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CASE 13.436

FRIENDLY SETTLEMENT

JOSÉ OLEAGUER CORREA CASTRILLÓN
COLOMBIA

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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On October 17, 2000, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition presented by Javier Leónidas Villegas Posada (hereinafter "the petitioner party") by means of which he claimed the international responsibility of the Republic of Colombia (hereinafter "the State" or "the Colombian State"), for the violation of the rights enshrined in Articles 4 (life) 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, (hereinafter "Convention", "ACHR" or "American Convention"). The foregoing, due to the alleged detention, disappearance and subsequent extrajudicial execution of Mr. José Oleaguer Correa Castrillón (hereinafter "alleged victim"), by paramilitaries and allegedly acting on orders from the Colombian National Army.

2. On January 11, 2018, the Commission notified the parties of the decision to defer the treatment of the admissibility of the case until the merits stage of the case, pursuant to Article 36 (3) of its Rules of Procedure and Resolution 1/16 on measures to reduce the procedural backlog.

3. On May 8, 2020, the parties entered into a Memorandum of Understanding, whereby they committed to initiate a friendly settlement process and to work through joint meetings to build the formulas for the friendly settlement.

4. On June 23, 2021, the IACHR formally notified the parties of the initiation of the friendly settlement procedure, which materialized with the signing of a friendly settlement agreement (FSA) on December 23, 2021, in the city of Bogotá, D.C. Subsequently, on April 1, 2022, the parties submitted a joint report on the progress made in complying with the FSA and requested the IACHR to homologate it.

5. In this friendly settlement report, pursuant to Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, provides a summary of the facts alleged by the petitioner and the transcription of the friendly settlement agreement, signed on December 23, 2021 by the petitioner and representatives of the Colombian State. Likewise, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

6. According to the petitioner, on May 6, 1987, in the town of Puerto Berrío, Department of Antioquia, Mr. José Oleaguer Correa Castrillón disappeared, along with other persons. The alleged victim was the manager of the now defunct Credit Agrarian Industrial and Mining Bank (now Agrarian Bank) and, on May 6, 1987, he had gone from the municipality of Puerto Nare, where the bank's headquarters were located, to the town of Puerto Berrío to conduct business related to his position and to obtain a safe conduct permit to carry a firearm. The petitioner argued that shortly after leaving the XVI Brigade, the alleged victim was intercepted by several armed men and it was impossible to obtain information on his whereabouts.

¹ Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion and decision of this case, in accordance with Article 17.2.a) of the IACHR Rules of Procedure.

7. The petitioner stated that several of the massacres and disappearances, committed by military officials from garrisons in the Municipality of Puerto Berrío, were allegedly carried out against members and sympathizers of the Patriotic Union party. The petitioner also argued that the alleged victim's sympathy for the Patriotic Union party was widely known, and that this would have been the cause of his disappearance and subsequent murder at the hands of the paramilitaries.

8. The petitioner provided parts of the testimony of Mr. Alonso de Jesús Baquero given during the criminal investigation of the massacre of Segovia Antioquia, in which he allegedly implicated retired National Army Colonel Hernando Navas Rubio in the alleged murder of Mr. José Oleaguer Correa Castrillón. In that testimony, Mr. Alonso de Jesús Baquero allegedly held that the alleged victim made loans to peasants, which were allegedly destined for the guerrillas. According to the petitioner, Colonel Hernando Navas Rubio would have given the order to kill the alleged victim once he learned that he was in the XIV Brigade. At the time of the events, the alleged victim was reportedly in the company of a mine administrator and a driver. The petitioner claimed that the three were kidnapped and taken to the Cero Uno Base in Puerto San Vito, where Mr. Alonso de Jesús Baquero was, who allegedly stated that he tortured them to extract information, took them alive to the San Vito cemetery, where he murdered them, mutilated them, and threw them into the river.

