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REPORT No. 337/21
CASE 13.758
FRIENDLY SETTLEMENT REPORT

FRANKLIN BUSTAMANTE RESTREPO AND FAMILY
COLOMBIA

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Colombia. November 22, 2021.

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FRANKLIN BUSTAMANTE RESTREPO AND FAMILY
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NOVEMBER 22, 2021

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On September 26, 2009, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition filed by Oscar Darío Villegas Posada (hereinafter “the petitioner” or “the petitioner party”), which claimed the international responsibility of the Colombian State (hereinafter the “State” or “Colombian State”) for the violation of the rights enshrined in articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), 11 (protection of honor and dignity) and 25 (guarantees of judicial protection) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), and of articles I and XVIII of the American Declaration of the Rights and Duties of Man, with regards to the alleged extrajudicial execution of the child Franklin Bustamante, of 14 years of age, allegedly by agents of the Administrative Department of Security (DAS), as well as the subsequent lack of effective investigation of the facts.

2. On April 13, 2019, the Inter-American Commission on Human Rights approved the Report on Admissibility No. 36/19 in which it declared itself competent to assess the alleged violation of the rights recognized in articles 4 (right to life), 5 (humane treatment), 8 (judicial guarantees), 19 (rights of the child) and 25 (right to judicial protection) of the American Convention, in accordance to the obligations set forth in article 1.1 thereof.

3. On November 30, 2020, the parties signed an act of understanding in search for a friendly settlement in the present case along with a chronogram of work to progress in the negotiations. Joint meetings were held over the subsequent months so as to agree on the measures of reparation to include in the Friendly Settlement Agreement, which materialized with the signing of said instrument on September 13, 2021, in the city of Bogotá D.C. Afterwards, on September 15, 2021, the parties requested the Commission the homologation of the agreement, request reiterated by the parties in the joint report on compliance with the agreement dated November 3, 2021.

4. In this friendly settlement report, as established by article 49 of the Convention and article 40.5 of the Commission’s Rules of Procedure, a summary of the alleged facts presented by the petitioners is made and the friendly settlement agreement, signed on December 13, 2021, by the petitioners and representatives of the State is transcribed. Likewise, the agreement signed by the parties is approved and the publication of this report in the IACHR’s Annual Report to the General Assembly of the Organization of the American States is agreed.

II. THE FACTS ALLEGED

5. The petitioner claimed that, on July 28, 1989, two agents of the DAS [*Administrative Department of Security- Departamento Administrativo de Seguridad in Spanish*] descended from a pick-up truck whose license plate was LG 15-81, threatening and kneeling child Franklin Bustamante, who was allegedly discussing with a sales partner in Berrio park. One of the agents would have shot him causing his death, after which both agents left the place. Although those responsible allegedly fled the scene, there were witnesses who allegedly identified them as renowned agents of the DAS.

6. As claimed by the petitioner party, on January 28, 1991, the 18 Criminal Investigating Court of Medellín had conducted an investigation deciding its archiving, allegedly due to lack of evidence. According to the petitioner, several witnesses had seen the facts and recognized those responsible, however, they did not declare during the criminal proceedings due to founded fear or retaliation from DAS agents; as opposed to the

latter Contentious Administrative proceedings, at which the witnesses declared in greater detail. According to the testimonies, one of said agents had been a bodyguard of the governess of Antioquia at the time. The petitioner party claimed that, by archiving the investigation, the access to justice had been denied, leaving the death of the alleged victim in impunity.

7. The petitioners narrated that, on September 7, 1989, the mother of the alleged victim had formulated a disciplinary complaint before the Provincial Prosecutor's Office of Medellín for the alleged conduct of the agents of the DAS, which caused the initiation of an investigation based on the considerations of the criminal proceedings and that had also concluded with the archiving of said proceedings.

