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## **REPORT No. 209/23**

### **CASE 13.780**

REPORT ON FRIENDLY SETTLEMENT

HUGO FERNEY LEON LONDOÑO AND FAMILY  
COLOMBIA

Approved electronically by the Commission on October 20, 2023.

**Cite as:** IACHR, Report No. 209/23, Case 13.780. Friendly Settlement. Hugo Ferney Leon Londoño and Family. Colombia. October 20, 2023.

**REPORT No. 209/23**  
**CASE 13.780**  
**FRIENDLY SETTLEMENT**  
**HUGO FERNEY LEON LONDOÑO AND FAMILY**  
**COLOMBIA<sup>1</sup>**  
**OCTOBER 20, 2023**

**I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS**

1. On December 1, 2008, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Edgar José Rodríguez (hereinafter "the petitioner" or "the petitioning party") alleging the international responsibility of the Republic of Colombia (hereinafter "State" or "Colombian State" or "Colombia"), for the violation of the human rights contemplated in Articles 4 (right to life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (right to privacy) and 25 (judicial protection), in relation to Article 1 (obligation to respect) of the American Convention on Human Rights, (hereinafter "Convention", "American Convention" or "ACHR"), as well as the violation of the provisions of Articles I, II, III of the Inter-American Convention on Forced Disappearance of Persons and Article 9 of the Protocol of San Salvador, for the disappearance of Hugo Ferney León Londoño (hereinafter, the "alleged victim") in the city of Cali, while in the service of the Special Operations Group (SOG) of the National Police, between December 21 and 22, 1988, as well as the subsequent lack of effective investigation of the facts and punishment of those responsible for the alleged disappearance.

2. On May 2, 2019, the Commission issued Admissibility Report 50/19, in which it declared the petition admissible and declared its competence to hear the claim presented by the petitioner concerning the alleged violation of the rights contained in Articles 3 (juridical personality), 4 (right to life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), and 25 (judicial protection) in accordance with Article 1. 1 of the American Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons.

3. On June 18, 2020, the petitioning party expressed its interest in initiating a friendly settlement process, and on May 20, 2021, the State indicated its willingness to move forward in the negotiation process.

4. On June 22, 2021, the Commission formally notified the parties of the start of the procedure and, on October 20, 2021, the parties signed a memorandum of understanding for the search for a friendly settlement in which they agreed on a work schedule that materialized with the signing of a friendly settlement agreement (hereinafter "FSA" or "agreement") on October 24, 2022, in the city of Bogotá D.C. Subsequently, on January 23, 2023, the petitioner requested the approval of the agreement, which was reiterated on February 28, 2023, through a report jointly submitted by the parties specifying the progress in its implementation.

5. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, contains a summary of the facts alleged in the petition and transcribes the friendly settlement agreement signed on October 24, 2022, by the petitioning party and representatives of the Colombian State. Likewise, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

**II. THE FACTS ALLEGED**

6. The petitioner alleged that between December 21 and 22, 1988, youth León Londoño, aged 22, went missing in the city of Cali when he was working with the Colombian National Police Special Operations Group (GOES). He claimed that on December 22, 1988, a Cali Police Major called Londoño's relatives to inform that the alleged victim had not reported to the worksite since the previous morning. He indicated that on December 25, 1988, León Londoño's family members traveled from Bogotá to Cali and found the alleged

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<sup>1</sup> Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the discussion and decision on this case, pursuant to Article 17(2)(a) of the Rules of Procedure of the IACHR.

victim's room "with the door open and his belongings searched". On December 26, the relatives came to Cali Metropolitan Police station seeking information about the alleged victim's going missing but received no answer. He submitted that, given the negligence by the Police Department—which did not search for the alleged victim—, the relatives decided to search for him in Cali on their own. They unsuccessfully searched in hospitals and forensic medicine services, as well as neighboring cities. The petitioner affirmed that over 26 years have passed since the alleged victim went missing, yet state authorities have not investigated, identified, prosecuted or sentenced the persons responsible for his disappearance nor established his whereabouts.

7. The petitioner alleged that when the reported events took place, there was a systematic practice of forced disappearance of police and military officers, and civilians. Around that time, eight officers were reported missing in Cali. He argued that police authorities claimed that the alleged victim and the other missing officers had deserted their jobs, to conceal their forced disappearance. He added that despite the existence of similar cases, the State failed to ensure their safety. He claimed that the State was ommissive for tolerating or disregarding risks and failing to protect the alleged victim's life, help the family to search for the missing relative immediately, further the claim for forced disappearance filed by the alleged victim's mother, and fulfill its obligation to initiate a criminal investigation for the alleged victim's forced disappearance. He also alleges negligence by the State because it appointed the alleged victim to the GOES even though the latter did not meet the requirements of age, experience, and seniority for that job. The State thus violated the alleged victim's rights, to the detriment of his family, which members faced moral, psychological, physical, social and financial damages, as a result of the uncertainty about the alleged victim's situation, the need to investigate into his disappearance on their own, with no support from the State, and the feeling of helplessness about such a painful situation. The petitioner moreover submitted that the alleged victim's relatives realized that the police were following them and even wiretapped the telephone they were using at their place of accommodation. He also indicated that, while the alleged victim was missing, the Military Criminal Court and the Police Department brought fiscal, administrative, and criminal charges against him for abandonment of duty. These bodies thus deprived the alleged victim of his right of defense, violating his right to a fair trial and tarnishing his and his family's name and honor. The petitioner alleged that the relatives were therefore unable to fully access the general social security plan.

