

OEA/Ser.L/V/II
Doc. 36
21 May 2024
Original: Spanish

REPORT No. 33/24
CASE 12.843
REPORT ON FRIENDLY SETTLEMENT

LUIS AND LEONARDO CAISALES DOGENESAMA
COLOMBIA

Approved electronically by the Commission on May 21, 2024.

Cite as: IACHR, Report No. 33/24, Case 12.843. Friendly Settlement. Luis and Leonardo Caisales Dogenesama. Colombia. May 21, 2024.

REPORT No. 33/24
CASE 12.843
FRIENDLY SETTLEMENT
LUIS AND LEONARDO CAISALES DOGENESAMA
COLOMBIA¹
May 21, 2024

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On December 13, 2006, the Inter-American Commission on Human Rights (“the Commission” or “IACHR”) received a petition filed by Mr. Pedro Julio Mahecha Dávila, on behalf of the victims, which was later assumed by Ms. July Milena Enriquez Sampay and later by Ms. Diana Marcela Muriel Forero² (“the petitioner” or “the petitioners”) alleging the responsibility of the Republic of Colombia (“State,” “Colombian State,” or “Colombia”), for violations of the human rights enshrined in Articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter “Convention”, “American Convention” or “ACHR”) in connection with Articles 1.1. and 2 thereof, as a result of the extrajudicial execution of Luis Caisales Dogenesama and the injuries caused to Leonardo Caisales Dogenesama (hereinafter “the victims”)³, members of the Embera Chamí People, on December 13, 2001, in the village of Itaurí, municipality of Pueblo Rico, department of Risaralda.

2. On November 2, 2011, the Commission issued Admissibility Report No. 152/11, declaring the petition admissible and declaring its authority to hear the claim filed by the petitioners regarding the alleged violation of the rights contained in Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial) and 25 (judicial protection) in accordance with Article 1.1 (obligation to respect rights) of the American Convention.

3. On March 19, 2021, the parties signed a memorandum of understanding to seek a friendly settlement in this case, with a timetable to move forward with the negotiations. In the following months, the parties held bilateral meetings to analyze the reparation measures to be included in the friendly settlement agreement (hereinafter FSA), which materialized with the signing of said instrument on December 21, 2022, Bogotá, D.C. Subsequently, on November 1, 2023, the parties submitted a joint report on the progress in the implementation of the FSA and requested the approval of the IACHR.

4. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Rules of Procedure of the Commission, contains a summary of the facts alleged by the petitioner and a transcription of the friendly settlement agreement signed on December 21, 2022, 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 of the IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioner stated that on December 13, 2001, the brothers Luis and Leonardo Caisales Dogenesama, members of the Indigenous Council of the Municipality of Pueblo Rico, Risaralda and the Arenales community of the reservation Embera Chamí (the first indigenous governor and health advocate and the latter schoolteacher) left their homes in the El Arenal settlement to collect their wages in la Unión. That afternoon when they returned, they were assaulted by members of the San Mateo No. 8 Artillery Battalion, who fired indiscriminately at them and at Alonso Molina Vargas, with whom they had crossed paths. The petitioner

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 Ms. July Milena Enriquez Sampay began representing the victims on May 28, 2019. Subsequently, on February 16, 2021, Ms. Diana Marcela Muriel took over as their representative, as stated in the file.

³ After verifying the identification documents of the beneficiaries of this friendly settlement agreement, the Commission acknowledges and corrects the unintentional error in the names of Luis and Leonardo Caisales Dogenesama in this approval report. In the original petition, their names were incorrectly written as *Luis and Leonardo Caizales Dogenesama*.

indicated that Alonso (or also Alfonso) Molina Vargas⁴ was injured. Leonardo Caisales Dogenesama was wounded in the left leg and left shoulder blade by a firearm, while Luis Caisales Dogenesama suffered injuries to the spinal column and died.

6. Based on the information provided by the petitioner, it can be gathered that on December 13, 2001, the abovementioned Colombian army anti-guerilla “attack” battalion had been involved in an armed confrontation with the *Ejercito Revolucionario Guevarista* (hereinafter “ERG”) in the Puente La Unión and the alleged victims and Alonso Molina suffered injuries as a result of said confrontation. The petitioner alleged that the State violated the right to freedom of Leonardo Caisales Dogenesama, who was arbitrarily detained by members of the aforementioned battalion, brought before the Pereira Prosecutor’s Complaint Filing Office on December 14, 2001, and accused of belonging to the ERG.

