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**REPORT No. 39/15**  
**PETITION 279-03**  
REPORT ON FRIENDLY SETTLEMENT

FREDY ROLANDO HERNANDEZ RODRIGUEZ  
GUATEMALA

Approved by the Commission at its session No. 2040 held on July 24, 2015  
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**I. SUMMARY**

1. On April 14, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by the Center for Legal Action on Human Rights (Centro de Acción Legal en Derechos Humanos or CALDH) alleging the international responsibility of the Republic of Guatemala (hereinafter “the State” or “the Guatemalan State”) for the acts of violence that occurred on March 21, 1982, in the Parcelamiento La Esperanza, in the municipality of Santo Domingo Suchitepéquez, department of Suchitepéquez. The petition addresses the torture and extrajudicial execution of Hector Hernandez Rodriguez<sup>1</sup>, Venancio Hernandez Rodriguez<sup>2</sup>, and Anacleto Soto Magaña<sup>3</sup>, and the forced displacement of their immediate families. The petitioners alleged the violation of Articles 1 (obligation to respect the rights enshrined in the Convention), 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 22 (right to freedom of movement and residence), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”).

2. According to the petitioners, on March 21, 1982, at night, Army units surrounded the community in the Parcelamiento La Esperanza, in the municipality of Santo Domingo Suchitepéquez. A military contingent was said to have violently entered the community, of selecting Hector Hernández Rodriguez, Venancio Hernandez Rodriguez, and Anacleto Soto Magaña, in addition to other persons, who were not individually identified in the petition, who were said to have been brutally beaten with a club, to the point of causing their deaths. Subsequently, they were said to have been hung from a nearby tree for approximately 10 minutes, and then dropped to the ground. Finally, the petitioners alleged that the corpses were shot in the chest before the members of the military left, and the corpses were left in the outdoors. All the events were said to have been committed in the presence of the entire community.

3. The victims’ next-of-kin alleged that they had to move elsewhere due to these events and due to the subsequent harassment by members of the Army, which is said to have caused a drastic change in their quality of life. According to the petition, the persons affected denounced the actions of the armed forces, with no definitive result.

4. This report on friendly settlement, in keeping with Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, presents a description of the facts alleged by the petitioners and transcribes the friendly settlement agreement, signed on September 26, 2006, by the petitioner and by a representative of the Republic of Guatemala. In addition, the agreement signed by the parties is approved and it is agreed to publish this report in the IACHR’s Annual Report to the General Assembly of the Organization of American States.

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<sup>1</sup> The immediate family of Héctor Hernández Rodríguez was made up of Fredy Rolando Hernández Rodríguez (brother), Lorenza Chinchilla Carrillo (sister-in-law), Concepción Chinchilla Carrillo (wife), Gladys Floricelda Hernández Chinchilla, Héctor Enrique Hernández Chinchilla, and Nora Lilliana Chinchilla (children), Hermelinda Cubias Ardón (wife), and Anastacia Hernández Cubias and Gloria Esperanza Hernández Cubias (children).

<sup>2</sup> The immediate family of Venancio Hernández Rodríguez was made up of Fredy Rolando Hernández Rodríguez (brother), Eladia Canel Carrillo (wife), and Elsa de Jesús Hernández Canel and Wilber Leanel Canel (children).

<sup>3</sup> The immediate family of Anacleto Soto Magaña was made up of Fredy Rolando Hernández Rodríguez (brother), Lorenza Chinchilla Carrillo (wife), and Noé Soto Chinchilla, Ana Ruth Soto Chinchilla, David Antonio Soto Chinchilla, and Marco Tulio Soto Chinchilla (children), and Gerardo Antonio Soto González (son of Soto Magaña).

## **II. PROCESSING BEFORE THE COMMISSION**

5. The IACHR received the petition on April 14, 2003, and began to process it on April 22, 2003. The Guatemalan State sent additional information on July 29 and October 10, 2003, and November 17, 2005. The petitioners sent their observations on August 22, October 16, and November 17, 2003; January 13, October 22, and October 29, 2004; and October 11 and October 24, 2005.

6. On October 17, 2003, the petitioners submitted a friendly settlement proposal, which was forwarded to the State. The IACHR held working meetings with the parties on October 16, 2003, and October 26, 2004. The parties signed an agreement on September 25, 2006, a copy of which was forwarded to the Guatemalan State on October 25, 2006. On January 19, 2007, there was a breakdown in the friendly settlement process, which was subsequently overcome and the agreement continued to be implemented based on the parties' decision to so proceed.

