

OEA/Ser.L/V/II.  
Doc. 228  
14 August 2020  
Original: Spanish

**REPORT No. 214/20**  
**CASE 10.441 A**  
REPORT ON FRIENDLY SETTLEMENT

SILVIA MARIA AZURDIA UTRERA AND OTHERS  
GUATEMALA

Approved electronically by the Commission on August 14, 2020.

**Cite as:** IACHR, Report No. 214/20, Case 10.441 A. Friendly Settlement. Silvia Maria Azurdia Utrera and others. Guatemala. August 14, 2020.

**REPORT No. 214/20**  
**CASE 10.441 A**  
FRIENDLY SETTLEMENT  
SILVIA MARIA AZURDIA UTRERA AND OTHERS  
GUATEMALA  
AUGUST 14, 2020<sup>1</sup>

**I. SUMMARY AND PROCEDURAL HIGHLIGHTS OF THE FRIENDLY SETTLEMENT PROCESS**

1. On October 6, 1989, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition presented by the Guatemalan Human Rights Commission (hereinafter “the petitioners”), in which it claimed the international responsibility of Guatemala (hereinafter the “State” or “Guatemalan State” or “Guatemala”), for the violation of human rights contained in articles 4 (life), 5 (humane treatment), and 7 (personal liberty) in relation to articles 1.1 (obligation to respect) of the American Convention on Human Rights, (hereinafter “Convention” or “American Convention”), for the disappearance of Aaron Ubaldo Ochoa, Hugo Leonel Gramajo Lopez, Ivan Gonzales Fuentes, Carlos Contreras Conde, Mario Arturo de León Méndez. As well as for the disappearance and subsequent execution of Victor Hugo Ramirez Jaramillo, Silvia Maria Azurdia Utrera, Eduardo Antonio Lopez Palencia, and Carlos Leonel Chuta Camey and Carlos Humberto Cabrera (hereinafter the “alleged victims”), who were students who belonged to the Association of University Students [*Asociación de Estudiantes Universitarios*] –AUE– of the Universidad San Carlos de Guatemala –USAC. Subsequently, on November 22, 1989, the Center for Legal Action on Human Rights (CALDH), became a party to the process before the Commission.

2. The petition was initially filed on behalf of 10 individuals. By virtue of the signing of 2 separate friendly settlement agreements, the Commission decided to disaggregate the case into 10.441 A (with respect to Silvia María Azurdia Utrera, Víctor Hugo Rodríguez Jaramillo, Iván Ernesto González, Carlos Contreras Conde, Hugo Leonel Gramajo, Mario Arturo de León, Carlos Leonel Chutá Camey, Eduardo Antonio López Palencia, and Aaron Ochoa), and 10.441 B with respect to Carlos Humberto Cabrera Rivera. Said disaggregation was notified to the parties on April 9, 2020.

3. During a hearing held on March 4, 2004, at the headquarters of the Inter-American Commission on Human Rights, the State of Guatemala and representatives of CALDH signed a memorandum of understanding in which the parties agreed to initiate a friendly settlement process that was materialized with the signing of a Friendly Settlement Agreement on February 18, 2005. Within the framework of a working meeting held in Guatemala on November 24, 2006, the parties signed an addendum to the friendly settlement agreement. Subsequently, on June 24, 2020, the petitioner indicated his conformity with the approval of the agreement.

4. In this friendly settlement report, as established in article 49 of the Convention and article 40.5 of the Commission's Rules of Procedure, a summary of the facts alleged by the petitioner is presented and the friendly settlement, which was signed on February 18, 2005, by the petitioner and the representatives of the State of Guatemala, is transcribed. Likewise, the agreement signed between the parties is approved and it is agreed this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

**II. ALLEGED FACTS**

5. As argued by the petitioners, the student leaders, Mario Arturo de Leon Mendez, Aaron Ubaldo Ochoa, Hugo Leonel Gramajo Lopez, Ivan Gonzales Fuentes, and Carlos Contreras Conde, would have been subjected to forced disappearance, as well as Víctor Hugo Rodriguez Jaramillo, and Silvia Maia Azurdia Utrera, who allegedly were forcedly disappeared, tortured, and executed. According to the petitioners, said violations

---

<sup>1</sup> Commissioner Stuardo Ralón Orellana, a national of Guatemala, did not participate in the consideration or vote on this case in accordance with Article 17 (2) (a) of the IACHR's regulations.

would have taken place in the framework of a military intelligence operation by state agents or persons who would have acted under their protection, tolerance, or acquiescence.

6. Regarding Víctor Hugo Rodríguez Jaramillo and Silvia Maria Azurdia Utrera, the petitioners indicated that around eight men, heavily armed, would have kidnapped the alleged victims on August 23, 1989 at 7 a.m. when they were getting ready to leave for work. These men would have driven them, while they were in a semi-conscious state, to two vehicles that were duly identified. According to the petitioners' allegations, the bodies of Silvia Utrera and Víctor Rodríguez would have been discovered 200 meters away from the San Carlos University Campus with evident signs of torture.

7. According to the petitioners, on May 11, 1990, the State of Guatemala provided them with information that the alleged victims had previously been threatened by a rival group with which they had conflicts at the University of San Carlos (USAC) and consequently they were accused of being responsible for what happened. The petitioners indicated that, as reported by the State of Guatemala, along with the bodies of Víctor Hugo Rodríguez Jaramillo and Silvia Maria Azurdia Utrera, some flyers were found where the alleged perpetrators, who would be members of said rival group and this, indicated the motives for the crimes.

