

HANDBOOK

Friendly Settlement Mechanism in the Petition and Case System



OAS

More rights for more people

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INTRODUCTION

In the framework of the system of individual petitions and cases before the Inter-American Commission on Human Rights (hereinafter “Commission” or “IACHR”), the friendly settlement procedure is a process facilitated by the Commission, aimed at getting the implicated State and the alleged victims and/or petitioners to reach an agreement, outside of a contentious proceeding, and provide a solution to the alleged human rights violation. The friendly settlement procedure is contingent upon the willingness of the parties and, consequently, both parties must be in agreement to initiate and continue this process. For this reason, the parties are required to express their wish to pursue this avenue before the Inter-American Commission.

While the system of individual petitions and cases establishes a procedure, the purpose of which is to determine States’ international responsibility for human rights violations, it also provides for the possibility, at any stage of examination of a petition or case, of reaching a friendly settlement of the matter, based on the respect for the human rights enshrined in the American Convention on Human Rights (ACHR), the American Declaration of the Rights and Duties of Man and other regional human rights protection instruments.



The good offices of the Commission and its role as impartial facilitator have been absolutely indispensable to bring the parties together and reinforce friendly settlement agreements.

The friendly settlement procedure has become a suitable setting for dialogue between States and alleged victims of human rights violations. The friendly settlement system enables the creation of participatory spaces of dialogue between petitioners and States, where agreements can be reached to establish measures of reparation or conciliation, which are not only beneficial to the alleged victims of the situation charged in the petition or case, but sometimes, to society as a whole at the structural level. **Every State member** to the Organization of American States may use the friendly settlement mechanism even if it has not yet ratified the American Convention on Human Rights, under the scope of the American Declaration of the Rights and Duties of the Man. Additionally, regardless of the nature of the dispute, the IACHR offers its good offices, **in all the cases**, to facilitate that the party’s reach an agreement that is respectful of human rights.

I. INTRODUCTION

The settlement of cases through this procedure is set into motion and continues **on the basis of the consent of the parties**, unless the Commission notices that the matter cannot be resolved by this means, or one of the parties does not consent to using it or does not display willingness to reach a friendly settlement based on respect for human rights.

The good offices of the Commission and its role as impartial facilitator have been absolutely indispensable to bring the parties together and reinforce friendly settlement agreements.

In order to make the most of the friendly settlement mechanism, the IA-CHR has written this introductory manual on the different stages of the friendly settlement process. This guide is intended to facilitate access to the friendly settlement mechanism for the users of the Inter-American human rights system.

During the different stages of the friendly settlement process, it is essential for the parties participating in the negotiation to have a general and practical understanding of how the friendly settlement mechanism works and what tools are available within this procedure for the examination and advancement of cases, how the parties are accompanied or assisted during the negotiation, what the report formalizing the approval of the signed agreement says and, lastly, what is involved in the follow-up on compliance with the agreement.



DEFINING THE FRIENDLY SETTLEMENT PROCEDURE (FSP)

In the framework of the System of Individual Petitions and Cases, the Friendly Settlement Procedure (FSP) is a mechanism used for the resolution of controversies by achieving a peaceful, consensus-based arrangement between the parties regarding claims before the IACHR.

When a petition is forwarded to a State to open the admissibility stage of a matter, the IACHR places itself at the disposal of the parties with a view to reaching a friendly settlement. In the event that both parties express their interest in writing to engage in the said procedure, the Commission will act as an impartial third party, performing the role of facilitator in order to bring the parties together, serve as a conduit of communication between them, provide them with a suitable space to discuss their interests and positions, promote agreements and commitments, through the identification of Zones of Possible Agreements (ZOPA) and conduct a follow-up on the compliance with the friendly settlement agreement entered into by them.

RELEVANT LEGAL FRAMEWORK OF THE FRIENDLY SETTLEMENT PROCESS



- > **AMERICAN CONVENTION ON HUMAN RIGHTS**
– ART. 48.1. F: When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, [...] it 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.
- > **IACHR RULES OF PROCEDURE**
– ART. 40.1 On its own initiative or at the request of any of the parties, the Commission shall place itself at the disposal of the parties concerned, at any stage of the examination of a petition or case, with a view to reaching a friendly settlement of the matter.
- > **IACHR RULES OF PROCEDURE**
– ART. 37.4 Prior to making its decision on the merits of the case, the Commission shall set a time period for the parties to express whether they have an interest in initiating the friendly settlement procedure [...].



