

OAS/Ser.L/V/II.
Doc. 66
10 May 2022
Original: Spanish

REPORT No. 63/22

CASE 13.775

FRIENDLY SETTLEMENT REPORT

GABRIEL ÁNGEL GÓMEZ MARTÍNEZ AND FAMILY
COLOMBIA

Approved electronically by the Commission on May 10, 2022.

Cite as: IACHR, Report No. 63/22, Case 13.775. Friendly Settlement. Gabriel Ángel Gómez Martínez and Family. Colombia. May 10, 2022.

REPORT No. 63/22
CASE 13.775
REPORT ON FRIENDLY SETTLEMENT
GABRIEL ÁNGEL GÓMEZ MARTÍNEZ AND FAMILY
COLOMBIA¹
MAY 10, 2022

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On March 17, 2009, the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a petition presented by Roberto Fernando Paz Salas, claiming the international responsibility of the Colombian State (hereinafter "State" or "Colombian State") for the violation of the rights enshrined in Articles 4 (life), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "Convention" or "IACHR") to the detriment of Mr. Gabriel Ángel Gómez Martínez (hereinafter "alleged victim"), for the alleged failure to investigate and punish those responsible for the events surrounding his murder, allegedly at the hands of a group of illegal self-defense groups.

2. On April 24, 2019, the IACHR issued Admissibility Report No. 45/19, which declared the admissibility of the petition in relation to the rights recognized in Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) in accordance with Article 1.1 and 2 of the American Convention on Human Rights.

3. On June 9, 2021, the Colombian State and the petitioners signed a memorandum of understanding for the search for a friendly settlement, which was made known to the Commission on June 18, 2021. Subsequently, on September 7, 2021, the parties signed a friendly settlement agreement (hereinafter FSA) in the city of Bogotá. Finally, on November 3, 2021, the parties submitted to the Commission a joint report on the progress of compliance with the FSA and requested its homologation.

4. This friendly settlement report, pursuant to Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, includes a summary of the facts alleged by the petitioner and a transcription of the friendly settlement agreement, signed on September 7, 2021, by the petitioners 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 IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioner held that the village of Nutibara, Municipality of Frontino, Department of Antioquia, had been abandoned by the public forces after an attack committed on December 28, 1998, by the 5th, 18th and 34th Fronts of the Revolutionary Armed Forces of Colombia. This decision allegedly left the civilian population unprotected because of the withdrawal of police personnel in the area. Likewise, petitioner stated that several settlers reportedly requested the authorities of Frontino, in numerous occasions, presence and assistance by the public force due to the alleged extortions and constant threats they were receiving, allegedly by the guerrilla and paramilitary groups.

6. According to the petitioner, on May 16, 1999, Mr. Gabriel Ángel Gómez Martínez, a construction official who lived in the village of Nutibara, was allegedly chased and attacked by paramilitary elements armed with machetes while he was playing a soccer match. The murder was allegedly perpetrated on the spot along with two other people in front of spectators in the stands.

¹ 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.

7. On August 17, 2000, in the investigation initiated for the homicide of Mr. Gómez Martínez, it would have been decided to suspend the proceedings due to the alleged impossibility of identifying the persons responsible for the act.

8. According to the petitioner, on May 16, 2001, the next of kin of the alleged victim filed a claim for direct reparation before the Contentious Administrative Court of Antioquia, which was rejected on September 8, 2008, on the grounds that there was no causal relationship between the existence of public forces in the Nutibara district and the murder of the alleged victim which could hold the State responsible.

9. The petitioners held that upon this decision they had filed an appeal, which was dismissed on October 24, 2008, by the Administrative Court of Antioquia, arguing that the matter could not be reviewed in the second instance because the amount requested did not exceed 500 current minimum wages, as provided by Law No. 446 of 1998.

10. In addition, on May 24, 2021, the 20th Prosecutor's Office Delegated before the Court, attached to the Directorate of Transitional Justice, ordered the archiving of the proceedings related to the investigation of the facts, considering that the documentation should not continue within the framework of the justice and peace process, because according to the georeferencing and temporality, the fact would not correspond to the actions of the United Self-Defense Forces of Colombia.

11. In that sense, and according to the information provided, the investigations of the facts described are said to be suspended in one case and archived in the other. The petitioner stated that the homicide of the alleged victim was in total impunity and that almost 20 years had passed without the perpetrators being identified or full reparations being made to the next of kin of the victim.

III. FRIENDLY SETTLEMENT

12. On September 7, 2021, the parties entered into a friendly settlement agreement, which provides the following:

FRIENDLY SETTLEMENT AGREEMENT CASE No. 13.775 GABRIEL ANGEL GOMEZ MARTINEZ AND FAMILY

On September 7, 2021, 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 the "State" or the "Colombian State," and on the other hand, the Organización Indemnizaciones Paz (Peace Compensations Organization), represented by Dr. Roberto Fernando Paz Salas, acting in his capacity as representative of the victims, hereinafter the "Petitioners", met in the city of Bogotá D.C., and have decided to enter into this Friendly Settlement Agreement in the framework of Case No. 13. 775 Gabriel Ángel Gomez Martinez and Family, in process 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: Injurious effects of the facts of the case that are not of an economic or patrimonial nature, which express 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.

