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REPORT No. 163/24
CASE 12.842
REPORT ON FRIENDLY SETTLEMENT

BRAINER ALEXANDER OQUENDO SANTANA
COLOMBIA

Approved electronically by the Commission on October 24, 2024

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FRIENDLY SETTLEMENT
BRAINER ALEXANDER OQUENDO SANTANA
COLOMBIA¹
OCTOBER 24, 2024

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On October 6, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition submitted by Nicolás Muñoz Gómez and José Luis Viveros Abisambra, on behalf of Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez, Bladimir Vélez Piedrahita and Brainer Alexander Oquendo Santana, who were all subsequently represented by the Centro Jurídico de Derechos Humanos (hereinafter “the petitioners”). The petition alleged the international responsibility of the Republic of Colombia (hereinafter, “Colombia” or “the State”) for the violation of the human rights enshrined in Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “American Convention” or “Convention”), in connection with Article 1.1 (obligation to respect rights) of this same instrument, as a result of the illegal detention of Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez, Bladimir Vélez Piedrahita and Brainer Alexander Oquendo Santana on November 13, 2002 in the rural area of the Municipality of Urao, Department of Antioquia, by members of the National Army, the subsequent death of the first three individuals, the ill-treatment of Brainer Alexander Oquendo Santana, and the lack of judicial investigation of the facts.

2. On November 2, 2011, the Commission issued Admissibility Report No. 151/11, in which it found the petition admissible and declared its competence to hear the claim filed by the petitioners with respect to the alleged violation of the rights enshrined in Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention, in connection to Article 1.1 (obligation to respect rights), to the detriment of Luis Giován Laverde Moreno et al.²

3. On May 2, 2024, the parties signed a memorandum of understanding to pursue a friendly settlement in the instant case, along with a timeline to move forward in the negotiations. Over the following months, the parties held bilateral meetings in order to analyze the measures of reparation to be included in the friendly settlement agreement (hereinafter “FSA”) with regard to Brainer Alexander Oquendo Santana and his family. Said instrument was signed by both parties on May 23, 2024, in the city of Bogota D.C.

4. On May 30, 2024, the parties submitted a joint report on the progress in the implementation of the FSA and requested the IACHR to approve it. On July 31, 2024, the petitioners waived the proceedings on behalf of Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez and Bladimir Vélez Piedrahita and their family members and requested the IACHR to proceed to approve the FSA on behalf of Brainer Alexander Oquendo Santana and family, reiterating this request on September 30, 2024.

5. Pursuant to Article 49 of the Convention and Article 40.5 of the Rules of Procedure of the Commission, this friendly settlement report includes a summary of the facts of the case as alleged by the petitioner and a transcription of the friendly settlement agreement entered into on May 23, 2024, between the petitioners and the representatives of the Colombian State. Additionally, the Commission hereby approves the agreement signed by the parties and decides to publish this report in its Annual Report to the General Assembly of the Organization of American States.

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.

² It should be noted that reference was made in Admissibility Report No. 151/11 to “Brainer Alexander Oquendo Santana.” Nonetheless, the parties clarified that the correct name is “Brainer Alexander Oquendo Santana” and, therefore, the Commission has rectified it in this report.

II. THE FACTS ALLEGED

6. The petitioners explained, as background, that after the Revolutionary Armed Forces of Colombia (FARC) had kidnapped the Governor of Antioquia and his peace advisor on April 21, 2002 there was a massive buildup of government troops who carried out operations in the rural area of the Municipality of Urrao, Department of Antioquia, where the events of the present case allegedly took place.

7. They alleged that in this context, on December 13, 2002, after having spent the day working in the fields, Luis Giován Laverde Moreno (18 years), José Lizardo Piedrahita Vargas (24 years) and the children Juan Carlos Castro Alvarez, Bladimir Vélez Piedrahita and Braimer Alexander Oquendo Santana, of ages 17, 15 and 14, respectively, were on their way to play billiards at the community center of the village of La Honda in the rural area of the municipality of Urrao. At approximately 6:30 PM they decided to take the road home, and they did so in two groups: on one hand, Luis Giován Laverde Moreno and José Lizardo Piedrahita Vargas and, on the other hand, Juan Carlos Castro Alvarez, Vladimir Vélez and Braimer Alexander Oquendo Santana.