GENERAL OVERVIEW OF THE FSP

The friendly settlement procedure is voluntary, informal and flexible, allowing the parties to engage in negotiations with each other, with or without direct involvement of the IACHR.

When one of the parties expresses its interest to enter into a friendly settlement, the IACHR provides information to both parties on the FSP so that they can make informed decisions on the use of the friendly settlement mechanism.

From the moment both parties formally express to the IACHR their willingness to enter into a friendly settlement, the procedure begins with a stage of negotiation between them. The Commission provides its good offices to exercise its role of facilitator. The IACHR also gives impetus to the procedure and supports the negotiation between the parties to jointly design the components of an eventual friendly settlement agreement.

Once the parties decide to sign a friendly settlement agreement, they are expected to provide the IACHR with information regarding the measures that will be taken to attain compliance with it. In this way, the Commission is able to assess whether the commitments reached in it are compatible with respect for human rights and verify compliance with it.

The stage of negotiation between the parties starts when they decide to enter into the friendly settlement. The role of the Commission will be to offer its good offices to act as facilitator.

The IACHR follows up on the fulfillment of the commitments included in the friendly settlement agreement signed by the parties.

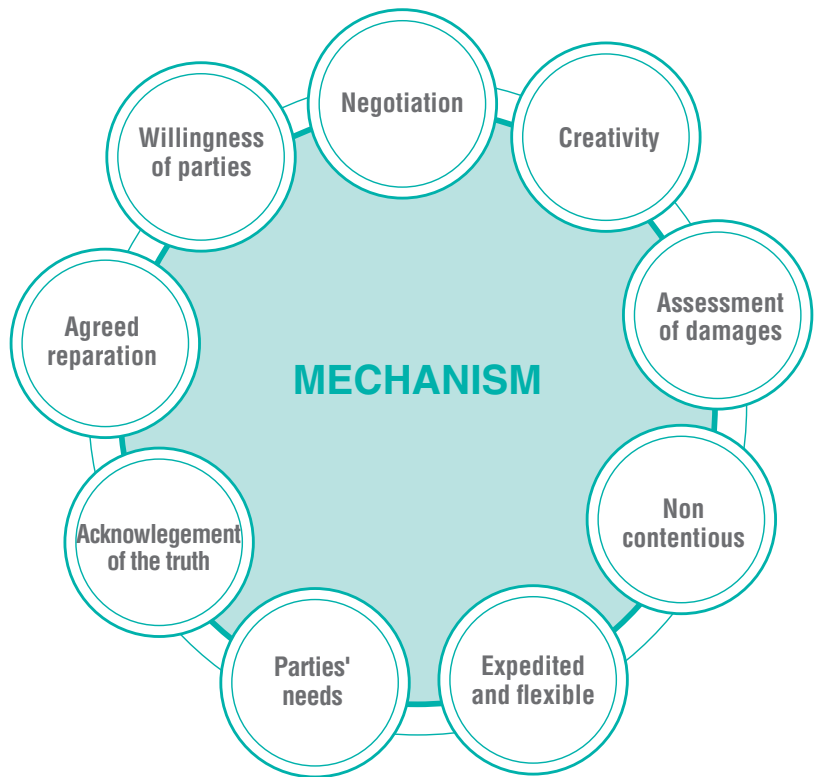
III. GENERAL OVERVIEW OF THE FSP



PURPOSE OF THE AGREEMENTS

Friendly settlements aim to narrow differences between the parties' positions, to find a common ground and reach a mutually satisfactory consensus-based agreement.

THE FSP IN THE NUTSHELL



IV.

PROCEDURAL OVERVIEW OF THE FSP

This section provides an overview of the friendly settlement procedure in response to frequent questions asked by users of the Inter-American system on how the IACHR is involved as a facilitator of the process, what requirements must be met in an agreement in order for it to qualify for approval, and how the procedure is terminated.

