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REPORT No. 115/23
CASE 13.232
REPORT ON FRIENDLY SETTLEMENT

OMAR ERNESTO VAZQUEZ AGUDELO
COLOMBIA

Approved electronically by the Commission on July 26, 2023.

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FRIENDLY SETTLEMENT
OMAR ERNESTO VAZQUEZ AGUDELO
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JULY 26, 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On October 22, 2008, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition lodged by Roberto Fernando Paz Salas and Lorena Esnid Areiza (hereinafter "the petitioners"), alleging the international responsibility of the Republic of Colombia (hereinafter "Colombia" or "the State"), for the violation of the human rights contemplated in Articles 6 (right to life) and 10 (right to dignified treatment of persons deprived of their liberty) of the International Covenant on Civil and Political Rights, to the detriment of Omar Ernesto Vásquez Agudelo and his family (hereinafter "alleged victims"), for the failure to investigate the facts surrounding the death of the alleged victim, who was deprived of his liberty in the Bellavista prison in Medellín, and the subsequent failure to punish those responsible.

2. On May 18, 2017, the Commission issued Admissibility Report No. 38/17, in which it declared the petition admissible and its competence to hear the claim presented by the petitioners regarding the alleged violation of the rights enshrined in Articles 4 (right to life), 5 (right to humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention, in relation to its Articles 1. 1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law); to the detriment of Omar Ernesto Vásquez Agudelo and his family.

3. On March 23, 2021, the parties signed a Memorandum of Understanding for the search for a friendly settlement in the present case, together with a work schedule to advance in the negotiations. In the following months, the parties held bilateral meetings in order to analyze the reparation measures to be included in the friendly settlement agreement (hereinafter "FSA"), which materialized with the signing of said instrument on March 1, 2022, in the city of Bogotá D.C. Subsequently, on February 16, 2023, the parties presented a joint report on the progress in the implementation of the FSA and requested the IACHR to homologate it.

4. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5) of the Commission's Rules of Procedure, contains a summary of the facts alleged by the petitioners and transcribes the friendly settlement agreement signed between the petitioners and the representatives of the Colombian State on March 1, 2022. Likewise, the agreement signed between the parties is approved and it is agreed that this document will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioners stated that Mr. Omar Ernesto Vásquez Agudelo was an inmate at the Bellavista Prison in Medellín where, according to the medical report, he died of methyl alcohol poisoning on September 9, 2002. They asserted that prison officers found the alleged victim having convulsions and transported him to the medical ward where he was cared for by the prison's medical staff. They stated that medical personnel performed CPR and determined that it was necessary to intubate the patient, but were unable to do so because they lacked endotracheal tubes. Accordingly, they monitored Mr. Vásquez until his immediate transport to an outside medical center was possible. They indicated that the alleged victim suffered cardiorespiratory failure twice more on the way to the hospital and that he died after arriving at the hospital.

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

6. The petitioners stated that authorities from the National Prison and Penitentiary Institute [*Instituto Nacional Penitenciario y Carcelario*] (hereinafter, "INPEC"), opened an investigation but were unable to fully identify those responsible for the alleged victim's death. Therefore, the investigation was transferred to the Office of the Assistant Prosecutor before the Criminal Judges of Bello in Antioquia for the appropriate investigations to be conducted. They alleged that on January 30, 2004, the Office of the Assistant Prosecutor issued a decision declining to open a criminal investigation because it was impossible to identify those responsible.

7. The petitioners asserted that the alleged victim's death was due to the inadequate surveillance by the penitentiary center's guards and wardens, since the intoxication of Mr. Vásquez and other inmates was the result of their negligence and failure to control the manufacture, sale, and consumption of prohibited substances within the prison. Therefore, they allege that the State is responsible for the omissions of its agents.

8. The petitioners stated that on September 9, 2004, they filed a request for pretrial conciliation with the Office of the Judicial Advocate [*Procuraduría Judicial*] before the Administrative Court of Antioquia. They alleged that a conciliation hearing was ordered to be held on November 25, 2004, and that INPEC failed to appear. They indicate that a petition for direct reparation was filed with the Administrative Court of Antioquia on November 26, 2004.