8. At approximately 6:40 PM, Luis Giován and José Lizardo were surprised by members of the National Army who, bearing officially issued uniforms and weapons and employing physical and verbal violence, forced them to lie on the ground. Minutes later another soldier arrived and ordered Luis Giován to stand up, whereupon the soldier shot him several times, killing him. The soldiers then entered into radio communication in which they asked whether they should also kill José Lizardo. The soldiers questioned him on the whereabouts of the weapons of his companions, to which he responded that he had never seen them armed and that he knew nothing about the matter. Members of the Army then took note of his personal data and threatened to kill him if he mentioned anything of what had happened.

9. Moments later, according to the petitioners, in a nearby place members of the Army arrested Juan Carlos, Bladimir and Braimer, herded them into a field and forced them to lie on the ground. The soldiers questioned them about the location of weapons, while beating them and threatening to kill them. Subsequently, the soldiers called a lieutenant by radio and asked him to send "the special guys". When "the special guys" arrived, they separated Braimer from his companions and forced him to witness the execution of Juan Carlos and Bladimir. Braimer had been a member of the FARC militia, but a lieutenant ordered him to go home but not to take the main road.

10. The petitioners alleged that the national Army covered up the executions as a false confrontation with guerrillas of the FARC. This fabrication was included in a report submitted by the counter-guerrilla Battalion 4, "Granaderos", on September 23, 2002.

11. A criminal investigation into the facts was opened by the military justice system. However, relatives of the victims submitted complaints alleging extrajudicial executions to the municipal prosecution office (*Personería Municipal*) of Urrao, whereupon the prosecutor of the Circuit Court of Urrao (*Fiscalía Delegada ante el Juzgado Penal del Circuito de Urrao*) brought action for conflict of jurisdiction, which was settled by the Superior Council of the Judiciary on March 11, 2004, in favor of the ordinary courts. On December 14, 2007, the 92nd prosecutor of the circuit criminal court (*Fiscal 92 Delegado ante el Juzgado Penal*) of Urrao decided to close the preliminary investigation on the grounds that the deaths of the three alleged victims occurred in a confrontation between the Army and the FARC. On this point, the petitioners argued that the investigation failed to take into account the evidence gathered in other proceedings in which statements had been taken from eyewitnesses, as well as the autopsy reports, which were inconsistent with the version offered by the Army.

12. The petitioners also reported that disciplinary proceedings were opened in the Office of Delegate Disciplinary Procurator for the Defense of Human Rights (*Procuraduría Delegada Disciplinaria para la Defensa de los Derechos Humanos*), headquartered in Bogotá, which resulted on July 18, 2005, in a decision to close the case because it had not been possible to identify the suspected perpetrators. As well, relatives of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita filed claims for direct reparations and on August 13, 2009, the Administrative Tribunal of Antioquia declared the State

administratively responsible for the death of the three victims. The Ministry of Defense filed an appeal, which was denied. The petitioners argued that the direct reparations process took much more than a reasonable time.

13. In short, the petitioners argued that the State is responsible for violating articles 4, 5, 8 and 25 of the American Convention in connection with article 1.1 thereof, to the prejudice of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez, and Bladimir Vélez Piedrahita, who were executed, and of Braimer Alexander Oquendo Santana, in view of the imminent risk to his life. The petitioners maintained that the lack of judicial clarification of the material facts of the case and the fact that the investigation remained at the preliminary stage for four years and was then closed constitute a violation of the rights to judicial guarantees and to judicial protection established in articles 8 and 25 of the American Convention, in connection with article 1.1 thereof.³