7. The petitioner alleged that the injuries and death were investigated by Military Court of Criminal Investigation 56, located in Pereira, Risaralda. The petitioner stated that the army officials who were accused argued that they were attacked by insurgents against whom they defended themselves and charged that the alleged victims were rebels. The petitioner pointed out that on May 2, 2006, Office 18 of the Military Criminal Prosecutor Assigned to the Ninth Court of Brigade Instance concluded its investigation of the six army officials, assessed the probative value of the evidence, decided to abstain from issuing an indictment [*resolución acusatoria*] and ordered all proceedings against the accused be dropped. The petitioner indicated that after an appeal was filed by the plaintiffs in a civil suit this decision was confirmed on June 13, 2006, by Prosecutor’s Office 2 of the Military Criminal Court.

8. The petitioner pointed out that these acts gave rise to a disciplinary investigation of three Colombian army officials by the Office of the Delegated Disciplinary Solicitor for the Defense of Human Rights under case 008-72924/2002. This proceeding was shelved on July 25, 2003.

9. The petitioner indicated that proceedings were initiated against Leonardo Caisales Dogenesama for rebellion in which the Indigenous Governor of the Council of Pueblo Rico submitted a request that the proceeding be transferred from the Office of the Prosecutor General of the Nation [*Fiscalía General de la Nación*] (hereinafter “FGN”) to the special indigenous jurisdiction. The petitioner further indicated that the Apia Risaralda Sectional Prosecutor’s Office 23 denied this request on January 22, 2002. The petitioner finally stated that the Pereira Circuit Third Criminal Court acquitted Leonardo Caisales Dogenesama on December 5, 2002. The petitioner considers that Leonardo Caisales Dogenesama’s detention was arbitrary and his access to a judicial remedy to demand his freedom was hindered.

10. Thereafter, the petitioner has alleged that although it seems that on December 13, 2001, regular forces were involved in a battle with insurgent forces, this battle was also waged against at least three civilians, which of course runs counter to the legal and constitutional responsibilities entrusted to the Colombian army. Therefore, the attack the indigenous individuals suffered “[...] could never be considered acts of military service.”

11. The petitioner added that they have not gone before the administrative courts seeking redress, “among other reasons, because in Colombia these courts are unable to go forward with a true proceeding for redress in the manner provided for under international human rights law. “

12. The petitioner alleged that the death and the violations of the rights of the alleged victims should be investigated by the ordinary criminal courts, which provide for courts of record with jurisdiction over human rights violations and an impartial tribunal. The petitioner contended that military criminal courts do not offer an effective remedy and that these acts have gone unpunished. The petitioner further contended that these acts were not effectively investigated and tried because the decisions issued by military criminal justice were arbitrary.

⁴ This petition was not submitted on behalf of Alonso Molina Vargas, which is why he does not appear as an alleged victim in Admissibility Report No. 152/11.

III. FRIENDLY SETTLEMENT

13. On December 21, 2022, the parties entered into a friendly settlement agreement in the city of Bogotá D.C., the text of which provides as follows:

FRIENDLY SETTLEMENT AGREEMENT⁵ CASE 12.843, LUIS AND LEONARDO CAIZALES DOGENESAMA

On December 21, 2022, in the city of Bogotá D.C., **ANA MARÍA ORDOÑEZ PUENTES**, Director of the Office of International Legal Defense of the National Agency for the Legal Defense of the State, acting on behalf of the Colombian State and hereinafter referred to as the “State” or the “Colombian State”; and **DIANA MARCELA MURIEL FORERO**, acting on behalf of the victims in the international legal proceedings and hereinafter referred to as “the petitioners,” met with the purpose of signing this Friendly Settlement Agreement in the framework of **Case No. 12.843, Luis and Leonardo Caizales Dogenesama**, underway 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.

Moral damage: Injurious effects of the facts of the case that are not economic or property-related, which are manifested through the pain, affliction, distress, sadness, grief, and anxiety of the victims.

Material damage: This includes the loss or detriment to the victim’s income, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus to the facts of the case.⁶

Non-pecuniary damage: Includes both the suffering and distress caused to the victims, the impairment of values that are very significant to individuals, as well as the disruption, of a non-pecuniary nature, in the living conditions of the victim and their family.⁷

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

Measures of satisfaction: Non-pecuniary measures that have as their purpose the recovery from the harm that has been caused to them. Such measures include, for example, public knowledge of the truth and acts of reparation.

Parties: The Colombian State and the petitioners.

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

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

⁵ Numbering different from the original text of the FSA.

⁶ 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.

⁷ 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.

Petitioners: Diana Marcela Muriel Forero.

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

Victims: Luis Caisales Dogenesama and Leonardo Caisales Dogenesama are direct victims of the facts of the case. The indirect victims of the events that happened to Mr. Luis Caisales Dogenesama and Leonardo Caisales Dogenesama are the family members identified in the third part of this Agreement as “beneficiaries.”

