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REPORT No. 80/20

CASE 13.370

FRIENDLY SETTLEMENT REPORT

**LUIS HORACIO PATIÑO AND FAMILY
COLOMBIA**

Approved electronically by the Commission on May 8, 2020.

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

1. On March 7, 2007, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition presented by Libardo Preciado Camargo and Libardo Preciado Niño. Alleging the international responsibility of the Republic of Colombia (hereinafter “the State” or “the Colombian State”) for the events surrounding the death of Mr. Luis Horacio Patiño Agudelo (hereinafter “the alleged victim”) on January 18, 1996. When he was in custody of the State while serving a sentence for the crime of homicide in the “*El Barne*” National Penitentiary in the municipality of Combita, Boyacá as well as the lack of investigation and clarification of the events that occurred.

2. The petitioners alleged the international responsibility of the Colombian State for the violation of Articles 4 (right to life), 5 (personal integrity), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “Convention” or “American Convention”). Likewise, the petitioners generally alleged the violation of the rights enshrined in the American Declaration of the Rights and Duties of Man, Inter-American Convention to Prevent and Punish Torture, Additional Protocol to the American Convention on the Abolition of the Penalty of Death and other international treaties.

3. On September 7, 2017, the IACHR declared the petition admissible through Admissibility Report No. 106/17. In which it concluded that it was competent to examine the alleged violation in relation to articles 4 (right to life), 5 (personal integrity), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention in connection with Articles 1.1 and 2 of the same instrument. As well as to analyze the possible violation of the rights enshrined in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

4. On February 22, 2018, the parties remitted a Memorandum of Understanding initiating the quest for a friendly settlement, which culminated in a friendly settlement agreement (hereinafter “FSA” or “agreement”) signed on December 3, 2019. Likewise, on November 13, 2019, the parties jointly requested the Commission the approval of the friendly settlement agreement and undertook to report back in due course on progress made with implementing the measures agreed upon. Likewise, the petitioner requested the approval of the agreement on April 3, 2019, an interest that was ratified by the State on April 13, 2020.

5. Pursuant to Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, the instant friendly settlement report provides an outline of the facts alleged by the petitioners and, thereafter, a verbatim transcription of the friendly settlement agreement, entered into on December 3, 2019, between the petitioners and the representatives of the Colombia State. It concludes with the approval of the agreement executed between the parties and it is agreed to publish this report in the IACHR’s Annual Report to the General Assembly of the Organization of the American States.

II. ALLEGED FACTS

6. The petitioner alleged that on October 1, 1992, Mr. Luis Horacio Patiño was sentenced for the crime of homicide to a sentence of thirteen years and four months in prison at the “*El Barne*” National Penitentiary located in the Municipality of Combita, Boyacá. Where he was in good health on July 6, 1993. They reported that, due to altercations with guards at the compound, the alleged victim was sanctioned and held in an isolation cell on January 17, 1996.

7. The petitioner alleged that while he was serving this punishment, that same night, continuous screams of pain would have been heard from his cell, which led to his companions requesting help from the prison guards, however, they would not have received a response. On January 18, 1996, the alleged victim was found dead in his cell with internal signs of violence. As alleged by the petitioner, the legal autopsy determined that the cause of death was intracranial hypertension secondary to blunt head injury, for which they argued that the injuries were probably due to a beating received by the guards in the punishment cell.

8. Due to the foregoing, a disciplinary investigation was initiated to establish the responsibility of the police officers, which was archived on May 13, 1996 by the National Penitentiary and Prison Institute — INPEC after considering that there had been no negligence in the actions of its control personnel in the prison compound during the events. Despite the fact that the statements of the other persons deprived of their liberty were uniform when they maintained that they had requested help for the alleged victim without obtaining a response.

9. The petitioners indicated that on January 18, 1996, a criminal investigation was initiated for the crime of homicide that would have ended without a substantive decision since the case would have been provisionally archived by the Prosecutor's Office, on September 12, 1997. In the previous stage without clarifying the facts.

