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REPORT No. 22/20
CASE 12.909
FRIENDLY SETTLEMENT REPORT

GERARDO BEDOYA BORRERO
COLOMBIA

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

1. On September 23, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition lodged by the Inter-American Press Association (hereinafter "the petitioners") alleging the international responsibility of the Republic of Colombia (hereinafter "the State" or "the Colombian State") for the facts surrounding the murder of journalist and columnist Gerardo Bedoya Borrero in Cali, Valle del Cauca, on March 21, 1997 and for the failure to investigate and punish the perpetrators. Mr. Gerardo Bedoya Borrero was critical of the drug trafficking in the Valle del Cauca and focused in his journalistic work on revealing and pointing out the infiltration of said groups in local and regional élites.

2. The petitioners alleged that the State is responsible for violating Articles 4 (right to life), 8 (right to a fair trial/judicial guarantees), 13 (freedom of expression), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention"), all in conjunction with the general obligation to respect and ensure the exercise of rights set forth in Article 1 (1) of that instrument.

3. On July 11, 2013, the IACHR declared the petition admissible in its Admissibility Report No. 39/13, in which it concluded that it was competent to examine the alleged violation of the rights embodied in Articles 4 (right to life), 8 (judicial guarantees), 13 (freedom of thought and expression), and 25 (judicial protection) of the American Convention on Human Rights in conjunction with Article 1.1 thereof.

4. On February 22, 2018, the parties remitted a Memorandum of Understanding initiating the quest for a friendly settlement, which culminated in a friendly settlement agreement (hereinafter "FSA" or "agreement") signed on August 16, 2019. Likewise, on November 13, 2019, the parties jointly requested the Commission the approval of the friendly settlement agreement and undertook to report back in due course on progress made with implementing the measures agreed upon.

5. Pursuant to Articles 49 of the Convention and 40(5) of the Commission's Rules of Procedure, this friendly settlement report includes a summary of the petitioners' allegations and transcribes the friendly settlement agreement signed on August 16, 2019 by the petitioners and representatives of the Colombian State. 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. ALLEGED FACTS

6. The petitioners alleged that journalist Gerardo Bedoya was murdered on March 21, 1997 in the city of Cali, Colombia, presumably in reprisal for his critical statements and, in particular, his numerous columns attacking criminal organizations and their infiltration of political elites and of the national and regional government. The petitioners alleged that remedies pursued in the Colombian justice system had been ineffective, since the case has stalled at the evidence-gathering phase for more than a decade. Accordingly, the petitioning party alleged delay in the investigation and stressed that the State has still not identified and punished those responsible for the crime. The petitioners underscored the fact that, at the time of his murder, the alleged victim was working as a journalist and columnist for the *El País* daily newspaper in Cali, Colombia.

7. According to the petitioners, the journalist had written vehemently against drug trafficking and the complicity of leading politicians with the illegal groups involved in it. They maintained that the article that cost him his life was the editorial entitled "*Aunque me llamen proyanqui*" ("Even though they may call me

pro-Yankee"), published on February 27, 1997, three weeks before the murder. The petitioners stated that on the night of March 20, 1997, the journalist left the newspaper's offices at 7:30 p.m., heading for a residential complex in the southern part of Cali. According to information provided by the petitioning party, "[...] the area was in darkness since, inexplicably, on that same day, the electric lighting had malfunctioned in that district. The guard told the driver to park just a few yards away, so that when they came back through the gate a few minutes later, they only had to walk for a short distance next to a line of trees. A man stepped out of the shadows and shot Bedoya five times. The assassin was wearing a white T-shirt and a baseball cap [...]. The murderer walked away from the gate to the corner. Then he fled on a motorbike."

8. The petitioners alleged that for two years the Regional Public Prosecutor's Office in Cali tried to prove a "crime of passion", for which not enough circumstantial evidence was available, and failed to take into account any connection between the murder and the journalist's writings. They pointed out that in April 1999, coordinators from the National Attorney General's Office (FGN) began a review of the investigation and emphasized that the case file contains an identikit picture of the murderer and yet he had not been identified. The petitioning party emphasized that the main suspects were reportedly members of drug-trafficking gangs in Valle del Cauca.

