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CASE 11.538

REPORT ON FRIENDLY SETTLEMENT

HERSON JAVIER CARO (JAVIER APACHE)
COLOMBIA

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FRIENDLY SETTLEMENT
HERSON JAVIER CARO (JAVIER APACHE)
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OCTOBER 7, 2016¹

I. SUMMARY

1. On September 5, 1995, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition filed by the Comisión Intercongregacional de Justicia y Paz [*Inter-Church Justice and Peace Commission*], now called the Comisión Intereclesial de Justicia y Paz [*Inter-Ecclesial Commission for Justice and Peace*, hereinafter “the petitioners”], in which it alleges the responsibility of agents of the Republic of Colombia (hereinafter “the State”) for the extrajudicial execution of Herson Javier Caro, known as “Javier Apache,” allegedly carried out by A State agent on November 15, 1992 in the municipality of El Castillo, in the Medellín de Ariari jurisdiction of Colombia. The petitioners claimed the violation of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 10 (right to compensation), 11 (right to privacy), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”), in keeping with Article 1.1 of the same instrument.

2. The petitioners alleged that on the morning of November 15, 1992, Herson Javier (15 years of age) went to the village of Puerto Unión to sell a few kilograms of coffee. That same day, a Colombia National Army patrol, attached to Infantry Battalion 21 Vargas allegedly carried out a series of checkpoints and raids in the village of Puerto Unión. This patrol set up a checkpoint at the points of entrance and exit to the village, reportedly subjecting many villagers to mistreatment. When Herson Javier learned of what was happening, he ran away. The members of the military patrol, upon seeing Herson Javier running, shot at him. He died some hours later due to the injuries sustained.

3. On May 6, 2015, the parties held a working meeting with the support of the Commission during the work visit to the country of Commissioner José Jesús Orozco Henríquez, Rapporteur for Colombia. The parties signed a memorandum of understanding at this meeting to reach a friendly settlement. On March 2, 2016, the parties signed a friendly settlement agreement, in which the State recognized its international responsibility for the violation of the rights enshrined in Articles 4 (right to life), 14 (right to privacy),² 19 (rights of the child) of the child Herson Javier Caro (Javier Apache), as well as Articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights.

4. This report on friendly settlement, pursuant to Article 39 of the Convention and Article 40.5 of the Rules of Procedure of the Commission, provides a brief statement of the facts alleged by the petitioner and transcribes the text of the friendly settlement agreement, signed March 2, 2016 by the petitioner and Colombian state representatives. Furthermore, the agreement entered into by the parties is adopted and it is agreed that this report shall be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

¹ Commissioner Enrique Gil Botero, of Colombian nationality, did not participate in the discussion and decision of this case, in keeping with Article 17.2.a) of the IACHR Rules of Procedure.

² According to the statements of the parties, the IACHR understands that the parties are referring to Article 11 of the American Convention on Human Rights. For this purpose, see: *Friendly Settlement Agreement, Case 11.538, Herson Javier Caro, Colombia*.

II. PROCESSING WITH THE COMMISSION

5. On September 5, 1995, the IACHR received the petition, which was reported to the Colombian state. On August 5, 2009, the IACHR issued Admissibility Report No. 72/09, which was sent to the parties. In its report, the IACHR concluded that it was competent to examine the alleged violation of Article 4.1 (right to life), 5.1 (right to humane treatment), 8.1 (right to a fair trial), 19 (rights of the child), and 25 (judicial protection) of the American Convention on Human Rights, in keeping with Article 1.1 of the same instrument.

6. On August 5, 2009, April 7, 2014, and April 17, 2015, the petitioners submitted additional information that was forwarded to the State. On November 26, 2014 and April 7, 2015, the State submitted additional information that was forwarded to the petitioners.

