

OEA/Ser.L/V/II.  
Doc. 60  
11 March 2022  
Original: Spanish

**REPORT No. 58/22**  
**CASE 14.291**  
FRIENDLY SETTLEMENT REPORT

CAPTAIN N  
COLOMBIA

Approved electronically by the Commission on March 11, 2022.

**Cite as:** IACHR, Report No. 58/22, Case 14.291. Friendly settlement. Captain N. Colombia. March 11, 2022.

**REPORT No. 58/22**  
**CASE 14.291**  
FRIENDLY SETTLEMENT  
CAPTAIN N  
COLOMBIA<sup>1</sup>  
MARCH 11, 2022

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

1. On February 1, 2013, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or the “IACHR”) received a petition filed by Germán Humberto Rincón Perfetti (hereinafter, “the petitioner” or “the petitioning party”), which alleged the international responsibility of the Colombian state (hereinafter “the State” or “the Colombian State”) for the violation of the human rights recognized under Articles 1.1 (obligation to respect rights), 2 (obligation to adopt provisions of domestic law), 8 (right to a fair trial) and 24 (equality before the law) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in relation to the alleged exclusion from and denial of promotion against Captain N<sup>2</sup> within the National Army of Colombia, on the grounds of his diagnosis as human immunodeficiency virus (HIV positive).

2. On December 7, 2020, the Commission notified the parties of its decision to delay the processing of the admissibility of the case until the merits stage, in accordance with Article 36(3) of its Rules of Procedure and Resolution 1/16 on *measures to reduce procedural backlog*.

3. On July 12, 2021, the parties signed a memorandum of understanding to seek a friendly settlement for this case, together with a work schedule to advance on the negotiations. Subsequently, on September 23, 2021, the Commission notified the parties of the beginning of the procedure to reach a friendly settlement.

4. On October 25, 2021, the parties signed a Friendly Settlement Agreement in the city of Bogota, D.C. Afterwards, on November 8, 2021, the parties filed a joint report before the Commission to request the homologation of the settlement and the protection of the identity of the alleged victim by giving him the pseudonym “Captain N”.

5. Pursuant to Article 49 of the Convention and Article 40.5 of the Rules of Procedure of the Commission, this report on the friendly settlement presents a summary of the facts alleged by the petitioner and the transcription of the Friendly Settlement Agreement, which was signed on October 25, 2021, by the petitioner and the representatives of the Colombian State. Furthermore, the Agreement signed by the parties shall be adopted and the instant report shall be published and included in the IACHR’s Annual Report to the General Assembly of the Organization of American States.

**II. THE FACTS ALLEGED**

6. The petitioner claimed that Captain N, who had served in the National Army of Colombia for approximately 15 years, tested positive for human immunodeficiency virus (HIV) in 2001. In that regard, the petitioner stated that the alleged victim had never been incapacitated due to his diagnosis, and that his treatment had been successful and timely; thus, his viral load was undetectable and he was asymptomatic. According to the information provided by the petitioner, in light of Article 7 of Decree Law No. 1543 of 1997, which regulates the management of infections with the human immunodeficiency virus (HIV), the acquired immunodeficiency syndrome (AIDS) and other sexually transmitted diseases (STDs), a person cannot be considered ill by the mere fact of carrying the virus.

---

<sup>1</sup> 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.

<sup>2</sup> The IACHR protects the identity of the victim as requested by himself.

7. The petitioner pointed out that, given his health condition, Captain N had been sent to the Health Squad; nevertheless, his attending physician had ordered his relocation to an area in which there were no sick persons nor conflict being waged. Afterwards, he had been relocated for a year and a half to perform anti-guerilla combat assignments, which the petitioner also considered to be against the instructions given by the attending physician. The aforementioned facts, in the petitioner's understanding, point to the lack of a clear, outlined and appropriate policy on the relocation of people with HIV in the Colombian Army.

8. The petitioner argued that on February 5, 2009, the Medical Board determined that the victim had lost 100% of his ability to work, deeming him incapable to serve in any position or capacity despite his satisfactory performance and medals. Due to the foregoing, he was dismissed from service due to his disability. As a result, he filed a writ for the protection of constitutional rights against the Ministry of Defense, which was rejected on August 10, 2012. To that regard, the petitioner indicated, in a general manner and without providing detailed information, that the aforementioned decision was challenged, which resulted in the revocation of the first instance ruling and an order to reinstate the petitioner into the military force, which then became effective.

