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REPORT No. 336/21
CASE 13.571
FRIENDLY SETTLEMENT REPORT

CARLOS MARIO MUÑOZ GÓMEZ
COLOMBIA

Electronically approved by the Commission on November 22, 2021.

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NOVEMBER 22, 2021

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On November 4, 2010, the Inter-American Commission on Human Rights (hereinafter “Commission”, “Inter-American Commission” or “IACHR”), received a petition presented by Oscar Darío Villegas Posada, (hereinafter “the petitioner” or “the petitioner party”), in which the international responsibility of the Republic of Colombia (hereinafter “Colombia” or “the Colombian State”) was alleged for the violation of the rights enshrined in Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 22 (freedom of movement and residence) and 25 (judicial protection) of the American Convention, as well as of Articles I, XI, and XVIII enshrined in the American Declaration of the Rights and Duties of Man, to the detriment of Mr. Carlos Mario Muñoz Gómez. The foregoing due to the arrest, disappearance and subsequent extrajudicial execution of Mr. Carlos Mario Muñoz Gómez by members of the National Police, as well as the lack of expediency in the investigations of these events and the lack of comprehensive reparation to the next of kin of Mr. Muñoz Gómez.

2. On October 18, 2016, the Commission notified the parties of the decision to defer the treatment of the admissibility of the case until the analysis on the merits of the case, in accordance with Article 36 (3) of its Rules of Procedure and the Resolution 1/16 on measures to reduce procedural backlog.

3. On July 23, 2019, the parties met in the city of Bogota, and signed a memorandum of understanding, by means of which they committed to starting a friendly settlement process and to working through joint meetings to build the formulas for the friendly settlement. Subsequently, on August 2, 2019, the parties jointly informed the Commission of their willingness to initiate a friendly settlement procedure and presented a work schedule to advance in this way.

4. On March 4, 2021, the parties signed a friendly settlement agreement in the city of Bogota, DC, and subsequently, on July 13, 2021, the parties submitted a joint report to the Commission, regarding progress in compliance with the friendly settlement agreement and jointly requested its approval.

5. In this friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Rules of Procedure of the IACHR, a review is made of the facts alleged by the petitioners and the friendly settlement agreement signed on March 4, 2021 by the petitioner party and the representatives of the state of Colombia 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 upon.

II. THE FACTS ALLEGED

6. According to the petitioners' allegations, on October 29, 1990, in the Municipality of Puerto Boyacá, Carlos Mario Muñoz Gómez and his companion, Jorge Alberto Restrepo Correa, were intercepted by two agents of the National Police, who took them to the Puerto Boyacá Municipality Police Station or Command, where they were held for investigation without a court order and where they were last seen. According to the petitioners' allegations, at the time of their arrest Messrs. Muñoz Gómez and Restrepo Correa were travelling in a vehicle owned by Mr. Muñoz Gómez, which was allegedly confiscated.

7. As indicated by the petitioners, Mr. Carlos Mario Muñoz Gómez commercialized the products of his lithography company throughout the national territory, for which he had to travel to various municipalities and, more frequently, to the municipalities of the Magdalena Medio, the place where the events

would have occurred. His relatives, having no news of his whereabouts, went to the Magdalena Medio area, where they learned of the arrest of Mr. Muñoz Gómez who was with Mr. Jorge Restrepo in the municipality of Puerto Boyacá. However, they would not have been able to locate the whereabouts of his relative. Likewise, the petitioners indicated that during the search for Mr. Muñoz Gómez, members of the National Police of the municipality of San Luis, Antioquia, gave the vehicle in which Mr. Muñoz Gómez and his companion were travelling at the time of their arrest on October 29, 1990, to their relatives, without providing any information on the whereabouts of Messrs. Muñoz Gómez and Jorge Restrepo or the reasons for their arrest.

8. Regarding the disciplinary investigations, on October 4, 1993, the Office of the Delegate Attorney for the Defense of Human Rights confirmed its own decision adopted by resolution No. 014 of 1993, in which it decided to sanction Mr. Ruperto Gallego Muñoz, an agent of the Puerto Boyacá National Police, with a request for dismissal (absolute separation from office) for having been found responsible for the events surrounding the death of Mr. Carlos Mario Muñoz Gómez.