III. FRIENDLY SETTLEMENT

14. On May 23, 2024, the parties signed a friendly settlement agreement, the text of which states the following:

FRIENDLY SETTLEMENT AGREEMENT
CASE No. 12.842, LUIS GIOVÁN LAVERDE MORENO ET AL

On May twenty-third (23rd) of 2024, , Jhon Jairo Camargo Motta, Acting Director of the National Agency for the Legal Defense of the State, acting with due authorization on behalf and in representation of the Colombian State, hereinafter, referred to as the “State” or the “Colombian State”, on the one hand, and, as on the other Luis Felipe Viveros Montoya and Paula Andrea Jiménez González, in their capacity as representatives of the Centro Jurídico de Derechos Humanos, acting as the representatives of the victims, hereinafter “the Petitioners,” referred to jointly as “the Parties,” in order to enter into the instant Friendly Settlement Agreement in the framework of **Case No. 12.842, Luis Giován Laverde Moreno et al**, pending before the Inter-American Commission on Human Rights.

PART ONE: CONCEPTS

For the purposes of this Agreement, the following terms shall be understood to mean the following:

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

ACHR or American Convention: American Convention on Human Rights.

Moral damages: Harmful effects of the facts of the case that are not of an economic or property nature, which are manifested through the pain, distress, grief, anguish and anxiety of the victims.

Pecuniary damages: The loss or detriment to the income of the victims, the expenses incurred as a result of the facts of the case, and the consequences of a pecuniary nature that have a causal link to the facts of the case.⁴

Non-pecuniary damages: These include both suffering and affliction caused to the victims, detriment to very significant personal values, as well as alterations, of a non-pecuniary nature, in the conditions of existence of a victim or his family.⁵

³ In Admissibility Report No. 151/11, it was noted that the petitioners named José Lizardo Piedrahita Vargas in their account of the events, but they did not include him as an alleged victim.

⁴ Inter-American Court of Human Rights. Case of the Serrano Cruz Sisters vs. El Salvador, (Merits, Reparations and Costs). Judgment of March 1, 2005, Series C No. 120, paragraph 150.

⁵ Inter-American Court of Human Rights. Case of Caesar vs. Trinidad and Tobago, (Merits, Reparations and Costs). Judgment of March 11, 2005. Series C No. 123, paragraph 125.

State or Colombian State: Pursuant to International Public Law, it shall be understood that as the signatory party to the American Convention on Human Rights.

Measures of satisfaction: Non-pecuniary measures intended to aid the victim in recovering from the harm caused to them. Examples of such measures include public admission of the truth and acts of apology.

Parties: The Colombian State and the Petitioners.

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

Comprehensive reparation or *restitutio in integrum*: All measures that objectively and symbolically restore the victim to the state prior to the commission of the harm.

Petitioners: The Centro Jurídico de Derechos Humanos.

Friendly Settlement: Alternative conflict resolution mechanism used to reach a peaceful and consensual settlement before the Inter-American Commission.

Victims: Brainer Alexander Oquendo Santana as direct victim, and his family members, Maria Luz Dary Santana Ibarra, Rafael Antonio Oquendo, Viviana Andrea Oquendo Santana and Fredy Bayardo Restrepo Santana, whose id and kinship will be listed in the third part of this Agreement.

PART TWO: BACKGROUND

1. On October 6, 2006, the Inter-American Commission received a petition, alleging international responsibility of the Colombian State for the illegal detention and extrajudicial execution of Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez and Bladimir Vélez Piedrahita on September 13, 2002⁶ in the rural area of the Municipality of Urrao, Department of Antioquia, by members of the National Army.