9. The petitioner also claimed in a general manner that, in spite of the fact that his reinstatement had been ordered, Captain N was denied a promotion on the same grounds. In this regard, the petitioner argued that, according to what was set forth in the regulations in force, candidates to promotions had to attest for a psycho-physical aptitude, and that many of Captain N's rank colleagues had not been considered suitable, but were promoted nonetheless. Conversely, the petitioner had been denied a promotion in spite of having served in a high rank and of meeting all the technical, tactical and physical requirements. According to the petitioner, this constituted disproportionate and discriminatory treatment. The petitioner explained that, in ten years of service, Captain N had been promoted five times to the ranks of Non-Commissioned Officer, Cadet, Sub-Lieutenant, Second Lieutenant, Lieutenant and Captain; he had received six medals; he had received 84 honors between 1999 and 2012; he had obtained a high score in the physical test; his lab results at the moment of the evaluation were within normal parameters, and he had passed the test in 2012 showing professional suitability and physical conditions that indicated he could be promoted.

10. For the foregoing reasons, the alleged victim filed a second writ for the protection of constitutional rights against the Ministry of National Defense. According to the general comment made by the petitioner, while the writ of amparo was granted, it was ineffective, since it ordered that the victim be re-evaluated by the same entity that had deemed him 100% unable to perform his duties.

11. The petitioner argued that this series of actions had resulted in a violation of the rights of Captain N to equality before the law and to a fair trial, given that he had suffered damage to his name, honor and professional credibility, and he had been prevented from thriving and improving his status and income.

### **III. FRIENDLY SETTLEMENT**

12. On October 25, 2021, the parties signed a Friendly Settlement Agreement on the following terms:

#### **FRIENDLY SETTLEMENT AGREEMENT CASE No. 14,291 CAPTAIN N**

On October 25, 2021, in the city of Bogotá D.C., on the one side, María del Pilar Gutiérrez Perilla, Advisor to the Directorate of International Legal Defense of the National Agency for the Legal Defense of the State, acting with due authorization on behalf of the Colombian State (hereinafter "the State" or "the Colombian State"), and on the other side, lawyer Germán Humberto Rincón Perfetti (hereinafter referred to as "the petitioner") met to sign this Friendly Settlement Agreement within the framework of Case No. 14,291, Captain N, pending resolution before the Inter-American Commission on Human Rights.

## FIRST PART: CONCEPTS

For the purposes of this document, the terms listed hereunder shall be understood as follows:

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

**Non-pecuniary damage:** Harmful effects of the case facts that do not have an economic or patrimonial nature, which are manifested through the pain, affliction, sadness, anguish and anxiety of the victims.

**Non-material damage:** Suffering and affliction caused upon the victims, the undermining of values that are very dear to persons and the non-pecuniary disturbance of the living conditions of the victim or their next of kin.<sup>3</sup>

**State or Colombian State:** In accordance with Public International Law, it will be understood that it is the signatory of the American Convention on Human Rights (hereinafter “the American Convention” or “ACHR.”)

**Satisfaction measures:** Non-pecuniary measures whose purpose is to ensure the recovery of the victims from the damage that has been caused to them. Some examples of this type of measure are the public disclosure of the truth and acts of redress.

**Parties:** State of Colombia, the victim’s next of kin, as well as their representatives.

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

**Integral reparation:** All those measures that objectively and symbolically restore the victim to the state previous to the commission of the damage.

**Representative of the victims:** Organization “Indemnizaciones Paz”.

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

## SECOND PART: BACKGROUND

### BEFORE THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS.

On February 1, 2013, the Inter-American Commission on Human Rights received a petition filed by Germán Humberto Rincón Perfetti reporting the following facts:

1. Captain N served in the National Army of Colombia for nearly 15 years.
2. In 2001, Captain N tested positive for human immunodeficiency virus (HIV) .
3. After his diagnosis, Captain N was promoted twice.<sup>4</sup>
4. Due to his health condition, Captain N was sent to the Health Squad. Notwithstanding the foregoing, on March 26, 2002, his attending physician ordered his relocation to an area where there were no sick persons nor conflict being waged.<sup>5</sup>

---

<sup>3</sup> IACHR Court, Caesar v. Trinidad and Tobago (Merits, reparations and costs). Judgement of March 11, 2005. Series C No. 123, para. 125.