9. On November 15, 1994, the Second Multiple jurisdiction Family Court of Bello, Antioquia, declared the presumed death of Mr. Carlos Mario Muñoz Gómez, a decision that was confirmed on June 6, 1995, by the Superior Court of Medellín, family chamber, which reached this instance by consultation. However, in the criminal sphere, the Office of the Attorney General of the Nation did not carry out any investigation to clarify the facts surrounding the forced disappearance and subsequent alleged death of Messrs. Carlos Mario Muñoz Gómez and Jorge Alberto Restrepo Correa.

10. On February 3, 2009, the Eighth Decision Chamber of the Administrative Court of Antioquia, issued a judgment declaring the responsibility of the State (Ministry of Defense and National Police) for the forced disappearance of Carlos Mario Muñoz Gómez. Said decision would have been contested by the plaintiffs on February 20, 2009 and would have been pending a ruling since December 3, 2018.

III. FRIENDLY SETTLEMENT

11. On March 4, 2021, the parties signed a friendly settlement agreement. The text of the friendly settlement agreement establishes the following:

FRIENDLY SETTLEMENT AGREEMENT CASE 13.571 CARLOS MARIO MUÑOZ GÓMEZ AND OTHERS

On March 4, 2021 in the city of Bogota DC, Ana María Ordóñez Puentes, Director of International Legal Defense of the National Agency for Legal Defense of the State, who acts on behalf of the Colombian State, and who hereinafter will be called "Colombian State", and on the other hand, the firm Villegas Associated Attorneys Arévalo, who acts as petitioner in this case, and who will be referred to as "the petitioner" hereinafter, sign this Friendly Settlement Agreement in case No. 13.571 Carlos Mario Muñoz Gómez and others, processed before the Inter-American Commission on Human Rights.

FIRST: CONCEPTS

For the purposes of this Agreement, it will be understood by:

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

Non-pecuniary damage: Harmful effects of the facts of the case that do not have an economic or patrimonial nature, which are manifested through the pain, affliction, sadness, anguish and anxiety of the victims.

State or Colombia: In accordance with Public International Law, it will be understood that it is the signatory of the American Convention on Human Rights (hereinafter "Convention" or "ACHR"); the Colombian State.

Measures of satisfaction: Non-pecuniary measures whose purpose is to seek the recovery of the victims of the damage that has been caused to them. Some examples of these types of measure are: public knowledge of the truth and acts of redress.

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

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

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

Representatives of the victims: Villegas Abogados Asociados Firm, represented for these purposes by Dr. Sandra Villegas Arévalo.

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

Victims: Family members of Mr. Carlos Mario Muñoz.

SECOND: BACKGROUND

A. Before the Inter-American system of Human Rights.

1. On November 4, 2010, the Inter-American Commission on Human Rights received an international complaint against the Colombian State, for the events that occurred on October 29, 1990, when Carlos Mario Muñoz Gómez and Jorge Alberto Restrepo Correa, who were engaged in the distribution of candy products in different sectors of the country, were intercepted by two agents of the National Police, who detained them leading to the investigation of the command of said institution. Their whereabouts remain unknown since that date.

2. By judgment of November 15, 1994, the Multiple Jurisdiction Court of the Municipality of Bello Antioquia declared the presumed death of Mr. Carlos Mario Muñoz Gómez.

3. By ruling of February 3, 2009, the Administrative Court of Antioquia declared the responsibility of the State - Ministry of Defense - National Police - for the forced disappearance of Carlos Mario Muñoz Gómez.

4. The plaintiffs challenged the decision on February 20, 2009, before the State Council, and since December 3, 2018, the case has been pending a decision.

5. On April 19, 2018, the Inter-American Commission on Human Rights decided to apply Article 36.3 of its Rules of Procedure in accordance with its Resolution 1/19 [sic] on Measures to reduce the procedural delay and jointly decided the admissibility and merits of this matter [sic].¹

6. On July 23, 2019, the Colombian State and the victims' representatives signed a Memorandum of Understanding in order to reach a friendly settlement.

¹ By applying Resolution 1/16 on measures to reduce procedural backlog, the Commission decided to defer the treatment of the admissibility of the case until the stage of debate on the merits.