2. Pursuant to the initial petition, on the aforementioned date, after spending the day working in agricultural sector, Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez, Bladimir Vélez Piedrahita, José Lizardo Piedrahita Vargas and Brainer Alexander Oquendo Santana got together to play pool and to talk at the Community Center of the village of “La Honda,” in the rural area of the Municipality of Urrao, Department of Antioquia.⁷

3. According to the petition, at approximately 6:30 p.m. the young men decided to head to their respective homes. They did so in two groups. One group consisting of Luis Giován and José Lizardo and the other group consisting of Juan Carlos, Bladimir and Brainer. At around 6:40 p.m. Luis Giován and José Lizardo were blindsided by members of the National Army along the way. The soldiers were wearing uniforms and bearing government-issued weapons and forced the two young men to get down on the ground using physical and verbal violence. Seconds later, another soldier arrived and ordered Luis Giován to stand up and, without any explanation, shot him several times with his government issued gun. Next, the soldiers asked over radio whether they should kill José Lizardo. The soldiers inquired threateningly about the whereabouts of his companions’ weapons, to which he responded he had never seen them armed and that he knew nothing about that. The soldiers then forced him to turn his identity

⁶ In the petition, it is recounted that the events took place on September 13, 2002, nonetheless, in Admissibility Report No. 151/11 issued by the Inter-American Commission, it is noted that they took place on November 13, 2002.

⁷ Initial petition received by the Inter-American Commission on October 6, 2006, pg. 7.

card over to them, they took note of his personal information and threatened that if he told anyone about anything he had witnessed, they would know where to find him and kill him.⁸

4. The petition also notes that minutes later at a nearby location, members of the National Army, all wearing uniforms and duly identified, stopped Juan Carlos, Bladimir and Brainer, who they forced down onto the ground. The soldiers pressed them about the location of weapons threatening to kill the young men if they did not turn them over. Next, according to the account of the Petitioners, Brainer Alexander Oquendo Santana was taken aside, forced to witness the execution of his two companions, who had been ordered to stand at the edge of a gorge. Then, he was released.⁹

5. Even though the initial petition identified Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez and Bladimir Vélez Piedrahita and their respective family members as victims, during the admissibility proceeding the Petitioners submitted a written communication on December 2, 2008 requesting the Inter-American Commission to include Brainer Alexander Oquendo Santana as a victim, on the grounds that he had been subjected to cruel, inhumane and degrading treatment while he was forced to witness the extrajudicial execution of his companions.¹⁰

6. Based on the facts of the case, the Office of Assistant Prosecutor 092, assigned to the Circuit Court for Civil and Criminal Matters of Urrao, opened a criminal investigation into the crime of murder of a protected person. Nonetheless, based on a decision of December 14, 2007, which assessed the merit of the preliminary investigation, the Office decided to preclude further investigation into the soldiers involved. The decision became final on December 27, 2007.¹¹

7. On the other hand, by judgment of August 13, 2009, the Fifth Chamber of Decisions of the Administrative Tribunal of Antioquia found the Nation – Ministry of Defense – National Army, responsible for the death of messieurs Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez and Bladimir Vélez Piedrahita, and sentenced it to payment of moral and pecuniary damages to their respective family groups.¹²

8. As alleged by the Petitioners, as a witness to the events and, based on the statements he gave to judicial officials at the request of the family members of the other victims, Brainer Alexander Oquendo Santana and his family were victims of threats and intimidation and were compelled to leave for the city of Medellín for their own safety and lives.¹³

9. Additionally, although the initial petition also included the violations perpetrated against Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez and Bladimir Vélez Piedrahita, the Petitioners have informed the Colombian State that, in view of the reparations granted to the families of these victims under the domestic legal system, this friendly settlement will only concern the victim Brainer Alexander Oquendo Santana and his family. As they have not been awarded reparation by the Colombian State. Thus, in signing this document, the Petitioners withdraw and waive the request for additional and or supplementary measures for the direct victims of these acts.

⁸ *Ibid.*, pgs. 7 and 8.

⁹ *Ibid.* Pg. 8.

¹⁰ Observations of the petitioners of December 2, 2008, submitted to the Inter-American Commission, pg. 13.

¹¹ Office of the Attorney General of the Nation. Case File No. 20181700050371 of June 26, 2018.

¹² Administrative Court of Antioquia. Fifth Decision Chamber. Action for Direct Reparation No. 05001-23-32-000-2003-02756-00. Decision of August 13, 2009.

¹³ Petitioners' communication of April 16, 2020, pg. 4.

