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## **REPORT No. 67/16**

### **CASE 12.541**

#### **REPORT ON FRIENDLY SETTLEMENT**

**OMAR ZUÑIGA VASQUEZ AND AMIRA ISABEL VASQUEZ DE ZUÑIGA  
COLOMBIA**

Approved by the Commission at its session No. 2069 held on November 30, 2016.  
159<sup>th</sup> Regular Period of Sessions.

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**REPORT No. 67/16**  
**CASE 12.541**  
FRIENDLY SETTLEMENT  
OMAR ZUÑIGA VASQUEZ AND AMIRA ISABEL VASQUEZ DE ZUÑIGA  
COLOMBIA  
NOVEMBER 30, 2016<sup>1</sup>

**I. SUMMARY**

1. On May 10, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition from the "Jose Alvear Restrepo" Lawyers Group (*Corporacion Colectiva de Abogados Jose Alvear Restrepo*), which claimed that the Republic of Colombia (hereinafter "the State" or "the Colombian State") bore international responsibility for the torturing and extrajudicial execution of Omar Zuñiga Vasquez and for the arbitrary detention and torture of Amira Isabel Vasquez de Zuñiga, during acts that took place on June 1, 1992 at the "El Cerrito" property in the municipality of San Cristobal. The petitioners alleged that those acts violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention" in conjunction with Article 1.1. of the same instrument.

2. According to the petition, on June 1, 1992, a group of armed men pertaining to the Third Marine Infantry Riflemen Battalion arrived at the home of Mrs. Amira Vasquez de Zuñiga, located at the "El Cerrito" property in the municipality of San Cristobal, district of San Jacinto, department of Bolivar, took her son, Omar Zuñiga Vasquez, out of the house and later to a school to be tortured for his alleged collaboration with or for his alleged membership to a guerrilla group. Because Amira Vasquez de Zuñiga had run after her son when he was arbitrarily detained by State agents, she had been held in the restroom at the aforementioned school for three days, where she witnessed the tortures and maltreatment inflicted on her son. The petitioners alleged that nine days later, near the "El Paraíso" district on the hill known as "El Capiro", the body of Omar Zuñiga was found with a bullet wound to the head. In addition, the petitioners argued that the military criminal justice system's knowledge of what had happened and the lack of outcomes from the proceedings before the ordinary justice system entailed a violation of the rights of the victims and his next of kin.

3. For its part, on March 14, 2011, the State acknowledged responsibility for the violation of Articles, 7, 8, and 25 of the American Convention. On October 2006, the parties began a friendly settlement procedure. On May 6, 2015, the parties held a working meeting with the Commission's auspice during the visit to the country of Commissioner Jose de Jesús Orozco, the IACHR Rapporteur for Colombia. The parties signed a friendly settlement agreement on April 6, 2016 at a working meeting held during the 157th Period of Sessions of the IACHR.

4. Pursuant to Articles 49 of the Convention and 40(5) of the Commission's Rules of Procedure, this friendly settlement report includes a summary of the petitioners' allegations and transcribes the friendly settlement agreement signed on April 6, 2016, by the petitioners and representatives of the Colombian State. Also, the IACHR hereby ratifies 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.

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<sup>1</sup> In accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Enrique Gil Botero, a Colombian national, did not participate in the discussion or decision on this case.

## II. PROCEEDINGS BEFORE THE IACHR

5. The IACHR received the petition on May 10, 2004, which was notified to the Colombian State. The Commission published the Report on Admissibility No. 20/06 on March 2, 2006. In its report, the IACHR concluded that it was competent to examine the alleged violation of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in conjunction with Article 1.1 thereof.

6. On March 2, 2006, the State reiterated its willingness to go forward with the quest for a friendly settlement, which was forwarded to the petitioners.

7. On October 23, 2006, the IACHR heard the parties at a public hearing held within the framework of the Commission's 126th Regular Period of Sessions. During that hearing, the petitioners accepted the State's offer to go forward with the quest for a friendly settlement.

8. On November 8 and 17, 2006; on January 2, 3, and 4, 2007; on February 3 and 16, 2010; on March 2, April 6, and April 22, 2010; and on March 17, 2011, the State presented additional information, which was forwarded to the petitioners.

9. On December 12 and 13, 2006; on November 12, 2009; on February 16, 2011; on February 6 and 18, and April 3, 2014; and on April 30, 2015, the petitioners submitted additional information, which was forwarded to the State.

10. During 2014, the State requested three extensions, which the Commission granted.

11. On April 13, 2015, the State expressed its intention to sign a memorandum of understanding, which was transmitted to the petitioners. On May 6, 2015, the parties held a working meeting, with the auspices of the Commission, within the framework of the visit to the country by Commissioner Jose de Jesús Orozco, in his capacity as the IACHR Rapporteur for Colombia. At that meeting they signed a memorandum of understanding on the quest for a friendly settlement.