8. The petitioner submitted that on December 22, 1988, the trial judge of the military criminal court ordered the military examining magistrate to investigate the alleged victim's disappearance. However, on December 23, 1988, a military criminal investigation was filed against the alleged victim for abandonment of duty and breach of trust. The petitioner alleged that on March 19, 1991, an oral court-martial was held without court officers or the alleged victim. On March 22, 1991, the court sentenced Mr. León Londoño to 28 months in prison and a six thousand pesos fine. An appeal was filed. On June 4, 1991, the Superior Court revoked the proceedings and ordered to resume the investigation in order to obtain evidence that proved those charges. On January 21, 1993, the Inspector-General's Office for the Police Department established, in the trial, that there was no probable cause to issue a resolution of convocation of the court-martial. Therefore, it ruled to dismiss all the proceedings filed for abandonment of duty and theft. On May 20, 1993, the Superior Military Court upheld the lower court's decision and ruled that the circumstances indicated that this appeared to be "a case of forced disappearance instead". The petitioner submitted that despite this decision, the Superior Court did not take any measures. At the same time, on December 28, 1988, the Commander of Cali Metropolitan Police Department ordered the filing of two fiscal, administrative proceedings: one for the loss of an official firearm and another for the loss of an item of radio equipment and other working tools. On February 3, 1989, a trial court found the alleged victim administratively guilty in both proceedings. An appeals court upheld both resolutions. On February 20, 1989, the alleged victim was terminated for not reporting to his worksite for over 10 days without cause. The petitioner affirmed that the military investigation against the alleged victim was meant to conceal the truth and to question and tarnish the alleged victim's name by leading to the latter's being prosecuted and sentenced to 28 months in prison. It was the Military Superior Court that, noticing the alleged victim's disappearance, revoked the said proceedings; yet it failed to take any action in this respect.

9. On January 27, 1989, the alleged victim's mother presented a criminal complaint for the disappearance of his son, before the Judicial Police Unit, which sent it to the 15th Magistrate's Court. According to the petitioner, the court undertook preliminary inquiries; however, on June 4, 1992, it ruled not to file a criminal investigation and to close the case. He alleged that the court did not notify the alleged victim's mother

of this decision, and that only on August 28, 2008, did she learn of this. In October 2014, the Unit for Crimes against Individual Liberty ruled to resume the case because the order to close the case had been dismissed—the previous order had serious irregularities regarding due process. Also, on April 29, 1994, the alleged victim's father lodged a claim for disappearance before the family judge for the Bogotá circuit, for it was over five years since the alleged victim had gone missing. On May 21, 1999, the court declared the alleged victim legally dead for absence and that the legal date of his death was December 23, 1990. The decision was upheld on August 30, 1999. The petitioner claimed omission by the State in that it failed to duly investigate the disappearance of the alleged victim, whose whereabouts remain unknown, and prosecute the persons responsible.

10. The alleged victim's relatives also filed two administrative remedies. The first was a claim for damages before the Administrative Court in Valle, Cali, which the said court dismissed on May 15, 2003, on considering that none of the claims had been proved in that court. Then, an appeals court ruled not to find their appeal admissible because it was a single-instance proceeding. The second was an appeal for annulment against the administrative decision in which the court denied the alleged victim's beneficiaries' access to death pension. On April 16, 2010, the court granted the alleged victim's relatives the said benefits.

### III. FRIENDLY SETTLEMENT

11. On October 24, 2022, in the city of Bogotá D.C., the parties subscribed a friendly settlement agreement, which provides the following:

#### **FRIENDLY SETTLEMENT AGREEMENT CASE No. 13.780 – HUGO FERNEY LEÓN LONDOÑO AND FAMILY**

On October twenty-four (24), 2022 in the city of Bogotá D.C., on the one hand, Ana María Ordoñez Puentes, Director of the Directorate of International Legal Defense of the National Agency for the Legal Defense of the State, acting with due authorization on behalf and in representation of the Colombian State, and hereinafter referred to as the "State" or the "Colombian State," and on the other hand, Doctor Edgar José Rodríguez García, acting as representative of the victims, hereinafter referred to as "the petitioners," met for the purpose of signing this Friendly Settlement Agreement within the framework of **Case No. 13.780, Hugo Ferney León Londoño and family**, in process 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 manifested through the pain, affliction, sadness, distress and anxiety of the victims.

**Material damage:** This includes the loss or detriment of the victim's income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case.<sup>2</sup>

**Non-pecuniary damage:** It includes both the suffering and affliction caused to the victims, the impairment of values of great importance for the persons, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victim or his family.<sup>3</sup>

<sup>2</sup> IHR Court., Case of the Serrano Cruz Sisters vs. El Salvador, (Merits, Reparations and Costs). Judgment of March 1, 2005, Series C No. 120, para. 150.