9. The petitioners pointed out that throughout the processing of the case -- for more than a decade -- the investigation into the murder of the journalist has remained at the evidence-gathering stage, without a single suspect being detained. Even though this investigation was chosen, along with 11 other cases, as one in which the process would be expedited with a view to finding possible culprits, no progress has been made and there have been long periods of inactivity. The petitioning party stated that due to the delays in the investigation, promising lines of inquiry (*pistas*) have been lost, creating "an obstacle to a just and thorough investigation."

III. FRIENDLY SETTLEMENT

10. On August 16, 2019, the parties signed the following friendly settlement agreement:

FINAL FRIENDLY SETTLEMENT AGREEMENT¹
CASE 12.909
GERARDO BEDOYA BORRERO AND FAMILY

On August 16, 2019, in Bogotá, María del Pilar Gutierrez Perilla, on the one hand, Advisor to the Director of International Legal Defense of the National Legal Defense Agency of the State, acting in the name and on behalf of the Colombian State, hereinafter referred to as "the Colombian State"; and on the other, the Inter-American Press Association, represented by its Executive Director, Ricardo Trotti, who acts as petitioner in this case, hereinafter "the petitioner," enter into the present friendly settlement agreement in Case 12.909 (Gerardo Bedoya Borrero) processed before the Inter-American Commission on Human Rights.

PRIOR CONSIDERATIONS

1. The facts in the petition concern the murder of Gerardo Bedoya Borrero, a journalist and columnist of the El País daily newspaper, in the city of Cali (Valle del Cauca), on March 21, 1997. Gerardo Bedoya Borrero had been a fierce critic of the drug trafficking in the Valle del Cauca and focused in his journalistic work on revealing and pointing out the infiltration of said groups in local and regional political élites.

2. On September 23, 1999, the Inter-American Commission on Human Rights received a petition lodged by the Inter-American Press Association, alleging the international responsibility of the State for the facts surrounding the murder of Gerardo Bedoya Borrero and for the lack of investigation and clarification of what happened.

¹ Numbering of the clauses not part of the original text of the agreement.

3. In Report No. 39/13, dated July 11, 2013, the Inter-American Commission on Human Rights declared the admissibility of the petition in relation to Articles 4, 8, 13, and 25 of the American Convention, in conjunction with Article 1.1 thereof.

4. On February 22, 2018, the Colombian State and the victims' representatives signed a memorandum of understanding with a view to seeking a friendly settlement.

5. Over the months that followed, joint meetings were held to analyze the proposals of both parties for constructing the following friendly settlement agreement:

FIRST: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility for omitting to comply with its duty to guarantee, for Gerardo Bedoya Borrero, the rights embodied in Articles 4 (right to life) and 13 (freedom of thought and expression) of the American Convention on Human Rights, in conjunction with the general obligation established in Article 1.1 of the same instrument.

It likewise acknowledges responsibility for the violation of Article 8 (right to judicial guarantees) and Article 25 (right to judicial protection) of the American Convention on Human Rights to the detriment of family members of the victim, in relation to what happened on March 21, 1997.

SECOND: MEASURES TO SEE JUSTICE DONE

To see justice done, the following commitments are adopted:

a) The State shall continue with its obligation to investigate, try, and punish those responsible for the facts in this case, with a view to establishing the real motives surrounding the murder of journalist Gerardo Bedoya Borrero.

b) The National Legal Defense Agency of the State shall request the Office of the Procurator General (PGN) to examine the feasibility of constituting a Special Agency within the criminal proceedings.