12. On April 6, 2016, the parties held a second working meeting within the framework of the 157th Ordinary Period of Sessions of the IACHR, and in the said meeting they signed a friendly settlement agreement.

13. On June 24, 2016, the State presented a report on compliance with the friendly settlement agreement which was forwarded to the petitioners.

14. On July 1, 2016, the parties presented a joint note on the compliance with the friendly settlement agreement, which they asked the IACHR to approve.

## III. THE ALLEGED FACTS

15. According to the petitioners' account, on June 1, 1992, at approximately 5:30 p.m., a group of 30 men pertaining to the Third Marine Infantry Riflemen Battalion broke into the home of Mrs. Amira Vasquez de Zuñiga, located on the "El Cerrito" property, to carry out the Operations Order No. 311300.

16. The petitioners alleged that around 20 military agents brutally threw everyone who was inside the house at the time face down on the floor. They alleged that the military then lifted up Omar Zuñiga Vasquez, who was 24 years of age at the time, and took him outside with his head covered in a bag. By the same account, Amira Vasquez de Zuñiga, Omar Zuñiga Vasquez's mother, seeing that they were taking her son away, went out after him, only to be detained and beaten by the marines.

17. According to the petitioners, Omar Zuñiga and his mother were taken to the village of San Cristobal, in the San Jacinto district, where the military rounded up the inhabitants and asked each of them

whether their children were guerrillas. After that, Amira Vasquez de Zuñiga was allegedly taken to the “El Paraíso” school, where they locked her in a restroom from which she could see the beatings and ill-treatment against her son. On the night of June 4, they left her by the side of the road, and told her that Omar Zuñiga had escaped and they did not know where he was. Nine days later, on the “El Capiro” hill in the district of “El Paraíso”, the corpse of Omar Zuñiga was allegedly found with a bullet wound to the head and a fractured jaw.

18. According to documents provided by the petitioners, on June 9, 1992, the 103rd Court of First Instance of the Military Criminal Justice System in Cartagena had ordered preliminary inquiries. Subsequently, on July 31, 1992, the Court 103 ordered that a formal investigation be conducted.

19. The petitioners allege that, on October 19, 1992, the Court 103 had refrained from issuing a warrant to arrest the alleged perpetrators: Marine Infantrymen Alvaro Perez Ospino, Carlos Mario Arango Martinez, Luis Enrique Marmolejo Ibañez, and Jose Miguel Ortega Olmos. That decision was confirmed by the Superior Military Tribunal on December 1, 1992.

20. The petitioners alleged that on May 29, 1996, the Superior Military Tribunal allegedly ordered to cease all proceedings because of the expiration of the criminal action due to the death of two of the marines. Subsequently, on February 18, 1997, the Commander of the Third Marine Infantry Riflemen Battalion allegedly ordered that copies of the file were issued for the “Life Unit” [*Unidad de Vida*] of the Cartagena District Public Prosecutor's Office, so that it could initiate investigations against the two marines who were still alive, in order to avoid impunity. Finally, on May 19, 1997, the Superior Military Tribunal allegedly ordered to cease all proceedings against the aforementioned marines.

21. As regards to the Ordinary Criminal Justice System, the petitioners stated that on June 10, 1992, the Municipal Court of Mixed Jurisdiction in San Jacinto, Bolivar, allegedly conducted a judicial procedure at the site where Omar Zuñiga's corpse was found. The petitioners alleged that on June 11, 1992, Mrs. Asteria Zuñiga Vasquez had filed a criminal complaint with the Municipal Court of Mixed Jurisdiction on account of the facts that had occurred. On June 11, 1994, the Office of the Attorney General, the El Carmen de Bolivar Public Prosecutors Unit, Office No. 43 [*Unidad de Fiscalías de El Carmen de Bolivar, Fiscalía Seccional No. 43*] apparently started the investigation and remitted copies of the proceedings to Judge 103 of the Military Criminal Court.

22. Subsequently, on April 15, 1999, seven years after the facts, the District Public Prosecutors Office No. 22 allegedly resumed hearing matters relating to the investigation and would have ordered again the opening of preliminary inquiries, since no perpetrators had been detained. On May 5, 2000, District Public Prosecutors Office No. 22 allegedly informed the District Director of Public Prosecutors Offices in Cartagena that the investigation was still at the preliminary stage. According to documents provided by the petitioners, on October 17, 2006, the Attorney General issued Resolution No. 03452 reassigning the investigation of the alleged facts to Public Prosecutor No. 80 of the National Unit of Public Prosecutors Offices for Human Rights and International Humanitarian Law.

