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REPORT No. 273/23
CASE 14.906
REPORT ON FRIENDLY SETTLEMENT

ELADIA MENDEZ BAUTISTA
COLOMBIA

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FRIENDLY SETTLEMENT
ELADIA MENDEZ BAUTISTA
COLOMBIA¹
NOVEMBER 30,2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On June 4, 2012, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Eladia Méndez Bautista, whose representation was assumed by María de Jesús Alvarado Bautista Narciso Guerra, and later by Sandra James Alvarado (hereinafter "the petitioning party"), alleging the international responsibility of the Republic of Colombia (hereinafter "Colombia" or "the State"), for the violation of the human rights enshrined in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 24 (right to equal protection), 25 (right to judicial protection) and 26 (progressive development of economic, social and cultural rights) of the American Convention on Human Rights (hereinafter "American Convention" or "Convention") in relation to Article 1 of the same instrument, and Article XVI (social security) of the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration" or "Declaration"); as a result of the disappearance and death of Luis Alberto León, husband of Mrs. Eladia Méndez Bautista; the refusal of the social security body to process the request for recognition of the survivors' pension or substitutive compensation and to grant the corresponding benefit; and the refusal of the domestic judges to protect the rights of Mrs. Méndez through the action for the protection of constitutional rights.

2. On February 9, 2022, the Commission issued its Report on Admissibility No. 14/22, in which it declared the petition admissible and its competence to hear the claim presented by the petitioner regarding the alleged violation of the rights enshrined in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 24 (right to equal protection), 25 (right to judicial protection) and 26 (progressive development of economic, social and cultural rights) of the American Convention, in relation to Articles 1. 1 (obligation to respect rights) and 2 (domestic legal effect) of the same instrument; and Article XVI (social security) of the American Declaration, to the detriment of Eladia Méndez Bautista.

3. On February 10, 2023, the parties signed a memorandum of understanding for the pursuit of a friendly settlement in the present case, together with a work schedule to move forward in the negotiations. In the following months, the parties held bilateral meetings in order to analyze the reparation measures to be included in the friendly settlement agreement (hereinafter "FSA"), which materialized with the signing of said instrument on May 18, 2023, in the city of Bogota D.C. Subsequently, on June 26, 2023, the parties presented a joint report on the progress in the implementation of the FSA and requested the IACHR to homologate it.

4. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40(5) of the Commission's Rules of Procedure, contains a summary of the facts alleged by the petitioner and a transcription of the friendly settlement agreement signed on May 18, 2023 by the petitioner and representatives of the Colombian State. Likewise, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petition recounted that Mrs. Méndez had been married since 1972 to Mr. Luis Alberto León, who worked for the transportation company SUMICAR Ltda. as the driver of a vehicle that had been rented to the National Army to transport troops and goods. Mr. León disappeared on May 31, 1991 while he was driving the vehicle in a rural area of the department of Arauca, and his whereabouts were never heard of

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

again. It was assumed by his relatives and friends that he was killed by ELN guerrillas and his body was thrown into a river along with the car he was driving, since this illegal armed group was active in the region where Mr. León was traveling that day in the course of his work. The petitioner reported that Mr. Crispiniano Pérez, Mr. León's co-worker, filed a criminal complaint for the disappearance on June 12, 1991; however, in response to a request for a copy of the complaint issued by the Fourth Family Court of Bucaramanga in 1997, the SIJIN (judicial police agency) reported that it had not found a copy of the complaint in the Archive of the Police Department of Arauca. After the disappearance of Mr. León, Mrs. Méndez had to provide for the needs of her three children under the age of eighteen, in very precarious economic conditions as she was a housewife with no higher education or professional training.

6. Two years after the disappearance of her husband, and in order to receive the survivor's pension in her capacity as Mr. León's widow, Mrs. Méndez initiated, on July 26, 1994, a civil proceeding for the declaration of presumed death due to disappearance, before the Fourth Family Court of Bucaramanga. After said proceeding, on August 22, 1997, the aforementioned court declared the presumed death of Mr. León, setting the date of presumptive death as May 31, 1993 (two years after his actual disappearance). This judgment was confirmed on November 28, 1997 by the Superior Court of the Judicial District of Bucaramanga - Family Chamber. After sending the first and second instance judgments to the notary public to issue the death certificate, and after the legal publications were made, the Seventh Notary Office of the Bucaramanga Circuit issued the death certificate of Mr. León on July 16, 1998.

7. Mr. León, at the time of his disappearance, was affiliated as an active contributor to the Instituto del Seguro Social (Social Welfare Institute) - Seccional Santander ("ISS"). Three months and twenty days after the issuance of the civil registry of death, Mrs. Méndez filed an application with the ISS on November 6, 1998, to be awarded the survivors' pension, with the required documentary support, and proving her status as a surviving victim of the crime of disappearance and homicide, as well as the judicial declaration of Mr. León's presumed death. However, by Resolution of June 15, 2000, the ISS rejected the request, denying the pension rights and the substitutive compensation, arguing that: (i) Mr. León had not contributed the minimum number of weeks legally required to access the pension during the six years prior to the date of his presumed death; and that (ii) the statute of limitations to file the request for recognition of the substitutive indemnity had expired, since the legal term of one year was counted from the time of the death of the insured. The ISS considered as the starting date for counting the year of the statute of limitations, the date of presumed death judicially declared for Mr. León, that is, May 31, 1993. The negative decision was notified to Mrs. Méndez by the ISS on August 1, 2000. An appeal and motion for reconsideration was filed against this decision, which was confirmed by resolutions of the ISS on February 19, 2001 and May 16, 2001.