10. The petitioner warned that, despite the reopening of the case in 2012, the Prosecutor's Office decided for the second time to archive the case provisionally on November 18, 2015, indicating that it was not possible to establish the identity of the custodians who verified the health status of the alleged victim and that the possibility that Luis Horacio Patiño could have self-infringed the injuries that caused his death could not be excluded. Consequently, the petitioner reported that absolute impunity persisted as of the filing date of the petition, since those responsible for the death of the alleged victim had not been punished.

11. The petitioners added that the next of kin of the alleged victim filed an action for direct reparation that was denied on February 14, 2005 by the Boyacá Administrative Court, which would have considered that, although there had been a failure in the prison surveillance, which would generate a responsibility for reparation for the State, the plaintiffs would not have been able to access it because they would not have proven their relationship with the alleged victim. Against said judgment, they presented an appeal, alleging the judicial omission in the request for additional evidence if there was any doubt about the filiation. Said legal challenge was declared inadmissible by the Council of State on November 4, 2005, which considered that the amount of the reparation sought at that time did not exceed the legal minimum amount and, consequently, was a single instance process not subject to appeal. Finally, the petitioners indicated that they filed an appeal, which was dismissed by the Council of State in a resolution of March 16, 2006, and notified to the petitioners on September 8, 2006.

III. FRIENDLY SETTLEMENT

12. On December 3, 2019, the parties signed a friendly settlement agreement, the text of which states the following:

FINAL FRIENDLY SETTLEMENT AGREEMENT¹
CASE 13.370
LUIS HORACIO PATIÑO AND FAMILY

On December 3, 2019, in the city of Bogotá DC, María del Pilar Gutierrez Perilla, Advisor to the Directorate of International Legal Defense of the National Agency for Legal Defense of the State, who acts on behalf of and represents the Colombian State, hereinafter "Colombian State", and on the other hand, Libardo Preciado Niño, who acts as petitioner in this case, and who will be hereinafter referred to as "the petitioner" sign this Friendly Settlement Agreement

¹ Numbering of clauses outside the original text of the agreement.

in case No. 13,370 Luis Horacio Patiño and family, processed before the Inter-American Commission on Human Rights..

PRIOR CONSIDERATIONS

1. The facts of the petition refer to the death of Luis Horacio Patiño Agudelo, between January 17 and 18, 1996, in the "El Barne" Penitentiary in Combita - Boyacá, where he was being detained.

2. The autopsy protocol determined that the cause of the death of Mr. Luis Horacio Patiño Agudelo was violent death. The petitioners indicate that there was an omission in the protection and surveillance by agents of the State. Additionally, they indicated that the circumstances in which he died and the impunity in which he has remained have not been clarified.

3. The inspection of the body was held until January 19, 1996 because due to the death of Mr. Patiño Agudelo, the other detained people in said prison had revolted and started a riot inside the prison.

4. Due to these facts, a disciplinary process was initiated, as well as judicial proceedings before the ordinary criminal jurisdiction and administrative litigation.

5. Regarding the disciplinary process, the Investigations Office of the Tunja National Penitentiary "El Barne" initiated an investigation that was archived on May 13, 1996.

6. For its part, the criminal investigation was suspended on September 12, 1997, because more than 180 days elapsed without having found sufficient merit to issue an investigative or inhibitory resolution. The criminal investigation was reopened on June 4, 2012. However, on November 18, 2015, an inhibitory resolution was issued, given the impossibility of establishing whether there was any person responsible for the death of Mr. Luis Horacio Patiño.

7. Finally, the process before the contentious administrative jurisdiction culminated in a first instance judgment that denied the claims of the relatives of Mr. Luis Horacio Patiño. Despite the foregoing, the Boyacá Administrative Court stated in its judgment that, "there was a failure in the surveillance service of the Penitentiary Guard of the Barne Prison that would generate responsibility for the State to compensate. However, despite being proven the constitutive fact of the failure of the state service, source of obligation to compensate, I did not find prove of the legitimacy for action from the plaintiff."²

8. On March 1, 2007, the Inter-American Commission on Human Rights received a petition presented by doctors Libardo Preciado Camargo and Libardo Preciado Niño. In which they alleged the international responsibility of the State, for the events surrounding the death of Mr. Luis Horacio Patiño Agudelo when he was in the custody of the State, as well as the lack of investigation and clarification of the events that occurred.