1. How does a friendly settlement procedure begin?

The friendly settlement procedure begins and continues on the basis of the mutual consent of the parties, unless the Commission notices that the matter cannot be settled by this means, one of the parties fails to give consent for its use, decides not to continue with it, or does not show willingness to reach a friendly settlement based on respect for human rights. This means that:

- The Commission may, on its own initiative, place itself at the disposal of the parties concerned with a view to reaching a friendly settlement (Art. 40.1 IACHR Rules of Procedure).
- Any of the parties may propose a friendly settlement (Art. 40.1 IACHR Rules of Procedure).
- The process is initiated and continues on the basis of the consent of the petitioner and of the State (Art. 40.2 IACHR Rules of Procedure).

2. When does the IACHR place itself at the disposal of the parties for a friendly settlement?

In practice, the IACHR places itself at the disposal of the parties with the view of reaching a friendly settlement of the matter on the following occasions:

- When the initial petition is forwarded to the State (Art. 48. 1. f ACHR).
 - When the admissibility report is forwarded to the parties (Art. 37.4 and 40.1 IACHR Rules of Procedure).
 - When one of parties requests the offices of the IACHR for a friendly settlement (Art. 40.1 IACHR Rules of Procedure).
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IV. PROCEDURAL OVERVIEW OF THE FSP

3. What does the negotiation phase involve?

The negotiation stage is defined as a process of dialogue between the parties with a view to reaching a mutually acceptable agreement to all parties. The negotiation stage begins from the time **both** parties display their willingness to use this mechanism, and terminates with the signing of the friendly settlement agreement.



IMPORTANT

Irrespective of the actual measures of reparation negotiated in the agreement, it is important to set forth in detail how the measures are to be implemented in order to ensure effective follow-up on the commitments accepted in the agreement.

During the negotiation phase of friendly settlement agreements, the parties may hold working meetings, with or without the accompaniment of the Commission, at the IACHR headquarters in Washington, D.C. or in the country, in order to advance in the discussions, sign memorandums of understanding and/or other instruments wherein advancements are put into writing and the negotiation is narrowed down with a view to signing a final agreement. Additionally, the parties can exchange positions and proposals in writing and the IACHR can forward them to the counterpart in order to move the process along.

The system's built-in flexibility means that parties can establish their own working timetable and deadlines for negotiation of reparations for the alleged human rights violations. Notwithstanding, it is recommended that provisions of agreements be as specific and detailed as possible, clearly specifying the scope of the obligations, who is responsible for the execution thereof, future deadlines for implementation and other indicators to enable the parties and the IACHR to conduct effective follow-up until full compliance with the terms of signed agreements.

Accordingly, when proposing a measure of full reparation, it is suggested that instead of using open-ended language and general phrasing, such as "training officials," to think about the purpose of the measure, who will receive the training, for how long it must be given, how many times and how well must it be implemented, what is the role of the parties in the implementation of the measure, and other questions of this nature. Along this line of thinking, the wording of the proposed measure could be: *"two training courses, three days long each, provided to 50 officials of the office of the prosecutor of X municipality, on the subject of the Protocol of Istanbul, with the participation of the petitioners as observers."*

IV. PROCEDURAL OVERVIEW OF THE FSP

It is also essential for the IACHR to be informed of the signing of the agreement as soon as possible and for information about compliance to be submitted as it comes in.

4. What are working meetings within the friendly settlement process?

Working meetings within the framework of the friendly settlement procedure can be held during the pre-negotiation stage, in order to lay the groundwork for pursuing a friendly settlement, or may also be held during the negotiation stage, either to negotiate the agreement, fine tune details of an unsigned agreement, or follow-up on compliance with the commitments of a previously signed agreement. Additionally, working meetings can also be held after approval and publication of the friendly settlement agreement by the Commission, for the purpose of resolving troubles with compliance and bring about full implementation of the agreement.

During the course of a friendly settlement process, the Commission may exercise its good offices and coordinate working meetings so the State and petitioners are able to move closer to a mutually satisfactory agreement. For this purpose, it is essential for the parties to be clear about the status of the negotiation or of compliance with the agreement and about the objectives of the working meeting, so that the Commission's presence at the working meeting will be put to the best use possible.

