

# Impact of the Friendly Settlement Procedure



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

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**CHAPTER I**  
**INTRODUCTION**





## CHAPTER I

### INTRODUCTION

1. The Inter-American Commission on Human Rights' principal function (hereinafter the "Inter-American Commission", the "Commission" or the "IACHR") is to promote and defend human rights in the Americas. It discharges these functions by conducting country visits, preparing reports on the human rights situation in a given country or on a particular theme, adopting precautionary measures, or requesting provisional measure orders to the Inter-American Court of Human Rights, and by processing and examining petitions submitted through the individual case system.

2. By filing a petition with the Inter-American Commission, individuals or groups who believe that their human rights have been violated access an international body to obtain protection of their rights and redress. The Commission investigates and examines these situations and, if it establishes that a violation has been committed, may recommend to the State responsible to reinstate the enjoyment of the violated rights, investigate the facts, make reparations, and take steps to avoid the violation's repetition.

3. While the individual petition system establishes a procedure to determine whether the international responsibility of a State has been engaged by a human rights violation, it also provides the possibility of reaching a friendly settlement on the matter, based on observance of the human rights set forth in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and other regional human rights instruments, at any stage during the examination of a petition or case. Although a friendly settlement is not a decision on the merits of the case before the Commission, this voluntary agreement reached by the parties may include public recognition and acceptance of responsibility by the State, as has occurred in numerous cases.

4. The friendly settlement mechanism opens a venue for dialogue between petitioner and State, where both sides can reach agreements on reparation measures for the alleged victims and often for the society as a whole. By implementing a broad spectrum of reparations measures, the friendly settlement procedure has afforded many victims of human rights violations the opportunity to obtain full reinstatement of the violated right or reparation through measures of satisfaction involving the State's public acknowledgement and recognition of its responsibility, an investigation of the facts and the punishment of the perpetrators, payment of economic compensation, rehabilitation measures or medical treatment, and symbolic reparation measures such as acts of atonement and issuance of public apologies. The friendly settlements have also featured guarantees of non-repetition, the purpose of which is to prevent future human rights violations.

5. For the petitioners and victims of human rights violations, the friendly settlement procedure opens up the opportunity to discuss and agree with the State the terms of the reparations for the harm caused by the violation of their rights and the possibility of obtaining a swifter settlement of the dispute. For the State, the friendly settlement arrangement is an opportunity to bring the litigation to an end and to demonstrate its commitment to its duty to respect and ensure human rights, and its good faith compliance with its obligations under the American Convention on Human Rights (hereinafter the “American Convention” or “ACHR”) and other regional human rights instruments. The procedure is premised on the good will of both parties, and as a result reaching a friendly settlement depends on the needs and desires of both.

6. In addition, the effectiveness of the friendly settlement mechanism relies on two pillars: the willingness of the parties to reach a friendly settlement and the level of implementation of the reparation measures agreed upon –which must respect the human rights recognized in regional instruments. Regarding the latter, it is crucial that the friendly settlements include only truly realistic measures and time frames for their execution, bearing in mind that once States endorse the friendly settlement, they have the duty to comply fully and in good faith with the commitments that they contain.

7. The Inter-American Commission has accumulated almost three decades of experience in facilitating friendly settlements between petitioners and States. This procedure is provided for in Article 48(1)(f) of the American Convention and Article 40 of the Commission’s Rules of Procedure. As this report shows, the procedure contemplated in the Rules of Procedure has undergone significant changes over time, with a view to encouraging petitioners to use the friendly settlement process.

## A. Background

8. The Inter-American Commission, petitioners and States agree that the friendly settlement procedure has been an important mechanism for resolving petitions and cases of alleged human rights violations brought to the IACHR.

9. In a report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System for consideration by the Permanent Council,<sup>1</sup> the OAS member States expressed their interest in seeing the Commission

<sup>1</sup> Permanent Council of the Organization of American States, *Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System, for consideration by the Permanent Council*, OEA/Ser.G. GT/SIDH-13/11 rev.2, December 13, 2011, pp. 12-13. In response to the recommendations made by the States on the report, the Inter-American Commission presented a document to the OAS Permanent Council on October 23, 2012, where it explained the measures that had been implemented and the activities it planned with a view to strengthening the friendly settlement mechanism. The document is available at the following web address: <http://scm.oas.org/pdfs/2012/CP29546E.pdf>

strengthen the friendly settlement process. In that chapter of the report, the importance of the friendly settlement process is highlighted and emphasis is placed on the need for the IACHR to play a more active role, both in performing its functions as facilitator of the negotiations and in monitoring compliance with the friendly settlements.

10. The Commission has made important steps to strengthen the friendly settlement procedure as an alternative to litigation, such as creating a special unit on friendly settlements, preparing an analysis of current friendly settlement practices, training the Executive Secretariat staff on alternative dispute resolution, and preparing an internal protocol to facilitate the processing of friendly settlements.

11. The IACHR's analysis of the friendly settlement practices was prepared on the basis of a comprehensive study of the 106 friendly settlement reports that the Inter-American Commission approved between its introduction in 1985 and 2012. The study also used information that the IACHR compiled by means of a special questionnaire directed at the States, civil society organizations, and experts on alternative dispute resolution. The questionnaire was posted on the Commission's website from October 31, 2011 to January 9, 2012.

12. This analysis enabled the Commission to establish that the effectiveness of the friendly settlement procedure depends in large part on access to information by the parties regarding this mechanism and the available alternatives to obtain just reparation.

13. In this regard, the Commission identified the dissemination of sufficient and accessible information on the friendly settlement procedure to all users of the Inter-American system as one of the main challenges.

14. To respond to this challenge, the Commission prepared this impact report on the successes obtained through the friendly settlement mechanism, in the hope that, for States and petitioners, it will serve as a useful guide regarding its use and the best practices developed over the years.

## **B. Methodology**

15. The preparation of this impact report on the friendly settlement procedure began with the constitution of a working group of experts on human rights and alternative dispute resolution. These offered observations on the Commission's role in the friendly settlement procedure, the application of the principles of alternative dispute resolution to human rights, and the strengths and weaknesses of the friendly settlement procedure.<sup>2</sup>

16. The IACHR also designed a questionnaire for States, civil society organizations and experts on alternative dispute resolution, in order to compile

<sup>2</sup> The working meeting was held on June 10, 2011 at the IACHR headquarters.

information on friendly settlements. Eleven experts and civil society organizations and thirteen States parties to the American Convention submitted their responses. They addressed the reasons why users of the system have recourse to the friendly settlement procedure; its advantages and disadvantages; the role that the Commission should play in the process, and whether States have institutions or mechanisms (at the State or institutional level, as the case may be) to follow up on the IACHR's friendly settlement reports. The questionnaire also enabled the participants to identify challenges to the procedure and measures necessary to make it more efficient.

17. An expert on alternative dispute resolution was at the IACHR from March 23 through April 1, 2012, to compile information for the preparation of an internal report on current friendly settlement practices. In anticipation of this report, the consultant, Mr. Francisco Diez, spoke with the attorneys at the IACHR's Executive Secretariat; participated as observer in work meetings between petitioners and States in connection with cases in the friendly settlement process; observed the hearings of the Commission's 144<sup>th</sup> regular Period of Sessions, and spoke civil society members to get their impressions about the friendly settlement mechanism. In May 2012, the consultant submitted a final report on the IACHR's activities in this area.

18. The First Inter-American Conference on Human Rights and the Exchange of Best Practices on Friendly Settlements<sup>3</sup> was held on June 7 and 8, 2013, during the 43<sup>rd</sup> regular Period of Sessions of the OAS General Assembly in Antigua, Guatemala, convened by the President of the Inter-American Commission on Human Rights. The program featured two panels, where representatives of States and civil society exchanged information about friendly settlement best practices, and in particular regarding the negotiation of settlements, their content, compliance with agreed-upon reparations measures, and the impact of reparation measures. Participants expressed their thoughts about the future of the friendly settlement mechanism, its challenges, the lessons learned and suggestions for making it more effective, during an open discussion moderated by the IACHR's Executive Secretary.

19. Finally, in anticipation of this report, the Commission analyzed the reparation measures included in the friendly settlement approved and published by the IACHR since 1985, year of approval of the first friendly settlement approved by the Commission. Similarly, the Commission reviewed the scholarship on the issue of reparations for human rights violations and analyzed the international legal

<sup>3</sup> The event was attended by representatives of 15 OAS member States (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Suriname and the United States of America) as well as representatives of the following civil society organizations: the Center for Reproductive Rights (CRR), the Center for Justice and International Law (CEJIL), the *Centro de Estudios Legales y Sociales* (CELS), the *Centro de Derechos Humanos Fray Bartolomé de las Casas*, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), the International Committee of the Red Cross (ICRC), the Colombian Commission of Jurists, DEMOS, the Due Process of Law Foundation (DPLF), the *Estudio para la Defensa de los Derechos de la Mujer* (DEMUS), the *Fundación Pro Bono*, *Grupo de Apoyo Mutuo* (GAM), and the *Instituto de Defensa Legal* (IDL).

framework, general principles, case law, and various statements by specialized organizations on this matter.

### C. Structure of the Report

20. This report is divided into two sections, one on the evolution of the friendly settlement mechanism and the other on the impacts of the implementation of friendly settlements.

21. The first section, on the evolution of the mechanism, presents a descriptive analysis of the background and legal foundation for the friendly settlement procedure, starting with the “Miskitos” case presented to the IACHR in 1981 and that became the first attempt of petitioners and a State to settle a dispute amicably. The Commission also examines the chronology of the procedure’s development. The study looks at how the IACHR’s methodology and standards evolved between 1995 and 1999; the consolidation of the norms governing the friendly settlement process with the entry into force in 2000 of the amendments to the Commission’s Rules of Procedure; and the Inter-American Commission’s current practices.

22. The second section examines the impact of the reparations measures contemplated in the friendly settlements signed by the State and the petitioners and published by the IACHR, taking into consideration the fact that reparation of the harm caused by the alleged human rights violations is their main objective. This section’s chapters present the various types of reparations adopted in friendly settlements and how effective compliance with those agreements has been to the system’s users.

23. In the second section, the first type of reparation examined is the *restoration of an infringed right*. In the IACHR’s practice, this modality has meant that persons arbitrarily and illegally deprived of liberty are given their freedom back; that laws contrary to the protection standards that the ACHR establishes are repealed; that alleged victims of violations of the right to property have their land returned, and that persons whose employment has been arbitrarily terminated are rehired. Reference is also made to *measures of medical and psychological rehabilitation and social assistance*, whose purpose is to improve the health and living conditions of victims of human rights violations.

24. *Measures of satisfaction*, on the other hand, mainly involve disclosure of the truth as a prerequisite for obtaining justice and restoring the victim’s dignity and reputation. These measures also include acknowledgement of responsibility and/or public disclosure of the facts; search for the remains of victims of human rights violations and official return of those remains; official statements and/or court rulings reinstating the victim’s honor and reputation; enforcement of legal and/or administrative sanctions against those responsible for the violations; and the construction of monuments and other such tributes to the victims’ memory.

25. Section II also features an analysis of the economic compensation measures agreed upon in the friendly settlements that the Commission has approved in cases where it is impossible to guarantee full reparation of a violated right. In many cases, economic reparations are necessary to compensate for the injury suffered as a result of human rights violations reported to the IACHR.

26. Finally, the second section also discusses the type of reparation known as “measures of non-repetition” which, in the friendly settlements, have been a means to rectify the structural problems that led to human rights violations. Those measures generate collective impacts that benefit society as a whole and have included the adoption of legislative and regulatory measures, implementation of public policies designed to protect the human rights of the inhabitants of a given country, and human rights training for public officials.

## **CHAPTER II**

### **EVOLUTION OF THE FRIENDLY SETTLEMENT PROCEDURE**





## CHAPTER II

### EVOLUTION OF THE FRIENDLY SETTLEMENT PROCEDURE

27. This section examines the evolution of the friendly settlement procedure since its inclusion in the American Convention and the Rules of Procedure of the IACHR. It consists of three chapters, set out in chronological order. The first looks at the origin of the friendly settlement procedure and includes an analysis of the “Miskitos” case, the first friendly settlement before the IACHR. The second chapter recounts the evolution in the Commission’s method, since 1995, and an examination of the consolidation of the rules governing the friendly settlement procedure as set forth in the Commission’s Rules of Procedure. The section specifically examines the amendments made to the IACHR’s Rules of Procedure in 2000 and the recent amendment to the Rules of Procedure which the Commission approved at the 147th Period of Sessions. The third and final chapter of this section looks at the IACHR’s current practice with respect to the friendly settlement procedure.

#### A. Background and Legal Foundation for the Friendly Settlement Procedure

28. The Inter-American Commission has had a wealth of experience in facilitating friendly settlements between petitioners and/or alleged victims of human rights violations and States. Starting with the discussions that took place at the “*Inter-American Specialized Conference on Human Rights*,” the event where the American Convention was approved and signed, the States contemplated the inclusion of a friendly settlement mechanism as part of the petition and case procedure.<sup>4</sup>

29. Article 48(1)(f) of the American Convention is the legal basis for the friendly settlement procedure. That article provides that, when it receives a petition in which violation of any of the rights protected by the ACHR is alleged, the IACHR has the authority to make itself available to the parties with a view to reaching a friendly settlement on the matter.<sup>5</sup>

30. The first principles governing the friendly settlement procedure appeared in Article 42 of the Commission’s Regulations, approved on April 8, 1980. That

<sup>4</sup> The States entrusted the Commission with the authority to offer the parties an alternative to the publication of the merits report or to a case going before a jurisdictional body. See, Organization of American States, “*Inter-American Specialized Conference on Human Rights*,” OEA/ Ser.K/ XVI/1.2., November 7 to 22, 1969, p. 27.

<sup>5</sup> Article 48(1) When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows: (f) The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention. OAS, *American Convention on Human Rights*, signed in San José, Costa Rica, November 22, 1969.

article provided that the procedure could be instituted at the request of either party or at the Commission's own initiative, at any stage of a petition's examination. The friendly settlement had to be based on respect for the human rights protected under the American Convention. If a friendly settlement was reached, the Commission was to prepare a report with a brief statement of the facts and of the solution reached and that report was then forwarded to the OAS Secretary General for publication. The procedure was to be confidential, since Article 67 of the Regulations stipulated that if no friendly settlement was reached, the Commission could not transmit to the Court any documents pertaining to the unsuccessful settlement attempt.<sup>6</sup> This rule was subsequently eliminated by the Commission.

31. The friendly settlement procedure underwent a number of changes when the Regulations were amended in 1985. While Article 45 of the new Regulations retained some aspects of the earlier Article 42, its main feature was that it added certain conditions for the Commission to act "as an organ of conciliation for a friendly settlement". It also set conditions for the Commission to accept to serve as an organ of conciliation. Article 45 of the new Regulations authorized the IACHR to fix deadlines for receiving and gathering evidence and for the conclusion of the procedure.

32. The first test for the IACHR's friendly settlement mechanism came as a result of a complaint filed against Nicaragua on February 24, 1981, concerning the human rights situation of a group of the Nicaraguan population of Miskito origin. The complaint alleged massive repression of Miskito indigenous people from the communities of Asang and San Carlos who, in 1981 and 1982, had reportedly been victims of extrajudicial executions, forced disappearances, unlawful detentions, violations of the right to property, and violation the right to freedom of movement and residence. In consideration of that complaint and of its observations in the context of a special visit made in May 1982, the IACHR adopted a special report on the Situation of Human Rights of a Sector of the Nicaraguan Population of Miskito Origin, which included an analysis of the dispute and recommendations for protection of the violated rights.<sup>7</sup>

33. In response to the report, the government of Nicaragua invited the Commission to assume "the role of mediator in a friendly settlement procedure". Exercising its powers under the ACHR and the Regulations, the Commission agreed to serve as mediator in a friendly settlement procedure and established how it would put into effect its conciliatory function, the procedure to be followed and the measures that the government would have to take in order to create the conditions for a friendly settlement.

34. On September 30, 1983, the IACHR asked the Government to comply with the measures it deemed essential for the procedure to continue. These included a

<sup>6</sup> IACHR, *Regulations of the Inter-American Commission on Human Rights*, OEA/Ser.L/V/II.49 doc. 6 rev. 4, April 8, 1980, Articles 42 and 67.

<sup>7</sup> IACHR, *Report on the Situation of Human Rights of a Sector of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62 doc. 10 rev. 3, November 29, 1983.

pardon or amnesty for all the Miskitos detained since the start of these events in December 1981, and holding a conference where Miskito leaders from as many sectors of that population as possible would be present<sup>8</sup>.

35. While the Government of Nicaragua complied with a significant number of the recommendations suggested by the IACHR, no agreement could be reached on fundamental aspects of the case, such as the claims to ancestral territory or the indictment of those responsible for the deaths in Leimus. Taking this into consideration, on November 29, 1983, the Commission informed the Nicaraguan State that it considered that its role as mediator of a friendly settlement procedure had come to an end.

36. This case was precedent-setting not only because it was the first in which the friendly settlement procedure was set in motion, but also because it revealed significant aspects of the functions that the Commission had assumed as mediator of the process. For example, the Commission did not institute the procedure *ex officio*, since once the IACHR's report on the human rights situation of the Miskito population was issued, it was the State that asked the Commission to intervene. The procedure began only once the Commission notified the State of its acceptance of its invitation.

37. The Commission informed the Government of the ways in which it would exercise its conciliatory functions, the procedure to be followed, and the measures that the Government should take in order to create the conditions of détente essential for the Commission to perform its conciliatory functions effectively.<sup>9</sup> Two important points stand out. Firstly, while the Regulations then in force established the basic principles for instituting the procedure and the publication of the report, no written rules existed for the negotiation process and or ensuring compliance with the measures agreed to. The Commission filled that void by establishing an *ad hoc* procedure for this specific case. Secondly, the Commission issued recommendations about the measures necessary to ensure an effective process. As a result, the measures that the State had to take to guarantee the friendly settlement were based on the Commission's recommendations, rather than being terms privately negotiated between the parties<sup>10</sup>.

38. Although the process did not yield to publication of a friendly settlement report, the Nicaraguan State did comply with most of the measures suggested by the IACHR. Thanks to the negotiations undertaken in connection with the friendly settlement procedure, the Nicaraguan government granted a broad amnesty to all

<sup>8</sup> IACHR. *Resolution on the friendly settlement procedure regarding the human rights situation of a segment of the Nicaraguan population of Miskito origin*, OEA/Ser.L/V/II.62 doc. 26, May 16, 1984, paragraph 11.

<sup>9</sup> IACHR. *Resolution on the friendly settlement procedure regarding the human rights situation of a segment of the Nicaraguan population of Miskito origin*, OEA/Ser.L/V/II.62 doc. 26, May 16, 1984, paragraph 8.

<sup>10</sup> For years, it has been the practice to allow the commencement of a friendly settlement process at any stage of the procedure until the Commission's decision on the merits. After the decision and the issuance of the recommendations, a compliance agreement could be reached.

Miskitos in detention, guaranteed that those forcibly displaced could return to their places of origin, the Moravian ministers of the Atlantic Coast who had been arrested received a pardon, and the order preventing many religious individuals from returning to the Atlantic Coast was lifted.<sup>11</sup>

## **B. Evolution of the IACHR's Methodology and Procedural Standards for Friendly Settlements**

39. It has not always been the Commission's practice to make itself available to the parties of cases brought before the inter-American system with a view to reaching friendly settlements. This is obvious from the IACHR's arguments before the Inter-American Court in the case of *Velásquez Rodríguez v. Honduras*.<sup>12</sup>

40. In that case, the Honduran government's position was that the petitioner's application was inadmissible because the Commission had violated Article 48(1)(f) of the ACHR by not proposing a friendly settlement. Both in its brief and at the hearing, the government alleged that friendly settlements were mandatory and that the conditions established in the Regulations<sup>13</sup> were inapplicable.<sup>14</sup>

41. The Commission's position at the time was that the friendly settlement procedure was not mandatory and could not have been undertaken for two reasons. Firstly, the lack of cooperation on the part of the government and its refusal to acknowledge responsibility. Secondly, the nature of rights violated in this case, which the Commission argued could not be effectively restored by conciliation.<sup>15</sup>

42. In response to the arguments made by the Commission and the Honduran State, the Court held that the friendly settlement procedure need only be attempted when the circumstances of a dispute make that procedure necessary or suitable,

<sup>11</sup> *Ibid*, paragraph 8.

<sup>12</sup> This case started with a petition lodged with the Commission on October 7, 1981, in which it was alleged that Angel Manfredo Velásquez Rodríguez, a student at the National Autonomous University of Honduras, "was violently detained without a warrant for his arrest by members of the Dirección Nacional de Investigación (DNI) and G-2 of the Armed Forces of Honduras" on the afternoon of September 12, 1981, in Tegucigalpa. The petitioners alleged that several eyewitnesses had reported that he and others were detained and taken to the holding cells of Public Security Forces Station No. 2, where he was interrogated under torture and accused of political crimes. The petitioners further alleged that all the police and security forces denied his arrest. The Commission brought the case to the Inter-American Court on April 24, 1986, asking the Court to declare that the State had violated articles 4 (right to life), 5 (right to humane treatment), and 7 (right to personal liberty) of the American Convention. It asked the Court to rule that "the consequences of the situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party or parties." I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 26.

<sup>13</sup> Under Article 45(2) of the Rules in force at that time, "[i]n order for the Commission to offer itself as an organ of conciliation for a friendly settlement of the matter [...] in the judgment of the Commission, the nature of the matter must be susceptible to the use of the friendly settlement procedure.", 1980 Rules.

<sup>14</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 42.

