

OAS/Ser.L/V/II.
Doc. 71
10 May 2022
Original: Spanish

REPORT No. 68/22
CASE 13.125
FRIENDLY SETTLEMENT

RICARDO ANTONIO ELÍAS AND FAMILY
COLOMBIA

Approved electronically by the Commission on May 10, 2022.

Cite as: IACtHR, Report No. 68/22, Case 13.125 Friendly Settlement. Ricardo Antonio Elías and Family. Colombia. May 10, 2022.

REPORT No. 68/22
CASE 13.125
FRIENDLY SETTLEMENT
RICARDO ANTONIO ELÍAS AND FAMILY
COLOMBIA¹
MAY 10, 2022

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On June 29, 2007, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACR") received a petition presented by Soraya Adalgiza Elías Puente (hereinafter "the petitioner", "petitioner party" or "the petitioners"), alleging the international responsibility of the Republic of Colombia (hereinafter "the State" or "the Colombian State"), for the violation of the rights enshrined in Articles 4 (life) and 24 (equality before the law) of the American Convention on Human Rights, (hereinafter "Convention", "ACHR" or "American Convention"), derived from the alleged murder of her brother Mr. Ricardo Antonio Elías Puente (hereinafter "alleged victim"), by members of the self-proclaimed guerrilla group National Liberation Army (ELN).

2. On April 27, 2017, the Commission approved Admissibility Report No. 37/17, in which it declared the petition admissible and its competence to hear the claim presented by the petitioner regarding the alleged violation of the rights recognized in Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its Article 1.1 (obligation to respect rights).

3. On December 20, 2021, the parties signed a Memorandum of Understanding for the search for a friendly settlement, together with a work schedule to advance in the negotiations. On January 11, 2022, the Commission formally notified the parties of the initiation of the friendly settlement process, which materialized with the signing of the friendly settlement agreement (hereinafter FSA) on March 1, 2022, in the city of Bogotá D.C. On April 1, 2022, the parties submitted a joint report on the progress of compliance with the FSA and requested the IACR to homologate it.

4. 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 by the petitioner and transcribes the friendly settlement agreement signed on March 1, 2022, by the petitioner 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 IACR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioner held that Mr. Ricardo Antonio Elías Puente, who was head of the El Cocuy National Park and was in charge of the government entity INDERENA, was allegedly murdered by members of the self-proclaimed guerrilla group National Liberation Army (ELN) on November 13, 1988, during a guerrilla takeover in the Cocuy area in the department of Boyacá. In this regard, the petitioner claimed that the State had full knowledge of the threats against the life of Mr. Ricardo Antonio Elías Puente prior to his assassination.

6. With regard to the criminal investigation, on November 21, 1988, the petitioner reportedly requested the Attorney General of the Nation to investigate the death of Mr. Elías Puente. On May 15, 2007, the Attorney General's Office reportedly informed that the investigation had been conducted by Prosecutor 14 Delegate before the Circuit Judges of Cocuy. The petitioners claimed that, in 1994, the files had been allegedly burned during a guerrilla raid, which is why the records prior to that date were not available.

¹ Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion and decision of this case, in accordance with Article 17.2.a) of the IACR Rules of Procedure.

7. According to the allegations, on November 28, 1990, the Full Chamber of the Administrative Court of Boyacá admitted an action for direct reparations filed by the petitioner and Ms. Adalgiza Puente and Ms. Sayde María Elías, mother and sister respectively of the alleged victim, against the Ministry of National Defense (MDN) and INDERENA for non-pecuniary and pecuniary damages caused by the death of Mr. Elías Puente. On May 7, 1997, the Plenary Chamber ruled in favor of the plaintiffs and ordered the defendants to pay 1,000 grams of gold to Adalgiza Puente and 500 grams to the alleged victim's sisters for moral damages, as well as to pay compensation for loss of earnings to the mother. Subsequently, on June 26, 1997, the Ministry of National Defense filed an appeal against said judgment, which was decided on December 11, 2003, by the Third Section of the Contentious Administrative Court of the Council of State, which resolved to "revoke the appealed judgment, which partially granted the defendant's claims and, instead, denied them on the grounds that in the present case there is a cause for exoneration of liability, which is the act of a third party".

