

OEA/Ser.L/V/II.  
Doc. 94  
1 June 2020  
Original: Spanish

**REPORT No. 84/20**  
**PETITION 595-09**  
FRIENDLY SETTLEMENT REPORT

JORGE ALBERTO MONTES GALLEGO AND FAMILY  
COLOMBIA

Approved electronically by the Commission on June 1, 2020.

**Cite as:** IACHR, Report No. 84/2020, Petition 595-09, Friendly Settlement. Jorge Alberto Montes Gallego and family. Colombia. June 1, 2020

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**I. SUMMARY AND RELEVANT PROCEDURAL ASPECTS OF THE FRIENDLY SETTLEMENT PROCESS**

1. On March 30, 2009, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition submitted by Miguel Piñeros Rey (hereinafter “the petitioners” or “the petitioner party”), against the Republic of Colombia (hereinafter “the State” or “the Colombian State”) in which the international responsibility of the State was alleged for the violation of articles 1.1. (Obligation to respect and guarantee rights), 2 (right to life), 5 (right to personal integrity), 8 (judicial guarantees), 10 (right to compensation), 17 (protection of the family), 22 (right to movement and residence), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “Convention” or “American Convention” or “CADH”). As well as for the violation of articles 1 (right to life, safety and integrity of the person), 2 (right to equality before the law), 8 (right of residence and transit), 11 (right to preservation of health and well-being) and 18 (right to justice) of the American Declaration of the Rights and Duties of man, to the detriment of Jorge Alberto Montes Gallego.

2. The petitioner alleged that on July 19, 1994, Mr. Montes Gallego had received several bullet wounds, because illegal armed groups had taken the Villavicencio-San Martín highway for approximately six hours, restricting all types of traffic. Likewise, the petitioner reported that the death occurred due to acute anemia and hypovolemic shock due to severe bleeding, because the victim could not be transferred to a medical center immediately, because the armed group had taken the place of the facts. Finally, the petitioner alleged that because of the facts, the relatives of Mr. Montes Gallegos were forced to leave their area of residence to protect their lives.

3. On August 26, 2019, the parties signed an Agreement of Understanding that materialized with the signing of a friendly settlement agreement (hereinafter “FSA” or “agreement”) on October 18, 2019, signed in the city of Bogotá, in order to resolve the complaint filed before the IACHR outside the contentious channel. On April 13 and 14, 2020, both the State and the petitioner requested the approval of the agreement, respectively.

4. Pursuant to Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, the instant friendly settlement report provides an outline of the facts alleged by the petitioners and, thereafter, a verbatim transcription of the friendly settlement agreement, entered into on October 18, 2019, between the petitioners and the representatives of the Colombia State. It concludes with the approval of the agreement signed between the parties and it is agreed to publish this report in the IACHR’s Annual Report to the General Assembly of the Organization of the American States.

**II. ALLEGED FACTS**

5. The petitioner alleged that on July 19, 1994, illegal armed groups took the Villavicencio-San Martín highway, known as the “*Curva del Cheque*”, which is five kilometers from the urban area of San Martín, for approximately six hours without members of the public forces arriving at the scene. As alleged by the petitioner, Mr. Montes Gallego had received several bullet wounds and, due to the impossibility of being transferred to a medical center immediately, the death occurred before reaching the clinic due to acute anemia and hypovolemic shock from severe bleeding. Additionally, the petitioner alleged that because of the facts and due to the psychological, social and economic impact, the relatives of Mr. Montes Gallegos were forced to leave their area of residence to protect their lives.

6. Additionally, the petitioner reported that after the facts, he initiated various administrative and judicial proceedings before the competent authorities, among which the administrative contentious claim was highlighted, through a process of direct reparation, filed on September 11, 1995, in order to obtain compensation for the damages suffered by the victim's next of kin. On September 7, 1999, the Administrative Court of Meta decided to deny the claims made, a decision that was appealed before the State Council. On February 11, 2009, the Administrative Litigation Chamber of the Third Section of the State Council fully confirmed the decision of the Administrative Court of Meta.