8. The petitioners argued that the Guatemalan State had attempted to present as findings of the investigation that the victims were disappeared and murdered by a group of rival students, but they rejected that version because the documents that the State had presented to them were from 1985 and the authors of the documents were not specified. Additionally, they assured that the State did not offer any evidence that accredited the existence of such groups.

9. On the other hand, with respect to Mario Arturo de Leon, it was reported that he disappeared on August 23, 1989, after he gave a press conference at the headquarters of the Association of University Students (AEU).

10. In relation to Aaron Ubaldo Ochoa, a student at the School of Political Science at the University of San Carlos, a member of the Political Science Board of Directors, and a member of the AEU Coordinating Executive Board, it was indicated that he had received death threats in February 1989. On August 23, 1989, after leaving his home, he would have disappeared. According to witnesses, shortly before leaving his home, he had received a phone call, informing him that he had to be at the university. A petition of Habeas Corpus was submitted by the Mutual Support Group office without results.

11. On August 22, 1989, Hugo Leonel Gramajo Lopez left his job at the National Institute of Public Administration, in zone 9 of the city approximately at 5:15 in the afternoon, where five armed men captured him. According to witnesses, he was beaten by those individuals before being forced into a red truck. A Habeas Corpus petition was submitted by the Mutual Support Group office without results.

12. On August 21, 1989, Ivan Ernesto Gonzales Fuentes was kidnapped on his way to a meeting with members of the Unit of Popular Union Associations [*Unidad de Asociaciones Sindicales Populares*] (UASP) at noon after leaving his home. A Habeas Corpus petition was submitted by the Mutual Support Group office without results.

13. On August 22, 1989, armed individuals kidnapped Carlos Contreras Conde, student of the School of Psychology, member of the Association of Psychologists, and collaborator of the AEU, in the parking lot in front of the Psychology building of the University of San Carlos approximately at 8 pm. A Habeas Corpus petition was submitted by the Mutual Support Group office without results.

14. With respect to Eduardo Antonio Lopez Palencia, Carlos Leonel Chuta Camey, and Carlos Humberto Cabrera, although the petitioners did not detail the violations allegedly suffered, the Commission subsequently learned that their bodies were initially missing and their bodies later found.

### **III. FRIENDLY SETTLEMENT**

15. The parties signed a Friendly Settlement Agreement on February 18, 2005, within the framework of a working meeting held in Guatemala, which states the following:

**FRIENDLY SETTLEMENT AGREEMENT  
CASE 10.441  
SILVIA MARIA AZURDIA UTRERA AND OTHERS**

#### **I. BACKGROUND**

The student community was one of the sectors of Guatemalan society that was hit the hardest by the repression during the internal armed conflict.

Students, especially those who were members of the Association of University Students ("AEU"), suffered waves of repression and state violence during different times of the conflict, which included threats, raids, destruction and theft of property, illegal detentions, forced disappearances, and extrajudicial executions.

One of the bloodiest times of violence against the student movement occurred in the two weeks between August 21 and September 10, 1989, a period in which eleven student leaders, all members of the AEU, disappeared. During the following weeks, the bodies of six of them were found in public places, all with signs of torture, and in the case of four of them, along with their bodies, notes indicating that their student activities were the motive for the crimes.

Illustrative Case No. 30 of the report of the Commission for Historical Clarification, Guatemala: Memory of Silence (1989) detailed the context, the facts, and the implications of the so-called "black August", and concluded that: "the students were victims of a military intelligence operation, in which State agents or people who acted under their protection, tolerance, or acquiescence participated."

On November 22, 1989, the Center for Legal Action on Human Rights ("CALDH") submitted a petition to the Inter-American Commission on Human Rights (the "Commission") on behalf of the families (the "Petitioners") of seven of the mentioned students. The petition argued that the forced disappearance (in the case of 5 students) and the forced disappearance, torture, and extrajudicial execution (in the case of 2) were violations of Articles 1.1, 4, 5, and 7 of the American Convention on Human Rights (the "Convention").

The State of Guatemala (the "State"), through the Presidential Coordinating Commission for Executive Policy on Human Rights ("COPREDEH"), in consensus with the petitioners, initiated a friendly settlement procedure on March 4, 1999.

In the framework of the Declaration of the Government of the Republic in response to the cases raised before the Commission on August 9, 2000, the State of Guatemala recognized its international responsibility for the breach imposed (sic) by article 1.1 of the American Convention on Human Rights to respect and guarantee the rights enshrined in the American Convention and articles 1, 2, and 3 of the Political Constitution of the Republic.

Said recognition is based on the omission that the state of Guatemala incurred in regarding its obligation to guarantee individuals the enjoyment and respect of their fundamental rights, in accordance with the Political Constitution of Guatemala, the American Convention on Human Rights, and other international instruments signed and ratified by Guatemala. As such, COPREDEH was instructed to study all cases that could reach a friendly settlement.

