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CASE 12.732

FRIENDLY SETTLEMENT

RICHARD CONRAD SOLÓRZANO CONTRERAS
GUATEMALA

Electronically approved by the Commission on June 1, 2020.

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FRIENDLY SETTLEMENT
RICHARD CONRAD SOLÓRZANO CONTRERAS
GUATEMALA¹
JUNE 1, 2020

I. SUMMARY AND PROCEDURAL ASPECTS RELATED TO THE FRIENDLY SETTLEMENT PROCESS

1. On July 14, 2004, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or the “IACHR”) received a petition filed by Mr. Mario Conrado Solórzano Puac (hereinafter, “petitioner” or the “alleged victim”), which alleged the international responsibility of the Republic of Guatemala (hereinafter, “State” or “Guatemalan State” or “Guatemala”), for the violation of the human rights recognized under article 8 (fair trial) and 25 (judicial protection), in relation to article 1 (obligation to respect rights) of the American Convention on Human Rights (hereinafter, “Convention” or “American Convention”), to his detriment and that of his son, Richard Conrado Solórzano Contreras (hereinafter, “alleged victim”), who was then 16 years of age, who passed away due to lack of medical attention in a public hospital and the subsequent lack of investigation of the facts of the case by agents of the State.

2. On October 29, 2009, the Commission adopted Admissibility Report N° 103/09, in which it declared the petition to be admissible and established its own competence to hear the claim filed by the petitioners with regards to the alleged violation of the rights recognized under articles 8 (fair trial) and 25 (judicial protection) of the American Convention.

3. On December 17, 2011, the parties held a work meeting facilitated by the Commission in Guatemala, Quetzaltenango Department, in which they adopted a Friendly Settlement Agreement.

4. On February 4, 2020, the petitioner expressed its consent to the official approval of the friendly settlement agreement.

5. This friendly settlement report, pursuant to Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, outlines the facts alleged by the petitioners and transcribes the friendly settlement agreement, which was signed on December 17, 2011, by the petitioners and representatives of the Guatemalan State. In addition, the agreement signed by the parties is approved, and it is agreed to publish this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. FACTS ALLEGED

6. According to the allegations of the petitioner, on March 10, 2003, Richard Conrad Solórzano Contreras, who was then 16 years of age, had been stabbed by an individual on the right-hand side of his neck. The facts had allegedly taken place around 8:30 PM, when the young man was three blocks away from his home. Consequently, he was allegedly transported immediately to the National Hospital of Coatepeque, a public institution.

7. The petitioner pointed out that, in the hospital where his son was admitted, the physician and the nurses who were on-call limited themselves to cleaning the wound, placing an intravenous needle and checking his vital signs, without undertaking a surgery to preserve the life of the alleged victim. In accordance to the description of the petitioner, his son allegedly spent, still with vital signs, approximately thirty minutes in the emergency room until a physician ordered that his oxygen supply be withdrawn. The young Solórzano Contreras allegedly died minutes later while embraced by his brother. The petitioner additionally said that a nurse at the hospital had allegedly mocked his son’s brother by saying that he “better look for a box”.

¹ Commissioner Stuardo Ralón Orellana, a national of Guatemala, did not participate in the consideration of the vote on this case of compliance with article 17 (2) (a) of the IACHR.

8. The petitioner alleged that, on the same day of the facts, March 10, 2003, the suspect for the murder was allegedly admitted to the Coatepeque National Hospital with a series of wounds. Family members, friends, students and neighbors that were in the premises to accompany the victim supposedly recognized the alleged murderer and denounced him to the Sub-Chief of the National Police and the Assistant Prosecutor of the Office of the Prosecutor, who were present there. According to the petitioner, the pre-trial detention and custody of the suspect was allegedly requested, to which the authorities supposedly replied that "everything was under control". The Assistant Prosecutor allegedly took statements from three witnesses that were in the hospital, who supposedly reiterated that the suspect had been admitted to that same hospital and pointed to the room where he was supposedly located. Despite these alleged warnings to the authorities in relation to the presence of the possible author of the homicide in the hospital, he was allegedly able to flee. In relation to this point, the petitioner states that the agents of the State who were present at the hospital were able to and should have detained the suspect, on the basis of article 257 of the Code of Criminal Procedure, which establishes that "the police must detain anyone who is surprised in the flagrant commission of a crime or who is chased down immediately after the commission of a punishable act".