9. By Report No. 106/17 of September 7, 2017, the Inter-American Commission on Human Rights declared the petition admissible in relation to Articles 4, 5, 8 and 25 of the American Convention on Human Rights, in relation to its article. 1.1 and Article 2 as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

10. On September 3, 2019, the Colombian State and the representative of the victims signed an Agreement of Understanding in order to reach a friendly settlement.

² First Instance Judgment of February 14, 2005-Decongestion Room Boyacá Administrative Court.

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

12. The Colombian State and the representative of the victims decided to sign this Friendly Settlement Agreement, which will be governed under the following terms:

FIRST: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State recognizes the responsibility for omission in its duty to guarantee the rights to life (article 4) and personal integrity (article 5 .1) 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 Luis Horacio Patiño Agudelo.

This based on the fact that Mr. Luis Horacio Patiño Agudelo was in the custody of the State in a prison center when he died, for which reason, being in a special relationship of subjection to state power, the administration had to respond fully for his protection and security.

SECOND: MEASURES OF SATISFACTION

The State of Colombia undertakes to implement the following measures:

a) **Act of Acknowledgment of Responsibility.** A Private Act of Acknowledgment of Responsibility, to be held at the Combita Boyacá Detention Facility. The act of acknowledgment of responsibility will be executed with the active participation of the next of kin and the representative of the victims. In it, the state responsibility will be recognized in the terms established in this agreement. This measure will be in charge of the National Penitentiary and Prison Institute INPEC.

b) **Preparation of banners.** The National Penitentiary and Prison Institute INPEC will elaborate banners of 1.50 x 2.00 meters, with the photograph of Mr. Luis Horacio Patiño Agudelo, along with a brief biographical sketch; which will be installed in five prison establishments of the second generation National Order of INPEC.

c) **Publication of the facts.** The Colombian State undertakes to publish the report of Article 49 of the American Convention on Human Rights issued by the Inter-American Commission on Human Rights that homologates a friendly settlement agreement (Sic), on the website of the National Penitentiary and Prison Institute INPEC and the National Agency for Legal Defense of the State.

THIRD: GUARANTEES OF NON-REPETITION

The State undertakes through the National Penitentiary and Prison Institute INPEC, to include as a subject of studies, the events that occurred on January 17, 1996 at the "El Barne" National Penitentiary. Through an exercise in lesson learned (sic) which would serve as a tool for evaluating and improving prison services, to address in training courses on Human Rights, dictated by the National Penitentiary School.

FOURTH: FINANCIAL COMPENSATION

The State undertakes to give effect to Law 288 of 1996, once this Friendly Settlement Agreement is approved by issuing the Article 49 Report of the American Convention on Human Rights. The foregoing, with the purpose of repairing the immaterial and material damages that may prove to be in favor of the victim's next of kin who have not been compensated through the Administrative Litigation Jurisdiction, discounting, if applicable, the

amounts recognized for administrative reparations. For these purposes, the criteria and amounts recognized by the current Jurisprudence of the Council of State will be used.

FIFTH: APPROVAL AND FOLLOW-UP

The parties request the Inter-American Commission on Human Rights to approve and follow up on this agreement.

This agreement was endorsed by the State entities committed to the implementation of the reparation measures.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

13. The IACHR reiterates that, under Articles 48(1) (f) and 49 of the Convention, this procedure has the objective of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s consent to pursue this avenue is evidence of its good faith to honor the Convention’s purposes and objectives, based on the principle of *pacta sunt servanda*. According to that principle, States must comply in good faith with the obligations undertaken in treaties.³ The IACHR also wishes to point out that, with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement procedure has proven to be a useful vehicle that both parties can utilize to arrive at a solution.

14. The Inter-American Commission has facilitated and closely monitored the progress of the friendly settlement reached in the present case and greatly values the efforts that both parties went to in negotiating this friendly settlement agreement, which is compatible with the object and purpose of the Convention.

15. In accordance with the provisions of the friendly settlement agreement, as well as, through the presentation of a joint progress report on compliance with the agreed measures, presented on January 9, 2020, the parties requested the Commission to adopt the report contemplated in Article 49 of the American Convention. Additionally, on April 3, 2020, the petitioner expressed interest in the IACHR issuing the homologation report. The same interest was ratified by the State on April 13, 2020.