7. On May 6, 2015, the parties held a work meeting with the support of the Commission during the in-country work visit of Commissioner José Jesús Orozco Henríquez, Rapporteur for Colombia. The parties signed a memorandum of understanding at this meeting to reach a friendly settlement. In a March 5, 2016 joint statement, the parties informed the IACHR that they had signed a friendly settlement agreement on March 2, 2016 in Bogota, Colombia and requested that a report be issued, pursuant to Article 49 of the American Convention.

III. ALLEGED FACTS

8. The petitioners indicated that Herson Javier Caro, born November 12, 1977, lived in the municipality of El Castillo, in the Department of Meta, a region characterized by high levels of violence and confrontations between guerrilla groups and law enforcement. He lived there with his family, working in agriculture. He was known in the village as Javier Apache, due to the last name of his mother's life partner, Heliodoro Apache Oyola.

9. According to the petitioners' allegations, on November 15, 1992, Herson Javier, of 15 years of age, had been sent to the village of Puerto Unión to sell the coffee they had grown on the farm. That same day, a Colombian National Army patrol attached to the Infantry Battalion had set up a series of checkpoints and raids in the vicinity of the village of Puerto Unión, located in the jurisdiction of Medellín de Ariari, Department of Meta.

10. According to the petitioners' allegations, Herson Javier – upon noticing the mistreatment of some of the residents at the hands of the soldiers at the checkpoint – became nervous and ran away. According to the petitioners, the members of the military patrol shot at Herson Javier when they saw him running. Javier Apache died some hours later at a health outpost in the municipality of El Castillo (Meta).

11. The Commission observes that, given the events, the preliminary investigation began with the Attorney General's Office of the East [*Fiscalía General de Oriente*] on April 1, 1996. On August 5, 1996, the preliminary investigation began in the ordinary justice system, then later in the regional justice system. It was later referred to the military criminal justice system on April 30, 1999 (as pertains to soldier Tiberio Silva) and May 9, 2001 (as pertains to soldier Guarnizo Ovalle). On May 29, 2003, the Military Criminal Brigade Court issued an acquittal, which was upheld September 3, 2003 by the Military Tribunal.

12. The petitioners alleged that on November 30, 2000, the Third Decongestion Administrative Court of Bogota issued a ruling rejecting the suit for direct reparations, submitted by Javier Apache's mother.

13. Lastly, regarding disciplinary actions, the petitioners, through the documentation provided alleged that they filed a complaint before the Office of the Inspector General of the Nation. On July 8, 1997, the Office of the Prosecutor General issued a ruling against Second Sergeant Guarnizo Ovalle, carrying the disciplinary sanction of suspension of rank for 30 days for the events that occurred. According to reports, this decision was appealed and later upheld on August 14, 1997 by the Office of the Prosecutor General.

IV. FRIENDLY SETTLEMENT

14. On March 2, 2016 in Bogota, Colombia, the State, represented by Juanita María López Patrón, Director of Legal Defense of the National Agency for Legal Defense of the Colombian State [*Agencia Nacional de Defensa Jurídica del Estado colombiano*], and the petitioner, represented by the Inter-Ecclesial Commission for Justice and Peace, represented by Danilo Rueda and Liliana Ávila, signed a Friendly Settlement Agreement, whose text is as follows:

FRIENDLY SETTLEMENT AGREEMENT CASE 11.538 HERSON JAVIER CARO (JAVIER APACHE)

On March 2, 2016, in the city of Bogota, Capital District, Juanita María López Patrón, Director of Legal Defense of the National Agency for Legal Defense of the Colombian State, who is acting on behalf and in representation of the Colombian state and whom shall be referred to hereinafter as “the Colombian state,” and the other party, the Inter-Ecclesial Commission for Justice and Peace, represented in this act by Danilo Rueda and Liliana Ávila, who are acting as petitioners in this case and whom shall be referred to hereinafter as “the petitioner,” signed this friendly settlement agreement for case 11.538 Herson Javier Caro (Javier Apache), processed before the Inter-American Commission on Human Rights, hereinafter “IACHR.” This agreement shall be governed by the following clauses:

FIRST: RECOGNITION OF RESPONSIBILITY

The Colombian state recognizes its international responsibility for the violation of the rights enshrined in Articles 4 (right to life), 14 (right to privacy), 19 (right of the child) (sic) of the child Herson Javier Caro (Javier Apache), as well as Articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter ACHR), to the detriment of the victim and his family, for the events occurred on November 15, 1992 in the village of Puerto Unión, located in the jurisdiction of Medellin de Ariari, Department of Meta, during which the child Herson Javier Caro died as a result of being shot at the checkpoint set up in the area by the National Army.

SECOND: JUSTICE

The Office of the Prosecutor General of the Nation, in the framework of its competencies, shall file the action for the revision of the ruling of May 29, 2003, handed down by the Fourth Military Criminal Brigade Court of Villavicencio Meta and upheld by the Superior Military Court on September 3, 2003, once the report called for in Article 49 of the ACHR is issued.

THIRD: SATISFACTION AND REHABILITATION MEASURES

The State of Colombia pledges to take the following measures:

1. An act of recognition responsibility (sic) and public apologies carried out by high-level state officials, with the participation of public authorities, the families of the victims and their representatives, broadcast across mass media. The logistical and technical support for this measure will be provided by the Comprehensive Reparation and Assistance for Victims Unit [*Unidad para la Atención y Reparación Integral a las víctimas*].
2. Provide a grant for \$50,000,000 pesos (FIFTY MILLION PESOS, local currency) for Cielo Yamile Apache Caro and another of the same amount for William Alfonso Apache Caro, siblings of the victim, in order to finance the technical, technological, or professional education of their choosing and pay living expenses. The beneficiaries of this measure must go through the relevant formalities to be admitted to the respective educational institution

and shall complete the programs offered by the university institution that would ensure adequate academic performance.

In any case, use of the grant must begin no later than five (5) years from the signing of this agreement, otherwise the State's actions shall be declared fulfilled. Should the measure not be implemented in the period indicated due to the State, the obligation to provide the educational grant shall not expire. The Ministry of National Education and the Colombian Institute of Educational Credit and Technical Studies Abroad [*Instituto Colombiano de Crédito y Estudios Técnicos en el Exterior*] shall be responsible for carrying out this measure.

3. William Alfonso Apache (siblings of the victim) (sic) will be exempted from compulsory military service upon turning 18 years of age and his military passbook will be issued free of charge. This measure shall be carried out by the Comprehensive Reparation and Assistance for Victims Unit and the Ministry of National Defense.

4. Through its model for comprehensive care, assistance, and reparation for victims implemented by the Unit, the State undertakes to provide support for the victims of this case, so that they may gain access to the reparation plans, programs, and projects offered by the Colombian state. A differentiated approach shall be given to the mother of Herson Javier Caro, bearing in mind that she is an older adult.

5. The Ministry of Health and Social Protection shall implement the health rehabilitation measures consisting of medical, psychological, and psychosocial care through the General Health Social Security System [*Sistema General de Seguridad Social en Salud*] and the Psychosocial Care and Comprehensive Health Program for Victims [*Programa de Atención Psicosocial y Salud Integral para las Víctimas*]. Adequate, timely, and priority treatment shall be guaranteed for those so requiring and having so requested the said treatment, and for the necessary time. By providing psychological and psychosocial treatment, the circumstances and needs specific to each person must be considered, such that collective, family, and individual treatment is provided, as agreed with each individual and following an individual evaluation.

6. For access to comprehensive health care, the beneficiaries of these measures shall be guaranteed any type of medication and treatment they may need (including physical, mental, and psychological health). They shall receive preferential and differentiated care based on their status as victims.

(Numbering not included in the text of the document).