7. In the following months, joint meetings were held to analyze the proposals of both parties in order to build this friendly settlement agreement.

THIRD: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State recognizes its international responsibility for omission in its duty to guarantee the right to life (article 4), humane treatment (article 5), personal liberty (article 7), fair trial and judicial protection (article 8.1 and 25) and the right to privacy (article 11) recognized in the American Convention on Human Rights in relation to the general obligation established in Article 1.1 of the same instrument, in favor of Carlos Mario Muñoz Gómez.

FOURTH: WITHDRAWAL OF THE DIRECT REPARATION ACTION

Given the signing of this Friendly Settlement Agreement between the Colombian State and the petitioner, the latter undertakes to desist from the Direct Reparation Action identified with File No. 05001233100019970137201. Likewise, the petitioner expressly waives to file another judicial action at the domestic level regarding the same facts and for the same claims.

FIFTH: REPARATION MEASURES AGREED BETWEEN THE PARTIES

The State commits itself to carry out the following satisfaction measures consisting of measures of satisfaction, guarantees of non-repetition and compensation in the terms highlighted below:

1) Measures of satisfaction.

The State of Colombia commits itself to carry out the following measures of satisfaction and rehabilitation measures:

a. Act of redress.

A virtual Act of Acknowledgment of Responsibility. The act of acknowledgment of responsibility will be carried out with the active participation of the next of kin and the representatives of the victims. In it, state responsibility will be recognized in the terms established in this agreement. This measure will be in charge of the National Legal Defense Agency of the State.

b. Publication of the facts.

The Colombian State undertakes to publish the report established on Article 49 of the American Convention on Human Rights issued by the Inter-American Commission on Human Rights that approves the friendly settlement agreement, on the National Police website for a period of one year, thus guaranteeing access to the homologation report and court rulings.²

2. Guarantees of non-repetition.

Once the Friendly Settlement Agreement is approved, the case will be included as a study in the training that the Ministry of Defense carries out within the framework of Permanent Directive No. 11 of 2019, related to the “Guidelines for the strengthening of annual extracurricular training plans [sic] for the Public Force on Human Rights and International Humanitarian Law”³[sic]

3. Pecuniary damages.

² Official communication N. OFI20-43738 of June 24, 2020 – National Ministry of Defense.

³ Official communication N. OFI20-43738 of June 24, 2020 – National Ministry of Defense.

The State undertakes to apply Law 288 of 1996, once this friendly settlement agreement is approved by issuing the report established on Article 49 of the American Convention on Human Rights. In this sense, in a session of the Judicial Conciliation and Defense Committee of the Ministry of Defense and the National Police, it was decided to offer a comprehensive conciliation proposal, in the following terms:⁴

Moral Damages:

Moral damages will be awarded to the people mentioned below:

NAME	RELATIONSHIP	AMOUNT
Jesús María Muñoz Guerra	Father	300 S.M.M.L.V
Elvia Judith Gómez de Muñoz	Mother	300 S.M.M.L.V
María Patricia Mejía de Muñoz	Spouse	300 S.M.M.L.V.
Lina María Muñoz Mejía	Daughter	300 S.M.M.L.V
Carlos Andrés Muñoz Mejía	Son	300 S.M.M.L.V
Johana Felisa Muñoz Mejía	Daughter	300 S.M.M.L.V
Marina Muñoz Gómez	Sister	150 S.M.M.L.V.
Nubia del Socorro Muñoz Gómez	Sister	150 S.M.M.L.V.
Elvia Judith Muñoz Gómez	Sister	150 S.M.M.L.V.
Rubén Darío Muñoz Gómez	Brother	150 S.M.M.L.V.
Guillermo León Muñoz Gómez	Brother	150 S.M.M.L.V.
Omar de Jesús Muñoz Gómez	Brother	150 S.M.M.L.V
Jhon Jairo Muñoz Gómez	Brother	150 S.M.M.L.V

Impairment or Relevant Violation of Assets or Conventionally Constitutionally Protected Rights

For this concept, one hundred (100) current legal monthly minimum wages will be recognized.