8. The petitioner claimed that, following that judgment, she continued to seek "compensation and a response" from various agencies. The documentation provided shows that, on April 5, 2005, the Director of the Presidential Program for Human Rights and International Humanitarian Law reportedly informed her that, once the second instance judgment had been handed down by the Council of State, no further appeal was allowed. On the other hand, on July 11, 2006, the Fourth Delegate Attorney General's Office before the Council of State reportedly informed the petitioner that, since there was a final judicial decision adverse to her claims, it was impossible to take any other action. Likewise, on July 18, 2006, the National Unit for Justice and Peace of the Office of the Attorney General of the Nation reportedly informed the petitioner that the petition filed with the National Commission for Reparation and Reconciliation was forwarded to the Santa Rosa de Viterbo Regional Prosecutor's Office for its corresponding processing pursuant to Law 975 of 2005.

III. FRIENDLY SETTLEMENT

9. On March 1, 2022, the parties entered into a friendly settlement agreement, the text of which reads as follows:

FRIENDLY SETTLEMENT AGREEMENT CASE No. 13.125 - RICARDO ANTONIO ELÍAS PUENTE & FAMILY

On March 1, 2022, the following met 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, hereinafter referred to as the "State" or the "Colombian State", and on the other hand, Mrs. Soraya Adalgiza Elías Puente, acting on her own behalf and on behalf of her family, hereinafter referred to as "the petitioner", in order to enter into this Friendly Settlement Agreement within Case No. 13.125, Ricardo Antonio Elías Puente and Family, pending before the Inter-American Commission on Human Rights.

FIRST PART: CONCEPTS

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

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

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

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

² 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 "IACtHR".

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

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

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

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

Petitioner: Soraya Adalgiza Elías Puente.

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

Victims: Relatives of Mr. Ricardo Antonio Elías Puente.

SECOND PART: BACKGROUND BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

1. On June 29, 2007, the Inter-American Commission on Human Rights received a petition presented by Mrs. Soraya Adalgiza Elías Puente for the murder of her brother, Mr. Ricardo Antonio Elías Puente. According to the facts of the petition, Mr. Elías Puente was the victim of homicide by members of the National Liberation Army (ELN) guerrilla group while he was serving as the chief of a national park.

2. On December 7, 1988, under file No. 032, an investigation was initiated into the facts of the case. Then, on May 25, 1989, the Sole District Court of Santa Rosa de Viterbo, decided not to take cognizance and ordered to forward the preliminary proceedings to the Criminal Investigation Judge of Cucuy, Department of Boyacá, which, by designation, corresponded to the 14th Criminal Investigation Court of Cucuy³.

3. On August 4, 1989, the 14th Court of Criminal Instruction declared the nullity of the proceedings, except for the removal of the corpse and the autopsy procedures and ordered the opening of the preliminary investigation⁴.

4. Subsequently, on February 20, 1992, the 17th Court of Criminal Instruction of Cucuy, found that the preliminary proceedings had been initiated by the 14th Court of Criminal Investigation for more than two years, without having been able to identify and individualize the perpetrators of the crime, for which reason it decided not to continue with the proceedings in accordance with the provisions of Article 118 of Law 23 of 1991⁵.

5. On December 26, 2011, the Office of the Attorney General of the Nation initiated the investigation ex officio, assigning it to the 14th Prosecutor's Office Delegated before the

³ Office of the Attorney General of the Nation, Official document No. 20181700044161 of June 6, 2018.

⁴ Ibidem.

⁵ Office of the Attorney General of the Nation, Official document No. 20141700044461 of July 4, 2014.

Comprehensive Circuit Judge, attached to the Sectional Directorate of Santa Rosa de Viterbo, under file No. 114946⁶.

6. On March 3, 2014, by means of Resolution No. 00325, the Attorney General of the Nation ordered to change the assignment of the investigation to the National Anti-Terrorism Prosecution Unit, Fourth Specialized Prosecutor's Office⁷.

7. On April 29, 2014, the Fourth Specialized Prosecutor's Office decided not to hear the investigation because it determined that the statute of limitations had expired⁸.

8. On April 27, 2017, by means of Admissibility Report No. 37/17, the Inter-American Commission declared the admissibility of the petition in relation to the rights to life, humane treatment, fair trial and judicial protection, recognized in Articles 4, 5, 8 and 25 of the American Convention to the detriment of the victim, in relation to Article 1.1. thereof.

9. At a meeting held on December 16, 2021, the parties decided to sign a Statement of Understanding to initiate the search for a friendly settlement in the present case.

10. On December 20, 2021, the Minute of Understanding for the Search for a Friendly Settlement was signed, which was communicated to the Inter-American Commission on December 21, 2021.

11. In the following days, joint meetings were held between the parties in order to analyze the comprehensive reparation measures to be included in the Friendly Settlement Agreement that was signed on that date.

