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REPORT No. 170/22
CASE 14.312
FRIENDLY SETTLEMENT REPORT

JUAN CARLOS DE LA CALLE JIMÉNEZ AND JAVIER DE LA CALLE JIMÉNEZ
COLOMBIA

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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On April 20, 2014, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Doris de la Calle Jiménez, claiming the international responsibility of the Colombian State (hereinafter "State" or "Colombian State" or "Colombia"), for the alleged violation of the rights enshrined in Article 4 (right to life), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "Convention" or "American Convention" or "ACHR") for the lack of investigation of the facts surrounding the alleged murder of Juan Carlos de la Calle Jiménez in November 1986 and Javier de la Calle Jiménez in November 1988 in the municipality of Urabá, in the Department of Antioquia, at the hands of alleged members of the extinct Revolutionary Armed Forces of Colombia —FARC, as well as the failure to punish those responsible.

2. On December 15, 2020, the Commission notified the parties of the decision to defer the treatment of the admissibility of the case until the merits stage, in accordance with Article 36.3 of its Rules of Procedure and Resolution 1/16, on *Measures to Reduce Procedural Backlog*.

3. On July 8, 2021, the parties signed a memorandum of understanding for the pursuit of a friendly settlement in the present case, together with a work schedule to advance in the negotiations. In the following months, the parties held bilateral meetings to analyze the reparation measures to be included in the friendly settlement agreement (hereinafter FSA), which materialized with the signing of said instrument on November 26, 2021, in the city of Bogotá D.C. Subsequently, on April 4, 2022, the parties presented a joint report on the progress made in the implementation of the FSA and requested the IACHR to approve it.

4. In this friendly settlement report, as established in Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, summarizes the facts claimed by the petitioners and a transcribes the friendly settlement agreement signed between the petitioners and the representatives of the Colombian State on November 26, 2021. Likewise, the agreement signed between the parties is approved and it is agreed that this document will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioner claimed that the alleged victims Juan Carlos de la Calle Jiménez and Javier de la Calle Jiménez were killed by alleged members of the FARC on November 19, 1986 and November 29, 1988, respectively, in the banana-growing area of Urabá, in the Department of Antioquia. The petitioner held that Mr. Juan Carlos de la Calle Jiménez had been sleeping on a farm when there was a knock on the door and when he came out, he was shot several times, which caused his death. The petitioner also indicated that Mr. Javier de la Calle Jiménez was shot while he was finishing loading a shipment of bananas for the Banana Growers Union of Urabá.

6. The petitioner held that the alleged murder of Messrs. de la Calle Jiménez occurred in a context in which the now extinct FARC completely dominated the area of Urabá, together with the inaction of the authorities during the 1980's in the Antioquia area. The petitioner held that *ex officio* criminal investigations

¹ Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion and decision of this case, pursuant to Article 17.2.a) of the IACHR's Rules of Procedure.

were initiated by the Municipal District Court of Mutatá, in the Department of Antioquia, in 1986 and 1988, respectively.

7. In this regard, the petitioner argued that the investigation into the alleged murder of Mr. Juan Carlos de la Calle Jiménez had been transferred to the 68th Criminal Investigation Court of Chigorodó, which, on November 8, 1989, had ordered the suspension of the preliminary investigation because more than sixty days had elapsed since the investigation began, without having been able to identify the alleged perpetrators of the crime, and therefore, at the time of filing the petition, the investigation had been archived. Likewise, the petitioner held that on February 15, 1989, the Municipal District Court of Mutatá had ordered the suspension of the preliminary investigation into the alleged murder of Mr. Javier de la Calle Jiménez and, therefore, the proceedings had been archived.

8. Finally, it should be noted that, as of the date the petition was filed, according to the petitioner's allegations, those responsible for the facts had not been punished, nor had full reparations been made to all the victims' families.

III. FRIENDLY SETTLEMENT

9. On November 26, 2021, the parties entered into a friendly settlement agreement, which provides as follows:

FRIENDLY SETTLEMENT AGREEMENT CASE 14.312 - JUAN CARLOS DE LA CALLE JIMÉNEZ AND JAVIER DE LA CALLE JIMÉNEZ

On November twenty-six (26), 2021, the following met in the city of Bogotá D.C., on the one hand, Ana María Ordoñez Puentes, Director of the International Legal Defense of the National Agency for the Legal Defense of the State, acting with due authorization on behalf and in representation of the Colombian State, hereinafter the "State" or the "Colombian State" and on the other hand, Doris de la Calle Jiménez, acting on behalf of herself and her relatives, hereinafter "the petitioners", who have decided to enter into this Friendly Settlement Agreement in the framework of Case No. 14.312, Juan Carlos de la Calle Jiménez and Javier de la Calle Jiménez, ongoing before the Inter-American Commission on Human Rights.