<sup>4</sup> Decree Law No. 1474 of May 30, 2003, and Decree Law No. 1881 of May 28, 2007.

<sup>5</sup> Administrative Staff Order No. 1010 of February 20, 2002.

5. On February 5, 2009, Captain N was examined by the Medical Board and deemed to have lost 100% of his ability to work. By virtue of said exam, Captain N was dismissed from service for disability, and was made eligible for pension payments.<sup>6</sup>
6. For this reason, Captain N filed a writ for the protection of constitutional rights against the Ministry of Defense/National Army, for considering there had been a violation to his rights to work, equality, free development of personality, freedom to choose profession or occupation, avoid degrading treatment, freedom of consciousness, honor and human dignity. This action was ruled upon in first instance by the Family Division of the Superior Court of the District of Bogotá, which rejected the petitioner's claims on its judgement of August 10, 2012. This decision was challenged. As a result, the first instance ruling was revoked and an order to reinstate Captain N to his position was issued.
7. Later on, the National Army called Captain N to participate in a promotion competition. As part of the process, an evaluation was conducted by the promotion board. It was determined that the petitioner did not meet the psycho-physical criteria required for promotion.<sup>7</sup>
8. Therefore, the alleged victim filed a second writ for the protection of constitutional rights against the Ministry of National Defense/National Army. Said decision was ruled in favor of the petitioner and thus requested the Labor Medical Board to perform a new evaluation.
9. Once the writ for the protection of constitutional rights had been exhausted and pursuant to the rules of the Inter-American system of human rights, the case was brought to the Inter-American Commission on Human Rights in January 2013, on the grounds of violations to the American Convention on Human Rights.
10. By means of its decision of December 7, 2020, the IACHR decided to address the stages of admissibility and merits jointly.
11. The State held meetings with the petitioner in 2019, 2020 and 2021 with the aim of setting in motion the process to reach a friendly settlement. Thus, the entities involved in the case held several meetings so as to analyze whether said process was feasible. The petitioner was then informed of said deliberations.
12. On June 9, 2021, the Colombian State and the petitioners signed a Memorandum of Understanding to Seek a Friendly Settlement, which was presented to the Inter-American Commission on June 18, 2021.
13. In the subsequent months, the parties met several times with the purpose of analyzing the reparation measures to be included in the Friendly Settlement Agreement signed on this date.

### THIRD PART: BENEFICIARIES

The Colombian State recognizes the following persons as victims for the purposes of this Agreement:

Name	Identity Card Number	Direct Victim / Relationship
Captain N	[...]	Direct Victim
[...]	[...]	Wife
[...]	[...]	Son

<sup>6</sup> Resolution No. 28,712 of the Labor Medical Board, February 5, 2009, and Ministerial Resolutions No. 8045 of November 2021 and No. 1969 of March 26, 2013.

<sup>7</sup> Decree Law No. 1790 of 2000.

The family members mentioned above shall be recognized in this Friendly Settlement Agreement provided that they prove they are related to Captain N by blood or marriage.

Additionally, the victims that shall benefit from this Friendly Settlement Agreement are those that were alive at the moment of the perpetration of the victimizing acts.<sup>8</sup>

#### **FOURTH PART: ACKNOWLEDGEMENT OF RESPONSIBILITY**

The Colombian State acknowledges its responsibility for the violation of the rights protected in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 thereof, to the detriment of Captain N. Likewise, it acknowledges its international responsibility for the violation of the right enshrined in Article 5 (personal integrity), of the same international document, to the detriment of Captain N, his wife [...] and his son [...].

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

The Colombian State commits to taking the following satisfaction measures:

**i. Reinstatement of Captain N to the National Army of Colombia.**

Once this Agreement has been homologated by the IACHR, the administrative procedures to reinstate Captain N shall be initiated by submitting the Agreement to the Ministry of National Defense for its review. Within a one-month (1) period, the Ministry shall submit it to the Personnel Department of the National Army, so that, in the two (2) subsequent months, the latter may prepare a draft resolution and a statement of reasons establishing the rank proposal, considering that Captain N is to be reinstated to the rank he had been dismissed from.