9. The petitioner pointed out that there allegedly had been irregularities in the documents pertaining to the admission of the possible author of the crime to the hospital, supposedly including that two different times, two different names and two different addresses had been recorded for the admission of the patient. According to the petitioner, the reason for such inconsistencies was to allegedly hinder or make harder the apprehension of the suspect. Additionally, the petitioner informed that said individual was allegedly last seen located in Mexico, apparently with the intent to travel to the United States of America.

10. The petitioner alleged that the investigation of the murder of his son, identified under the number 1200-03 in the Court of First Instance for Criminal Matters and Crimes against the Environment of the Municipality of Coatepeque, had supposedly been plagued by irregularities, including frequent changes in the assistant prosecutors in charge of the investigation; the lack of timely inspection of the scene of the crime; the fact that the arrest warrant of the suspect of the murder was supposedly issued on March 19, 2003, but could not be carried out because the alleged murdered had supposedly fled; the existence of procedures with false information, and; the lack of investigation of the government officials whose conduct supposedly facilitated the escape of the alleged murderer and of the alleged negligence in relation to the medical treatment that his son supposedly had received. Additionally, the petitioner pointed out that, in the face of the lack of investigation at the scene of the crime by police personnel, the murder weapon was supposedly found by family members of Richard Conrad and later delivered to the authorities.

11. The petitioner pointed out that, on January 22, 2004, he allegedly filed a criminal complaint for the crimes of denial of justice and concealment before the Court of First Instance for Criminal Matters and Crimes against the Environment of the Municipality of Coatepeque, against the Office of the Prosecutor and the officer and the Sub-Chief of the National Civil Police, who were allegedly present in the hospital during the night of the events. Said complaint was allegedly admitted, processed and eventually dismissed as the court considered that the agents of the State had acted lawfully.

12. According to the petitioner, he allegedly filed another complaint for corruption and concealment before the Corruption Department of the Office of the Prosecutor, at the beginning of 2005, against the government officials mentioned in the preceding paragraph. Said complaint was allegedly declared as justified and sent to the General Supervision of the Office of the Prosecutor to continue the procedure, under file number 4-2005. The petitioner provided a report from the General Supervision of the Office of the Prosecutor, dated February 2, 2005, allegedly concluding that the delay in the issuance of the arrest warrant, despite the identity of the alleged perpetrator being supposedly known during the same night of the facts, had allegedly contributed to his escape and therefore supposedly recommending the start of disciplinary proceedings against the agents involved. However, at the date in which the petition was filed, there had not been any criminal or disciplinary sanctions in connection with the facts of the case.

III. FRIENDLY SETTLEMENT

13. On December 17, 2011, the parties held a working meeting at the Quetzaltenango Department, Guatemala. In the framework of said meeting, the parties signed a friendly settlement agreement on the following terms:

FRIENDLY SETTLEMENT AGREEMENT² CASE 12.732 RICHARD CONRAD SOLÓRZANO CONTRERAS

I. PERSONS APPEARING

The State of Guatemala appears, through the Presidential Commission Coordinating the Executive Policy on Human Rights (COPREDEH), represented by its President Dora Ruth del Valle Cobar, a position she proves with the Governmental Appointment Agreement Number forty eight (48) dated January 30, 2008, and minutes of the taking of office of the position number seven dash two thousand and eight (7-2008), registered in the official book of records number thirty eight thousand seven hundred and sixty two (38762) of the COPREDEH, authorized by the Comptroller General of Accounts of the Nation; Attorney Enma Estela Hernández Tuy de Iboy, Legal Advisor to the Department for the Follow-up of International Human Rights Cases of said body, acting in the exercise of the Special Mandate with Representation conferred in her favor by the Attorney General of the Nation, to follow-up and carry out the pertinent procedures in the negotiation and subscription process of this agreement, as recorded in Public Deed number one hundred and seventy (170) authorized in Guatemala City on June 1, 2010 by the Notary of Chamber and Government, which it is registered with the number one hundred ninety-seven thousand three hundred twenty-three indent E (197323-E) of the electronic register of Powers of the General Archive of Protocols of the Supreme Court of Justice; and for the petitioner, Mr. Mario Conrado Solórzano Puac, fifty-six years old, married, Guatemalan, nurse, from this domicile, who identifies himself with a neighborhood identity card number [...], issued by the Municipal Mayor from Coatepeque, department of Quetzaltenango.

They appear in the present act for the purposes of adopting the FRIENDLY SETTLEMENT AGREEMENT in the Case 12.732 RICHARD CONRAD SOLÓRZANO CONTRERAS, in accordance with article (40) of the Rules of Procedure of the Inter-American Commission on Human Rights and the rights enshrined in the American Convention on Human Rights. According to the Admissibility Report No. 103/09, dated October 29, 2009, and in accordance with article 37(2) of the Rules of Procedure of the IACHR, petition No. P 581-03 was admitted and recorded before said high international body with the case number 12.732 Richard Conrad Solórzano Contreras.

II. BACKGROUND

On July 14, 2004, the Inter-American Commission on Human Rights IACHR, received a petition filed by Mr. Mario Conrado Solórzano Puac in which he alleged international responsibility against the State of Guatemala for the lack of due diligence in the investigation, alleged negligence and concealment by agents of the State in the criminal proceedings established over the murder of his son Richard Conrad Solórzano Contreras, of 16 years of age, that took place on March 10, 2003, as well as the alleged lack of adequate medical care in the time immediately prior to his death while he was hospitalized.

The petitioner pointed out that the State did not exercise due diligence in investigating the murder of his son, an act that was carried out by a private person and, in that way, the State denied him of justice and left this crime unpunished.

² Numbering independent of the original text of the Friendly Settlement Agreement

He pointed out that, in the initial phases of the investigation, police and justice authorities did not act, thereby allowing the alleged author to flee.

He also claimed that certain authorities took part in actions aimed at concealing the responsibility and whereabouts of the alleged author. He claimed that the medical personnel that received his wounded son where he died shortly thereafter did not provide him with the required medical attention. In relation to the admissibility requirements, he alleged that domestic jurisdictional remedies had been exhausted.

On November 20, 2009, the IACHR informed the State that, in examining petition 581-03 during its 137^o period of sessions, it approved the Admissibility Report No. 103/09 and place itself at the disposal of the parties for the purposes of arriving at a friendly settlement of the matter, in accordance with article 48 (1) (f) of the American Convention on Human Rights.

On December 30, 2009, the IACHR sent the State information that had been furnished by the petitioner, requesting it to present its timely observations with regards to the possibility of pursuing a friendly settlement.

In the report from the State dated January 28, 2010, the State informed the IACHR that it had the good will to arrive at a Friendly Settlement with the petitioner, requesting the submission of his proposal through the Inter-American Commission for analysis. By its report dated July 22, 2010, the State reiterated its good will and openness to finding a friendly settlement in the instant case.

III. LEGAL AND POLITICAL BASIS OF THE STATE OF GUATEMALA WITH REGARDS TO THE PURSUIT OF FRIENDLY SETTLEMENTS

The American Convention on Human Rights establishes in its articles 48, paragraph 1, section f, 49 and 50 the possibility of arriving at a friendly settlement, which must be based on the respect of human rights. For its part, the National Policy on Human Rights in charge of the Presidential Commission Coordinating the Executive Policy on Human Rights (COPREDEH), in force since 2007 and approved by Government Agreement number 552-2007, establishes in its guidelines that "The Government will continue promoting the pursuit of friendly settlements before the Inter-American Commission on Human Rights, a mechanism that allows combining the efforts of the representatives of the victims, the investigatory bodies of the State and said international instance to drive the resolution of certain particularly serious cases and repair the harm caused by the human rights violation".