9. The petitioners stated that on March 11, 2005, the Court asked the Office of Judicial Advocate No. 32 to clarify the date of the failed conciliation hearing in order to be able to determine whether the legal action was time-barred by the statute of limitations. On August 26, 2005, after receiving confirmation from the Judicial Advocate's Office that the hearing had been held on November 25, 2004, the Court admitted the claim. The petitioners further stated that the INPEC filed a motion for reconsideration of that decision on the grounds that the claim had not been filed in person, and requested that it be declared time-barred. On June 15, 2007, the Court dismissed the claim based on the expiration of the statute of limitations because Mr. Vásquez's family had not filed it within two years of the date of his death.

10. On June 7, 2007, the petitioners appealed this decision to the Council of State, but the appeal was dismissed without a ruling on the merits because the amount requested as reparation did not meet the minimum required by law to allow for review on appeal. The petitioners stated that on March 7, 2008, they filed a petition for the protection of constitutional rights [*acción de tutela*] against the Administrative Court of Antioquia, alleging that the court had acted beyond the scope of its authority by failing to properly calculate the filing deadline for the claim and the statute of limitations. The Council of State dismissed that petition as inadmissible.

11. Based on the foregoing, the petitioners asserted that this case has been met with impunity and that the State's actions constitute a violation of the rights to life, humane treatment, and access to justice.

III. FRIENDLY SETTLEMENT

12. On March 1, 2022, in the City of Bogotá, Colombia, the parties entered into a friendly settlement agreement which provides the following:

FRIENDLY SETTLEMENT AGREEMENT CASE 13.232- OMAR ERNESTO VÁSQUEZ AGUDELO AND FAMILY MEMBERS

On March 1, 2022, the following met in the city of Bogotá D.C., on the one hand, Ana María Ordóñez Puentes, Director of the Directorate of International Legal Defense of the National Agency for the Legal Defense of the State, acting with due authorization on behalf and in representation of the Colombian State, hereinafter the "State" or the "Colombian State," and on the other hand, the Indemnizaciones Paz Abogados Organization, represented in this act by Dr. Roberto Fernando Paz Salas, acting on behalf of the victims, hereinafter the "petitioners", who have decided to subscribe this Friendly Settlement Agreement in the

context of Case 13.232 Omar Ernesto Vázquez Agudelo and Family, pending before the Inter-American Commission on Human Rights, hereinafter "IACHR".

FIRST PART: CONCEPTS

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

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

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

Immaterial damage: It includes both the suffering and affliction caused to the victims, the impairment of values that are very significant for the persons, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victim or his or her family².

State or Colombian State: In accordance with Public International Law, the signatory subject of the American Convention on Human Rights, hereinafter referred to as "American Convention" or "ACHR".

Satisfaction measures: Non-pecuniary measures that aim to seek the recovery of victims from the harm that 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.

Integral reparation: All those measures that objectively and symbolically restore the victim to the state prior to the commission of the damage.

Representative of the victims: Indemnizaciones Paz Organization, represented by Dr. Roberto Fernando Paz Salas.

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

Victims: Mrs. Esnid Areiza Ruíz, permanent companion of Mr. Omar Ernesto Vázquez Agudelo.

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

1. On October 22, 2008, the IACHR received a petition presented by Dr. Roberto Fernando Paz Salas, in which it is indicated that on September 8, 2002, Mr. Omar Ernesto Vázquez Agudelo, who was incarcerated in the Bellavista prison in Medellín, together with other inmates, ingested a clandestine beverage containing methyl alcohol that had been smuggled into the penitentiary center.

² IHR Court, Case of Caesar vs. Trinidad and Tobago, (Merits, Reparations and Costs). Judgment of March 11, 2005, Series C No. 123, para. 125.