SECOND PART: BACKGROUND

BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

1. On December 13, 2006, the Inter-American Commission received a petition lodged by Pedro Julio Mahecha Ávila, alleging the responsibility of agents of the Colombian State for the extrajudicial execution of Luis Caisales Dogenesama and the injuries caused to Leonardo Caisales Dogenesama, both members of the Embera Chamí Indigenous community, on December 13, 2001, as they were returning to their home in the village of El Arenal, municipality of Pueblo Rico, department of Risaralda.⁸
2. According to the initial petition, on December 13, 2001, the brothers Luis and Leonardo Caisales Dogenesama were returning from the municipality of La Unión to their home located in the village of El Arenal, municipality of Pueblo Rico, department of Risaralda, when they encountered counter-guerrilla members of the San Mateo Artillery Battalion No. 8 of the National Army, who were engaged in an armed confrontation with members of the *Ejercito Revolucionario Guevarista* (ERG).⁹
3. During the confrontation, Luis Caisales Dogenesama was shot and died while being taken to a medical center, while Leonardo Caisales Dogenesama was wounded.¹⁰
4. On the other hand, according to the petition, members of the San Mateo Artillery Battalion No. 8 of the National Army detained Leonardo Caisales Dogenesama on December 14, 2001, and brought him before the Pereira Assignment Prosecutor’s Office, accusing him of belonging to the ERG.
5. The death of Luis Caisales Dogenesama and the injuries caused to Leonardo Caisales Dogenesama, allegedly by members of the National Army, were investigated by the 56th Court of Military Criminal Investigation, the 9th Trial Court for the Sixth and Eighth Brigades, and the 18th Military Criminal Prosecutor’s Office attached to the 9th Trial Court for the Sixth and Eighth Brigades.¹¹
6. In this case, on May 2, 2006, the 18th Military Criminal Prosecutor’s Office before the Ninth Brigade Trial Court assessed the evidence and decided to refrain from issuing an indictment against six members of the National Army, thus ordering the termination of all proceedings.¹² Following an appeal filed by the petitioners as a civil party, the

⁸ Initial petition filed by Pedro Julio Mahecha Ávila before the Inter-American Commission on Human Rights on December 13, 2006, p. 1.

⁹ *Ibidem*.

¹⁰ *Ibid.*, pp. 1-2.

¹¹ *Ibid.*, p. 3.

¹² Ministry of National Defense. Office of the 18th Military Criminal Prosecutor before the Ninth Brigade Trial Court. Legal Determination No. 027-2006 of March 2, 2006.

decision was upheld by the Second Prosecutor's Office before the Superior Military Court, by decision of June 13, 2006.¹³

7. On December 5, 2002, the Third Criminal Court of the Pereira Circuit issued a judgment of acquittal in favor of Leonardo Caisales Dogenesama,¹⁴ who had been charged with the crime of rebellion and deprived of his liberty for 12 months.
8. On November 2, 2011, the Inter-American Commission issued its Admissibility Report No. 152/11, declaring the petition admissible for purposes of examining the alleged violation by the Colombian State of the human rights set forth in Article 4 (right to life), Article 5 (humane treatment), Article 7 (personal liberty), Article 8 (right to a fair trial) and Article 25 (judicial protection), in conjunction with Article 1.1 of the American Convention on Human Rights.
9. In its report, the IACHR considered, *inter alia*, that when the Third Criminal Circuit Court of Pereira acquitted Leonardo Caisales Dogenesama on December 5, 2002, the Colombian justice system found that the alleged victim did not commit the crime of rebellion. In the Commission's opinion, after the court's determination of Leonardo Caisales Dogenesama's innocence (from which his civilian status is inferred), the investigation and possible criminal prosecution of the six members of the National Army alleged to have violated his physical integrity should have taken place in the ordinary criminal courts, since the case concerned alleged human rights violations.¹⁵
10. The Colombian State informed the Inter-American Commission on December 16, 2020, of its intention to initiate a friendly settlement process.
11. On March 19, 2021, the Colombian State and the petitioners signed a memorandum of understanding to seek a friendly settlement, which was brought to the attention of the Inter-American Commission on March 23, 2021.
12. In the following months, joint meetings were held between the parties to analyze the comprehensive reparation measures to be included in the friendly settlement agreement to be signed.
13. With regard to these efforts, the parties highlight the inclusion of the facts of the case by the Commission for the Clarification of Truth, Coexistence, and Non-Repetition¹⁶ (hereinafter "Truth Commission") as part of the various meetings held between the petitioners, representatives of the Truth Commission, and the National Agency for the Legal Defense of the State and the collective interview conducted by this agency with the Embera Chamí Indigenous People, which constitutes a measure of memory and non-repetition.

¹³ Ministry of National Defense. Military Criminal Justice. Second Prosecutor's Office before the Superior Military Court. Decision of June 13, 2006.