THIRD: MEASURES OF SATISFACTION

The state commits to adopting the following measures of satisfaction:

a) Holding a ceremony of acknowledgment of responsibility and public apology in the city of Cali (Valle del Cauca), conducted by a senior National Government official. The ceremony in which the State acknowledges its responsibility shall include active participation by family members and representatives of the victims. In that ceremony, the State shall acknowledge its responsibility in the terms agreed to in this Agreement. The Office of the Presidential Adviser on Human Rights and International Affairs shall be responsible for implementing this measure.

b) Naming of a highway. The Valle del Cauca Governor's Office shall assign the name Gerardo Bedoya Borrero to the Jamundí – Robles - Timba highway, to pay tribute to his professional and ethical values, thereby extolling his personal virtues, patriotism, and sacrifice.

c) Granting of four University Scholarships. Up to four (4) scholarships, each worth up to 12,500,000 pesos, shall be awarded to finance pre-graduate studies in Social

Communication at the University del Valle. The beneficiaries must comply with admission procedures or, in the case of current students at the university, make sure they achieve appropriate academic grades. The winners of the scholarships shall be chosen by Universidad del Valle.

d) The financial assistance shall cover the cost of registering for semesters required under the academic program and a half-yearly maintenance allowance of up to two (2) minimum monthly wages (SMMLV). The National Ministry of Education and the Instituto Colombiano de Crédito Educativo y Estudios Técnicos en el Exterior (ICETEX) [Colombian Institute of Educational Credit and Technical Studies Abroad] shall be responsible for implementation of this measure.

e) Establishment of the Honor Award in tribute to Gerardo Bedoya Borrero. To honor the memory of journalist Gerardo Bedoya Borrero, each year the National Ministry of Education shall grant the Gerardo Bedoya Honor Award, at the "Night of the Best" ceremony, to the student scoring the highest marks in the Professional Knowledge (Saber Pro) exams in the journalism and social communication program. This Honor Award shall not entail additional financial support or allowances.

f) Publication of the facts. The Colombian State commits to posting the report issued by the Inter-American Commission on Human Rights pursuant to Article 49 of the American Convention that approves the final friendly settlement agreement on the web pages of the Offices of the Presidential Advisor for Human Rights and International Affairs and the National Legal Defense Agency of the State.

g) The Ministry of Health and Social Protection shall coordinate the health rehabilitation measures in the form of medical and psychological care through the General Social Security Health System and its facilities. Once the beneficiaries express their desire to receive it, they shall be provided with appropriate, timely, and priority care, for as long as necessary, in accordance with the legal provisions currently in effect

In the provision of psychological care, consideration shall be given to the circumstances, needs, and specific records of each beneficiary, so as to provide the care needed and agreed upon with each, following an individual evaluation and the corresponding medical opinion. For access to comprehensive health care, the beneficiaries of these measures shall be guaranteed any medicine and any treatment that they need (including physical and mental health care), and shall receive the priority and specific care corresponding to their condition.

FOURTH: FINANCIAL COMPENSATION

Once this friendly settlement agreement is approved through the adoption of the corresponding report under Article 49 of the American Convention on Human Rights, the State undertakes to enforce Law 288 of 1996 in order to provide reparation for such material and immaterial damages as may be proven in favor of the victims' relatives that have not received compensation in the administrative jurisdiction.

FIFTH: APPROVAL AND FOLLOW-UP

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

This agreement was endorsed by the State entities committed to the implementation of the reparation measures.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The IACHR reiterates that, under Articles 48(1)(f) and 49 of the Convention, this procedure has the objective of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s consent to pursue this avenue is evidence of its good faith to honor the Convention’s purposes and objectives, based on the principle of *pacta sunt servanda*. According to that principle, States must comply in good faith with the obligations undertaken in treaties.² The IACHR also wishes to point out that, with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement procedure has proven to be a useful vehicle that both parties can utilize to arrive at a solution.

12. The Inter-American Commission has facilitated and closely monitored the progress of the friendly settlement reached in the present case and greatly values the efforts that both parties went to in negotiating this friendly settlement agreement, which is compatible with the object and purpose of the Convention.

13. As established in the friendly settlement agreement and in the presentation, on November 12, 2019, of a joint report on progress made with implementation of the measures agreed upon, the parties have requested that the Commission adopt the report contemplated in Article 49 of the American Convention.

14. The IACHR notes that, given the information thus far provided by the parties and their request to the Commission for approval of the FSA, it is incumbent upon it to assess compliance with the commitments undertaken in the friendly settlement agreement.