Parties to a friendly settlement procedure may request the IACHR to hold working meetings during two of its regular sessions in Washington DC, which are usually held during the months of March and October. The IACHR receives a high number of requests for working meetings for each session, and strives to grant as many as possible; however, for reasons of time constraints, it is not feasible to grant every request. When working meetings are held with IACHR participation, usually the Commissioner/country rapporteur for the State involved chairs the meeting. Working meetings on friendly settlements are closed to the public. Request for such meetings must be submitted no less than 50 days in advance of the first day of the upcoming IACHR session in order to be granted. Given that the IACHR publishes its annual schedule of sessions, as well as the deadline for requests for working meetings and hearings, parties are urged to regularly check the IACHR web site for this information. Additionally, it must be noted that the IACHR can convene meetings between the parties during the working visits it conducts to OAS Member States.

IV. PROCEDURAL OVERVIEW OF THE FSP

5. What is the role of the IACHR members at a working meeting?

Within their scope of duties in the context of friendly settlements, Commissioners chair working meetings held during its sessions and/or working visits to countries. Commissioners facilitate negotiations between the parties and assist in follow-up on compliance with the commitments taken on in the agreement.



THE STATE AND PETITIONERS AS ACTIVE PARTICIPANTS AT WORKING MEETINGS

- > The parties may request a working meeting to start a friendly settlement process, for the negotiation of an agreement or to further compliance with a signed agreement.
- > At any stage of the process, the parties may hold working meetings in their countries of origin, with or without the participation of the IACHR.
- > At working meetings with IACHR participation, the Commissioner/country rapporteur for the State involved (Art. 15.2 Rules of Procedure) shall act as facilitator of the dialogue.

6. What commitments can be included in a friendly settlement agreement?

The friendly settlement agreements may include a variety of measures of full reparation of the situation denounced in the petition. As means of example, the following is a list of the measures of reparation organized by the frequency with which they have been included by the parties in the friendly settlement agreements approved by the IACHR:

- **Measures of economic compensation**, through which the alleged victims of human rights violations and/or their relatives have received monetary payment as reparation for the harm caused by the violations.
- **Measures of restitution**, such as the release of persons, who have been deprived of liberty as a result of arbitrary detention, restitution of collectively owned and/or individually owned lands, reinstatement in a position of employment, among other measures. .
- **Measures of rehabilitation**, such as granting medical insurance coverage, psychological rehabilitation treatment, providing housing, scholarships or employment options, among other measures.

IV. PROCEDURAL OVERVIEW OF THE FSP

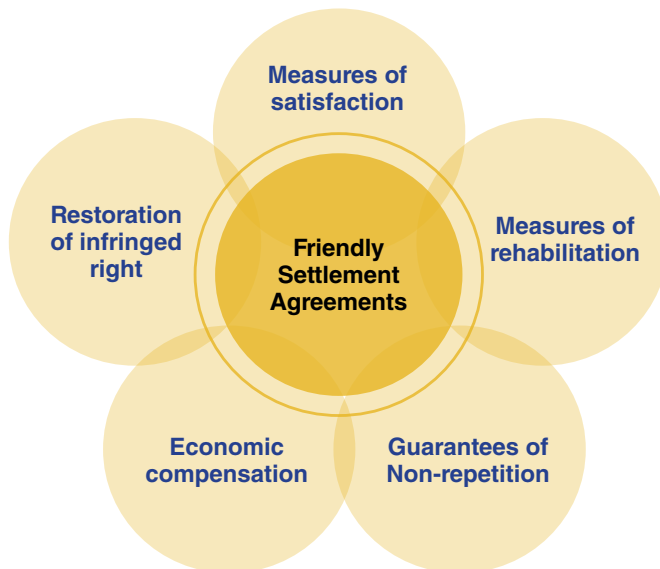
- **Measures of satisfaction**, such as public recognition of State's responsibility, public statement of apology, restoration of the dignity of the alleged victims, official statements to restore the honor of the alleged victims, searching for and handing over the remains of family members, criminal and disciplinary sanctions for human rights violators, and building monuments in honor of the alleged victims. Elements of satisfaction that the IACHR considers fundamental for integral reparation.
- **Guarantees of non-repetition**, such as legislative and regulatory reforms, adoption of public policies, training State's agents, incorporating the content of the petition and/or case into human rights education programs.