<sup>15</sup> *Ibid*, paragraph 43.

conditions that are left to the discretion of the Commission.<sup>16</sup> While the Court wrote that there was nothing objectionable in the Commission's conduct, it also acknowledged that the Commission enjoys discretionary "but by no means arbitrary" powers to decide in each case whether the friendly settlement procedure would be a suitable or appropriate way of resolving a dispute.<sup>17</sup>

43. As happened in the *Case of Velásquez Rodríguez*, the Commission argued in the *Case of Caballero Delgado and Santana v. Colombia*<sup>18</sup> that the friendly settlement procedure contemplated in the American Convention should not be regarded as a compulsory procedure, but rather "as an option that is open to the parties and to the Commission itself, depending on the conditions and characteristics of each individual case."<sup>19</sup> In the merits report in the *Case of Caballero Delgado and Santana*, the Commission expressly established that by their very nature, the facts of the case were not subject to resolution through the friendly settlement procedure<sup>20</sup> and observed that the parties had not requested it.<sup>21</sup>

44. The Court, for its part, held that only in exceptional cases and for substantive reasons could the Commission omit the friendly settlement procedure. It wrote that the Commission must "carefully document ... its rejection of the friendly settlement option, based on the behavior of the State accused of the violation."<sup>22</sup>

45. In the wake of these Court judgments, the Commission decided to undertake a series of initiatives designed to increase the Inter-American system's ability to respond to the changing necessities of the friendly settlement process and the increase in democratic regimes in the Americas.<sup>23</sup> These initiatives were geared

<sup>16</sup> *Ibid*, paragraph 44.

<sup>17</sup> *Ibid*, paragraph 45.

<sup>18</sup> According to the Commission's application, Isidro Caballero Delgado was a union leader and María Santana a member of the *Movimiento 19 de Abril* (M-19) when they were detained by a military patrol. The family of Isidro Caballero and a number of union and human rights organizations began searching for him at military facilities, where they were told that he had not been apprehended. Legal and administrative actions were taken in an attempt to establish their whereabouts, but to no avail. No reparations were obtained for the damages caused. The Commission lodged the case with the Court on December 24, 1992, seeking a determination as to whether there had been a violation of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection), all in relation with Article 1(1) of the American Convention. I/A Court H.R., *Case of Caballero Delgado and Santana v. Colombia*. Preliminary Objections. Judgment of January 21, 1994. Series C No. 17, paragraph 2.

<sup>19</sup> *Ibid*, paragraph 23.

<sup>20</sup> IACHR. Report No. 31/91 (Merits), Case 10,319, *Caballero Delgado and Santana v. Colombia*, September 26, 1991.

<sup>21</sup> The State, on the other hand, based its preliminary objection on the argument that the Commission's reason for denying Honduras the possibility of a friendly settlement agreement was arbitrary, since at no time did Colombia deny the actual material facts of the complaint and had, moreover, instituted investigations at the domestic level to determine who was responsible for the acts denounced. I/A Court H.R. *Case of Caballero Delgado and Santana v. Colombia*. Preliminary Objections. Judgment of January 21, 1994. Series C No. 17, paragraph 22.

<sup>22</sup> *Ibid*, paragraphs 27-28.

<sup>23</sup> In his presentation of the 1996 Annual Report, the President of the Commission explained that, in the new hemispheric framework, with elected governments, the Commission had to redirect it

toward modifying the Commission's *modus operandi* in relation to two basic aspects of the petition and case system: adoption of a practice of offering the possibility of facilitating a friendly settlement in *all* cases, and the need to organize the Commission's internal procedures to comply with the American Convention and the Commission's Rules of Procedure. The latter involved four procedural stages: (1) registration of petitions; (2) admissibility and determination of the facts; (3) friendly settlement, and (4) the analysis on the merits and the decision on the case.<sup>24</sup> This change in the Commission's practices was explained by the Commission's President at the opening of the Commission's 95<sup>th</sup> regular Period of Sessions, held on February 24, 1997, where he pointed out that a government can always acknowledge responsibility, agree to conduct an investigation, and make reparations, and that as a result a friendly settlement should be attempted and offered in every case.<sup>25</sup>

46. The number of friendly settlement reports published by the Commission has increased since the implementation of the Commission's new internal procedure. Between 1996 –year of the implementation of the new practices for processing petitions and for friendly settlement- and 1999, the IACHR published a total of five friendly settlement reports, by contrast to only three published in the 1985-1995 decade since the very first friendly settlement report.

47. One also observes a shift in the Commission's willingness to press for friendly settlements, regardless of the material facts of the case. Indeed, the friendly settlements approved and published by the Commission between 1984 and 1995 concerned, respectively, violations of the right to nationality, the right to a fair trial, the right to personal liberty, the right to equality before the law, and freedom of expression.<sup>26</sup> On the other hand, the friendly settlement reports published in the 1996-1999 period concerned violations that had previously been deemed as not subject to resolution through the friendly settlement procedure, such as extrajudicial executions, forced disappearances and violations of the right to physical integrity.<sup>27</sup> This represented a visible shift away from the principle

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efforts to focus less on general on-site visits to mobilize international public opinion, and more on the study of individual cases. IACHR, *Annual Report 1996*, OEA/Ser.L/V/II.95 Doc.7 Rev., March 14, 1997, Annexes. Available at: <http://www.cidh.org/annualrep/96eng/annex3.htm>

<sup>24</sup> *Ibid.*

<sup>25</sup> Address by the President of the Inter-American Commission on Human Rights, Claudio Grossman, at the of the IACHR's 95<sup>th</sup> regular session. February 24, 1997. IACHR, *Annual Report 1997*, OEA/Ser.L/V/II.98 Doc. 6, February 17, 1998, Document available online at: <http://www.cidh.org/annualrep/97eng/TOC.htm>

<sup>26</sup> See, Resolution No. 5/85 (Friendly Settlement), Case 7956, *Luis Alonzo Monge*, Honduras, March 5, 1985; Report No. 1/93 (Friendly Settlement), Cases 10,288, 10,310, 10,436, 10,496, 10,631 and 10,771, *Guillermo Alberto Birt et al.*, Argentina, March 3, 1993; Report No. 22/94 (Friendly Settlement), Case 11,012, *Horacio Verbitsky*, Argentina, September 20, 1994.

<sup>27</sup> See, IACHR. Report No. 19/97 (Friendly Settlement), Case 11,212, *Juan Chanay Pablo et al.*, Guatemala, March 13, 1997; Report No. 31/97 (Friendly Settlement), Case 11,217, *Paulo C. Guardatti*, Argentina, October 14, 1997; Report No. 45/99 (Friendly Settlement), Case 11,525, *Roinson Mora Rubiano*, Colombia, March 9, 1999; and Report No. 46/99 (Friendly Settlement), Case 11,531, *Faride Herrera Jaime, Oscar Iván Andrade Salcedo, Astrid Leonor Álvarez, Jaime, Gloria Beatriz Álvarez Jaime and Juan Felipe Rúa Álvarez*, Colombia, March 9, 1999.

followed in the cases of *Velásquez Rodríguez v. Honduras* and *Caballero Delgado and Santana v. Colombia*, which were about forced disappearances and which the Commission deemed unsuitable for a friendly settlement because the rights involved could not be restored through conciliation.

48. During its 109th extraordinary Period of Sessions, held December 4 through 8, 2000, the Commission approved new Rules of Procedure [hereinafter “Rules”].<sup>28</sup> This amendment of the Rules, regarded as one of the most important developments that the Inter-American system has undergone since the American Convention entered into force,<sup>29</sup> was the product of an open and inclusive process in which the States and some one hundred civil society organizations participated.

49. The new Rules modified the Commission’s procedures so as to make them more transparent and open to participation by the system’s users. They incorporated the provisions necessary to avoid duplication of procedures before the Court. This regulatory reform also introduced significant changes in the friendly settlement procedure, such as the practice of offering a friendly settlement prior to the decision on the merits; the possibility of arriving at a friendly settlement at any stage of the examination of a petition or case; and the fact that the procedure would apply to all member States of the Organization, even those that are not party to the American Convention.

50. The articles introduced to the Rules in 2000 regarding the friendly settlement procedure<sup>30</sup> reflect the changes in the IACHR’s working method implemented since 1996. They differ markedly from the previous rules in four main respects: (i) making the friendly settlement procedure more flexible; (ii) the authority of the parties to request that the procedure be instituted, continued or concluded; (iii) the inclusion of criteria for approval of the friendly settlement reports, and (iv) the Commission’s authority to institute follow-up measures and verify compliance with the agreements.

51. As for *making the procedure more flexible*, Article 41(1) of the Rules opened up the possibility that the friendly settlement mechanism might be applied to cases involving States that are not party to the ACHR.<sup>31</sup> This provision introduces the first fundamental change with respect to the procedure established in earlier

<sup>28</sup> IACHR, *Rules of Procedure of the Inter-American Commission on Human Rights*, OAS/Ser.L/V/1.4, Rev.12, December 4-8, 2000.

<sup>29</sup> Address by Dean Claudio Grossman, President of the Inter-American Commission on Human Rights, in the Context of the Dialogue on the Improvement of the Inter-American Human Rights System, Committee on Juridical Affairs of the Permanent Council of the OAS, Washington, D.C., May 3, 2001. IACHR, *Annual Report 2001*, OEA/Ser./L/V/II.114 doc. 5 rev., April 15, 2002. Available at: <http://www.cidh.oas.org/annualrep/2001eng/speeches.htm>

<sup>30</sup> IACHR, *Rules of Procedure of the Inter-American Commission on Human Rights*, OAS/Ser.L/V/1.4, Rev.12, December 4-8, 2000, Articles 38, 41, 46 and 62.

<sup>31</sup> The article provides that the “Commission shall place itself at the disposal of the parties [...] with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention on Human Rights, the American Declaration and other applicable instruments.”



regulations, which did not include this particular provision.<sup>32</sup> Furthermore, the Rules adopted in 2000 eliminated the text that established the Commission's authority to set deadlines for receiving and obtaining evidence, and by which the procedure was to be concluded. It also eliminated the Commission's discretionary authority to discontinue a process when "the nature of the matter" was not amenable to a friendly settlement.<sup>33</sup> Article 41 of the Rules, introduced in 2000, changed this language and gives the Commission the possibility to terminate the friendly settlement procedure if it finds that the matter is not susceptible to such a resolution or if any of the parties no longer consents to its application, decides not to continue it, or does not display the willingness to reach a friendly settlement respectful of human rights.<sup>34</sup>

52. Another fundamental difference in the friendly settlement procedure introduced in the 2000 amendment is that it *authorizes the parties to request the instigation, continuation and conclusion of the procedure*. The previous Rules had established the conditions under which the Commission could offer its good offices to serve as a conciliation organ and the conditions under which it could accept the proposals made by the petitioners and the State.<sup>35</sup> By contrast, the amended Rules do not establish conditions for the IACHR to suggest the institution of a friendly settlement procedure, and expressly provides that the procedure's initiation and continuation is based on the parties' consent.<sup>36</sup>

53. Furthermore, for the first time, the Rules adopted in 2000 included *criteria for the approval of friendly settlement reports*. Article 41(5) expressly provided that prior "to adopting the friendly settlement report, the Commission shall verify whether the victim of the alleged violation or, as the case may be, his or her successors have consented to the friendly settlement agreement." In all cases, the friendly settlement must be based on respect for the human rights recognized in the American Convention, the American Declaration and the other applicable instruments.

<sup>32</sup> Although this aspect was not previously regulated, on one occasion the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement, based on the human rights protected under the American Declaration of the Rights and Duties of Man. IACHR. Report No. 28/93 (Admissibility), Case 10,675, Haitians (*Boat People*), United States, operative paragraph 3.

<sup>33</sup> IACHR. *Rules of Procedure of the Inter-American Commission on Human Rights*, OEA/Ser.L/V/II.64, doc.15, March 4, 1985, Articles 45(2) and 45(5).

<sup>34</sup> IACHR. *Rules of Procedure of the Inter-American Commission on Human Rights*, OAS/Ser. L/V/1.4, Rev.12, December 4-8, 2000, Article 41(5).

<sup>35</sup> Article 45(2), "[i]n order for the Commission to offer itself as an organ of conciliation for a friendly settlement of the matter it shall be necessary for the positions and allegations of the parties to be sufficiently precise, and in the judgment of the Commission, the nature of the matter must be susceptible to the use of the friendly settlement procedure." Article 45(3), "[t]he Commission shall accept the proposal to act as an organ of conciliation for the friendly settlement presented by one of the parties if the circumstances described in the above paragraph exist and if the other party to the dispute expressly accepts the procedure." IACHR, *Regulations of the Inter-American Commission on Human Rights*, OEA/Ser.L/V/II.64, doc.15, March 4, 1985.

<sup>36</sup> Article 41(2) "[t]he friendly settlement procedure shall be initiated and continue on the basis of the consent of the parties." IACHR, *Rules of Procedure of the Inter-American Commission on Human Rights*, OAS/Ser.L/V/1.4, Rev.12, December 4-8, 2000.

54. Lastly, the new Rules authorized the IACHR to implement the *follow-up measures it deems appropriate [...] in order to verify compliance with friendly settlements*.<sup>37</sup> These follow-up measures may include requesting information from the parties and holding working meetings to evaluate the progress made in the agreements' fulfillment.

55. With the amendments to the Rules took effect in 2000, the number of friendly settlement reports adopted by the IACHR increased again.<sup>38</sup> This increase is due to several factors: the IACHR's consistency in the implementation of such practices as placing itself at the disposal of the parties in every case; the publicity gained when friendly settlements were reached in cases well covered by the media;<sup>39</sup> an open-mindedness on the part of the States, which in many cases voluntarily proposed that a friendly settlement procedure be initiated;<sup>40</sup> and a better understanding of the system on the part of petitioners, more and more of whom requested the use of the friendly settlement mechanism as a rapid and effective procedural alternative.

56. In 2009, the Commission's Rules were amended again. The central objective of these reforms was to enhance participation by victims in the Commissions proceedings, as well as their transparency. The amendments mainly addressed precautionary measures, the processing of petitions and cases, the referral of cases to the jurisdiction of the Inter-American Court, and the holding of hearings. This particular reform did not include any substantial changes to the friendly settlement procedure, but changed the number of the article establishing this procedure, now Article 40 of the Rules.

57. Between 2011 and 2013, the Commission instituted a new process to reform its Rules, policies and practices, in order to enhance the protection and promotion of human rights. The process included essential recommendations and observations from Member States and other stakeholders from civil society, victims, academia, and others.

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<sup>37</sup> *Ibid*, Article 46.

<sup>38</sup> Between 2000 and 2008, the Commission published a total of 66 friendly settlement reports, eight times the number of reports published between 1985 and 1999.

<sup>39</sup> Examples include the Case of the Enxet-Lamenxay and Kayleyphapopyet (Riachito) Indigenous Communities (Paraguay), in which the Paraguayan State returned ancestral lands to 300 members of those indigenous communities, and the friendly settlement agreement reached in the *Case of Birt et al.* (Argentina), as a result of which the government enacted National Law 24,043, which granted benefits to persons who had been placed under the authority of the National Executive Power during the state of emergency, or who, as civilians, had been held in custody under orders from military courts. See, Report No. 90/99 (Friendly Settlement), Case 11,713 *Enxet-Lamenxay Indigenous Communities et al.*, Paraguay, September 29, 1999; Report No. 1/93 (Friendly Settlement), Cases 10,288, 10,310, 10,436, 10,496 10,631 and 10,771, *Birt et al.*, Argentina, March 3, 1993.

<sup>40</sup> Proposal presented by the government of Peru, which as part of the government policy on protection of human rights, presented a request to initiate friendly settlements processes in a number of cases that were pending with the IACHR. See IACHR, Joint Press Release, Government of Peru, February 22, 2001. The Commission continues to monitor the implementation of the commitments made.

58. As for the new friendly settlement procedure, the new Rules of Procedure establish the possibility for the Commission to expedite the evaluation of a petition when the State formally expresses its readiness to enter into a friendly settlement process.<sup>41</sup> Article 59, which concerns the Annual Report, indicates that Chapter II of the report shall include friendly settlements approved during the period.

### C. The IACHR's Current Practice

59. Under the current practice, when the processing of a petition begins, the IACHR makes itself available to the petitioners and State with a view to reaching a friendly settlement on the matter. The friendly settlement procedure begins and continues with the consent of the parties, unless the Commission observes that the matter is not one susceptible to resolution through a friendly settlement or unless one of the parties opposes it or does not show a willingness to reach a friendly settlement respectful of human rights.

60. At any stage in the process, the parties are free to hold working meetings in their countries, with or without the IACHR's participation. They can also meet at the IACHR's headquarters during one of its Periods of Sessions, provided that the Commission convenes them. At the working meetings held with the IACHR's participation, it is generally the Commissioner acting as country rapporteur for the State concerned who facilitates the dialogue between the parties. In addition to working meetings, the IACHR keeps the process moving by transmitting written information between the parties and, when necessary, requesting observations from either side.

61. Should the parties arrive at an agreement that meets the requirements, the IACHR will confirm whether the victim, or his or her successors, have given their consent to the friendly settlement and whether the agreement itself is based on respect for the human rights recognized in the American Convention, the American Declaration and other applicable instruments. If that is the case, the Commission will approve a report setting out the facts and the agreement reached, will send said report to the parties and will publish it in accordance with Article 41 of the American Convention.

62. If the parties do not arrive at a friendly settlement, the processing of the petition or case will continue to the admissibility or merits phase, as appropriate. The processing of the petition or case may culminate with a report on the merits in which the IACHR decides the matter of the State's responsibility for the alleged violations of human rights enshrined in the American Convention and other regional protection instruments, and make recommendations the State concerned. In such cases, and provided that the State has previously accepted or accepts the contentious jurisdiction of the Inter-American Court, the IACHR may decide to refer

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<sup>41</sup> IACHR. *Rules of Procedure of the Inter-American Commission on Human Rights*, Resolution 1/2013, Article 29(2)(c).

the case to the Court. If the latter decides that the State's international responsibility has been engaged by virtue of its violation of one or more of the rights recognized in the American Convention, it may issue a judgment in which the State is ordered to comply with a series of reparations measures. In case of compliance with its recommendations, the Commission may choose to order the publication of the report on the merits in its Annual Report to the OAS General Assembly.

63. Once the friendly settlement report is published, the IACHR may take the necessary follow-up measures, such as requesting information from the parties and holding hearings or meetings to verify compliance with the friendly settlements (Article 48 of the Rules). Every year, the Commission requests information from the parties in those cases in which the friendly settlement agreement has not been fully implemented. At the present time, the IACHR devotes a section of its Annual Report to its follow-up of merits reports and friendly settlement reports, featuring a table classifying the State's compliance as either total, partial, or pending. Then follows the information provided by the parties, an analysis of compliance, and the Commission's conclusions on each case. Because compliance with the friendly settlements is essential this mechanism, based on the parties' trust and sincerity, the Commission devotes each year more resources to monitoring and compiling the information provided by the parties.



## **CHAPTER III**

### **IMPACTS OF THE FRIENDLY SETTLEMENTS PUBLISHED BY THE IACHR**



## CHAPTER III

### IMPACTS OF THE FRIENDLY SETTLEMENTS PUBLISHED BY THE IACHR

64. The Commission must begin by pointing out that, according to the Inter-American system's case law, victims of human rights violations are entitled to adequate reparation for the harm suffered, in the form of individual measures of restitution, compensation and rehabilitation, as well as general measures of satisfaction and guarantees of non-repetition.<sup>42</sup>

65. These types of reparations are consistent with the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law". These principles include different forms of reparation aimed at promoting justice and remedying the gross violations of human rights international standards.<sup>43</sup>

66. That document describes the elements of a "full and effective" reparation, that is appropriate and proportional to the gravity of the violation and the circumstances of each case. It lists the following as forms of reparation: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

67. The classification of the forms of reparation contemplated in the case law of the Inter-American Court and in the "Basic Principles and Guidelines" has served as a point of reference in determining the forms of reparation adopted in the friendly settlement agreements published by the IACHR, which is why it was used as a basis for preparation of this report.

#### A. Restoration of the Infringed Right

68. Restitution includes measures for restoring the victim to the situation known before the violation.<sup>44</sup> Its effect is to terminate the activity or conduct that is considered a violation of the victims' rights and reestablish the situation to what it was before the events occurred.<sup>45</sup> The Commission understands that the nature of

<sup>42</sup> IACHR. *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, doc. 1, February 19, 2008, paragraph 1.

<sup>43</sup> Hereinafter, "Basic Principles and Guidelines". See Office of the United Nations High Commissioner for Human Rights, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

<sup>44</sup> *Ibid*, Article 19.

<sup>45</sup> Like other forms of reparation, restitution or *restitutio in integrum* can be traced back to Public International Law. Article 35 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts provides that a State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation that existed before the wrongful



the acts that led to the supposed violation is what determines whether restitution can be deemed a feasible measure of reparation, since restitution is only possible when the consequences of the presumed violation can be fully restored. In this sense, restitution can be an effective form of reparation when, for example, one seeks to restore freedom, return property, or issue identification documents.<sup>46</sup>

69. The Commission's experience has shown that one of the advantages that the friendly settlement mechanism offers is to allow petitioners and States to agree on how the violated right can be restored, and identify together what other measures can be taken to redress the consequences of the violation. While restitution has been used relatively infrequently in the context of friendly settlements, the agreements approved in the IACHR's reports reveal that, in practically every case, the parties have settled on additional measures of reparation such as payment of compensation or medical and psychological treatment.

70. Restitution has figured in 18 out of the 106 friendly settlement agreements that the IACHR has approved through the report described in Article 49 of the American Convention. Over the years, friendly settlements have provided for a variety of restitution measures, ranging from restoring a person's liberty, repealing laws that are contrary to the ACHR's standards of protection, the return of land, and reinstatement of one's employment.