15. The Inter-American Commission appreciates declarative clause 1 acknowledging the international responsibility of the Colombian State for violating the rights upheld in Articles 4 (right to life) and 13 (right to freedom of thought and expression) of the American Convention on Human Rights, to the detriment of Gerardo Bedoya Borrero, and in Articles 8 (right to judicial guarantees) and 25 (right to judicial protection) to the detriment of the victim’s family members, on account of what happened on March 21, 1997

16. Regarding clause 2 (a) on measures to see justice done, regarding the obligation to investigate, try, and punish those responsible for the facts, in their joint report the parties did not provide information concerning this aspect of the FSA, so that the Commission regards compliance with it as still pending, and hereby declares it. In light of the above, the Commission urges the State to make every effort to comply with the measure, with a view to establishing the real motives surrounding the murder of journalist Gerardo Bedoya Borrero.

17. As regards clause 2 (b) on measures to see justice done, the parties reported that in Official Letter No. 20196010192311-GDI of October 28, 2019, the National Legal Defense Agency of the State asked the Office of the Procurator-General of the Nation to examine the feasibility of constituting a special agency in the criminal proceedings before the 190th Public Prosecutor’s Office attached to the Directorate Specializing in Human Rights Violations regarding the murder of Gerardo Bedoya. The Commission regards this subparagraph in clause 2 as complied with, and hereby declares it.

18. With respect to clause 3 (a) of the agreement on measures of satisfaction, the petitioners reported that on September 30, 2019, a public ceremony acknowledging the State’s responsibility was held in the city of Cali, in Valle del Cauca. The ceremony was presided over by the Presidential Advisor for Human Rights, Francisco Barbosa Delgado, with the participation of Dilian Francisca Toro Torres, Governor of Valle del Cauca; Maurice Hermitage, the Mayor of Cali; Juan José Quintana, Director of Human Rights at the Ministry of Foreign Affairs; Ana María Ordoñez, Director of the National Legal Defense Agency of the State; as well as representatives of the Attorney General’s Office, the Ministry of Health and Social Protection, and other officials from the Cali Mayor’s Office, the Valle del Cauca Governor’s Office and of various national, regional, and local

² Vienna Convention on the Law of Treaties, United Nations 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.*

entities. Also attending the ceremony were family members of the victim and their representatives; María Elvira Domínguez, President of the Inter-American Press Association and Director of El País; Roberto Pombo, Director of El Tiempo and Chair of the Chapultepec Committee of the Inter-American Press Association, invited journalists, and members of the Inter-American Press Association, as well as representatives of other civil society organizations.

19. The parties stressed that the State and representatives of the victims were in constant communication and had coordinated each detail in the implementation of this measure.

20. During the above-mentioned ceremony, the President Advisor for Human Rights and International Affairs, Francisco Barbosa, stated, on behalf of the Colombian State that "these kinds of acknowledgment, apart from constituting symbolic measures of satisfaction and reparation, served as opportunities to honor and extol the victims of human rights violations. They are commitments to seeing that such violations are not repeated. Today, therefore, we are remembering not only to do honor but also to strengthen our resolve never to allow a repetition of what happened."

21. The Commission was able to ascertain that the speeches by family members and their representatives, as well as those of the Colombian State, together with the photographic and audiovisual records of the ceremony, were disseminated and can be accessed by the public on the website of the Office of the Presidential Advisor for Human Rights.³

22. Based on the above information, the Commission considers that clause 3 (a) of the agreement has achieved full compliance and hereby declares it.

23. Regarding clause 3 (b) on the naming of the Jamundí-Timba-Robles highway, the parties reported that on September 5, 2019, the Valle del Cauca Governor's Office issued Decree No. 1-3-1278, naming said highway after Gerardo Bedoya Borrero. That decree was published in the Official Gazette of the Department of Valle del Cauca and on the Internet portal of the Secretariat for Peace and Reconciliation and was delivered in a commemorative letter (*nota de estilo*) to the family members of the victim and their representatives. Based on the above information, the Commission considers that in this aspect of the agreement the State has achieved full compliance and hereby declares it.