Simultaneously, Captain N shall complete his medical file so as to be evaluated by the labor medical personnel of the Directorate of Military Health of the National Army, in compliance with the ruling on protection, so as to determine if Captain N's health state is appropriate for his reinstatement. The foregoing procedure shall be carried out as of the moment the Ministry of Defense receives the Agreement and within the first subsequent month.

Once the draft reinstatement resolution has been prepared and reviewed, it shall be submitted to the National Army's Department of General Affairs of the General Command of the Military Forces, and to the Legal Affairs Office of the Ministry of National Defense, so that it can be reviewed and signed within the subsequent month. Afterwards, said resolution shall be notified to the interested parties in order to proceed to determine the number of vacation days Captain N is entitled to as per the information reported by the Division of Leaves of the Army's Personnel Department. Within the following fifteen (15) days, Captain N shall complete the military training procedure to be finally assigned to a military unit.

After his reinstatement, Captain N shall be under the supervision of the promotion board to be considered for a promotion to the rank of Major. The promotion board shall determine whether he meets the judicial and legal requirements, the psycho-physical criteria required (he will have to fill in his medical file for promotion), as well as the requirements set forth in Decree Law No. 1790 of 2000. The only requirement that shall not be taken into consideration is the *time in command*<sup>9</sup> required in the rank. In case he is promoted to the rank of Major, he shall have the opportunity to be promoted to the rank of Lieutenant Colonel, for which he will

<sup>8</sup> The foregoing is pursuant to the jurisprudence of the IAHR Court. See IAHR Court, Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia (Preliminary objections, merits, reparations and costs). Judgement of November 20, 2013. Series C No. 270, para. 425.

<sup>9</sup> Minimum time-in-service in each rank required to be promoted to the immediate higher rank.

have to take and pass the General Staff training course and meet other legal requirements. Also, his behavior shall comply with the rules of conduct of the Colombian Military Forces and the Military Disciplinary Code, Law No. 1862 of 2017, as well as the other regulations.

Once the foregoing procedure has been completed, the Officer shall be under the supervision of the promotion board to be considered for a promotion to the rank of Lieutenant Colonel. The promotion board shall determine whether he meets the judicial and legal requirements, the psycho-physical criteria required (he will have to fill in his medical file for promotion), as well as the requirements set forth in Law No. 1862 of 2017 and Decree Law No. 1790 of 2000. The only requirement that shall not be taken into consideration is the *time in command* required in the rank.

If he meets the aforementioned requirements, the administrative acts of promotions shall be consulted to determine the effective date of promotion of his training course peers, given that this Agreement provides that his reinstatement shall be carried out seamlessly in accordance with the relevant recommendations given by the labor medical personnel.

Finally, his salary and all the emoluments he was entitled to as Officer will be fully paid. However, the money received as a disability pension shall be reimbursed to the State, as it has been agreed upon with the petitioner and his representative in an exploratory meeting on the process of friendly settlement held on August 17, 2021, since the administrative act that granted him the pension must be revoked to enable his reinstatement, pursuant to Article 128 of the Political Constitution of Colombia, which forbids citizens from holding two or more public offices simultaneously and from drawing more than one allocation from the Public Treasury. The parties have also agreed on the payment of salary adjustments and benefits that the petitioner had stopped receiving once he has complied with the requirements and has been effectively promoted to Major and Lieutenant Colonel.

**ii. Publish Report on Article 49.**

The Colombian State shall publish the relevant sections of the report on the friendly settlement – once the Inter-American Commission has homologated said report – on the website of the National Agency for the Legal Defense of the State and the website of the Ministry of National Defense, for six (6) months.

**SIXTH PART: NON-DISCLOSURE OF IDENTITY**

Pursuant to what is set forth in the American Convention on Human Rights, in its Article 5.1 – “Every person has the right to have his physical, mental, and moral integrity respected” – and Article 11.2 – “No one may be the object of arbitrary or abusive interference with his private life, his family, [...] or of unlawful attacks on his honor or reputation” – and according to the Political Constitution of Colombia – Article 15 thereof provides that “All persons have the right to their personal and family privacy and to their good name” –, the State commits itself to respect confidentiality in the instant case.

**REQUEST BEFORE THE IACHR**

According to the foregoing considerations, the petitioner and his family request that their names be deleted from the publications carried out before the Inter-American System of Human Rights in relation to the instant friendly settlement.