At the hearing held before the Commission on March 4, 2004, the State and CALDH signed a

Memorandum of Understanding in which they agreed to arrive to a friendly settlement that includes all victims regarding: a) the State's recognition of international responsibility for the violations; b) commitment to offer public apologies to the next of kin of the victims; c) commitment to adopt measures to honor the memory of the victims; d) carry out an investigation, prosecution, and punishment of those responsible for the violations; e) commitment to establish reparation agreements with the next of kin of each of the victims as a priority within the framework of the National Compensation Program, and in any case within a year of the date of the signing of the Act of Understanding; and f) finally, a commitment to transfer the necessary communications to locate the Petitioners with whom CALDH is not in contact. Regarding the provisions of letter e), during the second half of 2004 COPREDEH informed CALDH that the funds to solve the financial compensation in the present case would not come from the National Compensation Program but from another state source.

The parties have decided to sign this agreement to formalize the commitments adopted by the State under the Memorandum of Understanding and to establish a process for its implementation (the "**Friendly Agreement**").

The Friendly Agreement is signed in relation to case 10.441, which includes the following students: Silvia María Azurdia Utrera, Víctor Hugo Rodríguez Jaramillo, Mario Arturo De León Méndez, Aarón Ubaldo Ochoa, Hugo Leonel Gramajo López, Iván González Fuentes, and Carlos Contreras Conde (the "victims")<sup>2</sup>.

## **II. ON THE PARTICIPANTS AND THE WILL OF THE PARTIES**

On the one hand, the President of COPREDEH -Frank William Rafael La Rue Lewy, on behalf of the State of Guatemala; and on the other hand, Fernando López Antillón, Legal Advisor to the petitioners before the Commission, and Legal Director of the Justice and Reconciliation Program of CALDH, representing the families of the Victims. Appear for the purpose of signing this Friendly Agreement in the case identified with number 10.441 Silvia Azurdia Utrera and Others, which includes the Victims, based on the respect for the human rights recognized in the American Convention on Human Rights, the American Declaration, and other instruments that are applicable to the present case.

## **III. ACKNOWLEDGMENT OF STATE RESPONSIBILITY AND ACCEPTANCE OF THE FACTS**

(a) Under instructions by the Constitutional President of the Republic, COPREDEH, on behalf of the State of Guatemala and before the Commission, recognizes the international responsibility of the State, without prejudice to the individual criminal responsibilities that may arise, for the violations of the following rights of the Victims: right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial and judicial protection (Articles 8 and 25), and the duty to protect and guarantee the rights enshrined in the Convention (Article 1.1);

(b) The State further acknowledges that there was a violent state strategy directed against the student movement at that time, and the victims' human rights violations occurred as a result of such a strategy.

## **IV. PUBLIC APOLOGY**

(a) The State undertakes to make public its acknowledgment of international responsibility for the violations of the Victims' human rights, as well as for the implementation

---

<sup>2</sup> On November 24, 2006, the parties signed an addendum where the students Eduardo Antonio López Palencia and Carlos Leonel Chuta Camey adhere to the friendly settlement agreement as victims and the benefits agreed upon in the Friendly Settlement Agreement were extended to their relatives.

of the violent state strategy against the student movement in general, and to present public apologies to the Victims and their families in a public act that will be held in a relevant location for the Petitioners, in Guatemala City (the "**Public Act**");

(b) The State will be represented in the Public Act by the President and Vice President of the Republic;

(c) The parties agree that the Public Act will be held within a period of two months from the date of signing this agreement;

(d) The parties agree to reach an agreement on the place, date, and time of the Public Act within one month of the date of signing this agreement;

(e) The State undertakes to disclose the Public Act through the efforts of COPREDEH's Department of Disclosure and Press before the media.

#### **V. MEASURES TO HONOR THE MEMORY OF THE VICTIMS**

(a) The State agrees to negotiate an agreement with CALDH on the measures to honor the memory of each of the Victims, in accordance with the reasonable wishes of the Petitioners and the real possibilities of COPREDEH, which must be executed with priority within COPREDEH' budget for 2005;

(b) CALDH agrees to submit proposals for compliance with said measures to COPREDEH within a period of two months from the date of signing the Friendly Agreement;

(c) COPREDEH undertakes to provide a response to the proposals prepared by CALDH under subsection (b) above, as soon as possible.

#### **VI. INVESTIGATION, PROSECUTION, AND SANCTION OF THOSE RESPONSIBLE**

(a) The State of Guatemala recognizes the imperative need to launch investigations to identify, prosecute, and punish those responsible for the victims' human rights violations.

(b) Within this framework, COPREDEH will promote the necessary actions before the Attorney General's Office in order to carry out an immediate, impartial, and effective investigation by the State.

(c) The State agrees to provide CALDH and the Commission reports on the investigation process detailed above, every 6 months from the signing of this agreement.

#### **VII. REPARATIONS**

(a) The State recognizes that the acceptance of its international responsibility, for the violations of the human rights of the Victims, implies the responsibility to pay fair compensation to the Petitioners under the parameters defined by mutual agreement between the parties, taking into consideration the criteria of the inter-American system and those of a national nature that are deemed convenient to apply in the negotiation.

(b) The State undertakes to arrive to an agreement, which will define the amount and the term of payment of the financial compensation, with each of the victim's families separately, before the end of the first quarter of 2005.

(c) The parties agree to meet within one month of the signing of the Friendly Agreement, to discuss the issue of financial compensation and set a schedule to ensure compliance with subsection (b) above.