<sup>3</sup> IHR Court. Case of Caesar vs. Trinidad and Tobago, (Merits, Reparations and Costs). Judgment of March 11, 2005. Series C No. 123, para. 125.

**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 "ACHR".

**Satisfaction measures:** Non-pecuniary measures that aim to ensure the recovery of victims from the harm which has been caused to them. Some examples of this type of measures are: public acknowledgement of the truth and acts to make amends.

**Parties:** State of Colombia, relatives of the victim.

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

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

**Petitioners:** Dr. Edgar José Rodríguez García, who acts as the representative of the victims in the international proceeding.

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

**Victims:** The relatives of Mr. Hugo Ferney León Londoño, included in the present Agreement.

## **SECOND PART: BACKGROUND**

### **BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM**

1. On December 1, 2008, the Inter-American Commission received a petition presented by Dr. Edgar José Rodríguez García, alleging the forced disappearance of National Police Second Lieutenant Hugo Ferney León Londoño in the city of Cali between December 21 and 22, 1988, while he was on active duty with the Special Operations Group (SOP) of the National Police.
2. The initial petition states that on December 22, 1988, the relatives of Mr. Hugo Ferney León Londoño received a telephone call from a Major of the Cali Police informing them that since the morning of the previous day, the victim had not reported for duty.<sup>4</sup> The initial petition indicates that on December 25, 1988, the León Londoño family traveled from Bogotá to Cali to inquire about his whereabouts.<sup>5</sup>
3. According to the facts of the petition, on December 26, 1988, the León Londoño family went to the Cali Metropolitan Police Command to obtain information on the disappearance of Mr. Hugo Ferney León Londoño without receiving a response.<sup>6</sup> The family members hold that, since no search operation had been conducted, they decided unsuccessfully to start the search by their own means in hospitals, forensic medicine and municipalities surrounding the city of Cali.<sup>7</sup>
4. On the other hand, according to the petitioner, the victim's family members suffered moral, psychological, physical, social and economic distress and harm as a result of the

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<sup>4</sup> Initial petition, numeral 3, page 3. According to information in the criminal file, Mr. Hugo Ferney León Londoño, after leaving work in the morning, went to the residence of some friends. There he received a phone call, walked out of the place and never returned.

<sup>5</sup> *Ibid.*, numeral 3.2., page 3.

<sup>6</sup> *Ibid.*, numeral 3.3., pages 3 and 4.

<sup>7</sup> *Ibid.*, numeral 3.4., page 4.

disappearance of Mr. León Londoño, due to the lack of information on his whereabouts and the lack of clarification of the facts.<sup>8</sup>

5. Finally, the initial petition states that, to date, the facts have not been clarified, the perpetrators have not been identified, those responsible for the facts have not been tried and punished within a reasonable period of time, and even less, the victim's family members have been compensated.<sup>9</sup>

### **Proceedings initiated against Mr. Hugo Ferney León Londoño**

6. The initial petition indicates that on December 22, 1988, the First Instance Judge of the Military Criminal Jurisdiction ordered the Judge of Military Criminal Instruction to proceed with the corresponding investigation for the disappearance of Mr. Hugo Ferney León Londoño.<sup>10</sup>

7. On December 23, 1988, the 90th Court of Military Criminal Investigations opened an investigation against Mr. León Londoño, for abandonment of service and breach of trust<sup>11</sup>. On March 19, 1991, a verbal court-martial was held -without the intervention of any of the members-, in which a public defender was appointed, since Second Lieutenant Hugo Ferney León Londoño was declared absent.<sup>12</sup>

8. During the court-martial held on March 22, 1991, Mr. Hugo Ferney León Londoño was sentenced to 28 months of imprisonment and a fine of one thousand pesos and interdiction of public rights and functions for a period equal to that of the imprisonment as perpetrator and criminally responsible for the crimes of abandonment of service and embezzlement by appropriation, ordering his detention for purposes of compliance with the decision imposed and issuing arrest warrants.<sup>13</sup>

9. This decision was appealed by the public defender before the Superior Military Court, which, through a decision of June 4, 1991, declared the actions null and void and ordered to continue the investigation with the purpose of gathering evidence that would demonstrate the commission of the punishable act.<sup>14</sup> As a result of the foregoing, it was ordered that several proceedings be brought to establish the responsibility of Mr. Hugo Ferney León Londoño.<sup>15</sup>

10. Subsequently, on January 21, 1993, the First Instance Court of the General Inspectorate of the National Police, after analyzing the case, declared that there was insufficient merit to issue a decision to convene a Court Martial and decreed the dismissal of all proceedings against Mr. Hugo Ferney León Londoño for abandonment of service and embezzlement by appropriation, ordering that the decision, if not appealed, be referred to the Superior Military Court,<sup>16</sup> Finally, on May 20, 1993, the Superior Military Court upheld the decision of January 21, 1993.<sup>17</sup>

11. On the other hand, the initial petition indicates that, by order of December 28, 1988, the commander of the Metropolitan Police of Cali instructed that two administrative proceedings be brought against Mr. Hugo Ferney León Londoño, one for the loss of the revolver and the other for the loss of the communications radio and other items that he was

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<sup>8</sup> *Ibid.*, page 17.

