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REPORT No. 94/22
PETITION 1391-15
FRIENDLY SETTLEMENT

MARIO ANTONIO CARDONA VARELA AND OTHERS
COLOMBIA

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FRIENDLY SETTLEMENT
MARIO ANTONIO CARDONA VARELA AND OTHERS
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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On September 4, 2015, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”), received a petition presented by Luis Felipe Viveros Montoya, representative of the Legal Center for Human Rights of Antioquia (hereinafter “The petitioners” or “the petitioner party”) in which the international responsibility of the Colombian State was alleged for the violation of the rights enshrined in Articles 4 (right to life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”) in accordance with the obligation to respect established in Article 1 of the same instrument, to the detriment of Mr. Mario Antonio Cardona Varela (hereinafter “the alleged victim”) derived from his forced disappearance on October 31, 1988 in the municipality of Tierra Alta Córdoba, allegedly at the hands of State agents, and the subsequent failure to investigate and punish those responsible for the events.

2. On July 26, 2021, in the city of Bogotá DC, representatives of the Colombian State and the petitioners signed a memorandum of understanding seeking a friendly settlement in the present case, together with a work schedule to advance in the negotiations, which materialized with the signing of a friendly settlement agreement on September 23, 2021.

3. On December 16, 2021, the parties jointly submitted a report giving account of the advances in the implementation of the agreement and requested its homologation.

4. In this friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Commission’s Rules of Procedure, a review of the facts alleged by the petitioner is made and the friendly settlement agreement, signed on September 23, 2021, by the petitioner and representatives of the Colombian State is transcribed. Likewise, the agreement signed between the parties is approved and the publication of this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States is agreed upon.

II. THE FACTS ALLEGED

5. According to the petitioner party’s allegations, on October 31, 1988, Mr. Mario Antonio Cardona allegedly went to the market with his brothers and, when he was returning to his plot of land in the village of La Estrella, he was detained by members of the National Army, who allegedly forced him to get off the mule he was on and accompany them. Supposedly, the State agents had indicated to Mr. Cardona’s companions not to look for the alleged victim again and that was the last time that Mr. Cardona was seen alive.

6. According to what was reported by the petitioners, the following day, November 1, 1988, Mr. Joaquín Emilio Cardona Torres visited the scene of the events to look for Mr. Mario Antonio Cardona, and found cans of food labeled with the name of “NATIONAL ARMY REVOLVING FUND”.

7. The petitioners alleged that they had gone to the battalion in the area where the colonel in charge accused them of belonging to illegal groups. Similarly, the story was allegedly corroborated by Mr. Luis Albeiro Goez Cardona, who indicated that the colonel had mistreated them and accused them of allegedly belonging to an illegal group.

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 Rules of Procedure.

8. According to what was reported by the petitioners, the victim's next of kin had gone to the Office of the Public Prosecutor of Apartadó to file the corresponding complaint, and in this regard, they indicated that "they were not given much attention."

9. The petitioners argued that the 12th Sectional Prosecutor's Office of Montería had initiated a criminal investigation, which was later transferred to the 13th Prosecutor Delegate before the Tribunal of the National Specialized Prosecutor's Office for Transnational Justice; however, there had been no positive progress on the initiated investigation and the whereabouts of the alleged victim and those responsible for the events remained unknown.

III. FRIENDLY SETTLEMENT

10. On September 23, 2021, the parties signed a friendly settlement agreement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT PETITION N. 1391-15, MARIO ANTONIO CARDONA VARELA AND OTHERS

On September twenty three (23), 2021, on the one hand, Ana María Ordoñez Puentes, Director of the International Legal Defense Directorate of the National Agency for Legal Defense of the State, who acts with the due authorization in the name and representation of the Colombian State, hereinafter the "State" or the "Colombian State" and, on the other hand, the Legal Center for Human Rights Defense of Antioquia, represented in this act by Luis Felipe Viveros Montoya, who will be called "The petitioner", met in the city of Bogotá DC, and decided to sign this Friendly Settlement Agreement within the framework of Petition No. 1391-15 Mario Antonio Cardona Varela and others, pending before the Inter-American Commission on Human Rights.