#### **VIII. COMMUNICATIONS TO LOCATE OTHER FAMILIES**

(a) The State undertakes to make its best efforts to locate the family of Aaron Ubaldo Ochoa, and to put them immediately in contact with CALDH in order to provide them with assistance and legal representation.

(b) The State undertakes to fulfill its obligations to repair this family, both financially and morally, in terms similar to those agreed with the petitioners included in this agreement.

#### **IX. BREACH OF TERMS**

(a) In the case of breach of any of the terms indicated in this agreement, and failure to remedy such violation, CALDH will have the option to terminate the Friendly Agreement and continue with the contentious process, in accordance with Article 41 of the Commission's Regulations.

(b) The terms agreed in this agreement may be extended by mutual agreement of the parties, upon verifying the existence of just cause, situations of force majeure, or acts of God.

#### **X. LEGAL BASIS**

This Friendly Agreement is signed based on articles 1, 2, 3, 44, 46, and 183 (a) and on the fundamental principles established in the Political Constitution of the Republic of Guatemala, in the Peace Agreements, signed by the Government of the Republic of Guatemala and the Guatemalan National Revolutionary Unit, as well as respect for the human rights recognized in Articles 1.1, 5, 7, 8, and 25 of the American Convention on Human Rights; and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights;

In Guatemala City, on the eighteenth day of February in the year two thousand and five.

16. On November 26, 2006, the parties signed an addendum to the friendly settlement agreement, which states the following:

**ADDENDUM TO THE FRIENDLY SETTLEMENT AGREEMENT IN CASE 10.441  
SILVIA MARIA AZURDIA UTRERA AND OTHERS IN RELATION TO STUDENTS  
EDUARDO ANTONIO LOPEZ PALENCIA AND  
CARLOS LEONEL CHUTA CAMEY<sup>3</sup>**

#### **1. BACKGROUND**

On February 18, two thousand and five, the State of Guatemala signed the Friendly Settlement Agreement in the case identified as 10.441 Silvia Utrera and Others.

This case is related to a group of students who were members of the Association of University Students ("AEU"), who, during the weeks between August 21 and September 10, 1989, disappeared. The following week, the bodies of six of them were found in public places, all with signs of torture, and in the case of four of them, along with their bodies, notes indicating that their student activities were the motive for the crimes.

---

<sup>3</sup> Numbering of the clauses outside the original text of the agreement.

The case is contained in the report of the Commission for Historical Clarification, Guatemala: Memories of Silence in case No. 30, in which it detailed the context, the facts, and the implications of the so-called "black August", and reached the conclusion that: "the students were victims of a military intelligence operation, in which State agents or people who acted under their protection, tolerance, or acquiescence participated."

On November 22, 1989, the Center for Legal Action on Human Rights ("CALDH") submitted a petition to the Inter-American Commission on Human Rights ("the Commission") on behalf of the families ("the Petitioners") of seven of the mentioned students. The petition argued that the forced disappearance, torture, and extrajudicial execution involved violations of Articles 1.1, 4, 5, 7 of the American Convention on Human Rights ("the Convention").

The State of Guatemala ("the State"), through the Presidential Coordinating Commission for Executive Policy on Human Rights ("COPREDEH"), in consensus with the petitioners, initiated a friendly settlement procedure on March 4, 1999.

In the framework of the Declaration of the Government of the Republic in response to the cases raised before the Commission on August 9, 2000, the State of Guatemala recognized its international responsibility for the breach imposed by article 1.1 of the American Convention on Human Rights to respect and guarantee the rights enshrined in the Convention and articles 1, 2, and 3 of the Political Constitution of the Republic.

Said recognition was based on the omission that the state of Guatemala incurred regarding its obligation to guarantee individuals the enjoyment and respect of their fundamental rights, in accordance with the Political Constitution of the Republic of Guatemala, the American Convention on Human Rights, and other international instruments signed and ratified by Guatemala. As such, COPREDEH was instructed to study all cases that could reach a friendly settlement.

At the hearing held before the Commission on March 4, 2004, the State and CALDH signed a Memorandum of Understanding in which they agreed to arrive at a friendly settlement that includes all victims regarding: a) the State's recognition of international responsibility for the violations; b) commitment to offer public apologies to the next of kin of the victims; c) commitment to adopt measures to honor the memory of the victims; d) carry out an investigation, prosecution, and punishment of those responsible for the violations; e) commitment to establish reparation agreements with the next of kin of each of the victims as a priority within the framework of the National Compensation Program, and in any case within a year of the date of the signing of the Memorandum of Understanding; and finally, a commitment to carry out the necessary communications to locate the Petitioners with whom CALDH is not in contact. Regarding the provisions of letter e), during the second half of 2004 COPREDEH informed CALDH that the funds to solve the financial compensation in the present case would not come from the National Compensation Program but from another state source.

The parties have decided to sign this Addendum to the Friendly Settlement Agreement 10.441 Silvia Utrera and Others to formalize the commitments adopted by the State under the Memorandum of Understanding and establish a process for its implementation.

The Friendly Agreement was signed in relation to case 10.441, which includes the following students: Silvia María Azurdia Utrera, Víctor Hugo Rodríguez Jaramillo, Mario Arturo De León Méndez, Aarón Ubaldo Ochoa, Hugo Leonel Gramajo López, Iván González Fuentes, and Carlos Contreras Conde (the victims).