<sup>9</sup> *Ibid.*, page 21.

<sup>10</sup> *Ibid.*, page 9.

<sup>11</sup> *Ibid.*, pages 9 and 10.

<sup>12</sup> Order of the Inspector General of the National Police in his capacity as First Instance Judge of November 23, 1990.

<sup>13</sup> Judgment issued by the War Council of the General Inspectorate of the National Police, on March 22, 1991.

<sup>14</sup> Judgment of the Superior Military Court, June 4, 1991.

<sup>15</sup> *Ibidem.*

<sup>16</sup> Judgment issued by the Inspector General of the National Police in his capacity as First Instance Judge, on January 21, 1993.

<sup>17</sup> Judgment handed down by the Superior Military Court on May 20, 1993.

carrying at the time of the disappearance. In relation to these proceedings, through a first instance decision issued on February 3, 1989, Mr. Hugo Ferney León Londoño was held administratively responsible for the loss of the revolver and was ordered to deduct the sum of one hundred and sixteen thousand six hundred and forty pesos<sup>18</sup>. This decision was confirmed on April 18, 1989 in the appellate court.<sup>19</sup>

12. By resolution of February 20, 1989, the Minister of National Defense temporarily retired Mr. Hugo Ferney León Londoño from service and transferred him to the reserve of the active service of the National Police, due to his absence from service for more than ten days without justified cause.<sup>20</sup>

13. The initial petition indicates that these charges were brought against Mr. Hugo Ferney León Londoño without giving him the opportunity -in the petitioner's opinion- to exercise his right to a defense, in violation of fair trial guarantees, and in violation of his honor and dignity, and that of his relatives.<sup>21</sup> The initial petition also alleges that, as a result of these actions, the family members were not able to fully enjoy the general social security system.<sup>22</sup>

**Legal actions taken domestically in connection with the disappearance of Mr. Hugo Ferney León Londoño**

14. Due to the facts of the case, Mrs. Rubiela Londoño de León, the victim's mother, filed a criminal complaint on January 27, 1989 before the Permanent Unit of the Judicial Police of Cali, which was forwarded to the 15<sup>th</sup> Court of Criminal Investigation of Cali. This court conducted the corresponding preliminary investigation.

15. By resolution of June 4, 1992, this office declined to open a criminal investigation and ordered that the casefile be archived, since more than two years had passed from the date on which the ruling to open the preliminary investigation was issued, without having been able to identify the perpetrators or participants in the crime, as stipulated in Article 118 of Law 23 of 1991. In the initial petition, the petitioners allege that this decision was never notified to the victim's mother, who became aware of it on August 28, 2008, when she requested information from the Attorney General's Office based on the complaint filed.<sup>23</sup>

16. Subsequently, in 2014, the Directorate of International Management of the Attorney General's Office requested the Sectional Directorate of Prosecutor's Offices to hold a Technical Legal Committee in order to evaluate the evidence collected to assess the feasibility of reopening the investigation.

17. In such way, the Technical Legal Committee was held in the Office of the 25<sup>th</sup> Sectional Prosecutor's Office in the city of Cali, in which several reasons for reopening the investigation were discussed, among them, the fact that due to the nature of the crime of forced disappearance, the statute of limitations was not applicable since the victim's body had not been found. Additionally, it was argued that, for procedural reasons, the reasoning of the inhibitory resolution had not been valid to make such decision, and therefore, it was susceptible to annulment.<sup>24</sup> Therefore, on September 26, 2014, the 25<sup>th</sup> Sectional Prosecutor's Office of Cali, revoked the inhibitory resolution, stating that it had not been properly justified.<sup>25</sup>

<sup>18</sup> *Ibid.*, page 12.

<sup>19</sup> *Ibidem.*

<sup>20</sup> Resolution No. 909 of February 20, 1989.

<sup>21</sup> *Ibid.*, pages 11 and 13.

<sup>22</sup> *Ibid.*, pages 21 and 22.

<sup>23</sup> *Ibid.*, page 12.

<sup>24</sup> 17<sup>th</sup> Delegated Prosecutor's Office before the Specialized Circuit Criminal Courts of Santiago de Cali. Interlocutory Resolution No. 126 of October 7, 2020, pages 6 and 7.

<sup>25</sup> *Ibid.*, page 7.