16. The IACHR notes that, given the information thus far provided by the parties and their request to the Commission for approval of the FSA, it is incumbent upon it to assess compliance with the commitments undertaken in the friendly settlement agreement.

17. The Inter-American Commission values the first declarative clause, in which the Colombian State recognizes its international responsibility for the violation of the rights enshrined in articles 4 (right to life) and 5 (personal integrity) of the Convention. American on Human Rights.

18. In relation to letter a) of clause 2, referring to satisfaction measures, on March 30, 2020; the parties sent a joint report to the IACHR, in which they stated that they were in talks to materialize the measures. Especially, they highlighted that the public act of acknowledgment of responsibility was planned to be held in the Combita-Boyacá Detention Facility. However, they stressed that due to the control measures adopted by the State to combat the Covid-19 Pandemic, they could not have met to agree on the final details. Subsequently, on April 22, 2020, the Colombian State extended an invitation to the Inter-American Commission on Human Rights to attend the act of acknowledgment of responsibility in virtual mode, as agreed between the parties due to the circumstances of social isolation imposed by the Pandemic COVID 19. In this sense, it should be noted that said act was held on April 24, 2020 and that it was chaired by the Director of the National Agency for Legal Defense of the State and had the participation of the Director of Human Rights of the National Penitentiary and Prison Institute (INPEC); the victim's next of kin together with the petitioner; Magistrates of the Superior Court

³ Vienna Convention on the Law of Treaties, United Nations 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.*

of Tunja; judicial branch officials; the Director of the Internal Action Foundation; the Commissioner and Rapporteur for Colombia, Antonia Urrejola; the Deputy Executive Secretary of the IACHR, Marisol Blanchard, and technical staff from the Executive Secretariat of the IACHR. Said act was broadcast live through the YouTube platform, and is publicly available⁴.

19. In said act, the Director of Human Rights of the National Penitentiary and Prison Institute stated the following:

Today we are in this space, to honor the memory of Mr. Luis Horacio Patiño, to dignify his family and above all to thank them for the opportunity to reconcile us and allow us, as a State, to ask for forgiveness for the unfortunate events that occurred in the month of January 1996, in nonsense events that are incomprehensible to us today.

In my capacity as Director General of INPEC, I strongly reject the events surrounding the death of Mr. Luis Horacio Patiño, which should never have occurred.

I want to thank the families of the victims and their representative, all these years of fighting against impunity and seeking justice that allow the State to strengthen, and that the commitment to Human Rights increases.

20. Likewise, the Director of the Colombian State Legal Defense Agency stated:

We deeply regret the pain that the entire family of Luis Horacio has had to suffer and today in this space I want to make a special recognition to Mrs. María Alicia Patiño, mother of Luis Horacio and her stepfather Guillermo Valencia, who have died, who suffered for many years the anguish and uncertainty of not knowing the causes, circumstances and those responsible for the death of her son. They should not have gone through that pain.

This act seeks to contribute, to some extent, to mitigate the pain caused during these 24 years and to dignify the memory of the victim. On behalf of the Colombian State, I offer you the most sincere apologies for all the damages caused. These words do not replace your loss, your pain, your sadness, your helplessness, but I trust that the feeling of forgiveness will be in your hearts.

On behalf of the Colombian State, I acknowledge that in the case of Luis Horacio, the duty to protect him was not fulfilled, in his capacity as a detainee in a prison center, against situations that could put his life and personal integrity at risk. We failed in the duty of custody, which led to the fatal outcome that occurred in January 1996 in the "El Barne" penitentiary.

Today, in my capacity as Director of the National Agency for Legal Defense of the State, I allow myself to recognize the international responsibility of the Colombian State for the omission in the duty to guarantee the rights to life and personal integrity, enshrined in Articles 4 and 5.1 of the American Convention on Human Rights, in favor of Mr. Luis Horacio Patiño, in relation to the general obligation to guarantee rights, established in Article 1.1 of the same instrument.