IV. COMMITMENTS ASSUMED BY THE STATE OF GUATEMALA

The State of Guatemala, through this agreement, establishes the following commitments:

1) ACKNOWLEDGMENT OF THE FACTS

a) The State will undertake an act of public acknowledgment of international responsibility and request for forgiveness in the municipality of Coatepeque, Quetzaltenango Department, the native city of the victim, which shall be directed by the President of the Presidential Commission Coordinating the Executive Policy on Human Rights (COPREDEH). In accordance with the request of the petitioner, a special invitation will be addressed to the Attorney General of the Nation and the Director of the National Civil Police, for them to attend the act of acknowledgment of international responsibility. Similarly, it will undertake the necessary steps for this public act to take place in the Municipal Theater of Culture of the Municipality of Coatepeque.

b) The State will produce a 7 minutes documentary that summarizes said act to be broadcasted only once in local cable channels.

c) The State will publish a summary of the facts that gave rise to the instant case in the *Diario de Centro América* and in the *Diario El Quetzalteco*.

2) JUSTICE

The State commits to set up a Promotion Committee, which will be formed by all bodies of justice involved in the process of investigation resulting from the death of the young student, Richard Conrad Solórzano Contreras, for the purposes of promoting such process and follow-up on administrative procedures against the employees and government officials identified by the petitioner as responsible for the negligence during the first investigatory acts.

3) MEASURES OF DIGNIFICATION

a) The State will request the municipal government of Coatepeque for it to authorize the naming of the Municipal Theater of Culture under the name of Richard Conrad Solórzano Contreras and, if it were not possible, the naming of the 6th Street, Zone 1, in front of the Central Park of Coatepeque or other location, with the name of the victim. Upon receiving authorization, a commemorative plaque shall be placed there.'

b) The State will request the relevant institutions to grant the usufruct over a property of the State for the purposes of the Richard Conrad Solórzano Contreras Foundation operating there.

4) ECONOMIC REPARATION

The State acknowledges that, in accepting its international responsibility for the violation of rights enshrined by the American Convention on Human Rights in its articles 8 and 25 on fair trial and judicial protection, respectively, it must provide reparation to the family members of the victim for the material and non-material damages.

The parties to this Friendly Settlement Agreement recognize the mutual will evinced in agreeing to a sum that allows compensation to the family members of Richard Conrad Solórzano Contreras, and thus the State commits to pay to the petitioner and his family composed of: Mario Conrado Solórzano Puac, Milton Josue, Edinson Geovany, Jaquelin Xiomara, Jorge Mario y Abner Alexander, all of Solórzano surname, compensation in the sum of [...] ³, which has been established through actuarial valuation carried out by an independent consultant, in order to establish the payment corresponding to the economic reparation of the respective material and non-material or moral damages. The amount established in this agreement is confidential and shall not be published.

V. NOTIFICATION TO THE ILLUSTRIOUS INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

In the established terms, the parties to the present Agreement commit to inform the Inter-American Commission on Human Rights, either jointly or separately, the commitments contained in it.

³ At the request of the parties, the amount agreed to as economic reparation is kept in reserved and confidential character.

VI. INTERPRETATION

The meaning and extent of this Friendly Settlement Agreement shall be interpreted in accordance with articles 29 and 30 of the American Convention on Human Rights, as pertinent and with the principle of good faith. In case of doubt or disagreement between the parties with regards to the content of this Friendly Settlement Agreement, the Inter-American Commission shall decide on its interpretation.

VII. SUPERVISION

In accordance with article 48 (1) (f) of the American Convention on Human Rights, the Commission shall supervise the fulfillment of the commitments included in this agreement until their definitive performance.

