

TECHNICAL INFORMATION SHEET
CASE 11.868 CARLOS SANTIAGO Y PEDRO ANDRÉS RESTREPO ARISMENDY REPORT ON
FRIENDLY SETTLEMENT AGREEMENT Nº 99/00
ARCHIVE
(ECUADOR)

I. SUMMARY OF THE CASE

Victim(s): Carlos Santiago and Pedro Andres Restrepo Arismendy
Petitioner(s): Judith Kimerling, Gastón Chillier, Patrick F.J. Macrory, and Laura Reifschneider
State: Ecuador
Beginning of the negotiation date: March 4, 1998
FSA signature date: May 20, 1998
Report on Friendly Settlement Agreement No. 99/00, published on October 5, 2000
Estimated length of the negotiation phase: 2 years
Rapporteurship involved: Persons Deprived of Liberty/Rights of the Child
Topics: Persons deprived of liberty/detention centers/detention conditions/police precincts/care and custody/forced disappearance/investigation/prison system/torture

Facts: The petitioners alleged that on January 8, 1988, brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy, ages 15 and 18, were arrested by the National Police of Ecuador, and thereafter disappeared while in police custody. In 1990, a Special Commission took charge of this case and determined that the two minors had been detained, tortured, killed, and disappeared by the National Police of Ecuador and that their bodies had been disposed of in a lagoon.

Rights alleged: The petitioners alleged violation of the rights to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), a fair trial (Article 8), rights of the child (Article 19), and judicial protection (Article 25) of the American Convention of Human Rights (ACHR).

II. PROCEDURAL ACTIVITY

1. On May 20, 1998, the parties signed the friendly settlement agreement.
2. On October 5, 2000, the Commission approved the friendly settlement agreement by report No. 99/00.

III. ANALYSIS OF COMPLIANCE WITH THE CLAUSES OF THE FRIENDLY SETTLEMENT AGREEMENT

| Agreement clause | State of compliance |
|---|---------------------------|
| III. STATE RESPONSIBILITY AND ACCEPTANCE With this background, the Ecuadorian State has acknowledged before the Inter-American Commission on Human Rights its guilt in the narrated facts and has been obliged to take reparative | Declarative clause |

| | |
|--|---|
| <p>measures through the use of the figure of friendly settlement provided for in Article 45 of the Regulations of the Inter-American Commission on Human Rights</p> | |
| <p>IV. COMPENSATION Therefore, the Ecuadorian State represented by the Attorney General of the State, delivered to the Engineer Pedro José Restrepo Bermúdez, under the provisions of articles 1045 and 1052 of the Civil Code, a one-time compensation of U.S. \$ 2,000,000 (two million US dollars or its equivalent in national currency), charged to the General State Budget.</p> <p>This compensation involves the consequential damages, loss of profits and moral damage, suffered by the Restrepo Arismendy family, and will be paid to the Engineer Pedro Restrepo, observing the internal legal regulations charged to the General State Budget, for which the Attorney General will notify to the Ministry of Finance and Public Credit so that within a period of 90 days, counted from the signing of this document, it fulfills this obligation.</p> | <p>Total¹</p> |
| <p>V. INDEMNIFICATION OF GUILTY The present friendly settlement does not include the compensation that the father of the Restrepo Arismendy brothers is entitled to claim, those guilty of their illegal and arbitrary detention, torture, death, and disappearance, and who received a conviction, in accordance with the provisions of the Articles 52 and 67 of the Ecuadorian Criminal Code, compensation that has been recognized in the judgment issued by the President of the Supreme Court of Justice of Ecuador, in a judgment rendered on March 31, 1998.</p> | <p>Declarative clause</p> |
| <p>VI. NEW SEARCH FOR THE RESTREPO BROTHERS</p> <p>[...] The Ecuadorian State, represented by the Attorney General, undertakes to carry out a complete, total, and definitive search, in Yambo Lake, for the bodies of the Restrepo brothers, which, it is considered, may have been cast into it in 1998 or subsequent years, and to recover them if located. To this end, the Ministry of National Defense shall make available a team of scuba divers from the Ecuadorian Navy to the Office of the Attorney General; they will be joined by a team or teams of specialized private organizations, whose assistance will be sought by the Office of the Attorney General or that are provided on a volunteer basis by Ecuadorian or international human rights organizations. The Ministry of Government, for its part, will provide the full collaboration needed to secure this objective.</p> | <p>Noncompliance²</p> |

¹ IACHR, Report No. 99/00, Case 11.868, Friendly Settlement, Carlos Santiago and Pedro Andres Restrepo Arismendy, Ecuador, October 5, 2000.

² See IACHR, Annual Report 2020, Chapter II, Section G. Friendly Settlements. Available at: <http://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap2-en.pdf>

IX. PUNISHMENT OF PERSONS NOT PLACED ON TRIAL

The Ecuadorian State, through the Office of the Attorney General, pledges to encourage the State Attorney General and the competent judicial organs, to bring criminal charges against those persons who, in the performance of their police functions, are considered to have participated in the death of brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy. The Office of the Attorney General undertakes to encourage the public or private organs with competence to contribute legally supported information that makes it possible to bring those persons to trial. If it takes place, this trial shall be carried out subject to the constitutional and statutory order of the Ecuadorian State, and, consequently, shall not proceed against those persons who have been subject to a final judgment by the Supreme Court of Justice of Ecuador, or in the event that the offenses attributable to them have been legally prescribed.

Partial³

IV. LEVEL OF COMPLIANCE OF THE CASE

3. The Commission noted that the petitioners did not submit updated information since the publication of the friendly settlement agreement since 2000. Additionally, the Commission noted that since publication of the FSA, the Commission had been following up on compliance with the clauses agreed upon by the parties in Chapter II G of the Annual Report, presented to the OAS General Assembly. As part of this follow-up, the petitioning party was requested updated information each year, granting them a reasonable period of time to submit the information they deem necessary.

4. Based on the foregoing and taking into account that the petitioners did not submit the comprehensive report as requested by the IACHR on February 11, 2020 and noting the unjustified procedural inactivity of the petitioners, which constitutes a serious indication of disinterest in the follow-up on the FSA, the Commission decided to cease the follow-up of the compliance of the friendly settlement agreement and archive the case in accordance with Articles 42 and 48 of its Rules of Procedure, noting on the record of its Annual Report to the General Assembly of the Organization of American States, that there has been partial compliance with the friendly settlement agreement.

5. Consequently, the Commission decided to cease the follow-up on compliance with the friendly settlement agreement and archive the matter.

V. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE**A. Individual outcomes of the case**

- The State paid financial compensation, as set forth under the agreement.

³See IACHR, Annual Report 2020, Chapter II, Section G. Friendly Settlements. Available at: <http://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap2-en.pdf>