FIRST PART: CONCEPTS

For the purposes of this Agreement, the following definitions shall apply:

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

Moral damage: Harmful effects of the facts of the case that are not of an economic or patrimonial nature, which are manifested through the pain, affliction, sadness, distress and anxiety of the victims.

Immaterial damage: It includes both the suffering and affliction caused to the victims, the impairment of values which are very significant for the persons, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victim or his/her family².

State or Colombian State: In accordance with Public International Law, it shall be understood as the signatory subject of the American Convention on Human Rights, hereinafter "American Convention" or "IACHR".

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

Satisfaction measures: Non-pecuniary measures intended to seek the recovery of victims from the harm which has been caused to them. Some examples of this type of measures are: public knowledge of the truth and acts of reparations.

Parties: State of Colombia, the victim's relatives, as well as their representatives.

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

Comprehensive repair: All those measures which objectively and symbolically restore the victim to the state prior to the commission of the damage.

Representatives of the victims: Doris De la Calle Jiménez, acting on her own behalf and on behalf of her family.

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

Victims: Margarita Jiménez de la Calle, Jairo Humberto de la Calle Jiménez, Gloria María de la Calle Valencia, Ignacio de la Calle Jiménez, Margarita Rosa de la Calle Jiménez and Doris de la Calle Jiménez.

SECOND PART: BACKGROUND

BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM.

1. On April 20, 2014, the Inter-American Commission on Human Rights received a petition filed by Mrs. Doris de la Calle Jiménez, for the murder of Juan Carlos de la Calle Jiménez, on November 18, 1986, and Javier de la Calle Jiménez, on November 24, 1988, allegedly by members of the extinct FARC-EP guerrillas, in the municipality of Urabá, in the Department of Antioquia.
2. In this regard, the initial petition narrates that Juan Carlos de la Calle Jiménez was sleeping on November 18, 1986, in a farmhouse, when at 11 p.m. there was a knock at the door. When he went out in response, he was shot and killed.³
3. Likewise, Javier de la Calle Jiménez was on November 24, 1988, finishing a shipment of bananas for the Union of Banana Growers of Urabá "Uniban", when at 3 p.m. two individuals arrived and shot him, causing his death.⁴
4. On December 14, 2020, the Inter-American Commission on Human Rights resolved to apply Article 36.3 of its Rules of Procedure, in accordance with Resolution 1/16 on *Measures to Reduce Procedural Backlog*, to decide jointly on the admissibility and merits of the case.
5. On July 8, 2021, the Colombian State and the petitioners signed a Memorandum of Understanding for the Search for a Friendly Settlement, which was transmitted to the Inter-American Commission on July 9, 2021.
6. In the following months, joint meetings were held between the parties in order to analyze the comprehensive reparation measures to be included in the Amicable Settlement Agreement which is currently being signed.

³ Petition Format of April 20, 2014.

⁴ *Ibidem*.

AT A DOMESTIC LEVEL.

7. For the homicides of Juan Carlos de la Calle Jiménez and Javier de la Calle Jiménez, ex officio criminal investigations were initiated by the Municipal District Court of Mutatá, in the Department of Antioquia, in 1986 and 1988 respectively. The investigation into the homicide of Juan Carlos de la Calle Jiménez was later transferred to the 68th Court of Criminal Investigation of Chigorodó, which, on November 8, 1989, decreed the suspension of the preliminary investigation because more than 60 days had passed since the investigation began without having been able to individualize and identify the perpetrators of the crime.
8. Likewise, on February 15, 1989, the Municipal District Court of Mutatá decided to suspend the preliminary inquiry for the homicide of Mr. Javier de la Calle Jiménez, and archived the proceedings.
9. To date, the statute of limitations has expired on the criminal actions.

THIRD PART: BENEFICIARIES

The Colombian State recognizes the following persons as victims of this agreement:

Name	Identification document	Kinship
Margarita Jiménez de la Calle (Q.E.P.D.) ⁶	[...]	Mother
Jairo Humberto de la Calle Jiménez	[...]	Brother
Gloria María de la Calle de Valencia (Q.E.P.D.) ⁷	[...]	Sister
Ignacio de la Calle Jiménez	[...]	Brother
Margarita Rosa de la Calle Jiménez	[...]	Sister
Doris de la Calle Jiménez	[...]	Sister

The victims recognized in this Friendly Settlement Agreement shall benefit as long as they can prove their blood bond with Mr. Juan Carlos de la Calle Jiménez and Mr. Javier de la Calle Jiménez.

Additionally, the victims who will benefit from this Friendly Settlement Agreement shall be those who were alive at the time of the victimizing facts⁸.