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 "ACHR".

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 redress.

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.

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

Representatives of the victims: Organización Indemnizaciones Paz (Peace Compensations Organization).

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

Victims: The relatives of Gabriel Ángel Gómez Martínez.

SECOND PART: BACKGROUND

BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM.

1. On March 17, 2009, the Inter-American Commission on Human Rights received a petition presented by Dr. Roberto Fernando Paz Salas, in which he held that on May 16, 1999, a group of illegal self-defense groups raided the village of Nutibara, municipality of Frontino - Antioquia. When Mr. Gabriel Angel Gomez was playing a soccer match, members of these groups began to chase him with bladed weapons, inflicting him serious wounds which caused his death.
2. Likewise, the petitioners stated that the homicide of the alleged victim is in total impunity and that almost 20 years have passed without individualizing those responsible.
3. The victim's relatives filed a claim for direct reparation before the Contentious Administrative Court of Antioquia. This claim was rejected on September 8, 2008, on the grounds that although it is true that there was no Police Force in the Township of Nutibara, its non-existence could not be argued to have been a determining factor for the murder of Mr. Gabriel Ángel Gómez Martínez. Thus, there was not an adequate causal relationship between the non-existence of the Police Force in the township of Nutibara and the death of Mr. Gómez Martínez.
4. By means of Admissibility Report No 45/19 of April 24, 2019, the Inter-American Commission on Human Rights, declared the admissibility of the petition, in relation to the

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.

rights recognized in Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) in accordance with Article 1.1 and 2 of the American Convention on Human Rights.

5. On June 9, 2021, the Colombian State and the petitioners signed a Memorandum of Understanding for the Search for a Friendly Settlement, which was notified to the Inter-American Commission on June 18, 2021.

6. In the following months, joint meetings were held between the parties to analyze the reparation measures to be included in the Friendly Settlement Agreement which was signed today.

AT DOMESTIC LEVEL.

An investigation for the homicide of Mr. Gabriel Ángel Gomez Martínez was conducted under file number 1458 and the preliminary investigation was suspended, as the perpetrator or perpetrators of the crime could not be identified and individualized³.

In addition, for these same facts, the 20th Prosecutor's Office Delegated before the Court, attached to the Transitional Justice Directorate, ordered the archiving of the proceedings on May 24, 2021, considering that they should not continue with their documentation within the framework of the justice and peace process, because according to the georeferencing and temporality, the fact does not correspond to the actions of the United Self-Defense Forces of Colombia⁴.

In this regard, the investigations are: one suspended and the other one archived, by virtue of that no new facts have arisen for the ordinary justice system to reopen the investigation, and in the same sense, the transitional justice system decided not to continue with the documentation of the facts of the case⁵.

THIRD PART: BENEFICIARIES

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

Name	Citizen ID number	Kinship
Gloria Patricia Medina Gómez	[...]	Wife
Leidy Johana Gomez Medina	[...]	Daughter
Katerin Viviana Gomez Medina	[...]	Daughter

The victims recognized in this Friendly Settlement Agreement will benefit as long as they can prove that they are related by blood and affinity to Mr. Gabriel Ángel Gomez Martínez.

In addition, the victims who will benefit from this Friendly Settlement Agreement shall be those who were alive at the time of the victimizing event⁶ and are alive at the time of the signing of the Agreement.

FOURTH PART: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility for the violation of the rights recognized in Articles 8 (fair trial) and 25 (judicial protection) of the American

³ Official Communication No 20211700057251 of August 23, 2021 - Office of the Attorney General of the Nation.

⁴ Official Communication No 20211700057251 of August 23, 2021 - Office of the Attorney General of the Nation.

⁵ Ibidem.

⁶ The foregoing, in accordance with the jurisprudence of the Inter-American Court. See, IHR Court. Case of The Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. (Preliminary Objections, Merits, Reparations and Costs). Judgment of November 20, 2013. Series C No. 270, para. 425.

Convention on Human Rights in relation to Article 1.1 thereof, to the detriment of the relatives of Mr. Gabriel Ángel Gómez Martínez, due to the lack of diligence in the investigation of the events which took place.

FIFTH PART: SATISFACTION MEASURES

The Colombian State undertakes to implement the following measures of satisfaction:

i. Act of Acknowledgement of Responsibility:

The Colombian State shall proceed to a Private Act of Acknowledgement of Responsibility, virtually conducted, with the participation of the relatives of Mr. Gabriel Ángel Gómez and their representatives. The act shall be carried out in accordance with the acknowledgment of responsibility indicated in this Agreement.

This measure will oversee 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 is issued by the Inter-American Commission on Human Rights, on the website of the National Agency for the Legal Defense of the State, for a term 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, in order to repair the damages caused to the relatives of the victims as a result of the effects generated by the facts of this 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.

For the purposes of compensation, the criteria and amounts to be used are those recognized by the current jurisprudence of the State Council.

SEVENTH PART: HOMOLOGATION AND FOLLOW-UP

The parties request the Inter-American Commission to homologate this Agreement and to follow up on it.

