



# Inter-American Commission on Human Rights

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## REPORT N° 82/08

PETITION 477-05

FRIENDLY SETTLEMENT

X AND RELATIVES<sup>[1]</sup>

COLOMBIA

October 30, 2008

### I. SUMMARY

1. On April 25, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACRH") received a petition alleging the international responsibility of the Colombian State for failing to identify, apprehend and prosecute all the individuals responsible for the sexual assault of Ms. X (hereinafter "the victim") in which, according to the information presented, three members of the Colombian Army took part. The petition was filed by Mr. José Luis Viveros Abisambra, Mr. Nicolás Muñoz Gómez and Mr. Diego Fernando Posada Grajales, members of the organization "Indemnizaciones Estatales" - "Government Compensations" - (hereinafter, "the petitioners").

2. The complaint assigns international responsibility to the Colombian State for violating rights protected under the provisions of articles 5, 7, 8, 10, 11 y 22 of the American Convention on Human Rights (hereinafter, the "American Convention") with regard to Article 1 (1) of the aforementioned international instrument, as well as articles I, V, VII, XI, XVIII and XXVI of the American Declaration of the Rights and Duties of Man. The petitioners allege that only one of the three individuals implicated in the sexual assault of Ms. X, which allegedly took place in a military facility, has been prosecuted and convicted and that the victims – Ms. X, her mother and brothers – have not received full reparation for the harm suffered.

3. During the 128<sup>th</sup> Regular Session of the IACRH on July 19, 2007, the Colombian State and the petitioners signed a friendly settlement agreement. In this report, approved in accordance with the provisions of article 49 of the American Convention, the IACRH summarizes the events that generated the complaint, describes the agreement reached by the parties and the progress made in fulfilling it and determines its publication.

### II. PROCESSING BY THE COMMISSION

4. On April 28, 2005, the Commission received the petition and assigned it the number 477-05. On December 15, 2005, the Commission forwarded the relevant parts to the State and requested that the State forward its observations within a period of two months. In communications dated February 6 and February 14, 2006, the State requested that relevant parts of the petition be forwarded again and in a communication dated February 16, 2006, the

State asked the IACtHR for an extension to present its observations. The State forwarded its observations on April 12, 2006. In turn, those observations were forwarded to the petitioners on April 19, 2006, who were asked to respond within one month.

5. The petitioners submitted their observations to the IACtHR on May 12, 2006, which were then forwarded by the Commission to the State on May 23, 2006, with the request that the State respond within a period of one month. The State submitted its observations on November 29, 2006, and those were forwarded to the petitioners on June 26, 2007. Likewise, the petitioners submitted additional information on November 27, 2006, which was then forwarded to the State on June 26, 2007.

6. In a communication dated April 24, 2007, the petitioners requested an admissibility hearing before the IACtHR within the framework of its 128<sup>th</sup> Regular Session. In a communication dated June 19, 2007, the IACtHR called a working meeting of the parties for July 19, 2007, within the framework of the 128<sup>th</sup> Regular Session. At that time, the parties signed a friendly settlement agreement and indicated that they would maintain the IACtHR informed of the progress made in complying with the agreement.

7. On August 27, 2007, the State submitted to the IACtHR an account of the progress made with regard to justice within the framework of the compromise agreement. On that same date, the petitioners requested the IACtHR to set aside the deadline to respond to the second set of observations submitted by the State due to the fact that the parties were engaged in the process of friendly settlement. On September 15, 2007, the IACtHR received a copy of the progress report on the process to meet the terms of the Friendly Settlement Agreement. On September 18, 2007, the IACtHR acknowledged receipt of these three communications.

8. On October 12, 2007, the State informed the IACtHR of the progress made in the friendly settlement process. On November 5, 2007, the IACtHR sent the petitioners a copy of the report requesting that they submit their observations within a period of one month. On November 27, 2007, the petitioners forwarded their observations to the IACtHR. On January 16 and on February 15, 2008, the State forwarded to the IACtHR updated information on the progress made in meeting the terms of the Friendly Settlement Agreement. On April 17, 2008, the State reiterated its request for official approval of the friendly settlement agreement signed by the parties on June 19, 2007.