2. The prison officers found Mr. Omar Ernesto Vázquez convulsing and took him to the health sector where he was attended by medical personnel.
3. In that sense, Mr. Vázquez Agudelo was monitored until it was possible to transfer him to an external center immediately. They hold that, in the course of the transfer, the alleged victim suffered two cardiorespiratory arrests. After his transfer to the hospital, Mr. Vázquez Agudelo died on September 9, 2002.
4. The relatives of the alleged victim turned on November 26, 2008 to the contentious-administrative jurisdiction. However, the claim was rejected due to the expiration of the statute of limitations of the direct reparation action.
5. The facts that caused the death of Mr. Vázquez Agudelo were investigated by the Attorney General's Office, which, on January 30, 2004, issued an order of inhibition and an order to archive the case, since it was not possible to identify those responsible for the death of Mr. Vázquez Agudelo.
6. The petitioner expressed its intention to initiate a process of seeking a friendly settlement, for which reason, after a meeting held, the parties decided to sign a Memorandum of Understanding in order to initiate the process of seeking a friendly settlement in the present case.
7. On March 23, 2021 a Memorandum of Understanding for the Search for an Friendly Settlement was signed.
8. In the following months, joint meetings were held between the parties to analyze the reparation measures to be included in the Friendly Settlement Agreement signed on that date.

THIRD PART: BENEFICIARY

The Colombian State recognizes the following as victims of this agreement:

Name	Id number	Kinship
Lorena Esnid Areiza Ruiz	[...]	Permanent companion

The victim recognized in this Friendly Settlement Agreement shall benefit from it provided she proves her affinity relationship with Mr. Omar Ernesto Vázquez Agudelo.

In addition, the victim who will benefit from this Friendly Settlement Agreement shall be the one who was alive at the time of the victimizing event³ and is alive at the time of the signing of the Agreement.

FOURTH PART: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State recognizes its international responsibility, by omission, for the violation of the rights recognized in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1. thereof to the detriment of the family of Mr. Omar Ernesto Vázquez Agudelo, due to the lack of diligence in the investigation of the events that occurred.

³ This, in accordance with the jurisprudence of the Inter-American Court of Human Rights. See I/A Court H.R., Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 20, 2013, Series C No. 270, para. 425.

This, based on the fact that Mr. Omar Ernesto Vázquez Agudelo was under the custody of the State in a prison, therefore, since he was in a relationship of special subjection to the State, the administration should be fully responsible for his safety and protection.

FIFTH PART: SATISFACTION MEASURES

The Colombian State undertakes to carry out the following satisfaction measures:

i. Act of Acknowledgment of Responsibility:

The Colombian State will carry out a Public Act of Acknowledgement of Responsibility, virtually, with the participation of the family of Mr. Omar Ernesto Vázquez Agudelo. The act shall be carried out in accordance with the acknowledgement of responsibility stated in this Agreement.

This measure will be in charge of the National Agency for the Legal Defense of the State.

ii. Publication of the Article 49 Report:

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, which homologates the friendly settlement agreement, on the website of INPEC and the National Legal Defense Agency, for a period of six months⁴.

SIXTH PART: GUARANTEES OF NON-REPETITION

Through the National Penitentiary School, the staff of the Custody and Surveillance Corps assigned to the Penitentiary and Prison Establishment of Medellín (Bellavista) will be trained in the virtual retraining course designed for the staff of the Custody and Surveillance Corps⁵.

This measure will be in charge of INPEC.

SEVENTH PART: COMPENSATION MEASURES

The State undertakes to initiate the procedure of the Law 288 of 1996 "Whereby instruments are established for the compensation of damages to victims of human rights violations by virtue of the provisions of certain international human rights bodies", once this friendly settlement agreement is homologated through the issuance of the Report of Article 49 of the American Convention on Human Rights, with the purpose of repairing the damages caused to the victim's family as a consequence of the effects generated by the facts of the present case.

The National Agency for the Legal Defense of the State shall be the entity in charge of assuming the processing of Law 288 of 1996.

For the purposes of indemnification, the criteria and amounts recognized by the current jurisprudence of the Council of State are to be implemented.

EIGHTH PART: HOMOLOGATION AND FOLLOW-UP

The parties request the Inter-American Commission to homologate this Agreement and to follow up on it.

⁴ National Penitentiary and Prison Institute. Official letter of December 21, 2021.