THIRD PART: BENEFICIARIES

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

Name	Citizen ID number	Kinship
Soraya Adalgiza Elias Puentे	[...]	Sister
Adalgiza del Socorro Puentе de Elias (R.I.P) ⁹	[...]	Mother

The victims recognized in this Friendly Settlement Agreement will benefit provided that they can prove their blood relationship with Mr. Ricardo Antonio Elías Puentе.

In addition, the victims who will benefit from this Friendly Settlement Agreement will be those who were alive at the time of the victimizing event¹⁰.

FOURTH PART: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State recognizes its international responsibility by omission, for the violation of the rights recognized in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to Article 1.1. thereof (obligation to guarantee), to the detriment of the

⁶ Office of the Attorney General of the Nation, Official document No. 20181700044161 of June 6, 2018.

⁷ Ibidem.

⁸ Ibidem.

⁹ In which case, the amounts to be recognized by virtue of the economic compensation under Law 288 of 1996, will be recognized to their beneficiaries in accordance with the succession presented for said purpose.

¹⁰ This is in accordance with the jurisprudence of the IHR Court. See, IHR Court. Case of the Displaced Afro-descendant Communities of 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.

relatives of Mr. Ricardo Antonio Elías Puente, due to the lack of diligence in the investigation of the events that occurred, which resulted in the absence of identification, prosecution and punishment of the perpetrators of his homicide.

FIFTH PART: SATISFACTION MEASURES

The parties establish that, within the framework of this Agreement, the following satisfaction measures are to be implemented:

i. Submission of a letter of dignification:

The Colombian State shall deliver a letter of dignification to Mrs. Soraya Adalgiza Elías Puente, sister of Mr. Ricardo Antonio Elías Puente, stating the acknowledgement of responsibility made by the Colombian State for the facts of the case, in accordance with the provisions of this Agreement. The letter of acknowledgment shall be sent through the postal service to the residence of Mrs. Soraya Adalgiza Elías Puente.

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

ii. Publication of the Report of Article 49:

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

SIXTH PART: 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 by virtue of 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 on Human Rights, with the purpose of repairing the damages caused to the relatives of Mr. Ricardo Antonio Elías Puente as a consequence of the affectations generated by the facts of the present case.

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

The criteria and amounts recognized by the current jurisprudence of the Council of State are to be used for compensation purposes.

SEVENTH PART: HOMOLOGATION AND FOLLOW-UP

The parties request the Inter-American Commission the homologation of this Agreement and its follow-up.

This Agreement is signed on March 1, 2022, being the parties aware of its scope and legal content.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

10. The IACHR reiterates that in accordance with Articles 48.1.f and 49 of the American Convention, the purpose of this procedure is to "reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention. The acceptance to carry out this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the principle *pacta sunt servanda*".

sunt servanda, by which the States must comply in good faith with the obligations undertaken in the treaties¹¹. It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows for the termination of individual cases in a non-contentious manner, and has proven, in cases involving several countries, to offer an important vehicle for settlement, which can be used by both parties.

11. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

12. Pursuant to the provisions of clause seven of the friendly settlement agreement, the parties agreed to request the Commission to issue the report contemplated in Article 49 of the American Convention, once the friendly settlement agreement is signed.

13. 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 execution. In this regard, the Inter-American Commission 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 guarantee) thereof, to the detriment of the relatives of the alleged victim, due to the lack of diligence in the investigation of the events that occurred, which resulted in the failure to identify, prosecute and punish the perpetrators of his murder.

14. With regard to point 1 (Letter of Dignification) of the fifth clause, the parties jointly reported that the document was delivered to the petitioners and provided a copy thereof, dated March 31, 2022, addressed to Mrs. Soraya Elías Puente and signed by the Director of the Legal Department of International Defense of the ANDJE, which states the following:

Respected Mrs. Soraya,

Please receive respectful greetings on behalf of the State of Colombia and as Director of the International Legal Defense Directorate of the National Agency for the Legal Defense of the State, it is an honor for me to send you this letter, not only to acknowledge the responsibility of the State in such painful events, but also to honor the memory of Mr. Ricardo Antonio Elías Puente, who was the victim of homicide on June 29, 2007, allegedly by members of the guerrilla group National Liberation Army (ELN).

Those responsible for his death, although they managed to extinguish his life, did not manage to extinguish the love of his loved ones, especially his sister, who for years fought to find the truth, and never forgot the memory of Mr. Ricardo Antonio Elías Puente. The Colombian State condemns this and all acts of violence, which, in an irrational manner, have led to the loss of innocent lives, of hard-working people, whose work exalts our country.

On behalf of the State of Colombia, and as Director of the International Legal Defense Directorate of the National Agency for the Legal Defense of the State, I express to you and the other family members of Mr. Ricardo Antonio Elías Puente our deepest feelings of solidarity. These events should pain us all and invite us to continue working for peace and reconciliation in our country.