### 1. Restoring a Person's Liberty

71. The friendly settlement agreement that the State of Mexico and the petitioners signed in the case of Ricardo Ucán Seca<sup>47</sup> illustrates the inclusion of restitution measures in such agreements and the impact that they have when the State complies.

72. Mr. Ricardo Ucán Seca, an indigenous Mayan, was found guilty of aggravated homicide. In the petition it was claimed that the Mexican State was responsible for alleged irregularities that reportedly affected the criminal proceedings against Mr. Ucán Seca, especially because he was not assisted by an interpreter -which would have enabled him to defend himself and to express himself in his own language- and because he was not assisted by a court-appointed public defender during his trial.

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act. The State responsibility can also be traced back to the decision of the Permanent Court of International Justice in the case of the Chorzów Factory, where the Court wrote that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed." See, International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 2001. Document available at: [http://untreaty.un.org/ilc/texts/9\\_6.htm](http://untreaty.un.org/ilc/texts/9_6.htm)

<sup>46</sup> Restitution is considered as the appropriate type of reparation in both public international law, for unlawful acts committed by States, and international human rights law.

<sup>47</sup> IACHR. Report No. 91/10 (Friendly Settlement), Case 12,660, *Ricardo Ucán Seca*, Mexico, July 15, 2010.

73. Following intense negotiations and a public hearing at the Commission's headquarters,<sup>48</sup> the petitioners and the State of Mexico signed a friendly settlement agreement on December 31, 2009. Under the terms of the agreement, the State pledged, *inter alia*, to grant Mr. Ricardo Ucán Seca's release through administrative channels and to arrange assistance for him and his family given their socio-economic situation. In keeping with the friendly settlement, Mr. Ricardo Ucán Seca was released by virtue of a law on suspended sentences.

74. Another example that illustrates how measures of restitution are incorporated into friendly settlements and the State's actions in compliance thereof is the case of Luis Rey García Villagrán,<sup>49</sup> who was victim of unlawful detention, torture, and violations of due process during his prosecution for an alleged crime<sup>50</sup>. In the friendly settlement agreement, the Mexican State pledged that, in collaboration with the Government of the State of Chiapas, it would take the relevant steps for Mr. García Villagrán's file to be submitted to the Reconciliation Board of the Chiapas State Government, for review and analysis of the criminal proceedings conducted against him.

75. As a result of the Mexican State's fulfillment of the commitments undertaken in the friendly settlement agreement, Mr. Luis Rey García Villagrán was released from prison on December 22, 2009.

## 2. Repeal of Laws Contrary to the IACHR's Standards of Protection

76. The repeal of laws contrary to the American Convention in fulfillment of the commitments undertaken by States in friendly settlements agreements has enabled persons harmed by the enforcement of such laws to obtain the restoration of their violated right. Their impact goes far beyond the immediate victim, since repeal of laws of this type brings domestic laws in line with the human rights protection standards that the American Convention establishes.<sup>51</sup>

<sup>48</sup> On November 5, 2009, during the Commission's 137th Regular Period of Sessions, a public hearing was held at the Commission's headquarters in Washington, D.C., with both parties present. In the course of that hearing, oral arguments were heard and evidence was introduced, with audiovisual aids, concerning the merits of the case. *Ibid*, paragraph 10.

<sup>49</sup> IACHR. Report No. 164/10 (Friendly Settlement), Case 12.623, *Luis Rey García Villagrán*, Mexico, November 1, 2010.

<sup>50</sup> It is noted that at a public event "... the Mexican State, through the Chiapas government, accepts and acknowledges that Mr. Luis Rey Garcia Villagran, at the time of the events, which was in the year 1997, was tortured and illegally deprived of his freedom by the then State Judicial Police and subjected to undue legal process. For this reason, the Mexican State offered public apologizes and admits that it was oblivious of the facts that incriminated it. "IACHR, Report No. 164/10 (friendly settlement), Case 12,623, *Luis Rey Garcia Villagran*, Mexico, November 1, 2010, paragraph 20.

<sup>51</sup> Chapter III will discuss the measures of reparation that have an impact on the structural context that give place to human rights violations. These measures are known as "guarantees of non-repetition" and include, among other forms of reparation, legislative amendments, implementation of public policies, and training of civil servants.

77. The friendly settlement agreement that journalist Horacio Verbitsky signed with the Argentine State<sup>52</sup> illustrates the ripple effect that friendly settlements can have when they include such measures.

78. According to the facts described in the petition, Mr. Verbitsky was convicted for contempt of the court [*desacato*] because he allegedly made libelous statements concerning a Supreme Court justice in an article published in the newspaper *Página 12*. The Argentinean authorities considered that the publication of that article, where the journalist had used the word “asqueroso” [nauseating, sickening, revolting] in reference to an interview given by Supreme Court Justice Augusto Belluscio, constituted a crime under Article 244 of the Criminal Code.

79. Following multiple meetings, the parties signed on September 21, 1992 a joint proposed friendly settlement. As the agreement was initially drafted, the petitioners asked the State, *inter alia*, to pledge to repeal Article 244 of the Criminal Code and, once the law repealing the crime of *desacato* would entered into force, to apply it to the case of Mr. Verbitsky so that the verdict delivered against him would be overturned and nullified.

80. In following up on the friendly settlement agreement, the Commission confirmed that the crime of *desacato* had been repealed by National Law No. 24,198, published in the Official Gazette of June 3, 1993. The National Chamber of Criminal Cassation upheld the decision of the Federal Chamber of the Capital District, that had ruled on the action presented by Mr. Verbitsky and resolved to overturn his conviction and nullify the one-month prison sentence imposed for the crime of aggravated *desacato*.

81. In its report approving the friendly settlement agreement, the IACHR expressed the view that the repeal of the crime of *desacato* as a result of Mr. Verbitsky’s petition brought the Argentinean law in line with the ACHR, as it eliminated the legal grounds for the government’s curtailment of the right to freedom of expression recognized in the American Convention.

82. Since the legislative amendment that came about as a result of the friendly settlement, another twelve countries of the region have struck down their *desacato* laws.<sup>53</sup> Thus, the repeal of *desacato* laws which criminalize criticism of public officials has played a key role in building and consolidating democracy, by enabling

<sup>52</sup> See, IACHR. Report No. 22/94 (Friendly Settlement), Case 11,012, *Horacio Verbitsky*, Argentina, September 20, 1994.

<sup>53</sup> The Special Rapporteurship for Freedom of Expression had worked diligently to achieve that objective and has been instrumental in getting those laws repealed, not only in Argentina, but in Chile, Costa Rica, El Salvador, Guatemala, Honduras, Mexico (at the federal level), Panama, Paraguay, Peru, and Uruguay. For further information, see IACHR, *Report on the Compatibility Contempt Laws and the American Convention on Human Rights*, Annual Report 1994, Chapter V, CIDHOEA/Ser.L/V/II.88, Doc 9 rev., February 17, 1995.

journalists to perform their role as watchdogs and critics of the authorities without fear of reprisals.

### 3. Land Return

83. Through a friendly settlement mediated by the Commission and signed by the Enxet-Lamenxay and Kayleyphapopyet–Riachito indigenous community and the government of Paraguay<sup>54</sup> on March 25, 1998, 300 members of the indigenous communities had their ancestral lands returned.<sup>55</sup>

84. On July 30, 1999, in a public ceremony attended by the IACHR, the President of Paraguay delivered the property deeds of 21,844 hectares which, in the friendly settlement, the government had pledged to purchase, to the representatives of the indigenous communities.

85. That friendly settlement also established commitments regarding reparation measures that would have a direct impact on protection of the alleged victims' economic, social and cultural rights. These measures included assistance to the communities in the form of food, medication, equipment, and means of transportation to enable the families to move to their new settlement; health-related, medical and educational assistance to the community, and upkeep of the property's access roads<sup>56</sup>.

86. Furthermore, under the friendly settlement agreement signed as a result of complaints of brutal eviction of the Los Cimientos Quiché Community from their lands, the Guatemalan State pledged to purchase a tract of land where they could move and settle permanently. In compliance with the agreement, on September 18, 2002, the Government purchased the San Vicente Osuna estate and the adjacent Las Delicias estate for the Community Association of Residents of Los Cimientos and relocated there the 233 families who had been violently driven off their lands in 2001.<sup>57</sup>

<sup>54</sup> The Enxet are an indigenous people who inhabit the Paraguayan Chaco, with a total population of some 16,000 persons. Before their lands were invaded, their main sustenance came from hunting, fishing, and gathering, although they had also cultivated small patches of land and raised some domestic animals. On December 12, 1996, the IACHR received a petition in which it was alleged that the Paraguayan State had sold the lands in the Chaco that were home to the members of the Enxet indigenous people. The petitioners also indicated that, in 1991, representatives of the community had instituted administrative procedures with the Institute of Rural Welfare to reclaim their land. An injunction respect to the lands claimed had been ignored. See Report No. 90/99 (Friendly Settlement), Case 11,713, *Enxet-Lamenxay Kayleyphapopyet (Riachito) Indigenous Communities*, Paraguay, September 29, 1999.

<sup>55</sup> This is the first friendly settlement agreement in the inter-American human rights system that restores legitimate land rights to an indigenous community. Press Release 4/98, March 25, 1998.

<sup>56</sup> In the report approving the friendly settlement agreement, the Commission recognized the effort of the Paraguayan State to solve the case through the establishment of reparation measures and assistance to these communities, and reiterated its availability implementation process of the State commitments of a continuous nature. See Report No. 90/99, (Friendly Settlement), Case 11,713, *Lamenxay Enxet Riachito Kayleyphapopyet*, Paraguay, September 29, 1999, paragraphs 22-23.

<sup>57</sup> IACHR. Report No. 68/03 (Friendly Settlement), Case 11,197, *San Vicente de los Cimientos Community*, Guatemala, October 10, 2003. Report No. 30/12 (Friendly Settlement), *Juan Jacobo*

87. The Commission highlights the efforts made by the Los Cimientos Quiché community to reach a friendly settlement, in particular through a long process of negotiation and by agreeing to be moved to the properties purchased by the State, which were not the same as the lands where they had previously lived, either in size or location.<sup>58</sup>

#### 4. Reinstatement of One's Employment

88. Restitution, once again, is an effective form of reparation only in those cases in which the violated right can be fully restored or reinstated. Thus, when the alleged violation consists of the victim's dismissal from his or her employment, re-establishment of the employment relationship is an appropriate way to redress the harm done.

89. A case in point is the friendly settlement whereby the Peruvian State undertook to restore Dr. Ignacio Livia Robles<sup>59</sup> to his position as Principal Provincial Prosecutor for Lima, from which he had been summarily dismissed without right to defend himself. Under the friendly settlement agreement, the State acknowledged its responsibility and restored the victim to his previous position, while also nullifying Article 3 of Decree Law No. 25446 under which he was dismissed.<sup>60</sup>

90. The State of Peru also reached a friendly settlement with a group of 177 magistrates who were dismissed from the bench when their tenure was not confirmed by the National Judiciary Council. The petitioners alleged that the Council's resolutions did not state the legal grounds for the decision not to confirm their tenure and that the procedure was incompatible with the judicial guarantees protected by the ACHR. Under the friendly settlement procedure, the State acknowledged that the tenure process for judges and prosecutors did not include certain guarantees for effective procedural protection, particularly with regards to the requirement of a reasoned judgment. It therefore nullified the resolutions by which the magistrates were not confirmed to their position and, as a result, ordered their reinstatement in their previous positions or appointment to a vacant seat at the same level.<sup>61</sup>

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*Arbenz Guzmán*, Guatemala, March 20, 2012, is another example of a friendly settlement agreement in which the State undertakes to restore ownership of properties to victims of human rights violations.

<sup>58</sup> During the negotiations of the friendly settlement, a working meeting was held on July 26, 2002, where the parties explained to the Commission that they had agreed to substitute land area for land quality. Consequently, the land that the State had agreed to purchase was an estate as productive or more than the Los Cimientos estate. IACHR, Report No. 68/03 (Friendly Settlement), Case 11,197, *Comunidad San Vicente de los Cimientos*, Guatemala, October 10, 2003, paragraph 38.

<sup>59</sup> IACHR, Report No. 75/02 (bis) (Friendly Settlement), Petition 12,035, *Pablo Ignacio Livia Robles*, Peru, December 13, 2002.

<sup>60</sup> See, IACHR, *Annual Report 2005*, OEA/Ser.L/V/II.124 Doc.7, paragraphs 332-335. Available at: <http://www.cidh.org/annualrep/2005eng/toc.htm>

<sup>61</sup> These friendly settlements have been partially complied with. In its Annual Reports, the Commission continues to monitor compliance with the pending elements. See, IACHR, Report No. 49/06 (Friendly Settlement), Petition 12,033, *Rómulo Torres Ventocilla*, Peru, March 15, 2006; IACHR, Report No. 50/06 (Friendly Settlement), Petition ,711-01 *et al.*, *Miguel Grimaldo Castañeda*

## B. Medical, Psychological, and Social Rehabilitation

91. The purpose of rehabilitation measures is to assist victims of human rights violations in their recovery from the physical and psychological harm, and from the living conditions caused by those violations.<sup>62</sup> The inclusion of rehabilitation measures in friendly settlements has served to relieve persons who have appealed to the Commission as victims and to mitigate the effects of the events that led to their petitions.

92. Out of the 106 friendly settlement reports approved and published to this date, 24 included measures of medical and psychological rehabilitation, as well as social assistance aimed at favoring the personal development of those affected.

93. The Commission has found that the nature of the allegations and the identity of measures' beneficiaries will, to a large extent, dictate the design and implementation of the rehabilitation measures. Through friendly settlements, the States have undertaken to provide psychological counseling to victims of torture,<sup>63</sup> rape victims,<sup>64</sup> and immediate family of victims of forced disappearance<sup>65</sup> and of

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*Sánchez et al.*, Peru, March 15, 2006; IACHR, Report No. 109/06 (Friendly Settlement), Petition 33-03 *et al.*, *Alejandro Espino Méndez et al.*, Peru, October 21, 2006; IACHR, Report No. 71/07 (Friendly Settlement), Petition 758-01 *et al.*, *Hernán Atilio Aguirre Moreno et al.*, Peru, July 27, 2007; IACHR, Report No. 20/07 (Friendly Settlement), Petition 732-01 *et al.*, *Eulogio Miguel Paz Melgarejo et al.*, Peru, March 9, 2007; IACHR, Report No. 20/08 (Friendly Settlement), Petition 494-04, *Romeo Edgardo Vargas Romero*, Peru, March 13, 2008, and IACHR, and Report No. 22/11 (Friendly Settlement), Petition 71-06 *et al.*, *Gloria José Yaquetto Paredes et al.*, Peru, March 23, 2011.

<sup>62</sup> Rehabilitation measures can include legal, occupational, and medical services, and measures to restore the victim's dignity and reputation. See, Commission on Human Rights, *Study concerning the right to restitution, compensation, and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45th Session. E/CN.4/Sub.2/1993/8, July 2 1993, p. 57. See also, United Nations, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly in resolution 40/34 of November 29, 1985.

<sup>63</sup> As a result of the complaint filed with the IACHR alleging arbitrary detention and torture, the State pledged in the friendly settlement agreement to provide psychotherapeutic assistance to Mr. Alejandro Ortiz Ramírez and his family through the office of the Assistant Attorney for Victim Assistance and Community Services. See, IACHR, Report No. 101/05 (Friendly Settlement), Petition 388-01, *Alejandro Ortiz Ramírez*, Mexico, October 27, 2005.

<sup>64</sup> In friendly settlement Report No. 21/07, dated March 9, 2007, the Inter-American Commission approved a friendly settlement in the case of Paulina del Carmen Ramírez Jacinto. The petitioners alleged, in summary, that on July 31, 1999, when Paulina del Carmen Ramírez Jacinto was just fourteen years old, she was the victim of a rape committed in her home. The incident was immediately reported to the Public Prosecution Service (MP) specializing in sexual crimes and domestic violence. The petitioners claimed that the Public Prosecution Service did not inform either Paulina del Carmen Ramírez Jacinto or her mother of the existence of an emergency oral contraceptive and the rape resulted in a pregnancy. They also complained that the authorities had put up several administrative and psychological barriers to stop Carmen Ramírez Jacinto from going through with her decision to have an abortion, even though rape is one of the exceptions when abortion is not a punishable offense. In the friendly settlement agreement, the State undertook to arrange psychological treatment for Paulina Ramírez Jacinto and her son, which was to be provided by the specialists at the Mental Health Center of the Baja California State Health Secretariat. See, IACHR, Report No. 21/07 (Friendly Settlement), Petition 161-02, *Paulina del Carmen Ramírez Jacinto*, Mexico, March 9, 2007. Furthermore, as a result of the friendly settlement agreement signed

violations of the right to life.<sup>66</sup> Furthermore, as this section shows, the friendly settlements reached in cases involving indigenous communities have featured collective social assistance measures for entire communities, such as the construction of clinics and implementation of health programs.

94. *Medical and psychological rehabilitation measures* have been included in 21 of the 106 friendly settlement agreements approved by the Inter-American Commission. Their purpose is to help victims overcome their suffering, especially that caused by illnesses and the deterioration of their living conditions.<sup>67</sup>

95. Implementation of medical rehabilitation measures must be differentiated, differentiated individualized, preferential, comprehensive, and provided by specialized institutions and personnel.<sup>68</sup> The medical treatment must be provided immediately, and beneficiaries must be spared the anguish of additional bureaucratic or other procedures that impair their access to treatment.

96. The medical and psychological rehabilitation measures included in the friendly settlements approved by the IACHR are of different types. In some cases, a sum of money is pledged to defray medical expenses.<sup>69</sup> In practice, setting a sum of money to cover health care can be useful when the medical treatment is for a specific condition and a specific period of time.<sup>70</sup>

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with the State of Colombia, Ms. "X", who had been the victim of a sexual assault perpetrated by members of the Colombian Army, is receiving psychological treatment twice a week through the CERFAMI Shelters Program. IACHR. Report No. 82/08 (Friendly Settlement), P-477-05, *X and relatives*, Colombia, October 30, 2008.

<sup>65</sup> The Colombian State undertook to evaluate the psychological condition and health of the mother, wife, and children of Jorge Barbosa Tarazona, a young soldier who disappeared after being detained by Army troops, and to provide them with the necessary treatment. IACHR, Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Antonio Barbosa Tarazona et al.*, Colombia, October 30, 2008.

<sup>66</sup> The State of Peru pledged to provide psychological counseling to the husband and seven children of María Mamérita Mestanza Chavez, a peasant woman who died as a result of being forced to undergo surgical sterilization. IACHR, Report No. 71/03 (Friendly Settlement), Petition 12,191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003.

<sup>67</sup> Beristain, Carlos Martín, "Diálogos sobre la Reparación: experiencias en el sistema interamericano de derechos humanos"[Dialogues on Reparations: Experiences in the Inter-American Human Rights System], Volume II, Inter-American Institute of Human Rights, San José, 2008, p. 230.

<sup>68</sup> I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, paragraph 270.

<sup>69</sup> The Inter-American Court has also ordered this type of reparation under the heading of compensatory damages. In the case of Loayza Tamayo, for example, the Court ordered the Peruvian State to pay a sum of money to cover the future medical expenses of the victim and her children because the evidence showed that the victim's ailments were caused by her incarceration. See, I/A Court H.R., *Case of Loayza Tamayo v. Peru*, Reparations and Costs. Judgment of November 27, 1998. Series C No. 42 paragraph 129.

<sup>70</sup> *Supra* note 65, paragraph 243.

97. In four friendly settlement agreements, the State has pledged to pay a sum of money for the purchase of medication,<sup>71</sup> payment of treatment,<sup>72</sup> surgeries<sup>73</sup> and psychological rehabilitation treatment.<sup>74</sup>

98. The second type of medical and psychological rehabilitation measure is medical treatment provided free of charge through the public health system. This reparation measure has also figured in four friendly settlements.<sup>75</sup> These agreements either name the specific medical facility where the service will be provided<sup>76</sup> or stipulate that the medical care will be provided through the Ministry of Health.<sup>77</sup> None of the friendly settlements in which the States undertake to provide medical attention through the Ministry of Health establish a time frame for the provision of treatment or whether treatment will be provided indefinitely. Nor do they specify what exact services will be provided. Here, the Commission must emphasize how important it is that the measures involving medical or psychological treatment be clearly spelled out, to avoid problems when the treatment is being

<sup>71</sup> In the friendly settlement agreement signed by the Guatemalan State and the representatives of the next of kin of José Sucunú Panjoj, a member of the Runujel Junam Council of Ethnic Organizations who was reportedly the victim of a forced disappearance, the State pledged to provide the victim's wife the sum of 681.00 quetzales for the purchase of medications. IACHR, Report No. 19/00 (Friendly Settlement), *José Sucunú Panjoj*, Guatemala, February 24, 2000.

<sup>72</sup> See, IACHR, Report No. 19/97 (Friendly Settlement), *Juan Chanay Pablo et al.* Guatemala, March 13, 1997.

<sup>73</sup> The Mexican State pledged to pay the sum of 500,000 Mexican pesos so that Mr. Luis Rey García Villagrán, who had reportedly been arbitrarily detained and tortured by State agents, could cover the cost of the medications and surgeries he required. IACHR, Report No. 164/10 (Friendly Settlement), Case 12,623, *Luis Rey García Villagrán*, Mexico, November 1, 2010.

<sup>74</sup> In the friendly settlement agreement that the Peruvian State and the next of kin of María Mamérita Mestanza Chávez signed, the State pledged pay the sum of 7,000 dollars so that her husband and children could receive psychological rehabilitation treatment. The agreement stipulated that the amount would be placed in a trust fund with a private or public institution that would serve as trustee to administer the funds earmarked for psychological treatment. The institution would be chosen by mutual agreement between the State and the representatives of the Salazar Mestanza family. See, IACHR, Report No. 71/03 (Friendly Settlement), Petition 12,191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003.

