

OAS/Ser.L/V/II.
Doc. 61
11 March 2022
Original: Spanish

REPORT No. 59/22
PETITION 535-17
FRIENDLY SETTLEMENT REPORT

LUIS GERARDO BERMUDEZ
COLOMBIA

Approved electronically by the Commission on March 11, 2022.

Cite as: IACHR, Report No. 59/22, Petition 535-17. Friendly Settlement. Luis Gerardo Bermudez. Colombia. March 11, 2022.

REPORT No. 59/22
PETITION 535-17
FRIENDLY SETTLEMENT
LUIS GERARDO BERMUDEZ
COLOMBIA¹
MARCH 11, 2022

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On March 21, 2017, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR"), received a petition filed by José Alberto Leguizamo Velásquez, on behalf of Mrs. Marleny Bermúdez Espinosa (hereinafter "the petitioners" or "the petitioner party") claiming the international responsibility of the Colombian State for the violation of the rights enshrined in Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 10 (compensation), 17 (rights of the family), 19 (rights of the child), 21 (right to private property), 22 (freedom of movement and residence) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), in relation to the obligations derived from Article 1 thereof (obligation to respect), to the detriment of Luis Gerardo Bermúdez, who was allegedly murdered by members of the FARC on August 21, 1997, and whose remains have not been found to date, as well as for the lack of investigation and punishment of those responsible for the facts.

2. On October 29, 2020, the Colombian State expressed its interest in initiating a friendly settlement process with the representatives of the alleged victims and requested the Commission's cooperation to do so. On January 20, 2021, the petitioners manifested to the IACHR their agreement to initiate a friendly settlement procedure and formulated their claims to reach an eventual agreement. Therefore, on March 23, 2021, the Commission initiated the negotiation process and requested the State to submit its observations on the viability of the petitioners' claims.

3. On March 17, 2021, in the city of Bogotá D.C., representatives of the Colombian State and the petitioners signed a memorandum of understanding whereby they agreed on a work schedule to advance in the process of seeking a friendly settlement agreement, which materialized with its signature on August 27, 2021.

4. Subsequently, on December 20, 2021, the parties submitted a joint report on the progress in the compliance with the agreement and requested its homologation.

5. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, contains a summary of the facts claimed in the petition and transcribes the friendly settlement agreement signed on August 27, 2021, by the petitioner party and 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

6. On August 21, 1997, according to the petitioner, Mr. Luis Gerardo Bermúdez allegedly left his residence to visit some friends at the kiosk on the La Primavera estate. Since the previous day, August 20, 1997, the air force had been carrying out a bombing operation in the jurisdiction of the Municipality of Mapiripán, Department of Meta, against members of the guerrilla who were allegedly there.

7. According to the petition, on August 21, 1997, Luis Gerardo Bermúdez was allegedly murdered in said municipality and said events were attributable to the Revolutionary Armed Forces of Colombia (FARC), and to date the location of his remains is unknown.

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.

8. According to the petitioners, up to the date on which the facts allegedly occurred, Mr. Luis Gerardo Bermúdez provided economic and moral support to his family, comprised of his permanent spouse, Elvia Espinosa, and his children, Luis Enrique Bermúdez Espinosa, Luis Jairo Bermúdez Espinosa, María Gladys Bermúdez Espinosa and Marley Bermúdez Espinosa, and in that sense, the alleged death and disappearance of the victim had serious repercussions for his relatives, who were forced to move.

9. With regard to the judicial investigation, the petitioner claimed that a complaint had been filed with the Attorney General's Office and a proceeding had been opened under Law 975 of 2005 (Justice and Peace Law), in order to establish the truth, obtain justice for the acts committed, and provide reparations to the victims. However, the objective was not achieved and it held that, as of the date of the presentation of the petition, the Colombian State had not granted any compensation whatsoever.

III. FRIENDLY SETTLEMENT

10. On August 27, 2021, the parties entered into a friendly settlement agreement, the text of which provides as follows:

FRIENDLY SETTLEMENT AGREEMENT PETITION No. 535-17, LUIS GERARDO BERMUDEZ

On August twenty-seventh (27), 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, Dr. José Alberto Leguizamo Velásquez, 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 context of Petition No. 535-17, Luis Gerardo Bermúdez, in progress 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 values which are very significant for the persons, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victim or his or her family².

State or Colombian State: In accordance with Public International Law, the signatory subject of the American Convention on Human Rights, hereinafter referred to as "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.

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.

Parties: The State of Colombia, family of the victim, 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: Doctor José Alberto Leguizamo Velásquez.

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

Victims: Marleny Bermúdez Espinosa, Maria Gladys Bermúdez Espinosa, Luis Jairo Bermúdez Espinosa and Luis Enrique Bermúdez Espinosa.

