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**REPORT No. 135/17**  
**CASE 12.712**  
REPORT ON FRIENDLY SETTLEMENT

RUBEN DARIO ARROYAVE GALLEGO  
COLOMBIA

Approved by the Commission at its session No. 2102 held on October 25, 2017.  
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FRIENDLY SETTLEMENT  
RUBEN DARIO ARROYAVE GALLEGO  
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OCTOBER 25, 2017 <sup>1</sup>

**I. SUMMARY**

1. On December 12, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition submitted by the *Centro de Derechos Humanos de Antioquia*, [Human Rights Center of Antioquia, hereinafter “the petitioners”] which alleged responsibility of agents of the Republic of Colombia (hereinafter “the State”) for failure to investigate and punish those responsible for the kidnapping and murder of Rubén Darío Arroyave Gallego while he was in the custody of the State on November 20, 1995. The petitioners allege violations of Articles 4 (right to life), 8 (right to a fair trial) 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 allege that Rubén Darío Arroyave, who had a disability, was kidnapped and murdered by members of illegal armed groups while he was being held in a prison in the municipality of El Bagre. According to the petitioners, the State failed in its duty to protect a person in custody, Mr. Arroyave Gallego, and did not investigate the facts surrounding the events nor make reparations to the family members of the alleged victim.

3. On May 17, 2016, the parties signed a memorandum of understanding to seek a friendly settlement, which established the working methodology for reaching an agreement. On August 15, 2017, the parties signed a Friendly Settlement Agreement in which the Colombian State acknowledged its international responsibility for violating the rights established in Article 3 (right to juridical personality), Article 4 (right to life), Article 5 (right to humane treatment), and Article 7 (right to personal liberty), of the American Convention on Human Rights, in relation to the general obligation established in Article 1.1 of that instrument, to the detriment of Rubén Darío Arroyave Gallego. The State also acknowledged its international responsibility for violating the right to humane treatment of the family members of the victim, as established in Article 5 of the same instrument.

4. This Report on Friendly Settlement, in accordance with Article 49 of the Convention and Article 40.5 of the Rules of Procedure of the Commission, provides a summary of the facts alleged by the petitioner and set forth in the Friendly Settlement Agreement signed on August 15, 2017 by the petitioner and a representative of the Colombian State. It also constitutes approval of the agreement signed by the parties and the decision for this report to be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

**II. PROCEEDINGS BEFORE THE COMMISSION**

5. On December 12, 2006, the IACHR received a petition, which was transmitted to the Colombian State on April 17, 2008. On August 5, 2009, the Commission declared the matter admissible for the purposes of examining the alleged violation of Articles 2 (obligation to adopt provisions of domestic legal effect), 4(1) (right to life), 8 (right to a fair trial), and 25 (right to judicial protection), in relation to Article 1(1) of the American Convention, to notify the parties, and to order its publication and include it in its Annual Report to the OAS General Assembly.

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<sup>1</sup> Commissioner José de Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the discussion and decision of this case, in keeping with Article 17.2.a) of the Rules of Procedure of the IACHR.

6. The petitioners submitted additional information during the processing of the petition on the following dates: June 22, 2009; February 3, May 14, and June 17 of 2010; June 6, 2011; September 13, 2012; and July 15, 2014. This additional information was transmitted to the State.

7. The State presented additional information during the processing of the petition on the following dates: April 7, August 5, and November 29 of 2009; March 17 and November 22 of 2010; and July 13 and October 24 of 2011. This additional information was transmitted to the petitioners.

8. On May 17, 2016 the parties signed a memorandum of understanding to reach a friendly settlement.

9. On March 17, 2017 the parties signed a Friendly Settlement Agreement (FSA).

10. On August 17, 2017 the petitioner asked the Inter-American Commission on Human Rights for its assessment and approval of the Friendly Settlement Agreement in keeping with Article 49 of the American Convention on Human Rights.

### III. ALLEGED FACTS

11. The petitioners allege that Rubén Darío Arroyave Gallego was the beneficiary of a pension from the National Army of Colombia who, after leaving the National Army, resided in the municipality of El Bagre in the Bajo Cauca area of Antioquia Department. The petitioners alleged, without providing details, that as the result of bullet wounds to the head Mr. Arroyave Gallego incurred during his military service, he had a disability which caused him serious behavioral crises. According to the account of the petitioners, during one such episode, Mr. Arroyave Gallego committed the crime of aggravated theft, for which he was convicted.

12. The petitioners indicated that Rubén Darío Arroyave was being held at a detention center in the custody of the *Instituto Nacional Penitenciario y Carcelario* (INPEC-National Penitentiary and Incarceration Institute), which was not appropriate for his medical condition, since it had no medical personnel nor the means to care for a person with this kind of disability. In addition, the petitioners indicated that because he was a retired officer in the armed forces who had served in a very dangerous area in which illegal armed groups were operating, the alleged victim feared for his life and on multiple occasions requested to be transferred to an institution appropriate for his medical condition and particular level of risk.