8. Mrs. Méndez filed an action for the protection of constitutional rights against the ISS decision in 2011. In the first instance it was denied by judgment of November 22, 2011 of the Fourth Labor Court of the Circuit of Bucaramanga, on the grounds that the action was considered inadmissible since there was a principal means of judicial defense at the administrative litigation jurisdiction. The court expressly indicated that the appropriate administrative litigation action to address the claims of the plaintiff was the "action for direct revocation of administrative acts". Upon appeal, this decision was confirmed in the second instance by the Superior Court of the Judicial District of Bucaramanga - Labor Chamber by judgment of December 19, 2011, which additionally argued that the requirement of immediacy in the filing of the action had been disregarded. The case was referred to the Constitutional Court, and by the date this petition was filed, Mrs. Méndez was unaware of the fate of her request for the Constitutional Court to select to hear her case. The Public Defender's Office filed an insistence on the selection of the file before the Constitutional Court on March 29, 2012. The Constitutional Court, by order of April 19, 2012, decided not to accept the insistence and not to select the file for review. This decision was communicated to Mrs. Méndez by the Public Defender's Office by means of an official letter dated May 25, 2012, received by her on May 30, 2012.

9. The initial petition alleged that Mrs. Méndez's rights to life in dignified conditions; social security; her rights as a woman and elderly adult; her economic, social and cultural rights to food, housing and recreation; and her right to health -because after the disappearance of her husband she was excluded from the social security health system for failure to pay the corresponding contributions to the employer- and her right to judicial protection through the action for the protection of constitutional rights were violated. For Mrs.

Méndez, the decision to deny her access to the survivors' pension and to the substitutive indemnity is unjust, and was based on an erroneous calculation of the number of weeks contributed by her husband before he disappeared. She argues that the date considered as the limit date of the six-year contribution period established in law was the date of presumed death declared judicially and not the date of the actual disappearance, which occurred two years before the presumed date of death. She argues that, if the latter had been considered, Mr. León would have amply complied with the minimum number of weeks of contributions, taking into account also that the employer company ceased its contributions to the social security system from the moment of Mr. León's disappearance. Furthermore, she argues that the decision was also unjust because the jurisprudence in force in Colombia, according to which the right to the pension and the right to the substitutive compensation of pension are not subject to a statute of limitations in normal circumstances, and even more so in abnormal situations such as that of being a victim of disappearance, was allegedly disregarded.

10. The petitioner also argued that it was impossible for Mrs. Méndez to initiate the process for recognition of a survivor's pension or substitutive compensation before she had a judicial decision of presumed death and its corresponding notarial formalization, processes that she initiated in time and which only culminated in July 1998, the date from which the statute of limitations should be counted. The petitioner also informed in her additional observations that the jurisprudence of the Supreme Court of Justice would indicate that the counting of the weeks contributed to the pension system in the case of forced disappearance should take as a reference the date of the actual disappearance, and not the date of the presumed death - a jurisprudential guideline that was allegedly ignored by the ISS.

11. The petitioner also alleged that the right to life of Mr. León was violated by his disappearance and presumed homicide, and the right to the family of Mrs. Méndez and her children by the subsequent fragmentation of their nuclear family; numerous international instruments were invoked in which the international prohibition of the crime of forced disappearance and the imprescriptibility of criminal action against it are enshrined. It was stated that the disappearance of Mr. León, and his subsequent death, constituted the internationally condemned crime against humanity of forced disappearance. In this regard, in the additional form submitted in July 2019, the petitioner pointed out that the Colombian State, and specifically the National Army, was responsible for the human rights violations "because [Luis Alberto León] was transporting elements and troops".

12. It was explained in the petition that Mrs. Méndez is an elderly woman born in 1946; with health conditions, including diabetes; that she lacks income to subsist in a dignified manner; and that her adult children cannot support her because each one has their own home to which they devote all of their resources. The petition also explains that after the refusal of the ISS to grant the survivor's pension, Mrs. Méndez, who until then had worked as a domestic employee in different homes, was left without economic resources to continue the claim, had to sell her share in the house where she resided and move to the countryside to live in poor conditions for several years; eventually returning to Bucaramanga for health reasons, and experiencing there acute economic difficulties that motivated her to file, years after the ISS decision, the action for the protection of constitutional rights. The alleged victim argued:

Due to the situation of destitution, I took refuge in the countryside in the house of a brother who lives in the municipality of San Andres - Santander, since I had to sell the quota part of the small house received as inheritance from my parents to pay for the expenses of the process before the Court and before the ISS, with the great misfortune (sic) that the ISS misapplied the law and seriously harmed me. Due to my delicate state of health I had to come to live in the city of Bucaramanga, and it is because of my state of need that I filed a action for the protection of constitutional rights against the ISS, so that this public Institution of Social Welfare, proceeded to correct the error and recognize in my favor the survivor's pension in my capacity as surviving spouse.