7. The Guatemalan State sent its observations on January 24, 2007, January 22, 2008, July 31 and September 17, 2012, and January 9, 2015; they were forwarded to the petitioners. The petitioners answered those documents on March 1, 2007, and May 3 and July 6, 2012.

8. On December 11, 2014, the IACHR, following up on the process of implementing the friendly settlement agreement, requested updated information from the parties, which was answered by the State on January 9, 2015. On January 20, 2015, the information was forwarded to the petitioners for them to make any observations; they submitted observations on July 5 and 8, 2015. In this last communication the petitioners asked that the Commission approve the friendly settlement agreement, indicated that they valued the efforts of the State, and asked the IACHR to continue supervising implementation of the justice clause.

## **III. THE FACTS ALLEGED**

9. According to the petitioners, on March 21, 1982, at night, Army units surrounded the community in the Parcelamiento La Esperanza, in the municipality of Santo Domingo Suchitepéquez.

10. Around 7 a.m., a military contingent was said to have entered the dwellings in the Parcelamiento La Esperanza by force, and to have removed valuables from the houses. Subsequently, some 200 persons arrived at the neighboring property, where the community members were separated into groups of children, women, and men. The children were confined in an old school building, and the military threatened to burn them alive. As appears from the petition, the men and women were forced to get in line, squatting.

11. As narrated in the petition, a member of the Army selected some persons while walking down the lines formed and asking each person if he or she was a leader; when the persons answered affirmatively, they were set apart from the rest. This group included the victims Hector Hernandez Rodriguez, Venancio Hernandez Rodriguez, and Anacleto Soto Magaña, along with other persons who were not individually identified in the petition. The persons selected were said to be bound at the hands and feet, placed face down, so as to then be beaten by clubs made of green wood until they died.

12. The petitioners indicate that subsequently the soldiers tied the victims' corpses from the neck, with a rope, to a branch of a tree approximately 15 meters high, so as to suspend the corpses in the air. After about 10 minutes, they were dropped abruptly to the ground; the corpses were then put in a row, and each was shot at or near the heart.

13. According to the petitioners the Army contingent left the scene, leaving the bodies in place, and subsequently the family members and other community members moved them to a room to sit in wake all night, and they were then buried in a common grave, in the Parcelamiento La Esperanza. The petitioners alleged that the victims were executed because they were community leaders.

14. The petitioners alleged that as a result of these acts of torture and subsequent executions committed in the presence of the entire community, in addition to the alleged harassment by the Army, the family groups of the victims were forcibly displaced from their plot in La Esperanza. According to the petition, the displacement was not only limited to victims' next-of-kin, but affected 136 families of the 146 persons to whom those plots had been adjudicated, who were displaced from their homes and their lands.

15. According to the petition, the victims' next-of-kin were forced to displace to the department of Jutiapa, to plots of family members, for two years. That change drastically diminished the families' quality of life and productivity, as it is alleged that the plots in Jutiapa were less productive than those on the south coast of Guatemala, where the Parcelamiento La Esperanza is found. In addition, the petitioners alleged that when they attempted to return to their plots they found that they were in the possession of third persons, making it impossible for them to recover them.

16. According to the petitioners, one family member of the victims, Fredy Hernandez Rodriguez, lodged a complaint on March 5, 1997, with the Court of First Instance of Mazatenango to investigate the facts alleged, and to establish the responsibility of the State for what occurred.

17. Nonetheless, according to the petitioners, investigative steps have not been taken that would be necessary for identifying, arresting, and punishing those responsible for the events that occurred in the Parcelamiento La Esperanza and the investigation was plagued with various irregularities. In that sense, the petitioners indicated that some actions were taken such as the inspection of the lands of the Parcelamiento, recognition of the cemetery in which the mortal remains of the deceased victims were found, and the taking of testimonies on July 10, 1997. Nonetheless, they indicated that the exhumation of corpses on November 17, 1997, was not performed by specialized personnel in such type of investigations, and that neither the documentation of the exhumation, nor any other investigative steps, appears in the record. The petitioners added that the victims' deaths were not entered in the respective Civil Registry, and in general, as of the date of filing of the petition, almost seven years had elapsed without having established the truth of what happened, and without any punishment of the persons involved in the acts.

