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REPORT No. 111/23 CASE 13.840

REPORT ON FRIENDLY SETTLEMENT

EDWIN HERNAN CIRO AND FAMILY COLOMBIA

Approved electronically by the Commission on July 26, 2023.

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REPORT No. 111/23 CASE 13.840

FRIENDLY SETTLEMENT
EDWIN HERNAN CIRO AND FAMILY
COLOMBIA¹
JULY 26, 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

- 1. On January 28, 2009, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition lodged by Roberto Fernando Paz Salas (hereinafter "the petitioner") alleging that the Republic of Colombia (hereinafter "Colombia" or "the State") bore international responsibility for the violation of human rights recognized in Articles 4 (right to life), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention"), taken in conjunction with Article 1(1) of the same instrument, for the failure to investigate the extrajudicial execution of Mr. Edwin Hernán Ciro on August 27, 1999, allegedly by agents of the Unified Action Group for Personal Liberty (hereinafter "GAULA") belonging to the National Police, as well as for the subsequent failure to conduct an effective inquiry into the facts and to punish those responsible.
- 2. On August 13, 2019, the Commission issued its Admissibility Report 130/19, in which it declared the petition admissible and that it was competent to analize the petitioner's claim regarding the alleged violations of the rights enshrined in Articles 4 (right to life), 5 (right to human treatment), 7 (right to personal liberty), 8 (right to a fair trial), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights, in relation to the Articles 1(1) and 2 thereof.
- 3. On November 20, 2019, the petitioner expressed an interest in initiating a friendly settlement process and on November 30, 2021, the State indicated its willingness to move forward with the negotiation.
- 4. On February 15, 2022, the Commission formally notified the parties of the initiation of the procedure and, on March 28, 2022, the parties signed a memorandum of understanding with a view to seeking a friendly settlement, in which they agreed on a negotiation schedule, which culminated in the signing of a friendly settlement agreement (FSA) on July 26, 2022. Subsequently, on October 31, 2022, the parties jointly submitted a progress report on compliance with the FSA and requested its approval.
- 5. Pursuant to Articles 49 of the American Convention and 40(5) of the Commission's Rules of Procedure, this friendly settlement report includes a summary of the petitioner's allegations and transcribes the friendly settlement agreement signed on July 26, 2022, by the petitioner and representatives of the Colombian State. Also, the Commission hereby approves the agreement signed by the parties and decides to publish this report in its Annual Report to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

6. The petitioner indicated that on August 27, 1999 in the Municipality of San Rafael, department of Antioquia, at dawn, while Mr. Edwin Hernán Ciro (hereinafter "the alleged victim") and his family were sleeping, a group of armed persons broke down the door of their home and entered violently without any type of judicial order or search warrant. He said that the men were agents of the Unified Action Group for Personal Liberty (GAULA), belonging to the National Police, as they were wearing uniforms and had police insignia. He stated that they proceeded to identify and tie up the alleged victim, and despite requesting to be allowed to put on his shoes, they shouted that where he was going he would not need them and subsequently they took him

 $^{^1}$ In accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or decision on this case.

away in a van. The relatives of the alleged victim indicate that after a few minutes they heard shots very close to his house. Additionally, the petitioner said that they searched the whole house, including their belongings, destroying some, and took away valuables, including an amount of money they kept.

- 7. The petitioner said that that afternoon, neighbors saw the trucks allegedly used in the operation in front of the police station; they also said that the police had killed two people and that their bodies were on the road to the Municipality of Guatapé. According to the petitioner, one of the bodies belonged to the alleged victim and had multiple gunshots in the back, as evidenced by the corpse removal certificate and the autopsy.
- 8. The petitioner said that an investigation was opened in the military criminal jurisdiction and that after a declaration of lack of competence, the case was referred to the 93rd Delegate Prosecutor's Office in the ordinary jurisdiction, without producing any known results to date.
- 9. In addition, the petitioner said that the family of the alleged victim filed a direct reparation action with the Administrative Tribunal of Antioquia. He said that it was denied on April 24, 2008, on the grounds that there was no proof of any link to the acts being carried out by the National Police. The petitioner said that they filed an appeal, which on July 14, 2008 was declared inadmissible by the Fifth Chamber of Decision of the Administrative Tribunal of Antioquia because of the amount of the claims.
- 10. According to the petitioner, the murder of the alleged victim remains unpunished because the investigations have so far failed to identify those responsible. He also said that the family of Mr. Edwin Ciro could had been unable to make use of an effective remedy, since they were denied the appeal to the State Council to obtain compensation.