10. Therefore, once the instant Friendly Settlement Agreement is approved, the contentious proceeding regarding this case before the Inter-American Commission shall be concluded, a fact known and accepted by the Petitioners.

International proceedings

1. By means of Report No. 151/11, the Inter-American Commission found the petition admissible with regard to the alleged violation of the rights set forth in Article 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights, in connection with Article 1.1 (obligation to respect rights) of the same instrument to the detriment of the victims.

2. The Colombian State, by Note of April 26, 2024, submitted to the Inter-American Commission, expressed its intention to pursue a friendly settlement.

3. On April 30, 2024, the Parties held a meeting at the facilities of the National Legal Defense Agency of the State. During this meeting, the petitioners submitted a proposal for comprehensive reparations, which was discussed, and the parties agreed to move forward with the signing of a Memorandum of Understanding for the Search of a Friendly Settlement.

4. Accordingly, the Parties signed this Memorandum on May 2, 2024, which was brought to the attention of the Inter-American Commission on May 3, 2024.

5. Given that the Parties have reached an agreement regarding acknowledgment of international responsibility, as well as the measures of comprehensive reparation for Mr. Brainer Alexander Oquendo Santana and his family, they agreed to sign this Friendly Settlement Agreement, which shall be governed by the provisions set forth hereunder:

PART THREE: BENEFICIARIES

The Colombian State recognizes the following individuals as victims in this agreement, all being Colombian citizens:

VICTIM	RELATIONSHIP	IDENTIFICATION
Brainer Alexander Oquendo Santana	Direct victim	[...]
Maria Luz Dary Santana Ibarra	Mother	[...]
Rafael Antonio Oquendo	Father	[...]
Viviana Andrea Oquendo Santana	Sister	[...]
Fredy Bayardo Restrepo Santana	Brother	[...]

The victims recognized in this Friendly Settlement Agreement shall benefit therefrom, provided that they prove their kinship to Mr. Brainer Alexander Oquendo Santana.

Additionally, the victims benefiting from this Friendly Settlement Agreement shall be those who were alive at the time of the victimizing act.¹⁴ Accordingly, the Petitioners attest that all the individuals listed above are alive at the time of the signing of the Friendly Settlement Agreement.

¹⁴ Pursuant to the legal precedents of the IA Court of HR. See, IA Court of HR. Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. (Preliminary objections, Merits, Reparations and Costs.) Judgment of November 20, 2013. Series C No. 270, par. 425.

PART FOUR: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility for the violation of the rights to humane treatment (Article 5), personal Liberty (Article 7) and to the rights of the child (Article 19), established in the American Convention, in connection with the general obligation to respect rights (Article 1.1 of the same instrument), to the detriment of Brainer Alexander Oquendo Santana, for the ill-treatment and threats he endured on September 13, 2002, in the Municipality of Urrao, Antioquia.

The Colombian State further acknowledges its international responsibility for the violation of the rights to a fair trial (Article 8.1) and to judicial protection (Article 25.1) as established in the American Convention, in connection with the general obligation to respect rights (Article 1.1 of the same instrument), to the detriment of Brainer Alexander Oquendo Santana and his family, bearing in mind that, to date, the circumstances surrounding these events have yet to be clarified and, consequently, those responsible have not been investigated, tried and punished.

PART FIVE: MEASURES OF SATISFACTION

The parties establish that, within the framework of the instant Friendly Settlement Agreement, the following measures of satisfaction shall be performed:

I. Public Ceremony for the Acknowledgment of Responsibility:

On the date of the signing of this Friendly Settlement Agreement, the Colombian State, through the National Agency for the Legal Defense of the State shall hold a Public Ceremony for the Acknowledgment of Responsibility. This ceremony will be presided over by the Director of the National Agency for the Legal Defense of the State and shall include the attendance of Brainer Alexander Oquendo Santana and the IACHR Rapporteur for Colombia, Commissioner José Luis Caballero Ochoa.