FOURTH PART: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State recognizes its international responsibility by omission, for the violation of the rights recognized in articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1. thereof (general obligation to guarantee), to the detriment of the family of Mr. Juan Carlos de la Calle Jiménez and Mr. Javier de la Calle Jiménez, due to the lack of diligence in the investigation of the facts which took place.

⁵ Office of the Attorney General of the Nation. Document No. 20211700063051 of September 14, 2021.

⁶ In which case, the amounts to be recognized by virtue of the economic compensation under Law 288 of 1996, will be recognized to their beneficiaries in accordance with the succession presented for said purpose.

⁷ In which case, the amounts to be recognized by virtue of the economic compensation under Law 288 of 1996, will be recognized to their beneficiaries in accordance with the succession presented for said purpose.

⁸ The foregoing, in accordance with the jurisprudence of the IACHR Court. See, I.H.R. Court., Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) vs. Colombia (Preliminary Exceptions, Merits, Reparations and Costs). Judgment of November 20, 2013. Series C No. 270, para. 425.

FIFTH PART: SATISFACTION MEASURES

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

i. Act of Acknowledgment of Responsibility:

The Colombian State will conduct a Private Act of Acknowledgment of Responsibility, which will be carried out virtually with the participation of the petitioners. The act shall take place in accordance with the acknowledgment of responsibility indicated in this Agreement. This measure shall be in charge of the National Agency for the Legal Defense of the State.

ii. Publication of the Article 49 Report:

The Colombian State shall publish the pertinent sections of the friendly settlement report, once it has been approved by the Inter-American Commission, on the web page of the National Agency for the Legal Defense of the State, for a period of six (6) months.

SIXTH PART: JUSTICE MEASURES

The Special Jurisdiction for Peace (JEP), in exercise of its powers and in application of its legal regime, has been conducting the investigation related to the territorial situation based on facts of the conflict which occurred in the Urabá region between 1986 and 2016 in the framework of macro-case 04, which prioritizes the humanitarian situation of the municipalities of Turbo, Apartadó, Carepa, Chigorodó, Mutatá, Dabeiba (Antioquia) and El Carmen del Darién, Riosucio, Ungula and Acandí (Chocó)⁹.

SEVENTH PART: COMPENSATION MEASURES

The State undertakes to initiate the processing of Law 288 of 1996 "Whereby instruments are established for the compensation of damages to 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 victims' next of kin as a consequence of the effects generated by the facts of the present case.

The National Agency for the Legal Defense of the State shall be the entity in charge of assuming the processing of Law 288 of 1996.

For the purposes of compensation, the criteria and amounts recognized by the current jurisprudence of the Council of State will be used.

EIGHTH PART: HOMOLOGATION AND FOLLOW-UP

The parties request the Inter-American Commission to homologate this Agreement and its further follow-up.

This Agreement having been read and the parties being aware of its scope and legal content, it is signed on the twenty-sixth (26th) day of November, 2021.

⁹ Special Jurisdiction for Peace. Official letter No. 202102012994 of October 1, 2021. According to said Jurisdiction: In development of the legal and constitutional mandate in charge of the Special Jurisdiction for Peace, the facts which motivate the search for the informed friendly settlement shall be integrated into the investigation underway and shall be subject to verification and consultation with those appearing from the extinct FARC-EP linked to case 04, in terms of obtaining the greatest amount of elements possible which allow to determine the circumstances of time, mode and place in which Mr. Calle Jiménez was murdered and the eventual responsibility of the FARC structures which operated in the region."

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

10. 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 to carry 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 treaties¹⁰. The Commission also wishes to reiterate that the friendly settlement procedure provided for in the Convention allows for the termination of individual cases in a non-contentious manner, and has proven, in cases involving several countries, to offer an important vehicle for settlement, 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. In accordance with the agreement signed by the parties whereby they requested the Commission to homologate the friendly settlement agreement contemplated in Article 49 of the American Convention, and taking into consideration the request of the parties of April 4, 2022 to proceed by this means, it is appropriate at this time to assess compliance with the commitments established herein.

13. The Inter-American Commission considers that the first (Concepts), second (Background before the Inter-American Human Rights System), third (Beneficiaries), fourth (Acknowledgement of Responsibility) and sixth (Measures of Justice) clauses of the agreement are of a declarative nature, and therefore no supervision of compliance is required. In this regard, the Commission values the fourth declarative clause, in which the Colombian State recognizes its international responsibility by omission, for the violation of the rights enshrined in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, due to the lack of diligence in the investigation of the facts that occurred to the detriment of Juan Carlos de la Calle Jiménez and Javier de la Calle Jiménez.