9. The petitioner held that the then 21st Court of Criminal Investigation, based in Puerto Berrío, had initiated an investigation into the facts of this case. A certification from the Court, dated May 17, 1989, reportedly established that the defendants did not appear and that they had no news of the missing persons. The petitioner argued that despite the various investigations conducted by the Colombian authorities and the time that has elapsed, as of the date the petition was filed, the next of kin of the alleged victim had not received any answers as to the material truth of the facts surrounding the disappearance and death of José Oleaguer Correa Castrillón, nor had the alleged perpetrators been punished. Moreover, the petitioner added having filed a civil proceeding for presumed death due to the alleged victim's disappearance, obtaining a death certificate on October 20, 1993.

III. FRIENDLY SETTLEMENT

10. On December 23, 2021, the parties entered into a friendly settlement agreement, the text of which reads as follows:

**FRIENDLY SETTLEMENT AGREEMENT
CASE No. 13.346 - JOSÉ OLEAGUER CORREA CASTRILLON²**

On December 23, 2021, in the city of Bogotá D.C., Ana María Ordóñez Puentes, Director of International Legal Defense of the National Agency of Legal Defense of the State, acting for and on behalf of the Colombian State and hereinafter referred to as the "Colombian State", and on the other hand, the firm Javier Villegas Posadas Abogados³, represented for these purposes by Dr. Sandra Villegas Arévalo, acting as petitioner in this case, hereinafter referred to as "the petitioner", enter into this Friendly Settlement Agreement in case No. 13.436 José Oleaguer Correa Castrillón before the Inter-American Commission on Human Rights.

FIRST: CONCEPTS

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

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

² On April 7, 2022, the parties jointly requested the Commission to adjust the name of the victim, which due to a clerical error was entered as Jose Olagar. Therefore, the Commission considers José Oleaguer to have been corrected.

³ On March 8, 2022, the parties jointly requested the IACHR to adjust the name of the firm acting as the petitioning party in this case.

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

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

Satisfaction measures: Non-pecuniary measures intended to seek the recovery of victims from the harm which has been caused to them. Some examples of this type of measures are: public knowledge of the truth and acts of atonement.

Parties: State of Colombia, the victim's relatives, as well as their representatives.

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

Comprehensive repair: All those measures which objectively and symbolically restore the victim to the state prior to the commission of the damage.

Representatives of the victims: Javier Villegas Posada Law Firm, represented for these purposes by Dr. Sandra Villegas Arevalo.

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

Victims: Relatives of Mr. José Oleaguer Correa Castrillón.

SECOND: BACKGROUND

A. Before the Inter-American Human Rights System

1. On October 27, 2000, the Inter-American Commission on Human Rights received an international complaint against the Colombian State for the events that occurred on May 6, 1987 in Puerto Berrío, Antioquía, the day on which Mr. José Oleaguer Correa Castrillón disappeared while he was in the company of two other persons. Mr. Correa Castrillón worked as a manager in the extinct Credit Agrarian, Industrial and Mining Bank.
2. For the facts of the case, criminal proceedings were brought against Alonso de Jesús Vaquero, aka "el negro Vladimir", who was convicted in an anticipated sentence on December 6, 2002, and confirmed in a second instance on March 21, 2003.
3. Subsequently, the investigation was dropped with an inhibitory resolution of December 2, 2013 and executed on April 12, 2013.
4. Notwithstanding the aforementioned, the Attorney General's Office decided to reopen the investigation and assign it to the 190th Specialized Prosecutor's Office, where the corresponding investigative work will be conducted in order to clarify the facts⁴.
5. On May 8, 2020, the Colombian State and the representatives of the victims signed a Memorandum of Understanding in order to reach a friendly settlement.

⁴ Official document No 20211700077001 of November 8, 2021 - Attorney General's Office of the Nation.

6. In the following days, joint meetings were held between the parties in order to analyze the comprehensive reparation measures to be included in the Friendly Settlement Agreement that was signed on that date.