13. It was also alleged that the judges that considered the action for the protection of constitutional rights omitted to apply the constant jurisprudence of the Colombian courts, in the sense that the action would have been appropriate to protect the pension rights of subjects of special constitutional protection, such as the elderly and victims of violence in conditions of vulnerability and manifest weakness;

circumstances that Mrs. Méndez proved. Likewise, it was indicated that there were no applicable regulations in Colombia for pension substitution for presumed death due to disappearance, because the statute of limitations would apply. Specifically, the petitioner requested the IACHR to order the Colombian State to recognize and pay the survivor's pension to the alleged victim, to which she considered she would have an international, constitutional and legally protected right.

III. FRIENDLY SETTLEMENT

14. On May 18, 2023, the parties executed a Friendly Settlement Agreement that establishes:

FRIENDLY SETTLEMENT AGREEMENT CASE No. 14.906, ELADIA MÉNDEZ BAUTISTA

On May eighteenth (18), 2023, at the facilities of the Universidad Externado de Colombia located in the city of Bogotá D.C., within the framework of the "Friendly Settlements in Colombia: A step closer to the victims" roundtable, Martha Lucía Zamora Ávila, General Director of the National Agency for the Legal Defense of the State, who acts with due authorization on behalf and in representation of the Colombian State, and who is hereinafter referred to as the "State" or the "Colombian State", on the one hand, and on the other hand: **(i)** Mrs. Eladia Méndez Bautista, who is acting in her capacity as victim and petitioner; **(ii)** Dr. Sandra Liliana Jaimes Alvarado, who is acting in her capacity as petitioner for Mrs. Eladia Méndez Bautista; **(iii)** Ms. Gina Marcela Osorio León, acting in her capacity as petitioner for Yaqueline León Méndez, Claudia Patricia León Méndez, Olibardo León Méndez and Adriana León Jaimes, sons and daughters of Mr. Luis Alberto León; hereinafter referred to as "the petitioners", collectively "the parties", in order to sign this Friendly Settlement Agreement in the framework of **Case No. 14.906, Eladia Méndez Bautista**, pending before the Inter-American Commission on Human Rights. .

FIRST PART: DEFINITIONS

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

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

ACHR or American Convention: American Convention on Human Rights.

Moral damage: Injurious effects of the facts of the case that are not of an economic or patrimonial nature, which are manifested through pain, affliction, sadness, distress and anxiety of the victims.

Material damage: Loss or detriment of the victim's income, the expenses incurred due to the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case².

Non-pecuniary damage: Includes suffering and affliction caused to the victims, detriment to very significant personal values, as well as non-pecuniary alterations in the conditions of existence of the victim or her family³.

State or Colombian State: In accordance with International Public Law, it shall be understood to be the signatory subject of the American Convention on Human Rights.

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

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

Measures of satisfaction: Non-pecuniary measures that have as their purpose the recovery of the victims from the harm that has been caused to them. Some examples of this type of measures are: public knowledge of the truth and acts of reparation.

Parties: Colombian State and petitioners.

Acknowledgement of responsibility: Acceptance of the facts and human rights violations attributed to the State.

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

Petitioners: Mrs. Eladia Méndez Bautista, who acts in her capacity as victim and petitioner; Dr. Sandra Liliana Jaimes Alvarado, who acts in her capacity as petitioner for Mrs. Eladia Méndez Bautista; and, Mrs. Gina Marcela Osorio León, who acts in her capacity as petitioner for Yaqueline León Méndez, Claudia Patricia León Méndez, Olibardo León Méndez and Adriana León Jaimes, sons and daughters of Mr. Luis Alberto León.

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

Victims: Mrs. Eladia Méndez Bautista, wife of Mr. Luis Alberto León and their children, Yaqueline León Méndez, Claudia Patricia León Méndez, Olibardo León Méndez and Adriana León Jaimes.

SECOND PART: BACKGROUND

1. On June 4, 2012⁴, the Inter-American Commission received a petition alleging the alleged international responsibility of the Colombian State for the disappearance and death of Mr. Luis Alberto León, husband of Mrs. Eladia Méndez Bautista, as well as for the refusal of the then Social Security Institute, now Colpensiones, to process and recognize the survivors' pension in her favor and the refusal of domestic judges to protect her rights⁵.
2. The initial petition states that Mrs. Eladia Méndez Bautista was married to Mr. Luis Alberto León, who worked for a private company as a driver of a motor vehicle that was rented to the Colombian National Army for the transportation of elements and troops⁶.
3. Mr. Luis Alberto León disappeared on May 31, 1991 in a rural area of the Department of Arauca, presumably at the hands of members of the National Liberation Army operating in that area⁷.
4. The initial petition states that a co-worker of Mr. Luis Alberto León reported the events to the Arauca Police Department on June 12, 1991⁸.
5. In turn, Mrs. Eladia Méndez Bautista filed a suit for declaration of presumed death due to disappearance before the Fourth Family Court of Bucaramanga, which was resolved in first instance on August 22, 1997, declaring the date of presumed death to be May 31, 1993. This decision was confirmed in second instance on November 28, 1997 by the Superior Court of the Judicial District of Bucaramanga - Family Chamber⁹.

⁴ Transmitted to the Colombian State on July 24, 2017.

⁵ Inter-American Commission on Human Rights. Report on Admissibility No. 14/22. February 9, 2022, p. 2.