18. By means of an interlocutory resolution of October 7, 2020, the 17<sup>th</sup> Delegated Prosecutor's Office before the Specialized Circuit Criminal Courts of Santiago de Cali, decreed the extinction of the criminal action due to statute of limitations, according to the provisions of articles 82, numeral 4 and 83, paragraph 2 of the Criminal Code.<sup>26</sup>

19. The relatives of Mr. Hugo Ferney León Londoño hold that they were not notified of the previous decision and that they were notified by conclusive conduct of said interlocutory resolution on September 1, 2021<sup>27</sup> upon the referral made by the National Agency for the Legal Defense of the State<sup>28</sup>. Against the decision issued, the victims filed a motion for reconsideration and appeal requesting its reversal and the reopening of the investigation for forced disappearance, which was communicated to the National Agency for the Legal Defense of the State on September 7, 2021.<sup>29</sup>

20. Finally, on September 23, 2021, the Delegated Prosecutor's Office before the Specialized Circuit Criminal Courts of Cali issued Interlocutory Resolution No. 093 of September 23, 2021, through which it declared the annulment of the proceedings following the notification of Interlocutory Resolution No. 126 of October 7, 2020, proceeding to its reversal and continuing with the criminal investigation initiated.<sup>30</sup>

21. On the other hand, the relatives of Mr. Hugo Ferney León Londoño filed a complaint for direct reparation against the Nation - Ministry of Defense - National Police before the Contentious Administrative Court of Valle in Cali for the disappearance of Mr. León Londoño.<sup>31</sup>

22. This action was decided by said Court by means of a judgment on May 15, 2003, through which the defendant entities were exonerated from administrative and patrimonial responsibility, considering that through the evidence presented by the plaintiffs it was not possible to prove the responsibility of the Nation - Ministry of Defense - National Police in the disappearance of Mr. Hugo Ferney León Londoño. Subsequently, the Contentious Administrative Chamber, Third Section, of the Council of State, by decision of April 15, 2005, decided not to process the appeal and, consequently, declared the judgment issued on May 15, 2003 to be enforceable.<sup>32</sup>

23. Likewise, the family members filed a lawsuit for annulment and reestablishment of rights, in order to obtain the nullity of the administrative act which denied the recognition of the pension to the beneficiaries of Mr. Hugo Ferney León Londoño. This claim was resolved by the Contentious Administrative Court of Valle del Cauca, by means of a decision issued on April 16, 2010, ordering the recognition and payment of the survivor's pension to the beneficiaries of the victim. As a result, by resolution of August 26, 2011, the survivor's pension was recognized in the amount of one legal monthly minimum wage in effect.<sup>33</sup>

24. On the other hand, on April 29, 1994, the victim's father filed a claim of presumed death by disappearance before the Family Judge of the Bogotá Circuit. This request was resolved by the Sixteenth Family Court of Bogotá by means of a decision issued May 21, 1999, through which it declared the presumed death of Mr. Hugo Ferney León Londoño due to

<sup>26</sup> *Ibid.*, page 8.

<sup>27</sup> Remedies for reconsideration and appeal against Interlocutory Resolution No. 126 of October 7, 2020.

<sup>28</sup> By e-mail of September 1, 2021, in accordance with the request made by the petitioners and in the framework of the process of finding a friendly settlement.

<sup>29</sup> E-mail signed by the petitioners on September 7, 2021, informing that Mrs. Rubiela Londoño de León has filed a motion for reconsideration and appeal.

<sup>30</sup> Office of the Attorney General of the Nation. Interlocutory Resolution No. 093 of September 23, 2021.

<sup>31</sup> Under file No. 760012331000200000155800.

<sup>32</sup> File No. 76001-23-31-000-2000-01558-01 (29326), Judge Ruth Stella Correa Palacio. Ministry of National Defense, official communication of December 5, 2020.

<sup>33</sup> Ministry of National Defense, official letter of December 19, 2017.

disappearance, establishing as the presumed date of his death on December 23, 1990.<sup>34</sup> The decision was confirmed on August 30, 1999 by the Superior Court of the Judicial District of Bogotá.<sup>35</sup>

### **Internacional proceeding**

25. By means of Report No. 50/19 of May 2, 2019, the Inter-American Commission, declared the admissibility of the petition with respect to the alleged violation of the rights included in Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 25 (judicial protection), of the American Convention on Human Rights in relation to its Article 1.1 (obligation to respect rights). Likewise, with regard to the facts that occurred prior to the date of deposit of the instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons, with respect to the alleged continuity and lack of clarification of the crime of forced disappearance, the Inter-American Commission considered that the alleged facts could characterize possible violations of Article I of said instrument.

26. On May 20, 2021, the State informed the Inter-American Commission of its intention to initiate a process of seeking a friendly settlement. On July 6, the petitioners, for their part, expressed by e-mail their willingness to enter into this process, transmitting to the State the proposal for reparation with the measures through which the victims would feel that they would be repaired in their integrity.

27. On October 20, 2021, the Colombian State and the petitioners signed a Memorandum of Understanding for the Search for a Friendly Settlement, which was communicated to the Inter-American Commission on October 21, 2021.

28. In the context of the process of Search for a Friendly Settlement, at the request of the National Agency for the Legal Defense of the State, the Unit for the Search for Missing Persons, hereinafter "USMP", proceeded to include the humanitarian search request of Mr. Hugo Ferney León Londoño in the Search Request Registry, assigning it the number 141746. This search is linked to the Regional Search Plan of the Cali Metropolitan Area, which is currently being formulated and includes the municipalities of Cali, Jamundí, Yumbo and Candelaria. Likewise, the USMP contacted Dr. Edgar José Rodríguez García in order to guarantee the due participation of the victims in this process.<sup>36</sup>

29. In addition, in the following months, joint meetings were held between the parties to analyze the reparation measures to be included in the Friendly Settlement Agreement that is currently being signed.

