally, the Commission reiterates that the rest of the content of the friendly settlement agreement is declaratory in nature, so it will continue to monitor the implementation of the aforementioned enforcement sections, which have not yet achieved full compliance.

V. CONCLUSIONS

1. Based on the foregoing considerations and by virtue of the procedure established 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 with the achievement of a friendly settlement in this 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 developed 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 December 23, 2021.

2. To declare pending compliance clauses (i) (act of acknowledgement of responsibility) and (ii) (publication of the Article 49 report) of the fifth section, as well as the sixth section (compensation measures) of the Friendly Settlement Agreement in accordance with the analysis contained in this report.

3. To continue with the supervision of the commitments established in clauses (i) (act of acknowledgment of responsibility) and (ii) (publication of the Article 49 report) of the fifth section, as well as in the sixth section (compensation measures) of the Friendly Settlement Agreement, in accordance with the analysis contained in this report and for this purpose, to remind the parties of their commitment to report periodically to the IACHR on their compliance.

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

Approved by the Inter-American Commission on Human Rights on May 10, 2022. (Signed): Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice President; Margarete May Macaulay, Second Vice President; Esmeralda E. Arosemena de Troitiño; Joel Hernández Garcia and Roberta Clarke Members of the Commission.