III. FRIENDLY SETTLEMENT

11. On July 26, 2022, the parties signed a friendly settlement agreement, which provides the following:

FRIENDLY SETTLEMENT AGREEMENT Case No. 13.840 - Edwin Hernán Ciro and Family

On July 26, 2022, the following met in the city of Bogotá, on the one hand, Giovanny Andrés Vega Barbosa, Acting Director of the International Legal Defense Directorate 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 organization Indemnizaciones Paz Abogados, represented in this act by Dr. Roberto Fernando Paz Salas, acting in his capacity as representative of the victims (hereinafter the "petitioner"), who have decided to enter into this Friendly Settlement Agreement in Case No. 13.840, Edwin Hernán Ciro and Family, currently before the Inter-American Commission on Human Rights.

PART ONE: DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply.

IACHR or Inter-American Commission: Inter-American Commission on Human Rights,

<u>Moral damages:</u> Injurious effects of the facts of the case that are not of an economic or financial nature, as manifested in the grief, affliction, sadness, distress, and anxiety of the victims.

Pecuniary damages: The loss of or harm to the income of the victims, the expenditure incurred as a result of the facts, and the pecuniary consequences that have a causal link to the facts of the case.2

Non-pecuniary damages This includes suffering and affliction caused to the direct victims and their next of kin, detriment to very significant personal values, as well as non-pecuniary alterations in the conditions of existence of a victim or his or her family.³

State or Colombian State: In accordance with Public International Law, the State is understood as the signatory of the American Convention on Human Rights.

Satisfaction measures: Non-pecuniary measures designed to enable the recovery of the victims from the harm caused to them. Examples of such measures include public disclosure of the truth and acts of atonement.

Parties: State of Colombia, relatives of the victims, and their representatives.

Acknowledgement of responsibility Acceptance of the acts and omissions attributed to the State that violate one or more of its obligations under international human rights law.

Comprehensive reparations: All those measures that objectively and symbolically restore the victim to their state prior to the commission of the harm.

Victims' representative: Indemnizaciones Paz, represented by Dr. Roberto Fernando Paz Salas.

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

Victims: Relatives of Mr. Edwin Hernán Ciro.

PART TWO: BACKGROUND

- On January 28, 2009, the Inter-American Commission received a petition lodged by Dr. Roberto Fernando Paz Salas, alleging the homicide of Mr. Edwin Hernán Ciro on August 27, 1999, in the municipality of San Rafael, department of Antioquia.
- 2. As to the background in the case, the initial petition states that in the early morning of August 27, 1999, while Mr. Edwin Hernán Ciro and his family were sleeping, a group of armed individuals, who the petitioners say were agents of the Unified Action Group for Personal Liberty, broke down the door of the home, tied Mr. Ciro up, and took him away in a pickup truck.⁴ Some time later the family heard the sound of gunshots.⁵
- It was later reported that two bodies were found in El Charco, a rural area of the Municipality of San Rafael, one of which was that of Edwin Hernán Ciro.⁶ Both bodies had several gunshot wounds.⁷

² I/A Court H.R., Case of the Serrano Cruz Sisters v. El Salvador, Merits, Reparations and Costs, Judgment of March 1, 2005, Series C No. 120, para. 150.

³ I/A Court H.R., Case of Caesar v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment of March 11, 2005, Series C No. 123, para. 125.

⁴ Initial petition, January 2009.

⁵ Ibid.

⁶ Inter-American Commission on Human Rights, Report on Admissibility 130/19.

⁷ Office of the Attorney General, Official communication No. 20151700022951 of April 13, 2015.