THIRD: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State acknowledges international responsibility for the violation of the rights recognized in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights to the detriment of the victim's next of kin, due to the lack of diligence in the investigation of the events of May 6, 1987 in which Mr. José Oleaguer Correa Castrillón disappeared.

FOURTH: SATISFACTION MEASURES AGREED BETWEEN THE PARTIES

The State undertakes to implement the following measures of reparation consisting of measures of satisfaction, guarantees of non-repetition and compensation, in the terms described below:

1) Measures of Satisfaction.

The State of Colombia undertakes to carry out the following satisfaction and remedial measures:

1.1. Act of atonement:

A virtual Act of Acknowledgment of Responsibility. The act of acknowledgment of responsibility shall be conducted with the active participation of the family members and representatives of the victims. In this act, the State's responsibility shall be recognized in the terms established in this agreement. This measure shall be in charge of the National Agency for the Legal Defense of the State.

1.2. Publication of the facts.

The Colombian State undertakes to publish the report of Article 49 of the American Convention on Human Rights issued by the Inter-American Commission on Human Rights homologating the friendly settlement agreement, on the website of the National Agency for the Legal Defense of the State, for a period of six months, thus guaranteeing access to the homologation report.

1.3. Financial aid.

The Colombian State, through the Ministry of National Education and the Colombian Institute of Educational Credit and Technical Studies Abroad (ICETEX), will grant financial aid to Manuela Casas Correa, in order to finance the Civil Engineering program at the University of Medellin in the on-site mode.

The financial aid will cover the tuition fees from the fifth (5th) to the tenth (10th) academic semester of the university level program, for a semester value of up to eleven (11) SMMLV and a semester support resource of two (2) SMMLV.

The beneficiary must ensure her permanence in the Higher Education Institution, maintaining adequate academic performance, being the sole responsibility of the beneficiary of the measure to maintain the status of student in the HEI. Thus, should she lose the quality of student for poor academic performance or disciplinary offense, the measure will be considered fulfilled by the State.

The financial aid must begin to be used within a term not to exceed five (5) years from the signature of this agreement, otherwise the State's efforts to obtain it shall be deemed to have been fulfilled.

The projection of the financial aid would amount to \$54,132,565, distributed for tuition and maintenance as follows:

TUITION 5TH TO 10TH SEMESTERS	SUPPORT SEMESTER 5TH THROUGH 10TH
\$41.773.136	\$12.359.429

The total amount of the financial aid will be \$54.132.565.

2) Justice measures

The State undertakes to continue to comply with its obligation to investigate, prosecute and punish those responsible for the forced disappearance of Mr. José Oleaguer Correa. This measure is the responsibility of the Office of the Attorney General of the Nation.

3) Pecuniary Reparation

The State undertakes to apply Law 288 of 1996, once this Friendly Settlement Agreement is homologated through the issuance of the Report of Article 49 of the American Convention on Human Rights. The foregoing, with the purpose of repairing the immaterial and material damages which may be proven in favor of the victim's relatives who have not been compensated through the Contentious-Administrative Jurisdiction, discounting, if applicable, the amounts recognized for administrative reparations. For these purposes, the criteria and amounts to be used are those recognized by the current Jurisprudence of the Council of State. The beneficiaries of this Agreement are⁵:

NAME	KINSHIP
Maribed Rico Correa	Wife
Nelfy Astrid Correa Rico	Daughter
Oleager Correa Rico	Son

FIFTH⁶: HOMOLOGATION AND FOLLOW-UP

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

This agreement was endorsed by the state entities involved in the execution of the reparation measures.

⁵ On April 1, 2022, the parties jointly requested the Commission to exclude Manuela Casas Correa from this end of the FSA, whom they clarified that would only be the beneficiary of the economic relief measure established in paragraph 1.3 of the fourth clause of the friendly settlement agreement. Therefore, the Commission considers that this clause has been remedied.