⁶ Inter-American Commission on Human Rights. Initial petition dated June 4, 2012, pp. 1-2.

⁷ *Ibidem*.

⁸ *Ibid.*, p.1.

⁹ *Ibid.*, p.2.

6. Pursuant to the ruling, Mrs. Eladia Méndez Bautista proceeded to request the recognition of the survivor's pension in her favor before the Social Security Institute. Said body, by means of Resolution No. 002241 of June 15, 2000, denied the pension right as well as the recognition and payment of a compensation in lieu of survivor's pension, by considering: (i) that Mrs. Eladia Méndez Bautista did not accredit the number of weeks required for the survivors' pension in accordance with the provisions of Article 25 of Agreement 049 of 1990, approved by Decree 758 of 1990, which, according to the Social Security Institute, was the regulation in force and applicable at the date of death; (ii) that the statute of limitations over the action for the recognition of the substitutive compensation of survivors' pension had elapsed¹⁰.

7. In view of this decision, Mrs. Eladia Méndez Bautista filed an appeal for reconsideration and an appeal to the Social Security Institute, which were resolved through Resolution No. 000383 of February 19, 2001 and Resolution No. 000211 of April 26, 2001, confirming the decision.

8. According to the aforementioned resolutions, Mr. Luis Alberto León had not contributed the minimum number of weeks legally required during the six (6) years prior to the date of his presumed death, in order to leave the right to the survivors' pension to which his beneficiaries could eventually be entitled. This is due to the fact that, according to the regulations in force at that time, the Social Security Institute required a minimum of 150 weeks of contributions within the last 6 years or 300 weeks of contributions at any time. According to the Social Security Institute, Mr. Luis Alberto León had credited 255 weeks up to 1993, of which 128 were contributed during the six (6) years prior to his death¹¹.

9. After exhausting the administrative venue, Mrs. Eladia Méndez Bautista filed an action for the protection of constitutional rights against the Social Security Institute, requesting the revocation of the administrative acts that denied the recognition of her deceased husband's pension. This action was heard by the Fourth Labor Court of the Bucaramanga Circuit, which, through a judgment of November 22, 2011, denied the validity of this mechanism, considering that it was not the appropriate remedy to demand the revocation of the administrative acts that denied the right to the survivor's pension and substitutive compensation¹².

10. Mrs. Eladia Méndez Bautista challenged the decision of first instance before the Superior Court of the Judicial District - Labor Chamber, who in a judgment of December 19, 2011 denied the claims of the challenge, confirming the decision issued in first instance. In the decision, it was stated that the action for the protection of constitutional rights was not the appropriate means to challenge the administrative acts issued by the Social Security Institute¹³.

11. Finally, Mrs. Eladia Méndez Bautista filed an action for direct reparation against the Nation - Ministry of Defense - National Army, which was heard in the first instance by the First Administrative Court of Arauca¹⁴, which ordered to notify the judgment of April 30, 2019 issued by the 10th Administrative Court of Tunja that denied the claims of the lawsuit¹⁵. This decision was appealed and is currently under review by the Administrative Court of Arauca¹⁶ in second instance.

¹⁰ Social Security Institute. Resolution No. 002241 of June 15, 2000..

¹¹ Social Security Institute. Resolution No. 000211 of April 26, 2001..

¹² Fourth Labor Court of the Circuit. Judgment rendered on November 22, 2011. File No. 2011-0419.

¹³ Superior Court of the Judicial District. Labor Chamber. Judgment rendered on December 19, 2011. File No. 533-2011.

¹⁴ By Agreement PCSJA18-11164 of November 19, 2018, it was ordered to refer the process to the Administrative Courts of Tunja for draft ruling as a decongestion measure.

¹⁵ Ministry of National Defense. Official communication No. RS20221206128405 dated December 6, 2022.

¹⁶ Which admitted it on May 7, 2021.

Pension Law

12. According to official opinion 2014_8166400 of September 29, 2014, issued by the Colombian Pension Administrator - Colpensiones, the generating event for the recognition of the survivor's pension is the death of the member or pensioner and the appropriate document to prove it is the civil registry of death, except in cases of presumed death due to disappearance in which the death must be proven with the executed judicial sentence in which the presumed death of the missing person is declared¹⁷.

13. According to the sentence issued by the Fourth Family Court of Bucaramanga, which declared the presumed death of Mr. Luis Alberto León, he died on May 31, 1993.

14. According to what was indicated by the Colombian Pension Administrator - Colpensiones¹⁸, the pension recognition must be studied in accordance with Agreement 049 of 1990, approved by Decree 758 of 1990, this being the norm in force at the date of death of Mr. Luis Alberto León.

15. This Agreement, in its Article 25, establishes the following as requirements to access the non-professional survivors' pension:

- a. When, at the date of death, the insured has met the number and density of contributions required to acquire the right to the common risk disability pension and,
- b. When the deceased insured was enjoying or was entitled to a disability or old age pension according to these Regulations.

16. Given the above, by reference to Article 25 of Agreement 049 of 1990, in order for the deceased insured or pensioner to be entitled to a survivor's pension, the following requirements had to be met: "(...) b) to have contributed to the Disability, Old Age and Death Insurance, one hundred and fifty (150) weeks within the six (6) years prior to the date of disability, or three hundred (300) weeks, at any time, prior to the state of disability"¹⁹.