### **Precautionary Measures**

9. In a communication dated April 24, 2007, the petitioners requested the IACtHR to implement precautionary measures for the protection of Ms. X who had received numerous death threats by telephone for having reported the sexual assault perpetrated by members of the Colombian Army. On May 2, 2007, the Commission requested that the State implement precautionary measures on behalf of Ms. X in order to guarantee her life and her personal integrity and to report on their implementation within 15 days.

10. On June 15, 2007, the petitioners forwarded to the IACtHR updated information on the follow up of the precautionary measures. On June 15, 2007, the State informed the IACtHR about the precautionary measures implemented to protect Ms. X and the Commission forwarded that communication to the petitioners on June 25, 2007, requesting that they submit their observations within a period of 15 days. On June 19, 2007, the IACtHR notified the parties that a working meeting would be held regarding petition 477-05 and MC 76-07 within the framework of the 128<sup>th</sup> Regular Session.

11. On August 16 and 18, 2007, the State notified the IACtHR that Ms. X would not be placed in the Protection and Assistance Program of the Office of the Attorney General of

Colombia. Those communications were forwarded to the petitioners on November 1, 2007, granting them a period of 30 days to submit their observations. On November 27, 2007, the petitioners submitted their observations to the IACtHR.

12. In a communication received by the IACtHR on February 20, 2008, the State indicated its disposition to take whatever measures were necessary to fully and effectively protect Ms. X's right to life and to humane treatment and stated its commitment to keeping the Commission informed about the actions being carried out. The Commission forwarded this communication to the petitioners on February 29, 2008, and requested their response within a period of 10 days. On February 29, 2008, the petitioners requested that the precautionary measures be lifted due to the fact that they considered that the Colombian State "has fulfilled its commitments within the framework of the current precautionary measures and the magnitude of the danger faced by our client has decreased considerably, to the point that, in our view, it is now practically non-existent ..." [2]. On August 21, 2008, the parties requested a working meeting to discuss the precautionary measures within the framework of the 133<sup>rd</sup> Period of Sessions of the IACtHR. The Commission approved the lifting of the measures on October 30, 2008.

### **III. FACTS COVERED BY THE FRIENDLY SETTLEMENT**

13. The petitioners allege that 22-year-old Ms. X was sexually assaulted and raped by a member of the Colombian Army together with two other servicemen. Although the sexual attacker was convicted and sentenced, the petitioners allege that the State has neither investigated nor prosecuted the other two individuals who took part in the assault of their client.

14. The petitioners point out that on September 11, 2001, Ms. X and a male friend went out for an aerobic workout in the area of the Atanasio Girardot Stadium near the "El Pesebre" Military Base. Afterwards, as they began to return home, they were intercepted by three members of the Colombian National Army, in uniform and with their faces covered, who forced them to climb the wire fence surrounding the "El Pesebre" Military Base and to enter the territory under their control.

15. The petitioners claim that, at the Military Base, the ranking sergeant in charge forced Ms. X and her friend to engage in sex under threat. Then, the Sergeant ordered his subordinates to get a photographic camera and forced Ms. X to adopt certain positions assisted by the other soldiers with the objective of photographing her in the process.

16. The petitioners claim that the sergeant forced Ms. X's friend to masturbate and then forced her to have sex with him while placing the barrel of his rifle in her mouth. During the rape, Ms. X was able to pull down the scarf covering the Sergeant's face. Once consummated the rape, and before allowing Ms. X and her friend to go free, the soldiers threatened to implicate them as participants in an attempt against the military if they revealed what had taken place.

17. On September 12, 2001, Ms. X reported the assault to the Human Rights Unit of the Fourth Brigade and to the Office of the Attorney General of Colombia. The petitioners claim that, as a result of the complaint, the Fourth Brigade undertook a disciplinary investigation which was closed a month later on the pretext that there was no conclusive evidence to indicate that uniformed members of the "El Pesebre" Military Base had taken part in the assault. The petitioners point out that, eventually, the sergeant implicated in the assault admitted his participation and responsibility in the events which were investigated under the Anticipated Sentencing process due to the fact that Ms. X had undergone scientific tests that determined his responsibility.