21. Finally, Commissioner Antonia Urrejola, IACHR Rapporteur for Colombia, recognized the great effort of the Colombian state, the victim's next of kin and their representatives to do the act in a virtual way, highlighting that "in these unprecedented conditions where the world that we knew it seems that it will no longer be the same, it is valued to make the effort through this route, we must continue fighting, human rights are not quarantined, there is no social distancing for them, today's act is a sample of that, and I think I make no mistake in pointing out that this act of acknowledgment of State responsibility is unprecedented in the inter-

⁴ In this regard, see YouTube, [Act of Acknowledgment of Responsibility in the Case of Luis Horacio Patiño](#). Published by the National Agency for Legal Defense of the Colombian State on April 25, 2020.

American human rights system. Thank you very much for not stopping and looking for this alternative for the memory of Mr. Luis Horacio Patiño Agudelo.”

22. The Commission was also aware of the extensive media coverage of the act of acknowledgment of responsibility, through social networks of State institutions and extensive coverage in the press, in which its link to YouTube was published⁵.

23. Taking into account the available information, the Commission welcomes the fact that the parties found alternatives for the implementation of the measure of the act of acknowledgment of responsibility in the context of the COVID-19 pandemic, and declares with satisfaction that this extreme the friendly settlement agreement has been fully complied with. The Commission also highlights that this would be the first act in the virtual modality in the history of the friendly settlements mechanism, and takes the opportunity to highlight it as a good practice to promote compliance with such agreements in the Region.

24. On the other hand, regarding letters b) and c) of clause 2 and clause 3, the Commission has not yet received information on the progress in their implementation, so it considers that these are still pending compliance.

25. With respect to clause 4, related to pecuniary reparation, the Commission observes that, according to the mechanism established in Law 288 of 1996, said measure must be complied once the present approval report has been issued, by which considers that the measure is pending compliance and so declares it. The Commission awaits updated information from the parties on its execution after the publication of this report.

26. Finally, the Commission concludes that literal a) of clause 2 of the agreement is fully complied with and that literals b) and c) of clause 2, as well as clauses 3 and 4 are pending compliance, therefore the friendly settlement agreement has a partial level of compliance. For these reasons, the Commission requests the parties to inform it in a timely manner of the effective implementation of the rest of the agreement. Likewise, the IACHR will closely follow the implementation of the obligations assumed in the agreement, applying the guidelines prescribed in Article 49 of the Convention.

V. CONCLUSIONS

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1) (f) and 49 of the American Convention. The Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement arrived in the present case based on respect for human rights and consistent with the object and purpose of the American Convention.

2. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES TO:

1. Approve the terms of the agreement signed by the parties on December 3, 2019.

⁵ Channel 1 News, Press Release. [For the first time, the State performs an act of public excuses in a virtual way](#), published on April 22, 2020. (Last accessed on April 29, 2020).

La Libertad newspaper. Press release. [Colombian State will carry out an act of public excuses in a virtual way](#). Published on April 22, 2020. (Last accessed on April 29, 2020).

El Tiempo newspaper, press release. [The State acknowledges responsibility and will ask for forgiveness in the case of Luis Patiño](#). Published on April 23, 2020. (Last accessed on April 29, 2020).

Legal Affairs Website, Press release. [Colombia will recognize its responsibility in the case of Luis Horacio Patiño Agudelo](#). Published on April 23, 2020. (Last accessed on April 29, 2020).

El Espectador Newspaper, Press Release. [In a virtual act, the Colombian State will ask for forgiveness in the case of Luis Horacio Patiño](#). Published on April 24, 2020. (Last accessed on April 29, 2020).

2. Declare that literal a) of clause 2 of the friendly settlement agreement has been fully complied with, according to the analysis contained in this report.

3. Declare that literals b) and c) of clause 2 (preparation of banners and publication of the agreement), as well as clauses 3 (guarantees of non-repetition) and 4 (financial compensation) of the friendly settlement agreement are pending compliance, according to the analysis contained in this report.

4. Continue with the supervision of the commitments established in clauses 2 (letters b and c), 3 and 4 of the friendly settlement agreement until their full compliance, according to the analysis contained in this Report. To this end, it reminds the parties of their commitment to inform periodically the IACHR about compliance.

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

Approved by the Inter-American Commission on Human Rights on May 8, 2020. (Signed): Joel Hernández García, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón, Members of the Commission.