⁶ The IACHR adjusted the numbering of the FSA ex officio because it noticed a material error in which this part of the FSA was designated as the Sixth.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The IACHR reiterates that in accordance with Articles 48.1.f and 49 of the American Convention, the purpose of this procedure is to "reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention. The acceptance to carry out this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the principle *pacta sunt servanda*, by which the States must comply in good faith with the obligations undertaken in the treaties⁷. It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows for the termination of individual cases in a non-contentious manner, and has proven, in cases involving several countries, to offer an important vehicle for settlement, which can be used by both parties.

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

13. Pursuant to the provisions of clause seven of the friendly settlement agreement, the parties agreed to request the Commission to issue the report contemplated in Article 49 of the American Convention, once the friendly settlement agreement is signed.

14. The Inter-American Commission considers that the first (Concepts), second (Background before the Inter-American Human Rights System), third (Beneficiaries) and fourth (Acknowledgement of Responsibility) clauses of the agreement are of a declarative nature, and therefore it is not applicable to supervise their execution. In this regard, the Inter-American Commission values the fourth declarative clause, in which the Colombian State recognizes its international responsibility for the violation of the rights enshrined in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, to the detriment of the alleged victim's next of kin, for the lack of diligence in the investigation of the events of May 6, 1987.

15. With regard to paragraph 1.1 of the fourth clause related to the act of acknowledgment of responsibility, as jointly reported by the parties, it was held on March 3, 2022, at 9:30 a.m., through a virtual platform. The parties reported the existence of "permanent communication between the State, the petitioners and the victims, who agreed on each of the details for the fulfillment of the measure, such as the date and time for the act, as well as the agenda and the logistics required for its development". In this regard, the parties provided a simple copy of the invitations circulated for said event, which was attended by the Commissioner and Rapporteur for Colombia, Joel Hernández García, the family of José Oleaguer Correo and their representative, and the National Agency for the Legal Defense of the State.

16. Likewise, the parties reported on the contents of the program, which included the opening and installation of the event, the projection of the National Anthem and a video in memory of Mr. José Oleaguer Correa. Afterwards, the victim's son, Mr. Javier Villegas Posada, representative of the victims addressed the audience, followed by the Director of International Legal Defense of ANDJE, who apologized for the events and acknowledged the international responsibility of the State under the terms of the friendly settlement agreement, and finally, the Commissioner and Rapporteur for Colombia, Joel Hernandez Garcia, participated in the event.

17. In this regard, the representation of the State, headed by the Director of the National Agency for the Legal Defense of the State, Camilo Gómez Álzate, indicated the following:

[...] The Colombian State had the obligation to investigate, prosecute and punish those responsible for violating Mr. Correa Castrillón's fundamental rights, and we have witnessed the painful search for truth and justice that the family of Mr. José Oleguer Correa has undertaken over the years. It is precisely in recognition of the harm caused to Mr. José

⁷ Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), Article 26: "Pacta sunt servanda". *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

Oleaguer's family that today the State asks for their forgiveness, thus complying with one of the measures agreed in the Friendly Settlement Agreement, through this act of acknowledgement of responsibility, as part of the comprehensive reparation.

It is for this reason that, in compliance with one of the measures agreed in the Friendly Settlement Agreement signed on December 23, 2021, in my capacity as Director of the National Agency for the Legal Defense of the State, I acknowledge the international responsibility of the Colombian State for the violation of the rights enshrined in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, to the detriment of the victim's next of kin, due to the lack of diligence in the investigation of the events of May 6, 1987, in which Mr. José Oleaguer Correa Castrillón disappeared. [...]

Only with resilience, tenacity and fortitude, families like that of Mr. José Oleaguer Correa, manage to move forward with their life project, rebuild and build themselves up in the face of a great loss. I am convinced that the act of forgiving and being forgiven has an enormous restorative power, which contributes to the reconstruction of the social fabric, helps to restore confidence in the State and its institutions and constitutes the cornerstone of a true process of national reconciliation. Under this firm belief, the Colombian State expresses its solidarity with the family and friends of Mr. José Oleaguer Correa and recognizes the harm caused to them.