This Agreement is signed on September 7, 2021, being the parties aware of its scope and legal content.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

13. 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 undertake 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, by which the States must comply in good faith with the obligations assumed in the treaties⁷. 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.

14. 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.

15. Pursuant to the agreement signed between the parties whereby they requested the Commission to homologate the friendly settlement agreement contemplated in Article 49 of the American Convention, as well as the joint request of the parties of November 3, 2021, it is appropriate at this time to assess compliance with the commitments set forth herein.

16. The 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 applicable to supervise their compliance.

17. In this regard, the Commission values the fourth declaratory clause, in which the Colombian State acknowledges its international responsibility for the violation of the rights recognized 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) thereof, to the detriment of the relatives of Mr. Gabriel Ángel Gómez Martínez, due to the lack of diligence in the investigation of the events that took place.

18. Regarding the fifth (Satisfaction measures) and sixth (Compensation measures) clauses of the agreement, it is the Commission's responsibility to assess the progress of compliance for each measure.

19. With respect to paragraph (i) of the fifth clause related to the act of redress on November 3, 2021, the parties submitted a joint report to the IACHR, in which they indicated that there was ongoing communication between the State and the petitioners to agree on the details for compliance with this measure in terms of the date, program, and other logistical aspects. According to the same report, the National Agency for the Legal Defense of the State sent an invitation to the act of recognition of responsibility to the victims and their relatives, and a banner was published on the web page of the National Agency for the Legal Defense of the State inviting the public in general.

20. On September 20, 2021, the private act of acknowledgement of responsibility and request for forgiveness was held virtually through the Streamyard platform and was broadcast live on ANDJE's YouTube private channel. Said platforms projected the national anthem of the Republic of Colombia, a video in memory of the victim and another video prepared by the victim's relatives in which they highlighted his qualities. Also, the representative of the victims as well as Mrs. Leidy Johana Gómez offered a public address.

21. The event was headed by the Director of the Directorate of International Legal Defense of the National Agency for the Legal Defense of the State, Dr. Ana María Ordoñez, who on behalf of the Colombian State apologized to the victims and their families, and acknowledged responsibility in the terms established in the FSA, stating the following:

[...]

“On behalf of the State of Colombia and as Director of the Directorate of International Legal Defense of the National Agency for the Legal Defense of the State, it is an honor to join you

⁷ 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 and must be performed by them in good faith.*

today not only to recognize the responsibility of the State in such a painful event, but also to honor the memory of Mr. Gabriel Angel Gomez Martinez.

The Colombian State recognizes its responsibility for the lack of diligence in the investigation of the events occurred on May 16, 1999, when a group of illegal self-defense groups raided the village of Nutibara, municipality of Frontino in Antioquia, and caused serious injuries to Mr. Gabriel Angel Gomez Martinez, which later caused his death.

The State has witnessed the painful search for truth and justice that the family of Mr. Gabriel Gómez has undertaken during these years.

The Colombian State had the duty to investigate, prosecute and punish those responsible for the murder of Mr. Gabriel Ángel Gómez. We deeply regret having made the Gomez Martinez family go through a path of difficulties, injustice, and uncertainty. Justice has the duty to be diligent, transparent, and impartial."

[...]

22. The joint report submitted by both parties also noted the coverage of the acknowledgment of responsibility event in the media and social networks of the State institutions and the dissemination of the link to the event through a private link on their YouTube channel.

23. Taking into account the information provided by the parties, the Commission notes as a good practice the adaptation of the act of recognition of responsibility to the health emergency in the framework of the COVID-19 pandemic. Therefore, the Commission considers with satisfaction that this aspect of the friendly settlement agreement has been fully complied with and so declares it as such.

24. On the other hand, with regard to paragraph (ii) of the fifth clause, on the publication of the Article 49 Report on the web page of the National Agency for the Legal Defense of the State, it is noted that this commitment will be enforceable after the present approval, therefore, the Commission considers that this measure is pending compliance and so declares it as such.

25. With regard to the sixth clause of the agreement, referring to the compensation measures in favor of the 3 beneficiaries of the FSA, the Commission notes that these measures must be fulfilled once the present approval report has been issued, for which reason the Commission will not issue an opinion on these reparation measures at this stage.

26. Furthermore, the Commission considers that the rest of the content of the agreement is of a declarative nature, and therefore the IACHR would not be responsible for supervising its compliance.

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. Approve the terms of the agreement signed by the parties on September 7, 2021.

3. To declare that paragraph (i) (Act of acknowledgement of international responsibility) of the fifth clause is in full compliance, according to the analysis contained in this report.

4. To declare that paragraph (ii) of clause five (Publication of the Article 49 report) and clause six (Financial compensation) are pending compliance, according to the analysis contained in this report.

5. Continue to monitor the commitments assumed in clause five (ii) (Publication of the Article 49 report) and clause six (Financial compensation) of the friendly settlement agreement until they are fully complied with. To this end, the parties should be reminded of their commitment to report periodically to the IACHR on their compliance.

6. To make this report public and include it in its Annual Report to the General Assembly of the Organization of American States.

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.