All aspects relating to the holding of the Ceremony for the Acknowledgment of Responsibility have been coordinated with the Petitioners. The statement of the Colombian State regarding its international responsibility shall be made in accordance with the acknowledgment of responsibility set forth in the instant Friendly Settlement Agreement.

The National Agency for the Legal Defense of the State shall be in charge of the coordination of this measure.

II. Publication of the Article 49 Report:

The Colombian State shall publish the Friendly Settlement Report pursuant to Article 49 of the American Convention after the Agreement is approved by the Inter-American Commission, on the website of the National Agency for the Legal Defense of the State, for a period of six (6) months.

The National Agency for the Legal Defense of the State shall be in charge of this measure.

PART SIX: MEASURES OF JUSTICE

Once the Friendly Settlement Agreement has been signed, the National Agency for the Legal Defense of the State shall request the Special Jurisdiction for Peace to study the feasibility of including the instant case among the illustrative cases that will be investigated in the phase of the national investigation of the Chamber of Acknowledgement of Truth, of Responsibility and of Determination of Facts and Conduct, pursuant to the prioritization and selection criteria

used by this Jurisdiction in the framework of Order OPV 305 of July 14, 2023.¹⁵ The aforementioned order presented the internal prioritization of the phase of national investigation of macro-case 03, which included cases that are before the Inter-American Human Rights system.

The National Agency for the Legal Defense of the State will be in charge of this measure. This measure shall be implemented once this Entity submits the appropriate request to the Special Jurisdiction for Peace, without compromising the decision to be adopted by this Jurisdiction.

PART SEVEN: MEASURES OF COMPENSATION

The State undertakes to begin the process under Law 288 of 1996 “establishing instruments for the compensation for damages to the victims of human rights violations by virtue of rulings of certain international human rights bodies;” once the instant friendly settlement agreement has been approved and the Report pursuant to Article 49 of the American Convention has been issued. The aforementioned in order to provide reparation for the non-pecuniary damages caused to Brainer Alexander Oquendo Santana, and his family (his parents and siblings), as a consequence of the violations committed through the crimes of the instant case, taking into account the objective, reasonable and effective criteria of the Colombian administrative claims jurisdiction.

The National Defense Ministry shall be in charge of the processing of Law 288 of 1996.¹⁶

PART EIGHT: APPROVAL AND FOLLOW-UP

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

Having been read and the parties being aware of its scope and legal content, this Agreement is signed on the twenty-third (23) of May of 2024.

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.¹⁷ It also wishes to remind 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 the instant case and appreciates the efforts made by both parties during the negotiation to reach this agreement, which is consistent with the object and purpose of the Convention.

17. The Inter-American takes note of the information submitted by the petitioners on July 31, 2024, requesting the withdrawal of the proceeding with respect to Luis Giován Laverde Moreno, Juan Carlos

¹⁵ Special Jurisdiction for Peace. Chamber of Acknowledgement of Truth, of Responsibility and of Determination of Facts and Conduct. Auto OPV 305 of July 14, 2023. Case 03. Killings and forced disappearances presented as casualties in combat by agents of the State.

¹⁶ Ministry of National Defense. Official Letters Nos. RS20240425055754 of April 25, 2024, and RS20240429057651 of April 29, 2024.

¹⁷ 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.*

Castro Álvarez and Bladimir Vélez Piedrahita and their families, inasmuch as they have received reparations in the domestic legal system. Likewise, the Commission notes that in the text of the FSA the parties have expressed their understanding that the FSA only involves victim Brainer Alexander Oquendo Santana and his family members who, as of the present date, have not received reparations from the Colombian State. In the same light, the petitioners withdrew and waived the request for additional and/or complementary measures for the other direct victims of the events described in the instant case.

18. Based on the foregoing and in view of the information submitted by the parties, the Commission hereby decides to archive the case proceedings with respect to Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez and Bladimir Vélez Piedrahita, pursuant to Article 48(1)(b) of the American Convention and Articles 41 and 42 of the Rules of Procedure of the IACHR.