24. With respect of clause 3 (c), (d), and (e), regarding the four scholarships, the maintenance allowance for undergraduate students in the Social Communication program of Universidad del Valle and the "Gerardo Bedoya" Honor Award, the parties reported that they had held a meeting on October 16, 2019 to work out ways to see this measure implemented. Also in connection with that meeting, officials from the Ministry of Education and Universidad del Valle pointed out that the list of possible beneficiaries of the scholarship was being reviewed and that the selection process will include participation by the family members of the victim based on records provided by the Ministry of Education. Based on the above information, the Commission considers that this aspect of the agreement has achieved partial compliance and hereby declares it.

25. In relation to clause 3 (f) on publication of a Friendly Settlement Report on this FSA issued by the IACHR, the Commission finds that said measure should be complied with once this approval report has been issued, so that it regards the measures as still pending and places that on record.

26. Regarding clause 3(g) on health care measures, the parties reported that, on September 30, 2019, the family members of the victim had a meeting with the Ministry of Health and Social Protection and the National Legal Defense Agency of the State at which they were apprised of the health care services available for them. Possible obstacles to accessing health care that family members of the victim may have encountered were also analyzed at the meeting with a view to overcoming them. The family members stated that currently they do not need treatment or health care, so that the Ministry of Health official offered to serve as a focal point for

³ The speeches by Clara Bedoya Borrero, a family member of the victim, María Elvira Domínguez, President of the Inter-American Press Association and Director of the El País daily newspaper, and by the Presidential Advisor for Human Rights were disseminated and can be consulted on the website of the Office of the Presidential Advisor for Human Rights See <http://www.derechoshumanos.gov.co/Prensa/2019/Paginas/Estado-colombiano-pide-perdon-caso-Gerardo-Bedoya.aspx>

the family for future health care needs. Based on the above information, the Commission considers that this aspect of the agreement has achieved full compliance and hereby declares it.

27. Finally, in relation to clause 4 on financial compensation, the Commission notes that, under the mechanism established in Law 288 of 1996, said measure should be complied with once this approval report has been issued, so that it regards compliance with the measure as still pending and hereby declares it. The Commission awaits updates from the parties on its implementation following publication of this report.

28. For the aforementioned reasons, the IACHR considers that clause 1 of the friendly settlement agreement is declarative and that clause 2 (b) on justice, and clause 3 (a) and (b) of the friendly settlement agreement on measures of satisfaction have achieved full compliance and hereby declares it. Likewise, the Commission finds that clause 3 (g) on health rehabilitation measures has been fully complied with and so it declares it.

29. On the other hand, the Commission considers that clause 3 (c), (d), and (e) (scholarships, maintenance allowance and the "Gerardo Bedoya" Award) have achieved partial compliance and so it declares it.

30. Finally, as regards clause 2 (a) (obligation to investigate, try, and punish those responsible); clause 3 (f) (publication of the facts), and clause 4 (financial compensation), the Commission considers that compliance is still pending and so it declares it.

31. In light of the above, the IACHR declares that the Agreement has achieved "substantial partial" compliance and will therefore continue to monitor clauses 2, 3, and 4 of the friendly settlement agreements until all parts thereof have been implemented.

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 that the parties signed on August 16, 2019.
2. To declare full compliance with clause 2 (b) of the friendly settlement agreement on justice.
3. To declare full compliance with clauses 3 (a) and (b) of the friendly settlement agreement on measures of satisfaction based on the analysis in this report.
4. To declare clause 3 (g) on health rehabilitation measures fully implemented, based on the analysis contained in this report.
5. To declare partial implementation of clauses 3 (c), (d), and (e) on the granting of scholarships, financial assistance and award in honor of the victim, based on the analysis contained in this report.

6. To declare compliance with clauses 2 (a) on measures to seek justice and 2 (f) on publication of the facts, as well as clause 4 on financial compensation, as still pending, based on the analysis contained in this report.

7. To continue monitoring the commitments made in clause 2 (a); clause 3 (c), (d), (e), and (f); and in clause 4 of the friendly settlement agreement. To that end, to remind the parties of their commitment to periodically inform the IACHR regarding compliance therewith.

8. 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 20th day of the month of April 2020.
(Signed): Joel Hernández García President; Antonia Urrejola, First Vice President; Flávia Piovesan; Second Vice President Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón, Members of the Commission.