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REPORT No. 59/14
CASE 12.376
FRIENDLY SETTLEMENT

ALBA LUCÍA RODRÍGUEZ CARDONA
COLOMBIA

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I. SUMMARY

1. On December 21, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by the Center for Justice and International Law (CEJIL) and the Colombian Network of Women for Sexual and Reproductive Rights [*Red Colombiana de Mujeres por los Derechos Sexuales y Reproductivos*] (hereinafter, “the petitioners”) alleging the international responsibility of the Colombian State (hereinafter “Colombia,” “the Colombian State,” or “the State”) for violations of the rights enshrined in Article 5 (right to humane treatment); Article 8 (right to a fair trial); Article 11 (right to privacy); Article 24 (right to equal protection), and Article 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention,” or “the Convention”), as well as Article 7 of the “Convention of Belem do Pará,” to the detriment of Alba Lucía Rodríguez Cardona (hereinafter “the victim”).

2. The petitioners alleged that Alba Lucía Rodríguez, a young peasant woman, was the victim of a rape that resulted in her pregnancy. She gave birth to a girl on April 4, 1996 in the bathroom of her house located in a rural area in the town of Pantano Negro. According to Alba Lucía’s own statements, the newborn fell into the toilet, “let out a sigh, and that was it.” Alba Lucía reportedly cut the umbilical cord with a wire and wrapped the baby up in a “sack.” She had lost a lot of blood during the birth, and barely managed to reach her bed in a semi-conscious state. Alba Lucía was taken to the Abejorral public hospital by one of her sisters. The physician who attended to Alba Lucía and later performed the autopsy on the infant accused her of having caused the child’s death intentionally, and criminal charges were brought against her based on those allegations.

3. On April 2, 1997, in a first instance judgment handed down by the Trial Court of General Jurisdiction for the District of Abejorral [*Juzgado Promiscuo del Circuito de Abejorral*], Alba Lucía Rodríguez was sentenced to 42 years and 5 months in prison for the offense of murder. The judgment was upheld on appeal on August 6, 1997 by the Superior Court of Antioquia [*Tribunal Superior de Antioquia*]. On March 7, 2002, the Criminal Cassation Division of the Colombian Supreme Court [*Sala de Casación Penal de the Supreme Court*] granted the appeal of that judgment based on errors of fact and law, overturned the conviction, and ordered Alba Lucía Rodríguez’s immediate release. The petitioners assert that the victim’s status as an economically disadvantaged peasant woman and unmarried pregnant woman led to the violation of her fundamental rights, in that she was subjected to discriminatory prosecution based on gender and social status.

4. On March 28, 2011, during the 143rd session of the Commission, the parties signed a Friendly Settlement Agreement whereby the State agreed to implement measures of reparation for the harm caused to Alba Lucía Rodríguez.

5. Pursuant to Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, this friendly settlement report contains a brief statement of the facts alleged by the petitioners and the text of the Friendly Settlement Agreement signed by the petitioners and representatives of the Colombian State on March 28, 2011. In addition, at the request of the parties and as a matter of exception, the Commission determines the amounts of compensation that the State must award to Alba Lucía Rodríguez Cardona and approves the agreement entered into by the parties. Finally, the Commission resolves to publish this report in the Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

6. The petition was filed on December 21, 2000. On April 3, 2001, the IACHR forwarded the pertinent parts of the petition to the Colombian State.

7. The petitioners sent their observations in communications dated August 9, October 19, and October 22, 2001. The State submitted its observations on August 8 and November 23, 2001, and on February 11, 2002.

8. On April 19, 2002, the State forwarded the March 2002 judgment of the Supreme Court. On October 17, 2002, a hearing on the admissibility and merits of the case was held with the parties during the 116th regular session. On November 21, 2002, the State asked the Commission to find the petition inadmissible based on the Supreme Court judgment, arguing that the victim could bring a case before the administrative disputes court to seek direct redress for judicial error.

9. On December 10, 2002, the petitioners requested that the petition continue to be processed, since the judgment of the Supreme Court would entail neither an acknowledgement of the international responsibility of the State nor the comprehensive reparation of the harm caused.

10. On October 26, 2004, the parties attended a working meeting held during the 121st regular session.

11. On March 28, 2011, during the 143rd session of the Commission, the parties signed the Friendly Settlement Agreement. On April 13 and 29, 2011, the State sent communications requesting the official approval of that agreement.

12. On March 24, 2012, a working meeting was held at which the parties asked the IACHR to set the amount of compensation to which the victim was entitled. They also stated that they could submit proposed compensation amounts and reiterated their interest in having the IACHR establish the final sums. The State indicated that, in order for it to be able to effectively process and pay the reparations under its domestic law, the Commission must issue a friendly settlement report so that the State can implement the measures of reparation established in the agreement entered into with the petitioners.¹

13. The State later sent compliance reports on September 3 and December 17, 2012.

14. On October 5, 2012, the petitioners sent the Commission a proposal on the compensation amount.

15. On August 20, 2013, during the 148th regular session, the IACHR decided, on an exceptional basis and in view of the mutual agreement of the parties, to adopt the report provided for in Article 49 of the American Convention, including the matter of setting the amount of compensation.

16. On July 22 and September 22, 2013, the State submitted its observations with respect to the compensation amount.

17. The petitioners' final observations were received on March 5, 2014.

¹ The State cites: Official Gazette No. 42.826, of July 9, 1996. Art. 2 "For purposes of this Law, mediation or proceedings for the payment of compensation for damages may be held only in those cases of human rights violations in which the following requirements are met: 1.- *There is a prior, written, and express decision of the Human Rights Committee of the International Covenant on Civil and Political Rights or of the Inter-American Commission on Human Rights which concludes in a specific case that the Colombian State has committed a human rights violation and establishes that the respective damages must be compensated [...].*

III. FACTS ALLEGED

18. The petition was filed on December 21, 2000, and alleged that Alba Lucía Rodríguez, a young, economically disadvantaged peasant woman, was raped by an acquaintance. A man who had been courting the victim reportedly drugged her soft drink. Taking advantage of her condition, he and other men allegedly raped her.