In addition to the previous list, the friendly settlement agreements may include other measures of reparation. To learn more about measures of reparation, see the Report on the Impact of the Friendly Settlement Procedure available on-line on the IACHR webpage.



[www.oas.org/es/CIDH/soluciones_amistosas/docs/
Informe-Soluciones-Amistosas.pdf](http://www.oas.org/es/CIDH/soluciones_amistosas/docs/Informe-Soluciones-Amistosas.pdf)

MEASURES OF REPARTION FREQUENTLY INCLUDED IN FRIENDLY SETTLEMENT AGREEMENTS



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7. What happens when a friendly settlement agreement is accepted by the parties?

When the parties reach a friendly settlement agreement, it is written into a document usually called a “friendly settlement agreement.” The friendly settlement agreement must clearly list all items or clauses reflecting the accepted commitments for full reparation to the victim of an alleged human rights violation.

When a friendly settlement agreement is successfully reached, after reviewing it to make sure it is based on respect for the human rights recognized in the American Convention on Human Rights, the IACHR gives its approval of the friendly settlement agreement and publishes a report, in accordance with article 29 of the American Convention on Human Rights (ACHR). The timing of the release of this report by the Commission is contingent upon the extent of compliance, and/or the express willingness of the parties set forth in the agreement or in a subsequent written communication.

8. What is approval of a friendly settlement agreement?

Approval or sanction of a friendly settlement agreement is the process in which the IACHR reviews the written agreement entered into between both parties in order to assess the contents thereof and verify that it is based on respect for the human rights recognized in the American Convention on Human Rights (ACHR), the American Declaration of the Rights and Duties of Man, and other applicable instruments.

The Commission then issues a report, under Article 49 of the ACHR and based on IACHR practice, approving the friendly settlement agreement and listing the measures adopted in it, which must be complied with under the pledged commitments. Copies of this report must be served on the petitioner and the State, included in the IACHR Annual Report to the General Assembly of the Organization of American States, and published on the IACHR web page.

As provided under Article 49 of the ACHR, the friendly settlement report contains:

ART. 49 CADH

If a friendly settlement has been reached the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication.

IV. PROCEDURAL OVERVIEW OF THE FSP

- A brief statement of the facts.
- A statement of the settlement achieved.
- The transcription of the friendly settlement agreement.
- Verification that the agreement is based on respect for the human rights enshrined in the ACHR, in the ADHR and other applicable instruments.
- An analysis on compliance with the commitments of the agreement.

Once an agreement is approved, it takes legal effect, terminating the processing of the petition in the system of petitions and cases. In other words, the Commission will continue to monitor compliance with the commitments established in the agreement, but the case shall not be returned to processing as a contentious matter, either at the admissibility stage, the merits stage or for referral to the Inter-American Court of Human Rights.

Regarding the moment to verify if the friendly settlement agreement is adjusted to the human rights established in the American Convention on Human Rights and other applicable regional instruments, the IACHR takes into consideration, the following scenarios to decide whether to approve a friendly settlement agreement:

- When the agreement itself indicates the wish of the parties for it to be approved, the IACHR will consider it once the parties have signed it.
- If the parties demand that the items of the agreement must be complied with in order for it to be approved, the IACHR will consider it, once it is advised of full compliance.
- If the agreement does not establish the timing to issue the approval, in practice, the IACHR will consider its approval once it observes substantial compliance by the State, after verifying such compliance with the petitioners.
- In any case, the IACHR will verify that the State is willing to comply with the commitment it accepted in the friendly settlement agreement.

Once the agreement has been approved by the IACHR, it will follow up on compliance with the commitments or clauses, until there is full compliance. It must be noted that after approval of the report under Article 49 and, in general, once friendly settlement agreements are signed by the parties, it is not possible to unilaterally change the commitments, though the parties may jointly determine and interpret the scope of the clauses of the agreement and/or amend the content thereof, by means of a memorandum of understanding or a letter of interpretation of the agreement.