So, this Addendum will integrate the students Eduardo Antonio López Palencia and Carlos Leonel Chutá Camey, thus complying with the State of Guatemala with what was agreed at the meeting of March 4, 2004.

## **2. ON THE PARTICIPANTS AND THE WILL OF THE PARTIES**

On the one hand, the President of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights - COPREDEH - Frank William Rafael La Rue Lewy, on behalf of the State of Guatemala; and on the other hand, Angélica González, Legal Advisor to the petitioners before the IACHR, representing the Center for Legal Action on Human Rights — CALDH- and the families of the Victims. Appear in order to sign this Addendum to the Friendly Settlement Agreement in case 10.441 Silvia Utrera and Others, through which the victims Eduardo Antonio López Palencia and Carlos Leonel Chutá Camey are included, based on the respect for recognized human rights in the American Convention on Human Rights, the American Declaration, and other instruments that are applicable to this case.

## **3. ACKNOWLEDGMENT OF STATE RESPONSIBILITY, ACCEPTANCE OF THE FACTS, PUBLIC APOLOGY.**

This act was carried out under the terms of the Friendly Settlement Agreement, at the National Palace on August 29, 2005, where the Vice President of the Republic, Graduate Eduardo Stein Barillas recognized the State's international responsibility for the violations of the victims' human rights, and publicly apologized to the families of the victims.

Therefore, the Addendum is subject to the points that are pending compliance in the Friendly Settlement Agreement in case 10.441 Silvia Utrera and Others, which are the following:

## **4. MEASURES TO HONOR THE MEMORY OF THE VICTIMS**

**(a)** The State agrees to negotiate an agreement with CALDH on the measures to honor the memory of each of the Victims, in accordance with the reasonable wishes of the Petitioners and the real possibilities of COPREDEH, which must be executed with priority within COPREDEH' budget for 2007.

**(b)** CALDH agrees to submit proposals for compliance with said measures to COPREDEH within a period of two months from the date of signing.

**(c)** COPREDEH undertakes to promote a response to the proposals prepared by CALDH under subsection (b) above, as soon as possible.

## **5. INVESTIGATION, PROSECUTION, AND SANCTION OF THOSE RESPONSIBLE**

**(a)** The State of Guatemala recognizes the imperative need to launch investigations to identify, prosecute, and punish those responsible for the victims' human rights violations.

**(b)** Within this framework, COPREDEH will coordinate the necessary actions before the Attorney General's Office in order to carry out an immediate, impartial, and effective investigation by the State.

**(c)** As part of the coordination, COPREDEH will convene the petitioners, their legal advisers, and the Attorney General's Office in a period of no more than three months, in order to facilitate communication between the parties and to provide information that contributes to the investigation, with the possibility of holding extraordinary meetings within the established period.

**(d)** The State agrees to provide CALDH and the Commission reports on the investigation process detailed above, every 6 months from the signing of this agreement.

## 6. REPARATIONS

(a) The State recognizes that the acceptance of its international responsibility, for the violations of the human rights of the Victims, implies the responsibility to pay fair compensation to the Petitioners under the parameters defined by mutual agreement between the parties, taking into consideration the criteria of the inter-American system and those of a national nature that are deemed convenient to apply in the negotiation.

(b) The State undertakes to arrive to an agreement, which will define the amount and the term of payment of the financial compensation, with each of the victim's families separately, before the end of the first quarter of 2007.

(c) The parties agree to meet within one month of the signing of the Addendum, to discuss the issue of financial compensation and set a schedule to ensure compliance with subsection (b) above.

## 7. BREACH OF TERMS

(a) In the case of breach of any of the terms indicated in this agreement, and failure to remedy such violation, CALDH will have the option to terminate the Friendly Agreement and continue with the contentious process, in accordance with Article 41 of the Commission's Regulations.

(b) The terms agreed in this Addendum may be extended by mutual agreement of the parties, upon verifying the existence of just cause, situations of force majeure, or acts of God.

## 8. LEGAL BASIS

This Addendum is signed based on articles 1, 2, 3, 44, 46, and 183 (a) and on the fundamental principles established in the Political Constitution of the Republic of Guatemala, in the Peace Agreements, signed by the Government of the Republic of Guatemala and the Guatemalan National Revolutionary Unit, as well as respect for the human rights recognized in Articles 1.1, 5, 7, 8, and 25 of the American Convention on Human Rights; and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights;

In Guatemala City, on the twenty-fourth of November in the year two thousand and six.

## IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE.

17. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this procedure is intended to "reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention." The acceptance of carrying out this process expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the *Pacta Sunt Servanda* principle, whereby States must comply in good faith with the obligations assumed in the treaties<sup>4</sup>. The IACHR also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows the closure of individual cases in a non-contentious manner, and has demonstrated, in cases related to various countries, to offer an important solution vehicle, which can be used by both parties.

18. The Inter-American Commission has closely monitored the development of the friendly settlement achieved in this case and highly values the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement that is compatible with the object and purpose of the Convention.