<sup>75</sup> Another four friendly settlement agreements featured a commitment on the part of the State to provide medical attention to the beneficiaries of the agreement; however, the agreements do not specify which institution will provide the service or whether the service will be provided through the public health system. See, IACHR, Report No. 90/99 (Friendly Settlement), Case 11,713, *Enxet-Lamenxay Indigenous Communities et al.*, Paraguay, September 29, 1999; Report No. 107/00 (Friendly Settlement), Case 11,808, *Valentín Carrillo Saldaña*, Mexico, December 4, 2000; IACHR, Report No. 110/06 (Friendly Settlement) Case 12,555, *Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola*, Venezuela, October 21, 2006; IACHR, Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Antonio Barbosa Tarazona et al.*, Colombia, October 30, 2008.

<sup>76</sup> In one friendly settlement agreement signed by the petitioners and the State of Guatemala, the latter pledged that the Hospital Santa Elena del Quiché would provide medical services to the next of kin of a victim of forced disappearance; in another friendly settlement agreement, it pledged that Salamá hospital would treat the injuries to the victim's physical integrity. See, IACHR, Report No. 19/00 (Friendly Settlement), *José Sucunú Panjoj*, Guatemala, February 24, 2000; IACHR, Report No. 123/12 (Friendly Settlement), *Angélica Jerónimo Juárez*, Guatemala, November 13, 2012.

<sup>77</sup> IACHR, Report No. 70/03 (Friendly Settlement), Petition 11,149, *Augusto Alejandro Zúñiga Paz*, Peru, October 10, 2003; IACHR, Report No. 82/08 (Friendly Settlement), Petition 477-05, *X and Relatives*, Colombia, October 30, 2008.



provided.<sup>78</sup> The State cannot be deemed to have complied with its obligation to provide medical and psychological treatment to victims simply by registering them with the public health services.

99. A third type of reparation is to provide the victims with permanent health coverage through the Ministry of Health or appropriate public institution.<sup>79</sup> One such example is the case of Reyes Penagos *et al.*, where Mexico pledged to make arrangements so that the beneficiaries would get access to medical insurance. According to the information that the Commission has received, the State has provided full and lifetime health coverage to the beneficiaries.<sup>80</sup>

100. Through the friendly settlement procedure, petitioners and States have agreed on implementation of health programs to serve indigenous communities, which have gone a long way toward solving these communities' health problems. One example is the agreement concluded between the Bolivarian Republic of Venezuela and the Yanomami indigenous people of Haximú,<sup>81</sup> under which the State pledged to finance and put into operation, through its Ministry of Health, a comprehensive health program that would include construction of infrastructure, medical equipment, and training for members of this people. Under the agreement, the petitioners acknowledged important progress, particularly with respect to the system of outpatient clinics in the Upper Orinoco Health District. They pointed out that the State has taken measures to ensure improvement of the primary health care service coverage.<sup>82</sup>

<sup>78</sup> The Commission has observed that in some friendly settlements, the parties have agreed that the health services would be provided through the Ministry of Health or other public agencies; however, the agreements are not specific on certain aspects essential to compliance, such as the health center that will provide the service, the level of coverage that the agreement offers, and which treatments the medical care will cover. The lack of specific information on these measures can pose problems in the future and difficulties in monitoring and compliance.

<sup>79</sup> See, IACHR. Report No. 71/03 (Friendly Settlement), Petition 12,191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003; Report No. 24/09 (Friendly Settlement), Case 11,822, *Reyes Penagos Martínez et al.*, Mexico, March 20, 2009; and Report No. 90/10 (Friendly Settlement), Case 12,642, *José Iván Correa Arévalo*, Mexico, July 15, 2010.

<sup>80</sup> IACHR. Report No. 24/09 (Friendly Settlement), Case 11,822, *Reyes Penagos Martínez et al.*, Mexico, March 20, 2009.

<sup>81</sup> On December 6, 1996, the IACHR received a complaint against the Bolivarian Republic of Venezuela, alleging the murder of 16 Yanomami indigenous persons from the Haximú region, events that occurred between June and July of 1993. The petitioners alleged that the State had failed to effectively keep *garimpeiros* out of the Yanomami territory and had not investigated, prosecuted, and punished those responsible for the murders. See, IACHR, Report No. 32/12 (Friendly Settlement), *Yanomami Indigenous People of Haximú*, Venezuela, March 20, 2012.

<sup>82</sup> The IACHR has observed that the Health Plan for the Yanomami has helped bring about improvements in such essential areas as the following: the health infrastructure at the Dr. José Gregorio Hernández Type II Hospital in the Amazonas state, Puerto Ayacucho; restoration of the network of outpatient clinics and reinforcement of the medical staff and assistance personnel in the Upper Orinoco Health District; establishment of Indigenous Health Offices to treat indigenous patients with the assistance of bilingual facilitators; supplies of medications; expansion of the health system's coverage to include indigenous communities in the Delgado Chalbaud area and the Yanomami of the Lower Siapa in the municipality of Río Negro, state of Amazonas; various programs and visits conducted by a multidisciplinary team from the Ministry of Health under the Visual Health Program, Office of the Coordinator of Indigenous Health, to treat eye problems, ensure dental health, and provide comprehensive and intercultural medical care in various indigenous communities;

101. The Commission notes that *social rehabilitation measures* appear in numerous friendly settlements. Their purpose is to further the victims' personal development and to provide vocational rehabilitation so that they can obtain and maintain adequate work.<sup>83</sup> These measures are geared towards compensating the victims for the lost opportunities as a result of the violations suffered. They are "transformative reparations" in that they foster change and social advancement of the victims and their families.<sup>84</sup>

102. Under friendly settlements, many victims and immediate family members have received scholarships for study and technical training. In some agreements, the States have pledged to award schooling stipends to the minor children of the victims until their majority;<sup>85</sup> petitioners and States have agreed on fellowships for study at institutions of higher learning,<sup>86</sup> technical training in electronics,<sup>87</sup> training in the management of funds handed over as compensation,<sup>88</sup> and public

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development of a strategic plan for immunization against yellow fever, in the State of Bolívar, in partnership with the Ministry of Health's Expanded Immunization Program; implementation of training and instruction courses for members of the Yanomami people and implementation of the Yanomami Health Plan Coordination Office. This includes: a General Coordinator, a Medical Coordinator, a Training Coordinator, a Coordinator for Logistics, and Assistance with research and monitoring of health interventions. The friendly settlement agreement has been partially complied with. In its Annual Reports, the Commission continues to monitor compliance with the matters still outstanding.

<sup>83</sup> Rehabilitation or social assistance measures significantly help victims of human rights violations rebuild their life plans. To date, the IACHR has approved 17 friendly settlement agreements that feature this type of reparation.

<sup>84</sup> Beristain, Carlos Martin, "Dialogues on Reparation: Experiences in the Human Rights System," Volume II, American Institute of Human Rights, San José, 2008, p. 343.

<sup>85</sup> See, for example, IACHR. Report No. 19/00 (Friendly Settlement), *José Sucunú Panjoj*, Guatemala, February 24, 2000; Report No. 107/00 (Friendly Settlement), Case 11,808, *Valentín Carrillo Saldaña*, Mexico, December 4, 2000; Report No. 71/03 (Friendly Settlement), Petition 12,191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003; Report No. 101/05 (Friendly Settlement), Petition 388-01, *Alejandro Ortiz Ramírez*, Mexico, October 27, 2005, and Report No. 123/12 (Friendly Settlement), *Angélica Jerónimo Juárez*, Case 12,591, Guatemala, November 13, 2012. Also, by signing a friendly settlement agreement, the State may commit itself to pay economic compensation to fulfill obligations undertaken in connection with student loans. See, IACHR. Report No. 33/02 (Friendly Settlement), *Mónica Carabantes Galleguillos*, Petition 12,046, Chile, March 12, 2002; Report No. 24/09 (Friendly Settlement), Case 11,822, *Reyes Penagos Martínez et al.*, Mexico, March 20, 2009; and Report No. 68/12 (Friendly Settlement), *Gerónimo Gómez López*, Mexico, July 17, 2012.

<sup>86</sup> See, IACHR. Report No. 71/03 (Friendly Settlement), Petition 12.191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003; and Report No. 29/04 (Friendly Settlement), Petition 9,168, *Jorge Alberto Rosal Paz*, Guatemala, March 11, 2004.

<sup>87</sup> Under the terms of the agreement between the parties, Juan Manuel Contreras San Martín, Víctor Eduardo Osses Conejeros, and José Alfredo Soto Cruz were detained for more than five years because of a miscarriage of justice. The friendly settlement agreement signed with the State of Chile provided funding through the Annual Scholarship Program Corporation Employment Training and Industrial Development Society for them to attend electrical courses offered by the Accounting and Tax Institute. See, IACHR. Report No. 32/02 (Friendly Settlement), *Juan Manuel Contreras San Martín et al.*, Petition 11.715, Chile, March 12, 2002.

<sup>88</sup> The Guatemalan State pledged to provide the beneficiaries of a friendly settlement agreement with training in setting up and running an investment association to invest the funds that would be received as financial compensation. That training was geared toward micro and small-enterprise. See, IACHR, Report No. 100/05 (Friendly Settlement), Petition 10,855, *Pedro García Chuc*, Guatemala, October 27, 2005.

accounting.<sup>89</sup> Finally, through friendly settlements, some States have pledged to pay financial compensation to the victims in compliance with their undertaking to provide support for children's tuition<sup>90</sup>.

103. In some friendly settlements, States have pledged to provide moneys to establish businesses or seed funding to agricultural projects. Under one friendly settlement agreement, the Government of the State of Chiapas pledged to provide Luis Rey García Villagrán with one million Mexican pesos to set up a serigraph printing shop and a legal accounting office for his family "to resume their life and have an honest way to support themselves."<sup>91</sup> In two friendly settlement agreements, the Guatemalan State pledged to provide seed funding to breed hogs<sup>92</sup> and acquire staple crops, thereby taking a productive approach to the improvement of the quality of life of the victims of human rights violations.<sup>93</sup>

104. Lastly, some friendly settlements have included measures of collective social assistance to community productive projects such as youth employment programs<sup>94</sup> and loans to entrepreneurs.<sup>95</sup> The petitioners and States have agreed to

<sup>89</sup> Under a friendly settlement that Ms. "X" and the Colombian State signed, the latter pledged to arrange for a full curriculum at the Metropolitan Technological Institute and funding of that plan or, alternatively, to pay her the sum of 30,000,000 Colombian pesos to finance her education. According to the information the Commission received, Ms. "X" was accepted at the Public Accounting Program of the School of Business Sciences at Universidad San Buenaventura. See, IACHR, Report No. 82/08 (Friendly Settlement), Petition 477-05, *X and Relatives*, Colombia, October 30, 2008.

<sup>90</sup> See IACHR. Report No. 33/02 (Friendly Settlement), *Monica Carabantes Galleguillos*, Petition 12.046, Chile, March 12, 2002, Report No. 24/09, (Friendly Settlement), Case 11.822, *Reyes Martinez Penagos and Other*, Mexico, March 20, 2009, and Report No. 68/12 (Friendly Settlement), *Geronimo Gomez Lopez*, Mexico, July 17, 2012.

<sup>91</sup> See, IACHR. Report No. 164/10 (Friendly Settlement), *Luis Rey García Villagrán*, Mexico, November 1, 2010.

<sup>92</sup> In the friendly settlement agreement that the Guatemalan State signed in the case of the forced disappearance of José Sucunú Panjoj, the State pledged to give the beneficiaries the sum of \$2,048.25 as seed capital for a project to breed hogs, and \$22,285 for the purchase and installation of a loom among other measures. See, IACHR, Report No. 19/00, *José Sucunú Panjoj*, Guatemala, February 24, 2000.

<sup>93</sup> The friendly settlement agreement that the next of kin of Emilio Tec Pop and the Guatemalan State signed provided that the State would provide the victims with seed for staple grains, through the Ministry of Agriculture, Livestock and Food. The petitioners informed the IACHR that the State not only provided capital in the form of seed, but also taught them the entire process of setting up vegetable gardens. It also pledged to train them in the cultivation and harvesting of their crop. The Project was extended to include another 11 families in the community. See, IACHR, Report No. 66/03 (Friendly Settlement), Petition 11,312, *Emilio Tec Pop*, Guatemala, October 10, 2003.

<sup>94</sup> In the friendly settlement agreement signed in the case of the "Villatina Massacre", the State of Colombia pledged to start an employment project, tailored especially for youth from the Villatina neighborhood of Medellín. As a result of the friendly settlement agreement, work got underway to install a warehouse for construction materials, which in the end became a grocery store. See, IACHR, Report No. 105/05 (Friendly Settlement), Case 11,141, *Villatina Massacre*, Colombia, October 27, 2005.

<sup>95</sup> IACHR. Report No. 90/10 (Friendly Settlement), Case 12,642, *José Iván Correa Arévalo*, Mexico, July 15, 2010.

the transfer of land and money for housing construction,<sup>96</sup> and to the inclusion of the friendly settlement's beneficiaries in State housing and other social programs.<sup>97</sup>

### C. Satisfaction Measures: Truth, Acknowledgment, and Justice

105. The friendly settlement procedure that the American Convention establishes opens up the possibility for petitioners and States to agree to reparation measures that make it possible to ascertain facts, restore the victims' dignity and reputation, and prevent future human rights violations.

106. These measures of reparations are known as "satisfaction" measures and aim at the disclosure of truth as the first pre-requisite to justice.<sup>98</sup> The State's acknowledgement of responsibility for the violations committed, the tributes paid to the victims, or the publication of the friendly settlement agreement, for example, are of paramount importance in restoring the victims' dignity and reputation, and help them find psychological relief from the suffering and weight of the past. The various measures of satisfaction also play an important role in reinforcing the State's commitment to non-repetition of similar violations in the future.

107. Satisfaction measures can take various forms, depending on the circumstances of each case.<sup>99</sup> Nevertheless, in the Commission's experience, satisfaction measures break down into five categories:<sup>100</sup> acknowledgement of responsibility and public admission of the facts; search for and return of the remains of victims of human rights violations; official declarations and court rulings to restore the victim's honor and reputation; enforcement of judicial and administrative sanctions against those responsible for the violations; and measures designed to keep the victims' memory and/or legacy alive by building monuments, memorials, and the like.<sup>101</sup>

<sup>96</sup> IACHR. Report No. 71/03 (Friendly Settlement), Petition 12,191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003; Report No. 30/04 (Friendly Settlement), Petition 4617-02, *Mercedes Julia Huenteao Beroiza et al.*, Chile, March 11, 2004; and Report No. 101/05 (Friendly Settlement), Petition 388-01, *Alejandro Ortiz Ramírez*, Mexico, October 27, 2005.

<sup>97</sup> IACHR. Report No. 43/06 (Friendly Settlement), Cases 12,426 and 12,427, *Emasculated Boys of Maranhão*, Brazil, March 15, 2006.

<sup>98</sup> "An imperative norm of justice is that the responsibility of the perpetrators be clearly established and that the rights of the victims be sustained to the fullest possible extent." *Supra*, note 19, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human Rights and fundamental freedoms*, p. 53. Commission on Human Rights, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human Rights and fundamental freedoms*, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45<sup>o</sup> Sessio.E/CN.4/Sub.2/1993/8, July 2 1993.

<sup>99</sup> See, International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001. Art. 37. Online: [http://untreaty.un.org/ilc/texts/9\\_6.htm](http://untreaty.un.org/ilc/texts/9_6.htm).

<sup>100</sup> These measures appear in 90 friendly settlement agreements approved and published by the IACHR through a report.

<sup>101</sup> That classification is in response to the criterion established in the "*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*". According to that document, satisfaction should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full public disclosure

## 1. Acceptance of Responsibility and Public Acknowledgment

108. The States' acceptance of responsibility for human rights violation is essential to restore the victims' dignity and to bring closure to violations committed in the past.<sup>102</sup>

109. Clauses requiring a State's acceptance of responsibility have been included in 77 friendly settlement agreements published by the Commission. A total of 58 of these agreements include acknowledgment of responsibility and, generally, require a statement from the State to the effect that it has failed to comply with its obligations under the American Convention; identifying the immediate victims of the human rights violations; recognizing the need to redress the harm caused, and an acknowledgement of responsibility on the part of the State concerned –this being the National State in the case of federal unions.<sup>103</sup>

110. The Commission observes that 19 of the signed friendly settlement agreements include a commitment on the part of the State to engage in a public act of atonement where it would admit its international responsibility for the violations committed against innocent persons.

111. Public acts of atonement are “an entree point towards a new relationship with the State, based on respect and the dignity of persons, and the re-establishment of some form of trust.”<sup>104</sup> They also serve as an opportunity to restore the victim's

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of the truth, to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search of the whereabouts of the disappeared, of the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation, and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels. See, *supra*, note 42, paragraph 22.

<sup>102</sup> Based on a friendly settlement agreement, the Governor of the Chiapas State accepted the State's responsibility for the failure to conduct a diligent investigation into the murder of José Iván Correa. The victim's father, Juan Ignacio Correa, wrote these words in a letter sent to the IACHR: “Right now, I am at a loss for those special words that will convey to you how very grateful my family and I are; thanks to all the hard work you did in this very difficult matter, [...] a humanitarian and honorable solution was finally found after 18 years of fighting, and my son, deprived of life in the middle of his adolescence, finally regained his reputation [...]. In 1993, I went to Mexico City to begin this very hard battle, which ends for me today.” See, IACHR, Report No. 90/10 (Friendly Settlement), Case 12,642, *José Iván Correa Arévalo*, Mexico, July 15, 2010.

<sup>103</sup> One example is the agreement that the IACHR approved through Friendly Settlement Report No. 81/08. In that agreement, the Argentinean State acknowledged that both the Province of Buenos Aires and the National State bore objective responsibility for the facts denounced. See, IACHR, Report No. 81/08 (Friendly Settlement), Petition 12,298, *Fernando Giovanelli*, Argentina, October 30, 2008.

<sup>104</sup> *Supra*, note 65, p. 59.

reputation and have a pedagogical value that will help prevent similar human rights violations in the future.

112. The friendly settlement mechanism enables victims of human rights violations to play an active role in the design and execution of this measure of reparation. In those agreements that require public acts of atonement, specific conditions have been set with regard to the authorities who are to participate in the event, the place where the event will be staged, or its media coverage. The following are examples of this kind of reparation measure.

113. In the friendly settlement agreement that the State of Colombia and the next of kin of Roinson Mora Rubiano signed,<sup>105</sup> the Government pledged to organize an act of public atonement in presence of the President of the Republic, the victims, their family members, and their representatives, and to publicly acknowledge its responsibility on this occasion. In compliance with the agreement, on July 29, 1998, the then President of Colombia offered his apologies to the families of the victims for the acts of violence and thanked the families for their “tolerance and forgiveness” and their faith in justice. He then conveyed the State’s intention to prevent violence by public servants.<sup>106</sup>

114. The family of the former president of Guatemala, Juan Jacobo Arbenz Guzmán, and the State of Guatemala concluded a friendly settlement agreement that included an act of public atonement, in presence of the President of the Republic, for the violations committed on the occasion of the military coup that took place on June 27, 1954. In compliance with the commitments undertaken by the State, on October 20, 2011, the President of the Republic of Guatemala acknowledged the State’s responsibility for the human rights violations committed against the Arbenz family and, as head of State, constitutional President of the Republic, and commander-in-chief of the Army, asked pardon for the crime committed on June 27, 1954.<sup>107</sup>

<sup>105</sup> On July 27, 1995, the “José Alvear Restrepo” Attorney Collective filed a petition with the IACHR in which it denounced the killing of young Roison Mora Rubiano by members of the National Army Command. See, IACHR, Report No. 45/99 (Friendly Settlement), Case 11,525, *Roison Mora Rubiano*, Colombia, March 9, 1999.

<sup>106</sup> Another example of public acts of atonement by the State of Colombia was conducted pursuant to the friendly settlement agreement signed as a result of the complaint of Jorge Antonio Barbosa Tarazona’s forced disappearance. Present for the event was the Deputy Minister of Defense, who asked forgiveness to the victim’s family in the following words: “The State of Colombia profoundly regrets the disappearance of Jorge Antonio Barbosa Tarazona under these circumstances and, in your presence, admits its responsibility for the events that occurred. It asks pardon to his mother, wife, daughter, and sisters for the deep pain and suffering that this tragic loss has caused and sincerely pledges to take the measures necessary to avoid a repetition of these events.” IACHR, Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Antonio Barbosa Tarazona et al.*, Colombia, October 30, 2008.

<sup>107</sup> IACHR, Report No. 30/12 (Friendly Settlement), Case 12,546, *Juan Jacobo Arbenz Guzmán*, Guatemala, March 20, 2012.

115. Where federal unions are involved, if friendly settlements contain clauses requiring acts of atonement, state or provincial authorities may also have to be present. It was the Governor of Chiapas State who presided over the event held for the public acknowledgement of responsibility required under the friendly settlement agreement that the State of Mexico concluded with the next of kin of José Iván Correa Arévalo. He publicly apologized to the family members for the harm caused by the failure to conduct a conclusive investigation and for the negligence on the part of the investigating authorities.<sup>108</sup>

116. Media coverage of an acknowledgement of responsibility and/or measures of reparation agreed to in friendly settlements is another mechanism of atonement that makes public the State's acknowledgement of responsibility and the truth regarding events brought to the attention of the Inter-American system. A number of friendly settlements have included a requirement that the acknowledgement of responsibility be reported in the media<sup>109</sup> or that the friendly settlement agreement be published once it is approved by the IACHR.<sup>110</sup>

117. Letters of atonement and letters asking forgiveness are an important measure to restore the victim's dignity and an essential part of the mourning process. Friendly settlement agreements concluded as a result of complaints for forced disappearance,<sup>111</sup> sexual assault<sup>112</sup> and extrajudicial

<sup>108</sup> See IACHR. Report No. 90/10 (Friendly Settlement), Case 12,642, *José Iván Correa Arévalo*, Mexico, July 15, 2010; IACHR, Report No. 164/10, Petition 12.623, *Luis Rey García Villagrán*, Mexico, November 1, 2010.