17. According to the information submitted by the Colombian Pension Administrator - Colpensiones, Mr. Luis Alberto León accredited a total of 2,146 days worked, corresponding to 306 weeks²⁰.

Criminal investigation

18. Regarding the criminal investigation into the disappearance of Mr. Luis Alberto León, the Attorney General's Office indicated that, after reviewing the information systems of said entity, no investigation was found to have been initiated for the events that took place²¹.

Humanitarian and extra-judicial search for Luis Alberto León

19. The Unit for the Search for Missing Persons²² (Unidad de Búsqueda de Personas Dadas por Desaparecidas) is conducting a humanitarian search for Mr. Luis Alberto León²³.

¹⁷ Colombian Pension Administrator - Colpensiones. Official notice filed No. BZ-2022_17452553 of November 26, 2022.

¹⁸ *Ibidem*.

¹⁹ *Ibidem*. Article 6, Agreement 049 of 1990, approved by Decree 758 of 1990.

²⁰ *Ibidem*.

²¹ Attorney General's Office. Official notice filed No. 20231700002171 of January 13, 2023.

²² The Unit for the Search for Missing Persons is a body of the Colombian State of humanitarian and extrajudicial nature that, within the Integral System for Peace, directs, coordinates and contributes to the search for persons reported missing due to and in the context of the armed conflict.

²³ Unit for the Search for Missing Persons. Official document No. UBPD-1-2022-010785 of October 14, 2022.

20. The humanitarian and extrajudicial search for Mr. Luis Alberto León is registered in the system of said body under file ID 5530, within which meetings have been held with his relatives and the following actions have been carried out:

- Elaboration of a qualitative participation instrument containing the genogram, support networks, narration of the facts and actions that guarantee the participation of the person being sought.
- Entry of Mr. Luis Alberto León in the Information System Network of Missing Persons and Corpses (SIRDEC), with the authorization of his relatives, who was assigned the file number 2022D009882;
- Preparation of a document establishing the status of the search process, in which the databases with the information of the person reported missing were analyzed.

21. The humanitarian and extrajudicial search for Mr. Luis Alberto León is part of the Regional Search Plan for Northern Casanare and Sabanas de Arauca, which is in the process of construction based on the territorial deployment of the Unit for the Search for Missing Persons and the development of Humanitarian Search Actions in the municipalities of Pore, Támara, Paz de Ariporo, Hato Corozal, Sácama and La Salina in the department of Casanare and Tame, Puerto Rondón, Cravo Norte, Arauca in the department of Arauca.

22. As part of the above, the Unit for the Search for Missing Persons is carrying out humanitarian actions to collect relevant information for the search of Mr. Luis Alberto León through contact spaces and the establishment of relationships with possible contributors of humanitarian information.

23. Likewise, actions have been budgeted for the collection of biological samples from his relatives, to be delivered to the National Institute of Legal Medicine and Forensic Sciences and entered into the genetic profile bank for the pertinent comparisons.

24. In accordance with the foregoing, the Colombian State will continue to advance in the search for Mr. Luis Alberto León outside the framework of the Friendly Settlement Agreement and the follow-up that the Inter-American Commission will carry out.

International proceedings

25. By Report No. 14/22, the Inter-American Commission declared the petition admissible with respect to the alleged violation of the rights recognized in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 24 (right to equal protection), 25 (right to judicial protection) and 26 (progressive development of economic, social and cultural rights) of the American Convention on Human Rights, in relation to Article 1. 1 (obligation to respect rights) and Article 2 (domestic legal effects) of the same instrument; as well as Article XVI (social security) of the American Declaration, to the detriment of the alleged victims.

26. The Colombian State, by means of a Note of December 2, 2022 transmitted to the Inter-American Commission, expressed its intention to initiate a process for pursuing a friendly settlement.

27. Subsequently, on January 11, 2023, the Colombian State held a meeting with Dr. Sandra Liliana Jaimes Alvarado, in her capacity as representative of Mrs. Eladia Méndez Bautista, in which it was agreed to sign a Memorandum of Understanding for the Pursuit of a Friendly Settlement.

28. The aforementioned Memorandum was signed on February 10, 2023 and was brought to the attention of the Inter-American Commission on February 13, 2023.

29. Within the framework of the process of seeking a friendly settlement, joint meetings were held to analyze the comprehensive reparation measures to be included in the Friendly Settlement Agreement. During these meetings, the children of Mrs. Eladia Méndez Bautista were involved, who in a meeting held on April 12, 2023, expressed to the Colombian State their willingness to be included as indirect victims of the events that occurred to their father, Mr. Luis Alberto León.

30. Thus, on April 21, 2023, the Colombian State received a communication signed by the children of Mr. Luis Alberto León in which they indicated that they would exercise their own representation in the international proceedings before the Inter-American Commission.

31. Therefore, the Friendly Settlement Agreement is hereby executed with Dr. Sandra Liliana Jaimes Alvarado, in her capacity as representative of Mrs. Eladia Méndez Bautista and with the children of Mr. Luis Alberto León: Yaqueline León Méndez, Claudia Patricia León Méndez, Olibardo León Méndez and Adriana León Jaimes.