18. On the other hand, Commissioner Joel Hernandez, IACHR Rapporteur for Colombia expressed the following:

[...] I wish to highlight the importance of the act that brings us together today in this space, particularly its component of satisfaction for the victims through the public acknowledgment of the facts, since it constitutes the cornerstone of reconciliation and the vindication of the harm caused. The IACHR understands this act as a fundamental measure in the process to achieve redress for the harm caused and a demonstration of the State's commitment to provide comprehensive reparation to the next of kin of Mr. José Oleaguer Correa, as a way of dignifying his life and preserving his memory. [...]

We hope that the reparatory effect of the friendly settlements expressed in this act of recognition will be significant and restorative for the family of Mr. José Oleaguer Correa and that it will serve in some way to initiate a new stage of reconciliation in which the very process of having been participants in the design of their own reparation measures will empower them in the course of the implementation of this agreement, until they achieve the integral reparation they long for and the resignification of the wounds and suffering they have endured during all these years of searching for justice, for the material truth of the facts and for a fair reparation.

19. By virtue of the foregoing, taking into consideration the elements of information described above, the Commission considers that point 1.1 of the fourth clause is fully complied with and it so declares it as such.

20. With regard to paragraphs 1.2 (publication of the facts) and 3 (pecuniary reparation) of the fourth clause, the Commission observes that, according to what was stipulated by the parties in the text of the FSA, these measures should be implemented once the friendly settlement agreement has been approved, and therefore, it considers that they are pending compliance and it so declares it as such. By virtue of the foregoing, the Commission would await updated information from the parties on their implementation after the approval of this report.

21. With respect to clauses 1.3 (economic assistance) and 2 (justice measures) of the fourth clause, the Commission observes that it has not received information from the parties on the progress made

with respect to these points, and therefore considers that they are pending compliance and it so declares it as such. By virtue of the foregoing, the Commission would await updated information from the parties on their execution subsequent to the approval of this report.

22. For the aforementioned reasons, the Commission concludes that number 1.1 of clause four of the friendly settlement agreement (act of acknowledgment of responsibility) has been fully complied with and it so declares it as such. Regarding points 1.2 (publication of the facts), 1.3 (economic assistance), 2 (justice measures) and 3 (pecuniary reparation) of the fourth clause of the agreement, the Commission considers that they are pending compliance and so declares it as such. Finally, the Commission reiterates that the rest of the content of the agreement is of a declarative nature and therefore its supervision is not applicable.

V. CONCLUSIONS

1. Based on the foregoing considerations and pursuant to 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 with 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. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. Approve the terms of the Friendly Settlement Agreement signed by the parties on December 23, 2021.

2. To declare point 1.1 (act of acknowledgment of responsibility) of the fourth clause of the friendly settlement agreement fully complied with, according to the analysis contained in this report.

3. To declare that points 1.2 (publication of the facts), 1.3 (economic assistance), 2 (justice measures) and 3 (pecuniary reparation) of the fourth clause of the friendly settlement agreement are pending compliance, according to the analysis contained in this report.

4. To continue with the monitoring of the commitments established in points 1.2 (publication of the facts), 1.3 (financial assistance), 2 (measure of justice) and 3 (pecuniary reparation) of the fourth clause of the friendly settlement agreement, according to the analysis contained in this report. To this end, remind the parties of their commitment to report periodically to the IACHR on compliance with these measures.

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

Approved by the Inter-American Commission on Human Rights on May 10, 2022. (Signed): Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice President; Margarette May Macaulay, Second Vice President; Esmeralda E. Arosemena de Troitiño; Joel Hernández García and Roberta Clarke Members of the Commission.