<sup>109</sup> An example would be the friendly settlement agreement signed as a result of the petition filed against Mexico for the forced disappearance of José Guadarrama García. Under the terms of the friendly settlement, space was purchased in the newspapers in circulation in the city of Morelos where the State's acceptance of responsibility, signed by the governor of that state, was published. See, IACHR, Report No. 69/03 (Friendly Settlement), Petition 11,807, *José Alberto Guadarrama García*, Mexico, October 10, 2003. The other friendly settlement agreements that included this clause are those approved by the Commission in the following reports: IACHR. Report No. 101/05 (Friendly Settlement), Petition 388-01, *Alejandro Ortiz Ramírez*, Mexico, October 27, 2005; Report No. 21/07 (Friendly Settlement), Petition 161-02, *Paulina del Carmen Ramírez Jacinto*, Mexico, March 9, 2007; Report No. 17/10 (Friendly Settlement), Case 12,523, *Raquel Natalia Lagunas and Sergio Sorbellini*, Argentina, March 16, 2010; and Report No. 90/10 (Friendly Settlement), Case 12,642, *José Iván Correa Arévalo*, Mexico, July 15, 2010.

<sup>110</sup> See IACHR. Report No. 102/05 (Friendly Settlement), Case 12,080, *Sergio Schiavini and María Teresa Schnack de Schiavini*, Argentina, October 27, 2005; Report No. 46/06 (Friendly Settlement), Petition 12,238, *Myriam Larrea Pintado*, Ecuador, March 15, 2006; Report No. 110/06 (Friendly Settlement) Case 12,555, *Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola*, Venezuela, October 21, 2006; Report No. 81/08 (Friendly Settlement), Petition 12.298, *Fernando Giovanelli*, Argentina, October 30, 2008; Report No. 80/09 (Friendly Settlement), Case 12,337, *Marcela Andrea Valdés Díaz*, Chile, August 6, 2009; Report No. 79/09 (Friendly Settlement), Case 12,159, *Gabriel Egisto Santillán*, Argentina, August 6, 2009; Report No. 15/10, Petition 11,758, *Rodolfo Luis Correa Belisle*, Argentina, March 16, 2010; Report No. 91/10 (Friendly Settlement), Case 12,660, *Ricardo Uacán Seca*, Mexico, July 15, 2010; and Report No. 160/10 (Friendly Settlement), Petition 242-03, *Inocencia Luca Pogoraro*, Argentina, November 1, 2010.

<sup>111</sup> IACHR. Report No. 67/03 (Friendly Settlement), Case 11,766, *Irma Flaquer*, Guatemala, October 10, 2003.

<sup>112</sup> IACHR. Report No. 82/08 (Friendly Settlement), Petition 477-05, *X and relatives*, Colombia, October 30, 2008.

execution<sup>113</sup> include a clause under which the State pledges to deliver a letter asking pardon of the family of the victims of human rights violations.

## 2. Search For and Restitution of the Remains of Victims

118. The search for and restitution of the remains of victims of human rights violations is a fundamental measure of reparation in cases of forced disappearance and a condition *sine qua non* for reaching the truth and obtaining justice.

119. The Court has also established that the families' right to know the whereabouts of their loved ones' remains is a measure of reparation and, therefore, an expectation of the victims' next of kin that the State must satisfy.<sup>114</sup>

120. The Inter-American Commission has only approved three friendly settlement agreements containing a clause in which the State pledges to undertake a search for the remains of victims of human rights violations. All three cases involved the victims' forced disappearance.

121. The friendly settlement concluded between the Ecuadorian State and Ing. Pedro Restrepo, father of Carlos Santiago and Pedro Andrés Restrepo Arismendy, minors who reportedly disappeared after having been detained by the National Police,<sup>115</sup> was the first to include a clause in which the State undertook to search for the victims' remains. Under this agreement, the Ecuadorian State pledged to undertake "a complete, total, and definitive search, in Yambo lake, for the bodies of the Restrepo brothers," which were believed to be in the lake where their bodies were cast in or after 1998.

122. The Commission emphasizes that handing over the remains of victims of human rights violations to their next of kin allows them to begin their mourning process and to rebuild their lives. Furthermore, because the remains are the *corpus delicti*, they are, in and of themselves, critical evidence for the investigation, the judicial fact-finding process, and the attribution of responsibility.

123. The Mexican State's compliance with the friendly settlement agreement signed in the case of José Alberto Guadarrama García is an emblematic example of this kind of reparation measure.<sup>116</sup> On October 30, 1998, the petitioners and

<sup>113</sup> IACHR. Report No. 1/12 (Friendly Settlement), Case 11,422, *Mario Alioto López Sánchez*, Guatemala, January 26, 2012.

<sup>114</sup> I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003, Series C No.99, paragraph 187; I/A Court H.R., *Case of the 19 Merchants v. Colombia*, Merits, Reparations and Costs. Judgment of July 5, 2004, Series C No. 109, paragraph 265; I/A Court H.R., *Case of Goiburú et al. v. Paraguay*, Merits, Reparations and Costs. Judgment of September 22, 2006, Series C No. 153, paragraph 171.

<sup>115</sup> IACHR. Report No. 99/00 (Friendly Settlement), Case 11,868, *Carlos Santiago and Pedro Andrés Restrepo*, Ecuador, October 5, 2000.

<sup>116</sup> On August 25, 1997, the IACHR received a petition reporting that José Alberto Guadarrama García had been abducted by four armed persons, one of whom was member of the judicial police. Despite the complaints filed by his next of kin, the whereabouts of José Alberto Guadarrama García were



representatives of the State signed an agreement, one of the main commitments of which was to locate José Alberto Guadarrama García. In compliance with this clause of the agreement and based on several expert reports prepared by Mexican institutions and by the Argentine Forensic Anthropology Team, a portion of his remains were identified.

124. Similarly, the Colombian State pledged to put forward its best technical and scientific efforts in order to locate the remains of Jorge Antonio Barbosa Tarazona.<sup>117</sup> According to the information supplied by the State in 2012, the case was included in the Centralized Virtual Identification Bureau (*Centro Único Virtual de Identificación* - CUVI) and was assigned to the National Unit of Justice and Peace Prosecutors, to be included on the list of bodies to be identified as a result of the exhumations conducted by that Unit.<sup>118</sup>

### 3. Official Declarations Restoring the Victim's Honor and Reputation

125. One way of rectifying the damage done to the honor, reputation and dignity of a victim of a human rights violation is to include, in a friendly settlement, pledges by the State to issue official declarations intended to restore the victim's honor and reputation.

126. These measures serve an important function for the immediate victims of human rights violations, because they restore the image that they had before the human rights violations. Its legal basis is Article 11 of the American Convention, which establishes the right of every person to have "the right to have his honor respected and his dignity recognized", as well as the desires and needs of those affected in the friendly settlement process.

127. The friendly settlement reports published by the Commission reveal that measures to restore honor and dignity can take several forms. One is to include a declaration by the State in which the victim's reputation and honor is restored in the text of the friendly settlement agreement. The friendly settlement report published in the case of the brothers Carlos Santiago and Pedro Andrés Restrepo is an example of this first type.<sup>119</sup>

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never determined and those responsible for the events were not convicted. IACHR. Report No. 69/03 (Friendly Settlement), Petition 11.807, *José Alberto Guadarrama García*, Mexico, October 10, 2003.

<sup>117</sup> On October 30, 2008, in Report No. 83/08, the Commission approved and acknowledged partial compliance with a friendly settlement agreement signed on September 22, 2006, in petition 401-05, *Jorge Antonio Barbosa Tarazona*. In summary, the petition alleged that State agents were responsible for the disappearance of Jorge Antonio Barbosa Tarazona on October 13, 1992 in the department of Magdalena, and that the judicial authorities were responsible for an unwarranted delay in investigating, prosecuting, and punishing those responsible. See, IACHR, Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Antonio Barbosa Tarazona et al.*, Colombia, October 30, 2008.

<sup>118</sup> IACHR. *Annual Report 2012*, OEA/Ser.L/V/II.147.Doc.1, March 5, 2012, Chapter III, D) Status of compliance with the recommendations of the IACHR, paragraph 451.

<sup>119</sup> As indicated in paragraph 121, the case concerned the arrest and subsequent disappearance of the brothers Carlos Santiago and Pedro Andrés Restrepo on January 8, 1988, by members of the

128. During the friendly settlement procedure, States have pledged to restore the victim's reputation and honor by erasing his or her name from criminal<sup>120</sup> and administrative<sup>121</sup> records, and by issuing press releases<sup>122</sup> and official statements.<sup>123</sup>

129. Acts of atonement held in honor of the victims are also an opportunity for the State to rectify their image. For example, under one friendly settlement, the Governor of the VII Region of Maule, in Chile, personally asked pardon to Juan Contreras San Martín, Víctor Osses Conejeros and José Alfredo Soto Ruz, who had been incarcerated by virtue of a miscarriage of justice. He publicly stated that they had been the victims of "mishandling and errors" that resulted in their imprisonment for more than five years for a crime they did not commit. One of the victims thanked the State for having acknowledged the miscarriage of justice and for publicly restoring his honor in a "truly historic" ceremony.<sup>124</sup>

#### 4. Enforcement of Court-Ordered and Administrative Sanctions against those Responsible

130. Under the American Convention, States have an obligation to prevent, investigate, identify, prosecute, and punish the material and intellectual authors of

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National Police. In the friendly settlement agreement, the Ecuadorian State made the following statement: "The Office of the Attorney General, in representation of the Ecuadorian State, states for the record that no charges have been pressed or are pending against Mr. Pedro Restrepo, his deceased wife and his family in general for activities outside the law, or outside of what is moral, and that any speculation, rumor, or suspicion stated or conveyed through private persons or authorities against the honor or reputation of these persons are absolutely tendentious and lack any basis whatsoever. To the contrary, the Office of the Attorney General has sufficient grounds to state, with no doubt, that Mr. Restrepo and his family, through their legitimate and honorable efforts, have contributed, as have other foreign citizens, to the progress of Ecuador." See, IACHR, Report No. 99/00 (Friendly Settlement), Case 11,868, *Carlos Santiago and Pedro Andrés Restrepo*, Ecuador, October 5, 2000. A similar example was the friendly settlement agreement signed between Juan Clímaco Cuellar *et al.* and the Ecuadorian State. See, IACHR, Report No. 19/01 (Friendly Settlement), Case 11,478, *Juan Clímaco Cuellar et al.*, Ecuador, February 20, 2001.

<sup>120</sup> In the friendly settlement agreement concluded between Myriam Larrea Pintado and the State of Ecuador, the State pledged to eliminate the name of Myriam [sic] Larrea Pintado from the Criminal Records or any other type of register, either public or confidential. See, IACHR, Report No. 46/06 (Friendly Settlement), Petition 12.238, *Myriam Larrea Pintado*, Ecuador, March 15, 2006.

<sup>121</sup> In this friendly settlement agreement, the Chilean State pledged to eliminate the administrative records of the victims and to remove any reference to the facts that led to the complaint. IACHR, Report No. 163/10 (Friendly Settlement), Case 12,195, *Mario Alberto Jara Oñate et al.*, Chile, November 1, 2010.

<sup>122</sup> A press release issued by the Office of the Attorney General of the Federal District (PGJDF) acknowledged that Mr. Alejandro Ortiz Ramírez, tortured and imprisoned for a crime he did not commit, was innocent. See, IACHR, Report No. 101/05 (Friendly Settlement), Petition 388-01, *Alejandro Ortiz Ramírez*, Mexico, October 27, 2005.

<sup>123</sup> The Government of the Argentinean province of Río Negro released a public statement in which it restored the reputation and honor of Raquel Natalia Lagunas and Sergio Sorbellini. See, IACHR, Report No. 17/10 (Friendly Settlement), Case 12,523, *Raquel Natalia Lagunas and Sergio Sorbellini*, Argentina, March 16, 2010.

<sup>124</sup> At the ceremony, Mr. José Alfredo Soto Ruz stated that both he and the other victims were present "with our heads held high, with dignity, and savoring the freedom that we ought never to have lost [...]". See, IACHR, Report No. 32/02 (Friendly Settlement), *Juan Manuel Contreras San Martín et al.*, Petition 11,715, Chile, March 12, 2002.

human rights violations and those who aid and abet them. In cases in which the violation of a protected right results in the commission of an act criminalized under domestic law, the victims or their next of kin have the right to have a court of ordinary jurisdiction prosecute the responsible parties swiftly and effectively, and impose the corresponding penalties.

131. The Court has held that a failure to investigate, pursue, capture, try, and convict the persons responsible for violations of human rights protected under the ACHR implies that these are not held accountable for their acts. No matter how much time has passed, the obligation to investigate and prosecute remains so long as the objectives they are intended to achieve are not fulfilled, namely full knowledge of the facts, identification of the authors, and their punishment.<sup>125</sup>

132. Enforcement of court-ordered and administrative sanctions is one of the reparation measures most often included in friendly settlements negotiated before the IACHR. An examination of the friendly settlement reports approved and published by the IACHR reveals that the commitment to investigate and punish those responsible for the violations, also referred to as the “justice clause,” appears in 45% of the friendly settlement agreements.<sup>126</sup>

133. When the justice clause is included in a friendly settlement and the State complies with it, the victims of human rights violations receive moral satisfaction and their confidence in the State apparatus is restored. Furthermore, fulfillment of the justice clause sends society the message that similar acts will not go unpunished, and thus serves as a deterrent to future human rights violations.

134. Important victories in the matter of justice have been won thanks to the friendly settlement mechanism.<sup>127</sup> An example is the State’s compliance with the agreement signed in the case of José Alberto Guadarrama

<sup>125</sup> I/A Court H.R., *Case of the 19 Merchants v. Colombia*, Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, paragraph 258.

<sup>126</sup> As of December 31, 2012, the Commission had approved and published a total of 106 friendly settlement reports. Of that number, 48 included the State’s commitment to investigate into the violations and punish those responsible.

<sup>127</sup> According to the information in the IACHR’s Annual Report for 2012 regarding the status of compliance with friendly settlement agreements, the justice clause has been fulfilled in the friendly settlement agreements contained in the following reports: IACHR, Report No. 70/03 (Friendly Settlement), Petition 11,149, *Augusto Alejandro Zúñiga Paz*, Peru, October 10, 2003; Report No. 71/03 (Friendly Settlement), Petition 12.191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003; Report No. 69/03 (Friendly Settlement), Petition 11,807, *José Alberto Guadarrama García*, Mexico, October 10, 2003; Report No. 43/06 (Friendly Settlement), Cases 12,426 and 12,427, *Emasculated Boys of Maranhão*, Brazil, March 15, 2006; Report No. 53/06 (Friendly Settlement), Petition 10,205, *Germán Enrique Guerra Achurri*, Colombia, March 16, 2006; Report No. 82/08 (Friendly Settlement), Petition 477-05, *X and Relatives*, Colombia, October 30, 2008; Report No. 90/10 (Friendly Settlement), Case 12,642, *José Iván Correa Arévalo*, Mexico, July 15, 2010; Report No. 32/12 (Friendly Settlement), *Yanomami Indigenous People of Haximú*, Venezuela, March 20, 2012; Report No. 68/12 (Friendly Settlement), *Gerónimo Gómez López*, Mexico, July 17, 2012; and Report No. 124/12 (Friendly Settlement), Case 11,805, *Carlos Enrique Jaco*, Honduras, November 13, 2012.

García<sup>128</sup>, on which occasion Mexico pledged to identify the material and intellectual authors of his forced disappearance, which happened on March 26, 1997, and to bring them to justice before the competent authorities. The investigations conducted pursuant to the commitments made in the friendly settlement uncovered sufficient evidence to determine that Gilberto Domínguez Romero, Francisco Peña Hernández, Armando Martínez Salgado, and José Luis Velásquez Beltrán may have been responsible for his forced disappearance. They were brought before the local courts and charged with the crimes of kidnapping and homicide.

135. Similarly, as a result of a petition filed with the IACHR denouncing the Brazilian State's failure to take effective measures to put a stop to the castration and killing of a group of boys in the state of Maranhão, the petitioners and the Brazilian State signed a friendly settlement agreement<sup>129</sup> under which the State pledged to continue investigating and seeking to punish those responsible. In furtherance of the friendly settlement, the perpetrator faced trial by jury for the murder of Jonnathan Silva Vieira –one of the 28 boys contemplated by the agreement- and was convicted and sentenced to imprisonment for 20 years and 8 months.<sup>130</sup>

136. Another friendly settlement in which the justice clause was fulfilled is the case of the Yanomami Indigenous People of Haximú against the Bolivarian Republic of Venezuela. This followed the denouncing of the murder of 16 Yanomami indigenous persons; the State's lack of diligence in ineffectively keeping the *garimpeiros* out of Yanomami territory; and the failure to investigate, prosecute and punish those responsible for the violations. Judicial investigations into the massacre were undertaken in Brazil and Venezuela.<sup>131</sup> For its part, the State of Venezuela committed to monitor the judicial inquiry into the criminal proceeding in Brazil, in order to establish the responsibilities and apply the appropriate criminal penalties. On December 19, 1996, the Regional Federal Court of Brazil delivered a verdict and convicted five *garimpeiros*, sentencing them to 20 years and six months in prison for the crime of genocide in association with other crimes, such as contraband. That verdict was upheld and became *res judicata*.

137. The Commission appreciates the efforts made by the States to comply with the friendly settlements, especially with regards to the commitment to investigate and punish those responsible for the violations.

<sup>128</sup> IACHR. Report No. 69/03 (Friendly Settlement), Petition 11,807, *José Alberto Guadarrama García*, Mexico, October 10, 2003.

<sup>129</sup> IACHR. Report No. 43/06 (Friendly Settlement), Cases 12,426 and 12,427, *Emasculated Boys of Maranhão*, Brazil, March 15, 2006.

<sup>130</sup> The State is continuing its prosecution of the criminal case against Francisco das Chagas Rodrigues de Brito, the author of all the homicides in this case.

<sup>131</sup> According to the information provided by the petitioners, a group of Brazilian *garimpeiros* had reportedly killed 16 Yanomami indigenous persons and wounded another group in the Haximú region, in the Venezuelan state of Amazonas, on the border with Brazil. See, IACHR, Report No. 32/12, Petition 11.706, *Yanomami Indigenous People of Haximú*, Venezuela, March 20, 2012.

However, it notes with concern that the justice clause has been fulfilled in only 21% of the agreements approved by the Commission.<sup>132</sup>

138. Where serious human rights violations are involved, the investigations must be conducted in accordance with the standards established by international norms and case law. To prevent impunity, States must “develop an adequate body of domestic law and/or organize the system for the administration of justice so that it ensures the conduct of serious, impartial, and effective investigations, undertaken by the State at its own initiative and without delay.”<sup>133</sup>

139. The Commission observes that the failure to comply with the clauses of friendly settlement agreements in which the State pledges to investigate human rights violations and punish those responsible is the result of structural problems within the justice system, such as are statutes of limitations for certain crimes<sup>134</sup> and the jurisdiction of military and police courts over crimes that belong in criminal courts of ordinary jurisdiction.<sup>135</sup> It also notes that, at the domestic level, it is difficult to reopen cases once decisions have been delivered and have become *res judicata*.<sup>136</sup>

140. The *jurisprudence constante* of the Inter-American system is that the duty to investigate and prosecute exists even when domestic difficulties make it

<sup>132</sup> According to the information that appeared in the IACHR’s 2012 Annual Report on the status of compliance with friendly settlement agreements, the justice clause had been fulfilled in 10 of the 48 friendly settlement agreements in which it appeared and that the Commission had approved and published.

<sup>133</sup> I/A Court H.R., *Case of Barrios Altos v. Peru*. Order Monitoring Compliance with the Judgment, September 7, 2012, paragraph 27 [the Commission’s translation].

<sup>134</sup> The Commission observes that in three friendly settlement agreements, the Ecuadorian State pledged to institute civil and criminal proceedings and to pursue administrative sanctions against those persons alleged to have participated in the violation in the performance of State functions or under the color of public authority. However, in all these cases, the statute of limitations has been applied; thus the State has failed to comply with the obligation it undertook in the friendly settlement agreements. See, IACHR, Report No. 96/00 (Friendly Settlement), Case 11,466, *Manuel Inocencio Lalvay Guamán*, Ecuador, October 5, 2000; IACHR, Report No. 97/00 (Friendly Settlement), Case 11,584, *Carlos Juela Molina*, Ecuador, October 5, 2000; and IACHR, Report No. 22/01 (Friendly Settlement), Case 11,779, *José Patricio Reascos*, Ecuador, February 20, 2001.

<sup>135</sup> See, for example, the following friendly settlement reports: IACHR, Report No.105/01 (Friendly Settlement), Case 11,443, *Washington Ayora Rodríguez*, Ecuador, October 11, 2001, paragraph 4; and Report No. 47/06 (Friendly Settlement), Petition 533-01, *Fausto Mendoza Giler and Diógenes Mendoza Brav*, Ecuador, March 15, 2006, paragraph 9.