#### **IV. FRIENDLY SETTLEMENT**

18. On September 25, 2006, the friendly settlement agreement was signed, on behalf of the petitioners, by Fredy Hernandez Rodriguez and the attorney for the petitioners, Jennifer Echeverria; and, for the Guatemalan State, by Frank La Rue Lewy, President of the Presidential Commission on Human Rights (COPREDEH). Its text establishes as follows:

#### **FRIENDLY SETTLEMENT AGREEMENT Hector Hernandez, Venancio Hernandez, and Anacleto Soto Magaña Case: P279-03**

##### **I. BACKGROUND**

The instant case concerns the torture and extrajudicial execution of Hector Hernandez Rodriguez, Venancio Hernandez Rodriguez, and Anacleto Soto Magaña (the "victims") that took place on March 22, 1982<sup>4</sup> in the community of Parcelamiento la Esperanza, Santo Domingo Suchitepequez, Suchitepequez.

On April 9, 2003, the Center for Legal Action on Human Rights (Centro para la Acción Legal en Derechos Humanos "CALDH") filed the petition with the Inter-American Commission on Human Rights ("the Commission") on behalf of the victims' families ("the petitioners"). The petition alleged that the torture and subsequent extrajudicial execution of the victims

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<sup>4</sup> The petition lodged establishes the date of the facts as March 21, 1982. At clause III (1)(a) of the friendly settlement agreement it also indicates that the date was March 21, 1982.

represent grave violations of fundamental rights, namely the right to life and the right to humane treatment, enshrined in Articles 4 and 5 of the American Convention on Human Rights, as well as breaching the duty to conduct a criminal investigation into the facts, which results in a violation of the rights to judicial guarantees and judicial protection protected by Articles 8 and 25 of that Convention.

The Guatemalan State provided the illustrious Commission its legal observations on the case on July 29, 2003, and CALDH submitted its legal observations on August 22, 2003.

CALDH submitted a proposed partial friendly settlement to the State at [the hearing] held before the Commission on October 16, 2003. CALDH submitted an amended petition and a proposed comprehensive friendly settlement in [the hearing held] before the Commission on October 26, 2004, which was accepted by the State.

The parties have decided to enter a Friendly Settlement Agreement and establish a process for its implementation (the “**Friendly Settlement Agreement**”).

## **II. ON THE PARTIES APPEARING (sic) AND THE DECISION OF THE PARTIES**

For the first party, the President of the Presidential Commission on Human rights (COPREDEH), Frank William Rafael La Rue Lewy, on behalf of the Guatemalan State; and for the second party Jennifer Echeverria, legal counsel for the petitioners before the IACHR, and Mr. Fredy Rolando Hernandez Rodriguez, in representation of the victims.

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

(1) Acting on instructions from the Constitutional President of the Republic, Oscar Berger Perdomo, COPREDEH, on behalf of the Guatemalan State, and before the Commission, recognizes the international responsibility of the State

(a) for the violation of the right to life, enshrined in Article 4 of the American Convention, in respect of Hector Hernandez, Venancio Hernandez, and Anacleto Soto, for having been extra judicially executed in their community on March 21, 1982;

(b) for the violation of the right to human treatment, enshrined in Article 5 of the American Convention, in respect of Hector Hernandez, Venancio Hernandez, and Anacleto Soto, for having suffered torture prior to their deaths;

(c) for the violation of the right to humane treatment of the petitioners, established in Article 5 of the American Convention, for the psychological and moral harm caused by having been forced to witness the torture and death of the victims;

(d) for the violation of the right to freedom of movement and residence of the victims' next-of-kin, as they were persecuted by the Army of Guatemala, resulting in their forced displacement (that right is enshrined in Article 22(1) of the American Convention);

(e) for the violation of the right to judicial guarantees and judicial protection enshrined in Articles 8 and 25 of the American Convention in respect of the petitioners for the failure to investigate, prosecute, and punish the persons responsible for and who committed the above-noted violations.

(2) The State also recognizes that there was violence against the rural communities of Suchitepaquez at that time, and that human rights violations were perpetrated against the victims as a result of that violence.

#### **IV. PUBLIC APOLOGIES**

- (a) The State undertakes to make public its recognition of institutional responsibility for the violations detailed against the rural communities of Suchitepéquez in general, and to present apologies through a private ceremony directed to the victims' next-of-kin, by Eduardo Stein, Vice President of the Republic.
- (b) The parties agreed that the private ceremony will take place on September 28, 2006.
- (c) The State undertakes to publicize the private ceremony to the media through the efforts of the Dissemination and Press Department of COPREDEH.