8. According to the petitioners, in parallel, on July 21, 1991, a direct reparation claim had been filed before the Administrative Court of Antioquia, which was dismissed on June 30, 1999, allegedly in considering that no flaw in service had been found, nor any act from DAS had been involved in the facts alleged in the claim.

9. The petitioners argued that, an appeal had been filed against this decision, in August 1999. Next, on February 25, 2009, the Contentious Administrative Chamber of the State Council had confirmed the appealed sentence. The petitioner party held that the decision of the State Council had been based on emerging criminal, disciplinary and Contentious Administrative investigations, which had not been conducted with due diligence and which concluded with the impunity of the facts.

III. FRIENDLY SETTLEMENT

10. On September 13, 2021 the parties signed a friendly settlement agreement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT CASE No 13.758 FRANKLIN BUSTAMANTE RESTREPO AND FAMILY

On September thirteen (13) of 2021, in the city of Bogotá D.C. was the meeting between, conforming from one party, Ana María Ordoñez Puentes, Director of the Directorate of International Juridical Defense of the National Agency of Juridical Defense of the State, who acts with the due authorization on behalf and representation of the Colombian State, hereinafter "State" or the "Colombian State," and the other party, other party (sic) the "Villegas Abogados Asociados" law firm represented in this act by Sandra Villegas Arévalo, who acts as petitioner of this case and whom hereinafter shall be called "the petitioner", who have decided to sign the present Friendly Settlement Agreement within Case No 13.758 Franklin Bustamante Restrepo and Family, in progress before the Inter-American Commission on Human Rights.

FIRST PART: CONCEPTS

For purposes of the present Agreement, the following concepts shall have their respective meanings:

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

Moral damage: Harmful effects of the facts of the case which do not have economic or patrimonial character, which can manifest through pain, affliction, sadness, sorrow and downfall of the victims.

Immaterial damage: Refers to both the suffering and afflictions caused upon the victims, the undermining of very important values for persons, as well as non-pecuniary alterations in the conditions of existence of the victim or his family¹.

State or Colombian State: Pursuant to Public International Law it shall be understood as the signing subject to the American Convention on Human Rights, hereinafter “American Convention” or “IACHR”.

Satisfaction Measures: Non-pecuniary measures intended to procure the recuperation of the victims from the harm caused upon them. Some examples of these measures are: public disclosure of the truth and acts of reparation.

Parties: State of Colombia, family of the victim, and their representatives.

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

Integral reparation: Every measure which objectively and symbolically restores the victim to the situation prior to the perpetration of the damage.

Representatives of the victims: “Villegas Abogados Asociados” Law Firm, represented in this act by Sandra Villegas Arévalo

Friendly settlement: Alternative mechanism of solution of conflicts, using peaceful and agreed arrangement before the Inter-American Commission.

Victims: Family of Mr. Franklin Bustamante Restrepo.

SECOND PART: BACKGROUND BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM.

1. On September 26, 2009, the Inter-American Commission on Human Rights received a petition filed by Doctor Oscar Darío Villegas Posada, which claimed that on July 28, 1998 the alleged extrajudicial execution of the minor (aged 14) Franklin Bustamante was perpetrated, in the city of Medellín- Antioquia, apparently by agents of the Administrative Department of Security DAS, as well as for the lack of effective investigation, in the facts of the case.
2. The petitioners hold, that on July 28, 1989, while Franklin Bustamante was discussing with a sales partner in Berrio park, two agents of the DAS descended from a pick-up truck whose license plate was LG-15-81, they threatened him, made him kneel and one of them shot him causing him death. Petitioners hold, that those responsible had fled, although there are witnesses who identified them as renowned DAS agents.
3. On July 31, 1989, the 18 Criminal Investigating Court of Medellín, initiated the investigation, conducting the pertinent proceedings until June 17, 1992, date when due to competence (Upon the creation of the Attorney General of the Nation), forwarded the case over to the 06 Prosecutor’s Office of the Second Unit of Life of Medellín.
4. On its part, the 06 Prosecutor’s Office, acknowledged the case on July 9, 1992, practiced several evidential procedures to determine those responsible of the facts and afterward proceeded to decree the inhibitory decision on July 17, 1992, in consideration of the set forth in article 118 of Law 23 of 1991, which orders “the preliminary inquiry