SECOND PART: BACKGROUND

BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

On March 21, 2017, the Inter-American Commission on Human Rights received a petition filed by Mr. José Alberto Leguizamo Velásquez, as a result of the disappearance of Mr. Luis Gerardo Bermúdez on August 21, 1997, in the Municipality of Mapiripán, Meta Department.

The petition indicated that Mr. Luis Gerardo Bermudez left his home on August 21, 1997, with the purpose of visiting some friends at the kiosk of the "La Primavera" estate, without subsequently returning to his home, and his whereabouts are unknown to date. Additionally, due to this circumstance, Mr. Luis Gerardo Bermúdez's family members were forced to move.

On March 17, 2021, the Colombian State and the petitioners signed a Memorandum of Understanding for the Search for a Friendly Settlement, which was informed to the Inter-American Commission on March 18, 2021.

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

AT THE DOMESTIC LEVEL

Due to these facts, in 2011, the Attorney General's Office initiated a criminal investigation conducted by the First Specialized Prosecutor's Office based on the criminal complaint filed by Mrs. Virginia Bermúdez Oidor, without having been able to identify and individualize the perpetrators of the crime to date³.

THIRD PART: BENEFICIARIES

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

Name	Citizenship Card	Kinship
Marleny Bermúdez Espinosa	[...]	Daughter

² Office of the Attorney General of the Nation. Official letters No. 20201700037481 of June 26, 2020 and No. 20201700060581 of October 19, 2020.

Maria Gladys Bermúdez Espinosa	[...]	Daughter
Luis Jairo Bermúdez Espinosa	[...]	Son
Luis Enrique Bermúdez Espinosa	[...]	Son

The victims recognized in this Friendly Settlement Agreement will benefit as long as they can prove their blood relationship with Mr. Luis Gerardo Bermúdez.

Additionally, the victims who will benefit from this Friendly Settlement Agreement shall be those who were alive at the time of the victimizing event⁴ and are alive at the time of the signing of the Agreement.

FOURTH PART: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility by omission, for the violation of the rights recognized in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1. thereof, to the detriment of the relatives of Mr. Luis Gerardo Bermúdez, for the lack of diligence in the investigation of the events that occurred.

FIFTH PART: SATISFACTION MEASURES

The Colombian State undertakes to carry out the following satisfaction measures:

i. Act of Acknowledgement of Responsibility:

The Colombian State shall carry out a Private Act of Acknowledgment of Responsibility, which shall be conducted virtually with the participation of the petitioners. The act shall be carried out in accordance with the acknowledgment of responsibility indicated in this Agreement.

The present measure will be in charge of 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 has been approved by the Inter-American Commission, on the web page of the National Agency for the Legal Defense of the State, for a period of six (6) months.

SIXTH PART: JUSTICE MEASURES

The Office of the Attorney General of the Nation, within the framework of its competencies, will continue to conduct with due diligence the judicial actions which will allow the investigation and the possible identification and individualization of those responsible for the facts.

In the development of the above, the Attorney General's Office and the petitioners will hold a meeting every six months to report on the progress made in the area of justice.

The semiannual meeting to be held will be convened directly by the Attorney General's Office.⁵

⁴ The foregoing, in accordance with the jurisprudence of the Inter-American Court. See, IHR Court. Case of the Afro-descendant Communities Displaced from the Cacarcia River Basin (Operation Genesis) vs Colombia. (Preliminary Exceptions, Merits, Reparations and Costs). Judgment of November 20, 2013, Series C No. 270, para. 425.

⁵ Office of the Attorney General of the Nation. Document No. 20211700032191 dated May 11, 2021.

SEVENTH 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 in accordance with 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 resulted from 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 processing 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.

EIGHTH 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 this twenty-seventh (27) day of August, 2021, having been read by the parties who are aware of its scope and legal content.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The IACHR reiterates that in accordance with Articles 48.1f 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 carry out 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 treaties⁶. The Commission 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.

12. 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.

13. Likewise, pursuant to the provisions of the eighth clause of the friendly settlement agreement, the parties requested the homologation of the agreement, as foreseen in Article 49 of the American Convention.

14. The IACHR observes that, given the information provided by the parties up to that time and the request for homologation of the FSA submitted by the parties to the Commission, it is appropriate to assess compliance with the commitments established in the friendly settlement agreement.

15. The Commission considers that the first (Concepts), second (Background), third (Beneficiaries) and fourth (Acknowledgement of Responsibility) clauses of the agreement are of a declarative nature, and therefore it is not appropriate to supervise their execution. In this regard, the IACHR values the fourth declarative clause, in which the Colombian State recognizes its international responsibility for the violation of the rights enshrined in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 (obligation to respect) thereof, due to the lack of investigation of the actual truth and the identification and punishment of those responsible for the facts.