14. With regard to paragraph (i) of the fifth clause on measures of satisfaction, as jointly reported by the parties, *the act of acknowledgment of responsibility* was conducted on March 3, 2022, through a virtual platform in the context of the COVID 19 pandemic, using different technological tools. The parties reported the existence of a permanent and fluid communication between the State and the petitioners, with whom they agreed on each of the details for the fulfillment of the measure, such as the date, time, agenda and logistics required for its development. In this regard, the parties provided a simple copy of the invitations circulated for this event, with the participation of the victim's next of kin and their representatives, as well as the National Agency for the Legal Defense of the State.

15. Likewise, the parties reported on the contents of the agreed schedule for the event, which included an opening, the projection of photographs of the family and the intervention of Doris de la Calle Jiménez, sister of Juan Carlos and Javier de la Calle Jiménez, as tributes to their memory. The State's intervention was made by the ANDJE's Director of International Legal Defense, who asked for forgiveness from the victims and their families for what happened, and acknowledged the State's responsibility under the terms established in the friendly settlement agreement signed by the parties, stating the following:

[...]

Today we say to those responsible for their death that, although they managed to extinguish their lives, they did not manage to extinguish the love of an entire family that for years

¹⁰ 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.*

struggled to find the truth. This same family that accompanies us today, never forgot the memory of Juan Carlos and Javier. [...]

The Colombian State had the obligation to investigate, prosecute and punish those responsible for violating the fundamental rights of Juan Carlos de la Calle Jiménez and Javier de la Calle Jiménez, we have witnessed the painful search for truth and justice that their family has undertaken over the years. [...]

The State recognizes that the administration of justice must ensure the vindication of the rights of the victims and the restoration of the positions affected by the act caused within a reasonable period of time. [...]

On behalf of the State of Colombia, I acknowledge international responsibility for the violation of the rights to a fair trial and to judicial protection, recognized in the American Convention on Human Rights, in relation to the general obligation to respect and guarantee established by that instrument, to the detriment of the family members of Juan Carlos and Javier de la Calle Jiménez. [...]

16. Taking into account the foregoing, and the information provided jointly by the parties, the Commission considers that paragraph (i) of clause five of the friendly settlement agreement related to the act of acknowledgment of responsibility has been fully complied with and declares it as such.

17. With regard to the sixth clause (measures of justice), on April 4, 2022, the State reported that the National Agency for the Legal Defense of the State transmitted to the Special Jurisdiction for Peace a copy of the signed FSA, as well as the contact information of the petitioning party for its participation in the process in charge of that jurisdiction and held that it would subsequently be sending the information corresponding to the progress made in Macro Case 04 of the Special Jurisdiction for Peace. In this regard, the Commission confirmed with the parties its common understanding that the clause is declaratory in nature and that the State will keep the petitioner party and the Commission informed of the progress made in the process being conducted by the SJP. For the above, the Commission takes note of what was indicated by the parties and looks forward to receiving the information that the State present to the petitioner on the actions postponed before the JEP.

18. On the other hand, as for paragraph (ii) *publication of the Article 49 report*, clause five (satisfaction measures) and clause seven (compensation measures) of the friendly settlement agreement and by virtue of the joint request of the parties to proceed with the homologation of the agreement prior to its execution, the Commission observes that said measures must be fulfilled after the publication of this report, and therefore considers that they are pending compliance and so declares it as such. By virtue of the foregoing, the Commission shall await updated information from the parties on their execution after the approval of this report.

19. Based on the foregoing, the Commission concludes that paragraph (i) act of acknowledgment of responsibility of the fifth clause has been fully complied with and declares it so. On the other hand, the Commission considers that paragraphs (ii) *publication of the report*, article 49, of the fifth clause, as well as the seventh clause (compensation measures) are pending compliance. Finally, the Commission reiterates that the rest of the content of the agreement is of a declarative nature and therefore it is not up to the IACHR to supervise its compliance.

IV. CONCLUSIONS

1. Based on the foregoing considerations and pursuant to 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 present 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 TO:

1. To approve the terms of the agreement signed by the parties on November 26, 2021.
2. To declare full compliance with paragraph (i) (act of acknowledgment of responsibility) of clause five of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare clause (ii) (publication of the report article 49) of clause five and clause seven (compensation measures) of the friendly settlement agreement as pending compliance, according to the analysis contained in this report.
4. To continue monitoring the commitments assumed in paragraph (ii) (publication of the Article 49 report) of the fifth clause, as well as the seventh clause (compensation measures), according to the analysis contained in this report. To this end, to remind the parties of their commitment to report periodically to the IACHR on their compliance.
5. To make this report public and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on July 25, 2022. (Signed): Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice President; Margarette May Macaulay, Second Vice President; Esmeralda E. Arosemena de Troitiño; Joel Hernández García and Roberta Clarke Members of the Commission.