¹⁴ *Ibid.*, p. 2.

¹⁵ Inter-American Commission on Human Rights. Admissibility Report No. 152/11 of November 2, 2011, para. 47.

¹⁶ Commission for the Clarification of Truth, Coexistence, and Non-Repetition. Final Report. *Resistir no es aguantar. Violencias y daños contra los pueblos étnicos de Colombia* [To resist is not to withstand: Violence and harm against ethnic peoples in Colombia.], pp. 191-192. Commission for the Clarification of Truth, Coexistence, and Non-Repetition. Ethnic Peoples Chapter. Case *Pueblos indígenas en riesgo inminente de exterminio físico y cultural* [Indigenous peoples at imminent risk of physical and cultural extermination], p. 89.

14. The agreements reached by the parties include the clauses set forth below:

THIRD PART: BENEFICIARIES

The Colombian State recognizes the following persons, all of whom are Colombian citizens, as beneficiaries of this agreement:

- **With respect to Luis Caisales Dogenesama:**

Name	Citizen ID Card	Relationship
María Rufina Dogenesama Gonzales	[...]	Mother
Elías Caisales Campo	[...]	Father
Luz Edilma Nariquiaza Nayaza	[...]	Wife
Washington Caisales Nariquiaza	[...]	Son
Luz Marina Caisales Nariquiaza	[...]	Daughter
Patricia Caisales Nariquiaza	[...]	Daughter
Deisy Caisales Nariquiaza	[...]	Daughter
Oliva Caisales Dogenesama	[...]	Sister
Paulino Caisales Dogenesama	[...]	Brother
Carmen Cecilia Caisales Dogenesama	[...]	Sister
Ana Ludivia Caisales Dogenesama	[...]	Sister
Elias Caisales Dogenesama	[...]	Brother
Idalba Caisales Dogenesama	[...]	Sister
Leonardo Caisales Dogenesama	[...]	Brother
Ángela Caisales Queragama	[...]	Niece
Yanery Caisales Queragama	[...]	Niece
Rubian Caisales Queragama	[...]	Nephew
Aneixa Caisales Queragama	[...]	Niece

- **With respect to Leonardo Caisales Dogenesama:**

Name	Citizen ID Card	Relationship
Leonardo Caisales Dogenesama	[...]	Direct victim
María Rufina Dogenesama Gonzales	[...]	Mother
Elías Caisales Campo	[...]	Father
Lucila Queregama (deceased) ¹⁷	[...]	Wife
Ángela Caisales Queragama	[...]	Daughter
Yanery Caisales Queragama	[...]	Daughter
Rubian Caisales Queragama	[...]	Son
Aneixa Caisales Queragama	[...]	Daughter
Oliva Caisales Dogenesama	[...]	Sister
Paulino Caisales Dogenesama	[...]	Brother
Carmen Cecilia Caisales Dogenesama	[...]	Sister
Ana Ludivia Caisales Dogenesama	[...]	Sister
Elias Caisales Dogenesama	[...]	Brother
Idalba Caisales Dogenesama	[...]	Sister

¹⁷ In this case, the amounts to be awarded by virtue of the economic compensation within the framework of Law 288 of 1996, will be granted to her successors in accordance with the order of succession filed for this purpose.

Name	Citizen ID Card	Relationship
Luis Caisales Dogenesama (deceased) ¹⁸	[...]	Brother
Washington Caisales Nariquiaza	[...]	Nephew

FIRST PARAGRAPH. The persons recognized in this friendly settlement agreement shall be granted benefits provided that they are able to prove with respect to Luis Caisales Dogenesama and/or Leonardo Caisales Dogenesama: (i) their relationship by affinity; or (ii) their relationship by consanguinity.

SECOND PARAGRAPH. In addition, the individuals who will benefit from this friendly settlement agreement will be those who were alive when the violations occurred.¹⁹

FOURTH PART: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility for the violation of the rights to life (Article 4.1.) and to humane treatment (Article 5.1.), in connection with the rights to a fair trial (Article 8.1.) and judicial protection (Article 25.1.) enshrined in the American Convention on Human Rights, with respect to the duty to ensure rights under Article 1.1. of the same instrument, to the detriment of Luis Caisales Dogenesama, due to the lack of due diligence in the criminal investigation into his murder at the domestic level, as well as the violation of the right to be heard by a competent judge.

The Colombian State also acknowledges its international responsibility for the violation of the rights to humane treatment (Article 5.1.), personal liberty (Article 7), fair trial (Article 8.1.) and judicial protection (Article 25.1.) enshrined in the American Convention on Human Rights, with respect to the duty to ensure rights under Article 1.1. of the same instrument, to the detriment of Leonardo Caisales Dogenesama, for the unjust deprivation of his liberty, the lack of due diligence in the criminal investigation conducted domestically for the injuries he sustained, and the violation of the right to be heard by a competent judge.