⁶ 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.*

16. With regard to point 1 of the fifth clause of the FSA, concerning the act of atonement, as jointly informed by the parties on December 20, 2021, the parties agreed on the content of the agenda of the event and sent a copy to the Commission. The private act of acknowledgment of responsibility was held on November 16, 2021, at 10:00 a.m. through the Streamyard platform and was broadcasted live on a private channel on the YouTube platform. In this regard, the parties provided a simple copy of the invitations circulated for said event, in which the relatives of Mr. Luis Gerardo Bermúdez and their representatives, the National Agency for the Legal Defense of the State and the IACHR participated.

17. Likewise, the parties reported on the contents of the agenda, which included the opening and installation of the ceremony and the projection of the National Anthem. This was followed by the intervention of the victim's daughter, the projection of a video prepared by Mr. Bermúdez's family and the intervention of the victims' representative. Then, the Advisor of the International Legal Defense Directorate of ANDJE apologized for the events that occurred and acknowledged the international responsibility of the State under the terms of the friendly settlement agreement. Finally, the Chair of the IACHR and Rapporteur for Colombia, Commissioner Antonia Urrejola Noguera, participated in the closing remarks.

18. In its apology, the Colombian State, through the Advisor of the International Legal Defense Directorate of the ANDJE, held that:

[...]

The Colombian State recognizes that the right of access to the administration of justice is an indispensable prerequisite for the fulfillment of fundamental rights, and is one of the pillars that support the model of the Social and Democratic Rule of Law. The right of access to the administration of justice implies the concrete possibility for all persons, without distinction, to obtain the reestablishment of their rights through the means provided by the administration of justice, which must be, inter alia, timely and effective.

The State recognizes that the administration of justice must ensure the vindication of the rights of the victims and the reestablishment of the positions affected by the event caused within a reasonable period of time. The due administration of justice is constituted as a guarantee for the victims, who have suffered from the violation of their rights, which must be fully repaired through several measures aimed at the redignification of the person, including the right to justice, truth and non-repetition.

Therefore, on behalf of the State of Colombia, I acknowledge international responsibility for the violation of the rights to a fair trial and judicial protection, recognized in the American Convention on Human Rights, in relation to the general obligation of respect and guarantee established in the same instrument, to the detriment of the relatives of Luis Gerardo Bermúdez.

[...]

19. In this regard, the Commission received the photographic record of the act and other documentation verifying the implementation of this end of the agreement, therefore, taking into account the information provided jointly by the parties, the Commission considers that point 1 of clause five of the friendly settlement agreement concerning the private act of redress has been fully complied with and it declares it as such.

20. In relation to the sixth clause of the FSA, related to justice measures, the parties jointly informed on December 20, 2021 that the ANDJE requested the Attorney General's Office to convene the semi-annual meeting in order to know the progress of the investigation. In this regard, the Attorney General's Office informed that said meetings have been scheduled for February 1 and August 1, 2022. Taking into consideration the information provided jointly by the parties, the Commission considers that the sixth clause of the friendly settlement agreement related to the measure of justice is pending compliance and it hereby declares it as such.

21. In accordance with point 2 of clause five (publication of the agreement) and clauses six (measures of justice) and seven (economic compensation) of the friendly settlement agreement, said measures are pending compliance and shall be executed after the present approval, for which reason the Commission will not rule on the compliance of these reparation measures at this stage.

22. Due to the foregoing, the Commission concludes that item 1 of the fifth clause is fully complied with and so it declares it. On the other hand, point 2 of the fifth clause and the sixth and seventh clauses are pending compliance which the Commission declares it as such. Finally, the Commission considers that the rest of the content of the agreement is of a declarative nature and therefore its supervision is not required.

V. CONCLUSIONS

1. Based on the foregoing considerations and by virtue of the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction 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 TO:

1. Approve the terms of the agreement signed by the parties on August 27, 2021.
2. To declare item 1 of the fifth clause (act of redress) fulfilled, according to the analysis contained in this report.
3. To declare clause five, point 2 (publication of the agreement) and clauses six (measures of justice) and seven (financial compensation) pending compliance, according to the analysis contained in this report.
4. Continue monitoring compliance with point 2 of clause five (publication of the agreement) and clauses six (measures of justice) and seven (economic compensation), until full compliance, according to the analysis contained in this report, and to that end remind the parties of their commitment to report periodically to the IACHR on their compliance.
5. To make this report public and to include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on March 11, 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.