32. Likewise, the parties state that the central object of the petition filed before the Inter-American Commission with respect to the facts of the case refers to the right to the survivor's pension of Mrs. Eladia Méndez Bautista and its recognition.

THIRD PART: BENEFICIARIES

The Colombian State recognizes the following persons, all Colombian citizens, as victims of this agreement:

Family member	Relationship	ID
Eladia Méndez Bautista	Wife	(...)
Yaqueline León Méndez	Daughter	(...)
Claudia Patricia León Méndez	Daughter	(...)
Olibardo León Méndez	Son	(...)
Adriana León Jaimes	Daughter	(...)

The victims recognized in this Friendly Settlement Agreement shall benefit provided that they can prove the following with respect to Mr. Luis Alberto León: (i) relationship by affinity, namely, spouse or permanent partner, or (ii) blood relationship.

Additionally, the victims who will benefit from this Friendly Settlement Agreement will be those who were alive at the time of the victimizing event²⁴ and are alive at the time of the execution of the Friendly Settlement Agreement.

FOURTH PART: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility for the violation of the rights to judicial guarantees (Article 8(1)), to judicial protection (Article 25(1)) and to the progressive development of economic, social and cultural rights (Article 26) established in the American Convention, in relation to the general obligation to guarantee (Article 1(1) of the same instrument), to the detriment of Mrs. Eladia Méndez Bautista, as a consequence of the lack of investigation of the facts related to the disappearance of Mr. Luis Alberto León, which prevented their clarification and the punishment of those responsible, generating in her situations of suffering and anguish in her condition as the victim's wife, as well as the refusal of the then Social Security Institute to recognize the survivors' pension in her favor.

²⁴ The foregoing, in accordance with the jurisprudence of the Inter-American Court. See, I/A Court H.R., Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 27, para. 425.

Likewise, the Colombian State recognizes its international responsibility for the violation of the rights to judicial guarantees (Article 8.1.) and to judicial protection (Article 25.1) established in the American Convention, in relation to the general obligation to guarantee (Article 1.1. of the same instrument), to the detriment of the children of Mr. Luis Alberto León, due to the lack of investigation of the events that happened to their father, which prevented their clarification and the punishment of those responsible, generating in them situations of suffering and anguish.

FIFTH PART: MEASURES OF SATISFACTION

The parties establish that, within the framework of this Friendly Settlement Agreement, the following satisfaction measures will be carried out:

I. Act of acknowledgment of responsibility:

On the date of signature of this Friendly Settlement Agreement, the Colombian State, through the National Agency for the Legal Defense of the State, will hold an Acknowledgement of Responsibility Act, which will be presided over by the Director General of the National Agency for the Legal Defense of the State and will be attended by the next of kin of Mr. Luis Alberto León and the Rapporteur for Colombia, Commissioner Joel Hernández García of the Inter-American Commission.

All aspects relating to the development of the Act of Acknowledgment of Responsibility have been agreed with the petitioners and the statement of the Colombian State regarding its international responsibility shall be made in accordance with the acknowledgment of responsibility indicated in this Friendly Settlement Agreement.

II. Survivor's pension:

Pursuant to the provisions of Article 47 of Law 100 of 1993, the Colombian Pension Administrator - Colpensiones shall recognize for life in favor of Mrs. Eladia Mendez Bautista, identified with citizenship card No. [...], a survivor's pension at a percentage of 100% in her capacity as the spouse of Mr. Luis Alberto León.

Likewise, Mrs. Eladia Mendez Bautista shall be granted a retroactive pension that shall be calculated as of April 3, 2015 and shall be paid until the date on which the Inter-American Commission issues the Friendly Settlement Report homologating the Friendly Settlement Agreement signed between the Colombian State and the representative of the victims.

Thus, once the National Agency for the Legal Defense of the State informs the Colombian Pension Administrator - Colpensiones about the publication of the Report of Article 49 of the American Convention, the latter will take the respective steps to issue the Administrative Act that recognizes the concepts stated in favor of Mrs. Eladia Mendez Bautista and will proceed to the respective notification to the beneficiary.

This measure shall be in charge of Colombian Pension Administrator - Colpensiones and shall be implemented in a term no longer than four (4) months once the Friendly Settlement Agreement is approved by the Inter-American Commission²⁵.

²⁵ Colombian Pension Administrator - Colpensiones. Document filed No. BZ 2023_6625683 of May 4, 2023.

III. Publication of the Article 49 report:

The Colombian State shall publish the pertinent sections of the Friendly Settlement Report, once it has been approved by the Inter-American Commission, on the web page of the National Agency for the Legal Defense of the State, for a period of six (6) months.

SIXTH PART: COMPENSATION MEASURES

The Colombian State undertakes to initiate the process of Law 288 of 1996 "Whereby instruments are established for the compensation of damages to victims of human rights violations in accordance with the provisions of certain international human rights bodies", in order to repair the damages caused to the victims' next of kin as a consequence of the harm caused by the facts of this case. For the purposes of compensation, the criteria and amounts recognized by the current jurisprudence of the Council of State shall be used.