- 4. In light of the facts of the case, on August 31, 1999, the 93rd Sectional Prosecutor's Office in San Rafael ordered a preliminary investigation. On September 8, 1999, the proceedings were referred to the Municipal Criminal Courts.⁸
- 5. On October 12, 1999, the 45th Military Preliminary Criminal Investigation Court took cognizance of the proceedings and ordered the collection of evidence. Among the evidence collected, it was found that the Rionegro GAULA group, with support from the Antioquia GAULA, had indeed been in the municipality of San Rafael on August 27, 1999, looking for a kidnapped minor; that led to an operation carried out on August 27, 1999.
- 6. On February 29, 2000, the 92nd Military Preliminary Criminal Investigation Court ordered the opening of a preliminary investigation and issued summonses for the members of the Second Rionegro GAULA group who were involved in the operation carried out on August 27, 1999, in the Municipality of San Rafael, Antioquia.¹⁰
- 7. On March 18, 2003, the investigation was referred to the ordinary courts on the grounds that the facts suggested that the alleged perpetrators were members of the National Police GAULA and that their actions had been committed outside their official duties; on the contrary, the criminal deeds were perpetrated in the context of acts alien to police functions.¹¹
- 8. On May 5, 2003, a resolution was passed to close the investigation, arguing that, according to article 329 of the Criminal Procedure Code, the term of instruction could not exceed 18 months from the date of its initiation, for which once expired, the proceeding action was the qualification of the summary.¹²
- 9. On June 8, 2004, the 97th Sectional Prosecutor's Office in Marinilla closed the preliminary investigation on account of the inability to corroborate the identities of the material perpetrators of the crime. 13
- 10. The Memorandum of Understanding for the Search for a Friendly Settlement was signed on March 28, 2022.
- 11. Over the months that followed the parties held joint meetings to analyze the reparation measures to be included in the friendly settlement agreement being signed on this date.

PART THREE: BENEFICIARIES

The Colombian State recognizes the following victims in this agreement:

Name	ID	Relationship
Ana Judith Ciro de Morales	[]	Mother
Ramón Antonio Morales Ciro	[]	Brother
Luz Mery Morales Ciro	[]	Sister
José Azarías Morales Ciro	[]	Brother
Elsy Amparo Ciro	[]	Sister
Rosa María Morales de Parra	[]	Brother (sic)
Leticia María Ciro	[]	Brother (sic)
Guillermo León Ciro	[]	Brother

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

The victims recognized herein shall benefit as long as they prove their relationship by consanguinity and affinity to Mr. Edwin Hernán Ciro.

Additionally, the victims who will benefit from this Friendly Settlement Agreement will be those who were alive at the time of the victimizing deed and are alive at the time of the signing of this Agreement.¹⁴

PART FOUR: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State acknowledges that it bears international responsibility by omission for the violations of the rights recognized in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to Article 1(1) (obligation to respect rights) of the same instrument, to the detriment of the relatives of Mr. Edwin Hernán Ciro, due to the lack of a diligent investigation of the events that occurred, which resulted in the failure to identify, prosecute, and punish those responsible for his murder.

PART FIVE: SATISFACTION MEASURES

The Colombian State undertakes to adopt the following satisfaction measures:

i. Act of Acknowledgment of Responsibility

The Colombian State will hold a virtual Public Act of Acknowledgment of Responsibility with the participation of the next of kin of Mr. Edwin Hernán Ciro and the petitioner. The act shall consistent with the acknowledgment of responsibility set forth in this Agreement.

This measure will be the responsibility of the National Agency for the Legal Defense of the State.

ii. Working Group Meetings with the Ministry of Housing, Urban, and Territorial Affairs

The Colombian State, through the Ministry of Housing, Urban, and Territorial Affairs, will hold three (3) working group meetings with the beneficiaries of the Friendly Settlement Agreement, if they so wish, in order to present the institutional offer established by the Colombian State for access to housing programs, including the requirements and the form of access to that offer.

Implementation of this measure will not imply the automatic granting to the beneficiaries of family or in-kind housing subsidies or housing improvements, since this will depend on the beneficiaries' willingness to access any of the programs included in the institutional offer presented, as well as the fulfillment of the corresponding requirements within the deadlines established in each program.

This measure will be implemented upon the signing of the Friendly Settlement Agreement.¹⁵

¹⁴ This, in accordance with the jurisprudence of the Inter-American Court of Human Rights. See I/A Court H.R., Case of the Afrodescendant 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.

¹⁵ Ministry of Housing, Urban, and Territorial Affairs, Official communication of July 18, 2022, Case 2022EE00674.

PART SIX: COMPENSATION MEASURES

The State undertakes to initiate the processing of Law 288 of 1996 "establishing instruments for the compensation of damages to victims of human rights violations as provided by certain international human rights bodies." The process will begin once this friendly settlement agreement is approved through the adoption of a report under Article 49 of the American Convention in order to provide reparation for the injuries to victims' relatives resulting from the violations caused by the deeds committed in 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 for damages and its verification, the criteria and amounts recognized by the current jurisprudence of the Council of State will be used.