<sup>136</sup> A case in point is the failure to comply with the justice clause in the friendly settlement agreement that the Guatemalan State and the petitioners signed in the *Case of the San Vicente de los Cimientos Community*. With regard to the investigation of the facts and the prosecution of the parties responsible, the petitioners pointed out that the court had decided to rule in favor of a motion to have the case barred, which was filed by the defense counsel representing the accused, and sought to have the case dismissed and the defendant released. See, IACHR, Report No. 68/03 (Friendly Settlement), Case 11,197, *San Vicente de los Cimientos Community*, Guatemala, October 10, 2003 and IACHR, *Annual Report 2011*, paragraph 769. Similar developments occurred in connection with other friendly settlement agreements approved and published in friendly settlement reports 106/01 and 108/01. See, IACHR, Report No. 106/01 (Friendly Settlement), Case 11,450, *Marco Vinicio Almeida Calispa*, Ecuador, October 11, 2001; IACHR, Report No. 108/01 (Friendly Settlement), Case 11,574, *Wilberto Samuel Manzano*, Ecuador, October 11, 2001.

impossible to identify the individuals responsible<sup>137</sup> and when the statute of limitations denies victims of human rights violations the reparations to which they are entitled.<sup>138</sup>

141. Under the friendly settlement agreement that the Colombian State signed in the case of Germán Enrique Guerra Achurri,<sup>139</sup> the Government pledged to file a request with the Office of the Attorney General of the Nation asking it to file, in exercise of its authorities, a petition seeking review of the decision by the military criminal justice system to declare the criminal process extinguished. Based on the friendly settlement, the Chamber of Criminal Cassation of the Colombian Supreme Court decided to grant the third ground for review invoked on the victims' behalf, and to revoke the judgments delivered in the military criminal justice system and the proceedings conducted in that jurisdiction as a result of the resolution delivered on September 19, 1990. The investigation was assigned to the Specialized Prosecutor Office no. 86 of the Human Rights and International Humanitarian Law Unit of the General Prosecutor of the Nation. According to the information provided by the State, the investigation is in the first phase, with members of the National Army under investigation.<sup>140</sup>

## 5. Tributes and Monuments to Honor the Victims

142. Time and time again, the Inter-American Commission has alluded to the fundamental value of recovering the historical memory of grave human rights violations so as to prevent such acts from being repeated. Along the same lines, the Inter-American Court has said that part of the process of comprehensive reparations for human rights violations involves carrying out works or ceremonies to publicly restore the memory of the victims.<sup>141</sup>

143. In the friendly settlement agreements signed, petitioners and States have agreed upon measures of reparation intended to recognize the victims' dignity, keep alive the memory of the events, and serve as guarantee of non-repetition. The friendly settlement reports published by the IACHR reflect the different types of symbolic reparation measures agreed upon in 12 of the agreements approved by the

<sup>137</sup> I/A Court H.R., *Case of Castillo Páez v. Peru*, Merits, Judgment of November 3, 1997, Series C. No. 34, paragraph 90.

<sup>138</sup> I/A Court H.R., *Case of Castillo Páez v. Peru*, Reparations and Costs. Judgment of November 27, 1998, Series C No. 43, paragraph 105.

<sup>139</sup> According to the petition filed with the IACHR, Germán Enrique Guerra Achurri had been permanently disabled as a result of an attack purportedly perpetrated by military troops on the farm campment at "La Perla" in the Department of Antioquia, Colombia. See, IACHR, Report No. 53/06 (Friendly Settlement), Petition 10,205, *Germán Enrique Guerra Achurri*, Colombia, March 16, 2006.

<sup>140</sup> See IACHR. *Annual Report 2010*, OEA/Ser.L/V/II. Doc.5 corr.1, paragraphs 329-333. Available at: <http://www.cidh.org/annualrep/2010eng/TOC.htm>

<sup>141</sup> IACHR. Press Release No. 1/10, January 11, 2010.

Commission: the construction of monuments in the victims' honor,<sup>142</sup> naming public spaces and buildings after the victims,<sup>143</sup> and installing commemorative plaques.<sup>144</sup>

144. The fulfillment of the friendly settlement agreement signed between the Colombian State and the petitioners in the case of the Villatina Massacre<sup>145</sup> illustrates the impact that measures of reparation can have for the victims of human rights violations and their families. In the agreement, the State pledged to install a commemorative plaque at the Villatina Health Center and to build a monument in the victims' honor. The plaque reads as follows:

*"This Health Center was built in memory of Johanna Mazo Ramírez, age 8, Giovanni Alberto Vallejo Restrepo, age 15, Johnny Alexander Cardona Ramírez, age 17, Ricardo Alexander Hernández, age 17, Oscar Andrés Ortiz Toro, age 17, Angel Alberto Barón Miranda, age 16, Marlon Alberto Álvarez, age 17, Nelson Duban Flórez Villa, age 17, and Mauricio Antonio Higueta Ramírez, age 22, all of whom died on November 15, 1992 in the district of Villatina in Medellín.*

*The Colombian Government publicly recognized its responsibility to the OAS Inter-American Commission on Human Rights and to Colombian society for the violation of human rights in these serious crimes, chargeable to agents of the State. Likewise, it expressed its feelings of solidarity and condolences to the families of the victims.*

*This action of moral redress and atonement will not be enough to ease the pain that this crime has caused, but it is an obligation of the State, a fundamental step to do justice and so that crimes of this nature do not occur again..."*

<sup>142</sup> See, IACHR. Report No. 67/03 (Friendly Settlement), Case 11,766, *Irma Flaquer*, Guatemala, October 10, 2003; IACHR, Report No. 105/05 (Friendly Settlement), Case 11,141, *Villatina Massacre*, Colombia, October 27, 2005.

<sup>143</sup> See, IACHR. Report No. 67/03 (Friendly Settlement), Case 11,766, *Irma Flaquer*, Guatemala, October 10, 2003; Report No. 29/04 (Friendly Settlement), Petition 9168, *Jorge Alberto Rosal Paz*, Guatemala, March 11, 2004; Report No. 17/10 (Friendly Settlement), Case 12,523, *Raquel Natalia Lagunas and Sergio Sorbellini*, Argentina, March 16, 2010; and Report No. 30/12 (Friendly Settlement), *Juan Jacobo Arbenz Guzmán*, Guatemala, March 20, 2012.

<sup>144</sup> IACHR, Report No. 29/04 (Friendly Settlement), Petition 9168, *Jorge Alberto Rosal Paz*, Guatemala, March 11, 2004; Report No. 105/05 (Friendly Settlement), Case 11,141, *Villatina Massacre*, Colombia, October 27, 2005; Report No. 46/06 (Friendly Settlement), Petition 12,238, *Myriam Larrea Pintado*, Ecuador, March 15, 2006; Report No. 43/06 (Friendly Settlement), Cases 12,426 and 12,427, *Emasculated Boys of Maranhão*, Brazil, March 15, 2006; Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Antonio Barbosa Tarazona et al.*, Colombia, October 30, 2008; Report No. 90/10 (Friendly Settlement), Case 12,642, *José Iván Correa Arévalo*, Mexico, July 15, 2010; and Report No. 84/11 (Friendly Settlement), Case 12,532, *Mendoza Prisons*, Argentina, July 21, 2011.

<sup>145</sup> IACHR. Report No. 105/05 (Friendly Settlement), Case 11,141, *Villatina Massacre*, Colombia, October 27, 2005.

145. On July 13, 2004, a park in honor of the victims was inaugurated in the city of Medellín. Present for the event were the victims' mothers, the Vice President of the Republic, the Minister of Defense, the Deputy Minister of Foreign Affairs, the Director of the National Police, officials from the Office of the Mayor of Medellín, the petitioners, the IACHR's Rapporteur for Colombia, and the Executive Secretary of the Commission.

#### D. Economic Compensation

146. Reparations are critical to ensuring that justice is done in individual cases. The interpretation and scope that the Inter-American human rights system attaches to reparations is that reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes "the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm."<sup>146</sup>

147. However, the injured party cannot always be guaranteed enjoyment *in integrum* of the violated right or freedom, in which case the proper course of action is that "reparation be made for the consequences of the violation [...], including the payment of fair compensation."<sup>147</sup> In a case of forced disappearance, the Court wrote that:

*The desired aim is full restitution for the injury suffered. This is something that is unfortunately often impossible to achieve, given the irreversible nature of the damages suffered (...). Under such circumstances, it is appropriate to fix the payment of "fair compensation" in sufficiently broad terms in order to compensate, to the extent possible, for the loss suffered.*<sup>148</sup>

148. By signing friendly settlement agreements, victims of human rights violations and their heirs have received monetary payments as reparation for the harm caused by the violations. The payment of monetary compensation as a reparation measure has in some cases allowed the next of kin of victims of human rights violations to have a decent life.<sup>149</sup>

<sup>146</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, paragraph 26; and *Case of Godínez Cruz v. Honduras*. Reparations and Costs. Judgment of July 21, 1989. Series C No. 8, paragraph 24.

<sup>147</sup> I/A Court H.R., *Case of Castillo Páez v. Perú*. Merits. Judgment of November 3, 1997. Series C No. 34, paragraph 92.

<sup>148</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Interpretation of the Judgment on Reparations and Costs. Judgment of August 17, 1990. Series C No. 9, paragraph 27; I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Interpretation of the Judgment on Reparations and Costs. Judgment of August 17, 1990. Series C No. 10, paragraph 27.

<sup>149</sup> In the case of Jorge Barbosa Tarazona, the petitioners alleged that the absence of reparations had caused serious injury to the victim's family inasmuch as he was their sole source of support. This



149. Out of the 106 friendly settlement reports that the Commission has adopted and published, 82 have included a pledge to compensate victims of human rights violations. In 92% of cases, States have complied with the economic compensation clause. The high rate of compliance is an indicator of how effective the friendly settlement mechanism is and the seriousness of States that have made this type of commitment.

150. Generally, the measures of monetary reparations included in friendly settlements are to compensate the pecuniary and non-pecuniary damages. The pecuniary damages are exclusively damages to the victim's property and assets, and include *lucrum cessans*<sup>150</sup> and *damnum emergens*.<sup>151</sup> Non-pecuniary damages, by opposition, are associated with the experiences of fear and suffering that the victims, to varying degrees, experience: anxiety, humiliation, degradation and feelings of inferiority, insecurity, frustration, and impotence. Non-pecuniary damages can also include obstruction of cultural values that are of particular importance to the injured party.

151. In friendly settlement agreements, clauses calling for compensatory damages may also include that the compensatory damages awarded shall be tax exempt, or may require that interest be paid on any unpaid amount.<sup>152</sup>

152. One of the most important aspects of friendly settlements is that compensatory damages are set by mutual agreement between the parties. While the Commission plays an important role in facilitating the negotiations, its functions do not include that of determining the amounts to be paid or how they will be disbursed.

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case was resolved through a friendly settlement agreement in which the State pledged to present a conciliation proposal of up to one hundred percent (100%) of the sentence handed down by the Contentious Administrative Court of Santa Marta, for moral damages suffered by the relatives of Jorge Antonio Barbosa Tarazona. The State will also recognize the material damages caused by the death of Jorge Antonio Barbosa Tarazona based on the current statutory minimum wage. IACHR, Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Barbosa Tarazona*, Colombia, October 30, 2008, paragraph 13.

<sup>150</sup> *Lucrum cessans* is any income that a victim did not receive as a result of the violation. It refers generally to lost salary, emoluments and benefits. Therefore, it reflects the adverse impact on the victim's prior objective circumstances and on the likelihood that those circumstances would have maintained themselves or improved. See, I/A Court H.R., *Case of Cantoral Benavides V. Peru Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 88, paragraph 48.

<sup>151</sup> *Damnum emergens* are the expenses that the victim and his next of kin have incurred as a direct result of the violation and may include the costs for an extrajudicial investigation of the actions perpetrated against the victim or the whereabouts of disappeared or deceased persons. See, I/A Court H.R. *Case of Blake v. Guatemala*. Reparations. Judgment of January 22, 1999. Series C No. 48, para. 49; I/A Court H.R., *Case of Castillo Páez v. Peru*. Reparations. Judgment of November 27, 1998. Series C No. 43, paragraph 77.

<sup>152</sup> See, for example, IACHR, Report No. 21/01 (Friendly Settlement), Case 11,605, *René Gonzalo Cruz Pazmiño*, Ecuador, February 20, 2001; IACHR, Report No.75/02 (bis) (Friendly Settlement), Petition 12,035, *Pablo Ignacio Livia Robles*, Peru, December 13, 2002.

153. Petitioners and States have agreed on different types of compensatory damages and different methods of payment. For example, Argentina has adopted the following good practice: the parties agree to the establishment of an “ad hoc” Court of Arbitration so as to determine the amount of pecuniary reparations owed “according to the laws whose violation has been acknowledged and based on the applicable international standards.”<sup>153</sup> As a condition precedent to the establishment of the Court of Arbitration, the friendly settlement agreement must be confirmed by executive decree and approved by the Inter-American Commission.

154. The “ad hoc” Court of Arbitration is usually a panel of three independent experts, one nominated by the petitioners, the second nominated by the State, and a third nominated by the two experts designated by the parties. The procedure followed is also determined by mutual agreement between the parties. The arbitral award sets the amount and modalities of the pecuniary reparations, identifies the beneficiaries, and awards any costs or fees owed for the international proceedings and the arbitration. The parties have requested the Commission, in its monitoring of the compliance with the agreement, to follow applicable international standards.

155. Another best practice is to establish legislative mechanisms that enable compliance with the decisions of the organs of the Inter-American system and friendly settlements. A noteworthy precedent in this regard is Law 288 of 1996,<sup>154</sup> in which the Colombian State established instruments for compensating victims of human rights violations based on the decisions adopted by certain international human rights bodies. This legislative mechanism has yielded positive results in honoring the friendly settlement agreements signed by the Colombian State.<sup>155</sup> Thus, the friendly settlement report published by the IACHR acts as a kind of “enforcement instrument” pursuant to which the National Government must pay the compensation, in accordance with the procedures established by law.

156. A third form of payment would be the one established in the friendly settlement agreement reached with Chile, which provides that the State shall pay a

<sup>153</sup> IACHR. Report No. 81/08 (Friendly Settlement), Case 12,298, *Fernando Giovanelli*, Argentina, October 30, 2008. See also, IACHR, Report No. 102/05 (Friendly Settlement), Case 12,080, *Sergio Schiavini and María Teresa Schnack de Schiavini*, Argentina, October 27, 2005; Report No. 79/09 (Friendly Settlement), Case 12,159, *Gabriel Egisto Santillán*, Argentina, August 6, 2009; and Report No. 16/10 (Friendly Settlement), Petition 11,796, *Mario Humberto Gómez Yardez*, Argentina, March 16, 2010.

<sup>154</sup> Official Gazette No. 42,826, of July 9, 1996. Act 882 of 1996, Article 2. “For the purpose of this law, negotiations for agreements or damages settlements may only be undertaken with respect to those cases of human rights violations that meet the following requirements: 1) an express, written decision has been taken by the Human Rights Committee of the International Covenant on Civil and Political Rights or the Inter-American Commission on Human Rights in which the conclusion reached in a specific case is that the Colombian State violated human rights and that the corresponding damages must be compensated [...]”.

<sup>155</sup> IACHR. Report No. 53/06 (Friendly Settlement), Petition 10,205, *Germán Enrique Guerra Achurri*, Colombia, March 16, 2006; and Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Antonio Barbosa Tarazona et al.*, Colombia, October 30, 2008.

“lifetime *ex gratia* pension”. This is a monetary award that the President of the Republic grants and that is intended to cover basic living expenses.<sup>156</sup>

157. As this chapter has illustrated, the friendly settlement process has had a positive and tangible impact on victims of human rights violations. Compliance with the agreements that the petitioners have signed with the States has improved living conditions for many victims, honored their memory through public acknowledgements of State responsibility and other acts of atonement that have an important symbolic message. These agreements have also been instrumental in instituting investigations and judicial proceedings to punish those responsible for the violations and have assisted victims in their medical, psychological, and social rehabilitation from the consequences of the acts reported to the Commission.

### E. Non-Repetition Measures

158. The case law of the Inter-American system has established that, under the general duty contemplated in Article 1(1) of the American Convention, States have an obligation to take all necessary measures to ensure that human rights violations are not repeated.<sup>157</sup> The Commission has written that the duty to prevent covers all those legal, political, administrative, and cultural measures that serve to safeguard human rights and ensure that their violation will be regarded and dealt with as punishable offenses for those who commit them. It also involves the duty to make reparations to the victims for the harm done to them.<sup>158</sup>

159. Over the years, the friendly settlements that the Commission has approved have had a positive impact, not only on the immediate victims of the human rights violations, but also on society as a whole, because the agreements provide for measures of reparation that have fostered change in the structure in which the violations occurred. Those measures are called “measures of non-repetition” and their purpose is to prevent the commission of human rights violations in the future.

160. For some States, like Argentina, “the friendly settlement procedure is a tool of enormous institutional value: on the one hand, it is a means by which domestic laws can be made to conform to the Inter-American human rights system’s standards; on the other hand, it is opportunity to make additions to the government’s agenda so that it includes issues and problems resulting from the design and implementation of public policies.”<sup>159</sup>

<sup>156</sup> See, IACHR. Report No. 32/02 (Friendly Settlement), Petition 11,715, *Juan Manuel Contreras San Martín, Víctor Eduardo Osses Conejeros and José Alfredo Soto Ruz*, Chile, March 12, 2002.

<sup>157</sup> I/A Court H.R., *Case of Garrido and Baigorria v. Argentina*. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, paragraph 41. See also, I/A Court H.R., *Case of Trujillo Oroza v. Bolivia*. Reparations and Costs. Judgment of February 27, 2002. Series C No. 92, paragraph 110.

<sup>158</sup> IACHR. *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II.Doc. 57, December 31, 2009, paragraph 41. p. 17.

<sup>159</sup> Ministry of Foreign Affairs and Worship, Ministry of Justice and Human Rights of the Argentinean Republic, Note No. 81/2013, Case 12,080, *Sergio Schiavini and María Teresa Schnack De Schiavini*, communication dated February 22, 2013, received by the IACHR on March 26, 2013.

161. Guarantees of non-repetition appear in 32 of the 106 friendly settlement agreements that the Commission has approved through issuance of a report. In these agreements, the States have undertaken to introduce legislative reforms, implement public policies designed to safeguard the rights of those sectors of society that require special protection, and to instruct public officials on the subject of human rights.<sup>160</sup> With this in mind, in this chapter the Commission will look at the impact that guarantees of non-repetition included in friendly settlements have had on these three fundamental issues.

### 1. Legislative and Regulatory Reform

162. The case law of the Inter-American system has repeatedly asserted the States have an obligation to guarantee non-repetition of human rights violations through the adoption of legislation.<sup>161</sup> The legal basis for that obligation is Article 2 of the American Convention, which provides that States have a duty to adopt legislative or other measures to give effect to the rights and freedoms recognized in the Convention.

163. In keeping with the case law of the organs of the Inter-American system, States and petitioners have agreed to, in friendly settlement, adopt and adapt domestic laws to conform to the protection standards established by the American Convention and other applicable instruments of the Inter-American system.

<sup>160</sup> Although the friendly settlement agreements approved by the IACHR that contain guarantees of non-repetition have been limited to these three types of guarantees, under the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, guarantees of non-repetition could also be of the following types: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service, and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law. See, *supra* note 42.

<sup>161</sup> I/A Court H.R. *Case of the "Five Pensioners" v. Peru*. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, paragraph 165; *Case of Cantos v. Argentina*. Merits, Reparations and Costs. Judgment of November 28, 2002. Series C No. 97, paragraph 61; and *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, paragraph 113.

164. The guarantees of non-repetition that provide for legislative reforms are designed to put an end to the violations by striking down laws that do not guarantee the rights and freedoms protected under the Convention<sup>162</sup> and enacting new laws a particular matter is unaddressed.<sup>163</sup> These commitments appear in 29 friendly settlement reports published by the IACHR and have been respected in 58% of the cases.

165. Human rights organizations (which include non-governmental organizations, academic institutions, and public defenders) have served as petitioners in 24 out of the 26 cases that have resulted in friendly settlement agreements published by the IACHR and that feature legislative reform as a guarantee of non-repetition.

166. The IACHR appreciates the effort made by human rights organizations that litigate before the Inter-American system and that use the friendly settlement mechanism as a tool to press for guarantees of non-repetition, both in the countries where human rights violations are associated with structural problems, and in countries where legislative reform is needed to ensure full respect for the rule of law. The promotion and protection of human rights undertaken at their own initiative by persons under the jurisdiction of States is a legitimate pursuit coincides with one of the State's essential obligations. At the same time, it generates special obligations of those States to protect those who are dedicated to promoting and protecting those rights.<sup>164</sup>

167. As discussed below, the legislative reforms that have been introduced as a result of the commitments undertaken by the States in friendly settlements have had a considerable impact on those sectors of the population that are especially

<sup>162</sup> When repeal of a law has the effect of interrupting a violation, the violated right is restored. Chapter III, section A.2. of this report contains examples of friendly settlement agreements in which one measure of restitution is the repeal of a law. See, *supra* page 18.

<sup>163</sup> See, IACHR, Report No. 1/93 (Friendly Settlement), Cases 10,288, 10,310, 10,436, 10,496, 10,631 and 10,771, *Guillermo Alberto Birt et al.*, Argentina, March 3, 1993; Report No. 71/03 (Friendly Settlement), Case 12,191, *María Mamérita Mestanza Chavez*, Peru, October 10, 2003; Report No. 91/03 (Friendly Settlement), Case 11,804, *Juan Ángel Greco*, Argentina, October 22, 2003; Report No. 95/03 (Friendly Settlement), Case 12,289, *José Pereira*, Brazil, October 24, 2003; Report No. 30/04 (Friendly Settlement), Petition 4617-02, *Mercedes Julia Huentao Beroiza et al.*, Chile, March 11, 2004; Report No. 101/05 (Friendly Settlement), Petition 388-05, *Alejandro Ortíz Ramírez*, Mexico, October 27, 2005; Report No. 102/05 (Friendly Settlement), Case 12,080, *Sergio Schiavini and María Teresa Schnack de Schiavini*, Argentina, October 27, 2005; Report No. 97/05 (Friendly Settlement), Petition 14/04, *Alfredo Díaz Bustos*, Bolivia, October 27, 2005; Report No. 81/08 (Friendly Settlement), Case 12,298, *Fernando Giovanelli*, Argentina, October 30, 2008; Report No. 80/09 (Friendly Settlement), Case 12,337, *Marcela Andrea Valdez Díaz*, Chile, August 6, 2009; Report No. 161/10, Petition 4554-02, *Valerio Oscar Castillo Báez*, Argentina, November 1, 2010; Report No. 84/11 (Friendly Settlement), Case 12,532, *Mendoza Prisons*, Argentina, July 21, 2011; Report No. 168/11 (Friendly Settlement), Case 11,670, *Amílcar Menendez, Juan Manuel Caride et al.*, Argentina, November 30, 2011; and Report No. 68/12 (Friendly Settlement), Petition 318-05, *Gerónimo Gómez López*, Mexico, July 17, 2012.