19. She became pregnant as a result of the rape, and gave birth to a baby girl in the bathroom of her house on April 4, 1996. During the birth, Alba Lucía herself “pulled the baby out” with her hands. The infant reportedly fell into the toilet, “let out a sigh, and that was it.” Alba Lucía Rodríguez reportedly cut the umbilical cord with a wire, and wrapped the infant in a sack, the only material at hand. Because she had lost a lot of blood during the birth, she felt unwell and only managed to reach her bed in a state of semi-consciousness, leaving the baby in the bathroom. One of the victim’s sisters found them both moments later. Alba Lucía was taken to the Abejorral public hospital with her dead infant.

20. The physician who attended to Alba Lucía and later performed the autopsy on the infant accused her of having caused the child’s death intentionally, and criminal charges were brought against her based on those allegations. On April 2, 1997, the court of first instance convicted Alba Lucía Rodríguez of murder and sentenced her to 42 years and 5 months in prison. The judgment was affirmed on appeal on August 6, 1997. The petitioners maintained that the sentence was “arbitrary and disproportionate.”

21. The petitioners alleged violations of due process and the right to a fair trial. They asserted that the presumption of innocence was not respected from the very beginning, and that the public defender service provided to Alba Lucía Rodríguez was late and inadequate. On this point, they stated that the defense attorney himself incriminated her directly, never believed in her innocence, and limited the technical position of the defense to trying to establish that the death of Alba Lucía’s daughter was not the result of murder. They further noted that in drafting the appeal, the defense attorney failed to challenge the due process errors.

22. The petitioners asserted that the weighing of the evidence by the judge was questionable. First, the statements of the doctor and the nurse were admitted into evidence, even though they had been given in violation of their provider-patient privilege and based on a statement made by the victim when she was in precarious health and in the absence of a defense attorney. In addition, neither the defense attorney nor the prosecutor ordered the taking of new evidence, such as the drafting of a new expert medical report on the cause of death of Alba Lucía Rodríguez’s daughter.

23. They also reported that the prosecutor never conducted an investigation on his own initiative when he learned that the alleged victim had been raped and that the respective authorities had reportedly displayed an offensive and discriminatory attitude toward Alba Lucía at every stage of the proceedings, especially during the public trial.

24. The petitioners stated that the denial of the right to a fair trial and the subsequent conviction were based on “arbitrary prejudices and assumptions arising from a bias motivated by discrimination on the grounds of gender and economic status,” given that the case involved an economically disadvantaged, pregnant, unmarried peasant woman. They state that as an economically disadvantaged woman she was subjected during the court proceedings to offensive, discriminatory, and stereotypical questions that—far from seeking to establish the truth of the events—focused on her sexual experience and whether she was a virgin at the time of the events.

25. An extraordinary petition for cassation [*recurso extraordinario de casación*] was filed on August 28, 1997. The Supreme Court issued a decision on March 7, 2002, granting the appeal of the judgment based on errors of fact and law. It overturned the conviction, and ordered Alba Lucía Rodríguez’s immediate release. This information was received after the petition was filed and the Commission had begun processing the case.

26. On September 7, 2010, the Administrative Disputes Court [*Tribunal Contencioso Administrativo*] of Antioquia handed down its judgment in the case brought by the victim's representatives for the judicial review of administrative acts, in which they sought direct redress for judicial error. The Court found the Colombian State administratively liable for the pecuniary and non-pecuniary damages caused to Alba Lucía, her parents, and her 11 siblings. The Court awarded a sum equivalent to 80 times the current legal minimum monthly wage (hereinafter "CLMMW") to Alba Lucía Rodríguez Cardona;² the equivalent of 20 times the CLMMW to each one of her parents, and the equivalent of 10 times the CLMMW to each one of Alba Lucía's siblings. It denied compensation for the loss of earnings given the alleged lack of evidence as to whether Alba Lucía was working at the time of her incarceration, reasoning that the existence of such damages could not be established with certainty. As far as actual damages, the Court awarded 10 times the CLMMW for attorneys' fees and legal representation expenses.

27. The victim's representatives took issue with the amounts set by the Administrative Disputes Court in comparison to the initial request.³ They appealed the judgment before the Council of State [*Consejo de Estado*]; however, there is no information regarding the decision on that appeal. In addition to challenging the sum established by the Court, they also argued in their appeal brief that the lower court had failed to acknowledge the existence of pecuniary damages in the form of lost earnings and, therefore, had failed to establish the respective amount of compensation.

28. On January 27, 2014, a mediation hearing was held between the parties in the abovementioned appeal proceeding; nevertheless, as they were unable to reach an agreement, Alba Lucía Rodríguez's representative requested that it be suspended.