FIRST PART: 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: It includes both the sufferings and afflictions caused to the victims, the impairment of very significant values for people, as well as the non-pecuniary alterations in the living conditions of the victim or his family.²

Material damage: Includes the loss of income of the victims, the expenses incurred on the occasion of the victimizing events³ and the economic consequences resulting from those events. The Council of State distinguishes this damage under the modalities of actual damage and loss of earnings.⁴

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.

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, par. 125.

³ Verbatim from the FSA

⁴ State Council. Contentious Administrative Chamber, Third Section. Judgment from October 20, 2014. N. 05001-23-31-000-2004-04210-01 (40.060). State Council. Contentious Administrative Chamber, Third Section. Counselor in charge: Carlos Alberto Zambrano Barrera. Judgement of July 18, 2019. N. 73001-23-31-000-2009-00133-01 (44.572).

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: Legal Center for Human Rights of Antioquia, represented in this act by Luis Felipe Viveros Montoya

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

Victims: Family members of Mr. Mario Antonio Cardona Varela.

SECOND PART: BACKGROUND

BEFORE THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

1. On September 4, 2014, the Inter-American Commission on Human Rights received a petition submitted by Dr. Luis Felipe Viveros Montoya, in which the events that occurred on October 31, 1988, in the municipality of Tierra Alta Córdoba, which led to the disappearance of Mr. Mario Antonio Cardona Varela were denounced.

2. Due to the facts of the case, a criminal investigation was carried out, which was assumed by the 12th Sectional Prosecutor's Office of Montería, under file number 114955, for the crime of forced disappearance.

3. On July 26, 2019, the parties decided to sign a memorandum of understanding to reach a friendly settlement in this case.

4. In order to get to know the progress in the investigation, on May 2, 2021, a meeting was held, in which the Attorney General's Office of the Nation and the National Agency for Legal Defense of the State participated.⁵

5. Within the framework of the meeting, the Attorney General's Office reported the investigative work that the Office was carrying out, in order to advance in the identification and individualization of the perpetrators of the forced disappearance of Mr. Mario Antonio Cardona Varela.⁶

6. In subsequent months, joint meetings were held between the parties to analyze the reparation measures to be included in the Friendly Settlement Agreement signed on the date.

⁵ Official document N. 20211700038581-GDI of June 4, 2021. General Prosecutor's Office.

⁶ Ibidem.

THIRD PART: BENEFICIARIES

The Colombian state acknowledges as victims of the present agreement, the following persons:

Name	ID Number	Relationship
Dioselina Posso Goetz	[...]	Permanent partner
Sonia Patricia Cardona Posso	[...]	Daughter
Francisco Antonio Cardona Varelas	[...]	Brother
Ovidio Antonio Cardona Varela	[...]	Brother
Luis Alfredo Cardona Varelas	[...]	Brother
Maria Ninfa Cardona Varela	[...]	Daughter
Luz Erlina Cardona Varela	[...]	Daughter
Edilma Varela Cardona	[...]	Daughter
Rosalba Varela Correa	[...]	Daughter
Maria Oliva Varela	[...]	Daughter

The victims recognized in this Friendly Settlement Agreement will benefit as long as they prove their consanguinity to Mr. Mario Antonio Cardona Varela

Additionally, the victims who will benefit from this Friendly Settlement Agreement will be those who were alive at the time of the victimizing act.⁷

FOURTH PART: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State recognizes its international responsibility for the violation of the rights recognized in articles 4 (life), 5 (humane treatment) and 7 (personal liberty), in relation to the rights recognized in articles 8 (fair trial), 25 (judicial protection) and 1.1 (obligation to respect) of the ACHR, due to the lack of due diligence in the clarification of the facts, to the detriment of the next of kin of Mr. Mario Antonio Cardona Varela.

FIFTH PART: MEASURES OF SATISFACTION

The Colombian state commits to carry out the following measures of satisfaction:

1.1. Act of redress

The Colombian State will carry out a Private Act of Acknowledgment of Responsibility, which shall be held virtually with the participation of the next of kin of Mr. Mario Antonio Cardona

⁷ The foregoing based on the jurisprudence 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, par. 425.

Varela and his representatives. The act will be carried out in accordance with the acknowledgment of responsibility indicated in this Agreement.