23. Public Prosecutor No. 80 supposedly then filed an appeal for review before the Supreme Court of Justice, against the decision handed down by the Court of First Instance on February 18, 1997, based on which it refrained from call a War Council [*Consejo de Guerra*] against the accused agents, and against the decision of the Superior Military Tribunal. The appeal was filed by Public Prosecutor No. 80 of National Unit of Public Prosecutors Offices for Human Rights and International Humanitarian Law on the grounds of a failure to meet legal requirements. Among other matters, the Supreme Court cited the following considerations:

The authority shown by the plaintiff, which depicts her as carrying on criminal proceedings in respect of the same facts, but not in respect of the same parties to the suit, does not entitle her *per se* to petition a review of decisions handed down by the Military Criminal Justice system. Note that although the Attorney General's office by virtue of its constitutional and legal powers would be entitled to bring an action for review when it is a question of complying with recommendations or decisions by international organizations, as the

jurisprudence of the Court has specified, in the case at hand neither it is a question of complying with any recommendation of an international organization, nor has the Public Prosecutor brought this action attaching the corresponding administrative certificate issued by the Attorney General authorizing her to file an action for review. It is the Attorney General who ultimately has that power and can either exercise it directly or through persons he delegates, as prescribed in the Constitution and in the Charter [*Estatuto Organico*] of the Office of the Attorney General [Law 938 of 2004].

24. The petitioners argued that the military criminal jurisdiction was not competent to examine the facts of the case, because it did not meet the standards for independence and impartiality required by Article 8.1 of the American Convention. Likewise, the petitioners considered that the investigation process under the ordinary jurisdiction had taken an excessively long time and failed to meet access to justice and judicial protection standards.

25. The petitioners pointed out that several complaints were supposedly filed with the Regional Prosecutor for Bolivar, with a view to the initiation of a disciplinary investigation. However, those actions had led nowhere.

26. With respect to actions under administrative law, the petitioners argued that on April 19, 1999, the Administrative Law Court for Bolivar allegedly declared the Nation [Ministry of Defense, First Marine Infantry Brigade] administratively and materially liable. After examining the evidence, the Court for Actions under Administrative Law declared that:

Throughout the military criminal justice and administrative investigations, the members of the National Army involved and the military criminal justice system itself suggested the possibility that the kidnapping and subsequent death of Omar Zuñiga Vasquez was carried out by outlawed groups, more specifically, guerrillas. Regarding that hypothesis, this Court deems that the evidence contains nothing to support its veracity, because it is illogical to suppose that during a military operation in the area, guerrillas should be present without there being any kind of armed clash with the Army. In addition, in their statements, all the military involved were emphatic that they had had absolutely no contact with guerrilla groups during that operation. Moreover, a guerrilla group would not have been able to set up camp in a municipal school, have their shoes fixed and have refreshments in plain daylight and in the town square, especially not when a military operation was under way designed principally to put an end to the insurgency in that zone.

[...]

This body considers that, based on the evidence gathered, in both the military and administrative proceedings, and on the analysis contained in this judgment, there is serious circumstantial evidence that the death of OMAR ZUÑIGA VASQUEZ was perpetrated by members of the National Army.

[...]

Pursuant to national case law and doctrine, circumstantial evidence must satisfy the following criteria: 1) A known fact or indicator; 2) An unknown fact, which needs to be demonstrated; 3) A logical inference, through which, based on the known fact, leads to certainty or probability to deduce a conclusion of fact from the fact that we thought we did not know.

[...]

As mentioned already, it is possible to deduce the fact from the circumstantial evidence, as follows:

The fact that the itinerary taken by the First Marine Infantry Brigade's commando group during the operation carried out in the first days of June 1992 in the Maria La Baja districts was the same as that described by Mrs. AMIRA ZUÑIGA as the itinerary taken by her son's and her captors;

The fact that the vehicle used by OMAR ZUÑIGA's captor had the same characteristics as that used by the military in its operation: a white 3000 truck;

The fact that there is no evidence of combat during the time the military personnel spent in the area, which precludes the presence of other combat forces that might have kidnapped Mr. ZUNIGA VASQUEZ and his mother;

The fact that military agents had been inquiring about the deceased, and had labeled him as guerrilla member, according to the testimony of the father of the victim, Mr. ANTONIO ZUÑIGA VASQUEZ.

The fact that in her account of the facts Mrs. AMIRA VASQUEZ DE ZUÑIGA asserted that the military personnel who had held her son Omar had gone to the village to have soft drinks and get their boots fixed, a version supported by the testimony of the owner of the soft drinks store, EDNA TULIA BATISTA DE RAMOS, and by the shoemaker, LUIS ALBERTO PEREZ MIRANDA, both of whom corroborated everything declared by Mrs. VASQUEZ DE ZUÑIGA;

The fact that Mrs. AMIRA VASQUEZ DE ZUÑIGA recognized in a line-up four of the marines who had taken part in the operation on the day of facts alleged, after previously describing what they looked like.