18. The petitioners claim that after the sergeant had confessed his conduct and after it had been determined that he had not acted alone, the Office of the Attorney General did not even indicate any intention of charging those members of the National Army that, on that day, were assigned to that mission. Nor were there any investigations carried out that would have allowed the Office of the Attorney General to make a fully reasoned decision with sufficient evidentiary background and, instead, the Office of the Attorney General limited its actions to the formality of undertaking a preliminary investigation without identifying any possible responsible individuals. The petitioners also claim that on November 15, 2006, Prosecutor's Office 35 of the National Unit of Human Rights and International Humanitarian Law resolved to declare the operation of the statute of limitations to the preliminary investigation of the two members of the National Army who contributed to the violation of Ms. X's rights because there was insufficient evidence in the case file to identify them.

19. The petitioners adduce that although the individual convicted is serving a ninety-six month prison sentence, there are two other members of the National Army who took part in the incident and who have not been identified, apprehended and prosecuted. The petitioners also point out that the disciplinary investigation did not follow the rules because it was carried out by the Military and not by the Office of the Prosecutor General of Colombia. Lastly, the petitioners claim that the victims were never compensated for the harm suffered.

#### **IV. FRIENDLY SETTLEMENT AGREEMENT**

20. The agreement signed by the parties on July 19, 2007, during the 128<sup>th</sup> Regular Session is transcribed below:

In Washington, D.C., on the 19<sup>th</sup> day of the month of July of 2007, during the 128<sup>th</sup> Regular Session of the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "IACHR") the Colombian State, represented by Dr. Clara Inés Vargas Silvia, Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, Dr. Francisco Javier Echeverri Lara, Director of International Affairs of the Office of the Attorney General of Colombia, and by Dr. Alex Salgado Lozano, Chief of the Legal Office of the Ministry of Defense, duly authorized by the Permanent Intersectoral Commission on Human Rights and International Humanitarian Law, and Dr. Luis Felipe Viveros, representing Ms. X, her mother, her father and her two (2) brothers (hereinafter "the parties") with the approval of the IACHR, agreed to sign a Compromise Agreement of Friendly Settlement to petition 477-05 Ms. X, in proceedings before the Commission, taking into account that a friendly settlement is a conventional mechanism (article 48.1.f of the American Convention on Human Rights – hereinafter "American Convention" or "Convention") appropriate and convenient in the resolution of this case in favor of the rights of Ms. X, Mrs. [...], mother of the victim and messrs., [...] and [...], brothers of the victim.

The parties agree to sign this Compromise Agreement under the following conditions:

1. With regard to reparation, the State agrees to apply Law 288 of 1996, for the purpose of providing reparation for moral and material damages and for damages to life suffered by Ms. X, Mrs. [...], mother of the victim, and by messrs. [...] and [...], brothers of the victim, as a result of the incidents that took place on September 11 and 12, 2001, near the "El Pesebre" Military Base in Medellin. Fulfillment of this compromise will depend on the formal approval of this agreement by the Inter-American Commission on Human Rights.
2. The State agrees to send Ms. X a letter repudiating the incidents occurred and agrees to adopt measures to prevent their reoccurrence in the future. This will be a private letter in order to maintain Ms. X's identity strictly confidential.
3. The State agrees to pay for a full education program at the Metropolitan Technological Institute (Instituto Tecnológico Metropolitano).<sup>[3]</sup> In the event

that Ms. X is not interested in this offer, the State will provide her with a grant of \$30.000.000 Colombian pesos to be administered for the sole purpose of financing her education.

4. The State agrees to provide Ms. X with medical and psychological care through the Ministry of Social Protection and the appropriate public entities.
5. The parties agree to jointly seek additional measures to provide integral reparation to Ms. X, Mrs. [...], mother of the victim, and messrs. [...] and [...], brothers of the victim.
6. With regard to justice, the State agrees to:
  - A) The Office of the Attorney General of Colombia to review the decision leading to the closing of the investigation for the purpose of reopening the same, guaranteeing the full participation of the victim in order to shed light on the incidents and to prosecute and punish all the individuals who were responsible for the incidents that took place.
  - B) If necessary, for the parties to jointly seek legal formulas that would allow the effective exercise of the right to justice.