Material Damages

Loss of Earnings: The values will be recognized according to the indexation of the Consumer Price Index [sic] from 2009 to 2020, in relation to the judgment of February 3, 2009, issued by the Administrative Court of Antioquia within the process: 05001233100019970137201, to the people listed below:

NAME	RELATIONSHIP	AMOUNT
<u>María Patricia Mejía de Muñoz</u>	<u>Spouse</u>	<u>\$141 115. 187,01</u>
<u>Lina María Muñoz Mejía</u>	<u>Daughter</u>	<u>\$24.669.046,06</u>
<u>Carlos Andrés Muñoz Mejía</u>	<u>Son</u>	<u>\$35.095,539,73</u>
<u>Johana Felisa Muñoz Mejía</u>	<u>Daughter</u>	<u>\$38.802.643,18</u>

The values proposed for material damages will be indexed and presented before the Internal Conciliation Committee of the National Police before the conciliation hearing, which will be held before the Attorney General's Office.

⁴ Official communication N. OFI20-107273 of December 29, 2020 / OFI21-6609 of January 27, 2021 – National Ministry of Defense – certification issued by the Conciliation and Judicial Defense Committee – December 16, 2020.

SIXTH: APPROVAL AND MONITORING

The parties request that the Inter-American Commission on Human Rights approves this agreement and supervises its implementation.

This agreement was endorsed by the state entities committed to carrying out the reparation measures.

Signed in three copies, in the city of Bogota D.C. on the fourth (4) day of the month of March 2021.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

12. The IACHR reiterates that in accordance with Articles 48.1.f and 49 of the American Convention, the purpose of this procedure is “to reach a friendly settlement of 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 virtue of the principle *pacta sunt servanda*, by which the States must comply in good faith with the obligations assumed in the treaties.⁵ It 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 vehicle for settlement, which can be used by both parties.

13. The Inter-American Commission has closely followed the development of the friendly settlement reached in the instant 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.

14. In accordance with the provisions of the sixth clause of the friendly settlement agreement, the parties agreed to request the Commission to issue the report contemplated in Article 49 of the American Convention, once the friendly settlement agreement is signed. Likewise, in accordance with the joint brief of the parties dated July 13, 2021, through which they requested the Commission the homologation of the friendly settlement agreement established in article 49 of the American Convention on Human Rights, it corresponds in this moment to assess compliance with the commitments established in the FSA.

15. The Inter-American Commission considers that the first (Concepts), second (Background), third (Acknowledgment of Responsibility) and fourth (Withdrawal of Direct Reparation Action) clauses of the agreement are declarative in nature, so it is not appropriate to monitor their execution. In this regard, the Inter-American Commission values the third declarative clause, in which the Colombian State recognizes its international responsibility for the omission of its duty to guarantee the rights enshrined in Articles 4 (right to life), 5 (humane treatment), 7 (personal liberty) 8.1 and 25 (fair trial and judicial protection) and 11 (privacy) of the American Convention on Human Rights, in relation to Article 1.1 (obligation to respect) of the same instrument, to the detriment of Mr. Carlos Mario Muñoz Gómez.

16. In relation to subclause 1.1 of the fifth clause related to the act of redress, as reported jointly by the parties, it was carried out on May 18, 2021, through a virtual platform in the context of the COVID 19 pandemic using different computer tools.⁶ The parties reported the existence of “permanent communication between the State, the victims, and their representatives, who agreed on each of the details for compliance with the measure, such as the date and time for the act, as well as the agenda and the logistics required for its development”. In this regard, the parties provided a simple copy of the invitations circulated for said event, in

⁵ Vienna Convention of the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), Article 26: “*Pacta sunt servanda*”. Any treaty in force is binding on the parties and must be performed by them in good faith.

⁶ See YouTube. National Agency for Legal Defense of the State channel. Act of acknowledgement of State responsibility in the case of Mr. Carlos Mario Muñoz Gómez. Broadcasted in direct on May 18, 2021. Available electronically at: [Agencia Nacional de Defensa Jurídica del Estado - YouTube](#)

which the victim's family members, close friends and their representatives participated, as well as the National Agency for Legal Defense of the State and the IACHR.