Finally, the State acknowledges its international responsibility for the violation of the rights to humane treatment (Article 5.1.), fair trial (Article 8.1.), and judicial protection (Article 25.1.) enshrined in the American Convention on Human Rights in relation to Article 1.1. of the same instrument (obligation to ensure rights), to the detriment of the family of Luis and Leonardo Caisales Dogenesama.

FIFTH PART: MEASURES OF SATISFACTION

The parties establish that, under this Agreement, the following measures of satisfaction will be implemented:

I. Act of Acknowledgment of Responsibility:

The Colombian State will hold an in-person event to acknowledge responsibility with the participation of Leonardo Caisales Dogenesama and the victims' families. The event will be carried out in accordance with the acknowledgment of responsibility set forth in this Agreement and will be agreed upon with the active participation of the victims and their families.

¹⁸ In this case, the amounts to be awarded by virtue of the economic compensation within the framework of Law 288 of 1996, will be granted to his successors in accordance with the order of succession filed for this purpose.

¹⁹ This is consistent with the case law of the Inter-American Court of Human Rights. 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. 270, para. 425.

The National Agency for the Legal Defense of the State will be responsible for this measure.

II. Financial Assistance:

The Colombian State, through the Ministry of National Education and the Colombian Institute of Educational Credit and Technical Studies Abroad ICETEX, will provide eight grants for financial assistance to eight relatives within the first or second degree of consanguinity of Luis Caisales and Leonardo Caisales. These grants will finance an on-site, distance, or virtual academic program at the professional technical, technological, university, or postgraduate level at a institution of higher education in Colombia recognized by the Ministry of National Education.

In order to qualify for this assistance, beneficiaries must meet the following requirements:

- Be a relative of first or second degree of consanguinity of Luis Caisales and/or Leonardo Caisales.
- Not be active beneficiaries of the 100% ICETEX forgivable lines of credit for higher education studies at the technical, professional, technological or university levels.
- Have taken the Saber 11 test or the equivalent state test and be a high school graduate.
- Those who receive funding for graduate programs must have a technological or university degree.
- Submit, through the Petitioner, a tuition payment receipt for the academic program showing the cost of the semester.
- Submit, through the Petitioner, a copy of their identity document.
- Provide, through the Petitioner, a contact telephone number.
- Provide, through the Petitioner, their home address.

Each financial aid grant will cover the tuition fees for the semesters of an academic program at the professional technical, technological, university or postgraduate level, for a semester value of up to 11 times the monthly minimum wage (SMMLV) and a semester stipend of twice the SMMLV if the higher education institution is located in the beneficiary's municipality of residence, or four times the SMMLV if the higher education institution is outside the beneficiary's municipality of residence.

Within the framework of university autonomy, the Ministry of National Education will refrain from managing or requesting the admission or allotment of places in academic programs before any institution of higher education. The beneficiaries of the measure must complete the relevant process to be admitted, ensuring that their continuance in the higher education institution, and ensuring an adequate academic performance.

The grants will have a term to be used, which may not exceed ten (10) years from the signing of this agreement; otherwise, the State's efforts to secure them will be deemed to have been fulfilled.²⁰

III. Measure with an Ethnic Focus:

The Ministry of Culture, as the executing entity, will implement a measure of satisfaction with an ethnic focus aimed at the women of the Embera Chamí Community of the municipality of Pueblo Rico in the Department of Risaralda, with the objective of strengthening and redefining the role of Indigenous women and highlighting their contributions to the community. To carry out this measure, the National Agency for the Legal Defense of the State will request that the Ministry of Finance and Public Credit transfer the necessary resources for its implementation.

²⁰ Ministry of National Education. Official letter No. 2022-EE-137589 of June 22, 2022.

Once these resources have been transferred, the Ministry of Culture will conduct a consultation to develop the ethnically-focused measure jointly with the women victims from the community in the territory, covering food, transportation, hotel, and other logistical costs needed to ensure their successful participation.²¹

IV. Publication of the Article 49 Report:

The Colombian State will publish the pertinent sections of the friendly settlement report, once it has been 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 months.

SIXTH PART: HEALTH AND REHABILITATION MEASURES

The Ministry of Health and Social Protection, exercising the powers described in Decree Law 4107 of 2011, will coordinate the measures for health rehabilitation consisting of medical, psychological, and psychosocial care through the General System of Social Security in Health and its members, as well as the Psychosocial and Integral Health Care Program for Victims - PAPSIVI, in order to ensure adequate, timely, and priority treatment for as long as necessary (according to medical criteria), in accordance with the relevant legal provisions.