By mutual accord, the parties request the Commission to approve this compromise agreement in accordance with the provisions of article 49 of the American Convention on Human Rights and article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

With regard to follow up to ensure compliance with this Compromise Agreement, the parties agree to keep the Inter-American Commission on Human Rights informed on the progress made and the results obtained.

## **V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

21. The IACHR reiterates that, in accordance with the provisions of article 48.1 (f) and article 49 of the American Convention, the purpose of this proceeding is "to reach a friendly settlement of this matter based on the respect for human rights recognized in the Convention." The willingness of the State to participate in this process demonstrates the good faith of the State to comply with the purposes and objectives of the American Convention based on the principle of *pacta sunt servanda*, whereby States must comply in good faith with treaty obligations. The Commission also reiterates that the process of friendly settlement contemplated by the American Convention allows for the non-contentious resolution of individual cases and, in cases in other countries where it has been used, it has demonstrated that it provides an important avenue of resolution available to both parties.

22. The Commission highly values the efforts made by both parties to reach this resolution which is fully compatible with the purposes and objectives of the American Convention. The IACHR has pointed out repeatedly the importance of promoting the rights of women in order to guarantee the full and effective exercise and enjoyment of their fundamental rights, especially, the right to equality, the right to non-discrimination and the right to live free of violence.

23. Furthermore, the Inter-American Convention to Prevent, Sanction and Eradicate Violence Against Women (hereinafter the "Convention of Belém do Pará"), emphasizes that the obligation of the States to act with due diligence to confront violations of human rights takes on a special meaning when dealing with cases of violence against women. The Convention of Belém do Pará acknowledges the critical link between access to appropriate legal protection for women when they are the victims of violence and the elimination of the violence and discrimination that perpetuate it. The IACHR is cognizant of the importance that

the States adopt criminal, civil and administrative measures in order to guarantee that incidents of sexual violence, such as those that took place in this case, are duly prosecuted and do not go unpunished.

24. On August 30, 2007, the State informed the IACtHR of the progress made with regard to the sixth clause in the Friendly Settlement Agreement which refers to the State's commitment in terms of justice. In that document, the State informed the Commission of the decision by the National Directorate of Prosecutorial Offices to unofficially order the annulment of the resolution of November 15, 2006, which denied the possibility of bringing criminal charges against the other two uniformed accomplices as a result of the investigation to determine their responsibility in the incidents.

25. Likewise, on September 15, 2007, the State and the petitioners submitted to the IACtHR a report, formalized by the signatures of both parties, on the progress made in complying with the terms of the Friendly Settlement Agreement transcribed above. With regard to the first clause (on reparation provided to the victims through the application of Law 288 of 1996), the parties agreed on an amount which includes reparation for material and moral damages and for damages to life caused by the incidents.

26. With regard to the second clause of the Agreement, the Ministry of Defense and the Presidential Council for Women's Equality wrote a letter of apology, signed by the Vice Minister for Political and International Affairs, which was delivered to the victim by the petitioners. In this letter, in addition to expressing its regret for the violation of Ms. X's right to humane treatment and liberty, the right to privacy and the right to freedom of movement and residency, the State affirmed its commitment to preventing that members of the military ever perpetrate this type of incident again as well as to implementing a gender based policy to guarantee the rights of women.

27. With regard to the progress made in complying with the third clause of the Friendly Settlement Agreement, the parties indicated that Ms. X was not interested in any of the education programs offered by the Metropolitan Technological Institute (*lInstituto Tecnológico Metropolitano*), and that, consequently, Ms. X opted for the grant of \$30.000.000 Colombian pesos to be used solely for her academic training at an institution of higher education of her choice. The parties indicated that once the petitioner submits a document to the Presidential Program on Human Rights making the decision official and Ms. X notifies the educational institution selected of her intention to attend and which academic program she wishes to enroll in, the Presidential Program will begin the process of disbursement of the corresponding monetary payments. In that respect, on January 16, 2008, the IACtHR received a communication from the State that Ms. X had been admitted to the Public Accounting Program of the School of Business Administration of the University of San Buenaventura in Medellin.