⁵ Ibidem

This Agreement having been read and the parties being aware of its scope and legal content, it is signed on March 1, 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

13. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the American Convention, the purpose of this procedure is to “reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention.” The acceptance to pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply with the obligations assumed in the treaties in good faith.⁶ It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.

14. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and values 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.

15. In accordance with the agreement signed by the parties whereby they requested the Commission to homologate the friendly settlement agreement contemplated in Article 49 of the American Convention, and taking into consideration the request of the parties of February 16, 2023 to move forward in this path, it is appropriate to assess compliance with the undertakings set forth in this instrument.

16. The Inter-American Commission considers that the first (Concepts), second (Background before the Inter-American Human Rights System), third (Beneficiary), fourth (Acknowledgement of Responsibility) and eighth (Homologation and Follow-up) clauses of the agreement are of a declaratory nature, and therefore it is not appropriate to supervise their compliance. In this regard, the Commission values the fourth declarative clause, in which the Colombian State recognizes its international responsibility by omission, 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, due to the lack of diligence in the investigation of the facts surrounding the death of Mr. Omar Ernesto Vázquez Agudelo.

17. With regard to item (i) *act of acknowledgment of responsibility*, of the fifth clause on measures of satisfaction, as jointly reported by the parties, after the execution of the FSA, the parties agreed that said act would be of a private nature and that it would take place on November 30, 2022, through a virtual platform. The parties reported the existence of a permanent and fluent communication between the State and the petitioners, and that they agreed on each of the details for the fulfillment of the measure, such as the date, time, program and logistics required for its development. In this regard, the parties provided a simple copy of the invitations circulated for said event and photographs of the event, in which the victim's family member and her representative participated, as well as the National Agency for the Legal Defense of the State.

18. Likewise, the parties reported the content of the agenda agreed for the event, which included an opening, the national anthem of Colombia, the projection of a video in memory of Mr. Omar Ernesto Vázquez Agudelo, words of Mrs. Lorena Esnid Areiza Ruiz, life partner of the victim, as well as her representative, Mr. Roberto Paz. The State's intervention was made by the ANDJE's Director of International Legal Defense, who asked for forgiveness from the victims and their families for what happened, and acknowledged the State's responsibility under the terms established in the friendly settlement agreement signed between the parties, expressing the following:

[...]

⁶ 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.*

Today, the State's invitation is that we seek together with Mr. Vázquez's family a true space and a sign of genuine reconciliation. Let there be forgiveness with the commitment that these painful events will not be repeated. We recognize the great loss suffered by Mrs. Lorena, her life partner and the loss of all her family members.

The Colombian State is aware that the duty to protect persons deprived of their liberty is reinforced since there is a relationship of special subjection to State power. In this sense, the obligation of the State consists of foreseeing and controlling the dangers that the person held in custody may suffer from the very moment in which the material deprivation of liberty takes place, until the moment in which is returned to society, as well as abstaining from any conduct that may violate or endanger the rights that are not limited by his special situation.

[...]

For the aforementioned and in particular recognizing the obligations we have as a State, in my capacity as Director of the International Legal Defense Directorate of the National Agency for the Legal Defense of the State, I recognize the international responsibility of Colombia for the violation of the rights to a fair trial and judicial protection, enshrined in Articles 8 and 25 of the American Convention on Human Rights, in relation to Article 1.1 thereof, to the detriment of the relatives of Omar Ernesto Vázquez Agudelo, due to the lack of diligence in the investigation of the events that took place.

[...]

19. Finally, Commissioner Joel Hernández, Rapporteur for Colombia, closed the event by acknowledging the efforts made by the parties to reach a friendly settlement agreement and reiterating the Commission's commitment to follow up on the matter until it is fully complied with. In this regard, he pointed out:

This act has a special emotion, and it is an emotion of which I have been contained when I saw in Dr. Paz's office Mrs. Lorena with her daughter, her granddaughter and her relatives, celebrating the life, the life of Ernesto Vázquez Agudelo, and this has a very important meaning. It seems to me that here we are starting from a dramatic and sad situation, to an optimistic one that gives us hope for the future. [...].