PART NINE: APPROVAL AND FOLLOW-UP

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

This Agreement having been read and the parties being aware of its scope and legal content, it is signed on July 26, 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

- 12. 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 pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply with the obligations assumed in the treaties in good faith. It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.
- 13. The Inter-American Commission has closely monitored the progress of the friendly settlement reached in the present case and values the efforts that both parties in negotiating this friendly settlement agreement, which is compatible with the object and purpose of the Convention.
- 14. In accordance with the agreement signed by the parties, by which they requested the Commission to approve the friendly settlement agreement envisaged in Article 49 of the American Convention, and taking into consideration the parties' request of October 31, 2022, to move forward in this way, it is appropriate at this time to assess compliance with the commitments set forth herein.
- 15. The Inter-American Commission considers that the clauses one (Definitions), two (Background), three (Beneficiaries) and four (Acknowledgement of Responsibility) of the Agreement are of a declarative nature, rendering supervision of their compliance unnecessary. In this regard, the Commission values the fourth declarative clause, in which the Colombian State acknowledges that it bears international responsibility for the violations of the rights recognized in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to Article 1(1) (obligation to respect rights) of the same instrument, to the detriment of the relatives of Mr. Edwin Hernán Ciro, due to the lack of a diligent investigation

¹⁶ 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.

of the events that occurred, which resulted in the failure to identify, prosecute, and punish those responsible for his murder.

- 16. In relation to subparagraph (i), Act of acknowledgment of responsibility, of the clause five (Satisfaction measures), as jointly reported by the parties, after the signing of the FSA, the parties agreed that the act would be conducted in private, and they confirmed that it was held on a virtual platform on September 27, 2022. The parties reported that there was permanent, fluid communication between the State and the petitioners, with whom it agreed on every detail for compliance with the measure, such as the date, time, agenda, and logistics required for the development of the space. In that regard, the parties provided a plain copy of the invitations circulated for said event, in which the victim's relatives and their representatives, the National Agency for the Legal Defense of the State, and the IACHR Commissioner and Rapporteur for Colombia, Joel Hernández García, took part.
- 17. The parties also reported the content of the agenda agreed on for the private act of acknowledgment of responsibility, during which a video memorializing Mr. Edwin Hernán Ciro was shown and Mrs. Leticia María Ciro, sister of the victim, and Dr. Roberto Fernando Paz Salas, representative of the victims, delivered remarks. The ANDJE's Director of International Legal Defense spoke for the State. She apologized to the victims and their relatives for what had happened, and acknowledged the State's responsibility under the terms established in the friendly settlement agreement signed by the parties, stating the following:

[...]

The Colombian State recognizes that the right of access to justice is indispensable for the material realization of fundamental rights, and implies that all persons, without distinction, have the concrete possibility of procuring the redress of their rights through the means provided by the administration of justice, which, *inter alia*, must be adequate, timely, and effective. The proper administration of justice entails, among other things, that victims whose rights have been violated receive comprehensive reparation by a variety of means aimed at restoring people's dignity, including the right to justice, truth, and non-repetition.

The Colombian State had the obligation to investigate, prosecute and punish those responsible for the murder of Mr. Edwin Hernán Ciro within a reasonable time and, though the authorities initiated a criminal investigation into the murder of Mr. Ciro, that was precluded by the impossibility of individually identifying those responsible for this deplorable deed, thus perpetuating the situation of impunity.

The Colombian State condemns and rejects the events surrounding the murder of Mr. Edwin Hernán Ciro, as well as the lack of diligence in identifying, prosecuting and punishing its perpetrators, which has hindered the right of his relatives to effective reparation and to move forward with their process of forgiveness. I know that this long search for truth and justice has been extremely painful.

Based on the foregoing, on behalf of the State of Colombia and as Director General of the National Agency for the Legal Defense of the State, I acknowledge international responsibility by omission for the violation of the rights to a fair trial and judicial protection recognized in Articles 8 and 25 of the American Convention on Human Rights, in relation to the general obligation to respect and ensure rights set out in said instrument, to the detriment of the relatives of Edwin Hernán Ciro. [...].

18. For his part, Commissioner Joel Hernández, IACHR Rapporteur for Colombia, stated the following:

[...]