### **THIRD PART: BENEFICIARIES**

The Colombian State recognizes the following persons, all Colombian citizens, as victims under this agreement:

<b>Name</b>	<b>Identification Document</b>	<b>Kinship</b>
Luis Alfonso León Ramírez (R.I.P.) <sup>37</sup>	[...]	Father
Rubiela Londoño de León	[...]	Mother

<sup>34</sup> Judgment issued by the Sixteenth Family Court of Bogotá, on May 21, 1999.

<sup>35</sup> Judgment issued by the Superior Court of the Judicial District of Bogotá, on August 30, 1999.

<sup>36</sup> Unit for the Search of Persons Reported Missing. UBPD file Nos. 1000-1-202102952 of November 22, 2021 and UBPD-1-2022-003588 of April 25, 2022.

<sup>37</sup> 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 that purpose.

Sandra Constanza León Londoño	[...]	Sister
Bebsy Yane León Londoño	[...]	Sister

The victims recognized in this Friendly Settlement Agreement will benefit as long as they can prove their relationship by blood with Mr. Hugo Ferney León Londoño.

In addition, the victims who will benefit from this Friendly Settlement Agreement will be those who were alive at the time of the victimizing event.<sup>38</sup>

#### **FOURTH PART: ACKNOWLEDGMENT OF RESPONSIBILITY**

The Colombian State recognizes its international responsibility by omission, for the violation of the right to life (Article 4.1) and the right to humane treatment (Article 5.1), in relation to the rights to fair trial (Article 8.1.) and to judicial protection (Article 25.1) established in the American Convention on Human Rights, in relation to the general obligation to guarantee (Article 1. 1. thereof), to the detriment of the family members of Mr. Hugo Ferney León Londoño, due to the lack of diligence in the investigation of the events that took place, which has prevented their clarification and the punishment of those responsible, and has generated situations of suffering and anguish for them.

#### **FIFTH PART: SATISFACTION MEASURES**

The parties establish that, within the framework of this Agreement, the following satisfaction measures will be carried out:

##### **I. Act of Acknowledgment of Responsibility:**

The Colombian State shall conduct an Act of Acknowledgment of Responsibility, which shall be performed virtually with the participation of the petitioners and the victim's family members. The act shall proceed in accordance with the acknowledgment of responsibility set forth in this Agreement.

This measure will 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 website of the National Agency for the Legal Defense of the State, for a period of six (6) months.

#### **SIXTH PART: MEASURES OF JUSTICE AND SEARCH**

The Office of the Attorney General of the Nation, within the scope of its competence, will continue to carry out, with due diligence, the judicial actions that will allow the investigation to move forward and the possible identification and individualization of those responsible for the facts. In development of the foregoing, the Office of the Attorney General of the Nation undertakes to submit a written report every six months to the petitioners on the investigative actions undertaken, as well as their progress.<sup>39</sup>

<sup>38</sup> The above, according to the jurisprudence of the IHR Court. See, IHR 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.

<sup>39</sup> Attorney General's Office. Document No. 20221700033011 of May 6, 2022 and inter-institutional meeting held on May 23, 2022.

The USMP, as a mechanism created within the framework of transitional justice, will lead, coordinate and contribute to the humanitarian and extrajudicial search for Mr. Hugo Ferney León Londoño, within the framework of the Regional Search Plan for Cali and its metropolitan area. Likewise, the USMP commits to inform and involve the family members and petitioners in the search process on a semi-annual basis.<sup>40</sup>

#### **SEVENTH PART: COMPENSATION MEASURES**

The State undertakes to initiate the process of Law 288 of 1996 "Whereby instruments are established for the compensation of damages to victims of human rights violations in accordance with the provisions of certain international human rights bodies", once this friendly settlement agreement is approved through the issuance of the Report of Article 49 of the American Convention, in order to repair the damages caused to the family members of the victims as a result of the effects generated by the facts of this case.

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

For this purpose, once the Friendly Settlement Agreement has been approved and the respective resolution has been issued by the Committee of Ministers referred to in Law 288 of 1996,<sup>41</sup> and after receiving the petitioners' proposal for compensation, the parties shall hold working sessions to discuss the amounts of compensation to be recognized, which, in any case, shall be subject to the approval of the Internal Conciliation Committee of the National Agency for the Legal Defense of the State.

#### **EIGHTH PART: HOMOLOGATION AND FOLLOW-UP**

The parties request to the Inter-American Commission to approve this Agreement and carry out its follow up.

This Agreement having been read and the parties being aware of its scope and legal content, it is signed on the twenty-four (24) day of October 2022.

#### **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 to pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply with the obligations assumed in the treaties in good faith.<sup>42</sup> It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.

13. 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.

14. Pursuant to the provisions of the eighth clause of the FSA and in accordance with the letters of January 23 and February 28, 2023, from the petitioning party and the one presented jointly by the parties,

<sup>40</sup> Unit for the Search for Missing Persons. Document No. UBPD-1-2022-008297 of August 18, 2022.

<sup>41</sup> Whereby the favorable concept for the payment of economic damages to the victims is established.