IV. PROCEDURAL OVERVIEW OF THE FSP

9. What does follow-up of an approval report issued under Article 49 of the American Convention on Human Rights involve?

Once the approval report on the friendly settlement is published, the IACHR begins a process of follow-up, requesting information from the parties in the event there has not yet been full compliance. In addition to requesting and evaluating information on compliance with friendly settlement agreements, the IACHR can hold meetings with the parties with a view to moving forward in the resolution of pending items of the agreement.

Art. 48 Rules of Procedure

Once the Commission has published a report on a friendly settlement [...], it may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements [...].

The IACHR also includes the information it gathers about compliance with agreements in its Annual Report to the General Assembly of the Organization of American States. In the said report, there is a section (Chapter II.D) where the IACHR puts on record the follow-up it conducts on recommendations formulated in its merits reports as well as to friendly settlements reports. That section begins with a table that contains a list of all petitions and cases, for which a friendly settlement report (Article 49 of the ACHR) or merits report (Article 51 of the IACHR) has been issued, and it also contains the status of compliance of each of the cases, which can range from total, to partial or to pending compliance.

Following the presentation of the table, the Commission provides a narrative section putting on record the information provided by the parties, an analysis of compliance and its conclusions consecutively. Even though petitions and cases with full compliance do not appear in the text of the Annual Report, those matters continue to be included [in the table] to serve as reference cases for users of the Inter-American human rights system.



TOTAL COMPLIANCE

Total compliance of friendly settlement is crucial for confidence building between the parties in an effective mechanism.

IV. PROCEDURAL OVERVIEW OF THE FSP

During the follow-up stage, the IACHR may:

- Request information from the parties.
- Hold hearings or working meetings in order to follow up on the commitments contracted between the parties.
- Conduct meetings on friendly settlement agreements in the course of working visits to countries.
- Report, as it deems appropriate, on progress in compliance with said agreements.



FRIENDLY SETTLEMENT VS. CONTENTIOUS PROCEEDING

Once the IACHR issues the friendly settlement approval report, its main legal effect is that the decision terminates the processing of the matter in the system of petitions and cases, and it becomes subject to follow-up through the annual report.

10. What happens when a friendly settlement negotiation does not lead to a result accepted by the parties?

If the parties do not reach a friendly settlement or, if after the agreement is signed, they express their wish not to continue with this FSP, they must indicate so to the IACHR in order for it to continue to process the petition or case at the admissibility or merits stage, as appropriate. The processing of the petition or case can culminate in a merits report, wherein the IACHR makes a decision on the alleged human rights violations. In the event that a violation is established, the IACHR can publish its report and monitor compliance with the recommendations it formulated or, provided that the State has accepted or accepts the jurisdiction of the Inter-American Court of Human Rights, it can decide to submit the case to the said tribunal, which is the body empowered to issue a judgment ordering the State to comply with measures of reparation of the rights found violated.

The IACHR may terminate its involvement in the friendly settlement procedure:

IV. PROCEDURAL OVERVIEW OF THE FSP

- If one of the parties does not give its consent.
- If one of the parties decides that it does not wish to continue in the friendly settlement process.
- If one of the parties is not willing to reach a friendly settlement.
- If the IACHR finds that the agreement does not respect human rights.

IACHR Rules of Procedure Art. 40.4:

The Commission may terminate its intervention in the friendly settlement if it finds that the matter is not susceptible to such a resolution or any of the parties does not consent to its application, decides not to continue it, or does not display the willingness to reach a friendly settlement based on respect for human rights.

11. When does the friendly settlement procedure conclude?

The friendly settlement procedure may conclude at the following points in time:

- When the parties reach an agreement that has been approved by the IACHR, without prejudice to any follow-up that may be conducted to verify compliance (Article 49 ACHR and 40.1 IACHR Rules of Procedure).
- When any of the parties decides that it does not wish to continue with the friendly settlement procedure, at whatever stage the process may be in, prior to the approval report (Article 40.2 and 4 of the IACHR Rules of Procedure).
- When the IACHR so decides, after assessing the situation (Article 40.4 IACHR Rules of Procedure).

V.

BEST PRACTICES IN FRIENDLY SETTLEMENT AGREEMENTS

The Commission notes that pursuant to the legal precedents of the Inter-American system, victims of human rights violations are entitled to full reparation for the damage they endured which, in general, includes individual measures designed to restore, compensate, rehabilitate the victim, as well as measure of satisfaction and guarantee of non-repetition.