The Commission appreciates the acknowledgment of international responsibility made on this occasion by the Colombian State for the failure to investigate and punish those responsible for the murder of Mr. Edwin Hernán Ciro on August 27, 1999, in the municipality of San Rafael, department of Antioquia. Today, through these photographs and this music, we remember his life, we celebrate the mark he left on his family, from whom we have heard today through his sister Leticia. We recognize the pain that all these years of waiting and searching for the truth have brought you. We appreciate the opportunity to be part of the history that is written of your lives from this day forward, as we look to advance in the implementation of the friendly settlement concluded by the parties on July 26, 2022.

I am convinced that the importance of acts of acknowledgment of responsibility lies in the extent to which they honor the truth. In other words, when a State accepts its responsibility in such acts, it acknowledges the truth of what happened, takes a candid looks at itself, identifies its shortcomings, and reflects on how to prevent such acts from happening again. This self-reflection is what facilitates reconciliation and reconstruction of the social fabric. The inter-American human rights system, through its system of individual petitions and cases, provides the opportunity for States to identify structural failures in the protection of the rights of their inhabitants. In that sense, I applaud that the Colombian State, from its institutions recognizes the failure in this case to protect the right of Edwin's relatives to justice in a timely manner, and that it is from that recognition that Edwin's relatives are afforded the opportunity to restore their trust in the institutions of the Colombian State. [...].

The Commission is aware that there is still a long way to go before full compliance is achieved with the measures contained in the agreement, in terms of financial compensation and the installation of working groups to obtain information on access to housing programs. Therefore, I urge the Colombian State to continue making every effort to comply with the commitments adopted with regard to reparations, thus strengthening the development of a fertile environment for the promotion and protection of human rights in Colombia. [...].

- 19. Taking into account the above and the information provided jointly by the parties, the Commission considers that subparagraph (*i*) of clause five of the friendly settlement agreement related to the act of acknowledgment of responsibility has been fully complied with, and so it declares.
- 20. In relation to subparagraph (ii), Working group meetings with the Ministry of Housing, Urban, and Territorial Affairs, of clause five (Satisfaction measures) and clause six (Compensation measures) of the friendly settlement agreement, and bearing in mind the joint request of the parties to proceed with the approval of the agreement prior to its implementation, the Commission observes that those measures must be complied with after the publication of this report. Therefore, it considers that they are pending compliance, and so it declares it as such. By virtue of the foregoing, the Commission will expect updated information from the parties on its implementation subsequent to the approval of this report.
- 21. In view of the foregoing, the Commission concludes that subparagraph (i), *Act of acknowledgment of responsibility*, of clause five has been fully complied with, and so it declares it as such. The Commission considers that subparagraph (ii), *Working group meetings with the Ministry of Housing, Urban, and Territorial Affairs*, of clause five and clause six (Compensation measures) are pending compliance. Consequently, the Commission considers that the level of compliance with the friendly settlement agreement is partial, and so it declares it as such. Finally, the Commission reiterates that the rest of the content of the agreement is of a declarative nature, rendering supervision by the IACHR of their compliance unnecessary.

V. CONCLUSIONS

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement has been arrived at in the present case

on the basis of respect for human rights and consistent with the object and purpose of the American Convention.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

- 1. To approve the terms of the agreement signed by the parties on July 26, 2002.
- 2. To declare subparagraph (i), Act of acknowledgement of responsibility, of clause five of the friendly settlement agreement to be at full compliance, based on the analysis herein.
- 3. To declare subparagraph (ii), Working group meetings with the Ministry of Housing, Urban, and Territorial Affairs, of clause five and clause six (Compensation measures) of the friendly settlement agreement to be pending compliance, based on the analysis herein.
- 4. To declare the friendly settlement agreement to be at partial compliance, based on the analysis herein.
- 5. To continue to monitor compliance with subparagraph (ii), Working group meetings with the Ministry of Housing, Urban, and Territorial Affairs, of clause five and clause six (Compensation measures) of the friendly settlement agreement, based on the analysis herein. To that end, to remind the Parties of their commitment to periodically inform the IACHR regarding compliance therewith.
- 6. To make the present report public and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 26th day of the month of July, 2023. (Signed:) Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Joel Hernández García, Julissa Mantilla Falcón and Stuardo Ralón Orellana, Commissioners.