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REPORT No. 81/20
CASE 11.626 A
FRIENDLY SETTLEMENT REPORT

FREDY ORESTE CAÑOLA VALENCIA
ECUADOR

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

1. On November 7, 1994, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition submitted by the Ecumenical Commission on Human Rights (hereinafter “the petitioners”, “the petitioner” or CEDHU), alleging the international responsibility of the Ecuadorian State for the violation of articles 4 (right to life), 7 (right to personal liberty), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to article 1.1 of the same instrument, in detriment of Fredy Oreste Cañola Valencia, Luis Enrique Cañola Valencia and Santo Cañola González.

2. The petitioner alleged that on April 12, 1993, the alleged victim was detained by the police for being allegedly involved in the death of a police officer. After the arrest, he was reportedly transferred to Viche and later transferred to Esmeraldas, where two hours later his dead body was found in the city's cemetery, with signs of torture and bullet wounds.

3. On June 11, 1999, during the IACHR's visit to Ecuador, the parties signed a friendly settlement agreement. On January 23, 2020, the petitioner sent to the Commission a note in which it requested the approval of the friendly settlement agreement and requested the cessation of monitoring and archiving of the case.

4. On April 9, 2020, the Commission decided to disaggregate the petition by virtue of the signing of three friendly settlement agreements in relation to each of the victims.

5. 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 June 11, 1999, between the petitioners and the representatives of the Ecuadorian State. It concludes with the approval of the agreement executed 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

6. The petitioner alleged that on April 12, 1993, Fredy Oreste Cañola Valencia was detained by a police patrol on the section of the Viche - Chucaple highway and transferred to Viche. Where a police officer had attempted to assassinate him publicly. Likewise, he alleged that Fredy Oreste Cañola Valencia, was transferred by police officers along with Luis Enrique Cañola Valencia and Santo Cañola González to Esmeraldas, where two hours later the dead bodies had been found, in the city cemetery, with signs of torture and bullet impacts. According to the petitioner, the alleged victims were detained as retaliation, for being allegedly involved in the death of a police officer.

7. Additionally, the petitioner reported that in May 1994 he presented a private accusation, that a criminal trial was subsequently held before the Fourth Criminal Court of Quinindé, and that the judge had “abandoned the criminal case”. Likewise, he stated that he reported the abandonment of the criminal case before the Esmeraldas Human Rights Committee and that, at the time of the petition, the case was pending before the Superior Court of Esmeraldas.

III. FRIENDLY SETTLEMENT

8. On June 11, 1999, the parties signed a friendly settlement agreement, which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT

I. BACKGROUND

The Ecuadorian State, through the State Attorney General's Office, in its effort to promote and protect human rights and in view of the great impotence that currently has for the international image of our country, unrestricted respect for rights human, as the basis of a just, dignified, democratic and representative society, has resolved to start a new process within the evolution of human rights in Ecuador.

The State Attorney General's Office has begun conversations with all those who have been victims of human rights violations, aimed at reaching friendly solutions that seek reparation for the damage caused.

The Ecuadorian State, in strict compliance with its obligations acquired with the signing of the American Convention on Human Rights, and other instruments of international human rights law, and consents that any violation of an intentional obligation that has produced damage against the duty to repair it adequately, constituting the pecuniary compensation and the criminal sanction of those responsible the fairest and most equitable way to do it. In this virtue the State Attorney General together with Mrs. Gladys Mariela Bolaños Pazmiño, representing Mr. Fredy Oreste Cañola Valencia, deceased, have resolved to reach a friendly settlement in accordance with the provisions of Articles 48.1 lit (f), 49, of the American Convention on Human Rights and 45 of the Rules of Procedures of the Inter-American Commission on Human Rights.

II. COMPARISONS

Appearing at the conclusion of this friendly agreement:

- a) On the one hand, Dr. Ramón Jiménez Carbo, State Attorney General, according to the appointment and possession certificate, which are attached hereto as enabling documents.
- b) On the other hand, Mrs. Gladys Mariela Bolaños Pazmiño appears, representing Mr. Fredy Oreste Cañola Valencia, deceased, with ID number 08-0154780-3, which is attached hereto as an enabling document.