---

<sup>4</sup> Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: "**Pacta sunt servanda**". *Every treaty in force binds the parties and must be complied with by them in good faith.*

19. According to the Resolution 3/20 of the IACHR on differentiated actions to address the procedural delay in friendly settlement procedures, since the signing of the agreement, the parties will have two years to move forward towards the approval by the Inter-American Commission on Human Rights, except for duly qualified exceptions established by the Commission. In relation to those matters with a signed agreement and without homologation in which the foreseen term has expired, the Commission will determine its course of action taking into particular consideration the duration of the compliance phase, the antiquity of the petition and the existence of fluid dialogues between the parties and/or substantial progress in the compliance phase. In said Resolution, the Commission established that when evaluating the viability of the approval of the agreement, or the closure or maintenance of the negotiation process, the IACHR will consider the following elements: a) the content of the text of the agreement and whether it has a clause of full compliance prior to approval; b) the nature of the agreed measures; c) the degree of compliance thereof, and in particular the substantial execution of the commitments assumed; d) the will of the parties in the agreement or in a subsequent written communication; e) its suitability with human rights standards and f) the observance of the State's will to fulfill the commitments assumed in the friendly settlement agreement, among other elements.<sup>5</sup>

20. In attention to the fifteen years that have elapsed since the signing of the friendly settlement agreement, on a petition filed 31 years ago, on October 6, 1989, regarding facts that occurred at that time and that the petitioner asked for its approval, it is up to determine the course of action of this matter and assess the viability of the approval of the agreement in light of the objective criteria established by the Commission in Resolution 3/20.

21. The IACHR observes that the parties signed an addendum to the friendly settlement agreement on November 24, 2006, where the students Eduardo Antonio Lopez Palencia and Carlos Leonel Chuta Camey are included in the friendly settlement agreement of February 18, 2005. Therefore, the Commission considers that said addendum constitutes an integral part of the agreement and so declares it.

22. The Inter-American Commission values the third declaratory clause (III), which recognizes the international responsibility of the Guatemalan State for the violation of the rights to life, humane treatment, personal liberty, fair trial, and judicial protection, established in articles 4, 5, 7, 8, and 25 of the American Convention; to the detriment of Víctor Hugo Ramírez Jaramillo, Silvia María Azurdia Utrera, Mario Arturo de León Méndez, Aaron Ubaldo Ochoa, Hugo Leonel Gramajo Lopez, Ivan Gonzales Fuentes, and Carlos Contreras Conde. Additionally, by virtue of the addendum signed between the parties on November 24, 2006, said acknowledgment of responsibility would be extended to Antonio Lopez Palencia and Carlos Leonel Chuta Camey.

23. Regarding the text of the agreement, the Commission observes that is not clear from its drafting that the approval of the agreement depends on the total fulfillment of the measures agreed upon. At the same time, it is necessary to indicate that when notifying the eventual application of Resolution 3/20 of the IACHR to the petitioners, they opted to move forward with the homologation process.

24. Regarding the nature of the measures agreed upon, the Commission observes that the agreement establishes instant enforcement measures such as the performance of an act of acknowledgment of responsibility, the payment of economic compensation, the construction of a plaza and installation of a plaque in memory of the victim. Likewise, the inclusion of successive execution clauses related to justice is observed.

25. Regarding the degree of compliance with the agreement, the Commission will now assess the progress made in relation to each of the clauses of the agreement.

26. Regarding the fourth clause fourth (IV) of the agreement, on the State's duty to present public apologies to the victims and their next of kin in a public act, the representatives of the victims reported on August 30, 2005 that, on 29 of August of the same year and in accordance with the Friendly Settlement Agreement, the act of acknowledging international responsibility was held at the facilities of the National Palace

---

<sup>5</sup> In this regard see, IACHR, Resolution 3/20 on differentiated actions to address the procedural delay in friendly settlement procedures, approved on April 21, 2020

of Culture. In this act, each of the victims' next of kin took the floor; the representative of CALDH; the president of COPREDEH, and the Constitutional Vice President of the Republic. Who publicly stated, "We apologize because the State did not guarantee the life and integrity of the students;" adding "the Executive will promote the start of a criminal procedure, since to date it does not exist, despite the fact that the events occurred in the return to democracy." In said brief, the petitioners considered that this part of the friendly settlement agreement was fulfilled, information that was repeated on June 24, 2020. The State confirmed this information on November 9, 2005. Taking into consideration, the information provided by both parties, the Commission considers that the fourth clause of the FSA is fully complied with and declares it so.

27. Regarding the fifth clause fifth (V), referring to measures to honor the memory of the victims, on April 10, 2006, the State reported that it was in negotiations with the petitioners who presented the State with a proposal to collectively honor all the students related to the case, consisting of the construction of a plaza in memory of the victims. Said information was forwarded to the petitioners, who confirmed on April 26, 2006 that, with regard to the honoring measure, the Rector of the University of San Carlos already had the authorization to build a plaza on the university campus in memory of the victims.

28. The State reported on May 25, 2006, that on May 16 of the same year a meeting was held at the University of San Carlos, with the representatives and relatives of the victims, in which it was presented the square that would have the name that the victim's families chose. As indicated by the State, there would have been no consensus among the relatives at that time, which is why they would explore other possible places for the construction of the plaza.

29. Subsequently, on June 5, 2006, the petitioners indicated the acceptance of the next of kin of the victims of the construction of the plaza at the University of San Carlos, in which trees would be planted and plaques would be installed in memory of them. The petitioners announced the continuation of the negotiations and meetings to define the content of the plates and the precise place of their location in the agreed plaza.