Within the framework of the present measure and in order to avoid the phenomenon of double or excessive reparation, the petitioners undertake within thirty (30) calendar days following the signature of the Friendly Settlement Agreement to file before the Administrative Court of Arauca and send to the National Agency for the Legal Defense of the State, the writ of withdrawal of the Action for Direct Reparation pending before said Office, the details of which are as follows:

- Record No. 81001333100120120012501;
- Complainants: Eladia Méndez Bautista, Claudia Patricia León Méndez, Yaqueline León Méndez y Olibardo León Méndez;
- Respondent: Nation - Ministry of National Defense - National Army.

In order to activate this mechanism, the following requirements must be met: (i) The homologation of the present Friendly Settlement Agreement by the Inter-American Commission through the issuance of the Article 49 Report of the American Convention; (ii) The Resolution issued by the Committee of Ministers provided for in Law 288 of 1996, by which, it issues a favorable opinion for compliance with the present measure; and (iii) The submission to the National Agency for the Legal Defense of the State of the writ of withdrawal of the Action for Direct Reparation before the Administrative Court of Arauca, with the due filing stamp.

The National Agency for the Legal Defense of the State will be the body in charge of the procedure established in Law 288 of 1996.

SEVENTH PART: HOMOLOGATION AND FOLLOW-UP

The parties request the Inter-American Commission to homologate this Friendly Settlement Agreement and its follow-up.

Having read this Agreement and the parties being aware of its scope and legal content, it is signed on the eighteenth (18) day of the month of May, 2023.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

15. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the American Convention, the purpose of this procedure is to "reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention." The acceptance to pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta*

sunt servanda, by which States must comply with the obligations assumed in the treaties in good faith.²⁶ It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.

16. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

17. In accordance with the agreement signed between the parties by means of which they requested the Commission to homologate the friendly settlement agreement contemplated in Article 49 of the American Convention, and taking into consideration the request of the parties of June 26, 2023 to move forward by this means, it is appropriate at this time to assess compliance with the commitments established in this instrument.

18. The Inter-American Commission considers that the first (Definition), second (Background), third (Beneficiaries), and fourth (Acknowledgement of Responsibility) clauses of the agreement are of a declaratory nature, and therefore it is not appropriate to supervise their compliance. In this regard, the Commission values the fourth declarative clause, in which the Colombian State recognizes its international responsibility for the violation of the rights recognized in Articles 8.1 (right to a fair trial), 25.1 (right to judicial protection) and 26 (progressive development of economic, social and cultural rights) established in the American Convention, in relation to the general obligation to guarantee (Article 1.1. of the same instrument), to the detriment of Mrs. Eladia Méndez Bautista, as a consequence of the lack of investigation of the facts related to the disappearance of Mr. Luis Alberto León, which prevented their clarification and the punishment of those responsible, generating in her situations of suffering and anguish in her condition as the victim's wife, as well as the refusal of the then Social Security Institute to recognize the survivors' pension in her favor. Likewise, the Commission values the recognition of international responsibility of the State for the violation of the rights recognized in Articles 8(1) (right to a fair trial) and 25(1) (right to judicial protection) established in the American Convention, in relation to the general obligation to guarantee (Article 1(1) of the same instrument), to the detriment of the children of Mr. Luis Alberto León, due to the lack of investigation of the events that occurred to their father.

19. In relation to paragraph (i) of the fifth clause on measures of satisfaction, as jointly reported by the parties, the act of acknowledgment of responsibility was carried out on May 18, 2023. The parties reported the existence of a permanent and fluid communication between the State and the petitioner, who agreed on each of the details for the fulfillment of the measure, such as the date, time, agenda and logistics required for its development. In this regard, the parties provided a simple copy of the invitation to the petitioner and family members to participate in the Act of Acknowledgment of Responsibility, as well as several images of the event and its broadcast, in which Mrs. Eladia Méndez Bautista, her representative, and Gina Marcela Osorio León, as representative of the sons and daughters of Mr. Luis Alberto León, who followed the broadcast virtually, as well as the National Agency for the Legal Defense of the State, participated.

20. Likewise, the parties reported on the contents of the agenda agreed for the event, which included the signing of the FSA, the opening and installation of the event, the Colombian national anthem, the projection of a video in memory of Mr. Luis Alberto León, as well as a few words by Mrs. Sandra Jaimes Alvarado, representative of Mrs. Eladia Méndez Bautista. The State's intervention was made by the the National Agency for the Legal Defense of the State Director of International Legal Defense, who asked for the forgiveness of the victims and their families for what happened, and acknowledged the State's responsibility under the terms established in the friendly settlement agreement signed between the parties, stating the following:

[...]

²⁶ 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.*

On this occasion we want to tell the perpetrators that violence will never be the solution. It has only served to deteriorate and hurt innocent Colombian families. The anguish left by the disappearance of a loved one is one of the cruelest wounds that have accompanied the history of our country. For this reason, we recognize their resilience to move forward with their lives, despite all the pain.

[...]

The Colombian State condemns and rejects the events surrounding the disappearance of Mr. Luis Alberto and deeply regrets that there is still no certainty as to his whereabouts and that, therefore, his family has not been able to move forward in this process of closure and forgiveness. The commitment we have as a society and as a State implies solidarity and empathy with the victims, especially when they turn to the authorities requesting that the necessary measures be adopted to seek justice and access their rights.