FOURTH: PECUNIARY REPARATION

The State undertakes to enforce Law 288 of 1996, once this friendly settlement agreement has been approved with the issuance of the report pertaining to Article 49 of the ACHR, for the purposes of redressing the pecuniary and non-pecuniary damages that may be proven in favor of the direct family members of Herson Javier Caro that have not been compensated through the contentious-administrative jurisdiction. The Ministry of National Defense shall be responsible for this measure.

FIFTH: APPROVAL AND FOLLOW-UP

The parties request that the Inter-American Commission on Human Rights approve this agreement and monitor its enforcement.

V. DETERMINATION OF COMPATIBILITY AND FULFILLMENT

15. The IACHR reiterates that, under Articles 48(1)(f) and 49 of the Convention, this procedure has the objective of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s consent to pursue this avenue is evidence of its good faith to honor the Convention’s purposes and objectives, based on the principle of *pacta sunt servanda*. According to that principle, States must comply in good faith with the obligations undertaken in treaties. The IACHR also wishes to point out that, with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement procedure has proven to be a useful vehicle that both parties can utilize to arrive at a solution.

16. To this end, it is important to highlight that the effectiveness of the friendly settlement mechanism is based primarily on two key pillars: the willingness of the parties to reach a friendly settlement of the matter and fulfillment of the reparation measures included in the friendly settlement, which should guarantee respect for the human rights recognized in regional instruments.³

17. In this case, the Inter-American Commission has closely monitored the development of the friendly settlement reached and greatly values the efforts made by both parties during the negotiations on the agreement to reach a friendly settlement that is consistent with the object and purpose of the Convention.

18. The IACHR observes that, in keeping with what was set forth in the friendly settlement agreement, the parties have jointly requested that the Commission adopts the report called for in Article 49 of the American Convention, in order to start the proceedings with respect to the State’s enforcement of Law 288 of 1996, as well as to revise the May 29, 2003 ruling handed down by the Fourth Military Criminal Brigade Court of Villavicencio Meta and upheld by the Superior Military Court on September 3, 2003.

19. The Inter-American Commission appreciates the Colombian State’s recognition of its international responsibility, as established in the friendly settlement agreement, for the violation of the rights enshrined in Articles 4 (right to life), 11 (right to privacy), 19 (rights of the child) of the child Herson Javier Caro (Javier Apache), as well as Articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the ACHR of the victim and his family.

20. The IACHR also takes note of the commitments undertaken by the Colombian state to provide comprehensive reparations to the family members of Javier Apache, with measures for satisfaction and social and health rehabilitation, and in particular the State’s commitment with respect to the justice clause regarding imposing the revision of the ruling that has allowed the events occurred to remain unpunished.

21. In light of the foregoing and giving special consideration to the joint request of the parties regarding the approval of the friendly settlement agreement, the IACHR decides to continue monitoring all the commitments made in the agreement until they have been fully implemented, following the issuance of this report.

VI. CONCLUSIONS

1. Based on foregoing considerations and in accordance with the procedure established in Articles 48.1(f) and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by both parties, as well as its satisfaction that a friendly settlement has been reached in this case, based on respect for human rights and that is consistent with the object and purpose of the American Convention.

³ IACHR, *Impact Report on the Friendly Settlement Procedure*, 2013, OEA/Ser.L./V/II. Doc. 45/13, December 18, 2013.

2. The IACHR concludes that the Colombian state has not yet fulfilled the commitments it undertook.
3. The IACHR will report on progress made by the State in fulfilling the friendly settlement agreement in its Annual Report to the OAS General Assembly.
4. 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 March 2, 2016.
2. To declare that the second, third, and fourth clauses of the friendly settlement entered into by the parties are pending fulfillment.
3. To continue overseeing the commitments not yet fulfilled by the Colombian state. To this end, to remind the parties of their commitment to regularly report their fulfillment to the IACHR.
4. To publish this report and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 7th day of the month of October, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.