III. STATE RESPONSIBILITY AND SEIZURE

The Ecuadorian State recognizes its international responsibility for having transgressed the human rights of Mr. Fredy Oreste Cañola Valencia, recognized in Articles 4 (Right to Life), Article 7 (Right to Personal Liberty), Article 8 (Judicial Guarantees), Article 25 (Judicial Protection) and in turn the general obligation contained in Art. 1.1. of the American Convention on Human Rights and other international instruments, such violations being committed by agents of the State, facts that could not be distorted by the State and have generated its responsibility towards society.

With this background, the Ecuadorian State acquiesces to the facts constituting Case No. 11.626, which is pending before the Inter-American Commission on Human Rights and is

obliged to take the necessary remedial measures in order to compensate the damages caused to the victim of such violations or failing their successors in title.

IV. COMPENSATION

With this background, the Ecuadorian State, through the State Attorney General, the latter as the only judicial representative of the Ecuadorian State in accordance with Art. 215 of the Political Constitution of the Republic of Ecuador, promulgated in Official Registry No. 1, effective as of August 11, 1998, delivers Gladys Mariela Bularios Pazmiño, representing Mr. Fredy Oreste Cañola Valencia, deceased, pursuant to the provisions of articles 1045 and 1052 of the Civil Code, a one-time compensatory of fifteen thousand dollars of United States of America (US \$ 15,000) or its equivalent in national currency, calculated at the exchange rate in force at the time of payment, charged to the General State Budget.

This compensation involves the emergent damage, the lost profit and the moral damage incurred, suffered by Mr. Fredy Oreste Canola Valencia, and his relatives, as well as any other claim that the relatives of Mr. Fredy Oreste Cañola Valencia may have, for the aforementioned concept. In this agreement, observing the internal and international legal regulations, charged to the General State Budget. For which purpose the State Attorney General will notify the Ministry of Finance and Public Credit, so that within 90 days, counted from the signing of this document, it complies with this obligation.

V. SANCTION OF THOSE RESPONSIBLE

The Ecuadorian State commits to both civil and criminal prosecution and to the search for administrative sanctions against people who, in compliance with state functions or taking advantage of the public power, are presumed to have participated in the alleged violation.

The State Attorney General's Office undertakes to excite both the State Attorney General, competent bodies of the Judicial Function, and public or private bodies to provide legally supported information that allows establishing the responsibility of said people. If viable, this prosecution will be carried out subject to the constitutional and legal order of the Ecuadorian State.

VI. RIGHT OF REPETITION

The Ecuadorian State reserves the Right of Repetition in accordance with Art. 22 of the Political Constitution of the Republic of Ecuador, against those people who are responsible for the violation of human rights by means of a final, firm sentence, issued by the courts of the country or when administrative responsibilities have been determined, in accordance with Article 8 of the American Convention on Human Rights.

VII. EXEMPT TAX AND DELAY PAYMENTS ON COMPLIANCE

The payment that the Ecuadorian State will make to the person object of this friendly agreement, is not subject to currently existing taxes or that may be decreed in the future with the exception of the capital circulation tax "1% tax".

In the event that the State is in arrears for more than three months, from the signing of the agreement, it must pay on the amount due an interest that will correspond to the current bank interest of the three banks with the largest collection in Ecuador, throughout the period of the arrears.

VIII. INFORMATION

The Ecuadorian State, through the State Attorney General's Office, undertakes to inform the Inter-American Commission on Human Rights every three months of the fulfillment of the obligations assumed by the State under this friendly settlement.

In accordance with its constant practice and the obligations imposed on it by the American Convention, the Inter-American Commission on Human Rights will monitor compliance with this agreement.

IX. LEGAL BASIS

The compensatory compensation granted by the Ecuadorian State to Mrs. Gladys Mariela Bolaños Pazmiño, representing Mr. Fredy Oreste Cañola Valencia, deceased, is provided in articles 22 and 24 of the Political Constitution of the Republic of Ecuador. For violations of constitutional norms, and other norms of the national legal order, as well as the norms of the American Convention on Human Rights and other international human rights instruments.