IV. FRIENDLY SETTLEMENT

29. On March 28, 2011, during the 143rd session of the Commission, the parties signed a Friendly Settlement Agreement together with its respective footnotes, whereby the State agreed to implement the following measures of reparation:

Friendly Settlement Agreement Petition P-12.376-00 Alba Lucía Rodríguez Cardona

At the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on March 28, 2011, the State of Colombia, represented by Francisco Javier Echeverri, Director of Human Rights and International Humanitarian Law at the Ministry of Foreign Affairs, duly authorized by the Permanent Inter-sectoral Commission on Human Rights and IHL, Viviana Krsticevic and Alejandra Vicente of the Center for Justice and International Law (hereinafter "CEJIL"), and attorney María Ximena Castilla Jiménez, representing Alba Lucía Rodríguez Cardona (hereinafter "the parties"), with the consent of the Honorable Inter-American Commission, agreed to sign a Friendly Settlement Agreement in petition P-12.376 Alba Lucía Rodríguez Cardona, currently pending before the Commission, bearing in mind that friendly settlement is a mechanism provided for in the Convention (Article 48(1)(f) of the American Convention on Human Rights (hereinafter "American Convention," or "Convention"), and is appropriate and proper for the resolution of this case, in the interest of the human rights of Ms. Alba Lucía Rodríguez and the relatives listed in the petition.

The parties agree to sign this Friendly Settlement Agreement under the following terms:

² The Current Legal Minimum Monthly Wage (CLMMW), which is adjusted annually, was COP \$ 515,000 in 2010 (equivalent to US\$257), and in 2014 it was approximately US\$ 322.

³ 200 times the CLMMW for Alba Lucía and 100 times the CLMMW for the other plaintiffs for non-pecuniary damages. For lost earnings, the plaintiffs sought judgment for Alba Lucía corresponding to the income she stopped receiving during the entire time she was incarcerated. They had also sought 200 times the CLMMW for the impairment of the victim's social relationships [*daños a la vida de relación*].

Alba Lucia Rodríguez Cardona's status as an economically disadvantaged peasant woman and unmarried pregnant woman led to the violation of her fundamental rights, in that she was subjected to discriminatory prosecution based on gender and social status. The court proceedings in her case were plagued by irregularities as a consequence of the stigmas attached to her situation and the prejudices of public servants of the State and other key actors in the development of the case. Therefore, through its state agents, the Colombian State violated the rights of Alba Lucía Rodríguez Cardona enshrined in Articles 1, 5, 8, 11, 24, and 25 of the American Convention on Human Rights, and Article 7(a), (b), (f), and (g) of the Convention of Belém do Para.

In addition, evidence was improperly admitted in the case against Alba Lucía, such as the testimony concerning statements allegedly made by Alba Lucía to the physician and the nurse who provided care to her, who had the inviolable professional duty to maintain and respect the confidentiality of all they had learned about the patient in the practice of their profession.⁴ In this respect, the doctor-patient privilege serves as a functional guarantee for other fundamental rights, including in particular the right to privacy, honor, information, and others.⁵ The use by healthcare personnel of the relationship of trust that exists with a patient to obtain private information with the deliberate aim of later conveying it to other persons or institutions is contrary to medical ethics,⁶ and therefore violated the right to privacy enshrined in Article 11 of the ACHR to the detriment of Alba Lucía.

The Inter-American Court of Human Rights has held that the culture of discrimination against women contributes to the fact that certain violations are not initially perceived as serious problems that require immediate and forceful action by the relevant authorities.⁷ The Court has also acknowledged that the subjection of women to practices based on socially dominant and socially persistent gender stereotypes is exacerbated when "the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities [...] The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women."⁸

Based on the above, the State agrees to take the following measures of reparation:

1. The State agrees to expressly acknowledge its responsibility, in consultation with the victim and with her consent;
2. The State agrees to compensate the victim for the pecuniary and non-pecuniary damages arising from the violations of the American Convention on Human Rights in this case. To this

⁴ I/A Court H.R., Case of De la Cruz Flores v. Peru. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C No. 115, para.97. (Footnote that appears in the agreement, as well as the ones included in footnotes 5-9).

⁵ Supreme Court of Justice, Criminal Cassation Division. Judgment of March 7, 2002, p. 27.

⁶ Both Colombian law and the international standards on medical ethics stipulate that professional privilege is inviolable. This concept is enshrined in Article 74 of the Constitution of Colombia and Article 37 of Law 23 of 1981 (Medical Ethics Code). Although the same law provides for exceptions in certain cases, the Constitutional Court has held that those legal exceptions are the ones provided for in Article 38 of the ethics code, which do not include court orders to testify, in keeping with the strict nature of professional privilege under Article 74 of the Constitution (Judgments C-411 of 1993 and C-264 of 1996). The Convention on the Rights of the Patient adopted by the World Medical Association limits the circumstances in which physicians can disclose their patients' confidential information to those cases in which the patient provides explicit consent, or cases specifically provided for by law. The World Medical Association's International Code of Medical Ethics states that, "a physician shall preserve absolute confidentiality on all he knows about his patient even after the patient has died."

⁷ I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 398.

⁸ Ibid, para. 401.

end, the State and the victims' representatives respectfully request that the Honorable Inter-American Commission on Human Rights set the amount of such compensation. (A joint communication to the IACHR on this matter will be attached).

In the event that an out-of-court settlement is reached or a judgment is handed down by a domestic court, the amounts paid to the victim pursuant to those legal proceedings shall be deducted from the compensation set by the Honorable Commission. In the event that the amounts awarded at the domestic level exceed the sum established by the Honorable Commission, the State shall pay the excess domestic amount.

3. As part of the State's agreement to take adequate comprehensive measures of reparation for the violations of the American Convention on Human Rights in this case, the State shall undertake to design and implement national training courses at schools for judicial and administrative public servants, as well as for medical, psychological, and psychiatric personnel, on gender perspective and the scope of professional privilege. The training courses must place special emphasis on topics such as: (i) gender and human rights; (ii) gender perspective for due diligence in conducting preliminary investigations and judicial proceedings related to discrimination, violence, and homicides perpetrated against women on the basis of gender, and (iii) overcoming stereotypes on the social role of women.⁹ Those programs should mention international human rights instruments, specifically those relating to gender-based violence, bearing in mind that certain standards and practices in the domestic law have discriminatory effects on the daily lives of women. In addition, the State agrees to request information from the National Ministry of Education on the processes and guidelines that have been advanced and that will be advanced in order to implement Article 11 of Law 1257 of 2008.