In light of all the above, based on the circumstantial evidence of the arrest of OMAR ZUÑIGA VASQUEZ by the army, logic, the maxims derived from experience, the public order circumstances in which our country found itself, and all the "coincidences" of fact given in the instant case, combined with the presumption, not disproved by the defendants, that any harm done to a person held in the custody of State organs is attributable to them, this body deems it logical to infer from the whole set of serious, precise and interrelated circumstantial evidence that the death of OMAR ZUÑIGA VASQUEZ was caused by members of the Colombian National Army."<sup>2</sup>

27. By virtue of the above, after examining the evidence, the Administrative Tribunal apparently found the Nation, the Ministry of National Defense, and the First Marine Infantry Brigade liable for the damages caused in relation to the death of Omar Zuñiga Vasquez. The petitioners did not provide details regarding implementation of the decision resulting from the action under administrative law. The petitioners pointed out that, despite the length of time that had elapsed, there has been no light shed, through diligent criminal proceedings, on the facts relating to the extrajudicial execution of Omar Zuñiga Vasquez by State agents. In that sense, the investigations conducted before both the ordinary and military courts were unsuccessful and the acts committed remain unpunished.

#### IV. FRIENDLY SETTLEMENT

28. On April 6, 2016, in Washington, D.C., the State, represented by Angela Maria Ramirez Rincon, and the petitioners represented by Corporacion Colectivo de Abogados "Jose Alvear Restrepo" in the persons of Jomary Ortegon Osorio and Rafael Barrios Mendivil signed a Friendly Settlement Agreement, which reads as follows:

**FRIENDLY SETTLEMENT AGREEMENT  
CASE No 12.541 OMAR ZUÑIGA VASQUEZ AND AMIRA VASQUEZ  
DE ZUÑIGA**

On April 6, 2016, in Washington, D.C., Angela Maria Ramirez Rincon, advisor to the National Agency for Legal Defense of the State, acting on behalf and in representation of the Colombian State (hereinafter referred to as "the Colombian State") and, for the other party, Corporacion Colectivo de Abogados "Jose Alvear Restrepo", represented by Jomary Ortegon Osorio and Rafael Barrios Mendivil, acting as the petitioners in this case (hereinafter referred to as "the petitioners") sign the present Friendly Settlement Agreement in case 12.541 Omar Zuñiga Vasquez and Amira Isabel Vasquez de Zuñiga, arrived at in proceedings before the Inter-American Commission on Human Rights.

<sup>2</sup> *Administrative Tribunal of Bolivar. Judgment in case file No. 9725. M.P. [Tr: Magistrada Ponente?: Presiding Judge] Dr. Olga Salvador de Vergel, April 19, 1999. C3, digital folios. 48-60.*

## PRIOR CONSIDERATIONS

1. On June 1, 1992, a group of men arrived at the home of Mrs. Amira Vasquez de Zuñiga, located on the "El Cerrito" property in the municipality of San Cristobal, district of San Jacinto, department of Bolivar and took away Mr. Omar Zuñiga Vasquez. Seeing that they were taking him away, his mother, Amira Vasquez de Zuñiga, went after him.
2. Later, they were taken to the "El Paraíso" school and there they kept Mrs. Amira Vasquez locked up until Thursday, June 4. On the night of Thursday, June 4, they left Mrs. Amira Vasquez de Zuñiga on the road to San Onofre, telling her that Omar had escaped. Nine days later, near the "El Paraíso" district on the hill known as "El Capiro", the corpse of Omar Zuñiga was found with a bullet wound.
3. On May 10, 2004, the Inter-American Commission on Human Rights received a petition presented by Corporacion Colectivo de Abogados "Jose Alvear Restrepo" denouncing the detention, torture, and extrajudicial execution of Omar Zuñiga Vasquez and the detention and inhumane treatment of his mother, Amira Isabel Vasquez de Zuñiga.
4. In Report No. 20/60, dated March 2, 2006, the Inter-American Commission on Human Rights declared the admissibility of the petition submitted on account of the facts in relation to Articles 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1.1 of the same instrument.
5. During the processing of the case, on several occasions the parties expressed their willingness to advance in the search of a friendly settlement, which at the time was not materialized. On April 29, 2010, the Colombian State expressed its willingness to acknowledge international responsibility under Articles 7, 8, and 25 of the American Convention on Human Rights, whereby the scope of that acknowledgment would be addressed during the friendly settlement proceedings.
6. In a written statement, dated March 14, 2011, the Colombian State acknowledged responsibility for the violation of Articles, 7, 8, and 25 of the American Convention on Human Rights.
7. In a note dated April 10, 2015, the State once again told the victims and their representatives, through the Inter-American Commission on Human Rights, that in the instant case it was ready to sign a Memorandum of Understanding in the Quest for a Friendly Settlement that would make it possible for the parties to enter into a dialogue aimed at reaching a Friendly Settlement Agreement. On April 21, 2015, a meeting was held between Colombian State officials and the petitioners, at which the parties decided to sign a Memorandum of Understanding for the Search of a Friendly Settlement [*Acta de Entendimiento de Busqueda de Solucion Amistosa*] in the instant case.
8. In connection with the Fourth National Seminar on the Friendly Settlements Mechanism, held in Bogota on May 6, 2015, the Colombian State and the representatives of the victims signed the Memorandum of Understanding for the Search of a Friendly Settlement.
9. During the process of search of a friendly settlement Ms. Carmen Zuñiga Vasquez, the sister of Omar Zuñiga Vasquez and his daughter of Amira Vasquez de Zuñiga, actively participated. All parties to the agreement pay tribute to her persistence, throughout these many years, in seeking to see justice done.
10. In the months following signature of the Memorandum, joint meetings were held to analyze both parties' proposals, with a view to forging the present Friendly Settlement Agreement:

### FIRST: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility for violating:

- Article 4 (Right to Life) of the American Convention on Human Rights to the detriment of Omar Zuñiga;
- Articles 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention on Human Rights to the detriment of Omar Zuñiga Vasquez and Mrs. Amira Vasquez de Zuñiga;

- Articles 8 (Right to a Fair Trial), 22 (Freedom of Movement and Residence), and 25 (Right to Judicial Protection) of the American Convention on Human Rights to the detriment of Omar Zuñiga's next of kin.

## **SECOND: JUDICIAL MEASURES**

The Office of the Attorney General [*Procuraduría General de la Nación*] shall, within its sphere of competence, and once the report referred to in Article 49 of the American Convention has been published, bring an action for reconsideration before the Higher Court of Bogota against the resolution of May 28, 2014 issued by Prosecution Office 73.

In addition, the National Agency for Legal Defense of the State commits to examining the feasibility of bringing an action for indemnity [*accion de repetición*] pursuant to the functions assigned to it under Article 6.3.ix of Decree Law 4085 of 2011.

## **THIRD: REPARATION AND REHABILITATION MEASURES**

The Colombian State commits to adopting the following measures:

1. Delivery in a dignified and respectful manner of the body of Omar Zuñiga Vasquez to his family to be buried in the city of Barranquilla, in a ceremony to be coordinated with the victims and their representatives.
2. An act of acknowledgment of responsibility and public apology performed by a high-level government official, in the presence of public authorities, the victim's next of kin, and their representatives, and publicized in the mass media. The logistical and technical support needed to implement those steps shall be provided by the Unit for Comprehensive Care and Reparation for Victims and coordinated with the victims and their representatives.
3. The granting of an allowance of \$50,000,000 (FIFTY MILLION PESOS) for Julio Miguel Zuñiga Villalba and another in the same amount for Julieth Zuñiga Villalba, the children of the victim, to finance any technical or technological education, or vocational training of their choice and maintenance costs. The beneficiaries of these grants shall follow the required procedures for admission to their respective colleges and shall complete the courses offered by their university-level institutions in such a way as to ensure appropriate academic performance.

In any event, the grants must begin to be used within no more than ten (10) years from the signing of this agreement; otherwise the State shall be deemed to have satisfied its responsibility by making them available. If failure to implement this measure in the time established is attributable to the State, its obligation to provide education grants shall not expire. The Ministry of Education and the Colombian Institute of Credit for Education and Technical Studies Abroad -ICETEX- for its name is Spanish [*Instituto Colombiano de Credito Educativo y Estudios Tecnicos en el Exterior*] shall be responsible for implementation of this measure.

4. Through the care, assistance, and comprehensive reparation for victim's model applied by the Unit for Comprehensive Care and Reparation of Victims, the State commits to assisting the victims in the present case, in order to ensure that they gain access to the reparation and assistance plans, programs, and projects offered by the Colombian State.
5. The Ministry of Health and Social Protection shall implement the health rehabilitation measures in the form of medical, psychological and psycho-social care through the General Social Security Health System and the Psycho-Social Care and Comprehensive Health Care for Victims Program [PAPSIVI]. The persons who need it shall be granted appropriate, timely and priority treatment, when they express their prior consent, and for as long as necessary. In the provision of psychological and psycho-social care, consideration shall be given to the particular circumstances and needs of each person, so that they are given collective, family, and individual treatment, as agreed upon with each of them and following an individual assessment.
6. For access to comprehensive health care, the beneficiaries of these measures shall be guaranteed any medicine and any treatment that they need (including physical, mental, and psychological care), as well as the special and preferential care they are entitled to as victims. Likewise,

special consideration and care shall be given to Miguel Antonio Zuñiga Buelvas and Amira Vasquez de Zuñiga, as older persons.