These types of reparation 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, as approved by the United Nations General Assembly in Resolution No. 60/147 of December 16, 2005. In the said principles, different measures are included, among other ones, which can be adopted to make reparation serve its ultimate purpose of furthering the cause of justice and remedying violations of international human rights law.

The instant document describes some of the elements that could constitute full reparation. The following types of reparation are included: measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

In some friendly settlement agreements approved by the IACHR, the parties have included measures that could constitute best practices and, for purposes of disseminating them, were reflected in the Report on the Impact of the Friendly Settlement Procedure published by the IACHR in 2013. Some of these measures are highlighted below.

¹ See, Office of the United Nations High Commission for Human Rights, Basic Principles and Guidelines on the Right to a Remedy and Reparation

for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Available at:

<http://www2.ohchr.org/spanish/law/reparaciones.htm>

1. Adopting measures aimed at obtaining justice

The application of judicial and administrative sanctions to those responsible for human rights violations is one of the central elements of the reparation included most frequently in friendly settlement agreements. Compliance with justice clauses, in addition to constituting a step toward restoring confidence in the state apparatus, constitutes means of preventing future human rights violations.

The IACHR considers the establishment of measures of this nature as a best practice, in particular, because some justice clauses have made it possible to bring those responsible for human rights violations to trial and punish them in cases involving forced disappearances, rape of women, torture and extrajudicial executions, among other types of conducts. How-

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ever, it is still necessary to continue to follow-up on compliance with the commitments linked to justice clauses in several cases.

2. Furthering legislative reform as a guarantee of non-repetition

Repeal of legal provisions, which are at odds with the American Convention on Human Rights or the American Declaration of the Rights and Duties of Man, as a result of the commitments undertaken by States in friendly settlement agreements, has made it possible for the people who were adversely affected by enforcement of those provisions to have their infringed right restored. At the same time, the impact goes far beyond the alleged victim to society, inasmuch as repeal of this kind of legal provision has helped to bring national legislation in line with the standards of human rights protection established in the American Convention on Human Rights or the American Declaration of the Rights and Duties of Man.

Repeal of laws, found to be contrary to the American Convention, is a tool that can be included in friendly settlement agreements in order to make domestic legislation consistent with the norms and standards of the Inter-American system, in addition to serving as the legal grounds to prevent further violations in the future. Through friendly settlement agreements, several States have approved reforms on the subjects of immigration, criminal law, the rights of persons with disability, among other ones.

3. Adopting public policies and training State officials

The Commission regards the training of public officials as a vital measure of non-repetition to ensure prevention of future human rights violations. In a high number of friendly settlement reports, petitioners and States have agreed on the commitment to train State officials on subjects such as sexual and reproductive rights, gender violence, labor rights and human rights. These trainings are generally taught to members of the public security forces, judicial officials or health care providers.

In the framework of friendly settlements before the IACHR, some States have pledged to include the factual context of the petition or case in which agreement was reached, as material for the training of public officials. In this way, the measure of training also becomes a tool for the preservation of the historic memory of the facts.

4. Measures of medical, psychological and social rehabilitation

Friendly settlement agreements can establish measures of rehabilitation providing assistance to victims in their recovery from physical and psychological harm and in adapting to new living conditions, under which they are forced to live, as a result of the events charged as violations of their rights.

Friendly settlement agreements can include measures such as:

- Establishing an amount of money to defray medical expenses.
- Granting priority and free health care through the public health care system.
- Providing a permanent health insurance plan through the Ministry of Health or the appropriate public agency.

5. Tributes and monuments to honor the victims

Through friendly settlement agreements, petitioners and States have agreed to measures of reparation aimed at recognizing the dignity of the victims, preserving the historical memory of the facts and serving as a guarantee of non-repetition. These measures can take different forms such as building monuments to honor the victims, naming public spaces or buildings after the victims in their honor, and establishing commemorative plaques in consultation with the persons affected.