28. With regard to the medical care and psychological counseling for Ms. X and her family through the network of public health agencies in Medellin, in a communication dated September 15, 2007, the parties indicated that the Ministry of Social Protection together with the First Lady of Medellin were engaged in efforts to obtain gender-based, psychosocial counseling for the victims. In a communication dated January 16, 2008, the IACtHR learned that the Secretariat for Women of the Medellin City Government had forwarded Ms. X's case to the Shelters Program of the Center for Integral Resources for the Family (CERFAMI), so that she may receive psychological counseling. At the present time, Ms. X receives counseling once or twice a week and her mother has attended one of those sessions.

29. With regard to additional measures of integral reparation for Ms. X and her family contemplated in the fifth clause of the Friendly Settlement Agreement, it was agreed that a workshop should be held at the VII Army Division—which includes the "El Pesebre"

Military Base—for the purpose of introducing the members of the Army to the gender-based policy of the institution which is aimed at guaranteeing the rights of women and their protection from acts of sexual violence, among others. With regard to this activity, on January 16, 2008, the IACtHR was informed of a forum on gender violence that was held at the IV Army Brigade in Medellin, which at the time the incidents took place, had jurisdiction over the "El Pesebre" Battalion, the location where the incidents occurred. Sixty-eight (68) members of the Army, including officers, non-commissioned officers, soldiers and legal counselors took part in the forum.

30. According to a communication dated September 15, 2007, another of the additional reparation measures agreed upon by the parties was to provide medical care and psychological counseling to the members of the family of Ms. X in order to mitigate the emotional impact they have suffered due to their closeness to the victim. At the same time, the Presidential Program on Human Rights was studying the possibility of providing scholarships to the brothers of Ms. X with the goal of helping all the members of her family to put their lives back together.

31. With regard to the progress made in the area of justice, in a communication dated September 15, 2007, the parties informed the IACtHR on the reopening of the investigation, case number 1608, Delegated Prosecutor 35, before Trial Judges of the Specialized Circuit of Medellin, assigned to the Second Unit of Human Rights and International Humanitarian Law. In this regard, the Prosecutor's Office issued an order to revoke the resolution to close the investigation and ordered the collection of evidence that would lead to the identification of the other members of the military involved in the incidents that motivated this case.

## **VI. CONCLUSIONS**

32. The Inter-American Commission on Human Rights has closely followed the developments in the friendly settlement reached in this case. The preceding information indicates that, in general, the terms of the agreement have been met within the framework of the American Convention. The Commission will continue to follow up in certain areas where compliance is still pending.

33. Based on the preceding considerations and on the process established under the provisions of article 48.1(f) and article 49 of the American Convention, the Commission would like to express once more its profound appreciation for the efforts made by both parties and also express its satisfaction with the friendly settlement agreement reached in this case based on the purpose and objectives of the American Convention.

34. Based on the considerations and conclusions outlined in this report,

## **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

### **DECIDES:**

1. To approve the friendly settlement agreement signed by the parties regarding petition 477/05.

2. To continue to follow-up and monitor each and every one of the clauses of this friendly settlement and to have the parties report periodically to the IACtHR on the measures adopted in order to fulfill the commitments made.

3. To publish this report and to include it in its annual report to the OAS

General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 30<sup>th</sup> day of October, 2008. (Signed): Paolo Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.

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[1] Complying with a request received from the petitioners on November 1, 2007, the Commission will not reveal the name of Ms. X. Also, in order to protect the identity of Ms. X, the Commission will not reveal the names of her mother or her two brothers who were also identified as victims by the petitioners in the petition received by IACHR on April 28, 2005.

[2] Communication of the petitioners dated February 29, 2008.

[3] Admission of Ms. X to an education program at the Metropolitan Technological Institute (*Instituto Tecnológico Metropolitano*) depends on her meeting the requirements established in the internal regulations of this institution.