7. In relation to the criminal procedure, the petitioner reported that the Office of the Prosecutor General of the Nation ordered the Prosecutor of San Martín Meta to perform the previous investigation and that said procedure was transferred to Bogotá without the investigation being concluded, nor have the alleged perpetrators been pointed out. Additionally, the petitioner stated that he was not aware of the existence of a final decision in the criminal process. Finally, the petitioner indicated that the Colombian State has breached its obligation to clarify the truth of the facts.

### **III. FRIENDLY SETTLEMENT**

8. On October 18, 2019, in the city of Bogotá DC, María del Pilar Gutiérrez Perilla, Advisor to the Directorate of International Legal Defense of the National Agency for Legal Defense of the State, who acts on behalf of and represents the Colombian State and who hereinafter will be called "Colombian State". And, on the other hand, Miguel Piñeros Rey, who acts as petitioner in this case, and who will henceforth be called "the petitioner", sign this Friendly Settlement Agreement in the petition No. 595-09 Jorge Alberto Montes Gallego and Family, processed before the Inter-American Commission on Human Rights.

#### **FRIENDLY SETTLEMENT AGREEMENT PETITION 595-09 JORGE ALBERTO MONTES GALLEGO AND FAMILY**

On December 3, 2019, in the city of Bogotá DC, María del Pilar Gutierrez Perilla, Advisor to the Directorate of International Legal Defense of the National Agency for Legal Defense of the State, who acts on behalf of and represents the Colombian State, hereinafter "Colombian State", and on the other hand, Libardo Preciado Niño, who acts as petitioner in this case, and who will be hereinafter referred to as "the petitioner" sign this Friendly Settlement Agreement in case No. 13,370 Luis Horacio Patiño and family, processed before the Inter-American Commission on Human Rights.

#### **PRIOR CONSIDERATIONS**

1. The facts of the petition occurred on July 19, 1994, on the road from Villavicencio to the municipality of San Martín, department of Meta, at the site called "*la curva del cheque*", located five kilometers from the town center. Approximately, between 7 and 8 at night, an illegal group established an illegal checkpoint and immobilized all the vehicles and people who were traveling on this road.
2. Mr. Jorge Alberto Montes Gallego was one of the people who were on the road where the illegal checkpoint was installed. At the time of passing through said place, Mr. Montes was the victim of an attack by the insurgents.
3. Because of the above and taking into account that the members of the illegal armed group left the place several hours after having wounded Mr. Montes Gallego, he was unable to receive medical attention, which is why he died before arriving at the clinic of San Martín.
4. Due to these facts, the respective investigation was initiated *ex officio*. However, in accordance with the information sent by the Office of the Attorney General of the Nation, the criminal file was lost and its reconstruction was ordered in 2015.

5. Currently, an investigation is being performed for the crime of homicide in a protected person, which is in the previous [investigation] stage under case No. 179.401 of the Seventh Specialized Prosecutor's Office for Citizen Security in Meta.
6. On August 26, 2019, the Colombian State and the representatives of the victims signed an Agreement of Understanding in order to reach a friendly settlement.
7. In the following months, joint meetings were held to analyze the proposals of both parties in order to build this friendly settlement agreement, in the following terms:

#### **FIRST: ACKNOWLEDGMENT OF RESPONSIBILITY**

The Colombian State recognizes its international responsibility for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8 and 25 of the American Convention on Human Rights, in relation to the general obligation established in Article 1.1 of the same international instrument, in favor of the immediate relatives of Mr. Jorge Alberto Montes Gallego.

#### **SECOND: MEASURES OF SATISFACTION**

- Private Act of Acknowledgment of Responsibility

The State agrees to perform a Private Act of Acknowledgment of Responsibility, in which it will deliver a letter of apology to the victim's family. This Act will be presided by the Director General or the Director of International Legal Defense of the National Agency for Legal Defense of the State and will be arranged with the representatives of the victims.

- Publication of the facts

The Colombian State agrees to publish the report, in accordance with the provisions of Article 49 of the American Convention on Human Rights that homologates the friendly settlement agreement, on the website of the National Agency for Legal Defense of the State, for the term of six months.