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

1.2. Publication of the Art. 49 report:

The Colombian State will publish the Report on Article 49 of the ACHR, once it is issued by the Inter-American Commission on Human Rights, on the website of the National Agency for Legal Defense of the State, for a term of six (6) months.

SIXTH PART: REPARATION MEASURES

The State undertakes to initiate the processing of Law 288 of 1996 “By means of which instruments are established for the compensation of non-pecuniary and material damages to the victims of human rights violations by virtue of the provisions of certain international organs of Human Rights”, once this friendly settlement agreement is approved through the issuance of the Report of 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 resulting from the damages generated by the facts of this case.

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

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

SEVENTH PART: APPROVAL AND MONITORING

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

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The IACHR reiterates that according to 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.⁸ 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 various countries, to offer an important vehicle for settlement, which can be used by both parties.

12. The Inter-American Commission has closely followed the development of the friendly settlement reached in the present case and highly values 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.

13. Likewise, in accordance with the provisions of clause seven of the Friendly Settlement Agreement, the parties requested its approval, as established in Article 49 of the American Convention.

⁸ Vienna Convention of 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.

14. The IACHR observes that, given the information provided by the parties up to that point and the request for approval of the FSA submitted by the parties to the Commission, it is appropriate to assess compliance with the commitments established in the friendly settlement agreement.

15. The Commission considers that clauses first (Concepts), second (Background), third (Beneficiaries) and fourth (Acknowledgment of Responsibility) of the agreement are declarative in nature, so it is not appropriate to monitor their execution. In this regard, the IACHR values the fourth declarative clause, in which the Colombian State recognizes its international responsibility for the violation of the rights enshrined in articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 (obligation to respect) of the same instrument, due to the lack of investigation of the truth and the determination and punishment of those responsible for the facts.

16. In relation to point 1 of the fifth clause of the FSA, related to the private act of atonement, as jointly reported by the parties on December 20, 2021, both parties emphasized that there was permanent communication between the State, the victims, and their representatives, who agreed on the details for the compliance of the measure, such as date, time, agenda, and logistics required for the event to take place. The private act of acknowledgment of responsibility was held on November 9, 2021, at 8:30 a.m. through the Streamyard platform and, at the request of the family, the transmission was made in hidden mode through the YouTube channel of the National Agency of Legal Defense of the State. In this regard, the parties provided a simple copy of the invitations circulated for said event, in which the family members of Mr. Mario Antonio Cardona Varela, their representatives, the National Agency for the Legal Defense of the State and the Executive Secretariat of the IACHR participated.

17. The parties also reported on the contents of the agenda, which included the opening and installation of the event, the projection of the National Anthem, a video in memory of Mr. Mario Antonio Cardona Varela, followed by a video prepared by the victim's family. The representative of the victims addressed the event, followed by an apology from the Advisor of the International Legal Defense Directorate of the National Agency of Legal Defense of the State, who acknowledged the international responsibility of the State under the terms of the friendly settlement agreement. Finally, the Deputy Executive Secretary of the IACHR, participated in the closing remarks.

18. In this regard, the Commission received the photographic record of the act as well as other means of verification of the implementation of this part of the agreement, and therefore, taking into consideration the information provided jointly by the parties, the Commission considers that point 1 of clause five of the friendly settlement agreement related to the private act of atonement has been fully complied with and so it declares it as such.

19. Regarding the commitments established in clauses, 5.2 (publication of the agreement) and 6 (reparation) of the friendly settlement agreement, the Commission observes that the parties have decided that their implementation be carried out after this approval, for which the Commission considers that compliance is pending and thus declares it as such.

20. On the other hand, the Commission considers that the rest of the content of the agreement is declarative in nature and therefore its monitoring is not appropriate.

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 solution 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 September 23, 2021.
2. To declare the total compliance of clause 5.1 (act of redress) based on the analysis included in this report.
3. To declare clauses 5.2 (publication of the agreement) and 6 (reparation measures) pending compliance based on the analysis included in this report.
4. To continue with the supervision of the commitments established in clauses 5.2 (publication of the agreement) and 6 (reparation measures) of the friendly settlement agreement until their complete fulfillment 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 March 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.