30. As reported by the State on September 29, 2006, CALDH's request on the collective memory measure included the next of kin of the victims' proposal that it reflected "both the interests and passions of the victims, as well as the unity and solidarity with which they lived their lives", adding that the petitioners had pointed out to the State that "this proposal is for the creation of a plaza in the capital that can serve as a space to remember and honor the memory of the students. The architectural and symbolic elements will contribute to a calm atmosphere, which will encourage the thought and reflection of visitors, and provide a space to honor and remember the deceased, which will have significance especially for the families of the disappeared."

31. According to the State, the architectural elements requested by the petitioner included:

- Central fountain: flowing water, symbolizing eternal life.
- A stone circle around the fountain with the names of the victims engraved, symbolizing their unity, friendship, and solidarity.
- Plaque with details of the events and mounted in an appropriate place in the square.
- For the historical memory and honor of the victims: stone benches in circular formation around the fountain to sit and to provide spaces for visitors to remember, think, and reflect.
- Eight trees (*Picus*) planted in a garden around the plaza in a circular formation, representing each of the deceased students.
- A small plaque with the name, date of birth and date of death of each victim would be placed at the foot of each tree.

32. In the same communication of September 29, 2006, the State reported on the opening ceremony of the plaza and honoring of the memory of the students on July 14, 2006. In this regard, it should be noted that said act counted with the participation of Commissioner Víctor Abramovich participated, in his capacity as Rapporteur of the IACHR for Guatemala; as well as the President of COPREDEH, the Rector of the University of San Carlos, the relatives and friends of the students, and the media. The State provided a photographic record with details of the plaza and the plaques installed. Said information was forwarded to the petitioners, who indicated their satisfaction with compliance with the measure to honor the memory of the victims on March 17, 2011, indicating that in addition to having fulfilled the wishes of the petitioners to reveal the plaques for each one of the victims at USAC, on July 21, 2009, an event was held in memory of Silvia Maria and Víctor Hugo with the donation of computers for the USAC School of Political Science. Said information was reiterated by the petitioners on March 15, 2012, indicating that they highly valued the installation of the plaques and the donation of the equipment and asked the Commission to assess the efforts of the State of Guatemala in complying with the honor measures contained in the FSA.

33. Additionally, on June 28, 2013, the State reported that:

[...] On July 21, 2009, the public act of donating six computers and the unveiling of a commemorative plaque in memory of the student Mario Arturo De Leon Mendez was carried out, an activity that took place at the Faculty of Agronomy, building T- 9 of the University Heroes and Martyrs Auditorium of the University of San Carlos of Guatemala;

On September 23, 2009, in honor of the memory of Ivan Ernesto González Fuentes, a member of the association of university students "Oliverio Castañeda de Leon" (AEU 89), the State of Guatemala carried out the act of unveiling the plaque and the donation of computers in the Metropolitan University Center - CUM- within the School of Psychological Sciences of the University of San Carlos of Guatemala;

On February 23, 2011, it was held a public act of unveiling a plaque and donating three computers in memory of the student Carlos Chutá Camey. This act took place in the auditorium of the Faculty of Legal and Social Sciences "Mario Lopez Larrave" in the S7 building of the University of San Carlos of Guatemala, the unveiling of the plaque and the delivery of the computers took place in the library of said faculty;

[...] On July 14, 2011, the act of unveiling a plaque in the memory of the student Carlos Ernesto Contreras Conde was held in the Auditorium of the School of Political Science in building M5 of the Central Campus of the University of San Carlos of Guatemala;

Similarly, on October 27, 2011, the public unveiling of a plaque was held in the Aula Magna of the Central Campus of said university in memory of Eduardo Antonio López Palencia, a student of the career of Biological Chemist at the Faculty of Chemical Sciences and Pharmacy;

During the performance of the act, there was a donation of a microbiology laboratory equipment from the School of Biological Chemistry of the Faculty of Chemical Sciences and Pharmacy, located in building T-12 of the University of San Carlos de Guatemala.

34. Said information was transferred to petitioners, who did not present any observations on that occasion. Subsequently, on June 24, 2020, the petitioners indicated their compliance with this part of the agreement.

35. Finally, the Commission learned that in 2019 the Exemplary Student Plaza in the USAC was revitalized in memory of the victims of the case, which now has gardens, lighting, benches, ambient sound, a

historical mural, and a commemorative plaque with the names of the martyrs<sup>6</sup>. Therefore, taking into consideration the aforementioned elements of information, the Commission considers that the fifth clause (V) of the friendly settlement agreement, as well as point 4 of the addendum, are fully complied with and so it declares it.

36. In relation to Clause sixth (VI), on the investigation, trial and punishment of those responsible, the State reported on July 5, 2013, 2013, in a general way and without specifying details of the investigation regarding each victim, on proceedings carried out in cases related to the disappearance and / or death of the 10 students, aimed at obtaining testimonies, death certificates and autopsy reports; the exhumation of the corpse in one of the cases; taking DNA samples; obtaining information on vehicles possibly involved in the events and obtaining the police roster operating at the time of the events, and reported that it had not been possible to identify those responsible. The petitioner indicated in its observations of September 20, 2016, that the State has not presented progress in the investigation and that it has not been possible to identify those responsible for these events and requested that the State send a detailed and updated report that reflects the concrete progress and significant results of the investigation on the events, as well as on the identification, judicial prosecution, and punishment of those responsible for the victims' human rights violations.