<sup>164</sup> IACHR. *Report on the situation of human rights defenders in the Americas*, OEA/ Ser.L/V/II.124.Doc.5 rev.1, March 7, 2006, paragraph 30.

vulnerable, such as women, indigenous peoples and migrants. It also influences the development of legislation that defines and punishes human rights violations such as torture and forced disappearance of persons. Important legislative reforms have been introduced with regard to the right to freedom of expression and the State's obligation to provide adequate reparations to victims of human rights violations.

#### a. Women's Rights

168. Measures of non-repetition can have an especially far-reaching impact on those sectors of the population that have historically been victims of discrimination, and among them on women. The IACHR has been particularly committed to protecting women's rights, and has paid special attention to the obstacles that prevent them from exercising freely and fully their basic rights.<sup>165</sup> Over course of time, the Commission has endeavored to ensure that friendly settlements include measures of reparation designed with a gender perspective. Guarantees of non-repetition can have a transformative effect on the gender-based structural inequalities that exist in many countries of the hemisphere.

169. For example, under one friendly settlement agreement, the Argentinean government amended the National Electoral Code to promote women's participation in politics and their inclusion in the political parties' slates of candidates. The reform -adopted on December 28, 2000- stipulates, *inter alia*, that "the thirty percent quota that Law 24,012 sets for women, shall be regarded as a minimum" and shall apply to all elective offices for deputy, senator, and member of a constituent assembly. This reform had a positive impact beyond Argentina. Other countries of the region have, in recent years, either adopted or amended their quota laws on women's participation in politics.<sup>166</sup>

170. Under the friendly settlement agreement signed by the Peruvian State and petitioners who filed a complaint with the Commission alleging the forced sterilization of María Mamérita Mestanza, the State pledged to introduce changes in the law and public policy on reproductive health and family planning, to eliminate any discriminatory content, and to respect women's autonomy. The Commission salutes the progress made in the fulfillment of this agreement, particularly with respect to the commitments to compensate family members and to offer health services. It also welcomes the State's decision to reopen the preliminary investigation into the forced sterilization of María Mamérita and thousands of other women. The Commission observes, however, that some other points of the

<sup>165</sup> The IACHR Rapporteurship on the Rights of Women works on preparing thematic reports on women's rights and the situation of women in specific countries of the region. She also assists in processes of precautionary measures and individual complaints alleging violations of women's rights and with preparation of case reports and the development of gender-sensitive standards of protection. For more information on the mandate and functions of the Rapporteurship on the Rights of Women, visit the webpage at: <http://www.oas.org/en/iachr/women/default.asp>

<sup>166</sup> See, IACHR. Report No. 103/01 (Friendly Settlement), Case 11,307, *María Merciadri de Morini*, Argentina, October 11, 2001.

agreement have still not been complied with and that it will continue to monitor the situation.<sup>167</sup>

171. Lastly, a friendly settlement agreement was signed by the Chilean State and a petitioner who claimed that the State was responsible for the violations of the honor and dignity of alleged victim Ms. “X”, as a result of a complaint lodged by another policewoman pertaining to the *Carabineros* and claiming that Ms. “X” was in a lesbian relationship with Ms. “Y”. As a result, Circular No. 1,671 of January 18, 2007 appeared in the Official Bulletin of the Chilean *Carabineros* and spelled out criteria and guidelines for protecting a person’s honor and dignity in administrative inquiries, and underscored the importance of ensuring administrative due process and of investigating only those situations that have administrative relevance, while respecting the privacy, honor, and dignity of persons.<sup>168</sup>

#### **b. Indigenous Peoples’ Rights**

172. The protection of indigenous peoples’ rights to their ancestral territories is a matter of particular concern to the IACHR. Effective enjoyment of that right implies not only their protection as an economic unit, but also the human rights of a group whose economic, social, and cultural development is based on its relationship to the land.<sup>169</sup>

173. In Report No. 30/04,<sup>170</sup> approved on March 11, 2004, the Commission approved a friendly settlement agreement resulting from the petition filed by Mercedes Julia Huentao Beroiza and four other members of the Mapuche Pehuenche people of the Upper Bío Bío, VIII Region of Chile. The petitioners claimed that the Chilean State was responsible for the Ralco Hydroelectric Dam, built by the National Electric Power Company (ENDESA) on the lands on which they lived.

174. Under the terms of the agreement, the State pledged to introduce certain legislative changes, one of which was to constitutionally recognize indigenous peoples in Chile and to ratify International Labour Organisation *Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries*. On September 15, 2008, Chile ratified ILO Convention No. 169, which entered into force for Chile on September 15, 2009.

<sup>167</sup> IACHR. *Annual Report 2012*, OEA/Ser.L/V/II.147. Doc.1, March 5, 2013, Chapter III, D) Status of compliance with the recommendations of the IACHR, paragraphs 971-973.

<sup>168</sup> See, IACHR. Report No. 81/09 (Friendly Settlement), P-490-03, “X”, Chile, August 6, 2009.

<sup>169</sup> The Commission’s work in connection with indigenous peoples centers around the work done by the Rapporteurship on the Rights of Indigenous Peoples, created in 1990 to permanently monitor their human rights situation by preparing thematic reports, conducting country visits and processing petitions and cases related to indigenous peoples’ rights. For information on the mandate and functions of this Rapporteurship, visit the website at: <http://www.oas.org/en/iachr/indigenous/default.asp>

<sup>170</sup> See, IACHR. Report No. 30/04 (Friendly Settlement), Petition 4617-02, *Mercedes Julia Huentao Beroiza et al.*, Chile, March 11, 2004.

175. As for the measures to strengthen legal institutions that protect the rights of indigenous peoples, the State reported that a reform had been discussed in the Senate Commission on the Constitution, Law and Regulations. The Commission had reportedly received and heard from over 50 indigenous organizations and leaders. The Chilean State reported that in April 2009, a political agreement was reached between the forces represented in the National Congress, after which the Executive Branch had reportedly conducted a “Referendum on Constitutional Recognition.” The results were delivered to the Senate Commission.

176. Thereafter, the State asserted that the Chilean Government remained committed to lobbying Congress for a constitutional amendment. To that end, it said that, on March 8, 2011, it announced a “Referendum on Indigenous Institutions” which would include seven stages and cover three themes: i) determination of the consultation and participation procedure, including regulations for participation in the Environmental Impact Assessment System (SEIA); ii) a draft constitutional amendment recognizing indigenous peoples; and iii) the creation of an National Indigenous Development Agency and a Council of Indigenous Peoples. It was also reported that the first two stages involving dissemination and information on the three themes had been carried out. It also said that the second stage consisted of 124 workshops nationwide, in which a total of 5,582 indigenous leaders reportedly participated.

177. In 2012, the State informed the Commission that on January 15, 2012, elections were held for the indigenous council members of CONADI, who took office on May 9, 2012, whereupon the work with the CONADI Council’s Consultation Commission immediately got underway, to move forward with the consultations on the regulations that would govern the Indigenous Consultation called for under Convention No. 169.<sup>171</sup> The Commission continues to monitor compliance with the commitments undertaken in the friendly settlement agreement.

### c. Migrants’ Rights

178. On July 21, 2011, the Inter-American Commission approved the first friendly settlement agreement on the rights of migrants, resulting from a petition from a Uruguayan migrant who had been expelled from Argentina. The petition claimed that his rights to personal liberty, protection against arbitrary interference with family life, protection of the family, due process guarantees, and judicial protection had been violated.<sup>172</sup>

179. According to the facts recounted in the petition, Juan Carlos De la Torre, a Uruguayan national, had had authorization from the National Immigration Office to work in Argentina since 1974. Nevertheless, he was arrested without a court order

<sup>171</sup> IACHR. *Annual Report 2012*, OEA/Ser.L/V/II.147. Doc.1, March 5, 2013, Chapter III, D) Status of compliance with the recommendations of the IACHR, paragraphs 367-398.

<sup>172</sup> IACHR. Report No. 85/11- Friendly Settlement. Petition 12,306, *Juan Carlos de la Torre*, Argentina.



and expelled to his country through a summary procedure in which he was not afforded due process guarantees.

180. On the question of measures of restitution, the friendly settlement in the case of De la Torre was an unprecedented step forward in the area of migration, as the decision to expel Mr. Juan Carlos De la Torre and ban him from re-entering the country was revoked, which enabled him to return to Argentina, where he now lives with his family.

181. As for the guarantees of non-repetition, the friendly settlement process, which began with a working meeting of the parties on October 17, 2003, during the Commission's 118th Period of Sessions, was a decisive factor in the repeal of the General Immigration Law then in effect, known as the "Videla Law" (22,349), and its replacement by Immigration Law No. 25,871. This law is nationally and internationally recognized as a model legislation governing all matters relating to Argentina's immigration policy and the rights and obligations of foreign nationals living in that country. In the friendly settlement agreement, the Argentinean State pledged to conduct a detailed analysis of the existing legislation regarding immigration and to reform any law that might contain discriminatory provisions on the basis of a person's status as alien or of migratory status. This friendly settlement was also key to the adoption of the measures necessary to approve and ratify, in February 2007, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

182. One of the far-reaching effects of this friendly settlement was the implementation of a mechanism for the consultation of various human rights organizations for the drafting of the Regulation under the Immigration Law. This included the following guarantees: immigrant persons' equal access to social services, public goods, health, education, the justice system, employment, employment insurance, social security, the right to family reunification, the right to due process in immigration procedures, assistance for payment of the immigration fee, and adoption of measures to ensure adequate legal representation for immigrants and their families. The Regulation was adopted through Decree 616/2010 and published in the Official Bulletin of May 6, 2010.

183. Another measure of general application that flowed from the friendly settlement was the suspension of immigration inspections and the ensuing detentions and expulsions. This was achieved by the adoption of Decree 836/04, which normalized the situation of all nationals of the States of MERCOSUR, Chile, Bolivia, and Peru, and Decree 1169/04, which had the same effect for nationals of any other state. A chapter specifically devoted to migrants and refugees was also included in the "National Plan against Discrimination", approved in 2005.<sup>173</sup>

<sup>173</sup> For more information on the impact and scope of the IACHR's Friendly Settlement Report in the Case of Juan Carlos De la Torre, see CERIANI CERNADAS, Pablo, FAVA, Ricardo and MORALES, Diego, "Políticas migratorias, el derecho a la igualdad y el principio de no discriminación: Una aproximación desde la jurisprudencia del Sistema Interamericano de Derechos Humanos"[Immigration Policies, the Right to Equal Treatment and the Principle of Non-

#### d. Freedom of Expression

184. Friendly settlements have also been reached in connection with the exercise of the right to freedom of expression, and have been instrumental in the repeal of laws incompatible with respect and guarantee of this right in the region. An example is a petition lodged against Uruguay, concerning the conviction and five-month prison sentence imposed to Carlos Dogliani, a journalist with the weekly “El Regional”. He was found guilty of criminal defamation for having written articles about irregularities allegedly committed by State officials who had annulled a debt owed by a taxpayer to the revenue administration.

185. As part of the friendly settlement process, the petitioners asked that a series of institutional and legislative changes be introduced, such as a program training State officials regarding the right to freedom of expression and access to information, and abrogation of the media crimes contained in the Criminal Code and Law No. 16,099.

186. In compliance with the agreement, Law No. 18,515 was adopted on June 26, 2009 and eliminated the prohibition of reporting opinions or news regarding public officials or matters of public interest, except in cases where malice could be proven. The law also eliminated penalties for offending or being disrespectful towards patriotic symbols or for questioning the honor of foreign officials. The new law states that the guiding principles for interpreting, applying, or incorporating civil, procedural and criminal laws on freedom of expression shall be found in the international treaties on the subject, and expressly recognizes the relevance of the decisions and recommendations of the Inter-American Court and the Inter-American Commission interpreting and applying such provisions.<sup>174</sup>

187. The Commission reaffirms that the repeal of contempt laws, that criminalize criticizing public officials, plays a fundamental role in building and consolidating democracy by allowing the criticism of authorities without fear of reprisal. One result of the friendly settlement agreement signed in connection with the petition filed by Horacio Verbitsky against Argentina was that Article 244 of the Argentine Criminal Code, which provided for the crime of *desacato* (contempt), was repealed.<sup>175</sup>

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Discrimination: an Examination Based on the Case Law of the Inter-American Human Rights System], in: CERIANI CERNADAS, Pablo and FAVA, Ricardo, *Políticas migratorias y derechos humanos* [Immigration Policies and Human Rights]. Buenos Aires: Universidad Nacional de Lanús, 2009, pp. 146-147.

<sup>174</sup> See, IACHR. Report No. 18/10 (Friendly Settlement), P-228-07, *Carlos Dogliani*, Uruguay, March 16, 2010.

<sup>175</sup> Chapter III. A. 2 examines the friendly settlement procedure and the results obtained as a result of the agreement signed in the case mentioned above.

### e. Torture

188. In the friendly settlement agreement signed as a result of the petition alleging that Mr. Alejandro Ortiz Ramírez was victim of torture aimed at forcing him to confess in court, the State of Mexico pledged to press for legislative debate at the local level with a view to amending articles 614 and 615 of the Code of Criminal Procedure for the Federal District. According to those provisions, an acquittal must be pronounced if the sole evidence presented against the accused is a torture-induced confession.<sup>176</sup>

189. In application of that friendly settlement, on November 15, 2005, the Federal District's Legislative Assembly approved amendments to articles 614 and 615 of the Code of Criminal Procedure for the Federal District. The amended version provides that a verdict of innocent is required when, *inter alia*, "the judgment is fundamentally based on a torture-induced confession". The amended text also establishes a procedure for filing an appeal with the Superior Court of Justice.

190. The friendly settlement reached as a result of a petition filed against the Argentinean State alleging violations of the rights to life, to humane treatment, and to health, in connection with the detention conditions of inmates in the Mendoza Penitentiary and the Gustavo Andrés de Lavalle Unit, presents similar features. The State pledged, *inter alia*, to introduce a bill in the Mendoza Provincial Legislature to create a local institution for the prevention of torture, in accordance of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to take the measures necessary to obtain its adoption.

191. In furtherance of the friendly settlement, Law 8279 was enacted on April 15, 2011 and provides for the creation of the Provincial Mechanism to Prevent Torture and other cruel, inhuman and degrading treatments. The law was published in the Official Bulletin on May 16, 2011.

### f. Forced Disappearance

192. The friendly settlements between petitioners and State have led to significant legislative amendments with respect to the right to identity and access to justice for victims of forced disappearance.

193. A friendly settlement agreement that was signed as a result of a petition that the *Asociación de Abuelas de la Plaza de Mayo* [Plaza de Mayo Grandmothers Association] brought against the Argentinean State and alleging violations of the rights to humane treatment, due process, protection of the family, and judicial protection. These violations were alleged to result from a Supreme Court judgment delivered on September 30, 2003, which vacated the order that compulsory expert

<sup>176</sup> See, IACHR. Report No. 101/05 (Friendly Settlement), Petition 388-01, *Alejandro Ortiz Ramírez*, Mexico, October 27, 2005.

blood sampling be conducted on the victims' alleged granddaughter and foreclosed any possibility of investigation into the disappearance of Susana Pegoraro and Raul Santiago Bauer.<sup>177</sup>

194. In compliance with the friendly settlement, on November 18, 2009, the National Congress adopted the following legislation: a bill to establish a procedure for obtaining DNA samples that protects the rights of those involved and is effective for investigating and adjudicating cases of abduction of children during the military dictatorship; a bill to amend the law regulating the operation of the National Genetic Database, in order to adapt it to scientific developments in the area; and a bill to more effectively guarantee the participation of victims in judicial procedures –with victims being defined as those persons allegedly abducted and their legitimate family members- as well as the participation of associations defending their rights in the investigation of children abduction.<sup>178</sup>

195. As a result of friendly settlement agreements signed in procedures mediated by the IACHR, the State of Mexico introduced legislative amendments regarding forced disappearance. On March 23, 2005, the IACHR received a petition claiming that the Mexican State was responsible for the alleged illegal detention, torture, and forced disappearance of Gerónimo Gómez López, and for the failure to investigate and punish those responsible. In compliance with one of the commitments undertaken in the friendly settlement, Decree No. 319 was published in the State's official gazette of September 23, 2009, which approved the Law to Prevent and Punish Forced Disappearance in Chiapas State.<sup>179</sup>

#### **g. Right to Reparations**

196. The reparation of the damage caused by a breach of an international obligation is full restitution (*restitutio in integrum*). However, should full restitution be impossible, the Commission has written that a set of measures “will then be required [...] such that, in addition to ensuring the enjoyment of the rights that were violated, the consequences of those breaches may be remedied and compensation provided for the damage thereby caused.”<sup>180</sup>

<sup>177</sup> See, IACHR. Report No. 160/10 (Friendly Settlement), Petition 242-03, *Inocencia Luca de Pergoraro et al.*, Argentina, November 1, 2010. See also, IACHR. Report No. 21/00 (Friendly Settlement), Case 12,059, *Carmen Aguiar de Lapacó*, February 29, 2000.

<sup>178</sup> IACHR, Report No. 160/10 (Friendly Settlement), Petition 242-03, *Inocencia Luca de Pergoraro et al.*, Argentina, November 1, 2010, paragraph 26.

<sup>179</sup> See, IACHR. Report No. 68/12 (Friendly Settlement), Petition 318-05, Gerónimo Gómez López, Mexico, July 17, 2012.

<sup>180</sup> IACHR, Application with the I/A Court of Human Rights in the *Case of Teodoro Cabrera García and Rodolfo Montiel Flores* (Case 12,449) against Mexico, June 24, 2009, paragraph 176, citing the case law of the Inter-American Court in the following cases: I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paragraph 201; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 415; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, paragraph 143.

197. Through friendly settlements, significant legislative reform has been accomplished regarding compensation as reparation for harm caused to victims of the Argentinean dictatorship. For example, as a result of a friendly settlement, the Argentine State enacted decree 70/91 according to which the Ministry of Interior was authorized to pay compensation upon request by persons who had proven that they had been detained by order of the Executive Branch during the military government and who had brought legal action within the first two years of democratic government. This decree was adopted specifically to settle cases of petitioners who were party to the friendly settlement. The decree was subsequently confirmed through National Law No. 24,043 enacted on December 23, 1991. The new law provided for monetary compensation in the case of persons, who, during the state of emergency, had been placed under the control of the National Executive Branch by virtue of an executive order or for civilians incarcerated by order of military courts during the period between November 6, 1974, the date on which the state of emergency was declared, and December 10, 1983. Those who had sustained serious injuries or death during their captivity received a larger amount.<sup>181</sup>

198. Subsequently, the Commission received a petition in which it was alleged that Valerio Castillo Báez had been detained during the military dictatorship. The federal justice system had accused him of violating Law No. 20,840, which criminalized participation in political parties deemed subversive. Although the alleged victim had sought damages from the competent authorities on the basis of Law 24,043, his claim was denied.

199. At the time of the friendly settlement procedure instituted in connection with this complaint, the Argentinean State pledged that the Human Rights Secretariat of the Ministry of Justice, Security, and Human Rights would prepare a draft amendment to Law 24,043 in order to include cases of persons deprived of liberty under Law No. 20,840.<sup>182</sup> In fulfillment of this pledge, on December 15, 2009, Law 26,564 was enacted and expanded the admissibility to reparations under laws 24,043 and 24,211. Specifically, the amendment provided that all political prisoners, victims of forced disappearance, or those killed between June 16, 1955 and December 9, 1983, qualified for benefits under those laws. Among those included were victims of the 1955 uprisings and military personal who, for refusing to join the insurgency against the constitutional government, became victims of defamation, marginalization, and/or were discharged from the armed forces.<sup>183</sup>

#### **h. Military Justice**

200. Measures of non-repetition under friendly settlements have also been instrumental in bringing about legislative reforms in the area of military justice.

<sup>181</sup> See, IACHR. Report No. 1/93 (Friendly Settlement), Cases 10,288, 10,310, 10,436, 10,496, 10,631 and 10,771, *Guillermo Alberto Birt et al.*, Argentina, March 3, 1993.

<sup>182</sup> See, IACHR. Report No. 161/10 (Friendly Settlement), P-4554-02, *Valerio Oscar Castillo Báez*, Argentina, November 1, 2010.

<sup>183</sup> See, IACHR. *Annual Report 2012*, OEA/Ser.L/V/II.147. Doc.1, March 5, 2013, Chapter III, D) Status of compliance with the recommendations of the IACHR, paragraph 164.

Examples include the friendly settlement agreements that the parties signed in the cases of *Roinson Mora Rubiano*<sup>184</sup> and *Faride Herrera Jaime et al. v. Colombia*.<sup>185</sup> These are the first friendly settlements with the Colombian State that resulted in the IACHR's approval.