4. The State agrees to provide medical, psychological, and sexual and reproductive healthcare to Ms. Alba Lucía Rodríguez and her partner, for purposes of evaluating the harm or trauma caused by the events in this case. If the diagnosis of the specialist so determines, the psychological services shall extend to her relatives as they provide support to Alba Lucía in her rehabilitation process. Along these same lines, the State agrees to cover her travel expenses. A comprehensive health rehabilitation and recovery program shall be designed to include free, comprehensive medical services for Alba Lucía and her partner, for the period of time considered appropriate according to the diagnosis of the respective medical and psychological professionals.

5. In the event that Alba Lucía Rodríguez decides to pursue her education, the State agrees to assist her in accessing her preferred course of study through the Department of Education of Medellín and/or the Office of the Governor of Antioquia. Her admission and continuation in the educational program shall be subject to the requirements established by the chosen educational institution. The offer of education includes starting basic secondary or high school, or technical, technological, and/or arts and vocational skills training. The education offered may be based in the city of Medellín or in any other municipality. In any case, the conditions stipulated in this paragraph shall be subject to variations according to the demonstrated needs of the individual.

6. In the event that Alba Lucía decides to pursue employment, the State shall support her through appropriate employment training based in the city of Medellín or in any other municipality in the Department of Antioquia, providing goods or merchandise one time only,

⁹ I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 541-542. In that case, the Court held that "training with a gender perspective involves not only learning about laws and regulations, but also developing the capacity to recognize the discrimination that women suffer in their daily life. In particular, the training should enable all officials to recognize the effect on women of stereotyped ideas and opinions in relation to the meaning and scope of human rights" (para. 540).

or in any other way that contributes effectively to Alba Lucía's ability to rebuild her life plan.

7. Given that the health services as well as the education and employment training services are not available and therefore cannot be implemented in the town in which Alba Lucía currently resides, the State shall assist Alba Lucía and her partner in moving to, establishing themselves, and remaining in the city of Medellín or another municipality in the Department of Antioquia, through the provision of a support allowance. This allowance shall be disbursed on a quarterly basis for the duration of the educational or employment training program chosen by Alba Lucía, in accordance with paragraph 5 of this agreement.

In the event that Alba Lucía decides only to pursue employment training, the support allowance shall be provided solely and exclusively for a period of six months. In any case, the aforementioned move shall be agreed upon with the victim.

The parties by mutual agreement respectfully request that the Honorable Inter-American Commission approve this Friendly Settlement Agreement and establish the amount of compensation in its report, in accordance with Article 49 of the American Convention on Human Rights and Article 40 of the Rules of Procedure of the Inter-American Commission on Human Rights.

With respect to the monitoring of compliance with this Agreement, the parties undertake to keep the Honorable Inter-American Commission on Human Rights informed of the progress and outcomes.

V. DETERMINATION OF THE AMOUNT OF COMPENSATION

30. In view of the foregoing, and in accordance with the decision made by the Commission during its 148th regular session in July 2013, as a matter of exception and bearing in mind the mutual agreement of the parties, the IACHR shall determine the amount of compensation below. Said amount will be established taking account of the provisions of the agreement between the parties, according to which, in the event that an out-of-court settlement is reached or a judgment is handed down by a domestic court, the amounts paid to the victim pursuant to those legal proceedings shall be deducted from the compensation set by this Commission. Account will also be taken of the stipulation that, in the event that the amounts awarded at the domestic level exceed the sum established by this Commission, the State shall pay the excess domestic amount.

31. The compensation amounts will be determined based on principles of equity, taking account of the proposal submitted by the petitioners in their communication of October 5, 2012 and the observations submitted by the State in communications dated December 17, 2012, July 22, 2013, and September 22, 2013. The Commission will also consider the amounts determined by the Inter-American Court of Human Rights in similar cases, using them as a guideline for calculating the sums in the instant case.

32. It bears noting that the Colombian State abstained from submitting specific observations on the proposal made by the petitioners, without this signifying its agreement thereto. The State also did not present a proposed compensation amount, but it did ask the IACHR to take the following into account in determining that sum: (i) the considerations made by the State with respect to the damages argued at the domestic level; (ii) the parameters set by the Colombian Administrative Disputes Court for the assessment of damages in situations such as the case under examination; and (iii) the manner of enforcement of the decision made in this Report, according to which, it would be enforceable at the domestic level through the procedures established in Law 288 of 1996.¹⁰

¹⁰ This law establishes a procedure consisting, first, of a feasibility study by the Committee of Ministers. If the Committee issues a favorable opinion, this leads to a mediation hearing before the Public Ministry representative assigned to the Administrative Disputes Court with jurisdiction over the case. In this case, and prior to the hearing, evidence is submitted to demonstrate legitimate interest and the amount of the damages, which must be assessed by applying the current national case law. If a mutual agreement is [continues ...]

A) Non-pecuniary damages

33. The petitioners proposed the sum of US\$ 60,000 for non-pecuniary damages, asserting that their proposal had been drafted in view of the evidence available in the case file, as established by the Colombian Council of State and the decisions of the bodies of the Inter-American Human Rights System in similar cases.

34. The State, for its part, did not submit observations on the petitioners' proposal; however, it stated that the Administrative Disputes Court had awarded compensation for non-pecuniary damages in the amount of 80 times the CLMMW for the victim, 20 times the CLMMW for her parents, and 10 times the CLMMW for her siblings.