19. On the other hand, as set forth in the clause eight of the FSA and taking into consideration the request of the parties of May 30, 2024, to move forward in this way, the Commission notes that this is an appropriate time to assess compliance with the commitments set forth in the friendly settlement agreement.

20. The Commission considers that clauses one (Concepts), two (Background), three (Beneficiaries) and four (Acknowledgment of Responsibility) of the agreement are of a declarative nature and, therefore, do not require supervision of compliance. In this regard, the Commission values clause four, in which the Colombian State acknowledges its international responsibility for the violation of the rights to humane treatment (article 5), personal liberty (article 7) and the rights of the child (article 19), as set forth in the American Convention, in connection with the general obligation to respect rights (article 1.1 of the same instrument), to the detriment of Brainer Alexander Oquendo Santana, for the ill-treatment and threats endured by him in the events that took place on September 13, 2002, in the Municipality of Urrao, Antioquia. The Commission also appreciates the acknowledgment of international responsibility of the State for the violation of the rights to a fair trial (article 8.1) and to judicial protection (article 25.1) as set forth in the American Convention, in connection with the general obligation to respect rights (article 1.1 of the same instrument), to the detriment of Brainer Alexander Oquendo Santana and his immediate family members, in view of the fact that, as of the present date, the circumstances surrounding these events have not been clarified and, consequently, those responsible have not been investigated, tried and punished.

21. With respect to section I of clause five, regarding the public ceremony for the acknowledgment of responsibility, according to information jointly reported by the parties, the act was held on May 23, 2024. The parties reported an ongoing and smooth communication between the State and the petitioners. Both parties agreed on each of the details for the compliance with the measure, such as the date, time, agenda, the video to be shown and the logistics required for its development. The parties provided a copy of the invitation shared with the petitioners and family members to participate in the Public Ceremony for the Acknowledgement of Responsibility, as well as several images of the event. The ceremony was attended by Mr. Brainer Alexander Oquendo Sanatana, his wife, Claudia Patricia Alvarez, and representatives of the Centro Jurídico de Derechos Humanos, as well as the National Agency for the Legal Defense of the State and IACHR Commissioner and Rapporteur for Colombia, José Luis Caballero Ochoa. Additionally, the parties provided the details of the live broadcast of the event, through the YouTube channel of the National Agency for the Legal Defense of the State.¹⁸

22. The parties also reported on the content of the agenda agreed upon for the event, which included the signing of the FSA, the opening and installation of the ceremony, the Colombian national anthem, the projection of a video in honor of Brainer Alexander Oquendo Santana, as well as remarks by Mr. Luis Felipe Viveros Montoya, representative of the victims. The remarks on behalf of the State were made by the director in charge of the National Agency for the Legal Defense of the State, who acknowledged the responsibility of the State under the terms of the friendly settlement agreement signed by the parties, as follows:

¹⁸ See: National Agency for the Legal Defense of the State, YouTube, Case 12.842 Luis Giován Laverde Moreno et al. Available at: [Caso 12.842 Luis Giován Laverde Moreno y Otros - YouTube](#) (Last viewed on September 23, 2024).

[...]

On behalf of the Colombian State, I acknowledge the international responsibility for the violation of the rights to humane treatment, personal liberty and the rights of the child as recognized in the American Convention on Human Rights, in connection with the general obligation to respect and guarantee, as established in the same instrument, to the detriment of Brainer Alexander Oquendo Santana, to whom I say once again, I apologize.

I also acknowledge the international responsibility of the Colombian State for the violation of the rights to a fair trial and to judicial protection as recognized in the American Convention on Human Rights, in connection with the general obligation to respect and guarantee as established in the same instrument, to the detriment of Brainer Alexander Oquendo Santana and his family. [...]

The Municipality of Urrao suffered, for many years, episodes of violence that led to the stigmatization of its civilian population, which is made up of, *inter alia*, farm workers and working class people who just wanted to live in a territory free of conflict, free of war. Brainer, today we acknowledge that you were part of the stigmatized and violated population and therefore I offer you, my apology. [...]