7. With respect to Mr. Omar Zuñiga's son, Julio Miguel Zuñiga Villalba, the State commits to making the necessary arrangements for his rehabilitation [...] through specialized entities within the General Social Security Health System.

*[Numbering outside the text of the document]*

#### **FOURTH: FINANCIAL REPARATION**

Once this friendly settlement agreement is approved by publication of the report referred to in Article 49 of the American Convention on Human Rights, the State commits to applying Law 288 of 1996 with a view to making reparation for any proven non-material and material injuries caused to immediate family members of Omar Zuñiga Vasquez and Amira Vasquez de Zuñiga that have not been compensated as a result of actions brought under administrative law. The Ministry of National Defense shall be responsible for implementing this measure.

The parties request that the Inter-American Commission on Human Rights ratify this agreement and monitor its implementation.

#### **V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

29. The IACHR reiterates that, under Articles 48(1)(f) and 49 of the Convention, this procedure has the objective of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s consent to pursue this avenue is evidence of its good faith to honor the Convention’s purposes and objectives, based on the principle of *pacta sunt servanda*. According to that principle, States must comply in good faith with the obligations undertaken in treaties.<sup>3</sup> The IACHR also wishes to point out that, with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement procedure has proved to be a useful vehicle that both parties can utilize to arrive at a solution.

30. The Inter-American Commission has facilitated and closely monitored the progress of the friendly settlement reached in the present case and greatly values the efforts that both parties went to in negotiating this friendly settlement agreement, which is compatible with the object and purpose of the Convention.

31. The IACHR notes that the parties have jointly requested that the Commission adopt the report contemplated in Article 49 of the American Convention with a view to initiating the procedures for granting the victims some of the reparation measures provided for in the Friendly Settlement Agreement, especially those relating to the State's implementation of Law 288 of 1996.

32. In light of the above, the IACHR considers that, given the information thus far provided by the parties, an assessment is warranted of compliance with the commitments entered into in points 1 and 2 of Clause 3 on reparation and rehabilitation measures.

33. As regards the reparation measures, the parties jointly informed the IACHR that the State complied with the measures relating to the delivery in a dignified and respectful manner of the body of Omar Zuñiga Vasquez to his family and that the said delivery took place, on June 10, 2016, in the city of Barranquilla, where a ceremony marking the return of his remains was held in coordination with the family and its representatives, followed by a religious ceremony at the request of the next of kin.

<sup>3</sup> Vienna Convention on the Law of Treaties, United Nations 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.

34. With this regard, the State reported that the Unit for Comprehensive Care and Reparation of Victims lent prior assistance to the members of Omar Zuñiga Vasquez's family, aimed at preparing them for the return of the remains of their loved one. That assistance was provided to the family members living in Barranquilla, Cartagena, Bogota, and in the Municipality of Maria La Baja on March 28 and 29 and June 9, 10, and 11, 2016. According to the State's account, those meetings took into account psychological and social needs of the family, to agree on measures of accompaniment that were consistent with the reality of the family, and that could allow them to make informed decisions about how best to take part in the process of handing over the earthly remains of the victim and the provision of psychological and social assistance.

35. Prior to and in preparation for the ceremony marking the return of Omar Zuñiga Vasquez's remains, the State provided a list of his next of kin who had attended the psycho-social assistance gatherings and specified how it would approach the family after first having ascertained the family's customs and later describing the procedure for delivering the body in a dignified manner. All of which was arranged in order to dispel any doubts of the family as to what would happen in the hand-over ceremony and to propitiate a dialogue with professional psychologists and sociologists, who would help identify what elements should be included in the ceremony.

36. In another day of accompaniment, a dialogue was facilitated with the family, aimed at evoking memories, anecdotes, and experiences shared with Omar Zuñiga Vasquez when he was alive, so they could be passed them on to his children. This created a space for psycho-social service in which the family could jointly create a poem to pay tribute to him. During one of those sessions, the next of kin prepared letters and posters to celebrate the meaning of Omar Zuñiga Vasquez's life and his legacy within the family; symbols were used in the ceremony to symbolize the return of his earthly remains, in the form of seeds and trees representing what he had planted in each member of the family, earth representing Omar's parents, vases representing the rural traditions that Omar observed and passed on, and nine plants representing all Omar Zuñiga Vasquez's brothers and sisters and how life goes on.