35. In its case law, the Inter-American Court has developed the concept of non-pecuniary damages and the situations in which compensation is appropriate. It has been established in practice that non-pecuniary damages may include "the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are highly significant to them, and other [disruptions], of a non-pecuniary nature, in the living conditions of the victim or his family."¹¹

36. The Court's judgments have reiterated the presumption that certain violations give rise to non-pecuniary harm to the victim, such as the unlawful or arbitrary deprivation of liberty, the suffering of being subjected to court proceedings without being afforded the right to a fair trial, and others.¹² It has set compensation amounts according to the seriousness of the violations and, although they have varied from case to case,¹³ they can serve as a comparative reference point in the instant case.

37. According to the Settlement Agreement, Alba Lucía Rodríguez was unjustly deprived of her liberty in a case that lacked the necessary due process guarantees, and in which she was sentenced to 510 months in prison. The words of the State are illustrative: in the public ceremony for the express acknowledgment of responsibility that took place on November 15, 2012, then-Minister of Justice and Law Ruth Stella Correa Palacio stated that although "there were proceedings designed to rectify the violations of her rights, Alba Lucía was unjustly deprived of her liberty for more than 5 years." Her case was also broadly publicized in the media, and even after she was released, close neighbors and the general public alike saw her as a "murderer." In addition, as stated by the parties, "the violations of Alba Lucía's rights are extremely serious, given that they were the result of discriminatory bias on the grounds of her condition as a poor peasant woman, and an unwed pregnant woman."¹⁴

38. The petitioners submitted additional information based on medical records to demonstrate that all of the events discussed above had physical and psychological effects on Alba Lucía Rodríguez,

[... continuation]

reached, the parties must sign the record of proceedings, which must be countersigned by the Public Ministry. It must then be sent immediately to the respective Administrative Disputes Court in order for the judge to decide whether the mediation is detrimental to the financial interests of the State, or whether it may be defective and therefore null and void. In all cases, the judge must issue an order stating the grounds for his or her decision.

¹¹ I/A Court H.R., Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 84; Case of Chitay Nech et al., *supra* note 18, para. 273, & Case of Manuel Cepeda Vargas, *supra* note 18, para. 242.

¹² I/A Court H.R., Case of De la Cruz Flores v. Peru. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C No. 115, para. 160; Case of Tibi. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 244; Case of Maritza Urrutia. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, para. 168.

¹³ Case of Cantoral Benavides v. Peru. Reparations and Costs. Judgment of December 3, 2001, para. 62; Case of De La Cruz Flores. Merits, Reparations and Costs. Judgment of November 18, 2004, para. 161; Case of Tibi. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 246. By way of comparison, there are references for the determination of the amount of compensation set by the Court in cases that involved violations similar to the ones in this case: the Case of Cantoral Benavides (US\$ 60,000), the Case of De La Cruz Flores (US\$ 80,000), and the Case of Tibi (US\$ 82,850)

¹⁴ See: Friendly Settlement Agreement of March 28, 2011, p. 1.

including: dysmenorrhea and menometrorrhagia, chronic back pain, and difficulties in becoming pregnant again; and post-traumatic stress disorder, including symptoms of anxiety, anger, and depression.¹⁵

39. Finally, the Commission observes that in the public ceremony acknowledging responsibility, the State maintained that this act should contribute “to comprehensive reparation and to the reconstruction of [the victim’s] life plan.” In this respect, the harm to the victim’s life plan alleged by the petitioners will also be considered, given that Alba Lucía “spent more than six years of her life in jail, between the ages of 20 and 25, which prevented her from achieving personal and professional fulfillment during critical years in any young woman’s development.”¹⁶

40. Based on the above and in keeping with the statements of the Commission during the 148th regular session, on an exceptional basis and in view of the mutual agreement of the parties, the Commission finds that the proposal of the petitioners is reasonable and decides to set, based on equity, the sum of US\$ 60,000 (sixty thousand United States dollars) as compensation for non-pecuniary damages to Ms. Alba Lucia Rodríguez.

B) Pecuniary damages

41. In its case law, the Inter-American Court has developed the concept of pecuniary damages and the situations in which compensation is appropriate. In particular, it has established that pecuniary damages entail “the loss of or detriment to the victims’ income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the [case].”¹⁷ Thus, pecuniary damages refer to the financial harm caused by the facts, and are comprised by: (i) the loss of earnings, understood as the loss of or detriment to the earnings of the victims during their probable lifetime; and (ii) actual damages, which are the expenses incurred by the victims and their relatives as a result of the events.

Loss of earnings

42. The petitioners argued that the Colombian Council of State held in similar cases—in which there was no available evidence of the victim’s employment opportunities—that employment should be presumed and calculated on the basis of the minimum wage.¹⁸ They asserted that the Council of State also not only took into account the period during which the person was unlawfully deprived of his or her liberty, but also factored in time for the detainee’s reintegration into the labor market.¹⁹

43. Accordingly, the petitioners based their calculation on the current legal minimum monthly wage in Colombia for the years in which Alba Lucía Rodríguez was incarcerated (1996-2002), and requested compensation in the amount of US\$ 10,740 (ten thousand seven hundred forty United States dollars) for lost earnings, without prejudice to the amount the Commission may establish for costs and expenses.

¹⁵ Attachment No. 2 to the October 5, 2012 communication of the petitioners, which is in the case file, contains a summary of the medical attention that Alba Lucía Rodríguez received.

¹⁶ The Court has in some cases presumed an impact on the life plan of persons who have been unjustly incarcerated. See, e.g., I/A Court H.R., Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 245.

¹⁷ Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 43; Case of Chitay Nech et al., *supra* note 18, para. 261, & Case of Manuel Cepeda Vargas, *supra* note 18, para. 242.