The particular circumstances and needs of each person should be considered in the provision of psychological treatment and psychosocial care, so that family and individual treatment is offered according to what is agreed with each person and after an individual assessment, based on respect for autonomy and willingness in access to treatment.

In terms of access to comprehensive health care, the beneficiaries of the measures are guaranteed timely and quality access to the medicines and treatments required (including physical and mental health), in accordance with the provisions governing the SGSSS, and they will have priority and differential care based on their status as victims.

These measures will be implemented as of the signing of the friendly settlement agreement.²²

SEVENTH PART: MEASURES OF JUSTICE

Once this friendly settlement agreement is approved by the Inter-American Commission, the National Agency for the Legal Defense of the State will send an official letter to the Office of the Attorney General of the Nation for it to study the feasibility of filing an action for review, taking into account the criminal investigation underway before the 109th Specialized Prosecutor's Office for Human Rights Violations in Medellín, file CUI 11001606606420010007703, which was received with the termination of the proceedings in the Military Criminal Court.

EIGHTH PART: COMPENSATION MEASURES

The State agrees to begin implementing proceedings under Law 288 of 1996 "Establishing instruments for the compensation of damages to victims of human rights violations in accordance with the provisions of certain international human rights bodies," once this friendly settlement agreement is approved through the issuance of the respective report under Article 49 of the American Convention on Human Rights, in order to provide redress

²¹ Ministry of Culture of Colombia. Email dated August 23, 2022.

²² Ministry of Health and Social Protection. Email dated December 9, 2022.

for the damages caused to the family of the victims as a result of the harm arising from the facts of this case.

The National Agency for the Legal Defense of the State will be the entity in charge of the proceedings under Law 288 of 1996.

For compensation purposes, the criteria and amounts recognized by the current case law of the *Consejo de Estado* [the highest administrative court in Colombia] will be used.

The persons who will benefit from this measure are those expressly listed in the “beneficiaries” tables in the third section.

PART NINE: APPROVAL AND MONITORING

The parties request the Inter-American Commission to approve and monitor this Agreement.

This Agreement having been read and the parties being aware of its scope and legal content, it is signed on the twentieth first (21) day of the month of December, 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

14. 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.²³ It also wishes to emphasize 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.

15. 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.

16. Pursuant to the ninth clause of the agreement signed by the parties, whereby they requested that the Commission approve the friendly settlement agreement under Article 49 of the American Convention and considering the joint request of the parties dated November 1, 2023, to proceed in this manner, it is appropriate at this time to assess compliance with the commitments set forth in the agreement.

17. The Inter-American Commission considers that the first (Definitions), second (Background), third (Beneficiaries) and fourth (Acknowledgement of Responsibility) clauses of the agreement are declaratory in nature, and therefore their compliance need not be supervised. The Commission values the fourth declaratory clause, in which the Colombian State acknowledges its international responsibility for the violation of the rights to life (Article 4.1.) and to humane treatment (Article 5.1.) in connection with the rights to a fair trial (Article 8.1.) and judicial protection (Article 25.1.) enshrined in the American Convention on Human Rights, with respect to the duty to guarantee rights contained in Article 1.1. thereof, to the detriment of Luis Caisales Dogenesama, due to the lack of due diligence in the domestic criminal investigation into his murder, as well as the violation of the right to be heard by a competent judge. Also, the Colombian State acknowledges its international responsibility for the violation of the rights to humane treatment (Article 5.1.), personal liberty (Article 7), right to a fair trial (Article 8.1.) and judicial protection (Article 25.1.) established in the American Convention on Human Rights, with respect to the duty to guarantee rights enshrined in Article 1.1. of the same

²³ 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.*

instrument, to the detriment of Leonardo Caisales Dogenesama, as a result of the unjust deprivation of his liberty, the lack of due diligence in the domestic criminal investigation into his injuries, and the violation of the right to be heard by a competent judge. Lastly, the State acknowledges its international responsibility for the violation of the rights to humane treatment (Article 5.1), a fair trial (Article 8.1) and judicial protection (Article 25.1) of the American Convention on Human Rights in relation to Article 1.1 of the Convention (obligation to guarantee rights), to the detriment of the families of Luis and Leonardo Caisales Dogenesama.

18. With regard to paragraph *(i) act of acknowledgement of responsibility*, of fifth clause on measures of satisfaction, as jointly reported by the parties, the event was held on October 6, 2023, at 9:00 a.m. in the municipality of Pueblo Rico, Risaralda, with a cultural and ethnic approach respectful of the expectations and needs of the family members of the victims and their customs. The parties reported ongoing communication between the State and the petitioners, with whom each of the details for compliance with the measure were agreed upon, such as the place, date, and time for the act, as well as the agenda and the logistics required for it to be held. The parties provided a copy of the promotional material circulated on the social networks of the State entities as an invitation to the act of acknowledgement, which were produced in Spanish and in the Embera language.