I would also like to emphasize that the best interests and protection of the rights of children must be a fundamental pillar in all actions undertaken by the institutional authorities of the State and by society as a whole. It must guide legislation, policies, and practices relating to children, regardless of their status. This will clearly make it possible to build a society where their rights are respected, and their future is protected. [...]

These events should prompt the members of the public security forces, as well as public officials and collaborators of the State to reflect on the role that we play vis-a-vis victims and their rights. Lastly, I cannot finish my remarks without thanking the Inter-American Commission on Human Rights for all of the support it gave the Agency in these cases.

[...].

23. Lastly, the closing remarks of the ceremony were given by Commissioner José Luis Caballero Ochoa, IACHR Rapporteur for Colombia, who said the following:

[...]

It was the fluidity of the dialogue between both parties that allowed them to define a friendly settlement agreement that specifically contains all measures consented to by the parties in order to obtain a comprehensive reparation of the victims. In this respect, it is also important to note the adequate use of the friendly settlement mechanism by the parties in a process that has been characterized by respect for the will, flexibility, and agility that allowed a smooth exchange which culminated in a successful negotiation that brings us today to this important ceremony. [...]

Acknowledging responsibility is the first act towards healing. We understand the pain that these events have caused, and we hope that this acknowledgement marks the beginning of a healing process. More than a formality, this ceremony is a commitment to the truth and prevention of future mistakes by the State.

In this case, it is also the beginning of an exercise towards a future that is what we see as comprehensive reparation and guarantees of non-repetition. It is so important therefore for

Colombia to heal from so much pain, so much violence, so many victims. Reconciliation requires acknowledgment of the injury caused and precisely the promise to not repeat it.

[...].

24. In view of the foregoing and the information jointly provided by the parties, the Commission considers, and hereby declares, that section I of clause five of the friendly settlement agreement, relating to the public ceremony of acknowledgement of responsibility, has been fully implemented.

25. With respect to section II of clause five, regarding the publication of the Article 49 report, as well as clauses six (measures of justice) and seven (measures of compensation) of the friendly settlement agreement and by virtue of the joint request of the parties to proceed with the approval of the agreement prior to their execution, the Commission notes that these measures must be complied with after the publication of the instant report. Therefore, the Commission considers, and hereby declares, that their compliance is still pending. In light of the above, the Commission awaits updated information from the parties on their implementation subsequent to the approval of this report.

26. Based on the foregoing, the Commission concludes, and hereby declares, that section I of clause five (public ceremony for the acknowledgment of responsibility) has been met with full compliance. On the other hand, the Commission considers, and hereby declares, that compliance is still pending with sections II of clause five (publication of the Article 49 report), as well as clauses six (measures of justice) and seven (measures of compensation) of the friendly settlement agreement. Accordingly, the Commission finds, and hereby declares, that the friendly settlement agreement has been partially implemented. Lastly, the Commission reiterates that the rest of the content of the agreement is declarative in nature and, therefore, does not require supervision.

V. CONCLUSIONS

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

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on May 23, 2024.

2. To archive the matter with respect to victims Luis Giován Laverde Moreno, Juan Carlos Castro Álvarez and Bladimir Vélez Piedrahita and their family.

3. To declare full compliance with section I of clause five (public ceremony for the acknowledgement of responsibility) of the friendly settlement agreement, as per the analysis set forth in this report.

4. To declare that compliance with sections II of clause five (publication of the Article 49 report), as well as clauses six (measures of justice) and seven (measures of compensation) of the friendly settlement agreement, is still pending as per the analysis set forth in this report.

5. To continue to monitor the commitments undertaken in sections II of clause five (publication of the Article 49 report), as well as clauses six (measures of justice) and seven (measures of compensation) of the friendly settlement agreement, based on the analysis set forth in this report. To that end, to remind the parties of their commitment to report periodically to the IACHR on its implementation.

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 24th day of the month of October, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Edgar Stuardo Ralón Orellana, Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.