17. Likewise, the parties reported on the content of the agenda for the act of acknowledgment of responsibility, which included an opening, musical pieces, testimonial video and photographs to honor the memory of Mr. Muñoz Gómez, followed by the interventions of a sister and a son of the victim, as well as the intervention of Oscar Villegas Posada, representative of the victims. For its part, the State intervention was led by ANDJE's director of International Legal Defense, who apologized for the events that occurred and acknowledged the State's international responsibility under the terms of the friendly settlement agreement, stating the following:

[...]

It is precisely, recognizing the profound damage that was caused to Mr. Carlos Mario Muñoz Gómez and his family, that today the State apologizes to them, complying with one of the measures agreed in the friendly settlement agreement, proceeding to carry out this act of acknowledgment of responsibility and public apologies, as part of the comprehensive reparation strategy.

That is why today we are in this beautiful space, to commemorate the life of Mr. Carlos Mario Muñoz Gómez, who stood out as an honest, hardworking man who loved and fought for his family and with many dreams that he failed to fulfill and against whom such regrettable deeds were committed.

The State has the duty to ensure the life and integrity of its citizens. That is why it is unacceptable and reprehensible that they are victims of human rights violations while they are in the hands of those who must guarantee their protection and respect. Mr. Carlos Mario Muñoz was not guaranteed that right and his family was deprived in the most deplorable way of the right today to have a father, a brother, a husband, a child.

[...]

18. Finally, the President and Rapporteur of the Inter-American Commission on Human Rights for Colombia, Commissioner Antonia Urrejola, also participated in the event and in this context highlighted the importance of the recognition of responsibility by the Colombian State and its satisfaction component for the relatives of the Mr. Muñoz Gómez through public recognition of the facts, since this act constitutes the cornerstone of reconciliation and the vindication of the damages caused. Likewise, she emphasized the importance of the participation of victims in designing their own reparation measures and their restorative and empowering effect within the framework of alternative conflict resolution that characterizes friendly settlements.

19. The parties also confirmed the dissemination of the act on the website of the National Legal Defense Agency and on various social networks. In this regard, the Commission verified the publication and dissemination of the act of acknowledgment of responsibility on the respective website and the dissemination of the link of the act through the YouTube channel. Taking into account the foregoing, and the information provided jointly by the parties, the Commission considers that subclause 1.1. of the fifth clause of the friendly settlement agreement related to an act of redress is fully complied with and so it declares it as such.

20. Regarding paragraphs 1.2 (publication of the facts) and 2 (guarantees of non-repetition) and 3 (pecuniary reparation) of the fifth clause, the Commission observes that, in accordance with the provisions of the parties in the text of the FSA, these measures must be implemented once the friendly settlement agreement has been approved, for which it considers that they are pending compliance and so it declares them as such. By virtue of the foregoing, the Commission would await updated information from the parties on its execution after the approval of this report.

21. For the above reasons, the Commission concludes that paragraph 1.1 of the fifth clause has been fully complied with and it declares it. In relation to numerals 1.2, 2 and 3 of the fifth clause, the Commission considers that compliance is pending, and it so declares it. Finally, the Commission reiterates that the rest of the content of the agreement is declarative in nature, therefore its monitoring is not up to the Commission.

22. Based on the foregoing, the Commission declares that the friendly settlement agreement has a partial level of execution, for which reason it will continue to monitor the implementation of the pending aspects of the agreement until its full implementation.

V. CONCLUSIONS

1. Based on the foregoing considerations and by virtue of the procedure provided for in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction with the achievement of a friendly settlement in the instant case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

2. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on March 4, 2021.

2. To declare the total compliance of subclause 1.1 of the fifth clause based on the analysis included in this report.

3. To declare subclauses 1.2 (publication of the facts), 2 (guarantees of non-repetition) and 3 (pecuniary damages) of the fifth clause pending compliance based on the analysis included in this report.

4. To continue with the supervision of the commitments established in subclauses 1.2, 2 and 3 of the fifth clause of the agreement based on the analysis included in this report. With this aim, it reminds the parties of their commitment to periodically inform the IACHR of the compliance with said measures.

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

Approved by the Inter-American Commission on Human Rights on November 22, 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño; Edgar Stuardo Ralón Orellana, y Joel Hernández García Members of the Commission.