VIII. LEGAL BASIS

This Friendly Settlement Agreement is entered into on the basis of the human rights recognized in articles 8 and 25 of the American Convention on Human Rights, the American Declaration on the Rights and Duties of Man and the Political Constitution of the Republic of Guatemala.

IX. APPROVAL

For his part, Mr. Mario Conrado Solórzano Puac, expresses that he accepts the commitments undertaken by the State of Guatemala in this Agreement, which are in accordance with his requests, accepting the economic reparation and the moral reparations included in this instrument and committing to grant to the State of Guatemala, upon compliance with each of them, the fullest and total settlement and not to sue in the future for any economic benefit arising from the same case. The reparations agreed to before the Inter-American Commission on Human Rights shall be the only ones that can be enforced against the State. Exception is made of the actions currently being heard by the courts of justice of the country, which have the objective of having the jurisdictional bodies fulfill their constitutional duty and administer justice.

X. GENERAL APPROVAL

The parties express their absolute conformity and consent to the full content of this Friendly Settlement Agreement.

Done in two copies, in the municipality of Coatepeque of the Quetzaltenango Department, on December 17, 2011.

XI. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

14. The IACHR reiterates that, in accordance with articles 48.1.f and 49 of the American Convention, this procedure has the objective of “reaching a friendly settlement of the matter on the basis of the respect for the human rights recognized in this Convention”. The consent to undertaking this procedure expresses the good will of the State to fulfill the purposes and objectives of the Convention and in light of the *pact sunt servanda* principle, by which States must perform in good faith the obligations undertaken in treaties.⁴ It also wishes to reiterate that the friendly settlement procedure established in the Convention allows for termination of individual cases in a non-contentious manner and has proven, in cases related to numerous countries, to offer an important vehicle for resolution that may be utilized by both parties.

15. The Inter-American Commission has followed closely the development of the friendly settlement at which the parties arrived in this case and values highly the efforts deployed by both parties during

⁴ Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: “**Pacta sunt servanda**”. *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

the negotiation of the agreement to conclude this friendly settlement that is compatible with the object and purpose of the Convention.

16. In light of the information submitted by the parties until this moment and given the time that has elapsed during the process of negotiation, the Commission must value the fulfillment of the commitments contained in said friendly settlement agreement.

17. With regards to section IV.1 dealing with the public act of acknowledgment of responsibility, as informed by the parties, on December 17, 2011, a public act of acknowledgment of responsibility and request for forgiveness was held at the Municipal Theater of Culture of the municipality of Coatepeque, the native city of the victim. The act was presided over by the President of COPREDEH and was attended by the Director of the National Civil Police. In that regard, in a communication dated March 11, 2012, the petitioner confirmed that the act was held and that the summary of the request for forgiveness was broadcasted in local cable channels. Additionally, the Commission was able to verify the publication of a press article, which was publicly distributed in the newspaper *El Quetzalteco*.⁵ The Commission considers, taking into account the information provided by the parties, letters a), b) and c) of clause IV.1 of the agreement have been entirely fulfilled and so declares.

18. With regards to section IV.2, concerning the establishment of a Promotion Committee composed of the justice bodies and to promote the investigation over the death of the victim and follow up on the administrative procedures against employees and government officials deemed responsible of negligent behavior during the first stages of the investigation, the State informed that on August 27, 2012, said Committee was established. Regarding the request to update and carry out the arrest warrant over the suspect of the homicide of young Solórzano Contreras, the petitioner reported that it had received information that he had died in Mexican territory. This information was later confirmed by the State of Guatemala, which, on October 28, 2015, informed that, while it had been possible to confirm that the suspect lived in Mexico under a pseudonym, he had apparently passed away on May 16, 2010. In that regard, the petitioner indicated that, while the case against the suspect had become moot as a result of his death, the investigatory measure related to the administrative and judicial procedures against the state employees pointed out as responsible for the negligence that derived in the lack of justice in the present case had not yet been complied with.