¹ IHR Court, Case of Caesar Vs. Trinidad and Tobago, (Merits, Reparations and Costs). Sentence of March 11, 2005. Serie C No. 123, paragraph 125.

proceedings which after two years of being initiated, have not yielded the identification of the indicted, shall be subject to inhibitory decision”². Said decision was personally notified to the Criminal Delegate of the Public Ministry on July 22, 1992.

5. On September 7, 1989, the mother of the alleged victim formulated a disciplinary complaint before the Provincial Prosecutor’s Office of Medellín for the conduct of agents of the DAS which prompted an investigation based on the considerations of the criminal proceedings and it also concluded with the archiving of the proceedings.

6. On July 21, 1991, the family of the alleged victim filed a direct reparation claim before the Administrative Court of Antioquia and on July 30, 1999 the latter dismissed it in considering that there was no credited failure of the service and involvement of the DAS in the facts alleged in the claim.

7. An appeal was filed against this decision in August 1999. On February 25, 2009, the Contentious Administrative Chamber of the State Council confirmed the contested sentence.

8. By means of Report No. 36/19 of April 19, 2019, the Inter-American Commission on Human Rights, declared the admissibility of the petition concerning the alleged violation of the rights to life, humane treatment, fair trial, rights of the child and right to judicial protection, recognized in articles 4, 5, 8, 19 and 25 of the American Convention on Human Rights in accordance with the obligations set forth in article 1.1 thereof.

9. At a meeting held on November 30, 2020, the parties decided to subscribe an minute of understanding to commence the search for a friendly settlement in the present case.

10. In the subsequent months, joint meetings were held between the parties in order to analyze the measures of reparation to include in the Friendly Settlement Agreement signed on this date.

AT DOMESTIC LEVEL.

An investigation was conducted for the murder of Mr. Franklin Bustamante Restrepo, by the 06 Prosecutor’s Office of the Unit of Life of the Sectional of Medellín. The following investigation activities were conducted under number 0788:

- The mother of the victim’s testimony was received, as well as from ten eye witnesses of the facts.
- The testimony of a person identified as the alleged author of the murder of young Bustamante Restrepo was also received.
- A municipal transit inspection was ordered in Puerto Berrio in order to identify the owner of a vehicle with the license plate LG-1581 which was used to attack Mr. Franklin Bustamante.
- An inhibitory decision was issued pursuant to the set forth in article 118 of Law 23 of 1991³.

The Colombian State has informed the actions which have been conducted under the criminal investigation. In light of the above, the parties understand that the component in terms of justice of the present agreement has been met and we respectfully request the H. Commission to so declare it.

² Official Document No 20201700070261 of November 30, 2020 and Official Document No 20211700061951 of September 10, 2021 – Attorney General of the Nation.

³ By means of which mechanisms are created to decongest Judicial Offices, and other provisions are dictated.

THIRD PART: BENEFICIARIES

The Colombian State recognizes as victims of the present agreement, the following persons:

Name	Citizenship ID	Relation
Maria of the Socorro Restrepo Velásquez	[...]	Mother
Denir Arcely Bustamante Restrepo	[...]	Sister
Fanory Calle Restrepo	[...]	Sister

The victims recognized in the present Friendly Settlement Agreement shall benefit provided the corroboration of their consanguinity link to Mr. Franklin Bustamante Restrepo.

In addition, the victims who will benefit from the present Friendly Settlement Agreement shall be those alive at the moment of the victimizing fact⁴ and who are alive at the time of the signing of the agreement.

FOURTH PART: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State acknowledges its 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 in connection to article 1.1 thereof, to the detriment of the family of Mr. Franklin Bustamante Restrepo, for the lack of diligence in the investigation of the occurred facts.