37. The schedule drawn up by the parties had also included several inter-agency meetings attended by the Agency for the Legal Defense of the State, the prosecutor in the case, the prosecutor responsible for coordinating the Attorney General's Exhumation Group, the forensic team of the National Institute of Forensic Medicine and Sciences, officials from the Unit for Comprehensive Care and Reparation for Victims, and officials from the Secretariat of Health of Barranquilla. Those meetings served to inform the family about specific aspects of the dignified return of the deceased's bones, to receive the legal, forensic and medical reports, observe the bones prior to the delivery ceremony, and to ask questions that the government officials answered. The psychosocial assistance given during the forensic explanations was geared to validating family members' emotional expressions of grief and suffering.

38. Furthermore, the IACHR takes note that the delivery of Omar Zuñiga Vasquez's earthly remains to members of his family was preceded and accompanied by the provision of psychological and social support. The Commission sincerely hopes that the ceremony helped Omar Zuñiga Vasquez's next of kin in their grieving process after waiting 24 years to bury him in accordance with their culture and religious beliefs. In light of the above, the Commission underscores the importance that in the implementation of the agreement, it transcends the terms agreed upon and finds it useful effect in the benefit of the members of the victim's immediate family. In the instance case, the IACHR concludes, based on the information provided by the parties, that point one of the third clause has been fully implemented.

39. With respect to the act of acknowledgment of responsibility, the parties jointly notified the IACHR that it had taken place on June 11, 2016 in the city square in Barranquilla named after the victims of the fighting, a location agreed upon with the family members of Omar Zuñiga Vasquez and their representatives. According to the account given by the parties, the act was headed by Colombia's Minister of Justice and Law, Dr. Jorge Eduardo Londoño Ulloa, and was widely publicized in the media. The IACHR was

able to ascertain reports of the act of acknowledgment of responsibility in El Heraldo<sup>4</sup>, Vanguardia<sup>5</sup>, W Radio<sup>6</sup>, Revista Semana<sup>7</sup>, El Espectador<sup>8</sup> and Contagio Radio<sup>9</sup>.

40. According to the parties, following the act of acknowledgment of responsibility, the parties walked to the *Jardines de la Eternidad* [Gardens of Eternity] cemetery in Barranquilla, where they finally buried the remains of Omar Zuñiga Vasquez in an ossuary chosen by his family.

41. The State provided detailed information regarding the contents of the acknowledgment of responsibility program and transcribed the speech delivered by the Minister of Justice and Law of Colombia, in which he said, inter alia, the following:

[...]

It is precisely in acknowledging the particular harm done to Omar Zuñiga, Mrs. Amira Vasquez de Zuñiga, and their family members that today the State asks for their forgiveness, complying in this way with one of the measures agreed upon in the friendly settlement agreement, which was to hold this act of recognition of responsibility and public apology as one part of a comprehensive reparation agreement. We also take to heart our obligation to continue working for comprehensive reparation for the family, after first asking them publicly for forgiveness for what happened.

Taking that path leads us to gather together in this beautiful spot to commemorate the life, the existence, of a hard-working man, a good and cheerful member of his family, who was treated so appallingly.

I am convinced that forgiveness has enormous restorative power, to help reconstruct the social fabric, to re-establish trust in the State and its institutions. Indeed, it is the cornerstone of a true process of national reconciliation. In that steadfast belief, the Colombian State expresses its solidarity with the family and friends of Mr. Omar Zuñiga and Mrs. Amira Vasquez and acknowledges the harm done to them. What happened to Omar Zuñiga and Mrs. Amira Vasquez was a tragedy our Nation mourns. It was a repugnant and shameful act cast in the irrationality of violence.

The National Government is driven by the conviction that its actions and decisions are only legitimate to the extent that they are rooted in absolute respect for human rights and fundamental freedoms. That is why, here today, in front of you, the family and friends of the victims, we declare that no effort will be spared to ensure that events like this never occur again.