19. In this regard, the Commission observes that, while the investigatory measure concerning the individual allegedly responsible for the murder has become moot because of his death, it still does not possess enough information concerning the measures undertaken by the State of Guatemala to disciplinary punish those government officials involved in the failures of the investigation that allowed the alleged suspect to flee and the case to be unpunished. In light of this, the Commission considers that this aspect of the Friendly Settlement Agreement has not yet been complied with and so it hereby declares it pending for compliance. The Commission will await detailed information on the part of the State about the actions undertaken to investigate and apply disciplinary punishment to the government officials that may have been involved in the criminal investigation and that allowed the facts to go unpunished.

20. Concerning section IV.3, regarding the dignification measures, the petitioners informed that on June 26, 2014, in a public act, a commemorative plaque was installed making the official name change of "10ª Avenida zona 2 barrio El Jardín" to "Estudiante Richard Solórzano", thereby fulfilling letter a) of clause IV.3. In addition, in relation to the granting in usufruct of state property for the functioning of the Richard Conrad Solórzano Contreras Foundation, the petitioner informed that on December 2, 2013, through an Ordinary Deed of the Municipal Council subsection II, a 25-year usufruct of a commercial premises located in the terminal market of the city of Coatepeque was approved, to install the offices of the petitioners' organization. However, the petitioners indicated that said property was not formally delivered in writing by State authorities and that it does not have sufficient space, furniture and security measures required for the organization's effective functioning in said property. Taking into account the information elements provided

⁵ In that regard see, Prensa Libre, "Estado pide perdón por negligencia médica en muerte de joven", December 17, 2011, available at: <https://www.prensalibre.com/ciudades/quetzaltenango/perdon-negligencia-medica-muerte-joven-0-610739077/>

by the parties, the Commission considers that this point of the Friendly Settlement Agreement is partially fulfilled and so declares it declares it.

21. With regards to section IV.4, concerning economic reparation, on March 11, 2012, the petitioner informed that it received the total sum in three disbursements dated April 28 and December 28, 2011, and February 28, 2012. In that regard, having both parties confirmed the fulfillment of the measure, the Commission considers that the State has complied with the commitment established in this point of the agreement and thus considers it entirely fulfilled.

22. In light of the foregoing considerations, the Commission considers that letters a, b and c of clauses IV.1 (public act of acknowledgment and dissemination), IV.3 a (naming of a street in memory of the victim) and IV.4 (economic reparation) are totally fulfilled and so declares it declares it. At the same time, the Commission considers that clause IV.3 b (concession of usufruct over property) is partially fulfilled and so it declares it. Finally, it declares that clause IV.2 (justice measures) remains pending for compliance and so it declares it.

23. Finally, the IACHR considers that the rest of the content of the friendly settlement agreement is declaratory in nature, and it will therefore continue to supervise the implementation of the aforementioned sections that have not yet been entirely fulfilled.

XII. CONCLUSION

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 would like to reiterate its profound gratitude for the efforts made by the parties and its satisfaction that this case produced a friendly settlement agreement grounded in respect for human rights and compatible with the object and purpose of the American Convention.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreements signed by the parties on December 17, 2011.
2. To find that there has been full compliance with letters a), b) and c) of clause IV.1 (public act of acknowledgment and dissemination), IV.3 a (naming of a street in memory of the victim) and IV.4 (economic reparation) of the Friendly Settlement Agreement, in accordance with the assessment included in this report.
3. To find that there has been partial compliance with clause IV.3 b (concession of usufruct over property) of the Friendly Settlement Agreement, in accordance with the assessment included in this report.
4. To find that compliance with clause IV.2 (justice measures) of the friendly settlement agreement, in accordance with the assessment included in this report.
5. To continue the supervision of clauses IV.2 and IV.3 b of the friendly settlement agreement, concerning justice measures and the concession of usufruct over property, until they have been fully complied with, in accordance with the assessment included in this report. To that end, to remind the parties of their commitment to periodically inform the Commission about their fulfillment.
6. To publish this report and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 1st day of June 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.