FIFTH PART: MEASURES OF SATISFACTION

The Colombian State is obliged to conduct the following measures of satisfaction:

i. Act of Acknowledgement of Responsibility:

The Colombian State is to perform a Public Act of Acknowledgement of Responsibility, which is to be conducted in a virtual manner with the participation of the family of Mr. Franklin Bustamante and their representatives. The act shall be performed pursuant to the acknowledgement of responsibility mentioned in this Agreement.

The present measure shall be performed by the National Agency of Juridical Defense of the State.

ii. Publication of the Report of Article 49:

The Colombian State shall carry out the publication of the Report of article 49 of the IACHR, once it is issued by the Inter-American Commission on Human Rights, on the web page of the National Agency of Juridical Defense of the State, for the term of six (6) months.

SIXTH PART: MEASURES OF COMPENSATION

The State is obliged to initiate the compliance of Law 288 of 1996 “By means of which instruments are established for the compensation of detriment to the victims of human rights

⁴ The above, pursuant to the jurisprudence of the IHR Court. See, IHR Court. Case of the Afrodescendent Communities displaced from the Basin of the Cacarica River (Operation Genesis) Vs. Colombia. (Preliminary Exceptions, Merits, Reparations and Costs). Sentence of November 20, 2013. Serie C No. 270, para. 425.

violations by virtue of the set forth by certain international human rights bodies”, once the present Friendly Settlement Agreement is homologated by means of the issuance of the Report of Article 49 of the American Convention on Human Rights, with the purpose of repairing the detriment caused to the family of the victims as a consequence of the affectations generated by the facts of the present case.

The National Agency of Juridical Defense of the State shall be the entity in charge of assuming the compliance of Law 288 of 1996.

For purposes of compensation, the criteria and amounts recognized by the current jurisprudence of the State Council is to be resorted.

SEVENTH PART: HOMOLOGATION AND FOLLOW-UP

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

This Agreement having been read and the parties being aware of the scope and legal content thereof, it is signed on September thirteen (13) of 2021.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The IACHR reiterates that in accordance with articles 48.1.f and 49 of the American Convention, this procedure is intended to “reach a friendly settlement of the matter founded in the respect for the human rights recognized in the Convention”. The acceptance to conduct this procedure 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, through which the States must fulfill in good faith the obligations assumed in treaties⁵. It also wished to reiterate that the friendly settlement procedure contemplated in the Convention allows the termination of individual cases in a non-contentious manner, and has proven, in cases concerning several countries, to offer an important means of solution, which may be used by both parties.

12. The Inter-American Commission has closely followed the friendly settlement achieved in the present case and highly 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 set forth in the agreement signed between the parties, by means of which they requested the Commission the homologation report of the friendly settlement agreement contemplated in article 49 of the American Convention and considering the request by the parties of September 15, 2021 to go ahead through this path, it is fit to value the compliance of the commitments set forth in this instrument.

14. On this matter, the Commission considers that clauses first (Concepts), second (Background Before the Inter-American Human Rights System), third (Beneficiaries) and fourth (Acknowledgement of Responsibility) of the agreement, are of declarative nature, for which reason it is not required to supervise its compliance.

15. The Inter-American Commission values the fourth declarative clause, in which the Colombian State acknowledges 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, due to the lack of diligence in the investigation of the facts occurred to the detriment of Mr. Franklin Bustamante Restrepo.

16. In relation to the first numeral of the fifth clause related to the act of redress, according to what was jointly reported by the parties, the act was carried out on October 22, 2021, through a virtual

⁵ Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), Article 26: “*Pacta sunt servanda*”. Any treaty in force is binding on the parties and must be performed by them in good faith.

platform, in the context of the COVID 19 pandemic, using different IT tools⁶. The parties reported the existence of permanent communication between the State, the victims, and their representatives, who agreed on each of the details for the compliance of the measure, such as the date, time, agenda, and logistics required for its development. In this regard, the parties provided a simple copy of the invitations circulated for said event, in which the victim's next of kin, close friends and their representatives, as well as the National Agency for the Legal Defense of the State participated.