¹⁸ The petitioners cite: Council of State, Third Section, judgment of February 22, 2007, case file No. 26036: The Public Ministry stated before the Court that “in circumstances where evidence is lacking or absent, and given the difficulty of predicting the financial or professional future of the victim [...] the Court has been inclined to agree that the victim lost a chance or opportunity, and therefore there has been a pecuniary harm corresponding to the victim’s loss of future earnings, which must be assessed based on the minimum salary for the respective profession or occupation.”

¹⁹ The petitioners cite: Council of State, Administrative Disputes Division, Third Section, judgment of April 14, 2010, case file No. 18960.

44. The State indicated that in its judgment of September 7, 2010, the Administrative Court of Antioquia did not award any amount for lost earnings, finding that Alba Lucía's representative had not proven that the victim was working at the time she was taken into custody. Therefore, in the Court's opinion, there could be no certainty regarding the existence of a specific harm. The State also requested that the Commission take account of "evidence proving certain harm" when setting the amount of compensation for loss of earnings.

45. The Commission finds that although the petitioners did not submit documentation of income earned by Ms. Alba Lucia Rodríguez, it is a fact that she ceased to perform productive activities while she was deprived of her liberty. Therefore, the Commission finds it necessary to take account of the fact that the alleged victim cared for her parents and performed housework at the time of her arrest. It bears noting that, according to the information in the case file, Alba Lucía Rodríguez had worked in recent years as a porter in an educational institution. In cases involving victims in similar social conditions, the Inter-American Court has presumed, without requiring evidence, that the violations resulted in the inactivity of the victim and therefore gave rise to pecuniary damages.²⁰

46. In view of the foregoing, the Commission finds that the petitioners' proposal based on the current legal minimum monthly wage for the years that Alba Lucía was deprived of her liberty is reasonable, and decides to accept it. Accordingly, based on equity, the IACHR establishes the sum of US\$ 10,740 (ten thousand seven hundred forty United States dollars) for Alba Lucia Rodríguez's lost earnings for the 6 years she was deprived of her liberty (1996-2002).

Actual Damages

47. With respect to this point, the petitioners reported that Alba Lucía Rodríguez's relatives had incurred various expenses in providing support to her while she was incarcerated for 6 years (transportation fare for jail visits, personal hygiene items, food they would take to the victim in prison). Alba Lucía Rodríguez's representatives estimate that these expenses totaled approximately US\$ 5,000 (five thousand United States dollars). In addition, the petitioners reported that a payment of US\$ 557 (five hundred fifty-seven United States dollars) was made to attorney Ximena Castilla for professional fees.

48. The State, for its part, added that the Administrative Court of Cundinamarca awarded the equivalent of 10 times the CLMMW for actual damages, upon finding that Alba Lucía's representative failed to present sufficient evidence to prove all of the damages alleged.

49. The Commission decides to establish, based on equity, the sum of US\$ 5,557 (five thousand five hundred fifty-seven United States dollars) for actual damages.

C) Costs and Expenses

50. As the Court has held on previous occasions, costs and expenses are included in the concept of reparation enshrined in Article 63(1) of the American Convention.²¹ Indeed, the Court has established that:

Costs and expenses are part of the concept of reparations, embodied in Article 63(1) of the American Convention, since the activities carried out by the victim, his successors or his representatives to obtain international justice entail expenses and financial commitments, which must be compensated. In regard to the reimbursement, it is for the Court to judiciously assess the amount, encompassing expenses incurred under domestic venue and those incurred in the proceeding before the inter-American system, taking into account certification of the expenses incurred, the

²⁰ I/A Court H.R., Case of Rosendo-Cantú and other v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, para. 274; I/A Court H.R., Case of Cantoral Benavides v. Peru. Reparations and Costs. Judgment of December 3, 2001, para. 48.

²¹ Cfr. Case of Garrido and Baigorria, *supra* note 204, para. 79; Case of Chitay Nech et al., *supra* note 18, para. 279, & Case of Manuel Cepeda Vargas, *supra* note 18, para. 254.

circumstances of the specific case, and the nature of international jurisdiction for the protection of human rights. The estimate may be based on the principle of fairness and assessing the expenses demonstrated by the parties, as long as their *quantum* is reasonable.²²

51. The petitioners submitted information regarding the expenses of representing Alba Lucía Rodríguez, with the indication that they were the reasonable expenditures made during the processing of the petition. According to that information, the alleged victim had been represented since 1997 by CEJIL, by the Colombian Network of Women for Sexual and Reproductive Rights of Medellín, and by attorney Ximena Castilla in her capacity as legal representative.

52. It should be specified that CEJIL communicated to the IACHR that it waives the sum to which it would be entitled for costs and expenses.

53. In relation to the expenses incurred by the Colombian Network of Women for Sexual and Reproductive Rights of Medellín, the petitioners submitted a detailed list of expenses incurred in the campaigns to raise awareness of Alba Lucía Rodríguez's situation as well as in providing other support in the case. In particular, they list the expenses pertaining to visits to the prison, such as ground transportation, telephone calls, and the purchase of personal items, food, and medicine for Alba Lucía. It also includes the expenses of round-trip air travel between Bogotá and Antioquia to attend hearings and meetings with various State officials.²³

54. The petitioners state that the expenses incurred with regard to attorney María Ximena Castilla include attorney's fees,²⁴ travel expenses to Medellín and Abejorral, and travel expenses to attend hearings and working meetings at the Inter-American Commission in Washington D.C, which Ms. Castilla paid for out-of-pocket; however, the case file does not contain an itemized breakdown of the expenses incurred for those purposes.