6. Enacting laws or creating ad-hoc tribunals for payment of economic compensation

It is an international obligation of States, to the extent possible, to seek full restitution of the infringed right for the victims, by striving to restore the situation existing prior to when the alleged violation occurred. Notwithstanding, it is not always possible to restore full enjoyment of the infringed right of the person, in which case it is in order to pay reparation of damages through monetary compensation.

The amount of monetary compensation can be a complex element in a negotiation process, inasmuch as one party may regard the proposed amount as insufficient to cover the damages endured, and the other, as overly burdensome in relation to the concrete case.

V. BEST PRACTICES IN FRIENDLY SETTLEMENT AGREEMENTS

When facing this dilemma, petitioners and States have resorted to different ways to establish amounts of compensation and make payment. For example, one constructive practice adopted by some States is for the parties to agree on the creation of an ad hoc tribunal to determine the amount of monetary reparation, based on the rights recognized as violated and on applicable international standards. As a preliminary step to the creation of an “ad hoc” arbitral tribunal, the friendly settlement agreement is ratified by means of an Executive Decree, thus giving it the force of law.

7. Facilitation mechanisms for compliance at the national level

Another practice, regarded as very important to promote, is to put into place administrative or legislative mechanisms to enable compliance with both the decisions of the Inter-American bodies, and friendly settlement agreements. In this way, the friendly settlement report published by the IACHR functions as a sort of “executive title”, which the national government must pay back in the form of compensation, after following the statutory procedure.

The Commission has observed that another crucially important tool for both the negotiation of friendly settlement agreements and for full compliance with them, is the interaction between the different State agencies involved in the disposition of the case or petition, through spaces of inter-institutional coordination and decision-making processes, which infuse the expression of willingness of the State with seriousness in taking on these commitments and subsequent fulfillment of them.

Lastly, to learn more about compliance with friendly settlement agreements approved by the IACHR, it is suggested to visit the IACHR web page where the Annual Report of the Commission to the OAS General Assembly is posted.



Annual Reports: www.oas.org/en/iachr/reports/annual.asp

Additionally, it is suggested to visit the IACHR web page that contains the full text of the friendly settlement agreements approved by the Commission.



Friendly Settlement Agreements:
www.oas.org/en/iachr/decisions/friendly.asp

V.
BEST PRACTICES
IN FRIENDLY
SETTLEMENT
AGREEMENTS

**SUMMARY OF FRIENDLY
SETTLEMENT PROCEDURE**

**START
Petition or Case**

→ IACHR places itself at the disposal of the parties at beginning of processing

IACHR places itself at the disposal of the parties at beginning of processing

PROCESS

-
- IACHR facilitates dialogue.
 - IACHR requests and exchanges information and proposals between parties.
 - Working meetings.

FSA SIGNED

-
- IACHR verifies consent of alleged victim(s) in agreement.
 - IACHR verifies that agreement meets human rights standards.
 - Compliance with commitments established in the FSA.

YES

IACHR approves report
Art. 49 ACHR
Follow-up Art. 48
Rules of Procedure

NO

IACHR continues
with the processing
of petition or case

VI.

ANNEX

MODEL WORKING MEETING MINUTES FRIENDLY SETTLEMENT PROCESS

Petition or Case No. xxx

In (city and country) on (day and month), 201(year), the State of (country) represented by (name and position), and in his/her capacity as petitioners (name and position, name of organization), sign the following minutes of the working meeting held between the parties in the framework of the friendly settlement procedure in case/petition xxxx.

In the course of the working meeting, the parties presented the progress obtained since the adoption of the letter of understanding to start a friendly settlement process, that was signed on (date of last working meeting), which included:

1. (text) xxxx.
2. (text) xxxx.
3. (Other items)

Regarding other measures of reparation under discussion, while there has been progress, the parties consider that it is important to provide a working schedule to help put the agreements reached into effect in the short term. For this purpose, listed hereunder are the activities that will be carried out:

- a. activity, date, how it is going to be implemented, who will be responsible for it, monitoring, when it will be reported)
- b. (activity, date, how it is going to be implemented, who will be responsible for it, monitoring, when it will be reported)
- c. (Other items)

Signing these minutes,

ON BEHALF OF THE STATE
(Name and position)

ON BEHALF OF THE PETITIONERS
(Name, name of organization)



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