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REPORT No. 82/15
PETITION 577-06
FRIENDLY SETTLEMENT REPORT

GLORIA GONZALEZ AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2054 held on October 28, 2015
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OCTOBER 28, 2015

I. SUMMARY

1. On June 2, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Carlos Enrique Londoño Zapata in which he alleged the international responsibility of the Republic of Colombia (hereinafter, “the State” or “the Colombian State”) for the acts of violence of May 7, 2002, when the Colombian National Army purportedly carried out an operation in which Mrs. Gloria Gonzalez was killed and in which her daughter DLG,¹ who at the time was breastfeeding from her mother, was seriously injured. On July 25, 2008, Javier Leonidas Villegas Posada registered as the petitioner representing Carlos Londoño Zapata, the victim’s life partner, and the other affected family members. The petitioner claims violations of Article I (right to life, liberty and personal security) of the American Declaration on the Rights and Duties of Man (hereinafter the “Declaration” or “the American Declaration”) and Article 4 (right to life) of the American Convention on Human Rights (hereinafter the “Convention” or “the American Convention”).

2. According to the petition, as a result of the complaints lodged by Gloria Gonzalez’s relatives, they were targeted by threats and extortion and so sought asylum in another country. As of the date on which the petition was filed, no investigation had been conducted and those responsible had not been punished. In turn, the State initially requested that the petition be ruled inadmissible because the Commission was not competent *rationae materiae*, because domestic remedies had not been not exhausted, and because of the lack of characterization.

3. The parties began a negotiation process in June 2011, in which the Commission served as a facilitator. The parties signed a friendly settlement agreement on July 16, 2015.

4. This friendly settlement report, pursuant to the terms of Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, provides an overview of the facts alleged by the petitioner and a transcription of the friendly settlement agreement signed by the petitioner and the representatives of the Colombian State on July 16, 2015. It also endorses the agreement signed by the parties and agrees on the publication of this report in the IACHR’s Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The IACHR received the petition on June 2, 2006, and served notice on the Colombian State on January 21, 2010. The State submitted its observations on June 2, 2010, which were forwarded to the petitioner. The petitioner, in turn, submitted observations on August 19, 2010, which were forwarded to the State.

6. On May 27, 2011, the petitioner requested the Commission’s good offices to commence friendly settlement proceedings. The State indicated its willingness to explore negotiations toward an agreement on June 30, 2011.

¹ The IACHR hereinafter refers to the child as “D.” The IACHR is keeping her identity confidential given that she is of minor age.

7. On February 3, 2015, the IACHR asked the parties for up-to-date information on their progress with the friendly settlement process. The petitioners sent a proposal to the Colombian State on March 11, 2015. The parties jointly reported on their progress toward the finalization of an agreement on March 20, 2015.

8. On May 6, 2015, a working meeting was held in Colombia, chaired by Commissioner José de Jesús Orozco, the IACHR's Rapporteur for Colombia, at which the parties signed a memorandum of understanding in their efforts toward reaching a friendly settlement.

9. On July 16, 2015, the parties signed a friendly settlement agreement and, on July 21, 2015, they jointly informed the Commission of the preparatory activities for beginning compliance with the established commitments.

10. The petitioners submitted additional information on July 21 and 23, 2015, which was forwarded to the State. The State presented additional information on August 14, which was forwarded to the petitioners.

11. The parties jointly presented up-to-date information on compliance with the agreement on September 11, and annexes on October 21, 2015. The parties jointly presented an addendum to the friendly settlement agreement on September 29, 2015.

12. The State presented additional information on October 21 2015, which was forwarded to the petitioners.

III. ALLEGED FACTS

13. According to the petitioner's narrative, on May 7, 2002, members of the National Army entered Juan XXIII sector, Barrio La Divisa neighborhood, in the city of Medellin, to carry out a raid on the house next door to Gloria Gonzalez's home. Allegedly the soldiers discharged their weapons and a stray bullet struck the victim in her chest as she was nursing her daughter D; as a result, Gloria Gonzalez was killed and the child D lost her right eye as a piece of shrapnel perforated the cornea.

14. Following the incident, the child was taken to San Vicente Hospital, where her right eye was removed; however, treatment for the insertion of a prosthetic eye to allow the correct development of the socket could not proceed because it was not covered by Identification System for Potential Beneficiaries of Social Programs (SISBEN).

15. The petition claims, in general terms and without specifying details, that the incident was reported to the prosecution service; however, threats were made against the family and they were therefore forced to desist from pursuing their complaint, and Carlos Londoño Zapata, the victim's life partner, and their four children sought refuge in another country, although some years later they returned to Colombia.