This friendly settlement is signed based on respect for human rights recognized in the American Convention on Human Rights and other international human rights instruments and on the policy of the National Government of the Republic of Ecuador, of respect and protection of human rights.

X. NOTIFICATION AND APPROVAL

Mrs. Gladys Mariela Bolaños Pazmiño, on behalf of the deceased Fredy Oreste Cañola Valencia, expressly authorizes the State Attorney General to inform the Inter-American Commission on Human Rights of this Friendly Settlement Agreement, for the purpose that this body approves and ratifies it in all its parts.

XI. ACCEPTANCE

The parties, who intervene in the signing of this agreement, freely and voluntarily express their agreement and acceptance with the content of the preceding clauses, stating that in this way they put an end to the controversy over the international responsibility of the Ecuadorian State, regarding the rights that affected Mr. Fredy Oreste Cañola Valencia, who is being followed before the Inter-American Commission on Human Rights.

XII. ENABLING DOCUMENTS

The following are incorporated into this friendly settlement, as enabling documents:

- a) Copy of the citizenship card of Dr. Ramón Jiménez Carbo, State Attorney General.
- b) Certified copies of the Appointment and Certificate of Possession of the State Attorney General.
- c) Copy of the citizenship card number XX-XXXXXXX-X, of Mrs. Gladys Mariela Bolaños Pazmiño.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. The IACHR reiterates that, pursuant to Articles 48.1.f and 49 of the American Convention, this process is aimed at “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Willingness to engage in this process is a sign of the State’s good faith to comply with the object and purpose of the Convention under the principle of *pacta sunt servanda*, whereby States must

comply in good faith with the obligations undertaken in treaties.¹ It also reiterates that the friendly settlement process provided for in the Convention allows for the disposition of individual cases in a non-adversarial manner; it has proven to be an important vehicle for reaching solutions at the initiative of both parties and has been used in cases involving a number of different countries.

10. The Inter-American Commission has closely followed the development of the friendly settlement achieved in the instant case and greatly appreciates the efforts put forth by both parties during the negotiation to reach this settlement, which is consistent with the object and purpose of the American Convention.

11. The Commission notes that, in light of the information provided by the parties thus far, compliance with the commitments set forth in Friendly Settlement Agreement should be assessed.

12. The Inter-American Commission values the information presented by the petitioner on January 23, 2020, by which he requested the homologation of the friendly settlement agreement, as well as the cessation of follow-up and the archiving of the case.

13. The Inter-American Commission values the recognition of the international responsibility of the Ecuadorian State, enshrined in clause III of the agreement. Likewise, the IACHR considers that said clause is declarative in nature, and therefore it is not appropriate to supervise its execution.

14. In relation to clause IV, referring to pecuniary compensation. On December 13, 2000, the petitioner reported that the State made the agreed payment, for the benefit of the victim's next of kin. Taking into consideration the information elements provided by the petitioner, the Commission considers that this end of the agreement is fully complied with and hereby declares it.

15. With regard to clause V, related to the sanction of those responsible, the petitioner throughout the monitoring of the friendly settlement agreement, has reported that the criminal process began in the Superior Court of Justice of Esmeraldas, in the year 1993. It also indicated that on November 22, 1996, the Court issued a definitive dismissal order, which was subsequently raised in consultation with the Single Chamber of the Superior Court of Esmeraldas and after several procedural incidents, on March 12, 2001; it revoked the dismissal and proceeded to issue the commencement order.

16. In addition, he indicated that on May 6, 2002, the Superior Court of Justice of Esmeraldas issued a condemnatory sentence of 8 years in prison against seven of the twelve police officers involved in the triple execution, who were detained at the time of sentencing. Likewise, he reported that the seven convicted police officers had escaped from the barracks where they were detained and that, in 2002, the seven fugitives had been recaptured and transferred to a common prison. Additionally, the petitioner stated that the defendants filed an appeal before the Single Chamber of the Superior Court of Esmeraldas, which confirmed the judgment of the Superior Court of Justice of Esmeraldas on November 5, 2002.