201. The mandate of the Working Group established by virtue of the friendly settlement was, *inter alia*, to establish the facts and recommend the measures necessary to fully compensate the victims and their families. To this end, it conducted an in-depth study of the military criminal proceedings instituted. The study identified certain legal provisions, such as the provision requiring a second verdict from the courts martial and the exclusion of the civilian party during the judicial proceedings, which were incompatible with the guarantee to face an independent and impartial judge under the American Convention. In compliance with the friendly settlement reached by the parties, the Colombian Congress eliminated these provisions from the August 12, 1999 Military Criminal Code.

202. Another important example is the friendly settlement agreement signed by the petitioners and the Argentinean State as a result of a petition filed with the IACHR and alleging that proceedings had been instituted against Rodolfo Correa Belisle in the court martial without minimum due process guarantees. This followed his reporting that a commander had lied during the course of a criminal investigation into the death of a cadet. As a result, he was put under arrest for three months for the military offense of "disrespect".<sup>186</sup>

203. In furtherance of the friendly settlement, the Argentine Military Code of Justice was repealed and a new system, under which crimes committed by military personnel would result in indictments in the ordinary jurisdiction, was adopted. The new law eliminated military jurisdiction and the death penalty. It also established a new disciplinary regime which eliminated discriminatory sanctions against homosexuality and classified sexual harassment within the Armed Forces as a serious or very serious offense.<sup>187</sup>

<sup>184</sup> See, IACHR. Report No. 45/99 (Friendly Settlement), Case 11,525, *Roison Mora Rubiano*, Colombia, March 9, 1999.

<sup>185</sup> See, IACHR. Report No. 46/99 (Friendly Settlement), Case 11,531, *Faride Herrera Jaime, Oscar Iván Andrade Salcedo, Astrid Leonor Álvarez, Jaime, Gloria Beatriz Álvarez Jaime and Juan Felipe, Rúa Álvarez*.

<sup>186</sup> At the time of the events, that disciplinary violation was described in the Code of Military Justice in force as follows: "ARTICLE 663. A member of the military who, while on active duty or in the presence of military personnel, insults, threatens, defames or in any other way shows disrespect for his superior officer, by his words, writings, drawings or improper conduct, shall face a penalty of imprisonment. In time of war and when facing the enemy, the penalty shall be death or confinement."

<sup>187</sup> IACHR. Report No. 15/10 (Friendly Settlement), Petition 11,758, *Rodolfo Correa Belisle*, Argentina, March 16, 2010.

### i. Rights of Persons with Disabilities

204. Full exercise of the rights protected under the American Declaration, the American Convention, and other instruments of the Inter-American system must be guaranteed without discrimination of any kind. The Commission has observed that persons with physical or mental disabilities are particularly vulnerable to discrimination and other human rights violations, such as arbitrary restriction of personal liberty and inhumane and degrading treatment.<sup>188</sup>

205. The Commission has recommended to the member States to take the legislative or other measures necessary to enable persons with disabilities to exercise their civil and political rights without discrimination and to ensure, in furtherance of the commitments undertaken in the Protocol of San Salvador, special protection of their economic, social, and cultural rights enjoy.<sup>189</sup>

206. In Report No. 86/11 of July 21, 2011, the Commission approved the first friendly settlement reached as a result of a petition alleging a violation of a disabled person's right to equal treatment.<sup>190</sup>

207. The petitioners had alleged that María Soledad Cisternas, an attorney who suffered from total blindness, had asked her travel agent to reserve a seat on a flight to Montevideo, Uruguay. The airline, "Linea Nacional – Chile S.A. (LAN Chile), made the reservation on the condition that she would not travel alone and be accompanied by another passenger or a guide dog. On November 5, 1998, the alleged victim filed a petition seeking the protection of the Santiago Court of Appeals. The appeal was filed against LAN Chile and alleged a violation of her right to equal treatment. The appeal was denied, as was the appeal filed against the appellate court's decision.

208. On December 11, 2003, María Soledad Cisterna Reyes and a representative of the Chilean State signed an agreement setting out the following obligations for the State: that María Soledad Cisternas Reyes be allowed to continue to participate in the work of a Review Committee, established by the Office of the Director General of Civil Aeronautics with the task of reviewing, updating, and improving the rules governing air travel by persons with various disabilities; and that the rules regarding the safe air travel of persons with disabilities be widely disseminate among the various carriers, public and private agencies, and the general public.

209. In furtherance of the friendly settlement, in April 2008, the Office of the Director General of Chile's Civil Aeronautics (DGAC) published the aeronautical

<sup>188</sup> IACHR. *Application in the case of Damião Ximenes Lopes* (Case 12,237) against the Federative Republic of Brazil, October 1, 2004, paragraph 5.

<sup>189</sup> IACHR. *Annual Report 1997*, OEA/Ser.L/V/II.98 Doc. 6, February 17, 1998, Chapter VII, Recommendations of the Inter-American Commission on Human Rights, paragraph 7.

<sup>190</sup> IACHR. Report No. 86/11 (Friendly Settlement), Petition 12,232, *María Soledad Cisternas Reyes*, Chile, July 21, 2011.

standards regulating air travel by persons with disabilities, ailments or special needs, as part of the National Air Travel Facilitation Program.

210. The Commission welcomes the parties' intention to "contribute to the gradual social integration of persons with disabilities," taking into account the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities.<sup>191</sup>

#### **j. Access to Justice and Social Security**

211. On December 27, 1995, the Commission received a petition lodged against the Argentinean State denouncing the delay in court procedures in which Amílcar Menéndez, Juan Manuel Caride, and other plaintiffs claimed adjustment of their pension benefits.

212. The petition raised particular questions regarding the procedural rules established in Law 24,463, known as the Social Security Law, since it allowed the Argentinean Government to delay proceedings in which plaintiffs sought pension adjustments and to raise a lack of budgetary resources as a justification for delaying compliance with court rulings ordering such adjustments.

213. During the Commission's 118th regular Period of Sessions, the Argentinean State and the petitioners agreed to dialogue on the possibility of friendly settlement of the matter. The process set in motion as a result of the friendly settlement signed on November 4, 2009, was instrumental to bringing about the reform of Law 24,463 on social security. On April 6, 2005, the Congress passed Law 26,025, which repealed Article 19 of Law 24,463. Months later, on October 26, 2006, it enacted Law 26,153, which repealed articles 16, 17, 20 and 23, and reformulated Article 22 in the terms mutually agreed upon by the parties. With these amendments, a substantial part of the petitioners' original claim was satisfied: repeal of the provisions of the law that had become an obstacle for the handling of legal cases.<sup>192</sup>

214. At the time, the Commission expressed its appreciation of the efforts made by the parties to arrive at a friendly settlement of the matter, especially with regard to amendment of Law 24,463 on social security, and of the Supreme Court's reinstatement of a constitutional principle of social security and interpretation in accordance with international human rights treaties.

<sup>191</sup> IACHR. *Annual Report 2012*, OEA/Ser.L/V/II.147. Doc.1, March 5, 2013, Chapter III, D) Status of compliance with the recommendations of the IACHR, paragraph 411.

<sup>192</sup> See, IACHR. Report No. 168/11 (Friendly Settlement), Case 11,670, *Amílcar Menéndez, Juan Manuel Caride et al.*, Argentina, November 3, 2011.



## 2. Adoption of Public Policies

215. Public policy consists of the guiding principles or courses of action that the State authorities establish in order to accomplish a given objective and that serve to create or transform the conditions under which individuals or groups conduct their affairs.<sup>193</sup>

216. Public policy must encompass the guarantee of human rights. With regards to human rights, their objective is to give effect to these rights at the normative and operative levels, as well as in the conduct of State institutions and agents.<sup>194</sup> The reference to the rights-based approach to public policies must be understood under two dimensions that, while different, nonetheless complement each other: on the one hand, the standards and principles of human rights are both a guide and a roadmap for designing, implementing, and evaluating public policies; on the other, States must craft public policies that give effect to those rights.<sup>195</sup>

217. Through the friendly settlement procedure, petitioners and States have mutually agreed to commitments under which programs and action plans will be set established to transform the conditions under which thousands of people live and function. The IACHR's experience shows that the States have pledged to implement public policies on such issues as labor conditions,<sup>196</sup> protection of children,<sup>197</sup> women,<sup>198</sup> and indigenous peoples.<sup>199</sup>

218. Pursuant to one friendly settlement agreement signed as a result of a petition filed against the State of Brazil and alleging slave labor and violations of the rights to life and to judicial protection against to Mr. José Pereira, the State pledged to take significant measures to monitor and prevent slave labor. These measures included steps to strengthen the Public Ministry of Labor; to ensure immediate compliance with existing legislation by imposing administrative and court-ordered fines, as well as by investigating into complaints of slave labor and the filing of the appropriate charges against those responsible, and to ensure, with participation of

<sup>193</sup> See, IACHR. *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II.Doc. 57, December 31, 2009, paragraph 52.

<sup>194</sup> *Ibid*, paragraph 54.

<sup>195</sup> See, Faroppa Fontana, Juan "La gestión de la seguridad ciudadana con enfoque de derechos humanos" [Ensuring Citizen Security with a Rights-Based Approach], in *Derechos Humanos en el Uruguay* [Human Rights in Uruguay], Report 2007, Ed. Servicio Paz y Justicia, Montevideo, 2007, pages 58-60.

<sup>196</sup> See, IACHR. Report No. 95/03 (Friendly Settlement), Case 11, 289, *José Pereira*, Brazil, October 24, 2003.

<sup>197</sup> See, IACHR. Report No. 43/06 (Friendly Settlement), Cases 12,426 and 12.427, *Emasculated Boys of Maranhão*, Brazil, March 15, 2006.

<sup>198</sup> See, IACHR. Report No. 71/03 (Friendly Settlement), Case 12,191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003.

<sup>199</sup> See, IACHR. Report No. 30/04 (Friendly Settlement), Petition 4617-02, *Mercedes Julia Huentao Beroiza et al.*, Chile, March 11, 2004; IACHR, Report No. 32/12 (Friendly Settlement), Petition 11,706, *Yanomami Indigenous People of Haximú*, Venezuela, March 20, 2012.

the judiciary, punishment of perpetrators. The State also pledged to adopt measures to raise awareness of slave labor through a nationwide campaign.<sup>200</sup>

219. Likewise, the friendly settlement agreement signed in the case of the “Emasculated Boys of Maranhão”<sup>201</sup> is an example of the impact that friendly settlements can have on structural situations that generate human rights violations. The case is related to two petitions filed with the IACHR in which it was alleged that no effective measures had been taken to stop mutilations and murders of children in the Brazilian state of Maranhão. The petitioners challenged the measures that the state of Maranhão had taken to identify those responsible, to prevent the murders of more boys, and to improve the living conditions of children and adolescents in that state.

220. The friendly settlement helped prevent other human rights violations by establishing guarantees of non-repetition, such as new public policies. Thanks to the friendly settlement, the state of Maranhão was included in the Program of Comprehensive Measures to Combat Sexual Violence against Children and Adolescents in Brazilian Territory (PAIR) and the Sentinel Program, whose purpose was to treat children and adolescents victims of sexual violence. The State also pledged to conduct training of civil and military police authorities on dealing with crimes against children and adolescents; to establish a forensic testing center for cases of sexual violence committed against children and adolescents; and to establish a public defender to improve and increase access to legal assistance.

221. On the subject of sexual and reproductive rights, under a friendly settlement following a complaint alleging the forced sterilization of María Mamérita Mestanza, the State of Peru pledged, *inter alia*, to adopt and implement the following public policies:

- 1) *Continuously provide training to health personnel regarding reproductive rights, violence against women, domestic violence, human rights, and gender equity, in coordination with civil society organizations that specialize in these topics.*
- 2) *Adopt the necessary administrative measures so that rules ensuring the right to informed consent are scrupulously followed by health personnel.*
- 3) *Guarantee that centers that offer sterilization surgery meet the conditions required by the Family Planning Program.*
- 4) *Take strict measures to ensure that the compulsory reflection period of 72 hours is faithfully and universally honored.*
- 5) *Implement a mechanism or channels for efficient and expeditious receipt and processing of complaints alleging human rights*

<sup>200</sup> See, IACHR. Report No. 95/03 (Friendly Settlement), Case 11, 289, *José Pereira*, Brazil, October 24, 2003.

<sup>201</sup> See, IACHR. Report No. 43/06 (Friendly Settlement), Cases 12,426 and 12,427. *Emasculated boys of Maranhão*. Brazil. March 15, 2006.

*violations in health establishments, in order to prevent and redress any injury caused.*<sup>202</sup>

222. Also, under a friendly settlement agreement signed as a result of a complaint filed with the IACHR concerning approval of a project to build a hydroelectric dam in Ralco, an area that was home to members of the Mapuche Pehuenche community, the Chilean State pledged to take meaningful measures to strengthen indigenous participation in the Upper Bío Bío Indigenous Development Area (ADI); to establish mechanisms to ensure indigenous communities' participation in the management of the Ralco Forestry Reserve, and to ensure that indigenous communities are informed, heard, and taken into account in the follow-up and monitoring of environmental obligations associated with the Ralco Hydroelectric Project. The State also pledged to strengthen economic development in the Upper Bío Bío region, particularly regarding indigenous communities, and to establish mechanisms binding upon all State agencies to ensure that future megaprojects, especially hydroelectric dams, are not built on indigenous lands in the Upper Bío Bío<sup>203</sup>.

### 3. Training of State Officials and Civil Servants

223. The education of all sectors of society, and particularly of law enforcement personnel, is a measure of non-repetition that is vital to preventing future human rights violations. In numerous friendly settlements, petitioners and States have agreed to a commitment to train State officials and civil servants in a variety of subjects, among them sexual and reproductive rights,<sup>204</sup> gender-based violence,<sup>205</sup> labor rights,<sup>206</sup> respect for human rights by police officers,<sup>207</sup> and training of judges regarding relatives of victims of forced disappearance.<sup>208</sup>

224. The commitments included in friendly settlements that involve training of State officials and civil servants have been of various types. For example, in one agreement involving the State of Mexico, it was agreed that the human rights course taught to candidates for positions with the Judicial Police would include the case

<sup>202</sup> See, IACHR. Report No. 71/03 (Friendly Settlement), Case 12,191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003.

<sup>203</sup> See, IACHR. Report No. 30/04 (friendly settlement), Petition 4617-02, *Mercedes Julia Huentao Beroiza et al.*, Chile, March 11, 2004.

<sup>204</sup> See, IACHR. Report No. 71/03 (Friendly Settlement), Case 12,191, *María Mamérita Mestanza Chávez*, Peru, October 10, 2003; IACHR, Report No. 21/07 (Friendly Settlement), Petition 161-02, *Paulina del Carmen Ramírez Jacinto*, Mexico, March 9, 2007.

<sup>205</sup> See, IACHR. Report No. 80/09 (Friendly Settlement), Case 12,337, *Marcela Andrea Valdez Díaz*, Chile, August 6, 2009.

<sup>206</sup> See, IACHR. Report No. 95/03 (Friendly Settlement), Case 11,289, *José Pereira*, Brazil, October 24, 2003.

<sup>207</sup> See, IACHR. Report No. 101/05 (Friendly Settlement), Petition 388-01, *Alejandro Ortiz Ramírez*, Mexico, October 27, 2005; IACHR Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Barboza Tarazona et al.*, Colombia, October 30, 2008.

<sup>208</sup> See, IACHR. Report No. 160/10 (Friendly Settlement), Petition 242-03, *Inocencia Luca de Pergoraro et al.*, Argentina, November 1, 2010.

that was the subject of the agreement. This measure was particularly significant when one considers that the petition alleged that the police had violated the due process guarantees.<sup>209</sup> A similar measure was included in the friendly settlement agreement signed as a result of a complaint of forced disappearance. In the agreement, the State pledged to include the case in the National Army's instruction program.<sup>210</sup>

225. Other friendly settlements include a commitment to deliver specialized courses on a given subject. For example, in one friendly settlement, the Chilean State pledged to give workshops and seminars on the protection of women and the role of police, with particular emphasis on the treatment of women victim of domestic violence, the social dimension of domestic violence, and its legal implications.<sup>211</sup> Likewise, the Brazilian State pledged to hold seminars on the eradication of slave labor in the state of Pará. Under other friendly settlements, the Argentinean State pledged to provide, through the Judiciary Council of the Nation, courses for magistrates, officers of the court, and employees in the judicial branch regarding the proper treatment of the next of kin of victims of forced disappearance.

226. The Commission applauds the States' efforts to comply with this important kind of reparation measure. It stresses that States have an obligation to adopt all the measures necessary to instruct and train every member of their armed forces and law enforcement officials regarding the principles and standards of human rights protection and the limits of their authority.<sup>212</sup>

227. Finally, emphasis should be put on the importance of guarantees of non-repetition measures and the impact that their inclusion in friendly settlements has had on the observance of human rights in the region. These arrangements not only secure reparations for victims in a given case, but enable the adoption of measures with very broad impacts at many levels of public action, such as legislative amendments, implementation of new public policies, and training of State officials and civil servants.

<sup>209</sup> See, IACHR. Report No. 101/05 (Friendly Settlement), Petition 388/01, *Alejandro Ortiz Ramírez*, Mexico, October 27, 2005.

<sup>210</sup> See, IACHR. Report No. 83/08 (Friendly Settlement), Petition 401-05, *Jorge Barboza Tarazona et al.*, Colombia, October 30, 2008.

<sup>211</sup> See, IACHR. Report No. 80/09 (Friendly Settlement), Case 12,337, *Marcela Andrea Valdez Díaz*, Chile, August 6, 2009. The Commission has written that States must devise and strengthen training programs to teach school staff and officials that violence against girls, adolescent girls, and women is a serious violation of human rights. IACHR, *Access to justice for women victims of violence: education and health*. OEA/Ser.L/V/II.Doc.65, December 28, 2011, p. 58.

<sup>212</sup> IACHR. *Second Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.Doc.66, December 31, 2011, paragraph 142.



**CHAPTER IV**

**CONCLUSION**



## CHAPTER IV

### CONCLUSION

228. The Commission stresses that the effectiveness of the friendly settlement mechanism rests on two fundamental pillars: the willingness of the parties to reach a friendly settlement on the matter, and compliance with the reparation measures to which the State has pledged itself in the agreement, measures that must guarantee respect for the human rights recognized in the American Convention, the American Declaration, and other regional instruments.

229. The Commission's experience shows that a relationship of trust must be established between petitioners and States, both in the negotiation phase and in the fulfillment of the friendly settlements. For petitioners, this means being able to convey in clear and precise terms their expectations with respect to the outcome of the process and the measures they believe necessary to obtain full reparations for the violated rights, as well as their adherence to the terms of the agreement once approved.

230. What the relationship of trust means for States in the initial phase of the procedure is listening with an open mind to the petitioners and alleged victims of human rights violations. It also means being frank and realistic about the measures that the State is able to fulfill and the time frames in which this can be accomplished, bearing in mind that once the agreement is signed, the State has an obligation to comply fully and in good faith with the commitments undertaken therein.

231. The Commission appreciates the efforts made by the States, the victims and the petitioners in the friendly settlement procedures conducted over the years to resolve matters brought to the Inter-American System without recourse to litigation. Special mention should be made of the First Inter-American Conference on Human Rights and the Exchange of Best Practices on Friendly Settlement,<sup>213</sup> held on June 7 and 8, 2013, in La Antigua, Guatemala. The Conference was an opportunity for participants to engage in frank and open dialogue about the best practices developed within the framework of the friendly settlement procedure, the challenges the mechanism faces, and its prospects for the future.

232. The best practices mentioned included the establishment of *ad hoc* arbitration courts to determine the amount of the compensation; the implementation of national laws establishing mechanisms to ensure enforcement of

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<sup>213</sup> This event set in motion the process of implementing the reforms to the Rules of Procedure, Policies and Practices, which the IACHR had adopted during its 147th Period of Sessions, and was responsive to the needs raised by users of the Inter-American system during the process of strengthening the IACHR that took place in 2011 and 2012.



friendly settlements at the domestic level; and the creation of multi-institutional teams by the States to participate in the negotiation of friendly settlements. These practices have been developed by petitioners and States working together, under the IACHR's auspices, and reflect how the friendly settlement mechanism has improved over the course of time.

233. Having said this, the Conference participants also identified the important challenges that the IACHR and the parties to the process face. The participants underscored the fact that the IACHR can play a more active role as a facilitator of the process. Accordingly, they suggested to the Commission that it devise protocols for the negotiations and mechanisms for assessing compliance with the agreements, and the use of information technology to open new possibilities of dialogue between the parties.

234. During the Conference, measures that both petitioners and States can take to make the procedure more efficient and promote compliance with the friendly settlement agreements were identified. Representatives of the States and civil society suggested that, at the beginning of the process, parties should establish timetables and deadlines, and should propose reparation measures for the harm caused that are proportionate to the State's capacities.

235. They also emphasized, in order to ensure effectiveness of these agreements, the importance that States bring representatives of those institutions that will be involved in the execution of the friendly settlement to the negotiation table; create mechanisms for the coordination of federal institutions and regional governments in the case of federal States; and adopt domestic laws to enable negotiation of and full compliance with the commitments undertaken in the friendly settlement agreements.

236. Finally, States and civil society organizations asked, each from their own perspective, the IACHR to increase its involvement in friendly settlement procedures. The first emphasized the importance of the opinion of the Commission and its good offices to promote the friendly settlement procedure, while the second highlighted the importance that the participation of the Commission be limited to cases where it had been required by the parties.

237. The Commission has taken note of the observations made by State and civil society representatives, and appreciates the efforts made by the users of the system that have availed themselves of the friendly settlement mechanism. Thanks to their constructive spirit during the conclusion and implementation of the friendly settlement agreements, many victims of human rights violations have obtained adequate reparations, and many more have benefited from the essential measures taken to prevent their repetition. Moreover, friendly settlements have provided opportunities to amend domestic laws to ensure their conformity with the standards of the Inter-American human rights system, and have put issues and measures that are crucial to the protection and promotion of human rights in the OAS member States on the public agenda.