We recognize that, in the present case, this did not happen, since the corresponding investigations were not carried out to establish the disappearance of Mr. Luis Alberto and determine his whereabouts. Additionally, the survivor's pension in favor of Mrs. Eladia Méndez was not recognized, in spite of the right that corresponded to her and all the steps taken. The different instances to which you, Mrs. Eladia, had to resort, should invite us, the public officials and collaborators of the State, to reflect on the role we play with regard to the victims and their rights.

We know that the right to access to the administration of justice is a pillar for the consolidation of a better society. Colombia, as a social and democratic State based on the rule of law, has set itself the goal of making this a reality and, to this end, it is the duty of the State to provide citizens with the necessary means so that all persons, without distinction, may obtain the restoration of their rights through the mechanisms available in a prompt and effective manner.

For this reason, on behalf of the Colombian State, I recognize the international responsibility for the violation of the rights to judicial guarantees, to judicial protection and to the progressive development of economic, social and cultural rights, recognized in the American Convention on Human Rights, in relation to the general obligation of respect and guarantee established in the same instrument, to the detriment of Mrs. Eladia Méndez Bautista. Likewise, I recognize the international responsibility of the Colombian State for the violation of the rights to judicial guarantees and judicial protection recognized in the American Convention on Human Rights in relation to the general obligation of respect and guarantee established in the same instrument, to the detriment of the sons and daughters of Mr. Luis Alberto León.

[...].

21. Finally, the event was closed by Commissioner Joel Hernández, Rapporteur for Colombia, who acknowledged the efforts made by the parties to reach a friendly settlement agreement and reiterated the Commission's commitment to follow up on the matter until it is fully complied with. In this regard, he said:

[...]

I humbly join this tribute that the Colombian State pays today in the memory and dignity of Luis Alberto León, because what we have heard here is the story of a family, one of many, who have suffered forced disappearance in this difficult context of the internal armed conflict. [...]

Stories like today's move us to say never again, never again to an armed conflict, never again to take up arms, never again to generate pain to innocent people, because that was never the solution.

Today I join this aspiration of Colombians to reach a total peace, but while we reach that, it is very important to advance in the comprehensive reparation to you, of Mrs. Eladia and, through Gina, Jaqueline, Claudia, Olivardo and Adriana, towards the comprehensive reparation for the pain caused. May this case be a way to close one of so many open wounds, and as Olivardo said very well, it is not an economic compensation that will bring back Don Luis Alberto, because the pain has been inflicted, the absence of the father, of the loving husband, but, hopefully, as Dr. Martha Lucia Zamora said, this will be the way to achieve the redirection of their lives.

[...]

The Inter-American human rights system was created by the States precisely to fill these gaps left by national institutions that are unable to fully redress the violations incurred, but I am pleased that, when the case reached the Commission, there was the will of the State and yours to pursue this path and reach a friendly solution that is materializing today.

[...].

22. The act of acknowledgment was recorded on the YouTube web page of the National Agency for the Legal Defense of the State²⁷. Therefore, taking into account the above, and the information provided jointly by the parties, the Commission considers that item (i) of clause five of the friendly settlement agreement, related to the act of acknowledgment of liability, is fully complied with and so declares.

23. With regard to item (ii) survivor's pension and item (iii) publication of the Article 49 report, both of the fifth clause on satisfaction measures, as well as the sixth clause (compensation measures) of the friendly settlement agreement and by virtue of the joint request of the parties to move forward with the homologation of the agreement prior to its execution, the Commission notes that said measures must be fulfilled after the publication of this report, and therefore considers that they are pending compliance and so declares. For this reason, the Commission would await updated information from the parties on their execution subsequent to the approval of this report.

24. Based on the foregoing, the Commission concludes that item (i) act of acknowledgment of responsibility of the fifth clause has been fully complied with and so declares. On the other hand, the Commission considers that item (ii) survivors' pension and item (iii) publication of the Article 49 report, both of the fifth clause (satisfaction measures), as well as the sixth clause (compensation measures) of the friendly settlement agreement are pending compliance. In this sense, the Commission considers that the friendly settlement agreement has a partial level of implementation and so declares. Finally, the Commission reiterates that the rest of the contents of the agreement are of a declarative nature and therefore it is not the IACHR's responsibility to supervise its compliance.

V. CONCLUSIONS

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

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

²⁷ See, ANDJE, YouTube, *Acto de Reconocimiento Caso 14.906, Eladia Méndez Bautista:* <https://www.youtube.com/watch?v=YzUS4xjybWM>

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement executed by the parties on May 18, 2023.
2. To declare full compliance with item (i) act of acknowledgment of responsibility of the fifth clause of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare compliance pending with items (ii) survivors' pension and (iii) publication of the Article 49 report, of the fifth clause (satisfaction measures), as well as the sixth clause (compensation measures) of the friendly settlement agreement, according to the analysis contained in this report.
4. Continue monitoring the commitments assumed in item (ii) survivors' pension and item (iii) publication of the Article 49 report, both of the fifth clause (measures of satisfaction), as well as the sixth clause (measures of compensation) of the friendly settlement agreement, according to the analysis contained in this report. To this end, the parties are reminded of their commitment to report periodically to the IACHR on their compliance.
5. To publish this report and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 30th day of the month of November, 2023. (Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón, Stuardo Ralón Orellana and José Luis Caballero Ochoa, Commissioners.