19. The parties reported that the Unit for Victim Services and Comprehensive Reparation (UARIV), through the Working Group on Symbolic Reparation and Contributions to the Truth, led the methodological process of preparing, coordinating, and carrying out the act of acknowledgment of State responsibility. The joint report submitted to the IACHR indicated that the process included an in-person registration and prior consultation held on September 7 and 8, 2023, on the Embera Indigenous Community Reservation in Santa Rita, in the village of Santa Cecilia, municipality of Pueblo Rico, department of Risaralda.

20. The parties also informed the Commission that the working session with the Embera Indigenous Community included the presentation of the friendly settlement agreement to the family members and was led by the National Agency for the Legal Defense of the State (ANDJE) and the victims' representative. The registration for the implementation of the measure of satisfaction with an ethnic approach, was led by Artesanías de Colombia; and coordination of the content, approach, and scope of the act of acknowledgement of State responsibility, was led by the UARIV.

21. In addition, the parties stated that the entire process was respectful of the worldview, practices, and customs of the community and the family members, and that it was authorized by the traditional authorities. They reported to the IACHR that a second in-person registration was held on October 5, 2023, which included registration for the implementation of the educational assistance measure, led by the Ministry of Education, as well as a working meeting with the deputy director of the UARIV to address the administrative routes of individual and collective reparation for the community.

22. Similarly, the parties reported on the content of the agreed agenda for the event, which included a formal opening, a spiritual opening led by the community's traditional authority, and the participation of the Victims' Unit in its capacity as promoter of the process. It included the set-up of the forum by the highest authority of the resguardo; the presentation of a musical group of wind instruments called Chocorbandó, made up of members of the community; the screening of a video by Don Elias Caisales, describing the context of violence in the territory and the facts of the case. It also included the presentation of a traditional dance of the Embera Chamí people by members of the community.

23. Under the terms of the friendly settlement agreement, in the joint compliance report, the parties noted that the agenda included remarks by Leonardo Caisales, who spoke about the impact on the family and the community of what had happened to his sons Luis and Leonardo.

24. According to the joint information provided by the parties, the next item on the agenda was a speech by the victims' representatives. For the State's part, Martha Lucía Zamora spoke in her capacity as Director General of the National Agency for the Legal Defense of the State, who on behalf of the Colombian State asked for the forgiveness from the victims and their families for what happened and acknowledged the

international responsibility of the State under the terms established in the friendly settlement agreement signed between the parties,²⁴ stating as follows:

[...]

We deeply regret the events that took place and the great loss that this has meant for the family of Luis Caisales Dogenesama, his community and for all those close to him, who have endured his painful absence for 22 years. We recognize that his calling of leadership and work for his community was cut short by these painful events, losing perhaps a great opportunity to improve the living conditions and strengthen his community.

We also deeply regret what happened to Leonardo Caisales Dogenesama and his painful search for justice and full reparation. We acknowledge the immense pain and burden he has carried during these 22 years for the loss of his brother, the stigmatization and judicial persecution of which he was a victim, and, finally, his unsuccessful quest for justice. We know that these events still affect him today. But we also celebrate Leonardo's fortitude, strength, and resilience. He has not for a moment faltered in this arduous task, leading the process and supporting his family and his community.

The State had the obligation to protect and guarantee rights, as well as to investigate, prosecute, and punish those responsible for violating the fundamental rights of Luis and Leonardo Caisales Dogenesama. We have witnessed the painful search for truth and justice that their family has undertaken over the years.

The Colombian State recognizes that the right of access to justice is an indispensable prerequisite for the realization of fundamental rights and is one of the pillars that support a social and democratic State governed by the rule of law. This right means that all persons, without distinction, must have the concrete opportunity to obtain the restoration of their rights through the means provided. This must be, *inter alia*, timely and effective. The State also recognizes that it must ensure that victims can assert their rights and that their rights are restored within a reasonable period.

In view of the foregoing, on behalf of the State and as Director General of the National Agency for the Legal Defense of the State, I acknowledge international responsibility for the violation of the rights to life (Article 4.1.) and to humane treatment (Article 5.1.) in connection with the rights to the right to a fair trial (Article 8.1.) and judicial protection (Article 25.1.) of the American Convention on Human Rights, in conjunction with the duty to guarantee enshrined in Article 1.1. thereof, to the detriment of Luis Caisales Dogenesama, as a result of the lack of due diligence in the domestic criminal investigation into his murder, as well as the violation of the right to be heard by a competent judge.