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

The State undertakes to build a wall and place plaques on it in a prominent location in the community Parcelamiento la Esperanza, Suchitepequez, which details the victims' names and the violations committed by the Army against them, as a measure to recover and dignify their memory. The ceremony will be held two months after the date on which this agreement is signed.

CALDH undertakes to forward the texts of the plaques and the specifications of the wall during the fifteen days following the signing of this agreement.

#### **VI. INVESTIGATION, PROSECUTION, AND PUNISHMENT OF THE PERSONS RESPONSIBLE**

- (a) The State of Guatemala recognizes the pressing need to give impetus to investigations to identify, prosecute, and punish the persons responsible for the violations of the victims' human rights.
- (b) In this framework, COPREDEH will give impetus to the necessary actions vis-à-vis the prosecutorial authorities (Ministerio Público) for the purpose of carrying out an immediate, impartial, and effective investigation by the State.
- (c) The State undertakes to provide CALDH and the Commission reports on the above-indicated investigative process at least every six months as from the date of the signing of this agreement.

#### **VII. REPARATIONS**

- (a) The State acknowledges that accepting its international responsibility for the violation of the victims' human rights entails the responsibility of granting fair compensation to the petitioners as per the standards established in domestic and international law.
- (b) The State undertakes to sign an economic compensation agreement that will define the amount and term for the payment of economic compensation with the victims' next-of-kin before the end of October of this year.
- (c) The parties undertake to meet within eight days of the signing of this Friendly Settlement Agreement to discuss the question of economic compensation and to set a timetable for ensuring implementation of subsection (b) above.
- (d) The economic compensation shall not be subject to any tax, encumbrance, or fee currently existing or that may be decreed in the future.

## VIII. VIOLATION OF TERMS

In the event of the violation of any of the terms established in this agreement, and lacking any remediation of that violation, CALDH shall have the option of ending the friendly settlement agreement and continuing with the contentious proceeding in keeping with Article 41 of the Commission's Rules of Procedure.

## IX. LEGAL BASIS

This Friendly Settlement Agreement is signed based on respect for the human rights recognized in Articles 1(1), 4, 5, 22(1), 8 and 25 of the American Convention on Human Rights; Article 45 of the Rules of Procedure of the Inter-American Commission on Human Rights; Articles 1, 2, 3, 44, 46, and 183(a) of the Constitution of Guatemala and the fundamental principles established therein; and the Peace Accords signed by the Government of the Republic of Guatemala and the National Revolutionary Unit (Unidad Revolucionaria Nacional Guatemalteca or URNG).

Guatemala City, September 25, 2006.

## V. DETERMINATION OF COMPATIBILITY AND IMPLEMENTATION

19. The IACHR reiterates that according to Articles 48(1)(f) and 49 of the American Convention, this procedure has as its purpose "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The agreement to carry out this procedure expresses the good faith of the State to carry out the purposes and objectives of the Convention in keeping with the principle of *pacta sunt servanda*, by which states must carry out the obligations assumed in treaties in good faith.<sup>5</sup> It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention makes it possible to conclude individual cases on a non-contentious manner, and has proven, in cases with respect to various countries, to offer an important vehicle for settlement that can be used by both parties.

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

21. As regards measures of satisfaction, the Inter-American Commission values the recognition of international responsibility of the Guatemalan State, set forth in the friendly settlement agreement, for the failure to respect the rights to life and humane treatment established in the American Convention on Human Rights in relation to the victims tortured and executed, Hector Hernandez Rodriguez, Venancio Hernandez Rodriguez, and Anacleto Soto Magaña during the events of March 1982 in the Parcelamiento La Esperanza.

22. The Commission also values the recognition made by the State of its responsibility for the violation of the right to humane treatment, the right to judicial guarantees, the right to freedom of movement and residence, and the right to judicial protection in relation to their next-of-kin, suffered by the families of Hector Hernandez Rodriguez, Venancio Hernandez Rodriguez, and Anacleto Soto Magaña.

23. In addition, the IACHR takes into special consideration the recognition of the State regarding the context of violence prevailing at the time of the events in Suchitepequez in which the violations of the human rights of the victims in this petition occurred.

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<sup>5</sup> Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26, "*Pacta sunt servanda*": *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

24. The IACHR takes note of the implementation of the commitment to offer apologies, which took place on September 28, 2006, with the assistance of the then-Vice President of the Republic, Eduardo Stein, and the victims' next-of-kin, in which institutional responsibility for the human rights violations to the detriment of the victims and their next-of-kin negatively impacted by the events set forth in this petition. The IACHR takes note of the petitioners' communications of May 3 and July 6, 2012, in which they expressed their satisfaction with the implementation of this clause, thus the Commission considers that it has been implemented.