I am honored to write these words to exalt the memory of Mr. Ricardo Antonio Elías Puente and to continue in this process of friendly settlement that we have initiated. I am sure that the words that are written here are not enough to heal the wounds and forget the pain, but I am convinced that they help to start the path towards forgiveness and reconciliation.

¹¹ 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.

The Colombian State has made unceasing efforts to put an end to so many years of violence in our country. The victims are the focus and priority of institutional decisions and actions. Only together, State and victims, can we advance in the construction of a country at peace, in which the rights to justice and reparation are a guarantee, a right for all Colombians.

The Colombian State condemns and rejects the events surrounding the death of Mr. Ricardo Antonio Elías Puente, as well as the lack of identification and individualization of the perpetrators of these crimes, which has hindered the right of his relatives to an effective reparation and to advance in their process of forgiveness. The Colombian State had the obligation to investigate, judge and punish those responsible for violating the fundamental rights of Mr. Elías Puente, we have witnessed the painful search for truth and justice during these years by Mrs. Soraya.

The Colombian State recognizes that the right of access to the administration of justice is an indispensable prerequisite for the realization 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, timely and effective. Likewise, the State recognizes that it must ensure the vindication of the rights of the victims and the reestablishment of the positions affected by the act caused within a reasonable period of time.

Therefore, on behalf of the State of Colombia, I acknowledge international responsibility for the violation of the rights to fair trial and judicial protection, recognized in Articles 8 and 25 of the American Convention on Human Rights, in relation to the general obligation of guarantee established in Article 1 thereof, to the detriment of the next of kin of Mr. Ricardo Antonio Elías Puente.

We hope that this letter, which is part of the measures of satisfaction agreed in the Friendly Settlement Agreement signed on March 1, 2022, will contribute to fill the void left by the death of Mr. Ricardo Antonio Elías Puente, as well as to the vindication of his memory.

I would like to end this communication highlighting the untiring fight of Mrs. Soraya Adalgiza Elías Puente, her persistence and infinite love for her brother. Thank you, Mrs. Soraya, because you never let yourself be defeated by despair and adversity. Although we know that nothing can replace the loss of a loved one, nor the lack of investigation and effective punishment of those responsible, we trust that the path of reconciliation that we begin today will allow us to overcome these violent episodes that we as a nation have had to face and allow us to build a country in which no one else has to suffer because violence takes away a loved one.

Receive my most fraternal embrace.

15. In view of the foregoing, taking into consideration the elements of information jointly provided by the parties, the Commission considers that point 1 of clause five, related to the delivery of a letter of dignification, has been fully complied with and declares it as such.

16. In relation to point 2 (Publication of the Article 49 Report) of clause five (Satisfaction Measures) and clause six (Compensation Measures), in virtue of the joint request of the parties to move forward with the homologation of the agreement prior to its execution, the Commission observes that said measures must be fulfilled after the publication of this report, and therefore considers that they are pending compliance and so declares it as such. By virtue of the foregoing, the Commission shall await updated information from the parties on their execution subsequent to the approval of this report.

17. For the foregoing reasons, the Commission concludes that paragraph 1 of clause five (Letter of Dignification) has been fully complied with and so declares it as such. On the other hand, the Commission

considers that paragraph 2 of clause five (Publication of the Report Art. 49) and clause six (Financial Compensation) are pending compliance and declares it so. Finally, the Commission reiterates that the rest of the content of the agreement is of a declarative nature and therefore its supervision does not apply.

V. CONCLUSIONS

1. Based on the foregoing considerations and pursuant to the procedure provided for in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction with the achievement of a friendly settlement in the present case, based on respect for human rights and compatible with the object and purpose of the American Convention.

2. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the Friendly Settlement Agreement signed by the parties on March 1, 2022.

2. To declare point 1 of clause five (Letter of Dignification) of the friendly settlement agreement fully complied with, according to the analysis contained in this report.

3. To declare point 2 (Publication of the Article 49 Report) of clause five and clause six (Compensation Measures) of the friendly settlement agreement as pending compliance, according to the analysis contained in this report.

4. To continue monitoring the commitments established in clause five, point 2, and clause six of the agreement, according to the analysis contained in this report. To this end, remind the parties of their commitment to report periodically to the IACHR on compliance with said measures.

5. To make this report public and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on May 10, 2022. (Signed): Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice President; Margarette May Macaulay, Second Vice President; Esmeralda E. Arosemena de Troitiño; Joel Hernández García and Roberta Clarke Members of the Commission.