The Colombian State further acknowledges its international responsibility for the violation of the rights to humane treatment (Article 5.1.), personal liberty (Article 7), right to a fair trial (Article 8.1.) and judicial protection (Article 25.1.) of the American Convention on Human Rights, with respect to the duty to guarantee rights enshrined in Article 1.1 of the Convention, to the detriment of Leonardo Caisales Dogenesama, as a result of the unjust deprivation of his liberty, the lack of due diligence in the domestic criminal investigation into the injuries he sustained, and the violation of the right to be heard by a competent judge.

Finally, the State acknowledges its international responsibility for the violation of the rights to humane treatment (Article 5.1.), right to a fair trial (Article 8.1.), and judicial protection (Article 25.1) enshrined in the American Convention on Human Rights in relation to Article

²⁴ As reported by the parties, the State's presentation was interpreted simultaneously into the Embera language by a leader and human rights defender from the community in order to ensure that family members, and particularly the women of the community, could fully understand it.

1.1. of the same instrument (obligation to guarantee rights), to the detriment of the families of Luis and Leonardo Caisales Dogenesama.

On behalf of the State of Colombia, and as Director General of the National Agency for the Legal Defense of the State, I express our heartfelt solidarity to you Leonardo; to María Rufina and Elías, the parents of Luis and Leonardo Caisales; to Luz Edilma Nariquiasa, the wife of Luis Caisales; and to the sons and daughters, relatives, and friends of Luis and Leonardo Caisales Dogenesama.

(...)

I would like to state that it is very important for the State to maintain a process of listening to and dignifying the victims at all levels of government. That is why this measure of satisfaction that brings us together today allows us to move forward in reconciliation with the victims and contribute to the process for their comprehensive reparation. I would like to thank the Unit for Victim Services and Comprehensive Reparation and its leadership in the support, preparation, and coordination of this act of acknowledgement of State responsibility to achieve the maximum possible satisfaction of the victims and the restoration of their dignity.

(...)

Finally, I invite you as a society to dignify the memory of Luis Caisales Dogenesama and the life of Leonardo Caisales Dogenesama so that such painful events never happen again. The State pledges to continue taking the necessary actions to provide full redress to this great family.

[...]

25. Based on the foregoing, and on the information provided jointly by the parties, the Commission finds, and hereby declares, that paragraph (i) of the fifth clause of the friendly settlement agreement related to the act of acknowledgment of responsibility has been met with full compliance.

26. With regards to paragraphs (ii) *financial assistance*, (iii) *measure with an ethnic focus*, and (iv) *publication of the Article 49 Report* of the fifth clause (measures of satisfaction) and the sixth (health and rehabilitation measures), seventh (measures of justice), and eighth (compensation measures) clause of the friendly settlement agreement and in view of the parties' joint request to move forward with the approval of the agreement prior to its execution, the Commission notes that these measures must be complied with after the publication of this report and therefore considers, and hereby declares, that they are pending compliance. Accordingly, the Commission will await an update from the parties on its implementation after the approval of this report.

27. In view of the above, the Commission concludes and declares that paragraph (i) *act of acknowledgment of responsibility* of fifth clause has been fully complied with. The Commission also finds and declares that paragraphs (ii) *financial assistance*, (iii) *measure with an ethnic focus*, and (iv) *publication of the Article 49 Report* of the fifth clause (measures of satisfaction) and the sixth (health and rehabilitation measures), seventh (measures of justice), and eighth (compensation measures) clause of the friendly settlement agreement are pending compliance. Consequently, the Commission considers that the friendly settlement agreement has reached a level of partial compliance. Finally, the Commission reiterates that the remaining content of the agreement is declaratory in nature and, therefore, not subject to IACHR 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 entered into by the parties on December 21, 2022.
2. To declare full compliance with paragraph (i) of the fifth clause (act of acknowledgement of responsibility) of the friendly settlement agreement, based on the analysis contained in this report.
3. To declare paragraphs (ii) financial assistance, (iii) measures with an ethnic focus, and (iv) publication of the Article 49 Report of the fifth clause (measures of satisfaction), and the sixth (health and rehabilitation measures), seventh (measures of justice), and eighth (compensation measures) clause of the friendly settlement agreement to be pending compliance, based on the analysis contained in this report.
4. To declare that the friendly settlement agreement has been met with partial compliance, based on the analysis contained in this report.
5. To continue supervising paragraph (ii) financial assistance, (iii) measures with an ethnic focus, and (iv) publication of the Article 49 Report of the fifth clause (measures of satisfaction), and the sixth (health and rehabilitation measures), seventh (measures of justice), and eighth (compensation measures) clause of the friendly settlement agreement until full compliance, according to the analysis contained in this report. To this end, to remind the parties of their commitment to report periodically to the IACHR on their compliance.
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 21st day of the month of May, 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.