17. Likewise, the parties gave an account of the content of the agenda, which included an opening, the projection of a video in memory of Franklin Bustamante, testimonial videos of Franklin Bustamante's sisters, and a compilation video of some photographs of the family members, as well as the intervention of Oscar Villegas Posada, representative of the victims. The State's intervention was made by the Director of International Legal Defense of ANDJE, who apologized for the events that occurred and acknowledged the State's international responsibility under the terms of the friendly settlement agreement, stating the following:

[...]

The Colombian State recognizes its responsibility for the lack of due diligence in the investigation of the events that occurred on July 28, 1998, when the alleged extrajudicial execution of the minor Franklin Bustamante was perpetrated in the city of Medellín [...].

It is precisely in recognition of the harm caused to Franklin's family that today the State asks for their forgiveness, thus complying with one of the measures agreed in the Friendly Settlement Agreement, by carrying out this act of acknowledgment of responsibility as part of the integral reparation [...].

This space today is a symbol of forgiveness and reconciliation, but also hope. To Mrs. María del Socorro Restrepo Velásquez, Mrs. Denir Arcely Bustamante Restrepo and Mrs. Fanory Calle Restrepo, on behalf of the Colombian State, I offer my most sincere apologies. Surely these words are insufficient, they were many years of pain, of anguish, of the search for justice, but from the bottom of my heart receive all my solidarity and understanding.

[...]

18. The parties also confirmed the dissemination of the act on the website of the National Legal Defense Agency and on various social networks. In this regard, the Commission verified the publication and dissemination of the act of redress in the web page and its broadcasting through the YouTube channel. Taking into account the above, and the information provided jointly by the parties, the Commission considers that the first numeral of the fifth clause of the friendly settlement agreement related to the act of redress has been fully complied and it declares it so.

19. In relation to paragraph 1.2 of the fifth clause related to the publication of the homologation report issued by the Commission, and sixth clause (Measures of compensation) clauses of the agreement, by virtue of the joint request of the parties to proceed with the homologation of the agreement prior to its execution, the Commission observes that said measures must be fulfilled after the publication of the present report, for which reason it deems that these measures are pending their compliance which it so declares. The Commission awaits updated information from the parties as to its execution after the publication of this report.

20. Also, the Commission considers that the rest of the content of the agreement is of declarative nature, for which reason it is not to the IACHR's to supervise its compliance.

⁶ In this regard, see YouTube, [Act of Acknowledgement of Responsibility in the case of Franklin Bustamante](#). Published by the National Agency of Legal Defense of the Colombian State on October 22, 2021.

V. CONCLUSIONS

1. Based on the considerations that precede and by virtue of the procedure foreseen in articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction for the attainment of a friendly settlement in the present case, founded in the respect for human rights, and compatible with the object and purpose of the American Convention.

2. By virtue of the considerations and conclusions exposed in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on September 13, 2021.
2. Declare that numeral 1.1 (act of redress) of the fifth clause of the friendly settlement agreement is fully complied with, according to the analysis contained in this report.
3. Declare that numeral 1.2 (publication) of the fifth clause and the sixth clause (compensation measures) of the friendly settlement agreement are pending compliance, according to the analysis contained in this report.
4. To continue with the supervision of the commitments assumed in numeral 1.2 of the fifth clause (publication) and sixth clause (Measures of compensation) of the Friendly Settlement Agreement until their total fulfillment, pursuant to the analysis contained in this report and in said pursuit, to recall the parties their duty to periodically inform the IACHR on their compliance.
5. To make the present report public and to include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on November 22, 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño; Edgar Stuardo Ralon Orellana, y Joel Hernández García Members of the Commission.