<sup>42</sup> 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.*

respectively, in which they requested the approval of said agreement, it is appropriate at this time to assess the compliance with the commitments set forth in this instrument.

15. The Inter-American Commission considers that the first (Concepts), second (Background before the Inter-American Human Rights System), third (Beneficiaries), and fourth (Acknowledgement of Responsibility) clauses of the agreement are of a declarative nature, and therefore it is not appropriate to supervise their compliance. 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 4.1 (right to life), 5.1 (right to humane treatment), 8.1 (right to a fair trial) and 25. 1 (right to judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 thereof, to the detriment of the family members of Mr. Hugo Ferney León Londoño, due to the lack of diligence in the investigation of the events that took place, thus preventing their clarification and the punishment of those responsible, and generating situations of suffering and anguish for them.

16. With regard to paragraph *(i) act of acknowledgement of responsibility* of the fifth clause on satisfaction measures, the act of acknowledgment of responsibility was carried out on February 13, 2023 at 11:00 a.m., via a digital platform, as jointly reported by the parties.<sup>43</sup> The parties reported the existence of 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. The parties provided a simple copy of the invitations circulated for said event, in which the relatives of Mr. Hugo Ferney León Londoño and their representative participated, as well as the National Agency for the Legal Defense of the State and the Commissioner and Rapporteur for Colombia, Joel Hernández García.

17. Likewise, the parties gave an account of the contents of the agenda agreed for the event, which included an opening statement, the national anthem of Colombia, the projection of a video in memory of Mr. Hugo Ferney León Londoño prepared by his relatives, words by Mrs. Sandra Constanza León Londoño and Mrs. Bebsy Yane León Londoño, sisters of the victim, as well as their representative, Dr. Edgar José Rodríguez García. The intervention of the State was made by the ANDJE's Director of International Legal Defense, who asked for forgiveness from the victims and their family for what happened, and acknowledged the State's responsibility under the terms established in the friendly settlement agreement signed between the parties, stating the following:

[...]

On behalf of the State of Colombia and as Director General of the National Agency for the Legal Defense of the State, it is an honor to join you today, not only to recognize the responsibility of the State, but also to honor the memory of young Hugo Ferney León Londoño, who disappeared in the city of Cali, while in the service of the Special Operations Group (SOG) of the National Police in events that occurred between December 21 and 22, 1988.

In this space we deeply regret the events that took place and the great loss that this has meant for the León Londoño Family and for all those close to them, who have lived for 35 years the painful absence of Hugo Ferney León Londoño. As a mother and sister I understand the immensity of the pain of the absence of a son and the weight of the silence to the questions about his whereabouts. And, also with admiration, I recognize the strength of the effort of the search and the desire that the measures of comprehensive reparation that the State is implementing contribute to mitigate the pain and provide peace of mind and wellbeing to his family. [...]

The State had the obligation to investigate, prosecute and punish those responsible for violating the fundamental rights of Mr. Hugo Ferney León Londoño. And, we have witnessed

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<sup>43</sup> See YouTube, Channel of the National Agency for the Legal Defense of the Colombian State (ANDJE). Acto de reconocimiento de responsabilidad caso 13.780 (Act of acknowledgment of responsibility case 13,780) Hugo Ferney León Londoño broadcast live on February 13, 2023. Available electronically at: <https://www.youtube.com/watch?v=2ZuEx5JM6Y8>

the painful search for truth and justice that the León Londoño family has undertaken over the years. [...]

The Colombian State recognizes that the right of access to the administration of justice is an indispensable prerequisite for the materialization of fundamental rights, and stands as one of the pillars that support the model of the Social and Democratic Rule of Law. This right means the concrete possibility that all persons, without distinction, must have to obtain the reestablishment of their rights through the means provided, which must be, among others, opportune and effective. Likewise, the State recognizes that it must ensure the vindication of the rights of the victims and the reestablishment of their rights within a reasonable period of time.

Taking into account the foregoing, and, in particular, recognizing the obligations we have as a State, in my capacity as Director General of the National Agency for the Legal Defense of the State, I acknowledge international responsibility by omission, for the violation of the rights to life (Article 4), humane treatment (Article 5.1), in relation to the rights to a fair trial (Article 8.1. ) and judicial protection (article 25) established in the American Convention on Human Rights, in relation to the general obligation to guarantee (article 1.1. thereof), to the detriment of the family members of Mr. Hugo Ferney León Londoño, due to the lack of diligence in the investigation of the events that occurred, which has prevented their clarification and the punishment of those responsible, and has generated situations of suffering and anguish upon them.

[...]

18. For his part, Commissioner Joel Hernández, IACHR Rapporteur for Colombia, stated the following:

[...]

The IACHR is present in those moments when human rights violations have not been redressed at the domestic level, and that is our role, as a complementary and subsidiary system of the national authorities that seeks, in light of the Inter-American human rights standards, that the victims of serious violations can obtain the comprehensive reparation they deserve. We are particularly pleased with the trust they have placed in the IACHR to achieve this comprehensive reparation.