55. The State did not submit any observations with respect to the extent of the petitioners' proposal on costs and expenses.

56. In view of the above, as well as of the criteria of reasonableness and necessity, the Commission decides to set, based on equity, the amount of US\$ 2,136 (two thousand one hundred thirty-six United States dollars) for costs and expenses for the Colombian Network of Women for Sexual and Reproductive Rights of Medellín. It additionally establishes, based on equity, the sum of US\$ 10,000 (ten thousand United States dollars) for costs and expenses for attorney Castilla.

VI. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

57. The IACHR reiterates that according to Articles 48(1)(f) and 49 of the Convention, the purpose of this proceeding is "[to reach] a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The State's agreement to pursue this option is evidence of its good faith to observe 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. The IACHR also wishes to underscore that the friendly settlement procedure provided for in the Convention allows for individual cases to be settled in a non-adversarial manner. In cases involving a number of different

²²I/A Court H.R., Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 268.

²³ Attachments No. 4, 5, and 6 to the October 5, 2012 communication of the petitioners, which is in the case file, contains the lists of expenses incurred in the campaign "*Por el derecho al derecho: Alba Lucía Libre*," invoices for the making of a video in support of Alba Lucía Rodríguez Cardona, and the campaign "*Por el derecho al derecho: Reparación para Alba Lucía*," respectively. The expenses recorded by the petitioners on the lists they submitted total \$3,952,846; that is, approximately US\$2.136.

²⁴ Attachment No. 3 to the October 5, 2012 communication of the petitioners, which is in the case file, contains a bill issued to Alba Lucía Rodríguez by attorney Castilla in the amount of \$49,000,000 Colombian pesos, or approximately US\$ 26,430, for professional legal fees.

countries, the friendly settlement procedure has proven to be a useful vehicle that both parties can utilize to arrive at a solution.

58. The IACHR describes below the degree of compliance with this agreement, according to the specific clauses:

- a. **Clause 1:** *The State agrees to expressly acknowledge its responsibility, in consultation with the victim and with her consent;*

59. The public ceremony for the express acknowledgment of responsibility was held on November 15, 2012 in the town square of Abejorral (Antioquia), where the victim and her family reside. The ceremony was presided by the then-Minister of Justice and Law of Colombia, Ruth Stella Correa Palacio. The parties find that the State has complied fully with this clause.

- b. **Clause 2:** *The State agrees to compensate the victim for the pecuniary and non-pecuniary damages arising from the violations of the American Convention on Human Rights in this case. To this end, the State and the victims' representatives respectfully request that the Honorable Inter-American Commission on Human Rights set the amount of such compensation. (A joint communication to the IACHR on this matter will be attached). In the event that an out-of-court settlement is reached or a judgment is handed down by a domestic court, the amounts paid to the victim pursuant to those legal proceedings shall be deducted from the compensation set by the Honorable Commission. In the event that the amounts awarded at the domestic level exceed the sum established by the Honorable Commission, the State shall pay the excess domestic amount;*

60. Compliance with this clause is still pending, given that the State and the victim's representatives requested that the Commission set the respective compensation amounts in this approval report.

- c. **Clause 3:** *As part of the State's agreement to take adequate comprehensive measures of reparation for the violations of the American Convention on Human Rights in this case, the State shall undertake to design and implement national training courses at schools for judicial and administrative public servants, as well as for medical, psychological, and psychiatric personnel, on gender perspective and the scope of professional privilege. The training courses must place special emphasis on topics such as: (i) gender and human rights; (ii) gender perspective for due diligence in conducting preliminary investigations and judicial proceedings related to discrimination, violence, and homicides perpetrated against women on the basis of gender, and (iii) overcoming stereotypes on the social role of women.²⁵ Those programs should mention international human rights instruments, specifically those relating to gender-based violence, bearing in mind that certain standards and practices in the domestic law have discriminatory effects on the daily lives of women. In addition, the State agrees to request information from the National Ministry of Education on the processes and guidelines that have been advanced and that will be advanced in order to implement Article 11 of Law 1257 of 2008;*

61. In its July 16, 2013 report, the State indicated that the "National Training Plan to Guarantee Access to Justice for Women Victims of Violence" had been launched on October 3, 2012. The plan is aimed at

²⁵ I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 541-542. In that case, the Court held that "training with a gender perspective involves not only learning about laws and regulations, but also developing the capacity to recognize the discrimination that women suffer in their daily life. In particular, the training should enable all officials to recognize the effect on women of stereotyped ideas and opinions in relation to the meaning and scope of human rights" (para. 540).

judicial personnel, and places emphasis on the enforcement of Law No. 1257 of 2008, a differential approach, and the rights of victims of violence. The State reports that more than 500 personnel, all of whom work in the judiciary and in the administration of justice, have already received training.

62. In a communication dated March 5, 2014, the petitioners asserted that the programs developed by the State are geared toward training only judicial employees, and only on one specific topic, that is, “a differential approach and the rights of victims of violence.” In this respect, they indicate that they would appreciate the submission of substantive information on the training conducted, in order to be able to examine whether the State has met the objective of the agreed-upon measure concerning gender perspective. In addition, they indicated their desire to receive further information on the measures taken by the State to train administrative officials in general terms.

63. With respect to the implementation of training courses for medical, psychological, and psychiatric personnel, the State reported that the Ministry of Health offers such courses on an ongoing basis, and it agreed to send consolidated information on their content and development. The petitioners state that they look forward to receiving that information in order to determine whether the courses meet the requirements of this clause.

64. Examining the positions of the parties, the IACHR views positively the steps that the State has taken in seeking to comply with this clause of the Agreement. In the same regard, it urges the State to continue its efforts to comply with this item thoroughly and completely, broadening its work with both administrative officials and medical, psychological, and psychiatric personnel, and further developing the training courses on gender perspective and on the scope of professional privilege.