Another dramatic aspect of this situation is that the Colombian State failed in an obligation it has to be the guarantor of the life and safety of the people in its custody. The Colombian State also failed when it was not possible to conduct in time and with due diligence the investigations that could lead to the punishment of those responsible. But all this over the years has been positively transformed into the moment we find ourselves today. [...].

[The State] has apologized to you as victims for the failures of the Colombian State throughout this process and this seems to me to be a very important fact because, on the one hand, it will allow you to close this long chapter in your lives in the best possible way, in order to be able to start another one with optimism. But on the other hand, there is also a positive aspect and it is this acknowledgement of responsibility that will give rise to the follow-up of the obligations assumed by the State in the friendly settlement agreement.

20. Taking into account the foregoing, and the information provided jointly by the parties, the Commission considers that item (i) of clause five of the friendly settlement agreement, concerning the act of acknowledgment of responsibility, has been fully complied with and it so declares it.

21. With regard to the sixth clause on the training of personnel of the Custody and Surveillance Corps attached to the Penitentiary and Prison Establishment of Medellín (Bellavista) in the virtual retraining

course, on February 16, the parties jointly reported that, through the National Penitentiary School, branch of INPEC, responsible for the training and education of prison staff, an invitation was extended to the management of the "Bellavista" Penitentiary and Prison Establishment of Medellín, for its staff of the Custody and Surveillance Corps to enroll in the *Seminar Workshop Basic Fundamentals of Penitentiary Security and Virtual Retraining Course*, which was developed during the year 2022 and had an intensity of 40 hours of academic instruction. In this regard, the parties submitted a copy of the schedule and program of the training.

22. Likewise, the parties informed that, according to what was reported by the Penitentiary School, during 2022, 47 officials of the Custody and Surveillance Corps of the Medellín Prison were trained. Finally, the parties stated that they considered the measure to be fully complied with. Taking into account the above, as well as the information provided jointly by the parties, the Commission considers that the sixth clause of the friendly settlement agreement, concerning the training of the Custody and Surveillance Corps of the Penitentiary and Prison Establishment of Medellín (Bellavista), has been fully complied with, and it so declares it.

23. With regard to item *(ii) publication of the report, article 49*, clause five (satisfaction measures), as well as clause seven (compensation measures) of the friendly settlement agreement, the Commission observes that said measures must be implemented after the publication of this report, for which reason it considers that they are pending compliance and it so declares it. By virtue of the foregoing, the Commission would await updated information from the parties on its execution after the approval of this report.

24. Based on the foregoing, the Commission concludes that paragraph *(i) act of acknowledgment of responsibility* of the fifth clause and the sixth clause on measures of non-repetition (training of officials) have been fully complied with and it so declares it. On the other hand, the Commission considers that paragraph *(ii) publication of the Article 49 report* of the fifth clause and the seventh clause (compensation measures) are pending compliance and it so declares it. In this sense, the Commission considers that the friendly settlement agreement has a partial level of implementation and it so declares it. Finally, the Commission reiterates that the rest of the contents of the agreement are of a declarative nature and therefore not subject to the IACHR's supervision.

V. CONCLUSIONS

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement has been arrived at in the present case on the basis of respect for human rights and consistent with the object and purpose of the American Convention.

2. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on March 1, 2022.
2. To declare total compliance with item *(i) (act of acknowledgment of responsibility)* of clause five and clause six (guarantees of non-repetition) of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare pending compliance with item *(ii) publication of the report article 49*, clause five (satisfaction measures), as well as clause seven (compensation measures) of the friendly settlement agreement, according to the analysis contained in this report.

4. To continue with the monitoring of the commitments assumed in paragraphs *(ii) publication of the report article 49, of the fifth clause* (satisfaction measures), as well as the seventh clause (compensation measures), according to the analysis contained in this report. To this end, remind the parties of their commitment to report periodically to the IACHR on their 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 the 26th day of the month of July, 2023.
(Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Joel Hernández García, Julissa Mantilla Falcón and Stuardo Ralón Orellana, Commissioners.