## SEVENTH PART<sup>10</sup>: COMPENSATION MEASURES

The State undertakes to initiate the procedure foreseen in Law No. 288 of 1996, which “establishes instruments to compensate victims of violations of human rights by virtue of what is set forth in some international human rights bodies,” once the instant Friendly Settlement Agreement is homologated by means of the issuance of Report on Article 49 of the American Convention on Human Rights, with the purpose of repairing the damages caused on Captain N, his wife [...] and his son [...] as a consequence of the impact of the facts of this case.

The National Agency for the Legal Defense of the State shall be the entity in charge of enforcing Law No. 288 of 1996.

With regard to compensations, the criteria and amounts to be applied shall be those provided for by the jurisprudence in force of the Council of State.

## EIGHTH PART: GUARANTEES OF NON-REPETITION

The Colombian State shall continue fostering programs to create awareness on human rights and sexual and reproductive rights targeted at the organic personnel of the Public Security Forces as a mechanism to fight stigmatization and discrimination towards people with chronic conditions. The IACHR shall receive the work plan within the six (6) months following its homologation of the Agreement.

Moreover, the State commits itself to building a case for study and analysis on the basis of the instant complaint within the six (6) months following the reinstatement of Captain N, in accordance with institutional proposals in training schools and with the aim of educating, raising awareness and promoting prevention in the matter.

## NINTH PART: HOMOLOGATION AND FOLLOW-UP

The parties request the Inter-American Commission to homologate this Agreement and to ensure its follow-up. Having this Agreement been read and understood by the parties and being all the parties aware of its scope and legal content, the Agreement was signed on October 25, 2021.

## IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

13. 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 the 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 *pacta sunt servanda* principle, by which the States must comply in good faith with the obligations assumed in the treaties.<sup>11</sup> It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows the termination of individual cases in a non-contentious manner and has proved, in cases involving various countries, to offer an important vehicle for settlement, which can be used by both parties.

14. The Inter-American Commission has closely followed the development of the friendly settlement reached in the instant 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.

<sup>10</sup> From this clause on, the IACHR adjusted the numbering of the FSA ex officio because the numbering was repeated in the sixth clause.

<sup>11</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.”

15. In pursuance of the Agreement signed by the parties to request the Commission to homologate the Friendly Settlement Agreement set forth in Article 49 of the American Convention, it is now appropriate to assess the compliance of the commitments established therein.

16. The Commission considers that the first (Concepts), second (Background before the Inter-American System of Human Rights), third (Beneficiaries), fourth (Acknowledgment of Responsibility) and sixth (Non-disclosure of Identity) clauses of the Agreement are declarative in nature, and as such, it is not the Commission's role to oversee their compliance.

17. In that regard, the Commission values the fourth declarative clause, in which the Colombian State acknowledges its international responsibility for the violation of the rights protected in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 (obligation to respect rights) thereof, to the detriment of Captain N. Likewise, it values the State's acknowledgement of responsibility for the violation of the right enshrined in Article 5 (personal integrity) of the same document, to the detriment of Captain N, his wife [...] and his son [...].

18. With regard to the commitments assumed in the fifth (Satisfaction Measures), seventh (Reparation Measures) and eighth (Guarantees of Non-Repetition) clauses of the Agreement, the Commission notes that, according to what the parties had agreed upon in the document of the Friendly Settlement Agreement, these measures shall be implemented once said Agreement has been homologated. Thus, the Commission considers the aforementioned clauses to be pending compliance and it declares it as such. By virtue of the foregoing, the Commission awaits updated information from the parties on the enforcement of the clauses after the adoption of this report.

19. Furthermore, the IACHR considers the remaining content of the Agreement to be declarative in nature and therefore notes it is not its responsibility to oversee its compliance.

## **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 settlement 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 Agreement signed by the parties on October 25, 2021.

2. To declare pending compliance with the fifth (Satisfaction Measures), seventh (Reparation Measures) and eighth (Guarantees of Non-Recurrence) clauses of the friendly settlement, in accordance with the analysis set forth in this report. With this aim, it reminds the parties of their commitment to periodically inform the IACHR of the compliance with said measures.

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

Approved by the Inter-American Commission on Human Rights on March 11, 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 Garcia and Roberta Clarke Members of the Commission.