#### **THIRD: FINANCIAL COMPENSATION**

The State undertakes to give effect to Law 288 of 1996, once this friendly settlement agreement is approved by issuing the Article 49 Report of the American Convention on Human Rights. The foregoing, with the purpose of compensating the immaterial and material damages that may prove to be in favor of the next of kin of the victim who have not been repaired through the Administrative Contentious Jurisdiction, discounting, if applicable, the amounts recognized for reparations administrative.

For these purposes, the criteria and amounts recognized by the current jurisprudence of the Council of State will be used.

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

The parties request the Inter-American Commission on Human Rights to approve and follow up on this agreement and its follow-up.

The beneficiaries of this Friendly Settlement Agreement are understood to be the people listed below:

| Name                            | Identification document | Kinship        |
|---------------------------------|-------------------------|----------------|
| María Victoria Perez Rey        | CC No 51.578.44         | Life partner   |
| Sebastián Montes Perez          | CC No 1.120.503.145     | Son            |
| Santiago Perez Rey              | CC No 1.120.504.053     | Posthumous Son |
| Diego Ernesto Perez             | CC No 86.065.129        | Foster child   |
| Nicolás Mauricio Díaz           | CC No 86.080.828        | Foster child   |
| Victoria Eugenio Montes Gallego | CC No 21.201.082        | Sister         |
| María Fernanda Montes Gallego   | CE No 907808973         | Sister         |
| María Cristina Montes Gallego   | CC No 32.617.421        | Sister         |

These people will be included in the fulfillment of the Friendly Settlement Agreement as long as they comply with the requirements demanded by the Colombian legal system, to demonstrate their active legitimacy in the cause and the damages suffered.

#### IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. 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.<sup>1</sup> 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.

10. The Inter-American Commission has facilitated and closely monitored the progress of the friendly settlement reached in the present case and greatly values the efforts that both parties went to in negotiating this friendly settlement agreement, which is compatible with the object and purpose of the Convention.

11. In accordance with the provisions of clause 4 of the friendly settlement agreement, the parties jointly requested on April 13 and 14 of 2020, that the Commission issued the friendly settlement report contemplated in Article 49 of the American Convention.

12. The Inter-American Commission appreciates the recognition of the international responsibility of the Colombian State, enshrined in clause 1, in favor of the immediate family of Mr. Jorge Alberto Montes Gallego. It also considers that said clause is declarative in nature, so it is not appropriate to supervise its execution.

13. In relation to clause 2, referring to measures of satisfaction, by which the State undertook to perform a private act of acknowledgment of responsibility, to deliver a letter of apology to the victim's family and to publish the approval report on the website of the National Agency for Legal Defense of the State for a term of six months; the Commission takes note of the commitments assumed by the State and declares that these parts of the friendly settlement agreement are pending compliance and will continue to follow-up until its full compliance.

<sup>1</sup> Vienna Convention on the Law of Treaties, United Nations 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.*

14. With regard to clause 3, related to pecuniary reparation, the Commission observes that, according to the mechanism established in Law 288 of 1996, said measure must be complied with once this homologation report has been issued, by which considers that the measure is pending compliance and so declares it. The Commission awaits updated information from the parties on its execution after the publication of this report.

15. Finally, the Commission observes that all the clauses of this friendly settlement agreement are pending compliance and requests the parties to inform it in a timely manner of the effective implementation of the agreement. Likewise, the IACHR will closely follow the implementation of the obligations assumed in the agreement, applying the guidelines prescribed in Article 49 of the Convention.

## **V. CONCLUSIONS**

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1) (f) and 49 of the American Convention. The Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement arrived in the present case based on respect for human rights and consistent with the object and purpose of the American Convention.

2. Based on the considerations and conclusions contained in this report,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES TO:**

1. Approve the terms of the agreement signed by the parties on October 18, 2019.
2. Declare pending compliance clauses 2 (satisfaction measures) and 3 (financial compensation) of the friendly settlement agreement.
3. Continue with the supervision of the commitments established in clauses 2 and 3 of the friendly settlement agreement until their full compliance, according to the analysis contained in this Report. To this end, it reminds the parties of their commitment to inform periodically the IACHR about compliance.
4. 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 1<sup>st</sup> day of Junet 2020. (Signed): Joel Hernández García, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Members of the Commission.