17. Regarding the five fugitives who were served search warrants, the petitioner reported that the State had not taken the pertinent actions to bring them to justice and to be tried. Finally, it indicated that on October 27, 2003, the Second Criminal Chamber of the Supreme Court of Justice declared the criminal action prescribed in relation to the 12 defendants, because it considered that more than 10 years had elapsed since the beginning of the criminal process.

18. In this regard, the IACHR reminds the State, that is a standard established in the jurisprudence of the Inter-American human rights system, to consider "that the amnesty provisions, the statute of limitations provisions and the establishment of exclusionary liability that seek to prevent the investigation and punishment of those responsible for gross human rights violations such as torture, summary, extralegal or arbitrary executions and enforced disappearances, all of which are prohibited for violating non-derogable

¹ 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.*

rights recognized by International Human Rights Law.² Therefore, the Commission considers that, although the friendly settlement agreement is compatible with human rights standards, the operation of the prescription of criminal action in this case related to the extrajudicial execution of Fredy Oreste Cañola Valencia is incompatible with the standards in the mentioned. Therefore, the Commission considers that clause V, related to the sanction of those responsible, was breached by the Ecuadorian State. This situation is also reiterated and systematic in the history of the friendly settlement agreements of the State, thus evidencing a structural deficiency in the administration of justice that perpetuates impunity in cases of serious violations of human rights.

19. At the same time, the Commission takes into special consideration the request for approval of the friendly settlement agreement from the petitioner, as well as the request to cease supervision of the same and its archive, for which reason it considers that it is not appropriate to continue with the supervision of the implementation of the agreement.

20. In relation to the petitioner's request for archiving, the Commission has already repeatedly applied the figures of withdrawal and archiving established in Articles 41 and 42 of the Regulations of the Inter-American Commission on Human Rights in various matters in the friendly settlement follow-up phase. Taking into consideration the will of the petitioner or the victims³ and the fact that the mechanism for monitoring friendly settlement agreements requires the active participation of both parties. Therefore, the Commission considers that, having approved the homologation of the agreement, and in response to the request of the petitioner for the cessation of supervision, it is appropriate to archive the matter.

21. Based on the foregoing, the Commission concludes that Clause IV (financial compensation) of the agreement is fully complied with. At the same time, the Commission concludes that Clause V (investigation and sanction) was breached by the State. Finally, the Commission considers that the rest of the content of the agreement is declarative in nature, so it is not appropriate to supervise its implementation. Therefore, the friendly settlement agreement is considered to have a partial level of execution.

V. CONCLUSIONS

1. Based on the preceding considerations and pursuant to the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate that it values the efforts put forth by the parties and its satisfaction for achieving a friendly settlement in the instant case based on respect for human rights, and in a manner consistent with the object and purpose of the American Convention.

2. In accordance with the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES TO:

1. Approve the terms of the agreement signed by the parties on June 11, 1999.
2. Declare full compliance with clause IV (compensation), according to the analysis contained in this report.
3. Declare non-compliance with clause V (sanction of those responsible), according to the analysis contained in this report.

² Inter-American Court of Human Rights, Case Barrios Altos v. Peru, Judgment of March 14, 2001, Merits. Par. 41.

³ Case 11.512, Report No. 20/01, Lida Ángela Riera Rodríguez. Case 11.779, Report No. 22/01, José Patricio Reascos. Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda. Case 12.188, Report No. 64/03, Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, Rocío Valencia Sánchez. Case 12.207, Report No. 45/06, Lizandro Ramiro Montero Masache – Ecuador. Case 12.555, Report No. 110/06, Sebastián Echaniz Alcorta et al., Venezuela. Case 12.298, Report No. 81/08, Fernando Giovanelli, Argentina. Case 11.783, Report No. 98/00, Marcia Irene Clavijo Tapia, Ecuador. And Case 11.441, Report No. 104/01, Rodrigo Elicio Muñoz Arcos et al., Ecuador.

4. Declare the cessation of the monitoring of the case and the archiving of the matter, as requested by the petitioner, stating in the Annual Report to the General Assembly of the Organization of American States, that clause V (sanction of those responsible) is in breach and that the level of Compliance with the settlement agreement is partial.

5. Make the present report public and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 1st day of June 2020. (Signed): Joel Hernández García, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Members of the Commission.