- d. **Clause 4:** The State agrees to provide medical, psychological, and sexual and reproductive healthcare to Ms. Alba Lucía Rodríguez and her partner, for purposes of evaluating the harm or trauma caused by the events in this case. If the diagnosis of the specialist so determines, the psychological services shall extend to her relatives as they provide support to Alba Lucía in her rehabilitation process. Along these same lines, the State agrees to cover her travel expenses. A comprehensive health rehabilitation and recovery program shall be designed to include free, comprehensive medical services for Alba Lucía and her partner, for the period of time considered appropriate according to the diagnosis of the respective medical and psychological professionals;*

65. With respect to this clause, the State maintained in its October 2012 report that Alba Lucía and her partner would be “insured through the contributory plan of the Colombian social security system at the Health Promoting Entities (EPS).” The State also reported that the family group had been offered the opportunity to undergo medical and psychological treatment with the team at the Psychosocial and Memory Unit [*Unidad Psicosocial y de Memoria*]. In its report of July 2013, the State included a report from the Social Fabric Reconstruction Unit of the Department of Human Rights, International Humanitarian Law, Victim Services, Community Reintegration, and Reconciliation [*Unidad de Reconstrucción del Tejido Social de la Dirección de Derechos Humanos, Derecho Internacional Humanitario, Atención a Víctimas, Reintegración Comunitaria y Reconciliación*] on the “psychological support provided in the case of Alba Lucía Rodríguez.” That report says that the State would be supporting “*the psychological rehabilitation process of alba lucia (sic) and her family,*” specifying that the psychosocial support was initially offered “*once a month, for one year, in the municipality of Abejorral,*” in order to render a diagnosis to “*determine whether continued follow-up is required in the case, or whether it is a sufficient period of time (...).*”

66. The petitioners, for their part, expressed their interest in obtaining more detailed information about the effective access of the victim and her partner to medical services and sexual and reproductive health services. They additionally stated that they were unaware of the outcome of the psychosocial support process and that they would like to obtain further information from the State so that the parties can jointly determine its effectiveness and the need for continued support services.

67. The IACHR notes that this clause is being observed, and urges the State to provide the information requested by the petitioners in order to be able to consider the requirements of this clause to have been satisfied.

- e.* **Clause 5:** *In the event that Alba Lucia Rodríguez decides to pursue her education, the State agrees to assist her in accessing her preferred course of study through the Department of Education of Medellín and/or the Office of the Governor of Antioquia. Her admission and continuation in the educational program shall be subject to the requirements established by the chosen educational institution. The offer of education includes starting basic secondary or high school, or technical, technological, and/or arts and vocational skills training. The education offered may be based in the city of Medellín or in any other municipality. In any case, the conditions stipulated in this paragraph shall be subject to variations according to the demonstrated needs of the individual;*

68. The State indicated that the Office of the Governor of Antioquia offered Alba Lucía at the Manuel Canuto School in Abejorral. Alba Lucia reported that she planned to enroll there in 2014 to complete her basic secondary school education.

69. To date, this Commission has not obtained any further information regarding this item of the agreement, and therefore requests that the parties keep it informed of the progress made with respect thereto.

- f.* **Clause 6:** *In the event that Alba Lucía decides to pursue employment, the State shall support her through appropriate employment training based in the city of Medellín or in any other municipality in the Department of Antioquia, providing goods or merchandise one time only, or in any other way that contributes effectively to Alba Lucía's ability to rebuild her life plan;*

70. The Colombian State reported that on May 9, 2013, by means of Executive Order No. 1920 of the Office of the Governor of the Department of Antioquia, Alba Lucía was appointed to the position of "Custodian" at the San Luis School in the municipality of Yarumal. On June 4, 2013, Alba Lucía began working at the school with a 6-month contract, subject to renewal for an additional 6-month period. The State asserts that the Office of the Governor of Antioquia aims to ensure her continued employment.

71. In a communication dated March 5, 2014, the petitioners stated that in spite of the efforts made by the State in this regard, the employment contract has not been made indefinite. Therefore, they are of the opinion that "the temporary nature of the employment offered makes it difficult for the victim to 'rebuild her life plan.'"

72. The IACHR urges the State to make its best effort to ensure that Alba Lucía is able to have suitable conditions to rebuild her life plan in the terms provided for in this agreement.

- g.* **Clause 7:** *Given that the health services as well as the education and employment training services are not available and therefore cannot be implemented in the town in which Alba Lucía currently resides, the State shall assist Alba Lucía and her partner in moving to, establishing themselves, and remaining in the city of Medellín or another municipality in the Department of Antioquia, through the provision of a support allowance. This allowance shall be disbursed on a quarterly basis for the duration of the educational or employment training program chosen by Alba Lucia, in accordance with paragraph 5 of this agreement. In the event that Alba Lucía decides only to pursue employment training, the support allowance shall be provided solely and exclusively for a period of six months. In any case, the aforementioned move shall be agreed upon with the victim.*

73. To date, this Commission has not obtained any further information regarding this item of the agreement, and therefore requests that the parties keep it informed of the progress made with respect thereto.

VII. CONCLUSIONS

1. Based on the foregoing considerations and in accordance with 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 as well as its satisfaction that a friendly settlement has been reached in this case based on respect for human rights and consistent with the object and purpose of the American Convention.

By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement that the parties signed on March 28, 2011.
2. To continue to supervise compliance with the pending obligations undertaken by the State of Colombia. To this end, to remind the parties of their commitment to report periodically to the IACHR regarding compliance.
3. To make this report public and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 24th day of the month of July, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.