16. According to the documents submitted with the petition, the 174th Sectional Prosecutor's Office of Medellin carried out some preliminary steps in an investigation — such as taking statements, collecting the body, and conducting an autopsy — but those formalities were referred to the 23rd Military Investigating Court for Criminal Matters. Later, the proceedings were forwarded to the 87th Military Investigating Court for Criminal Matters by means of order No. 244 of November 25, 2004. On April 24, 2008, a deed was issued ordering the proceedings to be referred to the Military Criminal Prosecution Service for appraisal, following which the 11th Military Criminal Prosecutor's Office ordered the taking of evidence on March 31, 2009; however, the record does not indicate that any decision punishing those responsible was adopted.

17. As regards the disciplinary investigation, according to documents submitted along with the petition, pursuant to an order issued by the Disciplinary Prosecution Service on September 3, 2002, an investigation was opened with respect to a captain and a sergeant who participated in the operation. On November 28, 2008, that same service established the disciplinary responsibility of Mr. Julián Ernesto Cadena Castillo, in his capacity as a major of the National Army and at the time of the facts a captain and commanding officer of the “Halcón” platoon of Infantry Battalion No. 32 (the “General Pedro Justo Berrio” battalion) based in the city of Medellín, for the serious disciplinary offense enshrined in Article 48.7 of Law 734 of 2002 and imposed on him the punishment of “dismissal from his position and a general disqualification from holding public positions for twenty (20) years.” However, the officer’s defense team lodged an appeal against that decision and, by means of a decision dated July 1, 2010, the Disciplinary Chamber of the Office of the Inspector General of the Nation (PGN) overturned the first-instance judgment and acquitted the captain of the punishment.

18. As for the administrative dispute proceedings, according to the documents furnished by the petitioners, in suit No. 2004-03638 for direct redress, the 12th Administrative Court of the Medellín Circuit handed down a conviction on March 30, 2012. In that judgment, the court stated that although there was no evidence of shrapnel entering the child’s eye, it was established that as a result of the incident, she had suffered an infection that progressed until it perforated the cornea of the eye; therefore, not only was the physical injury suffered by the child fully established, but also the corresponding permanent repercussion of the removal of her right eye and the resulting use of a prosthetic for the rest of her life. For that reason, the judge found that D’s injury was attributable to the State as form of special damage. In addition, the court also ruled:

Although in principle the members of the National Army were engaged in a legal operation, they acted beyond legal limits, in that they raided homes without judicial authorization and used a disproportionate amount of force, in that the statements from some eyewitnesses of the incident and the statements given by the soldiers themselves in the proceedings before the military courts, together with evidence collected by the prosecution service, indicate that the young people who were killed along with Mrs. Gonzalez were victims and not terrorists [...]. Thus, the operation [...] in which Mrs. Gonzalez Ardila was killed and her minor-aged daughter D was injured was carried out beyond the confines of the functions that the Constitution, the law, and regulations have assigned to the National Army and beyond the inherent legal interests of the military order.²

19. An appeal was lodged against that decision by the State’s defense team, during the processing of which the parties began a conciliation that was approved on December 5 and became final on December 11, 2012. As a result, Gloria Gonzalez’s partner and children, including D, received compensation for her death, and the child D additionally received compensation for her injuries and for her impaired ability to work. However, D’s father and siblings received no compensation for the moral damages they suffered as a result of her injuries, and no measures were ordered to ensure the permanent treatment she requires for the regular replacement and lubrication of her prosthetic eye, which was the main goal of the negotiation of the friendly settlement agreement signed in the proceedings before the IACHR.

IV. FRIENDLY SETTLEMENT

20. On July 16, 2015, the petitioners, represented by Sandra Villegas, an attorney with the Javier Villegas Abogados law firm, and the Colombian State, represented by Hugo Alvarez Rosales, Legal Defense Director of the National State Legal Defense Agency, signed a friendly settlement agreement. The text of that agreement provides as follows:

² Additional information presented by the petitioners on July 23, 2015, Judgment No. 034 of the Twelfth Administrative Court of Medellín, dated March 30, 2012, p. 11.