13. The petitioners allege that on September 20, 1995, some men belonging to an unidentified illegal armed group violently burst into the El Bagre municipal jail facility and carried away Rubén Darío Arroyave Gallego, and allegedly subjected him to summary execution in the neighboring municipality of Zaragoza, also in Antioquia Department, where his lifeless body was found. The petitioners did not indicate the estimated time of death or the length of time of the kidnapping. The petitioners indicated that the State authorities—both police and jail officials—took no actions to prevent the abduction of Mr. Rubén Darío Arroyave, nor to pursue his captors once he was taken by force from the detention center.

14. Without providing details, the petitioners indicated that a criminal investigation had been opened over the violent death of Rubén Darío Arroyave Gallego, which the family members of the alleged victim were not allowed to participate in as they were not given access to the investigation file. According to the petitioners, as of the date the petition was lodged the circumstances of Mr. Arroyave Gallego's death had not been established, nor had those responsible for his kidnapping and death been identified or put on trial. Along the same lines, the petitioners indicated that no investigation had been initiated against the State agents who had the duty to protect the alleged victim and who failed in their duty to take effective action to guarantee his life and humane treatment. From the case file it can be deduced that on September 21, 1995 a government investigation was opened under regular criminal jurisdiction, which was closed since sufficient evidence was not obtained and no indication was given to continue to the investigation.

15. The petitioners indicated that due to the events that occurred, a claim for direct reparations was filed but it was unsuccessful. From the file it is deduced that on September 11, 1997 a claim for direct reparation was filed against the Colombian State, INPEC, and the El Bagre municipality over the acts and omissions attributable to members of INPEC and the El Bagre municipality which resulted in the death of Rubén Darío Arroyave Gallego. According to documents in the file, on June 2, 2005, Courtroom Four of the Administrative Court of Antioquia issued a restraining order to prevent a ruling on the claim for direct reparation, because “an objection based on the acts of third parties” was in order.

16. In that decision, the Administrative Court of Antioquia dismissed the claim and sustained the objection raised by the State in its defense to the effect that there was no service failure, there was a lack of a causal relationship, and there was a lack of active legal stating. The court found that the death of Rubén Darío Arroyave could not be attributed to the State since “third parties unrelated to the territorial entity being sued were the ones who removed him from the prison and later murdered him... nor was it possible to speak of service failure by omission on the part of the El Bagre municipality prison authorities regarding the way Mr. Rubén Darío Arroyave Gallego was removed from the municipal jail, since the prison... was incapable of resisting a surprise, disproportionate incursion by several heavily armed subjects affiliated with the subversives. This, together with the exemption from criminal liability that was invoked, breaks the causal relationship between the unlawful harm suffered by the claimants and the behavior of the administration.”

17. The petitioners indicated that after the decision was handed down by the Administrative Court of Antioquia they filed an appeal and complaint, which were also denied without any ruling on the merits. They additionally filed a motion for protection (*tutela*), which was also denied. According to the petitioners the last judicial decision, on the complaint, was handed down on June 13, 2006.

18. According to the documents in the file, on March 9, 2006, the Administrative Contentious Court of the Council of State denied the motion for protection filed by the petitioner against the Administrative Court of Antioquia. This overturned the June 2, 2005 decision regarding the violation of due process and the right to judicial recourse. This decision indicated that the perpetrators of the crimes were members of the *Ejército de Liberación Nacional* [National Liberation Army—ELN] and that the alleged victim’s corpse was found two days after the events.

19. It is also observed that on May 25, 2006, the Administrative Contentious Court of the Council of State ruled on a complaint filed against the decision issued on September 9, 2005, which denied the appeal of the decision by the Administrative Court. In its considerations, the Council of State indicated that although when the motion was filed on September 11, 1997 the matter had two jurisdictional levels or stages, when Law 954 went into force on April 27, 2005, the provisions of the previous law were repealed and the matter became one of a single jurisdictional level or stage.

20. For the foregoing reasons, the petitioners believe that the State did not fulfill its duty to protect the life and humane treatment of the alleged victim, it failed to conduct a true and effective investigation, and it failed to provide effective remedies of judicial protection whereby the relatives of Rubén Darío Arroyave could obtain reparations.

#### **IV. FRIENDLY SETTLEMENT**

21. On August 15, 2017 in the city of Bogotá, Colombia, Ana María Ordoñez Puentes, Director of the *Defensa Jurídica Internacional de la Agencia Nacional de Defensa Jurídica del Estado* [International Legal Defense team of the State National Legal Defense Agency], acting on behalf and in representation of the Colombian State (hereinafter “the Colombian State”), and the *Centro Jurídico de Derechos Humanos de Antioquia* [Legal Center for Human Rights of Antioquia], represented by Luis Felipe Viveros Montoya, acting on behalf of the petitioner in this case (hereinafter “the petitioner”), signed the following Friendly Settlement

Agreement in Case No. 12.712 Rubén Darío Arroyave Gallego, in the context of proceedings before the Inter-American Commission on Human Rights.