The friendly settlement agreement signed last year is a positive step in this direction. It has allowed the victims of this tragedy, through their representative, to negotiate with the State on equal terms the measures that will form part of the comprehensive reparation for the damage suffered. Therefore, both parties recognize these measures as the suitable ones to advance in the satisfaction of the victims.

The State has been showing willingness to enter into friendly settlements in cases such as this and other similar cases and this is a public policy that we support from the Commission. The signing of the FSA in October 2022 was a first step, a second step is this act of acknowledgement of international responsibility that should be read as a pardon requested by the State for the violations incurred and for the denial of justice to you as relatives of Hugo Ferney. There are still steps to be taken and our exhortation to the State is to advance in this direction by complying with the other measures, especially those related to the investigation of the facts and the search, through the State agencies. The IACHR is at your disposal to accompany you in the next phase of compliance. What we all aspire is to see this FSA fulfilled in a satisfactory manner in all its clauses, which will be the best way to honor the memory of Hugo Ferney and also, the best way for you as victims to undertake this process of internal healing, reconciliation and peace with yourselves.

[...]

19. In view of the foregoing, and taking into consideration the elements of information described above, the Commission considers that paragraph (i) of the fifth clause of the friendly settlement agreement, concerning the act of acknowledgment of responsibility, has been fully complied with and so declares it.

20. On the other hand, with regard to the sixth clause, on justice and search measures, on February 28, 2023, in their joint report, the parties informed that on January 16, 2023, by means of Official Letter No. 20231700002471, the Attorney General's Office submitted a report to inform about the progress made in terms of justice. Said office pointed out that the Delegate for Territorial Security and, in particular, the 17<sup>th</sup> Specialized Prosecutor's Office for Law 600 of 2000 of the Cali Sectional Directorate, mentioned that on February 18 and March 15, 2022, the retired Major who served as Commander of the La Alameda Police Station was ordered to give a sworn statement. On the other hand, said report stated that on April 29, 2022, the office issued a work mission to the investigator of the Technical Investigation Corps -TIC- in order to identify and locate the person who served as Director of the F-2 of the National Police in the second semester of 1988, in the city of Cali, in order to hear him in a sworn statement, among other evidence. Likewise, the report also stated that on May 11, 2022, the office took a sworn statement from the former Commander of the Police Station of the La Alameda neighborhood of Cali, who affirmed that Second Lieutenant Hugo Ferney León Londoño did not work at said Station. In addition, through Substantive Resolution No. 162, the office ordered to identify and locate those who served as Commanders of the Special Operations Group SOG and the Judicial Investigation Sectional Metropolitan Police of Cali in December 1988 in Cali, in order to hear them in sworn statement. In the same sense, it was indicated that on December 6, 2022, by means of substantive resolution No. 369, it was ordered to hear the sworn statements of a Major and a Sergeant, proceedings that were reportedly carried out on January 19, 2023. Finally, it was informed that in response to the request made by the representatives to obtain a copy of file No. 830.682, the Delegate stated that it was delivered on November 23, 2022. By virtue of the foregoing, the Commission considers that this point has been partially complied with and so declares it.

21. In relation to paragraphs (ii) *publication of the article 49 report*, of the fifth clause (satisfaction measures), as well as the seventh clause (compensation measures) of the friendly settlement agreement, and by virtue of the joint requests of the parties to move forward with the approval 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. By virtue of the foregoing, the Commission awaits updated information from the parties on their execution subsequent to the approval of this report.

22. In view of the foregoing, the Commission concludes that paragraph (i) *of the act of acknowledgment of responsibility* of the fifth clause has been fully complied with and so declares it. On the other hand, the Commission considers that the sixth clause (justice and search measures) has been partially complied with and so declares it. At the same time, the Commission considers that paragraph (ii) *publication of the Article 49 report* of the fifth clause (satisfaction measures), as well as the seventh clause (compensation measures) of the settlement agreement are pending compliance. Consequently, the Commission considers that the friendly settlement agreement has a level of partial compliance and so declares it. Finally, the Commission considers that the rest of the contents of the friendly settlement agreement are of a declarative nature and therefore not subject to the IACHR's supervision.

## 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 has been arrived at in the present case on the basis of 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:**

1. To approve the terms of the friendly settlement agreement signed by the parties on October 24, 2022.
2. To declare full compliance with paragraph *(i) of the act of acknowledgment of responsibility* of the fifth clause of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare partial compliance with the sixth clause (justice and search measures) according to the analysis contained in this report.
4. To declare pending compliance with paragraph *(ii) publication of the article 49 report* of the fifth clause (satisfaction measures), as well as the seventh clause (compensation measures) of the friendly settlement agreement, according to the analysis contained in this report.
5. To declare that the friendly settlement agreement has a level of partial compliance, according to the analysis contained in this report.
6. To continue with the monitoring of the commitments assumed in paragraph *(ii) publication of the Article 49 report*, of the fifth clause (measures of satisfaction), the sixth clause (measures of justice and search) as well as the seventh clause (measures of compensation), 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.
7. 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 the 20<sup>th</sup> day of the month of October, 2023. (Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón, Stuardo Ralón Orellana and José Luis Caballero Ochoa, Commissioners.