**FRIENDLY SETTLEMENT AGREEMENT
P-557-06 GLORIA GONZALEZ ARDILA AND FAMILY**

On July 16, 2015, in the city of Bogotá D.C., Hugo Alvarez Rosales, Director of the Legal Defense Directorate of the National State Legal Defense Agency, acting in representation of the Colombian State, hereinafter referred to as “the Colombian State,” and the law firm of Javier Villegas Posada Abogados, represented in this undertaking by Sandra Villegas Arévalo, as legal representative, hereinafter referred to as “the representatives of the victims,” enter into this friendly settlement agreement as a part of petition P-577-06, currently being processed by the Inter-American Commission on Human Rights, pursuant to the terms of the following commitments:

- 1) Organize an act of restoration of dignity, accompanied by a private ceremony in which, in accordance with the desires of the victims’ family, the ashes of Mrs. Gloria Gonzalez’s mortal remains will be cast into the sea. This symbolic act will include psychosocial assistance provided by the Unit for the Attention and Comprehensive Redress of Victims, which shall be responsible for the execution of this measure.
- 2) Provide the victims in this case with assistance to ensure their access to the redress plans, programs, and projects offered by the Colombian State through the model for the attention, assistance, and comprehensive redress of victims implemented by the Unit for the Attention and Comprehensive Redress of Victims.
- 3) The State will provide assistance in the amount of \$50,000,000 (Fifty Million Colombian Pesos) for the child D, in order to fund her technical or technological education and cover her maintenance expenses. The value of this assistance will rise to \$70,000,000 (Seventy Million Colombian Pesos) if the beneficiary chooses a professional course of study. The beneficiary of the measure must pursue the relevant formalities for her admittance to the corresponding school and complete the programs offered by the university to ensure her due academic performance.

Bearing in mind that the beneficiary is currently in secondary education, the assistance will be available once she has completed the entirety of that formal educational cycle as stipulated in Article 11 of Law 115 of 1994.

In any event, the assistance must be used in a period of no more than ten (10) years following the signing of this agreement; otherwise this item of the agreement shall be taken as complied with. This measure will be supervised by the Ministry of Education and Ictetex.

- 4) Comprehensive health attention will be provided, with a psychosocial perspective and a restorative approach in light of the impact suffered as a result of the incident by D, Jennifer Johanna, Luisa Fernanda, and Carlos Josué Londoño Gonzalez (Mrs. Gloria Gonzalez’s children) by Mr. Carlos Enrique Londoño Zapata (Mrs. Gloria Gonzalez’s spouse) (sic). The beneficiaries of this measure will also receive comprehensive health attention with a psychosocial perspective and a restorative approach in light of the impact they suffered. Accordingly, the Ministry of Health and Social Protection will implement health rehabilitation measures to provide medical, psychological, and psychosocial attention through the General Health Social Security System and the Program of Comprehensive Psychosocial and Health Attention for Victims (PAPSIVI). Appropriate, timely, and priority attention will be guaranteed for those persons who so require, following an application for it, and for such time as may be necessary.

For access to comprehensive health attention, the provision of any kind of medicines and treatments required (including physical, mental, and psychological health) will be guaranteed for the beneficiaries of the measures, while they will also receive preferential and differentiated attention in their capacity as victims.

Special attention will be given to the child D who, in addition to the psychological harm, suffered physical injuries at the moment of her mother's death; she will therefore be given complete coverage by the health provision agency of the regime to which she is affiliated and her prosthesis will be changed regularly, and she will be provided with the necessary items of everyday consumption and hygiene and with medicines for lubricating the prosthesis.

5) The State will enforce Law 288 of 1996, once this friendly settlement agreement has been validated by the adoption of a report under Article 49 of the ACHR, in order to remedy the moral harm arising from the injury inflicted on D exclusively for Mr. Carlos Enrique Londoño Zapata (father) and for Luisa Fernanda, Jennifer Johana, and Carlos Josue Londoño Gonzalez (siblings), who received no compensation for that harm in the direct redress proceedings before the Twelfth Administrative Court of the Medellin Circuit, in accordance with the terms and parameters set by the jurisdiction for administrative disputes, provided that the harm is established as provided for in domestic law.

The parties request that the Inter-American Commission on Human Rights validate this agreement and give priority to the issuing of a report under Article 49 of the American Convention on Human Rights, which is necessary for the execution of several of the items contained in the friendly settlement agreement.

ADDENDUM TO THE FRIENDLY SETTLEMENT AGREEMENT
P-577-06 GLORIA GONZALEZ
September 29, 2015

6) In the area of justice, the State agrees to continue to make progress with the ongoing criminal proceedings, in order to cast light on the facts, and, once the legally corresponding decision has been reached, to punish those responsible.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

21. The IACHR again notes that pursuant to Articles 48.1.f and 49 of the American Convention, the aim of this procedure is "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." Accepting this procedure demonstrates the State's good faith in pursuit of the Convention's purposes and goals under the principle of *pacta sunt servanda*, whereby states are required to comply in good faith with the treaty obligations they assume.³ It would also like to note that the friendly settlement procedure provided for in the Convention allows individual cases to be concluded in a no contentious fashion and that in cases from several different countries, it has served as an important vehicle for resolving disputes that is available to either party.

22. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case, and it applauds the efforts made by both parties during the negotiations to reach this friendly settlement, which is compatible with the purposes and goals of the Convention.

23. As provided for in the friendly settlement agreement, the parties have jointly asked the Commission to adopt the report referred to in Article 49 of the American Convention, in order to begin formalities for granting the victims some of the reparation measures in the friendly settlement agreement and, in particular, those dealing with the implementation by the State of Law 288 of 1996.

24. The IACHR notes that according to the information provided to date by the parties, it must applaud the compliance with the first item of the friendly settlement agreement as regards the ceremony to restore the dignity of Gloria Gonzalez's memory.

³ 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."

25. On July 21, 2015, the parties jointly informed the IACHR that a meeting was held prior to the implementation of the measure on July 4, 2015, with the purpose of building confidence with the family, explaining the scope and contents of the measures of satisfaction, and addressing the commemorative and dignity ceremonies. At that meeting, the family stated that they wanted a ceremony that included the casting of Gloria Gonzalez's ashes into the sea, since they did not have the necessary funds or access to an area where such a ceremony could be held. In addition, they indicated the need for psychosocial assistance in dealing with their grief, and said that the dignity ceremony should be held in an intimate, family setting. At the meeting the parties agreed on the place and other logistical details of the dignity ceremony. It was also agreed that the Unit for the Attention and Comprehensive Redress of Victims (UARIV) would cover the costs of organizing the dignity ceremony and the other accommodation, transportation, and eating expenses of Gloria Gonzalez's family.

26. Following the meeting, and with the parties' agreement, the UARIV began to provide the family with psychosocial assistance and organized preparations for the ceremony, led by a psychologist and a professional instructed to reconstruct memory through photography and plastic arts. The family participated in building a wooden boat, which was decorated with their most important photos and keepsakes, as a part of a therapy session for enabling dignified grief. They also prepared an album with the family's most important photographs. During these activities, the family's words were collected for the address to be read out at the dignity ceremony.

27. The dignity ceremony was held at 6:00 p.m. on August 20, 2015, in the municipality of San Antero, department of Córdoba. All the members of Gloria Gonzalez's family cast her mortal remains into the sea, and they then burned the boat as a way to symbolize the warmth, unity, and strength of the family. The address read out at the dignity ceremony, following its approval by the family, was published on the web pages of the Unit for the Attention and Comprehensive Redress of Victims and the National State Legal Defense Agency.

28. The IACHR corroborated the publication of the address on the State's web pages⁴ and received a photographic and video records of the preparations of both the dignity ceremony and the private ceremony. Accordingly, in light of the foregoing and of the information provided jointly by the parties, it believes it is in a position to rule that item 1 of the agreement has been implemented in full.

29. As regards the rehabilitation measures established in item 4 of the agreement, the IACHR takes D's medical condition into particular consideration for appraising and approving the friendly settlement agreement, in light of the permanent repercussions inherent in the need to maintain and periodically change her prosthesis. The IACHR notes that is essential for D and her family to have access to the health system as established in the friendly settlement agreement, to which end it will continue to oversee the full compliance with that commitment with particular care.

30. The IACHR takes note of the other measures of reparation established in items 2, 3, and 5 of the agreement and it applauds the State's commitment to paying D's family compensation for her injury, noting that they received no redress in the administrative contentious proceedings because they were not included in the settlement reached between the parties at that venue.

31. As regards the clause added by the parties on September 29, 2015, the IACHR first declares that pursuant to the parties' wishes, the addendum forms an integral part of the friendly settlement agreement in this case. In addition to that, the Commission notes the State's commitment to continue "*to make progress with the ongoing criminal proceedings.*" According to the information provided by the State, the investigation is still pending before the military courts. Thus, in communications dated August 14 and October 21, 2015, the State reported that the investigation began on May 10, 2002, with an investigation commencement deed issued by the 23rd Military Criminal Court, and that on May 15, 2015; the 32nd Military

⁴ Unit for the Attention and Comprehensive Redress of Victims: <http://www.unidadvictimas.gov.co/index.php/es/79-noticias/4004-en-memoria-de-gloria-gonzalez-una-mujer-valiente-independiente-trabajadora>. National State Legal Defense Agency: <http://www.defensajuridica.gov.co/saladeprensa/noticias/Paginas/210815.aspx>.