**FRIENDLY SETTLEMENT AGREEMENT**  
**Case 12.712 RUBEN DARIO ARROYAVE GALLEGO**

**BACKGROUND**

1. On September 17, 1995 Mr. Rubén Darío Arroyave was taken from the municipal jail of Bagre, Antioquia by members of an illegal armed group. Days later he was found dead.
2. On December 12, 2006 the Inter-American Commission on Human Rights received a petition which claimed the State was responsible for the events surrounding the kidnapping and subsequent death of Rubén Darío Arroyave.
3. Through Report No. 69/09 dated August 5, 2009, the Inter-American Commission on Human Rights declared the petition admissible in relation to Articles 2, 4.1, 8, and 25 of the American Convention on Human Rights, in keeping with its Article 1.1.
4. On May 17, 2016, the Colombian State and the representatives of the victims, signed a Memorandum of Understanding to reach a friendly settlement.
5. In the ensuing months, joint meetings were held to analyze the proposals of both parties in order to arrive at this agreement.
6. In the aforementioned dialogue process, a detailed examination of the criminal file was conducted, leading to the conclusion that in this specific case the *Fiscalía General de la Nación* [National Prosecutor's Office] had reasonably complied with its obligation of means and had ensured an effective criminal investigation, according to the standard set by the constant jurisprudence of the Inter-American Court. The petitioners acknowledge and accept this conclusion.

**ONE: RECOGNITION OF RESPONSIBILITY**

The Colombian State acknowledges its international responsibility for failure to guarantee the rights to juridical personality (Article 3), to life (Article 4), to humane treatment (Article 5.1), and to personal liberty (Article 7) established in the American Convention on Human Rights, in light of the general obligation set forth in Article 1.1 of that instrument, of Mr. Rubén Darío Arroyave Gallego.

Given that Mr. Arroyave Gallego was incarcerated and in the custody of the State, and because of the special condition of being subject to State power, the government is fully responsible for his safety and protection.

In light of the foregoing, the State also acknowledges its international responsibility for violation of the right to humane treatment (Article 5.1) under the American Convention on Human Rights of the family members of Rubén Darío Arroyave Gallego, due to the anguish caused by his abduction from the jail and the uncertainty surrounding the causes and circumstances of his death.

**TWO: SATISFACTION MEASURES**

The Colombian State undertakes to hold a private act of recognition of responsibility in which it will deliver a letter of apology to the family of the victim.

Logistical and technical support for these measures will be provided by the Office of the Presidential Advisor for Human Rights.

### **THREE: PECUNIARY REPARATION**

The State undertakes to enforce Law 288 once this Friendly Settlement Agreement is approved through issuance of the Article 49 report under the American Convention, for the purpose of redressing the non-material damages that may be proven to the relatives of the victim which have not been compensated through the contentious administrative jurisdiction.

### **FIVE: APPROVAL AND FOLLOW-UP**

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

Signed in triplicate in Bogotá, Colombia on August 17, 2017.

## **V. DETERMINATION OF COMPATIBILITY AND FULFILLMENT**

22. 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 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.

23. The Inter-American Commission has closely monitored the development of the friendly settlement reached in this case 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.

24. According to the text of the Friendly Settlement Agreement, the parties have jointly requested that the Commission adopt an Article 49 report under the American Convention, so that proceedings can begin in favor of the relatives of the victim for reparations as described above through the State’s enforcement of Law 288 of 1996. The Commission also takes into special consideration the message from the petitioner of August 23, 2017 which noted that, “the reaching of a friendly settlement in this case is due to a *sui generis* situation in which the parties not only acknowledge the State’s responsibility for custody over Mr. Rubén Darío Arroyave Gallego, but also the investigative efforts made by the Colombian State to clarify the facts surrounding the criminal actions of third parties.” The petitioner’s message also reiterated the request that the Commission issue a report approving the friendly settlement agreement in order to move forward with implementation of the economic compensation measure.

25. The Inter-American Commission appreciates the Colombian State’s recognition of its international responsibility, as established in the friendly settlement agreement, for its failure to guarantee the right to life of Rubén Darío Arroyave Gallego. It also appreciates the acknowledgement of responsibility for violation of the right to human treatment of the relatives of Mr. Arroyave Gallego, which are rights established in the American Convention on Human Rights.

26. The Commission takes note of the State’s commitment to give a private apology to the relatives of Rubén Darío Arroyave Gallego, and urges the State to submit a timetable for compliance with this measure and that it report to the Inter-American Commission on Human Rights once the measure has been taken.

27. Therefore, the IACHR finds that the commitments made in the Friendly Settlement Agreement have not yet been fulfilled and so it shall continue to oversee this process. It urges the State to act as quickly as possible to carry out the reparation measures set forth in the Friendly Settlement Agreement signed by the parties, and to present to the IACHR, without delay, a compliance plan that includes a timetable of the actions to be taken.

## **VI. CONCLUSIONS**

28. Based on the foregoing considerations, and by virtue of the procedure set forth 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 that a friendly settlement was reached in this case, founded on respect for human rights and compatible with the object and purpose of the American Convention.

29. 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 August 15, 2017.
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 to the IACHR on fulfillment of the measures established in the Friendly Settlement Agreement, and to submit a fulfillment plan which includes a schedule of the actions entailed in implementation.
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 in the city of Montevideo, Uruguay, on the 25 day of the month of October, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez and Paulo Vannuchi.