37. On April 10, 2017, the State reported on the current situation of the investigation and the actions aimed at determining the historical truth of the events denounced, and which include: a) requests addressed to the Ministry of National Defense, to determine the participation of state agents in the commission of the facts investigated; b) requests to different institutions in order to confirm the information provided by the victims' families and the location of the place where the events occurred; c) Meetings were held with the participation of the adhesive plaintiff, sponsoring lawyer, experts, Military Advisor, and personnel of the Prosecutor's Office, in order to conclude with the terms of reference of two expert opinions to be carried out in this case.

38. For its part, on September 20, 2017, the petitioner indicated that it had no observations regarding the current situation of the investigation, since, as indicated by the State, the Prosecutor's Office has indeed carried out and is considering carry out the indicated procedures, for which they consider that there has been a will to move forward on the investigation. Subsequently, on June 24, 2020, the petitioner indicated that the State continues to fail to comply with this point and requested the Commission to follow up on the matter. Taking into consideration the information provided by the parties, the Commission considers that this part of the FSA and point 5 of the addendum are partially fulfilled, and urges the State to continue deploying the corresponding actions in the matter of investigation, prosecution, and sanction of those responsible.

39. Regarding the seventh clause (VII), referring to financial reparations, the State reported on January 5, 2010, on the signing of the agreements and financial compensation with the victims' next of kin on May 10, 2007. In addition, the State clarified that due to insufficient funds in the Ministry of Public Finance, the parties had agreed to defer the payment of the obligation in two disbursements equivalent to 50% each. The State did not indicate the total amounts of compensation for the benefit of the relatives of each of the victims, nor did it provide the payment vouchers, or the compensation agreements signed.

40. On March 17, 2011, the petitioner confirmed the payment of the financial compensation using the methodology indicated by the State. Which was reiterated on June 24, 2020. Taking into consideration the information provided by the parties, the Commission considers that clause seven (VII) of the friendly settlement agreement, as well as point 6 of the addendum, are fully complied with and declares it so.

41. Regarding the eighth clause (VIII) on the State's commitment to deploy actions to locate the family of Aarón Ubaldo Ochoa, the State reported on June 28, 2013, on actions to contact Mrs. Olga Marisela Ochoa Ramirez, with whom the economic compensation agreement of May 10, 2007 was signed and the compensation payment was extended as indicated above. The petitioner did not submit observations on the matter, but confirmed in general terms the fulfillment of the economic compensation measures on June 24,

---

<sup>6</sup> In this regard, see the Web page of the San Carlos University. Exemplary Student Plaza is inaugurated. October 29, 2019. Available at: <https://soy.usac.edu.gt/?p=9411>

2020. Taking into consideration the information provided, the Commission considers that clause eight (VIII) of the FSA is fully complied with and declares it so.

42. Regarding the will of the parties in the agreement or in a subsequent written communication, on June 24, 2020, the petitioner party indicated its compliance with the approval of the agreement, requesting the Commission to maintain the follow up of the measure of justice until its full compliance.

43. Regarding the adequacy of the agreement with the standards on human rights, it is observed that the content of the FSA is consistent with the standards on human rights, since elements were integrated as measures of satisfaction, economic compensation and justice, which are considered appropriate within the factual scenario of the particular case, being in accordance with the various pronouncements of the IACHR and the jurisprudence of the Inter-American Court of Human Rights regarding the reparation of victims of human rights violations.

44. In relation to the State's will to comply with the ASA, it should be noted that, according to the analysis of the case, it is observed that there has been a commitment on the part of the State verified in the partial substantial compliance with the friendly settlement agreement.

45. Based on the foregoing, the Commission concludes that clauses III (Acknowledgment of State responsibility and acceptance of the facts); IV (Public apologies); V (Measures to honor the memory of the victims); VII (Repairs); and VIII (Communications to locate the other families) of the friendly settlement agreement are fully complied with. At the same time, the Commission considers that clause VI on the investigation, trial and punishment of those responsible is partially fulfilled. For the aforementioned, the Commission considers that the friendly settlement agreement has a partial substantial level of execution. Finally, the Commission considers that clauses I, II, III, IX and X of the friendly settlement agreement, as well as points 1, 2, 3, 7 and 8 of the addendum of February 18, 2005, are declarative in nature, for which reason their supervision does not correspond.

## **XI. CONCLUSIONS**

1. Based on the foregoing considerations and by virtue of the procedure provided for in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction for the achievement of a friendly settlement in the present case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

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

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To approve the terms of the agreement signed by the parties on February 18, 2005.
2. To declare the full compliance of clauses three (III) (Acknowledgment of State responsibility and acceptance of the facts); fourth (IV) (Public apologies); fifth (V) (Measures to honor the memory of the victims); Seventh (VII) (Reparations); and eighth (VIII) (Communications to locate the other families) of the friendly settlement agreement.
3. To declare the partial compliance of clause six (VI) (Investigation, prosecution, and punishment of those responsible).
4. To continue with the supervision of clause six (VI) of the friendly settlement agreement until its full compliance according to the analysis contained in this Report. To this end, it reminds the parties of their commitment to periodically inform the IACHR on its compliance.

5. To make this report public and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on August 14, 2020. (Signed): Joel Hernández García President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón Members of the Commission.