Criminal Judge referred the investigation to the 11th Military Criminal Prosecutor's Office where it is "pending assessment."

32. The State indicated that actions had been taken to challenge the jurisdiction of the military courts on several occasions. It thus informed the Commission that on December 18, 2002, the 192nd Judicial Criminal Prosecutor's Office requested a change of jurisdiction, as a result of which the 23rd Military Criminal Judge sent the documents to the National Human Rights Unit of the Attorney General's Office (FGN). On March 2, 2004, the National Human Rights Unit issued a deed rejecting competence and proposed a negative conflict of jurisdiction. The matter was therefore referred to the Disciplinary Chamber of the Superior Council of the Judicature, which resolved on June 7, 2004, that the conflict of jurisdiction had not been legally established and, as a result, the proceedings were returned to the 23rd Military Criminal Judge.

33. The State reported, in general terms, that after September 29, 2004, the Office of the Inspector General of the Nation (PGN) requested that the proceedings be sent to the regular courts, and that the Brigade Judge decided not to and ordered the 87th Military Criminal Court to continue with the investigation. The State reported that the 87th Military Criminal Investigating Judge ordered the proceedings sent to the Attorney General's Office (FGN), believing that the military criminal courts were not competent to hear the matter. Finally, the 18th Prosecutor of the National Human Rights and International Humanitarian Law Unit issued a deed on September 1, 2010, in which he decided not to accept competence and caused another negative conflict of jurisdiction, with which the proceedings remained with the 87th Military Criminal Court. According to information furnished by the State, on May 15, 2015, the 32nd Military Criminal Judge referred the investigation to the 11th Military Criminal Prosecutor's Office for the closure of the committal proceedings, and a ruling is currently pending.

34. In connection with this, the IACHR notes that the injured legal interest is not military in nature, and so the prosecution of the perpetrators falls to the regular courts. This is of particular relevance considering that the domestic courts themselves, in the administrative dispute proceedings, found at least indications of a possible excessive use of lethal force by the agents during an operation that was, in principle, legal. The Commission again points out that the possibility of the military courts judging any soldier charged with a regular crime, for the sole reason on being on duty, means that the jurisdiction is granted by reason of his or her status as a member of the armed forces. Thus, although the crime is committed by soldiers during active service or as a result of actions of that service, that is not enough for its prosecution to fall to the military courts.⁵ The Inter-American Court of Human Rights has also established in its constant jurisprudence that "when the military courts assume jurisdiction over a matter that should be heard by the regular courts, the right to the appropriate judge is violated, as is, *a fortiori*, due process."⁶ The Commission will therefore continue to monitor compliance with this matter in accordance with the applicable inter-American standards.

35. Similarly, the IACHR takes note of the petitioners' request of July 21, 2015, in which they asked the Commission to encourage the assistance of the National State Legal Defense Agency in the monitoring and compliance of the agreement, with the purpose of ensuring the State's consistency in ensuring the victims appropriate redress. The Commission therefore invites the State to work for that agency's participation in the actions related to compliance with the commitments set out in this friendly settlement agreement.

⁵ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, paras. 161-162.

⁶ *Case of Castillo Petruzzi et al. v. Peru*, Merits, Reparations, and Costs, Judgment of May 30, 1999, Series C No. 52, para. 128; and *Case of Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 26, 2010, Series C No. 220, para. 197.

VI. CONCLUSIONS

36. In light of the foregoing, the IACHR declares that item 1 of the agreement has been implemented in full and it finds that the remaining points are still in the implementation process, for which reason it will continue to oversee compliance with commitments Nos. 2, 3, 4, 5, and 6 in its Annual Report to the OAS General Assembly.

37. Based on the above remarks and in light of the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission would like to reiterate its deepest appreciation of the efforts made by the parties and its satisfaction at the reaching of a friendly settlement agreement in the case at hand that is based on respect for human rights and is compatible with the purpose and goals of the American Convention.

38. In consideration of the comments and conclusions set out in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on July 16, 2015.
2. To continue to monitor the commitments that are still pending compliance by the State of Colombia. To that end, to remind the parties of their commitment to report to the IACHR on a regular basis regarding their implementation; in particular, the justice clause in accordance with inter-American parameters.
3. To publish this report and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 28th day of the month of October, 2015. (Signed):
Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz,
Tracy Robinson and Paulo Vannuchi, Commissioners.