<sup>4</sup> See El Heraldo, *Estado pide perdón por el asesinato de Omar Zuñiga*, June 11, 2016, available at: <http://www.elheraldo.co/judicial/estado-pide-perdon-por-el-asesinato-de-omar-zuniga-265879>

<sup>5</sup> See Vanguardia, *Minjusticia pidió perdón a víctimas en Bolívar*, June 12, 2016, available at: <http://www.vanguardia.com/colombia/361830-minjusticia-pidio-perdon-a-victimas-en-bolivar>

<sup>6</sup> See, W Radio, *Estado pide perdón por muerte de campesino a manos de militares*, June 11, 2016, available at: <http://www.wradio.com.co/noticias/actualidad/estado-pide-perdon-por-muerte-de-campesino-a-manos-de-militares/20160611/nota/3158111.aspx>

<sup>7</sup> Semana, *La Ejecución extrajudicial por la que el Estado pidió perdón*, June 11, 2016, available at: <http://www.semana.com/nacion/articulo/estado-pidio-perdon-por-ejecucion-extrajudicial-de-omar-zuniga/477265>

<sup>8</sup> El Espectador, *Estado pidió perdón por ejecución extrajudicial en San Jacinto Bolívar*, June 11, 2016, available at: <http://www.elespectador.com/noticias/judicial/estado-pidio-perdon-ejecucion-extrajudicial-san-jacinto-articulo-637268>

<sup>9</sup> Contagio, *Estado colombiano reconoce responsabilidad por ejecución extrajudicial en San Jacinto Bolívar*, June 10, 2016, available at: <http://www.contagioradio.com/estado-colombiano-reconoce-responsabilidad-por-ejecucion-extrajudicial-en-san-jacinto-bolivar-articulo-25260/>

In this way, the Colombian State not only honors its international commitments; it also seeks to commemorate the memory of Omar Zuñiga Vasquez and praise his legacy. Omar Zuñiga was a man cherished by his community and by his family, who today lives on in the example he set for those dear to him. As a father, son, brother, and worker.

42. The IACHR values the act of acknowledgment of responsibility carried out by the Colombian State and notes that it was geared to dignifying the memory of Omar Zuñiga Vasquez, thereby fulfilling one of the requests of the petitioners included in the friendly settlement agreement. Consequently, the IACHR considers that point 2 of the third clause, which gives content to the declarative first clause, has been fully implemented.

43. With respect to the rehabilitation treatment for Julio Miguel Zuñiga Villalba, provided for in point 7 of the third clause, the parties jointly notified the Commission that the young man is undergoing rehabilitation in a health provider institution which evaluated and diagnosed his condition and is currently developing a comprehensive health rehabilitation plan, with his consent and in cooperation with the family, who have expressed satisfaction with the services provided. The parties likewise jointly reported that the young man has received general and specialized health and nutrition care, lab tests, psychiatric and psychological care, social worker assistance, as well as medicines and other requisites for his treatment. In light of that information, the IACHR considers that point 7 of Clause 3 has been partially implemented. The IACHR will continue to monitor his rehabilitation and check that it continues to be available to the beneficiary for as long as he voluntarily agrees to the measure.

44. The IACHR takes note of the other commitments entered into by the Colombian State regarding investigation into what happened and assurances of non-recurrence. In particular, the IACHR takes note of the State's commitment, in relation to the judicial measures clause, to examine the feasibility of bringing an action for indemnity [*acción de repetición*] pursuant to the functions assigned to it under Article 6.3.ix of Decree Law 4085 of 2011. That commitment has yet to be honored.

45. In light of the above, the IACHR considers that the Colombian State has fully met its commitments under points 1 and 2 of the third clause of the friendly settlement agreement signed by the parties. The Commission considers that point 7 of third clause of the agreement has been partially implemented. At the same time, the Commission observes that the second clause, on judicial measures; points 3, 4, 5, and 6 of the third clause, on reparation and rehabilitation measures; and the fourth clause, on financial compensation, have yet to be implemented.

## **VI. 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. As regards fulfillment of the commitments undertaken by the Colombian State, the IACHR concludes that points 1 and 2 of the third clause of the friendly settlement agreement signed by the parties have been fully satisfied. It likewise concludes that the remaining points are in the process of being implemented, so the Commission will continue monitoring compliance with the second clause, points 3, 4, 5, 6, and 7 of the third clause, and clause fourth.

3. The IACHR will report on progress made by the State with fulfillment of the friendly settlement agreement in its Annual Report to the OAS General Assembly.

4. 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 that the parties signed on April 6, 2016.
2. To declare, on the basis of the analysis set forth in this report, that points 1 and 2 of the third clause on reparation and rehabilitation measures have been fully implemented.
3. To continue to monitor the commitments regarding compliance of the Colombian State with the remaining measures. To that end, to remind the parties of their commitment to provide periodic information to the IACHR on compliance with the judicial measures contained on the second clause; the reparation and rehabilitation measures contained in points 3 through 7 of the third clause; and compliance with the financial reparation agreed to on the fourth clause of the friendly settlement agreement signed by the parties.
4. To make the present report public and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Panama City, on the 30<sup>th</sup> day of the month of November, 2016.  
(Signed): James Cavallaro, President; Francisco Eguiguren Praeli, First Vice-President; Margarete May Macaulay, Second Vice-President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Esmeralda Arosemena de Troitiño, Commissioners.