25. Similarly, the IACHR observes that the State carried out the clause related to honoring the victims' memory through a special ceremony unveiling the commemorative plaques in memory of Hector Hernandez Rodriguez, Venancio Hernandez Rodriguez, and Anacleto Soto Magaña, which was held on May 28, 2007, at the Cemetery of the Parcelamiento La Esperanza, carried out and directed by the Presidential Commission on Human Rights (COPREDEH), with the attendance of some of the victims' family members. The IACHR takes note of the petitioners' communications of May 3 and July 6, 2012, in which they expressed their satisfaction with the implementation of this clause, thus the Commission considers that it has been implemented.

26. As regards the measures of economic reparation, the IACHR celebrates the implementation of the measures of reparation duly paid by the Guatemalan State to the three family groups of the victims, as established in the Agreement on Economic Compensation signed January 16, 2007 by Fredy Ronaldo Hernandez Rodriguez and Gerardo Antonio Soto Gonzalez; and the then-President of COPREDEH and representative of the Guatemalan State, Frank La Rue Lewy, in keeping with clause VII of the friendly settlement agreement that was signed. The payments established were made in installments individually to each of the immediate family members of the victims; the final payments were made on March 13, 2011, based on the copies of the checks submitted by the State. The total amount paid came to two million three hundred ninety-nine thousand, nine hundred ninety-nine quetzals and eighty cents (Q.2,399,999.80). The IACHR takes note of the petitioners' communications of May 3 and July 6, 2012, in which they expressed their satisfaction with the implementation of the measures of economic reparation; accordingly, the Commission considers that they have been carried out.

27. The IACHR takes note of the commitments that the Guatemalan State assumed aimed at giving impetus to actions to investigate, prosecute, and convict the persons involved in the incidents that took place at the Parcelamiento La Esperanza, established in point VI of the agreement. In that clause, the State undertook to give impetus to the actions that need to be taken before the prosecutorial authorities (Ministerio Público) to conduct an immediate, impartial, and effective investigation. In addition, it undertook to provide the petitioners and the IACHR reports every six months on the implementation of this clause of the friendly settlement agreement.

28. The Guatemalan State sent up-to-date information on implementation of the obligation to investigate, prosecute, and punish those responsible for the facts narrated in the petition, which are contained at clause VI of the friendly settlement agreement. The friendly settlement agreement cites proceedings that took place from 1997 to 2006 by the judicial authorities and the prosecutorial authorities (Ministerio Público) aimed at authorizing the exhumations required for the investigation and other measures related to obtaining evidence. The latest action reported by the State was July 26, 2006, where working meetings were held at the site with the Association of Family Members of the Detained-Disappeared of Guatemala (Fundación de Familiares de Detenidos y Desaparecidos FAMDEGUA), the School of Forensic Anthropology of Guatemala, and the National Police. In the report the State indicated that it is awaiting a report by the Public Ministry to report on the subsequent actions. To date, no additional information has been received regarding compliance with clause VI.

29. The petitioners indicated that the information provided by the Guatemalan State was the same information provided previously, thus they consider that there have been no concrete and significant results in the investigation into the facts, nor any identification, prosecution, or punishment of those responsible for the violence, even though more than 33 years have elapsed.

30. In view of the foregoing, the IACHR establishes that the commitment to investigate, prosecute, and punish is pending implementation, given that the facts continue in impunity; and that the commitment to inform the petitioners and the Commission every six months of the gains in this respect has been implemented irregularly, which is why the IACHR will continue monitoring that process with the aim of those commitments being carried out as per the international commitments acquired by the Guatemalan State, signed in the friendly settlement agreement.

## **VI. CONCLUSIONS**

31. Based on the foregoing considerations and by virtue of the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction with the fact that a friendly settlement agreement has been reached in this case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

32. By virtue of the considerations and conclusions set forth in this report,

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

#### **DECIDES:**

1. To approve the terms of the agreement signed by the parties on September 25, 2006.
2. To continue supervising the commitment pending implementation by the Guatemalan State; and to that end, to remind the parties of their commitment to periodically inform the IACHR on its implementation.
3. To make public this report and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 24<sup>th</sup> day of the month of July, 2015. (Signed): Rose-Marie Antoine, President; James L. Cavallaro, First Vice-President; José de Jesús Orozco Henríquez, Second Vice-President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.