

Differentiated Actions to Address the Procedural Backlog in Friendly Settlement Agreement Procedures

RESOLUTION 3/2020

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**DIFFERENTIATED ACTIONS TO ADDRESS THE PROCEDURAL BACKLOG IN FRIENDLY
SETTLEMENT AGREEMENT PROCEDURES**

April 16, 2020

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONSIDERING:

That in accordance with the provisions of Article 49 of the American Convention on Human Rights and Article 40 of the Rules of Procedure of the IACHR, the friendly settlement procedure (hereinafter FSA) will begin and continue based on the consent of the parties and that the Commission has the power to determine the course of action of the friendly settlement procedure;

That the IACHR has established as a priority line of action the strengthening of the friendly settlements mechanism, and that objective 1 of the Strategic Plan of the IACHR 2017-2021, seeks to contribute to the development of a more effective and accessible Inter-American justice, through decisive measures to extend the friendly settlement procedure and apply it to a greater number of issues and in a more expeditious manner;

UNDERLINING FURTHER that the Commission created, in its 2017-2021 Strategic Plan, the Program for the Expansion of the Use of the Friendly Settlement Procedure focused on the application of updated methodologies and new practices of alternative dispute resolution, as well as in the exchange and dissemination of good practices in the Region for the optimization of the use of the friendly settlement procedure;

CONSIDERING:

That one of the main challenges that the Commission faces is to reduce the procedural backlog in the processing of petitions and taking into account the urgent need to adopt measures to address this situation;

That the Commission has identified as challenges of the friendly settlement procedure the procrastination during the different stages of the procedure and the need to strengthen a higher number of dialogue spaces to promote and effectively monitor the negotiations and compliance with friendly settlement agreements by States;

AWARE of the need to harmonize the principles of agility, voluntariness and flexibility of the friendly settlement process against the need to make a timely assessment of each case, which allows to achieve the progressive reduction of the duration of the negotiation processes to prevent the friendly settlement mechanism from becoming a delay factor in the decision of the organs of the inter-American system in petitions and individual cases;

CONSIDERING the need to grant to the users of the friendly settlement procedure minimum time and methodology guidelines;

UNDERLINING the need to guarantee the access of victims of human rights violations to an effective and comprehensive remedy through a friendly settlement, as well as a timely decision on the matter submitted to the Commission through the petition system and individual cases;

The Inter-American Commission on Human Rights,

DECIDES to adopt the following principles and guidelines to optimize the use of the friendly settlement procedure:

1. The parties will have a period of three years, counted from the start date of the friendly settlement procedure, to negotiate and sign a friendly settlement agreement.

2. From the signing of the agreement, the parties will have two years to advance towards their homologation by the Inter-American Commission on Human Rights, except for duly qualified exceptions by the Commission.

3. In relation to those matters in which no friendly settlement agreements have been signed within the period provided in paragraph 1 above, the Commission will determine its course of action taking into particular consideration the duration of the negotiation phase, the date of the presentation of the petition and the existence of fluid dialogues between the parties and/or substantial progress in the negotiation.

4. In relation to those matters with a signed agreement and without homologation in which the term established in paragraph 2 above has expired, the Commission will determine its course of action taking into particular consideration the duration of the compliance phase, the date of presentation of the petition and the existence fluent dialogues between the parties and/or substantial progress in the compliance phase.

5. When assessing the viability of the approval of the agreement, or the closure or maintenance of the negotiation process, the IACHR will consider the following elements: a) the content of the text of the agreement and whether it has a full compliance clause previously to its homologation; b) the nature of the agreed measures; c) the degree of fulfillment thereof, and in particular the substantial execution of the commitments assumed; d) the will of the parties in the agreement or in a subsequent written communication; e) its suitability with human rights standards and f) the observance of the State's will to fulfill the commitments assumed in the ASA friendly settlement agreement, among other elements.

6. The Commission may exceptionally keep open the spaces for dialogue from the signing of the agreement until its approval, in those cases in which it is fully verified that compliance with the agreement is subject to extraordinary factors.

7. The Commission will notify the parties of the application of this resolution for each case found in the hypotheses indicated in paragraphs 1 and 2 above, indicating the eventual closure of the friendly settlement procedure, the setting of a deadline to advance in the processes and / or the determination of the corresponding course of action. The Commission's notifications to the parties will be duly motivated and substantiated.

8. In order to avoid the delay of the negotiation processes and the excessive use of requests for unfounded extensions, the petitions and cases submitted to the friendly settlement mechanism will remain there only if measurable progress is observed in the negotiation process. In this sense, the Commission will refrain from granting the parties more than 3 consecutive extensions to submit reports, without indicating any concrete substantial progress in the negotiation processes. The Commission may close friendly settlement processes if, having requested information or observations, one of the parties does not report in a timely manner on the progress in the negotiation process or does not provide the observations that have been requested.

9. In the event that the parties have tried an friendly settlement without success, and having closed that instance they wish to try again to make use of the friendly settlement mechanism, the Commission will offer its good offices only if the parties present substantial progress in the negotiation and signing of a friendly settlement agreement.

10. The Commission will prioritize the opening of greater spaces for dialogue, through meetings either in person or remotely, to promote the negotiation and implementation of friendly settlement agreements.

11. The parties have the responsibility to report to the Commission on the progress of the bilateral negotiations and to move forward in the negotiations in an agile manner. Likewise, the parties have the responsibility to request the opening of formal and informal spaces for dialogue to seek the facilitation of the IACHR Commission in matters in which such mediation is required.

12. To instruct its Executive Secretariat to adopt the necessary measures to apply this resolution, as well as include what is pertinent in its Annual Report.

Approved on the 16th day of the month of April, 2020 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda Arosemena de Troitiño; Julissa Mantilla Falcón; and Edgar Stuardo Ralón Orellana, members of the IACHR.